

205

SUBJECT

CASE No.

RCMP2 74

C O P Y

May 30, 1971

Statement of John Pratico, age 16 yrs., residing at 201 Bentinck St., Sydney

Friday night I was at St. Joseph's Dance. I left there around 12 P.M. I seen Junior Marshall and Sandy Seale between the store and dance hall. I was talking to them. They wanted me to walk through with them. I said no. I went down Argyle St. and went over Crescent St. I was over by the Court house when I heard a scream. I looked. I seen 2 fellows running from the direction of the screaming. They jumped into a white volkwagon; blue lic. and white no. on it. One had a brown cordroy jacket - 5'5 dark complexion; heavy set. The other grey suit about 6 ft. tall; husky; red sweater -like a pullover. I started to run home.

Q. Did you see the Volkswagon since

A. No. I saw the 2 fellows twice last night walking near the park.

Q. Did you see them at the dance

A. Yes. I seen them walking around. Bobbie Robert Patterson said they are from Toronto Saints Choice ~~BIM~~ Bike Gang.

Signed: John Pratico

May 30th - 6 P.M.
Sergt.Det. J.F.MacIntyre

CITY OF SYDNEY POLICE DEPT.
CONTINUATION REPORT

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CASE No.

RCMP2 73

C O P Y

June 4, 1971

10:45 A.M.

Statement of John Louis Pratico, age 16 yrs., residing at 201 Bentinck St., Sydney.

Last Friday night I went to the dance at St. Joseph's Hall, George St., Sydney. I went with Bobbie Christmas; Donald Gordon and I met Bob Janes from Alexander St. there. He gave me money to get in. This was about 9:30 P.M. I was at the dance till about 10 or 5 to 12. Then I walked out by myself.

I met Donald Marshall and Sandy Seale. We walked to the corner of Argyle St. Donald said John come down to the Park in a rough voice. I said No. I went down Argyle St. and over Crescent St. I was walking on the park side. I seen Sandy and Donald on the other side of the bridge stopped. I did not pay much attention to them. I kept walking for the tracks. On the tracks, I stopped where I showed you. Then Donald Marshall and Sandy Seale were up where the incident happened. I heard Sandy say to Junior, you crazy Indian and then Junior called him a black bastard. They were standing at this time where the incident happened. They were still arguing. They were talking low. I could not make out what they were saying.

Q. Which way was Sandy Seale facing

A. Facing the tracks

Q. Which way was Donald Marshall facing

A. The street

Q. ~~xxxxxxx~~ How close were they

A. Arms length

Q. what did you see or hear next

A. I did not hear. I just seen Doald Marshall's hand going towards the left hand side of Seale's stomach. He drove his hand in -turned it and pulled it back.

Q. what happened then

A. I seen Sandy fall to the ground and Donald Marshall running up crescent St. towards Argyle St.

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CITY OF SYDNEY POLICE DEPARTMENT

CONTINUATION REPORT

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SUBJECT

CASE No.

RCMP2 73

COPY

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Q. what did you do

A. I run home up Bentinck St.

Q. were you standing on the track at the time Sandy Seale fell to the ground

A. Yes. I was.

Q. Why were you standing there

A. I was drinking a pt. of beer

Q. Was there anybody else around the scene

A. Nobody - not a soul

Q. Did Seale scream when Donald Marshall struck him in the stomach

A. He screamed - aah

Q. How long did you know Sandy Seale

A. 4 or 5 years

Q. How long did you know Donald Jr. Marshall

A. Since last summer

Q. Did you ever quarrell with either boy

A. No

Q. were you talking to Sandy Seale at the dance

A. Yes outside about 10:30 P.M.

Q. How far away would you be from Sandy Seale and Donald Marshall when they were on Crescent St.

A. 30 to 40 ft.

Q. How long were they standing there

A. About 10 minutes. They were arguing over something

Q. How is it you did not come down where they were at

A. I was scared

Q. Did they notice you on the tracks

A. I don't know

Q. would ~~xxxx~~ there be any obstruction between you and Sandy Seale and Donald Marshall when you were on the tracks from them seeing you

A. Bushes between them and me - blocking the view on them. It was easier for me to see them.

Q. Did you see Donald Marshall since

A. Yes, Saturday or Sunday.

Signed: John Pratico

JULY '71
DMPRE 8

Q. They took Marshall away from that area, did you accompany the vehicle?

A. No.

Q. Did you stay there until the ambulance arrived?

A. Yes.

Q. What happened then, when the ambulance arrived?

A. The ambulance arrived and like Sandy Seale tried to get over on his stomach and I didn't want to move him so I asked a couple of other fellows to help me move him over on his stomach so he was moved over on his stomach, the ambulance came they wrapped the blanket over him and put him on the stretcher.

Q. Did you recognize the man at this time?

A. No sir.

Q. You didn't know Sandy Seale before this evening?

A. No.

Q. Tell me, are you familiar with this area that this took place?

A. No.

Q. Do you know if there were any lights in the area?

A. Yes sir.

Q. How many?

A. Two, maybe three, I guess there was a street light, fifteen or twenty feet away from where there were standing at.

No questions by Defence

John Pratico, sworn

By Mr. MacNeil

Q. What is your full name, please?

A. John Lawrence Pratico.

Q. Where do you live?

A. 2201 Bentinck Street.

Q. In the City of Sydney?

A. Yes.

Q. How old are you?

A. Sixteen (16).

Q. Do you know Donald Junior Marshall?

A. Yes.

Q. How long have you known him?

A. About a year.

Q. Do you see him in Court here today?

A. Yes.

Q. Will you point him out to the Court?

Witness indicates the accused.

Q. Did you see him in the late hours of the 28th of May 1971?

A. Yes.

Q. Where?

A. In Wentworth Park.

Q. Did you see him before you saw him in Wentworth Park?

A. I don't recall.

Q. Where about did you meet him in Wentworth Park?

A. I went up around Crescent Street, I went down Argyle over to Crescent Street.

Q. Pardon me, before you did that, did you see Donald Marshall?

A. I don't remember.

Q. Did you have any conversation with him?

A. I don't remember, I believe I seen him up on the street.

Q. What street?

A. George Street.

Q. What was that conversation? Tell me on that.

A. Just talking, then I left him, I had a little bit of talk

and then I left him and I went down Argyle Street.

Q. Did he suggest anything to you?

A. I don't recall, I believe he did, coming down to the park or something like that.

Q. Are you nervous Mr. Fratico?

A. Yes.

Q. Would you tell us what happened and what took place?

A. I went down Argyle Street, eh.

Q. No you never got there yet, I am not finished where you met him up on George Street, where about on George Street did you meet him?

A. By the store.

Q. What store.

A. I don't know the name of the store.

Q. Do you know where Argyle Street is?

A. Yes.

Q. How far away were you from Argyle Street?

A. Five feet, a little more.

Q. What was that conversation?

A. I believe he said something about coming down to the park or something.

Q. What did you say?

A. I said, no.

Q. What did you do?

A. I left and went down Argyle Street turned up Crescent Street and I walked up the railway tracks, I went down and went into the bush and started to drink a pint of beer.

Q. Tell me, can you read a plan?

A. Yes.

Q. I show you Exhibit M/1, can you tell me on that, where in the bush you were?

A. Right here (indicates on plan)

Q. That would be opposite the house that is designated as D.W. Campbell, and what did you see take place?

A. I seen Marshall and Seale talking.

Q. Where were they talking?

A. First, Marshall was on the sidewalk, Donald Marshall was on the sidewalk, and Seale was facing him. They were talking for awhile and I could hear mumbling they were arguing there about something and I seen Marshall haul something from his pocket and stab Seale.

Q. What happened to Seale when he was stabbed?

A. He dropped.

Q. Did you know Sandy Seale before this right?

A. Yes sir.

Q. Sandy Seale dropped, did he?

A. Yes sir.

Q. What did Donald Marshall do then?

A. I don't know sir, I started to run.

Q. Where did you run?

A. Down the tracks by the bridge there and up Bentinck right up Bentinck Street.

Q. You live on Bentinck Street?

A. Yes sir.

Q. Did you see the man that you refer to as Donald Marshall you saw on the 28th of May, in the Court room today?

A. Yes sir.

Q. Will you point him out to the Court, please?

A. Witness indicates the accused.

No questions by Defence

Q. What did you do as a result of what you saw,

did you do anything to her?

and I was in the opposite direction

Robert MacKay, swornBy Mr. MacNeil

Q. Your full name, please?

A. Robert S. MacKay.

Q. How old are you?

A. Sixteen (16).

8 Q. Where do you live?

A. 225 Fulton Avenue, Westmount.

Q. Were you attending a dance at St. Joseph's Parish Hall on the 28th of May, 1971?

A. Yes.

10 Q. What time did you leave that dance?

A. About twenty to twelve.

Q. Were you accompanied by anyone?

A. Yes.

Q. Who?

15 A. Debbie MacPherson, Coxheath.

Q. What direction did you travel as you left the dance?

20 A. We came down and went around the bandshell, a little way from, like you know from Argyle, we came down and were sitting on the benches for five or ten minutes, she wanted to get a bus home so I was going to walk her to the bus stop. We walked up Crescent Street away and I saw Sandy Seale lying on the side of the road. She noticed him first and then I walked over.

25 Q. What did he say?

25 A. Help me, I was stabbed.

Objection to answer by Mr. Rosenblum

Q. What did you do then?

A. I saw my girl home

30 Q. No, what did your girl do as a result of what you said, You said something to her?

A. She went to get a bus and I ran in the opposite direction.

Q. And where did you go?

A. I ran up across the park, I ran up by Pollets store there and got ...I saw a fellow with a girl?

Q. What did you do?

A. We came back together, like you know, we were getting up so far we saw a car pulling up and I saw Donald get out of the car.

Q. Donald Marshall the accused?

A. Yeah, So we went to a house to call the police, so we came back and the police was coming down, the guy wouldn't let us use the phone, so when we were getting down off the steps and off the lawn a police car came by, the police questioned me and told me to go home.

Q. Did you know Sandy Seale before?

A. Yes.

Q. And was this Sandy Seale you saw lying on the road?

A. Yes sir.

Q. Do you know the accused, Donald Marshall?

A. I just know him to see him, I don't know him to talk to.

Q. Do you see him in Court today?

A. Yes.

Q. Point him out to the Court, please?

Witness indicates the accused. (fellow with him.)

Brian Doucette, sworn By Mr. MacNeil

Q. Your name?

A. Brian Doucette.

Q. Where do you reside?

A. 120 Crescent Street, still in ambulance.

Q. What happened?

A. I don't know what happened and they said there was a fellow lying on the lawn, please call an ambulance. I said I will call the police first and ask for an ambulance. After they called.

NOVEMBER '71
DMI 12

-118- JOHN L. PRATICO, Dir. Exam.

JOHN L. PRATICO, being called, came forward.BY MR. MacNEIL:

What is your age, sir?

MR. PRATICO:

Sixteen.

[THE COURT QUESTIONED MR. PRATICO]

THE COURT:

(10) This young man is of age and has an appreciation of the significance and nature of an oath. I am satisfied that he should be sworn.

MR. MacNEIL:

Thank you, My Lord.

JOHN L. PRATICO, being duly sworn, testified as follows:BY MR. MacNEIL: (Dir. Exam.)

Q. What is your full name, sir?

A. John Lewis Pratico.

Q. Where do you live?

A. 201 Bantrock Street.

(20) Q. That's in the City of Sydney here?

A. Yes sir.

Q. County of Cape Breton, Province of Nova Scotia. And you were present in court since this term opened?

A. Yes.

Q. Until you were excluded as a witness in this case a few minutes ago - when I say a few minutes ago, when His Lordship ordered all witnesses to leave the court room. When you left this court room did you discuss this case with anyone?

(30) A. Yes.

Q. With whom?

A. Mr. Khatman.

Q. Anyone else?

A. Mr. Marshall.

Q. Mr. Marshall.

A. His Lordship discussed the case with him. I was talking to him.

-119- JOHN L. PRATICO, Dir. Exam.

MR. ROSENBLUM:

A little louder, please.

WITNESS:

Mr. Marshall.

BY MR. MacNEIL:

Q. With Mr. Donald Marshall, Sr.?

A. Yes.

Q. The father of the accused?

(10) A. Yes sir.

