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DONNA ELAINE EBSARY, being called and duly sworn, testified as follows:

BY MR. ARONSON: Direct Examination

Q. Could you state your full name to the Court, please?

A. My name is Donna Elaine Ebsary.

Q. Where do you live?

A. I reside at 180 River Street, Apartment 5A, Waltham, Mass.

Q. When were you born?

A. June 16th, 1957.

Q. What education do you have?

A. I'm sorry?

Q. What education do you have?

A. I have three years of college at the College of Cape Breton.

Q. What is your marital status?

A. Single.

Q. Are you employed or otherwise occupied?

A. I'm employed.

Q. And what are you doing?

A. I'm manager of a furniture company in the States.

Q. How long have you lived in Waltham?

A. I have been living in Waltham approximately three months.

Q. Prior to that time, where did you live?

A. Prior to that I was living in Boston where I stayed for approximately three years.

Q. And before then?

A. Before then I was residing at 46 Mechanic Street, Sydney.

Q. And who resided with you at that particular address?

A. Residing there was my father, my mother, my brother, his wife and two children.

Q. Could you tell us the names of your father and brother?

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A. My father's name is Roy Newman Ebsary. My brother's name is Gregory Allan Ebsary.

Q. Now prior to living at that address, had you lived anywhere else?

A. We lived at 126 Rear Argyle Street in Sydney.

Q. And for what period of time did you live at that particular address at Rear Argyle?

(10) A. Approximately sixteen years. Not that long. When we moved down, I was about five so it would be about eleven years.

Q. And when did you move from that residence?

A. We moved from there when I was in about grade eleven so the year -- I don't know. Do you want a date that we moved from there?

Q. A rough year.

A. Rough year. '73.

Q. Okay. So you were living at Rear Argyle on May of 1971?

(20) A. Yes, we were.

Q. Now who lived with you at that particular address?

A. My father, my mother, my brother.

Q. Can you say whether your father was employed at that time?

A. Off and on.

Q. What occupation?

A. He was a chef.

Q. Where?

A. At the Isle Royale and also at a grill on the Esplanade.

(30) Q. I see. You would have been almost fourteen years old in May of 1971?

A. Closer to thirteen.

Q. Thirteen. Can you recall hearing of the murder of Sandy Seale in May of 1971?

A. Yes, I can.

Q. When did you hear of the murder?

A. I started hearing stories about it probably the day after it happened. Stories that I recognized.

Q. Okay. Are you able to recall any of the events which took place the night before you heard of the murder?

(10) A. The night before I was at home. I was with my Mom and my father was out. He was out drinking with a friend which wasn't uncommon for him. We were sitting at home just kind of waiting for him to arrive. Late in the evening or I guess late in the night he arrived home with a friend. The two of them -- no, his friend was kind of excited and my father was trying to get his friend to quiet down. The two of them went into the kitchen where I followed them into the kitchen. My father had a knife in his hand. He put the knife in the sink and he washed it and that was -- that was the night prior to me hearing any stories about any murder taking place.

(20) Q. Okay, now, how late at night? You said it was late. Can you say approximately what time it would have been?

A. It may have been ten o'clock or later. It was just late. I know that I was up late so --

Q. Okay, so could it have been twelve o'clock?

A. It could have.

Q. You referred to the fact he came in with a friend. Do you know who that particular individual was?

(30) A. His name was Jimmy. MacNeil, I think.

Q. Okay. Had you ever seen Jimmy MacNeil prior to that time?

A. Yes, I had.

Q. How frequently?

A. I'd seen him a couple of times. He'd come to the house

with my father and at one point I had been with Jimmy and the two of us had gone somewhere together. So I knew him to see him.

Q. Okay, now you've indicated that you saw your father come into the house with Jimmy MacNeil and go to the kitchen sink and wash a knife off. Is that right?

A. Yes, sir.

(10) Q. Can you describe the knife?

A. The knife is a small knife. It had a short blade and a brown handle with tape around the bottom of the handle.

Q. How certain are you of that?

A. I'm as certain as I am that I'm sitting here right now.

Q. Okay. Can you recall how your father was dressed on that particular evening?

A. He had on his blue coat, had it kind of draped over his shoulders. He wore dark clothes. That's just about it.

(20) Q. Can you recall how Jimmy MacNeil was dressed on that particular night.

A. I don't recall that Jimmy was dressed.

Q. Can you recall whether any conversation took place? I'm not asking you to say what was said but can you recall if any conversation took place between --

A. Yes, Jimmy and my father were talking when they came in.

Q. Okay. Were you able to overhear that conversation?

(30) A. Jimmy and my father came through the front door and they turned, stare into the living room where my Mom and I were. Jimmy turned to my father and said: "That's a good job...".

Q. Please. No indications as to what they said. I'm concerned as to whether they had a conversation.

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A. Okay.

Q. Now you've indicated your father was washing a knife off at the sink. Can you indicate to the Court what reason he would have for doing that?

THE COURT:

She can say what she saw.

BY MR. ARONSON:

(10) Q. Can you say whether you saw anything on that particular knife?

A. There was definitely something on the blade of the knife. I have -- It seems to me there was blood on the blade of the knife.

Q. I'm sorry?

A. I said there was blood on the blade of the knife.

Q. How certain are you of that?

A. I'm not as certain as I am of the fact that I'm sitting here but I'm pretty certain that that is what it was.

(20) Q. What happened after you saw your father washing the knife off?

A. My father took the knife, he turned from the kitchen, he went upstairs and he put the knife in his room.

Q. Do you know what ever became of that particular knife?

A. I looked for the knife for a long time after that because I felt that if I could find it, somebody would listen to what I had to say about this case and I could never find it. I can only say that maybe he hid it somewhere, but I could not find it after that.

(30) Q. How old was your father in 1971?

A. Around sixty years old.

Q. Could you describe him as he was in 1971?

A. He was a very difficult man to be around. He completely ruled the household he lived in and there was no lives for his family --

THE COURT:

It's his physical appearance.

BY MR. ARONSON:

Q. I had intended his physical appearance.

A. I'm sorry. He was a small man. He was maybe five-two, kind of slight. He didn't have any amount of meat on him so he was like, I say very slight. He looked kind of -- let's see, how can I picture how he looked? Well, he looked like an average little old man, I guess. That's all I ever pictured him as.

Q. I see. Are you able to describe whether or say whether your father had any particular interests in 1971 or in those years?

A. Interests in what way?

Q. Hobbies, things like that.

A. Yeh, he liked to drink and he liked to read a lot and he liked to play with knives a lot.

Q. How can you say that he liked to play with knives? What do you mean by that?

A. Well he always had a lot of knives in the house. In his room. He owned canes that he had hollowed out and fitted knives into the handles of. He had a lot of knives in the basement where he kept a grinding stone where -- like, I'd come home from school in the afternoon and he'd be grinding them. Things like that, I guess, is how I base that.

Q. Can you at all describe -- did you ever have occasion to tell the police what you have said in Court today subsequent to May 28th, 1971?

THE COURT:

When?

MR. ARONSON:

I asked her -- the question is whether she ever had occasion

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to speak to the police concerning the incident that occurred on May 28th.

BY THE WITNESS:

A. I myself did not speak with the police but I spoke with a friend who suggested that I --

Q. Okay, that's all.

A. -- go to the police.

(10) Q. Did you ever see Jimmy MacNeil after May 28th, 1971?

A. I did not.

Q. Can you give any reason as to why you would or would not have seen him after that particular time?

THE COURT:

No, no.

MR. ARONSON:

All right.

BY MR. ARONSON:

(20) Q. After May of 1971, can you say whether or not your father's behaviour changed in any way?

A. Yes, I would say that it did.

THE COURT:

I don't see the relevance of that.

MR. ARONSON:

(30) Well, with respect, My Lord, I believe the evidence is admissible and in support of it, I would put forward the MacMillan case where we're speaking of a third party -- the potential of a third party for the commission of this particular offence and --

THE COURT:

That's not what is on trial here.

MR. ARONSON:

Well, I appreciate that but as I say the case is -- certainly indicates that evidence offered by friends and relatives of

a particular person to the effect that that person was capable of violence is certainly admissible. The Queen and MacMillan, 1975 --

THE COURT: (Justice Macdonald)

That's the Ontario Court of Appeal.

MR. ARONSON:

That's correct.

10) THE COURT: (Justice Macdonald)

It goes to the credibility of those witnesses like Mr. MacNeil.

MR. ARONSON:

In part, it does, yes.

THE COURT: (Justice Macdonald)

In part, that's right.

MR. ARONSON:

Shall I state the question again?

THE COURT:

20) Well you may ask a few questions.

MR. ARONSON:

Okay

BY MR. ARONSON:

Q. What can you say as to whether or not there were any changes in your father's behaviour subsequent to May 28th, 1971?

THE COURT: (Justice Pace)

She never said that there was any changes. You'd better establish --

30) MR. ARONSON:

All right, the question should be rephrased.

THE COURT:

Excuse me just a moment.

MR. ARONSON:

I'll withdraw that question, My Lord. I'll try a different

attack.

BY MR. ARONSON:

Q. What can you say as to your father's potential for physical violence?

A. He had a great potential for physical violence.

Q. In what sense? Are you able to support that with any particular instance or incident?

A. Can I say it from the past or does it have to be after 1971? Can it be prior to that?

Q. Just generally if you can site a particular instance.

A. Well my father was very easily enraged by things and at which point he would not stop at just like beating up the house. He would kill -- he would kill things and he would -- he had on occasions been stopped from going out and killing people.

Q. Now when you say killing things, what are you referring to when you're talking about things?

A. Well, when I was younger, I was more or less to myself and the only thing that I really related to were animals and he on one occasion came into the house, grabbed a budgie I had and ripped the head off it. And on another occasion I had a cat that I would relate to and he killed that. I had on several occasions had to leave home because of the violence that was going on and I didn't feel safe around him then.

MR. ARONSON:

I have no further questions.

THE COURT:

Mr. Edwards.

MR. EDWARDS:

My Lords, this time, just referring to what I was saying before the witness came in, I would like leave of the Court to elicit from the witness the conversation that she over-

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heard between MacNeil and Ebsary when they came in the house. As I stated, it's not -- it's not for the truth of what was stated but surely it would be a great assistance to this Court --

THE COURT:

Does it go to the credibility of Mr. MacNeil?

MR. EDWARDS:

Yes.

THE COURT: (Justice Macdonald)

How does it? He didn't give any evidence about a statement.

MR. EDWARDS:

Yes, he did, My Lord. With respect, as I recall he did say that: "You shoulda given him the money. You didn't have to kill him."

THE COURT: (Justice Macdonald)

When did -- he said that?

MR. EDWARDS:

Yes, that's what my notes show, My Lord.

THE COURT: (Justice Pace)

That was never -- it may be in your notes but it wasn't before this Court.

MR. EDWARDS:

I have in my notes, My Lord, that "that fellow died". This is what he told him. "You should have given him the money. You didn't have to kill him." But that -- that particular conversation, that's --

THE COURT:

That wasn't that night?

MR. EDWARDS:

No, I'm sorry, that was the next day.

THE COURT:

Yes, it wasn't that night.

MR. EDWARDS:

But it does -- you know, she was going to tell us about a

conversation they had that night. Surely that has a bearing on Mr. MacNeil's believability about what was said. I really -- my submission, I guess, I suppose is that really I don't see the harm or the prejudice of it and in fact I can see where it would be of a very great assistance to the Court to allow that in. Now a very rigid application of the hearsay rule --

10) THE COURT:

We're not talking about that. We're talking about -- carry on and ask the question on the basis of exploring Mr. MacNeil's credibility --

MR. EDWARDS:

Thank you, My Lord.

THE COURT:

-- at a closely related time.

BY MR. EDWARDS: Cross-Examination

20) Q. Now, Miss Ebsary, you stated that you overheard some conversation on the night of the stabbing when Mr. MacNeil and your father came into the house. Is that correct?

A. That is correct.

Q. Can you recall that in as much detail as you can for the Court please?

30) A. When Jimmy and my father came in, Jimmy turned to my father and said: "You did a good job back there." My father turned around and said: "Shut up, be quiet, don't say anything." And from there the two of them just proceeded into the kitchen.

Q. I see. What was Mr. MacNeil's demeanour like at the time if you understand what I mean by --

A. He was like a kid with a new toy, sort of. He looked very elated. He looked very excited about something, like. His eyes were big.

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Q. How did that compare with his behaviour as you had observed it on prior occasions?

A. Jimmy was usually very placid, just, you know, he was there and that was all. He, like, didn't really affect one way or the other. Just to see him normally --

THE COURT:

Have you finished that question?

MR. EDWARDS:

Yes, My Lord.

BY MR. EDWARDS:

Q. How do you feel about your father right this day?

THE COURT:

That's not relevant. What's the relevancy of that?

MR. EDWARDS:

Well the relevancy is, My Lord, to establish whether the witness has any motives for implicating her father in the stabbing. I submit it bears directly on her credibility. I mean, like if the witness -- I hesitate to say too much in the presence of the witness lest she be influenced in her answer by what I say. But obviously if she has a grudge against her father, that bears on the believability of what she's saying. I submit --

THE COURT:

All right, one question.

MR. EDWARDS:

Yes. I don't think I can ask it in one, My Lord.

THE COURT:

You've already asked her a question. Perhaps she could answer it.

MR. EDWARDS:

Yes.

BY MR. EDWARDS:

Q. What -- how do you feel about your father now?

A. I don't -- I just -- there isn't any real feeling. It's just something I'm doing. I don't -- I think if anyone has asked me about him, I might tell somebody he was dead rather than admit he was my father. It's kinda the way I feel about him.

Q. I'm sorry, I didn't follow you.

A. I said that if someone was to ask me right now about my father, I'd probably sooner tell them I didn't know him or that he was dead rather than have to go through these things all over again with him. I just don't really acknowledge him anymore.

Q. Okay. At the time in 1971 you indicated that you wished you could have found the knife so that you could have gotten somebody to listen to you. Is that what you said in your evidence?

A. That is what I said, yes. No, not in 19 -- yeh, in 1971, yes.

Q. Yes, so you said that you wished you could find the knife so you could get somebody to listen to your story.

A. Yes.

Q. Is that what you said?

A. Yes, I said that, yes.

Q. And the reason you wanted to do that, you wanted the authorities to know that your father had done the stabbing. Is that correct?

A. Yes, that is correct.

Q. So even at that time, there was no love lost between you and your father. Is that correct?

A. I grew up being afraid of my father. I wanted a stop put to him and I was tired of people telling me if I wait long enough something will happen and I won't have to put up with him any longer. I was a

little bit tired of the misery he caused in our household and in other ones. I think -- I thought then and I think now that I deserved a life I never got.

Q. Okay. Did you bring this matter to the attention of any person or persons?

(10) A. I had occasion on several times to speak with people about my knowledge about what had happened. I spoke with a very close friend of mine about it, Dave Ratchford, who brought it to the Mounties and we were going to try to do something at that --

Q. Well, no, you can't -- okay. You told David Ratchford about it for one?

A. Yes, I did.

Q. What was your relationship with him at the time?

A. He was my teacher.

Q. And when was that?

(20) A. Maybe 1974.

Q. About 1974. Okay. Did you have any discussions with Elizabeth Boardmore about it?

A. I discussed it indirectly with Liz Boardmore.

Q. And what was her relationship with you?

A. She was an English professor of mine at the College where I went and we were discussing criminal justice at one point.

Q. I see. Now do you -- do you have an uncle, Uncle Bob Ebsary?

A. Yes, I do.

(30) Q. Do you recall him visiting you in 1975?

A. Yes, I do.

Q. Do you recall conversation between -- without getting into the conversation now -- between your Uncle Bob and your father at that time?

A. Yes.

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MR. EDWARDS:

My Lords, here again I would like to elicit from the witness about that because the -- maybe we could ask the witness to leave for a moment, My Lord, lest she be influenced?

THE COURT:

Yes.

MR. EDWARDS:

(10) This is, I submit, of significance. It bears on the credibility.

THE COURT:

Credibility of whom?

MR. EDWARDS:

Well, again, MacNeil primarily.

MR. ARONSON:

(20) I have no reason to object because insofar as the case we are attempting to put before the Court in my view, it's not hurting the case. The difficulty I have is not altogether relevant to Jimmy MacNeil's credibility. I do not see that, where it has any relevance to the credibility but as I say, I leave it to the discretion of the Court.

