

14 May 1999: Lord Johnson's Summing Up

All I propose to do now, very briefly, is to give you one or two what might be described as aids as to how you might go about this task. But I repeat my warning, I'm not intending, and hope I will not, give you any impression that I have a view on the matter; this is simply designed to help you to go about your business, and you may ignore it as you like or proceed on any other basis as you like pertinent to the question.

This is not inverting the onus, but commonsense might dictate to you - and it's entirely a matter for you that the first thing you might like to consider when you retire is whether or not you believe Miss McKie on the basis that she gave evidence to you entirely consistent with the position that she has followed from the start. She does not have to prove anything, as I've said, she remains innocent until that presumption is rebutted. But the fact remains, that she has told you she is innocent and, if you believe that, that's the end of the matter and you need take the matter no further. If you are satisfied to that effect simply conclude that she is an honest and straightforward witness and you can come back to me in 5 minutes' time and tell me that; you needn't take the matter any further, and you needn't even start to consider the question of fingerprints.

If the evidence of Miss McKie leaves you in a reasonable doubt - as Mr. Findlay has put to you on a number of bases - as to her guilt, again, without taking the matter any further, you must conclude that she's innocent and acquit her.

If you reach neither of those conclusions, that is not the end of the matter, it is merely the beginning, because the Crown must still thereafter prove to your satisfaction

that she is guilty, and that is where, in the way Mr. Findlay emphasised it to you yesterday afternoon, he is quite correct, to take his metaphor, it is not an equal contest; the Crown must surmount every hurdle that it places in its own way, quite rightly, before you can establish guilt. And if any of those hurdles - and I'll just tell you in a few minutes what they are - are not surmounted, then at each stage the Crown case will fail completely and you must acquit bearing in mind that each hurdle has to be surmounted beyond reasonable doubt.

Now, ladies and gentlemen, if you are embarking on that exercise, looking at the Crown case, the first question you have to consider, which Mr. Findlay outlined very clearly before you yesterday, is if this is - if, lets assume for the moment, if this is Miss McKie's fingerprint, how did it get there and when did it get there? The Crown, as I understand it - it's your recollection that matters but according to what I noted yesterday the Crown go for if that's the right expression - sometime on the Saturday and say, well, that's when she must have slipped in, contrary to any logist's evidence, implanted the fingerprint.

But, ladies and gentlemen, as Mr. Findlay pointed out to you, what you must consider with the greatest of care in this context is the evidence of the man, Wilson, who, in fact, lifted the print on the Tuesday. We know from Thurley that he dusted the aluminium powder down on the - on the Tuesday, I beg your pardon, lifted the print on the Tuesday following. We know that Thurley found, dusted the aluminium powder on the Thursday, the first morning of the investigation, but what Wilson says,

as I noted it - and it's your recollection that matters - is that when he finally found the print with the black powder on the Tuesday, he saw, prior to it coming up, no sign of disturbance in the aluminium powder, no sign that there was a print that had been implanted upon it and, though it's entirely a matter for you, what you've got to consider very carefully is what conclusion you draw from that evidence. One obvious conclusion which is open to you is that the print was there when the aluminium powder was put on it. That is consistent with Wilson's evidence and there's no evidence to a contrary effect. If that is the case, the Crown case fails.

You have therefore ladies and gentlemen, first of all in this exercise, to surmount the hurdle beyond reasonable doubt that you are satisfied, assuming this is Miss McKie's print, that it got there sometime before the aluminium powder was dusted, a position the Crown does not take up, if you accept - as I say, it's matter for you - if you accept the evidence of Wilson as to what he said he saw - or didn't see, perhaps more importantly. He gave no evidence, in fact he denied that he observed any print implanted on top of the aluminium powder, which must be the case if it was implanted on the Saturday by the Accused or by anybody else. So that's the first hurdle, ladies and gentlemen.

The second hurdle is why would Miss McKie do this and stick to her position from Day 1, moment 1, apart from the very initial: reaction where she didn't think very much about it because obviously, as we know, rogue, to put it loosely, fingerprints can turn up. But it is a very pertinent aspect of this case in your consideration of it. Why should Miss McKie, for two years, against obvious - because there's no doubt about this - pressure, in an isolated and lonely position, adhere as firmly as she has done to the denial of any involvement with the fingerprint, so easy to detract, so easy to turn round and say, Well, all right, why has she done that? And, secondly, why, in any event, would she want to go in there at all? The suggestion is she was curious or it would help her in her own analysis of the case. Well, so be

But that's the second hurdle, ladies and gentlemen, which you have to take into account in considering where you are on this particular aspect of the case. Bearing in mind, of course, that against that background, all the logs are consistent with the view that she did not enter the house. What you make of that is entirely a matter for you, but you have to be satisfied beyond reasonable doubt that she did enter the house. The Crown say you can infer that from the fingerprints, and that's where we come, finally, to that aspect of the case, if you get this far.

Now, ladies and gentlemen, in assessing the fingerprint evidence, you do not, as it were, count heads, you must look at the evidence on its qualitative basis, albeit there are three led by the Crown and only two by the Defence. But what you have to do, ladies and gentlemen, as Mr. Findlay quite properly pointed out to you, is to assess the whole matter against what you were told, but also with the use of your own eyes. You have the photographs, you have the prints, make your own comparisons, you're quite entitled to do so. You can accept expert evidence when they say a blob in fact means something else, because certainly to my mind a blob's a blob. But if somebody says a blob contained something, you can accept that if you believe them. But, on the other hand, where the two comparisons with your own eyes reveal mismatches, then you have to start, I suggest, being seriously concerned about whether this really is Miss McKie's print and certainly seriously concerned to the point of beyond reasonable doubt.

