

REGINA

V

BRIAN NELSON

Before

THE RIGHT HONOURABLE LORD JUSTICE KELLY

on

Wednesday 22nd January 1992

(Rearraignment and Crown opening)

(BELFAST CROWN COURT)

Certified a true copy of the original filed in  
the Appeals and Lists Office on the

6<sup>th</sup> day of August 1992

THE PATENT  
OFFICE  
1 Watford Park, Derry BT28 3JF  
Tel: (0284) 208840  
Fax: (0284) 208833

1 PC From 11.10

2 MR CREANEY: My Lord, I'd ask your Lordship to deal with the  
3 bill which is the bill involving Brian Nelson, it's  
4 bill number 200 of 1991.

5 LORD JUSTICE KELLY: Yes.

6 MR CREANEY: I appear in this matter with my learned friend  
7 Mr Brian Kerr and Mr Gordon Kerr for the prosecution.

8 MR BOAL: My Lord, I appear with my learned friend Mr  
9 Brangham for the accused and might I just say before  
10 the charge is put to him that this case was adjourned  
11 from time to time last week and at the beginning of  
12 this week at the request of the defence. That was  
13 because of my own personal disposition and I want to  
14 say I'm very grateful to the Court for the indulgence  
15 it has shown.

16 MR CREANEY: My Lord, as a preliminary matter my Lord I'd  
17 ask that a 35th count be added to the indictment. A  
18 copy of that my Lord, has been furnished to my  
19 Lordship's clerk and it alleges conspiracy to murder,  
20 my Lord, and the particulars being that Brian Nelson,  
21 on dates unknown between the 31st day of August 1987  
22 and the 11th day of May 1988 in the County Court  
23 Division of Belfast conspired to murder Declan McDaid.

24 LORD JUSTICE KELLY: Any objections?

25 MR BOAL: No objections.

26 LORD JUSTICE KELLY: What is the application?

27 MR BOAL: The application now is that the accused should be  
28 rearraigned on all the charges.

29 THE CLERK OF THE COURT: Are you Brian Nelson?

30 THE DEFENDANT: Yes.

1 THE CLERK: On bill of indictment number 200 of 1991 you  
2 stand charged on the 35th Count of conspiracy to  
3 murder, contrary to Article 9(1) of the Criminal  
4 Attempts and Conspiracy (Northern Ireland) Order 1983  
5 and Common Law. Do you plead guilty or not guilty?  
6 THE DEFENDANT: Not guilty.  
7 THE CLERK: Upon application by your Counsel and direction  
8 of his Lordship I am to rearraign you on bill of  
9 indictment 200 of 1991. You stand charged on the 1st  
10 Count with murder, contrary to Common Law. Do you  
11 plead guilty or not guilty?  
12 THE DEFENDANT: Not guilty.  
13 THE CLERK: You are charged on the 2nd Count with  
14 collecting information likely to be useful to  
15 terrorists, contrary to section 22(1)(b) of the  
16 Northern Ireland (Emergency Provisions) Act 1978.  
17 Do you plead guilty or not guilty?  
18 THE DEFENDANT: Not guilty.  
19 THE CLERK: You stand charged on the 3rd Count ---  
20 MR CREANEY: Would you put Count 5 now please? Don't put  
21 Counts 3 and 4.  
22 THE CLERK: You stand charged on the 5th Count with  
23 conspiracy to murder, contrary to Article 9(1) of the  
24 Criminal Attempts and Conspiracy (Northern Ireland)  
25 Order 1983 and Common Law. Do you plead guilty or not  
26 guilty?  
27 THE DEFENDANT: Guilty.  
28 MR CREANEY: Don't put Count 6 and 7 please.  
29 THE CLERK: You stand charged on the 8th Count with  
30 collecting information likely to be useful to

1 terrorists, contrary to section 22(1)(b) of the  
2 Northern Ireland (Emergency Provisions) Act 1978.

3 Do you plead guilty or not guilty?

4 THE DEFENDANT: Guilty.

5 THE CLERK: You stand charged on the 9th Count with  
6 collecting information likely to be useful to  
7 terrorists, contrary to section 22(1)(b) of the  
8 Northern Ireland (Emergency Provisions) Act 1978.

9 Do you plead guilty or not guilty?

10 THE DEFENDANT: Guilty.

11 THE CLERK: You stand charged on the 10th Count with  
12 possession of a document likely to be useful to  
13 terrorists, contrary to section 22(1)(c) of the  
14 Northern Ireland (Emergency Provisions) Act 1978.

15 Do you plead guilty or not guilty?

16 THE DEFENDANT: Guilty.

17 THE CLERK: You stand charged on ~~the~~ 11th Count with  
18 conspiracy to murder, contrary to Article 9(1) of the  
19 Criminal Attempts and Conspiracy (Northern Ireland)  
20 Order 1983 and Common Law. Do you plead guilty or not  
21 guilty?

22 THE DEFENDANT: Guilty.

23 MR CREANEY: Don't put Counts 12, 13 or 14.

24 THE CLERK: You stand charged on the 15th Count with  
25 conspiracy to murder, contrary to Article 9(1) of the  
26 Criminal Attempts and Conspiracy (Northern Ireland)  
27 Order 1983 and Common Law. Do you plead guilty or not  
28 guilty?

