



0.

IN THE COURT OF THE PROVINCIAL MAGISTRATE

5.

HER MAJESTY THE QUEEN

10.

V.

15.

ROY NEWMAN EBSARY

CHARLES O'CONNELL

SYDNEY, NOVA SCOTIA

4th AUGUST, 1983

20.

25.

PRELIMINARY HEARING

30.

IN THE COURT OF THE PROVINCIAL MAGISTRATETHE QUEEN VS ROY NEWMAN EBSARYI N D E X

0.			
5.	<u>WITNESS</u>		<u>PAGE</u>
	<u>DONALD MARSHALL</u>		
	Direct Examination	5 -	15
	Cross Examination	16 -	30
	By the Court	31 -	33
	Redirect.....	34 -	35
10.	<u>JAMES MACNEIL</u>		
	Direct Examination	36 -	50
	Cross Examination	51 -	63
	<u>DONNA EBSARY</u>		
	Direct Examination	64 -	67
	Cross Examination	68 -	69
15.	<u>CONSTABLE LEO MROZ</u>		
	Direct Examination	70 -	74
	Cross Examination	75 -	77
	<u>DR. NAQVI</u>		
	Direct Examination	78 -	84
	Cross Examination	85 -	92
	By the Court	93 -	94
20.	<u>SUBMISSIONS</u>		
	By the Crown	95 -	96
	By the Defence	97 -	101
	<u>COMMITTAL</u>	102 -	106
25.			
30.			

0. IN THE COURT OF THE PROVINCIAL MAGISTRATE

THE QUEEN VS. ROY NEWMAN EBSARY

PRELIMINARY INQUIRY

SYDNEY, NOVA SCOTIA

5. AUGUST 4th, 1983

BEFORE: JUDGE CHARLES O'CONNELL

CHARGE: That he at or near Sydney in the County of
Cape Breton, Nova Scotia on or about the

10. 28th day of May 1971 did unlawfully commit
second degree murder on the person of Sanford
Seale, contrary to Section 218(1) of the
Criminal Code of Canada

15.

FRANK EDWARDS, LL.B. FOR THE PROSECUTION

LUKE WINTERMANS, LL.B. FOR THE DEFENCE

20. THE ACCUSED upon being arraigned on the above
charge will be tried by a Court composed by a Judge
and Jury and proceedings were by way of preliminary
inquiry.

25.

30.

0. BY MR. WINTERMANS

If Your Honour please first I would like to make a couple of motions. One for the non publication of any of the evidence on these

5. proceedings under Section 467.

BY THE COURT

Yes, the motion is granted. I make an order directing that the evidence taken at this Inquiry shall not be published in any newspaper or broadcast
10. over TV, this is directed to all the media, they are not to publish.

BY MR. WINTERMANS

And I would also make a request that Your
15. Honour order the exclusion of witnesses until they are called.

BY THE COURT

Motion granted.

20. BY MR. EDWARDS

Q. That would exclude the Informant Corporal
Carroll?

25. A. Yes.

30.

0. DONALD MARSHALL, - SWORN

BY MR. EDWARDS - DIRECT EXAMINATION

Q. Your name is Donald Marshall Junior?

A. Yes.

5. Q. And you are how old?

A. 29 years.

Q. What is your present address?

A. 2155 Monastery Lane.

10. Q. And where is that?

A. In Halifax.

Q. And in 1971, May of 1971 where would you have lived?

A. In Sydney, Nova Scotia.

15. Q. And that would have been at the Mic Mac Reservation?

A. Right.

Q. And there you resided with your parents?

A. Yes.

20. Q. Mr. and Mrs. Donald Marshall Sr.

A. Right.

Q. And you would have been approximately 17 years of age at that time?

25. A. Yes.

A. Yes.

Q. And you knew one Sanford, sometimes called Sandy Seale?

30. A. Yes.

0. DONALD MARSHALL - Direct Examination

Q. And on the 28th day of May 1971 did you see Sandy Seale?

A. Yes.

5. Q. And where did you see Sandy Seale on that day?

A. In Wentworth Park.

Q. Wentworth Park?

A. Yes.

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

A. Yes.

Q. And at what time that day did you first see Mr. Seale?

15. A. Later in the evening.

Q. Could you give an approximate time?

A. Before midnight.

20. Q. And when you saw Mr. Seale, it was in the park, was there anyone else there at the time?

A. There were people present and I recognize a couple, Robert Patterson was one of them.

25. Q. And do you remember who any of the others were?

A. I remember seeing people but I can't identify them.

Q. So how long was Mr. Patterson in company with you and Mr. Seale?

30. A. Not more than 5 minutes.

0. DONALD MARSHALL - Direct Examination

Q. And then I take it you and Mr. Seale left Mr. Patterson?

A. Yeah we separated.

5. Q. Where did you and Mr. Seale go?

A. We went to the foot bridge in the park.

Q. And what happened there?

A. I asked him where he came from and where he was going that night.

10. Q. You asked Mr. Seale where he came from and where he was going?

A. Yes.

Q. Yes.

15. A. He told me where he came from and where he was going and I asked him if he wanted to join with me to get some money off somebody.

Q. And what was his reply to that?

20. A. He agreed with me.

Q. Yes.

A. And at that time 2 men called us up on Crescent Street, they asked us for a cigarette and we went up there and half way down I met up with 2 more people, Terry Gushue and Patricia Harris.

25. Q. Now Mr. Marshall you say that 2 men called you up to Crescent Street from the footbridge

30.

0. DONALD MARSHALL - Direct Examination

and as I understand your evidence you said on your way up there you saw 2 people who you knew?

A. Yes.

5. Q. And who were they?

A. Patricia Harris and Terry Gushue.

Q. And did you go over to where Harris and Gushue were?

10. A. Yes.

Q. And what about Sandy Seale, where did he go?

A. He went up to join up with the 2 men that called us earlier.

15. Q. So the 2 men that called you up previously did you know them at that time?

A. No.

20. Q. So you went to where Gushue and Harris were, about how far were they from where the other 2 men and Sandy Seale were?

A. Not too far, just a walking distance, 30 - 40 feet whatever.

25. Q. Were they also, were Harris and Gushue also on Crescent Street?

A. I don't remember if they were on the street or in the park, I don't remember.

30. Q. You can't remember if they were on Crescent Street or in the park?

A. No.

0. DONALD MARSHALL - Direct Examination

Q. So I take it you had some conversation at that time with Harris and Gushue?

A. Yes.

5. Q. How long did that last?

A. Not too long, a couple of minutes.

Q. I take it then you left Harris and Gushue?

A. Yes.,

10. Q. Where did you go when you left Harris and Gushue?

A. I joined up with Sandy Seale and the 2 men that called us up earlier.

Q. Now these 2 men that called you up earlier, could you describe them?

15. A. Young guy....

Q. One fellow younger than the other?

A. Yes, the younger fellow, well I thought he was about 30 or so, he had a sports coat on, a brown sport coat.

20.

Q. What was his approximate height, was he as tall as you?

25. A. About the same height I would say.

Q. And you are how tall?.

A. Right now 6'1. I was a little shorter then.

Q. And what about the other fellow?

30. A. The other fellow was older, about 50s and short

0. DONALD MARSHALL - Direct Examination

and I can't say how big he was because he had a lot of clothes on.

Q. Did he have a cap on?

5. A. No.

Q. Do you remember the colour of his hair, was it light or dark?

A. It was light.

10. Q. Do you recall how he was dressed?

A. He had a top overcoat on or whatever, it is hard to describe.

Q. A top overcoat?

A. Yes.

15. Q. How did he have it on do you recall?

A. Like wrapped around his shoulders.

Q. How about his arms, were his arms in the sleeves?

A. I don't remember.

20. Q. And I take it you and Sandy Seale had some conversation with these men?

A. Yes we had conversation for about 15 minutes.

25. Q. And do you recall that conversation?

A. Generally speaking you know, talking about a lot of things, not only one thing, we were talking about everything I guess.

30. Q. The older fellow is he in court today?

A. There is only one old man, older man.

0. DONALD MARSHALL - Direct Examination

Q. There is only one older man here, what do you say about him?

A. What do I say about him, do you mean identify him?

Q. Yes?

A. I don't know if I can identify him today.

Q. And you had conversation with the older man and the younger fellow?

A. Yes.

Q. And that lasted about 15 minutes, what did you do then?

A. After the conversation, I don't know, the house there on Crescent Street where the body was found, could I have a map or a blueprint.

Q. I don't think we have one here, just describe what happened?

A. We were on Crescent Street, after we had conversation with them the older fellow asked both of us to come to his house for a drink, and we said no and they walked away, I would say the same distance as Gushue and Harris.

Q. They walked 30 or 40 feet away did they?

A. Yes after the conversation and I called them back.

Q. What words did you use do you recall?

0. DONALD MARSHALL - Direct Examination

A. I remember I said "hey come back here" and they came back and that's when the knifing started.

Q. Could you take it step by step and describe

5. exactly what happened as they came toward you and Sandy Seale?

A. It is difficult for me to really tell you what happened I think, there were too many stories already, I think I jeopardized my whole story.

10. Q. Well then would you tell it from your memory as

best you can recall?

A. They came back and I don't know what happened between them, my memory just went after that, I got stabbed and I don't remember too much.

15.

Q. Well do you remember what if anything happened to Sandy Seale?

A. The older fellow with the light hair was with Sandy, they had a conversation and I never understood what they were talking about, all I can remember is the old fellow told Sandy "I got something for you right here" and he knifed him.

25.

Q. The old fellow knifed Sandy Seale?

A. Yes.

Q. Where were you when the old fellow knifed Sandy Seale, and what were you doing?

30.

0. DONALD MARSHALL - Direct Examination
- A. I was, I don't know if I should say, I was fighting and holding the other guy, no one was on my side eh, no one was hurt, physically harmed.
5. Q. So you were with the younger fellow?
- A. Yes.
- Q. So when you saw Sandy Seale stabbed what did you do then?
10. A. I was holding onto the younger guy and the older fellow came at me and he pulled the knife on me then and got me in the arm.
- Q. Which arm?
15. A. The left one, and I stopped the knife, he went after my stomach not my arm but I stopped the knife with my arm.
- Q. As a result of stopping the knife with your arm what injury did you suffer?
20. A. I suffered 10 stiches in the forearm.
- Q. When he stabbed you in the arm, what did you do then?
25. A. I ran down Crescent Street and down Bentinck Street and met a young fellow named Chant, I asked him to help me and he asked me what happened.
- Q. After your conversation with Mr. Chant when you ran away from the stabbing what did you and Mr. Chant do then, where did you go?
- 30.