Perhaps the most critical aspect of this - though not the only one, because the

American witnesses have pointed to what they perceive to be discrepancies in the Crown's witnesses' comparisons - but perhaps I suggest to you - again it's entirely a matter for you - the most important part of this question is this issue of distortion and the top third of the print. If the Americans' evidence is acceptable to you, the top third of the print is genuine and available as a credible piece of evidence, then, again it's a matter for you, it seems to me the Crown case completely collapses because of the obvious disparities between the two tops of the print, and you can see with your own eyes.

Why then, or how then should you approach this matter? You are bound, I suggest - but it's entirely a matter for you - to recollect and take into account the Crown

witnesses, particularly Mr. Stewart and Miss McBride, pressed by Mr. Findlay in Cross-examination, offered no reasons for why they were dismissing the top part of the print, other than, "It's my opinion", "It's my judgment". On the other hand, what do the Americans do, particularly Mr. Wertheim. He says you look at the prints - it's your recollection, I'm just trying to help you - and you find immediately, without more than a casual almost, or casual expert, if that's the right expression, glance, that there are mismatches between the top half of both prints. What does he do? He says, "Well, that places me immediately in a doubt." "And what should I do next?", he says. He says, "Well, distortion" - or "slippage" was the word he used - "is something that can happen for a variety of reasons - pressure, application, movements", so on and so forth. But he doesn't say, "It is my judgment", he goes on to say, "I look for" - his words - "warning signs, signs of blurring, signs of movement", and you'll remember he drew a number of aspects on bits of paper as to what he would expect to find if he was looking for distortion. He finds none. So, what does he do? He goes back to his first base and says, therefore, this is a mismatch. And he bases that on reasons, not just judgment.

It's entirely a matter for you, ladies and gentlemen, but against that background you must give very serious consideration to whether or not you can safely say the Crown have established that the print was that of Miss McKie on their evidence beyond a reasonable doubt. And, as Mr. Findlay put it, it is sufficient for him at the end of the day if you were left in a doubt "maybe" was the word he used, and I endorse it if that is your view, maybe it's not, that is enough, and at that stage of this process the Crown would fail on the last hurdle, bearing in mind that it has to pass all the hurdles I've tried to identify for you.

Now, ladies and gentlemen, that's all I propose to say to you. The matter is clearly placed before you by two very competent speeches and it is focussed for your attention.

But do bear in mind that this is not an equal struggle, it is a contest in which the Crown must win and the Defence need prove nothing. At the end of the day, this is not a public inquiry where you are obliged to reach a positive decision. If the whole evidence, the whole evidence, leaves you in some reasonable doubt which is reasonably based as to the guilt of Miss McKie, you must acquit her.

Ladies and gentlemen, there are three verdicts open to you, guilty, not guilty and not proven. Not guilty and not proven are both verdicts of acquittal - it's sometimes thought that Not Proven means the Crown can start again. That is not the case. They simply are two versions of acquittal and the words mean what they say.

Your verdict may be unanimous or by a majority but, if it's going to be guilty by a majority, at least 8 of you - 8 of you – must vote for guilt - - for obvious reasons, there are 15 of you and there are three versions of, or three verdicts available to you. So, 8 of you must vote for guilt. If there are at least 8 of you divided between not guilty or not proven, just pick one or other of them and stop your deliberations there, you don't have to be unanimous as between those two; as long as there are 8 of you not satisfied the Crown has proved its case, you will simply return one or other of the acquittal verdicts. So I repeat if you are going to convict, at least 8 of you must vote for guilty.

The first thing to do ladies and gentlemen, I suggest when you retire as I'm now going to ask you to do, is to appoint one of your number, it doesn't matter who it is to speak for you when you return to Court and give your verdict, which my Clerk will ask for.

Will you now, please retire and consider your verdict, which I can take at any time

The jury retired at 10.26

Upon their return at 11.51

THE CLERK OF COURT: Ladies and gentlemen, will the person who speaks for you please stand. Have you agreed upon a verdict?

THE FOREMAN OF THE JURY: Yes we have.

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THE CLERK OF COURT: What is your verdict in respect of the Accuse Shirley McKie on the Indictment?

THE FOREMAN OF THE JURY: Not guilty.

THE CLERK OF COURT:

Is that verdict unanimous or by a majority?

THE FOREMAN OF THE JURY:

Yes, it's unanimous.

C THE CLERK OF COURT: I have to record that verdict, please sit down while I do so.

Ladies and gentlemen, is your verdict correctly recorded as follows. The jury unanimously find the Accused, Shirley Jane McKie (also known as Shirley Jane Cardwell) not guilty, is that correct?

THE FOREMAN OF THE JURY: Yes.

LORD JOHNSTON: Shirley McKie, it's not appropriate for me to comment on the jury's verdict, nor to comment upon how you find yourself in the situation you have found yourself in, but personally I would like to extend to you my respect for the obvious courage and dignity which you've shown throughout this nightmare, as you've described it. I very much hope you can put it behind you, I wish you all the best. I discharge you and you're free to go.

THE ACCUSED: Thank you.