

1

Wednesday, 10th June 2009

2 (10.20 am)

3 THE CHAIRMAN: Sorry for the delay. Technology fails
4 sometimes.

5 Who is the first witness you will call,
6 Ms Carmichael?

7 MISS CARMICHAEL: The first witness today is David Thurley.

8 THE CHAIRMAN: Mr Thurley, you wish to take an oath.

9 **DAVID SAMUEL KENNEDY THURLEY (sworn)**

10 THE CHAIRMAN: Give your full name so that we have it on the
11 record.

12 A. It's Stephen Samuel Kennedy Thurley.

13 THE CHAIRMAN: Take a seat, please.

14 **Examined by MISS CARMICHAEL**

15 Q. Mr Thurley, I'd like to start by asking you a little bit
16 about your job in 1997. You were a police officer with
17 the Identification Bureau of Strathclyde Police?

18 A. Yes, that's correct.

19 Q. Can you tell us a little bit about what the job -- I am
20 being told that not everybody may be able to hear you,
21 Mr Thurley, and we've found it's sometimes easier if
22 witnesses and indeed counsel are a little nearer to the
23 microphones.

24 A. Okay with that, yes?

25 Q. Yes, I think that's easier. Thank you, Mr Thurley.

1 I was asking you to describe for those who may not be
2 familiar with the work of examiners in the
3 Identification Bureau what your job in 1997 involved?

4 A. First and foremost, I was a police officer, in 1975
5 joined Strathclyde Police and in 1980 I went to what was
6 then the Identification Bureau which the function of
7 that department was to examine crime scenes and record
8 crime scenes with video and by photographic methods.
9 Part of my role in that department was within the
10 fingerprinting side of things and in 1997 that's why I
11 was sent down to Irvine was to lead the team to examine
12 the house.

13 Q. Were all the people who worked doing the sort of job you
14 did, recording the crime scene and dealing with
15 fingerprints at the crime scene, were they all police
16 officers?

17 A. No, I was the only police officer that was there on that
18 day apart from my boss Chief Inspector Hogg. He was
19 down initially after we had assessed the scene he then
20 went away so I would be the only police officer down
21 there from the Identification Bureau. There were other
22 police officers there but not from the Identification
23 Bureau.

24 Q. Just so that people who perhaps don't know the system as
25 it operated in 1997 can understand, you said you had an

1 expertise in fingerprints but should we understand that
2 your job was to find them rather than to say whose they
3 were?

4 A. Yes. My job was preserving scenes, scene preservation
5 and in the finding of fingerprints. It certainly was
6 not to identify prints. My job was solely to find the
7 marks at the scene and record them by uplifting them or
8 photographing them and then passing them on to the
9 experts to identify.

10 Q. You have given, I think, a written statement which you
11 have signed to the Inquiry. Do you have that with you
12 there?

13 A. I do, yes.

14 Q. You're content that that is a truthful record of your
15 position on the things you were asked about?

16 A. As I can recollect bearing in mind obviously the
17 time-frame, yes.

18 Q. I would like to take you first to paragraph 5 of your
19 statement which is on page 2 and you tell us there about
20 a number of different branches and agencies and how they
21 would work together in investigating serious crime.

22 CID would be responsible for the investigation of the
23 crime, the Identification Bureau (which is you and your
24 colleagues) would be responsible for photographing the
25 scene and creating a video record and seeking and

1 preserving fingerprint evidence. You then indicate a
2 third branch, forensics, who would obtain and analyse
3 biological and chemical evidence and then finally the
4 Scottish Criminal Record Office whose job was to try to
5 identify the fingerprints?

6 A. That's correct, yes.

7 Q. You say each of the branches were based in separate
8 offices. Can you tell us where the Identification
9 Bureau was located?

10 A. The Identification Bureau was in the city centre at that
11 time I think -- I'm not sure whether we were still in
12 Pitt Street by the old High School at the back of Pitt
13 Street but certainly right in the city centre.

14 Q. Sorry, I don't mean to interrupt you. You were going to
15 add something?

16 A. No, and that's where we were. When I say separate
17 offices, the SCRO would be in a separate office
18 altogether, CID obviously for this particular
19 investigation, U Division at the time, which would be
20 Kilmarnock.

21 Q. Where was the Scottish Criminal Record Office located in
22 1997?

23 A. I'm not sure where it was, no. You'd need to ask some
24 of the people that worked there.

25 Q. I see.

1 A. I can't honestly remember where it was in '97. For a
2 period of time they were in Police Headquarters at Pitt
3 Street and then they moved. The date they moved, I'm
4 not sure.

5 Q. It may be that they were in fact also in or about Pitt
6 Street in 1997?

7 A. It could be, yes.

8 Q. And the forensic laboratory, where was that located?

9 A. It was located in Pitt Street.

10 Q. It was located in Pitt Street as well.

11 You say at paragraph 6 that the branches were
12 independent with separate classes of function and you
13 say that that had advantages. I wonder if you could
14 expand on what you mean by that.

15 A. The main advantage, as far as I was concerned, was the
16 fact that we each had our own hierarchy, we had our own
17 chains of command. Had we had the likes of this
18 particular job, the CID would contact my senior
19 management who would make -- who I would get my
20 instructions from, the lab would be contacted and the
21 forensic people would be contacted separately, they
22 would get their instructions. Obviously SCRO, they
23 would get their instructions all independent of each
24 other. So we didn't have one hierarchy trying to run
25 the whole show.

1 The good thing about this, as far as I could see, is
2 the fact there could be no collusion. I worked myself,
3 personally, because of what I did, I tended to visit
4 scenes of serious crime. I worked throughout
5 Strathclyde; I wasn't tied to any particular area. So
6 therefore I had no association or affiliation with any
7 CID, anybody in SCRO, the lab, whatever. I worked
8 totally independently and that to me was one of the
9 strengths of the system, that we were all independent
10 departments.

11 Q. I may have some more questions for you about that later
12 but the next thing I would like to ask you about at this
13 stage is what you write at paragraph 8 about the order
14 of examination of a crime scene.

15 You say that following the report of a serious crime
16 allegation, it would usually be organised in the
17 following order: first, the scene being photographed and
18 video taken; then forensic biologists and chemists
19 taking samples; finally, the fingerprint officers coming
20 in at that stage.

21 If I can jump on in your statement to paragraph 24,
22 which is at page 6 if you have that, Mr Thurley, you
23 tell us that you wouldn't begin fingerprinting until the
24 forensic scientists had finished for their purposes?

25 A. That's correct.

1 Q. Are you certain in your own mind that the forensic
2 scientists had in fact finished at the murder scene in
3 Kilmarnock before you started your examination?

4 A. In general we would not. Because of the forensic
5 evidence that we were at risk of destroying or certainly
6 compromising with powders and chemicals or whatever we
7 might use to enhance fingerprints, in general we would
8 not move into a scene until the forensic lab had
9 finished what they were doing. So it would be
10 photographed and videoed first before anything was
11 disturbed, the forensic scientists would go in and
12 remove any fragile elements in the way of DNA, hairs,
13 fibres, things like that, and then we would come in at
14 the end and, because we added something to the scene,
15 we're adding powders to the scene, chemicals to the
16 scene, therefore it's important that the forensic side
17 of things is removed first.

18 Q. I understand that you're telling us that is how matters
19 normally proceeded?

20 A. That's correct.

21 Q. But I would like you to focus on -- I had understood
22 paragraph 24 of your statement to be telling us what
23 happened in the investigation in Kilmarnock with which
24 we are concerned today.

25 A. That's certainly my recollection, yes.

1 Q. I would like to try to clarify that with you and I
2 wonder if you would look, please, at SG0537 if we could
3 have that on the screen at page 2, please. I think if
4 we look just about halfway down there we see you
5 arriving with Detective Inspector McAllister and some
6 other colleagues?

7 THE CHAIRMAN: That is at 12.10.

8 MISS CARMICHAEL: No, I think it's 10.55.

9 It may be you are having difficulty ...

10 A. I can see what you're ...

11 Q. So that is the record of your arrival, I think, on
12 9th January.

13 A. Yes.

14 Q. I wonder if we could have the whole page back, please,
15 and if we can go back to page 1 you may want to take
16 just a moment to look at this but when you have had a
17 chance to do that I wonder if we could focus in on the
18 20.31 entry.

19 A. Yes.

20 Q. I think I am right in saying that the only mention of
21 forensic attendance there is a Mr Fairley at 20.31?

22 A. That's correct, yes.

23 Q. Could we have the full page back, please, and if we take
24 a moment to look at look at page 3, again you may want
25 to take a moment to look at this but it does not appear

1 that there is any entry there -- and we are still there
2 on 9th January -- there does not seem to be any
3 reference to forensic attendance at that stage.

4 A. That's correct.

5 Q. If we move to page 4, you see the entry starting for
6 10th January 1997 and then if you focus perhaps on the
7 9.05 entry --

8 A. Yes.

9 Q. -- at that stage we see a Mr Fairley and Mr Sweeney
10 coming from the lab, again forensic staff?

11 A. That's correct, yes.

12 Q. So I mention this to you because it would seem to
13 suggest that there may have been some forensic
14 involvement after you had started your examination of
15 the scene?

16 A. I don't know. I'm not aware of what they did when they
17 came, if in fact they did anything. I'm not sure. I
18 can't comment on that.

19 Q. I would like to take you back in your statement to
20 something that you say at paragraph 13 because I think
21 you have been involved in the development of crime scene
22 management as it has become a more specialised field
23 since 1997?

24 A. That's correct, yes.

25 Q. And you give us some explanation about that in your

1 statement.

2 I am interested particularly in what you say, in the
3 last sentence of paragraph 13 you have been describing
4 how crime scene management works in modern practice and
5 you say:

6 "It would not have been possible to set up the initial
7 log station inside the house in modern practice."

8 When you say "inside the house", what do you mean
9 there?

10 A. My recollection of it was when I attended the officers
11 were standing inside the porch, the glass porch, front
12 door effectively. Under today's circumstances, that
13 wouldn't happen. You would have outer cordon and inner
14 cordon you would have a log of the outer cordon, a log
15 of the inner cordon and then a log to get into the
16 house. All of these people would be outwith the crime
17 scene. There would be nobody within that crime scene.

18 Q. You are saying police officers in the porch keeping a
19 log?

20 A. Yes.

21 Q. The Inquiry has heard a suggestion that there were, in
22 fact, officers involved in keeping watch and keeping the
23 log stationed inside the living room on the night of the
24 8th into the 9th.

25 Is that something of which you have any knowledge?

1 A. No, I've no knowledge of that at all.

2 Q. As an officer who is responsible for examining a crime
3 scene, what would your reaction be to learning that that
4 may have happened?

5 A. If you're asking me in today's circumstances, then I
6 would -- I certainly wouldn't be happy about that at
7 all. Bearing in mind what I said earlier about
8 contaminating a scene, I certainly wouldn't be
9 happy about that at all.

10 Q. When you say that, are you talking from the point of
11 view of forensic evidence, biological or chemical
12 evidence, or are you referring to any difficulties that
13 that might pose for the collection of fingerprint
14 evidence?

15 A. Fingerprints is not such an issue because every police
16 officer in Strathclyde has their fingerprints taken when
17 they join the force and, because of the department I
18 worked in, I also, as other members of the department
19 do, have had DNA taken from us. It's not uncommon to
20 find police officers' fingerprints at a **locus**. It's not
21 uncommon to find DNA of police officers at a **locus**.
22 There isn't an issue with that at all. The issue is
23 that they are eliminated and discounted, explained and
24 discounted.

25 My concern for police officers being in or anyone

1 being into that scene to that extent would be for the
2 forensic side of things that's maybe harder to
3 eliminate. It could be eliminated but you're talking an
4 awful lot of work to do it. The easy way that it's done
5 nowadays is nobody goes into the crime scene at all.
6 You have read in my statement that a Crime Scene Manager
7 is appointed now. Crime Scene Managers, in my opinion,
8 are one of the best things that has happened in recent
9 times to do with preserving crime scenes. A Crime Scene
10 Manager is the one person who has control of the crime
11 scene. Nobody goes in or out of that crime scene
12 without the Crime Scene Manager's knowledge and he is
13 one point of contact for all the departments, the
14 specialists we have. We don't need to speak to the CID,
15 we don't need to attend briefings and things; it all
16 comes through the Crime Scene Manager. To me, that's
17 certainly the biggest improvement since this.

