

I N D E X

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EBSARY THIRD TRIAL CONT'D-----PAGES 1 - 250
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G. EBSARY, Direct Examination

Q. Now is that where you resided in 1971?

A. It is, yes.

Q. And how long approximately had you resided there at that time?

A. That's 10 years anyway.

Q. 10 years?

A. I'd say, yeah.

Q. And after Rear Argyle Street where did the family move?

A. We moved to 46 Mechanic Street.

Q. 46 Mechanic Street. And that is also in Sydney.

A. In Sydney, yes.

Q. Approximately when did the family move to Argyle Street?

A. I believe it was in the summer of 1974.

Q. And the family was still all together at that point.

A. Still all together, yes.

Q. And at some point subsequent to that was there a separation between your mother and father?

A. There was, but that was in the winter of 1979 or the early part of 1980.

Q. So up until then the family lived as a unit.

A. Well, I got married so I moved out.

Q. When did you move out?

A. 1975 I got married.

Q. And what about your sister Donna?

A. Well, she ws home for a few years and then she moved to Boston but I'm not really sure of the date when she moved.

Q. Okay. So in 1971 how old would you have been, Mr. Ebsary?

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G. EBSARY, Direct Examination

A. I would be 17.

Q. 17. And were you employed at that time?

A. No, I wasn't. I was a student.

Q. And what grade would you have been in?

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A. I would be in grade 11, I believe, Sydney Academy.

Q. Could you describe for the jury how your dad generally dressed?

A. Are you referring to when he went out or just around the house, or . . .

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Q. Well, when he was going out.

A. Well, when he was going out he would have a pair of suit pants or what I would call a good pair of pants, a white shirt, he would have a silk or nylon white scarf which he would put inside his shirt and fold it over like an ascot and then he'd have a suit jacket or sport coat, and then when he was ready to leave he'd put on his top coat or whatever he called it, a top coat and he'd just drape that over his shoulders like a cape sort of.

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Q. And what colour was that coat?

20.

A. Well, there was a blue, I guess. There was a blue one he had and then there was a couple of ones that were reversible, they were blue on one side and white on the other.

Q. And what shade of blue would the coat be?

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A. Well, one was navy blue, like I say the other one was white and blue.

Q. Do you know if he had any particular favour, if he wore one coat more than the other?

A. Well, he wore a blue one more than the reversible type.

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Q. That's the navy one.

A. Yes.

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0. G. EBSARY, Direct Examination

Q. Could you describe your father's state of health around 1971, and generally his physical ability?

5. A. He was in quite good shape. He walked everywhere he went when he was working and he was still working up to that time, he worked at the Isle Royale Hotel or down at the Esplanade Grill, I'm not really sure, but he walked everywhere he went. He was in good shape.

10. Q. Now the previous witness testified that you turned certain exhibits over to Staff Sergeant Wheaton.

A. Yes, I did.

Q. I'm going to show you a folder which is marked Exhibit #1 containing about 10 knives. Would you examine those knives? You had the opportunity to examine those knives prior to coming to court.

15. A. Yes. Yeah, these are the knives that I turned over to Harry Wheaton.

Q. Um-hmm. And you didn't make a note of the date on which you turned them over to him.

A. No.

Q. Do you remember what year?

20. A. I really don't, no.

Q. So could you explain to the jury where those knives came from? How they . . .?

25. A. Well, they were in use at 126 Rear Argyle where we resided and then when we moved, well before that, I guess, some of them were in the upstairs location around Roy's bedroom and the rest of them were downstairs in the kitchen and then when we were moving everybody kind of packed up their own junk and we shipped them up to Mechanic Street. I moved them up in a little trailer, a truck and then we just moved them into the house and

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0. G. EBSARY, Direct Examination

again Roy had a room upstairs and they - some of them went up there, he was using them for letter openers or whatever and the rest of them went into a drawer in the kitchen and subsequently they went into a drawer in the dining room and then down into the basement.

5. Q. So where were they when you retrieved them for Staff Sergeant Wheaton?

A. When I retrieved them for Staff Sergeant Wheaton they were in a basket in the basement up above my work bench.

10. Q. What kind of a . . .

A. An apple or a peach basket.

Q. And how did they get down there?

A. I put them there. I took them out of the - they were in a drawer, they were all in a drawer in the dining room and I took them out of that drawer and I put them in the basket and I put them downstairs up above my bench.

15. Q. Now I'm going to show you a couple of the knives. First of all I'm going to show you knife #1 which is also marked R4G.

A. Okay.

20. Q. Now explain to the jury how, if you can, say that that is your father's knife or it came from your home.

A. Well, this is not the kind of a knife that you'd buy in a store, I guess, not with this kind of a handle on it anyway. This was a bone handle or a plastic handle steak knife and the handle either became broken - there was a set of these - and some of them either became broken or he took the handles off and . . .

25. Q. By 'he' you're referring to your father.

A. Yes, Roy, yes. He took the handles off and he

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G. EBSARY, Direct Examination

put this copper pipe on it and used that for the handle, so that's how I know that this is one of our knives, or one of his knives, I guess.

Q. What's on the end of it there?

5.

A. Oh, this is a bullet shell, a little dressing, I guess, but he put that there as well.

Q. I see. All right. What about knife #7 which is also R4C?

10.

A. Okay. This is also one of his creations, the knife is sharpened on both sides. This is what I would call - it used to be what I would call a butter knife. It should be flat here on the top instead of sharp and it's - there's usually no edge on these at all but he has it sharpened to a fine edge on both sides and he has the piece of rubber hose of some sort on the handle and that's his work as well, I guess.

15.

Q. Do you know of any reason why the blade would've ben ground sharp on both sides?

A. I don't know why he did it. I know that he did it but I have no reason - I have no idea why he did it.

20.

Q. I see. Knife #8, what can you tell us about that?

25.

A. Again this is one of his knives and it's the same story.. The blade is ground on both sides and the knife comes to a sharp point and it's again what I would call a butter knife. It has the green hose on the handle and tape to support the hose where it's split, I guess and a little bit of cellophane, I guess or whatever you call it, tinfoil around the handle here. That's one of his knives. Or one of the knives that came out of the house, I guess.

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Q. Mr. Ebsary, you've examined the other seven

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G. EBSARY, Direct Examination

knives.

A. Yes.

Q. And are you satisfied that each of those came from . . .

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A. Oh yes, yes. They all came from our house, yes.

Q. Now I want to direct your attention to the night of the incident, we'll call it, in Wentworth Park. That would be May 28th, 1971. Do you have any idea where you were that day?

10.

A. Yes. I was working with a friend who was building a house on Harold Street and I was there until quite late in the early morning of May 29th, I guess, before I arrived home.

Q. So did you see your father at all on May 28th, 1971?

15.

A. No, I didn't.

Q. Did you see him on the 29th?

A. I saw him on the 29th for a couple of minutes and then I went back to building the house with a buddy of mine.

20.

Q. Did you have any conversation with him?

A. No, Sir, I didn't.

Q. On that day. Now around that time, 1971 could you describe your father's use of alcohol if in fact he did use alcohol?

25.

A. He used quite a lot of alcohol at that time. He spent the better part of his non-working time in - drinking alcohol. He was a bad drinker. He frequented the State Tavern which was on George Street, again during most of his off time.

THE COURT: Which tavern?

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A. The State on George Street.

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0. G. EBSARY, Direct Examination

THE COURT: Thank you.

A. All of his off time he was drunk, all of his off time.

5. Q. And whom did he include among his friends at that time? Do you recall?

A. Well, the only - well, Henry Peters was a friend of his and Jimmy MacNeil, that's the only two that I know by name that I could say right off the top of my head.

10. Q. Jimmy MacNeil, how well did you know him at that time?

A. I didn't know Jimmy all that well, he was at the house a couple of times before that incident so I didn't know him all that well. I knew him to see him or say hello to him or something.

15. Q. And can you comment^{upon} the degree to which Mr. MacNeil used alcoholic beverages?

A. No, I can't say. I can't really say if I've ever seen him drunk or anything.

Q. No further questions. Thank you, Mr. Ebsary.

THE COURT: Cross-examine?

20. CROSS-EXAMINATION

MR. WINTERMANS: Did you actually see your father modify or change or fix any of those knives?

A. I saw him change the handles on some of those steak knives with the copper handles. I did not see him change or add the rubber hose to the butter knives.

25. Q. And you moved out of the house you say in 1975 when you were married?

A. I'm saying around 1975. Around there.

Q. Some three or four years after this incident.

A. Yes.

30. Q. And before that though you lived in the home

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0. G. EBSARY, Cross-Examination

with your father and mother and your sister?

A. Yes, that's correct. Yes.

Q. At that time in May of 1971 your father was a cook at the Isle Royale Hotel, is that correct?

5. A. It's - I'm saying yes but there's two jobs he had around that time. He worked for the Isle Royale Hotel and then after he - around that time he worked for the Esplanade Grill so I'm not really sure.

Q. He was a cook, though.

A. He was a cook, yes.

10. Q. Did you move, did you and your family move from the residence at Argyle Street where you lived in 1971 to a new residence on Mechanic Street?

A. Yes, that's correct.

Q. When was that? Approximately.

A. I'd say the summer of 1974.

15. Q. '74, was it?

A. Um-hmm.

Q. I see. And do you recall how those exhibits, the knives, got from the first house to the new house?

20. A. Well, I moved the - once everything was packed I moved it in a half-ton truck and a little trailer from Argyle Street to Mechanic Street. Now some of the stuff, whatever was in the kitchen I would imagine my mother packed. Anything that was upstairs in their bedroom, Roy and my mother probably packed it and whatever my stuff was, I moved it so the knives, 25. wherever the knives were my mother packed them or Roy packed them, just depending on where they were, upstairs or in the kitchen.

Q. I see. And were some of these knives to the best of your knowledge from the kitchen?

30. A. Some of them were in the kitchen drawer.

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G. EBSARY, Cross-Examination

I've seen them in the kitchen drawer. And some of them were upstairs.

Q. So that would be up until the time of the move in 1974?

5.

A. That's correct.

Q. And some of them were in a dining room, did you say?

A. Well, that was after that.

Q. After that. I see. So there was no dining room at Rear . .

10.

A. No, we had just a kitchen. That's where we ate and cooked. Everything was done in the kitchen.

Q. I see. Were you - would you describe yourselves as a wealthy family? At that time?

A. Certannly not. Certainly not.

Q. Were you a poor family at that time?

15.

A. We were - I'd say we were - I don't know. I don't know if we were poor or not. WE never had a hell of a lot but we did all right.

Q. Um-hmm. Did your mother work at that time?

A. Yes, she did. She worked for Wandlyn Inns.

20.

Q. I see. Doing what?

A. She was a cook.

Q. Now after the - or when the move took place to the new house in 1974 you indicated that articles were packed according to room, is that correct?

A. Yes, that's correct.

25.

Q. So all the kitchen things were put in a kitchen box.

A. Yes.

Q. Kitchen boxes, and then when they were unpacked were they unpacked according to room?

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A. Yeah, they were put the same way they came

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G. EBSARY, Cross-Examination

out of the other house they went into the new house.

Q. So the knives would've been put into kitchen drawers.

5. A. Yeah, they would've been put into a kitchen drawer. In the new house that we moved in there was no cupboards or counter tops. There was only just one drawer in the kitchen for - it was in an old sink that was there, so any knives that were in the kitchen would've been put into that drawer first.

10. Q. I see. And in the new house there was a dining room?

A. There was a dining room, yes.

Q. And were some utensils kept in the dining room?

15. A. Yes, anything that we used day to day like the eating utensils would've been kept in the kitchen. There was no room for the larger knives or ladles or anything like that so they were all kept in a drawer in the dining room and . .

Q. Do you recall, can you say which of these 10 knives would've been kept where? At that apoint in time after the move?

20. A. The only ones I can say with any surety at all were the two of the bigger knives that are there. They were kept in the - they would've been in the dining room. The rest of them, well, I don't know. I have no idea. I can't say which ones were which. There were some downstairs and there were some upstairs. I don't know which ones.

25.

Q. Okay. And I understand your parents separated. When would that have been, 1979 and 1980?

A. That was around Christmas, around Christmas time of 1979. Into the early part of 1980.

30. Q. Um-hmm. And before that separation I understand

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0. G. EBSARY, Cross-Examination

that your father pretty much had his own room.

A. Yes, he did. Yes.

Q. And what happened with the things that were in his room?

5. A. The stuff that was in his room I helped him pack up and I moved him down to a place, the Cliefden House first and the - anything that was left over after he moved out, there was a few of those knives that were left. He had - I think to explain it better I'd have to tell you he had a desk in his room and he had some of those knives in a desk in his room on the 10. upstairs level and when we packed up of course, I was moving him out in a car that I had at the time so there wasn't enough room in the car to take everything, so there was a few of those knives left over and the knives, I just took them and I fired them in the drawer downstairs in the dining room and the rest of his stuff we moved out 15. in the car down to the - to his new location.

Q. I see. And these knives that we see before us, the 10 knives, they then at a certain point went from the kitchen and dining room down into the basement?

20. A. No. Eventually they all - all of those knives which you see there eventually all of those knives at one point were all in the dining room in a drawer, I don't know if you'd call it an obsolete drawer or not. They just became- they just weren't in use any more.

