The Lockerbie Trial
A perverse verdict

by

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"A masterly piece of work"
Professor Robert Black, QC

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On 21 December 1988, 270 people were killed when Pan Am flight PA103 from London Heathrow to JFK New York was brought down over Lockerbie. Almost three years later, on 14 November 1991 the prosecution authorities in Scotland and the United States announced simultaneously that they had brought criminal charges against two Libyan nationals, Abdelbaset Ali Mohmed al-Megrahi and Al Amin Khalifa Fhimah, for the bombing.

In the indictment, the two were alleged to be members of, and to have been acting as agents of, the Libyan intelligence service, the Jamahariya Security Organisation (JSO). The implication of the charges was that the Lockerbie bombing was an act of terrorism ordered by the Libyan state, that is, by Colonel Gadaffi. The assumption was that the bombing was in revenge for the US bombing of Libya from British airbases in 1986.

Libyan surprise

The indictment of the two Libyans in November 1991 came as a great surprise since it was widely believed up to then that the bombing was the work of Palestinians acting on behalf of Iran, in revenge for the shooting down in the Persian Gulf of an Iranian airliner carrying about 350 pilgrims to Mecca by the US guided missile destroyer Vincennes. This happened in July 1988 a matter of months before the bombing.

But in November 1991 the world was asked to believe that Libya was responsible, and that the action was in retaliation for the US bombing of Tripoli and Benghazi on 14 April 1986 from airbases in Britain, when about 100 civilians were killed, including Gadaffi's 2-year old adopted daughter.

Margaret Thatcher authorised the use of airbases in Britain. Lockerbie isn't mentioned at all in her 900-page autobiography, *The Downing Street Years*. Of the predicted Libyan retaliation for the bombing she boasted:

> "… it turned out to be a more decisive blow against Libyan-sponsored terrorism than I could ever have imagined. We are all too inclined to forget that tyrants rule by force and fear and are kept in check in the same way. There were revenge killings of British hostages organized by Libya, which I bitterly regretted. But the much vaunted Libyan counter-attack did not and could not take place. Gadaffi had not been destroyed but he had been humbled. There was a marked decline in Libyan sponsored terrorism." (pp 448-9)

This was published in 1993, long after the two Libyans were charged. It appears that she didn't believe in a Libyan connection to Lockerbie.

Beyond reasonable doubt?

The two accused were eventually tried under Scottish law by three Scottish judges without a jury at Camp Zeist in the Netherlands. The judges – Lords Sutherland, Coulsfield and Maclean – delivered their unanimous verdict on 31 January 2001, finding Megrahi guilty and acquitting Fhimah.

The judgement in full can be found on the Scottish Courts website here. It is clear from the judgement itself, without referring to the trial proceedings, that the conviction of Megrahi was perverse. In it, the judges relate the prosecution's account of how the Lockerbie bombing might have been carried out – by introducing an unaccompanied bag containing a bomb into the international airline baggage system at Luqa airport in Malta – and conclude that it was done that

way, and that it was done by Megrahi. But there is no evidence, let alone conclusive evidence, that a bomb was introduced at Luqa airport and no conclusive evidence connecting Megrahi with the bomb.

It is inconceivable that the three intelligent men who put their names to the judgement believe that the prosecution proved that Megrahi was guilty beyond reasonable doubt. As we show in an analysis of the judgement presented below, reasonable doubt leaps out of it all over the place.

The judgement is perverse. This extraordinary outcome is a consequence of the extraordinary decision of the Scottish prosecution authorities to indict the two Libyans in the first place. They did so on the evidence of Abdul Majid Giaka, a former member of the Libyan intelligence service, the JSO, and from August 1988 a CIA asset. During the trial, the defence demolished his credibility as a witness, so much so that the judgement discounts his evidence almost entirely. Before they charged the two Libyans in November 1991, Scottish prosecution authorities had a duty to ensure that their key witness was credible. They did not do so. This gross incompetence had consequences of geopolitical importance: it led to economic sanctions being imposed on Libya for most of the 90s at the behest of Britain and the US in an attempt to force Libya to hand over of the accused for trial.

What is more, the CIA and therefore the US government knew that Giaka was not a credible witness – it was in the cables which his CIA handlers sent back to Langley about him from August 1988 onwards – but they kept this information from the Scottish prosecution authorities. The CIA may even have furnished Giaka with the "evidence" he gave about the two Libyans. Be that as it may, the Scottish prosecuting authorities allowed themselves to be conned by the CIA.

So, what was at stake in the trial at Camp Zeist was about much more than the guilt or innocence of the two Libyans in the dock. For the judges to pronounce them innocent was an indictment of the their fellow professionals in the Scottish legal system who had allowed themselves to be conned by the CIA into bringing the charges in the first place. It was also an indictment of Britain and the US for pursuing a vendetta against Libya for most of the 90s to force the handing over of two innocent people.

