



PRELIMINARY INQUIRY

Carl MacDonald

Page No.

Comment

- 8 He is a Land Surveyor qualified in Nova Scotia.
- 9 Exhibit M-1 is introduced being a plan showing Wentworth Park which is bounded by Argyle Street, Crescent Street, Bentinck Street, Byng Avenue and George Street. He described that on the south side of Crescent Street the plan shows the first nine houses from Bentinck going toward Argyle. On the north side it shows a part of Wentworth Creek, the CNR tracks and various physical features.
- 10 The bushes which are shown on the plan are mostly between  $4\frac{1}{2}$  to 5 feet in height. The width of Crescent Street from curb to curb is 21 feet from Argyle to a point outside the Crescent apartment and from there it widens until it reaches a maximum of 35 feet at Bentinck Street.



PRELIMINARY INQUIRY

MICHAEL MacDONALD

Page No.

Comment

16

He is a Detective Sargeant with the City of Sydney Policy Department and has been acting as such for six years. On June 22 Gould delivered the yellow jacket to MacDonald. It was yellow on the outside with white stripes and white on the inside.

The jacket was in his care until he went to the R.C.M.P. Lab in Sackville and turned it over to them and in particular to a Mr. Duff.



PRELIMINARY INQUIRY

JOHN FRASER MacINTYRE

<u>Page No.</u>	<u>Comment</u>
65	He is the Sargeant of Detectives for the City of Sydney Police. He interviewed Donald Marshall on May 30, 1971.
66	The interview took place at his office on Bentinck Street. He was speaking to the accused on several occasions on that particular date and took the statement at about 5:00 p.m. in the evening.
66	He talked to Marshall on several occasions on May 30 and it was close to 5:00 p.m. in the evening when he took his statement from the accused. The statement is marked as Exhibit M-6.

CROSS-EXAMINATION

67	He had Marshall stay around the Station House pretty well all day. He had asked Marshall to come. He was not under arrest and neither was a Police Officer near him at all times.
68	He was told to stay around just in case he was needed. He believes he also talked to Marshall on Saturday, May 29, and he likely sent for him. He could have been there a matter of hours on the 29th as well and he was just hanging around.
69	The only time he can say for sure he was alone with Marshall was when he took the statement. He could have talked to Marshall on more than one occasion on the 29th.
70	He can't tie the amount of time down but he spent considerable time with the accused on the 29th and on the 30th. While he can say Marshall was there pretty well all day on the 29th he cannot say how long he was there on the 30th.
71	On the 30th he spoke to Marshall several times in the morning but just a few minutes at any time.
72	He confirms having spoken to Marshall several times during the day on the 30th. The conversations took place in the Detective's Offices or in the back room.

JOHN FRASER MacINTYRE (Cont'd)

Page No.

Comment

73

He was alone with Marshall in the room when taking the statement. The statement took from 4:50 to 5:12 and was written down by MacIntyre and later typewritten. He knew Marshall before the 29th to see him.





PRELIMINARY INQUIRY

ROBERT MacKAY

Page No.

Comment

43

He is 16 years old and lives at 225 Fulton Avenue in Westmount. He attended the dance at St. Joseph's Parish Hall on May 28, 1971 and left about twenty to twelve. He was accompanied by Debbie MacPherson. They went down around the Band-Shell and were sitting on the benches for 5 or 10 minutes. They walked up Crescent Street and he saw Sandy Seale lying on the side of the road. Debbie MacPherson noticed him first and they walked over and Seale said, Help me, I was stabbed. He then saw his girl home. She went to get a bus and he ran in the opposite direction.

44

He ran across the park up to Pollock's Drug Store and saw a fellow with a girl. They went back together and they saw a car pulling up and he saw Donald Marshall get out of the car. They went to a house to call the police but they were not allowed to use the phone. The police questioned him and told him to go home. He knew Sandy Seale before.

No questions by the Defence.



PRELIMINARY INQUIRY

PEARL MacMILLAN

Page No.

Comment

50

She is a registered Lab Technician.

51

She took the blood type of Sandy Seale and he was O positive.



RE-HEARING

JAMES MacNEIL

<u>Page No.</u>	<u>Comment</u>
80	He lives at 222 Mount Pleasant Street, Whitney Pier. He completed Grade 6 and he is 37 years old. He is single but is living common-law.
81	He says that he remembers what happened on Friday, May 28, 1971. At around 8:00 or 9:00 in the evening he was at State Tavern on George Street but it is no longer in operation. That is where he met Roy that evening.
82	Meeting Ebsary was accidental. He had known Ebsary for about 2 or 3 months. Ebsary lived on the rear of Argyle Street and he had been to his home on a few occasions. They had about 7 or 8 glasses of beer that night and that would be until approximately 11:00 o'clock.
83	Ebsary was kind of stocky and a little hunchback. He estimates he is about 5'7" and at the time was about 60 years old.
84	Ebsary was wearing a shawl over his shoulders and a sportcoat. The shawl was black. It would be about a 5 to 7 minute walk from the tavern to the Park. They were on the top of the hill and crossing over the street when they were approached by this colored youth and Marshall. Marshall put his hand up behind his back and MacNeil panicked.
85	He remembers Seale asking Ebsary for money saying "Dig man dig" and Ebsary said "I've got something for you". He heard the colored fellow screaming and saw him running and flopping. He never spoke to anybody in the Park before this event. He thinks he was approached from behind and everything happened so fast on the spur of the moment. He did not have any conversation with Marshall. He did see Marshall's face.
86	There was no conversation between he and Marshall. He describes Seale as being light complected.
87	Ebsary took out a knife and slit Seale up. He had not ever seen Seale or Marshall before.
88	After Seale was stabbed he ran for a piece and then fell on the ground and MacNeil heard him screaming.

JAMES MacNEIL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
89	He marks on Exhibit 5 with an S the location where Seale fell. It is directly across from a house numbered 130 Crescent Street. Marshall tried to come at Ebsary but then he ran himself and MacNeil doesn't know where he went but he believes he tried to help Seale. When he arrived at the Park, he wasn't staggering but he was feeling good.
90	The plan is marked as Exhibit R-2.
91	After the stabbing he and Ebsary went to Ebsary's home on rear of Argyle Street.
91	He tries to explain how you get to rear Argyle Street but it is not clear.
92	They arrived at Ebsary's home between 11:30 and 12:00. Ebsary's daughter was home. He saw Ebsary wiping the blood off the knife underneath the sink and MacNeil went home. He heard the next day that the other fellow died.
93	The knife was only a pocket knife about 6 inches long. He starts to tell about Ebsary's son coming to see him and the Court tells Aronson he cannot go into that.
94	The next day he went to Ebsary's house and said "You didn't have to kill him" and you should have give him the money. He also told his son but when he tried to tell the Court what the son said the Court would not permit him. He then starts to explain that he told his family about it and he couldn't sleep. Aronson tells the Court that this is relevant but relates its relevance to the question of admissibility of fresh evidence. The Court says it is not relevant at this stage of the proceedings. The question was whether MacNeil had ever communicated what had happened on May 28 to the police. The Court then tells Aronson to pursue the fact that MacNeil went to the police.
95	He told the police in Sydney after Marshall was in jail for something he didn't do. He made a statement to Sgt. MacIntyre and Urquhart. This was about a week after Marshall was sentenced. He waited that long before going to the police because Roy's son told him that otherwise the whole family would be in trouble.

JAMES MacNEIL ( Cont'd )

Page No.

