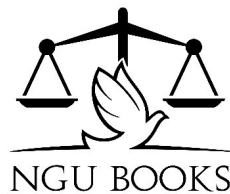


# Innocents Betrayed

*A true story of justice abandoned*

Dr Sandra Lean



# Innocents Betrayed

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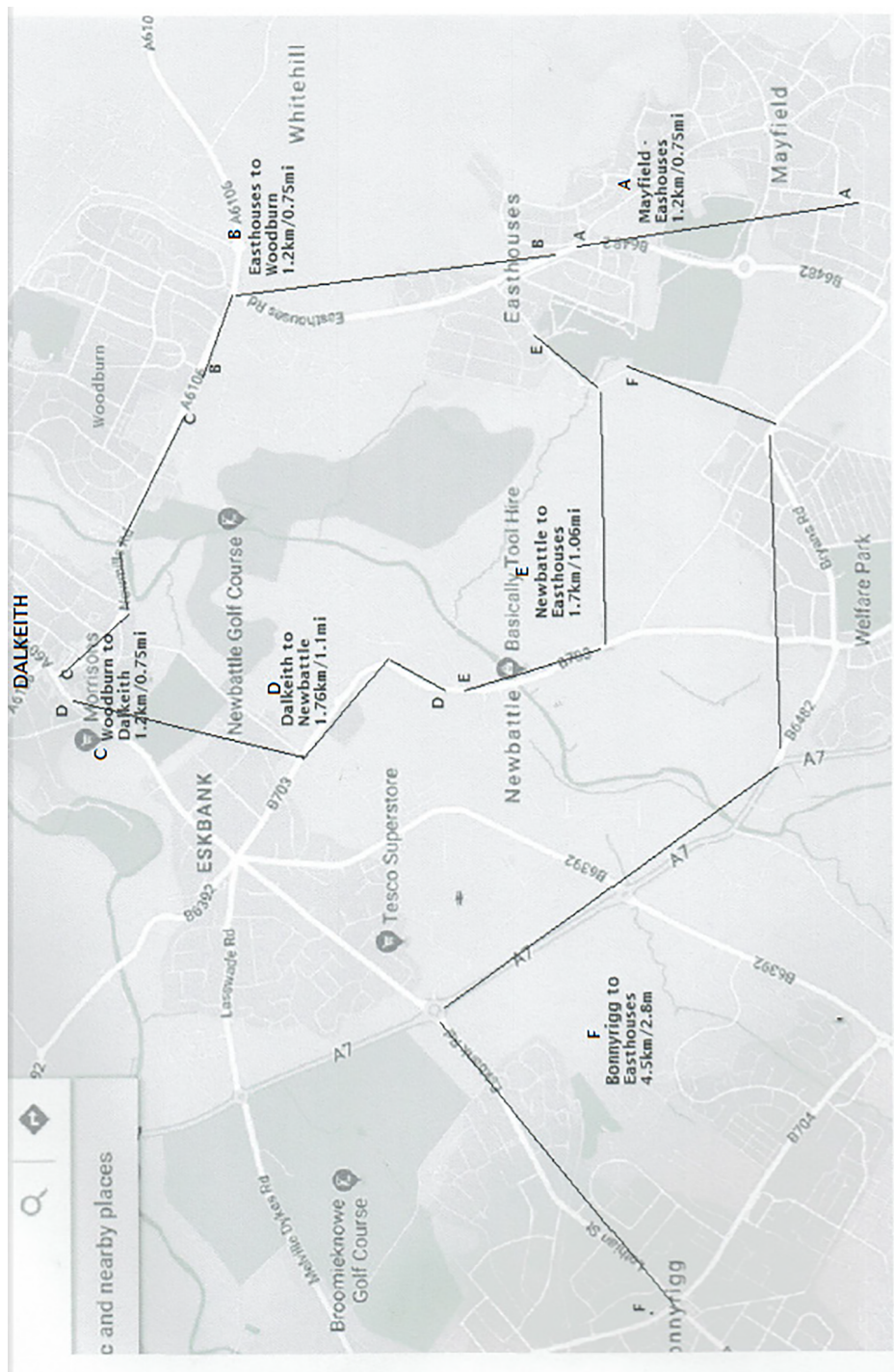
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This book is dedicated to everyone fighting for justice and truth.

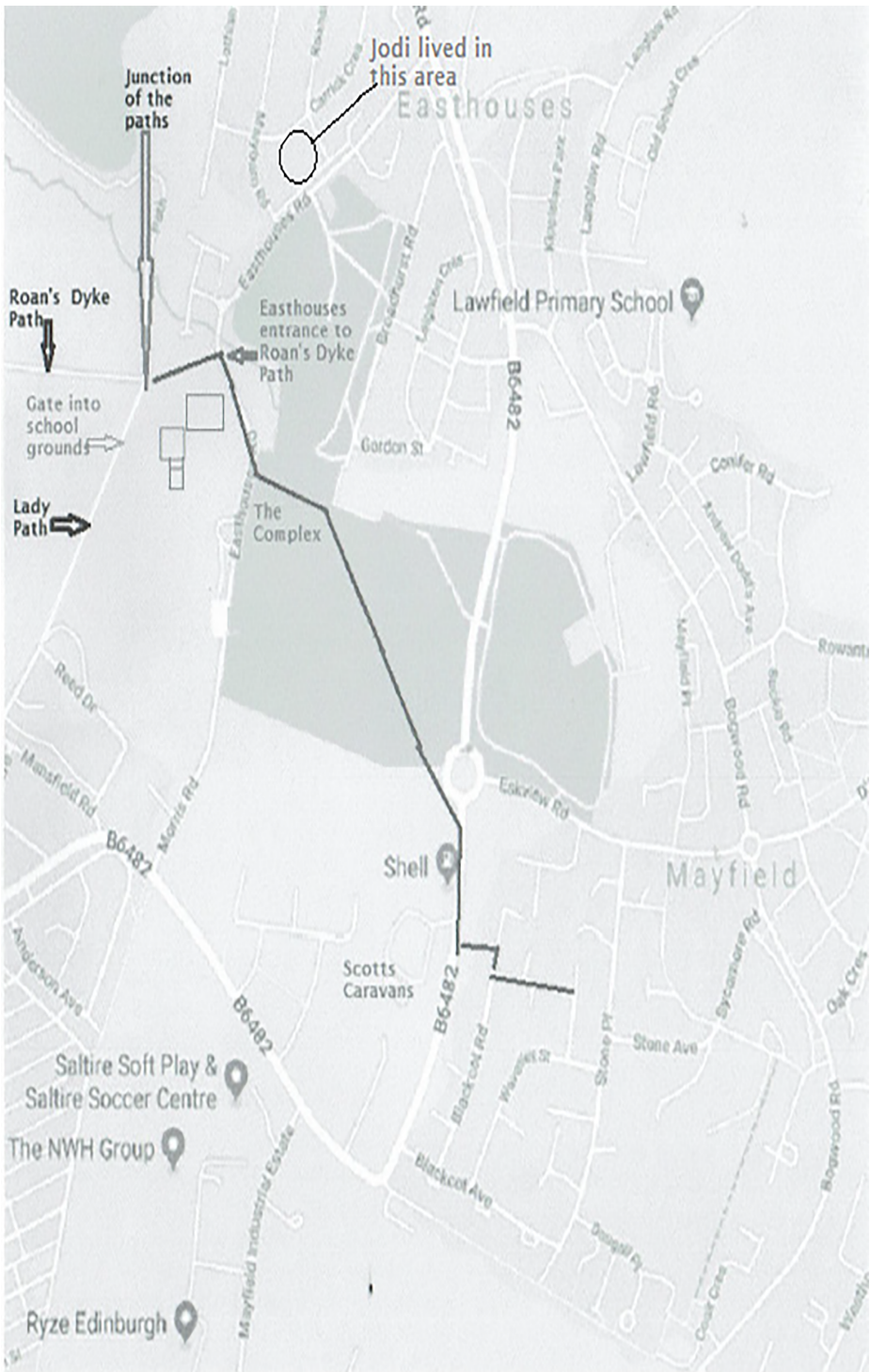
*“Justice will not be served until those who are unaffected are as outraged as those who are” ...Benjamin Franklin.*



