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False impression: transcript



Shirley's print was allegedly found on a door

This is the full transcript of Frontline Scotland's *False Impression* programme, broadcast on 16 May.

Shelley Jofre: The Scottish Parliament in March this year. Fingerprint experts from Britain and America gathered to support former police detective, Shirley McKie.

Shirley McKie: And they were prepared to do that to me, so I mean, who else? Who else is in jail just now because of fingerprint evidence?

Shelley: Shirley McKie's nightmare began when four staff from the Scottish Criminal Records Office in Glasgow identified a fingerprint as hers. But in our last programme we proved they got it wrong.

As a result, an inquiry has been set up into the Fingerprint Bureau. It's expected to report back next month. But tonight we can reveal shocking new evidence of a second mis-identification by the SCRO. It's prompted a scandal unparalleled in the history of British fingerprinting.

John Scott, of the Scottish Human Rights Centre: If what came out of your first programme it was alarming in relation to Shirley's position and her fingerprint, then this is even more concerning. It's difficult to see how this can be anything other than the most serious problem that has ever been encountered with fingerprint evidence.

TITLES: False Impression

Shelley: David Asbury, led from court to life imprisonment for the brutal murder of Marion Ross. Fingerprint evidence was crucial to his conviction.



John Scott: " Serious problem"

Marion Ross was stabbed to death in her home in Kilmarnock in January 1997. She was known locally as a recluse, but there was no sign of forced entry to the house. With little else to go on the police began looking for anyone who would

have had contact with her. They discovered some builders had completed an extension at the house the previous year.

The police tracked down one of those workers, David Asbury, to his family home in Kilbirnie, Ayrshire.

Shirley McKie was then a Strathclyde police detective who'd been assigned to the case. On a routine search of Asbury's house she found a tin containing bundles of cash - £1,800 in all.

This is the actual tin that was to provide the breakthrough in the investigation. It was dusted for fingerprints. And one was found that could not be matched up either to David Asbury, or to his family.

Prints were then taken from the murder victim. Experts at the SCRO later concluded the print on the tin, found in Asbury's bedroom, matched Marion Ross's right index finger.

At the High Court trial in May 1997 most of the evidence against David Asbury was circumstantial. So the print on the tin was to prove crucial. Asbury could offer no explanation as to how Marion Ross's fingerprint came to be on a tin he claimed belonged to him. And because the tin contained so much money it also suggested that the motive for the murder was robbery.

Amelia Crisp, David Asbury's mother: That seemed to be the damning evidence. The fact there was a fingerprint on that tin the prosecution at his trial said the tin belonged to Marion Ross and he'd taken the tin with money in it out of her home, and that's why her print was on it. But that's not the case at all.

Shelley: Where had the tin come from?

Amelia: My home, this house. It was David's tin and he'd had it three years. It was in his bedroom for three years. We knew he couldn't possibly have taken the tin out of somebody else's house, so there couldn't possibly be anybody else's print on it. It was David's tin.

Shelley: Not only did the tin belong to Asbury, according to his mother, so too did the money.

Amelia: The money was his. David worked for four years and he saved money over that period of four years. And I think it was a few months before that he'd drawn money out the bank, he was thinking about buying a new car. And he'd lost his job.

So he just left the money in his room, I think he thought 'I'll get another job soon. As soon as I get another job I'll buy a car'. Whereas he should have put the money back in the bank rather than just leaving it lying about his room.

Shelley: There was, however, one other piece of fingerprint evidence that implicated David Asbury. His print was found on a Christmas gift tag inside Marion Ross's house. He said he must have left it when he stopped at her house to use the phone when his car broke down a few days before the murder. But he steadfastly maintained that the tin belonged to him.



