

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: **1/4/11**

**IN THE CROWN COURT OF NORTHERN IRELAND**

—————  
**THE QUEEN**

**-v-**

**KEVIN CRILLY**  
—————

**McLAUGHLIN J**

[1] On Bill of Indictment No. 10/60195 Kevin Crilly is charged with five counts as follows:

**“FIRST COUNT**

**STATEMENT OF OFFENCE**

**Kidnapping contrary to Common Law.**

**PARTICULARS OF OFFENCE**

**KEVIN CRILLY**, on a date unknown between the 13<sup>th</sup> day of May 1997 and the 16<sup>th</sup> day of May 1977, in the County Court Division of Armagh and South Down unlawfully and by force or by fraud took or carried away Robert Laurence Nairac against his will.

**SECOND COUNT**

**STATEMENT OF OFFENCE**

**False Imprisonment contrary to Common Law.**

**PARTICULARS OF OFFENCE**

**KEVIN CRILLY**, on a date unknown between the 13<sup>th</sup> day of May 1997 and the 16<sup>th</sup> day of May 1977, in the County Court Division of Armagh and South Down assaulted Robert Laurence Nairac and unlawfully and injuriously imprisoned the said Robert Laurence Nairac and detained him against his will.

### THIRD COUNT

#### STATEMENT OF OFFENCE

Kidnapping, contrary to Common Law and section 1 of the Criminal Jurisdiction Act 1975.

#### PARTICULARS OF OFFENCE

**KEVIN CRILLY**, on a date unknown between the 13<sup>th</sup> day of May 1997 and the 16<sup>th</sup> day of May 1977, in the Republic of Ireland, unlawfully and by force or fraud took or carried away Robert Laurence Nairac against his will.

### FOURTH COUNT

#### STATEMENT OF OFFENCE

False Imprisonment, contrary to Common Law and section 1 of the Criminal Jurisdiction Act 1975.

#### PARTICULARS OF OFFENCE

**KEVIN CRILLY**, on a date unknown between the 13<sup>th</sup> day of May 1997 and the 16<sup>th</sup> day of May 1977, in the Republic of Ireland, unlawfully and injuriously imprisoned Robert Laurence Nairac and detained him against his will.

### FIFTH COUNT

#### STATEMENT OF OFFENCE

Murder, contrary to Common Law and section 1 of the Criminal Jurisdiction Act 1975.

## PARTICULARS OF OFFENCE

**KEVIN CRILLY**, on a date unknown between the 13<sup>th</sup> day of May 1977 and the 16<sup>th</sup> day of May 1977, in the Republic of Ireland, murdered Robert Laurence Nairac.”

[2] It will be observed there are two counts of kidnapping and two counts of false imprisonment and that one of each of those charges relates to an offence in the County Court Division of Armagh and South Down, whilst the other two refer to offences in the Republic of Ireland. The fifth count of murder alleges that the offence took place in the Republic of Ireland. It will be obvious from the circumstances outlined in what follows that these charges were necessary to cover what may be described loosely as the “cross border” factor in the case. The offences in the Republic of Ireland are charged in Northern Ireland pursuant to Section 1 of the Criminal Jurisdiction Act 1975. No point arises as to the jurisdiction of this court to try all or any of these offences.

[3] In very brief outline the prosecution case is that Captain Robert Laurence Nairac was murdered in May 1977 in County Louth. It is alleged that he was abducted at The Three Steps Inn car park, Dromintee, County Armagh from where he was taken to a location known as Flurry Bridge, Ravensdale and the murder occurred there or close by. His body has never been found but again it is admitted for the purposes of this trial that Captain Nairac was murdered and that one Liam Townson was so convicted of his murder by the Special Criminal Court in Dublin on 8 November, 1977. It is alleged Crilly assisted in the abduction and brought Townson from Dundalk to carry out the murder.

[4] The defendant Crilly was not arrested until May 2008 as in 1977 as he left the jurisdiction and he was not found for over 30 years. It appears that he went to America and lived there during most, if not all of, that time. He had been adopted in childhood and he reverted to the use of his birth name, namely Declan Power, and that was the name he was using at the time of his arrest. It is not disputed that Kevin Crilly and Declan Power are one and the same person.

[5] The prosecution case, as finally presented, was that Crilly collected Townson from Dundalk and drove him to the scene, or close by, at Flurry Bridge and then left. Mr Terence Mooney QC, who appeared with Ms Kitson for the prosecution, provided me with a written opening which he spoke to at the beginning of the case. In that document he put the basis of Crilly's guilt as follows:

"Crilly is therefore guilty of the charge of murder in that he was party to the abduction of Captain Nairac and he knew that the abduction, in the circumstances, would lead to Nairac's death. He is guilty because he willingly joined in the enterprise to abduct and kill Captain Nairac and he intended that result.

In the alternative, if the court is not satisfied that Crilly himself intended, with others, to kill Captain Nairac, then he is nevertheless guilty because he assisted in the abduction of Captain Nairac, carried him away with others to Ravensdale, and brought to that place an armed man whom he knew or realised might kill Captain Nairac with that intention. He is therefore guilty as a secondary party to an enterprise in which he realised that one of the participants might kill the Captain with that intention."

[6] In the course of the trial there was a lengthy challenge to the admissibility of certain evidence which I have ruled upon separately. The effect of my ruling was to exclude considerable parts of what were intended to be important parts of the prosecution case and so as the case was finally presented it was significantly different from that intended by the prosecution at the outset. I shall now summarise portions of the evidence however it is not necessary to review all of the evidence and I simply focus on background details and those elements which constitute the gravamen of the prosecution case.

