

THE FIRM

December 2004

Making her mark

International forensic experts gathered in Ayrshire recently for the unveiling of a memorial to Dr Henry Faulds, the Scottish scientist who made the breakthrough discovery that fingerprints are unique. Over one hundred and twenty years on from that discovery, fingerprint evidence continues to be regarded as infallible. Shirley and Iain McKie, who attended the ceremony, would not agree with Dr Faulds. For their eight year legal battle has challenged not just the science of fingerprint technology, but those responsible for processing fingerprint evidence and their superiors. Sue Lennox reports.

Many will remember the case of Shirley McKie – the former Detective Constable who was cleared of perjury, after “her” fingerprint was found at the murder scene she had denied visiting. Few will be aware of the dogged and desperate fight for justice that Shirley and her father, Iain, have fought since the 1999 perjury trial.

Now, eight years after Shirley was cleared of perjury, a five-week trial has been set down for February 2006. Senior fingerprint experts will have to explain why they mistakenly insisted that the fingerprint belonged to Shirley McKie, with the possibility of criminal charges if it is judged that their identification was malicious. Lawyers for the Scottish Executive, who are defending the £750,000 writ, dropped their appeal in October. The civil hearing has the potential to seriously undermine Strathclyde Police and the Crown Office.

Shirley’s case is well known within the Scottish political community and many MSPs have been vocal in their support for the McKies. However, as the case is presently sub judice it cannot be debated in Parliament, something that some MSPs such as Fergus Ewing and Alex Neill have criticised.

When I meet Shirley McKie and her father, Iain McKie is on fierce form. He feels that his daughter’s case painfully illustrates many faults within both the political system and the legal profession. A former police Superintendent he is full of anger at what has happened to his daughter. Shirley cannot handle the day-to-day campaigning that her father undertakes – it is too much for her to deal with. She says the only way she can deal with things is “to pretend this is not happening”.

She talks of their nomination for the “Campaigner of the Year” award at the Herald’s recent Politician of the Year Awards, and is quick to praise her father for his work on her behalf. “To be honest, I kind of just turn up at these things, do my interview and then just go and hide. The campaigning is done by my dad, behind the scenes. All I know is that my dad works very hard with it, too hard. So, to me he’s the campaigner of the year.” The award on the night goes to David and Ozlem Grimson, campaigners for Turkish gun law control, after the shooting of their baby. Shirley says she cannot get over the irony of her nomination and the thought of attending the awards dinner with the very people that they have campaigned against.

The McKies feel deep disillusionment at the system and how they have been treated. Top of the agenda is the lack of accountability that the McKies feel exists within the political system. They are shocked that Shirley has had to sue for compensation. Iain says, “Jim Wallace, who apologised for what happened, has never done anything about it since.” Many MSPs and commentators have criticised this state of affairs.

Fergus Ewing, the Nationalist MSP for Inverness East, asked in his letter to the Herald on 21 October, “What is the involvement, if any, of the Justice Minister, Cathy Jamieson, in all of this? It was four years ago that her predecessor, Jim Wallace, acknowledged in a statement to parliament that Shirley McKie was the victim of a grave injustice; she was wrongly accused of the serious crime of perjury, which, on conviction, could have led to a term of imprisonment of eight years. She was unanimously acquitted. But she has lost her career as a successful police officer as a direct result of being wrongly accused and tried of a crime on the basis of fingerprint evidence that everyone, except, apparently, the SCRO, admits is fatally flawed. But despite Jim Wallace’s admission of fault by the SCRO, for which the Executive is responsible, the court action which Ms McKie has pursued for the damage to her career and the loss of earnings is being resisted, not just on the amount of compensation, but also on the merits. The former Justice Minister had admitted that they were wrong, but his department is carrying on the defence of this action as if Mr Wallace had never made his statement to Parliament. If the Justice Ministers are not in charge of their department and bodies for whom they are responsible, like the SCRO, who is? It is as though the aim of the Executive forces in the conduct of this litigation is not justice, but victory at all costs.”

Some believe that the Executive’s motivation is transparent and point the finger at the implications for the criminal justice system and the continued belief in fingerprint evidence. Winnie Ewing, SNP President and a former criminal defence lawyer, has commented, “Why are we getting this intransigence from Scotland’s legal authorities? I can only think of one reason: that there are doubtless countless

numbers languishing in the country's jails – people convicted on fingerprint evidence – and all these people will be looking at a public inquiry and appeal in their case and the Crown is terrified of this happening.”

Shirley's outrage at the situation is tempered by a heavy dose of resignation. “Look at all the political scandals – Dr Kelly, Holyrood. No-one takes the blame when things go wrong. My case is a fraction of the size, so it's hardly surprising that no-one is taking responsibility.” What frustrates Shirley and her father more than anything is that they feel they are not being listened to. Iain believes that Scotland must be one of the hardest countries for an individual to campaign within, because “they may hear it, but they ignore it.”

Another issue that angers Iain McKie is what he sees at the misuse of sub judge. “They're all using sub judge to hide behind. It's a cop-out. Three Court of Session judges are not going to be influenced by Parliamentary discussion on this. It's been the subject of four television programmes, it's been discussed in Parliament on numerous occasions.”

Shirley's experience has also left her disillusioned with the Scottish legal system. She is full of praise for her current legal team but in the past has been crushed by some lawyers' attitudes. “Lawyers say, 'I'm just doing my job – it doesn't matter if I believe you're innocent.' But if you are a person who is innocent, deeply trying to convince people you are innocent, to hear that, well, it's soul destroying.” Her father believes that empathy and understanding are a key part of doing the job. “Lawyers need to think about their clients' perspective when something like this happens. Otherwise you might as well have a computer lawyer. You need the human element to be a good lawyer and to think about the psychological effects on people.”

