

JERSEY / JUDGMENT

The Attorney General v Shay John Edward Bester

COURT

Royal Court

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**Ruling on Article 43 Sexual Offences (Jersey) Law 2018 application and
application to discharge the jury**

[2026]JRC041

Royal Court

(Samedi)

29 January 2026

Before : A. R. Oldland, Esq., Commissioner
 The Attorney General
 -v-
 Shay John Edward Bester
 E. L. Hollywood, Crown Advocate.
 Advocate O. A. Blakeley for the Defendant.

JUDGMENT

THE COMMISSIONER: Section 43 ruling 1. This is an application by Advocate Blakeley acting for the Defendant to cross examine the third complainant Victim C as to her sexual activity with men other than the Defendant during the course of their relationship between 2001 and 2007. 2. Although, as with the previous application in respect of the first complainant, this application is extremely late and in breach of various court directions and the Criminal Procedure (Jersey) Rules 2021, Advocate Blakely has put his application in writing and Crown Advocate Hollywood for the prosecution has had the opportunity to respond in writing. 3. Advocate Blakely applies for leave under Article 43 of the Sexual Offences (Jersey) Law 2018 and he has referred, at my invitation, to the case of AG v Correia

- [2015] JRC 061A and also to the case of AG v RL [2021] (2) JLR 1. Advocate Blakely submits that he should be permitted to ask Victim C about a) men with whom she had sexual relations during the period in which she was in an intimate relationship with the Defendant and b) the type/nature of the sex she had with the men. He argues that the reasons he should be so permitted are twofold:- (i) To provide a reason or explanation for the Defendant's
- (a) heightened suspicions and mistrust of Victim C's faithfulness to him; and
 - (b) his excessive jealousy/possessiveness toward Victim C. I am going to describe those as the first set of reasons ("First Set of Reasons"). (ii) To support the defence case that Victim C enjoyed and encouraged "rough sex". I am going to refer to those as the second set of reasons ("Second Set of Reasons").
4. Advocate Blakely refers to the judgment of Commissioner Sir Michael Birt in AG v Correia and argues that his proposed line of questioning would fall within sub paragraphs 39(iv)(c) and (f) of the judgment. Alternatively, the instances provided by the learned Commissioner are not exhaustive and that the questioning should be permitted in order to ensure a fair trial. Further, Advocate Blakely submits that as the prosecution will lead evidence of a previous sexual encounter by Victim C with Witness E then it would be unfair to deprive the Defence from asking questions in respect of that evidence.
5. In his oral submissions Advocate Blakely confirmed that the purpose behind the First Set of Reasons, as with the first complainant, was to support the Defendant's case - if he were to give evidence - that the reason that the Defendant behaved jealously towards Victim C was that he believed she was having sexual activity with other men and not, as the prosecution say, as a form of coercion and control by the Defendant over Victim C.
6. Further, in his oral submissions Advocate Blakely also contended that as the prosecution were able to lead extensive background evidence about the behaviour of the complainants and the Defendant towards them then the defence should not be inhibited in the questions they wish to ask and should be able to cross examine the complainants about their sexual behaviour.
7. Put shortly, the prosecution case is that the Defendant sexually abused three vulnerable young women between 1994 and 2007. The first two complainants had been in and out of care and the third complainant Victim C was vulnerable and isolated because of her family circumstances. The first two complainants were aged between 15 and 18 during the abuse and Victim C was aged between 17 and 23 years old.
8. As far as Victim C is concerned, the prosecution case is that, having been introduced to the Defendant when she was 17 years old and he was 28 years old, a relationship developed between them which rapidly became sexual. The Defendant introduced Victim C to certain types of drugs, and he then became more aggressive and assertive over time. The circumstances relating to Count 8, rape, the first allegation, then took place. The prosecution case is that Victim C clearly told the Defendant "no" on that occasion but that he continued anyway. The subsequent counts 9 to 16 are all alleged to have taken place in the context of their ongoing sexual relationship.
9. All the complainants approached the police following press reports in 2022 and 2023 of the Defendant's trial and conviction for rape and other sexual offences in respect of another vulnerable young woman, then aged 17 years. Those convictions and brief facts were agreed as being admissible by the Defence and are to be admitted as agreed facts in

due course.

