

Judicial Communications Office

Friday 1 April 2011

KEVIN CRILLY ACQUITTED OF MURDER AND KIDNAPPING OF CAPTAIN ROBERT NAIRAC

Summary of Judgment

Mr Justice McLaughlin, sitting today at Belfast Crown Court, acquitted Kevin Crilly of the murder, kidnapping and false imprisonment of Captain Robert Nairac in May 1977. He said that his participation had not been established by the prosecution beyond a reasonable doubt.

The Judge, who presided over the trial without a jury, heard that the prosecution case rested on being able to connect Kevin Crilly with the events surrounding the abduction of Captain Nairac by virtue of the comments he made to BBC NI journalists who were making a programme on the murder and by a clump of over 650 hairs which were found in the rear foot well area of a Ford Cortina car which it is alleged he owned.

The prosecution had intended to call Liam Townson to give evidence at the trial. Townson made a verbal statement of confession to the Garda in 1977. The confession statement was the primary evidence against him at his trial and he was convicted of Captain Nairac's murder at the Special Criminal Court in Dublin. During the course of this trial a letter was produced which stated that Townson did not propose to co-operate with the investigation and by implication he would refuse to be a witness. There was a lengthy challenge during the trial to the admissibility of Townson's verbal confession in which he confessed his part in the murder of Captain Nairac and implicated Kevin Crilly as a secondary party. Mr Justice McLaughlin ruled on 21 February 2011 that he could not admit this evidence as it would put Kevin Crilly in a position which was unfair because he could not test the evidence to enable the judge to make a meaningful decision as to its worth.

Mr Justice McLaughlin heard evidence from scientists from the Forensic Science Agency. Analysis had been carried out on blood found on stones in the car park of the Three Steps Inn, Dromintee from where it is alleged that Captain Nairac was abducted and from stones and grass near Flurry Bridge, Ravensdale where the murder is alleged to have taken place. Further analysis was carried out on hairs found in these locations and the hair found in the Ford Cortina. The appearance of the hair found was consistent with it being

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forcibly removed from the head. These samples were compared to samples of hair taken from Captain Nairac's hairbrush.

The judge also viewed the BBC Spotlight programme which was made in 2007. The journalists "doorstepped" Kevin Crilly. During the conversation he admitted being at the Three Steps Inn on the night of the abduction of Captain Nairac. He said he was told to go to Dundalk and get a man named Townson. He did this, dropped him off and then went on the run because he "figures [he] was going to go to jail". Kevin Crilly acknowledged that had a role in the incident but claimed that his participation was "minimal, minimal" and he "regretted what had happened that night". The prosecution alleged that Kevin Crilly admitted during interview that he knew that Townson was the "OC" and this could only mean one thing in this context. Mr Justice McLaughlin considered, however, that while Kevin Crilly admitted he went to get Townson, he did not say that he knew he was the OC. The judge concluded that he "was quite unable to say that in admitting that he brought Townson, dropped him off and kept moving, [Kevin Crilly] was thereby making an admission which establishes guilt of any of the charges on the indictment". He added:

"Describing himself as having a minimal role was clearly an admission of sorts, but if it is an admission to driving Townson, dropping him off and moving on then it does not constitute any admission proving guilt of any of the charges in the Indictment when there is no way of knowing at what time this happened, where he was left off or what the specific intent of the accused can be inferred to have been at that time".

Mr Justice McLaughlin said he was therefore unable to draw assistance from the Spotlight interview in reaching any conclusion of guilt.

The judge then considered whether it could be proved that the Ford Cortina was used in connection with the abduction or killing of Captain Nairac, that it was associated with Kevin Crilly, whether the clump of hair was that of Captain Nairac, and if so how and when it got there. It was claimed that the car was driven by a number of family members. The only evidence to associate the car with Kevin Crilly was a statement of a police officer, Sergeant Swanson, who recounted a conversation he had with the defendant in which he confirmed he was the owner of the car and that he had been in the Three Steps the previous evening. Sergeant Swanson, however, had no contemporaneous notes of the conversation which could be relied upon in evidence as there were long since lost or destroyed.

