

JERSEY / JUDGMENT

The Attorney General v Beverley Rose Colley

COURT

Royal Court

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Hearsay

[2026]JRC146

Royal Court

(Samedi)

22 May 2026

Before :

M. H. Temple, Esq., Deputy Bailiff, sitting
alone
The Attorney General
-v-
Beverley Rose Colley
M. L. Preston, Crown Advocate.
Advocate J. W. R. Bell for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: 1. On 11 February 2026, I gave leave for certain hearsay statements concerning disclosures made by the Complainant to be given at trial by prosecution witnesses but I excluded the majority of such hearsay statements. 2. The counts in the Indictment were as follows: (i) Count 1 – causing harm to a child, contrary to Article 35(1)(a) of the Children (Jersey) Law 2002 (the “Children Law”). The Crown allege that the Defendant forced her daughter (the “Complainant”) to swallow the contents of a medicine pot containing mustard and other ingredients between 1 January 2000 and 22 May 2012 when the Complainant was a child. (ii) Count 2 – grave and criminal assault. The Crown allege that the Defendant struck the Complainant repeatedly with a training shoe when the Complainant was aged about twelve years old. (iii) Count 3 – causing harm to a child contrary to Article 35(1)(a) of the Children Law. The Crown allege that the Defendant used a kitchen knife and other implements such as a wooden spoon to strike the Complainant when the Complainant was a child. (iv) Count 4 – assault. The Crown allege that the Defendant threw a whiteboard at the Complainant; and

- (v) Count 5 – grave and criminal assault. The Crown allege that the Defendant used a dinner plate to strike the Complainant when the Complainant was about twenty-two years old. Overall, Counts 1 to 5 cover a period of almost twenty years during which the Complainant was between 3 and 22 years old. 3. The Crown sought to rely on hearsay evidence from the following 10 witnesses: (i) Stuart Colley (father of the Complainant and the Defendant’s ex-husband); (ii) Olivia Card (former colleague and friend of the Complainant); (iii) Christopher Carver (uncle of the Complainant); (iv) Nan Carver (aunt of the Complainant);
- (v) Katherine Cathcart (friend of the Complainant); (vi) Philip Duhamel (partner of the Complainant); (vii) Louis Hayard (friend of the Complainant); (viii) Kira Hillion (friend of the Complainant); (ix) Stephanie Marsh (friend of the Complainant); and
- (x) Lindi Lawrenson (psychotherapist who provided therapy treatment to the Complainant).
- The Law 4. Article 64 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (the “2003 Law”) provides as follows: “64. Admissibility of statement not made in oral evidence
- (1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if –
- (a) any provision of this Part or any other provision of an enactment makes it admissible;
- (b) any rule of customary law referred to in Article 64A makes it admissible;
- (c) all parties to the proceedings agree to it being admissible; or
- (d) the court is satisfied that it is in the interests of justice for it to be admissible.
- (2) In deciding whether a statement not made in oral evidence should be admitted under paragraph (1)(d), the court must have regard to the following factors (and to any others it considers relevant) –
- (a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;
- (b) what other evidence has been, or can be, given on the matter or evidence mentioned in sub-paragraph (a);
- (c) how important the matter or evidence mentioned in sub-paragraph (a) is in the context of the case as a whole;
- (d) the circumstances in which the statement was made;
- (e) how reliable the maker of the statement appears to be;
- (f) how reliable the evidence of the making of the statement appears to be;
- (g) whether oral evidence of the matter stated can be given and, if not, why it cannot;

