

I N D E X

VOLUME 11

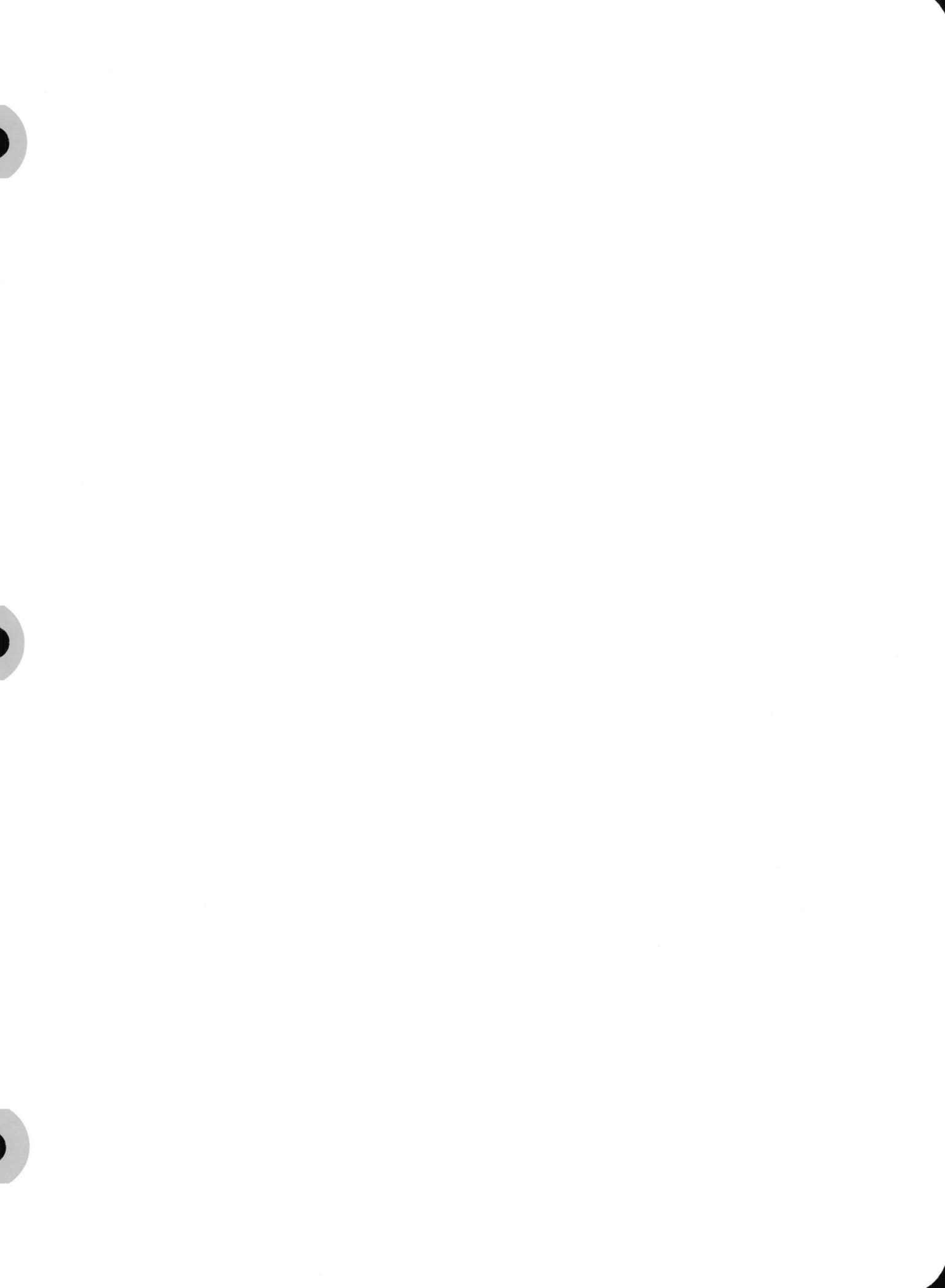
ROY EBSARY -----PAGES 1 - 3

JAMES MACNEIL -----PAGES 4 - 168

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MEDIA POOL COPY



CONTINUATION REPORT

RCMP 2 26

AGE	SUBJECT	CASE No.
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C O P Y

Nov. 15th, 1971 - 9:15 P.M.

Statement of Ray Ebsary, age 59 yrs., residing at 126 Rear Argyle St.
Sydney - Warned:

I remember one night myself and Jimmie McNeil were at the State Tavern. We were going home down George St. across the bridge in Wentworth Park up to Crescent St.

Q. what happened
we

A. When we were almost over to the corner of South Bentinck St. 2 chaps who were behind us came around the sides of us and asked us if we had cigarettes and if we had any money. We told them we didn't. They asked us to turn out our pockets so we turned out our pockets. The short fellow tried to take my ring off my finger while the tall fellow had his arm around the other fellows throat (Jimmie) and had him on the ground. When he tried to get my ring I was not well. I tried to wrestle him. He slung me onto the ground. I made a kick at him and he got up and ran off. I went over to see how Jim was getting along with the other fellow and he dropped Jim and ran off with the other fellow.

Q. Did you stab the man you were wrestling with

A. Hell no. Why would I stab him

Q. How old were these fellows

A. Young men - one fellow was tall. I had to look up at him

Q. What were they wearing

A. I would not be able to tell you

Q. What nationality were they

A. I believe Canadian. I asked them where they were from when they asked us for the money and they said Truro

Q. Were they white or colored

A. Well the tall fellow I seen him face - I thought he was white

Q. What about the short fellow

A. I would say he was white too

Q. Where did you go then

A. I went home

Q. Where did Jimmie go

A. he went to my place for a few minutes and then he went home to Hardwood Hill

Q. When did you see Jimmie again

A. The next day - him and his father

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CONTINUATION REPORT

RCMP 2 26

SUBJECT

CASE No.

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Q. Did he tell you the Scale Boy had died

A. No. I can't recall

Q. Do you carry a knife

A. No

Q. Does Jimmy still come to your house

A. No. I have not seen him for a long time. He was not a regular caller at my house

Q. Have you being to his house

A. Once

Q. Can you tell me when this disturbance took place on Crescent St.

A. After 11 P.M.

Q. What month

A. In May, the same night this boy was stabbed

Q. What were you wearing that night

A. A reversible top coat - blue.

Signed: Roy N. Ebsary

Witness: Det. Sgt. M.J. McDonald

Nov. 15th - 10:10 P.M.

By: Sergt. Det. John F. MacIntyre.

Statement of: Roy Newman EBSARY (B: 2 JUNE 12) 3
16 Falmouth St., Sydney, N.S.

Taken: 23 FEB 82 at Sydney, N.S.

RCMP 2 24

Q. What can you tell me about the SEALE murder.

A. As far as I was concerned it was an ordinary night. We were robbed and had to defend ourselves.

Q. How did you defend yourself?

A. We were held up by two muggers, who demanded all our money or whatever the hell we had in our pockets, I shelled out everything I had in my pockets but the other fellow was fighting with MARSHALL, do you see the point? MARSHALL was giving him a hard time, he had a reputation for that, all Sydney knows that. MacNEIL told me before this happened MARSHALL had robbed him before, beaten him up on Hardwood Hill. You arrange for an interview with Mrs. MARSHALL and I'll tell her the truth, I was a witness to the stabbing.

Q. Are you going to implicate yourself?

A. If necessary, yes.

Q. Do you know what that means?

A. Yes, it means that I'm willing to go all out to prove MARSHALL did not stab SEALE.

Q. Are you prepared to say or admit you know who did stab SEALE?

A. Yes, I'll tell his mother.

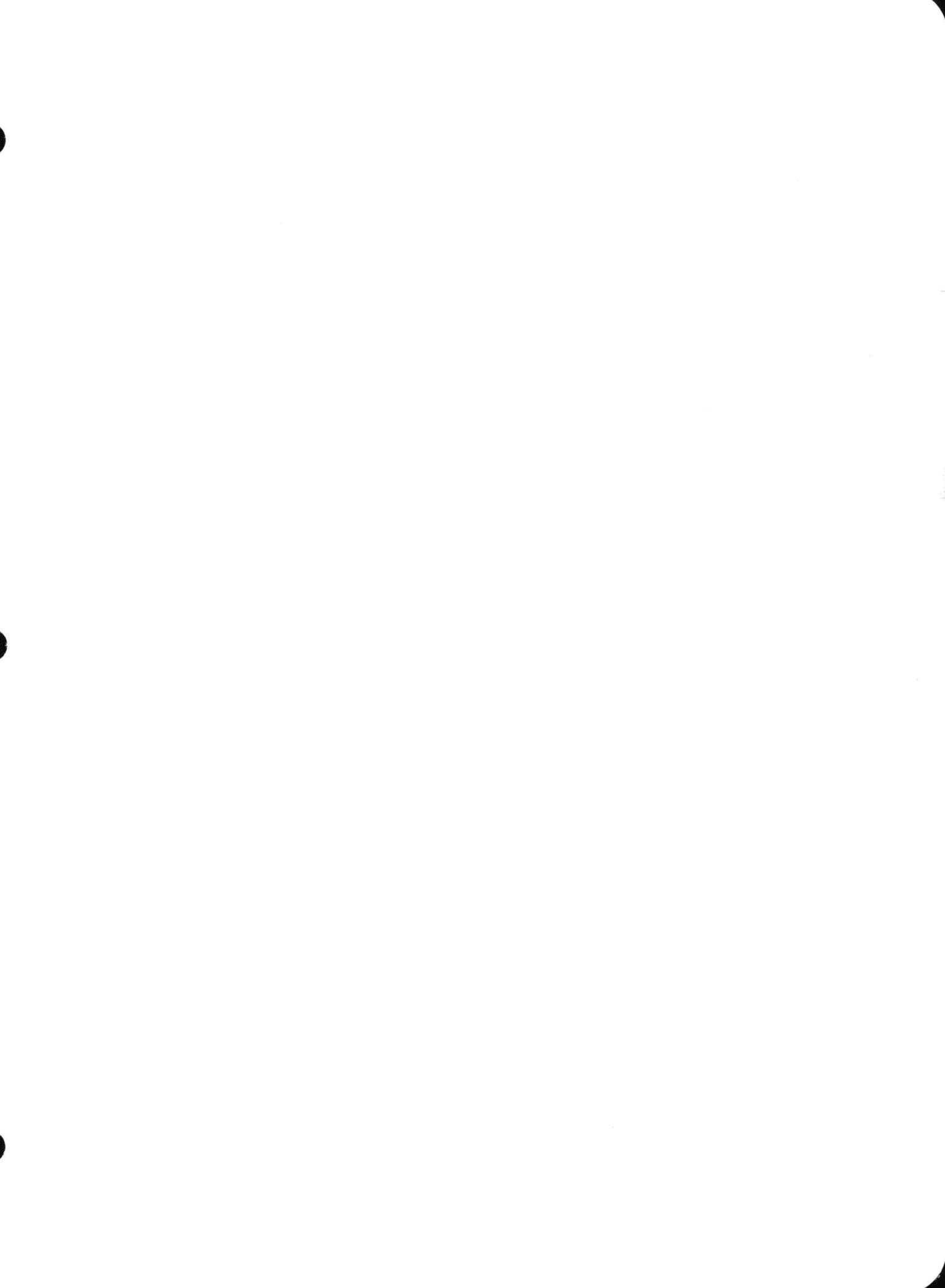
Q. Are you saying you are responsible?

A. No, I'm not saying I'm responsible, I'll convince her, her son didn't. Before I could make a statement like that I should see a lawyer.

Signed by:
R.N. EBSARY

Witness: Cpl. J.E. CARROLL

12:16 PM



CONTINUATION REPORT

RCMP2 51

OFFICER	SUBJECT	CASE No.
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C O P Y

Nov. 15th, 1971 - 7:25 P.M.

Statement of James William McNeil, age 25 yrs., residing at 1007 Rear George St., Sydney:

Myself and Roy Ebsary were at the State Tavern, George St., Sydney, late in the evening in May of this year. We were there about an hr. or so. We left. We walked down George St. and took the short cut through the Park (Wentworth). We came up to Crescent St. and while walking along Crescent St. we were approached by an Indian & 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

Q. What side

A. The left hand side of the colored fellow. I seen Roy's hand & knife full of blood

Q. Did you see the Indian being stabbed

A. No. I did not

Q. What happened then

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

Q. Did you ask him why he done it

A. Yes, he said it was self defence

Q. What time did you get home that night

A. About 12 P.M.

Q. How long were you at Roy's house that night

A. About 1 hr. after that

Q. When did you see Roy again

A. The next day I went to his house. He was laying in bed. I told him that fellow died

Q. What did he say

A. He said it was self-defence. I told him he did not have to kill him. He told me he had 2 children - a girl and boy and not to say anything to the police. I left then.

Q. Who seen you at the house besides Roy

A. His wife, daughter & son.

Q. Did they say anything to you then

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CONTINUATION REPORT

RCMP 2 51

SUBJECT

CASE No.

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A. No. Not that day. About 2 days after than his son, about 18 or 19 yrs old came to my house with his car. He drove me out to the Wandlyn Motel - He went in the motel and his mother came out to the car. She got in the back seat. He got in and she said don't go to their house any more 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. They will have to go to Court

Q. Was his mother present when he said that

A.No

Q. What were you wearing that night

A. I was wearing a college coat - blue with 2 white marks on the sleeve

Q. What was Roy wearing

A. A black shawl over his shoulders - something like a priest wears over his shoulders

Q. When did you tell somebody about this

A. The first one I told was my mother. She noticed I was not sleeping; and walking around since the trial. She asked me and I told her about the stabbing and Indian man was in jail for something he did not do. It isn't fair. Then I told my brother Johnnie last night. He told me to go to the police

Q. Did you know Marshall or Seale that night

A. No.

Signed: James MacNeil

Witness: Cpl.G.A.Taylor

Nov. 14th - 8 P.M.

By: Sergt. Det. J.F.MacIntyre

RE: OBJET

PAGE 1

Statement of: James William MacNEIL
222 Mt. Pleasant St., Sydney
B: 25 Jun. 46

RCMP 2 50

Taken: 82-02-08

"ATTACHMENT # 14c"

I remember the SEALE murder. That night Roy EBSARY and I were at the State Tavern on George St., Sydney. We left and cut through the Park to go to Argyle St., to Roy's house.

On Crescent St., two fellows came up on us from behind. They asked us for money. I heard one fellow the colored fellow or the Indian guy say dig man dig.

All I remember is that the colored fellow sort of ran and then flopped on the road. I think the colored fellow was in front of Roy. We walked kind of fast away to Roy's. We went in the house. I'm pretty sure I saw him wash the knife off in the sink. I can't remember if he had any blood. I told this to the Sydney City Police and R.C.M.P. I was nervous and shook up about this. Roy stabbed the negro and sort of come at the Indian.

(Signed by:)
James MacNEIL

Witness:

R.D. MacQUEEN, Cst.

H.F. WHEATON, S/Sgt.

S.C.C. No. 00580

IN THE SUPREME COURT OF NOVA SCOTIA,
APPEAL DIVISION

IN THE MATTER OF A REFERENCE PURSUANT TO SECTION 617 OF THE CRIMINAL CODE BY THE HONOURABLE JEAN CHRETIEN, MINISTER OF JUSTICE, TO THE APPEAL DIVISION OF THE SUPREME COURT OF NOVA SCOTIA UPON AN APPLICATION FOR THE MERCY OF THE CROWN ON BEHALF OF DONALD MARSHALL, JR.

AFFIDAVIT

I, James William MacNeil of 222 Mt. Pleasant Street, in the City of Sydney, County of Cape Breton and Province of Nova Scotia, make oath and say as follows:

1. That on Friday night, May 28, 1971, I was in the company of Roy Newman Ebsary at the State Tavern on George Street, Sydney where we had been drinking beer.
2. That we left the said Tavern together and proceeded along George Street to Wentworth Park in Sydney, at which time we walked through the Park to Crescent Street.
3. That at about 11:50 P.M. on May 28, 1971 as the said Roy Newman Ebsary and I walked along Crescent Street, we met two individuals, one black youth and one Indian youth, who, by word and action attempted to rob us.
4. That Roy Newman Ebsary was facing the black youth, at the time referred to in Paragraph 3 herein, and putting his right hand into his right coat pocket removed a knife, which without warning, he thrust into the left side of the black youth, at which time the black youth attempted to run away, but collapsed to the ground.
5. That the said Roy Newman Ebsary then attempted to stab the Indian youth, but was not able to prevent the said youth from leaving which he did immediately.
6. That I believe the person, referred to as a black

RCMP 23

CARROLL: It is 11:50 AM, the 29th day of October, 1982. and Roy Newman EBSARY and I are seated at his kitchen table.

EBSARY: Capt. Roy EBSARY - don't forget that.

CARROLL: At 68 Falmouth Street, Sydney, N.S.

EBSARY: Right.

CARROLL: I am here at the request of Capt. EBSARY, who requested that I produce a tape recorder and a fresh tape for the purpose of discussing an incident that happened in Wentworth Park in 1971, which resulted in the death of a

EBSARY: Sandy SEALE.

CARROLL: Sandy SEALE.

EBSARY: Yeah.

CARROLL: Now, Capt., before we go any further, I have to give something that is called a Police Warning it is as follows:

EBSARY: Right. Go ahead.

CARROLL: You need not say anything. You have nothing to hope from any promise or favour and nothing to fear from any threat whether or not you say anything. Anything you do say may be used as evidence. Do you understand that?

EBSARY: Yes.

CARROLL: Now, also, with the new Bill of Rights, you realize that you are entitled to counsel and it's, the wording of that is, you have the right to retain and instruct counsel without delay, now...

EBSARY: Right.

CARROLL: Do you understand that?

EBSARY: Yes.

CARROLL: Do you wish to have your lawyer...

EBSARY: I, do you know what I call my lawyer? A dimwit.

CARROLL: Okay.

EBSARY: Alright.

CARROLL: I'm not going to ask any questions. I'm just going to make sure the machine is working properly.

EBSARY: Right, okay.

CARROLL: And the incident...

EBSARY: Now I've got to go back eleven years. I've got to try to remember eleven years back.

CARROLL: I wonder if perhaps you can close that window, it might keep the sound of the traffic out.

EBSARY: Okay.

CARROLL: Now, you just say whatever's on your mind and I'm here to listen.

EBSARY: Okay. I remember the night vividly. Is this going on tape?

CARROLL: It's all going on tape.

EBSARY: I remember the night vividly. It was a kind of misty night, a fine rain was falling, so I had to take off my glasses, but I can't see very well anyway, but with the glasses off, I couldn't see at all. So, I went over to visit Mr. O'NEIL. Now, not the young O'NEIL, his father, and we sat and we consumed, it was a few days before my birthday, so, the wife bought me a couple bottles of wine, so naturally, I put the two bottles of wine in my pocket and I went over to visit Mr. O'NEIL. His son wasn't home, so, okay, we consumed one bottle of wine, Mr. O'NEIL and I, then his son came home and we consumed the second one. Now then, when I was about to leave to go home, the boy said he wants to go down to the State Tavern to meet someone, I don't know who, but he didn't have any success because (talking to his animal), "Now darling, now darling", ah, so we decided to go home and we walked, let me see, we, we must have came up George and I've gone through the park several times with the police, but Went...Wentworth Park at that time, Cres...Crescent Street at that time was one of the darkest areas of the city, it was. There was no lights there, right. So, when the police asked me down there who attacked me, I wasn't able to, I wasn't able to even tell them the color. I said two men attacked me. Okay, he turns around and he says to me, give me everything you've got in your pocket, and I gave him everything I had in my pocket, but when I put my hand in my pocket, I discovered I had a pen knife. Now it was only a pen knife. It was no knife that you took from my home and it was a pen knife and that pen knife was given to me by young Jacques BRITTAN, a young Frenchman that the authorities here had placed in my care, and I was training him to be a cook, and he wanted, he said he wanted to live somewhere where there was a family, so I took him home with me, okay? But he gave me this pen knife. The blade was about three inches long, three inches long, so, when this bastard

EBSARY: said to me give me everything you got in your pocket, I said
(cont'd) listen, you fucker, you're going to get everything I got in
my pocket. So I gave him everything I had in my pocket, every-
thing, my watch, my ring, but the fucking knife was in my
fuckin pocket and I opened it in my pocket and I said brother,
you asked for everything, you're going to get everything and
I gave him everything. Now, the blade was that small that that
boy that night, ran, he ran. In the meantime, MARSHALL was
strangling the other boy across the road, that young O'NEIL,
because MARSHALL was a thug and so was SEALE. So thugs become
heroes and honest men become what? Honest men become what?
You don't know, I do. Okay. How am I doing?

CARROLL: Just fine.

EBSARY: Have I got all my marbles?

CARROLL: I'm not going to shut the tape off Capt., I'm just going to let
it roll. Is there anything further you want to add there as to
what happened from that point on?

EBSARY: Now listen, young SEALE that night ran, he ran. Now listen, I
was only about fifty feet from South Bentinck to Crescent St.
Fifty feet, but he ran the whole length of that bloody street,
so I don't think the boy was hurt, I didn't think the boy was
hurt, but the next morning, young O'NEIL came to my house and
he said EBSARY, do you know a young fellow was killed in the
park last night? Well, I said he must have had bad luck, he
must have had bad luck, he took us for all we had, but he must
have bumped into somebody who gave him the works. Now I didn't
believe I did it. I couldn't convince myself I did it. Do
you understand that?

CARROLL: Yes.

EBSARY: You do? Honest to God?

CARROLL: Now there is one thing that you mentioned in your remarks there,
you say that the young fellow was SEALE, asked you. Did you
mention SEALE's name, or did you say the young fellow?

EBSARY: The young fellow.

CARROLL: Did you know him as SEALE before or later?

EBSARY: No, no, I never knew him before or later, I never knew MARSHALL
before or later. I wouldn't know MARSHALL if I, if I met him
today.

CARROLL: You say he asked you for everything you had in your pockets...

EBSARY: Right.

CARROLL: And you gave it to him.

EBSARY: Right, right.

CARROLL: What did you mean by giving it to him?

EBSARY: He said I want everything you got in your pockets, now, I've been mugged before coming through that park, umpteen times, but I never complained to the police, what in the hell was the use, but when he said give me everything you got in your pocket, when my hand felt the knife and it was only a pen knife, it wasn't one of the knives you took from my home.

CARROLL: What actually happened to the knife, what did you do with the knife?

EBSARY: I know where the knife is.

CARROLL: No, I mean on that particular night, what did you actually do with the knife, when he asked for what you actually had in your pockets? You opened the knife blade you say?

EBSARY: Right.

CARROLL: What actually, what motion did you make then?

EBSARY: I stuck the knife in the ground.

CARROLL: Not in, not in Mr. SEALE?

EBSARY: No, I stuck the knife in the ground. Now the people who say they saw me wash blood off that knife were telling bloody lies, because you stick a knife in the sod and there's no blood on the God damned knife is there? Is there?

CARROLL: It would depend on various circumstances.

EBSARY: Well, okay, okay, okay, you have it your way, you have it your way old man, you have it your way.

CARROLL: So, you're not saying you defended yourself or stabbed Mr. SEALE.

EBSARY: Yes, I did defend myself, sure I defended myself, what the hell else was I supposed to do?

CARROLL: Well, I'm not here to criticize your right to defend yourself, Captain, but in fact when you took the knife out of your pocket, what did you do with it before you stuck it in the ground?

EBSARY: I made a swipe at SEALE.

CARROLL: What particular part of his anatomy did you swipe at?

EBSARY: I don't know, I don't know. I told you, I was after consuming two bottles of wine. I just made a blind swipe, but he ran.

CARROLL: Would you say the upper part of his body, from the head down to the waist or from the waist down, or...

EBSARY: Probably I got him, probably I got him in the guts, probably I got him in the guts.

CARROLL: Was it just one blow?

EBSARY: One blow.

CARROLL: And then he left.

EBSARY: Right.

CARROLL: And at this time...

EBSARY: Now I asked you one time before, how many times was SEALES stuck.

CARROLL: What was my answer then?

EBSARY: You said once.

CARROLL: Right, that's what I'm saying today, to the best of my knowledge, only one blow.

EBSARY: Right.

CARROLL: And at this time, MARSHALL was fighting with McNEIL.

EBSARY: Yes.

CARROLL: You say strangling McNEIL?

EBSARY: Yes, strangling McNEIL. So you know what I did? I had, I still had the knife in my hand, so I ran across the road and I stuck MARSHALL in the arm.

CARROLL: Do you know what arm, can you recall?

EBSARY: No, I don't know, all I...

CARROLL: Upper part?

EBSARY: All I, all I know was he was strangling young McNEIL, and I tried to defend young McNEIL so I, I let MARSHALL have it.

