

ANONYMISED FOR PUBLICATION

PERFECTED EX-TEMPORE JUDGMENT

**IN THE ROYAL COURT OF GUERNSEY
(CRIMINAL DIVISION)**

Between:

THE LAW OFFICERS OF THE CROWN

Prosecution

-v-

O

Defendant

Perfected Ex-Tempore judgment 3rd October 2024

Application for remote viewing of criminal proceedings

Before: Catherine Maureen Fooks, Judge of the Royal Court sitting alone

Counsel for the Prosecution: Advocate P F Cobb

Counsel for the Defendant: Advocate C Green

1. This judgment is concerned with an Application by the Prosecution for permission for English Counsel, who will be assisting the Prosecution to watch part of the trial remotely from England so that she does not need to be here in person throughout the trial. The Application started as a request from Crown Advocate Dunford to the Court for confirmation that there was not going to be an issue with having English Counsel assisting, generally, and then, specifically, observing the trial remotely.
2. As a matter of principle, it is entirely a matter for Counsel on either side to have the assistance of English Counsel in the court room, well understood that there are no rights of audience. The remote attendance is a different matter and the Court requires an application on notice to the Defence for counsel in question to attend remotely. In response to the initial request, I raised that I have a personal connection with the specific English Counsel to whom the Application relates. There was no objection to my sitting and I do not feel that I should not sit. The decision is largely one of principle.
3. This is the first such application in the Royal Court (Criminal Division) but not in the Royal Court generally, so the procedure and applicable principles are known and are as follows:

The process for applying for English Counsel to watch a hearing in Guernsey is that the Applicant writes formally applying for permission having ascertained the views of the other parties which should be relayed to the Court. Being granted permission to watch a hearing is a courtesy extended by the Court, at its discretion, on a case by case basis, to those who do not live in Guernsey, but wish to observe a case with which they have a connection. That expression of it being a “*courtesy*” is taken from the parallel guidance in England in these matters.

Although a criminal trial is a public hearing, it is for the Court to be satisfied that it is necessary, appropriate and in the interests of justice for any hearing to be watched from a remote location. If the remote location is outside Guernsey, the Court has to bear in mind the limits of its jurisdiction to deal with any issues arising, (in terms of contempt) because, once a person is watching from another jurisdiction, that person is part of the Court proceedings and issues could arise but that person is not within the physical jurisdiction of the Court. The Court also has to consider whether the technology will be satisfactory, so as not to create an unnecessary administrative workload on the clerks, again something to be addressed in the request. Further, when such applications are granted, there is typically a reminder that the person is effectively in the courtroom so must behave accordingly so there must be no recording (this would be a contempt of Court) and it must also be understood that, if the remote link to the Court fails, the hearing will not be stopped while any issues are resolved.

In this case, the trial is a sensitive one with vulnerable witnesses giving evidence by way of special measures and there are reporting restrictions, so I asked that those issues and whether the witnesses should be told about the observing Counsel be addressed in the request. Crown Advocate Dunford filed the Application in which he dealt with the various points arising.

4. The Application is unopposed save that Advocate Green raised the issue of the notification to witnesses of the fact that somebody was watching or listening in. His submission was that they should be told; Crown Advocate Dunford questioned the need.
5. In terms of the specifics of this Application, of course, the person who is listening is English Counsel not a lay-person (if I might use that expression), and I am sure that English Counsel, generally, and she more specifically, would be completely aware of the obligations not to record, to behave appropriately and would be cognisant and mindful of the reporting restrictions and the need not to share information which might cause a breach of those reporting restrictions. The position where the person listening in is Counsel is different from the position where the person listening is a “lay-person”, but I do not need to deal with that today.
6. The plan is that Counsel would access the Court proceedings at times through Teams and the Court’s administration would be limited to setting up that Teams link. I do invite consideration as to whether we are going to have any other video links to make sure we are not going to have a clash of technologies. Obviously, the giving of the evidence and the participation, for example, of any of the experts using live or remote links is the priority.
7. As has been said, the proceedings would not be interrupted were the Teams link for Counsel to fail. There are no rights of audience. I am sure that Counsel in this case and generally would be aware of the sensitivities of the matter. Crown Advocate Dunford, in his submissions, was not convinced that there was a need to be overly concerned about the sensitivity of the case because it is a public court. With the greatest respect to him, I disagree with that. Although it is a public court, and we are sitting in a public court now, and people are free to come and go (warned about the reporting restrictions), that is a very different from, effectively, this Court broadcasting its proceedings over Teams into another jurisdiction. I am clear that this is a courtesy which has been requested and is going to be granted but it is for that Counsel only and appropriate steps must be taken that the proceedings cannot be overheard by anyone because the courtesy is extended to her and her alone. It is not the same as having any number of people coming in or out of this Court or any number of counsel or other people assisting Prosecution and Defence Counsel in the courtroom; it is different.
8. In terms of the final point, which is, should the witnesses be told that someone is watching or listening in, my decision is that they should. It seems to me that, if the witnesses are not told, there is a risk that the link will fail and it will get mentioned at that point. I do not want a witness’ evidence to be derailed because that witness, at that point, becomes aware that there is somebody else listening. It is going to have to be handled sensitively. It is something which I

think should be dealt with through the Witness Support Service and any input that they have is always very gratefully received. If a particular witness is not happy with the arrangement then it may be that observing remotely is not the way for Counsel to access the proceedings on that date. It is a courtesy. The priority here is the trial.

9. The Application is granted subject to what I have said above. I will publish this judgment, suitably anonymised, in due course.

Catherine Maureen Fooks
Judge of the Royal Court

28th October, 2024

Postscript

Subsequent to the issue of this judgment to the parties, I received an application from the Law Officers for persons to observe, from a location outside Guernsey, the sentencing of the Defendant in the case in which they were due to be witnesses, had there been a trial. There was no objection from Defence counsel. Applying the principles above, I considered it appropriate and in the interests of justice for those witnesses to watch the sentencing hearing and I granted the application but, because some of the witnesses were members of the public and not professionals' ("lay persons", as I have described above), I imposed conditions to ensure the integrity of the remote viewing and specifically, to address certain issues which had arisen in the course of that case.