

JERSEY / JUDGMENT

AG v Burnett [2024] JRC 189 (17 September 2024)

[2024] JRC 189

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JUDGMENT

THE DEPUTY BAILIFF: 1. I gave a ruling on the application of the Crown during the evidence of the Defendant in this case. I reserved my reasons for the ruling that I gave having heard argument from both counsel. The Defendant, who was aged sixty-three at the time, was unanimously convicted by the jury for an offence of indecently touching a sixteen year old girl, previously unknown to him, at a new year party shortly after midnight on 1 January 2024. The Defendant pleaded not guilty on indictment on 1 March 2024 and he was tried by the jury. The trial lasted four days and concluded on 5 September 2024. 2. The ruling I gave took place during the Defendant's evidence on 2 September 2024. An application was made by the Crown pursuant to Article 82I of the Police Procedures and Criminal Evidence (Jersey) Law 2003 ("the 2003 Law"). This Article provides as follows: "82I Evidence to correct a false impression

- (1) Evidence of a defendant's bad character is admissible if it is evidence to correct a false impression given by the defendant.
- (2) The defendant gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant.
- (3) Evidence to correct such an impression is evidence which has probative value in correcting it.
- (4) Only prosecution evidence is admissible under this Article and provided it goes no further than is necessary to correct the false impression.
- (5) A defendant is treated as being responsible for the making of an assertion if - (a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him or her); (b) the assertion was made by the defendant - (i) on being questioned under caution, before charge, about the offence with which he or she is charged, or (ii) on being charged with the offence or officially informed that he or she might be prosecuted for it, and evidence of the assertion is to be given in the proceedings; (c) the assertion is made by a witness called by the defendant; (d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or

is likely to do so; or (e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.

- (6) A defendant who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he or she withdraws it or disassociates himself or herself from it.
- (7) Where it appears to the court that a defendant, by means of his or her conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself or herself that is false or misleading, the court may, if it appears just to do so, treat the defendant as being responsible for the making of an assertion which is apt to give that impression.
- (8) In paragraph (7), "conduct" includes appearance or dress." 3. After the Defendant's arrest in the early hours of 1 January 2024, he was interviewed later the same day, the first interview commencing just after 5pm and concluding at 5.46pm. The agreed summary stated that it had been established that the Defendant was fit for interview. The Crown placed significant reliance on the contents of the Defendant's interview, in particular his assertion that he had had so much to drink at the party that he suffered from " a complete blackout " (page 2 of the agreed summary). When it was put to him that the Complainant said, which the jury subsequently accepted, that he had put his hand up her skirt and started rubbing her up and down over her knickers, he replied " No I didn't. Well, I can't recall ". When pressed and asked " You didn't or you can't recall ", the Defendant replied: "I can't recall. I can't say I didn't but I can't recall any of that happening." 4. He went on to say that he could not recall anything after a certain time (pages 8 and 9 of the agreed summary). 5. However, in evidence to the jury, the Defendant said that allegations made against him were " completely untrue ". As to his interview, he said in cross-examination that various omissions from his account to the police and his departure from his assertion that he could not recall the assault - replaced as it was by a denial - was explained by the fact that during interview he was " still shocked " at the fact that he was at a police station. As regards his presence at a police station, he said " I was in an alien situation ". Although that was the core assertion that led to the Crown's application, the context was a defendant who was not of good character, but who nonetheless began his evidence by giving details as to his current marriage, five children and five grandchildren. He said he had a " very good relationship " with these individuals and had told his three eldest children about the allegations against him. He then went on to give his professional history, describing himself as a semi-retired I. T. project manager who had worked for various entities including Sussex Police. 6. In the course of the Crown's application, defence counsel said that these questions which had elicited these replies during his examination in chief had been asked to put the Defendant at his ease. But these questions, particularly those in relation to his occupation and the fact he had worked with various entities including Sussex Police, would have, in my judgment, in the eyes of a fair minded observer, at least suggested that he was a man of good character. The Crown had not made an application consequent upon the Defendant saying in his interview (for example at

