

RE-OBJET:

PAGE

Statement of: Wayne Robert MAGEE
Sheriff, Cape Breton County, N.S.

Taken: Sydney, N.S., @ 2 March 82

RCMP 2 56

In May of 1971 I would have been Chief of Police for the Town of Louisbourg. During this time John MacIntyre would have been a Sgt. of Detectives for the City of Sydney. As I recall Billy Urquhart came to my office. They asked me to locate Chant for them. I brought Maynard Chant and his mother to the Town Hall. We had a meeting in the Counsel Chambers with Maynard, his mother, Larry Burke, John MacIntyre, Bill Urquhart and myself present.

John outlined to all persons that he was investigating the stabbing in the Park and he wanted the truth from Maynard what he had seen in the Park. John put the questions to Maynard and he wrote down his answers. I don't recall any hesitation on Chant's part he admitted seeing the stabbing. John did all the talking and after the statement was taken we all signed it. I don't recall the specific questioning which took place.

(Signed by:)

Wayne R. Magee

Witness:

H.F. WHEATON, S/Sgt.

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 CHRETIEN, 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.

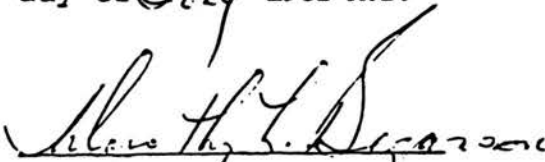
AFFIDAVIT

I, WAYNE ROBERT MAGEE, MAKE OATH AND SAY AS
FOLLOWS:

1. THAT I am presently the Sheriff for the County of
Cape Breton.
2. THAT in 1971, I was Chief of Police for the Town of
Louisbourg.
3. THAT on the 4th day of June, 1971, I was visited at
the Police Station in Louisbourg by John F. MacIntyre
and William Urquhart, both of whom were at the time
Detectives with the City of Sydney Police Department.
4. THAT I was advised by the said John F. MacIntyre that
he was investigating the murder of Alexander (Sandy)
Seale and that he wished to question Maynard
Vincent Chant in connection with that investigation.
5. THAT I advised John F. MacIntyre that I knew Maynard
Vincent Chant and, after being requested to do so, I
went to Chant's home and brought him to the Council
Chambers at the Town Hall in Louisbourg.
6. THAT, shortly upon our arrival at the above mentioned
Council Chambers, Maynard Vincent Chant gave a written
statement, a copy of which is annexed hereto as
Exhibit 'A', to John F. MacIntyre.

7. THAT those persons named in Exhibit 'A' were present for the entire interview.
8. THAT at no time did anyone in my presence or to the best of my knowledge make any threats or promises, or offer any inducements to Maynard Vincent Chant to have him give Exhibit 'A'.

SWORN TO at Sydney
in the County of Cape
Breton, Province of
Nova Scotia, this 23RD
day of July 1982 A.D.



DOROTHY L. BEZANON
A Commissioner of the Supreme
Court of Nova Scotia



WAYNE ROBERT MAGEE

Page 131

Mr. Wayne Magee, sworn, testified as follows:

EXAMINED BY MR. R. MURRANT

1. Q. Your name, sir is Wayne Magee?
A. Wayne Magee.
2. Q. And you're middle name is?
A. Robert.
3. Q. So that's Wayne R. Magee?
A. Yes.
4. Q. And at present you're the High Sheriff of Cape Breton County, I understand?
A. That's correct.
5. Q. How long have you been Sheriff?
A. Seven years.
6. Q. Prior to that what was your occupation?
A. I was Deputy Sheriff with the Sheriff's office for 11 years and I was the Chief of Police for the Town of Louisbourg.
7. Q. What period were you Chief of Police in Louisbourg?
A. Seventy to '73.
8. Q. And obviously you would have held that position in 1971?
A. Yes.
9. Q. Had you been with that police force prior to becoming Chief?
A. Yes.
10. Q. For how long?
A. Two years.
11. Q. Now in 1971, I'm going to an individual known as Maynard Chant, but in 1971 did you know Maynard Chant personally?
A. Yes I did.

