

I N D E X

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MEDIA POOL COPY

501.

0. MR. MacNEIL, Direct Examination

I would assume.

Q. Okay. So when you and Mr. Ebsary left the tavern, and the State Tavern, it was on George Street.

5. A. It was on George Street, right across from the Joy Supermarket.

Q. When you left the State Tavern, you come out the door, you're on George Street.

A. Um-hmm.

Q. Where did you and Ebsary go from there?

10. A. Well, we went to his place. We went . . .

Q. To his place.

A. To his place.

Q. He lived over on Rear Argyle Street.

A. Yes.

15. Q. So tell the jury what route you would take to get from the State Tavern to Mr. Ebsary's on Rear Argyle Street?

A. You come down and you cross the lights where Townsend comes out and you stay right on the right hand side and you go right down and you know just where the tracks are.

20. Q. You have to imagine the jury are all from New Waterford.

A. Oh. They're all from New Waterford. Oh, goodness, gracious.

Q. So you go down George Street.

25. A. You go down George Street, the first set of lights, there'd be a street before that, like Falmouth when you come out of the State Tavern, but you'd always be on the right hand side of the road.

30. Q. All right, Jim, you don't have to get too detailed. You go down George Street until you get to what?

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0. MR. MacNEIL, Direct Examination

Where would you turn off George Street?

A. You'd turn off at the tracks.

Q. And when you turn off there that'd take you into what?

5. A. Into Wentworth Park.

Q. Into Wentworth Park.

A. Right.

Q. All right. So then you walk through this park we have in Sydney.

A. Yeah, right.

Q. Wentworth Park.

A. Yeah.

Q. Go through the park.

A. Um-hmm.

Q. Across a footbridge?

A. Um-hmm.

Q. And up onto Crescent Street.

A. And up on Crescent.

Q. And then continue down Crescent.

A. Like you can go right across on the other side like, the side, but there's no sidewalk when you come up on the bank, you understand what I mean? Like
20. it's the road, eh, but on the other side it's the sidewalk so you cross over the road to get to the sidewalk.

Q. So once you get on Crescent Street then you go down to what street?

A. You could - like there was two ways to his place. You could go like up around the front, eh. Something like when you come out on Crescent well you're almost right next to Argyle, right? You know how Argyle runs down like that. So . . .

30. Q. Argyle runs parallel to Crescent Street.

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MR. MacNEIL, Direct Examination

0. A. Yeah, parallel, so you can go right like up that way.

Q. So that's the route you and Ebsary took that night.

A. Yeah, right.

5. Q. So you turn into the park.

A. Yeah, right.

Q. Get over on Crescent Street.

A. Yeah.

10. Q. Now I want you to explain in as much detail as you can remember to the jury what happened then?

A. What happened? We crossed over on Crescent like on the way home there. We were accosted like, we bumped into Mr. Seale and Mr. Marshall and . . .

Q. Did you know them at that time?

A. I didn't know them.

15. Q. You did not know who they were.

A. I did not know them. So they came close to us, like, Mr. Seale was standing right in front of Mr. Ebsary and Donald Marshall just grabbed my arm like that and he put it behind my back up like that and I just frozed. I didn't move, but we were very close together like this.

20. Q. All right, now I just want to stop you at that point. You say you and Marshall were together.

A. Um-hmm. Right.

Q. And Seale you said was in front of Ebsary?

25. A. Right in front of Ebsary.

Q. Yeah. Now how far from Seale or from Ebsary was Seale at that time? How far apart were they, Jim?

A. Very close, only a couple of feet.

Q. And did Marshall say anything to you?

30. A. Marshall never said a word to me. I'm just frozed, I just frozed and I heard Mr. Seale addressing

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0.

MR. MacNEIL, Direct Examination

Ebsary and he said 'Dig, man, dig.'

Q. Did, man, dig.

A. And Ebsary said 'I got something for you' and then all of a sudden . .

5.

THE COURT: Wait now, hold on. So far I'm at dig, man, dig. Seale said. What happened then?

MR. EDWARDS: Let's just go back.

A. Yeah.

Q. You and Marshall are there together.

A. Um-hmm.

10.

Q. Marshall said nothing to you.

A. He never said nothing to me.

Q. Seale and Ebsary, how far are they from you and Marshall?

A. Just next to us, you know, standing right next to us.

15.

Q. Yes. And they're a few feet apart.

A. Just a few feet apart.

Q. And you said that you heard Seale say 'dig, man dig' to Ebsary.

A. To Ebsary, yeah.

20.

Q. And then Ebsary made a reply.

A. 'I've got something for you.'

Q. He said 'I've got something for you.'

A. He said 'I've got something for you.'

Q. And when he said 'I got something for you' what if anything did Ebsary do?

25.

A. He just come up with his right hand like that.

Q. You're indicating an upward motion.

A. An upward motion.

Q. Yes.

30.

A. And at that time I heard him scream, Mr. Seale scream and then Marshall let go of my hand and sort of like

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0. MR. MacNEIL, Direct Examination

come at Ebsary like and there was something like a motion like that and like, you know like there was, he come over at Ebsary with his . .

Q. What did Ebsary do when Marshall came . .

5. A. I don't know, there was some kind of - like, I was so like confused there like, everything was just happening.

Q. You were confused there.

A. I was really confused.

Q. Yes.

10. A. Everything was happening, because I heard the young fellow screaming and I wa's confused.

Q. Now when you heard this scream, could you see what had caused Seale to scream? Did you see anything then?

15. A. I can barely visualize in my mind, I seen him holding onto his stomach and he ran, like that. He ran. P. 508

Q. How far did he run, Jim?

A. Now this is something, I'll tell you he ran about 30 feet.

Q. And then what happened?

A. He just fell.

20. Q. He fell down.

A. He fell down, yeah.

Q. Now I'll back you up just a bit again to where Seale is standing in front of Ebsary at the time he says 'dig, man, dig.'

25. A. Um-hmm.

Q. Now at that moment when he said 'dig, man, dig' where were Seale's hands?

A. Seale's hands were right at his side.

Q. At his side.

30. A. Yeah, they were at his side.

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MR. MacNEIL, Direct Examination

Q. Now what if anything did he have in his hands then?

A. He never had nothing, I never seen nothing in his hands.

5. Q. He never had anything in his hands.

A. No, nothing. I never seen nothing.

Q. I see.

A. Not a thing. His hands were just at his sides.

Q. What tone of voice did he use like when he said 'dig, man, dig?'

10. A. Used the tone like, kind of a high-pitched like you know, like a high pitch. Not like a really violent tone but just like, you know. . . .

