

224.

0. COURT OPENED - (January 11, 1985 - 09:35 a.m.)

JURY POLLED - All present.

THE COURT: Good morning, Mr. Foreman, members of the jury. Good morning, counsel. We're ready to start on the presentation of evidence, correct? Or your opening remarks.

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MR. EDWARDS' OPENING REMARKS

MR. EDWARDS: Thank you very much, My Lord.

Mr. Foreman, ladies and gentlemen of the jury, my name is Frank Edwards and I have the privilege of representing the Crown in this particular matter. I will be assisted by Shauna Wilson, the lady on my right.

10.

Now it's customary at the opening of any criminal trial for the Crown Prosecutor to give you an opening address summarizing the evidence he intends to call. I'm not going to do that this morning. I'm going to begin calling evidence immediately, but I'll say this. The Crown intends to prove to you beyond a reasonable doubt two things: number one, that Roy Newman Ebsary, the accused fatally wounded Sandy Seale on the night in question; number two, that when he did so he was not acting in self-defence.

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The first witness, Mrs. Leotha Seale.

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MRS. SEALE duly called, sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: Would you give your name and address, please?

A. Leotha Seale, 985 Westmount Road.

25.

Q. Mrs. Seale, I'm going to stand over here so that your testimony will be directed to people who need to hear it most. Now Mrs. Seale, you are the wife of Oscar Seale?

A. Right.

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Q. And you're the mother of the late Sandy Seale,

MRS. SEALE, DIRECT EXAMINATION

0. is that correct?
A. Yes.
Q. What was Sandy's full name, Mrs. Seale?
A. Sandford William Seale.
Q. And Sandy died in 1971?
A. That's right.
5. Q. And the exact date of his death, Mrs. Seale?
A. He died on May the 29th.
Q. May 29th.
A. 1971.
Q. Do you remember what time that day?
A. That he died?
10. Q. Yes.
A. It was around 7 o'clock, a little after 7.
Q. In the evening.
A. Yes.
Q. All right. Do you know what doctor treated
him at that time?
15. A. Dr. Naqvi.
Q. How old was Sandy at that time, Mrs. Seale?
A. 17.
Q. 17 years old. And was he a student?
A. Yes.
20. Q. What grade was he in?
A. Grade 9.
Q. Now could you tell us what his approximate height
and weight was at that time?
A. Well, I'd say he was around - I don't know, you
know, actually. I think around 155 maybe.
25. Q. 155 lbs.
A. Yes.
Q. Could you estimate his height?
A. 5-7.
Q. 5-7. Now on the night of May the 28th, 1971
- 30.

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0. MRS. SEALE, Direct Examination

when did you last see Sandy that day?

A. At home.

Q. At home?

A. He was at home.

5. Q. And at approximately what time?

A. I just can't remember. It was around - it was the last bus that was leaving Westmount, you know, he was catching the last bus.

Q. And where was he going?

A. He was going to a dance.

10. Q. Do you know where?

A. Well, I know - right off hand I don't know the hall.

Q. Do you know where it's located?

A. Well, down here. It's past the park here, you know.

15. Q. Past Wentworth Park.

A. Right.

Q. Okay. May I suggest the name of the hall to the witness?

MR. WINTERMANS: No objection.20. MR. EDWARDS: Is it St. Joseph's Hall?

A. Well, it might've been.

Q. Mrs. Seale, do you recall what he was wearing when he left the house that night?

A. Yes, I do.

Q. What type of jacket was he wearing?

25. A. He was wearing a brown jacket, a heavy jacket.

Q. Pardon me?

A. He was wearing a brown heavy jacket.

Q. A brown heavy jacket.

A. Um-hmm.

30. Q. Okay. And do you recall if it/waist length or

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MRS. SEALE, Direct Examination

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three-quarter length?

A. Yeah, it was a way down to his waist, there.

Q. To his waist. What was he wearing under his jacket, Mrs. Seale?

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A. He was wearing a white short-sleeved T-shirt and a long turtle neck sweater, an off-white.

Q. An off-white sweater. Okay. Do you remember what colour trousers he was wearing?

A. Yeah, blue jeans.

Q. Blue jeans.

A. Yes.

10.

Q. And what time did you expect Sandy home that night? Or was there a set time for him to come home?

A. Well, he usually came home around 10 after 12, on the last - not the last bus, but - like the buses leave Sydney around 12, you know, and then he's home around 10 after 12.

