

Extracts from transcript –Old Bailey

Thursday, 1st November 2007

VERDICT

7 THE CLERK OF THE COURT: Will the foreman please stand?
10 Members of the jury, have you reached a verdict on
11 this indictment upon which you are all agreed?
12 THE FOREMAN OF THE JURY: Yes.
13 THE CLERK OF THE COURT: Members of the jury, do you find
14 the Office of the Commissioner of the Police for the
15 Metropolis guilty or not guilty of failure to discharge
16 a duty under Section 3(1) of the Health and Safety at
17 Work, et cetera, Act 1974?
18 THE FOREMAN OF THE JURY: Guilty.
19 THE CLERK OF THE COURT: You find the Office of
20 the Commissioner of the Police for the Metropolis
21 guilty, and that is the verdict of you all?
22 THE FOREMAN OF THE JURY: Yes.
23 MR JUSTICE HENRIQUES: Now, Madam Foreman, I gather you have
24 a rider which you would like to add.
25 THE FOREMAN OF THE JURY: Yes. In reaching this verdict,
1 the jury attach no personal culpability to
2 Commander Dick.
3 MR JUSTICE HENRIQUES: Thank you very much indeed. I shall
4 have regard to that, as I am sure will she.

SENTENCE

15
16 MR JUSTICE HENRIQUES: On July 22nd 2005,
17 Jean Charles de Menezes, a perfectly innocent man, aged
18 27, was shot dead on the London Underground by firearms
19 officers of the Metropolitan Police. The jury have
20 concluded that the Metropolitan Police failed in their
21 duty during the police operation immediately preceding
22 that fatal shooting.
23 It must be stressed that the jury's verdict does not
24 amount to a finding that the very act of shooting was
25 unlawful. That will be determined at a Coroner's
1 Inquest in due course.
2 By 4.40 am, the Metropolitan Police had powerful
3 information linking two failed suicide bombers with the
4 address, 21 Scotia Road. Commander McDowall set up
5 a strategy which had it been pursued and adhered to
6 would have prevented any suspect from boarding the
7 public transport system, and would, in my judgment, have
8 avoided this terrible tragedy. That strategy was
9 plainly not understood by those whose task it was to
10 enforce it.
11 At 5.05 in the morning, an instruction was given to
12 deploy firearms teams as soon as possible. It was not
13 until 9.40 am that they arrived in the locality of
14 Scotia Road.
15 There was a firearms team on duty at 5.05, and in my
16 judgment, it should have been deployed as a matter of

17 urgency. No explanation has been forthcoming other than
18 a breakdown in communications.

19 When a different team came on duty at 7.00 am and
20 were deployed, it took some two hours, 40 minutes for
21 them to deploy. We have heard that an average time
22 should have been one and a half to one and three quarter
23 hours. Had they deployed during that time, they would
24 unquestionably have been in position when Mr de Menezes
25 came out of Number 21.

1 It has been clear from the evidence that the
2 surveillance team never positively identified
3 Mr de Menezes as the suspect, Osman. His status
4 throughout their surveillance was always that of
5 a possible. Their communications to the control room
6 were electronically logged, and it has not been
7 suggested at any stage of this trial that any
8 surveillance officer has done anything other than tell
9 the truth about his observations.

10 Unfortunately, the controlling officers believed
11 that a positive identification had been made, when every
12 indication is that it had not.

13 Commander Dick was clearly given inaccurate
14 information. The jury's rider in relation to her was
15 anticipated by me, and it accords with my view of the
16 facts. She was in charge of and controlling an
17 extremely difficult situation. She has now that rider
18 to depend on and in my judgment, rightly so.

19 It is significant that prior to believing in the
20 control room that a positive indication had been made,
21 the controlling officers were wrongly led to believe
22 that Mr de Menezes had been wholly excluded as
23 a possible suspect, when again, he had not. Again,
24 misleading information was given to Commander Dick.

