



The University of Hong Kong

Faculty of Law

4/F KK Leung Building, Pokfulam Road, Hong Kong

25 September 2006

Ms Elaine Lam

Zi Teng

Hong Kong

Dear Elaine:

Re: Security Bureau's supplementary information on police-undercover operations against vice activities

Thank you for informing me of the Security Bureau's recent response to our Centre's submission.

It appears that the Security Bureau agrees with our opinion that, as a matter of law, it is unnecessary for police officers to receive sexual services in order to prove any of the offences in Part XII of the Crimes Ordinance (Cap 200). Instead, it bases its position on an operational need to allow officers the flexibility to engage in sexual activities, short of vaginal and oral intercourse, "to collect sufficient evidence against the persons concerned".

While I agree that there may be circumstances in which it would be necessary for an undercover officer to receive sexual services, however, I would draw the line at circumstances where the officer's refusal of such services would likely lead to immediate physical harm. Essentially, what is wrong with the existing policy is that it endorses an exploitative practice that confers a personal advantage on the officer, whether he desires it or not. Furthermore, given the covert nature of such operations, there are insufficient safeguards to prevent the possible abuse of such practices by individual officers. There are also health and safety implications in having this permissive practice.

Such a practice raises an important professional and ethical issue for the police force as a whole. There needs to be a public debate on whether the police on ethical grounds should adopt a general policy that its officers will not receive sexual services in the execution of their duty. The only possible exception might be if the refusal of such services in the circumstances would likely lead to the immediate physical injury of a person.

It is fallacious to believe that obtaining direct and personal evidence of the receipt of sexual services is necessary to build a strong prosecutorial case for offences under Part XII.

As is seen in the three enclosed cases from England, it is possible to build a strong circumstantial case against the proprietors without police officers receiving sexual services. Such evidence would consist of

- observations of the premises both from within and without for signs of a vice operation;
- advertisement used suggesting the availability of prostitution services at the premises;
- communications for the sale and purchase of sex at the premises;
- attempted sexual contact between undercover agent and subject;
- observations and physical evidence of sexual activities found within premises as a result of the execution of search warrants.

I accept that to generate a strong inference of the proprietor's knowledge in the sexual activities, the evidence will need to show that the activities were prevalent in the premises and, in some cases, this may require that observations be made of the premises for a period of time.

There is a US law student on exchange at HKU this term who is interested in doing pro bono work on this topic. We may try to explore what policies police forces around the world have adopted in this area. I will keep you informed if I have any further research.

Yours truly,



Simon N.M. Young
Associate Professor
Deputy Director, Centre for Comparative and Public Law

Enclosure



[1983] Q.B. 663

FOR EDUCATIONAL USE ONLY

Page 1

1983 WL 215993 (DC), (1983) 147 J.P. 135, [1983] Q.B. 663, [1983] 1 All E.R. 525, (1983) 76 Cr. App. R. 165, [1983] 2 W.L.R. 299, (1983) 127 S.J. 52, [1983] Crim. L.R. 185

(Cite as: [1983] Q.B. 663)

*663 Kelly v. Purvis

[1983] 2 W.L.R. 299

Divisional Court

DC

Ackner L.J. and Webster J.

1982 Nov. 11, 12; Dec. 2

Crime--Sexual offences--Brothel, assisting in management of--Massage parlour--Masseuses providing sexual services not amounting to full sexual intercourse--Whether massage parlour "brothel"--Sexual Offences Act 1956 (4 & 5 Eliz. 2, c. 69), s. 33

[FN1] The defendant, who assisted in the management of a licensed massage parlour, was charged with assisting in the management of a brothel, contrary to section 33 of the Sexual Offences Act 1956. At her trial before the magistrate, the prosecutor established prima facie that during the massage extra services, involving masturbation of the client, were offered by the masseuse for additional fees, paid directly to that masseuse, and not forming part of the takings of the establishment. The defendant was fully aware of the sexual services being provided and on occasions performed them herself. At the close of the case for the prosecution it was submitted on behalf of the defendant that the offence alleged had not been established. The magistrate ruled that although he was satisfied that the masseuses were common prostitutes, he was not satisfied that a prima facie case had been made out that the premises were a brothel since there was no evidence that full sexual intercourse was provided there. Accordingly, he dismissed the information.

FN1 Sexual Offences Act 1956, s. 33: see post, p. 668E.

On appeal by the prosecutor:-

Held, allowing the appeal, that premises where more than one woman offered herself as a participant in physical acts of indecency for the sexual gratification of men constituted a brothel for the purposes of section 33 of the Sexual Offences Act 1956; that, accordingly, on a charge of assisting in the management of a brothel it was not essential to prove that normal sexual intercourse was provided at the premises (post, p. 671A-B).

Reg. v. Justices of Parts of Holland, Lincolnshire (1882) 46 J.P. 312, D.C. and Winter v. Woolfe [1931] 1 K.B. 549, D.C. considered.

Per curiam. To constitute a brothel, it is not essential to show that premises are in fact used for the purpose of prostitution which involves payment for services rendered. A brothel is also constituted where the women (for there must be more than one woman) do not charge for sexual intercourse (post, pp. 669G - 670A).

The following cases are referred to in the judgment:

Caldwell v. Leech (1913) 109 L.T. 188, D.C..

Durose v. Wilson (1907) 96 L.T. 645, D.C..

Gorman v. Standen [1964] 1 Q.B. 294; [1963] 3 W.L.R. 917; [1963] 3 All E.R. 627, D.C..

Reg. v. Justices of Parts of Holland, Lincolnshire (1882) 46 J.P. 312, D.C..

