

ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION

VOLUME XXIII

Held: November 3, 1987

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

Before: Chief Justice T. 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. Marlys 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., Joel Pink, 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 MacAlpine
Charles Broderick: Counsel for Carroll
S. Bruce Outhouse: Counsel for Wheaton & Scott
Guy LaFosse: Counsel for Davies
Bruce H. Wildsmith, & Graydon Nicholas:
Counsel for Union of Nova Scotia Indians
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 WW

INQUIRY RECONVENED AT 9:33 o'clock in the forenoon on Tuesday, the 3rd day of November, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia.

1 MR. SPICER:

2 Good morning, My Lords. The first witness this morning is Tom
3 Christmas.

4 THOMAS JOSEPH CHRISTMAS, being called and duly sworn, testified as
5 follows:

6 BY MR. SPICER:

7 Q. What's your full name, please, Mr. Christmas?

8 A. Thomas Joseph Christmas.

9 Q. And where do you live?

10 A. 27 Maillard Street. 27 Maillard Street.

11 Q. Is that on Membertou?

12 A. Yes.

13 Q. How old are you ?

14 A. Thirty-three.

15 Q. Thirty?

16 A. thirty-three.

17 Q. Okay. I think we're going to have to perhaps talk a little
18 slower, Tom, because it's going to go too fast.

19 Q. Are you married?

20 A. No.

21 Q. Do you have any kids?

22 A. Yes.

23 Q. How many?

24 A. One.

25 Q. How old?

- 1 | A. Three and a half.
- 2 | Q. What language do you speak at home?
- 3 | A. English and Micmac.
- 4 | Q. And your child is speaking English or Micmac or --
- 5 | A. Yes, like I teach him, you know.
- 6 | Q. What language would you speak around the house?
- 7 | A. English and Micmac.
- 8 | Q. English and Micmac?
- 9 | A. Yes.
- 10 | Q. Can you speak up a little bit?
- 11 | A. Yes.
- 12 | Q. Okay. Have you always lived in Membertou?
- 13 | A. Yes.
- 14 | Q. Tell us something about your schooling. Did you go to the
- 15 | day school?
- 16 | A. Yes, I did.
- 17 | Q. Do you remember what years that would've been?
- 18 | A. About '64 or '65.
- 19 | Q. And what grades would you have been in when you were going to
- 20 | the day school on the Reserve?
- 21 | A. One, two, and three.
- 22 | Q. One, two, and three? And was -- Were you taught in the English
- 23 | language at that school?
- 24 | A. Yes, we were.
- 25 | Q. How did you find being taught in English in grades one, two,

- 1 and three?
- 2 A. I don't know. You just have to listen, I guess, and --
- 3 Q. Did you understand everything that was going on?
- 4 A. Oh, yeh, you know. It was put over and over to you, you know.
- 5 Q. Sorry?
- 6 A. It was put over and over to you. You had to, you know, had to
- 7 pick it up, you know.
- 8 Q. When you started going to the Indian day school on the Reserve,
- 9 did you speak any English at all?
- 10 A. Not at home, no. We just spoke Micmac.
- 11 Q. So when you went to that school, you would've been, for the
- 12 first part of your life, speaking nothing but Micmac?
- 13 A. Yes.
- 14 Q. And then you go to the day school, and you had to start being
- 15 taught in English?
- 16 A. Yes.
- 17 Q. Could you read any English at all?
- 18 A. Oh, yeh.
- 19 Q. When you first went to the school?
- 20 A. Oh, no, no, just --
- 21 Q. No.
- 22 A. No.
- 23 Q. I think you indicated to me a minute ago that you went in
- 24 grades one, two, and three at the school on the Reserve?
- 25 A. Yes.

- 1 Q. And did you get through those three grades in three years?
- 2 A. Yeh. I think so, yeh.
- 3 Q. Think so?
- 4 A. Yeh.
- 5 Q. From that school, where did you go to school next?
- 6 A. St. Anthony Daniel.
- 7 Q. St. Anthony Daniel?
- 8 A. Yeh.
- 9 Q. How many -- For how many years were you at St. Anthony Daniel?
- 10 A. Three or four.
- 11 Q. Three or four?
- 12 A. Yeh.
- 13 Q. Again, how did you find being taught in English at that school?
- 14 A. It was a little harder, you know.
- 15 Q. Hard?
- 16 A. It was a little harder, yes, you know.
- 17 Q. And why was it a little hard?
- 18 A. We were with like a bunch of White kids with you and you know
- 19 you're like split up, you know, and they were never together like
- 20 you were in day school.
- 21 Q. Are you saying that it was difficult because instead of there
- 22 being all Indians as they were in the Indian day school --
- 23 A. Yes.
- 24 Q. When you moved to St. Anthony Daniel, you were split up?
- 25 A. Yes.

- 1 Q. Is that what you're saying? And why would that make it
2 difficult for you at St. Anthony Daniel?
- 3 A. I don't know. It's just different, you know. You weren't used
4 to it and, you know, you were always together like, you know.
- 5 Q. You were always together at the day school?
- 6 A. Yes, like you know.
- 7 Q. Did you find it different then by reason of the fact that there
8 were White children in your class now?
- 9 A. Oh, yeh, you know. There was a big difference, you know. We
10 were teased and you know and --
- 11 Q. Okay. If we could just stop for a sec, Tom. I think we're
12 having a little trouble picking this up. Can you -- Can we
13 move the mike a little closer? Okay. Maybe we can just speak
14 a little louder, and I'll let you know if we're not hearing
15 each other. Okay. In St. Anthony School -- St. Anthony
16 Daniel, you indicated to us that it was different.
- 17 A. Yes.
- 18 Q. Okay. And can you tell us in what way you felt it was different?
- 19 A. Well, it was just, you know, you couldn't -- You know, it was
20 pretty hard speaking English, you know, and what you learned
21 and all that, you know, and when you get to this other school,
22 you know, it seems to be that they're using big words at you
23 and, you know, and --
- 24 Q. You're -- You're going to have to speak up. Okay?
- 25 A. Yeh, okay.

- 1 Q. Yell at me or something. If I understand you correctly, you're
2 that it's because -- at least partly because you're being
3 taught in English and are using big words. Is that what I
4 heard you say?
- 5 A. Yeh, like, you know, a few words like, you know, that were --
6 like you never heard before, you know, and --
- 7 Q. Some of the words that you were hearing, you hadn't heard
8 before?
- 9 A. Yeh, you know, and the work and the homework you do and all that
10 you know, and we weren't doing it, you know, and --
- 11 Q. You weren't doing the homework?
- 12 A. No, you know.
- 13 Q. How come?
- 14 A. I don't know. We were just put back on our Reservation and,
15 you know, we hung around together and, you know, that was it,
16 you know, and --
- 17 Q. Were you able to get any help with your homework?
- 18 A. Oh, yeh, you know. My sisters used to help me, you know. They
19 were --
- 20 Q. Sister?
- 21 A. Yeh.
- 22 Q. Yeh. And were you living with your mom and dad at the time?
- 23 A. Yes, I was.
- 24 Q. Okay. Where -- Were they able to give you any help with your
25 homework?

- 1 A. Oh, yeh, my father used to read and all that, you know, and
2 you know he worked in town and all that before, you know, and
3 Q. He worked?
4 A. In town, you know.
5 Q. In town?
6 A. Yes.
7 Q. Doing what?
8 A. He used to work at Stephens Building Supplies in the yard there.
9 Q. On a fork-lift or something or in --
10 A. There wasn't a fork at that time. Just, you know, a horse
11 and a wagon or something, you know. I don't know.
12 Q. For how many years were you in the St. Anthony Daniel school?
13 A. Four. Four years, five years.
14 Q. Did you fail any of those grades?
15 A. Once, I think, twice.
16 Q. Once or twice? What was the final grade that you completed
17 at St. Anthony Daniel?
18 A. Six.
19 Q. You completed grade six?
20 A. Yeh.
21 Q. Did you go on to the -- to junior high after that?
22 A. No.
23 Q. What happened?
24 A. I was charged in Juvenile Court, eh.
25 Q. You were charged in Juvenile Court?

- 1 | A. Yes.
- 2 | Q. And was that after you finished grade six?
- 3 | A. Yeh, that --
- 4 | Q. And as a result of being charged in Juvenile Court, what hap-
5 | pened to you?
- 6 | A. I was about fourteen, I guess, fifteen.
- 7 | Q. Fourteen or fifteen?
- 8 | A. Yeh. I was charged with assault with two girls. There was a
9 | knife involved or something.
- 10 | Q. What happened to you as a result of that, Tom? Did you go to
11 | Shelburne?
- 12 | A. Yes, I went to the reform school in Shelburne.
- 13 | Q. Right. And that's the Shelburne reform school -- boys' school?
- 14 | A. Yes, in Nova Scotia.
- 15 | Q. For how long were you there?
- 16 | A. Seven months, eight months.
- 17 | Q. Seven or eight months?
- 18 | A. Yeh.
- 19 | Q. When you came back from the Shelburne school, did you go back
20 | into St. Anthony Daniel?
- 21 | A. No.
- 22 | Q. Did you go back to school at all?
- 23 | A. No, I wasn't accepted in.
- 24 | Q. Sorry.
- 25 | A. I wasn't accepted nowheres and --

- 1 Q. You weren't accepted?
- 2 A. No.
- 3 Q. Did you try and get back into school?
- 4 A. Yes, I tried.
- 5 Q. And what happened when you tried?
- 6 A. They told me they had no record of me or, you know, what school--
- 7 Q. Sorry?
- 8 A. They had no record of me and what school I came from and every-
- 9 thing, you know, I told my -- I did some school in the reform
- 10 school in Shelburne and all that, you know, boys' -- school
- 11 for boys and all that, eh. But, you know, they said it was
- 12 something about a criminal charge involved and all that, you
- 13 know.
- 14 Q. Are you telling me that when you came back from the Shelburne
- 15 boys' school, you tried to get back into school in Sydney?
- 16 A. Yes.
- 17 Q. And that you couldn't get back in?
- 18 A. No.
- 19 Q. And are you able to tell us why you couldn't get back in?
- 20 A. They told me they had no record of me and, you know, and --
- 21 Q. Didn't have any record of you where? At St. --
- 22 A. From the last school I was at, eh. They wanted the last school
- 23 I was at.
- 24 Q. The school you were at prior to -- Yeh.
- 25 A. You know, and I remember I finished grade six and all that and

- 1 I should be going to Sheriff or Park.
- 2 Q. Sheriff being a junior high?
- 3 A. Yes, you know, I was put in that school and like -- At least
- 4 I tried to get back in, but I was just -- I wasn't taken and
- 5 that's that. Said I had a criminal charge against me.
- 6 Q. Can you just remember, Tom, to speak up for us, okay? When you
- 7 came back then is what you're telling me that you tried to
- 8 get into Sheriff and you couldn't get in?
- 9 A. Yes.
- 10 Q. Okay. And what did you then?
- 11 A. Well, I didn't bother going back. I just went home and --
- 12 Q. How old were you then?
- 13 A. Fifteen, sixteen.
- 14 Q. Is grade six then the last grade -- last school grade that you
- 15 ever completed?
- 16 A. Yeh, but I did seven and eight work in Shelburne, eh, you know,
- 17 when I was in that school, eh, you know, I did school in there,
- 18 eh.
- 19 Q. Do you know whether or not -- Do you consider that you com-
- 20 pleted grade eight or that you just did some work in those
- 21 grades?
- 22 A. Well, I completed the books they gave me and everything, you
- 23 know, and, you know, and I did good on them and --
- 24 Q. At Shelburne?
- 25 A. Yes.

- 1 Q. And then when you came back here, you couldn't get back into
2 school. You went back to the Reserve?
- 3 A. Yeh.
- 4 Q. Were you living at home?
- 5 A. Yes.
- 6 Q. And what were you doing with yourself during the day?
- 7 A. Just hanging around, you know, and staying home and hanging
8 around with the young fellows.
- 9 Q. Hanging around with?
- 10 A. Hanging around with my buddies on the Reserve that weren't
11 doing nothing either, eh, just --
- 12 Q. Who would your buddies on the Reserve have been that weren't
13 doing anything either?
- 14 A. Junior Marshall and Artie Paul.
- 15 Q. Junior Marshall and Artie Paul?
- 16 A. Yeh.
- 17 Q. Anybody else?
- 18 A. Well, there were some boys that were in school, but I was
19 hanging around with them too, eh, you know.
- 20 Q. Were Junior and Artie in school at the time?
- 21 A. No.
- 22 Q. No?
- 23 A. No.
- 24 Q. Well, what sorts of things would you do?
- 25 A. Play ball, hockey -- winter-time we'll play hockey.

