

JERSEY / JUDGMENT

AG -v- Barrett [2016] JRC 047A (23 February 2016)

[2016] JRC 047A

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JUDGMENT

THE commissioner: 1. This is an application by the defence for the admission of something that was said by Colin Barrett, the father of the defendant, to a police officer when the police officer arrived when he said words to the effect "there was a bit of a thing you know and he (meaning Mr Arrowsmith) fell over". The defence wish to admit this as part of the *res gestae* because the defence accepts that it is hearsay. It is in effect a previous consistent statement, assuming that that is what Mr Colin Barrett will say in evidence. 2. The test for admissibility of evidence as part of the *res gestae* is well known. I have been handed the case of AG-v-Breckon

[2012] JRC 194 where a judgment of Dame Heather Steel sets it out. The case of Shewan -v-AG

[2006] JLR 79 is also relevant. The key question as set out there is perhaps summarised in paragraph 5 of Dame Heather's judgment when she says:- "I have been referred to the words of Lord Wilberforce delivering the opinion of the Privy Council in the case of Ratten-v-R

(1972) AC 378 which are cited for the proposition that the proper test of admissibility is whether the statement was so clearly made in circumstances of spontaneity or involvement in the event that the possibility of concoction can be disregarded. Conversely if the statement was made by way of narrative of a detached prior event so that the speaker was so disengaged from it as to be able to construct or adapt his account, it should be excluded..." She then refers to the well-known questions set out in the speech of Lord Ackner in the case of R-v-Andrews [1987] AC 281. 3. I am not satisfied it would be right to admit this evidence in this case. First, it is made by the father of the defendant; secondly, he was not himself involved in the incident, although it is clear that he may have seen it; thirdly, it does not seem to me that it was made in such circumstances of spontaneity that the possibility of concoction can be disregarded. Thus the incident had completed, the complainant had been looked after by the defendant and it appears that there was, at any rate, some gap between the incident and the arrival of the police and this particular conversation. Thus PC Thomas arrived at 23:00, he there saw Mr Arrowsmith, he spoke briefly with him and heard what he had to say, and then he spoke to Mr Barratt. All in all, given the fact that this was the father of one of the parties to the incident and that it was in

the nature of telling the police when they arrived what had happened, I cannot exclude the possibility of concoction nor do I think that the circumstance of the event would have been so overwhelming and overpowering that the possibility of concoction can be discounted. 4. The witness will of course still be able to give his evidence as to what he saw, but I think that this would not be a proper allowance of hearsay evidence. Authorities AG-v- Breckon

[2012] JRC 194. Shewan -v-AG

[2006] JLR 79 . R-v-Andrews [1987] AC 281. Page Last Updated: 29 Mar 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 26 October 2026 · Esheria