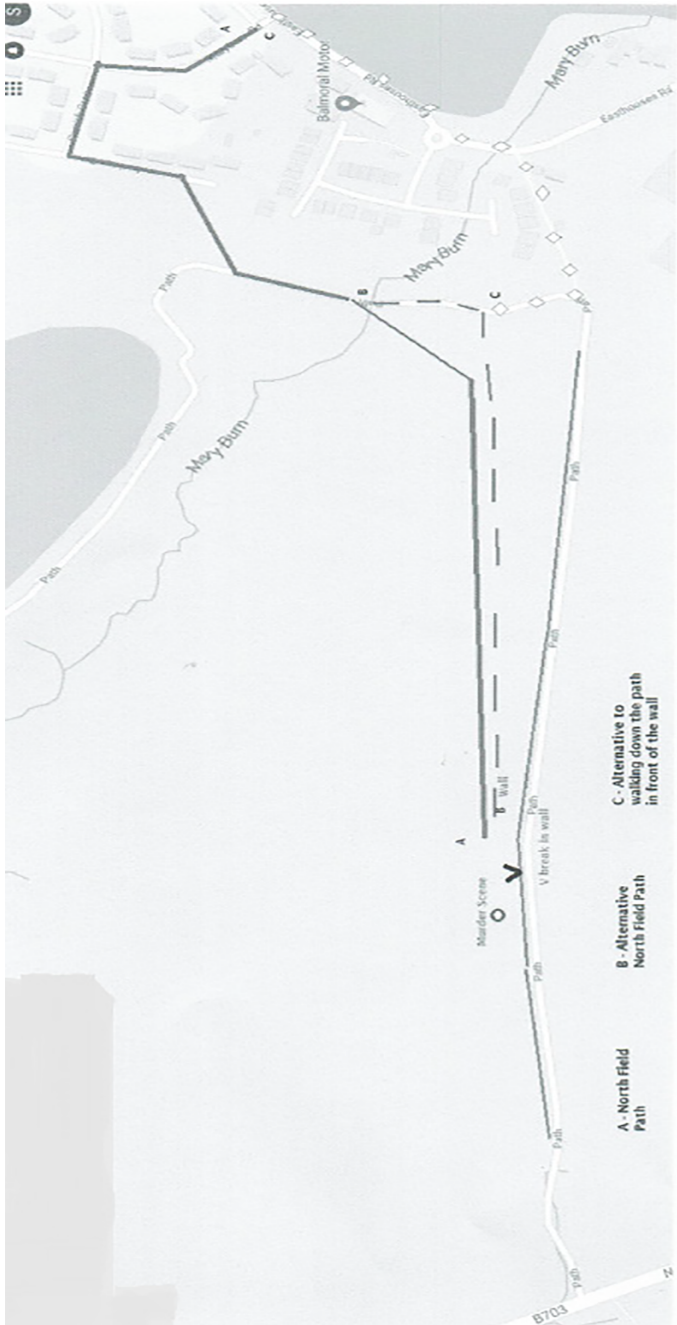
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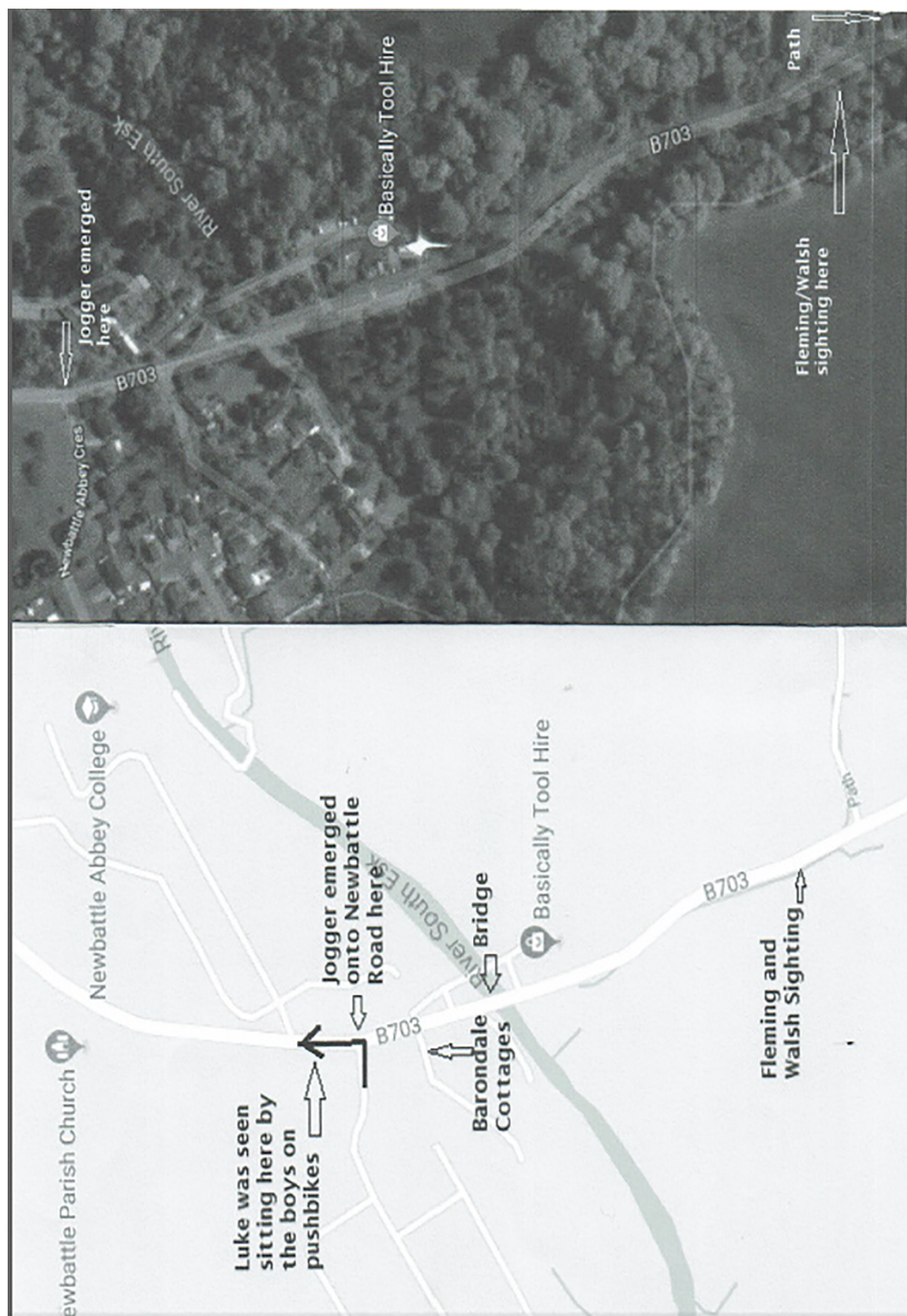
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## **Introduction**

This is a true story about murder and injustice:

injustice for the victim, 14-year-old Jodi Jones and her family;

injustice for the boy who was convicted of her murder, 14-year-old Luke Mitchell and his family;

and injustice for all of us when the wrong person is convicted and the real killer is left free to walk among us.

It is the story of an ordinary mum's battle against the mighty giant that is our Criminal Justice System (CJS), sucked into a world of deceit and cover-up, manipulation and betrayal; a shocking journey in pursuit of the truth.

But it's also the story of every injustice perpetrated in our names – yours and mine. The details change, the victims change, the people change, but the underlying practices and processes are startlingly similar.

Most of all, it's the story of every person who has tried to stand up and fight against a system with so much power, so much protection, that very often, that fight seems unwinnable.

Stand and fight, however, we must, every one of us. It doesn't matter so much what we do, or how much or little we do, what matters is that we do something. In the words of Edmund Burke; "The only thing necessary for the triumph of evil is that good men (and women) do nothing."

Telling the story of a brutal murder, especially when the victim is a 14-year-old child, is difficult. Telling that story from the perspective that the person convicted for that murder (himself a 14-year-old child at the time) is innocent, takes it beyond difficult and into the realms of near-impossibility.

When the family and friends of the victim are convinced, beyond doubt, that the correct person is in prison, that he did, in fact, bring this terrible ordeal upon them, it can appear deeply insensitive and cruel to present an entirely different possibility – that he is not responsible for all of their suffering. But what of the truth?

What if, despite the understandable strength of belief within the victim's

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family and friends, the facts point to a truth that is in direct opposition to those beliefs?

An accusation has been levelled at me, time and again, that telling this story is disrespectful to the victim and her family. I disagree. What is disrespectful to anyone is accepting, at face value, information which is demonstrably false, scenarios which make no logical sense and gaping holes covered over to shore up weak and questionable explanations, especially when that information, those scenarios and explanations, are used specifically to bring a false sense of closure to the grieving and bereft and, at the same time, to rob innocent people of their freedom.

Truth-seeking is a precarious and often maligned pursuit. To be labelled a crazy conspiracy theorist, interfering do-gooder, fame seeker, evil bitch, murderer lover, sicko.... these are the reactions of many who are afraid of the truth. That fear is understandable. We believe that justice and those we trust to take care of justice for us are the very foundations on which our safety and security are built. If they cannot protect us, who can? But those who react so negatively, out of fear, miss the most central point of truth-seeking: it is not only to ensure the correct person has been convicted, but also to discover what really happened – in this case, to a fourteen-year-old girl, whose death is unimaginable.

That is how we sleep-walk into a nightmare situation where anyone can be convicted of the most serious crimes, without any of the robust investigation, irrefutable evidence and thorough procedures we believe are inherent our justice processes. When I say anyone, I mean you, or someone you love, or me, or someone I love. The problem is, most of us simply cannot believe that such a thing could, or would, ever happen to us. In the last fifteen years, I have met dozens of people who believed exactly that, until the unthinkable happened to them. At the same time, the victims and their families are sold a lie – their closure is never complete and sadly, too often, other families have to suffer the same devastation because the real perpetrators were free to strike again while the lie – that the correct person had been apprehended – is upheld, even in the face of compelling evidence that it *is* a lie.

For twenty-seven years, our authorities refused to acknowledge what many could plainly see was an enormous lie (or rather, catalogue of lies), following the Hillsborough disaster. Such a lie was so publicly upheld, officially, for so long, even though the deaths of 96 people

were filmed as they happened, those horrific images beaming out from tv screens across the country and witnessed, first hand, by thousands of people attending a football match. How much easier would it be to maintain a similar lie when all of the evidence to refute it is gathered in private homes, from people utterly overcome by grief and shock?

My aim for this book is not to convince you of Luke Mitchell's innocence, but rather to expose the dishonesty, negligence, bias, manipulation and blinkered determination that ensured his conviction. The brutal murder of a fourteen-year-old girl deserved better than that. Jodi deserved better than that.