29 THE DEFENDANT: Guilty.

30 MR CREANEY: Don't put Counts 16, 17 or 18.

1 THE CLERK: You stand charged on the 19th Count with  
2 conspiracy to murder, contrary to Article 9(1) of the  
3 Criminal Attempts and Conspiracy (Northern Ireland)  
4 Order 1983 and Common Law. Do you plead guilty or not  
5 guilty?

6 DEFENDANT: Guilty.

7 MR CREANEY: Don't put Counts 20 or 21.

8 THE CLERK: You stand charged on the 22nd Count with  
9 possession of a firearm with intent, contrary to  
10 Article 17 of the Firearms (Northern Ireland) Order  
11 1981. Do you plead guilty or not guilty?

12 DEFENDANT: Guilty.

13 MR CREANEY: Don't put Count 23.

14 THE CLERK: You stand charged on the 24th Count with  
15 possession of a document likely to be useful to  
16 terrorists, contrary to section 22(1)(c) of the  
17 Northern Ireland (Emergency Provisions) Act 1978.  
18 Do you plead guilty or not guilty?

19 DEFENDANT: Guilty.

20 THE CLERK: You stand charged on the 25th Count with  
21 possession of a document likely to be useful to  
22 terrorists, contrary to section 22(1)(c) of the  
23 Northern Ireland (Emergency Provisions) Act 1978.  
24 Do you plead guilty or not guilty?

25 DEFENDANT: Guilty.

26 THE CLERK: You stand charged on the 26th Count with  
27 possession of a document likely to be useful to  
28 terrorists, contrary to section 22(1)(c) of the  
29 Northern Ireland (Emergency Provisions) Act 1978.  
30 Do you plead guilty or not guilty?

1 THE DEFENDANT: Guilty.

2 THE CLERK: You stand charged on the 27th Count with  
3 possession of a document likely to be useful to  
4 terrorists, contrary to section 22(1)(c) of the  
5 Northern Ireland (Emergency Provisions) Act 1978.  
6 Do you plead guilty or not guilty?

7 THE DEFENDANT: Guilty.

8 THE CLERK: You stand charged on the 28th Count with  
9 possession of a document likely to be useful to  
10 terrorists, contrary to section 22(1)(c) of the  
11 Northern Ireland (Emergency Provisions) Act 1978.  
12 Do you plead guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE CLERK: You stand charged on the 29th Count with  
15 possession of a document likely to be useful to  
16 terrorists, contrary to section 22(1)(c) of the  
17 Northern Ireland (Emergency Provisions) Act 1978.  
18 Do you plead guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE CLERK: You stand charged on the 30th Count with  
21 possession of a document likely to be useful to  
22 terrorists, contrary to section 22(1)(c) of the  
23 Northern Ireland (Emergency Provisions) Act 1978.  
24 Do you plead guilty or not guilty?

25 THE DEFENDANT: Guilty.

26 THE CLERK: You stand charged on the 31st Count with  
27 possession of a document likely to be useful to  
28 terrorists, contrary to section 22(1)(c) of the  
29 Northern Ireland (Emergency Provisions) Act 1978.  
30 Do you plead guilty or not guilty?

1 THE DEFENDANT: Guilty.

2 PC to WF at 11.25

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

1 WF from PC at 11:25

2 (Cont'd) Rearraignment:

3 THE CLERK: You stand charged on the 32nd Count with  
4 possession of a document likely to be useful to  
5 terrorists, contrary to section 22(1)(c) of the  
6 Northern Ireland (Emergency Provisions) Act 1978.  
7 Do you plead guilty or not guilty?

8 THE DEFENDANT: Guilty.

9 THE CLERK: You stand charged on the 33rd Count with  
10 collecting information likely to be useful to  
11 terrorists, contrary to section 22(1)(B) of the  
12 Northern Ireland (Emergency Provisions) Act 1978.  
13 Do you plead guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE CLERK: You stand charged on the 34th Count with  
16 possession of a document likely to be useful to  
17 terrorists, contrary to section 22(1)(c) of the  
18 Northern Ireland (Emergency Provisions) Act 1978.  
19 Do you plead guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 MR CREANEY: Count 35.

22 LORD JUSTICE KELLY: Mr Creaney, he has been arraigned on  
23 Count 1, but not on Count 7, I think. Is that  
24 intended?

25 MR CREANEY: He was already arraigned on Count 7, my Lord  
26 and pleaded not guilty to that.

27 LORD JUSTICE KELLY: Right.

28 THE CLERK: You stand charged on the 35th Count with  
29 conspiracy to murder, contrary to Article 9(1) of the  
30 Criminal Attempts and Conspiracy (Northern Ireland)