CARROLL: And in the arm you say?

EBSARY: Right.

CARROLL: More than one blow or...

EBSARY: No, one, one.

CARROLL: And he did what, after that?

EBSARY: He dropped him and ran.

CARROLL: Left you alone?

EBSARY: Right. So young McNEIL and I went home, but young McNEIL was that upset, I was going to start the Bar-B-Q and I did. I broke out a few steaks. I tried to light up the Bar-B-Q, I told you it was slightly raining, right?

CARROLL: Capt., were you working then at a local hotel?

EBSARY: No, I was retired.

CARROLL: Retired?

EBSARY: Right.

CARROLL: All right, now the rest of the facts, you say you heard about the death of SEALE the following day?

EBSARY: Yes, because young McNEIL, O'NEIL, whatever his name was...

CARROLL: Is that James McNEIL you're referring to?

EBSARY: Well, I don't know the...

CARROLL: Jimmy?

EBSARY: Yeah, the young fellow.

CARROLL: Jimmy?

EBSARY: Right. He came down to me to see me this morning and brought his father with him, and his father went down and bought two bottles of wine.

CARROLL: This is the day after?

EBSARY: This is the day after. Okay, now I had a white chicken, this may sound comical to you, but at Easter time, they brought my daughter, young Donna, a little white chicken and I reared her until she became a full grown hen and she used to lay a double yolk egg and I used to call her Mabel, and every time I'd go out that door, she knew me, boy...

CARROLL: Where were you living at this time?

EBSARY: I was out at 46 Mechanic Street.

CARROLL: Mechanic?

EBSARY: An, no, no, no, no, no, I was living at 46 Rear Argyle.

CARROLL: Rear Argyle.

EBSARY: Yea, right, yea, yea.

CARROLL: Okay, so you heard about it the following day...

EBSARY: Right.

CARROLL: And, I suppose you read about it in the papers and

EBSARY: No, I didn't even bother, I don't read the papers. I don't listen to the radio.

CARROLL: At any time later on did you realize that this could have been the person that you fought with in the park, I don't mean by a lengthy fight, but ah, the robbery or whatever.

EBSARY: I told you, to me it was only an incident.

CARROLL: You had been mugged there before, you say?

EBSARY: Yes, you're damned right I've been mugged there before.

CARROLL: And have you had to defend yourself before?

EBSARY: Right

CARROLL: Or did you just give in?

EBSARY: Gave in, I got beat up.

CARROLL: Okay, so...

EBSARY: But I swore by my Christ, I swore by my Christ that the next man that struck me would die in his tracks.

CARROLL: Okay, at what stage, if at any stage, did you realize that SEALE probably died as a result of the encounter you two had?

EBSARY: No, no, 'cause I'll tell you why. Why didn't MARSHALL go for assistance right away when he realized that SEALE was wounded? Why?

CARROLL: I don't know.

EBSARY: You don't know. Why didn't he? If you had a pal and that pal was hurt, wouldn't you go look for help? Would you? You're that type of man to me, and so would I. But he didn't.

CARROLL: Okay so just in conclusion then Capt., at what stage did you feel that well, I will put it a different way. Did you feel as days went on, or months or weeks went on that MARSHALL was being blamed for something he didn't do or...

BSARY: No, I didn't, no, because you know what I thought. I thought MARSHALL finished SEALE off. Yes, because it was very easy, very easy to put a knife into a wound, because the rip that that guy got in the guts didn't come from a three inch knife. It was impossible. Now I read the doctor's statement. That boy's guts were torn up. Now I read that much and I knew that a three inch blade couldn't a done it, so I said MARSHALL, I convinced myself that MARSHALL had finished SEALE off, to shut him up.

ARROLL: Do you still believe that now?

BSARY: Yes.

ARROLL: Do you?

BSARY: Yes, yes, I still believe it. I still believe it. All the lies that were told. MARSHALL was lying right and God Damned left.

ARROLL: The robbery never came out in the evidence of the court, at the trial did it?

BSARY: No, no, no.

ARROLL: Or the attempted robbery, I should say.

BSARY: Right. Nothing came out, nothing came out.

ARROLL: Well, would it be fair to say that you still believe that today, that your blow to SEALE did not result in his death?

BSARY: It was impossible for a three inch blade to do the damage the doctor said happened to, SEALE's whole inside was torn up.

ARROLL: Right.

BSARY: Now a three inch blade couldn't a done that.

ARROLL: I just have one final question I'm going to ask you and that is why have you decided to tell me today what we have just discussed now? Is there a reason? Do you feel obligated, or...

BSARY: Yes, yes, I do feel obligated.

ARROLL: Could you explain that to me, this will be the final remarks.

BSARY: Yes, I've served time in the slammer too, and I only spent a few months there, nine months, but I realize what young MARSHALL must have gone through, eleven years (crying).

ARROLL: Eleven years. Okay, so...

EBSARY: So what?

CARROLL: We have discussed this briefly before the tape was on as to what was to be said here this morning and you realize that anything, that anything that we have discussed and reduced to the tape recording...

EBSARY: Right

CARROLL: Must be accurate...

EBSARY: Right

CARROLL: Anything that is false is...

EBSARY: But there's nothing false.

CARROLL: I say it could be damaging to various causes.

EBSARY: Listen, I'm telling you the truth. I'm levelling with you. I told you I never broke a word to, I never broke my word to any man in my God damned life. Why should I break my word to you?

CARROLL: Okay, just before I turn the tape off now, is there anything further you care to add as to why this information has been kept for eleven years? I mean, in your own opinion...

EBSARY: I told you, it was only an incident, it didn't matter to me, boy, one way or the other. You know what I mean?

CARROLL: Yea, so you're saying that a robbery was attempted and you defended yourself?

EBSARY: Right.

CARROLL: And then the incident happened after that?

EBSARY: Right and that was it. It was only an incident as far as I was concerned.

CARROLL: Okay, it's 12:08 P.M.

EBSARY: Okay, boy.

CARROLL: And I'm shutting off the tape now.

EBSARY: Are you.

CARROLL: It's now 12:15 p.m. on the 29th of October 1982.

EBSARY: Right.

CARROLL: Captain, you expressed a desire to have something recorded here concerning the disposal of the knife that you were carrying on the night when SEALE was stabbed.

EBSARY: Right, so that any knife that was taken from my people's home wasn't involved. Now, listen what about, what's all this shit about a knife and the fibres that your so-called scientists came up with. Now that's a lot of shit.

CARROLL: The thing that you wanted recorded here was the disposal of the pen knife as described.

EBSARY: Right.

CARROLL: Would you care to expound on that?

EBSARY: Yes, I'll expound on it.

CARROLL: Ah, where is it now... oK....

EBSARY: I think myself that if I was to go back to that spot and stick a spade down into the ground I know exactly, it was right in the corner of the garden, that's where the blade went. The handle went across the field.

CARROLL: This is what address now, where are you referring to?

EBSARY: Rear Argyle.

CARROLL: Rear Argyle.

EBSARY: Right.

CARROLL: Is there a street number there?

EBSARY: Let's see, I don't know if it was 56 or 86, I don't know what the hell it was. My memory's not too clear on that.

CARROLL: Right. Would you be willing to show me the garden plot?

EBSARY: Yes, you're bloody right.

CARROLL: At some convenient time?

EBSARY: Yes, any time, any time you like kid.

CARROLL: All right and you say only the blade is buried there?

EBSARY: Right.

CARROLL: Approximately, how deep in the ground?

RCMP 23

EBSARY: Possible six or seven inches.

CARROLL: Right, okay then, perhaps we can have a look for that at some convenient time for you.

EBSARY: All right.

CARRCLL: All right, I'll shut this off once and for all then.

EBSARY: Good.

CARROLL: And the time is 12:17 P.M.

Roy Newman EBSARY

WITNESS: Cpl. J.E. CARROLL

12:17 PM

82-10-29

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JAMES WILLIAM MacNEIL, being called and duly sworn, testified as follows:

BY MR. ARONSON: Direct Examination

Q. Mr. MacNeil, could you please state your full name and address?

A. My full name is James MacNeil. I live at 222 Mount Pleasant Street, Whitney Pier.

Q. And where is that? Is that in the City of Sydney?

A. That is in the Sydney of Sydney.

Q. And are you employed?

A. Right now I'm laid off.

Q. I see, what trade do you have?

A. I have like maintenance, just labour like. I have a document here. This is the -- I don't know if you care to see it or not --

Q. That's all right. I don't think --

A. This is the last place I worked, okay. This is my document for the last place, Keddy's Motor Inn.

Q. Okay, thank you. Now what's the last grade in school that you completed?

A. Grade six.

Q. How old are you now?

A. I am thirty-seven years old.

Q. And were you born in Sydney?

A. Yes, I was. I was born in Sydney.

Q. And you lived in Sydney all your life?

A. All of my life, yeh.

Q. Are you married?

A. No, I'm single.

Q. I see. Do you --

A. No, I have to -- I'm living common law. Like, I'm living with a woman.

Q. Can you recall at all the events which occurred on the

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night of Friday, May 28th, 1971?

A. Well to my best of knowledge, I and Mr. Esabary were drinking at --

Q. Excuse me, before you start into it, I'm wondering if you might just indicate whether you recollect the events.

A. What do you mean by that like?

Q. Do you remember what happened?

A. Up to -- yes, I remember what happened. Yeh.

Q. Okay. Do you recall where you were around eight or nine on that particular evening?

A. I was at the State Tavern on George Street.

Q. And where is that located?

A. That is located on George Street.

Q. And that's in the City of Sydney as well?

A. In the Sydney of Sydney as well, yeh.

Q. Is that particular tavern still in operation today?

A. That tavern is closed down I believe. No, it is not in operation.

Q. Now can you say what time you arrived at the State Tavern?

A. I would say we arrived around eight o'clock in the evening. I would say.

Q. You say "we"?

A. Yeh, me and Roy. Oh, not me and Roy. I mean to say that's where I met Roy that evening.

Q. And you've indicated Roy. Roy who?

A. Roy Esabary.

Q. And when did you meet him?

A. Prior to that or like --

Q. Well did you meet him in the tavern or outside the tavern?

A. I met him in the tavern.

Q. I see. Had you known prior to that that you were going

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to be meeting him there or was it purely by accident?

A. Just purely by accident.

Q. Had you known Roy Ebsary prior to meeting him at the State Tavern?

A. Yeh. Yeh.

Q. How long had you known him for?

A. I guess I knew him for about two or three months before that.

Q. Had you met him at the State Tavern before that particular night?

A. Yes, I had met him there, yeh.

Q. And do you know where Roy Ebsary lived?

A. He lived on the rear of Argyle Street.

Q. And you ever been to his home before?

A. Yes, I had been to his home on a few occasions.

Q. Now while you and Ebsary were at the State Tavern on that particular Friday night, what were you doing?

A. We were just sitting down drinking, having a few glasses of beer and talking.

Q. How much would you say you had to drink?

A. I'd say about seven or eight glasses of beer.

Q. And over what period of time would you have had that quantity?

A. Oh, between around eight until around eleven or ten-thirty. Something like that.

Q. I see, and can you say how much Roy Ebsary had to drink?

A. I can't tell you how much he had to drink that night. Like I wasn't counting the glasses but I figure he had probably the same as I'd done. There might be a glass in the difference or something like that.

Q. Now had you had anything to drink prior to going to the State Tavern?

A. Prior to going to the State Tavern, no.

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Q. Can you recall what time you left the State Tavern?

A. I can recall -- I'd say around between ten-thirty and eleven o'clock or something like that. Like, you know, like --

Q. How certain are you about the time?

A. Well you know like I just -- I'd say about eleven o'clock. I would say.

10) Q. Could you have left a little later than that?

A. No, I don't believe, no. I don't think.

Q. Did you leave in anyone's company?

A. In Roy Esabary's company.

Q. And was there anyone else with you aside from Roy Ebsary?

A. Nobody, just the two of us.

Q. Now can you give us a physical description of what Roy Ebsary looked like around that time in May of '71?

A. Would you repeat that question there please?

Q. Could you describe Roy Ebsary as you recall him in 1971?

(20) A. Well he's about kind of stocky and kind of like a hunch, like a little -- like a little hunchy back, kind of stocky. He's not real tall, you know. He's kind of like stocky and --

Q. Could you estimate how tall he was?

A. I'd say he's -- he's roughly about five foot seven, I guess, if that.

Q. And do you recall or can you say what age he was?

(30) A. I guess he was in his -- wait now, I'm not very good at judging age. Let's see what age he was. Oh, he was about sixty or around sixty years or something like that, I would say roughly.

Q. Are you able to say how he was dressed on that particular night?

A. Well, I believe he was -- he had a white -- he was wearing like a shawl, eh, a shawl over his shoulders and

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I think he was wearing like a sports coat. You know like a jacket and I -- I can't remember the colour of pants that he had on, like, you know.

Q. Are you able to say what colour the shawl was that you've referred to?

A. It was black. I'm positive that it was black.

Q. Now what happened after you and Roy Ebsary left the State Tavern?

A. After we departed from the State Tavern, we went -- we walked down -- we took the shortcut about three blocks. We cut through the park and we went over the bridge in the park and when we come up -- you come up -- automatically you come up like on Crescent Street, eh. It's a street and we crossed over to the other side of the road.

Q. Okay, now, let's go back to your leaving the State Tavern.

A. Okay.

Q. How far would it have been from the State Tavern to where you entered the park?

A. What do you mean, like walking?

Q. Walking.

A. Walking distance. I would say it would be roughly around five, six, seven minutes. That's -- would be roughly.

Q. And after you arrived at the park and approached the bridge, what happened then?

A. Then we went up and we went up to like the top of the hill. Like I said we were crossing over the street and we were -- we were approached by this coloured youth and this Mr. Marshall. At that time I remember I recall that Mr. Marshall put my hand up behind my back like that, eh, and I remember I kinda like panicked because I -- in a situation like that, you get "stensafied"

or something like that but I remember the coloured fellow asking Roy Esabary for money. He said, like, "Dig, man, dig." and he said, "I got something for you." and then he -- I just heard the coloured fellow screaming and everything was so you know, like, "tensafied" and every darn thing and I seen him running and flopping. I seen him running and flopping.

- Q. Okay. As you're walking through the park -- let's go back a bit to after you'd entered the park and bring you up to the scene. Did you see anyone else in the park or speak with anyone else in the park prior to meeting this indian fellow and black youth?
- A. No, I never -- never spoke to anybody.
- Q. Can you say from what direction you were approached by these two individuals?
- A. I think I was approached from behind like, you know, and everything like happened so fast, eh, you know. You just -- you get one of them there "tensafied" like you know, you just -- a spear of the moment, like you know.
- Q. Okay. How certain are you as to whether you were approached from behind as you said?
- A. I can't answer you. How certain --
- Q. Take your time.
- A. Well when my arm was grabbed like this, so I mustta hadda been approached from behind, you know.
- Q. Now did you have any conversation with the indian youth?
- A. No, I had no conversation with Mr. Marshall at all, whatsoever, like.
- Q. I see. How can you say that the individual you saw in the park that night was Mr. Marshall?
- A. Well I -- just by -- well, I seen his face. I seen his face. I know -- I know a person's face. I seen his face.

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Q. Do you recognize him in Court today?

A. Yeh, I would.

Q. Can you point him out if you see him in this court room?

A. Yeh.

Q. Point him out. Do you see him, Mr. MacNeil?

A. I don't think I see him.

Q. Where are you looking at this point in time, now?

A. Pardon?

Q. I'm just asking where you're looking at this point in time.

A. I'm looking right here.

Q. Okay.

A. Oh, I -- there he is, right in front of me. Good heavens.

Q. You've indicated that there was no conversation as between yourself and Marshall?

A. No, there was no conversation.

Q. Okay, and you overheard a conversation between two other fellows next to you?

A. What two other fellows?

Q. Okay, you were with Roy Ebsary?

A. Yeh.

Q. You were approached by two other people. Is that right?

A. No, no, I was just approached by Mr. Marshall and the coloured person.

Q. Where was Mr. Ebsary at this particular point in time?

A. He was right next to me.

Q. And was anyone standing with or near him?

A. The -- Mr. -- the deceased, Mr. Seale.

Q. Can you describe what -- you say the deceased, Mr. Seale. What did he look like?

A. He's sort of like mulatte, like a light type face like. Like he was light, light-complected.

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Q. How tall would you say he was?

A. I'd say he was about -- probably about five foot seven or eight, something like that.

Q. And what happened again once you're -- what conversation did you hear between Ebsary and this other fellow?

A. I just heard -- conversation I just heard is that the coloured fellow asked him for money, told him to "Dig, man, dig.", and then Roy said: "I got something for you.", and bang-o, that was it.

Q. Now did you see this part where you say "bang-o, that's it"?

A. Yeh.

Q. What happened?

A. Well he took a knife and he just slit him up.

Q. Slit who up?

A. Slit up Seale.

Q. And who had the knife?

A. Esabary.

Q. At the time you saw these two fellows or you were approached by these two fellows in the park you've described or indicated were Seale and Marshall, had you ever seen them before?

A. I have never seen them before, no.

Q. Have you ever seen them since that point in time?

A. No, I've never seen them, no.

Q. Where were you standing, this small group, when the incident took place where you described the stabbing?

A. I was standing right in front of Mr. Marshall.

Q. In front of Mr. Marshall?

A. Yeh.

Q. I see. Where relative to the street were you standing?

A. Pardon?

Q. On what particular location were you standing when this

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incident took place?

A. What do you mean like what side of the street or to the left or the right or?

Q. Yeh.

A. The right.

Q. And you say you were on the street?

A. Yeh.

10) Q. Okay, and what street was that?

A. That's Crescent Street.

Q. Now you've indicated you saw a knife. Are you able to describe that knife in any way?

A. In any way, kinda dark that there night there too. Like I -- I didn't -- like I couldn't describe it, you know, like I couldn't describe the knife but like I said everything happened so darn fast.

Q. And after you say Seale was stabbed what did Seale do?

A. Well he ran for a piece and then he fell on the road like. I heard him screaming and he ran and he fell on the road.

Q. I'd like to show you a plan, Mr. MacNeil, if I might. Have you had an opportunity to see that plan before, sir?

A. Yeh.

THE COURT:

Is that a copy of exhibit number five?

MR. ARONSON:

That's right.

THE COURT:

30) Would you so indicate on the record?

BY MR. ARONSON:

Q. This is a copy of exhibit number five from the original trial in 1971 which I now place before you. Can you say where on that particular plan you saw Seale fall?

A. Well if you come through here, there's the bridge now.

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There's the bridge. Okay, up on Crescent -- we're up on Crescent so he would fall I would say down around here on the right hand side.

Q. Now when you're pointing to here, would you mark that particular location with the initial "S".

A. Okay. There.

Q. If I might say for the record the witness has marked the initial "S" approximately in the middle of the road directly across from a house numbered, I believe it's 130. I'd best show you the plan. I believe it's 130 Crescent Street. After the stabbing took place, what did you see Marshall do?

A. I noticed that Marshall tried to come at Mr. Esabary, like he tried to at -- come at him there but he -- then he just -- he ran himself. I don't know where he went but he disappeared out of the picture but I believe he tried to -- tried to help Mr. Seale at that there time.

Q. Now you've already indicated to the Court that you had been drinking at the tavern. Is that right?

A. Yes.

Q. What condition would you say you were in as you went through the park and took your walk from the State Tavern?

A. I would say -- I wouldn't say feeling good. Just well, not drunk that's for sure.

Q. Could you speak up a bit? I'm sorry.

A. I said not -- I wasn't staggering or nothing, eh. I was walking but I was -- I was feeling -- feeling pretty good like you know but I wasn't staggering like.

Q. Now what was the last you saw of Marshall on that particular night?

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A. Repeat that question, please.

Q. What was the last thing you saw of Marshall after the stabbing?

A. Just that he -- he just -- he vanished then.

Q. Could you say in which direction he vanished?

A. I couldn't -- I couldn't say. Everything happened so fast, like.

(10) Q. What happened after the stabbing?

A. Pardon?

Q. What happened after --

THE COURT:

Excuse me, Mr. Aronson. That exhibit, copy of exhibit number five which has now been introduced, have it marked as exhibit R-2 for this hearing.

MR. ARONSON:

(20) I might point out I think I had mentioned a map that had been in Sydney and I understand from Mr. Edwards that the map is no better than the one we have before us today so --

THE COURT:

We can't use that. You've got this one marked. We'll use that as the exhibit for this purpose. Mark it R-2.

MR. ARONSON:

All right.

BY MR. ARONSON:

(30) Q. Okay, just to go back to the stabbing incident you've described, how long -- over what period of time did it occur from the time as you put it that Marshall grabbed you by the arm until the time Marshall vanished from the scene?

A. Would you repeat that question there, please?

Q. How long would it have taken for the stabbing incident to take place?

A. Before Marshall disappeared from the scene, I would say

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about oh probably five minutes or seven minutes, something like that.

Q. Five minutes or seven minutes. What did you and Roy Ebsary do after the stabbing?

A. We automatically went to his home which is on the rear of Argyle Street. We went home.

Q. And how far is Rear Argyle Street from the location where the stabbing took place?

A. It would be about -- there's two ways to get there. We went around -- it would be about probably a block and a half or something like that.

Q. What are the two ways getting to Rear Argyle from that particular location?

A. Well you can go down like where I pointed out there on Crescent. You can go up on that side. That would take you up -- it would take you in up through to his back lane or you could go right up -- right out on the street. It would take you out to Argyle Street which if you turn right, you'd go up by -- there's a little store from -- not too far from -- about two blocks up and then there's a lane that goes down so you could go two ways there.

Q. Okay, possibly it might be best to use the map to describe what you're dealing with. Could you go using the street names as best as possible?

A. Okay, wait now. Okay, you could go up this way. When you come out here, you come out --

Q. What's this way?

A. Well when you come out on Crescent, the end of Crescent, there's a street that runs down. It's called South Bentinck, like, and runs right down, right down right to Charlotte like, right up to Charlotte.

Q. Do you see a street on there marked Bentinck Street?

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A. Wait now, yeh, I see Bentinck, yeh.

Q. Would that be the street you're referring to?

A. Bentinck, yeh, that's right, yeh, but that's Bentinck Street is farther down, farther down. The street that I'm talking about, it goes around the corner like. It's like -- when you come off a Crescent and you go up, like you know, you can go up this way like that, a short cut. Like that's the way --

Q. Well when you talk about taking a short cut, are you actually using streets or are you using a different method of getting there through back yards or alleys or things like that?

A. No, -- yeh, I could say in a sense like that. Like you can take the short cut like that one on the side there, like.

Q. Where did you -- did you end up at Roy Ebsary's home that night?

A. Yes, I did.

Q. Do you know approximately what time you might have arrived at his home?

A. Probably around eleven-thirty or twelve o'clock, something like that, I would say.

Q. And what happened after you arrived?

A. I didn't stay too long, I think. His daughter was home. I remember that. I didn't stay too long. I seen him. He was wiping the blood off the knife underneath the sink and I went home and -- took off home and then I heard the next day that the fellow died, eh, that this Mr. Seale died.

Q. Okay, now you indicated that after you arrived at Roy Ebsary's home, you saw Roy Ebsary wash a knife off at a sink?

A. Yeh.

Roy Ebsary

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Q. Describe that knife. Are you able to describe that knife?

A. Well it's only -- it was only his pocket knife. I think it's only about six inches long. I think -- just -- it was only a pocket knife.

Q. Are you able to explain why he was washing the knife?

A. I guess he just wanted to clean the, get it clean and get the, you know -- I suppose he just wanted the --

Q. Now you've mentioned that you saw Ebsary's daughter?

A. Yeh.

Q. Do you know her name?

A. It's been so long since I seen her. I forget her first name, like.

Q. Okay. Now did you tell anybody about what you had seen in the park that night subsequent to the date it occurred?

A. I never told anybody until after I heard -- I was in touch with Esabary's daughter's -- son came to see me and he told me, he said, well, "If you say anything about this here, you know, all of us would have to go to court." You know, --

THE COURT:

You can't go into this, Mr. Aronson.

BY MR. ARONSON:

Q. I don't think -- you're -- the question I'm trying to get is: did you after May the 28th tell anybody about the stabbing incident in the park?

A. No, no.

Q. Have you ever told anybody about that incident until you've come to Court today?

A. No, no. Well, the first one I told was Esabary's son, eh. His son. I told him about that. You know, I told him about that. The next day I went to Esabary's

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house and I told him that that fellow died, I said. I said: "You didn't have to kill him". You know, "You should have give him the money." You know, and I told -- I told his son that so his son just said, well, he said: "Well, if you say anything," well, he said --

THE COURT:

10) You can't get into that.