Page 132

12. Q. Did you know his parents and where he lived?

A. Yes I do.

13. Q. And was he involved with the law in 1970, '71?

A. Before I answer that, would I be lending myself to liable by revealing he was a juvenile at the time.

R. Pugsley: I guess neither one of us are here to advise you as to what is appropriate to answer.

R. Murrant: We are not here to get him in any trouble either.

R. Pugsley: No, that's right.

A. I know Maynard Chant, I knew him then and I know him now, very well.

R. Pugsley: Do you need to inquire about why he knew him, Bob?

R. Murrant: No, I am just interested with what his situation with the law was. I think a juvenile record is not admissible in criminal court.

14. Q. Let me ask you this Mr. Magee, prior to '71 did he have some involvement as a juvenile with the law?

A. I had some relations with him as a result of him being in conflict with the law, yes.

15. Q. Let's leave that at that for the moment. Did you know his mother and father?

A. Yes.

16. Q. What kind of folks were they?

A. They were then and still are lovely people. Good citizens.

17. Q. His mother is Bula Chant?

A. Yes.

18. Q. Now apart from any involvement with the law, forget about juvenile records just stay away from that, can you tell me what kind of young fellow Maynard Chant was in 1970, '71 and '72?

18. A. That is sort of a tricky question too.

19. Q. I don't mean to be.

A. He was your every day teenager, he was a very nice chap to talk to on the street, actually at that time we were on first name basis. He had his problems in some areas.

20. Q. Okay. The Chant family was known in the community to be quite religious, were they not?

A. Yes.

21. Q. Okay let's go to your involvement in the case of Donald Marshall. I understand that was limited to being present when a statement was taken from Maynard Chant?

A. That's right.

22. Q. And how did that arise, how did you become involved?

A. As a result of then Detective MacIntyre and Detective Urquhart, visiting the police station in Louisbourg. As I understand ordinary investigation is the same as the Seale, Marshall incident.

23. Q. Did they come to the station or to you?

A. Me, I would think at the police station.

24. Q. And what were they looking for?

A. They were--they asked me if I had known Maynard Chant and I said yes and they asked me if I could locate him and I said that and as a result of that I proceeded to his residence.

25. Q. And his residence is on Main?

A. Main Street in the Town of Louisbourg.

26. Q. No problem locating him?

A. No problem.

Page 134

27. Q. What was the purpose of their visit, what were they after?

A. I assumed they wanted to question him. As a result of bringing him to the police station it was obvious that they wanted to get a statement from him.

28. Q. Why would they go through you to do that?

A. Well...

29. Q. Some protocol or some reason?

A. I would think so yes. I would think they'd perhaps only one contact with him as I understand it, the night before, the day before and they didn't know exactly where he lived and being it a small town they knew that perhaps I could make him available.

30. Q. But they didn't have to go, there is no police regulation or protocol that said they had to contact you before contacting him?

A. Not that I am aware of.

31. Q. Tell us what happened after that. You located Maynard Chant, you took him to the police station?

A. Yes.

32. Q. Then what?

A. As I recall his mother also accompanied myself to the police station. Upon entering the--I must say that the police station is located in an old retired school house, high school and we were actually in the Council Chambers, the town of Louisbourg Council Chambers at that time and upon entering the Council Chambers there was Detective MacIntyre and Urquhart and myself, Mrs. Chant, Maynard Chant and Larry Burke who is a juvenile probation officer, he was then and still is a juvenile probation officer.

Page 135

33. Q. Was he--he and Chant know each other?

A. Pardon.

34. Q. Did Burke and Chant know each other?

A. Yes.

35. Q. So what happened at the Council Chambers?

A. Upon entering the Chamber, I introduced Mrs. Chant to Detective MacIntyre and Detective Urquhart and, of course, they knew Maynard and we all, a few seconds later knew each other and I recall Detective MacIntyre state to Mrs. Chant, we merely want to ask your son a couple of questions. All we want is the truth, that's all we expect and I don't think that's too much to ask of anyone, is it. She said no, not at all and she pointed to Maynard in a very low voice and she said Maynard, you tell these gentlemen the truth.

