SDS Case Number 87-312

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

Counsel: George MacDonald, Q.C., Wylie Spicer, & David Orsborn: Commission Counsel

Clayton Ruby, Ms. Marlys Edwardh, & Ms. Anne S. Derrick: Counsel for Donald Marshall, Jr.

Michael G. Whalley, Q.C.: Counsel for City of Sydney

Ronald N. Pugsley, Q.C.: Counsel for John F. MacIntyre

Donald C. Murray: Counsel for William Urquhart

Frank L. Elman, Q.C., & David G. Barrett: Counsel for the Donald MacNeil estate

Jamie W. S. Saunders, & Darrel I. Pink: Counsel for Attorney General

James D. Bissell: Counsel for the R.C.M.P.

Al Pringle: Counsel for Correctional Services Canada

William L. Ryan: Counsel for Evers, Green and McAlpine

Charles Broderick: Counsel for Carroll

S. Bruce Outhouse: Counsel for Wheaton & Scott

Guy LaFosse: Counsel for Davies

Bruce H. Wildsmith: Counsel for Union of N. S. Indians
Assisted by Daniel Christmas

E. Anthony Ross, & Kevin Drolet: Counsel for Oscar N. Seale

E. Anthony Ross, & Jeremy Gay: Counsel for Black United Front

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COURT REPORTER'S CERTIFICATE ..... DD

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'clcok.
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.

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.

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.

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

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

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 --

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?

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

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?

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.

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

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

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

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.

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.

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.

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 quessing?
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.

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
Street which way did you go, back this
23 way toward Argyle or this way towards
the intersection of South Bentinck
24 Street?"
25 Okay. So here's Argyle where you said you went a couple of

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 towards South Bentinck Street"?
6 A. "Yeh, right".
7
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 --

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?

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,

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--
I think it had a brown handle on it".

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

13 A. Yeh.

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

16 A. "Yeh".

17 Q. "Did I understand you correctly,
18 just a small pocket knife"?

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

20 A. "Yeh.

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

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

24 Q. "Are you sure"?

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

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.

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"--

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
it I think it was a small knife
17 with a brown handle on it".
18 Q. "Do you remember approximately how
long the blade was"?
19 A. "Well, a pocket knife, it would be
20 probably five to six inches".
21 Q. "And did you see what he did with the
knife after he washed the blood off"?
22 A. "I didn't notice where he put it".
23 So I take it on that occasion you were quite confident that it
24 had a brown handle, right? Would you agree with me?
25 A. Yeh. Yeh.

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"?

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

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

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

9 A. Right.

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

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

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

17 A. Yeh.

18 Q. Does it bend in?

19 A. No.

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

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

22 Q. You can't be sure?

23 A. No.

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

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,

1 page four, again this is your statement to Sergeant MacIntyre,
2 you see:
3 Q. "Who seen you at the house besides Roy"?
4 A. "His wife, daughter, and son".
5
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 daughter was home". "I remember that".
23 "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

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?

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
walking away from Marshall
18 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
could have happened before
22 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

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 asnwer 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.

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.

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?

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
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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

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 offficial? 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

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

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

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

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?

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?

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,

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

A. No, I did not.

Q. Why didn't you, Sir?

A. I just didn't.

Q. You just didn't?

A. No.

MR. SAUNDERS:

Those are all my questions, Mr. Lord.

MR. CHAIRMAN:

Counsel for the R.C.M.P.

MR. BISSELL:

I just have a few questions.

BY MR. BISSELL:

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

A. Yeh.

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

A. Yeh.

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

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

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?

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

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?

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.

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 myself?
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.

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.

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 wi
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

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

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.

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

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?

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?

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

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.

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

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

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?

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 --

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.

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

1 when it was done. To the best of his recollection. I think
2 my learnered 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

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. On m
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

house?

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.

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

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?

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.

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?

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?

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.

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.

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

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.

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.

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

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?

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"?

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.

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

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.
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SCOTT MacKAY, by Mr. Spicer

1 INQUIRY RECONVENED: 2:01 p.m.

2 MR. CHAIRMAN:

3 Mr. Spicer.

4 MR. SPICER:

5 Thank you, My Lord. The next witness is Scott MacKay.

6 SCOTT MacKAY, being called and duly sworn, testified as follows:

7 BY MR. SPICER:

8 Q. Mr. MacKay, my name is Wylie Spicer. I'm one of the
9 Commission Counsel. I'll be asking you some questions
10 but just before I start, I'll just indicate to the other
11 counsel and to their Lordships that the material that
12 I intend to refer you to is in Volume 11 at page 169 and
13 Volume 11 at page 170.

14 MR. SPICER:

15 Mr. MacKay also gave testimony at the Preliminary which is in
16 Volume 1 at page 46 and 47 but I don't intend to refer him to
17 that material.

18 BY MR. SPICER:

19 Q. Mr. MacKay, how old are you?

20 A. Thirty-three years old.

21 Q. And are you native of Sydney?

22 A. Of a community outside of Sydney by the name of Westmount.

23 Q. Westmount?

24 A. Yes.

25 Q. And at the time -- in 1971, how old were you?

SCOTT MacKAY, by Mr. Spicer

1 A. Sixteen years old.
2 Q. Sixteen years old and you attended a dance on the night of
3 May 28th, I believe?
4 A. That's correct, Sir.
5 Q. Okay. Can you tell me who you went to the dance with?
6 A. With a young girl by the name of Debbie MacPherson.
7 Q. Had you been doing any drinking before you went to the dance?
8 A. No, Sir.
9 Q. No. Do you have any recollection of what time it was when you
10 left the dance?
11 A. It was between 11:30 and 11:45.
12 Q. And how can you be sure of that so many years subsequent?
13 A. We were going to catch a bus that left -- it was around
14 mid-night from King's Road. So we were heading for a bus,
15 you know. So we left about a half hour before the bus was
16 due to leave.
17 Q. Okay. And can you indicate on the map behind you the route
18 that you took after you left the dance?
19 A. Yes. Okay, this is where the hall is and we walked down this
20 here street, which is George Street and we came to Argyle
21 Street and we walked down Argyle Street. And we're heading
22 to go over to King's Road. That's where we're heading for.
23 Q. Okay, you get onto Argyle Street and then what happened?
24 Can you turn around so that the Judges can we what you're
25 pointing to.

SCOTT MacKAY, by Mr. Spicer

1 A. I'm sorry, sure. Okay, we're at Argyle here and --
2 THE CHAIRMAN;
3 Where did you leave again? I couldn't see.
4 BY THE WITNESS:
5 A. Okay, I'm sorry. We left from the church hall over here,
6 came down to George Street, walked down George, turned onto
7 Argyle Street, and walked down Argyle and cut onto Crescent
8 Street. And there was a little pathway down to the Park. We
9 did walk down that pathway. We sat on a Park bench for about
10 five minutes. We got up off the bench. We headed back up to
11 Crescent Street and we walked a piece. I can't really say
12 for sure how long it was. It was maybe (inaudible) feet,
13 maybe a little longer. And Debbie had noticed -- the girl I
14 was with that night --.
15 MR. CHAIRMAN:
16 I'm afraid the court reporters are not picking up what you're
17 saying.
18 BY MR. SPICER:
19 Q. Perhaps you could go back to your seat.
20 A. Where do you want me to start.
21 Q. Go back to the church if that's where he was -- that's where
22 they started missing it. Go through the route again for us.
23 A. Okay. We left the church it was around 11:30 to go home. We
24 were catching a bus. So we walked down to George Street.
25 Are they picking this up now?

SCOTT MacKAY, by Mr. Spicer

1 Q. Yes.
2 A. Okay. We walked down to George Street, we come onto Argyle
3 Street, walked down Argyle Street on to Crescent Street.
4 On Crescent there's a pathway that leads right down into the
5 Park. Well we went down that path, we sat on a Park bench
6 for about five mintues talking. Then we got up we walked
7 back up to Crescent Street and we walked a piece and Debbie,
8 the girl I was with, noticed something on the road. She
9 said, "That looks like a person on the road".
10 Q. Okay, perhaps you can take your seat again.
11 A. I can take a seat now.
12 Q. Yeh, take a seat.
13 A. Okay.
14 Q. Turn your mike back around. And what happened then?
15 A. We walked up to the body and we started speaking to the person.
16 Q. Did you know who it was?
17 A. Yes, Debbie did and I did also.
18 Q. And who did you recognize it to be?
19 A. Sandy Seale.
20 Q. And what was the conversation between the two of you?
21 A. As we walked up, Sandy said, "Please help I've been stabbed".
22 Q. Right. Did you ask him by whom?
23 A. No, Sir.
24 Q. And what else was said?
25 A. At that particular point in time I assumed he was drinking.

1 That's why he was on the ground.
2 Q. Why did you assume that?
3 A. Just, I thought -- he may have been drinking.
4 Q. Okay.
5 A. And when I asked him a second time what was wrong. He said in
6 a more mournful tone of voice, "Please help me, I've been
7 stabbed".
8 Q. Right.
9 A. So at that point in time, I sent Debbie on her way to get the
10 bus, I ran across the Park to get some help.
11 Q. You sent Debbie on her way to get a bus and then you went back
12 across the Park?
13 A. Yes, I seen people on George Street, so I went right up over
14 to them.
15 Q. Okay, and were you successful in getting a couple of people?
16 A. Two, two men, yes.
17 Q. All right. And what did the three of you then do?
18 A. We went across the Park again, up to the body and as we got up
19 to the body, a car pulled up.
20 Q. The route that you took across the Park to George Street, could
21 you just get back up and do that for us. Remembering again
22 to stand on the other side and we'll move the mike over for you.
23 A. Sure. Okay, we're on Crescent Street, we find the body. Debbie
24 goes on her way, I go across the Park here, across the bridge,
25 over here and up the bank. So when I get up to the bank, there's

1 these two gentlemen that I had seen from the other side.
2 Q. Right, now your indicating an area, just so that we have some
3 idea of where we are, around here?
4 A. Approximately, yes.
5 Q. Right there, okay.
6 A. So I told them what had happened, we found, you know, a person
7 that's been stabbed and needs some help. So they came right
8 behind me and we followed the exact same route that I took over.
9 It's kind of like, taking short-cuts without going on these
10 walkways, we came back down over the hill and across the
11 bridge and up toward the body.
12 Q. Right, and what did you see just as you got back to the body?
13 A. Just as we were approaching the body, a car pulled up from
14 this direction here, from Argyle Street.
15 Q. From Argyle coming up Crescent?
16 A. He was coming up Crescent from Argyle, yeh.
17 Q. From Argyle?
18 A. Yeh.
19 Q. Take your seat again.
20 A. Okay.
21 Q. Did you recognize anybody that got out of the car?
22 A. Yes.
23 Q. And who was that?
24 A. Junior Marshall, Donald Marshall, Junior.
25 Q. Okay, and did you have a discussion with Junior at that time?

1 A. I did.
2 Q. And can you tell us what was said?
3 A. I ran up to him and I said, "Junior what's going on?" And he
4 was kind of shocked that I knew him. He said, "You know me."
5 And I said, "Well, I know who you are". And he said, "Sandy
6 and I have been stabbed". And he said, "Look at my arm". And
7 he showed me an arm, his -- I don't know if it was his left
8 or right arm, I can't recall -- it was cut. And he told me
9 that these two people stabbed him in the Park.
10 Q. Was there any blood coming from the cut?
11 A. No.
12 Q. At that time were there any police officers on the scene?
13 A. No.
14 Q. And did any police officers arrrive shortly thereafter?
15 A. Yes.
16 Q. And can you tell us how they arrived?
17 A. Yes. Well, I spoke to Junior, I said, "We should call the
18 police and an ambulance". And we were right around here.
19 Q. What was Junior's response to that?
20 A. It was negative, he didn't want to. He said, "No, I don't
21 want to call the police". So I said again, "Yes, we got to,
22 you know, there's a man stabbed here, we got to call for
23 help". Then he agreed. So I believe it was one of these
24 three houses that we went up to.
25 Q. The record is not picking up which houses you're talking about.

1 Are you talking --
2 A. Sorry, there's three houses here 120, 131 and 134.
3 Q. Okay.
4 A. I believe it was this house here.
5 Q. 120?
6 A. 120, yeh.
7 Q. And so did the two of you go over to that house?
8 A. Yes.
9 Q. And what happened when you got there?
10 A. We knocked on the door, a gentleman came to the door, he
11 wouldn't open the door, it was like a screen door so we could
12 speak back and forth to him. And we told him, like, we needed
13 to call an ambulance and the police because there's a chap
14 stabbed. And he wouldn't let us in the house to use the
15 phone.
16 Q. Did he indicate that he was going to make a call for you?
17 A. No.
18 Q. Did you have any understanding what he was going to do at
19 all?
20 A. No.
21 Q. Okay, you can take your seat again. So you leave the house
22 and where do you go?
23 A. We go back towards the body.
24 Q. All right, are there any police officers there by this time?
25 A. Just as we're getting back down to the street, a police

1 cruiser pulls up from Argyle Street up to Crescent and another
2 one very shortly after that, comes in the other direction
3 from off Bentinck Street.
4 Q. Off Bentinck Street onto Crescent?
5 A. Right.
6 Q. Okay. And what happens then, Mr. MacKay?
7 A. The first -- the car that was down on this side --
8 Q. On Argyle --
9 A. The officers got out and they grabbed Junior Marshall and
10 they threw him in the back of the car.
11 Q. Now okay, when you say they grabbed him and threw him in
12 the back of the car, you mean, just -- describe to us what
13 you mean by that?
14 A. Well, if you were involved in an incident where you were hurt
15 normally you wouldn't be treated, I would think the way they
16 treated him, they just picked him up and they forcefully put
17 him in the car. Like, more or less if you were -- if a crime
18 was committed or something, that's the way they treated him.
19 Q. Do you have any recollection of whether they asked him to get
20 into the car or whether they put arms -- their hands on him
21 or how it happened?
22 A. Something like, along the lines, "Come on you come with us".
23 And I think there was an officer on either side, had him in
24 the arms, by each arm.
25 Q. Do you know who those officers were?

SCOTT MacKAY, by Mr. Spicer

1 A. No, Sir.
2 Q. And I believe you indicated a couple of minutes ago that another
3 police car arrived?
4 A. That's correct, yeh.
5 Q. And how many officers were in that car?
6 A. Two also.
7 Q. Two. And by that time how many, how many people would there
8 have been around the scene?
9 A. By the time Junior and I came back from the house, I'd say
10 there was about twenty - twenty-five that were mulling around
11 starting to gather around, yeh.
12 Q. Okay. And from your recollection can you tell us what you
13 saw the police officers doing at the scene?
14 A. They were dispersing the crowd.
15 Q. By what method?
16 A. Telling people to "go home, get out of here." An ambulance
17 had come just around this time also. They were taking the
18 body, they put the body in the car, rather in the ambulance
19 and the police were, you know, really want to get people
20 away from the scene.
21 Q. Were you spoken to by any of the police officers that night?
22 A. No, just to say "go home, get out of here."
23 Q. Did you try to indicate to them that you had come upon the
24 body earlier in the evening?
25 A. No.

