17/78

SUPREME COURT OF VICTORIA

WYNNE v LOCKYER

Harris J

22, 23 February 1978 — [1978] VicRp 30; [1978] VR 279

CRIMINAL LAW – LOITERING – REPUTED THIEF LOITERING WITH INTENT TO COMMIT A FELONY – MEANING OF "LOITER" – DEFENDANT LOITERING IN STREET – ENTERING SHOPS WITH INTENT TO STEAL – NOT MOVING ABOUT THE STREET AS A SHOPPER – CHARGE DISMISSED – WHETHER MAGISTRATE IN ERROR: *VAGRANCY ACT* 1966, S7(1)(f)(iii).

HELD: Order nisi absolute. Dismissal of charge set aside and remitted to the magistrate for further determination. Direction that the defendant be convicted and such penalty imposed as the Magistrates' Court thinks proper.

1. The word 'loiters' in s7 of the *Vagrancy Act* 1966 should be construed in its ordinary sense of lingering idly or hanging about idly, subject to the qualification that conduct which in some persons would not properly be described as loitering, may become loitering in the case of other persons where their conduct is accompanied by the existence of an unlawful purpose.

2. What had to be decided by the Stipendiary Magistrate in this case was whether the conduct of the defendant between the time when he was seen in the car park, and the time when he was seen near the 'Black Orpheus' shop, or at all events during part of that time, was such that during the whole of that time or during part of that time, he loitered in a public place, namely a street. The period involved was at most about one hour. The evidence indicated that all the places referred to in the evidence were quite close to each other. There was little evidence of direct observation of the defendant's movements in the street.

3. The only conclusion that was reasonable upon all the evidence was that the defendant was loitering. Taking the evidence as a whole, the conduct of the defendant in the street could only be described as loitering in the sense of lingering idly about or hanging about idly, particularly as it was established that he was there for an unlawful purpose. On the evidence in this case, it was not reasonably open to conclude that the defendant was moving about the street as a shopper. If that conclusion had been reasonably open, then it might well have been said that his movements were not those of a person 'loitering', or that there was, at least, a reasonable doubt whether his movements should be described as 'loitering', even though it was found that, at the time he was shopping, his intention was the unlawful one of committing the felony of theft if the opportunity presented itself.

HARRIS J: I will begin by referring to the section under which the information was laid against the defendant. It is s7(1)(f)(ii) of the *Vagrancy Act* 1966, which provides:

> '7. (1) Any person who—
> (f) being a suspected person or a known or reputed thief or cheat loiters in or about or frequents—
> (ii) a public place
> with intent to commit a felony or misdemeanour shall be guilty of an offence.'

The information against the defendant was that he 'on 24th June 1977 at Hawthorn in the said State did being a reputed thief loiter in a public place to wit Burke Road, East Hawthorn with intent to commit a felony.'

I will summarise the evidence. At about 11.20 a.m. on Friday, 24th June, Detective Senior Constable O'Neill observed the defendant with another man and a woman standing in the car park at the back of the shops near Mayston Street. The evidence shows that this is an area in the close vicinity of the Burke Road shopping centre in East Hawthorn. A short time later O'Neill saw the defendant standing outside a ladies' clothing shop called 'Birdville' in Burke Road. He appeared to enter the shop.

At about 11.30 a.m. a Miss Latimer, who worked in a ladies' wear shop called 'Frog' in Burke Road, was alone in the shop. The defendant came into the shop. She recognised him as

being the same man as a man who had come in on a Tuesday not long before that. She looked out the window and saw a man and a woman looking in the shop. She was suspicious of the defendant when he came in. She said to him, 'Can I help you?' He replied, 'Yes. My sister saw a boiler suit here and wondered how much it was,' She said, 'We have some and they are $66.95.' She showed them to him and he said, 'Have you any other colour?' She said, 'Yes we have others,' and pointed to where they were. The defendant stood looking at them and then the man and the woman who had been looking in the shop came into the shop. At that moment the proprietor of the shop came into the shop from the back and spoke to the man and the woman. The defendant then left the shop followed by the other two people. At about 11.45 a.m. a Miss Miller, who worked in 'Dazzlers Boutique' at 737 Burke Road, was in that shop. A man and a woman came into the shop. The woman had a very large dark shopping bag. She had a short conversation with those people and they left the shop. About five minutes after this the defendant came into the shop, but before he actually came in he, as she put it, 'sort of stood in the doorway and looked around for a couple of minutes.' Miss Miller said to the defendant when he was in the shop, 'Can I help you at all?' The defendant replied, 'Do you only sell chick's gear?' She said, 'Yes'. He said, 'You do not sell guy's gear, only chick's gear?' He then looked around the shop and looked towards the fitting room and left the shop.

