

**MEETING BETWEEN SCRO AND CROWN OFFICE
ON THURSDAY, 20 MAY 1999**

ATTENDEES:

Detective Chief Superintendent H Bell	SCRO
Chief Inspector Christopher Griffiths	SCRO Fingerprint Bureau
Mr Robert Mackenzie	SCRO Fingerprint Bureau
Mr Charles Stewart	SCRO Fingerprint Bureau
Mr Hugh MacPherson	SCRO Fingerprint Bureau
Ms Fiona McBride	SCRO Fingerprint Bureau
Mr Sean Murphy	Advocate Depute
Mr Frank Crow	Deputy Crown Agent

APOLOGY

An apology was received from Detective Chief Superintendent George Leitch, who was due to represent Strathclyde Police at the meeting but had been called away on a murder enquiry.

OPENING REMARKS

Mr Bell opened the meeting which would look at how the case of Shirley McKie, which ended at Glasgow High Court on Friday, 14 May 1999, was dealt with and how SCRO and the Crown could learn from the event.

SUMMARY OF CASE BY ADVOCATE DEPUTE AND GENERAL DISCUSSION

Mr Murphy pointed out that no change in the law would be required and that the stated case of 'Robert Hamilton', 1933 still stood. Nothing affected the legal framework.

He noted that comments had already been made regarding future challenges to fingerprint cases. His opinion was that it was unlikely that this case would cause serious damage to fingerprint evidence and that the case was a one-off, containing circumstances which were unlikely to be repeated.

In respect of this case difficulties existed prior to the presentation of fingerprint evidence relating to surrounding matters, access to a secure locus and the need to prove that two people were lying.

Constable McKie could have been at the locus.

The Scene of Crime Officers' evidence, which initially was thought would show that the print had been put on between the first examination using aluminium powder and the second, using black powder, resulted in a statement that the print could have been on before the aluminium powder examination as the deceased's prints had been similarly developed after the second examination.

There was no criticism of the co-operation and assistance of SCRO.

The late arrival of the Defence Fingerprint Evidence had been a major problem but Mr Murphy was apprised of the Defence Evidence by Mr Finlay prior to the precognition of Charles Stewart and Hugh MacPherson.

Mr Stewart presented a half day tutorial on fingerprints to the jury and was able to go through both the Crown and Defence material.

Mr Wertheim's background was checked by Mr Murphy's American assistant. Mr Wertheim's credibility was much less than suggested, whereas Mr Grieve was more experienced, having worked in one of the largest bureaux in the USA.

The Defence Case adopted a broadly similar approach to giving of fingerprint evidence to that of the prosecution but American experts are more used to challenge and expect such.

Disagreement between experts made a difficult starting point for a jury. When experts disagree the case is immediate heading for a 'Not Proven' verdict as when experts appear to have a different view how can the jury expect to understand. The jury's understanding of what was being said was problematic.

The projection facility used in the court was an area which highlighted that the SCRO material (16 point illustrations) was not as good as the medium used by the Defence. It was suggested that in disputed cases photographs would be a better option.

Interpretation centred on the upper two-thirds of the fingerprint detail. The American experts were able to point out detail in a clear cut notion, whereas the SCRO experts were less clear in explaining area of distortion.

SCRO was invited to indicate to the Home Depute any areas which Mr Murphy could have brought out better.

Eighteen ridge characteristics were put to the Jury by proescution experts using three different illustrations. A major problem in terms of the fingerprint analysis was the inability to explain the distorted area.

Mr Murphy confirmed that an independent fingerprint expert, PETER SWANN, had looked at the evidence and had agreed with the findings of the SCRO experts

Mr Murphy had made contact with Mr Swann, who confirmed that his findings were similar to SCRO's but he was unable to trace another two independent experts who had reportedly reached similar findings. This additional evidence was only noted after the trial had commenced and, therefore, it was not possible to introduce an additional witness at such a late stage.

Mr Murphy had put it to Miss McKie that she knew of other experts having examined the print but she denied this. Therefore, an attempt to bring in Mr Swann through other means also proved impossible. Mr Murphy added that he now believes that McKie did not have such knowledge.

Disputed cases should, in future, be looked at in more detail in relation to areas of prints.

Replication rules apply to the recalling of witnesses or introducing new witnesses. Essential points of the defence case were broadly put to SCRO experts by the Defence during cross-examination of the prosecution evidence. However there was nothing new following the defence evidence, which would allow the prosecution to recall witnesses. There must be something new or unforeseen.