- (h) the amount of difficulty involved in challenging the statement; and
- (i) the extent to which that difficulty would be likely to prejudice the party facing it.
- (3) Nothing in this Part affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings. 64A
Admissibility of statement under rules of customary law For the purposes of Article 64(1)(b), any rule of customary law in respect of the following –...
 - (b) *res gestae*; ...; and
 - (f) expert evidence.” 5. The Crown primarily relied on Article 67(A)(2), (4) and (7) of the 2003 Law as the gateway to admit the hearsay evidence of the above listed persons. Article 67(A) provides as follows: “67A Other previous statements of witnesses
 - (1) This Article applies where a person (the witness) is called to give evidence in criminal proceedings.
 - (2) If a previous statement by the witness is admitted as evidence to rebut a suggestion that his or her oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.
 - (4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by him or her would be admissible, if –
 - (a) any of the 3 conditions set out in paragraphs (5) to (7) is satisfied; and
 - (b) while giving evidence the witness indicates that to the best of his or her belief he or she made the statement, and that to the best of that witness’ belief it states the truth.
 - (7) The 3rd condition is that –
 - (a) the witness claims to be a person against whom an offence has been committed;
 - (b) the offence is one to which the proceedings relate;
 - (c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence;
 - (d) the complaint was not made as a result of a threat or a promise; and
 - (e) before the statement is adduced the witness gives oral evidence in connection with its subject matter.
 - (8) For the purposes of paragraph (7) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.” 6. The above provisions are subject to the Court’s power to exclude unfair evidence pursuant to Article 76 of the 2003 Law which provides: “76 Exclusion of unfair evidence

- (1) Subject to paragraph (2), in any proceedings a court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would so adversely affect the fairness of the proceedings that the court ought not to admit it.
- (2) Nothing in this Article shall –
 - (a) prejudice any rule of law requiring a court to exclude evidence; or
 - (b) apply to extradition proceedings.
- (3) Nothing in this Law shall prejudice any power of any court to exclude evidence, whether by preventing questions from being put or otherwise, at its discretion.” Article 9 witness statements 7. Witness statements had been obtained by the police from each of the above persons pursuant to Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998. Given the nature of the allegations, most of the statements contained evidence relating to many years of the Complainant’s childhood and life as a young adult, much of which was background evidence to the offences alleged. Many of the statements included direct non-hearsay evidence of what the witnesses had seen or heard themselves in relation to the Counts alleged in addition to hearsay evidence. It is not necessary to set out in detail the contents of the statements, but for each of the statements I summarise below the disputed hearsay evidence sought to be adduced by the Crown, as well as evidence that I decided should be excluded for other reasons, such as lack of relevance. Statement of Stuart Colley 8. Stuart Colley’s statement included direct non-hearsay referring to an alleged assault on him by the Defendant and other derogatory treatment of him by the Defendant, which I ordered should be excluded as it was not relevant to Counts 1 to 5 as it did not concern the alleged offences against the Complainant. He also said in his statement that the Complainant told him that the Defendant “had done” the alleged grave and criminal assault in Count 2 during his attendance on the Complainant in the immediate aftermath, which Advocate Bell on behalf of the Defendant agreed was admissible *res gestae* hearsay pursuant to Article 64A(b) of the 2003 Law. Stuart Colley’s statement at paragraph 25 included a sentence that: “[The Complainant] confided in me that she was unhappy and wanted to leave home because of how her mum treated her” which Crown Advocate Preston submitted was admissible hearsay under Article 67A(2), (4) and (7) of the 2003 Law in that it was evidence to show “recent complaint” by the victim. Statement of Olivia Card 9. Olivia Card was a nurse and a colleague of the Complainant who had trained and qualified as a nurse. Almost the entirety of her statement was a hearsay account of what the Complainant had told her in relation to the Defendant’s treatment of her as a child and as a young adult, parts of which went beyond Counts 1 to 5. She also said in her statement that the Defendant came to work one day, and Ms Card observed finger-like bruises around one of Gemma’s arms. When Ms Card asked the Complainant what the bruising was, the Complainant had told her that her mother, the Defendant, had caused the injury. Crown Advocate Preston submitted that some 15 paragraphs of her statement were admissible hearsay under Article 67A(2), (4) and (7) of the