DONALD MARSHALL - Direct Examination

0. A. I went down from Crescent Street to Bentinck,
to Byng Avenue and I stopped a car coming up the
street, there was a few young people in it, I
stopped it and asked for help.
5. Q. And where did you go from there?
A. To Crescent Street.
Q. When you got back to Crescent Street what did
you observe there then? Was Sandy Seale there?
10. A. Yes he was on the ground.
Q. Could you tell the Court about Sandy Seal's condition
at that time, when you saw him on the ground?
A. I don't know what his condition was but he was
laying on the ground there. I know he was stabbed.
I ran to a house near there and asked them to get
an ambulance.
15. Q. You ran to a house to ask them to get an ambulance
and that was a house on Crescent Street was it?
20. A. Yes.
Q. And after you came from there where did you go?
A. I went back to where Sandy was laying and at
that time a lot of people were there, I couldn't
do anything anyway but 2 Sydney Policemen took me
to the City Hospital. That is all I remember.
25. Q. And you were charged with murder were you?
- 30.

0. DONALD MARSHALL - Direct Examination

A. Yes.

Q. And you were convicted?

A. Yes.

5. Q. And you served 11 years in Prison until this year when you appeared before the Nova Scotia Supreme Court Appeal Division and were acquitted of the charge?

10. A. Yes.

Q. Going back to the actual stabbing, you say you had conversation with the older and the younger fellow for about 15 minutes, they walked away, you called them back and the stabbing took place and you ran away?

15.

A. Yes.

Q. How long was it between the stabbing and the time you said you came back?

20.

A. About 10 minutes.

Q. That is how long it took you to go to where you say you met Mr. Chant and flagged down a car and then to go back to Crescent Street?

25.

A. Yes.

Q. Were you drinking that night?

A. I had one drink of rum.

Q. And what was your condition that night?

30.

0. DONALD MARSHALL - Direct Examination

A. I was pretty sober.

Q. And all this happened on the 28th of May
1971 at Sydney, County of Cape Breton, Province

5. of Nova Scotia?

A. Yes.

Thank you.

10.

15.

20.

25.

30.

0. DONALD MARSHALLBY MR. WINTERMANS - CROSS EXAMINATION

Q. You say you only had one drink of rum that night?

5. A. Yes.

Q. Is it possible that you may have had a little more than that?

A. No it is not possible.

10. Q. Is it possible, ...I understand that you were out of town earlier that day?

A. Yes.

Q. And that you arrived back when?

A. Friday.

15. Q. And what day of the week was this?

A. May 28th, Friday about 9:30 in the evening.

Q. So you had only been back in town for a short time when this incident occurred?

20. A. Yes.

Q. And where were you coming from when you came back to Sydney?

25. A. Bedford, Nova Scotia.

Q. And what were you doing up there?

A. I joined a bunch of people that were going to a meeting and I just tagged along with them.

30. Q. And was there any drinking going on there?

0. DONALD MARSHALL - Cross Examination

A. Yes there was drinking, as far as I'm concerned I was drinking.

5. Q. I suggest to you that you might have had a few drinks earlier that day and on the way back perhaps?

A. I was sober on Friday.

BY THE COURT

10. Q. This meeting was the day before, is that what you are saying?

A. Through the week.

Q. And when did the meeting break up, what day did you return to Sydney?

15. A. Friday.

Q. That was the day of the stabbing?

A. Yes.

BY MR. WINTERMANS

20. Q. So you got back around 9:30 in the evening?

A. Yes.

Q. And it was around 2 - 2½ hours later that this incident happened?

25. A. Yes.

Q. Were you at a tavern earlier that evening?

A. Yes.

30. Q. So you must have had some beer?

0. DONALD MARSHALL - Cross Examination

5. A. I was only 17, they wouldn't serve me, I wasn't in there for a drink anyway, I didn't go in there to have a drink anyway. I spent about 2 minutes in the Keltic Tavern.
5. Q. Now isn't it true that you have described yourself as a heavy drinker at that time?
- A. Yeah but I think I went over a little to try to convince the Court or the public or whatever it is. I was a drinker but you know I said in my thing that I was a heavy drinker but speaking averageally I think I drank just like anybody else.
10. Q. Of course you were only 17, you wern't allowed to drink?
15. A. Yes.
- Q. So perhaps you were a heavy drinker for a 17 year old, is that what you were trying to say?
20. A. I only started drinking when I was about 16 anyway so in a year I don't think I was too heavy on drinking.
25. Q. What about drugs, did you use any drugs like marihuana or LSD or anything like that?
- A. No.
- Q. You had been convicted of criminal offences at that time?
30. A. Yes.

0. DONALD MARSHALL - Cross Examination

Q. How many?

A. I can't answer that.

5. Q. You also described yourself as being, what were the words that you used, "a bad young guy"?

A. A bad young group, that's what I was involved in, not a bad young guy, I was involved in a bad young group.

10. Q. Isn't it true you were a fairly wild character then, getting into quite a bit of trouble.

A. Not only me individually, generally speaking we all got into trouble.

Q. The group that you hung around with?

15. A. Yes.

Q. You indicated that when you and Seale joined up that evening that you suggested to Seale to join with you to make some money?

20. A. Yes.

Q. And I understand from previous testimony that you've given that your intentions were to obtain

25. money any way that you could, whether it was stealing or robbing or break and enter, whatever?

A. Bumming, whatever or stemming.

BY THE COURT

30. Q. What was that?

0. DONALD MARSHALL - Cross Examination

A. Bumming, or stemming.

Q. You were going to run the whole spectrum.

BY MR. WINTERMANS

5. Q. You indicated that you had a discussion with Seale about rolling someone?

A. Generally speaking I said I was going to get some money, not rolling somebody.

10. Q. Didn't you testify in previous occasions as...

BY MR. EDWARDS

15. Objection Your Honour. If my learned friend is going to be cross examining him on testimony given elsewhere then I submit that the proper procedure is for him to put the exact question and answer to the Accused as well as remind him of when it was given.

BY THE COURT

20. Yes, I think you should lay some groundwork.

BY MR. WINTERMANS

25. Q. Do you recall having giving a statement to the R.C.M.P. at Dorchester Penitentiary on March 3rd 1982?

A. Yes.

30. Q. And do you recall having stated at that time and I'll quote a part of a paragraph and ask you to comment on it. "I asked Sandy if he wanted to

0. DONALD MARSHALL - Cross Examination

make some money, he asked how and I explained to him we would roll someone. I had done this before myself a few times, I don't know if Sandy had ever rolled anyone before. We agreed to roll someone so we started to look for someone to roll. The first time I saw the 2 fellows we later decided to rob was on George Street side of the Park" and then you go on to say "the short old guy I now know as Ebsary", do you recall having said that to the R.C.M.P.?

5. A. Yes I recall.

Q. Are you saying that that is not the truth?

15. A. It is the truth but speaking you know I didn't say rolling anybody, I said we were going to get some money. I asked him to get some money with me. I didn't directly say "let's go rob somebody".

20. Q. So you are saying that this statement is not the truth then?

25. A. I didn't say that, I said it was true. When you put my statements together I think there is more than one answer anyway.

30. Q. Now as I understand it, when you put together what you have been saying over the past day and on previous occasions in statements, the impression

DONALD MARSHALL - Cross Examination

0. one gets, and you tell me if this is fair,
is that you had a plan that you were going to
make some money that night whether you were
5. going to roll somebody or not, rob somebody or
not, you certainly had that option in mind but
you indicate that you didn't actually attempt a
robbery with the 2 people? Is that what you are
10. saying?
- A. That's right.
- Q. Now Mr. Marshall as my learned friend has brought
out have spent a considerable length of time in
Penitentiary, do you have any fears at this time
15. that you are not completely out of trouble yet,
that you are still in jeopardy, there is still
some danger of reactions from this incident?
- A. I realize that. But I am not the only one this
20. time. If I have to go to Prison I think we are
all going to Prison this time, not only me.
- Q. So you do acknowledge that you have some fear
25. still to this day that you may still be subject
to going back to Prison or to prosecution perhaps
whether it be for robbery or for perjury or for
something like that, you are still worried about
that?
30. A. I am not worried.

DONALD MARSHALL - Cross Examination

0. Q. No, but you just indicated a minute ago that you were worried about possible repercussions of this case still to this day in terms of your own freedom?
5. A. Like I said if I am going this time I think we are all going this time.
- Q. I suggest to you that you are still to this day a little nervous about talking about this incident?
10. A. I am pretty confused about what is going on because I think each one of us got a different story. They are all the same in general but they are twisted around in places that we can't straighten them out. It's not up to me to straighten them out but I think the people that investigated my case should be here and straighten it out themselves.
15. I can't answer the question, I didn't head up the investigation or nothing, it wasn't me, you got the wrong people in Court in my books.
20. Q. We've got the wrong people in Court?
25. A. Yes.
- Q. What do you mean by that?
- A. 10 days after I was convicted of murder I was sentenced to life the City Police that investigated
- 30.

0. DONALD MARSHALL - Cross Examination

my case like they were informed of the man that killed the guy, Sandy Seale, the eye witness that was with Mr. Ebsary that night was there so
5. it was handed right to them but they didn't care where they sent me, they couldn't care less if I ever got out.

Q. Can you describe the weapon that the old person
10. had?

A. No.

Q. Did you actually see a knife or a sharp instrument or are you just assuming that it must have been a knife because you got cut because Sandy was cut?
15.

A. Yes.

Q. Is that what you are saying?

A. Yes.

Q. And you are not sure, you indicated that you
20. and Seale separated at a certain point right before this incident with the injuries occurred?

A. Yes.

Q. Sandy Seale was up talking to these 2 people
25. and you were elsewhere not too far away?

A. Yes.

Q. And isn't it true that you were not able to
30. hear what may or may not have been said?

A. I never heard nothing.

0. DONALD MARSHALL - Cross Examination

Q. So my point is that there could have been conversation between Sandy Seale and these 2 people immediately before the injuries occurred

5. and you would not be able to say one way or the other whether there was?

A. It's possible, I don't know.

BY THE COURT

10. Q. What time did this happen roughly Mr. Marshall?

A. Around midnight.

BY MR. WINTERMANS

Q. Now you indicated earlier in your evidence today that after Mr. Seale was first injured I think you

15. said something to the effect that the older person went after your stomach?

A. Yes.

Q. But you had blocked him with your arm or something?

20.

A. Yes.

Q. Which arm would that have been?

A. My left arm.

25. Q. Are you right handed or left handed?

A. Left handed.

Q. So it was your left arm and you are left handed, why do you say he went after your stomach?

30. A. When I blocked the knife it was at my mid section.

0. DONALD MARSHALL - Cross Examination

Q. Where was the injury to your arm?

A. To my forearm.

Q. Is there still a scar today?

5. A. Yes.

Q. Could I see that? You are indicating a scar a couple of inches long on the inside of your forearm?

10. A. Yes.

Q. What position were you in at that time, were you on the ground, were you standing up?

A. I was standing up.

15. Q. Were you standing up straight or were you crouched over?

A. I was standing straight.

20. Q. And what kind of motion did this old person with the weapon make towards you, how would you describe the motion?

A. He was in a walking motion and he had the knife like this and took a swipe at me.

25. Q. Was it a swipe or a thrust?

A. I don't understand.

Q. Was it like a slashing motion or was it a stabbing motion?

30. A. It was a stabbing motion.

0. DONALD MARSHALL - Cross Examination

Q. And how do you describe that, if you pretend that you have a weapon in your hand and you make a motion similar to what you recall?