THE COURT: (Justice Macdonald)

Where is Uncle Bob? Where is he?

MR. EDWARDS:

Well Uncle Bob is in Newfoundland now. I know what you're getting at, My Lord, and in view of my learned friend's objection, I'll drop it.

MR. ARONSON:

(30) I didn't object.

MR. EDWARDS:

Well, --

THE COURT:

Are there any other questions for this witness?

MR. EDWARDS:

Yes, My Lord, if I could just have a second please?

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If I could just have a moment, My Lord.

THE COURT:

Well would you like to -- if there's more than one or two questions, we'll --

MR. EDWARDS:

No, My Lord, I haven't got much left. I'm just looking for a picture that's buried in the papers here.

THE COURT:

You'll probably be some time. We'd better adjourn until ten o'clock. We'll adjourn until ten o'clock tomorrow morning.

COURT RECESSED: 4:00 p.m.

NOTE: Miss Ebsary advised not to discuss case during the recess.

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COURT RECONVENED: 10:03 o'clock in the forenoon on
the 2nd day of December, A.D., 1982

DONNA E. EBSARY, resumes testimony as follows:

BY MR. EDWARDS:

(10) Q. When we left off yesterday, I was about to show you a photograph but before we get to that I'd like to ask you a few other questions. When did you stop residing in the family residence, Miss Ebsary?

A. About four years ago.

Q. About four years ago?

A. Yes, sir.

Q. So some time in 1978?

A. Yes, sir.

Q. All right, so you would have been present in or still been a part of the family unit when the move was made from Argyle Street to Mechanic Street. Is that correct?

(20) A. That is correct.

Q. Yes, and you recall in what year that was? Approximately.

A. Might have been '74, '75. I'm not sure.

Q. So it would be three, maybe four years after the Seale stabbing. Is that correct?

A. Yes, sir.

Q. And in that period between the time of the stabbing and the time of the move to Mechanic, were you aware of any knives around the house?

A. Yes, sir.

(30) Q. Yes. Belonging to your father?

A. Yes, sir.

Q. Yes. And were those knives kept in any one particular place in the house or were they at various locations?

A. My father had knives at various locations in the house.

Q. And would he keep several together in each of those locations or would there be one knife say in the -- in

his bedroom --

A. No, he had special areas for different knives.

Q. Yes. Can you describe some of those special areas for us?

(10) A. Some of his favorite knives he'd keep up in his bedroom mounted on a wall plaque. Or longer knives he kept in canes that he used for walking sticks. He had other knives that he had redesigned and kept in the kitchen for his own use and he had a group that he was in the process of redesigning he kept just like in a hall area, where he was in the process of changing them around.

Q. And would you recognize those knives if you saw them again?

A. I believe so.

Q. Can you describe in any detail any of the -- the types of knives that he kept around?

(20) A. Well he kept some long narrow ones that he had specially filed to fit inside a cane and so they were like kind of long and narrow type of knife. The ones that he had in the kitchen were ones that he had -- that were older knives that he had taken, like, the handles off them and put, like, brass-fitting handles on them with tape around them and then like a garden hose hooked onto that and the other knives he kept were for when he worked so they were like very large carving knives with wooden handles that had three steel pegs through them to hold the handles on.

(30) Q. I see, okay. Now around the time of the move from Argyle Street to Mechanic Street, did you witness the packing of the knives and the shipment of the knives from one location to another?

A. No, I did not.

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Q. After you moved to Mechanic Street, did you see any of the same knives that you had seen on Argyle Street in the Mechanic Street location?

A. Yes, sir.

Q. And can you say with any certainty whether or not they were --

A. They were from Argyle -- that they were my father's and they were from Argyle Street, yes.

10)

MR. EDWARDS:

My Lords, yesterday I had a photograph marked as an exhibit and it was a photograph of approximately ten knives. After considering the matter last night, I felt that it would be preferable to actually show the witness the knives so with the Court's leave, I'd like to mark those knives now and they -- their relevance will be established through subsequent witnesses.

THE COURT: (Justice Hart)

Are we up to R-4 now?

20)

MR. EDWARDS:

Yes, My Lord.

THE COURT: (Justice Hart)

Perhaps you could mark them R-4, a,b,c,d,e, and so on.

BY MR. EDWARDS:

Q. Miss Ebsary, as I put the knives there beside you, would you just examine them closely and I'll ask you a few questions on them in a moment. All right, Miss Ebsary, displayed before you are exhibits -- -- knives marked exhibits marked R-4a through to and including R-4j. Have you looked carefully at the knives?

30)

A. Yes.

Q. Now what if anything can you say about the similarity between those knives and the knives you saw while

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residing in the family home at Argyle Street and then later at Mechanic Street in Sydney?

A. These are all knives from my father -- that belonged to my father.

Q. You're sure about that?

A. Yes, I'm sure about that.

Q. Are there any distinguishing characteristics or marks on the knives that would indicate to you that they are definitely your father's?

A. Well from being around them and knowing them, I know that this --

Q. All right, let's identify them. You're pointing now to exhibit R-4g?

A. Okay, R-4g, h, j, and a are from the kitchen.

Q. Now how can -- how can you tell that, Miss Ebsary?

A. I know them from the brass handles that they are knives that were in the kitchen of the house. I mean they're not marked "kitchen". I just know that that's where they're from.

Q. The brass handles seem to be rather make-shift or home-made design.

A. He put them on himself.

Q. Did you ever witness him putting them on himself?

A. On one -- on a couple of occasions I saw him putting knives together.

Q. Yes, where would he have done that?

A. On Argyle Street he would have done it either in the kitchen or in the back yard or up in his room.

Q. I see. Did your father have any particular favorite knife or any knife that he carried with any more frequency than any others if in fact he carried knives?

A. Exhibit R-4i and exhibit whatever this is.

Q. Exhibit R-4i?

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- (10)
- A. He had on his long blue I guess you'd call it a trench coat that he had hung over his shoulders when he went out --
- Q. You say he had it hung over his shoulders?
- A. He didn't put his arms in his sleeves. He kept it hung over his shoulders as if he was playing a captain or if he was something like that. He never put his arms in his -- in that jacket or in that long coat.
- Q. You say as if he was playing a captain. What did he wear on his head? Did he have anything on his head that night?
- A. I don't remember him wearing anything on his head that night.
- Q. You may have described his facial features yesterday. I don't recall, but did you -- did you mention yesterday what colour hair he had at the time?
- A. Probably had gray or white hair but it might have been green the night he went out.
- (20)
- Q. Okay, did he wear a beard or a goatee or anything?
- A. He had a goatee, a little goat whisker, just a little chin whisker.
- Q. And did he wear eye glasses?
- A. He does wear glasses but he didn't wear them out. Like he'd have them in his pocket and he'd put them on if he had to read or something. He wore them on and off.
- Q. Do you recall what he was wearing under the blue trench coat?
- (30)
- A. I don't remember the colour of the shirt he had on. I know he had a shirt on and that he was wearing dark pants but --
- Q. You recall the period immediately following the stabbing very well, do you?

A. Fairly well.

Q. Were you aware of the preliminary inquiry and the trial?

A. Yes, I was. I was aware of it.

Q. Even at that age? You were thirteen years old at the time now.

(10) A. I was aware of it going on. It was a prime topic around the town and it was unusual to have detectives coming to my home so I was aware of them coming.

Q. Yes, now that's what I want to focus on. Between the time of the stabbing and the time of the trial, did any detectives come to your home, or was it after the trial?

A. I think it was after the trial the first time I saw a detective come to my house.

Q. So to the best of your recollection you -- no detectives or police of any kind came to your home before the trial?

(20) A. I don't recall any being there at that time.

Q. Okay, thank you, Miss Ebsary, I have no further questions.

MR. EDWARDS:

Thank you, My Lord.

MR. ARONSON:

No questions arising out of that, My Lord.

(WITNESS WITHDREW)
EXCUSED

(30) MR. ARONSON:

The next witness, Patricia Harriss.

- 135 - PATRICIA ANN HARRISS, by Mr. Aronson

PATRICIA ANN HARRISS, being called and duly sworn, testified as follows:

BY MR. ARONSON: Direct Examination

Q. Would you state your full name to the Court please?

A. Patricia Ann Harriss.

Q. And how old are you?

A. I'm twenty-six.

Q. And what was your date of birth?

A. November 15th, '56.

Q. Where are you presently living?

A. 5 Kings Road, Sydney.

Q. And how long have you lived at that particular address?

A. Close to twenty years.

Q. What education do you have?

A. I finished grade ten at Sydney Academy.

Q. And are you presently employed?

A. No, I'm not.

Q. Can you recall what year you finished school in?

A. Around '75, I think.

Q. And after 1975 when you had finished school, what did you do by way of employment or further education?

A. I worked various jobs, as a waitress. I took an aesthetic course; various things.

Q. Now in 1971 would you have been living at 5 Kings Road?

A. Yes.

Q. Did you testify at the trial of Donald Marshall Jr. in 1971 for the murder of Sandy Seale?

A. Yes, I did.

Q. Have you ever been convicted of a criminal offence?

A. Yes.

Q. Could you say what offence?

A. A shop-lifting offence.

Q. And can you recall when that occurred?

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A. I'm not quite sure in what year it was. I think it was --

THE COURT:

What's the relevance of that?

MR. ARONSON:

I'll leave it, My Lord.

BY MR. ARONSON:

Q. Can you recall whether or not you attended a dance in Sydney on Friday, May 28th, 1971?

A. Yes.

Q. Where was that dance?

A. St. Joseph's on George Street in Sydney.

Q. Is there a more lengthier description of St. Joe's?

A. St. Joseph's Parish Hall, I think.

Q. And where is that located?

A. On George Street.

Q. I see. How old were you when you attended that dance?

A. Around fourteen years old.

Q. Where -- do you recall how long you were at the dance for?

A. No, but I know I left before it was over.

Q. Can you say approximately what time you left?

A. I'm not too sure on the time. I just know that it was before the dance was over.

Q. Did you leave alone or in the company of anyone?

A. I was with my boyfriend.

Q. And what was your boyfriend's name?

A. Terrance -- Terry Gushue.

Q. And where did the two of you go from the dance?

A. We left the dance and proceeded to Wentworth Park.

Q. Can you say whether or not you had been drinking, that particular evening?

A. Terry might have been. I don't really recall.

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- Q. And what about yourself? Can you recall whether you had been drinking that night?
- A. I don't think so.
- Q. You say you went to Wentworth Park?
- A. Yes.
- Q. How far is Wentworth Park from St. Joseph's Parish Hall?
- A. Oh, my. Maybe two blocks.
- 10) Q. Can you say what time you would have arrived at Wentworth Park?
- A. For sure, no. I'm not sure of the time.
- Q. What did you do after going to the park?
- A. We sat on a bench and smoked a cigarette.
- Q. Are you able to say where that bench was in the park?
- A. Close to the bandshell.
- Q. If I could show you exhibit -- I believe it's marked R-2. Can you say where the bandshell is located with reference to exhibit marked R-2?
- 20) A. The bandshell is there.
- Q. Is it marked -- do you see any markings on the map that would indicate where it is?
- A. No.
- Q. Do you want to mark on the map with the letter "p" where you were sitting?
- A. Approximately?
- Q. Approximately. The witness has placed the letter "p" -- I think it would be probably easier if you could take a look at it, My Lords. And what happened after you sat down at that park bench?
- 30) A. We stayed for awhile. We smoked a cigarette and then we left.
- Q. And then what happened?
- A. We proceeded across the bandshell to Crescent Street on our way home.

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- Q. I see. Had you up to that point in time -- can you recall whether or not you saw anyone?
- A. I remember Robert Patterson. He was sick, vomiting in the woods and grass.
- Q. And subsequent to that time and as you were walking down Crescent Street on your way home, did you see anyone else?
- A. In the park?
- Q. Yes.
- A. No.
- Q. Okay, what happened after you started walking down Crescent Street towards home?
- A. We ran into Donald Marshall and asked him for a match to light a cigarette.
- Q. Do you see Donald Marshall in the court room today?
- A. Yes, I do.
- Q. Would you point him out please? For the record let it be noted that the witness pointed to the appellant. After you saw Donald Marshall, what happened?
- A. We just asked for a match, Terry and I, and then we left to go home.
- Q. Are you able to say from what direction Junior Marshall was coming, or from where he came?
- A. He was -- I don't think he was walking. He was more or less standing.
- Q. Now are you able to say whether or not there was anyone with Donald Marshall?
- A. I can say there was someone there but who, no.
- Q. Okay. Now you say there was someone there. Can you say how many were there?
- A. At the time I was saying two men.
- Q. Is that what you're saying today?

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A. Yes.

Q. Where were these two men standing or where did you see these two men relative to where you were standing with Donald Marshall?

A. One was on each side of Donald.

Q. And are you able to give a description of either one of those individuals?

A. At this time, no.

Q. Have you had the opportunity of reading over any of the statements you gave in this matter prior to testifying?

A. Yes, I have.

Q. Have you -- would you like to take a look at one of your statements in terms of refreshing your memory?

A. No.

Q. Would that assist you at all in terms of recalling
--

THE COURT:

You're on direct examination but one question that you perhaps overlooked, would you ask her where she was on Crescent Street when she saw Marshall and the other two men?

MR. ARONSON:

All right.

BY MR. ARONSON:

Q. Could you tell the Court with reference to exhibit R-2 where you saw Donald Marshall?

A. Okay, I'm not too sure really just where.

Q. Could you say approximately?

A. I would say approximately here.

Q. Would you put a P-2 at that location? For the record the witness has indicated -- placed the marking "P-2" on Crescent Street across a building above which are

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the words: "Green building, Crescent Apartments".
Had you seen Donald Marshall at all prior to seeing him in the park on that particular evening?

A. I recall seeing him at the dance.

Q. And did you see anyone else at the dance that evening besides Donald Marshall that you can name?

A. I met Sandy Seale at the dance.

Q. You met Sandy Seale. Had you known Sandy Seale prior to that particular night?

A. No.

Q. So in other words you're saying here that you first met him at the dance?

A. Yes.

Q. How did you come to meet him?

A. I remember he was trying to lick my hand and get the stamp off my hand to get in the dance.

Q. How certain are you that you saw Donald Marshall at the dance?

A. How certain am I? At this point, I can't really say I'm positive that he was there.

Q. And how long would you say you were with the -- Donald Marshall and these two other people on Crescent Street?

A. Just to light a cigarette and leave.

Q. Do you recall anything else that happened while you were with Mr. Marshall?

A. No.

Q. Was there a conversation?

A. Not that I remember, no.

Q. After -- after that what happened? What did you do?

A. I just went to Kings Road and went home.

Q. How far is your home from Wentworth Park?

A. Not too far.

Q. In terms of distance what would you put it at?

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Or putting it another way, how long would it have taken you to walk from the point you've marked P-2 on exhibit R-2 to your home?

A. No more than ten minutes if that.

Q. Now you've already indicated that you testified at Donald Marshall's trial in 1971. How did you come to be a witness at the trial?

A. I don't really understand your question.

THE COURT:

How would she know? She was presumably subpoenaed.

BY MR. ARONSON:

Q. Can you recall if you had any occasion to be interviewed or speak to Sydney City Police?

A. My mother had -- I guess they went to the house and asked my mother for me and my mother went and got me. I was going to the show and she brought me down to the police station for questioning.

Q. Do you recall when that occurred?

A. No, I don't.

Q. And what happened after you were called down to the police station?

A. I was brought in for questioning.

Q. Can you recall the length of time over which the questioning took place?

A. It was a long time.

Q. And can -- can you put it in terms of hours or?

A. At this point, no. I just know it was a long time.

Q. Do you recall generally the testimony that you gave at Donald Marshall's trial?

A. Yes.

Q. Are there any differences in your own mind as to what you've said in court today and what you said at his trial in 1971?

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A. Yes, I didn't mention the two men that I had seen with Marshall on Crescent Street.

Q. And how do you account for the difference between what you've just indicated you said at Marshall's trial in 1971 and what you're saying in court today?

A. Would you repeat the question please?

Q. How do you account or how do you explain the difference between the testimony which you've just indicated you gave at Donald Marshall's trial in 1971 and the testimony which you are giving in court today?

A. Through the long hours of being in the police station, my statement was changed and I was scared and didn't want to mention it.

Q. Mention?

A. The two gentlemen I had seen.

Q. Why were you afraid?

A. There was long hours of going over it and the word "perjury" was brought up a lot and they didn't seem to believe that I had seen these two characters.

