

JERSEY / JUDGMENT

AG -v- Coote [2013] JRC 228 (21 November 2013)

[2013] JRC 228

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE DEPUTY BAILIFF: 1. The defendant is charged with two counts of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 61(2)(b) of the Customs and Excise (Jersey) Law 1999 . The occasions on which the importation took place were 29 th November and 6 th December, 2012. His co-accused, Jack Coughlan, has pleaded guilty to these charges. The defendant has entered a not guilty plea. The facts are very broadly admitted. Coughlan ordered and paid for two deliveries of the drugs from a UK supplier, and arranged with the defendant that they should be delivered to the defendant's home address. Once they had arrived, Coughlan collected the drugs. It is not alleged that the defendant received any payment for his involvement. It is agreed that the defendant signed for the packages that arrived at his house. He so informed Coughlan, who then collected the packages. The sole issue at trial is whether the defendant had the requisite guilty knowledge as to the content of the packages. 2. The defendant was arrested on 13 th December, 2012, on suspicion of having committed the offences which have been charged and interviewed twice on that day. The first interview commenced at 10:05 hours and lasted for 39 minutes. The second interview commenced at 13:07 hours and lasted for 35 minutes. The defendant was interviewed further on 18 th February, 2013. Three interviews took place on that day, the first at 14:23 hours lasting 42 minutes, the second at 15:31 hours, lasting 39 minutes and the third at 16:20 hours, lasting 13 minutes. The interviews in December were conducted by two customs officers at the Elizabeth Terminal without anyone else present, other than the defendant. The interviews on 18 th February were conducted between the same officers and the defendant, but in addition, an appropriate adult from the Appropriate Adults Service was present. 3. Trial is set down for three days commencing 26 th November, 2013. This judgment concerns a number of directions which have been sought by the defendant pre-trial. Admissibility of expert psychological report 4. Advocate Marks wishes to place before the Court evidence from Dr Bryn Williams, a clinical psychologist whose qualifications and expertise are well known in this Court. I have been shown Dr Williams' report of 22 nd July, 2013. It addresses the defendant's cognitive awareness and makes a thorough psychological review of his strengths and weaknesses, including assessment of his mental health. The psychologist has had available to him the defendant's health records and the committal papers with respect to the current trial and has, of course, interviewed him. 5. Dr

Williams' report indicates that the defendant has a functional IQ score of 68, which is indicative of learning disability in the exceptionally low range of ability and consistent with only 2% of his peers. Within that overall score of 68%, he has relative strengths and weaknesses in various areas. His verbal comprehension is weak at 63, his perceptual reasoning and working memory relatively strong at 77 and processing speed is 76. Dr Williams indicates that there is a "confidence interval" which indicates the range of scores which one can be confident the defendant would achieve. On the full scale IQ, the confidence interval is 65 to 73. 6. The psychological report indicates the defendant has had a number of complex and debilitating physical difficulties, development delay and problems with regulating behaviour. It is said that he has experienced significant harm as a child, and that the combination of his learning difficulties, neuropsychological risks and exposure to emotional abuse makes him a very vulnerable young man. He is currently 19, having been born on 1st December, 1993. 7. Advocate Marks submits that it is relevant that the trial court receives the evidence of Dr Williams, not only because it will go to assisting in an assessment of any evidence which the defendant might give, but also because it will assist the Court in considering whether the Crown has proved the mental element of the offences with which the defendant is charged. In support, she relies in particular upon the English case of *R-v-Masih*

[1986] Crim. Lr 395 where the English Court of Appeal was considering a case in which there was an appeal against conviction upon the basis that the trial judge ought to have allowed expert psychiatric evidence to be admitted. In that case, the defendant had an intelligence quotient of 72, which placed him on the boundaries of intelligence level dull-normal and sub-normal. This is a level shared by the bottom 3% of the population. Lord Lane CJ, giving the judgment of the Court of Appeal referred to the judgment of Lord Justice Lawton in *Turner*

(1975) 1 All ER 70 where the Learned Lord Justice said:- "The foundation of these rules was laid by Lord Mansfield, Chief Justice, in *Folkes-v-Chadd*

