



JUDICIARY OF
ENGLAND AND WALES

R v Ismail Abdurahman

SUMMARY

Court of Appeal dismisses appeal against conviction

Overview

On 7 July 2005, three suicide bombers detonated bombs on the London transport network, killing themselves and 52 others. On 21 July 2005, four bombs were detonated on the London transport network and a fifth was found, abandoned. The bombs failed to explode. The five men responsible for planting the bombs (the ‘21/7 bombers’) escaped, but were later caught and convicted.

Ismail Abdurahman was convicted in 2008 of helping Hussain Osman, one of the 21/7 bombers, to evade arrest after the failed bombings. His appeal against conviction was dismissed by the [Court of Appeal, Criminal Division](#), in 2008. In 2016, his trial was found by the [Grand Chamber of the European Court of Human Rights](#) (‘the Strasbourg Court’) to have been unfair. In the light of this finding, the Criminal Cases Review Commission (CCRC) referred his case to the Court of Appeal.

The Court of Appeal, Criminal Division (Dame Victoria Sharp, President of the Queen’s Bench Division, Mr Justice Garnham and Mr Justice Chamberlain) decided that Abdurahman’s conviction was not unsafe, despite the findings of the Grand Chamber of the Strasbourg Court. It therefore dismissed his appeal.

Background

Abdurahman’s offences arose from help he was said to have given to Osman in the aftermath of the failed attacks. In particular, when Osman was being sought by police between 23 and 26 July 2005, it was said that Abdurahman allowed Osman to stay in his flat and gave him clothes and other help to allow him to escape abroad.

On 27 July 2005, police officers approached Abdurahman and asked him to accompany them to the police station. He did so and was questioned, not as a suspect, but as a potential witness. When he began to incriminate himself, the officers questioning him sought advice from a senior police officer. They were told to continue questioning him without administering a caution. That is what they did. He signed a written statement in the early hours of 28 July 2005, in which he described how Osman had stayed at his flat and admitted his involvement in the failed 21/7 attacks (‘the First Statement’).

It was only at that point that Abdurahman was arrested, cautioned and told of his right to free legal advice. On 30 July 2005, after receiving legal advice, he gave the police another written statement ('the Second Statement') in which he adopted most of the contents of the First Statement.

Abdurahman was tried at the Crown Court at Kingston-upon-Thames. He applied to exclude the First Statement pursuant to 76 and 78 of the Police and Criminal Evidence Act 1984 ('PACE') on the ground that he had been tricked into making it. He said the police officers had misled him into thinking he was only a witness, not a suspect. The trial judge accepted that there had been a breach of PACE Code of Practice C but ruled that the First Statement was not unreliable and its admission would not be unfair.

On 4 February 2008, Abdurahman was convicted of one count of assisting an offender and four counts of failing to give information about acts of terrorism. He was sentenced to ten years' imprisonment.

On 21 November 2008, the [Court of Appeal, Criminal Division](#), dismissed his appeal against conviction, deciding his conviction was not unsafe, but reduced his sentence to one of 8 years' imprisonment.

On 16 December 2014, the [Fourth Section of the Strasbourg Court](#) rejected Abdurahman's complaint that there had been a violation of his right to a fair trial under Article 6 of the European Convention of Human Rights ('Article 6').

The case was, however, referred to the [Grand Chamber of the Strasbourg Court](#). On 13 September 2016, the Grand Chamber found, by a majority, that the admission in evidence of the First Statement gave rise to a violation of Abdurahman's right to a fair trial under Article 6.

In the light of this decision, the CCRC subsequently referred Abdurahman's conviction to the Court of Appeal, Criminal Division.

The decision of the Court of Appeal, Criminal Division

The Court of Appeal decided, notwithstanding the decision of the Grand Chamber of the ECtHR, that Abdurahman's conviction is not unsafe and accordingly dismissed his appeal.

Applying the case law of the UK Supreme Court summarised at paragraphs 97-109 of its judgment, the Court of Appeal decided that, although domestic courts should usually follow a 'clear and constant line of decisions' of the Strasbourg Court, they were not obliged to do so in certain situations. One of these was where the reasoning of the Strasbourg Court appears to overlook or misunderstand some argument or point of principle (see paragraph 110 of the judgment).