Q. Not really violent.

A. No, just like a high pitch, like.

15. Q. Now at that point in time, where he said 'dig, man, dig' where were Ebsary's hands?

A. Ebsary's hands, one of his hands was going into his pocket. He said I got something for you. Ebsary's hands were down by his side too and he said I got something for you.

20. Q. Um-hmm. Now between the time that Seale said 'dig, man, dig' and the time that Ebsary made that upward motion, how many seconds passed?

A. Just a split second.

Q. A split second.

25. A. I'd say a split second.

Q. Was there any doubt in your mind what had happened to Seale?

30. A. In my mind at that time I knew that he was hurt, you know, I just - I didn't know what, till I heard - when I heard the scream right away I knew he was hurt.

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0. MR. MacNEIL, Direct Examination

Q. So then when Marshall let go of you.

A. He let go of my arm.

Q. Right. And what happened to him?

A. He came at Ebsary, he came up like that with his hand.

5. Q. Who came at who first?

A. I think Marshall came after, as a matter of fact I'm positive, Marshall came at Ebsary first.

Q. That was after the scream.

A. Yeah, right.

10. Q. And then what happened to Marshall? Do you recall what happened to Marshall?

A. I don't know what came of Marshall. I don't - I just seen him coming at him and that was it. I don't recall what happened to Marshall after that.

Q. Well, what happened to you and Ebsary?

15. A. We just continued right on to his house, we went up around the corner.

Q. So where was Marshall when you and Ebsary just continued on?

A. I don't know, he just disappeared.

Q. Ran away.

20. A. Yeah.

Q. You didn't see him any more that night.

A. I didn't see him any more that night, no.

Q. Now when you and Ebsary left Crescent Street, where did you go?

25. A. We went right to his place.

Q. That's on Rear Argyle.

A. Rear Argyle.

Q. Okay. How long did it take you to get there?

A. About 15 minutes.

30. Q. 15.

A. Yeah.

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0.

MR. MacNEIL, DIRECT EXAMINATION

Q. And when you got there what did you do?

A. When we got there I walked in and I sat in this, right off the kitchen like and Mr. Ebsary was washing his hands under the sink with a knife.

5.

Q. A knife.

A. And there was an awful lot of blood on his hands. There was an awful lot. I presume it was a pocket knife but I couldn't be sure, but there was so much, there was a lot of blood.

10.

Q. You presume it was a pocket knife but you can't be sure.

A. I can't be sure.

Q. Okay. And when you first went in the house do you remember seeing anybody else there?

A. I was in kind of a hyper . .

Q. Yeah, how were you at that time?

15.

A. I was in a hyper, because you know I heard the fellow scream and it's like a dream that I seen some of his intestines come out of his stomach. You know, so I was really in - I can still see it yet sometimes. And I was hyper. Really hyper.

20.

Q. So what was your answer then when I asked you who did you see in the house when you went in?

A. I don't remember seeing anybody.

Q. You don't remember.

A. No.

Q. So do you remember how long you stayed there?

25.

A. Cripes - I don't know if it was an hour. I can't really be sure how long I stayed there. Maybe it was an hour, I can't be sure.

Q. And when you left I take it you went home.

A. I went home, yeah.

30.

Q. Where were you living at that time?

A. I was living up on 1007 Rear George Street, on

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0. MR. MacNEIL, Direct Examination

Hardwood Hill.

Q. When did you next see Mr. Ebsary?

A. I seen him the next day.

Q. The next day.

A. Yeah. I came down to his house.

5. Q. Yes?

A. And told him that that young fellow died.

THE COURT: Wait now. You're going fast again.

A. Going too fast. I'm sorry.

MR. EDWARDS: All right, so you went down to his house the next day.

10. A. Um-hmm. Right.

Q. What time? Do you remember if it was the morning or the afternoon?

A. I don't know if it was the morning or the afternoon.

15. Q. So you went to his house and you and Mr. Ebsary had a conversation.

A. Yeah, right.

Q. What did you tell him at that time?

20. A. I told him that young fellow died. And he said it's self-defence, but I said you should have gave him the money. I said you should've gave him the money.

Q. You should've gave him the money.

A. Yeah.

Q. And what made you think the young fellow wanted money?

25. A. Pardon?

Q. What made you think Seale had wanted money?

A. Well, when Marshall put his arm behind my back I knew it was a robbery right away. I figured it was a holdup like.

THE COURT: Wait now, I'm sorry.

30. I just have one part that I missed, Ebsary said

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0. MR. MacNEIL, Direct Examination

it was self-defence.

A. Yeah.

Q. And you said you should have gave . .

A. Him the money. That's what I told him.

5. MR. EDWARDS: Now Jim, at any time that evening when the four of you, you and Ebsary and Marshall and Seale were on Crescent Street, did Ebsary pass anything over to Seale or Marshall like rings or watches?

A. No, I never seen him passing anything, no.

10. Q. So going back again then to the day after, after you had this conversation with Ebsary about you should've given him the money, how long were at the house that day?

A. I was at the house that day - I didn't stay too long, an hour or so.

Q. Um-hmm. Did you ever go there again?

15. A. No. No, that was it.

Q. That was it.

A. That was it.

Q. Did you and Ebsary remain friends after that?

A. No. No.

Q. Jim, when did you first go to the police?

20. And tell the police.

A. Well, when I first went after I heard that Donald was accused there of - sentenced to jail for stabbing Sandy Seale.

Q. It was after he was sentenced to jail.

25. A. Yeah, right.

Q. So that would've been after Donald Marshall's trial.

A. Yeah, that would be after his trial.

Q. Do you remember what month that was?

30. A. I don't remember the month.

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MR. MacNEIL, Direct Examination

Q. Well, this happened in May of '71.

A. Yeah.

Q. Could you tell us how long after that in months or years?

5.

A. It was after his trial there, a week after his trial.

Q. I see. Okay. So how did you feel between the stabbing, the incident that night in May and when you finally went to the police? How did that affect you?

10.

A. Terrible. Terrible. It affected me terrible, I couldn't sleep, I was walking around. It's something, you know, you'd have to go through it, you'd have to be there yourself to see it, you know. You'd have to be in my shoes to really know how you'd feel.

15.

Q. How did it affect your drinking?

A. It affected my drinking kind of bad there too because I started hitting the bottle after that, real hard, I started hitting the bottle real hard after that.