So, what could the judges do but suspend reasonable doubt and find at least one of the Libyans guilty?

On 1 June 2000 after the trial in Camp Zeist had started the prosecution at last saw uncensored versions of CIA cables about Giaka and became aware of the awful truth of Giaka's history, which if revealed to the defence would mean that his credibility as a prosecution witness would be undermined. When the defence applied to the Court for the same access to the cables, desperate to protect their key witness, the prosecution lied to the Court that the censored material would be useful to the defence (see below). The person who told this enormous whopper was the Lord Advocate, the chief law officer of Scotland, who led for the prosecution at Camp Zeist.

The key witness

As we have said, the key prosecution witness at the trial in Camp Zeist was Abdul Majid Giaka. Without him, the two Libyans, Megrahi and Fhimah, would never have been indicted. Whenever, in the intervening years, journalists and others questioned the soundness of the case against them, the prosecuting authorities in Edinburgh and Washington always responded by boasting that they had a witness who could connect the accused directly with the Lockerbie bomb. The witness in question was Giaka.

Giaka was a member of the Libyan intelligence service, the JSO, who in August 1988 a few months before the Lockerbie bombing offered his services to the CIA. In July 1991 he gave the CIA

startling eyewitness evidence connecting Megrahi and Fhimah with the Lockerbie bomb (whereupon he was taken to the US and put on a witness protection programme, where he has remained ever since). A few months later in November 1991, they were charged with the bombing in Scotland and the US. Without Giaka's evidence, they would never have been charged.

The credibility of any witness should be of concern to prosecuting authorities. The more so when he is the key witness in the biggest murder trial in British history with profound geopolitical implications. Even more so when he is a former member of Libyan intelligence who has defected to the CIA and who stood to receive US$4 million of reward money from the US government if his evidence was instrumental in securing a conviction for the Lockerbie bombing.

Plainly, it was incumbent upon the Scottish prosecuting authorities to look upon Giaka's evidence with a very sceptical eye and to assess his credibility as a witness thoroughly before charging the two Libyans. This they failed to do. Crucially, they failed to get sight of uncensored versions of the regular cables about him sent by his CIA handlers in Malta to CIA headquarters in Langley in the period from August 1988 onwards, which contained the CIA's own assessment of his credibility. It seems that prior to the charges being laid in November 1991 the CIA had allowed them to see censored versions of the cables with large parts blacked out. But it wasn't until 1 June 2000, after the trial in Camp Zeist had begun, that they saw uncensored versions of these cables.

It was, unsurprisingly, the blacked out parts which were relevant to an assessment of Giaka's credibility. They revealed that, as of 1 September 1989 when he had been working for the CIA for over a year (and months after the destruction of Pan Am 103), Giaka's CIA handlers were highly critical of him and of the lack of important information supplied by him. He is described as a man in the business of selling information for his own benefit; as someone who will never have the penetration of Libyan intelligence services that had been anticipated; as someone who had never been a true member of Libyan intelligence; and as someone whose CIA salary of $1000 per month should be cut off if he supplied no significant information. The clear inference from this is that by 1 September 1989 Giaka had still not given his CIA masters the crucial eyewitness "evidence" incriminating Megrahi and Fhimah, otherwise these criticisms of his value and of the worth of the information supplied by him could not have been made.

Had the Scottish prosecuting authorities done their job in 1991 and made it their business to acquaint themselves with the CIA's experience of Giaka then Megrahi and Fhimah would never have been charged – and Libya would not have had economic sanctions imposed on it for most of the 90s for refusing to extradite them. Clearly, the CIA deliberately kept vital information about Giaka's lack of credibility as a witness from the Scottish prosecuting authorities. But it was their job to make sure their key witness was credible, to demand a full account of Giaka's history with the CIA and to bring charges against the two Libyans only if that history revealed him to be credible.

(There is, of course, an alternative explanation to this: that the CIA supplied Giaka with the "evidence" incriminating Megrahi and Fhimah and dangled a carrot of a $4 million reward in front of him if he performed well enough at a trial to get them convicted. Megrahi was a suspect by early 1991 with tentative identification evidence against him, so it is possible that the CIA decided in July 1991 to make their hitherto useless asset perform a useful service for them by incriminating the two Libyans. Obviously, Giaka could only perform that service if the CIA's experience of him was kept away from the Scottish prosecuting authorities – and the defence.)