15.

Q. Um-hmm. So I take it then from your testimony that he got to and from Westmount where you live by bus.

A. By bus, yes.

Q. Where would he usually catch the bus like when he was leaving from Sydney?

20.

A. Well, he'd usually catch it right here at the - you know, he goes down this street, there's a - I forget the name of the street here.

Q. Well, in relation to the park.

A. Yeah, right.

25.

Q. In relation to the park where is the bus stop?

A. Well, right here at the corner, you know, when you turn around that corner?

Q. You don't know the name of the street.

A. No, I don't. No.

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Q. Now when did you next see Sandy after he left

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0. MRS. SEALE, Direct Examination

the home that evening?

A. In the hospital.

Q. Was that that night or the next day?

A. That night. We had a phone call that night.

5. Q. Now as a result of the phone call you and your husband went to the City Hospital.

A. Yes, that's right.

Q. Yes. And was Sandy conscious when you saw him?

A. Yes. He was.

10. Q. Now the jacket he was wearing that night, can you tell me what eventually happened to that?

A. Well, the jacket was given to me by my husband. The City Hospital gave the jacket to my husband and he gave it to me to put it away.

Q. Yes.

15. A. And then later on, after the funeral Mike MacDonald, the police officer came to the door and he asked for the clothing and I gave it to him.

Q. You gave the jacket to Mike MacDonald.

A. To Mike MacDonald, yeah.

Q. And did you ever get the jacket back after that?

20. A. No.

Q. That was the last you saw of it.

A. That was the last I seen of the jacket, yes.

Q. Thank you very much, Mrs. Seale. I have no further questions but my learned friend may ask you some.

25. THE COURT: Cross-examine?MR. WINTERMANS: No questions, My Lord.THE COURT: I suppose just to make the record clear, when you're referring to the bus, getting the bus, you said over here and you pointed, well, that doesn't go on the record very well. You were pointing to Kings Road.

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0. MRS. SEALE EXAMINED BY THE COURT

A. Is it Crescent Street?

Q. Crescent Street is the street there, yes.

A. And Kings Road, yes. Right at the corner of Crescent and Kings Road. That's where he catches a bus.

5. Q. All right. Thank you very much, Mrs. Seale.

A. All right.

WITNESS WITHDREW

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0. MR. SEALE duly sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: Sir, your name is Oscar Seale, is that correct?

A. Right.

5. Q. Mr. Seale, I'm going to stand over here if I could just direct your comments to the jury. Mr. Seale, your wife just testified and she stated that you live on Westmount Road and you're the father of the late Sandy Seale, is that correct?

A. Right.

10. Q. Now Mr. Seale, on the night of May 28th and the early morning of the 29th of May, 1971 you saw your son Sandy at the Sydney City Hospital?

A. Right.

Q. And Mr. Seale, could you tell us whether you took possession of the jacket he had been wearing that night?

15. A. Yes, I did.

Q. And do you recall what colour the jacket was?

A. Yes.

Q. What was it?

A. It was a brown one.

20. Q. It was a brown jacket. And what did you do with the jacket?

A. I received the jacket, blue jeans, boots, and it was a plastic bag and I took them home.

Q. And gave them to whom?

25. A. I gave them to my wife. My wife was there.

Q. Okay. Mr. Seale, do you recall your son's approximate height and weight in 1971?

A. Yeah.

Q. —What was that?

30. A. I'd say he was about 5 ft 8½, weight between 158 to 162 lbs.

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MR. SEALE, Direct Examination

Q. Okay. I think I covered everything else with your wife, Mr. Seale. Thank you very much. Mr. Wintermans may have some questions.

THE COURT: Cross-examination?

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MR. WINTERMANS: Your son Sandy was a good athlete?

A. Yes, he was.

Q. What sports did he play?

A. I can't hear you very well, Mr. Wintermans.

Q. What sports did he play?

A. He played hockey, baseball, a good swimmer.

He was a very good athlete.

10.

Q. A very good athlete?

A. Very good.

Q. Was he a strong boy?

A. I'd say he was very strong. Yes.

Q. Now when you saw your son at the hospital was he ever conscious?

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A. Yes, he was conscious.