Q. And as a result of this conversation that you had with Donald Marshall, Sr., what did you do?

A. Went and asked Mr. Khattar -

Q. Simon Khattar, Q.C., solicitor for the defence?

A. Lawyer.

Q. Yes, lawyer. And with anyone else?

A. No, besides Mr. McNeill, you and Mr. MacIntyre and Mr. MacDonald.

Q. That was after an adjournment though that we had here -

(20) THE COURT:

I -

MR. MacNEIL:

There's a purpose in this, My Lord. My learned friends are perfectly aware of it.

THE COURT:

Is this man to tell about what happened? That may come later.

MR. MacNEIL:

That will be coming later.

(30) THE COURT:

That may come later. I don't know. I think, Mr. MacNeill, for the moment you better confine yourself to the evidence concerning the events on May 28, 1971. Then later if for any good reason you have for bringing up the events of today, we will go into it.

-120- JOHN L. PRATICO, Dir. Exam.

MR. MacNEIL:

Well, My Lord, in view of the time element, I won't be able to -

THE COURT:

Proceed with the evidence of - I have nothing before me that would warrant my listening to what has been up to now your questioning. So proceed with the questioning of the events of that night.

(10) MR. MacNEIL:

As Your Lordship pleases.

THE COURT:

I will give you every opportunity if necessary to bring up what happened today.

BY MR. MacNEIL:

Q. Do you know Donald Marshall, Jr.?

A. Yes sir.

Q. Do you see him here in court today?

A. Yes.

(20) Q. Would you point him out to the court, please. Let the record indicate the witness points to the accused. Did you see him on the 28th day of May, 1971?

A. Yes.

Q. Where?

A. By Wentworth Park

Q. And where did you first see him that evening?

A. Up by St. Joseph's Hall.

Q. Up by St. Joseph's Hall?

A. Around that area.

(30) Q. Who was with him?

A. Sandy Sasio.

Q. Did you know Sandy Sasio?

A. Yes, I did.

Q. Tell me, Mr. Pratico, what did you do when you joined up with Sasio and Donald Marshall, Sr.?

A. Walked down the road as far as, like around the park.

-121- JOHN L. PRATICO, Dir. Exam.

Q. Do you know the streets in the city of Sydney?

A. Yes.

Q. There's a drugstore there on what corner?

A. Corner George and Argyle.

Q. George and Argyle. Tell me, sir, what took place there if anything?

A. They went down in the park. I went the other way.

Q. Which way did you go?

(10) A. Argyle to Crescent.

Q. You went up Argyle St. To Crescent Street?

A. Yes sir.

Q. Then where did you go?

A. I went over Crescent, down Crescent Street, as far as the railway tracks, there on the railway tracks and went up behind a bush and I stayed there and I went and sat down in a squat position, kind of behind the bushes where I was sitting.

Q. What time of the day or night would this be?

(20) A. I wouldn't know.

Q. I beg your pardon.

A. I wouldn't know what time it was. What I'm thinking, it would be 11:30, quarter to twelve. I wouldn't know for sure.

Q. What were you doing behind the bush?

A. Drinking.

Q. Tell me sir, what did you observe if anything?

A. Well soon as I observed Donald Marshall and Soale talking, it seemed like they were arguing.

(30)

THE COURT:

I can't hear you!

THE WITNESS:

It seemed like they were arguing.

BY MR. PRATICO:

Q. Where was that?

A. On Crescent Street.

-122- JOHN L. PRATICO, Dir. Exam.

Q. I'll show you plan exhibit No. 5. Are you familiar with this plan?

A. Yes.

Q. Would you point out please where on the exhibit 5 that you saw the two gentlemen.

A. There. This would be the drugstore.

Q. You'll have to speak up loud now,

A. This would be the drugstore here.

(10) Q. Louder, please.

A. I went down this way here.

Q. Down Argyle Street?

A. Down Argyle to Crescent and come up here and stopped around here.

Q. Stopped in the area marked "X" on the plan.

A. In that area.

Q. Stopped in the area marked "X" on the plan. (Shown to Jury).

A. Tell me, before this evening did you know Donald Marshall?

A. Yes.

(20) Q. How long did you know him?

A. Known him ever since last summer.

Q. Did you Sandy Seale?

A. Yes sir.

Q. How long did you know Sandy Seale?

A. A couple of years.

Q. When you got behind the bush, you say you were at in the park there that you pointed out at approximately the point marked "X" on the plan, what did you observe if anything?

A. I seen Sandy Seale and Donald Marshall talking, more or

(30) less seemed like they were arguing.

Q. Did you recognize them at that time?

A. Yes.

Q. Were there any street lights in that area?

A. (Inaudible response.)

Q. Take your hand down.

A. Yes, sir.

-123- JOHN I. PRATECO, Dir. Exam.

Q. And you could recognize them at that time?

A. Yes.

Q. What if anything did you see them do?

A. Well they stood there for a while talking and arguing and then Marshall's hand come out, his right hand come out like this -

Q. What do you mean this way?

A. Come out like that, you know, and plunged something into

(10) Sasic's - like it was shiny and I -

Q. Pardon me. You're confusing me. The hand came out of his pocket and, you said something about shiny. Now how does that connect in there?

A. Well it looked like a shiny object. Come out this way, you know.

Q. What did he do with the shiny object?

A. Plunged it towards Seale's stomach.

Q. Into whose stomach?

A. Seale's.

(20) Q. What did Seale do?

A. He fell. And that's the last I seen.

Q. What did you do?

A. I started running. I run up Bentinck Street.

Q. And tell me, can you tell me what Donald Marshall, Jr., the accused, was wearing the night he -

A. He was wearing a yellow jacket or shirt.

Q. And was he wearing that when you first saw him up at St. Joseph's Hall?

A. I'm not sure now. I can't remember that.

(30) Q. Where did you remember him wearing the yellow -

A. In the park.

Q. Pardon.

A. In the park.

Q. I will show you exhibit No. 3. Do you recognize that exhibit?

A. Yes sir.

-124- JOHN L. PRATICO, Dir. Exam.

Q. Beg your pardon?

A. Yes sir.

Q. What is that?

A. Jacket he was wearing.

MR. MacNEIL:

That's all, My Lord.

(Mr. Khattar requested adjournment)

BY THE COURT:

(10) Q. Where do you live?

A. 201 Bentinck Street.

Q. Listen carefully to me. I'm not going to have you locked up tonight, but I want you to remember that if anyone apart from your family - your own family - talks to you tonight, between tonight and tomorrow about this case, you are tomorrow morning to give me the name of every person who says anything to you about the case.

A. Yes sir.

(20) Q. And as far as your family, only to the effect that you were in court and you gave evidence. Is that clear?

A. Yes sir.

Q. If anyone should come hear you to tell you what to say, or to persuade you, no matter who it is, you will tell me?

A. Yes sir.

Q. Do you understand fully what I'm saying?

A. Yes sir.

Q. On that condition, I will not have you placed in safekeeping between now and tomorrow. Is that clear?

A. Yes sir.

(30) THE COURT:

Mr. Foreman and gentlemen of the jury, we will now adjourn. Needless to say, I ask you again to make sure, of course I'm quite sure that no one will, in any way come near any member of the jury in this case. We all recognize the great importance of this matter.

(4:50 P.M. COURT RECESSED)

-125- JOHN L. PRATICO, Cross-Exam.

10:00 A.M. NOVEMBER 4, 1971 COURT PROPERLY OPENED

10:00 A.M. JURY POLLED, ALL PRESENT

MR. PRATICO RESUMED THE STAND

BY MR. KHATTAR: (Cross-Exam.)

Q. Your friends call you John?

A. Yes.

Q. I'll call you John. Do you remember May 27 of this year?

(10) A. I think it was May 28.

Q. I asked you if you remember May 27, of this year. Do you remember that date?

A. Yes.

Q. You do?

A. Yes.

Q. How old are you, John?

A. Sixteen.

Q. When were you sixteen?

A. December. Last December.

(20) Q. This past month?

A. No, last December.

Q. September of last year?

A. December!

Q. Do you drink intoxicating liquor?

A. Yes.

Q. Were you drinking on the 27th of May this year?

A. Yes.

Q. You were?

A. Drunk.

(30) Q. You were drunk on that day. On the day previous to that, the 26th of May, were you drinking on that day?

A. No.

Q. Well the day after the 27th, the 28th of May, were you drinking?

A. Yes.

Q. Were you drunk on that day too?

A. Yes.

-126- JOHN L. PRATTICO, Cross-Exam.

Q. Did you go to a dance on the evening of the 28th of May?

A. Yes.

Q. You pretty well remember do you the 27th of May of this year?

A. Not pretty well.

Q. Just as well as you remember the 28th?

A. The same.

(10) Q. About the same. Did you see Donald Junior Marshall, the accused, on May 27 of this year?

A. Not the 27th.

Q. Did you see him on the 28th?

MR. MacNEIL:

Can't hear him.

THE WITNESS:

I said not on the 27th, no.

BY MR. KHATTAR:

Q. Did you see him on the 26th of May?

(20) A. I can't remember.

Q. When did you last see him before May 28 of this year?

A. I think it was the day before.

Q. That would be May the 27th. Now you're correcting your evidence are you. I asked you originally if you had seen Donald Marshall, Jr., the accused, on May 27 and your first answer as I recall, was, no. Now what is your answer, did you see him on May 27?

A. Maybe I did. I'm not sure.

Q. You're not sure. But you saw him at the dance on May 28?

(30) A. No!

Q. Oh, you didn't see him at the dance May 28. You say no?

A. No.

Q. Did you see him outside the dance hall?

A. Not near the dance hall; down the road. I believe it was him.

Q. Were you talking with him?

A. I'm not sure if it was him or not.

-127- JOHN L. PRATICO, CROSS-EXAM.

Q. This was on May 28?

A. Yes.

Q. 1971?

A. Yes.

Q. Approximately what time was it?

A. I wouldn't know the time.

Q. Do you have any indication - any knowledge of the time of any of the events of May 28, 1971?

(10) A. No.

Q. Were you sick at the dance on May 28 -

A. Sick?

Q. Sick, ruzsick?

A. Liquor sick, yes.

Q. Were you taken into the washroom and given some help by some of your friends?

A. Yes.

Q. You don't recall that time either?

A. No, my mind -

(20) Q. Was it out near the area of St. Joseph's Hall, is that the place where the dance took place?

A. Yes, St. Joseph's Hall.

Q. Where is St. Joseph's Hall located?

A. George Street.

Q. On Cottage Road?

A. I wouldn't know the road.

Q. You don't know the road. Is it some distance from Wentworth Park?

A. A little distance.

(30) Q. Approximately what distance is it?

A. I wouldn't know for sure.

Q. How long would it take you to walk, normal walk, from St. Joseph's Hall to Wentworth Park?

A. About five minutes.

Q. Did you see Oscar - Sandy Seale at the dance on that evening?

A. Yes.

-129- JOHN L. PRITICO, Cross-Exam.

Q. Did you see him outside the dance hall? When I say dance hall, I'm referring to St. Joseph's Hall.

A. No.

Q. You didn't see him? But my recollection is you told the Court you saw him later with Donald Marshall, Donald Junior Marshall?

A. That's what I said.

Q. They were walking together on George Street -

(10) THE COURT:

Just let him answer. Mr. Khattar, until I hear his answer.

MR. KHATTAR:

He had answered, My Lord, probably you didn't hear him.

THE COURT:

What was it?

THE WITNESS:

I said I saw him. I supposedly seen them but they were on George Street.

(20) BY MR. KHATTAR:

Q. You had seen them on George Street. Where on George Street?

A. Just as you come down, you come down from the dance hall St. Joseph's Hall, you come down from St. Joseph's Hall you know -

Q. Together?

A. No. Here's how it is. I walked over from St. Joseph's Hall, eh, me, and I come down - I wouldn't know how far it is, near a house, and I met them and I walked so far and I went down Argyle Street.

(30)

Q. Let me get it clearly. You walked which way, on what street did you walk from St. Joseph's Hall?

A. George.

Q. George Street?

A. Yes.

Q. From George Street what street did you walk?

A. Argyle.

-129- JOHN L. PERRICO, COURT-REPORTER.