Q. When would that have been?

25. A. I can't really say. We bought some new cutlery that looked a little cleaner and was a little cleaner in fact and we just moved that stuff away and we put it into the drawer in the dining room and then I took it from there and put into the basement. I can't say how long 30. they were down in the basement.

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0. G. EBSARY, Cross-Examination

Q. Okay. I refer you to - you recall that you gave evidence in Halifax in 1982?

A. Yes.

Q. I refer to page 209, question . . .

5. THE COURT: Which transcript is this?

MR. WINTERMANS: This is from the - Halifax.

MR. EDWARDS: This is the Donald Marshall reference.

MR. WINTEREMANS: Yes, the Donald Marshall matter.

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

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

Q. Do you recall that?

15. A. Well, what I'd have to say there is, I'd have to check. What happened there is we had the house insulated. I know that doesn't mean anything to you but in terms of the date it means something to me, because when we had the house insulated I went in and looked.
20. We were moving some stuff out of the dining room and when I pulled out one of the drawers there was some mildew on the inside of one of those drawers. Now I'd have to look and see when the house was insulated, then I could give you an exact date.

25. Q. I'm looking for an exact date, but do you recall having given that answer? Would that be an approximate date?

A. Sure. That's it.

30. Q. Can you say how your father's height, now compared to back in 1971? It's approximately the same, I would assume?

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G. EBSARY, Cross-Examination

A. Approximately, yes. He may even be a little shorter now. I'm not sure.

Q. I suggest to you approximately 5'2?

A. Approximately, yes.

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Q. And his weight in 1971?

A. Oh, I'd say he was a little heavier in 1971 than he is now. He was a little stockier in 1971.

Q. Would you be able to put a weight on it?

A. I have no idea.

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

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have.

THE COURT: Any re-examination?

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

WITNESS WITHDREW

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MR. MacALPINE duly called, sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: Your name is Richard MacAlpine?

A. That is correct.

Q. And how are you employed, Mr. MacAlpine?

A. I'm presently in charge of the serology section of the Royal Canadian Mounted Police Forensic Laboratory in Halifax, Nova Scotia.

Q. Now Mr. MacAlpine, I want to direct your attention to the 8th of March, 1982. On that date did you receive some registered mail from Staff Sergeant Harry Wheaton then of the Sydney Detachment of the R.C.M.P.?

A. I did.

Q. Would you tell the jury what that was?

A. It was a sealed package bearing registration #2185. It was addressed to the officer in charge of othe Halifax laboratory and it came into my possession on the 8th of March, 1982.

Q. I want to direct your attention for a moment, Mr. MacAlpine, would you just look at the folder, Exhibit #1 containing 10 knives? Would you examine those knives and tell the court whether or not they are the ones you got by registered mail on the date you just stated? After you got them what did you do with them?

A. I placed the sealed pac . .

THE COURT: I'm not sure that he answered your question that he got them.

MR. EDWARDS: Oh.

A. I did not receive the knives actually on the 8th of March, 1982. To my knowledge. I received a sealed package.

Q. I see. What did you do with the sealed package?

A. I retained this package in my possession in my personal locker at the laboratory until the 17th of March, 1982 when I turned it over intact to Mr. Adolphus

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0. MR. MacALPINE, Direct Examination

Evers of the Hair and Fibre Section of our laboratory in Sackville, New Brunswick.

Q. You turned that over to him personally on the 17th.

5. A. I did.

Q. Yes?

A. ON the 18th of March, 1982 I received from Mr. Evers the knives which I identified on the table at the court room and the wrappings of the package which I had received on the 8th of March.

10. Q. And what did you do with them then?

A. I transported them back to Halifax and while they were not being examined by myself were kept in my personal locker and I subsequently examined the items that I have identified before the court.

THE COURT: You received them back on which day?

15. A. I received them back on the 18th of March, My Lord.

MR. EDWARDS: Personally from Mr. Evers.

A. Yes.

20. Q. Um-hmm. And then you said you took them back to Halifax and when you weren't looking at them . .

A. They were kept in my locker.

Q. They were kept in your locker until they were eventually what?

25. A. They were eventually returned to Staff Sergeant Harry Wheaton accompanying a copy of my report by registered mail on or about the 26th of March, 1982.

Q. Okay. So what was your purpose in examining the knives subsequent to the 18th of March, 1982?

30. A. I was asked to examine the items for hte presence of blood.

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MR. MacALPINE, Direct Examination

Q. Now My Lord, I haven't qualified this witness to give opinion evidence, he's called mainly for continuity but do you have any objection to his qualifications?

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MR. WINTERMANS: I have no trouble with Mr. MacAlpine. I agree he's qualified to give opinion evidence.

MR. EDWARDS: Opinion evidence in the field of serology.

10.

THE COURT: All right, the witness is qualified to give opinion, qualified as an expert to give opinion evidence in the field of serology.

MR. EDWARDS: Perhaps you could just tell the jury briefly what serology is.

15.

A. Certainly. Serology in its broadest sense of the term is the science which deals with the liquid part of blood or the serum. My involvement in the field is more specialized. We refer to it as forensic serology and it involves the identification of blood and blood stains, the differentiation between human and animal blood and the classification or blood grouping of human blood into several blood grouping systems.

20.

Q. Now when you examined each of the 10 knives there what was the result of your examination?

A. I did not find blood to be present on any of the knives which I examined.

25.

Q. Could you tell the jury how easy or difficult, as the case may be, it is to remove fresh blood from the blade of a knife?

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A. Well, of course circumstances can vary from one instance to another. Usually when an exhibit or an item comes to me, if blood is present on it it is usually dry and knives as such usually being of smooth metal, the

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0. MR. MacALPINE, Direct Examination

sample is quite readily removed with a scalpel blade, a scalpel being a very sharp surgical blade, and it's not difficult usually to remove a sufficient sample for testing and other examination.

5. Q. That's removal of the blood sample when you get it, but I'm talking about if a knife has blood on it on a particular night, how easy or difficult is it at that time to clean the knife off?

10. A. Well, in my experience dealing with blood and blood stains on particularly such items as knives which again I pointed out that they do have smooth surfaces usually, especially on the blade, and it's not difficult at all to remove blood. Blood is relatively water soluble and can be removed from the blade of the knife simply by washing it under running water and wiping it with a cloth or other cleaning device.

15. Q. Thank you very much, Mr. MacAlpine.

CROSS-EXAMINATION

MR. WINTERMANS: Mr. MacAlpine, when you say that you examined these 10 knives for the presence of blood, perhaps you could explain to the jury exactly how you examine these knives. Certainly not with the naked eye.

20. A. Well, I did examine with the naked eye initially and I also examined the items by the use of what we call a stereo microscope. This is a microscope which magnifies an image, unlike conventional microscopes which use transmitted light through a very thing object, a stereo microscope uses reflected light onto the object and the object is magnified and also you get a stereo image, that is you get a three-dimensional image because there are two paths of light coming, and one coming into each eye, so I did use the stereo microscope with intense light and i also used a chemical test. We

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R. MacALPINE, Cross-Examination

call it a screening or presumptive test for the presence of blood. A positive test indicates the possible presence of blood. If we get a positive test with a presumptive test we go on with more specific tests to determine the actual presence of blood. I tested these various items in a number of areas on each item with the presumptive test and the presumptive test was negative in all instances.

5.

Q. When you use the stereo microscope what degree of magnification are we talking about?

10.

A. I would estimate - probably, it's variable, of course, from 1 or 2 times actual size to perhaps 10 times the actual size.

Q. What about the handles of these various knives? You've described how easy it is for blood to be washed off a blade because of the material, is that correct?

15.

A. Yes.

Q. Because of the type of material, smooth metal. What about the blade? Sorry, what about the handles of these various knives? I notice that there's several different materials on these various knives.

20.

A. I would suggest that it's probably possible to remove blood, or would be, hypothetically possible to remove blood from these items with relative ease. Some materials are very porous. I don't recall when I examined the items in question that there was any material used in the construction which would retain blood to a very great degree, so in my opinion it wouldn't be terribly difficult to remove blood from any portion of the items which I examined.

25.

Q. You examined the little piece of tape also, did you?

30.

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0. R. MacALPINE, Cross-Examination
 A. I believe there was tape with the items and
I examined that tape, yes.
 Q. Would that have been a porous material?
 A. I wouldn't consider it a porous material, no.
5. Q. So your results were that there was no blood
found on any of these knives.
 A. That is correct.
 Q. Thank you.

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

WITNESS WITHDREW

10. COURT RECESSED (11:14 a.m.)
 COURT RESUMED (11:37 a.m.)
 JURY POLLED. All present.

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0. MAYNARD CHANT duly called, sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: Sir, would you give your name, address and occupation to the jury, please?

5. A. My name is Maynard Chant, I live in Louisbourg, I work for National Sea Products. I'm a fish cutter.

Q. How old are you, Mr. Chant?

A. I am 28.

Q. So that would have made you how old in 1971?

A. 14.

Q. And at that time you were a school student?

10. A. Yes.

Q. What grade were you in?

A. I was in grade 6.

Q. And did you reside in Louisbourg at that time?

A. Yes.

Q. With your family.

15. A. Yes.

Q. Now I want to direct your attention to the night of May 28th, 1971. Do you recall where you were that evening?

A. Yes.

Q. Where were you?

20. A. On that specific evening we were having special services in Sydney. I went in with my family in the church. Do you want me to continue?

Q. Yes.

25. A. And a little later on in the evening I had asked would it be all right if I went down to meet a friend of mine in the Pier in Sydney and well, after a little bit, after the service, maybe around 9 or so I decided to take off from church and go down to the Pier and meet one of my friends, that we had planned earlier.

30. Q. Yes?

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10. MR. CHANT, Direct Examination

A. I couldn't locate him when I got down there so I had to hitchhike back from the Pier, I was going to try to catch the bus that goes out to Louisbourg from the bus terminal on Bentinck, and by the time I had got up there I had missed the bus so I decided well, I better find a way home so I walked down Bentinck and went out to George Street. Well, I never got out as far as George Street. As I walked down Bentinck Street . . .

10. Q. Bentinck Street is on the perimeter of Wentworth Park in Sydney, is that right?

A. Yes.

Q. So you were walking on Bentinck Street towards George.

A. Yeah.

Q. And George Street forms another boundary of Wentworth Park.

15. A. Um-hmm.

Q. All right.

A. And just as I got down to the corner of Bentinck And the street that runs parallel to Bentinck, which I don't remember the name of it, I just barely turned the corner and I was walking on this side of the park, I seen a fellow running from the bridge side towards me and I didn't know who it was, I just kept walking and he hollered to me and I turned around and he ran up to me and he just - he had his arms on his jacket rolled up and - the sleeves of his jacket rolled up - and he said . . .

20. Q. No, you can't tell us what he said.

A. Oh, I'm sorry.

Q. But do you know who that person was?

A. Not at the time. I didn't know.

30. Q. Have you learned since who he was?

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0. MR. CHANT, Direct Examination
 A. Yes.
 Q. Who was it?
 A. It's Donald Marshall.
 Q. Donald Marshall Junior.
5. A. Junior.
 Q. Yes. Now what if anything did you notice about his arms other than the fact that his sleeves were up?
 A. He had a gash on his arm, it looked fairly deep and he told me what had happened and he wanted to know if I could help him. Can I go into detail what he said what happened?
10. THE COURT: You cannot tell what he said.
MR. EDWARDS: You cannot tell us what he said.
 A. Okay.
 Q. But you can tell us as a result of the conversation at the time with Donald Marshall Junior what did the two of you do?
15. A. Well, we flagged down a car. First we met- as we were walking towards to get a hold of somebody to help us out, to help his friend out, we flagged down a car. Just before that we met a girl, two girls and like two couples and they had given Marshall a handkerchief for his arm so at that . . .
20. THE COURT: Sorry, you're going a little too fast. I'm trying to write this down.
 A. I'm sorry.
25. THE COURT: You met a girl, and then you said two girls and then you said two couples.
 A. I meant two couples, two boys and two girls, I'm sorry.
30. MR. EDWARDS: And they gave him a handkerchief for his arm?

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0. MR. CHANT, Direct Examination
- A. Yes.
- Q. Yes?
- A. So at that time we had flagged down a car and we drove around like to George Street up to where
5. Sandy Seale was hurt.
- Q. Do you know what street that was?
- A. After you come off of George Street you turn onto Argyle.
- Q. Yes.
- A. You go up Argyle a way. Now the street that
10. runs along the perimeter of the park, on the left side . . .
- Q. Would Crescent Street. . .
- A. Crescent Street, yeah, sounds familiar.
- So we got just about almost all the way like to the end of the road and there was a young man laying down on the pavement like, all hunched up and. . .
15. Q. Did you know that person?
- A. No.
- Q. Have you learned since who he was?
- A. Yes.
- Q. Who was he?
- A. Sandy Seale.
20. Q. Describe his condition.
- A. He wasn't saying much. After we got out of the car we went over to him. Marshall, Donald said that he would go for the ambulance and he ran up a couple of houses and went up the stairs and tried to get an
25. ambulance and while I was there Sandy never said much, he just murmured a few words and said that he was cold.
- Q. You can't tell us what he said. He was conscious.
- A. Yes.
30. Q. And did you observe any injuries on him?

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0. MR. CHANT, Direct Examination

A. I noticed he had a lot - a lot of blood. I took my shirt off and put it to where the cut was on his almost like on his stomach.

