

JERSEY / JUDGMENT

AG -v- X [2014] JRC 113B (15 May 2014)

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JUDGMENT

THE DEPUTY BAILIFF: 1. The defendant was convicted of an alternative count in an Indictment which contained two counts and two alternatives. He was acquitted on the remaining three counts. 2. Advocate Bell now makes an application for costs which, he says, is in relation to defence work undertaken to the end of the trial. The basis of the application is, he says, that the Crown knew that there was no admissible evidence from the victim of touching. There was an unreliable question and answer interview and there was an approach to the Crown, it is not entirely clear when it was first made, but certainly it is agreed that it had been made by March and I have been shown an email from Crown Advocate Redgrave to the Defence on 20 th March which deals with an approach that was been made - what would the Crown's position be if a guilty plea were to be entered on the alternative count on which the defendant was in fact convicted. That approach was rejected by the Crown. 3. First of all, as far as the period over which costs would be awarded is concerned, it seems to me to be clear that if I were minded to order costs, which I am not, then the costs would only run from the date of that approach and so there would have to be an enquiry as to when that was made. Secondly, I do not accept the suggestion that the Crown knew there was an unreliable question and answer interview. That was not the position at all. The Crown knew until the jury's finding that there was, for all purposes as far as the Crown was concerned, a reliable question and answer interview because it had been admitted in evidence following a decision which I had made. 4. The decision as to whether to make an order for costs is one that calls for an exercise of discretion and I exercise it against the application for a number of different reasons. The first of them is that there was not in fact a guilty plea. The defendant adopted a course by which he asserted he was not guilty on all counts. The jury found that this was not so. Had the defendant actually entered a guilty plea things might have been different. 5. Secondly, the Crown is right to say that the evidence on all counts would have to be provided if it went ahead in any event and this emphasises that the plea would have been important because it would have enabled the public interest to be assessed as to whether or not it would be right to proceed with the trial. 6. Thirdly, the Crown was entitled, in my view, to rely on the admissions which the defendant made to Dr Carstairs which were unprompted and they included an admission of touching and the Crown was entitled to take the view that the jury would do so as well. 7. In the circumstances of those points it seems to me that the application is made on the assumption that the defendant could have matters both ways; that he could hold out the advantages of a possible plea without actually entering the plea and then rely on that at a later

stage in relation to costs. I do not think that that is a reasonable approach. 8. In the case of AG-v-Gouveia 2000/182 reference is made to the then English Court of Appeal Practice Direction Criminal Law on costs which provides as reported in 1982 3 All ER 1152:- "Where the defendant is acquitted on one charge but convicted on another the court should make whatever order seems just having regard to the relative importance of the two charges and the conduct of the parties generally." So that makes it plain that in exercising discretion I am entitled to have regard to all the conduct of the Defence. 9. In this case the Defence objected to the Indictment that was brought by the Attorney General directly in this Court and wrongly objected to it. The Defence was entitled of course to raise those objections and to have that determined. But that is not to say that I cannot have regard to the conduct of making that application in the context of deciding an issue of costs. When I refer to the conduct of that application, the Defence must have been aware that if successful that would not have meant that the prosecution theoretically did not proceed but it would have meant that the child would be liable to be cross-examined twice, both the in the Magistrate's Court and in the Royal Court and that was therefore the use of a procedural objection, against which I ruled in any event, for the purposes of putting pressure on the Crown not to proceed with the case because the Crown undoubtedly would have had very real worries about putting a 5 year old child through cross-examination twice. It was a procedural objection taken which had no legal merit for the reason I gave in the judgment but it had no merit from an equitable stance either. 10. Secondly, arrangements were made for the child to be made familiar with court proceedings prior to the trial taking place. The arrangement made was that at 2.30 on Friday afternoon before the case was to be heard she would be brought by her parents to this Court room when she would meet me and Advocate Redgrave and Advocate Bell. Some amount of preparation of this child for what was going to be a challenging and difficult meeting, for she was a very shy child, took place. In the event, Advocate Bell kept us waiting more than 20 minutes during which time, unquestionably, the child would have become more anxious. 11. Thirdly, the suggestion is made that it was inevitable that the child had to be brought to court to give evidence even though an order had been made that the ABE interview would stand as her evidence-in-chief because the statute so provides. Had that point been raised with me I would have adjudicated upon it formally and I do not have the statute before me at the moment but I can say that I would have found every reason that I could to reach a conclusion that if there were to be no cross-examination of the child she should not be brought to Court. I cannot myself believe that the statute can be construed to mean that the child had to come to court even though nobody wanted to ask her questions and any normal reading of the statute, quite apart from an application of Article 8 of the European Convention of Human Rights as applied in this Island through the Human Rights (Jersey) Law 2000 would have made that an inevitable conclusion. 12. So this child was prepared for having to be asked questions and she and her family were kept in suspense over a period of days not knowing what those questions necessarily would be although knowing of course that the questions were put to the intermediary. 13. It came as a surprise to me and I think to everyone in court when the moment came for cross-examination and Advocate Bell announced that there would be no questions for the child. Now I cannot investigate this in any material way without trespassing on legal advice privilege and I do not intend to do so. But I can say that I was and am very unhappy with the outcome that seems to proceed upon the basis that

it is somehow in order to make the assumption that one can rely on legal rights regardless of the impact upon those who are affected by the trial. Now of course in relation to the trial the defendant was entitled to do that and no criticism was made before the jury of that point. That is completely different from saying that I am not entitled to take that conduct into account in the context of an application for costs. 14. For all these reasons I find that the application is refused. Authorities AG-v-Gouveia 2000/182. Human Rights (Jersey) Law 2000. Page Last Updated: 23 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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