

*Was taken for to
offence - but never went
because he is settled*

Noted 28.8.03 at Perth JMCQ

PRECOGNITION

of

JAMES ALEXANDER MACKAY,
QPM, 57 years, Ex Deputy Chief
Constable, Tayside Police

STATES: I retired from Tayside Police after 36 years service on 2nd March 2001. During the latter years of my service and as a senior officer I was responsible for carrying out a number of enquiries both internal and external involving the police service. On a number of these enquiries I was assisted by Detective Chief Superintendent Scott Robertson also of Tayside Police and I found that because of our previous experiences together we worked well as a team.

On Friday 23rd June 2000 following consultations between Mr William Rae then the President of ACPOS and Tayside Police I was appointed to make enquiry into the fingerprint identifications by SCRO relative to the murder

of Marion Ross in Kilmarnock in January 1997. I was aware that David Asbury had been convicted of the murder in June 1997 and had been sentenced to life imprisonment. I was also aware that Shirley McKie had undergone trial on a charge of perjury and had been unanimously found "Not Guilty" of the charge. Moreover on 22nd August 2000 Mr Asbury had been granted interim liberation pending an Appeal founded on the doubts regarding the fingerprint evidence in his case.

I received the following remit from Mr William Rae:-
"To conduct an investigation into all of the circumstances which resulted in the identifications by the Fingerprint Bureau of SCRO in the murder of Marion Ross in Kilmarnock in January 1997. In particular, the difference in opinions of SCRO fingerprint experts and the experts recently consulted by Mr William Taylor, HMCIC for Scotland".

On Thursday 7th September 2000 I received further instructions from Mr Gilchrist, Regional Procurator Fiscal at Paisley which by letter of 14th September 2000 extended my remit to include "An investigation into the recovery and subsequent misidentification of a fingerprint referred to as 'Q12'" which had apparently been found on a Marks & Spencer tin box from the home of David Asbury and identified by SCRO experts as being that of the deceased Marion Ross.

I was made aware of the history of Shirley McKie's involvement in the murder enquiry and I was aware of the media interest including a number of television programmes (Front Line Scotland) and that HMCIC for Scotland Mr William Taylor had commissioned fingerprints experts from Norway and Holland to re-examine the fingerprint evidence and to prepare Reports and that this had resulted in these experts concluding that the mark found at the locus of the murder was definitely not that of Shirley McKie.

I was also instructed that as the enquiry progressed that I should consult with Mr Rac and in addition I was made aware that Mr William Gilchrist the Regional Procurator Fiscal at Paisley had been appointed to deal with the criminal allegations surrounding this matter and indeed we liaised with him and were directed by him on occasions during the enquiry.

Scott Robertson, Detective Chief Superintendent of Tayside Police was appointed to the enquiry team as my Deputy. On 3rd July 2000 a full enquiry team (about 20 Detective Officers in all) was established and thereafter we worked out of Auchterarder Police Station where we had accommodation made available to us for our exclusive use. We also had on hand the Holmes 2 computer facility to assist us in the enquiry. To give some indication as to the extent of the work carried out I can state that:-

395 Actions were Raised;

301 Witness Statements were noted;

795 Documents were recovered; and
339 Productions seized.

Although not strictly part of the remit I considered it only proper and the right thing to do to liaise with the McKie family and Shirley McKie herself.

It should be noted that at the outset no member of my investigation team had had any previous dealings directly or indirectly with the matters being enquired into.

It should also be noted that on 20th October 2000 copies of the final Report were submitted to Mr William Gilchrist the Regional Procurator Fiscal at Paisley; Mr William Rae the then President of ACPOS and Mr John Duncan, Deputy Chief Constable of Strathclyde Police.

At the outset the general thrust of the enquiry was that we contacted all the fingerprint experts both in SCRO and

outwith SCRO who had had any dealings at all in the enquiry/judicial Court process. We also visited the Procurator Fiscal Office's at Kilmarnock and recovered the original Productions including the bathroom door facing from the house of the deceased Marion Ross (and from which the fingerprint mark claimed to be that of Shirley McKie had been found and lifted), and all Documentary Productions. It is fair to say that during our whole enquiry we very rarely encountered any obstruction or lack of co-operation. We did interview or attempt to interview the four SCRO experts (McPherson, McBride, Stewart and McKenna) but they each turned up for interview represented by their solicitors. They were each interviewed under caution and under tape recorded conditions and their response throughout, almost without exception "No comment".

Enquiries revealed that it was the expert Hugh McPherson in SCRO who was originally responsible for identifying the mark from the door facing as belonging to Shirley

McKie. This comparison had been carried out for elimination purposes (enquiries revealed that it was the same Hugh McPherson who had been involved in identifying Shirley McKie's (formerly Cardwell) fingerprint on the outside of a polythene bag containing the body of a deceased baby some four years earlier. On that occasion it was subsequently ascertained that the protective rubber gloves worn by Miss McKie (Cardwell) had been so fine that her fingerprint had been transferred to the polythene bag through the protective gloves. As a result of that case officers were thereafter instructed to "double glove" before handling Productions.)

Following on the initial "identification" by McPherson the mark and the elimination prints were examined by Alistair Geddes, another (but subordinate) expert in SCRO who on examining the mark and the elimination prints indicated that he could find only 10 points in agreement. Although the four "experts" refused to give evidence or information to my enquiry team it was

possible by examining records and documentary evidence at SCRO to conclude that the mark and the elims were subsequently passed to Fiona McBride, Anthony McKenna and Charlie Stewart who allegedly each found 16 points and were willing to sign/initial the various pieces of documentation and subsequent reports supporting Hugh McPherson's initial identification. It is worthy of note that Alistair Geddes had 12 years fingerprint experience and had been an "expert" for a number of years. Apparently he told McPherson that he was happy with 10 points but could not find 16 points and therefore McPherson should get someone else to corroborate his identification. Geddes was never a witness in either case.

