

Scottish justice system on trial

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IT WAS without doubt the most horrific scene the detectives who arrived at the house in Kilmarnock had ever encountered.

Marion Ross, 51, a former bank clerk, had been murdered in the most brutal fashion.

When a neighbour found the body on the morning of 8 January, 1997, the spinster had been subjected to a vicious attack, the force of which had crushed her ribs into her chest. She had also been stabbed in the eye with a pair of scissors, which were left embedded in her throat.

Five-and-a-half years later, the man convicted of killing her and stealing Â£1,400 from her home has walked free - and the case has put the entire Scottish justice system on trial.

Questions have been asked which brought the integrity of Strathclyde Police, the Scottish Criminal Records Office (SCRO) and fingerprint evidence into doubt.

David Asbury has launched a civil action against the Strathclyde force after serving five years for a crime he did not commit. Shirley McKie, one of the detectives on the inquiry team - cleared of perjury for allegedly lying under oath at Asbury's trial in May 1997 - may now continue the sorry saga by pursuing her own civil case against the Scottish Executive.

During Asbury's trial, the jury heard that the fingerprint of McKie had contaminated the scene of the crime. Under oath, she maintained that she was part of the murder inquiry but had never been in Ms Ross's house.

Despite the defence argument that the murder scene had been contaminated by police incompetence, the jury at the High Court in Glasgow was convinced of Asbury's guilt by prosecution claims that a biscuit tin full of money was found in the accused's bedroom - and that a fingerprint on the tin belonged to Ms Ross.

On the strength of the fingerprint evidence provided by the SCRO, Asbury, a joiner, from Kilbirnie, Ayrshire, was sentenced to life imprisonment.

On the morning of 6 March, 1998, ten months after the conviction, McKie's life fell apart when three police officers armed with a warrant arrived at her home and charged her with perjury.

She was suspended from Strathclyde Police for allegedly lying on oath at Asbury's trial.

McKie was charged on the strength of evidence provided by three officers from the SCRO plus a prosecution scientist who had testified that the print at the crime scene was hers - and guaranteed her presence at Ms Ross's flat.

Her presence and carelessness, they claimed, had contaminated a crime scene and almost jeopardised a murder trial.

In May 1999, the case was finally brought to court but McKie was acquitted of perjury after a High Court jury heard compelling evidence from two independent forensic and fingerprint experts from the United States.

In the wake of the trial, despite the acquittal, the SCRO refused to admit its mistake

and, in December 1999, after months of waiting for a vindication, McKie announced her retirement from the force though ill-health and depression.

Six months after her retirement, she was vindicated for a second time after the SCRO was criticised by a police inspectorate report as "not fully effective and efficient".

This put police in the dock and raised questions over fingerprint evidence, a virtually unassailable tool in investigations for more than 100 years.

Much to the chagrin of the SCRO and the police, one of the pillars of the entire legal system had been challenged by McKie.

To rub salt into the SCRO's wounds, Asbury was then released on bail pending appeal - having already served three years of his sentence - after Crown experts agreed he may have been convicted of killing Ross on faulty fingerprint evidence.

In August 2000, the four fingerprint experts involved in the McKie perjury case were suspended on full pay, following an inquiry in February earlier that year. The Association of Chief Police Officers Scotland said the workers were being "precautionarily" suspended from duty, but said this did not represent disciplinary action. They have since been re-instated.

More recently, the controversial ruling by the Scottish Parliament's Presiding Officer, Sir David Steel, preventing the parliament from debating the affair, has further stoked the embers of a worrying saga of incompetence and mismanagement.

For McKie, there now remains one glimmer of hope. She has been attempting to pursue a civil case against the SCRO.

Today, as Asbury celebrates his first day free from the threat of being sent back to prison, the real question remains - if he didn't kill Marion Ross, who did?

Last night, Strathclyde Police refused to confirm they would re-open the enquiry.

A spokeswoman said: "It is not for us to comment on the outcome of an appeal case.

"We submitted a report to the fiscal and the court has made their decision. At present, officers from Strathclyde Police are not looking for anyone in relation to the Marion Ross case.

"We will examine the matter in due course."

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