



Q. Did you see that jacket before?

A. Yes I did.

Q. Where did you see it?

A. Roy Gould had the jacket on every once in awhile.

Q. Did you see it with your son?

A. Not on him, no.

Q. Did you see him with it?

A. No.

NO QUESTIONS BY DEFENCE

Det. Michael R. MacDonald, sworn

By Mr. MacNeil

Q. What is your full name?

A. Michael MacDonald.

Q. What is your occupation Mr. MacDonald?

A. Detective Sergeant with the City of Sydney Police Department

Q. How long have you been acting as such?

A. Six (6) years.

Q. Were you acting as such on the 28th day of May, 1971?

A. Yes sir.

Q. And also on the 22nd day of June, 1971?

A. Yes sir.

Q. Do you know Mr. Roy Gould?

A. Yes sir.

Q. And did you see him on the 22nd day of June, 1971?

A. I did.

Q. What took place between you and Mr. Gould?

A. Mr. Roy Gould landed at the Police Station in the City of Sydney Police Station and turned over to me one jacket belonging to himself.

Q. Describe the jacket? Who commit the injury?

A. Yellow, outside yellow, white strips, inside white.

- Q. And what did you do with this jacket?
- A. The jacket was in my care until I went to the F.C.M.F. Lab. in Sackville with it and turned it over to them.
- Q. And do you know to whom you turned over this jacket?
- A. At the time, I just forget his name. I have it marked.
- Q. Where do you have it marked?
- A. Mr. Duff, F.C.M.F. Lab in Sackville.

BY THE COURT

- Q. A sergeant?
- A. No Mr. Duff is a civilian

NO OBJECTION BY DEFENSEPatricia Ann Harris,By the Court

- Q. How old are you?
- A. Fourteen (14)
- Q. What grade are you in, in school?
- A. Grade VIII.
- Q. Are you going to school now?
- A. Yes sir.
- Q. You are in Grade VII?
- A. Going into Grade VIII.
- Q. What school do you go to?
- A. Central.
- Q. Do you know what it means to take an Oath on the Bible?
- A. Yes.
- Q. What?
- A. To tell the truth.
- Q. What happens to people who don't tell the truth?
- A. Perjury.
- Q. What happens to people who commit perjury?
- A. Go to a home.

NOVEMBER '71
DMI 20

- 54 - SGT. MICHAEL MacDONALD, Dir. Exam.

SGT. MICHAEL MacDONALD, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. Your full name, sir?

A. Michael MacDonald.

Q. And you are a detective sergeant with the City of Sydney Police Force?

A. Yes sir.

(10) Q. And were you acting as such during the Months of May and June 1971?

A. I was.

Q. And with regard to this case, did you come into possession of any exhibits?

A. I did.

Q. What were they?

A. One jacket.

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

(20) A. Yes sir. This is the jacket that was on June 2, 1971, this jacket was turned over to me by Mr. Roy Gould. It was kept in a lock and key in my possession.

Q. Until when?

A. Until June 16 when I proceeded-

Q. 1971?

A. 1971 where I proceeded to the Crime Lab in Sackville, New Brunswick. Turned this jacket over to Mr. Evers.

Q. Any other exhibits?

A. Yes sir. Brown coat and a pair of overalls.

(30) Q. I show you Exhibit 4, what is that, please?

A. This is a coat that was turned over to me on June 3, -

Q. By whom?

A. Mrs. Seale living in Westmount. It was kept in my possession until June 16 when I proceeded to Sackville, New Brunswick, the Crime Lab with it.

- 55 - SGT. MICHAEL MacDONALD, Dir. Exam.

Q. To whom did you turn it over at the Crime Lab?

A. Mr. Evers.

Q. Any other exhibits?

A. Pair of overalls.

Q. I show you Exhibit 1. Tell me what that is please.

A. It's a pair of overalls. On June 3 it was turned over to me -
1971 - it was turned over to me by Mrs. Seale, Westmount. June
16 I proceeded to Sackville, New Brunswick, with this and turned
(10) it over to Mr. Evers at the Crime Lab.

Q. Any other exhibits?

A. Piece of tissue, kleenex.

Q. I show you an envelope marked Exhibit 2, would you look at the
contents of that and tell me what that is?

A. This is tissue turned over to me by Cst. John Maloney on
May 29, 1971. On June 16, 1971, I proceeded to the Crime Lab
in Sackville, New Brunswick, and turned this over to Mr. Evers.
BY MR. ROSENBLUM: (Cross-Exam.)

Q. Now Sergeant, you have been a member of the City of Sydney Police
(20) Force for how long?

A. Twenty-five years.

Q. And Sergeant, on this particular night, Friday, May 28 of 1971,
did you attend on Crescent Street in the City of Sydney, where
Mr. Seale was involved as we've heard here from witnesses this
morning?

A. No sir, I did not.

Q. Did you attend at the City of Sydney Hospital later that night?

A. Yes sir, I did.

Q. At what time did you get there?

(30) A. 12:10 A.M.