36. Q. Uh-hmmm.

A. And we all sat down and a statment was taken from Maynard.

37. Q. Was everybody present?

A. Yes.

38. Q. All the time?

A. Yes. As I recall all persons were present.

39. Q. I am not trying to test your memory, Mr. Magee?

A. No, all persons were present.

40. Q. Your recollection is that they were all present the whole time?

A. Yes.

41. Q. And how was the statement take from Chant?

A. Question and answer. It was a written statement. As I recall Detective MacIntyre was doing the writing and Detective Urquhart as I know policy was merely a witness to the taking of the statement and I don't recall anything that he said at that particular sessions and questions

Page 136

41. A. were asked of Maynard in very low, mild mannered way. No raising of voices. He was merely asked questions and the answers were written down, the answers he gave.
42. Q. You're describing it something like the process you and I are engaged in
A. Exactly.
43. Q. Questions and answers?
A. Exactly problems whatsoever, question and answer.
44. Q. Are you saying that whatever question was posed, it was written down, the answer was given, it was written down.
A. That's correct. I might add, relevant or not as a result of listening and hearing the Marshall case over a number of years that there was some bad light shed on the Sydney Police Department as a result of supposedly heavy handed tactics and what not, all I am commenting is the one statement that was taken in my presence and it was taken in as far as I'm concerned the proper manner, there was no arm twisting or raising of voices or anything of that nature at all.
45. Q. Were you aware of the fact that Chant had given a previous statement, was that discussed?
A. Yes it was. As I recall Detective MacIntyre stated that some of the information in the prior statement upon their subsequent investigation wasn't corresponding with other information and he wanted to get the information again from Mr. Chant to see what was correct and what wasn't correct.
46. Q. Some of the information in his first statement didn't correspond with the information from other people?
A. I would assume that they were conducting an investigation and they were getting information from all persons and some of it may have been conflicting, I don't know but I take it that perhaps what Mr. Chant

Page 137

46. A. may have said in an earlier statement may have not corresponded with what they had found out later during their investigation. They were merely setting the record straight again.
47. Q. So they were indicating to Chant that he had given one statment and didn't seem to fit and they wanted him to tell the truth?
- A. Yeah the word was used fruitfully, he said that to Mrs. Chant and I expected that they wanted to get a truthful statement from Mr. Chant.
48. Q. Okay. In that period of time you were a Police Chief yourself, if you had two inconsistent statments from a witness, what would you do?
- A. I had taken numerous statements myself and I see nothing improper about going back the second time and asking for a second statement if, perhaps, I'm not saying it's the case here but perhaps the first statement there was misleading the police contained in that statement and as result of further investigation something is not right so you go back and you can ask for a second statement. I see nothing wrong with that.
49. Q. Let's not talk about Maynard Chant in this example but if you got a statement from me and you do a further investigation and you have some doubts about my statement because my first one could have been misleading and you take a second statement, what was your practise with respect to these two statements now that you had them, did you burn one, did you give it to the crown, did you....?
- A. I would, of course, all the facts when your investigation is complete or during your investigation, all the facts are presented to the Crown Prosecutor and all the evidence that you've gathered and it would be known to the Crown Prosecutor that you had one or two statements. That was my policy, I thought it would be proper police methods.

Page 138

50. Q. Was the expectation that once you'd given these to the Prosecutor that it is quite likely that he would give them to the Defence Council?
- A. Well he could, he should...
51. Q. I'm not saying...that's his job, not yours, I'm talking about expectations.
- A. Exactly.
52. Q. But you would expect that he should give them to the Defense Council?
- A. Right.
53. Q. But whether he did or didn't you couldn't control?
- A. I would perhaps have some influence maybe but I wouldn't have complete control. I guess it depends on the Crown Prosecutor, you know, how effective he is doing his job but that is his job I would think.
54. Q. Did you have any other involvement with the Marshall case?
- A. No.
55. Q. Since it's come up again in '82?
- A. I--two years ago, approximately two years ago there was an RCMP officer arrived at my office one day and asked me for a statement concerning what we are discussing right now, a statement that I was a witness to it.
56. Q. Yes. I think if I recall that statement correctly you told him basically what you just told me, is that your recollection?
- A. That's my recollection.
57. Q. Any other involvement with the matter?
- A. No.
58. Q. Have you discussed it with anybody other than what you see in the paper?
- A. I think I've discussed it with several people.