2003 Law as evidence to show “recent complaint” by the Complainant. Statements of Christopher Carver

10. Christopher Carver’s first statement included witnessing a family argument involving the Defendant in around 2000 which I ordered should be excluded as it was not relevant to the offences alleged involving the Complainant. It included reference to what he witnessed directly when he moved into the Defendant’s household for about ten months in 2011, including that the Defendant hit the Complainant hard on her upper arm using the flat of a serrated knife during a meal (Count 3). However, his first statement also included alleged disclosures by the Complainant to him concerning how unhappy the Complainant was due to the Defendant’s treatment of her; how the Defendant washed her mouth out using the contents of the mustard pot (Count 1); and a call from Louis Hayard to his wife Nan Carver that the Defendant was scared to go home when she was about 18 due to how the Defendant would react and that he and his wife had allowed her to stay at their house. Crown Advocate Preston submitted the hearsay disclosures were admissible under Article 67A(2), (4) and (7) of the 2003 Law as “recent complaint” by the Complainant.
11. Christopher Carver’s second statement did not include hearsay and Advocate Bell did not object to its contents. Statement of Nan Carver
12. Nan Carver’s statement included evidence of receiving a phone call from Louis Hayard and then going to collect the Complainant when she was about 18 because she was frightened that her mother, the Defendant, would hit her. She stated that she telephoned the Defendant to inform her that the Complainant would stay with Nan Carver and Christopher Carver but the Defendant was not happy about this and said that the Complainant was going to be collected. When the Complainant’s father arrived to collect her, the Complainant refused to go home with her father. Nan Carver’s statement also included hearsay disclosures to her by the Complainant when she was an adult that she wanted to leave home because of the Defendant and that the Defendant used to hit her throughout her childhood. Crown Advocate Preston submitted that Nan Carver’s statement was relevant to Count 3 and was a mixture of direct evidence and admissible hearsay under Article 67A(2), (4) and (7) of the 2003 Law as “recent complaint” by the Complainant, and that it was part of the ‘narrative’ of the Defendant’s treatment of the Complainant. Statement of Katherine Cathcart
13. Katherine Cathcart’s statement included direct evidence of her witnessing Count 4, which alleged that the Defendant threw a whiteboard at the Complainant whilst throwing various items out of the Complainant’s bedroom and down the stairs, and then dumping the Complainant’s clothes in a wheelie bin outside the house. However, it also included four short paragraphs concerning hearsay disclosures by the Complainant to Katherine Cathcart that the Defendant did not allow the Complainant to stay out late, that she used to shout at her, and that the Complainant did not like going home due to the Defendant’s treatment of her. Again, Crown Advocate Preston submitted that the hearsay disclosures were admissible under Article 67A(2), (4) and (7) of the 2003 Law as “recent complaint” by the Complainant and that it was part of the ‘narrative’ of the Defendant’s treatment of the Complainant.

Statement of Philip Duhamel

14. Philip Duhamel is the Complainant's partner. His statement comprised some 28 paragraphs of evidence of the Complainant's various disclosures to him about her mother's, the Defendant's, treatment of her. These included three paragraphs concerning specific disclosures by the Complainant to him about the use of the medicine pot (Count 1), about being beaten with a trainer (Count 2), and being hit with a plate of dinner aimed at the Complainant's head (Count 5). Crown Advocate Preston submitted that the entire statement as admissible under Article 67A(2), (4) and (7) of the 2003 Law as "recent complaint" and as part of the unfolding narrative. Statement of Louis Hayard
15. Louis Hayard's statement contained some 17 paragraphs of evidence of the Complainant's disclosures to him concerning her mother's treatment of her, including that the Defendant had thrown a dinner plate at her head when she was an adult (Count 5) and hit her with a wooden spoon as a child (Count 3). It also included reference to a conversation between the Complainant and Mr Hayard which had resulted in the Complainant's call to Nan Carver (see above) because the Complainant was frightened to go home as the Defendant would hit her at home and that the Defendant had pushed the Complainant down the stairs. Again, Crown Advocate Preston submitted that the hearsay disclosures were admissible under Article 67A(2), (4) and (7) of the 2003 Law as "recent complaint" and as part of the unfolding narrative. Statement of Kira Hillion
16. Kira Hillion's statement comprised 31 paragraphs concerning the Complainant's disclosures to her concerning her mother's behaviour to her, including assaults by her mother. Miss Hillion also said that she witnessed bruising on the Complainant's arms and that the Complainant had said that it was her mother, the Defendant, that had caused the bruising, although the bruising did not relate to Count 5. She also stated that the Complainant had disclosed to her that the Defendant had thrown a bowl or plate at her (Count 5). Again, Crown Advocate Preston submitted that all the hearsay disclosures were admissible under Article 67A(2), (4) and (7) of the 2003 Law as "recent complaint" and as part of the unfolding narrative. Statement of Stephanie Marsh
17. Stephanie Marsh provided a long statement to the police to the effect that she had been friends with the Complainant for many years and about the Complainant's disclosures to her concerning the Defendant's treatment of her. Paragraph 28 of her statement included evidence that she witnessed finger like bruising to both the Complainant's upper arms when the Complainant was aged 19-21 during an argument, but Ms Marsh could not recall the context of the argument. Again, Crown Advocate Preston submitted that the hearsay disclosures were admissible under Article 67A(2), (4) and (7) of the 2003 Law as "recent complaint" and as part of the unfolding narrative. Report of Lindi Lawrenson
18. Lindi Lawrenson provided a report to the police concerning her psychotherapy treatment of the Complainant during eighteen sessions from 27 October 2021 to 28 April 2022 to address past experiences of abuse by her mother, which were impacting her current and future