25 There was here a serious failure of accurate
1 communication, which has simply not been explained.
2 There were three absent potential witnesses, all of whom
3 could have thrown light upon this particular area of
4 difficulty.

5 Whilst other failures have been alleged, it was in
6 my judgment the failure to have a firearms team in
7 place, and thus the failure to stop Mr de Menezes before
8 he boarded public transport, coupled with the failure of
9 the control room to adequately receive or have
10 communicated to them broadcasts from the surveillance
11 team.

12 Other failures are nevertheless significant. In
13 particular, the briefing of the firearms team was
14 inaccurate, and it was unbalanced. There was a failure
15 to give accurate information to the control room as to
16 the whereabouts of the firearms team immediately before
17 the order to stop, resulting in the order to stop being
18 given when Mr de Menezes was already down the escalator.

19 Mr de Menezes was twice permitted to get on to
20 a bus, and permitted to enter Stockwell Underground
21 station, despite being suspected of being a suicide
22 bomber, and despite having emerged from an address
23 linked to two suspected suicide bombers.

24 In sentencing, I shall not lose sight of the fact

25 that this was a unique and difficult operation.
1 A failed suicide bomber had never previously been at
2 large in London. I accept that the Metropolitan Police
3 had prepared fully and properly for such an event, but
4 preparing for a hypothetical event is no substitute for
5 the real thing.

6 I accept that everyone whom I have been able to see
7 give evidence was using his or her very best endeavours
8 to meet the demands of a fast-moving situation.

9 The failures alleged were not sustained or repeated,
10 and I accept that submission.

11 I accept also that the Metropolitan Police have
12 a good safety record, in the context of operational work
13 unblemished. Having regard to the size of
14 the organisation, that is an achievement which allows
15 them to say in the context of these proceedings that it
16 is mitigation.

17 I am deliberately not going to name any individual
18 as having failed. This was a corporate failing with
19 a number of failures contributing to the ultimate
20 tragedy.

21 This is not, however, a case in which one person
22 alone was placed in danger. The conviction involves
23 a finding that those passengers on the number 2 bus and
24 the passengers in the Underground faced the potential
25 danger of travelling with a suicide bomber, and the
1 obvious potential consequences, and those on the
2 Underground faced the further risks inherent in an armed
3 intervention.

4 In approaching sentence, I have been assisted by the
5 observations of the Lord Chief Justice in the case of *R*
6 *v* *Balfour Beatty, Rail Infrastructure and Services*
7 *Limited*, 2006, EWCA 1586.

8 I am, of course, dealing with a publicly funded
9 employer and am very conscious that any fine necessarily
10 must be paid out of funds provided by the public, and
11 that the effect of a substantial fine is almost certain
12 to reduce the number of police officers available to
13 serve the public.

14 I must, of course, consider how far the Metropolitan
15 Police fell short of the appropriate standard.

16 I conclude that they did fall short to a significant
17 and meaningful extent.

18 There was a very real risk that a failed suicide
19 bomber was within number 21 Scotia Road and every
20 possible step should have been taken to prevent him
21 entering the transport system.

22 Having failed in that task, information should have
23 been accurately collated and disseminated as to his
24 identification.

25 Those on the ground should have been accurately
1 briefed in a well balanced manner.

2 There has been much confusion as to whether any
3 attempt was made to stop the buses. The senior officer
4 has said that she made a positive decision not to stop
5 the buses. The jury have plainly accepted that, as do
6 I.

7 Two other officers attempted to stop the buses.
8 I can only assume that they acted on their own
9 initiative and that they failed to inform

10 Commander Dick.

11 It may well be that some of the failures within the
12 control room were attributable to the noise within the
13 room. There has been a stark conflict of evidence.
14 Descriptions have varied between "quiet" and "chaotic".
15 Those who had to hear communications and collate
16 intelligence were the most critical of the conditions
17 prevailing. Clearly, all was not plain sailing, nor can
18 it be anticipated that it would be.