Q. You're indicating your abdominal region.

5. A. Yes. And I didn't actually see the cut but there was a lot of blood at the time. We just waited there, I just told him to hold on. I just . .

Q. All right. So you're waiting with Seale. You say that Marshall went where?

10. A. He went to a house up the road, not very far, just a couple of houses.

Q. Yes.

A. And he said that he would call an ambulance.

Q. Well, you can't tell us what he said.

A. Okay.

Q. How long was he gone?

15. A. It wasn't very long, maybe five minutes.

Q. Yes.

A. And then he came back and sort of stood in back of Seale. He never said very much, he was just sort of standing there, I guess he was in a bit of a shock.

20. THE COURT: Look, I'll have to tell you at the beginning, all that you can tell us are facts that you saw or observed, you can't give us any opinions as to what you may think nor can you give us any evidence of what anybody said to you. All right?

25. A. Okay.

MR. EDWARDS: All right, so Mr. Marshall returned about five minutes later, you and Seale are there on the road on Crescent Street, he's standing behind. What happens then? Marshall, that is, is standing behind.

30. A. Marshall is standing behind. About a couple

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0. MR. CHANT, Direct Examination

of minutes later the ambulance comes.

Q. Yes.

A. And they just picked Seale up to take him to the hospital. And I proceeded on my way home and I got out to George Street and . . .

5. Q. Excuse me, before we leave Crescent Street you say the ambulance came and took Seale away.

A. Seale.

Q. What about the police? Did they arrive at that time?

10. A. I never really - I never really saw or seen the police there. All I remember is the ambulance and I don't even remember where Marshall went after that.

Q. Do you remember where Marshall was when the ambulance arrived?

A. He was right in back of Sandy standing up. Like I say he was just standing there waiting, I guess.

15. Q. So after Sandy is placed in the ambulance and taken away, you proceed where?

A. I proceeded to go home.

Q. By what route?

20. A. Well, I walked back Crescent, out Argyle and then from Argyle to George and I was walking up George Street there, up towards Hardwood Hill.

Q. How did you intend to get home to Louisbourg?

A. Hitchhike.

Q. Yes.

25. A. And just at the bottom of Hardwood Hill the police car rolled over and I guess they seen the blood on my shirt.

Q. Well, you can't say what they - what you guessed they thought. Anyway what did the police do?

30. A. So they picked me up and took me up to the hospital. I don't know why they took me to the hospital.

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0. MR. CHANT, Direct Examination

They asked me . . .

Q. Well, you can't -

A. Okay.

5. Q. Before we leave this sequence do you recall approximately what time it would've been when you were first hailed by Donald Marshall towards the intersection of George and Bentinck?

A. It would be close to midnight. I think the last bus left the depot at 11:45 so it would be handy between 11 and 12.

10. Q. And about how many minutes or whatever had elapsed by the time the police picked you up at the base of Hardwood Hill?

A. Anywhere from a half hour to an hour.

Q. So the police picked you up and they took you to the City Hospital.

15. A. Right.

Q. And where from there?

A. From there they took me up to the police station.

Q. How long were you at the hospital?

A. Just a short amount of time.

20. Q. Did you see anyone there? Of course you saw someone, but did you see Donald Marshall there?

A. Not that I can remember.

Q. Did you see Sandy Seale?

A. No.

25. Q. So then you went to the police station.

A. Right.

Q. And who among the principals in this matter did you see there?

30. A. I don't remember the names of any of the detectives who I came in contact with to give a statement

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MR. CHANT, Direct Examination

0. depending upon what happened that night. I had just given a statement and my parents came and picked me up and took me home.

Q. And then subsequently did you testify at the preliminary inquiry and trial of Donald Marshall?

5. A. Yes.

Q. How if at all does your testimony given then differ from the testimony you just gave now?

10. A. Back in the '71 trial I had said that I had seen Marshall murder Seale and I never seen nothing bearing that at all. The actual sighting - anything I seen was to where I met Seale on Bentinck - the corner - Marshall on the corner of Bentinck Street. That was the only thing I seen involving the murder.

Q. Can you explain to the jury why you would have given that testimony at that time?

15. A. Well, the reason was because the police had - after I went home, a couple of days later or a day later, they came out and they said that hte statement that I had given . .

Q. Well, you can't say what the police told you. Without telling what anyone told you can you explain?

20. A. Well, the only thing that I can say is they took me down to a room in the Town Hall in Louisbourg and the thing was that I was on probation and first . .

Q. For what?

25. A. I was on probation just through personal crime, like, and that I - that they had information that . .

Q. Again, if you can't explain it without getting into what somebody said to you . .

A. Well, I could give up to it anyway. It came to the point where I had given a falst statement the first time and . .

30. Q. Why had you done that?

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0. MR. CHANT, Direct Examination

A. Mostly because I was scared, I guess. The night that I had given the first statement, when I went up to the police station Marshall was coming out and he had come over to me and leaned over to me.

5. Q. And you and he had conversation?

A. Yeah. And so that's why I gave the statement that I gave so they - I don't know how to explain this. So anyway resulting in I ended up giving a false statement and when I tried to tell the truth they wouldn't accept it.

Q. They - the police?

10. A. The police wouldn't accept the story when I begin to confess up to say I never seen nothing and they just kept pressing and like I was more or less saying it was rough for me where I had perjured and I could really get into a lot of trouble.

Q. Those were your fears.

15. A. Those were my fears. Those were the -

Q. Okay. When did you decide to come forward with the story that you told the jury in the first instance today?

A. Two detectives approached me in '82 - between '82 and . . .

20. Q. Who were they?

A. One was Jim - I don't remember.

Q. Would you know him if you saw him?

A. Oh yes. Yes. That was one of the gentlemen.

25. Q. I just had Corporal Carroll stand up and you said that's one of them. Do you remember the other name?

A. No.

Q. Okay. And why did you decide to tell them the story you told us?

30. A. They were very level. I had - between the time of the '71 trial and '82 or coming up to where they came

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0.

MR. CHANT, Direct Examination

to question me, I had become a Christian and it seems like the principals or the tragedy that happened way back I wanted somehow to straighten it out because I knew then that I did wrong and I just felt that it was time that I should tell the truth.

5.

Q. The jacket Mr. Marshall was wearing on the night in question, do you recall its condition? Do you recall anything about it?

10.

A. All I remember is that it was a windbreaker and when he got to me the sleeves were rolled up even with the elbows. Other than that it seemed like it was in half decent . . .

back?

Q. I have no further questions, Mr. Chant, but Mr. Wintermans may have some.

CROSS-EXAMINATION

15.

MR. WINTERMANS: When this incident occurred back in 1971 you say you were 14 years old and in grade 6 at the time?

A. Um-hmm.

Q. And I believe that you had repeated grades 2, 5 and 6 at that time?

20.

A. Yes.

Q. Donald Marshall Jr., when you returned back to where Mr. Seale was lying, where did you say that Mr. Marshall went? You say he went to a house?

A. Yes.

25.

Q. Did you see that or were you looking at Mr. Seale?

A. I seen him run up the steps towards the house.

Q. But as to what he did you don't know for sure.

A. Not that I could remember.

30.

Q. And when he came back you say that he was standing behind where Mr. Seale was?

0. 280.

MR. CHANT, Cross-Examination

A. Yes.

Q. How far behind?

A. Just a couple of steps.

5.

Q. Was it rather dark in that spot?

A. It seemed to be fairly dark.

Q. Fairly dark. And when you say behind

Mr. Seale do you mean if Mr. Seale were lying on the ground, above Mr. Seale's - in the direction of behind Mr. Seale's head or behind his back or what?

10.

A. Between like his back, between like his shoulders and his head, around that area. Up that way.

Q. Could you indicate as to whether or not Mr. Seale appeared to look towards Mr. Marshall at that point?

A. No.

15.

Q. Was Mr. Marshall positioned in such a way that Mr. Seale wouldn't have been able to see him?

A. See.

Q. Is that right?

A. Yes, that's right.

20.

Q. Did Mr. Seale say anything as to what had happened to him?

A. No.

Q. He was conscious, though.

A. Yes.

Q. He could talk at that time.

25.

A. Yes.

Q. You remained there until the ambulance arrived?

A. Yes.

Q. How long a period was that, do you recall?

A. Like I really couldn't say because you know, maybe five, somewhere around that area. It was - it all

30.

| mins.

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0. MR. CHANT, Cross-Examination

happened pretty fast.

Q. Five minutes you say?

A. At the longest anyway.

Q. That's the longest?

5. A. Like I really couldn't say as far as time.

Q. Thank you.

THE COURT: Any re-examination?

MR. EDWARDS: No re-examination.

WITNESS WITHDREW

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15.

20.

25.

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0. MR. D. MARSHALL, JR. called, duly sworn, testified:
DIRECT EXAMINATION
MR. EDWARDS: Sir, your name is Donald Marshall,
Junior?
- A. Yes.
5. Q. What is your age?
A. 31.
Q. Speak up a little louder.
A. I'm 31.
Q. 31? Now Mr. Marshall, what was your address
in 1971?
10. A. 38 Micmac Crescent.
Q. And you were living with your parents?
A. Yes.
Q. Your father is Donald Marshall, Senior, is that
correct?
A. Yes.
15. Q. So you would have been how old in 1971?
A. 17.
Q. 17. And were you in school or out of school
at that time?
A. I was out of school.
Q. And what grade had you reached?
20. A. Grade 5.
Q. So were you employed?
A. I was working with my father.
Q. And what kind of business was he in at the
time?
25. A. Drywall.
Q. The drywall business. Okay. Had you been a
lifelong resident of Sydney?
A. Pardon?
Q. Had you lived in Sydney all your life up until
that time?
- 30.

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0. MR. MARSHALL, Direct Examination

A. I lived in Eskasoni for about two years.

Q. Yes.

A. I lived in Sydney most of my life.

5. Q. Now Mr. Marshall, in 1971 you were charged with the murder of Sandy Seale.

A. Yes.

Q. And in November of 1971 you were convicted.

A. Yes.

Q. And sentenced to life imprisonment.

A. Yes.

10. Q. And you served how many years in prison?

A. 10 years and 10 months I served.

Q. And that was in Dorchester Penitentiary in New Brunswick?

A. Yes. And in Springhill.

15. Q. It's very important that all of us hear you, Mr. Marshall, so do your best to speak up. Now you served 10 years and 10 months, you say?

A. Yes.

Q. And then you were released.

A. Yes.

20. Q. And in May of 1983 you were found innocent of the murder by the Appeals Division of the Supreme Court of Nova Scotia, is that correct?

A. Yes.

25. Q. Now Mr. Marshall, I want to take you back to the 28th of May, 1971. Would you describe for the jury please where you were early that day?

A. I was in - I went to Halifax, Shubenacadie. I came home May 28th at 9:30 in the evening and I got a drive down with a friend of mine, accompanied by another friend of mine and . . .

30. THE COURT: I'm sorry, I can't hear what you're

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0. MR. MARSHALL, JR., Direct Examination

saying.

A. Okay.

THE COURT: All right, you got a drive downtown with a friend after you came home from Halifax.

5. A. Yes.

MR. EDWARDS: Who did you come home from Halifax with, Donald?

A. Mr. Roy Gould.

Q. Roy Gould. So he let you off where?

A. He let us off at the liquor store in Sydney.

10. Q. Yes.

A. And we went to - after the liquor store we went to Intercolonial Street.

Q. What were you wearing?

A. I was wearing a yellow jacket I borrowed off of Roy Gould that night.

15. Q. Yes. And what condition was the jacket in when you got it from Roy Gould that evening?

A. It was good condition.

Q. So after he left you off you went where?

A. I went to - after the liquor store we went to Intercolonial Street.

20. Q. Who was travelling with you at that time?

A. Arthur Paul from Membertou.

Q. Art Paul?

A. Yes.

Q. Okay.

25. A. And after that there was - we were all drinking in the back of the house on Intercolonial and one of the - the mother of the house was dying in the hospital and the man that owns the house, he didn't like the idea of us people drinking around his property and his wife was dying in the hospital so . . .

30.

0. MR. MARSHALL, JR. Direct Examination

Q. Okay. Well, we don't have to get into that. So you left Intercolonial Street.

A. Yeah.

Q. All right. Before we go on from there let's get some approximate times if you can recall them.

5. Approximately what time was it when you got back from Halifax?

A. About 9:30.

Q. 9:30 p.m. What time would it have been when you left Intercolonial Street?

A. I would say about 11:30.

10. Q. 11:30. Now during that period of time how much did you have to drink?

A. I had one drink of rum at that time because the person that owned the house, he got mad and I left.

Q. Now prior to that, that day how much had you had to drink, if anything?

15. A. I wasn't drinking that day.

Q. You weren't drinking that day. What were your drinking habits at the time, generally speaking?

A. I don't know.

Q. Well, how many times a week would you drink?

20. A. Usually on the weekends because I worked with my father all week and my father doesn't drink so I don't think I should be drinking around him so I wasn't really allowed to drink.

25. Q. Now what night of the week would this have been, do you recall? May 28th, do you know what night it was?

A. It was a Friday night.

Q. Friday night. So at that time how big were you, Donald? Your height.

A. 5.10.

30. Q. 5.10? How tall are you now?

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0.

MR. MARSHALL, JR., Direct Examination

A. 6.1.

Q. And what was your approximate weight?

A. About 145 lbs at that time.

Q. You were in good physical condition.

5.