1 Order 1983 and Common Law.  
2 Do you plead guilty or not guilty?  
3 THE DEFENDANT: Not guilty.  
4 LORD JUSTICE KELLY: Would you repeat, put the count again.  
5 THE CLERK: You stand charged on the 35th Count with  
6 conspiracy to murder, contrary to Article 9(1) of the  
7 Criminal Attempts and Conspiracy (Northern Ireland)  
8 Order 1983 and Common Law.  
9 Do you plead guilty or not guilty?  
10 THE DEFENDANT: Guilty.  
11 THE CLERK: You may be seated with his Lordship's  
12 permission.  
13 MR CREANEY: My Lord, purely in relation to the mechanics of  
14 the counts on the indictment my Lord, specific  
15 instructions have been taken in relation to the counts  
16 to which the accused has not pleaded guilty, and I  
17 would ask that those counts remain on the books of the  
18 court not to be proceeded with without leave of the  
19 court. And reasons will be given for that my Lord, in  
20 the Crown opening.  
21 LORD JUSTICE KELLY: Tell me what those counts are?  
22 MR CREANEY: My Lord I'll indicate, if I might, those counts  
23 to you. Those are Count 1 my Lord, Count 2, Count 3,  
24 Count 4, Count 6, Count 7, Count 12, Count 13, Count  
25 14, Count 16, Count 17, Count 18, Count 20, Count 21,  
26 Count 23 and that's the end of them.  
27 LORD JUSTICE KELLY: Yes.  
28 LORD JUSTICE KELLY: Mr Kerr.  
29 MR B KERR: May it please your Lordship, in May 1988  
30 Terence McDaid, then a thirty-one year old married man,

1 lived with his wife and children at 4 Newington Street  
2 in Belfast. For some four weeks before the 10th of May  
3 1988 it had been customary for Mrs McDaid to take her  
4 children swimming at Maysfield Leisure Centre on  
5 Tuesday evenings. Her husband picked them up after the  
6 swim, and it was customary for Terence's parents to  
7 visit at 4 Newington Street. The 10th of May was a  
8 Tuesday, the 10th of May 1988, and the grandparents  
9 arrived at the home at approximately 9:10 pm.

10 Terence McDaid and his wife had not arrived home, but  
11 some five minutes later they arrived and all of the  
12 family, children, parents and grandparents entered the  
13 home. The children were taken to bed at approximately  
14 9:55 or 10:00 pm, and the grandparents and parents then  
15 sat by the fire talking.

16 Some five minutes later this quiet domestic scene  
17 was shattered by the bursting open of the living room  
18 door, and two men, one at least of whom was armed,  
19 forced their way into the living room, and making  
20 Terence McDaid their target they discharged seven  
21 bullets into his head and trunk causing his almost  
22 immediate death. At seven minutes past ten an  
23 ambulance was summoned and arrived at the scene at  
24 10:12 pm. One of the ambulance men believed that he  
25 could elicit a slight radial pulse, but at 10:25 pm  
26 life was pronounced extinct. This horrific murder my  
27 Lord, was made the more tragic and ghastly by reason of  
28 the fact that Terence McDaid was not the intended  
29 victim of the gunman. It is now clear that they had  
30 intended to murder his brother Declan.

1           My Lord on the 22nd of September 1988

2           Gerard Slane, a twenty five year old married man,  
3           returned to his home at 11 Waterville Street, Belfast.  
4           He lived there with his wife and three children, and he  
5           went to bed at approximately 1:30 am. In the course of  
6           the night he and his wife were disturbed on a number of  
7           occasions by children coming into the bed and by his  
8           wife's belief that someone was tampering with her car.  
9           But his wife had gone back to sleep when sometime  
10          between 4:15 am and 4:30 am the house was broken open.  
11          Armed and masked men entered the home and in a vain  
12          attempt to repel them, Gerard Slane threw a step-ladder  
13          downstairs at the invaders. But they were not  
14          repelled, and they shot him four times in the head  
15          causing his instantaneous death.

16          My Lord on the 9th of November 1988 at  
17          approximately 6:30 pm, Mary Kelly was preparing an  
18          evening meal at her home at 10 Devenish Court in  
19          Belfast. Present in the house were her three children,  
20          John, Michael and Orla. Michael was aged seventeen.  
21          A crack was heard at the front door and Mrs Kelly  
22          walked into the hall and there was confronted by a  
23          gunman standing in the doorway to the living room. On  
24          entering the living room she saw another gunman  
25          standing over her son Michael, who was crouched on a  
26          sofa. This gunman held a gun to the head of the  
27          seventeen year old boy and pulled at his shoulder to  
28          obtain a good look at him, at the same time demanding  
29          his name. The boy replied 'Michael' repeatedly and  
30          just then the voice of a third man was heard shouting,

1 "Come on" and thereupon all three left without harming,  
2 at least physically, the occupants of the house. It  
3 has been established my Lord that this incident was  
4 part of a plan to murder Patrick Monaghan.

5 My Lord on the 14th of November 1988 in the  
6 evening, Barbara Morgan was in her home at  
7 10 Devonshire Place, Belfast with her three children.  
8 Her husband was not in the house at that time, he'd  
9 been absent from about 3:00 pm. At 5:45 pm  
10 approximately Mrs Morgan became aware of a gunman  
11 standing in the living room. He brandished a gun in  
12 his right hand and confronted Mrs Morgan, asking her  
13 several times "Where is he?" On each occasion she  
14 replied "Who?" And a second man, also armed, was in  
15 the hallway of the home. It is clear my Lord, and it  
16 has been established, that both were looking for  
17 Mrs Morgan's husband, and it ~~is~~ equally clear that  
18 their intent was to kill him had he been there.

19 My Lord in each of the incidents which I've just  
20 described, the accused Brian Nelson played a vital,  
21 indeed an indispensable role. But before describing  
22 that role in those incidents, and indeed in other  
23 incidents which form the background to the charges  
24 which have been preferred against him, it is perhaps  
25 appropriate to say something of the background of the  
26 accused.