(1782) 3 Doug KB 157 and was well laid: the opinion of scientific men upon proven facts may be given by men of science within their own science. An expert's opinion is admissible to furnish the Court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help then the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon, it may make judgment more difficult. The fact that an expert witness has impressive scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves; but there is a danger that they may think it does." 8. Having referred to certain other material, the Lord Chief Justice went on as follows:- "The problem then is this, was this a case where the jury could form their own conclusion without help, or was it a case where expert evidence was required to assist them to come to their conclusion? It is a truism to which we often have to descend in this Court, every case depends upon its own facts, and this is an area where, par excellence,

once the principle is established, the answer will vary from case to case according to the facts. The first question is, was the appellant's state of mind and intelligence, ability to perceive situations, relevant? In many types of cases it may not be. The prosecution here had to establish first of all that sexual intercourse had taken place. As to that there was no dispute. Secondly that the complainant did not consent. That was established. Thirdly they had to establish against this man that he knew she was not consenting or was reckless as to whether she consented or not. Consequently his ability to appreciate the situation would be something which was relevant. Given his capacity to understand was material, was this a case where the judge was bound to admit the evidence? It is not necessary, for the purposes of this particular decision, to determine when, if ever, a defendant whose intelligence quotient is above that of a mental defective will be permitted to adduce evidence of mental capacity. Generally speaking if a defendant is mentally defective, or otherwise comes in the last class "69 and below mental defective", then insofar as that defectiveness is relevant - relevant that is to the particular case - it may be that expert evidence should be admitted about it. That is in order to enlighten the jury upon a matter which is abnormal, and therefore *ex hypothesi*, presumably, outside their own experience. If it is admitted it should be confined to the assessment of the defendant's Intelligent Quotient and to an explanation of any relevant abnormal characteristics which such an assessment involves." 9. Here, Advocate Marks submits that we have a defendant with an overall intelligence quotient of 68, and it is relevant to adduce this evidence because it goes directly to assist the court of trial in its assessment of the defendant's state of knowingness in relation to the charges which he faces. 10. As far as I am aware, this is not a matter which has previously been raised in this jurisdiction. Crown Advocate Pedley referred to the case of *AG-v-Picot*, which was a case where low IQ was used in mitigation, but the issue was not raised as a matter of admissibility for the purposes of a trial. He accepted that evidence of IQ was admissible, where it was relevant, and indeed had no objection to the admissibility of much of the report. Some of it however he contended ought not to be admitted. In the event, there was ultimately agreement between counsel that parts of Dr Williams' report should be excluded. Those parts which were excluded contained opinions in relation to the level of support which the defendant might need to have in the future, which is not relevant to the present proceedings, and opinions as to what the defendant might have thought in relation to the content of the packages which in fact contained the drugs, given the overall psychological assessment. These passages should be redacted. In the case of the latter opinions, it appears to me that there are two objections. First of all, the psychologist would be giving evidence of the very matters which had to be determined by the court of trial, and secondly he was giving such evidence without having the benefit of all the evidence which might be admitted at the hearing when the court of trial would determine guilt or innocence. For those reasons, what is contained in paragraphs 5.10, 5.11, 5.14 and 5.15 of the report are to be redacted, and there are further agreed redactions to be made to paragraph 5.13. 11. It appears to me that these are the right orders to make and that the principles which are set out in *R-v-Masih* should be adopted and form part of the law of this Island. The admissibility of the interviews on 13 th December 2012 12. The