18 Q. I think you said that you were giving your reaction by
19 reference to modern day standards to the suggestion that
20 log keepers may have been stationed in the living room.

21 If you can put yourself back in 1997 is that something
22 that would have disturbed you in the same way at that
23 date?

24 A. It would disturb me in as much as I could see a lot of
25 extra work coming out of it, not necessarily just for

1 myself but for all the other departments involved as
2 well in the eliminating of these people. There is not a
3 problem, as I said before there's not a problem with
4 people being in a scene, a crime scene. The problem is
5 eliminating all these people. If we know who has been
6 in there, then we can eliminate them. We can take
7 samples of footwear, we can take samples of clothing, we
8 can take their fingerprints, we can take DNA, we can
9 take hair and all these things if we know they have been
10 in there.

11 If we don't know who has been in there, then we're
12 going into a separate bundle and basically start
13 searching to see who has been in there and it causes a
14 lot of work for other departments.

15 Q. I would like to move on with you, Mr Thurley, to your
16 own examination of the scene on 9th January for
17 fingerprints. I wonder if you could look, please, at
18 document SG0402. If we can move on to page 3 of that,
19 please. I think this is a certificate of authentication
20 by yourself you have been asked to prepare at a
21 particular stage.

22 A. Yes.

23 Q. And that is your signature there and if we move on to
24 the next page we see a table. That appears to be a
25 table. I wonder if you can tell the Inquiry what that

1 is?

2 A. This whole production is a number of tables that have
3 been put together to explain when the particular items
4 were examined and when the marks were lifted and
5 photographed, what the marks were, whether it was lifted
6 or an impression and who the witnesses were.

7 Q. We can take that off the screen just for the moment,
8 please.

9 Could I refer you to paragraph 27 of your statement at
10 page 7. You say that you had one of the secretaries
11 produce the document that we have just looked at from a
12 handwritten list.

13 A. That's correct.

14 Q. You say that it was not normal procedure but you felt a
15 typed version would be helpful.

16 A. Yes.

17 Q. Can you recall in this case when a typed version was
18 produced?

19 A. Most serious crime you get involve in you do what you
20 do, you examine the scene, you mark things up and you
21 pass it on to the next in line and you move on to the
22 next one. In Strathclyde it's a busy place, there's
23 always serious crime on the go; so you literally go from
24 one serious crime to the other. What was happening here
25 was we kept on coming back and there were things being

1 questioned time and time and time again -- nothing wrong
2 with that. You will notice on the original list, the
3 original production, there is many different types of
4 handwriting on it.

5 Q. We will take a look at that in a moment, Mr Thurley.

6 A. The reason for producing this though is because some
7 people were having difficulty with the handwriting.

8 Now, that's not really surprising considering that the
9 list we're looking at in a moment is written at the
10 scene at the time when the place is being examined.

11 It's not in the best handwriting. It's literally
12 written just as an aide-memoire for ourselves as to how
13 the examination's going and what has been found at the
14 scene. This document would be referred to more and
15 more. The clearest way and quickest way and the best
16 way I could think of of clarifying the document was to
17 get it typed in this form. To me it made everything
18 very clear and there should be no problems with
19 handwriting and interpretations of handwriting on it.
20 So that's the only reason this was done. It was not
21 done for any other reason.

22 Q. Is it possible that the request may have come from the
23 Crown, from the Prosecution Service? Is that something
24 that you recall?

25 A. I can't recall that but I would suggest it was probably

1 done before the Crown Prosecution asked us for it.
2 There were a lot of requests to look at these various
3 documents and the handwriting, as you will see when you
4 look at that document, is maybe not as good and clear as
5 it should be. But it meant something to the people that
6 wrote it. Normally these documents wouldn't be produced
7 in court at that time. So this typing statement was
8 just to make things a lot clearer.

9 Q. We will just now look at the handwritten document that
10 you have been telling us about, Mr Thurley, and that is
11 DB0003. Can we look as an example at page 4, please.

12 So this is, as it were, the original version of what
13 we have seen typed up?

14 A. Yes, that's correct. It carries a lot of the same
15 information. It doesn't carry exactly the same
16 information but it does tell you when the specific marks
17 were found, where they were found and the letter that
18 was assigned to them.

19 Q. So we see in the second column from the left the date
20 when the item was found; would that be correct?

21 A. Yes, that's correct.

22 Q. And the wide column just to the right of that we see
23 where it was found?

24 A. That's correct.

25 Q. Under the heading "Mark", we see that, letters and I

1 think further on in the table letters and numbers have
2 been given to marks?

3 A. That's correct.

4 Q. And I would be right in saying the last two columns are
5 columns that are used once the marks and document have
6 been passed on to the SCRO Fingerprint Bureau, as it was
7 in 1997?

8 A. Yes, that's correct.

9 Q. And the examiners there would use that to record their
10 findings?

11 A. Yes, that's correct.

12 Q. I would like to move on, please, to paragraph 33. You
13 can take that off for now; we may come back to that
14 document.

15 You record at paragraph 33 of your statement that you
16 dusted the bathroom doorframe at the crime scene at
17 Kilmarnock with aluminium powder?

18 A. That's correct.

19 Q. And that you in fact found some prints by that method.
20 I would like you to look, please, at page 13 of ST0003.
21 I think we have a slightly edited version of this
22 photograph, sir.

23 When you're referring to the bathroom doorframe, are
24 we looking in this photograph straight at the doorway to
25 the bathroom?

1 A. That's correct, yes.

2 Q. Can we take the image off the screen just for now.

3 Can you describe to us just what you do physically
4 when you go about dusting an item like this with
5 aluminium powder?

6 A. The first thing you would do is examine the surface,
7 give it a visual examination first. What you've got to
8 do when you're examining any surface is go down the
9 least destructive method of examining a surface first
10 and then if you do it in the correct order, if you
11 examine the surface in the correct order, then you can
12 have several bites at the cherry. If you use aluminium
13 powder first, you can then move on to different, other
14 different powders and then, if you want, you can also
15 move on to chemicals.

16 If you do this in the wrong order, if you come in with
17 the chemicals first then you miss your other options.
18 So you use the most -- the least destructive method of
19 examining the surface first. The least destructive
20 method, as per the Home Office guidelines, is aluminium
21 powder. Aluminium powder is put on with what is known
22 as a zephyr brush, which is a fine fibre glass brush.
23 Aluminium powder is a flake powder, it appears to be
24 dust to the normal eye but if you look at it through a
25 microscope, it's a flake powder and the way that that

1 adheres to prints is it adheres to the fats and acids
2 the print leaves, that a person leaves when you touch
3 something. A lot of people don't like using aluminium
4 powder because it involves -- it's pretty messy because
5 it's so fine that it flies about everywhere and it
6 involves a fair amount of work to do that.

7 What you do with aluminium powder, because it's a
8 flaked granule, is you build it up on the print so
9 you're constantly working at the print to build the
10 print up; whereas some other powders that you use it's
11 the other way. There's a high contrast, for example,
12 black powder or black magna there's a high contrast on
13 that putting something black on to a light surface you
14 can just put the brush over it, look at it, ascertain
15 what's there and that's it. Yes, you can do that but if
16 you use the aluminium first, you get the result from
17 that and then you can consider if you want to re-examine
18 using other powders and ultimately chemicals as well.

19 So the advantage of using aluminium powder first is
20 that you have an extra bite at the cherry before you use
21 other powders, before you use chemicals.

22 These are all written down in -- not by me but by Home
23 Office guidelines. There is a book that's produced that
24 comes out periodically and is updated. These are
25 methods that are acknowledged methods of recovering

1 marks, finger-marks, at a scene. These are tried and
2 tested methods done by the Home Office. One of the
3 people responsible for the production of this book is a
4 fellow called Terry Kent and he has -- he is not a scene
5 examiner, he is a scientist and he has done an awful lot
6 of work regarding this. It's put into this book so that
7 all scene examiners work to a recognised pattern.

8 But as I've said before, sometimes you'll find that
9 you'll get younger inexperienced people possibly will go
10 straight to black powder because it's simpler to use and
11 it's easier to see, there is less work involved because
12 aluminium powder you have to work at it to get the
13 print. That is the logic for using aluminium powder
14 before anything else.

15 Q. There are some points I would like to follow up with you
16 from what you have just told us, Mr Thurley. You have
17 talked about building the print up using aluminium
18 powder.

19 What exactly do you mean by that?

20 A. By building it up what I mean is when somebody touches
21 something they can leave fats and acid deposits on the
22 surface. If you rub that surface, brush it carefully
23 with the zephyr brush I referred to with aluminium
24 powder on it initially you may find that there is
25 nothing appears but because of the structure of the

1 aluminium powder, if you keep brushing it, if you work
2 at it, then what happens is the print develops, the
3 print builds up. So what you do is you're putting
4 layers of aluminium powder on top of the fats and acids.
5 So it's almost like a photograph developing in front of
6 you. The more you brush it, the more clear this print
7 gets but in order to do that that takes a fair amount of
8 work and knowledge by the operator.

9 Q. I would take it from that then that in order to build up
10 a print using aluminium powder you have to have seen
11 something there first to make you think that there is
12 something further to build up?

13 A. Yes. You would go down the -- talking about a door
14 facing here, you would go down the whole door facing
15 brushing on the aluminium powder and you will see traces
16 of a mark appearing. Where you saw traces of a mark you
17 will then work at that.

18 Now the mark might very well be in any form of
19 contaminant that's on there, it needn't necessarily be a
20 finger-mark, but you would still work on it to see if a
21 finger-mark appears within that. If it doesn't, it
22 doesn't, you move on to the next mark that has been
23 enhanced by your initial covering with the aluminium
24 powder and you work down each mark like that. It does
25 take a lot more work involved in it but it's one of the

1 most commonly used and least destructive methods for
2 examining for fingerprints.

3 Q. Does it also involve from what you have told us about
4 building up whether they turn out to be marks or not but
5 items that you have observed that it will come to be
6 that on a doorframe, like the one we're thinking about
7 here, some areas of it come to be more thickly covered
8 with the aluminium powder than others?

9 A. If somebody had -- to take it to the extreme -- oil on
10 their hands and there was a contaminant of oil on the
11 surface, if you put an aluminium powder over that it
12 would adhere to the oil. The aluminium powder would
13 adhere to the oil straight away and very thickly. So,
14 therefore, you probably couldn't clean that out because
15 of the -- it would just adhere to the aluminium powder.
16 So, yes, it builds up at different speeds in different
17 areas.

18 The other advantage of aluminium powder is in general
19 aluminium powder is used for fresher prints. This
20 doesn't mean to say that it can't be used on older
21 prints, but aluminium powder is acknowledged to bring up
22 fresher prints easier than a lot of other powders. That
23 again comes from Home Office guidelines.

24 Q. On areas where the examiner hasn't observed anything
25 that he wishes to bring up there may come to be a rather

1 less amount of powder than on an area where he has
2 observed something in the first instance.

3 A. Yes, he would have a background, if you want, of
4 aluminium powder over the whole surface and then you
5 would have highlighted areas where a contaminant was
6 present, a contaminant either being a finger-mark or
7 some other form of contaminant.

8 Q. Would I be correct in saying that where a surface is
9 contaminated with grease or grime or nicotine or
10 something of that sort, it can be that aluminium powder
11 just doesn't take?

12 A. That's always an option and that's why if you examine
13 something in the correct order of powders or chemicals
14 or whatever then you have a second and a third and a
15 fourth shot at it. Aluminium powder has always got to
16 be your first port of call. You would use aluminium
17 first and then you would move on to other powders. But
18 it is feasible that you go over a surface because of
19 contaminants there that it may not -- the aluminium may
20 not adhere to it so you would go on to other powder.

21 Q. As you are dusting a surface with aluminium powder, how
22 do you tell whether it has taken or not?

23 A. Usually the amount of other marks that you're getting.
24 If you're getting -- in a house in general, you know, I
25 would be looking to get 200 plus marks out of a house.