Reg. v. Webb [1964] 1 Q.B. 357; [1963] 3 W.L.R. 638; [1963] 3 All E.R. 177, C.C.A..

*664 Rex v. De Munck [1918] 1 K.B. 635, C.C.A..

Singleton v. Ellison [1895] 1 Q.B. 607, D.C..

Winter v. Woolfe [1931] 1 K.B. 549, D.C..

The following additional cases were cited in argument:

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

1983 WL 215993 (DC), (1983) 147 J.P. 135, [1983] Q.B. 663, [1983] 1 All E.R. 525, (1983) 76 Cr. App. R. 165, [1983] 2 W.L.R. 299, (1983) 127 S.J. 52, [1983] Crim. L.R. 185

(Cite as: [1983] Q.B. 663)

Abbott v. Smith (Note) [1965] 2 Q.B. 662; [1965] 3 W.L.R. 362; [1964] 3 All E.R. 762.

Dickenson v. Fletcher (1873) L.R. 9 C.P. 1.

Reg. v. Pierson (1706) 1 Salk. 382.

Rex v. Chapman [1931] 2 K.B. 606, C.C.A..

Woodhouse v. Hall (1980) 72 Cr.App.R. 39, D.C..

CASE STATED by the South Westminster Stipendiary Magistrate sitting at Bow Street.

On January 21, 1982, an information was preferred by the prosecutor, Robert Kelly, a Sergeant in the Metropolitan Police, against the defendant, Christine Purvis, alleging that between October 20, 1981, and January 20, 1982, she did assist in the management of a brothel at premises known as Celebrity Sauna, 85, Charlotte Street, London, W.1, contrary to section 33 of the Sexual Offences Act 1956. The defendant pleaded not guilty to the information.

The stipendiary magistrate (Mr. W. E. C. Robins) heard the information on April 6, 1982, to the conclusion of the prosecution case and found, prima facie, the following facts. Between October 20, 1981, and January 20, 1982, the defendant was prima facie assisting in the management of the premises concerned, a massage parlour licensed by the appropriate local authority. The premises consisted of a lounge/reception area, two changing rooms, three massage rooms, a solarium, a sauna and two shower cubicles. On payment of the appropriate fee on entry, massage, or sauna and massage were provided. The defendant told the prosecutor that the charges were as follows: massage £12; sauna and massage £15; VIP treatment including free drinks at the bar £18. A card also advertised a sauna at £5, but the defendant told the prosecutor that they did not do saunas on their own. During the massage, which tended to concentrate on the customer's lower back, buttocks and thighs, extra services were offered by the masseuse concerned for an additional fee of £15, namely manual masturbation of the client's penis. There was a charge of £20 if the additional service was performed topless, and a charge of £25 if performed naked. Those fees were usually paid

direct to the masseuse concerned but on one occasion to the receptionist. There was no evidence that the additional fees and surcharges were treated as part of the takings of the establishment. Eleven women were seen in the premises during the eight days of observation, usually four working there at any one time, one of them acting as receptionist. A number of men were seen to visit the premises. On each occasion on which the officers visited the premises during the observation, they were offered masturbation and heard similar offers to other men. On two occasions men were seen to be masturbated, one by the defendant. Semen was found on tissues taken from the premises at the conclusion of the last police visit. The defendant also acted as a masseuse and performed masturbation. There were also conversations in her presence when she *665 was the receptionist which indicated that she was fully aware of the sexual services given by the other masseuses. There was no evidence that full sexual intercourse was offered at the establishment, although when asked by the prosecutor "Do any of the girls do full sex?" the defendant replied "Only with regulars, sir; we don't know you, sir. You will have to discuss it with the girls."

It was contended by the prosecutor that these masseuses were prostitutes plying their trade in an establishment in which during the relevant period, the defendant assisted in the management, and that therefore the premises became a brothel within the meaning of section 33 of the Sexual Offences Act 1956. It was submitted by the defendant that whether or not the masseuses could legally be described as prostitutes, and whether or not their activities might result in the commission of other offences, the premises could not be described as a brothel. It was further contended by the defendant that the word brothel was generally recognised as meaning an establishment to which male persons resorted for the purpose of having full sexual intercourse with prostitutes and that that definition was approved by the Divisional Court of the King's Bench Division in *Winter v. Woolfe* [1931] 1 K.B. 549, and that that definition was quoted with approval after the coming into force of the Sexual Offences Act 1956 in *Gorman v. Standen* [1964] 1 Q.B. 294.

The magistrate was of the opinion that in the context of the authorities quoted by the defendant,

1983 WL 215993 (DC), (1983) 147 J.P. 135, [1983] Q.B. 663, [1983] 1 All E.R. 525, (1983) 76 Cr. App. R. 165, [1983] 2 W.L.R. 299, (1983) 127 S.J. 52, [1983] Crim. L.R. 185

(Cite as: [1983] Q.B. 663)

illicit intercourse could only refer to sexual intercourse which was defined in section 44 of the Sexual Offences Act 1956. In default, therefore, of further authorities and argument from the prosecutor to widen that definition he felt obliged to dismiss the information. He was, however, satisfied prima facie that on the authorities quoted by the prosecutor, the women concerned were common prostitutes and the facts were sufficient to support a prima facie case for assisting in the management of a bawdy house but not a brothel. For those reasons, the magistrate was of the opinion that the defendant's contention was correct in law and accordingly dismissed the information without calling upon the defendant to answer it and also awarded her £500 costs against the prosecutor.

The question for the opinion of the High Court was whether on a charge of assisting in the management of a brothel in contravention of section 33 of the Sexual Offences Act 1956 it was essential that there be evidence that normal sexual intercourse had been provided there or whether it was sufficient to prove that acts amounting to prostitution by more than one woman had taken place on the premises.

