

1

Thursday, 15th October 2009

2 (Afternoon session)

3 (1.54 pm)

4

IAIN ARTHUR JAMES MCKIE

5

Cross-examined by MR HOLMES (continued)

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MR HOLMES: Thank you, sir.

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Mr McKie, we were speaking about positive aspects of

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the case that had been the subject of publicity. I am

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going to ask about other marks in the case that have

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been subject of criticism but subsequently has been

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found to be unfounded. Particularly I'm thinking about

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QD2. That was criticised by the Danish experts who

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looked at it but subsequently their criticisms were

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found to be incorrect.

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Of the Danes, you say in paragraph 66 of your

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statement that they were given the wrong photographs.

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You can't know that, can you, Mr McKie?

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A. I believe they were given the wrong photographs. That's

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my understanding.

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Q. It is not something that you know for yourself?

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A. No. It's up to the Inquiry to ascertain that.

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Q. You have also given interviews in the past during which

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you have said that you experienced a lack of

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co-operation from the police towards the beginning of

25

this case. Is that correct?

1 A. If you could be specific. I probably did but ...

2 Q. Do you feel now that towards the start of this case that
3 there was a lack of co-operation towards you from the
4 police?

5 A. It's a big question, Mr Holmes, because the police are
6 very central to this and of course I've been in the
7 force for 30 years. I got a feeling at the beginning
8 that -- it really is a major, major question this
9 because it comes down to the whole feeling we had at the
10 time that we had been part of the police and we were now
11 outcasts and I think certainly we felt very negatively
12 towards the police at that time.

13 We were also in considerable correspondence with
14 them for some time in the questions of Legal Aid for
15 Shirley's trial, which was being turned down time and
16 time again and I think we had to have two appeals for
17 the Local Authority to get the money.

18 So I suppose in general I would say that but I think
19 you need to be more specific. But, in general, I felt
20 that the police were not on our side in any way.

21 Q. Did you feel in some way restrained by the involvement
22 of the police in this case?

23 A. Restrained? In what way?

24 Q. Yes.

25 A. I really ... restrained by the police in what way?

1 Q. Did you feel that it was made more difficult for you?

2 The involvement of the police in this case made the
3 presentation of your case more difficult?

4 A. Yes. If you like, put it this way: in broad terms, we'd
5 say that they were part of the opposition to us. So,
6 from that point of view, yes.

7 Q. Was it not at your insistence that the mark was
8 originally re-examined?

9 A. Mark Y7?

10 Q. Yes.

11 A. It may well have been. I cannot remember. All I knew
12 is I fully supported what was happening. It probably
13 would be mine but remember at that time we didn't know
14 where we were with this whole thing at all and we just
15 felt that Shirley couldn't have left it there. We were
16 looking at all sorts of solutions to this, even stupid
17 solutions like some wood that perhaps Shirley had used
18 in her house had been left in Marion Ross's house. So
19 we were looking at all sorts of things.

20 Q. Was it something that you asked to be done for the mark
21 to be re-examined?

22 A. It was asked. Whether specifically I was first in the
23 queue, it was asked and I totally agreed with it.

24 Q. There were a number of checks on Y7; would you agree
25 with that?

1 A. There were.

2 Q. In fact, it went so far as for Ms McKie to be taken to
3 the house and for the mark to be re-photographed. Do
4 you recall that?

5 A. I do indeed.

6 Q. Does it in your view imply a lack of co-operation that
7 there was this non-standard procedure that she was taken
8 to the house and that the mark was re-photographed in
9 front of her?

10 A. You're talking about a single instance in a whole host
11 of things that were happening. In that specific
12 instance, no, but of course she also asked to be taken
13 to the SCRO and to watch the examiners going through
14 their processes and that was refused. So while I still
15 say in general terms, perhaps the opposition we felt was
16 felt -- perhaps I felt it too much, but we certainly at
17 that time seemed alone and beleaguered. But I accept
18 that that was co-operation to do that.

19 Of course, the point was the police really wanted to
20 resolve this because we had a murder case going on here
21 and Shirley's, if you like, refusal to accept that she
22 had been in the house was not helping that inquiry. So
23 I can understand where the police were coming from.
24 Understanding doesn't mean that I liked it. But, yes, I
25 felt they were in opposition.

1 Q. Towards the beginning there obviously was, as shown by
2 this, some co-operation on the part of the police.

3 Would you accept that?

4 A. No, I don't accept that. Let's be honest about it.

5 They believed fully and they'd arrested David Asbury for
6 murder. Her that murder was put in jeopardy by my
7 daughter. No, they were in total opposition to us.