SCOTT MacKAY, by Mr. Spicer

1 Q. Okay, if you could just turn to Volume 11 which you have in
2 front of you, Page 169. That's a copy of the statement that
3 you gave to the police. Do you recollect that?
4 A. Yes.
5 Q. Okay. Under what circumstances did that statement come to
6 be taken. Were you picked up at home?
7 A. That's correct.
8 Q. Were you home from school or --
9 A. Yes.
10 Q. Did you answer the door or did someone else in your house
11 answer the door?
12 A. Can't recall.
13 Q. Sorry.
14 A. I don't know, I don't remember who answered -- who -- no.
15 Q. Were your mother and father at home?
16 A. I recall my mother being at home.
17 Q. Do you know whether or not the police suggested that she
18 come along with you?
19 A. If they did, it was not to my knowledge. They did not tell
20 me that they asked her, so if they did, I would not have
21 known about it.
22 Q. Okay. Did you then go to the police station by yourself
23 with the police officers?
24 A. Yes.
25 Q. How long were you at the police station?

1 A. Approximately four hours.
2 Q. And do you remember from what time in the evening to what
3 time?
4 A. When I was speaking to you earlier today and I said about
5 six o'clock in the evening, I see from my statement it was
6 six-thirty. But it was around there, I knew it was around
7 between six and ten at night. It was four hours.
8 Q. And you got home around ten or ten-thirty?
9 A. Ten-thirty, I'd say, yes.
10 Q. Okay. Do you remember who the officer was who questioned you?
11 A. The gentleman that came to pick me up was Detective Urquhart.
12 He took me to the station and there I met with Detective
13 MacIntyre, Detective Urquhart and there was another Detective,
14 I don't know who that was.
15 Q. How many people would have been in the room during the
16 questioning?
17 A. Three and me. Three officers, like, three Detectives and
18 myself.
19 Q. MacIntyre, Urquhart and one other whose name you don't know?
20 A. That's right.
21 Q. Okay, who did the questioning?
22 A. Mostly MacIntyre and Urquhart.
23 Q. During the course of the interview, did any other police
24 officers come in and out of the room?
25 A. Yes, at one point in time they were talking about the officers

1 were at the scene that particular night and they wanted me
2 to identify them and they had some officers come in in
3 plain clothes.
4 Q. They would come into the room and you would be asked to
5 identify them and they would leave again?
6 A. That's right.
7 Q. Were you able to identify any of them?
8 A. No, Sir.
9 Q. Your statement Mr. MacKay is rather short. Can you tell us
10 what was going on for the four hours that you were at the
11 police station?
12 A. Well, they -- first of all they asked me to give, you know,
13 the accounts of the night, which I did. Then they went over
14 it a second and the second time they started tearing it apart
15 and, you know, questioning -- the first -- like -- the first
16 time I said it, they didn't question too much and the second
17 time there was questions after every action it seemed like,
18 you know. So that took a while and then the officers came in
19 that were supposedly on duty that night in plain clothes.
20 So we went through that. They had me call a friend while I
21 was there too to confirm something, I can't recall what it
22 was exactly, I had to confirm --
23 Q. They had you call a friend?
24 A. Yeh.
25 Q. Do you remember who the friend was?

1 A. Yes, yes.
2 Q. Who was that?
3 A. His name was Charles Morrison.
4 Q. And you don't remember what he -- what you called him about?
5 A. Exactly, I don't know, no.
6 Q. Did any of the police officers that were questioning you at
7 any time attempt to get you to change anything that you were
8 telling them?
9 A. No, Sir.
10 Q. I believe you indicated to me a few minutes ago that the police
11 had not spoken to you the night of the incident, do you know
12 how the police came to get your name so that they could take
13 you down for an interview?
14 A. Well, I -- as the news broke the next morning regarding Sandy
15 Seale, I was speaking to a couple of my friends and I had told
16 them that I had found the body. And as the news started to
17 break that week, more people seemed to know that I, you know,
18 that I was involved in this here somehow or other and I
19 guess my, you know, my name got around or something, you
20 know, that I had some information that could possiblely
21 help.
22 Q. You were never told directly by the police how they came to
23 get your name?
24 A. No, Sir.
25 Q. You testified at the Preliminary hearing?

SCOTT MacKAY, by Mr. Spicer

1 A. That's correct.
2 Q. At any time were you talked to by any of Mr. Marshall's
3 lawyers?
4 A. No.
5 Q. Were you talked to by the prosecutor other than to testify?
6 A. No, no.
7 Q. You were subpoenaed, I believe, for the trial but didn't
8 testify, is that correct?
9 A. That's correct.
10 Q. You can flip the page in your Volume to 170. And ask you if
11 you remember giving that statement in 1982?
12 A. Yes, I recall this.
13 Q. And do you remember the circumstances of giving that statement?
14 A. Yes, the R. C. M. P. notified me in 1982. I believe it was
15 in the Spring of the year, they said that new light has been
16 shed on the, on the Donald Marshall case. That they, they
17 think that the conviction could be changed and all that --
18 it was, you know, pretty heavy ramifications (any how) of what
19 was going on. So they said the whole case is being re-opened
20 again and they would like, you know, for me to give a new
21 statement or, you know, give my statement -- my original
22 statement at this time. So I said, sure, you know, I would.
23 Q. Do you remember who the officer was who interviewed you?
24 A. No, Sir. But he was in R. C. M. P. uniform clothes when he
25 came to my house.

1 Q. To the time that the car came up that, that Junior got out of,
2 you recollect whether or not you saw anybody else getting out
3 of that car?
4 A. There could have been. Junior got out of the car on the same
5 side of the road that I was on. So as soon as he got out, I
6 went right over to him.
7 Q. Did you recognize anybody else though getting out of the
8 car?
9 A. I believe there was, but I'm not a hundred percent certain,
10 it was on the other side of the road, you know. He was the
11 only one that got out on that side.
12 Q. Do you have any idea what type of car it was?
13 A. Not to the best of my recollection, no.
14 Q. Whether it was big or small?
15 A. I believe it was a small car.
16 Q. Small car.
17 A. Yeh.
18 Q. Did you see anybody else at the scene? For instance, did you
19 see Mr. Chant? Do you know Maynard Chant?
20 A. No.
21 Q. You don't know him or you didn't see him?
22 A. I don't know him and I don't recall seeing him.
23 Q. Okay. I believe you indicated that Junior said that two
24 people stabbed him?
25 A. Yeh, like his indication -- I can't recall if he said both

1 of them were in the stabbing but that there was two people
2 sort of, it appeared to me that two people attacked him and
3 Sandy.
4 Q. Right, now --
5 A. That's the indication that I got from him.
6 Q. Do you have any recollection -- do you know for sure whether
7 or not two people stabbed me or just two people were in on it
8 or --
9 A. No, Sir, I can't say.
10 Q. Can't say. I believe you said earlier on that you knew who
11 Junior Marshall was?
12 A. Yes.
13 Q. Was he an aquaintance of yours?
14 A. No.
15 Q. How was it that you knew who he was?
16 A. I knew him from, like, seeing him at dances and what-not over
17 the years. A few years.
18 Q. Did he have any sort of reputation to your knowledge?
19 A. Yes, it was a bad reputation.
20 Q. Bad reputation in what sense?
21 A. He'd pick fights with other people for no apparent reason and
22 he was a trouble maker.
23 Q. What about Sandy Seale?
24 A. I didn't know him that well, but I -- he seemed to be a fine
25 fellow, very sports minded and never, ever knew that he was

1 ever in trouble before.
2 Q. Okay, thank-you.
3 MR. CHAIRMAN:
4 Mr. Ruby.
5 BY MR. RUBY:
6 Q. Sir, I'm counsel for Donald Marshall, Junior, and I would like
7 to ask you a few questions. First of all, I take it that Junior
8 Marshall was not at the dance that night. Is that correct?
9 A. Could have been, you know, there was three or four hundred
10 people there. I did not see him.
11 Q. You didn't see him?
12 A. That's right.
13 Q. And when you came across this body, you were quite naturally
14 upset?
15 A. Yes.
16 Q. A very upsetting experience?
17 A. Yes.
18 Q. It would be for anyone young or old I should think. Junior
19 was very upset?
20 A. Yes.
21 Q. You could see that?
22 A. Yes.
23 Q. There's one difference I want to draw your attention to. Have
24 you got Volume 11?
25 A. I believe I have.

1 Q. You're at the right place, stay where you are right there.
2 A. Okay.
3 Q. Turn to Page 170.
4 A. I'm there.
5 Q. Today you told us that, if you'd just listen to my question
6 for a moment, today you told us that when Junior came back
7 from the car, you suggested that you get the police and an
8 ambulance and Junior said, "no."
9 A. Yes.
10 Q. If you look at the statement that you gave in 1982 towards the
11 end of the first paragraph on Page 170. Read this with me:
12 "We ran back across the Park". Are you with me?
13 A. Yes.
14 Q. Good. "And when we did we saw a car stop by Seale's body.
15 And Junior Marshall got out along with other people and the
16 car went on". Then there's the conversation where describes
17 it. And the second paragraph, "Then he told that two guys
18 jumped him and Sandy and showed me his arm and said 'look what
19 they did to me.' Then he showed me how the guy stabbed Sandy
20 by putting his fist into my stomach". And here's the point,
21 "Then I said we'd better call the police", not the police
22 and the ambulance, just the police. "He said, 'no.' Then I
23 said, we'd better get help". And I suggest to you that's
24 probably the ambulance part and to that he says, "Yes, and
25 the two of us started walking towards a house". Is that the

1 correct version? Is that what happened?
2 A. Regarding the fist and the stomach business, I recall that
3 that happened on the step.
4 Q. Okay.
5 A. Or leading up to the step of the house.
6 Q. Come down to the last part I read, "Then he said, we better
7 call the police". He said no to that. "Then I said we'd
8 better get help". I assume that means the ambulance. "And
9 he said, yes, and the two of us starting walking toward the
10 house". Is that true?
11 A. The way that I recall it is that I said police and ambulance
12 and then he said, "no" and I repeated the original question.
13 I don't know if it's shown in my first original statement.
14 Q. It's much the same way, but turn a page back.
15 A. Okay.
16 Q. Towards the end of the first paragraph about six lines from
17 the bottom of that first paragraph. The main centre paragraph,
18 "Junior said I was with him and he showed me his arm and so
19 I told him we should go to a house and call the police". So
20 again, no mention of ambulance. "He said, 'no.' So I talked
21 to him and both of us went to a house there and I said call
22 the police". Is it fair to say that you would have been
23 trying to tell the truth first of all in 1982 in the first
24 of the two statements I gave you?
25 A. That's possible, yeh.

1 Q. And your recollection in 1982 would be somewhat fresher than
2 it is today? Is that fair?
3 A. Yes, I would -- you know, if, if it says in both the statements
4 because -- you know, I was affirmative in this case ever
5 since it, you know, opened -- things that happened the way
6 I remember them and recall them, is exactly the way I
7 remember them. And if it does not say ambulance there, then
8 I did not say an ambulance.
9 Q. All right. I think we have had the experience with other
10 witnesses, this is in fact a long time ago.
11 A. Yes.
12 Q. And we appreciate it that you're doing the very best you can
13 to assist us.
14 A. Thank you.
15 Q. The -- Do you recall seeing Junior Marshall flagging down a
16 police car?
17 A. No.
18 Q. I take it you weren't watching Junior Marshall all the time
19 you were watching Seale a good portion of the time?
20 A. No, I was with Junior most of the time. Because we walked
21 to a house together and I spoke to him mostly. I was
22 more with Junior than with Sandy.
23 Q. When Junior arrived at the scene and gets out of the car,
24 how long is it before you two take off for the house, seconds,
25 minutes --

1 A. Yeh, within a minute, like, like it was like seconds, two
2 minutes, like, you know, a half a minute maybe. You know
3 like we're talking to each other, he's surprised that I
4 know him, he shows me what happened, told me what happened
5 and then we went to the house. So however long that would
6 take which maybe would maybe, you know, half a minute to
7 a minute.
8 Q. You moved immediately to that house?
9 A. Yeh, I wasn't -- I didn't want to wait any longer.
10 Q. And Junior moved with you?
11 A. Yes.
12 Q. And how far would you have been from Sandy Seale when you
13 were doing that half minute conversation?
14 A. I'm not sure, like, it's not like, you know, you'd be
15 within probably seventy-five feet around there.
16 Q. Okay.
17 A. But, you know, I never had a measuring tape with me that
18 night. I couldn't tell you. I wouldn't know.
19 Q. And when you came back after the house, where did you go
20 and where did Junior go?
21 A. We walked back down the street and that's when one cruiser
22 came up.
23 Q. And that's when Junior got man-handled into the car?
24 A. Right
25 Q. "Man-handled" the wrong word to use or is that a fair word?

1 A. That's a fair word.
2 Q. Did the police do the kind of thing that you seen probably
3 on television. There's a body -- did they try and rope off
4 an area where people should not go?
5 A. No.
6 Q. They allowed people to mill about when they weren't chasing
7 them away completely?
8 A. Yeh.
9 Q. Was there any police officers that you saw examining the area,
10 picking things up?
11 A. No.
12 Q. Taking photographs?
13 A. No.
14 Q. Was anyone assigned to guard the body while it was there?
15 A. Well, like I said, when I got down and they took Junior,
16 there was more people gathering around, there was more people
17 around the body. There was people around the body, and there
18 was police around the body. They, you know, they may have
19 been trying to keep people away but, you know, it was a
20 confusing time. There was a lot of people around then and
21 you know, there was cruisers coming and Junior's getting put in
22 like, you know, -- like I can't recall really, to tell you
23 the truth.
24 Q. All right. Let me put it to you this way. Tell me if this
25 is a fair assessment. If the police were trying to keep people

1 away from the area of the body, they were not successful?
2 A. That's what I'd say, yes.
3 Q. How many people would have been milling around that area
4 close to the body?
5 A. Well, right immediately close to the body there may have been
6 three or four, but like right in the general vicinity there
7 may have been twenty to twenty-five people starting to come
8 around. They're all coming home from the dance.
9 Q. You were sixteen at the time this statement was taken?
10 A. Yes.
11 Q. Were you scared at being at the police station, being
12 interviewed by three police officers? What were your feelings?
13 A. I was very, very scared.
14 Q. Why were you scared? This maybe obvious to you but I want
15 to hear it?
16 A. Well, being a kid first of all. You know you run into three
17 Detectives, you have little or no experience speaking to
18 people like that. At one point in time the way they were
19 cross-examining me, I thought they thought I did it.
20 Q. Okay. Why did you think that they though that you did it?
21 A. Just the way they kept going about, you know, there must
22 be more to this. Or there must -- you must have seen more
23 and this and that and I was saying, "no." This is everything
24 I've seen. Everything I know that's I'm telling you now.
25 But they weren't satisfied it appeared because they, like

you know, had me there for four hours. You know, the events all took place in maybe ten or fifteen minutes, you know.

