

I N D E X

VOLUME 1

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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 vilaticous 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 presence of the external side of his abdomen from the hospital to the Intensive Care department.

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 above a part of Wentworth Park. One N.S.P. tracks running through the park. Some other parts of the park and several physical features such as trees, bushes, etc.

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 Q. 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 28 th 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.

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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 MacMacCrescent.

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.D. 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.F. 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.
- Q. You are on Crescent Street, in which direction were you walking?
- 20
- 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?
- 30
- A. Junior Marshall.
- 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. MacIntyre 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. MacIntyre?
- 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 Cushman 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

A. 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?

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

A. Not that long.

Q. About six months?

A. Around that.

Q. You live near Wentworth Park, right?

A. Yes.

Q. You often go to the park?

A. No not that often.

Q. You often walk through it?

A. Sometimes.

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

A. Yes.

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

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

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?

10 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.

15 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.

20 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.

25 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.

30 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 person lying on the ground, please call an ambulance. I said I will call the police first and ask for an ambulance, after they called.

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 pulled 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.
Donal 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. The operation is continued from the next 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 the area of the foot are also circled in red and marked with numbers one, two and three.

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..
- 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?
- 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?
- 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.
- 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.

- 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

CANADA
 SUPREME COURT OF NOVA SCOTIA - TRIAL DIVISION
 PROVINCE OF NOVA SCOTIA

THE QUEEN on the information of
 SGT.-DET. JOHN F. MacINTYRE

- VS -

DONALD MARSHALL, JUNIOR

CHARGE:

DONALD MARSHALL, JR. did at Sydney, in the County of
 Cape Breton, Province of Nova Scotia, on or about
 the 28th day of May, 1971, murder Sanford William
 (Sandy) Seale, contrary to Section 218(2) of the
 Criminal Code of Canada." 206

WITNESSES:

✓ Dr. Mahomed Ali Naqvi
 ✓ Dr. David Gaum
 ✓ Carl MacDonald
 ✓ Roy Gould
 ✓ Donald Marshall, Senior
 ✓ Sgt. Michael R. MacDonald
 ✓ Patricia Ann Harriss
 ✓ Terrance Gushue
 ✓ Maynard Vincent Chant
 ✓ John Pratico
 - Robert MacKay
 Brian Doucette
 ✓ Leo Curry
 ✓ Pearl MacMillan
 ✓ Dr. Mohan S. Virick
 ✓ Mrs. Merle Faye Davis
 ✓ Aldophus James Evers
 ✓ Sandra Catherine Mrazek
 Cst. John Mallowney
 Det.-Sgt. John F. McIntyre

STATEMENT OF FACTS

On the 27th May, 1971 (a Saturday night) a dance was being held at a local hall (St. Joseph's Parish Hall) with a number of the witnesses in attendance. Near midnight the participants at the dance began to leave.

A Mr. John Pratico met the accused and the deceased, Sandy Seale, at the corner of Argyle and George Streets in Sydney, and was invited by the accused to go into Wentworth Park with them by the accused. Mr. Pratico did not like the way the invitation was extended so he declined and proceeded alone up Argyle St. to Crescent Street which skirts the edge of Wentworth Park. He proceeded along Crescent Street until he neared the intersection of Crescent Street and Bentinck Street. There he stepped behind a shrub in Wentworth Park in order to consume a pint bottle of beer. While behind this shrub he saw the accused and the late Mr. Seale walk along Crescent Street and engage in an argument, or at least a loud discussion. As he watched he saw the accused remove a knife from his right hand pocket and plunge it into the stomach of the deceased. He then panicked and ran from the scene to his home.

Meanwhile one Maynard Vincent Chant will testify that he missed his bus to his home at Louisbourg and that he proceeded down Bentinck Street, and coming to the railroad tracks that run through Wentworth Park he proceeded along these railroad tracks as a shortcut to George Street where he intended to hitch-hike a drive home. As he walked along the tracks he noticed, and can identify, Mr. John Pratico sitting behind a shrub watching two men in an argument on Crescent Street. He proceeded about thirty feet beyond Mr. Pratico and stopped to observe what was going on. He knew both the accused and Mr. Seale and he saw Mr. Marshall, the accused, draw a knife from his pocket and plunge it into the abdomen of Mr. Seale, the deceased.

" 3 "

He panicked and ran down the tracks and cut over a path to Byng Avenue, another street skirting Wentworth Park on the opposite side from Crescent Street.

While on Byng Avenue he saw the accused running down Bentinck Street and turn into Byng Avenue towards him. Mr. Chant turned to walk in the opposite direction when the accused caught up to him and told him that he and his friend, Mr. Seale, had been attacked by two men, one stabbed his friend, Mr. Seale, in the abdomen and he received a cut in the arm defending himself. This conversation took place in front of a house occupied by a Mr. Mattson, a former R.C.M.P. officer, who is expected to testify.

The accused showed Mr. Chant his forearm that was injured but no blood was in appearance. These two men stopped a passing automobile, the operator unknown, and were taken back to the scene where Mr. Seale was still alive, but beyond reasonable senses. Help was then summoned. Mr. Chant at first related to the police the story the accused gave him but later advised that he related the false story because of fear of the accused. He knew and can identify both men involved in the offence.

DR. M. A. NACVI & DR. D. GAUM will testify as to the identification of the deceased and the efforts put forth to save his life and the cause of death.

CARL MacDONALD will introduce the plans of Wentworth Park and the surrounding streets and area.

ROY GOULD will testify that he loaned the jacket in question to the accused on the night in question, that it was in good condition on the evening in question and its condition on recovery from the father of the accused. It was blood stained and torn.

DONALD MARSHALL, SENIOR, who is the father of the accused, will testify that he returned the jacket to its owner, Mr. Roy Gould.

" 4 "

DET. MICHAEL R. MacDONALD, a member of the City of Sydney Police Force, took the exhibit jacket from Mr. Gould and took it to the R.C.M.P. Crime Laboratory in Sackville, N.B.

PATRICIA ANN HARRIS, who is fourteen years of age, will testify that she left the dance with Terry Gushue at approximately 11 P.M. They went into Wentworth Park to the bandshell where they spent some time. Then they proceeded along Crescent Street at approximately 11:45 P.M. where they met the accused, and another man who she cannot identify. A conversation took place and they continued along to her home. Miss Harris had known the accused before.

TERRANCE PATRICK GUSHUE will give the same evidence as Miss Harris.

MAYNARD VINCENT CHANT, who is fourteen years of age and lives in Louisbourg, will testify that he missed the bus that was going to Louisbourg and that he walked down Bentinck Street to the railway tracks that run through Wentworth Park. As he walked along the tracks he noticed John Pratico hunched behind a bush watching something on Crescent Street. Mr. Chant stopped to see what Mr. Pratico was observing and saw two men talking to each other. Mr. Chant saw the accused haul a knife out of his pocket and drive it into the stomach of the other man. This other man keeled over and Mr. Chant ran away towards George Street. He cut off into a path to Byng Avenue. As he proceeded along Byng Avenue he saw the accused running down Bentinck Street and turn into Byng Avenue.

Mr. Chant turned around but the accused caught up to him in front of a house occupied by Mr. M. Mattson. Here the accused showed his arm and told Chant that he did not know the accused. Chant then ran away.

JOHN PRATICO will testify that he knew the accused and met him near the corner of George Street and Argyle Street. He declined an invitation by the accused to go into Wentworth Park. He then went down Argyle Street to Crescent, which he walked along until he came to a bush which he went behind in order to have a pint of beer. As he was there he saw the accused and the deceased talking or arguing, he saw the accused haul something from his pocket and stab Seale. Seale dropped and Mr. Pratico ran away from the scene. Mr. Pratico knew both Mr. Marshall and Mr. Seale before the night in question.

ROBERT MacKAY, who was attending the dance, left with Miss Debbie MacPherson around 11:40 P.M. They sat at the bandshell in Wentworth Park for a few minutes, then proceeded along Crescent Street. As they walked along they saw Sandy Seale lying on the street. He asked for help because he was stabbed. Mr. MacKay sent Miss MacPherson on her way and ran for help. He returned just as the automobile with the accused returned to the scene. Mr. MacKay and the accused went to a house to ask for an ambulance to be called.

BRIAN DOUCETTE will testify that he was asked by the accused and another man to call an ambulance. When the ambulance arrived Mr. Doucette accompanied the ambulance to the hospital. The accused showed Mr. Doucette his injured arm and there was no blood.

LEO CURRY will testify that he was the ambulance driver that took Mr. Seale to the hospital and stayed with the deceased until the doctor arrived.

PEARL MacMILLAN, a lab technician at the Sydney City Hospital, will testify that she typed the blood of Sandy Seale and found it to be "O" positive.

DR. MOHAN S. VIRICK will testify that he examined Donald Marshall and found that he had a laceration on the left arm which he sutured. There was no bleeding from this cut. It was a superficial laceration.

MRS. MERLE FAYE DAVIS will testify that she is a nurse at the Sydney City Hospital and that she examined Donald Marshall on his arrival at the Hospital. She will describe the condition of Mr. Marshall's arm and that there was no blood on the arm when he entered the hospital.

MR. ALDOPHUS JAMES EVERS will testify that he is with the R.C.M.P. Crime Laboratory in Sackville. He will testify that he received the Exhibits from Sgt. Michael MacDonald on June 16th, 1971. These exhibits were a light brown jacket and a bright yellow jacket. He passed these exhibits on to Miss Mrazek. He will then describe the conditions of the exhibits.

MISS SANDRA MRAZEK, from the R.C.M.P. Crime Laboratory, will explain her examination of the two exhibits and also of a piece of Kleenex given to her as an exhibit.

CONSTABLE JOHN MULLOWNEY, a member of the Sydney Police Force, will testify that he searched the Crescent Street area after the alleged offence and found the blood soaked piece of Kleenex in the area.

SGT. JOHN MacINTYRE, a member of the Sydney Police Force, may be called regarding statements made by the accused.

LAW INVOLVED: Section 206(2)
Section 203.

DATED AT Sydney, Nova Scotia, this 12th day of October, A.D., 1971.



Donald C. MacNeil
Prosecuting Officer
Cape Breton County

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

BETWEEN:

HER MAJESTY THE QUEEN

v.

DONALD MARSHALL JR.

BEFORE: DUBINSKY, J.

SYDNEY, NOVA SCOTIA
NOVEMBER 2, 3, 4, 5, 1971

COUNSEL:

D. C. MacNEIL, Q.C. and

D. L. MATHESON, Esq. for the Crown

C. M. ROSENBLUM, Q.C.

and S. J. KHATTAR, Q.C., for the Accused

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IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

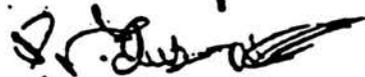
BETWEEN:

HER MAJESTY THE QUEEN

and

DONALD MARSHALL JR.

I, J. L. Dubinsky, the Judge who presided at the trial in the case of The Queen v. Donald Marshall Jr., certify that my charge therein is accurately set out on pages 252 to 287 inclusive of the transcript certified by Camilla Sutherland, Supreme Court Reporter, and dated at Halifax, Nova Scotia, December 16, 1971.


Justice

HALIFAX, NOVA SCOTIA
DECEMBER 16, 1971

- 1 -

3:30 P.M. NOVEMBER 2, 1971

MR. MacNEIL:

I move for the arraignment of Donald Marshall Jr.

CLERK:

You stand indicted by the name of Donald Marshall Jr. at Sydney, in the County of Cape Breton, Province of Nova Scotia, on or about the 28th day of May, 1971, did murder Sanford William (Sandy) Seale, contrary to s. 206(2) of the Criminal Code of Canada.

(10)

How say you? Are you guilty of this crime whereof you are indicted or not guilty?

THE ACCUSED:

Not guilty!

JURY SELECTED, JURY SWORN

3:55 P.M. COURT RECESSED

4:15 P.M. NOVEMBER 2, 1971 JURY POLLED, ALL P

MR. MacNEIL:

May it please Your Lordship, Mr. Foreman, gentlemen of the jury (20) As you have already heard on repeated occasions in connection with this case so far, we are now here dealing with Mr. Donald Marshall Jr. who is charged that he did, at or near Sydney, in the County of Cape Breton, Province of Nova Scotia, on or about the 28th day of May, 1971, murder Sanford William (nicknamed Sandy) Seale, contrary to s. 206(2) of the Canadian Criminal Code of Canada.

It is the intention of the Crown to call approximately 18-19 witnesses as I look down the list quickly - eighteen or nineteen witnesses. These witnesses will relate to you the events which took place the night in question, we expect. I will give you generally (30) the facts and I will refer directly to what we expect the witnesses to state. My expectations are based on interviews with the witnesses and also the evidence which they gave at what is called the Pre-trial Conference.

- 2 -

Inquiry before the Provincial Magistrate in this court house some months ago. I believe you will find that most of the witnesses that are present at the time, or on or about the time that this event took place, most of them were in attendance at a dance at a parish hall over on George Street. As the dance neared its end anywhere ranging from 11:30 on, the times are approximate in most instances, you will find that the accused, Mr. Donald Marshall Jr., the deceased, Sandy Seale, and another man by the name of Pratico, walked down to the corner of Argyle and George Street. I imagine some of you gentlemen are undoubtedly familiar with it. That's a drugstore on that corner called Pollett's drugstore. At that point the accused invited Mr. Pratico to join he and Mr. Seale down into Wentworth Park. This was somewhere in the vicinity of quarter to twelve at night, between quarter to twelve and twelve o'clock at night. Mind you, no one was taking their watches and keeping the exact time. But Mr. Pratico declined that invitation as he will tell you in his evidence because of the manner in which it was delivered to him - come on down the park, John Pratico, I believe his name is - and the rough manner. John declined. He walked up Argyle Street which is a street - we will show plans of these streets for those of you who are not familiar with it - runs off George and up George Street, Alexander Street, here in the city of Sydney. He walked up that street until he came to Crescent Street. Crescent Street is a street which is running, this is the extension of Crescent Street, the street runs across the front of the court house here and also runs across the creek on the other side of Bentinck Street. In Sydney here as you may know, there are a number of creeks, one up where the old mill used to be - this is before my time; then that enters into what we call the bandshell creek which is two; then there is a footbridge there between the bandstand creek and the railway track, there's another creek and then on the other side of the railway track, that is this side of the railway tracks, there is another creek. Then in addition to that there is a creek

- 3 -

that you see out in front of this building here today.

Now he walked down Crescent Street, and this would be the second creek that Crescent Street skirts and as he walked down, he had a pint of beer on him and he stepped in behind a bush which will be shown to you on the maps. There is a row of bushes set approximately ten to twelve feet apart. You will see them. They are approximately five feet in height, and in the form of a cone. He stepped in behind one of these bushes (10) and unless I am mistaken - and my recollection is pretty good on this point - I think it was the tenth bush from Bentinck Street, the location. While he was there, he observed the accused, Mr. Donald Marshall, and the deceased, coming up walking along up Crescent Street. He heard them arguing or certainly talking in a loud voice and he ducked behind this bush, hunched behind this bush to watch what was going on.

Meanwhile, there was a young man from Louisbourg by the name of Chant who came in to Sydney from Louisbourg with his parents to attend a church service. After the church service (20) was over, he went down to a friend's place in Sydney, Whitney Pier and after spending some considerable time there, he will explain the time element, he walked over from the Pier - in his youth, he is a fifteen year old lad, he was fourteen at the time this incident took place - when asked whether he walked over to the Pier - he said "I ran most of the way." But in any event, he came by foot from Sydney Whitney Pier over to the bus stop on Bentinck Street up here, Acadian Lines it is commonly called. I don't know the distance, my Lord, but I would suggest, gentlemen of the jury that that is probably (30) four miles from the Pier over to here. Maybe it's not that; maybe it's only three. But in any event, he missed his bus to Louisbourg. So he walked down - this is happening in the interim - he walked down Bentinck Street and Acadian Lines is on Bentinck Street - he walked down Bentinck Street, crossed the bridge which is over here in front of the court house - not in front but you

can see it from the front of the court house, the Bentinck Street bridge up to the railway tracks. At the railway tracks which are just over here, at the corner of this property, the railway tracks run right through the dead middle of Wentworth Park. He was taking a short-cut over to George Street in order to hitch-hike home, back to Louisbourg. As he walked along the tracks, he noticed John Pratico behind the bush obviously looking and watching something. He walked some twenty feet or so. He will make the estimate of the distance. And he stopped to look to see what Mr. Pratico was watching. He too observed two men on Crescent Street. They will describe where on Crescent Street and they will also describe to you in reference to a plan the two street lights that are in the vicinity of the scene of the event.

As these two men watched these events, a young lady, thirteen or fourteen years of age by the name of Harris, a Miss Harris and her boyfriend - perhaps I shouldn't use that term - her companion, left the dance, they went down into Wentworth Park and stayed in the bandshell. I believe probably you have all seen Wentworth Park one time or another. And they talked to some of their friends, smoked a cigarette and so on. Then they left and they walked up a block behind the bandstand up to Crescent Street. Then they started to walk along Crescent Street towards this court house, that's this way. Argyle Street is in the opposite direction. Started to walk towards Bentinck Street which is running right up the other side of the court house. And as they walked along, the companion - whose name escapes me at the moment, but I believe it was Terrence Gushue - and Miss Patricia Ann Harris, walking along Crescent Street, they came to the scene of this event. There the companion, Mr. Gushue, asked the accused, Donald Marshall, for a light. Donald Marshall did supply Mr. Gushue with a light and while he was lighting his cigarette with the

- 5 -

natches, Donald Marshall, the accused, had a conversation with Miss Harris who knew him for some time owing to their mutual presence at these dances that are around Sydney and area. After the cigarette was lit, Miss Harris and her companion, Mr. Gushue, go on down the road and that's all they have seen. That's all the evidence that they will give. They will place the accused at the scene of the event.

(10) Now, meanwhile what happened was as Mr. Chant and Mr. Pratico watched the events, and the loud tones of voice of the two men that were standing approximately a foot and a half apart. They will describe to you the positions at which they were standing. They saw the accused reach in his pocket and take out something that is long and shiny and plunge it into the abdomen of the late Sandy Seale. The late Sandy Seale was heard by one or both of these witnesses to let out a loud moan as he folded up and collapsed on the road.

(20) Mr. Pratico who knew both Seale and Mr. Marshall, the accused - well the only way I can put it to you is that he took to his scrapers as fast as he could, up Bentinck Street and to his home. Mr. Chant, on the other hand, he panicked and he ran down the railway tracks towards George Street. But before he reached George Street, there is a path, pathway, leading off to the railway tracks - he took this pathway and went to Byng Avenue which is another street which is running parallel to Crescent Street on the other side of the park, on the other side of the creek. As he walked along Byng Avenue, towards Bentinck Street, he saw the accused, Donald Marshall, running down Bentinck Street. So he turned, Mr. Chant turned, and started towards George Street. In other words, when he saw ahead of him (30) Bentinck Street and there was Donald Marshall running down it, he turned and started to go towards George Street. At that time the accused ran up to Mr. Chant and told him, "Look what they did to me." And at that time showed him a cut in his arm.

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This conversation was of a rather loud nature because it took place in front of a house. There will be another witness, the occupant of that house, who was in his bedroom at the time with his window up and he heard the loud conversation. He went to the window and as a result of the nature of the conversation, this man called the police.

Meanwhile the accused is telling this to Mr. Chant.

(10) A car comes along and the accused flags down that car and Chant and the accused get in the car and drive up to George Street, up George to Argyle, up Argyle and around to Crescent to where Sandy Seale was lying on the pavement. Meanwhile, another witness, Robert MacKay I believe is the one I am referring to - I want to make sure - yes, that's right; my memory is not as bad as I suspected it might be - Robert MacKay and a companion, a female companion, were walking along Crescent Street and Robert MacKay saw Mr. Seale lying on the road. He went over to him and he asked him what happened and as a result of what was said there, Mr. MacKay ran - told his female companion to continue on her way - and he ran back down through the park, over what is called the footbridge and up to George Street, back to the corner which I mentioned before, corner of George and Argyle and there he met another party and they both ran back to the scene of the event. As they got to the scene of the event, the car with Mr. Marshall, the accused, and Mr. Chant, arrived at the scene. And they will describe to you what was at that scene and what took place. They then summonsed help from an ambulance and the police arrived on the scene.

(20)

You will then have the opportunity of hearing the gentlemen who participated, the ambulance driver who participated in removing Sandy Seale, along with a neighbour in the neighbourhood who incidentally will give evidence that they asked him to call an ambulance and then he went outside to investigate or to see what was going on. He stayed with Mr. Seale in the back of the ambulance while he was driven up to the City of Sydney hospital.

(10) There at the City of Sydney Hospital, you will find that Dr. Naqvi, I believe, was the attending physician at that time. And he will give evidence, of course, as to the results of his examination and as the results of the treatment that he rendered in an effort to save the life of Mr. Seale. He underwent, if I'm not in error in my recollection, at least two major surgery operations and received, I believe it is in evidence, my Lord, perhaps it is not so I better not say it - will bring it out in evidence - and they will give you the reason and the cause of death.

(20) Assisting Dr. Naqvi is Dr. David Gaum who worked along with Dr. Naqvi in an effort to save Mr. Seale. Dr. Gaum, as the family doctor of Seale's family, or at least in any event knew Sandy Seale personally, can identify the man being attended to by Dr. Naqvi and Dr. Gaum as being that of Sandy Seale. And Sandy Seale, of course, as we know from the charge here, died in the hospital despite the very heroic attempt at saving his life by Dr. Naqvi.

(30) We will then be presenting other evidence which we have to present, bound upon the Crown, as you will discover in the days to come, that the burden is upon the Crown to prove this case beyond a reasonable doubt. His Lordship will be explaining to you in due course, if I may anticipate, His Lordship will be explaining to you what a reasonable doubt is. But we must call many witnesses to prove what in itself would be a small event but it is necessary for the Crown to go to this extent and much of the other evidence can be ignored later on if you so choose, but I'm suggesting that much of it is of little import.

(30) Now owing to the time of the day and pressures which His Lordship realizes are on the Crown, where I would ordinarily call my case in a chronological manner, where you would follow a

story step by step until you get the whole picture together, but this may be fair comment, my Lord, but we have two members of the Royal Canadian Mounted Police from the Crime Laboratory in Sackville, New Brunswick, as witnesses in this case. They received the exhibits from Det. MacDonald and ordinarily I would call them somewhere near the end of the case. But their presence is required in another Supreme Court in another part of this province so that it is hoped that we can call them first and have them give their evidence and be discharged so they can attend to their other obligations.

Gentlemen, I think that just gives you a brief resume of what the Crown in the next few days will be able to present to you.

I think that's all that I will say now, my Lord.

C.F.

SANDRA CATHERINE MRAZEK, Dir. Exam.

SANDRA CATHERINE MRAZEK, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Direct Exam.)

Q. What is your full name please?

A. Sandra Catherine Mrazek, surname spelled M-R-A-Z-E-K.

Q. What is your occupation?

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

(10) 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 Spring of 1967. I also hold a certificate in General Laboratory Technology and this certificate enables me to do hospital work. I received it in Spring of 1968. I then joined the Royal Canadian Mounted Police, Crime Detection Laboratory in Vancouver, British Columbia, where I understudied for a period of six months. At the conclusion of this understudy, I wrote and passed a written examination.

(20) And, I have given evidence in courts in the provinces of British Columbia, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

MR. ROSENBLUM:

No cross-examination on qualifications.

THE COURT:

The qualifications of Miss Mrazek, as a serologist and attending sciences is accepted by the Court and she is so qualified.

BY MR. MacNEIL:

(30) Q. Miss, were you working in your capacity as a member of the Royal Canadian Mount Police during the month of June 1971?

A. Yes, I was.

Q. Were you working in Sackville, New Brunswick?

A. Yes, I was.

SANDRA CATHERINE MRAZEK, Dir. Exam.

Q. At that time, were certain exhibits turned over to you relating to this case?

A. Yes sir, I received two exhibits from Sgt. MacDonald, of the Sydney City Police Detachment and also from Mr. Evers of the Hair and Fiber Section of the Crime Detection Laboratory in Sackville.

Q. Did you keep these exhibits in your possession from the time they were delivered to you?

(10) A. Yes I did.

Q. What did you do with them?

A. May I refer to my notes?

Q. Notes made at the time the events took place?

A. Yes sir, they were made at the time of my examination and in my handwriting.

MR. ROSENBLUM:

No objection My Lord.

MR. MacNEIL:

You may refer to your notes.

(20) WITNESS:

The exhibits that I received and examined were turned over to Mr. Evers of the Hair and Fiber Section of the Crime Detection Laboratory in Sackville on July 21st, 1971.

BY MR. MacNEIL:

Q. When did you receive these exhibits?

A. I received two exhibits from Sgt. MacDonald on June 16th, 1971 and I received two following exhibits from Mr. A.J. Evers, on June 28th, 1971.

(30) Q. Now, could you tell me which of these first exhibits you wish to deal with, Miss Mrazek?

A. The first of the two exhibits that I received from Sgt. MacDonald was a pair of blue jeans and a blue belt and a piece of facial tissue.

SANDRA CATHERINE MRAZEK, Dir. Exam.

Q. Would you look at exhibit one and tell me what that is?

A. It's a pair of blue jeans with a blue belt. I can identify these as the ones I received and examined. There is my initial. My initials are present, both on the pair of the blue jeans and on the belt. This is the pair of blue jeans that I received from Sgt. MacDonald.

Q. Did you examine those?

(10) A. Yes, I did.

Q. Your finding, please?

A. I examined them for the presence of human blood. I found human blood of group "O" to be present on them and I found the blood both on the pair of blue jeans and on the belt.

Q. And you see the next exhibit?

A. It's the facial tissue.

Q. I show you envelope marked exhibit number two. Would you tell the Court - tell us the contents of that please - of that envelope?

(20)

A. Exhibit two is an envelope containing a piece of facial tissue. I can identify it as the one which I received and examined. My initials are present on the envelope and on the facial tissue. I examined the facial tissue for the presence of human blood. I found human blood of group "O" to be present on it.

Q. Now, the next exhibit that you received.

A. I received two exhibits from Mr. Evers on June 28th, 1971. That is the yellow jacket and the brown jacket.

(30)

Q. I show you exhibit three. Can you tell me what that is please?

A. Exhibit three is the yellow jacket. I can identify it as the one which I received and examined and there are my initials. This is the jacket that I received from Mr. Evers on June 28th, 1971. I examined this for the presence of human blood. I found human blood present on it, however, I was unable to determine the group of the blood present.

SANDRA CATHERINE BRAZEK, Dir. Exam.

Q. Why?

A. There are a number of reasons why a group - why blood may not group. In this particular case, I don't know exactly why. It could be, perhaps the areas were just not concentrated enough or perhaps the material would not allow the blood to go into the solution. In order to test the blood I must extract it into a solution.

(10)

Q. Now, is this jacket in the same condition as when you examined - you did your examination - was it limited to the blood testing? Was your examination of that jacket limited to testing for blood?

A. Yes sir, it was.

Q. The next exhibit. I show you exhibit 4. What is that?

A. Exhibit 4 is a brown jacket. I can identify this as the one which I received from Mr. Evers; it bears my initials. It is the one I received on June 28th, 1971. I examined it for the presence of human blood. I found human blood of group "O" to be present on it.

(20)

Q. Any other exhibits?

A. No sir, those are all the exhibits that I received and examined.

(No cross-examination)

(THE WITNESS WITHDREW)

C.P.

ADOLPHUS JAMES EVERS, D.R. EXER.

ADOLPHUS JAMES EVERS, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Direct Exam.)

Q. What is your full name?

A. Adolphus James Evers, surname spelled E-V-E-R-S.

Q. Mr. Evers, what is your occupation?

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

(10) Q. What are your qualifications?

A. I have received a Bachelor of Arts degree from Carleton University in Ottawa with a major in Biology. I have had training in Hairs and Fibers in the R.C.M.P., Crime Detection Laboratories 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 various courts?

(20) A. Yes, I have given evidence in the Magistrates and Supreme Courts of British Columbia, Yukon, Nova Scotia, New Brunswick and Newfoundland and in the Magistrates Court of Prince Edward Island.

MR. ROSENBLUM:

There is no cross-examination on his qualifications, My Lord.

BY THE COURT:

Q. What is your science called?

A. The hair and fiber examination and comparison.

Q. There is no other name?

A. Not that I know of, My Lord.

THE COURT:

(30) I find his qualifications to be in order and he is so accepted by the Court.

BY MR. MacNEIL:

Thank you My Lord.

BY MR. MacNEIL:

Q. Now, Mr. Evers, did you know Detective Sgt. Michael MacDonald of the Sydney Police Force?

A. I met him, after he identified himself as such.

Q. Do you see him in Court here today?

A. Yes I do. The man with the yellow shirt on and green suit.

Q. Stand please. Is that the man?

A. Yes.

Q. Where did you see him?

A. He came to the laboratory on June the 16th, 1971 and gave to me two exhibits.

Q. What exhibits were they?

A. They were two jackets. One brown jacket and one yellow jacket.

Q. I show you exhibit 2, I guess. The yellow jacket -

A. No, exhibit 3.

Q. What is that?

A. This is the yellow jacket that I received from Sgt. MacDonald. I identify it by my initials, date and case number appearing on the jacket.

Q. What did you do with this exhibit?

A. I examined this jacket for the presence of any fresh appearing cuts or tears.

Q. What were the results of your examination?

A. I found one cut approximately one inch long on the left arm of the jacket. The cut is fresh in appearance having occurred since the garment was last washed, laundered or actively worn. The second separation is approximately eight inches in length - six and one half inches is indicative of being cut, again the cut is fresh in appearance. The remaining one and a half inches which continues through the cuff of the jacket is indicative of being torn. The tear is fresh in appearance.

(10)

(20)

(30)

ADOLPHUS JAMES EVERS, Dir. Exam.

Q. Anything else in that exhibit, Mr. Evers?

A. I found a number of superficial cuts to be present near the large separation. These superficial cuts again appear to be fresh.

Q. What do you mean by superficial cuts?

A. These are small cuts which one can notice with a microscope. They are just where the material is separated. It doesn't go through the material.

(10) Q. Now, you say you also received another exhibit.

Exhibit 4 - exhibit 4 - I show you exhibit 4. What is that?

A. I identify the brown jacket court exhibit 4, by my initials, date and case number on the jacket. I received this jacket from Sgt. MacDonald on June 16th, 1971. I examined this jacket for the presence of any fresh appearing cuts or tears. I noticed one cut approximately two to three quarter inches in length. The cut was approximately seven inches from the bottom of the jacket on the front side. The cut continued through the jacket and is approximately one inch in length in the back part of the jacket or inside part of the jacket. The separation is a cut and is indicative of being fresh, that is it has occurred since the garment was last washed, laundered or actively worn.

(20) Q. And tell me, where would this cut be in relation to the abdomen of the body of the person wearing that jacket, when they wear that jacket?

MR. ROSENBLUM:

(30) That would be pure conjecture My Lord, based on many things. That's not something that he can give evidence on from an expert's standpoint at all.

BY MR. MACNEIL:

Q. What other exhibits, if any, did you have Mr. Evers in connection with this case?

ADOLPEUS JAMES EVERS, Dir. Exama.

