

May 15, 1999, Saturday

## FINGERPRINT EVIDENCE DOUBTS CLEAR POLICEWOMAN OF PERJURY

**Stephen Rafferty Crime Correspondent**

A POLICEWOMAN made legal history yesterday when she was found not guilty of lying to a murder trial about a fingerprint.

Detective Constable Shirley McKie, 36, of Troon, Ayrshire, was cleared of perjury after a jury unanimously decided a smudged thumb print left at the scene of a murder did not belong to her.

During the trial of David Asbury for the murder of Marion Ross in 1997, she had denied the finger print was hers, and was charged with perjury. She did, however admit she had contaminated evidence on a previous occasion so that her palm print was found on a plastic bag containing an abandoned baby in Kilmarnock in 1993.

After legal debate at her trial, the judge, Lord Johnston, agreed to a defence motion that the jury should not hear evidence about that incident.

This verdict questions the reliability of fingerprint techniques and could assist Asbury's appeal against conviction.

Four Scottish experts told the High Court in Glasgow that a print found at Miss Ross's Kilmarnock home was "definitely" McKie's but the jury accepted evidence from two American experts contradicting that view.

Lord Johnston, clearly agreeing with the verdict, took the unusual step of praising McKie.

As she sat weeping in the dock, the judge told her: "I would personally like to express my respect for the courage and dignity you have shown through what must have been a nightmare" and turning to the jury Lord Johnston said it had been a "unique case which raises all sorts of issues".

The "rogue" thumb print at the centre of this trial was found on the bathroom doorpost near where Miss Ross was found stabbed through the eye and throat with scissors on 6 January, 1997.

McKie had been refused permission to visit the murder scene and denied ever having done so. Fingerprint experts from the Scottish Criminal Records Office, who receive seven years' training, insisted, however, that the print belonged to the officer.

During her two week trial, Donald Findlay, QC, defending, asked her: "The Crown is saying that you sneaked into the house for a peep."

She replied: "I did not."

McKie said she had never been inside the murder house and had gone only as far as inside the porch because the semi-detached bungalow had been sealed off for forensic tests. She said: "This is one big mistake and it's not me who made it. I had thought, until then, that fingerprint evidence had been infallible.

"It has been a nightmare for more than two years now. I've had no support from any of my colleagues and I've felt totally alone.

"I was told that if I still insisted at the murder trial that it was not my print, I would be charged with perjury. The only thing that has kept me going is the support of my family."

McKie said she was later arrested at her home by former colleagues and she felt humiliated.

The advocate depute, Sean Murphy, prosecuting, accused her of telling a lie - that the print was not hers - and then being "stuck" with the story.

She replied: "I knew if a mistake had been made that it could affect the murder trial."

McKie told the jury she came from a "police family." Her father, Iain, is a former superintendent and her brother is in training at the Scottish Police College at Tulliallan.

She said that after being told the print had been identified as hers she was isolated and none of her colleagues would speak to her.

Mr McKie, formerly head of the Strathclyde force press office, said the last two years had been "a hellish time" for his daughter and family and he attacked his former colleagues in the force.

He said: "We are angry at the persecution and isolation imposed on my family by Strathclyde police who were hell-bent on destroying everyone who opposed them."

The not guilty verdict was a personal victory for the solicitor Angela McCracken who had taken on what looked like a hopeless case two years ago.

She said: "Everyone believed fingerprint experts couldn't be wrong and therefore the print must have been Shirley's and no one believed her protests.

"It was decided we would have to find our own fingerprint experts to look at the print for an objective opinion. We trawled the internet and finally found the two American experts who this week convinced the jury that the print did not belong to Shirley."

Pat Wertheim, 52, of Oregon, spent two days showing the jury how the lines in the print could not match those of McKie.

David Grieve, 58, who trains police fingerprint experts in Illinois and is the editor of the Journal of Forensic Identification, told the court he agreed with him.

Mr Murphy told the jury that the four Scottish experts were not in any doubt that the print belonged to McKie. He said: "The experts' interpretations differ and I suggest that under laboratory conditions, the Scottish Criminal Records Office experts reached the correct decision."

During the trial of David Asbury, the prosecution had feared McKie's denial about the thumb mark being hers might lead to his acquittal.

Asbury, of Kilbirnie, Ayrshire, had carried out work at Miss Ross's home and the Crown alleged he had returned there to steal money.

Pretending he needed to use a phone he conned his way in to her home where he stabbed her in the eye with a pair of scissors which he left embedded in her throat.

A Marks & Spencer biscuit tin belonging to the dead woman was found at Asbury's home but he claims detectives took the tin to the morgue where they put the victim's fingerprints on it.

Asbury, 21, will seek to use the McKie case to bolster his appeal and his mother, Amelia Crisp, 42, and his grandfather, Nimrod Asbury, sat taking notes throughout McKie's trial.

Last night, Mr Findlay said he could not comment about the McKie case but said the result would not damage the standing of fingerprint evidence in trials.

Mr Findlay said: "This is not in any sense the death knell of fingerprinting. That would be a ridiculous point of view. What it means is that lawyers should do their job properly in the questioning of all evidence against an accused.

"It is the lawyers' duty to check everything to an enormous degree and maybe to an extent we have accepted fingerprint evidence at face value.

Fingerprinting is always going to be crucial evidence and more often than not will be the compelling evidence.

"It would be quite wrong to say this shows there is any kind of serious problem in the Scottish Criminal Records Office.

That would not be fair at all.

These are professional people doing their best in professional way but it does show a mistake can be made and it is the duty of the lawyer to make sure that mistake does not affect his client."

Ms McKie said she would not be asking for her job back and it is believed she may sue Strathclyde police, who last night said: "We have noted the findings of the court. It would be inappropriate to comment further."