Shirley McKie: "Perjury trial"

Amelia: We knew we wouldn't be believed, you know, when we told people about the tin, and we told the lawyer. So four of us, myself and my husband, David, and my son Steven, who was only six at the time, had to give evidence and say: 'this is our tin, therefore it can't possibly be Marion Ross's print on it'. But it's your word against a fingerprint expert, you know, so who's the jury going to believe?

Shelley: When police experts dusted the murder house for prints they found a thumb print on the bathroom door frame close to the victim's body. SCRO fingerprint staff identified this print as belonging to Shirley McKie. But in court she denied ever having been in the house.

Amelia: I believed her. I watched her give evidence, and I knew she was telling the truth. Yet again she wasn't going to be believed either because it was her word against the fingerprint experts.

Shelley: Did you think it was rather strange though that here was a policewoman taking issue with evidence that was presented by her colleagues?

Amelia: Yes, I did, I did. I knew something was badly wrong when that was happening.

Shelley: David Asbury was convicted by a majority verdict of murder and sentenced to life imprisonment. And for Shirley McKie, too, things were about to get a lot worse. Nine months after the trial she was charged with perjury. She was accused of lying at Asbury's trial when she maintains she'd never been in the house. The fingerprint evidence suggested otherwise. Shirley began her own research on the internet and, just weeks before her own trial, made contact with an American fingerprint expert. He came to Scotland and compared her print with the crime scene mark. His conclusion -

Pat Wertheim, fingerprint expert: It was clear to me that a mistake had been made. This was not an identification. There was something horrible going on here.

Shelley: His opinion was backed by another American expert in court. The jurors were unanimous in their verdict. Shirley McKie was not guilty. But the SCRO still refused to admit there was anything wrong with their identification. The bureau's head, Harry Bell, even wrote in a memo after the trial that he was satisfied with the integrity of the fingerprint experts from the SCRO. But when Frontline asked five leading experts to review the evidence their response was unequivocal - the SCRO had got it wrong. Pat Wertheim was right.



Experts compared the prints

Amelia: That was the break we were looking for. It had been proved that there was something wrong with the fingerprint evidence in that case.

Shelley: And what did that mean for David's case?

Amelia: It meant that the fingerprint in his case could get looked again, which was what we wanted, because we knew it wasn't right.

Shelley: David Asbury's solicitor made contact with Pat Wertheim, then Frontline brought him over to Scotland from his home in Oregon.

Shelley meets Pat Wertheim on arrival.

Shelley: We've asked him to examine for himself the fingerprint evidence that was so crucial in convicting David Asbury.

So what are you going to be looking while you're here?

Pat Wertheim: Well, as I understand it, there are two fingerprints in that particular murder case which were in part to the conviction to the David Asbury. There is some question as to whether or not they were tainted in the same way as that the fingerprint evidence in the McKie case was tainted.

Shelley: Have you any reason to be concerned about the evidence?

Pat Wertheim: Yes, I do. I've seen photocopies and some photographs that leave some serious questions in the mind that can only be answered by reviewing the actual evidence itself.

Shelley: Pat Wertheim has 20 years' experience in fingerprinting. In America he has served on an FBI fingerprint think-tank and, earlier this year, was invited to give two lectures at the British Fingerprint Society's annual conference.

This morning he's preparing to view the fingerprint evidence in David Asbury's case.

With him will be Allan Bayle, a fingerprint expert at New Scotland Yard, with 24 years' experience. By giving Frontline his personal view of the evidence he knows he's putting his job on the line.

Allan Bayle: Because I looked at Shirley McKie's case I know that she was innocent because of the mark I looked at. And my conscience got to me, and I could not sit back and say nothing. And I think a lot of other experts are in the same place, but they knew that there'd be repercussions against them. And I want to see honesty and my integrity to be stable.



Discrepancies were found

Shelley: The two men meet at the Procurator Fiscal's office in Kilmarnock where all the evidence in the Asbury case is held.

Pat Wertheim: What we're hoping to see is the actual biscuit tin and the actual gift tag itself in order to understand part of the image that appear in the photographs.

