

DCA PA (G Leslie/G Sandison)

From: DCA PA (G Leslie/G Sandison)
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To: Gibbons, Jeff
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Subject: SHIRLEY MCKIE CASE



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Gillian Sandison
PA to DCA

LORD ADVOCATE

Copy to: Chief Executive
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SHIRLEY MCKIE CASE

ISSUE FOR CONSIDERATION

Crown Office's response to the results of the internal disciplinary inquiry into the conduct of the four fingerprint officers who allegedly misidentified the fingerprints in the Shirley McKie and David Asbury case.

BACKGROUND

1 Criminal Investigation

In June 2000 the Deputy Chief Constable of Tayside Police was appointed to make enquiry into the fingerprint identification by SCRO in the murder of Marion Ross in Kilmarnock in January 1997. In May 1997 David Asbury was convicted of this murder. This appeal against conviction is still pending.

An important feature of the murder inquiry and trial of David Asbury was a fingerprint found within the house of Marion Ross which has been identified by SCRO Fingerprint Bureau as that of Shirley McKie, Detective Constable involved in the murder inquiry. McKie strenuously denied the fingerprint was hers. This allegation was an issue in the Asbury murder trial and following Asbury's conviction Shirley McKie was charged with perjury. In May 1999, after trial at Glasgow High Court she was found not guilty. At the trial the defence led evidence to the effect that the relevant fingerprint identified as that of Shirley McKie was not hers.

In light of growing concerns, ACPOS discussed the matter with Mr William Taylor, HMCIC for Scotland who was due to conduct a thematic inspection of SCRO in 2000. Mr Taylor agreed to accelerate an inspection of the Fingerprint Bureau of SCRO. He instructed fingerprint experts from Norway and the Netherlands to examine the relevant fingerprints in the Shirley McKie case. Their conclusion was that the fingerprint identification by SCRO was wrong and that the fingerprint was not that of Shirley McKie. The Deputy Chief Constable of Tayside Police was then appointed to conduct an investigation into the fingerprint evidence.

On 6 July 2000 the Lord Advocate instructed the Regional Procurator Fiscal at Paisley to deal with all criminal allegations in respect of the McKie case. At the same time, the Crown Office instructed fingerprint experts from Denmark to examine the other fingerprint

evidence in the Asbury case. In particular, a fingerprint of the deceased had been identified on a tin found in the bedroom of David Asbury. The Danish experts concluded that SCRO fingerprint experts had made a wrong identification. Accordingly, the Regional Procurator Fiscal's investigation into the fingerprint evidence in the Shirley McKie case was expanded to encompass the fingerprint evidence in the David Asbury case.

On 20 October 2000 a report was submitted to the Regional Procurator Fiscal at Paisley by the Deputy Chief Constable of Tayside Police. The Regional Procurator Fiscal then instructed a further analysis of all the fingerprint evidence by experts from the National Training Centre at Durham. Those experts agreed with the experts instructed by HMCIC and by Crown Office that there had been a misidentification in relation to both fingerprints.

The Regional Procurator Fiscal's report into these matters was considered by Crown Counsel who concluded that no criminal proceedings should be taken against the officers of SCRO as they were not satisfied that there was sufficient admissible evidence that the officers had committed perjury. The experts instructed by HMCIC and the RPF had concluded that these were 'bad' misidentifications. Nevertheless, there were other experts, originally instructed by the defence, who still agreed with the SCRO officers. Following the decision to take no proceedings, the DCA met with Shirley McKie, her father and Mike Russell MSP on 7 December 2001. At that meeting the DCA explained that the Crown would not be making any public comment on the evidence.

2 HMCIC Inspection of Fingerprint Bureau

Prior to the criminal investigation into the fingerprint evidence, HMCIC had reported on his formal inspection of SCRO. The issues HMCIC addressed included the training, skills and quality assurance process of the Fingerprint Bureau. HMCIC had concluded that his concerns regarding the functioning of the SCRO Fingerprint Bureau were such that he would be unable to endorse the organisation as being efficient and effective.

In response to this report, ACPOS set up a Review Group to implement HMCIC's recommendations. HMCIC subsequently completed his inspection of the Fingerprint Bureau. He was satisfied with the steps taken by SCRO to improve quality assurance.

In the period between the first HMCIC report and the final report, the Lord Advocate had instructed Procurators Fiscal that independent verification of SCRO fingerprint identification was required. In August 2001 in light of the changes and improvements made to SCRO procedures, the Lord Advocate instructed that such verification was no longer required. During the period when independent verification was sought, over 1,700 cases were examined and in each instance the quality and accuracy of the work of SCRO officers was confirmed. The Crown Office was not aware of any successful challenge to fingerprint evidence in Scotland over the preceding year.

3 Disciplinary Action

Following the decision not to take criminal proceedings, the Strathclyde Police Board, which employed the four experts, asked an expert in employment law to consider whether disciplinary proceedings should be taken against any of the four officers. The results of that independent investigation were submitted to an independent Panel established by the Police Board. The Panel issued its decision on 19 March. Their conclusion was that there were no "matters of misconduct or lack of capability" and that the officers should therefore be reinstated.

DISCUSSION

The issue which now arises for the Crown is what attitude we should take to evidence submitted to Procurators Fiscal by any of the four officers. The conclusion of the experts instructed by the Crown was that the four officers had made a misidentification in the McKie and Asbury cases. Following my own investigation into the matter my conclusion was that there remained a possibility that their identifications were correct but that the poor state of the fingerprint marks was such that they were never entitled to say that they could identify sixteen features in agreement.

There would appear to be two options for the Crown. The first would be to inform SCRO that we are not prepared to accept evidence from these officers. Justification for such a stance would be that (1) irrespective of whether or not the experts made a misidentification, the defence in other cases would be bound to make mischief by questioning the experts about their involvement in the McKie case, and/or (2) that the Crown was satisfied that these experts had made a serious mistake in the McKie/Asbury case and that we could no longer rely on their evidence.

The alternative approach would be to accept reports from these experts but adopt a policy of not calling them to give evidence. In summary cases the Crown will normally serve the report and not call either of the experts to give evidence. In solemn cases the Crown's practice is to cite only one of the three experts signing the report. SCRO have informally indicated that the four experts will not work with each other again and therefore any report submitted to a Procurator Fiscal would be signed by three experts only one of whom would have been involved in the McKie/Asbury case.

If the defence challenge the Section 280 notice served on the accused, thus requiring the Crown to call two experts to give evidence, we could require SCRO to obtain independent verification of the evidence at that stage or simply call the other two experts.

RECOMMENDATION

My own preference would be to adopt the alternative approach whereby we would still accept reports signed by these officers. I have asked SCRO if we can see the report submitted to the independent Panel. A final decision can await sight of that report. I would then propose to have a meeting with Chief Superintendent Bell of SCRO to discuss this

matter. On the assumption that the report does not significantly alter our understanding of the position and to assist me in my discussions with Mr Bell, it would be of assistance if I could have an indication of the Lord Advocate's likely position in relation to using these officers to give evidence in criminal cases on behalf of the Crown.

For the present, I have provided Howard Hart with the following line to take:

The Crown Office has only just become aware of the outcome of the independent investigation. A meeting will now be arranged between Crown Office and SCRO to consider whether the report has any implications for the Crown Office.

Until that meeting it would not be appropriate to discuss the matter. It is understood that there is legal action being taken by Ms McKie against Scottish Ministers.

W A Gilchrist

~~28~~ March 2002

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