

January 7, 1983

Frank Edwards, Esq.
Crown Prosecutor
County of Cape Breton
77 King's Road
Sydney, N.S. B1S 1A2

Dear Mr. Edwards:

Re: Reference Re R. v. Donald Marshall, Jr. - S.C.C. No. 00580

Please find enclosed a copy of the Transcript of the Hearing of December 1 and 2, 1982, before the Appeal Division.

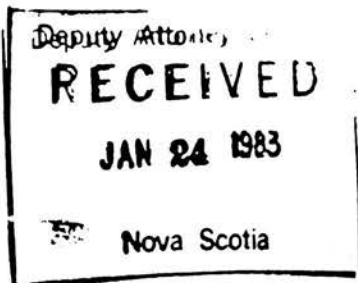
Yours very truly,

Stephen J. Aronson

SJA:md
Enclosure



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N. S.



77 Kings Road
Sydney, Nova Scotia
B1S 1A2
January 18, 1983

Mr. Martin E. Herschorn
Asst. Director (Criminal)
Dept. of Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Herschorn:

RE: Donald MARSHALL Jr.

As you know, the above matter has been set down for final argument on February 16, 1983.

Among the points which should be emphasized before the Court are the following:

- (a) The Appellant must bear considerable responsibility for the predicament in which he finds himself. Had he told either the police or his lawyers in 1971 that he and Seale were attempting a robbery, the subsequent investigation and/or defence would have taken different directions. In all likelihood, Marshall would never have been convicted.
- (b) The police investigators in 1971 bona fide believed they had the guilty party in the person of Donald Marshall Jr.; they certainly were not motivated by malice toward either the accused or, as has been suggested in some press reports, prejudice toward his race.

Beyond emphasizing the foregoing, the Crown has virtually no option respecting a position on the ultimate disposition of this case. To verify that proposition, one has only to pose two questions:

First, if the evidence now available had been known in 1971, would Donald Marshall have been charged with Seale's murder? Where all the evidence now available points toward someone other than Marshall, the answer has to be no, Marshall would not have been charged.

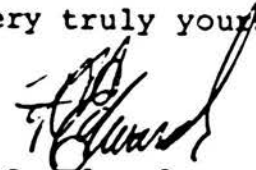
Second, if a new trial for Marshall were now to be ordered, who would the Crown call? There does not now exist a single scrap of evidence which points toward Marshall. The Crown would have to offer no evidence at a new trial.

I have considered the possibility of the Crown attempting to take no position re ultimate disposition. I do not believe that such a posture is either tenable or appropriate. The court will want to know the Crown's position and it would be an abrogation of the Crown's responsibility not to take one.

In view of the foregoing, the submission of the undersigned to the court will be that Donald Marshall Jr. should be acquitted. Where, in my professional opinion, enough evidence exists to charge another individual with Seale's murder, I could not and would not go to court and argue anything else.

I trust I will hear from you on this matter. In the meantime, I remain

Very truly yours,



F.C. Edwards
CROWN PROSECUTOR

FCE:ami

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson
Leo I. MacDonald

Dartmouth Professional Centre · Suite 305 · 277 Pleasant Street · Dartmouth, N.S. Canada B2Y 4B7 · (902) 463-9131

January 19, 1983

The Prothonotary
Post Office Box 475
Crescent Street
Sydney, N.S. B1P 6H4

JAN 27 1983

Dear Miss Bezanson:

Re: Marshall v. The City of Sydney et al

Please find enclosed the original and one copy of an Originating Notice (Action) and Statement of Claim in the above-noted matter. Would you kindly issue the Originating Notice (Action) and Statement of Claim and return to me.

Yours very truly,



Stephen J. Aronson

SJA:md
Enclosures

9.04A

RENEWED FOR THE PERIOD OF SIX MONTHS JULY 22, 1983
BY ORDER OF HIS HONOUR MURRAY J. RYAN, LOCAL JUDGE OF THE
SUPREME COURT OF NOVA SCOTIA.
DATED AT SYDNEY, N.S. THIS 22ND DAY OF JULY, 1983.

Walter T. Deegan
PROTHONOTARY
AG 242

129

ORIGINATING NOTICE (ACTION)

19 83

S.N. No. 62796

IN THE SUPREME COURT OF NOVA SCOTIA,
TRIAL DIVISION
Between DONALD MARSHALL, JUNIOR; PLAINTIFF

and-
THE CITY OF SYDNEY, a body corporate;
and John L. MacIntyre and William Urquhart; DEFENDANT

TO THE DEFENDANT:

TAKE NOTICE that this proceeding has been brought by the Plaintiff against you, the Defendant, in respect of the claim set out in the statement of claim annexed to this notice.