1 Q. You told them what you saw. This is the pattern and
2 you tell me if I'm correct. You tell them what you
3 saw. They say: "Oh, no. You must have seen more
4 than that. We want more." That kind of question?
5 A. No, it was, like, as -- as the story was going on -- as
6 I'm telling -- you know, what I seen, they would stop me
7 to say -- you know -- you're sure now, you didn't -- I'm
8 saying, no. You know -- and this is -- but no, they weren't
9 saying the story was like that. They would pick it -- at
10 each -- you know -- section as I would say it. They would
11 stop me. I might say two lines and then stop me and --
12 you know-- then I might go on to say maybe a half a paragraph
13 and then they -- you know, stop me again and maybe sometimes I
14 just say a word or one line and they stop me again and
15 -- you know, it took a bit of time, like.
16 Q. What was their tone of voice? Friendly, helpful?
17 A. I found Detective Urquhart quite helpful and friendly. I
18 found Detective MacIntyre overbearing and bullish.
19 Q. How loud was his voice?
20 A. He wasn't screaming but, I mean, he was a big man and
21 he didn't have to say anything too loud. You could tell
22 like when he was getting ruffled and --
23 Q. He got angry did he?
24 A. He never lost his cool or nothing but, I mean -- you know, like
25 he was starting to bother me.

1 Q. All right. The process that -- you used the phrase, when
2 my friend was asking the questions about the statement
3 taking process: "tearing it apart." To quote reference to
4 your statement. Have you told us know what you mean
5 by tearing it apart or was it something that you just --
6 A. Well, just going over it so many times. Like, you know,
7 you get tired of saying it and -- you know, like I can
8 see giving a statement and going over it a second time but
9 --you know, not going over it a third time and -- you know,
10 like they were -- it just seemed to be a little to much --
11 you know. That's all I'm saying.
12 Q. They went over it again and again?
13 A. Yes, sir.
14 Q. The same points? I guess sometimes the same points --
15 sometimes different points?
16 A. Yeh, I guess. Yeh.
17 Q. Yes?
18 How long did this interrogation last? Can you estimate
19 it for me?
20 A. It was four hours that -- from the time that I sat
21 in to about the time we finished up. Approximately four.
22 Q. Four hours -- they were questioning you for a four
23 hour process?
24 A. Yes, sir.
25 Q. And you were all alone?

1 A. That's right.
2 Q. My goodness. Did they offer you at any point an opportunity
3 to have a adult there? Your mother, family member, older
4 brother?
5 A. No.
6 Q. Would you have liked such an opportunity to have someone there
7 with you?
8 A. If I had have known what they were going to do, darn right.
9 I trusted them -- you know, they're officers -- you know,
10 but in my opinion they didn't treat me very good. Like,
11 but I'm sure if there was somebody else there it would have
12 been a little better.
13 Q. And you wound up feeling, as I understand it, that you
14 were the criminal and not --
15 A. Yeh, that feeling -- like you know -- like you know, it's
16 just -- I think they would have had a little more respect
17 of the situation, that they had me there, if I had my
18 father or mother or a professional lawyer or something.
19 Q. You had the feeling that you were going to get in to
20 trouble?
21 A. Sort of felt that way, yeh.
22 Q. The last thing I want to ask you about is during Junior
23 Marshall's reputation. You said it was a bad one and he
24 reputation for picking fights and being a trouble maker,
25 did you personally ever see him pick a fight?

SCOTT MacKAY, by Mr. Ruby

1 A. Not on me but at one time he hit my brother. One time, like,
2 he jumped -- him and some of his friends jumped my brother.
3 A few of their friends -- they were going to a dance
4 through the park and --
5 Q. Did you see this?
6 A. No. No. I recall -- like, my brother came home that
7 night and told us the story, what happened, and he never
8 seen a doctor or anything but he couldn't open his
9 mouth for three or four days -- like he thought he had
10 a fractured jaw. But whether he had one or not I don't know.
11 Q. Right. My point is -- my question is did you personally
12 ever see Junior Marshall pick a fight?
13 A. Well, I heard so many things. Did I ever see him pick a
14 fight? No.
15 Q. You never saw him make trouble for anyone did you? You?
16 A. It's -- Well, I mean -- like, I didn't hang around too
17 much. If I seen him in an area, like, I wouldn't hang around
18 to long there -- you know, so.
19 Q. Okay. The answer is no, you never saw it.
20 A. No.
21 Q. Thank you, sir.
22 A. Okay.
23 MR. RUBY:
24 That's all, My Lord.
25

1 MR. CHAIRMAN:
2 Mr. Pugsley?
3 BY MR. PUGSLEY:
4 Q. Mr. MacKay, I'm a lawyer acting on behalf of John MacIntyre.
5 What is your birthdate, sir? Birthdate?
6 A. September 6, 1954.
7 Q. And where do you presently live?
8 A. 195 Monteith Avenue in Westmount.
9 Q. And what's your occupation?
10 A. I'm a Customer Sales Agent for Canadian Airlines International.
11 Q. How long have you been there?
12 A. I've been employed with this company for thirteen years.
13 Q. You're a married man with a family?
14 A. That is correct.
15 Q. Yes. When you first saw Mr. Seale -- I'm not sure that
16 you may have identified the location on the map, exhibit
17 22 but would you point again and perhaps mark on the
18 plan where his body was when you and Debbie MacPherson
19 found him.
20 A. His body was around this vicinity.
21 Q. Put your initials by it if you would. Was he lying on the
22 paved portion of Crescent Street or was he on the --
23 A. Yes.
24 Q. -- on the grass? He was on the paved portion?
25 A. yes.

1 Q. Was he clearly visible? How far were you from him when
2 you --
3 A. The night in question there -- it was an overcast night.
4 It was dark and Debbie picked up that there was something
5 on the road before I did so clearly visible from -- you
6 know, how far -- you know as you were getting up to him,
7 yes, he was clearly visible. But from maybe one hundred
8 fifty, two hundred feet he was --
9 Q. You were about one hundred and fifty to two hundred feet
10 from him when --
11 A. No. No. I'm saying about about one and fifty to two hundred
12 feet he may not have been clearly visible but from twenty
13 feet he was. You know, what distance are we talking about
14 here?
15 Q. How close was Debbie to him when she pointed --
16 A. When she picked him up?
17 Q. -- out to you that there was something there?
18 A. He was probably -- gee, I don't know. He was probably around
19 one hundred and fifty feet just at a point where that --
20 I couldn't really -- you know, see. And then as we -- you
21 know, like five or six steps closer then yes I could see
22 that there was somebody there.
23 Q. And as soon as you saw there was someone there you immediately
24 went over to him?
25 A. Well, yes. Yes.

SCOTT MacKAY, by Mr. Pugsley

1 Q. And was he lying down?
2 A. Yes, he was. Stomach down.
3 Q. Stomach down. Lying on his stomach?
4 A. Yes, and curled. In a curled position.
5 Q. I see. Did you roll him over?
6 A. No, I bent down to speak to him. I didn't roll him over.
7 I didn't touch him.
8 Q. And the words he used were?
9 A. "Help me. I've been stabbed."
10 Q. The voice was a whisper or was he able to speak strongly or
11 how would you describe it?
12 A. If you're going to -- I'd say probably weakly. You know, it
13 was weak.
14 Q. Yes. Could you tell that he had been stabbed when he made
15 this comment to you?
16 A. No.
17 Q. At first I -- you say you did not believe him or you had some
18 doubts?
19 A. That's correct.
20 Q. Yes. But then he repeated it?
21 A. Yes.
22 Q. And when he repeated it you were satisfied that he was
23 in distress?
24 A. Yes.
25 Q. No one else around at the time. Just you and Debbie and

1 Mr. Seale?
2 A. That's correct.
3 Q. Had you seen anyone as you walked down Crescent Street?
4 A. No.
5 Q. On Crescent Street when you approached Mr. Seale?
6 A. No, sir.
7 Q. So you told Debbie to go and get her bus and that
8 you would go and seek assistance?
9 A. Yes. Yes, that's correct.
10 Q. So you ran over to George Street on the bridge between the
11 two waters of Wentworth Creek?
12 A. Yes.
13 Q. And you found some men up on George Street?
14 A. Yes, sir.
15 Q. Did you run?
16 A. Yes, sir.
17 Q. As fast as you could, I suppose.
18 A. Yes.
19 Q. And you called to the people -- hailed the people on George
20 Street?
21 A. Yes, sir.
22 Q. Did you have any idea who they were?
23 A. No, sir.
24 Q. Their age?
25 A. One chap seemed to be about the same age as me and the

1 other one may have been two years older. They were around
2 my age if not a little older.
3 Q. Could you make any determination as to whether or not they
4 had been drinking?
5 A. No, sir.
6 Q. You couldn't tell whether they had to had not?
7 A. There was no way, no, I could tell no.
8 Q. You hailed them and said come and give me a hand or help
9 me or something?
10 A. Yes. I explained what happened. You know -- a young fellow -
11 Q. What did you tell them?
12 A. There's a fellow over there needs help. He's been stabbed.
13 Q. So you then ran back to the scene?
14 A. Yes.
15 Q. They ran behind you?
16 A. Yes.
17 Q. Did you get up to Mr. Seale's body again before you saw the
18 police car arrive?
19 A. Oh, yes. We were just getting up the the body when a car
20 arrived and --
21 Q. I'm sorry. When a car arrived, yes.
22 A. When a car arrived, yes.
23 Q. And that car came from Argyle Street?
24 A. That's correct.
25 Q. And it stopped?

SCOTT MacKAY, by Mr. Pugsley

1 A. Yes.
2 Q. And Junior Marshall got out?
3 A. Yes.
4 Q. Did anyone else get out?
5 A. There could have been somebody get out around the other
6 side but when Junior got out I went right over to speak
7 to him.
8 Q. What happened to that car? Did it leave the scene then?
9 A. To my recollection, yes. It left after him and if somebody
10 else got out the other side -- got out of the car.
11 Q. Could it drive down Crescent Street past Seale's body? Was
12 it in the way?
13 A. I could have. Whether it went down that way or backed
14 in a yard and went -- because like I said I started talking
15 to Junior and then we went to a house for help. It left
16 the scene but how it left, I don't know.
17 Q. Was Seale's body visible in the headlights of the car?
18 A. My back was turned to Seale's body when I was talking
19 to Junior so I couldn't say.
20 Q. I see. How close did the car stop from Seale's body?
21 A. Roughly about, maybe, one hundred and twenty, one hundred and
22 thirty feet but I really -- you know. I don't know. It
23 was about that I guess. It wasn't really close to it but
24 it wasn't -- you know, real far away from it either.
25 Q. At this point in time you were just about as close to Seale's

1 body on your return from George Street as the car was?
2 A. No, just as -- just as we're getting back up over the hill
3 by the body there, this car pulled up.
4 Q. I see. How close were you to the body at that time?
5 A. Maybe -- maybe ten, fifteen, twenty feet.
6 Q. I see.
7 A. Anyone else --
8 Q. And as a car pulled -- was pulling up, it was slowing
9 down and stopping and Junior Marshall got out and I approached
10 the car. So the car was probably about another fifty or
11 sixty feet back from where I was.
12 Q. So --
13 A. So the car was probably about one hundred feet from the
14 body.
15 Q. You did not go over to Seale before you went back to
16 the car?
17 A. No, I went right to the car.
18 Q. Why did you do that?
19 A. Because -- well, maybe the car got there just before
20 or just we're getting up the hill. I seen Junior Marshall
21 get out and I went over to see him because I knew him too.
22 Q. And what did you say to him?
23 A. I said: "Geez, what's going on here?" And then he started
24 to explain what happened.
25 Q. At that time --

1 A. That he was with him. I went over and -- you know,
2 I --
3 Q. Was his first comment surprise that you knew him or
4 concern that you knew him?
5 A. Surprise.
6 Q. Surprise?
7 A. Yes.
8 Q. What did he say?
9 A. He said: "You know me?" I said: "Well,I know who you are."
10 Q. What did he say then?
11 A. And he says: "Sandy was with me." He said. And he said:
12 "These guys, with a knife" -- or knives --"jumped them"
13 And he said: "Look at my arm. Look what they done to me."
14 Q. Sorry? Sandy was with me?
15 A. Yes.
16 Q. Yes. And what else did he say?
17 A. That these two men attacked them.
18 Q. Yes.
19 A. And he showed me his arm and he said that he stabbed Sandy
20 and "Look what they done to my arm" he said.
21 Q. Now, at this point in time Mr. Seale was still lying on the
22 ground some one hundred feet away?
23 A. And there was some people around -- with him, yeh.
24 Q. Did Marshall make any effort to go up to Seale?
25 A. Well, as he was -- yeh, I suppose right at that point in time

1 that's when I brought up about we should call the police.
2 Q. At this -- but Marshall made no attempt to approach Seale
3 from the time --
4 A. He made have been but I stopped him. If he was, I can't
5 recall. If he was making any attempt or not making any
6 attempt.
7 Q. You can not recall him making attempt to go and see how
8 Seale was?
9 A. That's right.
10 Q. You then said: "Let's call the police." or "Let's call
11 an ambulance."
12 A. I just explained to the gentleman here. It must have been
13 just call the police.
14 Q. And what did he say to that?
15 A. He said: "No."
16 Q. And what did you respond?
17 A. I said: "Geez, we got to." I said: "You know, there's
18 a fellow stabbed up there." I said: "We got to get
19 help." and then he said: "Okay."
20 Q. So what did you do?
21 A. We proceeded to a house to call.
22 Q. Did you make the call?
23 A. No, the person wouldn't let us in the house to make the call.
24 Q. I see. The person made the call? The person made the call?
25 A. I don't know if he did or not. He never said he was going to.

