

THE STRANGE AND TRAGIC CASE OF JIMMY MONTGOMERY

Sayre, Oklahoma. Population 3,000. Flat grasslands, cattle country, big sky and not much else. The town is built along route 66 on the north fork of the Red River, just east of the Texas Panhandle. An old boy network of fundamentalist Christians rule this part of the southwest, and the locals say you're either in the right church, the First Baptist, or you may as well move. Jimmy Montgomery wasn't and didn't. And Jimmy Montgomery, a paraplegic who's dying from antibiotic resistant staph infections, is paying a price. He's serving 10 years of a life-plus-16 year sentence in Oklahoma's Lexington Correctional Facility for a first offence of possession with intent to distribute less than two ounces of marijuana. How Montgomery ended up with that sentence is an intriguing story of small town politics, gossip, police overreach and possible corruption. Why he remains inside involves the story of a zero-tolerance-except-when-it-suits-him District Attorney named Richard Dugger, a politically driven man who holds a grudge and has a long memory.

The story begins in 1972, when Montgomery, the son of a retired Federal Marshall and Sayre city cop, was 18. Just out of high school, he took a job doing road work for the state. Shortly after he began, a scaffold he was working on gave way. Montgomery's back was broken in the fall, leaving him paralyzed from the lower back down. During his initial hospital stay doctors provided him with morphine, and Montgomery returned home an addict. But according to his lifelong friend, Ralph Hannah, "Jimmy just didn't like being addicted, so he told them to stop giving it to him and he quit cold turkey." But when it became apparent that he was unable to control the pain and violent muscle spasms that accompanied his paralysis without medication, so he was put on a Valium regimen. The regimen quickly reached 100 milligrams a day, and according to his mother, Thelma Farris (formerly Montgomery, she remarried after Jimmy Montgomery's father died in 1986), "It just left him like a zombie. He didn't do anything. He couldn't."

In the first two years following his accident, Montgomery's left femur from his hip to his knee calcified, and in 1974 he began a series of surgeries—paid for by Workman's Compensation—to remove the calcified bone. Following each he'd recuperate in a rehab hospital for several weeks. During one of his rehab stays a fellow patient recommended that Montgomery substitute cannabis for Valium. And when a doctor seconded the idea, he did and found cannabis not only controlled his spasms better than Valium, but he began to get his energy back as well. He went to work selling oil leases during the late '70s Anadarko Basin oil boom in the Texas Panhandle and put quite a bit of money away in treasury bills. He also entered Sayre Junior College, working toward a degree in medical technology.

Unfortunately, and unknown to his doctors, during one of his early surgeries Montgomery had contracted a staph infection—Methacylin Resistant Staph Aureus—that tunnels through bone marrow and flesh and which went undetected until it broke through the skin of his left leg in 1980. By 1981 the infection had spread, requiring the removal of several vertebra and additional bone from his leg; surgery in 1983 left a large open ulcer on his thigh that needs to be cleaned and dressed several times daily. Montgomery's prognosis at that time was that he had six months to live.

Aware that even if he lived his contagious infection would prevent him from working in the medical field, he quit school—a semester- and-a-half shy of his degree—and began to rebuild car engines in a building behind his mother's house. Word spread that he was good and despite his continuing physical deterioration and regular surgeries, he'd soon converted the building into a shop designed for a wheel-chair bound mechanic who specialized in high performance engines.

THE BUST

By all accounts, Montgomery was successful, well liked, and a good worker. He was also independent—he lived alone for several years and only returned to live in his mother's home after his father died. If there was anything out of the ordinary about him it was simply that he made no secret of his use of medicinal marijuana.

But the story took an ugly turn on December 1, 1990 when a small time dealer and friend of Montgomery's named Billy Guy Cornelius got busted by a multi-county sheriff's narcotics task force looking for numbers. And Montgomery was one of them.

The bust began the afternoon of November 30, when two local girls, Susan and Cassie, traded some marijuana for cocaine with one of the task force members, Brian Lawless. Lawless and his primary partner, Rick Gheer, an Undersheriff from a nearby county, told the girls they could get off, but only if they turned the narcs onto someone else. The girls jumped at the chance and took six ounces of marijuana to the home of a neighbor, Allan Sands, and asked if they could stash it there. Sands, who allegedly prefers drinking to smoking, said they could. A few minutes later Gheer, Lawless and the rest of the task force entered Sands's home and arrested him for possession of the pot.

