

JERSEY / JUDGMENT

AG v Hatte [2004] JRC 143 (18 August 2004)

[2004] JRC 143

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

JUDGMENT

THE COMMISSIONER: 1. On the 25 th June, 2004, Hatte was indicted before the Royal Court on the charge of unlawful sexual intercourse contrary to Article 4(1) of the Loi (1895) modifiant le droit criminel . He pleaded guilty through his Advocate and she brings this application today. He has not yet been sentenced. 2. There is no need to deal with the facts in any great detail save to say that Hatte was born in France on the 1 st January, 1942. He is now 62 years old. On the 30 th December, 2003, he had sexual intercourse with a girl aged 14 years. He lives at Le Squez, the child is at Heathfield and he had known her for some time before the sexual intercourse took place. He is divorced from his wife and two of his three sons have committed suicide. He lives with his surviving son. 3. He works as a green keeper at Les Ormes Golf Course and has worked there for twenty-five years. He came to Jersey in 1963. 4. Advocate Fogarty takes exception to a Probation Report carried out on the 22 nd June 2004, when a plea of guilty had been accepted but before he came to be sentenced. The Probation Officer, Miss Janette Urquhart is experienced. She graduated in 1991 from Paisley University with a Bachelor of Arts in Applied Social Studies and a Certificate of Qualification in Social Work which included elements of psychology and sociology. (I am quoting from her sworn affidavit). In her affidavit she says this: "I worked in Scotland as a Child Care Social Worker for the first three years and then in 1994, I entered the Criminal Justice System as a Criminal Justice Social Worker. In 1994, I undertook a general offending behaviour course and a specific two-day course on sex offending. This was followed by another two refresher courses, the last one being in the summer of 2002. These courses looked at such matters as the risk of re-offending, antecedents, behaviours and consequences of sexual offending and the modus operandi of perpetrators of sexual abuse. In 1998, I was part of a working party which drew up guidelines in Inverclyde for the Criminal Justice Team working with sex offenders". 5. The Crown had proposed to sentence Hatte on indictment but Advocate Fogarty obtained an adjournment so that the Court could hear certain issues concerning the Social Enquiry Report. 6. On that Probation Report Advocate Fogarty raises two main issues. The first issue is contained within the passage: "Furthermore, he admitted that he had been in a sexual relationship with Ms X for the past two years. This means that he has, by his own admission, been having unlawful sexual intercourse with Ms X since she was thirteen years of age". There are references in the next paragraph to " their sexual relationship recommenced " and " He still continued to engage in, what he perceived to be a consenting adult relationship" . 7. Despite the fact that Crown Advocate Sharpe has reiterated that the Attorney General intends and

will proceed only on the basis of the one accepted act of sexual intercourse, Advocate Fogarty does not concede that that is sufficient; for she argues that there will remain a suspicion in the Representor's mind that the Court will take these matters into account at sentencing. 8. The second issue is the fact that the Probation Officer based her conclusions on the Representor's psychology and conduct on the findings of an American sociologist called David Finkelhor. In particular the Probation Officer appears to base her clinical findings on a book (Dr. Finkelhor has written a large number of them) called "Child Sex Abuse: New Theory and Research" which was published in 1984. 9. I shall of course examine each of these issues in greater detail. 10. There is one preliminary point in law. Twice Advocate Fogarty told me that there was precedence for a new probation report to be made in a case called Attorney General -v- Picot although no written judgment was given. That is, in my view, misleading. Attorney General -v- Picot was not a judgment. It was a discussion in chambers between counsel and the Deputy Bailiff. No Greffier was present although apparently Mr Heath was called to assist. 11. An agreement was made in the course of the discussion which was made in the unusual circumstances of that particular case. Although Advocate Fogarty represented Mr Picot the inter partes decision creates no precedent whatsoever and is not relevant to the decision I am asked to make. 12. In R -v- Ellerlay