Q. Did you have any conversation with him?

A. No. At the time I seen him I don't guess he could talk. The doctor took me in. I asked the doctor could I see my son. He took me in and he said yes, of course. He took me in and I asked him could he talk. Sandy was looking at me and the doctor said Sandy, do you know your name? I'll call your name. If you know your name nod your head. Is your name Sandy Seale? He nodded his head. He said do you know your parents? And he nodded his head, and this was aobut hte extent of what we talked about.

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Q. And he wasn't asked anything about who may have caused his injuries.

A. I wish I had knew he was going to die, I certainly would've asked.

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Q. Okay. thank you. That's all the questions I have.

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MR. EDWARDS: No re-examination, My Lord.

THE COURT: All right. Thank you, Mr. Seale.

WITNESS WITHDREW

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0. DONALD MARSHALL, SR. duly sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: Your name is Donald Marshall?

A. Senior.

Q. Donald Marshall, Senior.

A. Right.

5. Q. And what is your address, Mr. Marshall?

A. My address is 38 Micmac Crescent, Sydney.

Q. And how long have you resided there?

A. About 15 years.

Q. Now Mr. Marshall, you are the father of Donald Marshall, Junior?

10. A. Yes.

Q. And you gave evidence at your son's trial in 1971.

A. I believe I did.

Q. Now going back to then, do you recall taking possession of the jacket your son was allegedly wearing that night?

15. A. At the trial or at home?

Q. Well, can you tell us what happened to the jacket that Donald was wearing on the night of the stabbing?

20. A. I seen the jacket afterwards. At home.

Q. What colour was it?

A. Yellow.

Q. Yes. And what did you do with that jacket?

A. We just left it in the house, i guess.

For a week or so or whatever.

25. Q. Yes. And then what happened?

A. Either somebody came for it or I took it to I believe Roy Gould's. It was Roy Gould's jacket.

Q. It was Roy Gould's jacket.

A. Right.

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DONALD MARSHALL, SR. Direct Examination

Q. You think you might've given it to Roy Gould.

A. Right.

Q. How old was your son Donald in 1971?

A. He wasn't quite 17 I don't think. 17.

5.

Q. No further questions.

CROSS-EXAMINATION

MR. WINTERMANS: Mr. Marshall, this yellow jacket that you say was at home, do you know how it came to be at your home?

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A. I believe my son Donald wore it from that night when this happened.

Q. How did the jacket get there? Did you put the jacket in your home?

A. No, he probably brought it home when he came home.

15.

Q. I see. No further questions.

MR. EDWARDS: No re-examination, My Lord.

THE COURT: All right. Thank you, Mr. Marshall.

WITNESS WITHDREW

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ROY GOULD called. (Not present)

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0. MIKE MacDONALD duly sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: Sir, your name is Mike MacDonald?

A. Yes, Sir.

Q. And you're recently retired Deputy Chief

5. of the Sydney - City of Sydney Police Department?

A. Yes, Sir.

Q. And how long were you with that department,
Mr. MacDonald?

A. 38 years.

10. Q. Mr. MacDonald, you were involved in the
original investigation into the death of Sandy Seale in
1971?

A. Yes, Sir.

Q. And following that incident in Wentworth Park
you took possession of certain exhibits?

A. Yes, Sir.

15. Q. Among them were two jackets.

A. Yes, Sir.

Q. Would you tell the jury, please, where you
got the jackets and what you did with them?

A. On June 2nd, 1971 I received a jacket from
Mrs. Oscar Seale.

20. Q. What colour was that jacket, Mr. MacDonald?

A. It was a dark colour jacket, brown or black.

Q. Yes.

A. And on June the 3rd I received a jacket from
Mr. Roy Gould.

25. Q. Do you remember the colour of that jacket?

A. Not at the moment, Sir.

Q. And then what did you do with the jackets after
that?

A. They were placed in my locker at the Sydney
Police Department.

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MR. MacDONALD, Direct Examination

Q. Yes.

A. And on June the 16th I took both jackets . .

Q. This is in 1971?

A. 1971. I proceeded to the Crime Lab in

5. Sackville, New Brunswick where both pieces of clothing were turned over to Mr. Evers at the Crime Lab.

Q. That's Adolphus J. Evers?

A. Yes, Sir.

Q. Of the Hair and Fibre Section of the Crime Lab?

A. Yes, Sir.

10. Q. Okay. Thank you very much. My learned friend may have a couple of questions.

THE COURT: Cross-examine.CROSS-EXAMINATION15. MR. WINTERMANS: Mr. MacDonald, do you recall having given evidence at the preliminary inquiry into the Donald Marshall trial back in July 5th, 1971?

