

JERSEY / JUDGMENT

Lidgett -v- AG [2005] JRC 152 (03 November 2005)

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judgment

deputy bailiff: 1. This is an appeal against conviction in the Magistrate's Court on 23 rd May 2005 of two counts of parking contrary to Article 6(4) of the Road Traffic (St Helier) (Jersey) Order 1996 ("the Order") by using a vehicle, other than a vehicle delivering or collecting goods or merchandise, to wait on an unloading bay. The appeal raises an issue of general importance in relation to this provision of the Order. The facts 2. The facts are not in dispute. The appellant operates a business outside St Helier which requires him quite frequently to deliver merchandise from his warehouse in St John to shops in St Helier which have ordered his merchandise. He often parks in the unloading bay on the southern side of Beresford Street near the market, which is where he parked on the two occasions in question. On both occasions he was delivering boxes of batteries to shops. On 14 th December 2004 he delivered them to Woolworths, to a shop in Charing Cross and to another in Bath Street. He quite often has to wait, particularly at premises such as Woolworths, until someone has checked the items which he is delivering and signed for them. On this occasion he accepts that he was away from the vehicle for a period of some 40 minutes during which no activity took place in relation to his vehicle. It was a busy time at Woolworths leading up to Christmas and he had to wait for some time. On 7 th April 2005 he accepts that no activity took place around his vehicle for some 35 minutes and during this time he was again delivering merchandise to two of the shops described above and was delayed in the process of delivery. On each occasion he displayed a parking disc showing his time of arrival and a card stating his business name and address. 3. The Magistrate referred to another decision of his (Mayger th November 1999), where he had set out the principles applicable to prosecutions under Article 6(4). He held that in this case the periods of 35 and 40 minutes respectively during which no activity was taking place at the appellant's van were too long and that accordingly the vehicle could not be said to be 'delivering or collecting goods or merchandise'. He therefore found the appellant guilty. 4. The appellant now appeals saying that the Magistrate misdirected himself in law. We can deal very briefly with a preliminary ground of appeal. The appellant submits that the Magistrate should have referred the case to another Magistrate because he was applying the law which he personally had laid down in the case of Mayger . There is nothing in this point. A judge is not prevented from sitting merely because he is being asked to consider the correctness of a previous decision of his. The Order 5. Although the charge was brought under Article 6(4) of

the Order, it is necessary, for reasons which will become clear, to refer also to another provision, namely Article 6(1)(b). The two provisions are as follows:- "6. Prohibition of waiting and stopping

(1) A vehicle shall not:-

- (a) (b) Subject to Article 39*, wait between the hours of 2.00 am and 6.00 pm on a day other than a Sunday, on a road specified in Schedule 10;..... * The revised Law refers to Article 28 but all parties agreed that this is a typographical error and that the reference must in fact be to Article 39 . (4) A vehicle, other than a vehicle delivering or collecting goods or merchandise shall not wait, between the hours of 2.00 a.m. and 6.00 p.m. on a day other than Sunday, on a part of a road (hereinafter referred to as an 'unloading bay') which has been set aside for the purposes of allowing vehicles to load or unload goods or merchandise." 6. The relevant part of Article 39 is as follows:- "39. Parking of vehicles for loading and unloading (1) Subject to the conditions prescribed in paragraph (2), a vehicle may be parked:- (a) On a road specified in the first and second columns of the table in Part 1 of Schedule 10:-
- (b) for the purpose of being loaded or unloaded in connection with a trade or business carried on in the vicinity. (2) The conditions referred to in paragraph
- (1) are that there shall be displayed on the internal face of the windscreen of the vehicle or, if the vehicle has no windscreen, at a convenient place on the left or near side of the vehicle, and in such manner as to be distinctly seen by any person outside the vehicle:- (a) a parking disc as described in Article 19, indicating the time at which the vehicle was parked; (b) the business name and address of the user of the vehicle." Article 39(3) deals with a number of matters but provides that a vehicle may not be parked for longer than the period specified in Schedule 10 in relation to the particular road. In the case of Beresford Street, which is listed in Schedule 10, there is a maximum time of one hour between 10.00 a.m. and 6.00 p.m. 7. As can be seen, these provisions are not consistent with each other. The following differences appear:- Article 6(1)(b) (i) The vehicle must be parked for the purpose of loading or unloading. (ii) The loading or unloading must be in connection with a trade or business carried on in the vicinity. (iii) A parking disc must be displayed showing the time of arrival. (iv) The business name and address of the user of the vehicle must be displayed i.e. private shoppers cannot take advantage of this provision. (v) The vehicle may only park for one hour between 10.00 a.m. and 6.00 p.m. even if the loading or unloading has not been finished by then. Article 6(4) (i) The vehicle is to be used for 'delivering or collecting' as compared with 'loading or unloading' under Article 6(1)(b). (ii) The vehicle does not have to be involved in business use. Thus a private shopper may rely on the provision. (iii) Unlike 6(1)(b), there is no reference to the collecting or delivering being in connection with a business carried on 'in the vicinity'. (iv) There is no need to display a parking disc showing the time of arrival. (v) There is no time limit of one hour between 10.00 a.m. and 6.00 p.m. 8. One might have thought that these inconsistent provisions were clearly intended to apply to different areas of the road and that an 'unloading bay' for the purposes of Article 6(4) would not be on a road specified in Schedule 10. However in this case the relevant part of Beresford Street is

