

ROYAL COMMISSION ON THE  
DONALD MARSHALL, JR., PROSECUTION

VOLUME IV

**Held:** September 14, 1987

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

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

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INQUIRY RECONVENED AT 9:40 o'clock in the forenoon on Monday, the 14th day of September, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia

1

2 MR. CHAIRMAN:

3 Ms. Edwardh.

4 MS. EDWARDH:

5 Thank you very much, My Lord.

6 JAMES MacNEIL, resumes testimony, as follows:7 BY MS. EDWARDH:

8 Q. Mr. MacNeil, if I can just go back and touch upon some matters  
9 in conclusion where we left it on Friday. This morning before  
10 you came to testify, did you have an opportunity to take any  
11 medication?

12 A. No, I didn't. I took an aspirin for my throat because I'm  
13 waiting --

14 Q. I'm sorry?

15 A. I said I took an aspirin for my throat because I'm waiting for  
16 my x-rays to come in tomorrow.

17 Q. You didn't take any Valium this morning?

18 A. No, I did not.

19 Q. And how about last night?

20 A. I took one last night before I went to bed.

21 Q. Now when we left off on Friday, would it be fair, sir, to say  
22 that we had established on the night that Sandy Seale was  
23 stabbed that you had been drinking, correct?

24 A. Yeh.

25 Q. In fact you were pretty drunk.

JAMES MacNEIL, by Ms. Edwardh

1 A. Yeh but not paralyzed.

2 Q. Yeh. No, but you were just pretty drunk as you characterized.

3 A. Pretty drunk but not paralyzed.

4 Q. I appreciate that. And that you probably had, oh, at the State  
5 even upwards of fifteen beer?

6 A. Well, that's a little bit going overboard. I wouldn't have  
7 that much.

8 Q. Well, you said you'd been there anywhere from arriving at  
9 five o'clock in the afternoon to eight o'clock.

10 A. But you're trying to ask me how many beer I had at that time,  
11 away back at that time, I can't -- you can't recall that, you  
12 know, how many beers I finally had.

13 Q. So when you said you had seven or eight, what I'm really trying  
14 to establish is your recollection is when you arrived at the  
15 State, you drank until you left. Right?

16 A. Right, yeh.

17 Q. And in fact you were drinking with Mr. Ebsary and you were  
18 drinking -- as you put it you were in a good mood and you  
19 may well have even been, as you described it, drinking -- did  
20 you -- I think the term is drinking to become sober or drinking  
21 through to become sober. Right?

22 A. Yeh.

23 Q. And when you left, you were staggering a little bit, right?

24 A. Yeh, but not falling down or anything.

25 Q. Okay, you're just a little bit.



JAMES MacNEIL, by Ms. Edwardh

1 A. Yes.

2 Q. You said you were weaving occasionally, right?

3 A. Yeh.

4 Q. And that you knew that you sure couldn't have gotten into a  
5 car and driven it?

6 A. No.

7 Q. Right.

8 A. Right.

9 Q. Now you've also said, sir, that every time you gave a statement  
10 or you testified, you tried to tell the truth, correct?

11 A. Yeh, right.

12 Q. And that you had thought about your answers. You weren't trying  
13 to be just quick with your answers?

14 A. No, I was not.

15 Q. You were trying to be careful.

16 A. Trying to be, yeh.

17 Q. But that you indicated you were confused about some of the events,  
18 right?

19 A. Yeh, because I made -- I had so many statements and I got no  
20 copies of them. I got nothing, eh, and --

21 Q. No, but in terms of your actual recollection today, you'll  
22 agree with me that even today, you're confused about some of  
23 the events, right?

24 A. Well, after the incident happened, I was shocked. Like, I was --

25 Q. Right.

JAMES MacNEIL, by Ms. Edwardh

1 A. But I was, you know, I was -- You see somebody getting stabbed,  
2 you're not going to be the same person after that, you know.

3 Q. Right. It was traumatic for you.

4 A. It was traumatic, yeh.

5 Q. Okay, but today even about some of the incidents, some of the  
6 -- and I'll take you through some of them. Whether your Dad  
7 knew Mr. Ebsary, you're confused, aren't you? You don't  
8 really know whether he did or didn't at that time.

9 A. Well, that doesn't have no bearing on the case, whether he  
10 did or not.

11 Q. Yeh, but you testified one way, did you not, sir?

12 A. Yeh.

13 Q. Okay, and then you testified a different way, right?

14 A. Yeh.

15 Q. So would it be fair to say today you're just confused about  
16 whether your Dad did or did not know Mr. Ebsary?

17 A. Well, it's so long ago. It's so long ago.

18 Q. Will you answer the question, Mr. MacNeil? I know it's a long  
19 time. We all know it's sixteen, seventeen years. Today are  
20 you confused, sir, as to whether he did or didn't?

21 A. Yeh, I'm confused.

22 Q. Okay. And indeed when you testified sometimes that you had  
23 known Mr. Ebsary for two weeks and sometimes you testified  
24 that you knew him for six months, would it be fair to say  
25 you're just confused about how long you in fact knew Mr.

JAMES MacNeil, by Ms. Edwardh

1 Ebsary?

2 A. No, when -- after that happened, I put him out of my mind.

3 Q. Yeh, but prior to this happening, before this happening, you  
4 can't be specific about whether it was one month or three  
5 months or six months. You're confused about the time. Isn't  
6 that fair?

7 A. I'm not really confused. I know it's a few months but I  
8 can't be specific, you know --

9 Q. Okay, well, when you -- when you were specific, sir, when  
10 you used the words in front of the Commission that "I knew  
11 Mr. Ebsary for about six months." In fact, isn't it more  
12 accurate to say that you just knew him for some period, some  
13 months? You don't want to say four months or you don't want  
14 to say six months. You can't be that specific. Is that fair?

15 A. Yeh, that would be fair.

16 Q. And today also you're confused about when you in fact arrived  
17 at the State Tavern. In your testimony on Thursday or Friday,  
18 you said five o'clock and --

19 A. That was in --

20 Q. -- then at other times you said eight.

21 A. That was in the evening.

22 Q. Right, but when you said five o'clock, would you agree with me  
23 that you didn't have any clear memory that it was five o'clock?  
24 It was some time in the evening.

25 A. It was some time in the evening, yeh.

JAMES MacNEIL, by Ms. Edwardh

1 Q. It wasn't five o'clock, though. Right?

2 A. No.

3 Q. So when you said five o'clock, would you agree with me in  
4 fact you're confused about that?

5 A. Well, it's so far back. You know, you can't -- you can't  
6 put a recollection right quick on it, you know, for a  
7 specific time there.

8 Q. And indeed today you're confused about what specific time you  
9 arrived, just some time in the evening.

10 A. Yeh, some time in the evening.

11 Q. Now we -- you described for their Lordships on Friday and  
12 on Thursday some of the reasons you think you've given  
13 different versions or different descriptions of events. You've  
14 indicated you had a lot to drink, that you've had problems  
15 with regular dreaming, and that you sometimes read or received  
16 information about it; those three things, are they the  
17 explanation for some of those differences?

18 A. They have not -- no bearing whatsoever on what we're talking  
19 about.

20 Q. Okay, let's try again.

21 A. You're just assuming that and you're -- like, you're putting  
22 -- you're confusing me.

23 Q. I'm not trying to confuse you. I'm trying to find out how --

24 A. You're putting things your way, you know. You know, like  
25 things happened so darn long ago and I've been through so many

JAMES MacNEIL, by Ms. Edwardh

1 trials and every, you know, you just can't -- You know, you  
2 haven't got a super mind.

3 Q. You've been through so many trials. You've tried to recall  
4 the incident so many times. You've had so many people question  
5 you that it's hard to recall the details. Isn't that right,  
6 Mr. MacNeil?

7 A. Yeh.

8 Q. Is that correct?

9 A. Yeh.

10 Q. And when I asked you some questions about your dreams, you were  
11 very open with Mr. Orsborn that you'd had nightmares about this  
12 incident, right?

13 A. I did, yeh.

14 Q. Yeh, and you had nightmares where you had seen things that were  
15 very powerful to you in your dreams right? They're powerful  
16 nightmares.

17 A. Yeh.

18 Q. They woke you up at night.

19 A. Pardon?

20 Q. They woke you up --

21 A. Yeh.

22 Q. -- when you had them?

23 A. Yeh.

24 Q. And that was some of the reasons -- that was the reason that  
25 you sometimes testified you had seen things like Sandy

JAMES MacNEIL, by Ms. Edwardh

1 Seale's intestines or the blood or Mr. Marshall's red eyes.

2 You agreed with me those may have been in your dreams.

3 A. No, I -- What I seen -- When I seen his red eyes, I know what  
4 I seen.

5 Q. Well, Thursday, sir, or Friday, you said that it was possible  
6 that your recollection of red eyes was something you had  
7 dreamed.

8 A. Well, if I said that, I was confused there when you were putting  
9 so many questions to me there one after another.

10 Q. Now let me just take you then to why that question would  
11 confuse you. You've never before testified that Junior Marshall  
12 had red eyes, right?

13 A. No.

14 Q. This is the first time you've ever said it.

15 A. Yeh.

16 Q. Sixteen years after the event, sir.

17 A. Right.

18 Q. And you've had these very dramatic dreams, right?

19 A. Right.

20 Q. Why wouldn't have you have mentioned that you saw these red  
21 eyes before?

22 A. I just never -- I never mentioned it. I just never thought it  
23 was important.

24 Q. And what helped you recall that they were red eyes? How do you  
25 remember that?

JAMES MacNEIL, by Ms. Edwardh

1 | A. Well, it looked like he was on some kind of a drug or something.

2 | Q. Well what part of his eyes were red?

3 | A. The outsides.

4 | Q. When you said he looked like he was on some kind of a drug,  
5 | what kind of a drug are you experienced with that you would  
6 | know that? What are you talking about, alcohol?

7 | A. Well, it just -- No, it looked like something else, you know,  
8 | if -- I don't know.

9 | Q. Like what?

10 | A. Like he had a like a wild tendency. Like his eyes looked wild  
11 | like.

12 | Q. Yeh. When you -- first of all, let's start with red. You  
13 | say the outside of the eye was red.

14 | A. Yeh, and in the rounded outside of the pupil.

15 | Q. That was red.

16 | A. Yeh.

17 | Q. Was any part of the skin red?

18 | A. No, no.

19 | Q. And were both eyes red?

20 | A. Yeh.

21 | Q. And can you assist us in understanding what has helped you  
22 | remember this now?

23 | A. Well, I didn't -- I didn't come -- I didn't mention it before.

24 | Q. And why not?

25 | A. I just don't know why, you know. I -- Like -- but I should --

JAMES MacNEIL, by Ms. Edwardh

1 I just didn't mention it before.

2 Q. I'm going to suggest to you, Mr. MacNeil, that you may well have  
3 dreamed those red eyes and you can't be sure, certain. I mean  
4 certain --

5 A. If you --

6 Q. -- if those red eyes didn't come from the dream.

7 A. Yeh, but you're putting that in my --

8 Q. Yeh.

9 A. You're putting that in my mind.

10 Q. I'm suggesting it to you, that you can't be certain that you  
11 didn't have that image of red eyes from your dream. Isn't  
12 that right, you can't be certain that it didn't come  
13 from your dream?

14 A. I can't say. I know what I seen.

15 Q. You can't be certain it didn't come from your dream.

16 A. Repeat that question.

17 Q. You can't be certain that the red eyes didn't come from your  
18 dream today.

19 A. It didn't come from no dream. No.

20 Q. You're -- So you are certain?

21 A. Yeh.

22 Q. Let's go to some of the other descriptions that I'd like  
23 to take you through. One of the other things that you have  
24 said that you felt that night was that you were and I think  
25 the word you used was "tensified". Is that the word?



JAMES MacNEIL, by Ms. Edwardh

1 | A. Yeh, that was after -- after -- after the robbery, I was all  
2 | shooked up.

3 | Q. But when you -- you have described yourself from the moment  
4 | Mr. Marshall touched your arm as being "tensified". Right?

5 | A. Yeh, I got scared.

6 | Q. Now what do you mean by tensified? You mean more than just  
7 | scared, don't you, Mr. MacNeil? You mean like you're in a  
8 | shock?

9 | a. Yeh, right.

10 | Q. Like in a trance? Right? No?

11 | A. Close to it but not in a trance that you can't --

12 | Q. Close to it.

13 | A. Yeh, but not that you can't know what's going on.

14 | Q. And in that -- when you become tensified, you become confused,  
15 | don't you?

16 | A. Not really. Not all the time. Not -- I wasn't confused that  
17 | night. Tensified and confused is two different things.

18 | Q. When you become tensified, do you become confused?

19 | A. No, I don't.

20 | Q. Okay, could I ask the witness to turn to Volume 8, page 4 --  
21 | I'm sorry, page 6. It's Volume 11, I apologize. Now, that's  
22 | a statement that you gave Mr. Harry Wheaton, right, Mr. MacNeil?

23 | A. Where? Where at, in here?

24 | Q. Yeh, page six. You gave that to Mr. Harry Wheaton, an Officer  
25 | of the R.C.M.P. Take your time and read it. Do you see that?

JAMES MacNEIL, by Ms. Edwardh

1 | A. Yeh, I see that, yeh.

2 | Q. Okay. And you agree that that's a statement you gave to  
3 | Sergeant Wheaton.

4 | A. Yes.

5 | Q. And that was in 1982. Is that correct?

6 | A. Yeh, right.

7 | Q. And when Sergeant Wheaton came to you, sir, will you agree  
8 | that he was the first Officer who was coming back to you saying:  
9 | "I want to hear your version of the events.", after you failed  
10 | the polygraph? It was the first time in almost a decade that  
11 | someone was going to hear your story, right?

12 | A. Yeh, right.

13 | Q. So you wanted to tell him your story, didn't you, sir?

14 | A. Yeh.

15 | Q. Okay, let's look at what you told me. Now in this version of  
16 | the events, you never mentioned that Junior Marshall grabbed  
17 | your arm, right? You don't say that, do you?

18 | A. No, I don't.

19 | Q. Okay, and then when you say, "I'm pretty sure I saw him wash  
20 | the knife off in the sink.", I take it that after this state-  
21 | ment you've testified on many occasions that you're positive  
22 | that he washed that knife off in the sink, right?

23 | A. Yeh.

24 | Q. And then you say, "I can't remember if he had any blood.". You  
25 | couldn't remember in 1982 whether there was any blood on the

JAMES MacNEIL, by Ms. Edwardh

1 knife, could you?

2 A. No, but I seen the blood on his hands and --

3 Q. Okay, now you've testified the reason that that statement  
4 doesn't have some of that information or you're not clear  
5 is that you were tensified when gave it to Officer Wheaton,  
6 right?

7 A. Right.

8 Q. Okay. Now I'm going to put it to you that when you're tensified,  
9 you do become confused otherwise you would have put those details  
10 in. You would have said you saw the blood. Right?

11 A. Yeh, right.

12 Q. Okay, so you were confused. Right?

13 A. Yeh.

14 Q. You weren't trying to mislead Wheaton, right?

15 A. No.

16 Q. And then when you said -- I'll leave that. Okay. So when you're  
17 tensified, I put it to you, sir, that not only are you in  
18 shock, not only is it kind of like a trance, you get confused,  
19 and I think that if Sergeant Wheaton's statement is an example  
20 you have to agree, correct?

21 A. Yeh.

22 Q. Now with respect to the incident and how clearly you recall,  
23 you testified on Thursday or Friday of last week that Mr.  
24 Marshall and Mr. Seale approached from behind. Do you recall  
25 that testimony?