Q. Thank you.

THE COURT: Cross-examine.

20.

CROSS-EXAMINATION

MR. WINTERMANS: Mr. MacNeil, have you ever been convicted of any crimes?

A. Pardon?

Q. Have you ever been convicted of any crime?

25.

A. Yeah.

Q. What?

A. I was put in jail for being drunk.

Q. When was that?

A. Oh, that was a few times.

Q. Other than that?

30.

A. Nothing. Not that I know of.

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MR. MacNEIL, Cross-Examination

0. Q. Now Mr. MacNeil, you were walking through the park with Mr. Ebsary on your way to Mr. Ebsary's residence, is that correct?

A. Um-hmm.

5. Q. Is that right?

A. Right. Yeah.

Q. And it was quite dark in the park back then.

A. Well, it wasn't really that dark because there was a light, there was a light there. It wasn't really pitch dark.

10. Q. And you continued through the park and you say that you - did you say bumped into Mr. Marshall and Mr. Seale?

A. Um-hmm.

Q. Could you describe where they came from, as far as you can recall?

15. A. Well, they just came up abreast on us there on Crescent Street.

Q. Did they come from in front of you or did they come from behind you?

A. I'd say in front.

20. Q. And were you and Mr. Ebsary standing around on Crescent Street or in the park or were you just walking straight through?

A. No, just walking straight through, going right home.

25. Q. And you were minding your own business, were you?

A. Right on.

Q. And these two held you up, you described it as a holdup.

MR. EDWARDS: No, he didn't.

30. MR. WINTERMANS: Well, he said a holdup, a robbery or a holdup. Is that what you said?

0. 513.

MR. MacNEIL, Cross-Examination

A. Um-hmm.

Q. And you said that you didn't see any weapon in Mr. Seale's hands, is that right?

A. No, I did not.

5. Q. You don't recall having seen any weapon in his hands.

A. No, I did not. No.

Q. When Marshall put your arm up behind your back, were you afraid at that moment?

10. A. Yes, I was. I was afraid. I just frozed. I was afraid.

Q. Were you afraid that you might be hurt?

A. Yeah, I was afraid.

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

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

15. MR. WINTERMANS: My Lord, might I ask one omitted question?

THE COURT: All right.

MR. WINTERMANS: Is your father alive or dead?

A. My father just died at Christmas time.

Q. Thank you.

20. WITNESS WITHDREW.

25.

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514.

0. COURT RECESSED. (2:21 p.m.)COURT RESUMED. (2:46)DISCUSSION

5. MR. WINTERMANS: My Lord, I'm making an application under Section 643.1 of the Criminal Code to read in the testimony of a witness, Brian Doucette, who we have tried to find and he is a person who lived at 120 Crescent Street, the residence where help was sought and the person appears to have disappeared and he doesn't live at 120 Crescent Street. I've had a person try to find him by calling various government

10. offices and there's no sign of his whereabouts.

MR. EDWARDS: The Crown is not opposed to the application.

15. MR. WINTERMANS: My learned friend is agreeable to doing that. However, I would ask that his evidence not be read in first because I have a doctor here who has an office full of patients and he's graciously obliged me by coming over here. I'd like to call him first.

THE COURT: So it is your intention then to call evidence.

20. MR. WINTERMANS: It is.

THE COURT: You don't oppose the motion?

MR. EDWARDS: I don't oppose . .

THE COURT: Did he testify before? Where did he testify before?

25. MR. EDWARDS: In 1971 at the preliminary inquiry in July of '71, that'd be the preliminary inquiry in Donald Marshall's trial.

30. I guess the only difference is that we don't have a transcript which has not been highlighted so the Crown would be agreeable to Your Lordship reading it in and as we did with Constable Mroz' testimony putting in the

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0. DISCUSSION

transcript as an exhibit. When you think about it, that's all they would get really, if Mr. Doucette was here.

THE COURT: Are the provisions in 643 met?

5.

MR. EDWARDS: I'm admitting - there was one there about him being near the area.

THE COURT: Is he absent from Canada?

MR. EDWARDS: Well, I don't know if he's absent from Canada or not, I don't know where he is. He might be deceased.

10.

THE COURT: You're admitting . .

MR. EDWARDS: I'm admitting - I'm not contesting the application.

THE COURT: All right, we'll hear it in any event. You're not objecting to it.

Well, we want the jury in now, don't we?

15.

JURY RETURNED. (2:50 p.m.)

JURY POLLED. All present.

MR. WINTERMANS: I'd like to make a very short address to the jury.

20.

Ladies and gentlemen of the jury, my name is Luke Wintermans, the lawyer representing Roy Newman Ebsary. I'm a Legal Aid lawyer here in Sydney and with me at the table is Mr. Blair Kasouf who is assisting me in the matter. We've heard a number of witnesses from the Prosecution and I am going to call some evidence, even though I don't really have to, because the . . question

25.

comes down to whether or not you believe Donald Marshall telling the truth and nothing but the truth. So to that end, I would like to call a few witnesses and I think that I can show you that if you're not already convinced that he's contradicted himself in previous testimony, that even his testimony which you heard on Friday is

30.

wrong in certain parts, and I intend to show that as best

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MR. WINTERMANS ADDRESSES JURY

I can. I apologize that I can't present more evidence but you can understand that this happened an awfully long time ago. So I'd like to call Dr. Ryba.

DR. RYBA duly sworn, testified:

5.

DIRECT EXAMINATION

MR. WINTERMANS: Doctor, could you state your name and address of where you work, please?

A. My full name is Edward John Ryba, I'm an optometrist here in Sydney and I practice at 20 Townsend Street in Sydney.

10.

THE COURT: How do you spell the Ryba?

A. R-y-b-a.

MR. WINTERMANS: And do you know Roy Newman Ebsary?

A. Only on a professional basis.

Q. Do you see him in the court room today?

A. Yes, I do.

15.

(Witness identifies accused).

Q. What is your occupation?

A. I'm an optometrist.

Q. What does that mean? Would you explain that to the jury?

20.

A. I graduated from the University of Waterloo with a degree of Doctor of Optometry in May of '83.

Q. And what does that mean, Doctor of Optometry?

A. My occupation is the diagnosing and prescribing of some aids dealing with eyes, eyesight.

Q. What about glasses?

25.

A. That's part of it, yes.

Q. What do you do in relation to glasses?

A. I prescribe them and dispense.

Q. And did you prescribe any glasses for

Mr. Ebsary?

