

JERSEY / JUDGMENT

AG v N [2024] JRC 231 (16 October 2024)

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JUDGMENT

THE COMMISSIONER: 1. Advocate Blakeley has made a submission that I should refuse to allow certain particulars of Count 2 to go to the Jurats on the basis of the test in Galbraith

(1981) 73 Cr. App. R.124, CA . It is unusual because normally that is applied to an entire count, but I accept that it can be applied also to particulars; if there is for example, no evidence to support an individual particular it would be right for the judge to strike out that particular, because otherwise there is a danger of conviction based upon something in respect of which there is no evidence. So I accept the underlying thrust of what Advocate Blakeley says, namely that I can strike out particulars if I am satisfied that the Galbraith test is met in relation to those particulars. 2. I remind myself of the Galbraith test which is helpfully set out in Archbold 2023 at 4-364 "(1) If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty - the judge will stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury." 3. Advocate Blakeley has made his submission in relation to two of the particulars in Count 2. The first one is (a) that the Defendant "attempted to slam a door on [the Complainant]". It became clear during discussions yesterday that there was no evidence from the Complainant that the door had actually struck her. It appears this morning that it is the case that in his interview the Defendant said there was some contact between the door and the Complainant although in a very different context, as he says it was her seeking to close the door on him. Be that as it may, the case put forward by the Prosecution on the basis of the Complainant's evidence is that there was no contact. It is therefore one of those assaults where a Complainant is put in fear that violence is about to be used towards her and that is a well established alternative aspect of assault. 4. What Advocate Blakeley says is that,

on that basis, there is no evidence that she was put in fear that she was about to be struck by the door. I do not accept that submission. The wording that she uses for example in the footage of PC Welsby is " he tried to slam the door on me". It seems to me that it is perfectly possible for the Jurats to conclude from that that she was put in fear that the door was about to come into contact with her because he was slamming it on her. So I regard what she says as capable, it will be a matter for the Jurats, of satisfying the element of assault, namely that the Complainant is put in fear of physical contact as part of the assault. I reject Advocate Blakeley's submission in respect of the first particular. 5. Advocate Blakeley then makes a second submission in relation to the fourth particular which is itemised now as " grabbed and held [the Complainant] by the neck". He submits that the only evidence of this is from the Defendant in his interview, where it is quite clear he is saying that this is in the context of self defence because she was attacking him and at times, his hands came into contact with her neck as part of his defending himself. 6. In my judgment that is to ignore what the Complainant says; for example when talking to PC Bastable she says, " he dragged me to the ground and strangled me". Similarly in relation to PC Welsby she says, " he dragged me to the floor and he's like held me down by the throat". 7. In my judgment that is again a matter for the Jurats. They could properly take the view that her evidence is quite inconsistent with any idea of him grabbing her throat in self-defence. The use of the word strangle is not really consistent with that. This will be a matter for the Jurats but I do not consider at present either that there is no evidence in relation to particular 4 or that it is so unreliable and tenuous that I should withdraw this particular from the Jurats. 8. For those reasons I reject the submissions. Authorities Galbraith (1981) 73 Cr. App. R.124, CA. Archbold Criminal Pleading, Evidence and Practice 2023 Page Last Updated: 28 Nov 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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Prepared on 28 October 2026 · Esheria