- 1 Q. Was Junior working at the time?
- 2 A. He used to work with his father off and on like, you know.
- 3 Q. Yes.
- 4 A. Yes.
- 5 Q. And when would this have been? 1969, 1970, around there?
- 6 A. Yeh, about that year, yeh.
- 7 Q. About that time?
- 8 A. Yeh. '70.
- 9 Q. What about Artie? Was he working?
- 10 A. I think Artie was in -- just finished doing a carpenter trade
- 11 or something like that.
- 12 Q. Carpentry trade?
- 13 A. Yeh.
- 14 Q. Did he have papers?
- 15 A. I don't know if they were giving papers that time or not, you
- 16 know.
- 17 Q. But he was working as a carpenter?
- 18 A. But he -- Yeh, he was doing the trade, you know.
- 19 Q. Were you working at all at this time?
- 20 A. No.
- 21 Q. You were just living at home?
- 22 A. Yeh.
- 23 Q. Would you from time to time go down and -- leave the Reserve
- 24 and go down into Sydney?
- 25 A. Oh, yeh.

- 1 Q. What sorts of things would you do when you went down to
2 Sydney?
- 3 A. Oh, just, you know, visit around here and there, you know.
- 4 Q. Visit around here and there?
- 5 A. Yeh.
- 6 Q. Did you used to hang around the park at all?
- 7 A. Oh, yeh.
- 8 Q. There's been -- I think you know because you've been here most
9 days -- heard some of the evidence about drinking in the park
10 and that sort of stuff. Can you tell us from your own experi-
11 ence whether you and Junior and Artie were drinking in the park
12 from time to time?
- 13 A. Oh, yeh, you know, we had our share of drinking in there and,
14 you know, he had his own group. I had like friends of mine,
15 you know, we used to --
- 16 Q. Who had his own group? Sorry.
- 17 A. Like, you know, like Artie and Junior would go with one bunch
18 of girls and we go the other way, you know, and --
- 19 Q. So you didn't hang around in the same group when you got down-
20 town, is that what you're saying?
- 21 A. Oh, we did like, you know, so long and then it was --
- 22 Q. Yes.
- 23 A. -- you know, it was time for the girls to go home, you know.
24 We used to walk them home and all that, you know, and --
- 25 Q. Where did you used to get the booze from?

- 1 | A. Oh, just in town at the liquor store.
- 2 | Q. The liquor store?
- 3 | A. Yeh.
- 4 | Q. Did you ever have to bum money in order to get it?
- 5 | A. Oh, yes, yes. That's what we used to do like, you know. We
6 | used to bum -- you know, bum our friends and all that, you
7 | know, and chip in whatever we had, you know, and I suppose
8 | it wasn't very expensive at that time, you know, and two
9 | dollars, you know, and --
- 10 | Q. And when you were doing this bumming money, would you split
11 | up and then get back together again after you'd all done it
12 | and see how much you had?
- 13 | A. Oh, yeh, you know, there's times we did that, you know.
- 14 | Q. Did you ever use force when you were bumming money?
- 15 | A. No, we never did that. It wasn't much we were asking for, you
16 | know.
- 17 | Q. How much -- What kind of money are we talking about?
- 18 | A. Ten cents, five cents, you know.
- 19 | Q. And would you -- Are you able to tell us whether or not you
20 | would've been bumming money mostly from other kids or from
21 | grownups or --
- 22 | A. Oh, yeh. Kids and grownups, you know, and -- Not small kids,
23 | you know.
- 24 | Q. No.
- 25 | A. Only, say --

- 1 Q. Kids your own age or so?
- 2 A. Yeh.
- 3 Q. And also from older people as well?
- 4 A. Oh, yeh. Yeh.
- 5 Q. Would you normally be bumming money just to take care of that
- 6 day's needs? In other words, would you be bumming money and
- 7 thinking about well you're going to need this in two or three
- 8 days or were you just doing it to get money to get liquor for
- 9 that day?
- 10 A. Just for that day, you know, and bum for cigarette money, you
- 11 know, and --
- 12 Q. Yes.
- 13 A. Bum for cigarette money or, you know, bum for cigarettes, you
- 14 know.
- 15 Q. But always directed towards what you needed for that particular
- 16 day?
- 17 A. Yeh, you know.
- 18 Q. Were you ever with Junior when he was bumming money from
- 19 people?
- 20 A. Oh, yeh, a few times, you know.
- 21 Q. Did you ever see Junior use force on anybody?
- 22 A. No, not really that I recall, you know.
- 23 Q. Junior a good friend of yours?
- 24 A. Oh, yeh. I am.
- 25 Q. You indicated a couple of minutes ago that there were girls

1 | that people used to hang around with. Did you used to hang
2 | around with the same group of girls as Junior?

3 | A. No, not -- You know, I knew them like, you know. Like we hung
4 | around all together, you know, but --

5 | Q. Right.

6 | A. Later on we used to go our way like, you know, my friends I
7 | had like, you know.

8 | Q. You had some friends down the Pier, didn't you ?

9 | A. Yes, I did, you know. That's where I used to hang out at
10 | that time, you know, down the Pier area, you know.

11 | Q. And were the friends that you had down the Pier Black kids?

12 | A. No, White kids.

13 | Q. White kids?

14 | A. Yes.

15 | Q. Did you used to go to the dances and that kind of stuff from
16 | time to time?

17 | A. Oh, yeh, you know.

18 | Q. Was some of this drinking also taking place in the graveyard?

19 | A. I just recall once, twice, you know.

20 | Q. Was that a place you used to go to that sort of area that we've heard
21 | referred to as a jungle up by the graveyard?

22 | A. Yes, you know. We used to go through there coming from the
23 | Reserve we used to go to the graveyard.

24 | Q. You would come down the back of that graveyard from the
25 | Reserve and down towards town?

- 1 | A. Yeh.
- 2 | Q. Is that right?
- 3 | A. Yeh, I used to.
- 4 | Q. And did you used to hang out -- hang around in that part of
- 5 | the graveyard?
- 6 | A. Later on, you know, later on that year like, you know.
- 7 | Q. Later on -- Sorry. Later on when?
- 8 | A. Like in the fall time, you know. We were being chased out of
- 9 | the park and, you know, we were being --
- 10 | Q. Who would chase you out of the park?
- 11 | A. The police.
- 12 | Q. What -- And what would they say to you if they came up to you?
- 13 | A. They just come up to you and tell you to stop, you know, and --
- 14 | Q. And what would it be that you'd be doing that they'd be
- 15 | telling you to stop?
- 16 | A. Just standing around.
- 17 | Q. Would this normally be in the evening?
- 18 | A. Oh, yeh, you know. Nine, ten o'clock, you know.
- 19 | Q. Nine or ten o'clock? And what's -- What would they say to you?
- 20 | A. They asked us what we were doing there and, you know, and they
- 21 | come out and start searching us and everything, you know, and
- 22 | we're telling them, you know, we're just standing around, you
- 23 | know. They say, "You got no business around here now," like,
- 24 | you know. They asked, you know -- I -- They tell the girl
- 25 | to -- she should be home and all that, you know.

- 1 Q. Sorry. I didn't hear that part.
- 2 A. Tell the girls that, "You should be home and what are you doing
3 hanging around the park, you know, this hour," and all that,
4 you know, and --
- 5 Q. Tell the girls that?
- 6 A. Yeh, you know, and we tell them, "Well, we're going to take
7 them home," and all that. Tell us, "Well, you're coming with
8 us," you know.
- 9 Q. Let's just go through that again. I didn't catch part of
10 that.
- 11 A. You know, when they used to come around, they used to stop
12 us right.
- 13 Q. This is the police?
- 14 A. Yeh, you know, and --
- 15 Q. Okay.
- 16 A. -- they ask us what we're doing there and all that, you know.
17 We might of had a drink earlier part of the evening, you know,
18 but -- No, we weren't staggering around or, you know, we
19 weren't really falling down or nothing, you know. You know,
20 at times we were -- Sure, I admit we were drunk, you know, and
21 they'd come, you know. We were picked up. We were put in
22 goal, you know.
- 23 Q. All right. We'll get to those occasions, but did the police
24 tell you to leave the park area, for instance?
- 25 A. Oh, yeh, you know. They tell us to get back on the Reservation,

1 | you know, where we belong and -- because we -- At the time,
2 | you know, we were going around with long hair and all that, you
3 | know.

4 | Q. Yes.

5 | A. Hair was long and, you know, I guess the way we were dressed
6 | and all that, you know, they --

7 | Q. Did you get the impression that they wanted you to go back to
8 | the Reserve? Is that what you --

9 | A. Yes, you know.

10 | Q. Okay. And what about the girls that you were hanging around
11 | with? What would they say to the -- What would the police
12 | say to the girls?

13 | A. What's that again?

14 | Q. What would the -- If you were hanging around in the park,
15 | yourself and a bunch of girls, what would they say to the
16 | girls? Would they tell them to go home or what sort of
17 | comments would they make to them?

18 | A. Yeh, they -- No, they send them home and all that. They
19 | tell them, you know, not to, you know, bother with us
20 | and all that, you know, that we're nothing but trouble and --

21 | Q. Would these be White girls?

22 | A. Yeh.

23 | Q. Do you remember any -- Do you remember specifically any police-
24 | men who ever made that kind of comment to any of the White
25 | girls when you were there?

1 | A. Oh, yes, a few cops I can remember, you know.

2 | Q. Do you remember the names of those -- If you don't, just
3 | say you don't.

4 | A. No, not really. No, I can't really -- You know, they really --
5 | They gave us sass and all that, you know. They gave us --

6 | Q. They gave you what?

7 | A. They gave us sass and all that, you know. Like they start on
8 | us like, you know, like start calling us down first, you know,
9 | they, you know, see what reaction they get off us, you know,
10 | and sometimes we answer them back, you know, and that's
11 | what they wanted, you know, something they can, you know,
12 | put us in for, you know, instead of us -- instead of them,
13 | you know, driving us home or sending us back to the station,
14 | or they'd put us in the old Sydney lock-up, you know.

15 | Q. Were there any occasions when you spent the night in the
16 | Sydney lock-up and then weren't charged or just spent the
17 | night there and then were thrown out the next day?

18 | A. That was a later part, yeh, and --

19 | Q. Okay. But were there occasions when you would've spent the
20 | night there and then not been charged with anything the next
21 | day?

22 | A. Oh, yeh, yeh. I was picked up before that, you know, before
23 | I was charged, you know, for damaging property and all that,
24 | you know.

25 | Q. Okay. We'll get to that. All I want to know for the moment

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is whether or not there would've been occasions when you would've been picked up in the park, taken to the Sydney lock-up, spent the night there and then let go the next day without anything else happening to you?

A. Yeh, we were just fined if we got drunk, you know, or --

Q. Those would be occasions though when you would end up being charged under the Liquor Control Act, right?

A. Yes.

Q. Okay. Were there any occasions when you weren't charged?

In other words, when you just sort of used -- When the Sydney lock-up was just a place where you were put for the night, and then the next day, let go.

Q. I was brought up once for resisting arrest and I think it was assaulting a police officer or something like that. And that took place on George Street.

Q. Do you remember any nights when you were just put in the lock-up and then let go without any of these other things happening to you -- without being charged with anything?

A. No, I don't.

Q. Okay. We've seen this material before maybe. This is Volume 22, page 7. Do you remember being charged in connection with the knocking over of the MacIntyre headstone?