Q. Just shortly after midnight. Who was there when you got there
Mr. MacDonald?

A. Cpl. Martin MacDonald; Cst. Rich Walsh; Mr. Leo Curry and
another young chap who helped them. I forget his name.

- 56 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. Who else?

A. Dr. Naqvi.

Q. Yes, Dr. Gaum.

A. Dr. Gaum wasn't there.

Q. All right. Dr. Naqvi, yes.

A. Dr. Virick.

Q. Now was there a young fellow there by the name of Chant?

A. Not at that time, sir.

(10) Q. All right, when did you see him? Maynard D. Chant, I'm speaking about.

A. 2:00 A.M. in the morning.

Q. 2:00 A.M. - where did you see him?

A. At the City Hospital.

Q. So you stayed there from ten after twelve until what time?

A. I left there five minutes to three in the morning.

Q. So you saw Maynard Chant there about two o'clock in the morning?
Now who was there when you saw him there?

A. Cst. Jackie Johnstone and Cst. Howard Dean.

(20) Q. Both of the City of Sydney Police Force?

A. Yes sir.

Q. All right, were you talking to Chant?

A. For a moment.

Q. How long did he stay there in your company?

A. Two or three minutes.

Q. So you just had a short conversation with him?

A. Very short. I sent him down to the police station.

Q. Quite all right. You never wear a uniform, do you Sergeant?

A. No sir.

(30) Q. Did you make yourself known to Mr. Chant as to your position?

A. The police officers brought him right in to me where I was and identified-

Q. The police officers were in uniform, that is Walsh and who else?

A. No. Howard Dean and Cst. Jackie Johnstone.

- 57 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. And you notified Mr. Chant that you were a sergeant with the City of Sydney Police Force?

A. That's right.

Q. And then, did you see him later that day, Chant?

A. Again that morning.

Q. Where at?

A. At the police station.

Q. What time would that be?

(10) A. Quarter after three, twenty after three.

Q. Who was present on that occasion?

A. Sgt. Len MacGillivray, myself, Cpl. Martin MacDonald, and Mr. Chant's father.

Q. Did you see him again after that day?

A. Again?

Q. Yes, later that day?

A. No sir.

Q. When did you next see him?

A. Sunday, following Sunday.

(20) Q. Following Sunday, who was present on Sunday?

A. That would be-

Q. Yes, that would be May 30. Who was present then and where was that that you saw him?

A. Det. Sgt. John MacIntyre and myself.

Q. Now going back to midnight, ten after twelve, at the City of Sydney Hospital when you saw Mr. Chant and you had a brief conversation, was Donald Marshall present?

A. No sir. He was in the building.

Q. Did Chant tell you anything-

(30) MR. MacNEIL:

Objection, if Your Lordship please. Conversation took place between the officer and Mr. Chant is inadmissible unless the accused is present.

- 58 - SGT. MICHAEL MacDONALD, Cross-Exam.

MR. ROSENBLUM:

Oh no, quite the contrary. Any statement - I'm not asking for the words that were used, my Lord. I'm asking the question as to whether or not Chant made any accusation to this witness concerning Donald Marshall, at any time-

THE COURT:

Mr. Foreman and gentlemen, will you kindly step out, please.

(12:16 P.M. JURY WITHDREW)

(10) (VOIR DIRE)

MR. ROSENBLUM:

Cross-examination of the witness, my Lord.

THE COURT:

And you're asking him about-

MR. ROSENBLUM:

Whether any statement was made to him by Chant on that occasion in the hospital and I will lead him down to the other contacts that he had with Chant concerning Donald Marshall. My Lord, this is of such great importance to the case that I ask your usual serious consider-

(20) THE COURT:

Every piece of evidence is important.

MR. ROSENBLUM:

This goes to the nub of the case, My Lord.

THE COURT:

Actually you are asking him in your question, you are of course asking the witness what the other man had said.

MR. ROSENBLUM:

No. I'm asking what he didn't say. I'm asking what he didn't say my Lord, not what he said.

(30) THE COURT:

You have put to him something about making an accusation.

MR. ROSENBLUM:

As to whether or not he did - as to whether or not he did.

- 59 - SGT. MICHAEL MacDONALD, Cross-Exam. (Voir Dire)

THE COURT:

In effect you're asking him what he said.

MR. ROSENBLUM:

No, my Lord. I'm putting it in a negative way.

MR. MacNEIL:

I'm saying, of course, he is making it with the word "accusation" that he is asking what the witness said. And I am submitting to you that it is completely inadmissible unless the accused was present
 (10) And I know of no rule that would allow a conversation to go in that may work to the detriment of the accused when he wasn't present. Now take for example - I don't know what my learned friend expects to get from this answer - but let us suppose the answer came back like this, "Yes, he said that Donald Marshall Jr. stabbed Sandy Seale on Crescent Street." Then my Lord, I suggest that it wouldn't take two minutes for the Appellate Division of the Supreme Court to rule on that.

MR. ROSENBLUM:

I will be responsible for my questions.

(20) MR. MacNEIL:

I'm saying it is inadmissible regardless of who asks it.