1 If we were examining a house and getting next to
2 nothing, like below 50, then I would seriously be
3 considering that there was a reason for that and the
4 marks weren't coming up and we would have to look at a
5 way of doing it.

6 However, I would still go ahead and do the aluminium
7 examination first before I went on to other powders
8 because it's the least destructive, because there is an
9 order of doing these things and if you use the least
10 destructive first, as I've said before, you can then
11 move on. It gives you other options.

12 Q. Aluminium powder isn't suitable for all surfaces as a
13 first port of call, is it?

14 A. No, if you go down the lines of paper or, you know,
15 stone or emulsion paint or things like that then I would
16 say most definitely not. It depends what we're talking
17 about, a hard shiny surface, are you talking about a
18 gloss-painted piece of wood? If it was raw wood then I
19 would say, no, we wouldn't do that we'd go down the
20 other way with that but certainly for gloss-painted
21 wood, it was contaminated, what you're referring to was
22 contaminated with the nicotine, there was nicotine
23 throughout the house but whilst it was heavily
24 contaminated it wasn't sticking to the brush, it wasn't
25 contaminating the brush or the aluminium powder. The

1 brush was still flowing over it and this is backed by
2 the amount of marks we got through the aluminium powder.
3 Had we not, as I said before, had we not been getting
4 that amount of marks I would be concerned but at the end
5 of this, as you know, we got over 300 marks out of this
6 house and most of them with aluminium. So, no, I don't
7 consider we made a bad selection there. I consider we
8 made the correct selection.

9 Q. I wonder, Mr Thurley, if I could ask you to move the
10 microphone a little closer to you if you possibly can.

11 A. Sorry, yes.

12 Q. The Inquiry may hear evidence from others who say that
13 visually they thought that the powder hadn't taken on
14 the doorframe.

15 Do you have any comment on that?

16 A. Again I would refer back to the amount of marks that we
17 got throughout the house. Round about that door and the
18 doorframe I think we had a total of 15 marks. I believe
19 the black powder referred to later brought an additional
20 three marks on to that. It doesn't particularly
21 surprise me. As I said before, the powders complement
22 each other. There is no magic powder that does every
23 surface all the time, it doesn't exist. Depending what
24 the surface is, what the contaminant is as to what you
25 would be using on that. Each scene you've got to assess

1 in its own way. As I said to you before, I've regularly
2 attended scenes of serious crime throughout the years
3 that I was in the Serious Examination Branch
4 Identification Bureau, and I don't think I was ever
5 treated to two scenes the same. Every scene is
6 different and has got to be assessed in a different way.
7 There are guidelines that you can follow, but you've got
8 to be doing a judgment call on every scene you attend.

9 Q. You have mentioned the light at the scene not being the
10 best, Mr Thurley; is that correct?

11 A. That's correct. That comment was in comparison to what
12 you would have in a controlled environment. For
13 example, if I took something and put it into our
14 fingerprint lab back at the office, the conditions there
15 would be termed as "ideal" because we have many lights,
16 we can put on weak lighting, we can put on fuller
17 lighting, so it makes it very easy to look at and
18 examine articles within the fingerprint laboratory at
19 the office.

20 Where you have a normal house, even a building as well
21 lit as this, it's not ideal. There's very few places
22 that are ideal unless you can control the lighting
23 100 per cent. So, therefore, we have fairly good
24 torches and things that we can use. That is the best
25 that's available. So that was the best available at

1 that time. It's by no means ideal because it's not
2 laboratory conditions but it suffices, it manages to
3 find over 300 marks within that house so it does work.
4 It's the best that we had available to us at the time.

5 Q. What I am interested in is whether any difficulties in
6 the lighting, albeit it may have been inevitable
7 difficulties in the lighting, might have meant that
8 there was a mark that was not observed with aluminium
9 powder to be further brought up with aluminium powder.
10 Is that a possibility?

11 A. If you're asking me was that mark there and I didn't
12 bring it up then the answer is, no, that mark wasn't
13 there. I examined that door facing and the mark was
14 there or wasn't there. Had it been there, I would have
15 brought it up.

16 Q. When you say it definitely wasn't there, are you saying
17 that aluminium powder did not reveal it so you could
18 bring it up or are you saying the mark simply was not
19 there and only appeared after you put the powder on?

20 A. No, what I'm saying was that when I used the aluminium
21 powder it did not bring up any mark at that point.
22 That's what I'm saying.

23 Q. Your statement records that you came upon it at about
24 4.00 that day when you were contacted by laboratory
25 staff and you were asked to stop what you were doing and

1 do something else.

2 A. Yes.

3 Q. I think what you were asked to do was in relation to the
4 bannisters; is that correct?

5 A. That's correct. We were asked to remove a section of
6 the bannister. Requests like this are not unusual. In
7 serious crime then I'm afraid we have to have little
8 regard for the house; what we are after is as much
9 evidence as we can out of that house, out of that
10 premises. So taking the bannister off is -- it wouldn't
11 be an unusual request.

12 Q. At that time you also removed the door of the bathroom?

13 A. That's correct. Bearing in mind where the deceased had
14 been lying when she was discovered, I felt it prudent to
15 remove the door because we could take it back to the
16 fingerprint laboratory and examine it further then, as I
17 did with the carpet that was below and around the
18 deceased as well. I was only requested to remove the
19 bannister which we did but, as I say, I saw fit to
20 remove these other two items as well because they were
21 there and I very much go down the lines of if you take
22 possession of something, then you can examine it at a
23 later date in ideal conditions. If you don't take
24 possession of that item then something could be lost.

25 Q. You dusted the doorframe before you took the door off;

1 is that correct?

2 A. That's correct, yes.

3 Q. Did the presence of the door make your job more
4 difficult in dusting the doorframe?

5 A. Not particularly, no. The door was free to open and
6 close. It wasn't -- it wasn't in my way in any way at
7 all. It opened into the bathroom, into the room. It
8 didn't stop me doing what I wanted to be doing.

9 Q. Your colleague on 9th January was a Mr Ferguson?

10 A. Yes.

11 Q. Did Mr Ferguson express any view about the choice of
12 aluminium powder for the doorframe?

13 A. Not that I'm aware of. I certainly can't recall some
14 12 years ago whether he commented or not. I would
15 suggest that, you know, had he commented then I would
16 have certainly taken it on board and I would have given
17 the same explanation to him as I've given to you. These
18 are not things that I've decided that works, these are
19 things that the Home Office have decided that works.

20 Q. Paragraph 35 of your statement, if you would look at
21 that, please, for a moment at page 10, you say the area
22 around the bathroom door was heavily nicotine stained
23 and you have told us about the nicotine staining but you
24 go on, the presence of steam might have called for the
25 use of black.

1 In the light of what you are saying in your oral
2 evidence today how does that sentence fit in,
3 Mr Thurley?

4 A. Again, it was back to what I said. If you do things in
5 the correct order then there is not a problem. If you
6 put on black powder and got nothing you could not go
7 back to putting on aluminium powder. So, therefore, by
8 using aluminium powder first it didn't stop someone
9 using black powder at a later date.

10 Q. I am just curious about the words that you have used
11 there. You say it might have called for the use of
12 black powder, which to the reader might suggest that
13 you're saying there that black powder might be the first
14 port of call?

15 A. No, what I mean by that is that that decision really
16 didn't need me to be making it because that decision was
17 made for me at a later date when the door was examined
18 by somebody else using black powder. So I didn't have
19 that decision to make whether I was going to put black
20 powder on that or not. I still maintain that I would
21 always use aluminium first and then move on to black
22 powder.

23 So, as I say, I didn't have that decision to make
24 because in that house somebody had examined it with
25 black powder and there is nothing wrong with that. It

1 was fine. It was examined with aluminium, then moved on
2 to black powder. There's nothing wrong with that.

3 Q. In the next sentence in that paragraph you say that:

4 "Given that we were obtaining a large number of prints
5 we were happy with the use of aluminium powder."

6 Can I just clarify with you there who the "we" is when
7 you refer to that?

8 A. "We" would be at that point I was working with David
9 Ferguson. We would be happy and had he not been happy
10 then I assume that he would have said to me. Had I not
11 been happy then I would certainly have been looking at
12 another way of examining the items. As I say, because
13 of the large number of prints we were getting, I think
14 that speaks of itself the fact that we were going down
15 the right way, we were examining the items properly and
16 we were getting results.

17 Q. As you said, others I think you have already referred
18 yourself there did come on to examine the doorframe with
19 black powder.

20 In what proportion of cases where one has used
21 aluminium powder would one then go on to examine with
22 black powder as well?

23 A. Again, all options are available to you. Because of the
24 time restraints on what I would term "volume crime" the
25 chances are that you wouldn't be using many different

1 types of powders and chemicals for volume crime.

2 Serious crime is slightly different. When you do
3 examine a house such as this one, whilst everyone is
4 wanting a result straight away, there is never, ever any
5 pressure put on us at the scene to get a move on and to
6 hurry up and get a result or whatever. That doesn't
7 happen.

8 The officers who were examining that scene, it takes
9 the time it takes and that's it. If the job's to be
10 done, it's to be done properly. Time restraints are
11 not -- that's a problem for the CID to manage the time
12 they were taking. We take the time that we take and
13 that's it. So we can use -- at a serious scene we can
14 use as much, as many different powders and chemicals and
15 things as we want. There is nobody on our back pushing
16 us to hurry up at any stage in this at all; whereas with
17 volume crime, then there's always the next job to move
18 on to so, therefore, you would either make that judgment
19 call, use aluminium, use chemicals, use black powder,
20 you get one shot at it and move on.

21 Q. There are two or three points I would like to follow up
22 with you from what you have just told us, Mr Thurley.
23 First of all, just so that everyone listening will
24 understand what you are talking about, when you talk
25 about "volume crime" are you referring to things like

1 house break-ins and car thefts?

2 A. That's correct, yes. That's what we would term as
3 day-to-day crime, yes.

4 Q. Serious crime speaks for itself. It's serious assaults,
5 murders, attempted murders, rapes?

6 A. Yes.

7 Q. Leaving aside then the volume crimes and thinking about
8 the serious crimes, the question that I asked you was
9 whether you could say in what proportion of cases you
10 would go on to examine with black powder after you
11 examined with aluminium powder?

12 A. I personally would do that as a matter of course for
13 serious crime. There is no reason not to do it. If
14 there is the slightest chance at all of bringing one
15 extra mark up, then it's worth doing. As I say, I've
16 never been aware of time restraints on me when I am
17 examining the **locus** of a serious crime; so, therefore, I
18 am quite happy to use black powder after aluminium
19 powder. This, again, is a thing that -- it's an
20 experience thing. How often you do it? Do you get
21 results with it? Yes, you do. You only need one result
22 to make it worth your while and so it's not an uncommon
23 thing to do.

24 Q. Is it something you would do in every case?

25 A. Serious crime, yes, I would probably do it. I wouldn't

1 examine the whole house twice or so I can say but I
2 would pick certain areas as in fact was done on this
3 occasion. The whole house wasn't examination with the
4 aluminium and then black. What happened was it was
5 examined with aluminium powder and a number of areas
6 were done with black powder as well.

7 Q. So does it come to this then, that there will ultimately
8 be selections on the basis of experience --

9 A. Yes.

10 Q. -- in any crime scene rather than there being a process
11 whereby powders would routinely be used serially?

12 A. Yes. Technology is always moving on. There are always
13 different ways to do it. Had this happened nowadays or
14 today, then things would have been entirely different.
15 Things have moved on. This is 12 years ago. Things
16 have moved on in leaps and bounds in the fingerprint
17 world. It wouldn't be handled like this nowadays. We
18 have more technology available to us, non-destructive
19 technology that we would use. So what you're asking me
20 refers back to 1997 and is not necessarily relevant
21 today.

22 Q. In fairness, I should be clear and say that I am asking
23 you to put yourself back in 1997 and when I am asking
24 you about what proportion of cases certain things
25 happened in I am asking you to put yourself in that

1 position.

2 A. Yes, I appreciate that. Back in 1997, yes, routinely in
3 serious crime of what you have said before I attended a
4 large amount of, then yes I would routinely use more
5 than one powder.