That is why I tell this story without apology. It is a story that can't be told in any sort of linear fashion – a complex, sprawling mass of connections, inexplicable decisions, dead ends, red herrings, half-truths, misunderstandings and outright lies. In its entirety, it is a truth which has never been told – I leave it to you, the reader, to make up your own mind whether you think justice has been done for Jodi Jones and her family, Luke Mitchell and his family, you, as a mother, father, brother, sister, partner, cousin, friend, citizen ....





## **Chapter One**

### **Why Bother?**

Becoming involved in this work was, to me, as natural as breathing – I saw a wrong and knew I had to do whatever I could to help put it right. When I was younger, I believed that everyone thought the same way I did – I simply could not abide unfairness or injustice and would expect anyone and everyone else to be as vocal and indignant as I was.

I learned along the way that it is simply not the case – some people can compartmentalise their own experiences and comfortably conclude that the issue, whatever that issue is, has nothing to do with them. I remember a family friend, helpfully trying to keep me out of frequent trouble of my own making, telling me, “If it doesn’t affect you, don’t get involved – it’s just not worth it.”

In June 2003, I was happily running my own business, a Natural Health Centre and had completed a long-term project renovating the old mining cottage that was home to me and my two girls. It was seven years since my marriage to the girls’ dad had ended and at last, life felt good again.

Then, right in the middle of this wondrous new phase of my life, it happened. The brutal murder of a fourteen-year-old girl, just 500 yards from the school my elder daughter attended. We lived in a small village, a satellite in a three-mile radius around the town of Dalkeith, Midlothian. Village and small town life revolves around gossip and inward-looking concerns and our area was no different. The murder of Jodi Jones sent shock waves crashing through a number of interlinked, interdependent small communities encircling Dalkeith. The place was awash with rumour and horror stories. From the moment the news broke, another instant and insidious piece of information began to circulate. The girl’s 14-year-old boyfriend, Luke Mitchell, was the murderer.

As days turned to weeks and no arrest was made, hysteria turned to hostility and quickly hardened into hatred. The boy was a brutal killer, a weirdo, everyone knew it. Why hadn’t they arrested the little bastard yet? Cocky little so and so was walking around as if butter wouldn’t melt....

The original discomfort I felt at the speed of the local condemnation

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of the boyfriend grew rapidly into a sense of alarm. Everything I saw, heard and read caused me to question the entire investigation, but for vastly different reasons to those I heard in the local stores and bus shelters. It seemed to me that the police, themselves, were feeding both the media and the local communities, but they had, in my opinion, decided far too quickly that the boyfriend was the culprit. What if they were wrong? What if they were so intensely focused on this boy that they were letting the real killer slip away?

For a long time, I had been interested in why people commit dreadful crimes – what was it about the way their minds worked that was different to the rest of us? How did they become the way they were, in order to be able to do the things they did? After finishing my honours degree in Social Science at the age of 36, I considered studying Offender Profiling in Criminal Psychology but, because the Masters course was so far away and my younger daughter was still at primary school, I decided to delay further study for a few years. My interest, however, had not waned and I studied whatever I could in my own time. Now, with this terrible murder on our doorstep and a police investigation which seemed to be leaping to almost instantaneous conclusions, I set to work with what little information I had, to try to figure out if I was being unfair about the police investigation and if there really was no need to worry about my girls – after all, if it was the boyfriend and the police had him firmly in their sights, I had nothing to worry about ... did I?

I had absolutely no way of knowing that I had just taken the first steps on a brand new journey, one that would take me to far more depths than heights and one that would, ultimately, cause me to question everything I had ever believed about everything!

The first warning bell sounded loud and clear one evening in a local pub. A group of us had gone for a drink after work and everyone was talking about the murder. I voiced my concerns and a spirited debate continued amongst me and my friends for the best part of an hour. A man, who had been sitting at the bar throughout, abruptly thumped his glass onto the bar and walked over to our table. He stood for a moment, ensuring everyone was aware of his presence, before bending towards me. “You’d better watch what you’re saying around here,” he growled, before straightening and walking out. We sat in silence for a few moments – there was no mistaking the threat. I was both upset and angry – my friends and I had had many debates regarding the murder, the

investigation, the focus on the boyfriend and we were always willing to hear each other out and respect each other's right to individual points of view. Until this point, none of us had ever been threatened for expressing our opinions.

It was to be the first of many. I became intimately involved in the case when Luke's mother, whom I had never met, put a note through the door of the Natural Health Centre I ran, saying she had heard about my approach to the case and wondered if I could help her family. Back then, I knew nothing about the Criminal Justice System (CJS) and even less about wrongful accusations and convictions. I set about learning everything I possibly could.

Initially, what I discovered left me reeling with shock and disbelief. Not all wrongful accusations or convictions were the result of mistakes or incompetence. Some of them occurred even when the precise rules and processes had been followed to the letter. That could not be right – I could not accept it.

Over the next four years, I studied everything I could find, often sitting up until late into the night, reading case papers, websites, legal documents and articles. I made contact with others claiming wrongful conviction and studied their campaigns to have their cases re-examined. Layer by layer, my belief, trust and confidence in the CJS evaporated. This was something so much bigger and so far removed from anything I had ever experienced that, for the first time, I was truly afraid.

If this had all been going on for all these years and I had been utterly oblivious to it, what else might I uncover if I kept looking? But it was too late – already, I could not un-know what I knew and I could not walk away. A wrong was being done – a humungous, unbelievable, inexplicable wrong, which was repeating itself up and down the country, crushing family after family – it was a wrong that had to be put right and, I believed, anyone who could do anything to help had to do whatever they could.

The piles and piles of documents I amassed in my search for answers somehow turned themselves into a book; *No Smoke, the Shocking Truth about British Justice*, which highlighted seven cases of convictions where the evidence either clearly pointed to someone else or was so flimsy that it would not have passed a "slight doubt" test, far less a

“beyond reasonable doubt” standard.

I realised, during that period, that I had developed an almost pedantic approach to the workings of the CJS. The rules were there for damn good reason, I discovered. The presumption of innocence was centrally critical to the system – any person accused of anything had the absolute right to be presumed innocent until the state had proven them guilty, on the basis of solid evidence, beyond any reasonable doubt. It was both central and critical because, without both sides of this coin, we would return to the dark ages of stick pointing and witch dunking. If we allowed convictions to be obtained on the basis of police “gut instincts” we opened up a whole can of worms – how could anyone ever know, for certain, that police gut instincts were any better, or any more reliable, than anyone else’s? No, for sure, the best and only fair way for our justice system to run was on the basis of complete impartiality – the evidence must be robust enough to prove guilt and that guilt must be proven beyond reasonable doubt. Anything less was unacceptable because it represented the beginning of a slippery slope backwards.

I well remembered the cases of The Birmingham Six, the Guildford Four, George Bentley and others – I knew there were times in the past where the police, so convinced they had the right suspects and carried along on a wave of public support, suppressed or concocted evidence in order to make sure juries were convinced. Years of people’s lives destroyed, families ripped apart, victims left to face starting over again and the perpetrators of the most heinous crimes still wandering freely amongst us while other, innocent men and women served prison time that was not theirs to serve.

More recently, since my own children were born, the murders of Rachel Nickell and Samantha and Jazmine Bisset had shaken me to my core. Police investigators were convinced they knew who murdered Rachel on Wimbledon Common in 1992. That blinkered determination and focus on the wrong man left the real killer free to murder Samantha and Jazmine in the most horrific ways, in their own home (see Chapter 16).

It was not good enough, would never be good enough, to risk allowing a slide back to those terrible times. I vowed I would do everything I could to help highlight the enormous importance of this issue and if I could, in so doing, raise awareness and support for those already facing the same dreadful fate.

I was driven by a sense of outrage and indignation that ordinary people just like me, just like you, were being caught up in a terrible web, but I did not realise that there were so many of them – that there had to be so many of them, because the way the CJS is constructed makes it inevitable that there will be wrongful convictions of innocent people. Tinkerings, designed to “allay public fears” – about gangs, about paedophiles, about dangerous criminals evading justice – had made it even more likely that many more people would be wrongly convicted as a result. And more brutal killers would escape detection, leaving us all in danger.

And so, I blundered on, fighting passionately *for* something, but not knowing, in reality, what I was fighting *against*.

In 2007, *No Smoke* was published. Until that point, I worked anonymously, behind the scenes. I did so for my own safety and the safety of my girls. Living less than a mile from the family of Jodi Jones, hostility towards Luke Mitchell was still running high in the local area, two years and three months after his conviction. Suddenly, my face was in newspapers and on the internet. My greatest fear was that people would recognise my children and target them. It is a great credit to the girls and to their friends, that, outside of a tight group of friends, no-one ever got to know that I was their mother. I coached them to tell people, if they were asked, that *that* Sandra Lean was from a different family with the same surname – they’d never met me and didn’t know me. My girls were horrified. They were proud of what I did and wanted to stand up for me and for everything I stood for. I was terrified for them.

One day, not long after the book was published, I was walking along the pavement towards the local shop. I felt an almighty shove from behind and, knocked completely off balance, stumbled into the road. An on-coming driver stamped on his brakes, slithering sideways with a loud screech from the brakes. “Fucking disgrace,” I heard, as the person who pushed me walked away.

Another time, after a day of hearings at the appeal court, I walked out of a local shop and someone spat in my face. Another spat on my jacket. I began to be careful – I never used public transport and would check the newspaper headlines online before deciding if it was safe to go into the local shops or not. Oddly, I was not afraid for myself, as such. I understood the hostility. The police and media had done a sterling job of convincing the locals that their case was watertight and, since media

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coverage and local talk was all these people had to go on, I wasn't in the least surprised that they were absolutely convinced. I could see that they thought I was supporting a vicious murderer.

