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REGINA

-v-

BRIAN NELSON

before

THE RIGHT HONOURABLE LORD JUSTICE KELLY

On

MONDAY, 3RD FEBRUARY 1992

At

BELFAST CROWN COURT

SENTENCE

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

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SENTENCE

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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

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

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

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 Declan
7 McDaid and confirmed that the house he had watched and which
8 he believed was Declan 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 Declan 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.

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