5. A. I can describe it if you come here, I can't explain it.

Q. Under arm or over arm or directly at you?

A. He went like this, more faster.

10. Q. Did you knock the knife away?

A. No I knocked his arm away, not his knife.

Q. How far away from this old gentleman and Mr. Seale were you when this was happening?

A. Most is 5 feet away.

15. Q. There were 4 of you and you were all pretty much grouped together very close?

A. Yes.

Q. And it was dark was it?

20. A. Yes.

Q. Close to midnight?

A. It was midnight.

25. Q. Now would you agree and I think you stated something to the effect earlier in your evidence today that a lot of different stories have been told about what happened in those few minutes?

30. A. Yes.

0. DONALD MARSHALL Cross Examination

Q. And you indicated that earlier in your evidence that you, something to the effect that you couldn't remember too clearly, that you were
5. concerned about your recollection of exactly what happened. Would you agree...

BY THE COURT

Q. Let him answer the question first. Make your
10. question shorter because you are asking sometimes 3 or 4 questions.

BY MR. WINTERMANS

Q. You indicated that different versions of this
15. event have been told, would you agree that you yourself have told varying versions of what happened?

A. When I went to Court I went in for one thing and
20. that was for murder that I didn't even commit right, you know I was hung before I walked into the Court House at that time right. You know everything was going against me indicates that
25. the witnesses were told what to say and everything. I was the last one up on the stand so who in the hell am I going to believe right, you know I am not going to give myself up because other people
30. already gave me up so I had to fight right and today I am still fighting and anybody who wants to

0. DONALD MARSHALL - Cross Examination

contradict me I think they are doing a pretty good job you know.

BY THE COURT

5. What Mr. Wintermans is saying is that in your evidence a little while ago you said, at least I got the impression that your memory of certain events that happened at that time is not too good.

10. A. Yes that's right.

BY MR. WINTERMANS

Q. Just taking it from there, you spent a lot of years in gaol, as I understand it you had transcripts of the original trial?

15. A. Yes.

Q. Which you studied over and over and over again, read?

A. Yeah I think there was a reason behind it.

20. Q. You've thought about this incident for years?

A. Every day.

Q. Every day for years?

25. A. For years, and years.

Q. You've given a fairly detailed account of what took place, I am suggesting to you that is it possible that first of all this incident happened such a long time ago you thought about it so much

30. that perhaps your mind is filling in some of the details?

0. DONALD MARSHALL - Cross Examination

A. My mind is clear, details are fitting right in.

Q. Your imagination is filling in some of the details?

5. A. My imagination is pretty good too. My memory is pretty good. All the time I've been in there I wasn't on drugs, I wasn't on booze, I kept my mind pretty clear and if I didn't I don't think

10. I'd be here today, either I'd be at the N.S. or back in V.P.

Thank you, that's all.

15.

20.

25.

30.

0. DONALD MARSHALLBY THE COURT

- Q. You had a conversation earlier that evening I think you said with Mr. Seale that either he said to you or you said to him "let's make some money".
5. A. I said to him.
- Q. Now when you went to the Park that evening was it your intention to make some money at the Park that evening?
10. A. Not particularly no.
- Q. Now you mentioned that the old man and the younger fellow they called to you?
15. A. Yes.
- Q. What do you mean by that?
- A. They hollered to us asking for a cigarette.
- Q. And that was the time you had a discussion with them about many subjects for about 10 minutes or so?
20. A. Yes.
- Q. And after that you separated?
25. A. Yes.
- Q. When you were in the Park was there any intention between Sandy Seale and yourself to engage in any criminal activity before you met those other 2 people?
- 30.

0. DONALD MARSHALL - By the Court

A. I can't explain if there was or not, I hung around the Park for a long time.

Q. What time did you go to the Park?

5. A. It was before midnight, around 11:00 o'clock.

Q. And Sandy Seale was with you?

A. No I met him there.

Q. Was Sandy Seale at a tavern?

10. A. No.

Q. When did you meet Sandy Seale at the Park?

A. I met him when he was coming back from a dance, he was going home at the time.

Q. Were you alone when you met him?

15. A. Yes.

Q. Was he alone when you met him?

A. Yes.

20. Q. That is when you had the discussion, around 11:00 o'clock, to make some money was it?

25. A. I think it was later. I hung around the Park for a couple of years before that, used to bum money, ask people for money.

Q. Was there any talk about Sandy Seale and yourself engaging in any specific criminal activity?

30. A. I asked him "do you want to make some money" and then we talked about it and then we met

0. DONALD MARSHALL - By the Court

these 2 fellows and they asked us for a cigarette and as far as bumming any money well they offered us a drink.

5. Q. That is if you went back to Mr. Ebsary's place?

A. As far as physically harming or robbing people there was no physical harm done to anyone.

Q. And you didn't say "there's a few people, let's go after them"?

10.

A. No, they called us up on the bridge.

Thank you.

15.

20.

25.

30.

0. DONALD MARSHALL

BY MR. WINTERMANS -

Q. You say there was no physical harm done to anyone?

5. A. Not as far as us robbing anyone.

Q. I already asked you if you recalled giving a statement to the R.C.M.P. at Dorchester Penitentiary in 1982?

10. A. Yes.

Q. You stated that that was the truth?

A. Yes.

BY THE COURT

I don't think we'll go into that again.

15. BY MR. WINTERMANS

Q. Do you recall in that statement, page 2, stating that "they then knew we meant business about robbing them, I got in a shoving match with the tall
20. guy, Sandy took the short old guy?

A. You mentioned that a while ago I think.

BY THE COURT

25. Just answer the question.

BY MR. WINTERMANS

Q. Are you denying that?

A. I am not denying nothing, I am just asking that
30. certain people come on the stand.

0. BY THE COURT

That is up to the discretion of the Crown.

BY MR. WINTERMANS

5. Q. In your statement you said "they then knew we meant business about robbing them, I got in a shoving match with the tall guy and Sandy took the short old guy", can you deny that is the way it happened or not?
10. A. I don't remember. There are so many stories about what happened I don't know, I can't answer that. That is all thank you.

15.

20.

25.

30.

0. JAMES MACNEIL - SWORNBY MR. EDWARDS - DIRECT EXAMINATION

Q. Your name is James MacNeil?

A. Yes.

5. Q. And what is your address Mr. MacNeil?

A. 222 Mount Pleasant Street.

Q. That is in Sydney?

A. Yeah.

10. Q. And what is your age Mr. MacNeil?

A. My age is 39.

Q. What is your occupation Mr. MacNeil?

A. At the present time I am unemployed.

15. Q. So back in 1971 you would have been approximately
what, 27/28 years old?

A. 25.

Q. And what was your occupation at that time?

A. Landscaping.

20. Q. And where did you live at that time?

A. At 1007 Rear George Street.

Q. And at that time, let's say the month of May

25. 1971 did you know Roy Newman Ebsary?

A. Yeah I did.

Q. For how long had you known him?

A. I'd known him for roughly 3 months.

30. Q. That is in May '71 you had known him 3 months
prior to that?

0. JAMES MACNEIL - Direct Examination
- A. Yeah.
- Q. And would you look around the Courtroom and see if you can see Mr. Ebsary here today?
5. A. He is right here right in the front here.
- Q. You are indicating how many rows behind the rail there?
- A. Just the first one.
10. Q. And how many in from the aisle?
- A. Just the first one. Pointed to Accused (Roy Newman Ebsary).
- Q. So you say you had known him for 3 months prior to May 1971 and you had visited his home on
15. occasion?
- A. Unhuh.
- Q. And do you recall the night of approximately May 28, 1971?
20. A. Unhuh.
- Q. Were you with Roy Newman Ebsary that night?
- A. Yeah we were down at the State Tavern.
25. Q. And that was on George Street in Sydney at the time?
- A. That was on the corner of George and Townsend at that time.
30. Q. And I take it you and Mr. Ebsary were in there having a few drinks?

0. JAMES MACNEIL - Direct Examination

A. Yes indeed.

Q. Do you recall how much you had to drink that night?

5. A. I'd say I had about 7 or 8 beers.

Q. And what about Mr. Ebsary how much would he have had to drink?

A. Ah it would be around the same.

10. Q. What time did you go to the State Tavern that night?

A. I think it was earlier in the evening.

Q. About what time?

A. Probably around 7 or something like that.

15. Q. Was there anyone else with you at the Tavern?

A. Not that I recall, just the 2 of us.

Q. So what time did you leave the Tavern?

20. A. I figure we left between 10:30/11:00 o'clock something like that.

Q. And you say we, I take it you and Mr. Ebsary left together?

25. A. Yes.

Q. And when you came out of the State Tavern what route did you take?

A. We walked down George and we took the short cut through the Park.

30.

0. JAMES MACNEIL - Direct Examination

Q. Through Wentworth Park?

A. Wentworth Park yes, there is a bridge and then you go right up and there is like you come up

5. to Crescent Street right and we crossed the Street.

Q. So as I understand you went from George Street into Wentworth Park, across the footbridge which spanned the creek in the Park and then up

10.

onto Crescent Street?

A. Right, yeah.

Q. How would you describe the condition of you and Mr. Ebsary?

15. A. Ah I would say in good shape, I wasn't staggering or nothing you know.

BY THE COURT

Q. Feeling pretty good?

20. A. Felling pretty good yeah. But I wasn't you know staggering.

BY MR. EDWARDS

25. Q. Ok and what about Mr. Ebsary?

A. The same.

Q. So when the 2 of you went up onto Crescent Street after crossing through the Park could you tell the Court please what if anything happened at that

30.

time?

0. JAMES MACNEIL - Direct Examination

A. We were approached by the deceased Mr. Seale and Mr. Marshall.

Q. Now the deceased Mr. Seale you didn't know him before that?

5.

A. I did not know him no.

Q. He had been a person of approximately what age at that time?

10.

A. 16 or 17.

Q. And could you describe him?

A. He was Muladdy, like coloured, like good looking.

Q. You mean Mulatto?

A. Yes.

15.

Q. Like a lighter coloured black person?

A. Yeah.

Q. Do you recall how he was dressed?

A. I can't remember just how he was dressed.

20.

Q. And do you recall who was with Mr. Seale at the time?

A. Junior Marshall, Mr. Marshall.

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

25.

A. No.

Q. Had you seen him since?

A. Who?

Q. Mr. Marshall?

30.