Page 139

59. Q. Socially or business wise?
- A. Socially. I've always maintained a right or wrong, on the record or off the record, it doesn't matter, but I've always retained that the Sydney Police Department had a hard time as a result of this I've always stated and I'll state it here you got--the police were out doing an investigation, you have witnesses and supposedly eye witness, etc. giving false statements, lying under oath and misleading all of the justice, can you blame the police for that.
60. Q. Other than that I took it to be socially?
- A. Yes.
61. Q. Apart to your talking to friends?
- A. Nothing else involved in courts.
62. Q. You mentioned that you thought the police got a hard time because of their being mislead, what about the Crown Prosecutor, the record shows here that none of the information was given to the defense, do you have any comment on that, does that surprise you?
- A. It surprises me. It is my understanding of the system, the criminal system that all of the police, all of the police evidence and information that relates to the Crown Prosecutor that it should be brought to before the attention of the jury. If there was a second statement I would think that it would be proper procedure to say, well, yes we took the first statement, it seems like ther may have been some lies in that statement, here is what he said the second time. I would think it was proper procedure to bring it all before the jury.
63. Q. And give it to the accused?
- A. Exactly. I think that goes without saying.

Page 140

64. Q. As you do your police work, as you did in those years, you'd know that as you went about your investigation in anticipating that would happen?
- A. I would anticipate that it would happen but when you present your case to the prosecutor and you sit down to talk it over with him in his office and you know he outlines, this is how we're going to proceed, we're going to do it this way, that way. He's the boss at that point in time, you're pretty well obliged to--you may--I recall several times with several different prosecutors saying will we do it this way--no, no we'll leave that and we'll go this way so it's off the cuff so he call the shots and that's the way it goes.
65. Q. But you at least fulfill your obligation by getting those statements down there?
- A. Exactly.
66. Q. If we go to the script once more, there's the....Page three of my copy to Maynard Chant. He says; "I did not quite make it to the park." Pass over that sentence. "He showed me his arm where it had been cut and told me his friend was stabbed...."
- R. Pugsley: Bob would you mind explaining to the witness where this excerpt comes from.
- R. Murrant: I am sorry, this is a part of the script of the broadcast and this part is a part of a statement given by Maynard Chant to the RCMP in 1982.
67. Q. What I want to ask you about is not really based on what is written here but based on your own recollection. Chant is saying; "the police interviewed me that night and I repeated what Marshall had told me." Was that discussed when you were there, that he may have simply repeated what Marshall had told him?

Page 141

67. A. I recall a statement was taken at the Town Hall. I can't recall specifics.

R. Pugsley: Do you want to refer to the statement, Bob?

R. Murrant: The original

R. Pugsley: No, the one that he was present at.

R. Murrant: I'll come back to that in a minute.

67. A. There are certain parts that took place that day that I can remember distinctly, that is; Mrs. Chant and telling him to tell the truth and Mr. MacIntyre saying we merely want the truth and that's all. I can remember that very distinctly but I can't remember ever question and answer that was taken.

68. Q. Chant says there, "I don't know why I had to say something." Was this man intimidated, nervous, upset, given the fact that he was at the Council Chambers with yourself and the other four?

A. I don't recall him being upset at all. I don't recall him being upset at all. I think he answered every question that was asked of him that day. I don't know at this time, I may have stated that he signed the statement but I believe he did. He was asked to read it over and I believe he did sign the statement, it was witnessed, but he didn't-- he wasn't upset at all and I can't recall him saying that, you know, I am upset, anything of that nature at all.