Victor Temple for the prosecutor. There is no definition of a brothel in the Sexual Offences Act 1956 itself, so one is obliged to go back to the common law. *Coke's Institutes*, Pt. III (1817 ed.), p. 204, refers to "brothel houses, estuis and bordelloes" and states that the keeper thereof is punishable at the common law. In *Singleton v. Ellison* [1895] 1 Q.B. 607 a bawdy house was equated with a brothel. The term "bawdy house" included one room kept by a lodger who "accommodate[s] lewd people to perpetrate acts of uncleanness" (*Reg. v. Pierson* (1706) 1 Salk 382); but following more recent authority more than one woman would be required *666 to constitute a brothel: see *Caldwell v. Leech* (1913) 109 L.T. 188; *Durose v. Wilson* (1907) 96 L.T. 645 and *Singleton v. Ellison*. In *Singleton v. Ellison*, a brothel was described as a place resorted to by persons of both sexes for the purposes of prostitution. It is common ground that the premises in the instant case were used for prostitution. Prostitution is not limited to sexual intercourse, but includes a situation where a woman "offers her body commonly for lewdness for payment in return": see *Rex v. De Munck* [1918] 1

K.B. 635, 637 and *Reg. v. Webb* [1964] 1 Q.B. 357. In *Woodhouse v. Hall* (1980) 72 Cr.App.R. 39, 42, a brothel was accepted as being an establishment at which two or more women were offering sexual services.

That full sexual intercourse is not necessary to constitute a brothel is also suggested by section 6 of the Sexual Offences Act 1967, which treats as a brothel somewhere resorted to for the purposes of lewd homosexual practices. The purpose of the distinction between the offences of a tenant permitting premises to be used as a brothel in section 35 of the Act of 1956 and that of a tenant permitting them to be used for prostitution in section 36 of that Act is purely that more than one woman would be necessary for the premises to constitute a brothel, not because in that case full sexual intercourse needed to be shown.

R. Alun Jones for the defendant. Until 1872 there was no distinction either in statute or at common law between premises being used for prostitution and a brothel. Prosecutions were brought under the Disorderly Houses Act 1752, the preamble of which clearly suggested that the mischief at which it was aimed was the element of public nuisance involved. Sections 5 and 8 of that Act mention "bawdy houses, gaming houses or other disorderly houses ..." Both in *Hawkin's Pleas of the Crown*, 8th ed. (1824), vol. 1, p. 717, which refers to bawdy houses, and in *Coke's Institutes*, Pt. III (1817 ed.), p. 204, which refers to brothel houses, the offence is described as a "common nuisance." It was only towards the end of the 19th century that Parliament began to provide specific rules for specific offences. The Licensing Act 1872 by sections 14 and 15 respectively made a clear distinction between permitting premises to be the habitual resort of prostitutes and permitting them to be a brothel. Whilst payment is an essential element in prostitution, full sexual intercourse is not; but to establish a brothel, full sexual intercourse is necessary, though the element of payment is not. A "brothel" was defined by Groves J. in *Reg. v. Justices of Parts of Holland, Lincolnshire* (1882) 46 J.P. 312 as "premises kept knowingly for the purposes of people having illicit sexual connexion there." Lopes J., at p. 313 defined a brothel as a place where "people of opposite sexes ... have illicit sexual intercourse."

1983 WL 215993 (DC), (1983) 147 J.P. 135, [1983] Q.B. 663, [1983] 1 All E.R. 525, (1983) 76 Cr. App. R. 165, [1983] 2 W.L.R. 299, (1983) 127 S.J. 52, [1983] Crim. L.R. 185

(Cite as: [1983] Q.B. 663)

The difference between habitual prostitution and a brothel is maintained in *Winter v. Woolfe* [1931] 1 K.B. 549, a leading authority which has been recognised by Parliament in subsequent legislation. It was held there that it was not necessary to prove that the women resorting to the premises were prostitutes, or that they received payment for acts of fornication, and the main point was that persons of opposite sexes had been permitted with the knowledge of the occupier to have illicit sexual intercourse there. In giving judgment, Avory J. adopted the definition of a brothel given by Grove J. and Lopes J. in *Reg. v. Justices of Parts of Holland, Lincolnshire*, 46 J.P. 312 *667. In *Gorman v. Standen* [1964] 1 Q.B. 294, 303, Lord Parker C.J. stated that "A bawdy house by definition is a house resorted to or used by more than one woman for the purposes of fornication."

The forerunner of the Sexual Offences Act 1956 was the Criminal Law Amendment Act 1885, section 13 of which provided for the suppression of brothels, but retained the distinction between premises used "as a brothel" and those used "for the purposes of habitual prostitution." If Parliament uses a word previously defined judicially without providing its own definition it may be presumed that it thereby adopts that definition. In any case, the words of a penal enactment must clearly indicate the circumstances in which they operate: *Dickenson v. Fletcher* (1873) L.R. 9 C.P. 1. Where there is any doubt as to the meaning of an enactment, the benefit of the doubt should be given to the subject and against the legislature which had failed to explain itself: *Rex v. Chapman* [1931] 2 K.B. 606.

In enacting the Sexual Offences Act 1967, Parliament was not purporting to define a brothel but simply to apply to homosexual acts what sections 33 to 36 of the Act of 1956 did for heterosexual acts. Likewise, section 5 of the Act of 1967 gives no definition of prostitution by men. The facts of the present case do not establish that the premises were a brothel because there was no evidence of full sexual intercourse having taken place, and the appeal should be dismissed.