### **Personal details relating to Captain Nairac**

[7] Some of the personal history of Captain Nairac was relayed to the court via a statement made by his late father, Maurice Laurence Nairac, who died on 14 January 1993. He made a statement to the original investigation dated 16 December 1977 and produced Captain Nairac's birth certificate as an exhibit. He explained he was a retired ophthalmic surgeon and lived with his wife in Gloucestershire. In 1946 he and his wife went to Mauritius where he practised medicine. His wife gave birth to a son on 31 August 1948 who was christened Robert Laurence Nairac. The family left Mauritius in July 1949 and

returned to Sunderland. Robert attended the local pre-preparatory school until aged 8; he then went to Gilling Castle School, the preparatory school for Ampleforth College in Yorkshire, and between the ages of 12-18 years he was a pupil at Ampleforth College. He taught part-time before going up to Oxford at the age of 19 where he spent a period of four years reading history. During his time at Ampleforth he became a member of the Officers' Training Corp and in his final year at Oxford he joined the Grenadier Guards. He remained a Guardsman until his death. He served in Northern Ireland for a period of about four months whilst a Lieutenant but then returned to England where he was stationed for a period at Chelsea Barracks. He attended a number of courses, including a survival course in Kenya. He was by that stage a Captain and ultimately volunteered to return to Northern Ireland, which he did in April or May 1976. His father said Captain Nairac returned home on various occasions to visit his parents, the last time being at the end of March 1977. He confirmed that, as of the date of his statement in December 1977, he had not seen Robert since his last visit home and had received no communication from him.

[8] Dr Paul Alleway proved that he accessed the army records of Captain Nairac - Exhibit 5. In those records Captain Nairac's blood group was recorded as O Positive. This was based on a sample taken on 4 February 1972. Dr Alleway however also referred to a further document which was a laboratory form used to record bloods taken, it accompanied the samples to the lab and the results were recorded on it before being returned to medical reception. He noted on that document a list of ten officer cadets including "2 LT NAIRAC" whose blood grouping was marked as "O Rhesus Pos". He stated that having examined the copies of both these documents he could say with almost 100% certainty that Captain Robert Nairac's blood group was O Rhesus Positive. This was confirmed further by Thomas Worthington, a clerical officer attached to the Officer Training Corp at Oxford University, who examined their records which showed that Captain Nairac's blood group was O Rhesus Positive.

[9] Retired Captain David Allan Collett was a Captain attached to D Company 1 Batt. Worcestershire and Foresters Regiment stationed at Bessbrook Mill. He recalled being on duty on 14 May 1977 and during the course of the evening saw Captain Nairac who was also on duty. He was acting as operations officer and responsible for knowing the whereabouts of each man. At 9.25 pm he saw Captain Nairac dressed in civilian clothes and was informed by him that he would be leaving base in a civilianised car, a Triumph registration number CIB 4253, and that he would be going to The Three Steps Inn at Dromintee. He did not disclose the reason for his visit and left the base shortly afterwards being logged out at 9.25. At 9.48 he received a call by radio telephone from Captain Nairac using a recognised call sign "48 Oscar" when he was informed Captain Nairac was en route to Dromintee. He received two further similar calls at 9.52 and 9.56. At 9.58 a fourth call was

made by Captain Nairac to say that he was closing communications as he was at his destination. Captain Nairac had informed him earlier that he would be back by 11.30 pm. At 12.05 am he began to become concerned as Captain Nairac had not returned or communicated further. He hesitated however as this was not entirely unusual and took no further action until 1.05 am when he informed his commanding officer of the situation. An alert was raised and we know a police Serious Incident Log was opened at 0430 on 15 May 1977.

[10] Captain Collett confirmed that following the disappearance of Captain Nairac his room in Bessbrook Mill was locked and declared out of bounds so as to preserve it and no one was allowed to enter without prior authorisation. On 19 May 1977 he showed the room to a Sergeant Swanston who was allowed to enter. He searched it and a hair brush – Exhibit 5, was produced. This was identified by Captain Collett as belonging to Captain Nairac.

[11] In turn Sergeant Swanston confirmed he had found the brush in Captain Nairac's room and that some black hairs were adhering to the bristles. He recognised this as a hair brush, spoke to Captain Collett and as result put it in a bag with the requisite exhibit label. This was later passed to Mr Poots, SOCO. Mr Swanston also took a sample of hair from a dog owned by Captain Nairac which was put in a separate bag.

[12] I am satisfied beyond a reasonable doubt that the evidence obtained from the records of Captain Nairac held by the Army obtained by Dr Paul Alleway, together with the records held by the Officer Training Corp of Oxford University, proves that his blood group was O Rhesus Positive. I am also so satisfied that the hairbrush was the property of Captain Nairac and the hairs caught in its bristles came from him. These hairs were then used in effect as the reference sample against which comparisons were made during the forensic science investigations of hairs recovered from the various scenes.

### **Keystones of the prosecution case**

[13] The prosecution case rests essentially on being able to connect Crilly with the events surrounding the abduction of Captain Nairac at The Three Steps Inn and/or later at Flurry Bridge/Ravensdale; secondly with a clump of 650+ hairs found in the rear foot well area of a Ford Cortina car registration number MOR194F which it is alleged he owned. The links to the scenes are said to be made by answers given by Crilly when he gave a doorstep interview to BBC Northern Ireland journalists who were making a documentary on the disappearance of Captain Nairac for the *Spotlight* programme. The link to the Cortina car is said to be made by answers given by Crilly to Sergeant Swanston and Detective Constable Hamilton when they said they visited the Crillys' home on Sunday 15 May, 1977 and said he admitted it was his car. The importance of the car lies in the fact that when it was seized by police on 28 May 1977, and was later examined by Mr Richard

McClea at the Forensic Science Laboratory in Belfast, a large loose mass comprising approximately 650 hairs were said to be "similar microscopically" to the hairs from Captain Nairac's hairbrush.

[14] Detailed forensic examinations took place of many items recovered from the various crime scenes described earlier. Once these were collected they were passed to the Northern Ireland Forensic Science Laboratory or the Forensic Science Laboratory in Dublin. There were no disputes about the continuity of these items and so it shall suffice to concentrate on the evidence of the scientists who examined and reported upon them; I shall consider their evidence in turn.

1) **Mr Richard McClea**

[15] Mr McClea was employed in 1977 as a Principal Scientific Officer at the then Northern Ireland Forensic Science Laboratory. Unfortunately he died on 29 May 1995 and so was not available to give evidence in the trial. His statement was therefore read, but not agreed by the defence, and it contained the report of his findings; it is dated 22 June 1977 and consists of seven pages. He stated he received a large number of exhibits at the laboratory which had been collated from a number of sources, including himself, on various dates between 17 May and 2 June 1977. The relevant exhibits were numbered 1-24 and 50-74. Items 70-74 were collected by him personally at scene 1, Ravensdale Forest. The numbered items are tabulated in his statement along with the details of the actual dates these were received and from whom. Although his evidence was not admitted by the defence, no issue has been raised about these details or the continuity between the finding of the items and the receipt of them by Mr McClea at the laboratory. I am sure these details are accurate and reliable and shall take full account of them. That of course does not apply to his opinions which require separate analysis. I also note at this stage that there is a challenge to the issue of the finding of hair in the Ford Cortina motor car. The report includes a detailed chart at page 6 which tabulates findings in respect of his analyses of various items which contained, or consisted of, blood. I adopt that schedule into this judgment for the purposes of reference.

