

Andrew SATHIYAVAN

-v-

Regina

JUDGEMENT ON APPEAL AGAINST CONVICTION

1. FACTS

- 1.1 At approximately 3.15pm on 12th April 2020 (Easter Day), the Appellant (“AS”) was, as he accepted, on the High Street in Sutton preaching the Christian Gospel.
- 1.2 As the body worn footage of PC Routledge clearly demonstrates, there was a preliminary exchange between two police officers and AS in relation to his presence on the street during the first lockdown imposed by the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (“the Regulations”).
- 1.3 PC Routledge decided to become involved and, once physically on the scene, effectively took over inter-action with AS.
- 1.4 In essence, as AS accepted, the officer asked him to leave, AS refused to do so. The officer repeatedly asked AS for his name. AS, as he also accepted, refused; but gave his name eventually.
- 1.5 AS was arrested by PC Routledge.

2. REGULATIONS

- 2.1 It was widely accepted at the time that the severity of the pandemic brought with it the need for governmental

interference with general human rights and freedoms either unprecedented or not experienced since the Second World War.

2.2 AS was charged with a single offence:

On 12th April 2020 at High Street, Sutton, during an emergency period, without reasonable excuse, failed to comply with a reasonable instruction given by a relevant person, namely PC Routledge, under regulation 8 of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 in that you refused to leave the area and refused to provide your details contrary to regulation 9(3) and (4) of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.

2.3 The Regulations came into force on 26th March 2020. There was no challenge to the legality or validity of the Regulations.

2.4 The relevant parts of Regulation 6 read:

“6.-(1) During the emergency period, no person may leave the place where they are living without reasonable excuse.

(2) For the purposes of paragraph (1), a reasonable excuse includes the need-

.....

(f) to travel for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living.”

2.5 Regulation 8 provides for the enforcement of a requirement under the Regulations. Regulation 8(3) specifically provides as follows:

“(3) Where a relevant person considers that a person is outside the place where they are living in contravention of regulation 6(1), the relevant person may-

(a) direct that person to return to the place where they are living, or

(b) remove that person to the place where they are living.

2.6 Regulation 9 provides for the offences and penalties under the Regulations.

3. DISCUSSION

3.1 Prior to the hearing of the appeal the parties provided the Court with bundles containing written skeleton arguments. At

the beginning of the hearing of the appeal we indicated that we had read the contents of the bundles. We would like to express our gratitude to the parties for prior provision of this material; that was of great assistance and significantly reduced the duration of the appeal as both advocates readily accepted the Court's invitation not to rehearse in subsequent oral argument material which had been digested by the Court in written form.

- 3.2 Each advocate, at the Court's further invitation, supplemented written submissions with oral argument.
- 3.3 In essence, Mr. Phillips, on behalf of AS, argued that the appellant was not in breach of the Regulations. His primary submission was two-fold, namely that AS was out for the "purposes of work" or, in the alternative, "to provide voluntary or charitable services." Mr. Phillips pointed out that the Regulations are silent on the meaning of "work" and argued that it "should be given a wider reading.....than to simply cover gainful employment and should incorporate [AS's] work as a preacher."
- 3.4 Mr. Phillips further argued¹ that "it goes without saying that [AS's] work as a street preacher cannot be 'conducted from the place where [he is] living' under Regulation 6(2)(f)." For that proposition he relied in the first instance upon part of the evidence the Court received from AS; in the second instance, upon part of the testimony of the expert witness,² Dr. Martin Parsons who, in his written report at paragraph 41³ (repeated on oath in the witness box) told the Court this:

"Street preaching has always required physical presence on the street, and the importance of doing so during times of plague and pandemic is heightened, not lessened. It cannot reasonably be conducted for example, over the internet, as this would exclude some of the most vulnerable in society from the opportunity to 'make peace with God'".

And in the third instance, Mr. Phillips relied upon the live evidence of Mr. Martin Budd, who, essentially, reiterated the above material.

¹ See paragraph 36 Appellant's skeleton argument.

² Whose status as an expert witness and whose qualifications were not challenged by Counsel for the Respondent.

³ Taken as read by the Court by agreement with the advocates.