27 My Lord, at the time that these various incidents  
28 occurred he was a member of the organisation which  
29 describes itself as the Ulster Defence Association. He  
30 first joined that organisation in 1972, and he became

1 what has again been described as an Intelligence  
2 Officer, in 1983. He left Northern Ireland in 1985 to  
3 work in Germany, and in April or May 1987 was appointed  
4 to the position of Senior Intelligence Officer. Now  
5 running parallel with those developments my Lord, is  
6 the circumstance that in 1983 he had, to use his own  
7 words, offered his services to military intelligence  
8 and indeed it was at the request of the Army that he  
9 had returned from Germany to Northern Ireland in 1987.  
10 From 1983 onwards, while he was in Northern Ireland, he  
11 was in regular communication with military contacts  
12 known as handlers. And in the course of such contacts  
13 he provided information to his handlers of his  
14 activities and the activities of others within the UDA.  
15 On his appointment as Senior Intelligence Officer in  
16 1987, he gained access to a considerable volume of  
17 information which had been obtained by the UDA and  
18 which was characterised by that organisation as  
19 intelligence. My Lord, that information was built upon  
20 and supplemented by Nelson's own activities in his role  
21 as Senior Intelligence Officer. And in so far as it is  
22 material to this case, this so called intelligence  
23 consisted of information about possible victims of  
24 those murderous members of the UDA who sought out for  
25 assassination individuals who they regarded as  
26 legitimate targets. And my Lord, it is the Crown case  
27 that it was in the collection of information about  
28 those victims, often I may say carried out with great  
29 astuteness and ingenuity, and in its dissemination and  
30 provision to those who he knew to be murderers and who

1 he knew would use the information to murder again, that  
2 the accused played his pivotal role. And it's against  
3 that background therefore, my Lord that I turn to  
4 examine each of the main incidents which form the basis  
5 of the charge against the accused. My Lord, I've  
6 already described in broad outline the circumstances of  
7 the murder of Declan McDaid. And as I've said it is  
8 now clear that Declan McDaid and not his brother  
9 Terence, was in fact the intended victim. Now the  
10 evidence against the accused in relation to the 35th  
11 Count, to which he has pleaded guilty, is that in the  
12 latter part of 1987 the accused provided an index card  
13 giving details of Declan McDaid to two UDA men known as  
14 Hugh and Reid. Now nothing came of that relay of  
15 information, but sometime later within the first few  
16 months of 1988, Nelson was approached by a man known as  
17 Winky Dodds. And Dodds asked Nelson for a target in  
18 the West Belfast area. My Lord, Nelson knew that Dodds  
19 was a killer, but despite that he gave Dodds the name  
20 of Declan McDaid. At Dodds' request he set about  
21 obtaining what information he could on Declan McDaid.  
22 He conducted surveillance and saw McDaid on several  
23 occasions. He ascertained or discovered that he spent  
24 a lot of time at 4 Newington Street. He reported to  
25 Dodds that he was sure that Declan McDaid was staying  
26 at Newington and he subsequently checked the Electoral  
27 Register which confirmed that a McDaid was staying at  
28 that address. Finally he gave Dodds an index card with  
29 a photograph of Declan McDaid and within a couple of  
30 days to one week, Terence McDaid was shot dead at 4

1 Newington Street in the manner that I have described.

2 If I may turn now my Lord to outline the evidence  
3 in relation to the charges numbered eight to ten on the  
4 indictment, which arise out of the murder of Gerard  
5 Slane. My Lord on the 7th of September 1988 one  
6 William Quee was murdered outside a shop on Oldpark  
7 Road, Belfast. Several persons were believed to have  
8 witnessed the killing. The accused Nelson and another  
9 UDA, so called officer, Thomas Lyttle Jnr, compiled a  
10 section of photographs of suspected members of the  
11 organisations known as the Irish National Liberal Army  
12 and the Irish Peoples' Liberal Organisation. The  
13 accused collected one of the witness --- one of the  
14 avowed witnesses and showed her the photographs. She  
15 picked out two photographs, one of whom was of  
16 Gerard Slane. On enquiry from another UDA member, Eric  
17 McKee, Nelson provided Slane's address and subsequently  
18 provided Slane's file card, as it has been described,  
19 to James Spence, another member of the UDA, in the  
20 knowledge that Spence would arrange for the killing of  
21 Slane. He also checked Slane's address in the  
22 Electoral Register. He obtained the photograph of  
23 Slane and he gave it to Spence, and he advised  
24 Thomas Lyttle Jnr (known as Tosh Lyttle) on how to  
25 carry out a recognizance of where Slane lived.

26 My Lord in relation to Count 15 on the indictment,  
27 it has been established that sometime in 1988  
28 Eric McKee, to whom I've referred in relation to the  
29 Slane murder, asked Nelson to get something for  
30 James Spence; again the same James Spence to whom I

1 have referred. And the request was made in the context  
2 that McKee wanted something for Spence to work on. And  
3 it's clear my Lord that the accused understood this to  
4 mean that he should obtain a target for Spence.