[16] His report was then reviewed by Mr John Logan, a Principal Scientific Officer at the Forensic Science Agency of Northern Ireland who made a witness statement dated 17 October 2008. Mr Logan was asked to conduct the review of Mr McClea's findings as the latter was now deceased. His evidence in chief consisted essentially of adopting and then speaking to his own report, which relied necessarily on Mr McClea's findings, and then giving answers in cross-examination. This practice has become relatively common place given the number of historical cases being brought forward by the Historical Enquiries Team (HET).

## **The findings of Mr McClean relating to various items**

[17] The items noted below feature in his report and I shall include a summary of his findings in relation to each of them.

(1) Items 2-4 inclusive. These came from the car park of The Three Steps Inn and consist of stones, etc, picked up in the vicinity of the Inn. Each item was contaminated to a greater or lesser degree with blood. The blood was tested for species origin and blood groups and the results are recorded in the chart which I have incorporated. A hair was found which he associated with Item 3. He stated that it shows "some microscopic similarity" to hairs from a brush (Item 5) belonging to Captain Nairac. The appearance of the root of the hair is consistent with it having been forcibly removed from the head.

(2) Item 5 - a gent's hairbrush. From other evidence it was established the brush belonged to Captain Nairac. It consisted of a clear amber coloured plastic back with white bristles. Associated with these bristles he found a number of head hairs. He selected a sample at random and examined it microscopically.

(3) Items 7 and 8. Item 7 consisted of nine stones collected from scene 1 - the bridge at Ravensdale Forest. Each stone was contaminated to a greater or lesser degree with blood. The blood was tested for species origin and blood groups and the results are set out in the chart. He numbered the stones and examined each microscopically. On stones 1, 5 and 6 he found a total of eight hairs associated with the blood. In the bag which contained the stones he found a further eight hairs. All of these were examined microscopically and Mr McClean found that they varied in length, that most had roots the appearance of which suggested forcible removal from the head; a number had broken ends and one was crushed at one point along its length. He found these hairs, when examined under microscope, to be "similar to those from the brush". Item 8 consisted of grass collected from scene 1 but the state of the blood was unsuitable for testing.

(4) Item 15 - This was a Ford Cortina car registration number MOR 194F. He found no evidence indicating the presence of blood in the course of his examination. On the floor well of the rear off-side of the vehicle he found a large loose mass comprising approximately 650 hairs. He selected a sample of these at random and found that they were "similar microscopically" to hairs from the brush. The appearance of the roots suggested they had been forcibly removed from the head.

(5) Items 21-24 from scene 2 Ravensdale Forest. Items 21-23 were single stones and item 24 was a small piece of wood and a blade of grass. All of the items 21-24 inclusive were contaminated with blood. The blood was tested for species origin and blood groups and the results are set out in the chart.



(6) Item 69 consisted of hair found at scene 1 Ravensdale Forest. This was in the form of a small "lock" of hair comprising some 180 hairs. He selected a sample at random and found these were "microscopically similar" to hair from the brush and the appearance of the roots was consistent with forcible removal from the head.

(7) Items 70-74 consisted of blood samples which Mr McClean had collected personally at Flurry Bridge Ravensdale. He tested these for species identity and blood group and the results are in the chart.

[18] At the conclusion of his report Mr McClean then gave some details of how blood sample analysis was conducted in 1977, how blood group was determined and explained the concept of rhesus positive and rhesus negative. His description also referred to the occurrence frequency of the various blood groups; these ranged from 1:27-1:500 of the Northern Ireland population. The only rider that should be entered here is that the racial origins of Captain Nairac were not specifically proved. Evidence from his late father established that he was born in Mauritius but we do not have any details of where his mother or father originated, even if it is a safe assumption they were British. It has not been established to what extent his blood type might be found in the population from which he emanates. With that rider however I shall set out the conclusion of Mr McClean's report.

""Blood contains a number of substances which can occur in different forms or groups which can be recognised in laboratory testing. These groups are a reflection of inherited factors and they are persistent in the blood from birth and constantly throughout life and they can be given a figure for their frequency of occurrence in a population. Each group present in the blood of an individual is inherited independently of all other groups.

Thus it is possible to ascertain the blood groups in a sample of blood and on the basis of the results to give the blood a degree of individuality when the frequency figures in a population are known.

If 2 blood samples differ in one or more groups then they cannot have a common source.

The blood on each item in this case had to be tested independently no matter how close the association between items and this limited the extent of testing to the amount of the blood available in any one item.

Testing was confined to 4 blood systems and it can be seen that there is nothing in the results inconsistent with all the blood having a common source. ....

The combination of groups varies from an appropriate frequency figure of 1 in 500 to 1 in 27 of the Northern Ireland population.

Rhesus positive or rhesus negative means for most medical and transfusion purposes a positive or negative reaction for the presence of the D factor only. The blood on items 2, 7(1), 7(4), 7(9), 52, 56, 66, 67, 70 and 73 gave positive reactions for the presence of the D factor and could therefore be called rhesus positive."

(ii) **Evidence of Mr John Logan**

[19] Mr Logan in effect carried out a peer review of the work of Mr McClean completed in 1977. He confirmed it was no longer possible for him to carry out a similar analysis of any of the blood or hair samples as they were no longer available. He explained the approach today when testing blood samples and the technical issues associated with grouping. He confirmed there was a high degree of consistency in the bloodstains as demonstrated by the findings of Mr McClean and agreed there was a high degree of likelihood that they emanated from a common source. He adopted the match probabilities suggested by Mr McClean. His conclusion is in the following terms:

"Technical issues for blood grouping

The tests available at that time were serological (Species, ABO and Rhesus) and biochemical protein polymorphism (PGM and EAP). With the exception of Rhesus these tests were in routine use up until the development of DNA analysis in the early 90s. Rhesus was a problematic test requiring specialist and skilled manipulation, and a reliable source of antibodies. Whilst available for special cases, it was never adopted as a mainstream grouping technique for dried stains at the Forensic Science Laboratory in Northern Ireland.