6 Q. The other thing that you said was that there was no
7 pressure on you as regards timing in serious crime
8 investigations.

9 Was that the case in the investigation into the murder
10 in Kilmarnock?

11 A. Yes.

12 Q. The Inquiry discovered some evidence that aluminium
13 powder might be favoured because when you preserve the
14 fingerprint that you found that way you use a lift which
15 is instantaneously available; whereas if you use black
16 powder the mark has to be photographed which takes more
17 time to develop and pass on to the fingerprint
18 examiners.

19 With that in mind, was that -- it might be thought
20 that aluminium powder could be used because it was going
21 to produce quicker results?

22 A. No, I would suggest -- I don't know where that's come
23 from but I would suggest that's possibly from somebody
24 that's maybe not aware of the system.

25 What would happen at the end of each day is we would

1 take fingerprint lifts which would be the aluminium
2 lifts, I would take the film that we used to photograph
3 the black powder impressions and they would go up
4 together to my office in Glasgow and the next morning
5 they would be processed, and by processed I mean what
6 you've got to do to the aluminium lift is to photograph
7 it. You've got to photograph the lift and produce a
8 photographic print for the Scottish Criminal Record
9 Office to look at; whereas with the impressions you have
10 the negative there and you print up the negative. So
11 it's really the same amount of work. There's no
12 additional work in one over the other.

13 Q. I would like to take you on, please, to paragraph 48 of
14 your statement, Mr Thurley, at page 13. You say that
15 you came to see the mark which came to be identified as
16 mark Y7 on the doorframe on 15th or 16th January.

17 A. Yes.

18 Q. How did it come about that you were looking at that, not
19 having been one of the officers who found it?

20 A. Some of the days, a number of the days previous to that
21 I had been attending the High Court. So that is the
22 reason why I hadn't been at the **locus**. When I came down
23 on the 15th or the 16th, because I was in charge of that
24 scene I didn't just look at Y7, I looked at all the
25 additional marks that had been found. I felt that it

1 was my position if I was going to be asked any question
2 about it it was my position to know what additional work
3 had been done in my absence. In an ideal world I would
4 be there from start to finish and we don't have an ideal
5 world with the High Court intervening and I was
6 sidetracked to that. I lost maybe about two days in
7 total to the High Court.

8 When I came back, I felt it was my duty to see what
9 additional work had been done, where the marks were. As
10 regards to my statement, when I was making the statement
11 I was specifically asked about Y7. Had I been asked
12 about other marks, my answer would have been exactly the
13 same. It meant nothing to me. Y7 meant no more to me
14 or no less to me than any other mark found in that
15 house. My responsibility is recovering every mark out
16 of that house and ensuring that they are sent to the
17 SCRO. That is what my responsibility is. Y7 meant
18 nothing to me over any other mark.

19 Q. You were simply updating yourself as to any marks that
20 had been found and any work that had been done while you
21 were away?

22 A. That's correct.

23 Q. Moving on to paragraph 49 of your statement, you say it
24 is difficult to tell if aluminium powder is disturbed.

25 A. That's correct.

1 Q. When you looked at the doorframe when you got back on
2 15th or 16th, were you looking at it with a view to
3 seeing whether it had been disturbed?

4 A. No, I wasn't. I was really just looking at the marks
5 that had been found and where they had been found when I
6 came back. I didn't -- I wasn't looking -- again, I had
7 no reason -- Y7 meant nothing else to me than any other
8 mark so I had no reason to specifically look at this any
9 more carefully than any others. I wasn't particularly
10 surprised or shocked or horrified that an additional
11 mark had come up over an area that had already been
12 examined. It's not particularly uncommon for that to
13 happen. So I wasn't looking to see whether the
14 aluminium powder was disturbed, I wasn't looking to see
15 whether, you know, was the print on in black powder, in
16 the aluminium powder or whatever. It didn't concern me.
17 What concerned me was that mark was there, it was
18 photographed and it was recorded and up to SCRO. That's
19 what my responsibility was.

20 Q. In any event, you tell us that you did not notice any
21 disturbance in the powder that day?

22 A. No, I didn't notice any particular disturbance over
23 anything else.

24 Q. Is it possible, based on your own experience and
25 knowledge, to say whether mark Y7 was deposited before

1 or after you put the aluminium powder on?

2 A. No.

3 Q. I would like to move on please just to clarify something
4 at paragraph 61 of your statement where you describe how
5 photographs of marks are taken, Mr Thurley.

6 A. Yes.

7 Q. The aim of the exercise, I suppose, will be to try and
8 get actual size images of finger-marks?

9 A. That's correct. Where you have clearly a lift clearly
10 that's a one-to-one scale. The size of the mark that is
11 on the item is the same size of mark that you lift with
12 the tape that you put on the acetate and it's the same
13 size of mark that is photographed and it's the same size
14 of mark that the SCRO get for their comparisons.

15 They have an impression, that's when it's photographed
16 using a camera. We have a camera and on the camera we
17 have a frame, a fixed frame, so that you're taking each
18 impression the same distance away as all the rest and on
19 that frame at the bottom there are two small needles
20 come up and they are -- I can't remember exactly what
21 they are, I think they are 3 inches apart -- so that
22 when that photograph is produced on the enlarger the
23 technician will check that these prints are still three
24 inches apart. So what you are getting is a one-to-one
25 photograph, getting a life-sized photograph. So this is

1 a fixed, a camera on a fixed frame which is about maybe
2 about 12/14 inches long. So what you do is you put the
3 camera and the frame above the mark and you photograph
4 it and that's it. So you cannot be too far away, you
5 cannot be too closed, it's a fixed focus, a fixed frame
6 and that's what you take.

7 Q. One sometimes sees photographs of -- I am sorry, I
8 wonder if -- I am struggling with it myself, Mr Thurley.
9 One sometimes sees photographs of fingerprints where
10 there is a little scale or a little ruler down the side?

11 A. Yes.

12 Q. Can I take it from what you're telling us that the fixed
13 frame system that you've described avoids the need for
14 that?

15 A. Yes, it does but like all these things there are
16 exceptions. Sometimes you cannot get the camera --
17 there's not enough room to get the camera and the frame
18 in. If you were talking about high up on a window frame
19 and there's not enough room to get the frame and the
20 camera in because the ceiling's too close or whatever,
21 then what you would do, as you say, you put on a scale
22 and then you will photograph the scale so that when the
23 technician came to print that photograph up he could
24 produce it life-size again. So that would be the only
25 time that you would not use the fixed focus frame if you

1 couldn't physically get the camera and the frame in.

2 But then you would put down a small scale, sticky scale,

3 next to the print so the technician could then print it

4 to life size.

5 Q. Mr Thurley, moving on to a different topic, did you

6 yourself have any role in liaising with the SCRO

7 Fingerprint Bureau?

8 A. Not that I'm aware of and the only reason -- after

9 12 years I find it difficult to remember but the only

10 thing I would say is I was down there on a daily basis.

11 I was starting my work at 7.00 in the morning and

12 finishing at, you know, whatever time at night. I

13 wouldn't have imagined I would have any contact with

14 them at all apart from at any meetings or whatever I may

15 have attended.

16 There was one day in the middle of that lot where

17 there was a meeting that I think all the CID, SCRO,

18 maybe the Fiscal attended. These are commonplace at

19 serious incidents and it's really just to bring everyone

20 up-to-date with what's been done, what's still to do and

21 try to prioritise things because when you have 300 marks

22 or a lot of blood from a scene or whatever, then it

23 clearly can't all be done straight away. You have got

24 to try and prioritise things to some extent. For

25 example, if there was a forced entry in this house, then

1 I would be interested in getting the prints that we got
2 round about the point of entry looked at first.

3 So you have got to try and prioritise, you've got to
4 bear in mind the SCRO, they are only working with what
5 they are given. If we can prioritise things in any way
6 at all it may possibly help another department, be it
7 SCRO or the lab or whatever. But everything will get
8 examined anyway, it's just to try and put some sort of
9 priority on some sort of whatever we've managed to find
10 at the scene to let other departments know what in fact
11 should be prioritised and what should be left to a bit
12 later.

13 Q. The reason I am asking you about any liaison role you
14 had is if you look, please, at document DB0264 and if we
15 can scroll through that page by page, please, what this
16 appears to be is a series of notes if you could stop
17 there, please, and I can tell you this was found in
18 association with papers from the Scottish criminal
19 record office and if we can focus in here on page 3 just
20 at the bottom left-hand corner there's an entry that
21 seems to read:

22 "Elims D Thurley will liaise re elims where to
23 compare."

24 Having found that I certainly wanted to ask you if you
25 could tell us what that was about?

1 A. I'm sorry, no idea at all. You'd possibly be better
2 asking the author of whoever wrote the thing. I
3 certainly can't remember speaking to them. I'm not
4 saying that I don't speak to them. During the course of
5 an investigate then they are a part of a chain and I
6 would expect I would speak to them. I can't imagine
7 what this is about. However, if you're saying I did
8 speak to them then I wouldn't deny that. It's not
9 beyond the realms of possibility. They are colleagues.
10 It's perfectly acceptable to speak to them and
11 communicate.

12 Q. But you have no specific recollection at this time of
13 anything that you liaised with them about?

14 A. No.

15 MISS CARMICHAEL: Sir, I am noticing the time and I wonder
16 if this might be a convenient point at which to pause.

17 THE CHAIRMAN: Yes.

18 MISS CARMICHAEL: I was just conscious of the normal time
19 planning to give the stenographer some break at around
20 this time.

21 THE CHAIRMAN: We normally stop at 11.40.

22 MISS CARMICHAEL: I believe the normal scheduled time is
23 around 11.30.

24 THE CHAIRMAN: Oh right. That is my fault then. Very good.
25 We will sit, again at 11.45.

1 (11.30 am)

2 (A short break)

3 (11.48 am)

4 THE CHAIRMAN: I need to reprogramme. I'm not used to these
5 rather strange hours we are sitting. I am also told 15
6 minutes isn't quite enough for people to get coffee; so,
7 maybe as a punishment for me, we will extend it to 20
8 minutes in future if you would be good enough to remind
9 me.

10 MISS CARMICHAEL: Thank you, sir, I have just one more
11 question for Mr Thurley and I apologise perhaps for
12 returning to ground that we have covered to some extent
13 already.

14 You told the Inquiry that you could not tell whether
15 Y7 the mark on the doorframe had been deposited before
16 or after you put aluminium powder on?

17 A. That's correct.

18 Q. Why is it that marks will sometimes show up with black
19 powder when they haven't shown up with aluminium powder
20 despite already having been there?

21 A. It can be the age of the mark, it can be how fresh or
22 not the mark is, the age of the person concerned is an
23 issue as well, the older a person their skin tends to be
24 drier so they don't leave as many or as clear a
25 fingerprint as a young person would leave. The state of

1 mind has a lot to do with it as well. Somebody who is
2 perspiring a lot will certainly leave a mark a lot
3 clearer than somebody who is a bit cooler or whatever.

4 Their occupation has a lot to do with it actually as
5 well. Where you get the likes of bricklayers and
6 slaters and to some extent housewives as well who are
7 using their hands and their skin gets dry then they
8 don't tend to leave marks as readily as a younger sort
9 of office worker for argument's sake whose skin is soft.

10 There are a number of various reasons why some people
11 leave marks and others don't.

12 THE CHAIRMAN: If, for example, you had just dried your
13 hands in the bathroom walking out, would that be less
14 likely to show?

15 A. Not really because even though you're just drying your
16 hands, if your skin is soft and producing oils, then,
17 you know, you always do that. Coming back to the
18 bricklayer, for topic's sake, or the slater, if they
19 wash their hands or not wash their hands there's no
20 difference. Their hands are hard and the fats and oils
21 adhere to their hands what we're looking for. But
22 somebody who is young, like an office worker whose skin
23 is soft even if they do wash their hands they still tend
24 to leave a better mark than the likes of a slater. So
25 it's really got to do a lot with your occupation, what

1 you use your hands for.

2 MISS CARMICHAEL: So should I be taking from what you say,

3 Mr Thurley, that if I can put it this way, the oilier

4 marks are the ones that aluminium would pick up and the

5 drier ones are the ones that might be picked up with

6 black powder when they are not being picked up with

7 aluminium powder?