relationships. Miss Lawrenson's report exhibited her case notes for the eighteen sessions of treatment and her report stated "[The Complainant] exhibited signs of complex trauma, including emotional detachment, hyper vigilance, and difficulties with trust. She struggled with feelings of guilt and self-blame. In my professional opinion, [the Complainant's] experiences of abuse had a significant impact on her psychological health and functioning".

19. Crown Advocate Preston submitted that the hearsay disclosures were admissible under Article 67A(2), (4) and (7) of the 2003 Law as "recent complaint" and that they were important because the disclosures were made to an independent and professional third party and were relevant to the timing of the Complainant's subsequent complaints firstly to the Jersey Domestic Abuse Service and secondly to the police. He proposed that Lindi Lawrenson's evidence should be dealt with by way of an agreed admission, a draft of which he had provided to the defence.
20. More generally, Crown Advocate Preston submitted that the statements assisted with the timings of the alleged offences and the consistency of the Complainant's evidence. As the Defence Case Statement essentially stated that the alleged offences did not happen, the defence was therefore one of fabrication. The evidence of what the Complainant told others therefore became of central importance for the jury to properly assess the defence claim that the Defendant fabricated or exaggerated her complaint. In this case the alleged offences had taken place over many years, and the majority were when the Complainant was a child when she may not have considered making a complaint to the police. The prosecution should be able to disclose the narrative of what occurred over the years, and the fact that the Complainant had made disclosures to others concerning the alleged offences. He relied on the case of AG v Withe [2023] JRC 111 that it is proportionate in these circumstances for there to be reference to evidence suggesting that the Complainant had been consistent. Alternatively, he submitted that the evidence should be admitted in the interests of justice pursuant to Article 64(1)(d) of the 2003 Law.
21. In reply, Advocate Bell submitted that the hearsay evidence of the prosecution witnesses should not be admitted. Whilst he accepted that the defence maintained that the Complainant had falsely reported her domestic situation from the outset, he submitted that it should not be permissible for the prosecution to advance repeated complaints to rebut the denial by the Defendant. He submitted that it would be undesirable for the jury to be encouraged to think that a statement is made more credible by repetition. There needed to be fairness to restrict evidence of complaint upon complaint. He relied on a passage from a case of R v Athwal [2009] EWCA Crim 789 at paragraph 58: "The mere fact that a witness has said substantially the same thing on a previous occasion will not generally be a sufficient basis to adduce the previous statement when the truthfulness of [her] evidence is put in issue.... It is for the trial judge to preserve the balance of fairness and to ensure that unjustified excursions into self-corroboration are not permitted, ...".