A. Yes, I do.

Q. And if you just turn over to the next page, there's what would seem to be a statement there. Before we get to the statement

- 1 itself, can you tell us what happened? Were you picked up by
2 the police in connection with this gravestone incident?
- 3 A. Yes. We were all -- Well we called it a round-up at that time,
4 you know.
- 5 Q. You were all --
- 6 A. Picked up, you know, round-up. That's we called it that time,
7 you know.
- 8 Q. Rounded up?
- 9 A. Yeh, like all the same -- It was the same bunch of boys that
10 were always picked up there, you know.
- 11 Q. How many people were picked up in connection with the grave-
12 stone incident?
- 13 A. About seven.
- 14 Q. Do you remember who they were?
- 15 A. Junior Marshall, myself, Stewart Marshall, Artie Paul was asked
16 about it.
- 17 Q. Was Artie Paul picked up?
- 18 A. Yes, he was.
- 19 Q. Okay. Anybody else?
- 20 A. One of the Tobin boys were in with us.
- 21 Q. Tobin boys? There are two of them?
- 22 A. Just one, I think.
- 23 Q. One of them?
- 24 A. Yeh.
- 25 Q. Do you remember his first name?

- 1 A. Doc Tobin or Dennis Tobin is his real name.
- 2 Q. Doc?
- 3 A. They call him Doc Tobin, yeh.
- 4 Q. Yes. And were you all together when you were picked up?
- 5 A. And James Gould was another guy, but he's dead now, eh.
- 6 Q. He was another guy that was picked up?
- 7 A. Yes.
- 8 Q. Okay. Were you all together when you were picked up?
- 9 A. No, we were just -- They came to our homes and picked us up
- 10 like, you know, one by one, eh, you know.
- 11 Q. Did you all end up at the police station at the same time?
- 12 A. Yeh, we were all put in the lock-up.
- 13 Q. In the lock-up? Do you remember what day of the week it was?
- 14 A. I think it was in the morning that time. I don't know, it
- 15 was -- I think it on a weekday or something like that. No,
- 16 it was on a Friday or something like that.
- 17 Q. On a Friday?
- 18 A. Yeh.
- 19 Q. Do you remember who it was that picked you up?
- 20 A. John MacIntyre and Bill Urquhart.
- 21 Q. And when -- Did they come to your house to get you?
- 22 A. Oh, yeh. Yeh.
- 23 Q. Did they say anything to you when they picked you up about
- 24 why you were being picked up?
- 25 A. No, just told me they wanted to see me about -- They asked

- 1 | some questions, you know.
- 2 | Q. And did you go voluntarily to the police station with them?
- 3 | A. Yeh. Well, I said, "Sure," you know. I know I never did
4 | nothing to hide, eh, you know. So we went down the station
5 | and --
- 6 | Q. So you went down -- You went down to the police station
7 | and there were a bunch of you together. Where were you? In
8 | the lock-up.
- 9 | A. Yeh, in the lock-up, yeh.
- 10 | Q. Were you questioned by any of the police officers in connection
11 | with this incident?
- 12 | A. Later on, yeh, you know. Later on.
- 13 | Q. Later on in the day?
- 14 | A. Yeh, like they brought me in and they told me about that my
15 | friends said I damaged some headstones and all that.
- 16 | Q. Who was it that said to you your friends said you damaged the
17 | headstone?
- 18 | A. John macIntyre.
- 19 | Q. Did he tell you who the friend was?
- 20 | A. He said Junior Marshall and Stewart Marshall.
- 21 | Q. Now, am I -- I just want to be sure I'm getting this right.
22 | Did he say to you, to your recollection, "Junior Marshall
23 | and Stewart Marshall said that you damaged the gravestone,"
24 | or something like that?
- 25 | A. Yeh, he had a statement in my face and this.

1 Q. Sorry. He had a --

2 A. He had a statement in his -- in my face like and he told me,
3 "I got it all written down here what these fellows told me,
4 you know, that you're involved with this headstone."

5 Q. Did he let you read that statment?

6 A. No, he just --

7 Q. Were you alone in the room with --

8 A. Yes, I was.

9 Q. -- Mr. MacIntyre at the time?

10 A. Just me and MacIntyre and Urquhart were in there together.

11 Q. I see. What --Did you know anything about the gravestone
12 incident?

13 A. No, I didn't.

14 Q. Did you have anything to do with it?

15 A. No. No.

16 Q. If you just look at page 8. That's the page you got there.

17 A. Yeh.

18 Q. It would seem to be an unsigned statement of something that
19 you had said. I'll just read it:

20 Thomas Joseph Christmas, age six-
21 teen years, born May 4, 1954,
22 living at 27 Maillard, Membertou
Reserve.

23 Me and two other White guys tipped
24 over the big, black MacIntyre head-
stone. One guy's name was Rick, I
25 don't know the other fello's name.
I was walking through the grave-
yard, and I met two fellows and
asked for a smoke. We talked for a

1 while. They asked if there was a
2 dance. I told them no. Rick had a
3 black leather jacket. I asked him
4 where he was from. He said he was not
5 from Sydney.

6 And then it seems -- says:

7 Would not sign.

8 Do you remember giving that information to Sergeant Urquhart?

9 A. No, that's just one thing that I remember, you know, that's in
10 there, you know, that I said. But about the black leather
11 jacket and them not being from Sydney, I don't, you know --
12
13
14
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1 Q. Did you give a statement unsigned as it is on page eight?

2 A. Yes, I gave them a statement but that's not the statement there
3 I gave.

4 Q. Well, what did you tell them?

5 A. Well, that's later on in the evening, eh, I finally -- they
6 finally break me. I mean not break me, but I mean they were
7 making -- that's when they're -- that's when they were really
8 putting the pressure on me, you know, and --

9 Q. Well, this statement would seem to be dated. It's either
10 three thirty-five or five thirty-five p.m.

11 A. That's what I mean. That's the time I -- I'm in the lockup
12 all that morning right through dinner hour and all that afternoon,
13 you know, and they're taking us one by one in this room, and then
14 they were telling us that we're doing all this stuff and, you
15 know, and we're trying to -- we're telling them, "No, we're
16 not". We said, "We're not doing nothing wrong, you know".

17 Q. What do you say as to the statement on page eight, are you
18 telling us that you didn't give that information to Sergeant
19 Urquhart?

20 A. Not this statement here I didn't give, you know.

21 Q. Are you telling us you didn't say to Sergeant Urquhart that:
22 "Me and and two other White guys tipped over the big black
23 MacIntyre headstone"?

24 A. It wasn't White guys that I said.

25 Q. I'm sorry?

- 1 A. It wasn't -- It wasn't White guys that I said.
- 2 Q. Did you -- Were you involved in tipping over the gravestone?
- 3 A. No, I wasn't.
- 4 Q. Did you ever tell Sergeant Urquhart that you were?
- 5 A. No, I never told him I was -- I ever -- Well, I was one of the
- 6 guys that never, you know, really spoke up to the police, eh.
- 7 No, I -- I just heard them out, eh, you know, and they
- 8 questioned me and they -- I'd just tell them I don't -- You
- 9 know, there was things that I never -- I never really did
- 10 that they were accusing me -- that they were telling me I
- 11 did it.
- 12 Q. All right. Let's just deal for the moment with this first
- 13 incident of the gravestone. If I understand you correctly,
- 14 you're telling us that you didn't have anything to do with
- 15 knocking over the gravestone?
- 16 A. Yes, that's what I'm saying.
- 17 Q. Is that right?
- 18 A. Yes.
- 19 Q. You weren't there and you didn't have anything to do with it?
- 20 A. That's right.
- 21 Q. And that you didn't give this statement to the police which is
- 22 contained on page eight, the one that you're looking at?
- 23 A. Well, the statement I read is not the one I gave, you know. I
- 24 remember what I gave.
- 25 Q. What did you tell them?

- 1 A. Well, I told him, "All right", because he came in and he told
2 us that if we get this headstone business over with the sooner
3 you people will be released from gaol.
- 4 Q. Yes. Who told you that?
- 5 A. One of the detectives.
- 6 Q. Do you remember which one?
- 7 A. No, they were looking in through like a little window in a
8 doorway like and they were telling us. Like we were all --
9 We were locked up in the cells, eh, like we were just in a gaol
10 like, you know. We were all talking.
- 11 Q. All right. At the point you're being told this are you telling
12 us that you were all together in a room and the police officers
13 were looking through a window?
- 14 A. Yeh, like --
- 15 Q. And they were telling you what, the sooner you give a statement
16 the quicker you get out of here?
- 17 A. You see what it was -- I guess what got to them at that time,
18 like we spoke Indian pretty good, eh, you know we -- That's
19 our language. We spoke Micmac and there was -- there was
20 ways that we can -- that we can say things to each other in
21 gaol or when we were picked up, you know. As were were being
22 driven in the police car, you know, we can talk in Micmac,
23 you know, before we even got to the station sometimes and I
24 think that they didn't -- they didn't like that too much at
25 the times, no.

- 1 Q. On this -- With respect to this particular offense, the
2 gravestone charge, did you eventually go to trial on that?
- 3 A. Yes, I did. Yeh.
- 4 Q. Was anybody else charged?
- 5 A. No, just myself.
- 6 Q. You were charged. Did you plead guilty?
- 7 A. That was -- Me and Stuart Marshall were actually questioned
8 about it, you know. We were the ones that were really -- They
9 used James Gould as their witness against us that time.
- 10 Q. I'm sorry, there was --
- 11 A. They were using James Gould's name on a statement saying that
12 he seen us with other fellows doing it.
- 13 Q. And when you got to Court on this did you plead guilty?
- 14 A. Well, the statement I gave that time wouldn't have -- would that
15 make sense to the Courts, you know, so I even told them.--I
16 told the boys to come back in a cell that time I went to the
17 lockup what statement I gave him and, you know, they'd say,
18 "Well, at least, you know it'll get it off their minds for
19 a while", you know, because there was other charges involved,
20 eh.
- 21 Q. What do you remember about when you went to Court on this charge
22 though? Do you remember whether you just went in and pleaded
23 guilty?
- 24 A. I think I pleaded not guilty at the time and we were all put
25 in the County Gaol.

1 Q. That's after?

2 A. That's the time of this incident here. Like we were brought to
3 trial on it. We were brought to Court, you know, like --

4 Q. And you don't remember yourself whether or not you pleaded
5 guilty or whether you went in and were found guilty?

6 A. Oh --

7 Q. In other words, whether there was a trial.

8 A. I don't think there was a trial, no. It was just -- I think
9 they just went by the statement that I -- they had, but the
10 statement that I wanted them to read that time would not have
11 made sense to them, you know, what I said, you know. I put
12 myself in a place where, you know, I was alone in a graveyard,
13 eh. These two people never existed, you know. I just made
14 it up, I don't know to get smart with them or just do --

15 Q. Well, why did you -- What was it that you made up?

16 A. Well, they asked me -- We seen you in -- You went through
17 the graveyard. I was going to a dance that night. I said,
18 "Yeh, I went through the graveyard". He said, "Well, that's
19 the night we're talking about". I said, "Well..." -- I said,
20 "I never tipped over no headstones".

21 Q. Who are you talking to now, Tom?

22 A. John MacIntyre. So I said, "I don't know what you're talking
23 about". I said, "I never did nothing". So he told me --
24 You're not talking -- You're not co-operating with me now.
25 That, you know, you don't want to tell us nothing. So they

- 1 | telly me to get back in the lockup. So I go back and I'm telling
2 | the boys what they want, you know, in Indian. It ends up going
3 | through because they're bringing another guy in, and I'm telling t
4 | not to say nothing, you know, because let's see what they got
5 | first, you know, before we start talking, you know.
- 6 | Q. See what information the police have before you tell them
7 | anything?
- 8 | A. Yeh, because they're using different -- they're using our friends
9 | names on statements : they got. They're telling us that
10 | your friend here told us that you did -- you did this, you know,
11 | and, you know, you're just finished talking to your friend
12 | and he said he never gave nothing, you know, he never said
13 | nothing to -- and we're getting --
- 14 | Q. This offense is one you got two years probation on. Is that
15 | right?
- 16 | A. Yes, that's the one there, yeh.
- 17 | Q. Did you have a lawyer in connection with this charge?
- 18 | A. No, I don't think so.
- 19 | Q. Did you have a Court Worker?
- 20 | A. No, I --
- 21 | Q. Did you make any attempts to contact -- to get yourself either
22 | a Legal Aid lawyer or another lawyer or Court Worker?
- 23 | A. I never knew nothing about that then.
- 24 | Q. You never knew anything about it?
- 25 | A. No.

