

I N D E X

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(VOL. 1)
November 2-5, 1971

MEDIA POOL COPY

MAGISTERIAL COURT...SYDNEY

SUMMARY CONVICTION ON'

DONALD MARSHALL, JR.

JULY 5, 1971...206(2) C.C.C.

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Trial
July 5/71 - and another day

Trial Supreme Court
Nov 2 - 3 - 4 - 5

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CANADA
MAGISTERIAL DISTRICT OF THE
PROVINCE OF NOVA SCOTIA
COUNTY OF CAPE BRETON

IN THE SUMMARY CONVICTION COURT

THE QUEEN: SGT. DET. JOHN F. MacINTYRE INFORMANT

- VS -

DONALD MARSHALL (JR.) DEFENDANT

CHARGE: SECTION 206(2) OF THE CRIMINAL CODE OF CANADA.

I N D E X

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SYDNEY, COUNTY OF CAPE BRETON, PROVINCE OF NOVA SCOTIA,

MONDAY, JULY 5, 1971

COURT OPENED 10:00 A.M.

The Accused present.

John F. McDonald, Provincial Judge, presiding.
Donald C. MacNeil, Q.C., Crown Prosecutor, present.
C.M. Rosenblum, Q.C., Defence Counsel, present.
S.J. Khattar, Q.C., Defence Counsel, present.
Irene McMullin, Official Reporter, present.

BY THE COURT

DONALD MARSHALL, JR. you are charged at or near Sydney, in the County of Cape Breton, Nova Scotia, on or about the 28th day of May, 1971, that you did murder Sanford William (Sandy) Seale, contrary to Section 206(2) of the Criminal Code of Canada.

PROCEEDING BY WAY OF PRELIMINARY HEARING

The Court orders no publication by the Press or Radio of the Preliminary Hearing.

Dr. Naqvi, sworn By Mr. MacNeil

Q. Your full name Doctor?

A. My name is Mahomad Ali Naqvi.

Q. And are you a duly qualified medical practitioner, practicing medicine in the Province of Nova Scotia?

A. Yes I am. On the 28th of May, 1971, at approximately 10:00 p.m., the patient was brought to the hospital and was transferred to the intensive care room.

Q. How long have you been practicing in Nova Scotia?

A. Eleven years.

Q. You reside and practice in the City of Sydney, County of Cape Breton, Province of Nova Scotia?

A. Yes.

Q. What are your qualifications.

By Mr. Rosenblum

Qualifications admitted.

Q. Were you practicing in the City of Sydney By Mr. MacNeil
on the 28th of May, 1971?

A. Yes I was.

Q. During the course of your duties did you have occasion to administer to Mr. Sandy Seale?

A. Yes I did.

Q. And where did you first see this man?

A. In the emergency room at the City Hospital.

Q. Describe the man himself, not his injuries but the man himself?

A. This patient was brought into the emergency room in a state of shock, with no blood pressure, no pulse, he was pale and unresponsive.

Q. What time of the day or night and what date was this?

A. This was approximately between twelve midnight on the 28th and One o'clock on the 29th.

Q. And did you administer to this patient?

A. Yes.

Q. And what was done?

A. The patient was prepared after given three intravenous, four units of "O". Positive blood due to the urgency of the situation, with no luck in resuscitation, the patient was placed on the respirator and was transferred to the operating room.

Q. What took place?

A. He was prepared in the operating room, put under a general anesthetic and an incision above and below the stab wound was made, this was converted into a paramedian incision. There was no tear into the small bowel but there was a tear into the midtransverse colon and there was free spillage of fecal material into the peritoneal cavity. Huge retroperitoneal hematoma extending from the level under the esophagus right down to the iliac crest on the left side. There was hematoma into the bowel and this was not touched because of fear of bright bleeding already present into the peritoneal cavity. Large sized opening was seen to the superior mesenteric vein with a free bleeding of this area. This opening was closed with vascular sutures and the superior mesenteric vein was repaired after dissecting proximal end. Then branch of the middle colic vessel which was bleeding, having passed the knife through the area, was ligated. The colon was exteriorized and there was a large amount of blood into the stomach, the small bowel and the colon and the patient had brisk bleeding through the entire gastro intestinal tract. However, the stomach was not opened due to the critical nature and there was no obvious laceration or tear seen into the stomach. The bowel was placed into the peritoneal cavity which again could not be placed because of the huge hematoma occupying the entire abdominal cavity, there was also a dilation of the small bowel. The abdominal cavity was closed and the midtransverse colon was brought out as a colostomy. This patient, in spite of necessitated measures and corrections of injuries

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as a result of a stab wound, continued to be in a state of shock, with no urine output and no response. As a result of no improvement, the patient was taken back to the operating room within a few hours, who has been in a critical condition since the operation was brought into the operating room with pressure ranging from 40 and 50 of a systolic and the wound was opened from the xiphoid to the pubis, from the top to the bottom. The small bowel was markedly vilatious where the previous mesenteric vein was repaired and did not function. The colon was vilatous and dialated and the previously seen hematoma into the the back was increased in size because of this a pressure on the aorta behind the esophagus was applied by Dr. David Gaur who was assisting me at the second procedure. The aorta was dissected with this dissection there was a gush of bleeding and we lost the control of the aorta at this point. Due to this with a hand pressure on his aorta a thoracotomy was done through a left thoracic incision cutting the two costal cartilages and going between the 6th rib intercostal space. The aorta was clamped in the chest with a Satinsky clamp, then opening was seen into the aorta distally which was just below the level of the renal vein. This opening was closed with a 4 0 silk suture. Once the hemostasis was achieved and the opening was closed, the pressure packs were applied and the aorta clamps were slowly released. After releasing the clamps, there was some increase in the blood pressure and attention was drawn to close the thoracotomy wound. The thoracotomy wound was closed

with an interrupted chromic sutures. Hemostasis was achieved. Continuous sutures were applied into the muscles and the fascia. Skin closed with black silk sutures and a chest tube was inserted for thoracic drainage. Following this, attention was drawn to the abdominal part of the wound, the hemostasis by sutures into the abdominal part of the wound was achieved. The small bowel at this time almost peritoneum, however, the pulsation into the major vessel was present. Due to the extensive involvement of the small bowel it was best felt to leave the small bowel into the abdominal cavity which might recover and if not so patient condition continue to improve within the next twenty-four or forty-eight hours and a second look operation would be required. Following this the patient was transferred into the recovery room. He continued to be in a state of shock in spite of extensive measures taken for resuscitation. During the entire procedure twenty-seven pints of blood were given to the patient but to no avail. He was pronounced dead.

Q. At what time doctor?

A. At approximately 8 o'clock.

Q. On what date?

A. Between 8 to 10, this was on May 29th.

Q. Doctor, you said you gave Mr. Seale fifteen or so pints of blood?

A. Twenty seven (27).

Q. Twenty-seven; did you first of all determine the type of blood of this young man?

A. When he arrived he was in such bad shape and patients that come in like this, in order to revive them, we give them O negative or O positive blood, irrespective of what group they belong to. If we feel this might

Q. Did you eventually type the blood of Dr. Seale?

A. Yes sir.

Q. What was that blood type, please?

A. Here it says "C positive."

Q. Now, doctor, you said you were being assisted by
Dr. David Caum?

A. Yes.

Q. And you also mentioned in your evidence on several occasions, a stab wound, what did you mean by that?

A. This patient was brought in with the small bowel outside the abdomen. There was an opening in the abdomen and it was made by a sharp object.

Q. Would the injuries you described and the treatment in the hospital be consistent with a stab wound of a knife?

A. Any sharp object.

Q. You were the surgeon, would you tell his Honor the cause of death?

A. Cause of death in this case was massive trauma.

Q. Which means?

A. Injury to his colon, pancreas, vein and small bowel and aorta.

Q. Caused by?

A. Caused by a stab wound due to a sharp object.

Q. Doctor, I understand you stayed with the patient from the time he was admitted until the time of death?

A. Yes. BY MR. JOSEPHSON:

Q. BY MR. JOSEPHSON: I understand you were the patient or the victim was first treated in the Intensive Care department and at the first occasion that night, I hadn't seen the wound that had sustained. It was brought in, the only thing I could see was the wound of the abdomen. I was called in to the hospital from the Intensive Care department to the hospital.

Dr. David Gaum, sworn

By Mr. Jackson

Q. What is your name doctor?

A. David Gaum.

Q. You are now practicing medicine under the laws of Nova Scotia?

A. I am.

Q. and how long have you been practicing, doctor?

A. Since 43, over twenty-five years.

Q. And you reside and practice in the City of Sydney?

A. Yes.

10 Q. What are your qualifications, doctor?

A. A graduate of Dalhousie University.

By Mr. Rosenblum QUALIFICATIONS ADMITTED

Q. Now, were you acting as such on the 28th of May, 1971?

A. Yes.

15 Q. Did you know a gentleman by the name of Sandy Seale?

A. Yes, I know him, I don't just know how you want me to say that. I know the family, I knew the man. I hadn't seen him in years but I knew the man that was injured was Sandy Seale.

20 Q. and was this the man, Sandy Seale, that you assisted Dr. Naqvi in treating on the 28th of May, 1971?

A. Yes.

Q. And doctor, was that a very concise, detailed report from Dr. Naqvi, if you were in the Court room and heard?

25 A. Yes.

Q. Can you tell his Honor what injury this man sustained, not the details of the internal injury?

30 A. Well, I wasn't present when the patient or the victim was first treated in the Out-patients department and at the first operation that night. I hadn't seen the wound that he had sustained when he was brought in, the only thing I am familiar with is that because of the deterioration of his condition it was necessary to return him to the O.P. again

- 8 -
Major vessel and his abdomen

was opened, the incision previously made was opened and we had discovered a laceration of the main artery, aorta, which was described was sutured and the other injuries which you already know.

Q. Can you tell us, doctor, what type of injury this man suffered?

A. Well he had suffered a wound as a result of some sharp object penetrating the wound of the abdomen.

Q. Doctor based on your experience that night when you did administer to the patient, would you agree with Dr. Naqvi with the cause of death?

A. I would.

By Mr. Rosenblum

NO QUESTIONS.

