

JERSEY / JUDGMENT

AG v Withe [2023] JRC 110 (16 February 2023)

[2023] JRC 110

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JUDGMENT

THE BAILIFF: 1. This is an application by the Defence in this case for admission of what is referred to as bad character evidence relating to the Complainant. The bad character evidence arises out of an iLog provided by the States of Jersey Police that suggests within a short period before the incident in respect of which the Defendant faces a trial next week, the Complainant behaved with violence in a nightclub and caused a not insignificant injury to a young woman there. 2. We do not at this stage know the precise details and Advocate Bell has asked me to agree to summoning the individual who made the complaint in the iLog and who now lives in Scotland, to give evidence in this case. 3. Apparently the incident was filmed and was promoted through social media but it has not proved, up until this point at least, possible to procure the film or recording of the alleged assault and therefore its precise nature is not clear. 4. However, the allegations made against the Defendant in the trial next week are significant allegations of assault against the Defendant in this case and his defence is, and has been throughout, one in part of self-defence. The reference to his understanding that an assault had taken place by the Complainant in this case against a third party at a night club, although he did not get the names of the individual concerned entirely correctly nor indeed the day, has been apparent in his defence case statement. It is only recently, and no criticism flows against either the police or the Crown in that respect, that the existence of the iLog has come to the attention of the Defence. 5. Advocate Hallam for the Crown draws to my attention, as indeed she was correct to do, the provisions of Article 82J of the Police Procedures and Criminal Evidence (Jersey) Law 1999 which deals with the admissibility of non-defendant's bad character. Advocate Bell brings the application under (1)(b) which reads: "(1) In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only if - (a) ... (b) it has substantial probative value in relation to a matter which - (i) is a matter in issue in the proceedings, and (ii) is of substantial importance in the context of the case as a whole;" 6. It seems to me that the propensity for violence or otherwise in a case which involves a defence of self-defence, as this one does, is a matter that is relevant and in issue in the proceedings and potentially it is of substantial importance. I am not persuaded that it would be admissible simply to suggest that the Complainant went out and was not so terrorised by the Defendant that she remained alone at home, but I believe it is of probative value in the other aspect of the case which is a propensity potentially for violence. 7.

The question I ask myself therefore is, is the probative value substantial, which is the test that I must apply under Article 82J? In the context of a short relationship and the very serious allegations made against the Defendant in this case of prolonged violence and terrorisation and in the light of his defence that self-defence applies in this case I believe that the probative value is substantial. Accordingly I allow this evidence to be given. Authorities Police Procedures and Criminal Evidence (Jersey) Law 1999 Page Last Updated: 13 Jul 2023 Back to top About JLIB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey Legal Information Board 2001- 20262023 (External) BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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