- 1 Q. Did you know whether or not Legal Aid was available to you
2 in November of 1970?
- 3 A. No, they never told us, no, there was one there. We took it
4 that if you needed a lawyer at that time you had to have money,
5 you know, to -- you know, like we never knew about Legal Aid
6 or --
- 7 Q. Was there -- Was there a Native Court Worker Program at the
8 time?
- 9 A. I can't really recall at that time. There was some people--
10 Like we -- We dealt with the Council and the Chief and, you
11 know, the Councillors, you know. There was never no Court
12 Worker, you know. We went directly to the Chief, you know, and
13 told him we had problems. We told him, you know, and --
- 14 Q. Did you know whether -- Did you know at any time when
15 Bernie Francis was working as a Court Worker, that that's
16 what he was doing?
- 17 A. Yeh, he was like -- Yeh, he was into the law at that time,
18 you know, he was getting involved, you know.
- 19 Q. But at the time of this gravestone incident you didn't know
20 anything about Legal Aid and you didn't know anything about
21 getting a lawyer. Is that right?
- 22 A. That's right, I nevered.
- 23 Q. So you didn't have a lawyer?
- 24 A. No.
- 25 Q. Well, did anybody explain to you -- Did anybody explain to you

- 1 | probation and I wasn't on probation too long, you know.
- 2 | Q. Do you remember talking to anybody before you were sentenced,
- 3 | any probation officers or anybody from the Court?
- 4 | A. I can't really recall. I just remember just being in gaol
- 5 | that week and taken to Court and released again.
- 6 | Q. You were on remand for a week and you went to Court and you
- 7 | either pleaded guilty or were found guilty, you got two years
- 8 | probation?
- 9 | A. Yeh, and I was --
- 10 | Q. How long were you in Court? Do you remember how long this took?
- 11 | A. There was a few other people, you know, in Court that day.
- 12 | It was pretty --
- 13 | Q. Do you remember how long your case took?
- 14 | A. I don't know. Five -- Five minutes I guess.
- 15 | Q. Five minutes?
- 16 | A. Ten minutes at the most.
- 17 | Q. Was Junior Marshall in the courtroom the same day?
- 18 | A. I think he was because he was put back in County Gaol and
- 19 | Artie Paul was put back in the County Gaol.
- 20 | Q. Do you remember what Junior was there for that day?
- 21 | A. He was charged with giving minors a drink.
- 22 | Q. Giving liquor to minors?
- 23 | A. Yeh, giving liquor to minors.
- 24 | Q. Was -- Was -- Do you remember whether his trial on that charge
- 25 | was the same day as you were in there on the gravestone charge?

- 1 A. I -- I really don't know, you know. I was just -- I know
2 they were sentenced back to gaol and I was released on two
3 years probation.
- 4 Q. And you don't really know what -- You didn't see what Junior
5 was doing in Court that day?
- 6 A. No. No, we were in Court early -- We were -- When the charges
7 were first brought up against us, you know, charged ahead on
8 us, that's not when we were in Court together. After that we
9 came back and I was on remand for a week.
- 10 Q. Right.
- 11 A. And they brought me back in on this headstone business and I
12 was put on two years probation then.
- 13 Q. On the day that you were in Court on the headstone incident
14 and not on the day you first went in but on the day you went
15 in when you were sentenced, was Junior there that day?
- 16 A. I think we were all brought back to Court, yes.
- 17 Q. And do you have any recollection what Junior was doing there
18 beyond, I think you said it was something to do with the liquor
19 to minors?
- 20 A. Yeh, we were all -- I don't know. We were just going along
21 with the -- going along with the police, whatever they had,
22 you know, but we know we were doing nothing, you know, out
23 of the -- out of the ordinary there, you know. We know we
24 never -- I know myself I never did nothing wrong, you know,
25 and the boys knew there was a bunch of people down -- We're sure--

1 Q. What are you telling us? Are you telling us today that you
2 didn't have anything to do with the gravestone incident but
3 that you ended up getting two years probation. Is that what
4 you're saying?

5 A. Yeh, you know, like the statement that we gave we figured that
6 they'll read it out in Court. That's what we we're waiting
7 for, the statements that we gave at the police station to --
8 to be released from gaol, you know. They say -- Like they
9 told us, you know, you guys -- you people -- you young fellows
10 start getting your act together now and tell us what's going
11 on there and the sooner you guys get it over with, the sooner
12 you guys will be released. And we were --

13 Q. You're now talking about the night you were at the lockup
14 being questioned on the Friday?

15 A. The day -- That's the day we were brought in --

16 Q. Yes.

17 A. --that I'm talking about like, you know, and -- you know,
18 and you got to -- you got to give them -- you got to give
19 them a statement or, you know, they're going to make one up
20 anyway is the way I look at it, you know.

21 Q. Well, why do you have to give them a statement?

22 A. Well, they were pressuring you and they were telling you that
23 these people seen you, eh, you know. They say your friends
24 say that -- they gave us this statement that you did it,
25 you know, and they put us back in that same -- where they bring

- 1 | him out and put me back in the cell, you know, and like, you
2 | know, they were switching us around and all that there just
3 | to get statements off us, you know, and --
- 4 | Q. Between the date of the -- of this offense, the gravestone
5 | charge, the one that you got two years probation for, and
6 | May -- the following May in 1971, were you in and out of
7 | Court again between -- between the time of the gravestone
8 | charge and the time of the Sandy Seale murder?
- 9 | A. Yeh, I was picked up for intoxication where they found us in
10 | town, you know.
- 11 | Q. And that was in December and you got a ten dollar fine?
- 12 | A. Yeh, something like that anyway.
- 13 | Q. Did you -- Did you go to the dance at St. Joseph's Church on
14 | the night of May 28th, the night of the Seale incident?
- 15 | A. Yeh, I think I was there, you know.
- 16 | Q. You think you were there?
- 17 | A. I think -- Yeh, I was there. Yeh.
- 18 | Q. Do you remember who you went with?
- 19 | A. I went with -- We all went down the park earlier, the park, eh.
- 20 | Q. I'm sorry, you went down to the park earlier?
- 21 | A. Yeh, that evening, you know, but I wasn't with Marshall or
22 | Artie and those fellows. I was with another bunch of young
23 | fellows you know.
- 24 | Q. Who were you with that night, Tom, down the park before you went
25 | to the dance?

- 1 A. I was with Bobby Christmas
- 2 Q. Bobby Christmas?
- 3 A. Yeh, and Edmund Christmas.
- 4 Q. Edmund Christmas?
- 5 A. Yeh.
- 6 Q. Anybody else?
- 7 A. Stuart Marshall and Earl Herney, you know, and guys like that,
- 8 you know.
- 9 Q. I'm sorry, what kind of guys?
- 10 A. I mean fellows like that, you know, guys I knew like, you know.
- 11 Q. But you weren't with Junior?
- 12 A. No, I wasn't with Junior then.
- 13 Q. Do you remember leaving the dance?
- 14 A. Yeh.
- 15 Q. And do you remember where you went after you left the dance?
- 16 A. We took the girls back to the Pier.
- 17 Q. And the girls you were with were from the Pier?
- 18 A. Yeh.
- 19 Q. Did you -- Did you see Junior at all at that point after you
- 20 left the dance and when you were taking these girls home?
- 21 A. No, I never seen him at all then.
- 22 Q. Did you see Junior that night at all?
- 23 A. Yeh, after I came back from the Pier, well, that was after
- 24 one, I guess, one-thirty. I had to walk from the Pier area
- 25 to Membertou, you know.

- 1 Q. And when did you see Junior?
- 2 A. Oh, one-thirty, two o'clock that morning I guess, you know.
- 3 Q. Were you back at the Reserve when you saw him?
- 4 A. Yeh.
- 5 Q. And where did you see him?
- 6 A. I met him on the road right in -- right in front of his place
7 there, you know, where he used to live on Membertou Street.
- 8 Q. Was he walking, getting out of a car, or what was he doing?
- 9 A. I think he was getting out of a car at the time, you know,
10 and -- I was on the -- I was already on Membertou myself there
11 and --
- 12 Q. I'm sorry, you were?
- 13 A. I was already on Membertou myself and I -- you know, and, you
14 know, they said something about somebody getting knifed down
15 the park or something like that, you know.
- 16 Q. Did you know by the time you saw Junior at one-thirty or
17 two o'clock in the morning that there had been a knifing in
18 the park? Did you already know that before you saw Junior?
- 19 A. No, somebody was saying something about it, you know, like the
20 people that are with Junior and he told me that --
- 21 Q. Do you think you had heard about it though before you saw
22 Junior?
- 23 A. Yeh, there was people talking about it like. There was --
- 24 Q. On the Reserve?
- 25 A. On the Reserve, yeh, you know, there was like girls on the

- 1 Reserve --
- 2 Q. Now you see Junior getting out of -- getting out of a car?
- 3 A. Yeh.
- 4 Q. And did you talk to him?
- 5 A. Yeh, you know, he came over and he asked me where I was at and
- 6 I told him I was -- I was down the Pier and I just got back up
- 7 and all that and I asked him -- He said, "I got nailed on" --
- 8 He said, "I got nailed tonight".
- 9 Q. He said, "I got"?
- 10 A. I got nailed. Like, you know, I --
- 11 Q. Got nailed?
- 12 A. Yeh. I said, "What happened"? And he told me that him and --
- 13 Q. Now take your time with this. What did he tell you?
- 14 A. That him and his friend, they were in the park and two guys
- 15 came up and -- they were an old fellow and one young fellow
- 16 there that -- He said, "Oh, we" -- I guess they were -- I
- 17 guess they were bumming around. Junior was bumming around at
- 18 that time or --
- 19 Q. Who is generally bumming around?
- 20 A. Junior is, you know, and -- You know, like he'd -- he used
- 21 to ask for money and all that, you know. He never had to
- 22 force nobody or -- so he said, "I asked this guy for a
- 23 cigarette or something, hey".
- 24 MR. ROSS:
- 25 Mr. Chairman, I'm --

1 MR. SPICER:

2 You can't hear?

3 MR. ROSS:

4 --having some difficulties with this witness. I find him hard
5 to hear.

6 BY MR. SPICER:

7 Q. So why don't we just -- Mr. Ross, is having a little difficulty
8 hearing you. If you could just go back to the beginning of
9 your conversation with Junior that night, take you time and
10 speak up as best you can?

11 A. I meet him on the road when I came back from the Pier, you
12 know.

13 Q. Yes.

14 A. You know, we were -- we were drinking down at the dance --
15 earlier but by the time we got back, you know, we were sober.
16 In other words, he never had that much to drink, you know,
17 and -- so I get back on the Reserve and I meet -- I met -- I meet
18 Junior and I know there's girls and guys talking about this
19 incident, a knifing taken place, hey, down the park.

20 Q. When you were talking to Junior, are there other people around
21 or is it just you and Junior?

22 A. There's other people around, you know.

23 Q. Was Kevin around, Kevin Christmas?

24 A. You know, I can't -- I don't really -- I can't remember, you
25 know, like there was -- who was there at the time. I remember

- 1 | there was girls and there was guys, you know, but I can't
2 | actually give straight names right out, you know. I mean --
3 | You know, what I'm trying to say, you know.
- 4 | Q. All right. Now tell us -- tell us again, and speak up as much
5 | as you can, what it was that Junior said to you about the
6 | incident?
- 7 | A. He told me that he was down the park. He asked me where I was
8 | at, you know. He said, "Where did you go"? I told him that
9 | I was at the dance and that I went down the Pier after the
10 | dance was over. I said, "I took the girls back to the Pier".
11 | And he -- so he told me about the knifing taking place, eh.
- 12 | Q. What was it that he told you?
- 13 | A. He said that he got nailed, eh, he got stabbed in the arm.
14 | I got --
- 15 | Q. Did he show you his arm?
- 16 | A. Yeh, he showed me. He said, "I got nailed in the arm". As
17 | if --
- 18 | Q. Did he have a bandage on?
- 19 | A. Yeh, he had a bandage on and he was trying to take the bandage
20 | and show me the cut and all that. I said, "I" -- So I believed
21 | him. I said, "You don't have to take it off". But the band --
22 | the jacket was tight on his arm and all that, eh, so he told
23 | well just take that off, eh, you know, cut that off.
- 24 | Q. Did you cut that for him then?
- 25 | A. Yeh, I had a jack knife at the time and I cut the sleeve off,

1 | you know, and -- you know, but he wanted to take the whole
2 | bandage off and everything. And I said, "No, leave it on".
3 | So he told me that -- what happened to his friend, there,
4 | you know, Sandy, you know.

