

JERSEY / JUDGMENT

X v AG [2010] JCA 212 (25 November 2010)

[2010] JCA 212

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COURT OF APPEAL th November 2010 Before : Mr James W McNeill, Q. C.; President; Mr John V Martin, Q. C.; and Miss Clare Montgomery, Q. C. X -v- The Attorney General Application for leave to appeal against the conviction by the Royal Court Advocate D. S. Steenson for the Applicant. S. M. Baker, Esq., Crown Advocate.

JUDGMENT

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Introduction

1. This is the judgment of the Court to which all the members of the Court have contributed. The Applicant seeks leave to appeal against his conviction in the Royal Court before a Commissioner, Sir Christopher Pitchers, and a jury on 14 April 2010. The Applicant was convicted by the jury of twelve counts of indecent assault and one count of rape. A verdict of not guilty was pronounced on two other counts of indecent assault. On 15 June 2010 the Applicant was sentenced to twelve years' imprisonment. 2. The various indecent assaults were said to have taken place between 1975 and 1987, and the rape some time between December 1981 and January 1982. In all cases the relevant incidents took place in the setting of various family homes and involved Victim 1 and Victim 2. 3. Counts 1 to 6 charged indecent assaults on Victim 1, between 1975 and 1982 when she was 8 to 14 years old. Count 7 charged the rape of Victim 1 when she was 14. Victim 1 was the elder of the two complainants. Victim 1 is the Applicant's stepdaughter, whom he adopted in 1970 upon his marriage to B, now deceased. 4. Counts 8 to 15 charged indecent assaults in the case of Victim 2 between 1980 and 1986 when she was aged 9 to 15. Victim 2 is the Applicant's daughter through his marriage to B. 5. It was common ground that Victim 1 had made a statement in April 1982 alleging that she had been raped by the Applicant. However that allegation had been retracted almost immediately. As a result of the allegation in 1982, Victim 2 was examined. Victim 2 denied any inappropriate sexual contact with her father. She was then 10 years of age. 6. It was also common ground that, in adulthood, Victim 2 had accused her father of sexual abuse in private communications; however these accusations were not reported to the authorities in Jersey until after the police investigation into Victim 1's allegations had started in 2009. 7. Statements were made by Victim 1, and later by Victim 2, to the Police in 2009. The police investigation was initially linked to the wider police

investigations in relation to events at the Haut de la Garenne children's home. Both Victim 1 and Victim 2 were at first reluctant to assist the Police but in due course agreed to co-operate. 8. It is agreed that both Victim 1 and Victim 2 had limited contact with one another after Victim 1 reached adulthood and had not been in contact at the time they made their statements to the police. 9. The Applicant denied the charges. It was asserted on his behalf that the most likely explanation for the making of false allegations by Victim 1 was the very difficult family circumstances surrounding his marriage to B. A similar assertion was made in connection with Victim 2's allegations, coupled with a suggestion that she had been influenced by the complaint made by Victim 1 in 1982. 10. The only direct evidence in respect of any of the incidents charged came from the relevant complainant. There was potentially corroborating material. In the case of Victim 1, the evidence of Victim 2 was arguably admissible as similar fact evidence on the basis that it was improbable that she would make independent false allegations of abuse against her father. In addition Victim 2 gave evidence of having witnessed an incident in which her father appeared to be in a bed with Victim 1. 11. In the case of Victim 2, the evidence of Victim 1 was also arguably admissible as similar fact evidence. In addition there was evidence that the Applicant had made statements in communications with Victim 2 and with Victim 1's former partner that were capable of being interpreted as admissions. There was also evidence that the Applicant had conducted internet searches in relation to 'incest survivors' in 2005. Contentions for the Applicant 12. The contentions for the Applicant can be summarised in the following way:- (i) the proceedings should have been stayed as an abuse of the process of the court since a fair trial of the charges was no longer possible; (ii) the evidence of one complainant should not have been admitted as corroborating the evidence of the other; (iii) the charges against Victim 1 should have been severed from the charges against Victim 2 and heard separately; (iv) the case of rape should have been heard separately and should have been withdrawn from the jury on the basis that the evidence was not sufficient to permit conviction; and (v) the verdicts of not guilty were not consistent with the convictions recorded. Abuse of Process 13. Cases involving historic sexual allegations, in this case the relevant events were said to have taken place between 25 and 35 years ago, raise very difficult questions for the criminal courts. Inevitably the delay itself is capable of affecting the fairness of proceedings. In such cases the courts must remain vigilant to ensure that the evidence is of a sufficient nature and quality to make it safe to leave the case to the jury. In the instant case the initial allegations came from a young and vulnerable person who had experienced significant family tensions and upheaval during her childhood. 14. The Commissioner assessed the significance of the impact of the delay on the evidence both before and after witnesses were called. He was well placed to form a judgment on the effect of the delay on the fairness of the proceedings. He acknowledged the inevitability of deterioration in the quality of the evidence after such an elapse of time, but he held that it was possible for there to be a fair trial. 15. The Commissioner gave detailed consideration to the events of 1982 and acknowledged that the defence was subject to limitations on its ability to exploit the fact that Victim 1 had made and then retracted allegations of rape against the Applicant. However the Commissioner was satisfied that admissions would be (and were) made as to the events of

