

DEC 7th 1969

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: December 7, 1987

Witness: ALEXANDER MUGGAH

Muggah, Prothonotary of the Supreme Court in Sydney at the time of the Marshall trial, testified that evidence from trial was kept in his vault at the court house and was not sent to the Sydney police.

Practice with exhibits was to retain until after appeal and then follow directions of Judge re disposition. Never sent to Sydney police.

If Inspector Marshall examined yellow jacket worn by Marshall on night of stabbing, he must have done so at the court house.

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Date: December 7, 1987

Witness: JOHN F. MacINTYRE (1st. day)

Examination by: George MacDonald

MacIntyre, age 68, Sergeant of Detectives, Sydney Police department in 1971, directed the investigation of Seale stabbing.

MacIntyre's evidence fits into four areas: 1. Personal background and procedures, 2. Detective division and police department procedures, 3. Events prior to Marshall investigation, 4. Marshall investigation.

1. Personal background and procedures:

- Two week course in "all aspects of police work" only formal training before being appointed detective sergeant.
- Appointment as detective based on accountability as well as seniority.
- Appraised self of cases by reading occurrence and crime reports when coming on duty, talked with officers if necessary.

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- Never stood while taking a statement. Always sat and wrote using Q&A method. Everything said by self or other recorded except preamble.
- Never threatened witness with perjury, aware of importance of voluntariness of statement.
- Responsible for work of detectives, guided by talking over the cases with them. Instructed by telling how he did it, e.g. statements.
- Good working relationship with RCMP Ident and GIS.
- Statements taken from juveniles without parents present. If parents available would ask if they wanted to sit in.
- "Not my practice" to add anything to a statement after taking.
- Practice to take statement if person knew anything about a crime, but not always immediately.

### 2. Detective division and Police department procedures:

- ~~Most~~ appointments based on seniority.
- No procedure manual, information passed informally mainly by word of mouth. Patrolmen advised of what they needed to know, Chief and Deputy kept appraised of investigations but not told everything.
- No formal performance review for detectives.
- Cases assigned to detectives according to their availability.
- Other detectives not allowed to question when MacIntyre interrogating a witness, could pass note if they had a question.
- Name cards only available access to police records.
- Statements usually typed only for use in court.
- Patrolmen expected to report all calls on either Crime or Occurrence report sheets, detectives expected to review when coming on duty.
- Report sheets held at desk for few days and then stored in book form. Usually kept about five years.

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### 3. Events prior to Marshall investigation:

- Knew Marshall, "I think he was active in some problems and events going on at the time".
- No recall: why we went to see Joan Clemens about charge of giving liquor to a minor, or other liquor charge.
- No recall: circumstances of gravestone damage
- No recall: interrogation of Marshall, Paul, Christmas about damage.
- No recall: why Marshall charged for gravestone damage after statement of Tom Christmas.
- No recall: previous juvenile record of Marshall.
- No recall: interview of Joan Clemens, Mrs. Clemens being present;
- Recalls: Mrs. Clemens getting in car to help us find Joan.
- Denied allegation of Mrs. Clemens that he told Joan she could be sent to a youth home.
- No recall: Saying "If I don't get him now I'll get him later".
- Believes he got along very well with Natives, Not told that Indian Kids hated him by Ambrose MacDonald.
- No knowledge that O'Reilly sisters harassed.
- Aware some people allowed to sleep off a drunk at the lock-up, believed Indians also allowed.
- Did not know Sandy Seale, knew Oscar Seale.

### 4. Marshall Investigation

- Called after midnight by M.R. MacDonald who told him something about a stabbing in the park, Understood an altercation took place and Seale and Marshall in hospital. Gave instructions and direct MacDonald to call back if there was any trouble.
- Did not speak with Chief, Deputy or Sgt. MacGillvary.

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- Saturday morning went in to office, went to park, believes he reviewed occurrence and crime reports, did not see M.R. MacDonald.
- Thought M.R. MacDonald could have done more and should have been around in the morning but no recall of criticizing him.
- <sup>contradicted</sup> M.R. MacDonald ~~about~~ testimony that he saw and briefed MacIntyre on Saturday
- Some reports were not available until men came back on shift on Saturday evening. Not sure which he saw or didn't see.
- Took charge of the case on Saturday morning.
- No recall: Cst. Green offer of Ident assistance.
- No recall: seeing or talking with Cst. Wood, RCMP.
- No suspects "keeping an open mind".
- Saw Marshall at station, asked him to stay around, no statement taken at that time because "waiting for more information".
- Knew Pratico to see, did not know Chant previously.
- No recollection of RCMP telex.
- No recall of asking for MCIS help and "don't believe I did".
- Did not know of omissions by M.R. MacDonald in the investigation but assumed he didn't do things because "he would have told me if he had".
- Denies assertion by Floyd that he insisted she had been in park.
- No recall of line up.
- Believes he didn't find out about Chant until late Saturday.
- Recall about Chant "not too clear" believes he took him to the park on the way to the station.

