

1

Thursday, 11th June 2009

2 (10.15 am)

3 MISS CARMICHAEL: Thank you, sir. I should say that before  
4 resuming at the point where we left Mr Moffat's evidence  
5 yesterday, I would like to take him a little way back in  
6 his evidence to when he was telling us about what he  
7 observed Gary Gray doing.

8 We have today the benefit of an additional  
9 production in the form of a life-size series of  
10 photographic images of the piece of wood removed from  
11 the crime scene in Kilmarnock. The photographs were  
12 prepared by Dr Bleay at the Home Office. With your  
13 leave, Mr Chairman, I would ask Mr Moffat to leave the  
14 witness box to try to show us by reference to that  
15 production just what he observed.

16 THE CHAIRMAN: Perhaps you would like to explain what the  
17 production is so we have it on the record.

18 MISS CARMICHAEL: Yes, what we have is a series of  
19 photographs of the piece of wood that was removed from  
20 the crime scene. This was photographed by Dr Bleay at  
21 the Home Office and there are scales in the forms of  
22 essentially long rulers along the edges of it  
23 to demonstrate the size. The various images have been  
24 taped together to make a composite image of the whole  
25 height of the item and we now have that attached to one

1 of the walls beside a doorway in the hearing room here.

2 Now, for all the interested representatives to be  
3 able to observe what is going on it will probably be  
4 necessary to leave our seats and for you, sir, to leave  
5 your normal position and I understand that there is also  
6 a process whereby this passage of the evidence can be  
7 recorded photographically.

8 THE CHAIRMAN: We will see how it works.

9 MISS CARMICHAEL: I am obliged, sir.

10 **MICHAEL MOFFAT (continued)**

11 **Examined by MISS CARMICHAEL (continued)**

12 Q. So I think I should invite you then, Mr Moffat, to leave  
13 the witness box and I will leave my normal seat as well  
14 to come with you. I think there are more people coming  
15 up.

16 Now, Mr Moffat, what I'd like you to do by reference  
17 to the long photograph that we have there is show us the  
18 position that you saw Gary Gray in when he, as you told  
19 us, was touching the wood?

20 A. Okay, I'll show the piece of wood here in reference to  
21 how a doorframe would look if you can imagine if you're  
22 standing in the hallway and this was the bathroom door  
23 then this piece of wood on the inside here. **(Indicated)**

24 Q. Now, I should explain for the notes that we're actually  
25 facing a doorway here in the hearing hall and it may

1 actually be useful, since we have the possibility of  
2 recording this photographically, if you point simply to  
3 the bit of wood where you say is the equivalent of the  
4 doorframe that you saw in Kilmarnock and I will ask the  
5 assistant here to take a photograph.

6 A. Whether or not that's the exact same set up as the door  
7 in Kilmarnock I don't recall. All doors tend to be  
8 different but this piece of wood would have been on the  
9 inside edge of the frame. **(Indicated)**

10 Q. The one that you have indicated when the assistant has  
11 taken the photograph here. **(Photograph taken)**

12 Now, what I will ask you to do then -- thank you for  
13 showing us that -- is to try and put yourself in the  
14 position that you tell us that Gary Gray was in when you  
15 saw him touching the piece of wood and I will ask you  
16 first to do that by reference to the photograph.

17 A. With the position of the door of this, the photograph  
18 here just now, the end of the bathroom would have been  
19 down that way so I would have been standing there  
20 looking back towards Mr Gray who would have been  
21 standing here with his hand like that **(indicated)**.

22 Q. I would like you to try as precisely as possible to put  
23 your hand on the piece of wood in the position that you  
24 recall Mr Gray's hand being on the piece of wood?

25 A. Well, I roughly remember it as being round about my

1 shoulder height.

2 Q. When I say positioning your hand if you can recall and  
3 please tell us if you can't, if you can recall which of  
4 his digits, whether it was his forefinger, his middle  
5 finger, his thumb that was contacting if you --

6 A. You wouldn't be able to see that exactly because I'm  
7 standing at the back here and what you're seeing is a  
8 hand up here like that, in that position. So you can't  
9 see exactly what's touching where.

10 Q. So because you were behind you weren't able to see which  
11 of his digits was contacting the wood?

12 A. That's correct.

13 Q. But for the record, as to the approximate position, I  
14 wonder if you could show us and we could perhaps have  
15 that recorded on camera.

16 A. **(Indicated) (Photograph taken)** This was the position  
17 that Mr Gray was standing in. I don't know what height  
18 Mr Gray is. All I can refer to it is he was standing  
19 comfortably with his hand in that position leaning  
20 against that frame. So if Mr Gray's taller, then the  
21 hand print would be taller.

22 Q. We could perhaps enquire with Mr Gray in due course if  
23 that becomes necessary. I would like you also,  
24 please --

25 MEMBER OF INQUIRY TEAM: Can I ask another shot be taken,

1           please. **(Photograph taken)**

2           MISS CARMICHAEL: I wonder if you could show us also since

3           we have the benefit of a door here that I think I am

4           right in saying is hung in the same direction as the

5           bathroom door at Kilmarnock, if you could try to show us

6           as best you can, positioning yourself in the doorframe,

7           what you saw Gary Gray doing and the position that he

8           was in when you saw him.

9           A. He was standing within the doorframe just leaning as

10          that, for a brief instant. **(Indicated)**

11          Q. I wonder if you could record that as well, please?

12          A. I believe he was talking to another officer that's why

13          he turned round **(photograph taken)**.

14          Q. So can we take it then from where you are thinking of

15          the Kilmarnock scene that Mr Gray was facing out into

16          the hall at the time?

17          A. Yes.

18          Q. Just stay there a moment. I wonder if you could

19          position yourself again in the same way so that we can

20          record a picture of particularly focusing on your hand,

21          Mr Moffat. **(Photograph taken)**

22                 Before we leave here, I wonder if you could do one

23          more thing for me, Mr Moffat, and it's really to try to

24          reproduce the position that you were in physically when

25          you saw Mr Gray, whether you were crouching, standing,

1 try to recreate that and how far -- now, I think we will  
2 have to move other people here but since we do have the  
3 benefit of this perhaps, I think if we open up this  
4 door ... I'm down in this position because this is the  
5 head side up, possibly further back.

6 Q. You are trammelled there by some stairs.

7 A. I'd been down in this position but probably a bit  
8 further back and looked up and seen Gary leaning on it  
9 and acknowledged him, not to just a glance at it, seen  
10 him leaning and went, "Gary", you know, "mind where  
11 you're leaning". **(Photographs taken)**

12 Q. Now what we have here, Mr Moffat -- thank you, again,  
13 for showing us that -- is a door which is open at  
14 something of angle.

15 Can you recall how that compares with the position of  
16 the door in Kilmarnock at the time that you observed  
17 Mr Gray?

18 A. No, I wouldn't comment on that at all. It's a totally  
19 different door.

20 Q. Would you be able to tell us whether the door was, can I  
21 say, flatter back more at right angles to the doorframe  
22 or whether it may have been at an angle out from the  
23 perpendicular?

24 A. I think you can see in the photographs that the door is  
25 completely flat back against the bathroom.

1 Q. Thank you for that, Mr Moffat.

2 THE CHAIRMAN: If any of the Core Participants'  
3 representatives have some questions they would like  
4 asked at this stage rather than go through all this  
5 again this might be the moment.

6 MR SMITH: No, thank you, sir.

7 MR HOLMES: No, thank you.

8 THE CHAIRMAN: Very good thank you we will go back to our  
9 places.

10 MISS CARMICHAEL: There is one further matter that should be  
11 formally recorded in that the footing of the image  
12 against the floor is not precise and it should perhaps  
13 formally go in the record that the footing of the  
14 doorframe is perhaps something two inches above floor  
15 level here.

16 A. Could I just make one observation regarding how this  
17 looks?

18 THE CHAIRMAN: Could you make it down there?

19 **(Witness returned to witness box)**

20 THE CHAIRMAN: I think there was something you wanted to  
21 add, Mr Moffat?

22 A. Yes, sir, I was shown that piece of wood in court and  
23 looking at the appearance of it there, I don't know if  
24 the cleaners did a bit of work but when I seen it in  
25 court it looked to me as if it had been redusted at some

1 stage.

2 MISS CARMICHAEL: Just to follow that up when you say it

3 looked as if it had been redusted with what did it look

4 as if it had been redusted?

5 A. I would take it to be powder, fingerprint powders.

6 Q. We have heard some evidence there are different kinds,

7 not least aluminium flake and black powder.

8 Would you be able to tell us in those sort of terms

9 what sort of powder we're talking about?

10 A. I think it was possibly aluminium powder.

11 Q. So it had the appearance when you saw it of dusting with

12 aluminium powder?

13 A. Yes, it was a marked contrast from the time I

14 photographed it to which I'd actually seen in the court

15 that day.

16 Q. Mr Moffat, getting back to the point where we left you

17 yesterday, having taken you back a little out of

18 sequence, I had been asking you about who you had told

19 about the incident with Mr Gray.

20 A. Yes.

21 Q. You had started to tell the Inquiry about a telephone

22 call you made to Kilmarnock CID?

23 A. Yes, I did.

24 Q. When did you make this call?

25 A. It was some time shortly after the print coming up on

1 that surface. It would probably have been, possibly,  
2 the next day.

3 Q. So if the Inquiry has heard that that print was  
4 discovered on 14th January, we could have been talking  
5 about 15th January?

6 A. Yes.

7 Q. Who did you speak to?

8 A. I don't recall who it was I spoke to. I asked when I  
9 was interviewed for this Inquiry if reference could be  
10 made to check back for my house number and works number.  
11 Possibly if the call came from my own house number that  
12 I would need to phone the police office first in order  
13 to obtain that number to phone Kilmarnock Police Office.

14 Q. What did you say?

15 A. Just probably would have been regarding the possibility  
16 of a police officer's print coming up on a doorframe and  
17 possibly it would be Gary Gray's and it would be  
18 completely and totally accidental if anything was to  
19 come from that.

20 Q. Now Mr Gray himself has indicated to the Inquiry that he  
21 does not have any recollection of this happening.

22 Do you have any comment on that?

23 A. Yes, I'm quite saddened by that. I don't see how he  
24 cannot remember that happening because at the time I was  
25 quite, you know, quite concerned at seeing his glove

1 ripped, where he had been leaning and then afterwards,  
2 by pure coincidence, a print coming up in that area  
3 which is just a possibility. It could very well be that  
4 it's not Mr Gray's print but I still felt obliged  
5 because I was concerned that maybe a senior police  
6 officer might be on site regarding that matter and have  
7 to explain why his print was on that scene; whereas, in  
8 my own opinion, it was completely and totally  
9 accidental.

10 Q. Did you speak with Gary Gray about the matter again?

11 A. No.

12 Q. You have been good enough to provide some of your  
13 notebooks to the Inquiry, Mr Moffat.

14 A. Yes.

15 Q. Would you accept that neither of your notebooks records  
16 the incident with Mr Gray's glove.

17 A. Yes, because that's -- if a police officer leaves his  
18 print on a scene I've seen it happen on occasions. It's  
19 a quick elimination process and it's never -- it's never  
20 transpired to a situation that we've got here now.

21 Q. After you called to Kilmarnock when was the next time  
22 you spoke to somebody about the possibility that the  
23 mark might be Gary Gray's?

24 A. Can I refer to the ... is it visible in my statement  
25 here?

1 Q. I think you have told us in your statement and I will  
2 ask you about an occasion on 23rd January when you spoke  
3 to DI McAllister.

4 A. Oh, yes, that's correct, yes.

5 Q. Before we get to that, was there any conversation -- did  
6 you tell anybody about this between your call to  
7 Kilmarnock CID and when you spoke to Detective Inspector  
8 McAllister?

9 A. Just before we get to that, at the time when this print  
10 was found I was of that opinion with Stuart Wilson and  
11 Graham and, from my memory, I thought I spoke about it  
12 at the time within that house because, having seen  
13 Mr Gray leaning on that surface, we were in that house  
14 for quite a considerable amount of time, no  
15 identifications had been coming forward at that stage to  
16 say somebody had been accused for the scene and we were  
17 quite desperate to get a fingerprint ident and every  
18 time I walked past that doorframe, I was always of the  
19 opinion maybe the aluminium powder hasn't done it's job  
20 here.

21 Q. I will ask you a little bit more about that in due  
22 course as well, Mr Moffat.

23 But you say that you said something when Mr Hunter and  
24 Mr Wilson were there. Can you tell me what you said?

25 A. I expressed the fact that I think that that could be

1           probably Gary Gray's print because of what I'd seen  
2           occurring.

3       Q.    Apart -- you have told us about speaking to Mr Wilson  
4           and Mr Hunter and you have told us about a call to CID.  
5           Before your contact with Detective Inspector McAllister  
6           that you mention in your statement, did you mention the  
7           matter to anybody else?

8       A.    Not that I can recall just now.

9       Q.    So coming on to the conversation with Mr McAllister, can  
10          you tell us how it came to be that you and Mr McAllister  
11          were in discussion on 23rd January 1997?

12      A.    Yes. There was a phone call to the Dumbarton Police  
13          Office where I worked at the time and a instruction left  
14          that Mr McAllister wanted to see myself back at the  
15          scene to go over positions of certain fingerprints.  
16          This to me was very, very unusual. Why he wants me to  
17          go down and speak to him because Stuart Wilson and  
18          Graham Hunter were much closer to Kilmarnock Police  
19          Office so they could easily have gone down and provided  
20          that information.

