

JERSEY / JUDGMENT

AG -v- Richards [2010]

JRC 124 (05 July 2010)

[2010] JRC 124

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JUDGMENT

THE commissioner: 1. On the 18 th of June 2010, I reserved my decision on an application by the Crown Advocate for the complainant in this case to give her evidence behind a screen so that she could not see nor be seen by the defendant. My attention was drawn to the decision of the Court of Appeal in Myles-v-AG

[2005] JCA 065 where the Court stated at paragraph 19:- "In the judgment of this Court the Deputy Bailiff was entirely right to recognise that Jersey common law must move forward, especially in the protection and assistance of witnesses in criminal trials. In every case in which it is sought to use screens to shield a witness, the Judge has first to be satisfied either that the witness may be affected in giving evidence by fear or distress if not screened from the defendants, or that the quality of a witness's evidence may be adversely affected, or that for some other reason applying specifically to the witness, the witness may be so affected. If, and only if, the Judge is satisfied of this, the Judge will then need to balance the adverse effect upon the witness, if there is no screening, against the potential prejudice to the defendant, if there is screening. The judge in this way has to balance the just treatment of the defendant with both the just treatment of the witness and the interests of justice in the trial being fair to both the defendant and the witness." 2. Counsel for the defendant submitted that this was not an exceptional case and was at the lower end of the scale in terms of alleged gravity. It was not a case for a screen to be permitted. Counsel was not, however, in a position to challenge the statement of the complainant that she had suffered great stress following the incident, did not sleep very well at nights and had been affected in her day to day dealings with male customers during the ordinary course of her work. She felt inhibited in her contacts with them. She stated that she was very distressed at the thought of facing the defendant when she came to give evidence about what had happened. She felt that she would not be able to talk freely about the alleged assault with the defendant looking at her. 3. In my judgement the giving of evidence from behind a screen is not to be confined to exceptional cases. There is a two-stage test; first will the witness be affected by fear or distress if not screened from the defendant or will the quality of her evidence be adversely affected? If the answer to that question is in the affirmative, the judge must balance the adverse effect on the witness if a

screen were not to be used with the potential prejudice to the defendant if there is screening. 4. I am satisfied that the quality of the complainant's evidence would be adversely affected if there were no screen. I have no hesitation in finding that any potential prejudice to the defendant can be removed or diluted by an appropriate direction from the judge, I therefore grant leave for the evidence of the complainant to be given behind a screen which shields her from eye contact with the defendant. Authorities Myles-v-AG

[2005] JCA 065. Page Last Updated: 09 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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