

ROYAL COURT
(Samedi Division)

106.

8th June, 1995

Before: The Deputy Bailiff, and
Jurats Blampied and Vibert.

The Attorney General

- v -

Edward Robert Lundy

Trial before the Inferior Number, following not guilty pleas, entered on 24th February, 1995, to:

2 counts of possession of a controlled drug with intent to supply it to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978:

Count 1 : Lysergide.
Count 2 : Amphetamine Sulphate; and

2 counts of possession of a controlled drug, contrary to Article 6(1) of the said Law:

Count 3 : Lysergide.
Count 4 : Amphetamine Sulphate.

Advocate C.J. Scholefield for the accused.
A.J.N. Dessain, Esq., Crown Advocate.

JUDGMENT
(announcing Court's finding).

THE DEPUTY BAILIFF: It was necessary for me to analyse the facts of this case when I retired with the learned Jurats. This is how I have analysed them.

5 For a period of approximately four months, from October, 1993, to early 1994, the defendant in this trial, Edward Robert Lundy, was a tenant at the "Ye Olde Court" Guest House in Charing Cross. He moved elsewhere but he nevertheless made regular visits to the premises in order to see his girlfriend, so he was well-

known to the proprietors of the guest house, Mr. & Mrs. Evans, both of whom gave evidence before us.

5 On the afternoon of Sunday 23rd October, 1994, Mrs. Evans was in her kitchen which overlooks the courtyard at the back of the house. The kitchen is on the first floor of the property; there is nothing beneath it and it is situated immediately above an archway which leads to, and is the only access, to the courtyard. We heard that there is another entrance onto Castle Street but by 10 this time that door was securely locked. Situate in the bottom right-hand corner of the court yard are five outdoor toilets which are in a derelict condition and which have not been used for a number of years. On the afternoon of 23rd October Mrs. Evans saw 15 Lundy walk from the archway into the courtyard. She observed him stop and look around him before disappearing into the derelict toilet block. He remained out of her view for a couple of minutes before re-appearing and then walking out through the archway. His behaviour was such that Mrs. Evans mentioned it to Mr. Evans. The following day, which was a Monday, she again saw 20 Lundy walk into the toilet block, remaining there for less than a minute before re-emerging and disappearing towards Charing Cross.

Lundy told us that what he was doing in the toilet on the first occasion was taking seven diamond tipped blades for angle 25 grinders, five four inches long and two six inches long, which were stolen and which he was hiding in one of the toilets. On the second occasion Lundy told us that he was collecting the blades as he was going to sell them after work.

30 Once again Mrs. Evans spoke to her husband and as a result of that conversation Mr. Evans went to the toilet block the following day to take a look. In the second toilet cubicle from the right he saw two brown paper bags on the roof joist just above the door. He took these down and looked inside. One of the bags contained 35 two sheets divided up into perforated squares, each square bearing a circular design, the other bag contained a number of paper parcels containing a white powder. Mr. Evans formed the opinion that the bags contained drugs and therefore notified the police of his discovery. Officers attended at the premises where they 40 examined the contents of the bags and came to the conclusion that the perforated squares were the class A drug, lysergide, (LSD) commonly called "acid". The white powder was also an illegal drug.

45 The Officers replaced the paper bags *in situ* and assumed positions in the guest house from which they could observe the courtyard area and the entrance of the recess leading to the toilet block. They established that the only access to the block was through the archway leading to Charing Cross. Officers 50 continued to observe the courtyard until late that night (about 10.45 p.m.) when they retrieved both bags and took them to Police Headquarters. At Police Headquarters the contents of the bags

were examined. The first bag contained a total of 380 perforated squares which were believed to be LSD. They bore a design which had not been seen before in the Island. The second bag contained a total of eighteen wraps which contained a white powder. It was that powder that was field-tested and it gave a positive reaction to the presence of amphetamine.