application by Advocate Marks for the exclusion of these two interviews is made under Article 76 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 ("the 2003 Law"), which, so far as is material, is in these terms:- "(1) Subject to paragraph (2), in any proceedings a court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would so adversely affect the fairness of the proceedings that the court ought not to admit it." 13. The basis for the submission that admitting the evidence would affect the fairness of the proceedings is twofold. First of all it is alleged that the evidence which Dr Williams will give raises serious concerns about the reliability of the evidence obtained in the first two question and answer interviews where there was no appropriate adult present. Secondly it is alleged that the failure to have an appropriate adult present amounted to a serious and substantial breach of Code C of the Police Procedures and Criminal Evidence (Code of Practice)(Jersey) Order 2004 which the Court ought to take into account for the purposes of reaching a conclusion on the overall fairness of permitting the evidence to be adduced. 14. The application for the exclusion of evidence was also brought on the common law basis that the trial judge has an inherent power and overriding duty to exclude otherwise admissible evidence if, in his opinion, the prejudicial effect on the minds of the jury outweighs its true probative value. 15. I deal first with the contention that to admit the first two question and answer interviews would be to affect adversely the overall fairness of the proceedings. 16. The principal submission in the this respect was that because there was no appropriate adult present, one could not be sure that the defendant understood the nature of the caution which was given to him, and accordingly that it would not be fair to allow his answers to be given in evidence. That was supplemented by the submission that although the defendant was offered legal advice, which he refused, the evidence of Dr Williams is such that one cannot be sure that he understood the nature of the offer which was being put to him, and in the absence of an appropriate adult and the absence of a lawyer representing his interests, it would not be fair to allow the answers given in the two interviews to be admitted at trial. 17. The first interview opens in this way:- "AB: What is your full name please? CC: Conor John Coote AB: And what is your date of birth? CC: 21/12/1993 AB: Please confirm that there are no other persons present besides those already named. CC: Just them in the room AB: Sorry CC: Just us in the room AB: Yeah fine, the date is Thursday 13 th December 2012 the time by my watch is 10.05 hours, this interview is being conducted at Interview Room No. 1 at the Elizabeth Terminal. At the end of the interview I will give you a notice explaining what will happen to the tapes and how you may gain access to copies of them. You are not obliged to say anything unless you wish to do so but what you say will be recorded and may be given in evidence do you understand? CC: Yeah AB: Explain to me your understanding of the caution. CC: What I say well it's in evidence AB: OK, basically OK you are not obliged to say anything which means you don't have to answer my questions OK, it's up to you, if you want to answer my questions that's fine OK also anything you say gets recorded on the tape and becomes CC: OK AB: You are entitled to free independent legal advice which

includes the right to speak to an advocate or legal adviser on the telephone, you may also contact any specific advocate or legal adviser who is known to you. This interview can be delayed for you to obtain such legal advice, do you want legal advice at this time? CC: No AB: Your right to take legal advice is on-going, if, during the course of this interview you feel you would like legal advice or further legal advice the interview will be suspended and legal advice arranged for you, do you understand? CC: Yeah AB: Can you confirm you have been given a notice explaining your rights whilst in this Customs office? CC: Yeah AB: You've continued to decline legal advice, what are your reasons for this? CC: Don't know AB: Can you just explain why you don't want legal advice? CC: More effort, don't know." 18. Advocate Marks submits that this exchange shows that the interview took place on a false premise, namely that the defendant properly understood the nature of the caution which had been given to him and the nature of the rights to seek a suspension of the interview in order that he might obtain legal advice. She says that his answers as to what he understood by the caution and as to why he had declined legal advice show that to be the position. She points out that in subsequent answers which he gave shortly after the exchange which is set out above, he was asked to confirm his address, which was a matter which caused him some difficulty. She relied upon those parts of Dr Williams' evidence that the defendant presents with complex language difficulties, as is illustrated by his answer early on to a question about who was present in the room, when he says "just them in the room", when he meant "just us in the room". She also relies upon his evidence that the defendant has developed a number of strategies to manage his cognitive difficulties. The most obvious of these is that he uses repetition of what the other person has said, and that, importantly, he uses affirmative statements often by way of meaningless repetition of another person's spoken words, which is a symptom of psychiatric disorder. Thus in the extract above, he chooses the reply "it's in evidence", mirroring back the language he has heard, without knowing what "evidence" is. Another example appears later in the interview when the officer asked "do you understand what we mean by Class B", the defendant replied "Yes, obviously Class B". Dr Williams also points out that the defendant would regularly add the word "man" when completing a sentence, or the words "I'm joking" as a way of managing conversation. 19. In his supplementary report of 4 th November, 2013, Dr Williams says "as a result of Conor's limited cognitive skills there is an increased risk that he will find managing a complex conversation difficult, such as an interview or indeed cross examination. It is likely that his ability to understand process, and formulate answers quickly will be limited. Again this will be compounded by his social and emotional difficulties". 20. Advocate Marks submits that the defendant has a limited reading ability, and accordingly, although he would have been too embarrassed to admit it, would not have understood the writing on the caution notice handed to him by the officers. 21. I record that although the skeleton argument on behalf of the defendant asserts that the defendant's father attended at the harbour on the day of the defendant's arrest and advised the officers that his son could not read or write, and that the officer he spoke with responded that the defendant seemed to be doing alright, or words to that effect, this contention was not advanced before me. Furthermore the defendant's father was not