69. Q. Did he appear at all intimidated?

A. No.

70. Q. The last part here, he says; "they told me that another guy had seen me in the park and I had to see it." Now you mentioned earlier that Chant was told his statement was inconsistent with the investigation and that he should give another statement and he should tell the truth and I was wondering if that was one of the inconsistencies?

Page 142

70. A. That may have been, I can't specifically recall.

71. Q. That other parts of the investigation put him at the scene?

A. Uh-hmmm.

72. Q. So now he should be more truthful about it?

A. That may have been said, I can recall that the gist of it is that there was inconsistencies and they wanted to get the truth, now that may have been specifically mentioned but I can't recall if it was.

73. Q. I'm trying to figure out the--if you don't remember Mr. Magee, fine, don't guess because your evidence is taken down but history has shown that the first statement was accurate, that he didn't see this man and the second one was...

R. Pugsley: I am not so sure that's factual. The Appeal Court has said that Maynard Chant's evidence is not worthy of belief whenever he spoke. I am not sure what Maynard Chant saw or did not see. I think in fairness to the witness you...

A. You must, you must bear in mind, you know, I've read a lot and I've heard a lot and I'm speaking in my own defense now that I recall a statement being taken and I recall that Detective MacIntyre said he wanted the truth and who else took place when other statements were taken I'm not familiar with them. I don't know if I ever read any of the statements Maynard Chant has given and so that I can merely remember them taking a statement and stating that--I know what you're getting at, he's indicating there I take it that he said to Detective MacIntyre that he had made that statement at the Town Hall that day so he was going along with you. I'm telling you that I can't specifically recall that. I'm not saying he didn't, I'm not saying he did.

Page 143

74. Q. I guess your recollection is that his--correct me if I am wrong, his first statement, whatever it contained because you didn't witness it appeared to be inconsistent with other facts coming forward in the investigation so they wished to take a second statement from Chant in which they would like him to tell the truth?

A. That's right.

75. Q. Now there is a copy of a statement made here to officers MacIntyre and Urquhart, do you recall if you signed Chant's statement? I'll tell you what I'm referring to is the....

R. Pugsley: Do we have an original. A photostat of an original of a hand written statement.

R. Murrant: That's what I'm looking for.

76. Q. If you go back four pages, it says June 4, 1971....

R. Pugsley: ANd the question Bob is..

77. Q. Well on the additional page there you have 000024 begins and it concludes at 000027 at 3:45 p.m. Sergeant Detective J. MacIntyre signed by Maynard Chant and then go over to page 28 it has Mrs., it looks like Bula Chant, mother, Lawrence Burke, probation officer, Cheif Wayne R. Magee, Urquhart and myself. Do you see that there Mr. Magee?

A. Yes.

78. Q. What I am wondering is whether you witnessed the statement or whether that's your writing or whether that is someone elses.

A. ~~Someone else's writing.~~

79. Q. It is not yours?

A. No.

80. Q. And if I recall your evidence correctly, Bula Chant and Lawrence Burke, I can't read the other name...

R. Pugsley: Juvenile Court.

Page 144

81. Q. Juvenile Court?

A. Juvenile Probation Officer, Juvenile Court.

R. Pugsley: Juvenile Court, yes.

82. Q. Chief Wayne R. Magee, Urquhart and myself. Myself meaning Chief MacIntyre. Those were the persons that were present the whole time?

A. Yes.

83. Q. How long did this process take to take this statement?

A. I guess, I would say maybe 20 to 30 minutes.

84. Q. Is there any reference to the fact that Chant was on probation at this time?

A. No.

85. Q. Was there any reference to perjury?

A, No.

86. Q. Other than the introductory part that we talked about, were there any discussions other than those involving a written statement?

A. No.

87. Q. Other than the questions and answers?

A. No the introduction had taken place, Mr. Chant went over and sat at the--one end of the row of desks that were there and the only talking that was taken place as between Detective MacIntyre and Chant and no one else was saying anything.