A. Yeah in Halifax.

0. JAMES MACNEIL - Direct Examination

- Q. That is when you gave testimony on December 1st, 1982?
- A. Yeah right.
5. Q. And at that time were you able to identify Mr. Marshall as the person you saw with Seale that evening?
- A. Yeah right.
10. Q. So when you met Mr. Seale and Mr. Marshall you were on Crescent Street?
- A. Unhuh.
- Q. Would you describe exactly what happened when you met the 2 of them?
15. A. When we met the 2 of them like just on the other side, crossed over to the other side of the street on that there side.
- Q. You mean the side of the street furthest from the Park or closest?
20. A. Furthest on this here side.
- BY THE COURT
- Q. Near the residences?.
25. A. Yeah. Right near the buildings and then after that we were approached by the 2 individuals I was speaking about. Mr. Marshall put my hand behind my back like that.
- 30.

0. JAMES MACNEIL - Direct Examination

Q. You are indicating he put your right hand behind your back?

A. My right hand yeah.

5. Q. Where did they approach you from, front or behind?

A. I would say it would be from like behind or like in a counter clockways you know like we

10. were across the other side but I think it would be like from behind like.

Q. So you say it was Marshall that grabbed you and put your arm up behind your back?

A. Yeah right.

15. Q. Did he say anything to you at that time, Marshall?

A. Marshall never said one word to me. I just frozed, I frozed there, I just frozed.

20. Q. In the meantime what was happening if anything to Mr. Ebsary?

A. Mr. Ebsary was looking directly at Mr. Seale the deceased, and Mr. Seale looked back directly

25. at him and I heard him saying "dig man dig".

Q. Who said that?

A. The deceased Mr. Seale.

Q. Said that to who?

30. A. Mr. Ebsary and Mr. Ebsary said "I've got something for you" and then all hell.

0. JAMES MACNEIL - Direct Examination

Q. Just describe exactly what you recall happening?

A. What I recall, I heard Mr. Seale scream and then he sort of like ran in a direction like just ran in a direction and I was all shook up.

5.

Q. Did you see how far Mr. Seale got?

A. I did not see how far he got because Ebsary said you know he made a dash like for his place like.

10.

Q. He made a dash away from where you were?

A. Yeah right.

BY THE COURT

Q. Who was that, Ebsary or Seale?

15.

A. Ebsary.

BY MR. EDWARDS

Q. When Mr. Seale screamed would you describe Mr. Ebsary's position, what was he doing at the time that Mr. Seale screamed?

20.

A. I would say he was, well I didn't see the knife but I seen him like going something like that.

25.

Q. You are indicating now a thrusting motion with your right hand, that is like you saw Mr. Ebsary do?

A. Yeah right.

30.

Q. And how was that thrusting motion made as far as Mr. Seale was concerned?

0. JAMES MACNEIL - Direct Examination

A. I think it was made like...

Q. You are indicating an upward motion?

A. Yeah upward motion.

5. Q. Well how close did his arm come to Mr. Seale when he made that thrusting motion?

A. Ah very close, very close, it was very close probably 2 feet or 2½ feet or something like that.

10.

Q. And how, when did you hear the scream from Mr. Seale?

A. When he got stabbed like, just after that.

15. Q. How long after that thrusting motion was it that you heard Mr. Seale scream.

A. Just in a flash like.

Q. Now after Mr. Seale ran from where you were what did Mr. Marshall do?

20. A. Mr. Marshall he vanished, he sort of like, wait now just one second, I believe that Mr. Marshall tried to intervene or something just like and then he disappeared right quick.

25.

Q. Well after Seale ran away what did Ebsary do at that point?

A. After Seale ran away Ebsary just broke off sort of like now if I recall it I think Marshall tried

30.

JAMES MACNEIL - Direct Examination

0. to do something like eh.
- Q. To who?
- A. To Mr. Ebsary and then all of a sudden like he
5. ran like Mr. Marshall just ran like he just ran.
- Q. How would you describe your reaction when you met Seale and Marshall and this incident took place? How did you react?
10. A. Well I was just like I was frozen eh, like I frozed you know I just frozed right up, you know I got all you know tensed up and sort of like I don't know it's hard to describe, you would have to be in the same position.
15. Q. Now after Marshall disappeared what did you and Ebsary do?
- A. We went back home to Ebsary's place.
- Q. Mr. Ebsary's home?
20. A. Yeah.
- Q. Where was that at the time do you recall?
- A. That is on the rear of Argyle Street.
25. Q. And how much time in minutes would it have taken you to get from where this incident took place to Mr. Ebsary's home?
- A. I'd say roughly 5 minutes, 5 or 6, 7 minutes.
30. Q. And I take it then the 2 of you went into his house?

JAMES MACNEIL - Direct Examination

0. A. Unhuh.
- Q. And when you got in the house do you recall who if anybody was there?
5. A. I never seen anybody there.
- Q. And where did you and Mr. Ebsary go?
- A. Mr. Ebsary went right to the kitchen sink and he started washing, he was washing the blood off his hands and off the knife.
10. Q. Washing blood off his hands and off the knife?
- A. Yeah right.
- Q. And did you get a good look at the knife at that time?
15. A. At the time I got a glance at it, I think it was a small knife with a brown handle on it.
- Q. Do you remember approximately how long the blade was?
20. A. Well a pocket knife, it would be about probably 5 to 6 inches.
- Q. And did you see what he did with the knife after he washed the blood off it?
25. A. I didn't notice where he put it.
- Q. Did you say anything to Mr. Ebsary when you went in the house?
- A. I said "you did a good job" I said.
30. Q. And why did you say that?

0. JAMES MACNEIL - Direct Examination

- A. Because I was glad you know, I thought maybe I would have been hurt or some darn thing and it was just a manner of speech because I was
5. in that there position just previous to that.
- Q. And when you said to him "you did a good job" did he reply?
- A. No he did not reply.
10. Q. Did he say anything at all after you went in the house?
- A. He said it was self defence, no wait now, what did he say.
- Q. Well if you don't recall Mr. MacNeil.
15. A. I can't recall. I was you know all nerved up there.
- Q. And how long did you remain in Ebsary's house that evening?
20. A. About an hour.
- Q. And I take it you went home?
- A. Yeah.
25. Q. Now when did you first become aware that somebody had been stabbed in the Park, or somebody had died in the Park?
- A. Next day I heard it on the news, so I realized
30. right away, I said that was the fellow that met us last night there.

0. JAMES MACNEIL - Direct Examination

Q. So did you return to Ebsary's house that day?

5. A. Yeah I did, he was laying in bed and I told him about it and he said "it was self defence" and I said "well you didn't have to kill him you know, you didn't have to kill him, you should have gave him the money" you know.

10. Q. And what did Ebsary say?

A. Well he said you know "it was self defence".

Q. And so then I take it you left his house after a short period of time?

A. Right.

15. Q. Did you ever tell the police about that incident?

20. A. Yeah I told them, I told them after Marshall was convicted because I didn't think it was fair for him to spend time in gaol for something he didn't do and plus it was on my mind and I couldn't sleep and I spoke to my mother about it and then I spoke to my brother and he told me he said "just go to the police" so that's what I did, I went to the police, that would be about 10 days after he was charged, Mr. Marshall.

25. Q. After he was charged or after he was convicted?

30. A. After he was convicted.

197

0. JAMES MACNEIL - Direct Examination

Q. And do you remember what time of the year that would have been when you went down to see the police?

5. A. Ah I think it would be about November, I believe.

Q. November 1971?

A. Yeah.

Q. And what police did you go to see at that time?

10. A. I seen MacIntyre and...

Q. That is the present Chief of Police in Sydney John MacIntyre?

A. Yeah John MacIntyre.

Q. And who else did you see?

15.

A. And there was Corporal, I just can't think of his last name.

Q. And you told them the same story you are telling the Court today?

20.

A. Right yeah.

Q. And what if anything happened to you after that, after you gave that statement?

25. A. Well they asked me, they like I took a volunteer polygraph test and it was I think inconclusive you know so they didn't believe me and I was burnt up about that you know inside, they didn't believe me you know.

30.

0. JAMES MACNEIL - Direct Examination

Q. So you gave evidence respecting Donald Marshall on December 1st, 1982 for the Appeal Division of the Supreme Court of Nova Scotia?

5. A. Yeah right yeah.

Q. And you told them the same story then that you are telling now?

A. Yeah right.

10. Ok, no further questions.

15.

20.

25.

30.

0. JAMES MACNEILBY MR. WINTERMANS - Cross Examination

Q. Now you and Mr. Ebsary met up at the Tavern?

A. Yeah right.

5. Q. The State Tavern which is no longer in existence?

A. No there is Superior Propane place there now.

Q. And you didn't go there together though did you?

A. No I met him there. He was already there.

10. Q. He was already there when you arrived?

A. Yeah.

Q. And what time was it you arrived?

A. I think I arrived around 7 or 7:30 something like that.

15. Q. Was that by some pre arranged plan that you met him there or was it just by coincidence?

A. Just by coincidence.

20. Q. When you say that you had 7 or 8 beers and Mr. Ebsary had about the same, when you say he had about the same are you referring to from the time that you got there until the time the two of you left?

25.

A. Yeah that's right.

Q. I suppose you can't be sure how many he had before you got there?

30. A. No I can't be sure.

0. JAMES MACNEIL - Cross Examination

- Q. Did you go anywhere else before you got to Crescent Street when you left the tavern, did you go directly from the tavern through the
5. Park as you said to Crescent Street?
- A. Yeah right.
- Q. And that only took a few minutes?
- A. Yeah.
- 10.Q. 5 or 10 minutes?
- A. Right.
- Q. How long were you in the Crescent Street area before you were approached by these two young men?
- A. Not too long, a few minutes.
15. Q. What do you mean by that?
- A. Just as soon as we crossed the bridge and went up on the far side of the road we were approached.
- Q. Did you stop before you were approached by these
20. two young men or were you just walking home to Ebsary's house?
- A. We were just walking home.
25. Q. So you never stopped?
- A. We never stopped no.
- Q. You didn't hang around?
- A. No, we never hung around.
30. Q. Did you have any conversation with Marshall or Seale?

0. JAMES MACNEIL - Cross Examination

A. No.

Q. Before Marshall put your arm up behind your back?

A. No, no conversation.

5. Q. There was no conversation?

A. There was no conversation at all.

Q. So if someone else were to say that you had a conversation for 10 or 15 minutes about women

10. and bootleggers and stuff what would you say?

A. I would say that it was not true.

Q. Are you absolutely sure about that?

A. Positive.

15. Q. So you and Mr. Ebsary were just walking home from the State Tavern, you cut through the Park, is that a short cut to Ebsary's home?

A. Yeah.

Q. You were on Crescent Street?

20.