Carl MacDonald, Sworn

By Mr. MacNeil

Q. Your full name Mr. MacDonald?

A. John Carl MacDonald.

Q. What is your occupation?

A. I am the land surveyor for the City of Sydney.

Q. And where do you reside in the City of Sydney?

A. No I live in the Town of Dominion.

Q. And what are your qualifications as a Land Surveyor?

A. I am a qualified Nova Scotia Land Surveyor.

Q. And how long have you been so qualified?

A. Fifteen (15) years.

By Mr. Rosenblum

QUALIFICATIONS ADMITTED.

Q. Did you Mr. MacDonald make a survey of an area in the City of Sydney known as Wentworth Park?

A. Yes sir I did. I surveyed that area a part of Wentworth Park. One of the streets running through the park. Some of the physical features of the park and several physical features such as the water tower and the bridge.

Q. Did you make a plan of that survey?

A. Yes I did.

PLAN TENDERED AND MARKED EXHIBIT M/1

Q. I show you Exhibit M/1, please, what is that?

A. This is a plan showing Wentworth Park located in the City of Sydney.

Q. County of Cape Breton, Province of Nova Scotia?

A. Yes.

Q. Wentworth Park, Mr. MacDonald extends from what area to what area?

A. Wentworth Park is bounded by Argyle Street, Crescent Street, Bentinck Street, Byng Avenue and George Street, at least the amount of Wentworth Park I made the survey in.

Q. Does this plan contain the entire Wentworth Park area?

A. No sir.

Q. It does contain the area from Byng Avenue to George Street to Crescent Street to Argyle Street?

A. Yes sir.

Q. Now can you please explain to his Honor what this plan represents on the south side of Crescent Street West of Bentinck Street?

A. On the south side of Crescent Street it shows the first nine (9) houses from Bentinck Street going towards Argyle.

Q. That's on the North side of Crescent?

A. No the South side of Crescent Street.

Q. Would you explain what is on the North side of Crescent Street?

A. The north side of Crescent Street shows a part of Wentworth Creek, C.N.R. tracks running through the park. Some walk ways in the park and several physical features such as trees, bushes, shrubs and signs.

- Q. I notice there is a number, I didn't count them but upwards of fifteen- twenty circles along the railway tracks, what do they represent?
- A. They are bushes.
- Q. and can you tell us the height of those bushes. You are now going to refer to your field notes, made by yourself at the time of the survey?
- A. Yes sir, the bushes vary in height from three feet to six feet, most of them are around 4½ or 5 feet in height.
- 10 Q. Can you tell the Court what the circular, number of circles - 2 - 3 circles target appearing item?
- A. As explained in the legend on the bottom, if the one you are referring to is the same, I think it is, is the third one which designates power poles.
- 15 Q. What does the square on the south side of Bentinck Street or south side of Crescent Street, approximately opposite the house of D.W. Campbell?
- A. North side.
- A. I am sorry, north side?
- 20 A. The square across the street from the house shown as D.W. Campbell's house, is a sign which is written "No parking any time," on it.
- Q. Now can you tell us the width of Crescent Street?
- A. The width of Crescent Street from curb to curb is 21 feet, from Argyle Street up to a point just out from the Crescent Apartments and from there it widens until it reaches a maximum of 35 feet to Bentinck Street,
- 25 Q. Intersection of Bentinck Street?
- 30 A. Yes.

Q. Now Mr. MacDonald can you tell me the width from the tracks to the Northside of Crescent at any given point from Bentinck Street. Do you follow me?
Can you give us any distances which will represent the area of land from the track to the Northside of Crescent Street?

A. Yes I can scale any distances on the plan, it is drawn to scale.

Q. Well let us take it in front of the Campbell house, what is the distance here?

A. From the North curb of Crescent Street across from the Campbell house to the railway tracks is 37 feet.

Q. What is on the North side of Byng Avenue?

A. The North side of Byng Avenue has shown a house designated as 103 Byng Avenue which I know is a red house and occupied by Mr. N. Matheson.

Q. All the other distances are to scale on this plan?

A. Yes.

Q. Now you show on your legend some power poles 125 M.V. light?

A. Would you point out to the Court where those poles are?

A. There is two poles just inside the curb of Crescent Street one is located across from a house occupied by N.A. McQuinn and the other one is across from the Crescent Apartments.

BY Mr. Rosenblum

Q. What distance would there be between those two power poles?

A. The distance between the two power poles is scales 164 ft.

Q. These observations as disclosed on your plan were made in the day time?

A. Yes sir.

Roy Gould, sworn

By Mr. MacNeil

Q. What is your full name, please?

A. Roy Gould.

Q. Where do you live?

A. 124 Memberton Street, Sydney.

Q. That's in the City of Sydney, County of Cape Breton, Province of Nova Scotia?

A. Yes.

Q. And do you know the accused in this case Mr. Donald Marshall?

A. I do.

Q. And were you in his company on the 28th of May, 1971?

A. What day would that be?

Q. That would be the day this offence took place?

A. Yes I was.

Q. And where were you, where did you first join his company?

A. We were in Waverly, Nova Scotia and Shubenacadie and returned back to Sydney at approximately 9:30 that evening.

Q. 9:30 on the night of the 28th of May, 1971?

A. Yes.

Q. Did you own a jacket at that time?

A. I did.

Q. Describe the jacket to the Court, please?

A. A Yellow windbreaker with white stripes on the side.

Q. What was the condition of that jacket on the 28th day of May, 1971?

A. It was in good condition.

Q. Was there any rips or tears about the jacket?

A. No.

Q. Now Mr. Gould, did you do anything with that jacket?

A. Yes I loaned it to Donald Marshall, Junior.

Q. And where did you loan it to him?

A. At Waverly on a Thursday.

Q. Did he wear it all day the 28th of May, 1971?

A. Yes he did.

Q. You arrived home at what time?

A. Approximately 9:30.

Q. Was he still wearing the jacket at 9:30 on the 28th of May, 1971?

A. Yes.

Q. The last you saw him he was wearing it?

A. Yes.

Q. And when the next time you saw this jacket?

A. Wednesday the following week, I was asked to bring the jacket into the police station.

Q. And what did you do?

A. I asked Mr. Donald Marshall, Sr. if I could have the jacket.

Q. In particular what did you do?

A. I received the jacket?

Q. From who?

A. From Mr. Donald Marshall, Sr. and took it over and turned it over to Det. MacDonald of the Sydney Police.

Q. This was your jacket that you received from Donald Marshall, Sr.?

A. Yes it was.

Q. What was the condition you received it from Donald Marshall, Sr.?

A. There was a rip on the, I don't know which sleeve, down this way.

Q. On which arm?

A. I don't recall the arm sir, was either one of the sleeves, and there was some blood stains on it

Q. And you turned this jacket over to Sgt. MacDonald?

A. Yes I did.

Q. Was there any blood stains on the jacket when you loaned it to Donald Marshall, Jr.?

A. Not that I know of.

5 NO QUESTIONS BY DEFENCE

Donald Marshall, Sr., sworn

By Mr. MacNeil

Q. Your name is Donald Marshall, Senior?

A. Donald Joseph, right,

Q. You are the father of the accused?

10 A. Yes.

Q. And where do you live Mr. Marshall?

A. 38 MicMacCrescent.

Q. In the City of Sydney?

A. Yes.

15 Q. Do you know the last witness, Mr. Roy Gould?

A. Yes I do.

Q. Did you see him on the 2nd day of June, 1971?

A. Could be, one day that week.

Q. Did you give him any wearing apparel?

20 A. Yes.

Q. Would you describe what that wearing apparel was?

A. A Jacket, yellow with white strips.

Q. And this was the description that day?

A. Yes.

25 Q. Was that the same jacket?

A. Could be the same jacket, yes.

Q. Where did you obtain this jacket from?

A. From my home.

Q. Where in your home?

30 A. It was hanging in one of the closets in one of the bedrooms.

Q. Did you see that jacket before?

A. Yes I did.

Q. Where did you see it?

A. Roy Gould had the jacket on every once in awhile.

Q. Did you see it with your son?

5 A. Not on him, no.

Q. Did you see him with it?

A. No.

NO QUESTIONS BY DEFENCE

Det. Michael R. MacDonald, sworn

By Mr. MacNeil

10 Q. What is your full name?

A. Michael MacDonald.

Q. What is your occupation Mr. MacDonald?

A. Detective Sergeant with the City of Sydney Police Department.

Q. How long have you been acting as such?

15 A. Six (6) years.

Q. Were you acting as such on the 28th day of May, 1971?

A. Yes sir.

Q. And also on the 22nd day of June, 1971?

A. Yes sir.

20 Q. Do you know Mr. Roy Gould?

A. Yes sir.

Q. And did you see him on the 22nd day of June, 1971?

A. I did.

Q. What took place between you and Mr. Gould?

25 A. Mr. Roy Gould landed at the Police Station in the City of Sydney Police Station and turned over to me one jacket belonging to himself.

Q. Describe the jacket? Who owned the jacket?

30 A. Yellow, outside yellow, white strips, inside white.

Q. And what did you do with this jacket?

A. The jacket was in my care until I went to the I.C.M.I. Lab. in Sackville with it and turned it over to them.

Q. And do you know to whom you turned over this jacket?

A. At the time, I just forget his name. I have it marked.

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Q. Where do you have it marked?

A. Mr. Luff, F.C.M.I. Lab in Sackville.

BY THE COURT

Q. A sergeant?

A. No Mr. Luff is a civilian

10

EXAMINATION BY DEFENCE

Patricia Ann Harris,

By the Court

Q. How old are you?

A. Fourteen (14)

Q. What grade are you in, in school?

15

A. Grade VIII.

Q. Are you going to school now?

A. Yes sir.

Q. You are in Grade VII?

A. Going into Grade VIII.

20

Q. What school do you go to?

A. Central.

Q. Do you know what it means to take an Oath on the Bible?

A. Yes.

Q. What?

25

A. To tell the truth.

Q. What happens to people who don't tell the truth?

A. Perjury.

Q. What happens to people who commit perjury?

A. Go to a home.

30

Q. Do you go to Church?

A. Sometimes.

Q. What Church do you go to?

A. United.

Q. How often do you go do you go to Sunday School.

You understand what the meaning of an Oath is, do you, and you know what happens to people that are found guilty of telling falsehoods under Oath in Court, do you?