At a time which was a little time later, a Mrs Krusche, who worked at 'Black Orpheus', another women's clothing shop at 899 Burke Road, was working in that shop. She received a message. She saw a man and a woman looking in the window of the shop. They were the same persons as had been in the shop on 7th June. They stood for a short time and then walked off in Burke Road towards the Camberwell Junction. Mrs Auld, who was the proprietor of the shop, went out of the shop and commenced to follow those persons. They had just walked away when Mrs Krusche saw the defendant following about twenty yards behind. Mrs Auld followed first of all the man and the woman who had been referred to by Mrs Krusche. She then saw another man, who was the defendant. She went up to him. She asked him to come back to her shop, and said she had already called the police and they were on their way. The defendant replied, 'You are crazy. I do not know what you are talking about.' Mrs Auld then said that she had had property stolen from the shop and that she believed the defendant was involved in it. What she said was: 'Two of your friends were in my shop and they stole property while you were talking to one of my girls.' The defendant replied, 'I have not got any friends.' He started to walk away. Mrs Auld indicated she was going to follow the man until the police arrived. He went to a milk bar and bought some cigarettes. She followed him closely. They left the milk bar. He said 'I am not waiting around. I have got other things to do. Anyway, I have reason for not wanting to see the police.' He continued to walk down the street and he said, 'If I want to run away, I could, and you could not stop me.' Mrs Auld said that she would scream the street down if he did. The two of them then walked back up the street and went into the same milk bar where the defendant bought a drink. They when went back out into the street, and shortly after this the police arrived.

The defendant was then taken to the Hawthorn C.I.B. office. At the C.I.B. office the defendant was interviewed by the informant. The defendant gave his address as 4/23 Wingate Ave, Ascot Vale. Wynne said, 'Why did you come to Burke Road today?' The defendant said, 'To do some shopping.' Wynne said, 'How did you come from Ascot Vale?' The defendant said, 'I will answer your questions but I am not signing anything.' Wynne repeated, 'How did you come from Ascot Vale?' The defendant said, 'I went to the workrooms, then into the city and the Carlton hotel with a guy and had a few beers, and then by taxi to Burke Road.' Wynne said, 'Who is this guy you had a few beers with;' The defendant said, 'I would rather not say. I might need him in court.' Wynne said, 'Did this man come to Burke Road with you?' The defendant said, 'No'. Wynne said, 'What articles were you shopping for?' The defendant said, 'Nothing in particular, just clothing.' Wynne said, 'Did you buy anything?' The defendant said, 'No' Wynne said, 'How much money do you have on you?' The defendant said, 'A couple of dollars.' Wynne said, 'Did you go into any shops today?' The defendant said, 'Yes, the "Frog"'. Wynne said, 'What type of shop is that?' The defendant said, 'It is a ladies' shop.' Wynne said, 'Did you look at any clothing or buy anything in the shop?' The defendant said, 'yes I looked at a top.' Wynne said, 'Who served you?' The defendant said, 'A tall blonde girl. I told her that I was going to wear it but the sleeves were too short.' Wynne said, 'Did you ask how much this article was?' The defendant said, 'Yes, it was $32.00, or something.' Wynne said, 'But you only had $2.00 in your pockets. How were you going to pay for it?' The defendant said, 'I was going to come back later and get it.' Wynne said, 'When you went into that shop, do you recall seeing any other people?' The defendant said, 'Yes, there

were two other shop assistants.' Wynne said, 'Did you go into any other shops in the area?' The defendant said, 'I looked around.' Then the defendant answered other questions that he always shopped in Burke Road and that he went there every week.

The defendant gave evidence at the hearing and in answer to a question in examination-in-chief, which was: 'What were you doing in Burke Road on the 24th June this year?' His answer was, 'I was shopping.' He gave reasons for being there on the basis that he had lived in that area a few months before. He again said that he had been into the 'Frog' boutique. He denied that he had been with a man and a woman at any stage, and he denied that he ever intended to steal anything when he was in Burke Road. In cross-examination he did not directly deny the accuracy of the account of what took place in the 'Frog' boutique which had been given by Miss Latimer, although he insisted that he went in to buy a top.