1982 so as to enable the defence to cross examine Victim 1 effectively. 16. The Commissioner also weighed in the balance the impact of directions that the jury would be given as to the effect of delay. He concluded that directions, combined with the admissions, were capable of ameliorating any unfairness in this case. It is to be observed that in due course the Commissioner gave directions about the adverse effect of delay on the Applicant. No complaint is made about those directions. 17. The Commissioner had the benefit of having seen Victim 1, Victim 2 and the Applicant give evidence and heard two defence witnesses. The first defence witness, a former baby sitter, gave evidence about the nature of the contact between the Applicant and Victim 2 in 1980 and 1981 so as to rebut count 8. The second witness, the Applicant's then partner, gave evidence of the lack of opportunity to rape Victim 1 as alleged in count 7. 18. The Commissioner dealt directly with a submission to the effect that, because there was a decision not to prosecute in 1982, a prosecution should not now be permitted. The Commissioner held, having regard to the last statement given by Victim 1 in 1982, that no prosecutor could have sought a trial in 1982 since the only evidence was from a witness who had retracted earlier allegations. Matters changed only in 2009 when there was a full statement from Victim 1 setting out her allegations and giving an explanation as to why she did not tell the truth in 1982. The Commissioner rejected the submission that the only change of circumstance from 1982 to 2009 was the availability of Victim 2's evidence corroborating Victim 1. 19. Questions of abuse of process engage the discretion of the trial judge and are primarily a matter for him, see *Warren and Others v AG*

[2008] JCA 135 at paragraph 54. In a case, such as the present, where no complaint is made of the legal analysis performed by the Commissioner and the principles he applied, an appeal against conviction will only succeed if the Court of Appeal is satisfied that the decision of the Commissioner was outside the range of rational judicial responses or based on a mistake as to the relevant facts. 20. Before this court, Advocate Steenson emphasised the length of time between the alleged offending and the trial. We accept his submission that the delay in this case is towards the top end of the range that will be regarded as acceptable by the courts. 21. Advocate Steenson acknowledged, correctly in our view, that the length of time can never be, of itself, decisive. It is the impact of that time on the quality of the evidence that is the most important factor. Time is not relevant as an abstraction but as the cradle of events. 22. Advocate Steenson placed particular emphasis on the quality of the evidence given by Victim 1 on the charge of rape. Although Victim 1 gave a coherent if compressed account of the act of rape, Advocate Steenson complained that it lacked circumstantial detail and was difficult to challenge because of the vagueness of the description of the events. 23. However the Applicant's case was a straightforward denial of the allegation. It did not depend upon consideration of the specific content of the events to any great extent. 24. In addition the paucity of the description of the events was due, at least in part, to the decision made by the defence not to cross examine Victim 1 on the particulars contained in the statement she made in 1982. The 1982 statement contained graphic descriptive accounts of not one rape but three. The statement was identified by Victim 1 in chief and asserted to be true but its contents were not adduced in

