



An Chartlann Náisiúnta
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1 Wednesday, 29th January 1992

2 R v Brian Nelson

3 SB FROM AS 12.00

4 Witness 'Colonel'

5 (Contc) Cross-examination by MR B KERR:

6 Q. Well now, in characterising those as errors of judgment, on
7 what material did you rely in reaching the view that these
8 offences to which he has pleaded guilty could be put down to
9 errors of judgment on his part? What was the material that
10 you used to reach that judgment? A. The material I used
11 were the reports on our own files, the reports that the
12 handlers had received from Brian Nelson, his description of
13 how events had unfolded and what he had done. He was, to my
14 mind, very honest in that. He admitted things that he had
15 done wrong. He didn't try and hide them from us to the best
16 of my knowledge and, therefore, I base my opinions only on
17 the written records, my Lord, that we have and the very
18 extensive records we have recording our meetings with him.

19 Q. Well, before you came to Court today, knowing that you were,
20 presumably knowing that you were going to be asked for your
21 judgment about his involvement, did you refresh your memory
22 from those records? A. It would have been difficult for
23 me to come into Court without having done so because after
24 all it's really two years since I had any real sight of
25 these records.

26 Q. I see. A. I have to say that in the time that I had I
27 was able to do that only on a cursory basis.

28 Q. I see. A. And what I did was that I looked through the
29 files very quickly and a summary of the files just to remind
30 myself of the general trend in the case.

1 Q. So the judgment that you bring to bear on his involvement
2 and the evidence that you give is based on a cursory
3 reminder through the files before you gave evidence, is that
4 right? A. Yes, but a reminder is a reminder. I still
5 had a lot of knowledge in my brain and I still remembered
6 the case. There were instances and dates and places and
7 times that I couldn't remember and that was the sort of
8 thing that would concern me. Even now if you ask me for
9 detailed answers I would have to refer to the files to be
10 able to give a truthful and honest answer. But my feeling
11 for the case, my feeling for Brian Nelson was as a result of
12 living with his case over a three year period.

13 Q. Well, you use a telling word there when you say your feeling
14 for Brian Nelson and your feeling for the case, do you
15 accept the possibility that your feeling for Nelson has
16 clouded your judgment about this? A. Perhaps I misled
17 you when I talk about feeling, I mean an overall assessment
18 really. My overall assessment of the case and of his
19 performance. That is based -- you've got to remember that
20 over that period we received lots of reports from Brian
21 Nelson, we discussed his case often and, therefore, in my
22 mind I would have formed opinions as I went along. When I
23 talk about feeling for a case I really, I'm really
24 indicating what I believe to be the general run of the case,
25 his general motivation and the way in which the information
26 was passed over.

27 Q. Did you know, for instance, in relation to the murder of
28 Terence McDaid, did you know that Nelson had made statements
29 about that to investigating police officers? A. I was
30 made aware of that by the investigating officers, yes.

1 Q. But no doubt you're not privy to the information that Nelson
2 gave to the investigating officers? A. No, I'm not, no.
3 Q. Do you know that McDaid, Mr McDaid was murdered on the 10th
4 of May 1988? A. I couldn't swear that I already knew
5 that, if you tell me that's the date then I'm sure it is.
6 Q. Do you know or can you confirm that the last meeting that
7 Nelson had with his handler before the murder of Mr McDaid
8 was the 19th of April 1988? A. If that is what is on
9 our record then I'm sure that is the case.
10 Q. Do you know that between the last meeting on the 19th of
11 April 1988 and the 10th of May 1988 Nelson conducted
12 surveillance and established visual sightings of Declan
13 McDaid on several occasions? A. I'm sure that that
14 would have been reported on our records and, as I've already
15 indicated, he did and we did indicate that Declan McDaid was
16 under threat.
17 Q. No, I'm putting to you that after the 19th of April 1988,
18 the last meeting with the handler before the murder of
19 Mr McDaid on the 10th of May, after that meeting he
20 conducted surveillance and established visual sightings of
21 McDaid. A. Yes, but there's a Declan McDaid and Terence
22 McDaid.
23 Q. Quite so, but no information was relayed to the handler
24 about his activities during that time, that's what I'm
25 suggesting to you. A. My Lord, I would have to check my
26 own records to be absolutely sure whether he reported this
27 or not. I feel sure that in all cases where he was
28 indulging in intelligence activity he would tell us about
29 it, but without consulting the records I couldn't at this
30 moment say.