30.

A. Yes, I did.

Q. When did that take place?

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DR. RYBA, Direct Examination

A. This morning.

Q. This morning? And do you have the results of any examination that you . .

A. I brought my records with me.

Q. Okay. Now what did you do when Mr. Ebsary came in? First of all let me ask you, have you ever examined Mr. Ebsary before?

A. No, I haven't.

Q. You haven't. Okay. So you examined him this morning.

A. Yes.

Q. And what can you say as to his vision without wearing glasses?

A. This morning, 73 years of age, his vision without glasses is 20 over 200 which makes him essentially legally blind, without glasses.

Q. And what does that mean in terms of his ability, if I could put a hypothetical position to you. Let's assume that Mr. Ebsary were in a poorly lighted area and someone within three to five feet in front of him.

MR. EDWARDS: My Lord, I'm going to enter an objection at this point. Surely my learned friend has not yet laid the groundwork for that type of question. What possible relevance has Mr. Ebsary's ability to see at this time in the hypothetical situation, and we're talking about something that happened 14 years ago. Therefore in order for a relevant hypothetical to be put to the witness there's some groundwork that has to be first laid and further I notice that the witness has some documentation in his hand and I would ask that before the witness refers to that, if he does have to refer to it in giving his evidence, that I be given an opportunity to examine it.

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0. DR. RYBA, Direct Examination

MR. WINTERMANS: Certainly, Mr. Edwards, if you'd like to examine those documents.

5. THE COURT: Well, I think that Crown counsel is right, that you haven't laid the grounds for a hypothetical question. I'm concerned about the relevance myself. A person could be blind today but no indication of what he was 15 years ago.

MR. WINTERMANS: I was going to ask him to - based on his examination today, whether or not he could give any opinion evidence as to Mr. Ebsary's eyesight in 1971.

10. THE COURT: Well, do you feel you've qualified him as an expert?

MR. WINTERMANS: Perhaps I should continue on . .

THE COURT: He can't give opinion evidence until he's qualified as an expert.

15. MR. WINTERMANS: Would you go over your qualifications in detail, please?

A. Yes. I studied six years post-secondary, two years prerequisite science at St. Francis Xavier University . .

20. THE COURT: You're going a little too fast and a little too low. I can't hear you. Six years post . . .

A. Secondary education, two years science at St. Francis Xavier University in Antigonish, and four years at University of Waterloo, Waterloo, Ontario.

25. Q. And you told me earlier you graduated in 1983?

A. Correct.

MR. WINTERMANS: And what degree did you say you held?

A. Doctor of Optometry.

30. Q. Doctor of Optometry. And have you ever given opinion evidence in a court of law before?

0. 519.

DR. RYBA, Direct Examination

A. No, I haven't.

Q. What method of examination did you use this morning in relation to Mr. Ebsary?

5. A. Standard office procedures. The acuity is measured, the Snellen acuity to the chart, and calibrated for the distance which you're sitting. My office happens to be 17 feet so the letters are calibrated for 17 feet.

MR. EDWARDS: I'll admit his qualifications, My Lord.

10.

THE COURT: So you admit his qualifications.

MR. EDWARDS: Yes.

THE COURT: Which entitles him to give . .

MR. EDWARDS: To give opinion evidence in the field of optometry.

15.

THE COURT: Well, he's qualified then as an expert in the field of optometry.

MR. WINTERMANS: Now let me put a hypothetical situation before you. Assume that Mr. Ebsary is in a poorly lighted area with a person within 3 to 5 feet in front of him.

20.

MR. EDWARDS: Objection, My Lord. It's the same objection. He's qualified him but that's only half the battle. He still hasn't gotten from this witness anything about the accused's vision in 1971 and it seems to me he's got to make some relation between the examination done today and the accused's vision in '71 before he can put the hypothetical to him.

25.

THE COURT: I don't see how, counsel, that you can - if your hypothetical is relating to today . .

MR. WINTERMANS: And then I was going to ask him . .

30.

THE COURT: That's one thing, but it's a long leap from today to 1971 backwards.

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0. DR. RYBA, Direct Examination
MR. WINTERMANS: It certainly is, My Lord.
 Perhaps I should just ask him . .

5. THE COURT: You can go ahead and ask your
 assumptions, but you're talking about - at this stage
 you have to be talking about today.

MR. WINTERMANS: Yes. First I'll talk about today.
 Then we'll go back. Let's assume that Mr. Ebsary is in
 a poorly lighted area with a person 3 to 5 feet in front
 of him today. What can you say as to Mr. Ebsary's vision?

A. Is he wearing his glasses or not?

10. Q. He's not wearing his glasses.

A. Today he'd have very much difficulty in
 recognizing that person at that distance in poor lighting
 unless the person was familiar to him. In other words if
 it was a friend he could tell from the outline of the body
 shape, the hair, possibly the colour of the clothing.

15. Who this person might've been.

Q. And with his glasses on?

A. Much better. A much better chance and
 probably could, with his glasses on.

20. Q. Now based on your examination of him today
 can you give an opinion as to Mr. Ebsary's eyesight 14
 years ago?

A. Yes, I can.

Q. What can you say, first of all in normal
 circumstances and without any . . .

25. A. His vision would've been better 14 years ago.
 From his acuity today I can say that at about that time
 with two eyes together, vision unaided would've been
 about 20 over 60 which would be somewhere in the vicinity
 of 60% vision without glasses.

THE COURT: 16?

30. A. 60.

521.

0. DR. RYBA, Direct Examination

MR. WINTERMANS: And what can you say as to his ability to see in the hypothetical when he was 60 years old?

A. The idea is what do we expect him to see.

5. Q. When you describe first of all generally whether or not you feel you can give a strong opinion on his eyesight at that time.

A. the quality of what he can and cannot see depends on how big an object are you going to ask him to see. Could he see a fire truck or could he see an ant? There's a difference between those two things.

10. Q. Let me ask you first of all, though, whether or not you can give what you would feel a strong opinion.

MR. EDWARDS: Objection. This is his own witness.

THE COURT: You can't . . .

MR. WINTERMANS: I'm just trying to . . .

15. THE COURT: I don't care what you're trying to do. It's your witness and you cannot lead the witness. You can't ask him the question that you just asked him. in that manner.

MR. WINTERMANS: Based on your examination today of Mr. Ebsary, can you give an opinion as to his eyesight in 1971?

