

1 EUGENE COLE, duly called and sworn, testified as follows:
2

3 EXHIBIT 96 - COPIES OF PAGES OF SERGEANT COLE'S NOTEBOOK.
4

5 EXAMINATION BY MR. MACDONALD
6

7 Q Your name is Eugene Cole?

8 A Yes, sir, it is.

9 Q You are a member of the RCMP?

10 A Yes, sir, I am.

11 Q What is your present rank?

12 A Sergeant.

13 Q Where are you presently stationed?

14 A Pictou, Nova Scotia.

15 Q How long have you been in the RCMP?

16 A 26 years in April, sir.

17 Q If you would just briefly, Sergeant, tell us your career with
18 the department, with the force?

19 A I joined the force in 1962 and after training, I was stationed
20 for a short period of time in Halifax, transferred from Halifax
21 to Liverpool, Nova Scotia and served there on general
22 detachment duties and highway patrol duties. I transferred
23 from there to Chester, Nova Scotia and served there on
24 highway patrol duties and then general detachment duties.
25 In 1973, I transferred from there to Glace Bay detachment

1 and I served there until 1975, when I transferred from there
2 to Sydney, general investigation section, and I served there
3 until 1980, when I transferred from there to NCO in charge of
4 Pictou detachment.

5 Q. In 1975 when you transferred to Sydney GIS, who was in that
6 division, can you recall?

7 A. In 1975 when I transferred to Sydney GIS, there were three
8 of us, I guess, at the time, I think Sergeant Brooks, Constable
9 Eagen, and myself in the general investigation section itself.

10 Q. Would there be someone of that group, one person in charge?

11 A. At that time, Sergeant Brooks was in charge.

12 Q. Was your practice at that time, and perhaps even today, to
13 keep a notebook, is it?

14 A. Yes, sir.

15 Q. And to record in that notebook what sort of things?

16 A. Daily occurrences, things that I do on a day-to-day basis.
17 Things that come up throughout the day if I'm involved in a
18 particularly lengthy investigation, a chronological order of
19 things that occur throughout that investigation for court
20 purposes.

21 Q. You were asked to review your notes or files, was it, to
22 determine if you had any connection at all with the Donald
23 Marshall, Jr. matter?

24 A. Yes, sir, I was on a couple of occasions.
25

1 Q. And you were able to find some notes in your notebooks
2 concerning this matter, is that correct?

3 A. Yes, sir, I did.

4 Q. [To Mr. Chairman] I've introduced as Exhibit 96, My Lord,
5 copies of the relevant pages from Sergeant Cole's notebook.
6 [To Sergeant Cole] You have the original with you, do you
7 not?

8 A. Yes, I have them in my pocket here, sir.

9 Q. Do you have any recollection of the events recorded in these
10 notebooks independent of the notes?

11 A. Not other than what I have written in the notes, sir. As a
12 matter of fact when I was contacted initially on this, I didn't
13 recall being involved at all and felt that I had no notes on it
14 and wasn't until after, I think, about the third try, by
15 somebody, that I did look adamantly for the notes that I had
16 misplaced in a box in the basement after being moved and
17 went through them and determined that, in fact, I had made
18 some entries in my notebook.

19 Q. Well, let's look at the notes and perhaps you can get some,
20 any information from them. The first page are notes of
21 various items and I think there's something relevant under
22 the date September 29th of 1975, is that correct?

23 A. Yes, sir.

24 Q. Just read that into the record what it says that's relevant to
25

1 this particular matter.

2 A. It says:

3 Deputy Chief, Sydney CP interviewed and
4 advised that Roy Ebsary was given a lie detector
5 test and found to be cleared and not involved.
6 Inquiries conducted in the Seale murder case
7 five years old. Marshall presently serving time
8 for this murder.

9 Q. When were you transferred to GIS in Sydney in 1975, what
10 month, do you recall?

11 A. I believe it was in, the usual time at that time to be
12 transferred was around the end of June. I think it would be
13 around that period of time but I just got there and then I got
14 transferred temporarily for the summer to the Halifax area to
15 assist on a situation that was going on here and I was here
16 until September. So I didn't get back to Sydney GIS until
17 some time that fall.