BY MR. ARONSON:

Q. Did you ever have occasion to communicate what had happened on the night of May 28th to the police?

A. Well I -- I -- first of all, I went and I like I told my family then about it, eh. Like, I couldn't sleep.

THE COURT:

Mr. Aronson, what is the relevancy?

MR. ARONSON:

20) I think part of the -- part of the issue that may arise, if I may say with respect, My Lord, is that the appellant, Donald Marshall, was not aware of what has been told today in Court by this particular witness and that it may arise as to -- with respect to arguments relating to admissibility of fresh evidence; that is, the accused could have withheld or not indicated that --

THE COURT:

Well, it's not relevant at this stage of the proceedings.

MR. ARONSON:

30) All right.

BY MR. ARONSON:

Q. Have you had any communication with Donald Marshall at all?

THE COURT:

Just a moment, Mr. Aronson. Pursue the fact that he went to

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the police.

MR. ARONSON:

Oh, I thought what you were --

THE COURT:

As to what he told.

BY MR. ARONSON:

10) Q. Did you ever have occasion to tell the police of the incident concerning the stabbing of Sandy Seale?

A. Yeh, I told the police in Sydney.

Q. Sir?

A. I told the police in Sydney after I -- after I heard that this fellow was in gaol, Mr. Marshall, for something he didn't do so I went and I told the police this and it bothered me because I wouldn't like to be in gaol for something I didn't do.

Q. And --

(20) A. And so I went down and I made a statement to Sergeant MacIntyre and I just -- I don't know, is it Urquhart? There was another police -- what I remember was Sergeant MacIntyre. I made a statement to him and then I think a few days after that, --

Q. Okay, that's all.

THE COURT:

When was that?

MR. ARONSON:

I was just about to put that question.

BY MR. ARONSON:

(30) Q. When can you recall having spoken to Sergeant MacIntyre concerning that event?

A. It was about a week after you were sentenced.

Q. Are you able to explain why you waited that length of time before going to the police?

A. Well because like, ah, Roy's son told me, he said: "The

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whole family would be in trouble there."

Q. Okay, that's all right.

MR. ARONSON:

I have no further questions, My Lord.

THE COURT:

Mr. Edwards.

MR. EDWARDS:

Thank you, My Lord.

BY MR. EDWARDS: Cross-Examination

Q. Mr. MacNeil, you told my learned friend that you were not drunk that evening, that you definitely were not -- well, you didn't use those words. That you were not staggering or nothing, I think you said. Is that correct?

A. Yeh, that's correct. I wasn't staggering.

Q. Mr. MacNeil, are you sure about that?

A. I'm positive I wasn't staggering.

Q. So your walk was steady?

A. My walk was steady, yeh. I wasn't staggering.

Q. At the time when you had contact with Mr. Marshall and Mr. Seale, did you stumble or trip on anything before Mr. Marshall got hold of you?

A. No, no, I never stumbled. I never tripped.

Q. Are you sure?

A. Positive.

Q. And you indicated to my learned friend that Mr. Marshall took hold of you and put your right arm, I believe you indicated, up behind your back. Is that correct?

A. Yeh.

Q. What would you say if it was suggested that he was simply trying to keep you from falling?

A. No, he wasn't keeping -- he wasn't trying to keep me from falling. No. No.

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Q. You'd disagree with that?

A. I disagree with it a hundred percent. I disagree with it.

Q. Okay. So he had hold of you by the right arm. Did he have hold of you anywhere else?

A. No, nowheres else.

Q. I didn't catch what you said next. You said you panicked at that point, did you?

A. Yeh, I -- I just frozed. I just -- I got "sensitized". I froze, like. You know, I -- I got scared but I just didn't move. I just stayed there. I was -- I was just scared. Like I, you know, you'd get a fright too if somebody come up and grabbed you, you know, and all of a sudden you're --

Q. Did you remain on your feet or did you fall down?

A. No, I was -- I still -- I remained on my feet. I was still on my feet but I just froze there. I sort of was just in a "sensitized" shock. I was just, you know, like I was -- it came as a shock to me there.

Q. You remember that clearly, do you?

A. Yes, I do, yeh, yeh.

Q. Are you sure you didn't start shoving with Mr. Marshall?

A. No. No. I did not. No, I did not.

Q. Did Mr. Marshall say anything to you?

A. Not that I can relect -- not that I can recall.

Q. Is it possible he could have said something and you just don't remember now, Mr. MacNeil?

A. Well I -- I can't say that because I never heard him say anything to me. You know, he never -- I never heard him mentioning anything to me at all whatsoever.

Q. All right. What would you say if it was suggested to you that you and Mr. Ebsary spoke with Marshall and Seale for about twenty minutes before -- before Marshall

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grabbed you?

A. I would say it's in totally wrong. It's totally not true. It's totally not true.

Q. Just to clarify, do you remember any discussion that night with anybody about bootleggers?

A. No, I didn't not talk anything body about bootleggers.

Q. What about women in the park?

10) A. No, not women in the park neither.

Q. I believe you told my learned friend you heard Seale ask Ebsary for money. Is that correct?

A. Yeh.

Q. Yes. Do you recall exactly what words he used?

A. He said: "Dig, man dig."

Q. "Dig, man, dig."?

A. Yeh, right.

Q. But he didn't say the word money, did he?

A. No, he just said: "Dig, man, dig."

20) Q. How far was he from Ebsary when he said that?

A. He was just right in front of him. Right in front of him, yeh.

Q. Did either Marshall or Seale have anything in their hands?

A. They had no weapons in their hands whatsoever. I never seen them carrying anything.

Q. Do you recall whether or not you and Mr. Ebsary were walking away from Marshall and Seale and were called back?

30) A. No, I can't recall that.

Q. No?

A. I can't recall that.

Q. Is it possible that that could have happened before the scuffle actually started?

A. It could be possibly. It could possible but I -- I can't recall it though. I can't -- I can't relect that.

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Q. I'm sorry, I didn't catch the last part?

A. I said I can't recollect on that because I, you know, it could be possible but I don't believe it. I don't believe that ever happened like that. You know, I believe that we were never called back.

Q. I see. Now you say you heard Seale say: "Dig, man, dig."?

A. Yes, I did, yeh.

Q. What was it Mr. Ebsary said at that time?

A. "I've got something for you."

Q. He said: "I've got something for you."?

A. Yeh.

Q. Now where were Mr. Ebsary's hands at that time?

A. They were right by the side of his pocket, like that, down by his side, like that.

Q. Yes. And what did you see next?

A. And the next thing I just seen like he -- a knife.

I just seen a knife coming up and --

Q. You're indicating an upward motion with your --

A. Yeh, an upward motion.

Q. -- right hand?

A. Yeh.

Q. Yes, and that's when it made contact with Seale?

A. Yeh.

Q. But the point is you -- you did see the knife before it went into Seale, did you?

A. Not exactly because you know it was kind of dark, like, but I seen -- I seen it. I had a glimpse of it after that, like you know. It was only a pocket knife, not a dagger or nothing. It was only small.

Q. What was the lighting like in that area, Mr. MacNeil?

A. The lighting at that time was fair, I would say. Not really good. Fair.

- 100 - JAMES W. MacNEIL, by Mr. Edwards

- Q. Where was the light coming from?
- A. It was -- it's changed so much. They've changed the park so much since then. I think the light was coming from a tree up above or like a pole up above but I can't just be quite sure just where it was coming from.
- Q. But there was enough light so that you could recognize faces?
- 10) A. Yeh, yeh.
- Q. Okay. Now you told my learned friend then that Mr. Marshall ran away.
- A. Yes.
- Q. Do you remember in what direction he went?
- A. I didn't remember. I couldn't remember what direction he went in. I can't remember.
- Q. And then you and Mr. Ebsary ran to Mr. Ebsary's house?
- A. Right, yeh, we went to his house.
- Q. And what would that have taken you, a couple of minutes?
- (20) A. Yeh, a couple of minutes, yeh.
- Q. And when you got into Ebsary's house, you remember Ebsary's daughter was there?
- A. Yeh, right. I remember that.
- Q. Do you recall how old a girl she would have been at that time?
- A. I guess she'd be around, maybe around sixteen at that time. She wasn't very old. Thirteen, sixteen or something like that.
- Q. Now I don't want you to tell me what was said but I want you to tell me whether or not you and Mr. Ebsary said anything in the girl's presence about what had happened.
- (30) A. I believe that the girl heard us when we walked in. I think she heard us talking.
- Q. What makes you think that?

*Ebsary's daughter
#62*

- 101 - JAMES W. MacNEIL, by Mr. Edwards

A. Because the next day there -- the next day there, I was told not to go back to the house.

Q. I don't want to know what anyone told you.

A. No. I was told not to go back to the house there so I figured --

Q. Just hold there, Mr. MacNeil.

A. Okay.

10) Q. All right, so did you in fact go back to the Ebsary house any more?

A. Yes, I did.

Q. You did. On how many occasions?

A. Just the next day and that was it. I never went any more after that.

Q. Now you mentioned something to my learned friend about Ebsary washing blood off the knife.

A. Yes.

Q. In the sink?

20) A. Yeh, right.

Q. How long was it after you got into the house before he did that?

A. Right away. He just went right to the sink.

Q. He went right to the sink?

A. Yeh. He went right to the sink.

Q. Now where were you when he was washing the knife? How far away from him were you?

30) A. I was just sitting out by the dining room, like, just like a little living room like that and I was sitting on the side of the chair like that. I could see him washing the knife underneath the sink.

Q. Well in distances in this court room, how far would he have been from you when he was washing the knife?

A. He would be about from here to where Mr. Marshall is sitting.

- 102 - JAMES W. MacNEIL, by Mr. Edwards

Q. So you're indicating a distance of maybe ten feet?

A. Yeh, I would say, ten feet, yeh.

Q. And the lights were on in the kitchen at the time?

A. Yes, the lights were on, yeh.

Q. Now think carefully, Mr. MacNeil. Did you actually see any blood on the knife?

A. Yes, I did.

Q. You're sure about that?

A. Positive. I did.

Q. So you must have gotten a good look at the knife at that time?

A. Yeh.

Q. Did you see the handle of the knife?

A. To my knowledge, like, thinking back, I think it had a brown handle on it, if I'm not -- to my knowledge now.

Q. And you said the knife was about six inches long?

A. Yeh.

Q. Did I understand you correctly?

A. Just a -- just a small pocket knife.

Q. Yes, you used the term "pocket knife".

A. Yeh.

Q. Do you mean by that the type of knife with a blade that closes?

A. Yeh, right. Just opens and closes like that.

Q. Are you sure?

A. I'm pretty sure, yeh.

Q. You're pretty sure.

A. I'm positive.

Q. You're not positive?

A. Yeh.

THE COURT:

Would you repeat that question? I couldn't quite hear.

MR. EDWARDS:

Yes, I asked him if he was sure it was a pocket knife and he

Edwards
Edwards

(10)

(20)

(30)

- 103 - JAMES W. MacNEIL, by Mr. Edwards

said --

THE COURT:

I would like you to ask him the question again as to what he --

MR. EDWARDS:

I'm sorry.

BY MR. EDWARDS:

10) Q. Yes, I asked you if you were sure it was a pocket knife. What did you say to that?

A. I'm positive it was a pocket knife.

BY THE COURT:

Q. You are positive?

A. Yeh, it was a pocket knife.

BY MR. EDWARDS:

Q. But just a couple of seconds ago didn't you say that you weren't positive?

A. No.

20) THE COURT:

No.

MR. EDWARDS:

I'm sorry. I mis-heard it.

BY MR. EDWARDS:

Q. I take it you never saw that knife again.

A. No, I have never seen it again.

Q. After Mr. Ebsary finished washing it, what did he do with it then?

30) A. I do not -- I can't recall what he done with it. I can't recall what he done with it.

Q. Was there anyone else in the house at that time besides Ebsary's daughter?

A. I just think it was Esabary's daughter as far as I know. I just think it was his daughter.

Q. You don't recall his wife being there?

- 104 - JAMES W. MacNEIL, by Mr. Edwards

A. No, I don't recall, no. I do not recall.

Q. Now, Mr. MacNeil, my learned friend asked you about statements you had given.

A. Yeh, right.

Q. Do you recall that you gave a statement to the R.C.M.P. this year?

A. Yes, I did.

Q. In February?

A. Yes, I did, yeh.

Q. And do you recall the names of the police you gave the statement to?

A. It's Wheatly, Staff-Sergeant Wheatly.

Q. Would it be Staff-Sergeant Wheaton?

A. Wheaton, yeh.

Q. And Constable MacQueen?

A. And Constable MacQueen, yeh.

Q. And that statement was taken where, at your home?

A. At my home, yeh.

Q. I see.

MR. EDWARDS:

My Lord, it would appear that we don't have the original here. I have a typed copy. If there's no objection, I would like to show him the typed copy.

MR. ARONSON:

No objection.

THE COURT:

You're proceeding under?

MR. EDWARDS:

Section 10 again.

THE COURT:

Under Section 10?

MR. EDWARDS:

Yes.

- 105 - JAMES W. MacNEIL, by Mr. Edwards

THE COURT:

See if he can identify it.

MR. EDWARDS:

Yes.

THE COURT: (Justice Pace)

It's in the affidavits.

BY MR. EDWARDS:

(10) Q. Mr. MacNeil, you recall that you signed an affidavit on July 15th of this year. Is that correct?

A. Yes, I recall it, yeh.

Q. Do you recall that attached to that affidavit there was a copy of a statement that you gave to Constable MacQueen and Staff-Sergeant Wheaton?

A. Yes, indeed, yeh.

Q. I'm now going to show you exhibit -- a copy of exhibit "B", your affidavit.

THE COURT:

(20) Is there something contrary in this with his evidence? Is that why you're producing it?

MR. EDWARDS:

Yes, My Lord, there's -- well, it may be an inconsistency. He's less than certain on one of the points in the affidavit than he is in the evidence here. I'd like to question him on that, mindful again with respect that Section 10 allows for a general cross-examination on the statement.

THE COURT:

That is contradictory.

(30) MR. EDWARDS:

No, My Lord. With respect, I think it's two-fold. It allows him to be cross-examined but if it is intended to contradict him on any part of it, then his attention must be drawn to those parts.

THE COURT:

The statement has to be different than his testimony, his

- 106 - JAMES W. MacNEIL, by Mr. Edwards

testimony today.

MR. EDWARDS:

Well, if that's your ruling. The part that I would like to put to him is that he has given definite evidence that he saw the knife and the blood being washed. In the statement he says: "I'm pretty sure."

THE COURT:

(10) Carry on.

MR. EDWARDS:

Thank you, My Lord.

BY MR. EDWARDS:

Q. Yes, Mr. MacNeil, I'm showing you now exhibit "B" in your affidavit.

A. Yeh, right.

Q. That's the statement.

A. Yes.

Q. Now you see the middle part of the --

(20) A. Yes.

Q. -- second paragraph?

A. Yes, I see it.

Q. All right, and you say there: "I'm pretty sure...".

A. Yeh, I know. I know, yeh.

Q. Well let me read the whole sentence, okay?

A. Yeh, go ahead, yeh.

Q. *I'm pretty sure I saw him wash the knife off in the sink. I can't remember if he had any blood.*

A. Yes.

(30) Q. All right?

A. I remember, right, making that statement.

Q. Okay.

A. I remember making it.

Q. So, Mr. MacNeil, you just finished testifying that you did in fact see him wash the knife and that you did

- 107 - JAMES W. MacNEIL, by Mr. Edwards

remember seeing blood.

A. Yeh, right.

Q. Now that is different than the statement. Which --

A. Yeh.

Q. Which is it, Mr. MacNeil?

A. Okay, if you'll allow me, if it please the court?

Q. Sure.

10) A. That morning when Sergeant -- Staff-Sergeant Wheatly come in and Constable MacQueen, I was -- I wasn't in -- I got in a "sensitized" state, like, you know, nervous, eh. And you know I got, you know, well, I didn't -- it's hard to explain it. I -- I -- you know I just wanted and then I thought --

BY THE COURT:

Q. Well you're just asked the question as to whether -- as to which statement --

A. But I was --

(20) Q. -- which statement is correct. Can you remember?

A. Yeh, the first one. That one there I was "sensitized" and I have like a little nervous condition since the last few years and --

Q. So you do remember that there was blood?

A. Yeh, I do remember the blood so I don't go -- that's -- that morning I was in a little nervous state of the condition.

BY MR. EDWARDS:

(30) Q. Just for clarity, you're absolutely sure you saw him wash blood off the knife.

A. I am positive. I am positive, yeh.

Q. Now was the knife or was the blood only on the knife or was there some blood on his hands, too?

A. There was blood on his hands, too.

Q. On both hands?

- 108 - JAMES W. MacNEIL, by Mr. Edwards

A. As I can recall on -- on both hands. I remember I seen it on one. Yeh, on both hands. He had blood on both hands.

Q. I see. Before you gave that statement to Staff-Sergeant Wheaton and Constable MacQueen, had you read over any prior statements you had given?

(10) A. No, I have -- I did not. I did not but you know I -- I did not, no. Not over -- I never read any of them prior over to that.

Q. Have you had any communication with Mr. Marshall or his family since -- since 1971?

A. I had no comm -- no communication with his family or with Mr. Marshall until this morning. He come over and shook hands with me, his father.

Q. At the time of the investigation, May 28th, 1971, and in the weeks just after that or the days and weeks just after that, did anybody ever speak to you about -- about the stabbing? Did any policeman ever ask you about it?

(20) A. No. No way. No. Nobody asked about it.

Q. Where were you living at the time, Mr. MacNeil?

A. I was living up at 10-0-0-7 rear George Street.

Q. Rear George Street?

A. Yeh, at that time.

Q. How far would that have been from where the stabbing took place?

A. That would be about probably a quarter of a mile.

(30) Q. And you were living there with whom at the time?

A. With my mother and my father and my -- the rest of the family, my brothers.

Q. And you say that you had known Mr. Ebsary for about three months prior to that?

A. Yeh.

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Q. Yes?

A. Yes.

Q. Were you aware on the night of May 28th that he was carrying a knife?

A. I wasn't -- I wasn't aware of it at all. I was not aware. I was not aware of it at all. It surprised me.

(10)

Q. It surprised you.

A. It surprised me because I wasn't aware of him because I've never seen him taking out a knife or showing me a knife or anything and I was surprised. I really was.

Q. So not only on that night, you're saying that on no prior occasion had you ever seen him with a knife?

A. No, I have never. No. I never seen it.

Q. You said that he was dressed -- he had a shawl on that night, a black shawl?

A. Yeh.

(20)

Q. Is it possible that that was a black coat just slung over his shoulders?

A. No, I think it was a shawl. I would say it was a shawl. I would say.

Q. You would say?

A. Yeh.

Q. Thank you very much.

A. You're very welcome.

MR. ARONSON:

Nothing arising out of that, My Lord.

(30)

BY THE COURT:

Q. Is your middle name William?

A. My middle name is William -- James William.

Q. James William?

A. Yeh.

Q. Thank you.

(WITNESS WITHDREW)

AUGUST '83

0. JAMES MACNEIL - SWORNBY MR. EDWARDS - DIRECT EXAMINATION

Q. Your name is James MacNeil?

A. Yes.

5. Q. And what is your address Mr. MacNeil?

A. 222 Mount Pleasant Street.

Q. That is in Sydney?

A. Yeah.

10. Q. And what is your age Mr. MacNeil?

A. My age is 39.

Q. What is your occupation Mr. MacNeil?

A. At the present time I am unemployed.

15. Q. So back in 1971 you would have been approximately what, 27/28 years old?

A. 25.

Q. And what was your occupation at that time?

A. Landscaping.

20. Q. And where did you live at that time?

A. At 1007 Rear George Street.

Q. And at that time, let's say the month of May

25. 1971 did you know Roy Newman Ebsary?

A. Yeah I did.

Q. For how long had you known him?

A. I'd known him for roughly 3 months.

30. Q. That is in May '71 you had known him 3 months prior to that?

0. JAMES MACNEIL - Direct Examination

A. Yeah.

Q. And would you look around the Courtroom and see if you can see Mr. Ebsary here today?

5. A. He is right here right in the front here.

Q. You are indicating how many rows behind the rail there?

A. Just the first one.

10. Q. And how many in from the aisle?

A. Just the first one. Pointed to Accused (Roy Newman Ebsary).

Q. So you say you had known him for 3 months prior to May 1971 and you had visited his home on

15. occasion?

A. Unhuh.

Q. And do you recall the night of approximately May 28, 1971?

20. A. Unhuh.

Q. Were you with Roy Newman Ebsary that night?

A. Yeah we were down at the State Tavern.

25. Q. And that was on George Street in Sydney at the time?

A. That was on the corner of George and Townsend at that time.

30. Q. And I take it you and Mr. Ebsary were in there having a few drinks?

0. JAMES MACNEIL - Direct Examination

A. Yes indeed.

Q. Do you recall how much you had to drink that night?

5. A. I'd say I had about 7 or 8 beers.

Q. And what about Mr. Ebsary how much would he have had to drink?

A. Ah it would be around the same.

10. Q. What time did you go to the State Tavern that night?

A. I think it was earlier in the evening.

Q. About what time?

A. Probably around 7 or something like that.

15. Q. Was there anyone else with you at the Tavern?

A. Not that I recall, just the 2 of us.

Q. So what time did you leave the Tavern?

20. A. I figure we left between 10:30/11:00 o'clock something like that.

Q. And you say we, I take it you and Mr. Ebsary left together?

25. A. Yes.

Q. And when you came out of the State Tavern what route did you take?

30. A. We walked down George and we took the short cut through the Park.

0. JAMES MACNEIL - Direct Examination

Q. Through Wentworth Park?

A. Wentworth Park yes, there is a bridge and then you go right up and there is like you come up

5. to Crescent Street right and we crossed the Street.

Q. So as I understand you went from George Street into Wentworth Park, across the footbridge which
10. spanned the creek in the Park and then up onto Crescent Street?

A. Right, yeah.

Q. How would you describe the condition of you and Mr. Ebsary?

15. A. Ah I would say in good shape, I wasn't staggering or nothing you know.

BY THE COURT

Q. Feeling pretty good?

20. A. Felling pretty good yeah. But I wasn't you know staggering.

BY MR. EDWARDS

25. Q. Ok and what about Mr. Ebsary?

A. The same.

Q. So when the 2 of you went up onto Crescent Street after crossing through the Park could you tell the
30. Court please what if anything happened at that time?

0. JAMES MACNEIL - Direct Examination

- A. We were approached by the deceased Mr. Seale and Mr. Marshall.
- Q. Now the deceased Mr. Seale you didn't know him before that?
5. A. I did not know him no.
- Q. He had been a person of approximately what age at that time?
10. A. 16 or 17.
- Q. And could you describe him?
- A. He was Muladdy, like coloured, like good looking.
- Q. You mean Mulatto?
- A. Yes.
15. Q. Like a lighter coloured black person?
- A. Yeah.
- Q. Do you recall how he was dressed?
- A. I can't remember, just how he was dressed.
20. Q. And do you recall who was with Mr. Seale at the time?
- A. Junior Marshall, Mr. Marshall.
25. Q. Did you know Mr. Marshall at that time?
- A. No.
- Q. Had you seen him since?
- A. Who?
- Q. Mr. Marshall?
30. A. Yeah in Halifax.

0. JAMES MACNEIL - Direct Examination

Q. That is when you gave testimony on December 1st, 1982?

A. Yeah right.

5. Q. And at that time were you able to identify Mr. Marshall as the person you saw with Seale that evening?

A. Yeah right.

10. Q. So when you met Mr. Seale and Mr. Marshall you were on Crescent Street?

A. Unhuh.

Q. Would you describe exactly what happened when you met the 2 of them?

15. A. When we met the 2 of them like just on the other side, crossed over to the other side of the street on that there side.

20. Q. You mean the side of the street furthest from the Park or closest?

A. Furthest on this here side.

BY THE COURT

25. Q. Near the residences?.

A. Yeah. Right near the buildings and then after that we were approached by the 2 individuals I was speaking about. Mr. Marshall put my hand behind my back like that.

30.

0. JAMES MACNEIL - Direct Examination

Q. You are indicating he put your right hand behind your back?

A. My right hand yeah.

5. Q. Where did they approach you from, front or behind?

A. I would say it would be from like behind or like in a counter clockways you know like we

10. were across the other side but I think it would be like from behind like.

Q. So you say it was Marshall that grabbed you and put your arm up behind your back?

A. Yeah right.

15. Q. Did he say anything to you at that time, Marshall?

A. Marshall never said one word to me. I just frozed, I frozed there, I just frozed.

20. Q. In the meantime what was happening if anything to Mr. Ebsary?

A. Mr. Ebsary was looking directly at Mr. Seale the deceased, and Mr. Seale looked back directly at him and I heard him saying "dig man dig".