Q. Yeh, now when you're saying "the word 'perjury' was brought up", who brought up that particular word?

A. The detectives.

Q. Do you recall who those detectives were?

A. I recall Sergeant Urquhart. The other I don't.

Q. You've also indicated fear. Can you account for your feeling of fear?

A. I was young. I didn't understand and it was a long time of going over and over what had happened that night.

Q. Can you recall on how many occasions you gave statements to the Sydney City Police?

A. No.

Q. Can you recall how many statements you gave to the Sydney City Police?

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A. I remember a lot of writing and starting over again but how many statements, I don't know.

Q. Going back to your meeting with Marshall in the park, can you say how far or at what distance Marshall was from where you were standing?

THE COURT:

Is this on Crescent Street?

MR. ARONSON:

On Crescent Street, yes.

BY THE WITNESS:

A. How far? He was standing a bit off the street and I was practically on the grass going towards home.

Q. Okay, can you recall the location of the two individuals you've indicated you saw relative to where Marshall was standing?

A. They -- he -- they were along side Marshall.

Q. Can you say whether or not you would have recognized Sandy Seale if you would have seen him in the park that night?

A. I think I would have recognized him, yes.

Q. Can you say whether or not you saw Sandy Seale in the park on the night of Friday, May 28th, 1971?

A. No, I did not see him.

MR. ARONSON:

I have no further questions of the witness, My Lord.

THE COURT:

Mr. Edwards.

MR. EDWARDS:

Yes, thank you, My Lord.

BY MR. EDWARDS: Cross-Examination

Q. Now, Miss Harriss, the night in question, May 28th, 1971, you've told my learned friend that you don't think you were drinking that night.

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A. No.

Q. But you're not sure you weren't drinking that night?

A. I don't think I was drinking at that time, no.

Q. When you were fourteen years of age, did you take a drink on occasion?

A. I might have had a drink of beer or something like that. It wasn't hard drinking or anything.

Q. I see. But would it be fair to say that you did take a drink from time to time?

A. Oh, yes.

Q. So that if you had something to drink that night, it wouldn't have been unusual, would it, particularly?

A. No.

Q. You mentioned when my learned friend asked you about the number of men you saw in the area where you were talking to Junior Marshall that night or Donald Marshall, and I believe you said that at the time you said two men. Now what time do you mean? Is that your first contact with the police or some other time?

A. The reason I mainly remember is from reading my statements and going over it so much with the police at that time. At this time, I really -- I don't remember.

Q. I see. So what you're saying is that you now have no independent recollection of how many men were there. You're just going by your statement. Is that --

A. I -- from reading my statement it helps me remember. That's what I'm saying.

Q. Okay, well, you indicated to my learned friend that you -- you gave different versions at the time. So which -- which statement helps your memory best; the one where you said that there were two men there or when you said at the trial that there was only one other

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person there?

A. My first statement, the written statement.

Q. The original statement?

A. Yes.

Q. But you cannot now recall from your own memory without looking at the statements what those two men looked like?

(10) A. No, I don't know what they looked like.

Q. Can you recall whether they were young or old or anything about them?

A. Older men.

Q. Older men? What do you mean by that?

A. At -- that they weren't young. They weren't from the dance or young people.

Q. You mean they weren't teenagers?

A. Right. Yes.

Q. But on the other hand, they weren't senior citizens either, were they or were they?

A. In my mind they were just older men.

Q. Do you recall whether or not you had any discussion with any of those other persons?

A. No, I didn't.

Q. Was Terry Gushue with you at that particular time?

A. Yes.

Q. And you say that he might have had something to drink that night?

A. Terry?

(30) Q. Yes.

A. Yes.

Q. But you can't recall how much or what condition he was in, can you?

A. Well he wasn't in any drunk condition or -- he was fine.

Q. You're sure about that?

A. But he -- he used to drink.

Q. Yes. How old was he at the time?

A. I'd say he was around maybe nineteen, twenty years old.

Q. And he was five or six years older than you were at the time?

A. Yes.

Q. And you say he was your boy friend at the time?

(10) A. Yes.

Q. And how long had you been going out with him?

A. I knew Terry maybe two years or so.

Q. Two years? You were dating him since you were twelve years old?

A. No, no. I knew him for that long. I knew him for quite awhile. Not really dating. I was fairly young.

Q. Yes, but when did you start dating him? You referred to him as your boy friend. I assumed from that that you were dating.

(20) A. Well we went to dances together and that and at that time I would call him my boy friend, yes.

Q. Yes, and how long did that relationship --

A. My, I'm not sure really how long.

Q. Well was it over a year or less than a year?

A. Over a year.

Q. Over a year. I see. Were you a fairly big girl, tall girl, I should say, for --

A. Yes.

Q. -- for fourteen?

(30) A. Yes.

Q. Do you recall your height at the time? _____

A. No, I don't.

Q. You told my learned friend first that you recalled seeing Donald Marshall at the dance and then when he questioned you on that further, you said you're not -- you're not

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really sure.

A. I think it was Donald Marshall who was with Seale outside the dance when he tried to get the stamp from me.

Q. But you're not -- you're not really sure of that?

A. I'm not sure who introduced me to him, no.

Q. I see. Now you filed an affidavit with this Court, Miss Harriss, and -- well, the date of the affidavit is the 22nd day of July, 1982. Is that correct?

A. Yes.

Q. And it has attached to it copies of the statements that you gave to the various police authorities.

A. Yes.

Q. The two statements you gave to the Sydney City Police in 1971?

A. Yes.

Q. Right?

A. Yes.

Q. And also the statement that you gave to the R.C.M.P., Inspector or Staff-Sergeant Wheaton on the first of March, 1982?

A. Yes.

Q. Now my learned friend asked you to account for the discrepancy between your first statement where you said that you saw two other people there with Donald Marshall and your testimony on the trial where you said there was only one other person. Do you recall him asking you that?

A. Who is that?

Q. Mr. Aronson. He just asked you to account for the discrepancy in your testimony.

A. Yes. I don't understand.

Q. You will agree that there is a significant difference between your first statement to the police where you

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said there was two -- two men with Donald Marshall at the time and what you said at the trial when you said there was only one other person there.

A. Yes.

THE COURT:

We do not know and does she know what she said at the trial?

MR. EDWARDS:

I'll explore that with her now, My Lord.

BY MR. EDWARDS:

Q. Do you recall what you said at the trial?

A. Pertaining to who was --

Q. How many people were with Donald Marshall at the time in question.

THE COURT:

Read the transcript because it's --

MR. EDWARDS:

I'll refer her to the transcript, My Lord, yes.

BY MR. EDWARDS:

Q. Miss Harriss, I'm going to refer you to the trial transcript, page 78, the question which begins at line 20. I'll read you the question and then the answer, and the question and the answer pertaining to that particular time; that is, when you met Donald Marshall on Crescent Street. All right? The question:

Was there more than one person with Mr. Marshall?

The answer was yes. Question:

How many were there?

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

Do you recall giving that particular -- those questions and answers?

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A. Do I recall it?

Q. Yes.

A. Yes, I sort of.

Q. That's what you said when you were asked about it first. Then --

THE COURT:

You're going to go on?

MR. EDWARDS:

Yes. Yes, My Lord. I just want to be fair to get all her references in there.

BY MR. EDWARDS:

Q. Page 79, line 15 --

THE COURT:

But she goes on on page 78, Mr. Edwards.

MR. EDWARDS:

Yes, all right, perhaps that's a fair thing to do. I'll read that whole passage.

BY MR. EDWARDS:

Q. I'll just read you about half page of the transcript, Miss Harriss, and then I'll ask you some questions on it. All right:

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

A. Yes.

Q. 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.

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?

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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?*

A. *Yes.*

Q. *Who was it? Do you know?*

There was a pause there, no response.

Q. *Answer me please.*

A. *No.*

That was the reply to the question: "Who was it? Do you know?", and you answered: "No".

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

A. *One.*

Q. *The one person?*

A. *Yes.*

Okay. Now do you recall that passage?

A. *Not vividly, no.*

Q. *Do you recall the ultimate answer there?*

A. *I can't --*

Q. *After you were questioned -- well, after a few questions were put to you about the number of people with Donald Marshall where you ultimately answered one person.*

Do you recall saying that at the trial?

A. *No, not really, no.*

Q. *Would you disagree that that's what you said?*

A. *No.*

Q. *Was your recollection without being referred to the testimony -- did I understand your evidence to Mr. Aronson correctly that you recall saying at the trial that there was only one other person with Donald Marshall?*

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A. I don't understand your question again.

Q. Do you recall just being questioned by Mr. Aronson before I started questioning you?

A. Yes.

Q. Do you recall telling him that you thought you testified on the trial that there was only one person with Donald Marshall?

A. No, I don't remember saying that.

MR. EDWARDS:

My Lord, is the original affidavit filed with the Court there in reference to her?

THE COURT:

This has not been received. It has not been filed, none of the affidavits.

MR. EDWARDS:

No, My Lord, but I'd like to use it for the purposes of a Section 10 cross-examination. It is a previous statement by her in writing, and I'd like to use it to test her credibility.

THE COURT:

Contrary to what? I think you should put to her the rest of her examination on the question of who she was -- who was with her. Cross-examination.

MR. EDWARDS:

Okay, My Lord.

BY MR. EDWARDS:

Q. At page 80, line 29, this is when you were being cross-examined by Mr. Rosenblum at the trial. Do you remember Mr. Rosenblum asking you questions at the trial?

A. Yes, I do.

Q. Okay. And he -- he asked you the following:

THE COURT:

Line 29?

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MR. EDWARDS:

Yes, I'm just seeing where it starts, My Lord.

BY MR. EDWARDS:

Q. Line 22 I suppose or 23, Mr. Rosenblum asked you:

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?

You answered that by saying:

Well, someone was there but I never paid any attention -

Mr. Rosenblum then asked you:

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

A. No.

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.

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.

The answer was inaudible to that.

Q. You will have to answer so we can get it down.

A. Yes.

So just to clarify that, your answer "yes" was to the question: "You say you knew there was somebody around."

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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. Is that right?*

A. Yes.

Q. *And that's all. Isn't that it?*

A. Yes.

Q. *Anything else?*

A. No.

Do you have any recollection of being asked those questions --

A. Yes, I do.

Q. -- and giving those answers to Mr. Rosenblum?

A. Yes, I do.

Q. All right, and would you agree that the unmistakable impression from that passage is that you were saying in effect there was only one other person with Junior Marshall at that time on Crescent Street?

A. Do I remember saying that?

Q. Yes.

A. Is that what you're asking me?

Q. Yes.

A. Yes.

Q. Okay. And are you now saying that you have a different

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recollection from that? In other words, are you now saying that there was more than one person with Junior Marshall at that particular time?

A. I wanted to say it at that time in Court only I was scared to. I wanted -- I wanted to say that I saw the two people. That's what I'm saying now.

Q. You wanted to say that then?

A. Yes.

Q. So the short answer to my question of whether you are now saying that there was more than one person with Junior Marshall is yes.

A. Yes.

Q. And you're absolutely sure of that?

A. Yes.

Q. Now you've hesitated in your answer there when I asked you if you're absolutely sure.

A. I hesitate because I want to make sure that I feel that inside and that's the way I feel, that there were two other men with Marshall.

Q. Two other. You're sure it wasn't three or four?

A. I remember two as one on each side.

Q. But there could have been others or can you say that there definitely was no more than two?

A. There was no more than two alongside him.

Q. Were there other people in that general vicinity --

A. There --

Q. -- that you noticed?

A. There could have been but not that I noticed.

MR. EDWARDS:

Now, My Lord, may I now proceed with the affidavit?

THE COURT:

What's the purpose of it?

MR. EDWARDS:

Well, under Section 10, My Lord, to test her credibility.

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Perhaps just for clarity, I'll refer to the Section; Section 10:

Upon any trial...

Well, we're not on trial but I would assume the same rules apply.

...a witness may be cross-examined as to previous statements made by him in writing, or reduced to writing, relative to the subject-matter of the case, without such writing being shown to him; but, if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing that are to be used for the purpose of so contradicting him;...

I would refer Your Lordships to the annotated case in Martin's 1981 edition, CORMIER v THE QUEEN, and the case is cited after that. What Cormier --

THE COURT:

That's not necessary. What do you want to contradict?
What is the contradictory statement?

MR. EDWARDS:

Well, My Lord, right on the --

THE COURT:

What the witness has said today?

MR. EDWARDS:

Well, yes, in part what the witness says today contradicts not only I submit what she gave in evidence but also what she gave in the statement she gave to the City Police on June 18th, 1971, which is attached as an exhibit to her affidavit. I would like to explore with her in order to test her credibility the reasons -- well, the fact that there are discrepancies in her testimony and the reasons for those discrepancies.

THE COURT:

Statements that contradict what she said today?

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MR. EDWARDS:

Well, yes, in part but my submission is that Section 10 with great respect does not restrict me to merely contradicting her. Like there may be parts left out of a statement, there may be things said in the statement that require qualification. I submit that is the big difference between Section 9 where you go after your own witness and Section 10 which is used to cross-examine the other side's witness, because it -- the scope of Section 10, if I can put it that way, is very much broader than Section 9 and the latitude for cross-examination, I submit, corresponds therewith.

THE COURT:

Carry on.

MR. EDWARDS:

Thank you, My Lord. Could I have her affidavits marked for the record?

THE COURT:

Yes. Just the statement. Not the affidavit.

MR. EDWARDS:

Well, is -- are Your Lordships ruling that my cross-examination will be limited only to --

THE COURT:

What you asked for was about the statement.

MR. EDWARDS:

No, My Lord. I'm sorry, My Lord. Maybe I didn't make myself clear but I'm asking to cross-examine her not only on the statement but on the affidavit and all the exhibits. I would like to conduct a general cross-examination. I submit that it is imperative to test the credibility of this witness to have that scope of cross-examination.

THE COURT: (Justice Hart)

You didn't ask for that. You're now asking for that, are you?

MR. EDWARDS:

Yes, My Lord. I'm sorry I didn't make that clear.

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THE COURT:

Carry on.

MR. EDWARDS:

Thank you very much, My Lord.

BY MR. EDWARDS:

Q. Miss Harriss, I'm not showing you exhibit marked R-5.
Would you have a look at that please?

THE COURT:

Would you describe it for the record?

MR. EDWARDS:

Yes, My Lord.

BY MR. EDWARDS:

Q. That is the affidavit you filed with the Court -- if
I could just check the date, or you swore on the 22nd
day of July, 1982 --

THE COURT:

It is not filed with the Court. It's not filed with the
Court.

MR. EDWARDS:

No, I corrected that, My Lord, and said that she swore,
which was sworn on the 22nd day of July, 1982.

BY MR. EDWARDS:

Q. Do you want a chance to read it over?

A. Yes.

MR. EDWARDS:

Perhaps, My Lord, this would be a convenient time to take
five minutes so the witness can go over that?

THE COURT:

Very well.

COURT RECESSED: 11:03 a.m.

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COURT RECONVENED: 11:21 a.m.

MR. ARONSON:

10) If it please the Court during the recess and I might indicate Patricia Harriss is represented by other counsel and I had been informed during the recess that she had been asked to make a statement to the Court prior to giving any of her testimony and I would ask if with the Court's permission she might be permitted to read that particular statement now.

THE COURT:

I don't think it's necessary. What's that?

MR. ARONSON:

With respect to Section 5 of the Canada Evidence Act.

THE COURT:

She doesn't need to under the Canadian Charter.

MR. ARONSON:

20) Well I had gotten that impression but as I say it had been put to me by counsel that I should make that request to the Court. I would agree that Section 13 is a positive right. One does not have to take the right to have it.

THE COURT:

It doesn't need to be claimed specifically.

MR. ARONSON:

That's right, thank you.

BY THE COURT:

Q. You understand, Miss Harris?

30) A. Yes, I do.

THE COURT: (Justice Pace)

It doesn't protect her for perjury anyway.

MR. ARONSON:

Oh, I would agree with that as well, My Lord.

THE COURT:

Mr. Edwards.

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MR. EDWARDS:

Thank you, My Lord.

BY MR. EDWARDS:

Q. Miss Harris, now before the adjournment, you --

THE COURT:

How long do you expect to be on this line? Where -- the Court has difficulty in seeing just what you're objective is.