What I never understood and still don't, to this day, is why they thought I would do that. I had two girls, both around Jodi's age. Why would I, a mother of two teenaged girls, support someone who might have been responsible for the brutal slaying of another 14-year-old girl? If I'd been successful in my campaigning and advocacy, Luke Mitchell would have been freed. If there had been the slightest suspicion in my mind that he could have done to Jodi what was done to her, why on earth would I want him free in the very community where my children lived their lives? My motivation for, by then, five years, had been to try to ensure that a person capable of doing what was done to Jodi was not at large to do the same thing to another innocent child.

The publication of the book brought with it a new and deeply depressing experience. Day after day, I would receive email messages from people desperately searching for help. People whose loved ones had just been convicted, others who were still trying, years later, to understand how this could have happened to them – they were just ordinary, everyday families when their lives were suddenly catapulted into a living hell. I tried my best to respond to everyone who contacted me, but the sheer number soon became overwhelming. I tried to learn more and to learn more quickly. I read everything I could find, followed down leads and clues as far as they would take me, contacted anyone I believed might be able to help ... by that stage, the work completely consumed me. I ate, slept and breathed wrongful convictions. Ever present was the dread of being duped. I may have been passionate, but I was not stupid. I knew there would be people claiming innocence who were as guilty as sin and I knew that if I threw my support behind such a person, the ramifications for the others whose cases I openly supported could be devastating.

It was a dilemma that haunted me and I revisited it time and time again. How to know? How to decide? In every case I looked at, I started with the prosecution case and the evidence. I had learned by then that "the evidence" is not only what was presented in court to support the allegations, but the whole body of available information and, often tellingly, that which was missing. No amount of telling me, "I didn't do it, it wasn't me," would have convinced me if the evidence stacked up in

support of the accusation. But time after time, I would read the prosecution case, then painstakingly read through, look at and listen to all of the available evidence and discover gaping holes, flawed reasoning, conclusions with no basis whatsoever in the facts, strange anomalies and much, much more.

Even laying aside questions of guilt or innocence (as they are understood in layman's terms) in these cases, it would have been clear to a five-year-old child that these convictions were not safe, in the legal context. They had not been proven beyond a reasonable doubt, because simply reading through the material raised so many doubts. And within those doubts lay the very real possibility that a murderer was free to strike again.

The heavy sense of responsibility never left me – I was not trained or qualified in this work, I was on my own, with no-one to turn to for help and if I made a mistake, or got something wrong, I may have led people down a blind alley or worse. In spite of my passion and determination, I was wracked with doubt about my ability to help. Often exhausted and at a complete loss as to what to do next, I pushed myself to find out more, to investigate new ways of making progress, or to re-evaluate the evidence of a case, searching for anything I may have missed. In the October of 2007, I was invited to speak at the annual United Against Injustice day in London, where I met people who had been doing the work I had so recently discovered for years. It's difficult to describe the sense of relief that having others to turn to for advice and support brought and I will be eternally grateful to those who are still, to this day, willing to help and encourage me.

Just short of a year after No Smoke, I was offered the opportunity to undertake a PhD at Stirling University. I imagined, at the beginning, that my research would be some sort of extension to the work I'd been doing, by then, for five years. I was surprised and intrigued to find it actually took off in a different direction. Rather than continuing to examine how so many cases resulted in convictions on the basis of such poor evidence, I discovered, through methodically interviewing dozens of families, that there was something else going on – something I had noticed, but failed to realise its significance.

Language! The language of the CJS uses the same words and phrases that we all know and recognise – evidence, truth, forensics, justice and

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so on – but those words and phrases have entirely different meanings within and without the CJS. This fascinating discovery helped explain why so many people carried on trusting the Justice System, their legal representatives, expert witnesses and many others, long after the actions of these bodies should have shattered any confidence in them. Ordinary people thought their legal teams, or the courts, were following certain routes, or doing specific things, on the basis of their (ordinary) understandings of the words and phrases used. The legal representatives, judges, police officers, expert witnesses and others in the CJS knew exactly what they were doing and where they were going, on the basis of their specialist understandings and so often, those bore no resemblance whatsoever to the beliefs and expectations of their clients. Those within the CJS are completely immersed in its “secret language,” so it’s difficult to say whether or not they were aware of the different understandings and expectations of the accused and their families. I did come to discover, however, that there is a real tendency for many within the CJS to protect their own understandings and practices from perceived outsiders, often by condescending references to “well-meaning citizens” or more directly, through attempts to discredit those who call their actions and motivations into question.

As you will discover throughout this book, what we ordinary people think of as “evidence” is vastly different to what is considered to be evidence in our courts and police investigations and, indeed, much of what we believe should be evidence is ignored or discounted.

The vision we have been fed of forensic evidence being founded in hard scientific fact is a myth; we rarely catch a glimpse of the truth that much of the so-called scientific evidence is nothing more than opinion wrapped up in difficult-to-understand jargon.

The most difficult discovery in all of this is that what we believe to be the central, most important factor in every criminal investigation and trial in this country – truth – features nowhere, at least in the context we understand it. Legal truth, as you will discover, is an entirely different creature. The belief that “telling the truth” to investigators is an inherent protection (if you’ve done nothing wrong, you have nothing to fear) is, in reality, one of the most dangerous beliefs for any innocent person accused of a serious crime to hold.

Perhaps one of the most striking examples of this dual-language justice



system is found in the phrase “beyond a reasonable doubt.” Its meaning seems so self-evident, so obvious, that there would appear to be no reason to question it. Yet, as you will see again and again in this book, concepts of “reasonable” and “doubt” can be manipulated, interpreted and enforced on pieces of information in ways we would never expect or believe would be accepted in our courts... by those very courts.

At what should have been a time of bright new possibility, greater support and bolstered confidence, yet another shift took me completely by surprise. A hate campaign. While I fully understood that many people did not understand why I did what I did and most of those did not agree with what I did, it had never really been much of an issue. Apart from the safety aspect in my immediately local area, most stated opinions had been fairly innocuous.

It began with the launch of a website in support of Luke Mitchell, something that had been in the pipeline for some time, but had taken a huge amount of work to create. The furore caused by this one act was instant and vicious. Tabloids ran articles referring to “deluded” supporters, calling the site “sick” and “cruel.” The online versions of those stories allowed readers to leave comments and they did so in their dozens. But it was the very personal nature of the comments which shook me. I found myself portrayed as a self-publicist, in it for the money, an evil murderer-lover, a heartless bitch ... it should not have mattered one bit what people thought of me since none of them actually knew me, but I was deeply hurt – my only motivation, ever, had been to try to help right a wrong. I hadn’t received a single penny for the work I did – all of it was done voluntarily, mostly at my own expense.

To add insult to injury, a former online supporter of Luke suddenly changed tack and became a strident critic of the case and of those involved in fighting it. It would be several years before I realised that there are people whose favourite pastime is scouring the internet for people to attack – they take some sort of warped delight from spewing their hate-filled nonsense everywhere they can.

I watched in horror as lie after lie spread across the internet, like a filthy oil slick. Threats began to emerge – to post my home address and pictures of my house – to publish my daughters’ names and pictures – to expose “the truth” about me (that one actually made me laugh – how many people would be interested in two divorces and some parking tick-

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ets)? Someone posted, “I saw Sandra in uni the other day... she looked like she was carrying the weight of the world on her shoulders...” Was that true? Had I been so physically close to someone who had expressed real hatred for me and not even known who they were?

I answered a knock at the door one lunch-time, expecting the postman. A man I didn’t know stood on my doorstep, his jacket zipped up to under his eyes, a baseball cap pulled down low on his forehead. After ascertaining I was Sandra Lean, he launched into a stream of foul abuse about the website and my part in it. “Do you know who I am?” he demanded. I shook my head. “It was my sister that got killed,” he spat, followed by another stream of vicious abuse. My heart sank – by then, I knew of this man’s background. “That little bastard’s DNA was all over her... strands of it... all over her...” He was ranting, his breathing fast and agitated. I tried to calm him down. “It’s not true,” I told him, as calmly as I could manage. “They lied to you about that. I have the DNA results right here, I can show you.” *What was I doing?*

“Liar,” he roared. “Fucking liar. You’re a sick bitch... I’m telling you now, that website goes... or you do.” He poked a finger towards my face. “I know where you live now ... I’ll be back.”

A noise from next door drew his attention momentarily and he took a single pace backwards. “Aye... look at you... no wonder you look scared... so you fucking should. Sick fucking bitch...” Another noise from next door. He began to back off down the path, still shouting as he went. “It gets fucking taken down NOW... I know where you are now... don’t you fucking forget that....”

I closed the door, shaking. What should I do? Fortunately, I had a colleague visiting that day who had stayed out of view but saw and heard everything. We decided to go to the police, where another shock awaited me. I approached the desk and gave a brief outline of what had happened, pointing out that the person was Jodi’s brother. The police officer wrote down some details as I spoke and then glanced up at me. “Which one of the Mitchell brothers did you say it was?” I was furious. Had it been one of the Mitchell brothers, there was only one it could be, since the other was serving a life sentence for a murder he didn’t commit. But it was the ease with which this officer assumed it must be one of the Mitchells behaving this way which infuriated me.