25. Q. Who said that?

A. The deceased Mr. Seale.

Q. Said that to who?

30. A. Mr. Ebsary and Mr. Ebsary said "I've got something for you" and then all hell.

0. JAMES MACNEIL - Direct Examination

Q. Just describe exactly what you recall happening?

A. What I recall, I heard Mr. Seale scream and then he sort of like ran in a direction like just ran in a direction and I was all shook up.

5.

Q. Did you see how far Mr. Seale got?

A. I did not see how far he got because Ebsary said you know he made a dash like for his place like.

10.

Q. He made a dash away from where you were?

A. Yeah right.

BY THE COURT

Q. Who was that, Ebsary or Seale?

15.

A. Ebsary.

BY MR. EDWARDS

Q. When Mr. Seale screamed would you describe Mr. Ebsary's position, what was he doing at the time that Mr. Seale screamed?

20.

A. I would say he was, well I didn't see the knife but I seen him like going something like that.

Q. You are indicating now a thrusting motion with your right hand, that is like you saw Mr. Ebsary do?

25.

A. Yeah right.

Q. And how was that thrusting motion made as far as Mr. Seale was concerned?

30.

0. JAMES MACNEIL - Direct Examination

A. I think it was made like...

Q. You are indicating an upward motion?

A. Yeah upward motion.

5. Q. Well how close did his arm come to Mr. Seale when he made that thrusting motion?

A. Ah very close, very close, it was very close probably 2 feet or 2½ feet or something like that.

10.

Q. And how, when did you hear the scream from Mr. Seale?

A. When he got stabbed like, just after that.

Q. How long after that thrusting motion was it that you heard Mr. Seale scream.

15.

A. Just in a flash like.

Q. Now after Mr. Seale ran from where you were what did Mr. Marshall do?

20.

A. Mr. Marshall he vanished, he sort of like, wait now just one second, I believe that Mr. Marshall tried to intervene or something just like and then he disappeared right quick.

25.

Q. Well after Seale ran away what did Ebsary do at that point?

A. After Seale ran away Ebsary just broke off sort of like now if I recall it I think Marshall tried

30.

0. JAMES MACNEIL - Direct Examination

to do something like eh.

Q. To who?

A. To Mr. Ebsary and then all of a sudden like he

5. ran like Mr. Marshall just ran like he just ran.

Q. How would you describe your reaction when you met Seale and Marshall and this incident took place? How did you react?

10. A. Well I was just like I was frozen eh, like I frozed you know I just frozed right up, you know I got all you know tensed up and sort of like I don't know it's hard to describe, you would have to be in the same position.

15. Q. Now after Marshall disappeared what did you and Ebsary do?

A. We went back home to Ebsary's place.

Q. Mr. Ebsary's home?

20. A. Yeah.

Q. Where was that at the time do you recall?

A. That is on the rear of Argyle Street.

25. Q. And how much time in minutes would it have taken you to get from where this incident took place to Mr. Ebsary's home?

A. I'd say roughly 5 minutes, 5 or 6, 7 minutes.

30. Q. And I take it then the 2 of you went into his house?

JAMES MACNEIL - Direct Examination

0. A. Unhuh.
- Q. And when you got in the house do you recall who if anybody was there?
5. A. I never seen anybody there.
- Q. And where did you and Mr. Ebsary go?
- A. Mr. Ebsary went right to the kitchen sink and he started washing, he was washing the blood off his hands and off the knife.
10. Q. Washing blood off his hands and off the knife?
- A. Yeah right.
- Q. And did you get a good look at the knife at that time?
15. A. At the time I got a glance at it, I think it was a small knife with a brown handle on it.
- Q. Do you remember approximately how long the blade was?
20. A. Well a pocket knife, it would be about probably 5 to 6 inches.
- Q. And did you see what he did with the knife after he washed the blood off it?
25. A. I didn't notice where he put it.
- Q. Did you say anything to Mr. Ebsary when you went in the house?
- A. I said "you did a good job" I said.
30. Q. And why did you say that?

0. JAMES MACNEIL - Direct Examination

- A. Because I was glad you know, I thought maybe I would have been hurt or some darn thing and it was just a manner of speech because I was
5. in that there position just previous to that.
- Q. And when you said to him "you did a good job" did he reply?
- A. No he did not reply.
10. Q. Did he say anything at all after you went in the house?
- A. He said it was self defence, no wait now, what did he say.
- Q. Well if you don't recall Mr. MacNeil.
15. A. I can't recall. I was you know all nerved up there.
- Q. And how long did you remain in Ebsary's house that evening?
20. A. About an hour.
- Q. And I take it you went home?
- A. Yeah.
25. Q. Now when did you first become aware that somebody had been stabbed in the Park, or somebody had died in the Park?
- A. Next day I heard it on the news, so I realized right away, I said that was the fellow that met
30. us last night there.

0. JAMES MACNEIL - Direct Examination

Q. So did you return to Ebsary's house that day?

A. Yeah I did, he was laying in bed and I told him

5. about it and he said "it was self defence" and I said "well you didn't have to kill him you know, you didn't have to kill him, you should have gave him the money" you know.

10. Q. And what did Ebsary say?

A. Well he said you know "it was self defence".

Q. And so then I take it you left his house after a short period of time?

A. Right.

15. Q. Did you ever tell the police about that incident?

A. Yeah I told them, I told them after Marshall was convicted because I didn't think it was fair for him to spend time in gaol for something he didn't

20. do and plus it was on my mind and I couldn't sleep and I spoke to my mother about it and then I spoke to my brother and he told me he said "just go to the police" so that's what I did, I went to the

25. police, that would be about 10 days after he was charged, Mr. Marshall.

Q. After he was charged or after he was convicted?

A. After he was convicted.

30.

0. JAMES MACNEIL - Direct Examination

Q. And do you remember what time of the year that would have been when you went down to see the police?

5. A. Ah I think it would be about November, I believe.

Q. November 1971?

A. Yeah.

Q. And what police did you go to see at that time?

10. A. I seen MacIntyre and...

Q. That is the present Chief of Police in Sydney John MacIntyre?

A. Yeah John MacIntyre.

Q. And who else did you see?

15.

A. And there was Corporal, I just can't think of his last name.

Q. And you told them the same story you are telling the Court today?

20.

A. Right yeah.

Q. And what if anything happened to you after that, after you gave that statement?

25. A. Well they asked me, they like I took a volunteer polygraph test and it was I think inconclusive you know so they didn't believe me and I was burnt up about that you know inside, they didn't believe me you know.

30.

0. JAMES MACNEIL - Direct Examination

Q. So you gave evidence respecting Donald Marshall on December 1st, 1982 for the Appeal Division of the Supreme Court of Nova Scotia?

5. A. Yeah right yeah.

Q. And you told them the same story then that you are telling now?

A. Yeah right.

10. Ok, no further questions.

15.

20.

25.

30.

0. JAMES MACNEIL**BY MR. WINTERMANS - Cross Examination**

Q. Now you and Mr. Ebsary met up at the Tavern?

A. Yeah right.

5. Q. The State Tavern which is no longer in existence?

A. No there is Superior Propane place there now.

Q. And you didn't go there together though did you?

A. No I met him there. He was already there.

10. Q. He was already there when you arrived?

A. Yeah.

Q. And what time was it you arrived?

A. I think I arrived around 7 or 7:30 something like that.

15. Q. Was that by some pre arranged plan that you met him there or was it just by coincidence?

A. Just by coincidence.

20. Q. When you say that you had 7 or 8 beers and Mr. Ebsary had about the same, when you say he had about the same are you referring to from the time that you got there until the time the two of you left?

25. A. Yeah that's right.

Q. I suppose you can't be sure how many he had before you got there?

30. A. No I can't be sure.

0. JAMES MACNEIL - Cross Examination

- Q. Did you go anywhere else before you got to Crescent Street when you left the tavern, did you go directly from the tavern through the
5. Park as you said to Crescent Street?
- A. Yeah right.
- Q. And that only took a few minutes?
- A. Yeah.
- 10.Q. 5 or 10 minutes?
- A. Right.
- Q. How long were you in the Crescent Street area before you were approached by these two young men?
- A. Not too long, a few minutes.
15. Q. What do you mean by that?
- A. Just as soon as we crossed the bridge and went up on the far side of the road we were approached.
20. Q. Did you stop before you were approached by these two young men or were you just walking home to Ebsary's house?
- A. We were just walking home.
- 25.Q. So you never stopped?
- A. We never stopped no.
- Q. You didn't hang around?
- A. No, we never hung around.
30. Q. Did you have any conversation with Marshall or Seale?

0. JAMES MACNEIL - Cross Examination

A. No.

Q. Before Marshall put your arm up behind your back?

A. No, no conversation.

5. Q. There was no conversation?

A. There was no conversation at all.

Q. So if someone else were to say that you had a conversation for 10 or 15 minutes about women

10. and bootleggers and stuff what would you say?

A. I would say that it was not true.

Q. Are you absolutely sure about that?

A. Positive.

15. Q. So you and Mr. Ebsary were just walking home from the State Tavern, you cut through the Park, is that a short cut to Ebsary's home?

A. Yeah.

20. Q. You were on Crescent Street?

A. Yeah.

Q. And you were attacked, is that a fair word to use?

25. A. Yeah.

Q. By 2 complete strangers?

A. Yeah.

Q. To you at that time?

30. A. Right, yeah.

0. JAMES MACNEIL - Cross Examination

Q. And what did you feel was being done to you and Mr. Ebsary? Did you feel that you were being robbed?

5. A. Yes I did yeah, I felt scared.

Q. You were scared?

A. Yeah.

Q. You were afraid?

10. A. Yeah.

Q. Why were you afraid?

A. Well it's my nature, you know a lot of people they don't you know, it's your chemical makeup, another person probably wouldn't be scared you know, he would you know do something, but I freezed, I'm that type.

15.

Q. And when you say that Mr. Marshall put your right hand up behind your back, what do you mean by that, was he pushing your arm up?

20.

A. He wasn't hurting me, he just held it.

Q. Did he have his hand, his other hand somewhere else?

25.

A. I didn't notice.

Q. Was he twisting it at all?

A. No, he just had like so much strain on it, well I just frozed, I didn't try to put up a fuss or anything.

30.

0. JAMES MACNEIL - Cross Examination

Q. Did he push your arm up a little bit, up your back?

A. Unhuh.

5. Q. Was there some pressure there?

A. Yeah.

Q. And he never said anything to you at all?

A. I can't remember him saying a word.

10. Q. But Mr. Seale said something to Mr. Ebsary?

A. Yeah.

Q. Did Mr. Seale have his hands on Mr. Ebsary as far as you can recall?

A. No he never had one hand on him.

15. Q. Are you sure about that?

A. I am positive.

Q. Where were you looking? When Marshall had your hand up behind your back where were you looking?

20. A. I was just...

Q. You say that you froze?

A. Yeah. He could have had his hand on him but

25. I never seen it.

Q. Now you are saying that Seale could have had his hands on Ebsary?

A. I never seen it so I don't know.

30. Q. It is possible that you weren't looking in that direction?

0. JAMES MACNEIL - Cross Examination

A. It could be possible yeah.

Q. I suppose you were pretty worried about your own safety?

5. A. Right.

BY THE COURT

Q. Well Seale and Ebsary were in very close contact with one another at that point in time wern't they?

10.

A. Yes.

Q. Very close to one another?

A. Yeah.

Q. How far away from them were you?

15.

A. About 3 feet I would say.

BY MR. WINTERMANS

Q. So the 4 of you then were in a pretty confined space?

20.

A. Yes.

Q. Just a few feet would encompass all 4 of you?

A. Yeah.

Q. And you were afraid?

25.

A. Right.

Q. What were you afraid of?

A. I was afraid that I might get hurt or something.

Q. So you were afraid, you thought you would be

30.

robbed and you were afraid that you would be hurt?

0. JAMES MACNEIL - Cross Examination

A. Yeah right.

Q. And how much time passed between the time that Marshall put your hand up behind your back and

5. the time you saw a sweeping motion which we might assume was the stabbing of Seale, how much time passed?

A. I would say roughly not more than 3 or 4

10. minutes if that.

Q. A matter of seconds do you think?

A. Could be seconds, it happened so fast.

Q. Was there any other conversation besides "dig man dig" and "I've got something for you", were

15. there any other words said?

A. No not a word said.

Q. So it must have happened pretty quickly?

A. Yeah.

20. Q. 3 or 4 minutes is quite a long time?

A. Yeah.

Q. I suggest to you it would be more like 5 or

25. 10 seconds?

A. Yeah.

Q. Would you agree with that?

A. I would agree with that.

30. Q. Now you say that Mr. Seale ran away and fell?

0. JAMES MACNEIL - Cross Examination

A. Yeah.

Q. Did he scream?

A. Yes.

5. Q. How far did he run before he fell.

A. To my knowledge it would be about from here to just about the first pew there where Mr. Ebsary is sitting.

10. Q. You are talking about?

A. Just where you are at there.

Q. How far is that about 20 to 30 feet?

A. Yeah.

15. Q. You indicated that you had 7 or 8 beers and that you were feeling pretty good but that you wern't staggering?

A. No I wasn't staggering.

20. Q. Now if I was to suggest to you that you may have fallen off a curb or staggered and kind of tripped and Mr. Marshall just grabbed you to prop you up to keep you from falling down

25. because you were staggering what would you say about that?

A. I would say no to that.

Q. Are you absolutely sure about that?

30. A. I'm positive.

0. JAMES MACNEIL - Cross Examination

- Q. Now you say that when you, that you heard Seale scream and then run away, fall down and then you said something to the effect that
5. you thought that Marshall went after Ebsary?
- A. Right.
- Q. What do you mean by that?
- A. I think he tried to grab his arm or something.
10. Q. Did you see Marshall make a movement toward Ebsary?
- A. Yeah but everything happened so darn fast.
- Q. Did you see Ebsary make any movement after that towards Marshall?
15. A. Not that I can recall but he could have but I don't recall.
- Q. And then you say Mr. Marshall vanished?
- A. Yeah.
20. Q. You couldn't see which direction he went?
- A. No.
- Q. What was the lighting like there?
25. A. Fair.
- Q. Could you make out people's faces?
- A. Oh yeah.
- BY THE COURT
30. Q. Any street lighting around where you were standing?

0. JAMES MACNEIL - Cross Examination

A. Yeah there was light you know, you could see a person's face, but it was not like you were going down on Charlotte Street.

5. BY MR. WINTERMANS

Q. You testified that after that you and Mr. Ebsary went to Mr. Ebsary's home and that that was only a few minutes walk from where you were on Crescent Street is that right?

10.

A. Yes.

Q. How would you describe your speed in going, were you walking at a normal pace or were you walking fast or were you running or what?

15.

A. Walking fast.

Q. And Mr. Ebsary how old would you say Mr. Ebsary was in 1971?

A. Around 60 I guess.

20.

Q. And how would you describe Mr. Marshall in terms of size, physical appearance?

A. I would say he was about medium height you know at that time. Probably 5 foot 7 or something like that.

25.

Q. Marshall?

A. Yeah.

30.

0. JAMES MACNEIL - Cross Examination

Q. And what about Mr. Seale?

A. I can't precisely there say, he might have been a bit taller.

5. Q. Now I take it that you didn't actually see the weapon, the knife or whatever it was at the time the injury was taking place at Crescent Street?

A. No.

10. Q. You didn't see a knife until later at Ebsary's house?

A. At the residence yeah.

Q. And you described that as a pocket knife?

A. Yeah a pocket knife.

15. Q. Small.

A. Yeah.

Q. When you say pocket knife do you mean the type of knife that folds up like a jack knife?

20. A. Yeah.

Q. That the blade folds into the handle?

A. Unhun.

25. Q. Is that the kind of knife you it was?

A. Yeah.

Q. Are you certain about that?

A. Yeah.

30. Q. And did you see that knife in Roy Ebsary's possession at any time before this incident on Crescent Street?

0. JAMES MACNEIL - Cross Examination

A. No I never seen it before that.

Q. Did you know that Roy Ebsary had a knife in his pocket?

5. A. I didn't even know, I didn't even know that he had a grindstone to sharpen knives on, I didn't realize that.

Q. You had known him for some 3 months you say?

10. A. Yeah. And I never knew that.

Q. Now you say that when you got to Ebsary's home you don't recall anyone else being there?

A. No.

Q. What about his daughter?

15. A. I don't recall.

Q. You don't recall her being there?

A. No.

Q. And you say you saw Ebsary go over and wipe
20. or do what with the knife?

A. He washed it under the sink.

Q. Under the tap?

25. A. Yeah.

Q. With water?

A. Yeah.

Q. Did you actually see any substance on the knife
30. which you thought to be blood?

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0. JAMES MACNEIL - Cross Examination

A. Yeah I did.

Q. Are you certain of that?

A. Yeah.

5. BY THE COURT

Q. You are saying the knife was a pocket knife?

A. Yeah.

Q. After he washed it off did he put it back in his pocket?

10.

A. Um I didn't notice, I was in shock.

BY MR. WINTERMANS

That is all I have thank you.

BY MR. EDWARDS

15. No re examination Your Honour.

20.

25.

30.

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62.

James William MacNeil, Direct Exam. by Mr. Edwards

James William MacNeil is duly sworn.

1. Q. You are James William MacNeil?
A. Yes I am.
2. Q. What is your present address Mr. MacNeil?
A. Two two two Mount Pleasant Street.
3. Q. That's in Sydney?
A. Yeah.
4. Q. How old are you Mr. MacNeil?
A. I am thirty-nine.
5. Q. Thirty-nine?
A. Yeah.
6. Q. What is your present occupation?
A. I'm unemployed at this present time.
7. Q. You're a life long resident of Sydney?
A. Yes.
8. Q. And you lived in Sydney in May of nineteen seventy-one?
A. Yes.
9. Q. What was your address then?
A. Ten 0 0 Seven Rear George Street.
10. Q. Rear George Street?
A. Yes.
11. Q. What was your occupation at that time?
A. I was in landscaping then.
12. Q. Now Mr. MacNeil, do you know the accused, Roy Newman Ebsary?
A. Yes I do.

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63.

James William MacNeil, Direct Exam. by Mr. Edwards

13. Q. Is he in court today?

A. Yes he is.

14. Q. Would you have a look around and find out please?

A. Right here.

15. Q. Where are you pointing Mr. MacNeil?

A. Right there, the fellow with the cast on him there. The cast on his neck.

16. Q. What color jacket is he wearing?

A. He's wearing a light colored jacket and a yellow tie.

MR. EDWARDS:

For the record we'll say that he pointed to the accused My Lord.

17. Q. Mr. MacNeil, did you know Roy Newman Ebsary in nineteen seventy-one?

A. Nineteen seventy-one, yes I did, yeah.

18. Q. Prior to the night of May twenty-eighth, nineteen seventy-one, how long had you known Roy Ebsary?

A. I would say roughly around three months.

19. Q. Three months?

A. Yeah.

20. Q. And during that three months would you describe the relationship between the two of you?

A. Well we had a good relationship. I met him in the State Tavern and his son or daughter had a car there and I use to drive the car and I knew him pretty good at that there time.

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64.

James William MacNeil, Direct Exam. by Mr. Edwards

21. Q. How would you describe your drinking habits around that time Mr. MacNeil?
- A. My drinking habits weren't too bad, you know. They weren't too heavy but after this they got heavy, after this incident they got heavy after this, you know, after what happened to the deceased.
22. Q. And what would you say about Roy Ebsary's drinking habits at the time?
- A. I would say fair, moderate. He wasn't heavy or you know, I wouldn't say he was a heavy drinker at that time anyway.
23. Q. Do you know if he was employed at the time?
- A. I don't believe, I don't think he was employed, no, I don't think.
24. Q. Do you recall the night of May twenty-eighth, nineteen seventy-one?
- A. I recall it when we left the tavern. We were in the tavern there.
25. Q. Now you say we, who was with you that night?
- A. I and Mr. Ebsary.
26. Q. That's Roy Ebsary, the accused?
- A. Yeah, right.
27. Q. Yes?
- A. We left there roughly, I think it was around - it was between eleven o'clock, ten thirty, eleven o'clock, something like that.

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65.

James William MacNeil, Direct Exam. by Mr. Edwards

28. Q. That's in the night, of course?
A. That was in the night, yeah.
29. Q. How long had you been at the tavern?
A. I think we were there since evening, since about seven o'clock or six o'clock, but I can't be sure. Six, seven, something like that.
30. Q. Right. How much had you had to drink that night?
A. I'd say I had about eight beer or something like that.
31. Q. And what effect, was the beer having on you, if any?
A. Well I wasn't drunk, you know, I was just, I was feeling good but I wasn't drunk like.
32. Q. How was it affecting your walk, if at all?
A. My walk was alright.
33. Q. What about Mr. Ebsary, how much had he had to drink that night?
A. I couldn't judge that night what he had to drink but I would say roughly around the same. You know, like, when you're in a tavern and a person is talking, I'm not sure, but I believe, whether somebody else came over to the table or something. When you're talking you're not really looking but I'd say roughly around that there much.
34. Q. And what effect did it appear to be having on him if any?
A. He seemed to be alright, he seemed to be walking straight.
35. Q. Now the State Tavern, that's no longer in business is it?
A. That is out of business.

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66.

James William MacNeil, Direct Exam. by Mr. Edwards

36. Q. Where was it located at the time?
A. Right at the corner of Falmouth and George Street.
37. Q. So you and Mr. Ebsary left the tavern, you say somewhere around ten thirty or eleven o'clock?
A. Hmm-mm, yeah.
38. Q. Did anyone leave with you or was it just the two of you?
A. Just the two of us.
39. Q. What route did you take?
A. We came down George and we took a short cut up through the park.
40. Q. That's Wentworth Park?
A. Wentworth Park, yeah.
41. Q. To what streets?
A. To Crescent Street.
42. Q. Crescent Street. Where were you headed at the time?
A. We were heading for his place.
43. Q. Which was where?
A. On Argyle Street.
44. Q. So do you recall approximately what time it would have been or how long after you left the tavern was it before you crossed through the park?
A. I would say it wouldn't be too long, about five or ten minutes, something like that. From the tavern to the spot there it's only about a ten minute walk, a fifteen minute walk.

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67.

James William MacNeil, Direct Exam. by Mr. Edwards

45. Q. Perhaps you could tell the jury then what occurred from the time you reached the park?
- A. Well when we reached the park we crossed over to Crescent Street. When we crossed over to Crescent Street then we were approached by the deceased, Mr. Seale, and Marshall. My hand, Marshall put my hand up behind my back. . .
46. Q. That's Donald Marshall, Jr.?
- A. Donald Marshall, Jr. Then at that time like ah, I just froze. I just froze and the next question I heard, the deceased Seale asking Mr. Ebsary: "Dig man, dig".
47. Q. Seale said to Ebsary, "Dig man, dig."?
- A. Yeah.
48. Q. What was he doing when he said that Mr. MacNeil, if anything?
- A. I think the intentions were to rob him, I had no money.
49. Q. Yeah but, the question is what was Seale doing when he said "dig man, dig"? Was he doing anything?
- A. He was just standing right -- he was standing right in front of him like.
50. Q. How far from him?
- A. I would say roughly about three or four feet.
51. Q. Yes?
- A. Yeah, I would say roughly about three or four feet.
52. Q. So he said "dig man, dig"?
- A. Yeah.

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68.

James William MacNeil, Direct Exam. by Mr. Edwards

53. Q. What happened then?
- A. And Mr. Ebsary said I got something for you and he just slid his hand in his pocket like that. I didn't, you know, I was just in a frozen state like that, and then SHWOO, I seen this big squirt of blood coming out of no where and I just went right into the state of shock. You know, it was terrible.
54. Q. Just before - or put it this way. While Seale was saying "dig man, dig", where was Marshall?
- A. Marshall still had my arm. But I can have it in a phrase like, I think Marshall let go of my arm like that because I can be sure that he tried to go for Ebsary. Like, you know, in a phrase, you know. But I know he let go of my arm like. He just dropped my arm.
55. Q. After you saw this squirt of blood, what did Seale do?
- A. Seale, he ran, I seen him, he ran -- he ran and then I seen him falling, he fell down, like he fell.
56. Q. About how far from where you were?
- A. Gee it's pretty hard now just . . .
57. Q. Well look at points in this court room.
- A. I would say from about, from to where I'm sitting probably a little bit farther than you. Around fifty yards or something like that.
58. Q. You're saying, you tell me to stop.
- A. Stop there.

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69.