A. That is the two exhibits I received from Sgt. MacDonald. I gave these two exhibits to Miss Mrazek of the Serology Section on June the 28th, 1971 and I recieved from Miss Mrazek, on July 21st, 1971, a sealed box containing four exhibits. I presented these exhibits to the Court on July the 28th, 1971.

(10) Q. Did you keep them in your possession at all times, except from the time these two exhibits were given to you by Detective Sgt. MacDonald until you gave them to Miss Mrazek and then she gave them back to you and you presented them in Court - except for the time that she had the exhibits, were they in your possession at all times until you presented them to Court?

A. Yes sir.

THE COURT:

The exhibit must show the cut - where the tear is.

MR. MacNEIL:

In the brown jacket.

(20) THE COURT:

Did you exhibit this to the jury?

MR. MacNEIL:

No I did not. I thought that he held it up. There is the cut and tear which -

MR. ROSENBLUM:

Mr. Lord, he can't address the jury, but he can show them, but he can't speak to them.

MR. MacNEIL:

(30) I am saying that is the tear that the witness is referring to and -

BY MR. MacNEIL:

Q. What were the other exhibits? You say you returned four exhibits to the Court.

A. I believe the other exhibits were a pair of jeans and a piece of cloth.

ADOLPHUS JAMES EVERS, Dir. Exam.

Q. A pair of jeans. Do you recognize exhibit 1?

A. Yes, I have labeled the R.C.M.F. laboratory card. I did not examine this exhibit. I merely contained it in my possession.

Q. And this is the one which you turned into court at the Preliminary Hearing of this trial.

A. Yes it is.

Q. What was the other exhibit?

(10) A. It appeared to be a piece of cloth.

Q. I show you exhibit 2. Can you tell me what that is and indicate if that is the exhibit?

A. Yes, I identify the envelope from my initials, date and case number. This is the envelope which I received from Miss Krazek and retained in my possession and presented into Court on July 28th, 1971.

Q. And the contents thereof -

A. I did not open the contents or examine them.

MR. ROSENBLUM:

(20) No questions, My Lord.

(THE WITNESS WITHDREW)

C.P.

DR. MAHOMAD NAQVI, Dir. Exam.

5:00 P.M., NOVEMBER 3, 1971 COURT ADJOURNED to
10:20 A.M., NOVEMBER 3, 1971 AT WHICH TIME COURT
WAS PROPERLY OPENED: PETIT JURY POLLED, ALL PRESENT
DR. MAHOMAD NAQVI, being called and duly sworn, testified as

follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. Your full name doctor?

A. My full name is Mahomad Ali Naqvi.

(10) Q. You are a duly qualified practitioner, practicing medicine
in the province of Nova Scotia?

A. Yes I do.

Q. How long have you been practicing, sir?

A. Ten years.

Q. How long have you been residing and practicing in the city
of Sydney?

A. Three years.

Q. Where were you before that?

A. I was in training in New York city.

(20) Q. Where were you before that?

A. I was in New Waterford.

Q. How long were you in New Waterford?

A. Three years.

Q. Where were you before that?

A. Halifax.

Q. How long were you in Halifax?

A. Two years.

Q. Where were you before that?

A. New York city.

(30) Q. How long were you there?

A. One year.

Q. What were you doing there?

A. Internship.

Q. Tell me doctor, what are your qualifications, as a medical
practitioner?

DR. MAHOMAD NAQVI, Dir. Exam.

MR. ROSENBLUM:

I may say, My Lord, I happen to know Dr. Naqvi, he is one of the most talented and highly respected physicians in the area and I readily admit his qualifications.

THE COURT:

The qualifications of Dr. Naqvi are accepted as admitted and as well, accepted by the Court. His opinion will be admissible.

(10) BY MR. MacNEIL:

Q. Were you practicing in the city of Sydney on the 28th day 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.

Q. Where did you first see this man, Sandy Seale?

A. I saw him at the Emergency Room at the Sydney Hospital.

Q. Would you describe the man please?

(20) A. He was coloured teenage boy, who was - has had the bowel outside his abdomen and an opening into the abdomen approximately three inches - three to four inches wide into the abdomen. His clothes were filled with blood and he himself was in a state of shock.

Q. What time of the day or night would this be?

A. This was the middle of the night.

Q. Could you make any other external observations as to the nature of his condition?

A. Very critical and he had no pulse or blood pressure. He was on the verge of death at the time I saw him.

(30)

Q. What did you do to the patient, doctor?

A. Oh well, right away we did resuscitation, gave him blood, intravenous and supported his respiration and took him to the Operating Room right away.

DR. MAHOMAD NAQVI, Dir. Exan.

Q. What was done in the Operating Room?

A. In the Operating Room, we did extend the cut in the abdomen and made a formal cut where his bowels was torn - his vessels were torn. And he has had massive bleeding inside and the major vessel cut.

Q. Do you know how much blood you administered to Mr. Seale?

(10)

A. He has had a massive replacement. This means over 15, 20 pints of blood.

Q. Do you know the blood type of Mr. Seale?

A. I don't have it in my record here, but it is in the hospital record.

Q. Another witness will give the blood type, I just wondered whether or not you knew it. You described the nature of the internal injuries to Mr. Sandy Seale, Doctor. Can you express an opinion, Doctor, as to what might cause these injuries?

(20)

A. The injuries were caused by a sharp, pointed object that has penetrated through the abdomen and all the way down to the back.

Q. How long did you administer to Mr. Seale?

A. I was in attendance for over from 12:00 midnight until next day, approximately 4:00 or 5:00.

Q. 4:00 or 5:00 the next day?

A. In the afternoon.

Q. What day would that be Doctor. can you tell me? You saw him I believe -

A. This was May 29th, 1971.

(30)

Q. Yes that's the day following his admission to the hospital.

A. Yes.

Q. What happened at that time?

A. Well, in spite of resuscitation, controlling of his hemorrhage and doing what we had to do, he did not survive. He has - his kidneys were shut down, his respirations were shut down. He was on the artificial respiration machine for all this period after the operation, but he just could not be resuscitated.

DR. MAHOMAD NAQVI, Dir. Exam.

Q. What was the cause of death?

A. Cause of death is injuries to his bowel, his vessels.

Q. Were you assisted by any one, doctor?

A. Yes, I was assisted by Dr. Dave Gaum and Dr. Pajari, who no longer is in the city of Sydney.

BY MR. ROSENBLUM: (Cross-Exam.)

Q. Doctor, how many blood types are there?

A. There are types of A, B and O.

(10) Q. And in these classifications of A, B and O, O is probably - is it the most common?

A. Yes.

Q. O is the most common, and I suppose millions of people belong in that category of O.

A. Let's put it this way, O is common, yes, but I wouldn't know the figures that you have given me.

Q. No, but, it would be a very common type?

A. It is a common type, yes.

Q. Of blood grouping -

(20) A. Yes.

Q. "O".

A. Yes.

Q. Now, Doctor, would you say that the late Sandy Seale died as a result of one or more stab wounds, or wounds of a sharp instrument, as you described it.

A. The instrument was one -

THE COURT:

He didn't say sharp instrument.

MR. ROSENBLUM:

(30) An instrument of some sort -

MR. MacNEIL:

Sharp pointed, I believe -

BY MR. ROSENBLUM:

Q. Did you say a sharp pointed instrument?

A. Pointed instrument, yes -

DR. MAHOMAD NAQVI, Dir. Exam.

Q. You said that, a pointed instrument, is that the way you said it?

A. Yes.

Q. All right, would you say it was by one insertion into his body?

A. I would say one insertion.

BY THE COURT:

10)

Q. Doctor, I didn't get the width of the incision of the wound - I thought you said -

A. I said approximately - approximately 3 inches.

Q. That was, you said the cuts -

A. Made by the object.

Q. And through which cut, the intestine extended?

A. The cut into the intestine extended right from the front of the vessels supplying the large intestine, the vessels supplying the small intestine, the intestine - the large intestine itself, then right to the aorta.

20)

Q. And what was extending outside the man's body, as a result of the cut? What organs were visible?

A. All the intestine was outside - all the intestine was outside. I wouldn't say all, but most of the intestine was outside.

(THE WITNESS WITHDREW)

(Dr. David Gaum called but not present)

C.L.

DR. MOHAN S. VIRICK, Dir. Exam.

DR. MOHAN S. VIRICK, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Direct Exam.)

Q. What is your full name, Doctor?

A. Mohan Virick - V-I-R-I-C-K.

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

A. I am.

(10) Q. And residing and practicing in the city of Sydney at the present time.

A. Yes.

Q. Where did you practice before? How long have you been in the practice of medicine, Doctor?

A. Almost 11 years.

Q. What are your qualifications?

(20) A. I am a medical doctor from Christian Medical College and I had post-graduate training at John Hopkins University in Baltimore.

Q. And after you finished your formal education, Doctor, where did you start to practice?

A. In Glace Bay - '63.

Q. 1963 - how long did you practice there?

A. Two years.

Q. Where did you then go?

A. I came down to Sydney in '65 and in '67 I went back to Baltimore, came back in '68 and since then I am practicing here.

(30) Q. What were you doing in Baltimore in '67, '68?

A. I was doing some post-graduate training.

Q. What degrees do you have?

A. I have an M.D. in public health -

THE COURT:

The qualifications of Dr. Virick are accepted by the Court and he will be permitted to give his opinion evidence.

DR. MOHAN S. VIRACK, Dir. Exam.

BY MR. McNEIL:

Q. Were you practicing medicine in the city of Sydney on the 28th day of May 1971?

A. I was.

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

A. I do.

Q. Do you see him in Court here today?

A. Yes.

(10) Q. Would you point him out to the Court please?

A. (witness indicates).

Q. Let the record indicate that the witness points to the accused, Donald Marshall. Did you see him on the 28th day of May, 1971?

A. I did.

Q. Where?

A. At the Emergency Room at the City Hospital.

Q. That is in the city of Sydney, County of Cape Breton, province of Nova Scotia.

(20) A. That's right.

Q. Did you administer to him?

A. Yes, I did.

Q. Would you tell us your diagnosis which you observed about him?

A. Mr. Marshall had a laceration of the ^{left}/~~arm~~ which I sutured.

Q. That is a cut in the left arm.

A. That's right.

Q. Whereabouts on the left arm?

(30) A. Sort of on the arm approximately 7 and a - 7 1/2 inches from the wrist, approximately 4 inches long, which I sutured.

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

A. No, at the time I went there, there was no bleeding. The patient had already been prepared by the nurse. I just went and stitched it.

DR. MOHAN S. VIRICK, Dir. Exam.

Q. Yes, well, we'll have that nurse later on, but as far as you observed, personally, did you observe any blood at any time?

A. No.

Q. All right how would you describe this cut?

A. This is a superficial laceration, evenly in depth throughout, approximately 4 inches long.

(10)

Q. Now you say, a superficial laceration, would you break that down into other language, Doctor?

A. It isn't a bruise, but on the other hand the deeper tissues, the muscles and deeper tissues are not involved in a laceration.

Q. I see, and what did you do for this man?

A. I administered stitches under local anesthetic.

Q. Yes, and how many stitches did you insert?

A. Ten.

Q. All right now, Doctor, why did you insert stitches in a superficial wound?

(20)

A. This wasn't a bruise exactly. It is a laceration which needs to be sutured. If wouldn't have done it, he would have had a scar and probably infection.

Q. Did you remove the stitches in due course, Doctor?

A. No, I didn't.

Q. Did you make an attempt to remove them?

A. Yes, I did. I had an appointment to see Donald and to remove his suture, but when I went to the jail - that's the Cape Breton County Jail, the sutures were already removed.

(30)

Q. Already removed, did Mr. Marshall say, by whom?

A. He said he had done it himself.

MR. ROSENBLUM:

What's that again?

MR. MACNEIL:

He said he did it himself.

DR. MOHAN S. VIRICK, Dir. Gen.

BY MR. MacNEIL:

Q. Now, Doctor, considering your medical experience, I would like to ask you for your opinion. In your opinion, could this, or did this cut have the appearance of being self-inflicted?

A. It's possible.

Q. Was it deeper at one end than it was at the other, or anything like that?

(10) A. No, superficial throughout.

Q. Superficial cut down the arm, same depth all the way down.

A. Yes.

Q. And caused no bleeding.

THE COURT:

Mr. MacNeil, don't lead the witness.

MR. MacNEIL:

Pardon me, My Lord.

BY MR. MacNEIL:

Q. But you saw no blood at any time.

(20) A. I didn't see any, no.

Q. How long would you be observing the accused? The superficial laceration on his arm - how long would you be attending on that?

A. You mean on this particular patient on the night -

Q. Yes, on the night in question, when you first saw the accused and you said good-bye to him.

A. About approximately twenty minutes to a half an hour.

BY MR. ROSENBLUM: (Cross-Exam.)

(30) Q. Dr. Virick, you will recall, that you gave evidence in this case at the Preliminary Hearing in the Provincial Magistrates Court.

A. I did.

Q. And I ask you, Doctor, to recall your testimony at that Hearing, when I cross-examined you as to whether or not you formed an opinion as to this wound on the left arm of Mr. Marshall was self-inflicted. Now based on your knowledge, your observations of the accused arm, at that time and the type of wound that it was. Did you not say,

DR. MOHAN S. VIRICK, Cross-Exam.

Doctor, at that time, that you were of the opinion that it wasn't self-inflicted, although possibly it could have been?

A. If you remember, Mr. Rosenblum, I was trying to clarify the evidence at that time.

Q. But, did you not say that your opinion was, that it wasn't self-inflicted, but that it could have been?

(10) A. Yes, I don't know, it's just a laceration, I sutured, which is even - it is possible - it could be self-inflicted or it may not be. It is very hard for me to say.

Q. But didn't you say this -

THE COURT:

Mr. Rosenblum -

MR. ROSENBLUM:

I am going to quote the evidence. I am going to quote the evidence.

THE COURT:

(20) If he has said something which is contrary to what he said here today, then you may cross-examine him on what he said in the Court below, otherwise you can't.

MR. ROSENBLUM:

I'm about to do it.

THE COURT:

Well, you asked him, is it - did he not say it was possible. He said here this morning it is possible that it could be self-inflicted. Did he say that?

MR. ROSENBLUM:

(30) I'm about to question him, My Lord - about to question him on it. Just leading up to it My Lord.

BY MR. ROSENBLUM:

Now on page 54, of the transcript of evidence taken from the Magistrates Court, this question was asked by me of you: "Based on your knowledge, at the time, your opinion is that the wound was not self-inflicted". And your answer, "this point is against you". Do you recall saying that?

DR. MOHAN S. VIRICK, CROSS-EXAM.

A. Yes, I remember it, but this is -

Q. I am doing the questioning. Now, my next question to you, on page 54, line 25, "your opinion is that it was not self-inflicted" and your answer is: "Yes, yes I would say so". Do you remember making those answers to those questions?

A. Yes, right.

Q. Now Doctor, I would ask you to examine the left arm of the accused. Pull up your sleeve. Just walk over near the Doctor and turn around so the jury can see you. Is this the wound, that you see on the left arm of the accused, that you are speaking about?

A. Yes.

Q. And it would be about how long?

A. Approximately about 4 inches - 3 to 4 inches.

Q. And you put ten stitches in that?

A. Yes.

Q. Now from its appearance today, Doctor - O.K. he has seen it and the jury has seen it. From your inspection of it today, would you not say that it did more than just scrape the skin - this wound. Isn't that so?

A. Yes, that's true.

Q. Otherwise it wouldn't bare a scar, such as there is now, today, on November the 3rd, following an incident on May the 28th. And, Doctor, I realize that there was a nurse who attended Donnie Marshall before you saw him and that she would be in a better position to say what his condition was before you saw him, but nevertheless, would you not give an opinion that there had been bleeding from that wound before you saw it, that blood had flown from this wound? Would you not say that was in all likelihood the case?

A. It's possible.

Q. Well, I know anything is possible, Doctor, but in all likelihood -

A. It is likely, yes. It's possible.

DR. MOHAN S. VIRICK, CROSS-EXAM.

Q. Not only possible, but likely?

A. Yes.

Q. And, is it because of the length of the wound that you put in ten stitches or the depth of the wound, or both?

A. Actually, there is another factor, also the position - the movements occurring in the arm, which may gape the wound -

Q. Which, may what?

(10) A. Gape the wound from healing - all three factors.

Q. O.K., yes, and your fear then, you know about the movements of the arm opening the wound again, why would you be afraid of that, medically?

A. The edges may gape and it may leave a bad cosmetic effect.

Q. And, perhaps continue bleeding?

A. Or, get infected.

Q. Or get infected, yes.

A. Yes.

BY MR. MacNEIL: (Redirect Exam.)

(20) Q. Doctor, you say that you put these stitches, in answer to my learned friend, in order to prevent infection and to have a better healing - you know with as little mark or scar as possible, under the circumstances. Now, Doctor, would not a great deal depend -

MR. ROSENBLUM:

Now, isn't this leading, My Lord?

MR. MacNEIL:

No -

MR. ROSENBLUM:

(30) I'm just putting the question to his Lordship and we'll get a ruling on it - not whether you and I agree, but we'll ask the Court. We can have the stenographer read -

THE COURT:

What is the point that you wish to raise?

DR. MOHAN S. VIRICK, Redirect Exam.

MR. MacNEIL:

That's why I was wondering what the objection was, when my learned friend doesn't even know the question yet. I didn't finish it. I was going to pose the question that came out as a result of my learned friend's examination.

BY MR. MacNEIL:

(10)

Q. Would not the effectiveness, relating to the scar - the prevention of a scar and infection, have a direct bearing on when the stitches were removed from the arm?

THE COURT:

That's all right, go ahead. That will be allowed.

BY MR. MacNEIL:

Q. Did you hear my question, Doctor?

A. If you would phrase it -

Q. Would not-you say that you stitched the arm, I believe, to prevent infection, to lessen the scar that will remain after the wound?

(20)

A. And to create an anatomical position as it was before the injury.

Q. Now, would the the results of your stitching in the arm - would the results depend upon when the stitches were removed from the arm?

A. Yes.

Q. When were the stitches removed from the arm?

A. I don't know.

(THE WITNESS WITHDREW)

ds.

- 31 - CARL MacDONALD, Dir. Exam.

CARL MacDONALD, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. Your full name, Mr. MacDonald?

A. John Carl MacDonald.

Q. What is your occupation?

A. I'm a surveyor for the City of Sydney.

Q. Are you a duly qualified provincial land surveyor?

A. Yes, I am.

Q. And where do you live?

A. I live in Dominion.

Q. How many years have you acted as a provincial land surveyor?

A. Fifteen.

MR. ROSENBLUM:

His qualifications are readily admitted, my Lord.

THE COURT:

The witness's qualifications as a Nova Scotia Land Surveyor are accepted by the Court and his opinions may be given in evidence.

BY MR. MacNEIL:

Q. Now Mr. MacDonald, are you familiar with an area in the city of Sydney known as Wentworth Park?

A. Yes sir.

Q. Did you make a survey of that area?

A. Yes sir.

Q. You say, Mr. MacDonald, that you did a survey of the part of the area known as Wentworth Park area?

A. Yes sir.

Q. In the city of Sydney - did you make a plan of that survey?

A. Yes sir.

Q. I show you Exhibit 5, Mr. MacDonald, is that the plan that you made of the Wentworth Park area?

A. Yes sir.

- 32 - CARL MacDONALD, Dir. Exam.

Q. Now Mr. MacDonald, would you please explain this plan to His Lordship and the gentlemen of the jury?

A. This plan is a portion of Wentworth Park bounded on the south by Crescent Street, top street in the centre of the plan; on the north by George Street and Byng Avenue which is on the bottom of the plan; on the west by Bentinck Street; on the right of the plan, and by Argyle Street which is on the east - ie of the plan.

(10) Q. And this comprises how many creeks?

A. This comprises three creeks.

Q. Now would you describe your legend, please, that you have - you notice on the bottom right-hand corner of the plan you have what you call a legend: would you relate this legend to the plan, please?

A. Each place that the symbols shown on the left side of the legend which may be a circle or a square, triangle, etc., is explained by the explanation next to the symbol, is the same symbol that's used throughout the plan.

(20) Q. All right, now may I direct your attention to Crescent Street. You have on the south side of Crescent Street a number of buildings. Are they properly located to scale on the plan?

A. Yes sir.

Q. Now, are there any buildings on the north side of Crescent Street along the stretch that is covered by your plan, any houses?

A. Crescent Street?

Q. Yes.

A. No.

(30) Q. All right, now I notice here looking - well first of all, you have marked on this plan here, C.N.R. tracks and they go right across the full width of the plan and between the two creeks there - what is there?

A. Between the two creeks is a railway trestle.

Q. Railway trestle?

A. Yes.

- 33 - CARL MacDONALD, Dir. Exam.

Q. Going on the south side of the creek which borders on Bentinck Street, that is the creek, the large creek, that is worded "Wentworth Creek" - now dealing with the area south of that, and between that and the houses, would you describe what those circles are, probably four, seven - twenty-three if my mathematics are correct - running along the railway tracks or very close to them?

A. Yes, these are bushes.

(10) Q. Would you describe those bushes, please?

A. They're bushes properly located to scale on the plan. They have a width of approximately three feet and heights that range from approximately four feet to approximately six, six and a half feet.

Q. And tell me, sir, on this plan of yours, do you show where there is any - if there is any - street lights?

A. Yes. There is two power poles that have street lights on them.

Q. And where are they located on the plan, please?

(20) A. They are located just north of the north curb of Crescent Street - one approximately in front of the third house - third house down from Bentinck and across the street; and the other one across from the sixth building and across the street on the north side.

Q. The sixth building being what is noted on the plan as being Crescent Street Apartments or Crescent Apartments?

A. Yes sir.

Q. And what type of lights are these, Mr. MacDonald, do you know?

A. Yes. I called Eastern Light & Power Company and I was notified-

MR. ROSENBLUM:

(30) Now-

BY MR. MacNEIL:

Q. Do you know what kind of lights they are?

A. No sir.

Q. And those lights, the poles bearing the lights, are the ones that are designated by a symbol on your plan that looks like

- 34 - CARL MacDONALD, Dir. Exam.

a target, is that not so: circles, and smaller circles and so on until finally there is a dot?

A. Yes, these are power poles.

Q. Would you point them out to the jury? Would you step down with His Lordship's permission and point out to the jury the power poles - the poles which have lights on them-

THE COURT:

(10) No, Mr. MacNeil, that's not what he said. At the moment he's talking about the power poles themselves.

MR. MacNEIL:

All right, I'm sorry.

BY MR. MacNEIL:

Q. Those are the poles that are designated by the circles that look like a bullseye, target?

A. These are power poles.

Q. Those are the power poles. Now how many of these power poles have street lights on them?

A. None.

(20) MR. ROSENBLUM:

What did you say?

WITNESS:

None of those four.

BY MR. MacNEIL:

Q. Are there any street lights in that area south of Crescent Street in the area from Byng Avenue?

A. Yes.

Q. Where are they located?

A. There's one here -

(30) Q. Here, that's in front of the third house from Bentinck Street-

A. Yes. Designated by a small black or full dot - blue in this case. And the other one down directly across from the Crescent Apartment - here by the same round, small full dot.

Q. That is where the figure 21 appears on Crescent Street itself?

A. Yes.

- 35 - CARL MacDONALD, Dir. Exam.

Q. Now come down and show the Jury where the street lights are located.

A. One here-

Q. That's ^{opposite} the third house from Bentinck Street.

A. The third house and the other one opposite the seventh house, known as Crescent Apartments.

BY THE COURT:

Q. The third house, is that the red house, Mr. MacQuinn-

(10) A. Yes.

Q. There's a power pole with a light almost across from MacQuinn's house and across from the Crescent Apartments, at No. 21?

A. Yes, my Lord.

BY MR. MacNEIL:

Q. How wide is Bentinck Street, sir? I'm sorry, Crescent Street.

A. Crescent Street from curb to curb, is 21 feet, running from Argyle Street to the Crescent Apartments and then it widens out to 35 feet at Bentinck Street.

(20) Q. Now looking at the northern side of the creeks there, you have marked there, leading from the western side of the railway tracks to Byng Avenue, an area which has the word "walk" in it. What is that, please?

A. This is a path that runs from Byng Avenue to the tracks.

Q. Now would you please start at the corner of Crescent Street and Bentinck Street, Mr. MacDonald, and explain what all those symbols mean? Now we already have had the one about the bushes, the 23 or so bushes. We also had the one about the power poles and we also had the one about the light. Now I notice a square there for example: what is that?

(30) A. There is two squares there. One is darkened and one is light. The one/^{that} is darkened is right at the corner of Bentinck Street and is a power box for the railway signal light. The other one which is farther down Crescent Street across from the fifth house is a sign on a signpost with a sign on it that states, "No Parking Any Time."

- 36 - CARL MacDONALD, Dir. Exam.

Q. I do not believe that we got the trees explained to the jury, Mr. MacDonald. I'm talking now on the north side of Crescent Street.

A. The symbols which are two wavy circles, one inside the other, which would be on your legend, the seventh one down, are trees.

Q. Would you please then show to the jury where those trees are located?

A. There are six trees - 1-2-3-4-5-6-

(10) Q. And they are located along the curb - how close to the curb would they be located, the curb of Crescent Street.

A. Would be a couple of feet.

Q. From the curb?

A. About three feet from the curb.

Q. Is there any sidewalk on that side of Crescent Street?

A. No sir.

(20) Q. Tell me, Mr. MacDonald, other than the bushes, the trees, the lights, the power poles, that you have described to the Court, what is the terrain between the south side of the railway tracks and Crescent Street?

A. I beg your pardon. What is which?

Q. What is the terrain - what's on the ground?

A. It's level ground.

Q. Comprized of what? I mean, what material.

A. Grassy area.

Q. All right now, sir, in your legend you have here a symbol which I do not know how to describe it. It's an oblong - can't call it a circle, oblong - the fourth symbol from the bottom which is called hedges: where is that?

(30) A. That is at the corner of Crescent Street and Bentinck Street.

Q. Is there any other hedge in that area on your plan?

A. No sir.

Q. Now what are these areas throughout the entire plan here from Argyle Street particularly over to the railway track that are marked "walk" - what are they?

- 37 - CARL MacDONALD, Dir. Exam.

A. These are pathways, not grassy, earth or dirt covered so that people can walk throughout the park.

Q. All right now, sir, on the extreme right-hand side of your plan, just before the word "Bentinck" which I can see the street is up above there but before the word "Bentinck", that is just north of the word "Bentinck", you have a square there, square on Bentinck Street, what is that?

A. That is a bridge that runs under the street to allow the water to run through.

(10)

BY MR. KHATTAR: (Cross-Exam.)

Q. When were your observations made before preparing No. 5?

A. I began the survey on June 9 and I completed the survey and the plan on June 15, 1971.

Q. The data then you have on the plan would be data accumulated by you since the 28th day of May and beginning on June - when - June 9th?

A. Yes sir.

Q. Your observations, were they made in daylight or at night time?

A. Daylight.

(20)

Q. With respect to the items shown on your legend as bushes or bush, what was the condition of those bushes - were they full foliage at that time, June, when you made your first observation?

A. Yes sir.

Q. Were they such as to obstruct one's view if you were looking from one side to the other of the bushes?

A. Yes, if you were behind the bush, lower than the height of the bush, you wouldn't be able to see.

Q. And would that situation apply to the trees as well, if you were behind the tree, would your vision be so obstructed in the same way?

(30)

A. Yes sir.

Q. Looking at the plan and that is the south end of it, that is the top of the plan, and place called Green building, note on your plan, Green Building, Crescent Apartments, what would you say the distance is - you can scale it or probably you

- 38 - CARL MacDONALD, Cross-Exam.

have something with you - what is the distance of the north end of the building which would be the portion closest to Crescent Street, that is, the south side of Crescent Street, what is the distance from it, the front of the building to the curb?

A. From the front of Crescent Apartments to the closest curb on Crescent Street which is the south one, is 41 feet.

(10) Q. You're not in a position, are you, Mr. MacDonald, to tell us whether there are any lights on - noting that you have power pole with lights - on the evening of May 28 or the morning of May 29, 1971?

A. No sir.

Q. Now do you recall that evening, the evening of May 28, 1971?

A. No sir.

Q. You don't recall weather conditions on that evening or conditions of the soil or anything of that nature?

A. No sir.

BY THE COURT:

(20) Q. There is one symbol on Crescent Street, the fourth symbol from the end, what does that mean? The north side of Crescent Street

A. The fourth symbol, my Lord.

Q. Is it "stop ahead" sign?

A. Yes.

Q. Then there is an arrow, what is that?

A. Could we follow it from the legend on the bottom of the plan?

Q. All right then, the fifth-

A. The fifth one which is a six sided symbol which would be going from Bentinck Street down along Crescent, you have the hedge

(30) first; next is a small triangle which is a stop sign; next is a tree, explained before; and the next one, six sided figure is a sign with the words written on it, "stop ahead."

(THE WITNESS WITHDREW)

- 39 - DR. D. GAUM, Dir. Exam.

DR. DAVID GAUM, being called and duly sworn, testified as follows
BY MR. MacNEIL: (Dir. Exam.)

Q. Your full name, please, Doctor?

A. David Gaum.

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

A. I am.

Q. And you're duly licensed to practise in this province?

(10) A. I am.

Q. And what are your qualifications, Doctor?

MR. ROSENBLUM:

They are admitted, my Lord.

BY MR. MacNEIL:

Q. Doctor, were you practising medicine on the 28th day of May,
 1971?

A. I was.

Q. Do you know Mr. Sanford William (Sandy) Seale?

A. I do.

(20) Q. Did you see him on that date?

A. I did.

Q. Where did you see him?

A. At the City Hospital, Recovery Room.

Q. And who was present at that time?

A. Dr. Naqvi and nurses, and the patient.

Q. How long had you known Mr. Seale?

A. Well I have looked after the family. I have known him for a
 number of years. I hadn't seen him in recent years but I know
 the family, administered to them.

(30) Q. Did you administer to Mr. Seale?

A. Yes, I assisted Dr. Naqvi in an operation that day.

Q. And did you make an observation as to what his physical
 condition was?

A. He was critically ill at the time I saw him and he was bleeding
 from the stab wound, injury to the aorta, and abdominal injuries.

- 40 - DR. D. GAUM, Dir. Exam.

Q. And where would this wound be, Doctor; would you point out to the jury?

A. Well it was in the abdomen. When I saw Mr. Seale, he had already had an operation and I do not recall exactly the point because it was involved in the incision that had been made previously that early morning.

(10) Q. And did you subsequently administer after that operation to Mr. Seale? Perhaps put it this way, can you tell the court the nature of the injuries which you observed?

A. Well he had a stab wound or injury to the aorta, the main blood vessel in the body, large blood vessel in the body, and injury to the intestine, the vascular supply to the intestine, and-

Q. Did you form an opinion as to how these injuries could have been received?

A. Yes, by some sharp instrument puncturing the wound of the abdomen by some sharp instrument.

MR. ROSENBLUM:

No questions, my Lord.

(20) BY THE COURT:

Q. Doctor, would you please stand up and indicate to the jury just where on your own person where the stab wound was.

A. Up in the upper region - upper region of the abdomen as I recall it.

Q. Where does the aorta run?

A. The aorta runs from up around this region of the chest, curves right down to the-

Q. The aorta is the-

(30) A. The major blood vessel that originates from the heart to supply the rest of the body.