evidence before the jury. This gave a significant advantage to the defence; it permitted Advocate Steenson to choose the points in the 1982 statement with which to take issue; without his being required to run the risk of the undoubtedly damaging detail in the remainder of the statement going before the jury. 25. This forensic decision was obviously sensible. It is one that most experienced practitioners would have made. It permitted Advocate Steenson to make a jury speech relying on significant differences between the statement in 1982 and the statements made by Victim 1 in 2009 and in her evidence. Advocate Steenson pointed to variations in relation to the number of rapes alleged; the physical location of those rapes; and differences in the described circumstances of the rape, such as what side of the bed Victim 1 was on and whether Victim 2 was awake. 26. Advocate Steenson nevertheless retained the ability to argue (as he did at trial and before us) that the allegation of rape was so vague that it could not be credible. 27. As to prejudice in relation to the indecent assault charges, Advocate Steenson submitted that the length of the delay meant that it was virtually impossible to cross examine on specifics, that this was emphasised by the very general nature of the wording of the counts within the Indictment and that this therefore prevented him from adducing evidence as to where the Applicant might have been on a particular day, prevented him calling particular witnesses in relation to that day and prevented cross examination suggesting that the complainants must be mistaken as to timing. In the time that had elapsed, potential defence witnesses had become untraceable or unable to testify through illness and the girls' mother, the Applicant's first wife, had since died. 28. Advocate Steenson referred us to the decision of this court in *Warren and Others v AG* as well as to *AG v Aubin and Others*

[2009] JLR 340 , *R v Beckford* [1996] CrAppR 94 CA and *R v Smolinski*

[2004] 2 Cr App R 40 . 29. Each of these authorities considers, among other matters, the abuse of process which can be identified where the court concludes that a defendant cannot receive a fair trial. The Court of Appeal in *R v Smolinski* indicated in the plainest terms that it discouraged applications based on abuse in cases of the sort before it: that is, cases of indecent assaults upon young persons where a significant delay has occurred. On the other hand the court indicated that, where evidence was given after so many years, the court should exercise very careful scrutiny at the end of the evidence to see whether or not the case was safe to be left to a jury. 30. As we have already indicated, this course was followed in this case. Advocate Steenson renewed his application to stay the proceedings after the evidence had been given and indicated that three matters had come into greater focus. The first was the absence of the original police officers to support the defence case that Victim 1's account of rape in 1982 was not credible and her withdrawal of the allegation was a voluntary act. In the second place Advocate Steenson referred to the paucity of the evidence in relation to the allegation of rape. The third point related to the report by the examining doctor in 1982 narrating an admission by Victim 1 that she had had consensual sexual intercourse with her adopted father. The doctor was not available though age to give oral evidence as to the admission. 31. The Commissioner was satisfied that the events of 1982 were capable of being presented to the jury without any prejudice