The Lord Advocate lies

The prosecution saw the uncensored versions of the CIA cables about Giaka on 1 June 2000 at the US embassy in The Hague, having promised to keep the censored parts confidential. How this came about is not clear. Presumably, the prosecution made a request to the CIA. If so, it was not

obviously a sensible thing to do from their point of view. There is a clear obligation in Scottish law that the prosecution has a duty to disclose to the defence any information which supports the defence case or casts doubt upon the prosecution case. In principle, therefore, information from the uncensored cables which undermined Giaka's credibility would have to be disclosed to the defence, and a confidentiality agreement with the CIA could not override that principle. So, on the face of it, from the prosecution point of view it would have been far better if they had remained in ignorance.

(Why the CIA consented to the prosecution seeing the uncensored cables is also a puzzle, since they must have known that there was a grave danger that as a result Giaka would be discredited and the trial would collapse. At the time there was some public controversy about the CIA failing to make information available for the trial and at one point the Director of the CIA, George Tenet, made a statement to the victims' families saying that the CIA was committed to making every relevant piece of evidence available to the Court. Perhaps that's why the CIA felt obliged to give the prosecution unrestricted access of the cables for the first time.)

When the prosecution saw uncensored versions of the cables on 1 June 2000, they must have been panic stricken since their key witness had being revealed to be utterly unreliable. They kept quiet about their sight of the uncensored cables for three months until 21 August 2000, the day before the trial was due to resume after its summer recess. When the defence applied to the Court next day for access to the uncensored cables, the prosecution objected strenuously and simply lied to the Court that the censored material would be useful to the defence.

The Lord Advocate of Scotland, who led for the Crown at the trial, told the Court that the members of the prosecution team who saw the uncensored CIA cables were fully aware of the obligation upon them to make available to the defence teams material relevant to the defence of the accused and, to that end, considered the contents of those cables with certain principles in mind.

He said:

> "First of all, they considered whether or not there was any information behind the redactions [the censored material] which would undermine the Crown case in any way. Secondly, they considered whether there was anything which would appear to reflect on the credibility of Mr Majid [Giaka]. They also considered whether there was anything which might bear upon the special defences which had been lodged and intimated in this case. On all of these matters, … [they] reached the conclusion that there was nothing within the cables which bore on the defence case, either by undermining the Crown case or by advancing a positive case which was being made on may be made, having regard to the special defence... I emphasise that the redactions have been made on the basis of what is in the interests of the security of a friendly power... Crown counsel was satisfied that there was nothing within the documents which bore upon the defence case in any way."

One of the trial judges, Lord Coulsfield, then intervened:

> "Does that include, Lord Advocate ... that Crown counsel, having considered the documents, can say to the Court that there is nothing concealed which could possibly bear on the credibility of this witness?"

To which the Lord Advocate replied:

> "… there is nothing within these documents which relates to Lockerbie or the bombing of Pan Am 103 which could in any way impinge on the credibility of Mr Majid [Giaka] on these matters".

That is a barefaced lie by the chief law officer of the Crown in Scotland. The uncensored cables revealed, amongst other things, that the CIA believed Giaka to be in the business of selling information for his own benefit. One doesn't have to be a lawyer, let alone the chief law officer in Scotland, to recognise that this "impinges upon the credibility" of Giaka as a witness, as did other matters from the uncensored cables. A witness in court who is caught out lying can be charged with perjury and even gaoled, but the chief law officer of the Crown in Scotland can apparently lie with impunity.

However, the Lord Advocate's lies were in vain. The Court did not accept that the defence should be denied access to the uncensored cables and he was instructed by the Court "to use his best endeavours to ensure that the information in the unedited cables was disclosed to the defence". The CIA conceded that the defence could see the unedited cables – they had to, otherwise the case would most likely have collapsed – and for the first time in history CIA internal documents were made available to foreign court.

With the aid of the unedited cables, the defence destroyed Giaka's credibility as a witness when he gave evidence on 26-28 September 2000.

The Lockerbie judgement: an analysis

Prosecution case
In summary, the prosecution's account of how the Lockerbie bombing was carried out was as follows.

Abdelbaset Ali Mohmed Megrahi and Al Amin Khalifa Fhimah arranged for a brown Samsonite suitcase containing the Lockerbie bomb to be put on to Air Malta flight KM180, which left Luqa airport in Malta for Frankfurt on the morning of 21 December 1988.

The suitcase was put on to the flight as unaccompanied baggage and tagged for onward transmission, first on to a feeder flight (Pan Am PA103A) from Frankfurt to Heathrow and then on to Pan Am flight PA103 from Heathrow to JFK in New York, the flight which was blown up over Lockerbie at 19.03 GMT that evening.

Fhimah, who had been station manager for Libyan Arab Airlines in Malta and therefore knew his way around Luqa airport, provided stolen Air Malta luggage tags for this purpose.

