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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand
London, WC2

Thursday, 25th May 2006

B E F O R E:

LORD JUSTICE HOOPER

MR JUSTICE KEITH

MR JUSTICE LLOYD JONES

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R E G I N A

-v-

CASEY HARDISON

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Computer Aided Transcript of the Stenograph Notes of
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The APPELLANT appeared in person on the application for leave to appeal against conviction

MR R FORTSON appeared on behalf of the APPELLANT on the appeal against sentence

MR R BARTON appeared on behalf of the CROWN

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J U D G M E N T

1. MR JUSTICE KEITH: On 18th March 2005 at Lewes Crown Court, after a trial lasting eight weeks before Judge Niblett and a jury, the appellant was convicted on three counts of producing controlled drugs (counts 1, 3 and 4), one count of possessing controlled drugs with intent to supply them to another (count 6), one count of possessing controlled drugs (count 7) and one count of being concerned in the fraudulent evasion of a prohibition on the export of goods (count 8). The goods to which count 8 related were also controlled drugs.

2. The controlled drugs to which all these counts related were all specified as Class A drugs in Schedule 2 to the Misuse of Drugs Act 1971. The drugs which he was convicted of producing in counts 1, 3 and 4 were known, in their shortened version, as 2C-B, 2C-I and LSD. The drugs which he was convicted of possessing with intent to supply in count 6 were approximately 145,000 paper tabs of LSD. The drugs which he was convicted of possessing in count 7 were 0.369 grams of 5-Methoxy-DMT. And the drugs which he was convicted of exporting in count 8 were tablets of MDMA, commonly known as ecstasy. He was acquitted on two other counts of producing Class A drugs, namely DMT (count 2) and mescaline (count 5). He was refused leave to appeal against his convictions, and he now renews that application for leave to appeal.

3. The appellant returned to the Crown Court for sentencing on 22nd April 2005. He was sentenced to 20 years' imprisonment on counts 1, 3 and 4, to 15 years' imprisonment on count 6, to 1 year's imprisonment on count 7, and to 7 years' imprisonment on count 8. He was ordered to serve all these terms concurrently with each other, making 20 years' imprisonment in all. He appeals against his sentences with the leave of the single judge.

4. This was, in many respects, an unusual case. Despite the grave charges which the appellant faced, he chose to represent himself at his trial, though counsel was instructed on his behalf when it came to sentence. The laboratory which the appellant had established in his home was described by a forensic chemist from the Forensic Science Service as the most complex he had ever encountered. The level of production was said to be so high that the forensic chemist had not been able to analyse all the items found, since that would have taken years to do.

5. As with many major crimes, it was a matter of chance which brought the appellant to the attention of the police. Two passages were sent by FedEx to the United States. They arrived at the FedEx hub in Memphis, Tennessee. There, they were selected for random inspection by the law enforcement authorities. They were found to contain tablets of ecstasy. One of the packages was addressed to Tom Cartenson at an address in Idaho, and the authorities arranged for it to be delivered there. When it arrived, Cartenson was arrested, and the package was traced back to the appellant by documents found at that address. In addition, a thumbprint which was subsequently identified to be the appellant's was found on paper within the package.

6. Having traced the package containing the tablets of ecstasy back to the appellant, the appellant's home near Brighton was kept under surveillance. Eventually, he was arrested at a cafe in Hove and taken to Brighton Police Station. He was interviewed a number of times but he declined to answer the questions he was asked. When the

police searched his home, they found a fully functioning laboratory of some sophistication with chemicals stored in the garage. The forensic scientist from the Forensic Science Service, Dr Ian Griffin, concluded that the appellant had produced six Class A drugs at the premises, ie, drugs of the kinds to which counts 1 to 5 related, as well as the Class A drug known as 2C-H. They also found the drugs to which counts 6 and 7 related. In addition, the police found £9,450 in cash under a mattress which the appellant was to say was the last payment for his latest run of 2C-H, though it is unclear to us whether he meant by that that this was to enable to him to purchase chemicals for the next production run of 2C-H or whether this was payment for the last consignment of 2C-H which he had supplied.

