

R. v DEAN BONESS AND OTHERS

The second order prohibited the appellant from:

Entering any land or building on the land which forms a part of educational premises except as an enrolled pupil with the agreement of the head of the establishment or in the course of lawful employment.

As to this the respondent submits:

“It is not clear what information provided the basis for making this prohibition. There is nothing in the appellant’s previous offending history which suggests that he engages in anti-social behaviour in educational premises. It is submitted that the term ‘educational premises’ arguably lacks clarity; for example, does it include teaching hospitals or premises where night classes are held? There also appears to be a danger that the appellant might unwittingly breach the terms of the order were he, for example, to play sport on playing fields associated with educational premises.”

We agree with this analysis. The order was not necessary and is, in any event, unclear.

The third order prohibited the appellant from:

In any public place, wearing, or having with you anything which covers, or could be used to cover, the face or part of the face. This will include hooded clothing, balaclavas, masks or anything else which could be used to hide identity, except that a motorcycle helmet may be worn only when lawfully riding a motorcycle.

The respondent submits:

“It is presumed that this prohibition was based upon the assertion that the appellant is forensically aware and will use items to attempt to prevent detection. It is submitted that the terms of the prohibition are too wide, resulting in a lack of clarity and consequences which are not commensurate with the risk which the prohibition seeks to address. The phrase “having with you anything which . . . could be used to cover the face or part of the face” covers a huge number of items. For example, it is not unknown for those seeking to conceal their identity to pull up a jumper to conceal part of the face, but surely the prohibition can not have been intended to limit so radically the choice of clothing that the appellant can wear? It seems that the appellant would potentially be in breach of the order were he to wear a scarf or carry a newspaper in public.”

We agree.

The fourth order prohibited the appellant from:

Having any item with you in public which could be used in the commission of a burglary, or theft of or from vehicles except that you may carry one door key for your house and one motor vehicle or bicycle lock key. A motor