

# The Fingerprint Inquiry | Scotland

## Chairman's Publication of the Inquiry Report

The Scottish Government announced in March 2008 that it was establishing an inquiry under the Inquiries Act 2005 into the case of Shirley McKie.

I was appointed to chair the Inquiry with the following terms of reference:

- To inquire into the steps that were taken to identify and verify the fingerprints associated with, and leading up to, the case of HM Advocate v McKie in 1999, and
- To determine, in relation to the fingerprint designated Y7, the consequences of the steps taken, or not taken, and
- To report findings of fact and make recommendations as to what measures might now be introduced, beyond those that have already been introduced since 1999, to ensure that any shortcomings are avoided in the future.

I am now in a position to publish my Report which will be available in print form, on the web site and also as an interactive DVD. As the Report is comprehensive and thus lengthy, I shall confine myself this afternoon to stating what I regard to be my key findings and recommendations.

Some people may not be familiar with the background facts so I shall begin by outlining them briefly in order that the key findings may be more readily understood.

On Wednesday the 8<sup>th</sup> of January 1997, the body of Miss Marion Ross, who was 51 years of age and lived alone, was found in her home in Kilmarnock. A post mortem examination showed that she had died as a result of multiple stab wounds to her head and neck. It was obvious that there had been a grossly cruel attack on this defenceless woman, while she was in her own home.

Over a number of days, scenes of crime officers examined her house and found 428 fingerprints. These were sent to the fingerprint bureau of the Scottish Criminal Record Office in Glasgow for examination.

A number of these fingerprints could be eliminated as having been left by Miss Ross as she went about her house. Also, it would not be unusual to find other fingerprints in a house left by people with a legitimate reason to be there. These could include fingerprints left accidentally by police officers while investigating the crime.

I shall refer to two of the fingerprints found in Miss Ross's house in Kilmarnock. One, which was given the designation Y7, was found on the wooden door-frame of the doorway leading into a downstairs bathroom, close to where Miss Ross's body was discovered, lying on the floor. The other fingerprint, designated XF, was found on a gift tag on a Christmas present in a living room in her house.

Between 9th and 14th January 1997, Ms McKie, who was then known as DC Cardwell, was a member of the team investigating the murder. Fingerprint examiners at the Scottish Criminal Record Office identified the fingerprint Y7 as having been left by Ms McKie.

From the moment she was told of this, Ms McKie has consistently denied that she was at any time inside the house beyond the porch area and claimed that she could not therefore have left her fingerprint where Y7 was found.

She accepts that while carrying out her duties she was in the entrance porch of Miss Ross's house on three occasions. The first of these was on the evening of the 9th of January when, accompanied by a detective sergeant, they both went as far as the entrance porch. This was in order to understand the explanation that had been given to them by the neighbour of Miss Ross, who found her body, as to which of three entrance doors he had to unlock in order to gain entry to the house.

The second and third occasions were on Saturday 11th January when Ms McKie was asked to go to the house accompanied by the same detective sergeant to collect the scene log for copying. The sergeant remained in the car while she collected the log from the police officer who was on duty in the entrance porch. They then brought it to the police station where she copied it. She returned the log to the police officer at the door and her colleague again remained in the car. She said that she was only there for a few seconds and once again did not go into the house beyond the porch area.

■ Over the years it has been rumoured that Ms McKie entered the house beyond the porch area. So far as was possible I pursued these rumours.

The fingerprint examiners ascribed the fingerprint XF on the Christmas gift tag to a Mr David Asbury. This has been accepted as being a correct identification.

In addition to the fingerprints in Miss Ross's house, the police were interested in a tin found in the house where Mr Asbury lived. When they had this tin examined, a fingerprint, which was designated Q12, was found on it. Part of this fingerprint was, according to the fingerprint examiners in the Scottish Criminal Record Office, left by Mr Asbury and another part left by Miss Ross.

■ In due course Mr Asbury was charged with the murder of Miss Ross. At his trial Ms McKie gave evidence and denied on oath that she had been into Miss Ross's house beyond the entrance porch and she said that she could not have made the mark Y7. The identification of the fingerprints XF and Q12 was not disputed at the trial and Mr Asbury was convicted. It is important to add here that this conviction was later quashed by the Court of Appeal.

After Mr Asbury's trial, Ms McKie was charged with perjury on the ground that she had lied under oath at the trial of Mr Asbury by denying that she had been in the house beyond the entrance porch.

During her trial in 1999 on this charge the fingerprint examiners from the Scottish Criminal Record Office gave evidence that Y7 was her fingerprint, and two examiners from the United States who were called to give evidence by the defence said that it was not her fingerprint. The jury acquitted Ms McKie.

Early in the year 2000 the case, which had already received publicity, was given added publicity in two television programmes. In these, doubt was cast not only on the identification of Y7 as having been made by Ms McKie but also on the identification of part of Q12 as having been made by Miss Ross. This was the mark on the tin found in Mr Asbury's home. It was the questioning of this identification that led in due course to the case against Mr Asbury going to the Court of Appeal and the quashing of his conviction.

Some time after her acquittal, Ms McKie brought civil proceedings against the Scottish Ministers seeking compensation and, on the morning of the hearing in 2006, the case was settled, on the basis of a payment of £750,000, without an admission of liability.