Q. Argyle?

A. Yes.

Q. Where did you see Mr. Seal? and Mr. Marshall?

A. Up the road on George Street.

Q. Up the road on George Street?

A. Well on George Street, like -

Q. Do you know where Pollett's Drugstore is located on the corner of George and Argyle?

(10) A. I think that's the name of it, yes.

Q. Was it there -

A. We walked that far -

Q. You had walked that far?

A. Yes.

Q. Before you saw them?

A. No. I seen them a little before that.

Q. Well where were they? Were they on the other side of the street?

A. No, they were on the same side of the street.

(20) Q. On the same side, were they across that intersection of Argyle and George?

A. Well you know where Argyle and George are, come off -

Q. Don't ask me the questions. Just answer them.

A. Well they were on the other side of it, you know what I mean, like Argyle and George, Argyle cuts off George and they were on the other, off the intersection -

Q. They were across that intersection?

A. Not when I seen them first.

Q. They had not crossed the street?

(30) A. They had not crossed.

Q. Well what distance would separate you and them when you saw them?

A. I wouldn't know.

Q. Roughly? The same distance as separating you and me?

A. Might be a little more.

Q. They were walking together?

-130- JOHN L. PRATICO, Cross-Exam.

A. Yes.

Q. Did you have them under observation for any particular length of time after you first saw them?

A. Not at that time till I got down.

Q. Did they remain together until some time later that evening?

A. Well I wouldn't know that. I left them. I wouldn't know.

Q. Well then, do I take it you didn't talk to them?

A. Oh yes, I said "Hi" to them.

(10) Q. You said "Hi" to them where?

A. By the park, just before you get to the park, you know.

Q. Before you come to the park?

A. Yes.

Q. Was that on George Street, Argyle Street?

A. George Street, and Argyle Street, I believe it was them. George Street and Argyle.

Q. And you said "Hi" to them?

A. Yes. I think it was them two. I'm not sure.

Q. You're not sure it was them?

(20) A. No.

Q. At that point what distance would be separating the two of them, the same distance separating you and me?

A. No, I can't remember that.

Q. You can't remember that?

A. No.

Q. Were you closer to them than the first time you saw them?

A. I think I was.

Q. You were. Are there lights on George Street?

A. Yes.

(30) Q. Was the street well lighted?

A. Pretty well.

Q. Isn't that these vapour lights - you know what a vapour light is?

A. No.

Q. Isn't that where they're at - big yellow lights shining on the pavement?

-131- JOHN L. PRATICO, CROSS-EXAM.

A. I'm not sure if they're yellow lights or not.

Q. But it's well lighted?

A. Yes.

Q. Your conversation then with Mr. Marshall was "Hi"?

A. (Witness indicates affirmatively.)

Q. That's the extent of your conversation?

A. That's the extent, just that much.

Q. You didn't talk to him again until about when?

(10) A. I didn't talk to Donald Marshall any more.

Q. You didn't talk to Donald Marshall any more?

A. Nor Scale.

Q. Do you remember giving evidence before Judge John F. MacDonald?

A. Yes.

Q. Do you remember being asked this question -

MR. MacNEIL:

(20) Objection if Your Lordship please, until I find out where, when, why and under what circumstances. This witness is entitled to know if this was at the Preliminary Hearing or not. I don't know what it is.

MR. KEATY:

You don't. But I asked the witness and he says he remembers. My Lord, My learned friend I'm not concerned with. It's the witness.

MR. MacNEIL:

(30) He may have given evidence many times before Judge John F. MacDonald. And Your Lordship, if I understood you reading the law yesterday, the witness has to be associated with when, where, how he made the statement.

MR. KEATY:

In the interests of full disclosure, My Lord, I will associate the witness with the statement.

BY MR. KEATY:

Q. Do you remember Monday, July 5, 1971?

A. No.

-132- JOHN W. FRATICO, Crown Exam.

Q. Don't remember the date. Do you remember giving the evidence in the Preliminary Inquiry concerning this particular charge before Judge John P. MacDonald?

A. Yes.

Q. In this court house?

A. Yes.

Q. You remember that?

A. Yes.

(10) Q. And do you remember being examined by my learned friend, Mr. Donald C. MacNeil, Q.C., present in court?

A. What do you mean? Do you mean Mr. MacNeil?

Q. Yes. The gentleman on whom I place my hand.

A. Yes.

Q. Do you remember, question, page 40.

"Q. Do you know Donald Junior Marshall?"

A. Yes, I remember that.

Q. You remember that question. Your answer was, "Yes".

Is that answer correct?

(20) A. (Witness indicates affirmatively.)

Q. I'm going to ask you the questions, give you the question and give you the answers and I'm going to ask you if you remember the statement, question and answer - and I'm going to ask you if the answer you gave is correct.

A. Yes sir.

Q. "Q. How long have you known him? About a year." Is that answer correct?

A. Yes.

Q. The questions are correct. "Q. Do you see him in court

(30) here today? A. "Yes." And then you're asked to point him out in court.

Would you recall you did or didn't?

A. I did.

Q. Take your hand away from your mouth, please.

-133- JOHN L. FORTICO, CROSS-EXAM.

"Did you see him in the late hours of the 28th of May, 1971?" The answer was "Yes." "Where?" The answer, "In Wentworth Park." "Did you see him before you saw him in Wentworth Park?" Answer, "I don't recall." Do you recall that question and answer?

A. I don't recall the question and answer.

Q. Is the answer correct? - "I don't recall."

A. I don't remember.

(10) Q. You don't remember that question and answer?

A. No.

Q. I'll come back to that later. "Where did you meet him in Wentworth Park?" Answer, "I went up around Crescent Street. I went down Argyle over to Crescent Street." Do you remember that question and answer?

A. Yes.

Q. Is that correct?

A. Yes.

(20) Q. Pardon me, before you did that, - this is a question put to you. "Did you see Donald Marshall?" Answer, "I don't remember."

Do you recall the question and answer?

A. Yes.

Q. Is the question and answer correct that you gave?

A. Yes.

Q. "Did you have any conversation with him?" A. "I don't remember. I believe I saw him up on the street."

Do you remember the question and answer?

A. Yes.

(30) Q. Is the answer correct?

A. Yes.

Q. "What street?" Answer, "George Street."

Do you remember that question and answer?

A. Yes.

Q. "What was that conversation" - do you remember that question?

A. No.

CROSS-EXAMINATION

Mr. I'll give you the answer.

then I left him. I had a little bit of
left him and went down Argyle Street." -

on page 40, question is line 29 and the answer
how do you remember that answer?

answer.

the answer, So you say at that time on June 5,
answer you gave it as I have read to you?
(states affirmatively.)

Pratico, you say that you didn't do anything
to Mr. -

can remember what I said.

you can remember?

to talk with Mr. Marshall as I understand you,
after May 28, 1971?

on Saturday or Sunday.

on a Friday?

condition on Saturday, May 29, 1971?

Mr. Now you saw Mr. Marshall on that day?

if it was Saturday or Sunday. It was the day
he picked me up.

MacIntyre sent for me.

you?

what day that was.

Saturday or Sunday I believe.

MacIntyre sent for you on more than one

he sent for me.

Oh, I take it, on that day?

there, when you talked with

my Theresa Paul?

remember if she was there or not.

It was Saturday or Sunday.
Paul since May 28, 1971, didn't

what date after May 28?

was.

by following -

1971?

now I was talking to her. It

of days after, but what day.

and that Marshall didn't do

pleases, for the record if the
in the remarks were made by the

of your own ruling in which you
seen by my learned friend.

-136- JOHN L. PRATICO, Cross-Exam.

THE COURT:

Mr. MacNeil, the situation is not similar. It is not similar. He is now cross-examining the witness as to something which the witness said or didn't say. It is not what somebody told him. If he were asked, what did Mary Theresa Paul say - that would be different.

MR. MacNEIL:

Yes, I realize, My Lord.

(10) THE COURT:

I made the ruling on that yesterday.

MR. MacNEIL:

I just want my objection on the record.

THE COURT:

You have drawn to his attention the place and the time where this conversation took place.

MR. KHATTAR:

I'm going into that detail, My Lord.

BY MR. KHATTAR:

(20) Q. Where did you see Mary Theresa Paul?

A. Oh, the day I seen her she was at my place. She was coming with Gordie Lynch.

Q. She was with whom?

A. Gordie Lynch.

Q. Gordie Lynch. Where is your place, Mr. Pratico?

A. 201 Bantick Street.

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

A. Yes.

(30) Q. While there, did you make a statement to her that Marshall, that is, Donald Junior Marshall, the accused in this case, didn't do the stabbing?

A. I don't remember that.

Q. Are you prepared to say you did not make the statement?

A. I'm not saying I didn't make it. I'm just saying I can't remember.

-137- JOHN L. PESTICO, Cross-Exam.

Q. Was there any particular reason why you wouldn't remember making such a statement?

A. No.

Q. There isn't. Do you know one Tom Christmas?

A. Yes.

Q. Did you make a statement to him -

THE COURT:

(10) Now Mr. Khatlar, you cannot question the witness on cross-examination about a previous statement unless you bring home to him the time and the place.

MR. KHATTAR:

I propose to do that. I asked the question too quickly.

BY MR. KHATTAR:

Q. Do you know Tom Christmas?

A. Yes.

Q. When did you see him first after May 28 of this year?

A. I believe it was on a Saturday.

Q. Where did you see him?

(20) A. In Wentworth Park.

Q. In Wentworth Park?

A. Yes.

Q. Were you sober on that occasion?

A. Yes.

Q. Was Mr. Christmas sober on that occasion?

A. I believe so.

Q. Did you talk with him?

A. Yes.

Q. Did you tell him that Donald Junior Marshall did not stab Sandy Seale?

(30)

A. Yes.

MR. PESTICO:

Objection, if Your Lordship please, on the same basis -

-138- JOHN L. PRATICO, Cross-Exam.

BY MR. KEATTAR:

Q. Did you give the answer as "yes"?

A. Yes.

Q. Do you know Sheriff James MacKillop?

A. Yes.

Q. Mr. Pratico, after you say you saw Mr. Marshall, the accused, you say on George Street, where did you go?

A. Down Crescent Street, down Argyle to Crescent.

(10) Q. Was there anyone with you?

A. No.

Q. Did you see anybody and talk with them on that occasion?

A. No sir.

Q. At any time that evening of May 28 of this year did you talk with anybody while you were at the park if you were at Wentworth Park?

A. No, I didn't.

Q. Did you say no?

A. Yes.

(20) Q. Did I understand you earlier in your evidence to say that you had been drinking on that day, that is, May 28 of this year?

A. Yes sir.

Q. What time did you start to drink on that day?

A. I don't know. I think it was seven or eight o'clock.

Q. Eight o'clock.

A. Seven or eight.

Q. Seven or eight o'clock in the morning or evening?

A. Evening.

(30) Q. What did you first drink on that evening?

A. I think it was wine.

Q. Wine - what kind of wine?

A. Seventy-four.

Q. How much is that wine, do you know?

A. \$1.75.

-139- JOHN L. FINNICO, Cross-Exam.

Q. Where did you get that wine?

A. I went to the liquor store for it.

Q. You went to the liquor store for it. How much was in the bottle?

A. Well I only - I drank half of it.

Q. Half of it but how much is half? How many ounces?

A. I wouldn't know.

Q. At seven o'clock you drank the -

(10) A. Seven or eight -

Q. Seven or eight. What else did you drink?

A. Beer.

Q. Beer - how much beer did you drink?

A. Maybe half a dozen quarts I drank and pints.

Q. Half a dozen quarts and how many pints?

A. Two or three.

Q. About two or three pints. When did you have this beer?

A. I don't remember the time I had it.

Q. Some time after seven?

(20) A. Yes.

Q. What else did you drink?

A. I can't remember what else I drank.

Q. Did you drink anything else besides beer and wine?

A. I think so.

Q. Was it rum?

A. I'm not sure.

Q. Did you have any vodka?

A. Can't remember.

Q. Have any gin?

(30) A. Gin, I don't even know what the stuff is - lemon gin you're talking about.

Q. It doesn't matter what kind of gin. Did you have any kind of gin?

A. I can't remember.

Q. Well is there any doubt in your mind about the type of gin that you may have had?

-140- JOHN L. PRATICO, Cross-Exam.

