

JERSEY / JUDGMENT

# AG v Yuksel 23-Oct-2019 [2019]

## JRC 209 (23 October 2019)

[2019] JRC 209

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### JUDGMENT

THE COMMISSIONER: 1. On 4 th September, 2019, I announced my decision on an application on behalf of the Attorney General that certain witnesses should give their evidence by live television link pursuant to Article 14A of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998 ("the 1998 Law"). I gave a short judgment at the time and at paragraph 7 ruled that the complainants in relation to Counts 1, 4, 5, 6, 8 and 9 should be given leave for their evidence to be taken through TV link. This judgment is intended to explain briefly the reasons for coming to that conclusion. 2. The complainants in respect of those counts are resident in Ghana, Togo, Kenya, Uganda, Japan and Togo respectively. 3. Article 14A of the 1998 Law provides (so far as relevant) as follows:- "14A Evidence through television links (1) A witness other than the accused may, with the leave of the court, give evidence through a live television link in any proceedings for an offence, or in any proceedings on an appeal arising from such proceedings, if the witness is outside Jersey." 4. The charges in this case arise out of the Defendant's activities as principal of Jersey based businesses variously styled 'Parisma' and 'Logistics2go'. The businesses were concerned with selling used clothing and many of the clients came from developing countries. The essence of the Crown's case is that funds were transferred to the Defendant for her to fulfil specific orders for clothes but those funds were then used for other purposes. It is alleged that the goods were not received (or in one case not entirely) and the money has not been returned. It is alleged that the business was being carried on dishonestly. 5. According to Advocate Thomas, the Crown's case is not wholly dependent on the evidence of particular complainants. In particular, he states that there is documentary evidence such as proforma invoices to show that the goods were ordered, there is email and other correspondence to show the course of dealings between the complainants and the Defendant including the reasons that were given when goods were not delivered, there is banking evidence to show funds being paid into bank accounts controlled by the Defendant and then paid out almost immediately, and there is forensic accountancy evidence which provides an analysis of the bank accounts and other documentation to show what the money was spent on. 6. Advocate Thomas says therefore that the key evidence that the complainants are likely to give is that they did not receive the goods they ordered or, in a small number of cases, that such goods as were received were utterly inadequate. He submits therefore that, although the nature of the defence has not been disclosed, it is hard to see that

there is likely to be much cross-examination of individual complainants. 7. Advocate Jones, on the other hand, says that he will have questions to put to the complainants in cross-examination even where there is an email chain or other documentary evidence. 8. Advocate Thomas submitted that it would be disproportionate to require the complainants in respect of these counts to come so far to give what may be comparatively short oral evidence. In some cases three flights would be involved in order to come to Jersey. There would be considerable expense to the Jersey taxpayer in paying for the flights, accommodation for the necessary duration etc. In the case of Japan, there would be the additional aspect of jet-lag which might require longer to be spent in Jersey. Article 14A permitted evidence to be given by TV link and the Court should take advantage of this provision in connection with the prosecution of financial fraud. It would be reasonable and proportionate in this case to allow complainants who lived so far away to give their evidence by TV link, particularly when their evidence was supported by documentary evidence. 9. In his written submissions, Advocate Jones stated that the prosecution had been very dilatory in warning the complainants of the trial date in September and checking their availability. There was therefore a suspicion that the prosecution were simply now at this late stage wanting to adduce evidence by TV link because they would have difficulty in getting the witnesses to Jersey to give live evidence. 10. I explored this aspect with Advocate Thomas during the hearing and he confirmed, as an officer of the Court, that the complainants in respect of these counts are all able and willing to attend in person at the trial if I were to refuse leave for their evidence to be given by TV link. In those circumstances, I did not consider it necessary to explore whether the prosecution had in fact been dilatory as Advocate Jones alleged. I proceeded on the basis that, if I were to refuse leave, the complainants could all give evidence in person at the trial in September. 11. Apart from this particular argument, Advocate Jones argued that the normal way of giving evidence was in person so that the jury could assess a witness's demeanour when giving evidence. Some good reason had to be shown for departing from that principle. The prosecution had not given good reason in this case. There was no evidence of particular inconvenience to any individual complainant nor was there any evidence before the Court that it would in fact be cheaper to proceed by way of TV link than by way of bringing the witnesses to Jersey. 12. Having considered counsel's arguments, my conclusion was that it would be proportionate and in the interests of justice as a whole for these particular complainants to be allowed to give their evidence by TV link. I would summarise my reasons as follows:- (i) I accept that the normal manner of giving evidence is by live evidence before the jury. This will be the starting point whenever consideration is given as to how a witness should give evidence. (ii) However, the legislature has provided that evidence in a criminal case may be given by live TV link in certain circumstances. Those circumstances include where the witness is a child and the matter relates to a sexual offence (e.g. Article 2 of the Criminal Justice (Evidence of Children) (Jersey) Law ) and, as in the present case, where the witness is outside Jersey. The legislature (both here and in other countries such as England and Wales) can be taken to have concluded that evidence given by TV link is perfectly satisfactory for the purposes of assessing a witness's credibility. For example, in cases involving sexual offences against children, the case will often turn wholly on the credibility of the child witness, yet the legislature has provided that the evidence of such a witness may be given through a live TV link. (iii) That accords with the Court's