A. Yeah.

Q. And you were attacked, is that a fair word to use?

25. A. Yeah.

Q. By 2 complete strangers?

A. Yeah.

Q. To you at that time?

30. A. Right, yeah.

0. JAMES MACNEIL - Cross Examination

Q. And what did you feel was being done to you and Mr. Ebsary? Did you feel that you were being robbed?

5. A. Yes I did yeah, I felt scared.

Q. You were scared?

A. Yeah.

Q. You were afraid?

10. A. Yeah.

Q. Why were you afraid?

A. Well it's my nature, you know a lot of people they don't you know, it's your chemical makeup, another person probably wouldn't be scared you

15. know, he would you know do something, but I freezed, I'm that type.

Q. And when you say that Mr. Marshall put your right hand up behind your back, what do you mean by that, was he pushing your arm up?

20.

A. He wasn't hurting me, he just held it.

Q. Did he have his hand, his other hand somewhere else?

25.

A. I didn't notice.

Q. Was he twisting it at all?

A. No, he just had like so much strain on it, well I just frozed, I didn't try to put up a fuss or anything.

30.

0. JAMES MACNEIL - Cross Examination

Q. Did he push your arm up a little bit, up your back?

A. Unhuh.

5. Q. Was there some pressure there?

A. Yeah.

Q. And he never said anything to you at all?

A. I can't remember him saying a word.

10. Q. But Mr. Seale said something to Mr. Ebsary?

A. Yeah.

Q. Did Mr. Seale have his hands on Mr. Ebsary as far as you can recall?

A. No he never had one hand on him.

15. Q. Are you sure about that?

A. I am positive.

Q. Where were you looking? When Marshall had your hand up behind your back where were you looking?

20. A. I was just...

Q. You say that you froze?

A. Yeah. He could have had his hand on him but I never seen it.

25. Q. Now you are saying that Seale could have had his hands on Ebsary?

A. I never seen it so I don't know.

30. Q. It is possible that you weren't looking in that direction?

0. JAMES MACNEIL - Cross Examination

A. It could be possible yeah.

Q. I suppose you were pretty worried about your own safety?

5. A. Right.

BY THE COURT

Q. Well Seale and Ebsary were in very close contact with one another at that point in time wern't they?

10.

A. Yes.

Q. Very close to one another?

A. Yeah.

Q. How far away from them were you?

15.

A. About 3 feet I would say.

BY MR. WINTERMANS

Q. So the 4 of you then were in a pretty confined space?

20.

A. Yes.

Q. Just a few feet would encompass all 4 of you?

A. Yeah.

25. Q. And you were afraid?

A. Right.

Q. What were you afraid of?

A. I was afraid that I might get hurt or something.

30. Q. So you were afraid, you thought you would be robbed and you were afraid that you would be hurt?

0. JAMES MACNEIL - Cross Examination

A. Yeah right.

Q. And how much time passed between the time that Marshall put your hand up behind your back and

5. the time you saw a sweeping motion which we might assume was the stabbing of Seale, how much time passed?

A. I would say roughly not more than 3 or 4

10. minutes if that.

Q. A matter of seconds do you think?

A. Could be seconds, it happened so fast.

Q. Was there any other conversation besides "dig man dig" and "I've got something for you", were

15. there any other words said?

A. No not a word said.

Q. So it must have happened pretty quickly?

A. Yeah.

20. Q. 3 or 4 minutes is quite a long time?

A. Yeah.

Q. I suggest to you it would be more like 5 or

25. 10 seconds?

A. Yeah.

Q. Would you agree with that?

A. I would agree with that.

30. Q. Now you say that Mr. Seale ran away and fell?

0. JAMES MACNEIL - Cross Examination

A. Yeah.

Q. Did he scream?

A. Yes.

5. Q. How far did he run before he fell.

A. To my knowledge it would be about from here to just about the first pew there where Mr. Ebsary is sitting.

10. Q. You are talking about?

A. Just where you are at there.

Q. How far is that about 20 to 30 feet?

A. Yeah.

15. Q. You indicated that you had 7 or 8 beers and that you were feeling pretty good but that you wern't staggering?

A. No I wasn't staggering.

20. Q. Now if I was to suggest to you that you may have fallen off a curb or staggered and kind of tripped and Mr. Marshall just grabbed you to prop you up to keep you from falling down
25. because you were staggering what would you say about that?

A. I would say no to that.

Q. Are you absolutely sure about that?

30. A. I'm positive.

0. JAMES MACNEIL - Cross Examination

- Q. Now you say that when you, that you heard Seale scream and then run away, fall down and then you said something to the effect that
5. you thought that Marshall went after Ebsary?
- A. Right.
- Q. What do you mean by that?
- A. I think he tried to grab his arm or something.
10. Q. Did you see Marshall make a movement toward Ebsary?
- A. Yeah but everything happened so darn fast.
- Q. Did you see Ebsary make any movement after that towards Marshall?
15. A. Not that I can recall but he could have but I don't recall.
- Q. And then you say Mr. Marshall vanished?
- A. Yeah.
20. Q. You couldn't see which direction he went?
- A. No.
- Q. What was the lighting like there?
25. A. Fair.
- Q. Could you make out people's faces?
- A. Oh yeah.
- BY THE COURT
30. Q. Any street lighting around where you were standing?

0. JAMES MACNEIL - Cross Examination

A. Yeah there was light you know, you could see a person's face, but it was not like you were going down on Charlotte Street.

5. BY MR. WINTERMANS

Q. You testified that after that you and Mr. Ebsary went to Mr. Ebsary's home and that that was only a few minutes walk from where you were on Crescent Street is that right?

10.

A. Yes.

Q. How would you describe your speed in going, were you walking at a normal pace or were you walking fast or were you running or what?

15.

A. Walking fast.

Q. And Mr. Ebsary how old would you say Mr. Ebsary was in 1971?

A. Around 60 I guess.

20.

Q. And how would you describe Mr. Marshall in terms of size, physical appearance?

A. I would say he was about medium height you know at that time. Probably 5 foot 7 or something like that.

25.

Q. Marshall?

A. Yeah.

30.

0. JAMES MACNEIL - Cross Examination

Q. And what about Mr. Seale?

A. I can't precisely there say, he might have been a bit taller.

5. Q. Now I take it that you didn't actually see the weapon, the knife or whatever it was at the time the injury was taking place at Crescent Street?

A. No.

10. Q. You didn't see a knife until later at Ebsary's house?

A. At the residence yeah.

Q. And you described that as a pocket knife?

A. Yeah a pocket knife.

15. Q. Small.

A. Yeah.

Q. When you say pocket knife do you mean the type of knife that folds up like a jack knife?

20. A. Yeah.

Q. That the blade folds into the handle?

A. Unhun.

25. Q. Is that the kind of knife you it was?

A. Yeah.

Q. Are you certain about that?

A. Yeah.

30. Q. And did you see that knife in Roy Ebsary's possession at any time before this incident on Crescent Street?

0. JAMES MACNEIL - Cross Examination

A. No I never seen it before that.

Q. Did you know that Roy Ebsary had a knife in his pocket?

5. A. I didn't even know, I didn't even know that he had a grindstone to sharpen knives on, I didn't realize that.

Q. You had known him for some 3 months you say?

10. A. Yeah. And I never knew that.

Q. Now you say that when you got to Ebsary's home you don't recall anyone else being there?

A. No.

Q. What about his daughter?

15. A. I don't recall.

Q. You don't recall her being there?

A. No.

20. Q. And you say you saw Ebsary go over and wipe or do what with the knife?

A. He washed it under the sink.

Q. Under the tap?

25. A. Yeah.

Q. With water?

A. Yeah.

30. Q. Did you actually see any substance on the knife which you thought to be blood?

Exh 192/100

0. JAMES MACNEIL - Cross Examination

A. Yeah I did.

Q. Are you certain of that?

A. Yeah.

5. BY THE COURT

Q. You are saying the knife was a pocket knife?

A. Yeah.

Q. After he washed it off did he put it back in
his pocket?

10.

A. Um I didn't notice, I was in shock.

BY MR. WINTERMANS

That is all I have thank you.

BY MR. EDWARDS

15. No re examination Your Honour.

20.

25.

30.

Return 102

0. DONNA EBSARY - SWORNBY MR. EDWARDS - DIRECT EXAMINATION

- Q. Your name is Donna Ebsary?
- A. Yes sir it is.
5. Q. And your present address is?
- A. 46 Mechanic Street, City of Sydney, that is where I am now. I reside in the United States.
- Q. Where in the United States?
10. A. 180 River Street, Waltham, Mass.
- Q. And how old are you now?
- A. 26.
- Q. And in 1971 you would have been how old?
- A. 13 or 14.
15. Q. You are the daughter of Roy Newman Ebsary, the Accused?
- A. Yes I am.
- Q. Is your father Roy Newman Ebsary here today?
20. A. Yes sir.
- Q. Would you indicate for the record please where he is sitting?
25. A. Identifies the Accused Roy Newman Ebsary.
- Q. Now in May of 1971 where would the family residence have been?
- A. 126 Rear Argyle Street.
30. Q. And who resided at the residence?
- A. At the time my father, my mother, my brother and myself.

0. DONNA EBSARY - Direct Examination

Q. And do you recall an incident in late May of 1971 concerning your father and James MacNeil?

A. Yes I do sir.

5. Q. And prior to that night did you know James MacNeil?

A. Yes I did.

Q. And how long had you known him before that night?

10. A. A couple of months probably.

Q. And on how many occasions would you have seen him prior to that night?

A. On several occasions prior to that night.

Q. So on the night in question who was at home?

15. A. My mother and myself were at home.

Q. And when if at all that night did you see James MacNeil and your father?

20. A. It was late, very late in the night, my mother and I were in the front room watching the late news when my father and James MacNeil arrived at home.

25. Q. When you say late at night could you be any more specific? When in relation to midnight would it have been?

A. I think around 11:30, 11:40 something like that, it was like that general time.

30. Q. And you say James MacNeil and your dad came in?

0. DONNA EBSARY - Direct Examination

A. Yes.

Q. And where did they go when they came into the house?

5. A. They came into the house and they stopped at the front room for a second and then they went down the hallway into the kitchen. When they stopped at the living room where my mom and I were James

10. turned to say something to us, my dad told him to be quiet and the two of them went into the kitchen.

Q. Did you hear any further conversation or did you hear any conversation at all between the two of them?

15. A. Well when they stopped at the front room James had said to my father "you did a really good job back there", my father turned and said "shut up, be quiet" and the two of them went into the kitchen after, at which point I didn't hear them talk any more after
20. that.

Q. Now where did you go after they went into the kitchen?

A. I followed behind them.

25. Q. And what if anything did you observe them doing when they went into the kitchen?

A. My father went to the kitchen sink where he was washing his hands and a knife in the sink.

30. Q. Could you describe his hands and the knife.

0. DONNA EBSARY - Direct Examination

A. There was blood on his hands and on the knife that he had with him.

Q. And did you see what he did with the knife after he finished washing it?

5.