8 A. In general that would be fair to say, yes.

9 Q. And in this case the Inquiry has learned that some of

10 the marks that were discovered with black powder were

11 marks that were left by the lady who had been murdered,

12 Miss Ross. So we can say with some certainty that at

13 least some of the marks that were brought up with black

14 powder were there before they were powdered with

15 aluminium?

16 A. Oh, yes, yes.

17 Q. And ultimately Y7 is in no different position except

18 that we cannot say for certain whether it was there

19 before or after the powdering with aluminium?

20 A. That's correct.

21 MISS CARMICHAEL: Thank you very much, Mr Thurley. I do not

22 have any further questions for you.

23 THE CHAIRMAN: Are there any applications to cross-examine?

24 MR SMITH: Mr Smith, sir, I have a few questions I would

25 like to ask. I'm not sure if protocol requires me to

1 speak to counsel to the Inquiry first.

2 THE CHAIRMAN: Well, it does normally in the hope that they
3 will cover it for you but if you just tell me the nature
4 of the enquiry.

5 MR SMITH: I will just explain, if I may, what they are. I
6 think we heard from you earlier that this was a scene
7 where as much time as required would be given. The
8 information from the log in the case suggests that two
9 or four Scene of Crime Officers left.

10 THE CHAIRMAN: If you want to ask about the time --

11 MR SMITH: The second area relates to the officers who were
12 in the living room we heard some evidence about
13 yesterday and whether this would be expected to be
14 advised about that and, finally, it's to deal with
15 document DB0251 which has been writing on it "ident
16 required for deceased" and ask this witness if he has
17 any knowledge of those inquiries.

18 THE CHAIRMAN: I give you leave to ask about all three.

19 **Cross-examined by MR SMITH**

20 Q. Mr Thurley, you have heard the areas I would like to ask
21 you about. The first of these is you would be allowed
22 as much time as you required to carry out the
23 examination. I would like you to look at the log of
24 these which were shown earlier. I will try to get you
25 the number for you. SG0537. Can we have that, please.

1 I think if we can look at the second page and the main
2 area of this document we were looking at was the one
3 with the time, 10.55. It's not particularly clear -- I
4 have a photocopy myself -- but we can see:

5 "DI McAllister arrives at **locus**" and then "Chief
6 Inspector Hogg IB".

7 That's the investigation branch bureau?

8 A. Identification Bureau, yes.

9 Q. Then your name appears with IB next to it and then
10 scenes of crimes officers Stewart Wilson, Graham Hunter
11 and David Ferguson and as we see that was at 10.55.

12 If we go down the page we can see the time at 12.10 so
13 we're talking about, what, an hour and 15 minutes later
14 we see DI McAllister, your goodself and Scenes of Crime
15 Officer Dave Ferguson depart the locus; do you see that?

16 A. I see that.

17 Q. Some individuals, one would assume, are engaged in
18 gathering evidence are leaving the scene. Are you able
19 to help us how does that reconcile with the suggestion
20 that you would just take your time with enough personnel
21 to examine the scene as required?

22 A. The specific time and date you've mentioned there I
23 can't remember, as I say, from 12 years ago what I was
24 doing at that particular time. What I would say was the
25 first day we were down there we had five personnel

1 available to us. There wasn't -- we couldn't all get in
2 the house because of the type of house it was and the
3 layout within. We sent two to go away. So we had
4 plenty of manpower, we identified what manpower we
5 needed for a house of that size under normal
6 circumstances and the interior of that house wasn't
7 normal, I think it's fair to say. It had more of the
8 floor space was covered than we anticipated so,
9 therefore, we had to send people away. So we had more
10 than enough people to cover it to the extent we could
11 send people away, these people weren't being sent away
12 because they were needed elsewhere, these people were
13 sent away because we couldn't constructively use them
14 within that scene.

15 Q. So a combination of a difficulties; is that fair?

16 A. Yes, very much so, yes. I am sure you've seen
17 photographs of the inside of the house and I think if
18 you have seen them you're aware of the fact that there
19 wasn't a tremendous amount of floor area available for
20 equipment and personnel to be in there.

21 Q. Can I ask you this directly: at the time that you were
22 there, the time that this log indicates during that
23 period, was it your impression that the investigations
24 were into suicide rather than a suspicious death, if I
25 put it like that?

1 A. What my initial instruction was was that it was a
2 suspicious death. That's what I was told that it was at
3 the beginning and that's what I went down to look at, a
4 suspicious death. The fact that it was a suspicious
5 death made no difference to me whatsoever. It would
6 always be treated as a murder until I was told
7 differently.

8 Q. I wonder if you could look at another document and ask
9 you for your comments. This is CO1327 which will be
10 shown to you. What this document is for navigation
11 purposes is an e-mail that was received by Mr McKie from
12 Mr Ferguson, David Ferguson. I think what we are
13 looking at is the title sheet.

14 Can I ask you to move on to the next page, I think you
15 can see at the top of the page there it does appear to
16 be an e-mail received.

17 What I am interested in and, of course, Mr Ferguson
18 was someone who was known to you, I take it you have
19 never seen this mail before, have you?

20 A. No, I haven't.

21 Q. I will come on to ask you whether you have any knowledge
22 of the content of it. If you haven't seen it, I will go
23 to the e-mail with you. But if you look at the third
24 paragraph down, he explains, and I will just read this
25 out:

1 "I am not a fingerprint expert and cannot comment on
2 the identification, although I have no doubt that SCRO
3 have got it wrong. I have heard this from other
4 Scottish experts who have analysed the print on the
5 website and bow also to the greater knowledge of the
6 experts around the world. I also read with interest
7 Mr Wertheim's comments with regard the accusations made
8 by the SCRO regarding the crime scene photograph. I can
9 confirm that this is indeed the mark found at Irvine
10 Road."

11 Then he goes on in the next paragraph:

12 "I attended the scene on the morning after the
13 discovery of the victim's body. I was tasked, along
14 with a colleague, PC David Thurley, to carry out an
15 examination of the scene. I started at the porch area
16 while PC Thurley carried out the examination within the
17 hall."

18 Pause there, so far does that fit in with your
19 recollection of the position?

20 A. I wouldn't say it's drastically different. After this
21 time I can't remember which part of the building I was
22 in at any specific time but, yes, it's not a million
23 miles away I wouldn't say, yes.

24 Q. Just reading on:

25 "We were contacted some time later that day by CI", is

1 that Chief Inspector --

2 A. Yes.

3 Q. "... Hogg of our department to stop what we were doing.

4 When the photographer and forensics attended originally
5 everyone seemed to believe that victim had taken her own
6 life and ruled out foul play, I think based on her
7 diagnosed schizophrenia. No forensic had been carried
8 out because they were awaiting the result of the
9 post-mortem."

10 Now, you understand what they are suggesting is the
11 feeling about this examination was that because it was
12 suicide rather than a crime then the forensic analysis,
13 including yourself, was, if I put it this way, somewhat
14 soft-peddled. You disagree with that, don't you?

15 A. I most certainly do. I can honestly say in 32 years in
16 the police about 20 years within that department I've
17 never seen five scene examiners at the scene of a
18 suicide and examining the house along with productions
19 officers and senior police officers. So I would most
20 definitely disagree it was soft-peddled as you put it.

21 Q. What we looked at in the log was to some extent a
22 down-manning at one point, would that not fit into --

23 A. That's certainly an interpretation of it but it
24 certainly was not the case.

25 Q. Can you think of any reason why Mr Ferguson might have

1 had a different impression of what was going on?

2 A. That's a question you'd need to ask him.

3 Q. I am sure you understand why I'm putting it to you, that

4 there seems to be a difference between his position, if

5 he speaks to what is said in this e-mail, and your

6 position appears to be different impressions to what was

7 going on at the scene?

8 A. That's why I say you should really speak to him. I've

9 given you what my impressions were. I've given you what

10 my instructions were. I've told you as honestly and

11 straightforward as I possibly can as I have done in

12 previous hearings as to what my situation is in this.

13 There's no doubt in my mind at all that this was not

14 soft-peddled from the beginning. This was treated as a

15 murder inquiry. For the reasons I've also put in my

16 statement the reason that we do deal with it like that

17 is because, as you appreciate, it's far easier to, if

18 you deal with the most serious first, it's easier to

19 close something down than it is to try and gain speed on

20 it. So if you let a scene be contaminated, then it's

21 very, very difficult to recover that scene again.

22 Q. On that point perhaps it is appropriate to ask you at

23 this stage, we've received some information which tends

24 to suggest that possibly up to six police officers were

25 in the living room at the house at some stage prior to

1 you attending; do you follow?

2 A. Yes.

3 Q. You explained earlier that that was something that you
4 would be concerned about, if I put it that way?

5 A. I would be concerned, yes.

6 Q. I take it that, for example, people in there, as much as
7 leaving fingerprints, they might have accidentally
8 removed fingerprints that may have been of some
9 importance by putting their arm on a table or something
10 of that kind?

11 A. In the ideal world you do not want a scene to have
12 anyone in it apart from people who are moving evidence
13 out of it. The fact that when we were there on the 9th
14 and we left prints -- we enhanced prints and covered
15 them with tape and left them at the scene, I certainly
16 wouldn't have done that had I been aware of the fact
17 that there was six people within that house.

18 Going back to referring to nowadays, if I leave a
19 house or a premises and say to the Crime Scene Manager
20 that I have stuff in there, I don't wish anyone to
21 be there at all, it's evidence, I can guarantee that
22 that wouldn't happen. Clearly in '97 that may not have
23 been the case. However, I would be concerned at that
24 amount of people being in there, yes.

25 Q. Mr Thurley, I take it you agree it's common sense, even

1 in '97 it would be common sense, that you preserve the
2 scene, you shouldn't have people going in to the scene,
3 particularly in the room that was of particular interest
4 to the Inquiry. That's right, is it not?

5 A. I would certainly prefer that nobody went into the room,
6 yes.

7 Q. It is something that's not even best practice, but
8 common practice and probably any practice ought to have
9 ensured that no-one was in, who didn't have a good
10 reason to be there no-one was in the room where there
11 may be forensic evidence whether fingerprints, fibres,
12 blood stains, DNA all of these things. That would be
13 what would be expected in 1997, would it not?

14 A. Well, I would think whoever authorised that you would
15 have to ask them. As I've said all along I would be
16 concerned with that amount of people, with anyone being
17 in that room at all.

18 Q. And I take it then when you are carrying out the
19 forensic investigation it's something that had there
20 been people in that room you would have expected to be
21 told, would you not?

22 A. Possibly, yes. However, the ones, the main people that
23 need to be told that are the experts who are doing any
24 eliminations, be it the forensic lab for hairs and
25 fibres or blood or body fluids or whatever or SCRO who

1 have to try and eliminate every mark, every fingerprint
2 that's found in that house.

3 It's more important -- my job as I've said all along
4 is to find marks and recover marks. Whether they belong
5 to whoever that is not my concern. I don't have the
6 expertise to identify these marks. So had I got, you
7 mentioned six police officers going into that room, I'd
8 have six police officers prints in that were it would
9 mean no more or no less to me than any other print in
10 that house. My main function would be to recover
11 whatever marks are found in there and forward them to
12 the experts at SCRO and these experts within SCRO would
13 then have to eliminate whoever was in there. That's
14 their function not mine. Mine is to recover.

15 I would rather that there was nobody in there.

16 However, if you are telling me there are six people in
17 there then that's a question for somebody else.

18 Q. Just to pick you up on that point if I may about SCRO's
19 job and your job, they were quite different, weren't
20 they?

21 A. Oh, yes very much so. My job is to recover marks from
22 the scene. SCRO's job is to identify, eliminate and
23 identify.

24 Q. Can I ask you this: at some stage to your knowledge did
25 people from SCRO come to the house?

1 A. I believe they did. I don't think I was present. I'm
2 not avoiding the question there. I can't honestly
3 remember but I believe they did.