21      Q.    Is that something you thought odd at the time?

22      A.    Yes.

23      Q.    Did you query it with him?

24      A.    I'm not in a position to query it. If I am asked to go  
25          it I go and do it.

1 Q. So what happened when you attended that Kilmarnock that  
2 day?

3 A. I can't remember if I went to the police office first or  
4 if I met Mr McAllister at the scene, but I do remember  
5 that we were in the house, he highlighted he wanted to  
6 go round a few marks with me just relative to his  
7 inquiry and more or less straight away asked for my  
8 opinion on the marks Y7 and Z7 and also I think it was  
9 A8, those three marks, and asked me to take a very good  
10 look at them and asked me what I thought about them.

11 Q. What did you tell him?

12 A. I felt that they were, in my opinion, more recent marks  
13 because of the other marks about which appeared to be  
14 faded in colour. So I was of that opinion that those  
15 were quite recent marks.

16 Q. Did you say anything else to him about the marks?

17 A. Yes, I did. I said to him immediately that this will be  
18 Gary Gray's fingerprints. He said, "What do you mean by  
19 that?" Well, I told him what happened with the glove  
20 being burst, where Gary Gray, probably explained to him  
21 that I phoned the office and I'm thinking nobody's  
22 bothered to do anything about this and Gary Gray's  
23 fingerprint come up and now this is what it's come to.  
24 He said, "No, it's not Gary Gray's fingerprint", and I  
25 was actually quite shocked. It's just quite

1 coincidental that I've witnessed something and I  
2 thought, well, this is really bad luck on my part to  
3 have witnessed an officer standing in that position and  
4 the print turns out not to be his. But that's a  
5 possibility. That's quite a possibility.

6 I said to him, "Are you absolutely sure it's not Gary  
7 Gray's fingerprint?" He said, "No, it's another police  
8 officer's" and that was about the end of the  
9 conversation.

10 Q. Did you ask him whose fingerprint it was?

11 A. No, I didn't but again another police officers. We had  
12 quite a number of police officers in that scene. I knew  
13 that house was being searched before I attended that  
14 scene. So for it to be another police officer's I  
15 wasn't duly concerned about it, it was just a matter of  
16 doing another check to have that officer eliminated.

17 Q. I wonder if I could take you, please, to paragraph 63 of  
18 your statement, Mr Moffat. You tell us, therefore, if I  
19 can go to page 15 of your statement -- paragraph 63 runs  
20 on to that page -- you tell us in your statement that  
21 DI McAllister made no indication as to the name, age or  
22 sex of the officer.

23 A. That's correct.

24 Q. But you add:

25 "By his tone I thought now would be a good time not to

1 say any more."

2 What do you mean by that?

3 A. I didn't want to pursue this matter any further. It was  
4 of no interest to me to know who that fingerprint  
5 belonged to.

6 Q. You seem to be saying here that DI McAllister's tone put  
7 you off in some way and I would like to ask you whether  
8 I am reading that right in the first place and, if so,  
9 what it was about his tone that put you off.

10 A. Just quite a strong tone and I just felt, well, I'd  
11 better not to ask any more on this. I didn't feel it  
12 was my position to ask any more.

13 Q. Was his tone angry?

14 A. Quite a stern tone but we're talking about someone  
15 speaking to you 12 years ago. I think it would be a bit  
16 unfair here to try and get me to say something which I'm  
17 not going to say here.

18 Q. I certainly don't want to put words in your mouth,  
19 Mr Moffat, but so that the Inquiry can understand what  
20 you have written in your statement I would like you to  
21 give us your best recollection in describing  
22 DI McAllister's tone --

23 A. I would say he was talking in a serious tone.

24 Q. At paragraph 64 of your statement you say you now have  
25 concerns as to why you'd had to go back to the crime

1 scene to speak with DI McAllister about the marks at the  
2 scene.

3 Can you explain to the Inquiry why that is, what your  
4 concerns are?

5 A. Because that's quite an unusual practice. We had Stuart  
6 Wilson and Graeme Hunter who were nearer at the time and  
7 either one of them could have been back and highlighted  
8 these marks.

9 Q. So it is your concern that it was you rather than other  
10 officers?

11 A. Yes, that was my concern, why I was singled out, yes.

12 Q. What I want to be clear about is whether you think that  
13 there's anything sinister about the fact of an officer,  
14 whoever it happens to be, being brought back to the  
15 scene to speak to DI McAllister about these marks?

16 A. There's something very untoward about that, yes. I feel  
17 that, yes, because I don't see any other logical  
18 explanation for not bringing Stuart and Graeme back at  
19 the scene, no.

20 Q. I put the question badly to you. I understand that you  
21 are telling us that you were concerned or you are  
22 concerned that it was yourself rather than one of the  
23 other officers that was brought. But, leaving that  
24 particular matter aside, is there anything untoward  
25 about a Scenes of Crime Officer who has been involved in

1 finding marks being asked to come back to the scene to  
2 discuss matters with a detective inspector?

3 A. No, it will happen -- not just a Scenes of Crime Officer  
4 but it may well be a fingerprint expert who is asked to  
5 attend a scene to give them an indication, yes.

6 Q. Thank you. I just wanted to clarify that, Mr Moffat.

7 Mr Moffat, I think you have given statements about  
8 your involvement in this inquiry on a number of  
9 occasions.

10 A. Yes, that's correct.

11 Q. I would like you to look, please, at document CO1378 if  
12 you can put up the second page of that, please.

13 I think what we see here this is a statement that you  
14 gave in relation to your involvement in this Inquiry and  
15 I wonder if you could just take the time to read this  
16 particular statement and tell us when you have got to  
17 the bottom of the first page and need to go on to the  
18 next one. **(Pause)**

19 A. Could you move on to the next page?

20 Q. Yes, if we could have the next page. **(Pause)**

21 We see at the bottom of the second page that this was  
22 a statement that you gave to Detective Superintendent  
23 Malcolm at Dumbarton Police Office on 21st March 1997?

24 A. I've no recollection of giving that statement. I'm not  
25 saying it's not my statement but I've no recollection of

1 giving it.

2 Q. Do you recall at all Detective Superintendent Malcolm  
3 speaking to you in the course of the inquiry in  
4 March 1997?

5 A. No. I'm not disagreeing with what it says in the  
6 statement.

7 Q. You would accept, I think, looking at that statement,  
8 that it doesn't mention anything about Gary Gray?

9 A. Yes.

10 Q. What I am curious about is if you do accept you gave a  
11 statement about this matter in March 1997 one might  
12 think that it would be natural for you to mention  
13 concerns about Gary Gray at that time.

14 A. No, because probably there'd been an identification on  
15 the print as being Shirley McKie from SCRO and that's  
16 been acceptable at that time.

17 Why would I want to query that?

18 Q. The Inquiry may hear -- well, this is precisely why I am  
19 asking you this, to get your explanation, Mr Moffat.

20 The Inquiry may hear that Mr Malcolm was carrying out  
21 an investigation into whether anybody had seen Detective  
22 Constable Cardwell, as she was at the time, at the scene  
23 and that it was known at that point that there was some  
24 controversy or dispute about whether she had been there.

25 A. Yes.

1 Q. I think you were perhaps aware of that controversy or  
2 dispute yourself. **(Pause)**

3 A. (No audible response)

4 Q. Well, I would be right in saying that --

5 A. Yes, that's obviously the way I've given the statement  
6 to say I've no recollection of seeing her within that  
7 scene.

8 Q. But in giving a statement of that sort at that time you  
9 were aware that there was some controversy as to whether  
10 DC Cardwell had been at the scene?

11 A. Yes.

12 Q. So being aware of that controversy, I am wondering why  
13 you did not think it relevant to mention that, in your  
14 own mind, there might be another possible explanation  
15 for the presence of a print in the location where Y7 was  
16 found.

17 A. Because they'd obviously accepted the findings from  
18 SCRO.

19 Q. I would like to ask you about another statement, please,  
20 one that you gave to an officer called Laurence Wilson  
21 and that document is CO1582. I think we have this in  
22 hard copy. In fact, it is on the screen.

23 The Inquiry has evidence that when Chief Inspector  
24 Wilson was carrying out his inquiries, Mr Moffat, he was  
25 doing so in the context by that time of a disciplinary

1 inquiry into the allegation that Ms McKie or Cardwell  
2 had been in the scene when she ought not to have been.

3 Do you recall giving a statement to Chief Inspector  
4 Wilson in that enquiry?

5 A. Yes, I think I did, yes.

6 Q. You would be aware at that time that Ms McKie was in  
7 some trouble at least within the police in that there  
8 was a disciplinary inquiry going on?

9 A. I can't remember exactly. I would need to refer to what  
10 I've said in my statement there as to --

11 Q. Before we go to that --

12 A. When was --

13 Q. -- by June 1997, you would be aware, with an officer  
14 coming to speak to you from Complaints and Discipline  
15 within Strathclyde Police, that Ms McKie was in some  
16 trouble or some potential trouble in disciplinary terms  
17 within Strathclyde Police.

18 Would you accept that?

19 A. Yes, yes.

20 Q. Again, if we can go to page 2 of this document and  
21 again, if you read through the first page here and tell  
22 us when you are ready to turn over. **(Pause)**

23 A. Okay.

24 Q. Before we leave that page, we can note that at the  
25 bottom of that first page of the statement itself,

1 page 2 of the PDF, you do mention that you had gone to  
2 the house at Irvine Road with Mr Gray?

3 A. Yes.

4 Q. If we can have the next page and if you just take the  
5 time that you need to read through that and again tell  
6 us when you are ready to turn over. **(Pause)**

7 A. Okay.

8 Q. Please, if we could have the next page of the document  
9 which is headed page 3 of the statement. Again, please  
10 tell us when you have had an opportunity to read that,  
11 Mr Moffat. **(Pause)**

12 A. I don't recall that statement.

13 Q. You don't recall giving a statement to Inspector Wilson?

14 A. Not like that, no.

15 Q. Are you disputing that you gave a statement to Chief  
16 Inspector Wilson or are you saying that this is not  
17 noted in a way that you can recall as your evidence?

18 A. No. I'm not disputing giving a statement but this is --  
19 I'm seeing a typed image on a screen here. If you have  
20 a statement with my signature on it, I won't disagree  
21 with that but I'm just looking at an image on a screen.

22 My concern is that there's a locksmith mentioned  
23 there, a Mr David Garvey, and I think I wrote down in my  
24 notebook a Mr Gomez as a locksmith.

25 Q. I think other evidence the Inquiry has indicates a

1 record of Mr Gomez rather than Garvey being a correct  
2 record. Is that the point that concerns you about the  
3 statement?

4 A. Yes, it does.

5 Q. So in that case it would not be an accurate record of  
6 what you said to Mr Wilson?

7 A. Possibly not, no.

8 Q. Perhaps without asking you to trouble yourself about the  
9 detail of page 3 --

10 A. It's quite a lot of detail in this statement and, from  
11 what I recall from the interview with Mr Wilson, it  
12 didn't take a great amount of time. I'm talking about  
13 19 sets of prints here and 6 sets of prints there. It'd  
14 be 9 hours for me to put a statement like that together.

15 THE CHAIRMAN: Is there another page?

16 MISS CARMICHAEL: Yes, there is. I should perhaps, in  
17 fairness to you, Mr Moffat, say that what I am  
18 interested about in this statement is that it does not  
19 mention the incident with Gary Gray and I want to give  
20 you a proper opportunity to satisfy yourself that it  
21 does not mention Gary Gray.

22 Are you happy that page 3 doesn't mention Gary Gray?

23 A. Yes.

24 Q. If we could move on to page 4, again with that in mind,  
25 take the time that you need to read it but what I am

1 interested in is you satisfying yourself that this  
2 statement does not record any mention of Gary Gray.

3 **(Pause)**

4 A. I'm quite happy with that.

5 Q. You accepted, I think, that you were aware that by the  
6 time you were giving this statement Ms McKie was in some  
7 potential difficulty with Strathclyde Police?

8 A. Yes.

9 Q. And you were aware that she was disputing that she had  
10 been at the scene to leave her fingerprint?

11 A. Well, yes.

12 Q. With that in mind, did it not occur to you perhaps to  
13 mention again the matter with Gary Gray that you have  
14 told us about?

15 A. No, it certainly didn't because if you look at my  
16 statement, I challenged that just as an extra precaution  
17 when I found out that Ms McKie's defence was going to be  
18 mis-identification and I had no reason to challenge SCRO  
19 on their findings at that point, up until that point.

20 Q. I think that probably brings us on to the next chapter  
21 of this particular bit of the picture, Mr Moffat.

22 Would I be correct in saying that the next time you  
23 mentioned your concern about Gary Gray to anyone was at  
24 a time possibly shortly before the trial of Ms McKie?

25 A. That's correct.

1 Q. Who did you mention it to?

2 A. Initial involvement was my manager at that time within  
3 the Office, a Mr Ewart Orr -- he was my boss at  
4 Dumbarton Police Office -- and that's why I said I'm  
5 getting confused with that, what you're saying not being  
6 in these statements. Up until that point there was  
7 nothing -- I'm not a fingerprint expert. I'm not here  
8 to challenge what fingerprint experts say.

9 My concern was that what is the defence going to be  
10 and Ewart said to me it's going to be mis-identification  
11 because we were thinking they were going to try and say  
12 this fingerprint has been planted or something because  
13 she would need to come up with some sort of a defence  
14 and I heard it was going to be mis-identification and I  
15 thought has there been a mistake made? Up until that  
16 point I couldn't see a mistake being made. Quite  
17 possibly a mistake hasn't been made but I thought at  
18 that point I'll highlight it to the Chief Inspector  
19 because up until that point I would not have ever  
20 considered querying the work of fingerprint experts  
21 because that's their job to bring forward  
22 identification, not for a scene examiner to do that.