Q. You say this was punctured?

A. Yes, sharp puncture about, as I recall, maybe half an inch.

Q. When you were there, was any of the intestines exposed or-
A. Yes. When I was there - the patient had been operated on
earlier. His condition continued to deteriorate and it was
necessary to take the patient back to the O.R. to deal with
the continued hemorrhage and after re-exploration, the wound
in the aorta was found. This was repaired by suturing with
silk. He did have other injuries to the vascular supply of
the bowel which had been dealt with at the previous operation and
he continued to have quite a bit of hemorrhage from the
mesentery of the bowel. The mesentery is tissue which carries
the blood vessels to supply the bowel and he did have a lot
of bowel which was deprived of its blood supply and it was
becoming gangrenous.

(THE WITNESS WITHDREW)

(11:20 A.M. COURT RECESSED TO 11:35 A.M.)

11:35 A.M. JURY POLLED ALL PRESENT

(11:37 A.M. JURY WITHDREW TO ENABLE COURT
TO PROCEED WITH THE GRAND JURY)

(11:50 A.M. JURY POLLED, ALL PRESENT)

C.S.

- 42 - LEO CURRY, Dir. Exam.

LEO CURRY, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. Your name is Leo Curry?

A. Yes.

Q. And what is your occupation, Mr. Curry?

A. Ambulance operator, Funeral Director.

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

(10) A. Yes sir.

Q. And your place of business, I believe, is on George Street?

A. 390 George.

Q. And were you operating an ambulance on the 28th day of May, 1971?

A. Yes sir.

Q. Did you have occasion to answer a call at approximately 12:15 on that date?

A. Yes sir.

Q. Where did you go for this call?

(20) A. Crescent Street.

Q. Crescent Street in the city of Sydney here?

A. Yes.

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

And would you explain to His Lordship and gentlemen of the Jury what you found when you arrived at Crescent Street and what you did?

A. When I arrived there, there was a young man lying on the street, almost in the center of the street, probably a little more to the north side, park side, and policeman there and he appeared to be in very bad shape so I took him to City Hospital.

(30)

Q. And can you describe this man to us?

A. Young man, very well built, dark complexion.

Q. And you removed him to the City of Sydney Hospital?

A. Yes.

- 43 - LEO CURRY, Dir. Exam.

Q. Did you remain with this man?

A. I remained with him for ten minutes. I gave Dr. Naqvi a little help setting up the intravenous. As soon as that was completed I left.

Q. So the patient was delivered to Dr. Naqvi?

A. Right.

BY MR. ROSKOPFBLUM: (cross-exam.)

Q. Mr. Curry, were there any police there when you got there?

(10) A. There were two policeman I believe.

Q. Could one of them have been Richard Walsh?

A. Yes, I think.

Q. Are you not familiar with the City of Sydney policemen?

A. I'm familiar with them but this was a split second-

Q. Oh yes, yes, but there were-

A. -and my memory is not that good.

Q. That's quite all right. But there were one or two of the City of Sydney police force there?

A. Yes.

(20) Q. Now tell me, who else was there when you got there, Mr. Curry?

A. The only other one other than the young man in question who was injured was Brian Doucette.

Q. He helped you?

A. Yes.

Q. Any other people there?

A. Might have been but I don't remember.

Q. Was Donnie Marshall there?

A. I didn't see him.

Q. And he might have been there for all you know?

(30) A. I didn't see him.

Q. Well were there a number of people there whom you can't tell us who they were except that there were several policemen there and the man who helped you - were there a number of other people there?

A. I can't honestly say. I didn't look around.

44 - LEO CURRY, Cross-Exam.

Q. But you'd be aware if there was a group of people around or not, you know?

A. Funny thing, this question has been put several times before by different people - they'll ask you how bad the car was and how bad this was and that-

Q. No, no-

(10) A. -and I didn't look. I know Brian Doucette was there. I know there were two policemen and the injured man in question and I don't remember seeing anybody else.

Q. But can you say whether there were other people there?

A. I would say-

THE COURT:

He just told you, he can't remember if there was anybody else there.

MR. ROSENBLUM:

That's quite true but I would like to continue the cross-examination, my Lord.

WITNESS:

(20) There could possibly have been other people there. I certainly couldn't identify them.

BY MR. ROSENBLUM:

Q. No, I didn't ask you. To the best of your recollection would you say there were a number of other people there? As far as you can remember although you can't tell us who they were: can you answer that?

A. I sound like the town nut here, I guess. I don't remember really.

Q. You don't remember: all right, I'll take that.

That's all I wish to ask him, my Lord.

(THE WITNESS WITHDREW)

- 45 - MRS. MERLE FAYE DAVIS, Dir. Exam.

MRS. MERLE FAYE DAVIS, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. What is your full name, madam?

A. Merle Faye Davis.

Q. Now you will have to speak up much louder than that.

A. Merle Faye Davis.

Q. And what is your occupation?

(10) A. Registered nurse.

Q. And where do you work?

A. At the city hospital.

Q. City of Sydney Hospital?

A. Yes.

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

A. Yes.

Q. And were you on duty on the 28th day of May, 1971?

A. On night duty.

(20) Q. And what was your capacity on that night?

A. I was Acting Night Supervisor.

Q. Do you know Mr. Donald Marshall?

A. Yes.

Q. Do you see him, Donald Marshall Jr., do you see him here in court today?

A. Yes.

Q. Would you point him out to the court please?

A. (Witness indicates accused.)

Q. Let the record indicate the witness points to the accused.

(30) Q. Did you have occasion to see him when he arrived at the hospital?

A. Yes.

Q. You were the admitting nurse in other words, be the first one to attend to him?

A. Yes.

- 46 - MRS. MERLE FAYE DAVIS, Dir. Exam.

Q. All right, now would you explain to His Lordship and to the gentlemen of the Jury what injuries if any or what observations you made of Mr. Marshall?

A. He had a laceration on his left forearm about three inches long.

Q. And can you describe this laceration?

A. Well it was just a plain laceration. There was no blood.

Q. There was no blood?

A. No.

(10) Q. Did you observe blood coming from the laceration at any time when you were administering to Mr. Marshall?

A. No.

Q. Did you also have occasion to see Mr. Marshall's arm here today in court when he displayed it to the jury?

A. Yes.

Q. Did you notice anything else about his arm?

A. I noticed a tatoo today on his arm.

Q. What part of the arm was that on?

A. On the outer aspect of his arm.

(20) Q. Can you tell us what that tatoo is?

A. "I hate cops".

Q. And did you stay there until he received further medical attention?

A. No. I was called to the other room. Mr. Seale was brought in so I had to leave.

Q. Do you recall what Mr. Marshall was wearing at the time you saw him at the hospital?

A. He was wearing a light coloured jacket. I'm not quite sure what colour.

Q. Would you be able to identify it if you saw it again?

(30) A. I don't believe.

BY MR. ROSENBLUM: (Cross-Exam.)

Q. Mrs. Davis, Dr. Virick has told us that there were ten stitches put in this wound of Mr. Marshall's. You wouldn't feel that Dr. Virick made any unnecessary stitches would you?

A. No, I-

- 47 - MRS. MERLE FAYE DAVIS, Cross-Exam.

Q. And would you think that was necessary, the services performed by Dr. Virick for the type of wound that you saw?

A. Yes.

Q. You would. That it would require ten stitches?

A. Well I guess if he felt it necessary.

Q. You would feel that he was competent to judge that?

A. Right.

(10) Q. Now the wound was to the inside of the arm, of the left arm, forearm?

A. Yes.

Q. And did you remain there while Dr. Virick was giving him the services?

A. No.

Q. What you did was, you prepared the tray with the necessary instruments for Dr. Virick to do what he felt was necessary to do for Donald Marshall?

A. Yes.

Q. What did you prepare, Mrs. Davis?

(20) A. Not much of anything; the trays are already set up.

Q. Tell us what type of instruments are in the tray?

A. There's a needle driver-

Q. Pardon.

A. A needle driver to hold the needle for the suturing; and a tissue forceps, and a haemostat.

Q. What's a haemostat?

A. Haemostat is just like ^{little} pliers with teeth.

Q. To close the wound?

(30) A. No, they use it mostly if there is a bleeder, to clamp off a bleeder. And there's sponges.

Q. Mrs. Davis, with your experience which I am quite sure is lengthy as a nurse, would you not expect that there had been bleeding from that wound before you saw Mr. Marshall? Would

- 48 - MRS. MERLE FAYE DAVIS, Cross-exam.

you not ordinarily expect that from the type of wound that-

A. Yes, I guess.

Q. But that it had congealed or dried up by the time you saw it:
that's what you would expect?

A. Well yes.

BY MR. MacNEIL: (Redirect Exam.)

Q. Did you see any congealed blood in this wound?

A. No.

(THE WITNESS WITHDREW)

C.S.

- 49 - ROY GOULD, Dir. Exam.

ROY GOULD, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. What is your full name, sir?

A. Roy Gould.

Q. Where do you live?

A. 124 Membertou Street.

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

(10) 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 27th day of May, 1971?

A. Was that a Friday?

Q. I don't know. I'll have to have a look. Thursday.

A. Yes, I was.

Q. And where were you with him?

A. We were at Bedford in Shubenacadie.

Q. And at that time did you own any clothing that you weren't

(20) wearing?

A. Yes.

Q. What?

A. A jacket.

Q. Describe the jacket, please.

A. A yellow jacket with white stripes.

Q. And what did you do with this jacket?

A. I loaned it to Donald Marshall.

Q. And what was the condition of this jacket when you loaned it to him?

(30) A. Good.

Q. I'll show you exhibit 3. Will you tell me what that is, please?

A. That's the jacket I loaned to Mr. Marshall.

Q. Would you look at the condition of the jacket at the present time?

A. Yes.

- 50 - ROY GOULD, Dir. Exam.

Q. Was it in that condition when you loaned it to Mr. - the accused, Donald Marshall, Jr.?

A. No.

Q. What is the difference in its appearance today and when you loaned it to him?

A. This wasn't here, the cut-

Q. You're saying this wasn't here - what do you mean by "this is not here"?

(10) A. It wasn't in that condition.

Q. What?

A. The tear.

Q. The tear on the sleeve of the jacket-

A. There was no tear on the sleeve in other words.

Q. What about the front of the jacket?

A. There was no blood stains on it either.

Q. And tell me, you loaned this jacket to Donald Marshall when you were in Shubenacadie?

A. Yes.

(20) Q. And when did you return from Shubenacadie or did you return from Shubenacadie with the accused?

A. Yes, on Friday evening.

Q. Friday evening, that is, 27th of May-

A. 28th.

Q. 28th, I'm sorry. The 28th of May, 1971?

A. Yes.

Q. Friday - I'm sorry, sir. I apologize for confusing you. You returned to where?

A. Returned to Membertou.

(30) Q. And who else was with you?

A. Just Mr. Marshall.

Q. And what time did you return?

A. Approximately 9:30 that evening.

Q. Did you stay with Mr. Marshall?

A. No, he went to his own residence.

- 51 - ROY GOULD, Dir. Exam.

Q. He went to his own home?

A. Right.

Q. Where was the jacket when he went to his own home?

A. He still had it.

Q. And did you at a later date recover this jacket?

A. Yes. About, Wednesday or Thursday of the following week.

Q. Where did you go for it?

(10) A. I obtained it from his father, Donald Marshall, Sr. I asked him to bring it over upon request of the City Police.

Q. Did you get the jacket from Donald Marshall Sr.?

A. Yes, I did.

Q. What did you do with it?

A. Turned it over to Sgt. MacDonald.

Q. Sgt. Michael MacDonald?

A. Yes.

Q. City of Sydney Police Force?

A. Yes.

BY MR. ROSENBLUM:

No questions!

(THE WITNESS WITHDREW)

C.P.

- 52 - DONALD MARSHALL, SR., Dir. Exam.

DONALD MARSHALL, SR., being called and duly sworn, testified as follows:

- BY MR. MacNEIL: (Dir. Exam.)

- Q. Your name is Donald Marshall Sr.?

A. Yes sir.

Q. And you are the father of the accused, Donald Marshall, Jr.?

A. Yes.

Q. Who is on trial here today. Do you see him here in court?

(10) Would you point him out?

A. (Witness indicates accused.)

Q. If the Court please, let the record indicate the witness pointed to the accused, Donald Marshall Jr.

Now I show you Exhibit 3, I believe it is, the yellow jacket, did you see that yellow jacket before?

A. Yes, I did.

Q. And did you have it in your possession?

A. No, that jacket belongs to Roy Gould.

Q. Yes, but did you have it in your possession?

(20) A. I did.

Q. A week following the 28th of May, 1971?

A. Yes.

Q. And where did you get it?

A. It was in the closet in my home.

Q. And does the accused, Donald Marshall Jr., live with you at your home?

A. Yes.

Q. And what did you do with the jacket?

A. Mr. Gould asked me for the jacket, for me to give it to Mr. Gould.

(30) Q. Mr. Gould requested the jacket?

A. Yes.

- 53 - DONALD MARSHALL, SR., Dir. Exam.

Q. Did you notice the condition of the jacket when you gave it to Mr. Gould?

A. Yes.

Q. Would you look at Exhibit 3 and tell me if that is the jacket and if that is the condition in which it was when you turned it over to Mr. Gould?

A. Yes.

MR. ROSENBLUM:

No questions, my Lord.

(THE WITNESS WITHDREW)

C.P.

- 54 - SGT. MICHAEL MacDONALD, Dir. Exam.

SGT. MICHAEL MacDONALD, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. Your full name, sir?

A. Michael MacDonald.

Q. And you are a detective sergeant with the City of Sydney Police Force?

A. Yes sir.

(10) Q. And were you acting as such during the Months of May and June 1971?

A. I was.

Q. And with regard to this case, did you come into possession of any exhibits?

A. I did.

Q. What were they?

A. One jacket.

Q. Just hold it there, please. I show you Exhibit 3, do you recognize that jacket?

(20) A. Yes sir. This is the jacket that was on June 2, 1971, this jacket was turned over to me by Mr. Roy Gould. It was kept under lock and key in my possession.

Q. Until when?

A. Until June 16 when I proceeded-

Q. 1971?

A. 1971 where I proceeded to the Crime Lab in Sackville, New Brunswick. Turned this jacket over to Mr. Evers.

Q. Any other exhibits?

A. Yes sir. Brown coat and a pair of overalls.

(30) Q. I show you Exhibit 4, what is that, please?

A. This is a coat that was turned over to me on June 3, -

Q. By whom?

A. Mrs. Seale living in Westmount. It was kept in my possession until June 16 when I proceeded to Sackville, New Brunswick, to the Crime Lab with it.

- 55 - SGT. MICHAEL MacDONALD, Dir. Exam.

Q. To whom did you turn it over at the Crime Lab?

A. Mr. Evers.

Q. Any other exhibits?

A. Pair of overalls.

Q. I show you Exhibit 1. Tell me what that is please.

A. It's a pair of overalls. On June 3 it was turned over to me - 1971 - it was turned over to me by Mrs. Seale, Westmount. June 16 I proceeded to Sackville, New Brunswick, with this and turn
(10) it over to Mr. Evers at the Crime Lab.

Q. Any other exhibits?

A. Piece of tissue, kleenex.

Q. I show you an envelope marked Exhibit 2, would you look at the contents of that and tell me what that is?

A. This is tissue turned over to me by Cst. John Maloney on May 29, 1971. On June 16, 1971, I proceeded to the Crime Lab in Sackville, New Brunswick, and turned this over to Mr. Evers

BY MR. ROSENBLUM: (Cross-Exam.)

Q. Now Sergeant, you have been a member of the City of Sydney Police Force for how long?
(20)

A. Twenty-five years.

Q. And Sergeant, on this particular night, Friday, May 28 of 1971 did you attend on Crescent Street in the City of Sydney, where Mr. Seale was involved as we've heard here from witnesses this morning?

A. No sir, I did not.

Q. Did you attend at the City of Sydney Hospital later that night?

A. Yes sir, I did.

Q. At what time did you get there?

(30) A. 12:10 A.M.

Q. Just shortly after midnight. Who was there when you got there Mr. MacDonald?

A. Cpl. Martin MacDonald; Cst. Rich Walsh; Mr. Leo Curry and another young chap who helped them. I forget his name.

- 56 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. Who else?

A. Dr. Naqvi.

Q. Yes, Dr. Gaum.

A. Dr. Gaum wasn't there.

Q. All right. Dr. Naqvi, yes.

A. Dr. Virick.

Q. Now was there a young fellow there by the name of Chant?

A. Not at that time, sir.

(10) Q. All right, when did you see him? Maynard D. Chant, I'm speaking about.

A. 2:00 A.M. in the morning.

Q. 2:00 A.M. - where did you see him?

A. At the City Hospital.

Q. So you stayed there from ten after twelve until what time?

A. I left there five minutes to three in the morning.

Q. So you saw Maynard Chant there about two o'clock in the morning?
Now who was there when you saw him there?

A. Cst. Jackie Johnstone and Cst. Howard Dean.

(20) Q. Both of the City of Sydney Police Force?

A. Yes sir.

Q. All right, were you talking to Chant?

A. For a moment.

Q. How long did he stay there in your company?

A. Two or three minutes.

Q. So you just had a short conversation with him?

A. Very short. I sent him down to the police station.

Q. Quite all right. You never wear a uniform, do you Sergeant?

A. No sir.

(30) Q. Did you make yourself known to Mr. Chant as to your position?

A. The police officers brought him right in to me where I was and identified-

Q. The police officers were in uniform, that is Walsh and who else?

A. No. Howard Dean and Cst. Jackie Johnstone.

- 57 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. And you notified Mr. Chant that you were a sergeant with the City of Sydney Police Force?

A. That's right.

Q. And then, did you see him later that day, Chant?

A. Again that morning.

Q. Where at?

A. At the police station.

Q. What time would that be?

(10) A. Quarter after three, twenty after three.

Q. Who was present on that occasion?

A. Sgt. Len MacGillivray, myself, Cpl. Martin MacDonald, and Mr. Chant's father.

Q. Did you see him again after that day?

A. Again?

Q. Yes, later that day?

A. No sir.

Q. When did you next see him?

A. Sunday, following Sunday.

(20) Q. Following Sunday, who was present on Sunday?

A. That would be-

Q. Yes, that would be May 30. Who was present then and where was that that you saw him?

A. Det. Sgt. John MacIntyre and myself.

Q. Now going back to midnight, ten after twelve, at the City of Sydney Hospital when you saw Mr. Chant and you had a brief conversation, was Donald Marshall present?

A. No sir. He was in the building.

Q. Did Chant tell you anything-

(30) MR. MacNEIL:

Objection, if Your Lordship pleases. Conversation took place between the officer and Mr. Chant is inadmissible unless the accused is present.

- 58 - SGT. MICHAEL MacDONALD, Cross-Exam.

MR. ROSENBLUM:

Oh no, quite the contrary. Any statement - I'm not asking for the words that were used, my Lord. I'm asking the question as to whether or not Chant made any accusation to this witness concerning Donald Marshall, at any time-

THE COURT:

Mr. Foreman and gentlemen, will you kindly step out, please.

(12:16 P.M. JURY WITHDREW)

(10)

(VOIR DIRE)

MR. ROSENBLUM:

Cross-examination of the witness, my Lord.

THE COURT:

And you're asking him about-

MR. ROSENBLUM:

Whether any statement was made to him by Chant on that occasion in the hospital and I will lead him down to the other contacts that he had with Chant concerning Donald Marshall. My Lord, this is of such great importance to the case that I ask your usual serious consideration.

(20) THE COURT:

Every piece of evidence is important.

MR. ROSENBLUM:

This goes to the nub of the case, My Lord.

THE COURT:

Actually you are asking him in your question, you are of course asking the witness what the other man had said.

MR. ROSENBLUM:

No. I'm asking what he didn't say. I'm asking what he didn't say my Lord, not what he said.

(30) THE COURT:

You have put to him something about making an accusation.

MR. ROSENBLUM:

As to whether or not he did - as to whether or not he did.

- 59 - SGT. MICHAEL MacDONALD, Cross-Exam. (Voir Dire)

THE COURT:

In effect you're asking him what he said.

MR. ROSENBLUM:

No, my Lord. I'm putting it in a negative way.

MR. MacNEIL:

I'm saying, of course, he is making it with the word "accusation" that he is asking what the witness said. And I am submitting to you that it is completely inadmissible unless the accused was present. (10) And I know of no rule that would allow a conversation to go in that may work to the detriment of the accused when he wasn't present. Now take for example - I don't know what my learned friend expects to get from this answer - but let us suppose the answer came back, like this, "Yes, he said that Donald Marshall Jr. stabbed Sandy Seale on Crescent Street." Then my Lord, I suggest that it wouldn't take two minutes for the Appellate Division of the Supreme Court to rule on that.

MR. ROSENBLUM:

I will be responsible for my questions.

(20) MR. MacNEIL:

I'm saying it is inadmissible regardless of who asks it.

MR. ROSENBLUM:

If I was foolish enough to ask a question like that, I would be bound by the answer. I wouldn't ask a question unless I know what it's going to be - what he has to tell me. I don't ask a foolish question. I got to know the answer before I ask the question. If Your Lordship would like time to deliberate on it, we're going to the heart of the case.

THE COURT:

(30) You are asking him, Mr. Rosenblum, to give you a conversation which he had with Mr. Chant with respect to an accusation. You're asking him about conversation which he had with Mr. Chant and however you may phrase it, it gets to what Chant said to him.

MR. ROSENBLUM:

Or didn't say - or didn't say! This is the point. Silence!

- 60 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

THE COURT:

And isn't that also applicable, the matter of silence-

MR. ROSENBLUM:

The only way I can bring it out, My Lord, is to ask him whether Chant told him anything. That's how you prove silence.

THE COURT:

It is now near recess and I will take the time to look into it. But I would say, Mr. Rosenblum, that my inclination is that you
(10) cannot ask this witness anything about conversation.

MR. ROSENBLUM:

Or the lack of it!

THE COURT:

Anything that has to do with the conversation inasmuch as the accused man was not there.

MR. ROSENBLUM:

I'm well aware of that, my Lord. However, I will await your final ruling and I will put the question to him directly for the purposes of the record, My Lord, that we will have the record to
(20) show the question and either its admissibility or inadmissibility.

THE COURT:

Give me your question. Take your time in phrasing it.

MR. ROSENBLUM:

I'm leading up to the question now, my Lord.

Q. You say you had a conversation with Maynard Chant at about ten minutes after midnight on May 28 - no, May 29, Saturday morning at City Hospital.

A. (Witness indicates negatively.)

Q. 2:00 A.M. - you got there ten after twelve?

(30) A. That's right.

Q. About 2:00 A.M., Saturday morning, May 29?

A. That's right.

Q. And you talked to him for a few minutes?

A. That's right.

- 61 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

Q. Is that what you said, two or three minutes? . . .

A. Two or three minutes.

Q. Was Mr. Marshall there or not?

A. Not in person, no. He was in the building.

Q. He wasn't present when you were talking to Maynard Chant?

A. That's right.

Q. And Maynard Chant was aware of the fact that you were a Sergeant of the Sydney Police Force?

(10) A. Yes sir.

Q. And he had been escorted into your presence by two other police officers?

A. Yes sir.

Q. Did Maynard Chant on that occasion say anything to you to implicate Donald Marshall Jr., the accused in this case, in connection with the injuries which had been sustained by the late Sandy Seale?

THE COURT:

Don't answer that question!

(20) MR. ROSENBLUM:

There's the question.

THE COURT:

That's your question. Have you any other questions?

MR. ROSENBLUM:

Yes, My Lord.

THE COURT:

Assuming that I rule that you cannot ask that question.

MR. ROSENBLUM:

Yes, I have other questions. Naturally not in defiance of any (30) ruling.

THE COURT:

No, but nothing to do with this particular aspect of the case. If I rule-

MR. ROSENBLUM:

I have other questions aside from that.

- 62 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

THE COURT:

As I said before, my inclination at first blush is to say you cannot ask this question. In deference to yourself and Mr. Khattar I will utilize some of the time allotted to lunch to look into it.

MR. MacNEIL:

I would, of course, just like to have noted on the record my objection to the question, if Your Lordship pleases.

THE COURT:

(10) You have.

MR. MacNEIL:

I had before but then he rephrased it.

THE COURT:

Have the jury brought in.

(12:28 P.M. JURY POLLED, ALL PRESENT)

THE COURT:

Mr. Foreman, gentlemen, during the course of a criminal trial, from time to time points of law arise which must be discussed and decided upon in the absence of the jury. There are points arising quite frequently which we dispose of in your presence but when we come to something that is crucial, it is better, you understand, to have it dealt with in the absence of the jury. And when you are called in, if it is allowed, you will hear it. Now we are in the midst of one of these now. You will go to your lunch. Come back but don't come in the court room. Stay in your room. We will continue in your absence as we would have done had we not had the break until we make a decision on the point which has been raised. You, Sgt. MacDonald, of course, will not discuss the case with any one in the interval - with no one. I can rely on you.

(12:30 P.M. JURY WITHDREW

AND COURT RECESSED)

- 63 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

(2:15 P.M. COURT RESUMED: SGT. MacDONALD RESUMED THE STAND

THE COURT:

In connection with the matter which took up our attention prior to adjournment, may I say now something which I omitted to say before, to those who are here and interested in this case from the point of view of the news media. May I caution them against reporting anything of this case which is not in the presence of the jury. Whatever is said in a trial within a trial must not
(10) be reported by the press in any way.

Now as to the point which was well raised by Mr. Rosenblum and Mr. Khattar and I wish to commend counsel for the Defence for the care in which they have proceeded with this matter as is to be expected of them. I said prior to recess that I was of the opinion that the question could not be put to the witness. In the interval I have had an opportunity to go into the law and I may say too that I have now looked over the cases which the Defence counsel have submitted to me. From Phipson, which is one of the leading authorities, we find, Eleventh Edition, at p.268, enunci
(20) of fundamental rule -

"It is a fundamental rule of evidence at common law that hearsay evidence is inadmissible. In criminal proceedings the rule continues to prevail although there are many exceptions, both statutory and at common law, to it."

No doubt during the course of this trial we may have occasion to perhaps deal with some exceptions to the hearsay rule.

"Simple as this fundamental is, in principle if not in application, there nonetheless exists 'a superstitious awe ...about having any truck with evidence which involves A's telling the court what B said.' Conspicuous uncertainty exists amongst practitioners, magistrates and judges as to what evidence does and does not fall within the hearsay rule. The reasons for this widespread misunderstanding are threefold

The author goes on to give the reasons. Then he goes on to say:

"The exact scope of the rule is therefore patently unclear. It would appear however that the general statement of the rule which appears at the commencement of this section (which I'm reading) represents the essence of the rule and is well supported by authority."

- 64 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

THE COURT: (cont'd.)

I have read the case of Rex v. Rewniak cited in C.R. 1949, p.12 and the other cases cited by the Defence and I have particularly read the reference to the very famous case at the time, Rex v. 1947, which went to the Supreme Court of Canada. While I repeat again that I appreciate very much the reasons for the submission both the legal reasons and the practical reasons from the point of view of the Defence, I have come to the conclusion that in (10) this particular case, in the circumstances of this case, my ruling is that the witness cannot be questioned about the conversation which he had with Mr. Chant. That he had conversation with Mr. Chant or with anybody else is a verbal fact which can be brought out but what the conversation was or alternatively, what it did not consist of, is in my opinion inadmissible in the case.

Now Mr. Rosenblum, you said it was a very material point in the case. I say I appreciate very much your position. Nonetheless Crown Counsel in his opening remarks made it quite clear that (20) the person was going to be called and undoubtedly will be called. Indeed, it would be unthinkable that he wouldn't be. Therefore that witness will be available and will be subject to cross-examination as to things he said at the time and any point you may very well have in regard to his testimony can be established and brought out at that time.

MR. ROSENBLUM:

But My Lord, the difficulty following Your Lordship's ruling is that I will be bound to follow the same with regard to the witness Chant.

(30) THE COURT:

No, no-

MR. ROSENBLUM:

But my Lord the accused was not present either!

THE COURT:

No, Mr. Rosenblum. What Mr. Chant said or did not say, coming

- 65 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

from Chant will be available, will be open to you in cross-examination: the story that he will no doubt tell, when he first told it; why he did; what he said - as to these matters I don't know but it's not going to come out from the mouth of the present witness.

MR. ROSENBLUM:

But may through Chant, notwithstanding the absence of the accused.

THE COURT:

(10) Notwithstanding the absence-

MR. ROSENBLUM:

Thank you!

I take exception to Your Lordship's ruling for the matter of the record, My Lord.

THE COURT:

Mr. Rosenblum, it is the right of counsel, both counsel for the Defence and for the Prosecution, to raise all matters of law. It is my lonely responsibility to rule upon them and for the conduct of this trial, my ruling will prevail.

(20) MR. ROSENBLUM:

I accept it, my Lord.

THE COURT:

Whether I am right - who is there in this world who can say that he never made mistakes, is a matter which may, may, if necessary be looked into at some future time.

So that as to the fact that Mr. Chant was questioned in the hearing and subsequently, you have that if you wish. But the converse of my rule is not-

MR. ROSENBLUM:

(30) I will certainly obey Your Lordship's ruling.

(2:25 P.M. JURY POLLED, ALL PRESENT)

- 66 - SGT. MICHAEL MacDONALD, Cross-Exam.

BY MR. ROSENBLUM: (Cross-Examination continued)..

Q. Now Sgt. MacDonald, you told us before the jury retired that you went to the City Hospital in the City of Sydney about ten after twelve and who was present and that at about two o'clock in the morning, which would be Saturday morning, the 29th day of May, Maynard Chant arrived: right?

A. That's right.

Q. Now when did you next see Mr. Chant?

(10) A. Approximately three o'clock.

Q. In the afternoon?

A. In the morning, an hour later.

Q. Where did you see him?

A. At the police station.

Q. And for how long a period were you in his company?

A. Oh, ten minutes.

Q. Who else was present?

A. Cpl. Martin MacDonald, Sgt. Len MacGillivray, Mr. Chant's father.

Q. Mr. Chant's father - do you know how it came about that Mr.

(20) Chant's father was there? Do you personally know?

A. I believe he was called to the station.

Q. Called?

A. Yes.

Q. All right. We're into three o'clock in the morning, right?

A. Right.

Q. When did you next see Mr. Chant, Maynard Chant?

A. On May 30.

Q. May 30, the following day, Sunday?

A. Yes sir.

(30) Q. Where at?

A. In the town of Louisbourg.

Q. Where at in the town of Louisbourg?

A. Well I don't know the names of the streets out there.

Q. Well was it on a street?

A. It was on a street, yes.

- 67 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. Who was with you?

A. Det. Sgt. John MacIntyre.

Q. What time of the day?

A. In the afternoon.

Q. Was there any particular reason you met him on the street or was that by arrangement or-

A. No sir, no.

Q. You just happened to meet him on the street?

(10) A. We went to Louisbourg to-

Q. To see him and you met him on the street?

A. Yes sir.

Q. Was he walking?

A. He was with some other fellows.

Q. Walking?

A. In the area.

Q. Walking or driving?

A. No, he was walking, on foot.

Q. Did he get into the police car?

(20) A. Yes sir.