It was some time after the four experts had committed themselves to the identification that Shirley McKie's continuing protests led to there being a "blind testing" of the "identification". For this test a comparator was used and this was all done within SCRO with SCRO trained

personnel "Supervising" the test. The procedure is apparently, that the elimination print of the left thumb of Shirley McKie and the mark from the doorframe at the locus are put on a comparator screen (i.e. side by side) and thereafter a number of the experts from SCRO are asked one by one (and in isolation) to view the comparator screen and mark up the points of concurrence. After each expert marks up the points of concurrence the screens should be cleared for the next witness to view and mark up whatever points he or she can find in agreement. However this was apparently not done during the blind testing of the (Shirley McKie Y7) print and there were indications that when the "independent" experts came in to validate and double check the identification the 16 points were still marked on the charts. It may also have been clear to those coming in to check the identification that the original identification had already been made by Hugh McPherson backed by other three experienced experts.

On Monday 17th February 1997 Shirley had an interview with John Thomson, Superintendent (possibly Sub-Divisional Commander at Kilmarnock) and Shirley McKie had requested that the mark on the doorframe be re-photographed and the elimination prints retaken for a double check of the "identification". She also apparently asked if she could be present at SCRO when the comparison between the mark alleged to be hers and her elimination print was to be made. The witness Ferry who was the head of SCRO at that time told Superintendent Thomson that it would be **inappropriate** for Shirley McKie to be present while the comparison was made. Accordingly Shirley McKie's request to personally see the "identification" process through from beginning to end was denied.

The blind tests took place on 17th February after 1800 hours within SCRO and the following experts viewed the comparator with the following results viz. expert Bruce, expert Foley, expert Padden and expert McClure all

viewed the comparator screen as apparently had Messrs McKenzie and Dunbar. The test results were that Bruce could only find 8 points in agreement and could not make the identification; Foley found only 10 points in agreement and refused to agree to the "identification"; Padden refused to agree to the "identification" stating that he had difficulty in matching the mark and the print and McClure also refused to support the "identification" stating that there was a poor quality of light available. McKenzie supported the "identification" of McPherson and confirmed the integrity of the "identification" to Mr Ferry officer in charge of SCRO the following morning.

The following morning Ferry apparently put McKenzie under pressure and told McKenzie that an officer's career was at stake and that McKenzie had better be right in his identification and McKenzie confirmed that he was right. The witness Dunbar was challenged by Ferry on or about this time as to Dunbar's certainty regarding the identification of the print and Dunbar formed the opinion

identified. For the avoidance of doubt the Y7 print was marked up by Tayside Police fingerprint experts and put on the Live Scan System.

The 14 fingerprint experts from Lothian & Borders Police who were bold and professional enough to question the validity of the "identification" of Shirley McKie at an early stage in this saga were not all interviewed but a number of them were and those interviewed seemed to be unanimous in their view regarding the erroneous identification.

I am asked if there were experts who supported the "identification" in respect of the Y7 mark and in this regard I should explain that Peter Swan was interviewed and concluded that there were 21 points of identification/sequence in the lower part of the print but if the upper part of the print was taken into consideration then the identification would not stand up to scrutiny.

(There are disagreements in the upper portion of the mark).

Interestingly enough the ex police officer Malcolm Graham has examined the print and mark and concludes that Y7 was made by Shirley McKie and that the mark on the tin was made by Marion Ross. I am aware of course that both of these "identifications" have been thoroughly discredited and challenged by fingerprints experts throughout the world and indeed by the "independent" experts brought in by Mr Taylor HMCIC in connection with his enquiry and report.

The witnesses McKenzie and Dunbar of SCRO are both of the view that the mark Y7 if taken as "one touch" could not be Shirley McKie's but they consider that the top of the mark is separate from the bottom part of the mark and they cannot understand why other experts can't see this.

As already explained I had a broad remit and could approach a wide selection of fingerprint experts in connection with the enquiry and the witnesses Shepherd, Thomson and Griggs who are experts at Durham, the National Training Centre for Fingerprints were enlisted to assist in the enquiry. These experts have grave doubts as to the procedures involved during the various examinations and comparisons of the disputed marks i.e. Shirley McKie and Marion Ross. In particular they had serious doubts about the "independence" and "integrity" of the "blind testing" and other comparison procedures by the four experts from SCRO. In the view of the experts at Durham there seemed to be evidence of some manipulation of the evidence of the experts at SCRO and some element also of a collective and cultural collusion which led to the erroneous identification of Shirley McKie as the donor of the mark Y7.

The experts at Durham, notwithstanding their U.K. connections, appeared to be "objective" in their

approach. They were most helpful to the enquiry and, for the avoidance of doubt, they were provided with the originals of all photographs, Productions, lifts, etc in this case. They also carried out an exercise in checking the marks against all the elimination prints of all the officers we could trace who may or may not have had any contact or interference with the Productions or the locus.

I am asked if the enquiry concluded that there was criminality in the actings of the SCRO experts (and perhaps others) and if so when such criminality first appeared. It is my view and that of the enquiry team that there was criminality involved in the actings of the SCRO experts and that that criminality first reared its head in February 1997. This was after the blind testing was carried out when it should have been patently obvious to those involved that a mistake had been made and there were opportunities then for the mistake to be acknowledged and dealt with. The fact that it was not so dealt with led to "cover up" and criminality.

I was disappointed and rather surprised that no prosecution was initiated against the four "experts" (and perhaps others) at SCRO in light of the sufficiency of evidence of criminality involved. Mr Gilchrist was made aware of my views in this regard.