After a long wait, we were taken to a room, where a female officer introduced herself as CID. She swung on her seat, twiddling with a pen as I recounted the story. When I finished, she looked straight at me. “So, what do you want us to do?”

My heart started bumping uncomfortably. “I want you to warn him to stay away from me – arrest him if you have to.” She laughed, setting the chair back onto its four feet, still twiddling with the pen. “You knew what you were doing when you started all this,” she said, dismissively. “It’s no wonder the family’s upset.”

“He threatened to kill me. That’s more than just being upset.”

She laughed again. “You can’t expect the family just to sit back and say nothing when you’re doing what you’re doing.” Her expression hardened.

“I’m doing my job. Would you accept that it’s ok for someone to threaten you for doing *your* job?” I met her gaze, refusing to be so summarily dismissed.

“I’m afraid there’s nothing I can do. I don’t have any officers to take a statement – they’re all out on important jobs.”

For a moment, I couldn’t speak. Clearly, the threat “the website goes or you do,” was not important. When I did speak, I could hear the pleading in my own voice.

“Why can’t *you* take a statement?”

“That’s not the way we do things,” she said, rising from her seat. The interview was evidently over.

“What am I supposed to do now?” I asked, tears burning at the backs of my eyes. “I can’t go back to the house – what if he comes back?”

Walking towards the door, without bothering to look round, she said, “Lock your doors. If anything happens, dial 999.”

My distress turned again to fury. “You just told me you’ve no-one to take a statement. Who the hell is going to respond to a 999 call?”

She walked out of the room and another officer came to escort us from

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the premises.

There was nothing for it – I would have to move out of my house for safety until I knew he could not get to me and more importantly, my youngest daughter, who was still living at home. I made arrangements for her to stay with friends, packed all the important paperwork into my campervan and left. Parking up in a supermarket car park that night was surreal. My mind had been racing all day. Where and how did he get my address? How had the two police officers who'd contacted me around 7pm, known what car he drove, even as they looked me in the eye and told me, "He's never crossed our radar"? I knew they were lying – I'd seen their own records!

It was, perhaps, the lowest personal point since I'd begun this work. The stark realisation that the police would not protect me, that I was on my own, hit me at the same moment as the painful irony.

After speaking to the two officers who had eventually arranged to take a statement and identifying the man from police photographs, I turned my phone off. I'd known for some time that my phone was being monitored and I didn't want them knowing where I was. Someone had given Jodi's brother my address – they could just as easily disclose where I was hiding – if they knew! Thankfully, this was before mobile phones came fitted with GPS as standard.

It took a few days and a few hundred pounds buying a security camera and lights system before I returned home, but when I did, it was with a new resolve. The first email I opened on my laptop, from someone calling himself "John Jones," read (in part), "Do everyone a favour, would you? When you're out tomorrow, throw yourself under a bus."

"I've come too far to be scared off that easily," I told the empty room. "Bring it on."

## Chapter Two

### Background to the Official Story

Every now and then a terrible crime takes hold of the public's attention and generates a massive response. These so-called high-profile cases are often no more or less terrible than other similar crimes, but the disproportionate media interest which, in turn, fuels public interest, catapults them into a position of notoriety. The stories become indelibly imprinted in the memories and imaginations of those who get caught up in the graphic, shocking, long-running spectacles, spelled out in minute detail in myriad media outlets.

Few people in the UK would have missed the horror of the 1960s Moors Murders and the portrayal of pure evil personified in Myra Hindley and Ian Brady, the perpetrators. For decades, criminologists, psychologists, authors and members of the public pored over the details of the sexual torture and murder of five children and the psyche of those who callously committed those crimes.

A decade later, the country was once again gripped in horrified fascination as a serial killer murdered a number of young women across northern England. The Yorkshire Ripper evaded capture for six years, attacking at least twenty women and killing thirteen of them in that time. A recording of a hoax call, claiming to be from the Ripper, was made public in the hope that someone would recognise the voice and hoax letters to investigators were reproduced in the media, each intensifying public fear and anger. When Peter Sutcliffe was finally caught in 1981, it emerged that he had come to police attention some nine times in the course of the investigation, slipping through the net each time.

The murders of Caroline Hogg and Susan Maxwell in 1982/83 (Sarah Harper and Jennifer Candy being later identified as victims of the same murderer), James Bulger, by two children under the age of 12 years old in 1993, mother and daughter Lin and Megan Russell in 1996 (and the terrible injuries inflicted on Lin's other daughter, Josie, who survived<sup>1</sup>) and Holly Wells and Jessica Chapman in 2002 are all examples of terrible crimes which captured public attention and evoked hugely emotional responses.

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<sup>1</sup> Michael Stone, who was convicted in 1998 and again in 2001, of the attacks on the Russell family, has always maintained his innocence. A number of investigations have pointed to the likelihood that the real attacker is another man entirely, a man who was jailed in 2008 for a series of attacks on young women, very similar to the attack on the Russell family, dating back to 1995.

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On July 1st, 2003, the murder of Jodi Jones, in the village of Easthouses, 8 miles south of the city of Edinburgh in Scotland, joined this tragic list. From the first day of reporting, the media named Jodi's boyfriend, Luke Mitchell, even though Luke was only 14 years old. Jodi, they said, had been taking her "usual route" to visit Luke when she was attacked. The intensity of media interest in the case was staggering. Reporters and photographers almost literally camped outside the Mitchell home in Newbattle, less than a kilometre from the murder site.

Three days later, on the morning of July 4th, police officers descended in droves, taking Luke and his mother to the local police station and removing bags and bags of what reporters repeatedly referred to as "evidence" from the Mitchells' home. Although a police spokesperson told the media the development was a routine procedure, local opinion thought otherwise. Rumours escalated that Luke was Jodi's killer and it was only a matter of time before the police proved it.

By the time Luke's home was raided for a second time six weeks later, on August 14th, and four days after that, he was banned from returning to school with other pupils following the summer break, there was little doubt in much of the local opinion that he was Jodi's killer. Media reports thereafter, almost without exception, included the information that Jodi had been going to meet Luke and was reported missing when she failed to return home at 10 o'clock, omitting the previously reported information that she had failed to turn up in Newbattle earlier in the evening. The reports also carried the statement that Luke had been questioned twice about the murder, but no-one had yet been arrested.

Two events, in quick succession, stripped away any semblance of media impartiality. Jodi's body was released for burial (before any arrest had been made), the funeral being arranged for September 3rd and the media reporting that Luke had been told to stay away. That afternoon, Luke's mother, Corinne, agreed to allow Sky news to film the tribute they were having at home in Jodi's memory. She has always insisted that the family was promised the report would not be aired that day. The Sky interviewer, James Matthews, asked Luke direct questions about the murder and whether he had any part in it. Corinne sat beside Luke on the settee throughout the interview, a protective arm around his shoulders. Ironically, Luke said, during the interview, "I feel it has been left to the public and the media to decide ... it's a trial by media." Sky screened the interview that day, within hours of Jodi's funeral.

Later that evening, when they were sure all the mourners would be gone, Corinne, Luke and a friend of Luke and Jodi took a taxi to the cemetery to lay some flowers and pay their respects. They took the taxi, Corinne explained, to avoid being followed by the media, who had watched their every move for more than nine weeks. When they arrived, reporters and photographers, still hiding in the graveyard, suddenly emerged from their hiding places, trampling over other graves in their rush to get exclusive photographs.

The following day's headlines were damning: "How could you?" they screamed. Luke was portrayed as callous and cruel, deliberately increasing Jodi's family's suffering. The flowers left on Jodi's grave had been "dumped on Mitchell's doorstep" by Jodi's distraught mum, Judith, just hours after they were placed on the grave. No-one, it seemed, stopped to question the callousness of the person who thought it appropriate to tell Judith about the flowers and take her to collect them and dump them on the Mitchell doorstep on the day her daughter was laid to rest, rather than quietly removing them and telling Judith about it later.

The Sky interview was met with equal judgement and condemnation – the Mitchells were "trying to take attention away" from Jodi's funeral, Luke was goading investigators and the video footage suggested a "less than normal" relationship between mother and son.

Whatever lingering doubt remained about Luke being the murderer, either in media reporting or local opinion, evaporated on September 4th. Where reports previously reported that Luke had been interviewed twice, they now included the information that he was the only person to have been detained for questioning in relation to the murder. On September 23rd, they stopped trying altogether – the news that day was of a report being sent to the Procurator Fiscal naming Luke as the sole suspect.

By January 2004, with still no arrest made six and a half months after the murder, the media reported that senior investigators were to fly to the USA for assistance from the FBI's criminal profilers. There was no real explanation why – there were, after all, well-known profilers available in the UK. Three more months passed before Luke was arrested on April 14th 2004, nine and a half months after the murder.

The trial began in Edinburgh in November 2004, seventeen months after

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the murder, but had to be halted when two jurors were removed. One had become unwell. The other had clearly ignored instructions for potential jurors with connections to the immediate area, or Newbattle High School (behind which Jodi's body was found), or St David's, where Luke and Jodi were pupils, to exclude themselves. This juror's son was a pupil at St David's High School at the time of the murder. The son's girlfriend broke up with him over disagreements about her continued friendship with Luke, yet the mother had still been selected to sit on the jury at the Luke Mitchell trial. But for the concerns of a member of the public who brought her true circumstances to the attention of the court, she may well have gone on to do so. What we will never know is how many of those 15 men and women had ties to the area, or those connected to the case.

