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ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION

VOLUME XIV

Held: October 6, 1987

At: St. Andrew's Church Hall
Bentinck Street
Sydney, Nova Scotia

Before: Chief Justice R. A. Hickman, Chairman
Assoc. Chief Justice L. A. Poitras, Commissioner
Hon. G. T. Evans, Commissioner

Counsel: George MacDonald, Q.C., Wylie Spicer, & David Orsborn:
Commission Counsel

Clayton Ruby, Ms. Maryls Edwardh, & Ms. Anne S. Derrick:
Counsel for Donald Marshall, Jr.

Michael G. Whalley, Q.C.: Counsel for City of Sydney

Ronald N. Pugsley, Q.C.: Counsel for John F. MacIntyre

Donald C. Murray: Counsel for William Urquhart

Frank L. Elman, Q.C., & David G. Barrett:
Counsel for the Donald MacNeil estate

Jamie W. S. Saunders, & Darrel I. Pink:
Counsel for Attorney General

James D. Bissell: Counsel for the R.C.M.P.

Al Pringle: Counsel for Correctional Services Canada

William L. Ryan: Counsel for Evers, Green and McAlpine

Charles Broderick: Counsel for Carroll

S. Bruce Outhouse: Counsel for Wheaton & Scott

Guy LaFosse: Counsel for Davies

Bruce H. Wildsmith: Counsel for Union of N. S. Indians
Assisted by Daniel Christmas

E. Anthony Ross, & Kevin Drolet: Counsel for Oscar N. Seale

E. Anthony Ross, & Jeremy Gay: Counsel for Black United Front

Court Reporters: J. Graham Robson, & Judith M. Robson, OCR, RPR

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COURT REPORTER'S CERTIFICATE NN

INQUIRY RECONVENED AT 9:35 o'clock in the forenoon on Tuesday, the 6th day of October, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia

1 | MR. SPICER:

2 | Good morning, My Lord. There's two or three more volumes of exhibits
3 | that I just wanted to get filed and tell counsel the numbers of the
4 | various exhibits. They've all been distributed to counsel. The
5 | large volume which contains the medical records of John Pratico from
6 | the Cape Breton Hospital and the Nova Scotia Hospital would be
7 | exhibit 47. There's a volume that was distributed this morning
8 | which is called volume 22. Just to make it more interesting, it's
9 | exhibit 48. That's information and associated documents concerning
10 | Tom Christmas and Donald Marshall, Junior. And finally, there's a
11 | separate volume of medical records of John Pratico which would be
12 | exhibit 49 and which is contained in volume 23. All those materials
13 | have been distributed to counsel.

14 | MR. CHAIRMAN:

15 | Fine. Before we start this morning's proceedings, simply for the
16 | record because counsel have already received a schedule of hearings
17 | for the remainder of this calendar year but for others that may be
18 | interested, we will be sitting -- and this relates only to the
19 | Sydney Sittings. We will sit this week through to Friday morning,
20 | nine to eleven-thirty. And then we -- from there on we will be
21 | sitting a four-day week Monday to Thursday's and we will adjourn
22 | Thursday afternoon at four o'clock. We will be sitting on the week
23 | commencing October 26th, November the 2nd, November the 9th,
24 | November the 16th, November the 7th -- December the 7th, December the
25 | 14th and hopefully that will be the -- that will conclude the

DISCUSSION BETWEEN COURT AND COUNSEL

1 | hearings in Sydney. I'm not particularly anxious to come back for
2 | the week commencing December the 21st but I'm sure Counsel would
3 | insist that we do that if it becomes necessary. So with that rider and
4 | nebulous qualification, are you ready to proceed, Mr. Spicer?

5 | MR. SPICER:

6 | Thank you.

7 | MR. PUGSLEY:

8 | My Lord, just before my friend begins, the volumes given to us this
9 | morning relates to an information concerning Thomas Christmas on
10 | June the 11th of 1971. Evidence was given by John Pratico at the
11 | preliminary at that time and by Mrs. Pratico. I've not had a full
12 | opportunity of examining the evidence but had I had it at our last
13 | sittings, My Lord, I think I would have taken the opportunity of
14 | examining both John Pratico and Mrs. Pratico and the evidence they
15 | gave at that time. I'd simply like the opportunity of going through
16 | the transcript and if necessary, I would be making an application
17 | that those two people be called -- recalled so that they may be
18 | cross-examined on the evidence they gave at that preliminary.