A. Yes, I believe I did, yeah.

Q. And on page 16 you were asked the question at the top of page:

Q. What did you do with this jacket?

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

Q. Do you know to whom you turned over this jacket?

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

Q. Where do you have it marked?

25. A. Mr.D.. R.C.M.P. Lab in Sackville.

Q. (The Court): A Sergeant?

A. No, Mr. D.. is a civilian.

Do you recall those questions and answers? At that time back in 1971?

A. No, I don't believe.

30. Q. How is your recollection of those events at this

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0. MR. MacDONALD, Cross-Examination

time?

A. Well, I recall receiving them and I placed them in my care in my own locker at the Sydney Police Department until the day I was ordered to Sackville, New Brunswick with them.

5. Q. You went to Sackville. You don't recall exactly who it was that you gave them to there.

A. Well, I had marked down Mr. Evers.

Q. Where are those jackets now, do you know?

A. I couldn't say, Sir.

10. Q. Thank you. That's all the questions I have.

THE COURT: Re-examine?RE-EXAMINATIONA. MR. EDWARDS: My learned friend just referred you to the preliminary inquiry which was held in July of 1971, right?

15. A. Right.

Q. You also testified on the trial in November of 1971.

A. I just had one appearance in court, Sir.

20. Q. Well, I'm referring to the transcript of the trial, page 54, Sergeant Michael MacNeil being duly called and sworn, testified as follows:

A. Michael MacNeil?

Q. Michael MacDonald, I'm sorry. I'll show you the page. Do you want to read that over? Would you say that was a transcript of testimony given by you?

25. A. Yes, Sir.

Q. Yes. I want to refer you to lines 20 to 30 which reads:

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

30. A. yes, that is the jacket.

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MR. MacDONALD, REDIRECT

Q. 1971. You held it until
June 16th, 1971.

A. Yes. Where I proceeded
to the Crime Lab in
Sackville, New Brunswick.
I turned this jacket over
to Mr. Evers.

5.

A. Right, Sir.

Q. So at the trial you said . .

A. I turned it over to Mr. Evers.

Q. And that is your recollection now.

A. Yes, Sir.

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Q. Thank you, Mr. MacDonald.

WITNESS WITHDREW

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0. MR. EDWARDS: My Lord, before I call the next witness perhaps we should have the jury out for a few moments.

THE COURT: All right.

JURY RETIRES (10:02 a.m.)

5. MR. EDWARDS: My Lord, I thought it would be prudent in view of what my learned friend said yesterday, and just so there's nothing said before the jury that shouldn't be said, I indicate that the next witness will be the one from whom the knives in question come in and I figured if there was going to be an objection to that it should be discussed now.

10. THE COURT: All right, Mr. Wintermans.

MR. WINTERMANS: My Lord, when I came here this morning I wasn't going to make any objection on the grounds that the belief that the continuity on the exhibits went to weight as opposed to the admissibility. Now we're in a situation where there is a break in the link.

15. Mr. Gould isn't here and didn't testify.

THE COURT: He may be here.

MR. WINTERMANS: I have no objection.

THE COURT: You have no objection on the witness on the knives. All right. Bring the jury back in.

20. MR. EDWARDS: Perhaps, My Lord, before we bring them in I could just check outside for a minute to make sure that . . .

My Lord, I'm missing a couple of witnesses. I wonder if I could ask for five minutes to try to locate them.

25. THE COURT: All right. We'll recess for five minutes.

COURT RECESSED (10:05 a.m.)

COURT RESUMED (10:15 a.m.)

THE COURT: All right.

30. MR. EDWARDS: Yes, My Lord, I'm ready to go.

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JURY RETURNS. (10:16 a.m.)

JURY POLLED. All present.

ROY GOULD called, duly sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: Sir, you are Roy Gould?

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A. Yes, I am.

Q. What is your address, Mr. Gould?

A. Presently residing at 3 Millard Street in Sydney.

Q. Mr. Gould, where did you reside in 1971?

A. 124 Membertou Street, the same - Membertou

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Reserve.