In this case, the Court held that there were good reasons not to follow the reasoning of the Grand Chamber.

First, it turned on a factual conclusion that there were no compelling reasons for restricting Abdurahman's access to legal advice. The conclusion was not shared by a large number of Strasbourg judges (see paragraph 111(a)) and the Court of Appeal, respectfully, agreed with the minority on this point, rather than the majority of the Grand Chamber. The Court of Appeal

agreed with the observation made by the [Court of Appeal](#), in 2008 that ‘Abdurahman was providing information about Osman which could have been of critical importance in securing his arrest, which was the priority at that time’. The Court of Appeal considered it is difficult to conceive of more compelling reasons than the need to obtain information about the whereabouts of an individual who had already detonated a bomb capable of killing and maiming large numbers of people and who it was believed, for good reason, may be planning imminently to detonate more (see paragraph 114).

Secondly, the Grand Chamber applied a strong presumption that, where no such compelling reasons were shown, the trial was unfair. This was a development of the pre-existing Strasbourg case law, rather than the application of a clear and constant line of decisions (see paragraph 111(b)). It had the potential to undermine the multifactorial and holistic approach to overall fairness which the previous Strasbourg authorities had repeatedly espoused (paragraph 116). It was not, however, necessary to reach a final view about this point (paragraph 117).

Thirdly, the Grand Chamber concluded that the strong presumption of unfairness was not rebutted. That conclusion was heavily dependent on the absence of evidence from the senior police officer who had instructed the questioning officers to continue questioning Abdurahman as a witness. It was unclear why the absence of evidence from the senior police officer was relevant at this stage of the analysis. Anyway, given that Abdurahman’s argument for excluding the First Statement was that he had been tricked into making a confession, the senior police officer’s evidence was not relevant, because he had never spoken directly to Abdurahman (see paragraphs 111(c), 115 and 120).

Fourthly, the Grand Chamber concluded that the First Statement had occupied a ‘central position’ in the case because, although there was much other evidence, the police had discovered some of it through what Abdurahman had said in his First Statement. The Court of Appeal considered that this approach was inconsistent with a general principle that was well-established both in English law and in the case law of the Strasbourg Court. The principle is that it is not necessarily unfair to rely on real evidence, even where this is discovered on the basis of an improperly conducted interview (paragraphs 111(d) and 121).

Fifthly, the Court of Appeal considered that there was force in the view of the minority of the Grand Chamber that the majority’s decision had misunderstood the proper role of the jury in common law criminal justice systems (paragraph 111(e)).

The Court of Appeal considered it significant that Abdurahman had voluntarily agreed to assist the police with their enquiries and had been free to leave when he wished. At trial, the judge found there had been no unequivocal representation given by investigators or prosecutors that Abdurahman would not be prosecuted. The Court of Appeal therefore agreed with the minority in the Grand Chamber that it would be a mischaracterisation to say he had been ‘misled’ as to his legal rights (paragraph 118). They also considered it important that, not only had Abdurahman not retracted or modified his First Statement, he had adopted its essential elements and gone on to rely on it at trial. This meant that the trial judge’s decision to admit it could not be faulted. The ability to argue for its exclusion, both at trial and in the Court of Appeal, were substantial procedural safeguards relevant to the overall fairness of the proceedings (see paragraph 119).

Finally, the Court of Appeal placed considerable weight on the other evidence in the case, including the Second Statement, CCTV footage, fingerprint evidence, telephone records, cell-site analysis and witness testimony from Osman and from another individual who was tried with Abdurahman. When considered as a whole, this other evidence was overwhelming (see paragraphs 121-123). This would be a ground for concluding that the conviction was safe, even if – contrary to the Court’s view – the Grand Chamber had been right to regard the trial as unfair (see paragraph 124).

This summary is issued to assist understanding of the Court’s decision. It does not form part of the reasons for that decision. The full judgment of the Court is the only authoritative document.