22. He noted that Athwal had been cited by the Royal Court of Jersey in the cases of AG v Freitas [2022] JRC 042, AG v Wildes [2022] JRC 140, and AG v Withe [2023] JRC 111.
23. He also submitted that the hearsay evidence contained in various of the statements contained a disparate mixture of assertions which did not relate to the actual charges included in the Indictment. He submitted that the prosecution was “throwing as much mud at the wall as possible and then seeing what sticks”. He considered that the primary gateway was under Article 64(1)(d) of the 2003 Law, but the factors in Article 64(2) of the 2003 Law demonstrate that there had to be focus as regards the probative value of the statements. Much of the evidence was historic and not recent complaints, and it was all the more important to be careful with it. There were potential risks of satellite litigation.
24. Further, as regards the evidence of Lindi Lawrenson, he relied on the case of F v AG [2016] JCA 168, in which the Jersey Court of Appeal at paragraphs 50 to 64 had agreed with a decision of the trial judge to exclude the expert evidence of a Dr Tully, a registered clinical and forensic psychologist in relation to the evidence of a child witness. At paragraph 63, the Jersey Court of Appeal agreed with the approach that a defendant is not permitted to call an expert to examine the detail of a complainant’s statement or evidence and any other relevant evidence, such as medical or counselling notes, and then pass judgment or advance comment on whether the witness is credible or reliable, as to do so would be to usurp the function of the jury. He also objected to the contents of the draft admission proposed by Crown Advocate Preston.
25. As regards the case of F v AG, in reply, Crown Advocate Preston accepted that there was some force in Advocate Bell’s submissions, but he submitted that there was a difference between Dr Tully’s evidence in that he was an expert instructed by one of the parties to review the case papers and he was potentially usurping the function of the jury. Miss Lawrenson’s role was different in that as a psychotherapist she was simply acting as a listening post for the Complainant. It was important for the jury to know the narrative and progress of the Complainant’s complaint as, otherwise, the jury might form a false impression of how it had developed. He was not suggesting that the Complainant could not give evidence herself and that Miss Lawrenson’s evidence was somehow a substitute for the Complainant’s evidence.
26. Crown Advocate Preston also accepted in reply that his use of language concerning “recent” complaint was not correct. There were no express restrictions of time in either Article 64 or Article 67A of the 2003 Law and he agreed that both Freitas and Withe confirm that complaints do not have to be recent. Decision
27. At the hearing, I did not decide the admissibility of Miss Lawrenson’s statement and report but encouraged Crown Advocate Preston and Advocate Bell to attempt to agree an admission concerning the Complainant’s therapy sessions with Miss Lawrenson.

28. As regards the other statements, I excluded the following statements in their entirety: (i) Olivia Card; (ii) Nan Carver; (iii) Louis Hayard; (iv) Kira Hillion; and
- (v) Stephanie Marsh.
29. In summary, whilst parts of the above five statements included some non-hearsay statements, in many cases I could not be sure that these directly concerned Counts 1-5. As regards the hearsay contents of these statements, having applied the approach set out below I agreed with Advocate Bell that it was prejudicial to the Defendant to deal with five additional witnesses giving rebuttal evidence to the Defendant's claim of fabrication or exaggeration by the Complainant.
30. I allowed hearsay relating to the Complainant's disclosures in respect of the alleged offences in the Indictment from the following witnesses: (i) Stuart Colley – paragraph 25 of his witness statement; (ii) Christopher Carver's first statement – paragraphs 10, 11, 14, 22, 28 and 30; and (iii) Philip Duhamel – only paragraphs 9, 12 and 14 which related specifically to the Complainant's disclosures to him concerning Counts 1, 3 and 5 on the Indictment. All other paragraphs were excluded.
31. As regards the evidence of Katherine Cathcart, the vast majority of her statement was direct evidence relating to Count 4 on the Indictment. However, I did admit hearsay concerning the Complainant's disclosures to her in paragraphs 2 to 5 of her statement.
32. In making this decision, I applied the approach adopted by the Royal Court in the cases of *AG v Freitas* and *AG v Withe*. I agreed that the primary gateway for admission of such hearsay disclosures was under Article 64(1)(d) of the 2003 Law, although there is a possible secondary gateway in this case under Article 67A(2), (4) and (7) of the 2003 Law. I took account of the factors listed in Article 64(2) of the 2003 Law, as set out below. Under both gateways I then considered excluding some of the hearsay pursuant to Article 76 of the 2003 Law. I noted at paragraph 58 of the judgment in *Athwal*, that the English Court of Appeal had said: "The mere fact that the witness has said substantially the same thing on a previous occasion will not generally be a sufficient basis to adduce the previous statement when the truthfulness of his evidence is put in issue."
33. In the same paragraph, the Court also said that: "The touchstone is whether the evidence may fairly assist the jury in ascertaining where the truth lies. It is for the trial judge to preserve the balance of fairness and to ensure that unjustified excursions into self-corroboration are not permitted, whether the witness was called by the prosecution or the defence."