listed in Schedule 10. It is also accepted by all parties to be an unloading bay although there is no procedure set out in the Order for designating parts of a road as an unloading bay. In this case the relevant part of the road is painted with the words 'Unloading Bay' and the signs adjacent thereto read "Unloading Bay' 2.00 a.m. - 6.00 p.m. Disc 1 hour limit 10.00 a.m. - 6.00 p.m. Display business name and address". 9. The Magistrate stated in the course of his judgment that, in order for a vehicle to be lawfully parked in this area, it would have to comply with the requirements of both Article 6(1)(b) (which incorporates Article 39) and Article 6(4); the provisions were to be read cumulatively. We would respectfully disagree with that analysis. Each provision is a stand alone provision and does not refer to the other. Thus there is no reference in Article 6(4) to Article 39 and it is therefore impossible by any canon of construction to read into Article 6(4) a need to comply with the requirements of Article 39. Furthermore, if one removes the qualified negative in each case, Article 6(1)(b) allows parking on a road specified in Schedule 10 provided that Article 39 is complied with and Article 6(4) allows a vehicle to park in an unloading bay provided that it is delivering or collecting goods or merchandise. 10. If the Committee had applied these separate provisions to separate areas of road, no difficulty would have arisen by reason of the inconsistent requirements of the two provisions. But, as the Committee has chosen to apply both provisions to this section of Beresford Street - and, it would appear, to other roads such as the area of Halkett Place outside the market - the resulting situation is extremely confused and unsatisfactory. Thus, the signs in Beresford Street state that parking may only occur for one hour; that a disc must be displayed; and that the business name and address must be displayed. This is in fact all quite erroneous. Because the area is also an unloading bay, a vehicle may lawfully park there provided that it complies only with Article 6(4). Thus a private shopper may park there provided that the vehicle is delivering or collecting goods or merchandise. There is no need under Article 6(4) to display a parking disc or a business name and address. Furthermore, in the unlikely event of the delivering or collecting of goods or merchandise taking more than one hour (e.g. collecting a large amount of furniture which has just been purchased for a house) the vehicle could remain there for more than one hour despite what is said on the sign and despite the terms of Article 39(3). Because the Committee has applied both provisions to the same stretch of road, a person cannot be successfully prosecuted under Article 6(4) or Article 6(1)(b) if he is complying with the requirements of either one of them. 11. We recommend an urgent review of the situation by the Committee. The current road signs are misleading and erroneous and the resulting legal situation is highly unsatisfactory. Either the Committee should differentiate between those areas which are unloading bays for Article 6(4) and those which are listed in Schedule 10, or Article 6(1)(b) and Article 6(4) must be brought into line insofar as their conditions and requirements are concerned. The present position is a recipe for confusion. Requirements under Article 6(4) 12. The charges in this case were under Article 6(4). Notwithstanding the muddled and misleading signage put up by the Committee and the appellant's understandable belief that he was allowed up to one hour for his collection and delivery, we must consider what is meant by the words used in Article 6(4). The Magistrate had to consider this provision in the earlier case of Mayger . He quoted from a passage from

