

Testimony of Fiona McBride: How Much Did She Know?

Ms McBride's full testimony to the Inquiry can be found at the following link.

<http://www.thefingerprintinquiryscotland.org.uk/inquiry/1808.html>

It would be fair to say that some of the evidence offered by SCRO witnesses at the Inquiry has been vague, defensive and inconsistent and this assessment could be made of Fiona McBride's testimony.

One consistent theme of her written and oral evidence to the Inquiry has been that despite two of her colleagues having been advised of Pat Wertheim and David Gieves's challenge to the SCRO of print Y7 a week before Shirley's trial started on 14th April 1999 and their taking the defence charts back to SCRO to study she was not aware of this challenge until Pat gave evidence a week after she did on 6th May 1999.

Ms McBride has attempted to create an air of innocence and claims she did not know anything was controversial in the initial SCRO work with Y7 and their later work for Shirley's trial in 1999.

Despite this being the first ever challenge to fingerprinting in Scotland she has consistently denied that prior to the trial there was any sense of anxiety or interest within SCRO or that she had any real insight or knowledge about the coming challenge to her identification. Here she is experiencing an expert's worst nightmare – an identification being challenged as wrong – and she remains unconcerned and uninterested.

There is abundant evidence however that if she wasn't concerned plenty of other people were including the Police, Crown Office, PF, advocate depute Mr Murphy, Mr Hogg the IB Bureau head and various SCRO experts including Greg Padden and Hugh Macpherson and Charles Stewart (her fellow witnesses) who were called to an urgent meeting with Mr Murphy two weeks before Shirley's trial. There was also of course the blind test held in February 1997 that showed the height of management's concern.

Even when she herself was cited as a witness a few days before Shirley's trial she claims her interest was still not aroused and she was never told or tried to find out about the coming challenge.

I find an analysis of her testimony at Shirley's trial and the Inquiry extremely revealing about her mindset and that of her fellow SCRO experts.

Inquiry 6 November 2009 PM session starting page 75

<http://www.thefingerprintinquiryscotland.org.uk/inquiry/files/2009-11-06%20PM%20Transcript.pdf>

Q. Just on that theme, Ms McBride, when did you first become aware that Shirley McKie was contesting the identification of Y7 as hers?

A. I'm not sure. It would have been ... I'm not sure. It would have been early on, I would imagine. I can't be sure.

Q. We have heard that Sheriff Murphy, as he is now, showed a defence production to your colleagues at the meeting that he had with them..... I am sorry if my question has confused you, Ms McBride.

A. That's quite all right.

Q. The question is when you became aware that there was going to be a dispute at the trial about whether you and your colleagues had got it right.

A. I didn't know and the reason I didn't know and the first time I knew was when Pat Wertheim gave evidence because I was in the court at the time listening to his evidence. In fact, Mr Murphy had requested that we listen to the evidence and give him an update on

how the evidence was going, was there anything obvious about the evidence. That was Charles Stewart and myself, we were in court listening for that purpose.

Q. I am becoming, perhaps, just a little bit confused myself, about this here, Ms McBride. We can perhaps take this in stages. There had been a meeting between Mr Murphy and your colleagues and we understand that, at that meeting, your colleagues, Mr Stewart and Mr MacPherson, became aware that there was a dispute about whether the identification was correct. Should we understand that that wasn't passed on to you at all?

A. What do you mean by the identification wasn't correct? I think it's a definition. The identification not being correct could have meant it was insufficient.

Q. Well, if I can put it in perhaps broader terms if it is easier, Ms McBride: they became aware that Mr Wertheim was going to be going head-to-head with them on their conclusions.

A. Head-to-head?

Q. Disputing that the SCRO identification was a correct identification?

A. I don't think they knew that. Perhaps they did. If they did, they certainly didn't tell me.

Q. They became aware that there was going to be defence evidence that differed from the evidence that was going to be led from your colleagues.

A. Defence evidence, of course, by its very nature if it's being led must differ from our evidence and I'm quite sure there have been defence experts before who have given information to the Fiscal -- no, it wouldn't be, to their employer, to say, "I don't like this about an identification or that about a part of an identification". If you're asking about mis-identification -- which is precisely what I didn't know about and I'm not aware that my colleagues knew that either, and the reason for that is when I heard Pat Wertheim say it was a mis-identification, I nearly fell off my seat in shock.....'