19 I am satisfied on the evidence that for certain
20 tasks, particularly listening to critical communication
21 over the radio, conditions in the control room were not
22 satisfactory.

23 In determining the level of fine, the fact that the
24 Metropolitan Police is a public body does, of course,
very much affect my decision.

1 The same problem occurred in the case of South West
2 London and St George's Health NHS Trust. There the
3 funds available to the Trust were desperately needed for
4 the sick. Yet the judge concluded that an insignificant
5 fine would have sent out an entirely wrong message.

6 The same reasoning seems to me to apply in the
7 present case.

8 One of the factors I must have regard to is the
9 attitude and response of the defendant to these serious
10 allegations. There has been and was an expression of
11 sympathy to the family at an early stage. I associate
12 myself with that expression: it has been repeated again
13 today by Mr Thwaites.

14 On the other hand, every single failure here has
15 been disputed. Some of these failures have been simply
16 beyond explanation. Two senior officers have said that
17 they would act in the same way again. And whilst I have
18 been told that some lessons have been learned, events in
19 the control room are now recorded, as are the briefings,
20 further work has been done coordinating the work of
21 different branches, but there has been no single
22 admission as to any one of the 19 alleged failings.

23 It may be that that is to some extent attributable
24 to the early threat of either manslaughter proceedings
25 or disciplinary proceedings involving some individuals,
1 and it may be that an entrenched position has resulted.

2 Whilst the absence of any admission does not
3 aggravate matters, it does not mitigate them.

4 It would not be right for the public to be left with
5 the impression that all those involved in this operation
6 in some way failed in their duty.

7 We heard, Commissioner, of some magnificent police
8 work by several officers. The work of the officer
9 codenamed Ivor in grasping a suspected suicide bomber by
10 both arms, pinning them to his side, was magnificent,
11 and if he had been dealing with a suicide bomber, he may
12 well have saved many lives.

13 As it was, he risked his own life, not only by way
14 of proximity, but because he was dressed similarly to
15 Mr de Menezes, he was of similar complexion, and was
16 indeed apparently for a short time understandably
17 treated by the firearms team as an associate of the man
18 they believed to be the bomber.

19 It should be remembered also that he volunteered

20 himself to make the stop before Mr de Menezes entered
21 the Tube station.

22 May I, Commissioner, ask that he receives the
23 appropriate and well earned commendation.

24 Two other officers, codenamed Derek and James, the
25 surveillance team leaders. They did everything in their
1 power to remedy the very difficult situation in which
2 they found themselves, unsupported by any firearms
3 officers, apprehensive that at any moment a bomber would
4 emerge from Scotia Road.

5 Whilst they were never called upon to act as Ivor
6 did, their conduct throughout was admirable and merited
7 commendation. They confronted reality, and the Force
8 should be proud of them.

9 That I have singled out those three does not imply
10 any criticism of many of the remainder.

11 I can only express the hope that these facts will be
12 revisited in the light of this hearing, and that those
13 who participated in failure -- and I say "participated"
14 deliberately, because it was here an accumulation of
15 difficulties that gave rise to failure -- I hope that
16 further necessary lessons will be learned.

17 The aggravating factors are that one person died and
18 many others were placed in potential danger. This is
19 a case where there is a significant public element. The
20 public trust the police to carry out their work
21 competently and efficiently.

22 On the other hand, I am only too aware that a very
23 substantial penalty would result in inhibiting the
24 police to carry out the very duties that we expect of
25 them.

1 This was very much an isolated breach, brought about
2 by quite extraordinary circumstance.

3 I have to have regard to the costs, because that
4 again is a burden that will fall upon the Metropolitan
5 Police. Those costs, however, could very easily have
6 been minimised.

7 I have concluded that the appropriate fine in the
8 circumstances is one of £175,000. That reflects both
9 the loss of life and the potential danger.

10 I order costs in the sum of £385,000. Those are to
11 be paid within a formal 28 days.