Comment

CROSS-EXAMINATION

- 96 MacNeil is certain he was not staggering and his walk was steady in the Park. He never stumbled or tripped before Marshall got hold of him. When Marshall had his arm up behind his back, he was not trying to keep him from falling.
- 97 He did not start shoving with Marshall and he does not recall Marshall saying anything to him.
- 98 It's "totally not true" that he and Ebsary spoke with Marshall and Seale for about 20 minutes before Marshall grabbed him. He did not talk anything about bootleggers or women in the Park. He remembers Seale saying to Ebsary "dig man dig". Seale was right in front of Ebsary at that time. Neither Marshall nor Seale had any weapons. He cannot recall he and Ebsary walking away from Marshall and Seale and being called back. This possibly could be but he could not recall it.
- 99 He does not believe they were called back. Ebsary said "I've got something for you" and at that time Ebsary's hands were down by his side and the next thing he saw was a knife coming up in an upward motion and it made contact with Seale. It was only a pocket knife not a dagger or nothing. The light at the time was fair.
- 100 There was enough light so that you could recognize faces. He can't remember what direction Marshall ran in. It would take he and Ebsary a couple of minutes to get to Ebsary's house. Ebsary's daughter at the time would be around 16. He believes the girl heard them talking when they walked in.
- 101 The next day he was there he was told not to go back to the house. He was back there the next day but never anymore. Ebsary went right to the sink that night to wash the knife. MacNeil was just sitting by the diningroom and could see him washing the knife and he would only have been about 10 feet away.
- 102 He is positive he saw blood on the knife. He believes the knife had a brown handle on it and

JAMES MacNEIL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
102 (Cont'd)	was about 6 inches long. By a pocket knife he means one that just opens and closes and he is pretty sure of that.
103	He says he's positive it was a pocket knife. He never saw the knife again. He believes only Ebsary's daughter was home at that time.
104	He doesn't recall if Ebsary's wife was home.
104	He recalls giving a statement to the R.C.M.P. in February, 1982.
106	He is shown Exhibit "B" in his Affidavit which is the statement. In it it notes that he is "pretty sure I saw him wash the knife off in the sink. I can't remember if he had any blood".
107	He explains that when the police visited him, he was nervous. He is positive he saw Ebsary wash blood off the knife and there was blood on his hands too.
108	He had blood on both hands.
108	He never had any communication with Marshall or his family until this morning. During the time of the investigation no one asked him about the stabbing. At that time he was living at 10007 Rear George Street. He was living with his mother, father and the rest of the family.
109	He was not aware that Ebsary was carrying a knife and it surprised him. He had never seen Ebsary with a knife prior to that occasion. He says Ebsary was wearing a shawl on the night in question.





STATEMENT OF JAMES WILLIAM MacNEIL, NOVEMBER 15, 1971

The statement was taken at 7:25 p.m. and finished at 8:00 p.m. Detective J. F. MacIntyre took the statement and the witness was Corporal G. A. Taylor.

MacNeil says they were at State Tavern for an hour or so. He says that while walking along Crescent Street they were approached by an Indian and a colored fellow from behind. The Indian put my right hand up behind my back. The colored fellow said "Dig man dig" then Roy Ebsary said "I got something for you". He put his hand in his right pocket and took out a knife and drove it into the colored fellow's side.

The knife was driven into the lefthand side of the colored fellow and he saw Roy's hand and knife full of blood.

He did not see the Indian being stabbed.

Roy went home and I was with him. Roy washed the knife under the tap and washed his hands off. Then he told me not to say anything about it.

He asked Roy why he had done it and he said it was self defense. He indicates he was at Roy's house that night for about an hour after they arrived.

Page 43 - He went to Roy's house the next day and told him the fellow had died. Roy said it was self defense and I told him he did not have to kill him. Roy said he had two children and not to say anything to the police. I left then.

STATEMENT OF JAMES WILLIAM MacNEIL (Cont'd)

Roy's wife's daughter and son were at the house. They didn't say anything to him then but about two days afterwards his son, about 18 or 19 years old, came to MacNeil's house and drove him to the Wandlyn Motel and got his mother who came out to the car. Mrs. Ebsary got in the backseat and told him "Don't go to their house anymore because of what Roy done". The young fellow told me if I mentioned what happened to the police all your family will be in trouble and they will have to go to Court. Mrs. Ebsary was not present when he said that.

On the night of the murder I was wearing a college coat - blue with two white marks on the sleeve. Roy was wearing a black shawl over his shoulders, something like a priest wears over his shoulders.

The first one he told about this was his mother. She noticed he was not sleeping and walking around since the trial and she asked him what was wrong and I told her about the stabbing and the Indian man in jail for something he did not do. Last night I told my brother, Johnny, and he told me to go to the police. He did not know Marshall or Seale that night.



EBSARY TRIAL I

JAMES WILLIAM MacNEIL

<u>Page No.</u>	<u>Comment</u>
62	He lives at 222 Mount Pleasant Street in Sydney and is 39 years old. He is unemployed at the present time and in May, 1971 lived at 1007 Rear George Street and at the time he was employed in the landscaping buisness. He knows Roy Ebsary.
63	Prior to May 28, 1971 he knew Ebsary for about 3 months. They had a good relationship. He had met him in the State Tavern and used to drive the Ebsary car.
64	At the time his drinking habits weren't too bad but after the incident they got heavy. He would say Roy Ebsary had fair or moderate drinking habits at the time. He doesn't believe Ebsary was employed at the time. On the night in question they left the tavern between 10:30 and 11:00 o'clock.
65	He thinks they were in the tavern from about 6:00 or 7:00 o'clock and they had about 8 beer. He was feeling good but wasn't drunk and his walk was alright. Ebsary had about the same to drink.
66	State Tavern was located at the corner of Falmouth and George Street. He and Ebsary came down George Street and took a shortcut through the Park to Crescent Street heading towards Ebsary's place.
67	When we crossed Crescent Street, we were approached by Seale and Marshall. Marshall put MacNeil's hand up behind his back and he just froze. The next he heard was Seale asking Ebsary "dig man dig". I think the intentions were to rob Ebsary. Seale was standing right in front of Ebsary about 3 or 4 feet away.
68	Ebsary said I got something for you and slid his hand in his pocket and then "swish" I seen this big squirt of blood coming out of nowhere and I just went right into a state of shock. It was terrible. Marshall still had his arm but he left go of it because he tried to go for Ebsary. Seale ran and then I saw him falling, he fell down about 50 yards or so.

JAMES WILLIAM MacNEIL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
69	Edwards walked away from MacNeil until MacNeil tells him to stop and it is about 40 feet which would be the distance Seale ran. MacNeil acts out what was done and there is an upward motion with his right hand.
70	Ebsary had a knife in his hand. I think it was a pocket knife. Usually that's what people carry. I can't be sure just exactly the size but a pocket knife would be a 6 inch blade but I can't be really sure. He never saw the blade. When Marshall went to Ebsary, Ebsary waved at him with an upward motion and then Marshall just vanished. I can't remember the direction Marshall took off in. He and Ebsary then went to Ebsary's place on Argyle Street.
71	He thinks it would have taken 15 minutes for he and Ebsary to get to Ebsary's home. He sat in the frontroom and Ebsary went in and was washing the knife off underneath the sink, the blood off the knife under the sink. I saw him from a distance. I stayed for a little while longer and went home. He can't recall if anyone else was there that night because he was in a state of shock. He went back to Ebsary's house the next day and told him the fellow died and Ebsary said it was self-defence.
72	MacNeil said he didn't really think and I couldn't accept it as being self-defence. I told Ebsary he didn't have to kill him. I said he should have handed over his billfold because the fellow never put a gun in his face or any darn thing. Ebsary just said self-defence. A couple of days later I was up at the house and his son and wife came up and told me not to go down to the house on account of what ... He is then stopped and said he cannot say what was told him by the wife and son.
73	As a result of the conversation with the wife and the son he never went back to the house.
73	He never told anybody what happened until he went to the police after Marshall was tried. He went to the Sydney Police about 10 days after the conviction and spoke with John MacIntyre.

JAMES WILLIAM MacNEIL (Cont'd)

Page No.

Comment

78 MacIntyre and another cop there with him wouldn't believe him so MacNeil said I'll take a voluntary lie detector test. I took that and that came out negative.

CROSS-EXAMINATION

74 MacNeil was 25 at the time of the incident and Ebsary around 60. He described Seale as being a little bit taller than Marshall.

75 He met Ebsary at the State Tavern by coincidence. Ebsary was there before him.

76 They never stopped in the Park but just kept walking through at a steady pace until they reached Crescent Street. Marshall and Seale approached them.

77 Marshall approached him from the front but I never saw him coming. He never saw Seale at any time before Marshall grabbed his arm. The first thing he remembers is Marshall grabbing his arm and pushing it up behind his back but there was not too much pressure on it.

79 He thought they were being robbed and he was afraid and thought he might get hurt.

80 Seale and Marshall were total strangers.

81 From the time he was grabbed until the knife came out and the two people were cut it would only take five or ten seconds. It all happened very fast. He understood Seale was telling Ebsary to give him his money. He does not believe there was any conversation between Seale and Ebsary before the comment "dig man dig"

81 He didn't actually see the knife at the scene and it wasn't until later at the house.

82 He saw the knife at Ebsary's residence but just had a glimpse of it. He figures it was a pocket knife and that means one where the blade folds into the handle. When they got to the house he did say something to the effect "You did a good job back there" and he told the daughter that.