- 3.5 At paragraph 37 of his skeleton argument Mr. Phillips brought Regulation 8(3)(b) to the Court's attention. Given the primary basis for our Findings it is unnecessary to deal further with this Regulation.
- 3.6 Further and in the alternative, Mr. Phillips argued⁴ that "the Regulations, as interpreted by [PC Routledge] on the day, constitute an unreasonable interference with [AS's] rights under Article 9 ECHR. Article 9 is a qualified right capable of restriction 'for protection of public health' however any interference must be necessary and proportionate. It clearly was not."
- 3.7 The bundle of written materials served and oral submissions put before the Court placed equal reliance on the weight to "be afforded to [AS's]...Article 10 rights."⁵
- 3.8 Given the primary basis for the Court's Finding it is not necessary to consider further this limb of argument.
- 3.9 Ms. Steels on behalf of the Respondent accepted "the Appellant's summary of the relevant legislation under [the Regulations] at paragraphs 13 to 20 of the Appellant's skeleton argument, and that it is regulations 6, 8 and 9 that are pertinent in this case".⁶
- 3.10 "The First legal issue" to be addressed is, Ms. Steels, submitted "whether, at that time, Article 9 and Article 10 could be interfered with and limited".⁷
- 3.11 Given the primary basis for the Court's Finding it is not necessary to consider further this limb of argument.
- 3.12 Ms. Steels turned to the "Second Legal Issue"⁸ (i.e., the Regulations). Both in her written and oral submissions Counsel for the Respondent accepted that AS was providing "voluntary or charitable services" but submitted that AS was not in the street for the purpose of "work;" further submitting that it was for the Court to determine whether AS could have provided the services from home. In supplementary oral submissions Ms. Steels sought to persuade us that this type of service could have been so provided as it was not clear to

⁴ See paragraphs 39 & 21-30 skeleton argument.

⁵ Ibid paragraph 26.

⁶ See paragraph 7 skeleton argument.

⁷ Ibid paragraph 9.

⁸ Ibid paragraphs 21-23.

whom AS was on the streets to preach (there were not many people around that day was her observation taken from PC Routledge's body worn footage); there were no homeless people in evidence; AS had an alternative means of delivering the Gospel message - even if that were not ideal (everyone, in the prevailing circumstances, had to adjust their ways of working); AS could have successfully delivered these services by live-streaming through Facebook, by contacting homeless hostels (one of which, on the evidence, was nearby the location of the allegation), by posting tracts/leaflets to such hostels; or by engaging in Zoom sessions or streaming to homeless hostels. Therefore, Ms. Steels submitted, AS was lawfully arrested after a breach of the Regulations.

4. ROUTE TO FINDING

- 4.1 The Court directed itself upon the discharge of its primary functions; the elements of the offence and the burden and standard of proof generally and within the context of the defence of "reasonable excuse;" the good character of AS; the law relevant to Articles 9 & 10 ECHR.
- 4.2 The Court adopted the following "Route to Finding," asking itself these questions in order to arrive at its conclusions:
 1. What was AS doing on the day?
 2. What do the Regulations say in the context of what AS was doing on the day?
 3. What are the relevant exemptions within the Regulations?
 4. Was there an alternative means of AS doing what he was doing?
 5. How do Articles 9 & 10 ECHR affect the issues in the appeal?

5. FINDING

- 5.1 What was AS doing on the day?
 - 5.1.1 There is no doubt that AS was on the High Street in Sutton, having travelled there by himself in his own vehicle, in order to follow his calling as a street preacher. We accepted his evidence upon that point without

reservation. Ms. Steels, understandably, did not challenge that aspect of AS's case.

5.2 What do the Regulations say in the context of what AS was doing on the day?

5.2.1 Regulation 6(1) - entitled "**Restrictions on movement**" – provides (as aforementioned) that "During the emergency period, no person may leave the place where they are living without reasonable excuse".

5.3 What are the relevant exemptions within the Regulations?

5.3.1 for the purposes of paragraph (1) a "reasonable excuse **includes** the need – (f) to travel for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living."⁹

5.3.2 We noted that the particular drafting of the Regulation as highlighted above. Against the background of the issues in this appeal that particular form of words did not materially affect our reasoning or Finding.

5.3.3 We noted PC Routledge's evidence - both live and contained in the body worn footage - to the effect that AS was prohibited from being outside unless he had a reasonable excuse under the Covid (sic) Act; listing reasonable excuses that included "shopping, exercise or to continue work."

5.3.4 We have already noted the competing submissions of the Appellant¹⁰ and the Respondent and do not rehearse them.¹¹

5.3.5 We were grateful to Mr. Phillips when, during evidence, he helpfully conceded that AS "was not formally employed in the sense that he has an employment contract or regularised hours; it's a wider definition that may be used, he argued, by an Employment Tribunal; [AS] is a charity worker."

5.4 What, if any, exemption applies in this case?

5.4.1 AS considered street preaching his very important, full-time, work as people's lives are very important because

⁹ Emphasis added.

¹⁰ Supra paragraph 3.3.

¹¹ Supra paragraph 3.12.

they are created in the image of God. He told us that he had been doing this work for 5 years; not being paid for it, but sometimes being the beneficiary of donations; doing this work as part of a team; a team of two this Easter Day. Martin Budd described AS's street preaching as his "ministry." Dr. Parsons concluded as follows:¹²

"There is therefore a long history of Christians undertaking significant Christian ministry without receiving a salary for doing so. The claims made by [AS] in his witness statement that he is a full-time street preacher and Gospel preaching is his "work" are consistent with this and have a substantial grounding in Christian theology."