8 Q. In the example I have just given, the fact that she was
9 taken to the crime scene and the mark was
10 re-photographed and that that photograph was
11 again re-examined, is that something that is normally
12 afforded to a police officer or a Scene of Crime Officer
13 whose mark has been found at the crime scene?

14 A. I could argue that it was part of the process of trying
15 to clear this whole matter up. I don't see it as
16 positive or negative. The fact of the matter is we
17 asked for that to be done. Likewise other things we
18 asked to be done were not done. I can't go into these.
19 We felt at the time the police were in opposition. I
20 accept there would be things that they acceded to. Why
21 they did it, I would not know.

22 Q. There was a lengthy police investigation that was
23 conducted by Mr Mackay. Is it the case that the results
24 of that investigation were reported to you at some
25 stage?

1 A. Yes, they were.

2 Q. Again, is that something that signals a lack of
3 co-operation on the part of the police?

4 A. I think you need to separate the police from the police.
5 I'm not talking about Mr Mackay. I'm talking about, if
6 you like, Strathclyde Police and the officers
7 investigating this. I've never at any time said that
8 Mr Mackay treated us other than with courtesy and that's
9 what he did.

10 So Mr Mackay was not -- at the end of the day,
11 Mr Mackay was doing an independent assessment of this
12 whole case. It wasn't our side or anybody's side. He
13 did his assessment.

14 Q. One of the things that you said earlier on is that you
15 had to be forthright in this matter because these
16 institutions were never going to look into this, but it
17 appears that from the outset that you did have at least
18 a degree of co-operation from the institutions involved,
19 did you not?

20 A. I think that came later in the game. At the beginning
21 from 1997 until my daughter's trial when she was
22 acquitted, I can assure you that there was opposition
23 from the police. Once, if you like, that was held and
24 the HMCI's report was held and the results of
25 Mr Zeelenberg and Mr Rudrud's results, yes, things did

1 change at that time and I would expect them to change
2 because there were people involved in this who had been
3 friends and colleagues of mine, people actually who I
4 respect very, very highly. You know, it wasn't good
5 but, yes, at that time they did but at the beginning
6 there was always total opposition to my daughter, what
7 she stood for and what she was saying.

8 Q. One thing I will ask you if you have done intentionally
9 in your commentary to the media on this is to put your
10 daughter's character in issue, if you like. Have you
11 deliberately put forth the impression that she is an
12 individual who simply would not ever lie?

13 A. Yes.

14 Q. In fact, the quote on the front of your book is that her
15 only crime was to tell the truth; is that correct?

16 A. Yes.

17 Q. You have described in newspaper articles how difficult
18 it has been for her to accept anything but the complete
19 truth from other people, have you not?

20 A. Yes.

21 Q. The idea, I take it, behind that is that you wish to
22 convey to the public that your daughter would not under
23 any circumstances tell a lie and that by extension she
24 would not lie about being in the house at Irvine Road.
25 Is that the idea behind it?

1 A. In broad terms my daughter is an honest person. At the
2 beginning of all this, I more than anyone else doubted
3 her word. I believed that fingerprints were infallible
4 and I gave her a hard time of it, let me tell you, but
5 eventually I came to believe that she was speaking the
6 total truth in this and all I would say is that
7 throughout the 13 years that she's been in -- she has at
8 all times spoken the truth. She's almost I believe
9 scared to tell a lie.

10 Q. That's made the position quite clear. If I can move on
11 very briefly to her evidence during her own trial, you
12 confirmed earlier on that both you and Ms McKie went to
13 see Mr Swann in Wakefield in 1998; is that right?

14 A. That's correct.

15 Q. You say that both of you had a full discussion with
16 Mr Swann about the work that you wanted him to do.

17 A. That's correct.

18 Q. Your statement confirms that your daughter was told when
19 Mr Swann's opinion that Y7 was made by her was given at
20 a consultation in March 1999; is that right?

21 A. Yes.

22 Q. Her own letter, although it appears to be misdated
23 because it pre-dates that consultation confirms that she
24 met with Mr Swann. There is confirmation there that she
25 was aware of Mr Swann's involvement?

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1 A. From our meeting with him, absolutely, and from knowing
2 the results, as I said, that all the communications were
3 mine.

4 Q. During her trial she was asked by the Advocate Depute a
5 number of times whether anyone else had looked at Y7 and
6 she replied that she did not know.

7 A. I have explained the context of that. It's not as
8 simple as that. I think I made my evidence perfectly
9 clear. I've went through the transcript. I have laid
10 than on the table, that I think at the beginning,
11 basically, she was asked did she know who had examined
12 it beforehand. In the context of the number of people I
13 had seen she didn't know that so I'm holding that the
14 whole way through. I accept it depends how you look --
15 that's why I've laid it all out, transcript from the top
16 with comment and it's up to other people than me to make
17 that judgment.