19 | MR. CHAIRMAN:

20 | All right.

21 | MR. SPICER:

22 | Thank you, My Lord. The first witness is Rudy Poirier.

23 |

24 |

25 |

RAYMOND RUDOLPH POIRIER, being called and duly sworn, testified as

1 follows:

2 BY MR. SPICER:

3 Q. Your full name, please?

4 A. Raymond Rudolph Poirier.

5 Q. And where do you live?

6 A. 90 Victoria Road.

7 Q. Mr. Poirier, in 1971, were you living in Sydney?

8 A. Yes, at 209 Bentinck Street.

9 Q. Did you have occasion in July of 1971 to give a statement to
10 the Sydney Police Department?

11 A. Yes.

12 Q. Do you have -- and that statement is in volume 12, page 287.
13 That's the document you have in front of you.

14 A. Yes.

15 Q. Do you have any recollection at this time of the giving of that
16 statement?

17 A. Not exactly this one. What I remember though is just that we
18 were sitting on the step that morning or afternoon, whatever it
19 was on Sunday --

20 Q. All right, let me just stop you there before you get going. Can
21 you just give us then your recollection of when this discussion
22 took place? It's a couple of days after the incident on May the
23 28th?

24 A. Yeh, I believe so.

25 Q. Okay, just tell us then what you remember of that discussion as

R. RUDOLPH POIRIER, by Mr. Spicer

1 | now reflected in your statement?

2 | A. By not going what that is?

3 | Q. Just tell us what you remember.

4 | A. Well what I remember was we were sitting on the step. There was
5 | me, Johnny Pratico, Glen Lamsen. Mr. Marshall was coming down
6 | the -- from being questioned at the police station. He looked
7 | nervous and asked us for a cigarette.

8 | Q. Now before Junior got there, do you have any recollection whether
9 | or not Mr. Pratico said anything to you about knowing anything
10 | about the stabbing?

11 | A. No, not a thing.

12 | Q. He didn't or you don't remember.

13 | A. I don't think he mentioned anything.

14 | Q. He didn't mention anything. Okay, go ahead.

15 | A. So we were just sitting there and when he asked us for a
16 | cigarette, we asked him what was the matter and he -- we seen
17 | the bandage on his arm. He showed us the stitches and then he
18 | told us that him and his buddy, Sandy Seale, were walking through
19 | the park. Two fellows approached him, asked him for a cigarette.
20 | One guy stabbed Sandy Seale, made a stabbing motion at him, got
21 | him in the arm and they left.

22 | Q. Did he give any description to you of those guys that had done
23 | the stabbing?

24 | A. In the statement when the -- this statement, he did.

25 | Q. Yeh.

R. RUDOLPH POIRIER, by Mr. Spicer

1 A. He said there was shorter man in his fifties and a younger fellow
2 in his late twenties.

3 Q. And that's -- Your recollection of what he said to you that day is
4 what's written in that statement of July the 2nd. Is that right?

5 A. After I read the statement, yes.

6 Q. Yeh, okay. How long do you think the conversation lasted with
7 Junior Marshall?

8 A. Maybe ten, fifteen, twenty minutes.

9 Q. Your statement is on July 2nd. Can you give us any indication
10 of how it was that you came to give that statement?

11 A. How -- I'm not really sure. I think it was Mr. Pratico had
12 mentioned to the Detectives that we were sitting on the step
13 and they just wanted to verify what Junior Marshall had said
14 to us and one day I was home and they came to pick me up and
15 asked me to come up and give a statement.