James William MacNeil, Direct Exam. by Mr. Edwards

59. Q. Stop here?
A. Yeah.
60. Q. So I would suggest to you that's about thirty-five, forty feet, okay?
A. Yeah.
61. Q. So Mr. Seale fell at that point?
A. Yeah, he fell at that there point, yeah.
62. Q. Just before you saw the blood again, would you describe what Mr. Ebsary did?
A. Mr. Ebsary, we went right up to his place.
63. Q. No, no. Just before you saw the blood squirt?
A. Yeah?
64. Q. What was Ebsary doing?
A. Well Mr. Ebsary just ah, headed for home like, he just said come and we just headed for home like, he wanted to get home.
65. Q. Yeah, that was after?
A. That was after, yeah.
66. Q. That was after, I'm talking about before. Just back up a bit, okay. When Seale said "dig man, dig", just describe exactly what Mr. Ebsary did at that point.
A. At that time he said "I got something for you" and he slid his hand into his pocket and he just cut him up like that.
67. Q. You're indicating an upward motion with your right hand?
A. I would say an upward motion, yeah.

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70.

James William MacNeil, Direct Exam. by Mr. Edwards

68. Q. What, if anything, did he have in his hands?
A. A knife, a knife in his hand.
69. Q. How big was the knife, do you recall?
A. Well usually, I think it was a pocket knife. Usually that's what people carry, you know, but I can't be sure just exactly the size but a pocket knife would be a six inch blade. But I can't, you know, I can't be really sure.
70. Q. Did you see the blade?
A. No, I never seen the blade. This is just presay.
71. Q. Okay. So after Mr. Marshall let go of you, I believe you said that he went toward Ebsary?
A. Yeah.
72. Q. What happened between Ebsary and Marshall, if anything, at that point?
A. I just, I can't be sure. I think Ebsary waved like that at Marshall with his hand. It was like an upward motion. Then Marshall just vanished, right there he took off then.
73. Q. He took off?
A. Yeah.
74. Q. Do you remember what way he took off?
A. I can't remember the directions, I can't remember the directions.
75. Q. Then where did you and Ebsary go?
A. We went up to his place on Argyle Street.
76. Q. And how long would it have taken you to get from Crescent Street to his place on Argyle Street?

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71.

James William MacNeil, Direct Exam. by Mr. Edwards

- A. I'd say roughly fifteen minutes.
77. Q. About fifteen minutes?
- A. Yeah.
78. Q. Yes. And when you got to his house what did you do?
- A. I sat in the front room and he went in and he was washing the knife off underneath the sink, the blood off the knife under the sink like.
79. Q. Did you see him do that?
- A. I seen him like from a distance there, and that was it. I just stayed for a little while longer and then I went home.
80. Q. Do you recall if there was anyone else in the house that night?
- A. I was to, I was to -- if there was I can't recall because I was to in a state of shock like.
81. Q. Now when did you next go back to Ebsary's house after that?
- A. I went back the next day.
82. Q. Yes?
- A. And I told him that the fellow died.
83. Q. You told who?
- A. Mr. Ebsary that the fellow died and Mr. Ebsary said it was self defence.
84. Q. How did you know that the fellow had died?
- A. I heard it on the radio and he he said it was self defence.
85. Q. So what did you say then when he said it was self defence?

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James William MacNeil, Direct Exam. by Mr. Edwards

- A. Well I said I don't really think. I don't think. To me it was -- like when he asked me that there question I was laying in bed there. I just ah, I couldn't accept it as being self defence in my own thinking, ah.
86. Q. Is that what you told Ebsary?
- A. No I didn't tell him that but in my own thinking I couldn't take it. . .
87. Q. What did you tell Ebsary, if anything, or what did you say to Ebsary after he said it was self defence?
- A. Ah-h, I told him he didn't have to kill him, I said. I said he should have like, meaning he should have handed over his billfold because the fellow never put a gun in his face or any darn thing so he should have handed over his billfold, but people act in different ways I guess.
88. Q. And what did he say to that, if anything?
- A. He never said nothing, nothing. He just said self defence so I never went back to the house again after ah -- wait now, a couple of days after that - where was I at - I was up at the house and his son came up and his wife up.
89. Q. That's Ebsary's son and wife?
- A. Yeah. They told me not to go down to the house on account of what . . .
90. Q. You can't tell what they told you. But you had some conversation with the wife and son?
- A. Yeah, right.

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73.

James William MacNeil, Direct Exam. by Mr. Edwards

91. Q. As a result of that conversation you never went back to his house?
- A. Right.
92. Q. Mr. MacNeil when did you first tell anybody about this incident?
- A. Well when I went home I was pretty well ah - I couldn't sleep and then I never really told anybody except my like ah, when I went to the police after Mr. Marshall was tried.
93. Q. You went to the police after Mr. Marshall was tried?
- A. Yeah.
94. Q. Do you recall what month that would have been?
- A. That was just about ten days after that I think, or eleven days.
95. Q. Ten days after he was convicted?
- A. Yeah, right, yeah.
96. Q. Do you remember what month that was, what month of the year?
- A. I don't know, wait now, that was in November was it?
97. Q. November seventy-one?
- A. Yeah.
98. Q. Alright. So what police did you go to then?
- A. I went to Sydney Police. I think it was MacIntyre and ah.
99. Q. John MacIntyre, the one who is now chief?
- A. Yeah.
100. Q. Yes?
- A. And I gave him a statement and he wouldn't, him and there

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74.

James William MacNeil, Direct Exam. by Mr. Edwards

100. A. was another cop there with him, I forget the cop's name. They wouldn't believe me so I said I'll take a voluntary lie detector test. So I took that and that came out negative too, so you know, I was really in a pickle there. Nobody believed me and Chripts, a fellow has to spend all that time in jail for something he didn't do and you've got to live with it.

MR. WINTERMANS:

Your Honour, My Lord, I want to object again, I question the relevancy of this testimony.

MR. EDWARDS:

No further questions, thank you Mr. MacNeil.

MR. WINTERMANS:

1. Q. Mr. MacNeil, how old were you at the time that this incident took place?
A. I was twenty-five.
2. Q. And Mr. Ebsary, do you know how old he was at that time, approximately?
A. He'd be around sixty I guess.
3. Q. About sixty?
A. Yeah.
4. Q. How would you describe Mr. Seale in terms of size?
A. I would say that he was a little bit taller than Marshall,

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75.

James William MacNeil, Cross Exam. by Mr. Wintermans

I think he was taller than Marshall.

5. Q. You say that you first met Mr. Ebsary at the State Tavern which use to be on George Street. I understand it no longer exists there.

A. Yeah, right.

6. Q. It's on the corner of George and what?

A. George and Falmouth.

7. Q. Falmouth, okay. Mr. Ebsary was already at the tavern, wasn't he?

A. Yeah.

8. Q. And you just met him by coincidence there?

A. I believe so, yeah.

9. Q. So you're saying that you had about eight beers and that Ebsary probably had about eight beers. When you say that you're referring to the time that you were at the tavern with Mr. Ebsary, right?

A. Yeah.

10. Q. But you're not sure how long Mr. Ebsary was at the tavern before you got there?

A. No I'm not.

11. Q. Because you weren't there, right.

A. No I'm not, I can't.

12. Q. Okay, so you're not sure how much he had to drink before you even got there then?

A. No.

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James William MacNeil, Cross Exam. by Mr. Wintermans

13. Q. There's no way that you could know that?
A. No, there's no way I could.
14. Q. So you walked down George Street and of course that would be in the direction of Mr. Ebsary's residence at that time, which was on Argyle Street?
A. Yeah, right.
15. Q. And you cut through Wentworth Park which would have been directly on route to Mr. Ebsary's house at that time?
A. Yeah, right, yeah.
16. Q. Were you walking the whole time before you were approached by Marshall and Seale?
A. Yeah, we were walking.
17. Q. Did you stop in the park at all, lingering or anything like that?
A. No, we never stopped for nothing, no.
18. Q. You just kept walking through at a steady pace?
A. Yeah.
19. Q. And you were up on Crescent Street?
A. Yeah.
20. Q. You say that Marshall and Seale approached you?
A. Hmm-mm.
21. Q. You or Mr. Ebsary didn't approach them, did you?
A. No, no, no.
22. Q. So if someone was to testify that you or Mr. Ebsary called them over what would you say to that?

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James William MacNeil, Cross Exam. by Mr. Wintermans

22. A. I would have to say no, I would have to say no.
23. Q. From what direction did Mr. Marshall approach you?
- A. Well when we got up on the street from across the road I would say it would be around, just around, just as we.
24. Q. Okay. Let me rephrase that, I don't think you understand my question. Did he approach you from in front of you or from behind you or from beside you?
- A. I would say it would be sort of like in front of us.
25. Q. He approached you from the front?
- A. Yeah.
26. Q. Did you see him coming then?
- A. No, I never seen him coming.
27. Q. Do you recall having given evidence at the preliminary inquiry into this matter on August the fourth, nineteen eighty-three?
- A. Yeah.
28. Q. I'll just refer you to something at page forty-two, line five. Do you recall being asked the question by my Learned Friend, "Where did they approach you from, front or behind?" Your answer: "I would say it would be from like behind or like in a counter clockways, you know, like we were across the other side but I think it would be like from behind." Do you recall having said that then?
- A. Yeah, I think I recall saying that.

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James William MacNeil, Cross Exam. by Mr. Wintermans

29. Q. Let me ask you the question again. Did Marshall approach you from the front or from behind or from sideways or what?
- A. It was sort of like on a clock direction, like.
30. Q. What do you mean by that?
- A. Sort of like , I don't know in the heck; Marshall grabbed my arm and then all of a sudden I seen Mr. Seale in front of Mr. Ebsary.
31. Q. So let me just ask you this then. Did you see Mr. Seale at any time before Mr. Marshall grabbed your arm?
- A. Uh-h.
32. Q. Right at that - that night?
- A. No.
33. Q. Okay, so the first thing that you remember then as far as Marshall and Seale go is that Mr. Marshall grabbed your arm?
- A. Hmm-mm.
34. Q. And he pushed it up behind your back?
- A. Yeah.
35. Q. Like this?
- A. Yeah.
36. Q. And he put some pressure on it?
- A. Not too much pressure, I just froze when he grabbed it.
37. Q. He didn't hurt you or anything?
- A. No, he never hurt me, no.
38. Q. But he had you. . .
- A. He just had me like that.

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39. Q. So that you couldn't really move?
A. So I couldn't move like, right. Well I didn't plan or attend to move.
40. Q. You thought that you were being robbed, is that right?
A. Yeah, right.
41. Q. And you were afraid?
A. Darn rights I was.
42. Q. You thought that you might get hurt?
A. Darn rights.
43. Q. And Mr. Ebsary was standing right beside you?
A. Yeah.
44. Q. Just a couple of feet away from you?
A. Yeah, almost next, right, yeah.
45. Q. The two of you had been just walking along?
A. Yeah, right.
46. Q. Just minding your own business?
A. Yeah.
47. Q. Was there any conversation between either you and Ebsary with these two people, Seale and Marshall, before Mr. Marshall grabbed your arm?
A. No.
48. Q. Was there any conversation at all?
A. No.
either
49. Q. With Seale and Marshall?
A. No conversation whatsoever.

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James William MacNeil, Cross Exam. by Mr. Wintermans

50. Q. Was there any contact whatsoever?
A. No.
51. Q. Okay. So what you're saying is that you were walking through the park on your way to Mr. Ebsary's house?
A. Right.
52. Q. You were minding your own business?
A. Hmm-mm.
53. Q. You said that you had had a few beers but that you weren't staggering or anything, is that right?
A. No, I wasn't staggering.
54. Q. And two total strangers, were they total strangers?
A. Total strangers.
55. Q. Sandy Seale and Marshall?
A. Total strangers.
56. Q. Came up to you and attacked you. Is that a fair word to use?
A. Would be.
57. Q. At least Marshall attacked you?
A. Yeah, at least Marshall attacked me, yeah.
58. Q. I suppose you were more concerned about yourself and Mr. Marshall at that immediate moment than with Mr. Ebsary and Mr. Seale. Is that fair to say?
A. Yeah, that would be fair to say.
59. Q. Okay. And I suggest to you that between the time that Mr. Marshall grabbed your arm and put it up behind your back and the time that the knife came out and the two were cut

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with it, that that whole incident only took five or ten seconds, is that fair to say?

A. I would say, yeah.

60. Q. So it all happened very fast?

A. Very fast, yeah.

61. Q. And you say that right after Mr. Marshall put your hand up behind your back you heard some conversation between Mr. Seale and Mr. Ebsary?

A. Hmm-mm.

62. Q. Now you indicated that you heard Mr. Seale say: "dig man, dig".

A. I heard that, yeah.

63. Q. By that you understood, give me your money, dig into your pockets and give me your money?

A. Yeah, right, yeah.

64. Q. And that Mr. Ebsary said something to the effect, reaching into his pocket, "here, I've got something for you" or something like that?

A. Yeah, I heard that, yeah.

65. Q. Is that right?

A. I heard him saying that.

66. Q. Is it possible that there may have been some conversation between Seale and Ebsary before the comment "dig man, dig"?

A. I don't believe, no. I don't think, no.

67. Q. Are you sure that you may have just been so upset by being held by Mr. Marshall that you may not have noticed that

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it was all happening so fast?

A. No, no there was no conversation, no.

68. Q. I see. Isn't it true that Marshall never said one word to you before he put your arm up behind your back?

A. Marshall never said a word to me, no.

69. Q. Now you didn't actually see the knife at the scene, is that correct?

A. That's true.

70. Q. It wasn't until later at the house?

A. Yeah.

71. Q. And you say that Mr. Marshall, this is all happening of course in a five or ten second period but, after your arm was up behind your back and you heard "dig man, dig" and "I've got something for you" and you saw Mr. Ebsary move his arm towards Seale, isn't it right that you said that Mr. Marshall then made a move towards Mr. Ebsary?

A. Yeah, yeah, I seen that. I seen him making a move towards.

72. Q. And then Mr. Ebsary you say kind of swung his, put his arm up, his hand?

A. Yeah, and then Marshall.

73. Q. And then Marshall ran away?

A. Then he disappeared, yeah.

74. Q. Right. And Seale was already gone at that point?

A. Yeah.

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James William MacNeil, Cross Exam. by Mr. Wintermans

75. Q. He had already run and fell down or whatever?
A. Yeah.
76. Q. You and Mr. Ebsary then walked quickly to Mr. Ebsary's residence, is that correct?
A. Hmm-mm, yeah.
77. Q. And then when you got to Mr. Ebsary's residence you saw the knife at that time, did you not?
A. I saw the knife, I saw the knife.
78. Q. Isn't it true that this knife was a small knife with a brown handle on it?
A. There I can't -- I can't be really confident because I just had like a glimpse of it. There could have been a brown handle on it, but I can't be just, I'm not.
79. Q. Okay, what about the small aspect of it then?
A. I can't give you no size on the blade either. Just like if..
80. Q. But it was a pocket knife?
A. Yeah, this is what I figure it was.
81. Q. When you say a pocket knife to you mean like a jack knife, the blade folds into the handle?
A. Yeah, right, yeah.
82. Q. You said did you not too Mr. MacNeil, something to the effect "you did a good job back there"?
A. Yeah, I did when we got to the house. His daughter, I was telling her that.

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James William MacNeil, Cross Exam. by Mr. Wintermans

83. Q. And that was because you were glad because you thought that you might have been hurt, or something like that?
- A. Yes, yes I was.
84. Q. So you went to the police after the trial was over, the Marshall trial was over?
- A. Hmm-mm.
85. Q. After Marshall had been sentenced, is that right?
- A. Yeah, right.
86. Q. But they didn't believe you?
- A. No.
87. Q. The City Police didn't believe your story, is that right?
- A. No, they didn't believe me.
88. Q. And that was some ten days after the sentence was passed?
- A. Yeah, yeah.
89. Q. Isn't it true that just before this stabbing incident took place that Mr. Seale could have had his hands on Mr. Ebsary but you're not sure?
- A. Yeah, that could be possible, it could be possible.
90. Q. And it's possible that you weren't looking in Mr. Ebsary's direction because you were more concerned with what was happening to you at the hands of Mr. Marshall, is that correct?
- A. Well I couldn't say that's correct because I noticed his hand going into motion like.
91. Q. I'm talking about before that, right before you saw the hand going.

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James William MacNeil, Cross Exam. by Mr. Wintermans

91. A. Oh-h, yeah, right, yeah, yeah, oh.
92. Q. You were pretty worried about your own safety at that point?
- A. Yeah, right.
93. Q. You were afraid that you were being robbed and that you'd be hurt?
- A. Yeah, right.
94. Q. If I was to suggest to you that the reason that Mr. Marshall grabbed a hold of your arm was because he thought that you were drunk and you were staggering and were about to fall down and that he was just trying to help you out, what would you say to that suggestion?
- A. I would say it's wrong. I'd say that's wrong.
95. Q. Now with respect to the description of the knife, today you're saying that you're not sure how small it was or whether it had a brown handle and that. You recall having given evidence at the preliminary inquiry that I referred to earlier, do you?
- A. No answer.
96. Q. In August of nineteen eighty-three?
- A. Hmm-mm.
97. Q. Are you sure that the knife was in fact a jack knife type knife, where the blade folds into the handle?
- A. Well I figure that's the kind of a knife people carry on them, a pocket knife, jack knife like.

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James William MacNeil, Cross Exam. by Mr. Wintermans

98. Q. Do you recall having been asked as I refer to the preliminary inquiry in August of nineteen eighty-three: Question: "When you say pocket knife"

MR. EDWARDS:

Page and line please.

MR. WINTERMANS:

Page sixty-one, line seventeen.

99. Q. "When you say pocket knife do you mean the type of knife that folds up like a jack knife?". Your answer: "Yeah".
Question: "That the blade folds into the handle?" Answer: "Uh-hah". "Is that the kind of knife it was?" Answer: "Yeah." Question: "Are you certain about that?" Answer: "Yeah.". Do you recall having said that at the preliminary? That you were certain that it was a jack knife?

A. I believe I did.

100. Q. Isn't it true that you never saw any knife in Mr. Ebsary's possession earlier that evening?

A. No, I didn't even know.

101. Q. You were totally unaware of whether Mr. Ebsary had any kind of a knife on him?

A. I was totally unaware, totally unaware.

102. Q. Was it fairly dark at the tavern - not at the tavern, at the park that night?

A. The lighting was fair.

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James William MacNeil, Cross Exam. by Mr. Wintermans

103. Q. Was fair?
- A. It wasn't really dark it was just fair.
104. Q. So this is back in nineteen seventy-one around midnight?
- A. Hmm-mm.
105. Q. In a park?
- A. Yeah, it was fair, it wasn't really dark out.
106. Q. But the lighting was such that you were unable to see exactly what Ebsary had in his hand at that time, wasn't it?
- A. No answer.
107. Q. You said that you couldn't see the knife that well, isn't that right?
- A. Well, no, that's right, yeah.
108. Q. Now, again, you're saying today that you're not sure about the size of the knife that you saw later at the house?
- A. Yeah.
109. Q. Is that what you're saying?
- A. Yeah.
110. Q. Do you recall having given evidence up in Halifax before the Nova Scotia Court of Appeal in nineteen eighty-two, do you remember that? Giving evidence in Halifax, do you remember testifying up in Halifax?
- A. Yeah, right.
111. Q. Concerning this incident?
- A. Yeah.

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James William MacNeil, Cross Exam. by Mr. Wintermans

112. Q. Page ninety-nine, that evidence. Do you remember the question, line twenty-seven or something like that, Question: "But the point is you did see the knife before it went into Seale, did you?" Answer: "Not exactly because you know it was kind of dark like but I seen, I seen it. I had a glimpse of it after that, like you know, it was only a pocket knife, not a dagger or nothing, it was only small." Do you remember saying that?
- A. I remember saying that when I seen a glimpse of it after that. The only place I seen a glimpse of it was back home when he was washing it under the sink so I figured it was only a pocket knife.
113. Q. So what you're saying is that you assumed that the knife that you saw back at Ebsary's house, that he was washing in the sink, was the same knife that he had used back at the park, is that what you're saying?
- A. Hmm-mm.
114. Q. Yes?
- A. Pardon?
115. Q. Are you assuming that the knife that you saw Ebsary washing in the sink was the same knife that Mr. Ebsary had back in the park?
- A. Yeah, because there was blood on it and there was blood on his hands, blood on the handle.

1:50 Court Opens.

Jury called. All present.

Mr. James MacNeil duly sworn and examined.

Mr. MacNeil, direct examination, by Mr. Edwards

1. Q. Your name is James MacNeil?
- A. Yes your honour.
2. Q. What's your address Mr. MacNeil?
- A. Two-two-two Mount Pleasant Street.
3. Q. That's in Sydney is it.
- A. Yeah.
4. Q. How old are you now Mr. MacNeil?
- A. Thirty-Nine.
5. Q. And what's your present occupation?
- A. I'm working part-time -- just casual labour, like part-time you know.
6. Q. Okay, and in nineteen seventy-one how old were you?
- A. Ah, twenty-five.
7. Q. Twenty-five or twenty-six?
- A. Yeah.
8. Q. What was your occupation then?
- A. I was in landscaping then.
9. Q. Landscaping?
- A. Yeah.
10. Q. What was your address then?
- A. Ten-0-Seven Rear George Street.

Mr. MacNeil, direct examination, by Mr. Edwards

11. Q. And had you been a life long resident of Sydney up to that time?
- A. Yes Your Honour.
12. Q. And prior to May of nineteen seventy-one, had you known the accused, Roy Newman Ebsary?
- A. Yeah.
13. Q. Yes?
- A. Yeah.
14. Q. How long before May in seventy-one had you known Mr. Ebsary?
- A. About a couple of weeks, something like that.
15. Q. And is the Roy Newman Ebsary whom you knew then in court today.
- A. Yeah.
16. Q. And would you point him out please?
- A. Sitting right over here.
17. Q. What's he wearing?
- A. Blue coat, glasses, black tie and white shirt.
18. Q. And the record show him indicating the accused My Lord.
- By the Court: Yes.
19. Q. On the night of May twenty-eighth, nineteen seventy-one were you with Roy Newman Ebsary that evening?
- A. Yeah.
20. Q. Were you?
- A. No answer.

Mr. MacNeil, direct examination, by Mr. Edwards

21. Q. And where did you meet Mr. Ebsary on that evening?

A. In the State Tavern on George Street.

22. Q. The State Tavern on George Street?

A. Yeah.

Mr. Ebsary: Objection of the victim.

By the Court: Mr. Ebsary you have counsel and he is very competent and he is doing a good job for you. So, you just let him speak for you and if you want to speak in some manner, you just tug his coat tails and the message will get across.

23. Q. You met him in the State Tavern that evening?

A. Yes your Honour.

24. Q. What time did you go to the State Tavern?

A. I went there between six and seven -- something like that in the evening.

25. Q. You mean six or seven p.m.?

A. Yeah.

26. Q. And who did you go there with?

A. Myself.

27. Q. And you met Mr. Ebsary inside the tavern?

A. Right.

28. Q. And who was with him, if anyone, at the time?

A. I can't be just positive, I believe there was another person sitting with him?

29. Q. And you joined him at the table?

— A. Yeah.

Mr. MacNeil, direct examination, by Mr. Edwards

30. Q. And you remained at the State Tavern how long?
- A. About two hours, I'd say two hours.
31. Q. And during that two hours how much had you had to drink?
- A. I had roughly seven, eight beer.
32. Q. Seven, eight beer. Had you done any drinking that day before you went to the tavern?
- A. No, I didn't do no drinking that day.
33. Q. So, when you got to the tavern who was with you then?
- A. Mr. Ebsary.
34. Q. Do you recall time it was roughly when you left the tavern?
- A. It was after ten o'clock.
35. Q. And you went there at what time?
- A. I went there at seven.
36. Q. So, you were there over three hours?
- A. Yeah, right.
37. Q. So, did you and Mr. Ebsary leave alone or did someone else go with you?
- A. We left alone, the two of us.
38. Q. Now, the State Tavern, that was located on George Street?
- A. Yeah, right across from the Joy Supermarket on the right hand side.
39. Q. And when you and Mr. Ebsary left the tavern, what direction did you go?
- A. We went towards George Street down, that's, ah, towards the park.

