

1

Thursday, 18th June 2009

2 (10.15 am)

3 THE CHAIRMAN: I think we were on the shoe boxes and the
4 return of them; is that right?

5 **JAMES HILL KERR (continued)**

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

7 Q. Thank you, sir.

8 Yes, Mr Kerr, you started to tell us about 11th
9 January and I would like to try to go through the events
10 of that day with you in a little detail now.

11 Do you have your statement in front of you at the
12 moment?

13 A. Yes.

14 Q. I would like to take you first to paragraph 32 of your
15 statement. You tell us there that you attended at the
16 scene on Saturday 11th January and that it was yourself
17 rather than Constable Mr McIntyre as you had agreed that
18 each of you would have one of the weekend days off?

19 A. Yes.

20 Q. Now, moving on to paragraph 34 of your statement, you
21 tell us that during the morning of 11th January you had
22 gone to Kilmarnock Police Station to discuss issues that
23 had arisen with the seizure of the door handles. I
24 think you had maybe started to tell us a little bit
25 about that yesterday.

1 A. Yes.

2 Q. What were the issues about the door handles, just to be
3 clear about that?

4 A. Well, obviously it's the days prior to extensive DNA
5 examination so the Scene Examiners, in consultation with
6 myself, had decided to take the door handles off the
7 doors and submit them to the fingerprint lab for
8 examination under laboratory conditions. So it was
9 through discussions we decided that each door handle, in
10 order to prevent it being contaminated or damaged in any
11 way, would be put in a box, an individual box for each
12 handle. In those days we didn't have access to boxes so
13 we had to come up with some form of ingenuity to get a
14 box.

15 So I decided to go to Kilmarnock Police Station and
16 discussed it with Jim Kirkland, who was the production
17 officer for the inquiry, and we started to go up the
18 High Street in Kilmarnock, go round about the shoe shops
19 and sport shops and get shoe boxes.

20 Q. What I am quite interested to clarify with you, Mr Kerr,
21 is at what stage in the day you say the discussion at
22 Kilmarnock Police Station about the door handles took
23 place?

24 A. My recollection, it was late morning.

25 Q. Was that before you had been to the house at Irvine Road

1 at all that day?

2 A. No, I think -- there'd been a briefing as usual in the
3 morning and I was able to -- one of my duties was to
4 attend the briefing, update the inquiry team as how
5 events were developing at the house or at the scene, and
6 go back and brief the Scene Examiners with what was
7 happening in the inquiry itself, if there was anything
8 of particular interest which related to the house. So
9 we'd do that and then we'd start to discuss about the
10 door handles, which was a topic would be raised that
11 morning, about taking them off and submitting them for
12 examination.

13 Q. Is what you're saying that you had been to a briefing
14 and then went to the house and then gone back to
15 Kilmarnock Police Office?

16 A. Yes.

17 Q. This may or may not help us with the timings but I
18 wonder if you could look, please, for me at SG0537 at
19 page 8. Can we look back to page 7 as well, first of
20 all, please.

21 What we should be looking at here is the log of
22 attendance for 11th, certainly once we get about a third
23 of the way down the page, for 11th January 1997. You
24 are recorded at 10.16, I think, towards the bottom of
25 the page as arriving at the **locus**.

1 A. Yes.

2 Q. If we move on to the next page, I think we see at 12.50
3 you are recorded as removing productions to vehicles.

4 A. Yes.

5 Q. And then at 13.15 you are recorded, along with Mr Wilson
6 and Mr Moffat, as leaving the **locus**?

7 A. Yes.

8 Q. How do those times recorded there fit with your
9 recollection of events of the morning?

10 A. Timing-wise I couldn't recollect actual specific times
11 but I do remember attending the briefing, going to the
12 house, working away in the house, having a discussion
13 with the Scene Examiners, a decision was made about the
14 door handles and then leaving the house, going back to
15 Kilmarnock Police Station, discussing it with the
16 production officer and sourcing the boxes.

17 Q. So if the timing on this log would be correct, would we
18 take it that your discussion at Kilmarnock would have
19 had to be at some point after 1.15 in the afternoon?

20 A. Yes.

21 Q. You see, I am quite keen to be as clear as we can about
22 this because in paragraph 34 of your statement to this
23 Inquiry you say that it is during the morning of 11th
24 January that you went to Kilmarnock Police Station to
25 discuss the issues about the door handles in the house?

1 A. I thought it was, but I can't argue with what's on the
2 log.

3 Q. In paragraph 41 of your statement, you tell us about a
4 discussion that you say took place with Shirley McKie
5 while you were at Kilmarnock Police Station discussing
6 the question of boxes?

7 A. Yes.

8 Q. Tell us, please, what happened.

9 A. Invariably, I would travel two or three times a day from
10 the scene to the office. We had a dedicated room at the
11 office, a sterile area to take items from the house and
12 put in a room before we passed them on to the production
13 officer as and when required.

14 So I would have my protective clothing on travelling
15 between the house and the office, which is about a
16 10-minute journey in a car and I'd obviously walked down
17 to the office, I had my white suit on and Shirley had
18 made some comments about me -- my attire.

19 Q. You are smiling. I take it it was a jocular
20 conversation perhaps?

21 A. It was light-hearted. She said something about me going
22 decorating or something.

23 THE CHAIRMAN: Is that usual? I would have assumed that the
24 protective clothing you didn't wear it away from the
25 scene in case you introduced something to the scene when

1 you went back again.

2 A. Yes. Well, in that -- it became -- as I say, DNA wasn't
3 a particular principle at that point in time, it was
4 more the fingerprints and fibres and by that time the
5 forensic examination of the house was complete, unless
6 we came across something else. So, you know, the
7 protective clothing would be remained on. I wouldn't
8 have taken it off departing from the house.

9 THE CHAIRMAN: I see. Sorry, I interrupted you.

10 MISS CARMICHAEL: So there was a bit of light-hearted
11 conversation about you going decorating.

12 What else was said?

13 A. She asked me if the Scene Examiners, the Scene of Crime
14 examination had been finished at the house and she asked
15 me if there was a chance of going to the house to get
16 her head round about the layout of the house because she
17 had specific actions, specific tasks, in relation to
18 interviewing Marion's family and it was particularly
19 difficult to get your head round about the layout of the
20 house.

21 Q. What did you say to her?

22 A. I told her to speak to DCI Heath and that the scene
23 examination was not complete.

24 Q. So you told her that day that scene examination was not
25 complete?

1 A. Yes.

2 Q. I would like to ask you, please, about some other
3 accounts that you have given of events. I would like
4 you to look in the first place at a document CO2594. We
5 will see here that this is a statement that appears to
6 be a self-dictated by you, dated 10th April 1997.

7 A. Yes.

8 Q. It is really page 2 I am interested in if we could go to
9 that, please. If we read through the top there, if I
10 can read to get it into the record:

11 "At no time during my tours of duty at the **locus**, do
12 I recall Detective Constable Cardwell within the **locus**,
13 however, I do recall that on Friday 10th or Saturday
14 11th January 1997, whilst wearing regulation clothing
15 supplied by Identification Bureau about lunchtime, I
16 returned to Kilmarnock Police Office and on entering the
17 main Detective Constables' room I was approached by
18 Detective Constable Cardwell."

19 You then go on to give an account of her asking you
20 if she could go to the **locus**.

21 You say in the statement Friday 10th or Saturday
22 11th January 1997 and you tell us today 11th January,
23 the Saturday. Clearly this was a statement that you
24 prepared initially nearer the time of the original
25 events.

1 How can we be certain that it was on the 11th rather
2 than the 10th that Ms McKie made this request of you?

3 A. Well, when I was asked to provide this statement in
4 relation to Shirley's denial that her print had been in
5 the house, I didn't make any reference. At that point
6 in time the logs I had taken about items seized from the
7 house were with the Procurator Fiscal or certainly had
8 been lodged for the case of David Asbury. So I didn't
9 have reference to those logs when I made that statement.

10 However, in July of that year, I had reference to
11 the logs and I submitted another statement. In fact, it
12 was a statement that was taken off me by the Discipline
13 Branch in which I clarified that it was certainly 11th
14 January 1997 as the radio had been on in the house, the
15 football was on and I have every single door handle,
16 interior door handle from the house, logged as being
17 taken/seized from the house on that day.

18 Q. So would it be fair to say that your point of reference
19 is really the taking of the door handles and you
20 remember this being on the same day as the taking of the
21 door handles?

22 A. Yes.

23 Q. You have mentioned another statement and I will take you
24 to that. It is CO2593. I think we see that this is a
25 statement given on 12th July 1997 to Chief Inspector

1 Wilson.

2 This is the statement that you are referring to?

3 A. Yes.

4 Q. If we go to page 4 of that document, please, you record
5 that, if I can read again to get it into the record:

6 "On Saturday 11th January 1997, at about 0800 hours
7 I attended a long briefing at Kilmarnock Police Office,
8 then, again into the house at 43 Irvine Road Kilmarnock
9 with Scenes of Crime Officer Stuart Wilson and Michael
10 Moffat. I commenced work there about [I think that's
11 10.30 the print is poor] hours and about midday or
12 lunchtime I removed productions to Kilmarnock Police
13 Office with the intention of discussing some problems we
14 were having with Detective Constable Kirkland or
15 Constable Stevens. I can't remember which officer I
16 intended to speak to. On my arrival at Kilmarnock
17 Police Office I was still wearing my protective suit and
18 I went into the Detective Constables' room at the office
19 to look for Detective Constable Kirkland or Constable
20 Stevens."

21 If we have the full page up again and we see that
22 again you carry on to give an account of a conversation
23 with Detective Constable Cardwell, as she was at the
24 time.

25 Can we be quite clear about what the document that

1 you were able to look by the time you had given this
2 statement, that you had not been able to look at when
3 you gave the first statement.

4 Could you tell us just exactly what that was, sorry?

5 A. Well, as I said yesterday, you know, the house and the
6 **locus** wasn't dealt with in a haphazard fashion. Every
7 single object or production taken from that house was
8 recorded by myself and my colleague DC McIntyre. That
9 includes jewellery owned by Marion Ross as an example.

10 So each log that we made up is in day order so at
11 the end of every tour of duty we would log every item we
12 had seized from the house and subsequently pass it to
13 Mr Kirkland or Mr Stevens as production officers as and
14 when they required them.

15 The logs were obviously lodged as a production
16 themselves in the David Asbury case and I referred to
17 them in giving evidence at the David Asbury trial and
18 that's, you know, in the process of being asked in April
19 to get that, write that statement, I didn't have access
20 to the logs.

21 Q. Perhaps leaving the question of whether it was 10th or
22 11th January and returning to the question of timing,
23 there are some other items that I would like you to look
24 at, please. I would like you to look at item CO2592.

25 I should say, in fairness to you, Mr Kerr, that this

1 is, I think, not a document that you will ever have been
2 asked to correct or read over. It bears to be a
3 precognition taken from you by Mrs Greaves in the
4 Procurator Fiscal's office and it will be in her words
5 rather than yours. But I would like you to look,
6 please, at page 4 of this document. What is recorded at
7 the top of this page, if I can read it, it says:

8 "DC Shirley Cardwell spoke to me on Saturday 11th
9 January 1997 just before lunch at Kilmarnock Police
10 Office."

11 Now, today by reference to the log, I think we have
12 been placing this conversation after 1.15 and I simply
13 want to give you the opportunity to comment upon what
14 appears to be something slightly different recorded
15 here.

16 A. Well, I've noticed now in three statements you have
17 shown me or two statements and the precognition that
18 I've said lunchtime when interviewed in 1997 so my
19 recollection of the timings 12 years later are no
20 brilliant so I would have to go with what I said in 1997
21 and what Mrs Greaves has noted in 1997 in that it was
22 lunchtime and not late morning.