Q. At that time did you know Donald Marshall, Jr.?

A. Yes, I did.

Q. Did you know Donald Marshall, Sr.?

A. Yes, I did.

15.

Q. Now on the day of May 28th, 1971, the day of the incident in question, do you recall where you were that day?

A. We were just returning from Bedford, Nova Scotia. Arriving in Sydney about 9:30 that evening.

Q. Yes. Now who returned to Sydney from Bedford, Nova Scotia with you?

20.

A. Donald Marshall, Junior.

Q. Okay. And where did you stop off in Sydney?

A. I took him back to the Reserve and I left him there.

25.

Q. Now what was Donald Marshall wearing when you left?

A. He left with my jacket which was a yellow jacket with white stripes.

Q. A yellow jacket with white stripes.

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And what condition was the jacket in when you lent it to him that evening?

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MR. GOULD, Direct Examination

A. It was fairly new. It was in perfect condition.

Q. Okay. When did you next see that jacket,

Mr. Gould?

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A. About mid-week of that same week, the following week rather.

Q. And where did you see it?

A. Well, I obtained the jacket from Mr. Donald Marshall, Senior at the request of the City Police.

THE COURT: I'm sorry, I missed that. What was that?

10.

A. I took it from Donald Marshall, Senior. At the request of City Police.

MR. EDWARDS: And what was the condition of the jacket at that time?

A. There was a rip on one of the sleeves and there was blood stains on it.

15.

Q. What appeared to be blood stains.

A. Um-hmm.

Q. What did you do with the jacket then?

A. I turned it over to Michael MacDonald, a detective at the time with the Sydney City Police.

20.

Q. Did you see the jacket or get the jacket back after that?

A. No.

Q. Thank you very much, Mr. Gould. No further questions. My learned friend may have some questions.

CROSS-EXAMINATION

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MR. WINTERMANS: Mr. Gould, going back to the day that you returned from Bedford, Nova Scotia with Donald Marshall, Jr. you say you arrived back at 9:30 that day?

A. It was around 9:30 in the evening.

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Q. In the evening. 9:30 p.m. And you say you dropped off Donald Jr. at his home, did you?

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MR. GOULD, Cross-Examination

A. Somewhere around the Reserve. I think I went home myself and he just hopped off the car.

Q. Okay. Did you see him later on that night?

5.

A. Not that evening. The next morning I saw him.

Q. And do you recall whether or not you went to the liquor store with Donald Jr?

A. No.

Q. That evening at approximately 9:30 when you returned from Bedford, Nova Scotia?

10.

A. No, I don't recall.

Q. Are you saying that you didn't?

A. No, I'm not saying I didn't. I just don't remember it.

Q. So to the best of your recollection you came back from Bedford and went straight home. Or to the Micmac area.

15.

A. Yeah, well, I went home, probably got dressed and went out again.

Q. With Donald Jr. or by yourself?

A. By myself.

20.

Q. Are you sure of that?

A. That was my normal routine on a Friday night.

Q. Thank you.

THE COURT: Any re-examination?

MR. EDWARDS: Nothing out of that.

THE COURT: All right, thank you, Sir.

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WITNESS WITHDREW

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0. STAFF SERGEANT WHEATON called, duly sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: Sir, you are Staff Sergeant Harry Wheaton and you are a member of the R.C.M.P., are you?

A. I am, Sir.

5. Q. I'm going to stay here, Staff Sergeant Wheaton but I want you to direct your testimony to the jury, please.

A. Yes.

Q. Staff Sergeant Wheaton, how long have you been a member of the R.C.M.P.?

A. 23 years, Sir.

10. Q. And during part of that time you were stationed at Sydney where you were in charge of the General Investigation Section of the Sydney Detachment?

A. Yes, I was, Sir.

Q. And during what years did you hold that particular position?

15. A. 1980 and '81.

Q. Yes.

A. And part of '82 I think.

Q. Part of '82.

A. Yes.

20. Q. Do you recall when you were transferred to your present posting?

A. In June of 1982.

Q. When did you actually move?

A. I don't recall the specific date, it would be in the latter part of June, I believe.

25. Q. Now so you are stationed in Halifax now, is that correct?

A. That is correct, yes.

30. Q. Now Staff Sergeant Wheaton, you were the officer in charge of the re-investigation of what has become known as the Donald Marshall matter, is that correct?

