

ROYAL COURT
(Samedi Division)

39.

28th February, 1997

Before: F.C.Hamon Esq. Deputy Bailiff
(sitting alone)

The Attorney General

-v-

Robert John Patrick

On 22nd November, 1996, Paul Anthony Breese (the co-accused) and the accused were charged with:

1 count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug (diamorphine/heroin) contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law 1972

The co-accused pleaded guilty and was remanded in custody to receive sentence. the accused pleaded not guilty and was remanded in custody to be tried by the Inferior Number of the Royal Court *en Police Correctionnelle*.

N.M.C. Santos Costa Esq., Crown Advocate
Advocate J. Martin for Patrick

5 THE DEPUTY BAILIFF: The co-accused of Patrick, Paul Anthony Breese, has pleaded guilty in this case. He is an admitted heroin addict. The Crown has called him to give evidence on behalf of the prosecution. There is no dispute that an accused who has pleaded guilty is both a competent and compellable witness for the prosecution. When Breese went into the witness box and gave his evidence, he did not appear to the Court to be under any compulsion. He readily answered all the questions put to him.

Unfortunately, the answers that he gave did not appeal to the Crown. Mr. Santos Costa now seeks leave to cross-examine his own witness. He wishes him to be treated as hostile. He wishes to put to him statements that he made in police custody. I am minded to grant that request but we have reached a difficulty. It is clear that if a statement is inadmissible, then a witness must not be cross-examined on it. If the statement is tainted, then in my view no more should be heard of it. I cannot see that an inadmissible statement can be made admissible by putting it to the witness in cross-examination.

The Crown may well have assumed that once Breese had taken an oath he would not depart from what they considered to be the truth and what I may assume he considered true when he gave his statements to the police. If the statements are let in, they go to credit and not to issue. But I have to decide whether the statements upon which Mr. Santos Costa seeks to rely are admissible at all. Miss Martin objects to them, saying, first, that they were only made because of actual inducement by the police and secondly, that they were made at a time of acute heroin withdrawal, when Breese was in such a state that a breach of Code C of the Code had occurred.

We need to stand adjourned for expert and perhaps other evidence to be called. Miss Martin is in some difficulty because she is on legal aid and it is only now that this situation has arisen that she can apply for her medical expert to come to trial from England with a grant from the legal aid fund. When a date convenient to Counsel and the Court has been agreed this trial will continue.

For the convenience of Counsel I have ordered that a transcript of the evidence of Breese be prepared.

No Authorities