Mr. MacNeil, direct examination, by Mr. Edwards

40. Q. Down George Street, toward--that would be Wentworth Park?
A. Yeah, right.
41. Q. Where were you headed?
A. We were headed for Mr. Ebsary's home.
42. Q. And where was that at the time?
A. That was on Rear Argyle Street.
43. Q. When you got to Wentworth Park, what route did you take then?
A. We took the shortcut, there's a bridge, that goes down like-- you go down first and there's like, there was a bridge there it's been rebuilt -- then it was just like old fashion, like wood and that. Now, they rebuilt it, they have a concrete one there. But it's in the same indentially spot.
44. Q. I see.
A. Per say.
45. Q. So, you left George Street, then went through the Park over the foot bridge?
A. Yeah.
46. Q. And were did you come out of at?
A. We came out up at Crescent Street.
47. Q. And that runs along the perimeter of the park?
A. Yeah, right.
48. Q. When we came up to the top of the hill we crossed over on the Crescent Street where we went right over, like the sidewalk.
A. You crossed Crescent Street itself?
A. Yeah.

Mr. MacNeil, direct examination, by Mr. Edwards

49. Q. So what you are saying is that the sidewalk that runs across Crescent Street is on the side of the street furthest from the park?

A. Right, yeah.

50. Q. Alright. So, then when you got on the sidewalk on Crescent Street, what direction did you go?

A. When we crossed over, ah, we crossed over, I believe we took the direction towards, there is two ways you can go to his house, eh?

51. Q. Yeah.

A. You can go that way or you can go up like that.

52. Q. Perhaps you
/could just come down here Mr. MacNeil and refer to Exhibit Number One. Maybe you could just stand aside so the jury can see it. Just over there. Now, this is George Street now show us where you would enter the park.

A. Right about here.

53. Q. You are indicating, another witness has put an arrow there already?

A. Oh no.

54. Q. But you're indicating this, where the arrow. And there is a bridge shown here, is that the bridge you are referring to?

A. Yeah.

55. Q. So then we you come off the bridge, what way did you go?

A. We walked right up to here, this is Crescent right?

Mr. MacNeil, direct examination, by Mr. Edwards

56. Q. So, you are indicating the path on the right hand side-- there are two path going from the bridge and the one on the right hand side is the "Y".
- A. Yeah.
57. Q. So then you crossed, you're saying, the far side of Crescent Street, the far side from the park?
- A. Yeah.
58. Q. To the sidewalk?
- A. Right.
59. Q. Alright, now my question was when you got on the far side of Crescent Street what way did you go--back this way toward Argyle or this way toward the intersection of South Bentick Street?
- A. We went this here way.
60. Q. You are indicating the intersection toward South Bentick Street?
- A. Yeah, right.
61. Q. Alright then perhaps you could return to the witness stand. Alright, so, what if anything occurred as you began walking toward South Bentick Street.
- A. We were approached, by, ah, the deceased, Sandy Seale and Mr. Marshall.
62. Q. Now prior to that night did you know either Sandy Seale or Mr. Marshall, you referred to Donald naturally?
- A. No.

Mr. MacNeil, direct examination, by Mr. Edwards

53. Q. You didn't know either one of them on that evening?

A. No.

54. Q. So, when you met them -- would you describe how you met them?

A. Well, I think, it came so fast it seemed like I think we were -- they approached us from the front but then Marshall had my right arm and started coming like counter clockwise and put it up behind my back. So, then I kind of like froze like, eh. At that time the deceased, Sandy Seale, was facing Ebsary on the inside like.

55. Q. On the inside you mean from the street?

A. Yeah.

56. Q. You and Marshall would have been out by the curb?

A. Yeah.

57. Q. As opposed to the street?

A. Yeah, right.

58. Q. And Ebsary and Seale would have been on the inside?

A. Yeah, on the inside right, yeah.

69. Q. And when Mr. Marshall put your arm up behind your back, can you recall what Seale and Ebsary were doing?

A. When he done that I heard Seale telling Mr. Ebsary to dig. Dig man, like that.

70. Q. He said what?

A. Dig man.

71. Q. Dig?

A. Yeah.

Mr. MacNeil, direct examination, by Mr. Edwards

72. Q. Yes.

A. So, I figured it was probably a robbery. I didn't have no money, I was kind of shook up. I just stayed and, ah.

73. Q. So when Seale said to Ebsary, dig man, what, if anything, did Ebsary do?

A. He said I got something for you.

74. Q. He said I got something for you?

A. Yeah.

75. Q. Now when Seale says dig man to Ebsary, do you recall how Seale's hands were?

A. They were just out like that?

76. Q. When you say out like that...

A. Just laying by his sides.

77. Q. By his sides?

A. Right, yeah.

78. Q. And what about Mr. Ebsary, where were his hands at the time?

A. I just can't recall where his hands were, but I imagine they would be by his side.

79. Q. Alright now you can't imagine but just tell us.

By the Court: He can but he mustn't tell us.

80. Q. Now tell us--you said that after Seale said dig man, Ebsary said what?

A. I got something for you.

81. Q. Now how much time passed between Seale saying dig man and Ebsary answering I got something for you?

—A. Just a split second -- no time at all.

Mr. MacNeil, direct examination, by Mr. Edwards

82. Q. Split second, right?
- A. Yeah.
33. Q. What, if anything, did Ebsary do when he said I got something for you?
- A. I think he put -- come out of his pocket like that.
34. Q. Now you're motioning with your right hand?
- A. Yeah, he came out with his hand and he went like that.
35. Q. Now when you said when he went like that, for the record, you are showing upward motion with your right hand, is that correct?
- A. Yeah, yeah.
36. Q. And in what direction did he make that motion?
- A. In upwards, like upward direction.
37. Q. In relation to Mr. Seale?
- A. In like, just like upward direction.
38. Q. Put it this way--where did he make contact with Mr. Seale, if he did make contact?
- A. In his abdomen--his stomach.
39. Q. Did you see if Mr. Ebsary had anything in his hand as he made that upward sweeping motion you just described?
- A. No, but I seen like blood.
90. Q. When did you see the blood?
- A. Coming out of the deceased Mr. Seale.
91. Q. What if any sound did you hear from Mr. Seale or Mr. Ebsary?
- A. I heard a scream coming from Mr. Seale and then everything was in phrases and I seen him, he ran.

Mr. MacNeil, direct examination, by Mr. Edwards

92. Q. Who ran?
- A. Mr. Seale, he ran.
93. Q. Right.
- A. And he sort of like ran to the other side of the street.
94. Q. Ran to the other side of the street--the park side?
- A. Yeah, right.
95. Q. Then, I believe that Marshall had tried to do something or some darn thing but I think Ebsary or something I can't be quite sure.
95. Q. You tell us what you remember Ebsary doing?
- A. I think like Ebsary made like a swing for him.
95. Q. For him you mean Marshall?
- A. Marshall, yeah, but I think what Marshall was trying to do was help his friend or something like that.
97. Q. What type of movement did Marshall make before Ebsary made the swing at him?
- A. Like sort of like he come over, sort of like that to grab he left my hand go behind my back.
98. Q. Marshall let your hand go?
- A. He let my hand go.
99. Q. When he let your hand go, what was the motion he made then?
- A. He sort of come over, like, then I was like, everything was happening so fast there.
100. Q. When you say he came over, do you mean he came over towards Ebsary?
- A. No, he just of like, I don't know if he reached over or it

Mr. MacNeil, direct examination, by Mr. Edwards

101. Q. Reached over to whom, to where?
A. Reached over, like he put his hand over.
102. Q. But to where?
A. Toward Ebsary.
103. Q. But when he reached over toward Ebsary, what did Ebsary do?
A. As far as I can think Ebsary sort of like went like that.
104. Q. You are making sort of a downward motion with your right hand?
A. Yeah, right.
105. Q. What, if anything, did you see in Ebsary's hand at that time?
A. I couldn't see because I was sort of in a state of shock. You see something like that, you don't, you know, you get some people get different ways but I guess, I was just frozen like, you know.
106. Q. Now, after Ebsary made that last motion you just described, towards Marshall what, if anything, did Marshall do then?
A. I can't--Marshall just disappeared.
107. Q. Do you remember what direction he went when he disappeared?
A. No, I don't remember the direction, no.
108. Q. Did you see Mr. Seale at that time?
A. No, I couldn't see him at that time.
109. Q. What did you and Mr. Ebsary do then?
A. The next minute we were at his house.
110. Q. You went to his house?
A. Yeah.
111. Q. Do you remember what route you took to get to his house?
A. I can't be sure.

Mr. MacNeil, direct examination, by Mr. Edwards

112. Q. Can you give us an idea of how long it would have taken you to get from where this incident took place to Mr. Ebsary's house?

A. I'd say ten minutes or so.

Mr. Ebsary: (Inaudible).

By the Court: Remember what I told you earlier Mr. Ebsary, that you have to have you stay in court throughout the whole proceeding.

113. Q. So you and Mr. Ebsary went to Mr. Ebsary's house on Rear Argyle Street?

A. Yeah, right.

114. Q. I take it you went in the house?

A. Yeah.

115. Q. With Mr. Ebsary?

A. Yeah, right.

116. Q. Do you recall if there was anyone else in the house that night?

A. I can't--I never seen anybody.

117. Q. Where did you and Mr. Ebsary go then?

A. Well I sort of sat out in a room, like you know, it's right off to the kitchen and look in the kitchen and I'd seen him cleaning his and the knife underneath the thing.

118. Q. What do you mean by cleaning the knife underneath the thing?

A. Underneath the tap.

119. Q. Underneath the tap?

— A. Yeah.

Mr. MacNeil, direct examination, by Mr. Edwards

120. Q. That would have been in what area, bathroom, kitchen?
A. In the kitchen.
121. Q. How far were you sitting from Mr. Ebsary?
A. I was only about from where you're standing to.....
122. Q. Are you indicating approximately twenty feet?
A. Not even that just about from here to the middle of the rail there.
123. Q. Middle of the rail?
A. Yeah.
124. Q. About ten feet away?
A. Yeah.
125. Q. You saw him clean a knife at that time?
A. Yeah.
126. Q. Can you describe the knife?
A. I can't describe it, but I presume it was a pocket knife.
By the Court: Don' presume.
127. Q. Don't presume, just tell us what you remember about the knife, if you remember anything? Do you remember the length of the blade?
A. No, but it had a brown handle on it, but I can't remember the length of the blade.
128. Q. And, how long did you stay at the house?
A. I'd stayed about an hour after that.
129. Q. And who, if anybody, did you talk to in that hour?
A. Nobody, just him, Mr. Ebsary.

Mr. MacNeil, direct examination, by Mr. Edwards

130. Q. Now, after that hour passed I take it you left Mr. Ebsary's house.

A. Then I went home.

131. Q. You went home?

A. Uh Hmmm.

132. Q. And when did you next go to Ebsary's, if you did go there?

A. I went the next day there after I heard the young fella had died.

133. Q. How did you hear that the young fella had died?

A. I heard it on the news eh. He was laying in bed and he said well.

134. Q. Who was laying in bed? :

A. Mr. Ebsary. He said well, it was self defense.

Mr. Wintermans: Excuse me My Lord, I wonder if this evidence is relevant, as to a conversation that took place the following day.

By the Court: It's all part of the same transaction in my view.

Mr. Edwards: On the objection, the following day, the I submit following year- /if he had conversation with the accused in relation to the events that happened that night it was indeed relevant and admissible.

By the Court: I think it's admissible to. (inaudible) mentioned earlier the one -- Mr. Edwards has just stated the statement by the accused in respect to the alleged occurrence and since it's not up to a person in authority there's no necessity for (inaudible).

Mr. MacNeil, direct examination, by Mr. Edwards

Mr. Wintermans: Then I would understand that only the exact words that were spoken would be admissible and not perhaps the witnesses opinions with respect thereto.

By the Court: He is not suppose to give opinions in any event. We don't know what his evidence is, but certainly his recollection of what was said is admissible. Now if gets into impressionable opinion, we'll have to deal with that when we come to it.

Mr. Wintermans: So, therefore, the witness is not to give his own opinion.

By the Court: No, no, he has not been established as an expert, so there's no.

Mr. Edwards: (inaudible) that last remark because I don't see where that came into it. The witnesses wasn't giving any opinion nor did I anticipate that he would.

135. Q. Okay, Mr. MacNeil, you were relating a conversation that you and Mr. Ebsary had the day after this incident in the park?

A. Yes, right.

136. Q. And Mr. Ebsary was in bed at the time?

A. Yes.

137. Q. What did you say to Mr. Ebsary first?

A. I said you didn't have to kill him. I said you should have gave him the money.

138. Q. What did Mr. Ebsary say to that?

A. He said it was self defense.

Mr. MacNeil, direct examination, by Mr. Edwards

139. Q. Do you recall what else was said, if anything?
- A. Well he said, well, I got a family and, ah, you don't your family in trouble and every darn thing so, you know, I said well we'll have to go to court and everything like that.
140. Q. That's what he said to you?
- A. Yeah.
141. Q. And then what did you say?
- A. Well I just, you know, I just well should have gave him the money and this thing wouldn't have happened. because he wasn't armed or nothing, you know.
142. Q. You told Mr. Ebsary that Mr. Seale wasn't armed?
- A. He wasn't armed, he wasn't cursing, he just "dig man, dig" which meant he wanted money.
143. Q. When you said that to Ebsary about Seale not being armed what did he say to that?
- A. Well, Mr. Ebsary said self-defense.
144. Q. How long did you stay at the Ebsary house on that occasion?
- A. Ah, not too long about an hour and that's the last of it-- I never went there again.
145. Q. You never went there again?
- A. No.
146. Q. Okay. You were aware that Donald Marshall had been charged with stabbing Sandy Seale?
- A. Yes, I was aware of that, I was aware of that, and, ah, I, ah, after I found out he was convicted and sent away I couldn't sleep. I said it's just not right for a person

Mr. MacNeil, direct examination, by Mr. Edwards

walking around there and my mother.

147. Q. Now you can't tell us what your mother said?

A. Yeah, but I was walking around and anyhow that's it. I went down and made my statement to the police and I told them and they, I don't think they believed me, so.

148. Q. That was after you heard Donald Marshall had been convicted?

A. Convicted, yeah, but they didn't believe me.

149. Q. Mr. MacNeil you say you had how many beers that evening?

A. I had seven or eight beers.

150. Q. What effect would you say the beers were having on you at the time of this incident in the park?

A. What effect--well, I wasn't drunk or nothing. I was alright but after this happened I went kind of like in shock, eh. Like, you know, after the incident happened I was all shook up. I can't describe it you have to go through it yourself and then you realize what it's like.

151. Q. Okay. Do you ^{know} any of Mr. Ebsary's family?

A. At that time I knew Donna.

152. Q. Donna, who would be who?

A. That's her daughter.

153. Q. The daughter.

A. Her brother.

154. Q. What was his name.

A. The end of my tongue now and I can't think.

155. Q. Would it have been Gregory?

A. Gregory, yeah.

Mr. MacNeil, direct examination, by Mr. Edwards

156. Q. Yeah.

A. And his mother, Mary.

157. Q. Okay. When prior to the stabbing would you have last seen them?

A. Prior, that's like after....

158. Q. No, before.

A. Well, I seen them when they bought a car. I had my license, eh.

159. Q. How long before the night of the stabbing was that?

A. Awhile, about a month, something like that.

160. Q. When did you next see them after the stabbing?

A. After it happened I seen them a couple of days after that, they told me...

161. Q. Well you can't tell what...

A. No, no, no.

162. Q. Okay, I have no further questions.

Mr. MacNeil, cross examination, by Mr. Wintermans

1. Q. Mr. MacNeil, you say at the present time you are thirty-nine years old?
- A. Yeah.
2. Q. Working?
- A. Yeah.
3. Q. Part-time?
- A. Part-time, yeah.
4. Q. What kind of work are you doing?
- A. I'm just doing some work down at the Isle Royal Hotel. They are tearing it down--like tearing the insides out and they are rebuilding it, eh.
5. Q. Yeah.
- A. So, I'm down there just hauling the stuff out and that.
6. Q. And what kind of education do you have?
- A. I have Grade Six.
7. Q. How old were you when you finished school?
- A. Sixteen.
8. Q. I take it you didn't do too well in school?
- A. Not too well in school, no.
9. Q. Ah, you say that at this time, back in nineteen seventy-one, you were working as a landscaper, who was that with?
- A. I worked with Sydney Landscaping, I worked with Ellebrok, and I worked with Khattar, Khattar's Landscaping.
10. Q. All back in nineteen seventy-one?
- A. Yes, well, prior to that prior to that.

Mr. MacNeil, cross examination, by Mr. Wintermans

10. A. I worked at C.N.R. and I worked at Keddy's for awhile.
11. Q. And you're single, are you?
- A. Yeah.
12. Q. How would you describe you memory, generally speaking?
- A. Memory, since this here, I go through a lot of strain. It's not easy to get a job. I find when I go looking for a job everybody says I know you, you're in the paper there and then you know, sometimes you think people are like prejudice against you for some darn thing because you've been where there was somebody killed, and, ah, it hurts you inside a lot.
13. Q. So, this incident has caused you considerable suffering?
- A. And emotional problems a little bit, not serious, but serious enough I had to go to the doctor and get something for my nerves.
14. Q. When was that?
- A. That was last year.
15. Q. Are you still -- are you taking anything now?
- A. I'm still taking Valium.
16. Q. Valium?
- A. Yeah.
17. Q. How often do you take that?
- A. One every day, but if I'm not uptight--if I'm working I don't need them at all.
18. Q. I see. You say that you went to the tavern between six and seven in the evening?
- A. I'm posi....., pretty sure..

Mr. MacNeil, cross examination, by Mr. Wintermans

19. Q. Do you recall having given evidence in Halifax in nineteen eighty-two before the Nova Scotia Supreme Court Appeal Division, in relation to the Donald Marshall matter?
- A. Yeah.
20. Q. Page Eighty-Two, Page Eighty-One, do you recall having asked the Question: 'Now can you say what time you arrived at the State Tavern?' and the Answer: 'I would say we arrived around eight o'clock in the evening, I would say.' Question: 'You say we?' Answer: 'Yeah, me and Roy. Oh no, not me and Roy I mean to say that is where I meant Roy that evening.' Do you recall having said that?
- A. No, I don't recall saying that.
21. Q. Are you saying you didn't say that?
- A. I might have, but I don't recall it.
22. Q. The point is I wonder if you really do remember what time you went to the tavern, not that it's all that important, but if you said six or seven, I'm suggesting you may have previously said eight.
- A. Maybe.
23. Q. You are not sure?
- A. I'm not sure.
24. Q. Sometime between six and eight, is that fair to say?
- A. Yeah.
25. Q. Sometime in the early evening?
- A. Yeah.

Mr. MacNeil, cross examination, by Mr. Wintermans

25. Q. You weren't looking at your watch as you went out the door?
A. No, I never had a watch.
27. Q. Figuring you might have to testify about it, were you?
A. No, no.
28. Q. Isn't it true, you indicated when you got the tavern, whatever time it was Mr. Ebsary was already there. You say that you had seven or eight beers?
A. Yeah around seven or eight beers.
29. Q. How many did Mr. Ebsary have while you were there?
A. Ah, I would say around the same number. You don't look and watch.
30. Q. Approximately, give or take?
A. Approximately, yeah.
31. Q. And it's true that Mr. Ebsary was there before you got there so I suggest to you that he may have had more beer before you got there.
A. He might have, how would I know.
32. Q. Was Mr. Ebsary drinking beer when you arrived at the tavern?
A. Yeah, he had some in front of him there.
33. Q. Now, ah, what time did you say you left the tavern with Mr. Ebsary?
A. We left around ten o'clock.
34. Q. You again recall having testified in Halifax, as I indicated, before the Appeal Court, in relation to the Donald Marshall matter.
A. Uh Hmmm.

Mr. MacNeil, cross examination, by Mr. Wintermans

35. Q. Do you recall page eighty-three, being asked the question: 'Can you recall what time you left the State Tavern?'
 Answer: 'I can recall, I'd say around, between ten thirty and eleven o'clock or something like that, like you know like.' Question: 'How certain you about the time?'
 Answer: 'Well you know like I just--I'd say about eleven o'clock I would say.' Do you recall those questions and answers?
- A. No, not directly.
36. Q. Are you saying those answers are not true?
 A. No, I'm not saying that they are not true.
37. Q. So, again I suggest to you, that you are not sure about the times, that it could have been eleven o'clock, is that right?
38. Q. Okay. Now, did you say that you were approached by Mr. Marshall and Mr. Seale from the front or was it from behind?
- A. I figured it was from behind like, they come up on the counterwise, like from behind.
39. Q. And you say that Mr. Marshall put your arm up behind your back?
- A. Yeah, right.
40. Q. Up like...
- A. Yeah.
41. Q. Got a hold of your wrist or something?
- A. Yeah.
42. Q. Little bit of pressure?
- A. Yeah.

Mr. MacNeil, cross examination by Mr. Wintermans

42. Q. Did that put you in a position where you couldn't really move?
- A. Well I could have moved, but I just froze, I just stayed there.
43. Q. Did Mr. Marshall say anything to you before he put your hand up behind your back?
- A. Marshall never said nothing to me.
44. Q. Never said a word?
- A. Not a single word.
45. Q. Did he say anything to Mr. Ebsary?
- A. I never heard him saying a word.
46. Q. Was there any conversation between you before Mr. Marshall put your hand up behind your back?
- A. No, no conversation at all.
47. Q. If I was to tell you that Mr. Marshall testified that the four of you were having a conversation for about a half an hour before that incident occurred on that same evening, what would you say to that?
- A. I would say it's wrong.
48. Q. Are you sure about that?
- A. Positive.
49. Q. So, there was no conversation between you and either Seale or Marshall?
- A. There was no conversation whatsoever.
50. Q. Did you see Mr. Marshall or Mr. Seale before your hand was put up behind your back?
- A. Ah, just, like it happened so fast, eh, like I say, in a sense I think I did see him, like you know.

Mr. MacNeil, cross examination by Mr. Wintermans

51. Q. For how long?
- A. For just a second, that's about all.
52. Q. Now, do you know how old Mr. Ebsary was at that time?
- A. I guess he would be around sixty, I guess, sixty-one, or sixty.
53. Q. Did he look very much different then than he does now?
- A. I guess he did.
54. Q. Pardon me?
- A. I guess he did.
55. Q. In what way?
- A. He was a lot more spryer.
56. Q. He was?
- A. Yeah. He walked a lot more spryer.
57. Q. Was he any taller?
- A. No answer.
58. Q. You say that you only knew Mr. Ebsary for a couple of weeks before this incident occurred?
- A. Pardon.
59. Q. You say that you only knew Mr. Ebsary for a couple of weeks before this incident occurred?
- A. No, I knew him a couple of months before, but before the incident.....what are you talking about, like the?
60. Q. How long did you know Mr. Ebsary?
- A. Two months before that, yeah.
61. Q. And is your father living?
- A. Yeah.

Mr. MacNeil, cross examination by Mr. Wintermans

62. Q. He is?

A. Yeah.

63. Q. Where does he live?

A. Spring Garden Villa.

64. Q. Where's that?

A. It's up off Alexandra Street?

65. Q. Did Mr. Ebsary know your father at all, as far as you know?

A. As far as I know, he did not.

66. Q. Are you sure about that?

A. Positive.

Unless he met him in the State and I didn't know anything about it because my father use to go the State Tavern when he got pensioned up. He use to go there with all his friends there.

67. Q. How old is your father now?

A. My father is about, oh, he is way over seventy. About, seventy, he was born March, nineteen o one. So that makes him.

68. Q. Eighty two?

A. Yeah, eighty-two, yeah.

69. Q. Now, when Mr. Marshall put your hand up behind your back, were you afraid?

A. I was afraid indeed.

70. Q. You were.

A. I was afraid indeed.

Mr. MacNeil, cross examination by Mr. Wintermans

71. Q. What were you afraid of?
- A. Well, I had an incident when I was young where this fella was -- I don't know if I had to mention it here.
72. Q. Were you afraid he was going to hurt you?
- A. I was afraid, yeah.
73. Q. Now, you testified that you didn't see any knife in Mr. Ebsary's hand at the park on Crescent Street at that time, is that correct?
- A. Yeah, that's correct.
74. Q. You couldn't see the knife?
- A. No.
75. Q. Were you looking in that direction?
- A. I was stunned. If it was there, I, you know.
76. Q. Was it because it was dark you didn't see?
- A. Well, the lighting wasn't the best. The lighting was only fair.
77. Q. Do you recall the lighting in the park at that time as compared to now?
- A. To now, it's different now, it was only fair at that time. It wasn't as bright as it use to be.
78. Q. It's much brighter there now.
- A. It's much brightther there now, yeah.
79. Q. You indicated that you crossed across the bridge here and that it use to be an old wooden bridge?
- A. Yeah, right.
80. Q. And now it's a new...
- A. Concrete.

Mr. MacNeil, cross examination by Mr. Wintermans

81. Q. Concrete bridge?

A. Yeah.

32. Q. Do you recall whether or not there were any lights on that bridge back in nineteen seventy-one?

A. No, I don't recall none on that bridge.

33. Q. I suggest to you that there weren't.

A. No.

34. Q. Although there are very bright lights, do you agree with that?

A. Yeah.

35. Q. Ah, now you said that Mr. Marshall and Mr. Seale were not armed, in a conversation between yourself and Mr. Ebsary the following day. You testified to that?

