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Finger of suspicion: transcript



Shirley's print was allegedly found on a door

This is the full transcript of Frontline Scotland's *Finger of Suspicion* programme, broadcast on 18 January.

Presenter Shelley Jofre: She was once a promising young detective with Strathclyde Police. Now, Shirley McKie's career lies in ruins. The reason - a single fingerprint, which experts said belonged to her.

She made legal history when a court agreed the experts had got it wrong. Yet, still, she struggles to clear her name.

Shirley McKie: I have been persecuted. Well, I was persecuted for two and a half years. I had to give up my job, and em, as far as I can see absolutely nothing is happening to the people responsible for this.

Presenter: It was a David and Goliath battle, one woman's word against the century-old science of fingerprinting. A science regarded as infallible in the eyes of the law with experts who have rarely been challenged.

John Scott, Scottish Human Rights Centre: For the best part of this century fingerprint evidence on its own, depending on where the fingerprint is found, can be sufficient without any other corroboration to have someone convicted of even the most serious of crimes, such as murder.

And if there is any doubt over it, such as the serious doubt that has been raised over fingerprint evidence because of the Shirley McKie case, then we have to start from scratch. We have to now be satisfied that fingerprint evidence is good enough to be accepted, and I think on the basis of what we've seen so far that is not so.

Presenter: In the dock now are the Scottish Criminal Records Office,

based here at Strathclyde Police headquarters in Glasgow. Experts from the SCRO make thousands of fingerprint comparisons each year for all eight of Scotland's police forces. The credibility of fingerprinting relies on them getting it right every time.

January 1997, and police in Kilmarnock are called to the scene of a gruesome murder. The body of a 51-year-old woman, Marion Ross, is found in the bathroom of her home. She'd been stabbed in the eye and throat with a pair of scissors.

Within hours forensic experts arrived to comb the scene for clues. The house is sealed off, and the names of everyone leaving and entering are logged. CID officer Shirley McKie was one of several assigned to the case.

When you were working on the Marion Ross murder, when was the first time you came to the house?

Shirley: The first time was the Thursday evening, that was 9 January, about tea-time.

Presenter: And did you go inside the house?

Shirley: Myself and my sergeant went into the porch that you can see there.

Presenter: Did you go there on any other occasions?

Shirley: I went back out to the house another twice, and that was on the Saturday after the first time, and that was purely to pick up sheets from the log that the officers were keeping, and then to take it back again. So it was like, within a 20-minute period.

Presenter: On any of those three occasions did you go any further into the house than the porch?

Shirley: No.

Presenter: Shirley's first visit was logged by the police officer on duty. Known then by her married name, Cardwell, it was noted that she and her colleague entered the porch only. Her subsequent two visits, when she collected the log, copied then returned it, were not recorded.

As part of the inquiry Shirley and her colleague visited the home of a man who'd done some building work at Marion Ross's home the previous year. In his bedroom the detectives opened a biscuit tin containing £1,800.

Although they didn't know it at the time the tin was to become a key piece of evidence. The man, David Asbury, was later charged with the murder of Marion Ross.



Shirley McKie: "I've been persecuted"

Shirley: I informed my bosses that I had touched the tin, in fact my detective sergeant had also touched the tin. So we both supplied fingerprints to be eliminated against the tin.

So on the day the detective inspector came in and told me that my fingerprint had been found, in fact actually what he said was one of the fingerprints in the inquiry has been eliminated is yours. And I said: "yes, that's fine", it was so matter-of-fact as that.

And it was only when he was walking away I happened to say: "On the tin?", and he said: "No, it's the fingerprint from the bathroom door surround in the locus, in the house." And myself and my sergeant both sort of said at the same time "but that's impossible because we weren't actually in the house further than the porch".

Presenter: The fingerprint had been found on the bathroom door frame. The bathroom is at the back of the house, about 25ft from the front porch. Shirley and her colleague had been told by their boss not to enter the house. She maintains she never did.