A. After he finished washing it he put the knife away, he took it and he went upstairs.

Q. Now after that night can you recall how long after that night it was when you became aware that somebody had been stabbed and killed in Wentworth Park?

10.

A. I would say the next day I was aware that a person had been stabbed in Wentworth Park.

Q. And did you see James MacNeil around the house any more?

15.

A. I think he came once to the house after that.

Q. How long after that?

A. I am not certain how long it was after that he came to the house.

20.

Q. On that night when he and your father came into the house around midnight we'll say, how would you describe James MacNeil's condition at that time?

25.

A. He was very hyper, he was like just really, really excited like something had happened or he had been doing something that was a lot of fun or wasn't a lot of fun, like very hyper.

30.

Thank you.

0. DONNA EBSARY

BY MR. WINTERMANS - CROSS EXAMINATION

Q. You say that you saw this knife that he was watching in the kitchen?

5. A. Yes sir I did.

Q. Can you describe the knife?

A. The knife had a short blade, had a brown handle, that's as best I can describe it for you.

10. Q. And when you say you saw blood on the knife what you are really saying is that you saw a substance that you thought was blood on the knife?

A. I did not take the knife to a lab and have it examined.

15.

BY THE COURT

Just answer the question.

BY MR. WINTERMANS

20. Q. Can you describe the substance that you saw on the knife?

A. There was a red substance that looked to me like blood at the time.

25. Q. Did you notice if there was any blood on your father's hands?

A. There was blood on my father's hands yes.

Q. What you thought was blood?

30. A. Right.

0. DONNA EBSARY

BY THE COURT

Q. He was washing his hands and the knife at the same time?

5. A. Yes sir he was.

BY MR. WINTERMANS

Q. Did you notice any of what appeared to be blood on any of his clothes?

10. A. I did not notice.

Thank you.

BY THE COURT

Q. The knife you saw would it be consistent with a pocket knife?

15. A. Not like a pocket knife, it would be a little larger than a pocket knife.

20.

25.

30.

0. LEO MROZ - SWORNBY MR. EDWARDS - DIRECT EXAMINATION

- Q. You are Constable Leo Mroz, you are a Peace Officer employed by the City of Sydney Police Department and you have been employed as such for the past 20 years approximately?
5. A. That's correct.
- Q. And you were on duty on the night of May 28th 1971?
10. A. That's correct sir.
- Q. And on that particular night you and I guess as he was then Corporal Walsh, now Inspector Richard Walsh of the City Police Department responded to a complaint of a stabbing in Wentworth Park, City of Sydney, County of Cape Breton, Province of Nova Scotia?
15. A. That's correct sir.
20. Q. Can you recall approximately what time that night you responded to that occasion, to that complaint?
- A. Yes, just a matter of minutes before midnight that particular, it would be the 28th of May and we were perhaps at the scene there on Crescent Street until approximately 12:20 when Currie's Ambulance had arrived to convey the fallen and injured victim to City Hospital Out Patients.
25. 30.

0. LEO MROZ - Direct Examination

- Q. How do you know from your own experience or personal affairs, how can you be sure of the date as the 28th of May 1971?
5. A. The 28th was a Friday and the 29th my brother actually was married on the 29th, on the Saturday, is one method of recollection. Another was that when I was returned to the beat at approximately
10. 5:10 a.m. after searching into the night for a possible suspect for the stabbing, I was dropped off on Charlotte near Dorchester and I immediately proceeded to check my beat.
- Q. Without getting into that, there was another case
15. you got involved in that morning which eventually went to Supreme Court and that is what stands out in your mind?
- A. Yes break and enter at Simpson & Sears Warehouse
20. and Service Centre which was located on North Charlotte, the building is currently demolished and that case subsequently went to Supreme Court,
25. it involved theft.
- Q. Would you describe the scene that you observed when you and Inspector Walsh arrived at the Crescent Street area on that night of May 1971?
- A. My attention was drawn to a subject laying in
30. the street, the head of the victim was directed toward the centre, the body was slanted to the

0. LEO MROZ - Direct Examination

right curb and the feet were extended over the curb, practically almost to the depth of the shoes. The body was primarily in the Street and it appeared he was attired in a white T-shirt or possibly sweater, short sleeves and it appeared that under that garment it would appear that there was something concealed and on closer inspection or examination after we did roll up the garment the intestines were very apparent and they were being pressured or forced out almost in snake like fashion, this was as a result of a stabbing, that was my immediate conclusion.

15. BY THE COURT

Q. The victim was still alive at that time?

A. Yes, as a matter of fact Your Honour there was an utterance of "Oh God no, oh God no, oh Jesus no", in that sequence.

Q. From the victim.

A. From the victim and then he...

25. BY MR. EDWARDS

Q. Did you recognize the victim?

A. I did, I knew he was surnamed Seale, I couldn't put a given name on the subject at that time on the victim. Following the utterance after about

30.

0. LEO MROZ - Direct Examination

4 cries as I described the victim appeared to slip unconscious, there was no further conversation and facially there was an expression of deep hurt, or grip as I would call it.

5. BY THE COURT

Q. A what?

A. A deep hurt, you could see the hurt within the face.

10.

BY MR. EDWARDS

Q. And was there anyone else in the area that you recognized?

15. A. On the arrival of Car number 3 I was working with Constable Richard Walsh that morning, car number 3 did arrive by way of Bentinck to Crescent and in the headlights, the high beams of the oncoming cruiser I could spot Donald Marshall and he was

20. against a rather large tree which was situated in the park approximately 200 maybe 300 feet from where I was administering to Sandy Seale and the victim,

25. and Marshall appeared leaning to the left and his right hand appeared to be clasped over his left wrist and I observed this while awaiting the arrival of Currie's Ambulance, which was somewhat slow to

30. respond for whatever reason on that particular call and with the emergency stressed as well.

0. LEO MROZ - Direct Examination

Q. I take it that Mr. Marshall was also known to you prior to that evening?

A. Yes very much so.

5. Q. And when the ambulance arrived I take it that Mr. Seale would have been placed in the ambulance and taken to hospital?

A. That is correct sir he was.

10. Q. Do you recall what hospital he was taken to?

A. Yes he was taken to the City Hospital Out Patients.

Q. And did you in fact follow the ambulance?

A. Yes in the police cruiser.

Q. And did you see Mr. Seale in the Hospital?

15. A. Yes I did, in fact I followed the victim into the Out Patients area and I was present when Dr. Naqvi who apparently was at the Hospital awaiting our arrival, he was there to receive us,
20. to meet us on our arrival.

Q. So you observed Dr. Naqvi treat the victim Mr. Seale?

25. A. That is correct sir yes.

I have no further questions thank you.

30.

0. LEO MROZ

BY MR. WINTERMANS - CROSS EXAMINATION

Q. You said in your evidence that Marshall was very well known to you?

5. A. Yes sir, as a matter of fact that knowledge comes out of the fact my wife is a school teacher and it was in that relation I met him on occasion when I was present with my wife and she referred to him as a student and subsequently some sort of relationship, not close but I also saw him at dances etc etc during the years that I had been on the police department preceeding the incident that particular morning.

10. Q. Are you aware of any criminal record that he had at that time.

BY MR. EDWARDS

Objection.

20. BY THE COURT

I won't permit that question.

BY MR. WINTERMANS

25. Well Your Honour there is evidence of a robbery here which is in a sense not being denied by Mr. Marshall but he is being pretty evasive on that point.

BY THE COURT

30. Well I am not permitting the question.

0. BY MR. WINTERMANS

What I am trying to establish is to assist
in the creditability in a certain sense of Mr.
MacNeil, he testified very clearly that there
5. was a robbery.

BY MR. EDWARDS

Objection. The question should have been put
if at all to Donald Marshall not to this witness
Your Honour.

10.

BY THE COURT

Yes and for that reason I am not permitting
the question. I think it is proper for you to
ask Mr. Marshall to the effect is it possible
15. that charges could be laid against you and that
might show some bias in the evidence he has
given that he might want to cooperate with the
Crown on this particular matter but his
20. character as far as I am concerned hasn't been
placed in issue by Mr. Marshall anyway and I am
not permitting you to ask the witness that question
because I agree with the Crown that is a question
25. if you thought the matter was important you had an
opportunity to explore it when Mr. Marshall was on
the stand. He is the best person to give knowledge
of it.

30.

0. LEO MROZ - Cross ExaminationBY MR. WINTERMANS

Q. Would I be permitted to ask the same question in relation to Sandy Seale, the deceased in this matter?

5.

BY THE COURT

Yes I think I will allow that.

BY MR. WINTERMANS

10.

Q. Are you aware whether or not Sandy Seale the deceased in this matter had any criminal convictions?

A. No sir I am unaware.

Q. You are not aware.

15.

A. Exactly.

Q. You are not saying one way or the other?

A. No sir I am not aware whether he did or did not.

20.

BY THE COURT

I think it is a collateral matter, you are bound by the answer one way or the other.

BY MR. WINTERMANS

25.

Thank you, that is all.

BY MR. EDWARDS

No re examination.

30.

0. DR. NAQVI - SWORN

BY MR. EDWARDS - DIRECT EXAMINATION

Q. Would you give your name and occupation sir?

A. My name is Manuel Naqvi.

5. Q. And your occupation?

A. I am a surgeon.

Q. And as such you are qualified to practise medicine in the Province of Nova Scotia?

10. A. Yes.

Q. And you have been acting as a Medical Practitioner in the Province of Nova Scotia for how long?

A. 25 years.

Q. And you have been a surgeon for how long?

15. A. Since 1968.

Q. And you have been qualified to give evidence in the field of General Medicine and in fact you have given such evidence in the Courts of the Province of Nova Scotia on previous occasions?

20.

A. Yes.

Q. And your evidence has been accepted?

25. A. Yes.

Q. And you have also given opinion evidence as a Surgeon is that correct?

A. That is correct.

30. Q. And your evidence in those insitances has been accepted has it?

0. DR. NAQVI - Direct Examination

A. Yes.

BY THE COURT

Q. Are you admitting his qualifications?

5. A. I would like to ask a couple of questions.

BY MR. WINTERMANS

Q. Doctor where did you take your medical training?

10. A. I took my undergraduate training in Karachi
Pakistan. I did my post graduate work in New York
City, I did post graduate training in Halifax and
again took my post graduate training in New York
City.

Q. Where in New York City?

15. A. At Mount Sinai School of Medicine.

Q. And in Halifax?

A. At Dalhousie University and Victoria General
Hospital. I have a license from the Medical Council
20. of Canada, that is called LMCC. I have an MD, I
have a FRCS, Fellow of the Royal College of Surgeons
of Canada, I have the FACS, Fellow of the American
25. College of Surgeons, and I am a member of the
American Board of Surgeons, presently I am a member
of the American College of Surgeons, the Royal
College of Surgeons, the International College of
30. Surgeons and the American College of Gastro Interology,

0. DR. NAQVI -

American College of International Vascular Surgery, Royal College of Vascular Surgeons and also I have written 15 papers, various papers in the field of surgery and vascular surgery that have been published in the Nova Scotia Medical Society and various other International Journals.