23 Q. So what happened when you had spoken to Mr Orr?

24 A. Mr Orr said, "If you are that concerned about it phone  
25 the Chief Inspector", which I did straight away.

1 Q. Which Chief Inspector was that?

2 A. Chief Inspector Hogg.

3 Q. And he was in charge of the Identification Bureau, I  
4 think?

5 A. Yes, he was.

6 Q. What did you say to Chief Inspector Hogg?

7 A. I said to Iain Hogg that when I was down the house I  
8 felt -- I explained to him what had happened with Gary  
9 Gray. I can't remember if he actually knew about that  
10 or if I maybe spoke to him in the past or just gossip in  
11 the office about it, you know, but his reply was, "Look  
12 here, sunshine, don't you dare start going down that  
13 road at this stage".

14 Q. What was his tone to you?

15 A. Very threatening.

16 Q. What was your response?

17 A. I was quite upset.

18 Q. Did you say anything to him --

19 A. I stood my ground with him because --

20 Q. I am sorry to interrupt. What did you say?

21 A. I said, "I don't care about what you think or what  
22 you've got to say. For peace of mind at this stage of  
23 the inquiry, Mr Gray now in the atmosphere to suggest a  
24 possible mistake being made, there's got to be a start  
25 point. If we have a look at that mark now, get it

1 sorted with and then we can move on. I just want that  
2 from my conscience cleared out in my mind that that  
3 print hasn't been overlooked and a mistake been made".

4 Q. What did he say to you when you said that?

5 A. He just said to me, "Get it looked into", and he phoned  
6 me at that stage and put the phone down. My boss,  
7 Ewart, could see I was really taken aback and really  
8 upset -- really upset.

9 Q. Was he there with you when you made the call?

10 A. Yes, he was.

11 Q. Did anything follow from your call to Mr Hogg?

12 A. Yes. He phoned back the next day to the office much  
13 calmer, much more polite, "Not to worry I've asked  
14 Charlie to check it. It's been checked. There's  
15 nothing there for you to be concerned about", and that  
16 was the gist of the conversation.

17 Q. Did you know what the reference to Charlie was meant to  
18 be?

19 A. No, I assumed that would possibly be Charlie Stewart  
20 from SCRO.

21 Q. Mr Hogg's position may be that he does recall speaking  
22 to you on a number of occasions about this matter but he  
23 does not recall being angry in his tone to you.

24 What is your comment on that?

25 A. I think the man's lying.

1 Q. Did you have any further contact with Mr Hogg about this  
2 matter at any stage?

3 A. No, not so much as in that, no, but the man's attitude  
4 towards me from that very day on completely changed.

5 Q. I am sorry, I should perhaps properly direct you to  
6 paragraph 71 on your statement, Mr Moffat, where you do  
7 mention there an occasion where you talked to Iain Hogg.

8 A. Oh, yes.

9 Q. Can you tell us about that, please?

10 A. Yes. I was informed by Hogg that Tayside officers were  
11 coming in to interview us regarding the proceedings.  
12 They were carrying out their own investigation and I  
13 would be spoken to at some point and more or less not to  
14 elaborate, "stick to your statement, everything'll be  
15 fine".

16 Q. Can you tell us, just as well as you can remember, just  
17 exactly what words Mr Hogg used to you at that point?

18 A. Well, this is -- yes, just what I've said there. Told  
19 me not to get upset about it, "stick to your statement".  
20 I mean "stick to your statement" to me isn't a direction  
21 that should be coming from anyone because if you ask  
22 anyone, any person in a court, any particular question  
23 we're obliged to answer that not just what it says in a  
24 statement if it's at all possible for us to answer that.  
25 We also had a briefing before the High Court trial where

1 all the officers were all brought in and we were asked  
2 in general, you know, "This trial's coming up. We need  
3 to play this, you know, keep to your statements and, you  
4 know, don't elaborate, don't get carried away", and I  
5 was singled out, "Especially you, mate, because we all  
6 know what you are like in the witness box". That man  
7 has never, ever seen me in the witness box.

8 Q. I would like to ask you about this. This is a briefing  
9 you say took place --

10 A. I think that was before the original trial.

11 THE CHAIRMAN: That is the trial of Mr Asbury?

12 A. Yes, my Lord.

13 MISS CARMICHAEL: Who gave you that briefing?

14 A. It was Iain Hogg and Graeme Hunter and Stuart Wilson  
15 were also present and also quite a few of those  
16 officers. I remember being singled out.

17 Q. You say that something was said to you along the line  
18 of, "We know what you're like in the witness box"?

19 A. Yes.

20 Q. Who said that?

21 A. Iain Hogg.

22 Q. What was his tone when he said that?

23 A. I wouldn't say it was threatening in any way it was just  
24 in general, you know, off-the-cuff remark.

25 Q. Again, I don't want to put words in your mouth --

1 A. He was directing -- it wasn't a remark -- you know, it  
2 was directed towards me and no-one else in that room.

3 Q. One can perhaps imagine that a remark of that sort could  
4 be made in a disparaging tone, it could be made in a  
5 jovial tone. With those sorts of descriptions in mind,  
6 what sort of impression do you think Mr Hogg was trying  
7 to make on you with that remark? Was he joking with you  
8 or was he being disparaging?

9 A. That's not a matter to joke about really, you know. If  
10 he wanted to make a joke he could quite easily have said  
11 to all the guys watch it but, you know, it was directed  
12 towards me and, no, not funny in any way.

13 Q. But do you think he intended it to be funny?

14 A. No. There's plenty of other officers in that room he  
15 could have been funny with.

16 Q. We are quite clear you are talking about the briefing  
17 before Mr Asbury's trial?

18 A. Well, I wouldn't say -- quite easily sat here I can get  
19 a bit confused. I think that's when that one was, yes.  
20 Perhaps speaking to my other colleagues when they're in  
21 this witness box they can maybe clarify.

22 Q. I think you did give evidence at Ms McKie's trial.

23 A. Yes.

24 Q. You didn't say anything to the Fiscals who summoned you  
25 to court or seek to have anything brought to the

1 attention of the Advocate Depute who was prosecuting the  
2 case about your concern about Gary Gray?

3 A. No.

4 Q. Can I ask you to explain why not at that stage? You may  
5 think the answer is obvious but please give us it?

6 A. Yes, because I still believe the identification is  
7 correct from SCRO.

8 Q. When the officers from Tayside --

9 A. Could I just -- when you are trying to sit here in the  
10 circumstances --

11 THE CHAIRMAN: If there is something more you want to add --

12 A. Yes. It's been confirmed that, coming up to Ms McKie's  
13 trial it's been confirmed that that's been rechecked,  
14 that's correct, yes, by SCRO. The mark concerned with  
15 Gary Gray which I'm thinking could possibly have been  
16 his but I've asked for that mark to be rechecked and  
17 I've been given that information that it's been  
18 rechecked so ...

19 MISS CARMICHAEL: So in your mind, because you had been told  
20 it's been rechecked, the matter's cleared up?

21 A. Yes, of course.

22 Q. When the officers from Tayside came to speak to you, you  
23 did in fact tell them about what you have told us about  
24 the matter with Gary Gray?

25 A. Yes.

1 Q. In your statement you have also mentioned a recollection  
2 of speaking to an Inspector Baillie about the case if  
3 you look at paragraph 72 of your statement.

4 A. Can you just go back to the officer from Tayside for  
5 just a second.

6 Q. Of course, if there is more you would like to tell us  
7 about that, Mr Moffat.

8 A. Yes, when I was interviewed by the officers at Tayside I  
9 told them about asking for the print to be rechecked and  
10 they asked me, "What are you talking about?" I said,  
11 "The rechecking of the print", and they says, "Well,  
12 what print?" I said, "Well, you'll have spoken to my  
13 Chief Inspector and everybody else, you know. I did ask  
14 for SCRO to have this print rechecked", and they said,  
15 "Nobody's told us".

16 So I had then to explain to them what the scenario was  
17 with Gary Gray about asking for the print to be  
18 rechecked. So they said, "Well, we suggest you go back  
19 and re-speak to Mr Hogg regarding that".

20 Q. So your clear impression was the first time the Tayside  
21 officers had heard about it was from you?

22 A. Yes.

23 Q. If you go to page 17 of your statement at paragraph 72,  
24 you mention speaking to an Inspector Baillie?

25 A. Yes, that's correct.

1 Q. Who is Inspector Baillie? Where does he fit in?

2 A. He was the Inspector within the Identification Bureau.

3 His immediate boss would be Chief Inspector Iain Hogg.

4 Q. Did you approach Mr Bailey or did he approach you?

5 A. No, this is -- I think there's been a conversation that

6 come up he had been down visiting the Dumbarton Police

7 Office and everything going on with this trial this

8 subject has obviously come up and Mr Bailey said ... if

9 I can just see the exact words here, he'd said to me

10 don't get involved in this because it was going to get

11 messy.

12 Q. Did he say anything else?

13 A. I don't recall. I just remember that because I think

14 I've actually written that down in my notebook at one

15 point.

16 Q. I think I probably have to put this to you, in fairness,

17 Mr Moffat: as regards what you have told us about

18 speaking to Mr McAllister on 23rd January, the Inquiry

19 understands the position to be that that simply did not

20 happen.

21 What is your comment on that?

22 A. Mr McAllister's saying that didn't happen? Then I would

23 have to say Mr McAllister's telling lies to this

24 Inquiry.

25 Q. In regard to what you say about Mr Hogg telling you to

1 stick to your statement, that's not something he recalls  
2 saying to you.

3 Do you have any comment on that?

4 A. Again, I disagree with his comments as well.

5 Q. Mr Moffat, moving on to another topic but back to the  
6 night of 8th January into 9th January when you were  
7 first at the crime scene at Irvine Road, Kilmarnock, I  
8 think you left the crime scene in the early hours; is  
9 that right?

10 A. Yes.

11 Q. I think if you look at SG0537 at page 1, please, if we  
12 go down to the bottom fifth or so of that page we see an  
13 entry at 2310 a Constable Hutchison arriving. It seems  
14 to be on the right-hand side of that?

15 A. Yes, I see that, yes.

16 Q. That would be at a time when you were there carrying out  
17 your duties, yes?

18 A. Possibly, yes.

19 Q. If we move just down a little bit, we see at 2330 a PC  
20 Nicol arriving at the **locus**?

21 A. Yes.

22 Q. Just below that we see the gentleman from the funeral  
23 services whom we spoke about yesterday.

24 A. Yes.

25 Q. If we move on to the next page, please, I think we see

1           you leaving at about 1.30 in the morning. I think we  
2           are highlighting the entry for you, Mr Moffat.

3    A.    I have no entry in my notebook for the actual time I  
4           left.

5    Q.    I think you told us you got home --

6    A.    About 3.00.

7    Q.    -- which would be pretty much consistent with leaving  
8           around about that time?

9    A.    Yes.

10   Q.    Just below that, we see at 3.15 in the morning the  
11          officers I have just mentioned, PC Hutchison and PC  
12          Nicol, leaving after you have left.

13   A.    Yes.

14   Q.    We heard a suggestion, Mr Moffat, that Constables Nicol  
15          and Hutchison came to be stationed in the living room at  
16          the property and I would like to ask if you have any  
17          memory of that happening, of officers being stationed  
18          there any time before you left that evening?

19   A.    No, I don't recall that.

20   Q.    May it have happened and it is simply something you  
21          don't remember or is it something you would have  
22          expected to have stuck in your mind?

23   A.    No, if they had been in the living room suited and  
24          booted and covered up maybe they felt that was an  
25          appropriate place to stand at that time.

1 Q. There may be some suggestion that the officers were  
2 stationed to keep watch over the **locus** and keep it  
3 secure.

4 Would it surprise you in that context if they were  
5 stationed in the living room?

6 A. Yes. I would expect someone to be at the front door of  
7 the premises.

8 Q. Would it trouble you professionally, if I can put it  
9 that way, from the point of view of evidence collection  
10 to think of them being stationed in the living room  
11 rather than in the porch?

12 A. Well, when I first arrived at that house I drove past it  
13 first because I never saw any police officers present  
14 outside. I had to double back on myself and come back  
15 down the roadway and from what I can gather, I think --  
16 I can't remember an officer actually standing outside  
17 the **locus** when I arrived. I vaguely remember a piece of  
18 police tape which is probably what indicated me to the  
19 house. So when you're saying now there's officers  
20 standing within the house at that stage then I'm not  
21 surprised by that.

22 Q. I would like to move on with you to 14th January and the  
23 finding and recording of the mark Y7. I think you have  
24 already told us that yourself, Mr Wilson and Mr Hunter  
25 were there.

1 A. Yes.

2 Q. Sorry, if you need a glass of water, please, just take a  
3 moment, Mr Moffat.

4 The Inquiry has heard some evidence about there being  
5 a discussion about the use of black powder at the crime  
6 scene on 14th January.

7 Is that something that you remember?

8 A. Yes.

9 Q. Tell us please who was involved in the discussion?

10 A. I think we were all involved in this discussion. DC  
11 Kerr -- who, prior to reading the transcript, I wasn't  
12 aware -- has a lot of knowledge of fingerprinting  
13 himself, you know, and he could see we were all upset  
14 that we were not being allowed to use black powder.