34. As regards the gateway under Article 64(1)(d) I had regard to the factors listed in Article 64(2) of the 2003 Law as reviewed below. I also considered that a relevant factor in his case the length of time to which the alleged offences related during which it would be reasonable to expect that there would be evidence of disclosures by the Complainant to family and friends, against which would need to be balanced any prejudicial effect on the Defendant by reason of the passage of time.
- a) How much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case?
35. As regards paragraph 25 of Stuart Colley's statement, I considered that this had probative value in relation to rebutting the defence case of fabrication and / or exaggeration in relation to all the alleged offences and in assisting the jury's understanding of the chronology of the Complainant's complaint to the police.
36. I made the same evaluation in relation to the hearsay paragraphs in Christopher Carver's first statement which included specific reference to the Complainant's disclosure concerning Counts 1 as well as Count 3 on the Indictment.
37. As regards Philip Duhamel, I considered that only three paragraphs from his witness statement had probative value in that they related to specific disclosures by the Complainant to him as her partner concerning Counts 1, 3 and 5 on the Indictment, and that they were rebuttal evidence of consistency by the Complainant in response to the defence of fabrication or exaggeration.
38. As regards paragraphs 2 to 5 of the statement of Katherine Cathcart, these related to disclosures by the Complainant concerning how the Defendant was controlling and had to be at home by certain times. These had probative value in that they were relevant to the direct evidence which Katherine Cathcart would give in relation to Count 4 of the Indictment, and they were rebuttal evidence of consistency by the Complainant in response to the defence of fabrication or exaggeration.
- (b) What other evidence has been, or can be, given on the matter or evidence mentioned in sub-paragraph (a)?
39. The Complainant would give evidence concerning the hearsay evidence mentioned in (a) above and there was photographic evidence in relation to Count 5 when the Complainant was an adult.
- (c) How important the matter or evidence mentioned in sub-paragraph (a) is in the context of the case as a whole?

40. I considered that the matters mentioned in sub-paragraph (a) were important to the case as a whole in that the Defendant was asserting fabrication or exaggeration by the Complainant. Given the length of time to which the alleged offences related, it was important for the jury to know whether the Complainant had made disclosures to others, including close family and friends, before going to the police.
- (d) The circumstances in which the statement was made
41. The immediate circumstances in which the statements were made was in the Article 9 statements to the police following the Complainant's complaint to the police. However, the disclosures by the Complainant to the makers of the statements referred to in sub-paragraph (a) were made before the Complainant went to the police and, in most cases, some years ago. This was not a situation where the Complainant had made multiple disclosures to others recently in an attempt to corroborate or support her evidence.
- (e) How reliable the maker of the statement appears to be
42. None of the makers of the statements had any relevant previous convictions. Whilst Stuart Colley, as the ex-husband of the Defendant, might have been expected to have some bias against the Defendant because of his divorce from her, this was capable of being explored in cross-examination. In any event, he was the father of the Complainant and should be able to give reliable evidence of what had happened between the Defendant and the Complainant in the family home. Stuart Carver as the brother of the Defendant and uncle of the Complainant should also be able to give reliable evidence concerning them. Katherine Cathcart and Philip Duhamel were certainly not unreliable witnesses by being, respectively, the friend and partner of the Complainant, but again any potential animus against the Defendant could be explored in cross examination.
- (f) Whether oral evidence of the matter stated can be given, and if not, why it cannot?
43. The Complainant would be giving oral evidence of the matters stated. It was not suggested that any of the written statements themselves be admitted in evidence but that oral evidence would be given by the makers of the statements. The makers of the statements would (with the exception of Philip Duhamel) be giving direct non-hearsay evidence themselves concerning the alleged offences.
- (g) The amount of difficulty involved in challenging the statement
44. There appeared to be few difficulties for the Defendant in challenging the makers of the statements on the basis of the much reduced numbers of witnesses and the focused ambit of the evidence to be given by the remaining witnesses. She would be familiar with the subject matter given that she is the mother of the Complainant. Her Advocate could cross-examine the makers of the statements in relation to the fact that they had not seen the acts to which the hearsay disclosures related and that the Complainant may have exaggerated the events relating to the alleged offences. Whilst some of the alleged offences happened many years ago, whether the events alleged occurred should be capable of recall by the Defendant given