5 My Lord it is to be remembered that by this time Nelson  
6 knew of Spence not only by reputation but also of his  
7 involvement in the Slane incident. He knew therefore  
8 that his selection of Patrick Monaghan and his  
9 identification of him to Spence effectively targeted  
10 Monaghan for murder. Not only did he select Monaghan  
11 however, he carried out a recognizance of where he  
12 believed Monaghan lived. He noted and described to  
13 Spence the type of door on the house. He checked the  
14 Electoral Register but was not particularly perturbed  
15 at the fact that a Monaghan was not listed as living at  
16 that address. He considered that ~~the~~ intelligence  
17 which he had obtained on him, ~~that~~ that is on Monaghan, was  
18 to use his own expression, "Very up to date". He  
19 carried out visual sightings of Monaghan and he  
20 volunteered this information and a description of the  
21 appearance of Monaghan to Spence. He told Spence of  
22 seeing Monaghan in the company of another person whom  
23 he identified. And from the exchange that he had with  
24 Spence he can have been in no doubt that it was the  
25 intention of the UDA to murder Monaghan. And we say my  
26 Lord that the accused's participation in the planning  
27 for the attack on Monaghan was both willing and  
28 purposeful.

29 My Lord I turn now to deal with the conspiracy to  
30 murder James Morgan. My Lord sometime in 1988 in



1 response to a request by Winky Dodds, to whom I've  
2 referred, Nelson chose James Morgan as a target. He  
3 provided Dodds with so called intelligence data on  
4 Morgan. He also provided a photograph. He again  
5 checked the Electoral Register to ensure that Morgan  
6 lived at the address given in the intelligence  
7 material. Not only that, but he brought the Electoral  
8 Register to Dodds and pointed out the entry in relation  
9 to Morgan in it. He had made enquiries as to the area  
10 in which Morgan's house was to be found and  
11 subsequently he bought a map and helped Dodds further  
12 to locate the Morgan house. Thereafter he went on foot  
13 to reconnoitre the area, and on the day that he had  
14 positively identified Morgan's house he went to UDA  
15 headquarters and demonstrated to Dodds exactly where  
16 the house was to be found. And again my Lord we submit  
17 that all of these factors indicated an active and  
18 indeed willing participation in the plan to murder  
19 James Morgan.

20 My Lord I turn now to deal with Count 5 on the  
21 indictment, which charges that the defendant was guilty  
22 of conspiracy to murder Alex Maskey. My Lord although  
23 the accused's participation in this offence is similar  
24 in some respects to his activities in the series of  
25 offences which have already been described, the level  
26 of activity and degree of participation of the accused  
27 in this incident may be regarded as even more intense  
28 than any of the other incidents. On the 17th of July  
29 1988 the accused was told by a Ronald Bickerstaff that  
30 Alex Maskey, a Sinn Fein councillor, had been observed

1 at The Gregory, a restaurant/bar on the Antrim Road.  
2 His reaction was to assure Bickerstaff that he would  
3 get onto it right away. He left his home some five  
4 minutes after receiving this information and he drove  
5 directly to the home of Winky Dodds, of whom we have  
6 heard. He and Dodds drove to The Gregory and confirmed  
7 that Maskey's car was parked nearby. Dodds expressed  
8 himself, my Lord, as being unable to do anything about  
9 it because he did not have ready access to weapons.  
10 Nelson then drove Dodds home, but he did not rest  
11 content there. He drove back to check that Maskey's  
12 car was still parked where he'd seen it and he then  
13 drove to Highfield Rangers Club. There he met a  
14 Matthew Kincaid, and he told Kincaid about Maskey and  
15 then drove to another club where he met Jim Spence, who  
16 set about arranging to obtain a weapon in order to  
17 carry out an attack on Maskey. He then volunteered to  
18 check again whether Maskey's car was still parked near  
19 The Gregory but found it gone and he returned then to  
20 Mayo Street to tell Spence. And we submit my Lord that  
21 all of this activity could only be construed as  
22 demonstrating not only willingness, but indeed  
23 determination on the part of Nelson that an attack be  
24 made on Maskey.

25 My Lord, a somewhat similar picture, although less  
26 impressed in terms of time and less intensive perhaps  
27 in the level of activity, emerges in relation to  
28 Count 19 on the indictment which relates to the  
29 conspiracy to murder Brian Gillen. My Lord it is clear  
30 that the accused was well aware that senior members of

1 the UDA organisation had a well settled desire to carry  
2 out the assassination of Brian Gillen. And in  
3 furtherance of this and in his role as senior  
4 intelligence officer the accused made contact with a  
5 person in Lisburn. He was shown a bar which Gillen was  
6 said to frequent. He characterised this information as  
7 very sound when he discussed the matter subsequently  
8 with James Spence. He offered, and indeed himself took  
9 Eric McKee to Lisburn to show him the bar that had been  
10 pointed out earlier to him. He indicated to McKee a  
11 convenient parking place for a car to have access to a  
12 dual carriageway. He carried out a recognizance to  
13 locate the bar entrance and he offered to check whether  
14 there were security cameras in place. He suggested to  
15 McKee that Spence should be given the task of  
16 assassinating Gillen. Now quite independantly and  
17 indeed without consultation with others, he decided to  
18 take a trip to Lisburn to attempt to establish a  
19 sighting of Gillen. He produced a photograph of him  
20 and gave a description of him to the proposed assassin  
21 and he collected a homemade sub-machine gun for use in  
22 the proposed murder. And we respectfully say therefore  
23 my Lord that thus there was a number of obvious  
24 features demonstrating the accused's willing  
25 participation in this conspiracy. My Lord, although it  
26 is essentially incidental to the criminal liability of  
27 the accused, it is evident we submit that although  
28 Nelson was in contact with his handler over the period  
29 that these events took place, and although it is  
30 undeniable that he did provide his handler with

1 no information at all was passed?

