

JERSEY / JUDGMENT

AG -v- De Oliveira [2016] JRC 202A (07 November 2016)

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JUDGMENT

THE BAILIFF: 1. This is an application by the defendant to have excluded from the Newton hearing, which is to take place in ten days' time, evidence of an interview between the defendant and police officers held on 3 rd July this year at 8:30 in the evening. It was a very long interview which runs to some 125 pages of transcript. 2. The objection is taken by the defence is that the interview was conducted in the absence of any interpreters and that there was a real risk that the defendant did not either fully understand the questions or even if he did was unable to express himself clearly in his answers. 3. The Crown takes the approach that the police officers did everything they could to ensure that the questions were framed in such a way as were easily understood by him and that in the circumstances the evidence of the interview ought to be admitted. It will be contended or may be contended by the Crown in particular that what he said at the time of that interview in relation to the manner of approaching the victim and whether any force was used may be material to the issues which the Court has to determine at the time of the Newton hearing. It is not asserted by the Crown that there will be any likely inconsistency in relation to two of the issues which will arise at the Newton hearing in the sense that when he was interviewed the defendant denied digital penetration and he also denied exposure of his penis. 4. So that is the issue which I am now addressing. I have read the interview in some detail and I am absolutely clear that this defendant has difficulty in expressing himself clearly in English. It has the consequence that although he may understand the questions at least for the most part, his answers are perhaps going to be less reliable even though he is consistent in his denials in some respects and it follows that any cross-examination on the question and answer interview will be of very limited value to the Court on the Newton hearing. I am slightly concerned that the defence seeks to exclude material which, for the reasons I have given, that is to say the consistent denials, is actually helpful to the defendant but that is the application and I accept that despite my direction to the Jurats in relation to language, there is I suppose a risk that they may hold what I regard to be a linguistic uncertainty against him. In those circumstances with some misgivings I accept that there is potential prejudice it would be appropriate under Article 76 of the Police Procedures and Criminal Evidence (Codes of Practice)(Jersey) Order 2004 to exclude this interview. 5. I have considered Code C and in my view it needs to be looked at purposively. The purpose is to ensure that where it is necessary to have interpreters, interpreters should be

provided and necessary means not only in understanding questions but also having the ability to give proper answers and as far as the questions are concerned it is quite obvious from the very opening part of the interview that the officers realised that there was a potential problem. Detective Constable Thomas says this and I quote: "So, um, Alfredo, if there's anything that you don't understand at all, ok, then you can, you can say so and we can try and rephrase whatever. Defendant Yeah it's ok Officer We'll try and explain it to you in other ways, ok? Defendant Ok, it's ok." 6. Well, it is clear from that exchange that the officers were perfectly aware that there might be a difficulty in terms of language or it would not have been necessary to explain that to the defendant. What they do not seem to have been aware about is that it was not just a question of the defendant understanding their questions, it was a question of his having the ability to give his answers and while I do not see any evidence of any deliberate breach of Code C, I think it probably was breached in the sense that the officers should have erred on the side of caution and should have allowed the defendant an interpreter of their own volition to ensure that he could explain clearly what he wanted to say in answer to their questions and it was quite obvious from what he said right at the outset that he did intend to answer their questions. 7. There was an example at pages 68 and 69 of the transcript when the officers were asking whether the defendant found the victim/complainant to be attractive and we can properly call her a victim because he has pleaded guilty to the assault. "Q When you say something, maybe she wanted sex? A No, no sex, like touching Q Well isn't that sex? A Touching is no sex Q Touching is not sex, what is it then, what is touching? A Touch" That is the clearest of examples if you like that self expression was not something which came easily to this defendant, I am quite clear what he meant and what he was trying to answer but he could not express himself in the way that the question was asking that he express himself. It is just one example, there are many others and so in my view it is quite clear that the question/answer interview is not reliable evidence. I would say that to the Jurats but actually it is much more convenient that I just rule that it is not admissible now and I do so rule as a result. 8. The second objection was to the admission of an interview in 2013. Crown Advocate Maletroit advises me that the only purpose of putting that interview in was to explain the defendant's familiarity with English for the purposes of the 2016 interview. As the 2016 interview is excluded for the reasons I have given, it is not appropriate that the 2013 interview goes in either so that is also excluded. 9. Mr De Oliveira you remain in custody until the Newton hearing on 15 th November 2016. Authorities Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004. Page Last Updated: 06 Jan 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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