Temple in reply. The definition of a brothel was also considered in *Abbott v. Smith* (Note) [1965] 2 Q.B. 662, 663 where Judge Chapman stated: "the

essence of a brothel, or bawdy house, is that there must be premises resorted to or used by more than one woman for the purpose of illicit sexual intercourse or other sexual lewdness ... with more than one man. ..." It is significant that offences under sections 30 and 31 of the Sexual Offences Act 1956 of living on the earnings of prostitution and of controlling a prostitute respectively are both triable on indictment as well as summarily, whereas that of keeping a brothel under section 33 is only triable summarily.

Cur. adv. vult.

December 2.

ACKNER L.J.

read the following judgment of the court. This prosecutor's appeal by case stated from the adjudication on April 6, 1982, by the South Westminster Metropolitan stipendiary magistrate, Mr. William Edward Charles Robins, sitting at Bow Street, raises the question: what constitutes a brothel?

Only the prosecution evidence was heard, because the magistrate accepted the defence submission that the prosecution had failed to establish the offence alleged, namely, that between October 20, 1981, and October 20, 1982, the defendant, Christine Purvis, assisted in the management of a brothel at premises known as Celebrity Sauna, 85 Charlotte Street, London W.1, contrary to section 33 of the Sexual Offences Act 1956.

The prosecution evidence established, *prima facie*, the following facts. [His Lordship summarised the facts as set out in the case stated, and continued:] The magistrate was satisfied that the women concerned were common prostitutes. He was not, however, satisfied that a *prima facie* case had been made out that the premises were a brothel by reason of the *668 absence of evidence that sexual intercourse, within the meaning of the Sexual Offences Act 1956, was provided.

The magistrate's finding that the women concerned were common prostitutes was not challenged. Whereas under American law prostitution is the "practice of the female offering her body to an

1983 WL 215993 (DC), (1983) 147 J.P. 135, [1983] Q.B. 663, [1983] 1 All E.R. 525, (1983) 76 Cr. App. R. 165, [1983] 2 W.L.R. 299, (1983) 127 S.J. 52, [1983] Crim. L.R. 185

(Cite as: [1983] Q.B. 663)

indiscriminate intercourse with men, usually for hire," it is well established that in English law "prostitution is proved if it be shown that a woman offers her body commonly for lewdness for payment in return": see *Rex v. De Munck* [1918] 1 K.B. 635, 637, *per* Darling J. applied in *Reg. v. Webb* [1964] 1 Q.B. 357. *Reg. v. Webb* was also a case of a massage parlour, where the masseuses masturbated their clients. In that case, the point was taken by the defendant that the definition given by Darling J. in *Rex v. De Munck*, should be read as confined to cases where the woman offers her body for lewdness in what one might call a passive way, or where she submits to something being done to her. Lord Parker C.J., giving the judgment of the court, observed that the words used by Darling J. were not the words of the Sexual Offences Act 1956, but merely the judge's own definition, for the purposes of that case, of circumstances in which prostitution may be said to have been proved. In the judgment of that court, the expression "a woman offers her body commonly for lewdness" includes a case where a woman offers herself as a participant in physical acts of indecency for the sexual gratification of men.

It is thus common ground that these premises were used for the purpose of prostitution. Is that sufficient for it to qualify as a brothel, or do the prosecution have to establish that sexual intercourse takes place with the women who used the premises?

There is no definition in section 33 of the Sexual Offences Act 1956 as to what constitutes a brothel. The section merely provides: "It is an offence for a person to keep a brothel, or to manage, or act or assist in the management of, a brothel." That offence derives from the Criminal Law Amendment Act 1885 (48 & 49 Vict. c. 69), where in section 13 it is provided that: "Any person who - (1) keeps or manages or acts or assists in the management of a brothel ... shall commit an offence." That Act, too, gives no definition of a brothel. In such circumstances, as Lord Parker C.J. pointed out in *Gorman v. Standen* [1964] 1 Q.B. 294, 301: "one is driven back to the meaning of 'brothel' at common law."

In *Stephen, Digest of the Criminal Law*, 5th ed. (1894), at p. 142, the definition of a "common bawdy house" is given as "a house or room, or set

of rooms, in any house kept for purposes of prostitution."

In *Gorman v. Standen*, Lord Parker C.J. stated that at common law, a brothel was the same thing as a bawdy-house. He pointed out, at p. 301, that the definition of what is involved in a bawdy-house or a brothel had been variously stated in the cases: "Sometimes it is stated as a place resorted to by persons of both sexes for the purpose of prostitution; sometimes it is referred to as a place used by persons of both sexes for the purposes of prostitution."

The form of indictment for keeping a bawdy-house was referred to by Avory J. in *Caldwell v. Leech* (1913) 109 L.T. 188: *669

"Did keep and maintain a certain house and in the said house for filthy lucre and gain divers evil-disposed persons, women as well as men, upon the times and days aforesaid as well in the night as in the day unlawfully and wickedly did receive and entertain. ..."

In general the cases have been concerned, not so much with the activities which went on in the premises, as with the number of women who have to be involved, the extent of the control or management, and whether the women must be professionals or only amateurs. In *Singleton v. Ellison* [1895] 1 Q.B. 607, it was held that where a woman occupied a house and had men in for the purpose of fornication with her, she had not committed the offence of keeping a brothel within the meaning of the Criminal Law Amendment Act 1885. Wills J. said, at p. 608:

"A brothel is the same thing as a 'bawdy-house' - a term which has a well known meaning as used by lawyers and in Acts of Parliament. In its legal acceptance it applies to a place resorted to by persons of both sexes for the purpose of prostitution. It is certainly not applicable to the state of things described by the magistrates in this case, where one woman receives a number of men."

