

Examine evidence in cases of Shirley McKie and David Asbury

So, Shirley McKie is the victim of a grave injustice, while David Asbury was wrongfully convicted of the murder of Marion Ross and it is all the fault of the Scottish Criminal Records Office (The Herald's editorial, Victim of pass the parcel, and article, Police chief: McKie had a case in 2000 – November 10). As for compensation, taking into account interest and expenses, Ms McKie is seeking in excess of £1m, while Asbury is after a figure in excess of £100,000. However, before demanding that the Scottish ministers sign those cheques, drawn on the bank account of the Scottish taxpayers, you should examine the facts.

The four named fingerprint experts of SCRO have been publicly pilloried for six years. Notwithstanding the fact that they stand accused of "dishonesty, perjury, criminal conduct, malice, misrepresentation and conspiracy to pervert the course of justice" (Court of Session pleadings), they are subject to a gagging order by the lord advocate, Colin Boyd, QC, and are not permitted to speak publicly in their own defence. For my part, I represent Peter Swann, generally acknowledged to be "the doyen" of fingerprint experts.

The facts of the two cases are tragically simple. The body of Marion Ross was found at her home in Kilmarnock on January 8, 1997. She had been subjected to a frenzied attack, suffering 13 fractured ribs and multiple stab wounds. During the murder investigation, a mark was found on the door standard of the bathroom, identified by SCRO as the left thumb impression of Ms McKie, a serving police officer, who denied subsequently on oath having entered the crime scene. Asbury was arrested on January 22, 1997, and police officers retrieved from his bedroom a Marks & Spencer tin box, containing money. SCRO identified a mark on the tin as the right fore fingerprint of Marion Ross. On June 4, 1997, Asbury was convicted of her murder. Ms McKie was charged with perjury and subsequently acquitted on May 14, 1999.

In the aftermath of that acquittal and BBC Scotland documentaries, the lord advocate granted Asbury interim liberation on August 22, 2000, releasing him from his life sentence. On August 14, 2002, Asbury's appeal was heard in the Court of Appeal, Edinburgh. The lord advocate did not oppose that appeal, nor did he make application for Asbury's retrial.

Both McKie and Asbury claim they are the victims of an SCRO conspiracy. However, the SCRO experts discharged their duties with integrity and professionalism.

Prior to Asbury's appeal, on the instructions of the regional procurator-fiscal, the deputy head of SCRO prepared an expert report and lodged it with the Crown Office, pursuant to Section 280 of the Criminal Procedure (Scotland) Act, 1995. That report would have constituted fresh evidence; it identified 29 ridge characteristics in sequence and agreement, and is believed to determine conclusively that the tin recovered from Asbury's bedroom had upon it the fingerprint of Marion Ross. That report was a severe embarrassment to the lord advocate, who had already released Asbury. The lord advocate did not oppose Asbury's appeal nor did he seek an order for his retrial.

It is well-known that the lord advocate launched an investigation into the SCRO experts. In July of this year, the lord advocate made admission that the disputed mark was not the fingerprint of Ms McKie. However, he made his admission of misidentification without the agreement of the SCRO experts who maintain their identification of Ms McKie's fingerprint. There has been much publicity concerning the recent disclosure that Ms McKie had the support of three members of Grampian Police fingerprint department. However, many believe their report was fundamentally flawed. Indeed, they also used impressions of the left thumb, not one of which showed the disputed, right-hand side of the fingerprint. We have already offered to provide the lord advocate with full expert presentation on the McKie fingerprint. We have also lodged with him further evidence, dealing with the Grampian three.

It is evident that the lord advocate is desperate to settle the McKie and Asbury cases, to avoid public trials in the Court of Session. Indeed, on September 21, the lawyers for the Scottish Executive and Ms McKie conducted a secret settlement meeting. Having been forewarned of

the lord advocate's intentions, I gave formal notification to each of the Scottish ministers and, indeed, the auditor-general, Audit Scotland.

In the circumstances, instead of alleging that all parties are engaged in pass the parcel, I suggest that you open that parcel and examine the evidence. Since we are concerned with the gravest miscarriage of justice, it is in the interests of all parties that these matters should be determined once and for all before a High Court judge.

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For previous correspondence from Mr Russell:

<http://www.shirleymckie.com/> (breaking news – 21 May 2005 and thereafter)