23 Q. Just, again, for completeness and perhaps fairness to
24 yourself, Mr Kerr, if you look at CO1116, this is a
25 statement taken from you by Tayside police officers on

1 23rd August 2000. I think you would have to go to the
2 last page to get the date.

3 Do you see the date there?

4 A. Yes.

5 Q. This matter is dealt with on page 2 of this document and
6 what we see if we move about four paragraphs from the
7 bottom we see you are noted as saying:

8 "I also recall that some time after 10.30 hours on
9 Saturday 11th January 1997 ..." you were at Kilmarnock
10 Police Office when you were approached by Shirley
11 Cardwell who you knew was a member of the inquiry team
12 and that she asked you if the Identification Branch were
13 finished with the house.

14 Again, looking through these various accounts, can
15 the Inquiry be confident that you are referring to
16 something that happened after 1.15 when the log records
17 you going back to Kilmarnock Police Office after your
18 attendance at the house that day?

19 A. Yes, I mean, you know, interviewed in 2000 some time
20 after 10.30 hours is the time when obviously the log is
21 showing me going into the house. So at some point
22 during the course of that day I've been back to
23 Kilmarnock Police Office and she had a conversation with
24 me.

25 Timing: I don't know. I've said lunchtime, round

1 about lunchtime, in 1997; so I have to go with the
2 lunchtime. I would say I would be relatively confident
3 in that, that it would be lunchtime, having taken
4 productions out the house in the morning.

5 Q. Just to be quite clear you are not disputing the log's
6 accuracy at least in so far as it records you leaving
7 the **locus** at 1.15 after your first attendance at the
8 house that day?

9 A. No, I've no reason to question the time.

10 Q. You have told us about getting the shoe boxes. How was
11 it you went to get the shoe boxes, Mr Kerr?

12 A. I went to Kilmarnock, spoke to Shirley, spoke with Jim
13 Kirkland or Allan Stevens, one of the two, one of them
14 was on, one of them was off, I can't remember which one
15 it was, I think it was Jim Kirkland. We then went down
16 the street, the High Street in Kilmarnock, into various
17 shops and collected shoe boxes. We put them into a van
18 and we drove back to 43 Irvine Road with the boxes and
19 unloaded them.

20 For the sake of access, I would say, more than
21 anything else, we had a sterile bedroom area at the back
22 of the house which had the patio doors and we took them
23 round the back of the house and put them in the back of
24 the door, or we certainly put some of them that way
25 through the back of the door because I think the Scene

1 of Crime Officers were working in the house and we
2 didn't want to go past them with the boxes and disturb
3 their work. So I think we went round the back.

4 Q. So you went into the house through the back door rather
5 than the front door when you went back with the shoe
6 boxes?

7 A. Yes.

8 Q. I wonder if you could look again at SGO537.8, please.
9 You indicated yesterday that you had become aware of
10 something wrong with the log as far as your attendance
11 was concerned. We have already looked at the entry for
12 13.15 recording you leaving the **locus** after you moved
13 productions to vehicles.

14 A. Yes.

15 Q. I think we can look through the remainder of the entries
16 for that day, 11th January, and not see your name
17 mentioned again.

18 A. No.

19 Q. I am wondering is it possible that perhaps the log
20 keeper has not seen you coming in because you had gone
21 through the back door.

22 A. Well, it's possible. I can't remember, you know,
23 actually specifically saying to the log keeper I was
24 back at the house. I made an assumption that the log
25 keeper saw me arriving back at the house. I have a

1 feeling that ... I think in that log we have Mike Moffat
2 and Stuart Wilson there arriving at the **locus** about
3 14.15. Mike Moffat -- and then they are there to about
4 20.00, 8.00 pm. I feel that Stuart Wilson and Mike
5 Moffat arrived back at the house round about the same
6 time as me and I put the boxes into the house and worked
7 away with a screwdriver taking the door handles off the
8 interior doors.

9 Q. Just to be clear about this, when you went down
10 Kilmarnock High Street to get the shoe boxes, who was it
11 you went with?

12 A. I have a feeling it was -- if my memory serves me
13 correctly Jim Kirkland assisted me going down the
14 street, in getting shoe boxes and putting them into a
15 van.

16 Q. Did he come with you to help you with the boxes at the
17 other end, the Irvine Road end?

18 A. I think he may have been in the van and he may have
19 handed the boxes out the van to me and I put them in the
20 house. I think Jim was fairly conscious that, as a
21 production officer dealing with items that were being
22 seized from various individuals and from various places,
23 he was very conscious of the fact that he wasn't going
24 to be going into the house for that very reason of
25 cross-contamination. So I'm fairly certain Jim didn't

1 go into the house with me.

2 Q. When I hear you talk of cross-contamination you will
3 correct me if I am wrong but was that a concern in
4 relation to DNA evidence?

5 A. Not so much DNA at that time. It was mainly fibres or
6 blood or whatever in that respect. So Jim would be
7 handling productions and items that were related to
8 individuals' clothing, et cetera, and from various other
9 scenes if indeed they existed so he wouldn't want to be
10 going into the house in any event. Hence the reason we
11 were allocated a separate room at the office as well.

12 Q. In paragraph 45 of your statement to the Inquiry, you
13 say that later that afternoon you saw Shirley McKie at
14 the scene.

15 Where was she when you saw her?

16 A. In the porch.

17 Q. I wonder if you would look at ST0003, page 3. Are you
18 able to tell us by reference to this photograph
19 whereabouts she was?

20 A. Well, as I say, the chair was obviously moved to the
21 side after the initial photographs were taken. However,
22 to the right of the chair is the entrance into the main
23 house. it's just --

24 Q. It may help you to look -- sorry, I interrupted you.
25 Please carry on.

1 A. So where the chair is, to the right of that, she was
2 standing there and the log keeper would be as well.

3 Q. It might help you to look at the next photo in the
4 sequence.

5 Does that assist you more to tell us where you saw
6 Ms McKie?

7 A. Yes.

8 Q. I am not sure you've been given instructions how to mark
9 anything you see. I think there are arrows you can use,
10 Mr Kerr, if you could use that tool, please.

11 **(Indicated)**

12 The arrow seems to be pointing just above the metal
13 foot plate that we see?

14 A. Towards the edge of it, yes.

15 Q. So should we infer from that that you saw Ms McKie
16 standing on the metal foot plate?

17 A. No, I can't remember by that time -- I think it's
18 reasonable to suggest that by that time the metal plate
19 had been removed. The examination, the forensic
20 examination of the floor had been looked at certainly.
21 I'm not aware of a metal foot plate being there by that
22 time.

23 Q. I wonder if we could capture this image, please.

24 Where were you when you saw her?

25 A. I was crossing between the living room heading towards

1 the bathroom -- heading towards the bathroom or the
2 front bedroom, yes.

3 Q. So you were in the hallway of the property?

4 A. In the hallway.

5 Q. The Inquiry has heard that the bathroom was down the
6 hall and off to the right.

7 A. Yes.

8 Q. Were you as far down the hall as the bathroom?

9 A. Well, the living room I was in had a -- the bedroom
10 where we kept our equipment was off the living room. So
11 you'd come through the bedroom into the living room and
12 out and the bathroom faced you when you come out into
13 the hall and the bannister and the stairway was just to
14 your left.

15 Q. So you're talking about a bedroom and a living room at
16 the rear of the property?

17 A. Yes. It's quite a -- Marion had obviously built on a
18 few extensions and from the outside of the house you
19 would think it was like a two bedroom or three bedroom
20 semi-detached house but in point of fact it had three
21 living rooms, four bedrooms, three of which were down
22 the stair, a kitchen, a fairly large expanse of ground
23 floor area. So it's fairly difficult to imagine the
24 layout of the house without actually viewing it on a
25 video or being there.

1 Q. The Inquiry has had the benefit of the video but what I
2 want to be clear is that you were at the bathroom end of
3 the hall rather than nearer to the front door?

4 A. Yes.

5 Q. Who else was in the porch when Shirley McKie was there?

6 A. A log keeper.

7 Q. Did you hear any conversation between them?

8 A. No.

9 Q. Again, Mr Kerr, I need to try to clarify with you the
10 time at which you say you saw Ms McKie at the property
11 and in your statement to the Inquiry you say that you
12 believe that it was between 14.30 hours and 15.00 hours.
13 This is at paragraph 46 of your statement on page 11.

14 A. Yes.

15 Q. And I think you say also at paragraph 48 that you
16 believe you left the property yourself at about
17 18.00 hours that day?

18 A. Yes.

19 Q. Again, Mr Kerr, I would like to ask you about some other
20 accounts that you have given about the timing of this
21 matter. I would like you to look please again at the
22 12th July 1997 statement which is CO2593 at page 5.

23 What is recorded at the top of that page, Mr Kerr,
24 if I can read it to get it into the record is that:

25 "Some time in the afternoon [you] were working in

1 the rear bedroom and [you] were going from there to the
2 middle living room to get some bags for productions
3 when, as [you] crossed the hall, [you] saw Detective
4 Constable Cardwell standing in the porch. She was
5 speaking to the uniformed officer on the door who was
6 logging the visitors."

7 Do you recall whether you were asked for a timing
8 when you gave this statement?

9 A. I think I was actually asked for a time. My problem has
10 always been that January it gets dark fairly early and
11 timing was really important in the examination of the
12 scene and seizing articles from the scene.

13 Q. I am going to have to ask you to speak a little bit more
14 in the microphone. I think we are losing you, Mr Kerr.

15 A. Timing was of primary importance to us when seizing
16 items at the scene. So they asked about timing. I
17 didn't know. I didn't time when we, say, we took a door
18 handle off, you know, a front living room door what time
19 we actually took the door handle at. We recorded the
20 dates and sequential order the items we had taken during
21 the course of that day but we didn't record the actual
22 times of when we'd actually -- so it was very difficult
23 for me to pinpoint times during the course of the day.
24 One minute you'd be working away it would be daylight,
25 the next it was dark and time just flowed past.

1 Q. So, from what you have said, we should take it you were
2 asked about a timing when Mr Wilson spoke to you for
3 this statement but what you were able to tell him that's
4 noted here as some time in the afternoon?

5 A. Yes.

6 Q. I would like you to look again, please, at the
7 precognition that was noted from you -- that was
8 CO2592 -- and if we could look at page 5 -- in
9 fairness maybe we should start at the bottom of the
10 previous page. My apologies. Again, I will read this
11 to get it into the record from the bottom paragraph
12 here:

13 "I saw Shirley Cardwell at the house of Marion Ross
14 on the Saturday just after lunch (11th January 1997). I
15 was coming from the middle bedroom towards the middle
16 living room. I saw Shirley Cardwell in the porch
17 talking to the male police officer who was the log
18 officer. I did not acknowledge Shirley Cardwell as I
19 was doing something. I think I had a production in my
20 hand and I was going to seal it in a bag. There was a
21 table and a chair in the porch which measured about 8 by
22 6. The porch had a side entry which faced the table and
23 chair. Shirley Cardwell was standing between the table
24 and the outside door. I only saw her for about two or
25 three seconds but she adopted a leisurely stance and

1 didn't appear to be having an overbearing type of
2 conversation with the young officer. Where she was
3 standing, Shirley Cardwell would have been able to see
4 into the hall. In my opinion, it would have looked to
5 her as if the examination of the hall had been
6 completed. That examination would include the bathroom
7 door. I think Shirley Cardwell was there about 1.30 pm.
8 I left the **locus** about 3.00 pm-ish because of the
9 backlog of productions. My reason for thinking that was
10 the time was that the production room at Kilmarnock was
11 along from the TV room and I recall that there was a
12 rugby match on during the afternoon. I did not see
13 Shirley Cardwell or speak to her after that."

14 Now, as far as you can recall, does this record what
15 you said to the Procurator Fiscal when the Procurator
16 Fiscal interviewed you?