18 Q. So this September 29, 1975 could have been virtually your
19 first, close to your first involvement in GIS in Sydney?

20 A. That's possible. Now I don't recall and I didn't...I would say it
21 was late August or September when I got back there.

22 Q. So it wasn't long after you got there, anyway.

23 A. No, it wasn't.

24 Q. Do you know who the deputy chief of the Sydney City Police
25 was?

A. Yes, sir.

- 1 Q. Who was that?
- 2 A. Deputy Chief MacIntyre.
- 3 Q. For some reason, you were interviewing him concerning Roy
- 4 Ebsary and the fact that he had passed a lie detector test.
- 5 A. I use the word "interview". I may have been talking to him, I
- 6 don't know.
- 7 Q. Well, it was significant enough to make a note in your
- 8 notebook.
- 9 A. Yes.
- 10 Q. Can I assume from that that it, you were directed from
- 11 somebody in GIS in Sydney to go do this. You just didn't do it
- 12 on your own out of the blue.
- 13 A. No, I don't suppose I did, sir.
- 14 Q. You have no independent recollection of the events.
- 15 A. I have no idea who may have asked me to do that or why I
- 16 was interviewing or talking to the chief about it.
- 17 Q. Were you present yesterday during the evidence of Corporal
- 18 Green?
- 19 A. Yes, sir, I was.
- 20 Q. My understanding of his evidence is that in late '74, he
- 21 brought to the attention of GIS the fact that Donna Ebsary
- 22 related to him having seen her father wash blood from a
- 23 knife on the night of the stabbing.
- 24 A. Yes, sir.
- 25

1 Q. Had you ever heard anything like that before?

2 A. Not that I recall, sir. That had been a year before I got there.

3 Q. Okay, or nine months, approximately.

4 A. Well...

5 Q. It could be a year.

6 A. Whatever.

7 Q. Okay. Let's go on to the next note then on page two, I believe.

8 MR. CHAIRMAN

9 Before you leave that, Mr. MacDonald, do you have any
10 recollection of interviewing Deputy Chief MacIntyre?

11 SERGEANT COLE

12 A. I don't recall talking to him or being down there at all, sir,
13 other than what's in my notes here.

14 BY MR. MACDONALD

15 Q. Under the next page then, Sergeant, what is on that page of
16 relevance?

17 A. On the first of October, "Interview and inquire into Seale
18 murder 1971 vintage re Inquiry re Ebsary." Also it goes on
19 to say other things that I did that day until six p.m. that day
20 and it goes into four or five different things that I did that
21 day.

22 Q. So the notation "9 a.m. - 12 N", is that 12 Noon?

23 A. Yes, sir.

24 Q. So on the morning of October 1st, you were doing various
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1 things including "Interview and inquire into Seale murder in
2 1971 re Inquiry re Ebsary." What do you take that note to
3 mean?

4 A. I obviously talked to somebody about the Seale murder and
5 also about calculators that were in assistance to Ingonish
6 detachment.

7 Q. Do you have any recollection of who you might have
8 interviewed?

9 A. No, sir. It says that I was down at the, patrolled downtown
10 Sydney. So I don't know.

11 Q. Was it your practice in 1971 or was it a requirement that
12 when you carried out an inquiry or did something on
13 instructions from your superiors that you would report back
14 to them, you'd file reports?

15 A. Yes, sir, if somebody asked you to do an investigation into
16 something or whatever, then you would be required to put in
17 a report and the report would be submitted through channels
18 to headquarters.

19 Q. Would there have been a file in the GIS division in Sydney
20 concerning Roy Ebsary or Donald Marshall, Jr. on the Seale
21 stabbing?

22 A. Not that I recall.

23 Q. We are aware that a report was prepared by Inspector
24 Marshall in 1971.
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A. Yes, sir.

Q. A copy of which, I believe, went to Sydney. Are you aware of that?

A. I don't recall ever seeing that, sir.

Q. If such a thing had occurred, would that not have been filed in a file under that name in Sydney?

A. Well, it might very well be, sir. I don't recall ever seeing a file on this in Sydney GIS office.

Q. Okay, let's go on to the last page then of Exhibit 96, Sergeant. What is on that page?

A. "9 a.m. - 10 Message to Montreal. 10 a.m. Read Ebsary file re Seale murder." Also, "Read a report from Port Hawkesbury re Nova Scotia Steam failure."

