

The law on statutory conspiracy

Actus Reus

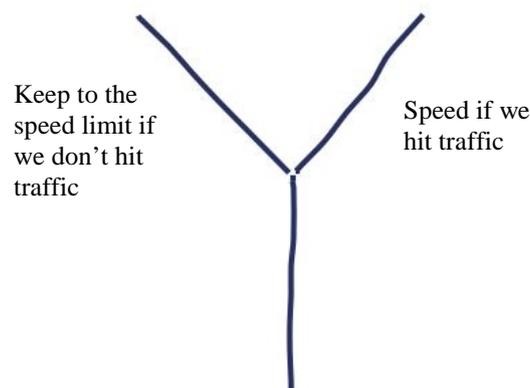
Under s 1 of the Criminal Law Act 1977, the *actus reus* of the offence of statutory conspiracy involves, among other things, agreeing ‘with any other person or persons that a course of conduct will be pursued which if the agreement is carried out in accordance with their intentions...will necessarily amount to or involve the commission of any offence or offences by one or more parties to the agreement...’.

The courts have taken this to mean that D will *not* be guilty of a statutory conspiracy if D agrees to embark on a course of conduct with C that does not *necessarily* involve the commission of an offence. Take the example provided by Lord Lane CJ in *Reed* (1982):

‘A and B agree to drive from London to Edinburgh in a time which can be achieved without exceeding the speed limits, but only if the traffic which they encounter is exceptionally light. Their agreement will not necessarily involve the commission of any offence, even if it is carried out in accordance with their intentions, and they do arrive from London to Edinburgh in the stated time.’

Lord Lane did not think that A and B would be guilty of a statutory conspiracy in this case. But what about the case of *Jackson* (1982), where W was on trial for burglary, and the defendants agreed (with W’s agreement) that *if* W were found guilty of burglary, they would shoot W in the hope that would persuade the judge in W’s case to go easy on W when sentencing W? It was held that the defendants’ agreement amounted to a statutory conspiracy because their plan did ‘necessarily’ involve the commission of an offence if it had been carried out in accordance with their intentions. But surely their plan did not *necessarily* involve the commission of an offence? – if W had been found not guilty, then they did not plan to shoot W.

I think the best way of reconciling the not guilty verdict in the hypothetical in *Reed* with the guilty verdict in *Jackson* is as follows. In the *Reed* hypothetical, A and B’s plan had a branch in it:



Because A and B's plan had a branch in it, and one of those branches did not involve committing an offence, their plan did not 'necessarily' involve the commission of an offence. By contrast, the plan in *Jackson* had no branch in it:



If W is found
guilty of burglary,
we will shoot him

The *only* thing the defendants in *Jackson* planned to do *together* was to shoot W. As a result, their plan as to what they would do *together* necessarily involved the commission of an offence.

Mens Rea

There is, apparently, some disagreement in the caselaw over when someone will have the *mens rea* for committing a statutory conspiracy. *Anderson* (1986) ruled that it does not have to be shown that D had an intent that the planned course of conduct be carried out – it is enough that D intended to play whatever part it was agreed D would play in the carrying out of the planned course of conduct. *Anderson* has been criticised, and *Yip Chiu-Cheung* (1995) is regarded as something of a return to orthodoxy in ruling that D (an undercover police officer) would have the *mens rea* for conspiracy if D intended that the agreement of the gang he had infiltrated to smuggle drugs into Hong Kong would be carried out.

I don't see why we need to choose between *Anderson* and *Yip Chiu-Cheung*. Why can't we say that D will have the *mens rea* of conspiracy if *either* (a) D intended to play some part in a plan that, if carried out, necessarily involved the commission of an offence *or* (b) D intended to play no part in a plan, that if carried out, necessarily involved the commission of an offence but did intend that that plan be carried out? On this view, if a number of people get together to plan a bank robbery, both *Mr Big* – who got together the various members of the gang planning to carry out the bank robbery but does not intend to play any part in the robbery himself – and *Driver* – who has agreed to act as the gang's get-away driver, but does not care about whether the bank robbery is carried out (he will be paid regardless) and has made it clear that if the robbers do not appear within two minutes of his arriving in the get-away car, he will drive away – will both be guilty of conspiracy: *Mr Big* under (b) and *Driver* under (a). Why would we want either to get away with being found guilty of statutory conspiracy? But that seems to be the result of forcing us to choose between *Anderson* and *Yip Chiu-Cheung*. Instead, we should take them as stating alternative ways of establishing that a defendant had the *mens rea* for statutory conspiracy.