17 A. No. I didn't go to Kilmarnock Police Office at 3.00,
18 rugby ... a rugby match on, there might well have been
19 but I wouldn't know. The radio was on in the house and
20 there was football on in the house on the radio --

21 Q. Sorry, I didn't mean to interrupt. I didn't mean to
22 interrupt you, sorry, I think I missed the last thing
23 you said there.

24 A. Sorry, the radio was on in the house and there was
25 football on on the radio but I don't recall saying I

1 went away at 3.00 or it was 1.30 that I saw her in the
2 house. I don't know how I would be able to be specific
3 and say it was 1.30 that I saw her at the house.

4 Q. Do you remember if the Procurator Fiscal asked you about
5 the timing?

6 A. No, I don't actually. I don't actually remember much
7 about the precognition to be fair.

8 Q. In fairness to you, I think we all recognise that this
9 is not something that is recorded in your own words but
10 in the words of somebody else, Mr Kerr.

11 As a matter of interest are you interested in rugby?

12 A. No.

13 Q. But you are interested in football?

14 A. Yes.

15 Q. So is your position that the Procurator Fiscal has
16 simply noted this down wrongly from you?

17 A. I can't really recall the conversation I had with the
18 Procurator Fiscal. I do recall the Procurator Fiscal
19 asking me about if fingerprints could be planted or not
20 but I don't see that in the statement. That's the only
21 thing I can remember about the Procurator Fiscal asking
22 me, was it physically possible to take a fingerprint
23 from an object and put it somewhere else, in my opinion.

24 Q. Now, if we can perhaps leave that document for the
25 moment, thinking back to the log, Mr Kerr, if it is

1 correct that you went to Kilmarnock Police Station at
2 1.15, can you tell us how long you stayed at Kilmarnock
3 Police Station discussing the problem about the boxes
4 and having the conversation with Ms McKie?

5 A. The whole process took about an hour.

6 Q. So adding an hour to 1.15 takes us to 2.15 when you
7 leave Kilmarnock Police Station again?

8 A. Yes.

9 Q. How long did it take you to collect the shoe boxes?

10 A. Well, I think, you know, the discussion with Shirley
11 would be a passing conversation. I didn't take anything
12 from it. The discussion with Mr Kirkland would be -- it
13 wouldn't take that long to decide where you're going to
14 get the boxes from on a Saturday afternoon, which was
15 another issue because we had a company called Kilmarnock
16 Removals, who obviously removed people, you know, for
17 their houses and flitted them, et cetera, and they had
18 sold various sizes of boxes but they were shut. So the
19 only option we were left with was to go to the sports
20 shops and shoe shops in Kilmarnock. So that's what we
21 did and that would take us 40 minutes.

22 So, you know, my recollection is that speaking with
23 Shirley, going to the scene, speaking with her, going to
24 the office, speaking with other officers, speaking with
25 Jim, going out, going up the street, getting the boxes,

1 putting them in a van, back to the -- would take no more
2 than an hour.

3 Q. Can I ask you this: did you have lunch at Kilmarnock
4 Police Office that day?

5 A. No, I never had lunch at Kilmarnock Police Office. I
6 had my lunch in the house.

7 Q. So do we understand your evidence to be not that you
8 took an hour at Kilmarnock Police Station but that the
9 whole process of getting away from the **locus**, back to
10 Kilmarnock Police Station, having your discussions,
11 getting boxes and going back to the **locus** takes an hour?

12 A. Yes.

13 Q. How many shoe shops did you have to go round?

14 A. About four or five. I went to some, Jim went to others
15 and we actually got too many but, you know, we split up.
16 We didn't go together. We split up, showed
17 identification and asked the shop manager if they had
18 any spare shoe boxes.

19 Q. On the timing you have just given us, that takes you
20 back to Irvine Road Kilmarnock around 2.15 in the
21 afternoon?

22 A. Yes.

23 Q. Do you recall a time during Ms McKie's trial but before
24 you gave evidence when a Fiscal came to speak to you?

25 A. Yes.

1 Q. Can you remember who it was came to speak to you?

2 A. No.

3 Q. Was it a man or a woman?

4 A. I think it was a woman. I'm not 100 per cent certain.

5 It was about ten minutes before I gave evidence. I

6 remember that.

7 Q. What did the Fiscal say to you?

8 A. He or she asked about my recollection of timings and how

9 did I know it was the Saturday afternoon and I'd said

10 that I had the radio on and the football was on and I

11 had, at that point in time, I did fixed odds football

12 coupons so I was particularly interested in the scores

13 and how the games were developing during the course of

14 the day.

15 Q. I suspect you have more expertise in this than I do,

16 Mr Kerr, but I think I am right in saying that the bulk

17 of Scottish football matches start at 3.00 on a

18 Saturday?

19 A. They do.

20 Q. So could we take it then if you were listening to the

21 football and hearing how matches were going on we would

22 be talking about a time after 3.00 in the afternoon?

23 A. Yes.

24 Q. Did the Fiscal who came to speak to you, did they ask

25 you about the log that we have looked at today, the

1 document with the timing on it of you going away at
2 1.15?

3 A. I can't remember. Might have. I was certainly aware
4 that I wasn't on the log by the time of David Asbury's
5 trial. I seem to remember that I was aware that I
6 wasn't on the log for Saturday afternoon.

7 Q. I am sorry, you were aware of that at the time of David
8 Asbury's trial?

9 A. Yes, I think I was. I don't think I was asked about it,
10 right enough, but I think I was aware of it.

11 Q. Why did you think the Fiscal was asking you about the
12 timing?

13 A. I thought the Fiscal was asking because Shirley had
14 denied being at the porch. That's what I thought, that
15 she'd denied being at the porch, speaking to the log
16 keeper and, therefore, I was being re-examined -- what
17 in effect was in a precognition to establish what the
18 time was and how was I sure of the timings and the day.

19 Q. What's noted in your precognition and what I think it
20 might be fair to assume the Fiscal thought your evidence
21 might be going to be was that you had seen Ms McKie
22 there at 1.30.

23 Were you asked about that?

24 A. I can't remember. I can't remember asking me about the
25 actual 1.30 time but had she asked me about it I would

1 have told her it wouldn't be 1.30 anyway because it was
2 still daylight at 1.30. It was dusk in my memory, if
3 not dark it was dusk, and the football was on or about
4 to start, you know, the Radio Clyde football show or the
5 Radio Scotland one, one of the two. So they start about
6 2.00 in the afternoon.

7 Q. The Inquiry may hear that the prosecutors thought
8 because of what we see in the log that you were only
9 there up until 1.15.

10 Can you recall being asked about that?

11 A. At some point in time I was asked if I had concluded
12 duties at 1.15 on the Saturday. Given it was the third
13 day of what was then a murder inquiry and considering
14 I'd been at the house for almost four weeks, there's no
15 way I'd have finished duty at 1.15 on the third day of a
16 murder inquiry or I wouldn't be sitting here.

17 Q. You say at some point you were asked about that. I
18 would like to be quite clear. I am simply asking you
19 about what the Fiscal who spoke to you before you gave
20 evidence asked you about rather than perhaps what the
21 Advocate Depute in court asked you about.

22 A. Asking me if I'd finished duty at 1.15?

23 Q. Yes.

24 A. No, I can't remember if he or she asked me about that.

25 Q. Did whoever it was show you the log when they were

1 asking you questions, show you the log that we've looked
2 at today?

3 A. I can't remember. I saw the log in the court on a, what
4 was a slide projector -- there was no Powerpoint
5 obviously but the same idea -- I saw the log in the
6 court giving evidence. I can't remember if I saw the
7 log at that precognition.

8 Q. Do you remember anything of the sort of perhaps thinking
9 again about the timing after the Fiscal had spoken to
10 you but before you actually came to give evidence in
11 court?

12 A. I think the Fiscal tried to reinforce the fact that how
13 was I sure it could have been 1.30 in the afternoon. I
14 told the Fiscal it couldn't have been 1.30 in the
15 afternoon because the football wasn't on. So I was
16 reasonably comfortable in the fact that it was later on
17 in the afternoon, the time of which -- you know, the
18 specific time I don't know and I've never said a time
19 when I thought she was at the house.

20 Q. Were you aware that there was a time late in that
21 afternoon between 5.30 and 6.00 when Shirley McKie was
22 quite legitimately at the house in relation to the
23 picking up and dropping off the log from the door there?

24 A. Not until about four weeks ago.

25 Q. So the Inquiry may hear that it was of some significance

1 to the prosecutors to place Shirley McKie at the house
2 at a time before 5.40 or so when she was entitled to be
3 there.

4 Is that something that you just didn't know about at
5 all when the Fiscal was speaking to you?

6 A. I didn't know Shirley had been at the house that day
7 when I gave my statements and even when I was
8 precognosed by the Fiscal, I didn't know that she had
9 legitimately been tasked to go to the house.

10 Q. So it would follow perhaps that you didn't understand
11 that any particular timing was important to the Fiscal
12 who was speaking to you?

13 A. No.

14 Q. Can you remember what evidence you actually gave at
15 Ms McKie's trial as to the time that she was there?

16 A. I think I just said it was some time in the afternoon.

17 Q. In fairness to you, Mr Kerr, I think we have perhaps two
18 items that I should put to you. I would like you to
19 look, please, at CO0214.53.

20 I should tell you what this is. This is a note
21 written by an officer Mr Carle who was present observing
22 the trial of Shirley McKie and it's simply his note of
23 the evidence, it's not a transcript of a shorthand note
24 or anything of that sort.

25 If we look at paragraph 31.10, first of all, it

1 records:

2 "The Advocate Depute asked if DC Kerr had seen any
3 other police officer at or near the house on that day
4 with the exception of the logging officer. The response
5 is noted as 'I saw Shirley McKie'. When asked where, he
6 explained he had seen her in the porch and that he had
7 been standing at the foot of the hallway prior to
8 entering the doorway into the kitchen."

9 We then have a note of some sketches and photographs
10 which I won't trouble you with and then:

11 "DC Kerr confirmed that at that time the logging
12 officer would have been sitting in the porch area on a
13 chair at a table. DC Kerr could not be specific about
14 the time but knew it to be some time in the afternoon
15 and that he knew it was not a weekday."

16 How does that accord with your own recollection of
17 what you said?

18 A. That's what I said, yes: some time in the afternoon and
19 I knew it was a Saturday.

20 Q. I would like you also to look, please, at F10070,
21 page 10.

22 Now, this is part of a statement given by the
23 gentleman who was the Advocate Depute in the trial.
24 That means that the prosecutor in the High Court in that
25 trial was then Sean Murphy who is now Sheriff Murphy.

1 What he records here in his statement to the Inquiry is
2 that:

3 "The trial commenced on 21st April 1999. At the
4 trial, James Kerr's evidence, having given the matter
5 more thought following the enquiries I had made of him
6 during the trial but prior to his evidence, was that he
7 had seen Shirley McKie at the house on Saturday
8 11th January 1997 at around 5.00 pm -- the time when she
9 had legitimate access to change the logs at the front
10 door to the house."

11 Then:

12 "He explained that the log inaccurately recorded his
13 presence at the house that day due to a number of
14 difficulties which the police had been having that day."

15 Now, do you recall giving evidence to the effect
16 that Ms McKie was at the house at around 5.00 pm that
17 day, because that is what the Advocate Depute seems to
18 remember?

19 A. I don't remember giving a specific time. I keep relying
20 on, and did then as well, relying on the seizing of the
21 door handles, obtaining the shoe boxes and the radio
22 being on in the house with the football on. So times,
23 as I say, I couldn't say the time to anybody, the
24 Procurator Fiscal at a precognition or in the High
25 Court, you know. He might have said something like,

1 "Could it have been round about 5.00?"