Singleton v. Ellison was distinguished in *Durose v. Wilson* (1907) 96 L.T. 645, a case involving a block of flats where a number of the tenants were in the habit of bringing different men nightly to the premises for the purpose of prostitution. However, A. T. Lawrence J. stated, at p. 646: "a brothel is

1983 WL 215993 (DC), (1983) 147 J.P. 135, [1983] Q.B. 663, [1983] 1 All E.R. 525, (1983) 76 Cr. App. R. 165, [1983] 2 W.L.R. 299, (1983) 127 S.J. 52, [1983] Crim. L.R. 185

(Cite as: [1983] Q.B. 663)

such a place as that described in that case - that is, premises used by more than one woman for prostitution."

In *Caldwell v. Leech*, 109 L.T. 188 Avory J. expressed his entire agreement with the judgment of A. T. Lawrence J., and stated, at p. 191:

"In my opinion the whole fundamental idea of a bawdy-house is that it is a house to which persons of both sexes indiscriminately make resort for the purposes of prostitution."

The case upon which the defendant strongly relies, and which persuaded the magistrate to dismiss the information, is *Winter v. Woolfe* [1931] 1 K.B. 549. This case concerned a cottage about two miles from Cambridge, frequented in the main by undergraduates, where sexual intercourse took place with a number of women. The women were not, however, proved to be prostitutes and therefore, at the close of the case for the prosecution, it was successfully submitted that there was no case to answer. Accordingly, the court held that although the occupier of the cottage knew what was going on, the premises were not being used as a brothel. Avory J. in giving the judgment of the court, held, at p. 554, that the justices had "given too restricted a meaning to the word 'brothel' as it is used at common law, and as it is used in section 13 of the Criminal Law Amendment Act 1885." It was not necessary to prove that the women resorting to the premises were prostitutes, known as such to the police, or that they received payment for acts of fornication committed by them with men. It was sufficient to prove that with the knowledge of the occupier persons of opposite sexes were permitted there to have illicit sexual intercourse. This case, in our judgment, merely demonstrates that to constitute premises as a brothel, it is not essential *670 to show that they are in fact used for the purpose of prostitution, which involves payment for services rendered. A brothel is also constituted where the women (for there must be more than one woman) do not charge for sexual intercourse.

In the course of his judgment (and this is essentially what is relied upon by the defendant) Avory J. expressed his willingness to accept the definition of a brothel given by Grove J. and Lopes J. in *Reg. v. Justices of Parts of Holland, Lincolnshire* (1882) 46 J.P. 312. Grove J. said, at p.

312:

"The sole question is, whether there was any evidence to support this conviction before the justices for permitting these licensed premises to be a brothel. ... I don't think that the matter of nuisance is of any importance, for it is too well known that these places are often kept in such a way as to be no nuisance at all, but kept perfectly private. But what needs only to be proved is this, namely, that the premises were kept knowingly for the purpose of people having illicit sexual connection there."

Lopes J. said, at p. 313:

"Now the sole question before the justices was, whether the applicant permitted his premises to be a brothel. What is the meaning of permitting the premises to be a brothel? I think my brother Grove has given a very apt definition, namely, that it is permitting people of opposite sexes to come there and have illicit sexual intercourse. That is a very complete and satisfactory definition of the whole matter."

Reg. v. Justices of Parts of Holland, Lincolnshire was concerned with whether there was any evidence to support the conviction by the justices for permitting licensed premises to be a brothel. There was evidence that two prostitutes, accompanied by two men, went into the house; that the police had watched the house; that they observed soon afterwards, by shadows on the blinds, these four people undressing in a double-bedded room. When the police at a later hour, knocked at the door, considerable delay occurred in opening it. Then they found that the two prostitutes had been transferred to the bed of the landlord's wife, three women in one bed, while in the double bedded room were the two men by themselves. It was argued that the conviction could not be supported by the evidence of one isolated act. The court, however, held that although only one instance was proved, still it supplied strong evidence of the mode of conducting the house, and it was reasonably to be inferred that this had not been a solitary instance of such conduct, but one of many such instances. There was the concealment of the two prostitutes by the wife of the landlord showing that this had been no extraordinary case but a frequent occurrence. The wife gave no evidence. The justices were thus held not to be bound to state a case, there being no point of law raised before them. That case merely decided that there was evidence before the justices

1983 WL 215993 (DC), (1983) 147 J.P. 135, [1983] Q.B. 663, [1983] 1 All E.R. 525, (1983) 76 Cr. App. R. 165, [1983] 2 W.L.R. 299, (1983) 127 S.J. 52, [1983] Crim. L.R. 185

(Cite as: [1983] Q.B. 663)

from which they could infer either that the premises were being used for the purposes of prostitution, or that persons of opposite sexes were permitted there to have illicit sexual intercourse. It *671 was not a case which called for an exhaustive definition of a brothel. In *Winter v. Woolfe* [1931] 1 K.B. 549, Avory J., in expressing his willingness to accept the definitions given by Grove J. and Lopes J. was doing no more than justifying his view that the justices were giving too restricted a meaning to the word "brothel."

We therefore answer the question raised by the case stated in these terms. On a charge of assisting in the management of a brothel in contravention of section 33 of the Sexual Offences Act 1956, it is not essential that there be evidence that normal sexual intercourse is provided in the premises. It is sufficient to prove that more than one woman offers herself as a participant in physical acts of indecency for the sexual gratification of men.