7. That was not the only evidence to suggest that this was a commercial enterprise on a large scale. Uncontested evidence shows that the appellant had purchased chemicals at a cost of £38,386.70 from one company alone. Indeed, the Crown's evidence was that the appellant's expenditure -- by which we assume was meant his expenditure in connection with drug production -- was assessed at £70,000 in the two years or so prior to his arrest. We acknowledge that that evidence may have included other expenditure as well, and we have therefore put that evidence to one side.

8. Although the prosecution was put to proof on very many matters, the appellant did not dispute much of the evidence. Indeed, he was to say that though he had done some of the things alleged against him, he had no sense of guilt whatsoever. That was a reference to what he claimed was his belief in the use of plants with hallucinogenic qualities, which had been used by folk medicine healers in primitive societies. He claimed to regard the bond between man and such plants as a sacred one, although the prosecution was to say that his assertions about the benefits which he claims the use of such drugs generate was just an excuse for his commercial production of hard drugs on a large scale. Indeed, the evidence suggested that the appellant's production of the drugs was the manufacture of them by a chemical synthesis -- in other words, the artificial production of components from their constituents rather than by the extraction of natural products from plants.

9. The appellant's portmanteau defence to these charges was that he was a victim of society's war on drugs. We all have the inalienable right to do with our own bodies as we wish, and that includes the right to alter our own consciousness by taking drugs whose hallucinogenic qualities free the mind. The appellant claims that he was doing no more than enabling members of the human race to expand their horizons by exploring the world through hallucinogenic drugs. The criminalisation of what he did was said to be an infringement of his and everyone else's human right to have autonomy over their own person. The judge was unimpressed by this argument. He told the jury that it was not a defence in law.

10. In our judgment, the judge was right to reach that conclusion for the reasons which he gave. Although the appellant has filed reams of material challenging that ruling on this application for leave to appeal, we do not regard it as necessary to address his argument in any detail. If there is any Convention right which is properly engaged by this argument, it is that which guarantees the right to respect for one's private life. But as this Court was to say in **Taylor (Paul)** [2002] 1 Cr.App.R. 519, in which the appellant

argued that the consumption of cannabis was part of his religion and was used as an act of worship, the prohibitions contained in the Misuse of Drugs Act 1971 did not amount to an unwarranted interference with the appellant's rights to a private life or to his freedom to practice his religion. They were part of this country's policy to combat the dangers of narcotic drugs to public health which included international treaty obligations.

11. That also disposes of another ground of appeal, which was that the judge erred in not permitting the argument relating to the infringement of the appellant's human rights to be considered at a preparatory hearing. Even if the judge had held a preparatory hearing, the judge would still have ruled, correctly, that his human rights arguments did not amount to a defence in law.

12. Leaving aside this portmanteau defence, it is not easy to discern what the appellant's defence to the charge in count 1 of producing 2C-B was. He admitted producing it and to receiving £25,000 "at most" for it. His defence to the charge in count 3 of producing DMT was that although he had tried to produce it he had not been successful in doing so, and in any event he had not known that its production was illegal in the United Kingdom. The judge told the jury that the latter was not a defence in law. His defence to the charge in count 4 of producing LSD was also that although he had tried to produce it in this country, he had not been successful in doing so, though he admitted to having successfully produced it outside the UK. His defence to the charge in count 6 of possessing the 145,000 or so tabs of LSD with intent to supply was that he had not known that they were there, and that they were nothing to do with him. His defence to the charge in count 7 of possessing 5-Methoxy-DMT was that he had been given it in exchange for a kilo of the precursor of 2C-B and 2C-I, and that he had used it as a sacrament for religious purposes. He also claimed that he had not known that its possession was illegal in this country. The judge told the jury that in effect the appellant had admitted the facts which the prosecution had to prove, and that the appellant's arguments did not amount to a defence in law.