DEC 8<sup>TH</sup> 1947

SUMMARY OF TESTIMONY

Date: December 8, 1987

Witness: JOHN MacINTYRE (2nd day)

Examination by: George MacDonald

MacIntyre's testimony can be divided into three categories:

1. Denials, 2. No recollection, 3. Assertions.

1. DENIALS

- Marshall was suspect early and that he did not look for evidence to support Marshall's story.
- Telling Fratico or Chant any information for their statements.
- Mrs. Chant left room during statement taking in Louisbourg.
- Talking with Mrs. Chant about other witness
- Making threats of any kind to Chant.
- He suffered from 'tunnel vision' in the investigation.
- Scott MacKay's interview was four hours long.
- Urquhart present at Scot MacKay interview
- Threats made to Fratico about going to jail
- Telling Fratico that somebody saw him in the park.
- Did not tell Fratico where Chant was supposed to be in the park.
- Did not tell Fratico where he (Fratico) supposed to be.
- Larry Burke who says he was not present at Chant statement taking.
- Magee testimony that Chant was told about contradictory statements
- was warned because he was on probation.
- Telling Fratico to stay away from Christmas and other Indians.

2. No Recollection

- Why Fratico sent for or how he got to the station.
- Fratico's bloody shirt. (would remember)
- Checking on extent of Fratico's drinking on night of stabbing.
- Asking Marshall, Chant or Fratico about Robert Patterson.
- Blockade at Membertou (until 1982)
- If he attached any importance to description provided by Sandy MacNeil or pattern of asking for cigarette noted in his statement.
- Ed. MacNeil saying anything about Marshall as suspect (would remember if it happened)
- How Scott MacKay came to be brought to the station.
- Statement of or appearance at station by Debbie MacPherson.
- Meetings with Crown Prosecutor Frank Edwards prior to preparation of affidavit. (later recalled two meetings)
- Taking Fratico or Chant to the park (must have but can't recall)
- If he took entire file or just last statements of Fratico and Chant when he went Crown Prosecutor.
- Whether he discussed the case with Crown Prosecutor MacNeil once or many times.
- Whether he discussed differences between first and second statements of Fratico and Chant with MacNeil.
- If he advised Crown about attempts to obtain blood sample.
- Butterworth's information. (meet Fratico on Charlotte St.)
- Circumstances about alleged threat of Fratico by Christmas and subsequent charges.
- Of Patricia Harriss and Terry Gushue at station at same time.



3. Assertions

- Pratico, Chant and Marshall kept separate at station on Sunday.
- Took all three statements by himself, took down everything said in question and answer format except brief preamble.
- Robert Patterson looked for but never located.
- Maintained open mind on suspects until after two eye witness statements presented and crown authorized warrant for Marshall.
- Description of two men provided by George and Sandy MacNeil not as important as later eye witnesses
- Cuts and tears on Marshall's jacket and absence of blood consistent with alleged wound made him begin to suspect Marshall.
- Expected Dr. Virik to obtain blood sample from Marshall for him.
- Sandy and George MacNeil statements were in MacIntyre's file which went to the Crown, "I kept nothing away from the Prosecutor".
- Concluded Pratico did not tell all truth in first statement when he visited the park and realized Pratico couldn't see what he said.
- Believed Chant and Pratico both got information for first statements from Marshall.
- Believed Pratico meant near the tracks when he said he was on the tracks in the park when he saw Marshall stab Seale
- Would "have to believe" that Pratico and Chant lied in 1971.
- "I'm saying I didn't tell Chant" information in his statement similar to that contained in Pratico's 2nd statement.
- Did not seek driver of car which returned Marshall to the scene.
- Did not search Marshall or his home for a weapon.

End Day 2, John MacIntyre, December 8, 1987

DEC 9<sup>th</sup> 1963

ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: December 9, 1987

Witness: JOHN MacINTYRE

Examination by: George MacDonald

MacIntyre's testimony can again be divided into three sections:

1. Denials, 2. No recollections and 3. Assertions.

1. DENIALS:

- Presence at first Harriss statement with Urquhart
- Threats of any kind to Harriss or Mrs. Harriss.
- O'Reilly did not say the things written in her statement.
- Ebsary told him about "swipe" at Seale.
- Statement of Greg Ebsary does not contain all that Ebsary told him.
- Ever saw Ratchford at the police station about Donna Ebsary or that Urquhart ever told him that Ratchford was there.
- Ever interrogated by RCMP about his conduct. Ever refused anything out of his file to RCMP investigators.
- Edwards' assertion that he was less than forthright.
- Ever slipped anything on the floor behind my desk as described by Herb Davies.