We should perhaps add, although this has not featured in our reasoning, that the view which we have expressed above does give content to section 6 of the Sexual Offences Act 1967 which provides that premises shall be treated for the purposes of sections 33 to 35 of the Act of 1956 as a brothel if people resort to it for the purpose of lewd homosexual practices in circumstances in which resort thereto for lewd heterosexual practices would have led to it being treated as a brothel for the purposes of those sections.

The appeal will be allowed and the case remitted to the magistrate to hear and determine according to the law as it has been laid down by this court.

Representation

Solicitors: Solicitor, Metropolitan Police; Peters & Peters.

Appeal allowed. Costs in cause. Case remitted to magistrate to continue hearing. ([Reported by PAUL MAGRATH, Barrister-at-Law])

(c) Incorporated Council of Law Reporting For England & Wales

END OF DOCUMENT

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



(1988) 10 Cr. App. R. (S.)

FOR EDUCATIONAL USE ONLY

Page 1

1988 WL 623720 (CA (Crim Div)), (1988) 10 Cr. App. R. (S.) 339

(Cite as: (1988) 10 Cr. App. R. (S.) 339)***339 R. v. Julie Martin**

Court of Appeal

CA (Crim Div)

(Lord Justice Watkins, Mr. Justice French and Mr. Justice Farquharson):

August 1, 1988

Keeping disorderly house--prostitute offering various sexual activities-- length of sentence.

Nine months' imprisonment for keeping a disorderly house reduced to three months.

The appellant was convicted of keeping a disorderly house. She had offered various sexual activities for payment at premises in London. No other prostitute was involved in her activities. The appellant had previously been fined for a similar offence. Sentenced to nine months' imprisonment.

Held, (considering Payne (1980) 2 Cr.App.R.(S.) 161) the circumstances in Payne were worse than those of the present case, and as the sentence in that case was reduced to six months, the sentence in the present case would be reduced to three months.

Case cited: Payne (1980) 2 Cr.App.R.(S.) 161.**References:** offences related to prostitution, *Current Sentencing Practice* B 5-1. 3 (A).*M. Boardman* for the appellant.

FARQUHARSON J.:

On June 10 this year this appellant appeared at the Knightsbridge Crown Court where, after a contested trial, she was convicted of the offence of keeping a disorderly house. The learned Judge imposed upon her a term of nine months' imprisonment.

She was then 23 years of age and at the time of the

offence, in the month of January this year, she was living in basement premises in Balcombe Street, West London. During that month observation was kept by police officers on those premises and it was observed by them that a considerable number of visits to the flat was made by various male persons. A record was kept of those visits, which are too detailed to be referred to in this judgment. It is sufficient to say that there was a very considerable clientele.

The appellant had published nearby an advertisement and a telephone number, which the police officers took the opportunity of using. The telephone was answered by somebody who turned out to be the appellant's "maid." In discussion she told them the tariff which was charged by the appellant for male visitors who required spanking or caning, either on themselves or on the prostitute. Further fees were charged for forms of sexual intercourse. The range of fees was such, bearing in mind the number of clients the appellant obviously had, that she made a very considerable amount of money. There is some information in the antecedent form to confirm that.

***340** At a later date one of the police officers attended the house, posing as a customer where, without going into it further, it was found that the activities which had been described on the telephone were undoubtedly taking place, more than one customer being present.

Subsequently the premises were raided and the appellant arrested. A good deal of paraphernalia in the form of whips and other weapons was found in the premises, which tend to corroborate the advertisement.

Grounds have been put forward before this Court saying that the sentence was too long: first, the young woman's age--she is now 24--secondly, the activities which she undoubtedly indulged in were done privately in a room in the flat: there was no public offence such as might be caused by prostitutes soliciting in the street, and thirdly, that she was acting as a sole prostitute: there was no

1988 WL 623720 (CA (Crim Div)), (1988) 10 Cr. App. R. (S.) 339

(Cite as: (1988) 10 Cr. App. R. (S.) 339)

other woman on the premises who was taking part in these activities, and so there was no evidence of any group misbehaviour or any girl being forced to conduct herself as a prostitute by the appellant. Indeed Mr. Boardman advancing this argument points out this is not the kind of disorderly house which was contemplated by the Legislature some 200 years ago. The activity is really that of a prostitute rather than somebody presenting indecent performances.

There is certainly authority for saying that this kind of activity does come within the general range of what constitutes a disorderly house, but it is fair to say, in deference to Mr. Boardman's argument, that this is very much at the lower end of the scale of disorderly house offences.

The difficulty in the case, one which obviously motivated the learned judge in taking the course that he did, was the fact that this appellant has a previous conviction for precisely the same offence, in that on September 19, 1986 at Marylebone Magistrates Court she was fined £250 for keeping a disorderly house, as well as being bound over in the sum of £200 for a term of 12 months. The attitude of the judge was that the appellant had plainly ignored the warning which had been given to her on that occasion, and indeed was in effect flouting the law by carrying on the activity in precisely the same way as she conducted herself before that earlier conviction.

The learned judge, it appears, would not consider the option of a fine. We do not criticise him for that, but plainly he took the view that there was no mitigation, bearing in mind the circumstances of that earlier conviction.

Before us today Mr. Boardman has referred to the case of Payne (1980) 2 Cr.App.R.(S.) 161. She in fact was charged with keeping a brothel and had been sentenced at her trial to a term of 18 months' imprisonment. On appeal this Court reduced that sentence to one of six months' imprisonment. It is fair to say that the circumstances in the case of Payne were very much worse than those of the present appellant: the scale of the activity, the number of people involved, the extent of the indecency and the general immorality of what Mrs. Payne was doing was very much worse, as I have just emphasised, than anything indulged in by this

appellant.