A. Yes sir.

WITNESS STATE

By Mr. MacNeil

Q. What is your full name, please?

A. Patricia Ann Harris.

Q. And where do you live?

A. 5 King's Road.

Q. And how old are you?

A. Fourteen (14).

Q. Did you attend a dance at St. Joseph's Hall on the evening of the 26th of May, 1971?

A. Yes sir.

Q. And did you leave that dance?

A. Yes sir.

Q. Were you accompanied by anyone or not?

A. Yes.

Q. Who?

A. Terry Cushue.

Q. And what time did you leave the dance?

A. About 10:30 - 11 O'clock.

Q. And where did you go?

A. Down to the park.

- Q. What park?
- A. Wentworth down by the Bandshell.
- Q. And what did you do there?
- A. We sat on the bandshell and had a cigarette and left and went up Crescent Street.
- B
- Q. How long were you in Wentworth park?
- A. About fifteen minutes.
- Q. What time would it be when you decided to leave Wentworth park and the bandshell?
- A. About eleven, it was about a quarter to twelve.
- 10
- Q. Where did you go, you walked behind the bandshell?
- A. Yes.
- Q. And where did you go?
- A. We went up Crescent Street.
- Q. Which direction did you go, when you reached Crescent Street?
- 15
- A. Down, down towards the other park, the second park.
- Q. Can you tell us in streets which way you went?
- A. On Crescent Street.
- 20
- Q. You are on Crescent Street, in which direction were you walking?
- Toward what place were you walking?
- A. We were going to my house.
- Q. And your house in on King's Road?
- A. Yes.
- 25
- Q. Now as you walk along Crescent Street that night did you see and Mr. Cushue see anyone?
- A. Yes.
- Q. Who?
- A. Junior Marshall.
- 30
- A. Yes.

- Q. Donald Junior Marshall the accused in this case?
- A. Yes.
- Q. And where was he standing?
- A. By the green apartment building on Crescent Street.
- Q. Was there anybody with him?
- A. Yes, I think so, I am not sure.
- Q. Did you see another person there with Donald Marshall?
- A. Well there was somebody there, I didn't pay any attention.
- Q. Was there more than one person with him?
- A. No.
- 10 Q. What took place while you were talking to Donald Marshall?
- A. Terry asked him for a match and he was talking to Junior for a while, then we left for home.
- 15 Q. Did you have any physical contact with Junior Marshall at that time?
- A. He held my hand.
- Q. Had you known him before?
- A. Yes.
- 20 Q. Then, what did he do?
- A. After Terry got his cigarette lit we left for home.
- Q. Which direction did you proceed?
- A. Going down Crescent Street until we came to the park and we walked down by the duck house, crossed the bridge to my house.
- 25 Q. This Donald Marshall, do you see him in Court here today?
- A. Yes.
- Witness indicates the accused.
- 30 Q. This is the man you saw around midnight on the 28th of May, 1971?
- A. Yes.

Q. Are you able to read a plan?

A. I think so.

Q. I show you a plan marked Exhibit K/1, do you see Crescent Street there?

A. Yes.

Q. Do you see the building you refer to, in front of which you saw Donald Junior Marshall?

A. Yes (points to map)

Q. And what is that building called as designated on the plan?

A. Crescent Apartments.

By Mr. Rosenblum

Q. You can't be sure there was anyone with Donald Marshall at the time.

A. There was somebody there but I didn't pay any attention.

Q. You don't know if he was with Donald Marshall or not?

A. No I don't know.

Q. You mean there was a person near?

A. Yes.

Q. And that other person, was that a man or a woman, a boy or a girl or do you know?

A. I don't know.

Q. Whoever he was, whatever sex, that person was, nobody had any conversation with that other person in your presence?

A. No.

Q. Tell me did your friend, Mr. Cushue smoke a cigarette at the bardshell?

A. Yes.

Q. How did he light his cigarette there?

A. Well, Cussie Robbin walked by and gave us a match.

Q. Now you say Mr. Marshall held your hand for a moment or so?

A. Yes.

Q. In a friendly manner?

B A. Yes.

Q. Did you smell any liquor off his breath?

A. No.

Q. Was there anything about his condition, at all, that would indicate he was drinking?

10 A. He seemed to be because he never took my hand before.

Q. He would not have to be under the influence of liquor to hold your hand, aside from the fact he held your hand or do something he never did before, was there anything else about him, his appearance, his manner, his way of speaking that would indicate that he had been drinking?

15 Take your time and try to remember. Did you get a smell of liquor off his breath. What did he say to you?

A. He was talking, I don't know what he was saying, he was mumbling, giving Terry the match.

20 Q. The whole thing only took a minute or so?

A. Yes.

Q. You say you had known him for some time before that?

A. Yes.

25 Q. Now when you left Mr. Marshall at that time and you continued on towards King's Road to your home, is that right?

A. Yes.

Q. Did you turn around at any time to see if Mr. Marshall had left where he was standing, talking to you and your friend?

30 A. No.

Q. You did not see any more that night?

A. No.

Q. Did you notice how he was dressed at that time?

A. I know he had a light jacket on at that time.

Q. You mean light in weight or light in color?

A. In color.

Q. Any particular color?

A. It was bright.

Q. Do you know what color trousers he was wearing, dark or light trousers?

A. No.

Q. Was he smoking himself at the time?

A. I don't think.

Q. Where did he get the match from his pants pocket or his jacket pocket or where?

A. I think the pants pocket.

Q. Do you know?

A. No.

Q. Was the jacket buttoned up or zippered up he was wearing?

A. I don't know.

Q. Was it a zippered jacket or one with buttons or something that you pull over your head or something that did not require buttons?

A. I don't know.

Q. Was the jacket tucked in - inside of his trousers or was it hanging loose, outside his trousers?

A. Hanging.

Q. This would be about midnight, would it not?

A. Around then, yes.

Q. Did you look at your watch any time to indicate the time?

A. I wasn't wearing a watch.

- Q. The information that you have given us here this morning by questions by Mr. MacNeil, to whom did you first give that information?
- A. Three city detectives.
- Q. To whom did you first tell that evidence about having met Donald Junior Marshall?
- A. I don't know his name.
- Q. Was it a police officer?
- A. Detective.
- Q. Sgt. McIntyre here sitting beside Donald Marshall?
- A. He wasn't the first.
- Q. He wasn't the first, was it Sgt. MacDonald sitting in the corner?
- A. Yes.
- Q. He was the first one you told it to?
- A. Yes.
- Q. Now, did you go to him or did he come to you?
- A. He called my mother up and told me to go down to the police station.
- Q. How many times did you talk to him, Sgt. Michael E. MacDonald?
- A. About two times.
- Q. Who was the next person you spoke to ... Sgt. McIntyre?
- A. Yes.
- Q. How many times have you spoken to him about this evidence you are giving today?
- A. Twice.
- Q. When was the last time?
- A. Last Tuesday.
- Q. And I suppose you signed a statement?
- A. Yes.

Q. Was that on the first occasion you spoke to Sgt. MacDonald or the second occasion?

A. The second time with Mr. McIntyre.

Q. The second interview with Sgt. McIntyre you gave a written statement?

A. Yes.

Q. Were you asked to give a written statement before that?

A. I don't think so.

Q. Were you interviewed in the company of Terry Cushue or separate from him?

10 A. Separate.

Q. On all occasions?

A. No, the second time we were together.

Q. The second time you were together in the presence of Sgt. MacDonald or Sgt. McIntyre?

15 A. Both.

Q. They were both present on the second time?

A. Yes.

Q. How long after, do you know what date it was your mother got the telephone call and told you to go down to the police station?

20

A. I don't know.

Q. In the month of June?

A. Yes.

Q. Was there any particular day in June you could attach that first interview with Sgt. MacDonald?

25

A. I think it was on a Thursday.

Q. Have you any idea of the day or how far advanced in June it was?

A. No.

30

Q. Yes.

Q. Would that be at St. Joseph's Parish Hall?

Q. How do you know it was May 28th of this year that you saw Donald Marshall in the park?

A. They told me.

Q. Who told you, Sgt. MacDonald or Sgt. McIntyre?

X. Sgt. MacDonald, who is sitting in the Court room and who has already given evidence today he told you it was on the night of May 28th?

A. Yes.

Q. If he had not told you that would you have know what night it was?

10 A. I don't think so.

Q. How long have you known Donald Marshall?

A. Since I started going to the dances.

Q. How long is that?

Q. about a year

15 A. Not that long.

Q. About six months?

A. Around that.

Q. You live near Wentworth Park, right?

A. Yes.

20 Q. You often go to the park?

A. No not that often.

Q. You often walk through it?

A. Sometimes.

25 Q. How long have you known Donald Marshall about six months?

A. Yes.

Q. Do you see him quite often, Miss Harris?

A. Only when I went to the dances, he would be there.

Q. Did he go to the same dances that you were at, would

30 he be present? you were going to dances at St. Joseph's

A. Yes, this year?

Q. Would that be at St. Joseph's Parish Hall?

A. Yes.

Q. And I suspect you often saw him, not often perhaps, but a number of times you saw Donald Marshall in Wentworth Park?

A. No, I don't hang around the park.

Q. I am not suggesting that, I am asking you have you seen Donald Marshall walking in the park on a number of occasions?

A. No, I never saw him.

Q. Well then, on Crescent Street?

A. I saw him on Crescent Street.

Q. Late at night, of course?

A. Yes.

Q. That would be on a number of occasions?

A. The first time I ever saw him, I often saw him at the dances or walking home.

Q. You have seen him after a dance walking on Crescent Street or near Crescent Street on various occasions?

A. No, this is the first time.

Q. That was the first time?

A. Yes.

Q. Where had you seen him on other occasions other than the dance hall?

A. I saw him going down town, sometimes, walking.

Q. Where else have you seen him, do you understand?

A. Like other places.

Q. Other places you have seen Donald Marshall?

A. Dances, that's all.

Q. Tell me other places where you have seen him, do you understand my question, can you answer it?

A. No.

Q. How often have you been going to dances at St. Joseph's Parish, this year?

A. Not too long, a couple of months.

Q. About once a week?

A. Twice.

Q. What nights of the week do they hold dances?

A. Friday and Saturday.

Q. Do you go on both Friday and Saturday nights?

A. Yes.

Q. When I ask you did you go to both Friday and Saturday nights during the month of May of this year?

A. Yes.

Q. When do the dances start?

No answer.