MR. EDWARDS:

Well, I guess the objective is, My Lord, generally speaking to test her credibility. She is saying now --

THE COURT:

Well, she said -- at the trial she said several different things about the people that she met and she said several different things now. Now is there any point in belabouring that? That's obvious.

MR. EDWARDS:

Well, My Lord, with respect she -- the bottom line to what she said at the trial was that there was only one person with Mr. Marshall at the time in question.

THE COURT:

Yes.

MR. EDWARDS:

And that -- now if you read the whole transcript and in particular the addresses to the Jury, it was one of the very significant features, I submit, that lead to the conviction of Donald Marshall. She is now saying that there was more than one person there at the time. Not only is she saying that now but she gave a statement on June 17th, 1971, where she said there was more than one person and then on June 18th, she gave a different statement where she said there was only one person. July 5th --

THE COURT:

She's explained all that so why do we have to go --

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MR. EDWARDS:

Well with respect My Lord --

THE COURT:

What does it add to the Crown's case or to the Appellant's case?

MR. EDWARDS:

Well, My Lord, I submit that the references to the statements and I intend to cross-examine her on the basis upon which he made the statement, what were the sources of her information in the -- that she gave in the statement.

THE COURT:

She told us. She was there. From the point of view of the Crown, what's the Crown's position on this? What's your objective in this? What's your position on this?

MR. EDWARDS:

Well my position on it, My Lord, is that as it stands now there is really no way of determining without further cross-examination whether she was telling the truth then or whether she's telling the truth now as to the number of people and hopefully through cross-examination, I can elicit information which will assist the Court in determining which is the correct version. That is my function. It's I suppose more inquisitorial than adversarial in nature if I could characterize it that way.

THE COURT: (Justice Pace)

Well, that can't be if you're using the Evidence Act. Section 10 --

THE COURT:

Well, Mr. Edwards, would you carry on but let's keep it within bounds, eh, because we frankly can't see the relevancy of it. It's already established that she told two different stories and she's explained it today and to go into a lot of details on other things but if you feel

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it's necessary, carry on. Keep it brief, will you.

MR. EDWARDS:

Okay, My Lord, I'll try to keep it brief.

BY MR. EDWARDS:

Q. Miss Harriss, you had the opportunity during the adjournment to read the affidavit which I believe is marked exhibit R-5?

A. Yes.

Q. That would be your affidavit of July 22nd. Now I want to refer you first to paragraph eleven in the affidavit where you say:

That as referred to in my statement marked Exhibit "A" hereto, I did, on the night of May 28, 1971, at or near Wentworth Park, see Donald Marshall, Jr. and two other men - one of whom was gray or white-haired, short and wearing a long coat.

Right? You recall that in your affidavit?

A. Yes.

Q. Now what I would like to know is whether or not that paragraph was based on your reading your prior statement or whether as you say here now -- I'm sorry, or whether you do actually recall those two men?

A. I recall the two men but I don't recall what they looked like or what they were wearing.

Q. So that reference in your affidavit, that information came from your statement and not from your memory. Is that correct?

A. From reading my statement, yes.

Q. Now you have as I mentioned attached as exhibits to your affidavit a statement that you gave to the Sydney City Police on June 17th, 1971?

A. Yes.

Q. Is that correct? And that was the statement in which you referred to the old gray-haired man?

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A. Yes.

Q. Now did you know Mary Katherine O'Reilly at the time?

A. Yes, I did.

Q. And did you know her sister?

A. Yes.

10) Q. And prior to giving that statement on June 17th, did you have any conversations with the -- either of the O'Reilly sisters concerning the events of the night of May 28th?

A. Not that I remember.

Q. Not that you remember?

A. No.

Q. Is it possible that you could have?

A. Well I knew them and I know they knew Junior Marshall, so --

Q. Were they friends of yours? Did you have contact --

20) A. Yes, they were friends of mine.

Q. You had contact with them on a regular basis during that period of time?

A. Well, I went to school with them. I wasn't -- I didn't hang around with them or anything.

Q. And they were friends of Donald Marshall?

A. Yes.

Q. Were you a friend of Donald Marshall's at the time?

A. I knew him at the dances and from the dances, yes.

Q. Would you dance with him on a regular basis?

30) A. No.

Q. And would it surprise you to know that Mary Katherine O'Reilly --

MR. ARONSON:

With respect, My Lord, I believe I know in which direction my friend leads and he may be referring to a statement which

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(10) is not on file or has been filed with the Court but has not been admitted in evidence. The particular person who gave that statement is not present, has not had anything to do with these particular proceedings and I believe that it is impossible to test the accuracy of that statement which my friend may be referring to with the O'Reilly girl and I would therefore object to him following that particular line of questioning.

MR. EDWARDS:

If I may speak to the objection, My Lord, surely it is legitimate to put to the witness a question about whether or not she got the information in question from -- from Miss O'Reilly when as my learned friend knows --

THE COURT:

What information?

MR. EDWARDS:

(20) The information about the descriptions of the men she gave, when there is in existence a statement -- I submit, it's not in evidence but that is immaterial but there is in existence a statement given on the same day that Miss -- on June 18th, 1971, at around the same time Miss Harriss gave her statement where O'Reilly says that she in fact told Harriss to give the police the description of the two old men. It seems obviously very relevant to credibility.

THE COURT:

Are you going to call O'Reilly?

MR. EDWARDS:

(30) I would be prepared to call her if that is necessary. I could say what I was going to do after the cross-examination or I could indicate it now I suppose -- it's -- it rather destroys the effectiveness of the witness's testimony to have this conversation in her presence. May she be excused for a moment?

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THE COURT:

Yes.

MR. EDWARDS:

My Lord, there is a statement, June 18th, 1971, from Mary Patricia O'Reilly. I was saying Mary Katherine but it's Mary Patricia.

THE COURT:

That's not before us and she hasn't testified today about the description of the men.

MR. EDWARDS:

No.

THE COURT:

She specifically said she didn't -- wasn't able to describe them.

MR. EDWARDS:

Yes, but I was going to put to her the fact that Miss O'Reilly -- we're on a voir dire so I assume it's all right to speak. I was going to put to her the fact that Miss O'Reilly gave a statement in which she said in part:

Q. *Did you discuss this matter with Patricia O'Reilly?*

A. Yes.

Q. *Did you tell her about the gray-haired man?*

A. *I told her there was supposed to be a gray-haired man there. I told her if she was questioned by the police she should tell about the gray-haired man that Junior told me about.*

THE COURT: (Justice Hart)

Whose statement is this?

MR. EDWARDS:

This is Mary Katherine O'Reilly. Now I should also say that I am aware that the police have contacted Miss O'Reilly who is now out in Calgary and she denies any recollection of

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that but there's no -- there's no question that she did give a statement to that effect at the time. She also was thirteen or fourteen years old.

THE COURT:

She has said she hasn't talked to O'Reilly just now.

MR. EDWARDS:

Yes, My Lord.

(10)

THE COURT:

Is that not the end of the matter as far as the question of today testing her credibility on this matter in which you're going?

MR. EDWARDS:

Well my concern is whether or not she would stick to that if she was confronted with what O'Reilly actually said in the statement. If she says: "No, I did not say that.", then I would submit that would be the end of the matter.

THE COURT:

(20)

You can't assure us that statement's going to be proved?

MR. EDWARDS:

Oh, I could assure you, yes, My Lord, that the statement could be proved, yes, by calling Sergeant of Detectives John F. MacIntyre.

THE COURT:

Are you prepared to call O'Reilly from Calgary?

MR. EDWARDS:

(30)

And I could call O'Reilly from Calgary although in fairness I would expect her to say: "No, I didn't give that statement." but we have the Chief of Police of Sydney on one side with the statement. He has signed it as a witness saying she did. It would be a question of fact for the Court at that time whether she did or she didn't.

THE COURT: (Justice Pace)

Can you cross-examine one witness on the statement of another?

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MR. EDWARDS:

I submit that that's legitimate, My Lord, in cross-examination. Not on direct.

THE COURT:

The Court really can't see -- you can question her on her credibility. You've done that.

MR. EDWARDS:

Yes, My Lord.

THE COURT:

You now propose to go far afield which would involve opening these proceedings on matters that are not before us. So I don't know how you can be permitted to carry on this.

MR. EDWARDS:

If that's Your Lordship's ruling, I accept it.

Could we have Miss Harriss back?

THE COURT:

Call Miss Harriss.

BY MR. EDWARDS:

Q. Miss Harris, I'd like you to recall if you will the night when you were questioned by the Sydney City Police, June 17th, 1971.

A. To recall it?

Q. Yes.

A. All I can say is that it was a good many of hours, a lot of going over what I had seen that night. It was very unpleasant.

Q. All right, and you had been there from approximately eight p.m. until almost two a.m. when you completed giving your second statement. Is that correct?

A. Yes.

Q. Now during that time your mother was at the police station, was she not?

A. Yes, she was.

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Q. And you were allowed out to see her at least once?

A. Yes.

Q. Did you request at any time to have her in the interview room with you?

A. No, I didn't.

Q. You didn't. You felt -- you didn't feel that intimidated that you wanted your mother there, did you?

10) A. Well, I was very young. I didn't think -- think of it maybe. I didn't know but maybe it would have helped.

Q. And Mr. Gushue, your boyfriend, he was at the police station at the same time, wasn't he?

A. Yes, he was.

Q. Yes. And in fact you and he were allowed to be together during parts of the interview, were you not?

A. Once, yes.

Q. So when you gave your second statement on the morning of June 18th, 1981, would it be fair to say that you gave that statement because you were tired and you wanted to get out of the police station?

A. Yes.

Q. Not because anybody told you that you had to give that statement in that way?

A. The statement that I gave wasn't the statement that I started off with and that I wanted to -- that I tried while I was there for so long and wanted to say.

Q. Yes. But the statement that you did give, the second statement, the one which is marked as exhibit B in your affidavit, that's the statement you gave because you were tired. Is it not?

30) A. The statement that was taken at one-twenty a.m.; that was my last statement.

Q. Yes.

A. Yes.

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Q. And that's the one that you're saying you gave because you were tired and you wanted to get out of there?

A. Yes.

Q. Nobody told you that evening that you had to stay there until you gave another statement, did they?

A. No.

10) Q. So that was on June 18th. Now you recall that you testified at the preliminary inquiry on July 5th?

A. Yes.

Q. Of that same year, 1971?

A. Yes.

Q. So that was about three weeks after you had given that second statement?

A. Yes.

Q. Yes. I want to refer you to page 19 of the preliminary inquiry to a sequence of questions beginning at line five or line one, rather:

20) Q. —

That first question is the continuation of another. You were asked who you saw at the time and you said Junior Marshall.

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?*

30) 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.*

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So that's what you said on the preliminary inquiry.

You stuck to your story that there was only one person with Donald Marshall at the time. Correct?

A. Yes.

Q. Why didn't you if you believed at that time that there was more than one, why didn't you tell the Court then that there was more than one person with Junior Marshall?

A. Because I knew the statement that I signed, I was told this is what to say in Court and if I didn't, I would be charged with perjury.

Q. Who told you that?

A. Through the investigation.

Q. Do you remember who?

A. No. Just one of the detectives.

Q. And that was told to you when?

A. The time I was down for so many hours trying to get the statement done.

Q. But as I stated, three weeks elapsed between that night and your giving evidence at the preliminary inquiry.

A. Yes.

Q. So at the preliminary inquiry, did your mother attend?

A. Yes.

Q. Yes. Had you sought any legal advise in the intervening period on what to do?

A. Yes, I did. Yes, I did.

Q. But you still stuck to that story?

A. Yes.

Q. But now you're coming here today and you're saying that you're absolutely sure that despite your testimony in the preliminary inquiry and the trial that there was more than one person there?

A. Yes.

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- Q. Did you know Maynard Chant prior to the night of the stabbing?
- A. I know Maynard Chant now. I don't know if I knew him prior.
- Q. Did you see him that night at all?
- A. No.
- Q. You're sure?
- A. Not that I remember, no.
- Q. Not that you remember?
- A. No.
- Q. Okay, thank you very much, Miss Harriss.

MR. ARONSON:

Nothing arising out of that, My Lord.

(WITNESS WITHDREW)
EXCUSED

THE COURT:

Next witness.

MR. ARONSON:

Maynard Chant.

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Q. Is that where the bus station is located?

A. Yes.

Q. Continue.

A. I started down Bentinck Street and towards the park area. I was gonna cross over on the park side. That was when I met up with Mr. Marshall, Donald, and he explained to me that him and his friend had been -- should I say, his friend was stabbed and if I could give him some help.

Q. Okay, do you recall if I showed you a plan numbered, I believe it's R-2 -- would you take a look at that plan, Mr. Chant? Have you ever seen that plan before?

A. Yes, I have.

Q. Okay, do you want to take a look at it and see if you are able to mark where on that particular plan or if it's on that plan at all you bumped into or met Donald Marshall Junior? If you'd like, you could just put your initials. Again, if I could indicate, the witness has marked the letters MC on Byng Avenue near the intersection of Byng and Bentinck. Now you've indicated to the Court you had a conversation --

A. Yes.

Q. -- with Mr. Marshall? Can you say what the conversation concerned?

A. Well the conversation was mostly concerning Marshall's friend which would be Mr. Seale and it was mostly concerning of getting an ambulance or getting help to help his friend because of what had happened to him.

Q. Okay. Now did you know Donald Marshall prior to that night?

A. No, I -- no.

Q. You've mentioned the name Sandy Seale. Did you know Sandy Seale on that particular night?

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A. No.

Q. Now can you say what if anything you noticed about Marshall's appearance on that particular night when you met him?

A. He had one -- he had both sleeves rolled up and he had a rather large gash on his arm inside of his arm, his forearm.

(10) Q. Now you've indicated he had his sleeves rolled up. What was he wearing? Do you recall?

A. He was wearing a jacket, like a parka.

Q. Do you recall the colour of the jacket at all?

A. All I knew -- all I know is that it was a light colour, really.

Q. With respect to the gash that you've described, what do you say as to whether or not that there was blood in or around that gash?

A. I didn't see any blood at the time.

(20) Q. You didn't. Are you saying that there was no blood or are you saying that you don't remember?

A. Well basically what I'm saying is what I met Donald, there was no blood and as we proceeded down the road, we met up with a girl and her boyfriend, another boy and her girl friend and that's I guess when his arm started to bleed because the young girl had given him a handkerchief for his arm.

Q. Now if we can go back to the point where you had met Marshall, what happened after you met Marshall and after you had your conversation with him?

(30) A. Well we proceeded down Byng Avenue, I believe. I'm not sure and -- to get help for his friend.

Q. And did you -- can you say whether or not you saw anyone as you were trying to get help?

A. Yes, we met up with two couples and just at that time

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there was a car coming by and we had flagged that over and they took us over to where Mr. Seale was laying.

Q. I see. And what happened after that?

A. We had got out of the car. We went over to where Sandy was laying and I believe Donald ran up to call an ambulance at a nearby house. And he had come back and was rather behind the body about maybe fifteen feet on his shoulder side, I would imagine, and the ambulance was taking a little long so I went up to see if they had called the ambulance. They had reassured me that they had called the ambulance and that was when I went back to the body or to the --

Q. Can you show us on the survey if you're able to, the plan or survey, R-2?

A. It's right here.

Q. Can you recall approximately where you saw Seale's body on that particular night? Possibly you could mark it with "S.S.". For the record, the witness has marked the initials "S.S." on the plan or survey marked R-2 on Crescent Street approximately between the green apartment building and the house above which is written the words, "Gray house, D. W. Campbell". Now can you recall what happened after the ambulance arrived?

A. Yes, I can.

Q. What happened?

A. After the ambulance had come and they had got Mr. Seale safely into the ambulance, I had took my shirt and I proceeded to continue to hitch-hike to Louisbourg. Just as I got onto George Street, the police had stopped me and they saw the blood on my shirt and they asked me where was I. And I told them that where I was and they

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asked me did I see anything and I said, yes, I'd seen everything.

Q. I don't know. I don't believe the Court wishes to go into any conversation concerning what was said to you.

A. Okay.

Q. Did you on that occasion provide the police with any statements at all?

A. Yes.

Q. Can you recall how many statements you provided the police with?

A. That night?

Q. All together.

A. Two.

Q. And can you recall when those statements were given?

A. One the night it happened and one -- one three days later.

Q. Are you sure?

A. No, I'm not.

Q. Can you recall at what location those statements were given?

A. Yes.

Q. Where was the first statement you've referred to given?

A. In Sydney at the police station.

Q. And the second statement?

A. Louisbourg at the Town Hall.

Q. Do you recall who was present while the second statement was being given?

A. My probation officer.

Q. What was his name?

A. Larry Burke. My mother, Beulah Chant; Chief of Police Wayne Magee. That's it.

BY THE COURT:

Q. That's of Louisbourg?

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A. Yes.