20. A. And I said yes, I could.

Q. What do you - could you explain how you could . . .

25. A. Today Mr. Ebsary has corrected 95% vision with his glasses which is pretty much as well as anyone else in this court room today. Now not quite but pretty close to it.

THE COURT: Today he has what?

A. 20 over 25 which is 95%.

Q. That's with glasses.

30. A. With glasses.

0. 522.

DR. RYBA, Direct Examination

And the reason why it's 2200 without glasses is because he is far sighted and far sightedness is one of the things that a body can accommodate for, there's a lens inside your eye which can change shape to focus in the image and as time goes by this lens becomes more and more rigid and loses shape; eventually when someone reaches about 45 years of age they have trouble reading. The lens can no longer change shape and they're holding things away like this and some people here can remember that happening to themselves. Well, for this far sightedness at 60 years of age, there's about one unit of accommodation left and this gentleman is about two units far sighted which means he can accommodate for about half of his correction which would give him vision somewhere in the vicinity of about 20/60.

10.
15. MR. WINTERMANS: Now you're making this, you're basing this opinion on data that you have here today, correct?

A. Correct.

Q. Are you making any assumptions when you talk about his eyesight in 1971?

20. A. Treating him as a generalization if that's what you mean, usual trend to calculate it back, assuming that his prescription hasn't changed much. Usually if there is a change it's for the worse so if anything it would've been better than that at that point in time.

25. Q. Than what it is now, you mean?

A. Yes. His correction, if you look at it, refraction is about +2 today. And in 1970 or thereabouts it may still have been +2 or it may have been +150, +175 but very, very doubtful that it was any more than that. Most changes are for the worse and not for the better.

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523.

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DR. RYBA, Direct Examination

Q. Thank you very much.

MR. EDWARDS: I have no questions, My Lord.WITNESS WITHDREW.

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0. Mrs. Strowbridge called, duly sworn, testified:

DIRECT EXAMINATION

MR. WINTERMANS: Could you state your full name, and address, please?

A. Rowena Dorcas Strowbridge, 191 Bentinck.

5. Q. And that's in Sydney?

A. In Sydney.

THE COURT: Is that Rowena?

A. Right.

MR. WINTERMANS: And do you know Roy Newman

Ebsary?

10. A. I do.

Q. Do you see him in court today?

A. Yes, I do.

(Witness identifies accused).

Q. Can you describe how you know Mr. Ebsary, what your relationship with Mr. Ebsary is?

15. A. I take care of Mr. Ebsary.

Q. You take care of him, do you?

A. Yeah.

Q. How long have you been taking care of him?

A. I was taking care of him since I came to

20. Sydney.

Q. And that was approximately when?

A. Last year, in August.

Q. Last year.

A. '83.

Q. '83, was it?

25. A. Yeah.

Q. And when you say you look after him, what do you mean by that?

A. I see that he gets his meals and that he keeps his appointments with doctors, clean his apartment
30. for him.

525.

0. MRS. STROWBRIDGE, Direct Examination

Q. I see. Now Mr. Ebsary doesn't have any glasses on, and hasn't had any glasses on throughout this trial. Could you tell the jury why that is?

5. A. Mr. Ebsary's glasses were misplaced at the City Hospital. They were on his eyes and they were taken from him and when he was brought back from the hospital he didn't have his glasses and cannot locate them.

Q. I see. Have you taken any steps to try and get glasses for him?

A. Yes, I have.

10. Q. And when did you do that?

A. I contacted D.V.A.

Q. D.V.A.?

A. Right. The Veterans Affairs.

Q. Veterans Affairs?

15. A. to obtain authorization to proceed with more glasses for Mr. Ebsary.

Q. And when did you do that?

A. I received a letter from them one day last week to make an appointment with the specialist, to get his eyes redone.

Q. I see. And when was the appointment?

20. A. For 8:30 this morning.

Q. This morning, was it? And did he receive glasses at that time?

A. This morning?

Q. Yeah.

25. A. No, he hasn't received them today, they order them.

Q. I see. Thank you very much. No more questions.

MR. EDWARDS: No questions, My Lord.

30. WITNESS WITHDREW.

526.

0. THE COURT: Thank you. The only comment, Mr. Wintermans, I don't see much relevance in that testimony. We're more concerned with events that happened a long time ago. I don't want to know about his life today, unless it's relevant.

5. MR. DECKER called, sworn, testified:

DIRECT EXAMINATION

MR. WINTERMANS: Could you state your full name and occupation, please?

A. Frederick Roy Blandford Decker, I'm officer in charge of the Sydney Weather Office.

10. Q. The weather office. Where's that located?

A. That's located at the Sydney Airport.

Q. And that's how far from the City of Sydney?

A. That's approximately 10 to 11 miles in a straight line.

Q. I see. Now what are your duties there?

15. A. Well, I administer the office program and at times help with the forecasting program.

Q. Now have you had an opportunity to examine the records of weather in May of 1971?

A. Yes, I have.

20. Q. And do you have the results of that search with you?

A. Yes, I do.

Q. Can you tell the jury what the weather was like on May the 28th, 1971?

A. Any particular time?

25. Q. The evening of May the 18th, 1971. Perhaps you could just go through the weather from say noon, May 28th to noon, May 29th.

30. A. Okay. Okay. These are observations as they were observed at the Sydney Weather Office which is located at the Sydney Airport. Noon on the 28th of May,

527.

0. MR. DECKER, Direct Examination

1971 we had overcast skies with some light rain showers and the light rain showers persisted until approximately 1:45 in the afternoon when it changed to a steady rain and we also had some fog. Now the rain and fog continued through the afternoon into the evening until - one second
5. here now - 8:59 in the evening. At 8:59 in the evening the steady rain changed to just a very light rain and some drizzle and fog was still occurring and this type of condition continued until approximately 11 o'clock at night. From 11 o'clock in the evening of the 28th until
10. midnight it remained overcast with some fog at the airport and starting at about 1:30, 2:00 in the morning the clouds gradually started to dissipate and by 5 a.m. on the morning of the 29th there was just a few clouds in the area . .

THE COURT: 5 a.m. did you say?

15. A. 5 a.m.

MR. WINTERMANS: Now you said that the weather office is out by the airport, is that right?

A. That's correct, yes.

20. Q. And what can you say as to the relation between the weather there and the weather in Wentworth Park in Sydney?

A. Okay, well, I don't have a copy of the weather maps but I was talking with our regional office

THE COURT: You can't tell what anybody said. What you did as a result of any conversations.

