



NEWS RELEASE

11 MARCH 2020

Application on behalf of Mr Abdelbaset Ali Mohmed Al Megrahi

The Scottish Criminal Cases Review Commission (the Commission) has today again referred the case of the late Abdelbaset Ali Mohmed Al Megrahi to the High Court of Justiciary for determination.

As a result of the Commission's decision, Mr Megrahi's family is now entitled to instruct an appeal against his conviction on 31 January 2001 for the murders of the 243 passengers and the 16 crew on board Pan Am Flight 103 (PA 103) from London to New York, and 11 residents of Lockerbie, on 21 December 1988.

The Commission has sent a statement of reasons for its decision to the High Court. It has sent a copy of the document to Messrs Aamer Anwar & Co (whom the Megrahi family have instructed), the Lord Advocate and the Crown Agent.

The Commission is not, by law, permitted to provide members of the public with copies of its statement of reasons. However, given the continuing worldwide interest in this case, which sits uniquely within the criminal justice system in Scotland, the Commission has decided to provide a fuller news release than normal by setting out a summary of the case history and providing brief details of the application made to it, the trial court's findings and the Commission's conclusions.

Announcing the decision today, the Chairman of the Commission, Bill Matthews, said:

'We recognise that the Commission plays an important role in the Scottish criminal justice system and has extensive statutory powers to enable it to carry out its duties. This is the second time that the Commission has carried out what I believe has been a rigorous and independent review of this particular conviction, and we note that since our last review further information has become available, including within the public domain, which the Commission has now been able to consider and assess.'

As the Chair of the SCCRC in 2007 said when the case was originally referred, our function is not to decide upon the guilt or innocence of an applicant. Our function is to examine the grounds of review identified and to decide whether any of the grounds meet the statutory test for a potential miscarriage.

I am pleased therefore that we are now able to issue a detailed statement of reasons which addresses all of the issues raised. I am satisfied that the matter is now returning to the appropriate forum – the appeal court – to consider fully all of the issues raised in our statement of reasons.'

Gerard Sinclair, the Chief Executive of the Commission, said today:

'When we referred this case in 2007 I never expected that, over 10 years later, we would be asked not only to revisit our original decision, applying the law as currently stated, but also consider a whole new set of materials which had become available in the intervening years. I'm pleased to report that, after another lengthy investigation and review, we are now in a position to issue our decision in this unique case.

It seems important to note that, this month, an entirely new Board of the Commission from that which considered the matter in 2007 has again decided to refer this case. The 419-page decision issued today, with voluminous appendices, is a testament to the hard work and diligence of our investigating team over the last 3 years, involving us in novel and challenging court procedures along the way, and I pay tribute to them.

The Commission's involvement in the case is, once again, at an end. It is now a matter for those representing the Crown and the defence to decide how to proceed at any future appeal. Thereafter, it will be for the appeal court to decide whether there has been a miscarriage of justice in this case.'

This news release is for information purposes only. Its content should not be treated as forming part of the Commission's decision to refer Mr Megrahi's case to the High Court.

Please note: the Commission will make no further comment on this case.

Case History

On 31 January 2001 Mr Megrahi was convicted of the murders of the 243 passengers and the 16 crew on board PA 103 from London to New York, and 11 residents of Lockerbie, on 21 December 1988.

Mr Megrahi appealed his conviction. On 14 March 2002 the High Court refused his appeal.

In September 2003 Mr Megrahi asked the Commission to review his conviction. On 28 June 2007 the Commission referred his case to the High Court for determination. On 17 August 2009 Mr Megrahi abandoned his appeal. On 20 August 2009 the Scottish Ministers approved his release on compassionate grounds and he was released from prison. He returned to Libya, where he died on 20 May 2012.

In July 2017 Aamer Anwar & Co, instructed by Mr Megrahi's widow and his family, asked the Commission to review Mr Megrahi's conviction. On 27 April 2018 the Commission accepted that application for a full review. Today the case has been referred back to the High Court.

The Application

The applicants asked the Commission to find that its original reference grounds in 2007 remain ‘valid and compelling’ reasons for the Commission to refer the case again to the High Court.

The applicants raised two new matters, and asked the Commission to review the two grounds argued at the abandoned appeal, on which the High Court did not deliver its opinion: insufficient evidence and unreasonable verdict.