The bomb itself was made out of Semtex and triggered by an electronic timing device (supplied and manufactured by a Swiss company, MEBO AG) and was contained within in a Toshiba RT-SF 16 radio cassette player. The suitcase also contained items of clothing purchased for this purpose from a shop in Malta (Mary's House in Sliema) by Megrahi.

The judges – Lords Sutherland, Coulsfield and Maclean – delivered their unanimous verdict on 31 January 2001, finding Megrahi guilty and acquitting Fhimah. There follows an analysis of their judgement, which shows that the verdict against Megrahi is not justified by the evidence as set out in the judgement itself.

* * * *

The first 15 paragraphs of the judgement are taken up with details of the fatal explosion which took place on PA103. There is no doubt that the explosive device was contained in a Samsonite case and surrounded by clothes which were bought in Malta, at Mary's House in Sliema. Below we will examine the identification evidence presented by the prosecution that Megrahi was the purchaser, a key element in the prosecution case.

The judgement also accepts the prosecution case that the explosive device was made of Semtex, and triggered by a MST-13 timer, manufactured by the Swiss company MEBO AG, and contained within a Toshiba RT-SF 16 radio cassette player (paragraph 15). The importance of this is that evidence was advanced to show that

MST-13 timers were sold by MEBO AG to Libya (paragraphs 44-54) and therefore could conceivably be available to Megrahi as a senior figure in the JSO, which did not seem to be disputed. However, there was no evidence advanced of Megrahi being in possession of an MST-13 timer or of a bomb triggered by one, or even of a Samsonite suitcase, once Giaka's evidence was discredited.

(This is not relevant to the current analysis but evidence was also advanced that MEBO AG supplied at least a couple of MST-13 timers to the Stasi (paragraph 48-49). It was therefore possible that one of these could have found their way to one of the Palestinian groups, the Palestinian Popular Struggle Front (PPSF) or the Popular Front for the Liberation of Palestine – General Command (PFLP-GC), whom the defence said were responsible for the bombing. In other words, it was possible to accept that the bomb was triggered by an MST-13 timer without necessarily accepting that it originated in Libya.)

* * * *

We will now look at the evidence advanced by the prosecution connecting Megrahi and Fhimah with the bomb, beginning with Giaka and followed by the owner of the Mary's House. We will then examine the evidence that Megrahi and Fhimah were responsible for putting an unaccompanied bag with a bomb in it got on KM180 at Luqa airport and the evidence that such a bag passed through Frankfurt airport on to PA103A.

Giaka's "evidence"

According to the judgement (paragraph 42), Giaka worked for Libyan Arab Airlines at Luqa airport in Malta from December 1985 and knew both Megrahi and Fhimah well. He worked for Fhimah who was the station manager for Libyan Arab Airlines at Luqa from 1985 to October 1988. His importance lay in the fact that he supplied the only eyewitness evidence connecting Megrahi and Fhimah to the bomb, which did not involve uncertainty about identification – since he knew them personally.

As the judgement recounts (paragraphs 42 & 43), he said he saw them arriving together in Luqa airport off a flight from Tripoli sometime between October and December 1988. The date was eventually pinned down to 20 December 1988, the day before the bombing took place. Crucially he said that he saw them at the luggage carousel and that Fhimah collected a brown Samsonite suitcase, which he took through customs.

He also told the CIA that explosives (TNT, not Semtex) supplied by Megrahi had been stored for months in the offices of Libyan Arab Airlines under the control Fhimah. He had mentioned the explosives to the CIA before but it wasn't until July 1991 that he associated the two accused with them.

He also said that in 1986 he had been asked by Said Rashid, a senior figure in the JSO, if it would be possible to put an unaccompanied bag on board a British aircraft at Luqa airport; he had, he said, reported back that it could be done and had later discussed the matter with the first accused, Megrahi. (In his evidence to the Court he admitted, under cross examination, that he had never reported this to the CIA prior to July 1991, even when they asked him if he knew anything about the possibility of the bomb which blew up PA103 being sent from Luqa).

The defence's access to the CIA cables about him enabled them to destroy his credibility as a witness and the judges were forced to conclude:

> "It is also in our view clear that whatever may have been his original reason for defection, his continued association with the American authorities was largely motivated by financial considerations. … Information provided by a paid informer is always open to the criticism that it may be invented in order to justify payment, and in our view this is a case where such criticism is more than usually justified. …
>
> "Putting the matter shortly, we are unable to accept Abdul Majid [Giaka] as a credible and reliable witness on any matter except his description of the organisation of the JSO and the personnel involved there."