BY MR. ARONSON:

Q. Now do you recall giving testimony at the trial of Donald Marshall Junior in 1971?

A. Yes.

Q. Do you recall generally what you said at the trial in 1971?

A. Yes.

Q. Are there any differences between what you said at that trial in 1971 in your testimony then and the testimony that you have given today in Court?

A. Yes, there is.

Q. What are the differences?

A. The differences are in that I recall witnessing the murder in '71 and the statement which I am now giving I did not witness the murder.

Q. How do you account for this particular discrepancy?

A. Excuse me, I don't understand.

Q. How do you account for the difference in the testimony that you gave at Donald Marshall's trial in 1971 and the testimony you have given today in Court?

A. First of all I was -- I was scared. The second of all, I felt pressured into giving a statement that I didn't normally want to give which caused me to give the different statement to what I'm giving today.

Q. I have some difficulty in following you. Could you please try and explain it a little better?

A. The statement that I gave in '71 --

Q. Now what statement are you referring to now?

A. The statement that I've given in '71, the first statement of the trial or the trial statement pertaining to seeing the murder was -- the reason why I said that was because as I have said I was scared and I was

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pressured into giving a statement that I -- when I was being questioned at the town hall in Louisbourg I didn't want to give. And the statement that I'm giving today is actually or exactly what I saw pertaining that I didn't see the murder take place.

Q. Okay, so what you're saying it that you did not see Donald Marshall stab Sandy Seale. Is that correct?

A. That's correct.

Q. And can you provide any other reasons for your failure to give the testimony that you have said today in Court and the testimony that you gave at the trial in 1971? Are there any other reasons?

A. When I had tried to begin to tell the truth, that I didn't see anything, the people that were taking the statements or that -- that I had given, wouldn't believe me so I didn't know what to do and resulting, I had given a false statement.

Q. Can you say who those individuals were who -- I think I have your words correct, pressured? Who were the people who you say here today pressured you?

A. All I know is that they were two policemen. I don't remember their names.

BY THE COURT:

Q. This was in Louisbourg?

A. Yes.

Q. At Louisbourg?

A. Yes.

BY MR. ARONSON:

Q. Subsequent to the trial in 1971 and Donald Marshall's conviction, did you ever have any occasion to tell anybody about the difference in your testimony?

A. No.

Q. Can you say when if ever you told someone about any

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discrepancy in your testimony?

A. Four years ago.

Q. Can you say who you said that to or who you indicated that to?

A. My parents.

Q. Anyone else?

A. About a year and a half later I told it to my pastor. That was it.

Q. Can you give any reason for having waited for such a length of time in indicating that you did not witness the Seale stabbing?

A. All that was going on and the talk, even though I didn't witness the murder, I -- I figured he was guilty because of what was -- what had been told to me and what I had acquired through friends that were doing time in the Correctional Centre the same time Donald Marshall was doing time.

Q. I see. Now can you give any reason to the Court today why you should be believed as to your testimony that you have given in Court today as opposed to the testimony you gave in Court in 1971?

A. Roughly four and a half years ago, I became a Born-Again Christian. I accepted Jesus Christ as my Lord and personal Saviour. And this book that is being or used today to swear truth I hold very sacred in my life and I vow my life to it and I act the will that is in the Bible according to the commandments that Jesus Christ has given. That's why I speak the truth today.

Q. Do you know an individual by the name of John Pratico?

A. Yes.

Q. When did you come to know him?

A. At the trial.

Q. Did you know him prior to the trial?

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A. No.

Q. Had you ever seen him prior to the trial?

A. No.

MR. ARONSON:

I have no further questions of this witness, My Lord.

BY MR. EDWARDS: Cross-examination

(10) Q. Mr. Chant, you say that the Court should believe you now because you're a Born-Again Christian. Is that what you've just finished saying?

A. Yes, it is.

Q. And isn't it true, didn't you also say that you were coming from church on the night of the stabbing?

A. Yes, I had skipped church.

Q. You had skipped church that night.

A. Just as soon as the service had ended, I had skipped church.

Q. But you were a church-goer at that time?

(20) A. Only because my parents made me go.

Q. I see. You really didn't believe in the teachings of Jesus Christ at that time?

A. Well, I really -- I believed in the teachings of Jesus Christ but I hadn't submitted myself to them.

Q. I see. Okay, so you are now saying with absolute certainty that you did not witness the stabbing.

A. Yes, I am.

Q. You're sure about that?

A. Yes.

(30) Q. You're sure you didn't know Donald Marshall before then?

A. No. Not personally, no.

Q. Did you know of him?

A. Not really.

Q. Well --

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A. No, excuse me.

Q. Did you know him to see him then?

A. No.

Q. Do you recall giving evidence at the preliminary inquiry on July 5th, 1971?

A. Yes.

10) Q. You were being asked about the incident in question, about the stabbing. You were asked this question:

You saw him what?

A. *Haul a knife out of his pocket.*

And from the context, it's obvious you're referring to Donald Marshall at that time.

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.*

20) Do you recall giving that testimony?

A. Yes, I do.

Q. You were pretty definite at that time about what you had seen. Would you agree with that?

A. No.

Q. Well anyone reading those words would get the impression you were pretty definite, wouldn't they?

A. They probably would, yes.

30) Q. And you recall -- you may not recall the precise date but you recall that the preliminary inquiry was in July of '71?

A. Yes.

Q. And you recall that the night of the stabbing was May 28th, almost six weeks earlier?

A. I remember the incident.

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Q. Well, if I suggested to you that it was May 28th, 1971, you wouldn't disagree with that?

A. No.

Q. And you told my learned friend that you gave a statement on the night in question?

A. Yes.

Q. And I suggest to you that you gave the next statement on the fourth of June, a few days later?

A. Yes.

Q. In 1971. So that after you gave that second statement you had about a five week period between that statement and the preliminary inquiry. Right?

A. Yes.

Q. And you thought about what you had said in the statement. You're nodding your head yes.

A. Yes, oh, excuse me.

Q. And you thought what -- about what you were going to say at the preliminary inquiry?

A. Yes.

Q. But yet you got on the stand at the preliminary inquiry and gave that evidence I just referred to?

A. Yes.

Q. And did you give that without any hesitation at all at that time?

A. No.

Q. You did hesitate? When did you hesitate?

A. At the last of it. When I was -- as I was all through the testimony, I knew I was doing wrong and --

Q. Now are you referring to the testimony at the preliminary inquiry or the trial --

A. The trial -- both.

Q. Direct your comments to the preliminary inquiry for a moment.

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A. Okay.

Q. So you were saying -- you were telling me that you had hesitated at that time. Did you express that hesitation to anybody?

A. No, I never.

Q. No. I see. You were more nervous about having to get on the witness stand than anything at the time, weren't you?

A. I don't know.

Q. I mean you told my learned friend that you believed Mr. Marshall was guilty at the time. Right?

A. Yes.

Q. So you didn't really believe that your statement was the crucial factor in deciding what fate he was going to meet, did you?

A. Yes, I -- I thought my statement that I was giving was a very damaging piece of evidence pertaining to Donald Marshall.

Q. Right, but you believed he was guilty anyway?

A. Yes, I did.

Q. Okay. And the second, the second statement you gave when you changed your first one -- well, do you remember the differences between the two statements or do you wish me to refresh your memory on it?

A. No, I do remember them.

Q. Yes, and could you just tell --

A. Could I give you the difference?

Q. Yes.

A. Okay, they had -- could I start from the beginning or do you just want the two statements or --

Q. Just answer the question, Mr. Chant, as best you can.

A. The difference between the two statements are that the first statement that I had given in the police

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10) station, I had given the story that Marshall or Donald had told me pertaining to what had happened to him in the park. The reason for this when the policemen had picked me up and I -- they asked me what I had seen, I said I seen everything. I was referring to the wound on Sandy Seale's stomach. They took me to the hospital first. Then they took me from the hospital to the police station where I was to give the statement. Just as I had arrived, Donald was coming out of the questioning room, came over towards me and stated: "There was two of them, wasn't there?" I was very afraid and I said yes. That's why I gave the story to what Donald had told me. My parents came in and picked me up. They took me home. A couple of days later two policemen came out. They took me in a room in the Town Hall along with my mother and a gentleman that I've just mentioned or previous and they began to question me. As a matter of fact they told me that I had committed perjury pertaining to the statement that I'd given that night in the cop station and that they had a fellow or a young man that said that he saw me there and I had seen -- that he said I had seen everything that he had seen and --

20) Q. Who were they referring to at that point, do you know?

A. At that point I didn't know but now I know.

Q. Would that have been John Pratico?

A. Yes.

Q. Okay.

30) A. And that's when they -- just after that, they put my mother out of the room where I was being questioned and they begin -- my probation officer was there and they begin to tell me my record of probation and the trouble that I was into and they told me again about the young fellow that had seen me there. I told them

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I -- that's when I opened up and begin to tell them I never seen nothing. One of the men leaned over and said: "You had to see something. Tell us what you saw." I told him again I didn't see nothing. It went on like that. Then they -- I said: "What did the other fellow see?" I don't remember if they told me what the other fellow seen but I remember somehow or another getting a statement -- giving a statement concerning what the other fellow had seen to correspond with the statement that I had given falsely that day.

10) Q. So to summarize, your first statement given on the night of the stabbing, that statement -- the gist of it is that you didn't see the stabbing. Right? And the gist of the second one is that you did see Donald Marshall do the stabbing. Now this conversation at the Louisbourg Town Hall, you said that your mother was there, your probation officer was there, Wayne Magee was there. He was then the Chief of Police of Louisbourg. Is that correct?

20) A. Yes.

Q. Yes. The two policemen whose names you don't know, do you know what police department they were from?

A. City.

Q. They were City -- Sydney City Police Detectives, weren't they?

A. I would imagine.

30) Q. And isn't it fair to say that what they were trying to tell or what they told you at the time was they communicated to you the seriousness of telling lies about what you had seen? They were after your true statement, weren't they?

A. They were after the truth.

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Q. Yes, there's no question about that. They were after the truth, right?

A. Yes.

Q. And so you gave them that second statement. You stuck to that at the preliminary inquiry and then

--

A. Yes.

10) Q. -- at the trial, do you recall the sequence of events at the trial?

A. Not really.

Q. Do you recall that you were declared a hostile witness?

A. Yes.

Q. And your preliminary inquiry was put to you?

A. Yes.

Q. The part that I just read?

A. Yes, yes.

Q. Right. So --

20) THE COURT:

Excuse me, Mr. Edwards. You referred to the first statement, the one on May 30th. I think you suggested to the witness that in it he said he didn't see anything. I think you'd better clarify --

MR. EDWARDS:

Yes, a point well taken, My Lord.

THE COURT:

-- just what he did say there.

MR. EDWARDS:

30) Yes.

BY MR. EDWARDS:

Q. I'll just read you from your statement of May 30th, 1971, which is attached as exhibit "B" to the affidavit you swore on July 14th, 1982, Mr. Chant.

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Friday night I was in town and I left the bus terminal on Bentinck Street about 11:40 p.m. I walked down Bentinck Street. I came over Byng Avenue and started to cross the tracks. I got half way across the tracks - first I seen two fellows walking and two more were walking kind of slow talking. The two fellows who stabbed Donald Marshall and Sandy Seale - they talked for a few minutes over on Crescent Street. One fellow hauled a knife from his pocket and he stabbed one of the fellow - so I took off back across the tracks to Byng Avenue....

So in fact in your first statement, you were saying that you saw someone other than Donald Marshall do the stabbing. Right?

A. Is this referring to the statement that I had given at the police station, the first?

Q. Yes. Would you like to look at it?

A. I don't recall saying anything like that.

Q. Perhaps I should show it to you, then.

A. Okay, yeh.

Q. You recognize that statement?

A. Yes.

Q. And that is the one you gave on the night of the stabbing to the police?

A. Yes.

Q. Yes, so just to clarify and I'm sorry I misdirected you before, --

A. That's okay.

Q. -- but you said at that time you saw someone other than Donald Marshall do the stabbing?

A. The story that I had given at that time was one that I had gathered from what Donald had told me or Donald had explained to me when I had met him what happened and that's where I got that story at.

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Q. I see so when you gave that statement, you were repeating what Donald Marshall had told you?

A. Yes.

Q. But you didn't say that in the statement, did you?

A. No, sir.

Q. And then on June 4th, that's when you gave this statement which is attached as exhibit "C" to your affidavit, and on page two of that statement, you were asked:

Could you hear what they were talking about?

A. No. I just...

...I just heard a mumbling or swearing. I think Marshall was the one who was doing doing most of the swearing. Then I seen Marshall haul a knife from his pocket and jab the other fellow with it in the side of the stomach.

Do you recall saying that in your second statement at the Louisbourg Town Hall on June 4th?

A. I don't recall saying it at Louisbourg. I recall saying it at the trial. A lot of it has slipped away from me.

Q. I'll show you exhibit "C" on your affidavit, page two, the second question on the page.

A. Still, I don't remember saying -- giving that statement. Not that particular -- not --

BY THE COURT:

Q. I'm sorry, would you speak up please?

A. Oh, I'm sorry. I -- I don't remember saying that. I don't know why.

BY MR. EDWARDS:

Q. Okay, but you do remember giving a statement on June 4th at the Louisbourg Town Hall?

A. Yes.

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Q. And you do remember that in that statement you said that Donald Marshall did the stabbing. You remember that much?

A. Oh, yes.

Q. So are you denying that this is the statement or are you simply saying that you just don't remember whether this is --

10) A. Oh, I don't deny that that isn't the statement. I'm just saying that I --

Q. You don't recall --

A. Yeh.

Q. -- those exact words?

A. Yeh.

Q. So just to conclude, Mr. Chant, would it be fair to say that when you gave that statement on June 4th and when you testified as you did on the preliminary inquiry and then the trial, that you were doing it because you thought it was the right thing to do?

10) A. I knew what I was saying wasn't right. I don't know why I said it, probably because I was scared. I don't -- I don't know what to say. Excuse me.

Q. You can't go beyond that. Thank you, Mr. Chant.

MR. ARONSON:

Nothing arising out of that, My Lord.

THE COURT:

I'd like to ask a couple of questions, please.

BY THE COURT:

30) Q. In your first statement of May 30th, 1971, you were asked:

Did you know Donald Marshall?

And your answer:

I knew him to see him.

• That isn't what you said today. Today you've said you

- 191 - MAYNARD V. CHANT, by The Court

didn't know, if I understood your evidence earlier.

A. Yeh, I didn't know either Seale or Donald.

Q. But you did know Donald Marshall to see him at that time.

A. I used to do a lot of hanging around in Sydney. I used to --

Q. So you -- I'm just asking about your statement there that you said that you knew him to see him.

A. I knew of them but I didn't know them. I knew the Marshall -- I used to -- well, --

Q. The statement of May 30th which you made to the police, not the one in Louisbourg but the one before that which Mr. Edwards has just read to you, that is not -- you say that is not a true statement?

A. It's -- it's true -- well, it's true up until the part where I had said that I had witnessed the stabbing of another man stabbing Seale.

Q. It was not true there. Why did you not tell the truth to the police at that time?

A. Well, I was -- I told them what Donald was telling me about what had happened. I don't know. I was -- I guess I was sort of scared then. Donald came out of -- when Donald came out of the questioning room, I guess, he -- he come over to me and he sort of -- I shouldn't -- yeh, I guess he was mad and he said: "There was two of them, wasn't there?" I didn't know what to say so I said yes. When he had said there was two of them, that's the reason why I give the statement that he had told me when we met up with one another on Byng Avenue.

Q. But in that statement, you didn't say that that was what Donald Marshall told you. You said it was what you saw?

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A. Yes.

Q. That was not true?

A. Yes, sir.

Q. What did you see that night when you were in the park?

(10) A. The only thing that I did see -- I didn't see nothing pertaining to the murder, the actual murder. The only thing that I seen was Donald, when I met Donald on Byng Avenue. We went over. He -- me and him both tried to help Seale, get to the or get an ambulance for him. That was all I seen, Your Honour.