25. A. I beg your pardon, Your Honour?

THE COURT: You can only tell what you did as a result of any conversations.

A. Okay.

THE COURT: Or saw, or observed.

30. A. As a result of conversation with my regional office, I've come to know what the weather pattern was.

528.

0. MR. DECKER, Direct Examination

MR. EDWARDS: Objection. He's just telling us in another way what the regional office told him.

THE COURT: Yes, you're going to have to be careful at this stage.

5. MR. WINTERMANS: All right. Can you answer the question . . .

THE COURT: Without any reference to . . .

MR. WINTERMANS: Without any reference to the conversations you may have had.

10. A. Okay. From looking at the records that I have in front of me, if one looks at the weather that was reported at the weather office and the type of winds and the direction of winds that we were getting at that time, it would indicate that there was a low pressure area that was giving us the weather and not just an isolated, this wasn't just isolated showers or anything, it was a weather system that was fairly
15. broad in area and I would say that this weather associated with the low pressure area encompassed all of Cape Breton Island for the day time, and as evening started to - as it progressed later into the evening and the low moved away towards Newfoundland, the
20. weather would gradually improve starting at the western part of Cape Breton, let's say the Canso area and it gradually moved eastward as the evening progressed. And then as it moved further out of our area by 5 o'clock in the morning of course our weather had substantially
25. improved, in fact very near clear conditions.

THE COURT: Gradually moved in which direction, westward did you say?

A. I beg your pardon?

THE COURT: The system gradually moved westward?

30. A. No, the system moved eastward, it cleared from the west. The weather itself cleared from the west.

529.

0. MR. DECKER, Direct Examination
MR. WINTERMANS: Can you say what the weather was like in Wentworth Park from May 28th, 1971 at approximately 10:00 p.m. until 1:00 a.m. based on your records there?
5. A. Based on what I have right here I would expect the weather to be in the Sydney area proper, Sydney proper, to be overcast with some very light drizzle, perhaps a little bit of very light rain. That's what I would expect the weather to be.
Q. Thank you very much. No more questions.
10. THE COURT: Cross-examine?
MR. EDWARDS: Yes, My Lord, if I could just have a moment, please. I believe in your direct testimony, Mr. Decker, you stated that the fog and drizzle stayed till 11 p.m. and then between 11 and 12 it was overcast with some fog at the airport.
15. A. Yes, that's correct.
Q. And the clearing was coming from the west.
A. That's correct.
Q. And Sydney is albeit slightly west of the airport.
20. A. Yes. That's true.
Q. So between 11 and 12 midnight, isn't it possible that it was fairly clear in Sydney at that time?
A. I wouldn't expect it to be clear. I would expect to see the conditions clearing in Sydney quicker or earlier than what they did at the airport.
25. Q. Than what they did at the airport. So it's possible then that if at midnight there was a slight drizzle at the airport, that it might be marginally better in Sydney?
A. Marginally better, yes.
30. Q. Thank you.

530.

MR. DECKER, Re-Examination

0. MR. WINTERMANS: Mr. Decker, how fast was this weather moving?

A. With what I have here it is impossible to say exactly.

Q. Thank you.

5. THE COURT: Thank you, Sir.

WITNESS WITHDREW. _____

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0. DAVID RATCHFORD duly called, sworn, testified:

DIRECT EXAMINATION

MR. WINTERMANS: Would you state your full name and address, please?

5. A. David Franklin Ratchford, I live at 296 Charlotte Street.

Q. In Sydney, is it?

A. Yes.

Q. And what is your occupation?

A. I'm a writer and an actor.

Q. A writer and an actor?

10. A. Yes.

Q. Now do you know Donna Ebsary?

A. Yes, I do.

Q. And when did you first know her?

15. A. I met Donna in the early part of 1974. She was a student at Sydney Academy at the time and I met her while giving a lecture to a group of students there one afternoon.

Q. What were you lecturing?

A. I was lecturing them on physical fitness and more specifically to one area of the Martial Arts system.

20. Q. And could you explain to the jury what your qualifications are in respect to Martial Arts?

A. Yes. I practiced Martial Arts since I was approximately 14 years old and . . .

25. MR. EDWARDS: My Lord, objection. He's on direct, but is this relevant? Unless he's going to qualify him to give opinion evidence in the Martial Arts . . .

MR. WINTERMANS: No, I'm just . . .

THE COURT: You're stretching relevancy pretty much.

30. MR. WINTERMANS: Okay. Did you have any kind of a school in 1974?

532.

0. D. RATCHFORD, Direct Examination
 A. Yes, I did.
 Q. What kind of a school was that?
 A. It was a school for Martial Arts, physical fitness and health.
5. Q. And where was that located?
 A. At 274 Charlotte Street.
 Q. In Sydney.
 A. Uh-huh.
 Q. And did you - you were saying how you first met Donna Ebsary, were you?
10. A. Yes.
 Q. And that was when you were giving a lecture at . .
 A. At the Academy.
 Q. Sydney Academy where she was a student?
 A. Yes.
 Q. And did you get to know her any better after that?
15. A. Yes, I got to know her very well after that. She remained a student with me for over 7½ years.
 Q. I see. And did she ever tell you . .
- THE COURT: Wait now. You want to be careful. You're leading, and think about your question so that it's not leading. You can ask him what if anything she told him.
20. MR. EDWARDS: My Lord, if I may rise on that point. I would submit that that would be the case had he put to Donna Ebsary on the stand, when she was on the witness stand in cross-examination he had said to her now you told David Ratchford X, is that correct, and she said no, I told him Y. Well, now if he was calling David Ratchford to say that she did in fact say X, that would be legitimate, had he put it to her. But my recollection is, all he asked Donna Ebsary was whether or not she had ever confided in David Ratchford and as I recall, her answer
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 30.

533.

0.

D. RATCHFORD, Direct Examination

was yes. And secondly, the other point I think with respect to Ratchford, he asked her whether or not she had ever accompanied Ratchford to the police station and her answer to that was 'no.' On the second point
5. it would be legitimate for him to ask Mr. Ratchford about that, but the conversation, it's not fair to Donna Ebsary.

THE COURT: Yes, I understand that.

MR. WINTERMANS: What I proposed to do, My Lord, was to put . .

10.

THE COURT: Well, wait now. I don't know how far this will go on. I think the jury should be removed.

JURY RETIRED.

15.