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S/S WHEATON, Direct Examination

A. That is correct, yes.

Q. And into the circumstances of the death of Sandy Seale.

A. That is correct, yes, Sir.

5. Q. And you commenced that reinvestigation when?

A. I believe it was the 4th of February, the early part of February in 1982 when I began investigating this matter.

10. Q. And during that reinvestigation I take it you took a number of statements from those you considered principals in the matter?

A. I did, Sir, yes.

Q. And among those were statements from Donald Marshall, Jr.?

A. Yes, Sir.

15. Q. And when did you take the statement from Mr. Marshall?

A. May I refer to notes made . . .

Q. Were they made at the time?

A. At the time and at various times during this investigation.

20. Q. Yes.

THE COURT: Mr. Wintermans?

MR. WINTERMANS: No objection to that.

THE COURT: All right. You may refer to them.

A. Thank you, My Lord.

25. MR. EDWARDS: Sergeant Wheaton, the precise date is unimportant. Can you tell us where and approximately when?

A. Yes. I interviewed Mr. Marshall on two occasions in Dorchester Penitentiary in the Province of New Brunswick.

30. Q. Yes.

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S/S WHEATON, Direct Examination

A. In March and in February, the precise dates I'm not sure.

Q. Of 1982.

A. 1982, yes, Sir.

5.

Q. Okay. And as far as the other principals in the matter, from whom did you take statements?

A. I would have taken statements from Mr. Chant, Mr. Pratico . .

Q. That's Maynard Chant?

A. Maynard Chant.

10.

Q. John Pratico?

A. John Pratico.

Q. Patricia Harris?

A. Patricia Harris, Terrence Gushue, various witnesses.

Q. And a number of others.

15.

A. In the park, yes, and probably 15, 20 others.

Q. Who assisted you on the investigation?

A. Corporal James Carroll assisted me.

Q. Did members of any other police departments assist you during the reinvestigation? That is by assist you I mean did they take part in the conduct of the investigation or was it exclusively R.C.M.P.?

20.

A. It was exclusively R.C.M.P., Sir.

Q. Now during the reinvestigation you had occasion to meet the accused, Roy Newman Ebsary?

A. Yes, I did.

25.

Q. And is Mr. Ebsary here today?

A. Yes, he is, Sir, seated at the rear of the court room wearing the brown jacket, cane in his right hand.

Q. The record will show he's indicating the accused, My Lord.

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S/S WHEATON, Direct Examination

0. THE COURT: Yes.

MR. EDWARDS: Now when was the last personal contact you had with Mr. Ebsary during 1982, that is either by telephone or face to face meeting?

5. A. The last personal contact I had with Mr. Ebsary was in February, the 23rd of February, 1982.

Q. Okay. Now Staff Sergeant Wheaton, during your reinvestigation you also interviewed Mary Ebsary, the wife of the accused?

A. That is correct, Sir, yes.

Q. Donna Ebsary, the daughter of the accused?

10. A. Yes, Sir.

Q. And Gregory Ebsary, the son of the accused.

A. Yes, Sir.

Q. And as a result of conversations with those people you took possession of certain exhibits, is that correct?

15. A. Yes, I did, Sir.

Q. And would you tell the jury where and under what circumstances you took possession of those exhibits?

20. A. Yes, Sir. On the 3rd of March, 1982 I went to the home of Mrs. Mary Ebsary and also the residence of Mr. Gregory Ebsary and his wife Linda and their children.

Q. Which is where?

25. A. Which is on Mechanic Street here in the City of Sydney, Province of Nova Scotia, County of Cape Breton. After some conversation with Mrs. Ebsary and her son Gregory I accompanied Gregory Ebsary to the basement of the home. I then walked with him over to a beam up over a work bench and observed a fruit basket such as one would buy pears or peaches in, a wooden basket and I observed Mr. Ebsary take it down and in

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S/S WHEATON, Direct Examination

0. the basket were a number of knives. This was on the
3rd of March and he turned them over to me and I took
possession of them. We went upstairs to the kitchen
of the home and Mrs. Ebsary, Mrs. Mary Ebsary was there
5. and I spread the knives, 10 knives out on the kitchen
table and I had conversation with Mrs. Ebsary about
these knives.