18 Q. The ultimate question that was asked of her is that,
19 regardless of the identity, does she know anyone or of
20 anyone who looked at the mark other than Mr Wertheim and
21 she said in response to that question:

22 "I don't know."

23 A. Broadly, what you are saying is correct but that's not
24 word-for-word, as you know. But let's put that by --
25 but let me finish the answer. I've put it in context

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1 before. That was the last question that was asked and
2 in context of what we'd spoken about before and seeing
3 her solicitor that was perfectly adequate. You also
4 know it -- and that disturbed me slightly -- the full
5 text was not released, certainly not by Mr Swann and
6 Mr Findlay's follow up points were never released at
7 all. These points make it quite clear that Mr Findlay
8 was running the show and he was in charge. So in the
9 context of all of that I accept that she made that
10 response to the last question.

11 Q. The transcript of Mr Findlay's re-examination is on the
12 database now. Have you had a chance to see that?

13 A. Yes. I'm not going to go into the detail, all I'm going
14 to say is this: that she did not lie, in the context I
15 put to you, in terms of her health -- let me make the
16 point. She's in the dock; she's a police officer; she's
17 looking at five or six years; her mental health is on
18 record as not being good at all; she's fighting for her
19 life. Yes, sometimes things get said and confused like
20 this. I know that she was not aware of who had examined
21 that print in total and that she was giving honest
22 responses to that. I leave it really to others to
23 either accept that or dismiss it.

24 Q. You have accepted that she is in the dock; she's a
25 police officer; she has sworn to tell the truth. From

1 the transcript it would appear that that final answer
2 requires some explanation at least; would you accept
3 that?

4 MR SMITH: Sir, I wonder if I can interject?

5 THE CHAIRMAN: Yes.

6 MR SMITH: The transcript is there for everyone to see. The
7 evidence of Ms McKie is there for everyone to read and
8 accept, if they want to accept it. You, sir, as you
9 have already pointed out, have limited powers in this
10 matter. We have covered this evidence already and I
11 really have to question why we are covering the same
12 ground.

13 THE CHAIRMAN: I am not sure to what extent Mr McKie's
14 interpretation of what she said is entirely relevant.
15 It will be for others to form their view as to what the
16 proper interpretation of the answer, in light of the
17 information that we know that she had, should be.

18 MR HOLMES: Sir, that was my next and final question, which
19 is whether Mr McKie would accept that the only person
20 who can really explain why she said what she said is
21 Ms McKie.

22 THE CHAIRMAN: Very good.

23 MR HOLMES: Is that something that you would accept,
24 Mr McKie?

25 A. I accept it with all the qualifications that I've given.

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1 If you are instructed by your QC to conduct your defence
2 in a certain manner you follow that on pain of death, on
3 pain of going for gaol for five or six years. I'm not
4 pleading or excusing here. I may as well say just
5 finally with no animosity at all towards yourself but
6 really I have put forward my statement, everything I
7 know about this and, quite bluntly, she's been put on
8 trial once. I hope, Mr Holmes, you're not seeking to
9 put her on trial again and that -- it's a personal
10 comment. Perhaps it's not right but I'm making the
11 comment to you. It's unfair and it's not the way this
12 should be conducted. This is not a criminal inquiry.
13 It's an Inquiry about fingerprints. I'm doing my best
14 to help you. I think I have been extremely open with
15 you. It's all in the statement. I would hope to be
16 able to rest at that.

17 THE CHAIRMAN: I think that concludes your question on that
18 topic?

19 MR HOLMES: Indeed, sir, and I don't intend to ask any
20 further questions.

21 THE CHAIRMAN: Thank you. Mr Macpherson, have you any
22 question or any issue you want leave to ask?

23 MR MACPHERSON: No, I don't thank you, sir.

24 THE CHAIRMAN: Miss Grahame?

25 MISS GRAHAME: No thank you, sir.

1 THE CHAIRMAN: Mr Smith?

2 MR SMITH: Sir, there is just one very short matter of
3 clarification I can deal with in probably one or two
4 questions relating to content of paragraph 157 of his
5 statement. He was asked some questions by Mr Holmes
6 about it and I'd just like be clear what Mr McKie's
7 position actually is. That's the only matter I wish to
8 ask about.

