

THE FINGERPRINT INQUIRY SCOTLAND
WITNESS STATEMENT OF IAIN ARTHUR JAMES MCKIE

Part 1

(i) PERSONAL DETAILS

1. My name is Iain Arthur James McKie. I am 70 years old. I was formally a superintendent with Strathclyde Police and retired in 1992. Since then I have been self employed as a counsellor.

(ii) BACKGROUND TO GIVING THIS STATEMENT

2. At the time of giving this statement certain persons have been designated as 'Core Participants' under the Inquiries (Scotland) Rules 2007. It is envisaged that this statement may be disclosed in advance of public hearings to such Core Participants. Such disclosure is to be on a confidential basis and each Core Participant is to give a written confidentiality undertaking prior to disclosure.
3. I give this statement on condition that prior to disclosure to any Core Participant that such Core Participant
 - a) Has given a written confidentiality undertaking or
 - b) Has been subject to an order by The Chairman of the Inquiry, the Right Hon. Sir Anthony Campbell, requiring such core participant to keep the contents of this statement confidential.

(iii) OPENING STATEMENT

4. In opening this statement I would like to pay tribute to the memory of Marion Ross the innocent victim of an unspeakable crime. I believe that I owe her a duty to ensure that as far as is humanly possible that my evidence to this Inquiry assists in ascertaining the truth behind the issues under examination.
5. I would also like to highlight that while Ms Ross was the primary victim in this whole affair other have suffered because of a failure of our justice system to resolve the issues before this Inquiry.

6. From a personal point of view the pain and suffering caused to my daughter Shirley and the psychological and emotional trauma she suffered is a matter of deep regret to myself and my family

Redacted

8. Over the years since then the continual failures of the justice system in Scotland to resolve the issues under review at this Inquiry have only served to add to that trauma.

Redacted

10. I would also acknowledge the debt of gratitude we owe to the hundreds of experts across the world that have supported Shirley over the years and proved that the science of fingerprinting still retains a premier place among our crime prevention and detection tools and is underpinned by honesty and integrity.
11. It is also proper to remember that these years have been very difficult for the friends and families of the SCRO experts and their supporters who share none of the blame for what has happened over the past 13 years.
12. I still retain the hope that a spirit of truth and reconciliation will imbue our deliberations and that when the Inquiry has finally reached its conclusions that all parties to it can accept the findings and move on in their lives.

(iv) INTRODUCTION

13. Because of the length and complexity of my statement and Inquiry deadlines for its presentation I have divided it into two parts.

- a) **PART 1:** I will address the questions posed at 'Annex A' to the Inquiry Letter of 24 August 2009.
- b) **PART 2:** I will address issues that I wish to bring to the Inquiry's attention.

PART 1

(v) PREPARATION FOR HMA V MCKIE

- 14. Three experts in total were instructed by Solicitors Levy and McRae on behalf of Shirley viz. Peter Swann, Pat Wertheim and David Grieve

Peter Swann

- 15. After Shirley's 1998 arrest and in the lead up to her April 1999 trial I made extensive enquiries at home and abroad to try and trace qualified experts who would be able to ascertain if print Y7 had been forged or transplanted in the murder house.
- 16. As part of these enquiries Peter Swann was recommended to me and I arranged through solicitors Levy and McRae for Shirley and myself to meet him in his office at 17 Barstow Square, Wakefield, Yorkshire in May, 1998.
- 17. At this meeting we had a full discussion with Mr Swann re his qualifications and the work we wished him to carry out.
- 18. We explained that while Shirley's print had been identified by SCRO experts within the murder house she denied having ever entered the house. We requested that he consider acting as her defence expert and carry out an examination of the productions to ascertain if the print Y7 had been forged or transplanted at the scene.
- 19. He agreed to carry out the necessary work and on my return to Scotland I informed lawyers Levy and McRae that Shirley was willing to have Mr Swann act for her.