JAMES WILLIAM MacNEIL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
83	It's possible Seale had his hands on Ebsary but he's not sure.
84	He would say it was wrong to suggest that Marshall grabbed ahold of his arm because he thought MacNeil was drunk and staggering and was about to fall.
84	When asked if he is sure that the knife was a jack-knife, he said I figure that's the kind of knife people carry on them, a pocket knife or a jack-knife.
85	He was totally unaware that Ebsary had a knife on him. The lighting was fair at the Park that night.
87	He repeats the only place he saw a glimpse of the knife was in Ebsary's home when he was washing it under the sink and he figures it was only a pocket knife. He assumes it was the same knife used in the Park because there was blood on it and there was blood on his hands and blood on the handle.





EBSARY TRIAL II

DEPUTY CHIEF MICHAEL JAMES MacDONALD (Voir Dire)

Page No.

Comment

142

He is Deputy Chief and has been a member of the police force for 37 years. In 1971 he was a Sargeant. He is shown the Statement of Ebsary where he signed as a witness and says he has no independent recollection of the evening. The practice was such that he would not have said anything at all and he wasn't allowed to ask questions. If there was a question he wanted asked, he wrote it on a piece of paper and passed it to MacIntyre.



EBSARY TRIAL II

CHIEF JOHN MacINTYRE (Evidence on a Voir Dire)

<u>Page No.</u>	<u>Comment</u>
128	He is Chief of Police in Sydney and has been for 8 years. He has been with the Department since May, 1942 and in 1971 he was Detective Sargeant in charge of the investigation of Seale's death.
129	On November 15, 1971 he took a Statement from the accused Roy Ebsary. Prior to that time he did not have any contact with Ebsary in relation to this particular investigation.
130	On November 15, 1971 he had a visit from James MacNeil and his brother and as a result of conversations he had with them and Statements he took from them it seemed fit to take a Statement from Ebsary. The Statement is in MacIntyre's handwriting and Sargeant Mike MacDonald was present when it was taken. Prior to it being taken he and MacDonald were the only two Police Officers who had contact with Ebsary.
131	The signature of Ebsary was placed on it by Ebsary. Prior to giving the Statement, Ebsary was given a warning that he need not say anything and that he had no promise or favour and no fear from any threat whether he said anything and anything that he said could be used as evidence. Ebsary appeared to understand the warning.
132	His practice in taking Statements is in all cases to ask the party if he wishes to read it or examine it. His procedure was to do all the talking himself and the man sitting as a witness was not to do any talking and if there were any questions he wanted to ask, he would have to write them down and pass them to MacIntyre. The Statement notes he started to take it at 9:15 and finished at 10:10.
135	The Statement from his son Gregory notes that it started at 9:55 and was over at 10:20. The Statement of Mary Ebsary commenced at 8:45 and was over at 9:07. Gregory's was witnessed by Corporal Gerald Taylor. Mary's was witnessed by William Urquhart.

CHIEF JOHN MacINTYRE (Evidence on a Voir Dire)

Page No.

Comment

CROSS-EXAMINATION

- 137 He explains the difference in time as being a mistake and denies that he ever examined two of the witnesses at one time (there is an overlap in time in the recorded time of completion of Roy Ebsary's Statement and the commencement of Greg Ebsary's Statement).
- 138 He says he did not have any conversation with Roy Ebsary prior to commencement of the Statement.
- 139 There was something said to Ebsary but not until he was warned. He expects he would have told Ebsary he had fresh evidence on the Seale murder and evidence that there had been a disturbance in the Park area between Ebsary and Jim MacNeil and two others. Ebsary then started to talk.
- 140 It was not the practice in those days to note on the Statement that a warning had been given and have the witness sign that he understood the warning.
- 142 His practice when sending someone to pick up a witness is to tell them not to have any conversation of any kind with the witness.



## EBSARY TRIAL II

### CHIEF JOHN MacINTYRE

<u>Page No.</u>	<u>Comment</u>
161	In 1971 he was Sargeant of Detectives. He had been in detective work for over 20 years.
162	In an attempt to find the knife the area was searched and the creeks were drained to the best of our ability. No weapon was found. He first had contact with MacNeil on November 15, 1971 which was following the conviction of Marshall. As a result of ocnversations he had with MacNeil, he took a statement from Ebsary.
163	On the same day he took statements from James MacNeil and his brother, Mrs. Ebsary and Gregory Ebsary. Following the taking of the statements he consulted with the Crown, being the late Don MacNeil and Mr. Levatte. He requested that because he had handled the Marshall case he thought another force should look into it and the Crown arranged for the R.C.M.P. to become involved and he had nothing more to do with it. The statements he took were turned over to the Crown.
164	Ebsary's statement is marked Exhibit No. 2. Prior to taking the statement he gave Ebsary the normal warning.
165	He explains his practice which he followed in taking statements.
166	He always gives a warning and asks the witness if he understood it and he doesn't recall ever being answered in the negative. He reads the statement to the jury.
<u>CROSS-EXAMINATION</u>	
169	He doesn't know whether the police picked Ebsary up or merely contacted him and asked him to come to the station.
171	It is his practice to indicate the time the statement commences and the time it is finished. On Greg Ebsary's statement it notes starting at 9:55 and finishing at 10:20. A witness would not leave the room while he is being questioned.

CHIEF JOHN MacINTYRE

<u>Page No.</u>	<u>Comment</u>
172	He never takes two Statements at one time or gets involved in the second one when he takes the first one.
175	He would not have told Ebsary any of the contents of MacNeil's statement. It was he who decided, on advice of the Crown, that there was sufficient evidence to lay a charge against Donald Marshall.
178	The investigation was taken over by two R.C.M.P. Officers from Halifax. One was Staff Sargeant Allan Marshall and the other he believes was Sargeant Smith.





EBSARY TRIAL II

JAMES MacNEIL

<u>Page No.</u>	<u>Comment</u>
75	He lives at 222 Mount Pleasant Street, is 39 years old and works part time at casual labour.
76	He had known Ebsary a couple of weeks prior to May, 1971.
77	He met Ebsary at the tavern between 6:00 and 7:00 in the evening.
78	He remained in the tavern for about two hours and had about 7 or 8 beer. It was after 10:00 o'clock when they left.
79	They were headed for Ebsary's home. When they got to the Park, they took a shortcut. There is a bridge there which is now concrete but used to be wood. We came up at Crescent Street and were on the sidewalk.
81	He indicates they were heading towards south Bentinck Street. They were approached by Sandy Seale and Marshall. Prior to that time they did not know either Seale or Marshall.
82	They approached us from the front but then Marshall had my right arm and started coming counter-clockwise and put it behind my back. At that time Seale was facing Ebsary on the inside side, that is from the street. He and Marshall would have been out by the curb. I heard Seale telling Ebsary dig man dig.
83	I figured it was probably a robbery. I didn't have any money and I was kind of shook up. Ebsary said I've got something for you. Seale's hands were just lying by his sides.
84	Ebsary came out of his pocket with his right hand and he shows an upward motion and made contact with Seale in his abdomen. I didn't see if Ebsary had anything in his hand but I seen blood coming out of the deceased. I heard a scream coming from Seale and I seen him, he ran.
85	Seale sort of ran to the other side of the street. I think Ebsary made a swing for Marshall. I think Marshall was trying to help his friend or something.

JAMES MacNEIL

Page No.

Comment

- 86 Marshall reached toward Ebsary who made sort of a downward motion with his right hand and after that Marshall just disappeared.
- 87 It took them about 10 minutes to go to Ebsary's house and they went into the house. He never saw anyone else there that night. He sat out in a room right off the kitchen and looked in the kitchen and saw Ebsary cleaning the knife.
- 88 He cannot describe the knife but it had a brown handle. He cannot remember the length of the blade. He stayed for about an hour and he did not talk to anyone other than Ebsary.
- 89 He went there the next day after he heard the young fellow had died. Ebsary said it was self-defense.
- 90 I said you didn't have to kill him and you should have give him the money and Ebsary said it was self-defense.
- 91 Ebsary said I've got a family and we'd have to go to Court. I told him he should have give him the money and this thing wouldn't have happened because he wasn't armed and he wasn't cursing. Ebsary just said it was self-defense. He never went back to the house again.
- 92 After Marshall was convicted, I went down and made my statement to the police and I don't think they believed him. At the time he knew Ebsary's daughter, Donna.