Shelley: How important is it to actually see the exhibits themselves?

Allan Bayle: Oh it's very important because . . . get the details from photographs, actually seeing the exhibits themselves would give us more insight into the detail that's there into the fingerprints.

Shelley: First, they examine the print on the gift tag which was identified as David Asbury's. After close analysis they both agree it is his. Not that surprising since Asbury has never denied touching the tag. Next, they examine the tin.

Pat Wertheim: This is the sweet tin that was found in David Asbury's apartment, and upon which the mark was found. You can see the top of this carriage, you can see the staircase, you can see the handrail.

Allan Bayle: Yes, I can see that.

Pat Wertheim: So you can clearly say that this photograph of the mark is from this area of the tin. Now the mark in question is this whirl pattern fingerprint in this area. And in comparing . . . this is the . . . dead body print of Marion Ross, which was the print that was identified to the mark.

And yet as soon as you begin a comparison the thing falls apart before you can go anywhere. In a case like this you start with the very centre of the fingerprint, and in the mark you look for the most obvious closest point, which is this ridge just to the right and there it is.

Well let's go to Marion Ross's print and see if that's true. If we come to the centre of the print, go the ridge to the right, it comes down and sure enough there it is, splitting develops. . .

Allan Bayle: Right.

Pat Wertheim: So this could be said to match the point that it does in the mark. Then you look for the next point in succession in the mark, and the next obvious point would be straight up above the centre. And if we follow the ridge from the splitting ridge up towards the top we see that we skip one ridge and we come to that . . . ending ridge.

Now the ridge above and below that ending ridge come together to fill in the gap. So this is clearly an ending ridge, there can be no doubt of that. So this would be our second point that we have to look for.

Allan Bayle: And it's not even on the . . . Marion Ross

Pat Wertheim: No, or Marion Ross's fingerprint if you come up and go to a ridge ending skip one, there's nothing there, nothing at all. And in fact, if we're going to look for a ridge coming in from the right that ends we start at this splitting ridge, come up to the top, and we're going to have to skip how many - one, two, three, four, five, six, seven, eight.

Here's the first ridge coming in from the right that comes to an ending. Here you skip one, here you skip eight. That should kill the identification right there. But there are far more discrepancies in that formal. The so-called 16 points that were found by the SCRO in this are pure fiction, and these are some photographic enlargements that I had made of their chart.

If we look at the imprint we see 16 numbers and 16 little red lines coming into the photograph. And in fact these numbers and these lines do all point to points that exist within the inked print. So this shows 16 points in the ink print. However, if we come to the mark itself we find that, while it does in fact have 16 numbers and 16 little red lines, many of these lines end out in the middle of nowhere, they don't go to any point. And they have overlooked completely.

Allan Bayle: Discrepancies.

Pat Wertheim: The obvious discrepancies, not just that one ridge ending, but all throughout here. It's terrible. OK, point number six for example, goes basically nowhere. Point number four goes nowhere. Point number three goes nowhere. Now interestingly here point number seven ends at a horizontal line, and yet in the ink print of Marion Ross point number seven comes down, point seven is a vertical line. How do you get that?

Allan Bayle: This is incompetent marking up.

Pat Wertheim: Well, or worse.

The fingerprint which was on the tin inside of David Asbury's apartment is not Marion Ross's print. It's that simple.

Shelley: Can you be absolutely sure about that?

Pat Wertheim: Absolutely sure. It's not a difficult thing to see.

Allan Bayle: There is enough detail in that mark to individualise, and that's what the conclusion I've come to, that it is definitely not hers.

Shelley: You can say that with absolute certainty?

Allan Bayle: With absolutely certainty.

Shelley: So the mark on the gift tag was left by David Asbury, but alarmingly the mark on the tin was not left by Marion Ross.