to the Applicant. Victim 1 agreed in evidence that the investigating officers in 1982 had not believed her account. The fact of the admission made to the Doctor had been admitted by the prosecution as having been recorded in the report and Victim 1 declined to say that she had made it up when questioned about it. The Commissioner held that these points were sustainable jury points rather than ones that should lead to the case being stayed as an abuse of process. 32. Advocate Steenson recognises that, as indicated in *R v Smolinski*, an argument based purely upon delay is unlikely to be successful. Whilst the circumstances in the present case indicate a time frame which may be towards the top end of the range of acceptability, and whilst the withdrawal of the earlier complaint called for careful consideration, the latter does not bring the former into the realms of a situation where the defendant could not receive a fair trial. 33. On the contrary, the events of 1982 seem to us to have served to preserve many features of the evidence that made a fair trial easier to achieve in this case than in many historic cases. This is because the complaint in 1982 was meticulously recorded and examined. It was brought to the attention of the Applicant at the time (he spent a night in the cells). In the result, even in 2010, the Applicant was able to recall the events around Christmas 1981 with relative ease and was able to call his then partner to give evidence in his defence to deny that the Applicant had any opportunity to commit the rape and to describe the sleeping arrangements in the family home. 34. The Applicant was also able, to the extent he wished to, to examine the minutiae of the 1982 complaints for the purpose of casting doubt on their reliability. 35. The Applicant was also able to point to the report made by the Doctor, the doubts that Victim 1 admitted were expressed to her about her own veracity by the Police in 1982 and her acceptance that she had withdrawn the complaint and said she was lying. 36. The judgment as to the fairness of the trial was made by an extremely experienced Commissioner who considered the arguments as to abuse of process both at the outset and after the evidence had been led. The Commissioner had the benefit of having seen the evidence given and clearly had in mind the factual points made to him by Advocate Steenson. We consider his decision to permit the case to go to the jury was not only based on an accurate application of the law but also on a complete consideration of the facts and was manifestly a reasonable decision. Cross admissibility 37. The question of the cross-admissibility of the evidence of Victim 1 and Victim 2 was raised at the start of the trial. The Commissioner expressed the view that the argument that the evidence was cross admissible as evidence of similar facts was of sufficient strength to allow the matter to proceed to trial on the assumption that the evidence might be cross admissible although the issue might require to be looked at again after evidence had been given. As the Commissioner indicated, it was perfectly possible that, after testing and cross examination, a different aspect would appear. In the event the Commissioner was satisfied that the evidence of Victim 1 corroborated that of Victim 2 and vica versa. He directed the jury to this effect. No complaint is made as to the terms of that direction. 38. Advocate Steenson drew our attention to a number of cases but placed particular emphasis on the decision of this Court in *X v AG*

- [1998] JLR 221 . He submitted that, as was the case in *X v AG* , it could not be said the evidence of one complainant was sufficiently related to that given by the other or that it so strongly supported the truth of the charges that it would be fair to admit it notwithstanding its prejudicial effect on the Applicant. 39. Advocate Steenson relied on the fact that the necessary "relationship" required to be established referred not simply to the relationship between the parties, but to the relationship between the events described by each of the complainants. He argued it was insufficient that the Applicant and the complainants were members of the same family and that in both cases the alleged offences involved a abuse of position. Advocate Steenson said that there was no relationship between the events Victim 1 and Victim 2 described and in particular that the account of the rape by Victim 1 bore no relationship to the accounts of indecent assault described by Victim 2. 40. It is clear that this Court in *X v AG* regarded the law in Jersey as being materially identical to the law of England and Wales as explained in the decision of the House of Lords in *DPP v. P*
- [1991] 2 AC 447 at p. 460. The essential feature of evidence to be admitted under the "similar fact" rule is that its probative force in support of an allegation being tried is sufficiently great to make it just to admit the evidence, notwithstanding that it is prejudicial to the accused in tending to show that he is guilty of another crime. Such probative force may be derived from striking similarities in the evidence about the manner in which the crime was committed, but the circumstances in which there may be sufficient probative force to overcome the prejudice of evidence relating to another crime is not to be restricted to cases where there is some striking similarity between them. The speech of Lord Mackay of Clashfern LC made it clear that the degree of similarity required would vary according to the issues in the case and the nature of the other evidence. 41. Since the decision in *DPP v P* , it is clear that the basis for admitting similar fact evidence lies in its possession of a particular probative value or cogency such that, if accepted, it bears no reasonable explanation other than the inculcation of the person accused in the offence charged; in other words, similar fact evidence may be admitted where the objective improbability of its having some innocent explanation is such that there is no reasonable view of it other than as supporting an inference that the accused was guilty of the offence charged. 42. In determining whether such evidence may be admissible, the task of the judge is to assume that the evidence of the witnesses is true (*R v H* (Evidence: Corroboration)
- [1995] 2 AC 596) and then to determine whether an explanation of the common allegations on the basis of chance or coincidence would be an affront to common sense. No particular degree of similarity is required. The Judge is entitled to have in mind the reality that independent people do not normally make false allegations of a like nature against the same person. 43. We consider that there was, in this case, a degree of similarity between the accusations of Victim 1 and Victim 2 that went beyond the mere status of the Applicant as their parent and the abuse of trust implicit in their allegations. There was a clear relationship between the events described by both sisters. The allegations were similar in that they involved heterosexual activity starting at around the age of 8 or 9 with the digital