The warnings about connections to the area came about because of defence concerns that Luke could not have a fair trial in Edinburgh, after so much adverse media coverage in such a small area. The judge considered an adequate safeguard would be to ensure that no-one with a home address in the immediate locality of the murder sat on the jury. The year and a half of negative media coverage, the interconnectedness of *all* of the small towns and villages around Dalkeith and the sheer numbers of people who commuted from those towns and villages to work in the city of Edinburgh were not taken into consideration.

Once a new jury was sworn in, the trial re-started. Officially, the case was built around three central planks:

that Luke had led the three members of Jodi's family out searching for her directly to the body, indicating that he knew, already, where the body lay, something only the killer could know;

that an eyewitness had positively identified Luke at the East-houses entrance to the path leading to the woodland strip where Jodi was found and

that not only did he have no alibi for the claimed time of the murder, but his mother and brother had lied to cover up his lack of alibi.

The prosecution set out its case, eagerly reported by the media. Luke Mitchell was a boy out of parental control following the break-up of his parents' marriage. He was indulged by his mother and allowed to do as



he pleased, including living in “squalor” at home. Although both he and Jodi (and a number of their friends) used cannabis, Luke had a “huge” cannabis habit, interests in satanic and other dark practices and was obsessed with knives. A loner, who had raised concerns of teachers with “satanic” writings on his school jotters and disturbing content about Satanism in his essays, Luke was also two-timing Jodi. The prosecution believed Jodi found out about “the other girl” on June 30th in school, at lunchtime and set out to confront him about it that evening.

Jodi’s mother, Judith, unexpectedly lifted a grounding punishment at 4.30pm that afternoon and Jodi immediately texted Luke at 4.34pm, arranging to meet up with him. Within twelve minutes of her last text at 4.38pm, she was out of the door and on her way. The plan, according to Jodi’s mother, was for the teens to hang out “up here” - in the Mayfield/ Easthouses area.

This official version emphasised that Jodi was not allowed to use Roan’s Dyke path alone (the path was the shortcut between Easthouses and Newbattle that the media previously referred to as Jodi’s usual route to Newbattle.) There was a “standing arrangement,” if she was going to Newbattle, for Luke to meet her at the Easthouses end of the path and walk down with her. Jodi’s sister, Janine and her grandmother, Alice, as well as Judith herself, all gave this information in evidence at trial. Jodi would not use the path alone – Judith was adamant about it. That particular afternoon, however, such a standing arrangement was not required, because Jodi and Luke were going to be hanging out “up here” – the Easthouses/Mayfield area – again, Judith was certain. She was equally certain Jodi would have told her if she was going to Newbattle - mum always knew where Jodi was and with whom – she didn’t have to ask, Jodi just automatically told Judith these things.

Also, in this final version of events, the family search trio comprising Jodi’s grandmother, Alice Walker, her sister, Janine and Janine’s boyfriend, Steven Kelly, met Luke at the path on the night of the murder, (the heavy implication being that they arranged to do so in advance) and, on reaching a V-shaped break in the wall, Luke climbed through and found the body – there was no apparent reason for him climbing through the break and no suggestion that his dog alerted him to anything. After finding the body, Luke was calm and emotionless – his “normal self” having, according to the prosecution case, led the family directly to Jodi’s body.

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He had called Judith's landline at 5.32pm and 5.40pm, according to this version, in an effort to cover his tracks and make everything appear to be perfectly normal, demonstrating how cold and calculating he was. His failure to call back after 5.40pm, when Jodi didn't turn up, was also suspicious. Why did he not call again when his 14-year-old girlfriend failed to appear and why did he tell police he thought her mum had grounded her again? He knew she had already left to meet him, because Alan Ovens, Judith's partner, had told him so.

What he had done, according to the prosecution, was lure Jodi over the V shaped break in the wall on Roan's Dyke path, where an argument erupted about the other girl. He beat Jodi about the face and head – possibly with a large branch – strangled her into semi-consciousness or unconsciousness either with his bare hands or with a ligature, attacked her with a knife, causing deep defence wounds to her arm, then cut her throat between 12 and twenty times. The knife was plunged into her mouth, piercing a tonsil.

He then became icily calm, stripping Jodi out of her clothes (except her socks), cutting her t-shirt and bra strap in the process, tied her arms behind her back with her trousers and mutilated her face and body.

The mutilations, according to the prosecution, were copy-cat injuries taken, by Luke, from images of the 1940s murder of Elizabeth Short in the USA. The unsolved "Black Dahlia" case, as it was called, was depicted in watercolour pictures on the website of Marilyn Manson, a goth rocker. Luke, it was alleged, was also obsessed with Manson.

Luke then coolly returned home and had his mother destroy a parka jacket he wore during the attack, in a log burner in the back garden and between them, they arranged for the disposal of the murder weapon, Luke going out later that night to hide it. Corinne, they implied, would do anything to cover up for Luke. She and his brother Shane had been arrested and charged with attempting to pervert the course of justice by lying about Luke's whereabouts at the claimed time of the murder. To cover for the missing parka, Corinne bought an identical one just days after the murder.

Having first tried to cover his tracks by calling Jodi's house, the prosecution contended, he then spent the rest of the evening distancing himself from the murder. But when Judith texted, looking for Jodi later

that night, Luke involved himself in the search party and led the family straight to the body, knowing exactly where it was, because he murdered Jodi. He showed no emotion either at the time of the finding of the body, or thereafter and he lied about seeing Jodi's body in the woodland strip that night – the police had 'proven' he was too far away from the body to have been able to describe the injuries, therefore, he must have already known exactly where Jodi lay and what her injuries were.

He lied repeatedly to the police during questioning, as did his mother and brother and had given information to a reporter that only the killer could have known. The claim to police that he thought Jodi may have been grounded again was an "obvious lie" and, they asserted, he failed to tell the police that the "something" he had found was a body.

On the surface, it looked like a compelling case which, if proven, would have gone some way to supporting a guilty verdict. But there was no forensic evidence linking Luke to the murder in any way, the murder weapon was never found, the time-scales for what was alleged to have happened were so tight as to be verging on the impossible and no-one had positively identified Luke with Jodi at any point on the evening of June 30th.

If the various prosecution claims could not be proven, then an already precarious case (as circumstantial cases, such as this one, often are) would become extremely tenuous – with no forensic evidence, no eye-witnesses, no proof that any articles of clothing had been destroyed or knives disposed of, no proof that the time of death was correct (as the only time at which it could be claimed Luke was the murderer) and no proof that cannabis, Satanism, and/or Marilyn Manson influences had been in any way involved in the murder, there would be virtually nothing on which to base claims that Luke Mitchell was the murderer.

The stories of what happened on the evening of the murder had changed over time, with new details emerging and original details being dropped, until the version most widely known and accepted was the one reported by the media and adopted by the prosecution at trial seventeen months later. It is a process, I would come to discover, that is found in virtually every case of wrongful accusation and conviction. How reliable was that final version and how well did the evidence support it? The purpose of this book is to examine every aspect of the prosecution case, the reliability of the evidence professed to be supportive of it and alterna-

tive explanations or interpretations which were ignored or summarily dismissed in order to maintain the prosecution narrative.

### **The Agreed Facts**

The simplest place to begin is with the known and agreed facts at the time – the maps at the beginning of this book will help create a visual understanding of the various points of interest:

Monday, June 30th, the 4.34pm text from Judith’s phone to Luke’s (Jodi’s phone was broken) asked, did he want to meet up with Jodi later that evening? Luke texted back saying he would be out after tea and suggested Jodi come down from her home in Easthouses to meet him near his home in Newbattle. It wasn’t something they did very often – in the three or four months they had been seeing each other, they mostly hung out in Easthouses (where Jodi lived with her mother, brother and step-father) or Mayfield (where Jodi’s sister Janine lived with the girls’ Gran, Alice Walker.) Jodi’s cousin, Yvonne Walker, lived just yards from Alice and Janine – Yvonne’s one-bedroom flat was a popular hangout for many of the teens connected to this case. Luke’s mother’s business, Scott’s Caravans, was just a few minutes’ walk from both Alice and Yvonne’s houses. More recently, Luke and Jodi had been going to Woodburn, where they met up with other friends. The friend they met most often there was away on a holiday organised by the school on Monday, 30th June, hence Luke’s suggestion that Jodi come to Newbattle instead.

*(Map 1 shows the proximity of each of these estates to the others and Map 3 demonstrates the location of Alice and Yvonne’s homes and Scotts Caravans)*

At 4.38pm, Jodi texted back, again from Judith’s phone, to say she would be down “later”. Luke cooked dinner for Corinne and Shane every weekday except Tuesday (Corinne’s day off from work), so he was rarely out before 5.30pm, Corinne arriving home from work around 5.15pm. Normally, because Luke had to get from Newbattle to Easthouses or Mayfield or Woodburn, he would meet Jodi and their other friends around six o’clock.

None of the texts were ever recovered – by the time police collected Luke and Judith’s phones, the messages had been deleted from both.

At 5.32pm, Luke tried to call the landline in Jodi's home to tell her he'd had dinner and was out, sitting on a wall at the end of his street. The call didn't connect, so he tried again at 5.40pm. This time, Judith's partner, Alan Ovens, answered, telling Luke that Jodi had left, or possibly had *just* left. By seven o'clock, Jodi hadn't turned up, so Luke called his mother and asked her to direct Jodi, if she turned up at the house, to the grounds of Newbattle Abbey, where he had arranged to meet some other friends.