Pat Wertheim: In a free society a person has the right to be confronted in court only with valid evidence. If we allow the police to introduce bogus evidence in the court then we become a police state. And we can't allow that. I certainly think that a new trial would be warranted in order to allow a jury to hear all of the evidence without having bogus evidence thrown in front of them.

Shelley: How do you feel about the outcome of their analysis?

Amelia: Very good. Relieved. But not surprised. We knew it couldn't possibly be Marion Ross's print, and now Pat Wertheim has verified that. And that's good.

Shelley: How much do you think that's going to help David's appeal?

Amelia: Well I think it should help because the print was the damning evidence. I feel there's something very wrong going on here. One might be a mistake - two, I don't think so. I don't think any of it is a mistake. I think they had to get a conviction. A terrible crime had been committed, they would be under pressure. I think there's more than a mistake going on here.

John Scott: If the jury had known that what they were being told about one of the fingerprints in the case, one of the crucial parts of the evidence was in fact completely wrong, it's possible to see that that may have had a completely different result when they came to return their verdict, and on that basis I think the very least that we can hope for, or demand, is a fresh trial for David.

Shelley: This latest revelation is yet another twist in an already terrible tale for Shirley McKie. Her health has suffered, and she's been shunned and humiliated by her former work colleagues. Earlier this year Shirley felt forced to leave the job that was meant to be her lifetime career. She tries to escape the strain of it all by helping out with the horses at a local stable. Until now she has struggled to make sense of the events of the last three years.

We now have evidence that a second fingerprint in the David Asbury case was mis-identified by the SCRO. What's your reaction to that?

Shirley McKie: I'm just flabbergasted. The one thing it has done is answer a lot of questions for me. I always wondered why I was dealt with so harshly, and why I was pursued the way I was pursued and it sort of answers all these questions.

Obviously if . . . I don't know what's happened with this other fingerprint, you know. I don't know whether there's been a mistake made, or whether there's been a conspiracy to convict David Asbury. But em, all I do know is it explains why I was treated so badly, because I was questioning the fingerprint system, which would obviously open up the book for people to look at the rest of the fingerprint evidence. And obviously now there's another fingerprint that's wrong, then that explains why they treated me the way they did.

Shelley: If the print from the bathroom door is not Shirley McKie's, then it means another, as yet unidentified person, touched the door where the murder victim

was found. Equally, if the print on the tin was wrongly identified as Marion Ross's there's no other proof that the tin or the money belonged to her.

John Scott: I suppose if it happened once then it's possible it was just a really bad mistake. The fact that it's happened twice in two very serious instances probably means that at best what we're talking about is a system of work that involves wrong identifications being made as a matter of routine, and that's alarming enough.

The more worrying prospect is one where perhaps some pressure has been put somewhere along the line, and the person has been identified as suspect, and everything else has been put into place to fit round that person being the guilty party. If that's the case then what you're talking about is a criminal conspiracy, and perhaps the need for a prosecution of some of the people that have given evidence.

Shelley: Following the allegations in our last programme Her Majesty's Inspector of Constabulary was asked to carry out an inspection of the training and skills of the SCRO's fingerprint staff. The inspection will include a close examination of Shirley McKie's case. But there are no plans to broaden the inquiry to include the fingerprint evidence from David Asbury's case, even though his local MSP has asked for this to happen.

Allan Wilson, Labour MSP for Cunningham North, Labour: I have already written to the Deputy First Minister and the Minister for Justice, Mr Jim Wallace, in relation to encompassing my constituent's case within the overall review. I now intend to follow that up having received a response in the negative to ensure that in fact my constituent's case is incorporated with in the overall review.

Shelley: And Shirley McKie's father has his own reservations about the inspection. He was a Strathclyde Police officer himself for thirty years. He wants to see a review of the whole workload of the SCRO experts involved in Shirley's case.