Q. And how long were you and Sgt. John MacIntyre in the company of Maynard Chant on that particular occasion?

A. Maybe a couple of hours.

Q. So now we're up to about what time?

A. Five o'clock Sunday afternoon.

Q. Five o'clock Sunday afternoon-

A. Five-thirty.

Q. All right, when did you next see him?

A. Can't recall now, not right off-hand.

(30) Q. The next day?

A. I couldn't say.

Q. Well you did see him later?

A. I might have seen him once more during the week. I don't know which day it was.

- 68 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. Where would it have been?

A. Could have been up the police station.

Q. In Sydney?

A. Yes sir.

Q. Were you talking to him?

A. No, I wasn't.

Q. Were there other police officers talking to him at the time you saw him?

(10) A. No.

Q. Well, what was he doing?

A. He was in the front ^{office} of our detectives' office.

Q. Detectives' office?

A. Yes sir.

Q. How long was he there?

A. I couldn't say, sir; I was back and forth, in and out. He was sitting there.

Q. Over what period of time did you observe him in the detective's office of the city hall?

(20) A. Sometime in the afternoon-

Q. Yes, over what period of time - would you say you were in and out over what period of time?

A. Well from two o'clock to five.

Q. What day of the week would that have been?

A. I couldn't say.

Q. How long after this particular Sunday you and Sgt. MacIntyre were talking to him in Louisbourg from two o'clock until five o'clock?

A. I couldn't give you the exact data.

(30) Q. Would you try to put your mind to it now because we may not have you on the witness stand again? This is the time to extract all the information from you. Just think about it.

A. No, I couldn't give you the exact day, sir. I was on other work pertaining to this-

- 69 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. Well I'm sure you had other work-

A. -I was in and out so I couldn't give you the exact day.

Q. Would it have been two days later?

A. I couldn't say, sir.

Q. Tell me Sergeant, when was Marshall arrested on this charge that he is facing trial today?

A. I believe it was June 4.

Q. June 4?

(10) A. I believe, on Friday.

Q. What day of the week would that have been?

A. June 4 on Friday, I believe. I wasn't in on the arrest.

Q. No, but you became aware of it. You were involved in the investigation.

A. Yes, but I was away at the time of the arrest.

Q. Yes, but you knew about it after it happened?

A. Oh yes, yes.

Q. That would have been a week after the events on the night of May 28: right?

(20) A. Yes.

Q. Had you seen the accused, Mr. Marshall, during that week?

A. The week of-

Q. During the time from the night of May 28-

A. Oh yes, I seen him several times.

Q. Tell us about the times you saw him.

A. On May 29, he was at the police station.

Q. That was on a Saturday morning.

A. Saturday morning.

Q. How long was he there?

(30) A. Four or five hours.

Q. And who was talking with him?

A. Nobody in particular.

Q. What was he doing, just sitting there looking at the walls for four or five hours?

A. He was there.

- 70 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. He was there, I know, but what was he doing there? What was he doing there? Who was talking to him? Were you?

A. No sir.

Q. You didn't speak to him the whole time he was there?

A. No, I didn't have any conversation.

Q. Well did you see anybody else having a conversation with him?

A. No sir.

Q. Well where was he? Was he standing for four hours or five hours?

(10) A. He was sitting around.

Q. Where at? Sitting around where?

A. In the Detectives' office, outside the front office and out in the alleyway, the driveway where the police cars are, he was smoking out there, back and forth.

Q. What was he doing there? For four or five hours, what was he doing there?

A. He was asked to be there by Sgt. MacIntyre.

Q. Yes, so he came there as a result of that. Now he got there, in response to a request by Sgt. MacIntyre. What happened when

(20) he got there? He stayed there four or five hours. What happened during that four or five hours?

A. I couldn't say sir. He was there.

Q. All right. When did you see him again?

A. Sunday morning.

Q. Where did you see him?

A. At the police station.

Q. How long was he there then?

A. Four or five hours.

Q. Was anybody talking to him?

(30) A. Ah-

Q. Or was he all alone for four or five hours and speaking to nobody as he was the day before, in your opinion. On Sunday, what happened when he was there for four or five hours?

A. On Sunday, we had him for a line-up Sunday morning.

- 71 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. Who was talking to him was my question.

A. Sgt. MacIntyre might have spoke to him.

Q. Well did you see anybody talking to Marshall?

A. No sir.

Q. On Sunday when he was there for four or five hours?

A. That's right.

Q. Nor on Saturday when he was there for four or five hours?

A. That's right.

(10) Q. All right. What about Monday? Monday, now let's get the date.

A. Monday would be the 31st.

Q. Yes, 31st of May, that's right. What about Monday?

A. No, I didn't see him any more, sir, until - I think that's the last time I saw him.

Q. Last time you saw him until after he was arrested?

A. Yes.

Q. Now were you up on Crescent Street at around midnight on the night of April 28, Sergeant, when the ambulance arrived, Curry's ambulance?

(20) A. No.

Q. What officers were there to your knowledge? I understand Richard Walsh was there.

A. Cpl. Martin MacDonald; Cst. Howard Dean; Cst. Jack Johnstone. Two police cars, two men in each car.

Q. Now if I inadvertently mentioned April 28, my learned friend draws my attention to it, I meant May 28. You understand that?

A. Yes.

(THE WITNESS WITHDREW)

C.P.

- 72 - OSCAR SEALE, Dir. Exam.

MR. MacNEIL:

My Lord, I'm going to ask your permission. It's a technical matter. I realize they are not on the indictment, but for continuity of possession of the exhibits. Det. MacDonald just said that he received the exhibits from Mrs. Seale. I would like to call Mr. and Mrs. Seale to prove continuity of the exhibit.

THE COURT:

Yes.

(10) OSCAR SEALE, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. Your name, sir, is Oscar Seale?

A. Yes.

Q. And you're the father of the deceased, Sandy Seale?

A. I am.

Q. And on the night that this event took place, the 28th of May, 1971, did you obtain any of the exhibits we have here in court from anywhere?

A. Yes, I did.

(20) Q. From where?

A. From the City of Sydney Hospital.

Q. What did you obtain?

A. Well I obtained a various amount of clothing.

Q. Pardon.

A. I obtained various clothing, plus boots.

Q. I show you Exhibit No. 1: do you recognize those?

A. Yes.

Q. What are they?

A. They are a pair of pants I took from the hospital, belonged to my son.

(30)

MR. ROSENBLUM:

You can lead him, Mr. MacNeil.

BY MR. MacNEIL:

Q. Thank you.

Those are the trousers you obtained from the hospital that you

- 73 - OSCAR SEALE, Dir. Exam.
LEOTHA SEALE, Dir. Exam.
son was wearing the night in question?

A. Yes.

Q. What other pieces of clothing?

MR. ROSENBLUM:

You can lead him. It would be the brown jacket.

BY MR. MacNEIL:

Q. Exhibit 4, a brown jacket?

A. Yes.

(10) Q. You obtained that from the hospital?

A. Yes.

Q. You recognize the jacket as being the one your son was wearing
the night in question?

A. Yes.

Q. What did you do with these exhibits?

A. Well I gave them-

Q. Did you take them home and give them to your wife?

A. Yes.

MR. ROSENBLUM:

(20) No questions.

(THE WITNESS WITHDREW)

LEOTHA SEALE, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. Your full name, Mrs. Seale?

A. Leottha Seale.

Q. And you are the wife of the last witness?

A. Yes.

Q. Wife of Oscar Seale and mother of the deceased, Sandy Seale?

A. Yes.

(30) Q. I show you Exhibits 1 and 4: did your husband give you these?

A. Yes.

Q. Did you keep them in your possession until you turned them over
to Det. Sgt. MacDonald?

A. I did.

MR. ROSENBLUM:

No questions, my Lord.

(THE WITNESS WITHDREW)

- 74 - PATRICIA HARRIS, Dir. Exam.

PATRICIA HARRIS, being called and duly sworn, testified as follows
BY MR. MACNEIL: (Dir. Exam.)

- Q. What is your full name, please?
 A. Patricia Ann Harris.
 Q. You will have to speak up much louder than that.
 A. Patricia Ann Harris.
 Q. And how old are you?
 A. Fourteen.

(10) Q. What grade are you in school?

A. Eight.

BY THE COURT:

Q. Miss Harris, you're fourteen years of age?

A. Yes.

Q. You're in grade eight?

A. Yes.

Q. Do you go to church?

A. Yes, sometimes.

Q. Pardon?

(20) A. Sometime.

Q. Sunday School - have you been to Sunday School?

A. No.

Q. Never?

A. No.

Q. Do you know what it means to tell the truth?

A. Yes.

THE COURT:

Actually, she had been sworn. I was looking at my notes and she was sworn. Her height deceived me, Mr. MacNeil. However,

(30) I will go through some questioning to satisfy myself that the swearing of this young woman was in order. I think it is.

BY THE COURT:

Q. You understand what it means to tell the truth?

A. Yes.

- 75 - PATRICIA HARRIS, Dir. Exam.

Q. What exactly did you do just now when you swore?

A. I swore to tell the truth.

Q. Before whom did you take this oath?

A. Pardon me.

Q. Before whom did you take the oath?

A. The Court, Jury.

Q. Do you remember the words - "So Help You God"?

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

(10) Q. So Help You God?

A. Yes.

Q. You've taken the oath before God?

A. Yes.

Q. Would you venture to say what happens to anyone who tells a

A. It's perjury.

Q. It is perjury. What is perjury? What is your idea of perjury?

A. Well, if you don't tell the truth, you go to jail, or school for girls.

Q. You appreciate then the significance of the oath that you have

(20) taken, what it means?

A. Yes.

Q. I'm sure you are satisfied of the seriousness of what you are about to say today?

A. Yes.

Q. That you are going to tell the truth?

A. Yes.

THE COURT:

I am satisfied and I have no doubt that Miss Harris is one who understands the nature of the oath and appreciates the significance

(30) of what it means not to tell the truth. I am satisfied and you may proceed.

MR. MacNEIL:

Thank you, my Lord.

- 76 - PATRICIA HARRIS, Dir. Exam.

BY MR. MacNEIL:

Q. I believe I got your name. Did I ask you where you lived?
Where do you live?

A. 5 Kings Road.

Q. Kings Road, that's in the City of Sydney here, County of Cape Breton, Province of Nova Scotia?

A. Yes.

(10) Q. As a matter of fact, it's just across the pond from the front of this court house, is it not?

A. Yes.

Q. And where were you on the evening of the 28th of May, 1971?

A. St. Joseph's Dance.

Q. You will have to speak up loud, now.

A. Yes.

Q. Where?

A. St. Joseph's Dance.

Q. And that's held at the Parish Hall on George Street in the City of Sydney?

(20) A. Yes.

Q. And how long did you stay at the dance?

A. Oh, until about 10:30.

Q. And what did you do at 10:30?

A. Well my boyfriend was asked to leave the dance, so I went with him down to Wentworth Park, in front of the bandshell and we stayed there for a while. First we got a package of cigarettes. We went down and sat on the bench. A friend walked by and we asked him for a match and lit the cigarette. After that we left and come on to Crescent Street.

(30) Q. All right now, what time would this be?

A. Oh, about quarter to eleven.

Q. Quarter to eleven! Are you sure of that, Miss Harris?

A. Left the dance about 10:30, we were there for a while; we walked back of the bandshell and came up on Crescent.

- 77 - PATRICIA HARRIS, Dir. Exam.

Q. How long did you remain in the park, the bandshell?

A. Just to smoke the cigarette.

Q. All right, you say it was what time when you decided to leave Wentworth Park and the bandshell?

A. I'm not sure - twenty to eleven, around there.

Q. And as you proceeded along Crescent Street, who was with you?

A. My boyfriend, Terry Gushus.

Q. And which direction were you walking along Crescent Street?

(10) A. Going towards my house.

Q. Well, which direction is that? In other words, you were walking towards the direction of Kings Road, were you?

A. Yes.

Q. Walking from the bandshell over in this direction - did you walk past in front of the court house here?

A. Yes.

Q. All right now, as you were walking along Crescent Street, would you tell His Lordship and the gentlemen of the jury what took place?

(20) A. Well we met Junior Marshall and we asked him for a match. He gave us a match and-

MR. ROSENBLUM:

A little louder, please.

WITNESS:

-spoke to Junior for a while. And we left.

BY MR. MacNEIL:

Q. Spoke to who?

A. Junior.

Q. Junior - who is Junior? Donald Marshall Jr., the accused?

(30) A. Yes.

Q. And had you known him before this time?

A. I met him at the dance-

Q. So you knew him. For how long a period?

A. Not too long.

- 78 - PATRICIA HARRIS, Dir. Exam.

Q. Well-

A. Do you mean, how long I knew him?

Q. Yes! Over what period of time had you known him?

A. Ever since I went to the dances.

Q. All right, when did you start going to the dances?

A. This year, last year.

Q. Last year or this year?

A. Last year.

(10) Q. Can you tell us how many months or how many years you knew him?

A. About six or seven months.

Q. I beg your pardon.

A. Six or seven months.

Q. Prior to this evening that you saw him. Was there anyone with Mr. Marshall, the accused?

A. I think so, yes.

Q. Did you have any conversation with Donald Marshall, yourself?

A. Not long - like I said - he asked "Were you at the dance" and

(20) I said, "Yes."

Q. Then what did you do?

A. Well, Terry lit the cigarette and then we just said "Bye" and went home.

Q. And did you see the accused, Mr. Marshall, any more that evening?

A. No.

Q. What time did you arrive home?

A. I don't know. I'm not sure.

Q. Was there more than one person with Mr. Marshall?

A. Yes.

(30) C. How many were there?

A. I don't know really but there wasn't many there.

Q. I beg your pardon.

A. There wasn't many there.

Q. What?

A. There wasn't many there.

- 79 - PATRICIA HARRIS, Dir . Exam.

Q. Now what do you mean by that?

A. Well, there wasn't a crowd of people.

Q. How many people that you know were there?

A. Just Junior.

Q. Just Junior?

A. Yes.

Q. I may have confused you. Miss Harris, you saw Donald Marshall and did you see anyone else there?

(10) A. Yes.

Q. Who was it, do you know?

A. (No response.)

Q. Answer me, please.

A. No.

Q. And how many people did you see there with Donald Marshall?

A. One.

Q. The one person.

A. Yes.

Q. Tell me, did you have any physical contact with Junior Marshall at that time?

(20)

A. Yes.

Q. What was that?

A. He held my hand.

Q. And did you notice anything about his condition insofar as liquor is concerned?

A. No, not really. You couldn't tell.

Q. You couldn't tell whether he had been drinking or not.

A. No.

Q. Did you have a conversation with Mr. Marshall while you were there on Crescent Street?

(30)

A. Just a short one.

Q. And do you see Donald Marshall here in court today?

A. Yes.

Q. Would you point him out to the court please?

A. (Witness points to the accused.)

- 80 - PATRICIA HARRIS, Dir. Exam.
Cross-Exam.

MR. MacNEIL:

Let the record indicate that the witness points to the accused.
I think that's all, my Lord.

BY MR. ROSENBLUM: (Cross-Exam.)

Q. Now Miss Harris, Junior Marshall spoke pleasantly to you and to your boyfriend, Terry Gushue?

A. (No audible response.)

Q. Didn't he?

(10) A. He just asked if I was at the dance.

Q. Pardon me.

A. He just asked if I was at the dance.

Q. And when Terry Gushue asked him for a match, he gave him a match?

A. Yes.

Q. And your encounter with Junior Marshall on that occasion was pleasant. There was nothing unpleasant about it, was there?

A. No.

Q. And it was only for a moment or two?

(20) A. Yes.

Q. I can't hear you.

A. Yes.

Q. Now can you say under oath that there was anybody at all with Junior Marshall that time or if there were other people around but you can't say if they were with him?

A. Well someone was there but I never paid any attention-

Q. No, you couldn't say if it was a woman, a man, a child?

A. No.

(30) Q. So you really are not sure if there was anybody with Junior Marshall at all, are you?

A. I knew he was there.

Q. Pardon?

A. Sort of knew he was there.

- 81 - PATRICIA HARRIS, Cross-Exam.

- Q. Knew who was there?
 A. The person.
 Q. You can't say if it was a man, woman or child, can you?
 A. No.
 Q. You say you knew there was somebody around?
 A. (No audible response.)
 Q. You will have to answer so we can get it down?
 A. Yes.
 (10) Q. And that other person that you're speaking about, they never had any conversation with you or with Terry Gushue?
 A. No.
 Q. Or with Junior Marshall while you were there?
 A. No.
 Q. And so the sum net result is that you and Terry Gushue went to a dance, you left the dance, you went to the bandshell for a cigarette, a smoke, whatever it was; then you started to walk towards your home over there on Kings Road, and on the way you met Junior Marshall who gave Terry Gushue a match
 (20) is that right?
 A. Yes.
 Q. And that's all. Isn't that it?
 A. Yes.
 Q. Anything else?
 A. No.

(THE WITNESS WITDREW)

MR. MacNEIL:

I will call Mr. Gushue.

TERRANCE GUSHUE, being called, came forward.

BY MR. MacNEIL:

Q. How old are you, sir?

A. Twenty.

MR. MacNEIL:

Proceed.

- 82 - TERRANCE GUSHUE, Dir. Exam.

TERRANCE GUSHUE, being called and duly sworn, testified as follows
BY MR. MacNEIL: (Dir. Exam.)

Q. What is your full name, sir?

A. Terrance Patrick Gushue.

Q. Where do you live?

A. Fuller Terrace, Apartment No. 2

Q. What is it?

A. Fuller Terrace, Apartment No. 2.

(10) Q. No. 2. That's in the City of Sydney, here?

A. Yes.

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

A. Yes.

Q. What day of the week was that?

A. Friday?

Q. And did you leave the dance?

A. Yes.

Q. With whom?

(20) A. With Patricia Harris, Robert Patterson.

Q. What time would this be that you left the dance?

A. 10:30, around that.

Q. And where did you go?

A. Down toward Wentworth Park.

Q. And where did you go in Wentworth Park?

A. On one of the benches, next to the bandshell.

Q. What did you do there?

A. Had a cigarette and talked.

Q. Did you leave the park?

(30) A. Yes, we left the park after about twenty minutes.

Q. So what time would this be now that you're up on Crescent St

A. About ten to eleven, around that.

Q. Which direction did you go in?

A. Towards Kings Road.

- 83 - TERRANCE GUSHUE, Dir. Exam.

Q. That is towards the building that we're in now?

A. Yes.

Q. And over beyond, over to Kings Road and did anything happen on Crescent Street?

A. We met Junior Marshall and I bummed a match off him.

Q. Did you know Junior Marshall before?

A. Yes.

Q. How long have you known him?

(10) A. About a year.

Q. Do you see him here in court today: will you point him out to the court, please?

A. There.

Q. Let the record indicate the witness points to the accused. Did you have any conversation with him?

A. Just asked him for a match.

Q. What took place?

A. He gave me the match. I lit the cigarette. He was talking to Patricia for a second.

(20) Q. Did you see him any more that evening?

A. No.

BY MR. KHATTAR: (Cross-Exam.)

Q. Mr. Gushue, was there anyone else at the park that you knew that evening?

A. There was a friend of mine, talked to him for a second, just give me a match.

Q. Anyone else?

A. Robert Patterson.

Q. Someone else?

(30) A. I don't know. I'm not sure.

Q. Were there many people at the park that-

A. Oh, couples walking back and forth.

Q. Was there anything unusual going on while you were there?

A. No.

- 84 - TERRANCE GUSHUE, Cross-Exam.

Q. You were only at the park about fifteen or twenty minutes?

A. Yes sir.

Q. Where exactly on Crescent Street did you see Mr. Marshall?

A. By the Green Apartments Building.

Q. Was there some other person or persons there in the vicinity?

A. Yes, someone on the sidewalk.

Q. More than one?

A. No, one.

(10) Q. Just one. Were you able to recognize that person?

A. No sir.

Q. How far would that person be from Marshall?

A. About six to eight feet I guess - about six to eight feet.

Q. Was the light that bad that you couldn't tell who that person-

A. I never noticed. I just cupped my hands down and lit a cigarette. I just put my hands in front of my face to cup the match from the wind, and lit a cigarette.

Q. But when you were going by, did you pass this other person?

A. Yeah, we had to pass him.

(20) Q. You had to pass him but you didn't recognize that person.

Was it a man or a woman?

A. I'm not sure.

Q. You're not sure. Are you sure it wasn't two people?

A. I don't know.

Q. There may have been two people?

A. I don't know. I thought there was only one.

Q. You're not sure of that. You may have been mistaken with regard to the number?

A. I think there was only one. I think there was only one.

(30) Q. Do you remember what the weather was like on that evening?

A. No.

Q. Did you sit on the grass?

A. No, park bench.

- 85 - TERRANCE GUSHUE, Cross-Exam.

Q. Do you know if it was wet or dry?

A. Dry I guess.

Q. You think it was dry?

A. I think so.

(THE WITNESS WITHDREW)

C.A.

-86- MAYNARD CHANT, being called was examined by the Court.

THE COURT:

I am perfectly satisfied that Mr. Chant appreciates the nature of an oath and can be sworn.

MAYNARD CHANT, was duly sworn.

MR. ROSENBLUM:

May it please Your Lordship, I move for the exclusion of all other witnesses who are to be called on behalf of the Crown and who have not already testified.

(10)

MR. MacNEIL:

My Lord, I suggest to you that this motion certainly would have been appropriate at the beginning of the case. We've now gone through thirteen - the two parents - fifteen witnesses.

THE COURT:

Can you give me any authority?

MR. MacNEIL:

Not off-hand, I can't.

THE COURT:

(20)

Motion granted.

All who may be called by the Crown and have been subpoenaed to give evidence in this case by the Crown who have not yet been called are asked to leave and you will be called in. Once you are called in and given your evidence, you may remain in the court room. For the time being, all who have not been called and are going to be called, must leave the court room.

(The Informant, Det. Sgt. MacIntyre permitted to remain)

MR. MacNEIL:

(30)

I don't know. I just want to make sure that that also includes the witnesses for the Defence, exclusion for any witnesses for the Defence.

THE COURT:

Are you asking for that?

MR. MacNEIL:

Yes, I'm asking for that, My Lord.

-87- MAYNARD CHANT, Dir. Exam.

THE COURT:

Are there any witnesses present?

MR. ROSENBLUM:

Your Lordship if you make a ruling that they should be excluded, it will be complied with.

THE COURT:

So made!

MAYNARD CHANT, testified as follows:

(10)

BY MR. MacNEIL: (Dir.Exam.)

Q. What is your full name, sir?

A. Maynard Vincent Chant.

Q. How old are you?

A. Fifteen.

Q. What grade are you in?

A. Seven.

Q. What school do you go to?

A. Louisbourg High School.

Q. Where do you reside at the present time? Where do you live?

(20)

A. Louisbourg.

Q. Were you in the city of Sydney on the evening of the 28th day of May, 1971?

A. Yes, I was.

Q. Where were you?

A. I just come from church.

Q. And come from church to where?

A. Went down the park - down the Pier, at that time to go on the bus with a fellow from Louisbourg. He was at another house so I walked around for a while down the Pier. Getting kind of late so I decided well I better go up and call for him and see if he was there. I went up and he already left.

(30)

Q. What did you do?

A. I started out towards the bus terminal.

Q. What bus terminal?

A. Think it was Canadian Lines.

-88-MAYNARD CHANT, Dir. Exam.

Q. Acadian Lines - do you know what street that's on in Sydney?

A. Bentinck Street.

Q. I see. You went to Acadian Lines bus terminal on what you believe to be Bentinck Street in the city of Sydney, County of Cape Breton, Province of Nova Scotia? What time of the day or night was this?

A. It was late at night.

(10)

Q. Well what do you mean, late at night?

A. Well it was around twenty-five to twelve.

Q. Did you get your bus?

A. No I never.

Q. Speak up good and loud now.

A. No, I never.

Q. Why?

A. Because the bus had already left.

Q. What did you do then?

A. I started down - I started to go down Beacon Street towards the park -

(20)

Q. Beacon Street?

A. The street on the - the bus terminal street.

Q. Bentinck Street?

A. Yes, Bentinck.

Q. Yes.

A. And I crossed across the bridge and started to walk down the tracks.

Q. The railway tracks?

A. The railroad tracks, yes.

(30)

Q. Can you read a plan?

A. Yes sir.

Q. Now I'll show you this plan, exhibit 5 - would you stand before the jury. There's Bentinck Street, sir. Can you tell us where you proceeded on that evening?

A. Proceeded down Bentinck Street and up onto the tracks.

-89-MAYNARD CHANT, Dir. Exam.

Q. That's down Bentinck Street in a southerly direction?

A. Yes.

Q. And you came to the railway tracks?

A. Yes.

Q. Then what did you do?

A. I started to proceed down the tracks.

Q. In what direction? There's north there, sir.

A. Northwest -

(10) Q. Look at that again.

A. There is north -

Q. Yes.

A. East -

Q. Yes, in an easterly direction?

A. Yes.

Q. You started to walk along the railway tracks?

A. Yes.

Q. Did you notice anything as you walked along the railway tracks?

(20) A. I noticed a fellow hunched over into a bush.

Q. Good and loud now.

A. I noticed a fellow hunched over into a bush.

Q. Where would that be on this plan?

A. Right there.

Q. You're pointing to a bush that is opposite a light -
(The Court directs to mark plan with "X")

A. (Witness marks plan) (Shown to the Court and Jury)

(30) Q. The bush that you have marked with the letter "X" is the tenth bush from Bentinck Street when counting in an easterly direction along the railway tracks? That is the bush in front - between the houses marked E.F. MacDonald and N.A. McQuinn. Is that correct, the tenth bush?

MR. ROSENBLUM:

I think the witness has to do the demonstrating, My Lord and give the evidence instead of my learned friend who I know is trying to be helpful.

-90-MAYNARD CHANT, Dir. Exam.
BY MR. MACNEIL:

Q. When you observed this man did you recognize him?

A. No sir.

Q. Beg your pardon?

A. No sir.

Q. What did you do?

A. Oh, I kept on walking down a little farther. I walked down a little farther and looked back to see what he was looking at. He was looking over towards the street. So I looked over and saw two people over there.

Q. Did you recognize either of these people?

A. No. And I guess they were having a bit of an argument.

Q. Why do you say that?

A. I don't have no reason why.

Q. Could you hear what they were saying?

A. No.

Q. What took place?

A. Well one fellow, I don't know, hauled something out of his pocket - anyway - maybe - I don't know what it was. He dropped it towards the left side of the other fellow's stomach.

Q. What took place, when then?

A. Fellow heeled over and that's when I ran.

Q. You ran from the scene?

A. Yes sir.

Q. Can you describe these two men, what they were wearing?

A. The fellow what had keeled over, he had a dark jacket and pants and that on. The other fellow had, I thought it was a yellow shirt at first but after a while he caught up to me and it was a yellow jacket.

Q. Tell me, sir, before you ran from the scene did you recognize either of these two gentlemen?

A. No sir.

Q. Then what did you do?

A. I ran down the tracks and cut across the path right onto - I don't know the name of the street - the street up from George Street - I started to walk up towards the bus terminal and I saw a fellow running towards me. I turned

(10)

(25)

(30)

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MAYNARD CHANT, Dir. Exam.

around and started to walk up the other way. He caught up to me and by that time I recognized him and it was a Marshall - Marshall fellow.

Q. Donald Marshall?

A. Donald Marshall.

Q. That's the accused in this case here. Do you see him in court here today?

A. Yes.

(10)

Q. Would you point him out to the court please?

A. There.

Q. Let the record show the witness points to the accused. Whereabouts did he catch up to you?

A. I guess it was about two houses down, maybe three.

Q. Can you point out on exhibit 5 where he met you on Byng Avenue?

A. Right there.

Q. Around the area in which is noted what?

A. Red house, Mattson.

(20)

Q. The area of the house shown as Mr. Mattson's on exhibit 5, on Byng Avenue. Now what took place there, sir?

A. He caught up to me and I stopped and waited. He said, "Look what they did to me." He showed me his arm. Had a cut on his arm and I said, "Who" and he told me there was two fellows over the park. By that time another couple, like two girls and two boys come along and he stopped them and asked them for their help, you know. They said, "What could we do to help?" and the girl gave him a handkerchief to put over his arm. He showed his arm and it was bleeding. So they kept on going. A car come along and he flagged that down -

(30)

Q. Who flagged it down?

A. Marshall. And we got in the car and drove over to where the fellow was at.

Q. Where what fellow was at?

A. Over - the body on Crescent Street I guess and the fellow was at Crescent Street.

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MAYNARD CHANT, Dir.Ex:am.

Q. Was this where you had seen the action you had described earlier in your evidence?

A. Yes sir.

Q. About the two men that were there and then one man keeling over and so on, this area in which this took place?

A. Yes sir.

Q. Were there any street lights in the area?

A. There might have been one or two. I think at least one, as far as I know of.

(10)

Q. Tell me, did you recognize Mr. Marshall as being the man that you had -

MR. ROSENBLUM:

No, wait now. Have to be very careful here.

MR. MacNEIL:

All right, let's have a ruling.

THE COURT:

I won't say any more except to say, don't lead the witness. What do you say as to such and such -

(20)

MR. MacNEIL:

I'll try not to lead him, My Lord.

BY MR. MacNEIL:

Q. You say you recognized Donald Marshall on Byng Avenue when he come up and talked to you?

A. Yes.

Q. What was he wearing?

A. He was wearing at that time a yellow jacket and dark pair of pants.

Q. I show you exhibit No. 3, what is that, please?

(30)

A. It's a jacket that Marshall wore.

Q. Jacket that Marshall wore and what colour is it?

A. Yellow.

Q. When Marshall caught up to you on Byng Avenue - I'm sorry, did you give us what he said - "Look what they did to me" did he say anything else?

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MAYNARD CHANT, Dir. Exam.

A. He said that his buddy was over at the park with a knife in his stomach.

Q. Then you say, sir, that Marshall flagged down a car and you went where?

A. Over to Crescent Street on the other side of the park.

Q. Back to Crescent Street?

A. Yes.

Q. Is this in the area in which you marked an "X" on exhibit 5?

(10)

A. Yes.

Q. What did you find there?

A. There was fellow keeled over on the street, he was laying down on the street. It was on this here street on the side where the tracks was at.

Q. Tell me, how long would this be after you saw the man keeled over that you mentioned, before you ran from the scene? How much time would have passed?

A. About ten minutes, fifteen minutes.

(20)

Q. What did you do?

A. I got out of the car, ran over to where the fellow was lying on the ground and jumped down beside him.

Q. Did you recognize that man?

A. No sir.

Q. You didn't know him before?

A. No.

Q. What took place?

A. Well, Donald Marshall got out of the car and come over near the body and at that time, he stood there for a minute; another fellow come over - I don't know if he or the other fellow went up and called the ambulance -

(30)

Q. Where did Marshall go when he came back? Did he go near the body?

A. No.

Q. Where did he stand?

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MAYNARD CHANT, Dir. Exam.

