Clockwise from top left - Irfan Raja, Awaab Iqbal, Aitzaz Zafar, Akbar Butt and Usman Malik

Terrorism Convictions Tossed For Five Muslim Youths "Intoxicated" By Religious And Political Literature

By JD Staff

Seventeen-year-old Mohammed Raia left his Ilford, England home on February 24, 2006, intending to travel to Pakistan. He didn't tell his parents about his trip, but he left a letter for them under his mattress. His parents contacted the police, who searched is room and the contents of his computer. On Raia's computer hard drive police investigators discovered information that they considered to be of an extreme religious and political nature.

After leaving home Raia traveled to Bradford, England, where he stayed with Awaab Iqbal and Aitzaz Zafar. When Raia contacted his parents several days after he left, they convinced him to return home. Upon his arrival he was arrested on suspicion of violating the United Kingdom's Terrorism Act of 2000.

During the subsequent investigation, records identified that Raia had communicated with four other Muslim youths on an MSN (Microsoft Network) chatroom about traveling to Pakistan to train so they could aid the Muslim freedom fighters opposing the Afghan government. Those four young men, all Bradford University students, where Iqbal, 18, Zafar, 19, Akbar Butt, 19, and Usman Ahmed Malik, 20.

Searching the computer hard drives of the four students resulted in the discovery of political and religious information similar to what was on Raia's computer. However, analysis of the hard drives, interrogations of the youths, and extensive questioning of friends, family members, and students and

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been in Tacoma at the time of the robbery if he left LA by car on the afternoon of the 7th.

After Anderson explained to the judge his stand-by counsel's investigator wouldn't take collect calls from the jail, the judge again ordered the stand-by attorney to try and find the documents. Anderson's efforts were to no avail. By the start of his trial he still did not have the probation office records.

There was no physical, forensic, or eyewitness evidence linking Anderson to the robbery. The prosecution's case began and ended with the identification by the two men that Anderson was in one of the surveillance photos. However, the witnesses, who received reduced charges in exchange for their testimony, gave conflicting identifications of other men in that photo and another photo.

Without the probation documents Anderson's alibi defense was only supported by his testimony and that of his girlfriend from Los Angeles, who testified during his trial that she was with him during the early morning hours of April 8.

The jury believed the two police informants over Anderson's girlfriend. He was convicted of first-degree robbery and sentenced to more than 16 years in prison. After his conviction was affirmed on direct appeal, Anderson wrote the Innocence Project Northwest (IPNW) in Seattle, asking for their help in obtaining the records proving that in the late afternoon of April 7, 2004 he was at the LA County Probation Office. Boris Reznikov was the IPW student intern who reviewed Anderson's letter. Reznikov was skeptical of Anderson's claim of being more than 1,100 miles from the crime scene, but he took the time to read the trial transcript and was struck by Anderson's dogged unsuccessful effort to obtain the probation records. Reznikov's curiosity was piqued enough for him to call the probation office and inquire about obtaining the records for April 7 and 8. The man he talked to checked the computerized records database while Reznikov waited on the line. The man told Reznikov that James S. Anderson had been in the probation office at 4:46 p.m on April 7, 2004. That was less than 12 hours before the robbery. Reznikov knew the Pierce County Prosecutors Office had already checked with the airlines, and there was no evidence Anderson had flown from LA to the Seattle/Tacoma airport on the 7th. Anderson had been telling the truth! He had been convicted of committing a robbery in Tacoma when he was in California, two states away from the crime scene!

The IPNW agreed to represent Anderson in the filing of a Personal Restraint Petition challenging his conviction on the basis of newly discovered evidence. The State vigorously opposed the petition, with one of their arguments being that Anderson didn't meet the due diligence requirement for discovering the existence of the probation records. The Washington Court of Appeals unanimously granted Anderson's petition on December 11, 2008. In their Order the Court dismissed the State's "due diligence" argument by writing, "Anderson put forth a monumental effort to discover this evidence before trial, but his efforts were to no avail." Although the new evidence supported Anderson's actual innocence, the Court did not order his acquittal. Instead his conviction and sentence were vacated, and a new trial ordered. That entitled him to a bail hearing pending a decision by the Pierce County Prosecutor's Office on how it would proceed.

Unfortunately for Anderson, just days after the ruling the Seattle/Tacoma area experienced the most intense and prolonged ice and snow storm in decades. With government offices, including the courts closed, Anderson languished for days in prison when he otherwise would have had a hearing on being granted bail pending the prosecution's decision to retry him or dismiss the indictment.

Finally, on Christmas Day 2008, Anderson was granted bail and released. Later that day he arrived at his family's home in Los Angeles after spending almost four-and-a-half-years in custody for a crime it is impossible for him to have committed. His mother, Yuralene Spencer told the Associated Press, "All the family's talking about James coming home. James coming home! Everyone is so happy, full of joy, like God gave us the best present we ever had." While imprisoned Anderson's father died, but his sister Loretta delayed her wedding after discovery of the probation records made his release a realistic possibility, so that he could walk her down the aisle.

Although Anderson was told by the LA County Probation Office that they provided the records for April 7 and 8 to the Pierce County Prosecutor's Office, after his release deputy prosecutor Michelle Luna-Green insisted, "We would never willfully withhold records of that nature."

Sources:

Gene Johnson, "Proven innocent, but still behind bars," *Seattle Post-Intelligencer*, December 23, 2008.
In Re: Pers. Restraint of James S Anderson, No. 37073-5-H (WA Ct of Appeals, 12-11-08) .