Q. Okay. So following that conversation what
did you do?

A. Following this conversation I took the
knives back to our office on Alexandra Street. I locked
10. them up overnight. The next morning I packaged these
knives in an envelope together, and I forwarded them to
Mr. Richard MacAlpine of our Crime Detection Laboratory
in Halifax.

Q. And he would be in the serology section.

A. Yes, he would examine them for blood.

15. Q. Right. Now you forwarded them to
Mr. MacAlpine on what date?

A. I forwarded them by registered mail number
2185 to Mr. Richard MacAlpine on the 4th of March, 1982.

Q. And did you get the knives back after that?

20. A. Yes, Sir. I subsequently received the knives
on the 27th of March, 1982 by registered mail from
Mr. Richard MacAlpine again, and I kept the knives in
my possession in my exhibit locker, took them to Halifax
with me when I was transferred and on the 1st of December,
25. 1982 I turned them over to the clerk of the court for the
Supreme Court of Nova Scotia in Halifax.

Q. That would be the Appeal Division.

A. Yes, Sir.

Q. I'm going to show you what for our purposes
we'll generously call a folder which is marked EXHIBIT 1
30. and it contains 10 knives and a piece of tape.

248.

0. S/S WHEATON, Direct Examination

A. Yes, Sir.

Q. Would you examine those briefly please?

Well, you examined them prior to coming to court, did you not?

5. A. Yes, I have, Sir.

Q. Yes. And are you satisfied that they are the knives to which you've just referred in your evidence?

A. Yes, I am satisfied. These are the knives. They are not exactly in the condition which I seized them. This particular knife . . .

10. Q. All right, now you're holding up knife #8.

A. Knife #8.

Q. Which is also marked in the Appeal Division Exhibit R4I.

15. A. Yes, Sir. Knife #8 is a homemade knife and - what appears to me to be a homemade knife and when I seized it and forwarded it to the laboratory it had black tape similar to this black tape I have in my hand here now attached to the bottom of the handle here.

Q. You're indicating at the juncture between the plastic handle and the blade of the knife.

20. A. That's correct, similar to what can be seen attached to the top of the handle now. There were two pieces of this black tape attached here as well.

Q. Okay. Thank you very much.

THE COURT: Cross-examine?25. CROSS-EXAMINATIONMR. WINTERMANS: Now when you first observed these knives it was on March the 3rd, 1982 at the home of Mary Ebsary, is that correct?

A. That is correct, Sir, yes.

30. Q. And how were they packaged at that time?

0. 249.

S/S WHEATON, Cross-Examination

A. They were open sitting in this fruit basket, this wooden fruit basket up over a beam.

Q. So they were all together in the same basket.

A. They were in one common container, yes, Sir.

5. Q. And how did you package them after that, did you send them in that basket to Halifax?

A. No, I did not, Sir. I packaged them in an envelope.

Q. All together?

A. Yes.

10. Q. All just bunched together.

A. That's correct, Sir.

Q. They weren't individually wrapped or anything.

A. No, Sir.

Q. No more questions.

THE COURT: Re-examination?

15. MR. EDWARDS: No re-examination.

THE COURT: All right, thank you, Sir.

WITNESS WITHDREW

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0. 250.

GREGORY EBSARY called, duly sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: Your name is Gregory Ebsary, Sir?

A. That's true, yes.

5. Q. And your present address, Mr. Ebsary?

A. 46 Mechanic Street in Sydney.

Q. And you're employed?

A. I'm with Briand's Cab Company.

Q. I'm going to stand over here, Mr. Ebsary and I'd like you to direct your answers to the jury. So your present occupation you say is . .

10. A. Cab driver.

Q. Cab driver. How old are you, Mr. Ebsary?

A. 31.

Q. And you are the son of the accused, Roy Newman Ebsary?

A. I am.

15. Q. And for the record would you point him out please?

A. Over there with the brown sport jacket.

Q. The witness points to the accused, My Lord.

20. THE COURT: Yes. The record will show that he points to the accused.

MR. EDWARDS: Now where - first of all how many comprised your family?

A. There was my sister, myself and my mother and. .

Q. Your sister is Donna?

25. A. Donna, yes. And my mother Mary and Roy.

That's all that resided at Argyle Street.

Q. What was the exact address on Argyle Street?

A. 126 Rear Argyle.

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

30. A. Yes.