Wilkinson's Road Traffic Offences at para 6.2.99. We were referred to the 13th Edition which reads as follows:- "6.2.99 Local Acts and orders sometimes permit vehicles to stop in 'No Waiting'; streets while loading or unloading goods. The question was raised but not decided in *Kirkland v Carins* 1951 SC (J) 61 whether the goods must be limited to those not sold from the vehicle; in that case fish and chips were sold from the vehicle. In *Whiteside v Watson* 1952 SLT 367 it was doubted if selling to customers is 'unloading'. 'Unloading' was held by a metropolitan magistrate to include taking a large sum of money from a car into a bank [1952] Jo Crim 193). Money in bulk can be 'goods' (112 JP Jo 49, QS). It is not 'loading goods' to put a small parcel in a private car, but it might be if an object not easily portable was put in a car, eg a laundry basket or several chairs (*Sprake v Tester*

(1955) 53 LGR 194). In *Richards v McKnight*

[1977] RTR 289 it was held by a majority that, in accordance with a local order in Manchester, a motorist was not exempted from parking restrictions when collecting £695 for his employees' wages which he was able to carry on his person. The exemption was held to cover the collection and delivery of goods in a vehicle, but not the mere collection and delivery of goods by a person who happens to be in a vehicle, ie if a vehicle is needed for collection or delivery of the goods, the vehicle is exempted; but otherwise if the goods to be collected can be carried on the driver's person, e.g. a fountain pen or pair of shoes, or (as in *Boulton v Pilkington*

[1981] RTR 87) a Chinese take-away meal. It is submitted that, on the authority of these cases, the need of a vehicle may depend on the physical capabilities of the persons in it. A metropolitan magistrate has held that, where a van is left in a restricted street for eighteen minutes and during most of that time the driver is not engaged in loading or unloading, he is not within an exemption for delivering or loading, etc. The van must be engaged, as distinct from the driver, in loading or delivering during the whole time. Further, the regulations in question required the driver to be with the van all the time (102 SJ 358). In *McLeod v Wajkowska* 1963 SLT (Notes) 51 it was held that an exemption in an order for loading and unloading goods extended to taking goods from the vehicle into premises and depositing them there. Similarly, in *Bulman v Godbold*

[1981] RTR 242 it was held permissible to unload frozen fish into a hotel refrigerator. Where an order permits waiting 'while loading', the defendant must show that his actions were covered by the latter words; if he had merely been asking customers if they had goods for loading but no goods had been loaded, he was not within the permission (*Holder v Walker*

[1964] Crim LR 61). A metropolitan magistrate has held that waiting in expectation of a load is not within the exemption [1963] Crim LR 706). In *Chafen v Another*, Supplement to the Justice of the Peace and Local Government Review, 21 March 1970, it was held that an exemption for the loading or unloading of goods did not extend to leaving a vehicle for so long as might be necessary for the goods to be located. No criticism could be made of a finding that thirty-five minutes' parking was unreasonable." From this the Magistrate