Iain McKie, Shirley's father: As far as I'm concerned there should be a review team taken in of fingerprint experts taken into SCRO immediately and the whole of the work of the SCRO for years back should be looked at. The procedures should be looked at, the supervision should be looked at, the training and skill should be looked at. And these SCRO officers should be responsible for these mis-identifications, should be suspended immediately. Shirley was suspended, Shirley was locked up, thrown in a police cell, and they've sat in there in that building behind me, and . . . have they lied? I don't know. I think it's time someone found that out.



Iain McKie: Review call

Shelley: That's a call echoed by Shirley McKie's MSP, Mike Russell. He's fighting for compensation and an apology for Shirley. But he's now concerned about the wider implications of the case.

Michael Russell, SNP MSP for South of Scotland: How many other cases rest solely on fingerprint evidence? In two ways, in one way that the conviction would not have been secured otherwise - or even perhaps more worrying - in a case where somebody has pled guilty because they themselves believe that the fingerprint evidence cannot be challenged.

So, you know, the potential for a problem here is enormous. Now there may be no other cases. I'm quite able to accept that. Or there may be hundreds, thousands of other cases. Somewhere we've got to start looking at this. So this case isn't just a flash in the pan, it's not just a one off. It actually raised the question of the Scottish criminal justice system and its operation.

Shelley: Can the public have any faith in the Scottish Criminal Records Office.

Michael Russell: Well, I certainly think that the whole question of faith in the Criminal Records Office is at the heart of it. I would say the evidence so far is no they can't have that faith. What they've actually got to do now is inquire into it, and on behalf of the public the minister for justice has that responsibility. I don't think yet he's fully meeting that responsibility.

Shelley: Meanwhile, the director of the Scottish Criminal Record Office, Harry Bell, refuses yet again to comment on the whole controversy. He told Frontline it would be inappropriate for me to discuss this matter in light of the inquiry and David Asbury's forthcoming appeal.

David Asbury has now spent three years in prison for a murder he says he did not commit. Whether he's guilty or innocent if the evidence that was presented in court was flawed, it's difficult to see how he could have received a fair trial. Shirley McKie, too, is still counting the cost of her experience with the SCRO. And no one knows whether the problems at the Fingerprint Bureau are consigned to the two cases we've investigated. What is clear now though is that the SCRO stands accused of failing the criminal justice system in Scotland.

Pat Wertheim could never have imagined finding himself in the situation he's now in - 5,000 miles from home, challenging the Scottish fingerprint establishment. Today he's going to an Ayrshire hotel to meet the woman who feels he's saved her life.

Shirley: Hi Pat, how are you?

Pat: Good, how have you been.

Shirley: Gosh, getting there. So are we going to win?

Pat: Oh yes, you will win, because you've been in the right on this the entire time. And I hope we can bring it to a quick conclusion. But you will win. You will get your vindication. That's why I'm here of course.

Shirley: Well, I'm glad you are, because I need all the help I can get here at the moment.

Shelley: Pat Wertheim and Shirley McKie are now united in their battle to see those responsible for this controversy called to account.

Does it frustrate you that things seem to be taking so long to happen?

Shirley: Yes, of course it frustrates me. With three years down the line, more than three years down the line. And while this is still going on I can't get any sort of a life back. I can't. It's as if the authorities keep hoping that I'll just give in and go away, and I can't do that. I need to see this through, I need to see justice done.

Shelley: Can you be absolutely sure that your position on this is the correct one, because these are very serious charges that you're levelling at the SCRO?

Pat Wertheim: They are, and my career is on the line on this. And I'm not putting my career on the line on a gamble, I don't gamble with that. I am right. My position has been confirmed by other experts from other countries all over the world. The SCRO is wrong. They have no one to support them in this. No one at all except their own internal people who are applying the whitewash to this thing.

Shelley: How will you feel if no action is taken against the SCRO?

Pat Wertheim: Well ultimately it's not my problem because I live in the United States. But it's the problem of the entire science of fingerprints world-wide if this is continuing to happen.