SCOTT MacKAY, by Mr. Pugsley

1 Q. But in any event, how long were you -- do you think you
2 were at that house, speaking to the --
3 A. Not long. Maybe a minute.
4 Q. Yes.
5 A. You know, it wasn't --
6 Q. Was the time you left the steps, the police car was there?
7 A. As we're -- yeh, as we're turning to head back down the
8 street, yeh. One cruiser pulls up.
9 Q. You gave evidence at the Preliminary?
10 A. Yes.
11 Q. And have you reviewed your evidence before you gave evidence
12 here today? Have you reviewed your evidence that you
13 gave at the Preliminary before you came on the stand here
14 today?
15 A. I was speaking earlier today with the Commission Counsel
16 here and he showed me the book but I never read it though.
17 I never read it -- read it through. I just looked at
18 the first line or two and he was saying: Is this is the
19 statement you gave at such time" and I said: "Yes."
20 Q. And in the course of that evidence you stated at the
21 Preliminary that you saw Mr. Marshall at the scene and
22 had a discussion with him?
23 A. Yes.
24 Q. You say you were not interviewed by any lawyers acting on
25 behalf of Mr. Marshall at any time after you gave evidence

1 at the Preliminary?
2 A. I was not.
3 Q. Or before trial?
4 A. That's right.
5 Q. Am I fair in suggesting to you that Mr. Marshall was more
6 concerned about showing you the mark on his arm than he
7 was about investigating the condition of Sandy Seale?
8 A. I really couldn't say. You'd have to ask Junior Marshall
9 that. I couldn't make that assumption.
10 Q. Let me direct to the first statement you gave to the police.
11 Or the statement you gave to the police on June 2nd, 1971.
12 I believe you have it in the book in front of you.
13 I think it's at page one hundred and sixty nine?
14 Do you have that statement?
15 A. Yes.
16 Q. I direct your attention to approximately the middle of the
17 statement: "So we ran back down through the park & up Crescent
18 Street but by the time we were getting up to him a car
19 slowed down and a Marshall boy got out. Junior said, 'I was
20 with him' and he showed me his arm and so I told him we should
21 go to a house and call the police." Is that essentially
22 what happened?
23 A. Yes, sir.
24 Q. On the evening that you were at the police station on
25 June 2nd, do you recall as to whether or not that was the

1 evening in question?
2 A. It was a Wednesday, yes, following the incident.
3 Q. It was Wednesday. June 2nd was a Wednesday.
4 You made a call to a friend at some point during the evening?
5 A. Yes, about half way through the -- half way through the
6 night. It was -- like, I was there for about four hours.
7 About two hours in to our -- in to the statement I was
8 giving I called a friend.
9 Q. Yes. Where did you call the friend from? The room
10 in which you were being asked questions or from another
11 room?
12 A. Yes.
13 Q. There was a telephone there, was there?
14 A. Yes.
15 Q. Yes. Do you recall what the conversation was about?
16 A. It was about something. I can't recall exactly. It was
17 something about --
18 Q. What you were going to do that night?
19 A. -- seeing someone maybe at the dance that night or something
20 because he was at the dance too. This, particular --
21 It was about something like that. It was a vague --
22 Q. To check your recollection or something?
23 A. I suppose, I don't know.
24 Q. Yes. The material that we have, and I'll show you --
25 I wonder if you could give the witness volume sixteen, exhibit

1 book volume sixteen, please.
2 Is it your evidence, Mr. MacKay, that Mr. MacIntyre was
3 present with you for that four hour period?
4 A. To the best of my recollection he was there pretty well
5 for the full four hours, yes. He may have went out for
6 a coffee or something or a sandwich or something but --
7 Q. Well, the --
8 A. To the best of my recollection he was there for the
9 whole time.
10 Q. The documentary information we have indicates that he
11 was absent for some period of time. If you would turn to
12 page thirty one of volume sixteen that has been placed
13 in front of you, you'll find a copy of -- page thirty one?
14 A. Page thirty one?
15 Q. The pages are marked in the centre at the top of the page.
16 A. Okay.
17 Q. And if you look at page thirty two and thirty three, what
18 appears to be a photostat of the handwritten statement you
19 gave at that time. You'll notice signatures at the bottom
20 of page thirty two and after the statement on page thirty
21 three. Scott MacKay.
22 A. Yes.
23 Q. Is that your signature?
24 Are you nodding yes?
25 A. Yes.

1 Q. And you had signed those two pages after the statement
2 was written down by Sergeant MacIntyre?
3 A. Yes, sir.
4 Q. Yes. If you turn to page thirty four-- page thirty four
5 appears to be a statement taken on June 2nd, 1971, the
6 same evening at seven thirty p.m. from a Lawrence Paul
7 signed by Detective MacIntyre. Do you know Lawrence Paul?
8 A. No, sir.
9 Q. No. And if you turn to page thirty six, there's a statement
10 again on June 2nd at eight o'clock signed by Arthur Paul
11 and witnessed by Detective MacIntyre as well. Could
12 it well be that Sergeant MacIntyre saw you when you initially
13 came in at around six thirty in the evening but was out
14 for a period of time at seven thirty and then eight o'clock
15 to take these other statements and then returned to the
16 room where you were being questioned?
17 A. Yes, like I said he was gone at certain times. He wasn't
18 there for the full four hours but he was there for the
19 greater part -- like two thirds of the night he was there.
20 Q. You indicated to my friend that you would have been happier
21 if an adult had been present with you. If your mother
22 had been present with you?
23 A. Yes.
24 Q. Did you make the request that your mother be present?
25 A. No, sir.

SCOTT MacKAY, by Mr. Pugsley

1 Q. Was there any attempt by either Detective MacIntyre or
2 Detective Urquhart to force you to stay in the room
3 against your will?
4 A. Well, they weren't going to let me go until they were
5 satisfied with what they had. I mean I -- if come say
6 eight o'clock I'm getting tired of what's going on and
7 said I'm going to leave now, I don't think I could have
8 been able to leave.
9 Q. I see. Did you say that you wanted to leave?
10 A. No, I wanted to satisfy them to -- you know, I wanted to --
11 I gave a story and I wanted them to be satisfied with with
12 I recalled that night and --
13 Q. Of course.
14 A. -- you know, I didn't want to stay there, no. Sure. So
15 maybe it was against my will although I didn't say I wanted
16 to leave.
17 Q. No.
18 A. Like they came over to Westmount and picked me up. The
19 City Police and I had no way home. I had no money to
20 get a bus or nothing so -- you know. As far as I was
21 concerned when I was going home was when they were satisfied.
22 Q. Was your mother there at home when they picked you up?
23 A. Yes.
24 Q. She knew where you were?
25 A. Yes, sir.

1 Q. Yes. At page thirty-one, the statement that you gave.
2 The last question at the bottom of the page: "Did you
3 ask Junior Marshall who stabbed them?" Andwer: "Yes, he
4 said a man with glasses." I just want you to focus on that
5 for a moment. Is it your recollection that Mr. Marshall
6 said that it was a man with glasses? As distinct from a
7 man without glasses? Obviously he wouldn't say a man without
8 glasses stabbed me but is it your recollection that he did
9 say a man with glasses?
10 A. Yeh, I can't one hundred percent say that I can remember
11 Junior saying it was a man with glasses.
12 Q. And you'll note that it goes on to say: "And the younger
13 man with him. Junior said the man with the glasses stabbed
14 Sandy." The glasses is repeated on two occasions there.
15 A. Right. yes.
16 Q. Sorry, I may have asked you this before, Mr. MacKay, but I
17 can't recall your response. When you and the two men from
18 George Street returned to the scene, was there anyone else
19 around Seale at the time or were you again the first three
20 to arrive?
21 A. As far as I recall we were the first three back again.
22 Q. Yes. Do you have any recollection as to whether or not
23 you saw Mr. Seale at the dance?
24 A. I can't recall, sir.
25

1 MR. PUGSLEY:
2 Excuse me for one moment, My Lord.
3 BY MR. PUGSLEY:
4 Q. The statement that you gave 1982, do you recall the
5 name of the R.C.M.P. Constable that you gave that statement
6 to?
7 A. No, sir.
8 Q. That statement is found in exhibit book eleven which I believe
9 you have in front of you at page one hundred and seventy.
10 Are my notes correct that when they came in to -- when the
11 R.C.M.P. came in to see you -- You tell me what did they
12 say when they came in to see you in the reinvestigation?
13 A. Well, prior to them coming to see me they called me and --
14 you know, explained what was going on and they said there
15 was going to be a reinvestigation into the Donald Marshall
16 case. That they had found some new evidence that -- you
17 know, leads to them to believe that he didn't do it.
18 So they were going -- you know, appeared to be a whole
19 new trial was going to happen and they wanted to get in
20 contact with all witnesses that were involved before and
21 take new statements.
22 Q. They told you this on the telephone?
23 A. Yes.
24 Q. Yes. Did they reiterate that when they saw you?
25 A. Yes,sir.

SCOTT MacKAY, by Mr. Pugsley

1 Q. Do you know how long before the taking of the statement the
2 telephone call occured?
3 A. I -- you know, the best of my recollection, the call was
4 sometime -- ten or eleven in the morning and they came
5 by around two or two thirty in the afternoon.
6 Q. Same day?
7 A. Yeh.
8 Q. This was the first indication that you had of it, was it?
9 A. Yes.
10 Q. The statement would appear to be have taken on 82/03/02
11 which I assume was the second day of March, 1982?
12 A. Yeh, it was -- I believe it was in March. I knew it was
13 in the spring of the year but it must have been March
14 and not February, yeh.
15 Q. At the second paragraph of that statement on page one hundred
16 and seventy. "Then he told me that two guys him and Sandy.
17 He showed me his arm and said look what they did to me.
18 Then he showed me how the guy stabbed Sandy by putting his
19 fist in to my stomach. Then I said we better call the
20 police." Now, all those things to place before you made
21 any reference to the police or any attempt was made to
22 see Seale by Marshall.
23 A. As I spoke to the gentleman here, I recall this fist incident
24 in the stomach was on our way to the house.
25 Q. Was what?

1 A. Was on our way to the house.
2 Q. On your way to the house?
3 A. Yeh, I stated to get help before that happened as I recall.
4 Q. I see. Okay.
5 Thank you, Mr. MacKay.
6 A. Thank you.
7 MR. CHAIRMAN:
8 Mr. Murray?
9 BY MR. MURRAY:
10 Q. Mr. MacKay, my name is Donald Murray and I'm representing
11 Detective Urquhart who I understand you spoke to on the
12 night of June the 2nd in 1971?
13 A. Yes.
14 Q. You commented to a previous questioner that at no time
15 did either of the officers or any of the officers you
16 spoke to attempt to change your story?
17 A. Sorry, go over that again.
18 Q. You testified earlier in response to one of the questioners,
19 I believe it was Commission Counsel, that at no time
20 did any of the police officers attempt to change your story?
21 A. They didn't try to change my story, no, but they were finely
22 going over the story and trying to say well, you -- you know
23 you must have seen something else or something like that
24 but they didn't try to change it other than try to -- you
25 know, have me think it over more or something. I don't know.

SCOTT MacKAY, by Mr. Pugsley

Q. They were trying to determine if you knew any more?

A. I suppose, yeh.

Q. And you mentioned that in particular Mr. Urquhart was helpful?

A. Yes.

Q. And he was friendly?

A. What's that?

Q. And he was friendly?

A. Well, he'd give me a cigarette or you know, he seemed concerned. Out of the three of them he seemed concerned to be genuinely -- you know, he'd get you a coffee or a cigarette or -- he picked me up -- like, he come over to Westmount to pick me up in the car and drove me home and that.

Q. And it was a particularly serious matter that they wanted to talk to you about, isn't that so?

A. Yes.

MR. MURRAY:

Let me have a moment, My Lords.

SCOTT MacKAY, by Mr. Murray

BY MR. MURRAY:

1 Q. Mr. MacKay, you've mentioned that when you first met Mr.Marshall
2 he appeared to be upset. What particular physical observations
3 did you make that led you to that conclusion?
4 A. Well, he was quite excited. He was talking very fast and he
5 seemed to be out of breath.
6 Q. I see.
7 A. And like his hair was messed up. It looked it -- It appeared
8 like he was running before --
9 Q. It appeared like?
10 A. He was running or something. Although he just got out of
11 a car it appeared that he was, you know, doing some physical
12 activity of some sort because he was out of breath, whether
13 that was because he was excited or what I don't know.
14 Q. Nineteen seventy-one was some time ago and other Counsel have
15 referred you to both the 1971 statement and the 1982
16 statement, and in neither of those statements do you refer to
17 the fact that Donald Marshall was grabbed and manhandled into
18 the back of a police car almost immediately upon the police
19 arrival. Could Mr. Marshall have been put into a police car
20 at some later point than immediately?
21 A. No, it was within a minute or two of us coming back from the
22 house he was put in the car.
23 Q. You have no doubt about that in your mind?
24 A. That's right.
25 MR. MURRAY:

Thank you.

1 MR. CHAIRMAN:
2 Mr. Elman.
3 MR. ELMAN:
4 No questions, My Lord.
5 MR. CHAIRMAN:
6 Mr. Saunders.
7 MR. SAUNDERS:
8 We have no questions, My Lord.
9 MR. CHAIRMAN:
10 Counsel for the various R.C.M.P. Officers.
11 BY MR. BISSELL:
12 Q. Mr. MacKay, I'm curious as to whether or not you were familiar
13 with Roy Ebsary back in May of '71?
14 A. No.
15 Q. You had never heard of Mr. Ebsary?
16 A. No.
17 Q. And one other question, was it the officers from the first
18 police car that placed Mr. Marshall in the police car or
19 from the second car?
20 A. The first car which came from Argyle Street is the car that
21 he was put in.
22 MR. BISSELL:
23 Those are all the questions that I have. Thank you.
24 MR. CHAIRMAN:
25 Mr. Ross.

1 MR. DROLET:
2 I have just a few questions for Mr. MacKay.
3 COMMISSIONER EVANS:
4 Would you give your name please.
5 MR. DROLET:
6 Kevin Drolet, I'm Counsel for Oscar Seale, and I have just a few
7 questions.
8 BY MR. DROLET:
9 Q. Perhaps If I came forward I could clarify some matters with
10 you with respect to your movements on the night prior to
11 finding Sandy Seale's body. You indicated that you came from
12 St. Joseph's Church, down George Street, left onto Argyle,
13 left again down into the park by the band shell where you --
14 A. No, no, right into --
15 Q. Right into the park itself?
16 A. No, right on Crescent and then into the park.
17 Q. Oh, I see, and then from Crescent into the park?
18 A. Yes.
19 Q. And you indicated in your evidence that you and Debbie then
20 sat on a park bench for a few moments?
21 A. Yes.
22 Q. Could you see the park at that time?
23 A. Yes, we were sitting down and we were -- like we were facing
24 the band shell. You could see the band shell.
25 Q. Was it very, very dark?