In addition to the evidence which described what happened between the time when the accused was seen by the police in the car park, and the time he was apprehended in the car park, there was other evidence given. There was evidence that the defendant had visited the shop called 'Frog' on two prior occasions, and that he had made enquiries of a somewhat general kind, but had not purchased anything. The witness Latimer gave evidence that she suspected this man or felt there was something 'funny' about him. There was also evidence of a visit to the Black Orpheus shop on the 7th June. This evidence was given by Mrs Krusche, and it was evidence of the defendant being present in the shop talking to her, apparently with a view to buying something at a time when another man and woman were in the shop. It is clear from this evidence that what was happening during that time was that the other man and woman were engaged in taking garments from the shop and that the defendant was engaged in endeavouring to distract the attention of Mrs Krusche.

At the hearing before the Magistrate, the defendant appeared and pleaded not guilty. He was represented by counsel. At the conclusion of the evidence, the Stipendiary Magistrate asked the informant, who conducted the case for the prosecution, 'Where is the precedent for loitering?' Then, apparently, some discussion followed about what the magistrate was asking for. The informant then read to the magistrate what is described in the affidavit as 'the Oxford Dictionary definition of loitering', and quoted a passage from *Milne v Mutch* [1927] VicLawRp 28; (1927) VLR 190 at p193; 33 ALR 172; 48 ALT 180.

The Stipendiary. Magistrate then asked counsel for the defendant whether he had any reply. Counsel said, 'There is nothing to show that my client has been doing anything else but shopping.' The Stipendiary Magistrate then gave the informant the opportunity to add anything further, but that opportunity was not taken. The Magistrate then gave his reasons and his decision. What he said was this:

> 'Firstly, I am well satisfied that this man is a reputed thief. Also I am well satisfied that this man was in Burke Road on the 24th day of June, 1977 with the intention to steal. But there is no crime that I know of for a person being guilty of intending to commit a crime such as if a person intended to commit murder, and it could be well said that this man was just shopping, even though he went into boutiques. He could just as easily have gone into three hardware shops, and therefore the charge will be dismissed.'

On the 7th September 1977, the informant obtained an order nisi to review the decision from Master Brett. The grounds of the order nisi were as follows:

> '1. On the evidence the Stipendiary Magistrate ought to have found that the defendant was loitering in Burke Road, East Hawthorn on 24th June 1977 as alleged in the said information.
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> 2. On the evidence the Stipendiary Magistrate wrong in finding (if he so found) that the defendant was in fact shopping in Burke Road, East Hawthorn on 24th June 1977, or that if he was in fact shopping, he was not also loitering in Burke Road as alleged in the said information.
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> 3. The finding of the Stipendiary Magistrate that the defendant was not loitering in Burke Road, East Hawthorn, was against the evidence and the weight of the evidence of such an extent that it was unreasonable for him to have so found.'

As I said at the outset, the case required the interpretation of an ordinary English word.

That does not necessarily mean that it is an easy matter to resolve. The word is 'loiters'. 'Loiters' and 'loitering', are words which have been used in legislation for a very considerable period of time, and the matter of the interpretation of various statutes in which the word has been found has come before the courts on a number of occasions. What I propose to do is to refer to Victorian authorities and to a decision of the High Court. I begin with the citation from the most recent of the Victorian authorities, because it states clearly what are the necessary elements of the offence created by the section.

In *Harrison v Hegarty* [1975] VicRp 35; [1975] VicRp 35; (1975) VR 362 at p364, Menhennitt J after having referred to the part of s7 of the *Vagrancy Act* 1966 which I have set out earlier, said this:

> 'The language of the provision appears to me to be quite clear and unambiguous. It requires the establishment of three objective facts; namely, firstly that the defendant was a reputed thief; secondly that he, being a reputed thief, loitered in a public place; and thirdly that he did so with intent to commit a felony or misdemeanour.'

The Stipendiary Magistrate found two of the elements of the defence proved (i.e., that the defendant was a reputed thief and that he intended to commit a felony). It is not disputed that those findings cannot be challenged in these proceedings.

