

JERSEY / JUDGMENT

AG -v- X [2014] JRC 088 (02 April 2014)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is a submission that there is no case to answer. The charge is that of committing an act of gross indecency, that involves, in the traditional language, an actus reus , something done, with qualifications, and a mens rea , a guilty intent. 2. I accept Advocate Bell's submission that this is not a strict liability offence. I do not accept the submission that the offence is generated from the English statute of the Indecency with Children Act 1960 . Such an approach is not consistent with the way our criminal law has developed. This offence is known to Jersey Law, although I am not aware of any authority on the precise elements of it and none has been found at this short notice. 3. I was proposing the direct the Jury that the offence is committed, if they are sure, firstly, that the defendant committed an act, did something, in the circumstances of gross indecency i.e. circumstances which right thinking members of the public would regard as grossly indecent; and secondly did so deliberately, knowing that it was a grossly indecent thing to do, or being reckless as to the possibility that it was. Recklessness does not arise in this particular case, but I have added the language about recklessness for the avoidance of doubt as to my view of what the appropriate mens rea is. 4. I have been referred to the English case of *R v Francis*

(1989) 88 Cr. App. R. 127 where the trial judge said that the Crown had to prove that grossly indecent behaviour had taken place in the presence of the child with the purpose of giving the offender sexual satisfaction. I pause to say that the offence charged appears to have been an offence of indecency with or towards a child, contrary to the Indecency with Children Act 1960 and it is clear from the extract from Archbold 2014 which Advocate Bell has supplied me with, that it is part of the statutory offence that the act of gross indecency should be committed with or towards a child. The trial judge in that case, as I say, had said the Crown had to prove the grossly indecent behaviour had taken place in the presence of the child with the purpose of giving the offender sexual satisfaction. The appeal seems to have gone forward - I have received at very late notice some more detailed reports - on the basis that the appellant's behaviour must have been directed towards the children and the Court of Appeal seems to have found that the trial judge should have so directed the Jury. In that case the appellant was masturbating in some public baths changing rooms in the presence of two 13-year old boys. One might infer from the apparently admitted fact of masturbation that the appellant was deriving sexual satisfaction so it seems probable that this was not a contested point. 5. I do not find that this is a necessary ingredient in the

offence in Jersey. People obtain sexual pleasure in different ways. The lack of an erection does not of necessity imply no sexual satisfaction. In my judgment the offence carries the mens rea which I have indicated in my proposed direction. By way of example let us suppose that there were two 15-year old boys found masturbating in a public shower when an adult male walks in. They are charged with the offence of committing an act of gross indecency. It does not seem to me that their motive, whether it is sexual pleasure or an empirical investigation as to how long they could masturbate for before ejaculation, or any other motive is relevant. The motive, as opposed to the intention, may be sexual satisfaction and the Jury may well infer in most cases that it is, but the Crown should not be required to prove a motive. What it has to prove is the intention or recklessness as to the act itself although there may be, in some cases, a very close connection between the two. 6. I accept, for the purposes of an argument that there is no case to answer, that dropping one's trousers and underpants on the sofa while alone with a 4-year old child about one foot away could be an act which the Jury might consider to be an act of gross indecency and therefore in Law, as the Jury represent right-thinking members of the public, it is capable of amounting to that. I also accept that there is evidence that the defendant knew that. His answer to the police was "you're not supposed to show a minor" and there is evidence that he deliberately committed the act of dropping his trousers. 7. Accordingly the submission of no case to answer is rejected and the case is fit to be left to the Jury. Authorities Indecency with Children Act 1960. R v Francis White (1989) 88 Cr. App. R. 127. Archbold 2014. Page Last Updated: 04 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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