A. I don't know if I drank gin or not. I don't know if I drank gin.

Q. You were drinking anything you could get your hands on was it you on that day?

A. No.

Q. Or were you confining it merely to wine and beer?

A. Well I would've drank rum if I had it.

Q. If you had it when, what time?

(10) A. That night.

Q. That night, at what time that night?

A. I wouldn't know.

THE COURT:

What was that, would what?

MR. KHATTAR:

"I would've drank anything if I had it."

MR. ROSENBLUM:

Rum -

BY MR. KHATTAR:

(20) Q. Would you give His Lordship the answer you were giving me?

BY THE COURT:

Q. You wouldn't have drank rum?

A. I would have.

Q. You would have drank rum if you had had it.

A. Yes.

BY MR. KHATTAR:

Q. At what time did you get sick in St. Joseph's Hall?

A. I don't know.

Q. Was that just immediately before going to the park?

(30) A. I don't know.

Q. You don't remember that. Do you know Donald Jew?

A. Yes.

Q. Did you see him on that evening? May 28, 1971?

A. Yes. We were drinking together.

Q. You were drinking together. Did you have the drinks together?

-141- JOHN L. PRATICO, Cross-Exam.

A. No. I don't remember really.

Q. You don't remember what?

A. Leaving together.

Q. You don't remember leaving the dance?

A. Together, I said.

Q. Do you remember leaving the dance?

A. Yes.

Q. Do you remember the time you left the dance?

(10) A. No.

Q. You have no idea of the time at all?

A. No.

Q. Were you wearing a wristwatch or a watch of any kind, time piece of any kind?

A. No. (Witness indicates negatively)

Q. You have to answer "yes" or "no". Don't nod your head.

A. No.

Q. I'm not being smart because it has to get on the record if you say "yes" or "no". In any event, you went to the

(20) park somewhere?

A. I didn't go into the park.

Q. You didn't go to the park.

A. I went down Myrtle - like I guess you would call it the park, the tracks there.

Q. The tracks - what tracks?

A. On Crescent Street.

Q. Tracks on Crescent?

A. By the park, you know where the park is, well the tracks that goes - the C.N.R. tracks that go along there.

(30) Q. Were there people in the area where you were?

A. I can't remember seeing anybody.

Q. You didn't see anybody?

A. I can't remember seeing anybody.

Q. Are you prepared to say there was nobody there?

A. No.

-142- JOHN L. PRATICO, CROSS-Exam.

Q. Was the fact that you couldn't use them because you were so intoxicated?

A. Might have been.

Q. Were you carrying some liquor on your person?

A. One pint of beer.

Q. On pint?

A. Yes.

Q. What kind of beer was it?

(10) A. I believe it was Oland's.

Q. You're not sure of that either?

A. No.

Q. Where did you get that pint of beer?

A. Well I had - some fellows gave me some beer by, I think it was Stephens lumber mill there.

Q. Somebody gave it to you by Stephens lumber mill. Where is Stephens lumber mill located?

A. Townsend.

Q. Townsend Street?

(20) A. Yes.

Q. Townsend Street, is that right?

A. Yes.

Q. Well what did you do? Did you leave the dance and go to Townsend Street?

A. No. I got that before and I saved it.

Q. What time did you get it before?

A. I wouldn't know the time.

Q. Was it at seven o'clock, after seven -

A. I think it was after seven.

(30) Q. Was it after ten?

A. I wouldn't know.

Q. You wouldn't know. It was sometime after seven but you don't know in between?

A. Yes.

-143- JOHN L. PRATICO, Cross-Exam.

Q. And you went to Stephens lumber mill on Townsend Street. Is there a liquor store there?

A. No, that's where I was passing through, like, you know, the tracks, towards the park, that's when we received the stuff.

Q. And some individual that you know or didn't know -

A. Didn't know them. They were pretty drunk and they gave us it.

(10) Q. They?

A. There was two or three there.

Q. Two or three. Do you remember their names?

A. I didn't know their names. I wouldn't even know - I don't even know them.

Q. You didn't know them and apparently they didn't know you.

A. Yes. Well I don't know if they knew the fellow I was with or not.

Q. Oh, there was somebody with you?

A. Yes.

(20) Q. Who was with you?

A. Donald Joe and a few others.

Q. Who were the others?

A. I don't know who the others were.

Q. Is there any reason you wouldn't remember those people?

A. I just can't remember.

Q. You just can't remember. And this is sometime between seven and ten o'clock?

A. Yes.

Q. What were you drinking at eleven o'clock?

(30) A. I don't think I was drinking anything at eleven o'clock.

Q. Nothing at eleven; when were you drinking the quarts of beer?

A. That was - I told you between seven and ten.

Q. Between seven and ten. Now to get back to the park area. You said you walked along the tracks, you called the track on Concord Street; is that what you said?

A. Tracks, yes.

-244- JOHN L. PRATICO, Cross-Exam.

Q. There were people on the park or you don't know?

A. I don't know.

Q. You don't know if there was one or a number there?

A. I know Marshall and Seale was -

Q. You noticed Marshall and -

A. Seale.

Q. Where did you notice them?

A. Crescent.

(10) Q. On Crescent Street, and were those the only two people you noticed?

A. Only two people I noticed.

Q. And you spoke to them?

A. No.

Q. How did you get by without speaking to them? You spoke to them earlier?

A. No, I spoke to them earlier but I went the other way.

Q. Oh, you mean you went what way?

A. Argyle, down Argyle Street, onto Crescent.

(20) Q. Now you didn't enter onto Crescent Street at all, is that what you're telling me?

A. I said I went on the railroad. I went around on the railway. I walked down Crescent so far and got on the railway.

Q. You walked down to Crescent so far -

A. And got on the railway tracks.

Q. And you got on the railroad tracks. Well why is it that you wouldn't go by Seale and Marshall.

A. There's no reason.

(30) Q. But you didn't run into them at all?

A. No.

Q. And you went up the tracks. You did something, did you?

A. Yes.

Q. You're familiar with exhibit 5?

-145- JOHN L. FRATECO, Cross-Exam.

A. Yes.

Q. And you're able to locate your position on the evening of May 29, 1971 - May 28, I'm sorry, 1971. And you say you walked along the track.

A. I came down this way -

Q. You'll have to refer to the area in which you say you came down.

A. I came down Argyle Street and walked down this way -

(10) Q. You walked down Crescent?

A. Yes. Down Crescent so far, then I went -

Q. How far?

A. Well I'd say -

Q. Identify the spot where you were walking, the distance you walked on Crescent Street.

A. I walked down to here -

Q. Put a mark - letter "B" so it identifies - red pencil. Mark the letter "B" the point on which you last walked on Crescent Street on the evening of May 28, 1971.

(20) A. I walked about as far as there, I'd say.

Q. And that's identified by the letter "B" on exhibit 5?

A. Yes. Then I got on the tracks there, C.N.R. tracks. And walked to about that "X".

Q. And what did you do at point "X"?

A. Stayed there in the bushes.

Q. You stayed in the bushes how long?

A. Oh, I didn't know how long I stayed there. It was quite a while.

(Plan shown to jury.)

(30) Q. How long were you in the bushes, did you say?

A. I wouldn't know how long I was there. It was quite a while.

Q. Do you remember the condition of the ground there?

A. No.

Q. Were you lying down, sitting down or what were you doing?

-146- JOHN L. FERTICO, Cross-Exam.

A. I was in squat position. I was in the type of a squat position.

Q. Were your knees on the ground or -

A. No.

Q. They weren't. You were in a squatting position?

A. Yes.

Q. And you were behind a bush that had foliage or no foliage?

A. It had kind of bushes there.

(10) Q. Kind of bushy. And while there what did you see?

A. I seen Mr. Marshall and Mr. Seale talking for a while.

Q. How long?

A. I wouldn't know how long it was.

Q. How long were you crouched?

A. I don't know how long I was crouched.

Q. Did you drink the beer while you were there?

A. Yes.

Q. Did you drink the full bottle?

A. Yes.

(20) Q. How long after you got behind the bush did you start to drink the beer?

A. Well I opened it as soon as I got there, to the bush.

Q. And did you take your time drinking it?

A. No, I drank it kind of fast.

Q. And while you were drinking the beer, what was going on between Mr. Seale and Mr. Marshall?

A. When I seen them on Crescent Street they were talking to one - more or less arguing.

Q. They were arguing. What were they arguing about?

(30) A. I wouldn't know what they were arguing about. Then I seen Mr. Marshall's hand come out like this here and go towards Mr. Seale's approach and that's all I seen.

Q. Give us the details of that now. Mr. Seale was standing where that you say?

-147- JOHN L. BRARCO, Cross-Exam.

A. His back would be facing like towards me -

Q. His face -

A. He'd be facing me like you are .

Q. Yes.

A. And Mr. Marshall would be standing like, sitting like I am facing you.

Q. Mr. Seale was facing -

A. Me.

(10) Q. - Facing you?

A. Yes.

Q. And the other man was facing the opposite way?

A. Facing that way.

Q. Were they standing one in front of the other?

A. Arm's length away.

Q. Pardon me.

A. Arm's length.

Q. Arm's length but they were facing each other as you and
ars?

(20) A. Yes.

Q. You are seated and I am facing directly opposite you?

A. Yes.

Q. So you could observe Mr. Seale fully, is that right, but
Mr. Marshall may not have been in the same position?

A. No.

Q. Now what did you see? What did Mr. Seale do with his
hands?

A. I think he put his fists up.

Q. He put his fists up?

(30) A. I think so.

Q. How far did he get with his fists?

A. Didn't get too far. Just got 'em up like that.

Q. While he was doing that, what was Mr. Marshall doing?

A. He took his hand and -

Q. What hand did he use?

-148- JOHN L. PRATICO, Cross-Exam.

A. I think he used the right hand.

Q. And what did he do?

A. Took it out like that and plunged it into Mr. Seale's stomach.

Q. Now let me get that clearly. You say your first observation was that Mr. Seale had his fists up?

A. Yes.

Q. And then the next, both fists, right and left?

(10) A. Yes.

Q. And then the next move that you observed was that Mr. Marshall raised his right hand - you know the difference between right and left?

A. Yes.

Q. And it is right you say?

A. Yes.

Q. Now Mr. Pratico, were you here yesterday?

A. Yes.

Q. And do you recall talking with me yesterday afternoon?

(20) A. Yes.

Q. Do you remember what time that was?

A. No.

Q. Was there anyone else present?

A. Yes.

Q. Who was present?

A. The sheriff.

Q. The sheriff? What did you say to me in the presence of the sheriff?

A. I said that Mr. Marshall didn't stab Mr. Seale.

(30) Q. That Mr. Marshall didn't stab Mr. Seale - now just to qualify that, before you started to talk, you were talking to the sheriff?

A. Yes.

Q. By me.

A. Yes.

-149- JOHN L. PRATICO, Cross-Exam.

Q. And didn't I indicate to you that I didn't wish to talk with you without the sheriff being present?

A. Yes.

Q. And isn't it correct that there was no conversation until the sheriff was present?

A. Until he was present, yes.

Q. What else did you say to me in the presence of the sheriff?

A. I think that's all I said.

(10) Q. You just said that Marshall didn't stab Mr. Seale. Did you say anything further about - tell us all the conversation that took place then?

A. (No response.)

THE COURT:

No, Mr. Khattar -

MR. KHATTAR:

Q. Tell us what you said.

THE COURT:

(20) No, Mr. Khattar. Your cross-examination is directed to something he said at a time which is inconsistent with what he says today. Now confine yourself to that statement.

MR. KHATTAR:

It's only to that that I have any interest and it is only to that that the conversation took place.

THE COURT:

That's the purpose, otherwise, you confine yourself to the events of May 28.

BY MR. KHATTAR:

(30) Q. Let's take it so we will be clear, Mr. Pratico. The conversation you had with me in the presence of the sheriff concerned the evidence that you gave before Judge John P. MacDonald on June 5, in this court house this year. Is that right?

A. Yes.

-150- JOHN L. PRATICO, Cross-Exam.

Q. Now you tell His Lordship and the jury about that conversation, every part -

A. I -

Q. - concerning the evidence that you had given on June 5, of 1971.

A. What I said yesterday -

THE COURT:

Wait now, Mr. Khattar -

MR. KHATTAR:

- and confined with respect -

THE COURT:

Wait now, Mr. Khattar. Will the jury please step out.