(2003) 2 Cr. App R 11, 165 at 171 Lord Woolf CJ says this: "A probation officer is under a duty to prepare a report which clearly and frankly sets out the probation officer's view, in particular in relation to sexual offenders, as to the degree of risk to the public that an offender constitutes. In order to do this in many cases they have to ask questions of an offender as to the precise circumstances in which the offender came to commit the offence to which he may have already pleaded guilty, or in relation to which there may be an agreed basis of facts between the prosecution and the defence. If in the course of that interview the offender volunteers an admission of committing the particular offence or some other offence which is relevant to the task of the probation officer in preparing their report for the court, they cannot ignore what they have been told. They are under a duty to provide a full and frank report which includes those details. Usually there will be little risk of any danger of action being taken in relation to an offender in consequence of anything said to the probation officers or anything said in a report. However, as this case illustrates, there can be a situation where that can arise". 13. That case led to further charges being made as a result of an admission being made to a probation officer which had not previously been made to the police. 14. At 172 the Court said: "A course which, in some cases, may be appropriate if an offender starts making a confession, is to stop him and ask him whether he would like to see his solicitor before he makes any further remarks. Probation officers should exercise judgment as to the appropriate course in the particular case. It is not possible for this Court to lay down guidance for probation officers as to what they should do, other than to indicate that if they fear there is any risk of unfairness to an offender, they should take whatever appropriate action they think is necessary to protect the offender from any unfairness". 15. Advocate Fogarty began by saying that the Representor was hard of hearing and in any event he should have had an interpreter present as he was born in France. 16. I have had the opportunity to read a very

detailed affidavit, sworn by Miss Urquhart. In that she says on this first part: "I asked the Prison Officer if Mr Hatte would require an interpreter and I was told he would not. When I attended upon Mr Hatte in prison on 10 th June 2004, I asked him again if he needed an interpreter. Mr Hatte told me that he understood English perfectly well, having resided in Jersey since the mid 1960's and it was fine to proceed with the interview without one." She goes on to say this: "I introduced myself, explaining who I was and my role as a Probation Officer. There were one or two occasions when Mr Hatte asked me to repeat myself and I therefore asked him specific questions about his hearing. He confirmed that he was hearing everything satisfactorily, but had need of further explanation of what I had said, hence he asked me to repeat myself. 17. I have to recall that on 31 st December, 2003 and on th January, 2004, Hatte was interviewed at Rouge Bouillon by Police Officers. The first interview commenced at 20.30 and concluded at 22.42. There is no indication that an interpreter was needed nor that the Representor had difficulty in hearing. The second interview commenced at 20.50 and Mr Philip Syvret, an écrivain from Benest and Syvret, was present as duty solicitor throughout. That interview concluded at 22.04. Nothing was said about an interpreter and nothing was said of Hatte not being able to hear. In my view the contentions are not sustainable. 18. Of course, no police admissions were made at the police interview under caution by Hatte of any previous "sexual intercourse" with the child in question. I must bear in mind, however, that Miss Urquhart made a clear point to the Representor. She says: "I explained to Mr Hatte that the Social Enquiry Report was a confidential document but that his advocate would receive a copy, as would the Crown, the Chief Probation Officer and the Court. I told him that it was a confidential document so far as the Press and anyone else was concerned. I specifically recall warning Mr Hatte that if he disclosed anything to me which could constitute a criminal offence, then as an officer of the Court, I might feel compelled to report it to the police and he could be further charged." 19. I agree with Miss Urquhart that a man of 62 who has been married and had children from that marriage, would have understood what a "sexual relationship" means. Miss Urquhart's notes are very clear. These are not notes meant to be seen by anyone. They are an aide memoire. They are detailed and they include these words: "There has been a sexual relationship for the past two years". 20. In the guidelines for working with sex offenders prepared by social workers of the Inverclyde Council Criminal Justice team (one of which was Miss Urquhart) Advocate Fogarty points out the words: "Workers must always start from the premise that they do not believe what clients say". 21. That, in my view, does not help to advance her argument. Probation Officers are officers of the Court. They are not police officers nor sentencers. It is for this reason that I totally reject Advocate Fogarty's submissions that Code C conditions should be administered and that a lawyer should be present. Probation officers are not charged with the duty of investigating offences or charging offenders. The Probation officer has a duty to assess a likely risk of whether the interviewee will be likely to re-offend and to give assistance to the Court when it considers sentencing. The accused has already pleaded guilty. It is interesting to note that the Probation Officer assessed Hatte as being at a low risk of sexual reconviction and her conclusion was that she was not in a position to offer a