MR. ROSENBLUM:

If I was foolish enough to ask a question like that, I would be bound by the answer. I wouldn't ask a question unless I know what it's going to be - what he has to tell me. I don't ask a foolish question. I got to know the answer before I ask the question. If Your Lordship would like time to deliberate on it, we're going to the heart of the case.

THE COURT:

(30) You are asking him, Mr. Rosenblum, to give you a conversation which he had with Mr. Chant with respect to an accusation. You're asking him about conversation which he had with Mr. Chant and however you may phrase it, it gets to what Chant said to him.

MR. ROSENBLUM:

Or didn't say - or didn't say! This is the point. Silence!

- 60 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

THE COURT:

And isn't that also applicable, the matter of silence-

MR. ROSENBLUM:

The only way I can bring it out, My Lord, is to ask him whether Chant told him anything. That's how you prove silence.

THE COURT:

(10) It is now near recess and I will take the time to look into it. But I would say, Mr. Rosenblum, that my inclination is that you cannot ask this witness anything about conversation.

MR. ROSENBLUM:

Or the lack of it!

THE COURT:

Anything that has to do with the conversation inasmuch as the accused man was not there.

MR. ROSENBLUM:

(20) I'm well aware of that, my Lord. However, I will await your final ruling and I will put the question to him directly for the purposes of the record, My Lord, that we will have the record to show the question and either its admissibility or inadmissibility.

THE COURT:

Give me your question. Take your time in phrasing it.

MR. ROSENBLUM:

I'm leading up to the question now, my Lord.

Q. You say you had a conversation with Maynard Chant at about ten minutes after midnight on May 28 - no, May 29, Saturday morning at City Hospital.

A. (Witness indicates negatively.)

Q. 2:00 A.M. - you got there ten after twelve?

(30) A. That's right.

Q. About 2:00 A.M., Saturday morning, May 29?

A. That's right.

Q. And you talked to him for a few minutes?

A. That's right.

- 61 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

Q. Is that what you said, two or three minutes?

A. Two or three minutes.

Q. Was Mr. Marshall there or not?

A. Not in person, no. He was in the building.

Q. He wasn't present when you were talking to Maynard Chant?

A. That's right.

Q. And Maynard Chant was aware of the fact that you were a Sergeant of the Sydney Police Force?

(10) A. Yes sir.

Q. And he had been escorted into your presence by two other police officers?

A. Yes sir.

Q. Did Maynard Chant on that occasion say anything to you to implicate Donald Marshall Jr., the accused in this case, in connection with the injuries which had been sustained by the late Sandy Seale?

THE COURT:

Don't answer that question!

(20) MR. ROSENBLUM:

There's the question.

THE COURT:

That's your question. Have you any other questions?

MR. ROSENBLUM:

Yes, My Lord.

THE COURT:

Assuming that I rule that you cannot ask that question.

MR. ROSENBLUM:

Yes, I have other questions. Naturally not in defiance of any

(30) ruling.

THE COURT:

No, but nothing to do with this particular aspect of the case.

If I rule-

MR. ROSENBLUM:

I have other questions aside from that.

- 62 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

THE COURT:

As I said before, my inclination at first blush is to say you cannot ask this question. In deference to yourself and Mr. Khattar I will utilize some of the time allotted to lunch to look into it.

MR. MacNEIL:

I would, of course, just like to have noted on the record my objection to the question, if Your Lordship pleases.

THE COURT:

(10) You have.

MR. MacNEIL:

I had before but then he rephrased it.

THE COURT:

Have the jury brought in.

(12:28 P.M. JURY POLLED, ALL PRESENT)

THE COURT:

Mr. Foreman, gentlemen, during the course of a criminal trial, from time to time points of law arise which must be discussed and decided upon in the absence of the jury. There are points arising quite frequently which we dispose of in your presence but when we come to something that is crucial, it is better, you understand, to have it dealt with in the absence of the jury. And when you are called in, if it is allowed, you will hear it. Now we are in the midst of one of these now. You will go to your lunch. Come back but don't come in the court room. Stay in your room. We will continue in your absence as we would have done had we not had the break until we make a decision on the point which has been raised. You, Sgt. MacDonald, of course, will not discuss the case with any one in the interval - with no one. I can rely on you.

(12:30 P.M. JURY WITHDREW

AND COURT RECESSED)

- 63 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

(2:15 P.M. COURT RESUMED: SGT. MacDONALD RESUMED THE STAND)

THE COURT:

In connection with the matter which took up our attention prior to adjournment, may I say now something which I omitted to say before, to those who are here and interested in this case from the point of view of the news media. May I caution them against reporting anything of this case which is not in the presence of the jury. Whatever is said in a trial within a trial must not
(10) be reported by the press in any way.