The earliest of the Victorian cases to which I shall refer is *Olholm v Eagles* [1914] VicLawRp 50; (1914) VR 379; 20 ALR 240; 36 ALT 6. That was a decision of the Full Court. It concerned an information laid under the predecessor of s7 of the *Vagrancy Act* 1966. The location of the alleged offence was the flat at a racecourse. In the course of argument, a'Beckett ACJ made this observation: 'Loitering means standing about without any ostensible reason for being there.' (see p381). His Honour regarded all the persons who were on the flat as having (congregated for the purpose of loitering while being amused (see p383). That being the learned judge's view, it would seem to follow necessarily that he would regard it as being open to the justices to find that the defendant, whose purpose for being there was not an innocent one, was also loitering on the flat. This he did. His Honour's reasoning shows that his view of what constituted loitering turned on the nature of the person's conduct.

Cussen J (with whom both a'Beckett ACJ and Hodges J agreed) pointed out that the question of whether or not the accused loitered must be decided having regard to the whole period of the afternoon during which the race meeting was conducted and to the whole of the flat where these events took place. His Honour directed his attention to the nature of the movements of the accused during the afternoon and he observed (at p385):

> 'Loitering, when considered with respect to a period of time and an area like a racecourse, is not inconsistent with movement, even rapid at particular moments and in particular spots and so considered a person may I think, be loitering with intent to commit a felony, even though for portion of the period he may be enjoying the races.'

In *Olson v Johnson* [1917] VicLawRp 28; (1917) VLR 206; 23 ALR 59; 38 ALT 144, Hood J had before him a case stated by a Chairman of General Sessions. His Honour's decision was that there was no evidence that the accused in that case was loitering in the street. The only evidence was of the accused man's presence in Collins Street, Melbourne, looking at a procession of soldiers and the evidence was that he was not noticed until he touched the arm of the man who complained about his conduct. Thus, in that case nothing was proved about the man except that he was in the street. That was not sufficient in itself to prove that he was loitering in the street. (See also *Harrison v Hegarty* (*supra*) at p369.)

In *Milne v Mutch* [1927] VicLawRp 28; (1927) VLR 190; 33 ALR 172; 48 ALT 180 the appellant had been charged under another of the predecessors of s7 of the *Vagrancy Act* 1966. The place where the alleged offence occurred was a tram travelling along Swanston St., between Collins St. and Batman Ave. McArthur J held that the other passengers in the tram should not be held to be loitering on the tram. He held, as I understand it, that the fact that those persons were on the tram for the lawful purpose of being carried from one place to another was sufficient to show that they Could not properly be described as loiterers. As His Honour said, they were not "lingering idly" or "wasting time when engaged on a particular task" or "dawdling", to use some ordinary dictionary

definitions of "loiter". (see p192) On the other hand, His Honour held that the appellant was not a *bona fide* traveller and was not on the tram for any lawful purpose. His Honour held that during the time, short though it may have been, when he was amongst the crowd of passengers watching for an opportunity to steal, he could properly be described as loitering (see p193). On the facts of that case, the presence of an unlawful purpose for being on the tram was, in the circumstances, regarded as sufficient to show that the conduct of the defendant could be regarded as loitering. His Honour went on to observe that the existence of the unlawful purpose could not be regarded as removing the element of 'idling about' or 'idling' that is involved in loitering, and he added (at p197):

> 'Whether a person is loitering or not may depend upon whether the conduct relied upon as constituting loitering is part of his duty in the course of a lawful occupation.' (see p197)

There is a recent decision of the High Court in which the meaning of the word, 'loitering' is considered by the Full Court. This is the case of *Samuels v Stokes* [1973] HCA 62; (1973) 130 CLR 490; 2 ALR 269; 18 ALT 110; 47 ALJR 766. The case came to the High Court on appeal from the Supreme Court of South Australia. The defendant, had been charged with an offence under a South Australian Act which provided that a person who lies or loiters in a public place and upon request by a police officer does not give a satisfactory reason for so lying or loitering was guilty of an offence. The defendant was a woman who had been participating in a demonstration in a street in Adelaide. She was standing in a place, or standing in the one place and jumping up and down when she was requested by the police officer to give a satisfactory reason for her alleged loitering, The Full Court of South Australia held that her conduct did not constitute loitering. The High Court unanimously reversed that decision. Gibbs J dealt with the meaning of the word 'loiter' in detail. He said (at p502):