2 MR B KERR: Yes, my Lord. I think Maskey was the obvious  
3 case where no information was passed until after the  
4 event. Yes, in all other cases information was passed  
5 of targeting, but we would say particularly my Lord in  
6 the case of McDaid, the information which was given was  
7 not nearly as comprehensive as it might have been; and  
8 I'll return to that very briefly my Lord, later in the  
9 opening.

10 LORD JUSTICE KELLY: Yes.

11 WF to PC at 11:55

1 PC from WF at 11.55

2 (Cont'd) Facts Opened by MR BRIAN KERR (QC):

3 MR BRIAN KERR: My Lord, in relation to the 24th Count in  
4 the indictment, the circumstances in relation to that  
5 are that the defendant supplied Ronald Bickerstaff, to  
6 whom I have made reference earlier, with approximately  
7 40 index cards which he himself had compiled and these  
8 contained details of various individuals and were  
9 supplied to Bickerstaff in response to his request that  
10 the accused should provide him with, and I quote, "a  
11 number of targets within his (that is Bickerstaff's)  
12 area." And, my Lord, it is abundantly clear that the  
13 collecting of the material on the index cards was for  
14 terrorist purposes and equally that's applied to  
15 Bickerstaff particularly in the context of a response  
16 to his request for targets which clearly was for  
17 terrorist purposes.

18 My Lord, in relation to the 25th Count on the  
19 indictment, the accused gave out a number of index  
20 cards with information on individuals. Those  
21 individuals were described as Provisional IRA or Irish  
22 National Liberation Army suspects or Irish People's  
23 Liberation Organisation suspects. Some 20 to 30 of  
24 these cards was supplied to James Spence and again, my  
25 Lord, the Crown would say that the circumstances in  
26 which the accused had them in his possession  
27 originally, and the purpose for which he supplied them  
28 bit off no explanation but the information was of such  
29 a nature as to be likely to be useful to terrorists in  
30 planning or carrying out acts of violence. And, my

1 Lord, in relation to the 26th Count on the indictment,  
2 Nelson was given four pages of names and addresses by  
3 Eric McKee. They were said to pertain to suspected  
4 members of the Provisional IRA in Belfast and  
5 Londonderry. He was also given, my Lord, a set of  
6 montage photographs. Subsequently about two months  
7 after he had received them from McKee he was then  
8 requested by McKee to provide him with information on  
9 persons living in Londonderry. And he photocopied all  
10 the montages and he typed up a copy of the persons  
11 living in Londonderry among the group that he had been  
12 given by McKee and he derived that from the written  
13 material that had accompanied the montages and he gave  
14 it to Eric McKee for onward transmission to the  
15 Londonderry Brigade of the UDA.

16 My Lord, in relation to the Counts 27 and 28 on  
17 the indictment, the circumstances are that on the 26th  
18 of October 1987 the accused told his handler that he  
19 had updated what he described as his 'P card system'.  
20 He had photocopied files and supplied 5 copies to  
21 different people in the Ulster Defence Association and  
22 the avowed reason for that given by Nelson to his  
23 handler was firstly to prevent the information being  
24 lost in a security forces raid and secondly to increase  
25 the targeting capacity of the UDA and we say, my Lord,  
26 that the assertion made by Nelson in this context  
27 constituted clear evidence of his willing participation  
28 in the targeting of others. And the fact that that  
29 evidence in support of those charges had been obtained  
30 by the relay of information by Nelson to his handler in

1 our respectful submission could not disguise or nullify  
2 what his intention was in relation to the provision of  
3 that information.

4 My Lord, in relation to Counts 29 and 30 on the  
5 indictment, the circumstances are that on the 16th of  
6 August 1989 he had a meeting with his then handler and  
7 he informed him, that is Nelson informed the handler,  
8 that on the 8th of August 1989 one Jackie Anderson  
9 called at his house and when he had been admitted he  
10 explained to the accused that he was visiting on behalf  
11 of one Samuel Austin and the purpose of his visit was  
12 expressed to be that Austin was in need of a new supply  
13 of photographs of known Republicans, particularly  
14 members of the IPLO. Nelson, my Lord, promised to  
15 provide what he could but could only provide  
16 photocopies of his own photographs. He then drove to  
17 his store in Forthriver Crescent, retrieved  
18 approximately half of his stock of photographs and he  
19 then visited Anderson's home from where both he and  
20 Anderson drove to a location to photocopy the  
21 photographs and the copies were then handed to Anderson  
22 with the purpose that they would be delivered to  
23 Austin.

24 My Lord, in relation to Counts 31 to 34 of the  
25 indictment, again the evidence for this is to be  
26 obtained from an account given by the accused to his  
27 handler and it may be convenient if I tell your  
28 Lordship that the account of the meeting which took  
29 place on the 23rd of March 1988 is to be found at pages  
30 504 and 505 of the book.