Now as to the point which was well raised by Mr. Rosenblum and Mr. Khattar and I wish to commend counsel for the Defence for the care in which they have proceeded with this matter as is to be expected of them. I said prior to recess that I was of the opinion that the question could not be put to the witness. In the interval I have had an opportunity to go into the law and I may say too that I have now looked over the cases which the Defence counsel have submitted to me. From Phillips, which is one of the leading authorities, we find, Eleventh Edition, at p.268, enunciate
(20) of fundamental rule -

"It is a fundamental rule of evidence at common law that hearsay evidence is inadmissible. In criminal proceedings the rule continues to prevail although there are many exceptions, both statutory and at common law, to it."

No doubt during the course of this trial we may have occasion to perhaps deal with some exceptions to the hearsay rule.

"Simple as this fundamental is, in principle if not in application, there nonetheless exists 'a superstitious awe ...about having any truck with evidence which involves A's telling the court what B said.' Conspicuous uncertainty exists amongst practitioners, magistrates and judges as to what evidence does and does not fall within the hearsay rule. The reasons for this widespread misunderstanding are threefold.

The author goes on to give the reasons. Then he goes on to say:

"The exact scope of the rule is therefore patently unclear. It would appear however that the general statement of the rule which appears at the commencement of this section (which I'm reading) represents the essence of the rule and is well supported by authority."

- 64 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

THE COURT: (cont'd.)

I have read the case of Rex v. Rewniak cited in C.R. 1949, p.127 and the other cases cited by the Defence and I have particularly read the reference to the very famous case at the time, Rex v. Dea 1947, which went to the Supreme Court of Canada. While I repeat again that I appreciate very much the reasons for the submission, both the legal reasons and the practical reasons from the point of view of the Defence, I have come to the conclusion that in

(10) this particular case, in the circumstances of this case, my ruling is that the witness cannot be questioned about the conversation which he had with Mr. Chant. That he had conversation with Mr. Chant or with anybody else is a verbal fact which can be brought out but what the conversation was or alternatively, what it did not consist of, is in my opinion inadmissible in this case.

Now Mr. Rosenblum, you said it was a very material point in the case. I say I appreciate very much your position. Nonetheless, Crown Counsel in his opening remarks made it quite clear that

(20) the person was going to be called and undoubtedly will be called. Indeed, it would be unthinkable that he wouldn't be. Therefore that witness will be available and will be subject to cross-examination as to things he said at the time and any point you may very well have in regard to his testimony can be established and brought out at that time.

MR. ROSENBLUM:

But My Lord, the difficulty following Your Lordship's ruling is that I will be bound to follow the same with regard to the witness Chant.

(30) THE COURT:

No, no-

MR. ROSENBLUM:

But my Lord the accused was not present either!

THE COURT:

No, Mr. Rosenblum. What Mr. Chant said or did not say, coming

- 65 - SGT. MICHAEL MacDONALD, Cross-Exam. (VOIR DIRE)

from Chant will be available, will be open to you in cross-examination: the story that he will no doubt tell, when he first told it; why he did; what he said - as to these matters I don't know but it's not going to come out from the mouth of the present witness.

MR. ROSENBLUM:

But may through Chant, notwithstanding the absence of the accused

THE COURT:

(10) Notwithstanding the absence-

MR. ROSENBLUM:

Thank you!

I take exception to Your Lordship's ruling for the matter of the record, My Lord.

THE COURT:

Mr. Rosenblum, it is the right of counsel, both counsel for the Defence and for the Prosecution, to raise all matters of law. It is my lonely responsibility to rule upon them and for the conduct of this trial, my ruling will prevail.

(20) MR. ROSENBLUM:

I accept it, my Lord.

THE COURT:

Whether I am right - who is there in this world who can say that he never made mistakes, is a matter which may, may, if necessary be looked into at some future time.

So that as to the fact that Mr. Chant was questioned in the hospital and subsequently, you have that if you wish. But the conversation

I rule is not-

MR. ROSENBLUM:

(30) I will certainly obey Your Lordship's ruling.

(2:25 P.M. JURY POLLED, ALL PRESENT)

- 66 - SGT. MICHAEL MacDONALD, Cross-Exam.

BY MR. ROSENBLUM: (Cross-Examination continued)

Q. Now Sgt. MacDonald, you told us before the jury retired that you went to the City Hospital in the City of Sydney about ten after twelve and who was present and that at about two o'clock in the morning, which would be Saturday morning, the 29th day of May, Maynard Chant arrived: right?

A. That's right.

Q. Now when did you next see Mr. Chant?

(10) A. Approximately three o'clock.

Q. In the afternoon?

A. In the morning, an hour later.

Q. Where did you see him?

A. At the police station.

Q. And for how long a period were you in his company?

A. Oh, ten minutes.

Q. Who else was present?

A. Cpl. Martin MacDonald, Sgt. Len MacGillivray, Mr. Chant's father.

Q. Mr. Chant's father - do you know how it came about that Mr.

(20) Chant's father was there? Do you personally know?

A. I believe he was called to the station.

Q. Called?

A. Yes.

Q. All right. We're into three o'clock in the morning, right?

A. Right.

Q. When did you next see Mr. Chant, Maynard Chant?

A. On May 30.

Q. May 30, the following day, Sunday?

A. Yes sir.

(30) Q. Where at?