penetration of the vagina. This activity then increased in frequency and in intrusiveness and in the case of Victim 1 culminated in an allegation of rape. In both cases the assaults ceased when the sisters were about 15 years old. The offences overlapped in that the assaults on Victim 2 were alleged to have started as the assaults on Victim 1 were coming to an end. The assaults on Victim 2 appear to have commenced at a time when Victim 1 may have been out of the Applicant's reach in the children's home. In neither case did the assaults involve overt verbal or physical threats although in both cases efforts to resist were brushed aside. 44. The Commissioner was entitled to conclude that any explanation of these common allegations on the basis of chance or coincidence was an affront to common sense. Victim 1 and Victim 2 had no contact with each other for many years. The common allegations emerged independently without any apparent opportunity for collusion in circumstances where both women were initially reluctant to make any formal allegation. In the circumstances we agree with the conclusion of the Commissioner that the evidence could be left to the jury as being cross admissible. Severance 45. It is contended that the Commissioner erred in law and fact in refusing to sever the Indictment so as to ensure that the allegations of Victim 1 were tried separately from the allegations of Victim 2. 46. The Commissioner dealt with this when the application was made to him before the evidence was called. He indicated that, in his view, even if the evidence was not cross-admissible, there were reasons for trying the cases together, a matter within his discretion: see *R v Christou*

[1996] 2 All ER 927. 47. In our view the charges in relation to Victim 1 (counts 1 to 7) were properly joined in the same indictment with the charges in relation to Victim 2 (counts 8 to 15). The relevant rule is rule 3 of the Indictments (Jersey) Rules 1972 which provides that; "charges for any offences, whether 'crimes,' 'délits' or 'infractions,' may be joined in the same indictment if those charges are founded on the same facts or form or are part of a series of offences of the same or a similar character." 48. Where there is a clear factual or evidential overlap between various offences they may properly be joined in the same indictment, see *AG v Channing*

[2004] JLR 265 (approved by this court in *Benyoucef v AG*

[2008] JCA 206). We are satisfied that there was here a clear factual nexus between the charges. The charges were concerned with broadly similar forms of conduct occurring regularly throughout the indictment period. It is clear that the charges in the indictment were a series of offences or offences of a similar character as set out in r.3 whether or not the evidence was held to be cross admissible. 49. Where charges are properly joined, there is nevertheless a discretion to sever under rule 6(2) of the Indictments (Jersey) Rules 1972 , which provides:- "Where, before trial, or at any stage of a trial, the Court is of opinion that an accused person may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment, the Court may order a separate trial of any count or

counts of such indictment." 50. It was argued by Advocate Steenson that it was not in the interests of justice for the case in relation to Victim 1 to be heard at the same time as the case in relation to Victim 2, particularly since the case in relation to Victim 2 was stronger than that in relation to Victim 1 (given the possible admissions made by the Applicant and the evidence of his internet activity). However this submission ignored the fact that, even if the two sets of allegations were severed, the prosecution would nevertheless have been entitled to call Victim 2 in corroboration of Victim 1 on a trial on indictment in relation to her allegations. Accordingly severance would not have achieved the purpose that Advocate Steenson identified would be served. 51. In our judgment it would have been contrary to the interests of justice for the trial to have been severed. It was in the interests of all concerned that Victim 1 and Victim 2 gave their evidence once only and that the difficult issues as to the cross admissibility of their evidence and the fairness of the trial were considered comprehensively in one single process Evidence of the rape 52. Advocate Steenson directed us to various aspects of Victim 1's evidence in chief and in cross examination. He submitted that her evidence was unreliable for a number of reasons, that her accounts were substantially lacking in detail. In respect of the conviction on the charge of rape he submitted that the conviction amounted to a miscarriage of justice because the evidence in relation to rape was so vague notwithstanding that evidence in relation to the indecent assaults, together with the potential similar fact evidence from Victim 2, might generally be corroborative of the allegation of rape in showing a pattern of sexual offending. 53. Whilst, as regards the conviction in respect of rape, Advocate Steenson characterised the ground of appeal as a miscarriage of justice, his submissions relate to the strength of the evidence before the jury. It has to be remembered that the powers of this Court, in considering an appeal against conviction are strictly limited. Article 26(1) of the Court of Appeal (Jersey) Law 1961 states, among other matters:- "Subject to the following provisions of this Part, on any appeal against conviction, the Court of Appeal shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal ..." 54. As was pointed out by this court in *Styles v Attorney General*