JAMES MacNEIL, by Ms. Edwardh

- 1 A. Right.
- 2 Q. And you agreed with Mr. Orsborn that you had testified to  
3 the opposite on some occasions, right, that they had come  
4 from the front.
- 5 A. Right, yeh.
- 6 Q. Indeed, can I ask you to turn to page 112?
- 7 A. 112.
- 8 Q. And I understand this, as an example of that kind of testimony,  
9 about the third line down: Question: So when you met them,  
10 would you describe how they -- how you met them. Answer:  
11 Well, I think it came so fast it seemed like, I think, we  
12 -- we were -- they approached us from the front but then  
13 Marshall had my right arm and started coming like counter  
14 clock-wise and put it up behind my back. Do you recall that  
15 testimony?
- 16 A. Yeh, right.
- 17 Q. And I take it, sir, when you answered that question to Mr.  
18 Edwards during the trial, you were trying to tell the truth?
- 19 A. Yes, indeed.
- 20 Q. And you were confused and you are confused as to how that  
21 approach was taken, whether it was from the front or whether  
22 it was from the back. Isn't that fair, sir?
- 23 A. Yeh, that would be fair to say.
- 24 Q. Okay, and you're confused today about that? You can't be  
25 sure.

JAMES MacNEIL, by Ms. Edwardh

1 | A. Yeh.

2 | Q. You can't be certain.

3 | A. No.

4 | Q. And would it also be fair to say that really, you really just  
5 | have an image that it starts with Marshall beside you with  
6 | your -- holding your arm and Mr. Seale in front of Mr. Ebsary.  
7 | That's really how it starts in your mind.

8 | A. Yeh, but that's how it happened. You can -- You can ask your  
9 | client that. He's got nothing to hide.

10 | Q. But you don't have any perception of how anyone approached  
11 | you one way or the other? You're not clear about it. You're  
12 | confused about it, right?

13 | A. Yeh but I know that it's a robbery.

14 | Q. I'm sorry?

15 | A. I said I know it was an attempted robbery. I know that.

16 | Q. We'll come to that.

17 | Q. Now you also testified yesterday or on Friday that you had  
18 | no recollection of Mr. Ebsary and yourself stopping under a  
19 | tree when you first came into the park and having a conversation  
20 | with some young people in which Mr. Ebsary either asked for a  
21 | match or a cigarette. You didn't recall that, right?

22 | A. I don't recall it, no.

23 | Q. But you -- I'm sorry.

24 | A. I don't recall it.

25 | Q. But you said it was possible that it had happened. Right? You

JAMES MacNEIL, by Ms. Edwardh

1 testified in --

2 A. Yeh.

3 Q. -- answer to Mr. Orsborn's question it was possible that that  
4 happened.

5 A. Yeh, could be but I don't remember it happening.

6 Q. Okay. And I take it when you say it's possible, it's because  
7 you weren't paying any attention as you walked through the  
8 park. You'd had a lot to drink and you weren't watching what  
9 was going on, right?

10 A. Yeh.

11 Q. Is that correct?

12 A. Yeh.

13 Q. Now why would you have testified, if I could ask you to turn  
14 to page 66, page 6 you were asked in cross-examination about  
15 line 25, question: -- Let me just go up above that. Question:  
16 (Go up to line 20.) Did you stop before you were approached by  
17 these two young men or were you just walking home to Ebsary's  
18 house? Answer: We were just walking home. Question: So  
19 you never stopped? Answer: We never stopped. Can I ask you,  
20 sir, why you sound so certain sometimes and yet are so prepared  
21 to say that the opposite is possible? Can you give us any  
22 insight into that?

23 A. I cannot. I can't give you no insight.

24 Q. And again at page 25, you sounded so certain when you said  
25 at about line 15, starting at -- actually a little bit farther

JAMES MacNEIL, by Ms. Edwardh

- 1 up at line 10, question: Okay, as you were walking through the  
2 park, let's go back a bit to after you'd entered the park and  
3 bring you up to the scene. Did you see anyone else in the park  
4 or speak with anyone else in the park prior to meeting this  
5 Indian fellow and black youth? No, I never, never spoke to  
6 anybody. And again you sound pretty certain there, don't  
7 you, Mr. MacNeil?
- 8 A. Repeat that question please.
- 9 Q. You sounded certain when you testified to that. Right?
- 10 A. Yeh. Right.
- 11 Q. And in fact you're not certain. You're not certain today.
- 12 A. No, I didn't see nobody else. There was nobody else there.
- 13 Q. But you're not certain in the sense that you -- when you said  
14 to Mr.Orsborn it was possible you had conversations under the  
15 tree, although you don't recall it. Isn't what you're really  
16 saying is you don't specifically recall how you got across  
17 the park, that you were -- you had enough to drink that you  
18 just don't remember. Isn't that fair?
- 19 A. Yeh, that'd be fair to say.
- 20 Q. Now in answer to a question from Mr. Orsborn, you said you  
21 didn't see the knife in the park.
- 22 A. No.
- 23 Q. You never saw the knife in the park.
- 24 A. No.
- 25 Q. Do you understand that answer you gave?

JAMES MacNEIL, by Ms. Edwardh

1 A. Yeh.

2 Q. Are you certain of it today, sir?

3 A. Well I just -- it was so dark, like. I just seen him coming  
4 up like that.

5 Q. Are you certain of the answer that you never saw the knife?

6 A. No, I never saw the knife, no.

7 Q. Perhaps you can assist us in explaining why sometimes you  
8 indicate or appear to indicate that you did see the knife.

9 Take a look at page four in this book. This is your very  
10 first statement when you come forward and in the last two  
11 sentences of the first big paragraph on that page, Mr. MacNeil,  
12 you say: "Then Roy Ebsary said, 'I got something for you."

13 I put his hand -- "He put his hand in his right pocket and took  
14 out a knife and drove it into the coloured fellow's side."

15 Would you agree with me, Mr. MacNeil, that when you said those  
16 words, anyone would have understood that you saw the knife?

17 A. Well, I --

18 Q. He took out a knife.

19 A. Yeh. Yeh, well, I didn't -- I didn't see the knife but I seen  
20 the -- I seen him stabbing him and then like, he went after  
21 Marshall's arm then and Marshall let go of me. He just took --

22 Q. Well, we'll come --

23 A. -- a swing at Marshall then.

24 Q. We'll come to that. You didn't -- You're saying that you  
25 didn't intend to convey that you saw the knife there. You



JAMES MacNEIL, by Ms. Edwardh

1 | didn't mean to tell Detective MacIntyre that you saw the knife.

2 | Is that what your evidence is, sir?

3 | A. Yeh.

4 | Q. Well let me take you to page 27, about line, oh, 11. Question:

5 | Now did you see this point where you say "bango, that's it.?"

6 | Answer: Yeh. Question: What happened? Answer: Well, he

7 | took a knife and he just slit him up. Question: Slit who up?

8 | Answer: Slit up Seale. And question: And who had the knife?

9 | Answer: Ebsary. Would you agree, sir, that when Mr. Aronson

10 | asked you those questions, you again indicated that what you

11 | saw happen was that he took a knife and he just slit him up.

12 | A. Yeh.

13 | Q. And you didn't see the knife at all, did you?

14 | A. No, I didn't see the knife.

15 | Q. So when you answered that to Mr. Aronson, was it because in

16 | your imagination you just assumed what had happened? So you

17 | figured he must have had a knife?

18 | A. Yeh.

19 | Q. Therefore you just put a knife in his hand. That's what

20 | happened in your own mind, right?

21 | A. Yeh.

22 | Q. Now you've also said and testified very clearly that you saw

23 | Mr. Ebsary slash Junior Marshall's arm. You have a clear

24 | image of that, don't you?

25 | A. Yeh.

JAMES MacNEIL, by Ms. Edwardh

1 Q. No question that you have a clear image of that.

2 A. No; I have a clear image, yeh.

3 Q. And that's the kind of memory that Mr. Orsborn was talking about  
4 when he said, "Can you -- do you have a picture in your mind?".  
5 Right?

6 A. Yeh.

7 Q. The same kind of image, right?

8 A. Right.

9 Q. Now let me ask you to take a look at page four again. Go down  
10 about half way through the page, right in the centre, Mr. MacNeil,  
11 and you'll see the following question and answer: 1971, six  
12 months after the event. The question is put to you: Did you  
13 see the Indian being stabbed? Answer: No, I did not. See  
14 the question and see that answer? Let me point it out to you.  
15 See the question. See the answer.

16 A. Yeh, right.

17 Q. Now when you said to me and to their Lordships two seconds ago  
18 "I have a clear image in my mind.", --

19 A. Right.

20 Q. -- why would you not have told Sergeant MacIntyre in 1971 that  
21 you had seen this, you had seen Marshall slashed? Why wouldn't  
22 you tell him? Why did you lie to him and say, "No, I didn't."?

23 A. I can't answer that.

24 Q. In fact, because you weren't lying to him, were you, Mr. MacNeil?  
25 You were telling the truth.

JAMES MacNeil, by Ms. Edwardh

1 A. Yeh.

2 Q. To the best of you ability?

3 A. Yes, I was.

4 Q. And you're confused about whether you in fact saw that. Isn't  
5 that right?

6 A. I seen his arm going down like that and I seen Ebsary, there,  
7 going like that.

8 Q. Okay. Then if you saw that and you have a clear image, why  
9 did you say that to Detective MacIntyre? Why did you say:  
10 "No, I did not."?

11 A. I don't know.

12 Q. Are you the kind of man that would have been trying to mislead  
13 the officers?

14 A. No, I wasn't, no.

15 Q. Now I'm going to suggest, sir, that you don't have a certain  
16 image in your mind today that you actually saw it. You've  
17 testified so many times that that image may well have come  
18 from all those years in trying to figure out what happened,  
19 and that's where it's come from. Possible?

20 A. Possible.

21

22

23

24

25

JAMES MacNEIL, by Ms. Edwardh

1 Q. Now you also said on Friday or on Thursday that you didn't  
2 see blood at the scene in the park. Do you recall answering  
3 that question to Mr. Orsborn?

4 A. Yeh, right.

5 Q. That you didn't see blood in the park?

6 A. Yeh.

7 Q. And that's the question, I take it, that you say maybe confused  
8 in your mind because it may bring forth images from your dreams.  
9 Right, Mr. MacNeil?

10 A. Yeh.

11 Q. Right?

12 A. Right.

13 Q. So that when you testified under oath at a man's trial that you  
14 saw blood and that you saw intestines and things like that,  
15 you were pulling from your dreams, right?

16 A. Right.

17 Q. And that when you testified on those occasions you were  
18 confused?

19 A. Yeh.

20 Q. Right?

21 A. Right.

22 Q. Well, might you have been confused in answer to Mr. Orsborn?  
23 Maybe you did see it. You were right there. You were only  
24 two or three feet away, right?

25 A. Right.

JAMES MacNEIL, by Ms. Edwardh

- 1 Q. You were shocked by what you saw?
- 2 A. Yeh.
- 3 Q. Something registered in your mind, right?
- 4 A. Right.
- 5 Q. Do you think you possibly saw the blood?
- 6 A. Yeh, I could have possibly saw it.
- 7 Q. Yeh. Now sometimes you testified that the incident seemed
- 8 to occupy a fairly long space of time. I think you've testified
- 9 on occasion that it was up to five to seven minutes, this
- 10 meeting with Mr. Ebsary and Mr. Marshall, and other times
- 11 you've testified it was just a few seconds. Which is right,
- 12 just a few seconds?
- 13 A. It was just a few seconds.
- 14 Q. Maybe just several seconds?
- 15 A. Yeh.
- 16 Q. So the whole thing could have happened like that, right?
- 17 A. Right.
- 18 Q. And that's really your recollection?
- 19 A. Yeh.
- 20 Q. So when you said five to seven minutes were you just guessing?
- 21 A. Well --
- 22 Q. Just a bad estimator at times?
- 23 A. Well it happened so fast like and --
- 24 Q. Well, five to seven minutes I'm suggesting is a long time.
- 25 A. Yeh, but I can't say it's five or seven minutes. I can't.

JAMES MacNEIL, by Ms. Edwardh

1 Q. At one time you did, sir. So I take it what's true is it  
2 all happened in split seconds.

3 A. Yeh.

4 Q. Now when you testified that Mr. Ebsary and you walked back  
5 through the park -- I'm sorry, not through the park. You  
6 walked back through his home. I take it it's your evidence  
7 today, and I think you said you were -- or on Friday and  
8 Thursday, you were clear, you were positive that you walked  
9 down here, right?

10 A. Yeh.

11 Q. Are you clear and positive today as well? Take a look at the  
12 map. Is there anything confusing about that map for you?

13 A. No, it's not confusing.

14 Q. Do you know, sir, that you have testified differently?

15 A. No.

16 Q. That you have testified that you went the other direction at  
17 page 111. Yeh, that you crossed the bridge and then turned  
18 the other way. Do you see page 111?

19 A. Yeh, right.

20 Q. Let's start with question 59.

21 "All right. Now my question was, when  
22 you got to the far side of Crescent  
23 Street which way did you go, back this  
24 way toward Argyle or this way towards  
the intersection of South Bentinck  
Street?"

25 Okay. So here's Argyle where you said you went a couple of

JAMES MacNEIL, by Ms. Edwardh

1 | days ago?

2 | A. Yeh.

3 | Q. And this is what the question is asking about.

4 | A. "We went this way here".

5 | Q. "You are indicating the intersection  
6 | towards South Bentinck Street"?

7 | A. "Yeh, right".

8 | You were positive. You didn't have a doubt when you testified  
9 | according to your answer to Mr. Orsborn. Sir, you don't even  
10 | remember which direction you were walking, you're so confused  
11 | about this incident, isn't that right?

12 | A. Yeh.

13 | MR. CHAIRMAN:

14 | Ms. Edwardh, would you take the witness through the rest. There's  
15 | some more on that page 111 because if you look at question 61  
16 | on page -- line 61 he may have been referring to the time period  
17 | before the incident occurred.

18 | MS. EDWARDH:

19 | I'm sorry.

20 | MR. CHAIRMAN:

21 | Do you see the answer?

22 | MS. EDWARDH:

23 | It was my understanding, My Lord, that that's what the witness  
24 | was referring to yesterday just before the incident as well.

25 | MR. CHAIRMAN:

No, no, I appreciate that but the --

JAMES MacNEIL, by Ms. Edwardh

1 MS. EDWARDH:

2 My question may have --

3 MR. CHAIRMAN:

4 --the question that -- when you read to him commencing at line 59  
5 I was under the impression that he was referring to after the  
6 event. Then when you come down to the next question it leaves  
7 some doubt in my mind as to whether it's before or after.

8 BY MS. EDWARDH:

9 Q. Let me then ask you to read these few lines, if I could, starting  
10 at about line 50 or question 50. Take your time so you  
11 understand. Have you had a chance -- Have you had a chance to  
12 read that?

13 A. Yeh.

14 Q. Okay. Let's start. When you testified on Friday, you testified  
15 that you came through the walkway, right?

16 A. Yeh, right.

17 Q. That you went over the bridge, correct?

18 A. Right.

19 Q. That you took the route that led up to Crescent Street that  
20 was closest to Argyle, so you walked this way, right?