A. In the town of Louisbourg.

Q. Where at in the town of Louisbourg?

A. Well I don't know the names of the streets out there.

Q. Well was it on a street?

A. It was on a street, yes.

- 67 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. Who was with you?

A. Det. Sgt. John MacIntyre.

Q. What time of the day?

A. In the afternoon.

Q. Was there any particular reason you met him on the street or was that by arrangement or-

A. No sir, no.

Q. You just happened to meet him on the street?

(10) A. We went to Louisbourg to-

Q. To see him and you met him on the street?

A. Yes sir.

Q. Was he walking?

A. He was with some other fellows.

Q. Walking?

A. In the area.

Q. Walking or driving?

A. No, he was walking, on foot.

Q. Did he get into the police car?

(20) A. Yes sir.

Q. And how long were you and Sgt. John MacIntyre in the company of Maynard Chant on that particular occasion?

A. Maybe a couple of hours.

Q. So now we're up to about what time?

A. Five o'clock Sunday afternoon.

Q. Five o'clock Sunday afternoon-

A. Five-thirty.

Q. All right, when did you next see him?

A. Can't recall now, not right off-hand.

(30) Q. The next day?

A. I couldn't say.

Q. Well you did see him later?

A. I might have seen him once more during the week. I don't know which day it was.

- 68 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. Where would it have been?

A. Could have been up the police station.

Q. In Sydney?

A. Yes sir.

Q. Were you talking to him?

A. No, I wasn't.

Q. Were there other police officers talking to him at the time you saw him?

(10) A. No.

Q. Well, what was he doing?

A. He was in the front ^{office} of our detectives' office.

Q. Detectives' office?

A. Yes sir.

Q. How long was he there?

A. I couldn't say, sir; I was back and forth, in and out. He was sitting there.

Q. Over what period of time did you observe him in the detective's office of the city hall?

(20) A. Sometime in the afternoon-

Q. Yes, over what period of time - would you say you were in and out over what period of time?

A. Well from two o'clock to five.

Q. What day of the week would that have been?

A. I couldn't say.

Q. How long after this particular Sunday you and Sgt. MacIntyre were talking to him in Louisbourg from two o'clock until five o'clock?

A. I couldn't give you the exact date.

(30) Q. Would you try to put your mind to it now because we may not have you on the witness stand again? This is the time to extract all the information from you. Just think about it.

A. No, I couldn't give you the exact day, sir. I was on other work pertaining to this-

- 69 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. Well I'm sure you had other work-

A. -I was in and out so I couldn't give you the exact day.

Q. Would it have been two days later?

A. I couldn't say, sir.

Q. Tell me Sergeant, when was Marshall arrested on this charge that he is facing trial today?

A. I believe it was June 4.

Q. June 4?

(10) A. I believe, on Friday.

Q. What day of the week would that have been?

A. June 4 on Friday, I believe. I wasn't in on the arrest.

Q. No, but you became aware of it. You were involved in the investigation.

A. Yes, but I was away at the time of the arrest.

Q. Yes, but you knew about it after it happened?

A. Oh yes, yes.

Q. That would have been a week after the events on the night of May 28: right?

(20) A. Yes.

Q. Had you seen the accused, Mr. Marshall, during that week?

A. The week of-

Q. During the time from the night of May 28-

A. Oh yes, I seen him several times.

Q. Tell us about the times you saw him.

A. On May 29, he was at the police station.

Q. That was on a Saturday morning.

A. Saturday morning.

Q. How long was he there?

(30) A. Four or five hours.

Q. And who was talking with him?

A. Nobody in particular.

Q. What was he doing, just sitting there looking at the walls for four or five hours?

A. He was there.

- 70 - SGT. MICHAEL MacDONALD, Cross-Exam.

Q. He was there, I know, but what was he doing there? What was he doing there? Who was talking to him? Were you?

A. No sir.

Q. You didn't speak to him the whole time he was there?

A. No, I didn't have any conversation.

Q. Well did you see anybody else having a conversation with him?

A. No sir.

Q. Well where was he? Was he standing for four hours or five hours?

(10) A. He was sitting around.

Q. Where at? Sitting around where?

A. In the Detectives' office, outside the front office and out in the alleyway, the driveway where the police cars are, he was smoking out there, back and forth.

Q. What was he doing there? For four or five hours, what was he doing there?

A. He was asked to be there by Sgt. MacIntyre.

(20) Q. Yes, so he came there as a result of that. Now he got there, in response to a request by Sgt. MacIntyre. What happened when he got there? He stayed there four or five hours. What happened during that four or five hours?

A. I couldn't say sir. He was there.

Q. All right. When did you see him again?

A. Sunday morning.

Q. Where did you see him?

A. At the police station.

Q. How long was he there then?

A. Four or five hours.

Q. Was anybody talking to him?

(30) A. Ah-

Q. Or was he all alone for four or five hours and speaking to nobody as he was the day before, in your opinion. On Sunday, what happened when he was there for four or five hours?