A. He stood behind the body for a minute and then he flagged a cop car down.

Q. Was he standing in front of Seale as he lay on the ground or the man that was laying on the ground or behind him?

A. Behind him.

Q. Behind him?

A. Yes sir.

Q. And did he assist you with Mr. Seale in any way?

(10)

THE COURT:

Mr. MacNeil -

MR. MacNEIL:

I'm sorry, My Lord.

BY MR. MacNEIL:

Q. - the man who was laying on the street?

A. Not that I know of.

Q. And what took place?

A. Well after he flagged the car down, the police got out and went over by the body and Marshall - Donald Marshall showed 'em his arm. He got in the police car and they took him to the hospital. And by that time the ambulance had arrived and they took the fellow up and put him into a - wait now, a -

(20)

Q. Speak up now.

A. A stretcher and put him in the back of the ambulance.

Q. And then?

A. Then I started to leave to go home.

Q. Did you go home?

A. I was on my way going home when a truck picked me up and give me a drive far as the dance hall - St. Joseph's dance hall. I got out and started to hitch-hike, started to walk up Hardwood Hill when a police car come along and stopped and asked me what my problem was and I said - I just got in the car and they said, "Was you down the park?" and I said, "Yes". And they -

(30)

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MAYNARD CHANT, Dir.Exam.

MR. ROSENBLUM:

What was that?

MR. MacNEIL:

"Were you down the park?" and he said "Yes".

BY MR. MacNEIL:

Q. No more conversation though about what took place between yourself and the officers. What did you do then?

(10) A. The officers drove me down to the hospital and they said, "Wait for a minute" and they went out and got another police officer - forget his name - he come over in the car and sit down with me and asked me -

Q. No, no - he asked you -

THE COURT:

No conversation; just what you did.

BY MR. MacNEIL:

Q. And what did you do then?

(20) A. After that, two policemen drove me down to the police station and the police officer called my father for me and my father come in and picked me up.

3:25 P.M. COURT RECESSED TO 3:55 P.M.

3:55 P.M. JURY POLLED, ALL PRESENT

BY MR. MacNEIL:

Q. Now Mr. Chant, let us return to the evening in question, 28th day of May, 1971, you said that you started to walk down the railway tracks?

A. Yes sir.

Q. And you saw - what was the first thing you observed as you walked along the tracks?

(30) A. A fellow into the bushes hunched over.

Q. Did you recognize that man?

A. No sir.

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MAYNARD CHEWY, Dir. EXAM.

Q. Had you seen him before?

A. I might have.

Q. Do you know his name today?

A. Yes.

Q. Tell me, as you went down the tracks you stopped to look over to see what he was observing.

A. Yes.

Q. Now you say at that time you did not recognize either of the parties?

(10)

MR. ROSENBLUM:

Excuse me, My Lord. With all deference, My Lord, to my learned friend and yourself, we have already had this, Your Lordship, in direct examination. I don't think Crown Counsel has the privilege of having the witness examined in chief twice. Now this is the position we're in at this moment, My Lord, and whether repetition or emphasis will make it any stronger on the part of the Crown case, I leave to Your Lordship. But I feel that he is re-examining on evidence already elicited by his direct examination previous to the adjournment or recess.

(20)

MR. MacNEIL:

If Your Lordship pleases, I refer you to page 34 of the transcript of the evidence of the Preliminary Hearing. This is what I am laying the groundwork for.

THE COURT:

Are you asking that this witness be declared hostile?

MR. MacNEIL:

Yes, My Lord. Not necessarily hostile but hostile it may be or the previously sworn testimony that he gave in the court below.

(30)

THE COURT:

Inconsistent?

MR. MacNEIL:

Definitely what he is saying here today.

MR. ROSENBLUM:

Now, My Lord, we better have the jury out.

3:58 P.M. JURY WITHDREW

-97- MAYNARD CHANT, Dir. Exam. (VOIR DIRE)

MR. MacNEIL:

Now, My Lord, on page 33 of the transcript of evidence of the Preliminary Hearing of this witness, I will read over to you what he said -

- "As you walked along the tracks, what did you observe?
First thing I noticed was a guy hunched over the bush watching something.
Did you recognize that man?
(10) Not at first but after I did.
Can you identify him today?
Yes.
Do you know his name today?
I don't think I can remember.
Would you point him out to the court, please?
The witness points to John Pratico.
Is that the man?
Yes.
(20) That is the man you saw behind the bush watching something?
Yes.
In which direction was he looking?
He was looking down that way. He was looking towards the street.
Do you know which street?
I think it was Crescent Street.
What did you do?
I looked back to see what he was looking at. Then I saw two guys talking to one another.
And do you know who these two guys were?
(30) I didn't know Sandy Seale at the time but I didn't recognize Donald Marshall at the time either until afterwards.
After what?
After what happened.
Tell me, what did you see take place if anything?
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 out a knife out of his pocket.
(40) That's Donald Junior Marshall who you see in court here today
Would you point him out to the court please?
The witness points to the accused.
You saw him what - haul a knife out of his pocket-

MR. ROSENBLUM:

Excuse me. Now direct Your Lordship's attention for the purpose of the record that the witness who is about to be impuned by my learned friend is on the witness stand listening to what my learned friend has to say. I just draw that to Your Lordship's attention and for the record.

-98- MAYNARD CHANT, Dir. Exam. (VOIR DIRE)

MR. MacNEIL:

- "The witness points to the accused.
 You saw him what?-
 Haul a knife out of his pocket.
 What if anything did he do with the knife?
 Drove it into the stomach of the other fellow.
 What?
 Drove it into the stomach of the other fellow.
 (10) What did the other fellow do?
 I just saw him keel over and I ran."

I'm submitting if Your Lordship pleases-

THE COURT:

Wherein is the inconsistency?

MR. MacNEIL:

- Well he said that he recognized the man behind the bush, that he had seen him before; that he didn't know his name but he recognized him and he pointed him out as being John Pratico. Then he also said that he saw Donald Marshall haul a knife out
 (20) of his pocket which my recollection of the evidence is that he didn't say today - plunged it into the stomach of the other man.

THE COURT:

Question him now. Is John Pratico in the court room now?

MR. MacNEIL:

No, he is excluded, My Lord.

THE COURT:

All right, you question him again about the questions you were starting to ask him when Mr. Rosenblum objected.

BY MR. MacNEIL:

- (30) Q. Now you say that you - I believe I know where to pick it up. You started to walk down the railway tracks and you noticed this man behind the bush?
 A. Yes.
 Q. Did you recognize that man?
 A. No.
 Q. Did you know him by sight?
 A. The only time I knew him by sight was when he was up the police station that Sunday, that following day.

-99- MAYNARD CHANT, Dir. Exam. (VOIR DIRE)

Q. All right now, as you stood there and watched these two men on Crescent Street, what did you see take place?

A. Saw two men arguing and one fellow hauled an object from his pocket.

Q. What was that object?

A. I'm not sure.

Q. And what did he do?

A. He drove it into the other fellow's stomach.

(10) BY THE COURT:

Q. Who was that man?

A. Pardon.

Q. Who was the man that hauled out the object and drove it-

A. Donald Marshall.

BY MR. MacNEIL:

Q. Pardon.

A. Donald Marshall.

THE COURT:

Did he say that before?

(20) MR. MacNEIL:

No, my Lord. He did not say that before. In his evidence he said he did not recognize him. I think in his evidence at the Preliminary Hearing of this inquiry he named Donald Marshall, the accused, and pointed him out to the court as the man who hauled a knife from his pocket and plunged it into the abdomen-

THE COURT:

What were you about to say, Witness?

WITNESS:

I didn't recognize him at that time but after I recognized him.

(30) BY THE COURT:

C. After, when?

A. After when he met me on the other side of the street after I ran.

Q. You recognized him-

A. When he come up to me.

-100- MAYNARD CHANT, Dir. Exam. (VOIR DIRE)

Q. -as being Donald Marshall?

A. Yes.

Q. But more, what do you say about the man that you recognized as Donald Marshall and the person who you saw doing something hauling out something and putting it into the stomach of the other person: what do you say about that?

A. The only thing I know is-

(10) Q. Never mind - tell me, do you or don't you - what do you say as to who that person was?

A. I don't know who that person was.

Q. You say you don't know who the person was who pulled out the knife and stuck it in Seale's body?

A. No, I didn't.

BY MR. MacNEIL:

Q. And you don't even know now if it was a knife or not-

MR. ROSENBLUM:

This is cross-examination, my Lord!

THE COURT:

(20) Wait a moment!

Read me back again - did he say that Donald Marshall stuck the knife in the other man's body?

BY MR. MacNEIL:

"Tell me, what did you see take place if anything?
(Line 25, page 34)

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

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.

That's Donald Junior Marshall who you see here in court to
Yes.

Would you point him out to the court please?

The witness points out the accused.

You saw him what?

Haul a knife out of his pocket.

What if anything did he do with the knife?

Drove it into the stomach of the other fellow.

-101-MAYNARD CHANT, Dir. Exam. (VOIR DIRE)

"What?

He drove it into the stomach of the other fellow."

BY THE COURT:

Q. Did you say that in the court below?

A. Yes, I did.

Q. You said that?

A. Yes.

Q. What are you saying today?

(10) A. The only reason I knew his name, I mentioned his name because I knew his name - well, I knew who it was after, but up the police station there - I don't know how to put it.

Q. The man you saw afterwards you recognized as Donald Marshall?

A. Yes.

Q. Did you see him do anything to the other man?

A. Yes.

Q. You did?

A. Yes.

Q. What did you see him do?

(20) A. I saw him haul an object out of his pocket and drive it into the stomach of the other man.

THE COURT:

That's what you say he didn't say earlier?

MR. MacNEIL:

That's right, my Lord. I'm saying that he said distinctly and clearly in his evidence, as far as I can read it in plain English.

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

(30) Not an object, a knife! This is unquote-

MR. ROSENBLUM:

May it please Your Lordship, I must protect the rights of the accused by placing my objection on the record. We are now, my Lord, going through a proceeding in the absence of the jury

-102- MAYNARD CHANT, Dir. Exam. (VOIR DIRE)

whereby, with all deference, My Lord, and as respectfully as I can say it, you yourself have interrogated the witness; my learned friend has interrogated and cross-examined the witness my learned friend has read out aloud in the presence of the witness the testimony in the court below and I say, my Lord, that my learned friend's conduct at any rate, is now attempting to condition the witness for his testimony when the jury is brought back into this room. That's the position I want to have on the record.

(10)

THE COURT:

I have to satisfy myself, Mr. Rosenblum, if this witness in my opinion proves adverse - by leave of the court may prove that witness made at other times a statement inconsistent with his present testimony. Has he made a statement inconsistent with present testimony?

MR. ROSENBLUM:

Not in my opinion, no!

THE COURT:

(20) I regret that I defer you.

MR. ROSENBLUM:

Thank you.

THE COURT:

I will allow you to draw - in the presence of the jury when they return - to draw the testimony that this witness gave in the court below, read it to him and then ask him if he said that, if it is true. Bring back the jury.

(4:08 P.M. JURY POLLED, ALL PRESENT)

BY MR. MacNEIL:

Q. Do you recall, Mr. Chant, giving evidence at the Preliminary Hearing of this trial on Monday, July 5, 1971?

A. Yes.

Q. And do you remember being asked the following questions and answers: I refer to page 34 - line 16 -

"Q. What did you do?

(10) A. I looked back to see what he was looking at. Then saw two guys talking to one another.

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

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.

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

(20) A. Well first, the only thing I saw - I saw them talking and I guess they were using some - were using kind 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.

Q. That's Donald Junior Marshall who you see in the courtroom here today? Would you point him out to the court please? (The witness points to the accused). You haul him what - haul a knife out of his pocket. What if anything did he do with that knife?

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

MR. ROSENBLUM:

(30) My Lord, is he going to read four or five pages and ask the witness, "did you say all that", or is he going to take it piece-meal?

MR. MacNEIL:

I can do it either way. Do you want me to do it individual questions, My Lord?

THE COURT:

It is up to yourself.

MR. MacNEIL:

I will do it individual questions, then.

(40) BY MR. MacNEIL:

Q. Do you recall giving evidence to the following questions that I am going to read to you -

"Q. What did you do?

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

Do you remember giving that evidence?

A. Yes.

Q. And do you remember the question,

"And do you know who these two guys were?

(10)

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

Do you remember that?

A. Yes.

Q. Yes.

"Q. After what?

A. After what happened."

Do you remember saying that?

A. Yes.

Q. Do you remember the question,

(20)

"Tell me, what did you see take place if anything?" and the following answer, "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."

Do you remember giving that evidence?

A. Yes.

Q. Is it true?

A. Yes.

(30) Q. All right now, do you recall the following question:

"That's Donald Junior Marshall who you see in court here today. Would you point out to the court, please. (And witness points to the accused.)"

Do you remember doing that?

A. Yes.

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MAYNARD CHANT, Dir. Exam.

Q. And then the question was,

"You saw him what?

A. Haul a knife out of his pocket."

Do you remember that question and that answer?

A. Yes.

Q. And is it true?

A. Yes.

(10) Q. "Q. What if anything did he do with the knife?

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

Do you remember giving that -

A. Yes.

Q. - question and answer?

"What?

He drove it into the stomach of the other fellow."

Do you remember that question and answer?

A. Yes.

Q. Is it true?

A. Yes.

(20) Q. "Q. What did the other fellow do?

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

Do you remember that question and answer?

A. Yes.

Q. Is it true?

A. Yes.

MR. ROSENBLUM:

Now My Lord, has Your Lordship declared the witness to be
adverse or hostile?

THE COURT:

I gave the Crown permission to do exactly what he has done.

(30)

-106- MAYNARD CHANT, Dir. Exam.

MR. ROSENBLUM:

Well is this cross-examination, My Lord or not? I would like to have a ruling, My Lord, as to whether or not the witness has been declared to be hostile or adverse as the case may be so that I'll know how to treat the witness myself.

THE COURT:

- (10) I would not have permitted Mr. MacNeil to read these questions if I did not in my opinion consider that by his contradiction, by his contradiction, from the evidence that he gave previously with the evidence that he gave in the court below that to that extent he was adverse and I gave leave to the Crown to prove that the witness made at other times a statement inconsistent with the testimony he gave this afternoon, but before such last mentioned proof can be given, circumstances of the supposed statement sufficient to designate the particular occasion shall be mentioned to the witness and he shall be asked whether or not he did make such a statement. And that's my ruling!
- (20)

MR. ROSENBLUM:

Thank you.

THE COURT:

Any further questions?

MR. MacNEIL:

No further questions, My Lord.

BY MR. ROSENBLUM: (Cross-Exam.)

- Q. Now Mr. Chant, you're fifteen years of age. You'll have to speak up because the jury have to hear you as well as His Lordship. And you're in grade seven?
- (30)

A. Yes.

Q. Did you miss any grades in school or have to repeat any grades?

A. I repeated grade six and grade two and I think grade five.

Q. So out of the seven grades that you're in, you repeated three grades, two, five and six?

A. Yes.

Q. What school is it that you've been going to?

A. High school at Louisbourg.

Q. I thought that the high school was for higher grades. Perhaps I'm wrong. It was in my day.

A. The junior high -

(10) Q. Oh, yes. Were you in grade six last year?

A. Yes.

Q. For the second time?

A. I got promoted from grade six this year into grade seven.

Q. Yes, but you had been repeating grade six?

A. Yes.

Q. Now, do I understand you to say - and anything that I ask you that you don't understand, don't answer me until you ask me again, will you. I want you to be sure of what I'm asking you?

(20) A. Yes.

Q. Now take your hand down. That's better. Now do I understand you to say that you recognized Donald Marshall when you met him on Byng Avenue as you were going toward George Street to try and get a lift to Louisbourg; is that correct; is that what you're saying?

A. Well -

Q. Is that what you're saying?

A. I don't understand.

(30) Q. Good, I'll ask you again. You met up with this man here, Donald Marshall, Jr., when you were heading for George Street to try and get a lift to Louisbourg; is that right? Did you?

A. After what happened?

Q. Yes.

A. Not - well I headed for the bus terminal.

-108- MAYNARD CHANT, Cross-Exam.

Q. Well where did you meet Donald Marshall after whatever you saw?

A. I saw him coming - running over the bridge and I turned around and started to walk -

Q. Where did you meet Donald Marshall?

A. On -

Q. Where did you meet him? You said you met him. You flagged down a car. You drove with him.

(10) A. I don't know the street. Well you go down the street from the bus terminal and you turn off, the street towards George Street - it's on that street there -

Q. Let me show you the plan because I think you told my learned friend that you can read a plan. Take the plan. You show us the street where it was that you met him. There's Bantnick Street over there.

A. There -

Q. All right, what's the name of it?

A. Byng Avenue.

(20) Q. Byng - B-Y-N-G - is that right?

A. Yes.

Q. All right. So I'm suggesting to you that you met - what you're saying is you met Donald Marshall on Byng Avenue as you were heading for George Street to try and get a lift to Louisbourg. Right?

A. Yes.

Q. And the first thing he said to you, was, "Look what they did to me!", isn't it?

A. Yes.

(30) Q. And there was blood on his arm then, wasn't there?

A. No -

Q. Well you saw -

A. - a few minutes after there was blood.

Q. A few minutes afterwards, okay. Now, this question, and you know you're under oath and I know you're not enjoying this. Under oath as you are, can you swear before God that Donald Marshall whom you met on Byng Avenue is the man you saw previous; are you sure of that, under oath before God?

A. Uh, you mean, like, uh - Donald Marshall, when I seen him on that there street that you were talking about, is the same fellow over on Crescent Street?

Q. Yes.

A. No, I'm not sure.

Q. You're not sure. So in other words, Maynard, that is your first name?

A. Yes.

(10) Q. When you were talking about the fact that you saw two men over there on Crescent Street arguing, you can't swear that one of those men was Donald Marshall, can you?

A. No sir.

Q. No! All right. Now, and as a matter of fact you can't swear under oath - just take your hand down and the jury will hear you better because a lot of people do this - that the man whoever he was, that he pulled out a knife; you didn't see a knife or anything like that, did you?

A. Well -

(20) Q. You didn't see a knife -

A. Listen -

Q. Go ahead.

A. I saw a long shiny object -

Q. Yes, but you can't say it was a knife, can you?

A. I appeared to myself that it was a knife.

Q. You thought it was.

A. Like the statement I gave here today -

A. Ah, I don't care what you said today. I'm asking you -

MR. MacNEIL:

(30) Let him answer the question, My Lord.

MR. ROSENBLUM:

I'll let him. I'll let him. I won't be unfair to him, My Lord. He is young and I was young once.

BY MR. ROSENBLUM:

Q. You thought it was a knife?

A. Yes.

Q. You thought it was a knife. All right. Well, so Donald Marshall met up with you or you met with him on Byng Avenue?

A. Yes.

Q. And the first thing he did was, he said, "Look what they did to me!" and he showed you the scar on his arm and from which blood showed a few minutes later?

A. Yes.

Q. And then the next thing he did was he flagged down a car didn't he?

A. No. There was a couple walking by -

(10) Q. A couple walking by.

A. And he stopped the couple and asked them for help.

Q. For help?

A. Yes.

Q. And did you get a drive then in somebody's car?

A. After a few minutes later -

Q. Got a drive -

A. After they left, yes.

Q. A drive up to Crescent Street?

A. Yes.

(20) Q. And that's where you saw the body of Sandy Seale or the body of a man laying on the street?

A. Yes.

Q. All right. When you got there, when you got there - now we're up on Crescent Street, Donald Marshall then tried to - not only tried but he succeeded in flagging down a police car, didn't he?

A. Yes.

Q. He flagged down a police car?

A. Yes.

(30) Q. And he was telling them about these two man who had stabbed Seale and stabbed him, wasn't he?

A. Yes.

Q. And not only that, not only that, how many police were there?

A. At that time?

Q. At that time?

A. I think there was only two.

-111- MAYNARD CHANT, Cross-Exam.

Q. Two police. All right. Then you tried to help the man on the ground?

A. Yes.

Q. Now how many police arrived after that?

A. Two more.

Q. Two more police. And the ambulance - were you there when the ambulance came?

A. Yes.

(10) Q. And the police were there then?

A. Yes.

Q. Now Maynard, at no time that evening, at no time that evening in the company of at least four policemen which you were, weren't you -

A. Yes.

Q. - did you say to any of those policemen, that this boy here stabbed the man on the ground, did you?

A. No, I didn't.

Q. And how long would you say that you were in the company of Donald Marshall that night?

(20)

A. Oh, 15, 20, 25 minutes, something like that.

Q. Maybe half an hour and then finally you saw Donald Marshall being taken to the hospital for attention to his wounds?

A. Yes.

Q. And then you headed for home?

A. Yes.

Q. And the police picked you up?

A. Yes.

Q. So you were brought back to the police station?

(30)

A. Yes.

Q. About what time would that be, Maynard? You know, roughly, I know you can't tell me for sure.

A. Between one and two.

Q. Between one and two and how long did you stay at the police station between one and two, how long were you there?

A. Oh, five minutes.

-112- MAYNARD CHANT, Cross-Exam.

A. Three.

Q. Do you see any of them here today? Stand up, Mike.

A. Yes, Mike.

Q. Would you say this was one of the officers here, he was one of them?

A. Yes.

Q. He was one of them. Det. Sgt. MacIntyre, here was he one of them?

(10) A. No.

Q. He wasn't. All right, do you know the names of the other two were speaking to you?

A. No.

Q. And at no time did you tell any of those officers on that occasion that this boy, Donald Marshall, Jr., was the one who stabbed the fellow who was laying on the ground, Sandy Seale.

MR. MacNEIL:

Objection, if Your Lordship pleases, register it for the record.

(20)

MR. ROSENBLUM:

Answer me first.

MR. MacNEIL:

Don't answer first!

MR. ROSENBLUM:

All right.

MR. MacNEIL:

If Your Lordship please, in connection with the argument that we had before, the presence or absence of the accused - I know Your Lordship indicated before that you were going to overrule me but I would like to have it on the record that I object to any conversation that took place in the absence of the accused.

(30)

THE COURT:

He is now perfectly within his rights to cross-examine this witness on the subject matter that he was proceeding with.

-113- MAYNARD CHANT, Cross-Exam.

MR. ROSENBLUM:

Thank you.

BY MR. ROSENBLUM:

Q. Now, your answer to my question.

A. No.

Q. You didn't tell them. And so, how did you get home - how did you get home the early morning hours of that morning?

A. My father.

(10) Q. Your father came in and took you home?

A. Yes.

Q. When did you next see any police officers?

A. I think it was Sunday.

Q. That would be the next day. You know it was early Saturday morning that you were at the police station -

A. Yeah, the next day then.

Q. Yes, so it would be Sunday. Where else did you see them?

A. They come out -

(20) Q. They come out to Louisbourg, yes. And how long were you talking to them Sunday?

A. Oh, wasn't too long.

Q. How many police officers were you talking to?

A. Two.

Q. And were they the same police officers that you were talking to in the police station in the early hours of Saturday morning?

A. No, it wasn't.

Q. They were two different police officers?

A. One was the same one.

(30) Q. Would that be Sgt. Michael MacDonald?

A. Yes.

Q. And at no time did you tell Sgt. Michael MacDonald on Sunday or the other officer or anybody else that it was Donald Marshall who stabbed this fellow who fell down on the street?

MR. MacNEIL:

Objection - for the record, My Lord!

THE WITNESS:

A. No.

BY MR. ROSENBLUM:

(10) Q. All right. Now on Monday, did you see police again? You know, the following Monday. You see, we talked about Friday night, Saturday, Sunday in Louisbourg, and now we're talking about Monday.

A. I can't remember.

Q. How about Tuesday?

A. (Response inaudible.)

(20) Q. No. All right. Now just to clear up something and to help the court and the jury and everybody concerned with this case, the only reason, I'm suggesting to you, that you mentioned in the court below, in the magistrate's court, from which my learned friend read to you, that it was Donald Marshall who pulled out this object that looked to be a knife was because the police told ^{you} it was Donald Marshall who did it.

A. No, I never.

Q. They're the ones who told you the name Donald Marshall. Don't look at them! Look at me!

A. No.

Q. What?

A. Uh -

(30) Q. Is that the only reason you said that in your evidence in the magistrate's court, was because it was the police told you it was Donald Marshall who did that?

A. Police didn't tell me Donald Marshall did it at all.

Q. No, and you didn't tell the police that he did it?

A. No -

Q. No -

A. Not until afterwards.

Q. Oh.

A. See, I told them a story that wasn't true.

-115- MAYNARD CHANT, Cross-Exam.

Q. Oh! I'm coming to that. When did you tell this untruthful story? When did you tell them that?

THE COURT:

(10) Now may I just make one point clear. This is not a TV program and if there will not be absolute decorum, the whole court room will be cleared. This is too serious a matter for any levity. Please keep that in mind. I don't mean to say that people can't speak and whisper if they wish but I do not want any expressions such as I have heard at this moment.

BY MR. ROSENBLUM:

Q. When did you tell that untrue story to the police, Maynard?

A. Sunday afternoon.

Q. When?

A. Sunday afternoon.

Q. That was in Louisbourg?

A. That was in Sydney.

Q. Oh, I thought you met them in Louisbourg Sunday -

(20) A. I did, but they took me in -

Q. Oh, they took you in to Sydney. How long did you stay at the police station in Sydney on Sunday afternoon?

A. Six o'clock.

Q. How long a period of time - a half hour, an hour, two hours?

A. Oh, approximately two hours.

Q. Two hours. And who was questioning you at the police station on Sunday afternoon after you had been speaking to the police in Louisbourg in the earlier afternoon? Who

(30) were the police then?

A. I don't know the policeman's name.

Q. Do you see anybody here?

A. Yes.

Q. Would you point him out, please?

A. I'm not too sure but I think it was that one there.

Q. You mean Det. Sgt. John MacIntyre here?

A. Yes.

-116- MAYNARD CHANT, Cross-Exam.

Q. Was he one of them?

A. Yes.

Q. Was that your first contact with him?

A. Yes.

Q. Sunday afternoon, in Sydney?

A. Well I met him earlier in the morning but I didn't tell him the story until the afternoon.

Q. It was in the afternoon you had the long talk with him?

(10) A. Yes.

Q. He was questioning you?

A. Yes.

Q. And another police officer was questioning you. There was two of them?

A. Yes.

Q. And for several hours?

A. Yes.

Q. That's all My Lord.

BY MR. MacNEIL: (Redirect Exam.)

(20) Q. You told my learned friend in your evidence that you told the police an untrue story. Why did you tell them an untrue story?

A. Because I was scared.

MR. ROSENBLUM:

Excuse me, just a moment. Now, My Lord, we're going into the recesses of a man's mind. There's an old saying that even the devil doesn't know what's going on in a man's mind, it's not tryable and for him now to give explanation as to why he did something or why he lied or why he lied or why he lied yesterday or why he lied in the police station -

(30)

THE COURT:

I know. Any further questions?

MR. MacNEIL:

No, no further questions but do I understand that Your Lordship won't allow that question.

-117- MAYNARD CHANT, Redir.Exam.

THE COURT:

That's right. Now I want to get something for my record.

BY THE COURT:

- Q. When was it that you told them the untrue story?
 A. On Sunday afternoon.
 Q. On Sunday afternoon in Sydney?
 A. Yes.
 Q. Did you at any time tell them the true story?
 (10) A. Yes.
 Q. When was that?
 A. I don't know what day it was.
 Q. Was it after you had told them first the untrue story?
 A. Yes.
 Q. Now witness will you look at that - when you saw those two people, you saw one man do something to the other.
 A. Yes.
 Q. Do you recall anything about the clothing that was worn by the man who did that something to the other person?
 (20) A. Yes.
 Q. What do you recall?
 A. That he had a yellow jacket on and a dark pair of pants.
 Q. What if anything do you say as between the clothing that was worn by this man whom you saw do something and the clothing that was worn by the accused, Donald Marshall?
 A. I don't understand.
 Q. What do you say about the clothing that was worn by this man whom you saw do something as regards the clothing that was worn by Donald Marshall whom you saw a few
 (30) minutes later?
 A. They had the same clothing.

(THE WITNESS WITEDREW)

-118- JOHN L. PRATICO, Dir. Exam.

JOHN L. PRATICO, being called, came forward.

BY MR. MacNEIL:

What is your age, sir?

MR. PRATICO:

Sixteen.

(THE COURT QUESTIONED MR. PRATICO)

THE COURT:

(10) This young man is of age and has an appreciation of the significance and nature of an oath. I am satisfied that he should be sworn.

MR. MacNEIL:

Thank you, My Lord.

JOHN L. PRATICO, being duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. What is your full name, sir?

A. John Lewis Pratico.

Q. Where do you live?

A. 201 Bentinck Street.

(20) Q. That's in the City of Sydney here?

A. Yes sir.

Q. County of Cape Breton, Province of Nova Scotia. And you were present in court since this term opened?

A. Yes.

Q. Until you were excluded as a witness in this case a few minutes ago - when I say a few minutes ago, when His Lordship ordered all witnesses to leave the court room. When you left this court room did you discuss this case with anyone?

(30) A. Yes.

Q. With whom?

A. Mr. Khattar.

Q. Anyone else?

A. Mr. Marshall.

Q. Mr. Marshall.

A. Didn't discuss the case with him. I was talking to him.

-119- JOHN L. PRATICO, Dir. Exam.

MR. ROSENBLUM:

A little louder, please.

WITNESS:

Mr. Marshall.

BY MR. MacNEIL:

Q. With Mr. Donald Marshall, Sr.?

A. Yes.

Q. The father of the accused?

(10) A. Yes sir.

Q. And as a result of this conversation that you had with Donald Marshall, Sr., what did you do?

A. Went and asked Mr. Khattar -

Q. Simon Khattar, Q.C., solicitor for the defence?

A. Lawyer.

Q. Yes, lawyer. And with anyone else?

A. No, besides Mr. MacNeil, you and Mr. MacIntyre and Mr. MacDonald.

Q. That was after an adjournment though that we had here -

(20) THE COURT:

I -

MR. MacNEIL:

There's a purpose in this, My Lord. My learned friends perfectly aware of it.

THE COURT:

Is this man to tell about what happened? That may come later.

MR. MacNEIL:

That will be coming later.

(30) THE COURT:

That may come later. I don't know. I think, Mr. MacNeil for the moment you better confine yourself to the evidence concerning the events on May 28, 1971. Then later if for any good reason you have for bringing up the events of today, we will go into it.

-120- JOHN L. PRATICO, Dir. Exam.

MR. MacNEIL:

Well, My Lord, in view of the time element, I won't be able to -

THE COURT:

Proceed with the evidence of - I have nothing before me that would warrant my listening to what has been up to now your questioning. So proceed with the questioning of the events of that night.

(10) MR. MacNEIL:

As Your Lordship pleases.

THE COURT:

I will give you every opportunity if necessary to bring up what happened today.

BY MR. MacNEIL:

Q. Do you know Donald Marshall, Jr.?

A. Yes sir.

Q. Do you see him here in court today?

A. Yes.

(20) Q. Would you point him out to the court, please. Let the record indicate the witness points to the accused. Did you see him on the 28th day of May, 1971?

A. Yes.

Q. Where?

A. By Wentworth Park.

Q. And where did you first see him that evening?

A. Up by St. Joseph's Hall.

Q. Up by St. Joseph's Hall?

A. Around that area.

(30) Q. Who was with him?