21 A. Yeh.

22 Q. That the incident happened and you kept going in that direction,  
23 right?

24 A. Yeh.

25 Q. You didn't turn around and go back, am I right?



JAMES MacNEIL, by Ms. Edwardh

- 1 A. There's a possibility we might have went the other way.  
2 It's a possibility. I'm so confused between the --
- 3 Q. You're so confused, okay.
- 4 A. This here --
- 5 Q. Of course, Mr. MacNeil. Giving your best recollection, you  
6 can't be sure which way you went today, right?
- 7 A. Yeh, not today.
- 8 Q. You're not certain?
- 9 A. No.
- 10 Q. And when you answered to a couple of questions from  
11 Mr. Orsborn, I take it today and Friday and Thursday of  
12 last week you recall seeing Mr. Ebsary wash blood from the  
13 knife in the kitchen?
- 14 A. Right.
- 15 Q. You have a clear image of that?
- 16 A. I have a clear image of that.
- 17 Q. And your only explanation for being unclear about it to  
18 Sergeant Wheaton when you said to him you weren't sure is  
19 what, that you were tensified? Is that your only  
20 explanation?
- 21 A. Yeh.
- 22 Q. You were confused when you spoke to him?
- 23 A. Yeh.
- 24 Q. Now perhaps you would also help clarify for us your evidence  
25 about the knife. Take a look at it. Now, would you agree, sir,

JAMES MacNEIL, by Ms. Edwardh

1 that -- I'll take you through this if you would like me to  
2 and perhaps I better. The first time you testified on  
3 pages 42 to 43, you said--starting at about line 11 you said  
4 you were sure that you'd seen the blood on the knife and  
5 then you said in answer -- the question put to you was:

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

8 A."Yeh".

9 Q."Did you see the handle of the knife"?

10 A."To my knowledge like, something black--  
11 I think it had a brown handle on it".

12 You think it had a brown handle on it. Let me draw that  
13 language to your attention.

14 A. Yeh.

15 Q. Q. "If I'm not -- To my knowledge  
16 now -- And you said the knife  
17 was about six inches long"?

18 A. "Yeh".

19 Q. "Did I understand you correctly,  
20 just a small pocket knife"?

21 "Yes, you used the term pocket  
22 knife".

23 A. "Yeh.

24 Q. "Do you mean the type of a knife with  
25 a blade that closes"?

A. "Yeh, right". "It just opens and closes  
like that".

Q. "Are you sure"?

A. "I'm pretty sure, yeh".

JAMES MacNEIL, by Ms. Edwardh

1 Q. "You're pretty sure".

2 A. "I'm positive".

3 Q. "You're not positive"?

4 A. "Yeh".

5 Then the Court asks you to repeat it, and over at the top of  
6 the next page about line 13 the Court says to you:

7 Q. "You are positive"?

8 A. "Yeh, it was a pocket knife".

9 Now if you want to take a very good look at that knife, sir,  
10 does that knife fold? Pick it up if you need to.

11 A. No, it doesn't. It doesn't fold.

12 Q. It doesn't fold at all?

13 A. No.

14 Q. It is not a pocket knife, is it?

15 A. No, it's not.

16 Q. It does not have a brown handle?

17 A. No, it doesn't.

18 Q. And when you used six inches as being the length of the knife,  
19 were you referring roughly to a three and a half inch blade or  
20 a six inch blade?

21 A. Well, just a pocket knife, I guess, a three and a half inch  
22 blade or --

23 Q. And would you take a look at that blade and tell me whether  
24 you think it's three and a half inches?

25 A. That's about six inches.

JAMES MacNEIL, by Ms. Edwardh

1 Q. About double a three inch blade, right?

2 A. Yeh. Yeh.

3 Q. Now when you next testified in September of 1983 you testified  
4 about the knife as well, and I think it's at page 82. I'm  
5 sorry, that's the wrong page reference.

6 MR. CHAIRMAN:

7 Page 86.

8 MS. EDWARDH:

9 Thank you very much, My Lord.

10 BY MS. EDWARDH:

11 Q. Let me take you to page 86, Mr. MacNeil, if you could just  
12 turn a few more pages and let's take a look at your testimony  
13 on that occasion, and if we go back to even page 85 you see  
14 you're referring to the point where you observe Mr. Ebsary  
15 take an upward motion towards Mr. Seale.

16 Q. "What, if anything, did he have in his  
17 hands"?

18 A. "A knife". "A knife in his hand".

19 Q. "How big was the knife, do you recall"?

20 A. "Well, usually --I think it was a pocket  
21 knife". "Usually that's what people  
22 carry, you know, but I can't be sure  
23 just exactly the size, but a pocket  
24 knife would be a six inch blade, but I  
25 can't, you know -- I can't really  
be sure".

Q. "Did you see the blade"?

A. "No, I never saw the blade". "This is just"--

JAMES MacNEIL, by Ms. Edwardh

1 Q. "Okay, so after Mr. Marshall  
2 let's you go..."

3 And then you go on. So on that occasion you didn't know, I  
4 take it, that it was a brown knife, you didn't know for sure  
5 whether it was a pocket knife, and you couldn't tell really  
6 the size of the knife, right?

7 A. Yeh, right.

8 Q. So you didn't have a clear image of the knife at all?

9 A. No, I did not.

10 Q. Okay, and in November -- No, I'm sorry, let's go to August, 1984,  
11 '83, at page 60. This time when you testify about the knife  
12 and your observations when he's washing it in the kitchen,  
13 about line eight you say -- I'm sorry line twelve:

14 Q. "Did you get a good look at the  
15 knife at this time"?

16 A. "At the time I got a glance at  
17 it I think it was a small knife  
18 with a brown handle on it".

19 Q. "Do you remember approximately how  
20 long the blade was"?

21 A. "Well, a pocket knife, it would be  
22 probably five to six inches".

23 Q. "And did you see what he did with the  
24 knife after he washed the blood off"?

25 A. "I didn't notice where he put it".

So I take it on that occasion you were quite confident that it  
had a brown handle, right? Would you agree with me?

A. Yeh. Yeh.

JAMES MacNEIL, by Ms. Edwardh

1 Q. Yeh, on that occasion you were sure that it was a small knife  
2 and a pocket knife, right?

3 A. Yeh.

4 Q. Now page 110 in November of '83, going back to this pocket  
5 knife -- I'm sorry, I'll find this in a moment, sir, but  
6 I'm trying to refer you to the portion of transcript that  
7 you may recall where someone brought out that you didn't  
8 really know it to be a pocket knife, you just presumed it  
9 was. Do you recall giving that answer at some time? You  
10 just presumed it was because you saw that Mr. Ebsary or  
11 believed he took it out of his pocket. Do you recall that?

12 A. No.

13 Q. Okay. Well, let me see if I can find it.

14 MR. ROSS:

15 Volume 10, page 8.

16 MS. EDWARDH:

17 I'm sorry.

18 MR. ROSS:

19 Volume 10, page 8.

20 BY MS. EDWARDH:

21 Q. I'm getting some help from my friend. I'm in the wrong Volume.  
22 Okay, my friend is referring me to volume 10, page 8:

23 Q. "And there was a lot of blood on his  
24 hands". "There was..."

25 I'm sorry.

"...a knife"?

JAMES MacNEIL, by Ms. Edwardh

1                   A. "And there was an awful lot of  
2                   blood on his hands". "There was  
3                   an awful lot". "I presume it  
4                   was a pocket knife but I couldn't  
5                   be sure, but there was so much--  
6                   there was a lot of blood".

7                   Q. "You presume it was a pocket knife  
8                   but you can't be sure"?

9                   A. "I can't be sure".

10                  So on that occasion I take it, Mr. MacNeil, you couldn't even  
11                  be sure it was a pocket knife, right?

12                  A. Right.

13                  Q. Now what puzzles me, sir, is why when Mr. Orsborn asked you  
14                  about that knife which isn't brown, which isn't a pocket  
15                  knife, you said that looked like the knife. What about that  
16                  knife matches anything you've ever said about the knife in  
17                  question?

18                  A. Well, it looks like a pocket knife.

19                  Q. That looks like a pocket knife to you?

20                  A. Yeh.

21                  Q. Does it bend in?

22                  A. No.

23                  Q. What about it looks like a pocket knife?

24                  A. Well, I can't be sure about that.

25                  Q. You can't be sure?

                  A. No.

                  Q. So looking at that right in front of you now, can you describe  
                  to their Lordships what about that knife is similar to a

JAMES MacNEIL, by Ms. Edwardh

1 pocket knife, any feature?

2 A. Nothing.

3 Q. Right, and why do you say today that looks like the knife?

4 A. I don't know. It just --

5 Q. It just came to you?

6 A. Yeh.

7 Q. And, in fact, would you agree that it doesn't match one aspect  
8 of the description you have given varied though that may be?

9 A. Yeh.

10 Q. Now, I take it, after this incident you and Mr. Ebsary walked  
11 to his home and that would have taken you some time, right,  
12 a number of minutes?

13 A. Yeh.

14 Q. But when you arrived at the home I take it your evidence is  
15 today you do not recall seeing anyone?

16 A. I didn't recall seeing anyone.

17 Q. So as far as you were concerned you went in the house and you  
18 could see the living room area, you could see the kitchen  
19 area, right?

20 A. Yeh.

21 Q. And you saw no one? You have no recollection of anyone being  
22 there?

23 A. No.

24 Q. Well, let me ask you just to turn with me back in volume 11,  
25 we'll start with page four. The very bottom of that page,



JAMES MacNEIL, by Ms. Edwardh

1 page four, again this is your statement to Sergeant MacIntyre,  
2 you see:

3 Q. "Who seen you at the house besides  
4 Roy"?

5 A. "His wife, daughter, and son".

6 A. Well, I didn't mean on that occasion.

7 Q. I'm sorry.

8 A. That I didn't mean on that occasion. That was another occasion  
9 that I was there when I --

10 Q. I'm sorry, Mr. MacNeil, so that answer refers to another time?

11 A. Yeh.

12 Q. So you weren't trying to convey at all to Sergeant MacIntyre  
13 that you had been at the house and you had seen other members  
14 of the family that night?

15 A. No.

16 Q. Oh, okay. Well, then perhaps you'll explain then why at  
17 page 32 when you were testifying at the reference you said  
18 precisely the same thing under oath? Okay. At page 32, line  
19 27 or 8. First of all you were asked about what time you  
20 arrived there approximately:

21 Q. "And what happened after you arrived"?

22 A. "I didn't stay too long I think". "His  
23 daughter was home". "I remember that".  
"I didn't stay too long."

24 Then you go on to describe the wiping of the blood. So even  
25 though you may have been mistaken or referring to another

JAMES MacNEIL, by Ms. Edwardh

1 incident when you spoke to Sergeant MacIntyre, isn't it  
2 true, sir, on this occasion you testified you saw members  
3 of the family and you saw Donna Ebsary?

4 A. Yeh.

5 Q. You said that under oath, right?

6 A. Right.

7 Q. You were trying to tell the truth?

8 A. Yeh, right.

9 Q. In fact, you don't know whether you saw anybody that night,  
10 sometimes you said you did and sometimes you said you didn't,  
11 right?

12 A. Right. Right.

13 Q. And today you're confused about it, right?

14 A. Yeh. Yeh.

15 Q. Now in terms of the few seconds we've talked -- love to talk  
16 about, the few seconds that Sandy Seale was stabbed, let's  
17 just go back and trace those movements out. It was a dark  
18 night, right?

19 A. Right, yeh.

20 Q. And it was so dark that you couldn't tell that the two  
21 men, one was black and one was Indian, right? You didn't  
22 figure that out until later, right?

23 A. Yeh, right.

24 Q. And all this happened in a couple of seconds, fractions,  
25 right?

JAMES MacNEIL, by Ms. Edwardh

1 A. Right.

2 Q. And, in fact, I believe you said on one occasion it happened  
3 so fast you didn't have time to think about what was  
4 happening when it was happening, right?

5 A. Right.

6 Q. And you'd had a lot to drink. You weren't comatose but you  
7 were pretty drunk, right?

8 A. Yeh.

9 Q. In fact, you also have testified that you may even have  
10 possibly somewhere in your mind, walked away and come back  
11 for some reason. It's possible. Do you recall that  
12 testimony?

13 A. No.

14 Q. Okay. Take a look at page 38, again -- a question at the  
15 bottom of page 38 about line 28:

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

19 A. "No, I don't recall that".  
20 "No, I can't recall that".

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

23 A. "It could be possibly" -- "It could  
24 possibly, but I can't recall it  
though".

25 So would you agree with me, sir, that you testified that it

JAMES MacNEIL, by Ms. Edwardh

1 was possible that you'd come back? You don't recall it,  
2 but it was possible?

3 A. Yeh, it could have been possible, but I can't recall it.

4 Q. And you -- When you first have your recollection of where  
5 you are when Mr. Marshall touches your arm, you're right by  
6 the curb, aren't you, right by the curb?

7 A. Yeh.

8 Q. Walking in one direction or the other, right?

9 A. Yeh.

10 Q. And you say Marshall grabbed your arm, right?

11 A. Right.

12 Q. And he grabbed it just for a second, didn't he? I mean the  
13 whole thing happened within a few seconds?

14 A. Right.

15 Q. It was just for a second?

16 A. Right.

17 Q. And, in fact, you testified in answer to a question from  
18 Mr. Orsborn that he let your arm go before Mr. Ebsary said,  
19 "Here's everything", and made a slashing motion or struck  
20 out at Sandy Seale, before Mr. Ebsary did anything, right?

21 A. Yeh.

22 Q. He let your -- It's an important question. I want you to  
23 hear me. He let your arm go before Mr. Ebsary took anything  
24 out of his pocket?

25 A. No, no, after.

JAMES MacNEIL, by Ms. Edwardh

1 Q. Why did you testify to Mr. Orsborn that, in fact, it was  
2 before?

3 A. Well, I was confused on that day.

4 Q. You were confused. I'm going to put it to you, sir, that,  
5 in fact, it was before or it happened so quickly you can't  
6 be certain today?

7 Q. You can't be certain, right?

8 A. Right.

9 Q. Now when you describe the feeling of that -- in that  
10 split second of Marshall holding your arm, you've described  
11 in the past as a feeling of pressure, small pressure, right?

12 A. Yeh.

13 Q. Nobody was jacking your arm up your back, right?

14 A. No.

15 Q. And, in fact, there was no pain, right?

16 A. No.

17 Q. And there was no twisting of the arm, right?

18 A. No.

19 Q. It was just a feeling of pressure on the arm that lasted a  
20 couple of seconds, right?

21 A. Right.

22 Q. And, in fact, you could have moved. Isn't that what you've  
23 testified to before? If you weren't tensified you could  
24 have physically moved?

25 A. Yeh.

JAMES MacNEIL, by Ms. Edwardh

- 1 Q. Right?
- 2 A. Right.
- 3 Q. Now I'm going to suggest to you, sir, that's just the kind  
4 of feeling you would have, not when someone's jacking up  
5 your arm, but when someone just grabs your arm for a split  
6 second maybe when you trip, that's just the kind of feeling  
7 you'd have, right?
- 8 A. Yeh.
- 9 Q. Correct?
- 10 A. Yeh.
- 11 Q. And that today you can't be certain that that isn't what  
12 caused the feeling, just someone grabbing it for a second  
13 when you staggered, right, Mr. MacNeil?
- 14 A. No.
- 15 Q. You can't be certain?
- 16 A. No.
- 17 Q. Now -- Okay. You also have an image that you heard some words,  
18 "Dig, man, dig", right?
- 19 A. Right.
- 20 Q. And Mr. Orsborn said to you, "Where did it come from?", and  
21 you said, "It came from Mr. Seale", right?
- 22 A. Yeh.
- 23 Q. Then you were asked, "Why did you tell Harry Wheaton, well,  
24 it was from one of the two". And you said, "Well, that was  
25 a mistake". "I'm clear it didn't come from Marshall", right?