AND TAKE NOTICE that the Plaintiff may enter judgment against you on the claim, without further notice to you, unless within TEN days after the service of this originating notice upon you, excluding the day of service, you or your solicitor cause your defence to be delivered by mail or personal delivery to,

- (a) the office of the Prothonotary, at
The Court House, Sydney, Nova Scotia, and
- (b) to the address given below for service of documents on the Plaintiff:

provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the Plaintiff or his solicitor within six days from the service of this notice on you, then this proceeding will be stayed.

ISSUED the day of January A.D. 19 83.

Solicitor for the Plaintiff - Stephen J. Aronson, Esq.
whose address for service is: 277 Pleasant St., #305
Dartmouth, N.S. B2Y 4B7

TO: City of Sydney
c/o Michael G. Whalley, Esq.
Post Office Box 730
Sydney, N.S. B1P 6H7

AND TO: John L. MacIntyre and William Urquhart
c/o Sydney City Police

1983

AG 142
S.H. No.

IN THE SUPREME COURT OF NOVA SCOTIA,
TRIAL DIVISION

BETWEEN:

DONALD MARSHALL, JUNIOR;

Plaintiff

- and -

THE CITY OF SYDNEY, a body
corporate, and John L. MacIntyre
and William Urquhart;

Defendants

STATEMENT OF CLAIM

1. The Plaintiff, Donald Marshall, Junior, resides in Halifax, in the County of Halifax and Province of Nova Scotia.
2. The Defendant, City of Sydney, is a body corporate, incorporated by an Act to Incorporate City of Sydney, S.N.S. 1903, c. 174, as amended, and is located in the County of Cape Breton, in the Province of Nova Scotia.
3. The Defendants, John F. MacIntyre and William Urquhart are employees of the Defendant City, and reside in the City of Sydney.
4. On or about the month of June, 1971, the Plaintiff was investigated and subsequently charged with the murder of one Sanford Seale, by the Sydney City Police Department.
5. The Defendants, John MacIntyre and William Urquhart, were employed by the Defendant City as police officers and at all material times hereto were involved in the above-mentioned investigation of the Plaintiff.
6. As a result of the investigation and prosecution by the Defendants, the Plaintiff suffered damages, caused solely by the negligence of the Defendants, MacIntyre and Urquhart, for which the Defendant, City of Sydney, is vicariously liable, particulars of which are as follows:

- (a) The Defendants were negligent in that they

failed to fully investigate the facts surrounding the events of the evening of May 28, 1971, and in particular the version of events related to them by the Plaintiff.

- (b) The Defendants gave false and misleading information to Maynard Chant, a witness for the Crown at the trial of the Plaintiff in November, 1971, to the effect that the former had been seen in the vicinity of the murder by the Crown witness, John Pratico.
- (c) The Defendants exerted pressure on Mr. Chant to state falsely that he had witnessed the Plaintiff stab the deceased.
- (d) The Defendants coerced John Pratico, a witness for the Crown at the trial of the Plaintiff in November, 1971, through threat of imprisonment to state falsely that he had witnessed the Plaintiff stab the deceased.
- (e) The Defendants pressured Patricia Harriss, a witness for the Crown at the trial of the Plaintiff in November, 1971, by means of lengthy and persistent interrogation on the eve of June 17, 1971, to contradict her initial statement and falsely testify to a version of events as suggested to her by the said Defendants.
- (f) Such other negligence as may appear.

7. By the actions referred to in Paragraph 6 herein, the Defendants were negligent in their duties and were instrumental in the fabrication of false and misleading evidence which proved detrimental to the Plaintiff and the Plaintiff's Defence.

8. As a result of the testimony of the Crown witnesses, in particular, that of the aforementioned Chant, Pratico and Harriss, the Plaintiff was convicted of the murder of Sanford Seale on November 5, 1971, and sentenced to a term of life imprisonment.

9. That the tortious actions committed by the Defendants were not made known to the Plaintiff until the Spring of 1982

upon the completion of an investigation conducted by the R.C.M. Police under the direction of S/Sgt. Wheaton.

10. The Plaintiff therefore claims as relief:

- (i) damages for false imprisonment, abuse of process, defamation, negligence and malicious prosecution perpetrated upon the Plaintiff by the actions of the Defendants;
- (ii) costs of this action;
- (iii) such further and other relief as the Court might deem appropriate.

PLACE OF TRIAL: Sydney, Nova Scotia

DATED at Dartmouth, in the County of Halifax and Province of Nova Scotia, this day of January, A.D. 1983.