THE COURT:

Any questions arising out of that?

MR. ARONSON:

Nothing arising out of that, My Lord.

(WITNESS WITHDREW)

(20) COURT RECESSED: 12:32 p.m.

COURT RECONVENED: 2:00 p.m.

MR. ARONSON:

I believe the next witness is Gregory Ebsary.

(30)

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GREGORY ALLAN EBSARY, being called and duly sworn, testified as follows:

BY MR. ARONSON: Direct Examination

Q. Would you state your full name to the Court?

A. My name is Gregory Allan Ebsary.

Q. And what do you do, Mr. Ebsary?

A. Currently I'm employed as a taxi driver in the City of Sydney.

Q. How long have you been doing that kind of work?

A. Just a couple of months.

Q. And how old are you?

A. I'm twenty-eight years old.

Q. And when were you born?

A. 1953.

Q. What's the last grade in school that you completed?

A. I completed grade twelve in Sydney Academy.

Q. And did you have any subsequent education after that?

A. No, sir, I did not.

Q. And are you married?

A. Yes, I am. I'm married and I have two children.

Q. Where do you presently live?

A. I reside at 46 Mechanic Street in Sydney.

Q. And how long have you resided at that particular address?

A. Nine years.

Q. And prior to that residence, prior to your present residence, where did you live?

A. We lived at 126 Rear Argyle Street, Sydney.

Q. When did you move from Rear Argyle Street? Can you recall the year you moved from Rear Argyle Street to Mechanic Street?

A. I'm pretty sure it was in the middle of 1973.

Q. Now with respect to your residence at Rear Argyle, can

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you say how far that is from Wentworth Park?

A. On Rear Argyle Street?

Q. Yes.

A. In terms of mileage or in terms of walking distance or?

Q. Walking distance.

A. Three minutes, maybe.

Q. Who was living with you on Rear Argyle Street?

A. On Rear Argyle Street, it would have been my sister, Don; my mother and my father and myself.

Q. And what is your father's name?

A. My father's name is Roy.

Q. Are you able to recall what he looked like in 1971?

A. Well he was -- height-wise, he was about five foot three. He was -- he had white hair. He wore his -- he had a little mustache, a little goatee beard.

Q. Did he -- can you say how old he is at present?

A. He's seventy years old as of June 2nd past.

Q. Can you say whether or not he had any particular mode or manner of dressing in 1971?

A. He always dressed if he was going out some place, he always liked to dress up kind of fancy. He'd come home from work and change his clothes and when he did, he'd wear dark, dark pants, he'd wear a white nylon shirt, t-shirt underneath and he'd wear a white silk scarf around his neck and flipped over once like an ascot and then he'd wear a blazer, something like the one I'm wearing and then he'd wear a top coat, probably a blue Burberry or a blue reversible top coat and he'd just have that put over his shoulders. That's pretty well the way he always dressed.

Q. Is your father presently living with you?

A. No, my father hasn't been living with me since 1979.

- 195 - GREGORY ALLAN EBSARY, by Mr. Aronson

Q. Is there any particular reason why your father's not living with you?

A. Well he started -- he started drinking again in 1979 and we -- for a few other reasons besides, we saw fit to ask him to move out.

Q. What do you say as to whether your father had any particular hobbies or interests in 1971?

10) A. My father's biggest hobby was to see how much alcohol he could consume and how many taverns he could visit. That was his biggest hobby.

THE COURT:

What are you asking? Ask him the direct question on this.

MR. ARONSON:

I'm sorry?

THE COURT:

You are leading up to something. Go ahead and ask him the direction question.

20) MR. ARONSON:

I was going to ask him if he had any other hobbies or interests aside from drinking. That was going to be my next question, My Lord.

THE COURT:

Well ask him about the knives.

MR. ARONSON:

Well I think we are just about to get into that.

THE COURT:

Well how about doing it.

30) BY MR. ARONSON:

Q. What can you say as to whether or not your father had any particular interest in knives?

A. My father had a special interest in sharp instruments, especially knives. He'd use them for screw drivers.

. He'd use them for -- if he had to cut kindlings, he'd

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use a knife to cut kindlings with; and around that time, he started making sword canes. He started taking any knife he could find and sharpening both sides of it down to a point. Like a butter knife which would usually be rounded and sharp -- only -- not even sharp, he'd take it and he'd put it on the wet stone like that and he'd make it down into like a stelletto kind of --

0) Q. And did he have any particular use that he put these knives to?

A. He used them for everything. He had -- like I said, he made sword canes with them. That is, he'd have a walking stick and he'd hollow it out and he'd make the knife into a kind of a handle for it and then the blade, of course, would go down inside the sword cane. Like I said, he used knives for everything. Anything he had to do. He used them for letter openers, paper weights, anything. It was a knife or like that.

0) Q. What can you say as to the source of these knives generally?

A. The source of the knives, they were kitchen knives. They were all kitchen knives that he had. Some of them he obtained them from the Isle Royale Hotel where he worked. They were discarded meat cutting knives and stuff and he'd bring them -- he'd bring those home and the rest of them were just regular kitchen knives that you'd buy at the local hardware store or whatever. He'd just take them out of the drawer and he'd sharpen them and put them back in the drawer like that.

0) Q. I'd like to show you something --

BY THE COURT:

Q. What was his occupation at that time?

A. He was a cook at the Isle Royale Hotel, sir.

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BY MR. ARONSON:

- 10) Q. I was to lay before you a group of ten knives, I believe, marked exhibits R-4a to R-4j.
- A. Okay.
- Q. What can you say as to your knowledge of those particular items?
- A. All these knives at one time or other belonged to us as a family. They belonged in our home. These ones here for instance with the copper handles on them, these were bone-handled steak knives before he decided to take the handles off them and put the copper on them.
- Q. Now what -- now this last description of your accounting take in which of these knives? Can you say?
- A. Which ones, the steak knives?
- Q. Yes.
- 20) A. All right, the steak knives were these ones that I'm saying here with the copper handles. Okay, that would take in to account four of these knives here, the serrated edged ones. These two here --
- Q. Now which?
- A. These two larger ones.
- Q. Those would be, if I could for the record, say exhibit R-4e and exhibit r-4f.
- 30) A. Okay, these are two knives that he -- I'm pretty sure he got these at the Isle Royale Hotel. They were discarded kitchen knives at the hotel and he took those home so that's where they came from and that's how we came into possession of them. These two here, this one for sure, now this one here was just a regular table knife, like a butter knife, something you'd use to butter your bread with.
- Q. And would I be correct in saying you're referring to

- 198 - GREGORY ALLAN EBSARY, by Mr. Aronson

exhibit R-4c?

- (10) A. I believe you would. That's right and the same with this one here. That would just be a knife that you'd use to butter your bread with. Now he took those and these are the ones that I was saying before that he started sharpening both sides because there's an edge -- there's an edge on either side of that and it's sharpened down to a point and before this knife -- this knife had a round point -- not a round point but it had a round edge on it so that it wasn't sharp.

BY THE COURT:

- Q. That's exhibit number what?
- A. This is R-4i. And the same with this one here, it was -- it had a round end on it and he took it and he sharpened it on both sides and he sharpened it down to a point.
- (20) Q. Now you're speaking of exhibit R-4c. Is that correct?
- A. This is R-4c, yes. And this one here and this one here, they're just two bread knives that were -- that were in the drawer.
- Q. And the last two you've referred to are exhibits R-4d?
- A. This is d and that's b. Those are just two bread knives.
- Q. Now how long can you say that you had been familiar with those particular knives?
- (30) A. Well those knives were in the house on Argyle Street for sure because I know that because I moved these knives from Argyle Street up to Mechanic Street when we moved in 1973, so they were in the house prior -- quite a while prior to 1973. They were there for -- for as long as I can remember.
- Q. How far back can you remember those knives?

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A. Well those two there, the two that he brought home from the hotel, I couldn't be specific on those but these were in the house. These are -- these are easily --

Q. Would you refer to the exhibit numbers?

A. Okay. This R-4d and R-4b, these are about maybe twenty years old and these, this would be the first set of knives that they had, steak knives, which would make these at least fifteen years old and this R-4j, h, g, and a, so those are about fifteen years old and these are butter knives. They might have had these before I was born but they've been in the house that long because they were there since I can remember and that's R-4i and R-4c.

Q. Can you say over the period of time that you've been familiar with these knives where they were located prior to your moving to Mechanic Street?

A. Okay. Most of the time -- there were six of these --

Q. Now which ones are you referring --

A. The ones that are indicated by R-4c and R-4i, there were at least six of these and over the period of years a few of them have become misplaced. I have -- I have maybe two of these at home as well right now. When we moved -- 1973 when we moved, before that, they were -- some of them were in the drawer and a couple of them he, Mr. Ebsary, had upstairs for letter openers and paper weights and the rest of them were in the kitchen drawer on Argyle Street. Now after 1973 when we packed up, everything was packed in boxes and I moved it to our new residence on Mechanic Street where they went into the kitchen drawer --

Q. Before you bring it up, when you say you packed up and moved, what are you referring to when you say you packed

up and moved?

A. Well we packed up everything.

Q. Yeh.

(10) A. We moved all our furniture and then we took all the kitchen utensils and then we moved like room by room. We moved everything out of the kitchen first and then like everything out of the front room, like that, so a couple of these knives came out of different boxes when we got down to Mechanic Street. We found a couple of those knives come out of different boxes because he had, like I say he had some of them for letter openers and more of them were in the kitchen.

Q. Now prior to your move to Mechanic Street, what can you say as to whether persons other than your father had access to or made use of those knives?

(20) A. Okay, most of these knives, anybody that came into the house could have had access to them. They were only in the kitchen drawer, the same as any kitchen drawer. You open the drawer and you want a knife to butter your bread or whatever, you just take the knives out of the drawer so if anybody could have had access to them.

Q. Now specifically with respect to exhibit, I believe, it's R-4i, what can you say as to the use of that particular knife prior to your moving to Mechanic Street?

(30) A. I don't -- I really -- I really don't know what to say. It could have been -- it could have been one of the ones he used as a letter opener because these are the ones he had sharpened for himself, these two, like c and i. He had those sharpened for letter openers and whatever so more than likely I'd have to say that maybe those two were upstairs in his bedroom and he used them for letter openers or whatever.

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Q. With respect again to exhibit R-4i, what can you say as to whether or not there have been any changes in the condition of the knife over the period of time with which you've been familiar with?

A. Well besides having the handles replaced, the -- it's kind of a little more raggedy now than when I -- when I saw it the last time.

10) Q. You referred to the handles being replaced, what can you tell us about that?

A. Okay, this one here with the handle on it, he took these and he put --

Q. Which one are you referring to?

20) A. All right, this one here is exhibit R-4i. He took this one and after he sharpened it, he put these -- well I don't even know what to call it; they're a plastic. I call it holes I guess but he put that on and you can't see it I guess but it's cut down there where he put it on and he put this tape around the handle of it. I guess he thought he was decorating it or something but he put this tape on it to keep the handle in tact so that it wouldn't fall off. But before like there was a handle on that, so like that's the only changes. He changed the handles and sharpened them.

Q. Are you able to say when that particular change took place?

A. No, I'm sorry, I'm not.

30) Q. Would you remember that knife in that condition over what period of time?

A. I'm sorry?

Q. Over what period of time do you remember that particular exhibit in the condition as you see it today?

A. As I see it today, it's like that -- it's like that at

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least ten years. At least ten years, longer perhaps.

Q. Do you recall the Seale murder in Sydney in 1971?

A. Certainly, yes, I do.

Q. Subsequent or after the time of the Seale murder, did you have any involvement with the Sydney City Police concerning that particular knife?

A. After the murder I was called in and asked -- I was questioned by John MacIntyre.

Q. Concerning what?

A. He wanted to know if I had overheard my parents talking about the murder and I did not and he wanted to know if I thought my father had done it and I couldn't tell him if I -- I didn't think he had but just questions in that line.

Q. I see. Can you recall when you became involved with the police?

A. I would have to say I'm pretty sure it would be around November, I think.

Q. And in what year?

A. 1971, I guess. 1971.

Q. Can you say whether anyone -- whether any other members of your family were involved in the police investigation?

THE COURT:

You can't get into that, can you?

BY MR. ARONSON:

Q. What can you say as to your father's potential for violent behaviour?

A. My father was an alcoholic and a bad one and in a state of -- if he'd get a few drinks in him, anything that came into his mind and do it, he'd do it. He was a very violent person. If he had an argument with me or one of the members of the family, he'd beat the furniture up with a hatchet or something like that or

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throw things around. I remember one particular incident and I think my sister repeated that yesterday where the bird was singing in the kitchen and he didn't like it and he just -- he tore the head off the bird and anything that crossed his path that he didn't like it, he would -- he would take the violent approach to having it stopped.

10) MR. ARONSON:

I haven't got any further questions of this witness, My Lord.

BY MR. EDWARDS: Cross-Examination

Q. Mr. Ebsary, do you know whether or not your father was in the habit of carrying knives on his person?

A. My father carried knives constantly.

Q. How do you know that?

A. Because the man is my father. I see what he does every day. The man carries those sticks with them all the time, those walking sticks?

20) Q. Yes.

A. They all have knives in them. He has knives in his pocket. He has knives in his belt -- in his belt like a dagger would be. Constantly.

Q. And did he have that habit around the time of the stabbing in 1971?

A. He carried -- he carried knives constantly at that time.

Q. Did you see him before he left the house on that particular day?

A. No, sir, I did not.

30) Q. Did you see him at all on that day?

A. I did not.

Q. Where were you that day, Mr. Ebsary?

A. I was -- a friend of mine was building a home and I was with him. We were putting up some gyproc so I wasn't home all that day and I wasn't home when he

came home either.

Q. You're referring to when he came home that night?

A. I am.

Q. Did you -- did you know James MacNeil?

A. I was familiar with James because he came around with my father a few times at the house and they were drinking. That's how I -- I knew him to see him kind of thing but I wasn't friendly with any of my father's drinking partners.

Q. Did you see him at the house at any -- around the time of the stabbing, a few days before or a few days after?

A. He was at the house a few times, yes, before the stabbing.

Q. How -- how long before the stabbing?

A. I really couldn't say. A couple of days perhaps.

Q. What about after the stabbing?

A. I remember he was there the day after the stabbing and I don't really recall after that.

Q. James MacNeil testified in this Court that he had told you what had happened in the park on the night in question. Is that correct?

A. I don't recall that.

Q. You don't recall?

A. I don't recall him telling me what happened in the park.

Q. Is it possible that he could have?

A. He could have but if he did, I certainly don't recall it.

Q. I see. Okay. My learned friend asked you several questions about the knives and you gave evidence about the changing of the handles and the knives by your father?

A. That's right.

Q. Did you actually see him change the handles on the knives?

10) A. He'd be doing that in the kitchen. That's -- this became a common occurrence with him that if the knife was in the drawer; one of these knives here was in the drawer and he decided he wanted to change the handle on it, he'd just do it. There was no other -- there was no work shop in our home so if he decided to do it, he'd just -- he'd just take it out and do it.

Q. And you were actually present on some of those occasions where --

A. I saw him change the handles on these for instance.

Q. Now you're referring to what knives now?

A. I'm referring to exhibit R-4h and that series of knives. I saw him change the handles on those for instance.

20) Q. What about the knife, R-4i, the one with the rubber hose on it? Did you see him change that one?

A. No, I didn't see him change it but he changed it.

Q. You're assuming that he changed it.

A. No, sir, I'm not assuming. I know he changed it.

Q. Well you didn't see him. You didn't see him actually change it, did you?

A. No, sir, indeed I didn't.

Q. No. Were any of those knives particular favourites of his?

30) A. The smaller ones. Like I said this R-4c and even these ones here, R-4h and like that, he liked those because they'd fit right into his pocket.

Q. Now again you're making assumptions. He never -- he never told you that he liked those because they fit --

A. Well he never come out and said -- he never come out and

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said: "Well, Greg," he said, "I like this one because it'll fit into my pocket.", sir.

Q. Of course. Now you mentioned that most of those knives were kept in a drawer in the kitchen?

A. That's right.

Q. That's on Argyle Street?

A. That's right.

(10) Q. But you've mentioned a couple that he would have kept up in his room with him.

A. That's right.

Q. Which were they again, Mr. Ebsary, please?

A. I'd say that they were R-4c and R-4i and as well there's a couple of more of these in my Mechanic Street residence now.

