

ROYAL COURT  
(Samedi Division)

1st August, 1997 151

Before: F.C. Hamon, Esq., Deputy Bailiff, and  
Jurats Ruffitt and Quérée.

The Attorney General

- v -

A

1 count of possession of a controlled drug, with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978:  
count 1 : M.D.M.A.

Plea: Guilty.

Age: 17.

Details of Offence:

Police officers on licensing duty noticed the defendant acting suspiciously when they entered the 'Venue' nightclub on 21st March, 1997. A was searched and he was found to be carrying 3 loose Ecstasy tablets, a gold foil wrap containing 5 Ecstasy tablets and a silver foil containing 7 Ecstasy tablets. Upon a full search a further 37 tablets were found in a bank bag between his buttocks. A total of 53 MDMA tablets were found. He claimed that he had been given the drugs earlier that evening by a friend who asked him to take them into the Club in return for which he would be paid £100. The defendant claimed it was the first time he had had a quantity of drugs in his possession. The 53 tablets, calculated at £20 per tablet, were worth a street value of £1,060. No confiscation order.

Details of Mitigation:

Lived in Jersey since he was about four years old. Father killed in a road accident in 1990 which had considerable impact on the defendant. His mother traced his offending back to the death of his father.

Previous Convictions: Three previous convictions but none drugs related.

Conclusions:

1 year's Youth Detention. Starting point of 7 years allowing 6 years discount for mitigation.

Sentence and Observations of the Court:

2 years' Probation; 240 hours' Community Service to be completed in the first year. Court found the defendant's explanation inherently implausible but observed that the Crown had accepted his explanation. Seven years was the correct starting point, Jurats divided. The Deputy Bailiff told him he had escaped prison by the skin of his teeth.

Mrs. S. Sharpe, Crown Advocate.  
Advocate P.S. Landick for the accused.

JUDGMENT

THE DEPUTY BAILIFF: The fact that A is 17 years of age means that we cannot pass a sentence of Youth Detention unless it can be shown that he has a history of failure to respond to non-custodial penalties or is unable or unwilling to respond to them - this clearly does not apply; that a custodial sentence would be required to protect the public from serious harm - this clearly does not apply; or the offence or the totality of offending is so serious that a non-custodial sentence cannot be justified - in the circumstances of this case, that might apply.

Briefly, the facts are these: A was found in suspicious circumstances in the 'Venue' nightclub, in Beresford Street, at one o'clock in the morning. His attitude, from what we heard, when he saw the police officer, was a guilty reaction. Drugs were found in several of his pockets. There were even Ecstasy tablets, wrapped in a TSB plastic bank bag, between his buttocks. There were 53 Ecstasy tablets in total with a street value of £1,060.

A was clearly involved in the trafficking of drugs. If we accept his explanation that he was a caretaker and was to return them to an un-named friend - which seems to us inherently implausible, but as the Crown has accepted this story we must take the Crown's acceptance into account - then he must clearly suffer the consequences of what was a deliberate decision.

I would like to say this: no one in Jersey can possibly be unaware that this Court, guided by the Court of Appeal, will give what is called condign punishment to those caught in this dreadful trade, particularly when mind-altering drugs such as Ecstasy are concerned. The Court of Appeal said this in the case of Campbell, MacKenzie, Molloy -v- AG (1995) JLR 136:

*"Much will depend upon the amount and value of the drugs involved, the nature and scale of the activity and, of course, any other factors showing the degree to which the defendant was concerned in drug trafficking".*

The Court went on to say:

*"....we accordingly state that it is seldom that the starting point for any offence of trafficking in a Class A drug on a commercial basis can be less than a term of seven years".*

In our view, the Crown has quite rightly taken seven years as a starting point.

5 There are many mitigating factors; the guilty plea clearly warrants a one-third discount; there is the question of the accused's extreme youth; he has co-operated with the police; he has shown remorse; and this is his first drug offence. There are, of course, other personal matters contained in the Probation Report. I have to say the Probation Report makes an impassioned plea for leniency. However, at this point, the Jurats are divided; one feels that one year's Youth Detention is perfectly right; the other Jurat feels that perhaps there is some real chance that the accused can develop a constructive lifestyle. I will read what the Probation Report says:

15 " A is at a stage where he could leave behind his criminal behaviour but without consistent and mature guidance believe he could make decisions which will lead him into a potentially disastrous situation".

20 A, I am going to agree with the Jurat who has shown leniency towards you. We are not going to sentence you to Youth Detention. However, you have escaped Youth Detention by the skin of your teeth. We are going to sentence you to two years' Probation. Due to the harm which you clearly could have inflicted on the society in which you live, you are also sentenced to 240 hours' Community Service to be carried out within the first year. I think you have been extremely lucky this morning. If you break the Probation Order, or fail to do as the Probation Officer tells you, or you do not fulfil those 240 hours' Community Service properly, you will be brought back to Court at any time during those two years. If that happens you will receive a custodial sentence. We also order the forfeiture and destruction of the drugs.

Authorities

Campbell, Molloy and MacKenzie -v- A.G. (1995) JLR 136 CofA.

Walker -v- A.G. (16th June, 1997) Jersey Unreported CofA.