5 | Q. Did he describe Sandy as his friend?

6 | A. Yeh, he said, "My buddy, you know, they got him in the chest --
7 | in the stomach". He said, "He's gone to hospital". He said,
8 | "I was" -- "The police drove me down there and they stitched
9 | me up and they"-- I guess there was police officers down
10 | there and everything, you know, and they didn't -- they let
11 | him go that night. They brought -- They drove him back up
12 | again, you know, and --

13 | Q. Did -- Did Junior say anything to you by way of describing the
14 | two other people in the park?

15 | A. Yeh, he told me that there was one short fellow and one tall
16 | fellow, eh. He said, "The little old fellow had white hair and
17 | he had black clothes on". Like they were dressed something
18 | like priests, you know. He was thinking it was some priests, you
19 | know, or -- He said --

20 | Q. Did he say anything to you about any conversation that might have
21 | taken place between them?

22 | A. I don't know if he said something about a cigarette, bumming
23 | a cigarette or a light that night you know. Somebody was bumming
24 | a light or a cigarette that night, you know.

25 | Q. Do you -- Do you have -- Do you remember who it was that was

1 said to have been doing the bumming, was it Junior and Sandy
2 or was it these other guys that they ran into?

3 A. I don't know if it was Junior that night that told me that
4 he bummed a cigarette or the old fellow bummed him for a
5 cigarette or something or -- but I just -- you know, I just
6 told him, you know, we'll see, you know, what happens. So
7 we'll see what comes out. But he told me that -- that his
8 friend -- He said, "He must be" -- He said, "He's in bad
9 shape, you know".

10 Q. His friend was in bad shape?

11 A. Yeh, you know. He said, "I have to take" -- He said, "When he
12 went" -- The old fellow came at him, eh.

13 BY MR. CHAIRMAN:

14 Q. Mr. Christmas, when Junior was describing this incident to you
15 did he say which of the two men was dressed like a priest?

16 A. Pardon?

17 Q. Did he say which of the two men --

18 A. The old fellow. The small --

19 Q. The old fellow?

20 A. Yeh, the small fellow.

21 Q. The small fellow was dressed like a priest?

22 A. Yeh.

23 Q. Thank you.

24 BY MR. SPICER:

25 Q. Did you question Junior at all about the incident that night?

- 1 Did you say, "Well, why did this" -- "Why did these guys do it?",
2 or "Why did this happen"?
- 3 A. No, we just went -- went to a place, you know, and they were
4 all drinking at this place, you know, and -- you know, and
5 he told them that he -- that they got jumped down the park and
6 his friend got stabbed and he was stabbed in the arm and all
7 that, you know.
- 8 Q. Is this some time later? Now you're saying you went to somebody's
9 place?
- 10 A. Yeh, like later on that night, you know, we were --
- 11 Q. Where did you go?
- 12 A. I'm not too sure I think it was Jamie Joe's place.
- 13 Q. I'm sorry.
- 14 A. James Joe.
- 15 Q. You went to his place with Junior?
- 16 A. Yeh.
- 17 Q. And were there other people there as well?
- 18 A. Yeh, there was James Joe and a few other friends there like, you
19 know. Junior Marshall related to them, you know, and so
20 we went over there and -- after --
- 21 Q. Junior was related to them. Is that what you're saying?
- 22 A. Yes, he was related to James Joe and the people that were
23 there, you know.
- 24 Q. What time of the evening would that have been?
- 25 A. Oh, that's after two-thirty, three o'clock in the morning, you

1 know.

2 Q. All right. Do you remember what -- what it was that Junior
3 told those people?

4 A. Well, the same thing that he told me like, you know, one old
5 guy and one tall fellow, eh.

6 Q. Were -- Were either yourself or any of those people that were
7 at your friend's place questioning Junior about what happened
8 or did he just tell his story?

9 A. Yeh, he just told them, you know, what -- what happened, you
10 know, but nobody -- nobody ever questioned him about it like,
11 you know. They just thought well, he got into a fight or
12 something, you know.

13 Q. Wait a second, sir. What did you say?

14 A. Like we just -- Like some people thought he just got into a
15 night fight or something, you know, and that was it, you know.
16 It never -- Because -- The people on the Reserve never knew
17 what we were doing, you know; the older people, you know, they
18 never know exactly what we were doing in town or --

19 Q. The house that you went to later on that evening though, were
20 the group of people that you saw there, were those kids your
21 own age or were they adults?

22 A. They're older than us.

23 Q. Older than you?

24 A. Yeh.

25 Q. And are you telling us that -- that what happened when you got

1 | to that house was that Junior told his story?

2 | A. Yeh, he told us what -- what happened, you know, and he
3 | described the guys and we were drinking there, you know.

4 | Q. You were drinking at this house later?

5 | A. Yeh, you know, I had a few drinks with them and we left and
6 | I think he went to Artie's that night. I went home anyway.
7 | I told him I got to hike -- head off home, you know, because
8 | I was tired, really tired, you know, and -- So he said,
9 | "All right, I'll see you tomorrow anyway". So --

10 | Q. You think Junior went to Artie's?

11 | A. Yeh.

12 | Q. Did you see Junior at all during the -- during the week from
13 | the time -- from the night of the stabbing until the time he
14 | was charged the next Friday?

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SMR

1 A. I'd seen him, I think the day -- I think the day after or
2 a couple of days after.

3 Q. Where did you see him?

4 A. It was on the Reservation there, you know.

5 Q. And what did you talk about?

6 A. Well, he just asked me, you know -- well, I never -- never
7 questioned him, you know. And he never told me that -- that
8 the cops, you know, were questioning him about -- about him
9 stabbing his friend and all that, you know. I still believe
10 what he told me, you know, and I never --

11 Q. Did you talk to him during this second meeting; did you talk
12 to him about the incident again?

13 A. I'd just tell him, you know, just tell about the guys that
14 we met in the Park and, you know, that -- that after he got
15 stabbed, you know.

16 Q. Did -- well, did he tell you tell you the story again the
17 next time you saw him or what -- what was it that you talked
18 about?

19 A. Yeh, yeh, he told -- he told me that he was being questioned,
20 you know, and that it seems to me that they don't -- they
21 don't believe me. They're not believing me or something.
22 I just tell him that, you know, what really happened, you
23 know, and --

24 Q. Was he of the -- was he of the -- of the -- of the feeling
25 as he expressed to you that he wasn't being believed by the
police?

- 1 | A. Yeh, yeh, you -- you know, he was really scared, you know and
2 | so --
- 3 | Q. How could you tell he was scared?
- 4 | A. Just the way he was explaining it to me. It was like, more
5 | like stuttering and kind of put it together like, you know,
6 | and telling me that, you know; I said just tell them, you
7 | know, -- just tell them what -- what really happened, you
8 | know and he said I -- so, you know, he left me that day and
9 | I went home again, you know.
- 10 | Q. Is that the only other time you saw him up until the time
11 | he was charged?
- 12 | A. Yeh, that was -- about once or twice I seen him that day --
13 | that week, you know, so --
- 14 | Q. Did you see -- did you see John Pratico at all during that
15 | week?
- 16 | A. Yeh, we were hanging around before that, like you know,
17 | around the Park area and all that, you know; you know, we
18 | knew the guy and --
- 19 | Q. You knew John Pratico generally?
- 20 | A. Yeh.
- 21 | Q. Okay, during that week between the time that of the stabbing
22 | on the night of the 28th and the time that Junior was
23 | charged, the next Friday, did you see Pratico at all during
24 | that week?
- 25 | A. I think -- yeh we were down the Park, you know.

- 1 Q. During the week?
- 2 A. Yeh.
- 3 Q. Would you have been talking to Pratico about what Junior said
- 4 he had seen and what happened?
- 5 A. No, no, I never.
- 6 Q. You wouldn't have been?
- 7 A. No.
- 8 Q. What would you have been talking to him about?
- 9 A. Well, we was -- we was going to bum around and all that, you
- 10 know. And how we were going to get our liquor, you know,
- 11 and what is --
- 12 Q. Are you able to tell us whether or not at any time during
- 13 that week, that is the week from the time that the incident
- 14 took place to the time that Junior was charged, whether you
- 15 discussed Junior's description of what had happened with
- 16 John Pratico?
- 17 A. No, I wouldn't.
- 18 Q. You didn't?
- 19 A. No.
- 20 Q. Did John Pratico say anything to you about being questioned
- 21 by the police?
- 22 A. No.
- 23 Q. He never mentioned that he had been questioned by the police?
- 24 A. No.
- 25 Q. On that following Friday, you -- did you go to a dance again

- 1 the next week?
- 2 A. Yes, I did, yeh.
- 3 Q. And what happened -- what happened at that dance?
- 4 A. Well -- well, the earlier part of that day -- the evening,
5 Junior was saying something about going to Whycocmagh because
6 of some threat calls he was getting. And -- they were talking
7 about "Black Panthers" coming down or something like that,
8 you know, and did I -- Sam was really scared and his mother
9 was really scared and, you know, and they had to go to
10 Whycocomagh, you know. So I said, all right, you know, I'll
11 see you when you get back, you know.
- 12 Q. That was during the day on Friday?
- 13 A. Yeh, so I said I'm going -- I'm going -- going to the dance
14 tonight any way, you know, and so he said all right, you know,
15 and I asked later on -- that's the last I seen Junior until
16 I heard that he was char -- picked up and charged for murder,
17 you know.
- 18 Q. Where did you find that out, Tom?
- 19 A. At the dance. When I got to the dance that night, eh.
- 20 Q. And who -- do you remember who told you?
- 21 A. A girl I knew, eh, you know.
- 22 Q. Do you know what her name was?
- 23 A. Mary -- Mary Hawkins.
- 24 Q. Mary Hawkins?
- 25 A. Yeh.

- 1 | Q. And she told you what, that Junior had been charged?
- 2 | A. She told me -- she called me over to the window and like
- 3 | we're -- like before -- like we're trying to get a way of
- 4 | getting liquor before we got into the dance, like you know.
- 5 | We had our dance money but we -- we were still bumming and
- 6 | this girl called me over and told me about Johnny putting
- 7 | a finger on Junior.
- 8 | Q. She told you about Johnny -- this is John Pratico you're
- 9 | talking about now?
- 10 | A. Yeh.
- 11 | Q. What did she tell you he'd done?
- 12 | A. She said that he seen Junior Marshall -- Donald Marshall, eh --
- 13 | Junior and that he seen him stabbing Sandy.
- 14 | Q. So that I understand you correctly. Did she tell you that
- 15 | Pratico had said that he saw Junior do the stabbing?
- 16 | A. Yeh.
- 17 | Q. And she told you that at the dance on the Friday night?
- 18 | A. Yes.
- 19 | Q. And what did you do as a result of that?
- 20 | A. So I asked where Johnny was at. I thought, you know, I thought
- 21 | Johnny would be in the dance or his brother -- the girl's
- 22 | brother was with me, you know; he was hanging around with
- 23 | Johnny too, eh.
- 24 | Q. This is --
- 25 | A. Howard.

- 1 Q. -- Mary Hawkins brother?
- 2 A. Yeh, Howard Hawkins.
- 3 Q. Howard Hawkins?
- 4 A. Yeh, he was hanging around with Johnny that time and so, you
5 know, I -- so -- you know, he told me that he seen Junior,
6 that he was, you know, something sitting in the bushes.
- 7 Q. Let's just wait until we get to that after. You left -- did
8 you leave -- did you leave the area of the dance with Howard
9 Hawkins?
- 10 A. Yeh.
- 11 Q. And go over to John Pratico's?
- 12 A. Yeh, we did, yeh.
- 13 Q. Right, what happened when you got to John Pratico's place?
- 14 A. Well, I went to the door and I knocked on the door and
15 his mother opened the door for me and --
- 16 Q. And what did you say to her?
- 17 A. I asked her if Johnny was home and she said yes, he is, you
18 know, and I seen Johnny standing in the hall and I asked
19 Johnny to come out and talk to me for a minute, you know.
20 So he said, sure, I'll be out, you know, and so --
- 21 Q. And did he come out and talk to you?
- 22 A. Yeh, he came out with his friend there and so I went off --
23 I got off the step and got on the sidewalk. So his buddy
24 come off the step and I go --
- 25 Q. Who was his buddy?