Each test required a relatively small amount of material, the total used if all five tests were carried

out would be large compared with current DNA techniques. It may well be that for those samples with incomplete grouping results, insufficient material was available for all tests.

The chemicals detected for each test were also highly labile and subject to decomposition from heat, light and bacterial decay, and this might also explain the absence of results for some samples.”

[20] The confirmation of Mr McClean’s findings was not challenged in cross-examination. Mr Richard Pratt QC, who appeared with Mr John Kearney for the defendant concentrated on Mr McClean’s opinions relating to his analyses of the hair samples.

### **Analyses of hair samples**

[21] Mr McClean described his findings in respect of the microscopic comparison of the hairs found in various places with those taken from the Captain Nairac’s hairbrush. Different descriptions were given to denote the degree of similarity and these are worth repetition in view of their importance.

(1) Item 3 - The single hair was said to show “some microscopic similarity” to hair from the brush.

(2) Item 7 - Stones 1, 5 and 6 were associated a total of eight hairs and a further eight hairs were found in the bag containing the exhibits. These were all examined, varied in length and he concluded “that the microscopic appearance of these hairs was similar to those from the brush”.

(3) Item 15 - Samples were taken from the large loose mass of hair comprising approximately 650 strands found in the Cortina car. The samples were found to be “similar microscopically to hairs from the brush”.

(4) Item 69 which comprised of hair found at scene 1 was a lock of some 180 hairs. The random samples taken from the lock were “microscopically similar to hairs from the brush”.

[22] In cross-examination by Mr Pratt QC, Mr Logan accepted there was now no way any double check could be made or further details given to assist with this comparative exercise. He agreed the science of hair comparison was one based on opinion, in turn informed by experience, and there was no scientific or objective standard or description that could be used to impart to a reader the degree of certainty sought to be attached to a comparative analysis of this kind. We simply had to accept Mr McClean’s analyses and the

descriptions which he gave. Mr Logan agreed no scale for comparisons such as might be found in other areas of scientific opinion, indicating the degree of support for a given proposition, had been used. Mr Pratt gave as an example how words such as "very strong", "strong", "some support" or "weak support", if used, would have been of considerable benefit. Mr Logan accepted that other forms of description and comparison might have been adopted. For example, there was no measurement of the length of any of the hairs, of the colour or pigmentation, general appearance or condition all of which were possible reference points. Gradations within a colour spectrum might also have been used. He agreed these could be important matters and could lead to significant distinctions being drawn. Interestingly, in re-examination, Mr Logan gave further examples by which various characteristics might be compared, for example, pigmentation, diameter, medulla, cuticle, cortex, etc of the hair.

[23] In the course of cross-examination Mr Pratt also questioned Mr Logan from two files which had been disclosed to the defence by the prosecution. One of these dealt with the blood analyses of items found at the bridge at Ravensdale and the other with reference to hair samples. These files had not been referred to by Mr Logan in his report, although he accepted he did have access to them. When Mr McClean examined hair from the brush, the reference sample for Captain Nairac, he recorded the description that it was "mostly shades of brown - light to dark brown with reddish" (then there is a word which could be 'type' or 'tinge' or 'tint'). He agreed there were no comparisons with any of the other samples by reference to any of these descriptions. With respect to the particularly important hair from the Cortina, he noted there was no description of the colour of the hair. He confirmed that of the 650 hairs found, 12 had been mounted - that is selected at random and prepared for microscopic examination. The findings noted in the file indicated that all of the roots were pulled, the ends were sharply cut (at the opposite end to the root) and there were "close similarities" to hairs from the brush, although he did note that they "tended to be rather longer". This could be explained by the hair on the head growing beyond the length of the hair on the brush, or that the brush hair came from an area of the head where the hair was simply shorter than that from where it had been pulled. Nevertheless we are left guessing or speculating at this stage.

[24] Apart from the difficulties inherent in this form of comparative analysis, Mr Pratt also elicited there were no samples of hair available from any member of the Crilly family, therefore no comparison could be made between any of them and the large loose mass of hair found in the Cortina. This was not an unfair observation given that when seized the car was actually being used by family members.

[25] At the time Mr Logan gave his evidence we did not have the benefit of having heard from Captain Collett. He told the court that Captain Nairac had

“black woolly” hair. In those circumstances we have not had the benefit of Mr Logan’s observations on how that description might match that used by Mr McClean of Captain Nairac’s hair contained in the disclosed file. Mr Logan agreed the microscopic similarities referred to by Mr McClean were not further described so we do not know whether his opinion is based simply on colour, some other characteristic or a combination of characteristics not recorded. Finally, he confirmed the only comparisons carried out were between the individual samples and the reference sample from the hairbrush i.e. there were no comparisons made between the individual samples recovered from the various scenes.

(iv) **Evidence of Dr James Donovan**

[26] Dr Donovan is a retired forensic scientist and was a founder and director of the Forensic Science Laboratory, Dublin. He was involved in the original investigation of the murder and disappearance of Captain Nairac in 1977. He gave evidence that he had actually attended and given evidence at the trial of Townson before the Special Criminal Court, but there seems to be some reason to question whether he was actually called as a witness. Nevertheless his report was prepared for that court and he was asked to assist with the investigation in connection with the arrest of the defendant Crilly. He confirmed his original statement dated 16 December 1977 was correct and that he had received a number of exhibits including the following from Detective Garda Niland on 20 May 1977.

(a) Hairs taken from the wall of the bridge. These were human head hairs with some blood attached. Exhibit 45.

(c) Two shirt buttons marked Exhibit 86 and Exhibit 85. Both of these buttons were of exactly the same design, composition and colour, both had the same pieces of thread still through the holes and the ends of the thread were broken. He said it appeared that both buttons had been pulled from a garment.

(d) Scrapings from the wall of the bridge suspected of having been made by a bullet together with a scalpel blade (Exhibit 80). He also had scrapings from a mark made by a bullet (on a test fire) together with another scalpel blade (Exhibit 81). He compared the metal content of both scrapings and found them to be the same thus indicating that the suspect mark may have been made by a bullet also.

(e) Seven samples of grass some of which contained human head hair and dried blood – Exhibit 47.

(f) Three samples of clay some of which contained human head hair and some blood – Exhibit 48.

