



FINGERED

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EXCLUSIVE: Murder suspect sues police experts for £250,000 Evidence must be about the facts not opinion

By Marion Scott And Billy Paterson

A SUSPECTED killer is suing four police fingerprint experts for £250,000 after being cleared of killing a bank clerk.

David Asbury, 29, launched the legal action after his conviction for the murder of Marion Ross, 51, in her home was overturned.

He is to sue the four Scottish Criminal Record Office workers responsible for controversial fingerprint evidence at his trial.

Last night, Asbury said: 'The SCRO got it wrong and they won't admit it. They just keep saying that is their professional opinion. But fingerprint evidence is based on scientific fact, not opinion.'

The SCRO testimony was crucial in convincing a jury that he had killed Marion at her home in Kilmarnock in January, 1997.

He was later cleared but police say they are not looking for anyone else in connection with the murder.

Asbury claims the case against him hinged on a biscuit tin found in his house in Kilbirnie, Ayrshire.

The four experts signed a report saying a fingerprint from Miss Ross was on the tin. But Asbury claimed the tin was his own and used to keep his savings in.

In August 2000, he was released on interim liberation pending his appeal, which was heard in August 2003, when his conviction was quashed Asbury said last night: 'The main piece of evidence against me was that Miss Ross's fingerprint was on that tin, but that couldn't be because the tin never left my house.'

'Now all these experts are saying that there was no way it was Miss Ross's fingerprint.'

'There was no proper identity at all and, therefore, that evidence should not have been used.'

'I have a lot of anger for these people. The jury were always going to believe fingerprint experts before they would believe me.'

'As a result my life has been hell. I was a joiner but I don't think I will ever go back to that. I'm now unemployed.'

His solicitor, Cameron Fyfe, said: 'The advice of Counsel is that an action should be raised against the four SCRO fingerprint experts who provided evidence in Mr Asbury's trial - Hugh McPherson, Charles Stewart, Fiona McBride and Anthony McKenna.

'The law is that you cannot sue the police or an expert if they simply got it wrong or have been negligent - unlike a doctor or lawyer.

'You have to prove the evidence was actually fabricated - which is a heavy word.

'We have independent fingerprint experts - one from America and one from England - who say that the fingerprint evidence against Mr Asbury was so wrong, that it couldn't just be a mistake.'

All four fingerprints experts declined to comment yesterday.

In addition to them, Asbury is also suing Strathclyde Joint Police Board and the Scottish Executive.

Mr Fyfe said: 'The sum being sought will be well into six figures to compensate for the three and half years Mr Asbury was incarcerated and for the effect this conviction has had on his employment prospects. It will be getting towards quarter of a million pounds.'

However, police believe that when they arrested Asbury for the brutal murder of Miss Ross - she was stabbed in the eye and throat with a pair of scissors - they got the right man. An ex-detective who worked on the case said: 'It is very significant that the police said straight away they were not looking for anyone else for this murder.

'This was a major inquiry which involved a lot of serious detective work and the police didn't just pick Asbury's name out of a hat.

'All officers involved in the investigation were convinced at the time that they got the right man.'

The two experts Asbury is relying on for his civil action to succeed are Allan Bayle, who trained fingerprint officers for New Scotland Yard, and FBI-trained Pat Wertheim, of Texas.

Mr Bayle said the evidence in the Marion Ross case was 'badly flawed'. He added: 'The public need to know if this was incompetence or criminal behaviour by the SCRO or the police.'

Mr Wertheim said: 'Mere error alone cannot explain the erroneous identification. The possibility of an intentional erroneous identification must be considered. If that is the case, Crown evidence on those productions is a complete fabrication.

'In a free society, a person has the right to be confronted in court only with valid evidence. If we allow bogus evidence in court, then we become a police state.

'My position has been confirmed by other experts from other countries all over the world.

'The SCRO have no-one to support them, except their own internal people who are applying the whitewash in this thing.'

Mr Fyfe said: 'At the moment we are awaiting Counsel framing a summons which will be lodged in court.'

The Marion Ross case has been dogged by fingerprint controversy SCRO evidence showed that Strathclyde detective Shirley McKie was in the victim's house. She denied that in evidence and was later charged with perjury - a charge she was later cleared of after a trial.

Her ordeal led to demands for a complete overhaul of Scotland's fingerprint service.

The family of Miss Ross have declined to comment on developments in the case. But her cousin William has criticised the way it was handled by police and prosecutors.

Last night, Strathclyde Police declined to comment on Asbury's legal action but confirmed the Marion Ross murder case remains closed