1 A. Well, the night -- It was a dark night and an overcast night,
2 like fog and heavy mist, and in the park itself there's
3 a lot of lighting down there anyhow, so right in the park
4 down by the Wentworth Creek there it was fairly lit up.
5 Q. Yeh, could you see anybody --
6 A. But up --
7 Q. --from where you were sitting, walking around the park?
8 A. No, I didn't see anybody in there.
9 Q. You didn't see anybody at all?
10 A. No.
11 Q. And then you got off and you began to walk through the park
12 heading down towards the bus. Is that correct?
13 A. No, we got up off the bench and we went back up on the bank
14 that's in the park onto Crescent Street.
15 Q. And you were at that time intending to go to catch a bus?
16 A. Yes, sir.
17 Q. Where was it that you intended to catch the bus?
18 A. On Kings Road.
19 Q. On Kings Road?
20 A. Yes.
21 Q. So it would be somewhere off this map?
22 A. Yes.
23 Q. Would you have proceeded -- When you sent Debbie home which way
24 did she head? Would she have continued --
25 A. Well, I don't know north, east, west, here, you know, she kept

1 heading up Crescent in the opposite -- like heading towards
2 Bentinck Street on Crescent.
3 Q. Okay. Now you've indicated a spot here on the map with your
4 initials indicating where you think the body of Sandy Seale
5 may have been located when you came upon it. If you notice
6 here on the map there's a little black dot which represents
7 I think you'll see a power pole with a 120 m.v. light. Do
8 you recall what the lighting was like in the area where you
9 found Sandy's body?
10 A. Well, the lighting was poor because of the conditions of the
11 night. That's why I say we were -- You know, we weren't that
12 far from him when we picked him up. If it was maybe a clear,
13 clear night, like a full moon and stars and whatnot, we probably
14 would have picked him up sooner, so I had -- To the best of
15 my recollection the lighting was poor in the area.
16 Q. How close did you have to get to Sandy? You say from approximatel
17 a hundred and fifty feet you could make out the form of a
18 person. How close was it before you recognized Sandy Seale?
19 A. Well, I'd say -- I don't know. Maybe halfway up or maybe
20 a little closer. Maybe -- I really can't recall. You know,
21 we seen somebody -- Debbie seen somebody from I'd say
22 approximately two hundred feet. I picked him up a little
23 bit later and when we knew it was him we could have been
24 right over him, I don't know. I don't recall.
25 Q. So you're still quite a --

1 A. Like the person was laying down on the ground with their face,
2 you know, towards the ground. You know, normally you're not
3 going to know who it is until you're right up to him anyhow.
4 Q. Right. Yeh, I understand that. So you had to get quite close
5 to him before you could tell that it was Sandy?
6 A. Yes.
7 Q. And you've been asked by Commission Counsel how well you knew
8 Sandy and you indicated that you knew him pretty well?
9 A. No, I didn't know him well at all. I knew who he was and he
10 went to a different school than I did. He lived in the same
11 community as I did but he had only moved over there, I think,
12 within that year, so I didn't know him well at all, sir.
13 Q. So you just knew him well enough to know that he was a pretty
14 good guy, that he --
15 A. From all the people that --Like he was friends with people
16 that I knew of in Westmount and they all had good things to
17 say about him.
18 Q. And you knew that he was quite -- I think you said he was
19 quite sportsman like?
20 A. Sport minded, athletic.
21 Q. Sport minded?
22 A. Yeh.
23 Q. And had you ever played sports with him?
24 A. No, sir.
25 Q. At all?

A. No.

Q. You've indicated that both you and Sandy were living in Westmount at the time. Is that correct?

A. Yes.

Q. So would you have both been taking the same bus home from the dance that night?

A. No, the bus that we were going to get, and Debbie was going to get on, was a bus going to North Sydney.

Q. Okay, and you weren't headed for the bus then?

A. No, I was just taking her to the -- taking her to the bus and then I was going to hitchhike home.

Q. I just wanted to take you back to the dance for a moment again. You indicted to Counsel for Mr. Marshall that, in fact, you didn't see Junior at the dance that night. Did you see Sandy at the dance that night?

A. I don't recall.

Q. You don't recall. When you moved into the park and you had identified Sandy, then you ran off to get help, you indicated that you came back and you found as you headed back towards the body of Sandy Seale a car pulled up and stopped and Junior Marshall got out of the car. He appeared very upset to you. Did you notice anything particular about his eyes?

A. They may have been a little glazy or something, again I was saying it seemed like he was out of breath running and that could do that to a person, you know.

1 MR. DROLET:
2 No further questions. Thank you very much.
3 MR. CHAIRMAN:
4 Mr. Wildsmith.
5 MR. WILDSMITH:
6 Yes, I do, My Lord.
7 BY MR. WILDSMITH:
8 Q. Mr. MacKay, my name is Bruce Wildsmith and I'm here on
9 behalf of the Union of Nova Scotia Indians. Let me just ask
10 you a couple of preliminary questions about your background
11 now. I understand that -- from what you said previously
12 that you live in Westmount.
13 A. That's right.
14 Q. And that's a suburban kind of area around Sydney?
15 A. Yes.
16 Q. How long have you lived there?
17 A. I lived there for -- Well, I was born in Sydney but I lived
18 in Westmount ever since I was just going to come home from
19 the Hospital.
20 Q. I'm sorry, since when?
21 A. Since I come home from the hospital from being born and
22 I lived there all my life.
23 MR. CHAIRMAN:
24 Now Mr. MacKay, could you move your mouth a little closer to
25 the mike, please.

1 THE WITNESS:
2 Sure.
3 BY MR. WILDSMITH:
4 Q. So I take it that you lived in Sydney -- in the Sydney area
5 all of your life. You've described being at this particular
6 dance on that evening with three or four hundred other people.
7 I take it you've gone to other dances, yes?
8 A. Yes, sir.
9 Q. Would you describe yourself as being part of the teenage
10 community in Sydney in about 1971?
11 A. Well, yeh. There was like different groups of people that
12 used to hang out and, you know, like I went to dances. I
13 went to pool halls, etcetera, you know, so, yeh, I guess
14 I'd be part of that, yeh.
15 Q. Okay, and you were reasonably active then with other teenagers
16 in the Sydney area?
17 A. Yes, mostly though from the -- from the community of Westmount
18 and the surrounding area more so than people in Sydney.
19 Q. All right. Now you've given some testimony about giving the
20 statement in 1971 to Detective Urquhart and Detective MacIntyre,
21 and you've described there being three people in this room
22 at the Sydney Police Headquarters. Could you describe that
23 room for us?
24 A. There is a small room -- It was like a -- almost like a
25 building to itself they used to have behind the Police

1 Headquarters. I believe it used to be on Bentinck Street, but I'm
2 not sure.
3 Q. Now you've described it as being a small room. What do you mean
4 by small?
5 A. Well, like I said, it seemed like a separate building away from
6 everything and it wasn't real big. Like there was an outer-office
7 and then an inner-officer.
8 Q. And where were you, the inner or outer-office?
9 A. Yeh, the inner most office.
10 Q. And can you give us dimensions of that room approximately?
11 A. It's been a long time, you know. I -- You know, I never --
12 Q. Can you tell us anything about what was in that room?
13 A. A desk and chairs and a filing cabinet, typewriters.
14 Q. And can you tell me whether there was much room to move around
15 in that room then once the desk, the chairs, the filing
16 cabinets were in there? In other words, was it a crowded
17 room?
18 A. I'd say it was an adequate size for what they had to do. You
19 know, it wasn't cramped and it wasn't overly big.
20 Q. Were there windows?
21 A. To the best of my recollection there was, yeh.
22 Q. Okay. So you've told us that you were reasonably active in
23 the teenage community in Sydney and the surrounding area.
24 You've told us as well although I don't want to go into this
25 with you, about a particular reputation that Junior Marshall

had. Now my question to you is, can you tell me anything about the reputation that the Indians in and around Sydney enjoyed amongst you and your colleagues?

A. You mean the younger Indian like teenagers?

Q. Yes.

A. Well, we never -- You know, we never hung out with them or anything. They were -- Sometimes Junior was down the park with a group of them and they were, you know, fighting with people and that.

Q. They were fighting with people a lot?

A. Yeh.

Q. All right. When you said, "Junior with other people", do you mean other Indians?

A. Yes.

Q. Okay. You mentioned an incident which we don't need to go into in detail, but I take it that there was an incident that involved your brother and a fight?

A. Yes.

Q. And were the other people that your brother was fighting with, were they Indians?

A. Yeh, well, he was with some friends of his and these Indians came up on him in the park and started giving him a hard time and then they started beating him up.

Q. Okay. Now the --

MR. CHAIRMAN:

This is certainly straining the rules of admissibility,

1 Mr. Wildsmith, but I suppose if no one objects, we might
2 as well hear it.
3 BY MR. CHAIRMAN:
4 Q. Well, what's your brother's name?
5 A. Stuart MacKay.
6 Q. Stuart MacKay. Is he still living in the Sydney area?
7 A. Yes.
8 MR. WILDSMITH:
9 What I'm interested in generally, My Lord, is getting some
10 sense of the mood in Sydney about this time and something about
11 the relationship with the Indian community.
12 MR. CHAIRMAN:
13 Oh, I understand the purpose of that questioning, but his
14 description of what happened to his brother as he walked through
15 the park one night is certainly stretching the hearsay rule --
16 MR. WILDSMITH:
17 I think as evidence of an actual event which took place but
18 perhaps not as something which was known as part of the kind
19 of rumour mill in the community at the time.
20 MR. CHAIRMAN:
21 I suppose.
22 BY MR. WILDSMITH:
23 Q. So speaking now about Wentworth Park, you described this
24 incident as taking place in Wentworth Park. Is this a place
25 where you've been on a number of occasions?

1 A. No, I never made a habit of going down there, no.
2 Q. You did happen to be there this particular night, I believe?
3 A. Yes, heading home.
4 Q. Is it your understanding that Indians generally hang around
5 in Wentworth Park?
6 A. Can you say that again please.
7 Q. Do Indians in general hang around in Wentworth Park?
8 A. When I was younger that was common, yes.
9 Q. Yes, and would other people as well as Indians hang around in
10 Wentworth Park?
11 A. At times of the day. In the afternoon families and --
12 you know, like husbands and wives and children would be
13 down there and in the evenings you'd have some Indians down
14 there. You'd have some white kids down there too and you
15 might have, you know, a few winos down around there too.
16 Q. Were you -- At these dances you were attending I take it that
17 there was some kind of security enforced-- in place at the
18 dances?
19 A. Yes, sir.
20 Q. And would they by in large be off-duty Sydney Policemen?
21 A. I don't know. I can't remember who they were.
22 Q. Would they be people in uniform?
23 A. I can't recall.
24 Q. Okay. Now were there occasional fights at these dances?
25 A. Yes.

1 Q. And who would be involved in these fights?
2 A. Anybody that --
3 MR. CHAIRMAN:
4 Mr. Wildsmith, would you -- I don't want to interrupt you
5 unnecessarily, but whether there were fights at dances in Sydney
6 leaves me with some doubt as to the relevancy to the issues
7 including the issues to whether or not there were racial discrimintion
8 It --I think we can take judicial note of the fact that fights
9 have started at dances over the years regretfully throughout most
10 of Canada and certainly all of West Canada prior to '49.
11 MR. WILDSMITH:
12 Well, the particular point that I'm interested in, My Lord, is
13 whether the fights were organized in any kind of racial way.
14 BY THE WITNESS:
15 A. No, they weren't.
16 MR. WILDSMITH:
17 Whether there was any racial --
18 MR. CHAIRMAN:
19 He's answered the question for you.
20 MR. WILDSMITH:
21 Fair enough.
22 BY THE WITNESS:
23 A. No.
24 BY MR. WILDSMITH:
25 Q. Now you've mentioned, Mr. MacKay, that you didn't hang around

with the Indians. Had you ever been to the Indian Reserve of Membertou?

A. I've been to Eskasoni Reserve before but I was never to Membertou, driving through and that, but never --

Q. Driving through the Eskasoni Reserve?

A. Yeh.

Q. That's a public highway that goes right through the middle of the Reserve?

A. Yes.

Q. And did you ever have any other experience or contact with Indians?

A. No, sir.

MR. WILDSMITH:

Thank you.

MR. CHAIRMAN:

That's all. Thank you, Mr. MacKay. This is probably a satisfactory time to take a short recess while you're getting ready for the next witness.

INQUIRY ADJOURNED: 3:19 p.m., AND ADJOURNED: 3:31 p.m.

MR. CHAIRMAN:

Mr. Spicer.

MR. SPICER:

Thank you, My Lord. My next witness is Debbie (MacPherson) Timmins.

1 DEBORAH MAXINE TIMMINS, being called and duly sworn, testified as
2 follows:
3 BY MR. SPICER:
4 Q. Your name is Debbie Timmins and in 1971 you were Debbie
5 MacPherson?
6 A. Yes, that's right.
7 Q. In 1971, how old were you?
8 A. I was fifteen.
9 Q. In May?
10 A. Yes.
11 Q. Your birthday --
12 A. I would have been sixteen the end of the month.
13 Q. I see. Okay, and where did you live in 1971?
14 A. On Keltic Drive. That's on the other side of Coxheath.
15 Q. And did you from time to time attend the dances at St. Joseph's
16 Church?
17 A. From time to time when I was allowed to go.
18 Q. When you were allowed to go?
19 A. Yeh.
20 Q. And did you attend the dance on the night of May 28th?
21 A. Yes, I did.
22 Q. With Scott MacKay?
23 A. Yes.
24 Q. Can you indicate what time approximately you left the dance?
25 A. Oh, I imagine around eleven-thirty to quarter to twelve or

1 something like that.
2 Q. Would there be any particular reason why you would leave at
3 that time?
4 A. I was going to catch the Acadian Lines bus going to North
5 Sydney.
6 Q. And what time did that bus leave?
7 A. At twelve.
8 Q. Can you describe to us the route that you took after you left
9 the dance?
10 A. Yes, sir.
11 Q. Sure, stand up. Just come and stand around to this side over
12 here. I'll move the mike for you.
13 A. Okay.
14 Q. Okay.
15 A. Okay, we left the hall and we came down George Street and went
16 down Arygle and we went down through the walkway here through
17 where the band shelter was, a park bench, and we were there
18 for a few minutes and then we went back up on the road
19 through -- down through Crescent Street.
20 Q. Okay. During the time that you were sitting on the park
21 bench, did you hear anything?
22 A. No, sir.
23 Q. Did you see anybody?
24 A. No.
25 Q. No. Okay. Have a seat. What was the weather like that evening?

DEBORAH M. TIMMINS, by Mr. Spicer

1 A. It was fairly dark out. I never really noticed much.
2 Q. Do you remember whether it was rainy or misty?
3 A. It was misty. It wasn't like really rain but it was misty, yes.
4 Q. How would you describe the visibility?
5 A. Oh, fairly okay, you know.
6 Q. When you came up along Crescent Street what did you see?
7 A. I seen a body on the road.
8 Q. Do you know how far away you were from the body when you first
9 saw it?
10 A. Not really. I was quite a piece away though. I could see,
11 you know, further up the road.
12 Q. And what was it that you saw?
13 A. I'd seen a body on the road.
14 Q. Did you at that point say anything to Scott?
15 A. I think we were both thinking the same thing, but maybe I
16 had said, there's something lying on the road up there. I
17 thought it might have been a --you know, somebody drunk or
18 something. You know, I never really noticed who it was.
19 Q. Did you keep walking or did you run up to it?
20 A. No, we walked.
21 Q. You walked up to it?
22 A. Yes.
23 Q. And what happened when you got there?
24 A. Well, we realized that it was Sandy, Sandy Seale.
25 Q. Did you know Sandy personally?

