

ANALYSIS OF THE EVIDENCE

The witnesses in this case are all basically credible. In general, they are police officers and legal persons associated with the court proceedings. Problems arise with the reliability we normally expect from the police evidence in particular in relation to the actual sequence of events. Obviously, none of the officers involved in the murder enquiry expected this case would arise from the investigation of the death of Marion Ross. The officers correctly concentrated their efforts on finding the murderer and did not especially note the actions of their colleagues in particular Shirley Cardwell.

To this extent, the evidence given by the police witnesses in connection with events between 8 and 14 January 1997 will inevitably be of the standard provided by civilian witnesses in similar circumstances. It cannot be of the usual standard expected of police officers. The deficiencies in the standard of evidence should not have any material bearing on the proof of the case.

The Book of Regulations states that "The crime of perjury is a serious matter since it is a deliberate attack on the basic foundations of the legal system". This is clearly the case with Shirley Cardwell. She has called into question the reliability and infallibility of fingerprint evidence. Shirley Cardwell has denied on oath that she entered the house of Marion Ross and that she left a print on the bathroom door surround. Shirley Cardwell did not suggest during her evidence that the print had been planted. She did, however, leave the matter open by saying that she was not an expert.

Chief Inspector Hogg (witness) has provided a number of articles regarding planted and manufactured fingerprints. Neither he nor any of the other police or SCRO fingerprint witnesses suggest that there was anything suspect about the print 'Y7'. The independent SCRO witnesses Charles Stewart and Hugh McPherson have no concerns about the propriety of the impression. The fingerprint impression has been repeatedly photographed and compared with two separate fingerprint forms provided by Shirley Cardwell. There is no doubt that the comparison shows her prints and the impression to be identical. A number of/

of theories have been suggested at various times during the investigation of Shirley Cardwell's position prior to the trial of David Asbury. None of these possibilities has stood up to scrutiny. Reference is made to the report compiled by Detective Superintendent Malcolm dated 1 April 1997 in response to a request made to him by the Procurator Fiscal.

He has indicated Shirley Cardwell's position changed from the time that her fingerprint on the door frame was first detected and brought to her attention. Initially, she simply denied that it could possibly be her print. Later, she went on to espouse an impossible conspiracy theory. DC Cardwell appears to accept that the fingerprint was hers but claimed it had been planted by mistake when an attempt was made to plant Asbury's fingerprint, her print having been removed from the tin (LABEL NO 74). This is rebutted by the chronology. On 14 January 1997, the tin (LABEL NO 74) was seen in Asbury's home in Kilbirnie by Shirley Cardwell and DS William Shields. The tin was not seized as a production at that time and was left in situ.

On the same day, i.e. 14 January 1997, the print 'Y7' was discovered on the bathroom door frame at 43 Irvine Road, Kilmarnock and photographed. It was not a lifted impression.

On 16 January 1997, elimination prints were obtained from Asbury. It was not until 22 January 1997 that the tin (LABEL NO 74) was recovered and thereafter subjected to fingerprint examination.

In a note prepared by John F McMenemy, Senior Depute, in the original precognition in the case of David Asbury, it states "In order to hold any water at all, the conspiracy theory namely that someone abstracted a print from the tin in order to implicate Asbury (but mistakenly "lifted" Cardwell's print in error) and placed it on the door frame in time for it to be photographed on 14 January, could only work if Cardwell and Shields were themselves the conspirators and even then such would need the collusion of the three scenes of crime operators who were at the murder scene all day on 14 January 1997. In particular, the log shows that the scenes of crime men were working continuously/

continuously at the murder locus from 2 pm to 6.30 pm. Moreover, Cardwell and Shields did not come across the tin (LABEL NO 74) at Asbury's house in Kilbirnie until after 3.30 pm that day. Additionally, working on the basis that it is hypothetically impossible to "lift" a print and "place" it elsewhere this would inevitably mean the dusting of the tin with the powder etc and this simply did not happen because their handling of the tin was done in full view of Asbury's stepfather".

DC Cardwell also theorised that wood thrown out during work at her father's house may have had her fingerprint on it. She stated that the wood may have been recovered from a skip and used to refurbish the door frame of the bathroom at the locus. This was considered by Mr Keith Eynon, Forensic Scientist, who carried out an examination of the door frame and wood and paint within the house at the locus. He has discounted this theory as a possibility as comparison showed that the structures of the door frames in the remainder of the hallway appeared to be of similar construction, size and age as the door surround (LABEL NO 102).