The following morning the drugs were replaced in their respective bags and put back on the joist in the toilet block. D.C. Thomas said they were replaced as he found them about six inches apart. Police officers renewed their surveillance of the court yard and at 10.50 a.m. they saw Brendan Joseph Feagan, a known acquaintance of the accused, enter the courtyard. To them he appeared to be nervous, continually looking around, before walking quickly back through the archway. At a few minutes before 3.00 p.m. that afternoon Lundy himself entered the courtyard. He too appeared nervous, and walked over to a Honda motor cycle which was parked in the courtyard; he waited near to the bike for a while before walking purposefully towards the recess leading towards the toilet. He entered the recess, remained out of sight for a few seconds before reappearing and walking towards the archway. It was at this point that the police officers, who were stationed nearby, were told to detain Lundy. Detective Constables de la Haye and Thomas entered the courtyard and shouted at the accused "Police, stay where you are." They were dressed in plain clothes and Lundy says he did not hear them say these words. He stopped and looked shocked but as the officers moved towards him in order to detain him he ran at them, running at D.C. de la Haye before barging past. D.C. de la Haye struck him a glancing blow on the shoulder with his truncheon. He ran through the archway and then knocked down D.C. Nicol who was at the Charing Cross end of the archway, causing the officer to fall backwards into the road. The accused apparently stumbled, regained his footing and ran off in the direction of Broad Street, with police officers in hot pursuit.

Detective Constable Thomas was within six feet of Lundy when he recognised Feagan who was standing outside the Charing Cross Wine Store. Feagan started to run alongside the accused and the police officer heard him say "Have you got the acid? Give me the acid." Now, we will deal with that statement in a moment. (Acid is the street term for the drug Lysergide, LSD). Apparently there was no reply.

Lundy carried on running, turned into Dumaresq Street and headed towards Union Street, he ran past a building site, situated opposite B.G. Romeril into a private car park, climbed over a fence surrounding the building site and ran through the site in the direction of Pitt Street. As he passed the rear entrance to De Gruchy, a female member of the public stepped out into his path and although she was knocked to the ground it enabled D.C. de la Haye to rugby tackle him and he was subsequently hand-cuffed. He

was searched; no drugs were found on him and the police officers retraced the route which the chase had followed.

5 In the meantime other officers positioned near the guest-house searched the toilet block and found the bag containing the LSD was missing, although the bag containing the Amphetamines was still in place in the roof of the toilet. One of the officers noticed a crumpled brown paper bag lying in the middle of the road at the point where Lundy had collided with D.C. Nicol. The officer took possession of the bag which was clearly the bag which Lundy had removed from the toilet. There was apparently a five minute gap before the bag was found.

15 Lundy was conveyed to Police Headquarters and was detained in the cells. In the meantime the drugs taken from the Defendant were sent for analysis. The States Analyst reports that the sheets of perforated paper consisted of 380 squares each containing an average of 88 micrograms of LSD. The powder found in the wraps in the other envelope weighed 460 milligrams containing an average of 2% by weight of Amphetamine Sulphate. We only mention that as a technical point because we were told that LSD tabs sell on the street at £5 each; 380 tabs would therefore have been worth about £1,900 and that is a commercial quantity. The Amphetamine Sulphate wraps sell at £15 a wrap, so the 18 wraps found left in the toilet in the bag would have a street value of £270 and that too represents a commercial quantity.

30 So it is that Lundy is charged before us today on possession of LSD, possession of Amphetamine Sulphate and then possession of those two drugs within intent to supply them. There are four counts.

35 I have directed the learned Jurats carefully on the law and pointed out that the Misuse of Drugs Jersey Law (1978) Article 6(1) reads:

40 *"(1) Subject to the provision of any Order for the time being under enforce under Article 10 of this law it is an offence for a person to have a controlled drug in his possession.*

45 *(2) It is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another person, in contravention of sub paragraph B of Article 5 of this law".*

50 I also apprised the learned Jurats of the defences which are available to Lundy in these proceedings under Article 22. Article 22 applies to offences, particularly under Article 6(1) of the law and not under Article 6(2). Article 22(2), (3) and (4) reads:

5 "(2) Subject to the provisions of paragraph 3 of this Article, in any proceedings for an offence to which this Article applies, it shall be a defence for the accused to prove that he neither knew of, nor suspected, nor had reason to suspect the existence of some fact alleged by the prosecution, which it is necessary for the prosecution to prove, if he is to be convicted of the offence charged.

10 (3) Where in any proceedings for an offence to which this Article applies, it is necessary if the accused is to be convicted of the offence charged, for the prosecution to prove that some substance or product involved in the alleged offence, was the controlled drug which the prosecution alleges it to have been, and it is proved that the substance or produce in question was that controlled drug, the accused

15 (b) shall be acquitted thereof:-

20 (i) If he proves that he neither believed nor suspected nor had reason to suspect that the substance or product in question was a controlled drug or:

25 (ii) If he proves that he believed the substance or product in question to be a controlled drug or a controlled drug of a description such that, if it had in fact been that controlled drug or a controlled drug of that description, he would not, at the material time, have been committing any offence to which this Article applies.