4 Q. Bearing in mind the division of labour up to that point
5 between your job and their job, can you help us with
6 this: is there any reason you could think of why they as
7 fingerprint examiners would look at stuff you have given
8 them, photographs, et cetera, why they would have to
9 attend at the particular house?

10 A. It's not uncommon -- when we send a lift or a print or a
11 photograph up of a particular print, it's only -- you
12 only see a very small snapshot of what I'm looking at,
13 if you want to follow that. They only see a small
14 part of that piece of wood. What can sometimes help
15 them if they can see the orientation of that mark of
16 that print that's on a specific item. So had it been,
17 for topic's sake, the print of a plastic cup we can
18 certainly take the plastic cup to them, take them to the
19 productions officer and let them see the plastic cup and
20 how the print was on there.

21 In this particular instance where you have print Y7,
22 it was on a doorframe. It would possibly have helped
23 them to see the orientation of the print, see which way
24 the print was sitting on that doorframe.

25 So, again, it's not a common thing to have SCRO coming

1 out to a scene to look at how the print was on an item
2 but it's not unheard of.

3 Q. If there's going to be analysis between a mark by a
4 fingerprint left somewhere and a fingerprint, an inked
5 print, if you like, why is it that the orientation or
6 positioning of it would affect, as far as you understand
7 it, their views as to whether or not there's a match?

8 A. This is where -- what I said to you earlier, my
9 expertise is in recovering prints. These were
10 recovered. You'd need to speak to the experts regarding
11 why they support it.

12 Q. I am not sure you've addressed this. Did you share
13 premises with SCRO at this time?

14 A. Well, it was suggested to me that we shared a building.
15 I honestly can't remember whether they were still in
16 Pitt Street or not at that point. There are, you know,
17 hundreds if not thousands of people work in that
18 particular building. It's reasonable at that point they
19 were still in the building, not in the same -- they
20 weren't certainly in the same department as us, a
21 separate department. But as you appreciate within that
22 building there are many departments all within one
23 building.

24 Q. I understand that but from what you said and your
25 working relationship with SCRO were they people that

1 you, for example, were on first name terms with when you
2 saw them?

3 A. I think it's fair to say that if you work 30 years in
4 anything that you do get to know the people who you
5 supply and who you work with. I'm sure with respect you
6 are on first name terms with people in this room because
7 you know them, because of your occupation. It doesn't
8 mean to say that there's anything untoward in that.

9 Q. I wasn't suggesting anything, Mr Thurley. I was simply
10 asking if you would be on first name terms?

11 A. With some of them, yes.

12 Q. Finally, can I ask you this: if you look at another
13 document, DB0251, please. Are you able to help us with
14 what this document is? Have you seen this type of thing
15 before?

16 A. Yes, this is what is referred to as a form 13B. It's an
17 internal form and it's used within the Identification
18 Bureau.

19 Q. Is it filled in by the Identification Bureau or filled
20 in by people who send it to the Identification Bureau?

21 A. This is filled in by somebody within the Identification
22 Bureau. It's referring to items that have been examined
23 within the examination room and it's referring to items
24 that have been Quasered.

25 Q. So you understand people say Quasered?

1 A. It's like a high-powered light source for looking for
2 marks, contaminants.

3 Q. Thank you. Do you see in the middle of the page two
4 asterisks we see something that appears to be:

5 "Ident required for deceased."

6 Do you see that?

7 A. Yes.

8 Q. Have you seen this document before?

9 A. Not that I'm aware of, no.

10 Q. As far as that part that's been subject to highlighting
11 is concerned, "Ident required for deceased", if you
12 received this what would you understand was being
13 referred to there?

14 A. Possibly just as it says, an ident required for the
15 deceased. I can't read anything -- I don't know in what
16 context that was written which makes it difficult to
17 comment but by reading what is there it says, "Ident
18 required for deceased."

19 Q. It is my fault, the use of the word "required" perhaps
20 conveys a sense of urgency or a request that something
21 specific is being looked for, hunted for.

22 Is that a fair way of reading that as far you can
23 tell?

24 A. Again, I think it would be fair to ask the author of the
25 document. I don't know in what context that was asked

1 for. I think you can only decipher that if you know
2 what context it's asked for, what the term "required"
3 means and I don't know.

4 THE CHAIRMAN: Mr Holmes, have you any questions you want to
5 ask?

6 MR HOLMES: Just two matters, sir, one arises from the
7 questions that were asked by my learned friend Mr Smith
8 and that's in relation to the division of expertise
9 between SCRO and the Identification Bureau.

10 THE CHAIRMAN: Yes.

11 MR HOLMES: The other arises from my learned friend
12 Miss Carmichael's questions and it relates to the use of
13 scales in photographs.

14 THE CHAIRMAN: Yes.

15 MR HOLMES: I am obliged.

16 **Cross-examination by MR HOLMES**

17 Q. Mr Thurley, you explained a bit about the division of
18 skills between you as an officer of the Identification
19 Bureau and the officers who were comparing fingerprints.
20 Your expertise, if I understand your answers correctly,
21 is in developing marks and in photographing them.

22 Do you ever compare fingerprints?

23 A. No.

24 Q. Would it be appropriate for you to comment on the
25 comparison of a fingerprint?

1 A. No, I would never comment on it at all. It's not my
2 field of expertise. I would not comment on it.

3 Q. Does the same go for any officer employed by the
4 Identification Bureau?

5 A. I can only speak for myself but if they do not have the
6 right expertise they most certainly shouldn't be
7 commenting on them.

8 Q. Thank you.

9 The second matter is just to be clear about this, you
10 mentioned earlier on the use of fixed position cameras
11 so you get a consistent sized photograph and I think you
12 said the photographs taken where you get that camera in
13 position there would be no scale used, there would be no
14 ruler within the picture or anything like that. I think
15 you also said that in certain circumstances where you
16 can't get the camera in position you sometimes used a
17 scale within the picture. Is that right?

18 A. That's correct, yes.

19 Q. Did you use a scale in any of the pictures you produced
20 in this case?

21 A. I cannot honestly recollect. If it was that important I
22 could look at the particular marks and tell you but I
23 can't recollect offhand.

24 Q. My particular interest is in Y7. Do you recall if you
25 used a scale in production of any of the photographs of

1 of what had happened and what had occurred on what day.

2 Q. When did you write it?

3 A. That I can't remember. It was clearly after the
4 examination had been completed because of what is on the
5 other pages here, but when exactly I couldn't tell you.

6 Q. Are we talking about within a month, within two months?

7 A. With respect it's 12 years ago. I honestly can't
8 remember.

9 Q. With that caveat in mind, I think if we look just at the
10 top of page 1 there, we see a record that "DT", which I
11 think is yourself, "GH", possibly Graham Hunter?

12 A. Yes, that's correct.

13 Q. "SW", Stewart Wilson and "DF", that would be David
14 Ferguson?

15 A. That's correct, yes.

16 Q. "... attended 43 Irvine Road, Kilmarnock, where they
17 were instructed by DCI Heath and DI McAllister to treat
18 the incident as a murder until the pm result."

19 A. That's correct, yes.

20 Q. Looking at that note, what is your best recollection
21 today as to how you were treating the scene?

22 A. That would be accurate at the time, if that's clearly
23 what was written there. It wasn't written last week,
24 last year. That would be written nearer the time of the
25 investigation, you know, a number of years ago. What

1 I've written there is what I was told. I've highlighted
2 that for a specific reason. I've written that because I
3 was told to treat it as a murder. It came to me
4 initially as a suspicious death but treat it as a murder
5 and that's exactly what we did do.

6 MISS CARMICHAEL: Thank you, Mr Thurley.

7 THE CHAIRMAN: Just two matters I wanted to ask you about.

8 So far as using that aluminium powder is concerned,
9 as I understand your evidence if you use black powder
10 then you have ruled out the use of aluminium powder and
11 so that's the logical reason why you use aluminium
12 before black?

13 A. Yes.

14 THE CHAIRMAN: Because you cannot use aluminium after black?

15 A. That's correct, yes.

16 THE CHAIRMAN: Is black powder -- I gathered from your
17 evidence it is quite difficult to use; messy, I think
18 you said.

19 A. It's a carbon powder. It's almost like soot. It's very
20 light, it floats about, it's filthy, dirty, the
21 advantage of using it is it's very contrasting. It lets
22 you see the marks very, very clearly if they are in fact
23 there. It lets you see them very clearly.

24 THE CHAIRMAN: If I could put it this way, would officers
25 find it more convenient to use black powder than

1 aluminium powder?

2 A. It's easier to use and less --

3 THE CHAIRMAN: And less time-consuming.

4 A. Yes.

5 THE CHAIRMAN: Of course on the point that was being raised

6 with you about people being allowed into this room when

7 they were looking after the scene, that would really add

8 to your work because there would be more prints that

9 would have to be analysed because more prints would have

10 to be eliminated.

11 A. There's certainly a possibility that. There would be

12 more prints in theory and more prints could be recovered

13 from the scene and that obviously has a knock-on effect

14 for everyone else who comes on board as far as SCRO or,

15 in fact, if it's forensic samples that are found it

16 involves more work for the forensic lab. So really it's

17 got a knock on effect.

18 THE CHAIRMAN: But you would not expect to be told when you

19 begin that officers had been using a particular room.

20 A. Not necessarily. I would like to have been told but

21 that's not really answering your question. I wouldn't

22 necessarily expect to have been told. As I said, my job

23 entailed the recovery of whatever marks were in there.

24 Had I not been told I would have expected certainly SCRO

25 to be told because ultimately they are the ones who are

1 going to have to try to eliminate. If we get 300 marks
2 out of a scene they have really got to try to answer as
3 many of them as possible, whether it's the fact that
4 they are insufficient, whether they are eliminated to
5 people who have legitimate access to the house or
6 whatever.

7 THE CHAIRMAN: When you receive the marks they would know or
8 be told where they had come from, the area, the general
9 area?

10 A. Yes. We saw earlier the handwritten form that was up
11 there that SCRO had used, the last two columns to reply
12 if you want to, to answer each mark individually. They
13 get a copy of that form when the prints go to them, when
14 the marks go over to them. So, yes, they would know
15 exactly where these marks were from in as much as they
16 were on the door face 5-foot 6 up or on the skirting
17 board 3 inches or whatever. It doesn't show the
18 orientation of them but it certainly does show -- it
19 would tell them roughly where they were.

20 THE CHAIRMAN: Just if you knew the number of police
21 officers who had been using the room that these prints
22 had come from or marks you would then know to expect to
23 eliminate some from that or would that advice not be
24 given.

25 A. You would be looking at where they came in, in the

1 hallway, the hall and then into the room. These would
2 be the three areas the porch, the hall and the -- we
3 heard it was a lounge area. You would be looking at
4 these three areas to be highlighted, at least to SCRO,
5 to say any marks coming out of these areas in
6 particular, these are the individuals you need to
7 compare against them just in a normal list of
8 elimination.

9 It means nothing to the scene examiners and it means
10 nothing to SCRO the fact that these prints have been
11 identified to whoever. These individuals are not known
12 to myself or to SCRO. We all work totally independently
13 of the divisions. It would mean something to CID
14 whether it was a police officer who was in that lounge
15 or whether it was an accused for a particular crime or
16 the deceased or whatever, it would be up to the --
17 information would go back to the CID and they make a
18 judgment call on the relevance of that.

19 THE CHAIRMAN: On a different topic, you were good enough to
20 describe the limitations, if I can call it that, of your
21 expertise, that you would not venture opinion on
22 interpretation of a mark.

23 May I take it that your expertise would not or would
24 it extend to how a mark may have been deposited?

25 A. Sorry --

1 THE CHAIRMAN: If you understand what I mean.

2 A. How it might have been --

3 THE CHAIRMAN: Well, if you saw a mark on some part of a
4 window or something like that, would your expertise go
5 to the extent of saying, well, that looks very like
6 somebody climbing in through that window in a particular
7 direction or something of that sort?

8 A. If it was the likes of a point of entry for the purposes
9 of a housebreaking, you could clearly see four prints
10 coming in the window, yes, I would make a decision on
11 that these were marks coming in the window as opposed to
12 going out the window. Yes, I would do that. But I
13 would always stand corrected by -- if my theory was
14 disputed by SCRO I would go on the side of SCRO because
15 they are ultimately experts in identifying marks. Yes,
16 I would say, and have said, what these marks are
17 consistent with is somebody coming in the window, for
18 topic's sake, but certainly if I was questioned and SCRO
19 said they are clearly not that, then I would go on the
20 side of what SCRO said. They are the experts.