Q. Do they go all year around?

A. Yes.

Q. And you started going to dances about six months ago, is that correct?

A. Yes.

Q. You have been going the two nights a week they hold the dances, Friday and Saturday, regularly each week?

A. Yes.

Q. Were you at the dance at St. Joseph's Parish on the evening of April 23rd?

A. Probably.

Q. What night of the week was April 23, do you know?

A. No.

Q. Why did you say, probably, if you were not aware of the fact it was a Friday or Saturday night?

A. I usually got every weekend.

Q. I will ask you this you are not sure of any dates or nights you went to dances without looking at a calendar is that right? Correct.

A. Yes.

Q. When were you at the dance at St. Joseph's Parish, last?

A. The 28th.

Q. Were you there last Friday or Saturday night?

A. No.

Q. Were you there the Friday and Saturday nights before this?

B A. I never went after what happened my mother would not let me go.

Q. That is the last time you went to the dance?

A. Yes.

By Mr. MacNeil

10 Q. Tell me, Miss Harris, was Donald Marshall, the accused walking or standing when you first saw him on Crescent Street?

A. Standing.

Q. Was this other person walking or standing?

15 A. I don't know.

Q. Now was this a Friday night dance or a Saturday night dance that you attended the night that you saw Donald Marshall

A. I think it was a Friday night dance.

20 Q. Tell me did you hear about this incident that we are discussing here today?

A. Yes.

Q. When?

A. A couple of days after, my mother told me about it.

Terrance Gushue

BY THE COURT

25 Q. How old are you Mr. Gushue?

A. Twenty (20).

Q. WITNESS SWORN By Mr. MacNeil

Q. What is your full name?

A. Terrance Patrick Gushue.

30

Q. Where do you live?

A. 2 Tulip Street, Sydney.

Q. In the City of Sydney?

A. Yes.

Q. Did you attend a dance at St. Joseph's Hall on the 28th of May, 1971?

A. Yes.

Q. What day of the week was that?

A. Friday.

Q. Did you leave the dance?

10 A. Yes I did.

Q. At what time?

A. About 11 O'clock.

Q. Did you leave with anyone?

A. Patricia Harris.

15 Q. Where did you go?

A. Down to Wentworth Park.

Q. Where in Wentworth Park?

A. Down by the bandshell.

Q. What did you do there?

20 A. Had a cigarette.

Q. Where did you go when you left the bandshell?

A. Went behind the bandshell and up Crescent Street.

Q. In which direction did you go?

A. Toward the Court House.

25 Q. Here?

A. Yes.

Q. Do you know Donald Marshall, Junior, the accused in this case?

A. Yes sir.

30 Q. Did you know Donald Marshall before that time?

Q. Is he in Court here today, point him out to the Court please?

A. Witness indicates the accused.

Q. Did you see him on Crescent Street in the City of Sydney, County of Cape Breton, Province of Nova Scotia on that time and on that date?

A. Yes I did.

Q. Where was he when you saw him?

A. At the green apartment building.

Q. Where was he standing?

A. By the curb.

Q. Was he walking or standing?

A. Standing.

Q. Was there anyone with him?

A. There was another person there but we were on the pavement.

Q. Did you pay any attention to this other person?

A. No.

Q. Where was this other person standing?

A. On the sidewalk.

Q. Where were you?

A. On the street.

Q. How far were you away when you first saw Donald Marshall,

A. When we were walking along the curb there.

Q. Tell us in feet?

A. Twenty or thirty feet.

Q. Tell me, did you have any conversation with Donald Marshall that evening?

A. I asked him for a match.

Q. What did he say?

A. He gave me the match so I left.

Q. Did you know Donald Marshall before that time?

A. Yes.

Q. How long have you known him?

A. About a year.

Q. What was he wearing?

A. A light jacket and dark pants.

Q. After this conversation you had with Mr. Marshall, what did you do?

A. I walked Patricia home.

Q. Where is her home?

A. F King's Road.

By Mr. Khatter

Q. Mr. Gushue, did you see anybody else in the park the time you were there, other than the other person?

A. Yes, I saw four of my friends, Gussie Dobbin.

Q. Where was he?

A. He was in the park, he was walking down by the bandshell and I asked him for a match.

Q. How long were you at the bandshell, what were you doing?

A. Just talking and I had a cigarette.

Q. Was there anybody else there besides your friend?

A. Robert Patterson.

Q. Was he sitting with you and your girl friend?

A. No, I seen him walking back and forth.

Raynard Vincent Chant

BY THE COURT

Q. How old are you?

A. Fourteen.

Q. What grade are you in?

A. Six.

Q. What school do you go to?

A. Louisbourg.

Q. You live in Louisbourg, do you?

A. Yes.

Q. Do you know what it is to take an Oath on the Bible?

A. Yes.

Q. What does it mean?

A. To tell the truth.

Q. What happens to people who don't tell the truth?

8 A. They commit perjury.

Q. And what happens to people who commit perjury?

A. They have to pay a fine.

Q. Besides paying a fine, what else can happen to them?

A. They can be sent to gaol.

10 Q. They can be sent to gaol anywhere else?

A. No.

Q. You are in Grade 6, how old are you, four teen, have you missed any grades?

A. Yes.

15 Q. How many, are you still in school?

A. Yes.

Q. And you know what it means to take an Oath then, do you?

A. Yes.

Q. What does it mean let us have it again?

20 A. To tell the whole truth and nothing but the truth.

Q. If you don't tell the truth?

A. You will be charged for perjury.

WITNESS SWORN

By Mr. MacNeil

25 Q. What is your full name Mr. Chant?

A. Maynard Vincent Chant.

Q. And you reside, where?

A. Louisbourg.

Q. And how old are you?

30 A. Fourteen (14).

Q. And were you in the City of Sydney on the evening of the 28th day of May, 1971?

A. Yes I was.

Q. What day of the week was that?

A. Friday.

5 Q. And where were you, I don't want to know all your activities, say about half past eleven on the evening of the 28th of May, 1971?

A. I had just come from the bus terminal and I was going down towards the park area.

10 Q. Now where is the bus terminal?

A. I took the street just down from the bus terminal.

Q. You walked down?

A. Yes.

Q. What time of the night would this be?

15 A. I guess around 12.

Q. Where did you go?

A. I went across the bridge like two sides of the park join, sort of, and I walked down there and I walked down the tracks.

20 Q. And you walked down the railway tracks in what direction?

A. East.

Q. Toward what street?

A. George Street.

25 Q. And as you walked along the tracks what did you observe?

A. The first thing I noticed was a guy hunched over in the bushes watching something.

Q. Did you recognize that man?

A. Not at first but after I did.

30

Q. Can you identify him today?

A. Yes.

Q. Do you know his name today?

A. I don't think I can remember.

Q. Would you point him out to the Court, please.

Witness points to John Fratico

Q. Is that the man?

A. Yes.

Q. That is the man you saw behind the bush watching something?

10 A. Yes.

Q. In which direction was he looking?

A. He was looking down that way, he was looking towards the street.

Q. Do you know which street?

15 A. I think it was Crescent Street.

Q. What did you do?

A. I looked back to see what he was looking at, then I saw two guys talking to one another.

Q. And do you know who these two guys were?

20 A. I didn't know Sandy Seale at the time but I didn't recognize Donald Marshall at the time either, until afterwards.

Q. After what?

A. After what happened.

25 Q. Tell me, what did you see take place, if anything?

A. Well first, the only thing I saw, I saw them talking and I guess they were using kind of profane language. Donald said something to the other fellow and the other fellow said something back to Donald and I saw Donald haul a knife out of his pocket.

30

- 25 -

Q. That's Donald Junior Marshall who you see in Court here today? Could you point him out to the Court please?

A. Witness points to the accused

Q. You saw him what?

A. Haul a knife out of his pocket,

Q. What, if anything did he do with that knife?

A. Drove it into the stomach of the other fellow.

Q. What?

A. He drove it in the stomach of the other fellow.

Q. What did the other fellow do?

A. Well I just saw him keel over and I ran.

Q. In which direction did you run?

A. I ran down toward George Street.

Q. Where did you go?

A. I cut across, I didn't go exactly toward George Street, there was a path on the other side of the tracks, the bridge like, I went up that path up that way towards the bus terminal again.

Q. Can you read a plan, sir?

A. yes.

Q. I show you Exhibit K/1, sir, now do you see what that is?

A. Yes tracks ...

Q. Would you explain to his Honor, please?

Q. You ran down, where did you get on the tracks?

Witness points to plan. That's at the corner of the

tracks and Bentinck Street. And which direction did you walk down?

A. Down this way (points to plan)

Q. How far down did you walk when you saw this man behind the bush.

A. Flight about here (points to plan)

Q. Did you stand behind him?

A. Behind the man.

- 36 -

Q. Yes?

A. I was about 35 feet down below him.

Q. You walked past him that is where you stopped and made your observations?

A. Yes sir.

8 Q. After the incident took place?

A. I ran down the tracks crossed the bridge and started to walk up there.

Q. The area designated as being a walk on this plan?

A. Yes.

10 Q. And you got up to where?

A. Up to about there, I was going to go up there and I saw Donald Marshall running this way.

Q. Running North on Bentinck Street down to Byng Avenue?

A. Yes.

15 Q. What did you do?

A. I turned around and started to walk the other way and he caught up to me, right around here?

Q. Is that the area of a house which is marked there as being M. Matheson.

20 A. Yes.

Q. What took place there?

A. He told me, he said, "look what they did to me."

Q. What did he show you? after the shooting?

A. He showed me his arm.

25 Q. What did you observe about his arm if anything?

A. It had a long cut from his wrist up his arm to his elbow.

Q. And was there any blood from this cut? then and he used

A. Not right at that moment but after a few minutes it started to bleed.

30 Donald Marshall started to
bleed and he got in the car and drove over to Crescent

Q. What did he tell you?

A. He told me, first, "look what they did to me," and I said, who, and he said, "the two fellows over at the park," then he said, "my buddy is over at the park with a knife in his stomach".