13. Finally, his defence to the charge in count 8 of exporting the ecstasy tablets was that while he admitted wrapping and sending the two packages in which the tablets were packed, he thought that the packages contained cash. He had not known that they contained drugs. He admitted selling them under a false name, but claimed that he did so because he did not wish to be associated with sending what he thought was a large amount of money through the post. To the extent that the judge did not tell the jury that the appellant's case on all these changes did not amount to a defence in law, the jury must have disbelieved the appellant on all issues of fact.

14. Leaving aside the portmanteau defence, a number of more conventional grounds of appeal are relied upon. First, it is said that the judge erred in refusing to sever count 8 from the indictment. There is no doubt that it was properly joined with the other counts in the indictment, since it formed part of a series of offences of the same or similar character. Although count 8 related to exporting ecstasy, it was in effect a case of supplying to persons abroad and distinguishable from count 6 only on the basis that the latter was related to LSD which was intended for the UK market. The issue really was whether a separate trial of the allegations in count 8 should have been ordered under

section 5(3) of the Indictments Act 1915 on the basis that there was some special feature of the case which made the joinder of count 8 prejudicial or embarrassing to the appellant and that a separate trial was required in the interests of justice. We have not discerned any basis for concluding that that might have been the case, and in our judgment the judge did not err in refusing to sever count 8 from the indictment.

15. The appellant claims that the police operation which resulted in his arrest, trial and conviction was instigated on the word of one man, Tom Cartenson, who he says was a paid informant of the Drugs Enforcement Agency in the United States and who received a substantial reduction in his sentence for implicating the appellant. He alleges that the prosecution withheld statements made by Cartenson to the law enforcement authorities in the United States, but they misled the court when they said that they had no information about Cartenson's whereabouts, and that they deliberately failed to make any attempt to bring Cartenson to the United Kingdom to give evidence at the appellant's trial. It has not, of course, been possible for us to investigate these allegations, but we fail to see how, assuming they were all made out, they could have helped the appellant. What the prosecution relied on was the fact that the appellant had sent the ecstasy to Cartenson, not on what Cartenson would have said about it. If the appellant thinks that he was set up by Cartenson, he could have given evidence about that himself. To the extent that the appellant claims that he was denied the opportunity to cross-examine Cartenson to establish that he did not have the ecstasy, and was therefore unaware of the contents of the package, we fail to see how Cartenson could have given any evidence about that at all. The fact is that the appellant's thumbprint was found on a sheet of paper wrapped around one of the packages after his arrest, those packages having been traced back to him before his arrest.

16. The appellant claims that the judge lacked the impartiality and objectivity required of a trial judge, and deferred far too readily to the wishes of the prosecution. We have read the transcripts of the various rulings which the judge made, and of his discussions with the appellant. We have not discerned any basis for saying that the judge failed to extend to the appellant as a litigant in person such assistance on practice, procedure or the law as was appropriate. The fact that the judge accepted the submissions of the prosecution and rejected those of the appellant did not indicate a lack of impartiality or objectivity. They reflected the judge's considered view, whether right or wrong, on the strengths and weaknesses of the arguments addressed to him.

17. The appellant argues -- and it is the one conventional ground of appeal which he referred to in his address to us today -- that counts 4 and 6 were duplicitous, on the basis that the 145,000 or so tabs of LSD to which count 6 related were suggested by the prosecution to have been produced by the appellant by the production run to which count 4 related. We do not agree that they are duplicitous. The 145,000 or so tabs of LSD may have been the product of one production run, but count 4 related to the production of LSD over a two year period.

18. Two other points are taken about the 145,000 or so tabs of LSD. First, the appellant claims that the judge erred in refusing to exclude the evidence about the finding of those tabs, on the basis that they were found following a search of the property after the appellant had been taken into custody and when permission to search the property was

obtained only from the owner of the property and not from the appellant as occupant. We have not seen a transcript of the judge's ruling on that topic, but assuming that an objection to the admissibility of this evidence on this basis was made at the trial, we do not think the judge erred in exercising his discretion not to exclude it. If it was necessary for the appellant's consent for the property to be searched to have been obtained but was not, a search warrant would undoubtedly have been granted if one had been sought. Secondly, it is said that the Crown failed to quantify the extent to which the 145,000 or so tabs of LSD were actually impregnated with LSD. In our view, the relevance of that point goes to sentence, and we shall refer to it then.