1 A. I knew of him, but I didn't know him personally, like I
2 knew -- because he went to a different school than I did.
3 Q. But you recognized him?
4 A. Oh, yes, I did. Yes.
5 Q. And what happened, did you bend down?
6 A. No, I didn't but Scott did.
7 Q. Did you hear anything that was said between Scott and Sandy?
8 A. No, I didn't. No.
9 Q. What were you doing during this period of time?
10 A. More or less just standing there. I was kind of concerned
11 about the bus because it was getting later too, hey, and I
12 had to get home.
13 Q. Okay, and for how long would you have been standing there?
14 A. Oh, not very long, a couple of minutes.
15 Q. A couple of minutes?
16 A. That's all, yeh.
17 Q. Did you say anything to Sandy during the time that Scott was
18 there?
19 A. No, no.
20 Q. Okay, and then what happened, did Scott leave?
21 A. Yes, he did. I recall Scott going to a home to -- he said he
22 was going to help, but the house that he went to, they didn't
23 answer the door, like he wasn't gone very long, and in that
24 period of time I had said to Sandy, I said, "He's gone for
25 help". He said, "No cops", and I sort of kind of backed off.

1 MR. CHAIRMAN:
2 Who said "No cops"?
3 MR. SPICER:
4 Sandy said it.
5 BY THE WITNESS
6 A. And then I kind of backed off and I said-- I didn't really
7 say anything more. I had no conversation and then he said,
8 "Move me", and like I was kind of stunned, I didn't say
9 anything.
10 Q. Was anything else said by Sandy when you were there by your-
11 self other than that, other than "no cops"?
12 A. No, nothing.
13 Q. And did you say anything more to Sandy yourself?
14 A. No, no, because I was kind of surprised, you know, that he had
15 said something like that.
16 Q. Could you tell by looking at Sandy lying there whether or not
17 he'd been stabbed?
18 A. No.
19 Q. No?
20 A. No.
21 Q. What did you think at that time?
22 A. I had no -- I don't really know what I -- You know, it was
23 just -- I knew he was maybe hurt or something, but I didn't
24 know actually what, you know, because he was in a crouched
25 position with his hands to his stomach and, you know -- Yeh.

1 Q. How long after the comment, "No cops", did you leave?
2 A. A couple of seconds because Scott had a ride back and he
3 said, "Well, you better go get your bus", and I said, "Yeh,
4 okay". So I just kept going.
5 Q. Did you say anything to Scott about any comments that Sandy
6 had made?
7 A. No.
8 Q. Okay. So what did you then do?
9 A. I proceeded down Crescent and I went right out to the end of
10 Atlantic Springs there at the corner so I could get the bus
11 and as it was I missed the bus.
12 Q. Right. During the period of time when you were standing by
13 Sandy, was there anybody else around other than Scott?
14 A. No.
15 Q. And on your way down towards the bus did you see anybody else?
16 A. No, I did not.
17 Q. Did you see any cars?
18 A. No.
19 Q. No?
20 A. Not on Crescent Street, no.
21 Q. Did you speak to any Police Officers that evening?
22 A. No.
23 Q. And did you at any time later speak to any Police Officers?
24 A. Yes, quite awhile after.
25 Q. And what happened quite awhile after?

1 A. Well, this particular day I was home sick from school and
2 there was a knock on the door -- I was home by myself and
3 this gentleman came to the door and asked who I was and
4 I had told him or he knew who I was sort of thing, and he
5 asked if I'd go down to the police station and I said,
6 "Sure", you know, but I didn't go that day. I went the
7 prior -- the next day. It was on a Thursday.
8 Q. When you were asked at the door did you recognize the person
9 who was asking you the question to be a Police Officer?
10 A. No, sir. No, he wasn't -- I don't know. I thought it was like
11 an investigator. I didn't think it was a Police Officer.
12 Q. Did he identify himself in any way to you?
13 A. He probably did but I can't remember.
14 Q. Was there anybody else home at the time?
15 A. No, there wasn't.
16 Q. And you went the next day?
17 A. Yes, I did.
18 Q. Were you picked up by somebody?
19 A. No, I had my brother and my uncle take me in.
20 Q. Did you discuss the fact that you were going to the police
21 station with your parents at all?
22 A. Then I did because they didn't know anything up until that
23 point?
24 Q. You had not told your parents up to that point in time that
25 you had --

A. Nothing, no.

Q. --been there the night of the stabbing?

A. Right.

Q. Okay. Did your parents express any desire to come with you to the police station?

A. No.

Q. So you went down with your brother and your uncle?

A. Yes, I did.

Q. And when you got to the police station do you remember by whom you were interviewed?

A. Well, I remember Mr. MacIntyre mostly and there was one other gentleman but I can't particular make him by name.

1 Q. All right. Do you remember what he looked like?
2 A. No.
3 Q. No. Do you remember for how long you were at the police
4 station?
5 A. Probably for an hour or an hour and a half for sure.
6 Q. All right, and what sorts of questions were you asked?
7 A. Just in general what happened that night, and you know, what
8 we would -- we come across and what was said and stuff like
9 that.
10 Q. Were you being questioned by MacIntyre?
11 A. Yes, most of the time.
12 Q. Most of the time.
13 A. All the time. He was there the whole time.
14 Q. Do you remember anything in particular that he was asking you?
15 A. Well, not really just that he -- I found him a little suggestive.
16 Things that I didn't see that maybe I should have seen or some-
17 thing.
18 Q. Can you remember any -- Can you give us any examples?
19 A. Well, for instance a man in a trench coat which I had no
20 recollection of at all but it was suggested more or less that
21 I did see him, but I didn't.
22 Q. Suggested to you by whom?
23 A. Mr. MacIntyre.
24 Q. I see. Is there anything else that you recollect about that
25 meeting?

1 A. Yes, and the railroad tracks. Crossing a railroad track,
2 but like, you know, I had to cross the railroad tracks,
3 really precise sort of thing and I said, "No, I didn't.".
4 Q. What was the reason that it was suggested that you had to
5 cross the railroad tracks?
6 A. I don't know why unless -- I don't -- I don't know why, why
7 it was. Like it was more or less really suggestive and I
8 kept saying, "No, that isn't where I went." or "That isn't
9 how I went.".
10 Q. All right, and how many times would you have had to say, "No,
11 that's not where I went."?
12 A. Oh, quite a few times.
13 Q. And what happened? Had they finally stopped asking about that?
14 A. Yeh, well, my brother kind of spoke up. He said, "Well, if she
15 didn't see nothing, she didn't see nothing." sort of thing so
16 he kind of give up on it.
17 Q. Okay. Did you say anything to the police that day about Sandy
18 having said to you, "no cops".
19 A. Yes, I told everything that I had heard and seen.
20 Q. And you remember telling them that?
21 A. Yes.
22 Q. I see. Do you remember whether or not you signed a statement?
23 A. Yes, I did.
24 Q. Do you remember whether the statement was written out by
25 MacIntyre or by anybody else?

1 A. I'm not really sure who wrote it out but it was hand-written
2 and I know I signed it.
3 Q. Do you remember signing it?
4 A. Yes, I do.
5 Q. Did you read it before you signed it?
6 A. Not particularly, no, because I just figured they writ down
7 what I said.
8 Q. All right, was it read out to you before you signed it?
9 A. I can't remember, no.
10 Q. And this statement would have been taken at a time when you
11 were still in school?
12 A. Yes.
13 Q. And when did school end?
14 A. The end of June.
15 Q. The end of June?
16 A. Yeh.
17 Q. So it would have been sometime probably in June?
18 A. Yeh, some time.
19 Q. Were you contacted at any time by lawyers acting for Mr. Marshall?
20 A. No.
21 Q. Were you ever contacted by the Crown Prosecutor's office?
22 A. No.
23 Q. No. Were you subsequently contacted by the R.C.M.P. in 1982?
24 A. Yes. Yes, in 1982. That was the first telephone call I got
25 since I had been at the police station that day.

1 Q. All right, and did you give a statement to the R.C.M.P.?
2 A. No, they just formally as -- they said that there was a
3 new investigation into the Marshall case and they asked of
4 my name and that, who I was and that was more or less it.
5 Q. Did anything further come of that?
6 A. No.
7 Q. Were you ever contacted again?
8 A. Not until I heard from this Inquiry.
9 Q. I see. Thank you.
10 MR. SPICER:
11 My Lord, there's a statement that we've been referring to. We
12 have not received a copy of it. It is our understanding that we
13 had received everything that was in the Sydney Police records but
14 the statement that Mrs. Timmons is referring to is one that we do
15 not have or I would have referred Your Lordships to it. We don't
16 know where it is.
17 MR. CHAIRMAN:
18 Well, have you received any indication whether the statement is
19 still in existence?
20 MR. SPICER:
21 No.
22 MR. CHAIRMAN:
23 It isn't?
24 MR. SPICER:
25 Well, we -- it's our -- We had understood that we had asked for

1 everything from the Sydney Police. That statement was not included
2 in the statements that we received. There may be some evidence
3 later about that, but we have no knowledge as to where that
4 statement is.
5 MR. CHAIRMAN:
6 Mr. Ruby.
7 MR. RUBY:
8 I have no questions, My Lord.
9 MR. CHAIRMAN:
10 Mr. Pugsley.
11 MR. PUGSLEY:
12 Thank you, My Lord.
13 It is my understanding, My Lord, that all statements have
14 been turned over, that that statement is not among the ones turned
15 over because it was not there. That's my understanding, my
16 instructions.
17 BY MR. PUGSLEY:
18 Q. You say that some suggestions -- I'm acting for Mr. MacIntyre,
19 Miss MacPherson -- Ms. Timmons?
20 A. I'm married.
21 Q. Mrs. Timmons. You say there were suggestions made to you by
22 Mr. MacIntyre about a man in a blue coat, as to whether or not
23 you saw a man in a blue coat.
24 A. Yes, sir.
25 Q. Did he refer you to something like a priest, use those words?

1 A. No, sir. No, just a man with a trench coat.
2 Q. I see. Describe his hair, height, anything of that nature that
3 you can recall?
4 A. Not that I can remember, no. Just a simple man with a trench
5 coat.
6 Q. And you had not seen a man in a trench coat?
7 A. No, I did not.
8 Q. Indeed, you had not really seen anyone in the park from the
9 time you left the area of Pollett's Drug Store, went to the
10 bandshell, stayed there for about five minutes I suppose?
11 A. Oh, yes.
12 Q. Which side of the bandshell were you on? That is the open
13 semi-circle?
14 A. Yes, the open side. That's right.
15 Q. So you an look in and see the bandshell?
16 A. Yes. That's right.
17 Q. So you saw no one milling around there?
18 A. No, sir.
19 Q. You saw no one when you went up Crescent Street, except of
20 course for Mr. Seale?
21 A. Yes.
22 Q. That is correct?
23 A. Yes.
24 Q. yes. And you saw no one as you left Crescent Street?
25 A. No.

DEBORAH M. TIMMINS, by Mr. Pugsley

1 Q. You indicated that when you were -- when you went down to
2 the police station that -- they came to your house, you
3 presumably told them that you were not well that day and
4 wanted to have a chat another day. Is that so?
5 A. No, well, I -- Yeh, I just wanted to go the next day because
6 I hadn't told my parents up to this point anything so I had
7 to kind of tell them before I was able to go. I wouldn't --
8 Q. So it was your suggestion that you go down to see them, the
9 following day?
10 A. Well that I had to tell my parents before hand. So that was
11 okay, so I went the next day.
12 Q. Yes. Did you tell the policeman who came to the house that
13 you wanted to speak to your parents?
14 A. Yes, I did.
15 Q. Yes, and he said presumably that was fine.
16 A. Yes.
17 Q. And you went down the following day?
18 A. That's right.
19 Q. You're answer is yes to that?
20 A. Yes.
21 Q. You went with your brother and your uncle?
22 A. Yes, I did.
23 Q. How old is your brother or was your brother then? He's
24 older than you, I take it?
25 A. Oh, yes.

1 Q. How much?
2 A. He was in his twenties.
3 Q. Okay, and how old was your uncle?
4 A. Oh, god, I don't know.
5 Q. Roughly. How many years older than you is your uncle?
6 A. Maybe in his thirties, late thirties.
7 Q. He was then?
8 A. Oh, yes.
9 Q. And they were in the room with you --
10 A. Yes, they were.
11 Q. -- throughout the entire time?
12 A. Yes.
13 Q. Your brother and your uncle?
14 A. Yes.
15 Q. Yes. When -- do you know the name of the R.C.M.P. constable --
16 A. No.
17 Q. -- who got in touch with you in 1982?
18 A. No, I can't recollect the names but I'm sure I was told --
19 Q. That was only by --
20 A. -- but I can't remember.
21 Q. And that was only by phone? Did they --
22 A. Yes, that was by telephone.
23 Q. One telephone call?
24 A. Yeh.
25 Q. Did they indicate to you at that time that there was going to

1 be a reinvestigation and the conviction was going to be over-
2 turned?
3 A. No, just that it was a reinvestigation and just, you know, to
4 state that I -- who I was and that I was there and whatnot but
5 that was it.
6 Q. Did they indicate to you they were going to get a new trial for
7 Mr. Marshall?
8 A. No.
9 Q. Do you have any recollection as to what time of year this was
10 that you received this call?
11 A. I -- maybe in the spring. I think I had -- probably they
12 had contacted my family's home first because and then they
13 got the telephone number of my own home there, and then they
14 called me there and that was all I heard.
15 Q. Were you married at that time?
16 A. Yes, I was.
17 Q. Living in Sydney?
18 A. No.
19 Q. Living where?
20 A. I live on the Cabot Trail.
21 Q. I see. How far from Sydney?
22 A. Approximately a hundred and thirty miles.
23 Q. I see. Did you indicate to them on the telephone, the R.C.M.P.
24 who phoned you, that Sandy Seale said, "No cops.", at the
25 scene?