5 Q. What was Donald Marshall wearing that night?

A. Well it looked like to me that he was wearing a yellow jacket with the sleeves rolled up.

Q. And did you know Donald Marshall before?

A. I knew him to see him.

10 Q. Could you remember, sir, how the sleeves were in his jacket when you first observed him over on Crescent Street?

A. They were shoved up like that, I think they were up to the

Q. Up to the elbows?

A. Yes.

15 Q. Tell me, did you observe, after the incident that you have described, which direction Mr. Marshall ran in?

A. In which direction?

Q. Yes?

A. Well, he ran toward Bentinck Street... toward Bentinck Street west, I guess.

20

Q. Toward the Street that you had walked down?

A. Yes that is the only way I saw him coming over.

Q. But did you see him running after the stabbing?

A. No.

25

Q. What took place on Crescent Street?

A. After when he told me, we started to walk up and we met two girls and two boys and he stopped them and he asked them for help, they said they would try to help, as they walked on by there was a car, Donald Marshall flegged down the car and we got in the car and drove over to Crescent Street.

30

Q. And do you know who the driver of that car was?

A. No.

Q. What happened when you got to Crescent Street?

A. I got out of the car and he got out of the car, we rushed over to where the other fellow was laying and I knelt down beside him and I had my shirt and I put it to his stomach.

Q. Did he say anything to you?

A. The only words he was saying that he was going to die he was just mumbling every word out.

Q. Where was Donald Marshall while you were kneeling beside the wounded man?

A. He was on this side of the street and Sandy was lying facing down there and I was around his feet a little farther, maybe, to the other side of the street.

Q. Did he come right up beside the body where you were standing?

A. He walked around and I guess he went up to a house or something, I don't know if it was him that went up to the house, I am pretty sure it was him that went up to the house and he called the ambulance.

BY THE COURT

You don't know that.

By Mr. MacNeil

Q. You don't know that?

A. Not really.

By Mr. MacNeil

Q. Then what took place?

A. After the police came, like he sort of flagged the police down when they were coming over Crescent Street and he told them what happened. They told him to get in the car and they phoned for an ambulance to come over and they took Marshall to the hospital.

Q. They took Marshall away from that area, did you accompany the vehicle?

A. No.

Q. Did you stay there until the ambulance arrived?

A. Yes.

8 Q. What happened then, when the ambulance arrived?

A. The ambulance arrived and like Sandy Seale tried to get over on his stomach and I didn't want to move him so I asked a couple of other fellows to help me move him over on his stomach so he was moved over on his stomach, the ambulance came they wrapped the blanket over him and put him on the stretcher.

10

Q. Did you recognize the man at this time?

A. No sir.

Q. You didn't know Sandy Seale before this evening?

15

A. No.

Q. Tell me, are you familiar with this area that this took place?

A. No.

Q. Do you know if there were any lights in the area?

20

A. Yes sir.

Q. How many?

A. Two, maybe three, I guess there was a street light, fifteen or twenty feet away from where there were standing at.

No questions by Defence

25

John Pratico, sworn

By Mr. MacNeil

Q. What is your full name, please?

A. John Lawrence Pratico.

Q. Where do you live?

30

A. 2001 Bentinck Street.

Q. In the City of Sydney?

A. Yes.

Q. How old are you?

A. Sixteen (16).

Q. Do you know Donald Junior Marshall?

A. Yes.

Q. How long have you known him?

A. About a year.

Q. Do you see him in Court here today?

A. Yes.

Q. Will you point him out to the Court?

Witness indicates the accused.

Q. Did you see him in the late hours of the 28th of May 1971?

A. Yes.

Q. Where?

A. In Wentworth Park.

Q. Did you see him before you saw him in Wentworth Park?

A. I don't recall.

Q. Where about did you meet him in Wentworth Park?

A. I went up around Crescent Street, I went down Argyle over to Crescent Street.

Q. Pardon me, before you did that, did you see Donald Marshall?

A. I don't remember.

Q. Did you have any conversation with him?

A. I don't remember, I believe I seen him up on the street.

Q. What street?

A. George Street.

Q. What was that conversation? Tell me on that.

A. Just talking, then I left him, I had a little bit of talk and then I left him and I went down Argyle Street.

Q. Did he suggest anything to you?

A. I don't recall, I believe he did, coming down to the park or something like that.

Q. Are you nervous Mr. Fratico?

A. Yes.

Q. Would you tell us what happened and what took place?

A. I went down Argyle Street, eh.

Q. No you never got there yet, I am not finished where you met him up on George Street, where about on George Street did you meet him?

A. By the store.

Q. What store.

A. I don't know the name of the store.

Q. Do you know where Argyle Street is?

A. Yes.

Q. How far away were you from Argyle Street?

A. Five feet, a little more.

Q. What was that conversation?

A. I believe he said something about coming down to the park or something.

Q. What did you say?

A. I said, no.

Q. What did you do?

A. I left and went down Argyle Street turned up Crescent Street and I walked up the railway tracks, I went down and went into the bush and started to drink a pint of beer.

Q. Tell me, can you read a plan?

A. Yes.

Q. I show you Exhibit M/1, can you tell me on that, where in the bush you were?

A. Right here (indicates on plan)

- 12 -

Q. That would be opposite the house that is designated as D.W. Campbell, and what did you see take place?

A. I seen Marshall and Seale talking.

Q. Where were they talking?

A. First, Marshall was on the sidewalk, Donald Marshall was on the sidewalk, and Seale was facing him. They were talking for awhile and I could hear mumbling they were arguing there about something and I seen Marshall haul something from his pocket and stab Seale.

Q. What happened to Seale when he was stabbed?

A. He dropped.

Q. Did you know Sandy Seale before this right?

A. Yes sir.

Q. Sandy Seale dropped, did he?

A. Yes sir.

Q. What did Donald Marshall do then?

A. I don't know sir, I started to run.

Q. Where did you run?

A. Down the tracks by the bridge there and up Bentinck right up Bentinck Street.

Q. You live on Bentinck Street?

A. Yes sir.

Q. Did you see the man that you refer to as Donald Marshall you saw on the 28th of May, in the Court room today?

A. Yes sir.

Q. Will you point him out to the Court, please?

A. Witness indicates the accused.

No questions by Defence

Q. What did you see?

A. No. What did you see as a result of what you said, you said something to her?

Q. What did you see and I am in the opposite direction

Robert MacKay, sworn

By Mr. MacNeil

Q. Your full name, please?

A. Robert S. MacKay.

Q. How old are you?

A. Sixteen (16).

8 Q. Where do you live?

A. 225 Fulton Avenue, Westmount.

Q. Were you attending a dance at St. Joseph's Parish Hall on the 28th of May, 1971?

A. Yes.

10 Q. What time did you leave that dance?

A. About twenty to twelve.

Q. Were you accompanied by anyone?

A. Yes.

Q. Who?

15 A. Debbie MacPherson, Coxheath.

Q. What direction did you travel as you left the dance?

20 A. We came down and went around the bandshell, a little way from, like you know from Argyle, we came down and were sitting on the benches for five or ten minutes, she wanted to get a bus home so I was going to walk her to the bus stop. We walked up Crescent Street away and I saw Sandy Seale lying on the side of the road. She noticed him first and then I walked over.

25 Q. What did he say?

25 A. Help me, I was stabbed.

Objection to answer by Mr. Rosenblum

Q. What did you do then?

A. I saw my girl home

30 Q. No, what did your girl do as a result of what you said, You said something to her?

A. She went to get a bus and I ran in the opposite direction.

Q. And where did you go?

A. I ran up across the park, I ran up by Pollets store there and got ... I saw a fellow with a girl?

Q. What did you do?

A. We came back together, like you know, we were getting up so far we saw a car pulling up and I saw Donald get out of the car.

Q. Donald Marshall the accused?

A. Yeah, So we went to a house to call the police, so we came back and the police was coming down, the guy wouldn't let us use the phone, so when we were getting down off the steps and off the lawn a police car came by, the police questioned me and told me to go home.

Q. Did you know Sandy Seale before?

A. Yes.

Q. And was this Sandy Seale you saw lying on the road?

A. Yes sir.

Q. Do you know the accused, Donald Marshall?

A. I just know him to see him, I don't know him to talk to.

Q. Do you see him in Court today?

A. Yes.

Q. Point him out to the Court, please?

Witness indicates the accused.

Brian Doucette, sworn By Mr. MacNeil

Q. Your name?

A. Brian Doucette.

Q. Where do you reside?

A. 120 Crescent Street, call an ambulance.

Q. What happened?

A. I saw what happened and they said there was a ... please call an ambulance ... I said I will call the police first and ask for an ambulance after they ...

Q. In the City of Sydney, County of Cape Breton, Province of Nova Scotia?

A. Yes sir.

Q. Were you at your home on the 28th day of May 1971?

A. Yes sir.

Q. Can you read a plan sir?

A. Yes sir.

Q. I show you Exhibit M/1, can you show his Honor where your home is on that plan?

Q. (Indicates on plan). That is the house on the East side of the Crescent Apartments

A. Yes.

Q. And you were there during the late evening hours at your house?

A. Yes.

Q. What, if anything, took place sir?

A. Between 11:30 and 12 O'clock I was sitting watching television and I heard two voices in our front porch and I proceeded to go to see who was there, and they knocked on the door. I opened the door and they asked to call an ambulance.

Q. Who was it, do you know?

A. Mr. Marshall and there was a young fellow with him.

Q. Donald Marshall was there when this conversation took place?

A. Yes.

Q. What did they ask?

A. They asked if I would call an ambulance.

Q. What did you do?

A. I asked them what happened and they said there was a person lying over there hurt, please call an ambulance and I said I will call the police first and ask for an ambulance later, after the police were called.

Q. And then what took place?

A. After I phoned the police station I proceeded to go outside over to where the victim was lying on the street.

Q. What took place while you were there, if anything?

A. There was a young fellow down along side of him comforting him, holding him down and I proceeded to keep him still. He tried to get up I held him in place then we waited for the ambulance to arrive.

Q. Did the ambulance arrive?

A. Yes.

Q. What took place then?

A. We proceeded to put him on the stretcher and we put him into the ambulance and I went in the ambulance to the hospital with him.

Q. What happened at the hospital?

A. He was taken to the out-patients room where his clothing was removed and a doctor was present.

Q. Who was removing his clothing?

A. Leo Curry, the doctor, orderly and I.

Q. Do you know Mr. Leo Curry?

A. Yes.

Q. What is his occupation?

A. He operates an ambulance service.

Q. Did you remain there until somebody else arrived.

A. I remained there until the commissioner came in and told me to leave.

Q. Were you there when the doctor arrived?

A. Yes.

Q. Did you see that doctor give evidence here today?

A. Yes.

- Q. I don't know his name.