> 'The word, "loiter" and its derivatives has been used since the 16th century in statutes dealing with vagrancy, as Scott LJ pointed out in *Ledwith v Roberts* (1937) 1 KB 232 at pp258-277; [1936] 3 All ER 570; (1936) 53 TLR 21; (1936) 155 LT 602; [1936] LJKB 20, and are also to be found in many comparatively modern statutes creating various sorts of police offences. In *Ledwith v Roberts*, Scott LJ said that the word "loiter" has a "statutory meaning", and indicates the person to whom it is applied is an "idle and disorderly person". In the same case Greer LJ said that the word "loitering" meant "idling in the street for some unlawful purpose" and the same idea appears in other authorities: *Milne v Mutch* (*supra*): *R v Andsten and Petrie* (1960) 32 WWR 329. In *Hagan v Ridley* (1948) 50 WALR 112 at p124 it was said by Dwyer CJ that loitering means: "remaining in or about or in the near vicinity of a restricted but not necessarily defined place without any apparent reason such as one might be expected to have in the conditions existing", and Wolff J said that "Its ordinary meaning is to tarry or wait or idle aimlessly about a particular spot ..,". In my opinion, it could not be said that the word "loiter" has acquired a fixed "statutory meaning" to be given to it whomever it appears. The meanings suggested in these cases would be obviously inappropriate in certain contexts — e.g. in the regulation forbidding traffic to loiter which was considered in *Fairfoul v Somerville* (8) — and there is in any case no justification for treating "loiter" as a technical word to be construed in a technical sense. It ought normally to be understood in its ordinary sense but its meaning may, of course, be controlled by the context in which it appears.
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> The word "loiter" in its ordinary sense does not connote remaining without a lawful reason. Dictionary meanings of the word include "to loiter idly about a place" and "to hang about in an idle manner"; it has other senses not relevant in the present context. In its natural meaning the word may suggest indolence or inactivity but it does not connote either legality or illegality; and a person may loiter for a legitimate reason (as s-s18(1) of the *Police Offences Act* recognises) and an unlawful purpose will not cause activity to become "loitering" if it could not otherwise be so described, e.g. a prostitute hastening directly on her way to catch a taxi would not be loitering for the purpose of prostitution within s25(b) of the *Police Offences Act*, notwithstanding that she was on her way to an assignation.'

His Honour then went on to say that in his opinion the context of s18(2) of the South Australian Act made it clear that a person may be loitering although he was standing about with a perfectly lawful purpose.

Menzies J held that the word 'loiter' in the South Australian Act,

> 'Means no more than "tarrying", or to use a phrase that has received judicial recognition, "hanging about". A person may loiter who has a reason, lawful or unlawful, for standing sitting or sauntering in a public place. It is to be observed that merely to loiter in a public place is not made an offence and there is, therefore, no compelling reason for reading the word in a narrow sense' (see p498).

Having said that about the meaning of the word in the statute the Court had to construe, His Honour then went on to say this (at p499):

> 'I consider that, without any context, the word "loiter" does not ordinarily carry the meaning lingering idly or aimlessly, and not merely lingering, but the context to which reference has been made suggest that here a person who merely lingers is a person who loiters, regardless of his reason for so lingering. It must also be remembered that, although, without some context, the word "loiter" would carry the suggestion of idling or lack of purpose, there are many decided cases which establish that to hang about with an unlawful purpose is to loiter, see, e.g. *Olholm v Eagles* (*supra*); *Milne v Mutch* (*supra*); *Rawlings v Smith* (1938) 1 KB 675; [1938] 1 All ER 11.'

In my opinion, having regard to these authorities, the word 'loiters' in s7 of the *Vagrancy Act* 1966 should be construed in its ordinary sense of lingering idly or hanging about idly, subject to the qualification that conduct which in some persons would not properly be described as loitering, may become loitering in the case of other persons where their conduct is accompanied by the existence of an unlawful purpose.