Shirley: Nobody believed me. Everybody said:

"Your fingerprint's there, Scottish Criminal Records Office are telling you it's there, so you must have been there."

Presenter: This mark from the door frame was said to be a left thumbprint. This is Shirley McKie's left thumb print. An SCRO expert compared both prints and concluded that they matched. Three other SCRO experts agreed.



John Scott: "We have to start from scratch"



A major headache for the police

But Shirley's insistence that she had never been inside the house was a major headache for the police. Fingerprint evidence was crucial in this case. Any doubts in court could see the accused walk free. The pressure on Shirley to change her story intensified. She was visited at home by a colleague bearing gifts.

Shirley: She was there three hours trying to... not tell me to lie, but say: "Look, Shirley, this is serious, and if you're not happy working where you are where would you like to work?, and we will just say you were basically off your head."



A major headache for the police

And that, if anything, made me ever more determined, because somebody's trying to make out that you are not only a liar but you are a crazy person.

It just seemed like every time it got bad, you think right, that's as far as they're going to take this. It was like, they just kick you again and it got worse, and it got worse, and it got worse, and I really felt that they were trying to kill me.

Presenter: A fingerprint on the tin found in David Asbury's house was identified as the victim's by the SCRO. Asbury's print was found on a label on her home. Both prints linked Asbury to the murder. Shirley's father is himself an ex-policeman.

Iain McKie (Shirley's father): Well this is a fingerprint case. Asbury's fingerprints were allegedly found on a label. And the deceased's fingerprints were found on a tin. And you start to think, well wait a minute, this is all about fingerprint evidence.

Shirley in a way is challenging that evidence, and then it becomes very clear what's happening, that come hell or high water we will protect this hoped for conviction.

Shirley: I was so, so scared, because I thought if David Asbury gets found not guilty, then everybody's going to blame me. So that was terrifying giving evidence that day.

Presenter: At David Asbury's trial Shirley said repeatedly, under oath, that she didn't leave her print at the crime scene.



Iain McKie: Wanted to throw medal in Clyde

In the end the controversy over the rogue fingerprint made no difference to the outcome of the murder trial. In June 1997 David Asbury was convicted of the murder of Marion Ross. He was sentenced to life imprisonment.

But for Shirley McKie a whole new nightmare chain of events was about to unfold.

Shirley: I was lying in my bed and the phone went. I picked the phone up

and there was a hang-up. And about 10 or 15 minutes later the door went. So I just slipped on my dressing gown and went to the door.

And I opened the door and there was a detective chief superintendent and two female detectives standing outside. I was being arrested for perjury, and I was just in an absolute daze.

I went to the toilet. The superintendent told one of the female officers to go with me. So she followed me into the toilet, watched me do the toilet, and then I said: "I'll need to have a shower", and she says: "We've not time for a shower", and I says: "Well, I'm having one", and to be honest it wasn't that I really needed a shower, I just wanted time to think - what do I do here, you know.

I've never been in bother in my life. I'd never even been disciplined or complained about in my career, and I really didn't know what I was supposed to do. I was trying to think, right do I have rights here?

Presenter: She was taken to Ayr Police Station, led past fellow officers, charged with perjury and taken to a cell.

Shirley: They gave me an intimate body search which involved touching my private...you know, my chest, and my private parts.

And I don't know what... there was no point in that, they watched me get dressed, what did they think that I had, I had put in there since I'd been watched getting dressed, it was just so unnecessary. But, of course, em, they'd been told to do it.

Presenter: No-one from Strathclyde Police was willing to be interviewed for this programme, but in a statement they maintain Shirley's treatment was "in accordance with well-established force procedures".

John Scott: The way Shirley McKie was treated was completely unnecessary. The police have got a fairly large degree of discretion about how they deal with people who are arrested in these circumstances, even where it's for a petition warrant.

