

JERSEY / JUDGMENT

AG -v- U [2010] JRC 186A (14 October 2010)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application by the Crown for special measures to adduce a video-recording of the witness statement of the complainant to stand as evidence in-chief pursuant to Article 3 of the Criminal Justice (Evidence of Children)(Jersey) Law 2002 and for cross-examination of the complainant to be by video-link pursuant to Article 2 of the same piece of legislation. The basis of the application is that the complainant was 16 when the recording was made and is vulnerable and medical evidence has been put forward which supports that view. 2. No objection has been raised as to form by the defendant; no objection is raised by the defendant based on the interview itself, or the conditions under which it has been held; it has not been asserted that there has been any breaches of applicable guidelines, nor has it been asserted that there is any intrinsic lack of credibility or accuracy of the video interview. Indeed, the Crown in its summary which the defendant has seen, has said that amongst the evidence which would be brought against the defendant, the police were able to retrieve a film clip from his digital camera and on that clip he is seen to masturbate the complainant and to suck his penis and the complainant is seen to reciprocate. The masturbation has been taken by the prosecution to be subsumed in various oral sex counts. Furthermore, it has been said that part of the prosecution case is that the accused's voice can be heard in the background of this film encouraging the complainant and saying, among other things, "You're harder than usual" and "that's bigger than normal", which the Crown contends is evidence of earlier offending and supports the complainant's overall account. 3. The defendant's position therefore is, as I have understood it from Mr Blakeley, to sit back; in opposing the application of the Crown, he says he wants to wait and see what the evidence looks like; the Crown must prove its case. The extent of cross-examination will depend upon how the complainant's evidence in-chief comes out. This would be to put the complainant through the ordeal of giving evidence in-chief in the knowledge that he is a vulnerable young man and, as is said in the report of the medical expert, and I quote:- "living the on-going burden of psychological distress from reported serial and systematic sexual abuse over a lengthy period with the alleged perpetrator". The medical report does not distinguish in terms between evidence given in court and evidence by video link, it seems to address only the former, that is to say whether or not the complainant should give evidence in court; and it concludes that he is not fit to give evidence in court. But the rationale for that conclusion leads me to think that it is right to limit the extent to which this vulnerable young man is exposed to the stress and ordeal of giving evidence. 4. The primary purpose of the 2002 Law is to protect

children in court proceedings; it recognises that the fairness of a trial involves principles of fairness to all, that is to say not only to the defendant but also to witnesses, to the defence and to the prosecution. Of course, I have regard to the requirement under Article 6 of the European Convention that the accused is entitled to a fair trial. In my judgment that is met by the fact that the defendant can test the evidence which is given by the complainant. In other words, the fairness of the trial is achieved by permitting cross-examination. 5. In my judgment this case falls classically into the type of case where these special measures ought to be ordered and in the exercise of my discretion I have absolutely no doubt that it is right to order them and I so order. 6. Now in the course of the argument Mr Blakeley, I was asking you about timetables and you have said that you hope to deal with admissions and summaries by Monday. I am making absolutely no order in that respect at all, but I say both to you and to Mr Baker that as I said on the last occasion, I am quite determined that this trial should go ahead on the th of November; it is not fair either to the accused or to the complainant that one should contemplate any form of delay and that does require both counsel to pull out all the stops to ensure that the matters are dealt with as quickly as possible. 7. As I understand it Mr Baker there are no other orders that you seek from me today. You have not mentioned the issue of the statutory offences which are charged against this defendant and I take it you are not intending to adduce evidence of the statutory offences as part of this trial. 8. Mr Blakeley, the other thing I wanted to mention, again it forms no part of any order today, but you will have seen from the medical report that there are areas where the complainant is likely to get particularly confused, if there are complicated questions or if he cannot differentiate different questions being all rolled up into one and they all happen at the same time. It is very unusual for the judge to intervene in cross-examination of a complainant, but this is one of those cases where I will intervene if you do not focus your questions in a way that the witness can reasonably understand them. So when you are preparing cross-examination I should be grateful if you bear that in mind. Authorities Criminal Justice (Evidence of Children)(Jersey) Law 2002. Page Last Updated: 09 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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