Thus the evidence of the key witness had to be discounted. Of itself, his evidence did not amount to much. It certainly did not amount to direct evidence that the two accused were responsible for getting the bomb on to Air Malta flight KM180 at Luqa airport. But it did apparently show that the JSO had been thinking about blowing up an aircraft by putting an unaccompanied bag on board at Luqa and that there was a reliable method

of doing so (though, strangely, the method was not described at the trial). And it did suggest that a brown Samsonite suitcase of the type which contained the bomb was in the possession of the accused at Luqa shortly before the bombing occurred.

The discounting of this evidence blew a very large hole in the prosecution case.

The "identification" of Megrahi

The only remaining evidence connecting Megrahi to the bomb was his "identification" by Tony Gauci, as the person who bought the clothes which were in the Samsonite case along with radio cassette containing the bomb. Gauci was a partner in Mary's House, in Sliema, Malta, where according to the prosecution the clothes were bought. On the basis of the identification evidence by Gauci, the prosecution tried to prove that Megrahi did the buying (see paragraphs 55-69).

It should be emphasised, as the judgement freely admits, that Gauci never ever made a positive identification of Megrahi as the purchaser of the clothes. Yet the judges accepted his identification evidence as reliable, while acknowledging it was defective and excusing its defectiveness because of the lapse of time since the purchase occurred. This is not a joke. It is there in black and white in paragraph 69 of the judgement. It was on the basis of this defective identification evidence that Megrahi was convicted of mass murder. After Giaka was discredited, there was no other identification evidence connecting to Megrahi with the bomb.

As the judgement recounts, in September 1989, nine months after the bombing, Gauci was first approached by police about the clothes. Amazingly, he said he remembered selling the clothes to a Libyan about a fortnight before Christmas 1988. He remembered the sale, he said, because the choice of clothes didn't appear to matter to the purchaser (paragraph 12).

Gauci assisted the police in the construction of a photofit and an artist's impression of the purchaser (paragraph 56). At various times over the next eighteen months he was shown sets of photographs of individuals and invited to identify one as the purchaser and on two occasions he picked out a person who he said looked like the purchaser.

At about the end of 1989 or the beginning of 1990 his brother showed him an article in a newspaper about the Lockerbie disaster (paragraph 61). There were two photographs in the article. He thought that one of them was of the man who had bought the clothing from him. The photograph was of a Palestinian named Abo Talb, who was associated with the PPSF. However, it should be said that on one occasion when shown a set of photographs which included one of Abo Talb, he did not pick him out (paragraph 61).

On 15 February 1991 he was again asked to look a number of photographs (see paragraph 62), this time 12 in number and he picked out number 8 which was of Megrahi from his 1986 passport, saying:

> "Number 8 is similar to the man who bought the clothing. The hair is perhaps a bit long. The eyebrows are the same. The nose is the same. And his chin and shape of face are the same. The man in the photograph number 8 is in my opinion in his 30 years. He would perhaps have to look about 10 years or more older, and he would look like the man who bought the clothes. It's been a long time now, and I can only say that this photograph 8 resembles the man who bought the clothing, but it is younger."

He went on:

> "I can only say that of all the photographs I have been shown, this photograph number 8 is the only one really similar to the man who bought the clothing, if he was a bit older, other than the one my brother showed me."

The one his brother showed him was, of course, of Abo Talb.

Much earlier, on 14 September 1989 he picked out one Mohammed Salem from a set of photographs as similar to the man who had bought the clothing (see paragraph 58) and presumably if he had continued to be presented with sets of photographs of people who resembled the photofit and artist's impression, he would have picked out others.

That does not amount to a positive identification of Megrahi as the purchaser of the clothes surrounding the bomb. That was the state of play when he was indicted in November 1991.

Before the trial began on 13 August 1999, Gauci picked out Megrahi at an identification parade at Camp Zeist. This was pretty meaningless because photographs of the accused had being published widely over the years. But even then Gauci did not say that Megrahi was the man who purchased the clothes in his shop. His exact words were:

> "Not exactly the man I saw in the shop. Ten years ago I saw him, but the man who look a little bit like exactly is the number 5" (paragraph 55)

Number 5 in the parade was Megrahi.

Gauci also identified him in Court, saying:

> "He is the man on this side. He resembles him a lot" (paragraph 55)

Yet again not a positive identification in either case.

There is another matter which casts doubt upon Gauci's identification of Megrahi as the purchaser. When he was first interviewed by the police he said that the purchaser was six feet or more in height and aged 50 (paragraph 57). Megrahi is 5'8" in height and in December 1988 he was 36 years old (paragraph 68).