21 THE CHAIRMAN: Of course you would defer to their opinion
22 but you would only express an opinion if it was
23 something that was reasonably obvious?

24 A. If it was reasonably obvious, I would express an
25 opinion.

1 THE CHAIRMAN: So you wouldn't, for example, with a mark
2 like Y7, have expressed an opinion --

3 A. Absolutely not.

4 THE CHAIRMAN: -- as to how that could have been placed
5 there?

6 A. No opinion on that at all.

7 THE CHAIRMAN: Thank you very much. Thank you for your
8 assistance. You are free to go as far as the Inquiry is
9 concerned, thank you.

10 **(The witness withdrew)**

11 MISS CARMICHAEL: The next witness is David Ferguson.

12 **DAVID WILLARD FERGUSON (sworn)**

13 THE CHAIRMAN: Your full name, please, for the record.

14 A. It's David Willard Ferguson.

15 **Examined by MISS CARMICHAEL**

16 Q. Mr Ferguson, I think you have provided a written and
17 signed statement for the Inquiry.

18 A. I have, yes.

19 Q. That is, as far as you are concerned, a truthful record
20 of the things you were asked about?

21 A. It is, yes.

22 Q. Going back to 1997, Mr Ferguson, how long had you been a
23 scene of crimes officer in January 1997?

24 A. I'd started as a Scenes of Crime Officer in March 1995;
25 so it was just short of two years' service at that

1 point.

2 Q. I would like to ask you first, please, about what you
3 say in paragraph 16 of your statement if you can look at
4 that for me, please. It is at page 4 of your statement.

5 A. Yes.

6 Q. What you say there is that you think that the work had
7 been done by forensics the night before you came on the
8 scene, you coming on the scene on 9th January?

9 A. That's correct, yes.

10 Q. I wonder if you could look for me, please, at a document
11 SG0537 at the first page, please, and I wonder if you
12 could look at the entry in about the middle of the
13 page 20.31.

14 A. Yes.

15 Q. What we are looking at here is a log of people coming
16 into the scene on 8th January. That is the night they
17 get there. At 20.31 we see a Mr Fairley from the
18 forensic lab.

19 Is that a name you are familiar with?

20 A. Yes, it is, yes.

21 Q. If we can enlarge the page again please, I think I am
22 right in saying that we see him leaving at about
23 23.00 hours?

24 A. Yes, I can see that.

25 Q. So that might suggest that there had been at least some

1 forensic presence or consideration of the matter in the
2 hours before you had attended?

3 A. Yes, that would be correct. It would be consistent with
4 something that would be regarded as a strange or
5 suspicious death that somebody from the forensic lab
6 would attend initially at the premises.

7 Q. So it certainly wouldn't necessarily be right to say no
8 work had been done by forensics?

9 A. Obviously I don't know what Mr Fairley did at the scene
10 but certainly it was suggested he was there and he left
11 at that time but as to what he did --

12 Q. I quite understand that. This shows he was there.

13 If we can go on to page 4, please, I think the Inquiry
14 has already heard that the next we see of forensic staff
15 attending is on the 10th which is, of course, the day
16 after that you start your examination on the 9th?

17 A. Yes, I can see that, yes.

18 Q. Is that consistent with your own recollection of what
19 happened?

20 A. I can't actually remember the forensic lab attending but
21 certainly if they were on the log they would have been
22 there at the time.

23 Q. The Inquiry has heard a suggestion that perhaps a total
24 of six officers in three pairs of two were present in
25 the living room the night before you came to do your

1 examination. As a Scenes of Crime examiner, what would
2 be your reaction to learning that that would be the
3 case?

4 A. It would certainly be extremely unusual for any form of
5 scene where there would be a forensic examination taking
6 place where there should be no people within that
7 location at all until the examination is started and, in
8 fact, completed before anyone should have any entry into
9 the scene.

10 Q. Would it have any impact on the collection of
11 fingerprints?

12 A. It certainly would if they touched any surfaces in the
13 living room as you suggest they may have been placed,
14 yes, I mean, not just in the fingerprint examination but
15 certainly any forensic examination as well, the fact
16 there was any form of traffic going through the location
17 would certainly have compromised the forensic
18 examination.

19 Q. Focussing on the fingerprints, in what ways might it
20 have compromised the collection of fingerprint evidence?

21 A. If they had touched any surfaces, if they had even
22 rubbed against surfaces these fingerprints could have
23 been remove from the surface itself.

24 Q. So they could have left fingerprints or could --

25 A. -- could have left fingerprints or accidentally removed

1 fingerprints.

2 Q. I think you say in paragraph 17 of your statement that
3 whatever the position may be regarding forensic work
4 having been done overnight there was not necessarily any
5 consequence for the fingerprint examination as regards
6 when the investigation was officially designated as a
7 murder investigation?

8 A. Yes and what I was explaining there was that certainly
9 as far as our fingerprint examination goes it would be
10 the last part of the examination of a location after the
11 forensic examination had taken place. No forensic
12 examination takes place when a fingerprint examination
13 was going on and any forensic material there could
14 potentially be either compromised, disturbed or even
15 destroyed.

16 Q. Moving on, I would like to ask you a little about in the
17 next section of your statement where you talk about the
18 use of aluminium powder.

19 A. Yes.

20 Q. You say that yourself and Mr Thurley were working at the
21 house that day on 9th January and you tell us that
22 Mr Thurley applied aluminium powder to the bathroom
23 doorframe while you were away doing something else in
24 the porch.

25 A. Yes, that's correct. I was examining the glass porch

1 area as was instructed by David Thurley. During this
2 time, he was within the hall area examining door frames
3 and facings and the doors themselves.

4 Q. Did you yourself that day view the treated doorframe of
5 the bathroom?

6 A. Yes, I did.

7 Q. What did you observe when you viewed it?

8 A. The doorframe had been powdered using aluminium powder
9 but, as far as any sort of material on the doorframe,
10 coming back to that, I didn't actually view the surface
11 of the doorframe prior to aluminium powder being applied
12 to it.

13 Q. The Inquiry may hear evidence that sometimes aluminium
14 powder doesn't take on a surface. What would you
15 understand by that expression, it not taking?

16 A. The use of powders at a crime scene ultimately come down
17 to the individual choice of the scene examiner who
18 attends the scene. Some surfaces react better to
19 aluminium powder, some surfaces will react better to
20 black powder and some surfaces wouldn't react to any
21 powders and would have to be removed and chemically
22 treated. It was of my opinion, and certainly the
23 training I received up to that point, that for surfaces
24 such as white door facings, especially when they have
25 been painted and can sometimes have a slight texture to

1 them, are best treated with black powder. It makes it
2 easier to see the marks especially with the light
3 conditions that were in the hall at the time.

4 Q. I will come on to that in a minute but if aluminium
5 powder does not take, can you see that it has not taken?

6 A. Yes. When I'm examining crime scenes I may start using
7 aluminium powder and quickly realise as I start to dust
8 the surface that the powder doesn't seem to be adhering
9 to that surface. I would then maybe change to a
10 different type of powder, say an aluminium magneta
11 powder, or maybe even on to a black powder for the
12 surface. The experience is built up over the years.
13 You certainly judge when you look at a surface what the
14 best powder is to use.

15 Q. When you look at the treated doorframe yourself that day
16 was there anything to indicate to you that the aluminium
17 powder had not taken?

18 A. No, the use of aluminium powder throughout the house had
19 revealed good fingerprints and good quality fingerprints
20 were certainly being developed using aluminium powder.
21 From that point of view it would have been the powder I
22 would have used.

23 Q. The Inquiry has heard from your colleague, Mr Thurley,
24 that he would always use aluminium powder first because
25 that's the least destructive option.

1 Do you have any comment on that?

2 A. Yes. It's certainly something I've never done. I have
3 like 14-years' service. I wouldn't use aluminium powder
4 and then go over the surface again, with the black
5 powder. I certainly haven't done it in my 14-years'
6 service up to this point.

7 Q. Would you accept that if you treat with black powder
8 first you wouldn't be able to go back and have another
9 go with aluminium powder?

10 A. Yes. If you treat a surface with black powder then you
11 are certainly covering the whole area with black powder.
12 Any marks that are there come up fairly well on that
13 type of surface using black powder and after you have
14 used black powder, there's no reason you can't go on to
15 use some form of chemical process as well which would
16 leave the black powder and leave chemical traces behind.

17 Q. But you wouldn't be able to go back to aluminium powder
18 after black powder?

19 A. No.

20 Q. Whereas you can use black powder after you have used
21 aluminium powder?

22 A. It's something I've never done, to be honest. Obviously
23 it was done on this occasion and further prints were
24 revealed, but it's certainly something I've never done
25 in the past. After using aluminium powder, I wouldn't

1 have a reason to go back and use black powder. If that
2 was the powder I used, first chosen to use, then I
3 wouldn't have seen any need to go back and use a
4 different powder.

5 Q. Mr Thurley gave evidence today that there's some form of
6 Home Office guidance that indicates that aluminium
7 powder comes first in the order ahead of black powder.

8 Do you disagree with that?

9 A. There's certainly -- the Home Office have produced a
10 series, there's a manual of fingerprint development
11 techniques and it's like a flow chart system, gives you
12 a sort of sequential process of examining any type of
13 surface with it, be it a gloss-painted doorframe, for
14 instance, whether it be paper, whether it be wall, and
15 it gives recommendations of how you would process that
16 surface. It always starts with the visual examination
17 if there's something there you can see visually you
18 photograph it, then recommends you go on to use possibly
19 a light source, for instance, a fluorescent
20 light similar to the Quaser that was mentioned earlier
21 or you would then go on to use, after that, powders and
22 from the powders on to chemical treatments but I don't
23 recall, as I say, I haven't seen anywhere in this manual
24 that suggests you would use aluminium powder and then
25 follow it with black powder.

1 Q. To the lay mind, if you forgive me, Mr Ferguson, if
2 there's one powder that you can use first that won't
3 stop you using other powders afterwards it would seem to
4 make sense to use that powder first, wouldn't it?

5 A. I don't -- I would have to probably disagree with that.
6 I think, as I said earlier, it's down to the individual
7 scene examiner to look at a surface and that surface
8 really would determine which powder you would use. The
9 powder -- if the surface itself is a fairly textured
10 surface you wouldn't use, for instance, something like
11 aluminium, which is a flaked powder, you use black
12 powder which is a granular powder and tends to adhere
13 better within the textures. Something like a white
14 painted doorframe that might have a slight texture where
15 the brush marks of the white gloss may react to black
16 powder. Certainly it's something I've never done in
17 14 years. I don't know other Scene of Crime Officers
18 who have used aluminium powder when they would want to
19 use black powder.

20 Q. Just on that very point, Mr Ferguson, in the case that
21 we are dealing with here there was a mark, assuming it
22 was there before the aluminium powder was -- well, in
23 fact, I will start again.

24 We know that there were marks that were identified as
25 belonging to Miss Ross, the lady who died, which were

1 revealed by the black powder but not by the aluminium
2 powder?

3 A. That's correct, yes.

4 Q. So from that we can take it that there will be times
5 when even if you've had a relatively, perhaps even a
6 relatively productive dusting with aluminium powder
7 there still might be a point to using black powder
8 afterwards because you may find something else?

9 A. Yes, I would suggest that we used black powder at the
10 start, all the marks from that doorframe would have been
11 developed using the black powder and none would have
12 been missed using the aluminium powder.

13 Q. But if I have understood your evidence correctly, your
14 position is that if you had, for whatever reason,
15 started with the aluminium powder in any case you would
16 never think of going back over it with black powder?

17 A. It wouldn't be something I would do unless you examine a
18 scene, a surface, and realise right away that powder
19 hasn't particularly taken to it you then start using a
20 different powder but I would always try and choose the
21 best powder for that surface at that time and wouldn't
22 go over a surface again with a second powder. The only
23 time I've ever done that where I was using the black
24 granular powder and sometimes you can actually enhance
25 it, make the mark slightly better if you go over it with

1 the black granular powder. It's basically the same
2 powder but just fine and that is purely from a contrast
3 point of view when it comes to photographing that mark.