JAMES MacNEIL, by Ms. Edwardh

1 Do you remember saying that?

2 A. Right.

3 Q. Isn't it true, sir, that the only thing you are certain of  
4 is that you didn't say it and Marshall who was standing  
5 beside you didn't say it? You don't know whether it was  
6 Seale who spoke those words or Ebsary, right?

7 A. I knew it was Seale.

8 Q. How do you know it was Seale?

9 A. I heard his voice.

10 Q. He heard it first -- You never heard the voice before, right?  
11 You've never heard Sandy Seale speak, right?

12 A. No.

13 Q. It didn't sound like a Negro voice, did it, because you  
14 didn't know he was Negro then, right?

15 A. Right.

16 Q. It was a voice and it didn't even sound like a violent voice,  
17 right?

18 A. Right.

19 Q. I'm going to suggest to you, sir, that all you can be  
20 certain of today is that you didn't say those words and the  
21 man standing right beside you didn't say them, but you can't  
22 be certain as to whether it was Sandy Seale or whether it  
23 was Ebsary in that split second, right?

24 A. Right.

25 Q. I want to go to some totally different issues, Mr. MacNeil.

JAMES MacNEIL, by Ms. Edwardh

1 When you came forward and first spoke to the Officers, do you  
2 remember when--shortly after Mr. Marshall's conviction  
3 and you gave your statement to Detective Sergeant MacIntyre,  
4 you see on the statement that you weren't there very long,  
5 right? I mean it looks like only about thirty-five minutes.  
6 Does that accord -- Is that your recollection that it only  
7 took thirty-five minutes?

8 A. Yeh, right.

9 Q. And you had -- Could you have been there longer, maybe an hour?

10 A. Yeh.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

*grr.*



JAMES MacNEIL, by Ms. Edwardh

- 1 Q. Okay. And I understand from your answers to some questions  
2 that Mr. Orsborn put to you that you had other conversations  
3 with the Officers. You talked about some other things like  
4 why you hadn't come forward? I don't want to put words in  
5 your mouth.
- 6 A. I can't be sure.
- 7 Q. Okay. Let me just ask you to take your mind back for one  
8 minute. Did anybody ask you anything else about Mr. Ebsary? Did  
9 they you ask for a physical description of him? Did they ask  
10 you where he lived? Anything like that?
- 11 A. I can't remember.
- 12 Q. You don't remember?
- 13 A. No.
- 14 Q. Did they ask you anything about your background?
- 15 A. No.
- 16 Q. Where -- no --
- 17 A. I can't recall.
- 18 Q. Did they ask you anything about how you knew Mr. Ebsary?  
19 What was your relationship?
- 20 A. I can't recall.
- 21 Q. Nothing like -- not that you can recall. Certainly it's not  
22 in the statement here. Did Mr. MacIntyre seem to know when  
23 you used the words Roy Ebsary, did he look surprised?
- 24 A. I can't, I can't be sure. It was so long ago.
- 25 Q. Did they seem to know who Roy Ebsary was?

- 1 | A. I can't be sure of that neither.
- 2 | Q. When you say you can't be sure, what was your best hunch?
- 3 | A. Too long ago. Pardon.
- 4 | Q. Did you have a feeling that they knew who he was?
- 5 | A. No, I didn't even have a feeling.
- 6 | Q. And there's nothing then that came to your mind from what
- 7 | they said you or from their demeanour, that made that Ebsary's
- 8 | name look familiar? Nothing they did or said?
- 9 | A. No, I can't recall.
- 10 | Q. Not that you can recall?
- 11 | A. No.
- 12 | Q. Did they ask you if you knew Mr. Ebsary had a weapon?
- 13 | A. Can't recall.
- 14 | Q. Did they ask you, Sir, whether you -- you had anything to
- 15 | drink that day? Not on the -- not on the night of the
- 16 | stabbing but on the day you were coming forward to give your
- 17 | statement?
- 18 | A. I can't recall.
- 19 | Q. Did at any time anyone suggest to you that you should meet
- 20 | with the prosecutor? Crown council?
- 21 | A. I can't recall.
- 22 | Q. Did anyone suggest to you, you should or should not approach
- 23 | defence council, Marshall's lawyer?
- 24 | A. I can't recall.
- 25 | Q. Did anyone suggest that you should or should not approach

JAMES MacNEIL, by Ms. Edwardh

1 Marshall's lawyer at the time you did the polygraph and  
2 thought you failed?

3 A. I can't recall.

4 Q. Did anyone suggest to you that you might have a, I'm going to  
5 call it a body pack for a moment for want of a better word.  
6 That you, that the police might monitor another conversation  
7 between you and Mr. Ebsary. They'd send you back to talk to  
8 him and they would try and hear what he said. Anyone suggest  
9 anything like that?

10 A. No.

11 Q. Did you hear them talking at all around that time about a  
12 search warrant or whether where the knives or might be?  
13 Anything like that?

14 A. I can't recall any of that.

15 Q. Did MacIntyre tell you, Sir, not to tell anyone or did any  
16 other police officer tell you not to tell anyone about what  
17 had gone on your statement?

18 A. It's so far back I can't recall if they did or not.

19 Q. In any event, you never spoke to anyone between the time  
20 of, I'm going to use your term, failing your polygraph,  
21 and your interview with Sergeant Wheaton anyone who was  
22 official? Any police officials, any lawyers?

23 A. No.

24 Q. And I take when the polygrapher, the guy who did the polygraph,  
25 if he says that you joked and laughed and said that you were

JAMES MacNEIL, by Ms. Edwardh

1 | lying, I take it, Sir, the only reason that you joked and  
2 | laughed was because you thought that having failed the  
3 | polygraph somehow you were going to go to jail?

4 | A. Yes.

5 | Q. Did anybody say anything that made you come to that conclusion?  
6 | Were you told that it was a serious matter to come forward  
7 | now after the trial? Were you told that it was a serious  
8 | matter? You better be telling the truth?

9 | A. I can't just recall.

10 | Q. Was it something like that?

11 | A. Yeh.

12 | Q. And do you know who would have told you that it was a serious  
13 | matter? Would that have been what the R. C. M. P. officers  
14 | or would that have been the Detective Sergeant MacIntyre?

15 | A. I didn't, I didn't hear him saying right off, like, it -- he  
16 | didn't say to me that it was serious matter, just that will  
17 | you take the polygraph. And I said yes.

18 | Q. Mr. MacNeil you've been very patient with me and my questions  
19 | have not been easy. I would like to indicate one thing  
20 | if I may. I would like to thank you for coming forward in  
21 | 1971 on behalf of Mr. Marshall and I think everyone here  
22 | should know that at least what happens to Marshall, we think  
23 | you did the right thing.

24 | A. And I thank you too.

25 |

JAMES MacNEIL, by Mr. Saunders

1 | MR. CHAIRMAN:

2 | Mr. Pugsley.

3 | MR. PUGSLEY:

4 | I have no questions, My Lord.

5 | MR. MURRAY:

6 | Donald Murray, no questions on behalf of William Urquhart.

7 | MR. CHAIRMAN:

8 | Mr. Elman.

9 | MR. ELMAN:

10 | No questions on behalf of Donald C. MacNeil.

11 | MR. CHAIRMAN:

12 | Mr. Saunders.

13 | MR. SAUNDERS:

14 | Only a few, My Lord.

15 | MR. CHAIRMAN:

16 | Mr. Saunders, could you give me some indication as to how long  
17 | you will be. I don't to --

18 | MR. SAUNDERS:

19 | About three or four minutes, I expect, My Lord.

20 | MR. CHAIRMAN:

21 | All right, carry on. Thank you.

22 | BY MR. SAUNDERS:

23 | Q. Mr. MacNeil, my name is Saunders and I'd like to ask you  
24 | a few questions about your condition in May of 1971 and  
25 | then your condition in November of 1971. Sir, as I recall

JAMES MacNEIL, by Mr. Saunders

1 | your testimony over the last couple of days, you indicated  
2 | that you were quite a heavy drinker both in May 1971 and  
3 | in November of that year. Correct?

4 | A. Correct, yes.

5 | Q. And would it be fair to say, Mr. MacNeil, that because of the  
6 | stresses in your life at that time, you found some relief  
7 | by drinking?

8 | A. Well, there was so much of it around, I guess I did find  
9 | relief by drinking.

10 | Q. Yes, Sir. And one of stresses that you talked about earlier  
11 | was that your mother was seriously ill? Yes?

12 | A. Yes.

13 | Q. And you were unemployed as I recall, Sir?

14 | A. Yes.

15 | Q. And did you also have a brother who was gravely ill at the  
16 | time?

17 | A. Yeh.

18 | Q. That was your brother, Lewis, was it?

19 | A. Yeh.

20 | Q. And your father was a heavy drinker too?

21 | A. Yes.

22 | Q. And you testified before that there was a lot of alcohol  
23 | around the house?

24 | A. Yes, there was.

25 | Q. And you found yourself in a position that you were drinking

JAMES MacNEIL, by Mr. Saunders

1 every second or third day to the extent that you were  
2 sleeping and unable to walk. Correct? Answer yes?

3 A. Yes.

4 Q. And did your stresses increase, Mr. MacNeil, from the time of  
5 the incident in the Park in May, 1971 until when you went to  
6 the police in November of that year?

7 A. Ah, not really, you know, they did in a way but I always  
8 drowned them with a little bit alcohol.

9 Q. You drowned them in a bit of alcohol?

10 A. Yeh, right.

11 Q. Was the incident in the Park the most stressful incident that  
12 had ever occurred to you in your lifetime up to that point?

13 A. The most stressful incident.

14 Q. All right. Now you talked a bit about the medication that  
15 you were on in 1971, Mr. MacNeil. Had you been to the  
16 Detox Centre in Sydney prior to the incident in the Park  
17 in May?

18 A. No, not prior to it.

19 Q. But were you there after May? Between May and November?

20 A. I probably was. I'd have to check.

21 Q. And that's the Detox Centre on Alexandra Street in Sydney?

22 A. Alexandra Street, yes.

23 Q. Still in the same place now as it was then?

24 A. Yes, it is yeh.

25 Q. And who was your family doctor in 1971?

JAMES MacNEIL, by Mr. Saunders

- 1 | A. Doctor A. B. Gaum. He's now --
- 2 | Q. He's now deceased? A. B. Gaum now deceased?
- 3 | A. Yeh.
- 4 | Q. What medication, Mr. MacNeil, had Doctor Gaum prescribed for
- 5 | you in 1971?
- 6 | A. Oh, he gave me something for my nerves, that's all.
- 7 | Q. Had you been to Montreal for any surgery, Sir?
- 8 | A. No, that was my brother.
- 9 | Q. You had not been to Montreal for brain surgery?
- 10 | A. No, that was my brother.
- 11 | Q. Were you on any medication for seizures?
- 12 | A. Yeh, I was.
- 13 | Q. Yeh, what medication was that, Mr. MacNeil?
- 14 | A. It was Dolantin.
- 15 | Q. Dolantin?
- 16 | A. Yeh.
- 17 | Q. Were you also taking Phenobarb to prevent seizures?
- 18 | A. Yes, I was, yeh.
- 19 | Q. And you were taking Valium as well?
- 20 | A. No, not too much Valium.
- 21 | Q. In any event you were taking Dolantin and Phenobarb?
- 22 | A. Yeh, right.
- 23 | Q. And those drugs had been prescribed to you by Doctor Gaum?
- 24 | A. Yeh, right.
- 25 | Q. And you were taking them in May of 1971?



JAMES MacNeil, by Mr. Saunders

1 | A. Yeh.

2 | Q. And you were also taking them in November of 1971?

3 | A. Yeh.

4 | Q. Is that correct?

5 | A. Right.

6 | Q. Yes. And tell me Mr. MacNeil did you continue drinking  
7 | between November 15, 1971, when you were interviewed by the  
8 | Sydney Police Department and the 23rd of November when you  
9 | were interviewed by the R. C. M. P.?

10 | A. Well, not -- I was drinking but not too heavy.

11 | Q. Yes, but you had been drinking?

12 | A. Yeh.

13 | Q. And you were taking this medication too? Answer yes?

14 | A. Yes.

15 | Q. And this medication, how often were you taking it, Sir?  
16 | On a daily basis?

17 | A. Yeh, one a day.

18 | Q. Yeh, how much Phenobarb were you taking in terms of tablets?

19 | A. One a day.

20 | Q. And how many tablets of Dolantin were you taking?

21 | A. Two a day.

22 | Q. Right. Mr. MacNeil I've gone through the booklets of evidence  
23 | that are prepared by Commission Council and I wasn't able to  
24 | find any reference to any details of this medication that you  
25 | were on at the time. That is to say both in May and November,

JAMES MacNeil, by Mr. Saunders, by Mr. Bissell

1 1971. I assumed that you never told any investigating  
2 officers about the medication that you were on at that time?

3 A. No, I did not.

4 Q. Why didn't you, Sir?

5 A. I just didn't.

6 Q. You just didn't?

7 A. No.

8 MR. SAUNDERS:

9 Those are all my questions, Mr. Lord.

10 MR. CHAIRMAN:

11 Counsel for the R.C.M.P.

12 MR. BISSELL:

13 I just have a few questions.

14 BY MR. BISSELL:

15 Q. Mr. MacNeil, my name is Jim Bissell. I represent the R.C.M.P.,  
16 and I just have one or two questions for you, sir.

17 A. Yeh.

18 Q. When you were being questioned by Mr. Orsborn, you told him  
19 that you believe you may have signed the statement at the  
20 time you took the polygraph examination?

21 A. Yeh.

22 Q. Is it possible, Sir, that all you signed was a consent to  
23 take the polygraph test?

24 A. It's possible, yes. I don't know them procedures, like,  
25 papers, like.

JAMES MacNEIL, by Mr. Bissell

1 Q. You don't recall signing any more than one statement, is  
2 that correct? Or one particular document or do you have  
3 any recollection of that?

4 A. No, I don't recall.

5 Q. That's fine, Sir, those are all the questions that I have.

6 MR. CHAIRMAN:

7 Counsel for Staff Sergeant Wheaton or the R.C.M.P. Officers, Evers,  
8 McAlpine, Green, Carroll and Davies. I guess not, so that brings  
9 me down to you, Mr. Ross. Do you have any questions?

10 MR. ROSS:

11 Yes, I think, My Lord, this -- if you propose to break, this  
12 might be an appropriate time.

13 MR. CHAIRMAN:

14 Well, it -- can I assume you may be longer than your --

15 MR. ROSS:

16 I might be.

17 MR. CHAIRMAN:

18 -- predecessors, the two immediate predecessors?

19 MR. ROSS:

20 Absolutely.

21 MR. CHAIRMAN:

22 All right. We'll take a break.

23 INQUIRY ADJOURNED: 10:51 a.m.

24 INQUIRY RECONVENED: 11:13 a.m.

25 MR. CHAIRMAN:

Mr. Ross.

JAMES MacNEIL, by Mr. Ross

1 | MR. ROSS:

2 | Thank you, My Lord.

3 | BY MR. ROSS:

4 | Q. Good morning, Mr. MacNeil.

5 | A. Morning.

6 | Q. My name is Anthony Ross.

7 | A. Yes.

8 | Q. And I'm representing Oscar Seale and also the Black United  
9 | Front.

10 | A. Right.

11 | Q. Is it fair to say, Mr. MacNeil, that you'd prefer that I  
12 | wouldn't take you through all of these statements that you've  
13 | gone through so many times before?

14 | A. Please, please. I've been through it so many times.

15 | Q. Yeh, you're getting tired of it, aren't you?

16 | A. Yeh.

17 | Q. Quite tired?

18 | A. Yeh.