1 Your Lordship will see from the statement there in  
2 appearing that Nelson had a meeting on the 23rd of  
3 March 1988. He stated that at 9.00 am on the 22nd of  
4 March Laurence Clifford called at his home and asked if  
5 he had a photograph of Sean Stanton. His reply was  
6 that he had and would photocopy it for Clifford.  
7 Clifford also asked for a selection of photographs and  
8 Nelson gave him approximately 20, mainly from north  
9 Belfast. And he then asked Clifford if he was  
10 targeting Stanton and Clifford said that he was. Your  
11 Lordship will also see that at a meeting on the 31st of  
12 March 1988, Nelson stated that during the afternoon of  
13 Saturday the 26th of March he saw Laurence Clifford  
14 again and your Lordship will see the circumstances in  
15 which he had an exchange with Clifford, particularly in  
16 relation to the targeting of Stanton.

17 My Lord, the accused was arrested on 12th January  
18 1990 and thereafter he was interviewed by members of  
19 the team of detectives who staffed what has come to be  
20 known as the Stevens Enquiry. My Lord, those  
21 interviews were conducted initially over several days.  
22 Firstly at Castlereagh Police Office between 12th and  
23 19th of January and thereafter he was interviewed at  
24 Crumlin Road Prison from the 25th of January onwards  
25 extending over a period of months, but particularly in  
26 the first few months of 1990. And it is right that I  
27 should say that as a result of those interviews a very  
28 substantial number of written and verbal statements  
29 were obtained and it is largely, although not uniquely,  
30 upon the material obtained by those admissions that



1 these charges could be brought. The handlers, that is  
2 the Army handlers of Nelson throughout the period of  
3 these events, have also been interviewed and provided  
4 statements and documents relating to their conduct with  
5 Nelson over that period and those have been a  
6 supplement to the information obtained by the Stevens  
7 Enquiry team. I think it is correct, my Lord, that I  
8 should say in this context that it will be obvious from  
9 the papers that a laborious, indeed painstaking inquiry  
10 was necessary and not merely competently but I would  
11 respectfully submit, skilfully, with great thoroughness  
12 and industry was completed by those charged with the  
13 investigation of these offences and in particular, the  
14 interview of Nelson. And it is in no small measure due  
15 to the obvious commitment of those who were charged  
16 with the investigation of the offences that it has been  
17 possible to prefer these charges against him.

18 LORD JUSTICE KELLY: You are talking about the Stevens  
19 Enquiry only, are you?

20 MR BRIAN KERR: No, no, my Lord, I think that all who were  
21 associated with the provision of information which led  
22 to the preferring of these charges and the prosecution  
23 of the accused contributed in a material way but I  
24 think that it is not unfair to single out the Stevens  
25 Enquiry and those detectives associated with it for the  
26 singularly valuable work they performed. My Lord, may  
27 I say by way of conclusion that as my learned friend Mr  
28 Creaney has told your Lordship, it has been concluded  
29 on behalf of the Crown that it is appropriate to accept  
30 the accused's pleas of guilty to the count to which he

1 has now pleaded guilty and not to proceed on the counts  
2 to which he has here today already pleaded not guilty.

3 I think it's important that I should state clearly  
4 on behalf of the Crown that in reaching this  
5 conclusion, a careful review of all relevant factors  
6 has been undertaken. Without seeking to accord any of  
7 those factor's particular priority, or attempting an  
8 exhaustive or comprehensive list of all of the factors  
9 which have influenced the decision they have included  
10 the following. Firstly, my Lord, the amount and nature  
11 of the material which the accused passed to those who  
12 were responsible for the various incidents. Secondly

13 ---

14 LORD JUSTICE KELLY: Sorry. Just say that again please.

15 MR BRIAN KERR: Yes, we've taken into account, my Lord, the  
16 amount and the nature of the material which he passed  
17 to those who were responsible for the various incidents  
18 that I have described to your Lordship. Secondly, my  
19 Lord, the opportunity available to him to communicate  
20 with his handler about the information that he was  
21 passing to other UDA members. Thirdly, my Lord, it has  
22 been taken into account the degree of involvement or  
23 lack of it of the accused in the planning of the actual  
24 attack as opposed to the supply of the information  
25 which proceeded the plan and its execution. Fourthly,  
26 my Lord, we have taken into account the evidence which  
27 was available to the Crown which could have been held  
28 to be consistent with a purpose or intention on the  
29 part of Nelson that in particular McDaid and Slane  
30 should not be murdered.

1           The decision, my Lord, not to proceed with those  
2 charges which are associated with the various  
3 conspiracy to murder charges to which the accused has  
4 pleaded guilty is because of the recognition by the  
5 Crown that, if I might describe them as such, the  
6 subsidiary charges are properly subsumed on the charge  
7 of conspiracy in each case to which he has pleaded  
8 guilty.

9           My Lord, may I say that underpinning all of these  
10 considerations has been the fundamental question  
11 whether the interests of justice would be satisfied by  
12 the course which has now been taken. It will of course  
13 be obvious to the Court but in view of the public  
14 interest, the legitimate public interest, which has  
15 been generated by this case, it is perhaps appropriate  
16 my Lord that I should say that the decision whether to  
17 prosecute involves a markedly different exercise from  
18 that involved in the decision whether to proceed with  
19 counts to which a plea of not guilty has been entered.

20           On behalf of the Crown, my Lord I assert that the  
21 preferring of charges of murder in each case was  
22 justified, was justified on the evidence available to  
23 the Crown at the time that the decision to prosecute  
24 was taken. But it is important that it be recognised  
25 equally that when a plea of guilty to alternative  
26 charges to those contained in the original indictment  
27 or a plea of guilty to what might be described as, or  
28 depicted as the major charges in the indictment, when  
29 such a course is taken by the accused it is not less  
30 than the duty of the prosecuting authority to give

1 careful consideration to the Crown's proper reaction to  
2 that.

