

JERSEY / JUDGMENT

AG v Roberts [2024] JRC 056 (07 March 2024)

[2024] JRC 056

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

judgment

the bailiff: 1. On 9 February 2024 I gave a ruling on an issue that arose on the fifth day of the trial of Gavin Neil Roberts ("the Defendant"). 2. On that occasion, I gave very brief reasons for my ruling and said that I would give further reasons in due course. These are those reasons. 3. The issue arose when counsel for the defence was cross-examining one of the complainants concerning her allegations that the Defendant had committed a grave and criminal assault on her in the doorway of Redvers in Broad Street. 4. Defence counsel asked the complainant whether she had taken any photographs of her alleged injuries. That question arose because no such photographs had been disclosed by the prosecution and there was no indication in her evidence in chief that any such photographs had been taken. 5. The complainant responded that she had taken photographs and in response to further questions responded that she had provided them to the police. Defence counsel left the matter there. 6. Subsequent investigation showed that in fact photographs had been provided by the complainant to the police purportedly relating to those injuries but that they had not been disclosed as such to the defence or deployed by the prosecution. Other photographs of other injuries had been taken by the complainant relating to different charges and they had been relied upon by the prosecution. 7. The question before me was whether, at this late stage, the photographs could be placed before the jury and whether or not this would be unfairly prejudicial to the defence. 8. The defence argued that it was unfair to admit the photographs at this point. It is clear that the defence had asked the prosecution at a relatively early stage whether there were photographs of the injuries and in effect the prosecution did not disclose that there were. They were in fact an item in the unused material schedule under a designation which mean that they were not disclosable. 9. The defence further argued that any photographs of the complainant's injuries following the alleged assault at Redvers should have formed part of the prosecution's case and should have been led. 10. The defence case before the jury to the extent mentioned above had been put on the basis there were no such photographs of injuries in connection with the incident and that to produce photographs this late in the day would highlight adversely the defence's questions in this regard. The defence wished to be able to submit to the jury that there was no evidence before them in the form of photographs of injuries sustained by the complainant in the Redvers assault and producing photographs now, so the defence claimed in its skeleton argument, would amount to an inadvertent ambush of the

defence's case. The prosecution should accept that it had made a mistake and proceed without the photographs. 11. The Crown, for its part, made the assertion that the photographs were highly relevant and were admissible and they should be permitted to be adduced in evidence before the jury. The complainant had produced an account in an ABE interview which included the words, of the incident at Redvers, and of her injuries: "...and it was all round here... so yeah I had scratches up the side of my neck and bruising around both sides of my neck....which obviously are in the pictures. The pictures were taken a week later. So I....like, didn't take them at the time." 12. The complainant had been asked by the interviewing officer where the pictures were, and she said she could not find them immediately but in fact they were available to the police from the phone. 13. Amongst other things, the Crown also make the observations that there was a great deal of material generated as a result of downloading various phones and, in effect, although the pictures were in fact downloaded, they were missed. This was an oversight on the part of the police. 14. In the belief that the photographs were unavailable, the Crown Advocate did not seek to adduce from the complainant in her Examination in Chief that she had taken photographs, and this information only came about as a result of questions put to her by defence counsel. The questioning by defence counsel must, so the Crown asserted, have been a tactical decision as the ABE interview clearly did state that photographs had been taken. 15. The Crown, in its skeleton argument, says: "The defence, having taken the decision to adduce this evidence from the complainant, were left with the - entirely predictable - answer from the complainant that she had taken such pictures." 16. The Crown accept that the images should have been identified and properly exhibited and that this was an oversight on behalf of the police, albeit an inadvertent one. Whatever the difficulties, so the Crown argued, there can be no question but that the images were relevant to an important issue in the case and therefore prima facie admissible. 17. The Crown also point out that the defence had not cross-examined the complainant on the basis that she was lying about the fact that photographs had been taken because they were not before the jury, and from my note of the evidence, that was indeed the case. It was possible to give a full explanation to the jury about the photographs and there was no prejudice to the defence in bringing that photographic material before the jury now.

Conclusion

18. It was clearly the case that the complainant had taken photographs of the injuries approximately one week after the event. 19. Although the defence had not seen those pictures, nor indeed had the Crown Advocate, it was not suggested to her that she was lying and that such photographs did not exist. The most that the questioning could have given arise to was a submission on the part of the defence that there was simply no photographic evidence there before the Court. 20. The issue of photographic evidence being raised, however, and the photographs being identified after the event, it would to my mind be entirely wrong to withhold that evidence from the jury. The risk would arise that the jury would be left with an entirely incorrect impression and potentially concerned about the fact that no photographs had in fact been taken when the complainant asserted that she had. 21. It is clear that if the photographs had been known to the Crown Advocate they would have

been deployed in the Crown's case and, as with the other photographic evidence that went before the jury, they were clearly both relevant and admissible. 22. They were also of not insignificant probative value. 23. This was clearly an error on the part of the prosecution (in its wider sense) and it was necessary for me to consider fairness both to the defence and to the complainant and, indeed, to the jury. In my view there was no real prejudice to the defence in this case and it was therefore entirely appropriate that the photographic evidence went before the jury. 24. I offered to give a direction to the jury explaining that the defence's questioning on the basis there were no such pictures should not be held against the Defendant and the ignorance of the existence of the pictures was no fault of either the Defendant or counsel for the defence. In the event, defence counsel did not wish such a direction to be given. 25. In those circumstances, I allowed the pictures to go before the jury. No Authorities Page Last Updated: 30 Apr 2024 Back to top About JLIB Accessibility Contacts Copyright Disclaimer Feedback Privacy policy Site map 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/2024/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-roberts-2024-jrc-056-07-march-2024>

Prepared on 25 October 2026 · Esheria