The judges' conclusions from this (paragraph 69) are remarkable:

> "What did appear to us to be clear was that Mr Gauci applied his mind carefully to the problem of identification whenever he was shown photographs, and did not just pick someone out at random. Unlike many witnesses who express confidence in their identification when there is little justification for it, he was always careful to express any reservations he had and gave reasons why he thought that there was a resemblance. There are situations where a careful witness who will not commit himself beyond saying that there is a close resemblance can be regarded as more reliable and convincing in his identification than a witness who maintains that his identification is 100% certain.
>
> "From his general demeanour and his approach to the difficult problem of identification, we formed the view that when he picked out the first accused at the identification parade and in Court, he was doing so not just because it was comparatively easy to do so but because he genuinely felt that he was correct in picking him out as having a close resemblance to the purchaser, and we did regard him as a careful witness who would not commit himself to an absolutely positive identification when a substantial period had elapsed.
>
> "We accept of course that he never made what could be described as an absolutely positive identification, but having regard to the lapse of time it would have been surprising if he had been able to do so. We have also not overlooked the difficulties in relation to his description of height and age. We are nevertheless satisfied that his identification so far as it went of the first accused as the purchaser was reliable and should be treated as a highly important element in this case."

The judges seem to have omitted one crucial fact in this treatise on the virtues of uncertain witnesses: Tony Gauci picked out, in one way or another, three different people who resembled the purchaser. But, most important of all, he wasn't sure that any of them was the purchaser. Because Megrahi looked like the purchaser, according to Gauci's evidence, and conceivably might have been the purchaser, the judges have elevated that possibility into a certainty and declared him to be the purchaser.

The rain in Malta

The judges not only concluded that Megrahi bought the clothes in Mary's House, but also that he bought them on Wednesday, 7 December 1988 in the early evening (paragraph 67).

Tony Gauci said that the clothes were bought about a fortnight before Christmas and he also recalled that he had been alone in his shop because his brother Paul had been watching football on television (paragraph 56). Assuming the latter recollection to be accurate, this narrowed the possible purchase dates to Wednesday 23 November or Wednesday 7 December 1988.

Tony Gauci also recalled that it was raining when the purchaser came into the shop and that he bought an umbrella, which he put up when he left the shop (paragraphs 56 & 57). Fragments of a black nylon umbrella were also in the Samsonite case along with the bomb (paragraph 10).

Major Mifsud, Chief Meteorologist at Luqa Airport at that time, appeared as a witness for Megrahi at the trial (the first of only two witnesses called in his defence). Paragraph 65 of the judgement reports his evidence as follows:

> "He was shown the meteorological records kept by his department for the two periods, 7/8 December 1988 and 23/24 November 1988. He said that on 7 December 1988 at Luqa there was a trace of rain which fell at 9.00am but apart from that no rain was recorded later in the day. Sliema is about five kilometres from Luqa. When he was asked whether rain might have fallen at Sliema between 6.00pm. and 7.00pm in the evening of 7 December 1988, he explained that although there was cloud cover at the time he would say "that 90% was no rain" but there was however always the possibility that there could be some drops of rain, "about 10% probability, in other places." He thought a few drops of rain might have fallen but he wouldn't think that the ground would have been made damp. To wet the ground the rain had to last for quite some time. The position so far as 23 November 1988 was concerned was different. At Luqa there was light intermittent rain on that day from noon onwards which by 1800 hours GMT had produced 0.6 of a millimetre of rain. He thought that the situation in the Sliema area would have been very much the same."

So rain definitely fell at Sliema in the early evening of 23 November 1988. No rain fell at Luqa, 5 kilometres away from Sliema, on 7 December 1988 after 9am and in Major Mifsud's opinion there was only a 10% chance of even a few drops of rain falling at Sliema between 6.00pm and 7.00pm that day. So, in the absence of definite evidence to the contrary, 7 December 1988 is almost definitely ruled out as the purchase date, isn't it? The judges thought otherwise:

> "Having carefully considered all the factors relating to this aspect, we have reached the conclusion that the date of purchase was Wednesday 7 December." (paragraph 67)

The only other factor apart from the presence or absence of rain was Gauci's recollection of how close the purchase date was to Christmas. He said it was about a fortnight before Christmas but as reported in paragraph 56 he gave various answers about whether or not Christmas decorations were up. His definite recollections were that his brother was watching football and that it was raining – which leads to the conclusion that the purchase date was probably 23 November 1988. However, the judges concluded that the purchase date was definitely 7 December 1988. The evidence allows for a possibility that it was 7 December 1988, but once again the judges have elevated a possibility into a certainty unjustified by the evidence.

Reading through the judgement for the first time, it was puzzling why the judges felt the need to conclude that the purchase date was 7 December 1988 rather than 23 November 1988. What difference did it make when the bomb was, allegedly, put on an aircraft at Luqa on 21 December 1988? Then in paragraphs 87 & 88 the reason became clear:

> "The first accused travelled on his own passport in his own name on a number of occasions in 1988, particularly to Malta on 7 December where he stayed until 9 December …
>
> "We have already accepted that the date of purchase of the clothing was 7 December 1988, and on that day the first accused arrived in Malta where he stayed until 9 December. He was staying at the Holiday Inn, Sliema, which is close to Mary's House."