16 Q. And who is they?

17 A. I think it was Mr. MacIntyre.

18 Q. Okay, do you remember the circumstances of giving that statement?
19 Where did it take place? At the station?

20 A. At the police station.

21 Q. Do you remember how many officers were present?

22 A. I think just the two. I think it was Mr. MacIntyre and Mr.
23 Urquhart.

24 Q. Do you remember what the tenor of the interview was? How was
25 Mr. MacIntyre's voice? Was he kind to you?

R. RUDOLPH POIRIER by Mr. Spicer

1 A. Just normal. No pressure.

2 Q. Was any attempt made to change anything that you were saying?

3 A. No.

4 Q. Do you know how John Pratico's name got to the Sydney Police
5 Department?

6 A. Not really.

7 Q. Did you give John Pratico's name to Sergeant MacIntyre?

8 A. Not that I remember.

9 Q. Not that you remember. Did you know John Pratico?

10 A. Yes, we were neighbours.

11 Q. Okay, and did John have any kind of a reputation with the kids?

12 A. No, not really.

13 Q. What did you think of his -- of his mental state at the time?

14 A. Oh, he was in bad shape.

15 Q. Yeh, now when you say he was in bad shape, in what sense was he
16 in bad shape to your knowledge?

17 A. Just by his reactions. His nerves were shot. He was always on
18 medication. You know if somebody hollared at him -- if his
19 mother hollared at him, he'd take off and run, you know.

20 Q. Do you know him to be the sort of guy that would make up stories?

21 A. Well, he -- Well at that time he used to make up all kinds of
22 stories, you know, but you wouldn't remember them now but you
23 know living next to him, you wouldn't believe what he was saying
24 half the time anyway because he was so doped up.

25 Q. I'm sorry. You wouldn't believe what he was saying half the time

R. RUDOLPH POIRIER, by Mr. Spicer

1 | because he was what, so doped up?

2 | A. Yes.

3 | Q. On medication?

4 | A. Yeh.

5 | Q. Okay, did you know that John Pratico was going to be a witness
6 | at the preliminary or at the trial?

7 | A. Not right off the bat, no.

8 | Q. Did you know before it happened?

9 | A. No.

10 | Q. When did you realize that he'd been a witness?

11 | A. When they started the preliminary hearings, I guess.

12 | Q. Okay, so you would have known -- did you know then that he was
13 | going to be a witness at the trial in November?

14 | A. It's hard to say. I might have.

15 | Q. Okay. Did you have any discussions with Sergeant MacIntyre or
16 | anybody else with the Sydney Police Department concerning John
17 | Pratico's state of health?

18 | A. No.

19 | Q. No. Were you ever contacted prior to the preliminary or prior
20 | to Mr. Marshall's trial by any of the lawyers acting for Mr.
21 | Marshall; that is, Mr. Khattar or Mr. Roseblum?

22 | A. No.

23 | Q. Were you ever contacted by the Crown Prosecutor, Mr. MacNeil?

24 | A. No. Nobody.

25 | Q. Subsequent to giving the statement on July 2nd, were you ever

- 1 | contacted again prior to trial by anybody in the Sydney Police
2 | Department?
- 3 | A. No. Not --
- 4 | Q. I'm sorry?
- 5 | A. Not that I know of.
- 6 | Q. Not that you know of.
- 7 | A. Not that I recall.
- 8 | Q. Were you contacted in 1982 by the R.C.M.P.?
- 9 | A. Yes. Sergeant Wheaton.
- 10 | Q. And do you remember the circumstances under which he contacted
11 | you? Where were you?
- 12 | A. I was home.
- 13 | Q. Did he come to your house?
- 14 | A. Yes.
- 15 | Q. And what did he say to you?
- 16 | A. Just asked me if I remember my statement, you know. I just
17 | basically told him what I just said a little while ago.
- 18 | Q. Did he have a copy of the statement with him when he came to see
19 | you?
- 20 | A. No, I don't believe so.
- 21 | Q. No. Did he indicate to you why he was coming to talk to you?
- 22 | A. Yes, he said there was a -- they were reopening the investigation.
- 23 | Q. Did he say anything further or just that "we were reopening the
24 | investigation"?
- 25 | A. No, that's about all I can --

R. RUDOLPH POIRIER, by Mr. Spicer, by Mr. Ruby

1 Q. Was he by himself?

2 A. Yes, I think his partner was in the car.

3 Q. Do you know who his partner was?

4 A. No, not at the time.

5 Q. And it's your recollection then I take it, that it wasn't you
6 that gave John Pratico's name to the Sydney Police Department
7 following that meeting on the steps?