88. Q. So you would have simply sat there?

A. That's correct.

89. Q. Why would you be there?

A. I often wondered that myself to be honest with you. There was sort of a large crowd for taking of a statement, although Mr. Chant being a juvenile it think it was practise or policy or law then that you had to have one or two parents present.

Page 145

90. Q. Well that explains....

A. At least it was good practise to have one of the parents present in taking of a statement from a juvenile.

91. Q. Well that explains Bula Chant, that doesn't explain you to me.

A. I can't explain it myself. I stayed there because I wasn't asked to leave. I brought him up, the introductions were made, I sat down and Larry Burke was there when I came back with Mr. Chant. I think he had arrived in the interim after I had left and that was it.

92. Q. Do you know what accounts for Mr. Burke's presence?

A. At the time we would have had perhaps up to a dozen juveniles on probation and it was his practise to call the police station when he visiting. He use to visit once a week to check on juvenile offenders and he would drop into the police station to consult with myself and see how the boys were getting along on probation, any complaints about them, any more conflicts with the law, etc.

93. Q. But that doesn't say why he was there when the statement was taken?

A. No.

94. Q. You as the Chief of Police, if you were taking a statement from this young man at this point, could have done so in the presence of yourself and his mother?

A. Yes.

95. Q. You don't need to be the Chief of Police from an adjacent community or a probation officer there, do we?

A. No. The only thing to bear in mind in looking at the police point of view is not, Mr. Chant was not being accused of anything, he was not the person who would have been charged with the murder, he was merely a witness or supposedly a witness to an offense and a little different situation, if he was an accused then he would keep as many people clear as possible I would think, you wouldn't allow such a large crowd

Page 146

95. A. unless like I said he was a juvenile and had to have one of his parents present but the fewer people present the less complication when you get to court. So they were merely, I take it, the police were merely looking for a statement and there was two court official, being myself a police official and a probation officer and the mother so I could understand them not objecting to us being present.
96. Q. Not objecting, I'm just wondering what impact it has on this young man that you've got, you know, the Chief of Police of his own community that knows him, probation officer who supervises him and two other officers.
- A. Well I can't say what impact it would have on him, we were there during the taking of the statement and that's all I can say.
97. Q. Would you expect a young man at that age in that community be somewhat intimidated in your own police work?
- A. Well it would depend. If he was supposed to be a witness to an offense and he was giving a truthful statement, you know, all he has to do is tell the truth, so I can not see why he should be intimidated. All of the persons with the exception of the two Sydney Police Detectives were on a first name basis with him so certainly I couldn't see him being intimidated by them if you're referring to Larry Burke and myself, no I couldn't see him being intimidated by us. In fact I could say the opposite, I've known Maynard for a number of years and on a first name basis and always got along fairly good with him and we had good communications with him and may have thought I could render some moral support for him.
98. Q. It may have been the opposite?
- A. That's right.

Page 147

99. Q. Apart from his involvement in the Marshall affair and the statements he's given, whatever they stand for, Maynard Chant, is he--back in '71, do you today find him, did you find him to be a sincere, honest young man, from a good family?
- A. Yes, to repeat he comes / ^{from} a good family, good home life, large family and my dealings with him when I would present myself to him I found him to be open with me, not mislead me.
100. Q. Even though he was mischievous he was forthright, I guess?
- A. That's correct.
101. Q. Have you seen him recently?
- A. I seen him two days ago.
102. Q. You still consider him to be the same type of individual?
- A. Well he's --in the last several years he's sort of--bright, working steady, had a home so I'd have to say he's turned his life around in the last number of years.
103. Q. As it stands now he is reputable or well regarded member of the community in Louisbourg, is he not, as was the case with his father?
- A. His father is a very fine individual, I don't know if Maynard has reached that stature yet but....
104. Q. Okay, that's all I have, thank you.
- R. Pugsley: The last question that you addressed to Mayor MacDonald was whether or not the City had any interest in the litigation. I am not sure how broad you intended the scope of that question to be but it occurred to me that it could be broad enough to include an arrangement between Chief MacIntyre and the Sydney Police Commission which is set forth in this letter of April 19, 1984, a copy of which you should have.