called to give evidence on a voir dire to this effect. Crown Advocate Pedley told me that there was no evidence of any such conversation having taken place prior to these two interviews in question. In the absence of evidence on a voir dire, I have proceeded on the basis that this objection by the defendant has not been maintained. 22. I turn now to the contentions in relation to Code C. Here I record that Advocate Marks was careful to emphasise that she was not alleging bad faith against any of the officers in question. Nonetheless she submitted that the defendant should have been treated as a mentally vulnerable person for the purposes of the Code and she pointed out that where the custody officer has any doubt about the mental capacity of a detainee, the detainee should be treated as mentally vulnerable and an appropriate adult called. By note 1I of the Code "mentally vulnerable" applies to any detainee who, because of his mental state or capacity, may not understand the significance of what is said, or his replies. Dr Williams' evidence supported the contention that the defendant should be so treated. She then referred to paragraph 13 of the Code which in its material provisions is as follows:- "13.1 A juvenile or a person who is mentally disordered or mentally vulnerable, whether suspected or not, must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless Annex C applies. If the person is cautioned in the absence of the appropriate adult, the caution must be repeated in the adult's presence (unless the interview is by then already finished). 13.2 If, having been informed of the right to be afforded facilities to consult a legal representative in private, the appropriate adult considers that these facilities should be utilised, then the provisions of Section 6 of this Code apply." 23. The guidance notes which follow, at paragraph 13B say this:- "It is important to bear in mind that, although juveniles or persons who are mentally disordered or mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances, to provide information which is unreliable, misleading or self-incriminating. Special care should therefore always be exercised in questioning such a person, and the appropriate adult involved, if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence, it is also important to obtain cooperation of any facts admitted whenever possible. 13C The appropriate adult should be informed that he or she is not expected to act simply as an observer. The purposes of the adult's presence are, first to advise the person being questioned and to observe whether or not the interview is being conducted properly and fairly; and secondly, to facilitate communication with the person being interviewed." 24. It is therefore said that, had there been an appropriate adult present, there would be a better chance of the defendant understanding the questions which were put to him, and of his answers properly addressing those questions. 25. It is accepted by Advocate Marks, rightly, that a breach of Code C does not make the evidence inadmissible of itself - what it does do however, she says, is to support the contention that in all the circumstances the admission of the evidence might make the trial process unfair. 26. Crown Advocate Pedley contends that there has been no breach of the Code because the officers did not suspect that the defendant was a mentally vulnerable person. They had no access at that time to the information which Dr Williams has now provided, and there

is nothing from the previous occasions on which the defendant has been questioned by the police which would suggest that he was not capable of understanding the questions put, nor of giving answers which in those previous interviews he did. It is true of course that some of those interviews took place when he was a minor, and there was an appropriate adult present for that reason. Crown Advocate Pedley also submitted that there was no breach of paragraph 13.1 of the Code. Although that paragraph contains the language "whether suspected or not" it cannot be right that the officers are found to be in breach of this provision in Code C when an officer, acting reasonably, would not be expected to suspect that the person concerned was mentally disordered or mentally vulnerable. 27. In order to decide this question of admissibility, and indeed how to exercise the discretion which is conferred upon me whether as a matter of common law or by Article 76 of the 2003 Law, I have to have regard to all the circumstances. For these purposes, I take Dr Bryn Williams' two reports as being part of these circumstances to which I should have regard, and indeed the Crown did not contend otherwise. 28. The two interviews do not contain anything which amounts to a confession, and, to that extent, Article 74 of the 2003 Law does not seem to have any direct application. It is not being said, for example, that I should not allow the evidence to be admitted because it is unreliable for the purposes of Article 74(2)(b). It seems that the real reason that the prosecution wish to adduce the evidence of the first two interviews is that there are a number of lies alleged to have been told by the defendant in answers given during these interviews, and it will be asserted that the telling of such lies can legitimately be taken by the Jurats to establish part of the prosecution's case namely the alleged guilty knowledge of the defendant. 29. I have also noted the terms of Article 75 of the 2003 Law which in its material provisions is as follows:- "(1) Without prejudice to the general duty of the Bailiff at a trial on indictment to direct the jury or, as the case may be the Jurats, on any matter on which it appears to the Bailiff appropriate to do so, where at that trial a case against the accused depends wholly or substantially on a confession by the accused and the Court is satisfied that the accused is mentally impaired and that the confession was not made in the presence of an independent person, the Bailiff shall - a) Warn the jury, or, as the case may be, the Jurats, that there is special need to caution before convicting the accused in reliance on the confession; and b) Explain that the need arises because of the circumstances mentioned in this paragraph. ... (3) In this Article - ... "Mentally impaired", in relation to a person, means that the person is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning". This provision seems to imply that such a confession, obtained in the absence of an independent person, is admissible in evidence but a warning must be given about it. 30. I also have regard to the case of R-v-Silcott