community based disposal and she asked that the case be dealt with "on its legal merits alone". 22. In any event what was reported to the Probation Officer was not reported as being true, it merely showed how the Representor tried to explain his behaviour to the Probation Officer. The consultant psychologist's report says this: "Mr Hatte has pleaded guilty to unlawful sexual intercourse with a minor and he expressed considerable guilt and remorse for this offence. He claims that the sexual relations with Miss X were consensual and occurred in the context of a relationship he has had with her for a few years". 23. However that passage is interpreted it is perhaps strange that Advocate Fogarty does not argue that the same strictures should apply to the Consultant Psychologist nor indeed to a Police Surgeon who is called in from time to time and who notes what is said to him on examination. 24. In my view the Social Enquiry Report is not evidence, it is a report prepared after a plea of guilty is put forward and it is there to explain, as far as possible, the defendant's version to the Court and to assess whether he or she is likely to re-offend. If Advocate Fogarty is correct then it would be difficult to see how a Social Enquiry Report could ever be prepared objectively in the future. 25. I move now to the second main issue. The mention of Dr Finkelhor in the Probation report led to Advocate Fogarty saying that "the alleged findings as to the Representor's psychology and conduct are an opinion by an individual not qualified as an "expert" witness in the psychology of sex offenders and are based upon theories of an American sociologist which are twenty years old". 26. As if to confirm the matter Advocate Fogarty told me that she had telephoned both Mr Hollywood and Mr Berry who told her that "they had never heard of Dr. Finkelhor". That really is hearsay and is of little value to me. Interestingly, Mr Heath was in court and volunteered the information that Dr Finkelhor's works are widely used in probation reports throughout the British Isles. (Details of his published works, his awards and his professional activities cover sixteen typed pages). 27. I have read guidelines of the Inverclyde Council Criminal Justice Team ("Working with Sex Offenders") of, which, as I have said, Miss Urquhart was one and it is interesting to note that Dr Finkelhor's work referred to in the present report was one of two by that expert and one of twenty-three works that were considered by the Team. Perhaps it might have been more helpful had Advocate Fogarty asked Mr Hollywood or Mr Berry (who are highly valued experts in their field in Jersey) to come to Court and tell me what they had been able on research to discover of Dr Finkelhor of whom, of course, I know nothing. Dr Finkelhor appears to have expertise in the criminology of sex offenders, I just do not know whether the Jersey Consultant Psychologist is an expert in that field. 28. Certainly Miss Urquhart does not attempt to claim the research as her own. She is very clear in what she says. Jurats are not members of the public called to assist the court. They have a vital judicial role and they are well accustomed to sentencing. 29. Five of them serve on the Probation Board. The Crown does not wish to edit the report - a suggestion that I made at some stage of the hearing - and on reflection I respectfully agree. It is not for counsel to have prepared a sanitised report acceptable to the defence. That would create a situation where a full and frank picture was no longer being presented. The Social Enquiry Report is a report

- it is not evidence and particularly not evidence in this case when the Crown has said that it will not proceed on any other basis than that of the admission made to the Police by Hatte. 30. The Probation Service has a difficult task of presenting, where appropriate, realistic non-custodial sentencing options to the court. These sometimes are at variance with the Crown's conclusions but they give the Jurats a complete picture upon which they can fairly sentence an offender who has pleaded guilty. 31. The application is accordingly refused. Authorities R -v- Salisbury Magistrates' Court ex p Gray (21 st July 1999) Times Law Reports. Archbold (2004 E'dn) Hearsay Rule: para 3; Police Powers: paras 15-10 to 15-12; Rights Guaranteed: 16-91 to 93. A. G. -v- Dowse, Heys (18 th December 1996) Jersey Unreported; [1996/124A]. Joy -v- Federation against Copyright Theft (14 th January 1993) [1993 WL963922]. R -v- Bayliss [1994] 98 Cr. App. R.235. The Queen, on application of Secretary of State of Social Security -v- South Central Division Magistrates' Court CO/248/2000QBD2000. Kostovski -v- the Netherlands 12EHRR434. Luca -v- Italy (2003) 15 EHRR46. Ludi -v- Switzerland (1993) 15 EHRR173 . Indictments (Jersey) Rules, 1972. Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée. R -v- Ellerlay (2003) 2 Cr. App R 11. Blackstone's Criminal Practice (2004 Ed'n): para F1.5.7. Page Last Updated: 24 Mar 2017 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/2004/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-hatte-2004-jrc-143-18-august-2004>

Prepared on 25 October 2026 · Esheria