A. I was working.

Q. You were sufferieng from no illnesses, I take it.

A. No.

Q. Now after you left Intercolonial Street you say it was around 11:30.

10.

A. Yes.

Q. Where did you go from there?

A. From there I went with two friends and we headed to the Keltic Tavern and we walked in there and I was under age at that time so I just walked out the back door of the Keltic Tavern by myself. I left

15.

them two people there and I headed down towards the dance hall in Sydney.

Q. What dance hall were you going to?

A. St. Jo's.

Q. And where was that located?

20.

A. On George Street, I think. I think that's the name of the street up there.

Q. Now to get to there did you have to go by Wentworth Park?

A. Yes.

Q. From where you were?

25.

A. Yes.

Q. So do you remember the route you took from Intercolonial Street to get to St. Joseph's Hall?

A. I walked down from the Keltic Tavern, I walked straight down George Street till I got to the park. I took the route down George Street from the Keltic Tavern,

30.

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0. MR. MARSHALL, JR. Direct Examination

I don't know the name of the street where the Keltic Tavern was.

Q. Your voice is getting soft again.

5. A. On George Street, I took the route on George Street to the park. That leads to the park.

Q. And did you go to St. Joseph's Hall?

A. No, I didn't make it there.

Q. Where did you go?

10. A. I went to the park to see if any of my Indian friends were there at the park that time to join up with them and I met Sandy Seale at the park.

Q. Yes. Now had you known Sandy Seale prior to that day?

A. Yes, I met him in dance halls. I knew him.

Q. So you met Sandy Seale exactly where in the park?

15. A. In the center of the bandshell area and the pond there. I met him around the middle of the park. And I asked him where he came from and he told me he came from a dance and he was heading home.

Q. You can't tell us what he said to you.

A. Okay.

20. Q. But you and he had conversation.

A. Yes.

Q. You can tell us what you told Sandy but you can't tell us what he told you. Do you recall what you said to him at that time?

25. A. I asked him where he came from and he told me where he came from and . . .

Q. Just take your time. What if anything did the two of you decide to do or did you go your separate ways at that time?

30. A. We didn't go our separate ways. I was down

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0. MR. MARSHALL, JR. Direct Examination
 there to see if I could find my Indian friends down there
 and I told him I was ogoing to try to scrape up some
 money for later on and . . .
- Q. And what did you want the money for?
5. A. Probably head out to the bootleggers or
 something when we get home on the Reserve.
- Q. And how did you intend to get the money?
- A. Like I usually do. I bum it down there.
 Like I bum it off people.
- Q. You're saying you usually bum the money off
 10. somebody in the park.
- A. Yes.
- Q. All right. So where did you and Sandy
 proceed after you met him in the bandshell area?
- A. We walked to the footbridge in the park up
 there.
15. Q. That's a bridge which spans a creek there?
- A. Yes.
- Q. Yes?
- A. And at that time we were - I don't know what
 we were talking about at that time and two people, one
 of the people there was on Crescent Street, asked me to
 20. give him a cigarette at that time.
- Q. Now you said two people.
- A. Yes.
- Q. Where were these two people that you're
 referring to?
25. A. They were on Crescent Street.
- Q. And you and Sandy were down at the footbridge.
- A. Yes.
- Q. So what'd be the approximate distance between
 these two people and you and Sandy-Seale?
30. A. About . . .

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0. MR. MARSHALL, JR. Direct Examination

Q. Well, take lengths of this court room.

One, two, three, four lengths of this court room or what?

A. Three or four. Four maybe.

5. Q. About four lengths of the court room. Yes?

A. And one of them asked me if I had a cigarette on me and I had one so we were going to go, we were going up to where these two people were and I met this other couple that were on Crescent Street.

10. Q. Now this was before you got to the two who had asked you for the cigarette?

A. Yes.

Q. Now who were these other two people you met?

A. Terry Gushue and Patricia Harris.

THE COURT: Is that Terry?

A. Yes.

15. MR. EDWARDS: Terry Gushue.

A. And they asked me for a cigarette at the same time. I went to see Terry Gushue and Patricia Harris and Sandy Seale walked up to the . .

Q. To the two that called you in the first place.

A. Yes.

20. Q. Okay. Now you are in location with Gushue and Harris.

A. Yes.

25. Q. Then there's the two guys, the two people who asked you for the cigarette. Where is Sandy at the time you're with Gushue and Harris?

A. He's with the two men that asked me for the cigarette already.

Q. So we've got two groups of three.

A. Yes.

30. Q. Now how far are those two groups of three apart?

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0. MR. MARSHALL, JR. Direct Examination
A. Two lengths of this court house.
Q. The court house or the court room?
A. The court room, I mean.
Q. Now where you were with Gushue and Harris
5. were the other three visible to you?
A. Yes.
Q. Describe the lighting there that night?
A. I don't remember the lighting.
I can't recall that.
Q. Could you or did you observe what Seale
and the other two were doing?
10. A. No. They were just standing there.
Q. And what about you and Gushue and Harris?
What were the three of you doing?
A. After I gave them a cigarette I asked them
where they came from and they told me they came from
the dance.
15. Q. Again you can't tell what anybody told you.
So you were having a discussion.
A. Yes.
Q. So how long were you with Gushue and Harris?
A. A few minutes.
20. Q. Pardon me?
A. A couple of minutes.
Q. A couple of minutes. Yes. So then did they
leave you or did you leave them?
A. We both left each other. They were going
25. home. They were on their way home.
Q. Yes. Now Terry Gushue, what kind of condition
was he in that night?
A. He was drunk.
Q. He was drunk. What about Patricia Harris?
A. She was in pretty good shape. I don't think
30. she was drinking, or if she was she didn't drink too much.

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0.

MR. MARSHALL, JR. Direct Examination

Q. Had you known Gushue and Harris prior to that evening?

A. Yes.

5.

Q. Okay. So after you and Gushue and Harris left each other, as you say, where did you go from there?

A. I went to join up with the other party that called Sandy Seale and I up.

Q. Sandy Seale and the other two.

A. Yes.

10.

Q. Now up to this time, when you left Gushue and Harris, did you know who the two people were with Sandy Seale?

A. No.

Q. No.

15.

A. I met them when I walked in through the park area. They were talking to a man and woman in the park at that time. That's where I first seen them.

Q. This is before you even met Sandy Seale.

A. Yes.

20.

Q. Do you know who they were talking to at that time?

A. One of them was - when I was in the Air Cadets he was one of the officers that took care of the groups and I was in his group so I knew him.

Q. Do you know his name, first or last?

A. I don't know his name.

25.

Q. Okay. Do you know who the other person was these two were talking to?

A. No. It was a woman that was with the person I knew.

30.

Q. Okay. So when you first went in the park you saw these two people who later asked you for a cigarette.

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0. MR. MARSHALL, JR., Direct Examination
A. Yes.
Q. Talking with two other people.
A. Yes.
Q. One of whom you had known from Air Cadets.
A. Yes.
5. Q. Did you recognize either of those two people at that time?
A. No.
Q. Were they two men or two women or one of each?
A. The people we were with?
10. Q. No, no. The people who later called you up for a cigarette.
A. I knew they were men.
Q. Yes. Had you known them prior to that evening?
A. No.
15. Q. Did you get a look at them, or how good a look did you get at them when you first went into the park?
A. A pretty good look. I walked past them, they were only a short distance from me when I walked through the path area.
20. Q. Was there any discussion between you and them at that time?
A. No. They were talking to the people that they were with.
Q. How - well, could you just generally describe these two men? Take height first. How would you describe their height?
25. A. Well, after seeing them on Crescent Street I can describe it that way, I didn't really . . .
Q. You didn't take note of it at that time.
A. No.
30. Q. All right. So let's jump back then to where

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0. MR. MARSHALL, JR., Direct Examination

you have left Gushue and Harris and you're going up to join Seale and these two men who asked you for a cigarette.

A. Yes.

5. Q. Take it from there. What happened to them?

A. When I joined up with them I started talking to the older person that was there and I asked him how are you doing and whatever, and . . .

10. Q. All right. Now before we get into that conversation, describe this older person. I take it you're saying that one of the men was older than the other.

A. Yes.

Q. Describe the older person. How tall was he, what colour hair did he have, if you saw that, how was he dressed?

15. A. At that time he was about 50 years old or whatever and he had white hair, glasses on and he had some kind of a navy coat on, some kind of a cape he had on at that time.

Q. A navy coat or a cape.

20. A. Yes.

Q. Yes?

A. And . . .

Q. Did you know him when you saw him?

A. No.

25. Q. Do you know who he is now?

A. I think so, yes.

Q. Is he in this court room?

A. Yes.

Q. Would you point him out?

A. He's right there.

30. Q. What's he wearing?

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A. Wearing a brown coat with a blue shirt.

Q. The record shows he's pointing to Mr. Ebsary. All right. So you and Mr. Ebsary had some conversation when you joined up with the three.

5. A. Yes.

Q. Now can you tell us what that conversation was?

10. A. I asked him about his coat he had on, I told him you look like a priest with that coat on, he told me he was a preacher or something, I don't know, and he said that he was a sea captain and he was a priest or some sort of a priest, I don't know what kind of a priest he was, and we were talking and . .

Q. What were you talking about? What type of things were you talking about?

15. A. I asked him where he was from and he told me he was from Manitoba, right, and he asked me if there was any women around the park area and at that point I hung around the park for about three years at that time and I told him there was all kinds of women in the park and whatever, and he . .

20. Q. Take your time, try to remember everything that was said as best you can.

25. A. The only things I remember is he told me he was a priest and a sea captain, and he offered me, he offered us, Sandy Seale and I, he offered us to go to his home while we were talking and he told us he had a quart of rum up there at that time and . .

Q. And what did you or Sandy say to that invitation?

30. A. I said no to him because I didn't know the person and in '71 the Indian friends I had, we had to stick together for gang reasons or whatever it was.

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MR. MARSHALL, Jr., Direct Examination

Q. Are you explaining now why you didn't go to this man's home?

A. I wasn't interested in going to his home.

5.

Q. So when you refused the invitation to go to his home, was there any conversation after that?

A. He told me he just lived around the corner where we were at on Crescent Street and he proceeded to go home, right?

Q. He proceeded to go home.

A. Yeah.

10.

Q. Now what way did he walk?

A. What way?

Q. Yes. How did he proceed to go home?

A. He walked - he was on Crescent Street and he walked towards Bentinck Street. I think it's Bentinck Street.

15.

Q. Bentinck Street is another street that borders Wentworth Park.

A. Yeah.

Q. Now before we leave that part of the sequence of events, what about the other man who was with Mr. Ebsary at that time? Did you know him before?

20.

A. No.

Q. Was he taller or shorter than Ebsary?

A. He was taller.

Q. Yes. And could you - do you remember how he was dressed?

25.

A. He had a brown corduroy coat on, that's all I remember of him.

Q. Now what could you say about his condition at the time?

A. He appeared to be feeling pretty good. Apparently he was drinking, I guess.

30.

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Q. What made you think that?

A. Just by his condition, I guess. I could tell he was drinking.

5. Q. When you and Ebsary were having the conversation, did this other man have any conversation with you?

A. No.

Q. You already told me you didn't know who he was at the time.

A. I didn't know him.

10. Q. Have you seen him since?

A. Yes, I seen him.

Q. Yes. And do you know his name?

A. Yes.

Q. What is it?

A. Jimmy MacNeil.

15. Q. Jimmy MacNeil. All right. So let's go back then to where Mr. Ebsary you say started to walk away from you and Sandy Seale. You said he started to go home.

A. Yes.

Q. Where did MacNeil go when Ebsary left?

20. A. He went with him.

Q. He went with Ebsary.

A. Yes.

Q. So that left you and Sandy Seale standing on Crescent Street.

25. A. Yes.

Q. Now Ebsary and MacNeil walk away from you. Were you watching them as they walked away?

A. Yes.

Q. Describe how MacNeil walked?

30. A. I don't think I can describe how he walked. I don't remember.

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MR. MARSHALL, Jr., Direct Examination

Q. So what about Ebsary's walk, anything . .

A. No.

Q. So the two of them walked away from you.

How far did they get?

5.

A. About two lengths of this court room.

Q. About two lengths of the court room. Okay.

Now what happened then?

A. One of us called him back.

Q. Do you remember which of you, you or Sandy called him back?

10.

A. I don't remember who.

Q. Do you remember what was said when you called them back?

A. No.

Q. So when either you or Sandy called Ebsary and MacNeil back, how did they respond? What did they do?

15.

A. They came back. They walked back towards us.

Q. They walked back towards you.

A. Yes.

Q. Now you already said that you and Sandy were standing on Crescent Street. Now what positions were you in, side by side, were you in front of him or in back of him, or just what position were the two of you in when Ebsary and MacNeil started coming back towards you?

20.

A. We were standing side by side but I was in front of Sandy Seale, beside him but in front of him.

25.

Q. Beside him but in front of him.

A. Yes.

Q. So how far were you from Sandy?

A. Five feet anyway.

30.

