

REPORT

BY

REGIONAL PROCURATOR FISCAL  
FOR NORTH STRATHCLYDE

RE

FINGERPRINT EVIDENCE IN THE CASES AGAINST

DAVID ASBURY

and

SHIRLEY MCKIE

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This report addresses the question of whether criminal proceedings should be taken against fingerprint officers employed by the Scottish Criminal Record Office arising out of the mis-identification of fingerprints in the cases against David Asbury and Shirley McKie.

#### APPENDICES

The following documents are attached to this report:

1. Report to HMCIC by Rudrud and Zeelenberg.
2. Report by Kristian Rokkjer and Frank Rasmussen dated 7 August 2000.
3. Report by Pat Wertheim dated 2 April 1999.
4. Report by Pat Wertheim dated 30 March 2000.
5. Report by National Training Centre dated June 2001.
6. Extract from Tayside Police Report.

The four principle suspects are Hugh McPherson, Charles Stewart, Fiona McBride and Anthony McKenna. McPherson and Stewart are principal fingerprint officers, both of whom qualified as fingerprint experts in 1977. McKenna is a senior fingerprint officer who qualified in 1982. McBride is a fingerprint officer who qualified in 1989. These four fingerprint experts are the prime suspects because they are the authors of the fingerprint reports used in the Asbury and McKie cases. In addition, McPherson and Stewart gave evidence at the Asbury trial; and McPherson, Stewart and McBride gave evidence at the McKie trial. When considering the

report, however, it should be borne in mind that there were numerous other fingerprint experts, some from SCRO and others who were independent practitioners, who also wrongly identified the fingerprints in these two cases. Further details are provided later in this report.

### EVIDENCE AGAINST DAVID ASBURY

The body of the deceased, Marion Ross was found on 8 January 1997. An extensive forensic and fingerprint examination of the locus was carried out, and in an effort to eliminate fingerprints found at the locus, all persons who had been in the house were to be traced, interviewed and fingerprint impressions for elimination purposes taken from them.

In 1995, the deceased had extension and conversion work carried out at her home. All the workers who were involved in this building work were interviewed as part of the enquiry and elimination prints taken from them. David Asbury had been employed as an apprentice joiner and had worked on the extension and conversion at the deceased's home. He was interviewed by police officers on 16 January 1997 and a set of elimination prints were taken from him. He was asked at that time if he had been at the deceased's house on 6, 7 or 8 January 1997, and replied that he had not.

During the examination of the locus, a wrapped Christmas gift, bearing a tag was found in the sitting room. Part of the wrapping paper was seen to be torn. It was subsequently found that a fingerprint on the gift tag attached to the gift was that of David Asbury. There was evidence to show that the wrapping paper and gift tag were probably purchased by the deceased on 18 November 1996.

On 13 January 1997, David Asbury's stepfather reported that he had gone missing that day, leaving a note intimating that he had killed himself. On 14 January officers attended at the accused's home and checked his bedroom for any clues as to his whereabouts. Within a cupboard in the bedroom they found a tin which contained approximately £1795. The accused returned home later than day. He was interviewed regarding his disappearance.

On 21 January 1997 the accused's fingerprint was identified on the gift tag. On 22 January officers detained the accused. At interview he denied having been back at the locus after the completion of the building work. During the course of the interview he was asked whether he had murdered Marion Ross. After a long pause the accused replied, "NO SORRY. SORRY ABOUT THAT DELAY THERE. AH WIS THINKING ABOUT THINGS. NAWNAW. AH DIDNAE MURDER HER. NO." The officers then told the accused that his fingerprint had been found at the locus in circumstances which indicated his involvement in the crime. He still denied having been back at the locus and repeatedly insisted that he considered the officers to be lying about the print.

At the conclusion of the interview, David Asbury was charged with the murder of Marion Ross. While being fingerprinted he told officers that he had been in the house since the work but that it was two or three days before the murder. He maintained that his car had broken down and that he had gone to the house to phone his mother. He said that the deceased had let him in and that he had attempted to phone his mother but could get no answer.

After the accused had been taken from his home on the morning of 22 January 1997, his house was thoroughly searched. The tin previously examined by police officers on 14 January was found to be in the same cupboard in the bedroom. At this stage it contained £2240.