15 The first time I did any dusting within that house the  
16 first fingerprint I found was with black powder. The  
17 minute I found that print I was instructed by my  
18 colleague Stuart Wilson that we weren't to use any black  
19 powder. This would be on a unit, on a cupboard door, I  
20 think it was, in the upper part of the house, in the  
21 area where I had been instructed to work.

22 So after finding that print, I then went down to have  
23 a discussion with Mr Thurley regarding the list of what  
24 powders we were to use and David said he felt it was  
25 best if we continued examination using aluminium powder.

1            Now, over the years of going to these scenes sometimes  
2            it's left to the individuals, sometimes we go to scenes  
3            and are given instruction. On this particular -- at  
4            this particular stage, the instruction I was getting was  
5            I had to use aluminium powder, so that's it.

6        Q.    That was at some stage before 14th January when mark Y7  
7            was found?

8        A.    Yes, this is before, yes.

9        Q.    So you started to tell us about DC Kerr saying something  
10           on 14th January. I wonder if you could continue with  
11           that?

12      A.    Yes. It was just regarding the mark on the skirting  
13           board, there was a mark on the skirting board -- this is  
14           the day Y7 was found, yes?

15      Q.    That is what I am asking you about, yes.

16      A.    There was a mark on the skirting board in the hallway  
17           which we had a look at and it was covered in aluminium  
18           powder and we were querying what it may have been. So  
19           we dusted it with black powder -- it could very well  
20           have been myself -- and the result was quite phenomenal.  
21           You know, it came up a lot clearer and it looked to be a  
22           piece of material mark or something. Whether or not it  
23           would have been significant to the inquiry I don't know  
24           but we did remove that piece of skirting board and it  
25           was taken back.

1 Q. Whereabouts was the skirting board?

2 A. I think this was down at the front doorway.

3 Q. Near the front doorway?

4 A. Yes, yes.

5 So then Stuart and Graeme were of the opinion, you  
6 know, this is giving a better result. So I think, you  
7 know, I can't remember the exact wording but between us  
8 we decided that it was probably a better idea to look  
9 around the doorframe where the initial attack took  
10 place, and also I've got it in the back of my mind that  
11 I haven't seen anything there at all.

12 Now, I don't know, I don't have a log to see if  
13 there's any prints in aluminium been lifted from that  
14 area, and possibly confirming with me I don't think  
15 there was any prints in aluminium taken from that area  
16 at all.

17 Q. Just to be clear about what we're talking about, when  
18 you're talking about where the attack took place, in any  
19 event you're talking about the doorframe where  
20 Miss Ross' body came to be discovered?

21 A. Yes, that's what I meant by that, not fair comment to  
22 say where the attack because we don't know those facts.  
23 What I'm referring to is the area where the deceased's  
24 body was lying.

25 Q. So we are talking about the bathroom doorframe.

1 A. Yes.

2 Q. Was there anything that occurred to you about the  
3 appearance of the doorframe when you saw it as powdered  
4 with aluminium and before black powder was applied?

5 A. I couldn't see -- I don't recall seeing any areas where  
6 prints had been lifted from or had there been prints  
7 there at all. Bearing in mind had there been prints  
8 there at all there is also the possibility that with  
9 using the black you could then re-enhance the same  
10 fingerprint again so you would need to take that into  
11 account and have it noted that it's possibly the same  
12 print as opposed to finding a fresh print. That would  
13 need to be recorded.

14 Q. But presumably if there was a print that had already  
15 been noticed there, there would be some label or  
16 indication that it was there?

17 A. Perhaps not a label but perhaps what you would find is,  
18 if it's been done with aluminium and lifted with the  
19 sticky tape, so you would then expect to see marks where  
20 the tape has been on the surface and peeled off the  
21 surface with the tape.

22 Q. So you will see some indication that somebody had  
23 noticed and lifted a print from the aluminium?

24 A. Yes.

25 Q. Are you familiar with the idea of a powder taking to a

1 surface, Mr Moffat?

2 A. Different -- well, that's obviously why we have  
3 different types of powders. Some are magnetic flake  
4 powders, some are -- how to describe it -- carbon  
5 powders, different textures as to how it actually lies  
6 on the actual surface itself. I'm not a scientist by  
7 any means.

8 Q. Just on the basis of your own experience and your own  
9 professional work, Mr Moffat, is it possible to see by  
10 looking at a surface that's been powdered with aluminium  
11 flake whether the powder has taken to the surface?

12 A. Yes, you can usually see deposits of the aluminium on  
13 the surface.

14 Q. Thinking back to when you saw the doorframe of the  
15 bathroom as it had been powdered with aluminium, was  
16 there anything that indicated to you whether it had or  
17 had not taken on the surface?

18 A. Well, that's -- well, it's quite a controversial  
19 question because, you know, if you can see aluminium on  
20 the surface you have to assume that it's been powdered,  
21 whether or not -- I mean, the powder's in the atmosphere  
22 then. There was nothing to indicate that aluminium was  
23 not on that surface. So to me it had been powdered by  
24 aluminium powder.

25 Maybe I'm not explaining myself clearly here. On some

1 surfaces you can put aluminium powder on and it appears  
2 more obvious on particular types of surface than it does  
3 on other types of surface.

4 Q. But is there anything that -- when you look at a surface  
5 even as you perhaps powder it yourself with aluminium,  
6 is there any way of telling whether it's working well,  
7 whether it is adhering to the surface, whether it is  
8 adhering to any marks on the surface?

9 A. If you're not finding anything you maybe think maybe  
10 it's not working so well. If you're finding prints then  
11 you obviously have to assume that it's doing what it's  
12 supposed to do. But it is a first stage process.

13 Q. There's been some suggestion that perhaps aluminium  
14 powder does not always adhere very well to surfaces that  
15 are grimy or greasy or which have been subject to  
16 condensation?

17 A. Yes, that's just to highlight that fact, the instruction  
18 was that we weren't to use aluminium we move into the  
19 bathroom area and the powder just wasn't taking to that  
20 surface at all so we didn't ask Mr Thurley about  
21 continuing with aluminium powder, we just automatically  
22 changed over to using a black powder within that.

23 Q. Sorry, did you say the instruction had been that you  
24 were to use aluminium powder or that you had to use --

25 A. No, Mr Thurley had indicated he wanted us to continue

1 the examination using aluminium powder. However, by the  
2 time we got into the bathroom area, it was blatantly  
3 obvious that you couldn't -- the conditions of the tiles  
4 and everything else, the powder wasn't taking very well.  
5 We tried using -- I can't remember if it was black magna  
6 powder or black brush-on powder, but that was giving us  
7 a better result and, as indicated, then there were a  
8 number of marks found within that bathroom area which  
9 were then photographed.

10 Q. That's within the bathroom itself --

11 A. Within the bathroom itself, yes.

12 Q. What I am trying to get at is when you looked at the  
13 doorframe as it had been powdered with aluminium, was  
14 there anything to indicate that aluminium powder hadn't  
15 taken to that surface or to part of that surface?

16 A. That's ... you know ... it's an unfair ... you can't say  
17 has it taken or has it not taken. It's been powdered.  
18 Whether or not it's worked ...

19 Q. We've heard some evidence that that when one can see the  
20 paint clearly through or where one can perhaps see grime  
21 or staining clearly on the surface that might indicate  
22 that the powder has not stuck well, if I can put it that  
23 way, to that particular surface?

24 A. Yes, I would agree with that, yes. It wouldn't have  
25 been my choice to do that door with the basic aluminium

1 powder.

2 Q. Well, that's what I am getting at really. If it is the  
3 case that sometimes you can see things through the  
4 powder that indicate that the powder hasn't stuck very  
5 well, when you looked at that doorframe was there  
6 anything like that?

7 A. It just looked like a very light coating of aluminium.  
8 If it's very, very light then I suppose you can be in a  
9 position there to say maybe it hasn't taken as well to  
10 the surface as it possibly should have.

11 Q. Can you remember whose decision it was to use the black  
12 powder on the bathroom doorframe or was it perhaps a  
13 joint decision?

14 A. I think we were all having -- I felt we were having this  
15 discussion after seeing the mark on the skirting board  
16 and I think it was really quite obvious to us all, you  
17 know, that we were going to carry on using the black  
18 powder in other parts of the house.

19 Q. I think that you personally made notes of finding mark  
20 Y7 and I would like you to look, please, first at page 4  
21 of AA0002. I think we are looking here at your own  
22 notebook; is that correct, Mr Moffat?

23 A. That's correct, yes.

24 Q. On the right-hand page on the screen about halfway down  
25 we see "Y7 RHS hallway bathroom door surround 5 feet"

1 and then an arrow.

2 A. Yes.

3 Q. Can you tell us what the arrow means, please.

4 A. Yes, it's an indication arrow as a rough guide as the  
5 direction of the prints at the time which we think  
6 they're facing.

7 Q. So can we take it that you think that the mark that you  
8 found was pointing straight up if we can say in a 12.00  
9 position?

10 A. I would say that, yes.

11 Q. You said very fairly that obviously you are not a  
12 fingerprint expert yourself; you are somebody who finds  
13 and records fingerprints. Do you, in that role, have  
14 the expertise to say what the orientation of a mark is  
15 in that way?

16 A. That is just taken as a very, very rough, rough  
17 guideline. It should not be taken in any other context  
18 other than that.

19 Q. That is helpful to know that, Mr Moffat, thank you.

20 Just below where you have recorded Y7 you recorded  
21 another mark Z7 and I think you have put ditto marks for  
22 the positions.

23 A. Yes.

24 Q. And another arrow pointing upright. We should take the  
25 pointing upright with the same caveats or health

1 warnings as you have given us about the other one?

2 A. Yes, that's correct.

3 Q. I would like to ask you also about the entry immediately

4 below that which is for a mark A8.

5 Can you tell us what it says there?

6 A. "Possible sweat print, appears fresh."

7 Q. You found, I think, that on LHS shall we take that as

8 left-hand side of the hallway bathroom door facing?

9 A. Yes.

10 Q. At 5-foot up. So should we take it that is on the

11 surface directly opposite where you found the other

12 marks?

13 A. Yes.

14 Q. The notation that you made about possible sweat print

15 appears fresh, is that referable only to A8 rather than

16 the other marks?

17 A. It appeared a bit more -- that's what I've ... yes,

18 that's how I've noted it, yes.

19 Q. What do you mean when you write "sweat print"?

20 A. Well, it's not scientific, it's just an indicator to me

21 because it's a mark which is darker in colour. There

22 are reasons for that, because we did find the deceased's

23 fingerprints on that doorframe and, just to try to

24 explain it to you, the deceased's from what I recall

25 prints were very faded and light grey in colour but this



1 helpful if you bring the microphone closer. If you can  
2 do that it would be very helpful; thank you.

3 I think we have your notebook, the notes that you  
4 took at the time that Y7 and some other marks were  
5 discovered -- and if we could just have that up again,  
6 thank you -- Y7, Z7 and A8 all pointing upwards as far  
7 as your judgment could tell us that.

8 A. Yes.

9 Q. I wonder if you could look, please, at DB0003, page 17.  
10 I think again you are responsible for at least some of  
11 the entries on this sheet?

12 A. Yes.

13 Q. Can you tell us what this sheet is and how it is used?

14 A. This is a sheet that accompanies the form 13B which goes  
15 to the Criminal Records Office relating to all the  
16 prints which are found on the scene.

17 Q. Are these sheets that you complete when you are at the  
18 scene?

19 A. Yes.

20 Q. And the first three entries that we see on this  
21 particular sheet relate to the same three marks, Y7, Z7  
22 and A8?

23 A. Yes, they do.

24 Q. What we see, I think, at least for A8 is an arrow that  
25 maybe doesn't exactly echo what we see in your notebook?

1 A. That's correct.

2 Q. Can you tell us which one is right to the best of your  
3 recollection?

4 A. Well, to the best of my recollection from A8, the  
5 fingerprint itself, I can remember it being what I  
6 thought was probably a fingertip which I've put it down  
7 as maybe facing up because it could not be something  
8 going left or right or down. However, I will stand  
9 corrected if fingerprint experts disagree with that.  
10 But that's just, you know, in general.

11 Q. I suppose I'm just asking which of the two arrows  
12 records your own impression more accurately.

13 A. I would say up, the way that could very well be the way  
14 they had been leaning at the time or, you know ...

15 Q. So you think the one in your notebook is the more  
16 accurate note of your impression at the time?

17 A. Yes.

18 Q. We have heard some evidence from various people thus far  
19 about the question of whether we can tell when Y7 was  
20 deposited from the fact that it didn't show itself up  
21 with the aluminium powder and it did when black powder  
22 was applied.

23 On the basis of your experience in this field, can we  
24 draw any conclusions as to when the mark was put there?

25 A. No. Obviously, it would be if the print was deposited

1 and you could see the ridge detail in the aluminium  
2 powder. Other than that, I don't see how you could  
3 tell.

4 Q. So only if you had seen an obvious finger-mark that had  
5 been made in the aluminium powder would you be able to  
6 tell?

7 A. You could probably say that had been made afterwards,  
8 yes, and if that had been visible prior, then there  
9 would have been an indication of that having been lifted  
10 and taken at that time.

11 Q. Can we take it you did not see anything of that sort?

12 A. No.

13 Q. So the position is that we simply cannot tell whether Y7  
14 was deposited before or after the aluminium powder was  
15 put on?

16 A. That's correct.

17 Q. I do have just a couple more questions for you,  
18 Mr Moffat.

19 I think you actually took a photograph of Y7 on  
20 14th January; is that correct?

21 A. That's correct.

22 Q. And I would like you to look, please, just for  
23 completeness at 0002, page 1. I think that's your  
24 photograph, Mr Moffat?