[27] On 23 May 1977 he received from Detective Garda Niland the following:-

(h) Hair found at scene 1 - Exhibit 94. He found this to be human head hair.

(i) Twigs and human head hair from scene 1 - Exhibit 89.

(j) A black four holed button "found at the top of the ditch". This button still had thread looped through its four holes, the thread appeared to have been pulled from a garment - Exhibit 93.

(k) Hair found at scene 1 - Exhibit 95 - which he found to be human head hair with blood attached.

[28] He compared the hair found in various parts of the crime scene against hair samples taken from the hair brush of Captain Nairac. He said he found the hair in these samples to be "very similar". In other words, the hair from the scene was consistent with it being the hair of Captain Nairac.

[29] Dr Donovan confirmed that he had visited the scene some days before receiving these exhibits at the laboratory. He was able to describe the stream running along the field and under the bridge. He noted that sods of grass in proximity to the stream were broken up and they gave him the impression this was caused by "a considerable struggle", not from cattle but humans. The blood he observed was in drips and smears and there was a line of blood which he considered was still wet and consistent with it having spurted. He said he was in no doubt that reports of someone having been killed in a struggle there, which were known to him at the time, were consistent with his observations of the scene. As he put it "there was no doubt if you saw the scene that there was a human struggle there".

[30] In cross-examination by Mr Pratt he reconfirmed that he had visited the scene but agreed this was not mentioned in his report; he explained this was "because of security" and was not pressed further on that particular issue. He confirmed that he did not have the hair brush of Captain Nairac but had received labelled hair samples taken from it to enable him to make comparisons. He too agreed that such comparisons were essentially "observational evidence". He did say that he would look at matters such as colour, circumference and the like before coming to his conclusions but there was no actual record of the outcome of his comparisons.

[31] The analyses of the many hair samples carried out by Mr McClean and Dr Donovan proves these were consistent with being from Captain Nairac if the opinions of the witnesses are reliable. At its height however neither

witness ever purported to go further than that. The nature of the comparison is rooted in opinion; however it is as much art as science. The contrary view is that Mr McClean's observations of the colouring of Captain Nairac's hair contained in the disclosed file, but not in his or Mr McClean's reports, may be inconsistent with Captain Collett's description of the deceased's hair as "woolly black". In any event the strength of the "match" between the recovered and reference samples is impossible to gauge now given the paucity of material available.

### **The BBC *Spotlight* interview**

[32] On 19 June 2007, some thirty years and one month after the disappearance of Captain Nairac, BBC Northern Ireland broadcast a programme entitled "The Hunt for Captain Nairac" in the *Spotlight* series. The programme contained an interview with Kevin Crilly and a transcript was prepared for the trial which is Exhibits 7 and 8. The journalists used what may be referred to as the technique of "door stepping" the target of the interview. In other words they simply arrived at the door of Crilly's house unannounced. Perhaps to their surprise Crilly actually engaged in a conversation with them over an extended period. The prosecution obtained an order for the production of a tape of the interview, the transcript was prepared from that and a DVD copy of the recording was played in evidence.

[33] The effect of the interview is said to be important by the prosecution and is relied upon in support of the case against Crilly. In the course of the interview the defendant introduced himself initially as Declan Power, which was his birth name, but quickly accepted the journalists knew he was Kevin Crilly. He told the interviewers that he had left Northern Ireland, had been away for about 27 years and returned about three years prior to their visit. It was alleged by the prosecution when opening the case that in the course of the interview Crilly said certain things, which implicated him in the abduction and murder. These were summaries as follows:

- (i) He had been to The Three Steps Inn on the night of the abduction of Captain Nairac,
- (ii) He 'regretted what happened that night',
- (iii) 'There was a bit of a battle outside',
- (iv) He was told to go to Dundalk and get a man named Townson and did so,
- (v) He dropped Townson off,

- (vi) He went on the run because 'I figured I was going to go to jail',
- (vii) He acknowledged that he had a role in the incident, but claimed that his participation was 'minimal, minimal',
- (viii) He further acknowledged that the probability was that he would be subject to arrest, judicial process and imprisonment.

[34] The prosecution then said that it would be their submission at the end of the trial:

"..... That on a reasonable interpretation both of what Crilly said in the broadcast interview and the fact that he evinced an attitude from which the court may infer that he was a man who knew that what he had done [in relation to the abduction and murder of Captain Nairac] was criminal, that he was now exposed and he was resigned to the consequences of his acts.

We submit the court will readily infer that Crilly deliberately fled the jurisdiction in order to evade arrest and conviction and therefore wilfully frustrated any investigation of his complicity in the murder of Captain Nairac that would lead to his prosecution and conviction."

[35] It is not necessary in the course of this judgment to set out lengthy extracts from the transcript, which in any event is a trial exhibit. There are however some important passages which I should mention. At page 5 of the transcript it is noted that he was asked:

"Q. Do you regret you were involved in what happened that night?

A. Indeed I do believe me, believe me, believe me I do. ....

Q. Well who, who would have been, who would have been in charge in Dundalk around that time?

A. I have, wouldn't have a clue. I honestly

Q. If Townson was in charge if Townson was the OC at the time who was the, you went to get Townson that night?



A. Yes.

Q. Who was?

Q. What happened that night?

A. I'll tell you, I'm sure you know it all you know .....

Q. Well tell, tell us what happened?

A. I'm not saying nothing no I'm sorry.

Q. But you. What are your feelings about your role that night?

A. I just wish I hadn't a been in the position, the place, wrong place, wrong time that's it."

[36] Then at page 7 he was asked if he had read any of the books that had been written on this matter and he answered:

"A. Well I read The Nairac Affair that was it.

Q. Are they, are they accurate?

A. Phew I guess, I guess I don't you know, parts are, parts aren't, its that long since I read it you know I don't know.

Q. What parts are wrong that's what we want to get it right I mean that's why you know we're here to talk to you?

A. It's that long since I read the book you know.

Q. Were you in the bar that night?

A. I was in the bar that night yeah. ....

Q. Was it your car that was used?

A. No.

Q. Then how come it says whose car was used (inaudible). How did eh did somebody come up to you and say something about it?

A. It was just a bit of a battle outside that's the first I knew about it and the next thing I knew about it was the next day when the shit hit the fan.