19. A point stressed in the grounds of appeal relates to video footage of the appellant's home taken while it was under surveillance. The prosecution produced a schedule giving details of what the video footage revealed, but not the videos themselves because they wished to maintain confidentiality over the surveillance techniques adopted by the police. This was said to contrast with other video footage which the jury was allowed to see. We do not believe this criticism to be valid. The judge viewed the video footage which the jury had not seen. Had he concluded that it contained anything which undermined the prosecution's case, or advanced the defence case, he would no doubt have required the prosecution to disclose it. From what we have seen, we do not think that this was an appropriate case for the court to have appointed a special advocate to view this, and any other material which was not disclosed to the appellant, so as to make submissions on whether it did indeed undermine the prosecution's case or advance the defence case. This was a case in which the judge was able to come to an informed decision himself on those issues without the need for a special advocate to be appointed.

20. The claimant next contends that the judge erred in allowing the jury to hear evidence of the value of the drugs which came from a police officer, Detective Sergeant Pike, who was not a forensic chemist and who was said to lack the expertise to give evidence of value. We do not believe that we need to investigate this point further, because even if the evidence should not have been given, it cannot on its own render the convictions of the appellant unsafe in the light of the evidence against him as a whole and the admissions he made. In any event, the judge warned the jury not to be dazzled by the figures and to put out of their minds any sensationalism.

21. Finally, the appellant claims that while he was on remand awaiting trial, he was denied access to the facilities he needed to prepare his case. In particular, he wanted access to a computer. Eventually, he complained to the judge about that at a directions hearing about seven weeks before the trial began. The judge sent a fax to the prison in which the appellant was being held requesting that the appellant be given access to a computer. In fact, the appellant acknowledges that he had had access to a computer for a few hours a week a month or so earlier. But as a result of not having access to a computer for any longer than that, the appellant claims that there was material -- in particular, e-mails -- which he could not view properly. He had the opportunity to view them at his trial, but only otherwise than in a leisurely way. So on the first day of the trial he asked the judge to adjourn the trial to give him time to read the material otherwise than under pressure. He claims that the judge erred in refusing to adjourn the case.

22. We do not agree. We do not comment on whether there was a breach of the Prison Service's own internal rules for allowing prisoners access to computers in connection with legal proceedings in which they are involved. Nor do we comment on whether such a breach would amount to an infringement of the appellant's right to a fair trial guaranteed by Article 6 of the Convention, and to enjoy "equality of arms" with the prosecution, namely for the appellant to have "a reasonable opportunity of presenting his case to the court under conditions which do not place him at a substantial disadvantage vis-à-vis his opponent". The point is that even if there was merit in those arguments, they did not undermine the judge's refusal to adjourn the case or the safety of the convictions if the appellant was not in fact disadvantaged by not having access to a computer during the trial. That, in effect, is what the judge found, and we cannot say that he was wrong to do so.

23. In these circumstances, we do not regard any of the grounds as having sufficient merit to justify granting the appellant leave to appeal against his convictions, and his renewed application for leave to appeal against his convictions is therefore refused.

(After further argument)

24. This morning we gave judgment refusing the appellant leave to appeal against his convictions. We now turn to his appeal against sentence. This was, on any view, a case of the utmost gravity. The appellant engaged in the production of three different Class A drugs (2C-B, DMT and LSD), and the evidence pointed to the preparations he was making for the production of at least two other Class A drugs (2C-I and mescaline). He had made enquiries about purchasing very large quantities of the precursor for another Class A drug, 5-Methoxy-DMT. He had the equipment, literature and skills to produce yet another Class A drug, ecstasy. And despite the lofty ideas which the appellant was claiming to espouse, and his mission to enlighten others about the benefits of using hallucinogenic drugs, the judge found that the appellant's primary motivation for his activities was personal financial gain. Certainly there was evidence of not inconsiderable spending on the part of the appellant at a time when he had no means of support other than drug production. He bought an ocean-going boat for his father, and he had spoken of purchasing land in Spain, Mexico and the United Kingdom. He himself admitted that he had made tens of thousands of pounds from the manufacture of LSD and 2C-H, which was an intermediate drug from which 2C-D and 2C-I are produced.