[2006] JLR 210 , at paragraphs 32 - 34, it is no part of the powers of this court to review the totality of the evidence below, sift through points of alleged weakness and attempt to make our own evaluation of that evidence. To do so would simply be to usurp the function of the tribunal of fact. Upon the assumption that there has been evidence to go to the jury, that there has been no misdirection and it cannot be said that the verdict is one which a reasonable jury, properly directed, could not have arrived at, this Court has no power to set aside the verdict. 55. In closing submissions, the defence specifically put to the jury that Victim 1's evidence was so vague and contradictory that the jury should not even reach the stage of considering whether there was other material evidence in support of it.

In his Summing Up, the learned Commissioner instructed the jury that, if they rejected the evidence on the rape as too vague and contradictory, they would reflect that by acquitting on all counts involving Victim 1. 56. In *Aladesuru v The Queen*

[1956] 1 AC 49, at 54 - 55, Lord Tucker, delivering the advice of the Board of the Judicial Committee of the Privy Council, indicated the exceptional nature of cases in which a criminal verdict has been set aside as one which no reasonable tribunal could have found. 57. To ask this court to consider issues of vagueness and inconsistency, as opposed to some more exceptional aspect of evidence, is to ask this court to try the case on the written record and allow the appeal assuming, that is, that this court is persuaded that it would not have convicted. That is beyond our powers. 58. It therefore follows that the application for leave to appeal insofar as based upon grounds of unreasonableness or weight and substance of the evidence cannot be granted. Inconsistent verdicts 59. The Jury acquitted the Applicant on counts 5 and 9. Count 5 concerned an allegation of indecent assault on Victim 1 committed between 5 April and 3 September 1981 when she was either 12 or 13 years old. Count 9 concerned an allegation of indecent assault on Victim 2 committed between 24 December 1981 and 19 November 1982 when she was 10 years old. It is submitted by Advocate Steenson that these verdicts are inconsistent with the guilty verdicts returned on the remainder of the counts in the indictment. 60. Where, on an application for leave to appeal, verdicts on any indictment are said to be inconsistent, the Applicant bears the burden of establishing that the verdicts are indeed inconsistent. However in our judgment it is necessary for an Applicant to go further and show that the inconsistency is such as to call for interference by the appellate courts. Article 26 (1) of the Court of Appeal (Jersey) Law 1961 permits the court to interfere with a guilty verdict on the grounds of inconsistency only if it thinks that the verdict should be set aside as unreasonable or otherwise unsustainable on the evidence. It is thus only if the Court is satisfied that no reasonable jury who had applied their minds properly to the facts in the case could have arrived at the conclusion which was reached that inconsistency will lead to convictions being quashed. 61. The approach in Jersey is similar to the approach to the problem of inconsistency in England, see *R v Durante*

