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## SUPREME COURT OF SOUTH AUSTRALIA

***FINGLETON v BRYSON***

Jacobs J

7 October, 19 December 1980 — (1980) 26 SASR 208

**CRIMINAL LAW – SOLICITING FOR THE PURPOSE OF PROSTITUTION – ADVERTISEMENT PLACED IN NEWSPAPER FOR "DISCREET VISITING SERVICE" – POLICE OFFICER ANSWERED ADVERTISEMENT AND LATER MET WOMAN AT HOTEL – WOMAN CHARGED WITH OFFENCE OF SOLICITING – MEANING OF "SOLICIT" – CHARGE DISMISSED BY MAGISTRATE – WHETHER MAGISTRATE IN ERROR: POLICE OFFENCES ACT 1953-1979 (SA), S25.**

A woman advertised in a newspaper as "discreet visiting service for mature gentlemen at home, motel, hotel". A police officer, without disclosing his identity, telephoned the woman, and an agreement was made for the woman to attend at a motel room for the purpose of sexual intercourse. By arrangement, the police officer met the woman at a hotel, and discussions as to the proposed sexual intercourse took place between them in the bar of the hotel, which was a public place. The woman was charged with having solicited a person in a public place for the purpose of prostitution. The Court of summary jurisdiction dismissed the complaint. On appeal—

**HELD: that the woman had not solicited the police officer in a public place for the purpose of prostitution and that the dismissal of the complaint should be affirmed. The meaning of the word "solicit" in s25 of the *Police Offences Act 1953-1979 (SA)*, considered.**

**JACOBS J:** ...."The relevant section is as follows:

S25. Any person who—

(a) in any public place or within the view or hearing of any person in a public place accosts or solicits any person for the purpose of prostitution...."

In the context of the legislation as a whole, and of s25 in particular, the word "solicit" takes some colour from the word "accost" which involves some act or movement in the nature of a physical approach to another person, whereas a person generally "solicits" by word, although possibly by actions alone, as in *Behrendt v Burrigge* (1976) 3 All ER 285; [1977] 1 WLR 29, where it was held that passive conduct was "soliciting". In that case, the young woman concerned, sitting scantily clad on a stool, bathed in red light in the window of premises fronting the street, in an area where prostitutes were sought, was held to be soliciting in the sense of tempting or luring prospective customers to come in for the purpose of prostitution.

But whether the person concerned is said to "accost" or to "solicit" in a public place, the conduct must amount to an invitation to other persons going about their business to avail themselves of the services of the prostitute. No such invitation can be spelt out of the conduct of the present respondent in the bar. Indeed, it was the police officer who had sought her out and issued the invitation, albeit in response to her advertisement. If any part of her conduct in response to that invitation could amount solicitation, it had occurred in private over the telephone, and the "solicitation" ceased when the parties agreed to meet each other in order to carry out their avowed purpose.

It is only necessary to add that the advertisement in the newspaper although it may be said in a sense to solicit for the purposes of prostitution, if one can read enough between the lines, cannot of itself amount to an offence against s25 of the *Police Offences Act*. That offence involves some physical presence of the prostitute in a public place (*Weisz v Monahan* (1962) 1 WLR 262; *Smith v Hughes* [1960] 2 All ER 859; (1960) 1 WLR 830), for it is the postulated conduct in that place, involving an invitation to members of the public to avail themselves of the services of the prostitute, that attracts the penal sanction.