2 "Aye, it could have been because the football was
3 on." Other than that, I don't know.

4 Q. I think we would probably have been into the after match
5 commentary by then?

6 A. Yes.

7 Q. I think we can take that down.

8 You have told us that it was, I think, in your mind
9 dusky at the time you saw Ms McKie, if not dark?

10 A. Yes.

11 Q. Is it possible that the time she was there was indeed at
12 some point between 5.30 and 6.00 that day?

13 A. Yes.

14 Q. I'm moving on to some slightly different topics now,
15 Mr Kerr.

16 Did you ever have any experience of officers being
17 called together for something like a team meeting prior
18 to a trial with a senior officer for a sort of pep talk?

19 A. No.

20 Q. Can we take it that as far as you were concerned nothing
21 of that sort happened in this case?

22 A. No, not that I'm aware of, no.

23 Q. Now, I would like to ask you, please, about a date after
24 11th January, rather a little later in the
25 investigation, 14th January 1997. I think you start to

1 tell us about that at paragraphs 50 onwards of your
2 statement.

3 You say at paragraph 52 you remember a discussion
4 about a carpet and that you saw what you thought was a
5 blood-smear on skirting in the property?

6 A. Yes.

7 Q. You record also that people started to use black powder.

8 Do you recall how the use of black powder came about
9 that day?

10 A. I seem to remember that Mr Thurley had decided to use
11 aluminium flake when they initially attended the scene
12 and subsequently they completed the examination with
13 aluminium flake and now decided to go on to use black
14 magna, carbon.

15 Q. Did you hear any of the discussion about why they were
16 doing that?

17 A. No. The only recollection I have is Michael Moffat
18 being particularly concerned that we're using aluminium
19 flake and it was decided by that time to use black
20 carbon and go over the wooden material again, the
21 gloss-painted wooden material in particular, again with
22 black carbon.

23 Q. If we can jump back but on the same topic to
24 paragraph 20 of your statement. You say that you
25 understand that aluminium powder is ideal for glass

1 surfaces. You had seen it used on glossed surfaces
2 before but not in major incidents and you would have
3 expected black powder to have been used.

4 Do you have any expertise yourself in the use of
5 these powders, Mr Kerr?

6 A. Been trained in, you know, scene of crime examination,
7 not at Durham but locally when I joined the CID, but I'm
8 not an expert by any stretch of the imagination.

9 Q. Do you have training in what powders to use? Was that
10 part of your training?

11 A. Well, the training was in the CID at that time you would
12 attend and do scene of crime on house-break-ins,
13 break-ins to cars, recover stolen cars, that type of
14 thing.

15 Q. So perhaps in more volume crime, routine crime, an
16 officer such as yourself might have been doing the
17 powdering rather than a specialist Scenes of Crime
18 Officer?

19 A. Yes.

20 Q. So why were you surprised that they had been using
21 aluminium powder?

22 A. I thought given the fact that it was initially a
23 suspicious death, then there was a lot of gloss-painted
24 wood, particularly in the hall and round about where
25 Marion had been found that they would have used black

1 powder but that was just my thoughts on the matter.

2 Q. It would have been your personal preference on the basis
3 of your own perhaps less specialist experience?

4 A. Well, I think the objective is to find fingerprints on
5 items and the best way of getting it out of gloss paint,
6 I would have thought, would have been black carbon.

7 Q. In any event, you tell us that Stuart Wilson -- this is
8 at paragraph 53 -- was black powdering the doorframe and
9 can we take that to be the bathroom doorframe?

10 A. Yes.

11 Q. When he came across a print and you say he questioned
12 how did he miss that with aluminium powder.

13 Did you hear him say that?

14 A. I think it was myself and my colleague, Graeme McIntyre,
15 Michael Moffat, Ian Wils... -- Stuart Wilson. I
16 feel --

17 Q. Was it perhaps Graham Hunter rather than Graham Martin?

18 A. Sorry?

19 Q. I think -- well, certainly what's come up on the record
20 is that you mentioned a Graham Martin and I think we've
21 heard that Graham Hunter was there?

22 A. Graham Hunter, yes -- that the print was found and one
23 of them made mention of the fact that they questioned
24 how it had been missed on aluminium powder because he
25 could see -- I noticed that you could see when they were

1 black powdering the surfaces you could see where the
2 vinyl slide tape lifts had been taken of fingerprints
3 because you could see the tape marks, you know, the
4 disturbance in the aluminium the black was picking up.
5 So you could see where the prints had originally been
6 found.

7 Q. Where they had already found items and they had been
8 taken away by way of lift from the aluminium?

9 A. Yes, and the big question with that print was there was
10 no obvious signs of tape marks so, therefore, you could
11 easily infer it hadn't been lifted using tape with
12 aluminium flake. So the question was if you were
13 working with torches and working with aluminium powder
14 on white paint it is difficult to see prints anyway with
15 aluminium on white I would have thought but they are
16 dusting away with white -- with aluminium, they've
17 obviously missed that print. And the question was, you
18 know, a general comment at the time was, you know, how
19 could it have been missed using aluminium flake.

20 Q. Did anyone say anything about who they thought might
21 have put the mark there?

22 A. My recollection of events was that Stuart Wilson had
23 said he thought it looked quite a small print, as in it
24 might be a child's or a lady's print. That was my
25 recollection of events. That was a general comment but

1 no any individual names were mentioned as to, oh, it
2 could be this person or that person. It was a print
3 that was found and it was marked and photographed.

4 Q. Mr Moffat didn't say anything along the lines of saying,
5 "Oh, that might be Gary Gray's print"?

6 A. No, I don't recall him saying that.

7 I thought it may have been my print because there
8 had been an issue with the latex gloves. You know, the
9 particular batch we'd been issued with appeared to be
10 quite thin so we subsequently get supplied with cotton
11 gloves, then we can put the latex gloves on on top of
12 the cotton because I think the Scene Examiners had
13 learned that prints were coming through the latex glove
14 or had a risk of coming through the latex glove.

15 So I thought by this time we had been in the house
16 for five days and I thought, well, I was only using, you
17 know, one set of latex gloves. So I think, well, you
18 know, I assisted in taking the bathroom door off, taking
19 the bannister off, you know, working round about that
20 area. I thought it may have been my print. I take it
21 because it had been missed with aluminium powder was my
22 theory behind that.

23 Q. What was the logic of that particular --

24 A. You know, taking away human error, facts, if that side
25 of that doorframe had been dusted with aluminium flake

1 and that print wasn't there because it hadn't been
2 lifted and you would have expected if it had have been
3 there then the tape marks would have been up against
4 that print. So I assumed then, well, that print must
5 be -- have been put there after the aluminium flake so,
6 therefore, it's going to be one of us that were working
7 in the house.

8 Q. I think you have told us a little in your statement
9 about the gloves issue that you mentioned just now.

10 A. Yes.

11 Q. You say that you realised the gloves you were using were
12 substandard. Some of the witnesses have told us that
13 even at that time they always would have used cotton
14 under a latex glove. How was it that there was a
15 particular realisation about a problem with these gloves
16 two days into this particular investigation?

17 A. I think it emanated from headquarters that all of a
18 sudden a certain -- these gloves weren't as reliable as
19 first thought and, therefore, you'd either have to
20 double glove up, you know, put two gloves on because
21 it's particularly with latex, or get a set of cotton
22 gloves which we didn't have access to cotton gloves
23 anyway. Get set of cotton gloves which would go for the
24 Scene Examiners and then put a set of latex on top of
25 the cotton.

1 Q. Now, I would like to ask you have you ever spoken about
2 this case to a man called Les Brown?

3 A. No.

4 Q. Never?

5 A. Not that I can remember, no.

6 Q. I am not sure we have this to put on the screen for
7 various reasons --

8 THE CHAIRMAN: Sorry?

9 MISS CARMICHAEL: I am not sure that we have what I am about
10 to read out available to put on the screen, sir. So
11 what I am going to read from ...

12 I am being corrected on that point. I believe it is
13 possible to put on the screen now.

14 THE CHAIRMAN: Is there a passage you want to read?

15 MISS CARMICHAEL: Paragraph 46 from the statement of Les
16 Brown to the Inquiry, sir. I am going to read out to
17 you evidence that Les Brown has provided to the Inquiry.

18 THE CHAIRMAN: Could you do it fairly slowly so that the
19 stenographer can --

20 MISS CARMICHAEL: In fact, it has appeared as FI0017.10 on
21 the screen now, sir, which should make matters a little
22 easier.

23 What is recorded here as Mr Brown's evidence is:

24 "I did speak to a SOCO officer, Officer Kerr, who
25 confirmed that he heard PC Lees and Shirley McKie having

1 a heated discussion in the porch of the **locus**. The SOCO
2 said that Shirley McKie used the word 'contamination'.
3 The SOCO was dismantling door handles at the time and
4 this was around 13th January 1997."

5 A. When was this?

6 Q. I don't think we have been told that, in fairness to
7 you, Mr Kerr.

8 A. Well, I thought if he'd spoken to me he would at least
9 have got my rank right. I'm not a Scene of Crime
10 Officer and never have been. I've not spoken to Les
11 Brown. I remember getting a phone call once from
12 someone purporting to be Les Brown wanting to speak to
13 me about the McKie case and I referred him to our Legal
14 Services Department.

15 Q. Just to be quite clear about it, did you say any of the
16 things to Mr Brown that he records you here as having
17 said about hearing Constable Lees and Ms McKie in a
18 discussion?

19 A. Absolutely not. I couldn't even have told you that
20 Constable Lees was in the porch. You know, I knew
21 Constable Lees was a log keeper but I couldn't have told
22 you Constable Lees was in the porch at the same time
23 Shirley McKie was in the porch. The 13th of January's
24 the wrong date as well and contamination is utterly
25 absurd.

1 Q. Why do you say that?

2 A. Nobody would use the word "contamination". In what
3 context?

4 MISS CARMICHAEL: Thank you, Mr Kerr. If I may just have a
5 moment, sir. **(Pause)**

6 Thank you. I don't have any further questions at
7 this point.

8 THE CHAIRMAN: I assume there will be applications to
9 question the witness and I think the right way to do
10 that would be to take the applications and the
11 questions, if I allow them, after the break. So I will
12 rise now until -- I think it is working better at 11.50,
13 is it?

14 MISS CARMICHAEL: I haven't heard anybody say otherwise,
15 sir.

16 THE CHAIRMAN: Sorry?

17 MISS CARMICHAEL: I haven't heard any suggestion that it's
18 not, sir.

19 THE CHAIRMAN: We want to keep moving as best we can but I
20 think we will make it 11.50.

21 **(11.30 am)**

22 **(A short break)**

23 **(11.50 am)**

24 THE CHAIRMAN: Had you completed?

25 MISS CARMICHAEL: Sir, there is another matter I have been

1 asked to raise with this witness and I will do that at
2 this stage.

3 I wonder if we could have up, again, CO2592. This
4 is your precognition we discussed earlier but the points
5 I want to ask you about are a little different just now.
6 CO2592, at page 5.

7 What I would like to ask you about are the third and
8 fourth paragraphs on this page and if I can read out
9 again to get this into the record:

10 "I am asked about the log officers at the **locus**.
11 They didn't really have much of a clue of what they were
12 doing. I remember that at one time I saw 'Hello'
13 magazines which had been removed from the lounge of the
14 house of Marion Ross and taken into the porch for the
15 log officers to read. Some of these log officers did
16 not appreciate the seriousness of their task, in my
17 opinion. Sometimes when I went up, and I know Graham
18 McIntyre did not notice this as much as me, log officers
19 asked to nip over to the garage for crisps or a drink or
20 to use the toilet. In those circumstances, I would just
21 hang around until they got back."