19 | Q. Well, what I'm going to try to do is very quickly clear up  
20 | in my own mind your recollection of events. I'm not -- I'm  
21 | going to try not to make statements to you so you answer yes  
22 | or no. I'm going to try to ask some questions and you give me  
23 | your own answer. Will that be appropriate to you?

24 | A. Okay.

25 | Q. And you try to give me full answers, will you?

JAMES MacNEIL, by Mr. Ross

1 A. Yeh.

2 Q. Yes. Now as I look through the very many statements, there's  
3 one thing that becomes apparent to me. It appears as though  
4 in all of these statements you're trying to help. Am I  
5 correct with that?

6 A. Right.

7 Q. And would this, Sir, account for the reason why you say one  
8 thing sometime and another thing another time? Would that  
9 be the reason for it?

10 A. Yes, that, that would be the reason. The way you'd get  
11 confused -- you get confused from one statement to another.

12 Q. I see. And then what I'm going to try to find out from you  
13 is the circumstances under which all of these statements  
14 were given. Now I'm going to want you to slow down.

15 A. Okay.

16 Q. If you don't understand me, ask me to repeat it. I don't  
17 mind.

18 A. Okay.

19 Q. I'm going to really want you to slow down and think and give me  
20 best answer.

21 A. Okay.

22 Q. Okay.

23 A. Okay.

24 Q. Fine. I will start by trying to find out something about you  
25 personally. I'm going to speak to you about something prior

JAMES MacNEIL, by Mr. Ross

- 1 to May 1971. Okay?
- 2 A. Okay.
- 3 Q. Fine. Perhaps you could tell me what year did you leave
- 4 school?
- 5 A. I can't remember.
- 6 Q. Would it have been in the 1960's?
- 7 A. Probably.
- 8 Q. Do you remember when President Kennedy died in 1963? Do you
- 9 remember when he was shot?
- 10 A. Yes.
- 11 Q. Do you remember where you were?
- 12 A. In Sydney.
- 13 Q. You were in Sydney?
- 14 A. Yes.
- 15 Q. Are you specifically remembering the event?
- 16 A. Yeh.
- 17 Q. Or you're not sure? If you're not sure, please I'm not trying
- 18 to put you --
- 19 A. No, no, I'm not sure. I don't see what President Kennedy got
- 20 to do with this.
- 21 Q. Oh, yeh. That's true. But as I said I'm trying -- I'm just
- 22 trying to get an understanding of where you were and what you
- 23 were doing. I'm just trying to test your memory. Okay?
- 24 A. Okay.
- 25 Q. Do you remember whether you were in school or not in school
- at that time?

JAMES MacNeil, by Mr. Ross

- 1 | A. I don't remember.
- 2 | Q. Fine, fine, good. When you -- just before you left school,  
3 | do you remember who was your last school teacher?
- 4 | A. No.
- 5 | Q. No. Do you remember where your school was located?
- 6 | A. Down the Pier.
- 7 | Q. At Whitney Pier?
- 8 | A. Yeh.
- 9 | Q. Did you live in Whitney Pier?
- 10 | A. Yeh.
- 11 | Q. I see. And after you left school, do you remember whether or  
12 | not you started working?
- 13 | A. Yeh.
- 14 | Q. Right after you left school?
- 15 | A. Yeh.
- 16 | Q. Who did you work for?
- 17 | A. I worked for Sydney Landscaping at that time. I worked for  
18 | Ellerbrook for a while. I worked different, like, labour  
19 | jobs.
- 20 | Q. Yeh. And this was after you left school but before May of  
21 | 1971?
- 22 | A. Yes.
- 23 | Q. Yeh. And as I understand it as we talked around May of 1971,  
24 | you used to drink quite a bit?
- 25 | A. Yes.

JAMES MacNeil, by Mr. Ross

- 1 Q. Did any doctor ever indicate to you that you had a drinking  
2 problem?
- 3 A. No, I knew it myself.
- 4 Q. You knew that yourself?
- 5 A. Yeh.
- 6 Q. When did you first determine that you had a drinking problem,  
7 approximately?
- 8 A. Well, after my mother was -- after my mother had died there,  
9 I knew I had a drinking problem and --
- 10 Q. Yeh, what year did your mother die?
- 11 A. '73 -- '72.
- 12 Q. '72, I see. Was she ill for a long time before she died?
- 13 A. Quite ill, quite ill for a while but I --
- 14 Q. As far as your drinking problem is concerned, did you have  
15 this problem before this Seale incident in May of 1971?
- 16 A. No.
- 17 Q. You never had a drinking problem up to then?
- 18 A. Well, I did drink heavy, you know like, but not really, you  
19 know.
- 20 Q. I see. Perhaps you can tell me, where you ever a patient in  
21 the Nova Scotia Hospital?
- 22 A. Nova Scotia Hospital -- I believe I was there once for  
23 drinking.
- 24 Q. At the Nova Scotia Hospital?
- 25 A. Yeh.



JAMES MacNEIL, by Mr. Ross

- 1 Q. Do you remember when that was?
- 2 A. I don't remember.
- 3 Q. Do you remember who sent you there?
- 4 A. The family doctor.
- 5 Q. And that was Doctor?
- 6 A. Gaum.
- 7 Q. Doctor Gaum, I see. Now as you relax, as you relax a bit, can  
8 you recall the events around the 28th of May, 1971? That's  
9 the date Sandy Seale was stabbed. Can you generally recall  
10 those events?
- 11 A. Yes.
- 12 Q. Now you indicated to Mr. Orsborn that you had either dinner  
13 or supper; you ate around five o'clock the afternoon?
- 14 A. Yes.
- 15 Q. And from there you went to the State Tavern?
- 16 A. Right.
- 17 Q. Do you remember where you ate? Was it at your home, at a  
18 restaurant, at Ebsary's home; any idea where it was?
- 19 A. I don't remember, really.
- 20 Q. Now did you at that time have a brown corduroy jacket?
- 21 A. No, I was wearing a blue jacket at that time.
- 22 Q. Oh, yes, you said what you were wearing. Did you have one?
- 23 A. A brown one.
- 24 Q. Yes?
- 25 A. Not to my knowledge.

JAMES MacNEIL, by Mr. Ross

1 Q. Right. You say you were wearing a blue, a blue university-  
2 type jacket?

3 A. Yes.

4 Q. And where did you get that from?

5 A. I bought it.

6 Q. I see. And this evening having spent some -- you spent some  
7 time at the State Tavern?

8 A. Yes.

9 Q. Yes. Now tell me whether or not this is your experience that  
10 if you're in a tavern, the waiter comes around with a  
11 substantial number of glasses of draft beer on the tray.

12 A. Right.

13 Q. And you would ask him to put so many down before you, six  
14 eight, any amount?

15 A. Yeh.

16 Q. And this was the policy in Sydney also that when he's passing  
17 so that you're not stopping him every minute, you get him to  
18 put quite a few down at the same time?

19 A. Yeh, some times. If you have a lot of extra people at the  
20 table.

21 MR. CHAIRMAN:

22 Mr. Ross, would you ask this witness if the draft beer was  
23 available in 1971 in Sydney.

24 MR. ROSS:

25 Yes, yes.

JAMES MacNEIL, by Mr. Ross

1 Q. Do you recall if draft beer was available in 1971?

2 A. Yeh.

3 Q. You could go up to the tavern and get draft beer?

4 A. Yes.

5 Q. Now I don't want you to give me some general situations, I'm  
6 going to try to specifically address this Friday. You recall  
7 it was a Friday?

8 A. Yes.

9 Q. Do you recall it specifically or because I said so?

10 A. I recall it specifically.

11 Q. Yes. And this Friday, you went to the tavern and -- do you  
12 recall around what time you first noticed that Roy Ebsary was  
13 also at the tavern?

14 A. That's probably around an hour after I got in there. But I  
15 can't be specific, I can't.

16 Q. Approximately?

17 A. An hour, approximately, yeh.

18 Q. So you got there around five?

19 A. Yeh.

20 Q. And around six you noticed the presence of Roy Ebsary?

21 A. Yes.

22 Q. Pardon me.

23 A. Yeh.

24 Q. Where was he sitting -- sorry, was he sitting or standing  
25 when you saw him?

JAMES MacNEIL, by Mr. Saunders

- 1 | A. I do not recall if he was sitting or standing but --
- 2 | Q. Fine. When you saw him do you recall if you were sitting or
- 3 | standing?
- 4 | A. I do not recall.
- 5 | Q. So you might have been standing or sitting and he might have
- 6 | been standing or sitting?
- 7 | A. Yes.
- 8 | Q. Do you recall where he was in relation to you?
- 9 | A. No.
- 10 | Q. Or what can you specifically tell us about the time when you
- 11 | saw him?
- 12 | A. What do you mean by that, Sir.
- 13 | Q. Can you tell us anything at all about the first contact you had with
- 14 | Roy Ebsary that evening at the State Tavern?
- 15 | A. Well, I just went in and met him and just sat down and start
- 16 | talking and drinking.
- 17 | Q. Excuse me, you say you went in and met him?
- 18 | A. Yeh.
- 19 | Q. Am I to understand from that that when you got there he was
- 20 | already there?
- 21 | A. Yes.
- 22 | Q. Pardon.
- 23 | A. Yes.
- 24 | Q. Did anybody apart from Roy Ebsary buy you beer that evening?
- 25 | A. I don't believe. I think I had my own quarters at that time

JAMES MacNEIL, by Mr. Ross

1 | for the draft.

2 | Q. You had your -- you had your own quarters?

3 | A. Yeh.

4 | Q. And had you been a frequent State Tavern by that time?

5 | A. Yes, indeed.

6 | Q. Quite frequent?

7 | A. Yes, quite, yeh, quite frequently.

8 | Q. Then I take it you would have known who the bartenders were?

9 | A. Yeh.

10 | Q. And you would have known who the waiters were?

11 | A. Yeh.

12 | Q. And from the frequency would you say that most of the time  
13 | that you were there, you were there with Roy Ebsary?

14 | A. Yes.

15 | Q. Do you know whether or not the bartenders knew Roy Ebsary?

16 | A. I do not know. I'd imagine they did.

17 | Q. Do you know whether or not the waiters knew Roy Ebsary?

18 | A. I'd imagine.

19 | Q. Do you know whether or not any of the bartenders were contacted  
20 | after this incident? Do you know anything about that?

21 | A. I do not know.

22 | Q. Do you know if any of the waiters were contacted after this  
23 | incident?

24 | A. I do not know.

25 | Q. Isn't it reasonable to conclude that from your knowledge that

JAMES MacNEIL, by Mr. Ross

- 1 both the bartenders and the waiters ought to have remembered  
2 you people coming to the tavern?
- 3 A. Yeh, they should -- yeh.
- 4 Q. Yes. On that night, I understand, you were weighing around  
5 something of the order of a hundred pounds?
- 6 A. Yes.
- 7 Q. Quite small at this time?
- 8 A. I was quite thin, yeh.
- 9 Q. And you were on different types of medication?
- 10 A. No, not at that time.
- 11 Q. Just a minute, I thought you told my learned friend here,  
12 Mr. Saunders, that you were taking one Phenobarb and two --
- 13 A. Oh, yeh, that's right.
- 14 Q. You were taking medication at that time?
- 15 A. Yeh, yeh.
- 16 Q. And where were you getting your prescriptions filled?
- 17 A. Pollett's Drug Store.
- 18 Q. And was that the only place that you got your prescription  
19 filled?
- 20 A. The only place.
- 21 Q. The only place?
- 22 A. Yeh.
- 23 Q. So they should have a record of the kind of drugs you were  
24 on during 1971 and forward?
- 25 A. Yes. Yep, they should.

JAMES MacNEIL, by Mr. Ross

1 Q. I see. So you were taking these, these, these drugs and  
2 was it just two types of drugs you were taking, the  
3 Phenobarb and the Dolantin?

4 A. Yes.

5 Q. Those were the only two drugs you were taking?

6 A. Yeh.

7 Q. Now the Phenobarb, did you have to take it on a full stomach,  
8 do you recall anything about it?

9 A. No, not really.

10 Q. You just took it?

11 A. Yeh.

12 Q. Yeh. And it made you drowsy, didn't it?

13 A. Yeh, it'll make a person drowsy.

14 Q. And the other drug, that would also make you drowsy.

15 A. Yes.

16 Q. And their effect did make you more drowsy if you're drinking  
17 alcohol than if you were drinking milk or water?

18 A. Yeh, it would.

19

20

21

22

23

24

25

JAMES MacNEIL, by Mr. Ross

- 1 Q. And that evening, you go up to the State Tavern, as I  
2 understand you told Mr. Orsborn and my notes indicate.  
3 You go up there around five o'clock in the afternoon.
- 4 A. Yes.
- 5 Q. And what would you be doing between five o'clock  
6 and say nine o'clock? Just drinking beer?
- 7 A. Just drinking and talking.
- 8 Q. Did they have a shuffleboard game? Any games at all? Darts?  
9 Anything?
- 10 A. No, not down there at that time. No shuffle-boards.
- 11 Q. I see. So just drinking and talking.
- 12 A. Yes.
- 13 Q. Were you sitting at the same table with Roy Ebsary?
- 14 A. I can't remember. I might have moved around a couple  
15 of tables. I might have been talking to a few more  
16 people.
- 17 Q. I see. Was it your practise that you'd go and just  
18 walk around to different tables?
- 19 A. Oh, no. If I seen a person that I knew, like, you know --
- 20 Q. But you can't specifically remember this night?
- 21 A. No.
- 22 Q. And did you stay there until the tavern closed?
- 23 A. No.
- 24 Q. Did you stay there until there was the last call?
- 25 A. Till around that time.



JAMES MacNEIL, by Mr. Ross

1 Q. What time was last call?

2 A. In them days I think it was eleven o'clock.

3 Q. Eleven o'clock was the last call?

4 A. Yeh.

5 Q. And the tavern then would close at what time?

6 A. Eleven thirty.

7 Q. Eleven thirty. Now, was it quite short after the last  
8 call that you left or close to when it was closing?

9 A. Pretty close to after the last call.

10 Q. So the last call was at eleven?

11 A. Yes.

12 Q. Would you have left by quarter past eleven?

13 A. Probably.

14 Q. Would you have left by ten past eleven?

15 A. Probably.

16 Q: Would you have left by five minutes past eleven?

17 A. Probably.

18 Q. Would you have left by one minute past eleven?

19 A. Yes.

20 Q. Would you have left, maybe, ten minutes before eleven?

21 A. Probably.

22 Q. I see. How about ten thirty? Could you have left around  
23 ten thirty?

24 A. Probably but it's so long ago you can't -- you can't recall.

25 Q. Well, this is true but you have to remember Mr. MacNeil that

JAMES MacNEIL, by Mr. Ross

1 | you were there. You see, we're trying to get the facts  
2 | about what's there.

3 | Anyway, the State Tavern, that's located on the corner  
4 | of -- what is it -- Falmouth and George Street was it?

5 | A. Falmouth and George, yes.

6 | Q. Falmouth and George.

7 | A. Yes.

8 | Q. And do you recall what if anything you were discussing  
9 | with Roy Ebsary as you left the State Tavern and approached  
10 | Wentworth Park?

11 | A. I don't recall.

12 | Q. And I take it that having -- that you went through the park  
13 | -- completely through the park without incident? Without  
14 | any problems?

15 | A. Yes.

16 | Q. Now, sir, you indicate to the court -- you indicate  
17 | to the Inquiry that you saw two people. That two  
18 | people approached you?

19 | A. Yes.

20 | Q. Do you recall how either of them were dressed?

21 | Let me -- as a matter of fact I understand there was  
22 | a tall one and a shorter one?

23 | A. Yes.