What had to be decided by the Stipendiary Magistrate in this case was whether the conduct of the defendant between the time when he was seen in the car park, and the time when he was seen near the 'Black Orpheus' shop, or at all events during part of that time, was such that during the whole of that time or during part of that time, he loitered in a public place, namely a street. The period involved was at most about one hour. The evidence indicates that all the places referred to in the evidence were quite close to each other. There was little evidence of direct observation of the defendant's movements in the street. Hence, any finding that the defendant did loiter would have to be based upon an inference to be drawn from the evidence of what he was actually observed doing during the period, taken in the light of all the evidence and of all relevant circumstances. What direct evidence there is of those who observed the defendant's conduct in the street is at least consistent with the defendant having lingered idly in Burke Road. Then there is his own account of his conduct in Burke Road. He says he was shopping, but his evidence is of one visit to one shop and of looking around at others. He had only $2.00 in his pocket. He lived in Ascot Vale. He did not suggest that he was engaged in any more definite 'shopping' than what he described. Next there is the evidence of his conduct in the two shops which he in fact entered. In each he made some rather inconsequential enquiries and bought nothing. In each he aroused the suspicions of the shop assistant as to the genuineness of his enquiries. He was seen in the company of another man and woman. Then there is his earlier conduct on the 7th June or thereabouts and his later conduct when he was followed by Mrs Auld after he had been seen near her shop. On the earlier occasion, he was party to the theft of goods from the 'Black Orpheus' shop by the method of him operating in concert with another man and woman. On the 24th June when followed by Mrs Auld, his conduct was of an evasive nature.

Finally there is the fact that the Stipendiary Magistrate found that he was in Burke Road with intent to steal. The finding that he had this intent while he was in that street, in my opinion, is a material matter to be taken into account when considering what description should be given to his conduct in that street. In my opinion, it strongly suggests that the man was 'idling there' or 'hanging about' there. Here, the proof that he was there with an unlawful purpose, does enable his presence there to be described as loitering. The proof of his unlawful purpose is significant, as it was in *Milne v Mutch* (*supra*). All this evidence is sufficient to justify a finding that the defendant's conduct in Burke Road was such that loitered there, but if it leaves open the possibility that the Stipendiary Magistrate could reasonably have found that he was not satisfied beyond reasonable doubt that the evidence established that the defendant loitered in Burke Road, the dismissal of the information must stand.

Mr Bryant rightly stressed that it was insufficient for the prosecution merely to prove that the defendant was in the street at the relevant time. He urged that it was necessary for the prosecution to prove what he called 'overt acts' to establish the loitering. As Burke Road was a shopping area and as it was during business hours, it was plainly possible that the defendant was there for the definite and legitimate purpose of shopping, using that word widely. Mr Bryant urged that the absence of direct evidence of the nature of the defendant's movements in the street was fatal. Unless there was such evidence and it was of movements which could properly be described as loitering in the sense of hanging about idly, there could be no finding of loitering. The circumstantial evidence was not strong enough to remove all reasonable doubt about the character of the defendant's conduct.

The finding of intent to commit a felony was quite consistent with the defendant's conduct in the street not being loitering. So I understood Mr Bryant's argument. I may say that I am not at all clear just what was in the Stipendiary Magistrate's mind from what he said.

It is at least possible that he may not have been directing his mind to what constituted loitering. In my opinion, the submission of Mr Canavan that the only conclusion that was reasonable upon all the evidence was that the defendant was loitering is made out, and I reject the argument of Mr Bryant. Taking the evidence as a whole, in my opinion, the conduct of the defendant in the street could only be described as loitering in the sense of lingering idly about or hanging about idly, particularly as it was established that he was there for an unlawful purpose. In my opinion, on the evidence in this case, it was not reasonably open to conclude that the defendant was moving about the street as a shopper. If that conclusion had been reasonably open, then it might well have been said that his movements were not those of a person 'loitering', or that there was, at least, a reasonable doubt whether his movements should be described as 'loitering', even though it was found that, at the time he was shopping, his intention was the unlawful one of committing the felony of theft if the opportunity presented itself.

Just what will or will not constitute loitering must depend on the facts of each case and the observations in the cases to which I have referred show how each set of facts must be considered on its own. I add that Mr Bryant also stressed that there was no onus on the defendant to explain his presence in the public place. This is clearly correct. Nothing I have said involves imposing any burden upon the defendant. However, the Stipendiary Magistrate was entitled, and, indeed, bound, to take into account all the evidence, including the statement of the defendant to the police, and the defendant's own evidence in deciding whether the offence alleged against the defendant was proved. Order nisi absolute.