- 1 A. Jackie Ferguson.
- 2 Q. Jackie?
- 3 A. Ferguson.
- 4 Q. How do you spell the last name?
- 5 A. Ferguson.
- 6 Q. Ferguson, okay.
- 7 A. So I tell him to -- I wanted to talk to Johnny, you know, and
- 8 so he keeps walking and so I'm standing.
- 9 Q. Who keeps walking -- Ferguson?
- 10 A. Yeh, Ferguson, he keeps -- I told him, you know, I want to
- 11 talk to him. I want to see Johnny. And my friends are on
- 12 the other side of the road sitting on the library, like
- 13 you know, lawn like, eh.
- 14 Q. Who are your friends?
- 15 A. Howard Hawkins and Lawrence Paul and I think my brother was
- 16 with me that time. I'm not too sure now; my brother or my
- 17 nephew one of them. So I'm talking to Johnny and Johnny tells
- 18 me that -- I asked him, you know, what's -- what's the -- are
- 19 you going around telling people that you seen Junior stabbing
- 20 Sandy.
- 21 Q. What did he say?
- 22 A. He saw -- he looks at me and he starts telling me that it
- 23 wasn't his -- it's not my fault, you know; it's not my fault.
- 24 I said what do you mean. You had no business going, you know;
- 25 he said I was picked up by the police and they -- they --

1 they were questioning me there, you know.

2 Q. This is John Pratico talking to you now?

3 A. Yeh, you know, he's telling me that -- you see, they kept
4 telling me that I seen Junior in the Park with Sandy, eh.
5 And I said, well, what did you tell them? He said, well,
6 I told them I went through the Park and all that and said
7 they were going on and on, you know. So I just told him,
8 I said, well, you better go back and tell, you know, I told
9 like how I felt about the cops. I said, you better go back
10 and tell these pigs, you know, that you're not telling the
11 truth, you're lying, you know and -- or if you don't I'm
12 going to come back and see you again, you know.

13 Q. Did -- did he tell you -- did John Pratico tell you that he,
14 in fact, hadn't seen anything?

15 A. Yeh, he told me that he never -- that's he wasn't -- he
16 said I don't -- he said, I never seen nothing. So I said
17 well, you go back and tell them that.

18 Q. What did he say?

19 A. He said -- he said how they press -- they pressed him like,
20 they pushed him to like -- they pressed him, eh, like, you
21 know; they were giving him pressure & all that and he told
22 me that I'm not even supposed to be talking to you, you
23 know. So and this police officer comes out of Acadian Lines
24 and Jackie Ferguson hollers to him and I tell Johnny I got
25 to go and I just run down the street, eh.

1 Q. During the conversation that you had with John Pratico, did
2 you at any point suggest to -- to Pratico that he had
3 squealed on Junior?

4 A. No, he never said he squealed. He said he told me that
5 he was more like pushed into it like, you know, he was --

6 Q. Did you -- did you ever suggest though to Pratico, "listen
7 you squealed on Junior"?

8 A. Yeh, that's what -- that's what I told him, you know, I
9 said --

10 Q. That's what you said to him?

11 A. -- yeh, I told him that I heard that he had squealed on
12 Junior. That he seen him stabbing Sandy. I said, you're
13 lying. You never seen nothing, like you know.

14 Q. Did you tell him you're lying or did --

15 A. Yeh, I told him that you're lying. He says, you know --
16 I believe -- I believe my friend before I believed you, eh,
17 you know.

18 Q. And what did he say to that?

19 A. Oh, he just told me that he -- that he was scared, like,
20 you know. The police were talking to him and all that, you
21 know and said -- so I, you know, I told him to go back and
22 tell them, you know, that you're -- that you never seen
23 nothing, you know, and tell the truth, you know.

24 Q. So when you told him to go back and tell the police that
25 you didn't see anything, were you telling him just to go and

1 do that or had he told you at that point that he hadn't seen
2 anything?

3 A. I told him to go back and tell them that he never seen
4 nothing and he wasn't in the --

5 Q. All right, at that point in time when you told him that,
6 had he told you by then that he hadn't seen anything?

7 A. No, he said, you told me -- he told me like he was more
8 like pushed like, eh, he was pressed, you know. You know,
9 that -- to -- he was talking to John MacIntyre and Bill
10 Urquhart, eh, about what to say, you know. Those were the
11 police officers that were working on the case at that time,
12 eh, you know. And I had my dealings with MacIntyre and
13 Urquhart before this incident, you know, and I knew how
14 these police -- these police officers reacted to questioning
15 and all that, you know. I knew what Johnny was talking when
16 he told me that he was pressured and all that. Like I just
17 told him, well, you go back and tell them that you never
18 seen nothing and you don't know nothing about this case,
19 you know. I don't know why you're going telling them that
20 you seen Junior stabbing this guy and --

21 Q. All right, Tom, just when you told him that, when you said
22 go back and tell them that you didn't see anything, had --
23 had Pratico said anything to you at -- by then to indicate
24 to you that he hadn't seen anything?

25 A. He just told me that the cops pressured him and, you know.

1 Q. And he didn't say to you, well, I really didn't see anything?

2 A. No, he never really said that he never really had seen anything,
3 you know. He just told me that the cops pushed him and you
4 know, it wasn't his fault. He told me, you know, it's not
5 my fault and that the cops were pushing me to it and all that.
6 You know, he told me, to stay away from this, you know. So
7 I just told him, you know, well, you go back and I told I
8 thought we were friends and all that, you know. And I said
9 no, and we took care of the guys, I said, that we were
10 friends and like we were talking, you know, there was no
11 -- wasn't really nothing -- no fighting involved nothing,
12 you know. I wasn't -- just told the guy that I -- I didn't
13 believe like what he was saying.

14 Q. At -- if you want to flip to page 27 of that volume, Tom.
15 This is the testimony that was given by -- by John Pratico
16 at the time of his -- at the time of your Preliminary on
17 the obstruction charge. And about half way down here Pratico's
18 being questioned and it says:

19 (Christmas.) What took place?

20 And the answer is

21 Christmas went and hollered
22 to me. I didn't answer him
23 And then he said some here,
24 come on down the Park, we
25 have some words to say.
And Marshall -- Donald Marshall
he did not stab Seale. So I
never said nothing to him, I
just kept walking. So he went

1 A. No.

2 Q. No. And the last one:

3 And what did he say when he shook
4 his fist at you?

5 And Pratico is saying here that you said:

6 You're going to get it.

7 Do you have any recollection of saying that to John Pratico?

8 A. Yeh, I told him that if he didn't go back to the cops and
9 tell them the truth --

10 Q. Yes.

11 A. -- and I was going -- and I told -- I was coming back, you
12 know.

13 Q. And this conversation finished because of a police officer
14 came across from the Acadian Lines, is that what you were
15 saying?

16 A. Yes, a police officer showed up on the street there and
17 everybody just ran --

18 Q. Took off?

19 A. -- away -- took off, you know.

20 Q. Were you then picked up the next day by the police?

21 A. Yeh, I was picked up the next day.

22 MR. SPICER:

23 Perhaps, my Lord, before we get to that, if we could take five
24 or ten minutes.

25

1 MR. CHAIRMAN:

2 Sure, okay.

3 INQUIRY ADJOURNED: 10:44 a.m.

4 INQUIRY RECONVENED: 11:06 a.m.

5 BY MR. SPICER:

6 Q. Just at the time that we took the break there a few minutes
7 ago, you were starting to say that you were picked up the
8 day following the incident with John Pratico?

9 A. Yeh, the next -- the next morning.

10 Q. The next morning?

11 A. It would be Saturday.

12 Q. Who were you picked up by?

13 A. Bill Urquhart and MacIntyre.

14 Q. Urquhart and MacIntyre?

15 A. Yeh.

16 Q. Where were you when you were picked up?

17 A. Home.

18 Q. At home?

19 A. Yeh.

20 Q. Were you taken down to the police station?

21 A. Yes, I was.

22 Q. Did you know when you were going to the police station why
23 you were being taken there?

24 A. No.

25 Q. Had MacIntyre or Urquhart said anything to you about why it

- 1 was they wanted you to go to the station?
- 2 A. No, they were just talking to themselves, like you know and
- 3 I was sitting in the back seat, you know, just --
- 4 Q. What -- what was it that they said to you though that got
- 5 you into the car in the first place?
- 6 A. Well, they told that they had some questions -- they wanted
- 7 to ask me some questions about something.
- 8 Q. Did they -- did they tell you what it was about?
- 9 A. No.
- 10 Q. You got in the back of the police car and you went down to
- 11 the station?
- 12 A. Yes.
- 13 Q. And were you questioned further when you got to the police
- 14 station?
- 15 A. No, they were -- they were more like telling me what I did,
- 16 you know, instead of taking a statement from me, you know.
- 17 Q. Were you questioned at the police station?
- 18 A. Yes, I was.
- 19 Q. By whom?
- 20 A. MacIntyre and Urquhart.
- 21 Q. And what were they questioning you about?
- 22 A. About me threatening Johnny Pratico.
- 23 Q. And what did you tell them about that incident?
- 24 A. I said I never bothered the guy or never -- never touched him.
- 25 Q. Do you know how long the questioning went on for?

1 A. They were -- they were telling me that people -- they got
2 witnesses and that Johnny told them that I -- there was
3 a knife was involved and all that. They wanted to know
4 where the knife was at I had.

5 Q. They told you that there was a knife involved with respect
6 to your threatening of John Pratico?

7 A. Yes.

8 Q. Did you have a knife that night?

9 A. No.

10 Q. What else was said during that questioning, Tom?

11 A. Well, I -- like I was -- I wouldn't answer them. I wouldn't
12 tell them -- you guys got that much, you know, take it to
13 court, you know, or -- no I didn't -- I didn't answer them
14 at all. It was more like listening to them, you know, they
15 were -- they were reading out statements to me, eh, you
16 know, and people --

17 Q. I'm sorry there were statements?

18 A. They were reading out statements that people said, you know,
19 they said so and so told me that you did this and he seen
20 you and all that.

21 Q. And what did you say to all of that?

22 A. I just told them if you got that, take it to court.

23 Q. And did you spend some time on remand to -- between the time
24 that you were taken down to the station that day and the
25 time of your Preliminary?

1 | A. Yes, I went -- I went that same morning Marshall was brought
2 | up for murder. He was -- when he was brought in Monday
3 | morning. Because he was charged Friday. I was picked up
4 | about Saturday morning but, you know, I was released and I
5 | come -- I walked to the court house that morning. That
6 | Monday morning. They were just bringing Marshall in that
7 | time when I got to the court house and Junior asked me
8 | why I -- what I was doing down there and I told him something
9 | about --

10 | Q. That's on the following Monday?

11 | A. That's the following Monday, yeh, in the morning -- court.

12 | Q. Will you look at page 18, Tom, of that volume. Eighteen and
13 | nineteen. And so we can get straight what it was that
14 | happened. That's dated June the 7th which would have been
15 | the following Monday. Was that the day that you were
16 | first taken into court?

17 | A. Yes.

18 | Q. And then you were remanded on that date to the 10th and then
19 | if you will flip over the page to 19, you'll see on the 10th
20 | you were remanded until the 11th. Do you see that at the
21 | top on page 19 in the right. At the top it says June 10, 1971?

22 | A. Yes.

23 | Q. And then you were remanded until the 11th day, so you were
24 | just remanded for just one more day. So you were -- you were
25 | in gaol that week then, were you?

1 A. Yes, I was with -- we were -- both of us were remanded to
2 the County Jail for six months.

3 Q. Both yourself and Junior?

4 A. Yeh.

5 Q. All right, we'll get to that in a minute. Your Preliminary
6 Hearing on the obstruction charge, if you'll look on page
7 22, you'll see that that was on Friday, June the 11th.

