

Mar 1996.

2ND CASE of Level 1 printed in FULL format.

Tunbridge Wells Borough Council v Dunn

QUEEN'S BENCH DIVISION (CROWN OFFICE LIST)

CO/3687/95. (Transcript: John Larking)

HEARING-DATES: 19 MARCH 1996

19 MARCH 1996

pedlar

COUNSEL:

T Straker for the Appellant; S Birks for the Respondent

PANEL: LEGGATT LJ, SIR IAIN GLIDEWELL (SITTING AS A JUDGE OF THE QUEEN'S BENCH DIVISION)

JUDGMENT BY - 1: LEGGATT LJ

JUDGMENT - 1:

LEGGATT LJ: The Tunbridge Wells Borough Council appeals against the decisions of the Tunbridge Wells Magistrates, who, on 5 September 1995, acquitted the Respondent, Paul Dunn, on eight informations, each of which charged him with having, on a different date, engaged in street trading in a prohibited street called Calverley Road, Tunbridge Wells, between its junction with Mount Pleasant Road and its junction with Crescent Road, contrary to para 10(1) of Sch 4 of the Local Government (Miscellaneous Provisions) Act 1982.

The Act deals with street trading in Sch 4. By force of s 3 of the Act the district council may resolve that Sch 4 shall apply to their district. Schedule 4, para 10(1), makes it an offence for a person to engage in street trading in a prohibited street. Paragraph 1(1) defines "prohibited street" as meaning:

"..... a street in which street trading is prohibited:

'street' includes-

(a) any road, footway, beach or other area to which the public have access without payment; [and in effect, a motorway service area.]

'Street trading' means, subject to sub-paragraph (2) below, the selling or exposing or offering for sale of any article (including a living thing) in a street

Finally, sub-paragraph (2), referred to in that definition of "street trading", provides, so far as material:

"The following are not street trading for the purposes of this Schedule-

(a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871

Turning to that Act, it is necessary only to read the part of the interpretation section, s 3, which is concerned with the definition of "pedlar". That provides:

"In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; that is to say, - ^{terms have}

The term 'pedlar' means any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise"

The justices, having considered the relevant statutory provisions and recounted the arguments advanced before them, found facts which included the fact that Mr Dunn was the holder of a pedlar's certificate and that on each of the eight occasions the subject of charges he had, on various dates (all of which were at least a week apart from any other date for which a charge was preferred) offered balloons for sale for a period of up to 20 minutes. In fact, on four of the occasions the periods specified were between 15 and 20 minutes and on the remaining four occasions there was no period specified.

The justices found that on each occasion the Respondent was in the paved area of Calverley Road, with which they were no doubt familiar and which they identified by reference to a chemist job and a colonnade. They found that the Respondent was not trading from a fixed position. He moved up and down Calverley Road in the course of selling and offering to sell his balloons. At no time did he have a stand whilst he was selling or exposing for sale his balloons and did he not have any articles on the ground around him. On these occasions the Respondent walked up and down while selling balloons. Although most of his trading took place in Calverley Road, he occasionally traded in other parts of Tunbridge Wells. He stopped and waited for members of the public to approach him to buy his balloons. The justices also found that it was his regular practice to travel to other towns, such as Maidstone and Crawley, in order to sell balloons.

They concluded that the Respondent was acting as a pedlar on each of these occasions in accordance with his pedlar's certificate. In reaching that conclusion they relied on the fact that he had no stand nor articles around him on the ground. He was not trading from a fixed position but he sold balloons only when approached by members of the public, and that he regularly travelled from town to town in order to sell balloons.

The Appellant's counsel, by Mr Straker, argues that a pedlar acting as such must be travelling, that is to say going somewhere as opposed to walking about within a place. That, it is submitted, shows where the Magistrates went wrong because they thought that motion by itself was enough. They thought, so it is submitted, that a person would be peddling were he to be moving in or through Calverley Road, whereas what happened here was, as was submitted by Mr Straker, that the Respondent arrived in Tunbridge Wells in the morning and went to a location. I must say there that the reference to "in the morning", whatever effect that was suppose to have on our minds, is wholly unwarranted by anything that I have been able to find in the Case Stated. Mr Straker submits that having gone to what he calls a location, meaning, presumably, the area of Calverley Road, the Applicant remained in one place.

The findings of fact by the Justices, however, make quite plain that he was not accused of being even in one area, that is to say in the area of Calverley Road, for a period of more than 20 minutes at any one time.