Thinking they could get more out of the girls, Gheer and Lawless asked who else the girls could get. Terrified, the girls went to the home of Keith Easter, someone they knew from around Sayre. With Keith was Billy Guy Cornelius. According to Cornelius, "I was at Keith Easter's house that night and them girls came down and said if we'd buy some coke they'd come back and spend the night and party with us. Well, that sounded good to me. They wanted us to buy a gram but I told them I didn't have that kind of money. I only had thirty dollars and Keith didn't have anything, so we said we'd get a quarter of a gram.

"But they said they'd go get that set up and we were to come over to their place and bring our scales. So I went over with Keith, and there was another guy I didn't know sitting in the room. That turned out to be Lawless. He took out the coke, took the money, then asked if we wanted to play Simon Says. He said "Simon Says get on the floor, I have a gun." And then Gheer and the rest of them came in and busted us for attempted possession of cocaine."

Montgomery's name came up during the questioning of Cornelius. According to a deposition made by Gheer shortly after the arrest, it was

Cornelius who was looking to save his skin—as he was a multiple felon and the bust would have brought an automatic 40 years—who brought it up. According to a deposition made by Cornelius, Gheer brought it up along with several others and was told he “could be “cut some slack”; if he would “wear a wire and would go in undercover on Jim.”

Though Cornelius refused the deal and doesn’t know why they wanted to target Montgomery, he did admit that when asked if he was “getting marijuana from Montgomery I said I have gotten some but I have gotten him some too.”

In his deposition, Gheer, who later that night wrote the affidavit used to get a search warrant on Montgomery’s mother’s home, tells the story of his conversation with Cornelius differently. “Billy [Guy Cornelius] told me,” said Gheer, “that he had been getting his dope from Jim, that he got some off of him relatively recently, seemed like it was the last couple days, something like that. He had been to his house, had seen some—some more dope besides what he bought.”

Asked how much marijuana Cornelius said he “recently bought from Montgomery, Gheer said “For some reason I want to say a quarter ounce.”

Using Cornelius’s statements, Gheer and the narcotics task force secured their warrant, and the following morning entered Thelma Farris’s house, where they discovered just under two ounces of marijuana in a pouch hanging from Montgomery’s wheelchair, several pipes and bongs, and some cannabis seeds in marked containers. The police also found two handguns that had been left to Montgomery by his police officer father, who “died in the late 1980s. Additionally, Gheer confiscated and later classified as paraphernalia much of Montgomery’s college chemistry equipment. (Rick Gheer is a story of his own: in 1993 he pleaded guilty to three counts of embezzlement of Narcotics Task Force funds and was sentenced to three concurrent terms of seven years each. He served six months before he was released. He has since left the state.)

Montgomery was charged with four felony counts: Possession of Marijuana with Intent to Distribute; Possession of Paraphernalia; Unlawful Possession of a Weapon During Commission of a Crime; and Maintaining a Place Resorted to by Users of Controlled Drugs.

Simultaneously, a separate forfeiture proceeding was initiated against Montgomery’s mother’s home on the grounds that her home was being used to facilitate drug trafficking.

Montgomery was scheduled for major surgery and rehab shortly after his arrest, so his trial was postponed until May 3, 1992. During the 17 months between his arraignment and trial he was out on his own recognisance. During that same time, rumors circulated that Thelma’s home, situated on Sayre’s main street, would make a good police station. “Nobody ever asked if we wanted to sell it,” says Thelma Farris, they just hinted that since the police department, the fire department and the library were all in one building they sure could use a new space. And then with my house being brick with large rooms and a big corner lot, and with Jimmy’s big mechanic’s shop out there on the side, and plenty of space for parking, well, people just began telling me it could easily be turned into a police station.”

Several calls to local officials—all of whom have requested anonymity—have confirmed what Farris said. One employee of a state representative even commented, “Everybody in Sayre knew that’s what Jimmy’s arrest was about. The police wanted a new headquarters and they thought his mom would just get the hint and offer to give up the house in exchange for Jimmy.”

According to Farris: “Jimmy said he knew that’s what they wanted, but he couldn’t live knowing I “had to give up everything his dad and I worked for. He wouldn’t hear of it.”

Instead of getting the hint, Farris hired local attorney Leon Willsie to fight the forfeiture, and the case against the house was still undecided when Montgomery’s trial date arrived. “It was only the night before the trial that my lawyer called me and said that assistant District Attorney David Brooks had just called him and said that if we signed my property over they would drop all charges on Jimmy. And that offer came straight from the District Attorney, Richard Dugger.”