CROSS-EXAMINATION

- 94 He has Grade 6 education and finished school at age 16. He is now taking Valium for his nerves.
- 96 He is not sure what time they arrived at the tavern, it could be between 6:00 and 8:00. It was sometime in the eraly evening.
- 98 It could have been 11:00 o'clock when they left the tavern. He figures he was approached by Seale and Marshall from behind and Marshall put his arm up behind his back.

JAMES MacNEIL

Page No.

Comment

- 99 Marshall never said a single word to him and I never heard him saying anything to Ebsary. He was saying Marshall was wrong to say they had a half hour conversation before the incident. It happened fast but in a sense I think I did see Marshall before my hand was put behind my back.
- 100 Ebsary looked a lot spryer at the time than he does now. He knew Ebsary for about two months before the event.
- 101 When Marshall lput his arm up behind his back, he was afraid.
- 102 He didn't see any knife in Ebsary's hand in the Park. The lighting was only fair at the time.
- 103 There were no lights on the bridge at that time.
- 104 He couldn't say for certain that Seale and Marshall were not armed but he didn't see any weapons.
- 106 We were going pretty fast back to the Ebsary's house.
- 106 They were walking through the Park minding their own business when they were attacked by Seale and Marshall.
- 107 He is positive he saw blood on the knife in the kitchen.
- 108 He discussed it with the police after Marshall was convicted and never discussed it again until on February 8, 1982.
- 109 He adopts his evidence in the Appeal Court that he had a glimpse of the knife before it stabbed Seale and it was only a pocket knife.
- 109 He does not recall seeing Donna Ebsary at Ebsary's house on that night nor did he see Mary Ebsary. There wasn't much time to think before Ebsary used his knife.

JAMES MacNEIL

Page No.

Comment

110

When he said it was only a pocket knife, he just presumes that's what the type of knife people carry.



EBSARY TRIAL III

SERGEANT MICHAEL MacDONALD

<u>Page No.</u>	<u>Comment</u>
235	On June 2, 1971 he received the dark colored jacket from Mrs. Seale and on June 3 he received a jacket from Roy Gould. The jackets were placed in my locker at the Sydney Police Department.
236	On June 16, 1971 he turned both jackets over to Evers at the Crime Lab in Sackville.









MARSHALL TRIAL

CARL MacDONALD

Page No.

Comment

He is the surveyor who prepared the plan of the Wentworth Park. His evidence starts at page 31 and continues to 38.



MARSHALL TRIAL

SGT. MICHAEL MacDONALD

Page No.

Comment

- 54 He is a Detective Sergeant with the Police. He came into possession of the yellow jacket from Roy Gould and he gave it Evers at the Crime Lab. He also obtained Exhibit 4, being the brown jacket from Mrs. Seale and turned it over to the Crime Lab.
- 55 He also turned over a pair of overalls and the piece of tissue. He attended at the City of Sydney Hospital on the night of the stabbing approximately 12:10 a.m.
- 56 He saw Maynard Chant about 2:00 a.m. in the morning at the City Hospital. He talked to Chant for 2-3 minutes and sent him down to the Police Station.
- 57 He saw Chant at the Police Station about 3:20 and he was present with Sgt. Len MacGillivray, Corporal Martin MacDonald and Mr. Chant's father. He didn't see him again until the following Sunday and he was present with Detective Sgt. John MacIntre. He asked if Chant told him anything when they met at the Sydney City Hospital and there is objection by the Crown. Following argument, Justice Dubinsky rules that no reference could be made to the conversation other than the fact that it was held.
- 66 MacDonald said he saw Chant in Louisburg on May 30 on the street.
- 67 MacIntyre was with him and it was in the afternoon and Chant got into the Police car. They were with him for a couple of hours. MacDonald says he may have seen him once more during the week but doesn't know which day it was.

MARSHALL TRIAL

SGT. MICHAEL MacDONALD (continued)

<u>Page No.</u>	<u>Comment</u>
68	He says he saw him again in the Detective's office at the Police Station in Sydney and he would have been there for the entire afternoon but he can't give an exact date.
69	He said he saw Marshall at the Police Station several times following the incident. He was there on the Saturday morning for 4-5 hours.
70	Marshall had been asked to be there by Sgt. MacIntyre. He saw him again on Sunday morning at the Police Station and Marshall was there again for 4-5 hours. They had him for a line-up on Sunday morning.



MARSHALL TRIAL

PEARL MacMILLAN

Page No.

Comment

176

She is a Lab Technician at the City Hospital in Sydney. She typed Sandy Seale's blood has 0 positive.

177

0 positive is the classification having the largest number people.





STATEMENT OF GEORGE MacNEIL AND SANDY MacNEIL, MAY 31, 1971

This statement was taken at 6:30 p.m. We do not know who witnessed the statement.

George is 18 years old and Rod is 17 years old and both live at Coxheath.

They left the dance around 11:40 and walked to the Park. They saw two men hanging around. One was grey haired with a grey or white topcoat. He was 5'9", 180 lbs. with hair flat on his head and was trampish looking. The second man was about 6', was average size and with dark hair and was in late 30's or early 40's. He had a brown short jacket on. He saw these two people speak to a fellow and a girl sitting on a bench closest to the railway tracks and asked them for a cigarette.



STATEMENT OF SCOTT MacKAY, JUNE 2, 1971

This statement was taken on June 2, 1971 at 6:30 p.m. and witnessed by MacIntyre.

MacKay is 16 years old and lives at Westmount. He left the dance at 11:45 with Debbie MacPherson who wanted to get the North Sydney bus. They were walking on Crescent Street when Debbie noticed Sandy Seale lying on the roadway. They went over and asked him what was wrong and Seale said he was stabbed and needed help.

MacKay told Debbie to go get a bus and he then ran to find a person to get help. He ran up to the Drug Store and found a boy named Livingston from East Bay and both of them went back. By the time they got there a car slowed down and Marshall got out. I told Marshall to go to a house and call the police and Marshall said no. Both of them went to the house and asked a man to call the police.

The police questioned me and told me to leave. He asked Marshall who had stabbed him. Marshall said a man with glasses and a younger man with him. He said the man with the glasses stabbed Sandy and said that is for you, buddy. Junior then tried to get away and the man stabbed him in the arm.



STATEMENT OF DEBORAH MacDONALD COUTURE, MARCH 29, 1982

This statement is found in Volume G-2.

She says approximately three years ago she went to Boston with Donna Ebsary. At that time Donna knew Deborah was with the National Parole Service. She told Deborah that her father had killed the guy that Donald Marshall was serving time for. She couldn't remember the name and Deborah asked her if it was Sandy Seale. Donna related how her father came home with blood on his shirt and a knife which he was cleaning in the kitchen. She referred to a statement by the other guy that "that was some job you did on the nigger". Donna allegedly told Deborah that Donna and her brother, Greg, went to the police and saw Bill Urquhart and told him they knew who did the murder but Urquhart told them he had the man responsible and for them to go home. Deborah refused to sign the statement.



PRELIMINARY INQUIRY

Dr. Mohammed Naqvi

Page No.

Comment

- 2 Seale was brought into the Emergency Room in a state of shock with no blood pressure and no pulse and was pale and unresponsive. This was approximately between 12 midnight and 1:00 o'clock on May 29. The patient was given 4 units of blood and was placed on a respirator and transferred to the operating room.
- 3 He describes in detail the damage which he observed and the procedures followed in an attempt to repair the damage.
- 4 In spite of procedures taken Seale continued to be in a state of shock with no response. Again there is extensive discussion of the procedures which were followed.
- 5 During the entire procedure 27 pints of blood were given to the patient but to no avail. He was pronounced dead between 8:00 and 10:00 a.m. on May 29.
- 6 Seale's blood type was 0 positive. The patient was brought in with the small bowel outside the abdomen. There is an opening in the abdomen which was made by a sharp object. The injuries would be consistent with a stab wound of any sharp object. The death was caused by the stab wound due to a sharp object.
- There were no questions asked of the Doctor by counsel for Marshall.





EBSARY TRIAL I

DR. NAQVI

Page No.