A. On Sunday, we had him for a line-up Sunday morning.

- 71 - SGT. MICHAEL MacDONALD, Cross-Exam.

- Q. Who was talking to him was my question.
- A. Sgt. MacIntyre might have spoke to him.
- Q. Well did you see anybody talking to Marshall?
- A. No sir.
- Q. On Sunday when he was there for four or five hours?
- A. That's right.
- Q. Nor on Saturday when he was there for four or five hours?
- A. That's right.
- (10) Q. All right. What about Monday? Monday, now let's get the date.
- A. Monday would be the 31st.
- Q. Yes, 31st of May, that's right. What about Monday?
- A. No, I didn't see him any more, sir, until - I think that's the last time I saw him.
- Q. Last time you saw him until after he was arrested?
- A. Yes.
- Q. Now were you up on Crescent Street at around midnight on the night of April 28, Sergeant, when the ambulance arrived, Curry's ambulance?
- (20) A. No.
- Q. What officers were there to your knowledge? I understand Richard Walsh was there.
- A. Cpl. Martin MacDonald; Cst. Howard Dean; Cst. Jack Johnstone. Two police cars, two men in each car.
- Q. Now if I inadvertently mentioned April 28, my learned friend draws my attention to it, I meant May 28. You understand that?
- A. Yes.

(THE WITNESS WITHDREW)

C.P.

Michael Bernard MacDonald, sworn, testified as follows:

EXAMINED BY R. MURRANT

1. Q. First of all sir, I would like to get your name straight. Your name is actually Michael B. MacDonald?
A. Right.
2. Q. And the B. stands for?
A. Bernard.
3. Q. Bernard?
A. Yes.
4. Q. And you are presently a member of the Sydney City Police?
A. Yes.
5. Q. And your rank is?
A. Deputy Chief.
6. Q. How long have you been with the force, sir?
A. Thirty-nine years.
7. Q. And in 1970, '71, what rank or position did you hold?
A. Detective Sergeant.
8. Q. Now I was asking the previous witness about a statement that was taken by the RCMP and there is reference to a Michael R. MacDonald..
A. It's M.R. on police records, M.B. is my original.
9. Q. Just explain to me to me why it's M.R. on the..
A. ~~I don't know~~--well there was two M.B.'s, maybe John can tell you all that, he knows more. There was two M.B's and there was a little friction, he was an Inspector and I was just a Constable and there was friction so the Chief of Police Vince Campbell at that time just changed the initials and it stayed that way down through the years?

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10. Q. Does that tie into your nickname, the M.R.?
A. Well some people call me M.R. and someone people call me just Michael. It's not a nickname really.
11. Q. No well I thought you were known as the Red Michael?
A. Well at one time.
12. Q. What I am interested in is a statement and I'll show you a copy of it. This statement of John Lewis Pratico, his date of birth?
A. No, I had nothing to do with John Pratico.
13. Q. In reference to the statement, we really don't need the statement but what the statement says, this is Pratico's statement. "In 1971, May, I was questioned by John MacIntyre and I believe Michael R. MacDonald." Now at that point in time in 1971 in May were you the only Michael R. MacDonald on this force or the only person known as that?
A. Yes I imagine I would be. In May of '71?
Q. May of '71?
A. May of '71. I was transferred that next to fill in for retired Sergeant Len MacGillivray so I don't know how I could be in on a statment with John talking to Pratico.
14. Q. This is the day after the murder you changed?
A. I was changed by Chief of Police, Gordon MacLeod to fill in for Sergeant Len MacGillivray who was retiring.
15. Q. Just to go through what it says here. Can you read that with those?
A. Did I sign any of these statements.
16. Q. This is an RCMP statement that refers to you, now I don't know.
A. I don't recall talking to John, I see the man out there, I don't recall talking to that man with John MacIntyre. I don't recall it at all.
17. Q. Did you know John Pratico?
A. Oh, yes.

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19. Q. Did you know him back in this point in time?

A. Yeah.

20. Q. Do you know his family?

A. No.

21. Q. What did you know John Pratico as back in

A. Just as being around the city, he didn't seem to be--something wrong somewhere that his actions or whatever it was, we had problems with him. The name came up a couple times on the charge books.

22. Q. Didn't appear to be fully competent?

A. Yeah, right.

A. I didn't know any of his background or his family but I knew John Pratico if that is the way you pronounce it.

23. Q. To come to the point, there is an allegation here, it says Pratico saying a part and I'll read it to you. "A couple of days later the police came, I wasn't home, my mother took me to the Sydney Police Station around one or two o'clock I think. I talked to MacIntyre alone at first, MacDonald came in," reference being Michael R. MacDonald. "a few minutes later. I sent my mother home to look after my sister. MacIntyre asked me what happened in the park that night. I said I didn't know. I'd heard of the stabbing at the time, not who did it or who had died. MacIntyre said I did know and if I didn't tell I would be put in jail. MacDonald wasn't saying anything. I was scared. He said he knew what happened and for me to tell him. They told me about Marshall and Seale, that Marshall stabbed Seale, they put words in my mouth so I just agreed with what they were saying." This is the allegation that Pratico has given to the RCMP obviously, the taking of this statement.

