

TRANSCRIPT OF PROCEEDINGS

Ref. G00BS113

IN THE MAGISTRATES' COURT AT BRISTOL

Marlborough Street
Bristol

Before HIS HONOUR JUDGE RALTON

IN THE MATTER OF

THE SOUTHERN CO-OPERATIVE LIMITED (Claimant)

-v-

MR PAUL DONNE (Defendant)

**MR E TOPAL appeared on behalf of the Claimant
THE DEFENDANT did not attend and was not represented**

**JUDGMENT
15 JUNE 2021
(FOR APPROVAL)**

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JUDGE RALTON:

1. This is a committal hearing in open court within the meaning of part 81 of the Civil Procedure Rules 1998. The claimant in this case is The Southern Co-operative Limited. It is a well-known chain of grocery stores. Mr Paul Donne is the defendant.

2. The claimant is the applicant for the committal to prison of Mr Donne for breach of an injunction order dated 28 February 2020, as since varied, and indeed extended by myself and I shall set out the orders in a moment.

3. The claimant is represented today by counsel, Mr Topal, who has prepared a skeleton argument for which I thank him. The claimant has been ready to proceed with its evidence today. The defendant, Mr Donne, has not appeared. I have been given a statement of service dated 9 June 2021 by Mr David Curley, who tells me that on 2 June 2021 at 1800 hrs, so 6pm, he recognised Mr Donne at his accommodation at 20 Toll House, North Street, Bristol, and he handed Mr Donne the application and paperwork which included the notice of the hearing for the hearing today, and importantly, the application notice dated 30 April, Mr Curley's affidavit with respect to the committal proceedings dated 13 April, a number of exhibits, and a defence form.

4. Mr Donne is not present in court. There has been no form of response or engagement in these proceedings either with the court, so far as I am aware, or with the claimant. Enquiries have been made by my clerk by way of the usual tannoy, and a look outside of the court to see whether or not Mr Donne has put himself in one of the rooms or a waiting room, and there is no sign of him. Mr Donne has a track record of not appearing at court. I am satisfied that all of the procedural steps are in order and the court can proceed, in particular, by reason of the new style application form which is deployed in committal proceedings. Mr Donne was given the usual warnings so the court can proceed in his absence and he was given the usual information such as his right to obtain legal advice.

5. The history in this matter is as follows: The claimant was concerned that Mr Donne was entering its grocery premises and shoplifting - quite simply, taking away goods belonging to the claimant without paying for them. Such was Mr Donne's conduct so far as the claimant was concerned, it terminated such licence Mr Donne might have to enter its stores. Unfortunately, the claimant found it necessary to apply to the court for an injunction order to restrain the defendant from trespassing in its stores.

6. The application came before Deputy District Judge Hocking and on 28 February last year, counsel appeared for the claimant, Mr Donne did not attend, and Mr Donne was

forbidden from entering or remaining within a number of stores listed in the order. The order was to last until 28 February 2021.

7. The claimant was concerned that Mr Donne was in breach of that injunction order, and under the old part 81 process, by application which is dated 16 June 2020, it applied for the committal of Mr Donne to prison. The application was supported by an affidavit of Mr Callum Vicker who dealt with service of the order. On his evidence on 29 March 2020, the defendant, in summary, shoplifted alcohol.

8. The committal application came before myself on 24 September 2020. The claimant was represented. Mr Donne did not attend. I was satisfied that he had been served. I made various directions with respect to the civil proceedings, we need not trouble ourselves with them today. In particular though, I found that Mr Donne had breached the injunction order by entering the claimant's store on the day in question, and I sentenced Mr Donne to 10 weeks' imprisonment suspended on condition that Mr Donne complied with the order. The suspension was to last until 24 September this year, and indeed, I also extended the injunction order. Furthermore, I made a costs order.