summarised the position in Mayger by saying that a vehicle only falls within the terms of Article 6(4) if:- "(i) The goods or merchandise which were being delivered or collected are too heavy to be carried around the town by the particular driver (the reference to the particular driver gives some allowance for disabled people); and (ii) The vehicle must only be parked there during the period which is required for loading and unloading or collecting and delivering and must be moved as soon as possible after this process has been completed." 13. The appellant criticised the Magistrate's reliance on Wilkinson and pointed out that the passage in question referred to 'No Waiting' streets (which we do not have as such in Jersey) and was not concerned with the interpretation of 'unloading bays' as established in Jersey under the Order. This is clearly correct but the passage in Wilkinson was discussing how the English courts have interpreted the expression 'loading or unloading' which has often been a permitted exception to the prohibition on parking in 'No Waiting' streets. We think therefore that the Magistrate was fully entitled to have regard to this passage in Mayger in order to assist him in interpreting Article 6(4). However it must be pointed out that the relevant expression in Article 6(4) is 'delivering or collecting' not 'loading or unloading' and, although there is a passing reference to 'delivery' at the beginning of the second paragraph of the passage from Wilkinson, the context in which that expression was used is not clear and the passage as a whole seems to have been primarily concerned with the expression 'loading or unloading'. 14. Nevertheless we think that the conclusions which the Magistrate drew in Mayger were broadly correct although we would refine and re-state the requirements of Articles 6(4) as follows:- 1. The reference is to a vehicle delivering or collecting goods, not to the delivery or collection of goods by a person who happens to be in a vehicle. We agree therefore with the Magistrate that the goods or merchandise must be of a type for which a vehicle is needed. If they are capable of being carried by the particular driver e.g. a pen, a pair of shoes, documents in a briefcase, the exemption does not apply. The question is whether the goods or merchandise which are being delivered or collected are too heavy or bulky to be carried around the town by the particular driver. 2. For the same reason, it is the vehicle which must be engaged in the delivering or collecting of goods as distinct from the driver. This carries the necessary implication that, although clearly the court will allow a reasonable time for the process of collection and delivery by going to the relevant premises, the question is whether the vehicle, as opposed to the driver, is still involved in the process of collecting or delivering. The vehicle is only entitled to be parked in the unloading bay for such time as is required for such collecting or delivering. 3. In Mayger, the Magistrate appears to have drawn no distinction between the expression 'loading or unloading' and that of 'delivering or collecting'. In our judgment there is a difference of degree for two reasons:- Where different words are used in a statute, there is a presumption that this is deliberate and that the words therefore have different meanings. This is particularly so if, as in Article 6(4), the different words are used in the same provision. 1. The natural construction of 'delivering or collecting' is a little wider than 'loading or unloading'. The latter expression relates very much to the physical process of putting the goods into or taking them out of the vehicle. Clearly they go a little wider than that because they must

also encompass moving the goods into or from the relevant premises. But 'collecting and delivering' is a wider expression which encompasses the process of going somewhere to fetch or leave something. Nevertheless the expression is not open-ended. Although, unlike in Article 39 (which applies to Article 6(1)(b)) there is no reference to 'in the vicinity' there is in our judgment a necessary implication under Article 6(4) that the delivery or collection of the goods is in reasonable proximity to the unloading bay in which the vehicle is parked for the purpose of that collection or delivery. 4. Ultimately it is question of fact and degree for the Magistrate as to whether the time for which the vehicle is in the unloading bay, the nature and extent of the activities which have been undertaken in relation to the vehicle during that time, the nature of the goods or merchandise in question and the location of the premises where the delivery or collection is taking place lead him to conclude that the vehicle can properly be said to be engaged in 'delivering or collecting goods or merchandise' (so that parking is lawful) or whether it is not or is no longer so doing (in which event an offence has been committed). Decision 15. Turning to the facts of this case, although the principles which we have described are similar to those set out by the Magistrate in Mayger , there are certain respects in which the Magistrate applied a different test in this case. Thus on page 12 of the transcript (when correctly saying that it was reasonable to allow a certain amount of time for the purposes of going to premises and dealing with matters) he went on to consider whether the vehicle was still involved in the process of 'loading or unloading'; similarly he made a reference to 'loading or unloading' on page 13 and referred to the need for it to be in relation to premises 'in a close vicinity'. This is the expression which relates to Article 6(1)(b) (via Article 39) and may no doubt have been considered by the Magistrate because he was of the opinion (incorrectly as we have held) that a driver must comply with the provisions of both Article 6(1)(b) and Article 6(4); but neither 'loading or unloading' or 'in the vicinity' are relevant expressions for offences under Article 6(4). It is true that elsewhere the Magistrate referred to consideration of whether the vehicle could be said to be delivering or collecting goods but, all in all, we think that there is some doubt as to the test which the Magistrate was applying and we think that the fair outcome is to allow the appeal and quash the conviction on that ground. 16. We wish however to emphasise that we are not saying that, if he had applied the principles which we have endeavoured to set out above, it would not have been open to the Magistrate to convict. On the contrary it would clearly have been open to him, depending upon all the circumstances, to conclude that a delay of 35 or 40 minutes during which no activity was taking place meant that an offence had been committed under Article 6(4). We are not saying that he would inevitably have reached such a conclusion but he might well have. Had he found the defendant guilty on application of the principles which we have described, we would not have interfered. It is only because he did not apply these principles that we are allowing the appeal. Authorities Road Traffic (St Helier) (Jersey) Order 1996. Wilkinson's Road Traffic Offences at para 6.2.99. Page Last Updated: 15 Oct 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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