2. NO RECOLLECTIONS:

- Marshall after arrest saying "I didn't do it". (Cpl. Clark)
- Tearing up Harriss' statements about two men.
- Asking Mrs. Harriss to leave interview room. (none whatsoever)
- About his handwritten note concerning O'Reilly twins
- Testifying at the Grand Jury proceedings, Helping MacNeil prepare the

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Preliminary or visiting the scene with him.

- That Pratico was at the Nova Scotia Hospital between Preliminary and Trial, or how he was transported.

- Assertion in Urquhart affidavit: " 1:20 am I took second written statement from Patricia Harriss in the presence of J. F. MacIntyre."

- Attempt by Pratico to change story in hall of Court House.

- When Lou Matheson arrived or that Matheson told him to interview all in Ebsary family.

- Checking records for Ebsary prior arrest. What Ebsary was wearing.

- Who told him or when told of prior Ebsary conviction.

- Telling Insp. Marshall, Ebsary conviction was trivial.

- Visiting scene with Insp. Marshall. Talking about intoxication of Jimmy MacNeil and Ebsary.

- Telling RCMP Officer Coles about polygraph results when Coles reviewed file in around 1974.

- Inquiry by RCMP Officer Gary Green as result of Dona Ebsary's story.

- What he said to C.S.C. about Marshall when contacted about possible Parole or pass to visit Membertou.

- Being questioned or interrogated by Wheaton, Carroll or Scott, rather just informal meetings at the office.

3. ASSERTIONS:

- Did not believe Harriss statement containing description of two men because it contradicted Gushue statement.

- Did not believe Harriss statement because had info that O'Reilly girl would say Harriss got description of two men from Marshall.

- Urquhart was with me for Gushue statement although his name is not on the handwritten statement.

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- There was no earlier statement by Gushue.
- Gave complete file to Crown Prosecutor MacNeil.
- Agreed with Insp. Marshall report that Jimmy MacNeil is subnormal and slightly mental
- Questions asked of Ebsary family members were "my trend of thought at the time"
- "I (not Matheson) asked for another police force to investigate" after MacNeil accused Ebsary.
- Gave entire file on Marshall and Ebsary to Insp. Marshall.
- Formed the opinion that Marshall's wound was self-inflicted and may have discussed this with Insp. Marshall.
- Didn't believe Jimmy MacNeil's story & may have told Insp. Marshall that it was a 'cock and bull' story.
- "Could have told Insp. Marshall about Marshall getting rid of bandage and taking stitches out of his arm.
- Aware of Polygraph but not sure if he had results.
- Refused support for Police/Community Relations proposal of Indians because he disagreed with some of the assertions in the proposal.
- Took entire file to meeting with Frank Edwards and Insp. Scott, they took documents they wanted I took remainder back to the office.
- Never offered file to Wheaton or Carroll when they visited his office because they didn't ask for it.
- Went to Halifax to see Attorney General, visited Dep. A.G. Gale, because of bad publicity in press about Sydney police being released by someone connected with re-investigation.

DEC 10<sup>th</sup> 1964

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: <sup>DEC</sup> November 10, 1987

Witness: JOHN MacINTYRE (4th day)

In the closing direct examination, MacIntyre agreed that Marshall's conviction was based on testimony of two independent eye witnesses. Counsel MacDonald then gave examples of independent witnesses who related that MacIntyre had acted in a certain way, (e.g. Mrs. Harriss and Mrs. Chant said they were asked to leave the interview of their children; Pratico, Chant and Floyd each said they were told by MacIntyre that another witness saw them in the park). MacIntyre repeated earlier denials of the assertions, and then denied the 'independence' of witnesses in further examples raised by MacDonald.

In response to questions by Clayton Ruby, MacIntyre asserted:

- No recollection of Marshall talking in car after arrest.
- Failure to check NCIS and Ident was not a mistake.
- Did not ask for a post mortem.
- No recollection that Prosecutor MacNeil's summation contained unfounded allegations against Marshall.
- Did not intend to scare Mary or Greg Ebsary when he gave warning.
- It was not unfair to develop a theory about Marshall's blood without first seeking a voluntary sample.
- It was his opinion Marshall's wound self-inflicted.
- His opinion Marshall pass from jail might cause reprisals from Black community.