25 A. Yes, it is.

1 Q. There have been some questions about the way that  
2 photographs were taken and we had some evidence about a  
3 fixed focus system that was used in taking photographs  
4 of this type.

5 Can you tell us whether you used that system in taking  
6 the photograph of Y7?

7 A. Yes, that was taken there because we can see the pins  
8 from the end of the mechanism which is used for the  
9 scale on the photograph.

10 Q. It may be that I can assist here by pointing to what I  
11 think you are looking at?

12 A. Would you like me to put an arrow on?

13 Q. If you can, that would be excellent help, Mr Moffat. I  
14 am just conscious of the difficulties we experienced  
15 yesterday.

16 A. **(Indicated)**

17 Q. So you put a red arrow at one pin and now at another pin  
18 further up. Is it possible to capture that image for  
19 the record, please, as Mr Moffat indicating where the  
20 pins are that he is talking about.

21 How did the pins work in taking the photograph,  
22 Mr Moffat? What are they for?

23 A. They are fixed at a set distance so that once I've  
24 photographed, whoever's going to be printing the prints,  
25 he will know the distance that these pins are apart. So

1           once he sets up the enlarger or the machine, whatever it  
2           is they are using to print the prints, once he sets it  
3           up for the first one then every photograph that's been  
4           taken with that attachment he doesn't need to realign  
5           the enlarger so all the prints can be then be printed  
6           off without any further adjustment.

7        Q.    Are they a device within the camera or something like a  
8           ruler that is actually put up against the print that you  
9           are taking?

10       A.    No, the base itself it has a lens which fits into the  
11           camera and like tripod legs which come out on a frame at  
12           the bottom.

13       Q.    So this is part of something that's attach to camera  
14           that has the pins in it?

15       A.    Yes, it is.

16       Q.    When we have heard about a fixed focus system that's  
17           what we're talking about?

18       A.    Yes.

19       Q.    We also heard that sometimes it would be possible to use  
20           that kind of system and something like a little ruler  
21           will have to be placed beside a mark when it's being  
22           photographed?

23       A.    That's correct.

24       Q.    But we can take it the ruler method wasn't what you were  
25           using when you took the picture of Y7?

1 A. That's correct.

2 Q. One last question for you. I wonder if you would look,  
3 please, at document AA0001 at page 1. I wonder if we  
4 could go to the 20.10 entry on the page, please.

5 I have to say I noticed that you have written there  
6 that DC Gary Gray had attended but also a DCI Stevie  
7 Heath had attended. I just wondered if that is how you  
8 referred to Mr Heath when you were speaking to him.  
9 What would you call him? Would you call him Stevie? It  
10 seems like an odd question but --

11 A. I don't really recall speaking to him. I mean, I would  
12 speak to him directly but I wouldn't call him "sir" or  
13 anything, normally. I don't recall talking to him -- if  
14 I had something to say to him, I would just say to him.  
15 I wouldn't say -- I don't think I would say "Stevie",  
16 no.

17 Q. If you ever had cause to speak to him by name --

18 A. If he's known as Stevie, you know, in broad terms, if  
19 somebody said "Who is the DS at Kilmarnock" people would  
20 say "Stevie". That's, you know ...

21 Q. Just drawing a possible distinction, is that how people  
22 talked about Mr Heath or is that what they would call  
23 him when they spoke to him?

24 A. I've no idea. It's not a question I can answer.

25 Q. Well, when you talked about Mr Heath would you refer to

1           him --

2       A.    As Mr Heath.

3       Q.    Well, I suppose I'm wondering why you have written down  
4           Stevie Heath here.

5       A.    Yes.

6       Q.    Sometimes people are talked about by a name that they  
7           wouldn't use themselves or they perhaps wouldn't be very  
8           happy at being addressed with but everybody else will  
9           round about refer to them as that. So I suppose if you  
10          were talking to Gary Gray about what Mr Heath had  
11          ordered you to do you might say, "Oh, Stevie Heath told  
12          me to do this"?

13      A.    Yes, that's correct, yes.

14      Q.    But do you know whether, when people were talking to  
15          Mr Heath, they called him Stevie?

16      A.    No, I wouldn't have thought so, no.

17      THE CHAIRMAN:   He was generally known as Stevie?

18      A.    Yes.

19      MISS CARMICHAEL:   Thank you very much, Mr Moffat.

20      A.    Could I add one further point?

21      THE CHAIRMAN:   Yes, certainly.

22      A.    Regarding the photographing of that fingerprint, it's  
23          the manner I believe this fingerprint's been  
24          photographed on other occasions which perplexes me  
25          because this photograph, when the experts are asked to

1           come up with an identification on a print, these experts  
2           should all be referring to one print only and that's the  
3           initial photograph that's taken because --

4    THE CHAIRMAN:   I think there might be many who would agree  
5           with you. So one is comparing like with like.

6    A.   Yes, because if they are not looking at that initial --  
7           once we've photographed that image, then even hours  
8           after that we have no control over that image or what  
9           happens to that image due to whatever circumstances but  
10          I would like to think when experts are looking at that  
11          image that everybody's singing from the same hymn sheet  
12          because any other image other than that first image, in  
13          my opinion, should never have come into any inquiry if  
14          that be the case.

15   THE CHAIRMAN:   I think we note your view about that. As I  
16          say, others might well share it.

17                 I am not sure which order you wish me to take.

18          Shall I take you first, Mr Smith?

19   MR SMITH:   I am happy to go first. It seems to be the  
20          common approach. Sir, I do have a few questions I would  
21          like to ask and the topics are as follows: the first  
22          relates to the question of the integrity of the **locus**.

23   THE CHAIRMAN:   Yes.

24   MR SMITH:   And in particular this witness's understanding of  
25          what kind of investigation was underway. The second

1 relates to the package and whether it was moved to be  
2 photographed. I am not sure we covered that.

3 THE CHAIRMAN: That's the Christmas gift?

4 MR SMITH: Correct. The third area is just a few more  
5 questions about Gary Gray, in particular his reaction,  
6 if any, to the comment that was made.

7 THE CHAIRMAN: Yes.

8 MR SMITH: I wouldn't intend asking very much on that, my  
9 Lord.

10 There is then a fourth matter which relates to the  
11 time of this witness becoming aware that it may be a  
12 police officer's fingerprint that's Y7 and that might  
13 become fairly obvious. Those are the areas I would wish  
14 your permission seek to ask.

15 THE CHAIRMAN: I think they are all areas I will allow.

16 MR SMITH: Thank you, sir.

17 **Cross-examined by MR SMITH**

18 Q. Mr Moffat, I am sure you have heard the areas that I  
19 wish to try and cover with you.

20 The first of these is the question of the status of  
21 the **locus** when you were there. We have heard some  
22 evidence already that sometimes it's known, obviously  
23 it's known that it's a murder investigation, sometimes  
24 it's unknown, sometimes it's pretty obviously been a  
25 suicide.

1           Can I ask what was your understanding at the time you  
2           first attended the **locus** as to whether or not this was a  
3           murder investigation, a suicide or just a suspicious  
4           death?

5     A.   Well, I actually was in the police office --

6     THE CHAIRMAN:   It is very natural to turn to the person who  
7           is asking but it makes it very difficult for the  
8           stenographer.

9     A.   I was actually going into our police office because I  
10          think there was instruction for me to phone Kilmarnock  
11          Police Office and there was a telex printout of the  
12          incident at Kilmarnock and from reading that incident,  
13          from that point, as far as I was concerned, it was very  
14          much possible in my mind that we were dealing with a  
15          murder or a very, very suspicious death and nothing less  
16          than that.

17    MR SMITH:   I take it that obviously emphasised to you the  
18          importance of the integrity of the **locus**, that had to be  
19          organised in such a way that the minimum disruption took  
20          place with regards to the premises being patrolled by  
21          people who were doing the job they had to do at that  
22          time; is that right?

23    A.   Yes, that's correct.

24    Q.   I think it was put to you there was some other police  
25          officers who may have been in what's been described as a

1 living room. It may be difficult for us to understand  
2 what was the living room, because I think there were two  
3 rooms that might answer that description, but can I ask  
4 you this, first of all: where you aware when you were at  
5 the premises of any police officer who was inside any  
6 room that might reasonably be described as a living room  
7 or a sitting room?

8 A. The position I found myself in being at that scene was,  
9 you will see in my statement at one point I've referred  
10 to personnel who were all there were asked to leave  
11 because nothing can be done until the whole scene's  
12 photographed and -- sorry, the whole scene is, first of  
13 all, videoed and then it's photographed and shortly  
14 after my arrival at that scene we've had several police  
15 personnel, pathologist, scientist who are following me  
16 about and once I've completed one area coming in and  
17 having a look. So, no, it's not an ideal situation.

18 Had there been police officers it could very well have  
19 been that every member of that personnel from  
20 pathologist to sergeants to chief inspectors and  
21 inspectors could probably all have been in that living  
22 room.

23 Q. Perhaps I can put to you something quite specific just  
24 for your comment. You may or may not have seen this  
25 taking place, but we have in our possession -- and it

1 has been produced to the Inquiry -- a copy of a  
2 precognition or a statement taken from a Constable Lynn  
3 Nicol who indicated that on Wednesday 8th January 1997  
4 she reported for duty and her tour of duty was 11.00 pm  
5 until 7.00 am through the night. I would just like to  
6 ask for your comments about her practice, as it were.

7 She says that she arrives at the **locus** and relieved  
8 the late shift personnel and ... can I have just one  
9 moment.

10 She indicates that she and her colleague, Constable  
11 Hutchison had been issued with protective clothing, were  
12 dressed accordingly, went into the house:

13 "... and our movements were confined to the front  
14 living room. We had been instructed to remain in the  
15 living room and not to move around the house."

16 She also makes reference to the fact that Constable  
17 Gary Gray of U Division was also in attendance at the  
18 **locus**, the body was still in situ:

19 "... it had not been removed. As far as I recollect,  
20 the police photographer was also present."

21 I am assuming that that description of you being a  
22 police photographer --

23 A. That would be me, yes.

24 Q. -- would be you.

25 Now her indication was what we've heard is that

1           although she had the suit on, protective clothing, she  
2           was in fact confined to the living room of the house.

3           Have you any recollection of someone who was there  
4           actually in the living room with a protective suit on?

5       A.    Yes, there were officers would be -- any officer within  
6           that scene should be there with a protective suit on.  
7           I've got the problem where I've got to -- I'm going  
8           about from room to room videoing, photographing, I'm not  
9           keeping track of where particular officers are.

10      Q.    Please understand I am not in any sense criticising you  
11           for not remembering, I am simply interested in whether  
12           from your experience, even way back in 1997, that is  
13           something that you would have made comment on if police  
14           officers were in a room which, as you well know, was of  
15           specific interest later. The room was very carefully  
16           investigated.

17      A.    Ideally nobody should have been in this room at any  
18           time -- or in any of the rooms. We now have a procedure  
19           in place which is with a Crime Scene Manager which  
20           controls that sort of situation.

21      Q.    I think in your statement at paragraph 12 -- I will just  
22           read out what you have said -- you say that:

23            "At that point [the point obviously when you are going  
24            about your duties] I felt there were too many people in  
25            the **locus** and I suggested to Detective Superintendent

1 Malcolm that he and the rest of his team go back to  
2 Kilmarnock Police Office and let me video and photograph  
3 the house first."

4 You have written in your statement what happened next  
5 but can you just tell us in your own words here and now  
6 what Detective Superintendent Malcolm's response was?

7 A. They were all there now and we would work round it.

8 Q. I think in your statement you say after that your  
9 reaction was you were not happy with the decision but  
10 there was nothing you could do about it?

11 A. It's certainly not an ideal sort of situation we'd be  
12 happy with. It's a bit carnival-like, to be honest.  
13 Ideally, we want -- what generally would happen with a  
14 crime scene is you call in the photographer first of all  
15 and the photographer would photograph the  
16 scene -- sorry, video the scene at a major incident. He  
17 would then start to photograph it and then he would  
18 possibly indicate bringing in then forensic scientists  
19 or whatever at a particular stage rather than having  
20 everybody standing around at the same time.

21 Q. Can I ask you about Detective Superintendent Malcolm:  
22 was he wearing a protective suit?

23 A. I can't recall but I wouldn't suggest that he wasn't.

24 Q. Did you see any personnel to your recollection who were  
25 not wearing the appropriate clothing?

1 A. No, because I can remember handing out quite a quantity  
2 of suits in a black holdall and I can remember supplying  
3 suits out to persons that were there.

4 Q. We heard some evidence yesterday that sometimes the  
5 senior officers on an inquiry, I think it could be said  
6 have some latitude as to whether or not they were  
7 wearing protective clothing.

8 Is that something that you agree with or disagree  
9 with?

10 A. That's something -- well, no senior officer should have  
11 any attitude -- sorry, latitude as to what they are  
12 wearing into a crime scene. If they made a decision  
13 they are not going to do it that's entirely up to them  
14 but you wouldn't accept that as normal practice.

15 Q. The reason I ask is I think Graham Hunter said in his  
16 statement -- I think it is paragraph 25 -- that  
17 Mr Lauder was not wearing protective clothing.

18 Is that something that you saw?

19 A. I don't recall. I'm not even sure who Mr Lauder is.

20 Q. Very well. As far as you recollect it you thought  
21 everyone you saw was dressed appropriately for the  
22 **locus**?

23 A. Yes.

24 Q. I'd like to ask you now if I can about the present. We  
25 saw something in the video you recall seeing a Christmas

1 present that caused some interest.