The Commission considered that the points raised formed the following six broad grounds of review:

Ground 1: Insufficient Evidence

Ground 2: Unreasonable Verdict

Ground 3: Fresh Evidence: The Christmas Lights

Ground 4: Non-disclosure

Ground 5: Timer Fragment PT/35(b)

Ground 6: The Suitcase Ingestion

The Commission now believes that a miscarriage of justice may have occurred in Mr Megrahi’s case by reason of ‘**Ground 2: Unreasonable Verdict**’ and ‘**Ground 4: Non-disclosure**’.

The Commission does not believe that any of the other four grounds may have led to a miscarriage of justice.

A brief summary of the reasons why the Commission reached this view in respect of these six grounds is included below.

The Trial Court’s Findings

The Commission has, for clarity’s sake, set out here a brief summary of the trial court’s findings.

- The bomb that destroyed PA 103 had been contained in a Toshiba RT-SF16 Bombeat radio-cassette player which had been in a brown hardshell Samsonite suitcase of the 26-inch Silhouette 4000 range (the bomb suitcase).
- The scientific evidence identified 12 items of clothing and an umbrella that had been in the bomb suitcase.
- The items in the bomb suitcase had been, with one exception, the items that Anthony Gauci, the owner of a shop in Sliema, Malta, described that he sold before Christmas 1988 to a Libyan man.
- Mr Megrahi was identified as the purchaser of the items in the bomb suitcase (based upon Mr Gauci’s evidence that the purchaser of the items closely resembled Mr Megrahi and evidence that Mr Gauci sold the items on 7 December 1988, a date on which Mr Megrahi was in Malta, staying in a hotel close to Mary’s House).

- Mr Megrahi was a member of the Libyan intelligence service (JSO), occupying posts of fairly high rank, one of which was head of airline security; he was also involved in military procurement.
- The timer used to trigger the bomb was an MST-13 timer that a Swiss firm, MEBO, produced; MEBO had supplied a substantial quantity of such timers to Libya.
- Mr Megrahi had an association with one of the partners in MEBO, Edwin Bollier, and with various members of the JSO and Libyan military who purchased MST-13 timers from Mr Bollier; and he had, along with another man, formed a company that leased premises from MEBO and intended to do business with MEBO.
- On 21 December 1988 the bomb suitcase was carried on Air Malta Flight KM 180 from Luqa Airport to Frankfurt (KM 180), was transferred to Pan Am Flight 103A from Frankfurt to Heathrow (PA 103A), a feeder flight for PA 103, and was carried to Heathrow, where it was transferred to PA 103; there was a plain inference from the documentary record that an unidentified and unaccompanied bag travelled on KM 180 and was loaded at Frankfurt on to PA 103A.
- On 20 December 1988 Mr Megrahi flew into Malta, travelling on a passport in a false name; he stayed overnight in a hotel in Sliema, registering there under a false name; on the morning of 21 December 1988 he was at Luqa Airport when the baggage for KM 180 was being checked in, immediately before flying to Libya.

Ground 1: Insufficient Evidence

At any trial, before the case may proceed for determination by the fact-finder, normally the jury, the court must be satisfied that there is a sufficiency of evidence which, if believed, would entitle the jury to return a guilty verdict. The Commission remains of the view, based upon the evidence that the trial court accepted in this case, that there was sufficient evidence in law to convict Mr Megrahi. The wholly circumstantial case against Mr Megrahi, as accepted, supported the conclusion that Mr Megrahi was guilty of the murders for which he was charged.

Ground 2: Unreasonable Verdict

A person may appeal his conviction based on ‘the jury’s having returned a verdict which no reasonable jury, properly directed, could have returned’. In the unique circumstances of this case, a panel of three judges sat in place of the jury

The Commission’s analysis under this ground of review required the Commission to revisit the view it took in 2007 about the trial court’s conclusion that Mr Megrahi was the purchaser of the items that were inside the bomb suitcase.

There was a framework of evidence pointing to Mr Megrahi’s guilt. One piece of that framework

was Mr Gauci's evidence about the date of purchase of items bought from his shop (items that were inside the bomb suitcase) and other evidence about the date of purchase. On the basis of that evidence, the trial court concluded that the date of purchase was 7 December 1988. That conclusion, taken with Mr Gauci's evidence that Mr Megrahi closely resembled the purchaser, enabled the trial court to infer that Mr Megrahi was the purchaser. The Commission believes that no reasonable trial court could have accepted that Mr Megrahi was identified as the purchaser.