Attorney Willsie remembered the conversation differently. “There was an attempt to resolve both cases that were pending at that time, the forfeiture case and the drug case. But I don’t remember it being anything that would have been insulting to me or that shouldn’t have been offered, like “You give up your interest in the house and we drop all charges.” I don’t remember anything like that.”

And former assistant DA David Brooks denied that the call came from him. “That wasn’t me. It wasn’t my case after pre-trial. That sounds like something Dugger might have said, but I don’t know that he did. All I can say about Dugger is that he’s a political animal. I think the only conversations we had on that as far as pleading went were that any plea included the house.

“As far as Montgomery went, the sentence he received tells you what the jury thought of him. He had a reputation, let’s put it that way. Everybody in town thought you could buy dope there. But it’s a small town and you run into gossip. I don’t know if it was true.”

Asked why no one had ever arrested him before if Montgomery had had such a reputation, Brooks didn’t know.

Brooks may be right about his assessment of the town’s sentiment regarding Montgomery. But maybe not. According to Joe Hay, sheriff of nearby whatever, prosecutor Cummins, who was brought in from nearby county whatever to try the case, is Dugger’s big gun trial lawyer. “He’s real good with a jury. He can make a jury believe just about anything, just the way he tells it. He could sell anything. Hell, he could make a jury take off its pants if he wanted.”

If sheriff Hays’s assessment is right, Cummins wouldn’t have to play underhanded to get them to believe Montgomery was a dealer, despite having what he said was “very little evidence that he was one.”

Richard Dugger never returned repeated phone calls.

In any event, Montgomery again refused to allow his mother to sign over the property and the trial went on the following day. The prosecutor in the

case, David Cummings, was brought in from an outside county just a week before the trial. Montgomery was defended by court appointed attorney Tom Pixton, who recommended he plead "not guilty" as he thought the case against Montgomery was flimsy and he would win. It was a bad decision.

Though Montgomery had never been previously arrested and there was only the word of Billy Guy Cornelius that Montgomery ever sold marijuana, and even that was acknowledged as an occasional exchange of favors between friends rather than as real sales, the jury, the youngest member of which was over 50 years old, found him guilty on all counts and recommended the maximum penalty for each. On the Possession with Intent to Distribute charge the jury imposed a life sentence (45 years in Oklahoma) and a fine of \$20,000. On the Paraphernalia charge he got one year and a fine of \$1,000. On the Weapons charge the jury gave him 10 years, and on the Maintaining a Place Resorted to by Users of Controlled Drugs he got five years and a \$10,000 fine. In all, the jury recommended Montgomery serve life-plus-16-years and pay a fine of \$31,000 for a first offense on what amounted to possession of less than two ounces of medical marijuana in his own house.

"I don't think the convictions surprised anyone," said Pixton when reached for comment. "Jimmy made no bones about using marijuana at the trial. He said it helped with the pain and what not. But I think what surprised everyone was the sentence. It was unbelievably harsh. It almost destroys one belief in the jury system."

The verdicts were so severe that the judge, Beckham County (OK) Associate District Judge Charles L. Schwabe, with little opposition from DA Dugger, and at the urging of the trial prosecutor Cummins, imposed the jury sentences but suspended everything over 10 years and suspended all but \$10,500 of the fines.

Montgomery, despite his contagious staph infections, began serving his time on April 9, 1992 in the general population at the Lexington (OK) state penitentiary. After a transfer to the Jess Dunn Correctional Facility—where his health began to deteriorate badly from a lack of medical treatment—he was finally transferred to the Griffith Correctional Facility Medical Center in Norman, OK. In all, he spent nearly 10 months in prison—at an estimated cost of \$50,000 per month to the state—before he was released pending appeal.

Upon his release, an ambulance took him to the Sayre Memorial Hospital where he was immediately put on intravenous antibiotics and given several pints of blood. "He was so sick he couldn't even sit up by himself," his mother told HT. "His infections were just going wild."

Following three weeks in the hospital, he was sent to specialists in Oklahoma City, where his health improved dramatically.

Montgomery remained free from February, 1993 until April 4, 1995, when his appeal was heard. His new lawyer, Rayburn Martin, succeeded in having both the weapons and maintaining a house for drug trafficking convictions reversed, though in a summary decision by the Court of Appeals, the Possession with Intent to Distribute conviction—and the 10 year sentence—was upheld.