The following month the Scottish Parliament's Justice<sup>1</sup> Committee began a parliamentary inquiry with the purpose of contributing to the process of restoring public confidence in the Scottish Fingerprint Service. The committee published its report in 2007. It was not part of the committee's remit to express a view as to whether Y7 was correctly identified.

At about the same time, the Scottish Criminal Record Office fingerprint bureau, and the other bureaux in the Scottish Fingerprint Service, all became part of the new Scottish Police Services Authority.

In this short summary I have not referred to many matters of importance such as the fact that other experienced independent fingerprint examiners agreed with the identifications of Y7 and Q12 made by the examiners at the Scottish Criminal Record Office. Furthermore when work of the four officers involved in the McKie case was

checked independently for the year before and the year after that case it was found to be 100% accurate. I would urge those who wish to be fully informed to refer to the Report where all these matters are covered in detail.

I have reviewed fully in the Report the varying opinions that were held about the fingerprints Y7 and Q12 Ross. With reference to their clarity, both of these fingerprints were regarded as being complex. I have also considered, in some depth, the underlying methodology used by fingerprint examiners.

I have made numerous findings which are described in the text throughout the Report.

### **Key findings**

These are the findings that I regard as being the key ones:

1. There is no evidence other than the mark Y7 to suggest that Ms McKie at any time entered Miss Ross's house beyond the area of the porch.
2. The mark Y7 on the door-frame of the bathroom in Miss Ross's house was misidentified as the fingerprint of Ms McKie.
3. Ms McKie did not make the mark Y7.
4. There was no conspiracy against Ms McKie in Strathclyde Police and all reasonable steps were taken by that force to seek from the Scottish Criminal Record Office fingerprint bureau confirmation of the identification of Y7.
5. The mark Q12 Ross (on the tin) was misidentified as the fingerprint of Miss Ross.
6. There was no impropriety on the part of any of the Scottish Criminal Record Office fingerprint examiners who misidentified the mark Y7 as having been

made by Ms McKie or the mark QI2 Ross as having been made by Miss Ross. These were opinions that they genuinely held.

7. The marks Y7 and QI2 Ross were both misidentified by the Scottish Criminal Record Office fingerprint examiners due to human error and there is nothing sinister about the fact that these two errors occurred in the same case.
8. The misidentifications of Y7 and QI2 Ross expose weaknesses in the methodology of fingerprint comparison and in particular where it involves complex marks.
9. Fingerprint examiners are presently ill-equipped to reason their conclusions as they are accustomed to regarding their conclusions as a matter of certainty and seldom challenged.
10. There is no reason to suggest that fingerprint comparison in general is an inherently unreliable form of evidence but practitioners and fact-finders alike require to give due consideration to the limits of the discipline.

### **Key recommendations**

In all I have made 86 recommendations for future action as a result of the Inquiry and these are described in the chapters comprising Part 7 and in full in Chapter 43.

There are ten that I consider to be key recommendations:

1. Fingerprint evidence should be recognised as opinion evidence and not fact. Those involved in the criminal justice system need to assess it as such on its merits.
2. Examiners should discontinue reporting conclusions on identification or exclusion with a claim to 100% certainty or on any other basis suggesting that fingerprint evidence is infallible.

3. Examiners should receive training which emphasises that their findings are based on personal opinion; and that this opinion is influenced by the quality of the materials that are examined, their ability to observe detail in mark and print reliably, the subjective interpretation of observed characteristics, the cogency of explanations for any differences and the subjective view of 'sufficiency'.
4. Differences of opinion between examiners should not be referred to as 'disputes'.
5. The Standard Operating Procedures of the Scottish Police Services Authority should set out in detail the ACE-V process that is to be followed. I should explain here that ACE-V is an acronym for analyse, compare, evaluate, verify and is a process that fingerprint examiners are encouraged to follow.
6. Features on which examiners rely should be demonstrable to a lay person with normal eyesight as observable in the mark.
7. Explanations for any differences between a mark and a print require to be cogent if a finding of identification is to be made.
8. A finding of identification should not be made if there is an unexplained difference between a mark and a print.
9. The Scottish Police Services Authority should develop a process to ensure that complex marks (such as Y7 and Q12 Ross) are treated differently. The examination should be undertaken by three suitably qualified examiners who reach their conclusion independently and make notes at each stage of their examination. The substantive basis for the examiners' conclusions should be reviewed. The reasons why they have reached their respective conclusions

should be explored and recorded, even where they agree that an identification can be made.

10. An emphasis needs to be placed on the importance not only of learning and practising the methodology of fingerprint work, but also of engaging with members of the academic community working in the field.

Those are my main recommendations.

■ In closing I would add this:

Identification through fingerprints has been with us for over 100 years. Examiners face many challenges in carrying out what is important, difficult and, at times, complex work. The recommendations that I have made in this Report are designed to assist them to meet these challenges and to ensure that the identification evidence they provide continues to be evidence in which the general public and the criminal justice system in Scotland can have confidence.

I would like to take this opportunity to thank all those who have assisted me in this Inquiry. The core participants and their legal representatives, those who gave evidence both oral and in written form and in particular the members of the small Inquiry team who have supported me in this task and worked so hard.

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