[1993] 1 WLR 619. This case involved consideration by the English Court of Appeal of the circumstances to be considered by the trial judge upon a submission under Section 76(2)(b) of the Police and Criminal Evidence Act 1984, which is the comparable provision to Article 74 of the 2003 Law. In that case, when considering question of reliability, the Court

found that psychological evidence was admissible before a trial judge in support of a submission under Section 76(2)(b) that the confessions were inadmissible. For these purposes, there was no borderline or cut off point, nor was there any classification of intelligence for the purposes of assessing the reliability of the confession. This is in contrary distinction therefore to the approach later adopted in *R-v-Masih*, where a cut-off point is taken for the purposes of determining whether psychiatric or psychological evidence going to the defendant's mens rea is admissible. The same approach was taken in *R-v-O'Brien*

[2000] Crim. Or. 676 where the Court of Appeal were considering a ground of appeal that the pre-trial confession and evidence was unreliable having regard to the conduct of the police and the defendant's proneness to fantasise, in circumstances where expert evidence with regard to a personality disorder which did not amount to a mental illness had been found to be inadmissible. The conviction had occurred in 1988, and the application before the Court of Appeal was in January 2000. The Court of Appeal found that "although the substantive criminal law in force in 1988 had to be applied, the conduct of the investigation of the case, the conduct of the trial, the directions to the jury and the reliability of the evidence were to be judged according to present day standards; and the understanding of the unreliability of confessions of vulnerable people whose confessions might be false was greater today than it was. Admissible evidence from psychiatrists was not confined to evidence of personality disorder so severe as properly to be characterised as a mental disorder. This was an exceptional case because of the convictions of the other two as well as [the defendant]. [The defendant] had traits associated with those who made false confessions rendering his evidence unreliable. The test was not whether an abnormality fitted into a recognised category such as anti-social personality disorder. It was sufficient for the disorder to be of a type which might render a confession unreliable. But there must be a very significant deviation from the norm; and a history, pre-dating the relevant confession, and not based solely on the history given by the subject, pointing to or explaining the abnormalities. Had the jury heard the medical evidence they would probably have come to a different conclusion as to the reliability of the defendant's confession and all the convictions were therefore unsafe". 31. I agree with the commentary which notes that the conclusion that the conviction was unsafe upon the basis that the jury would have reached a different verdict was a conclusion reached by applying the wrong test. It seems to me that, if there was doubt about the reliability of the confession, the judge should have decided that the confession was not admissible at all, and the jury would never have heard it. That might indeed have meant that the jury reached a different verdict, but the route for the conclusion is not the same. Nonetheless the other comments of the Court of Appeal as set out in the extract above are of interest. 32. I have read the two question and answer interviews which are the subject of challenge here. With very few exceptions, it seems to me that the questions are straightforward. There are no admissions, as far as I can tell, which the Crown could assert to be confessions for the purposes of the 2003 Law. Nonetheless, I have reached the conclusion