9 THE CHAIRMAN: Yes.

10 MR SMITH: I wonder if we could have paragraph 157 of
11 Mr McKie's Inquiry statement, which is I think FI0181.

12 MR MOYNIHAN: Mr Smith, do you have the page number?

13 MR SMITH: I am sorry, I'm hoping to get there just in one
14 moment.

15 THE CHAIRMAN: It's page 34 in my copy.

16 MR SMITH: Thank you. It is page 34, paragraph number 157
17 if we could have that expanded, please.

18 **Cross-examined by MR SMITH**

19 Q. I would just like to be clear, Mr McKie, the content of
20 this paragraph is as follows that:

21 "What wasn't revealed until the current Inquiry was
22 that some outside agencies had disagreed with SCRO but
23 Harry Bell and/or others had ensured that their comments
24 were suppressed."

25 I take it you meant what is said there, that some

1 outside agencies had disagreed, et cetera?

2 A. Yes.

3 Q. You are not suggesting that all outside agencies,
4 including people like Pat Wertheim, et cetera, were
5 being suppressed?

6 A. No, it's my terminology.

7 Q. As far as that suppression is concerned, you mentioned,
8 I think in passing, the question of Mr Dempster from the
9 Aberdeen Bureau?

10 A. I did, yes.

11 Q. Was there ever an official report prepared by the
12 Aberdeen Bureau, as it were, reflecting the views of the
13 Aberdeen Bureau as a whole on the identification of Y7?

14 A. There was two reports, one on Y7 and one on QI2. These,
15 I think, were actually the most seminal reports I ever
16 received. I think for the first time, although I excuse
17 the Lothian & Borders expert, but the first time that
18 Scottish experts stood up and gave these reports, so the
19 answer is yes.

20 Q. I am interested in the question of whether they were
21 official reports, as it were, representing officially
22 the view of the Aberdeen Bureau?

23 A. My understanding is that, in fact, they had asked their
24 superiors if, in fact, they could complete a report but
25 that, if you like, was refused to them and they had

1 discussions and decided that on a point of principle
2 they believed this was wrong and they felt that they
3 should make these reports. They, however, made checks
4 and balances before they did it and they submitted them,
5 I believe, to the Lord Advocate, to their force and a
6 copy was sent to myself.

7 Q. I think, it was some time ago, but we had some evidence
8 before the Inquiry about Devon & Cornwall Police
9 Authority issuing a view as to the identification of Y7.

10 A. That's correct.

11 Q. Can you recall that Mr Bell's response to that was
12 certainly other than it should be made public, if I put
13 it that way. Do you recall that evidence?

14 A. Indeed I do.

15 Q. I take it that is the kind of thing that you are talking
16 about, about some agencies being suppressed or dissuaded
17 or that kind of thing, is that the type of thing you are
18 referring to?

19 A. Yes. The gossip in this is more interesting because
20 there's so many stories going about about suppression of
21 evidence, from the Metropolitan Police, but I really
22 have tried to confine myself to the facts and certainly
23 that's the fact and that's the suppression that I was
24 speaking about.

25 MR SMITH: Thank you.

1 THE CHAIRMAN: Mr Moynihan?

2 MR MOYNIHAN: I have no further questions, sir, thank you.

3 THE CHAIRMAN: There are just two matters I would like to
4 ask you about.

5 As Mr Moynihan was going through with you today the
6 various hurdles that Lord Johnston referred to, there
7 were many grounds upon which the jury could have decided
8 to acquit your daughter.

9 A. Correct.

10 THE CHAIRMAN: No doubt you were interested, to say the
11 least of it, in the evidence of Mr Wertheim and
12 Mr Grieve. But at the end of that trial, although you
13 may have been absolutely satisfied that it had been
14 proven that it was not your daughter's fingerprint on
15 Y7, others could have legitimately taken the view that
16 there had been a disagreement between experts.

17 A. Absolutely.

18 THE CHAIRMAN: Looking at the reaction of the various
19 authorities at that stage, on one view what had happened
20 was two lots of experts had disagreed. That in itself
21 would not normally be the cause for some steps to be
22 taken by the authorities because frequently in a
23 criminal case the prosecution experts and the defence
24 experts don't agree and if one had enquiries and took
25 steps and so on after that, it would be endless.

1 So would it be fair to say that your expectations
2 might be thought to have been on the basis that you
3 believed, as you do, that it was not your daughter's
4 fingerprint; therefore, they should have taken a number
5 of steps, but it would only be when it is absolutely
6 established that it is not her fingerprint that one
7 could reasonably expect those steps to be taken.