And I can think, I don't need to think too far back for circumstances where other police officers were arrested in connection with charges that resulted in the High Court prosecution, and the circumstances of their arrest were entirely different. They were dealt with ultimate discretion and did not have to go through the degrading process that Shirley McKie did.

Presenter: Is it unusual for an intimate body search to be carried out in a case of perjury?

John Scott: I cannot see any reason for it at all in this case. I can see that they might want to have asked her for her fingerprints, but I can't see the need for anything else.

Presenter: Shirley's case seemed hopeless in the face of the fingerprint evidence. With the perjury trial now imminent she knew she faced several years in prison if convicted.

Shirley: I'd actually thought about what I'd do if I got found guilty, what would be the easiest way to make it go away.

Presenter: And what did you think that would be?

Shirley: Well, it was really deciding what was the quickest way to kill myself really. I'm not a brave person at all, and I couldn't have coped. If I'd done something wrong, that would be different. But to, if I'd been found guilty for something I hadn't done - no, I couldn't have lived with that.

Presenter: Following her arrest Shirley was suspended from her job as a detective. She used the time to do her own investigation at the local library. Just two months before her trial Shirley typed the words "fingerprint expert" into an internet search. Those two words were to lead her to a remarkable discovery.

Shirley McKie's search on the internet brought her here, to Oregon, 4,500 miles away on America's west coast. She made contact with an internationally renowned fingerprint expert, who was to provide her with the breakthrough she needed.

By e-mail Pat Wertheim agreed to come to Scotland to compare the crime scene mark with Shirley's fingerprints.

Pat Wertheim, American fingerprint expert: I had a sinking feeling in my stomach because it was clear to me that a mistake had been made. This was not an identification. There was something horrible going on here.

I've never been put in a position of calling another fingerprint expert wrong, and to see a print so obviously not the same, charted as if it were an identification. Quite frankly my stomach just knotted up. This was a, I wasn't prepared for that.

Presenter: How surprising was it for you to come to that conclusion?

Pat Wertheim: Well, shocking really. Because here is a mark that was not only identified but had been verified by three other experts in the SCRO, and allegedly verified by one other expert outside the SCRO. And to look at this and think that all of these people were wrong left me extremely disoriented.

Presenter: Another American expert, David Grieve, also analysed the print. He reached the same conclusion - the crime scene mark was not made by Shirley McKie.

Shirley: It was like, just to have all your prayers and hopes had been answered. It was like God, I'm not crazy after all. It's the one thing I hadn't considered that the Criminal Records Office had got it wrong.

Presenter: But the experts from the Criminal Records Office maintained in court that the print was hers, even though every police officer who'd been at the house confirmed they hadn't seen Shirley inside.

The High Court jury took less than an hour to reach its unanimous verdict.

Shirley McKie was not guilty of perjury.

The case made legal history. Never in over 100 years of fingerprint evidence had an identification been overturned in court.

The judge, Lord Johnson, lent his weight to the verdict. In his summing up he said Shirley had shown obvious and dignity throughout this nightmare. Yet, despite the unequivocal result attempts were made to undermine the verdict in the coming weeks.

Shirley was accused of leaving her palm print on evidence in an earlier case. She says she was wearing latex gloves. A police memo later confirmed that prints were being pressed through these gloves.

Another report cast doubt on Pat Wertheim's expertise claiming he only had two weeks tuition in fingerprinting. In fact, he has over twenty years experience.

Pat Wertheim: I think it's disinformation to try to minimise damage that might be done to other fingerprint cases. Those four experts I know must have numerous fingerprint cases...fingerprint identifications in the pipeline, as we would say.

And the damage that might accrue to some of those, I suspect, could be considerable. So I suspect what's happening is just damage control.

Presenter: More worrying though was the SCRO's response to the verdict. In a memo the head of the Fingerprint Bureau reassured other police forces that the Crown Office was "satisfied with the integrity of the experts from the SCRO, and indeed, their court presentation in this case".