Subsequent fingerprint examination of the lid of the tin revealed a fingerprint identified

as that of the deceased. The accused's fingerprints were also found on the lid of the tin and also on the money within the tin.

The money recovered from the tin was made up of bundles of £10 notes with 9 notes laid flat, 10<sup>th</sup> note folded over the 9<sup>th</sup> and then the complete bundle folded in half. According to former colleagues of the deceased, this was a method of bundling money unique in their experience to the deceased.

It will be apparent from the above brief summary of the evidence in the Asbury case, that the finding of the deceased's fingerprint on the tin recovered from the accused's bedroom was possibly the most damning piece of evidence against him.

One of the officers who had initially found the tin was Shirley McKie. During the course of the enquiry, SCRO found a print on the doorframe of the bathroom at the locus. This was the doorway of the room in which the deceased was found. SCRO eliminated that print as having been made by Shirley McKie who continually denied having visited the locus.

The fingerprint evidence relating to the tin was not challenged at Asbury's trial. A defence expert, Malcolm Graham agreed with SCRO's identification of both the deceased's fingerprint on the tin and Shirley McKie's fingerprint on the doorframe. Shirley McKie gave evidence in which she denied having entered the locus. Following Asbury's conviction, Shirley McKie was prosecuted for perjury. At her trial, two defence experts gave evidence to the effect that the fingerprint on the doorframe was not that of Shirley McKie.

## CHRONOLOGY OF EVENTS

### JANUARY 1997 -

- 8 Body of Marion Ross found.
- 9 Shirley McKie seconded to murder enquiry.
- 13 David Asbury reported missing.
- 14 Scenes of crime examination at murder locus revealed a crime scene mark "Y7" on the bathroom door frame.  
Shirley McKie and DS Shields find Marks and Spencer tin in Asbury's bedroom.
- 16 Elimination fingerprints provided by David Asbury.
- 21 SCRO identify Asbury's fingerprints on gift tag from murder locus.
- 22 Marks and Spencer tin recovered from Asbury's home.
- 31 SCRO identify mark "QI2" from the Marks and Spencer tin as that of Marion Ross.

### FEBRUARY 1997 -

- 6 Shirley McKie provides elimination fingerprints.
- 10 SCRO identify mark "Y7" as that of Shirley McKie.
- 11 Mark "Y7" re-photographed and results sent to SCRO - again confirmed as Shirley McKies.
- 18 A further set of elimination prints taken from Shirley McKie.  
Shirley McKie present when mark "Y7" re-photographed. Photographs and new set of elimination prints sent to SCRO - again confirmed as that of Shirley McKie.

### MARCH 1997 -

- 27 Joint report prepared by SCRO in case against David Asbury.

### MAY 1997 -

- 27 McPherson and Stewart give evidence in case against David Asbury.

### JUNE 1997 -

- 4 David Asbury convicted of murder.

### MARCH 1998 -

- 5 Shirley McKie arrested on petition warrant for perjury.

JANUARY 1999 -

28 SCRO joint report submitted in case against Shirley McKie.

MAY 1999 -

4 - 7 Hugh McPherson, Charles Stewart and Fiona McBride give evidence at the trial of Shirley McKie.

15 Shirley McKie acquitted.

AUGUST 2000 -

McPherson, Stewart, McBride and McKenna suspended.

The mark "Y7" from the bathroom door surround was first photographed on 14 January 1997. The scenes of crime officer who took the photographs, lodged the film containing "Y7" at the Identification Branch for process. A number of photographs were produced from the negatives and forwarded to SCRO.

The Marks and Spencer tin was passed to the Identification Branch on 27 January 1997. The tin had been well handled and the examination revealed six areas where there were clusters of marks which could not be separated. These clusters of marks were then labelled. One of the labels being "Q12". The marks were photographed and the film was processed. A number of photographs were then forwarded to SCRO.

IDENTIFICATION OF "Q12" BY SCRO

On 31 January 1997 there is a written record of an identification of "Q12" shown on the rear of a photograph of the cluster of marks. The rear of the photograph bears the following writings:

In red ink at the top of the photograph - "*Deceased's on screen 31/01/97 HMCP/CS/AG/EB*". These initials are believed to be those of Hugh McPherson, Charles Stewart, Alistair Geddes and Edward Bruce.