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teachers at Raia's school and Bradford University did not result in the discovery of any information that the five youths had done anything unusual or extreme. No information was discovered related to making any type of explosive device, and nothing found on the youth's computers or from questioning people during the investigation suggested they were plotting a bombing or any type of attack. They had merely downloaded information from the Internet that included a film showing atrocities against Muslims around the world, and discussed on an MSN chatroom the possibility of traveling to Pakistan to train as freedom fighters.

The five youths were initially charged with violating section 58 of the Terrorism Act of 2000. After considerable pre-trial maneuvering that included an appeal to the U.K.'s Court of Appeals about the appropriateness of charging a section 58 violation, the prosecution revised the charge to a violation of section 57. Section 57 states:

"(1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(2) It is a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism."

The Terrorism Act of 2000 defines terrorism as: "'Terrorism' is defined by section 1 of the 2000 Act as including the use of firearms or explosives that endangers life for the purpose of advancing a political, religious or ideological cause."

The youth's trial began in London on May 16, 2007. The trial was a major news story widely reported on throughout Britain.

The prosecution alleged that each of the five defendants violated section 57 (and engaged in terrorism) by downloading from the Internet to their computer hard drive radical religious and political literature that "instigated" that defendant to plan to travel to Pakistan, and then go to Afghanistan to fight against the government. The prosecution claimed the youths had become mentally "intoxicated" by the extremist literature they downloaded from the Internet, and that it was only because they were arrested that they had not been able to carry out their intention to fight against the Afghan government – which is supported by England and the United States.

The youths defense was that their hard drives stored religious and political information, and there was no direct relationship between that information and "the commission, preparation or instigation of an act of terrorism" required for a violation of section 57.

The judge gave jury instructions consistent with the prosecution's position. Consequently, after a two month trial the five defendants were unanimously convicted on July 24, 2007 of violating section 57. Malik was sentenced to three years in an adult prison. Because of their age at the time of their arrest the other four defendants were sentenced to terms in a youth offenders institution: three years for Zafar and Iqbal, 27 months for Butt, and 2 years for Raia.

The defendants appealed and the Court of Appeals unanimous quashed their convictions. (See, *Zafar, et al v. R.*, [2008] EWCA Crim. 184.) The Court zeroed in on two of the many issues raised in the appeal: What sort of connection is required by section 57 between an alleged act of terrorism and the information on the defendant's hard drives; and, was the jury properly instructed about the elements of the crime.

The Court ruled that there must be "a direct and obvious connection between the article and the intended act of terrorism." (¶20) The prosecution's case hinged on the supposition that it was enough of a connection with terrorism that each defendants hard drive "was 'for a purpose connected with' the travel to Pakistan." (¶34) However, the Court concluded "there was nothing that evidenced expressly the use, or intention to use, the extremist literature to incite each other to do this. We think it doubtful whether there was a case of infringement of section 57, as we have interpreted it, that could properly have been left to the jury." (¶37)

The Court didn't stop by ruling there was no direct connection between the information on the hard drives and terrorism, which the prosecution had the burden to prove. They then analyzed if the jury had been properly instructed as to the second element that the prosecution had to prove to establish a violation of section 57: that the defendants had incited each other to engage in terrorism.

After analyzing the jury instructions, the Court ruled they were legally insufficient to inform the jury of what constitutes a section 57 violation. Among other issues, "They did not tell the jury that they had to be satisfied that each appellant intended to use the relevant articles to incite his fellow planners to fight in Afghanistan." (¶46) The Court also decided, "We do not consider that it was made plain to the jury, whether by the prosecution or by the [judge], that the case that the appellants had to face was that they possessed the extremist material for use in the future to incite the commission of terrorist acts." (¶48)

The Court concluded it decision by writing: "Difficult questions of interpretation have been raised in this case by the attempt by the prosecution to use section 57 for a purpose for which it was not intended. … The consequence of this is that the basis upon which the appellants were convicted is shown to have been unsound. Their appeals are allowed and their convictions must be quashed." (¶49)

With the Court having found that there was insufficient evidence to support a conviction and that the jury had been fatally misinstructed about the elements of a section 57 terrorism charge, the defendants were released after almost two years in custody.

Saghir Hussein, Malik's lawyer, said after the Court's decision was announced, "This is a landmark judgment in a test case over the innocent possession of materials, including books and speech, and the court has finally agreed that this is in no way connected to terrorism. It was very difficult in the current climate for any jury to decide on anything apart from conviction." Hussein also observed, "A book about how to make bombs would come under Section 57, not a book that contains ideological material. It's just like reading *Mein Kampf* does not make you a Nazi."

Malik described his ordeal as "worse than a nightmare. I was arrested and accused of being a terrorist. No one would listen to my claims of innocence." He also said, "I was never a terrorist and have never supported violence. I was wrongly convicted and accused. No one should have to go through this, who is innocent."

Joel Bennathan, a lawyer for Zafar, described the transparency of what the youths did by pointing out that Zafar made no attempt to conceal the information on his computer, since "his computer had no password," and the contents of his hard drive were "not encrypted or deleted."

Sources:

Zafar, et al v. R., [2008] EWCA Crim. 184 (February 13, 2008)
Appeal upheld for youths 'intoxicated by terror', By Tom Chivers, *The Telegraph* (London), February 13, 2008.
Five freed after terror convictions quashed, Vikram Dodd, *The Guardian* (London), February 13, 2008.