8 A. Not that I can remember, no.

9 Q. Did you have occasion to talk to Junior Marshall again following
10 that morning on the steps prior to his arrest?

11 A. I never seen him after that except for at the trial.

12 Q. At the trial. Did you know Junior?

13 A. No.

14 Q. Was the first time you say him then when he came walking
15 along that morning?

16 A. Yeh.

17 Q. Did you know who he was?

18 A. No.

19 Q. No. Never seen him, never heard of him.

20 A. No.

21 MR. SPICER:

22 Thanks very much.

23 BY MR. RUBY:

24 Q. Am I correct, Mr. Poirier, that you now have very little memory
25 of this conversation apart from what is on this paper?

R. RUDOLPH POIRIER, by Mr. Ruby

1 A. After reading this two weeks ago but I didn't remember half what
2 I had said, you know. Just basically similar to what I just
3 said when I first asked Mr. Spicer's answers.

4 Q. I'm trying to understand whether or not as a result of reading
5 the paper you now have a real recollection of the conversation
6 on the front porch --

7 A. No, not really. Just basic parts.

8 Q. Just the basic stuff and you're relying for detail on the state-
9 ment, I take it? You're relying for the details on the statement?

10 A. I was what?

11 Q. In terms of recollecting what took place, you're remembering it
12 because you've read this.

13 A. I remember it because I read this? No. Just basic parts I
14 remember but like the part in here where it says that older
15 person was in his fifties or that, I didn't recall that until
16 I heard this again.

17 Q. Okay. Once you read it, do you recall it being said, or are
18 you just accepting it as being said at the time because it's
19 down here on the paper?

20 A. Well, I accept it as from being down there that I said it.

21 Q. That's the way you're approaching this document, correct?

22 A. Yes.

23 Q. Okay. There's one statement here that I want to ask you a question
24 about and that's the third last line. "He", and I take it that's
25 Junior Marshall, "said then that two men took off and jumped in a

R. RUDOLPH POIRIER, by Mr. Ruby, by Mr. Pugsley

1 white Volkswagen. I'm wondering whether or not that came from
2 some other source, for example, Mr. Pratico because on May 31st,
3 1971, in a document found in Exhibit book Volume 16, page 22,
4 a statement of May 30th was given by Mr. Pratico where he uses
5 almost exactly the same words, word for word: "They jumped
6 into a white Volkswagen."?

7 A. Couldn't say.

8 Q. You're not sure if it came from Marshall or Pratico?

9 A. No. I'm not sure.

10 MR. RUBY:

11 Thank you, sir.

12 BY MR. PUGSLEY:

13 Q. The statement to which Mr. Ruby referred you a moment ago, the
14 statement of John Pratico was given on May 30th, 1971, which was
15 the Sunday after this incident, this incident occurring in the
16 park at around midnight on Friday night, on the 28th. It's my
17 understanding that the discussion you had with Mr. Marshall when
18 you were sitting on the doorstep occurred on the Saturday morning
19 on May 29th; that is before the statement given by John Pratico
20 on the 30th. My friend referred -- I'm sorry, my friend refers
21 me to your statement which says -- Do you have Volume -- You
22 have your statement in front of you.

23 A. Yes.

24 Q. And your statement is given on July 2nd and it says: "Sunday,
25 after the stabbing at the park", is it possible for you to recall

R. RUDOLPH POIRIER, by Mr. Pugsley

1 | now whether that -- that incident -- that meeting with Marshall
2 | occurred on the Sunday or the Saturday morning?

3 | A. Probably. Right now I couldn't remember.

4 | Q. All right. It doesn't really matter. The statement given by
5 | Pratico was on Sunday afternoon. Perhaps the same day you met
6 | Marshall, perhaps the day after, where Pratico talks about the
7 | white Volkswagen and you as well talk about a white Volkswagen.
8 | Is it likely that that white Volkswagen came from Donald Marshall,
9 | that he was the person who originally spoke of the two men who
10 | attacked him jumping in a white Volkswagen?

11 | A. Most likely when I gave this --

12 | Q. Most likely, yeh. Okay. You talked about Pratico making up
13 | stories. That was a habit of his.

14 | A. Yes.