A. Sandy Seale.

Q. Did you know Sandy Seale?

A. Yes, I did.

Q. Tell me, Mr. Pratico, what did you do when you joined up with Seale and Donald Marshall, Jr.?

A. Walked down the road as far as, like around the park.

Q. Do you know the streets in the city of Sydney?

A. Yes.

Q. There's a drugstore there on what corner?

A. Corner George and Argyle.

Q. George and Argyle. Tell me, sir, what took place there if anything?

A. They went down in the park. I went the other way.

Q. Which way did you go?

(10) A. Argyle to Crescent.

Q. You went up Argyle St. To Crescent Street?

A. Yes sir.

Q. Then where did you go?

A. I went over Crescent, down Crescent Street, as far as the railway tracks, there on the railway tracks and went up behind a bush and I stayed there and I went and sat down in a squat position, kind of behind the bushes where I was sitting.

Q. What time of the day or night would this be?

(20) A. I wouldn't know.

Q. I beg your pardon.

A. I wouldn't know what time it was, What I'm thinking, it would be 11:30, quarter to twelve. I wouldn't know for sure.

Q. What were you doing behind the bush?

A. Drinking.

Q. Tell me sir, what did you observe if anything?

A. Well soon as I observed Donald Marshall and Seale talking it seemed like they were arguing.

(30)

THE COURT:

I can't hear you!

THE WITNESS:

It seemed like they were arguing.

BY MR. MacNEILL:

Q. Where was this?

A. On Crescent Street.

-122- JOHN L. PRATICO, Dir. Exam.

Q. I'll show you plan exhibit No. 5. Are you familiar with this plan?

A. Yes.

Q. Would you point out please where on the exhibit 5 that you saw the two gentlemen.

A. There. This would be the drugstore.

Q. You'll have to speak up loud now.

A. This would be the drugstore here.

(10) Q. Louder, please.

A. I went down this way here.

Q. Down Argyle Street?

A. Down Argyle to Crescent and come up here and stopped around here.

Q. Stopped in the area marked "X" on the plan.

A. In that area.

Q. Stopped in the area marked "X" on the plan. (Shown to Jury).

A. Tell me, before this evening did you know Donald Marshall?

A. Yes.

(20) Q. How long did you know him?

A. Known him ever since last summer.

Q. Did you Sandy Seale?

A. Yes sir.

Q. How long did you know Sandy Seale?

A. A couple of years.

Q. When you got behind the bush, you say you were at in the park there that you pointed out at approximately the point marked "X" on the plan, what did you observe if anything?

A. I seen Sandy Seale and Donald Marshall talking, more or less seemed like they were arguing.

(30)

Q. Did you recognize them at that time?

A. Yes.

Q. Were there any street lights in that area?

A. (Inaudible response.)

Q. Take your hand down.

A. Yes, sir.

-123- JOHN L. PRATICO, Dir. Exam.

Q. And you could recognize them at that time?

A. Yes.

Q. What if anything did you see them do?

A. Well they stood there for a while talking and arguing and then Marshall's hand come out, his right hand come out like this -

Q. What do you mean this way?

A. Come out like that, you know, and plunged something into
(10) Seale's - like it was shiny and I -

Q. Pardon me. You're confusing me. The hand came out of his pocket and, you said something about shiny. Now how does that connect in there?

A. Well it looked like a shiny object. Come out this way, you know.

Q. What did he do with the shiny object?

A. Plunged it towards Seale's stomach.

Q. Into whose stomach?

A. Seale's.

(20) Q. What did Seale do?

A. He fell. And that's the last I seen.

Q. What did you do?

A. I started running. I run up Bentinck Street.

Q. And tell me, can you tell me what Donald Marshall, Jr., the accused, was wearing the night he -

A. He was wearing a yellow jacket or shirt.

Q. And was he wearing that when you first saw him up at St. Joseph's Hall?

A. I'm not sure now. I can't remember that.

(30) Q. Where did you remember him wearing the yellow -

A. In the park.

Q. Pardon.

A. In the park.

Q. I will show you exhibit No. 3. Do you recognize that exhibit?

A. Yes sir.

-124- JOHN L. PRATICO, Dir. Exam.

Q. Beg your pardon?

A. Yes sir.

Q. What is that?

A. Jacket he was wearing.

MR. MacNEIL:

That's all, My Lord.

(Mr. Khattar requested adjournment)

BY THE COURT:

(10) Q. Where do you live?

A. 201 Bentinck Street.

Q. Listen carefully to me. I'm not going to have you locked up tonight, but I want you to remember that if anyone apart from your family - your own family - talks to you tonight, between tonight and tomorrow about this case, you are tomorrow morning to give me the name of every person who says anything to you about the case.

A. Yes sir.

Q. And as far as your family, only to the effect that you were in court and you gave evidence. Is that clear?

A. Yes sir.

Q. If anyone should come hear you to tell you what to say, or to persuade you, no matter who it is, you will tell me?

A. Yes sir.

Q. Do you understand fully what I'm saying?

A. Yes sir.

Q. On that condition, I will not have you placed in safekeeping between now and tomorrow. Is that clear?

A. Yes sir.

(30) THE COURT:

Mr. Foreman and gentlemen of the jury, we will now adjourn. Needless to say, I ask you again to make sure, of course I'm quite sure that no one will, in any way come near any member of the jury in this case. We all recognize the great importance of this matter.

(4:50 P.M. COURT RECESSED)

-125- JOHN L. PRATICO, Cross-Exam.

10:00 A.M. NOVEMBER 4, 1971 COURT PROPERLY OPENED

10:00 A.M. JURY POLLED, ALL PRESENT

MR. PRATICO RESUMED THE STAND

BY MR. KHATTAR: (Cross-Exam.)

Q. Your friends call you John?

A. Yes.

Q. I'll call you John. Do you remember May 27 of this year?

(10) A. I think it was May 28.

Q. I asked you if you remember May 27, of this year. Do you remember that date?

A. Yes.

Q. You do?

A. Yes.

Q. How old are you, John?

A. Sixteen.

Q. When were you sixteen?

A. December. Last December.

(20) Q. This past month?

A. No, last December.

Q. September of last year?

A. December!

Q. Do you drink intoxicating liquor?

A. Yes.

Q. Were you drinking on the 27th of May this year?

A. Yes.

Q. You were?

A. Drunk.

(30) Q. You were drunk on that day. On the day previous to that, the 26th of May, were you drinking on that day?

A. No.

Q. Well the day after the 27th, the 28th of May, were you drinking?

A. Yes.

Q. Were you drunk on that day too?

A. Yes.

Q. Did you go to a dance on the evening of the 28th of May?

A. Yes.

Q. You pretty well remember do you the 27th of May of this year?

A. Not pretty well.

Q. Just as well as you remember the 28th?

A. The same.

(10) Q. About the same. Did you see Donald Junior Marshall, the accused, on May 27 of this year?

A. Not the 27th.

Q. Did you see him on the 26th?

MR. MacNEIL:

Can't hear him.

THE WITNESS:

I said not on the 27th, no.

BY MR. KHATTAR:

Q. Did you see him on the 26th of May?

(20) A. I can't remember.

Q. When did you last see him before May 28 of this year?

A. I think it was the day before.

Q. That would be May the 27th. Now you're correcting your evidence are you. I asked you originally if you had seen Donald Marshall, Jr., the accused, on May 27 and your first answer as I recall, was, no. Now what is your answer, did you see him on May 27?

A. Maybe I did. I'm not sure.

Q. You're not sure. But you saw him at the dance on May 28?

(30) A. No!

Q. Oh, you didn't see him at the dance May 28. You say no?

A. No.

Q. Did you see him outside the dance hall?

A. Not near the dance hall; down the road. I believe it was him.

Q. Were you talking with him?

A. I'm not sure if it was him or not.

Q. This was on May 28?

A. Yes.

Q. 1971?

A. Yes.

Q. Approximately what time was it?

A. I wouldn't know the time.

Q. Do you have any indication - any knowledge of the time of any of the events of May 28, 1971?

(10) A. No.

Q. Were you sick at the dance on May 28 -

A. Sick?

Q. Sick, runsick?

A. Liquor sick, yes.

Q. Were you taken into the washroom and given some help by some of your friends?

A. Yes.

Q. You don't recall that time either?

A. No, my mind -

(20) Q. Was it out near the area of St. Joseph's Hall, is that the place where the dance took place?

A. Yes, St. Joseph's Hall.

Q. Where is St. Joseph's Hall located?

A. George Street.

Q. On Cottage Road?

A. I wouldn't know the road.

Q. You don't know the road. Is that some distance from Wentworth Park?

A. A little distance.

(30) Q. Approximately what distance is it?

A. I wouldn't know for sure.

Q. How long would it take you to walk, normal walk, from St. Joseph's Hall to Wentworth Park?

A. About five minutes.

Q. Did you see Oscar - Sandy Seale at the dance on that evening?

A. Yes.

Q. Did you see him outside the dance hall? When I say dance hall, I'm referring to St. Joseph's Hall.

A. No.

Q. You didn't see him? But my recollection is you told the Court you saw him later with Donald Marshall, Donald Junior Marshall?

A. That's what I said.

Q. They were walking together on George Street -

(10) THE COURT:

Just let him answer. Mr. Khattar, until I hear his answer.

MR. KHATTAR:

He had answered, My Lord, probably you didn't hear him.

THE COURT:

What was it?

THE WITNESS:

I said I saw him. I supposedly seen them but they were on George Street.

(20) BY MR. KHATTAR:

Q. You had seen them on George Street. Where on George Street?

A. Just as you come down, you come down from the dance hall, St. Joseph's Hall, you come down from St. Joseph's Hall you know -

Q. Together?

A. No. Here's how it is. I walked over from St. Joseph's Hall, eh, me, and I come down - I wouldn't know how far it is, near a house, and I met them and I walked so far and I went down Argyle Street.

(30)

Q. Let me get it clearly. You walked which way, on what street did you walk from St. Joseph's Hall?

A. George.

Q. George Street?

A. Yes.

Q. From George Street what street did you walk?

A. Argyle.

Q. Argyle?

A. Yes.

Q. Where did you see Mr. Seale and Mr. Marshall?

A. Up the road on George Street.

Q. Up the road on George Street?

A. Well on George Street, like -

Q. Do you know where Pollett's Drugstore is located on the corner of George and Argyle?

(10) A. I think that's the name of it, yes.

Q. Was it there -

A. We walked that far -

Q. You had walked that far?

A. Yes.

Q. Before you saw them?

A. No. I seen them a little before that.

Q. Well where were they? Were they on the other side of the street?

A. No, they were on the same side of the street.

(20) Q. On the same side, were they across that intersection of Argyle and George?

A. Well you know where Argyle and George are, come off -

Q. Don't ask me the questions. Just answer them.

A. Well they were on the other side of it, you know what I mean, like Argyle and George, Argyle cuts off George and they were on the other, off the intersection -

Q. They were across that intersection?

A. Not when I seen them first.

Q. They had not crossed the street?

(30) A. They had not crossed.

Q. Well what distance would separate you and them when you saw them?

A. I wouldn't know.

Q. Roughly? The same distance as separating you and me?

A. Might be a little more.

Q. They were walking together?

-130- JOHN L. PRATICO, CROSS-EXAM.

A. Yes.

Q. Did you have them under observation for any particular length of time after you first saw them?

A. Not at that time till I got down.

Q. Did they remain together until some time later that evening?

A. Well I wouldn't know that. I left them. I wouldn't know.

Q. Well then, do I take it you didn't talk to them?

A. Oh yes, I said "Hi" to them.

(10) Q. You said "Hi" to them where?

A. By the park, just before you get to the park, you know.

Q. Before you come to the park?

A. Yes.

Q. Was that on George Street, Argyle Street?

A. George Street, and Argyle Street, I believe it was them. George Street and Argyle.

Q. And you said "Hi" to them?

A. Yes. I think it was them two. I'm not sure.

Q. You're not sure it was them?

(20) A. No.

Q. At that point what distance would be separating the two of them, the same distance separating you and me?

A. No, I can't remember that.

Q. You can't remember that?

A. No.

Q. Were you closer to them than the first time you saw them?

A. I think I was.

Q. You were. Are there lights on George Street?

A. Yes.

(30) Q. Was the street well lighted?

A. Pretty well.

Q. Isn't that where vapour lights - you know what a vapour light is?

A. No.

Q. Isn't that where they're at - big yellow lights chining on the pavement?

A. I'm not sure if they're yellow lights or not.

Q. But it's well lighted?

A. Yes.

Q. Your conversation then with Mr. Marshall was "Hi"?

A. (Witness indicates affirmatively.)

Q. That's the extent of your conversation?

A. That's the extent, just that much.

Q. You didn't talk to him again until about when?

(10) A. I didn't talk to Donald Marshall any more.

Q. You didn't talk to Donald Marshall any more?

A. Nor Seale.

Q. Do you remember giving evidence before Judge John F. MacDonald?

A. Yes.

Q. Do you remember being asked this question -

MR. MacNEIL:

(20) Objection if Your Lordship please, until I find out where, when, why and under what circumstances. This witness is entitled to know if this was at the Preliminary Hearing or not. I don't know what it is.

MR. KEATTAR:

You don't. But I asked the witness and he says he remembers My Lord, My learned friend I'm not concerned with. It's the witness.

MR. MacNEIL:

(30) He may have given evidence many times before Judge John F. MacDonald. And Your Lordship, if I understood you reading the law yesterday, the witness has to be acquainted with when, where, how he made the statement.

MR. KEATTAR:

In the interests of full disclosure, My Lord, I will acquaint the witness with the occasion.

BY MR. KEATTAR:

Q. Do you remember Monday, July 5, 1971?

A. No.

Q. Don't remember the date. Do you remember giving the evidence in the Preliminary Inquiry concerning this particular charge before Judge John F. MacDonald?

A. Yes.

Q. In this court house?

A. Yes.

Q. You remember that?

A. Yes.

(10) Q. And do you remember being examined by my learned friend, Mr. Donald C. MacNeil, Q.C., present in court?

A. What do you mean? Do you mean Mr. MacNeil?

Q. Yes. The gentleman on whom I place my hand.

A. Yes.

Q. Do you remember, question, page 40.

"Q. Do you know Donald Junior Marshall?"

A. Yes, I remember that.

Q. You remember that question. Your answer was, "Yes".

Is that answer correct?

(20) A. (Witness indicated affirmatively.)

Q. I'm going to ask you the questions, give you the question and give you the answers and I'm going to ask you if you remember the statement, question and answer - and I'm going to ask you if the answer you gave is correct.

A. Yes sir.

Q. "Q. - How long have you known him? About a year." Is that answer correct?

A. Yes.

Q. The questions are correct. "Q. Do you see him in court

(30) here today? A. Yes." And then you're asked to point him out in court.

Would you recall you did or didn't?

A. I did.

Q. Take your hand away from your mouth, please.

-133- JOHN L. PRATICO, Cross-Exam.

"Did you see him in the late hours of the 28th of May, 1971?" The answer was "Yes." "Where?" The answer, "In Wentworth Park." "Did you see him before you saw him in Wentworth Park?" Answer, "I don't recall" Do you recall that question and answer?

A. I don't recall the question and answer.

Q. Is the answer correct? - "I don't recall."

A. I don't remember.

(10) Q. You don't remember that question and answer?

A. No.

Q. I'll come back to that later. "Where did you meet him in Wentworth Park?" Answer, "I went up around Crescent Street. I went down Argyle over to Crescent Street."

Do you remember that question and answer?

A. Yes.

Q. Is that correct?

A. Yes.

(20) Q. Pardon me, before you did that, - this is a question put to you. "Did you see Donald Marshall?" Answer, "I don't remember."

Do you recall the question and answer?

A. Yes.

Q. Is the question and answer correct that you gave?

A. Yes.

Q. "Did you have any conversation with him? A. "I don't remember. I believe I seen him up on the street."

Do you remember the question and answer?

A. Yes.

(30) Q. Is the answer correct?

A. Yes.

Q. "What street? Answer, "George Street."

Do you remember that question and answer?

A. Yes.

Q. "What was that conversation" - do you remember that question?

A. No.

Q. You don't remember. I'll give you the answer.

"Just talking, then I left him. I had a little bit of talk. Then I left him and went down Argyle Street." - that appears on page 40, question is line 29 and the answer is line 30 - now do you remember that answer?

A. I remember the answer.

Q. You remember the answer, so you say at that time on June 5 1971, that the answer you gave it as I have read to you?

(10) A. (Witness indicates affirmatively.)

Q. Now today, Mr. Pratico, you say that you didn't do anything but say "Hi" to Mr. -

A. That's what I can remember what I said.

Q. That's what you can remember?

A. Yes.

Q. So you did not talk with Mr. Marshall as I understand you, until when, after May 28, 1971?

A. I think it was on Saturday or Sunday.

Q. Now May 28 was on a Friday?

(20) A. Yes.

Q. What was your condition on Saturday, May 29, 1971?

A. Sober.

Q. You were sober. Now you saw Mr. Marshall on that day?

A. I'm not sure if it was Saturday or Sunday. It was the day the detectives picked me up.

Q. Pardon.

A. The day Sgt. MacIntyre sent for me.

Q. What?

A. Sent for me.

(30) Q. He sent for you?

A. Yes.

Q. I don't know what day that was.

A. It was either Saturday or Sunday I believe.

Q. I suppose Sgt. MacIntyre sent for you on more than one occasion?

A. Twice it was, he sent for me.

Q. And you talked with Mr. Marshall, I take it, on that day?

A. Yes.

Q. In fact, Mary Theresa Paul was there, when you talked with

him on that day?

A. I don't think so.

Q. You didn't talk to him with Mary Theresa Paul?

A. I talked to him. I don't remember if she was there or no

I know I was talking to him. It was Saturday or Sunday.

(10) Q. You talked to Mary Theresa Paul since May 28, 1971, didn't

you?

A. Yes.

Q. What is your answer to that?

A. Yes, I did, I talked to her.

Q. Where did you talk to her; what date after May 28?

A. I don't remember what day it was.

Q. Was that on Saturday or Sunday following -

A. No, I don't believe.

Q. Pardon.

(20)

A. I don't believe so.

Q. How many days after May 28, 1971?

A. I can't remember that. I know I was talking to her. It

wasn't too long ago.

Q. It wasn't too long, a couple of days after but what day,

you don't remember?

A. No.

Q. Did you tell Mary Theresa Paul that Marshall didn't do

the stabbing -

MR. MARSHALL:

(30)

objection to your leadership please, for the record if the

accused was not present when the remarks were made by the

MR. KHATTAR:

witness.

May I remind your Lordship of your own ruling in which

permitted the same examination by my learned friend,

Mr. Rosenblum.

-136- JOHN L. PRATICO, Cross-Exam.

THE COURT:

Mr. MacNeil, the situation is not similar. It is not similar. He is now cross-examining the witness as to something which the witness said or didn't say. It is not what somebody told him. If he were asked, what did Mary Theresa Paul say - that would be different.

MR. MacNEIL:

Yes, I realize, My Lord.

(10) THE COURT:

I made the ruling on that yesterday.

MR. MacNEIL:

I just want my objection on the record.

THE COURT:

You have drawn to his attention the place and the time where this conversation took place.

MR. KHATTAR:

I'm going into that detail, My Lord.

BY MR. KHATTAR:

(20) C. Where did you see Mary Theresa Paul?

A. Oh, the day I seen her she was at my place. She was coming with Gordie Lynch.

C. She was with whom?

A. Gordie Lynch.

C. Gordie Lynch. Where is your place, Mr. Pratico?

A. 201 Bentinck Street.

C. That is in the City of Sydney, County of Cape Breton, Province of Nova Scotia?

A. Yes.

(30) C. While there, did you make a statement to her that Marshall, that is, Donald Junior Marshall, the accused in this case, didn't do the stabbing?

A. I don't remember that.

C. Are you prepared to say you did not make the statement?

A. I'm not saying I didn't make it. I'm just saying I can't remember.

-137- JOHN L. PRATICO, Cross-Exam.

Q. Was there any particular reason why you wouldn't remember making such a statement?

A. No.

Q. There isn't. Do you know one Tom Christmas?

A. Yes.

Q. Did you make a statement to him -

THE COURT:

(10) Now Mr. Khattar, you cannot question the witness on cross examination about a previous statement unless you bring home to him the time and the place.

MR. KHATTAR:

I propose to do that. I asked the question too quickly.

BY MR. KHATTAR:

Q. Do you know Tom Christmas?

A. Yes.

Q. When did you see him first after May 28 of this year?

A. I believe it was on a Saturday.

Q. Where did you see him?

(20) A. In Wentworth Park.

Q. In Wentworth Park?

A. Yes.

Q. Were you sober on that occasion?

A. Yes.

Q. Was Mr. Christmas sober on that occasion?

A. I believe so.

Q. Did you talk with him?

A. Yes.

(30) Q. Did you tell him that Donald Junior Marshall did not state Sandy Seale?

A. Yes.

MR. MACNEIL:

Objection, if Your Lordship please, on the same basis -

-138- JOHN L. PRATICO, Cross-Exam.

BY MR. KEATTAR:

Q. Did you give the answer as "yes"?

A. Yes.

Q. Do you know Sheriff James MacKillop?

A. Yes.

Q. Mr. Pratico, after you say you saw Mr. Marshall, the accused, you say on George Street, where did you go?

A. Down Crescent Street, down Argyle to Crescent.

(10) Q. Was there anyone with you?

A. No.

Q. Did you see anybody and talk with them on that occasion?

A. No sir.

Q. At any time that evening of May 28 of this year did you talk with anybody while you were at the park if you were at Wentworth Park?

A. No, I didn't.

Q. Did you say no?

A. Yes.

(20) Q. Did I understand you earlier in your evidence to say that you had been drinking on that day, that is, May 28 of this year?

A. Yes sir.

Q. What time did you start to drink on that day?

A. I don't know. I think it was seven or eight o'clock.

Q. Eight o'clock.

A. Seven or eight.

Q. Seven or eight o'clock in the morning or evening?

A. Evening.

(30) Q. What did you first drink on that evening?

A. I think it was wine.

Q. Wine - what kind of wine?

A. Seventy-four.

Q. How much is that wine, do you know?

A. \$1.75.

-139- JOHN L. PRATICO, Cross-Exam.

Q. Where did you get that wine?

A. I sent to the liquor store for it.

Q. You sent to the liquor store for it. How much was in the bottle?

A. Well I only - I drank half of it.

Q. Half of it but how much is half? How many ounces?

A. I wouldn't know.

Q. At seven o'clock you drank the -

(10) A. Seven or eight -

Q. Seven or eight. What else did you drink?

A. Beer.

Q. Beer - how much beer did you drink?

A. Maybe half a dozen quarts I drank and pints.

Q. Half a dozen quarts and how many pints?

A. Two or three.

Q. About two or three pints. When did you have this beer?

A. I don't remember the time I had it.

Q. Some time after seven?

(20) A. Yes.

Q. What else did you drink?

A. I can't remember what else I drank.

Q. Did you drink anything else besides beer and wine?

A. I think so.

Q. Was it rum?

A. I'm not sure.

Q. Did you have any vodka?

A. Can't remember.

Q. Have any gin?

(30) A. Gin, I don't even know what the stuff is - lemon gin you're talking about.

Q. It doesn't matter what kind of gin. Did you have any kind of gin?

A. I can't remember.

Q. Well is there some doubt in your mind about the type of gin that you may have had?

-140- JOHN L. PRATICO, Cross-Exam.

A. I don't know if I drank gin or not. I don't know if I drank gin.

Q. You were drinking anything you could get your hands on were you on that day?

A. No.

Q. Or were you confining it merely to wine and beer?

A. Well I would've drank rum if I had it.

Q. If you had it when, what time?

(10) A. That night.

Q. That night, at what time that night?

A. I wouldn't know.

THE COURT:

What was that, would what?

MR. KHATTAR:

"I would've drank anything if I had it."

MR. ROSENBLUM:

Rum -

BY MR. KHATTAR:

(20) Q. Would you give His Lordship the answer you were giving me?

BY THE COURT:

Q. You wouldn't have drank rum?

A. I would have.

Q. You would have drunk rum if you had had it.

A. Yes.

BY MR. KHATTAR:

Q. At what time did you get sick in St. Joseph's Hall?

A. I don't know.

Q. Was that just immediately before going to the park?

(30) A. I don't know.

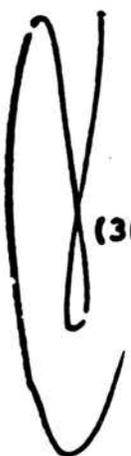
Q. You don't remember that. Do you know Donald Joe?

A. Yes.

Q. Did you see him on that evening? May 28, 1971?

A. Yes. We were drinking together.

Q. You were drinking together. Did you leave the dance together?



- A. No. I don't remember really.
- Q. You don't remember what?
- A. Leaving together.
- Q. You don't remember leaving the dance?
- A. Together, I said.
- Q. Do you remember leaving the dance?
- A. Yes.
- Q. Do you remember the time you left the dance?
- (10) A. No.
- Q. You have no idea of the time at all?
- A. No.
- Q. Were you wearing a wristwatch or a watch of any kind, time piece of any kind?
- A. No. (Witness indicates negatively)
- Q. You have to answer "yes" or "no". Don't nod your head.
- A. No.
- Q. I'm not being smart because it has to get on the record if you say "yes" or "no". In any event, you went to the park somewhere?
- (20) A. I didn't go into the park.
- Q. You didn't go to the park.
- A. I went down Argyle - like I guess you would call it the park, the tracks there.
- Q. The tracks - what tracks?
- A. On Crescent Street.
- Q. Tracks on Crescent?
- A. By the park, you know where the park is, well the tracks that goes - the C.N.R. tracks that go along there.
- (30) Q. Were there people in the area where you were?
- A. I can't remember seeing anybody.
- Q. You didn't see anybody?
- A. I can't remember seeing anybody.
- Q. Are you prepared to say there was nobody there?
- A. No.

-142- JOHN L. PRATICO, Cross-Exam.

Q. Was the fact that you couldn't see them because you were so intoxicated?

A. Might have been.

Q. Were you carrying some liquor on your person?

A. One pint of beer.

Q. On pint?

A. Yer.

Q. What kind of beer was it?

(10) A. I believe it was Oland's.

Q. You're not sure of that either?

A. No.

Q. Where did you get that pint of beer?

A. Well I had - some fellows gave me some beer by, I think it was Stephens lumber mill there.

Q. Somebody gave it to you by Stephens lumber mill. Where is Stephens lumber mill located?

A. Townsend.

Q. Townsend Street?

(20) A. Yes.

Q. Townsend Street, is that right?

A. Yes.

Q. Well what did you do? Did you leave the dance and go to Townsend Street?

A. No. I got that before and I saved it.

Q. What time did you get it before?

A. I wouldn't know the time.

Q. Was it at seven o'clock, after seven -

A. I think it was after seven.

(30) Q. Was it after ten?

A. I wouldn't know.

Q. You wouldn't know. It was sometime after seven but you don't know in between?

A. Yes.

-143- JOHN L. PRATICO, Cross-Exam.

Q. And you went to Stephens lumber mill on Townsend Street. Is there a liquor store there?

A. No, that's where I was passing through, like, you know, the tracks, towards the park, that's when we received the stuff.

Q. And some individual that you know or didn't know -

A. Didn't know them. They were pretty drunk and they gave us it.

(10) Q. They?

A. There was two or three there.

Q. Two or three. Do you remember their names?

A. I didn't know their names. I wouldn't even know - I don't even know them.

Q. You didn't know them and apparently they didn't know you.

A. Yes. Well I don't know if they knew the fellow I was with or not.

Q. Oh, there was somebody with you?

A. Yes.

(20) Q. Who was with you?

A. Donald Joe and a few others.

Q. Who were the others?

A. I don't know who the others were.

Q. Is there any reason you wouldn't remember those people?

A. I just can't remember.

Q. You just can't remember. And this is sometime between seven and ten o'clock?

A. Yes.

Q. What were you drinking at eleven o'clock?

(30) A. ~~I don't think I was drinking anything at eleven o'clock.~~

Q. Nothing at eleven; when were you drinking the quarts of beer?

A. That was - I told you between seven and ten.

Q. Between seven and ten. Now to get back to the park area.

You said you walked along the tracks, you called the tracks on Crescent Street; is that what you said?

A. Tracks, yes.

-144- JOHN L. PRATICO, Cross-Exam.

Q. There were people on the park or you don't know?

A. I don't know.

Q. You don't know if there was one or a number there?

A. I know Marshall and Seale was -

Q. You noticed Marshall and -

A. Seale.

Q. Where did you notice them?

A. Crescent.

(10) Q. On Crescent Street, and were those the only two people you noticed?

A. Only two people I noticed.

Q. And you spoke to them?

A. No.

Q. How did you get by without speaking to them? You spoke to them earlier?

A. No, I spoke to them earlier but I went the other way.

Q. Oh, you mean you went what way?

A. Argyle, down Argyle Street, onto Crescent.

(20) Q. Now you didn't enter onto Crescent Street at all, is that what you're telling me?

A. I said I went on the railroad. I went around on the railway. I walked down Crescent so far and got on the railway.

Q. You walked down to Crescent so far -

A. And got on the railway tracks.

Q. And you got on the railroad tracks. Well why is it that you wouldn't go by Seale and Marshall.

A. There's no reason.

(30) Q. But you didn't run into them at all?

A. No.

Q. And you went up the tracks. You did something, did you?

A. Yes.

Q. You're familiar with exhibit 5?

178(A)

A. Yes.

Q. And you're able to locate your position on the evening of May 29, 1971 - May 28, I'm sorry, 1971. And you say you walked along the track.

A. I came down this way -

Q. You'll have to refer to the area in which you say you came down.

A. I came down Argyle Street and walked down this way -

(10) Q. You walked down Crescent?

A. Yes. Down Crescent so far, then I went -

Q. How far?

A. Well I'd say -

Q. Identify the spot where you were walking, the distance you walked on Crescent Street.

A. I walked down to here -

Q. Put a mark - letter "B" so it identifies - red pencil. Mark the letter "B" the point on which you last walked on Crescent Street on the evening of May 28, 1971.

(20) A. I walked about as far as there, I'd say.

Q. And that's identified by the letter "B" on exhibit 5?

A. Yes. Then I got on the tracks there, C.N.R. tracks. And walked to about that "X".

Q. And what did you do at point "X"?

A. Stayed there in the bushes.

Q. You stayed in the bushes how long?

A. Oh, I didn't know how long I stayed there. It was quite a while.

(Plan shown to jury.)

(30) Q. How long were you in the bushes, did you say?

A. I wouldn't know how long I was there. It was quite a while.

Q. Do you remember the condition of the ground there?

A. No.

Q. Were you lying down, sitting down or what were you doing?

A. I was in squat position. I was in the type of a squat position.

Q. Were your knees on the ground or -

A. No.

Q. They weren't. You were in a squatting position?

A. Yes.

Q. And you were behind a bush that had foliage or no foliage?

A. It had kind of bushes there.

(10) Q. Kind of bushy. And while there what did you see?

A. I seen Mr. Marshall and Mr. Seale talking for a while.

Q. How long?

A. I wouldn't know how long it was.

Q. How long were you crouched?

A. I don't know how long I was crouched.

Q. Did you drink the beer while you were there?

A. Yes.

Q. Did you drink the full bottle?

A. Yes.

(20) Q. How long after you got behind the bush did you start to drink the beer?