22 I think yesterday you told us that you didn't seem
23 to have any particular concerns about the log keeping
24 other than what you told us in your statement and so I'm
25 curious to know how what we see here accords with your

1 recollection.

2 A. Well, as I said yesterday, I remember them asking to go
3 over to the garage for refreshments or to use the
4 toilet. I do remember the occasion that's spoken about
5 there when magazines seemed to have walked from the
6 lounge to the porch because on one of the occasions I
7 went into the porch there I remember there being two
8 magazines sitting on the table in the porch and the next
9 thing I realised there was about 15 magazines sitting on
10 the table in the porch.

11 So Marion -- contrary to what other people had said
12 Marion Ross, in my opinion, was not an individual who
13 was messy. She did collect things and, ultimately,
14 collected receipts that were of particular interest to
15 the inquiry. She had a place for everything and one of
16 those things was magazines and she had a significant
17 number of magazines in the front lounge. You would take
18 the first top two and the bottom two for fingerprinting
19 and seize them; so there were still some remaining in
20 the lounge but they seem to have taken legs and went
21 into the porch.

22 Q. Did you ever yourself hang around to allow officers to
23 go over to the garage?

24 A. No, I wouldn't have used the term "hang around". As I
25 said yesterday, I would have the assumption that I was

1 in the house myself because I would have said to them,
2 "Well, look, needs must, particularly if you need the
3 toilet. Lock the porch and go over to the garage", so
4 hanging around is not a term I would have used because
5 the house, as far as I'm concerned, would have been
6 secured when they'd left the scene.

7 Q. That is really the other thing I would like to ask you
8 about, Mr Kerr, because if we look at the next paragraph
9 down here it is recorded that you said:

10 "I know that the question of keys and uplifting of
11 keys by Shirley Cardwell was an issue at the trial of
12 David Asbury but in my opinion, keys did not matter in
13 this case. The house was not locked because there was
14 always a log officer on the door."

15 I am just wondering -- well, in the first instance
16 do you recall saying that to the Fiscal when she was
17 noting your precognition?

18 A. Yes, I remember saying it to somebody that keys were not
19 an issue, given the dates of course but, you know, the
20 prints found on the Tuesday, the 14th, and at that time
21 there was always a loggist on the door and the front
22 porch would either be, in my opinion, unlocked with an
23 officer there or locked with the officer, you know,
24 using the facilities at the garage.

25 So I'm not saying that's right but that had

1 happened. But so, therefore, Shirley Cardwell uplifting
2 the keys between those two specific dates from the
3 discovery of Marion Ross on the Wednesday night to the
4 Tuesday when the print was found, uplifting the keys, I
5 couldn't see what the issue was with uplifting keys.

6 Q. What I am slightly confused about now, Mr Kerr, is that
7 you have told us that -- well, you don't know whether
8 the house was ever locked but you think that it's
9 possible that it may have been when log keepers went
10 over to the garage to use the lavatory?

11 A. Yes.

12 Q. But what you are recorded as saying here to the Fiscal
13 is that the house was not locked because there was
14 always a log officer on the door and I'm just wondering
15 how you square those two.

16 A. I think I'm saying the same thing there. I'm not saying
17 to the Fiscal that the loggists go over to the garage
18 because I don't think she asked me about that anyway but
19 I'm saying there was a loggist on the door so the house
20 wasn't locked when the loggist would be there, the front
21 door would be unlocked and the police officer would be
22 in the porch or thereabouts, you know, perhaps outside.
23 So therefore the keys -- what I was trying to get to the
24 fiscal I couldn't work out what the issue with the keys
25 were.

1 The inference was Shirley Cardwell got the keys of
2 the house to go up to the house to let herself into the
3 house and I couldn't get -- I couldn't work out, you
4 know, that type of allegation because she wouldn't have
5 needed the keys to get into the house unless she went
6 round the back and climbed over the garden fence and
7 went in the back door. We had a key to the back door.
8 Do you follow me?

9 Q. I understand that but if a log keeper had gone away and
10 locked the door in the way suggested then that would be
11 a time that somebody would need a key to get in the
12 house, wouldn't it?

13 A. Yes.

14 Q. If it's right -- and I accept that you can't say
15 yourself whether the house was ever locked by a log
16 keeper who went away -- if a log keeper went away and
17 locked the house to cover himself while he went off to
18 the loo, that would be a time when the house was locked
19 up.

20 A. I see where you're coming from.

21 MISS CARMICHAEL: Thank you for clarifying that.

22 THE CHAIRMAN: Mr Holmes, do you have an application?

23 MR HOLMES: There are a couple of matters. The first is the
24 movement of any item within the house and the second is
25 the log keeping, sir.

1 THE CHAIRMAN: Yes, very good.

2 **Cross-examined by MR HOLMES**

3 Q. If I can ask you first, when you said in evidence
4 yesterday that when you went into the house you
5 initially noticed disturbance to any items that were in
6 there, can I ask did you subsequently notice whether any
7 items had been moved or removed from the house?

8 A. I was aware that, obviously, there had been a Christmas
9 present that had been torn and there had been a square
10 area in dust where an object had at one point been.

11 When I mean I didn't see a sign of disturbance, I
12 mean by that a physical disturbance, a fight, a plant
13 pot knocked over, a lamp knocked to the ground and
14 broken, glasses broken. That's the type of thing I
15 mean. I don't mean like a -- I don't mean an ornament,
16 for example, had been slightly moved on a unit. That
17 wasn't what I was looking for. I was looking for had
18 there been an act of physical violence in the front
19 living room or the back bedroom or upstairs. That's
20 what I was looking for.

21 Q. But it appeared to you -- you mentioned a square in
22 dust; is that right, that --

23 A. We didn't notice that initially. I think I'm right in
24 saying it was maybe two or three days into the inquiry
25 that I think we'd -- we were trying to establish through

1 Marion's family and through the search of the house and
2 from receipts she'd retained if there was anything
3 missing from the house at all. I think at that point in
4 time we then started to pay attention to -- obviously
5 the scene of crime expanded if there was any kind of
6 appearance that something was missing from the house, an
7 ornament or, you know, tins or where she kept her money,
8 where she kept her bags, that type of thing.

9 Q. The second thing I would like to ask you about relates
10 to the log keeping. You spoke to my learned friend,
11 Miss Carmichael, about a part of your precognition to
12 the Procurator Fiscal. I wonder if we could have that
13 back up on the screen, please. It's CO2592, page 5.

14 The paragraph that you have spoken about:

15 "I am asked about the log officers at the **locus** ...
16 they didn't really have much of a clue what they were
17 doing."

18 Do you recall saying that to the Fiscal?

19 A. No, not in those words, no. In those days there was, as
20 I said yesterday, an assumed knowledge. You get initial
21 training when you join the police about what you should
22 do at a crime scene and what tasks you may be assigned
23 at a crime scene. You know, one of the times you're
24 expected to put your hands in your pockets as part of a
25 disciplined organisation and when to do that but that's

1 the one occasion you should be doing that. So you
2 assume that police officers know what to do when they're
3 assigned the job of log keeper at the scene is logging
4 in and out individuals and the reason why that
5 individual was there. It's one of the few occasions
6 over the years and it has happened where a constable
7 could challenge a Chief Superintendent and order the
8 Chief Superintendent not to enter the crime scene and it
9 happens fairly regularly these days. Then I'm not so
10 sure about, but now it does happen. So that's the
11 benefit of the additional training.

12 So with the subsequent -- when I subsequently got to
13 see the logs and listening to rumours of individuals
14 doodling on logs and urinating at the side of the house
15 and stories like that, I formed the opinion that they
16 didn't really know what they were doing because on other
17 occasions I would have expected them to patrol the
18 grounds of 43 Irvine Road, and perhaps even engage with
19 the community at 43 Irvine Road with people laying
20 flowers and tributes to Marion Ross at the front, but I
21 was not aware of any of that happening.

22 Q. So would you accept that that's not exactly the approach
23 that was taken at the time?

24 A. Yes.

25 Q. Because you have already spoken about the issue with

1 magazines making their way from the house into the
2 porch.

3 A. And individuals being cold as well and going in and
4 switching the heating on was another example.

5 Q. So there were errors in the log keeping at the house?

6 A. Yes.

7 Q. The Procurator Fiscal involved in the indictment of
8 Shirley McKie for perjury has described the log keeping
9 in this case as an absolute shambles.

10 Would you say that's a fair description?

11 A. Yes.

12 Q. You mention at some stage in your evidence that you had
13 been in the house for a number of days and became
14 concerned that the gloves that you and other officers
15 had been using were substandard. Is that right?

16 A. Yes.

17 Q. How long, again, did you say that you were in the house
18 for?

19 A. From recollection almost four weeks.

20 Q. To your knowledge are there any other officers who were
21 using those gloves whose fingerprints were lifted from
22 the house?

23 A. No.

24 Q. You mentioned earlier on that initially when the
25 controversy surfaced over Y7 you thought it might be

1 yours because of the substandard gloves?

2 A. Yes.

3 Q. Did you ever mention that to anyone at that stage?

4 A. No, because I was confident in the system and when you

5 join the police you get your fingerprints taken. If you

6 join today you get your fingerprints and your DNA taken

7 for elimination purposes. So I was confident if it was

8 my print it would be identified. Nobody had taken

9 elimination prints from me but by examining the prints

10 taken from me when I joined the police.

11 Q. You have mentioned also at one stage you accessed the

12 house through the back.

13 A. Yes.

14 Q. Did you require keys in order to do that?

15 A. Yes.

16 Q. Are you aware of any other officers who accessed the

17 house through the back?

18 A. No. We had a sterile area in the back bedroom which was

19 part of the extension and this was the one we used and

20 the patio doors gave an access to it so I'm not aware

21 of -- you would have to have got permission from the

22 production keeper to get the keys in the first place,

23 you know, to get keys to get in back door. So I'm not

24 aware of any officer accessing via the rear.

25 Q. How easy was it to access the rear of the house?

1 A. Well, there's two ways. You could go down the driveway
2 of the house, towards the garage and then turn to your
3 left and that gives you access to the back garden and,
4 therefore, the back doors. There was a back door and I
5 think two patio doors, one onto a rear living room, one
6 onto a rear bedroom, or you would have to either --
7 well, you would have to climb into neighbours' gardens
8 either at the rear or either side and climb the fence
9 and get into the garden.

10 Q. You wouldn't necessarily have to do that though to get
11 to the back of the property?

12 A. No.

13 Q. Just one final thing: you are certain although you are
14 not certain of the time, that at some stage during the
15 day, despite the fact that she does not make an
16 appearance in the log that Ms McKie was at the house?

17 A. Yes, in the porch, yes.

18 MR HOLMES: Thank you.

19 THE CHAIRMAN: Mr Macpherson?

20 MR MACPHERSON: I wonder if I may seek to clarify or raise
21 two minor issues: one is the attitude of the police to
22 an officer's print being found at the **locus** and the
23 other is simply in relation to the location of the
24 garage that has been referred to.

25 THE CHAIRMAN: Yes, you may ask both topics.

1 **Cross-examined by MR MACPHERSON**

2 Q. Mr Kerr, if I can just to raise these two points with
3 you, please. As you have explained, you had a
4 suspicion, if I can put it that way, that the mark was
5 found might have been your own.

6 A. Yes.

7 Q. If that had been the case, what would the consequences
8 have been?

9 A. Nothing.

10 Q. For you personally?

11 A. No.

12 Q. What was the attitude of the police to an officer's
13 print being found at the **locus** in those circumstances if
14 that had happened?

15 A. It is one of these things that happen, particularly when
16 you're told that there's an issue with wearing one set
17 of latex gloves and it's not the first time. In fact,
18 invariably, if you were doing volume crime scene
19 examinations you would actually put your registered
20 number down on the form submitting the fingerprints
21 because you would make an assumption that your prints
22 may be there, therefore, you would look to eliminate
23 yourself from the crime scene, so you would put down
24 your registered number for the SCRO to be aware that you
25 were at the scene legitimately.