15 | Q. You gave that evidence to my friend, Mr. Spicer. Yes. Are you
16 | aware that Mr. Pratico gave evidence before Judge John F.
17 | MacDonald on June the 11th of 1971 where he was on the stand for
18 | about six pages, that he gave evidence before the same Judge
19 | MacDonald in July of 1971 at the preliminary of Donald Marshall
20 | where he was on the stand for -- evidence after being transcribed
21 | was nine pages long and that he gave evidence before Mr. Justice
22 | Dubinsky and a jury in November of 1971 and the trial evidence
23 | goes from pages 214 to 270, almost fifty-six pages of evidence
24 | and these judges and that jury in November had an opportunity
25 | of seeing Mr. Pratico. Were you aware of that, that he was

R. RUDOLPH POIRIER, by Mr. Pugsley

1 | viewed not only by a judge and jury but by three -- on three
2 | separate occasions in the summer and fall of 1971?

3 | A. I guess so.

4 | Q. And that at least to those judges and that jury he did not appear
5 | to be making up stories.

6 | A. I don't know. I couldn't say.

7 | BY MR. CHAIRMAN:

8 | Q. Mr. Poirier, you have no idea whether Mr. -- who Mr. Pratico
9 | appeared before?

10 | A. No, not really.

11 | BY MR. PUGSLEY:

12 | Q. Did he -- You were a next-door neighbour of his at this time?

13 | A. Yes.

14 | Q. Yes. Did he ever discuss with you the fact that he had given
15 | evidence or that he was going to give evidence?

16 | A. No.

17 | Q. How often did you see him?

18 | A. Every day for awhile and then I think after that happened, he
19 | went back to his father for awhile and he was back and forth to
20 | the Pier most times.

21 | Q. Was he sleeping in the house next door? That was his mother's
22 | house, was it?

23 | A. Sometimes, yes. Sometimes he'd go down the Pier and stay with
24 | his father and come back and stay with his mother.

25 | Q. I see. Was there any rhyme or reason to that? Would he go for

R. RUDOLPH POIRIER, by Mr. Pugsley

1 a particular period of time to stay with his father?

2 A. No, not really.

3 Q. Would it be fair to say that you saw him at least every other
4 day throughout the summer of 1971?

5 A. No, I never seen too much of him. I think he went away, like,
6 went away for awhile.

7 Q. I see. We know that he went in the hospital in late August,
8 1971.

9 A. Yes.

10 Q. Up until that time, would you have seen him every other day?

11 A. I couldn't say.

12 Q. I see.

13 A. Before that, I -- you know, --

14 Q. Did you go -- were you going to school at that time?

15 A. No.

16 Q. Was he going to school in June?

17 A. I believe so.

18 Q. Yes. Were you working?

19 A. At the time, I don't remember.

20 Q. I see, but in any event, he never spoke to you at any time about
21 giving evidence in court.

22 A. Not that I -- not that I recall.

23 Q. About having given evidence or about to be -- about to give
24 evidence?

25 A. No.

R. RUDOLPH POIRIER, by Mr. Pugsley, by Mr. Wildsmith

1 MR. PUGSLEY:

2 Thank you.

3 MR. MURRAY:

4 No questions on behalf of William Urquhart.

5 MR. BARRETT:

6 No questions, My Lord.

7 MR. SAUNDERS:

8 No questions.

9 MR. BISSELL:

10 No questions, My Lord.

11 MR. ROSS:

12 No questions.

13 BY MR. WILDSMITH:

14 Q. Mr. Poirier, I just have a couple of questions. Just to follow
15 up what my learned friend, Mr. Pugsley, was just telling you,
16 am I correct in understanding that you did not know at any time
17 that John Pratico was claiming to be an eye witness to the
18 stabbing?

19 A. Not that I can recall.

20 Q. You didn't know when he was testifying that he was claiming to
21 be an eye witness?

22 A. No.

23 Q. I see. And my other question to you is: Did you know at the
24 time of the incident referred to in your statement that you have
25 in front of you when you first saw Mr. Marshall that he was an

R. RUDOLPH POIRIER, by Mr. Wildsmith

1 Indian?

2 A. That did I know he was?

3 Q. Yes. Did you know that he was an Indian?

4 A. Yes.

5 MR. WILDSMITH:

6 Thank you. Those are all my questions.

7 MR. CHAIRMAN:

8 That's all, you may go, thank you.

9 MR. SPICER:

10 The next witness is Doctor Mian.

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Spicer