

JERSEY / JUDGMENT

AG v Y [2024] JRC 040 (24 January 2024)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application by the Crown to adduce bad character evidence in the Defendant's forthcoming trial for manslaughter. The Defendant is 17 years old and will be 18 at the end of February. 2. The evidence that the Crown seeks to adduce takes two forms, firstly what is said by his friend W in his Achieving Best Evidence video recording on 6 March last year in which he said that little things could trigger the Defendant and "set him off" and then referred in particular to the Defendant finding it hard to control his anger and the witness said "you could see that if you walked into his house. He's got a few holes in his walls and his doors." The Crown has shown footage of the home that the Defendant shares (I am told) with his mother indicating damage to various doors, particularly his bedroom door, another door and a cupboard door. 3. The first question is, is this bad character evidence at all? Bad character evidence is defined in Article 82C of the Police Procedures And Criminal Evidence (Jersey) Law 2003 ("the Law") as "evidence of, or of a disposition towards, misconduct on his or her part" and misconduct is defined in Article 82A as "the commission of an offence or other reprehensible behaviour". 4. This is plainly not the commission of an offence as no offence was committed. Is it reprehensible behaviour to cause such damage? My attention has been drawn to the passage in Archbold which considers this issue and the Crown rightly say that such behaviour could amount to malicious damage so this is, prima facie, reprehensible behaviour. Whether it is the Defendant's reprehensible behaviour is another matter as there is no direct evidence that it was and the Court is being asked to proceed on the footing that it is owing to a combination of what is said by the witness and the images to which I have referred. 5. I have my doubts as to whether or not this material could be properly held to be misconduct attributable to this Defendant, but even if it could, and on the footing that it could I have considered the decision of this Court in AG v Richomme

[2021] JRC 193. The first matter, bearing in mind the Crown seeks to adduce this evidence as relevant to the issue of the Defendant's propensity, is to consider Article 82F of the Law. The Crown says this is evidence which says the Defendant has a propensity to commit offences of the kind of which he is charged and in particular relevant to an important matter in issue between the Defendant and the prosecution as the Crown says that the Defendant's history, as they describe it, of "losing his temper and lashing out" is relevant to at least three key issues in this case, including why the Defendant chose to stop his car and confront the deceased, secondly it supported the Crown's case that he was the aggressor

and thirdly it is relevant to whether the Defendant was really acting (as he claims) in self-defence, or was this (as the Crown says) simply illustrative of his habit of losing his temper. 6. In order to admit this evidence the Court must consider the questions set out in the English Court of Appeal case in R v Hanson

- [2005] EWCA Crim 824 , which were considered in the case of AG v Richomme , having in mind the Court's exclusionary power under Article 82E to refuse to admit bad character evidence if it " would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it." 7. Turning to the decision of the Royal Court in AG v Richomme , the Court set out the three questions set out by the Court of Appeal in R v Hanson as follows:- "1) Does the history of conviction(s) (in this case information) establish a propensity to commit offences of the kind charged?
- 2) Does that [information] make it more likely that the defendant committed the offence charged? [and]
- 3) Is it unjust to rely on the [information] ... and ..., will the proceedings be unfair if they are admitted?" 8. Whether one considers this material as either evidence of propensity or relevant to a particular matter in issue between the Defendant and the Prosecution, in my view it is taking things too far to suggest that the fact that the Defendant has or may have damaged property at his home demonstrates a propensity to commit the sort of offence alleged and/or is relevant to the issues identified by the Crown in this case. Even if I was satisfied of either of those matters I would conclude that it would be unfair to admit such evidence. As the Royal Court said in AG v Richomme (referring in this regard to the decision of R v Hanson) when considering the question of fairness the judge may also take into consideration the gravity of the alleged offence. I do not think it is fair for this sort of material to go before the Jury having regard to the seriousness of matter with which the Defendant is charged. 9. So, I do not admit this evidence and the transcript of the video interview of the witness in question will need to be edited to remove the sections to which the Crown's application refers. Authorities Police Procedures And Criminal Evidence (Jersey) Law 2003. Archbold Criminal Pleading Evidence and Practice AG v Richomme

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Prepared on 25 October 2026 · Esheria