Comment

- 98 He is admitted to be qualified to give evidence in the field of general surgery.
- 99 He first saw Seale some time after midnight on the night of the stabbing.
- 100 Seale was about 5'6" or 5'7" and an average build. He was unconscious, did not have any blood pressure and had a wound in his abdomen and there was intestine lying over the abdomen at that time.
- 101 The wound would be as wide as his finger and about 3 or 4 inches. The wound extended from the abdomen on the front part all the way to the back where the aorta lies. The wound would be a depth of a good 6 inches, maybe more.
- 102 He describes the surgical procedure that was carried out.
- 103 Seale died at 8:00 o'clock in the evening. The cause of death was his abdominal injuries as a result of an injury by a sharp object.

CROSS-EXAMINATION

- 103 There was just one injury, that is just one stab wound to Seale.
- 104 The wound would be somewhere around the umbilicus and that is below the ribcage.
- 105 There was no autopsy done and they never actually measured the depth of the injury. He could not describe the incident without his notes.
- 106 - 107 He is referred to earlier evidence and there is some confusion over the time of death.
- 109 He agrees he is not sure exactly how deep the injury was. At the time he was not particularly interested in that point.

RE-DIRECT EXAMINATION

It is attempted to have him say the minimum length of blade required to cause the injuries he saw.



EBSARY TRIAL II

DR. NAQVI

Page No.

Comment

- His qualifications as a surgeon are admitted. He practices surgery in Sydney for approximately 15 years.
- 196 He doesn't know the exact time he saw him. The admission record is noted at 2:00 a.m.
- 198 When he first saw him, there was a stab wound in the abdomen with the evisceration of the small bowel over the abdominal wall. He was in a state of shock with no blood pressure. He was taken to the operating room directly and an emergency operation was performed. The wound was as a result of a sharp object.
- 199 An incision above and below the wound was extended. There were no tears in the small bowel but there was a tear into the large bowel. He describes the various damages he found.
- 201 He was taken back into the operating room in the morning to repair the aorta and it was repaired.
- 202 The patient was pronounced dead at 8:05 p.m. The cause of death was massive hemorrhage and abdominal injuries. He had been given 27 pints of blood and this would be almost total body blood replacement.
- 203 The minimum length of blade that could have inflicted that injury would be approximately 3½ inches.

CROSS-EXAMINATION

- He is relying on the notes of the hospital records to give his evidence. He does not have an independent recollection of the events.
- 206 He was with Seale from the time he was admitted until he died.
- 207 Once anyone cuts into the abdomen and the cut is big enough, the pressure pushes the intestine out.
- 208 Running or falling or the extruding of the intestine would not cause the injury to tear more. There was only one stab wound.

DR. NAQVI

Page No.

Comment

209

The injury was located approximately around the belly button.



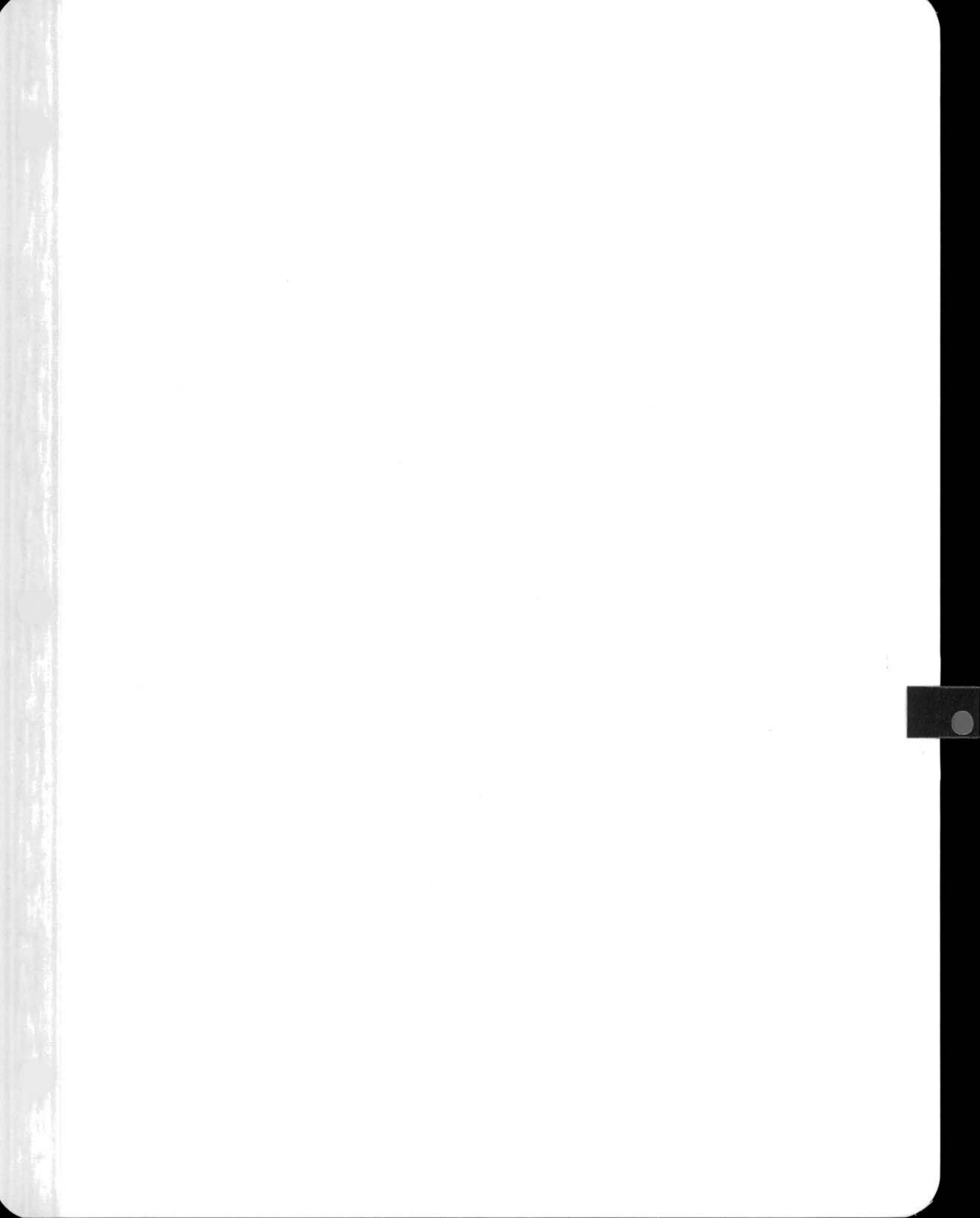
MARSHALL TRIAL

DR. MAHOMAND NAQVI

Page No.

Comment

- 19 He saw Seale in the emergency room. His bowel was outside his abdomen and an opening of approximately 3"-4" wide was in the abdomen. He had no pulse or blood pressure and was on the verge of death and he was given blood.
- 20 Over 15-20 pints of blood were administered. The injuries were caused by a sharp pointed object that penetrated through the abdomen and all the way to the back.
- 21 Cause of death was injuries to the bowel and his vessels.
- 22 He says there was only one insertion of the sharp object into Seale's body.







PRELIMINARY INQUIRY

JOHN PRATICO

Page No.

Comment

- 40 He lives at 201 Bentinck Street and is 16 years old and he knows Donald Marshall for about a year. He saw Marshall in the late hours of May 28, 1971 in Wentworth Park. He does not know if he saw Marshall before that but believes he saw him on George Street. He then says he spoke with Marshall on George Street and left him and went down Argyle Street.
- 41 He believes Marshall suggested that Pratico come down to the Park or something like that. Pratico admits that he is nervous. He says he met Marshall on George Street by the store. He again says he believes Marshall said something about coming down to the Park. Pratico left and went down Argyle Street and turned up Crescent Street and walked up the railway tracks and went into the bush and started to drink a pint of beer. He is shown Exhibit M-1 and shows where in the bush he was.
- 42 The bush pointed out by Pratico is opposite the house designated as D. W. Campbell. He saw Marshall and Seale talking. Marshall was on the sidewalk and Seale was facing him. They were talking for a while and they were arguing and I saw Marshall haul something from his pocket and stab Seale. When Seale was stabbed, he dropped. He had known Seale before this night. He does not know what Marshall did then because Pratico started to run. He ran down the tracks by the bridge and up Bentinck Street.

No questions by the Defence.