By Mr. Rosenblum:

- Q. Did you notice any wound on Mr. Marshall?
- A. Yes he showed a wound on his arm when he came to the door.
- Q. A long cut, from the wrist to the elbow?
- A. Yes.
- Q. And was there any blood?
- A. There was no sign of blood.
- Q. But this cut was noticeable and it appeared to be very recent?
- A. Yes.
- Q. It was Marshall who asked you to call the ambulance was it?
- A. And the young fellow with him.
- Q. Do you know who the other fellow was with Marshall?
- A. No.
- Q. Do you see him here today?
- A. Yes.
- Q. Was he already a witness?
- A. Yes.
- Q. Did Marshall remain there until you made the phone call?
- A. No, they left, as soon as I went to the phone and closed the door.
- Q. When you came to where Mr. Sale was lying on the ground, was Marshall there then?
- A. No.
- Q. Did you see Mr. Marshall any time after that, after he requested that you call an ambulance?
- A. Yes when I was coming out of the house I seen him taken in the police car.

- Q. Were the clothes of the jacket Mr. Marshall was wearing rolled up?
- A. It seemed like one of them was, the one with the cut.
- Q. Were you outside of the house when the ambulance arrived?
- A. I was along side of Seale when the ambulance arrived, yes.
- Q. Who arrived first, the police or the ambulance?
- A. The police.
- Q. Was Marshall there when the police arrived?
- A. I was on the phone when the first police car arrived.
- Q. You saw him getting into the police car, anyway?
- A. No I didn't see him get in but when I was going out the front door of my home I saw him in the police car.
- Q. It would appear to you he remained there until the police arrived?
- A. Yes.
- Q. Were you close up to Marshall when he asked you to call the ambulance?
- A. Yes.
- Q. Was there anything to indicate the use of liquor?
- A. I did not notice at the time.
- Q. Did you smell liquor off his breath?
- A. No I didn't.

25

Leo Curry, sworn By Mr. MacNeill

- Q. Your full name please?
- A. Leo Curry.
- Q. And what is your occupation?
- A. Funeral director and ambulance operator.

30

Q. Were you operating your business in the City of Sydney, County of Cape Breton, Province of Nova Scotia

A. Yes.

Q. Were you operating your business on the 28th of May, 1971?

A. Yes.

8 Q. Did you answer to a call in the vicinity of Crescent Street, in the City of Sydney?

A. Yes.

Q. About what time?

10 A. It was about shortly after mid-night is the closest I can come to it.

Q. What did you do at that time?

A. I got a call from Len McGillivray the police officer. When I got there you mean.

15 Q. As a result of a call you received you went to Crescent Street?

20 A. I went to Crescent Street there was a young man lying in the middle of the street and I took the stretcher out of the ambulance, I took the canvas stretcher I eased him up a little on one shoulder, put the canvas stretcher under him and Mr. Brian Doucette who lives handy there helped me put him on the stretcher along with Richard Walsh and I took the patient to City Hospital - Out-patients Department. I put him on the table Dr... eh, the Indian doctor, Naqvi. 25 I assisted him in setting up the I.V. we put two saline and two blood set ups and I remained there for half an hour somewhere between fifteen minutes and a half hour until they removed him to the operating room during that time he took two pints of blood, two pints of saline which indicated he was loosing a lot.

30 NO QUESTIONS BY DEFENCE.

Pearl McMillan, sworn

By Mr. MacNeil

Q. What is your full name?

A. Pearl McMillan.

Q. And what is your occupation?

5 A. Lab. Technician.

Q. And where?

A. City Hospital.

Q. In the City of Sydney, County of Cape Breton, Province of Nova Scotia?

10 A. Yes.

Q. What are your qualifications, ma'am?

A. Registered technician.

Q. What educational qualifications have you in order to become a technician?

15 A. Grade 12, two years of University.

Q. Grade 12, what else?

A. Central School, New Waterford.

Q. And after that you attended University?

A. Yes, for two years.

20 Q. Where?

A. U.N.B.

Q. And after that, what did you do?

A. I took.....I was out of University for a year, and I took the Lab. Technician course.

25 Q. Did you successfully complete that course?

A. Yes, I did.

Q. Where?

A. I went to Halifax for ten months, then we came back to the city for another nine months, practical training.

30 Q. And were you working on the 28th of May, 1971?

A. Yes, I was.

Q. Did you at that time blood type the blood of Mr. Sandy Seale?

A. Yes I did.

Q. And would you tell the Court what type he is?

A. It is "O" Positive.

NO QUESTIONS BY DEFENCE

SYDNEY, COUNTY OF CAPE BRETON, PROVINCE OF NOVA SCOTIA.

WEDNESDAY, JULY 28, 1971

COURT OPENED 10:00 A.M.

The Accused present.

J.F. McDonald, Provincial Judge, presiding.
Donald D. MacNeil, Q.C., Crown Prosecutor, present.
C.M. Rosenblum, Q.C., Defence Counsel, present.
S.J. Khattar, Q.C., Defence Counsel, present.
Irene McMullin, Official Reporter, present.

Dr. Virick, sworn

By Mr. MacNeil

Q. What is your full name doctor?

A. Dr. Mchan S. Virick.

Q. You are a duly qualified medical practitioner, practicing medicine under the laws of the Province of Nova Scotia?

A. I am sir.

Q. And how long have you been practicing in the city of Sydney, here?

A. Since '65/

Q. What are your qualifications?

A. I am a medical doctor from Christian Medical College and I trained in the John Hopkins University, Maryland.

QUALIFICATIONS ADMITTED BY DEFENCE

Q. Were you practicing medicine on the 28th day of May, 1971?

A. I was sir.

Q. Do you know the accused in this case, Donald Marshall?

A. I do sir.

Q. Do you see him in Court here today?

A. Yes sir.

Q. Would you point him out to the Court Please?

A. Witness indicates the accused.

Q. Where did you see him?

A. I saw him on the 28th day at City Hospital Out-Patients Department.

Q. Did you treat him?

A. I did.

Q. And what was the nature of your treatment sir?

A. Donald Junior had a laceration on the left arm which I sutured.

Q. And where was that laceration?

A. It was on the left arm approximately four and a half inches, it was seven inches from the wrist joint.

Q. And tell me, would you describe this cut to me?

A. It was a laceration on the left arm approximately four and a half inches long.

Q. Was it an even cut, doctor, or a jagged cut?

A. It was an even cut.

Q. Tell me doctor, was there any bleeding from this cut?

A. There was no bleeding.

Q. Now doctor,.....

A. There was no bleeding at the time I saw the patient, he was prepared, already, in the out-patients to receive the treatment.

Q. And doctor, would you describe this cut by way of depth?

A. Well, it was not a very deep laceration and yet it was not a scratch, it was a superficial laceration.

Q. A superficial laceration, and what treatment did you administer?

A. I put ten (10) stitches in it.

Q. Why did you put ten stitches in it?

A. Because of the length of the wound, and there is movement of that arm so much that there is possibility of gaping of the edges, to be on the safe side we usually suture quite close by so that there is no cosmetic defect.

Q. But the cut was not deep enough to bring about blood from the arm?

Objection by Mr. Rosenblum

Q. Just what you saw from your own personal knowledge what you observed, there was no blood coming from the cut?

A. That is right.

Q. Did you remove those stitches?

A. No I didn't remove those stitches.

Q. Isn't it customary doctor for a medical practitioner when he administers stitches to a patient to remove them at a later date?

A. Yes, I made an appointment for the removal of the sutures, I went to visit Donald in the gaol, he had already removed the sutures himself.

By Mr. Rosenblum

Q. Now I think what you said doctor, was that Marshall had already been attended to by some nurse or some doctor in the Out-patients department before you got him?

A. Yes it is customary for the nurse to prepare the patient.

Q. The preparation, perhaps, would include the stopping of any blood that would have eminented from the wound.

A. Usually the only thing the nurse would do was ^{to} put pressure on the wound.

Q. Yes, and that would be to stop the flow of blood?

A. Yes, it is possible.

Q. And you can't say whether or not there had been blood coming from that wound before you saw it?

A. At the time I saw it, there was no bleeding.

Q. You can't say that prior to you seeing it there could have been blood eminenting from the wound?

A. I can't say that.

Q. How long after you put these stitches in on this particular night was it that you called in to the gaol to see him and to remove the stitches?

A. I would say it was between twelve and fifteen days.

Q. Between twelve and fifteen days later, you found that he had already removed them himself, did the wound heal nicely?

A. Yes.

Q. Doctor, was there anything at all about this wound that would interest you, that would not be self inflicted?

A. Yes. My only impression of that is a long wound like that there would be an element of hesitation, a person couldn't just sit down and make a clean cut wound, he would have hesitated a moment or two.

Q. Based on your knowledge at the time, your opinion is that the wound was not self inflicted?

A. This point is against it.

Q. Your opinion is that it was not self inflicted?

A. Yeah, I would say so.

By Mr. MacNeil

Q. But it could be self inflicted?

Objection by Mr. Rosenblum

Objection over-ruled

Q. The answer to that question is, doctor?

A. It could be.

Mrs. Davis sworn

By Mr. MacNeil

Q. Your full name madam?

A. Merle Faye Davis.

Q. And what is your occupation?

A. Registered nurse

Q. And where do you work?

A. In the City Hospital.

Q. Were you working as such on the 28th day of May, 1971?

A. Yes.

Q. Do you know the accused Mr. Donald Marshall?

A. Yes.

Witness indicates accused.