25. There were a number of other aggravating features which the judge took into account. He regarded the appellant, who was a citizen of the United States, as having come to this country to exploit a potential market here for LSD, and to create a new market for at least one other Class A drug, 2C-B. The United Kingdom was the place where he thought there was less chance of his activities being detected and punished than the United States, where things, as he was to say, were "getting too hot" for him. The appellant denies that he came to the United Kingdom for the production of drugs and money. He says that he came here to attend a conference, and that he hoped to further a relationship with a girl he knew. It was only after he had arrived that he met someone who provided him with the opportunity to produce a drug which he claims he thought was legal in this country, and it was that which led him into wider production. The

judge rejected that claim. After all, the appellant set up the United Kingdom branch of the Atha Research Foundation (which was the front for his activities) as soon as he arrived here, and he acquired suitable premises almost immediately.

26. Other factors which the judge thought aggravated the appellant's offences were the sophistication of the operation and the measures which the appellant took to conceal what he was doing. He set up an off-shore company in Belize. He deliberately chose not to have any bank accounts in the United Kingdom. He used false names. He had at least three different laboratories -- admittedly not operating at the same time -- during the period covered by the indictment, and he deployed a high level of technical knowledge and expertise. He was constantly on the look out for new methods of production and for improvements in yield. All in all, his operations went on for a period of almost two years.

27. The principal area on which Mr Rudi Fortson for the appellant has concentrated his attack on the judge's appraisal of the appellant's activities relates to their scale. The judge clearly thought that the appellant was operating on a massive scale. Yet when the evidence was carefully analysed, the operation was not, so the argument goes, anything like as big as the judge thought it was. The evidence suggested that the amount of the 2C-B which the appellant produced was not much more than that which he admitted producing, namely about 300 grams which he sold for £25,000. He admitted producing about 1.5 kgs of 2C-H which he sold for £90,000, but he was not indicted for producing 2C-H, and he was acquitted of producing 2C-I, although he admitted intending to produce 2CI, only to abandon the idea later on. It is said that the largest amount of DMT which was found was that which was discovered in a damp creamy powder, which, when it was dried out, was found to contain only a small amount of DMT. We are not impressed by these arguments. The quantity of any particular drug found at the appellant's home following his arrest is hardly decisive of the extent of his production over the years. It simply represents a snapshot of his stock and materials at one particular point in time.

28. Mr Fortson's principal submissions related to the production of LSD. Two broad points were made. First, if the 145,000 or so tabs of LSD which were found at his home had been produced by him, the degree to which each of the tabs had been impregnated with LSD -- which, according to **Hurley** [1998] 1 Cr.App.R(S) 299 is highly relevant to sentencing for producing LSD -- was not known. None of the tabs were analysed for the amount of LSD with which they had been impregnated. Their LSD content may therefore have been very low. Secondly, it was simply not possible to tell from what was found at the appellant's home how many tabs the appellant had produced in the time that he was manufacturing LSD.

29. There were at least a couple of documents which contained some clues about the extent of the production of LSD. For example, one document produced by the appellant himself when giving evidence referred to 500 grams of ergotamine tartrate, which is the raw material from which LSD is produced, as well as 20 grams of LSD which would produce something in the region of 400,000 tabs of LSD. There was a dispute about the provenance of that document, the appellant's case being that the document was sent to him, the prosecution's being that it was generated by him. Even if it was not his, and

he received the document in order to see whether he could solve the manufacturing problem which the writer of the document was referring to, it still shows the appellant's assistance being sought in respect of the production of very large quantities of LSD. Another document referred to 460 grams of ergotamine tartrate, producing a maximum yield of 188 grams of LSD, which would be a huge amount of LSD. The references to ergotamine tartrate in these documents are opaque, but the inference to be drawn from them was that this was indeed production on a large scale. For example, Detective Sergeant Pike, admittedly not a forensic chemist, expressed the view that 460 grams would be sufficient to produce between 805,000 and 2,683,000 tabs of LSD, depending on the extent to which each tab was impregnated with LSD. For these reasons, we think that the judge was entitled to treat the appellant as producing Class A drugs on a large commercial scale.