20. I have no personal direct knowledge of the ongoing negotiations and contact between the parties other than access to copies of related correspondence (DB_0671-DB_0706) Statement of Iain Arthur James McKie: Appendix B.
21. Mr Swann in a submission to the Justice 1 Enquiry also attached correspondence documenting his contacts with Levy and McRae.
<http://www.scottish.parliament.uk/business/committees/justice1/papers-06/PeterSwannforweb.pdf>
22. Mr Swann was appointed as a defence expert on 22 May 1998 by Peter Watson of Levy and McRae. Following a delay in gaining access to the relevant productions he eventually made his examination on 2 March 1999 at Glasgow Sheriff Court accompanied by solicitor Angela McCracken.
23. Later the same day he confirmed to Donald Findlay that in his opinion the fingerprint Y7 had been correctly identified by the SCRO experts as belonging to Shirley.
24. At a meeting with Mr Findlay and the legal team on the 5th March 1999 this information was passed to Shirley and me. On 7 March I submitted a paper to Levy and McRae entitled, '*Some Questions to be Answered by the Fingerprint Experts*' in which I posed a series of questions to be answered by Mr Swann and any other experts involved in production examinations.
25. Mr Swann thereafter submitted two reports dated 16 March 1999, the first related to his original examination on 2 March and the second as a response to my paper.
26. Copies can be found on the Justice 1 Enquiry website;
<http://www.scottish.parliament.uk/business/committees/justice1/papers-06/PeterSwannforweb.pdf> (Pages 30 to 48 inclusive)

Pat Wertheim

27. I made the initial contact with Mr Wertheim by telephone on the 23 December 1998 and explained the background to Shirley's case. I informed him that we

had found his name on the internet as an expert in forgery and transplanting and that we wished him to come to Scotland and view the productions.

28. The same day I wrote to Levy and McRae giving them his phone and fax numbers and asking them to make contact with a view to employing him to make an examination of all the productions.
29. On 17 February 1999 I telephoned the solicitors and they informed me that they had not been able to contact Pat Wertheim. I immediately telephoned him and after a discussion he said he would be in Scotland in March and offered to take up the case.
30. The following day I wrote to Levy and McRae highlighting Mr Wertheim's importance:

'Shirley and I feel that expert opinion on the forgery and fabrication of fingerprints is vital to her defence and Pat Wertheim is potentially an essential witness.'
31. On or about the 9th March 1999 I received a letter from Mr Wertheim confirming his willingness to review the evidence and I immediately passed it onto Levy and McRae.
32. Mr Wertheim travelled to Scotland on 24 March 1999 and carried out his examination of the documentation and productions relevant to print 'Y7'. Shirley met with Mr Wertheim to allow him to take a large number of her fingerprints for examination purposes. A lawyer was present at this time and no conversation was allowed between them. This was the only contact Shirley had with this expert until after her acquittal.
33. On 26 March Mr Wertheim continued his examination and on completion advised Levy and McRae that print was not Shirley McKie's.
34. He confirmed this conclusion in a report dated 2nd April 1999 and in an additional report of 12 April submitted at the request of Levy and McRae.

35. Mr Wertheim's statement to the Inquiry, (FI_0118) Inquiry Statement of Pat A. Wertheim, contains information on these reports and on his meetings with Shirley and his work on behalf of Levy and McRae.

David Grieve

36. Although aware that Levy and McRae had instructed American expert David Grieve for the defence I am not aware of the details of these instructions.
37. Neither Shirley nor I met Mr Grieve until after he had given his evidence at Shirley's trial.
38. The relevant documents that passed between myself and Levy and McRae in respect of Mr Swann, Mr Wertheim and other experts contacted by me are attached at (DB_0671-DB_0706) Statement of Iain Arthur James McKie: Appendix B.

(vi) EXTENT OF SHIRLEY MCKIE'S CONTACT WITH EXPERTS

39. From shortly after the accusations were made against her in February 1997 and because of Shirley's failing health I had been mandated to act on her behalf in all aspects of the case and little of what I was working at to further her cause was known to her.
40. From her arrest in March 1998 until after her unanimous acquittal on 14 May 1999 her psychological and emotional health was particularly poor and was a source of great concern for myself and my wife and family. Redacted
Redacted
41. Her fragile health inhibited Shirley's ability to participate in the preparation of her defence to a great degree.
42. Over the whole period virtually all communication with the lawyers and experts was carried out by me on Shirley's behalf and over this time I prepared a number of letters for Shirley's signature. At no time did she read them and she took no part in their preparation other than when I was checking facts with her. Occasionally Mr Findlay would request to see Shirley on her own and specifically in early April 1999 when he informed her of the result of

Pat Wertheim's examination. Even at these times she was accompanied by me or her mother to and from the meetings.

