

Man convicted for Lockerbie bombing wins right to appeal

By Steve James
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The Libyan man convicted of the 1988 bombing of Pan Am 103 over Lockerbie, Scotland—an atrocity that killed 270 people—has been given leave to appeal to the Scottish High Court.

The long-awaited Scottish Criminal Cases Review Commission (SCCRC) into the case of Abdelbaset Ali Megrahi stated that new evidence discovered since the trial, as well as evidence not placed before the court, indicated “that the applicant may have suffered a miscarriage of justice.”

The SCCRC identified six grounds on which they based their findings. These all relate to evidence placing Megrahi in a Maltese clothing shop at the time materials alleged to be in the same suitcase as the bomb were purchased. The SCCRC found contradictory statements from the shop owner, Tony Gauci, and incorrect behaviour by the authorities when asking Gauci to identify Megrahi. It noted that there was “no reasonable basis” to place Megrahi in Malta at the time of the purchase.

The decision raises the possibility either of Megrahi having a second appeal rejected, a full re-trial, or of his case being dismissed and him walking free. The SCCRC rejected 45 of 48 grounds for appeal submitted by Megrahi’s defence team, but this will not prevent these grounds from being raised in any subsequent appeal. An appeal is not expected for another year.

Evidence submitted by Megrahi’s defence team was leaked to the *Scotsman*. In addition to evidence questioning Gauci’s reliability as a witness, the submissions included statements from a retired Scottish police officer, known as “Golfer”, accusing investigators of the disaster of tampering with evidence.

Scotland on Sunday, June 24, reported “Golfer” as claiming, “Senior members of the Lockerbie

investigating team agreed to manufacture and manipulate evidence to help secure a suspect and conviction.”

“Golfer” also claims that an undeclared US passport, issued to Khaled Jafaar, was discovered in the wreckage. Jafaar is at the centre of suggestions of a CIA-approved drug-running operation that some sources say provided the real route for the bomb to be placed on the plane.

The defence submission also pointed to apparent evidence manipulation: A babygro pajama suit presented in fragments to the court was allegedly originally found whole; a Toshiba radio manual presented burnt to the court was also found whole. The MST 13 timer that supposedly brought down the plane was supposedly installed in a Toshiba radio cassette.

The short published SCCRC report, summarising an 800-page report submitted to the High Court, specifically rejects “Golfer’s” allegations. The commission, which interviewed “Golfer” on three occasions, accepts that he is a former detective sergeant and was involved in the investigation. But they accuse “Golfer” of a “vast array of inconsistencies and contradictions”, considered some of his allegations to be implausible while others were “unsupported or refuted when viewed in the context of the Commission’s other findings.” The commission does not identify the inconsistencies and contradictions it claims to have found.

The Commission then uses “Golfer’s” alleged inconsistencies as a starting point for the rejection of all other defence submissions, including those of evidence fabrication, with the exception of the new evidence over Tony Gauci’s testimony.

Megrahi was convicted in 2000 at a non-jury trial, held under Scottish law in a former US base in the

Netherlands.

It was organised by the Blair government, with assistance from former South African President Nelson Mandela and the United Nations, at a time when strenuous efforts were underway to rehabilitate the government of Colonel Muammar Gadhaffi and to make Libya's vast oil assets accessible to British and US capitalism. For years Libya had been treated as a pariah, targeted since the 1980s for US and UN sanctions.

The Lockerbie bombing had originally been laid at the door of Iran, or alternatively attributed to a Palestinian group. But Libya was made the focus of the investigation in 1991, at a time when Washington was seeking to ensure Iran's tacit support for a US attack on Iraq in the first Gulf War.

In the next decade, Libya was to become a major investment location for Italian and French capital, threatening to exclude the US and UK from valuable markets and resources.

To pave the way for a rapprochement, the issue of Lockerbie had to be resolved. An agreement was reached whereby two Libyans accused of the mass-murder at Lockerbie were handed over to the Scottish authorities, and a trial arranged in Camp Zeist in the Netherlands. The former US airbase was temporarily designated as part of Scotland and under the jurisdiction of the Scottish legal system, which is distinct in terms of court procedure and the available verdicts from the rest of the UK.

Campaigners and lawyers working for relatives of the Lockerbie victims, including those killed in Lockerbie village itself, had long called for some sort of trial to explore the case against the two Libyans, Megrahi and Al-Amin Khalifa Fhima.

The trial was repeatedly disrupted as the testimony of several of the main prosecution witnesses, including the CIA spy Abdul Majid Giacka, fell apart. Megrahi's defence team, paid for by the Libyan government, did not probe crucial pieces of evidence. The final verdict, in which Megrahi was convicted yet his alleged co-conspirator Fhima went free, was based on the trial judges accepting a circumstantial trail of evidence to which Gauci's testimony was central.

The Libyan government viewed Megrahi's incarceration, and the billions of dollars in compensation agreed for the relatives of those who

died, as a small price to pay for the investment flood which has subsequently poured into the North African state, much if it into the hands of Gadhaffi's immediate entourage and family.

The recent SCCRC decision upholds the Crown case and only questions the identification of Megrahi as the suspect.

Libyan relations with the European Union are already close, but are hampered by the Libyan government's imprisonment of six Bulgarian medics accused of deliberately infecting hundreds of children in Benghazi with the HIV virus. Currently under sentence of death, the medics were used as scapegoats to divert attention for the regime's responsibility for poor hygiene in Benghazi's Al Fateh Children's Hospital. They were arrested shortly before Gadhaffi handed over Megrahi and Fhima to the Scottish authorities and have been subject to a series of trials, death sentences and appeals ever since. Another verdict on their case is due July 20.

Bulgaria is now an EU member and the next EU presidency, Portugal, has pledged to resolve the medics issue during its term in office. Britain recently concluded a provisional agreement on prisoner exchange with Libya, aimed at establishing arrangements for prisoner transfer, extradition and mutual assistance in criminal law. A final agreement is expected in a year. The British government insists that Megrahi will not be included in the agreement, but former Scottish First Minister, Jack McConnell, conceded after his May 3 election defeat that he had in fact been asked to include Megrahi in any such an exchange but had refused to do so.

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