10. The Defendant was interviewed under caution in February 2024 and responded no comment to all questions asked of him. In the Defence Case Statement from December 2025 the Defendant asserts that any sexual activity with Victim C was consensual.
11. Article 43 of the Sexual Offences (Jersey) Law 2018 reads “(1) Except with the leave of the court –
 - (a) no evidence may be adduced; and
 - (b) no question may be asked in cross-examination, by or on behalf of a relevant defendant, about the sexual history of a complainant.
- (2) For the purpose of paragraph (1) – “complainant” means a witness other than a relevant defendant; “relevant defendant” means a defendant prosecuted for an offence under this Law, an offence of indecent assault under customary law, a customary law offence abolished by Article 44 or an offence under a Law repealed by Article 45; “sexual history” means the fact that a complainant has engaged in a sexual act with a person other than a relevant defendant.
- (3) The States may by Regulations –
 - (a) provide that paragraph (1) does or does not apply to evidence adduced, and to a question asked, for a purpose prescribed by the Regulations;
 - (b) prescribe grounds on which the court may or may not give leave;
 - (c) amend paragraph (2).”
12. No such regulations have been introduced by the States. It follows that the customary law continues to govern the grounds upon which the Court may or may not give leave and Advocate Blakely has correctly focused on the case of AG v Correia as conveniently and accurately setting out the grounds for such applications, having considered a number of authorities from England and Wales, Canada and Jersey.
13. In the judgment at paragraph 39 the learned Commissioner stated “Doing the best I can, I would summarise the correct approach as follows:-
 - (i) In a prosecution for rape, evidence that the complainant has engaged in consensual sexual conduct with persons other than the defendant is not admissible to support the inference that a person who has previously engaged in consensual sexual conduct is for that reason less worthy of belief as a witness i.e. that it affects her credibility. (ii) Such evidence is similarly not admissible to support the inference that a person who has previously engaged in consensual sexual conduct with other persons is for that reason alone more likely to have consented to the sexual conduct at issue in the trial.” These two paragraphs address what are known as the “twin myths”. “(iii) Evidence of consensual conduct on the part of the complainant with persons other than the accused may, however, be admissible for other

purposes. (iv) By way of illustration only, and not by way of limitation, the following are examples of admissible evidence:- ...

- (c) Evidence of prior sexual conduct, known to the defendant at the time of the act charged, tending to prove that the defendant believed that the complainant was consenting to the act charged;
 - (d) Evidence of a pattern of sexual conduct so distinctive and so closely resembling the defendant's version of the alleged encounter with the complainant as to tend to prove that the complainant consented to the act charged or behaved in such a manner as to lead the defendant to believe that the complainant consented; ...
 - (f) Evidence that the complainant has made a false allegation of rape.
40. Where evidence is not admissible in accordance with the preceding paragraph, questions concerning such matters may not be asked of the complainant.
41. Where the Defence wish to ask questions of a complainant or introduce evidence relating to her previous sexual conduct, they must apply for leave to do so and the judge should not give leave unless satisfied that it is necessary for the purposes of a fair trial. It is not necessary under our procedure to have a voir dire to the extent envisaged in *Seaboyer* but the judge must be satisfied that there is a proper evidential basis to support the grounds upon which the defence wish to ask questions or introduce evidence about previous sexual conduct with other persons. This is to prevent questions being put or evidence adduced in order to elicit evidence about the complainant's past sexual behaviour as such under the guise of some other ground. In considering applications by the defence, the judge is entitled to remind himself of the public interest summarised conveniently by Lord Hutton at para 142 in *R v A*, namely to ensure that the woman who complains that she has been raped is treated with dignity in court and is given protection against cross-examination and evidence which invades her privacy unnecessarily and which subjects her to humiliating questioning and accusations which are irrelevant to the charge against the defendant. “
14. Applying that to this application: The First Set of Reasons. It is clear in my view that none of the illustrations provided by the learned Commissioner at paragraph 39(iv) apply to Advocate Blakely's application including sub paragraphs (c) and (f). The reasons are the same as those that I gave in the Article 43 application in respect of the first complainant. As I indicated in respect of the previous application, if the Defendant were to give evidence, he would not be prevented from asserting what he believed to be the case, namely that he believed that Victim C may have been sleeping with other men which is what gave rise to his “heightened suspicions” or “excessive jealousy”. His belief in this context is not the same as evidence of Victim C's sexual behaviour.
15. Turning to the Second Set of Reasons, the prosecution have opened and will lead in evidence that on one occasion whilst Victim C was in the relationship with Defendant, she had consensual sexual intercourse with another man Witness E. Victim C had believed that the

Defendant was away and, I paraphrase, sought solace with Witness E. The Defendant however arrived at Witness E's flat and discovered them. Having removed Victim C from the premises and dragged her back to where they were living the Defendant is alleged to have raped Victim C making reference to what she had done with Witness E, (this is Count 12), but reference to Victim C having slept with Witness E is a theme that would repeat itself. The reason for the prosecution leading this evidence is clear, it sets the context for the rape covered by Count 12.

