4 pages.

ROYAL COURT

(Samedi Division)

183.

14th October, 1992

Before: The Bailiff, and

Jurats Blampied and Le Ruez

The Attorney General

- v -

Anthony Hunter Milne

Trial "en Police Correctionnelle" following not guilty plea to:

2 counts of Importation of a controlled drug, contrary to Article 23 of the Customs and Excise (General Provisions) (Jersey) Law, 1972. (Counts 1 and 2 of the Indictment).

2 counts of supplying a controlled drug, contrary to Article 5 of the Misuse of Drugs (Jersey) Law, 1978. (Counts 3 and 4).

Preliminary application by defence for trial to be heard *in camera*.

C.E. Whelan, Esq., Crown Advocate.

Advocate Miss D. Sowden for the accused.

Judgment on the preliminary point.

THE BAILIFF: The accused is charged with the importation of LSD and supplying LSD; and the importation of Amphetamine Sulphate and supplying Amphetamine Sulphate.

An application has been made by his counsel that the trial should be heard *in camera*. The principal reason is that part of the evidence for the prosecution is a confession of the accused that he did so import and supply the drugs in question. But he says - and we will have to have a *voir dire* on this - that two police officers told him (according to his counsel) that if he did not plead guilty to the importation and the supplying, the police would say in open Court that he had co-operated with them in catching or attempting to catch drug dealers.

His counsel has stressed that without her having complete freedom to cross-examine the police on this particular point, and without the accused being able to tell the Jurats his side of the story as to whether the confession was voluntary or not, justice could not be done.

The question is really whether an *in camera* hearing is necessary so that the paramount consideration that justice be done should prevail over the general rule; and the general rule is clear, - there is no doubt about it; both Mr. Whelan for the Crown and Miss Sowden are agreed on this: in criminal cases all evidence communicated to the Court should be communicated publicly. (R. -v- Reigate Justices, ex parte Argus Newspapers Ltd and Anor [1983] Crim.L.R. 564).

It seems to the Court that the proper way to proceed is to open the case in public, but when we get to the evidence of the police about the confession, we should have a *voir dire in camera* which would entitle the accused to put his story through counsel

to the police and for him to give evidence on the question of voluntariness.

If, at the end of the *voir dire*, the Court rules that the confession is inadmissible, that really disposes of the matter. If, on the other hand, the Court rules that it is admissible, it will then have to be reheard and we think it should be reheard as much as possible in open Court, but when the time comes to cross-examine the police officers - and we should add that the questioning by Mr. Whelan of the police should be very circumspect at that point, when he is laying the ground for the confession; but when Miss Sowden, as I have said, comes to cross-examine, we think that that cross-examination should be *in camera*. And likewise although when the accused gives his evidence he should start in open Court, if we get to the question of his confession having been admitted or allowed to be put in by the Court, then at that point, again he should be allowed to give that part of the evidence, but only that part of the evidence, *in camera*.

We think and we hope that these arrangements will both uphold the general rule but at the same time ensure, as far as we can, that justice will be done.

Authorities

R. -v- Reigate Justices, ex parte Argus Newspapers Ltd and Anor [1983] Crim.L.R. 564.

R. -v- Ealing Justices, ex parte Weafer [1982] Crim.L.R. 182.

Scott and Anor -v- Scott [1913] A.C. 417.

Archbold (1992 Ed'n): para. 4-4: p.409.