10:50 A.M. JURY WITHDREW

C.S.

-151- JOHN L. PRATICO, Cross-Exam. (VOIR DIRE)

THE COURT:

Now, have we resolved that one?

MR. KHATTAR:

My Lord, what I was about to do with the witness, was to question him on statements he made which are inconsistent with his testimony here today, number one-

THE COURT:

You did that.

(10) MR. KHATTAR:

That's only part of it, My Lord.

THE COURT:

You did that. You questioned him about statements that he made to Mary Theresa Paul, Mr. Christmas - Tom Christmas-

MR. KHATTAR:

And now I'm on the sheriff.

THE COURT:

(20) Now, you have asked him whether he made these statements - in one case he said no and another case he said yes, and before the sheriff, he says yes.

MR. KHATTAR:

To the sheriff he made a different statement.

THE COURT:

Isn't that all? Isn't that as far as you can go?

MR. KHATTAR:

No, My Lord, I think now I'm going to credibility.

THE COURT:

The whole exercise is credibility.

MR. KHATTAR:

(30) Yes, I know. I submit-

THE COURT:

The whole cross-examination is credibility. You cross-examined him on a previous statement and you have elicited from him that he said this. Now I'm not interested in bringing up again the whole previous lower court proceedings. You can only, as I can

-152- JOHN L. PRATICCO, Cross-Exam. (VOIR DIRE)

to you, you can only question the witness about a previous statement by bringing ^{it} to his attention and asking him if he made it. Now he said that he made the statement that you have asked him. Isn't that so?

MR. KHATTAR:

That's right.

THE COURT:

(10) How much further do you want to go? I don't see where he has said anything very different today from what he said in the court below.

MR. KHATTAR:

Oh My Lord, with all respect, the witness said that he told the sheriff, told me in the presence of the sheriff-

THE COURT:

I know! That's what I understood him to say, he said yesterday he told an untrue story.

MR. KHATTAR:

-that Donald Marshall - that he had told an untrue story.

(20) THE COURT:

He gave his evidence yesterday. Today he has told you that he made a different statement to the sheriff.

MR. KHATTAR:

That's different from the court below, My Lord. This statement here today is completely contradictory to what he had said in the court below.

THE COURT:

And to what he said yesterday - from what he said yesterday!

MR. KHATTAR:

(30) From what he said yesterday, yes, completely contradictory.

THE COURT:

Then you just merely wish to refer to the transcript - what he said in the court below about that. But you started to ask him "what else did you say in the court below" and that's

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why I stopped you. If you want to limit yourself to, did you in the court below, say such and such, if you want to put that to him, fine. But you were saying to him, "what else did you say in the court below" and I say we are not having a re-hearing of what went on in the court below.

MR. KHATTAR:

With all respect, My Lord, I'm in error there.

MR. MacNEIL:

- (10) Well My Lord, I would like to have on the record, of course, my objection to this questioning concerning a statement that was made to the sheriff.

THE COURT:

Why!

MR. MacNEIL:

Well because of the same old argument that I used at the original that Your Lordship overruled. But I do want it on the record.

THE COURT:

- (20) Mr. MacNeil, it is absolutely proper for the witness to be cross-examined on a previous statement made by him irrespective, irrespective of where he made it. This is not hearsay. This is going basically and essentially to the credibility of the witness - is this a truthful witness.

MR. MacNEIL:

I understand Your Lordship's viewpoint on that and I abide by it but I simply say that it is perfectly proper for the Crown to register an objection because that's all I'm doing. I'm not arguing the objection.

THE COURT:

- (30) All right. To the extent that you are objecting to the cross-examination on the statement because the conversation was not in the presence of the accused, to that extent, you are overruled. The ruling remains throughout. Now Mr. Khattar, you will confine yourself only to that one statement in the evidence in the court below if you wish to do so. Then you go on to matters which are

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relevant, namely, what took place on the night of May 28, if you want to do so.

MR. KHATTAR:

Yes. Before the jury comes back, My Lord, I propose to question this witness on this same statement as to it being made to other persons immediately after speaking with me. In other words, I propose to ask him about whether the same statement was repeated in the presence of my learned friend, Mr. MacNeil and the sheriff
(10) and any other persons immediately after he mentioned it to me.

THE COURT:

So there will be no doubt -

"Where a witness upon cross-examination as to a former statement made by him relative to the subject matter of the case and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion,
(20) shall be mentioned to the witness, and he shall be asked whether or not he did make such statement."

So you have the right to ask him about any statement which he made to anyone inconsistent - but Mr. Khattar, let us limit ourselves to anything that he said that was inconsistent.

MR. KHATTAR:

Yes, My Lord. Otherwise, we will be into a great deal of irrelevant matter.

THE COURT:

Bring in the jury.

11:00 A.M. JURY POINED, ALL PRESENT

(30) BY MR. KHATTAR: (Cross-Exam. cont'd.)

Q. Mr. Pratico, immediately after you made the statement in my presence and the presence of the sheriff, "Donald Marshall didn't do it, didn't do the stabbing," did you make the same statement to my learned friend, Mr. Donald C. MacNeil, the

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learned Crown Prosecutor?

A. Yes.

Q. And to whom else did you make the same statement?

THE COURT:

No, no, no!

BY MR. KHATTAR:

I'm sorry.

Q. Did you make the same statement to the sheriff again?

(10) A. The sheriff was there when you were there.

Q. And wasn't the sheriff present at the time you made the statement to Mr. MacNeill?

A. I think he was.

Q. And was Det. Sgt. MacIntyre present?

A. Yes.

Q. Did you make the statement to him?

A. Made it there when he was there.

Q. How many times did you make the statement?

A. Just the one statement.

(20) Q. These statements to which I have been referring, that is with the sheriff in my presence, with Mr. Donald C. MacNeill, learned Crown Prosecutor, Det. Sgt. MacIntyre, were they made in this court house?

A. Yes.

Q. Yesterday afternoon?

A. Yes.

Q. Thank you. That's the cross-examination.

BY MR. MacNEILL: (Redirect Exam.)

(30) Q. Mr. Pratico, my learned friend read to you from the transcribed evidence taken in the court below on July 5, 1971, and he read from the bottom of page 40. I would like to read to you the questions and answers on the top of page 41. It just continues on where he left off.

MR. KHATTAR:

Now is this re-examination, My Lord?

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MR. MacNEIL:

This is clarification. This is re-examination on cross-examination.

BY MR. MacNEIL:

Q. "Q. Did he suggest anything to you? A. I don't recall. I believe that he did coming down into the park or something like that -

MR. KHATTAR:

Objection!

THE COURT:

(10) What has this got to do with re-examination?

MR. MacNEIL:

My learned friend took it out in cross-examination, if Your Lordship please.

THE COURT:

(20) All he did was he drew to his attention previous statement which was made. He drew to his attention a statement which he made which was inconsistent with what he said yesterday, and he questioned him about that as he had a right to do, and I can't see where you can come in now with further evidence from the court below.

MR. MacNEIL:

Well, My Lord, I am suggesting that what was read to the court was read out of context. The following question that I just posed to the witness explains exactly what was brought out on cross-examination.

THE COURT:

(30) Mr. MacNeil, if you would be good enough to address yourself to re-examination which you have a right to do without any reference to what went on in the court below; if you have anything that arises from the cross-examination, you have a right to re-examine but please do it without any reference to the court below.

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MR. MacNEIL:

I can't, My Lord, because cross-examination was on the evidence in the court below.

THE COURT:

Can't you ask the witness anything you want to ask him relative to statements that he gave -

MR. MacNEIL:

(10) I will be getting to that in a moment, My Lord. That's not the point -

THE COURT:

Get to it! Mr. MacNeil, I'm sorry but that's not possible for you to do.

MR. MacNEIL:

Well, My Lord, mark on the record that the Crown has been overruled in not referring to the evidence that was referred to my my learned friend in cross-examination.

THE COURT:

Do you want to re-examine him on anything?

(20) MR. MacNEIL:

Yes, My Lord, I have many things to re-examine him on.

THE COURT:

Proceed to do so!

MR. MacNEIL:

That's one point that I wanted to re-examine on.

BY MR. MacNEIL:

Q. Now, with reference to the statement my learned friend referred to that you made to the sheriff, to myself, and to Johnnie MacIntyre; that took place yesterday afternoon?

(30) A. Yes.

Q. And that took place after His Lordship excluded the witness from this court room, is that not true?

A. Yes.

Q. All right. Did you discuss this case with anyone from the witness stand or from the court room on His Lordship's order?

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MR. KEPTAR:

This is objected to.

BY MR. MacNEILL:

- and making that statement?

THE COURT:

Why? Isn't he going to a matter that you brought up?

MR. KEPTAR:

Yes.

(16) THE COURT:

All right! Give me an authority why he can't -

MR. KEPTAR:

Well, I submit, My Lord, subject to your ruling that he is now cross-examining this witness.

THE COURT:

He is not cross-examining!

MR. KEPTAR:

He has asked if he discussed the case with someone else.

THE COURT:

(20) Maybe his voice is a little bit - he naturally has a brusque manner. Not everybody is like Cassius, lean and hungry. But he is directing his questioning to the cross-examination that you brought out.

MR. KEPTAR:

All right, My Lord.

MR. MacNEILL:

Thank you, My Lord.

BY MR. MacNEILL:

(30) Q. My question was, I believe, after you were excluded by His Lordship from the case -

THE COURT:

That was the point that Mr. Keptar's re-examination to which you are referring has been permitted; your objection has been noted on the record.

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MR. KHATTAR:

I'm not concerned about that part.

BY MR. MacNEIL:

Q. All right, now as I said, after His Lordship excluded the witnesses, did you discuss with anyone this case between the time you were excluded yesterday afternoon and the time that you made the statement to my learned friend Mr. Khattar?

(10) A. Yes.

Q. With whom did you speak?

A. Sgt. MacIntyre, Crown Prosecutor MacNeil -

Q. No, no before you made the statement to my learned friend, after you were excluded from the courtroom - you remember that?

A. Yes.

Q. And before you spoke to either Mr. Khattar or Mr. Rosenblum, did you speak -

MR. ROSENBLUM:

(20) He didn't speak to me at all.

MR. MacNEIL:

Q. I'm sorry. Mr. Khattar, before you spoke to Mr. Khattar, did you discuss this case with anyone?

A. No, just Mr. Khattar.

Q. Do you know Donald Marshall Sr.?

MR. KHATTAR:

Now -

THE COURT:

(30) No, just a moment, Mr. Khattar, Mr. Rosenblum. There was some evidence given yesterday. You proceed to question him as you were about to because he gave evidence yesterday and mentioned the name of some person who had spoken to him. If my recollection of that evidence is not correct, I will ask the court reporter to check. My recollection is that this witness said yesterday - he mentioned the name.

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BY THE COURT:

Q. Now Withers, do you understand what Mr. MacNeil has asked you, whether somebody was talking to you outside the courtroom after you went out with all the other people?

A. Yes.

BY MR. MACNEIL:

Q. All right now, who was that person?

A. I spoke to Mr. Marshall.

(20) Q. Which Mr. Marshall?

A. Senior.

Q. That is the father of the accused?

A. Yes.

Q. You knew him?

A. I knew him to see him.

Q. Where did this conversation take place?

A. Just spoke out in the hall for a couple of minutes.

Q. And as a result of that conversation -

MR. ROSENBLUM:

(20) No -

BY THE COURT:

Q. You spoke to Mr. Marshall, Sr. in the hall, you say?

A. Yes.

Q. How long did you speak?

A. Just for a couple minutes.

Q. What?

A. Just for a couple minutes.

Q. Spoke for a few minutes?

A. Yes.

(20) BY MR. MACNEIL:

Q. After you had this conversation with Donald Marshall, Sr., what did Donald Marshall, Sr., do?

A. He got Mr. Ruston.

Q. Did you talk to Donald Marshall, Sr. after the conversation with my friend, Mr. Ruston, myself and Sgt. Ruston?

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A. What did you mean -

Q. Pardon.

A. What did you say after -

Q. Did you talk to Donald Marshall after the conversation you had with Mr. Khattar, myself and Sgt. MacIntyre?

A. Just for a minute or so. He told me to -

MR. ROSENBLUM:

Oh -

(10) MR. KHATTAR:

The ruling, Your Lordship has made with respect to conversations in the absence of the accused, statements made by others -

BY THE COURT:

Q. You talked with Donald Marshall, Sr. afterwards again?

A. Yes.

Q. Did you talk with him last night?

A. No.

Q. You didn't?

(20) A. No.