8 A. Yes.

9 Q. Now at that Preliminary Hearing you -- you were represented
10 by Frank Elman; do you remember that?

11 A. Yes.

12 Q. How was it that you got a lawyer for this particular charge?

13 A. I don't know. It's -- I don't know if -- I don't know. I
14 think we had -- that was in '71 and we had a court worker
15 that time and you know, we had people, you know, taking
16 care of the court system for us at that time, you know. And
17 it wasn't just going up no more and being alone, like you
18 know. We had somebody in the aisles for us, like you know,
19 to understand the charges -- to tell us do we understand
20 the charge and no what -- what it is. And I told him I
21 didn't understand the charges they were reading out to me,
22 you know -- you know.

23 Q. You told them that when?

24 A. That day at, you know --

25 Q. The first day?

1 A. The first day, yeh, that I was charged. I said, I don't
2 understand the charge you've got up against me, you know,
3 I don't --

4 Q. Did you have a lawyer that first day?

5 A. No, I think I had the lawyer come around after.

6 Q. After that?

7 A. After the charges were read and everything, after we were
8 remanded cause as far as me giving statement to the
9 police that time, I didn't give them nothing, you know; they
10 just -- they had -- they had a charge on me and they had
11 -- they had Marshall with me and he was charged for murder
12 and I was charged for threatening the witness or something.

13 Q. Is it your recollection then that on the day that you first
14 -- you first went into court, that would be the following
15 Monday, on the 7th?

16 A. Yes.

17 Q. And you indicated to the court that you didn't understand
18 the charges. At that point in time you didn't have a lawyer
19 but you got Frank Elman sometime between then and the 11th,
20 the date of your Preliminary?

21 A. Yeh.

22 Q. Okay, did you arrange to get a lawyer yourself or did the
23 court worker do that for you?

24 A. I don't know if the courts got him for me that time or if
25 the court worker got a hold of him or -- but I -- I knew that

- 1 Marshall had lawyers and you know, he -- but he had paid
2 lawyers that time.
- 3 Q. But as to yourself you ended up with Frank Elman?
- 4 A. Yeh, he was working for Legal Aid system that time.
- 5 Q. Did you have an opportunity to speak to Mr. Elman before you
6 went to court on the 11th for your Preliminary?
- 7 A. Yeh, I think he come up and I think he took -- took the
8 charge that time -- the charge that was read out to me.
9 And he said he'll like stand for me, like you know -- so
10 I -- he answered me later on, I guess -- he asked me if I
11 had a statement. I said no, I never gave no statement knowing--
- 12 Q. Did he come and see you in gaol?
- 13 A. I think he was talking in the court house that time, like,
14 inside the -- in the courtroom like.
- 15 Q. Would that have been on the 7th, the first day you were in,
16 or it's for the 11th when you went back to the Preliminary?
- 17 A. I think it was -- I think come back on the hearing, yeh,
18 you know.
- 19 Q. Would that have been the time you're talking about when you
20 were talking to Mr. Elman?
- 21 A. No, I was -- I was just by my own then, like, the court
22 worker and myself and Marshall and --
- 23 Q. That's the first day on the 7th?
- 24 A. Yeh, that's -- that's -- yeh, the first part and later on the
25 lawyer come see me, like you know.

1 Q. All right, now you say the lawyer -- later on the lawyer
2 came -- came to see you. Did he come to see you during that
3 week that you were on remand; do you remember?

4 A. I can't really pinpoint it but I think he did, you know,
5 at the time though.

6 Q. And did you have any opportunity to discuss what happened
7 with Mr. Elman before you got to the Preliminary?

8 A. No, I just told him that I -- I never -- I don't -- they
9 talk about a knife and then I threatened this guy with a
10 knife and stuff like that, you know. They -- that I heard
11 in the police station, you know, what the police were telling
12 me, you know, I just told --

13 Q. You did talk to Mr. Elman about it before the Preliminary?

14 A. I must have, you know, because --

15 Q. Do you remember whether or not you would have told Mr. Elman
16 what John Pratico had said to you that night?

17 A. No, I never -- I just -- I was more -- more interested like --
18 worried about the charge, eh, you know, it was -- they told
19 me that it was a serious offense I was up on, you know, and
20 -- and I just -- I just told them that I never bothered the
21 guy. I never threatened him nor I never bet him up, you
22 know.

23 Q. During that week that you were on remand, Tom, Junior was
24 also in gaol wasn't he?

25 A. Yes, he was.

1 Q. Did you have an opportunity during that week to discuss with
2 Junior Marshall anything further concerning the Seale case?

3 A. Yeh, we talked about my -- my charge. What happened, you
4 know, what I -- what I did. And I told him, you know.

5 Q. What did you tell Junior?

6 A. I just told him that I went -- I went down and I heard that
7 Johnny's the one that put the finger on him.

8 Q. Johnny was going to put the finger on him?

9 A. Johnny's the one that put the finger on him.

10 Q. Johnny's the one who put the finger on him?

11 A. Yeh, he was one of the eye witness that --

12 Q. Yes.

13 A. -- that he seen him stabbing buddy here, Sandy.

14 Q. What did Junior say to that?

15 A. He said he's crazy. I said that's -- I know that. I think
16 that's where -- they throw me in here -- he's crazy -- I
17 went over and told the guy to go back and tell the cops
18 he never seen nothing.

19 Q. Do you remember whether or not you would have said anything
20 to Junior about whether John Pratico had said to you that
21 he'd seen anything at all?

22 A. Yeh, he say -- I told him that he told the cops that he had
23 seen -- he seen you stabbing Sandy. And that's when something
24 about a bush or something come up that time.

25 Q. Something about the bushes?

- 1 A. Bushes or something that he was in the bushes or something.
- 2 Q. Yes, what was Junior's response to that?
- 3 A. He was -- he was mad that I told him that, eh. He just
- 4 kept telling me that the guy was crazy. And I said he's
- 5 crazy -- he's not -- that he never seen nothing. He said
- 6 I never did nothing.
- 7 Q. At that point in time, Tom, did you -- did you think that
- 8 you knew that Pratico wasn't telling the truth?
- 9 A. Yeh, I knew. I believed Junior. Like I said, I believed
- 10 Junior more than I believed him.
- 11 Q. Right, and is it -- at that point in time was the only thing
- 12 you had to go on as to who you believed was that you wanted
- 13 to -- you preferred to believe Junior than to believe John
- 14 Pratico?
- 15 A. Yeh.
- 16 Q. Okay, did you have any discussion with -- with Junior during
- 17 that week when you were on remand about the stabbing itself.
- 18 Did Junior give you any more information about what had
- 19 happened that night?
- 20 A. No, just what he told me -- where they had parted at the
- 21 time, like, you know, about -- about that old fellow and that
- 22 -- the other guy. Same -- same thing, you know, that -- and
- 23 you know his scar was -- his arm was healing up, you know,
- 24 while we were in gaol and all that and he still had his arm
- 25 -- and that, you know, and he told me that he'll never forget,
- you know, what happened, you know.

- 1 Q. Were the stitches still in his arm at that time?
- 2 A. Yes, they were still in his arm when we were in gaol together,
3 you know.
- 4 Q. Yes. If you could flip to page 42 of that volume Tom.
5 Mr. Francis -- Bernie gave some testimony yesterday that
6 I think he got you out on bail in connection with this
7 obstruction charge at some point. Do you remember that
8 happening?
- 9 A. Yes, I do.
- 10 Q. Do you remember when you got out on bail?
- 11 A. Yeh, It was in the afternoon. I don't know what day it was.
12 It was in the afternoon anyways. I seen him about sometime
13 in July.
- 14 Q. And for how long were you out?
- 15 A. Oh, not to long. Two weeks, three weeks. Not to long.
- 16 Q. What happened?
- 17 A. I was charged for break and enter.
- 18 Q. If you want to flip to page 46. Is that the charge that you
19 refer to as break and enter?
- 20 A. Yes, that's the charge. Yeh.
- 21 Q. That's the one?
- 22 A. Yeh.
- 23 Q. And is it -- was it as a result of this charge coming up that
24 your bail was revoked?
- 25 A. Yes, it was. Yeh.

1 Q. Then you went back into gaol again?

2 A. Yes.

3 Q. In connection with the charge that you've been referring to
4 a B. & E., do you remember who you were picked up by?

5 A. I know it was detectives. I don't know if MacIntyre was
6 involved that time or Bill Urquhart. I know Bill Urquhart,
7 MacIntyre or it was Mike MacDonald at the time. I know it
8 was one of those -

9 Q. One of those three?

10 A. Yeh, you know.

11 Q. One of MacDonald, Urquhart or MacIntyre?

12 A. Yeh.

13 Q. Do you -- Are you able to tell us today whether or not
14 you remember which one it was?

15 A. I can't really pinpoint who. I just remember
16 the police wanting me again, you know and --

17 Q. The information is sworn by MacDonald.

18 A. Yeh.

19 Q. Does that help you at all?

20 A. I remember MacDonald being there, you know. Like I said
21 he was in and out of the offices with MacIntyre and Urquhart,
22 you know.

23 Q. You then spent some more time in gaol waiting for your
24 -- for this charge to come up? Is that right? Your B & E?

25 A. Yes.

- 1 Q. And if you want to flip to page 44 and I want to look --
2 hold on to that one and at the same time have a look at
3 47. Now 47, Tom, would indicate that with the respect
4 to the B & E charge you re-elected to Provincial Magistrates
5 Court on October the 5th and plead guilty to that charge.
6 That's the dwelling house offense.
- 7 A. Yeh.
- 8 Q. Do you remember doing that?
- 9 A. Yeh, I remember changing my plea to guilty on that charge
10 there, yeh.
- 11 Q. All right. And at the same time if you go back to page
12 44 you'll see that on the same day you re-elected on the
13 obstruction charge and there was no evidence offered and
14 the charge was dismissed. Do you remember that?
- 15 A. Yeh.
- 16 Q. Now, are you able to tell us why it was that you pleaded
17 guilty to the dwelling house offense? The one that you
18 call the B & E.
- 19 A. Just to where the officer going around in the court house
20 that time with the Crown Prosecutor and, you know, you never
21 had no say in court, you know, and they just --
- 22 Q. Well, help me out a little bit more on this Tom. I don't --
23 I want you to try and give us some understanding of why it
24 is that you would have pleaded guilty to -- to that offense?
- 25 A. Oh, yeh. I know -- They told me that, you know, plead guilty

1 to the charge and it would only be -- probably you'd get
2 a few months out of it, eh, you know.

3 Q. At the time in October when you pleaded guilty to the dwelling
4 house offense and the obstruction charge was dismissed, were
5 you represented by a lawyer at that time?

6 A. I don't recall a lawyer that time this happened, you know.
7 I was up on one charge and I was more worried about the
8 first trial I was up on. That obstruction charge that they --

9 Q. You were more worried about the obstruction charge?

10 A. Yeh.

11 Q. Why was that?

12 A. Cause, you know, what it meant to us, you know. It --

13 Q. What did it mean to you?

14 A. That Marshall was going to bring me in court as a witness
15 for him, you know. To tell them what happened to Johnnie and
16 why I went to him, you know.

17 Q. Am I understanding you correctly? You're saying that you
18 were more worried about the obstruction charge because you,
19 I paraphrase this, but you wanted to be able to be at Marshall's
20 trial, is that what you're saying?

21 A. Yeh.

22 Q. And why was that?

23 A. To be a witness for him that one of the eye-witnesses weren't
24 -- wasn't telling the truth.

25 Q. And how did you know that that eye-witness wasn't telling the

1 | truth?

2 | A. Well, Marshall kept telling me that he never did it and I
3 | believed him, you know, and, you know, he told me what
4 | happened over and over again, you know.

5 | Q. So on October the 5th when you plead guilty to the B & E
6 | offense, did you have any discussions yourself with the
7 | Crown Prosecutor or the police about what was likely to
8 | happen to you if you pleaded guilty?

9 | A. I remember somebody saying you'll just get two or three
10 | month out of it, you know.

11 | Q. Were you told that?

12 | A. Yeh, I was told that by one of the police, you know.
13 | Guilty charge and, you know, and you'll probably get two, three months
14 | out of it, you know.