2 Did you actually photograph that at some stage with  
3 still photographs?

4 A. Yes, I videoed it first, then I photographed it and took  
5 close-ups of it.

6 Q. Did you move it from its position at any stage?

7 A. If it shows that in the photograph then I must have  
8 done.

9 Q. Was that for better lighting or a better view?

10 A. Probably to give it a better view to show exactly what  
11 it was.

12 Q. Please don't take this as any suggested criticism: was  
13 there any other item that you similarly moved in order  
14 that it could be photographed in a still photograph?

15 A. Yes, there was. There was a particular jewellery box in  
16 one of the downstairs bedrooms -- the bedroom which  
17 faces on to the rear porch and this had been -- when you  
18 looked in the house, the impression you got was there  
19 was a lot of drawers opened and closed. Then again,  
20 I've also been told the house had been searched prior to  
21 my arrival but it looked as if there was items in the  
22 house that had been moved in the search, or is this a  
23 search that has been done by somebody breaking into the  
24 house or whatever. I don't know.

25 But there was a jewellery box in that particular

1 bedroom, the one with the Hoover which we saw. This was  
2 videoed, this was photographed and I opened up the  
3 jewellery box and photographed the interior of it to  
4 see -- it was just an indication we were trying to  
5 establish possibly, if anything, has been missing from  
6 this house. So I thought the obvious place to maybe  
7 look is to look in a jewellery box to see if there is  
8 jewellery taken.

9 I remember being summoned down to Kilmarnock Police  
10 Office by Superintendent Malcolm and by Mr Heath to  
11 explain why I had opened up this jewellery box.

12 Q. I am sorry, give me just one moment, please. **(Pause)**

13 I am sorry, could I have just one moment, please.

14 There is a passage I am looking for. **(Pause)**

15 I would like to ask you if I can about some typing  
16 issues, in particular from your statement. Just to  
17 place this in context, in paragraph 62 and 63 you  
18 indicate from 62 you say your next involvement was on  
19 23rd January 1997:

20 "[You] received a message that DI McAllister wanted me  
21 to go to the **locus** with him and review some of the  
22 fingerprint marks at the scene. This was a new one on  
23 me, I'd never done anything like this before."

24 Before going on can I ask you this: how is it you came  
25 up with that date? Is that from your notebook or from

1 something --

2 A. Yes, I made a note in my notebook.

3 Q. You go on to say that -- I will just read this out

4 because it maybe very important:

5 "I cannot remember if I met him at the **locus** or at the

6 police office. He wanted to ask for opinion on certain

7 marks at the scene. He was mainly interested in the

8 area around Y7 and Z7. He kept asking about Y7 did, I

9 think it was fresh? When did I think it was made? He

10 asked similar questions about A8, but I indicated that I

11 couldn't give him a timescale, but it did appear fresh.

12 I can't recall the exact words spoken by DI McAllister

13 but that was the nature of his questions. I said I was

14 pretty sure Y7 and Z7 were Gary Gray's. I then went on

15 to explain the touching the doorframe, the burst glove

16 and the faded palm print through the glove theory.

17 DI McAllister clearly indicated that the prints were not

18 Gary Gray's and that they had been identified as

19 belonging to another police officer. He gave no

20 explanation as to the name, age or sex of the officer.

21 By his tone I thought now would be a good time not to

22 say any more."

23 If you take it from me -- well, first of all, can I

24 ask are you quite sure about the date and sequence of

25 events?

1 A. Yes, and that's in my notebook. I'm listening to that  
2 specific wording here and he did indicate this as being  
3 does it belong to another police officer ... whether or  
4 not he specifically said "identified" but he did  
5 indicate it belonged to another police officer.

6 Q. If you take it from me, as you may know, it wasn't until  
7 11th February, as I understand it, that Shirley McKie  
8 was identified by SCRO as the author?

9 A. I don't know when that was made.

10 Q. If you take it from me it wasn't until 11th February we  
11 can say there is something that has to be squared off  
12 here because 23rd January, if you are correct, an  
13 indication is being given to you that a police officer  
14 is suspected as being the author of the mark Y7.

15 A. Yes, I totally agree with that.

16 Q. No doubt we will hear how that might be reconciled but I  
17 suppose it may be suggested by Mr McAllister either it  
18 didn't happen or it happened on a date subsequent to  
19 11th February.

20 Can I ask you again how sure are you about the  
21 suggestion of the police officer and that it happened on  
22 23rd January?

23 A. Well, that is in my notebook and that was the day I was  
24 asked to go down there. My immediate boss was Mr Peter  
25 Weir, who would have been in my office at the time, and

1 he would know I'd be taking the van down on that  
2 particular day.

3 Q. So you are certain, you are positive about the date at  
4 least?

5 A. Yes.

6 Q. And you are positive as well about that conversation?

7 A. Yes, I am.

8 Q. You also mentioned that when the conversation took  
9 place, I think, with Mr Hogg who was fairly forceful  
10 with you, the first conversation you had, "Not going  
11 there sunshine", I think is what you said and you said  
12 you were a bit distressed about it?

13 A. Yes -- I still am.

14 Q. I am sure you must be distressed about it. Was it  
15 something you communicated to your boss? I think it was  
16 James Orr, did you tell him what you had been told by  
17 Mr Hogg?

18 A. Yes, I did.

19 Q. So I suppose if there's a denial of that we can speak to  
20 your boss and he would be able to confirm it?

21 A. Yes, you could and, yes, he could.

22 Q. Did you tell him the detail of what was said by Mr Hogg?

23 A. Yes. It is also possible that there were other staff  
24 members in that room as well. I can't recall who they  
25 were.

1 Q. Surely. You will understand that from the questions  
2 that have already been put to you by Counsel to the  
3 Inquiry there is likely to be a denial at least of the  
4 tenor of the conversation, if not some of the content.

5 That is why I asked you those who can confirm your  
6 version of events; do you understand?

7 A. Yes.

8 Q. You seem to have gone, if I may put it this way, very  
9 much out on a limb in this regard explaining what the  
10 position actually is.

11 Can I just pick up from something that you were asked  
12 earlier. As far as disclosing the question of Gary Gray  
13 and whether or not he might have left a fingerprint, you  
14 will understand it was being put to you, I think, that  
15 this is something you could have explained at a much  
16 earlier stage.

17 Can you explain to us again why it was that you didn't  
18 mention it when the statement was given to the  
19 disciplinary inquiry?

20 A. Yes, because I totally accepted the findings of the  
21 Scottish Criminal Records Office giving that  
22 identification and I couldn't see any way or any reason  
23 at all to mistrust that. That's certainly good enough  
24 in my book.

25 Q. You, of course, told Gary Gray at the time that his

1 fingerprint might be there and he should report it?

2 A. Yes. It wasn't anything I was concerned about or -- you  
3 know, I thought I was doing him a favour by saying  
4 mention it to somebody and I made the phone call ... you  
5 know in hindsight now I wondered why I bothered but I  
6 did it and it should have been a straightforward -- it  
7 should be a straightforward elimination. They maybe  
8 said, you know, it's a silly thing. It was just a lapse  
9 of concentration. It still happens and always will  
10 happen at crime scenes.

11 Q. What was Gary Gray's reaction when you said to him,  
12 "Look, you know, get your hand off it"?

13 A. I don't really recall it because it was no big thing for  
14 me. What I'm saying -- you know, I noticed a glove  
15 burst later on. I haven't indicated remembering seeing  
16 him standing there with a burst glove touching the  
17 surface. That would have been a whole different  
18 scenario.

19 If a glove bursts, it's an indication that quite  
20 possibly --

21 THE COURT REPORTER: I'm sorry, I couldn't catch that.

22 A. It is quite possible that, you know, from how I viewed  
23 it that, even though he's there with a burst glove, even  
24 though he's leaning on that surface, it's perfectly  
25 reasonable that he never, ever left a mark on that

1 surface.

2 MR SMITH: Gary Gray's position, as you will understand is,

3 I think, either this didn't happen or he certainly

4 doesn't have any recollection but --

5 A. I find that unbelievable.

6 Q. Have you seen Gary Gray since this point in time?

7 A. Yes. I believe he was at the (inaudible) -- there was a

8 gentlemen there called Gary Gray, of that name, but as

9 far as I'm aware there is only one Gary Gray in the

10 Strathclyde Police. I was up there for four or five

11 days in his presence and I never spoke to him at any

12 time about the mark.

13 Q. I suppose people might be wondering whether you have any

14 reason to make this up.

15 Can I just ask you this: have you ever had any

16 difficulty with a working relationship with the police

17 or with SCRO or anyone like that? Is there any --

18 A. No, I've never had any difficulty at all with SCRO.

19 It's been really difficult since that day carrying on

20 doing what I do.

21 Q. If you want to stop for a few moments I am sure the

22 Chairman will be content to do so.

23 THE CHAIRMAN: Of course.

24 A. No, I will carry on.

25 MR SMITH: I will move on to something slightly different,

1            maybe if you help us --

2        THE CHAIRMAN:    Just give the witness a moment. **(Pause)**

3        MR SMITH:    Are you all right?

4        A.    Yes.

5        THE CHAIRMAN:    Take your time.

6        MR SMITH:    I'd like to ask you about the meeting that took

7            place just before the Asbury trial. You told us there

8            was this conference, I think, was maybe the word that

9            you used.

10       A.    That's correct.

11       Q.    You have clearly given evidence in a number of other  
12            cases before, including murder trials, I presume?

13       A.    Yes.

14       Q.    Have you ever on any previous occasion had to be at a  
15            conference of that kind?

16       A.    There might have been -- I mean, I don't recall -- I  
17            wouldn't deny that. It could very well have been with a  
18            big trial coming up you do have a briefing, you know.  
19            But how that one was instigated was quite unusual.

20       Q.    What was unusual about it, if I may ask?

21       A.    In the fact that what was mentioned, what was said to me  
22            by Iain Hogg to watch how my reaction, how I act in the  
23            witness box.

24       Q.    What did you understand he was trying to get you to do?  
25            He said stick to your statements but what were you

1 taking from that?

2 A. I don't know. I didn't speak to Mr Hogg regarding that.

3 Like perhaps there's a lot of things here discussed here

4 today that probably aren't written down in statement

5 form, just general expressions, general opinions.

6 Q. I think you also said in your statement but I don't

7 think you said today, just so we understand it, do you

8 feel that your stance on this has in any way affected

9 your career?

10 A. Yes, I do feel that way. Stuart also made a comment

11 about anybody involved with that inquiry wouldn't be

12 going much further with their careers. However, I took

13 that with a distinct pinch of salt at the time. But

14 from that time and that phone call I've felt as if I was

15 totally isolated from the management. I felt as if I'd

16 been looked down upon. I don't think that I ever went

17 back for a long, long time to any major examination to

18 carry out fingerprint work. It was a long time before I

19 got involved. I was kept out on the run-of-the-mill of

20 things, unless I was actually on-call when they wouldn't

21 have control over that. I've always felt as if I've

22 been put down by Mr Hogg in comments, no gratitude shown

23 for a lot of things that I've done.

24 I've been involved in quite a few outstanding

25 inquiries. Just to give you a sort of example I found,

1 for example, ear prints which turned out to be the first  
2 ear prints in Scottish criminal history that proved a  
3 conviction in court and that was just fobbed off; an ear  
4 print that produced the first DNA ident at a murder  
5 scene, very good. That was part of an inquiry where the  
6 information recovered the biggest single arms recovery  
7 of firearms in Strathclyde Police history, very good.

8 I felt it was just a constant put-down and detrimental  
9 to myself.

10 MR SMITH: Thank you very much.

11 THE CHAIRMAN: Mr Holmes have you any application?

12 MR HOLMES: Thank you, Mr Chairman, there are a couple of  
13 matters. The first relates to the video and the second  
14 relates to the incident with PC Gray's glove.

15 THE CHAIRMAN: Yes. I will allow both.

16 **Cross-examined by MR HOLMES**

17 Q. Firstly, Mr Moffat, can I ask in relation to the taking  
18 of the video you mentioned that you also took still  
19 photographs of a number of items and we saw the  
20 photographs of the Christmas present that you had taken.

21 A. Yes, I did.

22 Q. You said that you had perhaps moved the Christmas  
23 present and you had moved a jewellery box when taking  
24 the still photographs; is that correct?

25 A. Yes, that's correct.

1 Q. Did you do that before or after you took the video?

2 A. The video would be done first, always.

3 Q. The video would be done first. In that case, I wonder

4 if we could have a look at a very specific part of the

5 video recording, if I just get the time for you. It is

6 approximately 22 minutes and 30 seconds in.

7 THE CHAIRMAN: I was going to ask the witness to look at the

8 still photographs and tell us if there was any

9 photograph which had been taken before any movement had

10 taken place so to have that on the record.

11 While we are waiting for the video it might be

12 convenient if we can -- I am afraid I don't know the

13 number of the still photographs.

14 MISS CARMICHAEL: ST0003 is the set we have been looking at,

15 sir.

16 THE CHAIRMAN: What I would really like to know is are there

17 still photographs, any of the still photographs that you

18 can say, "I took that photograph before any movement,

19 before moving the gift"?

20 A. Yes, there should be, yes.

21 THE CHAIRMAN: Would you be good enough so we have on the

22 record the original position.

23 MISS CARMICHAEL: I am very sorry to interrupt at this

24 point. I should say the sequence of photographs

25 involves in its totality some distressing photographs

1 and I just wanted --

2 THE CHAIRMAN: I think if somebody could just tell us which  
3 numbers have the gift tag.

4 Is that possible without us all having to --

5 MISS CARMICHAEL: It may be possible for us to do something  
6 in the background here to avoid the need to go through  
7 every single one of the photographs, sir. I am sorry to  
8 interrupt.