Q. With anyone?

A. No.

Q. Did anyone come near you?

A. No.

BY MR. MacFILL:

Q. Now, my learned friend asked you about a conversation that you had with Thomas Christensen. Do you recall a conversation that you had with Thomas Christensen on Bentinck Street in the city of Sydney?

(30) A. Yes. Is that the night they arrested him?

Q. That's the night, yes. And tell me, I'll ask this question. My Lord -

THE COURT:

Don't answer it.

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MR. MacNEIL:

Don't answer it until His Lordship rules.

- what did you say -

MR. KHATTAR:

I think the jury should be out, My Lord.

MR. ROSENEUM:

The question may be prejudicial, My Lord.

THE COURT:

- (10) Mr. MacNeil, I dislike very much having to ask the jury to leave so often. I dislike that gentlemen. I can tell you that it is happening not only before me but before the other members of the court and I'm sure the jury understand. Perhaps, Mr. Foreman, once again you will step out. We trust that there won't be too many more of these interruptions.

11:12 A.M. JURY WITHDREW

C.D.

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MR. MacNEIL:

If Your Lordship plesses, my questions relating to a conversation that took place with Thomas Christmas on Bentinck Street in the City of Sydney at which time Mr. Christmas threatened the witness; the witness also-

THE COURT:

Just ask him.

BY MR. MacNEIL:

(10) Q. What was the nature of that conversation?

A. He come to my house and he asked for me and I was coming out the door at the time he knocked on the door. So Mr. Marshall - I mean Mr. Christmas, said, "Come on down the park, I want you." I said, "No." He said, "Why". I never told him. He said, "I know why" and he told me, he said, "You're going to get it now." He said, "You squealed on Junior," which is Donald Marshall.

Q. All right, now, were you the recipient of any other threats?

A. Well, Artie Paul, he come up to me down the circus. He told me, he said, "Don't you squeal on Junior." He said, "You go up to

(20) the court house" he said, "and you say that Junior never did it. And he said that if I didn't, he would make sure that I was kill

MR. MacNEIL:

Now My Lord, I say that this is extremely material as to this witness, that this witness's life has been threatened.

THE COURT:

Is Thomas Christmas here?

MR. MacNEIL:

No, he is a resident of another province for a period of time, My Lord.

(20) THE COURT:

Is this man Paul here?

MR. MacNEIL:

I do not know, My Lord.

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MR. MacNEIL:

I think this is vitally important, My Lord.

THE COURT:

Mr. MacNeil, I would agree with you that it is vitally disturbing and may very well be the subject of another proceeding. I would think amazing if a witness's life was threatened or his well-being, and the Crown/^{did} not take steps against the person who made these threats.

(10) MR. MacNEIL:

An information was laid, My Lord.

THE COURT:

But insofar as this case is concerned, notwithstanding the gravity of what you say, I can only rule according to the rules that pertain to this case, and whether or not the threats against him are such that one can overrule the basic fundamental rule of hearsay evidence cannot be given-

MR. MacNEIL:

(20) Perhaps you will allow me to ask him in the absence of the jury a few more questions that you may take into consideration at the same time.

THE COURT:

I will take a few minutes to consider the matter. I am of the opinion that I can't. You may bring out from the witness his state of mind. That is material, his state of mind.

MR. MacNEIL:

That is just what I was going to bring out. I asked permission to ask further questions for that very purpose.

BY MR. MACNEIL:

(30) Q. Now Mr. Pratico, You say that you were threatened on two different occasions?

A. Yes.

Q. How did these threats affect you?

A. Made me right nervous, scared, and I still am.

-165-JOHN L. PRATICO, Re direct Exam. (VOIR DIRE)

Q. Tell me sir, did you also have three or four conversations with me yesterday morning-

MR. KHATTAR:

This is objected to, My Lord. There was no reference in my Cross-examination to any conversations with my learned friend yesterday morning or any other morning. I assume he had many with my learned friend.

THE COURT:

(10) All right.

MR. MacNEIL:

So I will let it rest with that, the effect that these threats had on the witness.

BY MR. MacNEIL:

Q. What effect if any - what actual effect if any-

MR. KHATTAR:

This is objected to.

THE COURT:

Why?

(20) MR. KHATTAR:

He says, "what effect if any did these statements have"-

MR. MacNEIL:

I didn't get the words out of my mouth, yet. I find it very difficult.

BY MR. MacNEIL:

Q. What effect if any did these threats have on your conduct?

A. What do you mean?

Q. What do I mean?

A. Yes.

(30) BY THE COURT:

Q. Why did you tell the story to Mr. Khattar and Sheriff Mack/llip-

A. I don't understand.

-166-JOHN L. PRATICO, Redirect Exam. (VOIR DIRE)

Q. Why did you tell what you said out there yesterday? Why?

A. I was scared.

THE COURT:

"I was scared" - do you wish to pursue that?

MR. MacNEIL:

No, that's it. If I am allowed to ask that question before the jury, that's all I will request.

MR. KHATTAR:

(10) Possibly Your Lordship would like to have a few minutes recess and we can argue the point.

THE COURT:

I'm ready to hear your argument now.

You had brought out as was your right, your undoubted right, that this man, this witness, made statements contrary to and inconsistent with the statement he made in court yesterday and in the court below. Now then, that gives the Crown the right to ask him surely, it seems to me, as to why he made the statement that he did. Why did he make the statement that was

(20) inconsistent - that seems to me to be not only good from the legal point of view but is good from common sense which generally you find them both together. Now do you have authority that that can't be? If you have, I am ready to look at any authorities. But otherwise, I have to as I said before, trying to keep the balance between you gentleman is not an easy task and I appreciate/^{the}depth of work that both sides have put into this thing. I can only make my ruling as I see it which may certainly not be in accord with people - as we call it - "upstairs". I am prepared to rule at the moment that Mr. MacNeil may ask the

(30) witness why he made this inconsistent statement yesterday.

MR. MacNEIL:

And just on the supposition of his answer, may I ask him - if he gives the answer that he gave Your Lordship a moment ago that he was frightened-

-167-JOHN L. PRATICO, Redirect Exam. (VOIR DIRE)

THE COURT:

I will instruct him to give us no conversation, what anybody told him. You will ask him why he gave the inconsistent statements.

MR. MacNEIL:

Supposing, My Lord, for a moment, the answer was, "because I was in fear", am I allowed to ask him, "Why were you in fear?"

THE COURT:

- (10) No, because then he must tell you why. You can bring out, as indeed you have now, with whom he had been in contact, with Tom Christmas, with Paul and with somebody else. He had been in contact with somebody else.

MR. MacNEIL:

Would I be allowed to ask if he was threatened by any of these people?

THE COURT:

No.

MR. MacNEIL:

- (20) I just wanted to clarify that because I didn't want the jury to come in here again and pose that question and have them go out. So the only question I am allowed to ask him is, why did he make that-

THE COURT:

Why did he make those statements.

MR. KHATTAR:

- Necessary statement, My Lord, will be a question of the same nature and kind to the witness as to why he made the statement to me and he made a different statement here in court, that
- (30) is following the statement made to me and the sheriff and the conversation with my learned friend, as to why-

THE COURT:

Would you like to know - do you really want to know the answer why he did?

-169-JOHN L. PRAFICO, Redirect Exam. (VOIR DIRE)

MR. KHATTAR:

Yes, I do!

THE COURT:

In direct examination-

MR. KHATTAR:

Not in direct, no.

THE COURT:

You don't want that answer, Mr. Khattar!

(10) (11:25 A.M. COURT RECESSED to 11:30 A.M.)

MR. MacNEIL:

My Lord, before the jury comes in, I plan also to put to this witness two questions, one of which the answer is obvious, was he under oath when he made any of these inconsistent statement and secondly, a conversation he had with the accused -

THE COURT:

Isn't it obvious, Mr. MacNeil?

MR. MacNEIL:

(20) I want it for the record, My Lord. The other is, I want him to disclose the conversation my learned friend was talking about between the accused, Donald Marshall, and this witness on Saturday morning. My learned friend asked him if he saw Donald Marshall, talked to Donald Marshall Sr. on Saturday morning after the event took place.

THE COURT:

You had the opportunity for that. You had him in direct examination. This is re-examination.

MR. MacNEIL:

(30) I know, My Lord, but it came up in cross-examination, the fact that he had a conversation with Donald Marshall Sr. on Saturday, May 29.

THE COURT:

Donald Marshall Sr.?

MR. MacNEIL:

Yes, Donald Marshall Sr., My Lord, on Saturday, May 29.

-169- JOHN L. PRATICO, Redirect. Exam. (VOIR DIRE)

THE COURT:

Relative to this particular matter?

MR. MacNEIL:

Event, yes.

THE COURT:

No, no, relative to the question of why he made these inconsistent statements?

MR. MacNEIL:

(10) Yes, My Lord, that will be the explanation that I expect.

THE COURT:

The accused said something to him, leading to his making this statement?

MR. MacNEIL:

Right. Making the inconsistent statement, yes.

THE COURT:

What do you say, Mr. Khattar?

MR. KHATTAR:

(20) My Lord, I merely wish to point out to my learned friend in case he may have forgotten, at the Preliminary Hearing held on July 5, 1971, and the reference to sworn testimony would only - I assume, unless there is something that my learned friend is going to introduce to the court which he has not before - this is the only sworn testimony apart from this hearing.

MR. MacNEIL:

That's right.

MR. KHATTAR:

And the conversation with the accused is alleged to have been May 29.

(30) THE COURT:

Mr. Khattar, the witness you examined yesterday and today was subjected to a very searching and careful cross-examination and I found your cross-examination to be in order. But you have brought up the matter of inconsistent statements and now the law is, that in re-examination a witness may explain -

-170- JOHN L. PRATICO, Redirect Exam. (VOIR DIRE)

- may explain - the reasons why he gave this inconsistent statement. That is the law, Mr. Khattar. Now then, he cannot tell in court what somebody said to him because it was not in the presence of the accused. He cannot say what Donald Marshall Sr. said to him or Mary Theresa Paul or Tom Christmas. But there is no such prohibition relative to the reason why he gave this inconsistent statement affecting the accused himself. You see, Mr. Khattar, as was your right to bring out the inconsistent statement, now surely the law is that in re-examination the witness can explain why he gave an inconsistent statement.

MR. KHATTAR:

On so many occasions!

THE COURT:

Thus the right to re-examine exists only where there has been cross-examination and must be confined to explanation of matters arising thereon. Thus if a witness has admitted making a former inconsistent statement, he may in re-examination explain his motives for so doing. Now I haven't the cases here. But it is possible that courts may have allowed even conversation between people but I won't go that far. I won't go that far but I will pause to give you ^{and} Mr. Rosenblum, because it is a very crucial matter - I will continue our recess another ten, fifteen minutes so that you may show me an authority which will prevent me allowing Mr. MacNeil to ask the witness relative to the inconsistent statement, you follow me, not anything about what happened that night. But let us assume the accused said to this witness, "Don't you dare say that I did this", it seems to me with great deference, that is proper.

(30) MR. KHATTAR:

My Lord, up to that point, no quarrel. But may I submit, My Lord that my learned friend is making reference to an occasion prior to the Preliminary Inquiry. Now mind you, that's what he's asked. He wants an opportunity to-

-171- JOHN L. FRANTICO, Redirect Exam. (VOIR DIRE)

THE COURT:

It matters little! It matters little! The threat if at any time may have been made the night of the incident but only by the accused.

Now you understand, Mr. MacNeil, and I rely upon you that you are not going for any fishing expedition.

MR. MacNEIL:

(10) I know what answer I expect, 'My Lord. I'm not going on a fishing expedition. I am instructed-

THE COURT:

At this moment we are concerned with an explanation of one thing - why the inconsistent statement. What somebody told him is not relevant unless that somebody said that to him in the presence of the accused. For the moment I am holding that if the accused said anything to him, he may answer. I am saying that Mr. Khattar and Mr. Rosenblum, not with such a dogmatic attitude that I know it all. Like yourselves, we are all endeavouring to do what is justice in this case and we may make mistakes.