30 (4) Nothing in this Article shall prejudice any other defence which is open to a person charged with an offence to which this Article applies to raise."

35 We have carefully examined in Court - and there was very little dispute in law between Counsel during the course of their addresses - the commentary which appears in Archbold (1994 Ed'n) at paragraphs 26-57, 26-58, and 26-59. I have explained to the learned Jurats the helpfulness of the propositions that emerge from the speeches in the case of Warner -v- Metropolitan Police Commissioner (1969) 2 AC 256. They are set out at paragraph 26-40 57 in Archbold (1994 Ed'n) in this way:

45 "1. A man does not have possession of something which has been put into his pocket or house without his knowledge.

50 2. A mere mistake as to the quality of a thing under the defendant's control is not enough to prevent him being in

possession - for example, in possession of heroin, believing it to be cannabis or aspirin.

5 3. If the defendant believed that the thing was of a wholly different nature to that which in fact it was, then to use the words of Lord Pearce in Warner, the result would be otherwise.

10 4. In the case of a package or box, the defendant's possession of it led to the strong inference that he was in possession of the contents. However, if the contents were quite different in kind from what he believed, he was not in possession of them."

15 That is the passage upon which we have concentrated our minds during the course of this trial. The commentary goes on:-

20 "To rebut the inference in proposition 4, the defendant must prove that, (or raise a real doubt, as to whether) either (a) he was a servant or bailee who no right to open the package and had no reason to suspect that its contents were illicit or were drugs, or (b) he had no knowledge of, or had made a genuine mistake as to the nature of the contents, even though he was the owner and he had received
25 the package innocently and had had no opportunity to acquaint himself with its actual contents."

30 I need not quote from the other passages that we read, but I have carefully taken the learned Jurats through paragraphs 26-57, 26-59 through to 26-60 of the commentary in Archbold.

35 One point, however, that Mr. Scholefield asked me to draw to the attention of the learned Jurats, and I have done it, is a passage that occurs in paragraph 26-62 where in the case of Warner it says this:-

40 "May L.J. continued. 'Call it a policy decision if you will, call it a matter for the Jury, both Lord Pearce and Lord Wilberforce made clear that the question in the end is whether on the facts the defendant is proved to have, or ought to have imputed to him, the intention to possession or the knowledge that he does possess, what, is in fact a prohibited substance'."

45 Now, because I have analysed the facts as they were presented to us, I thought it was right that I should deal with Lundy's defence, which was unusual.

50 There were no bones made about it; he is a professional criminal, having learned his trade in Northern Ireland with Feagan. He went to school with Feagan and he practised the art of selling stolen property at the numerous horse fairs which he

attended on both sides of the Irish border. He described himself, at his present age of twenty, as highly successful. He only came to Jersey because apparently he had been threatened by the IRA in that he was apparently 'queering' one of their pitches by his success and they ordered him out of Ireland for at least two years on pain of being shot or at least knee-capped.

I had to tell the Jurats that on the facts this had not prevented Lundy from going back to Ireland to attend a trial outside Newry, where he was accused of being driven in a stolen car. The trial, he told us, had dragged on, and he was often there for four days at a time and this had led to his losing his first employment in Jersey. He is, by trade, a joiner. The trial in Ireland is still not concluded.

It had also, apparently, not deterred his friend Feagan - who was also under the edict of the IRA - from going back to Ireland, leaving Lundy to deal with his present serious situation as best he can.

In Jersey, as we were told, Feagan and Lundy continued their successful partnership dealing mainly in stolen property, that is, buying stolen goods and selling them on again. Feagan, we were told, is apparently very secretive, but was presumably more successful than Lundy because he had no permanent work in Jersey.

One must recall that Lundy, although he gave evidence himself, called no other evidence. If he had, we might have learned more about the use of the motor cycle that he told us he had. It was this motor cycle that was parked in the courtyard at Charing Cross. We only say that because Mr. Evans told us that no one but Eddie Williamson, to his knowledge, used the motor cycle and he had no idea that Lundy had an interest in it.