1 A. No, sir, I never spoke of anything only that he just inquired
2 in who I was and that was it.
3 Q. And did you say that you were at the scene the night of the
4 incident?
5 A. No, I presumed that he knew that. That's why he called me.
6 Q. What did he say?
7 A. He just said that there was an investigation reopening and
8 that I was Deborah MacPherson, at that time and I said, "yes, sir,
9 that's right", and he said, "Well, okay, that's fine.". It was --
10 Q. Did he indicate --
11 A. It was a very brief conversation. That was it.
12 Q. Did he indicate that someone would be in touch with you?
13 A. No.
14 Q. And there never were?
15 A. No.
16 Q. Thank you.
17 MR. CHAIRMAN:
18 Mr. Murray.
19 BY MR. MURRAY:
20 Q. My name is Donald Murray and I'm representing Mr. Urquhart of
21 the Sydney City Police - formerly with the Sydney City Police.
22 You mentioned that there was -- were suggestions made about
23 crossing railroad tracks.
24 A. Yes, sir.
25 Q. Was that in reference to perhaps seeing anyone in bushes? Was

1 that part of the suggestions?
2 A. No, not -- not in general; just that I had to cross them.
3 I had to cross them but I didn't cross them.
4 Q. I see. You made the comment that after you and Scott MacKay
5 came upon Sandy Seale, at that point Scott MacKay immediately
6 went to a house on Crescent Street.
7 A. Yeh, he was going for help. He just ran -- the home was
8 just right directly not very far, just in a couple of seconds,
9 he was gone.
10 Q. Do you recognize the area depicted on the map?
11 A. I recognize the street and that but I wouldn't be able to --
12 the home, no.
13 Q. You wouldn't be able to pick out the home?
14 A. No.
15 Q. Would you be able to place the approximate area where you
16 came upon Sandy Seale's body?
17 A. Well that wasn't too far -- Down on the other side there.
18 These are the apartments --
19 Q. Could you get up and point it out for us please?
20 A. Down around here somewhere.
21 Q. So would it have been to the large green building that Scott
22 MacKay went?
23 A. No. It was a home.
24 Q. Directly across?
25 A. I'm sure it was a home. It wasn't like an apartment building, no.

1 Q. It was a home. So Looking at that map, would it be the light
2 green or the gay house that he went to immediately?
3 A. The first one probably. It might have been closer than, you
4 know.
5 Q. When you say the first one, what colour is that?
6 A. Well, it's gray there on that there. Close to the apartments,
7 like, but it would be the round -- I don't know, you know the
8 first house or so.
9 Q. Are you able to give us a name that's written on that house on
10 the map?
11 A. No, sir.
12 Q. There are names written down. If you could just indicate for
13 the record.
14 A. Campbell, is it?
15 Q. Pardon?
16 A. Campbell. Is that it?
17 Q. Campbell?
18 A. I'm not quite sure. I know there was a home but to point it
19 out --
20 Q. That's D. W. Campbell?
21 A. Yes.
22 Q. After he went to --
23 A. There was no answer.
24 Q. -- the house and could not get a response.
25 A. No, there was no answer.

DEBORAH M. TIMMINS, by Mr. Murray

1 MR. CHAIRMAN:
2 Is this witness saying, -- you know, she says that she did not
3 know the home. Now am I to understand that she has identified
4 it as the home of one Campbell?
5 BY THE WITNESS:
6 A. No, I don't -- I'm not sure.
7 BY MR. MURRAY:
8 Q. You're not sure?
9 A. No, I couldn't say for sure if that was the home or not. It
10 was just a house.
11 Q. I see. When Mr. MacKay came back from going to this house,
12 at that point is when he went back across the park.
13 A. Yeh, I left and then he left, apparently.
14 Q. Oh, you did not see where he went after that.
15 A. No, I kept going. I kept -- I left. Then I left and apparently
16 he left.
17 Q. So no one was left with Sandy Seale at that point?
18 A. No.
19 MR. MURRAY:
20 I have no further questions.
21 MR. CHAIRMAN:
22 Mr. Elman.
23 MR. ELMAN:
24 No questions.
25 MR. CHAIRMAN:
Mr. Saunders.

DEBORAH M. TIMMINS, by Mr. Pink:

1 MR. SAUNDERS:
2 A few questions, My Lord.
3 MR. CHAIRMAN:
4 Okay, Mr. Pink.
5 BY MR. PINK:
6 Q. Mrs. MacKay -- Mrs. Timmons, the -- Your brother who was with
7 you, what's his name?
8 A. Steven.
9 Q. And where does he live now?
10 A. He lives on the Cabot Trail also.
11 Q. Pardon me?
12 A. He lives in -- down North in on the Cabot Trail.
13 Q. And your uncle who was present, what is his name?
14 A. Allan MacPherson. He lives in East Bay.
15 Q. And where is East Bay? That's in Cape Breton?
16 A. Yes, it is.
17 Q. And the statement that you gave, did you receive a copy of it?
18 Did the police give you a copy?
19 A. No, sir.
20 Q. Did you ask for a copy?
21 A. No.
22 Q. Did your brother or your uncle ask for a copy?
23 A. No.
24 Q. After you gave the statement to the police, did you ever see
25 it again?

1 A. No, sir. I never heard from nobody ever again.
2 Q. You never heard from anybody ever again.
3 A. No.
4 Q. The time of day that you were there to give the statement was
5 what?
6 A. It was in the morning because I was there before dinner so
7 I went in the morning.
8 Q. Did you have to miss school in order to go?
9 A. Yes. I didn't go to school the next day. I had been home sick
10 the day before.
11 Q. And you missed -- You didn't go back to school that day.
12 A. No.
13 Q. But it was your recollection it was on a school day.
14 A. Yes.
15 MR. PINK:
16 That's all.
17 MR. CHAIRMAN:
18 Counsel for the R.C.M.P.
19 MR. BISSELL:
20 No questions.
21 MR. CHAIRMAN:
22 Mr. Ross.
23 MR. ROSS:
24 Thank you, My Lord.
25

1 BY MR. ROSS:
2 Q. Mrs. Timmons, my name is Anthony Ross. I'm representing Oscar
3 Seale and the Black United Front. Be good enough to tell me,
4 please, around what time did you leave the dance that night?
5 A. Approximately around eleven thirty-four to twelve.
6 Q. I see, and what time were you supposed to catch this bus?
7 A. At twelve.
8 Q. And you had to, I take it, get enough time to get down to the
9 bus -- bus stop?
10 A. Yes, that's right.
11 Q. And the bus stop was on King's --
12 A. King's Road.
13 Q. King's Road at which one, at Crescent or Byng?
14 A. At the end of Crescent. I went right straight through to
15 the end of Crescent there, at Atlantic Springs right at the
16 corner there on King's Road.
17 Q. I see. Yes, and tell me you would have left you say around
18 what, eleven-thirty, quarter to twelve?
19 A. Yeh, I was running kind of late so probably, yeh.
20 Q. Probably which one?
21 A. Well, around -- I'd say closer to, like, quarter to, twenty to
22 twelve, quarter to twelve.
23 Q. I see. Were you concerned about catching the bus?
24 A. Yes. Very much so.
25 Q. Yeh, and you stopped in the park at any rate?

1 A. Yes, we stopped at the park bench just for like five minutes
2 or so. Not very long.
3 Q. Had you known Sandy Seale before this incident?
4 A. Not personally but I knew who he was, yes, because he went to
5 school with my older brother.
6 Q. What's your older brother's name?
7 A. Steven.
8 Q. Yes. He had been in school with Steven?
9 A. Yes.
10 Q. When you saw this person on the street and you go up close
11 enough, did you identify him definitely as Sandy Seale?
12 A. , I did.
13 Q. Did you look -- You knew at that time it was Sandy?
14 A. Yes. Yes.
15 Q. And when you spoke with him and he said, "No cops", did you
16 ask him why?
17 A. No, sir, I didn't. I kind of backed off. I didn't know what
18 to think.
19 Q. And along the route, after you left Sandy Seale -- I'm sorry,
20 before I get to that, did you know Maynard Chant?
21 A. Pardon me?
22 Q. Did you know Maynard Chant?
23 A. No.
24 Q. What about John Pratico? Did you know him?
25 A. No.

1 Q. I see. And how long would it have been after Mr. MacKay left
2 you around the time that you had this conversation with Sandy
3 Seale, and Mr. MacKay getting back to you? About how long
4 would that have been?
5 A. Oh, it was just seconds, like.
6 Q. A very, very short time.
7 A. A very, very short time, yes.
8 Q. And from there you left and went home.
9 A. Yes, I did.
10 Q. Now as far as this statement is concerned, you gave the police
11 a full and complete statement about what happened on the
12 street?
13 A. Yes, I did.
14 Q. Now your brother and uncle were present at that time?
15 A. Yes, they were.
16 Q. Had you discussed the statement with them subsequent to giving
17 it to the police?
18 A. No. Not really.
19 Q. You've never -- You never have spoken to your brother about
20 this case --
21 A. Well, my brother, he was home that night when I arrived home.
22 I didn't realize exactly how bad Sandy was hurt until the
23 next morning because I didn't know that's what was wrong with
24 him.
25 Q. What did you find out the next morning?

1 A. That he had been stabbed.
2 Q. I see. But I'm -- I'm speaking about when you went down to
3 the police station. I understand you gave a statement to
4 Detective MacIntyre.
5 A. Yes, I did.
6 Q. And he wrote this down?
7 A. Yes, he did.
8 Q. With your brother, Steven, present and your uncle, Allan, present?
9 A. Yes.
10 Q. And I'm asking you: After giving that statement, did you speak
11 to Allan about the statement?
12 A. No, I tried to forget it really.
13 Q. I see, what about Steven? Did he ever read it?
14 A. No.
15 Q. So is it fair to say that between the time of that statement
16 which would have been in June of 1971 and now, did you ever
17 discuss with anybody apart from the police the statement he
18 said, "No cops."?
19 A. Maybe casual contact or casual conversation but nothing, you
20 know, no, nothing major.
21 MR. ROSS:
22 Thank you very much, Mrs. Timmons. No more questions.
23 MR. CHAIRMAN:
24 Mr. Wildsmith.
25 MR. WILDSMITH:
No questions, My Lord.

MARVEL MATTSON, by Mr. Spicer

1 MR. CHAIRMAN:

2 That's all, thank you, Mrs. Timmons.

3 MR. SPICER:

4 Mr. Mattson

5 MARVEL MATTSON, being called and duly sworn, testified as follows:

6 BY MR. SPICER:

7 Q. What's your name, please, sir?

8 A. Marvel Mattson.

9 Q. Where do you reside?

10 A. Chester, Nova Scotia.

11 Q. In 1971, where did you reside?

12 A. We resided at 103 Byng Avenue, Sydney.

13 Q. Sydney?

14 A. Yes.

15 Q. Were you employed in 1971?

16 A. I was, yes.

17 Q. By whom?

18 A. By the Nova Scotia Tax Commission.

19 Q. I see, and what had been your employment prior to that time?

20 A. I went with the Nova Scotia Tax Commission in 1966. Prior

21 to that I was with the R.C.M.P.

22 Q. I see. In 1971, you resided on Byng Avenue?

23 A. I did, yes.

24 Q. All right, and if you could just turn around. Would this be

25 your house that's marked on the map, "red house, 103"?

MARVEL MATTSON, by Mr. Spicer

1 A. Yes, sir, that's correct.
2 Q. And were you in your house, Mr. Mattson, on the evening of
3 May 28th?
4 A. I was, yes.
5 Q. Can you tell us what if anything you saw or heard on that evening?
6 A. Well about ten minutes to twelve that night, I went upstairs to
7 go to bed and just as I got in my bedroom, I heard some talking
8 down -- outside downstairs.
9 Q. Is your bedroom on the side of the house facing Byng Avenue?
10 A. Yes, the bedroom faces Byng Avenue and it's on the second
11 floor.
12 And the talking came from the street below opposite the
13 veranda.
14 Q. Was the window open or closed?
15 A. The window was open.
16 Q. I see. What did you hear?
17 A. I heard someone say that some one is bleeding in the park.
18 Q. Some one's bleeding in the park.
19 A. Some one is bleeding in the park. And when I heard this, I
20 immediately called the Sydney City Police.
21 Q. Prior to doing that, did you go to the window, did you see
22 if you could see anybody?
23 A. I did, yes.
24 Q. All right.
25 A. And I couldn't see anybody because the veranda juts out over

1 so I couldn't see anybody and there's no light there.
2 Q. How much of the street can you see from the window? Can you
3 see the far side?
4 A. Yes. Yes, you can.
5 Q. To what extent then as you go off by there?
6 A. I think that from that window you could see just about from
7 the edge of the sidewalk on Byng Avenue -- on my side of the
8 street to, you know, the rest of the park on the other side.
9 Q. Okay. In any event, when you looked out, you couldn't see
10 anybody?
11 A. No. I could not. They were too close to the house.
12 Q. Okay. What did you do then?
13 A. I phoned the Sydney City Police and reported what I had heard.
14 Q. Do you know who you talked to of the Sydney City Police?
15 A. No, I don't, but I -- I suggested that it was probably something
16 serious and they should --
17 Q. What was their response?
18 A. -- look into it. Well they were going to attend to it immediately
19 Q. Did they indicate to you whether they'd received any other calls
20 at that point?
21 A. No, they did not.
22 Q. They did not, okay. What happened next?
23 A. I watched out the window and just about the time I finished the
24 call someone was out in the middle of the street in the lights
25 of some cars and he was showing his arm. And again the -- the

1 words came that somebody is bleeding in the park.
2 Q. Was the person who was standing in the middle of the street,
3 had he stopped a car at that point or?
4 A. Well, a car stopped in any event. Now --
5 Q. You didn't see whether or not he'd flagged it down?
6 A. No, no, whether he had flagged it down, I'm not too sure.
7 Q. No. Can you tell us from what direction the car was coming?
8 A. I think the car was coming from the direction of Bentinck Street
9 going towards George and he showed his arm and then he got in
10 the car and went in the direction of George Street. And
11 immediately he did that, I phoned again. The two phone calls
12 would just be a matter of a minute or so apart.
13 Q. Was the person who got in the car by himself?
14 A. I just saw one person get in the car. I don't know if there
15 was more than one or not.
16 Q. Could you see whether or not there was anybody other than the
17 driver already in the car?
18 A. No.
19 Q. You couldn't tell?
20 A. It was -- It's very dark there.
21 Q. Right. Could you tell what type of car it was?
22 A. No, I could not.
23 Q. Okay. So the car drives off towards George Street.
24 A. Yes.
25 Q. Okay, and what did you do then?

MARVEL MATTSON, by Mr. Spicer

1 A. I phoned the City Police again and they said somebody --
2 somebody in route and before I got off the phone, I saw
3 the flashing lights over in the direction of George Street
4 or the park somewhere.
5 Q. Are you able to be more specific as to where you saw the
6 flashing lights from?
7 A. I thought it was in the area of George and Crescent, in around
8 there somewhere, in that area.
9 Q. Do you know whether or not the person you spoke to the second
10 time you phoned the Sydney Police Station was the same person
11 you spoke to the first time?
12 A. No. No, I don't know for sure.
13 Q. You don't know.
14 A. No.
15 Q. Did you see any other vehicles arriving?
16 A. There was a -- there was a fair amount of traffic on Byng
17 Avenue that night. Cars were going and coming but nothing --
18 Q. Did you see an ambulance?
19 A. -- that attracted my attention, no.
20 Q. Did you see an ambulance at any point?
21 A. I think -- I took it that when I saw the lights of a couple
22 of vehicles that probably one was a police car and one was
23 the ambulance.
24 Q. Okay. Are you sure about that or are you just --
25 A. No, I'm not -- I'm not positive about that, no.