8 A. Yes, I can well understand all of that but I've said
9 before this is the first time that fingerprinting had
10 ever been challenged. I mean, if you had been in court
11 and seen the evidence of Mr Wertheim and Mr Grieve, it
12 was powerful, powerful evidence. Even Mr Findlay in
13 talking to us beforehand on one of the submissions he
14 made he realised this was seminal moment in
15 fingerprinting because, to his knowledge, it was the
16 first time that fingerprinting was going to be
17 challenged.

18 THE CHAIRMAN: Well, that brings me to the point I wanted to
19 ask you. Was it the fact that fingerprint evidence had
20 been challenged that made you feel that the authorities
21 should have been taking more positive steps or was it
22 the fact that you believed that it was not your
23 daughter's fingerprint? I want to be clear whether it
24 is the challenge you think was sufficient to trigger
25 further steps to be taken by the relevant authorities.

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1 A. I'm sure you can imagine, sir, the sheer relief on the
2 verdict. I'll never forget it. I want to put it into
3 that sort of -- I want to put you into that sort of
4 place and that day I'm quite sure, you know, we didn't
5 think of that at all. But afterwards when we began to
6 think about it as ex-police officers you realised that
7 there are many, many unanswered questions happening here
8 and, above all, why had this organisation not had the
9 marks independently examined? I would have thought if
10 fingerprinting was challenged and I accept that the
11 jury, there's lots of reasons, but fingerprinting had
12 been challenged. Why did no-one think of having that
13 independently examined. If I look at the meeting of the
14 23rd, I appreciate, but I looked at that meeting, to me,
15 and I may be wrong, it's just looks like a rush meeting,
16 let's get this finished with, let's get this out the
17 door. All the safety, the checks that I believe should
18 have been done were not done and I think, to some
19 extent, history proves me right on that because whenever
20 it was done -- but I accept, it was an emotional time
21 and I accept that how dare they challenge my daughter
22 would be in the background but I really believe -- I
23 believed -- the shock of this was enormous to me. I
24 believed in the infallibility of fingerprints. I'd bet
25 my life on it for years and all of a sudden they were

1 wrong. So it's a mix of things but I still believed and
2 to this day I believe that the authorities did not deal
3 with this in the proper way, to have a meeting with the
4 fingerprint experts afterwards and thereafter, from that
5 moment on, nothing -- it's the wrong way.

6 THE CHAIRMAN: On the basis that fingerprints had been
7 challenged for the first time in Scotland?

8 A. Yes, and they were refusing to have an independent
9 examination which may have proved them right.

10 THE CHAIRMAN: I see.

11 The other matter is quite different. When you were
12 being asked about the IAI, the committee that
13 investigated it, I believe you said -- and I haven't
14 checked the transcript -- when I asked you about with
15 all the information, your connections on the Internet,
16 and I think you said you had also written a letter?

17 A. I may have.

18 THE CHAIRMAN: If you have a copy of the letter, perhaps you
19 would make that available because this may be an issue,
20 well it is an issue and it is important that I should
21 have all the facts.

22 A. I reflected -- may I go on?

23 THE CHAIRMAN: Yes.

24 A. I've reflected on it. I think possibly it was an e-mail
25 as opposed to -- everything's an email. If I have got

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1 at least from my perspective, goes with other passages
2 that I am reinstating. Subject to discussion of that
3 amongst ourselves, I understand the redactions are
4 capable of agreement and, therefore, do not need to be
5 taken up with you today.

6 THE CHAIRMAN: Do you wish to have some discussion?

7 MR MOYNIHAN: We will have some discussion amongst
8 ourselves, sir, to resolve that.

9 THE CHAIRMAN: Subject to that, there is agreement; is that
10 right?

11 MR MOYNIHAN: Subject to that. I will confirm that
12 amongst --

13 THE CHAIRMAN: Well, how we will leave it is I will rise now
14 and if agreement isn't reached and it is necessary for
15 me to give a ruling, then I will come back and do that.

16 MR MOYNIHAN: Sir, just in case you don't come back, with
17 apologies --

18 THE CHAIRMAN: I will if required.

19 MR MOYNIHAN: No, no, sir. At least I can be redundant, you
20 perhaps are not.

21 In case we do not require to ask you to come back,
22 with apologies to all concerned, you know but it has not
23 been told to members of the public, Mr McKie was the
24 only witness for this week so we will accordingly not
25 have evidence tomorrow. We would be resuming on Tuesday

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1 and then have a full week next week, so I do apologise

2 that we have miscalculated this week.

3 THE CHAIRMAN: So that means no sitting tomorrow --

4 MR MOYNIHAN: No, sir.

5 THE CHAIRMAN: -- and we will return, if required, today.

6 **(Adjourned until 10.00 am, Tuesday 20th October 2009)**

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