Mr Straker next submitted (and this was the burden of all his submissions) that the Respondent had to be travelling if he were to be acting as a pedlar. He acknowledged that whilst doing so he had to be able to stop for the purpose of selling his balloons from time to time, but the suggestion appeared to be that because he was not in something not far short of perpetual motion he could not claim to have been a pedlar at the material times. This, Mr Straker asserted (and we have no reason to doubt him), was a pedestrian precinct. Therefore, he argued, activities of this kind, were they to be permitted in this area, might occur in the concourse of a railway station.

For my part, I was quite unable to understand how that submission, assuming it to be correct, could advance the Council's case on this appeal.

It was further said in that context that because "street", as a matter of definition under the Act of 1982, includes a motorway service station, activities of this kind might, without constituting an offence under Sch 4 of the Act, be conducted in such an area.

Again, I am unable to understand how, assuming that to be correct, it makes any difference to the conclusion at which the justices arrived in the present case.

The high point of Mr Straker's argument appeared to be the argument addressed to us by reference to *Watson v Malloy* [1988] 3 All ER 459, [1988] 1 WLR 1026. In that case, which was heard in this court, two different persons who had been selling gift wrapping paper from portable stands in different places were charged with street trading under Sch 4 of the Act of 1982. It was said of the first of the defendants that he sold wrapping paper from a portable stand in a stationary position in a particular street although, when not in that street in Plymouth, he travelled all over the country by motor vehicle to various other towns in England. He was described as trading from a stationary position during some part of the day.

The woman who was also charged similarly conducted herself, although in the latter part of the principal judgment *Hutchison J* mentioned that when in Plymouth, selling goods from a stall in the same position, she normally worked from nine to four. In that case the judge said, but with reference to a photograph, at page 1030D of the latter report:

"The picture is of a man conducting his business from one position, rather than of someone carrying and selling goods as he moves around."

At page 1032E *Hutchison J* said:

"The popular conception of a pedlar is someone who goes around selling things or services, who sells on the move; he is an itinerant seller."

If the distinction is to be encapsulated in an aphorism, one might say that a pedlar is one who trades as he travels as distinct from one who merely travels to trade."

Whether or not that be a neat summary of the position I have not found it helpful in ascertaining whether a particular offence has been committed under Sch 4 of the Local Government (Miscellaneous Provisions) Act 1982

Mr Straker summarises his argument by saying that had it been desired to include pedestrian activities the definition could have been 'trades on foot' and 'goes from time to time', instead of "travels and trades". To that the answer would appear to me to be that it is difficult to contemplate a description of what this Respondent was about unless it was that he was travelling and trading on foot, exposing for sale any goods, namely balloons. Mr Straker refers to a case in which, on the facts, the person concerned was travelling on foot from house to house, whilst going, as it was said, through the town. However, that case was concerned primarily with the question whether the accused man was rightly described as a "pedlar" because notwithstanding that he had come to the town in question, where he was alleged to have committed the offence, not on foot but by motor vehicle.

The emphasis, according to Mr Straker, once more is upon "travel". That, he contends, does not occur if a person has, as he puts it, arrived at a particular place at which the activity of selling balloons occurs. He submits that on the facts found in this case Mr Dunn could not aptly be described as someone who sells on the move or as a person who was trading as he travels. Those, no doubt, are phrases culled from Watson's case to which I have referred. Mr Straker remarks that street trading may include persons who are only occasional traders and they may be said to be in and remain in a particular place provided that they are within the same street during the period in question. He submitted, taking the latter points together, that the time for which Mr Dunn was within the area, referred to in each of the summonses, was longer than was consistent with his having been acting as a pedlar during that period.

It seems to me that we must go by the definition of "pedlar" as we find it in the Pedlars Act 1871. After identifying various descriptions of persons selling on a small scale as individuals, the section then it describes what it is they have in common. They are persons who, so far as material for present purposes, travel and trade on foot and go from town to town carrying to sell or exposing for sale any goods. I have already remarked that that aptly describes what it was that Mr Dunn was doing on the occasions that were the subject of the charges brought against him.

It seems to me that the approach of the Magistrates was in every respect correct. They applied the right test for determining whether the Respondent was pedlar and in a model Case Stated they made findings of fact that render intouchable their decision to acquit the Respondent. The question which they asked at the end of the case for the opinion of this court is:

"Whether on the facts found we were entitled to conclude that the Respondent was acting under the authority of his pedlar's certificate, and therefore had a defence under Paragraph 1(2) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 to the offences alleged?"

To that question I unhesitatingly answer "Yes" and I would accordingly dismiss the appeal.

JUDGMENT BY -2: SIR IAIN GLIDEWELL

JUDGMENT -2:

SIR IAIN GLIDEWELL: I also have no hesitation in answering "Yes" to the question, and I agree that the appeal should be dismissed.