Q. Yes.

A. The same ones with the plastic handles on them.

(20) Q. Okay. Now at the time of the move from Argyle Street to Mechanic's Street, you say that you moved them.
Yes.

Q. You moved the knives?

A. Yes, I moved them, yeh.

Q. Yeh. Who --

A. I moved them all.

Q. -- actually packed the knives?

(30) A. Well I'm sure you're familiar with moving. Anybody that's in the house would pack something. The -- Mr. Ebsary would be upstairs in his bedroom. He'd pack what was in his room. My mother packed her stuff and I packed mine and Donna packed hers but I moved it all.

Q. Specifically with relation to the knives, Mr. Ebsary, did anyone person pack the knives or were they packed by various individuals?

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A. Anything that was in the kitchen, my mother would have packed it. Any knives that were upstairs --

Q. Did --

A. Yes.

Q. All right, did you see your mother pack any of those knives?

A. I saw her packing in the kitchen and my father did not pack in the kitchen.

Q. All right, do you recall when you moved the knives from Argyle Street to Mechanic Street? Were all those knives in one container or were they in --

A. No, sir, they were not.

Q. They were in various containers.

A. The ones that came out of the kitchen would be in a box marked "kitchen" stuff. Anything that was in the upper bedrooms would be marked "bedroom", like.

Q. Okay, so when you get the knives over to Mechanic Street, what happened to them then?

A. Okay, most of these knives with the exception of the ones with the green handles and maybe one of these, the green handled ones and R-4c, R-4i, and a couple of these, I don't know which ones, --

Q. All right, you're referring to what?

A. R-4j; R-4h. Pick your choice on those. Most of them went in the kitchen drawer because that was the utensils that they used to eat with.

Q. Where did the other knives go?

A. All right, the ones that were marked in his bedroom would have gone upstairs to his room. Anything that was in the box marked for him would have gone up there.

Q. All right, so at some point after the time you moved to Mechanic Street, did you or anyone in your presence collect all the knives?

A. Yes. After the move to Mechanic Street and -- some time thereafter, after the old man moved out --

Q. This would have been in 1979?

A. This would have been in 1979. The ones with the green handles, that's R-4i and R-4c, anything -- any other knives that were up in his room, there were a few of them. I can't say which ones, but there was a few with the green handles and there was a few with the copper handles, like R-4j, were in that room. They were taken downstairs.

Q. By whom?

A. By me. I did all the moving.

Q. Yes.

A. And they were put into a drawer in the dining room where they used to put all the old kitchen utensils and before that, I had collected a bunch of these copper handled ones and a few of these rubber handled ones. And I had moved those along with the bread knives and those two knives there.

Q. Which are marked as?

A. They're marked R-4f and R-4e. I have moved them into the drawer in the dining room because they had got some new knives and stuff and we just took all the old stuff and we put it in there.

Q. All right, so all the knives then were put in a drawer in the dining room some time in '79?

A. Some time in '79. That would be around the time that the old man moved out and my wife and myself moved back in because we had kitchen utensils of our own and they were all newer so and none of them had those kind of handles on them. So we put all our stuff in the kitchen drawer and we moved all the old stuff into the dining room drawer.

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Q. Now how long did all the knives remain in the dining drawer?

A. I can't really say for sure. A year perhaps, maybe longer, maybe a little less.

Q. That's not where they were when you turned the knives over to Staff-Sergeant Wheaton.

A. No, sir.

(10) THE COURT:

He hasn't said anything about that yet.

MR. EDWARDS:

No, My Lord.

BY THE WITNESS:

(20) A. I took the knives from that drawer and we were cleaning out all the old stuff and we were putting a lot of it in the garbage. I had those knives and I had them ear-marked for going to the dump but only that they're sharp and I wouldn't put them in the garbage. I put them in a peach basket and I put them down up above my work bench in the basement. That's where they stayed until Mr. Wheaton came.

BY MR. EDWARDS:

Q. All right, now let's try to get the time frame. When would you have put the knives in the peach basket and put them in the cellar?

A. I'd have to say some time between maybe 1981 and when Mr. Wheaton came to the house.

Q. And when was that?

(30) A. Oh, I'm not really sure. October of last year, I guess, or something like that. I'm not sure.

Q. Would it have been in April of this year?

A. It could have been. I'm not sure.

Q. But in any event until the time that Staff-Sergeant Wheaton took possession of the knives, they were in the

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peach basket --

A. In the peach basket up above my work bench in the rafters.

Q. And the peach basket and the knives were turned over to Staff-Sergeant Wheaton at the same time --

A. Yes, sir.

Q. -- or separately?

(10) A. I took the peach basket -- it was up above the bench and I took it down. He was asking about if there was any knives around --

Q. Well I don't want to get into what he was asking you.

A. Okay, I gave him the peach basket and the knives at the same time.

Q. Thank you, Mr. Ebsary.

MR. ARONSON:

I have no further questions of this witness, My Lord.

(20)

(WITNESS WITHDREW)

MR. ARONSON:

The next witness is A. J. Evers.

Before I ask this witness any questions, I'd like to indicate that I propose to tender Mr. Evers as an expert in the science of hair and fibre comparison and with the ability to provide an opinion on that particular subject.

(30)

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

BY MR. ARONSON: Direct Examination

Q. What's your name, sir?

A. Adolphus James Evers.

THE COURT:

Was he not qualified at the trial?

MR. ARONSON:

He was qualified at the trial. If it has to be done again, I'm prepared to do it.

THE COURT:

Any objection from the Crown?

MR. EDWARDS:

Well, My Lord, I submit for the record since the evidence he's giving now has to do with the tests that he performed both then and now, perhaps we should hear something.

THE COURT:

If he was qualified before, there would be no need to hear --

MR. EDWARDS:

I submit it would be helpful just to hear something of his qualifications. I'm not going to oppose it --

THE COURT: (Justice Hart)

Are they not in the record already?

MR. EDWARDS:

Pardon me?

THE COURT: (Justice Hart)

Are they not in the record?

MR. ARONSON:

They are in the 1971 record.

MR. EDWARDS:

Yes, but he's far more experienced now and perhaps we could bring that out.

THE COURT:

Are you challenging him or are you trying to support him?

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MR. EDWARDS:

No, My Lord, I'd just like to hear about his experience since.

MR. ARONSON:

I tender him as an expert witness, My Lord.

THE COURT:

I beg your pardon?

MR. ARONSON:

(10) I tender him as an expert witness.

MR. EDWARDS:

No objection.

THE COURT:

All right.

BY MR. ARONSON:

Q. Could you state your name, sir?

A. Adolphus James Evers. Surname spelled E-v-e-r-s.

Q. And what is your present occupation?

(20) A. I am in charge of the Hair and Fibre Section at the R.C.M.P. Crime Detection Laboratory, Sackville, New Brunswick,

Q. Now did you testify at the trial of Donald Marshall, Jr., in November of 1971?

A. I did.

Q. Can you recall the general nature of the testimony you were asked to give?

A. I examined two articles of clothing, one a jacket and one a coat, for the presence of any separations being fresh cuts or tears.

(30) THE COURT:

Could you -- I would suggest you tie them in with the exhibits that were --

MR. ARONSON:

I had just intended to do that.

BY MR. ARONSON:

Q. Do you know the exhibit numbers, whether those items

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were introduced as exhibits in 1971?

A. I know they were introduced as exhibits. I do not know the exhibit number.

Q. Can you describe just very briefly the two particular items that you've indicated you examined?

A. Yes. The first article was a brown coat, wool. It had a brown belt present. It also had a white pile lining. The second article was a yellow nylon jacket. It had a white lining and white trim.

Q. I see.

MR. ARONSON:

I believe, My Lord, that the brown coat that's being referred to by the witness was exhibit number four at the 1971 trial of Donald Marshall, Jr. The yellow jacket was exhibit number three at the 1971 trial of Donald Marshall.

THE COURT:

That was shown -- that's in the transcript.

MR. EDWARDS:

The Crown is prepared to admit that.

BY MR. ARONSON:

Q. Do you know the whereabouts of those particular items now?

A. No, I do not.

Q. Now you had occasion to examine the two exhibits you've referred to?

A. Yes, I did. I examined the brown coat for the presence of any fresh appearing cuts or tears. I found one cut present on the brown coat. It was on the left salvaged edge approximately five and one half inches from the bottom. The cut was two and three-quarter inches in length on the front of the coat. The cut continued through the inner lining, interfacing, and into the salvaged edge on the back. The opening on the back was

approximately thirteen-sixteenths of an inch in length.

Q. I'd like to show you one exhibit if I might. Would you take a look at exhibit number R-4i?

A. I identify court exhibit R-4i by my initials, date and case number appearing on the knife and on the red laboratory tag.

Q. Have you ever seen that particular exhibit before?

(10)

A. Yes, I received this from Mr. MacAlpine of the Serology Section in Halifax on the 17th of March, 1982. I examined the article and returned it to Mr. MacAlpine on the 18th of March, 1982.

Q. Do you have an opinion as to whether that particular exhibit, R-4i, was capable in terms of blade size of causing the cut that you've referred to in the brown jacket, exhibit number four of the 1971 trial?

(20)

A. I cannot state that this particular knife caused the cut present in the brown jacket. I did examine the dimensions of this knife. The depth which I termed the depth of the knife was two centimeters in length. This equates to approximately thirteen-sixteenths of an inch in length and the cut present in the coat was caused by a sharp object.

Q. Okay. Now you've also indicated you examined a yellow jacket, I believe?

A. I did.

Q. And what can you say concerning the condition of the yellow jacket or your observations concerning the condition of the yellow jacket?

(30)

A. The yellow jacket had several separations. The separations were on the left arm, on the -- what I term the inside surface. That is that they were away from the wear on the elbow side. There was one separation approximately one inch in length. It was

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(10) a cut and it was fresh in appearance. Directly below this was a second separation which again continued through the shell and into the lining, through the lining. This separation was eight inches in length, six and one half inches being a fresh-appearing cut, one and one half inches being a tear. This cut or -- and tear was very irregular; that is that it was not one smooth stroke but made up of a number of irregular strokes. Also present on the jacket were four superficial cuts. These were next to the two separations. They did not continue through the lining or the shell.

Q. Do you have any opinion as to what caused those types of cuts you've just described on the yellow jacket?

A. I cannot say what caused the cuts. I can state that -- that they are cuts, that they are fresh or were fresh in appearance and that they were not one stroke. This was because of the irregular cut, the tearing, and also the second cut above the long one.

(20) Q. Now subsequent to your receiving these exhibits; that is to say, exhibits number three and number four of the 1971 trial, did you have occasion to take any samples?

A. I did.

Q. And did you bring those samples to Court today?

A. Yes, I do.

MR. ARONSON:

(30) If it please the Court, it's not necessary if he could speak of what he compared with respect to his opinion. He's going to be able to compare or discuss the comparison between certain objects and certain fibres and other fibres. The exhibits or the slides that I've spoken of could be introduced as exhibits and I'm wondering whether that would be required to show what he compared them to. They would be of no use to look at or to see.

THE COURT:

Oh, yes, of course.

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BY MR. ARONSON:

Q. What form did the samples take that you took from those items?

A. The samples from the brown coat. I had no knife or any other article to compare the fibres to. I simply removed a small tuft of fibre from the outer brown area of the coat and from the interfacing or interlining of the coat. I put these on a slide simply to determine what type of fibre they were. No other means. So that the standard is very limited.

Q. May I have the slides?

A. The sample from the yellow coat, I simply cut a small swatch out of the jacket. I noted that it was next to my initials, where it was from on the jacket.

THE COURT:

Is he producing the sample?

MR. ARONSON:

Yes, he is producing the sample.

BY MR. ARONSON:

Q. And you're saying this particular sample or the last sample you spoke of comes from the yellow jacket which you examined?

A. It did, yes.

MR. ARONSON:

If I could introduce these as exhibits?

THE COURT: (Justice Hart)

You should have it marked, yes.

BY MR. ARONSON:

Q. Now what can you say as to exhibit number R-6? Can you tell us what that is?

A. R-6 is the small swatch of material I removed from the yellow jacket which was given to me on the 16th of June, 1971.

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Q. Can you tell us what exhibit R-7a is?

A. R-7a is a small sample of the interfacing or pellow of the brown coat which I received on June the 16th, 1971.

Q. And can you tell us what exhibit R-7b is?

A. R-7b is a small sample of the brown wool of the brown jacket I received on June the 16th, 1971.

Q. And what exhibit R-7c is?

A. R-7c is a small sample of the yellow jacket I removed on June the or I received on June the 16th, 1971.

Q. Is there any difference between the sample in exhibit R-7c and exhibit R-6?

A. R-7c would be a small amount of R-6 that I put on to a slide and examined.

Q. Now since you took the samples that you've last referred to, those four exhibits, where have these items been located since then?

A. They were in my possession.

Q. Until when?

A. Until today.

Q. In March of this year did you have occasion to examine any other items?

A. Yes, on March 17th, 1982, I received a total of ten knives. I examined these articles and returned them to Mr. MacAlpine on the 18th of March, 1982.

Q. I show you one more item which I would ask you to describe.

A. This appears to be a piece of black tape. I cannot identify it. The envelope on which I received the ten knives did contain a small piece of black tape.

Q. And what is this item I've passed you now?

A. I identify the envelope by my initials, date and case number. This is the envelope that contained the small

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piece of black tape as well as the ten knives which I received from Mr. MacAlpine.

Q. I see. Could I have those items marked?

THE COURT:

Mark these.

BY MR. ARONSON:

10) Q. So if I'm correct, the ten knives marked from exhibits 4 -- R-4a to R-4j, are they the same as the exhibits you -- that were contained in the envelope which has been introduced as an exhibit?

A. May I have a look at them?

Q. Go right ahead.

A. Yes, these are the ten knives which I examined on March 17th, 1982.

Q. How are you able to identify those as being the exhibits you examined?

20) A. All of the knives have red laboratory tags on them. I notice that a number of the knives have my initials, date and case number as well. I could -- I also note my initials, date and case number appearing on each of the knives as well.

Q. Now what did you do with the exhibits?

30) A. I examined the ten knives and the contents of the brown envelope for the presence of any fibres. I compared the fibres present to the small pieces of material I'd removed from the jackets in 1971. I examined the knives for the presence of any fibres consistent with the fibres present from the -- consistent with the fibres present on the slides and in the swatch from the brown and yellow jackets. I noted that the envelope contained two light brown wool fibres consistent with the brown jacket. The piece of tape present in the envelope contained two synthetic fibres consistent with the inner

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lining of the brown jacket. Knife number -- knife number one contained one synthetic fibre consistent with the inner lining of the brown jacket.

Q. Could you identify it by the exhibit numbers?

(10) A. R-4g. Exhibit R-4h contained one synthetic fibre consistent with the inner lining of the brown jacket. Exhibit R-4b contained four synthetic fibres consistent with the inner lining of the brown jacket. Exhibit R-4e contained two synthetic fibres consistent with the inner lining of the brown jacket. Court exhibit R-4f contained two synthetic fibres consistent with the inner lining of the brown jacket and Court exhibit R-4i contained eight synthetic fibres consistent with the inner lining of the brown jacket. Also from Court exhibit R-4i, I removed one light brown wool fibre consistent with the brown jacket and contained three light acetate fibres consistent with the lining of the yellow jacket which I received in 1971.

(20) Q. Did you make a written report of the results of your examination as you've just described?

A. I did.

Q. Could we tender that as an exhibit? Could we have it and tender it as an exhibit if that would be helpful to the Court?

A. It is my hand-written copy of which I have -- it is the only copy.

Q. All right. What other items did you examine?

(30) A. That is all of the articles which I examined. I did examine four knives which I found to be negative for the presence of any fibres.

Q. In terms of the tape, did you have occasion to examine that piece of tape marked exhibit number R-9?

A. I did examine a piece of black tape present in the

envelope. From the piece of black tape, I removed two synthetic fibres. These synthetic fibres were similar to the lining or inter-lining of the brown jacket which I received in 1971.

Q. Are you able to say where that particular piece of tape comes from, exhibit R-9?

A. I cannot.

(10) Q. When did you first see that particular exhibit?

A. It was loose in the envelope when I opened it.

Q. And the --

A. And the envelope was sealed.

Q. And the envelope you're referring to?

A. The envelope I'm referring to is Court exhibit R-8. From this envelope I removed two light-brown wool fibres consistent with the brown jacket I received in 1971.