their subject matter.

- (h) The extent to which that difficulty would be likely to prejudice the party facing it?
- 45. It seemed to me that the difficulty (which I had assessed as minor) would not prejudice the Defendant in any material respect. I had decided to disallow the hearsay sought to be admitted by the prosecution from 5 witnesses, and parts of the evidence of the remaining witnesses. I had also excluded hearsay evidence which did not relate to the counts on the Indictment but which related to general background evidence. The fact that the events in some cases took place years ago could be included in a direction to the jury.
- 46. I balanced the considerations under (a) to (h) and considered that it would be a fair balance to both the Defendant and the Complainant to allow in the limited amount of hearsay evidence but exclude the majority.
- 47. I then considered whether to exclude any of the limited amount of hearsay evidence which, in principle, I proposed to allow pursuant to Article 76 of the 2003 Law and concluded that none of it would so adversely affect the fairness of the proceedings that the court ought not to admit it.
- 48. As regards the secondary gateway under Article 67A of the 2003 Law, I considered that the limited amount of hearsay evidence which I proposed to admit was also admissible as rebuttal evidence pursuant to Article 67A(2), (4) and (7) of the Law. Article 67A(2) is expressly directed at rebuttal evidence and the evidence sought to be adduced by the Crown in this case was rebuttal evidence.
- 49. As regards the third condition in Article 67A(7): (i) The Complainant was the person against whom the alleged offences had been committed; (ii) The offences were ones to which the Defendant was being prosecuted in Counts 1 to 5 in the Indictment; (iii) The hearsay evidence did consist of a complaint by the Complainant concerning conduct which would, if proved, constitute the alleged offences or part of the alleged offences in Counts 1 to 5 on the Indictment; (iv) There was no evidence that the Complainant's complaint was made as a result of a threat or a promise. The Defendant did not suggest this; and
- (v) The Complainant would be giving oral evidence first in connection with the subject matter of the hearsay statements.
- 50. As regards Article 67A(8) of the 2003 Law, there was no suggestion that a threat or promise was involved and therefore I could discount the question of the complaint being elicited in that way.
- 51. Again, I considered whether to exclude any of the hearsay evidence that in principle I had proposed to admit under Article 76 of the 2003 Law and decided, as above, that none of the evidence would so adversely affect the fairness of the trial of the Defendant that it needed to be excluded. Postscript

52. At the trial, by the conclusion of the prosecution case there was an agreed admission in relation to the evidence of Lindi Lawrenson and an agreed admission concerning the chronology leading to the Complainant making her complaint to the police. Authorities Children (Jersey) Law 2002. Police Procedures and Criminal Evidence (Jersey) Law 2003. Criminal Justice (Evidence and Procedure) (Jersey) Law 1998. AG v Withe [2023] JRC 111. R v Athwal [2009] EWCA Crim 789. AG v Freitas [2022] JRC 042. AG v Wildes [2022] JRC 140. F v AG [2016] JCA 168.

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