Q. Now where would those files have been located?

A. It must have been at the Sydney City Police.

Q. Why do you say that?

A. Well, I say that I received information here further on "Re calculators theft from Ingonish from the Sydney City Police." So I obviously must have been there.

Q. You take it from reading the note that the file you reviewed was in the Sydney City Police protection.

A. I assume it was. I don't recall reading it.

Q. Sergeant MacIntyre has testified before this Commission that someone attended at his office one day and asked to review

1 the files and was given the entire City police files concerning
2 Donald Marshall, Jr. and had the opportunity to go through
3 them. I assume that was you. Do you recall actually sitting
4 down in the Sydney City Police Department and reviewing
5 files?

6 A. No, sir, I don't.

7 Q. Am I correct then in saying that your only recollection and
8 the only way you can assist this Commission is what's written
9 in these notes.

10 A. The only thing that I recall is what is written here, sir, in the
11 notes and I can only say that from the notes it appears that I
12 was doing several things on the days that these things were
13 going on and that may be the reason for the lack of recall.
14 There were, just to clarify that, there were three of us. One
15 person, I suppose, administratively in charge of the unit, and
16 two to do the other detachments on Cape Breton Island.

17 Q. You would only do what you were instructed to do, though, by
18 Sergeant, is it Brooks?

19 A. Yes, sir.

20 Q. So whatever you did, it was on the instructions you received
21 from the man in charge of GIS.

22 A. Either he or the OC of the subdivision, I would think.

23 Q. Where is Sergeant Brooks now, is he still around?

24 A. Yes, I think he's in Mississauga, Ontario.
25

1 MR. PUGSLEY

2 Those are all the questions I have.

3
4 EXAMINATION BY MR. RUBY

5 Q. You're quite a mystery to me and I'm not sure I'm going to be
6 able to do any better in clearing up the mystery than my
7 colleague did, but I take it that you're not sure what you were
8 doing at this point in time, in connection with these files.

9 A. I don't recall reading the file, sir, no.

10 Q. You don't know what you were doing there.

11 A. I didn't recall even having been involved in this thing to the
12 point where I had made notes on it and it wasn't until after
13 about the third inquiry was made that I dug into my
14 notebooks and ascertained that I had, in fact, been involved
15 in it, to the point where I made these notes.

16 Q. Do you know if you ever made a report, or was the matter not
17 considered sufficiently substantial that it would not...

18 A. I don't recall making...

19 Q. Require one?

20 A. I don't recall ever making any report on this thing, sir.

21 Q. So it may well have been that your superior and yourself at
22 the time didn't think this was a tremendously serious matter
23 at all.

24 A. Well, it may have also been at the time that since I was kind
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1 of the new boy on campus there that they decided to tell me
2 to go read a serious murder file and do it when I had time.
3 And that was the general case on these general investigations
4 sections when a new person came to the unit, they wanted
5 them to read things that were of a serious nature that they
6 would be investigating from time to time, familiarize
7 themselves with what work they would be doing. Because I
8 came from a general investigation section and had no
9 particular serious investigational prowess at the time.

10 Q. We've heard also that the Attorney General's office put the
11 youngest guy on the ladder in charge of the case on the
12 appeal.

13 A. Well, I don't know what they do, sir.

14 Q. Did the same thing you did. Do you have any idea if
15 anything...

16 MR. PRINGLE

17 I didn't hear the last statement.

18 MR. RUBY

19 They did the same thing you did.

20 MR. PRINGLE

21 Well, that's not quite fair because it's his testimony that he doesn't
22 recall anything but those notes. I mean it's more an editorial
23 comment.

24 MR. RUBY

25

1 I'll try to avoid repeating them.

2 BY MR. RUBY

3 Q. At the end of the day, you have no idea what, if anything,
4 happened as a result of your work.

5 A. Not after 12 years, sir, no.

6 Q. Okay.

7 A. I suppose I did at the time.

8 Q. Assume for a moment that, and it may not be the case, but
9 assume for the purposes of answering this question that
10 information had come to the attention of your superiors that a
11 woman was coming forward and saying that she had personal
12 knowledge that Marshall was innocent and somebody else
13 was guilty, namely Ebsary, and that you were the detail to try
14 and determine whether this was true or not. Would you
15 agree with me that this does not appear to be an adequate
16 way of dealing with that problem?