Montgomery was returned to the general population at Lexington Correctional Institute on April 4, where his condition immediately began to deteriorate again. Protests and a phone campaign brought the matter to the attention of OK Governor Frank Keating, who was prepared to release Montgomery to house arrest until, according to Keating's Press Liaison Jason Nelson, "We received a very strenuous objection to that from District Attorney Richard Dugger." Asked what those objections were, Nelson said he didn't know. At least some callers to the Governor's office have been told that "Montgomery must have done something far worse than the trial records indicate," according to a press release from the national offices of NORML, which has been closely monitoring the case.

In fact, calls to several Sheriffs in the area indicate that while Montgomery's name had come up over the years as a possible drug dealer, until Cornelius' arrest no one had ever said that they'd bought, or been given, anything from him. His mother suggests that his name came up "because everyone knew he had to buy marijuana for his condition, and in a small town like Sayre that means they suspect you of every kind of thing."

District Attorney Dugger may have a personal gripe with Montgomery. He had contact over the years with Montgomery's father, and according to Thelma Farris, "My husband used to say Dugger was a crazed man. And as for me, Dugger and I never liked one another from way back. He's a very obnoxious man. I knew his late wife, a school teacher. She was a friend of mine. And he used to beat her. Everyone in town would see her, she'd have black and blues all over her arms and legs, and people just said, "Oh, I guess Richard had a bad night again." Everybody thought that of him, though she never did file charges on him."

Repeated calls to Dugger's office to question him on both why he "strenuously objected" to Montgomery's release and whether there was, in fact, bad blood between the Montgomery's and the DA were not returned.

As we go to press, Montgomery has just been moved from the general population of the Lexington Correctional Facility into an isolated ward in the prison's infirmary. His infections, which had been under control while he was free pending appeal, have begun to run rampant again and his health is failing. He is not permitted visitors, so his mother has not seen him in nearly two months.

The groundswell of support for his case is building fast; among those working on his behalf is Dennis Cotner, the Oklahoma Department of Corrections Head of Medical Services, who has been in contact with Montgomery and has been working to get him released on a medical parole.

According to Rayburn Martin, Montgomery's new lawyer, Montgomery could be released despite the governor's refusal and Dugger's objections if the Department of Corrections wanted to release him. "The OK Dept of corrections can put him [Montgomery] on the street any day they want. They are the only ones who can do that, under the authority of the state constitution. They can let him out on any condition they want: medical parole, house arrest, whatever."

Martin—who is appealing Montgomery's case on the grounds that the initial arresting officers had no jurisdiction in Sayre, and is also asking the Supreme Court to take a discretionary look at the way his initial appeal was handled in Appeal's Court is not confident that the DOC will release his client any time soon. "Not over the governor's refusal."

Asked what the chances are of winning an appeal, Martin suggests that since he's targeting the Supreme Court, they're about one in 100.

Meanwhile Montgomery remains in prison and terribly ill. Is he being kept there by a proud DA who thinks the jury's voice should be heard, or by a small town DA who has a personal ax to grind? As to the question of why the jury meted out the sentences they did, that remains unanswered. Calls to several people in Sayre suggest that emotions ran high in the case. Some think Montgomery was a dope dealer finally getting his due. Some believe he was railroaded for being a cripple who made no secret of his use of medical marijuana.

POSTSCRIPT

On July 14, at the Oklahoma DOC's Parole Board hearing from which DA Richard Dugger was conspicuously absent, it was recommended that Jimmy Montgomery be discharged on a medical parole. The recommendation now goes to Governor Keating, who has 90 days to either permit or deny the parole. It is expected he will permit it.

The parole stipulates that Montgomery must participate in a drug rehabilitation program, that he will be subject to weekly meetings with his parole officer and will take regular urine tests for the remainder of his life sentence. Asked whether Dugger, if he chose, could reincarcerate Montgomery for his medical marijuana use, Montgomery's caseworker, Sherry Vinson, says that if a doctor orders Montgomery to use cannabis it would be highly unlikely he would be tested for THC. "But Jimmy knows where he stands with this DA. He'll have to mind his Ps and Qs when he gets home."

His mother Thelma was ecstatic about the news. "I can't wait to get him home," she said. "And as soon as I do, I'm going to sue the DA and the State of Oklahoma for violating Jimmy's civil rights. There was just so much wrong with this case, right from the beginning." Asked how Jimmy reacted, she says "He broke down when I told him. And then he said 'Mom, I've heard so much and had so many promises broken that I won't believe it until it happens. And even if it does, I know I'll have to be real careful when I get home. I don't want to have to come back here.'"

He was actually released and lives at home.

About the Author

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