MR. WINTERMANS: What I was going to ask the witness, My Lord, was whether or not he had had conversation with Donna Ebsary concerning the night of May 28th, 1971, the night Sandy Seale died.

THE COURT: Okay. All right.

MR. WINTERMANS: Then I was going to ask did Donna Ebsary tell you what James MacNeil said when he entered the house.

20.

THE COURT: First, he's your witness and aren't you leading him, to start off with, and secondly, if he says what Donna Ebsary says, is it not hearsay?

MR. WINTERMANS: Well, it's a prior inconsistent statement is what I'm trying to . .

25.

THE COURT: Yes. By whom?

MR. WINTERMANS: By Donna Ebsary.

THE COURT: You can't do it that way.

MR. EDWARDS: That's right.

30.

THE COURT: This witness didn't make any prior inconsistent statements that I know of yet.

534.

0. DISCUSSION

You should have asked Donna Ebsary what she said. And then if she indicated what she said, and you came along with another witness and you say what did she say, presume you got over all other hurdles, what did she tell you? And the witness gave some different answer then you might have some grounds for it, but what grounds have you got for it now?

5.

MR. WINTERMANS: Yes. Fine, My Lord.

10.

THE COURT: You didn't ask her what she said. I checked back on my notes and the note I have is that she confided in him. You don't disagree with that, do you?

MR. WINTERMANS: No.

THE COURT: You don't disagree that that's what my note is correct, that's what she said.

15.

MR. WINTERMANS: No. Well then, there are no more questions of this witness.

THE COURT: Well, you can't ask . .

MR. WINTERMANS: Well, I could ask one, I suppose.

20.

THE COURT: Well, you can ask any question when the jury is here that hasn't been objected to or isn't objected to, but you cannot ask this witness what she said to him in the circumstances as they exist here. Because we have no knowledge of what she said to him and she has already testified. The system just would not permit that.

All right. Call the jury back.

25.

JURY RETURNED.

JURY POLLED. All present.

MR. WINTERMANS: No questions, My Lord.

THE COURT: Any cross-examination?

MR. EDWARDS: No, My Lord.

30.

THE COURT: All right, thank you, Sir.

WITNESS WITHDREW.

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0. DISCUSSION

MR. WINTERMANS: Well, My Lord, I would ask that Your Lordship read in the evidence of Brian Doucette from the Preliminary Inquiry evidence which he gave in 1971 in relation to the Donald Marshall charge of murder.

5. MR. EDWARDS: The Crown agrees, My Lord.THE COURT: All right.

MR. WINTERMANS: I have a copy, a Xerox copy which my learned friend has graciously agreed that Your Lordship will follow.

MR. EDWARDS: Could read in.10. MR. WINTERMANS: Could read in from. I apologize for the condition of the transcript, it's a rather old one and you'll note what appears to be print on the bottom of the first page but what it really is is a trace through from the next page, so apparently the paper must've been really thin.15. THE COURT: I'll just have a look at it. The bottom of page 44 has something on it which is illegible.

MR. EDWARDS: That's correct, My Lord. It's simply a reprint from the next page.

20. THE COURT: I see what it is. It shouldn't be on there.MR. EDWARDS: That's right.

MR. WINTERMANS: There are some other spots on the transcript too that are like that.

25. THE COURT: I just want to see that I can read it, that's all.

MR. WINTERMANS: My learned friend also has a transcript of the same and perhaps his might be better, My Lord. If Your Lordship would like to . . .

30. THE COURT: I'm all right to the top of page 47. There's a question there, it looks like 'do you know what'

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0. DISCUSSION

and something 'it was' and can you tell me what that question is?

MR. EDWARDS: 'Do you know what doctor it was?'

5. THE COURT: All right. Members of the jury, there was a witness, Brian Doucette who testified at the Preliminary Inquiry of the original trial back in 1971. That person is unavailable now and I have been asked by counsel for the Defence to read his testimony in as part of the testimony in this case and counsel for the Crown has agreed that it can be read in.

10. The witness is Brian Doucette. He was sworn, and then questioned as follows:

"Q Your name?

A. Brian Doucette.

Q. Where do you reside?

A. 120 Crescent Street.

Q. The City of Sydney,
County of Cape Breton,
Province of Nova Scotia?

15. A. Yes, Sir.

Q. Were you at home on the
28th day of May, 1971?

A. Yes, Sir.

Q. Can you read a plan, Sir?

A. Yes, Sir.

Q. I show you Exhibit M-1.

20. Can you show His Honour
where your home is on
that plan?"

(and then he indicates on the plan).

"Q. That is the house on the
east side of the Crescent
Apartments?

A. Yes.

25. Q. And you were there during
the late evening hours at
your house?

A. Yes.

Q. What if anything took
place, Sir?

30. A. Between 11:30 and 12:00 I
was sitting watching tele-
vision and I heard two

TRANSCRIPT OF B. DOUCETTE READ

0. voices in our front porch
and I proceeded to go see
who was there, and they
knocked on the door. I
opened the door and they
asked to call an ambulance.
5. Q. Who was it, do you know?
A. Mr. Marshall and there was
a young fellow with him.
Q. Donald Marshall was there
when this conversation
took place?
A. Yes.
Q. What did they ask?
A. They asked if I would call
an ambulance.
10. Q. What did you do?
A. I asked them what happened
and they said there was a
person lying over there
hurt, please call an
ambulance, and I said I
will call the police first
and ask for an ambulance
later, after the police were
called.
15. Q. And then what took place?
A. After I phoned the police
station I proceeded to go
outside over to where the
victim was lying on the
street.
20. Q. What took place while you
were there, if anything?
A. There was a young fellow
down alongside of him
comforting him.
Holding him down, and I
proceeded to keep him
still. He tried to get
up, I held him in place,
then we waited for the
ambulance to arrive.
25. Q. Did the ambulance arrive?
A. Yes.
Q. What took place then?
A. We proceeded to put him
on the stretcher and we
put him in the ambulance
and I went in the ambulance
to the hospital with him.
- 30.

538.

TRANSCRIPT OF B. DOUCETTE READ

0. Q. What happened at the hospital?
- A. He was taken to the Outpatients room where his clothing was removed and a doctor was present.
5. Q. Who was removing his clothing?
- A. Leo Currie, the doctor, orderly and I.
- Q. Do you know Mr. Leo Currie?
- A. Yes.
- Q. What is his occupation?
- A. He operates an ambulance service.
10. Q. Did you remain there until someone else arrived?
- A. I remained there until the commissionaire came in and told me to leave.
- Q. Were you there when the doctor arrived?
- A. Yes.
- Q. Did you see that doctor give evidence here today?
15. A. Yes.
- Q. Do you know what doctor it was?
- A. I don't know his name."

