

JERSEY / JUDGMENT

AG -v- X [2014] JRC 085 (01 April 2014)

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JUDGMENT

THE DEPUTY BAILIFF: 1. On 6 th March I was asked to appoint an intermediary for the defendant. The basis of this application was primarily the report and evidence of Dr Carstairs, a clinical psychologist. I will return to her evidence in a minute, but I noted that she did not herself mention the possibility of an intermediary although she did express some views on how questions should be asked of the defendant and on making some time allowance for him to enable him to process questions so that he understood them. I also had evidence from a barrister employed in Advocate Bell's firm who said that she was concerned the defendant was not able to understand the legal concepts on which he was getting advice, nor to make informed decisions about his defence. 2. In giving my reasons on 13 th March for my decision I said this:- "24. In the instant case, I am satisfied that an intermediary is not necessary for the defendant to have a fair trial. However, although the evidence is a little marginal, I am satisfied that it would be helpful for an intermediary to be appointed. This is particularly so to ensure that the defendant can give reliable instructions to his counsel in the event that any change in plea comes to be considered, or any new plea has to be entered - and I note that the indictment is subject to minor amendment - and additionally I consider it would be helpful to ensure that during the breaks which I contemplate having during the trial, the intermediary can assist Advocate Bell and his team in ensuring that the defendant understands what in broad terms has been happening during the trial to that point. 25. I also agree that the ground rules hearing which is listed to take place on 19th March, 2014 should consider ground rules which apply to the defendant as well as to the child witness. At present I do not think it is necessary for there to be discussion as to the content of the questions put to the defendant, but there should certainly be discussion as to the way in which the questions are to be formulated, having regard to this defendant's identified vulnerabilities. 26. I do not at present think it is necessary for the intermediary to assist the defendant while he is giving evidence. However, that is a matter that can be revisited at the time. The intermediary will as I understand it be in Court, and at any time during the course of the defendant's evidence, it will be open to Advocate Bell to make an application which, with the advice of the intermediary, he considers to be appropriate to ensure that the defendant is treated fairly." 3. On 31 st March Advocate Bell made a further application for intermediary assistance when the defendant gives evidence, if indeed he does. He relies on the report of a firm called D Limited which was apparently authored by an employee or associate of that firm called C. However we have not had the benefit of C's presence here in Court to answer questions on her

report and recommendations. We have heard from E, who I understand is also of D Limited. She understandably relies on the report of her colleague because she has not had the opportunity of making her own assessment of the defendant. E agreed that if Advocate Redgrave followed the proposed ground rules she might not be needed, but she added that if she were needed then it would be difficult to signal that need unless she was standing next to the defendant when he gave evidence. Advocate Bell submitted that the intermediary should take up that position for the defendant's evidence in chief as well as in cross examination. When I asked how her presence would be explained to the Jury he said that the English practice was to explain that the defendant had language difficulties and that he needed someone to assist his understanding of the questions. 4. I am not satisfied at the moment that this is necessary and the presence of the intermediary next to the defendant and any explanation of that presence may have an impact on the fairness of the trial. The defendant may be unfairly diminished in the eyes of the Jury and his evidence treated as less credible on the one hand, and on the other hand the Defence may seek to use the presence of the intermediary as a peg on which to hang the suggestion that his admissions to the police were not reliable. 5. I do not think it is necessary on the evidence currently before me for these reasons:- (i) Dr Wolstenholme regarded the defendant as fit for interview without an appropriate adult. She had no concerns about his mental vulnerability. He answered her questions without reflecting back to her what she said to him. (ii) Dr Carstairs said that the defendant's cognitive functioning was below average but not in the seriously low range. Functioning in the borderline range as he does means that he does not suffer from a learning disability. He is capable of understanding simple questions. She thought he was markedly more suggestive and more compliant with authority figures than the average person. He will need more time than the average person to process questions. If he gave evidence short simple questions without double negatives would be needed. (iii) C relied heavily on Dr Carstairs report but she did her own tests too. She too said that the defendant understands short, simple questions; he has a good understanding of conversational language; his mind was liable to wander. But having looked at the tests which he did and the questions she asked I did not consider that the defendant did too badly. I did not find his inability to answer some of the questions surprising, particularly as these were questions on stories recently read to him which had nothing to do with him personally, whereas if he gives evidence he will be asked questions on what he did or what the child said or did in his presence, and so on. In short nothing has changed, in my opinion, since this was last floated before me on the 19 th March. 6. This question of whether the defendant needs an intermediary by his side is one I will keep under review. The Crown must abide by the ground rules set out in paragraph 2(b) of the Act of 20 th March, must avoid relative clauses and reversible passives; in brief must use short, simple questions and allow the defendant time to process them. Asking the same question more than once may be appropriate, but with care. The defendant has shown in his question and answer interview with the police that he can stand up to questions from those in authority and hold his ground. 7. If Advocate Redgrave breaks the ground rules I hope I will be alert to pull him up, if I fail to do so no doubt Advocate Bell will be able to object, referring merely to a breach of the ground rules, and if I do not immediately accept the objection at that time we can ask the Jury to retire and I will hear the necessary argument. As I say the matter remains under review but that is the way in

which we will approach evidence from the defendant for the time being. No Authorities Page Last Updated: 20 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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