9 THE CHAIRMAN: You are quite right to remind me. It is  
10 distressing enough to watch the video even in its edited  
11 form. I don't want to add to that.

12 MISS CARMICHAEL: Sir, I think we have the video now so it  
13 may be that can be proceeded with and we will try to  
14 sort out the photographs if it would be helpful to you,  
15 sir.

16 THE CHAIRMAN: I am wondering if it would be convenient to  
17 deal with the gloves issue while the technology is -- or  
18 do you want both?

19 MR HOLMES: I think that may take some time so if the video  
20 is available, then hopefully that can be dealt with  
21 fairly quickly.

22 MISS CARMICHAEL: Sir, it has been brought to my attention  
23 by our witness liaison officer that Mr Moffat may need a  
24 break.

25 THE CHAIRMAN: Very good. You would like a break,

1 Mr Moffat?

2 A. No, I am fine.

3 MISS CARMICHAEL: I appreciate we are receiving conflicting  
4 messages but I am --

5 THE CHAIRMAN: We will take a short break.

6 **(12.34 pm)**

7 **(A short break)**

8 **(12.43 pm)**

9 MR HOLMES: Sir, the video has been paused at what I think  
10 is the appropriate moment.

11 If I could ask the witness, Mr Moffat, is that the  
12 same room that the jewellery box that you were speaking  
13 about was in? Can you tell from that shot?

14 A. I can't tell from that shot, no. **(Pause)**

15 Q. If we can wind it back slightly from where the shot is  
16 so Mr Moffat can see whether it's the same room.

17 THE CHAIRMAN: You must have had a very steady hand when you  
18 take this video or do you do it on a stand?

19 A. No, because if you move a video recorder too quickly  
20 people watching it feel sick. **(Pause)**

21 This is the same room.

22 MR HOLMES: Are you able to say where the jewellery box was?

23 A. This is my original video yes.

24 Q. Yes.

25 A. This is how I found it, as I found things. So wherever

1           you see things in place at that time that's where it was  
2           when I was there.

3       Q.    Can you let the camera sweep round past the bedside  
4           table.

5           Are you able to indicate when the jewellery box you  
6           were speaking about comes on to the screen?

7       A.    I don't recall exactly which jewellery box it was.  If  
8           you look here, there's various items here.  It could  
9           possibly have been this one here.  **(Indicated)**

10          Is that a jewellery box?

11       Q.    Which item are you indicating?

12       A.    The white, the large white square item on the bed.

13       THE CHAIRMAN:  It's the white box closed box lying on the  
14          bed, is it?

15       A.    Yes.  What you should see is a view of -- in the video  
16          and then a still photograph and then you will see a view  
17          of the item in an open position, whichever item it was.

18       MR HOLMES:  If we can move on to the still shot of  
19          that ... it's at 22.47.

20          It's not very clear, I'm afraid, from the still  
21          shot, Mr Moffat, but are you able to see there is a  
22          layer of dust on the table you are looking at?

23       A.    Yes, that appears so, yes.

24       Q.    Can you see there are voids in that dust?

25       A.    Yes.

1 Q. Would it appear to you that there have been items or an  
2 item moved?

3 A. Well, if you are accurate in saying that that is in fact  
4 dust and not a stain on the surface, then I would agree  
5 with that.

6 Q. Thank you. That is all from the video, thanks.

7 It has already been put to you, Mr Moffat, that your  
8 account of Gary Gray potentially leaving a fingerprint  
9 at the scene does not square with some of the other  
10 accounts that the Inquiry has had access to. I would  
11 like to put some of those other accounts to you and ask  
12 you to tell me what you think of those.

13 I think you have already been asked about the  
14 statement that you gave to Chief Inspector Wilson in  
15 June of 1997 and you accepted, I think, that there is no  
16 mention of the incident with Gary Gray in that  
17 statement; is that correct?

18 A. That's correct.

19 Q. Neither is there any mention of the incident with Gary  
20 Gray in the statement given by you to the Mackay team in  
21 2000; is that correct?

22 A. I don't recall.

23 Q. Well, the statement that was put to you CO1378 --

24 A. Yes, that would be correct. I'm just trying to figure  
25 out the timing of --

1 Q. That statement appears to have been given in  
2 August 2000?

3 A. August 2000 --

4 Q. It is headed up as being the Malcolm report. There is  
5 no mention of Gary Gray in that statement; is that  
6 correct?

7 A. That's correct.

8 Q. And neither of your notebooks around the time make any  
9 mention of Gary Gray potentially leaving his fingerprint  
10 at the scene?

11 A. That's correct, yes.

12 Q. You do note down in the notebook that has been shown to  
13 you already a visit to the scene with DI McAllister on  
14 23rd January 1997; is that correct?

15 A. That's correct, yes.

16 Q. There is no mention of the incident with Gary Gray nor  
17 indeed any conversation that you might have had with  
18 DI McAllister in that notebook. Would you accept that?

19 A. Yes, I accept that, yes.

20 Q. You make no mention of the incident in the statement  
21 given by you, it is CO40142?

22 A. Yes, but as I have indicated the time that I felt it was  
23 appropriate to speak about this, about Mr Gray, was when  
24 I first learned that there would be a challenge to the  
25 identification of the print and the SCRO had possibly

1           made a mistake. That's why nothing was said prior to  
2           that.

3       Q.   Indeed and you have mentioned the conversation that you  
4           had with DI McAllister about that. DI McAllister in his  
5           statement to this Inquiry has indicated that that  
6           conversation did not happen.

7       A.   Well, I disagree with that totally.

8       Q.   Has DI McAllister simply forgotten this conversation  
9           took place?

10      A.   Sorry, could you repeat that?

11      Q.   Has DI McAllister simply forgotten this conversation  
12           took place?

13      A.   You would need to ask DI McAllister his recollection of  
14           that.

15      Q.   DI McAllister has been asked, Mr Moffat, and if I can  
16           show you his statement, it is at paragraph 73 of his  
17           statement. I am afraid I don't have a reference number  
18           to hand. It is FI0068.

19      THE CHAIRMAN:   Is there a particular paragraph?

20      MR HOLMES:   It is paragraph 73, sir.

21                   That paragraph says Mr Moffat:

22                   "I am aware that Mr Moffat has said that during that  
23                   meeting I am alleged to have confided to him that I  
24                   believed the mark Y7 had been identified as belonging to  
25                   a police officer. I had no knowledge that would allow

1 me to make such an assertion and I did not make such a  
2 remark."

3 What is your reaction to that, Mr Moffat?

4 A. Total disagreement.

5 Q. "The allegation is untrue", says DI McAllister. What is  
6 your reaction to that?

7 A. I don't agree with that at all. I think the man's  
8 telling lies.

9 Q. DI McAllister then goes on to say:

10 "Mr Moffat similarly did not pass any comment as to  
11 the possible identity of the fingerprint. There was no  
12 discussion of a glove having burst at the scene nor any  
13 mention of Detective Constable Gary Gray."

14 What is your reaction to that?

15 A. It's lies.

16 Q. "Had I received such information I would have passed it  
17 on to the SCRO as part of my liaison function. I would  
18 not have speculated with anyone about the mark."

19 He then goes on to mention that he does not recall:

20 "... expressing any specific view that mark Y7 was  
21 that of a woman or child."

22 He says the first time he:

23 "... became aware of these allegations was in 2000  
24 during the Tayside Police inquiry."

25 What is your reaction to that?

1 A. I don't agree with what Mr Gray is saying  
2 there -- sorry, what Mr McAllister is saying.

3 Q. You mentioned in your evidence that you had also spoken  
4 to Chief Inspector Hogg about this incident.

5 A. Yes.

6 Q. Chief Inspector Hogg wrote a memo to Detective  
7 Superintendent Malcolm. It is CO1460. It is dated  
8 17th July 2000 which would have been after the time that  
9 you discussed this matter with him; is that correct?

10 A. Yes.

11 Q. Can we move on a page, please. This memo -- and I will  
12 give you the opportunity to read it -- makes no mention  
13 of this incident of any report by you to Chief Inspector  
14 Hogg of this incident.

15 A. Okay. This memo -- sorry, just to clarify does this  
16 memo come out after when I've -- after I've had that  
17 phone call with Iain Hogg regarding getting the print  
18 checked?

19 Q. Say again please?

20 A. Has this memo been issued after the time when I've  
21 phoned Iain Hogg and asked him can I have the print  
22 rechecked.

23 Q. It's dated 14th March 1997.

24 A. Do we have a date for when it was ...

25 THE CHAIRMAN: If you need to look at your statement at all

1 please do.

2 MISS CARMICHAEL: I am trying to do that, sir. I think it  
3 is possible that there may have been some initial  
4 confusion about the date of this document because a  
5 number of the documents in the Inquiry, if this is of  
6 assistance to others, are attached with the covering  
7 notes that they came from, from the Mackay Inquiry. A  
8 number of them have dates in July 2000. That is, I  
9 think, sometimes the date that the document has been  
10 seized by those dealing with it at Tayside Police and  
11 that may not be the date of the document itself which I  
12 think we see on the document itself as 14th March 1997.

13 I think that what we have been told by this witness  
14 already when he spoke to Mr Hogg was it was shortly  
15 before Shirley McKie's trial and we know her trial took  
16 place in about May 1999.

17 THE CHAIRMAN: Yes. So this precedes by some years then.

18 MR HOLMES: That is correct. I will move on, sir.

19 I think the way forward is if I refer you directly  
20 to the Mackay report, Mr Moffat. That is CO0005. It is  
21 page 68 of that report. I think it is at page 68 of the  
22 document rather than page 68 of the report. It is  
23 paragraphs 7.9.18, 7.9.19 and 7.9.20 that I am  
24 interested in. **(Pause)**

25 A. Okay.

1 Q. Again, we see from those paragraphs that DI McAllister  
2 has given an account denying the conversation ever took  
3 place between yourself and him about the origins of Y7  
4 and the possibility that that was Gary Gray's  
5 fingerprint?

6 A. I disagree with Mr McAllister.

7 Q. You see another officer who was present has been asked  
8 about it and again denies any knowledge of this  
9 incident?

10 A. Yes, well, that's ... I disagree.

11 Q. If we move out from those three paragraphs to see that  
12 same page again, at the bottom of the page, Mr Moffat,  
13 at 7.9.22 you will see a paragraph that says:

14 "It is the view of the Enquiry Team that there is no  
15 evidence to corroborate witness Moffat's statement and  
16 the weight of evidence supports witness McAllister's  
17 position that he had no knowledge of the donor of the  
18 mark until 11th February 1997."

19 What your reaction to that?

20 A. Well, I can't disagree with that because I wrote nothing  
21 down and it was word for word, one version versus  
22 another version.

23 Q. So you would agree with the conclusion of the Mackay  
24 team that there is apparently no evidence to support the  
25 account that you have given of the incident

1 involving Gary Gray?

2 A. Yes, I would agree with that, yes.

3 Q. In which case there is only one more thing I have to ask

4 which is that you recovered the fingerprints from the

5 doorframe and on that doorframe there were Y7 and Z7; is

6 that correct?

7 A. Yes.

8 Q. If, as that report states, the Mackay team had Y7

9 checked and it's not the fingerprint of Gary Gray, where

10 is Gary Gray's fingerprint?

11 A. Say that again.

12 Q. The Mackay report states that Y7 has been checked and it

13 is not the fingerprint of Gary Gray?

14 A. It's not the fingerprint of Gary Gray?

15 Q. It's not.

16 A. Then if that's not Gary Gray's fingerprint, then I would

17 believe that's Shirley McKie's fingerprint. That's one

18 of the answers I've been asking for for quite a number

19 of years and nobody came back to me with a reply to

20 that. I've sent several requests to have that

21 information passed to me expressed to the Tayside Police

22 saying I would like to know, after the interview, is

23 that correct, they ruled out that fingerprint and they

24 came back to me with no further information and that's

25 the first time I've been told that.

1                   So if that's not Gary's fingerprint, there's no doubt  
2                   in my mind that that fingerprint belongs to Shirley  
3                   McKie.

4       Q.     Just to clarify Y7 and Z7 are the only fingerprints or  
5             Y7 is the only fingerprint that's on that door post; is  
6             that correct?

7       A.     Y7 and Z7, yes.

8       Q.     Z7 being a palm-print?

9       A.     Well, we have it in the print-out of the document if  
10            you're saying that, yes.

11      MR HOLMES:   Thank you.

12      THE CHAIRMAN:   I am anxious to conclude this witness if I  
13            can. I realise it is just after 1.00.

14            Miss Grahame, do you have any questions to ask?

15      MISS GRAHAME:   I have no questions.

16      THE CHAIRMAN:   Mr Macpherson?

17      MR MACPHERSON:   No, thank you, sir.

18      MR SMITH:    Sir, I wonder if I could ask a couple of  
19            questions. It is literally just a couple of questions  
20            follow up to what has been asked by Mr Holmes. You will  
21            appreciate, sir --

22      THE CHAIRMAN:    I am sure you will be as concise as you can  
23            be.

24      MR SMITH:    I will be, sir. It is relating to the last few  
25            comments.

1 THE CHAIRMAN: Yes.

2 **Further cross-examination by MR SMITH**

3 Q. Mr Moffat, obviously you will have to wait and see what  
4 examination was carried out with regards to the  
5 fingerprint Y7 in comparison with Gary Gray's.

