

JERSEY / JUDGMENT

AG v MM [2024] JRC 114 (15 May 2024)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application for special measures. The Defendant stands trial facing inter alia two allegations of rape and the Complainant has made a statement on 26 March 2024 in which she speaks of her understandable concerns for having complained of a serious sexual assault and knowing that this case will be tried by the jury in due course. Some months from the trial she is already struggling with the prospect of giving evidence which must be quite common in cases such as this. The application we are concerned with today is her wish to be screened from the Defendant and from the public gallery. The latter application is opposed by the Defence. 2. The Complainant says at paragraph 4 of her statement: "I am also worried that if I see others attending Court while I am giving evidence this will be very distressing for me. It is very hard to accept that I have to be in Court and face so many unknown people, to explain very intimate details about a situation that causes me a lot of distress. I am very worried that I will not be able to give any coherent responses to the Court if I have to see more strangers entering the Public Gallery, who may have no interest in supporting me and which I will find very intimidating." She speaks about previous prescriptions for anxiety and asks for permission to have screens placed between herself and the Defendant so she does not have to see him when she is giving evidence and also screens protecting her from seeing people in the public gallery so that she can "focus on the questions being asked and to ensure I can respond as fully as possible with the most relevant details about what happened to me". 3. The relevant statutory background for the purpose of this application is Article 100 of the Criminal Procedure (Jersey) Law 2018. The Complainant is an eligible witness for the purposes of that article if the Court is satisfied that the quality of evidence to be given by her is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings. In determining whether a witness falls within this subparagraph the Court must take into account the factors set out in subparagraph (6) of the Article which lists a number of matters which include:- "the nature and alleged circumstances of the offence to which the proceedings relate; (b) the age of the witness; (c) any such other matters as appear to the court to be relevant, including - ... (d) any behaviour towards the witness on the part of - (i) the defendant, ..." And the final subparagraph of the Article says, "For the purpose of a determination under paragraph (6), the court must in addition consider any views expressed by the witness". I have already referred to those views because they are contained in her statement. 4. But looking at what the Complainant says in this case, what she says is something that most, if not the vast majority of persons who have complained of

rape would say about the prospect of giving evidence in a jury trial and the Court has to have regard of the nature and alleged circumstances of the offence which is of, in this case, two counts of rape that took place in the Defendant's home. It is clear to me that the witness in this case is a qualifying witness and that most if not all complainants complaining of this sort of offence in these sort of circumstances will qualify. Accordingly the time has come for the Court to observe that complainants in this sort of case should anticipate that this sort of application for a special measure will be granted and that there will be a strong presumption having regard to the terms of the statute to which I have referred that these sort of special measures - by which I mean screening a complainant from the Defendant and the public gallery - will be granted if they are sought by the Crown on behalf of the complainant. 5. I do not say that such a presumption applies to other special measures, but certainly in my judgment it applies to screens. 6. We will determine the other application in due course. In relation to that application, to determine whether the ABE should be played as evidence in chief, Counsel can wait until you have the date for directions that you are about to fix in September or October but if that is unsatisfactory, it is a matter for you to reflect upon, then you can either both proceed on the footing that I will determine that in writing but the matter may benefit from an oral hearing and if one of the parties demands an oral hearing on that particular issue then we could facilitate that perhaps before the summer adjournment so I leave counsel to reflect on that. Authorities Criminal Procedure (Jersey) Law 2018. Page Last Updated: 17 Jun 2024 Back to top About JLJB Accessibility Contacts Copyright Disclaimer Feedback Privacy policy Site map BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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