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23. A. That was in May of 1971?
24. Q. May 1971 and what puzzles me is the reference there to a Michael R. MacDonald which I can only conclude is you?
- A. Yeah.
25. Q. And whether or not you were involved in that process?
- A. I don't recall taking statements from Pratico with John MacIntyre.
26. Q. Is it possible you did?
- A. Well it's possible I could have been called in the office with nobody else there on account of--see the first night of the stabbing I was the original officer at the hospital. John MacIntyre was asked to come out that night and he didn't come out, or he wouldn't come out so I was left alone on that. Sergeant Len MacGillivray called him and I spoke to him then we had a conference with the Chief of Police, Gordon MacLeod and that was the issue for that night.
27. Q. Why didn't he or wouldn't he come out?
- A. I don't know, he was in charge of the detective division, he didn't tell me why, I guess he figured he didn't have to tell me but he didn't come out anyway.
28. Q. What was the conference with the Chief about?
- A. I needed some help and he was in charge of the detective division.
29. Q. And you were at the hospital at the time?
- A. Yes.
30. Q. Did you
- A. Not at the time, no, I was at the police station.
31. Q. You were at the police station when it happened?
- A. No when I called John MacIntyre. I was home when it happened.

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32. Q. Let's not test your memory, let's just take what you do recall, you were home when it happened?
- A. I worked four to twelve shift that evening, I went home at 12:00, I was only in the house a little while when I received a phone call.
33. Q. All right?
- A. And I came back down to the station and ^{went} we/out to the park, I forget at the moment who was with me but--and then we were informed that somebody went to the hospital so I went up to the hospital and I was informed by the doctor that Seale was in the hospital ready to be operated on but they wouldn't allow me in to see him then.
34. Q. Do you remember Marshall being in the hospital at the same time?
- A. I believe he was, yes. He has a scar or cut on his arm.
35. Q. Now is that St. Rita's Hospital?
- A. City.
36. Q. City Hospital. Let's just try to reconstruct from there. You're at the City Hospital, you'd like to speak to Seale obviously but you can't.
- A. No the doctors wouldn't allow me.
37. Q. He probably couldn't anyway.
- A. They wouldn't allow me in anyway.
38. Q. Then what is the next thing you remember doing?
- A. I think we took Seale down to the Police Station from the hospital--I am sorry, not Seal, Marshall.
39. Q. Marshall that night?
- A. Yes.
40. Q. And did you...
- A. And we asked him a few questions and he was released.

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41. Q. That night?

A. Uh-hmmm.

42. Q. As I reconstruct it that evening, the latter part of the evening, members of the force were looking for two men who had been described as being in the park?

A. During the course of the evening?

43. Q. After the murder?

A. Oh.

44. Q. That the original theory of the investigation was to attempt to locate to.

A. I am not sure of the conversation we had with Marshall except that he was cut on the arm by somebody in the park -- I believe on of the cars I don't know who was in the cars at the time, I couldn't tell you, I believe one of the cars went to the park area just to check around, you know.

45. Q. When you spoke to Marshall that night at the police station did you believe what he was telling you?

A. Well I didn't know Marshall, you know, he was a friend of Seale's from what I gather, I couldn't disbelieve or believe I just said we'll put it on hold until the morning and see what would happen.

46. Q. Is it after this that you had your meeting with the Chief?

A. No, I had the meeting--the telephone call before I went to the City Hospital because I heard a person was stabbed and taken to the hospital.

47. Q. But did you meet face to face with the Chief that night?

A. No.

48. Q. Whatever discussion you had was on the phone?

A. Right.

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49. Q. Anything else that you did to follow this up?
- A. No. That was it, once we got Marshall, we put it on hold to see what happens at City Hospital.
50. Q. So the next morning or the next day when Seale died, were you out of the picture then?
- A. Pretty well, Pretty well, I didn't take any part in the -- I was out a couple of--I think on a Sunday if I -- did we go to Louisbourg on the Sunday or can I ask you that question or what is the....
- R. Pugsley: You have to do the best you can, sir.
- A. Well I think on a Sunday I was out working day shift and John asked me if I would go to Louisbourg with him to see a fellow by the name of...
51. Q. Chant?
- A. I thought there was two fellows in Louisbourg, I am not sure. Some fellow in Louisbourg he went to his house and his mother told us that, his mother or father, I just forget told us that he was visiting down on the Louisbourg Highway towards Sydney and we went to that house and we spoke to this fellow. I think his name was Chant.
52. Q. Do you remember what that...
- A. I'm pretty sure it was--yeah, I thought there might have been two fellow in Louisbourg but I'm....
53. Q. Do you remember what that interview was about?
- A. Well John was doing the talking to him, I guess it was pertaining to the Seale, or what he knew, he was supposed to be on George Street that night hitchhiking to Louisbourg at the time of the so called incident. His first name, I couldn't tell you his first name, I'm pretty sure it was Chant now. It was on a Sunday anyway, Sunday afternoon, the date I couldn't tell you.