6 You say you have no doubt it would be Shirley McKie's  
7 if it's not Gary Gray's.

8 A. Yes.

9 Q. I want to be clear about it: when you saw Mr Gray  
10 leaning against the doorframe at the side of the door  
11 you did not see, did you, whether or not his glove was  
12 torn?

13 A. That's correct, yes.

14 Q. If the glove had not been torn at that time would he  
15 necessarily have left any fingerprint?

16 A. Well, my concern then was it possible that a piece of  
17 print transferred through a piece of rubber glove but  
18 that's very, very unusual but not impossible but I  
19 wouldn't have expected it.

20 Q. So just to be clear about it, if he did not have a torn  
21 glove at that point he may have been leaning against the  
22 door and the fingerprint Y7 was found it maybe AN Other,  
23 someone else?

24 A. Yes, that's correct.

25 MR SMITH: Thank you.

1 THE CHAIRMAN: Have you been able to select the photographs  
2 just so we know which is the unmoved gift.

3 MISS CARMICHAEL: I am not sure that what I have found will  
4 be much help but it may be worthwhile trying to clarify  
5 with the witness, in what I hope will be a short  
6 sequence of questions.

7 THE CHAIRMAN: I am sure you would prefer to conclude your  
8 evidence before we break.

9 **Re-examined by MISS CARMICHAEL**

10 A. Yes. Could I have a picture of Y7 brought back up on to  
11 the screen?

12 MISS CARMICHAEL: That was not immediately what I planned to  
13 ask you about, Mr Moffat. Before turning back to  
14 photographs which the Chairman had mentioned, just to  
15 clarify one point. You mentioned when Mr Smith was  
16 asking you questions that you had made a note in your  
17 notebook about meeting with Mr McAllister.

18 A. Yes.

19 Q. I wonder if we could just look quickly at AH0002 at  
20 page 8. If we look at the left-hand page there's an  
21 entry for Thursday, 23rd January 1997 and you record  
22 there, I think, "attend at **locus** with DI McAllister,  
23 review position about outstanding fingerprints."

24 A. Yes.

25 Q. So it would be fair to say you noted the meeting in your

1 notebook but lest there be any doubt there isn't any  
2 mention there of any detail of what your conversation  
3 was?

4 A. That's correct. Mr McAllister hasn't given an  
5 indication as to why he never took Stuart or Graeme with  
6 him to this scene? Why?

7 Q. Mr McAllister will be a witness here and no doubt  
8 questions that are appropriate for Mr McAllister will be  
9 asked of him at that time, Mr Moffat.

10 Turning to the photographs, could we look, please, at  
11 ST0001 at page 3. This seems to be a close-in shot,  
12 Mr Moffat, and I am wondering if you can tell us to the  
13 best of your recollection whether this is the picture  
14 that you think may have been taken once you had moved  
15 the item to get a better view or whether that is in the  
16 position that you found it?

17 A. No, that's not in the position it was found. It would  
18 probably have been moved by myself at that point for  
19 photograph it.

20 Q. I am sorry, I didn't mean to cut you off there.

21 A. Yes, we would see quite clearly in the video that I  
22 think it's sitting further up.

23 Q. So the best view that we have thus far at least of where  
24 it was before you moved it to take this picture is what  
25 we saw when we paused the video --

1 A. Is there not a still photograph of that showing the same  
2 position as the video?

3 Q. Regrettably, the best efforts of myself and the lady  
4 sitting beside me have not located that for you. There  
5 is another photo, which I fear may not come up very  
6 clearly on the screens, but we should perhaps give you  
7 the opportunity to look at it here. There was some  
8 difficulty when it was shown to you before. It is  
9 page 38 of ST0003.

10 I think what we see in this shot is the room where you  
11 found the parcel that we've just been looking at and if  
12 we look at the door which is just in the centre of shot  
13 there, would I be correct in saying that the nest of  
14 tables is located effectively part way down the door  
15 here? I appreciate it is not particularly easy to see.  
16 I think we have been able to place an arrow.

17 A. Yes, I see where the tables are now, yes.

18 Q. In relation to this shot, can you tell us whether where  
19 we placed the arrow shows us the position of the parcel  
20 on the table before you moved it or afterwards?

21 A. I think perhaps round about there (**indicated**).

22 Q. We have two arrows pointing to the same thing which are  
23 roughly to the left on the shot of the third arrow.

24 What are you pointing at with the two arrows that are to  
25 the left of this shot?

1 A. Well, you have indicated that's that set of stacking  
2 stools or stacking tables so I think on the video we see  
3 the package is sitting on the top one although ...

4 THE CHAIRMAN: You would say the video is the best version  
5 of it.

6 MISS CARMICHAEL: It may be, with that in mind, it may not  
7 be productive to try to use the photographs on this  
8 topic, sir.

9 THE CHAIRMAN: I do not think it is.

10 MISS CARMICHAEL: I am obliged.

11 One point, you were shown a section of the video  
12 again when Mr Holmes was asking you questions,  
13 Mr Moffat --

14 A. Can I highlight another point regarding that package?  
15 There was a lot of emphasis put on that package that  
16 day. As you can see, there's a tear in it and there was  
17 the bit about getting this package taken up to  
18 headquarters as soon as possible for fingerprint  
19 examination.

20 Q. Thank you for that.

21 You were shown a section of the video again when  
22 Mr Holmes was asking you questions and the video was  
23 paused at a section where we were looking at what looked  
24 like a dressing table beside the bed and I think  
25 Mr Holmes suggested to you that what we may be seeing

1           there is a clean area in an otherwise dusty surface.

2       A.    Yes.

3       Q.    Now are you able to tell today from looking at the video

4           whether we are looking at a clean area in dust or I

5           think you otherwise suggested might have been a stain?

6       A.    I can only go from what I've seen on that screen there.

7           I've no recollection of whether there was dust or

8           whether it was a stain.

9       Q.    It is not something that you can remember from the time

10          seeing a dusty area and thinking, "Well, something's

11          been taken away"?

12       A.    That's correct because there's so many items in that

13          house and anything which I felt was quite obvious I've

14          tried to capture with the first video. But, don't

15          forget, we were going to be there for a few days; so

16          anything that was going to be highlighted later on could

17          quite easily have been re-videoed or photographed during

18          the search initially going to do, followed by a

19          sustained forensic thorough search.

20       Q.    But ultimately you can't help us very much today from

21          your memory at the time as to just what it is on the

22          portion of the video --

23       A.    It's very, very difficult to do that bearing in mind I'm

24          looking through a very small eye piece of a video

25          camera.

1 Q. Nobody is criticising at all. I am trying to clarify --

2 A. There's nothing sprung out at me if that's ...

3 Q. Finally, in relation to what you said about mark Y7 when

4 Mr Holmes was asking you questions, the fact is it's

5 just quite possible, is it not, that we don't know who

6 Y7 belongs to?

7 A. That's correct, yes. Could I see Y7 back up on the

8 screen, please?

9 THE CHAIRMAN: Could you have Y7 on the screen.

10 MISS CARMICHAEL: The reference is PS0002, sir.

11 A. I may be in a very, very unfortunate position of having

12 witnessed something which is quite unusual because I've

13 seen, in what I've said, an officer standing in that

14 area and if you want to see how I've come to that

15 certain conclusion about this possibility, if you look,

16 it would appear in the next -- I think the next person

17 will correct me if I'm wrong -- but that would appear to

18 be a palm-print on the lower part and the print above

19 it, Y7, is certainly darker, which is why I thought

20 there might have been a possibility of a glove and a

21 burst -- of a hand with a glove with a print

22 transferring through. And also if a glove's torn, then

23 the print on top would be darker and that's why I came

24 to that conclusion and if that's not the right

25 conclusion, well, I wouldn't change it. Just being

1           privy to having witnessed one situation and how it  
2           developed, I had no control over it.

3           But I felt that once -- that's why it's taken two  
4           years into the Inquiry before you see anything in my  
5           statement to start thinking, okay, we need to come up  
6           with that at that time but we need to start looking  
7           somewhere to see if there's a mistake gone wrong  
8           somewhere and that's why I introduced it then, but up  
9           until that point I wouldn't criticise any fingerprint  
10          expert.

11        Q.    Thank you, Mr Moffat. I don't have any further  
12          questions for you but just to get the position of that  
13          last part of the reference into the notes, when you are  
14          talking about what you refer to as a palm-print, you are  
15          referring to a mark which is to the left on the image of  
16          a label that bears Z7 at the end of the number; would  
17          that be correct?

18        A.    That area there. **(Indicated)**

19        Q.    Thank you very much if we can just capture that image to  
20          record Mr Moffat's position on that but I don't have any  
21          further questions.

22        THE CHAIRMAN:   There is a little I would like to ask you,  
23          Mr Moffat, that would be very helpful.

24                  While preserving the scene in a murder, do you  
25          normally allow the undertakers to come in to move a body

1 or do the police prefer to do it or the Scenes of Crime  
2 Officer prefer to do it themselves so that the risk of  
3 contamination as seen by outsiders doesn't arise?

4 A. It's not just contamination; there's an intelligence  
5 issue there. If public -- people who come in to lift  
6 the body, the undertakers, if they come in, then they  
7 have visual knowledge of exactly how that body's lying  
8 at the scene. You don't want that going out there into  
9 the public domain because if that was in the public  
10 domain, it's not the first time somebody's admitted to a  
11 murder when they haven't done it and if they come in and  
12 give specific information as to what's inside the scene  
13 on the basis they have heard the story, that could be  
14 quite feasible. So you really don't want any members of  
15 the public at all coming in and viewing a body in a  
16 scene and that's --

17 THE CHAIRMAN: So you normally then wouldn't -- you would  
18 prefer to do it yourself?

19 A. I wouldn't say it's maybe never happened but you  
20 wouldn't expect that to happen.

21 THE CHAIRMAN: The second question, quite a different thing  
22 I wanted to ask you was we have heard that you can  
23 accidentally in lifting a mark or -- yes, particularly  
24 in lifting a mark, leave your own personal, an officer,  
25 Scenes of Crime Officer, could leave their own print.

1                   If that happens, is that reported to the Scottish  
2                   Criminal Record Office saying, "This could well be my  
3                   print because I accidentally touched the point" --  
4        A.    If you were aware of it, yes, but what used to happen  
5                   these fingerprint lifts we used to -- it is almost  
6                   impossible to lift actually with gloves on; you have got  
7                   to take your gloves off to put the tape on to the  
8                   acetate and quite often you would see your prints on the  
9                   tape. So what we used to do is put an X through the  
10                  prints which we thought which we knew to be our own  
11                  because more often than not the print you were lifting  
12                  would be more or less in the centre of the piece of  
13                  acetate for an officer to be in that position where he's  
14                  left his print on a tape, it's probably happened quite a  
15                  few times.

16       THE CHAIRMAN:   I was just wondering whether you leave them  
17                  to it or whether if you know, fine, well, that it is  
18                  your print accidentally that has got there, do you tell  
19                  them that that is so?

20       A.    No, SCRO -- well, if we knew -- you know, if we knew we  
21                  left it on, quite often sometimes officers cut it off if  
22                  they know for sure it's theirs. But, in general, if  
23                  SCRO pick that up, then it's perfectly acceptable. It's  
24                  perfectly acceptable to have police officers'  
25                  fingerprints found at scenes and we should never have

1 got to this stage for any inquiry of an officer leaving  
2 a print at the scene.

3 THE CHAIRMAN: The last thing I wanted to ask you is this:  
4 when did you first know, and I mean know or gather  
5 either officially or unofficially, that this Y7 could be  
6 DC Cardwell's print or DC McKie? Can you remember when  
7 that would have been?

8 A. That would have been some time after the announcement  
9 from the Scottish Criminal Record Office.

10 THE CHAIRMAN: Because in March when you were being  
11 interviewed you were being asked had you seen her at the  
12 scene, did it strike you then that must be some question  
13 about it being her print?

14 A. Yes, that was probably taken into consideration but I  
15 can't ever recall having seen that officer at the scene.  
16 In fact, I looked in my notebook and see the forensic  
17 scientist was Martin Fairley and I don't remember Martin  
18 Fairley being there, although I know Martin Fairley  
19 fairly well. If I walk by him in the street, I know who  
20 it was. But, you know, didn't have any recollection of  
21 Martin Fairley visually being there.

22 THE CHAIRMAN: And I take it that from what you said you say  
23 Mr McAllister said it was a police officer's print, Y7?

24 A. Yes.

25 THE CHAIRMAN: So when you were being asked had you seen

1 DC Cardwell at the scene, did you put two and two  
2 together and assume that it was Y7 that they were  
3 investigating, so far as she was concerned?

4 A. That's what he said to me. He said to me the print  
5 wasn't Gary Gray's, it was another police officer's.  
6 Whether or not he said identified, right, but he said it  
7 was another police officer's print. Well, I wouldn't  
8 have had any recollection as to who that was because and  
9 I wasn't concerned about it because I'm aware there have  
10 been several police officers in that scene from all  
11 staff and what really defies me more than anything else  
12 is there's only one group of experts that put a name to  
13 that fingerprint. That fingerprint has to come from one  
14 of us within that scene.

15 THE CHAIRMAN: What I was trying to get clear in my own mind  
16 was you have been told or you gathered that it was a  
17 police officer's print and then you were being asked had  
18 you seen Shirley McKie at the scene.

19 A. Yes.

20 THE CHAIRMAN: Did you add two and two together and say that  
21 must be the person whose print they think is Y7 or did  
22 you know that already?

23 A. No, no. I didn't know who this print belonged to other  
24 than I thought it was Gary Gray's, if it wasn't his  
25 then ... if it's not a police officer then whose it