15 | Q. And are you certain, today, that you were told that before
16 | you changed -- before you pleaded guilty to that offense?

17 | A. Yes, because I was on probation at the time, you know,
18 | and I was -- I figured, you know, two or three months the
19 | most I would get cause I was never in gaol any length
20 | of time, like, months or something like that. You know
21 | I was just on remand. I was in gaol. I was in and out, out
22 | of lock-ups, you know.

23 | Q. Do you remember any discussion, Tom, about -- to the effect
24 | that if you pleaded guilty to the B. & E. charge that the
25 | obstruction charge would be withdrawn? Do you remember

1 anything about that at all?

2 A. I remember -- I remember the evidence in the obstruction
3 charge and everything, you know, and I, you know, I understood
4 the lawyer -- what the lawyer had to say and, you know, the
5 Crown about the evidence they had on me and all that, you know,
6 and plus, you know, I was told that case would be dismissed
7 and I understood that there was not -- there was no evidence
8 in their courts that I -- there was any way there was any
9 violence used or -- or --

10 Q. Do you remember any discussion around this time, around
11 October the 5th, that if you pleaded guilty to one the
12 other one would be withdrawn? Were you part of any conversation
13 about what was going to happen?

14 A. No. No I wasn't. I was never --

15 Q. Other than you indicated to me a couple of minutes ago that
16 somebody said to you well, if you plead guilty to this you
17 get two or three months.

18 A. Yeh, I just seen police officers going to the Crown with
19 papers, you know, and, you know, the Crown going to the
20 -- going up the Judge and reading out papers to each other
21 and going back and stuff like that, you know.

22 Q. Did you know on that day, on October 5th, what was going on?
23 Did you know that the obstruction charge was going to be
24 withdrawn and in turn you were going to plead guilty to the
25 other one?

- 1 A. No, I just wanted to get out of there, you know, get it
2 over with and, you know, so that's why I figured, you know,
3 I'd -- give me two or three months, you know, I'll be still
4 around for --
- 5 Q. You'd still be around for what? For the trial?
- 6 A. Junior Marshall's trial, eh. It was going up on Supreme
7 Court in November, you know.
- 8 Q. And do you have any memory at all as to what happened with
9 respect to withdrawing the obstruction charge?
- 10 A. No, I don't.
- 11 Q. Don't remember anything about that?
- 12 A. Don't remember nothing about it.
- 13 Q. Were you surprised when you got two years?
- 14 A. Yeh, I was. You know, I was.
- 15 Q. Why were you surprised?
- 16 A. I was only about 16, 17 and I was -- I had never really did
17 length of time, you know.
- 18 Q. Had you ever been in a Federal Penitentiary before?
- 19 A. No, it was my first time.
- 20 Q. And did -- You expected to do some time?
- 21 A. I expected some time in the county gaol, like you know.
- 22 Q. What did you think about going back to the county gaol?
- 23 A. Well, I knew Indian people that were in there and, you know,
24 I wasn't -- I wasn't scared or-- I knew I would -- You know,
25 Indian people hung together and they more or like mingle with --

- 1 together, you know, and --
- 2 Q. And there were other Indian people in the county gaol
3 anyways was there?
- 4 A. Oh, yes. You know there was -- half the gaol was full
5 that time, like you know.
- 6 Q. With Indians?
- 7 A. Indians, yeh.
- 8 Q. The document that we've had marked already as exhibit 70
9 which is the parole conditions that I handed out to you
10 a few minutes ago. Tom, I'm going to show you a document
11 we've had marked exhibit 7. Do you recognize what that
12 is?
- 13 A. Yes, I do.
- 14 Q. And is that your parole conditions after you spent time
15 on the B. & E. charge?
- 16 A. Yes.
- 17 Q. On the second page of that it says
18 Report to police. Report to supervisor.
19 Are you able to tell us where it was that you were supposed
20 to be reporting?
- 21 A. Yes, to the City Police. Sydney Police Station down there.
- 22 Q. Sydney Police Station. So you weren't reporting as a condition
23 of your parole to anybody on the Reserve?
- 24 A. No, I had a Parole Officer that time and I had to -- like the
25 Court Worker, you know, he kept tabs with my Parole Officer and

- 1 | the John Howard Society at that time.
- 2 | Q. Right. And when you were keeping contact with these people
3 | the location you would go to would be off the Reserve, is
4 | that correct?
- 5 | A. Yes, I had to go in town to report.
- 6 | Q. And on the first page of exhibit 70 on the left hand top
7 | it -- one of the conditions of parole is
8 | To refrain from the use of all intoxicants.
- 9 | A. Yeh.
- 10 | Q. In other words you weren't to drink.
- 11 | A. That's right. I know.
- 12 | Q. Right. Did you discuss that condition with anybody at the
13 | time?
- 14 | A. No, I never -- They just -- just -- when they said alcohol was
15 | involved in my case and all that, you know, and I was sentenced
16 | to the institution, to the Federal prison there and said more
17 | likely if you were sober none of this would have taken place,
18 | you know.
- 19 | Q. Yes.
- 20 | A. While I was in the institution there.
- 21 | Q. Do you remember at time of the -- on October the 5th when
22 | you got the two years, do you remember whether anything was
23 | said in the court room about whether there ought to be a
24 | pre-sentence report in connection with this offense?
- 25 | A. No, I figured the court probably knew I was already on two

- 1 | years probation, you know, and, you know, it was
2 | one of the things that I wasn't supposed to be back in that
3 | court house, you know or in front of that judge, you know.
- 4 | Q. You thought the judge already knew who you were?
- 5 | A. Yeh, he already knew who I was and, you know, the people I
6 | chummed around with, you know.
- 7 | Q. So there was no mention made of any kind of pre-sentence
8 | report?
- 9 | A. No, there was never -- never heard no -- nothing like that,
10 | you know, just --
- 11 | Q. When you got out on parole in the following July, did you
12 | deal then with this Mr. Smith? Was that your Parole
13 | Supervisor?
- 14 | A. Yeh. Yes, he was. Yeh.
- 15 | Q. John Howard Society?
- 16 | A. Yes.
- 17 | Q. How did you feel you were treated by the John Howard Society?
- 18 | A. They were pretty good, you know, and they asked -- well they -
19 | well, when I went out for my parole that time was no bad
20 | deals from Reservation, you know. They wanted me back home
21 | and my family wanted me back home and as far as sitting
22 | on it, there was no -- just reporting to the John Howard
23 | Society and all that and I had to -- I had a Parole Officer
24 | I had to go up to and all that, you know.
- 25 | Q. Was that Mr. Smith or was he your supervisor?

1 Q. It was Brian Smith, my Parole Officer.

2 A. Right. And you felt you were treated fairly by John
3 Howard Society?

4 A. Oh, yeh. I was, yeh.

5 Q. By the time you got out in July of 1972 had Junior Marshall
6 arrived at Dorchester at that point?

7 A. I was in Springhill along -- and I heard on the radio that
8 he was found guilty of the charge.

9 Q. And that would have been in November?

10 A. That would have been November, yeh. I wasn't --

11 Q. Did you keep in touch with Junior at all following his
12 conviction to the time you got out in July?

13 A. Yes, I was keeping in touch with him when I was up -- when
14 I was in Dorchester and when he was still in the county
15 gaol waiting for his trial to come up I was still in contact
16 with him through letters, you know, and --

17 Q. You were writing back and forth?

18 A. Yeh, we were.

19 Q. Was he writing to you or were you doing all the writing?

20 A. We were writing back and forth. You know, he kept telling
21 me that I should be -- I don't know -- he's going to
22 try to get me up as my witness, you know, as to what
23 happened between me and Johnnie and all that, you know. So
24 I kept writing to him, "don't forget to get the lawyer to
25 contact me" or get, you know, "the courts to bring me back down

THOMAS J. CHRISTMAS, by Mr. Spicer

1 and to testify.

2 Q. To Sydney to -- for the trial?

3 A. Yeh.

4 BY MR. CHAIRMAN:

5 Q. Were you in Dorchester all the time or did you move over
6 to Springhill?

7 A. I was in Dorchester for a length of time. I think it was
8 30 days or something like that and I was transferred down
9 from Dorchester to Springhill.

10 BY MR. SPICER:

11 Q. And were you in Springhill when you were finally released
12 in July of '72?

13 A. Pardon?

14 Q. When you got out on parole --

15 A. Yes, I was in Springhill.

16 Q. You were released from Springhill not from Dorchester?

17 A. Yes, I was in Springhill.

18 Q. Just a couple of other things, Tom. There was some suggestion
19 in some of the earlier testimony that, and it was denied I believe
20 that one of the police officers, Wyman Young, I think it
21 was suggested to him during his testimony, that he had thrown
22 a billy club at you and hit you on the back. Do you have
23 any recollection of that incident?

24 A. Yeh, I was standing on -- Well, they come up to me in the
25 early part of the evening, like, a little earlier. They come

1 to me, the police, and they told me to get out of the park and
2 get --

3 Q. Do you remember when this happened? Was this prior to
4 the Sandy Seale thing?

5 A. Yes, before that. Yeh.

6 Q. Before that?

7 A. Yeh. And I was told to get out of the park. Go home, you know
8 and so I left and I walked around and there was a bunch of
9 people around by the tracks by the park.

10 Q. Yes.

11 A. So I came over there and I was looking around for some
12 of my friends there, you know. So we were all standing around
13 and I asked for some guys that I knew, like, some people
14 were they were at and they didn't know. They -- Well, they
15 didn't know where --

16 Q. The police came and asked you if you knew where some people
17 were and you didn't know where they were?

18 A. No. I was asking where some of my friends were.

19 Q. Oh, I see. Okay.

20 A. You know, and that's when the police arrived. There was
21 a bunch of girls and I think there was a fight or something
22 early in the park that evening with two White fellows fighting
23 at the park that time or close by that area, you know, and
24 so all the people were all standing around, you know, and so
25 I was standing there and the police car stopped and they see me

- 1 in the crowd again and he hollered to me.
- 2 Q. Who's he now?
- 3 A. One of the cops.
- 4 Q. Do you know who it was?
- 5 A. Wyman Young.
- 6 Q. Yes.
- 7 A. He hollered to me. He said hold it, didn't we just send you
- 8 home a while back and I looked at him and he was coming out
- 9 of the car and I was telling the people to move, you know.
- 10 I started running down -- I start running cause they were
- 11 front of me like. Instead of running towards that park I --
- 12 Q. Was he chasing you?
- 13 A. Yeh, he come and started chasing me.
- 14 Q. Yes, and what happened?
- 15 A. That's when I got struck with the billy bat.
- 16 Q. How did that happen?
- 17 A. One of the -- I guess the police officer threw it at me and
- 18 hit me on the back and I hit a tree. I fell on the ground
- 19 and I was getting up and that's when he grabbed ahold of
- 20 me and threw me back on the ground and --
- 21 Q. Who's he now?
- 22 A. That police officer. Wyman Young.
- 23 Q. Were you taken to the police station?
- 24 A. Yes, I was charged for resisting arrest and I think assaulting
- 25 the police. I was -- cause the way he was handling me taking

1 me to the police car, you know. I had long hair at that time
2 and he had me by the hair and he was like, more like, dragging
3 me back to the -- He was telling that -- weren't you
4 already told to leave the area and all that, you know. Why
5 don't you people listen and all that. And I was telling
6 him I -- Well, I never did nothing wrong to start with, you
7 know, why should leave, you know, and that's when we were--
8 we were given little booklets from the Indian Reserve that
9 time about --

10 Q. I'm sorry I missed that?

11 A. I said we were given little booklets about how police handle
12 you and all that, you know like, about the law and all that.

13 Q. Who gave you these booklets?

14 A. The people from the Reserve. I don't know if it was Roy Gould tha
15 time who gave it to us or Bernie Francis, you know. It was
16 little white booklets they gave and told us what -- you know,
17 all the charges, you know. How to be -- like, handle the
18 police or how to come out with police and all that, you know.

19 Q. Was this a book of information then that was provided to you -

20 A. Yeh.

21 Q. -- by people on the Reserve?

22 A. Yes, it was.

23 MR. SPICER:

24 Okay. Thanks very much.

25