He cites delay in the legal system as a key factor in exacerbating the emotional toll for those wrongly accused. “The system is not working, and it is long overdue that lawyers understand the emotional effects of this kind of case, because eight or nine years kills people. I don't care how much compensation we get – it never ever heals the wounds that have been caused.” Talking about the trial set for February 2006, he says, “It's not a cliché to say, 'Justice delayed is justice denied'. It's an absolute and utter fact. The time it takes for lawyers and the system to act is a disgrace and that we have to wait another 15 months is shocking.” The McKies believe that delays in the legal system deny justice to people. “The system leaves people broken,” Iain says. “Not many people have kept going like we have. There are hundreds that just give up. You're put in a catch 22 position. The system forces you to sue.”

Iain McKie is also critical of the Law Society's position. “I have explained to them why there should be concern about our fingerprint service. Yet they say they won't talk about matters that are a subject of litigation. That's an excuse, but they still promised to put the matter before a committee and haven't. After 11 months I've had no satisfactory response from them.”

My question “did you ever feel like giving up?” is met with amused incredulity. They have felt that way many times. “Each time I've been let down, I've lain on the floor – literally – and said 'nothing's worth this',” says Shirley. “But the thing is, I've got to live with myself.” Listening to Shirley talk, it is clear that the past eight years have taken an immeasurable toll: “I have to deal with it, but it's very difficult. I've gone through periods of deep depression in my life and I'm kind of in another one. I've been on medication since it happened. Sometimes you'll maybe get a wee piece of good news, and things pick up for a little while, and then when every time it's looking good, the system just kicks you again. I see a therapist every week but I just feel as though I'm getting absolutely nowhere in my life.”

Shirley finds relationships particularly difficult. “I have recently tried again to be with someone but in a matter of weeks I can't cope. I think a lot of me thinks that I must have done something really terrible to be treated like this, so I feel as though I don't deserve anything. But then I think, 'People say such wonderful things about me' but, quite frankly, I find them hard to believe.” She says she thinks of what she has in her life such as “a nice house and a much better relationship with my family than I ever did” and asks herself “so why do I feel so miserable?” But she concludes, “It's just the way it's left me and, until it's over, I think that's the way it's going to be.”

When I ask tentatively if she could say there has been any good to come from this, she is passionate in her response: “I've met some amazing people with such integrity. When I think of what they have done for me, someone that they didn't even know. Alan Bayle, the fingerprint expert, for example, has real principles. You find that there are very few people who have real integrity though, but I'm very glad to say that I've met quite a few of them. And that's what's missing from this system, there's just no integrity whatsoever.” She says that the support of the media and the public has also helped her continue.

“People have stayed with the case. It's fantastic, and it does seem to happen when you're at your lowest. Like a wee old lady will meet me in Troon, and say, 'Let me give you a hug, hen,' – a complete stranger. It really helps.” Her father adds that they have been hugely supported by politicians such as Fergus Ewing, Mike Russell, Alex Neil and also human rights lawyers such as John Scott. The McKies also say that the family support they have is invaluable.

For Shirley, this case is about compensation, yes, but it goes deeper than that. “See, while there's one person out there who thinks I lied, you really don't know how much that affects me. I need total vindication for this, and I need somebody to take responsibility for this, because, without that, eight years of my life have been for absolutely nothing.”

She dreads going back into a courtroom, after two court cases. She also adds that she is surprised it has come to this. “Part of me hoped that sense would prevail and it wouldn't go ahead. I cannot see how

they can afford, and I don't mean financially, for it to go ahead." Her father is reluctant to see his daughter go through another court case but admits he does want the trial to go ahead. "It's the only way to hear the truth."

For more about this case visit www.shirleymckie.com.

The facts of the case:

• Shirley McKie was a Detective Constable with Strathclyde police. In February 1997, Marion Ross was murdered at her Kilmarnock home. David Asbury was arrested and convicted of her murder on the basis of fingerprint evidence.

• Following Asbury's trial, Shirley was arrested and charged with perjury for stating she had never been inside the murder victim's house.

• During the perjury trial at the High Court in Glasgow, four experts from the Scottish Criminal Records Office (SCRO) testified that they had identified a fingerprint found within the murder victim's house as Shirley's. The jury rejected their testimony after two American fingerprint experts testified that the SCRO's identification was wrong. Shirley was unanimously acquitted of perjury in May 1999. The case made legal history; never in 100 years of fingerprint evidence had an identification been overturned in court. Summing up, the trial judge, Lord Johnston, said to Shirley: "Personally, I would like to extend to you my respect for the obvious courage and dignity which you have shown throughout this nightmare."

• March 2000: the Association of Chief Police Officers Scotland (ACPOS) asked Her Majesty's Chief Inspector of Constabulary (HMCIC), Mr William Taylor, to carry out an inspection of the SCRO. The HMCIC report, published in June, contained the conclusion "the mark was not made by Shirley McKie. The decision could have been reached at an early point in the comparison process." Twenty-nine recommendations and 20 suggestions were made, including that "all fingerprint experts within the SCRO should undergo competency testing provided and managed by an external provider."

• June 2000: a Police Major Inquiry Team, under the Deputy Chief Constable of Tayside, is set up to investigate the case. The report recommends prosecution of SCRO experts. The Lord Advocate decides not to prosecute.

• June 2002: following the report, Jim Wallace (then Justice Minister) issues an apology to Shirley McKie in the Scottish Parliament and confirms the print was not hers. An overhaul of the fingerprint services at SCRO follows. The SCRO experts are cleared of any blame by an internal procedural inquiry.

• 2001–present: the case becomes known as the "Scotch Botch" within the international fingerprint community, and in May 2002 international fingerprint experts state that the SCRO was wrong.