Q. Well, can you show us by spreading your arms the distance that you and Sandy were apart?

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0. MR. MARSHALL, JR., Direct Examination
A. I'd say about five feet.
Q. Now you and Sandy were about five feet apart and Ebsary and MacNeil are coming back towards you.
5. A. Yes.
Q. Are they coming together or is one in front of the other or just . . .
A. They're coming together.
Q. They're coming together.
A. Yes.
10. Q. I forgot to ask you. Is Sandy Seale standing to the right of you or to the left of you?
A. He's standing on the right of me.
Q. He's standing on your right. So Ebsary and MacNeil are coming back towards you and you say they're coming together.
A. Yes.
15. Q. Now were either you or Sandy Seale carrying any weapons that night?
A. No.
Q. When Ebsary and MacNeil were coming back towards you, could you see their hands?
20. A. No.
Q. Was there any conversation among the four of you as they came back towards you on Crescent Street?
A. The only conversation that went on, Mr. Ebsary told Sandy Seale if he wanted everything he had.
25. THE COURT: Sorry, Mr. Ebsary told Sandy Seale . . .
A. If he wanted everything he had.
MR. EDWARDS: If he wanted everything he had.
A. Yeah.
Q. Now How far from Seale was Ebsary when he asked him do you want everything I have?
- 30.

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A. He was standing almost together with him.

Q. Almost together with him. All right.

Now you would've been standing slightly in front of Sandy Seale.

A. Yes.

5.

Q. Were there any words spoken between you and Ebsary as he - he must've passed you to get to Seale?

A. No, there was no words between him and I.

Q. Now when Ebsary spoke those words where were Sandy Seale's hands?

10.

A. In his coat pocket.

Q. And was Sandy Seale saying anything?

A. When Mr. Ebsary asked him if he wanted everything he had, I guess he didn't - he didn't say nothing.

Q. Sandy Seale didn't say anything.

15.

A. No.

Q. Okay. So what happened then?

A. He put his hand on his shoulder.

Q. Who put whose hand on . . .

A. Mr. Ebsary put his hand on Seale's shoulder, right.

20.

Q. Yes.

A. And at the first time when that happened I thought he punched him in the stomach but apparently he stabbed him in the stomach.

Q. So he puts one hand, you say Ebsary puts one hand on Seale's shoulder.

25.

A. Yes.

Q. What does he do with the other hand?

A. He had it in his pocket.

Q. He had the other hand in his pocket.

30.

A. Yes.

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0. MR. MARSHALL JR., Direct Examination

Q. Yes?

5. A. And he stabbed him at that point and at the same time this happened pretty fast so when he asked him if he wanted everything he had at the same time he had him on the shoulder and at that time he stabbed him.

Q. I'm sorry, I missed what you said. At the same time he put his hand on his shoulder he what?

A. He stabbed him at the same time.

10. Q. Now show the jury the way Ebsary's hand that had been in his pocket moved. Show us the motion he made or he must've made towards Seale. Do you want to stand up?

15. A. They were pretty close together. He had him on the shoulder. He said do you want everything I have and before he could say anything he put the knife in him.

Q. All right. Now you took your hand out of your pocket and you made an upward motion with your hand and that's what you're saying the motion was that Ebsary made.

20. A. Yes.

Q. Okay. When Ebsary did that to Seale how did Seale react?

A. He bent over.

Q. Did he stay there or did he go away?

25. A. He fell down at that point.

Q. Seale did.

A. Yes.

30. Q. All right. Now that's what two of the people are doing. You were standing slightly in front and to the side of Sandy Seale. Now when this happened, when Seale apparently got stabbed, what were you doing at that

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MR. MARSHALL, Jr., Direct Examination

precise moment?

A. I was looking at Mr. Ebsary doing what he was doing and MacNeil was coming, MacNeil was with me.

Q. MacNeil was with you at that point.

5. A. Um-hmm. Well, he came towards me, right.

Q. Okay.

A. I grabbed him and I threw him and it was at that point Mr. Ebsary was coming after me at that point.

10. Q. Well, let's just - I know it all happened fast but if we could break it down step by step. You say that when MacNeil made contact with you, you threw him.

A. Yes.

15. Q. Now describe the motion there. How did you make contact? When he made contact with you where were his hands?

A. I don't remember.

Q. You don't remember that.

A. No.

20. Q. So how did you grab hold of him, where on his body?

A. I grabbed him right here.

Q. All right, now you're indicating two hands against MacNeil's chest area.

A. Yes.

Q. Yes?

25. A. And . . .

Q. And then?

A. I threw him towards the sidewalk and . . .

Q. You threw him towards the sidewalk.

A. Yes.

30. Q. Was there any conversation between you and

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MR. MARSHALL JR., Direct Examination

MacNeil at that time?

A. No.

Q. Up to that point in time had you heard Sandy Seale say anything to either MacNeil or Ebsary?

5.

A. No.

Q. Although he may have been the one who called him back. You don't know if it was you.

A. I don't know if it was him or I.

Q. So now you throw MacNeil away from you, Seale is stabbed and down and you said that when you threw MacNeil Ebsary was coming for you. What did you mean by that? Describe what Ebsary was doing at that point?

10.

A. At that point he - after him stabbing Seale he come towards me and in different words, he said I got something for you too, you Indian.

Q. I'm sorry, I got something for you too what?

15.

A. He called me an Indian, right? And he made - he come towards me and he had something in his hand and he walked towards me, I was about five feet from him at that point and he walked towards me and he had something like that and he went to stab me here and I blocked the knife and he got me here.

20.

Q. So he called you an Indian, and Sandy Seale, he was black.

A. Yes.

Q. What if anything was said about Sandy's race?

25.

A. I don't remember. The only thing I remember Mr. Ebsary saying, do you want everything I have? That's all I remember him saying to him.

30.

Q. Now Mr. Campbell, could I have the . . . ?
Just stand down a minute, Mr. Marshall. Now I am Ebsary and you say-I want you to put my hand in the position his was in when he came at you.

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0. MR. MARSHALL, JR., Direct Examination

Down low. Now do you remember if it was in his right hand or his left hand?

A. It was in his right hand.

5. Q. His right hand. Okay. So then you say that he lunged towards your stomach.

A. Yes.

Q. All right. So just grab hold of the blade here and pull my hand the way the knife came.

A. He came towards there and . . .

10. Q. All right. Now so the ruler is going towards your abdominal area. Now how did you move when the knife was coming towards your abdominal area?

A. I pushed his arm . . .

Q. All right, now you are hitting my right hand with your left hand. All right. So you pushed the knife aside.

15. A. Yes.

Q. Now show us - previous evidence indicates that you had a cut arm that night. Which arm was cut?

A. My left arm.

Q. Do you have a scar from that?

20. A. Yes.

Q. Will you show wit to the jury?

Okay. The record shows there's a scar on the inside of Mr. Marshall's left forearm about three inches in length. Would you show that to His Lordship? Okay.

25. All right. So I'm Ebsary coming at you. I want you to show what you did.

A. (Answer inaudible)

Q. Now how did you get the cut in your left arm? I'm coming at you like this, okay. Show us how the knife makes contact with your left arm.

30. A. I grabbed him by the arm there and . . .

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0. MR. MARSHALL, JR., Direct Examination

Q. Up like that. Yes. Now . .

THE COURT: I wonder are you going to be moving to any other area or are you going to continue on in this area?

5. MR. EDWARDS: Perhaps this would be a good place to stop.

THE COURT: All right. We'll recess now until 2 o'clock.

COURT RECESSED (12:40 p.m.)

COURT RESUMED (2:14 p.m.)

10. MR. MARSHALL, JR., Direct Examination (Cont'd)

MR. EDWARDS: Mr. Marshall, just before we adjourned for lunch you were demonstrating the movements you made when Ebsary lunged at you and I of course at that time was playing the part of Ebsary. Now I'd like you to take the ruler and you take the part of Ebsary and show us how his arm moved. You don't need me.

15. When he went for you, I'll stand here facing you. When he went for you how did his arm move?

A. Like this.

Q. So yours is showing an upward sweeping motion. Thank you.

20. Now when he did that to you and you showed us your arm, you had your arm cut, what about the jacket? What happened to the jacket?

A. It was cut. There was two cuts on it when I passed it to the Sydney Police. One cut was about that long.

25. Q. Now you are indicating in the area where you showed us the scar on your arm and you're showing us a cut of approximately five or six inches, are you?

A. Yes.

Q. Yes?

30. A. When I got to the REservation I had this coat

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MR. MARSHALL, JR., Direct Examination

on that had elastic sleeve on it and after I come from the hospital I asked a friend of mine to cut the elastic band off which he did with a butter knife or a little knife. That was on the Reserve in Membertou.

5.

Q. Now you showed us where that tear was that was in the jacket. You say there was another one?

A. Yes.

Q. Where was that? Point that out to the jury.

A. From the - from where the cut I got from the stab wound, from here to the end of the jacket was cut by a friend of mine on the Reserve.

10.

Q. That's afterwards. But immediately after Mr. Ebsary made the lunge at you, there was that one cut you showed us in your forearm. Was there another one?

A. I don't remember.

15.

Q. So after Mr. Ebsary did that what happened then? After you got your arm cut.

A. I ran down the direction he was going down before, down Bentinck Street and I ran up towards the bridge on Bentinck and I met Maynard Chant there and I asked him to help me out, to go back and he asked me what happened and I told him.

20.

Q. You can't tell us what Maynard asked you. You met Maynard Chant at that point.

A. Yes.

25.

Q. Now you and Maynard Chant had some discussion. Where did you go from there?

A. I ran down towards Byng Avenue down towards George - well, I met some people of Byng Avenue and a girl gave me a handkerchief to wipe the blood off my arm and there was a car coming and I stopped him and there were about four people in the car, which I knew

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0. MR. MARSHALL, JR., Direct Examination
the driver of the car and I asked them to come down and help me out, there was a guy stabbed in the park and we drove down and we went back to Crescent Street.
- Q. Onto Crescent Street. So when you arrived on Crescent Street who got out of the car?
5. A. I did. We all did. And . . .
- Q. Was Maynard Chant with you at that time?
- A. Yes.
- Q. And where was Sandy Seale?
- A. He was on the pavement.
- Q. And do you recall whether he was conscious or not at that time?
10. A. I don't recall because I ran to a house to call the ambulance.
- Q. And how long were you gone to call the ambulance?
- A. A couple of minutes.
15. Q. Do you remember whose house it was?
- A. A guy named Mr. Doucette, I think.
- Q. So after you asked Mr. Doucette to summon an ambulance where did you go from there?
- A. I went back to where Mr. Seale was laying and the people that were there, and somebody pointed out, I don't know who it was but somebody pointed to me and they told the Sydney Police that I was . . .
20. Q. Well, you can't tell what anyone said.
- A. Okay.
- Q. When you got back after calling the ambulance, sometime after that the ambulance arrived.
25. A. Yeah.
- Q. Were you there when the ambulance arrived?
- A. No, the Sydney Police took me to the City Hospital.
30. Q. The Sydney Police took you to the City Hospital.

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Okay. Do you remember what policemen?

A. I don't remember.

Q. Sorry?

A. I don't remember.

5. Q. So you were at the hospital for how long?

A. About a half hour.

Q. A half an hour. And where did you go from there?

A. I went home.

Q. When were you arrested and charged?

10. A. It was a week later.

Q. A week later. And during that week you were out on your own.

A. No, not really. I was told to go to the police station everyday to report and I was under police protection.

15. Q. Now what happened to the jacket that you were wearing that night?

A. The Sydney Police called my father up and wanted the jacket and my father returned it to Roy Gould which I borrowed it off.

Q. How did it get to your father?

20. A. I gave it to him.

Q. You gave it to your father. How long would that have been after the night of the stabbing?

A. It was the next day.

Q. Thank you, Mr. Marshall.

25. THE COURT: Cross-examine?

CROSS-EXAMINATION

MR. WINTERMANS: Mr. Marshall, you were 17 years old at the time, is that correct, that this happened on May 28th, 1971 and you at that time had been out of school for about three years, is that right?

30.

0. MR. MARSHALL, JR., Cross-examination
- A. Yeah, about that.
- Q. You left school when you were 14, in grade 5?
- A. Around that, yes.
- Q. You were a heavy drinker back then, for your
5. age?
- A. I can't say I was. I worked with my father through the week and I went out drinking with my friends on the weekend.
- Q. Of course you were only 17 and you weren't allowed to drink in those days at that age, is that
10. correct?
- A. Yes.
- Q. So you're saying now that you weren't a heavy drinker then?
- A. I wouldn't say.
- Q. You're not saying that you were or you're not saying that you weren't.
- 15.
- A. I'm not saying either. I didn't keep track.
- Q. You indicated that you were coming back from Halifax, is that right?
- A. Shubenacadie, yes.
- Q. Shubenacadie?
- 20.
- A. Yes.
- Q. And that you arrived back in Sydney earlier that evening, around 9:30 you said?
- A. Yes.
- Q. Had you gone up to Halifax area or Shubenacadie
25. or wherever in the company of other people?
- A. Yes.
- Q. And you'd been up there for a few days, is that correct?
- A. It was two days. Or three days. Two days.
30. Q. Three days?
- A. Two days.

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0. MR. MARSHALL, Cross-Examination

Q. And I understand that there was some drinking going on up there at that time. Is that right?

A. Not too much.

Q. Not too much?

5. A. No.

Q. And that - were you yourself drinking up there?

A. I had a couple.

10. Q. Now I asked you if you were a heavy drinker at that time and you said, you didn't say you were and you didn't say you weren't. I refer you to your testimony; do you recall having given evidence in September 12th, 1983 and on page . . .