1 Q. Thank you.

2 Then turning briefly to the question of the garage
3 that you referred to, you explained that log keepers
4 might leave premises, locking them and go to the garage
5 to go to the toilet or buy refreshments.

6 How far away was the garage from the **locus**?

7 A. 30 yards -- almost across the road and maybe three or
8 four houses up. You could see it from the house. Well,
9 you could see actually from the garden, front garden, of
10 the house.

11 MR MACPHERSON: Thank you. I have no further questions.

12 THE CHAIRMAN: Miss Grahame?

13 MISS GRAHAME: Yes, I would like to ask some questions if I
14 may. In relation to the timings, I would like to
15 clarify some ambiguities in relation to some of the
16 answers given to my learned friend, Miss Carmichael.

17 THE CHAIRMAN: Yes.

18 MISS GRAHAME: And to clarify something in relation to his
19 evidence at the trial.

20 THE CHAIRMAN: I agree.

21 **Cross-examined by MISS GRAHAME**

22 Q. I am obliged.

23 You have given evidence earlier today about the
24 Fiscal speaking to you during the McKie trial prior to
25 you actually giving evidence and you've indicated or you

1 have been asked about the Fiscal asking you about
2 Saturday, 11th January 1997 and the timings of when you
3 saw Ms McKie in the **locus**.

4 A. Yes.

5 Q. I would like to ask you about one of the answers you
6 gave and for those of us who have the LiveNote
7 transcript, this starts at page 26, line 22 and you were
8 asked a question by my learned friend, Miss Carmichael:

9 "What's noted in the precognition and what I think
10 it might be fair to assume the Fiscal thought your
11 evidence might be going to be was that you had seen
12 Ms McKie there at 1.30.

13 "Were you asked about that?"

14 Your answer, which then is at the top of page 27 is
15 noted as:

16 "I cannot remember. I can't remember asking me
17 about the actual 1.30 time but she -- had she asked me
18 about it I would have told her it wouldn't be 1.30
19 anyway. It was dusk in my memory, not dark, it was
20 dusk, and the football was on or about to start. The
21 radio played football show or the radio Scotland one --
22 one of the two. So they started at 2 in the afternoon."

23 Do you recollect that answer?

24 A. Yes.

25 Q. Is it fair to say that from the answer you gave to that

1 question that you cannot remember who the Fiscal was?

2 A. No, I can't remember who the Fiscal was.

3 Q. You can't remember whether the Fiscal was male or
4 female?

5 A. No.

6 Q. You can't remember what the Fiscal actually said to you?

7 A. I can only remember the Fiscal trying to tie me down to
8 a specific time which I couldn't do. But the only thing
9 I can refer to was the fact that the football was on on
10 the radio.

11 Q. Is it possible that the person you spoke to was a Mr Ian
12 Bradley, the Sitting Manager?

13 A. It could have been; it could have been.

14 Q. Do you know Mr Bradley?

15 A. No.

16 Q. You were later asked about this issue again and, again,
17 for those of us with the transcript it's at page 28,
18 line 10.

19 You were asked the question:

20 "Do you remember anything of the sort or perhaps
21 thinking again about the timing after the Fiscal had
22 spoken to you but before you actually came to give
23 evidence in court?"

24 Your answer was:

25 "I think the Fiscal tried to reinforce the fact that

1 how was I sure it could have been 1.30 in the afternoon.

2 I told the Fiscal it couldn't have been 1.30 in the
3 afternoon because the football was on. So I was
4 reasonably comfortable in the fact it was later on in
5 the afternoon, the time of which, the specific time I
6 don't know and I've never said a time when I thought she
7 was at the house."

8 That's the answer that you gave.

9 A. Yes.

10 Q. Is it possible that what you said to the Fiscal was that
11 you saw Shirley McKie at the house when you were there
12 on Saturday, 11th January 1997?

13 A. Yes.

14 Q. You did say that?

15 A. To the Fiscal?

16 Q. To the Fiscal.

17 A. That I'd saw ...?

18 Q. You saw Shirley McKie at the house on Saturday, 11th
19 January 1997?

20 A. Yes.

21 Q. When you were there?

22 A. Yes.

23 Q. But you did not mention to the Fiscal that you couldn't
24 have seen her at the house at 1.30 pm?

25 A. Yes, that's possible. I'm not -- I can't remember the

1 Fiscal suggesting times to me. I can remember the
2 Fiscal trying to tie me down to a time when -- bearing
3 in mind this about ten minutes before going into the
4 High Court. I remember the Fiscal trying to tie me down
5 to a time to clarify a point but I couldn't tell the
6 Fiscal there was a time.

7 Q. So you couldn't give the Fiscal specific timings?

8 A. No.

9 Q. Is it possible that you did not say to the Fiscal it
10 couldn't have been -- you couldn't have seen Shirley
11 McKie at the house at that specific time, 1.30, because
12 you were listening to the football on the radio and that
13 started after 3.00 pm? Is it possible you didn't say
14 that?

15 A. Yes, it's possible. It all depends on the Fiscal's line
16 of questions to me in trying to pin me down to a time.

17 Q. But it's possible you weren't specific about the timings
18 with the Fiscal?

19 A. Yes, it is because, as far as I can recollect, any
20 statement I've given I've not referred to a time on
21 Saturday afternoon, other than that --

22 Q. I will come on to that.

23 A. Sorry.

24 Q. I will come on to that in a moment.

25 In relation to this I would like to clarify another

1 specific part of that answer which you just gave again
2 just to repeat it. For those with LiveNote it is
3 page 28, line 20. You said as part of that answer:

4 "I've never said a time when I thought she was at
5 the house."

6 If we hear evidence during this Inquiry at a later
7 stage from the Advocate Depute who prosecuted Ms McKie
8 that during your evidence at the trial you said you saw
9 her at the house at 5.00 pm or about 5.00 pm, would you
10 disagree with that evidence?

11 A. No.

12 Q. Would you accept if the Advocate Depute says that in
13 evidence that that is true?

14 A. Yes.

15 Q. That is what you said?

16 A. Yes.

17 Q. Just turning your previous statements, if I may, do you
18 accept that in the first statement -- and you have been
19 referred this in some detail by my learned friend,
20 Miss Carmichael -- that was a statement from
21 10th April 1997, that there's no reference in that
22 statement to you seeing Ms McKie on 11th January 1997?

23 A. Yes.

24 Q. Turning to the second statement you were referred to,
25 dated 12th July 1997, and perhaps we could have this on

1 the screen if I may, CO2593 at page 5, if you just give
2 me a moment I will find the section.

3 Yes, it's the first paragraph and it states:

4 "Some time in the afternoon I was working in the
5 rear bedroom and was going from there to the middle
6 living room to get some bags for productions when, as I
7 crossed the hall, I saw Detective Constable Cardwell
8 standing in the porch. She was speaking to the
9 uniformed officer on the door who was logging the
10 visitors. I cannot recall who he was."

11 Then later on page 5 in paragraph 2 at line 3 it
12 says:

13 "I only glanced at Detective Constable Cardwell,
14 then entered the middle living room and went through it
15 into bedroom number 3 where we kept the bags. I never
16 thought anything about it. Then I returned to the
17 bedroom to continue my work. I did not see Detective
18 Constable Cardwell enter the house and I did not see her
19 in the porch when I came back from collecting the bags."

20 That's what is stated in that statement of
21 12th July; is that correct?

22 A. Yes.

23 Q. So, again, there's no specific timings given in that
24 statement?

25 A. No.

1 Q. Then finally may I look at the precognition taken by
2 Denise Greaves which is CO2592 and if we may look at
3 page 5 and, again, paragraph 1, line 1:

4 "In my opinion, it would have looked to her as if
5 the examination of the hall had been completed. That
6 examination would include the bathroom door. I think
7 Shirley Cardwell was there about 1.30 pm. I left the
8 **locus** about 3.00 pm-ish because of the backlog of
9 productions. My reason for thinking that was the time
10 was that the production room at Kilmarnock was along
11 from the TV room and I recall that there was a rugby
12 match on during the afternoon. I did not see Shirley
13 Cardwell or speak to her after that."

14 So, again, can I ask you to confirm there's no
15 reference in this precognition to you seeing Shirley
16 McKie at the house at 5.00 pm on 11th January 1997?

17 A. No.

18 Q. According to the precognition, your version, at the time
19 of giving this precognition, was that you left the **locus**
20 at 3.00 pm-ish; that would appear to be correct?

21 A. Yes.

22 Q. And you then went to the production room at Kilmarnock?

23 A. No.

24 Q. Does it not say:

25 "My reason for thinking that was the time was that

1 the production room at Kilmarnock was along from the TV
2 room ..."?

3 A. Yes, the production room at Kilmarnock was used Jim
4 Kirkland and Allan Stevens.

5 Q. Is the --

6 A. I wouldn't have went to the production room at
7 Kilmarnock with items from the house.

8 Q. It may be my wrong interpretation but is the production
9 room along from the TV room in Kilmarnock?

10 A. It is indeed or it was then.

11 Q. But it doesn't say there that you went to the production
12 room. That was maybe my mistake. It simply says the
13 production room was along from the TV room.

14 A. Yes.

15 Q. And that you saw a match.

16 A. Well, it infers I was at the production room, does it
17 not, when I'm speaking about a rugby match being in the
18 TV room.

19 Q. I would not wish to make any suggestion or inferences to
20 you at this stage. We may be hearing evidence about
21 this precognition in due course. But it also states in
22 the final sentence of this paragraph in the precognition
23 that you did not see Shirley Cardwell or speak to her
24 after that.

25 Do you see that line?

1 A. Yes.

2 Q. That would appear to be after leaving the **locus** about
3 3.00 pm-ish?

4 A. Yes.

5 MISS GRAHAME: Thank you very much.

6 THE CHAIRMAN: Mr Smith?

7 MR SMITH: Yes, sir, I have a few questions if I may, a few
8 questions regarding the management of the scene.

9 THE CHAIRMAN: Yes.

10 MR SMITH: Secondly, some questions that relate to documents
11 available to the public and this witness's attitude
12 towards Shirley McKie and I think it's quite important.

13 THE CHAIRMAN: Yes.

14 MR SMITH: I've one question relating to what is supposed to
15 have been said by this witness to Mr Les Brown. Those
16 are the elements I would like to deal with if I may.

17 THE CHAIRMAN: Very good. I will give you leave to deal
18 with those matters.

19 MR SMITH: Thank you, sir.

20 **Cross-examined by MR SMITH**

21 Q. Mr Kerr, you have answered a number of questions earlier
22 about what may or may not have been said by you to
23 Mr Brown. I understand your position is that you think
24 you didn't say anything to Mr Brown.

25 A. No.

1 Q. I would just like to clarify one matter. I don't think
2 we need to call this up but in the paragraph that we
3 were looking at earlier, I will just read it out, this
4 is Mr Brown's statement, not your statement, Mr Brown
5 says:

6 "I did speak to a SOCO officer, Officer Kerr, who
7 confirmed that he heard PC Lees and Shirley McKie having
8 a heated discussion in the porch of the **locus**."

9 I know you say that you didn't say anything to
10 Mr Brown but can I ask you when you say you did see
11 Shirley McKie you told us you saw her at the **locus**, was
12 there any heated discussion going on between her and the
13 officer at the door?

14 A. No.

15 Q. So that is not only not said but was wrong factually?

16 A. Yes.

17 Q. Thank you.

18 I would like to ask you if I can just a few
19 questions about the management of the scene. I think
20 you explained to us that we can see in various documents
21 it was about 4.00 pm on Thursday 8th January 1997 that
22 you say you were delegated responsibility as officer in
23 charge of the **locus** at about that time-frame. Is that
24 right.