9. The orders were duly served. Unfortunately, it would appear, the orders have not had the desired effect of persuading Mr Donne to comply with the injunction orders, and that takes us to the application today. The application is supported by the affidavit of Mr Curley sworn on 13 April 2021. Mr Curley has also stepped into the witness box in my court, has been affirmed, and has confirmed his affidavit. I have enquired and been told that Mr Curley is unaware of any criminal proceedings in existence by reason of the allegation.

10. The allegation is straightforward: that on 9 March, Mr Donne was seen on CCTV, or should I say was recorded on CCTV, entering the store, the store in question being the Whiteladies Road store, which is the one of the specific stores mentioned in the injunction orders. Mr Curley viewed the CCTV on the next day, 10 March 2021; by reason of his previous dealings with Mr Donne he was able to recognise Mr Donne and confirmed that it was him who was within the store together with an accomplice whose identity is not known to the claimant. What the defendant then did in the store is a matter that I will address in a moment, but so far as breach of the injunction order is concerned, I must ask myself whether, on the evidence before me, I am satisfied that I am sure that on 9 March 2021, Mr Donne entered the Whiteladies Road store in breach of the injunction orders as amended and extended. The evidence is clear, it is not contested, and I am so satisfied.

11. I consider the remainder of the claimant's evidence because it is pertinent to the defendant's conduct in the matter of considering penalty. It would appear that on this

occasion, as can be seen very clearly from the stills images captured from the CCTV, that the defendant and his accomplice made off with confectionary, chocolate bars for which the retail price would have been £278.40. And I suspect that in the circumstances, the defendant really cannot claim as mitigation the multibuy offer which saw a saving had they been paid for in the first place of £97.20. How do we know about these specific goods? By reason of investigations carried out by the store and its stock check.

12. What then is the sentence that should be imposed? I have given careful thought to whether I should in fact now adjourn this hearing to another hearing to give Mr Donne the opportunity to speak in mitigation on his own behalf, or through legal representation. I have made the decision not to do so because of Mr Donne's track record, as I have said before, of not engaging in the court process. As I mentioned earlier, by reason of the new forms and processes, he is informed in the documents that the court can proceed in his absence. Therefore, I bear this in mind.

13. Again, this is a clear breach of the injunction order. The order could not be clearer. He has defied the injunction order again notwithstanding knowing he is at risk of imprisonment, and he entered the store with the obvious purpose of making off with chocolate without paying for it. And we are not talking about a single bar of chocolate, we are talking about a considerable quantity of chocolate notwithstanding the multibuy savings. This is similar conduct to his previous conduct when he made off with alcohol, Thatchers Cider. There is no evidence of any coercion thrust upon him, of any emergency, of any reason to excuse or understand the behaviour. Indeed, there is nothing before me that gives rise to any point of mitigation that could be said on behalf of Mr Donne.

14. I previously sentenced him – forgive me, there is a tap on the door – for the avoidance of any doubt, the tap on the door was a member of court staff handing me the court file, it was not any information about Mr Donne. I previously sentenced Mr Donne to 10 weeks' imprisonment suspended. This breach does not automatically activate the suspended sentence, and of course, it is carrying its own penalty.

15. I have come to the conclusion that a term of imprisonment should be imposed on Mr Donne. I have considered lesser orders. The powers of the County Court are very limited, and in reality, financial penalties against Mr Donne would appear to be meaningless. That only leads, as far as the County Court, is concerned, to its powers of imprisonment, ranging from no imprisonment to a maximum term of two years. I consider that the appropriate term of imprisonment, given that no credit can be given to Mr Donne, is, again, 10 weeks.

16. I have given careful consideration to whether I should, again, suspend. I have no reason to, again, suspend. Unlike the Crown Court, the greater ethos of the County Court is to secure compliance with its injunction orders. Thus far, this court has not succeeded. Mr Donne needs to understand that the County Court does have teeth and therefore I am not going to suspend. I likewise activate the previous sentence but the sentences shall run concurrently, not consecutively, so that Mr Donne is sentenced to a total period of 10 weeks, which inevitably means he will be released after 5 weeks.

17. That concludes my judgment with respect to the committal.