When Andrew Smith cross examined Ms McBride he tried to clarify the issue of how much she knew and when and probed just how much Donald Findlay had told her when cross-examining her at Shirley's trial a week before Pat gave evidence.

Inquiry Wednesday, 11th November 2009 PM session starting page 40 to 50

<http://www.thefingerprintinquiryscotland.org.uk/inquiry/files/2009-11-11%20PM%20Transcript.pdf>

Q. The other matter I wanted to ask you about was this: the response by Mr Findlay to your answer at the top of the next page, page 35, he says from line 3:

"Well, the defence will produce evidence from the two people who have been doing this job for an awful lot longer than 14 years who take a very different opinion about this?"

You can read the answer if you wish: *"Well, I cannot comment on the standard of other fingerprint experts."* What I am interested in, Ms McBride, is this: when you were standing in the witness box and Mr Findlay asked you that or made that comment to you, and indeed all the other comments that he made, what did you think he was trying to achieve in his cross-examination?

A. I've no idea. I answered the questions that were put to me. I don't try to figure out what the strategy is of the defence counsel.

Q. The reason I am asking you is because of your evidence to this Inquiry that you say it was after you left the witness box that you nearly fell off your seat when you realised what the defence was. Was it not perfectly clear from what Mr Findlay was doing was, first of all, challenging your evidence? That much was clear, wasn't it?

A. Every time that a QC questions us, the questions are very similar. There was nothing to indicate that there was anything about this case that was different from any case that had gone before.

Q. I am interested in what Mr Findlay says about line 6, the words "very different opinion about it". I take it you picked up at that point there were other people who had at least a very different opinion than your opinion. You understood that much?

A. Well, their opinion may have been on a couple of characteristics for all I knew; so I didn't comment, and I still can't comment, on the standard of other fingerprint experts because during the comparative exercise I checked Mr MacLeod's work and was very shocked at what he produced and couldn't understand it. Then later on it transpired that he had taken the instructions another way and produced something entirely different. So I can't judge -- without actually having spoken to the person or understanding how they came to their conclusion, I can't be sure what another expert's been doing, so ... When I checked the comparative exercise, I was surprised. I couldn't understand how he came to that conclusion. I wondered about his ability. Then I heard him give evidence and he sounded pretty good, I thought, and it turned out that the comparative exercise had just been completed in another way and that then made sense. So I can't possibly comment on the standard of other fingerprint experts, certainly not people I don't know anything about.

Q. I am not asking you about your comment regarding the standard of other fingerprint experts, I am simply asking you to explain whether you had any inkling at all that there was going to be a challenge to your identification. I think your answer is no, you didn't.

A. That's true.

Q. No doubt we can all look at the entire cross-examination in due course, but as someone who had received training in appearing in court, training in knowing what the rules were in court, challenges by defence counsel, you're telling us here before this Inquiry you had no idea what the nature of the challenge was that was presented by Mr Findlay?

A. Absolutely.

Q. When you were shown the acetate sheet, the document, (the defence chart from Pat Wertheim) did you actually take it from Mr Findlay and look at it?

A. What do you mean, did I take it? I think it was handed to me by a court clerk and it was put in front of me, although that could be wrong.

Q. Very well. I am hardly going to pick you up and say it was a court clerk rather than Mr Findlay.

A. It may have been a court clerk.

Q. Did you have it available to you actually in your hand at some stage, did you?

A. In my hand? It would have been on the lectern or whatever you call it in front of me.

THE CHAIRMAN: Well, available to you?

A. Yes. It would have been available to me, yes.

MR SMITH: Did you see the handwritten entry that's been before this Inquiry when Mr Wertheim has written in his own hand in green writing an indication that there were parts at the top of the print that do not exist in the mark of Shirley McKie in the fingerprint. Did you see that writing?