24 | Q. Let's deal with the taller one. Do you recall how  
25 | he was dressed?

JAMES MacNEIL, by Mr. Ross

- 1 A. No. I can't recall.
- 2 Q. Do you recall whether he had on shoes or sneakers or boots?
- 3 What?
- 4 A. I can't recall.
- 5 Q. Do you recall whether he had on jeans or plain slacks?
- 6 A. I can't recall.
- 7 Q. Do you recall whether he had on a shirt, an overcoat, a
- 8 jacket, anything?
- 9 A. I can't recall.
- 10 Q. What about the shorter one? Do you recall whether he
- 11 had on shoes, boots or sneakers?
- 12 A. I can't recall.
- 13 Q. Do you recall whether he had on slacks -- dress slacks, jeans?
- 14 Do you recall anything about him?
- 15 A. No.
- 16 Q. And you further indicate that -- and this is your evidence
- 17 given on Friday to Mr. Orsborn.
- 18 You indicated that you were positive that Seale made a
- 19 statement?
- 20 A. Yes.
- 21 Q. And you are positive there by the sound of his voice?
- 22 A. Yes.
- 23 Q. What do you mean by that? The sound of his voice?
- 24 A. I don't know. Just the sound of his voice.
- 25 Q. I see. How did his voice sound? Like mine?

JAMES MacNEIL, by Mr. Ross

- 1 A. No, a little bit different than yours. You have a little  
2 more of a different accent.
- 3 Q. Did he sound like yours?
- 4 A. No.
- 5 Q. Did he sound like any of the lawyers who've questioned you?
- 6 A. No.
- 7 Q. Did you hear the -- you never heard the voice before?
- 8 A. No.
- 9 Q. You never heard the voice after?
- 10 A. No.
- 11 Q. Did you hear a similar voice before?
- 12 A. Yeh.
- 13 Q. From whom?
- 14 A. Well, when I lived down the Pier. When I lived down the  
15 Pier --
- 16 Q. When you lived down the Pier, what happened?
- 17 A. Well, I used to know coloured people and I know how they  
18 talk like.
- 19 Q. Pardon me?
- 20 A. I said I used to know a lot of coloured people and I know  
21 how they talk.
- 22 Q. You knew a lot of coloured people and you know how they talk?
- 23 A. Yes.
- 24 Q. I see. These coloured people that you knew, how far did  
25 they go in school?

JAMES MacNEIL, by Mr. Ross

- 1 | A. Not to far but most of them are all working.
- 2 | Q. I take it that you just came to a conclusion out of the blue.
- 3 | That it was a coloured person. Correct?
- 4 | A. No, I didn't come to that conclusion.
- 5 | Q. Were you -- I understand that you said that you identified
- 6 | this person from his voice?
- 7 | A. Yes.
- 8 | Q. Tell me more about it. I want to understand how you came
- 9 | to that conclusion? You tell me. I don't want to ask this
- 10 | and then you say yes, no, yeh, no. I want you to tell me.
- 11 | To explain to me how from somebody's voice you determined
- 12 | he was coloured?
- 13 | A. I can't explain that.
- 14 | Q. Pardon me?
- 15 | A. I said I can't explain that.
- 16 | Q. What did it sound like?
- 17 | A. I can't explain.
- 18 | Q. But at that point -- sorry -- you indicated that the lighting
- 19 | was pretty poor that night?
- 20 | A. Yes.
- 21 | Q. Would this account for the reason -- would this be the
- 22 | reason why you couldn't see the people? Identify the people?
- 23 | A. Possibly.
- 24 | Q. Well, if that's -- if it's possibly what's the other reasons?
- 25 | Are there other reasons?

JAMES MacNEIL, by Mr. Ross

1 | A. Not right off the hand I can't. Like I mean not right  
2 | off hand.

3 | Q. We know that you were are medication. Two different kinds.

4 | A. Yes.

5 | Q. We know that you had a substantial amount to drink.

6 | Am I correct?

7 | A. Yes.

8 | Q. And we know that it was dark.

9 | A. Yes.

10 | Q. Am I correct?

11 | A. Yeh.

12 | Q. Yes. And you say you heard a statement made "Dig, man, Dig"?

13 | A. Yes.

14 | Q. And with all of these -- now within a very short time an  
15 | incident occurred and was over?

16 | A. Yes.

17 | Q. Right?

18 | A. Yeh, right.

19 | Q. You further indicated that the other person -- the taller  
20 | person who was there, disappeared?

21 | A. Yes.

22 | Q. Correct?

23 | A. Right.

24 | Q. Now, would you agree with me that if you were in the park  
25 | last night -- on Crescent Street last night and you were not

JAMES MacNEIL, by Mr. Ross

- 1 drinking and you were not on medication that made you drowsy,  
2 if something happened at least you will see where the person  
3 disappeared to?
- 4 A. Yeh.
- 5 Q. And after this incident -- after this incident in the park  
6 that night, you were really concerned I take it?
- 7 A. Yes.
- 8 Q. Concerned for whom?
- 9 A. Well, concerned that the young fellow died. Mr. Seale.
- 10 Q. You were concerned that he died?
- 11 A. Yes.
- 12 Q. Did you express your concern to your father? Did you call  
13 his father and tell him?
- 14 A. No, I did not.
- 15 Q. Did you tell anybody?
- 16 A. No.
- 17 Q. You just kept it inside you?
- 18 A. Yes.
- 19 Q. Why didn't you tell the police?
- 20 A. Well, I figured the police, they'd -- they look after things  
21 like that.
- 22 Q. Pardon me?
- 23 A. I figured the police would have more of a knowledge into that  
24 than -- rather than asking -- telling anybody else.
- 25 Q. I don't understand the last part of your answer.

JAMES MacNEIL, by Mr. Ross

- 1 A. Well, I figured the police would have more of a knowledge  
2 in to it than asking anybody else like.
- 3 Q. A knowledge in to what?
- 4 A. In to what you just asked me.
- 5 Q. Why you didn't tell the police?
- 6 A. Yeh.
- 7 Q. They'll know why you didn't tell them?
- 8 A. Yes.
- 9 Q. Pardon?
- 10 A. Repeat that question?
- 11 Q. I asked you why did you not tell the police? Do you recall  
12 me saying that?
- 13 A. Yes.
- 14 Q. The answer was that the police would have a better knowledge  
15 in to that.
- 16 A. Yes.
- 17 Q. And I asked you a better knowledge in to what?  
18 And that's the last question. Can you answer that?
- 19 A. I can't answer it.
- 20 Q. Okay. Now, do you know -- did you know a guy by the name  
21 of John Joseph MacNeil?
- 22 A. John Joseph MacNeil. He's-would be my distant cousin.  
23 Third cousin.
- 24 Q. Your third cousin?
- 25 A. Yeh.



JAMES MacNEIL, by Mr. Ross

- 1 Q. Was he living in Toronto?
- 2 A. No.
- 3 Q. Was there a John Joseph MacNeil that you knew that was  
4 living in Toronto?
- 5 A. Oh, that's my brother you're talking about. Yeh.
- 6 Q. Is he alive?
- 7 A. No, he's dead.
- 8 Q. When did he die?
- 9 A. Oh, about three years ago.
- 10 Q. In 1985?
- 11 A. Yeh.
- 12 Q. Do you recall what he died from?
- 13 A. Well, --
- 14 Q. Do you recall?
- 15 A. Yeh.
- 16 Q. What?
- 17 A. Excessive drinking.
- 18 Q. Excessive drinking.
- 19 A. Yeh, he wasn't looking after his health.
- 20 Q. Pardon me?
- 21 A. He wasn't looking after his health.
- 22 Q. I see. And do you recall him coming back to Sydney in 1971?
- 23 A. Yes.
- 24 Q. And do you recall speaking to him?
- 25 A. Yes.

JAMES MacNEIL, by Mr. Ross

- 1 Q. Now, when you came back to Sydney, do you recall  
2 drinking with him?
- 3 A. No, I don't recall drinking with him.
- 4 Q. Do you recall drinking with him before then?
- 5 A. Yeh, when he used to come home. Like before then he'd  
6 come home every second summer or sometime every third summer.
- 7 Q. Now, the night that he got home, do you recall that night?  
8 Or you don't. If you don't -- just answer me to the best  
9 of your --
- 10 A. No, I can't recall it, no.
- 11 Q. You can't recall the night?
- 12 A. No, I can't recall.
- 13 Q. I see. Do you know that he had given a statement to the  
14 police?
- 15 A. Yeh, he came to the police with me.
- 16 Q. Who else went to the police with you?
- 17 A. David.
- 18 Q. Pardon me?
- 19 A. David. My other brother.
- 20 Q. David?
- 21 A. Yeh.
- 22 Q. And I take it -- did you have a conversation with John  
23 Joseph MacNeil and David MacNeil the night when John Joseph  
24 MacNeil came home?
- 25 A. Yeh. I -- yeh.

JAMES MacNEIL, by Mr. Ross

- 1 Q. And do you recall where you were speaking to him?  
2 Where in your house you were?
- 3 A. I don't remember where in the house.
- 4 Q. Who all was present while you all were speaking?
- 5 A. Just two of them as far as I --
- 6 Q. Just the three of you?
- 7 A. Yeh.
- 8 Q. How many brothers did you have?
- 9 A. Around six.
- 10 Q. You had six brothers?
- 11 A. Yeh.
- 12 Q. How many sisters?
- 13 A. Around seven sisters.
- 14 Q. And they are all in the same father -- all in the same  
15 family?
- 16 A. Yes.
- 17 Q. And that would be fourteen of you were in the family is it?
- 18 A. Yeh.
- 19 Q. Seven boys and seven girls?
- 20 A. Yeh.
- 21 Q. And that night when you were speaking to John Joseph MacNeil  
22 and David MacNeil, were any of your other brothers there?
- 23 A. No.
- 24 Q. Any of your sisters?
- 25 A. No.

- 1 Q. Were they living at home at that time?
- 2 A. Some of them -- some of them were living at home but  
3 some of them were working like. They were working and  
4 some of them were going with one -- Ann Marie was going  
5 with Leonard from Newfoundland and Shirley had a part-time  
6 job and --
- 7 Q. Yeh, but I'm just speaking about that night. Do you remember  
8 the night when John Joseph came from Toronto?
- 9 A. Yes.
- 10 Q. And that night you were speaking to him?
- 11 A. Yes.
- 12 Q. And present at that time was your brother David?
- 13 A. Yeh.
- 14 Q. Was there anybody else present or were just -- was it just  
15 the three of you?
- 16 A. I can't recall that. I can't recall it.
- 17 Q. Do you recall your sisters being present?
- 18 A. I can't recall.
- 19 Q. Well, why can you recall specifically that David was present?  
20 How come?
- 21 A. I don't know. I recall he was there with Johnny.
- 22 Q. Pardon me?
- 23 A. I recall he was there with Johnny.
- 24 Q. I see. And I take it that David would have heard the same  
25 thing that John would have heard? You were speaking about

JAMES MacNEIL, by Mr. Ross

1 the night in the park.

2 A. Probably, if he was listening.

3 Q. I see. And was it the first time -- was that the very  
4 first time you had spoken to anybody about the night in  
5 the park?

6 A. No, I spoke to my father.

7 Q. Oh, yes. You spoke to your father and your father said  
8 that a man has to protect himself.

9 A. Yeh. He said it was self defense.

10 Q. Your father said it was self defense?

11 A. Yeh. But I didn't -- couldn't buy that.

12 Q. Now, do you recall whether or not your brother, John Joseph  
13 MacNeil, attended at the police station in Sydney?

14 A. Yeh, he came down to the station. I recall that.

15 Q. Do you recall if anybody else went down to the station?

16 A. No, I don't recall.

17 Q. I've got a statement signed by David W. MacNeil. Do you  
18 recall if he was at the station?

19 A. Yeh, I believe he was there.

20 Q. You just told me you didn't recall.

21 A. Yeh. Well --

22 COMMISSIONER EVANS:

23 Well, he previously said that he had to as I understood him, Mr.

24 Ross. You asked him that and he said that he and John Joseph and

25 David went to the police station together as I understood his

JAMES MacNEIL, by Mr. Ross

1 evidence.

2 MR. ROSS:

3 My apologies. I didn't recall that at all, My Lord.

4 BY MR. ROSS:

5 Q. I'll read to you. Tell me if this is consistent with  
6 what you recall having said to David. David's statement  
7 reads as follows: -- One moment please. Volume sixteen.  
8 Can I borrow volume sixteen, please?

9 MR. CHAIRMAN:

10 While we're getting volume sixteen, is David still alive?

11 MR. ROSS:

12 I will check that.

13 BY MR. CHAIRMAN:

14 Q. Is David still alive? Is your brother David still alive or?

15 A. Yes, sir. He is.

16 Q. Living where?

17 A. Victoria Road.

18 Q. Sydney?

19 A. Yeh.

20 Q. Fine.

21 BY MR. ROSS:

22 Q. There's a typewritten statement in volume sixteen, page  
23 one seventy-four.

24 A. David-- David misquoted himself there.

25 Q. Pardon me?

JAMES MacNEIL, by Mr. Ross

- 1 A. I said David misquoted himself there. That's not --
- 2 Q. Where did he misquote himself?
- 3 A. In -- In --
- 4 Q. What was he saying when he misquoted himself?
- 5 A. When he said Seale went to search him.
- 6 Q. What about --
- 7 A. Seale didn't go to search him.
- 8 Q. Pardon me?
- 9 A. Seale didn't go to search him. He just asked him. Like that's --
- 10 Q. Well, perhaps sir, just identify this section that I'm concerned
- 11 with.
- 12 David is saying as follows -- He said: "About two weeks ago
- 13 my brother James told me that himself and Roy Ebsary were
- 14 walking through Wentworth Park." Did you tell him that?
- 15 A. Yeh, I told him that part, yeh.
- 16 Q. He said: " Donald Marshall and Sandy Seale were on Crescent
- 17 Street." Did you tell him that?
- 18 A. Yes.
- 19 Q. How did you know it was Donald Marshall and Sandy Seale?
- 20 A. I must have seen it in the paper.
- 21 Q. You've seen it in the paper. I see.
- 22 And that was the paper during the trial, was it?
- 23 A. Yes.
- 24 Q. He said: "Donald Marshall grabbed my brother." Did
- 25 you tell that?

JAMES MacNEIL, by Mr. Ross

1 A. Donald Marshall grabbed my brother. No, I didn't tell  
2 him that.

3 Q. You did not tell him that?

4 A. No.

5 Q. I see.

6 MR. CHAIRMAN:

7 I think in all fairness, we better draw this attention -- this  
8 witnesses attention that my brother is himself.

9 BY THE WITNESS:

10 Oh, myself.

11 BY MR. ROSS:

12 Q. Yeh, that Donald --

13 MR ROSS:

14 Yes, very sorry, My Lord.

15 BY MR. ROSS:

16 Q. That Donald Marshall grabbed you. Did you tell him that?

17 A. Yes. Yeh, right. I told him that.

18 Q. He said: "He put his arm up behind his back." That means  
19 your arm up behind your back. Did you tell him that?

20 A. Yes, I did.

21 Q. "Marshall and Seale asked them for money." Did you tell  
22 him that?

23 A. Marshall and Seale asked for money.

24 Q. That asked you and Ebsary for money. Did you tell him that?

25 A. I imagine I did if it's down -- you know --



JAMES MacNEIL, by Mr. Ross

- 1 Q. No, but I am -- do you recall that you told him that?
- 2 A. Yes.
- 3 Q. Now, wait a minute please. You just said you imagine  
4 you did because it's down.
- 5 A. Yeh.
- 6 Q. Is that the only reason why you think you told him that?  
7 Because it's written there?
- 8 A. No, it must be true.
- 9 Q. I see. Now, he went on further and he said: "Marshall asked  
10 Seale to search James' father."
- 11 A. James' father? No, I didn't ask -- it's not from me.
- 12 Q. You did not tell him that?
- 13 A. No, I did not. No.
- 14 Q. I see. Now, he said: "Seale went to search him."  
15 That would be James father -- your father. And Ebsary  
16 said: "Wait, I have something and he pulled a knife and  
17 stabbed Seale in the stomach." Did you tell that to your  
18 brother?
- 19 A. No. No. If I did he got it mixed up because that's wrong.
- 20 Q. I see. Now, I want to talk to you about these statements.  
21 I take it you'd have had a long conversation and there  
22 was much discussion between yourself and your brothers?
- 23 A. Yes.
- 24 Q. Pardon me?
- 25 A. Yeh.