Ian McKie wrote to the Crown Office to ask if there would now be a review of all the work of the four experts in Shirley's case. The reply said there would not. In other words it's business as usual at the SCRO.

Shirley: Still people think that I was lucky, and that hurts so much, because I wasn't lucky. I told the truth. I got found not guilty, and someone else made a mistake, and they've got to take responsibility for that.

But they're not, and that is what is frustrating me more than anything. And that's probably why people still think I was lucky, because nothing has changed.

Presenter: So was it luck or did the SCRO get it wrong? Frontline took Shirley McKie to meet some of Britain's top fingerprint experts to find out.

(Shelley and Shirley meet fingerprint expert) **Presenter:** Ron Cook, Hi, Shelley Jofre.

Ron Cook: Shelley, nice to meet you.

Presenter: And this is Shirley McKie, whose fingerprints you're going to take.

Ron Cook is a former police detective inspector with 33 years' experience in

fingerprinting. He's also a member of a government-sponsored working group on the registration of fingerprint experts.

In his lab he took Shirley's fingerprints, carefully compared each one to the crime scene mark.

Ron Cook:I've compared the two impressions and I've found that there are in fact a number of discrepancies between your left thumb impression and the crime scene mark, which I'm unable to reconcile. For example here appears a ridge ending.

Shirley: Yes.

Ron Cook: Which when I look for it on the left thumb impression, I'm unable to find any sign of it. In my expert opinion that particular crime scene mark there was not made by you.

Shirley: So it's not mine?

Ron Cook: That is correct.

Shirley: That's great. That is all I needed to hear.

Presenter: So what do the experts look for when making a comparison? Each fingerprint is like a unique landscape of ridges with distinctive characteristics.

For a positive identification the expert must find 16 of these in both the crime scene mark and the fingerprint. There should be no unexplained differences.

The SCRO experts claimed in court to have found 16 points in the crime scene mark that matches Shirley's thumb print. But the experts we asked could find no more than five similarities and many differences.

Frank Williams, fingerprint expert: They were not made by the same finger or thumb. Now I base that answer on over 45 years' experience.

Ray Broadstock, chair, National Fingerprint Society: I've looked at those two fingerprints and I've come to the conclusion they were not made by the same person.

Frank Reid, fingerprint expert: My conclusion is judging by my experience in fingerprints, which is 36 years, I have no doubt that that mark is not identical with the fingerprint of Shirley McKie.

Pat Wertheim: Well I'm not surprised at all. I believe that any competent expert looking at these two fingerprints would have no trouble whatsoever in reaching the conclusion that the prints could not have been made by the same finger, but had to have been made by different people.

Presenter: If they were wrong on this occasion though isn't it possible that they've been wrong on previous occasions and maybe wrong in the future?

Pat Wertheim: That's what concerns me. That's why I would hope that

internally steps are being taken to assure that this won't happen again, or that it hasn't happened in the past, that there isn't some innocent person sitting in jail somewhere because of a situation like this.

I suspect that if I hadn't caught this Shirley McKie herself would be sitting in jail right now. And what a travesty that would be. You see, if this can happen to Shirley it can happen to anyone who has ever been fingerprinted for any reason. And therefore steps have to be taken to make sure that it doesn't happen again.

Presenter: The case has provoked world-wide interest. Although Pat Wertheim has been advised by friends in the FBI to keep quiet he's put the prints in a website so that others can judge for themselves. Experts have replied from as far afield as New Zealand.

Pat Wertheim: Every reply that we've gotten has been just one right after another. Experts who are in agreement with Dave Grieve and me.

Presenter: And Frontline can reveal even a former senior fingerprint expert from the SCRO agrees with them.

SCRO fingerprint expert (unidentified): The mark and the print that I have examined were not made by the same person.

Presenter: How do you feel then when you see that four fingerprint experts from the department where you used to work have all come to the conclusion that this is Shirley McKie's fingerprint?