5.4.2 We are not persuaded by this body of evidence. We do not find that this type of activity falls within the commonly understood and every day meaning of the word "work." We reject Mr. Phillips' submissions and do not adopt his invitation to give this word a wider meaning in the context of this appeal.

5.4.3 However, we do find that, in the particular circumstances of this case, the activity of street preaching which AS was carrying out on this particular day - the most important day in the Christian calendar, Easter Day - was the provision of "voluntary or charitable services".

5.4.4 Therefore, we find that this exemption applies in this particular case.

5.5 Was there an alternative means of AS doing what he was doing (i.e., was it necessary for AS to travel to High St, Sutton on Easter Day 2020 to preach on the street where it was not reasonably possible for him to have done so from his home)?

5.5.1 On the facts of this particular case, we find that the answer to this question is "no" – there was no alternative means of AS doing what he was doing other than travelling to the High St on 12th April 2020.

5.5.2 Our reasons are as follows:

5.5.3 12th April 2020 was Easter Day - as we have just mentioned above - the most important day in the Christian calendar.

¹² See paragraph 23 of his Witness Statement; p.18 Appellant's bundle.

5.5.4 We accepted as entirely genuine the sincerity repeatedly expressed by AS when giving evidence. Sincerity based on the genuinely held Christian belief that the street preaching in which he was then regularly involved is incapable of being effectively delivered unless face to face. AS drew upon two principal bases for that proposition: (a) The Holy Bible (the Word) – Matthew Chapter 28 where “Christ’s last command to His disciples was to preach to non-believers throughout the world”:¹³

“Then Jesus came to them and said, ‘All authority in heaven and earth has been given to me. Therefore, go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you.’”¹⁴

(b) part of his upbringing in Sri Lanka when he described one of the pastors getting involved with the dead and losing his own arms. “That influenced me deeply and so [Easter Day] was an important day to do what I did. When you’re in the darkness you need the light.”

5.5.5 We accepted that, in this case, AS’s motives were genuine; that he believed he was carrying out a serious endeavour.

5.5.6 Although perhaps of little or less import, we accepted that, in this case, what AS did was not done on impulse. Although AS did not demonstrate a detailed knowledge of the relevant Regulations or their particular application to his circumstances, we were satisfied that he was not acting with wanton disregard for the safety of the public leading up to, and during, the afternoon of 12th April 2020.

5.5.7 We accepted that, on that particular Easter Day, the fact that there were few people on the High Street in Sutton was immaterial to AS for, as he told the Court, if ONE PERSON was “saved” that was sufficient as he would have done as Christ did, namely, to go in search of the one lost sheep.

5.5.8 We accepted that, on that particular day, the focus of AS’s ministry was the homeless, the poor and drug addicts,

¹³ See Dr. Martin Parsons witness statement paragraph 9, Appellant’s bundle p.15.

¹⁴ Matthew 28:18-20; Mark 16:15; Luke 24:46-49.

many of whom will not have ready access to Facebook,¹⁵ the internet or other forms of social media.

5.5.9 We accepted that at the time the police arrived on the scene and engaged AS there were no homeless people to be seen. AS gave unchallenged evidence that there was a homeless hostel “further down the road.” Given our finding at paragraph 5.5.8 the absence of homeless people at or near the scene at the time of police engagement did not, in this specific case, materially affect our findings. In passing, we noted that in his evidence, Dr. Parsons told the Court in cross-examination that not all homeless shelters are open to approaches from Christian preachers.

5.6 How do Articles 9 & 10 ECHR affect the issues in the appeal?

5.6.1 Although we carefully considered both the written and oral arguments advanced by the respective parties in support of this limb of the appeal alongside the case law, given our Findings above it is unnecessary for us to decide how these Articles affect the issues in the appeal.

6. POSTSCRIPT

6.1 We wish to underline that, as our Findings makes clear, this case was fact-specific.

6.2 I would like to express my sincere gratitude to the two Magistrates who determined this appeal with me and who have contributed so helpfully to the production of this judgement.

Judgement handed down on Friday 27th May 2022

NB: at the conclusion of reading this judgement into the record Ms. Steels pointed out that the date of handing down was incorrectly recorded; so I changed it from 28th to 27th.

¹⁵ The evidence from both PC Routledge and AS was that his activities were being live streamed by a colleague so that they could be available on Facebook and, more particularly, to “Gospel Livestreaming Ministries”.

During the course of reading the judgement into the record I noticed that paragraph 5.3.1 was incomplete and, with the agreement of the advocates added the following words “where they are living”.