experience. The key matter for the jury is that they should be able to see and hear a witness give evidence in order to assess the witness's demeanour and how the witness answers testing questions in cross-examination. Evidence by TV link allows the jury to see and hear the witness give evidence; the only difference is that the jury has a picture of the witness on the TV screen rather than seeing the witness in person. (iv) As Advocate Thomas pointed out, Jersey is an international finance centre and people from around the globe transact with businesses and persons in Jersey. It is important for a reputable finance centre that it shows it is capable of prosecuting effectively those who are alleged to have behaved in a criminal manner in relation to financial matters. It is likely therefore that the prosecution will quite often have to rely upon and produce witnesses from far afield. Witnesses will often not be able or willing to take time away from their ordinary activities to travel halfway across the world to spend a few days in Jersey in order to give evidence, whereas they may well be willing to give evidence locally by TV link, which will take up less time and be less inconvenient. (v) These considerations would appear to accord with the view of the Court of Appeal (Criminal Division) of England and Wales in the case of R -v- Clark

[2016] 1 Cr. App. R.(S) 52 where, having ruled that evidence by telephone was inadmissible and that there were many gaps in the circumstances where legislation allowed for evidence to be given by TV link the court went on to say as follows:- "19. That there are idiosyncrasies in the provision of this important aid [i.e. TV link] to the administration of justice does not, in our judgment, befit a modern system of criminal justice. It does not further the overriding objective to deal with cases justly, including being fair to the parties, recognising the rights of defendants, respecting the interests of victims (and, in this case, witnesses) and progressing cases in a manner that is efficient, expeditious and proportionate.

20. There are clearly circumstances where it may be in the interests of justice for a court to be able to receive evidence by live link from witnesses and defendants for which the existing statutory provisions do not provide. One potential example is a defendant who wishes to give evidence in relation to a minor road traffic offence alleged to have been committed hundreds of miles from his home.... 21. When Parliament first began legislating to prescribe the circumstances in which criminal courts could receive evidence by live link, the requisite technology was in its infancy and the courts were not necessarily equipped with the relevant equipment (or technical knowledge). Times have changed; technology has improved and is continually improving. The courts now regularly receive evidence by live link where the statute permits." (vi) I appreciate that this is not a case where the witnesses are unable or unwilling to come to Jersey but the point about being able to act in an efficient, expeditious and proportionate manner in connection with the prosecution of crime remains relevant. (vii) I do not see any material prejudice to the Defendant if the complainants in relation to these counts give their evidence by TV link. The jury will still be able to see and hear them give their evidence in order to assess their demeanour and credibility. (viii) I do consider that cost to the prosecution is a relevant factor to consider although it is not of course determinative; the overriding consideration must be the interests of justice. But that entails

fairness to the prosecuting authorities and witnesses as well as to the defendant. As just mentioned, it is important that the Island is to be seen to be capable of prosecuting financial crime and the process would be assisted if, in appropriate cases, witnesses do not have to travel a long distance to Jersey and spend some time here but instead can give evidence in their home country through a TV link. I accept Advocate Jones' submission that I have not been provided with any information from the prosecution that it would be cheaper to proceed by way of TV link than by way of bringing the witnesses to Jersey. However it seems to me that this is a matter which can properly be left to the prosecution. One has to assume that they would not wish to spend money unnecessarily and would not be applying for evidence by TV link unless it was cheaper to do so or there was some other reason, such as an inability or unwillingness for a witness to come to Jersey, in which event that would and should be stated. 13. Putting all these matters together and taking account of the nature of the evidence which they will be giving, I consider that the interests of justice would be best served in this case by giving leave for the complainants in respect of the specified counts to give evidence by live TV link. 14. I should add that Advocate Jones raised a very valid point as to the arrangements to be made for the TV link. He submitted - and Advocate Thomas accepted - that evidence by TV link should only be admitted where the court is satisfied that proper precautions are in place to ensure that the evidence is given in a manner which allows for the uninfluenced evidence of the witness to be given. To take a simple example, it would be quite unacceptable if there were to be someone else in the room whispering or indicating via placard how a witness should answer a question. The court will therefore need to be satisfied as to the arrangements. 15. In this particular case, the prosecution had not produced details of the arrangements which they proposed to make. I therefore directed that they should provide details of the arrangements within 10 days so that, if so advised, the defence could apply to the court to reconsider the order made. On future occasions, the prosecution should satisfy itself as to the arrangements and be in a position to explain the arrangements to the court when the application for evidence to be given by live TV link is made. 16. Finally, I should add that I rejected the application of the prosecution that those complainants who reside in the United Kingdom should also give their evidence by TV link. It did not seem to me to be disproportionate to require them to travel to Jersey to give evidence in person.

Authorities Criminal Justice (Evidence and Procedure) (Jersey) Law 1998. Criminal Justice (Evidence of Children) (Jersey) Law 2002. R -v- Clark [2016] 1 Cr. App. R.(S) 52 Page Last Updated: 25 Oct 2019 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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