30. The appellant was 34 years old at the time of sentence. He had no previous convictions in the United Kingdom, but he had not been here very long. He did have some convictions for minor offences in the United States which the judge ignored for the purposes of sentence. He did not, of course, have the mitigation of pleas of guilty, and he never displayed for one moment any regret or remorse for what he had done in view of his belief about the benefits of hallucinogenic drugs. On the other hand, the judge acknowledged that serving a lengthy prison sentence far away from his home and his family would make his time in prison harder than it might be for local prisoners. The judge did not doubt that the appellant's views on drugs were sincerely held, and so although he treated the appellant as motived by financial gain, he did not add hypocrisy to the appellant's failings. But he thought that he had to pass a deterrent sentence in order, as he put it, "to send the clearest possible message to others in this country and overseas who might be tempted to pursue the same ends" as the appellant had done.

31. Because the judge had to sentence the appellant on the six counts on which he was convicted, it is unnecessary, subject to one point, to analyse the sentences which he passed upon each count. Our one reservation relates to the sentence of 15 years' imprisonment on count 6, relating to his possession of the 145,000 or so tabs of LSD with intent to supply. In **Hurley**, the Court of Appeal expressed the view that for a quantity of 25,000 or more squares or dosage units, the sentence should in the ordinary case be 10 years' imprisonment or more. Where 250,000 or more squares or dosage units were seized, the sentence should ordinarily be 14 years' imprisonment or more. Accordingly, it is said that, on that count at least, a sentence of 12 to 13 years would have been appropriate. That may be right, but the judge was not sentencing the appellant on count 6 alone. So the ultimate question which we have to ask is whether the totality of the appellant's offending justified sentences totalling 20 years' imprisonment.

32. We have considered, as the judge did, the case of **Kemp** (1979) 69 Cr.App.R. 330. That case arose out of Operation Julie, in which large numbers of people were convicted of a conspiracy to produce LSD, perhaps LSD with a greater purity than that produced by the appellant, on a massive scale over a period of six to seven years. The principal conspirators were sentenced to 13 years' imprisonment. But at that time the maximum sentence was 14 years' imprisonment, and it has since then been increased to life imprisonment by the Controlled Drug (Penalties) Act 1985. We acknowledge that

the size of the appellant's operation did not compare with that investigated in Operation Julie. But this was not an amateurish operation in a garden shed. It was a careful and calculated attempt to introduce new synthetic drugs onto the UK market which could have reaped great financial rewards. The criminality of the appellant working on his own to produce hard drugs for the UK market equated with the criminality of the individual members of the conspiracy which Operation Julie exposed. We acknowledge that sentences totalling 20 years' imprisonment must be reserved for cases of the utmost gravity but we think that the judge was right to treat the appellant's case in that way. These were very tough sentences, but we do not think that they were manifestly excessive. Accordingly, this appeal against sentence must be dismissed.

33. We do not have any information about the appellant's means to enable us to decide whether this is an appropriate case for a recovery of defence costs order to be made. We will hear what Mr Fortson has to say on the topic. Having said that, if proceedings have been brought against the appellant under the Proceeds of Crime Act 2002 and have not been concluded, it may be better for any investigation relating to costs to be postponed until after those proceedings have come to an end.

34. MR BARTON: My Lord, the proceedings have been concluded. The only assets that were found in this jurisdiction was the money seized at the property. Effectively all assets that were available that we could find were seized pursuant to confiscation proceedings.

35. LORD JUSTICE HOOPER: It seems, in those circumstances, there being no assessable assets following the proceedings under the Proceeds of Crime Act 2002, the appropriate order to make is that this is not a suitable case for a recovery of defence costs order to be made.