JAMES MacNEIL, by Mr. Ross

1 Q. And did they fill in some of the facts for you as you spoke  
2 with them?

3 A. No, not really. No.

4 Q. Sure.

5 A. No.

6 Q. Well, then you spoke with them and what happened? What  
7 happened? Can you recall or you can't.

8 A. No, I can't.

9 Q. You can't recall. I see.

10 A. No.

11 Q. Along the time that you went and you gave a statement to  
12 the police department -- the Sydney Police, how long did  
13 you spend with the Sydney Police?

14 A. I can't recall.

15 Q. Do you recall going down to the station?

16 A. Yeh.

17 Q. Do you recall whether it was in the morning or the afternoon?

18 A. I don't know -- I can't recall if it was in the morning or  
19 the afternoon.

20 Q. Do you remember -- recall whether it was day or night?

21 A. It was in the day I believe.

22 Q. In the day?

23 A. Yeh.

24 Q. Are you -- you say you believe, can you be a little more  
25 specific? You recall it or you don't?

JAMES MacNEIL, by Mr. Ross

1 A. Well, I recall it was in the day. It was so long ago. Krips  
2 I can't -- I can't remember --

3 Q. Well, I appreciate that you're -- the important thing  
4 is that --

5 A. -- remember every damn thing and then as I'm going through  
6 this all the time you get confused.

7 Q. I see. So you recall it being in the day?

8 A. Yes.

9 Q. Now, why do you say it was in the day?  
10 What jogs your memory? Was the sun up?

11 A. Yeh.

12 Q. And how long did you spend with the police?

13 COMMISSIONER EVANS:

14 Excuse me. Mr. Ross, are you asking him now about a statement in  
15 writing?

16 MR. ROSS:

17 Yes, a statement of the 15th.

18 COMMISSIONER EVANS:

19 And wouldn't it be proper to refer him to that statement?

20 MR. ROSS:

21 Well, I am not going to go in to the content of the statement --

22 COMMISSIONER EVANS:

23 No.

24 MR. ROSS:

25 --My Lord. All I'm doing -- I'm addressing the circumstances

JAMES MacNEIL, by Mr. Ross

1 | when it was done. To the best of his recollection. I think  
2 | my learned friends have addressed the content to an extent  
3 | that I don't propose to go in to --

4 | COMMISSIONER EVANS:

5 | The reason that I'm asking is because I think the statement would  
6 | have the time marked on it and then you wouldn't be in any doubt  
7 | about when that was.

8 | MR. ROSS:

9 | Well, that's exactly true. And that's exactly why I didn't want  
10 | to ask -- want to put the statement to him. I just wanted to  
11 | test his recollection of events. But I'll move on.

12 | COMMISSIONER EVANS:

13 | 1971?

14 | MR. ROSS:

15 | Well, I don't mean to be argumentative, My Lord, but the difference  
16 | between day and night, I think, would be so sufficiently basic  
17 | that he might -- you know, he might -- just might remember it.  
18 | But I wouldn't stay on that point.

19 | BY MR. ROSS:

20 | Q. Whenever you went to the police in 1971, do you have any  
21 | recollection of how long you were with them?

22 | A. I would say probably half an hour, three quarters of an  
23 | hour just -- that's a recollection but I can't be positive.

24 | Q. You -- I see. Now, as far as the conversation is concerned.  
25 | You had a conversation with Mrs. Ebsary in their car outside

JAMES MacNEIL, by Mr. Ross

1 the Wandlyn Motel?

2 A. Yes.

3 Q. At that time -- she sent for you didn't she?

4 A. Yes.

5 Q. In her statement she indicates that she would have sent  
6 for you -- her statement was in November and she said  
7 about six weeks ago, which would put it around the beginning  
8 of October. She said it was around October that she had  
9 sent for you. Had you any reason to doubt that?

10 A. No, I got no reason to doubt it. It's -- be in her  
11 affidavit I guess.

12 Q. In her affidavit?

13 A. It would be in her affidavit.

14 Q. Yeh, but that wouldn't be the basis. I'm asking you about  
15 your best recollection. You can't pin the dates down  
16 can you?

17 A. No, I can't.

18 Q. It could have been anywhere between May and November?

19 A. Yes.

20 Q. Did you know Greg Ebsary?

21 A. Her son, yeh.

22 Q. Did you know him quite well?

23 A. Quite well, yeh.

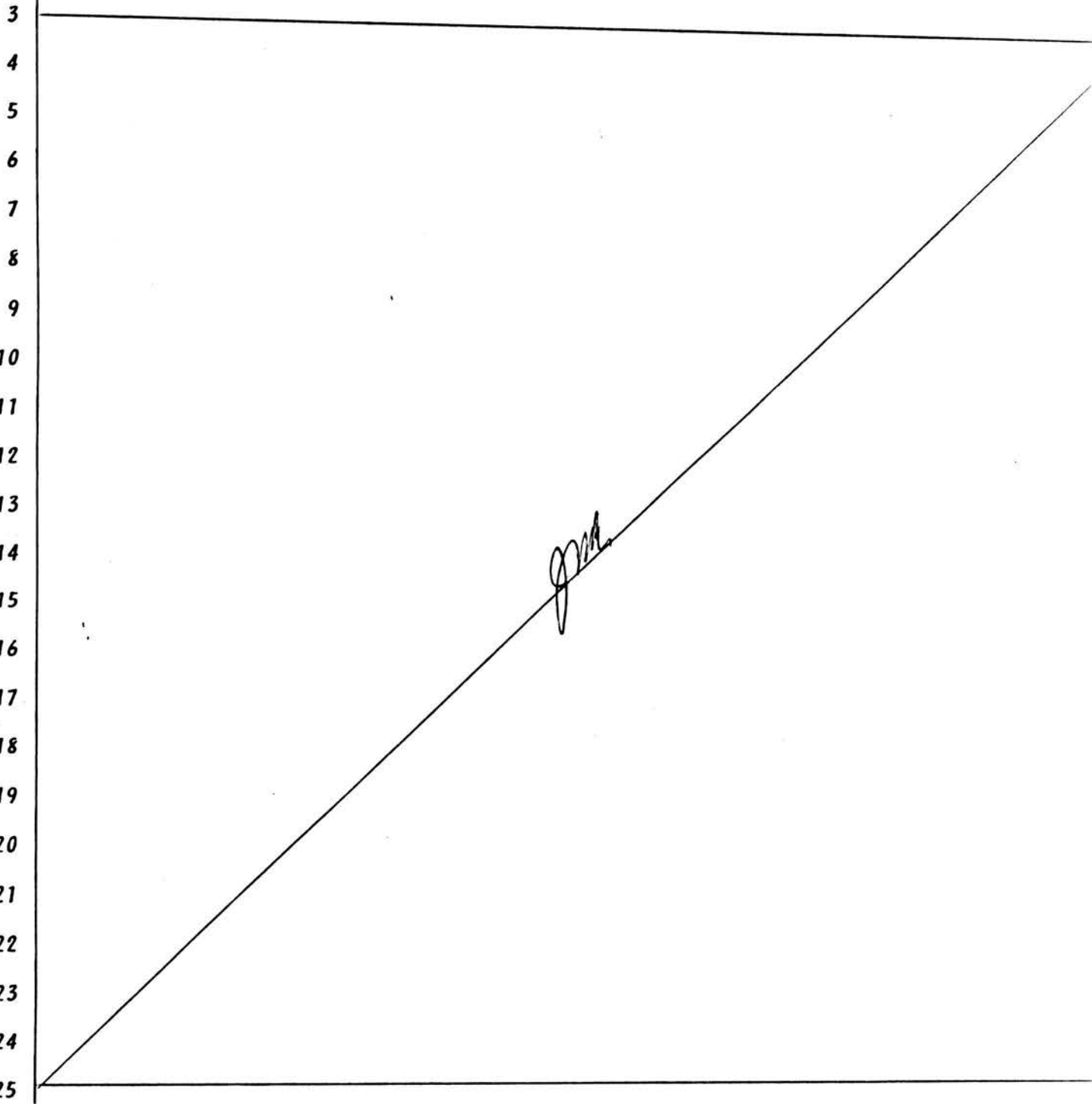
24 Q. Did you speak with Greg Ebsary at any time about -- Sorry.

25 Did Greg Ebsary speak to you about not coming back to the

JAMES MacNEIL, by Mr. Ross

1 house?

2 A. Yes. He did.



JAMES MacNEIL, by Mr. Ross

- 1 Q. Pardon me?
- 2 A. He did.
- 3 Q. Did he give you a reason?
- 4 A. Yeh.
- 5 Q. Can you clearly remember the reason?
- 6 A. Oh, to the best of my knowledge just that he told me that --
- 7 Q. Your hand is over your mouth, we can't hear you.
- 8 A. He told me that our families would be in trouble on account
- 9 of what his father done.
- 10 Q. On account of what his father done?
- 11 A. Yeh.
- 12 Q. He said that to you?
- 13 A. Yeh.
- 14 Q. You didn't say anything like that to him?
- 15 A. No.
- 16 Q. I see, and after that incident the next thing that happened
- 17 was that you wound up taking a polygraph test?
- 18 A. Repeat that please.
- 19 Q. After the incident, after you had made a statement to the
- 20 police, the next thing really that happened was that you
- 21 had to take a polygraph test?
- 22 A. Right, yeh.
- 23 Q. How long did you spend with the officers who administered
- 24 the test, do you recall?
- 25 A. It's so long ago, I can't recall.

JAMES MacNEIL, by Mr. Ross

1 Q. Do you recall how many tests did you have?

2 A. I think it was one.

3 Q. Just one?

4 A. Yeh.

5 Q. Do you recall any discussion that they spent some time with  
6 the officers after the test?

7 A. No, I do not recall any discussion, no.

8 Q. In the report the Police Officers who administered the  
9 polygraph indicate that because of drinking and some other  
10 things, that you have formed this idea about this stabbing  
11 in your own mind. That's what they say. Do you recognize  
12 that?

13 A. No, I don't.

14 MR. CHAIRMAN:

15 Where are you --

16 MR. ROSS:

17 That's in volume 19 -- I'm very sorry, very sorry, that's not  
18 volume 19.

19 MR. CHAIRMAN:

20 Volume 16.

21 MR. ROSS:

22 Volume 16, page 202 to 206. On the last page, on the second  
23 last sentence, My Lords.

24 BY MR. ROSS:

25 Q. They said that you had formed this idea in your mind that



JAMES MacNEIL, by Mr. Ross

1 Ebsary had, in fact, stabbed, that you had just formed this  
2 in your mind. What can you say about that?

3 A. I can't remember them saying anything like that.

4 Q. Well, I don't ask that you remember them saying it because  
5 I don't know if they said it to you, but this is what they  
6 claim. What's your response to what they claim?

7 A. Oh, they're wrong.

8 Q. They're wrong?

9 A. They're wrong, yeh.

10 Q. And what is correct?

11 A. My statement's correct.

12 Q. Your statement is -- Your statement to whom?

13 A. The R.C.M.P. or whatever.

14 Q. Did you attend Court during the Marshall trial?

15 A. No, sir.

16 Q. Were you concerned at that time?

17 A. I was, sir.

18 Q. Is there any reason why you didn't attend Court for to hear  
19 what's happening?

20 A. Well, I didn't think Marshall was going to be convicted.

21 Q. And that's why you've stayed away?

22 A. Yeh.

23 Q. And I take it it was after he as not convicted of -- sorry,  
24 after he was convicted that you decided to come forward?

25 A. Yeh.

JAMES MacNEIL, by Mr. Ross

1 Q. And when you came forward, I take it, you were still trying  
2 to be helpful?

3 A. Yeh.

4 Q. Now in Volume 11, page 6, you're speaking to Staff Sergeant  
5 Wheaton. Do you remember Staff Sergeant Wheaton?

6 A. Yes, indeed I do, yeh.

7 Q. And you gave him a statement. Do you recall that?

8 A. Yeh.

9 Q. And in the statement you said that on Crescent Street two  
10 fellows came up on you and Ebsary from behind and they asked  
11 you both for money. Do you remember them asking you for  
12 money?

13 A. No.

14 Q. Then you say:

15 "I heard one fellow, the coloured  
16 fellow or the Indian guy say,  
'Dig, man, dig'."

17 That's what you said to Staff Sergeant Wheaton in 1982.

18 A. And was that at my house?

19 Q. I don't know where it was. It was signed by you and witnessed  
20 by MacQuinn and Wheaton was present. I understand you're  
21 giving Wheaton the statement?

22 A. Yeh.

23 Q. But you told him that you heard one fellow, the coloured  
24 fellow or the Inidian guy say, "Dig, man dig". Do you  
25 remember telling him that?

JAMES MacNEIL, by Mr. Ross

- 1 A. No, I don't remember him saying that.
- 2 Q. Are you saying that this statement as recorded here is wrong?
- 3 A. If I said it I can't recall it.
- 4 Q. Yeh, but you signed it. Would you have read it before you  
5 signed it?
- 6 A. No, I don't think.
- 7 Q. You would not have read it before you signed it?
- 8 A. I don't think, no.
- 9 Q. Okay. Was it read to you?
- 10 A. I believe so.
- 11 Q. And after it was read to you, you signed it?
- 12 A. Yeh, I was in a nervous condition that.
- 13 Q. Pardon me?
- 14 A. I said my nerves were bad that day.
- 15 Q. I see. Now you told Mr. Orsborn that you had been going to  
16 Roy's house and you were going to spend the night there. Do  
17 you recall saying that to Mr. Orsborn?
- 18 A. Yeh.
- 19 Q. Had you often spent the night at Roy's house?
- 20 A. A few times.
- 21 Q. And perhaps you can describe the house. Was it all on one  
22 floor or part was upstairs, downstairs? What is it like?
- 23 A. There's an upstairs and downstairs.
- 24 Q. Was there a basement?
- 25 A. I think there was a basement there but I was never in it.

JAMES MacNEIL, by Mr. Ross

- 1 Q. You were never into the basement?
- 2 A. No.
- 3 Q. I see. So as you came in off the street you would enter where?
- 4 A. I could go through the -- there was like a back yard, you
- 5 go through that door, I think, in the back and there was one
- 6 in the front.
- 7 Q. Yes, and would you sleep upstairs or downstairs?
- 8 A. I'd sleep downstairs.
- 9 Q. And where would you sleep downstairs?
- 10 A. On a couch.
- 11 Q. On a couch?
- 12 A. Yeh.
- 13 Q. Yeh, but you told my learned friend that you slept on the cot?
- 14 A. On the cot, couch, it's the same thing.
- 15 Q. Oh, it's the same thing?
- 16 A. Yeh.
- 17 Q. I see, and why didn't you spend the night there if that's what
- 18 you planned to do?
- 19 A. Repeat that please.
- 20 Q. You left the State Tavern heading for Roy Ebsary's house where you
- 21 planned to spend the night?
- 22 A. Yeh.
- 23 Q. You were going to sleep there on the cot or the couch?
- 24 A. Yeh.
- 25 Q. Then there was this incident on Crescent Street, correct?