Q. Did you examine any other items in March of this year?

(20) A. Yes, I did.

Q. And what was that item?

A. There was a basket, a wooden basket which I examined.

MR. ARONSON:

And my friend and I have just had a discussion. It was requested that I introduce that particular evidence without introducing the actual exhibit as it was not our intention to use that exhibit. We've agreed that it will be provided to the Court if necessary. Maybe my friend has something to say on that.

(30) MR. EDWARDS:

My Lords, just on the continuity aspect of it, counsel have agreed that the cardboard basket that he just referred to is the same cardboard basket containing the knives which was referred to in the evidence of Gregory Ebsary. The cardboard basket with the knives turned over to Staff Sergeant Wheaton

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who in turn forwarded it on separate occasions the knives and then the basket to Mr. Evers. So unfortunately the basket is still in Sydney but it is -- it is obviously relevant to the proceedings as I expect Mr. Evers will talk about some fibres he examined from the basket. So with the Court's permission, that will go on the record as agreed facts.

(10) BY MR. ARONSON:

Q. You've indicated you examined a cardboard basket. What were the results of your examination of the basket?

A. May I refer to my notes? They're --

Q. Please. The notes were taken at the time of the examination?

(20) A. Yes, they were. On the 26th of March, 1982, I received a cardboard basket from Constable Arsenault. I examined the basket for the presence of any fibres consistent with the brown coat or the yellow jacket. From the cardboard basket I removed four synthetic fibres consistent with the interlining or the interfacing of the brown coat. I then returned the basket by registered mail on April 6th, 1982.

Q. Now we're here speaking of fibres. In terms of size can you compare these fibres to any particular object that the average person might understand?

(30) A. The fibres which I removed from the knives, out of the envelope, and from the piece of tape were very minute. I had to use a stereo-microscope in order to see them. I also had to use a stereo-microscope in order to put them on the microscopic slide. The fibres ranged in length from approximately point three five millimeters which might be the thickness of your finger-nail to approximately four millimeters in length which

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is approaching a quarter of an inch. Once the fibres were put on to a slide, using the stereo-microscope, I then put them on to a compound comparison microscope which I could examine the internal features of the hair and do an identification.

10) Q. I see. Now based on your observations and comparisons, do you have an opinion as to whether one particular knife is more significant than any of the other knives in terms of the exhibits which are there today?

THE COURT:

No, no.

MR. ARONSON:

I think the question is a straight-forward question in terms of significance. He's already indicated the number of fibres that he found in each of the knives.

MR. EDWARDS:

20) I'd have to object to my learned friend's question. I don't think it's for the witness to comment on the significance. He can say what he saw and observed.

THE COURT:

How many fibres and what they were.

BY MR. ARONSON:

Q. Now do you have an opinion as to the relationship between the fibres found on the knife marked exhibit R-4i and the samples of fibre which are marked as the microscopic slides, three microscopic slides and the swatch of material?

30) A. The knife, Court exhibit R-4i, contained or had adhering to the handle -- the blade was free of fibres -- adhering to the handle twelve fibres which I found to be consistent with the two articles of clothing. The twelve fibres were made up of five fibre groups of which there was seven different types consistent with the two articles

of clothing, the brown coat and the yellow jacket.

Q. How strong is your opinion --

THE COURT: (Justice Macdonald)

Perhaps he might repeat that answer again just to make sure that I have it.

BY MR. ARONSON:

Q. Could you repeat your answer?

(10) THE COURT: (Justice Macdonald)

Just as to what the knife contained.

BY MR. ARONSON:

Q. What did the knife contain?

A. The knife contained twelve fibres which I found to be consistent with the fibres composing the brown coat and the yellow jacket. The twelve fibres were made up of five fibre groups; that is, wool, acetate, viscose, acrylic and polyester. There were seven types of fibres; that is that there were two types of polyester or two types of acrylic. And I found the five groups and the seven types present in the jacket and the brown coat.

(20)

BY THE COURT:

Q. How many in each?

A. Three -- three acetate fibres from the knife were consistent with the yellow jacket, nine fibres were consistent with the brown coat.

BY MR. ARONSON:

Q. And can you say what your opinion is as to the relationship between the fibres you've referred to which you located on the exhibit R-4i and the fibre samples which you compared the former fibres to?

(30)

A. The relationship were that they were a similar type of fibre.

MR. ARONSON:

I have no further questions.

THE COURT:

Mr. Edwards.

MR. EDWARDS:

Thank you very much, My Lord.

BY MR. EDWARDS: Cross-Examination

10) Q. Mr. Evers, I don't want to labour this but I'm not sure that I followed you all the way on your breakdown of the fibres that were on R-4i. Now there were twelve fibres on that knife altogether, right?

A. There were more than twelve fibres on the knife.

Q. I see.

A. There were twelve fibres which I found to be consistent with the articles of clothing.

Q. With the brown jacket and the yellow jacket?

A. That is correct.

Q. The other fibres, they -- no relationship at all?

20) A. I -- I should state that the samples which I am using as standards are not the usual standard that I would com -- use in ordinary laboratory practices. For examine, if I were comparing fibres from a knife to articles of clothing, I would have that article of clothing to go back to and remove more standard. The standard which I am working with is very limited. It was taken simply because I wanted to see what type of fibre was present in the jackets. There was no requirement to take the standard. I cannot go back to the articles; for example, the brown coat and examine the
30) white pile lining or the sewing threads making up the coat so I'm working with a very limited standard. So that when you state there can be no relationship, there is no relationship at this point, no.

Q. No relationship as far as the standard you had to work with was concerned?

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A. That is correct.

Q. I see, so that would affect the weight of any opinion that you would be able to give --

A. Yes.

Q. -- on the consistency between the items involved. Is that correct?

A. Yes.

(10) Q. All right, now, just getting back to that breakdown again, I understood you to say that three of the twelve fibers were consistent with the fibres from the yellow jacket. Is that correct?

A. Yes.

Q. And the other nine consistent with the fibres from the brown jacket?

A. Yes.

Q. All right. Now where I'm having a bit of difficulty is with the five fibre groups of seven different types. Could you briefly just relate that to the nine and three?

(20) A. Yes, when one examines fibres, there are a large number of fibres produced. There are many types of fibres produced. The fibres which I examined off the knife were made up of five different groups, all different from each other. There were acrylic, viscose, polyester, wood and acetate fibres. I found all of these different groups present in the two articles of clothing.

Q. The five different types were present in each of the brown jacket and the yellow jacket?

(30) A. No. No, the acetate fibres were present in the yellow jacket in the lining. The wood, acrylic, viscose and polyester were present in the brown jacket.

Q. And notwithstanding the fact that you've had a small standard to work with, what can you say as to the likelihood that those fibres could have come from a source other

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than the brown jacket and the yellow jacket; that is, the fibres found on the knife?

A. I would say that the chances of them coming from another source would be fairly remote.

Q. Fairly remote. Can you be at all any more specific than that?

(10) A. I cannot put a probability or a number to it. In order for these fibres from Court exhibit R-4i to come from other sources; that is, contamination, other articles, I would think that it would be very, very remote. That is they are not there because of contamination. In order for them to come from another article, they would have to come from an article or two or three articles that were composed pretty well of the five groups that I've already identified. That is, they could have come from another source but that other source would have to be limited or sources would have to be limited to basically the five groups that I've identified.

(20) Q. When you mention the word "contamination", are you referring to the knives or the jacket?

A. The knives.

Q. The knives and what are you suggesting, that the knives were uncontaminated?

(30) A. Yes, the knives were virtually uncontaminated. For example, the knife, Court exhibit R-4i contained only two synthetic fibres which I was not able to associate with the two articles of clothing. Court exhibit numbers -- court exhibit numbers R-4d, R-4j, and R-4a contain no fibres whatsoever. There was -- there was very little contamination present on the knives and one would expect some contamination because a knife is usually wiped. Each time it is wiped one can leave

fibres, for example your white or your cotton tea towelling. I found very few fibres other than those that I could identify.

Q. You're not able to draw any conclusions or inferences because of the absence of contamination. That is not significant, is it?

A. Yes, I've just explained that because of the limited contamination present on the knives --

Q. Yes, I know that but the fact that the knives weren't -- weren't contaminated.

A. No.

Q. That's not unusual in itself?

A. No.

Q. Is R-4i the only one of the exhibits which has fibres consistent with the fibres in both jackets on it?

A. Yes.

Q. So the other items, the other knives that you examined and the basket, the fibres on such of those that had fibres are consistent with either the yellow coat or the brown coat?

A. No, the fibres on all of the knives, other than R-4i, the piece of tape and the envelope are all consistent with only one jacket, the brown wool jacket.

Q. I see. So R-4i is the only one that bears any relation whatever to the yellow jacket?

A. That is correct.

Q. The type of material involved here, do you remember having independent recollection of the types of coats, the style of the coat or the brand of the coats?

A. I did not note the brand of the coat. The yellow coat was a nylon coat which is very slippery. It was more like the shells that we wear today except that it had an inter-white acetate lining.

Q. Would it be fair to suggest that there was really nothing unusual about the coats themselves, that they were coats that were worn by many people of the age group of say Mr. Marshall and Mr. Seale at the time?

A. I would think, yes.

10) Q. Does that fact make you qualify your opinion in any way as to the probabilities of the sources of the fibres?

A. No.

Q. Why wouldn't that? Like if there were thousands of coats -- say for example if there were thousands of coats such as the one worn by Mr. Marshall and the same as the one worn by Mr. Seale, then wouldn't that decrease the probability that the fibres in question came from those specific jackets?

20) A. Not really. I have stated that the fibres present on for example the knife, R-4i, the chances of them coming from another article would be fairly remote. I did state that they could have come from another article or articles providing those articles were composed of fibres of the four or the five fibre groups. That's exactly a good example of where they could have come from. They could have come from another nylon yellow jacket with a white acetate lining. They could have come from another brown wool jacket with an inter -- with a pellow interfacing.

30) Q. Right. But that's -- that's my point. You can't say that they absolutely didn't come from another jacket of the same kind?

A. No, sir.

Q. But you stick to your opinion that that possibility is very remote?

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A. I didn't say very remote. I said the changes were fairly remote.

Q. Fairly remote. Thank you, Mr. Evers.

MR. EDWARDS:

No further questions, My Lord.

BY THE COURT:

(10) Q. Mr. Evers, you say fibres are consistent -- the fibres which you found were consistent with the samples that you had -- the fibres in the samples you had. Would you define what you mean by consistent?

A. My Lord, when I --

Q. In terms of probability and that sort of thing.

(20) A. When I state that a fibre is consistent, a layman may use the term identical. Since I am using a microscope at approximately four hundred magnification, I am dealing with the actual internal structure of the fibres. In order for a fibre to be identical, it would have to be identically the same in each and every respect. If you were to compare two cars, one may appear to be identical to another car but there has to be basically some small difference. Perhaps one may be dirtier than the other, it may have a small ding which you don't notice at first glance, perhaps the mirror is in a small -- is in a different place. One may say that the car is identical to the second car. I would say that the car is consistent or similar with the second car.

(30) Q. I take it from your -- please correct me if I'm wrong, I take it that these fibres are not distinctive. You cannot say they come from only one source as you could say an animal fibre or a human fibre, coming from only one man. You'd have to say, I take it, that it could

come from any jacket of a similar type?

A. Yes, or the fibres could have come from another article, perhaps a pair of pants that were composed with a similar type of fibre.

Q. The white acetate lining, for example, that could be white acetate material in any clothing or cloth?

10) A. Yes, that white acetate was very popular back in the '60's. We don't find as much white acetate now. In fact it is fairly remote to find white acetate. The polyesters have taken over.

Q. Were you able to identify the colour of the -- of the object from which any particular fibre came?

A. The acetate which I identified off the knife was a white acetate. The only fibres with any colour were the three brown wool fibres.

Q. They were wool?

A. Yes, there were three brown wool fibres.

20) Q. No yellow?

A. No.

THE COURT:

Okay.

MR. ARONSON:

I have no further questions arising out of that.

MR. EDWARDS:

No.

(WITNESS WITHDREW)

MR. ARONSON:

That's all the evidence the Appellant has brought forward at this particular time.

MR. EDWARDS:

10) My Lord, perhaps it should be just stated for the record I don't believe that exhibit R-9 has been tied in. The agreed fact between counsel that R-9, the piece of tape, was in the basket referred to by Gregory Ebsary turned over to Staff-Sergeant Wheaton and it was with -- with the knives. Continuity is admitted right through to Mr. Evers.

THE COURT:

Does that complete the evidence?

MR. ARONSON:

That completes the witnesses at this point in time, My Lord.

THE COURT:

I asked does that complete the evidence you wish to have tendered?

20) MR. ARONSON:

No, it does not. I should still like to have some clarification on the evidence relating to John Pratico, My Lord. If it's taken, I'm quite prepared with my friend to agree that he's not a credible witness if that's acceptable to the Court. If it's not, I would suggest that something be done either by way of admitting certainly affidavits which support the opinion with respect to his credibility or that he himself be called as a witness if that's not sufficient.

THE COURT:

30) Yes, is there any other evidence that you wish -- that you're applying to have adduced?

MR. ARONSON:

No, My Lord.

THE COURT:

Mr. Edwards?

MR. EDWARDS:

(10) My Lord, I had indicated in my application that I was seeking to have the members of the City Police Department, Messrs. MacIntyre, Urquhart and Sheriff Wayne Magee called but after hearing the evidence, I am not -- I submit there's no need to hear from them however I would ask that their affidavits and those paragraphs dealing with their questioning of Mr. Chant and Miss Harriss, that they be tendered. What I would propose to do would be to take the affidavit, take those paragraphs out, put them in an abbreviated affidavit if you wish and have that one filed with the Court unless my learned friend wishes to have them here for cross-examination. I'll make the available but really I -- the witnesses have been subjected to cross-examination and to call the police officers would really add nothing to the proceedings.

THE COURT:

What have you to say, Mr. Aronson, at this time?

(20) MR. ARONSON:

Well if as my learned friend said it would add nothing to the evidence, I don't frankly see any reason why they should be admitted at all with respect to matters that have gone on before the Court in the last two days.

THE COURT:

He's applying to permit those paragraphs in the affidavits.

MR. ARONSON:

I appreciate that but what I'm --

THE COURT:

(30) You're objecting to that?

MR. ARONSON:

Yeh, I'm objecting to that because I can't see the relevancy.

THE COURT:

If they are admitted, do you wish to have them cross-examined?

MR. ARONSON:

If they are admitted, we would wish the opportunity to have

those witnesses cross-examined, yes, My Lord.

THE COURT:

I see. We shall not admit the affidavits. You've applied for leave to produce Mr. Pratico?

MR. ARONSON:

The point I'm making, My Lord, and I think we had some --

THE COURT:

10) Are you asking that he be produced?

MR. ARONSON:

No.

THE COURT:

Very well. Then that completes the evidence. When the transcript of evidence has been completed, sent to counsel, counsel will be expected to prepare factums in the usual way for the hearing of the -- for the continued hearing of this appeal. After the transcript is available, counsel can apply to have a date for the resumption of the hearing.

(20)

MR. ARONSON:

Thank you, My Lord.

COURT CLOSED: 3:24 p.m.

(30)

- 234 - COURT REPORTER'S CERTIFICATE

I, Judith M. Watson, a Supreme Court Reporter, do certify that the transcript of evidence hereto annexed is a true and accurate transcript of the appeal hearing held at Halifax, in the County of Halifax, Province of Nova Scotia on the 1st and 2nd days of December, A.D., 1982, in the matters between DONALD MARSHALL, JR., and HER MAJESTY THE QUEEN, S.C.C. 00580, recorded on tape, transcribed and checked by me.

Judith M. Watson
Supreme Court Reporter
Registered Professional Reporter

Halifax, N. S.
December 16, 1982

LIST OF EXHIBITS

- Exhibit R-1 Statement of Donald Marshall, Junior
taken at Dorchester Penitentiary in
March, 1982.
- Exhibit R-2 Plan of Wentworth Park, Sydney, Nova
Scotia.
- Exhibit R-3 Photograph of the knives.
- Exhibit R-4 (a-j) Ten (10) knives.
- Exhibit R-5 Affidavit of Patricia Harriss.
- Exhibit R-6 Swatch of yellow material.
- Exhibit R-7(a-c) Slides of fibres(3).
- Exhibit R-8 Large envelope.
- Exhibit R-9 Piece of black tape.