

JERSEY / JUDGMENT

AG -v- Baker [2016] JRC 151 (01 September 2016)

[2016] JRC 151

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JUDGMENT

THE commissioner: 1. The issue of the defendant's fitness to plead to one count of common assault was referred to this Court pursuant to Article 1 of the Criminal Justice (Insane Persons) (Jersey) Law 1964 (as amended) ("the 1964 Law"). 2. The issue had first been raised by the defence in the Magistrate's Court and the case was therefore committed to the Royal Court, following AG v O'Driscoll

[2003] JLR 157 . 3. The Court had directed that the hearing proceed in the absence of the defendant pursuant to Article 1(2) of the 1964 Law, on the recommendation of the Crown and defence experts, as confirmed by them in evidence before the Court. Legal test for fitness to plead 4. The legal test to be applied in this jurisdiction in relation to the question of fitness to plead is set out in AG v O'Driscoll

[2003] JLR 390 where, at paragraph 29, Bailhache, Bailiff, stated as follows:- "An accused person is so insane as to be unfit to plead to the accusation, or unable to understand the nature of the trial if, as a result of unsoundness of mind or inability to communicate, he or she lacks the capacity to participate effectively in the proceedings. In determining this issue, the Superior Number shall have regard to the ability of the accused:- (a) to understand the nature of the proceedings so as to instruct his lawyer and to make a proper defence; (b) to understand the substance of the evidence; (c) to give evidence on his own behalf; and (d) to make rational decisions in relation to his participation in the proceedings (including whether or not to plead guilty), which reflect true and informed choices on his part." 5. References to the Superior Number within the above extract from O'Driscoll should now be read as the Inferior Number by virtue of Article 2 of the Criminal Justice (Insane Persons) (Amendment) (Jersey) Law 2005 . 6. The O'Driscoll test has been approved and subsequently applied by the Court of Appeal in the case of Harding v AG

[2010] JCA 091 at paragraph 5 as follows:- "... For our part, we are satisfied that the test which he (Sir Philip) stated in O'Driscoll is correct, but we do not regard it as any different in principle from that which has been held to apply in England." Burden and standard of proof 7. As to the burden and standard of proof, paragraph 30 of the O'Driscoll judgment states as follows:- "A number of points arise from that test. First, the presumption of sanity

remains. If an issue as to unfitness to plead is raised by the defence, the burden is on the defence to satisfy the Superior Number on a balance of probabilities that the accused does not have the capacity to participate effectively in the proceedings. If the issue of unfitness to plead is raised by the Crown, the burden is on the Crown to satisfy the Superior Number beyond reasonable doubt." 8. AG v Sousa

- [2016] JRC 059 clarifies at paragraph 13 that the burden of proof rests with the party contending unfitness at the hearing. In this case, both experts agreed that the defendant was not fit to plead and the parties had agreed that the hearing should proceed on the basis that it is the defence contending unfitness, which the Crown did not seek to challenge. As a result, the burden fell upon the defence to establish on the balance of probabilities that the defendant was not fit to plead. Psychiatric Evidence 9. The Court was provided with reports from Dr Dale Harrison, a consultant psychiatrist instructed by the defence, and Dr D Ho, a consultant psychiatrist instructed by the Crown. They also gave evidence, confirming the opinions reached in their reports, having further attended upon the defendant at HMP La Moye prior to the hearing. Both experts were agreed as to the defendant's diagnosis and, having addressed each of the factors set out in the case of AG v O'Driscoll, advised that in their opinion, the defendant was unfit to plead. 10. The defendant has a long documented history of poly-substance abuse and has been diagnosed with mental and behavioural disorders due to multiple drug use and use of other psycho active substances. Her presentation and behaviour has deteriorated over a considerable period of time and had persisted beyond the period during which a direct psycho active substance related effect might reasonably have assumed to be operating. In the opinion of both experts she was presenting with psychotic symptoms, delusional beliefs and hallucinations. Further investigation is required to determine whether this represents an organic delusional disorder or schizophrenia, but both agreed that she would benefit from an extended period of treatment with anti-psychotic medication, medication which she is currently refusing at HMP La Moye. 11. It is also possible that the defendant fits the criteria for personality and behavioural disorders due to brain disease and dysfunction. She might also meet the criteria for organic personality disorder. 12. As the experts were agreed, we have no need to delve into the details of the defendant's presentation and behaviour. Suffice to say that it was deeply concerning. There was clear evidence of a clinically recognised condition leading to an incapacity on her part to participate effectively in the proceedings. 13. Both experts were agreed that the defendant needed to be transferred to a secure psychiatric hospital for assessment and that admission to Orchard House in Jersey would not be appropriate because of the risks she would present both to herself and to the staff. The experts had secured a provisional placement at the medium secure facility at Brockfield House in Essex and set in motion the requisite application for a warrant from the Ministry of Justice under the Mental Health Act 1983 (England and Wales) and for the funding of that placement by the Jersey authorities. 14. The Court therefore made a formal finding pursuant to Article 1(3) of the 1964 Law that the defendant was unfit to plead and that she should be detained during Her Majesty's

pleasure. 15. Advocate Marks sought an order under Article 3(1) of the 1964 Law that the defendant should be detained in a hospital setting. Article 3(1) is in these terms:- "(1) It shall be lawful for a person in respect of whom an order has been made in pursuance of Article 1(3) or 2(2) of this Law, to be detained in a hospital until Her Majesty's pleasure is known and thereafter to be detained in the hospital by order of Her Majesty during pleasure; and any such order shall be sufficient authority for the reception and detention of that person in the hospital." 16. Article 3(3) provides that the word "hospital" in this article has the meaning given by Article 1 of the Mental Health (Jersey) Law 1969, namely "any institution administered by the Minister which provides treatment for persons suffering from illness, mental disorder or addiction." 17. Two points arose from this:- (i) We did not think that the Court had the power to order that the defendant be detained in "a hospital setting" as no such term is defined and it would not be clear what such an order would actually mean. (ii) The power to order a defendant to be detained in a hospital under Article 3(1) of the 1964 Law is limited to hospitals in Jersey (administered by the Minister). In this case, it was not recommended that the defendant be detained in any hospital in Jersey and it was not therefore open to the Court to order that the defendant be detained in Brockfield House, a hospital outside its jurisdiction. It was equally clear that the defendant needed to be detained for her own safety, notwithstanding the relatively minor nature of the charge she was facing, and that the prison authorities should be given the power to transfer her out of this jurisdiction once a place had been secured for her at Brockfield House and the jurisdiction of the English authorities under the Mental Health Act engaged. 18. We therefore ordered that, pursuant to Article 1(3) of the 1964 Law, until her Majesty's pleasure was known, the defendant be detained at HMP La Moye, and once the necessary arrangements had been put in place, transferred out of the jurisdiction to the medium secure facility at Brockfield House in Essex, England. We also ordered the Attorney General to provide the Court with a report in four weeks as to whether the move to Brockfield House had been accomplished. Authorities Criminal Justice (Insane Persons) (Jersey) Law 1964. AG v O'Driscoll

[2003] JLR 157 . AG v O'Driscoll

[2003] JLR 390 . Criminal Justice (Insane Persons) (Amendment) (Jersey) Law 2005. Harding v AG

[2010] JCA 091 . AG v Sousa

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