At 10:38pm, while he was taking his dog, Mia, out for her last walk of the evening, Luke received a text from Judith's phone, clearly intended for Jodi - "Right Toad, 2 weeks grounding, say bye to Luke." Luke immediately called Judith to tell her he had not seen Jodi all evening. Seven minutes later, at 10.49, Judith called back in tears to say Jodi was nowhere to be found and she was calling the police. Luke offered to walk up Roan's Dyke Path - the isolated path, bordered by a high stone wall, which Jodi would have come down to reach Newbattle. If he didn't find her on the way, he would make his way to Judith's house, where the adults would decide what to do next. *Map 2 shows Roan's Dyke Path and other significant landmarks.*

Another ten minutes later, at 10.59, Judith called Luke again. He told her he had just arrived at the Newbattle entrance to Roan's Dyke Path with his dog and was about to make his way up to Easthouses, looking for Jodi on the way.

He was just half an hour away from the end of normal life as he'd known it.

"Storming" up the path with the dog pulling excitedly, he didn't find Jodi, but, when he was about two thirds of the way up, Luke made out shadowy figures in the beam of his torchlight, standing at the right-angled junction where Roan's Dyke path met Lady Path, behind Newbattle High School.

"Is that you, Luke?" Alice Walker called out in the darkness. As Luke drew level with them, he realised there were three people there – along with Alice were 17-year-old Janine and her 19-year-old boyfriend, Steven Kelly.

"Did you see anything on the way up?" Alice asked. Luke confirmed he had not. "We'll go back down and check," Alice suggested. Luke asked

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if anyone had anything of Jodi's from which the dog could get a scent, explaining that she was being trained as a tracker dog. Nobody had, but Luke put the dog in 'tracker mode,' telling Mia, "Seek Jodi, Jodi's hiding, find Jodi" – all commands the dog would understand to mean that she was 'working,' or rather, to Mia, 'playing the tracking game.' (Mia's training was being conducted by a highly skilled, ex-military dog trainer with twenty-five years' experience. He would later describe Mia's natural tracking abilities as "exceptional." He was never called to give evidence at trial.)

They made their way slowly back down the path, hampered by the darkness and the slower pace of 67-year-old Alice. At one point the dog, nose to the ground, turned to the wall and seemed interested in something. Luke climbed up to a small break in the top of the high wall and shone his torch into the woodland strip beyond, but there was nothing to see. A couple of times, the dog appeared to follow a scent into the crop field to the left and Luke followed her accordingly, again finding nothing. Further down the path, a few meters past the V-shaped break in the wall towards the Newbattle end of the path, Mia darted over to the wall and stood up on her hind legs, scrabbling at the wall and 'air sniffing'. Luke recognised the dog's behaviour as an 'alert' and doubled back to the V-shaped break. He handed the dog's lead to Alice, who had fallen a little behind the others, and climbed through the break in the wall into the woodland strip on the other side, turning left towards the area where Mia alerted on the path side of the wall. Steven and Janine continued down the path. They were brought running back to the V-shaped break by the sound of Luke's voice from the other side of the wall.

"I think there's something here."

Steven Kelly climbed through the break in the wall – the bottom of the V break was more than 4 feet above the ground - disappearing into the woodland strip for a few moments, before returning to the break, clearly distressed. Alice demanded to see for herself what was there. The two boys helped her over the wall, then Steven returned to the path side, to stand with Janine, who was now holding the dog's lead. Luke remained on the woodland side beside the V, waiting for Alice. Janine heard her grandmother screaming and she, too, began to scream. Luke placed a 999 call at approximately 11.35pm telling the operator they had "found something" and asking the police to get there as soon as they could. After the boys helped Alice back through the wall onto the path, Luke

was making his own way back over when his phone rang. The time was 11.38pm. It was the police, asking where, exactly, Luke was.

At 11.55pm, just over an hour after Luke left his home to look for Jodi, one of the first police officers on the scene radioed in confirmation that a body had been found, before the four members of the search party were taken up to a car park at the back of Newbattle High School. By the time they got there, a number of police vehicles had already arrived and two of Jodi's aunts were parked up in a jeep. Luke and Steven Kelly were sitting on the kerb smoking a cigarette when a police officer told Luke to get into the back of a police Range Rover with Mia. The three other members of the search party joined the aunts, Judith, Alan Ovens and Jodi's brother Joseph, all of whom had, by then, arrived in the car park – some of them were sitting in the aunt's jeep, others were standing around it, when, minutes later, Luke was driven off to Dalkeith Police station.

Luke's mother, who was frantically trying to contact him (by now, he should have been at Judith's house at least an hour ago), called his mobile. As Luke went to answer the call in the back of the police vehicle, a police officer took his phone from him and switched it off. Corinne tried calling again – failing to get through, she sent a text – “Right, you tell me right now what's going on. I'm coming up to get you.” Five minutes later, the officer turned Luke's phone back on and instructed Luke to call Corinne's number. When Corinne answered, he identified himself as a police officer, told her to make her way to Dalkeith Police Station and hung up. Corinne put on her shoes, grabbed a jacket and started running towards the police station. As she made her way up Newbattle Road, a police vehicle drew to a halt beside her, with Luke in the back. Corinne could not hear everything being said in the vehicle, but she did hear two words – “Jodi's dead.” She repeated, in disbelief, “Jodi's dead?” The officers would not allow Corinne to get into the vehicle because of ‘contamination issues’ – they drove off, with her 14-year-old son in the back, leaving her to run the rest of the way. By the time she got there, both she and Luke say, Luke had been stripped and placed in a paper ‘forensic’ suit.

On the night Jodi Jones was beaten, strangled and brutally murdered and her body stripped and mutilated, these were the agreed facts of the case.

From this point, the story becomes a tangled mess.

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The first, obvious question is why, within less than half an hour of the confirmation that a body had been found, was the decision taken to separate Luke from the others, place him in a police vehicle and transport him to Dalkeith police station? Only the briefest of statements had been taken, so, on the surface, there was nothing to indicate that Luke should be treated differently to any of the others. He was the youngest person there – a child, in law. The others were all members of the same family, Luke was completely alone. The only information the police had was that Luke and three members of Jodi’s family had gone out looking for her when she failed to return home.

The three family searchers were allowed to mingle with other family members before statements or forensic examinations of their clothing were obtained. Luke, Alice and Steven all went over the wall. Where the boys froze in their tracks on seeing Jodi’s body, Alice went right up to Jodi and touched her (early accounts suggested she ‘cradled’ Jodi; later accounts simply stated that she “touched her forehead”). These were some of the earliest indications of what Donald Findlay, QC for the defence, would later claim was an investigation that was “botched from the start.”

Two police officers logged their arrival at Judith’s house to take the Missing Person details at 11.20pm.

At the time the police were taking those details from Judith, she should have been expecting Luke to arrive at any minute, with or without Jodi. According to accounts of the various phone calls that took place earlier that evening, Judith knew Luke was at the Newbattle entrance to the path at just before 11 o’clock and the journey from there to her house would only have taken Luke around twenty minutes. But the two officers left Judith’s house after “no more than five minutes” to go looking for Jodi, so that had to be on the basis that they were unaware of the possibility that Luke might be about to walk through the front door with her. Rather than going into the entrance to the path after they left Judith’s house, they drove into the school car park and walked along Lady Path to the back of Reed Drive - heading in the opposite direction, away from Roan’s Dyke path (and away from the Newbattle direction), having gone straight past the entrance to the path without so much as pausing to check if Luke was there. (*See Map 2*) The two officers, it seems, had no idea, at that point, that Roan’s Dyke path existed, yet Judith was adamant she told those officers exactly which path Luke was



using.

It's somewhat surprising to realise that the only point at which police officers asked if Luke had seen Jodi was in the very first call from the officers who took the missing person details from Judith. Arriving at the waste ground at the back of Reed Drive and failing to locate Luke or Jodi, one of the officers on the ground called control saying he had a telephone number and the name 'Luke.' He asked the control operator to call the number and find out where Luke was and if Jodi was with him. (This request resulted in the operator's call to Luke's mobile at 11.38pm, as he was climbing back over the wall.) The question about Jodi was never answered, because the control officer failed to pass it on and it was never asked again. It would later emerge that the only contact number the police had that evening was Luke's, in spite of the fact that Janine and Alice also had phones with them.

Worse still, one of the two officers responding to the missing person call noted in a statement that he was of the impression that Jodi left home *with her boyfriend* at around 5pm that evening. It is no surprise that he was suspicious, especially if he was also told by Judith that Luke was saying he hadn't seen Jodi all evening. There has never been any explanation of why he formed the impression that Jodi left from her home with Luke earlier that evening – whether he was told that, or simply assumed it (and, if so, on what basis). In Judith's first recorded statement to police, at 2.45am on July 1st, she said Luke told her, in the 10.59pm phone call, he was coming up the path "on his bike." It's unclear whether this information was passed to the two officers who arrived to take the missing person details, but it does seem reasonable to suppose it was.

Somewhere in the confusion between the officers arriving at Reed Drive and the ensuing back and forth relay of information between them and control, one of the officers stated, "I think there's been a wee falling out; that's why he's galloping about at the back of the school." By this stage, at least, this one officer appeared to believe Jodi and Luke were in the vicinity together.

But the reference to "galloping about" arose in part because the two officers went looking for Jodi (or Luke) in the wrong place, in part because the control operator was not listening properly to what he was being told and in part because all three officers were of the impression

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that Luke and Luke alone, was ‘known’ to be located in the area behind Newbattle High School.

By this stage, less than quarter of an hour after taking Jodi’s details, those first officers were labouring under three separate pieces of incorrect information – that Luke was the only one out searching, that he was on his bike and that Jodi left her home with him earlier in the evening, but he was now saying he hadn’t seen her.