STEPHEN J. ARONSON
Aronson, MacDonald
277 Pleasant St., Suite 305
Dartmouth, N.S. B2Y 4B7

TO: City of Sydney
c/o Michael G. Whalley, Esq.
Post Office Box 730
Sydney, N.S. B1P 6H7

AND TO: John L. MacIntyre and
William Urquhart
c/o Sydney City Police
Sydney, Nova Scotia

IN THE SUPREME COURT OF NOVA SCOTIA,
TRIAL DIVISION

BETWEEN:

DONALD MARSHALL, JUNIOR;

Plaintiff

- and -

THE CITY OF SYDNEY, a body
corporate; and John L.
MacIntyre and William Urquhart;

Defendants

STATEMENT OF CLAIM

Stephen J. Aronson, Esq.
Aronson, MacDonald
Barristers and Solicitors
277 Pleasant St., Suite 305
Dartmouth, N.S. B2Y 4B7

VIA PUROLATOR

January 24, 1983

Frank Edwards, Esq.
Crown Prosecutor
County of Cape Breton
77 King's Road
Sydney, N.S. B1S 1A2

Dear Mr. Edwards:

Re: Donald Marshall, Jr.

Please find enclosed a copy of the Appellant's Factum in the above matter which will be filed on January 25, 1983.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosure

January 28, 1983

Terry Hatcher
Carlton Centre
5253 College Street
Halifax, N.S. B3H 1X5

Dear Terry:

Re: Donald Marshall, Jr.

Enclosed, as you requested, is a photocopy of the Order and
Recognizance releasing Junior.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosure

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson

Leo I. MacDonald

Dartmouth Professional Centre · Suite 305 · 277 Pleasant Street · Dartmouth, N.S. Canada B2Y 4B7 · (902) 463-9131

January 28, 1983

Miss Karen Brown
5651 Ogilvie Street, #113
Halifax, N.S. B3H 1B9

Dear Junior:

I have recently filed a legal document with the Court in Sydney commencing legal proceedings against the City of Sydney, John MacIntyre and William Urquhart. Please understand that the only purpose in filing the document, a copy of which is enclosed, is to protect your interests. At this point in time and certainly until after a decision on your murder conviction is received, we have no intention of actually serving the document and formally commencing the proceeding.

The main reason why I have filed this document with the Court is to protect your interests in the event that a limitation period applies to any civil action which you might take against the City of Sydney for the wrong done to you.

In addition, I enclose a copy of a proposed partnership Agreement between Harris, you and I which I would ask you to read over. If you have any comments or suggestions please let me know. I am going out of town from February 1 to February 5, inclusive, and would be happy to sit down with you again upon my return to discuss these matters or the Appeal Hearing which is on February 16, 1983.

I would confirm that your attendance is required at the Hearing on February 16 at 2:00 P.M.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures



DEPARTMENT
OF
ATTORNEY GENERAL
NOVA SCOTIA

P. O. BOX 7
HALIFAX, NOVA SCOTIA
B3J 2L8

February 1, 1983

Our File No.
08-83-0003-00

REGISTERED MAIL

Mr. Stephen J. Aronson
Aronson, MacDonald
Barristers & Solicitors
Dartmouth Professional Centre
Suite 305
277 Pleasant Street
Dartmouth, Nova Scotia
B2Y 4B7

FEB 2 - 1983

Re: Donald Marshall, Junior

Dear Mr. Aronson:

Further to your letter to me dated December 16, 1982, I enclose a Provincial cheque in the amount of \$1,274.92 respecting witness fees at the hearing of the above-named.

Yours very truly,

A handwritten signature in cursive script that reads "Martin".

Martin E. Herschorn
Assistant Director (Criminal)

MEH:if
Enclosure



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N. S.

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
February 7, 1983

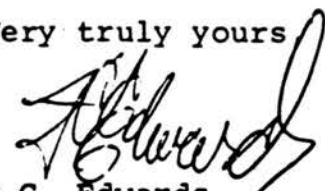
Stephen J. Aronson, Esq.
Aronson and MacDonald
Barristers and Solicitors
277 Pleasant St., Suite 305
Dartmouth, Nova Scotia
B2Y 4B7

Dear Mr. Aronson:

RE: Her Majesty The Queen
- vs -
Donald Marshall Jr.

Enclosed please find a copy of the "Factum of The Respondent" in the above noted matter.

Very truly yours


F.C. Edwards
CROWN PROSECUTOR

FCE:ami
Enc.

COPY



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N. S.

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
February 22, 1983

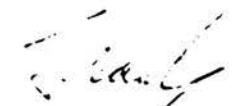
S/Sgt. Harry Wheaton
R.C.M. Police
P.O. Box 2286
Halifax, Nova Scotia

Dear, Sgt. Wheaton:

RE: Her Majesty The Queen
- vs -
Donald MARSHALL Jr.

Please find the factum which I prepared in the
above noted matter.

Very truly yours,


F.C. Edwards
CROWN PROSECUTOR

FCE:ami
Enc.