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Mr Justice McLaughlin concluded that he could not be satisfied beyond a reasonable doubt that Kevin Crilly told Sergeant Swanson he owned the car or had taken it to the Three Steps Inn, or that he had visited the Crilly house and was directed to arrest Crilly and seize the car:

“Some of these incidents may have occurred but the police log, which was kept despite the Sergeant saying there was not one, simply undermines his evidence too much. The log also contradicts by inference his claims that he was involved in enquiries prior to 11.30 am on Monday 16 May 1977 as the agreed evidence is the serious incident log was opened at 04.30 on 15 May 1977 and the first mention in it of Sergeant Swanson is some 31 hours later when he became involved in setting up the incident room. Finally, there is no reference in the log to Sergeant Swanson going or returning to Crilly’s house”.

Mr Justice McLaughlin said that given the prosecution has been unable to prove a sufficient nexus between Kevin Crilly and the Cortina, the significance of the mass of hair found in it becomes irrelevant in proof of his participation in the murder or abduction. He also said that the vagueness of the strength of comparison of the hair found in the car with the sample from Captain Nairac’s hairbrush would have made it impossible to link the hair from the car beyond a reasonable doubt. While the other samples which were found with the blood stains on stones in the car park of the Three Steps Inn or at Ravensdale could be proved because they were found with blood matching Captain Nairac’s blood, the hair in the car was not:

“The fact that the hairs in the car bore many roots, indicating forcible removal, was consistent with the pattern of trauma associated with Captain Nairac’s abduction but the vagueness of the evidence as to the strength of the comparison between it and the reference sample left it impossible to draw the inference sought by the prosecution to the requisite standard”.

In his verdict, Mr Justice McLaughlin concluded:

“[70] The admissions by Crilly to the journalists from the *Spotlight* programme prove he was involved to some degree in the events surrounding the death of Captain Nairac. He was present at The Three Steps Inn when what he described as a “battle” took place; this can only mean what he witnessed was the abduction of Captain Nairac, but it does not prove his active participation in it. He later collected Townson and brought him to a place, and at a time, unspecified but, as Townson was convicted of the murder, it is certain that this was before the murder. The evidence does not prove where Captain Nairac was at the

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time Crilly went to collect Townson or when he dropped him off; nor does the evidence establish when or by whom the decision was made to execute the deceased. To prove the offence of murder the prosecution must establish beyond a reasonable doubt either that Crilly participated in the abduction of Captain Nairac willingly, knowing and agreeing that it would lead to his death, or that he brought Townson to the scene knowing or realising that he might kill the deceased, with that intention, so as to be guilty as a secondary party. **I have concluded that the prosecution has not proved Crilly was a participant in the abduction. I have also concluded that the prosecution has not proved beyond reasonable doubt the state of knowledge or intention necessary to transform the transporting of Townson by Crilly to an unspecified place at an unspecified time into a knowing participation in a potential murder. For these reasons I find the accused not guilty of Count 5 on the indictment.**

[71] On the first and third counts I return verdicts of not guilty as it has not been proved beyond a reasonable doubt that Crilly was involved in the kidnapping of Captain Nairac for the reasons just given.

[72] Counts two and four allege false imprisonment of Captain Nairac respectively in Northern Ireland and in the Republic of Ireland. The essence of this offence is that the prosecution must prove Crilly imprisoned and detained him unlawfully and injuriously against his will. There can hardly be any question of Captain Nairac being held voluntarily or lawfully and Crilly witnessed the "battle" which, in the context, must refer to the abduction of the victim at The Three Steps Inn.

[73] Does collecting and dropping off Townson constitute participation in the restraint of the victim's freedom? Clearly Crilly was not a principal as he has not been shown to have acted with those who took the victim prisoner. Indeed it has not been shown that when he went to collect Townson he knew whether Captain Nairac was alive or dead. In reality he was still alive because retrospect tells us Townson killed him which must have been after Crilly dropped him off. It is as of that point however that I must decide whether the defendant had the requisite mens rea either as a principal or secondary party? As the defendant has not been proved to have had actual or implied knowledge of the fate or whereabouts of Captain Nairac at the time of doing the act of transporting Townson, the charge of detaining the deceased unlawfully has not been proved in either jurisdiction. Accordingly I shall enter verdicts of not guilty on Counts two and four also. The accused may be released if there are no other matters concerning him to be dealt with."

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NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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