43. From the beginning of 1998 until her trial despite her health Shirley wanted to be kept informed of progress towards finding an expert who would act for her defence but in this I had to be extremely selective in what I told her as the slightest set back or even the appearance of a setback threw her back into anxiety and depression.
44. One of my most pressing tasks was to trace fingerprint experts who could help us in disproving the claim that she had been in the murder house. In particular I hid from her the fact that I was having some difficulty in tracing a suitable expert who was willing to undertake the work.
45. It has to be remembered that at this time we were not claiming that the SCRO experts were wrong in identifying the print as Shirley's because our previous police training had lulled us into accepting that such experts were infallible and as 'scientists' displayed honesty and integrity. The various double-checks we believed had been carried out only strengthened our conviction that while the print was hers something must have gone seriously wrong. Our sole focus was on the belief that the print although hers must have been forged or placed in the murder house accidentally or transplanted there by persons unknown - probably by other than the experts.
46. Without sharing any details with Shirley I set about tracing experts and between January 1998 and March of 1999 I made contact with a number at home and abroad. One of the first experts consulted, David Johnston of Currie in Midlothian, had previously been employed by Lothian and Borders Police and from him I moved on to consult various experts in England by telephone.
47. In December 1998 and January 1999 I and lawyers Levy and McRae were in communication with, among others, Ray Broadstock and Ken Luff, highly respected English experts, but they were for varying reasons unable to help.

48. I also made contact with experts like Professor Pierre Margot of the University of Lausanne in Switzerland who was recommended as an expert in forgery.
49. In January 1998 I also wrote to London Civil Rights Lawyer Gareth Pierce who I believed had previous experience of fabricated fingerprints.
50. Although none of them was able to assist directly it was during these various conversations that the name of Peter Swann, an ex West Yorkshire Constabulary expert was suggested as a potential defence expert and I passed his name to Levy and McRae.
51. As I have referred to above I eventually made contact with Mr Swann via Levy and McRae and arranged to meet him in his Wakefield office in early May 1998.
52. As I have already explained because of her fragile psychological and emotional state I had been limiting the information I passed onto Shirley about my expert search to general reassurance but when I identified Mr Swann I asked her if she would like to meet him with me.
53. I felt this might encourage her at a difficult time and as Mr Swann stayed only a few miles from my brother in Huddersfield we decided to combine the Swann visit with a couple of days holiday with my brother.
54. Again as referred to above the meeting took place in early May 1998 and following a comprehensive discussion with Mr Swann he agreed to act for Shirley and carry out an examination of the SCRO productions to ascertain if the print Y7 had been forged or transplanted at the scene.
55. The detailed contact and further instruction was left to Levy and McRae but because of delays Mr Swann did not examine the productions until March of 1999.
56. Neither Shirley nor I had any further contact with Mr Swann although in March 1999 Shirley was informed that he had agreed with the SCRO findings.

57. The only other expert she had contact with was Pat Wertheim and I have outlined the extent of that contact above.

Contact with Mr. Swann.

58. In my Operation Alba statement , (CO_4430) Statement of Iain A J McKie - MacKay Report No: S2A, given in 2000 I explained the only direct contact myself and Shirley had with Mr Swann.

'For some months I had been looking at the possibility of contacting and independent fingerprint expert to establish if the 'mark' found had been forged or otherwise fabricated. I was given the name of Peter Swann (Witness 32) and Shirley and I travelled to Wakefield to see him. He agreed to examine the 'mark' for forgery etc., and I passed his name to Ms Angela McCracken. (Witness 33)'

59. This was the one and only contact Shirley or myself had with Mr Swann.
60. This statement at paragraphs 15 to 26 above outlines this contact in more detail.