STATEMENT OF JOHN PRATICO, MAY 30, 1971

It does not indicate when the statement started to be taken but it concluded at 6:00 p.m. The statement was taken by Detective J. F. MacIntyre.

Pratico is 16 years old. Friday night he was at St. Joseph's dance and left around 12:00 p.m. He saw Marshall and Seale between the store and the dance hall and was talking to them. They wanted him to walk through with them and he said no.

He went down Argyle and over Crescent Street. He was over by the Courthouse when he heard a scream. He looked and saw two fellows running from the direction of the screaming. They jumped into a white Volkswagon with blue license and white numbers on it. One had a brown corduroy jacket and was about 5'5" with dark complexion, heavysset. The other had a grey suit, was about 6' tall, husky with a red sweater like a pullover. Pratico started to run home.

He has not seen the Volkswagon since but he saw the two fellows twice last night walking in the park. He saw the two guys at the dance. Robert Patterson said they were from the "Toronto Saints Choice Bike Gang".

STATEMENT OF JOHN PRATICO, MAY 30, 1971

The statement was taken at 6:00 p.m. and was witnessed by Sgt. MacIntyre.

Pratico is 16 years of age. He left the dance around midnight and he saw Marshall and Seale between the store and the dance hall and was talking to them and they wanted Pratico to walk with them and he said no.

He went down Argyle Street and over Crescent Street and was over by the Court House when he heard a scream. He looked and saw two fellows running from the direction of the screaming. They jumped into a white Volkswagen. One had a brown corduroy jacket, 5'5", dark complexion, heavy set. The other guy was in a grey suit and was about 6' tall, husky and had a red pullover sweater.

He saw the two fellows twice last night walking near the Park. Bobby Patterson had said they are from the Toronto Saints Choice Bike Gang.









MARSHALL TRIAL

JOHN PRATICO

Page No.

Comment

- 118 He says when he left the court room he discussed the case with Mr. Khattar and Mr. Marshall, Sr.
- 119 When he spoke with Mr. Khattar, he then spoke with Mr. MacNeil and Mr. MacIntyre and Mr. MacDonald.
- 120 He first saw Marshall on May 28th at St. Joseph's Hall and he was with Sandy Seale and he walked with them down as far as the Park.
- 121 When they reached the corner of George and Argyle, Seale and Marshall went into the Park and he went up Argyle to Crescent. He went down Crescent as far as the railway tracks and went behind a bush and stayed there. This would be around 11:30-11:45. He observed Marshall and Seale talking and it seemed like they were arguing.
- 122 He knew Marshall since last summer and Seale for a couple of years.
- 123 While Seale and Marshall were arguing, Marshall's hand came out, his right hand, and he plunged something into Seale, like it was shiny. The shiny object was plunged towards Seale's stomach. Seale fell and that's the last I saw. He started running up Bentinck Street. Marshall was wearing a yellow jacket.

CROSS-EXAMINATION

- 125 He was drunk on May 27 and May 28.
- 126 He says he didn't see Marshall at the dance or near the dance hall but saw him down the road.

MARSHALL TRIAL

JOHN PRATICO (continued)

<u>Page No.</u>	<u>Comment</u>
127	He was liquor sick at the dance on May 28 and was taken into the washroom and given some help by some of his friends.
130	He says he said hi to Marshall and Seale just before you get to the Park but then he says he's not sure it was them two.
134	He saw Marshall on the Saturday or Sunday. It was the day the detectives picked him up. Sgt. MacIntyre sent for him on more than one occasion and he thinks it was twice.
136	He does not recall making a statement to Mary Teresa Paul, who was with Gordie Lynch, that Marshall did not do the stabbing. He is not prepared to say he didn't make the statement but just that he cannot remember.
137	He met Tom Christmas on a Saturday in Wentworth Park and he was sober and he told Christmas that Marshall did not stab Sandy Seale.
138	He started to drink 7:00-8:00 o'clock in the evening on May 28.
139	He drank half a bottle of wine, half a dozen quarts of beer and two or three pints. He thinks he also was drinking something else.
144	He knows he saw Marshall and Seale on Crescent Street and these were the only two people he noticed.
146	He drank a full bottle of beer while he was squatted behind the bush. He opened it as soon as he got there and drank it kinda fast. I saw Marshall's hand come out like this and go toward Mr. Seale's stomach and that's all I saw.

MARSHALL TRIAL

JOHN PRATICO (continued)

<u>Page No.</u>	<u>Comment</u>
147	He thinks Seale put his fists up.
148	Marshall took his right hand and plunged it into Seale's stomach. He says that yesterday afternoon in the presence of the Sheriff he told Khattar that Marshall did not stab Seale.
149	He agrees that Khattar said he did not want to talk to him unless the Sheriff was present and there was no conversation until the Sheriff was present.
149	Justice Dubinsky tries to limit the examination Khattar is conducting on the conversation with Pratico to a previous inconsistent statement. Pratico agrees the conversation he had concerned the evidence he gave to Judge MacDonald on the Preliminary Hearing.
154	He agrees that after making this statement to Khattar and the Sheriff, he also told the Crown Prosecutor that Marshall didn't do the stabbing.
155	He is asked to whom else he made the statement and that question was not permitted by the Judge.
155	Sgt. MacIntyre was present when the statement was made.
160	He is questioned by Judge Dubinsky and says that he first of all had a conversation with Donald Marshall, Sr. in the hall and after this conversation, Mr. Marshall got Mr. Khattar to come.

MARSHALL TRIAL

JOHN PRATICO (continued)

<u>Page No.</u>	<u>Comment</u>
160-171	There is considerable discussion in the absence of the Jury as to the questions which can be put to the witness concerning threats made to him or conversations he had with other people. The Judge rules he can be asked why he made the inconsistent statement and tell the Jury that he was scared but could not go on to ask the basis for his fear.
172	Pratico says he saw Tom Christmas and Teresa Mary Paul and Artie Paul some time but it was not yesterday.
173	He says before he discussed it with Khattar, he saw Donald Marshall, Sr. He said he made the statement yesterday to Khattar which is inconsistent with his evidence because he was scared of his life being taken.
174	He says his fear of his life being taken was not because of anything the accused said to him at any time.



NOTES OF THE DISCOVERY EXAMINATION

OF JOHN PRATICO

Page No.

Comment

276, Q. 53

He is asked if he saw anyone stab Sandy Seale and he says no. He was asked why he made the statement and he said, "I take it there were a few threats made to me, but I really don't know." "They said, if you don't tell us what happened, it's the County Jail. I was scared of anybody when you're threatened to go to jail at a young age."

278, Q.68

He was referred to a statement he gave to Corporal Carroll in 1982 wherein he again referred to the fact that MacIntyre told him that he did know what happened and if he didn't tell, he would be put into jail. He confirmed that that is what was said to him. He repeats that the police said that if you don't tell us what happened, you're going to go to jail.

280, Q.89

He confirms that the Sydney Police drove him to the Nova Scotia Hospital after the Preliminary Hearing but before the Trial and says this was arranged by Dr. Gaum.

282

He agrees with the statement contained in his Affidavit of July 15, 1982, to the effect that he confessed to witnessing the murder under duress and pressure being exerted by MacIntyre and Urquhart.



STATEMENT OF JOHN PRATICO, JUNE 4, 1971

This statement was taken on June 4, 1971 at 10:45 a.m.

Pratico is 16 years old. He said last Friday night he went to the dance and names certain people he met there. He was at the dance until about 10 or 5 to 12 and walked out by himself. He says he met Marshall and Seale and they walked down to the corner of Argyle Street and they asked him to go down to the Park and he said no.

Pratico went down Argyle Street and over Crescent Street walking on the Park side. He saw Sandy and Donald on the other side of the bridge stopped and did not pay attention to them and he kept walking for the tracks. On the tracks he stopped. By then Donald Marshall and Sandy were up where the incident happened. He heard Sandy say to Junior "you crazy Indian" and then Junior called him "a black bastard". They were standing where the incident happened and they were still arguing and talking low and he could not make out what they were saying. (Note Pratico says he stopped on the tracks "where I showed you").

Seale was facing the tracks and Marshall facing the street. He saw Marshall's hand going toward the left hand side of Seale's stomach and he drove his hand in, turned it and pulled it back. I saw Sandy fall to the ground and Marshall running up Crescent Street toward Argyle Street.