Being loyal therefore to the earlier decision of this Court, it seems to us that if Mrs. Payne's sentence was reduced by this Court to six months' imprisonment, the present appellant's sentence should be similarly reduced to something of the order of three months. It is our view that that would be an appropriate sentence for this particular offence.

Accordingly the appeal will be allowed, the sentence of nine months' imprisonment imposed by the learned judge will be quashed and the sentence of three months' imprisonment substituted therefor.

(c) Sweet & Maxwell Limited

END OF DOCUMENT



(1981) 72 Cr. App. R. 39

FOR EDUCATIONAL USE ONLY

Page 1

1980 WL 148609 (DC), (1981) 72 Cr. App. R. 39, [1980] Crim. L.R. 645

(Cite as: (1981) 72 Cr. App. R. 39)***39** Woodhouse v. Hall

[Divisional Court]

DC

Lord Justice Donaldson and Mr. Justice Comyn

July 9, 1980

Evidence--Admissibility--Brothel--Management of Brothel--Police Officers' Evidence of Words Said by Employee in Brothel Not Called as Witness--Whether Admissible--Sexual Offences Act 1956 (4 & 5 Elix. 2, c. 69), s. 33.

By section 33 of the Sexual Offences Act 1956: "It is an offence for a person ... to manage, or act or assist in the management of, a brothel."

In a prosecution for acting in the management of a brothel contrary to section 33 of the Sexual Offences Act 1956 evidence by police officers of conversations in the absence of the defendant in which immoral services were offered to them by women employed at the premises as masseuses, is admissible to show the purpose for which the premises were used. Such evidence is not hearsay but is ordinarily admissible because it does not turn on the truth of the statements alleged to have been made by the women concerned but whether they made the oral offers as alleged.

Ratten v. R. (1971) 56 Cr.App.R. 18; [1972] A.C. 378 applied.

[For admissibility of evidence and exceptions to the hearsay rule, see Archbold (40th ed.), paras. 1284, 1286].

CASE STATED by Redbridge Justices for the North East London Area sitting at Ilford.

1. On January 6, 1978, an information was preferred by the prosecutor Eric Woodhouse against the defendant, Jacqueline Hall that she did between

and including November 18, 22, 1977, at Wanstead Sauna, 3 High Street, Wanstead, E11 act in the management of a brothel at the said premises contrary to section 33 of the Sexual Offences Act 1956.

2. The justices heard the said information on November 16, 1978, when counsel for the prosecutor in his opening address intimated that the defence had been supplied with copies of the prosecution witnesses' statements, that counsel for the defendant wished to object to the admissibility of certain evidence, and that both counsel asked us to rule on this matter at the outset.

***40** The evidence in question was that of conversations by police officers with women at the premises, out of the presence and hearing of the defendant, in which immoral services were offered.

3. Counsel for the prosecutor outlined the prosecution case as follows:

(a) the premises referred to in the information were a Sauna and Massage establishment occupying two floors of the building, and consisted of a reception area, sauna room, solarium, exercise gymnasium, showers and cubicles used for changing and massage;

(b) the defendant was the manageress of the establishment and that two other women were also employed there with her from time to time, so that there were always two women on the premises at any one time;

(c) during the period referred to in the information four police officers in plain clothes had kept observation on the premises and had also entered it in the guise of customers, when they had used the sauna, gymnasium and showers and had been massaged by the defendant and the other two women;

(d) while being massaged they had been offered masturbation under the name "hand relief" by the defendant and also by the other two women, such

1980 WL 148609 (DC), (1981) 72 Cr. App. R. 39, [1980] Crim. L.R. 645

(Cite as: (1981) 72 Cr. App. R. 39)

offers having been on some occasions unsolicited and on others in response to questions from the officer concerned, and that the price quoted for "hand relief" was £6 and for "topless hand relief" £10;

(e) such offers were made when the defendant or other women making the offer was alone with one of the police officers, so that when made by one of the other women the defendant was neither present nor within earshot;

(f) none of the officers had accepted any such offer, each making some excuse;

(g) test requests by the officers for sexual intercourse had been refused;

(h) on one occasion when a man being massaged by the defendant was glimpsed through a half-open door it was seen that he was naked and his penis erect;

(i) on January 9, 1978, when a warrant for the defendant's arrest was executed police officers searched the premises and found a number of discarded tissues two of which were later shown to bear heavy seminal staining; and

(j) the two other women were not to be called as witnesses for the prosecution.

4. It was contended by the prosecutor that evidence by police officers of conversations with women on the premises out of the hearing of the defendant in the course of which extra services of an immoral nature were offered would be admissible on the ground that such evidence went to prove that the premises were in fact a brothel, being a place resorted to for the purpose of the prostitution of more than one woman.

5. It was contended by the defendant that such evidence would be inadmissible as being hearsay.

6. The justices ruled that the evidence would be rejected as inadmissible unless the women alleged to have spoken the words gave evidence of them. Consequently the prosecution were only able to call evidence relating to the activities of one woman and at the conclusion of the prosecution's case the defence submitted and the prosecution did not

challenge that there was no case to answer there being no evidence that there was more than one prostitute engaged on the premises. The justices accepted the submission and found that there was no case to answer and did not come to any conclusion as to the facts.

7. The justices were referred to the following case: *Gorman v. Standen* [1963] 3 All E.R. 627; (1963) 48 Cr.App.R. 30.

*41 8. The justices were of opinion that the object of the proffered evidence was to establish the truth of the statements and was therefore hearsay and inadmissible. There being no evidence that more than one prostitute was engaged on the premises they accordingly dismissed the information. The prosecutor appealed.

9. The question for the opinion of the court was: "Whether the justices were right in rejecting as inadmissible the proffered evidence of conversations between police officers and women who offered immoral services on the premises, such conversations not being in the presence and hearing of the defendant Jacqueline Hall."