SCRO fingerprint expert (unidentified): I'm very sorry to see this has ever reached this stage and that that impression was presented in a court of law. At the end of the day it's not an identification. Their expertise is then in question.

The system of fingerprint identification is infallible. The expert individually is not. Any expert can make a mistake, and should be seen to admit making a mistake. We feel that some inquiry should be made. Perhaps going to another bureau. The only case that they can go, another police-orientated bureau.

Presenter: In court Shirley McKie was vindicated and yet she now finds herself unemployed.

Shirley: Why are the people that wrongly identified it not been made to account for their mistake? I mean I have been persecuted and it still continues. I mean I am still shattered.

I had to give up my job. And as far as I can see absolutely nothing is happening to the people responsible for this, and I just want to know why. Why are they being allowed to get away with it?

Presenter: And how did a solitary fingerprint end up as the cause of so much controversy? Could it date back to a simple mistake made by the first SCRO expert?

Pat Wertheim: I believe he carelessly applied a lower standard to an

officer's fingerprints than he would have applied to a suspect's fingerprints. And I believe the situation escalated.

They I suspect had to go back to Shirley and say: "Are you sure you weren't at the crime scene?", and she says: "No I wasn't at the crime scene", and they go back to the expert and says: "She says she wasn't there", and he said: "but her fingerprint was there", and I think it just escalated a little bit at a time until both of them had climbed so high that they can't either one admit that they were wrong. Well of course it's an erroneous identification. The SCRO was wrong.

Presenter: Do you think that anybody has accepted that a mistake was made?

Iain McKie: I think possibly there was lots of people accepted, but how do they admit a mistake was made. You realise the repercussions now they've taken it so far. What's at threat here is the Scottish fingerprint system. Because we're no way saying fingerprints are not accurate and right, of course they are.

What we're saying is the fingerprint system is only as good as the experts. If the experts lie, which is one option you can take; or if they're incompetent, which is another option you can take; or even if they've made a mistake. That needs to be brought out.

John Scott: The SCRO's position is incredible and untenable. They are scientists but also human beings. Human beings can make mistakes, and that's the basis for the fact that science cannot be relied on 100%.

What they need to do is acknowledge the mistake they've made, acknowledge that it's more than simply presentational difficulties, look into their methods, ensure that it does not happen again or else I don't know how they can sleep soundly on the basis of evidence that they've perhaps produced even in the past where similar mistakes could have been made and simply not detected.

It's quite possible it's not the first mistake. I think their attitude on being confronted with the overwhelming evidence that they're wrong is unfortunately not very reassuring.

Unless they can satisfy us that their methods have changed we can have no confidence in them for the future, and I think there will be a few people looking at evidence that's been produced in the past with perhaps more scepticism than they did at the time when it was first presented.

Presenter: David Asbury is to appeal against his conviction for murder on the grounds that the fingerprint evidence in his case, too, was flawed. Shirley McKie meanwhile plans to sue the police force that once employed both her and her father.

Iain McKie: I feel angry, and I feel sad. But I feel so proud of my daughter, because she's the only one in this whole sad and sorry affair that has any guts or bravery. And that's sad to say about a force that I spent 30 years in.

I've got a good service conduct medal through there in my drawer, I honestly

feel like throwing it into the Clyde. It doesn't mean anything to me. But Shirley, she's brilliant. She's truth and integrity. So could someone just come forward and say thanks Shirley.

Shirley: I've totally lost, most, not all, of my confidence. I can't see a police car, or a police officer without feeling totally nauseous and sick. When the phone rings or someone comes to the door there's still this fear in me that it's going to be the police again, they're going to take me out the house again.

And I've lost a job that was to be a career for me. I'm 37 years old and I'm terrified of my future. I mean there's just so many questions that I don't what I can do, what I would like to do, and em... I'm just 37 and terrified.