1 Q. But the question is, how sound is that conviction that you
2 expressed? This is the point that I want to put to you,
3 Colonel. You see, I understand that from your earlier
4 evidence that you had understood that Mr Nelson told his UDA
5 associates that Mr McDaid, that is Declan McDaid, did not
6 live at Newington Street. is that right? A. The address
7 at which Terence McDaid was killed he said that that address
8 was not Declan McDaid's address and he was intent on, he was
9 being asked what the address for Declan McDaid was, he was
10 passing on information to us that there was a threat to
11 Declan McDaid and, therefore, he was establishing that his
12 terrorist associates knew where Declan McDaid lives and he
13 reported that to us.

14 Q. Would your judgment about this matter change, Colonel, if
15 you discovered, as I suggest to you was in fact the case,
16 that Nelson admitted to police officers that between the
17 time of his last contact with his handlers and the murder of
18 Terence McDaid that not only had he conducted surveillance
19 and established sightings of Declan McDaid, but had reached
20 the view himself that he was living at four Newington Street
21 and that he told Winkie Dodds that he was sure that he was
22 living at Newington. A. I have no recollection, my
23 Lord, of that on our files and I would have to consult them
24 to be sure of giving a truthful answer, but I certainly,
25 what I remember from our files is that he did not know of
26 the, he did not know that that attack was going to take
27 place and he did not know that that address was the one that
28 they were interested in.

29 Q. But what I suggest to you, what I've just suggested to you
30 is quite contrary to the impression that you had about the

1 his handlers? A. In the events which led up to the
2 conspiracy from what he told us afterwards and we recorded
3 on files, it is clear that there were possibly occasions
4 when he might have telephoned us. I do believe that he may
5 well have tried to telephone us, that the telephone box was
6 broken, that he didn't wish to do so from his home because
7 his sons were in the vicinity and these are reasons which
8 actually I accept in part. I've said there were errors of
9 judgment and I do believe in this particular case he could
10 well have made more of an effort to contact us beforehand.

11 SB TO AS 12.10

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1 Wednesday, 29th January 1992

2 R.v. Brian Nelson

3 AS FROM SB 12:10

4 WITNESS 'COLONEL'

5 (Cont'd) Cross-examination by MR B KERR:

6 Q. Now, you say that you accept these explanations in part, do
7 you accept that it was an excuse or an acceptable excuse
8 that he didn't telephone you, didn't make contact with his
9 handler from his own home? A. I think that it may have
10 been difficult for him to do so. I think probably he could
11 have done and that was an error of judgment.

12 Q. Well you see, I have to suggest to you that it goes far
13 beyond an error of judgment and the evidence for that comes
14 from the words of Mr Nelson himself because when he admitted
15 his involvement in this, he told the interviewing officers
16 he couldn't phone his handlers from the house because his
17 sons were knocking about the house which, in reality, was a
18 poor excuse. Those are his words and I have to suggest to
19 you that there is no acceptable excuse for his failure to
20 contact his handlers in relation to what he knew was planned
21 for Mr Maskey? A. Well, when you say he knew what was
22 planned there was a lot of comings and goings that night as
23 I remember from his files, nothing ever actually came of it.
24 Now, there were occasions, and I think he has already
25 entered a guilty plea to this offence, he has already
26 entered a guilty plea so he obviously accepts his guilt in
27 this matter and I have to go along with that. He is the man
28 who makes the plea. What I'm saying, in mitigation, and
29 remember I have been asked to give evidence in mitigation,
30 I'm saying that he didn't get it right all the time, but he

1 got it right an awful lot of the time.

2 Q. You see, it's not simply a question of not getting it right,
3 I have to suggest to you, that his failure to contact his
4 handlers in relation to Maskey and his admitted
5 participation, not only in contacting people whom he knew to
6 be killers, but also in helping -- in returning to a number
7 of people and going to see whether Mr Maskey was still at
8 the Gregory Restaurant, that that all admits of only one
9 interpretation and that is that he was a willing participant
10 in the conspiracy to murder Mr Maskey? A. I can't
11 comment on whether he was a willing participant or not. If
12 I were to give an opinion on that it would be based on what
13 he told us on the files. I can't say that, only he can say
14 whether he was a willing participant or not. He has pleaded
15 guilty. he entered a guilty plea to this offence. What he
16 saying in mitigation is there were a lot of other things he
17 did and there were a lot of other potentially life-saving
18 information that he gave and lives were saved, so how do we
19 balance this off against this particular incident?