A. Yeah.

36. Q. And I suggest to you that you can't really say or at least you couldn't say that night in the park when this incident happened whether or not they were armed?

A. No, they could have, but I presumed that they weren't because you know, but I can't.

87. Q. When did you presume they weren't, after?

A. No, no, I mean to say well, you know, they could be armed, they could....

Mr. Edwards: Objection, the witness is trying to get his answer in but my learned friend is not letting him to complete it.

By the Court: We should do that. This witness obviously takes longer to answer than some other witnesses and I

Mr. MacNeil, cross examination by Wintermans

37. A. I can't say that they wouldn't be armed, I'm not, you know, but to me the way I see, I didn't see nothing in the deceased hands, you know, club or anything like that, but then I can't say for sure that Marshall wouldn't have a weapon on him. You can understand that, eh.
88. Q. Sure. Of course, you couldn't see any weapon on Mr. Ebsary either?
- A. No.
89. Q. Isn't it true that you didn't know before this incident that Mr. Ebsary even had a knife?
- A. I didn't even know, I didn't even know he had a stone sharpener in the basement and every darn thing, I didn't know anything about that.
90. Q. Isn't it true that you couldn't really see the hands of four hands of Mr. Marshall and Mr. Seale when you were being held by Mr. Marshall.
- A. Repeat that question again please.
91. Q. You couldn't see their, ah, the four hands of Mr. Marshall and Mr. Seale while you were being held by Mr. Marshall?
- A. No, just Mr. Seale's hands were the only one, I couldn't this is kind of, I could see Mr. Seale's hands, but, ah.
92. Q. You could see whether he had a....
- Mr. Edwards: Objection.
- A. I didn't see no, to my, I couldn't see no weapon in his hands but, I can't say that Marshall wouldn't have something on him, but the way I figure out the kids, they were just probably looking for some money to go to a dance or something

Mr. MacNeil, cross examination by Mr. Wintermans

92. A. instead of all this going on

93. Q. Let me just say something by way of question, I'll ask you to comment on. I'm suggesting to you, that the way you are thinking now about that incident in a lot of ways, based on the consequences that resulted and everything from it.

A. Yeah, I....

94. Q. But that particular night, back in nineteen seventy-one, at that moment when Mr. Marshall grabbed you and held you.

A. Yeah.

95. Q. And when Mr. Seale said "dig man" and you thought there was a robbery and you were afraid as you testified, you weren't thinking quite this clearly then, were you?

A. No, that's true.

96. Q. You have given this a lot of thought over the years, I suggest.

A. I've given it a lot of thought, you know, ah, I.

97. Q. Do you....

Mr. Edwards: Objection, let him finish.

By the Court: Just because a witness does not answer as quick Mr. Wintermans as you would like, doesn't mean that he ought not be given the opportunity to answer the question you ask. So, don't be too impatient, just wait until he finishes the question, the answer if you would.

98. Q. Now, you saying that when you went back to Ebsary's residence ah, you're not sure which route you took.

—A. No.

Mr. MacNeil, cross examination by Mr. Wintermans

99. Q. How would you describe the speed?

A. We were going pretty fast, I know that.

100. Q. And, ah, you say that you were sitting in one room off the kitchen?

A. Uh Hmmm.

101. Q. While (inaudible) Mr. Ebsary was doing something under the sink, is that right?

A. Right.

102. Q. Can you describe what you saw in that kitchen?

A. Ah, I can just describe, as I think, ah, it's got a brown handle on it. I can't really describe how long the blade was or because or because I was too shook up to start looking to see what size knives are.

103. Q. Now were you lingering in the parking lot when this incident occurred?

A. No, I wasn't lingering at all. No.

104. Q. Were you -- is it fair to say you were walking from George Street through the park on you way to Mr. Ebsary's residence?

A. Right.

105. Q. Without stopping?

A. Without stopping.

106. Q. Minding your own business?

A. Minding my own business, yeah.

107. Q. Is it fair to say you were attacked by these two?

A. Yeah, that would be fair, yeah.

Mr. MacNeil, cross examination by Mr. Wintermans

108. Q. And you've indicated that you were afraid you might be hurt?
- A. Yeah, but the only thing that gets me there is that he should have had more experience than me. Everybody thinks that in a case like that, you know.
109. Q. I don't want what you opinions might be. Now, did you or did you not see blood on the knife in the kitchen?
- A. Yes, I did.
110. Q. Are you sure?
- A. Positive.
111. Q. Do you recall having given a statement to the R.C.M.P. on February the eighth, nineteen eighty-two?
- A. Yeah.
112. Q. Do you recall having stayed at -- I'll read it to you and ask you -- "On Crescent Street two fellas came up on us from behind, they asked us for money, I heard one fella, the coloured fella or the Indian guy say 'dig man, dig'. All I remember is the colour fella ran and then flopped on the road. I think the colour fella was in front of Roy. We walked kind of fast away to Roy's, we went in the house. I'm pretty sure I saw him wash the knife off in the sink, I can't remember if it had any blood."
- A. That was the morning -- whose name is on that Weitman?
113. Q. Yes.
- A. Yeah, he and MacQueen came up to the house and I wasn't feeling good that there morning and I wasn't, I was all (inaudible) up and didn't, and everything came back so sudden there and I just, you know, I told them, you know, I was all worked up

Mr. MacNeil, cross examination by Mr. Wintermans

113. A. and that's, ah.
114. Q. How many times did you discuss this matter with the police?
A. I discussed it after Marshall was convicted and then I never discussed it again?
115. Q. You never discussed it again?
A. No.
116. Q. What do you call February the eighth, nineteen eighty-two?
A. Well, that was the next time after that. But before that, like, Marshall's lawyer Anderson was down and he was asking me questions and then there was people coming around from Cape Breton Post and everybody is coming around asking questions about this and that.
117. Q. What about Mr. Edwards, did he talk to you about it?
A: Mr. Edwards, Yea. Now that I think about it yea.
118. Q. What about Corporal Carol of the R.C.M.P.? You must have talked to him about it on more than one occasion.
A. Yes.
- 119 Q. Now, you have already indicated that you recall having a testified in Halifax before the appeal court in 1982.in relation to the Donald Marshall matter.
A. Yes.
- 120 Q. Do you recall this question and answer? Question: But the point is you did see the knife before it went into seal didn't you? Answer: Not exactly because you know it was kind of dark like, but I seen it. I had a glimpse of it Like after you know. It was only a pocket knife. Not a

Mr. MacNeil, cross examination by Mr. Wintermans

109.

- 120 Q. dagger or nothing, it was only small. Do you recall having said that?
- A. I have, recall saying that.
121. Q. Is that true?
- A. Yes.
122. Q. And you don't recall having seen anyone else at the Ebsary house besides you and Roy Ebsary?
- A. I don't recall seeing anybody.
123. Q. Do you recall seeing Donna Ebsary, the daughter?
- A. No.
124. Q. Do you recall seeing Mary Ebsary, Mr. Ebsary's wife?
- A. No.
125. Q. Are you saying that they weren't there?
- A. I never seen them.
126. Q. If I was to suggest to you that they were there and they saw you what would you say to that?
- A. I would say, I would say I don't remember seeing them.
127. Q. Now you said that this whole incident where Marshall grabbed you by the arm and Mr. Ebsary stabbed Mr. Seale, all happened pretty quickly did it?
- A. Pretty quickly.
- 128 A. In a matter of a couple of seconds?
- Q. A couple of seconds.
129. Q. So you didn't have a lot of time to really think about what was happening before Mr. Ebsary used his knife?
- A. No.
130. Q. No more questions.

Mr. MacNeil, redirect by Mr. Edwards .

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131. Q. Mr. Edwards: The last part of the testimony you gave in Halifax that Mr. Wintermans referred you to where you said the knife was only a pocket knife, why did you say that it was only a pocket knife?

A. I presume that's what people carry is pocket knives.

132. Q. Thank you.

By the court: Thank you very much Mr. MacNeil.

Court recesses.

OCTOBER '84

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Mr. James MacNeil, sworn, testified as follows:EXAMINED BY R. MURRANT

1. Q. Your names is James MacNeil?
A. Yeah, right.
2. Q. Your middle name is?
A. William.
3. Q. And your address?
A. 222 Mount Pleasant Street.
4. Q. And that's in Sydney?
A. Yes.
5. Q. How old are you Mr. MacNeil?
A. I am 39.
6. Q. And this proceeding, you got a notice to come here today?
A. Yes I did.
7. Q. You'll see by the notice it is a proceeding between John F. MacIntyre and the Canadian Broadcasting Corporation?
A. Yeah, right.
8. Q. And have you discussed this case with anybody?
A. Just my girlfriend.
9. Q. I represent the Canadian Broadcasting Corporation here today?
A. Yeah.
10. Q. I want to ask you about one part of the Donald Marshall affair and that is, he stood trial in November of 1971, you learned that he had been convicted of the murde of Sandy Seale?
A. Yeah right.
11. Q. Now I want to know what you did when you learned that?
A. Well I didn't go back to the police. I was at the police before that.

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12. Q. Before that?
A. No, no, wait now.
13. Q. It's been a long time, don't guess.
A. Then I went to the police.
14. Q. After the conviction?
A. After the conviction I went to the police.
15. Q. Which policeman?
A. I forget their names.
16. Q. What did you tell them?
A. I just told them that he wasn't--that he didn't kill Sandy Seale and they did a polygraph test on me and it was inclusive, it didn't come out.
17. Q. One way or the other?
A. Yeah, it didn't come out.
18. Q. Did they do anything else?
A. No they didn't.
19. Q. Did you have anything to do with them interviewing Roy Ebsary at the t
A. No.
20. Q. After the polygraph test, I take it that was the end of it as far as you were concerned?
A. Yeah, I figured they didn't believe me and that was it.
21. Q. But you knew Mr. MacNeil you were right?
A. Yeah.
22. Q. Never mind this machine, you knew you were telling the truth?
A. I knew I was telling the truth but they go by the machine.
23. Q. Is there anything you did or wanted to do after that?
A. Well I wanted to go back again but I said they're not going to believe me so what is the sense in going back.

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24. Q. What was the attitude of the police when you came in?
A. Ah...
25. Q. Were they pleased to see you?
A. I think they were fairly good.
26. Q. Now the person you identified when you went in in November after the conviction. The person you said was the real killer was who?
A. Ebsary.
27. Q. Roy Ebsary?
A. Yes, that's who.
28. Q. And I know he has to stand trial again, you have to go through that again, don't you?
A. I don't know but I would imagine.
29. Q. But he's been found guilty by a court of having committed this murder?
A. Yeah, right.
R. Pugsley: I guess that's technically correct. That conviction has been overturned.
R. Murrant: I know.
30. Q. Did you know Roy Ebsary before this happened?
A. Oh, yes, I met him in the Tavern before.
31. Q. Did people around town know him?
A. Ah...
32. Q. Did they know him on the street or....
A. Not to my knowledge, I just met him in the Tavern, he invited me up to his place, he bought a new car for his daughter and she didn't have her license and I was driving it.
33. Q. So you had only known him a very short time?
A. A short time, I didn't know him for a year or anything like that.

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34. Q. Why did you hesitate to go to the police?
A. Because Ebsary told me, he said if you go to the police you're going to get in trouble, the family in trouble and that.
35. Q. Right. Years ago when he was on trial did you go to the Court House?
A. No.
36. Q. Did you follow it in the paper?
A. I heard it on the radio what the fellow got and I told Ebsary and he said he said it was self-defense.
37. Q. Then Marshall was charged, right?
A. Right.
38. Q. You must have read that in the paper?
A. Right.
39. Q. The trial was on?
A. Yeah.
40. Q. Did you go over to the Court House or....
A. No I didn't.
41. Q. Did you ever consider going to Marshall or his lawyer?
A. No.
42. Q. I was wondering why you went to the police instead of -- why did you chose the police to tell?
A. Well I trusted the police, I figured the police would know what to do.
43. Q. It didn't occur to you to go to Marhsall?
A. No.
44. Q. Back when this murder happened, of course, you were there when it happened?
A. Yeah right.

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45. Q. Was it much of an event in Sydney?
A. What do you mean by an event?
46. Q. Talk, of things in the paper, pressure on the police to solve it?
A. At that time I wasn't reading much in the paper, after that I kind of hit the bottle.
47. Q. After the murder?
A. Yeah.
48. Q. That's about 10 days after the conviction that you walked in, wasn't it?
A. Yeah.
49. Q. Thank you that's all the questions I have.

Mr. James MacNeil, examined by R. PUGSLEY

1. Q. Mr. MacNeil, you say you're 39 now?
A. Yeah.
2. Q. Are you a married man?
A. No.
3. Q. Do you work?
A. I can't get a job, once they see my face, that's it.
4. Q. Why is that sir?
A. Because on account of being in the Marshall case, you know. On account of Ebsary I got a bad name, marked for life.
5. Q. How far did you go in school?
A. I went to grade five.
6. Q. Then what did you do?
A. I landscaped, I worked for Sydney Landscaping for a while.
7. Q. How long did you work for them?
A. I worked for them for a summer and there I went to another job and I worked for Ellerbrok for a while.

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8. Q. For who?
A. Ellerbrok.
9. Q. What is Ellerbrok
A. He's landscaping too.
10. Q. How long did you work for him?
A. I worked for him for a summer and then I worked at Ideal Sausage when they were in business on Alexandra Street.
11. Q. How long were you there?
A. I was there for a year.
12. Q. Yes?
A. And I was on some grants after that.
13. Q. On some what?
A. City grants.
14. Q. Welfare grants do you mean?
A. Yeah, welfare grants. And then I stayed on welfare. They were suppose to get me some work but unfortunately they can't do it right now because there are so many people out of work.
15. Q. In the last 20 years, since you were 20 years of age for what period of time have you worked would you saw?
A. Since I was 20?
16. Q. Since you were 20, yes.
A. I guess I worked for about 12 years I guess.
17. Q. You worked 12 of those 20 years, did you?
A. Yes.
18. Q. And where do you live now?
A. 222 Mount Pleasant Street, that's down in Whitney Pier.
19. Q. You have a room there, do you?
A. Yeah, I'm rooming there.

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20. Q. How do you pay for that?
A. Pardon?
21. Q. How do you pay for that?
A. Through Welfare.
22. Q. Through Welfare, okay. It is my understanding that when you went to see the City Police in Sydney, they took a statement from you and then they called in the RCMP and it was the RCMP that gave you the polygraph test, do you remember?
A. Yeah.
23. Q. The RCMP constable who gave you the test had this to say about the test that he gave you and I'll just read this to you and you listen and then I'll ask you a question about it. It says; "it will be noted that I gave an indefinite opinion as to MacNeil's polygraph examination, however, the following should be added. This subject, 'that's you' was interviewed after the examination and on a number of occasions was quite ready to admit that he was lying and that he was only joking when he said that Ebsary had stabbed Seale." Do you remember laughing about it and joking with the man who gave you the test?
A. No, no.
24. Q. You don't recall that at all?
A. No I don't recall that at all, no.
24. Q. You and Mr. Ebsary were in Wentworth Park?
A. Yeah.
25. Q. It was dark out, was it?
A. Right.
26. Q. What happened, what was the first thing that happened with the two of you?
A. We were taking a short cut.

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27. Q. From where to where?
A. From the Tavern up to his place.
28. Q. And this would be--can you tell me--you were going through the park, were you?
A. Yeah.
29. Q. Over a bridge?
A. Yeah, right over a bridge.
30. Q. Were you walking up towards Crescent Street?
A. Yeah, right.
31. Q. And what happened?
A. Then we were approached by Seale and Marshall.
32. Q. What did they do?
A. They asked for money.
33. Q. What did they say?
A. Seale said dig man dig and Marshall put my right had behind my back like that and Seale said dig man dig and everything happened so quick, I just remember Roy's hand going like that, in a motion like that and then I heard Seale scream and I sort of like, right, I don't know, -- I think I was scared when Marshall had me by the arm.
34. Q. How did Marshall have you by the arm?
A. He had me like this.
35. Q. You're indicating with your right hand behind your back?
A. Yeah.
36. Q. And was he pulling your hand up towards your head?
A. Yeah.
37. Q. Did it hurt?
A. Not that I know of, it didn't feel like it hurted, it didn't feel like he was putting that much pressure on it.

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38. Q. Could you get away from him, did you....
A. Well I didn't try to get away from him, I just froze, I just froze because people in situations like that act different but I just froze.
39. Q. Did Marshall say anything to you when he put your arm behind your back?
A. He never said a word.
40. Q. He never said a word.
A. No.
41. Q. Did Marshall and Seale come up behind you or did they come up in front of you?
A. I think they came up behind us.
42. Q. And/^{what}was the first thing you knew when Marshall took your right hand and put it up behind your back?
A. Pardon.
43. Q. Was that the first thing that happened, Marshall taking your hand and putting behind your back?
A. Yeah, right.
44. Q. And Seale said, what did he say?
A. He said dig man dig to Ebsary.
45. Q. Did Seale say anything to you?
A. Not a work.
46. Q. Had you seen these fellows earlier that evening?
A. No, never laid eyes on them.
47. Q. What do you think Seale and Marshall were doing?
A. Well naturally they were robbing me.
48. Q. Out to rob you and Ebsary?
A. Right.

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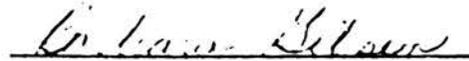
49. Q. Did you actually see Marshall being injured?
A. No, I never seen Marshall being injured.
50. Q. After Seale screamed what happened?
A. Well after Seale screamed he sort of ran and fell on the ground.
51. Q. Was he on the street now or on the sidewalk?
A. I believe he was up on the sidewalk.
52. Q. On the sidewalk?
A. Yeah.
53. Q. That is on the sidewalk of Crescent Street?
A. Yeah, right.
54. Q. Where the houses are?
A. No, on the other side?
A. Yeah.
55. Q. Where the grass is on the railway track?
A. Yeah.
56. Q. And you say he ran some steps?
A. Yeah.
57. Q. How far would he have run?
A. I can't make a calculation but about 30 feet or something like that.
58. Q. About as long as this room?
A. No not as long as this room.
59. Q. And then what happened?
A. And then we just went right up to Ebsary's place.
60. Q. Did Marshall let go of your hand?
A. Yeah; Marshall let go of my hand.
61. Q. And what happened to him?
A. It all happened so fast but what I've heard about it....

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62. Q. No, just you saw. What did you see?
A. I didn't see him getting stabbed but I heard he got stabbed.
63. Q. Did he run away?
A. No I didn't see him running away.
64. Q. Did he run up to Seale?
A. I didn't see him running.
65. Q. Was there anyone else around except the four of you?
A. Nobody else.
66. Q. Did you and Ebsary ever see Marshall by yourself?
A. No.
67. Q. Was there ever any time when Seale was not present?
A. No.
68. Q. Seale was always there with Marshall?
A. Yeah.
69. Q. Thank-you.

CERTIFICATE

I, Barbara Gibson, Reporter, certify that the foregoing is a true and accurate transcript of all the evidence taken by way of Discovery, held with the consent of all parties, at Sydney in the County of Cape Breton, Province of Nova Scotia, on October 2 & 3, 1984, taken by way of shorthand/tape recording and transcribed by me as such reporter.



Barbara Gibson

Sydney, Nova Scotia

October 17, 1985

498.

0. JAMES MacNEIL, called, sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: Sir, your name is James MacNeil?

A. Yes.

Q. You've had a long wait to get here.

5. A. You won't believe it.

Q. How old are you now, Jim?

A. 39.

Q. You're 39.

A. 39, yeah.

Q. And where do you live?

10. A. I live at 222 Mount Pleasant Street, at the Pier.

Q. That's in Sydney.

A. Yeah.

Q. Are you working at the present time, Jim?

A. No, I'm unemployed.

Q. Jim, back in 1971 were you employed then?

15. A. No, I was not. No.

Q. And you were about the same height and weight that you are now?

A. No, I wasn't. I'm in good shape today. At that time I was about 105 lbs.

Q. 105.

20. A. I was way down, my health wasn't like it is today.

Q. How tall are you, Jim?

A. I'm 6'.

Q. 6?

25. A. Yeah.

Q. Now Jim, back in 1971 did you know the accused, Roy Newman Ebsary?

A. Yes.

Q. For the record would you point him out if you see him here?

30.

499.

0.

MR. MacNEIL, DIRECT EXAMINATION

(Witness points to accused).

Q. Jim, you recall the night of the Seale incident?

A. I do.

5.

Q. How long had you known Roy Ebsary prior to that night?

A. I knew him since a few months, three or four months.

Q. Three or four months before.

A. Before that, yeah.

10.

Q. Did you see Roy Ebsary that night?

A. Yeah.

Q. You did?

A. Yeah.

Q. And where did you see him, Jim?

A. At the State Tavern.

15.

Q. At the State Tavern.

A. On George Street.

Q. Right. And what time did you meet him there?

A. I'd say it was around the evening, 7, 6:00.

Q. Between 6 and 7 o'clock?

A. Yeah.

20.

Q. I see. And what time did you and Mr. Ebsary leave the tavern that night, Jim?

A. I would say about roughly around anywhere after 10, something like that. 10 o'clock or after 10.

Q. After 10 or something like that.

25.

A. Yeah.

Q. Yes? Now Jim, between those times when you arrived and when you left, how much did you have to drink?

A. I had about a half a dozen beer, probably six drafts, like. Six or seven.

30.

Q. That's your estimate.

500.

0. MR. MacNEIL, Direct Examination

A. That's my estimate, yes.

Q. Now had you been drinking earlier that day?

A. No, I wasn't drinking earlier that day but the day before that I was drinking, you know, the day prior to that I had a few drinks.

5. Q. Yes. Generally speaking, you know, around that time if somebody asked you what were your drinking habits like, what would you say?

A. Well, at the time my drinking habits were kind of bad because everything in the house wasn't that good because my mother was dying with cancer and . . .

10. Q. Okay, well, you don't have to get into that.

A. It's best we don't go into that there.

Q. No. But you're saying you were a heavy drinker at the time.

A. Yes, I think I was. That's right, yeah.

15. Q. Now how much - well, first of all were you with Roy Ebsary at the State Tavern for the whole evening?

A. I was with him until we left.

Q. How much did he have to drink, could you . . .

20. A. Well, this is something hard to describe because once you talk and I think there was somebody else come to the table, like, and you know how it is in a tavern like . . .

Q. No.

25. A. No. Well, I'm sorry about that. But you get, you know, everybody is going here and there.

Q. Okay.

A. Every darn thing.

Q. So to the best of your recollection how much did Mr. Ebsary have to drink?

30. A. He had around the same amount as me, I suppose.

501.

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MR. MacNEIL, Direct Examination

I would assume.

Q. Okay. So when you and Mr. Ebsary left the tavern, and the State Tavern, it was on George Street.

5.

A. It was on George Street, right across from the Joy Supermarket.

Q. When you left the State Tavern, you come out the door, you're on George Street.

A. Um-hmm.

Q. Where did you and Ebsary go from there?

10.

A. Well, we went to his place. We went . .

Q. To his place.

A. To his place.

Q. He lived over on Rear Argyle Street.

A. Yes.

15.

Q. So tell the jury what route you would take to get from the State Tavern to Mr. Ebsary's on Rear Argyle Street?

A. You come down and you cross the lights where Townsend comes out and you stay right on the right hand side and you go right down and you know just where the tracks are.

20.

Q. You have to imagine the jury are all from New Waterford.

A. Oh. They're all from New Waterford. Oh, goodness, gracious.

Q. So you go down George Street.

25.

A. You go down George Street, the first set of lights, there'd be a street before that, like Falmouth when you come out of the State Tavern, but you'd always be on the right hand side of the road.

30.

Q. All right, Jim, you don't have to get too detailed. You go down George Street until you get to what?

502.

0. MR. MacNEIL, Direct Examination

Where would you turn off George Street?

A. You'd turn off at the tracks.

Q. And when you turn off there that'd take you into what?

5. A. Into Wentworth Park.

Q. Into Wentworth Park.

A. Right.

Q. All right. So then you walk through this park we have in Sydney.

A. Yeah, right.

10. Q. Wentworth Park.

A. Yeah.

Q. Go through the park.

A. Um-hmm.

Q. Across a footbridge?

A. Um-hmm.

15. Q. And up onto Crescent Street.

A. And up on Crescent.

Q. And then continue down Crescent.

A. Like you can go right across on the other side like, the side, but there's no sidewalk when you come up on the bank, you understand what I mean? Like it's the road, eh, but on the other side it's the sidewalk so you cross over the road to get to the sidewalk.

