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RICHARDSON V DIRECTOR OF PUBLIC PROSECUTIONS [2019] EWHC 428

(ADMIN)

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Abstract
There is a substantial body of case law on the meaning of ‘public place’ in the Road Traffic Act 1988. Whilst it might appear to be a simple phrase, the courts have not always found it straightforward to interpret and apply.

Commentary
A number of offences under the Road Traffic Act 1988 are committed only where a motor vehicle is driven “on a road or other public place”. Section 192 of the Act defines ‘road’ but not ‘public place’, though (as the court points out, at [23]) the definition of road (“any highway and any other road to which the public has access”) is clearly relevant to the definition of public place, given its requirement of “public access”. Although ‘public place’ is not defined in the Road Traffic Act 1988, it is defined in (for example) the Prevention of Crime Act 1953 s.1(4), as including “any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise”. Whilst a definition in one statute does not necessarily apply to the same word or expression in another statute, consistency of interpretation is of course desirable.

There is a substantial body of case law on the meaning of ‘public place’ in the Road Traffic Act 1988. Whilst it might appear to be a simple phrase, the courts have not always found it straightforward to interpret and apply.

In Sandy v Martin [1974] R.T.R. 263, the defendant parked his van in the car park of a public house. A notice stated that the car park was reserved for patrons of the public house. The defendant went into the public house and remained there until closing time. An hour later, a police officer found him in the car park, leaning against the van in a drunken condition. He was charged with being in charge of a motor vehicle in a public place, having consumed alcohol in excess of the prescribed limit. May J (at p.268) said:

“In my opinion an otherwise private place is a public place … if, and for so long as, the public in fact have access, and they have that access at the invitation of the private land owner. In my judgment, at the relevant time in this case, namely, over an hour...”

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after closing time of the public house, the licensee’s invitation must have expired and, consequently, the car park had at that time ceased to be a public place.”

A case which is regularly cited in this connection is DPP v Vivier [1991] R.T.R. 205. The defendant, who was over the drink-drive limit, drove a motor vehicle in a caravan park on a privately-owned site. Anyone staying on the site had to register, and visitors had to have a car pass. Accordingly, the caravan park was available for use only by people who had complied with the requirements imposed by the site owners and who had been properly admitted, either as caravanners or campers or as their guests. The justices ruled that, although the site was open to the public, it was open not to the general public but to only a special class of the public and so the site was not a public place. They therefore dismissed the charge. The Divisional Court allowed the appeal brought by the prosecution. Simon Brown J (at p.210-211) said:

“A road is one to which the public have access if:
(a) it is in fact used by members of the public; and
(b) such use is expressly or implicitly allowed – or, putting it the other way round, not achieved by overcoming physical obstruction or defying express or implied prohibition. (b) presents no problem. But (a) does. In particular … (a) essentially begs rather than answers the often crucial question whether those who use the road are members of the public. Take our case. We have not the least hesitation in accepting that the only material use of this caravan park was by those who had complied with the various site requirements and been properly admitted, in short those who had been expressly or implicitly allowed into the caravan park, either as caravanners or campers or as their bona fide guests. We think it right to ignore both the few trespassers who escaped the security controls and also the users of the bridleway (which in any event could not affect the character of the park as a whole)".

The case under consideration was categorised (see p.212-213) as one where those seeking entry were “doing so for their own, rather than the occupier’s purposes and yet [were] screened in the sense of having to satisfy certain conditions for admission”. In such a case, the question was whether “those admitted pass through the screening process for a reason, or on account of some characteristic, personal to themselves”, or whether they are “in truth merely members of the public who are being admitted as such and processed simply so as to make them subject to payment and whatever other conditions the landowner chooses to impose”. Applying these principles to the facts of the case (at p.213), the justices

“were not entitled as a matter of law to reach the conclusion that the users of this park
constituted a special class distinct from members of the general public. On the contrary … they had no alternative but to find that the general public does indeed have access to the park”.

It is perhaps significant that the site in question had 450 static owner-occupied caravans and a further 600 touring caravans. At any time when the site was open there were (depending on the time of year) between 800 and 3,500 people present on site. The key point is that, although they were caravanners or campers, they were still members of the general public.

Vivier was considered in Havell v Director of Public Prosecutions (1994) 158 JP 680. The defendant was in his car, parked in the car park of a community centre. The car park was readily accessible from the public road and there was no physical obstruction preventing access to it by any member of the public; there were no signs saying that it was private or otherwise indicating restricted access. The magistrates found that, in order to use the facilities of the community centre, an individual had to be a member, that the defendant was a member, and that he had on the day in question been there to have a drink in the bar, which closed at 3.00 pm (an hour before he was found). Quashing the defendant’s conviction for being in charge of a motor vehicle on a road or other public place whilst unfit through drink or drugs, Rose LJ said:

“If someone is a member of a bona fide club and if in exercise of that membership he uses the club’s car park, it seems to me that he is not using that car park as a member of the general public but is within a category separate and different from the general public”.

By contrast, May v Director of Public Prosecutions [2005] EWHC 1280 (Admin) concerned an accident in the car park of a Volvo dealership. There was a sign indicating ‘Customers Parking’, and the car park was used only by customers. However, Laws LJ (at [8]) said:

“there are no restrictions whatever upon the access of members of the public generally to the [car] park during its opening hours. There is no selective process. A member of the public need not demonstrate or even harbour any particular reason for going there, albeit that the car park is intended for the use of customers of the premises. The car park adjoins a public road. In my judgment those factors are in this case sufficient to justify the lower court’s conclusion that this was a public place”.

Similarly, in Filmer v Director of Public Prosecutions [2006] EWHC 3450 (Admin); [2007]
R.T.R. 28, the defendant had been driving a motor vehicle in the parking area of a tyre and exhaust centre. The justices accepted found that, whilst the parking area was private property, it was a public place for the purpose of the 1988 Act. Fulford J, dismissing an appeal against conviction, said (at [30]) that the “critical distinction is between private land to which the public have access at the time in question … and private land which is closed to the public at the material time or is only open to particular people”.

In May, counsel and the court proceeded on the basis that five propositions were correct (noted in the present case, at [25]):

(i) “The burden of proving that a particular location is a ‘public place’ rests on the Crown to prove beyond reasonable doubt;
(ii) There must be evidence that the public actually utilised premises before a court can conclude that they are a ‘public place’. It is not sufficient to say that the public could have access if they were so inclined …;
(iii) Premises will be private where they are entered for reasons beneficial to the occupier … or where they are visited for business purposes …;
(iv) However, even business premises will be ‘public’ if the location is a public service, a railway station, a hospital or other public utility … This will include a pub car park during licensed hours …;
(v) … [A] distinction is to be made where premises are occupied by a large number of people -- even if there has been a condition of entry for those people, the premises will be a ‘public place’ … because a potentially large number of individuals need to be caught or protected by the umbrella of the legislation”.

These factors do provide a helpful starting point. However, it is clear from the case law that careful analysis of the facts is required in order to determine whether or not a particular site is a ‘public place’ for the purpose of the 1988 Act.

In the present case, the factors fatal to the prosecution case included the fact that there was no evidence of any use of the car park by the public, as opposed to members of the public who happened to have business at the premises served by the car park; moreover, there was no evidence that even if, contrary to the signs which indicated that it was a private car park, the public did in fact use the car park, they had lawful permission to do so either explicitly, implicitly or as the result of tolerance by the owners of the land in question.