17 A. Had I been there in '74 and somebody said that to me, I
18 imagine that the NCO that was in the charge of the section at
19 that time would have detailed somebody to investigate that
20 and would have demanded a very concise report.

21 Q. I agree. Assuming it's unlikely, but for the purposes of my
22 question, assume it's not so. Presume that that really was the
23 task at hand.

24 MR. PRINGLE

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1 I'd just like to put an objection to the purely hypothetical question
2 in light of the fact that this witness has no recall.

3 MR. CHAIRMAN

4 It's hypothetical in one sense but Mr. Ruby is simply inquiring
5 and I think it is relevant as to what his practice would be under
6 this hypothetical circumstance.

7 MR. PRINGLE

8 Thank you, My Lord.

9 MR. CHAIRMAN

10 And treat it as such.

11 BY MR. RUBY

12 Q It may not have been you doing this but somebody did this
13 and I'm saying assuming for a moment that that was the task
14 at hand, do you agree with me that that would have been
15 inadequate?

16 A. What would have been inadequate, sir?

17 Q To go down and read the files for a few hours?

18 A. Definitely.

19 MR. PRINGLE

20 I would think if someone is putting a hypothetic question, you put
21 the premises to him and we don't have any premise, just one basic
22 point and then the answer. Why don't you put the premises to
23 him about it, assuming you got this, assuming he got those
24 instructions and so on, and make it complete?
25

1 MR. CHAIRMAN

2 If you would like to put the premise over again so I could follow
3 it.

4 BY MR. RUBY

5 Q I would like to assume for the purposes of answering my
6 question that the task at hand, although it's not identified in
7 your notes, was to investigate information that had come to
8 the attention of your superiors that someone had firsthand
9 knowledge that not Mr. Marshall but someone named Ebsary
10 had commented this particular murder, Marshall being then
11 serving life in prison. That's the factual foundation I want
12 you to assume. Assume that that was your task, though I
13 know you don't remember. Would you agree with me that if
14 that was the task that this is an inadequate job?

15 A. If that had been the task, yes.

16 Q. That's what I thought. [To Mr. Pringle] Is that satisfactory to
17 you?

18 MR. PRINGLE

19 Well, no, I mean I put my objection on the record but...

20 MR. RUBY

21 Well, perhaps I'll be further enlightened when you cross-examine.

22 MR. CHAIRMAN

23 Mr. Pugsley?

24 MR. PUGLSEY

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No questions.

MR. MURRAY

No questions.

MR. BARRETT

No questions.

MR. SAUNDERS

No questions, My Lord.

MR. ROSS

No questions, My Lord.

MR. RUBY

Your turn.

MR. PRINGLE

No, I don't think I'll further bother the Commission with questions on this particular witness.

MR. CHAIRMAN

Mr. MacDonald?

MR. MACDONALD

No, My Lord, nothing.

10:50 INQUIRY RECESSED.

INQUIRY RESUMES - 11:15 a.m.MR. PUGSLEY

1 My Lord, there's a question I neglected to put to the last
2 witness. I would ask leave to have recalled so I could put the
3 question to him. I have spoken to my friends, Mr. Bissell and
4 Mr. Pringle.

MR. CHAIRMAN

5 Fine.

MR. PUGSLEY

6 And alerted them to the nature of the question.

MR. CHAIRMAN

7 Fine. Mr. Cole.

8 MR. EUGENE COLE, recalled and previously sworn, testified as
9 follows:
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EXAMINATION BY MR. PUGSLEY

11 Q. Mr. Cole, it's my instruction that in 1982 after the
12 reinvestigation started by the RCM Police under Sergeant
13 Wheaton that you were on the Myra River during vacation
14 period with Sergeant Brooks who had been your superior at
15 GIS in Sydney in '75 and that you had a discussion with him
16 concerning the nature of your review in 1975 that you spoke
17 about earlier and that you discussed the nature of the review
18 with him and indicated to him that you were satisfied that
19 MacIntyre had not been guilty of any mistakes in his initial
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