THE COURT: Where and what was that? It's pretty hard to remember.

15. MR. WINTERMANS: That was in the Supreme Court, the first of these three trials in relation to Mr. Ebsary. Do you recall having testified here in this same building?

A. I recall you asking me if I was a heavy drinker and that the R.C.M.P. report that you kept repeating, asking me if I was a heavy drinker. I can't answer that.

20. Q. I'd like to read a question and answer to you from the September 12th, 1983 testimony which I'll refer to as the first trial in relation to Mr. Ebsary, on page 41 at the bottom of the page:

25. "Q. I understand that you described yourself at one time as being a heavy drinker at that time.

A. Yeah, I was."

Are you now saying something different than that?

A. Well, you kept repeating that question, maybe I just answered you the way you wanted me to answer you, that's all I did.

30. Q. Is that the way you're giving your testimony,

MR. MARSHALL, JR., Cross-Examination

0. that you're answering the way people want you to answer?

A. It appears that way.

Q. You were a bad young guy that time, were you?

A. I explained earlier, when I was growing up there was gangs in Sydney and we had to keep together.

5. Q. You were involved in that.

A. Yes, I was.

Q. And the group, the gang that you were involved in, you described yourselves as bad young guys at that time?

A. You had to be bad to live in Sydney anyway.

10. Q. A bad crowd?

A. There was a lot of bad crowds in Sydney.

Q. My Lord, I apologize for any delays that are caused by the procedure that I am required by law to follow, that I have to refer the witness to the time and the exact - I have to find the pages and then refer him to the question and the answer and then have him comment on it.

15.

THE COURT: No problem with me, counsel.

MR. WINTERMANS: Now you recall having given evidence in 1982 before the Supreme Court Appeal Division in Halifax in December of 1982?

20. A. Yes.

Q. You recall that you were there.

A. Yeah, I recall that I was there.

Q. You recall that you gave evidence?

A. Yes.

25. Q. You were under oath at the time?

A. Yes.

Q. I refer you to page 26, some questions or the question near the very top of the page.

"Q. Could you describe what your drinking habits were generally around that time?

30. A. I was a heavy drinker."

Do you recall having said that?

A. I answered your question a little while ago.

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0. MR. MARSHALL, Cross-Examination

You're bringing that back to me.

Q. When you drank back then did you get drunk fairly easily on not too much liquor?

A. I don't remember.

5. Q. You don't remember? I'll just continue with that same series of questions and answers so that it makes sense. Page 26, 1982 Appeal Division:

"Q. Could you describe what your drinking habits were generally around that time?

A. I was a heavy drinker.

Q. You were a heavy drinker?

10. A. Not too heavy, but heavy.

Q. So it wouldn't have been unusual if on that day you did have a lot to drink?

A. No, I think I can hold my liquor whether I want it or not.

Q. No. That's not the question. The question is, would it have been unusual for you to have a lot to drink that day?

15. A. Unusual?

Q. Yes.

A. I get drunk pretty fast. I wouldn't have too much anyway."

Do you recall having said that?

A. Yeah.

20. Q. So do you, back at that time did you in fact get drunk quite fast on not very much liquor?

A. You're confusing me a little bit.

Q. I'm trying not to.

25. A. If I was a heavy drinker, what you're saying now doesn't fit in. If I drank pretty fast, if I drank a little bit, I got drunk fast.

30. THE COURT: Maybe you don't understand what counsel is doing. Counsel has asked you certain questions here which you've answered today. Now counsel has a right to make inquiries of you if he has any other previous

0. MR. MARSHALL, JR., Cross-Examination

statements given by you under oath which he feels might be different from what you said today. Everybody appreciates that these events initially happened in 1971 and this is now 1985 so that's almost 14 years ago and one's memory has a habit of not being so good at different times, but what he's doing is he's referring you, after you have said something, he's then saying do you recall giving testimony at a particular hearing and on the occasion that he's asked you your answer apparently was yes, you recall giving testimony at those hearings. Then he's giving you the testimony, reading you the testimony that you gave at those hearings under oath and he's saying to you, do you remember saying that? And then he's asking you what do you say now or is that different from what you say now? This is the process he's going through. Do you understand that?

15. A. Yeah.

Q. All right. So go ahead, counsel.

MR. WINTERMANS: Thank you, My Lord. Now isn't it true that it was quite dark in the spot where this incident occurred? I'm referring to Sandy Seale being stabbed. It was quite dark in that spot where it happened.

20. A. It was dark, but it wasn't really dark.

Q. And you were unable to describe the alleged knife that you're suggesting that Mr. Ebsary had because you were unable to see it at that time, is that not right?

25. A. It happened too fast. I couldn't see the knife coming. I couldn't explain if it was a knife or not.

Q. Pardon?

30. A. I couldn't explain whether it was a knife or not. But apparently it was a knife.

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0. MR. MARSHALL, JR., Cross-Examination

Q. And you're basing that conclusion, are you not, on the fact that you had a cut on your arm?

A. Yes.

5. Q. And when you were running away it occurred to you that it must've been a knife.

A. Yes.

Q. Correct?

A. Yeah.

10. Q. Now isn't it true that you can't recall precisely what was said between Mr. Seale and Mr. Ebsary, yourself and Mr. MacNeil during the period immediatley preceding the fatal injuries that Mr. Seale received?

A. Just before? I recall him saying yes, Mr. Seale - if he wanted everything what he had.

15. Q. But the question is, isn't it true that you can't recall what other conversation took place at that time?

A. Yeah, I recall. Between myself and Mr. Ebsary?

Q. Yeah. Between Mr. Seale and Mr. Ebsary?

20. A. I don't think they were even talking.

Q. You don't think they were even talking. Isn't it true that in spite of what you told the jury here today, that really you can't remember what happened, what was said or what happened, that all you know is that you got cut and you hurt your arm and ran away, isn't that true?

25. A. No.

Q. No?

A. No.

30. Q. I refer you to the transcript of - perhaps I should ask you first, do you recall having testified

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0. MR. MARSHALL, JR., Cross-Examination
- at the preliminary hearing on August the 4th, 1983
downstairs in this building in relation to the
preliminary hearing against Mr. Ebsary?
- A. I don't . . .
5. Q. Do you recall having testified downstairs
in this building in another court room at the
preliminary hearing in August of 1983?
- A. The little court house or the big one over
there?
- Q. In this building, downstairs. The
10. preliminary hearing. The first time that you gave
testimmony in relation to Mr. Ebsary. Before Judge
O'Connell.
- A. I don't recall which court house, I've been
walking in and out for three years now, I don't know
which one I'd be walking in.
15. THE COURT: I'm not worrying about the court
house. That wasn't the question that was intended.
Do you remember giving testimony before Judge O'Connell
at the preliminary inquiry is all that he's really
asking you, which occurred in August of 1983, last
20. August?
- A. I don't recall.
- MR. WINTERMANS: You don't recall. Surely you recall
the first time that you testified in relation to a charge
against Mr. Ebsary.
- A. Maybe I was there. I don't recall.
25. MR. EDWARDS: My Lord, this is the 5th time in
three years that he's testified. Surely it would be in
order for my learned friend to allow him to look at the
preliminary transcript to refresh his memory.
- MR. WINTERMANS: I have no objection to that
30. either. I have a dissected version of the preliminary

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0. MR. MARSHALL, JR., Cross-Examination

transcript but there is one as an exhibit before
Your Lordship. perhaps if I could just show him . .

THE COURT: There isn't an exhibit before me.

MR. WINTERMANS: The preliminary hearing.

5. THE COURT: I don't have any preliminary
hearing. There may be one somewhere in the court
file.

MR. WINTERMANS: It was filed in relation to
earlier matters.

THE COURT: Perhaps you'd tell him what it is
before you get to the page.

10. MR. WINTERMANS: This is a preliminary hearing
transcript signed by Charles O'Connell, Provincial
Judge in and for the Magisterial District, Province of
Nova Scotia.

THE COURT: What date is it?

15. MR. WINTERMANS: It's August the 4th, 1983
and it's certified by the court reporter August the
16th, 1983.

THE COURT: Is there a list of witnesses in the
beginning of it?

20. MR. WINTERMANS: List of witnesses, Donald
Marshall's name is first on the list of witnesses.

THE COURT: Let him look at the book and show him
the pages that are his testimony. All of it, from the
beginning where he starts. Let him look at it, if it
helps to refresh his memory.

25. MR. WINTERMANS: I'll ask you at this point
whether you recall.

A. Okay.

30. Q. You do recall. Page 11, line 7, I want to
read you a series of questions and answers and just ask
you to comment on it, Page 11, line 7.

MR. MARSHALL, Cross-Examination

0. "Q. Would you take it step by step and describe exactly what happened as they came towards you and Sandy Seale?
- A. It is difficult for me to really tell you what happened, I think, there were too many stories already and I think I jeopardized my whole story.
5. 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.
10. 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."
15. Do you recall having giving that evidence?
- A. I recall him saying that I got something for you.
- Q. I suggest to you that you did give that evidence under oath at that time.
- A. Yes.
20. Q. And I suggest to you that it differs from what you told this jury today earlier in your evidence. Do you agree with that?
- A. Yeah, I agree with it.
- Q. Now you recall having given evidence back on the trial of November 4, 1983, the last time in this same court room.
25. A. Yes, I recall that.
- Q. I refer to page 60 and 61. Now page 60, line 37, line 36:
30. Q. Now you recall giving evidence at the

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0.

MR. MARSHALL, JR., Cross-Examination

preliminary inquiry into this matter on August the 4th, 1983 at the Magistrate's Court?

A. Yes.

5.

Page 11, start about line 3:

Q. Could you take it step by step and describe exactly what happened as they came towards 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?

A. They came back, 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 old 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.

20.

Q. Now do you remember those questions and answers?

A. Yes.

Q. Are they true?

A. Yes, they are true."

25.

Do you recall having said that under oath last time at trial?

A. Yes.

Q. Are you saying now that it's not true or are you saying it's true?

A. I'll explain something to you, okay?

30.

Q. Just answer my question, yes or no.

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MR. MARSHALL, JR., Cross-Examination

MR. EDWARDS: Let him answer.

THE COURT: Let him answer.

5.

A. I stuck to my story for 8, 9 years and nobody believed me when I told them what happened and I had to twist it around to let people believe what they wanted to hear.

10.

MR. EDWARDS: My Lord, I'm going to rise at this point because I believe my learned friend may have succeeded only in confusing the issue because the two passages he put to him and suggested were different than what he said in direct. I can't see where they are. He says I can't remember too much, the other fellow with the light hair was with Sandy, they had a conversation, 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.

15.

Well, how is that in any material sense different than what the witness testified on direct?

20.

MR. WINTERMANS: I'd like to be able to answer that, My Lord. I have the witness today testify that he that his memory is clear on what happened on the events leading up to it. On previous occasions or on one previous occasion at least he testified that he couldn't remember what happened, all he could remember was one line but suggesting that there may have been conversations prior to that between Sandy and Ebsary saying that they had a conversation but that he can't remember what it was except for the one line. Now today he's coming into court and he's saying that all there was, was the one line.

25.

THE COURT: All right. You go ahead. Continue on.

30.

MR. WINTERMANS: And the reason I went through it again, I suggest, My Lord, is that . . .

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0. MR. MARSHALL, JR., Cross-Examination

THE COURT: I'm not worrying about why you went through it again, I'm saying you may continue. I don't agree with Mr. Edwards' position.

5. MR. WINTERMANS: So with respect to the last statement of questions and answers I put to you from your trial in November 4, 1983 you indicated that it was true what you said at the preliminary hearing, that there was this conversation that you can't remember exactly what it was and that your recollection is vague on what happened at the time of the stabbing. You indicated in November I suggest to you that that was true. Now I'd like you to comment on it. Was it or wasn't it true?

10.

A. My memory is pretty clear about it.

Q. Your memory is clear about it.

A. Yeah.

15. Q. You indicated in your answer to me just a minute ago that you had a story for 8 or 9 years and that you changed it to what you thought people wanted to hear.

A. Yes.

Q. Is that what you're saying?

20. A. Yes.

Q. Are you saying that you testified under oath falsely because you thought people wanted to hear that?

A. I don't understand you.

25. Q. I'm asking you, did you commit perjury, knowingly commit perjury because . . .

THE COURT: I don't know whether that's a question. You don't commit perjury until you're convicted of committing perjury.

MR. WINTERMANS: Did you tell untruths under oath in previous judicial proceedings?

30. A. I don't think so.

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0. MR. MARSHALL, JR., Cross-Examination

Q. You didn't.

A. No.

Q. Now the older person you referred to today is Mr. Ebsary. You said in your identification of him that you now know him to be Mr. Ebsary.

5. A. Yes.

Q. But at the time you didn't know who he was.

A. No. That's the first time I met him.

Q. Is that right?

A. Right.

Q. And so he was a stranger to you at that time.

10. A. Yes.

Q. And you identified him here today.

A. Yes.

Q. I refer you back to the August 4th, 1983 preliminary hearing testimony which you had an opportunity to examine on the witness stand and indicated you recalled having given - on the bottom of page 9 and crossing into page 10:

15. "Q. The older fellow, is he in court today?

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

20. 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."

Do you recall having said that?

25. A. Yes.

Q. You couldn't identify him now, I suggest to you, or if you couldn't identify him then I suggest to you that your identification of him now is just simply you're saying that's . . .