(1972) 56 Cr App R 708 in which the views of Devlin J were cited with approval:- "When an appellant seeks to persuade this Court as his ground of appeal that the jury has returned a repugnant or inconsistent verdict, the burden is plainly on him. He must satisfy the court that the two verdicts cannot stand together, meaning thereby that no reasonable jury who had applied their mind properly to the facts in the case could have arrived at the conclusion, and once one assumes that they were an unreasonable jury, or that they could not have reasonably come to the conclusion, then the convictions cannot stand. But the burden is on the defence to establish that". 62. The mere fact that different counts all depend on the evidence of the same witness, whose evidence is uncorroborated, and whose credibility is in issue, does not render different verdicts on different counts inconsistent for this purpose; see *R v G*

[1998] Crim LR 483 where the Court observed that logical inconsistency is an essential pre-requisite but that the credibility and reliability of any witness is not "a seamless robe." A jury may take a different view of the reliability of evidence on different counts. 63. We doubt whether there was in this case any inconsistency. We are in even greater doubt as to whether there was any inconsistency that was logically indefensible. 64. In relation to count 5 Victim 1 had given evidence that between 5 April 1980 and 3 September 1981 she had been in Haut de la Garenne children's home and had chosen to remain there, even when her siblings returned to the first family home. Victim 1 said that when she was at Haut de La Garenne, indecent assaults by the Applicant only took place when she stayed overnight with her family. Victim 1 said that she could not remember staying overnight at the first family home during this time although she could remember staying at the second family home. The family only moved to this home in December 1981. 65. It followed that Victim 1 gave no evidence of any indecent assault that could have taken place in the period identified in count 5 when she was living in Haut de La Garenne and her siblings were either in Haut de La Garenne or in the first family home. Thus, although she had also said that there were assaults when she was "12, 13, 14," from her description of the circumstances of the assaults there was doubt as to whether they could have happened in the period charged in count 5. Victim 1 agreed that in respect of this period; "on dates and times it is very difficult for me to work out age, and year and where I was on that side of it. I thought they had moved to the second family home earlier ...". 66. Victim 2's evidence in relation to her father began with an account of an indecent assault in the bath when she was 9 years old and living at the first family home. She also gave evidence of an incident on a chair which she said had also happened when she was living at the first family home. Victim 2's evidence was that she was "9 or 10 I am not sure" when the chair incident happened. Although count 9 covered a period of time when Victim 2 was 10 it was restricted to a period after the family had moved out of the first family home into the second family home. Victim 2 did not describe any other assaults as certainly having taken place when she was 10. She said that she had been indecently assaulted at the second family home but she said that had started when she was "about 10. 10/11". 67. The verdicts of not guilty on Counts 5 and 9 appears to us to be entirely consistent with the other guilty verdicts and to reflect the evidence and the doubts on the part of the complainants themselves in relation to the charges in Counts 5 and 9. Far from suggesting any inconsistency, the verdicts of not guilty demonstrate that the jury analysed the evidence with very great care, only convicting when they were sure that an offence was committed within the dates charged. 68. On the facts we consider that it was quite understandable on the evidence that the jury came to differing conclusions on the different counts.

Conclusion

69. In the circumstances other than in relation to the question of abuse of process we consider that the application for leave to appeal against the convictions in this case is unarguable and must be refused. Given the age of the case, the point in relation to abuse of process was

arguable and we grant leave to appeal on this ground alone. However for the reasons we have already given, this court is wholly unpersuaded that any stay on the grounds of any abuse of process should have been granted and the appeal is dismissed, Authorities Warren and Others v AG

[2008] JCA 135 . AG v Aubin and Others

[2009] JLR 340 . R v Beckford [1996] Cr App R 94 CA. R v Smolinski

[2004] 2 Cr App R 40 . X v AG

[1998] JLR 221 . DPP v. P [1991] 2 AC 447. R v H (Evidence: Corroboration)

[1995] 2 AC 596. R v Christou [1996] 2 All ER 927. Indictments (Jersey) Rules 1972. AG v Channing

[2004] JLR 265 . Benyoucef v AG

[2008] JCA 206. Court of Appeal (Jersey) Law 1961. Styles v Attorney General

[2006] JLR 210 . Aladesuru v The Queen [1956] 1 AC 49. R v Durante (1972) 56 Cr App R 708. R v G
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