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54. Q. Okay, anything else that you remember doing?
- A. No that's about the last. I think John and Bill Urquhart took over after that and they got into it.
55. Q. I just want to go back a little bit and if you don't recall, that's, I can appreciate that but initially it appeared that the Police Department were looking two men and that there had been some checks made at the water front and hotels and....
- A. Like I say, there was no statement taken from Marshall but during the course of taking to him, you know, it was suggested that there was a couple of fellows faced them in the park and I don't know was in the car, what Constables went or not but I understand there was a car that went out with two men in it and went through the park area, you know, now I couldn't tell you who they were, who the men were.
56. Q. Do you remember the force looking for these two men or looking for two men?
- A. The force?
57. Q. The police department?
- A. Like I say the car went out with two men that night into the park area.
58. Q. Yeah but I'm thinking as a result of what Marshall may have said or someone said about these two guys, whether steps were taken by the police force?
- A. That would be up to John.
59. Q. But he wasn't there that night?
- A. No, I imagine during the night they might have been around, I think I went home after Marshall was released. They might have been around looking, you know whoever these fellows were, there was no names mentioned. That's to the best of my knowledge anyway.

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60. Q. Don't guess, it's been a long time.

A. Yeah there was a lot of water under bridge since '71 and I didn't have too--John had the most of the doings with it all. Him and Bill Urquhart.

61. Q. No, I am just wondering if you recall?

A. I don't recall--I might have, it's possible, went in with the office, and nobody else there and maybe John might have called me in or something because there was a statement taken but I don't think I was involved in the taking of a statement. I might have been just sitting there as you do when your taking a statement, just listen when somebody else is taking it.

62. Q. Of course. The other--the last thing to clarify here. The other Michael MacDonald is now retired?

A. Yes.

63. Q. Yeah, he was an inspector?

A. Yeah, he was an inspector, Michael B. MacDonald again, see, here's where you run into the...

64. Q. What was his middle name now?

A. Michael Bernard.

65. Q. Bernard? When did he retire?

A. Michael B. anyway. When he retired, I couldn't tell you?

66. Q. Is he still in Sydney?

A. No, he's dead today.

67. Q. There are no other Micahel MacDonald's other than the three we've?

A. The Chief today.

68. Q. But in 1970, '71, those were the three....?

A. We had M. MacDonald, you know, different Martin MacDonald's but he'd go on as Michael MacDonald.

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69. Q. There was another M. was there?
A. Yes there was two or three of them.
70. Q. Any of those gentlemen still with the police force?
A. No, Martin is dead. M MacDonald was killed in a motorcycle accident. But like I say, getting back to that Pratico, I might have been asked to go in the office with John, Might have been, but I didn't take any part in any questions or anything else, it says right there I didn't say anything. I might have been in there just was a--which is if you're taking a statement you got to have a witness there with you.
71. Q. Okay, that's all the questions I have.

235.

0.

MIKE MacDONALD duly sworn, testified:

DIRECT EXAMINATION

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

A. Yes, Sir.

5.

Q. And you're recently retired Deputy Chief of the Sydney - City of Sydney Police Department?

A. Yes, Sir.

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

A. 38 years.

10.

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

A. Yes, Sir.

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

A. Yes, Sir.

15.

Q. Among them were two jackets.

A. Yes, Sir.

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

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

20.

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

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

Q. Yes.

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

25.

Q. Do you remember the colour of that jacket?

A. Not at the moment, Sir.

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

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

30.

236.

0.

MR. MacDONALD, Direct Examination

Q. Yes.

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

Q. This is in 1971?

A. 1971. I proceeded to the Crime Lab in

5.

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

Q. That's Adolphus J. Evers?

A. Yes, Sir.

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

A. Yes, Sir.

10.

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

THE COURT: Cross-examine.CROSS-EXAMINATION

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

15.

A. Yes, I believe I did, yeah.

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

Q. What did you do with this jacket?

20.

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

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

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

25.

Q. Where do you have it marked?

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

Q. (The Court): A Sergeant?

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

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

A. No, I don't believe.

30.

Q. How is your recollection of those events at this

237.

0. MR. MacDONALD, Cross-Examination

time?

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

5.

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

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

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

A. I couldn't say, Sir.

10.

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

THE COURT: Re-examine?

RE-EXAMINATION

MR. EDWARDS: My learned friend just referred you to the preliminary inquiry which was held in July of 1971, right?

15.

A. Right.

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

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

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

20.

A. Michael MacNeil?

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

25.

A. Yes, Sir.

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

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

30.

A. yes, that is the jacket.

238.

0.

MR. MacDONALD, REDIRECT

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

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

5.

A. Right, Sir.

Q. So at the trial you said . .

A. I turned it over to Mr. Evers.

Q. And that is your recollection now.

A. Yes, Sir.

10.

Q. Thank you, Mr. MacDonald.

WITNESS WITHDREW

15.

20.

25.

30.