that, having regard to all the circumstances, and in particular having regard to the absence of an appropriate adult and the evidence of Dr Williams both as to the defendant's intelligence quotient and as to the other psychological factors which affect him, that it would not be fair to him to allow these two interviews to go forward into evidence. I have anxiously considered whether it makes any difference, as the Crown contends in its skeleton, that this is not a trial before a jury, but rather a trial with Jurats. I have also considered that the reliance by the Crown on the alleged lies would undoubtedly require a Lucas direction to be given, and, in all the circumstances, whether any possible unfairness would be removed by a combination of the Jurat trial and the Lucas direction. Nonetheless I have retained an uneasy feeling about the reliability of what was said in those two interviews by the defendant, and in those circumstances, I do not think it is appropriate to trust to the possibility that the direction plus the common sense of the Jurats, which is undeniable, would undoubtedly negate any such unfairness which arises from the fact that, unknown to the officers, the person they were interrogating had learning difficulties of such a magnitude that he ought to have had an appropriate adult present to assist him. Without that protection his understanding of the question and the reliability of his answer are so poor in all the circumstances of this case that it would not be fair to have those interviews in evidence and the Jurats invited to draw adverse inferences from what the defendant said. 33. For the avoidance of doubt, I wish to emphasise that I have not reached the conclusion that there has been any breach by the officers of Code C. Although it is no longer relevant for these purposes, in my judgment, there has been no breach of Code C because the officers could not reasonably have known or suspected that the defendant was a mentally vulnerable person. The quality of his answers to the various questions which have been put may not have been high, but it is often the case that the quality of answers given is not high. There is no evidence that the interviewing officers suspected or were told that the defendant was mentally vulnerable. They did ask questions which were intended to test whether the defendant had understood the nature of the caution and whether he had some reasonable basis for not wanting to have access to legal advice, and the answers given were, in my judgment, not such as would necessarily prompt any reasonable suspicion that he was mentally vulnerable. I accept that I should apply the dicta of the English Court of Appeal in *Gill and Others-v-R*

- [2004] EWCA Crim. 3245, where the Court was dealing with a defendant with an IQ of 63 who had made her admissions on arrest and had no appropriate adult in interview as the officers did not appreciate that she needed one. At paragraph 68, there is a summary of propositions which relate to the reliability of the confession under Section 76 of the Police and Criminal Evidence Act 1984 (Article 74 of the 2003 Law). Although those propositions relate to Section 76 and not to Section 78, they nonetheless are relevant questions raised there which are to be considered in relation to the overall fairness of permitting the evidence to be admitted which in my judgment ought to be applied to an application under Article 76 of the 2003 Law as well. The provisions of Article 75(1) of the 2003 Law, to

which I have referred earlier, recognise the need for the tribunal of fact to be told about potential defects. In such cases, the evidence would clearly be admissible. In other cases, the trial judge will not allow the evidence to go in at all because in all the circumstances of the case he believes it would not be fair. In my judgment, this is such a case. 34. For these reasons, I rule that the Crown may not adduce evidence of the two interviews on 13 th December, 2012. Redactions from later interviews where there is a reference to questions and answers in interviews 1 and 2 35. Advocate Marks contends that in some of the later interviews on 18 th February, 2013, which did take place in the presence of an appropriate adult, there was a reference back to questions put at the December interview. An example is as follows:- "JLM: When we asked you, when we spoke to you previously, we asked you about the signature, on this signed for docket, and you stated that it was your signature. CC: No comment JLM: Do you confirm or deny that earlier statement? CC: No comment." 36. It is clear to me that questions falling into this category and the answers given thereto should be redacted. They have no evidential value because a reference to something which is not admissible, and where that reference receives a no comment response, has no evidential value. I was shown a number of examples from the interview which commenced at 14:23 hours, and in my judgment all those examples fall within the category where the questions and answers should be redacted. I do not set them out in detail now but if there is disagreement between counsel, it can be referred back to me for adjudication. 37. In my judgment the fact that there was an appropriate adult present on the occasion of the interviews on 18 th February, 2013, does not permit evidence which was not admissible from December coming in, as it were, as a side wind, in the shape of a question to which there was a denial or a no comment answer. Redactions to the fifth interview 38. This interview took place at the request of the defendant. It took place in the presence of a representative from the Appropriate Adults Service. Objection has been taken to a number of questions which go to the defendant's alleged state of knowledge. It is said by Advocate Marks that the defendant did not understand the meaning of the question such as a reference to "controlled drug". 39. In my judgment, these questions, and the answers given to them, are admissible. They took place in the presence of an appropriate adult. There is no reference back to material which is inadmissible. The fact that Dr Williams may give evidence upon which the defendant will rely for the purposes of showing he did not fully understand the nature of the question being put to him will be a matter for the Jurats, who will assess its weight and will receive a direction from me in accordance with Article 75 of the 2003 Law. This objection from the defence is therefore rejected. Special measures 40. It is contended by the defendant, on the authority of R-v-SH