Q. But you went and got a man to.

A. I was.

Q. You went and got.

A. I did, yes I did.

Q. Where you told to?

A. I was sort of told to yes.

Q. Who told you to take it?

A. I can't reveal that now I can't.

Q. Listen what condition was Townson in when you got him?

A. He seemed okay to me.

Q. Was he drunk?

A. I was nervous I don't know I was ... scared stiff.

Q. And was the body still in the field whenever.

A. I don't know. I dropped Townson off and I took off and that was it.

Q. You weren't there afterwards?

A. I wasn't there afterwards no.

Q. You got off-side?

A. I got, I dropped him off and I kept, kept on moving.

Q. Well why did you go on the run then?

A. I figured I was going to go to jail.”

[37] At page 9 he was asked:

“Q. How would you consider your role that night, how would you?

A. Minimal. Minimal (inaudible).”

[38] It is difficult to do full justice to the transcript by picking out the above quotations but it seems to me that those extracts do cover the eight points made by the prosecution in the opening by repeating the actual words that Crilly and the journalists used. It should also be remembered that the prosecution sought to say that Crilly knew Townson was armed. This does not appear at all from the transcript and was probably based on evidence now excluded, speculation or intelligence.

### **Evidence linking Crilly to the Cortina**

[39] The prosecution seek to connect Crilly to the Ford Cortina VRN MOR194F, in which the mass of approximately 650 hairs, alleged to have been pulled from the head of Captain Nairac, through the evidence of Sergeant James Swanston. In examination-in-chief he said that in May 1977 he was a sergeant in the Special Investigation Branch of the Royal Military Police attached to the CID Office at Newry Police Station. On 15 May 1977 he said he was directed to go to the home of Kevin Crilly in the Dromintee area close to Jonesborough. He went there with a colleague Detective Constable Charlie Hamilton.

[40] When they arrived at the Crilly household he noticed a Ford Cortina car parked to the left of the front door. They knocked at the door but a significant time gap elapsed before anyone answered, when someone did appear it was either the mother or father of the defendant who answered. Whilst they waited Sergeant Swanston said that he took the opportunity to look inside the Cortina which was unlocked, but that he did not find anything untoward or incriminating. He said they had a conversation with the person who answered the door and there was a further significant delay before Kevin Crilly appeared. Sergeant Swanston said Crilly was shaking like a leaf and there was a very strong smell of alcohol from him. He asked him to confirm if he was Kevin Crilly and he did so. He said he also asked Crilly if he had been in The Three Steps Inn the night before and Crilly confirmed he had. He then

asked him if he was the owner of the Cortina and he confirmed he was. When asked if he had the car with him at The Three Steps Inn the previous evening he replied that he had.

[41] After the discussion with Crilly, Sergeant Swanston said he and Detective Constable Hamilton stepped away out of Crilly's hearing. They had a private discussion and in the course of it decided they had insufficient grounds to arrest Crilly and therefore decided to return to Newry Police Station. On their arrival there they spoke to Detective Sergeant McCann about the matter and he said that he was "directed to go straight back and arrest him". They then did this and the time gap between leaving the Crillys' house and returning to it was about 1½ hours at most. He said they knocked on the door again when one or other of Crilly's parents answered and when they asked to speak to Crilly they were told he was no longer there. They searched the house to confirm he was not present.

[42] Sergeant Swanston was cross-examined by Mr Pratt and I consider it fair to say that this was the only witness whose evidence was the subject of any significant challenge by the defence. The witness confirmed to Mr Pratt that on 14 May 2009 he was shown a statement which he had made on 29 December 1977 for the purposes of the earlier investigation and had adopted it verbatim. In effect he confirmed that he was relying upon a statement which he had made about six or seven months after the events of May 1977. He no longer had his contemporaneous journal recording his evidence in its original form. He said that he had tried to find this journal some years ago but it did not prove possible, perhaps because of subsequent attacks on Newry RUC base, or because records were moved to Armagh, or some other location which cannot now be identified.

[43] He was unable to remember if in February 2009 he was recalling the events of 32 years earlier with or without the help of his earlier statement. He was unable to remember who actually took that statement. He said he was able to recall the events of 1977 and was clear in his recollection that he had called at Crilly's house during the morning period. He agreed that he may have met with an officer from the Historical Enquiries Team (HET) and, when asked if it was a Mr Kirkpatrick with whom he spoke, he answered that he thought it was a lady from HET to whom he had spoken. He confirmed he left the Military Police later and joined the RUC. He said he knew Captain Nairac and had met him whilst working in the Bessbrook area. He could recall the Captain had a black dog and he had taken a hair sample from it.

[44] He was then asked if he could recall saying that he met Crilly the "night" after the events. He was adamant he had never said at any time he had gone back at "night time". He was strongly of the view that he went in the morning and had returned to the house a second time within 1½ hours by

which time it might have been early afternoon but that was the latest he was prepared to put the second visit.

[45] He was asked if he had ever said he was told to go back to the house to arrest Crilly and seize the car as in his witness statement he had said “we were told to go and arrest him and seize the car”. He was able to explain why Crilly had not been arrested, since he was no longer at the house, but he could give no explanation why the car had not been seized. He conjectured that it would not have been appropriate for him to take it without it first being examined by a Scenes of Crime Officer.

[46] Several matters were then put to Sergeant Swanston, clearly based on disclosed documentation and his own earlier statements. It was put to him that he had not gone back to Crilly on the same date at all and that the return visit 1½ hours later did not happen: he insisted that it did. It was also put that there was no record of him ever having been sent on a mission which included seizing the car. Again he denied that suggestion.

[47] In fact it is clear that Sergeant Swanston has an inaccurate recall of many aspects of these events. This is hardly surprising after such a lapse of time, particularly when he no longer has his original notes. The prosecution and defence supplied me with a document containing a number of agreed facts. I have set it out in full hereunder as the defence argues they cast serious doubt on the accuracy of Sergeant Swanston’s recollection.

#### AGREED FACTS

(1) A serious incident log was opened at 4.30 am on 15 May 1977 in relation to the Captain Nairac investigation.

(2) The log suggests that Detective Sergeant McCann was informed by Detective Chief Inspector Fitzsimons that Captain Nairac was missing.

(3) The log suggests that Detective Sergeant McCann attended the scene at The Three Steps Inn at 10.30 am on 15 May 1977.