25 A. Yes, it started on the 9th.

1 Q. Well, perhaps in fairness we can call up document
2 CO2592, page 1, please.

3 We can see bears to be a statement, precognition, so
4 again we have seen bits of this before and I am just
5 asking for your comment, if you agree the timing's about
6 right.

7 Do you see the paragraph in the middle of the page
8 commencing, "At lunchtime ..."; do you see that?

9 A. "At lunchtime", yes.

10 Q. "... I was told that the death of Marion Ross was a
11 murder inquiry. DI McAllister and DCI Heath were
12 responsible for delegating duties. I was told to seal
13 the house and tape up the outside and carry out a
14 systematic search of the house in conjunction with the
15 IB."

16 Now again, I think this precognition is one that you
17 have only some recollection of the detail of this, this
18 is a precognition which I'm assuming was given to the
19 Crown in connection with criminal proceedings.

20 Can I ask you first of all in that paragraph I just
21 read do you agree that that's about right? Does that
22 seem to be factually correct?

23 A. No.

24 Q. What's wrong with it?

25 A. My recollection of events are that it's obviously

1 Thursday 9th January. I don't know whether that's a
2 typing error or not but Thursday 9th January I commenced
3 duties about 8.00 in the morning, which was about
4 12 hours after Marion Ross' body had been discovered and
5 I was immediately directed to Kilmarnock Police
6 Office --

7 Q. Can I ask you to lean closer to the microphone?

8 A. Sorry. I was directed to Kilmarnock Police Office in
9 the morning and I received a briefing in the morning
10 that there was a suspicious death at 43 Irvine Road and
11 I was then assigned to duties at 43 Irvine Road, not at
12 4.00 on Thursday afternoon.

13 Q. Very well and you are quite right. I think we see in
14 the next paragraph there was a reference to Thursday as
15 8th January, not Thursday 9th at the top of the page.

16 I am actually interested in the question of who was
17 delegating responsibilities. You say DI McAllister and
18 DCI Heath were responsible for delegating duties. That
19 much is right, I take it, is it?

20 A. Yes.

21 Q. You explain or it is said in the next paragraph -- I am
22 sorry, you explained -- there seem to be one or two
23 obvious errors in this precognition -- but it says here
24 that you recall:

25 "... there was a briefing meeting about 4.00 pm on

1 Thursday 8th January and tasks were delegated at this
2 meeting. I was delegated responsibility as officer in
3 charge of the **locus** and when I had been at the **locus**
4 earlier there had already been a log officer on the
5 door. I was in charge of the search of the house
6 finding clues as to the identification of the killer."

7 Can I ask this: you clearly were delegated by
8 someone the task, as you explained to us earlier, of
9 being in charge of the **locus**.

10 Who was it that delegated that to you?

11 A. DCI Heath.

12 Q. It was definitely DCI Heath himself?

13 A. Yes.

14 Q. Do you know who, if anyone, had preceded you, who was
15 just before you, as it were, in charge of the **locus**?

16 Was anyone in charge of the **locus**?

17 A. My recollection of that is that Marion Ross had been
18 found, there'd been obviously officers attended
19 initially for assessment and she had been taken from the
20 house for post-mortem examination and the police had
21 cordoned off that specific area and I would be the first
22 person to actually be put in charge of the house in that
23 area.

24 Q. So your understanding at least was prior to you being
25 delegated and taking up the task of what we now call a

1 Crime Scene Manager, I think, is the phrase that's used
2 there really wasn't anyone except a police officer who
3 was at the door guarding it, for want of a better
4 phrase. Is that fair?

5 A. Yes.

6 Q. You have explained in your evidence that certain aspects
7 of the management of the scene, I am not directing
8 criticism at you but certain things that were going on
9 were causing you some concerns. We've looked at some
10 statements, some of which you have agreed are correct,
11 for example, the Hello magazines being used, the heating
12 being put on, that kind of thing.

13 I take it that you were less than pleased with the
14 circumstances in many respects which may have been
15 interfering with possible investigation; is that right?

16 A. Yes.

17 Q. Did you report that to anyone officially?

18 A. Well, I didn't know about the heating until after the
19 inquiry. It came out at a discipline inquiry or a
20 subsequent trial. I can't remember which but I didn't
21 know about the heating or the doodling, that type of
22 thing, until after my duties were finished at 43 Irvine
23 Road.

24 I knew about the magazines, obviously, and I'd
25 raised that with, I believe -- at a briefing which would

1 be taken by DCI Heath or DI McAllister of the movement
2 of the articles and I believe they raised the issues
3 with the supervisory officers who ultimately had line
4 management responsibility for the log keepers.

5 Q. You see, I think we have heard some information that has
6 been presented to this Inquiry suggesting that some
7 police officers overnight had been in what was described
8 as the living room within the premises.

9 I am not sure exactly how this would affect the time
10 you were in charge of it but as far as something like
11 that is concerned, were you unaware of that at that
12 time?

13 A. I was unaware of that, yes.

14 Q. I think you also mention some Serious Crime officers who
15 arrived?

16 A. Yes.

17 Q. Did they get into the house?

18 A. Yes.

19 Q. How far into the house?

20 A. Right down the hall to the bottom of the stairs.

21 Q. And they were not dressed appropriately?

22 A. No.

23 Q. Just in ordinary clothes?

24 A. Yes.

25 Q. I think you told us that they told you at least they had

1 been directed to go and uplift the motor vehicle, the
2 car that belonged to Miss Ross; is that right?

3 A. Yes.

4 Q. Did you understand what on earth they required to come
5 into the house for in order to remove a motor vehicle?

6 A. No.

7 Q. The vehicle was in the garage, I take it, was it?

8 A. Correct. They would have to locate the keys which
9 ultimately would have been in the house but they should
10 have waited at the gate to the grounds of 43 Irvine Road
11 and indicated to the officer that they were there to
12 uplift the vehicle.

13 Q. And as far as that is concerned, were you a bit short
14 with them, were you?

15 A. You could say that, yes.

16 Q. What was the response?

17 A. Their response were that they'd been directed from
18 Glasgow down to uplift the vehicle and that they were
19 merely -- it was a chain of custody issue that they
20 would escort the vehicle back up for scene examination
21 at Paisley, I believe.

22 Q. I am more interested in your position. I presume you
23 told them they had to leave the house immediately
24 because they weren't appropriately dressed and shouldn't
25 be in it?

1 A. I didn't have any discussions with them in the house. I
2 told them to leave the house and I'd discuss why they
3 were there, why they were actually in the house,
4 outside.

5 Q. Is this something that you consider one understands to
6 be difficult but the log keeper, the door keeper,
7 perhaps should have said, "You're not coming in. You
8 need to wait here until I find out whether you're
9 allowed in"? Do you consider it was really the man at
10 the door who was the first line to stop this happening?

11 A. Yes.

12 Q. Did you happen to raise it with the door keeper at the
13 time saying, "Listen, you can't let anyone in"; is that
14 fair?

15 A. Yes.

16 Q. Do you recall at that stage when the Serious Crime Squad
17 officers came along, do you recall who the door keeper
18 was who was responsible for that?

19 A. No, I don't, unfortunately. I can't remember at the
20 time. We dealt with the issue, spoke to the Scene of
21 Crime(sic) officers, we raised it -- I raised it at the
22 briefing that night, I took the car out and put it onto
23 a low loader because they came down with, you know,
24 accompanied by a contractor to take the vehicle away,
25 put it onto a low loader and they went away and then I

1 addressed the issue with the log keeper.

2 Q. So undoubtedly, as you have explained to us, something
3 that was raised at a higher level and you say at the
4 briefing?

5 A. Yes.

6 Q. I take it Mr Heath was at the briefing, was he?

7 A. Well, it's so long ago that the briefing would either be
8 taken by Mr McAllister or Mr Heath. What one was there
9 I'm not sure about now, but one of them would be there,
10 as well as the office manager.

11 Q. I think you have readily accepted that the log itself is
12 substandard; there are things that should have been on
13 it that are not?

14 A. Yes.

15 Q. You mentioned something about suggestions of doodling on
16 it or something.

17 Is that something you have actually seen on the log?

18 Are you saying that, having seen the log, it's not
19 there?

20 A. I recall seeing parts of the logs that were used in
21 Shirley McKie's trial. One was of a doodle of a
22 matchstick man or a motor vehicle of some kind on the
23 log. That is when, you know, again, the issues of
24 urinating, putting the heating on, moving magazines was
25 again raised during that trial.

1 Q. You said something about maybe some disciplinary thing
2 took place.

3 Are you talking about some disciplinary action taken
4 after Shirley McKie's trial?

5 A. Well, I think it was fair to state there were various
6 log keepers, in my opinion, during the subsequent McKie
7 trial had issues with Discipline investigating them for
8 instances of neglect of duty or conduct unbecoming of a
9 police officer or some other disciplinary action.

10 Q. Are you saying you know that took place after the McKie
11 trial?

12 A. No, I knew that there was a threat to them. I don't
13 know if it actually took place once -- the investigation
14 took place once the trial had finished but I know it was
15 a threat to them.

16 Q. You were asked a good deal of questions about your
17 movements at various times and whether you were at
18 Kilmarnock Police Station or whether you had your lunch,
19 wherever you had it and so on.

20 I take it that's something that would be in your
21 notebook, would it, where you were at various times on
22 that day?

23 A. No, it's mainly in the logs that I kept, which were
24 major incident log manuals. Again, coming on and off
25 duty you'd be signed on and off at the incident room

1 when you would attend in the morning for the briefing
2 and then go about your duties in Irvine Road you
3 expected the log keeper, obviously, to keep a record of
4 when you come in and out, and you kept a log in the
5 house of all the items you seized during the course of
6 that day which were appropriately labelled and bagged
7 and sealed in the, then, the appropriate manner.

8 Q. Thank you. You have reminded me there is something I
9 needed to ask you about, this question of the area of
10 dust. Remember you were asked about an area that became
11 of interest.

12 A. Yes.

13 Q. I think you said it was a few days into the inquiry that
14 that was focused in of as being, perhaps, of importance?

15 A. Yes.

16 Q. I take it that it wasn't just someone passing and
17 thinking, "Goodness me, that might be interesting", it
18 was fully investigated, was it?

19 A. Yes.

20 Q. No doubt they tried to work out what item may have come
21 from there?

22 A. Yes.

23 Q. I am sure you know that there's a suggestion of a tin in
24 this case?

25 A. Yes.

1 Q. And as far as that's concerned, I take it you would
2 ordinarily have expected someone to check that the tin
3 fitted the dist, if I put it that way; is that right?

4 A. Yes, I think that would have happened at some point in
5 time.

6 Q. The last thing I want to ask you about is your position
7 of generally how you got on with Shirley McKie.

8 Can you explain to us, up until this point when the
9 investigation was ongoing within the house, is she
10 someone you had known before?

11 A. Yes, I knew Shirley for a number of years. I hadn't
12 worked with her directly -- I think once, in fact, I
13 worked with her directly on a murder inquiry but she was
14 based at Kilmarnock and I was based mainly on the coast,
15 at Irvine or Saltcoats. So I knew her and I always
16 found her pleasant.

17 Q. I think you say in your statement -- I don't need to
18 show you this, it's in paragraph 42 -- that you got on
19 all right with the Detective Constable McKie you worked
20 with her before and so on and just generally everything
21 seemed to be fine.

22 A. Yes.

23 Q. The reason I ask you this, Mr Kerr, is I would like your
24 comments on the note to something that may end up in the
25 public arena at some stage just to see whether you have

1 any comment on it.

2 Can I ask you to look at a document that is CO2592
3 which I think we have looked at already. This is a
4 statement, precognition, that you have some issues with
5 but can you go to the end of it, please. It is actually
6 page 6 -- sorry, it's the next one.