A. Could you show me the production, please?

Q. Of course. Give me one moment and we will get the number.

MR SMITH: I think the reference number for the purpose of the screen is DB0172 if we can have that, please. I think if we go through this and keep flicking through and stop there. Thank you.

Ms McBride, I think you have the original or maybe not the actual one but a similar version of the acetate sheets before you just now. Can you perhaps confirm to us that you had available to you a document like that when you were giving your evidence?

A. I can't remember and, specifically since you're saying it might not be the actual one, I'd rather not comment on it at all.

Q. Come over with me on this one for the moment. Let us presume that what you have is a document that contains the same written information as appeared in the one that was available at trial. Just take that as a given for the moment. Do you agree that it is clear from this document, particularly the electronic page that we're looking at, where it says "target group and" written in black and then for purposes of clarity:

"Points in crime scene mark which clearly do not exist in left thumb of Shirley McKie."

Would you agree with me that it makes it abundantly clear from that document that what is being suggested is there are bits of Y7 that do not appear in the inked mark of Shirley McKie?

A. I'd like to say that I can't take it as a given that this is the case and I'll tell you why. I noticed you made several errors during this Judicial Inquiry. One of them was when you said that a document had been redated by Hugh MacPherson and in fact it hadn't happened. So while of course the Inquiry team will have sorted all that out, I can't possibly take anything that you say as a given.

Q. Ms McBride, I know you want to make a speech but I would like an answer to the question which –

A. You have an answer to the question.

Q. Please let me finish. Please let me finish. The question that I put to you is whether is it not abundantly clear from this document you are looking at that it is being said that there are points in Y7 that do not exist in the left thumb of Shirley McKie?

A. In court I think I asked to see this at the office. I wouldn't have gone as far as even reading all that. To be handed that in a High Court case to -- how would I say -- decipher is not something that I would do. I would take it away and look at it. So I wouldn't have read it and, in fact, I think I mentioned something about the overlays. Of course, I could be wrong so you would have to check the transcript but I think they said, "Well, just push the overlays back and look at that then" because I didn't recognise it. I didn't know what it was that they were giving me. So, in fact, the chances of me even attempting to read that are practically nil.

Q. Let us just look at another bit in the evidence to see if the light wasn't coming on about the purpose of the challenge. Could we have SG0528. Can you go to page 31 electronically -- I am sorry, it is the electronic page 31, page 29 -- and the next page for completeness as well. Just reading what Mr Findlay said, reading from the bottom of the left-hand page, line number 22. He says this:

"You see, because when we go into the evidence in this case -- and I have no doubt you have been told or heard -- there is evidence that says out of the 16 illustrated in, for example, 152 at least ten of them don't exist or are faulty."

You say:

"I cannot comment on someone else's opinion and I have no idea what their qualifications are and I don't know how long they've been looking at fingerprints but I'm happy that the author of these prints has had the fingerprints taken on that form."

Ms McBride, is it abundantly clear from that question, isn't it, that it was being said that the examination you carried out was faulty and that at least ten points either didn't exist or were incorrectly identified. That's what he said to you, isn't it?

A. No, the only way I could have commented on that would have been if I'd been given time to take it away and verify or otherwise what the claims were.

Q. Ms McBride –

THE CHAIRMAN: That is not quite the point. The point is whether you were being put on notice, to say the least, that somebody else didn't agree with your conclusion.

A. Yes. I'm wondering whether this is after there are differences, alleged differences, pointed out at the top of the mark and whether I would have thought that at least ten of them -- you're saying the "16 illustrated don't exist or are faulty", so ... It didn't occur to me. It didn't occur to me. It just sounded like some, an argument being led by a QC and they do have a tendency to go off on a tangent and not exactly represent what's in front of you, so ...

MR SMITH: Just finally, in fairness to you, Ms McBride, as I understand your position, that despite us seeing this question, the other question and answer that I directed you to a few moments ago and the acetate, you are saying you did not know that a challenge was being placed to the identification by SCRO and that is your evidence before this Inquiry, is it not?

A. I did not know that anyone was going to say it was a mis-identification.

Examination of the SCRO expert's testimony will reveal many passages like this. I leave it to the reader to make their own assessment of this evidence and to ponder why simple questions should prove so difficult to answer.