Because the court's specific conclusion that he was the purchaser was integral to the court's ultimate conclusion that he was guilty of the murders libelled, the Commission believes that, notwithstanding that the remaining chapters of evidence pointed to the involvement of operators of the Libyan state in the execution of the crime, a miscarriage of justice may have occurred because no reasonable trial court, **relying on the evidence led at trial**, could have held the case against Mr Megrahi was proved beyond reasonable doubt.

Ground 3: Fresh Evidence: The Christmas Lights

A person may appeal his conviction based on 'the existence and significance of evidence which was not heard at the original proceedings'. The fresh evidence concerning the Christmas lights in Sliema, Malta, consisted of confirmation that the lights were illuminated on 6 December 1988.

The Commission decided that the fresh evidence in question is not likely to have assisted Mr Megrahi's cause. Notably, Mr Megrahi chose not to lead it in connection with his appeal in 2002.

Ground 4: Non-disclosure

In any trial, the Crown must disclose to the defence information which might materially weaken the Crown case or which might materially strengthen the defence case. A failure to do so is a breach of process, but the significance and consequences of such a breach must be assessed.

In other words, taking into account of all the circumstances of the trial, was there a 'real possibility' that the jury would have arrived at a different verdict if the undisclosed information had been before it?

The Commission considers that the Crown ought to have disclosed to the defence a statement and a police report concerning Mr Gauci's possession of photographs of Mr Megrahi before the identification parade, because that information might have materially weakened the Crown's reliance on Mr Gauci's I.D. parade and dock resemblance identifications of Mr Megrahi as the purchaser.

While the foregoing information relates only to one aspect of the overall circumstantial case against Mr Megrahi – the Crown's contention that Mr Megrahi was the purchaser – the court's finding that he was the purchaser was integral to its ultimate conclusion that he was guilty of the murders libelled. The Commission considers that the Crown's failure to disclose the information in question deprived Mr Megrahi a real chance of an acquittal.

The Commission also considers that the Crown's failure to disclose the information about the reward money to be paid to Mr Gauci under a scheme administered by the US Department of State bolsters its conclusion that Mr Megrahi was denied a fair trial.

Ground 5: Timer Fragment PT/35(b)

The applicants' submissions under this overall ground were three-fold and were as follows:

(1) The Crown failed to disclose to the defence information about the difference in metallurgy between the timer fragment PT/35(b), recovered during the ground search, and the 'control' circuit boards (fragment PT/35(b) being, the trial court concluded, part of the MEBO-produced MST-13 timer used to trigger the bomb);

(2) There is fresh evidence about the difference in metallurgy between PT/35(b) and the control circuit boards which casts serious doubt on the trial court's conclusion that PT/35(b) was part of the MEBO-produced MST-13 timer; and

(3) If there has not been a miscarriage of justice by reason of undisclosed information or fresh evidence relating to the metallurgy issue, the defence team's decision not to investigate it amounted to a failure to present Mr Megrahi's defence.

The Commission decided that the Crown did not fail to disclose the information in question to the defence. It decided also that the applicants have not provided a reasonable explanation as to why the fresh evidence concerning the metallurgy issue was not led at the trial. In other words, it did not believe that submissions (1) and (2) are arguable.

As regards submission (3), the conduct of an accused's defence may be said to amount to a miscarriage of justice only where it has deprived him of a fair trial; a fair trial is denied to an accused where his defence was not presented to the court because counsel either disregarded his instructions or conducted the defence in a way in which no competent counsel could reasonably have conducted it.

The Commission decided that the decision by the defence team to proceed without investigating the metallurgy issue did not mean that Mr Megrahi's defence was not presented to the court.

In any event, the Commission was not persuaded that the evidence obtained post-trial about the metallurgy of the control circuit boards called into question the trial court's conclusion that PT/35(b) was part of the MEBO-produced MST-13 timer used to trigger the bomb.

Ground 6: The Suitcase Ingestion

The submissions in this regard arose from a theory derived from the work of the organisation 'Justice for Megrahi'. The issue was covered extensively in the report that 'Operation Sandwood' produced (Operation Sandwood being the investigation that Police Scotland initiated in 2014 following allegations that Justice for Megrahi made about criminality on the

part of officials involved in the Lockerbie enquiry).