Shirley Cardwell was later precognosed by John McMenemy, Senior Depute, on Crown Counsel's instructions. She categorically rejected any suggestion that she gained unauthorised entry to the house during the murder enquiry. At precognition, she appeared to accept that the print detected on the door frame was hers but could not explain how it got there. Her position altered at the trial. When Shirley Cardwell was asked by the Advocate Depute if she accepted that the fingerprint found on the bathroom door was hers. She replied "No". She was again asked if she disputed that the print that was found on the door was hers and she said "Yes". She indicated that she had no explanation as to how the print had been put there.

Shirley Cardwell has not provided an explanation for the presence of her print within the house of Marion Ross. Given the reliability and status of fingerprint evidence, the only conclusion to be drawn is that she has told lies on oath.

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One matter which causes concern arises from the articles provided on faked and manufactured fingerprints (APPENDIX I). No doubt, Shirley Cardwell will draw attention to the fact that while her prints had been provided presumably at the time of recruitment and were available for comparison in 1993 when she was identified as having prints on the bag which had previously contained a baby in the case against Vincent McBride. When Shirley Cardwell's prints were required for comparison purposes in the investigation of the murder of Marion Ross, the card which had previously been available at SCRO fingerprints was lost. There is no doubt that Shirley Cardwell will make a great deal of this.

While SCRO (fingerprints) are independent from Strathclyde Police and have compared the fingerprint forms provided and the impression 'Y7' found in the house of Marion Ross, Crown Counsel may wish to consider whether or not an expert previously unconnected with the case should make a further comparison.

In relation to the articles which Chief Inspector Hogg has provided relating to transplanted and faked fingerprints, Crown Counsel are asked whether an expert in this field should be instructed. Chief Inspector Hogg does not consider himself an expert in transplanted and faked fingerprints. The name Dr Terry Kent of the Home Office at Sandwich has been mentioned as a possible expert.

The precognoscer is aware that the police are extremely concerned that should the case against Shirley Cardwell proceed to a trial that a jury may not fully understand the complexities of the case and the infallible nature of fingerprint evidence. They are concerned that Shirley Cardwell will present well in court and the jury will feel sympathetic towards her. Fiona Davies, Crown junior, stated that when Shirley Cardwell gave her evidence in court "it was the best lying I have ever seen". Clearly, a not guilty or a not proven verdict would have catastrophic implications for any future case which relies on fingerprint evidence. The defence will always hark back to this case involving Shirley Cardwell. Again, reference is made to the article entitled "Case of the Faked Fingerprint" contained with APPENDIX I. Crown Counsel's attention is drawn to the last paragraph on page 3 of the article.

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The precognoscer is also aware that the police have for reasons of their own withheld disciplinary proceedings involving DC Cardwell until Crown Counsel have made a decision in relation to this case.

They are concerned that Shirley Cardwell may complain about prejudice following on a delay. There is, however, an Appeal outstanding by David Asbury and accordingly, the documentary productions and label productions are not free for use in any case against Shirley Cardwell. No date has been allocated for the Appeal as yet. It is strongly recommended at this time that Shirley Cardwell should not be placed on Petition until the Appeal is completed. Crown Counsel will be aware that appeals are notoriously slow to conclude. If Shirley Cardwell were placed on Petition at an early stage then the time bar clock would tick away whilst the appeal procedure continued.

The alternative solution which would avoid a further delay would be to make an application to the judge of the court in which the conviction took place (Lord Dawson) in terms of the Criminal Procedure (Scotland) Act 1995, Section 106(6) and to request him to grant an order authorising release of the documents and productions required in this current matter.

If such an application were successful the Shirley Cardwell could be placed on Petition at an early date, if Crown Counsel so instruct.

Crown Counsel will see that the original numbers for productions and label productions have been retained in this case at the present time but productions can be re-numbered at a later date if required. Obviously, at present, the productions are not free for use and cannot be re-numbered.

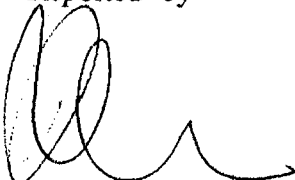
CONCLUSIONS/

CONCLUSIONS AND RECOMMENDATIONS

There is clearly a sufficiency of evidence in this case to proceed on a charge of perjury against Shirley Cardwell. Clearly, fingerprint evidence was crucial in the case against David Asbury. Shirley Cardwell's position in her evidence cast doubt on the reliability of fingerprint evidence and indeed, the whole conduct of the murder enquiry. Her evidence which was given on oath was therefore clearly material and pertinent to the matter in issue at the trial of David Asbury.

Crown Counsel's attention is again drawn to the concerns which the police have voiced in connection with this prosecution. These concerns are a matter for Crown Counsel to consider. Crown Counsel's instructions are requested.

Reported by



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