

JERSEY / JUDGMENT

AG v Porter [2024] JRC 067 (25 March 2024)

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JUDGMENT

THE DEPUTY BAILIFF: 1. I determined a defence application to adduce hearsay evidence of a child witness during the trial. I gave the ruling but reserved my reasons. 2. On the Crown's case (and the Jurats' verdict) on 27 August 2022, the Complainant was assaulted by the Defendant whilst sitting in his lounge at home, a flat in St Clement, by the Defendant wielding a wooden bat. The Complainant was watching television, eating a meal and not expecting an assault. 3. The Defendant sought to adduce the account given by the Complainant's former girlfriend's son, a boy then aged eight, who I will call K. 4. The assault occurred at 11pm and K was spoken to by two police officers in the presence of a social worker the following morning at a nearby flat. The body worn footage recorded lasted six minutes and commenced at 10.25am. 5. An agreed transcript was produced by the parties. K said that the Complainant had been arguing with his mother the previous day, that he had started the argument and that the Complainant had pinned his mother " on to the stairs ". Later on his mother had run upstairs to " my cousin's house ". Subsequently, he said that the Complainant and the Defendant " had a fight " but "[the Defendant] had a small bat and I don't know what happened and...because I just ran down there ". He said that the fight he witnessed had happened in the lounge in the flat where he lived, whilst his younger sister (the daughter of the Complainant and his ex-girlfriend) was in bed. He described the bat as being red with a black handle. 6. The defence sought to adduce this material. The Crown opposed the application. Neither party suggested it was appropriate for K to give evidence owing to his age. On any view, this was the correct decision in the best interests of K. Both parties were agreed (although the defence did not file a Skeleton Argument in support of the application or substantively make the application prior to trial - either or both of which would have been preferable) that pursuant to Article 64(1)(d) of the Police Procedures and Criminal Evidence (Jersey) Law 2003 , this statement not made in oral evidence was admissible if the Court could be " satisfied that it is in the interests of justice for it to be admissible ". 7. In that regard, the Court needed to consider the facts set out in the " checklist " at Article 64(2). Article 64(2) and the nine factors listed thereunder were not considered in detail by defence counsel, but the thrust of the defence argument was that this was an account given by K less than twelve hours after the incident in the absence of his mother but in the presence of police officers and a social worker. The defence argued that this was the only evidence from an important eye witness in circumstances where there could be no real dispute about its reliability. 8. The Crown argued that the evidence was inadmissible and the Court could not be satisfied that it was in the interests of

justice for it to be admitted on the footing that it was not reliable, had not been conducted under achieving best evidence conditions, was not subject to any examination as to whether or not K understood the meaning or importance of telling the truth, and could not be effectively tested either by cross-examination or at all. 9. Having considered the factors in Article 64(2) on balance I preferred the defence arguments and ruled that it was in the interests of justice for the evidence to be admitted. 10. The Jurats were directed in the following terms at the end of the trial: "I need to direct you regarding the video evidence in which K replied to certain questions from police officers the following day. K was eight years old at the time that he spoke to the police. You must decide how much importance, if any, you give to this evidence and, when you are doing so, you must bear in mind that the evidence has a number of limitations:

- (i) First, K was not asked if he understood the importance of telling the truth - as he would have been at the outset of an ABE (achieving best evidence) police interview; (ii) Secondly, K was not cross-examined on what he said and we do not know how his evidence would have withstood cross-examination; and (iii) Thirdly, his account was short and partial and it is perhaps unclear how much of the incident he really saw." 11. The latter direction was appropriate in order to address the fact that, on the evidence of both the complainant and the Defendant, K ran away from the scene at some point before the incident came to an end. Authorities Police Procedures and Criminal Evidence (Jersey) Law 2003. Page Last Updated: 30 Apr 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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