The purchase date had to be 7 December 1988 to implicate Megrahi in the purchase – because Megrahi was in Malta that day and not on 23 November 1988.

Luqa airport

There is another major hole in the prosecution case, which yet again the judges acknowledged but then ignored. It is an essential element of the prosecution's case that an unaccompanied brown Samsonite suitcase got on to Air Malta Flight 180 at Luqa airport bound for Frankfurt. Yet the prosecution failed to identify a route whereby any unaccompanied bag could have got on to any flight at Luqa.

(In 1993 Granada Television broadcast a dramatised documentary on the Lockerbie bombing, which showed the suitcase containing the bomb commencing its fatal progress by being loaded on to an Air Malta flight to Frankfurt at Luqa. Air Malta sued Granada for libel and in December 1993 accepted substantial damages in an out of court settlement.)

This issue is dealt with in paragraphs 36-39 of the judgement. In the usual way, before a flight took off from Luqa the number of bags loaded on it had to match exactly the total number of bags checked in for it and likewise the passengers. The prosecution tried in vain to establish that this rule was not always strictly adhered to but they failed to do so.

The judgement frankly acknowledges this hole in the prosecution case, saying:

> "If therefore the unaccompanied bag was launched from Luqa, the method by which that was done is not established, and the Crown accepted that they could not point to any specific route by which the primary suitcase could have been loaded". (paragraph 39)

And later:

> "As we have also said, the absence of an explanation as to how the suitcase was taken into the system at Luqa is a major difficulty for the Crown case but after taking full account of that difficulty, we remain of the view that the primary suitcase began its journey at Luqa" (paragraph 82)

The judgement says (paragraph 87) that Megrahi flew to Malta from Tripoli on 20 December 1988 using a passport in the name Ahmed Khalifa Abdusamad, staying overnight in the Holiday Inn, Sliema, using the same name, and leaving the next morning on flight LN147, scheduled to leave at 10.20am about the same time as KM180 to Frankfurt. He therefore checked in around the same time as passengers for KM180. If direct evidence existed connecting Megrahi to the bomb, then evidence of this kind, assuming it is true, would provide useful corroboration to the prosecution case. But of itself it doesn't prove anything, particularly since the prosecution failed to identify a mechanism whereby an unaccompanied suitcase could be got on any flight at Luqa.

Frankfurt airport

So, there is no evidence that Megrahi got the suitcase on to the Air Malta flight KM180 at Luqa, and there is no evidence as to how any unaccompanied bag could get on to any flight at Luqa. How then can the judges continue to accept the prosecution case that the suitcase began its journey at Luqa?

The answer, such as it is, is that there is some evidence that an unaccompanied bag from flight KM180 from Luqa went through the computer controlled baggage handling system at Frankfurt airport (see paragraphs 26-35). What seems to be certain is that no passenger who came in on KM180 from Malta flew out of Frankfurt on PA103A to Heathrow. But baggage handling records seem to show that a bag which came in on KM180 from Luqa was entered into the baggage handling system for transfer to PA103A.

A computer printout of all baggage which went through the system on 21 December 1988 was fortuitously available to investigators, because a computer programmer who realised that it may contain useful information about baggage loaded on to PA103A printed it the next morning and kept it (paragraph 30). The printout specified the flight on which each bag was loaded that day, but not the flight a transit bag came in on if it was a transit bag – only the destination flight needs to be entered into the computer system in order to route a bag correctly.

So, what had to be done was to identify the bags which according to the printout were loaded on to PA103A that day and note the workstation at which each was entered into the system and the time this was done. Most of these bags had been checked in at Frankfurt and the rest were transit bags from flights into Frankfurt. To determine the flight on which transit bags came in required careful examination of work sheets filled in by hand at the workstations used for transit bags. There, the procedure was supposed to be to take a trolley of transit bags from a particular flight and enter them into the system, recording on the worksheet the flight they came in on and the start time and end time of the entry process. During that period, bags from a different flight were not supposed to be entered at the workstation, otherwise the work sheet would obviously be inaccurate.

But there was nothing to stop baggage handlers doing this. And if it was done, the routing of baggage would still function properly, as long as the correct destination was entered into the computerised handling system. This means that it could have been a regular practice without coming to the attention of the airport management. Lawrence Whittaker, an FBI special agent who appeared as the second and last witness in Megrahi's defence, gave evidence that he had observed this happen when he was present in the baggage hall as a member of the investigating team in September 1989 (paragraph 34).