Q. Did you see him on the 28th day of May, 1971?

A. Yes.

Q. What time of the day or night did you see him on the 28th of May, 1971?

A. About a quarter after twelve.

Q. Did you examine Mr. Marshall at that time?

A. Yes.

Q. And what did you find?

A. A laceration on his left forearm.

Q. How long would it be?

A. Around three inches.

Q. Was it bleeding at the time he entered the hospital?

A. No.

Q. Did you see any blood coming from it at any time?

A. No.

Q. How would you describe the cut?

A. Well, it was a laceration, certainly not severe, not very deep.

Q. Did you remain with the patient until Dr. Virick arrived?

A. No, I got his information, got the tray ready for the doctor to suture him and then went out and called him.

By Mr. Rosenblum

Q. What did you do for the patient in preparing him?

A. Nothing.

Q. You just looked at him?

A. I just looked at the arm and got the tray ready for the doctor.

Q. You were not there when the doctor treated him at all?

A. No, I was in the room twice but just briefly.

Mr. Evers, sworn

By Mr. MacNeil

Q. What is your full name?

A. Aldophus James Evers.

Q. What is your occupation?

A. I am employed in the Hair and Fiber Section at the R.C.M.P. Crime Detection Laboratory at Sackville, New Brunswick.

Q. What are your qualifications?

A. I have received a Bachelor of Arts Degree from Carlton University in Ottawa with a major in biology, I have had training in hairs and fibers in the R.C.M.P. Crime Detection Laboratory in the cities of Ottawa and Vancouver and I have completed written and practical examinations regarding these subjects.

Q. And have you given evidence in the Supreme Courts of New Brunswick and Nova Scotia?

A. I have given evidence in Magistrates and Supreme Courts in British Columbia, the Yukon, Nova Scotia, New Brunswick, Newfoundland and in the Magistrate Courts in Prince Edward Island.

Qualifications admitted by Defence

Q. Do you know Detective Sergeant Michael MacDonald of the Sydney Police Force?

A. I had met a man who identified himself as such.

Q. Where did you see him?

A. At the R.C.M.P. Crime Detection Laboratory in Sackville.

Q. And what took place?

A. Sgt. MacDonald turned two exhibits over to myself on June 16, 1971.

Q. And what were these exhibits?

A. One exhibit was a light brown jacket and the second exhibit was a bright yellow jacket.

Q. And do you have these exhibits in your possession at the present time?

A. Yes I do.

Q. And have you kept them in your possession since they were turned over to you by Detective MacDonald?

A. No, I did not.

Q. What did you do with them?

A. The exhibits were given to Miss Mrazek of the Serology Section, On June 28, 1971 they were subsequently returned to me together with two further exhibits on July 21, 1971, in a sealed box. of the packet the operation is contained four in each upward.

Q. And Miss Mrazek, who is she?

A. She is a Serologist at the R.C.M.P. Crime Laboratory.

Q. Have you those exhibits with you today?

A. Yes I do.

Jacket tendered and marked Exhibit M/2

Q. I show you M/2 what is that, please?

A. Identified Exhibit M/2 by my initials, date and case number appearing on the brown jacket. This is the exact jacket I received from Sgt. MacDonald. I examined this jacket for the presence of any fresh, appearing cuts or tears. I found one cut, one fresh appearing cut present on the front, lower left hand side of the jacket. The cut was approximately two and three quarters inches in length and continued through the jacket to the back where the cut was approximately one inch in length.

Q. Would you point them out to the Court, please?

A. This is the cut present on the front of the jacket, the cut present on the back of the jacket is in this position (witness referring to jacket).

Yellow jacket tendered and marked Exhibit M/3

Q. I show you Exhibit M/3, what is that please?

A. Identified Court Exhibit M/3 by my initials, date and case number appearing on the jacket, this jacket I received from Sgt. MacDonald on the 16th of June. I examined this jacket for the presence of fresh appearing cuts or tears.

Q. What did you find?

A. I found a separation on the left arm of the jacket the separation is continued from the cuff upwards. the separation could have been cut by an axe there was no determination what made the cut, the cut was not a straight cut that there was not one straight

actually there are two separations, the first separation is approximately one inch in length the separation is a fresh appearing cut, the second separation is approximately eight inches in length, the separation continues down on to the cuff, approximately six and one half inches, it is indicative of being a fresh appearing cut measuring a inch and a half which continues through the cuff and through the elastic it is indicative of being torn and it is a fresh appearing tear. I feel that the tear has occurred since the garment was last washed, laundered or worn.

Q. Tell me sir what is the significance in the cut in that sleeve and the tear in that sleeve?

A. The cut, the fibers appear straight that is like one would, would see anything that is cut, the torn fibers are jagged and the fibers are separated more then with a cut.

Q. Did you do any other work in connection with this particular case?

A. No I did not.

Q. Was there any evidence of any blood on that jacket, Exhibit M/3? Mr. Rosenblum

A. I did not examine it for blood as this is not my particular field.

Q. Was it examined it for blood?

A. I gave it to the Serologist to do a blood examination.

Q. The cut that you speak of would that be consistent with being cut by a knife?

A. It could be cut by a knife, it could have been cut by scissors, could have been cut by an axe there is no way of determining what made the cut, the cut was quite irregular that is that there was not one straight

Q. Would you say it was cut on two different occasions or could you tell?

A. Could you tell me what you mean by two separate occasions?

Q. That the one cut you speak of, the length of it, that is wasn't done at the one time?

A. The cut is indicative of being not one straight long cut, in one continuous stroke, the cut was quite irregular, there are two cuts present, the one cut which is quite distinct and separate from the longer cut and because the bottom is torn it is not indicative to one separation at one time and also there are several superficial cuts near the one long separation, all of these are indicative of being not cut in one continuous stroke.

Miss Mrazek, sworn

By Mr. MacNeil

Q. What is your full name?

A. Sandara Catherine Mrazek.

Q. What is your occupation?

A. I am a serologist at the Royal Canadian Mounted Police Crime Detection Laboratory in Sackville, New Brunswick.

Q. What are your qualifications?

A. I have a Bachelor of Arts in Clinical Laboratory technology which I received from the University of Saskatchewan in the Spring of 1957. I also have a certificate for General Laboratory Technology which I received in the spring of 1968.

Q. Where?

A. I received it in Saskatoon, Saskatchewan, it is a national certificate, I then joined the Royal Canadian Mounted Police, Crime Section Laboratory in

in Vancouver, British Columbia where I under-studied for a period fo six months at the conclusion of this I wrote and passed a written examination. I have given evidence in Courts in the Provinces of British Columbia, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

Qualifications admitted by defence

Q. Were you working in your capacity as a member of the R.C.M.P. during the month of June, 1971?

A. Yes I was.

10 Q. Do you know the last witness Mr. Evers?

A. Yes sir, I do.

Q. Who turned Exhibit over to you?

A. I received a couple of Exhibits from Sgt. MacDonald on June 16, 1971, I received two other exhibits from Mr. Evers on June 28, 1971.

15 Q. Would you tell me if you received Exhibit M/3? Did you receive that exhibit before?

A. Yes sir I can identify Exhibit M/3 as one which I received and examined, it bears my initials. - I received this exhibit from Mr. Evers on June 28, 1971.

20 Q. Did you perform any work on that garment?

A. Yes sir, I examined this exhibit for the presence of human blood, the areas that I examined are circled in red, number one which is on the front, left hadn side, number two, also on the front left hand side. Area number three, which is on the left cuff. I found these areas to contain human blood however I was unable to determine the group of the blood present.

25 Q. Were you able to group any of the blood stains that you saw?

30 A. On this Exhibit, no sir. ... right leg ... and ...

Q. Did you examine any other exhibits?

A. Yes I did.

Q. What?

A. There was a brown jacket, a pair of blue jeans with a belt and a facial tissue.

Q. I show you a brown jacket, Exhibit M/2, did you make an examination on that and what were your findings?

A. I identify this exhibit as one which I received and examined it bears my initials, I received it from Mr. Evers on June 28, 1971. I examined it for the presence of human blood. I found human blood of group "O" to be present on it. The area is circled in red and marked number one and number two.

Q. All on the inside of the jacket?

A. Yes sir.

Q. Did you receive any other exhibits?

A. Yes sir.

Q. What was that?

A. A pair of blue jeans with a belt and a facial tissue.

Pair of jeans tendered and marked Exhibit M/4

Q. I show you Exhibit M/4, do you recognize that Exhibit?

A. Yes sir I can identify Exhibit M/4 as one which I received and examined it bears my initials. I received it from Sgt. MacDonald on June 16, 1971, I examined it, this exhibit for the presence of human blood. I found human blood of group "O" to be present, there are four areas on the blue jeans that I examined and two area on the belt, they are all circled in red and marked, number one which is on the venter front, right hand side, areas number two and three on the front left hand side and area number four which is on the cuff of the left right leg, the area on the belt are also circled in red and marked number one and number two.

Tissue tendered and marked Exhibit M/5

Q. Did you receive any other exhibits?

A. Yes a facial tissue.

Q. I show you Exhibit M/5 that is an envelope what does that contain?

A. This exhibit contains a facial tissue, I can identify it as one which I received and examined, it bears my initials. I received this exhibit from Sgt. MacDonald on June 16, 1971. I examined it for the presence of human blood, I found human blood of group "O" to be present.

Q. Did you examine any other exhibits?

A. No sir I did not.

By Mr. Rosenblum

Q. Would you be able to tell on the date of your examination of these exhibits just approximately how long these blood stains were on the exhibits in question?

A. No sir, we are unable to tell the age of a stain.

Q. Was it a week old?

A. No sir, we cannot determine that.

Q. So these blood stains on all these exhibits that you are talking about might have been present for six months before you saw them?

A. I am sorry, I am unable to determine.

Q. They could have been?

A. It could be a day, a week, a month.

Q. A year?

A. Yes.

Officer Mallowney, sworn

By Mr. MacNeil

Q. What is your name?

A. Constable John Mallowney.

- Q. What is your occupation please?
- A. Police constable for the City of Sydney.
- Q. And how long have you been acting as such?
- A. Going on to sixteen years.
- Q. Were you acting as such on the 28th of May, 1971?
- A. I was.
- Q. Do you know where the area in the City of Sydney known as Wentworth Park and Crescent Street is?
- A. I do.
- Q. Did you on that date have occasion to search that area?
- A. I did.
- Q. And what was the result of your search?
- A. Myself and Cst. Wyman Young, Crawford were detailed to the area to do a thorough search of it. We checked the complete area considerably, with the result of information I received I found a Kleenex tissue, what appeared to be a Kleenex tissue on the lawn of a house, may I refer to my notes. On a lawn in front of house number 130 Crescent Street.
- Q. I show you an envelope marked Exhibit M/5, would you tell me what is in that envelope?
- A. It is a Kleenex that was ... this is the Kleenex with blood on it similar to the one I had given to Sgt. M.R. MacDonald.
- Q. You had turned it over to Det. Sgt. M.R. MacDonald?
- A. Yes sir.
- By Mr. Rosenblum
- Q. You searched the grounds and found a Kleenex, when was that, that you found the Kleenex?
- A. The 29th in the morning.