16. In her ABE video there is reference to Victim C having sex on another occasion with another man. The prosecution do not intend to lead that evidence arguing that it is irrelevant. There is nothing in either account that Victim C gives to support the Defendant's case that "she enjoyed and encouraged rough sex". Advocate Blakely seeks leave to cross examine Victim C on her previous sexual activity with men other than Witness E during the course of her relationship with the Defendant including the other man referred to by Victim C.
17. Although there is an evidential basis, namely Victim C's ABE interview, for her having sex with the other man there is no evidential basis for her having sex with any other men. The fact that the Complainant may have engaged in sexual behaviour with men other than the Defendant does not make it anymore likely that the Complainant consented to have sex with the Defendant. This is the second of the two myths set out by the learned Commissioner at paragraph 39(ii). Nor, on the facts of this case, where the Complainant and the Defendant were engaged in a sexual relationship that initially was consensual, does it tend to prove that the Defendant believed that the Complainant was consenting to the act charged. What the Defendant did or did not believe as to consent will be set against the context of their ongoing relationship. Whether or not during that time Victim C had sex with other men is, I find, completely irrelevant to the issue of the Defendant's belief in consent in the context of their ongoing sexual relationship. It follows that sub paragraph 39(iv)(c) does not apply to this case. Nor do I find that sub paragraph 39(iv)(f) applies. There is no evidence that Victim C has previously made a false allegation of rape.
18. Out of completeness, although not raised by Advocate Blakely I have also considered sub paragraph 39(iv)(d). There is nothing in my view that reveals a pattern of sexual conduct so distinctive and so closely resembling the Defendant's account as to tend to prove that the Complainant consented to the act charged. There is nothing distinctive about Victim C's sexual encounter with the other man she refers to and there is no evidence relating to any other sexual encounters. Even if there was such evidence, which there is not, that Victim C enjoyed "rough sex", it is in my view that is not sufficiently distinctive so as to permit its submission in evidence on this basis.
19. I have borne in mind that the learned Commissioner in AG v Correia described the list of examples he gave as non-exhaustive. I have also considered the case of AG v RL but find it of no assistance based, as it is, on a completely different factual scenario.

20. I am quite satisfied there is no unfairness in preventing this line of questioning. With the exception of Witness E and the other man referred to by Victim C in her ABE, there is no “proper evidential basis to support the grounds upon which the Defence wish to ask questions” (paragraph 41 of AG v Correia). The encounter with the other man does not advance the Defence case for the reasons I have given above.
21. The Defence will be able to cross examine Victim C about the incident involving Witness E as this is being led by the prosecution. Advocate Blakely informs me that his instructions are that the Defendant walked in on the two of them and that Victim C was handcuffed to the bed. The prosecution do not object to these instructions being put to Victim C but her answers as to what is put will be final. I will allow cross examination on Victim C’s previous sexual activity with Witness E to this limited extent only. Any further attempt at such cross examination is prohibited.
22. Finally, in my judgment the attempt to ask Victim C about previous sexual encounters with men other than the Defendant and Witness E would be no more than an attempt to elicit evidence of the Complainant’s sexual behaviour under the guise of some other ground and the public interest as set out by Lord Hutton in R v A [2001] UKHL 25 would not be served by permitting it. Application to discharge the jury and order a retrial
23. This morning, the fourth day of this trial, Advocate Blakely was instructed to make an application to discharge the jury and for a retrial to be ordered at a future date. Neither the Court nor the prosecution had any notice of this application.
24. The basis of the application as advanced by Advocate Blakely was that the defence had received a great deal of relevant material by way of disclosure immediately prior to the trial. Yesterday Advocate Blakely applied for more time to prepare to cross examine the second complainant. With some reluctance I granted that application. Advocate Blakely then had all the afternoon and evening yesterday to prepare his cross examination.
25. I say “with some reluctance” because, in my judgment, the primary reason for the late arrival of disclosure was the failure by the defence to provide a Defence Case Statement in accordance with the directions set by the Court. The Defence Case Statement was due in the spring of 2025. It was not forthcoming. Further court orders were subsequently made for its service, but the Defence Case Statement was not served until early December.
26. Some disclosure of medical and social services records had already been made and draft admissions relating to them had been prepared. The service of the Defence Case Statement then triggered a disclosure review in the usual way and some further disclosure then followed, much of which was provided on the 21 January which was four days prior to the trial starting including, of course, a weekend. This was raised in yesterday’s application for more time. No application was made at the outset of the trial and before the complainants had started to give their evidence, to adjourn the trial. When pressed by me as to the need to identify particular heads of prejudice Advocate Blakely was only able to identify the late arrival of a further ABE transcript made by the second complainant in 2021 but relating to a

separate indecent assault relating to a different alleged perpetrator. This incident had some relevance as the second complainant states that it was because this allegation was not taken seriously back in 1996 that she lost confidence in her care home and the system in general. She then left the care home and relied on the Defendant to house her; their relationship having started some months before.

27. It is clear that Advocate Blakely had been able to digest the contents of this further ABE because he had prepared a note about his intended line of questioning based on that ABE which he had shared with the Court and the prosecution given its potential to engage Article 43 of the Criminal Procedure (Jersey) Law 2018, although, on analysis, it does not.
28. Other than this, which I find did not in fact deprive the defence of a proper ability to cross examine the second complainant on this point, Advocate Blakely was unable to identify any other potential heads of prejudice other than the broad assertion that the defence had received a great deal of material at a late stage.
29. I have already dealt with why this was so a moment ago. There is no prejudice that has been identified to me that would make continuing with this trial unfair. The public interest, and specifically the interests of the three complainants, weighs heavily in favour of this trial continuing. Accordingly, I refuse the application. Authorities Criminal Procedure (Jersey) Rules 2021. Sexual Offences (Jersey) Law 2018. AG v Correia [2015] JRC 061A. AG v RL [2021] (2) JLR 1. R v A [2001] UKHL 25

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