Meetings with Donald Findlay QC discussing expert evidence

61. I have searched my records and little documentary information on the dates and contents of meetings with Donald Findlay exists.
62. I have however attached correspondence outlining the activity of Shirley's lawyers Levy and McRae over the period 22 May 1998 until her trial in April 1999 in relation to expert witnesses and other matters. There are references in these documents to discussions with both her senior counsels Herbert Kerrigan and Donald Findlay. See (DB_0671-DB_0706) Statement of Iain Arthur James McKie: Appendix B.
63. Mr Findlay was instructed as Shirley's QC by Levy and McRae in early February 1999 following Shirley's decision to change her then counsel Mr Kerrigan and he acted for her over the 2 ½ months until the start of the trial on 21st April 1999. She had a number of meetings with him and his team. I was present with Shirley at most of them although on the occasion that Pat

Wertheim's findings were intimated to her I waited for her in my car outside Levy and McRae's offices in Glasgow.

64. In my Operation Alba statement at pages 22 to 24 I make general reference to Mr Findlay and meetings with him but little specific information is available.
65. I do not have any notes of any meetings although I am sure they would have been taken. Given that the initial trial start date we were working to was in March 1999 meetings were extremely focussed on preparing a defence for Shirley and obtaining the services of experts for the defence who would counter the SCRO evidence.
66. The necessity of obtaining expert assistance was top of the agenda and I certainly remember one or two meetings in this connection.
67. Once Mr Wertheim conclusions were revealed in his reports of 2nd and 12th April the focus of the meetings changed considerably as Mr Findlay realised the implications of the challenge to the SCRO experts.
68. Mr Findlay had meetings with both Mr Swann and Mr Wertheim at the time they reported their findings but neither myself nor Shirley were present.
69. I can confirm that at a meeting held shortly before her trial Shirley and I met with Donald Findlay on matters related to that trial. It is my recollection that it was at that meeting that Mr Findlay indicted his strategy with regard to Shirley's evidence and even how he wished her to be dressed. It was made crystal clear that he made the rules and it was important that Shirley followed his instructions to the letter. Expert evidence was discussed in general terms and Shirley was instructed that when being cross-examined on matters related to Mr Swann and the other fingerprint experts she was to refer such matters back to him.
70. Reference is made to Mr Findlay in the documents contained at Appendix 'B' to this report.

71. I do not hold any minutes of meetings held with Mr Findlay although Levy and McRae or Mr Findlay himself might do so.

The Wertheim Report

72. I have no direct information on this issue as neither Shirley nor I was involved in these matters. I would suggest referring the question to Shirley's trial lawyers Levy and McRae or her QC Donald Findlay.
73. From Inquiry oral and written evidence to date however it appears as if the report was made available some time before Shirley's trial as the SCRO experts were able to have a meeting with Advocate Depute Sean Murphy and take fingerprint productions away for assessment.
74. It is known that prior to the trial SCRO experts met with Sean Murphy QC, who was prosecuting the case. He provides details of this meeting in (CO_2036 – Page 2) Statement of Sean Francis Murphy - MacKay Report No: S168.

Sometime around 16 April 1999 (16/04/1999), I had a meeting with the defence counsel Donald Findlay QC. He outlined at this time what the defence's angle was to be with regards to the fingerprint evidence. He told me that American fingerprint experts had categorically assured the defence that the print Y7 was not that of Shirley McKie's. He told me the experts were Pat Wertheim and David Grieve but that the productions that they were to be using were not available at that time but that I would be given a copy as soon as he had them.

Shortly after that meeting, days after, the defence material was made available to me. I asked for a meeting with SCRO experts Charles Stewart and Hugh Macpherson to discuss this evidence. This took place in the courtroom at the High Court in Glasgow and together we spent the best part of the afternoon going over the defence productions produced by Wertheim and also going back over their own presentations which I had also in the court.

On discussing Mr Wertheim's productions the two experts brought out a number of criticisms regarding Mr Wertheim's approach to the fingerprint. They were very critical about the overlays that had been produced in that they felt this was an unprofessional approach. They also called into question the fact that it appeared Mr Wertheim had damaged the mark when he had physically examined the doorpost. They questioned his level of expertise in that this was a chance mark of poor quality whilst Wertheim was more used to examining text book prints in his occupation in recent times and the fact that Mr Wertheim was someone who hadn't had the same level of expertise as them in that he was a serving police officer who appeared to have fallen into the role of fingerprint expert. We discussed other matters such as an FBI report/survey in 1998 regarding a mark of mis-identification in USA courts whereas this had never happened in the Scottish court to date.