30. THE COURT: Well, give him an opportunity to

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0. MR. MARSHALL, JR., Cross-Examination

explain it.

MR. WINTERMANS: Go ahead. Explain. Explain how you can identify him at one time or you can't identify . .

5. MR. EDWARDS: Well, will you be quiet long enough while he does?

A. Ask that question again.

MR. WINTERMANS: Explain how you were unable to identify Mr. Ebsary at the preliminary hearing in 1983 and today you are able to identify him.

10. A. Yes.

Q. How is that possible?

A. I don't know.

THE COURT: Do you understand what he's asking you? He's saying to you that you gave a statement on August 4th that you were not able to identify Mr. Ebsary. Today you can.

15. A. I met Mr. Ebsary 12 years after he committed a crime.

MR. WINTERMANS: I ask you the question. How are you able to identify him today if you indicated that you couldn't identify him a year and a half ago at the preliminary hearing?

20. A. If they had shown him to me in 1972 when they had him I would have identified him.

Q. That's not what I asked you.

A. That's what I'm telling you.

25. Q. They showed him to you in 1983 and you couldn't identify him, is what I'm saying, and now you come into court and say that's Roy Newman Ebsary. Is that not true?

A. I can identify him.

30. Q. I suggest to you that you're identifying him

322.

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MR. MARSHALL, JR., Cross-Examination

because you've seen him in court.

A. He wrote me a letter, before the court ever started.

5. Q. Now the older person who you identify now as Mr. Ebsary who was in the park that night, you described him as having a blue coat or a dark coat hung over his shoulders like a cape, is that right?

A. Well, it was a trench coat or whatever it was, it was a heavy coat.

10. Q. A heavy coat. Was it hung over his shoulders?

A. I don't know. I don't really know.

Q. You don't remember?

A. I said it was a coat. I don't know if it was a cape coat or a trench coat or what it was.

Q. A cape coat, did you say?

15. A. A trench coat or a cape coat. I don't know what it was.

Q. What do you mean by a cape coat?

A. I just finished saying it had a cape on it.

Q. A cape.

A. Or whatever it was.

20. Q. In other words . . .

25. THE COURT: We're getting nowhere here, I'm sorry. You might as well put the question to him another way. What he asked you was whether he had a coat, you said he did on direct examination and he asked you whether he was wearing a coat or just put over the person's shoulders or whether he had his arms in it. That's all he's asking.

A. I believe he had a coat.

Q. You think he had a coat. Not a cape?

A. He had his hands in his pockets.

30. Q. Did he have his hands through the sleeves of

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0. MR. MARSHALL, JR., Cross-Examination

his coat, in the sleeves of his coat, or was the coat draped over his shoulders with his arms on the inside, not through the sleeves?

5. A. I only seen it once and that was a long time ago.

Q. So you can't . . .

A. I can't explain what kind of coat it was.

Q. All right. I'm just asking you and your answer is you're not sure, right?

A. It was a dark coat, a heavy coat.

10. Q. Did you indicate in your evidence today, did I hear you correctly when you said something to the effect that at the time that you say you saw Mr. Ebsary appear to punch Mr. Seale in the stomach that Mr. MacNeil came towards you? Is that what you said here today?

A. I didn't say he came towards me.

15. Q. You didn't say he came towards you? What did you say?

A. I said he was beside me.

Q. He was beside you.

A. Yeah.

20. Q. So you're not saying that Mr. MacNeil came at you, attacked you, are you?

A. No.

Q. Okay. Isn't it true that you grabbed a hold of Mr. MacNeil?

A. I grabbed him and threw him on the side.

25. Q. Put his hand up behind his back?

A. No.

Q. This kind of a motion? Is that true?

A. No.

Q. What did you do then? How did you grab him?

30. a. I grabbed him and I threw him.

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MR. MARSHALL, JR., Cross-Examination

Q. You grabbed him and you threw him?

A. Yes.

Q. You didn't grab a hold of each other?

You and Mr. MacNeil?

5.

A. As far as MacNeil goes I wasn't worried about MacNeil, I was worried over Mr. Ebsary coming after me.

Q. I see. Now so you're saying that Mr. MacNeil didn't grab you. You grabbed him.

A. All I was worried about was that man over there came after me with a knife.

10.

Q. Just answer the question, yes or no. Did you or didn't you grab a hold of Mr. MacNeil?

A. To get him out of my way.

MR. EDWARDS: He's already said that, My Lord, about three times, that he grabbed a hold of Mr. MacNeil.

MR. WINTERMANS: Did you grab Mr. MacNeil because you thought he was drunk and falling down off the curb?

15.

A. I grabbed Mr. MacNeil to protect myself against Mr. Ebsary.

Q. Were you fighting with Mr. MacNeil and holding him?

20.

A. No.

Q. No? Okay. I refer you again to your testimony in September 12th of 1983 being the first trial in this court in relation to Mr. Ebsary. You've already indicated that you recall having given evidence there. Page 50. I'm sorry, page 43. Page 43, line 25.

25.

"Q. You say that when just before this incident took place that night in the park, that you had a conversation with these two gentlemen that you refer to and didn't you grab on to Mr. MacNeil, grab a hold of him?"

30.

A. I don't recall.

Q. You don't recall?

A. I don't recall."

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MR. MARSHALL, Cross-Examination

Do you recall saying that?

A. Yes.

Q. Is it true?

A. I don't remember, but I recall. I do

5.

remember what happened.

Q. You do remember what happened.

A. Yes.

Q. Do you agree that the testimony I just referred you to is different from what you said here today?

That you do recall?

10.

A. I recall grabbing Mr. MacNeil. I said I grabbed Mr. MacNeil.

Q. You're saying that it was for the purposes of protecting yourself from Mr. Ebsary, is that it?

A. Yes.

15.

Q. Again you indicated you recall having given evidence before the Appeal Court in Halifax in December of 1982, page 16, the middle of the page.

"Q. Then what happened?

20.

A. They were walking. When we called them back they did come back and they joined up with us and the younger guy, the taller guy walked on my right hand side. I guess he had a few drinks that night because when they did come back he had his head down, he had his hands in his pocket and to me he looked like he was ready to pass out or he was drunk or something and the curb of that road, street, sidewalk, he slipped off that and I grabbed him and at the same time I heard the older fellow . . ."

25.

etc., etc., so you indicated there, do you recall having

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MR. MARSHALL, Cross-Examination

said that, the story about MacNeil falling off the curb and that's why you grabbed him? To keep him from falling down? Do you recall having said that?

5. A. At that point I seen Mr. Seale getting stabbed, it's pretty hard to explain what I'm trying to get . .

Q. It's pretty hard to remember, maybe.

A. No, no, no, no, no. I was there.

Q. You were there.

A. Yeah.

10.

Q. Okay. Now you've indicated, you've been shown your preliminary transcript evidence from August 4, 1983 downstairs before Judge O'Connell, the one that you examined briefly. I refer you to the bottom of page 11 and the top of page 12:

15.

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

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.

20.

Q. So you were with the younger fellow?

A. Yes."

Do you recall having said that?

A. Yes.

Q. You were under oath when you said that?

25.

A. Yes.

Q. True?

A. Yes.

30.

Q. It is. I refer you again to your testimony before the Appeal Court in Halifax in 1982, page 48 where you were asked a series of questions and gave a series of

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0. MR. MARSHALL, Cross-Examination

answers:

"Q. Is it possible that Sandy Seale could have said something to Ebsary at that point and you not heard it?"

5. That's referring of course to immediately prior to the stabbing.

" Q. Is it possible that Sandy could have said something to Ebsary at that point and you not heard it?

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

Do you recall having said that?

10. A. Yes.

Q. Was it possible and you don't know or are you now saying . .

A. He didn't say nothing to him when he came back.

Q. That's what you're saying now.

15. A. I'm saying it and I said it before.

Q. And your testimony before the Appeal Court in 1982 that I just read to you, you were under oath.

And you testified differently. Do you agree?

A. He never said nothing to him.

20. Q. In other words you're disagreeing.

A. Yes, I'm disagreeing.

Q. I suggest to you, Mr. Marshall, that Mr. Sandy Seale at least after you say that Mr. Ebsary asked him if he wanted what he had, that Sandy Seale nodded his head. Do you agree with that?

25. A. He didn't nod his head.

Q. He didn't nod his head.

A. No.

Q. I refer you to your testimony last time, November, 1983 the last time you testified in this same

30.

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0. MR. MARSHALL, Cross-Examination

building, page 27:

"Q. This is the position the two parties were in right now my left shoulder is next to your right shoulder or maybe a foot between them, and this is the position they were in when Ebsary asked Seale if he wanted everything he had.

5.

A. Yes.

Q. And what happened then?

A. Seale nodded his head."

Do you recall having said that?

A. Nodded his head in what way?

10.

Q. I'm just asking if you said it, that's all.

A. Yeah, that's what I said.

Q. Did you say that last time?

A. I said he nodded his head. That don't mean yes or no. I don't know what he did. You know.

Q. I think nodding your head means yes?

15.

A. I don't know.

Q. Doesn't shaking your head mean no and nodding your head mean yes?

A. I don't know.

20.

Q. I won't argue with you about that. Now you said earlier in your evidence today that you were 5'10 back in 1971 at age 17, is that correct?

A. Yes.

Q. Now you're 6'1?

A. Yes.

25.

Q. I refer you to your testimony once again in the Appeal Division in 1983 up in Halifax, page 49:

Q. You were 17 at the time?

A. Yes.

Q. How tall were you, you were over 6 feet then, weren't you?

A. I don't know. I don't know.

Q. You don't know?

30.

A. I don't know.

329.

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D. MARSHALL, JR., Cross-Examination

Q. You were big for 17, would you agree with that?

A. Tall.

Do you recall having said that, that you didn't know how tall you were?

5.

A. I said I was tall.

Q. You didn't say you were 5'10, you said "I didn't know how tall I was." Isn't that right?

A. I was measured when I went away to prison so I know how tall I am.

10.

Q. How long did you know Sandy Seale before this incident?

A. I just used to meet him and other people at dance halls.

Q. How long?

A. I don't know. Approximately a year probably.

15.

Q. Could it have been three years?

A. I don't know.

Q. Now you recall having given a statement to the R.C.M.P. in 1982 when you were in Dorchester Penitentiary?

A. Yes.

20.

Q. That statement was freely and voluntarily made by yourself, was it not?

A. Yes.

Q. That statement you indicated was true, did you not?

25.

A. The whole statement, you say?

Q. Yes.

A. No, it's not true.

Q. Not true.

THE COURT: Perhaps we'll have our afternoon break now. We'll recess for 10 minutes.

30.

COURT RECESSED (3:15 p.m.)

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COURT RESUMED (3:40 p.m.)

JURY POLLED. All present.

D. MARSHALL, JR., Cross-Examination (Cont'd)

MR. WINTERMANS: Just before the break, Mr. Marshall,

I asked you if you recalled having given a statement to
5. the R.C.M.P. in 1982 when you were still in Dorchester
Penitentiary and you said that you did, correct?

A. Yes.

Q. And then I asked you whether or not the
statement was freely and voluntarily given, you indicated
that it was.

10.

A. Yes.

Q. Then I asked you if the statement was true
and I believe your answer was to the effect that parts
of it were true and parts of it weren't true, is that
what your answer was?

A. Can I read my statement over?

15.

Q. I'm showing you the handwritten version of
the statement that I'm referring that you say you
voluntarily gave to R.C.M.P. officers while in Dorchester
Penitentiary in 1982. You're reading it now. Is that
the statement you recall having given?

A. Yes.

20.

Q. I asked you whether or not it was true. What
was your answer?

A. Most of it is not true.

Q. Most of it is not true. Is that what you're
saying?

25.

A. Yes.

Q. I show you again page one. Is that your
signature at the bottom?

A. Yes.

Q. Page two, is that your signature on the side?

30.

A. Yes.

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D. MARSHALL, JR., Cross-Examination

Q. Page three, is that your signature on the side?

A. Yes.

Q. Page four, is that your signature at the end?

5.

A. Yes.

Q. So parts of it are true and parts of it aren't, is that what you're saying?

A. Yes.

Q. I want to read you part of it and ask you whether or not it's true or not. The first page:

10.

"I guess you could say I was a bad young guy. I drank a lot and generally hung around."

True?

A. I answered that earlier. I worked all week and I drank with my friends on the weekend.

Q. Just answer the question yes or no.

15.

A. I answered it.

Q. This part of the question is true.

A. It's true.

Q. Then further along in the statement, quoting from the statement:

20.

"I asked Sandy if he wanted to make some money. He asked how and I explained to him that 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 two fellows we later decided to rob was on the George Street side of the park. The short old guy I now know as Ebsary."

25.

A. That's not true.

Q. That's not true?

A. No.

30.

Q. I refer you to the testimony that you gave

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0. D. MARSHALL, JR., Cross-Examination

in 1982 before the Appeal Court in Halifax which you indicated earlier that you recall having given, page 69:

5. "Q. Therefore it's a reliable statement. Well, let me rephrase that, Mr. Marshall. Therefore when one reads that statement one can take it as being truthful, is that right?

A. Yes."

Do you recall having said that?

A. Yes.

10. Q. Under oath.

A. Yes.

15. Q. Okay. Do you recall having given evidence in the preliminary hearing in 1983, August of 1983 for the first time downstairs here, I showed you the blue folder, you looked it over. Page 20. I ask you to comment on these questions and answers:

"Q. Do you recall having given a statement to the R.C.M.P. in Dorchester Penitentiary on March 3rd, 1982?