Q. Was that the only piece of kleenex you could find after scouring the premises of this house?

A. It was the only piece of kleenex that interested me at that time.

Q. Was there other kleenex?

A. There was other debris, paper and kleenex also thrown through the other side of the park, on the grounds and garbage boxes.

Q. Was this the only piece of kleenex on the lawn of the house, 130 Crescent Street?

A. It was.

Det. Sgt. MacIntyre, sworn

By Mr. MacNeil

Q. What is your full name?

A. John Fraser MacIntyre.

Q. What is your occupation?

A. Sergeant of Detectives, City of Sydney Police Department, Sydney, Nova Scotia.

Q. Were you acting as such during the month of May, 1971?

A. I was.

Q. Do you know the accused?

A. I do.

Q. Do you see him in Court today?

A. I do.

Q. Would you point him out to the Court?

A. Witness indicates the accused.

Q. Did you see him on the 28th day of May, 1971?

A. Not on the 28th.

Q. When did you see him?

A. I interviewed him on the 30th day of May, 1971.

Q. Where?

A. At my office.

Q. Where is your office?

A. On Bentinck Street in the City of Sydney,
County of Cape Breton, Province of Nova Scotia.

Q. What did you say to the accused, first?

A. Well, I was talking with him on several occasions
on that particular date and at this time which
was close to 5 P.M., in the evening I took a
statement from the accused.

Q. Did you reduce that statement to writing?

A. Yes.

Q. And was the accused under arrest at that time?

A. He was not.

Q. And how come you came to interview him?

A. Well, I wanted to get it down in as much detail
as I could as to what he had to say.

Q. Did you threaten him in any way?

A. No.

Q. Did you hold out any promise or favor to him?

A. No I did not.

Statement marked for identification M/6

Q. I show you M/6, what is that?

A. That's a statement, dated May 30, 1971, time
4:50 P.M., Donald John Marshall, age- seventeen
years, residing at 38 MacMac Street.

Q. Does it bear any signature?

A. It bears the signature of Donald Marshall and witnessed
by myself.

Q. Was there anyone else present at the time you
took this statement?

A. No.

Q. How did it happen that Marshall got there Sergeant?

A. He had been around the station, Mr. Rosenblum pretty well all day.

Q. At your request?

A. I mean I was working on the case and I had him stay around.

Q. How was he brought to the station, did he come on his own?

A. He was asked to come.

Q. Did you send a police officer for him?

A. I believe if my memory serves me right he was in a car early that morning in the park area, which was Sunday morning. I couldn't say for sure if it was Saturday or Sunday but any how he was asked to stay at the station.

Q. By who?

A. By me.

Q. What time would that be?

A. It was pretty well all day, I believe he had dinner at the station.

Q. So when you say all day, it would be the early morning?

A. Well yes, from the time I out to work.

Q. Where was he at the station?

A. I believe he was just around the office.

Q. He could be at random as far as I was concerned.

Q. Was he guarded?

A. Oh no, he wasn't under arrest.

Q. No, no I didn't say under arrest, was there a police officer near by him all the time?

A. Oh, no.

- Q. He was free to come and go, is that what you are saying?
- A. Yes, just stay around in case that I needed him.
- Q. You told him that?
- A. Yes.
- Q. Was that the first time you saw the accused in connection with this case?
- A. At that time, yes. I believe I did talk to him on Saturday.
- Q. What day of the week was May 30th?
- A. This was Sunday, this happened Friday night.
- Q. And you saw him the day previous?
- A. I believe.
- Q. Where would that be?
- A. At the station.
- Q. How did he get there the day previous?
- A. Well I couldn't say, I likely sent for him.
- Q. How long did he stay at the police station on Saturday, the 29th?
- A. He could have been there considerable time, Mr. Rosenblum.
- Q. Such as?
- A. A matter of hours.
- Q. Can you recall?
- A. Well I mean there was... I have an explanation for it, I can't recall how long he was there, no. I know I was there quite long, myself.
- Q. Would you say he was there four or five hours on Saturday?
- A. He could have been.
- Q. Where was he?
- A. Just hanging around,

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- Q. And you told him to wait until you were ready to see him?
- A. Yes, just stay around, yes.
- Q. And so when you had a discussion with him on Saturday, was it just the two of you or was there others present? Other police officers?
- A. Could have been.
- Q. I am asking you?
- A. Well I am not ... the only time I could say that I was alone..
- 10 Q. Was when you took the statement?
- A. That's right, that's right.
- Q. But I am asking you about the 29th, officer, who would be present when you were talking to him on the 29th, can you recall?
- 15 A. I can't just recall.
- Q. And there could have been other police officers talking to him?
- A. Oh yes, there could have been.
- Q. Likely there were?
- 20 A. Likely.
- Q. You, yourself were talking to him on the 29th?
- A. I talked to him on more than one occasion.
- Q. For how long?
- A. Well, it depended on what I wanted to know.
- 25 Q. How long did you talk to him on Saturday?
- A. I couldn't tie that down for you, I couldn't Mr. Rosenblum could have been in the morning, could have been in the afternoon, could have been the evening.
- 30

- Q. I know it could have been, but you don't remember?
- A. No.
- Q. You don't remember?
- A. No, to tie the amount of time, I spent considerable time with the accused.
- 5 Q. On the 29th?
- A. And on the 30th talking to him.
- Q. Did you talk to him in the morning of the 29th?
- A. I can't recall too much about the 29th but the 30th, he was at the station all day.
- 10 Q. I am not talking about the 30th, on the 29th, officer, you said he was around the station pretty well all day.
- A. He was around the station, I didn't say all day. I don't know what length of time.
- 15 Q. Would you say he there pretty well all day on the 29th?
- A. No, on Sunday I think he was there pretty well all day.
- Q. How long was he there on Saturday the 29th?
- 20 A. I can't say.
- Q. Was he there in the morning on the 29th?
- A. He was there on the 29th I just couldn't say what time.
- Q. Would you say it was in the morning?
- 25 A. I couldn't say.
- Q. Was it in the afternoon?
- A. It could have been.
- Q. Was it in the evening?
- A. Might have been.
- 30

Q. It was one of the three, morning, afternoon or evening, it could have been any one, I would like to find out, could you tell me?

A. No.

Q. You couldn't tell me if it was at night, you couldn't tell me if it was afternoon and you can't tell me it was morning?

A. No, I couldn't.

Q. On the 30th we come to the day you feel you can remember, were you talking to him in the morning?

A. Yes.

Q. What time would that be in the morning, officer?

A. I would say in the vicinity of 10 O'clock.

Q. 10:00 O'clock in the morning?

A. Somewhere in that vicinity probably a little earlier than ten, somewhere between nine and ten.

Q. How long did you talk to him in the morning?

A. Well in fact I had a line-up at the police station that morning.

Q. Well just answer my question?

A. I was talking to several people.

Q. I don't care about other people, how long were you talking to him in the morning of the 30th?

A. Just a few minutes at any time, but several times Mr. Rosenblum.

Q. You say you spoke to him for just a few minutes?

A. Yes.

Q. How many times would you say you spoke to him in the morning?

A. Probably several.

Q. What do you mean by several?

A. Well, more than once, more than twice, probably four or five or six times, it depended on what I wanted to know.

Q. Do you know?

A. No.

Q. How many times did you talk to him in the afternoon?

A. I couldn't say.

Q. Could it be five; six, seven, eight...?

A. Oh no, it wouldn't be that long, I was out questioning a few people.

Q. How many times did you talk to him?

A. I said Mr. Rosenblum, I couldn't tell you how many times, several, that is all I can tell you.

Q. I know, your interpretation of several that you had on the 29th..?

A. Well I couldn't tell you, I don't know if it was twice or if it was three or four times but I did talk to him several times during the day.

Q. These several times you speak of that you were talking to him were on separate occasions, is that correct?

A. Yes.

Q. Not a continuous conversation?

A. No.

Q. You would talk to him, leave him and then come back to him?

A. That's right.

Q. Where did the conversation take place in the detectives office or in the back room?

A. That's right.

Q. You were alone with him in the room when you were taking the statement?

A. Yes.

Q. Who was in the other office, Sergeant?

A. There was nobody in the other office.

8 Q. Nobody?

A. No I was alone.

Q. Nobody in the other office?

A. No.

10 Q. Nobody in the other, outer office, you know what I mean? The motor vehicle office?

A. Yes, it is closed on Sunday.

Q. No other police officers there?

A. Not to my knowledge.

15 Q. How long did the questioning take place on Sunday afternoon when you took the statement?

A. Well, it started at 4:50 , I have it here, 5:12 - twenty-two minutes.

Q. And the statement was written down by you?

A. That is right.

20 Q. And it was later typewritten?

A. Right.

Q. Did you know Marshall before the 29th of May, Officer?

A. I knew him, yes.

25 Q. You knew him to see him?

A. Yes.

By Mr. MacNeil
I am not tendering the statement, and it is marked
for identification purposes only.

30

BY THE COURT

Q. Stand up please?

Having heard the evidence do you wish to say anything in answer to the charge, you are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial, you must clearly understand you have nothing to hope from any promise of favor, nothing to fear from any threat that may have been held out to you to induce you to make any admission or confession of guilt, whatever you now say may be given in evidence against you at your trial, notwithstanding the promise or threat.

By Mr. Rosenblum

A. Nothing to say at present, your Honor.

Q. Do you wish to call any witnesses?

A. Not at this time your Honor.

Q I will read the charge again:- Donald Marshall, Jr. you are charged at or near Sydney, in the County of Cape Breton, Nova Scotia, on or about the 28th day of May, 1971, "that you did murder Sandford William (Sandy) Seale, contrary to Section 206(2) of the Criminal Code of Canada."

I COMMIT YOU BEFORE THE SUPREME COURT AND JURY FOR TRIAL.

.....
John F. McDonald,
A PROVINCIAL JUDGE IN AND
THE MAGISTERIAL DISTRICT
OF THE PROVINCE OF NOVA SCOTIA