The computer printout and the work sheets together appeared to show that a bag which came in on KM180 was entered into the baggage handling system for transfer to PA103A and since no passenger transferred from KM180 to PA103A, it looked like a piece of unaccompanied baggage. Of course, there was no way of telling if this was the Samsonite case with a bomb in it, tagged for loading on to PA103 at Heathrow.

The defence questioned this conclusion, pointing out that the baggage handling records at Frankfurt were manifestly inaccurate in many instances, which called into question any conclusion derived from them (see paragraphs 32-34). For example, the records appeared to show that a bag from flight LH1071 from Warsaw was entered into the baggage handling system that day for loading on to PA103A (paragraph 33). Since no passenger from LH1071 transferred to PA103A, this too seemed to be an unaccompanied bag and could equally well be a Samsonite case with a bomb in it, tagged for loading on to PA103 at Heathrow. The judges admit that this astounding conclusion can be drawn from the records – but never refer to it again.

There is another question mark against the prosecution's theory that the bomb went through Frankfurt as transit baggage from an Air Malta flight. It was Pan Am's practice to X-ray this transit baggage from other airlines – so-called interline baggage – at Frankfurt and there is evidence that interline baggage for PA103A was indeed X-rayed (paragraph 34). There is also evidence that staff at Frankfurt had been warned to look out for explosive devices hidden in radio cassette players, most recently in October 1988 after German police arrested a number of Palestinians and found bomb making equipment and radio cassette players (in the so-called Autumn Leaves operation). The unanswered question is why was the Lockerbie bomb not discovered, if as the prosecution postulated it went through Frankfurt airport in interline baggage. Again, the judges admit this problem with the prosecution's case, but explain it away by saying that evidence had shown that the operator of the X-ray machine (who was too ill to give evidence himself) was poorly trained.

Their conclusion about the evidence from Frankfurt is as follows:

> "The evidence in regard to what happened at Frankfurt Airport, although of crucial importance, is only part of the evidence in the case and has to be considered along with all the other evidence before a conclusion can be reached as to where the primary suitcase originated and how it reached PA103. It can, however, be said at this stage that if the Frankfurt evidence is considered entirely by itself and without reference to any other evidence, none of the points made by the defence seems to us to cast doubt on the inference from the documents and other evidence that an unaccompanied bag from KM180 was transferred to and loaded onto PA103A." (paragraph 35)

It is true that the baggage handling records seem to indicate that an unaccompanied bag from KM180 was loaded on to PA103A. But the records are obviously not completely accurate and any conclusion drawn from them must be viewed with caution. The judges seem to accept that there is element of uncertainty, when they say that the evidence from Frankfurt must be considered with all the other evidence before a conclusion can be reached about the origin of the Samsonite case.

The trouble is there is **no** other evidence that its origin was Luqa airport. The prosecution did not present evidence to show that Megrahi put the case on KM180, or arranged to have it done. They couldn't even offer an explanation as to how any unaccompanied bag could be put on to any plane at Luqa.

Without any other evidence, why should Luqa be preferred to Warsaw as the origin of the Samsonite case with a bomb in it, tagged for loading on to PA103 at Heathrow?

The evidence against Fhimah

Apart from Giaka's evidence, which the judges discounted, the only other evidence connecting Fhimah to the bomb was two entries in his 1988 diary, one on the page for 21 December 1988 and both apparently reminders to "get" luggage tags from Air Malta (paragraphs 84-85). The prosecution maintained that the inference to be drawn from these entries was that he had obtained Air Malta interline tags for Megrahi, and that as an airline employee he must have known that the only purpose for which they would be required was to enable an unaccompanied bag to be placed on an aircraft in order to blow it up. There was, of course, no forensic evidence that Air Malta tags, as opposed to any other airline, were attached to the Samsonite case which contained the bomb.

But the judges couldn't make the leap of faith to convict him of being party to getting the suitcase containing the bomb on board KM180 and concluded:

> "There is therefore in our opinion insufficient corroboration for any adverse inference that might be drawn from the diary entries. In these circumstances the second accused falls to be acquitted." (paragraph 8)

Conclusion

Paragraph 89 of the judgement says:

> "We are aware that in relation to certain aspects of the case there are a number of uncertainties and qualifications. We are also aware that there is a danger that by selecting parts of the evidence which seem to fit together and ignoring parts which might not fit, it is possible to read into a mass of conflicting evidence a pattern or conclusion which is not really justified."

It appears that the judges didn't heed their own warning when they declared Megrahi guilty beyond reasonable doubt. Without Giaka's evidence, there was no positive evidence linking Megrahi to the bomb or that that Luqa airport was the origin of the Samsonite case containing the bomb which blew up PA103 over Lockerbie.

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