THE COURT: Now those questions were asked by . .

MR. EDWARDS: Mr. MacNeil.

20. THE COURT: Mr. MacNeil. And Mr. Rosenblum, I presume this is cross-examination?

MR. EDWARDS: Yes.

THE COURT: Mr. Rosenblum on cross-examination was questioning the witness:

25. "Q. Did you notice any wound on Mr. Marshall?
- A. Yes, he showed a wound on his arm when he came to the door.
- Q. A long cut, from the wrist to the elbow?
- A. Yes.
30. Q. Was there any blood?
- A. There was no sign of blood.

539.

STATEMENT OF B. DOUCETTE READ

0. Q. But this cut was noticeable and it appeared to be very recent?
A. Yes.
- Q. It was Marshall who asked you to call the ambulance, was it?
5. A. And the young fellow with him.
Q. Do you know who the other fellow was with Marshall?
A. No.
Q. Do you see him here today?
A. Yes.
Q. Was he already a witness?
A. Yes.
Q. Did Marshall remain there until you made the phone call?
10. A. No, they left as soon as I went to the phone and closed the door.
Q. When you came to where Mr. Seale was lying on the ground, was Marshall there then?
A. No.
Q. Did you see Mr. Marshall any time after that, after he requested that you call an ambulance?
15. A. Yes, when I was coming out of the house I seen him taken in the police car.
Q. Were the sleeves of the jacket Mr. Marshall was wearing rolled up?
20. A. It seemed like one of them was, the one with the cut.
Q. Were you outside of the house when the ambulance arrived?
A. I was alongside of Seale when the ambulance arrived, yes.
Q. Who arrived first, the police or the ambulance?
25. A. The police.
Q. Was Marshall there when the police arrived?
A. I was on the phone when the first police car arrived.
Q. You saw him getting into the police car anyway?
A. No, I didn't see him get in.
30. But when I was going out the

540.

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STATEMENT OF B. DOUCETTE READ

front door of my home
I saw him in the police
car.

Q. It would appear to you
he remained there until
the police arrived?

5.

A. Yes.

Q. Were you close up to
Marshall when he asked
you to call the ambulance?

A. Yes.

Q. Was there anything to
indicate the use of liquor?

A. I did not notice at the time.

Q. Did you smell liquor off his
breath?

10.

A. No, I didn't."

THE COURT: And that was the testimony of Brian
Doucette, which is now part of this trial as is the
testimony of Constable Mroz which I read earlier. You'd
better mark it as an exhibit, Mr. Wintermans.

15.

MR. WINTERMANS: Yes, My Lord.

MR. EDWARDS: I have no objection, My Lord.

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MRS. MERLE DAVIS called, sworn, testified:

DIRECT EXAMINATION

MR. WINTERMANS: Could you state your full name and occupation, please?

A. Merle Faye Davis, Registered Nurse.

5.

Q. Speak up a little bit please.

THE COURT: Sorry, Merle is it?

A. Yes. M-e-r-l-e.

MR. WINTERMANS: Merle Faye Davis, is that right?

A. Yes.

Q. And what is your occupation?

10.

A. I'm night supervisor at the City Hospital.

Q. And which City Hospital is that?

A. Sydney City Hospital on Hospital Street.

Q. And what was your occupation in 1971, May 28th, 1971?

A. I was acting night supervisor.

15.

Q. At the City Hospital?

A. At the City Hospital.

Q. In the City of Sydney.

A. Yes.

Q. And do you recall having seen Donald Marshall that evening?

20.

A. Yes.

Q. Do you recall what the circumstances were on seeing him?

A. Well, I remember him being brought in and he had a laceration on his left arm.

25.

Q. When you say a laceration, what do you mean?

A. Well, it's a tear or break in the skin.

That's what a laceration is.

Q. And did you notice anything about the laceration, the cut?

30.

A. Nothing unusual, no. It was approximately 3"

542.

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MRS. DAVIS, Direct Examination

long.

Q. Three inches long.

A. And it was what we would call superficial.

Q. Superficial. And . . .

5.

A. It wasn't bleeding at the time, it was just, you know it was just the skin was broken.

Q. It was not bleeding?

A. It was not bleeding, no.

Q. Was there any sign of blood at all?

A. No.

10.

MR. EDWARDS: Objection.

THE COURT: That's pretty leading.

MR. WINTERMANS: All right.

MR. EDWARDS: You're on Direct now, Sir.

MR. WINTERMANS: What can you say as to - you said it wasn't bleeding. Can you be any more specific than that?

15.

A. Well, it was just an open, a very superficial open wound. There was no blood so I just left him there until the doctor came to suture him.

Q. Did you also have occasion to see Sandy Seale that night?

20.

A. Yes.

Q. And what can you say if anything about what you had done in relation to him?

A. Well, he was brought in, very shocky, he was complaining of pain. He had a wound in his abdomen and part of the bowel was protruding through the wound, probably about the size of my fist.

25.

Q. Do you recall him having said anything at that time?

A. No, Sir, he didn't.

30.

Q. That's alal the questions I have.

0. 543.

THE COURT: Cross-examine?

MR. EDWARDS: Yes.

CROSS-EXAMINATION

MR. EDWARDS: Mrs. Davis, as far as you know
Donald Marshall's arm was sutured?

5. A. It was apparently sutured. I was not there
when it was done.

Q. Yes. Who treated him, Doctor Virick?

A. Yes, Sir.

Q. Thank you.

THE COURT: Any re-examination?

10. MR. WINTERMANS: Nothing, My Lord.

THE COURT: Did you say none? All right.
Thank you.

WITNESS WITHDREW.

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544.

0. DISCUSSION

MR. WINTERMANS: My Lord, my next witness is a witness who could not be here until tomorrow. I have a message that he will be here at 9:00 tomorrow morning.

5. THE COURT: Well, he'll have to sit and wait till 9:30 because I'm not coming until 9:30 tomorrow morning.

MR. WINTERMANS: And since it's . .

THE COURT: Is he your last witness or do you have other witnesses?

10. MR. WINTERMANS: He's the last witness I intend to call. Perhaps since we started at 1:30 the jury is getting a little tired now anyway.

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