John Hazan, Q.C. and *John Blair-Gould* for the prosecutor. *Ann Goddard* for the defendant.

Donaldson L.J.:

This is a prosecutor's appeal by case stated against the dismissal of a charge against the defendant under section 33 of the Sexual Offences Act 1956. The charge was that between and including November 18 and 22, 1977, at Wanstead Sauna in Wanstead, London, she acted in the management of a brothel at those premises contrary to that section.

The question of the admissibility of certain evidence was raised at the beginning of the hearing, and, in consequence, the case does not find facts but sets out the evidence which the prosecution sought to adduce to prove the charge, and which, as was admitted, they could only prove if two police officers gave evidence of a conversation.

The prosecution case, so far as relevant, was this. The premises consisted of a reception area, a sauna room, a solarium, an exercise gymnasium, showers and cubicles for changing and massage. The

1980 WL 148609 (DC), (1981) 72 Cr. App. R. 39, [1980] Crim. L.R. 645

(Cite as: (1981) 72 Cr. App. R. 39)

defendant was the manageress of the establishment. Two other women were also employed there with her from time to time, so that there were always two women on the premises at any one time. During the period referred to in the information four police officers kept observation and also entered the premises in the guise of customers. They used the sauna, the gymnasium and the showers. They were massaged by the defendant and by the two other women.

Then I get to the crucial matter upon which the prosecution relied, the evidence by the police officers "that while being massaged they had been offered masturbation under the name 'hand relief' by the defendant and also by the other two women, such offers having been on some occasions unsolicited and on others in response to questions from the officer concerned, and that the price quoted for 'hand relief' was £6 and for 'topless hand relief' £10." Then the prosecution case goes on to allege "that such offers were made when the defendant or other woman making the offer was alone with one of the police officers, so that when made by one of the other women the defendant was neither present nor within earshot" and "that none of the officers had accepted any such offer, each making some excuse." It appeared that the other two women, not unnaturally, were not to be called as witnesses for the prosecution.

The justices ruled that the evidence of the police officers as to the offers made by the two other women were inadmissible unless the women themselves gave evidence as to what they had said. The prosecution accepted that in the absence of the evidence of the police officers, they could not establish that this was a *42 brothel, namely an establishment at which two or more women were offering sexual services. The question is whether the evidence was rightly excluded.

We have been referred to *Ratten v. R.* (1971) 56 Cr.App.R. 18; [1972] A.C. 378, a Privy Council decision, but one which reflects English law. For my part I think it is sufficient to refer to a short passage in the opinion of the Board which was delivered by Lord Wilberforce and appears at p. 23 and p. 387 of the respective reports: "The mere fact that evidence of a witness includes evidence as to words spoken by another person who is not called, is no objection to its admissibility. Words spoken

are facts just as much as any other action by a human being. If the speaking of the words is a relevant fact, a witness may give evidence that they were spoken. A question of hearsay only arises when the words spoken are relied on 'testimonial,' *i.e.* as establishing some fact narrated by the words. Authority is hardly needed for this proposition, but their Lordships will restate what was said in the judgment of the Board in *Subramaniam v. Public Prosecutor* [1956] 1 W.L.R. 965, 970: 'Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made.'"

I suspect that the justices were misled by *Subramaniam's* case (*supra*) and thought that this was a hearsay case, because they may have thought that they had to be satisfied as to the truth of what the ladies said or were alleged to have said in the sense they had to satisfy themselves that the words were not a joke but were meant seriously and something of that sort. But this is not a matter of truth or falsity. It is a matter of what was really said--the quality of the words, the message being transmitted.

That arises in every case where the words themselves are a relevant fact. The quality of the words has to be assessed, but that is quite different from the situation where the words are evidence of some other matter. Then their truth and accuracy has to be assessed and they are hearsay.

There is no question here of the hearsay rule arising at all. The relevant issue was did these ladies make these offers? The offers were oral and the police officers were entitled to give evidence of them. The evidence, in my judgment, was wrongly excluded and should have been admitted. What the result would have been is of course another matter.

This charge relates to 1977 and the prosecutor in this case, a metropolitan police officer, and the Metropolitan Police as the prosecuting authority, have very properly said that it would be oppressive to continue with the trial of these proceedings at this stage. It is no fault of either party that there has

(1981) 72 Cr. App. R. 39

FOR EDUCATIONAL USE ONLY

Page 4

1980 WL 148609 (DC), (1981) 72 Cr. App. R. 39, [1980] Crim. L.R. 645

(Cite as: (1981) 72 Cr. App. R. 39)

been this delay. For my part I would declare simply that this evidence should have been admitted. If the question arises in another case, as it will, the evidence should be admitted. In this case I would make no order sending the case back.

Comyn J.:

There is a famous observation in English literature: "What the soldier said was not evidence." That can be misleading.

The subject of hearsay can be misleading, because it looks so simple in outline. I think a case such as this is of particular importance for emphasising that we are not dealing with an exception to the hearsay rule. What we are here dealing *43 with is a more fundamental question as to whether the evidence proffered by the prosecution, rejected by the justices, was hearsay at all.

In my judgment, sharing completely the views expressed by Donaldson L.J., this was never a question of hearsay evidence. This was a question of whether there was ordinary admissible evidence and there was, with the result as Donaldson L.J. has stated.

Representation

Solicitors: Solicitor, Metropolitan Police, for the prosecutor. Pellys, Bishop Stortford, for the defendant.

Appeal allowed. Case not remitted.

(c) Sweet & Maxwell Limited

END OF DOCUMENT