10. BY MR. WINTERMANS

Q. Have you been practising exclusively in the Cape Breton Area, Sydney Area?

A. I have been practising surgery exclusively in the Cape Breton Area after I did my Fellowship in General Surgery, General and Vascular Surgery.

15. Q. Which was?

A. 1968.

Thank you very much Doctor.

20. BY MR. EDWARDS - Direct Examination

Q. Qualifications admitted.

BY MR. WINTERMANS

Certainly.

25.

BY MR. EDWARDS

Q. Dr. Naqvi you were on duty at the City Hospital on the night of May 28, 1971 is that correct?

A. I will have to look at my notes.

30.

0. DR. NAQVI - Direct Examination

Q. Were they notes that were made at the time?

A. Yes.

Q. And you are using them to refresh your memory?

5. A. Yes.

BY THE COURT

Very well.

BY MR. EDWARDS

10. Q. Yes Doctor?

A. May 29, 1971.

Q. May 29th?

A. That's right, 1971.

15. Q. So that would have been in the early morning of the 29th you would have treated one Sanford Seale at the City Hospital?

A. That's correct.

20. Q. And approximately what time that morning would you have first seen Mr. Seale?

A. The very early morning, I can't be sure of the time but I have a note here that it was before 7 a.m.

25. Q. Could it have been around midnight, in the area of 1 to 2 a.m. Do you have any independent recollection?

30. A. Ah 2:00 o'clock.

0. DR. NAQVI - Direct Examination

Q. Do you remember Mr. Seale, can you describe approximately what age he would have been and what his general physical characteristics

5. would have been?

A. He was a young man.

Q. Would you say he was a teen ager?

A. Yes.

10. Q. And would you say he was a black person?

A. Well I would say he was a coloured person.

Q. And would you describe his condition when you saw him at 2 a.m., approximately 2 a.m. on that morning?

15. A. He was very critical at the time and he did not respond, and he did not communicate because he was in a state of shock. He had lost enough blood from him that we could not record his blood
20. pressure at that time and his blood pressure was almost zero over zero. His respiration was 36, very shallow and he was just almost dead at that
25. time.

Q. Were you able to determine the cause of the loss of blood?

A. Yes he had had a wound in his abdomen and he
30. had most of the intestine was lying on the abdominal wall.

0. DR. NAQVI - Direct Examination

Q. Could you describe the size of the wound in his abdomen?

A. The size of the wound was large enough that most of the bowel was outside.

5. BY THE COURT

Q. The bowel exited from the wound?

A. That's right yes.

10. BY MR. EDWARDS

Q. And for how long did you treat Mr. Seale that morning?

A. I treated Mr. Seale from that time on until he died and I was in attendance on Mr. Seale throughout his entire hospitalization.

15. Q. And how long after you started treating him was it before he expired?

A. Well we treated him as soon as he was brought into the emergency room. From then on we did resuscitate him, we gave him a lot of blood and fluids and then we took him to the operating room to assess his injuries and he had had the first

25. operation on the same morning, on May 29th, '71 and at that time, I have my own report of the operation if you would like me to read it.

30. Q. Well perhaps you can just briefly tell us what happened, you operated on him?

0. DR. NAQVI - Direct Examination

A. He had a stab wound of the abdomen and he had a perforation of his large bowel, he had an injury to the vessels going to the large bowel, injuries to the vessels going to the small bowel and he had a lot of haemorrhages in the abdomen and he had a rupture in the aorta.

Q. A rupture in the aorta?

10. A. Yeah.

Q. And did you make a note of what time he did expire?

A. Yeah 7:30 a.m.

15. Q. Could you give the Court an opinion on the cause of death?

A. Abdominal injuries, injury to all his organs, ruptured aorta.

Q. That would be loss of blood?

20. A. Yeah.

Q. And could you give the Court an opinion as to what the wound to his abdomen would be consistent with?

25. A. The wound was consistent with a sharp object.

BY THE COURT

Q. Such as a knife?

30. A. Possible.

No further questions thank you.

0. DR. NAQVI

BY MR. WINTERMANS - CROSS EXAMINATION

- Q. I understand there was only one wound as far as from the outside is that correct?
5. A. Yes.
- Q. Consistent as if it was from a knife from one stab with the knife?
- A. If it was with a knife yeah it would be one
10. stab. But the wound was very deep, the wound of entry was in the abdomen and the other end of the wound was in the aorta, the aorta is the last organ that lies over the vertical body, over the bones, the back bones. The aorta is the last
15. organ that lies over the back bones, the wound was gone all the way through and cut everything going in.
- Q. So just pointing to your own abdominal area where
20. approximately would the point of entry have been?
- A. The wound was somewhere in the middle of the abdomen.
25. Q. Which is where?
- A. Which is not over the belly button but around the belly button.
- Q. And do you have a height and weight for the
30. deceased on the record?
- A. No.

0. DR. NAQVI - Cross Examination

Q. You wouldn't have that?

A. No.

Q. Would that be available under any of the hospital records?

5.

A. I couldn't tell you because when the patient comes in if they are very sick and they are very critical we generally try to do the best for the patient at that time, when they do recover then these things come later on and in this case he did not recover.

10.

Q. Now we heard a police officer say something to the effect that you were waiting at the hospital when the ambulance arrived, do you agree or disagree or recall?

15.

A. I can't recall but traditionally what happens, if the ambulance has a patient, a sick patient, they do notify the Out Patient Department and Emergency Room of the Hospital that they are bringing in a sick patient so when this happens we do come in and wait for them.

20.

Q. Now from other testimony it would appear to put the time of arrival at the hospital somewhere in the vicinity of 12:30, now you testified that you thought it was 2:00 o'clock?

25.

A. I couldn't be sure.

30.

0. DR. NAQVI - Cross Examination

- Q. Are you saying that it could have been 12:30, closer to 12:30 than 2:00 o'clock?
- A. According to my notes I handled the patient
5. somewhere around 2:00 o'clock, I can't be sure what the time of arrival was.
- Q. And what would the first procedures that you performed on the patient be?
10. A. Recussitation involves the classical A,B,C, that is airway, circulation and breathing, so we maintain his airway, start his intravenous and we administer large quantity of blood transfusions.
- Q. And there was exploratory surgery then?
15. A. Yes.
- Q. On 2 occasions?
- A. Yes.
- Q. In the course of the early morning?
20. A. Yes.
- Q. And I understand that on the 1st of those
- ~~25.~~ exploratory surgeries that certain injuries were dealt with but as I understand it the rupture to the aorta was not seen at that time?
- A. What it was is the 1st injury would repair most of the bowel, he was in such bad shape we couldn't
30. proceed to continue with the operation and what

0. DR. NAQVI - Cross Examination

the haematoma and the recto peritoneal space for the aorta was injured. Quite often it seals off and when the patient's condition was so bad

5. we thought that once we repaired the opening that this would seal off but it did not seal off so we had to go back and seal that off.

Q. So you are saying that it wasn't a matter of having missed it the first time around?

10. A. No, no, in fact we have a record of the first operation and this was the first operation. The laparotomy repair of the superior mesenteric vein and ligation of the branch of the middle colic artery and transvers colostomy. The patient was brought in from the Emergency Room in a state of shock with no blood pressure, no pulse, with rapid respiration, he was pale, the patient prepared, given 3 intravenuses and 4 units of O positive blood in order to bring pressure however with no luck. It was best felt to do a laparotomy in spite of critical situation, was brought in from the Emergency Room directly to the Operating Room, was prepared in the Operating Room and under general anesthetic, an incision below the stab wound was made and this was converted into a

15.
20.
25.
30.

0. DR. NAQVI - Cross Examination

- paramedian incision. No tear into the small
bowel was encountered but there was a tear into
the mid transverse colon, there was a free
5. spillage of fetal matter in the peritoneal cavity.
Huge rectal peritoneal hematoma extending from
the level under the esophagus right down to the
iliac on the left side, the patient's condition
10. was so bad that we just couldn't do anything at
that time. Although the aorta was palpated at
the time it appeared ulcerated but this probably
was secondary to a stab wound of the aorta which
sealed off into the rectal peritoneal space,
15. this was not touched with the fear of the bright
bleeding already present in the peritoneal
cavity. He was hemorrhaging so much we thought
to control the rest of it first to see what happens
20. but this large sized opening was sealed to
see if it would drain with the free bleeding of
this area. This opening was closed by vascular
25. surgery. Severe mesenteric bleeding was
repaired after that a branch of the colic vessel
which was bleeding had been patched and the
area was lighted, the colon was exteriorized and
there was a large amount of blood into the
30. stomach, the small bowel and the colon, we tried

0. DR. NAQVI - Cross Examination

bleeding although the site could probably be
a stress ulceration so by this time he was bleeding
from all over. However the stomach was not open
5. due to the critical nature of the injuries. There
was no obvious laceration or tear seen in the
stomach, the bowel was placed into the peritoneal
cavity which again could not be placed because
10. of this huge haematoma, there was some free
bleeding, again it was all from the peritoneal
space and through fibre muscle sutures were
applied to close the abdomen after exteriorizing
the peritoneal colon. So what we did is
15. sometimes if there is bleeding in rectal peritoneal
space it will seal off, it will give you a temporary
effect until you stabilize the patient.

20. Q. Did the deceased stabilize at any point before
expiring?

A. No.

25. Q. Was there any improvement ever during the course
of the morning?

A. That morning he had a very fluctuating blood
pressure, his blood pressure dropped to 60
we did a cardio response and he didn't respond.
30. The patient didn't respond at all, he still

0. DR. NAQVI - Cross Examination

continued to bleed, it came from the rectal peritoneal space so because of this continual bleeding we went back right away within a time span of very few hours.

5. Q. Would that have been a ruptured aorta causing the continuing bleeding?

A. Yes.

10. Q. Why wouldn't you fix the ruptured aorta the first time and if you had done so could there have been any possibility of him being saved?

15. A. Well the problems of course were too many at that time. The anesthist assistant and surgeon, everybody at the time wanted the patient to come out alive and there was no way we could keep him going, we had administered already some 27 pints
20. of blood at the time and this was the problem. We waited to see if he would stabilize on his own because once you open the aorta then you are finished so you have to, like in his case
25. we didn't control from the abdomen the second time when we went back we had to prepare for the chest operation in order to control the bleeding from the chest, we had to do a
30. terachotomy, open the chest to control it.

0. DR. NAQVI - Cross Examination

Q. Was any measurement done of the depth of the injury?

A. No.

5. Q. Are you aware of any autopsy being performed afterwards?

A. I don't think he had an autopsy.

Thank you Doctor.