page 8) that what was alleged against him, namely an assault (albeit a sexual assault) carried out on any view when he was very drunk, was "completely out of character" (paragraph 8 of the agreed summary). But I did consider the Crown's application under Article 82I in respect of the false impression that the Defendant had, in my view, given by describing a police station as "an alien situation" in the context of what he had said at the outset of his evidence in relation to his professional career. 7. The Crown argued that the nature of the false impression that the Defendant overall had given was: (i) that he would not behave badly in drink; (ii) that he was not used to police custody; (iii) that he had changed his account in interview because he was in shock and because a police station was an alien environment to him. 8. The Crown also said the Defendant's subsequent assertion in his evidence to the effect that he "had not been in a police station for a sexual offence in my life" was a studied attempt to work around his antecedents. 9. The Crown said that it was important that the jury were not left with a false impression, in particular, to the effect that a police station was an "alien situation" for him. 10. The Defendant antecedents referred to three matters, the latter two which the Crown sought to adduce. The first of these was his caution in July 2002 (when he would have been in his early forties) for offences of assault occasioning actual bodily harm and being drunk and disorderly in circumstances where he, when drunk, assaulted a taxi driver by punching him in the face. The second matter was an incident when the Defendant was arrested but not charged in December 2017 for an offence of assault upon his wife whom he had struck four times. On both occasions he had been (evidenced by additional material disclosed by the Crown to the defence and the Court during the course of the argument) interviewed whilst in police custody at police stations in Sussex. 11. The defence opposed the application on the footing that the first matter (the 2002 caution) was many years ago; that the cautions and 2017 matter were irrelevant to the substantive offence for which he was on trial, and that the Defendant did not really create a false impression as what he was really saying was that he had not been arrested, interviewed and detained in a foreign police station for the purpose of a sexual offence before. However, this is not in fact what the Defendant said - although it is something he subsequently said when his cross-examination resumed. 12. There was also some discussion in argument as to whether the Defendant had made an attack on the Complainant's character under Article 82G but the Crown did not press for a ruling or seek to introduce the evidence of the previous matters on that basis. 13. I considered the terms of Article 82I and also the Court's general exclusionary discretion under Article 76 to exclude evidence which would so adversely affect the fairness of the proceedings that the Court ought not to admit it. Ultimately, I concluded that the Defendant had given a false impression for which he was responsible which needed to be corrected. As regards the provision under Article 82I(4), that evidence to correct the false impression "should go no further than is necessary to correct the false impression", I directed the Crown that they should deal with the circumstances of the previous matters in no more than a sentence or so. In my judgment, it was important for the Crown to put in the briefest possible terms the circumstances of the matters in question for which the Defendant was arrested and interviewed in police custody, so that the jury understood that although they were events involving drunken violence, they were not sexual

offences and accordingly not connected with the offence with which he was charged. In the context of the Defendant's evidence as a whole, I concluded that it was necessary on my evaluation of that evidence for this material to be admitted and not excluded in the exercise of the Court's discretion under Article 76. 14. When the evidence resumed, the Defendant accepted (to the extent that he said he could remember them) both matters, that he had received a caution for the 2002 offences and had been interviewed in relation to both. In relation to the 2017 allegation, he had punched his wife in the head when he was drunk and again was interviewed by the police. 15. The Crown Advocate prefaced his questions on these matters (in order that the jury could understand why they were being asked) by asking the Defendant to confirm that he had said he was shocked about being in a police station, whereupon the Defendant said that he had not been to a police station in Jersey before but agreed that he had been to police stations for the purpose of police interviews. 16. I considered carefully the directions to give to the jury in this regard, having regard to the published guidance from England and Wales Crown Court Compendium and, in particular, tailored the direction to ensure that the jury could not treat this as evidence of propensity. The draft directions to the jury were shared with counsel in advance, and their comments on the same were accepted. The jury were directed as follows: "Evidence in relation to the Defendant's previous arrests and police interviews 24. The Defendant admitted an offence of violence, committed when he was drunk (he was interviewed at a police station in England and cautioned) in 2002 and he was arrested in respect of an allegation of domestic violence, again whilst he was drunk (he was interviewed at a police station in England but not charged, although accepts punching his wife) in 2017.

25. You heard this evidence because the Defendant said that his presence in a police station was an "alien situation" to him. He gave the impression that he was not used to spending time in police custody, and suggested that the changes between the account that he gave to the police in his interview in January and the account which he gave to you in evidence was in consequence of his shock at being arrested and the fact that the police station was an unfamiliar environment to him.
26. The Crown says that his evidence was designed to create a false impression and in order for you to assess the Defendant's evidence on this point, the Crown asked the Defendant about his arrest and police station interviews in 2002 and 2017.
27. The Crown says that you are entitled to have regard to this material as it shows the Defendant was trying to mislead you as to the reasons why he felt able to depart from the contents of his police interview in certain material aspects. The defence say that these statements were not misleading as the Defendant was really saying that he had no prior experience of being in custody in Jersey and being interviewed in relation to an allegation of sexual assault and that he had not materially departed from the account he gave in his police interview.

28. If you are sure the Defendant was trying to mislead you in the way the Crown suggests then this is a matter which you can take into account when deciding whether or not the Defendant was a truthful witness. If you are not sure about this then you should disregard the evidence of his previous arrests and interviews as irrelevant. In any event, the fact that the Defendant has a 2002 caution for an offence of violence and was arrested in 2017 for an offence of domestic violence for which he was not charged, does not mean that he is guilty of the offence with which he is charged. The offence with which he is charged is of a different nature. Accordingly, the relevance of this evidence is limited to your assessment as to whether or not the Defendant's evidence was truthful. This evidence does not indicate that the Defendant is more likely than might otherwise be the case to commit the offence with which he is charged." 17. In my summary of the evidence to the jury at the end of the summing up, I covered the 2002 and 2017 matters briefly and did not remind the jury of the detail of either. Authorities Police Procedures and Criminal Evidence (Jersey) Law 2003. Page Last Updated: 14 Oct 2024 Back to top About JLII Accessibility Contacts Copyright Disclaimer Feedback Privacy policy Site map BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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