

JERSEY / JUDGMENT

AG v Bester [2023] JRC 071 (27 April 2023)

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JUDGMENT

THE COMMISSIONER: 1. Advocate Jones on behalf of the Defendant has made a submission of no case to answer on Count 1 of the Indictment 2. Count 1 alleges against the Defendant that he trafficked a person contrary to Article 4(1) of the Crime (Transnational Organised Crime) (Jersey) Law 2008 . The particulars of the offence are that the Defendant intentionally arranged for a teenage girl to enter Jersey for the purposes of her physical exploitation namely the use of her for sexual purposes. 3. The teenage girl was 17 at the time of the allegation. She, we now know, was affected by ASD, autistic spectrum disorder, at the time, although it had not then been diagnosed and was not known to the Defendant. She was to his knowledge 17 years of age, and he knew that she was very disturbed in that he knew that she self-harmed and had attempted to kill herself. 4. This is, it appears, the first prosecution under this section of this Act in Jersey. 5. The essence of Advocate Jones' submission is that to be an offence under this section, the Prosecution have to prove that the sexual purpose for arranging the entry into Jersey was an unlawful sexual purpose. It is argued that there is no evidence or no sufficient evidence of an unlawful sexual purpose to leave the count to the jury. 6. The Prosecution case is that any sexual purpose will suffice and it is not required that it is an unlawful sexual purpose. They further argue that even if the Defence were to be correct, the submission must still fail as there is evidence from which the Prosecution can properly infer that the Defendant's purpose in arranging for her to visit Jersey was an unlawful sexual purpose. 7. While it may be that the Prosecution are correct on their alternative submission, in part because sexual offences are alleged in the indictment which occurred after the girl had arrived in Jersey, I have to make a decision on whether the first part of the Defence submission is correct that is that the sexual purpose in this Article has to be an unlawful sexual purpose to amount to an offence. I will need to direct the jury on what 'sexual purposes' mean. 8. By virtue of Article 4(2) different considerations apply to people who are said to be exploited who are aged 18 or over than to those who are under 18. As the girl was 17 I shall ignore the provisions relevant to those that are 18 or over. The distinction may however be important as an indication that the Jersey legislature wished to provide greater protection for girls up to the age of 18 than is provided in England and Wales. 9. The relevant parts of Article 4 for this submission are as follows: "4. Trafficking in persons (1) A person commits an offence if, for the purposes of the physical exploitation of another person, he or she - (a) recruits or arranges for the other person to enter a State, or travel within a State; ... (6) In this Article, any reference to the physical exploitation of a person means any of the following - (a) the use of the person for sexual

purposes; ... (7) Paragraph (6)(a) includes, but is not limited to including, any of the following - (a) the taking, or transmission, by any means, of an image of the person engaged in real or simulated sexual activities; (b) the taking, or transmission, by any means, of images of the person's genitalia, anus, or breasts, for the purpose of obtaining, directly or indirectly, a material benefit for the person or any other person; (c) the person's participation, for the purpose of obtaining, directly or indirectly, a material benefit for the person or any other person, in a performance or display, or other employment, that involves the exposure of the person's genitalia, anus or breasts. (8) Paragraph (6)(a) does not include - (a) the taking, in good faith, for purposes primarily other than the exposure of body parts of the person for the sexual gratification of a viewer, of an image of the person as part of an artistic or cultural performance or display; 10. It is accepted that there is evidence to go to the jury that the Defendant arranged for the girl to enter Jersey. There is also evidence that the purpose of the Defendant in doing that was to have a sexual relationship with her. 11. That evidence is, in brief, grooming online for some time before the girl left to go to Jersey including discussions on sexual matters. Further there is evidence that the Defendant was interested in having sex with much younger partners and when the girl came to Jersey they did have sex together. 12. None of that is in dispute. The issue is whether the Prosecution have to go further and satisfy the jury that the Defendant's intention was to have unlawful sex with the girl. 13. In my judgment that is not necessary. The first and principal reason is that that is not what the Law says. Article 4(6) says that "any reference to the physical exploitation of a person means the use of any person for sexual purposes" . It does not say any 'unlawful sexual purpose'. The Prosecution also rely correctly in my judgment on Article 4(7)(c) which sets out matters which are included in sexual purposes which are not in themselves necessarily unlawful. That is a clear indication, in my judgment, that the interpretation put on 'sexual purposes' by the Defence is wrong. 14. The words in the Article are in my judgment clear. There is no ambiguity and it does not require the insertion of other words to make it clear. 15. The Defence rely on what they say are the consequences of the interpretation that the Prosecution put on this section. They argue that if the Prosecution interpretation were correct the results would be ludicrous. It would mean, for example, that if an 18 year old from England invites a 17 year old to join him/her on a trip to Jersey for the purposes of having sex because their parents prevent them doing so in England, he/she would be committing an offence. That is, say the Defence, a surprising result and the Article would also cover an 18 year old and a 17 year old travelling within Jersey to have sex. 16. I accept that those are surprising results and would trust that prosecutorial discretion would result in no prosecution being brought. It is not open to me as a matter of statutory construction to alter the natural meaning of the words because some of the consequences of giving that meaning are surprising. Part of the reason for the legislation being drafted in the way it is may be because it has been introduced to comply with a United Nations Convention where there is particular emphasis on protecting persons under the age of 18. 17. Further it is pointed out by Advocate Jones that the equivalent legislation in England and Wales which is the Modern Slavery Act 2015 catches only sexual behaviour which involves the commission of an offence. 18. While legislation in Jersey sometimes derives from legislation in England and Wales, there is no indication of that in this Jersey Law and accordingly the position in England and Wales is not relevant to my considerations. 19. In my judgment there is no reason

to depart from the clear words of the Law. There has been no suggestion that the Prosecution interpretation is unlawful and it is accordingly impossible to interpret the Law in the way advocated by the Defence. 20. For those reasons I reject the submission of no case to answer. Authorities Crime (Transnational Organised Crime) (Jersey) Law 2008. Modern Slavery Act 2015 Page Last Updated: 05 Jun 2023 Back to top About JLIB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey Legal Information Board 2001- 20262023 (External) BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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