[2003] EWCA Crim. 1208 that, given the evidence which Dr Williams will give, some special measures ought to be taken in relation to the defendant's evidence. In particular it is asserted that where there is a defendant with learning difficulties, the Court can and should:- (i) Permit him to have the assistance of an interpreter or an intermediary whilst giving evidence, to ensure that questions are thoroughly understood and that the answers given reflect what the defendant wants to say; (ii) A detailed defence statement is available

to the tribunal of fact; and (iii) Leading questions based on that statement in examination in chief can be put. 41. Crown Advocate Pedley accepted that the Court has inherent jurisdiction to give such directions in connection with the giving of evidence at trial as it thinks appropriate in order to secure a fair trial. I think that concession was properly made. Article 6 of the European Convention in any event requires that the defendant should have a fair trial and it is incumbent upon a trial judge to take such steps as meet any particular difficulties which arise in the course of the trial which would put that objective in jeopardy. This Court has already taken special measures, without statutory authority, in connection with the provision of screens or permitting ABE interviews to be adduced as evidence in chief in certain cases, and indeed other special measures will from time to time have been taken. I accept that I have an inherent jurisdiction to order special measures to be adopted in order that a fair trial is secured. 42. When this matter was argued before me, Advocate Marks confirmed that she had in mind that a detailed defence statement would be prepared, read to the defendant who would be asked by a leading question or questions to confirm its truth. In response to a question from me, she confirmed that she had no objections to providing a copy of the statement to the Crown in advance of the trial. I asked that question because, while the Crown was not normally entitled to have the defendant's evidence in advance of that evidence actually being given before the Court, in this case, there was going to be a requirement on the Crown to formulate its questions in a simple and non-complex way, and it was desirable, in the interests of fairness to the prosecution as well as to the defence, that some advance notice be given to the Crown of the detailed defence statement which would be given. On the other hand, it was also important that the Crown should not have such a statement sufficiently in advance that would enable it to adjust the presentation of prosecution evidence. Accordingly, with the consent of the defendant's counsel, I have directed that the defendant is permitted to adduce a detailed defence statement which will be made available to the Jurats, and will be proved at trial in chief by one or more leading questions put by Advocate Marks to the defendant, on the assumption of course that he gives evidence. If he chooses not to give evidence, such detailed defence statement will not be admitted. 43. That leaves over the question of any interpreter or intermediary. It appears that Advocate Marks is not yet aware as to who that intermediary might be. At present, I have not had the opportunity of seeing the defendant give evidence, and I do not therefore know whether it will be necessary to have any specialist or skilled intermediary available to the Court at that time. On the face of it, some of the interviews, including those which I have ruled should not be admitted for other reasons, reveal that the defendant is able to cope with some questions and answer them. For the time being therefore, I do not consider it is necessary to direct that an intermediary should be present, but I have understood from Advocate Marks that she will arrange for an intermediary to be in Court so that, if there is a difficulty, or perceived to be a difficulty, either party may apply to the Court, or the Court may determine of its own motion, that the intermediary assist. For the time being therefore no order is made in that respect but there is liberty to apply. Authorities Customs and Excise (Jersey) Law 1999. R-v-Masih [1986] Crim. Lr 395. Turner

(1975) 1 All ER 70. AG-v-Picot. Police Procedures and Criminal Evidence (Jersey) Law 2003. Police Procedures and Criminal Evidence (Code of Practice)(Jersey) Order 2004. R-v-Silcott [1993] 1 WLR 619. Police and Criminal Evidence Act 1984. R-v-O'Brien [2000] Crim. Or. 676. Gill and Others-v-R [2004] EWCA Crim. 3245. R-v-SH [2003] EWCA Crim. 1208. Page Last Updated: 03 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2013/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-coote-2013-jrc-228-21-november-2013>

Prepared on 26 October 2026 · Esheria