3 My Lord, in my submission, it must be emphasised  
4 that the decision to accept these pleas has been based  
5 solely on an evaluation of the factors likely to affect  
6 the outcome of the case and the demands of justice. My  
7 Lord the decision has been reached after a scrupulous  
8 assessment of possible evidential difficulties for the  
9 prosecution and a rigorous examination of the  
10 requirements of justice.

11 Now may I, my Lord, in final conclusion say a few  
12 words briefly about the two charges of murder  
13 originally preferred against the accused. In the case  
14 of the Slane murder which occurred, my Lord, on the  
15 22nd September of 1988, the accused had told his  
16 handler on the 12th September that Slane had been  
17 clearly targeted by UDA killers. A witness to the  
18 murder of Kee had purported to identify him, his  
19 address had been confirmed and the UDA were keen to  
20 retaliate for the murder of Kee and all that was passed  
21 by the accused to his handler, and of crucial  
22 importance, as I'm sure your Lordship will accept, on  
23 the 21st September, the very day before the murder,  
24 Nelson again gave a considerable amount of information  
25 to his handler about the further planning of that  
26 murder. It is clear from the evidence which was  
27 available to the prosecution that Nelson was  
28 considerably surprised by the timing of the murder. He  
29 had left for a holiday just before it occurred and was  
30 not in fact in the country at the time of its

1 commission. The nexxus, therefore, between the conduct  
2 of Nelson and the murder was likely, to put it at its  
3 lowest, to be a highly contentious issue on trial. And  
4 taking those factors into account, and having regard,  
5 my Lord, to the accused's plea of guilty to the other  
6 counts on the indictment which relate to this incident,  
7 it was concluded that it would be correct to accept the  
8 plea and not to proceed with the original charge and  
9 that conclusion, my Lord, again I emphasise, was taken  
10 on the basis that it properly reflected his criminal  
11 responsibility and that the requirements of justice  
12 would be satisfied by taking that course.

13 My Lord, in the case of the murder of Terence  
14 McDaid, the distinction is to be drawn because as I've  
15 already told your Lordship, the information which the  
16 accused gave his handler was not as complete as it  
17 could or ought to have been. Nevertheless, it must be  
18 accepted that he communicated to his handler on no  
19 fewer than five occasions that Declan McDaid had been  
20 targeted by the UDA. Those five occasions proceeded  
21 the murder of Terence McDaid and it is clear, and was  
22 clear to the Crown from the evidence available to it,  
23 that his reaction after discovering that Terence McDaid  
24 had been murdered, that he had no intention whatever  
25 that harm should befall Mr Terence McDaid. Again, all  
26 of those factors were very carefully considered and it  
27 was concluded after, if I may respectfully so say, my  
28 Lord, a careful, painstaking and scrupulously conducted  
29 review that it was proper that the plea to conspiring  
30 to murder Declan McDaid should be accepted and in the

1        interests of justice should be satisfied by that  
2        course.

3                My Lord, the only other matter is in relation to  
4        the accused's previous convictions a copy of that is  
5        available.

6        (A copy of the previous convictions was handed to the Judge)

7                My Lord, unless there are any matters arising,  
8        those are the matters which we would wish to put before  
9        the Court at this stage.

10       MR BOAL: My Lord, I propose in due course to address the  
11       Court in mitigation but I should say now that in  
12       support of many of the points that I would urge the  
13       Court to consider in mitigation I would intend to call  
14       a witness. That witness is at the present out of the  
15       jurisdiction and is not available therefore today and  
16       won't be available until the ~~beginning~~ beginning of next week.  
17       It would be much more convenient as your Lordship shall  
18       appreciate that I should call him on the same day as I  
19       would be addressing the Court, particularly since in a  
20       number of respects it could be said that the plea  
21       really is effectively being done through the mouth of  
22       that witness. My instructing solicitor has ascertained  
23       his whereabouts and his ability to be present in this  
24       Court any day next week as your Lordship feels...

25       LORD JUSTICE KELLY: He's not within the jurisdiction at the  
26       moment?

27       MR BOAL: He is not; he's not even in England. I'm not  
28       talking about the Northern Ireland jurisdiction, he's  
29       on the continent and he would, as I say, be available  
30       from the beginning of next week. I have talked about

1 this to my friends and subject to your Lordship's  
2 convenience - the Court's convenience I would suggest  
3 any day from Tuesday onwards.

4 LORD JUSTICE KELLY: Have you any particular day in mind?

5 MR BOAL: The convenience of the Court is perfectly  
6 acceptable to us.

7 LORD JUSTICE KELLY: Well I will be sitting every day here,  
8 I anticipate from Monday and I am quite prepared to  
9 interrupt a case to hear this plea. The plea should  
10 take what, a morning or an afternoon?

11 MR BOAL: Half a day.

12 LORD JUSTICE KELLY: Half a day? Shall we leave it we  
13 adjourn it generally but in expectation we hear the  
14 plea next week, probably the beginning of the week.

15 MR BOAL: Yes.

16 LORD JUSTICE KELLY: Thank you. Would you put the accused  
17 back please.

18 (Adjourned sine die)