(4) The logs suggests that SOCO examined the scene at The Three Steps Inn from 1.30 pm until 2.45 pm and Detective Sergeant McCann’s statement of evidence suggests that he was present during that examination.

(5) The log suggests that Detective Sergeant McCann then attended a conference at Forkhill at 4.00 pm.

[48] I interrupt to observe that the above movements of Detective Sergeant McCann do not sit comfortably with the timescale given by Sergeant Swanston for his trip from Newry to the Crilly household, his return to

Newry or the subsequent directions allegedly given by Detective Sergeant McCann to return to the house.

[49] The Agreed Facts document then continues as follows:

(6) There is no log reference to Sergeant Swanston's involvement on 15 May 1977.

(7) The log suggests that arrangements were made to carry out house to house enquiries in the area during the 10.30 am conference on 16 May 1977.

(8) The first log reference to Sergeant Swanston's involvement is in relation to the setting up of an incident room at 11.30 am on 16 May 1977.

(9) There is no reference in the log or in the statement of Detective Sergeant McCann to a briefing on 15 May 1977 at which Detective Sergeant McCann directed Swanston to attend the home of Kevin Crilly.

(10) There is no reference in the log or in the statement of D/Sergeant McCann to information being received about Kevin Crilly and/or the Cortina.

(11) There is no reference in the log to a photograph of Kevin Crilly.

(12) There is no log reference to D/Sergeant McCann directing Swanston to return to the Crilly house to arrest Crilly and seize the Cortina.

(13) The log does suggest that Swanston was involved in house to house enquiries on 18 and 19 May 1977.

(14) The log does not contain any reference to the fact that Crilly was not at the house after the second visit by Swanston.

### **The seizure of the Cortina**

[50] In view of the insistence of Sergeant Swanston that the Cortina was the early focus of enquiries, and that he had been directed to seize it, even though he did not do so, it is important to record at this point how it was eventually seized.

[51] The statement of Robert Stewart Johnston, a police sergeant stationed at RUC Forkill, County Armagh, was read by agreement. He stated that on 28 May 1977 at approximately 11.00 am he received a phone call from Sergeant McCann, CID Newry, to the effect that the army had stopped a suspect car at Adavoyle, Newry, at approximately 10.30 am. He visited the scene accompanied by Constables Pedlow and Begley also from Forkill RUC Station. On arrival at the scene he found a Mrs Crilly, 26 Station Road,

Adavoyle, her daughter Mary O'Dowd, 35 Cambrook, Bessbrook and her baby daughter. He said he conveyed them to No. 26 Station Road and instructed Constable Pedlow to drive the red Ford Cortina registration number MOR194F to the Forensic Science Laboratory in Belfast. He was present when the keys were handed over to staff at the Forensic Science Laboratory. The car was marked Exhibit 15. Constable Alexander Pedlow made a statement, which was read also, which confirmed the evidence of Sergeant Johnston. The effect of their evidence therefore is that the car was not seized until almost two weeks after Captain Nairac disappeared and after Sergeant Swanston claimed that he had been directed by Detective Sergeant McCann to seize the car.

## CONCLUSIONS

### **i) The fate of Captain Nairac**

[52] I must now ask myself what is the cumulative effect of all of the evidence which I have heard pointing towards the fate of Captain Nairac? The ambit of the evidence includes:

- The finding and analyses of the various hair samples accepting the limitations of this form of evidence.
- The finding and analyses of the various blood samples.
- The finding and examination of the two white shirt buttons.
- The finding and examination of the black button.
- The comparison of the impact damage on the stonework of the bridge caused in testing firing a bullet with the original damage.
- The anticipated and reported movements of Captain Nairac.
- The defendant's description in the course of the interview by BBC journalists that he observed "a battle" taking place at the car park of The Three Steps Inn - considered in the context of the interview which focused on the fate of Captain Nairac.
- The presence of the damaged Triumph Dolomite car driven by Captain Nairac found abandoned at the car park of The Three Steps Inn.

[53] This evidence, taken as a whole, satisfies me beyond reasonable doubt that:-

- Captain Nairac went to The Three Steps Inn car park.

- That he was attacked in the car park of the Inn so he could not get into his car either to use the radio hidden therein, or to use it to escape.
- That he was taken from there to Flurry Bridge and the nearby field at Ravensdale.
- That he was beaten so severely that he was bleeding quite freely at The Three Steps Inn, Scene 1 and Scene 2 due to assaults.
- That he was murdered at Ravensdale, or somewhere in the vicinity, on the night he disappeared.
- He was murdered by Liam Townson who was convicted on 8 November 1977 by the Special Criminal Court of Ireland of killing Captain Nairac.

### **Conclusions on BBC *Spotlight* interview**

[54] The entirety of this interview has to be considered, rather than just snatches from it. I quoted earlier the basis upon which the case was opened to me and have set out what I consider to be the relevant extracts upon which those propositions were based. It is very clear the journalists concerned were preparing a documentary focusing upon the disappearance of Captain Nairac, the fact that his body had never been found, the allegation that Crilly transported Townson to the scene and was involved in the incident from the beginning. It is suggested he was present at The Three Steps Inn car park where he witnessed a “battle” taking place and that he was responsible for bringing a person to the scene who was ultimately convicted of the murder. The defence has put before me a number of submissions based upon these assertions by the prosecution.

[55] It is said that the expression of regret about being involved that evening taken at its height could indicate involvement of a criminal nature in the events of 14/15 May 1977 but begs the question - involved in what and with what intent? With reference to each of the five counts on the indictment, the defence asks: What is it said Crilly is admitting?

[56] The prosecution has sought to rely upon the assertion that Crilly admitted he knew Townson was the OC. In common parlance and in common understanding, the initials OC could only mean one thing in the context. An examination of the transcript however shows that the question being put to Crilly was in fact two questions. If the question had been put that way in court there is no doubt that a judge would have been duty bound to correct counsel and insist that he should not seek one answer to two questions. Alternatively there is a conditional presumption suggested i.e. “if



Townson was the O.C.” which is then followed by a question “you went to get Townson that night”, to which the answer is “Yes”.

“If Townson was in charge, if Townson was the OC at the time who was the, you went to get Townson that night.”

[57] It will be seen that there is a request to make an assumption that Townson was in charge and was the OC at the time and then a statement that he went to get Townson. The one word answer was simply ‘Yes’. That is an admission he went to get Townson, not that he knew he was the O.C.