A. Well I opened it as soon as I got there, to the bush.

Q. And did you take your time drinking it?

A. No, I drank it kind of fast.

Q. And while you were drinking the beer, what was going on between Mr. Seale and Mr. Marshall?

A. When I seen them on Crescent Street they were talking to one - more or less arguing.

Q. They were arguing. What were they arguing about?

(30) A. I wouldn't know what they were arguing about. Then I seen Mr. Marshall's hand come out like this here and go towards Mr. Seale's stomach and that's all I seen.

Q. Give us the details of that now. Mr. Seale was standing where that you say?

A. His back would be facing like towards me -

Q. His face -

A. He'd be facing me like you are .

Q. Yes.

A. And Mr. Marshall would be standing like, sitting like I am facing you.

Q. Mr. Seale was facing -

A. Me.

(10) Q. - facing you?

A. Yes.

Q. And the other man was facing the opposite way?

A. Facing that way.

Q. Were they standing one in front of the other?

A. Arm's length away.

Q. Pardon me.

A. Arm's length.

Q. Arm's length but they were facing each other as you and I are?

(20) A. Yes.

Q. You are seated and I am facing directly opposite you?

A. Yes.

Q. So you could observe Mr. Seale fully, is that right, but Mr. Marshall may not have been in the same position?

A. No.

Q. Now what did you see? What did Mr. Seale do with his hands?

A. I think he put his fists up.

Q. He put his fists up?

(30) A. I think so.

Q. How far did he get with his fists?

A. Didn't get too far. Just got 'em up like that.

Q. While he was doing that, what was Mr. Marshall doing?

A. He took his hand and -

Q. What hand did he use?

JOHN L. PRATICO, Cross-Exam.

- Q. I'm not sure if they're yellow lights or not.
 A. But it's well lighted?
 Q. Yes.
 Q. Your conversation then with Mr. Marshall was "Hi"?
 A. (Witness indicates affirmatively.)
 Q. That's the extent of your conversation?
 A. That's the extent, just that much.
 Q. You didn't talk to him again until about when?
 A. I didn't talk to Donald Marshall any more.
 Q. You didn't talk to Donald Marshall any more?
 A. Nor Seale.
 Q. Do you remember giving evidence before Judge John F. MacDonald?
 A. Yes.
 Q. Do you remember being asked this question -

MR. MacNEIL:

Objection if Your Lordship pleases, until I find out where, when, why and under what circumstances. This witness is entitled to know if this was at the Preliminary Hearing or not. I don't know what it is.

MR. KHATTAR:

You don't. But I asked the witness and he says he remembers. My Lord, My learned friend I'm not concerned with. It's the witness.

MR. MacNEIL:

He may have given evidence many times before Judge John F. MacDonald. And Your Lordship, if I understood you reading the law yesterday, the witness has to be acquainted with when, where, how he made the statement.

MR. KHATTAR:

In the interests of full disclosure, My Lord, I will acquaint the witness with the occasion.

BY MR. KHATTAR:

- Q. Do you remember Monday, July 5, 1971?
 A. No.

-132- JOHN L. PRATICO, Cross Exam.

Q. Don't remember the date. Do you remember going the evidence in the Preliminary Inquiry concerning this particular charge before Judge John F. MacDonald?

A. Yes.

Q. In this court house?

A. Yes.

Q. You remember that?

A. Yes.

(10) Q. And do you remember being examined by my learned friend, Mr. Donald C. MacNeil, Q.C., present in court?

A. What do you mean? Do you mean Mr. MacNeil?

Q. Yes. The gentleman on whom I place my hand.

A. Yes.

Q. Do you remember, question, page 40.

"Q. Do you know Donald Junior Marshall?"

A. Yes, I remember that.

Q. You remember that question. Your answer was, "Yes".

Is that answer correct?

(20) A. (Witness indicates affirmatively.)

Q. I'm going to ask you the questions, give you the question and give you the answers and I'm going to ask you if you remember the statement, question and answer - and I'm going to ask you if the answer you gave is correct.

A. Yes sir.

Q. "Q. - How long have you known him? About a year." Is that answer correct?

A. Yes.

Q. The questions are correct. "Q. Do you see him in court

(30) here today? A. Yes." And then you're asked to point him out in court.

Would you recall you did or didn't?

A. I did.

Q. Take your hands away from your mouth, please.

-133- JOHN L. PRATICO, Cross-Exam.

"Did you see him in the late hours of the 23th of May, 1971?" The answer was "Yes." "Where?" The answer, "In Wentworth Park." "Did you see him before you saw him in Wentworth Park?" Answer, "I don't recall" Do you recall that question and answer?

A. I don't recall the question and answer.

Q. Is the answer correct? - "I don't recall."

A. I don't remember.

(10) Q. You don't remember that question and answer?

A. No.

Q. I'll come back to that later. "Where did you meet him in Wentworth Park?" Answer, "I went up around Crescent Street. I went down Argyle over to Crescent Street."

Do you remember that question and answer?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Pardon me, before you did that, - this is a question put to you. "Did you see Donald Marshall?" Answer, "I don't remember."

(20)

Do you recall the question and answer?

A. Yes.

Q. Is the question and answer correct that you gave?

A. Yes.

Q. "Did you have any conversation with him? A. "I don't remember. I believe I seen him up on the street."

Do you remember the question and answer?

A. Yes.

(30) Q. Is the answer correct?

A. Yes.

Q. "What street? Answer, "George Street."

Do you remember that question and answer?

A. Yes.

Q. "What was that conversation" - do you remember that question?

A. No.

-134- JOHN L. PRATICO, Cross-Exam.

Q. You don't remember. I'll give you the answer.

"Just talking, then I left him. I had a little bit of talk. Then I left him and went down Argyle Street." - that appears on page 40, question is line 29 and the answer is line 30 - now do you remember that answer?

A. I remember the answer.

Q. You remember the answer, So you say at that time on June 1971, that the answer you gave it as I have read to you?

(10) A. (Witness indicates affirmatively.)

Q. Now today, Mr. Pratico, you say that you didn't do anything but say "Hi" to Mr. -

A. That's what I can remember what I said.

Q. That's what you can remember?

A. Yes.

Q. So you did not talk with Mr. Marshall as I understand you, until when, after May 28, 1971?

A. I think it was on Saturday or Sunday.

Q. Now May 28 was on a Friday?

(20) A. Yes.

Q. What was your condition on Saturday, May 29, 1971?

A. Sober.

Q. You were sober. Now you saw Mr. Marshall on that day?

A. I'm not sure if it was Saturday or Sunday. It was the day the detectives picked me up.

Q. Pardon.

A. The day Sgt. MacIntyre sent for me.

Q. What?

A. Sent for me.

(30) Q. He sent for you?

A. Yes.

Q. I don't know what day that was.

A. It was either Saturday or Sunday I believe.

Q. I suppose Sgt. MacIntyre sent for you on more than one occasion?

A. Twice it was, he sent for me.

-135- JOHN L. PRATICO, CROSS-Exam.

Q. And you talked with Mr. Marshall, I take it, on that day?

A. Yes.

Q. In fact, Mary Theresa Paul was there, when you talked with him on that day?

A. I don't think so.

Q. You didn't talk to him with Mary Theresa Paul?

A. I talked to him. I don't remember if she was there or not. I know I was talking to him. It was Saturday or Sunday.

(10) Q. You talked to Mary Theresa Paul since May 23, 1971, didn't you?

A. Yes.

Q. What is your answer to that?

A. Yes, I did, I talked to her.

Q. Where did you talk to her; what date after May 28?

A. I don't remember what day it was.

Q. Was that on Saturday or Sunday following -

A. No, I don't believe.

Q. Pardon.

(20) A. I don't believe so.

Q. How many days after May 28, 1971?

A. I can't remember that. I know I was talking to her. It wasn't too long ago.

Q. It wasn't too long, a couple of days after but what day, you don't remember?

A. No.

Q. Did you tell Mary Theresa Paul that Marshall didn't do the stabbing -

MR. MacNEIL:

(30) Objection if Your Lordship please, for the record if the accused was not present when the remarks were made by the witness.

MR. KEATTAR:

May I remind Your Lordship of your own ruling in which you permitted the same examination by my learned friend, Mr. Rosenblum.

-136- JOHN L. PRATICO, Cross-Exam.

THE COURT:

Mr. MacNeil, the situation is not similar. It is not similar. He is now cross-examining the witness as to something which the witness said or didn't say. It is not what somebody told him. If he were asked, what did Mary Theresa Paul say - that would be different.

MR. MacNEIL:

Yes, I realize, My Lord.

(10) THE COURT:

I made the ruling on that yesterday.

MR. MacNEIL:

I just want my objection on the record.

THE COURT:

You have drawn to his attention the place and the time where this conversation took place.

MR. KHATTAR:

I'm going into that detail, My Lord.

BY MR. KHATTAR:

(20) Q. Where did you see Mary Theresa Paul?

A. Oh, the day I seen her she was at my place. She was coming with Gordie Lynch.

Q. She was with whom?

A. Gordie Lynch.

Q. Gordie Lynch. Where is your place, Mr. Pratico?

A. 201 Bentinck Street.

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

A. Yes.

(30) Q. While there, did you make a statement to her that Marshall, that is, Donald Junior Marshall, the accused in this case, didn't do the stabbing?

A. I don't remember that.

Q. Are you prepared to say you did not make the statement?

A. I'm not saying I didn't make it. I'm just saying I can't remember.

Q. Was there any particular reason why you wouldn't remember making such a statement?

A. No.

Q. There isn't. Do you know one Tom Christmas?

A. Yes.

Q. Did you make a statement to him -

THE COURT:

(10) Now Mr. Khattar, you cannot question the witness on cross examination about a previous statement unless you bring home to him the time and the place.

MR. KHATTAR:

I propose to do that. I asked the question too quickly.

BY MR. KHATTAR:

Q. Do you know Tom Christmas?

A. Yes.

Q. When did you see him first after May 28 of this year?

A. I believe it was on a Saturday.

Q. Where did you see him?

(20) A. In Wentworth Park.

Q. In Wentworth Park?

A. Yes.

Q. Were you sober on that occasion?

A. Yes.

Q. Was Mr. Christmas sober on that occasion?

A. I believe so.

Q. Did you talk with him?

A. Yes.

(30) Q. Did you tell him that Donald Junior Marshall did not state Sandy Seale?

A. Yes.

MR. MACNEIL:

Objection, if Your Lordship please, on the same basis -

-138- JOHN L. PRATICO, Cross-Exam.

BY MR. KEATTAR:

Q. Did you give the answer as "yes"?

A. Yes.

Q. Do you know Sheriff James MacKillop?

A. Yes.

Q. Mr. Pratico, after you say you saw Mr. Marshall, the accused, you say on George Street, where did you go?

A. Down Crescent Street, down Argyle to Crescent.

(10) Q. Was there anyone with you?

A. No.

Q. Did you see anybody and talk with them on that occasion?

A. No sir.

Q. At any time that evening of May 28 of this year did you talk with anybody while you were at the park if you were at Wentworth Park?

A. No, I didn't.

Q. Did you say no?

A. Yes.

(20) Q. Did I understand you earlier in your evidence to say that you had been drinking on that day, that is, May 28 of this year?

A. Yes sir.

Q. What time did you start to drink on that day?

A. I don't know. I think it was seven or eight o'clock.

Q. Eight o'clock.

A. Seven or eight.

Q. Seven or eight o'clock in the morning or evening?

A. Evening.

(30) Q. What did you first drink on that evening?

A. I think it was wine.

Q. Wine - what kind of wine?

A. Seventy-four.

Q. How much is that wine, do you know?

A. \$1.75.

-139- JOHN L. PRATICO, Cross-Exam.

Q. Where did you get that wine?

A. I sent to the liquor store for it.

Q. You sent to the liquor store for it. How much was in the bottle?

A. Well I only - I drank half of it.

Q. Half of it but how much is half? How many ounces?

A. I wouldn't know.

Q. At seven o'clock you drank the -

(10) A. Seven or eight -

Q. Seven or eight. What else did you drink?

A. Beer.

Q. Beer - how much beer did you drink?

A. Maybe half a dozen quarts I drank and pints.

Q. Half a dozen quarts and how many pints?

A. Two or three.

Q. About two or three pints. When did you have this beer?

A. I don't remember the time I had it.

Q. Some time after seven?

(20) A. Yes.

Q. What else did you drink?

A. I can't remember what else I drank.

Q. Did you drink anything else besides beer and wine?

A. I think so.

Q. Was it rum?

A. I'm not sure.

Q. Did you have any vodka?

A. Can't remember.

Q. Have any gin?

(30) A. Gin, I don't even know what the stuff is - lemon gin you're talking about.

Q. It doesn't matter what kind of gin. Did you have any kind of gin?

A. I can't remember.

Q. Well is there some doubt in your mind about the type of gin that you may have had?

-140- JOHN L. PRATICO, Cross-Exam.

A. I don't know if I drank gin or not. I don't know if I drank gin.

Q. You were drinking anything you could get your hands on were you on that day?

A. No.

Q. Or were you confining it merely to wine and beer?

A. Well I would've drank rum if I had it.

Q. If you had it when, what time?

(10) A. That night.

Q. That night, at what time that night?

A. I wouldn't know.

THE COURT:

What was that, would what?

MR. KHATTAR:

"I would've drank anything if I had it."

MR. ROSENBLUM:

Rum -

BY MR. KHATTAR:

(20) Q. Would you give His Lordship the answer you were giving me?

BY THE COURT:

Q. You wouldn't have drank rum?

A. I would have.

Q. You would have drunk rum if you had had it.

A. Yes.

BY MR. KHATTAR:

Q. At what time did you get sick in St. Joseph's Hall?

A. I don't know.

Q. Was that just immediately before going to the park?

(30) A. I don't know.

Q. You don't remember that. Do you know Donald Joe?

A. Yes.

Q. Did you see him on that evening? May 28, 1971?

A. Yes. We were drinking together.

Q. You were drinking together. Did you leave the dance together?

- A. No. I don't remember really.
- Q. You don't remember what?
- A. Leaving together.
- Q. You don't remember leaving the dance?
- A. Together, I said.
- Q. Do you remember leaving the dance?
- A. Yes.
- Q. Do you remember the time you left the dance?
- (10) A. No.
- Q. You have no idea of the time at all?
- A. No.
- Q. Were you wearing a wristwatch or a watch of any kind, time piece of any kind?
- A. No. (Witness indicates negatively)
- Q. You have to answer "yes" or "no". Don't nod your head.
- A. No.
- Q. I'm not being smart because it has to get on the record if you say "yes" or "no". In any event, you went to the park somewhere?
- (20) A. I didn't go into the park.
- Q. You didn't go to the park.
- A. I went down Argyle - like I guess you would call it the park, the tracks there.
- Q. The tracks - what tracks?
- A. On Crescent Street.
- Q. Tracks on Crescent?
- A. By the park, you know where the park is, well the tracks that goes - the C.N.R. tracks that go along there.
- (30) Q. Were there people in the area where you were?
- A. I can't remember seeing anybody.
- Q. You didn't see anybody?
- A. I can't remember seeing anybody.
- Q. Are you prepared to say there was nobody there?
- A. No.

-142- JOHN L. PRATICO, Cross-Exam.

Q. Was the fact that you couldn't see them because you were so intoxicated?

A. Might have been.

Q. Were you carrying some liquor on your person?

A. One pint of beer.

Q. On pint?

A. Yes.

Q. What kind of beer was it?

(10) A. I believe it was Oland's.

Q. You're not sure of that either?

A. No.

Q. Where did you get that pint of beer?

A. Well I had - some fellows gave me some beer by, I think it was Stephens lumber mill there.

Q. Somebody gave it to you by Stephens lumber mill. Where is Stephens lumber mill located?

A. Townsend.

Q. Townsend Street?

(20) A. Yes.

Q. Townsend Street, is that right?

A. Yes.

Q. Well what did you do? Did you leave the dance and go to Townsend Street?

A. No. I got that before and I saved it.

Q. What time did you get it before?

A. I wouldn't know the time.

Q. Was it at seven o'clock, after seven -

A. I think it was after seven.

(30) Q. Was it after ten?

A. I wouldn't know.

Q. You wouldn't know. It was sometime after seven but you don't know in between?

A. Yes.

-143- JOHN L. PRATICO, Cross-Exam.

- Q. And you went to Stephens lumber mill on Townsend Street. Is there a liquor store there?
- A. No, that's where I was passing through, like, you know, the tracks, towards the park, that's when we received the stuff.
- Q. And some individual that you know or didn't know -
- A. Didn't know them. They were pretty drunk and they gave us it.
- (10) Q. They?
- A. There was two or three there.
- Q. Two or three. Do you remember their names?
- A. I didn't know their names. I wouldn't even know - I don't even know them.
- Q. You didn't know them and apparently they didn't know you.
- A. Yes. Well I don't know if they knew the fellow I was with or not.
- Q. Oh, there was somebody with you?
- A. Yes.
- (20) Q. Who was with you?
- A. Donald Joe and a few others.
- Q. Who were the others?
- A. I don't know who the others were.
- Q. Is there any reason you wouldn't remember those people?
- A. I just can't remember.
- Q. You just can't remember. And this is sometime between seven and ten o'clock?
- A. Yes.
- Q. What were you drinking at eleven o'clock?
- (30) A. ~~I don't think I was drinking anything at eleven o'clock.~~
- Q. Nothing at eleven; when were you drinking the quarts of beer?
- A. That was - I told you between seven and ten.
- Q. Between seven and ten. Now to get back to the park area. You said you walked along the tracks, you called the tracks on Crescent Street; is that what you said?
- A. Tracks, yes.

-144- JOHN L. PRATICO, Cross-Exam.

Q. There were people on the park or you don't know?

A. I don't know.

Q. You don't know if there was one or a number there?

A. I know Marshall and Seale was -

Q. You noticed Marshall and -

A. Seale.

Q. Where did you notice them?

A. Crescent.

(10) Q. On Crescent Street, and were those the only two people you noticed?

A. Only two people I noticed.

Q. And you spoke to them?

A. No.

Q. How did you get by without speaking to them? You spoke to them earlier?

A. No, I spoke to them earlier but I went the other way.

Q. Oh, you mean you went what way?

A. Argyle, down Argyle Street, onto Crescent.

(20) Q. Now you didn't enter onto Crescent Street at all, is that what you're telling me?

A. I said I went on the railroad. I went around on the railway. I walked down Crescent so far and got on the railway.

Q. You walked down to Crescent so far -

A. And got on the railway tracks.

Q. And you got on the railroad tracks. Well why is it that you wouldn't go by Seale and Marshall.

A. There's no reason.

(30) Q. But you didn't run into them at all?

A. No.

Q. And you went up the tracks. You did something, did you?

A. Yes.

Q. You're familiar with exhibit 5?

A. Yes.

Q. And you're able to locate your position on the evening of May 29, 1971 - May 28, I'm sorry, 1971. And you say you walked along the track.

A. I came down this way -

Q. You'll have to refer to the area in which you say you came down.

A. I came down Argyle Street and walked down this way -

(10) Q. You walked down Crescent?

A. Yes. Down Crescent so far, then I went -

Q. How far?

A. Well I'd say -

Q. Identify the spot where you were walking, the distance you walked on Crescent Street.

A. I walked down to here -

Q. Put a mark - letter "B" so it identifies - red pencil. Mark the letter "B" the point on which you last walked on Crescent Street on the evening of May 28, 1971.

(20) A. I walked about as far as there, I'd say.

Q. And that's identified by the letter "B" on exhibit 5?

A. Yes. Then I got on the tracks there, C.N.R. tracks. And walked to about that "X".

Q. And what did you do at point "X"?

A. Stayed there in the bushes.

Q. You stayed in the bushes how long?

A. Oh, I didn't know how long I stayed there. It was quite a while.

(Plan shown to jury.)

(30) Q. How long were you in the bushes, did you say?

A. I wouldn't know how long I was there. It was quite a while.

Q. Do you remember the condition of the ground there?

A. No.

Q. Were you lying down, sitting down or what were you doing?

-146- JOHN L. PRATICO, Cross-Exam.

A. I was in squat position. I was in the type of a squat position.

Q. Were your knees on the ground or -

A. No.

Q. They weren't. You were in a squatting position?

A. Yes.

Q. And you were behind a bush that had foliage or no foliage?

A. It had kind of bushes there.

(10) Q. Kind of bushy. And while there what did you see?

A. I seen Mr. Marshall and Mr. Seale talking for a while.

Q. How long?

A. I wouldn't know how long it was.

Q. How long were you crouched?

A. I don't know how long I was crouched.

Q. Did you drink the beer while you were there?

A. Yes.

Q. Did you drink the full bottle?

A. Yes.

(20) Q. How long after you got behind the bush did you start to drink the beer?

A. Well I opened it as soon as I got there, to the bush.

Q. And did you take your time drinking it?

A. No, I drank it kind of fast.

Q. And while you were drinking the beer, what was going on between Mr. Seale and Mr. Marshall?

A. When I seen them on Crescent Street they were talking to one - more or less arguing.

Q. They were arguing. What were they arguing about?

(30) A. I wouldn't know what they were arguing about. Then I seen Mr. Marshall's hand come out like this here and go towards Mr. Seale's stomach and that's all I seen.

Q. Give us the details of that now. Mr. Seale was standing where that you say?

-147- JOHN L. PRATICO, Cross-Exam.

A. His back would be facing like towards me -

Q. His face -

A. He'd be facing me like you are .

Q. Yes.

A. And Mr. Marshall would be standing like, sitting like I am facing you.

Q. Mr. Seale was facing -

A. Me.

(10) Q. - facing you?

A. Yes.

Q. And the other man was facing the opposite way?

A. Facing that way.

Q. Were they standing one in front of the other?

A. Arm's length away.

Q. Pardon me.

A. Arm's length.

Q. Arm's length but they were facing each other as you and I are?

(20) A. Yes.

Q. You are seated and I am facing directly opposite you?

A. Yes.

Q. So you could observe Mr. Seale fully, is that right, but Mr. Marshall may not have been in the same position?

A. No.

Q. Now what did you see? What did Mr. Seale do with his hands?

A. I think he put his fists up.

Q. He put his fists up?

(30) A. I think so.

Q. How far did he get with his fists?

A. Didn't get too far. Just got 'em up like that.

Q. While he was doing that, what was Mr. Marshall doing?

A. He took his hand and -

Q. What hand did he use?

-148- JOHN L. PRATICO, CROSS-EXAM.

A. I think he used the right hand.

Q. And what did he do?

A. Took it out like that and plunged it into Mr. Seale's stomach.

Q. Now let me get that clearly. You say your first observation was that Mr. Seale had his fists up?

A. Yes.

Q. And then the next, both fists, right and left?

(10) A. Yes.

Q. And then the next move that you observed was that Mr. Marshall raised his right hand - you know the difference between right and left?

A. Yes.

Q. And it is right you say?

A. Yes.

Q. Now Mr. Pratico, were you here yesterday?

A. Yes.

Q. And do you recall talking with me yesterday afternoon?

(20) A. Yes.

Q. Do you remember what time that was?

A. No.

Q. Was there anyone else present?

A. Yes.

Q. Who was present?

A. The sheriff.

Q. The sheriff? What did you say to me in the presence of the sheriff?

A. I said that Mr. Marshall didn't stab Mr. Seale.

(30) Q. That Mr. Marshall didn't stab Mr. Seale - now just to qualify that, before you started to talk, you were introduced to the sheriff?

A. Yes.

Q. By me.

A. Yes.

-149- JOHN L. PRATICO, Cross-Exam.

Q. And didn't I indicate to you that I didn't wish to talk with you without the sheriff being present?

A. Yes.

Q. And isn't it correct that there was no conversation until the sheriff was present?

A. Until he was present, yes.

Q. What else did you say to me in the presence of the sheriff?

A. I think that's all I said.

(10) Q. You just said that Marshall didn't stab Mr. Seale. Did you say anything further about - tell us all the conversation that took place then?

A. (No response.)

THE COURT:

No, Mr. Khattar -

MR. KHATTAR:

Q. Tell us what you said.

THE COURT:

(20) No, Mr. Khattar. Your cross-examination is directed to something he said at a time which is inconsistent with what he says today. Now confine yourself to that statement

MR. KHATTAR:

It's only to that that I have any interest and it is only to that that the conversation took place.

THE COURT:

That's the purpose, otherwise, you confine yourself to the events of May 28.

BY MR. KHATTAR:

(30) Q. Let's take it so we will be clear, Mr. Pratico. The conversation you had with me in the presence of the sheriff concerned the evidence that you gave before Judge John F. MacDonald on June 5, in this court house this year. Is that right?

A. Yes.

-150- JOHN L. PRATICO, Cross-Exam.

Q. Now you tell His Lordship and the jury about that conversation, every part -

A. I -

Q. - concerning the evidence that you had given on June 5, of 1971.

A. What I said yesterday -

THE COURT:

Wait now, Mr. Khattar -

MR. KHATTAR:

- and confined with respect -

THE COURT:

Wait now, Mr. Khattar. Will the jury please step out.

10:50 A.M. JURY WITHDREW

C.S.

-151- JOHN L. PRATICO, Cross-Exam. (VOIR DIRE)

THE COURT:

Now, have we resolved that one?

MR. KHATTAR:

My Lord, what I was about to do with the witness, was to question him on statements he made which are inconsistent with his testimony here today, number one-

THE COURT:

You did that.

(10) MR. KHATTAR:

That's only part of it, My Lord.

THE COURT:

You did that. You questioned him about statements that he made to Mary Theresa Paul, Mr. Christmas - Tom Christmas-

MR. KHATTAR:

And now I'm on the sheriff.

THE COURT:

Now, you have asked him whether he made these statements - in one case he said no and another case he said yes, and before

(20) sheriff, he says yes.

MR. KHATTAR:

To the sheriff he made a different statement.

THE COURT:

Isn't that all? Isn't that as far as you can go?

MR. KHATTAR:

No, My Lord, I think now I'm going to credibility.

THE COURT:

The whole exercise is credibility.

MR. KHATTAR:

(30) Yes, I know. I submit-

THE COURT:

The whole cross-examination is credibility. You cross-examined him on a previous statement and you have elicited from him that he said this. Now I'm not interested in bringing up again the whole previous lower court proceedings. You can only, as I

-152- JOHN L. PRATICO, Cross-Exam. (VOIR DIRE)

to you, you can only question the witness about a previous statement by bringing ^{it} to his attention and asking him if he made it. Now he said that he made the statement that you have asked him. Isn't that so?

MR. KHATTAR:

That's right.

THE COURT:

(10) How much further do you want to go? I don't see where he has said anything very different today from what he said in the court below.

MR. KHATTAR:

Oh My Lord, with all respect, the witness said that he told the sheriff, told me in the presence of the sheriff-

THE COURT:

I know! That's what I understood him to say, he said yesterday he told an untrue story.

MR. KHATTAR:

-that Donald Marshall - that he had told an untrue story.

(20) THE COURT:

He gave his evidence yesterday. Today he has told you that he made a different statement to the sheriff.

MR. KHATTAR:

That's different from the court below, My Lord. This statement here today is completely contradictory to what he had said in the court below.

THE COURT:

And to what he said yesterday - from what he said yesterday!

MR. KHATTAR:

(30) From what he said yesterday, yes, completely contradictory.

THE COURT:

Then you just merely wish to refer to the transcript - what he said in the court below about that. But you started to ask him "what else did you say in the court below" and that's

-153- JOHN L. PRATICO, Cross-Exam. (VOIR DIRE)

why I stopped you. If you want to limit yourself to, did you in the court below, say such and such, if you want to put that to him, fine. But you were saying to him, "what else did you say in the court below" and I say we are not having a re-hearing of what went on in the court below.

MR. KHATTAR:

With all respect, My Lord, I'm in error there.

MR. MacNEIL:

(10) Well My Lord, I would like to have on the record, of course, my objection to this questioning concerning a statement that was made to the sheriff.

THE COURT:

Why!

MR. MacNEIL:

Well because of the same old argument that I used at the original that Your Lordship overruled. But I do want it on the record.

THE COURT:

(20) Mr. MacNeil, it is absolutely proper for the witness to be cross-examined on a previous statement made by him irrespective, irrespective of where he made it. This is not hearsay. This is going basically and essentially to the credibility of the witness - is this a truthful witness.

MR. MacNEIL:

I understand Your Lordship's viewpoint on that and I abide by it but I simply say that it is perfectly proper for the Crown to register an objection because that's all I'm doing. I'm not arguing the objection.

THE COURT:

(30) All right. To the extent that you are objecting to the cross-examination on the statement because the conversation was not in the presence of the accused, to that extent, you are overruled. The ruling remains throughout. Now Mr. Khattar, you will confine yourself only to that one statement in the evidence in the court below if you wish to do so. Then you go on to matters which are

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relevant, namely, what took place on the night of May 28, if you want to do so.

MR. KHATTAR:

Yes. Before the jury comes back, My Lord, I propose to question this witness on this same statement as to it being made to other persons immediately after speaking with me. In other words, I propose to ask him about whether the same statement was repeated in the presence of my learned friend, Mr. MacNeil and the sheriff
(10) and any other persons immediately after he mentioned it to me.

THE COURT:

So there will be no doubt -

"Where a witness upon cross-examination as to a former statement made by him relative to the subject matter of the case and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion,
(20) shall be mentioned to the witness, and he shall be asked whether or not he did make such statement."

So you have the right to ask him about any statement which he made to anyone inconsistent - but Mr. Khattar, let us limit ourselves to anything that he said that was inconsistent.

MR. KHATTAR:

Yes, My Lord. Otherwise, we will be into a great deal of irrelevant matter.

THE COURT:

Bring in the jury.

11:00 A.M. JURY POLLED, ALL PRESENT

(30) BY MR. KHATTAR: (Cross-Exam. cont'd.)

Q. Mr. Pratico, immediately after you made the statement in my presence and the presence of the sheriff, "Donald Marshall didn't do it, didn't do the stabbing," did you make the same statement to my learned friend, Mr. Donald C. MacNeil, the

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learned Crown Prosecutor?

A. Yes.

Q. And to whom else did you make the same statement?

THE COURT:

No, no, no!

BY MR. KHATTAR:

I'm sorry.

Q. Did you make the same statement to the sheriff again?

(10) A. The sheriff was there when you were there.

Q. And wasn't the sheriff present at the time you made the statement to Mr. MacNeil?

A. I think he was.

Q. And was Det. Sgt. MacIntyre present?

A. Yes.

Q. Did you make the statement to him?

A. Made it there when he was there.

Q. How many times did you make the statement?

A. Just the one statement.

(20) Q. These statements to which I have been referring, that is with the sheriff in my presence, with Mr. Donald C. MacNeil, learned Crown Prosecutor, Det. Sgt. MacIntyre, were they made in this court house?

A. Yes.

Q. Yesterday afternoon?

A. Yes.

Q. Thank you. That's the cross-examination.

BY MR. MacNEIL: (Redirect Exam.)

(30) Q. Mr. Pratico, my learned friend read to you from the transcribed evidence taken in the court below on July 5, 1971, and he read from the bottom of page 60. I would like to read to you the questions and answers on the top of page 41. It just continues on where he left off.