(20) No judge is known not to have made a mistake.

MR. MacNEIL:

Just one other question for clarification, My Lord. Supposing-

THE COURT:

You're not asking me to help you with your case.

MR. MacNEIL:

No, My Lord.

THE COURT:

Then don't bring up hypothetical questions!

MR. MacNEIL:

(30) Fine.

THE COURT:

Sheriff, may we have the jury.

(11:45 A.M. JURY POINED, ALL PRESENT)

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(TRIAL IN CHIEF RESUMED)

BY MR. MacNEIL:

Q. Now I believe, sir, that we were at the point when we adjourned where I was posing the question, why did you make the inconsistent statement in this court house yesterday, that is, inconsistent with your evidence here today. Yesterday, I'm sorry. Given in this courtroom anyway at this trial?

(10) THE COURT:

Q. Do you understand the question, Witness?

A. Yes.

Q. You understand what Mr. Macneil has asked you? Why did you - what is your answer?

A. I was - well, Artie Paul got to me down the circus -

MR. MacNEIL:

No, No.

THE COURT:

(20) I don't want you to say - you can tell Mr. MacNeil people that you saw or who came to see you, but don't say anything what they said. Who came to see you?

BY MR. MacNEIL:

Q. Who came to see you?

A. I seen Tom Christens and Theresa Mary Paul, and I seen Artie Paul.

Q. Was this yesterday?

A. No.

BY THE COURT:

Q. Did you see anybody else?

(30) A. When, yesterday?

Q. Not yesterday.

BY MR. MacNEIL:

Q. Any time?

A. No.

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Q. All right, yesterday did you see anyone else, discuss this case with anyone else?

A. Mr. Khattar.

Q. No, before you discussed it with Mr. Khattar?

MR. KHATTAR:

Witness, please speak up so I can hear you.

THE WITNESS:

Mr. Marshall.

(10) BY MR. MacNEIL:

Q. Donald Marshall. All right now why did you - Senior - that's Donald Marshall, Sr.?

A. Yes.

Q. Now why did you make that statement yesterday that Mr. Khattar referred to as being made - why did you make that statement which is inconsistent with your evidence as given before those gentlemen and His Lordship in this trial?

A. Scared.

(20) BY THE COURT:

Q. What's that?

A. I was scared.

Q. Scared of what?

A. Of my life being taken.

BY MR. MacNEIL:

Q. All right now sir, Mr. Khattar also referred to a conversation that you had with Mr. Donald Marshall, Jr., the accused, in this case -

MR. KHATTAR:

(30) I beg your pardon, My Lord, I rise at this point. I'm rising, of course, on my own recollection and I don't recall and I say this with respect, My Lord, because my memory may not be as good as I think it is - I don't recall having referred to any conversation. I do recall having asked the witness if he saw Mr. Marshall, but I don't recall asking

-174- JOHN L. PRATICO, Redirect Exam.

whether he had a conversation. I could be in error, My Lord, and I make my objection on that basis.

THE COURT:

We will clarify that. Mr. Khattar says he doesn't recall and at the moment, I must say, looking at my hurried notes, I don't recall. Ask him what did he say about the accused, clear that up.

BY MR. MacNEIL:

- (10) Q. What did you say about the accused on Saturday morning, on this Saturday morning at your home?

THE COURT:

He said something to Mr. Khattar when Mr. Khattar was cross-examining about the accused.

BY MR. MacNEIL:

Q. All right, you heard His Lordship. You said something to Mr. Khattar - did you say anything to Mr. Khattar about the accused on Saturday morning, May 29, 1971?

A. 29th of May?

- (20) Q. Yes.

A. No, I just told Mr. Khattar that the accused was down to my place. The accused was down to my place May 29 or May 30, one of them days.

BY THE COURT:

Q. Mr. Pratico, Mr. MacNeil asked you why you made the statement outside yesterday to Mr. Khattar, to the sheriff. You now say you made it because you were scared of your life.

A. Yes.

- (30) Q. Now, your being scared of your life, is that because of anything the accused said to you at any time?

A. No.

MR. MacNEIL:

I take it that concludes that line of questioning on that meeting on Saturday.

-175- JOHN L. PRATICO, Redirect Exam.

THE COURT:

I'm sorry that I had to take over but I had to put an end to this.

MR. MacNEIL:

That's all right.

THE COURT:

Any further re-examination.

MR. MacNEIL:

(10) There is a question that is bothering me, My Lord.

MR. ROSENBLUM:

Perhaps we better approach the Bench rather than have the jury go out.

THE COURT:

No.

He is going to ask you a question, don't answer it.

MR. MacNEIL:

The question, My Lord, would be to the witness, what is the basis for his fear. He said that he had fear.

(20) THE COURT:

He answered not due to anything the accused said. Now if anybody else said anything to him, I'm not interested. He has given you an explanation, namely, he was scared of his life.

MR. MacNEIL:

I was puzzling the matter just for the basis of whether his fear was justified or not but I accept your Lordship's ruling. That's all.

BY THE COURT:

(30) Q. That man's name was Tom Christmas, was it?

A. Yes.

MR. ROSENBLUM:

And Mary Theresa Paul.

THE WITNESS:

Artie Paul.

(THE WITNESS WITHDREW)

IN THE SUPREME COURT OF NOVA SCOTIA,
APPEAL DIVISION

IN THE MATTER OF A REFERENCE PURSUANT TO SECTION 617 OF THE CRIMINAL CODE BY THE HONOURABLE JEAN GHERCIEN, MINISTER OF JUSTICE, TO THE APPEAL DIVISION OF THE SUPREME COURT OF NOVA SCOTIA UPON AN APPLICATION FOR THE MERCY OF THE CROWN ON BEHALF OF DONALD MARSHALL, JR.

AFFIDAVIT

J. L. P.

I, John Louis ~~Prattico~~, of ~~331~~ ^{324 Arthur} MacKay Street, New Waterford, in the County of Cape Breton and Province of Nova Scotia, make oath and say as follows:

1. That I was born on December 31, 1954 and on the date of the murder of Alexander (Sandy) Seale, May 28, 1971, I was sixteen (16) years of age.
2. That I have been continuously treated by a psychiatrist, Dr. M.A. Mian of Sydney, since August of 1970 to date.
3. That on the evening of May 28, 1971, I attended a dance at St. Joseph's Hall in the City of Sydney, and during the course of that evening from 7:00 or 8:00 P.M. I drank a quantity of wine, approximately six quarts and three pints of beer together with, I believe, some rum or gin and that I was intoxicated.
4. That on February 25, 1982, I was interviewed by R.C.M.P. Cpl. J.E. Carroll, and gave a free and voluntary statement to the said Cpl. Carroll, a copy of which is produced herewith and marked Exhibit 'A', concerning my knowledge of the events surrounding the murder of Alexander (Sandy) Seale on the night of May 28, 1971 and that the facts referred to in that statement are true to the best of my knowledge and belief.
5. That on May 30, 1971, I was interviewed by then Det. Sgt. J.F. MacIntyre of the Sydney City Police and gave a

written statement to the said MacIntyre, a copy of which is produced herewith and marked Exhibit 'B', concerning my knowledge of the circumstances surrounding the murder of Sandy Seale.

6. That on June 4, 1971, I was again interviewed by the said John F. MacIntyre and then Det. Sgt. William Urquhart, both of the Sydney City Police, and gave a written statement to the said MacIntyre and Urquhart, a copy of which is produced herewith and marked Exhibit 'C', concerning my knowledge of the events relating to the Sandy Seale murder.

7. That my statement, referred to herein as Exhibit 'C', is not entirely true, and, in particular, the facts contained therein with reference to my having seen the murder of Sandy Seale are not true, as I did not personally witness the said murder, nor was I present at the scene of the murder at the time it occurred.

8. That prior to May 28, 1971, I was acquainted with Donald Marshall, Jr., and that on the morning of May 29, 1981, I met Donald Marshall, Jr. briefly and we spoke about the Seale murder.

9. That I stated I had witnessed the murder of Sandy Seale, as referred to in Exhibit 'C' herein, as a result of the said John F. MacIntyre accusing me of having been a witness to the murder and threatening to jail me unless I stated I did witness the murder and I was further informed by the said MacIntyre and Urquhart as to what I had purportedly witnessed of the murder and agreed, out of fear, with them.

10. That I testified at a Preliminary Hearing and subsequent trial of Donald Marshall, Jr., who was convicted of the murder of Sandy Seale on November 5, 1971.

11. That my testimony at the trial of Donald Marshall, Jr. relating to the murder of Sandy Seale, at Pages 118-175 of the Transcript of the said trial, is not true insofar as I stated I had witnessed the murder of Sandy Seale; the truth being that I was not a witness to the said murder.


12. That on August 31, 1971, between the Preliminary Hearing in this matter, held in July of 1971, and the Trial in this matter, held in November of 1971, I was admitted as a patient to the Nova Scotia Hospital in Dartmouth, Nova

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Scotia for treatment of my mental condition.

13. That I did not know Maynard V. Chant on or before May 28, 1971 and did not see the said Maynard V. Chant on the night of May 28, 1971 or at any time thereafter until the time of the Preliminary Hearing in July, 1971.

SWORN TO at)
in the County of Cape Breton,)
Province of Nova Scotia, this)
15th day of July, A.D. 1982,)
before me,)


A Barrister of the Supreme
Court of Nova Scotia


JOHN LOUIS PRATICO

DOUGLAS R CROWE
A COMMISSIONER FOR THE SUPREME
COURT OF NOVA SCOTIA

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R. Pugsley: I understand the next witness Mr. Murrant proposes calling is Mr. Pratico. I object to the taking of his evidence if you--what would appear to be the medical evidence that he is not fit to give evidence and that's why I wish to record an objection to the record.

R. Murrant: Okay.

Mr. John Pratico, sworn, testified as follows:

EXAMINED BY R. MURRANT

1. Q. Mr. Pratico, you're here today as a result of receiving a subpoena type of document?
A. Right.
2. Q. And this is a proceeding between John MacIntyre, the former Chief of Police of Sydney and the Canadian Broadcasting Corporation.
A. That's right.
3. Q. You saw that on the document?
A. Yes, sir.
4. Q. Have you discussed this with any of the person involved in this particular case?
A. No sir.
5. Q. We appreciate that I represent the Canadian Broadcasting Corporation?
A. Yes, sir.
R. Pugsley: I am sorry I didn't hear you.
J. Pratico: I said: "yes sir."
R. Pugsley: I am sorry, I didn't hear what you said after that?
J. Pratico: I didn't say nothing after that.
R. Pugsley: I am sorry.
6. Q. This concerns a radio broadcast?
A. Yes.

7. Q. Mr. Pratico what is your address at the moment?
A. Twenty-nine Main Terrace.
8. Q. Main?
A. Terrace. Twenty-nine May Terrace.
9. Q. May Terrace?
A. Yeah, that's where I, you know, but I am not there all the time.
That's my mailing address, do you know what I mean.
10. Q. What part of Sydney is that in?
A. Pardon?
11. Q. What part of Sydney is that in?
A. The Pier.
12. Q. The Pier? How long have you lived down there?
A. All my life. I was born and raised in the Pier.
13. Q. How old are you now, Mr. Pratico?
A. Twenty-nine.
14. Q. Are you married?
A. No, sir.
15. Q. Are you working at the moment?
A. No, sir.
16. Q. Are you working at the moment?
A. No, sir.
17. Q. Now in the year 1971--let me ask you what your birth date was?
A. Thirty-first day of December, '54.
18. Q. Do you recall in 1971 having some involvement with the death of
Sandy Seale and the case against Donald Marshall?
A. Yes, sir.