The theory purported to show conclusively that the suitcase containing the bomb that destroyed PA 103 had entered the airline luggage chain at Heathrow Airport. In other words, it purported to show that the bomb had not entered airline luggage in Malta. If accepted, this would fatally undermine the Crown case.

Having excluded various other possibilities, the Commission considered that the submissions could be relevant only as a claim of defective representation. As the Commission understood them, the applicants were arguing that the failure of the defence to demonstrate that the bomb was ingested in Heathrow amounted to a failure to present the defence.

The Commission concentrated on what it considered to be the most important aspect of the submissions. The theory lacked certain important information, which the Sandwood report had highlighted. In light of this, it was not arguable that the Justice for Megrahi theory could show conclusively that the bomb had entered the airline luggage in Heathrow.

The Commission was satisfied that the defence team had good tactical reasons for approaching this part of the evidence in the way in which it did. It was not thus arguable that counsel had failed to present Mr Megrahi's defence.

Interests of Justice

The test that the Commission must apply in the exercise of its primary statutory function is in two parts.

The first part of the test, as applied above, is whether or not the Commission believes that a miscarriage of justice may have occurred. But before it may refer a case to the High Court, the Commission must also believe that it is in the interests of justice to do so.

In this case the Commission identified during the review two issues of particular relevance to the interests of justice test.

The first major issue addressed by the Commission at the outset was whether to accept the application for review at all, given Mr Megrahi's decision in 2009 to abandon his appeal.

Part of the submissions in support of the request to the Commission to accept a further application from the family was an allegation that there had been an effort on the part of the Scottish Government to induce Mr Megrahi to drop his appeal in exchange for his return to Libya. After fully investigating the matter the Commission did not accept this allegation, concluding that throughout the process the message from the Scottish Government had been both consistent and uncompromising in its outward-facing neutrality.

It did, however, accept that Mr Megrahi genuinely believed that his chances of being returned to Libya rested upon him dropping his appeal. Mr Megrahi's source of information for this belief was a member of the Libyan Government under Colonel Muammar Gaddafi. The Commission

addressed whether or not it was reasonable for Mr Megrahi to rely upon this information. It accepted that Mr Megrahi had little option but to do so. Accordingly, the Commission concluded that the abandonment of the appeal ought not to be taken as a justifiable reason not to accept the case for further review.

The second major issue was to decide whether, having concluded that there may have been a miscarriage of justice, it would be in 'the interests of substantive justice' to refer the case again to the High Court.

To put the point in its sharpest terms, whether Mr Megrahi did or did not buy the items that were in the bomb suitcase would hardly matter if there was now a '**compelling and unanswerable case**' indicating that he is guilty of the crime.

Material the Commission obtained during its 2003–07 review reinforced the case against Mr Megrahi; other aspects yielded, potentially, further criminative circumstances on Mr Megrahi's part; while aspects of Mr Megrahi's accounts were unconvincing or implausible, displaying substantial and inherent contradictions.

The Commission, as part of the current review, obtained new information which, *if believed*, points at Libya, and Mr Megrahi as an operative in 1988 for that state, as being the culprits in the bombing of PA 103. The Commission considered, however, that the foregoing material did not entitle the Commission to establish *a compelling and unanswerable case* indicating that Mr Megrahi is guilty. As matters presently stand, the Commission was unable either to assess the nature or the circumstances under which this information was obtained or to form any conclusion about the credibility or reliability of the information. It may be that, if such matters are able to be properly considered in the future in a court of law, appropriate conclusions could be drawn about this new information.

Accordingly, and for these reasons, the Commission believes that it is in the interests of substantive justice to refer this case to the High Court.

Note for Editors

The Commission was established on 1 April 1999 as an independent body to review alleged miscarriages of justice in convictions in Scotland or in sentences imposed in such convictions.

The Commission may, under s194A–T of the Criminal Procedure (Scotland) Act 1995, refer a case to the High Court if it believes that a miscarriage of justice may have occurred and that it is in the interests of justice that a reference should be made. After the Commission makes a reference to the High Court the case will proceed as a normal appeal.

The Commission operates with a Board of eight Members (one of whom is the Chairperson), a Chief Executive, a Director of Corporate Services, a Head of Casework, two Senior Legal Officers, three Legal Officers and administrative support staff.

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