MR. KHATTAR:

Now is this re-examination, My Lord?

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MR. MacNEIL:

This is clarification. This is re-examination on cross-examination.

BY MR. MacNEIL:

Q. "Q. Did he suggest anything to you? A. I don't recall. I believe that he did coming down into the park or something like that -

MR. KHATTAR:

Objection!

THE COURT:

(10) What has this got to do with re-examination?

MR. MacNEIL:

My learned friend took it out in cross-examination, if Your Lordship pleases.

THE COURT:

(20) All he did was he drew to his attention previous statement which was made. He drew to his attention a statement which he made which was inconsistent with what he said yesterday, and he questioned him about that as he had a right to do, and I can't see where you can come in now with further evidence from the court below.

MR. MacNEIL:

Well, My Lord, I am suggesting that what was read to the court was read out of context. The following question that I just posed to the witness explains exactly what was brought out on cross-examination.

THE COURT:

(30) Mr. MacNeil, if you would be good enough to address yourself to re-examination which you have a right to do without any reference to what went on in the court below; if you have anything that arises from the cross-examination, you have a right to re-examine but please do it without any reference to the court below.

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MR. MacNEIL:

I can't, My Lord, because cross-examination was on the evidence in the court below.

THE COURT:

Can't you ask the witness anything you want to ask him relative to statements that he gave -

MR. MacNEIL:

(10) I will be getting to that in a moment, My Lord. That's not the point -

THE COURT:

Get to it! Mr. MacNeil, I'm sorry but that's not possible for you to do.

MR. MacNEIL:

Well, My Lord, mark on the record that the Crown has been overruled in not referring to the evidence that was referred to my my learned friend in cross-examination.

THE COURT:

Do you want to re-examine him on anything?

(20) MR. MacNEIL:

Yes, My Lord, I have many things to re-examine him on.

THE COURT:

Proceed to do so!

MR. MacNEIL:

That's one point that I wanted to re-examine on.

BY MR. MacNEIL:

Q. Now, with reference to the statement my learned friend referred to that you made to the sheriff, to myself, and to Johnnie MacIntyre; that took place yesterday afternoon?

(30) A. Yes.

Q. And that took place after His Lordship excluded the witnesses from this court room, is that not true?

A. Yes.

Q. All right. Did you discuss this case with anyone from the time that you left this court room on His Lordship's order -

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MR. KHATTAR:

This is objected to.

BY MR. MacNEIL:

- and making that statement?

THE COURT:

Why? Isn't he going to a matter that you brought up?

MR. KHATTAR:

Yes.

(10) THE COURT:

All right! Give me an authority why he can't -

MR. KHATTAR:

Well, I submit, My Lord, subject to your ruling that he is now cross-examining this witness.

THE COURT:

He is not cross-examining!

MR. KHATTAR:

He has asked if he discussed the case with someone else.

THE COURT:

(20) Maybe his voice is a little bit - he naturally has a brusque manner. Not everybody is like Cassius, lean and hungry. But he is directing his questioning to the cross-examination that you brought out.

MR. KHATTAR:

All right, My Lord.

MR. MacNEIL:

Thank you, My Lord.

FY MR. MacNEIL:

(30) Q. My question was, I believe, after you were excluded by His Lordship from the court -

THE COURT:

You can be assured that Mr. MacNeil's re-examination to which you are objecting has been permitted; your objection has been noted on the record.

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MR. KHATTAR:

I'm not concerned about that part.

BY MR. MacNEIL:

Q. All right, now as I said, after His Lordship excluded the witnesses, did you discuss with anyone this case between the time you were excluded yesterday afternoon and the time that you made the statement to my learned friend Mr. Khattar?

(10) A. Yes.

Q. With whom did you speak?

A. Sgt. MacIntyre, Crown Prosecutor MacNeil -

Q. No, no before you made the statement to my learned friend, after you were excluded from the courtroom - you remember that?

A. Yes.

Q. And before you spoke to either Mr. Khattar or Mr. Rosenblum, did you speak -

MR. ROSENBLUM:

(20) He didn't speak to me at all.

MR. MacNEIL:

Q. I'm sorry. Mr. Khattar, before you spoke to Mr. Khattar, did you discuss this case with anyone?

A. No, just Mr. Khattar.

Q. Do you know Donald Marshall Sr.?

MR. KHATTAR:

Now -

THE COURT:

(30) No, just a moment, Mr. Khattar, Mr. Rosenblum. There was some evidence given yesterday. You proceed to question him as you were about to because he gave evidence yesterday and mentioned the name of some person who had spoken to him. If my recollection of that evidence is not correct, I will ask the court reporter to check. My recollection is that this witness said yesterday - he mentioned the name.

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BY THE COURT:

Q. Now Witness, do you understand what Mr. MacNeil has asked you, whether somebody was talking to you outside the courtroom after you went out with all the other people?

A. Yes.

BY MR. MacNEIL:

Q. All right now, who was that person?

A. I spoke to Mr. Marshall.

(10) Q. Which Mr. Marshall?

A. Senior.

Q. That is the father of the accused?

A. Yes.

Q. You knew him?

A. I knew him to see him.

Q. Where did this conversation take place?

A. Just spoke out in the hall for a couple of minutes.

Q. And as a result of that conversation -

MR. ROSENBLUM:

(20) No -

BY THE COURT:

Q. You spoke to Mr. Marshall, Sr. in the hall, you say?

A. Yes.

Q. How long did you speak?

A. Just for a couple minutes.

Q. What?

A. Just for a couple minutes.

Q. Spoke for a few minutes?

A. Yes.

(30) BY MR. MacNEIL:

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

A. He got Mr. Khattar.

Q. Did you talk to Donald Marshall, Sr. after the conversation between my learned friend, Mr. Khattar, myself and Sgt. MacIntyre?

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A. What did you mean -

Q. Pardon.

A. What did you say after -

Q. Did you talk to Donald Marshall after the conversation you had with Mr. Khattar, myself and Sgt. MacIntyre?

A. Just for a minute or so. He told me to -

MR. ROSENBLUM:

Oh -

(10) MR. KHATTAR:

The ruling, Your Lordship has made with respect to conversations in the absence of the accused, statements made by others -

BY THE COURT:

Q. You talked with Donald Marshall, Sr. afterwards again? *

A. Yes.

Q. Did you talk with him last night?

A. No.

Q. You didn't?

(20) A. No.

Q. With anyone?

A. No.

Q. Did anyone come near you?

A. No.

BY MR. MacNEIL:

Q. Now, my learned friend asked you about a conversation that you had with Thomas Christmas. Do you recall a conversation that you had with Thomas Christmas on Bentinck Street in the city of Sydney?

(30) A. Yes. Is that the night they arrested him?

Q. That's the night, yes. And tell me, I'll ask this question
My Lord -

THE COURT:

Don't answer it.

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MR. MacNEIL:

Don't answer it until His Lordship rules.

- what did you say -

MR. KHATTAR:

I think the jury should be out, My Lord.

MR. ROSENEUM:

The question may be prejudicial, My Lord.

THE COURT:

- (10) Mr. MacNeil, I dislike very much having to ask the jury to leave so often. I dislike that gentlemen. I can tell you that it is happening not only before me but before the other members of the court and I'm sure the jury understand. Perhaps, Mr. Foreman, once again you will step out. We trust that there won't be too many more of these interruptions.

11:12 A.M. JURY WITHDREW

C.D.

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MR. MacNEIL:

If Your Lordship pleases, my questions relating to a conversation that took place with Thomas Christmas on Bentinck Street in the City of Sydney at which time Mr. Christmas threatened the witness; the witness also-

THE COURT:

Just ask him.

BY MR. MacNEIL:

(10) Q. What was the nature of that conversation?

A. He come to my house and he asked for me and I was coming out the door at the time he knocked on the door. So Mr. Marshall - I mean Mr. Christmas, said, "Come on down the park, I want you." I said, "No." He said, "Why". I never told him. He said, "I know why" and he told me, he said, "You're going to get it now." He said, "You squealed on Junior," which is Donald Marshall

Q. All right, now, were you the recipient of any other threats?

A. Well, Artie Paul, he come up to me down the circus. He told me, he said, "Don't you squeal on Junior." He said, "You go up to the court house" he said, "and you say that Junior never did it." And he said that if I didn't, he would make sure that I was killed

MR. MacNEIL:

Now My Lord, I say that this is extremely material as to this witness, that this witness's life has been threatened.

THE COURT:

Is Thomas Christmas here?

MR. MacNEIL:

No, he is a resident of another province for a period of time, My Lord.

(30) THE COURT:

Is this man Paul here?

MR. MacNEIL:

I do not know, My Lord.

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MR. MacNEIL:

I think this is vitally important, My Lord.

THE COURT:

Mr. MacNeil, I would agree with you that it is vitally disturbing and may very well be the subject of another proceeding. I would think amazing if a witness's life was threatened or his well being, and the Crown/^{did}not take steps against the person who made these threats.

(10) MR. MacNEIL:

An information was laid, My Lord.

THE COURT:

But insofar as this case is concerned, notwithstanding the gravity of what you say, I can only rule according to the rules that pertain to this case, and whether or not the threats against him are such that one can overrule the basic fundamental rule of hearsay evidence cannot be given-

MR. MacNEIL:

(20) Perhaps you will allow me to ask him in the absence of the jury a few more questions that you may take into consideration at the same time.

THE COURT:

I will take a few minutes to consider the matter. I am of the opinion that I can't. You may bring out from the witness his state of mind. That is material, his state of mind.

MR. MacNEIL:

That is just what I was going to bring out. I asked permission to ask further questions for that very purpose.

BY MR. MACNEIL:

(30) Q. Now Mr. Pratico, You say that you were threatened on two different occasions?

A. Yes.

Q. How did these threats affect you?

A. Made me right nervous, scared, and I still am.

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Q. Tell me sir, did you also have three or four conversations with me yesterday morning-

MR. KHATTAR:

This is objected to, My Lord. There was no reference in my Cross-examination to any conversations with my learned friend yesterday morning or any other morning. I assume he had many with my learned friend.

THE COURT:

(10) All right.

MR. MacNEIL:

So I will let it rest with that, the effect that these three had on the witness.

BY MR. MacNEIL:

Q. What effect if any - what actual effect if any-

MR. KHATTAR:

This is objected to.

THE COURT:

Why?

(20) MR. KHATTAR:

He says, "what effect if any did these statements have"-

MR. MacNEIL:

I didn't get the words out of my mouth, yet. I find it very difficult.

BY MR. MacNEIL:

Q. What effect if any did these threats have on your conduct?

A. What do you mean?

Q. What do I mean!

A. Yes.

(30) BY THE COURT:

Q. Why did you tell the story to Mr. Khattar and Sheriff MacKillop-

A. I don't understand.

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Q. Why did you tell what you said out there yesterday? Why?

A. I was scared.

THE COURT:

"I was scared" - do you wish to pursue that?

MR. MacNEIL:

No, that's it. If I am allowed to ask that question before the jury, that's all I will request.

MR. KHATTAR:

(10) Possibly Your Lordship would like to have a few minutes recess and we can argue the point.

THE COURT:

I'm ready to hear your argument now.

You had brought out as was your right, your undoubted right, that this man, this witness, made statements contrary to and inconsistent with the statement he made in court yesterday and in the court below. Now then, that gives the Crown the right to ask him surely, it seems to me, as to why he made the statement that he did. Why did he make the statement that was

(20) inconsistent - that seems to me to be not only good from the legal point of view but is good from common sense which generally you find them both together. Now do you have authority that that can't be? If you have, I am ready to look at any authorities. But otherwise, I have to as I said before, trying to keep the balance between you gentlemen is not an easy task and I appreciate/^{the} depth of work that both sides have put into this thing. I can only make my ruling as I see it which may certainly not be in accord with people - as we call it - "upstairs". I am prepared to rule at the moment that Mr. MacNeil may ask the

(30) witness why he made this inconsistent statement yesterday.

MR. MacNEIL:

And just on the supposition of his answer, may I ask him - if he gives the answer that he gave Your Lordship a moment ago that he was frightened-

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THE COURT:

I will instruct him to give us no conversation, what anybody told him. You will ask him why he gave the inconsistent statements.

MR. MacNEIL:

Supposing, My Lord, for a moment, the answer was, "because I was in fear", am I allowed to ask him, "Why were you in fear?"

THE COURT:

(10) No, because then he must tell you why. You can bring out, as indeed you have now, with whom he had been in contact, with Tom Christmas, with Paul and with somebody else. He had been in contact with somebody else.

MR. MacNEIL:

Would I be allowed to ask if he was threatened by any of these people?

THE COURT:

No.

MR. MacNEIL:

(20) I just wanted to clarify that because I didn't want the jury to come in here again and pose that question and have them go out. So the only question I am allowed to ask him is, why did he make that-

THE COURT:

Why did he make those statements.

MR. KHATTAR:

Necessary statement, My Lord, will be a question of the same nature and kind to the witness as to why he made the statement to me and he made a different statement here in court, that
(30) is following the statement made to me and the sheriff and the conversation with my learned friend, as to why-

THE COURT:

Would you like to know - do you really want to know the answer why he did?

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MR. KHATTAR:

Yes, I do!

THE COURT:

In direct examination-

MR. KHATTAR:

Not in direct, no.

THE COURT:

You don't want that answer, Mr. Khattar!

(10) (11:25 A.M. COURT RECESSED to 11:30 A.M.)

MR. MacNEIL:

My Lord, before the jury comes in, I plan also to put to this witness two questions, one of which the answer is obvious, was he under oath when he made any of these inconsistent statements and secondly, a conversation he had with the accused -

THE COURT:

Isn't it obvious, Mr. MacNeil?

MR. MacNEIL:

(20) I want it for the record, My Lord. The other is, I want him to disclose the conversation my learned friend was talking about between the accused, Donald Marshall, and this witness on Saturday morning. My learned friend asked him if he saw Donald Marshall, talked to Donald Marshall Jr. on Saturday morning after the event took place.

THE COURT:

You had the opportunity for that. You had him in direct examination. This is re-examination.

MR. MacNEIL:

(30) I know, My Lord, but it came up in cross-examination, the fact that he had a conversation with Donald Marshall Jr. on Saturday, May 29.

THE COURT:

Donald Marshall Sr.?

MR. MacNEIL:

No, Donald Marshall Jr., My Lord, on Saturday, May 29.

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THE COURT:

Relative to this particular matter?

MR. MacNEIL:

Event, yes.

THE COURT:

No, no, relative to the question of why he made these inconsistent statements?

MR. MacNEIL:

(10) Yes, My Lord, that will be the explanation that I expect.

THE COURT:

The accused said something to him, leading to his making this statement?

MR. MacNEIL:

Right. Making the inconsistent statement, yes.

THE COURT:

What do you say, Mr. Khattar?

MR. KHATTAR:

(20) My Lord, I merely wish to point out to my learned friend in case he may have forgotten, at the Preliminary Hearing held on July 5, 1971, and the reference to sworn testimony would only - I assume, unless there is something that my learned friend is going to introduce to the court which he has not before - this is the only sworn testimony apart from this hearing.

MR. MacNEIL:

That's right.

MR. KHATTAR:

And the conversation with the accused is alleged to have been May 29.

(30) THE COURT:

Mr. Khattar, the witness was examined yesterday and today was subjected to a very searching and careful cross-examination and I found your cross-examination to be in order. But you have brought up the matter of inconsistent statements and now the law is, that in re-examination a witness may explain -

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- may explain - the reasons why he gave this inconsistent statement. That is the law, Mr. Khattar. Now then, he cannot tell in court what somebody said to him because it was not in the presence of the accused. He cannot say what Donald Marshall Sr. said to him or Mary Theresa Paul or Tom Christmas. But there is no such prohibition relative to the reason why he gave this inconsistent statement affecting the accused himself. You see, Mr. Khattar, as was your right to bring out the inconsistent statement, now surely the law is that in re-examination the witness can explain why he gave an inconsistent statement.

(10)

MR. KHATTAR:

On so many occasions!

THE COURT:

Thus the right to re-examine exists only where there has been cross-examination and must be confined to explanation of matters arising thereon. Thus if a witness has admitted making a former inconsistent statement, he may in re-examination explain his motives for so doing. Now I haven't the cases here. But it is possible that courts may have allowed even conversation between people but I won't go that far. I won't go that far but I will pause to give you ^{and} Mr. Rosenblum, because it is a very crucial matter - I will continue our recess another ten, fifteen minutes so that you may show me an authority which will prevent me allowing Mr. MacNeil to ask the witness relative to the inconsistent statement, you follow me, not anything about what happened that night. But let us assume the accused said to this witness, "Don't you dare say that I did this", it seems to me with great deference, that is proper.

(20) MR. KHATTAR:

My Lord, up to that point, no quarrel. But may I submit, My Lord that my learned friend is making reference to an occasion prior to the Preliminary Inquiry. Now mind you, that's what he's asked. He wants an opportunity to-

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THE COURT:

It matters little! It matters little! The threat if at any time may have been made the night of the incident but only by the accused.

Now you understand, Mr. MacNeil, and I rely upon you that you are not going for any fishing expedition.

MR. MacNEIL:

(10) I know what answer I expect, My Lord. I'm not going on a fishing expedition. I am instructed-

THE COURT:

At this moment we are concerned with an explanation of one thing - why the inconsistent statement. What somebody told him is not relevant unless that somebody said that to him in the presence of the accused. For the moment I am holding that if the accused said anything to him, he may answer. I am saying that Mr. Khattar and Mr. Rosenblum, not with such a dogmatic attitude that I know it all. Like yourselves, we are all endeavouring to do what is justice in this case and we may make mistakes.

(20) No judge is known not to have made a mistake.

MR. MacNEIL:

Just one other question for clarification, My Lord. Supposing-

THE COURT:

You're not asking me to help you with your case.

MR. MacNEIL:

No, My Lord.

THE COURT:

Then don't bring up hypothetical questions!

MR. MacNEIL:

(30) Fine.

THE COURT:

Sheriff, may we have the jury.

(11:45 A.M. JURY POLLED, ALL PRESENT)

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(TRIAL IN CHIEF RESUMED)

BY MR. MacNEIL:

Q. Now I believe, sir, that we were at the point when we adjourned where I was posing the question, why did you make the inconsistent statement in this court house yesterday, that is, inconsistent with your evidence here today. Yesterday, I'm sorry. Given in this courtroom anyway at this trial?

(10) THE COURT:

Q. Do you understand the question, Witness?

A. Yes.

Q. You understand what Mr. Macneil has asked you? Why did you - what is your answer?

A. I was - well, Artie Paul got to me down the circus -

MR. MacNEIL:

No, No.

THE COURT:

(20) I don't want you to say - you can tell Mr. MacNeil people that you saw or who came to see you, but don't say anything what they said. Who came to see you?

BY MR. MacNEIL:

Q. Who came to see you?

A. I seen Tom Christmas and Theresa Mary Paul, and I seen Artie Paul.

Q. Was this yesterday?

A. No.

BY THE COURT:

Q. Did you see anybody else?

(30) A. When, yesterday?

Q. Not yesterday.

BY MR. MacNEIL:

Q. Any time?

A. No.

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Q. All right, yesterday did you see anyone else, discuss this case with anyone else?

A. Mr. Khattar.

Q. No, before you discussed it with Mr. Khattar?

MR. KHATTAR:

Witness, please speak up so I can hear you.

THE WITNESS:

Mr. Marshall.

(10) BY MR. MacNEIL:

Q. Donald Marshall. All right now why did you - Senior - that's Donald Marshall, Sr.?

A. Yes.

Q. Now why did you make that statement yesterday that Mr. Khattar referred to as being made - why did you make that statement which is inconsistent with your evidence as given before these gentlemen and His Lordship in this trial?

A. Scared.

(20) BY THE COURT:

Q. What's that?

A. I was scared.

Q. Scared of what?

A. Of my life being taken.

BY MR. MacNEIL:

Q. All right now sir, Mr. Khattar also referred to a conversation that you had with Mr. Donald Marshall, Jr., the accused, in this case -

MR. KHATTAR:

(30) I beg your pardon, My Lord, I rise at this point. I'm rising, of course, on my own recollection and I don't recall - and I say this with respect, My Lord, because my memory may not be as good as I think it is - I don't recall having referred to any conversation. I do recall having asked the witness if he saw Mr. Marshall, but I don't recall asking him

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whether he had a conversation. I could be in error, My Lord, and I make my objection on that basis.

THE COURT:

We will clarify that. Mr. Khattar says he doesn't recall and at the moment, I must say, looking at my hurried notes, I don't recall. Ask him what did he say about the accused, clear that up.

BY MR. MacNEIL:

- (10) Q. What did you say about the accused on Saturday morning, on this Saturday morning at your home?

THE COURT:

He said something to Mr. Khattar when Mr. Khattar was cross-examining about the accused.

BY MR. MacNEIL:

Q. All right, you heard His Lordship. You said something to Mr. Khattar - did you say anything to Mr. Khattar about the accused on Saturday morning, May 29, 1971?

A. 29th of May?

(20) Q. Yes.

A. No, I just told Mr. Khattar that the accused was down to my place. The accused was down to my place May 29 or May 30, one of them days.

BY THE COURT:

Q. Mr. Pratico, Mr. MacNeil asked you why you made the statement outside yesterday to Mr. Khattar, to the sheriff. You now say you made it because you were scared of your life.

A. Yes.

(30) Q. Now, your being scared of your life, is that because of anything the accused said to you at any time?

A. No.

MR. MacNEIL:

I take it that concludes that line of questioning on that meeting on Saturday.

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THE COURT:

I'm sorry that I had to take over but I had to put an end to this.

MR. MacNEIL:

That's all right.

THE COURT:

Any further re-examination.

MR. MacNEIL:

(10) There is a question that is bothering me, My Lord.

MR. ROSENBLUM:

Perhaps we better approach the Bench rather than have the jury go out.

THE COURT:

No.

He is going to ask you a question, don't answer it.

MR. MacNEIL:

The question, My Lord, would be to the witness, what is the basis for his fear. He said that he had fear.

(20) THE COURT:

He answered not due to anything the accused said. Now if anybody else said anything to him, I'm not interested. He has given you an explanation, namely, he was scared of his life.

MR. MacNEIL:

I was pursuing the matter just for the basis of whether his fear was justified or not but I accept your Lordship's ruling. That's all.

BY THE COURT:

(30) Q. That man's name was Tom Christmas, was it?

A. Yes.

MR. ROSENBLUM:

And Mary Theresa Paul.

THE WITNESS:

Artie Paul.

(THE WITNESS WITHDREW)

-176- PEARL McMILLAN, Dir. Exam.

PEARL McMILLAN, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. What is your full name, please?

A. Pearl Marie McMillan.

Q. What is your occupation?

A. Lab technician at the City Hospital.

Q. That's in the City of Sydney. What are your qualifications please?

A. I graduated from the Nova Scotia Institute of Technology.

(10) MR. ROSENBLUM:

Admitted, My Lord.

THE COURT:

Mrs. McMillan's qualifications as a laboratory technician are acknowledged and she may give opinion evidence in her specialty.

BY MR. MacNEIL:

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

A. Yes, I was, on call.

Q. At that time did you type the blood of the late Mr. Sandy Seale?

A. On the 29th, I believe. I was called around 12:30 which would

(20) make it the 29th or it may be registered on the 28th. I don't think we changed the date.

Q. Did you type his blood in any event?

A. Yes, I did.

Q. What is his blood type?

A. "O" positive.

Q. Incidentally, Miss McMillan, I will just ask you this one question. Do you know where Crescent Street is in the City of Sydney?

A. Yes.

(30) Q. Do you know where Wentworth Park is?

A. Yes.

Q. They are both in the City of Sydney, County of Cape Breton, Province of Nova Scotia?

A. Yes.

177- PEARL McMILLAN, Cross-Exam.

BY MR. ROSENBLUM: (Cross-Exam.)

Q. Miss McMILLAN, just tell us what different types of blood there are?

A. The main type like in the "A", "B"-

Q. Well we don't know. See, this is your specialty. I have an idea.

A. There are many, many types.

Q. Yes, but the usual common types.

(10) A. The usual common types, "A" positive or "A" negative; "B" positive or "B" negative; "AB" pos. or "AB" negative; "O" positive or "O" negative.

Q. Now, there would be millions of people with the blood type "O" are there not?

A. There would be a large segment of the population.

Q. Yes, and they have the largest classification, "O"?

A. "O" positive is the largest.

Q. And did you take the blood typing of Donald Marshall Jr. here?

A. No, I did not.

(20) Q. Or do you know if anybody else did?

A. No, I don't.

Q. And do you know if he has a blood typing of "O" or not?

A. No, I don't.

Q. You don't know that. But it is the most common type of blood grouping, is it not, "O"?

A. Yes.

BY THE COURT:

Q. What time did you take the classification?

A. What time did I take his blood?—

(30) Q. Yes.

A. 12:30, roughly.

Q. Was this between operations?

A. This was when he first came in. I had taken blood different times, later too, between that. I was working the next day too so I was doing him afterwards, different times.

(THE WITNESS WITHDREW)

-178- CST. JOHN MULLOWNEY, Dir. Exam.

CST. JOHN MULLOWNEY, being called and duly sworn, testified as follows:

- BY MR. MacNEIL: (Dir. Exam.)

- Q. Your full name, Constable?

A. John Hugh Mallowney.

Q. And you are a member of the City of Sydney Police Force?

A. I am.

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

(10) A. I was.

Q. And did you have occasion - are you familiar with the Wentworth Park area?

A. I am.

Q. And where is Wentworth Park area?

A. In the City of Sydney.

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

A. Yes.

Q. And also Crescent Street is in the City of Sydney, are you familiar with that?

(20) A. I am.

Q. And that is in the City of Sydney, County of Cape Breton, Province of Nova Scotia?

A. Yes.

Q. I will show you Exhibit 5. Are you familiar with that area as set out in that plan?

A. Yes, I am, the Wentworth Park area.

Q. Did you have occasion to search the Wentworth Park area subsequent to the 28th day of May, 1971?

A. Yes sir.

(30) Q. When did you search the area?

A. On the 29th of May, the morning of the 29th.

Q. And as a result of your search, what were the results of your search?

A. Searched the whole area and I found a piece of tissue on it which was on the lawn of 130 Crescent Street.

79- CST. JOHN MULLOWNEY, Dir. Exam.

Cross-Exam.

Q. And could you show me please, on Plan, Exhibit 5, where that is located?

A. Right here, 130 Crescent Street.

Q. Now when you say right there, is there any marking on there that would indicate which house it is?

A. Yes, this house on the plan is numbered as 130 and the name-

THE COURT:

(10) Louder, please.

WITNESS:

-The number of the house is indicated on the plan as 130.

The house is owned by a Mrs. N. Boudreau by the plan here.

BY THE COURT:

Q. Witness, will you mark on that plan, the exhibit, with a circle where the tissue was found? Then will you show it to the jury.

A. (Witness complied.) Approximately two feet in on her property from the curb, south curb. (Shown to the jury.)

BY MR. MacNEIL:

(20) Q. I show you an envelope marked Exhibit 2, what are the contents of that envelope?

A. This is the piece of kleenex that I picked up on that lawn on Crescent Street and took it into the station and tagged it.

Q. Louder.

A. I took it into the police office and I tagged it and I passed it over to Cst. - Sgt. M. R. MacDonald.

BY MR. ROSENBLUM: (Cross-Exam.)

Q. You searched the park grounds, did you not?

A. Yes sir.

(30) Q. When was that, Cst. Mallowney, when you did this searching?

A. In the morning of the 29th.

Q. But what time?

A. We were detailed there approximately quarter to nine-

30- CST. JOHN MULLOWNEY, Cross-Exam.

Q. In the morning -

A. -Sgt. MacDonald - yes.

Q. And I suppose all over the park grounds there was lots of debris?

A. Yes sir.

Q. Kleenex tissue, napkins, empty pop bottles, empty liquor bottles?

A. In the park area, yes.

Q. All over the place?

(10) A. Not on this particular lawn.

Q. No, I'm coming to the lawn. What you say is you found a piece of kleenex which you identified on the lawn in front of 130 Crescent Street?

A. Yes sir.

Q. Is that right?

A. Yes.

Q. Now that is the only piece of kleenex you saw there?

A. On that particular lawn?

Q. On that particular lawn.

A. Yes sir.

(THE WITNESS WITHDREW)

C.S.

31- M. D. MATTSON, Dir. Exam.

M. D. MATTSON, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. What is your full name, please?

A. Marwell Dwight Mattson.

Q. Where do you live?

A. 103 Byng Avenue, Sydney.

Q. And were you living there during the month of May, 1971, and particularly the 28th day of May, 1971?

(10) A. Yes sir, I was.

Q. I'm going to show you a plan which is marked Exhibit 5. Are you able to read plans?

A. Yes, I live right here.

Q. You say "right here", that would be on-

A. On the north side of the plan and it is marked "103".

Q. What else is marked there?

A. "103, red house, Mattson".

Q. Now were you at home in the late hours of the 28th of May, 1971?

(20) A. Yes sir, I was.

Q. And did anything take place?

A. It did, yes.

Q. What did you observe?

A. A few minutes before midnight, May 28, 1971, I went upstairs to bed or to go to bed. Shortly after getting to my bedroom, which is on the south side of the house, on the Byng Avenue side, I heard some talking coming from the street. I couldn't make out all of the conversation but I did hear a part of it. The conversation that I heard-

(30) Q. No, as a result of the conversation, that you heard - how many people were in this conversation?

A. I don't know. It was dark so I couldn't see the number of people that were involved but I could hear-

MR. ROSENBLUM:

Not until His Lordship tells you.

182- M. D. MATTSON, Direct Exam.

MR. MacNEIL:

He can hear. He's not saying what they were saying.

BY MR. MacNEIL:

Q. You could what?

A. I could hear more than one person talk.

Q. And as a result of this conversation that you heard in front of your house, did you do anything?

A. I called the City Police.

(10) Q. Did you recognize any of the people engaged in conversation?

A. I did not, no sir.

Q. And did you observe anything after you made the telephone call?

A. I did, yes sir.

Q. What?

A. I observed a man walk out to the center of the street, hold up a car and display his arm and then this man got in this car which went in the direction of George Street and at this juncture I again called the City Police.

BY MR. ROSENBLUM: (Cross-Exam.)

(20) Q. Mr. Mattson, did you see more than one person getting into the car with - when you say "hold up a car", you mean flag down a car?

A. Yes.

Q. You use the words "hold up" which might involve robbery or something like that: you don't mean that?

A. No.

Q. What you mean is you heard some voices around midnight, or ten after or something like that and there was more than one person engaged in conversation?

(30) A. Yes.

Q. And so then you looked out and you saw a man stopping a car and displaying his arm?

A. Yes sir.

M. D. MATTSON, Cross-Exam.

Q. And then that man getting into the car?

A. Yes.

Q. Was there more than one person that got into the car or did you notice?

A. I'm not sure.

Q. You didn't notice?

A. No.

(THE WITNESS WITHDREW)

(10) MR. MacNEIL:

That is the case for the Prosecution, if Your Lordship pleases, we tender the exhibits and rest.

(12:15 P.M. COURT RECESSED TO 2:00 P.M.)

C.S.