Mr Bell suggested that in future cases experts could ask the Court to be given time to re-examine areas of contention.

A previous case where Constable McKie had left her palmprint on a bag containing the body of a baby was subject to a legal debate which was lost. The judge excluded it, ruling that it was one-step removed. It would have provided a motive for the officer who was ambitious and on a trial run for a CID attachment.

Scene of Crime Officers had, in addition, explained that at that time it had been found that officers' prints were coming through thin gloves. Thereafter the policy was adopted to 'double glove'. McKie had apparently been a Production Officer at the time.

The way Constable McKie was treated after arrest came across very badly to the Jury.

Miss McBride asked, "Would everything have gone to plan if SCRO experts could have explained better?"

Mr Murphy explained that there were problems with:

- 1 Access to house
- 2 Development of scene of crime marks
- 3 Competing Experts:
 - Prosecution and Defence

He added that it was an uphill battle before the fingerprint evidence was begun.

Mr Stewart asked if two or three days to study and thereafter explain the Defence Evidence would have helped.

Mr Murphy said an adjournment could have been sought and in hindsight it was agreed by those present that this should be considered in future cases where defence evidence is introduced at such a late stage.

The original productions of SCRO were superior to those of Mr Wertheim in which the mark was apparently damaged. In future it would be wise to ask for forty-eight hours to look at productions which are produced at a late stage. The rules relating to when defence productions are lodged tend to be more lax in the High Court in the interest of fairness and to avoid inevitable appeal cases.

Miss McBride asked "Did fingerprints lose the case?" Mr Murphy's reply was, "No, there were other difficulties with the case" and added that the Defence made a good case in suggesting doubt.

It was the generally accepted position (acknowledged by the American experts) that Crime Scene marks are never perfect.

Mr Griffiths asked if Courts are now allowing more open style presentations/debates. Mr Murphy said that he did not think that there was an Americanisation of the courts and he hated to think that they should get to ludicrous levels. Fingerprint evidence was taken in the conventional way and went a bit further.

Mr Griffiths asked what advice should be given to expert witnesses who feel that an element of evidence has not been covered in the court. Mr Murphy explained that where experts want to cover certain areas they should do background preparation and discuss beforehand.

Mr Crow stated there was a requirement for tightly structured questions which focus on specific issues and it was accepted by those present that there were risks involved of introducing something that witnesses were not led on. He thought that a different style of presentation will have to be looked at for contested cases of this kind.

Mr Mackenzie explained how the introduction of a non-numeric fingerprint standard would unshackle fingerprint experts and allow them to freely give their opinion when they were satisfied with identifications. It is hoped to introduce such changes by April 2000.

Mr Murphy summing up highlighted

- The Jury System
- Non-Fingerprint difficulties
- Newspaper Reports
- One challenge does not mean other cases should be challenged. Each case should be explained on its own merit

Mr Crow noted the long term credibility of the SCRO witnesses. Mr Bell added that SCRO require policy direction for those going to court and stressed the integrity of the SCRO experts and that the fingerprint system was sound.

Mr Griffiths commented on the less than complimentary remarks attributed to the American witness Grieve, relating to personnel from the National Training School at Durham.

Mr Crow advised that in future fingerprint cases, where problems are envisaged, discussions should take place at an early stage.

Mr Bell said that any press response would be as per that issued by Strathclyde Police. Mr Crow said that the Crown would not be putting out a statement.

In response to a question by Mr MacPherson on what effect this is likely to have on the Asbury case, Mr Murphy considered there were no ramifications in relation to that case.

Mr Crow would be reporting back to the Crown that there had been discussions with SCRO and that there were no problems with the integrity of the system. He will also circulate a note to Procurators Fiscal.

MAIN LEARNING POINTS: (PFs to be circulated)

Visits to SCRO by Advocates would be of value

Presentation of evidence needs to be considered with a view to giving clearer cut explanations to the jury, especially in relation to areas of distortion, etc.

Generic Fingerprint material would be examined to allow for a more professional presentation in high profile cases.

Guidance would be given to fingerprint experts on how to respond to this case at future trials and to ask for time to examine fresh material.

Crown would highlight need to monitor late submissions of material by defence in order to allow for adequate examination of such evidence.

Pre-trial indicators should be noted to allow adequate preparation in advance of the trial.