20. Q. So once you get on Crescent Street then you go down to what street?

25. A. You could - like there was two ways to his place. You could go like up around the front, eh. Something like when you come out on Crescent well you're almost right next to Argyle, right? You know how Argyle runs down like that. So . .

30. Q. Argyle runs parallel to Crescent Street.

503.

0. MR. MacNEIL, Direct Examination
A. Yeah, parallel, so you can go right like up that way.
Q. So that's the route you and Ebsary took that night.
A. Yeah, right.
5. Q. So you turn into the park.
A. Yeah, right.
Q. Get over on Crescent Street.
A. Yeah.
Q. Now I want you to explain in as much detail as you can remember to the jury what happened then?
10. A. What happened? We crossed over on Crescent like on the way home there. We were accosted like, we bumped into Mr. Seale and Mr. Marshall and . . .
Q. Did you know them at that time?
A. I didn't know them.
Q. You did not know who they were.
15. A. I did not know them. So they came close to us, like, Mr. Seale was standing right in front of Mr. Ebsary and Donald Marshall just grabbed my arm like that and he put it behind my back up like that and I just frozed. I didn't move, but we were very close together like this.
20. Q. All right, now I just want to stop you at that point. You say you and Marshall were together.
A. Um-hmm. Right.
Q. And Seale you said was in front of Ebsary?
A. Right in front of Ebsary.
25. Q. Yeah. Now how far from Seale or from Ebsary was Seale at that time? How far apart were they, Jim?
A. Very close, only a couple of feet.
Q. And did Marshall say anything to you?
A. Marshall never said a word to me. I'm just
30. frozed, I just frozed and I heard Mr. Seale addressing

504.

0.

MR. MacNEIL, Direct Examination

Ebsary and he said 'Dig, man, dig.'

Q. Did, man, dig.

A. And Ebsary said 'I got something for you' and then all of a sudden . .

5.

THE COURT: Wait now, hold on. So far I'm at dig, man, dig. Seale said. What happened then?

MR. EDWARDS: Let's just go back.

A. Yeah.

Q. You and Marshall are there together.

A. Um-hmm.

10.

Q. Marshall said nothing to you.

A. He never said nothing to me.

Q. Seale and Ebsary, how far are they from you and Marshall?

A. Just next to us, you know, standing right next to us.

15.

Q. Yes. And they're a few feet apart.

A. Just a few feet apart.

Q. And you said that you heard Seale say 'dig, man dig' to Ebsary.

A. To Ebsary, yeah.

20.

Q. And then Ebsary made a reply.

A. 'I've got something for you.'

Q. He said 'I've got something for you.'

A. He said 'I've got something for you.'

Q. And when he said 'I got something for you' what if anything did Ebsary do?

25.

A. He just come up with his right hand like that.

Q. You're indicating an upward motion.

A. An upward motion.

Q. Yes.

A. And at that time I heard him scream, Mr. Seale

30.

scream and then Marshall let go of my hand and sort of like

505.

0. MR. MacNEIL, Direct Examination

come at Ebsary like and there was something like a motion like that and like, you know like there was, he come over at Ebsary with his . .

Q. What did Ebsary do when Marshall came . .

5. A. I don't know, there was some kind of - like, I was so like confused there like, everything was just happening.

Q. You were confused there.

A. I was really confused.

Q. Yes.

10. A. Everything was happening, because I heard the young fellow screaming and I was confused.

Q. Now when you heard this scream, could you see what had caused Seale to scream? Did you see anything then?

15. A. I can barely visualize in my mind, I seen him holding onto his stomach and he ran, like that. He ran. P. 508

Q. How far did he run, Jim?

A. Now this is something, I'll tell you he ran about 30 feet.

Q. And then what happened?

20. A. He just fell.

Q. He fell down.

A. He fell down, yeah.

Q. Now I'll back you up just a bit again to where Seale is standing in front of Ebsary at the time he says 'dig, man, dig.'

25. A. Um-hmm.

Q. Now at that moment when he said 'dig, man, dig' where were Seale's hands?

A. Seale's hands were right at his side.

Q. At his side.

30. A. Yeah, they were at his side.

0. 506.

MR. MacNEIL, Direct Examination

Q. Now what if anything did he have in his hands then?

A. He never had nothing, I never seen nothing in his hands.

5. Q. He never had anything in his hands.

A. No, nothing. I never seen nothing.

Q. I see.

A. Not a thing. His hands were just at his sides.

Q. What tone of voice did he use like when he said 'dig, man, dig?'

10. A. Used the tone like, kind of a high-pitched like you know, like a high pitch. Not like a really violent tone but just like, you know. . .

Q. Not really violent.

A. No, just like a high pitch, like.

15. Q. Now at that point in time, where he said 'dig, man, dig' where were Ebsary's hands?

A. Ebsary's hands, one of his hands was going into his pocket. He said I got something for you. Ebsary's hands were down by his side too and he said I got something for you.

20. Q. Um-hmm. Now between the time that Seale said 'dig, man, dig' and the time that Ebsary made that upward motion, how many seconds passed?

A. Just a split second.

Q. A split second.

25. A. I'd say a split second.

Q. Was there any doubt in your mind what had happened to Seale?

30. A. In my mind at that time I knew that he was hurt, you know, I just - I didn't know what, till I heard - when I heard the scream right away I knew he was hurt.

507.

0. MR. MacNEIL, Direct Examination
- Q. So then when Marshall let go of you.
- A. He let go of my arm.
- Q. Right. And what happened to him?
- A. He came at Ebsary, he came up like that with his hand.
5. Q. Who came at who first?
- A. I think Marshall came after, as a matter of fact I'm positive, Marshall came at Ebsary first.
- Q. That was after the scream.
- A. Yeah, right.
10. Q. And then what happened to Marshall? Do you recall what happened to Marshall?
- A. I don't know what came of Marshall. I don't - I just seen him coming at him and that was it. I don't recall what happened to Marshall after that.
- Q. Well, what happened to you and Ebsary?
15. A. We just continued right on to his house, we went up around the corner.
- Q. So where was Marshall when you and Ebsary just continued on?
- A. I don't know, he just disappeared.
- Q. Ran away.
20. A. Yeah.
- Q. You didn't see him any more that night.
- A. I didn't see him any more that night, no.
- Q. Now when you and Ebsary left Crescent Street, where did you go?
25. A. We went right to his place.
- Q. That's on Rear Argyle.
- A. Rear Argyle.
- Q. Okay. How long did it take you to get there?
- A. About 15 minutes.
- Q. 15.
30. A. Yeah.

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0. MR. MacNEIL, DIRECT EXAMINATION

Q. And when you got there what did you do?

A. When we got there I walked in and I sat in this, right off the kitchen like and Mr. Ebsary was washing his hands under the sink with a knife.

5. Q. A knife.

A. And there was an awful lot of blood on his hands. There was an awful lot. I presume it was a pocket knife but I couldn't be sure, but there was so much, there was a lot of blood.

10. Q. You presume it was a pocket knife but you can't be sure.

A. I can't be sure.

Q. Okay. And when you first went in the house do you remember seeing anybody else there?

A. I was in kind of a hyper . . .

Q. Yeah, how were you at that time?

15. A. I was in a hyper, because you know I heard the fellow scream and it's like a dream that I seen some of his intestines come out of his stomach. You know, so I was really in - I can still see it yet sometimes. And I was hyper. Really hyper.

20. Q. So what was your answer then when I asked you who did you see in the house when you went in?

A. I don't remember seeing anybody.

Q. You don't remember.

A. No.

Q. So do you remember how long you stayed there?

25. A. Cripes - I don't know if it was an hour. I can't really be sure how long I stayed there. Maybe it was an hour, I can't be sure.

Q. And when you left I take it you went home.

A. I went home, yeah.

Q. Where were you living at that time?

30. A. I was living up on 1007 Rear George Street, on

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0. MR. MacNEIL, Direct Examination

Hardwood Hill.

Q. When did you next see Mr. Ebsary?

A. I seen him the next day.

Q. The next day.

A. Yeah. I came down to his house.

5.

Q. Yes?

A. And told him that that young fellow died.

THE COURT: Wait now. You're going fast again.

A. Going too fast. I'm sorry.

MR. EDWARDS: All right, so you went down to his house the next day.

10.

A. Um-hmm. Right.

Q. What time? Do you remember if it was the morning or the afternoon?

A. I don't know if it was the morning or the afternoon.

15.

Q. So you went to his house and you and Mr. Ebsary had a conversation.

A. Yeah, right.

Q. What did you tell him at that time?

20.

A. I told him that young fellow died. And he said it's self-defence, but I said you should have gave him the money. I said you should've gave him the money.

Q. You should've gave him the money.

A. Yeah.

Q. And what made you think the young fellow wanted money?

25.

A. Pardon?

Q. What made you think Seale had wanted money?

A. Well, when Marshall put his arm behind my back I knew it was a robbery right away. I figured it was a holdup like.

30.

THE COURT: Wait now, I'm sorry.

I just have one part that I missed, Ebsary said

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0. MR. MacNEIL, Direct Examination

it was self-defence.

A. Yeah.

Q. And you said you should have gave . .

A. Him the money. That's what I told him.

5.

MR. EDWARDS: Now Jim, at any time that evening when the four of you, you and Ebsary and Marshall and Seale were on Crescent Street, did Ebsary pass anything over to Seale or Marshall like rings or watches?

A. No, I never seen him passing anything, no.

10.

Q. So going back again then to the day after, after you had this conversation with Ebsary about you should've given him the money, how long were at the house that day?

A. I was at the house that day - I didn't stay too long, an hour or so.

Q. Um-hmm. Did you ever go there again?

15.

A. No. No, that was it.

Q. That was it.

A. That was it.

Q. Did you and Ebsary remain friends after that?

A. No. No.

20.

Q. Jim, when did you first go to the police?
And tell the police.

A. Well, when I first went after I heard that Donald was accused there of - sentenced to jail for stabbing Sandy Seale.

Q. It was after he was sentenced to jail.

25.

A. Yeah, right.

Q. So that would've been after Donald Marshall's trial.

A. Yeah, that would be after his trial.

Q. Do you remember what month that was?

30.

A. I don't remember the month.

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0. MR. MacNEIL, Direct Examination

Q. Well, this happened in May of '71.

A. Yeah.

Q. Could you tell us how long after that in months or years?

5. A. It was after his trial there, a week after his trial.

Q. I see. Okay. So how did you feel between the stabbing, the incident that night in May and when you finally went to the police? How did that affect you?

10. A. Terrible. Terrible. It affected me terrible, I couldn't sleep, I was walking around. It's something, you know, you'd have to go through it, you'd have to be there yourself to see it, you know. You'd have to be in my shoes to really know how you'd feel.

15. Q. How did it affect your drinking?

A. It affected my drinking kind of bad there too because I started hitting the bottle after that, real hard, I started hitting hte bottle real hard after that.

Q. Thank you.

THE COURT: Cross-examine.20. CROSS-EXAMINATIONMR. WINTERMANS: Mr. MacNeil, have you ever been convicted of any crimes?

A. Pardon?

Q. Have you ever been convicted of any crime?

25. A. Yeah.

Q. What?

A. I was put in jail for being drunk.

Q. When was that?

A. Oh, that was a few times.

Q. Other than that?

30. A. Nothing. Not that I know of.

512.

0.

MR. MacNEIL, Cross-Examination

Q. Now Mr. MacNeil, you were walking through the park with Mr. Ebsary on your way to Mr. Ebsary's residence, is that correct?

A. Um-hmm.

Q. Is that right?

5.

A. Right. Yeah.

Q. And it was quite dark in the park back then.

A. Well, it wasn't really that dark because there was a light, there was a light there. It wasn't really pitch dark.

10.

Q. And you continued through the park and you say that you - did you say bumped into Mr. Marshall and Mr. Seale?

A. Um-hmm.

Q. Could you describe where they came from, as far as you can recall?

15.

A. Well, they just came up abreast on us there on Crescent Street.

Q. Did they come from in front of you or did they come from behind you?

A. I'd say in front.

20.

Q. And were you and Mr. Ebsary standing around on Crescent Street or in the park or were you just walking straight through?

A. No, just walking straight through, going right home.

Q. And you were minding your own business, were you?

25.

A. Right on.

Q. And these two held you up, you described it as a holdup.

MR. EDWARDS: No, he didn't.

30.

MR. WINTERMANS: Well, he said a holdup, a robbery or a holdup. Is that what you said?

0. 513.

MR. MacNEIL, Cross-Examination

A. Um-hmm.

Q. And you said that you didn't see any weapon in Mr. Seale's hands, is that right?

A. No, I did not.

5.

Q. You don't recall having seen any weapon in his hands.

A. No, I did not. No.

Q. When Marshall put your arm up behind your back, were you afraid at that moment?

10.

A. Yes, I was. I was afraid. I just froze. I was afraid.

Q. Were you afraid that you might be hurt?

A. Yeah, I was afraid.

Q. That's all the questions I have. Thank you.

MR. EDWARDS: No re-examination, My Lord.

15.

MR. WINTERMANS: My Lord, might I ask one omitted question?

THE COURT: All right.

MR. WINTERMANS: Is your father alive or dead?

A. My father just died at Christmas time.

Q. Thank you.

20.

WITNESS WITHDREW.

25.

30.



CITY OF SYDNEY POLICE DEPARTMENT
CONTINUATION REPORT

PAGE	SUBJECT	CASE No.
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C O P Y

June 2, 1971 - 6:30 P.M.

Statement of Robert Scott MacKay, age 16 yrs., residing at 225 Fulton Avenue, Westmount, C.B.

I was at St. Joseph's Dance Hall last Friday night. I was with Debbie McPherson, Keltic Drive and left the hall about 11:45 P.M. because she wanted to get the North Sydney bus home. We walked down to Wentworth Park. We were there for 5 to 10 minutes; so we walked up on to Crescent St. She noticed Sandy Seale lying down on the roadside. I went over. I noticed it was Sandy and I asked him what was the matter. He told me he was stabbed and he needed help. I told her to go get a bus and I ran and tried to find a person to help me. I ran across the Park up to Polletts and I found a boy named Livingston from East Bay. He was with a girl at the time. So we ran back down through the park and up to Crescent St., but by the time we were getting up to him a car slowed down and a Marshall boy got out. Junior said I was with him and he showed me his arm and so I told him we should go to a house and call the police. He said No. So I talked to him and both of us went to a house there and I said "Call the Police. Jr. Marshall showed this man his arm. When we got back from the house, 2 police cars arrived.

So the Police questioned me and told me to leave. I went home with Bruce Butt from Westmount. I met him at Harris' corner after I left the scene.

Q. Did you ask Junior Marshall who stabbed them.

A. Yes, he said a man with glasses and a younger man with him. Jr. said the man with the glasses stabbed Sandy and said that is for you Buddy and then Jr. said he tried to get away and he stabbed him in the arm.

Signed: Scott MacKay

By: Sergt. Det. J.F. MacIntyre

Statement of: Robert Scott MacKAY (B: 54-09-06)
47 Gritton Ave., Sydney, N.S.

RCMP2

Taken: 1230 hrs on 82-03-02

RCMP2 42

On the night of Sandy Seale's murder I was at the dance at St. Joseph's Hall. We left the dance and walked through Wentworth Park to catch a bus on Kings Rd., by Atlantic Spring. I was accompanied by a Debbie McPherson. While we, we were walking I Noticed Sandy Seale lying on the Crescent St., more towards the centre of the road. I bent over and asked him what the problem was. He told me that he was stabbed and wanted help. I told the girl to go to the corner to get the bus and I went in the other direction to get help. I ran across the park by Pollets Drug Store and met a Livingston chap from East Bay and told him that a guy was stabbed and that he needed help. We ran back across the park and when we did we saw a car stop by Seale's body and Junior Marshall got out along with other people and the car went on. First when I saw Marshall I said "Junior" and he said do you know me. I said yes Sandy has been stabbed He said I know he was with me.

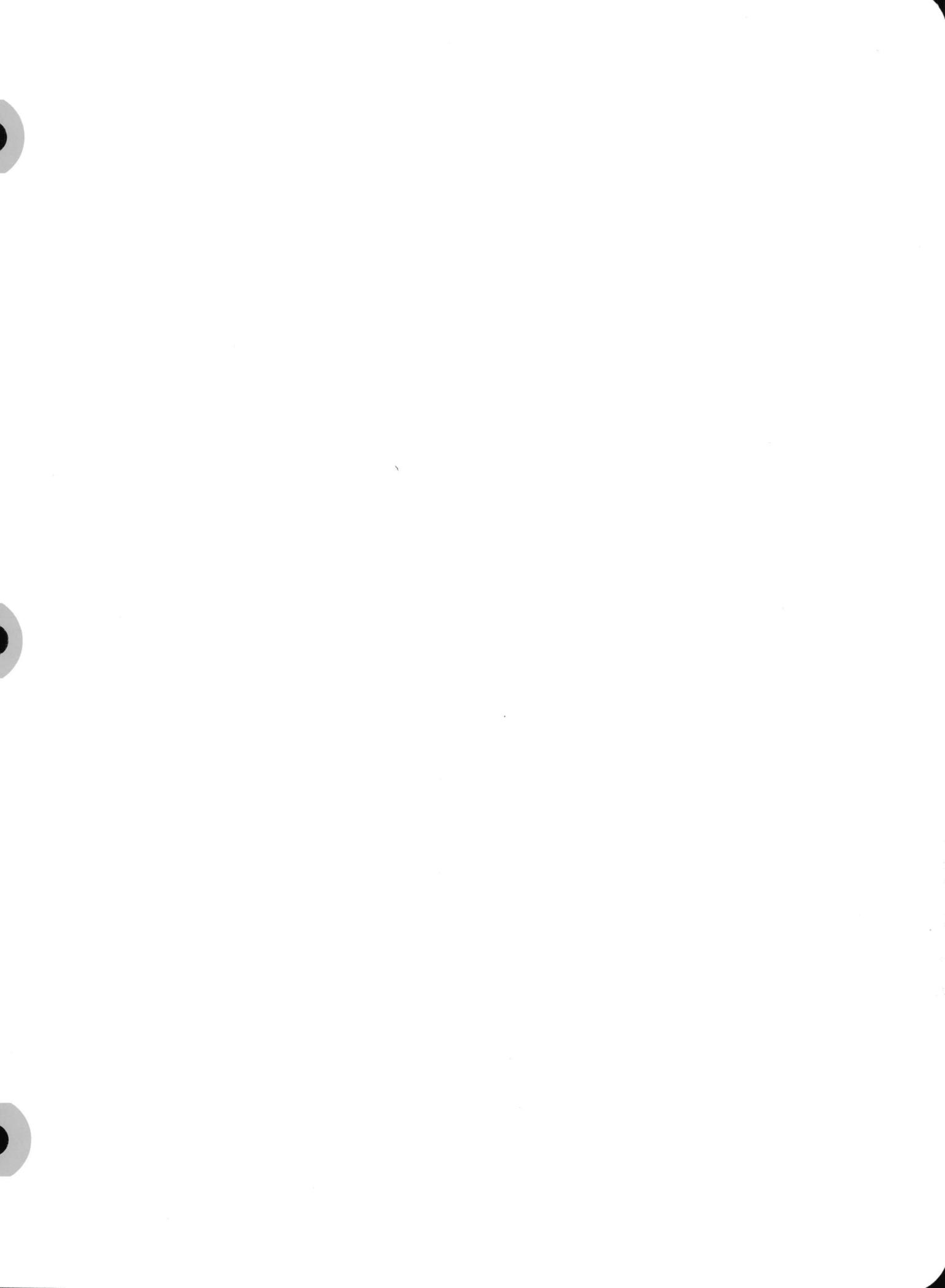
Then he told me that two guys jumped him and Sandy. He showed me his arm and said look what they did to me. Then he showed me how the guy stabbed Sandy by putting his fist into my stomach. Then I said we'll better call the police. He said no. Then I said we better get help and he said yes and the two of us started walking towards a house. We went up to the house and they wouldn't let us use the phone so then we left and came down back to the body and when we did there were two police cars there. The police then put Junior Marshall in the back of police car. At that time I went home. I spoke to the police and gave a statement on June 2 when they called me to go to their office.

I didn't see anyone else in the park at that time.

There was a crowd of people gathering at the time the police arrived and they told us to go home.

(Signed by:) R.D. MacKay

Witness:
D. HYDE



CITY OF SYDNEY POLICE DEPARTMENT
CONTINUATION REPORT

RCMP 2 59

SUBJECT

CASE No.

C O P Y

Sydney, Nova Scotia
8 June 1971

Statement of Marvel Dwight Mattson, 103 Byng Ave., Sydney, N.S.

I reside at 103 Byng Ave., Sydney, Nova Scotia

About ten minutes before midnight of May 28, 1971, I went upstairs to go to bed. The bedroom is on the Wentworth Park side of the house. I was in the bedroom a matter of a few minutes when I heard talking coming from the street; the window was open. I paid little attention until I heard someone say, "there's someone bleeding in the park". I went to the window, but couldn't see anyone. They were below the verandah and also I had turned off the outside light before going upstairs.

I immediately called the City of Sydney City Police from the upstairs telephone to report what I had heard. I continued to watch from the window in the upstairs hall - next to the telephone. There was more conversation, but I couldn't make it out. Then a car came along and a man stopped it in the middle of the street. He had walked out from the sidewalk in front of my house. He showed the driver his arm and it was again said, "there's someone bleeding in the park" and with that he got in the car and it drove off towards George St. I kept an eye on it and believe it went down George towards Argyle. I again called the police to report further on what I had seen.

In a matter of a minute or so of the first telephone call I saw a car with flashing lights on Crescent St. and very shortly afterwards another vehicle showed up which I took to be an ambulance.

Signed: M.H. Mattson.

31- M. D. MATTSON, Dir. Exam.

M. D. MATTSON, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. What is your full name, please?

A. ~~Marvel~~ Dwight Mattson.

Q. Where do you live?

A. 103 Byng Avenue, Sydney.

Q. And were you living there during the month of May, 1971, and particularly the 28th day of May, 1971?

(10) A. Yes sir, I was.

Q. I'm going to show you a plan which is marked Exhibit 5.

Are you able to read plans?

A. Yes, I live right here.

Q. You say "right here", that would be on-

A. On the north side of the plan and it is marked "103".

Q. What else is marked there?

A. "103, red house, Mattson".

Q. Now were you at home in the late hours of the 28th of May, 1971?

(20) A. Yes sir, I was.

Q. And did anything take place?

A. It did, yes.

Q. What did you observe?

A. A few minutes before midnight, May 28, 1971, I went upstairs to bed or to go to bed. Shortly after getting to my bedroom, which is on the south side of the house, on the Byng Avenue side I heard some talking coming from the street. I couldn't make out all of the conversation but I did hear a part of it. The conversation that I heard-

(30) Q. No, as a result of the conversation, that you heard - how many people were in this conversation?

A. I don't know. It was dark so I couldn't see the number of people that were involved but I could hear-

MR. BOSWELLUM:

Not until His Lordship tells you.

-182- M. D. MATTSO, Direct Exam.

MR. MacNEIL:

He can hear. He's not saying what they were saying.

BY MR. MacNEIL:

Q. You could what?

A. I could hear more than one person talk.

Q. And as a result of this conversation that you heard in front of your house, did you do anything?

A. I called the City Police.

(10) Q. Did you recognize any of the people engaged in conversation?

A. I did not, no sir.

Q. And did you observe anything after you made the telephone call?

A. I did, yes sir.

Q. What?

A. I observed a man walk out to the center of the street, hold up a car and display his arm and then this man got in this car which went in the direction of George Street and at this juncture I again called the City Police.

BY MR. ROSENBLUM: (Cross-Exam.)

(20) Q. Mr. Mattson, did you see more than one person getting into the car with - when you say "hold up a car", you mean flag down a car?

A. Yes.

Q. You use the words "hold up" which might involve robbery or something like that: you don't mean that?

A. No.

Q. What you mean is you heard some voices around midnight, or ten after or something like that and there was more than one person engaged in conversation?

(30) A. Yes.

Q. And so then you looked out and you saw a man stopping a car and displaying his arm?

A. Yes sir.

M. D. MATTSON, Cross-Exam.

Q. And then that man getting into the car?

A. Yes.

Q. Was there more than one person that got into the car or did you notice?

A. I'm not sure.

Q. You didn't notice?

A. No.

(THE WITNESS WITHDREW)

(10) MR. MacNEIL:

That is the case for the Prosecution, if Your Lordship pleases,
we tender the exhibits and rest.

(12:15 P.M. COURT RECESSED TO 2:00 P.M.)

C.S.