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- Purpose in opposing Marshall's release was protection of life and property.
- Wheaton should have asked for file if he wanted it.
- Recalls only one visit by Cpl. Coles about Marshall case.
- Considered Harriss statement important when discussing case with Edwards and Scott.
- "I didn't hide anything from anybody."
- "I thought I carried out a very good investigation in 1971."
- "I got concerned about possible criminal charges against me when the news hit the street."
- Comment to Edwards about criminal charges said in jest.
- No recollection of conversation with Oscar Seale about complaint against Frank Edwards.
- Did not drink with D. C. MacNeil to celebrate Marshall conviction.
- Remembers meeting with Mr. & Mrs. Marshall when she got upset, ran out and slammed door.
- Does not remember banging on desk, or throwing things on floor at meeting with Mr. & Mrs. Marshall.
- Did not strike desk during interview with Wheaton.
- Prefers parents be present when interviewing young person if matter is serious.
- Never suggested information to Chant or any other witness when taking a statement.
- I took the inference that Marshall was directing people to tell police about the grey haired man from O'Reilly's statement.
- The Marshall investigation was proper and competent, treatment of witnesses was fair and it was not my fault if anything went wrong.



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In response to questions by Grady Nicholas:

- No recollection that early training contained information about handling minorities or need for translators.
- Not many crimes committed on Membertou Reserve, handled as any place else.
- Detectives not directly concerned with drinking in park. Recalls only a couple of instances where charges under liquor control act were laid by detectives.
- No recollection of girls being stopped and questioned about being with Indians.
- No special training for Sydney police regarding handling of Natives.
- Assisted Native constable get into Halifax school, also held discussions with him about his work on the Reserve.
- Aware of one request for more police surveillance on the Reserve.
- Expressed concerns about Proposal for Police - Native Community Relations Study in a couple of meetings with people concerned.
- No Indian now or ever on police force or Commission.
- No recollection that Community Relations Study brought up at meeting of Police Commission.
- No complaints in my file from Indians when I took over as chief.
- Not aware of courses in Community Relations available.
- Never ran into anyone who didn't understand the 'warning'

In response to Mr. Murray, MacIntyre described Urquhart as a very good, honest and reliable police officer.

In response to questions by Mr. Saunders:

- Never heard about Ratchford going to police with Donna Ebsary until he heard it here at the Hearing.

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- Coles came alone to the police station, no recall of record of his visit.
- Can't recall if he told Edwards or Scott the purpose of meeting with them beforehand.
- Recalls that meeting was long, about 2:00 - 4:30 pm. No notes taken.
- No recall if Marshall file kept in Detective office or Chief's office, Can't recall if he read the file before meeting Scott and Edwards.
- Only 1 file for Marshall and Ebsary and had it with him at meeting.
- Did not tell Scott and Edwards about 1st Harriss statement "thought they knew".
- All Marshall file turned over when letter received from Attorney General ordering it.
- No recall of Edwards saying he needed leave for MacIntyre and Urquhart to appear before the Appeal court. "I was told I was going to appear.
- Did not know that Whalley attended the Appeal until long after.

End Summary Day 4 Testimony John MacIntyre, December 10, 1987.

DEC 11<sup>th</sup> 1987

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: December 11, 1987

Witness: John MacINTYRE (5th day)

Under examination by various lawyers for the parties, MacIntyre added the following information:

1. About the 1971 Investigations:

- Maintained a personal notebook, no recall when it was destroyed, no recall if he showed it to Inspector Marshall.
- Did not make inventory of the file given to Marshall.
- Did not see Marshall's report after the '71 investigation, did not request results from Halifax, did not request some report for his file, Can't recall asking McKinley about it, Can't recall if he was interested in what happened.
- Later found a large manila envelope from George McKinley in his file, Can't recall when or how it arrived there.
- Didn't try to get statement from Marshall after arrest, didn't consider search of Marshall home for knife.
- Sketch of park ordered early in 1st week of June.
- Did not consider search of Ebsary residence, taking MacNeil or Ebsary to the park "because I called the Crown and turned the case over".
- You were the common denominator between Marshall, Pratico and Chant?  
"Correct".

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2. About 1982 Investigation:

- Marshall didn't have to ask for the file in '71 but Scott and Wheaton did in '82 because "that's what took place at the time".
- Inventory made in '82 but not '71 because, "I didn't do it".
- "could have" discussed Chant's statement with Magee in '82, "no specific recall of conversation".
- Did not discuss case with others just Magee because "I might have run into him".
- Did not offer the file to Scott, Edwards, Wheaton. Recalls discussing Chant, Pratico and Harriss with Wheaton, "I don't recall discussing other things".
- Surprised by letter from A.G. ordering turn-over of files but does not recall asking why, complaining, or indicating displeasure, sought advice from city solicitor Mike Whalley.
- Made no notes of meetings with Wheaton, Scott or Edwards.
- Note about reprisals from Black Community in Parole report, "just my view that anything could happen".
- No evidence to indicate that Seale involved in criminal activity.
- No active recruitment of Blacks for police department '71 or later.
- "Can't tell you at this time if there were two copies of everything.
- Retained a copy of the complete file for himself.

End Summary of Testimony, John MacIntyre, (5th day) Dec. 11, 1987.