JAMES MacNEIL, by Mr. Ross

- 1 A. Yeh, right.
- 2 Q. And you continued over to Ebsary's house?
- 3 A. Yeh.
- 4 Q. And you stayed there for awhile?
- 5 A. Yeh.
- 6 Q. Well, why did you leave?
- 7 A. Because I got -- It's a long story. I -- You know, with the  
8 robbery and all and every darn thing, I -- well, you know, I  
9 was -- I just went home.
- 10 Q. I see. Did you have a falling out with Ebsary while you  
11 went home?
- 12 A. No, I didn't have a falling out with him, no.
- 13 Q. I see. Well, tell me something more. Some time later you  
14 gave an affidavit, you gave an affidavit to Mr. Aranson.  
15 Do you remember Mr. Aranson?
- 16 A. Yes, I remember him, yeh.
- 17 Q. Do you remember speaking to him?
- 18 A. Yeh.
- 19 Q. Where did you speak to him, at your home or at some place else?
- 20 A. At my home.
- 21 Q. Do you recall how many times you would have met him?
- 22 A. Once.
- 23 Q. About once or more than once?
- 24 A. Just once.
- 25 Q. Just once?

JAMES MacNEIL, by Mr. Ross

- 1 | A. Yeh.
- 2 | Q. Are you sure of that?
- 3 | A. Was that Marshall's lawyer?
- 4 | Q. Yes.
- 5 | A. Yeh.
- 6 | Q. You met him?
- 7 | A. Yeh.
- 8 | Q. Now you're sure it was just once?
- 9 | A. Yeh.
- 10 | Q. Did you speak to him over the telephone?
- 11 | A. Possibly. It's a possibility, yeh.
- 12 | Q. When you said a possibility, I might take it that if you did
- 13 | speak to him it might have just been once?
- 14 | A. Yeh.
- 15 | Q. I'll ask again. Did you speak frequently to him over the
- 16 | telephone?
- 17 | A. No, not frequently.
- 18 | Q. I see. There is an affidavit which was signed by you on the
- 19 | 15th of July, 1982, and I'll tell you what my concern
- 20 | is, if you only met Mr. Aranson once and you did not speak
- 21 | with him frequently over the phone, I'm wondering, did he
- 22 | show up at your place with the affidavit already prepared?
- 23 | A. I think he did, yeh.
- 24 | Q. Did you read it?
- 25 | A. Yeh, I read it.

JAMES MacNEIL, by Mr. Ross

1 Q. Did you understand it?

2 A. Yeh.

3 Q. I see. Have you got volume 11?

4 A. Volume 11?

5 Q. Yes.

6 A. Voluem 16, Volume 11, yeh.

7 Q. Page seven.

8 A. Seven.

9 Q. Well, as far as this affidavit is concerned --

10 MR. CHAIRMAN:

11 Are we waiting for Mr. MacNeil to read this affidavit?

12 MR. ROSS:

13 That's what I --

14 BY MR. ROSS:

15 Q. You're reading it, aren't you, Mr. MacNeil?

16 A. Yeh.

17 Q. Pardon?

18 A. I'm reading it.

19 MR. CHAIRMAN:

20 Mr. Ross, why don't you -- If you have any questions concerning  
21 the wording of the solicitor who prepared this affidavit, if  
22 you feel this witness can help on that, will you please direct  
23 him to the paragraph you have in mind because I think he's still  
24 on paragraph one.

25 MR. ROSS:

As you wish.

JAMES MacNEIL, by Mr. Ross

1 | BY MR. ROSS:

2 | Q. Tell me something, did you read any part of that affidavit?

3 | A. Yeh.

4 | Q. How far did you get?

5 | A. Right down here at number six.

6 | Q. You got down to number six?

7 | A. Yeh.

8 | Q. Now having read that, do you recall whether you read this  
9 | affidavit over yourself?

10 | A. I can't recall if I did or not.

11 | Q. There's reference in the affidavit in paragraph four of  
12 | Mr. Ebsary putting his right hand into his right coat pocket  
13 | and removing a knife. Do you see that?

14 | A. Yeh.

15 | Q. Your evidence here at this Inquiry is that you did not see a  
16 | knife?

17 | A. Yeh.

18 | Q. Now this is your affidavit. If you read it over, the first  
19 | thing I must ask you, are you sure that you did not see a  
20 | knife?

21 | A. Yeh.

22 | Q. Well, why did you sign it if you did not see a knife?

23 | A. I don't know.

24 | Q. Over on paragraph nine -- There's a reference in paragraph  
25 | nine that you saw Ebsary washing blood from the knife and his



JAMES MacNEIL, by Mr. Ross

1 hands. Do you see that in paragraph nine?

2 A. Yes, indeed I do.

3 Q. And you signed it?

4 A. Yeh.

5 Q. But you indicated to my learned friend -- one of my learned  
6 friends that you did not see any blood, that this might have  
7 been from a dream. Do you recall saying that?

8 A. Yeh.

9 Q. Well, why did you sign this document?

10 A. I can't answer that.

11 Q. Tell me, around that time -- this would have been in July of '82,  
12 were you still drinking quite a bit at that time?

13 A. Yes, I was.

14 Q. Were you still on medication?

15 A. Yes.

16 Q. That night that you got to Mr. Ebsary's house -- Do you  
17 recall the night after the incident on Crescent Street?

18 A. Yeh.

19 Q. Were you feeling good walking from Crescent Street toward  
20 Mr. Ebsary's house?

21 A. Repeat that again please.

22 Q. How were you feeling walking from Crescent Street after the  
23 incident to Mr. Ebsary's house? Were you upset, were you  
24 feeling good?

25 A. Upset. I was upset.

JAMES MacNEIL, by Mr. Ross

1 Q. I see, but that night as I understand as you told Ms. Edwardh  
2 that you'd been drinking, you drank yourself sober, and as  
3 I understand it you were in a good mood?

4 MR. CHAIRMAN:

5 No, no, that's -- He described as I recall it in his Cross-Examination  
6 that on occasion he drank himself sober. There's creditable  
7 evidence -- Well, there's no evidence to satisfy me that he said  
8 that he drank himself sober on that evening, suffice it to  
9 say is the evidence so far is that he'd been drinking a substantial  
10 amount of beer over an indeterminate time.

11 MR. ROSS:

12 That will satisfy me --Thank you, My Lord.

13 BY MR. ROSS:

14 Q. So when you got to the house, did you -- Did you see anybody  
15 when you got to Mr. Ebsary's house?

16 A. No.

17 Q. Nobody at all?

18 A. No.

19 Q. Are you sure of that?

20 A. Positive.

21 Q. You knew Donna?

22 A. Yeh.

23 Q. As a matter of fact you were teaching Donna to drive?

24 A. Yeh -- Not teaching her to drive. I just took her out once  
25 just -- she didn't have her license like.

JAMES MacNEIL, by Mr. Ross

1 Q. I see, and did you know Mrs. Ebsary?

2 A. Yeh.

3 Q. Did you get along well with Mrs. Ebsary?

4 A. Very fine.

5 Q. Very fine, and I take it if Mrs. Ebsary was in the house  
6 you would have seen her if she was downstairs?

7 A. Yeh, I would have seen her.

8 Q. I'll tell you what Mrs. Ebsary said and tell me if you  
9 recall this. I'm referring to volume 19, page 86.

10 MR. CHAIRMAN:

11 Page 86.

12 BY MR. ROSS:

13 Q. I'm going to ask you to look at paragraph number three, do  
14 you see that?

15 A. Yes, I do. Yeh.

16 Q. Now it says, "upon entering the house, the first room on the  
17 right was the living room bordered by a hallway"

18 A. Yeh.

19 Q. "With the kitchen being a separate room on the right-hand side".  
20 Is that correct?

21 A. Yeh.

22 Q. You're sure of that?

23 A. Yeh.

24 Q. Mrs. Ebsary now advised that James MacNeil stopped for a  
25 moment and talked to her. Do you recall stopping and speaking

JAMES MacNEIL, by Mr. Ross

1 to Mrs. Ebsary that night?

2 A. No, I do not. I do not recall.

3 Q. Are you definite about that?

4 A. I'm definite. Yeh, I don't recall.

5 Q. In the second last paragrah Mrs. Ebsary says she heard him  
6 (meaning you) say:

7 "You sure gave it to that Nigger".

8 Do you recall saying that?

9 A. I do not recall saying that.

10 Q. "And Roy replied, 'Shut up'."

11 What have you got to say about those statements?

12 A. I don't recall saying that. I don't recall.

13 Q. And you're sure of that?

14 A. I'm positive.

15 Q. So when you got to the house you claim that Mrs. Ebsary was  
16 not there?

17 A. Yeh.

18 Q. So you could not have made such a statement to her?

19 A. No.

20 Q. Therefore, if she said this she was wrong?

21 A. Yeh.

22 Q. And you're sure of that?

23 A. I'm positive. I didn't see her. I know I didn't see her  
24 there when I went to the house.

25 Q. What about Donna, did you see Donna?

JAMES MacNEIL, by Mr. Ross

1 A. I didn't see Donna neither.

2 Q. What about Greg, did you see him?

3 A. I didn't see Greg.

4 Q. And then after -- I take it that you saw Mr. Ebsary go to  
5 the sink though?

6 A. Yeh.

7 Q. And after he left the sink what happened, did you go upstairs  
8 with him?

9 A. I can't recall. I can't recall.

10 Q. Now you say you do not recall Mrs. Ebsary being there, so I  
11 take it you would not have spoken to her, but could you have  
12 been speaking to Roy Ebsary and she overheard you?

13 A. That's a possibility, yeh.

14 Q. Okay. That's possible?

15 A. Yeh.

16 Q. And if that's possible then, did you make that statement:  
17 "You sure gave it..." at the bottom of 86.

18 MR. CHAIRMAN:

19 Page 86.

20 MR. ROSS:

21 Page 86.

22 BY MR. ROSS:

23 Q. So now we know that you were not speaking to Mrs. Ebsary.

24 A. Yeh.

25 Q. But did you say this to Roy: "You sure gave it to that Nigger"?

JAMES MacNEIL, by Mr. Ross

1 A. No, I did not say that.

2 Q. Are you sure of that?

3 A. I'm sure of that.

4 Q. I take it you wouldn't use words like that, would you?

5 A. No, I wouldn't. No, I would not.

6 MR. CHAIRMAN:

7 You may find it appropriate in fairness to this witness to-- also  
8 if you're reading from statements or a report allegedly prepared  
9 by a gentleman named Wheaton-- On page 87, if I direct your  
10 attention to paragraph five toward the end where he is allegedly  
11 referring to a conversation overheard that night by Donna Ebsary  
12 which would seem to confirm what he's saying.

13 MR. ROSS:

14 Yes.

15 BY MR. ROSS:

16 Q. Did you say: "You sure gave it to that fellow"?

17 A. It's a possibility.

18 Q. You say it's a possibility, but I take it you cannot recall  
19 saying anything like that?

20 A. But I can't recall saying it. I can't recall.

21 Q. Well, then perhaps you can just describe to me, what was the  
22 mood like? What was things like after you got back? You  
23 got back to the house and was there any conversation between  
24 you and Roy Ebsary?

25 A. When I got back to the house I was pretty shook up.

JAMES MacNEIL, by Mr. Ross

- 1 Q. I appreciate that, but do you recall whether there was  
2 any conversation between you and Roy Ebsary?
- 3 A. No, I can't recall.
- 4 Q. I see, but you recall him going to the sink?
- 5 A. I recall him going to the sink.
- 6 Q. And after he left the sink do you recall if there was any  
7 conversation then?
- 8 A. No, I can't recall if there was.
- 9 Q. Well, then could you perhaps just tell me what were the  
10 circumstances when you were just about ready to leave?
- 11 A. Repeat that please.
- 12 Q. Well, I'm asking you to describe for me the circumstances when  
13 you were ready to leave Mr. Ebsary's house to go home.
- 14 A. I can't recall. I just left.
- 15 Q. Pardon me?
- 16 A. I said I just left but I can't recall the circumstances.
- 17 Q. Did you tell him good night? Did you tell him you weren't  
18 going to stay?
- 19 A. No, no.
- 20 Q. Nothing at all?
- 21 A. No.
- 22 Q. You just walked out?
- 23 A. I just -- Right, I just walked out.
- 24 Q. Now how long were you living in Whitney Pier at that time?
- 25 A. Whitney Pier? At what time?

JAMES MacNEIL, by Mr. Ross

1 Q. Sorry, you grew up in Whitney Pier I understand?

2 A. Yeh, right.

3 Q. And then you left school when you were living in Whitney  
4 Pier?

5 A. Right.

6 Q. Did you have any disputes from time to time -- any race  
7 type disputes between the black people who live at Whitney  
8 Pier?

9 A. No, I lived right 'in the Pier myself. I was brought up down  
10 the Pier with my father and the coloured people down there,  
11 there were always -- they always -- There was one fellow  
12 by the name of George Maxwell there, they were always having  
13 a shot together and talking Gaelic. Although he was coloured  
14 he could still talk Gaelic, and Mrs. Maxwell and we -- I  
15 never had -- and all the Campbells and the Greens and -- I  
16 never had no disputes down there. I always got along good with  
17 the coloured people and I still do today.

18 Q. What about -- Did you visit the Reserves from time to time?

19 A. The Reserves?

20 Q. Yes.

21 A. The Indian Reserves?

22 Q. Yes.

23 A. No, just pass through, you know, Eskasoni. I drove through  
24 Eskasoni a few times because our place is up above that,  
25 up Christmas Island. We used to have a house up there.



JAMES MacNEIL, by Mr. Ross, by Mr. Chairman

1 MR. ROSS:

2 Thank you very much, Mr. MacNeil.

3 THE WITNESS:

4 Thank you too.

5 MR. CHAIRMAN:

6 The Counsel for the Union of the Nova Scotia Indians.

7 MR. CHRISTMAS:

8 Your Honour, Mr. Wildsmith has instructed me that he has no  
9 comments for this witness.

10 MR. CHAIRMAN:

11 All right. Any questions on Re-Direct, Mr. Spicer?

12 MR. SPICER:

13 No, My Lord.

14 MR. CHAIRMAN:

15 That's all. Thank you, Mr. MacNeil.

16 THE WITNESS:

17 Thank you very much.

18 BY MR. CHAIRMAN:

19 Q. I'm sure you'll be happy to know that you're through hopefully  
20 for the last time testifying.

21 A. I hope so. I want to say a few things. I feel real bad about  
22 this and especially Mr. Seale's son, but I can't redo the past  
23 when things happen like that, you know, but I often wished that  
24 I didn't even know -- never even heard of that name Ebsary, but  
25 I can't do nothing about that, but it's -- It will be always

JAMES MacNEIL, by Mr. Chairman

1 a part of, you know, that. It will never leave me but I  
2 just hope that he understands that I don't, you know --  
3 Well, he knows me himself personally, Darren. We had a few  
4 conversations during the summer and we got along good together  
5 so that's all I have to say.

6 MR. CHAIRMAN:

7 Well, thank you very much.

8 THE WITNESS:

9 And thank you very much too.

10 MR. CHAIRMAN:

11 We'll rise until two.  
12

13 INQUIRY ADJOURNED: 12:23 p.m., AND RECONVENED: 2:01 p.m.  
14

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20 MR.  
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