[58] Crilly has clearly admitted he did go to get Townson and brought him to the scene. He has made clear, as appears from the quotations from the transcript earlier, that he “dropped him off and I kept, kept on moving”. This cannot be said to establish beyond reasonable doubt that he left Townson at the scene in circumstances where it was unambiguous, i.e. beyond reasonable doubt, that Crilly was assisting in murder, kidnap or false imprisonment.

[59] I have read over the transcript, and examined the prosecution submissions alongside the arguments of the defence and I am quite unable to say that in admitting he brought Townson, dropped him off and kept moving he was thereby making an admission which establishes guilt of any of the charges on the indictment. The statement is followed immediately by a discussion about why he went on the run and it is self-evident that someone who did what he had admitted would be arrested and questioned by the police.

[60] Having regard to what people must have known happened to Captain Nairac within a short time after his disappearance, it is not entirely unreasonable for Crilly to have said that he thought he was going to go to jail if he was caught by the police, thus “justifying” his decision to abscond. An inference of guilt cannot be drawn from that fact, or the statements associated with it in the course of the interview. Seeing a “battle” taking place in the car park, or regretting what happened that night, either individually or collectively, cannot give rise to an inference of guilt either. These are observations that could have been made, and sentiments that ought to be held by, anyone who was in the bar that evening, or indeed any right thinking member of the community. 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 on 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.

[61] In conclusion therefore I am unable to draw assistance from the *Spotlight* interview in reaching any conclusion of guilt as urged on me by the prosecution.

### **Crilly's association with the Cortina**

[62] The defendant has posed four central questions in respect of the car and the clump of hair allegedly found in it. These are:-

- (1) Can the prosecution prove that the car seized by Sergeant Johnstone at Adavoyle on 28 May 1977 is associated with Kevin Crilly?
- (2) If so, can it be proved that it was used in connection with either the abduction or the killing of Captain Nairac, or both?
- (3) Can it be proved to the requisite standard that the clump of hair found in the rear off-side foot well is in fact that of Captain Nairac?
- (4) If so, when, and in what circumstances, did it get there?

[63] The only time the car was seen in use was on the day it was seized, namely 28 May 1977, some two weeks after Captain Nairac's disappearance. At the time it was being driven by Mrs Peter Crilly who was accompanied by her daughter Mary O'Dowd and her child. The car was then taken to the Forensic Science Laboratory where it was logged in with the reference that it belonged to Peter Crilly - father of the defendant.

[64] The only evidence therefore which can associate the car with Kevin Crilly specifically is that of James Swanston. He recounted the conversation he claimed he had with the defendant when standing outside the family home on 15 May 1977. He said he observed a red car parked at the house. He alleged that the accused was asked if he was in The Three Steps Inn the previous evening and that he had confirmed he was and that he was the owner of the car. He also allegedly confirmed the car was at The Three Steps Inn the previous evening. Before this evidence can be acted upon however it has to be remembered that Sergeant Swanston did not have any contemporaneous notes to assist his memory as these were long since lost or destroyed.

[65] It is also argued by the defence that Mr Swanston's evidence must be treated with great caution because he denied that any police log was being kept of events when in fact a log was being kept. Further, the log appears to contradict, at least by inference, his claim that he was at the house on the morning immediately following the report of the disappearance of Captain Nairac. There is no reference to him being sent out initially, as claimed, or a second time by Sergeant McCann; nor is there any reference to a direction

being given to him to arrest the accused and seize the car. It would be an extraordinary state of affairs, if Mr Swanston is correct, that not only did he not seize the car when he was specifically directed to do so, but that the police did not manage to take possession of the car for a further two weeks. When the car was stopped by the Army, Mrs Crilly was driving the car with her daughter and granddaughter as passengers and it was being used in every way consistent with it being the family saloon, there is no obvious way of reconciling these apparent contradictions. The net result is, the defence say, that Mr Swanston's recollection is simply too fragile to be relied upon in these important respects.

[66] Quite apart from any frailties that may have been exhibited in his memory it is also said that it is important not to rely on the alleged acknowledgment by Crilly that he was at The Three Steps Inn with the car on the night in question. The transcript of the *Spotlight* interview records he was at the Inn and witnessed a "battle" but there is no reference to him having the car there. There is no evidence that Crilly was seen using the car.

[67] It is further argued that the Judge's Rules, would have required proper recording of the comments of the accused but of course that does not appear to have been done. Perhaps Mr Swanston wrote up some notes afterwards, but these are long lost, and we have no way of knowing whether he recorded the alleged admissions or not. Compliance with these basic precautions assists a court ordinarily to make a decision whether to rely on evidence of this kind, or not. Mr Pratt has argued that given the overall difficulties with Mr Swanston's recollection, the absence of contemporaneous records, and the overall importance of this matter, that it would be wrong to rely upon the evidence of Sergeant Swanston in this regard at all. In consequence it is said that the evidence of association between Crilly and the car is unreliable and, if anything, the evidence establishes the persons most closely associated with it are his father and mother. Finally, the car parked outside the house, as described by Mr Swanston, and as seized on 28 May, was a red Mark II Cortina. The prosecution opened the case, based on a statement of a person convicted in connection with the murder, now ruled inadmissible, that the car in question was a Mark III bronze coloured Cortina.

[68] In the circumstances I cannot be satisfied beyond a reasonable doubt that Crilly told Sergeant Swanston he owned the car or had taken it to the Three Steps Inn, or that he visited the Crilly household during the Sunday immediately after Captain Nairac's disappearance or that he was directed by Detective Sergeant McCann to return to the house 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 0430 on 15 May

1977 and the first mention in it of Sergeant Swanston 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 Swanston going or returning to Crillys' house.

[69] Given that the prosecution has been unable to prove a sufficient nexus between Crilly and the Cortina, the significance of the mass of hair found in it becomes irrelevant in proof of participation by Crilly in the murder or abduction. In any event the vagueness of the strength of the comparison with the reference sample would have made it impossible to link the hair from the car with Captain Nairac beyond a reasonable doubt. This is because it was found away from the various scenes, and unlike all the other hair samples which were found with or in close proximity to blood matching his blood grouping, no such blood was found in or about the car. This deprives the evidence of support from circumstances which buttresses the link between Captain Nairac and the many other hair samples recovered from the various scenes. 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.

## VERDICT

[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 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.