Pratico ran home up Bentinck Street. He was standing on the track at the time Seale fell to the ground and he was drinking a pint of beer. There was no one else around. He had known Seale for 4 or 5 years and Marshall since last summer. He had never quarrelled



with either boy. He was talking to Seale at the dance about 10:30 p.m. He would be about 30 to 40 feet from Seale and Marshall when they were on Crescent Street. They were standing there about 10 minutes arguing. There were some bushes between he and them which would make it easier for Pratico to see them than for them to see him. He saw Marshall since the event on Saturday or Sunday. The statement is taken by MacIntyre and witnessed by Urquhart and finishes at 11:30 a.m.

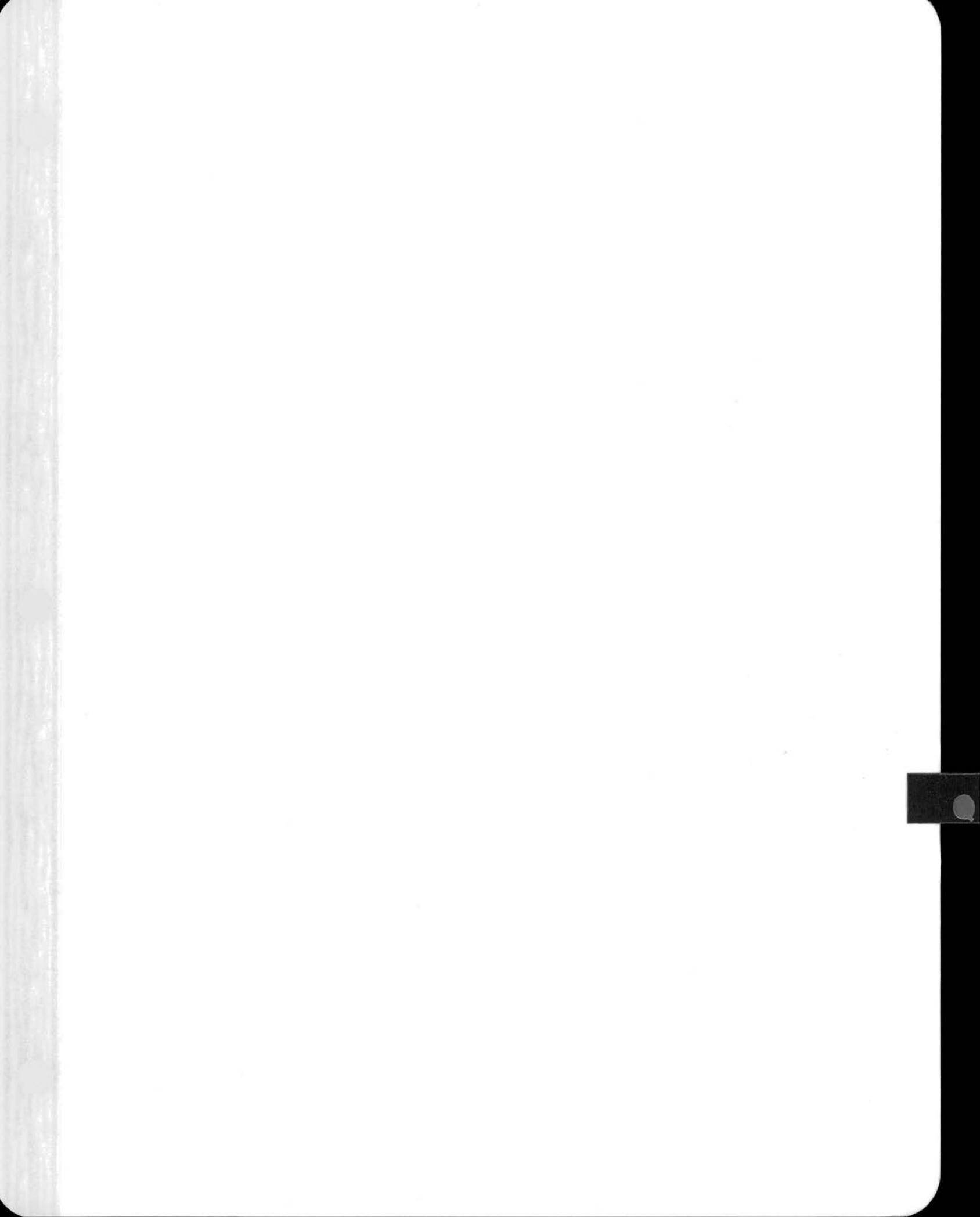


STATEMENT OF ARTHUR PAUL, JUNE 2, 1971

The statement was taken on June 2, 1971 at 8:00 p.m. and witnessed by MacIntyre.

He was with Marshall on the Friday night at Tobins. Junior left to go to the dance.

He saw Junior on Saturday morning about 2:00 or 2:30 a.m. Junior told him that he and Sandy met on the bridge at the Park and there were two guys up on the hill and they were asking for a match. The two fellows asked Junior if he was coloured and he told them he was an Indian. The fellow said he hated niggers and the short fellow with the white hair stabbed Sandy and then stabbed Junior in the arm. They had asked Junior where there were bootleggers and women. He says they also asked them to meet them in the Park tomorrow night.





NOTES OF DECISION OF THE APPEAL COURT ON THE REFERENCE

<u>Page No.</u>	<u>Comment</u>
1	The Reference is made pursuant to paragraph 617(v) of the Criminal Code.
6	The powers of the Court on the Reference are referred to and are contained in Section 613 of the Criminal Code. In particular Section 613(i)(a)(iii) provides for the Appeal being allowed if there was a miscarriage of justice.
8	The Court sets out that if it concludes that the decision of the jury is unreasonable or cannot be supported by the evidence, it must then determine whether a new trial should be ordered or a verdict of acquittal entered.
25	Reference is made to the evidence of Pratico at trial. In particular the fact that on the day following the murder when he talked to Mary Theresa Paul he did not mention Marshall had done the stabbing and also he told Tom Christmas that Marshall did not stab Sandy Seale.
31	Reference is made to the fact that no attempt was made by the Defence to produce evidence of Marshall's blood grouping.
32	It is stated that in order for a jury to reach the conclusion they did it must have drawn an inference that the uncertainties of the accounts of the eyewitnesses and their failure to immediately inform the police of what they had seen had been caused by some pressures brought to bear upon them on behalf of the accused.
34	Of all the evidence given on the Re-Hearing, that of James MacNeil was the most significant and met the test of fresh evidence that could be properly produced. The Court says that MacNeil's evidence was such that if believed it would establish that Marshall had not committed the crime.
35	The Court says even if MacNeil's evidence were not completely accepted, it would permit a Court to say that no jury properly instructed with such evidence before it could reach a verdict of guilty of the offence charged.

REFERENCE (Cont'd)

<u>Page No.</u>	<u>Comment</u>
41	Reference is made to MacNeil's Affidavit (Was this introduced as part of the case).
45	The Court finds the evidence of Donna Ebsary, Gregory Ebsary and A. J. Evers to be highly speculative and by itself not of much force in determining the guilt or innocence of Marshall. It is only to the extent it is consistent with the evidence of MacNeil that it has any independent validity.
47	Reference is made to the statement made by Chant on May 30, 1971. The Court notes that no reference to the statement was made at trial and counsel for Marshall did not know of its existence.
49	The Court says that Chant has changed his story so many times that in the Court's opinion no weight can be placed upon his evidence either at the trial or now. It is noted that his evidence could no longer be of much assistance to the Crown should a new trial ever take place.
49	The Court states that with the consent of counsel for the Crown the Appellant produced an Affidavit in which Pratico indicated he had not in fact been a witness to the actual killing even though he had said so at trial, together with a second Affidavit from a psychiatrist indicating Pratico had been a patient prior to the time of the murder and continues under psychiatric treatment to the present day.
50	Also referred to is the statement which Pratico gave to the Sydney Police on May 30, 1971 and which is attached to the Affidavit of Pratico.
51	There is reference to the statement given by Patricia Harris on June 17, 1971. Reference is also made to Marshall's evidence and the fact that it now includes many facts which if they were known to Marshall at the time of his trial must have been wilfully held back from the Court at that time.

REFERENCE (Cont'd)

Page No.