7 We can see after the word "truth" in the middle, do
8 you see just about the middle of the page at the start
9 of that we have a note -- I will just read it out for
10 the record:

11 "This officer discussed matters off the record
12 although he didn't say that they required to be kept off
13 the record. It was his opinion that Shirley
14 Cardwell had possibly visited the premises for whatever
15 reason and had relieved one of the log officers to allow
16 that officer to visit the garage to purchase goods or to
17 go to the toilet. His impression was that Shirley
18 Cardwell would have thought the examination of the hall
19 had been completed as it looked that way and that she
20 would just simply enter the hall when the log officer
21 wasn't present. It is his opinion that no log officer
22 will compromise his position to admit that he deserted
23 his post."

24 It goes on to say that:

25 "This officer was a very down to earth character and

1 was clearly not impressed by Shirley Cardwell. The
2 precognoscer gained the impression this officer felt
3 that Shirley Cardwell thought she was better than him
4 and she thought it was only a matter of time before she
5 was promoted high in the police ranks."

6 Obviously, that's someone else's impression in many
7 respects of what they say they felt about you. I am
8 sure wouldn't quarrel with the officer being a very down
9 to earth character but as far as the rest of it is
10 concerned I take it you agree with me that there is a
11 suggestion that you might have been speculating as to
12 her entering the premises without permission. You see
13 that that is suggested that you were prepared to
14 speculate to that effect.

15 A. I was asked to elaborate on rumours and gossip. I can
16 recall that. I was also asked about fingerprints and
17 movement of them, which I notice is not recorded as off
18 the record or otherwise. I would have said, Shirley, I
19 always found very pleasant. I would have said Shirley
20 was ambitious because I believe she would have wanted to
21 emulate her father in the Police Service. Certainly if
22 my father had been a Superintendant in the police I
23 would have wanted to emulate him as well.

24 I would not have said that I thought she was better
25 than me or anybody else. She'd sat her police exams and

1 went and did her HNC Police Studies so, you know, she
2 expected to get promoted but, you know, there's a few in
3 the same boat.

4 Q. I think all I'm asking you is that if this person had
5 the impression you didn't really like Shirley McKie or
6 Shirley Cardwell then that person was wrong. You had no
7 animosity towards her whatever?

8 A. No.

9 Q. And the comment on rumours and so on that were going on,
10 you've no doubt heard some discussion already that
11 people were trying to come up with an idea as to when
12 she could have gone in to leave the fingerprint. You
13 understand that that's what was the chat.

14 Is that the kind of rumours you were referring to?

15 A. Yes.

16 Q. And you were almost being invited by the person taking
17 the statement to join in with that, I suppose, and say,
18 well, how could it have been done? Is that --

19 A. Yes. It was speculation about motives and opportunity
20 to get into the house, yes.

21 MR SMITH: Thank you very much.

22 THE CHAIRMAN: Anything further you want to ask?

23 **Re-examined by MISS CARMICHAEL**

24 Q. Mr Kerr, just as a matter of interest, can you remember
25 where the square in the dust was?

1 A. Bedside cabinet, I think.

2 Q. Just to clarify another matter, you have mentioned two
3 patio doors and a back door. Which of these doors were
4 you using?

5 A. The new one. It was a PVC. The other one was
6 aluminium-framed. So the PVC, the new extension at the
7 back, as you look at the rear of the house to the right,
8 there's a new extension which had a bedroom in it and I
9 was using that.

10 Q. So you were using a UPVC door that went directly into a
11 bedroom?

12 A. Yes.

13 Q. I would like to clarify with you further something that
14 was raised with you by Miss Grahame and I think I need
15 to take you back, first of all, to something that I
16 asked you and I will just put the exact passage to you
17 which is, for those with LiveNote, at page 32.1.

18 Now, I'd asked you, Mr Kerr -- I think I'd drawn
19 your attention to part of the Advocate Depute's
20 statement to this Inquiry and I asked you:

21 "Do you recall giving evidence to the effect that
22 Ms McKie was at the house at around 5.00 pm that day,
23 because that is what the Advocate Depute seems to
24 remember."

25 Your answer was:

1 "I don't remember giving a specific time. I keep
2 relying on, and did then as well, relying on the seizing
3 of the door handles, obtaining the shoe boxes and the
4 radio being on in the house with the football on. So
5 times, as I say, I couldn't say the time to anybody, the
6 Procurator Fiscal at a precognition or in the High
7 Court, you know. He might have said something like,
8 'Could it have been round about 5.00?' Aye, it could
9 have been because the football was on. Other than that,
10 I don't know."

11 Miss Grahame asked you some further questions about
12 this which, again for those with LiveNote, are at
13 page 58.10 and the question that Miss Grahame asked you
14 was:

15 "If we hear evidence during this Inquiry at a later
16 stage from the Advocate Depute who prosecuted Ms McKie
17 that during your evidence at the trial you said you saw
18 her at the house at 5.00 pm or about 5.00 pm, would you
19 disagree with that evidence?"

20 Your answer was no.

21 What I would like to clarify with you is this: if I
22 can put it this way, Mr Kerr, one can be asked about
23 timing in different ways. Someone might ask you, "What
24 time did you see Ms McKie?" and you might say, "At about
25 5.00" or someone might, as I think you've suggested,

1 say, "Could it have been about 5.00 that you saw
2 Ms McKie?" and you might say, "Yes."

3 Now, what I would like is your best recollection as
4 to the way you were asked about the timing in the trial
5 by the Advocate Depute.

6 A. Well, it was a closed question rather than an open one
7 as far as I can recollect. "Could it have been about
8 5.00?" Could have been -- could have been.

9 Q. Just to try to be quite clear about who asked you this
10 question, are you quite clear that that would have been
11 the Advocate Depute, the prosecuting counsel, in the
12 High Court rather than the defence counsel who I think
13 you know was Mr Findlay QC?

14 A. Mr Findlay didn't ask me any questions -- as far as I
15 can remember.

16 Q. Can you actually recall being asked a closed question
17 along the lines of, "Could you have seen Shirley McKie
18 at about 5.00?"

19 A. No.

20 Q. Are you speculating?

21 A. Speculating that it was a closed question and I would
22 have answered, "It could have been."

23 Q. I just want to be quite clear what it is you were saying
24 to Miss Grahame, that you would not disagree if the
25 Advocate Depute comes and tells us that you gave

1 evidence that you saw Shirley McKie at 5.00. I don't
2 want you to particularly speculate or to say anything
3 that you don't remember but I'd just like to be clear as
4 to why you wouldn't disagree with that.

5 A. I wouldn't disagree with it because my thought processes
6 in the Advocate Depute saying that is that he's asked me
7 a closed question and I've given my reply as agreeing
8 with that. I do not think I've ever come out and said I
9 saw Shirley at the house at 5.00 because, as I've said
10 consistently throughout the 12 year, I have no -- I
11 cannot pinpoint specific times in relation to specific
12 duties.

13 MISS CARMICHAEL: Thank you for that.

14 THE CHAIRMAN: Just one matter that maybe you could clear up
15 for me. When you come on duty during an incident, you
16 sign on in the incident room; is that right?

17 A. Yes.

18 THE CHAIRMAN: And when you finish duty you sign off again
19 in the same place?

20 A. Yes.

21 THE CHAIRMAN: And is that in some record book that's kept
22 there?

23 A. It's a Force document which is a Major Incident Duty
24 Sheet and there are sections for name, your number, time
25 on duty, time off duty and hours worked, if you like,

1 and there's one for each day that major incident runs.

2 THE CHAIRMAN: I realise it's a long time ago but have you
3 in the interim had an opportunity to look and see what
4 hours you actually worked on that day? That's the
5 Saturday.

6 A. Well, I was off duty on the Sunday and I do recall
7 claiming overtime for at least the first two weeks of
8 the inquiry.

9 THE CHAIRMAN: Would that mean that you might have finished
10 at 6.00 or --

11 A. Yes.

12 THE CHAIRMAN: Would that be the usual time to finish if you
13 were --

14 A. Well, I would think 6.00 on a Saturday night would have
15 been early. It would usually have been the first 7 to
16 14 days of an inquiry of that magnitude would have
17 easily have been 12-hour shifts, if not more than that.

18 THE CHAIRMAN: I am not familiar with the practice in
19 Strathclyde Police but I know in some Forces detectives
20 keep, or the one I'm familiar with, they keep what they
21 call a "journal" in which they record their working
22 hours and where they have been and what they have been
23 doing.

24 A. Yes.

25 THE CHAIRMAN: Is there anything similar kept by officers

1 in Strathclyde?

2 A. Well, if you were doing normal generic duties, you would
3 have your notebook, assigned specific duties during that
4 MI you would necessarily record everything in your
5 notebook because these are the documents to record your
6 daily duties. So that journal you're referring to is
7 probably going to be that Duty Sheet for that major
8 incident.

9 THE CHAIRMAN: So you wouldn't keep any form of record of
10 your own hours --

11 A. No, because it's kept in the incident room and it's open
12 and you can refer to it at any point of time you require
13 it within, you know, a six-month period.

14 THE CHAIRMAN: I appreciate you could rely on that but I
15 just want to get it clear. You would not keep a journal
16 or whatever it's called; that wouldn't be the practice
17 in this jurisdiction or in the Strathclyde Force?

18 A. No, with times and dated and date-stamped; that type
19 kind of journal, no.

20 THE CHAIRMAN: No I didn't mean stamped or anything like
21 that, I mean something which you write yourself and keep
22 it as your own personal record of your duties that
23 you've performed.

24 A. It would normally have been a notebook, yes. But on
25 that occasion, because of the specific duties we were

1 assigned, we didn't need to rely on the notebook. So I
2 might have recorded on and off duty on specific days in
3 that notebook, but I'm not 100 per cent sure.

4 THE CHAIRMAN: But are they kept or are they destroyed or
5 what happens?

6 A. They are kept for a certain period of time.

7 THE CHAIRMAN: Maybe not 12 years.

8 A. No. I think it's 6 plus 1 for notebooks, I think.

9 THE CHAIRMAN: But I was anxious for us to discover at some
10 time there was doubt of whether it was Friday or
11 Saturday and I was just wondering is that not something
12 you could have checked quite easily?

13 A. Yes, it could have been -- and I did because I had a log
14 of the items I'd taken from the house. In the April, I
15 didn't have access to the log and really, you know, up
16 until then, you know, up until Shirley's alleged print
17 was found, it wasn't really an issue. So, you know, you
18 only really -- your objective in the house was to
19 hopefully identify the culprit of who had murdered
20 Marion Ross and that was it. Nothing else.

21 THE CHAIRMAN: Just turning to one other matter, from the
22 way you were able to, if I can use the expression, deal
23 with the officers who came down to seize the car, do I
24 take it that as a detective in your rank at that time
25 that you could say to plain clothes or to uniformed

1 officers whether they were not doing their duty properly
2 or not?

3 A. Well, some detective constables might form that view.

4 We were all in the constable rank; so when I'm saying to
5 a log keeper, "Look, you need to do X, Y, or Z that"
6 it's the way you pitch it at them, I would say, and I
7 did not view myself as being their superior or their
8 supervisor in any way.

9 THE CHAIRMAN: The only reason I ask was because I got the
10 impression that you were prepared to remonstrate with
11 the officers who had come down from Glasgow to seize the
12 car.

13 A. Yes, because I knew they'd done something inherently
14 wrong.

15 THE CHAIRMAN: I see.

16 A. And I didn't know that the log keepers had done
17 anything, you know, inherently wrong.

18 THE CHAIRMAN: I see. Thank you very much. I think that
19 brings us close enough to 1.00 and thank you for your
20 assistance. So we will begin the next witness at 1.50.

21 **(1.00 pm)**

22 **(Luncheon Adjournment)**

23

24

25