20 Q. Well, you see, what I'm suggesting to you is that you don't
21 balance it off by seeking to diminish or characterise his
22 errors of judgment, his obvious criminal activity in the
23 offences to which he has pleaded guilty and that's what you
24 have sought to do? A. No, I haven't sought to diminish
25 his guilt in any of these cases that he has already entered
26 a guilty plea for. I have said it's a very understandable
27 situation when you're living day to day when your life is at
28 risk and you're putting your life on the line. It's a very
29 understandable situation where you get drawn into activities
30 that you shouldn't get drawn into and that is the position

1 that we place these people at when we're running those
2 agents. I'm not seeking to diminish his guilt in this
3 thing. He has entered a guilty plea he accepts that he was
4 wrong.

5 Q. Do you know that in the case of Gillen, the conspiracy to
6 murder Brian Gillen, that he went of his own accord to carry
7 out a reconnaissance of the bar which Gillen frequented?

8 A. Again, I can't necessarily recollect that from the files
9 I'm sure I could confirm it if I had. If you're telling me
10 that's what he did and you have evidence on which to base
11 that, fine. if did he that but he was an intelligence
12 officer for the UDA I've already said that he carried out
13 the surveillance. In fact, in that particular case we were
14 highly dubious about the whole of the information. We were
15 highly dubious that Mr Gillen was ever going to drink in the
16 Sports Bar in Lisburn, he may have done but we were highly
17 dubious of all of that stuff and as I have already said re
18 reported on about twelve occasions before that incident that
19 Mr Gillen was being targeted and warnings had been issued.

20 Q. Do you know that he collected a home-made submachine gun for
21 use in the proposed murder? A. No, I don't and I'm not
22 sure that anybody does because my recollection of that
23 particular incident was that he got into the car with
24 someone else and there was a bag or some sort of receptacle
25 in the car and he asked what was in the receptacle and he
26 was told there was a machine gun he did not see a machine
27 gun to the best of my knowledge. He was told there was one
28 in the receptacle. He was not then in the position to
29 actually get out of the car.

30 Q. And is it not right, Colonel, that of the handlers under

1 your command. at least two of the handlers under your
2 command expressed concern to you about the activities of
3 Nelson? A. We have very extensive case files and
4 handlers when they write their notes. write it in a variety
5 of ways. They not only recording the information that was
6 given they're recording all sorts of personal details about
7 the source they're recording all the details about how the
8 meeting took place and where it took place and when it took
9 place and they are recording anything that is of real
10 relevance. And so, we were aware, yes, through the handlers
11 notes when they had worries.

12 Q. And an aspect of that worry was, wasn't it, that he was
13 going beyond what was required of him as an agent and
14 participating willingly in these events, isn't that right?

15 A. I don't believe that that was, in my reading of the
16 files, that actually it was said like that. I believe that
17 what the handlers were saying was: We must watch him, he's
18 getting himself into a situation here where he's been drawn
19 into terrorist activities, he's allowing himself to become a
20 little too enthusiastic. They were saying this and they
21 were telling him and they were saying to him: Look you have
22 to watch this, you condition not get yourself drawn in out
23 remember protect your own position as well. We go back to
24 the very difficult situation and the very fine line that I
25 talked about earlier on between him looking after himself
26 and at the same time allaying the suspicions of his
27 associates and at the same time trying to get information
28 from them.

29 Q. Well, is it not right that he was reprimanded on occasions
30 because he had gone beyond that line that you have

1 described? A. Yes absolutely we would not have been --
2 we would have been remiss in our duties if we had not done
3 so.

4 Q. But notwithstanding the fact that he was reprimanded he
5 continued to cause concern on the part of the handlers,
6 isn't that right? A. Because he continued to be in a
7 very difficult situation, he continued to be in the same
8 situation I have referred to time and time again

9 MR B KERR: Thank you.

10 LORD JUSTICE KELLY: Mr Boal, re-examination

11 MR BOAL: No thank you, my Lord.

12 LORD JUSTICE KELLY: Thank you very much.

13 (THE WITNESS WITHDREW)

14 MR BOAL: It would be the intention of the witness to leave not
15 only the Court but the country, my Lord, would that be with
16 the agreement of the Court?

17 LORD JUSTICE KELLY: Yes, of course.

18 AS TO SB 12:20

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