Comment

- 61 The Court says there is evidence before them to the effect that counsel for Marshall at the time of his trial had no knowledge of the prior inconsistent statements given to the police by Chant, Pratico and Harris. The Court notes it must determine whether the conviction of Marshall is unreasonable, or cannot be supported by the evidence, or whether an injustice has been done.
- 63 The Court notes Marshall obviously is not prepared to admit at this stage that he was engaged in a robbery. The Court notes that Marshall's new evidence "despite his evasions, prevarications and outright lies" supports the essence of MacNeil's story that Seale was not killed by Marshall but died at the hands of Ebsary in the course of a struggle during the attempted robbery. In the Court's opinion Marshall's evidence, old and new, if it stood alone, would hardly be capable of belief.
- 64 The court notes that "unfortunately" MacNeil's evidence was not adequately tested by rigorous cross-examination by Crown counsel. MacNeil's evidence is clearly capable of being believed "even though the various members of this Court may have varying degrees of belief as to some aspects of that evidence". It is noted that the evidence even if much is not believed would make it impossible for a jury to avoid having a reasonable doubt as to whether the Appellant had been proved to have killed Seale. The Court concludes the verdict of guilty is not now supported by the evidence and is unreasonable and the conviction must be quashed. Further the Court finds that the evidence now available, with the denials by Pratico and Chant that they saw anything, could not support a conviction of Marshall and accordingly a judgment of acquittal must be entered in favour of Marshall.
- 65 The Court says that any miscarriage of justice is more apparent than real. Marshall admittedly committed perjury for which he still could be charged. By lying he helped secure his own conviction. He misled his lawyers and presented to the jury a version of the facts he now says is false, a version that was so far fetched as to be incapable of



REFERENCE (Cont'd)

Page No.

Comment

65 (Cont'd)

belief. By hiding the facts from his lawyers and the police Marshall effectively prevented development of the only defences available to him. He now says he knew approximately where the man lived who stabbed Seale and had a pretty good description of him and with this information the police may well have uncovered Ebsary.

66

Even at the time of giving fresh evidence Marshall was far from being straightforward. He continued to be evasive about the robbery and assault and refused to answer questions until ordered. There can be no doubt that Donald Marshall's untruthfulness throughout this whole affair contributed in large measure to his conviction.



EBSARY TRIAL III

LEOTHA SEALE

<u>Page No.</u>	<u>Comment</u>
225	She is the mother of the late Sandy Seale who was a Grade 9 student at the time of his death. He was 17 years old and was 5'7" and weighed 155 lbs.
227	Sandy was wearing a brown heavy jacket of waist length and a white short sleeved T-shirt and a long turtleneck sweater and blue jeans.
228	She next saw Sandy in the hospital and he was conscious. The jacket he was wearing had been given to her husband by the City Hospital and she put it away. Subsequently she gave it to Sargeant Michael MacDonald and she never got the jacket back.
229	Sandy would have caught the bus home at around midnight and he caught it at the corner of Crescent and Kings Road.



EBSARY TRIAL III

OSCAR SEALE

Page No.

Comment

230

He is the father of the late Sandy Seale. He had received a jacket, blue jeans, boots in a plastic bag and took them home and gave them to his wife. He says his son was 5'8½" and weighed between 158 and 162.

231

His son played hockey, baseball, was a good swimmer and was a very good athlete and was very strong. When he saw his son he was conscious. The doctor took him in to see him and he communicated by nodding his head in response to questions. The only questions asked were "Is your name Sandy Seale" and "Do you know your parents". He wasn't asked anything about who may have caused his injuries.









PRELIMINARY INQUIRY

DR. VIRICK

Page No.

Comment

- 51 He knows Donald Marshall.
- 52 He saw Marshall on May 28 at the Outpatients Department and treated him. Marshall had a laceration on the left arm which he sutured. The laceration was approximately 4½ inches in length and it was 7 inches from wrist joint. It was an even cut and there was no bleeding from the cut. That is there was no bleeding at the time he saw the patient. He had already been prepared to receive the treatment. It was not a very deep laceration but it was a superficial laceration. He put 10 stitches in it.
- 53 10 stitches were put in because of the length of the wound. There is movement of the arm so much that there is a possibility of gaping of the edges and to be on the safe side they usually suture quite close so there is no cosmetic defect. He made an appointment for the removal of the sutures but when he went to visit Donald Marshall in jail, he had already removed the sutures himself.
- CROSS-EXAMINATION
- 53 Marshall had already been attended to by some nurse or some doctor in the Outpatients Department before Virick saw him. Usually the only thing a nurse would do is put pressure on the wound.
- 54 That pressure would be to stop the flow of blood. He can't say whether prior to seeing the wound that there could have been blood coming from it. There would be between 12 and 15 days later that he called at jail to remove the stitches. The wound healed nicely. Given the fact that this is along wound if it were self-inflicted, he would expect an element of hesitation, a person couldn't just sit down and make a clean cut wound but would have hesitated a moment or two. Based on his knowledge he would not be of the opinion that the wound was self-inflicted.
- 55 He says the wound could have been self-inflicted.



MARSHALL TRIAL

DR. MOHAN VIRICK

Page No.

Comment

- 24 He saw Marshall on the night of the stabbing. He had a cut on his left arm approximately 7½" from the wrist and approximately 4" long and Virick sutured it. There was no bleeding from the cut at the time he was there and the patient had already been prepared by the nurse.
- 25 He describes the cut as superficial, that is, it isn't a bruise but the deeper tissues, the muscles, etc. are not involved in the laceration. He administered ten stitches under local anesthetic. If it had not been sutured, there would have been a scar and probably infection. He made an appointment to remove the sutures but when he went to see Donald Marshall in jail, the sutures were already removed and Marshall said he had done it himself.
- 26 It's possible the cut could have been self-inflicted. It was the same depth all the way down.
- 25-26 He was confronted on his evidence on the Preliminary Inquiry when he gave the opinion that it was not a self-inflicted wound although it was possible.
- 27 He agrees it is likely that the wound had bled at some time before he saw it.



JURY CHARGE - EBSARY TRIAL I

LUKE J. WINTERMANS

<u>Page No.</u>	<u>Comment</u>
130	He points out that the whole incident only took 5 or 10 seconds and Ebsary didn't have a lot of time to decide what to do.
131	He suggests that Ebsary would expect to be beaten up and his money taken away from him and that would be grievous bodily harm.
134	He says that a defense such as self-defense when it is raised places the burden on the Crown to disprove it.
138	He talks about what Ebsary's intention was. He says his intention was not to cause bodily harm but to stop the commission of an offence (Remember Ebsary didn't give any evidence).
145	He says Marshall is an admitted robber who perhaps spent a little longer in jail than he would have if he had been caught for what he really intended to do that night.



EBSARY TRIAL III

STAFF SARGEANT WHEATON - Voir Dire

<u>Page No.</u>	<u>Comment</u>
66	He is a member of the R.C.M.P. stationed in Halifax and formerly in Sydney. He was the Officer in charge of the re-investigation of the Marshall case. His first contact with Ebsary was on February 22, 1982.
70	He gave Ebsary the normal warning. He read to him the statement which James MacNeil had given to him in 1982.
71	In the MacNeil statement he told of the activities on the night of the murder and the fact that he had observed Ebsary stabbing Seale.
72	He reads notes of a telephone conversation he had with Ebsary on February 22 later in the day and in it Ebsary admitted to stabbing Sandy Seale. His next meeting with Ebsary was on February 23.
73	Nothing was accomplished during that meeting on the 23rd. They did arrange a meeting with the Marshall family as requested by Ebsary.
81	On several occasions Ebsary said he held the key to Marshall getting out of jail.
86	He recalls Ebsary saying words to the effect that he was going to single handedly get Donald Marshall out of jail.

EBSARY TRIAL III

STAFF SARGEANT WHEATON

<u>Page No.</u>	<u>Comment</u>
243	He has been a member of the R.C.M.P. for 23 years.
244	He commenced the investigation of the Marshall affair on February 4, 1982. He interviewed Marshall on two occasions in Dorchester in February and March, 1982.
245	He also took statements from Chant, Pratico, Harriss, Gushue and a number of others. The investigation was done exclusively by the R.C.M.P.
246	He also interviewed Mary, Donna and Gregory Ebsary and as a result of conversation with those people he took possession of certain exhibits.
247	He describes getting the knives from a fruit basket which was on a beam over a workbench in the Mechanic Street home and this was on March 3. He packed the knives in an envelope and forwarded them to the Crime Detection Laboratory in Halifax to be examined for blood.