4 Q. Is it your position that any mark that would come up
5 with aluminium powder would come up with black powder?

6 A. Yes, that would be my position.

7 Q. As to your view of matters, Mr Ferguson, we know that
8 mark Y7, the mark perhaps that we are all interested in
9 in this Inquiry, was developed by black powder but
10 not -- it certainly wasn't developed by aluminium
11 powder, whether or not it was there at the time.

12 Can we reach any conclusion as to whether it was there
13 before the aluminium powder was applied or whether it
14 must have been deposited after the aluminium powder was
15 applied?

16 A. I think the fact that Miss Ross' prints were also found
17 in the doorframe we can't make any inference as to
18 whether that mark was there before or after we examined
19 it with aluminium powder.

20 Q. Would there have been, on the basis of your experience,
21 any disturbance in the aluminium powder if it had been
22 deposited on the surface treated with aluminium powder?

23 A. It's hard to say whether it would be noticed by anyone
24 who decided to then go over it with a different powder.

25 The aluminium powder is, once it's on the surface,

1 especially if the surface is slightly sticky, would
2 maybe not be disturbed with any mark that then went over
3 the top of it. But I wouldn't be able to make any
4 informed decision at the time. I certainly wasn't
5 present when mark Y7 was found.

6 Q. You have told us that you would have preferred the use
7 of black powder on the surface that Mr Thurley used
8 aluminium powder on?

9 A. Yes.

10 Q. Did you say anything to him about it at the time?

11 A. No, I didn't. I was a relatively junior Scenes of Crime
12 Officer at that time, as I said, with less than two
13 years' service. David Thurley was obviously a Scene of
14 Crime police officer with many years' service. I
15 believe I made a comment when we came to examine the
16 bannister or a question, maybe slightly a loaded
17 question as, "David, do you want me to use aluminium
18 powder", and it was probably, you know, the answer was
19 obviously, yes, but it was maybe a slightly loaded
20 question in just confirming, "You are happy with me
21 using aluminium powder".

22 Q. But you certainly did not voice any disagreement about
23 what he had done with the bathroom doorframe?

24 A. No, I didn't say to him that we should have used black
25 powder.

1 Q. But you have criticised Mr Thurley's decision about that
2 in the past to other people, have you not?

3 A. Yes, I think with greater knowledge and probably greater
4 understanding of the various events and the fact that
5 when the area was gone over with black powder and
6 further prints were developed that the black powder
7 should really have been the powder that was used at the
8 time and not aluminium powder.

9 Q. I would like you to look, please, at a document CO1327,
10 page 2. I think that is an e-mail from you to Iain
11 McKie copied to -- it's written as "Wertenheim" but I
12 think it is meant to be Wertheim?

13 A. Yes, that's correct.

14 Q. You wrote that in January 2000?

15 A. Yes, this was after the various trials and obviously the
16 acquittal of Ms McKie. At that point I was working
17 within the identification branch of Lothian & Borders in
18 the same capacity as in the Crown Office. I had been
19 obviously reviewing various items on the Internet and
20 various discussions that were going on with the experts
21 round the world. I'd also, for want of a better word,
22 had some banter and some ribbing from my colleagues in
23 Edinburgh who were joint fingerprint experts and Scene
24 of Crime Officers. So it was possibly an e-mail written
25 in frustration and sort of venting my opinions on what I

1 thought was the case.

2 Q. I would like to ask you particularly in the first
3 instance about the last paragraph on this page. Now you
4 write:

5 "By the time the entire hall area had been examined by
6 myself and PC Thurley using aluminium powder I disagreed
7 with this choice of powder, the areas being examined
8 were white facings and doors and felt black or magna
9 powder was in fact the correct powder which should have
10 been used."

11 You accept that whatever you may have thought at the
12 time you did not voice any disagreement to Mr Thurley or
13 give him the chance to comment on that at the time, did
14 you?

15 A. Yes, that's correct. Probably the e-mail is not very
16 grammatically correct I would suggest. Certainly I
17 didn't believe we were using the correct type of powder
18 for the surfaces but I didn't say that to Mr Thurley at
19 the time.

20 Q. You say:

21 "Had the hall been examined in black powder at the
22 start this whole sorry affair would never have
23 happened."

24 You have told us, I think, that we cannot know whether
25 Y7 was deposited before or after the aluminium powder

1 was put on so I wondered if you could explain to us how
2 it would be that the events that subsequently came to
3 pass involving the controversy with Ms McKie might have
4 been avoided by dusting with black powder?

5 A. Yes, I can understand your point certainly. If the
6 print Y7 was there at the time and had been developed
7 using black powder Mr Thurley had examined the scene it
8 still may have been misidentified. I think I was
9 explaining the circumstances there that inferred an
10 officer had entered the scene and placed a fingerprint
11 on a surface that had already been examined and which
12 was then later reexamined with black powder then the
13 affair wouldn't have happened in the first place. We
14 would actually have examined that door facing with black
15 powder we wouldn't have got into a situation where other
16 officers felt the need to go over it with black powder.
17 So I really feel it may have actually brought up the
18 prints on the doorframe itself.

19 Q. It might have brought it up but of course Y7 -- we don't
20 know -- might have been deposited after the aluminium
21 powder was put on?

22 A. Yes, that's correct.

23 Q. In that event it would make no difference would it?

24 A. No, but certainly if the print Y7 was deposited after
25 the door facing had been examined with black powder,

1 then it would probably never have been recorded in the
2 first place.

3 Q. You say it may have been clearer if it had been dusted
4 with black powder in the first instance rather than the
5 second. Is that your position?

6 A. Yes. If the print had been there -- I don't know if,
7 for instance, print Y7 could also have been a print that
8 was previously lifted on that door in which, when you
9 lift a print off a frame using aluminium powder and you
10 then go over that surface with black powder you may well
11 be going over a print that's already been printed in
12 which case you are actually duplicating your work.

13 Q. But if somebody has lifted a print out of aluminium
14 powder surely the tape must leave some sort of mark?

15 A. The tape would leave a residual mark but certainly if
16 you are then going over it with black powder and every
17 mark that comes up then you will be photographing marks
18 that possibly may have been lifted as well.

19 Q. But any dusting with black powder should see where tape
20 had been lifted with the aluminium powder surface?

21 A. Yes but I can't suggest -- I don't know whether the
22 other Scene of Crime Officers would know these were
23 lifted parts or not.

24 Q. I wonder if we could take that of the screen for now.
25 Your own fingerprint, I think, was found on a piece of

1 tape?

2 A. Yes, that's correct.

3 Q. And can you tell us how that came to happen?

4 A. Yes. When you are carrying out a fingerprint lift it
5 can be quite tricky to move -- at the end of the day,
6 the fingerprint lift is used using a piece of sellotape,
7 a fairly broad piece of sellotape and it's quite tricky
8 to try and manipulate the sellotape when you have gloves
9 on. When we were lifting the prints sometimes we remove
10 gloves to make it easier to place that piece of
11 sellotape on to the acetate itself, the acetate sheet.
12 At some point I inadvertently managed to put my finger
13 on the underside of the tape which has then been
14 identified or eliminated by the Scottish Criminal Record
15 Office.

16 Q. And is that something that happens quite often or --

17 A. It's not something that happens often. It's quite
18 embarrassing when it does happen, obviously, but on this
19 occasion it did happen. I cannot remember exactly what
20 surface my print was found but it was certainly found
21 on -- it was a lateral reversal which I understand it to
22 be on the underside of a piece of tape and not actually
23 a fingerprint that has been left on a surface.

24 Q. I wonder if you could look again at document CO1327,
25 this time on page 3. I would like to focus on a part

1 that starts in fact halfway down the first paragraph do
2 you see a passage:

3 "In fact, I was also used to setup Ms McKie."

4 A. Yes. As I said, hopefully a way of venting frustration
5 and anger at the whole affair that went on. I felt -- I
6 found it strange that for a case that relies so much on
7 fingerprint evidence at that time was relying then went
8 on to have a police officer denying that her fingerprint
9 had been found at a scene. I felt when I went to give
10 evidence at the trial of Mr Asbury that my main evidence
11 was really about the fact that I had left a fingerprint
12 at the crime scene and was used to introduce something
13 like the Strathclyde Police record card, which is
14 completed for all Scene of Crime Officers and police
15 officers when they enter the service, when your
16 fingerprints are taken, and felt it was almost as if I
17 was being set-up for Ms McKie to then come in and
18 allegedly perjure herself.

19 Q. I wonder if we can look at what you write there. You
20 say:

21 "My print was eliminated by SCRO. They had identified
22 a lateral reversal of one of my fingers, inadvertently
23 left on the underside of the lifted tape."

24 And you don't dispute you had inadvertently left it
25 there?

1 A. It does happen.

2 Q. And you don't dispute that it happened?

3 A. No.

4 Q. You go on to say:

5 "They made me look incompetent trying to show that
6 police officers' prints are left at crimes scenes."

7 The fact is that police officers are like the rest of
8 humanity. They are not always perfectly careful and
9 they sometimes leave their marks where they shouldn't
10 be?

11 A. Yes.

12 Q. And that's not altogether unusual, is it?

13 A. No, obviously the first attendance of a major scene,
14 where there may be a distinct possibility that life
15 could be preserved, police officers when they enter the
16 scene are more concerned with watching what they touch
17 and what they don't touch their first objective is to
18 preserve life. So they may touch inadvertently touch
19 surfaces and leave prints behind.

20 Q. It is not altogether unusual to find police fingerprints
21 at a scene?

22 A. No, it's not.

23 Q. And that's why there are elimination prints kept on
24 file, isn't it?

25 A. That's correct.

1 Q. So, frankly, Mr Ferguson, nobody would need your
2 fingerprint on a piece of tape to demonstrate that
3 police officers left their fingerprints at scenes, would
4 they?

5 A. No, it certainly does happen but whether they felt they
6 needed to use me to introduce that I don't know.

7 Q. It is simply a fact of police procedure, is it not, that
8 police prints are, generally speaking, kept on file for
9 elimination purposes?

10 A. Yes, my understanding would be that when fingerprints
11 are taken from a crime scene and they are submitted to
12 SCRO for checking, the SCRO would have a list of people
13 who had some form of involvement in that scene whether
14 the first police officers who attended and also the
15 Scene of Crime Officers who attended and, I believe, a
16 first port of call would be to eliminate any of these
17 marks against the people who had, if you like,
18 legitimate access to the crime scene being police
19 officers and crime scenes officers as well.

20 Q. Just about any police officer can tell you the prints
21 are routinely kept on file?

22 A. Yes.

23 Q. So, again, one might think there wasn't any particular
24 need to have you brought into this matter to show: (a)
25 sometimes prints get left at scenes; and (b) that police

1 officers have files kept of their prints for elimination
2 purposes?

3 A. I certainly couldn't understand why I was brought in to
4 court to explain my own fingerprint being found at a
5 crime scene.

6 Q. You don't understand that at all?

7 A. I don't understand why I was asked to give that evidence
8 at court. I didn't think -- certainly, obviously, I
9 wasn't party to the discussions about that. I didn't
10 understand why there was any requirement for me to go in
11 there and speak about that, other than my examination of
12 the crime scene.

13 Q. So in the case where there was an unexplained
14 fingerprint or at least a disputed fingerprint and a
15 case where there was a great deal of importance placed
16 on fingerprint evidence you cannot -- your position is
17 you cannot understand why you were called to give
18 evidence about the presence of your print?

19 A. I don't think I was actually fully aware of the
20 circumstances at the actual trial as to why I was going
21 in to do that. I understand that there was a print that
22 had been identified. I was not aware that Ms McKie
23 would be attending and that her fingerprint had been
24 found.

25 MISS CARMICHAEL: Sir, I do not think I have anything

1 further for this witness but I suspect -- I note the
2 time.

3 THE CHAIRMAN: We will return at 1.50.

4 **(1.00 pm)**

5 **(Luncheon Adjournment)**

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