

27/10/97

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 32/97

**BEFORE: THE HON. MR. JUSTICE RATTRAY, P.
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE HARRISON, J.A.**

**REGINA
v
KEMISHA ROBINSON**

J. Vernon Ricketts for Appellant

Carrington Mahoney for Crown

27th October and 8th December, 1997

HARRISON, J.A.

The appellant was summarily convicted on information in the Resident Magistrate's Court for the parish of Westmoreland on the 28th day of April, 1997, for the offence of soliciting prostitution, contrary to section 4(1) (a) of the Tourist Board (Prescribed Areas) Registrations, 1985. She was sentenced to pay a fine of Three Thousand Dollars (\$3,000.00) and in default of payment to undergo ten days imprisonment. The fine was paid.

Having heard the appeal, we allowed the appeal, quashed the conviction and set aside the sentence. As promised, we now state our reasons in writing.

The facts of the case are that, on Thursday, the 23rd day of November, 1995, at about 2.30 a.m. Special Constable Devon Meylor, dressed in plain clothes was standing in a lighted plaza in the town of Negril in the parish of Westmoreland. The defendant walked up to a male person who was sitting on a motor cycle in the said plaza, touched him on "his private part" and said, "You got to come home with me tonight and make sure you have money to pay for my body." Special Constable Meylor walked up to the defendant and spoke to her. The male person confirmed the act of touching that Special Constable Meylor had observed. He arrested her and charged her for the said offence of soliciting prostitution.

At the close of the case for the prosecution counsel for the appellant, Mr. Vernon Ricketts, submitted that there was no case to answer. The learned Resident Magistrate ruled that there was a case to answer. Mr. Ricketts rested on his submission and the defendant was convicted.

Mr. Ricketts for the appellant before us relied on several grounds namely, that the learned Resident Magistrate should have upheld the "no case" submission, that she drew the wrong conclusion in law, that on the totality of the evidence she should have had a reasonable doubt, that she had no jurisdiction to hear the case and that the verdict was unreasonable having regard to all the evidence.

He argued that the regulation under which the appellant was charged did not contemplate any offence of prostitution nor the requirement of a licence therefor. Nor was there any evidence that the appellant was a vendor and consequently was obliged to obtain a licence under the said

regulations. He concluded that there was no satisfactory proof that the incident occurred in a public place and in all the circumstances the appeal should be allowed.

Mr. Mahoney, without much conviction, sought to maintain that the definition of "vendor" under paragraphs 2 (a) and (b) of the said Regulations coincided with the actions of the appellant who was offering sexual services for sale, and that she being in a prescribed area was required to be the holder of a licence and she was not, therefore the offence was properly proven.

Section 16 of the Tourist Board Act provides:

"16. - (1) The Minister may make regulations generally for the better carrying out of the purposes of this Act and in particular but without prejudice to the generality of the foregoing make regulations providing for-

- a) the measures and methods to be adopted in improving the basis of the tourist industry in Jamaica and in controlling and eliminating undesirable factors that may affect it;
- b)
- c)
- d)
- e) the licensing of such categories of persons employed in tourist accommodation or tourism enterprises as may be prescribed;
- f) the designation of prescribed areas and for regulating the activities and conduct of persons -
 - (i) soliciting for any prescribed purpose in those areas; or

(ii) who, having no fixed place of business in those areas or whose business activities are not carried out pursuant to any licence granted for that purpose under the provisions of any other enactment, offer goods or services to members of the public in those areas;

g) the licensing of persons referred to in paragraph (f);

(2)...

(3)...

(4) Regulations made under this section may provide for the imposition, on conviction in a Resident Magistrate's Court, of penalties for offences against the regulations, not exceeding a fine of twenty thousand dollars and imprisonment for a term not exceeding two years"

The Tourist Board (Prescribed Areas) Regulations, 1985 were made by the Minister under section 16 of the Tourist Board Act on the 12th day of December, 1985.

Paragraph 2 of the said regulations provides, inter alia:

" 'Vendor' means any person who -

(a) sells or offers for sale, rents or offers for rent to members of the public any goods or services; or

(b) solicits orders for, invites attention to, advertises or promotes in any manner whatsoever, any goods or services, but does not include a taxi operator or a contract car operator."

The relevant regulation under which the appellant was charged is contained in paragraph 4. It reads:

" 4. - (1) Subject to this regulation, no person shall engage in any activities as a vendor -

(a) in or on any street, sidewalk, park, beach or area of water adjacent to a beach;

(b) in or on any other public place,

within a prescribed area, unless that person is the holder of a licence granted under these Regulations and such activities are carried out in accordance with the terms and conditions of that licence.

(2)....

(3) Any person who contravenes the provisions of paragraph (1) shall be guilty of an offence and shall be liable, on summary conviction in a Resident Magistrate's Court to a fine not exceeding three thousand dollars or to imprisonment with or without hard labour for a term not exceeding three months or to both such fine and imprisonments and where the offence is continued after conviction such person shall be guilty of a continuing offence and in respect of each day during which the offence continues shall be liable to a fine not exceeding one hundred dollars." (Emphasis added).

The succeeding paragraphs of the Regulations provide for, the application to and grant by the Board of a licence, and fee payable, paragraph 5; the discretion of the Board, in the grant, refusal or renewal of the licence and the right of appeal, paragraph 6; the revocation or suspension of the licence for breaches of the Regulations and the right of appeal, paragraphs 7 and 8; the issue of identification cards and decals to licencees, paragraphs 9 and 10; the operation of stalls and booths, paragraph 11; the appointment of inspectors, paragraph 12; and offences against the Regulations, paragraphs 13 and 14.

The entire spirit of the statutory provisions, and in particular the Regulations is aimed at the control of and the regulating of the actions of persons involved in tourism activities, by licensing provisions and other procedural rules. The Regulations contemplate the licensing of persons involved in legitimate business activities, ancillary to the tourist trade, e.g. selling of goods and services, the operation of shops and stalls, transport services and similar activities.

Regulation 4(1)(a) is not aimed at prohibiting an offence by a "vendor" of prostitution services, who is "soliciting..." in an " area designated a prescribed area". Such services are not "carried out pursuant to a licence granted for that purpose." The said statute cannot nor did it purport to legitimize prostitution by requiring the appellant to be in possession of a licence. The fact that even the wording of the penal provision of paragraph 4(1)(a) provides that "such person shall be guilty of a continuing offence and in respect of each day during which the offence continues shall be liable to a fine" demonstrates how inappropriate it would be if it included a reference to "soliciting prostitution."

When the Tourist Board Act came into force on the 1st. day of April, 1955, Parliament must be taken to have been aware of the existence of the Town and Communities Act, which specifically provides for the offence of soliciting for the purpose of prosecution. Section 3 of the latter Act as amended by the Justices of the Peace Jurisdiction (Amendment) Act, 1995 provides:

"3. Every person who -

...

r) shall loiter in any public place and solicit
any person for the purpose of prostitution,

shall be guilty of an offence and shall be liable to
a penalty not exceeding one thousand dollars."

The prosecution of the appellant under the said Regulations was
totally misconceived.

For the above reasons, we came to the conclusion that we did.