A. Yes.

20. Q. Do you recall having stated at that time, and I quote a part of the paragraph and ask you to comment on it. "I asked Sandy if he wanted to 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 two fellows we later decided to rob was on George Street side of the park."

30. And then you go on to say "the short old guy I now know

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D. MARSHALL, JR., Cross-Examination

as Ebsary." Do you recall having said that to the R.C.M.P.?

5.

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.'

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

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

10.

Do you recall having said that?

A. Yes.

Q. Is that the truth, what you said there?

A. What you just read?

Q. Yeah.

A. Yeah.

15.

MR. EDWARDS: My Lord, I'm going to rise on this point.

I don't think my friend is doing this quite properly. Fair ball for him to cross-examine the witness on the contents of the March, 1982 statement. That is no surprise to anybody, but what he's doing now is putting to the witness the cross-examination of the witness on the March, 1982 statement and it seems to me that it's only legitimate for him to do that if he says something different during this cross-examination than he said during the previous cross-examination.

20.

25.

THE COURT: I wouldn't think it is limited to the cross-examination but it's as I understand it, open for him, if the witness says anything today which appears to be different from what he may have said at a previous time under oath, then he can ask him if he remembers and if he remembers then he can put the question to him and then he asks him to explain the difference if there is a difference.

30.

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0. MR. MARSHALL, JR., Cross-Examination

MR. EDWARDS: And that's well taken. What I'm saying is that I submit the proper way for him to go about it would be to put a portion of the '82 statement to the witness. Let's say he gave him a portion and the witness said that's the truth, but at an earlier trial 5. said when referred to that same portion that's a lie. Then I think I submit it's legitimate for him to go to the earlier cross-examination and say well, you testified that that was a lie earlier and then ask him to account for it. But it seems to me my learned friend is skipping the first step.

10. THE COURT: Well, I think you've lost me somewhere along the way. He's entitled to go to any previous prior statement under oath, if there's a difference between it - if he believes there's a difference between it and what is said here, and puts it to him, gives him the opportunity to read it or reads it to him, asks him 15. if he remembers the testimony and if he remembers the testimony then he can ask him how come it's different or explain the difference. I think he can do that.

MR. EDWARDS: Okay, My Lord. I won't belabour that. I was just trying to clarify the issue.

20. MR. WINTERMANS: The next time you testified was in Supreme Court here in Spetember 12th of 1983, the first trial in relation to Mr. Ebsary, and you've already indicated you recall that. On page 45 you were asked the question:

25. "Q. Do you recall having given a statement to the R.C.M.P. In Dorchester Penitentiary back in 1982, March the 3rd, 1982? Do you recall that?

A. Yes.

Q. That statement is true, is it not?

A. Yes."

30. Do you recall having said that?

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0. M. MARSHALL, Cross-Examination

A. Yes.

THE COURT: Sorry, did you answer that or not?

A. I said yes.

5. MR. WINTERMANS: I'm going to read you a couple of other parts of your statement before I go any further, your testimony of last time, and ask you to comment on them. Further in the R.C.M.P. statement which you indicated you gave to the R.C.M.P. in 1982 at Dorchester Penitentiary, the statement 'the two guys started to walk away from us and I called them back. They then knew we meant business about robbing

10. them. I got in a shoving match with the tall guy, Sandy took the short old guy. I don't remember exactly what was said but I definitely remember Ebsary saying "I got something for you" and then stabbing Sandy.' Do you recall - you read that. I'd like you to comment on whether or not that's true. True or false?

15. A. It's not true.

Q. And one last part. "When questioned about this, I did not mention that Sandy and I were robbing these two as I thought I would get into more trouble. I never told my lawyers or the court. I just thought I would get in more trouble. I felt bad about Sandy dying as it was my idea to rob these guys."

20.

A. It's not true.

Q. Not true?

A. Can I comment now?

25. THE COURT: Yes. You were asked a question. You answer the question.

A. I did not go follow Ebsary. Ebsary asked me for a cigarette when I was in the park. The same which somebody else asked me for a cigarette that time. I wasn't out to rob him at all. But I was at the end forced to almost say that I had - that's what it boiled down to.

30.

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0. MR. MARSHALL, Cross-Examination

Q. I apologize to the jury for these delays but unfortunately the only way that I can put these things to this witness is by looking through these piles of materials and finding the exact page and reference. At the preliminary hearing in August, 5. 1983, the blue folder that I showed you earlier, page 34, I already asked you if you recall giving a statement to the R.C.M.P. in Dorchester Penitentiary in 1982 and your answer 'yes.'

"Q. You stated that that was the truth.

A. Yes.

10. THE COURT: I don't think we'll go into that again.-

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

A. You mentioned that awhile ago, I think.

15. THE COURT: Just answer the question.

Q. MR. WINTERMANS: Are you denying that.?

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

20. And then on the next page:

"Q. In your statement you said they 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 that is the way it happened or not?

25. A. I don't remember. There are so many stories about what happened I don't know, I can't answer that."

Do you recall having said that?

A. Yes.

30. Q. Now with reference to your plan to make some money that night, you testified in the Appeal Division

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0. MR. MARSHALL, Cross-Examination

in Halifax in 1982, page 11:

"Q. Could you give an example of how you might have considered making money?

5. A. Bumming it, breaking in a store probably, taking it off somebody."

Do you remember having said that?

A. Yes.

Q. True?

A. What I said? No, it's not true.

10. Q. Not true. In September of 1983 you testified at the first trial here, upstairs, in relation to Mr. Ebsary, you already recall having testified. On page 45:

"Q. There was discussion between yourself and Seale as to how you would make some money.

A. Uh-huh.

15. Q. You suggested to him that you would roll somebody.

A. Yes.

Q. Is that right?

A. Yes.

Q. And roll someone, is it fair to say that roll someone, that means rob someone?

20. A. No, robbing is different subject altogether. Rolling somebody is different."

And continuing:

25. Q. I see. But the people that you rolled or tried to roll, they would have known that you were trying to rob them at a certain point right before this incident with the knife took place, wouldn't they?

A. They would know?

Q. They would know that you intended to rob them.

A. Yes. Roll them.

Q. Roll them?

30. A. Yes."

0. 338.

MR. MARSHALL, JR., Cross-Examination

Q. Do you recall having said that?

A. Yes.

Q. Is that true or false?

5. A. It's not true.

Q. It's not true. So you're saying that you came into this court, the Supreme Court before a jury and swore to tell the truth, and you told that and it's not true?

A. I told the truth the first time.

10. Q. All right. I referred you to a few quotes from that statement and you said they were not true. Now I'd like to refer you to your - continuing on your September 12th, 1983 testimony that you gave in this court at the first trial. On page 47, I'll read you the phrase, a couple of questions and answers and ask you to comment on it. 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 guy and Sandy took the short old guy.

A. You mentioned that awhile ago, I think.

20. THE COURT: Just answer the question.

Q. MR. WINTERMANS: Are you denying that?

A. I'm not denying nothing.

Q. Do you recall having stated that at the preliminary?

A. Yes."

25. Q. Now would you explain the difference between rolling someone and robbing someone?

A. Not really.

Q. Not really. I refer you to your September 12th, 1983 testimony before a jury in this case on page 48:

30. "Q. You were finally released from

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MR. MARSHALL, JR., Cross-Examination

the penitentiary after speaking to the R.C.M.P. ultimately.

A. Yes.

Q. Isn't that the way it really happened?

5.

A. Yes.

Q. You finally admitted that there was a robbery taking place.

A. A robbery is when you are armed. I wasn't armed."

Q. Do you recall having said that?

A. Yes.

10.

Q. Is that true, that was the difference in your mind at that time, between rolling and robbing?

A. I would say, yes.

Q. That robbing somebody is when you take their money and you're armed with a weapon, whereas rolling is when you take money or something from a person and you're not armed?

15.

A. I didn't rob nobody and I didn't roll nobody. A person bummed me a cigarette and that's what happened.

Q. Now you recall last time when you testified here, in November of 1983, the Crown Prosecutor cross-examined you in relation to that R.C.M.P. Statement in Dorchester, page 53, he asked you in relation to the differences between your testimony that you were giving then and the contents of your statement:

20.

"Q. Now can you explain why there is a discrepancy between what you are saying today and what you told the police on March 9th, 1982?

25.

A. The difference.

Q. Yeah.

A. When I wrote this statement, I can't explain.

Q. Pardon?

30.

A. I can't explain.

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MR. MARSHALL, JR., Cross-Examination

Q. You can't explain. Thank you, Mr. Marshall."

Q. Do you recall that exchange?

A. Yes.

5.

Q. Is it true?

A. What's true?

Q. What I just read you.

A. That I can't explain.

Q. Now when you testified before the Appeal Division back in 1982, you've already indicated you recall that, page 58, the bottom of the page, Mr. Edwards asked you:

10.

"Q. So we are just making sure we have our terms straight, Mr. Marshall, when you use the term 'to roll somebody' that means to beat them or grab a hold of them for the purpose of forcing money from them. Isn't that what it means?

15.

A. Yes.

Q. Right. Now had you ever rolled anyone prior to that night?

A. I can't answer that.

20.

Q. You can't answer that?

A. No. Because whether I did or not, I don't think it's anybody's business what I did as far as me rolling anybody before or after because the night we met Ebsary and MacNeil our intention was to get money and the intentions were there but the attempt as far as me grabbing MacNeil or Sandy Seale grabbing Ebsary, nothing like that happened. He said I jumped him from behind. I don't think I jumped him from behind.

25.

30.

THE COURT: You were asked a question. You haven't answered it.

0. 341.

MR. MARSHALL, JR., Cross-Examination

A. I did. I have no answer."

Q. Do you recall having said that?

A. Yes.

5.

Q. Is that true?

A. I didn't roll nobody.

Q. Had you ever rolled, robbed anybody before that night, that is May 28th, 1971?

A. I'm going to say no.

Q. You're going to say no?

A. Yes.

10.

Q. Do you recall page 60 of your Appeal Court evidence in Halifax that you already acknowledged:

"Q. You're saying that that's no one's business, it's not the Court's business?

A. It's my business. I was not caught for it so why do I have to deal with it? I wasn't summonsed for it, I don't have to deal with it."

15.

Q. Do you recall having said that?

A. Yes.

Q. All right. I'll just continue.

20.

MR. EDWARDS: Were you just reading from page 60?

MR. WINTERMANS: No.

"Q. THE COURT: Now you've been asked now, Mr. Marshall, you've been asked a question now, you must answer it.

25.

A. I might have. I may have not.

Q. MR. EDWARDS: You might have. Mr. Marshall, you realize that to roll someone or to rob someone, to use the legal term, is very serious business. Do you realize that?

30.

A. Sure it is.

Q. Yes. Would it also be fair to say

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MR. MARSHALL, JR., Cross-Examination

that unless you were doing it on a daily basis you would remember it?

A. Yes. But I didn't do dit on a daily basis.

5.

Q. No. Exactly the point. So therefore you should remember whether you had ever rolled anyone before. Is it possible that you did?

A. It's possible.

Q. Yes. Is it possible that you did more than once before?

A. It's possible I robbed somebody. I don't know whether it was once or not.

10.

Q. Is it possible you may have rolled five or six people prior to that night?

A. I don't know.

Q. You don't knwo? So then it is possible?

A. It is possible."

15.

Q. Do you recall those questions and answers?

A. No.

Q. Are they true?

A. What's true?

Q. What you said there, is it true?

A. No, it's not true.

20.

Q. It's not true?

A. No.

Q. Okay. Have you ever been convicted of a criminal offence prior to May 28th, 1971?

A. Yes.

25.

Q. On June 12th of 1971 you were convicted of theft . .

THE COURT: I don't know how far you can go. Unless he was convicted.

30.

MR. EDWARDS: The Crown has no objection to him putting the specific offence, date and disposition, My Lord.

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0. MR. MARSHALL, JR., Cross-Examination

THE COURT: All right. Just hold on a minute, will you, Mr. Wintermans?

MR. WINTERMANS: There's just one other question that I really care to ask.

5. THE COURT: Well, I'm not stopping you, I'm just holding you up.

MR. WINTERMANS: I don't really wish to pursue it, My Lord.

THE COURT: All right.

10. MR. WINTERMANS: I would just like to ask the question to Mr. Marshall. Had you ever been sentenced to jail prior to May 28th, 1971?

A. Yes.

Q. Is it true that you spent 8 months in jail on one occasion?

A. Yes. But it doesn't show on my parole record.

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

THE COURT: All right. Any re-examination?

20. MR. EDWARDS: My Lord, I intend to be a little bit of time on re-examination and I would like to have a few minutes to prepare it so as it's 20 after 4 may I ask Your Lordship to adjourn for the day?

25. THE COURT: All right. We'll adjourn until Monday. You've got a weekend ahead of you, Mr. Foreman and members of the jury. I have to advise you not to talk about the case or discuss the case and as I said before keep in mind the evidence that you've heard so when we come back on Monday we'll be able to continue right on. I also have to tell you, Mr. Marshall, that you're not to discuss your evidence with anybody between now and the time you come back on the stand on Monday morning and be back here Monday morning at 9:30. All right?

30. COURT ADJOURNED (4:20 p.m.)