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19. Q. You do?
A. I was involved in it, yeah.
20. Q. Pardon me?
A. I was involved in it, yeah.
21. Q. Before that case every happened, did you have any involvement with the Sydney Police?
A. No, sir.
22. Q. None?
A. None.
23. Q. Had you ever been in trouble with the police?
A. Once, but that was the first time.
24. Q. Did you know any of the police officers or did they....?
A. I knew a few of them from living in Sydney.
R. Pugsley: I am sorry I can't hear.
J. Pratico: I said I knew a few from living in Sydney.
R. Pugsley: Thank you.
25. Q. Did you know John MacIntyre?
A. Not really, sir, I heard of him but I really didn't know him, do you know what I mean.
26. Q. What about William Urquhart, did you know him?
A. Well yeah, but not as close.
27. Q. Would you know each other if you met in the street?
A. Well yeah--well maybe, I'm really not sure.
28. Q. Now with respect to the murder of Sandy Seale the record indicates that you gave a statement to the Sydney Police a few days later, May 30, 1971?
A. Yes.
29. Q. And I have a copy of it here, Mr. Pratico, it's typed out. May 30, 1971.
A. You want me to read that do you?

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30. Q. Have a look at it so you know what we're talking about.
A. I can't remember saying this, you know, that is, I can't (inaudible) corduroy jacket, I don't remember nothing about that.
31. Q. Do you remember talking to the police, the police talking to you?
A. When.
32. Q. In May, May, June, 1971?
A. Yes.
33. Q. That statement you have there, I'll walk over there so we can both see it, I only got one copy.
A. Okay.
34. Q. Bobby Robert Patterson?
A. I don't know him.
35. Q. You see his name and nobody else knows him?
A. I never heard tell of him.
36. Q. You say; "I seen two fellows running from the direction of the scream and they jumped into a white volkswagon?
A. I can't remember this here stuff, I can't remember that.
37. Q. Brown corduroy...
A. Jacket, I can't remember saying that.
38. Q. That statement is dated the 30th of May, do you remember how it was the police got you to sign that statement?
A. A little bit, I can remember a bit. I remember a bit of it.
39. Q. Perhaps you could--there is another one here a few days later, June the 4th and then later on you testified in court, did you not?
A. Yes sir.
40. Q. Perhaps if you could just take your time, Mr. Pratico, and tell me how you came to be involved?
A. Like it is a long story, I don't know--I can't remember back that far but Sergeant MacIntyre, not Sergeant MacIntyre but one of the

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40. A. sergeants come down the house, you know and took me up there and they questioned, and you know...
41. Q. Right?
- A. A few questions asked and then I was let go and called back again and....
42. Q. You were let go...?
- A. You know, sent home and then come back, do you know what I mean?
43. Q. And when you came back again what happened?
- A. A couple of questions asked, you know, and it was just, you can go for now and there was no more for a few weeks. Like this is not too clear to me, do you know what I mean but I can't remember all that took place.
44. Q. There is another statement here which is June 4th, 1971, maybe I'll let you have a look at that because this is five or six days after the first one you looked at and that's a statement of John Lewis Pratico age 16 years.
- A. Oh, I see that, yes.
45. Q. Just look through it and see if you can recall this one?
- A. I don't recall anybody giving me money, I had my own money for the dance, I had my own money. I had my own money for the dance because my mother gave me the money. Well I can remember some of this, I can remember going to the dance and I paid my own way into the dance. Like some of this stuff ain't too clear to me eh, not all of it. I can remember this part here.
- R. Pugsley: What part is the witness looking at Bob.
46. Q. "I heard Sandy Seale say to Junior, you crazy Indian and Junior called him a black bastard, they were standing."
- A. I can't remember saying that but I can remember saying this.

47. Q. "They were standing at this time where the incident happened."
A. I can't remember that part. All I remember is this and this.
R. Pugsley: Sorry, what is he....
A. I remember black bastard and crazy indian.
48. Q. Black bastard and crazy indian.
R. Pugsley: Does he recall that or does he....?
A. I recall that.
49. Q. If you look at the second page, Mr. Pratico, this talking here about Donald Marshall struck him in the stomach, he screamed.
A. I don't remember saying that, really, you know. I was drinking and that I wasn't used to drinking, you know, because you know after taking seven and after 1:00, I don't know, you're memory is not the best.
50. Q. Did you see that night of the dance, you were drinking that night?
A. Yes, quite heavily.
51. Q. Would you say you were pretty drunk?
A. Yes, pretty well.
52. Q. Did you tell the police that?
A. Well I told them I was drinking but I didn't say I was totally drunk but I said I was drinking, that I was pretty drunk at the time.
53. Q. Did you see anybody stab Sandy Seale?
A. No.
54. Q. But you indicate in that statement that you saw Marshall strike him in the stomach?
A. I take it there was a few threats made to me, but I really didn't know.
55. Q. You take there was a few....?
A. I said there was a few threats to me but I really didn't understand. They said if you don't tell us what happened, it's the county jail!! I was scared of anybody when you're threatened to go to jail at a young age.

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56. Q. There is another statement here, Mr. Pratico, this is a statement of John Lewis Pratico and the address is MacKay Street in New Waterford?
- A. Yes sir.
57. Q. Taken at New Waterford, 82/02, February 25, '82, it's two pages and the witness is Corporal J.E. Carrol?
- A. J. Carrol, yes sir.
58. Q. Do you remember Corporal Carrol as an RCMP officer?
- A. Yes sir.
59. Q. And you had a talk with him?
- A. Yes sir.
60. Q. And I'm going to give you this statement to look at?
- A. This is the one of Corporal Carrol, is it?
61. Q. There is two pages of it. The yellow marks are mine, okay. Just look and tell us if that is the....
- A. I'm not finished reading it yet.
62. Q. You take your time, whatever time you need.
- A. Yes sir.
63. Q. Is that the statement you gave Corporal Carrol?
- A. Yes sir.
64. Q. And on the front page there, the part--you see where I put some yellow marking?
- A. Yes sir.
65. Q. You say: "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 a few minutes later. I sent my ^{mother} home to look after my sister." Do you have a sister?
- A. Yes sir.

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66. Q. Do you remember your mother going to the station with you?
A. Yes sir.
67. Q. "MacIntyre asked me what happened in the park that night. I said I didn't know." I guess it is true that you didn't know?
A. Yes sir.
68. Q. "I had heard of the stabbing at this time but 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."
A. I told that to Carrol in '82 or whenever it was.
69. Q. Is that what was said to you?
A. Yes sir.
70. Q. Why would the police say that to you?
A. I can't answer that question. That's something I don't know the answer to.
71. Q. Why they would do it?
A. I don't know, that's right. I don't know an answer for that one.
72. Q. But you're telling me, Mr. Pratico that they did do it?
A. Yeah, they said well if you don't tell us what happen you're going to go to jail.
73. Q. Did you tell them that you didn't see anything?
A. At first I did,, yes and they let it go and they questioned me some more.
74. Q. It says here MacDonald wasn't saying anything, I guess that's the other officer?
A. Yeah.
75. Q. "I was scared." Were you scared?
A. Yes sir.
76. Q. What were you scared of?
A. Well I guess, you know, some of the things that took place I was scared, you know, it was just a frightening experience, do you know what I mean.

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77. Q. Uh-hmmm?
- A. I'm not any good at explaining to you, but it was a frightening experience.
78. Q. Okay. Then you go on to say, "they told me about Marshall and Seale, that Marshall stabbed Seale" did they tell you that Marshall did it?
- A. Well in a round about way. They didn't just come right out, here is what was said. They said, we know what happened and so do you, this what was said to me. We know what happened and so do you and I said what do you mean--we know and we know you know.
79. Q. But you didn't know?
- A. No.
80. Q. Okay. Then you say; "they put words in my mouth so I just agreed with what they were saying."
- A. Yeah, I was a little bit frightened, you know and young and they said you're nerves are bad, you do this right and it's easy.
81. Q. "I guess Marshall would be in trouble for what I said but I was being badgered by the police and scared what they would do to me" I guess that was what, put you in jail?
- A. Well whatever.
82. Q. "My nerves were really bad then.?"
- A. I believe they were.
83. Q. Now you talk about going to court. "The lawyers gave me a hard time. I saw Chant there but I wasn't allowed to talk to him."
- A. Right.
84. Q. Did somebody tell you you couldn't?
- A. Like I say I can't remember everything, it was so long ago and I was so mixed up that I don't remember everything.

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85. Q. You said your nerves were bad?
A. Yeah.
86. Q. Were you under any treatment in those days for your nerves?
A. Yes, I was in the Nova Scotia Hospital a few different occasions.
87. Q. A number of...?
A. On a few different occasions I was in the Nova Scotia Hospital.
88. Q. That's before this came up?
A. No--well my nerves were bad before that but when all this started my nerves went altogether.
89. Q. I understand that between giving this statement and between the-- after the Preliminary Hearing, before the trial you were in the Nova Scotia Hospital again and the Sydney Police drove you there?
A. Yes sir.
90. Q. Well why would they drive you all the way to Halifax?
A. Well that was what Doctor Guam arranged.
91. Q. Doctor?
A. Gaum.
92. Q. Guam?
A. Yes, sir he arranged to have the police to take me up.
93. Q. Did they bring you back?
A. No sir, I stayed there for quite the time and I came home on the train.
94. Q. Did you -- was there two officers that took you or the one or...?
A. One.
95. Q. One?
A. And my mother came with me, she had to sign the papers, and my mother took the bus back to Sydney.

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96. Q. So this officer that drove you up there, he'd know that you were going for treatment wouldn't he?
- A. Yes sir.
97. Q. You talked about it in the car?
- A. No, I tell you there wasn't too much talking going on, there wasn't much talking.
98. Q. Now this statement that you gave--you gave a second statement that you said you saw Marshall striking Seale and as I understand the record, you went to court and you said that again?
- A. Yes sir.
99. Q. At a couple of different hearings, the Preliminary Hearing and the trial with the grand jury. Did you know it was wrong to do that?
- A. Yes sir.
100. Q. I am kind of wondering why you didn't change that?
- A. I really can't answer why I didn't change it.
101. Q. Maybe I should ask you why you did it?
- A. I really can't explain it, do you know why I mean.
102. Q. When the Donald Marshall case came up again in 1982, you signed an affidavit?
- A. For Jim Carrol?
103. Q. No, I'll show it to you. I guess this would be after, let's see when did you talk to Jim Carrol, that was in February. This is the 15th of July, '82, is that your signature?
- A. Yes sir, that's my signature.

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104. Q. It was sworn in front of Douglas....
A. Oh, okay, I did sign it, yeah, I recognize that.
105. Q. The affidavit is three pages long and the--they spelled Pratico wrong?
A. It's a strange name anyway.
106. Q. Then on page two there is a couple of things I marked there, paragraph nine, just read that paragraph nine for us.
A. That's where that yellow spot is.
107. Q. Yes. Was true?
A. Yes it was true, to me it was true, the jail business came up, you know.
108. Q. I'm just going to read paragraph nine so everyone knows what we're talking about. "That I stated I had witnessed the murder of Sandy Seale as referred to in Exhibit "C" herein as a result of the said John F. MacIntyre accusing me of having been a witness to the murder and threatening me to jail unless I stated I did witness the murder and I was further informed by the said MacIntyre and Urquhart as to what I had purportedly witnessed of the murder and agreed out of fear with them."
A. That true.
109. Q. Is what you say there true?
A. Well pretty close to it, yeah.
110. Q. Is there anything you'd change now?
A. No, not really.
111. Q. Did you know Donald Marshall before this night?
A. Yes sir.
112. Q. Did you know Sandy Seale?
A. Yes sir.
113. Q. If I understand correctly you knew a lot of the young people around Sydney and a lot of them knew you?
A. Well I was young myself, you know, when you're young you meet a lot of young people.

114. Q. Was Marshall the kind of fellow who would--knowing both those young people, Sandy Seale and Donald Marshall was it possible for Marshall to have killed Seale?
- A. I can't answer that now, how am I suppose to answer that question, I can't answer that.
115. Q. Were the two of them friends?
- A. Yeah, I guess so.
116. Q. Were you friends with both of them?
- A. I wasn't friends with Seale but I was friends with Marshall.
117. Q. How did the--do you recall how the police first contacted you?
- A. No I don't.
118. Q. You didn't see any of this happen?
- A. I don't know how--I don't remember, you know...
119. Q. I am wondering why they ever went to you in the first place?
- A. I don't remember that.
120. Q. They just sort of showed up one day and asked you about it?
- A. Well I was out (inaudible) I can't answer that.
121. Q. Okay, those are all the questions I have, Mr. Pratico.
- R. Pugsley: I decline to cross-examine this man for the reasons I advanced earlier.