



**An Chartlann Náisiúnta**  
**National Archives**

**Reference Code:** 2021/47/85

**Creator(s):** Department of Foreign Affairs

**Accession Conditions:** Open

**Copyright:** National Archives, Ireland.  
May only be reproduced with  
the written permission of the  
Director of the National  
Archives.

CRIGIN

2811

REGINA

-v-

BRIAN NELSON

before

THE RIGHT HONOURABLE LORD JUSTICE KELLY

On

MONDAY, 3RD FEBRUARY 1992

At

BELFAST CROWN COURT

SENTENCE

1 Monday, 3rd February 1992

2 R v Brian Nelson

3 SENTENCE

4 LORD JUSTICE KELLY: The accused Brian Nelson is charged and has  
5 pleaded guilty to five counts of conspiracy to murder and  
6 other related offences. Conspiracy to murder is a serious  
7 crime and Parliament has prescribed life imprisonment as the  
8 maximum penalty.

9 All these crimes were committed between August 1987 and  
10 January 1990 when Nelson was a member of the Ulster Defence  
11 Association and indeed a senior intelligence officer. But  
12 throughout this period he played a double game. He was at  
13 the same time an agent for Army intelligence. The defence,  
14 however, would not put it quite that way, that is that he  
15 played a dual role. Rather they would say that he played  
16 the singular and undivided role of an undercover agent for  
17 the Army within the UDA, that his loyalty was only to the  
18 Army and that for the UDA he merely postured as of necessity  
19 as its member and intelligence officer.

20 The infiltration into criminal gangs by undercover  
21 agents working for law and order has long been recognised in  
22 most countries as a legitimate means of detecting criminal  
23 activity and bringing criminals to justice. In particular  
24 this is especially acknowledged where gangs and groups carry  
25 on constant serious crime against society - yet its leaders  
26 and members remain unknown, or if known remain in the  
27 absence of evidence free from prosecution. Terrorist groups  
28 and drug trafficking groups fall easily into this category.

29 But at the same time the law has made it clear that if  
30 the undercover agent during the period of his infiltration

1 commits a crime, he cannot expect to be immune from criminal  
2 prosecution and punishment. In our system of criminal  
3 justice there is no refuge or half-way house in criminal  
4 culpability in these circumstances. Our system does not  
5 create for the agent an in between category that lies  
6 somewhere between guilt and innocence. The agent is  
7 prosecuted and punished for his crimes as an ordinary  
8 criminal and that is why in this case Brian Nelson appears  
9 before this Court guilty of crime and subject to punishment  
10 as a criminal.

11 However, the law realistically recognises there may be  
12 special extenuating circumstances peculiar to the under-  
13 cover agent. The agent may find, even if he is a  
14 disciplined and knowledgeable police officer, as he often  
15 is, but which Nelson was not, difficulty in maintaining the  
16 line between lawful cooperation with his criminal associates  
17 and entering into the commission of criminal offences with  
18 them. Nelson was tasked by Army intelligence, as Colonel  
19 'J' has said, to learn the workings of the UDA, to limit  
20 their murderous activities, to pass on information, but not  
21 to get involved with their murder gangs. On the other hand,  
22 as their senior intelligence officer, the UDA having given  
23 him a mass of documentary intelligence relating to suspected  
24 Republican terrorists and other personalities, instructed  
25 him, in his own words : "I was to build an efficient  
26 intelligence network to enable the Association to properly  
27 target known Republicans for possible execution". In these  
28 opposing directions the dividing line between criminal  
29 participation and lawful intelligence gathering was drawn.  
30 Nelson chose to cross the wrong side of the line on five

1 occasions, as his pleas of guilty indicate. He did not, as  
2 Colonei 'J' said, maintain a balance but went beyond what  
3 was required of him and involved himself with the murder  
4 gangs.

5 In the McDaid conspiracy, when asked for a target by a  
6 UDA gunman, he selected from his index cards that of Decian  
7 McDaid and confirmed that the house he had watched and which  
8 he believed was Decian McDaid's was indeed his. In the  
9 Maskey conspiracy he took steps to inform UDA gunmen of his  
10 whereabouts in a restaurant and on two occasions went to see  
11 gunmen to alert them of this fact. In the Morgan conspiracy  
12 when asked for a target by a gunman he selected James Morgan  
13 and passed over his card and photograph, again checking with  
14 the electoral role and map Morgan's identity and address.  
15 He did the same thing in the case of Patrick Monaghan. In  
16 the case of Brian Gillen he watched the bar Gillen was  
17 alleged to frequent and suggested a plan to assassinate him  
18 to a UDA leader, and even suggested who might be the gunman.  
19 In each case he took steps of his own accord to confirm the  
20 addresses and habits of these victims, and in addition in  
21 the case of Gillen he assisted in the transporting of a  
22 sub-machine gun to be used in his murder.

23 Nelson's activities in all these five matters amounted  
24 in law to nothing less than conspiracies to murder, and in  
25 these he conformed to the UDA directive and disobeyed his  
26 instructions from Army intelligence.

27 It is of course right to say that in four of these  
28 conspiracies, including that of Decian McDaid, he had  
29 previously alerted his military handlers of the intended  
30 victim on more than one occasion, and that none of them

1 resulted in the murder of or injury to any of the targets.  
2 But it was a close run thing. In three cases the gunmen  
3 went into action at the addresses given by Nelson, and on  
4 one of these, tragically, the brother of Nelson's selected  
5 victim was murdered. In the fourth the gunmen were ready  
6 but the guns were not available. And in a fifth the gunmen  
7 did not shoot because their victim was in the company of a  
8 woman.

9 In passing sentence I remind the accused again that the  
10 maximum penalty for conspiracy to murder is imprisonment for  
11 life. However, the sentences I am about to impose will show  
12 that much of the mitigating material given forcefully before  
13 me by Colonel 'J', and submitted most eloquently by Mr Boal,  
14 has been taken into account.

15 In particular I take into account that Nelson gave up a  
16 comfortable life in Germany at the behest of the Army and  
17 with good motivation, not for gain, and with the greatest  
18 courage submitted himself to constant danger and intense  
19 strain for three years. I also take into account that in  
20 order to preserve his identity and indeed his life, and to  
21 give the appearance of cooperation with his criminal  
22 associates, it was never easy for him to maintain the line  
23 between what was lawful and what was not. And I give of  
24 course considerable weight to the fact that he passed on  
25 what was possibly life saving information in respect of 217  
26 threatened individuals.

27 Further Nelson has pleaded guilty and the law rules  
28 that such a course should reduce the sentence. And finally  
29 I am mindful of the fact that a prison sentence in his case  
30 will mean, for obvious reasons, extra hardship.



1            Brian Nelson, would you stand up? On the 11 counts of  
2 possession of documents likely to be useful to terrorists I  
3 sentence you on each count to three years imprisonment.

4            On the three counts of collecting information I  
5 sentence you to four years imprisonment on each count.

6            On the count of possession of firearms with intent I  
7 sentence you to six years imprisonment.

8            On each of the five counts of conspiracy to murder I  
9 sentence you to ten years imprisonment. All these sentences  
10 will be concurrent.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30