1 Q. And did that occur during the time you were still on the phone
2 the second time talking to the Police Department?
3 A. Yes, just as I -- Yeh, right about that time and then I kept
4 an eye on the situation a little bit longer and things seemed
5 to clear up and that was the end of it.
6 Q. Did you see anything further during the time that you kept
7 your eye on it?
8 A. No, no.
9 Q. Okay, I'm just going to draw your attention to page 171, if
10 I could, sir, of this volume, Volume 11. Do you recognize
11 that, Mr. Mattson?
12 A. I do, yes.
13 Q. Is that the statement that you gave to the Sydney Police on the
14 8th of June?
15 A. It is, yes, sir.
16 Q. I see. Did you in fact go to the Police Station to give that
17 statement?
18 A. I have been thinking about that since and I -- I'm not too
19 sure. I rather believe that I probably prepared it at my own
20 home and took it down to them.
21 Q. Prepared --
22 A. It looks like my -- looks like the type of statement that I
23 would prepare. It doesn't look like that of someone else's.
24 Q. When you say it looks like the type of statement you would
25 prepare, what do you mean by that?

1 A. Well, it's my words, you know, and just the way it's set out
2 there. I rather believe I prepared it myself.
3 Q. Prepared it yourself and then took it down and it was retyped
4 on the Sydney Police --
5 A. I may have typed it myself.
6 Q. On this particular -- On the Sydney Police Continuation Report
7 Sheet?
8 A. No, on my -- on my own paper.
9 Q. Do you have any recollection now if that's in fact what you did?
10 A. No, I don't, Not really, no.
11 Q. Do you have any recollection of being interviewed by the police
12 and giving the statement?
13 A. No, I don't. No. That's what makes me think that I probably
14 did it myself because I don't recall any kind of an interview
15 or -- so that's why I think that I prepared it myself and
16 passed it to them.
17 Q. Do you have any idea who you might have passed it to?
18 A. I rather think it was probably Detective MacIntyre.
19 Q. Did you know Detective MacIntyre?
20 A. Oh, yes.
21 Q. Yes, and how was it that you knew him?
22 A. Well, I -- I've known him for some time. I was in the R.C.M.P.
23 and also I was on the City Police Commission so -- so I knew
24 a great many of the members of the Sydney Police force.
25 Q. I see. You have testimony at the trial of Junior Marshall.

MARVEL MATTSON, by Mr. Spicer

A. At Supreme Court, yes.

Q. Were you subpoenaed to give testimony at the Preliminary?

A. No, I was not, no.

Q. Were you at any time talked to by any of the lawyers acting for Mr. Marshall, Mr. Khattar or Mr. Rosenblum?

A. No, I was not.

Q. Were you talked to by the Crown Prosecutor in advance of giving testimony?

A. Yes, I think I was?

1 Q. Do you remember when that would have been?
2 A. Sometime prior to Supreme Court, and --
3 Q. Sorry, go ahead.
4 A. Which would be in 1971.
5 Q. Right.
6 A. I think that would be the Fall hearing.
7 Q. Do you much about that -- that much or anything about that
8 interview?
9 A. No, I think it was a very short interview and we just went
10 over the statement and that was it.
11 Q. I see.
12 MR. SPICER:
13 Thank you.
14 MR. CHAIRMAN:
15 Ms. Edwardh.
16 MS. EDWARDH:
17 Thank you very much, My Lord.
18 BY MS. EDWARDH:
19 Q. Mr. Mattson, just a couple of questions. I take it you were
20 at the point of retiring before you identified voices from
21 the outside -- coming from the outside area?
22 A. I was, yes.
23 Q. And can you indicate whether not only the content of the
24 words, but there was something in the tone of the voice that
25 drew you to the window? Did the voices sound agitated?

1 A. That's right. That's right. I did hear some talking, but
2 these particular words, "There's somebody bleeding in the
3 park", is what attracted my attention.
4 Q. And in addition to the words, would the quality of the voice
5 have indicated some urgency?
6 A. I would say it did, yes.
7 Q. And when you got up and looked out the window, I take it you
8 were aware that there were at least two people below the
9 veranda and maybe more?
10 A. Yes, at least two because somebody was talking to somebody
11 else.
12 Q. And it might be more?
13 A. Yes, that's possible.
14 Q. And then at some point a -- I take it your assumption is one
15 of those individuals may have flagged a car down, but in any
16 event, the car stopped and that individual went over to the
17 car?
18 A. Yes.
19 Q. Did they go to the driver's side of the vehicle or to the
20 passenger's side?
21 A. Well, I could see him, so he would be somewhere between the
22 car and the house.
23 Q. And your recollection of the direction the vehicle was going?
24 A. I kind of think the car was heading in the direction of
25 George Street.

MARVEL MATTSON, by Ms. Edwardh

1 Q. So then you would be looking at the --
2 A. I would be looking at the -- at the driver's side.
3 Q. And I take it, the only thing that you recall is this person
4 made a movement and seemed to show a part of their arm?
5 A. That's right, yes.
6 Q. Do you recall which part of their arm they were showing the
7 driver?
8 A. The -- Oh, the forearm.
9 Q. And could you see any blood or any apparent injury?
10 A. No, I wasn't close enough for that.
11 Q. And do you recall any words that that person spoke at that
12 time?
13 A. The only words I heard again was, "Somebody is bleeding in
14 the park".
15 Q. And did you -- Was that the same voice?
16 A. Oh --
17 Q. That you had heard earlier in the conversation?
18 A. Yes, it was.
19 Q. And it was the same agitation or --
20 A. The same tone.
21 Q. The same tone?
22 A. The same tone.
23 Q. And I take it that person then got into the vehicle directly?
24 A. Yes, he did or whoever it was did.
25 Q. I'm sorry?

1 A. I said, I said, "he did", but I said, "somebody did".
2 Q. And I take it you don't recall whether other individuals as
3 well got into the car at that time?
4 A. No, I'm not sure. It's possible, but I'm not sure. They
5 could have gotten in the other side because the street
6 is very dark. I normally keep my light on or I kept my
7 light on outside the door but I had shut it off when I went
8 upstairs.
9 MS. EDWARDH:
10 Those are my questions. Thank you.
11 MR. CHAIRMAN:
12 Mr. Pugsley.
13 MR. PUGSLEY:
14 No questions, My Lord. Thank you.
15 MR. CHAIRMAN:
16 Mr. Murray.
17 MR. MURRAY:
18 No, no questions.
19 MR. CHAIRMAN:
20 Mr. Elman.
21 MR. ELMAN:
22 No, questions, My Lord.
23 MR. CHAIRMAN:
24 Mr. Saunders.
25 MR. SAUNDERS:
No questions, My Lord.

1 MR. CHAIRMAN:
2 Counsel of the R.C.M.P.
3 (NO RESPONSE)
4 MR. CHAIRMAN:
5 MR. Ross.
6 BY MR. ROSS:
7 Q. Mr. Mattson, as far as timing is concerned, can you be sure
8 that these telephone calls would have occurred around ten
9 minutes before mid-night?
10 A. That's my recollection, yes.
11 Q. And upon what is that recollection based please.
12 A. That is in accordance with the statement that I have, that
13 it's ten minutes to twelve.
14 Q. Yes, but I'm asking about your recollection.
15 A. Yes.
16 Q. Did you look at the news perhaps?
17 A. It -- I had looked at the news prior to going to bed, yes.
18 No, just a minute now. That's my practice to look at the news
19 before I go to bed and it still is.
20 Q. Yes, and which news did you look at? Do you recall if it
21 was the eleven o'clock or the mid-night news that you would
22 have seen?
23 A. I would say it would be the eleven o'clock news.
24 Q. Yes, you see the purpose is that as I look at the police
25 records they have indicated that your phone call came in at

1 ten minutes past twelve.
2 A. I see.
3 Q. Could you perhaps comment on that?
4 A. No, I can't. I thought it was before mid-night.
5 Q. And as far as you were concerned you called before mid-night?
6 A. Yes, it was right around that time.
7 Q. And tell me, you were in the R.C.M.P. up until 1966, was it?
8 A. Yes, I was in until 1966.
9 Q. Were you stationed in the Sydney area?
10 A. I was, yes.
11 Q. And perhaps you'd be good enough -- This has nothing to do
12 particularly with the circumstances of the death of Sandy
13 Seale, but there's some broader issues that perhaps you might
14 be able to enlighten us on. Now when you were in the R.C.M.P.,
15 were you aware of any problems or complaints by black people
16 that they were not being treated the same as other people, the
17 same as white people when complaints were made to the R.C.M.P.
18 or the Police in general?
19 A. No, I did not. Mind you, I was only here a short time in the
20 Police. I came to Sydney in September of '65, and I left the--
21 I went on pension in the end of February, '66, so I wasn't
22 here very long in that capacity.
23 Q. Just a matter of four or five months. What rank were you?
24 A. I was a Sergeant and I was the Section N.C.O. for Cape Breton
25 Island.

1 Q. I see. I take it that in that position you would not have
2 had much dealing with the general public on a day-to-day
3 basis. Is that a fair statement to make?
4 A. That would be a fair statement, yes.
5 MR. ROSS:
6 Thank you very kindly, sir. No more questions.
7 MR. CHAIRMAN:
8 Mr. Wildsmith.
9 MR. WILDSMITH:
10 Thank you, My Lord.
11 BY MR. WILDSMITH:
12 Q. Mr. Mattson, I'm interested in the park that you live across
13 the street from, Wentworth Park?
14 A. Yes.
15 Q. I take it you came to Cape Breton in 1965. Did you move into
16 that house that's indicated on the map in 1965?
17 A. No, we lived on Cabot Street and we moved in the 103 Byng
18 Avenue house in '67.
19 Q. In '67, so you lived here about four years before this
20 particualr evening?
21 A. Yes, sir, that's right.
22 Q. And how long after this particular evening did you live there?
23 A. We lived there until '76.
24 Q. Okay. Are you aware of problems in that park?
25 A. Well, let's see now. I don't think any more than any other

1 park, you know. There's always a few things happening in a
2 park.
3 Q. A few things of what nature?
4 A. Oh, you know, drinking, a few scraps. and so on, that kind
5 of thing.
6 Q. Was it a place where people would hang around?
7 A. Oh, yes.
8 Q. Hang around after dark?
9 A. Well, no, there was a lot of activity in the park, you know.
10 It's a band shell and picnic area and so you had families
11 bringing their children there, you had school teachers
12 bringing their class there and --
13 Q. Yes.
14 A. --then there's be the Sunday -- I think Sunday night band
15 shell concert.
16 Q. All of those would be by and large day time activities or
17 various public activities?
18 A. Both, both day time and evening.
19 Q. Okay.
20 A. So -- And these -- But for the most part no real problems,
21 no.
22 Q. And people would hang around in the park if I can use that
23 expression, after dark, I take it?
24 A. Oh, yes. Yes.
25 Q. And you're saying that that byand large did not lead to

1 any problems?
2 A. No. It never caused a problem to us and we lived right
3 there, you know.
4 Q. Can you tell me whether Indians were amongst the people who
5 would hang around in the park after dark?
6 A. I heard that earlier but I wasn't aware of it, no.
7 Q. Did you ever see Indians in the park or are you saying it
8 wasn't any more than any other racial group?
9 A. I don't know that there were, no.
10 Q. Okay. Perhaps you could enlighten me on something, it's
11 just a little clipping from The Cape Breton Post, I don't
12 think we need to mark it as an Exhibit or anything, but there's
13 a bit of information in here which I'd like your comments on.
14 I'm reading from The Cape Breton Post of June the 3rd, 1971,
15 which would be about six days or so after this particular
16 incident and it appears on page three in The Cape Breton Post.
17 It says:
18 "Wentworth Park hours are posted".
19 And it goes on to say:
20 "The Sydney Recreation and Parks
Commission announced Wednesday
21 that Wentworth Park in the City's
south end would be closed nightly
22 from eleven p.m. to seven a.m."
23 And it goes on to give a quote from the Recreation Director
24 Jim Fox who said:
25 "The park was never intended to be an

1 all night park. The park is
2 for the enjoyment of our
citizens and is to be used,
3 not abused..."

And it goes on to say that:

4 "The decision to close the
5 park from eleven to seven
had been made before the
6 knife slaying of Sandy
Seale".

7 Do you know any reason why the park --

8 A. Had been made? Pardon me? Had been made before?

9 Q. Yes, it says he said the decision to close the park from
10 eleven p.m. to seven a.m. was made before the knife
11 slaying of Sandy Seale. I'm wondering if you think there
12 were any reason to close the park if there were no problems.

13 A. Well, we had no problems where we lived. There apparently
14 were some problems. I can't recall anything that would
15 be too significant any more than any other park.

16 Q. Okay, and just one other little piece of detail about this
17 park, the map that we're looking at there, Exhibit 22, doesn't
18 quite show this, but that park, in fact, continues to the
19 left of the map that's there beside you with a fairly large
20 pond, at least as large as the one that's shown on the
21 left of that map?

22 A. Yes.

23 Q. And it empties then into Sydney Harbour from there, I take it?

24 A. Yes, it does.

25

1 Q. And the other section of the park that's not shown on this
2 map is pretty much as large as the piece that is shown?
3 A. I would say pretty close, yes.
4 Q. And Wentworth Creek that goes through there continues upstream?
5 A. It goes right on through to Kings Road.
6 Q. It goes up into the area of Hardwood Hill?
7 A. Pardon me?
8 Q. It goes up into the area of Hardwood Hill?
9 A. Oh, yes. It comes from that direction and empties into
10 Kings Road, yeh.
11 MR. WILDSMITH:
12 Thank you. That's all the questions I have.
13 MR. CHAIRMAN:
14 Mr. Spicer.
15 MR. SPICER:
16 No questions, My Lord.
17 MR. CHAIRMAN:
18 That's all. Thank you.
19
20 (WITNESS WITHDREW)
21
22 MR. CHAIRMAN:
23 Do you have another witness?
24 MR. SPICER:
25 No, My Lord. Those are all the witnesses for today.

1 MR. CHAIRMAN:

2 We'll rise until nine-thirty.

3

4

5

6 INQUIRY ADJOURNED AT 4:23 o'clock in the afternoon on the 14th
7 day of September, A.D., 1987.

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COURT REPORTER'S CERTIFICATE

I, Judith M. Robson, an Official Court Reporter, do certify that the transcript of evidence hereto annexed is a true and accurate transcript of the Royal Commission on the Donald Marshall, Jr., Prosecution as held on the 14th day of September, A.D., 1987, at Sydney, in the County of Cape Breton, Province of Nova Scotia, taken by way of recording and reduced to typewritten copy.

Judith M. Robson
Official Court Reporter
Registered Professional Reporter

Sydney Discovery Services
September 14, 1987