



JUDICIARY OF
ENGLAND AND WALES

Court of Appeal (Criminal Division)

30 September 2013

Munir Ahmed Farooqi, Matthew Newton and Israr Hussain Malik v R

SUMMARY TO ASSIST THE MEDIA

The Court of Appeal (Lord Chief Justice, Lord Justice Treacy and Mrs Justice Sharp) has today dismissed appeals by Munir Ahmed Farooqi, Matthew Newton and Israr Hussain Malik against their convictions for terrorism offences. The Court also refused to grant permission to Munir Ahmed Farooqi and Israr Hussain Malik to appeal their sentences.

In its judgment the Court discusses at length the duty owed by advocates to the Court.

Introduction

Lord Judge, in his last Court of Appeal judgment before he retires as Lord Chief Justice, said:

“We have all contributed to the writing of this judgment of the Court, which arises in melancholy circumstances as a result of flagrant misconduct and alleged professional incompetence by one of the advocates at trial, Mr Lawrence McNulty, leading counsel for Munir Farooqi (Farooqi).” (para 1)
Details of the convictions are set out in paras 2 – 8.

The Appeals

Farooqi, Newton and Malik seek leave to appeal against their convictions.

Farooqi and Malik also seek leave to appeal against sentence.

Lord Judge said: “... In the circumstances we granted each appellant leave to appeal against convictions on the single issue of the consequences of Mr McNulty’s misconduct and his alleged incompetence.” (para 9)

The Grounds of Appeal and the Crown’s response

These are set out in paragraphs 16 – 99.

Fairness of the trial

The Court discusses this ground of appeal in paragraphs 100 – 120.

Lord Judge, giving the judgment of the Court, said:

“We must begin by emphasising that the conduct of the trial by the judge was impeccable. He remained patient under considerable provocation, and in the public interest he sought to salvage an important lengthy trial from shipwreck. In his directions to the jury, in fairness both to the prosecution and to ensure that justice would be done according to the law the danger that the jury would be misled had to be avoided. We cannot detect any basis for criticising the judge for lack of fairness or balance in his approach to his responsibilities. The essential criticism is that notwithstanding the fairness with which the judge sought to discharge them, the misconduct of counsel and his deliberate and repeated challenges to the judge’s authority could not be addressed and dealt with without compromising the fairness of the trial. The only answer to the problem created by Mr McNulty was the discharge of the jury, and the only answer to the resulting unfairness of the continuing of the trial is to quash the convictions.” (para 101)

Lord Judge went on to say:

“Something of a myth about the meaning of the client’s “instructions” has developed. As we have said, the client does not conduct the case. The advocate is not the client’s mouthpiece, obliged to conduct the case in accordance with whatever the client, or when the advocate is a barrister, the solicitor “instructs” him. In short, the advocate is bound to advance the defendant’s case on the basis that what his client tells him is the truth, but save for well-established principles, like the personal responsibility of the defendant to enter his own plea, and to make his own decision whether to give evidence, and perhaps whether a witness who appears to be able to give relevant admissible evidence favourable to the defendant should or should not be called, the advocate, and the advocate alone remains responsible for the forensic decisions and strategy. That is the foundation for the right to appear as an advocate, with the privileges and responsibilities of advocates and as an advocate, burdened with twin responsibilities, both to the client and to the court.

“In the trial process the advocate is subject to some elementary rules. They apply whether the advocate in question is a barrister or solicitor, and to the extent that the rules of professional conduct of either profession are not consistent, they should be made so. In the forensic process the decision and judgment of this court bind the professions, and if there is a difference, the rules must conform with the decisions of the court. By way of emphasis, in the course of any trial, like everyone else, the advocate is ultimately bound to abide by the rulings of the court. If a remedy is needed, the rulings are open to criticism in this court, and if they are wrong, their impact on the trial and the safety of any conviction can be fully examined. Although the judge is ultimately responsible for the conduct of the proceedings, the judge personally, and the administration of justice as a whole, are advantaged by the presence, assistance and professionalism of high quality advocates on both sides. Neither the judge nor the administration of justice is advantaged if the advocates are pusillanimous. Professional integrity, if nothing else, sometimes requires submissions to be made to the judge that he is mistaken, or even, as sometimes occurs, that he is departing from contemporary standards of fairness. When difficult submissions of this kind have to be made, the advocate is simultaneously performing his responsibilities to his client and to the administration of justice. The judge, too, must respect the reality that a very wide discretion is vested in the judgment of the advocate about how best to conduct the trial, recognising that different advocates will conduct their cases in different ways, and that the advocate will be party to confidential instructions from his client from which the judge must be excluded. In general terms, the administration of criminal justice is best served when the relationship between the judge and the advocates on all sides is marked by mutual respect, each of them fully attuned to their respective responsibilities. This indeed is at the heart of our forensic processes.” (para 108 – 109)

The Court went on to “highlight some of the further rules which appear to have been significantly infringed.” (para 110 – 115)

Lord Judge, giving the judgment of the Court, concluded:

“In our judgment the issues were fully and fairly explained to the jury and left for their decision, and the necessary process of correction was handled so as to ensure that the normal processes by which the jury addressed the evidence and reached their eventual conclusion were not undermined. Notwithstanding many unfortunate features of this trial the convictions of three of the defendants, and the acquittal of the fourth defendant, followed a fair trial.” (para 119)

Farooqi’s failure to give evidence

The Court considers this ground of appeal in paragraphs 121 – 148.

Lord Judge, on behalf of the Court, concluded:

“[As], again, we have noted, Farooqi is an intelligent man with a good command of English who had enjoyed a lengthy working relationship with his legal team over many months. He was in court on 22nd August and would have heard and understood the discussions. Had he wished to confer with his legal team, he needed only to ask them to come and see him. Had he wished to complain that he had in some way not made a free and informed decision as to whether to give evidence, there was ample opportunity for him to have done so. The complaint based on Farooqi’s failure to give evidence is not sustained.” (para 148)

The Watson direction

The Court considers this ground of appeal in paragraphs 149 - 158.

The Court observed:

“Most surprisingly there is no witness statement of any sort provided by Farooqi himself. When an appellant wishes to assert that he has not been given appropriate advice in a particular respect, or has not been able to make an informed decision about a matter of materiality in the trial, he must provide the court with a statement setting out the relevant history. There is no such material from Farooqi.” (para 126)

Lord Judge, on behalf of the Court, concluded:

“In the circumstances we are wholly unpersuaded that the judge was wrong to give a *Watson* direction. To have ignored his concern that the jury had been invited to take an inappropriate approach to their deliberation would have been a dereliction of his duties. The advice given in the *Watson* direction was precisely apt to cover the situation. In the unusual circumstances of this case, the *Watson* direction was an appropriate way of ensuring that the jury approached their responsibilities on a correct basis.” (para 152)

The Court went on to conclude:

“Moreover, there was, as the judge ruled, a clear difference between Count 8 and Counts 9 and 10, and separate consideration was required in relation to each count. There is no reason at all why the jury should not have considered and reached verdicts on Count 8 before moving onto the later counts. The order in which the jury considers counts is a matter for it to determine. We can perceive no properly arguable basis for complaint in relation to this second limb of the *Watson* argument.” (para 157)

Lord Judge, giving the judgment of the Court, dismissed the appeals against conviction saying:

“There is no merit in these arguments and we reject them.” (para 158)

Applications regarding sentence

The Court considers the applications of Farooqi and Malik in paragraphs 159 – 170 and refuses both applications to appeal sentence (para 171).

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