On the Sunday previously, it appears that Lundy had fallen off the motor cycle whilst riding with his friend Mr. Williamson, and this had led to his being signed off work and he had had seventeen stitches inserted into his right hand at the General Hospital. He also had two fingers stalled together. That was indeed unfortunate, as he had, he told us, been offered work, apparently to start on the Monday. He could not do that work and he made other arrangements.

He used to store the things that he had stolen in one of the toilets, the second from the left. On the Monday, he had stored seven diamond tipped angle cutter blades for angle grinders. They were valuable. He moved them from there on Monday. On Wednesday he was due to decorate room no.2 in the guest house where his girl friend lived. He had apparently spoken to the owner, Mrs. Evans, about rollers and paint. It is again unfortunate that Mrs. Evans was not asked about these matters while she was in the witness box, because they were, of course,

matters known only to the defendant. His day of useful work was planned. He was not only going to decorate his girl friend's room but he was also going to order and cut some sheets of ply wood for a friend who was a painter and decorator.

5

He had had breakfast with Feagan on the Wednesday and there was time to kill before lunch. He had, of course, been signed off work. He left Cannon Street with Feagan, who told him that he was going to make a telephone call and Lundy asked his girl friend to open the door of her flat as he did not have a key and he needed to collect some tools. It was then that he had a message from Feagan. Feagan had asked him to collect a bag from the roof of the second toilet on the right. He told him where to locate the bag. Lundy told us that he went to the toilet, put his damaged hand up into the roof without looking and chose one of the bags, presumably not knowing that the other was there. That bag of course, was the one containing the LSD. The bag with the amphetamines was not taken. He put the bag into his pocket and he knew there was something in it, but he said it could have been gold chains or counterfeit money in the bag. And it is that point, of course, that I have had to deal with; the question of the word "illicit" in Lord Pearce's judgment, because those were illicit items.

10

15

20

25

He was walking back to the courtyard when two men came running out, one with a truncheon. They were, of course, D.C. De la Haye and D.C. Thomas. He did not recognise them but he would not, he told us, have stopped anyway if he had. He said he did not hear them call out the words "*Lundy, Police, stay where you are*". Apparently, two weeks previously he had been beaten up and robbed by two men at night and the police had sent him to the hospital and were to investigate the matter. He was troubled by that incident.

30

35

He saw a man at the end of the tunnel. Again, he did not recognise the police officer D.C. Nicol, but having knocked him over he was running up the road and Feagan merely said to him, not "*have you got the acid, give me the acid*" but "*what's wrong*"? He heard him say nothing else and he denies that the words alleged to have been said were spoken at all. He has never been involved with drugs, although he stated that his close friend Feagan clearly must have been a serious drugs dealer. The LSD was the first of their stamp in Jersey. Presumably Feagan had not taken him into his confidence.

40

45

Now, I think it also right to say that on the questions that the learned Jurats had to decide, I advised them in this way, and I will set out what I told them now, so that we have a record of it.

50

Having told them that the burden of proof is all upon the prosecution, I said this:

Because Lundy gave evidence, four legal results had to follow.

5 The first is that the learned Jurats were bound to give to the evidence given by the accused the same consideration as they gave to any of the other evidence they heard during the hearing.

10 The second result was that if, in the course of giving his evidence, the accused gave an explanation of facts which might otherwise count against him, then quite clearly, if the learned Jurats accepted that explanation, the prosecution had failed in its obligation to satisfy them beyond reasonable doubt and they were bound to return a verdict of not guilty.

15 The third result was this. If, although the learned Jurats did not accept the explanation of the accused, they might nevertheless, think that the explanation might be true, then they were still bound to accept it and return a verdict of not guilty.
20 The reason for that, of course, was that it might, of necessity, be that, if they thought an explanation could be true, although they were not altogether prepared to accept it, they could not say to themselves that they were satisfied beyond reasonable doubt that the prosecution had proved its case.

25 The fourth result is that even if they rejected the accused's explanations, they must still be satisfied that he has committed the offences before they could convict.

30 Now, all those facts the learned Jurats have carefully considered and also the technical matters that have been raised in Warner as I addressed it to them.

35 The learned Jurats have no hesitation in finding Lundy guilty on all the counts that are brought before him.

Authorities

Archbold (1994 Ed'n): paras. 26-41 - 26-119: pp.2/1003-2/1038.

Misuse of Drugs (Jersey) Law, 1978.