10.

15.

20.

25.

30.

0. DR. NAQVI

BY THE COURT

Q. Doctor do you have any idea just approximately the length of the incision, you know the injury from when it entered the abdomen until it penetrated the aorta, just roughly?

A. Well he was an average boy and you can take any average boy and measure from one end to the other.

Q. I know you have to just answer in a general way, I want just a rough idea.

A. I couldn't put the size on it, I would say it would be fairly something like this.

Q. The length of the palm of your hand?

A. The wound of entry, I would say something like the length of the palm of your hand, it would be from here to here.

Q. I see 3 or 4 inches?

A. Something like that.

Thank you very much Doctor.

30.

0. BY MR. EDWARDS

That is the evidence for the Crown on the Preliminary Your Honour.

BY THE COURT

5. Roy Newman Ebsary stand up. On the charge at Sydney in Cape Breton County on or about the 28th day of May 1971 you did unlawfully commit second degree murder on the person of Sanford Seale contrary to Section 218 (1) of the Criminal Code of Canada, having heard the evidence do you wish to say anything in answer to the charge. You are not bound to say anything but whatever you do say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour, nothing to fear from any threat that may have been held out to you to induce you to make any admission or confession of guilt. Whatever you now say may be given in evidence against you at your trial notwithstanding the promises or threat. Have you anything to say at this time Roy Newman Ebsary? ———
- 10.
- 15.
- 20.
- 25.
- A. No Your Honour.
30. Q. Roy Newman Ebsary do you wish to call any evidence?
- A. Not at this time.
- Q. Any submissions gentlemen.

0. BY MR. EDWARDS

Well Your Honour just very briefly I would submit that the evidence discloses obviously without any question that Sandy Seale died as a result of the stab wound inflicted by Roy Newman Ebsary. Now my learned friend may very well argue that there was provocation or that Mr. Ebsary acted in self defence. I submit that while both of those may be viable arguments this is not the place for them and they should properly go before the Jury.

BY THE COURT

The only problem that concerns me is that every killing is not necessarily murder. It is a question whether there is any evidence of specific intent. I am not concerned about provocation or self defence, in other words I am saying should he be committed on murder or should he be committed on man slaughter.

BY MR. EDWARDS

Well I would urge Your Honour to commit him on murder because I submit the evidence shows that there is no question that he intended to cause serious bodily injury and using the definition in the Code it is really reckless whether or not that injury resulted in the death of the

0. BY MR. EDWARDS

victim. I submit that the issue is not whether or not he intended to cause that injury but whether or not the infliction of that injury at the time in question and in those circumstances constituted excessive force and thereby did deprive the Accused of the defence of self defence, or alternatively whether or not the Accused acted all of a sudden before his passions had a chance to cool in circumstances which would have deprived the ordinary person of the power of self control. In either of those issues I submit that it is a matter of the weight to be given to the evidence and also that should properly be decided by a Jury.

20. BY THE COURT

Well there is no question, creditability doesn't come up at a preliminary hearing, I agree with that.

25.

30.

0. BY MR WINTERMANS

Your Honour I refer Your Honour to Section 475 of the Criminal Code which states that when all the evidence has been taken by the

5. Justice he shall (a) if in his opinion the evidence is sufficient to put the Accused on trial;

(i) commit the Accused to trial; or (ii) order the Accused to stand trial etc.

10. (b) discharge the Accused if in his opinion

upon the whole of the evidence no sufficient case is made out to put the Accused on trial.

And it says "shall" too so if there is in your opinion on the whole of the evidence no sufficient

15. case made out to put the Accused on trial for murder, this is not suggesting that there isn't

or at least something in terms of manslaughter

20. for a Jury to decide on although I would certainly

be surprised even with that verdict. The other

point that I want to make is the function of the

Provincial Judge conducting the preliminary inquiry

25. is not determining whether the Accused is guilty

or not guilty, his function is to ascertain

whether or not there is sufficient evidence to

induce the belief in the mind of a cautious man

30. that the Accused is probably guilty. A mere

0. BY MR. WINTERMANS

scintilla of evidence has been held to be insufficient to justify committal order, the evidence must be such that a Jury properly

5. instructed and acting judicially could convict and any doubt on this matter must be resolved in favour of the Crown according to R vs.

LaPierre. One of the more practical tests suggested in several Canadian decisions is that

10. the Magistrate should put himself in the position of the trial judge, thus if he is of the opinion that the evidence is such as

15. would justify him as a trial judge in withdrawing a case from a Jury he ought to discharge the

Accused. On the other hand if he would submit the matter to a Jury then he should commit the

20. Accused. In reaching his decision he must take care that he is not usurping the function of the Jury and is not dealing with the preponderance of evidence. I would submit that in this case that

25. where the evidence of the Crown witnesses, specifically Mr. MacNeil, is that there was a robbery taking place.

On cross examination he indicated that it may have only taken 5 or 10 seconds for the whole incident to go from start to finish, that it is just so

30.

0. BY MR. WINTERMANS

obviously a situation of provocation...

BY THE COURT

Either robbery or attempted robbery.

5. BY MR. WINTERMANS

10. The only real question here is whether or not there was excessive force used and I think that the only real question that a properly instructed Jury could consider is whether or not there was excessive force used and that is a situation of man slaughter and not of murder, there is no question of any pre meditated offence, there is no question of anything but a reaction to a dangerous situation and I would submit that the proper charge should have been right from the start if anything manslaughter. When you consider a 60 year old man walking through the park on his way home in the company of a friend being attacked by two young men. It is just so obviously a situation of if it's a question of manslaughter or nothing but not murder and that is why I would submit that it would be dangerous almost to leave a charge of that gravity in the hands of a Jury, that a properly instructed Jury could not by any stretch of the imagination enter a conviction on murder therefore

15.

20.

25.

30.

0. BY MR. WINTERMANS

I ask that Your Honour seriously consider committing on the included offence and of course Your Honour does have the power to

5. discharge a person on a primary charge and commit only on a lesser and included offence, I think probably you have done it before, I leave that to Your Honour.

10.

15.

20.

25.

30.

BY THE COURT

0. Thank you very much gentlemen. The Accused
stands charged in Sydney on the 28th of May
1971 he did unlawfully commit second degree
5. murder on the person of Sanford Seale contrary to
Section 218(1) of the Criminal Code of Canada.
The evidence against the Accused is that when a
robbery was in process he stabbed Sanford Seale with
10. his death ensuing as a result of the stabbing. Now
the question I have to determine is is there sufficient
evidence to commit the Accused for trial. I just
want to review the authorities in brief. I think
there is no disagreement, I think we are all in
15. agreement the leading case on committment for
trial is the United States of America versus
Sheppard, and I want to refer to an article written
by Mr. Maurice Fish, Committal for Trial, and it
20. is in the 39 Revu, a French publication du Bareau,
a Bar Review in Quebec 1979, 607 at page 8 and
the author goes on to say test for committal to
trial is identical to the test upon a motion for
25. non suit or directed verdict to trial. There
remaïns pckets of resistance to this motion but
the question must be taken as settled by the cases of
Moribideau, Paul and of course Sheppard. The common
30. test of sufficient evidence is throughout these
judgements equated with prima facie case. Prima

0. BY THE COURT

facie case and either of it's two accepted sentences never means less than sufficient evidence and the phrase "sufficient evidence" used in relation to criminal law invariably means evidence upon which a Jury might through the absence of contradiction or explanation reasonably and properly convict. That is the Law. In Canada talking about...another authority is found in the text known as "Criminal Procedure in Canada" at page 306, not that it matters who the article is by but I believe it is by Greenspan and Mark Rosenberg, and there again they are referring to the United States of America versus Sheppard, and it has been pointed out that the test propounded in the United States of America versus Sheppard is not the equivalent of any or some evidence. The test, and they agree with Professor Fish, the test is identical to that for a motion for non suit or a directed verdict to trial and requires evidence capable of satisfying a properly instructed, reasonable Jury that the Accused guilt was beyond a reasonable doubt. This test is often interpreted of course as meaning that the Justice, now this is at the preliminary inquiry level, at the level we

0. BY THE COURT

we are at, is not to weigh the evidence, it is not the function of a Justice or Judge on trial where application is made for non suit

5. to determine whether a witness is creditable however where the evidence is circumstantial the Justice necessarily weighs the evidence as he must consider whether a Jury could properly infer guilt from the individual facts.

10. Now in this particular case I will just refer briefly to a recent decision of the Supreme Court of Canada: Regina vs Faid, 2 CC, Canadian Criminal Cases, 3rd Edition Part A, June 21st, 1983. And I am going to

15. quote quite briefly from the judgement of Mr. Justice Dixon and this is a case he is talking about murder and he is talking about manslaughter. "Where a killing has resulted from the excessive use of force in self defence the Accused loses the justification provided under Section 34, there is no partial

20. justification open under the Section. Once the Jury reaches the conclusion that excessive force has been used, the defence of self defence has failed. It does not follow automatically however that the verdict must be murder. The Accused has become responsible for a killing." That is what we have here. The

30.

0. BY THE COURT

next sentence hasn't any bearing as far as
Mr. Ebsary is concerned. "He has no justification on
the basis of self defence but unless it is shown
5. that the killing was accompanied by the intent
required under, in this case, Section 212(a) of
the Code, it remains a killing without intent;
in other words manslaughter." Now I am
10. satisfied upon reviewing the evidence that
there is no evidence of intent, but there is
evidence of a killing, and on the evidence before
me I am discharging the Accused on the charge of
murder against Section 218(1) of the Criminal
15. Code but I am committing the Accused for trial
on the included offence of manslaughter.

Q. What about bail gentlemen.

BY MR. WINTERMANS

20. If Your Honour please the Accused has been in
custody since a couple of months ago.

BY MR. EDWARDS

25. We are objecting to bail Your Honour.

BY THE COURT

On what grounds.

30.

0. BY MR. EDWARDS

Well Your Honour I would like time to prepare
for a bail hearing.

BY THE COURT

5. I'll have a bail hearing on Monday but I
think in the meantime I will release the
Accused. Bail hearing Monday morning and
the Accused is released on his own recognizance.

10.

.....
CHARLES O'CONNELL, PROVINCIAL JUDGE
IN AND FOR THE MAGISTERIAL DISTRICT
OF THE PROVINCE OF NOVA SCOTIA

15.

20.

25.

30.

0. IN THE COURT OF THE PROVINCIAL MAGISTRATE

THE QUEEN VS ROY NEWMAN EBSARY

5. CERTIFICATE OF COURT REPORTER

I, Ann Landry, Court Reporter,
hereby certify that the foregoing transcript
10. of evidence is a true and accurate transcript
of the evidence given in this matter, taken by
way of shorthand and tape and transcribed by
me as such Reporter.

15.

Ann Landry

20.
Sydney, Nova Scotia
August 16th, 1983

25.

30.