Luke was still on the phone with the police operator, desperately trying to explain exactly where the search party was and that this was an urgent situation, when Steven Kelly called 999 from Janine’s phone, at 11.44pm (he had no credit in his own phone), screaming down the phone, “it’s a body... tell them it’s a fucking body.” The transcript of the 999 call from Kelly is painful to read – the operator was more concerned with Kelly swearing than with getting the correct details. Kelly said five times – *five times* - that the search party was on the path and still the operator believed Kelly was in Judith’s house. The officer on the ground appeared not to understand that the two calls with the control operators were from different people – instead, he appeared to be under the impression that all of the information being passed to him from control was coming from Luke. (Of course, if he believed *only* Luke was behind the school, this would have been a logical assumption.) The fact was that none of the search party had moved from the area of the path at the V point from the moment Jodi’s body was found, so nobody was “galloping about” anywhere.

A senior officer later stated that Luke “led [his] officers a merry dance” that evening. Somehow, the police error in going along the wrong path in the wrong direction transformed into the police being in the right place and Luke ‘playing games’ with them by sneaking around in the darkness and giving directions to different places regarding his whereabouts. The reality is that it was police misunderstanding of where the search party was, how many people were out looking and who was giving information to the control operator that led officers to perceive that Luke was ‘playing games’ with them.

For many years, I wondered why the police had gone to the back of Reed Drive, particularly since Judith was adamant she told them exactly where Roan’s Dyke path was situated. In 2014 I uncovered a potential explanation. Every police force, I was told, has a record of sex offenders

at liberty in the community – when a child goes missing, the first port of call will be any addresses from those records which are close to the place the child was last known to be. That may, in turn, explain what had seemed to be a strange decision to conduct house to house enquiries for only part of Reed Drive. Neighbours and the general public, of course, have no idea of the history of those housed in this way.

One of the control operators later gave a statement saying that the caller did not seem genuinely upset at the finding of a body – he was more “annoyed” at the length of time the police were taking and didn’t seem to be reacting in ways the operator would have expected someone who had just found the body of a 14-year-old girl to behave. That statement was never used in evidence against Luke ... because the call to which the operator referred was the one from Steven Kelly. Given the amount of adverse media coverage the case attracted, there are two ways of interpreting the control operator’s statement. Either he was influenced by commonly disseminated portrayals of Luke as cold and emotionless (and assumed the call he took was from Luke), or he was giving his honest opinion that Kelly did not appear to be genuinely disturbed by the finding of Jodi’s body.

In Steven Kelly’s 999 call from Janine’s mobile phone at 11.44pm, he said, “We called the police an hour ago. They were in the mother’s house and they’re supposed to be meeting us here, but there’s no sign of them.”

When examined in light of all of the known evidence, this was a strange statement. The section on phone timings and claims in Chapter Eight will examine these in more detail, but, in explaining the various calls that night, it was claimed that Alice told Judith to call the police in a phone conversation at 11.03pm, the family search trio leaving Alice’s house immediately thereafter to go looking for Jodi. The search trio could not have known what time Judith actually called the police from her own house because there was no further contact until 11.18pm, when it was maintained that Judith called Janine (while the search trio were on their way to the path) and told her the police had arrived. So, who were the “we” who called the police “an hour ago,” to whom Kelly referred?

If he was referring to the instruction to Judith to call the police, that was only a little over 40 minutes previously and the police were not (and

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could not have been) “in the mother’s house” then. The 11.18pm call to Janine, stating that the police were in Judith’s house, was prior to the search trio meeting up with Luke, prior to the double check of the path, prior to the finding of the body and just 25 minutes before Kelly’s 999 call. Put simply, there would have been no reason for an arrangement for the police to meet the searchers on the path to be made until after the searchers found a body. Even if he knew at 11.18pm that the police were “in the mother’s house,” Kelly could not have known that there would be a later, urgent arrangement for the police to meet the searchers on the path, because he could not have known, at 11.18pm, that around 10 - 15 minutes later, they would find Jodi dead.

It may be that Kelly was referring either to Luke’s call to the police at 11.35, or their call back to Luke at 11.38pm being the calls in which the arrangement for the police to meet them was made, but those were literally just a few minutes earlier. In fact, the six minutes between the police call to Luke and Kelly’s 999 call is approximately the amount of time the police would have needed to get from Judith’s house to the V point, had they headed in the correct direction. In summary, therefore, the only calls in which arrangements had been made for the police to meet the searchers on the path were the one from Luke at 11.35 and the return call from the police at 11.38 trying to clarify his whereabouts – just 9 and 6 minutes respectively, before Kelly’s 999 call claiming the search party had called the police an hour ago.

Kelly may simply have been exaggerating the time lapse in order to try to make the police hurry and it may have seemed that a much longer time had elapsed than the six minutes which actually had, but by an odd coincidence, Kelly’s “hour ago” claim placed the first call to the police at 10.44pm – just one minute out from the mysterious ‘first (unidentified) call’ reporting Jodi missing, as discussed in Chapter Eight. It would be the first of many odd coincidences.

Kelly’s first comment, when the police reached the search party, was, “I suppose you’ve been to my house already?” Again, this was a strange comment. Either he thought that, on leaving Judith’s house at some point after 11.18pm, the police went to his house looking for Jodi, hence the delay in them arriving at the path, or he thought that between their call to Luke at 11.38pm and them arriving at the path, they went to his house looking for Jodi. But there is a big difference between the two. At 11.18pm, the police would have gone to his house looking for a girl who

was late home. After 11.38pm, they would have gone to his home in relation to a call saying a body had been found. To which one was Kelly referring when he said to the police, “I suppose you’ve been to my house already?” More importantly, why would Kelly think the police would go to his house first at all? Jodi was not known to frequent her sister’s boyfriend’s house.

Almost a decade later, I would discover that the telephone number originally noted in the police record for Kelly’s 999 call was not Janine’s number, nor was it a number connected to any person whose phones were recorded in the documents released to the defence. By the time that transcript was typed up for use as evidence, the incoming number had been changed to Janine’s number. Had the two numbers differed by a digit or two, the error could easily have been explained as accidental transposition by the receiving officer – 649 being recorded as 694, for example. But they were completely different numbers, so this was not a simple recording error.

When the police finally located the search party at around 11.50pm, there were very clearly four searchers. Two, Steven and Janine, had gone a few paces further up the path trying to attract the attention of the police (by then, the searchers were aware the police were on the wrong path), but there could be no doubt that there were four people, in total, at the wall. But the first officer to reach them then leapt to strange conclusion – that the search trio must have turned up after Luke found Jodi.

The control operator had already told this officer, “The laddie says he’s found something, but he won’t say what.” Literally a minute or so before this officer met the search party (his partner was further up the path), he was told: “they’re saying it’s a body.” With his mind so firmly set on Luke being on his own, the officer appears to have interpreted “He’s saying he’s found something” as Luke alone finding something (the operator, apparently thinking the same), the confirmation that it was a body coming from some other source (“they’re saying”) – i.e., the trio who he appeared to believe turned up after the “finding” comments. This appears to have come about because, throughout the conversation with the control operator, Luke referred to “we,” but the operator, right up to the very last minutes of the conversation, relayed Luke’s “we” in the singular – “he says...” “he’s found...”

The officer radioed his partner - “can you come down (the path) ...

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there's a grandmother and a couple - the sister and her boyfriend here... just to get the details of them. I think the boyfriend's found it." Clearly, by that stage, the officer knew a body had been found but was unaware that all four of the people on the path were involved in the finding of it. Perhaps the control officer who believed that Kelly and others were in Judith's house concluded that they must have made their way to the path after Luke found Jodi's body and passed this erroneous information to the officers at the scene?

It seems absolutely clear that, for whatever reason, both the searching officer and the control operator were working from the assumption that it was Luke and only Luke that they were trying to locate somewhere behind Newbattle High School and that Luke was alone, those officers having no idea that the other three were with him throughout. The other officer did, indeed, "just get the details of them [the family trio]" – names, dates of birth, relationship to Jodi ... not the details of the search, or the finding of Jodi's body. The police would not even begin to obtain any further details from the trio until more than four hours later.

According to all of the statements, Judith told the police that Alice, Steven and Janine were out searching as well as Luke, but not that all four were together (because she did not know they had met up.) In fact, based on her belief that Jodi should have been "mucking about up here" it seems strange that the police did not take the numbers of the searchers heading down from Mayfield and that they didn't consider trying to meet those searchers, or to look for Jodi in the areas she was supposed to have been that evening.

These events account for some of the difference in treatment of Luke that night. The question is why? Why was that first officer completely unaware that there were four people together on the path? Why did the operator not pick up on Luke's repeated "we" and why was Luke's number the only contact the police officer had? The instant focus, from the very beginning, for the search trio and the police, was Roan's Dyke path, even though the only person, at that time, who knew Jodi was headed for Newbattle that evening was Luke himself.

Furthermore, if the police believed that Luke came up the path on his bike, it's not surprising that they would be suspicious of him apparently finding Jodi's body, on his own, behind the wall – what possible reason would he have had to stop, get off the bike and climb over the wall at

that particular point?

But Lothian and Borders Police would eventually claim that the investigation into Jodi's death was "first class" and "left no stone unturned." Such an investigation should have ensured not only a robust case against the accused, but also robust reasons for discounting, eliminating or simply not collecting other evidence. Part of the purpose of this book is to allow you, the reader, to decide whether or not you think that happened.

Everything you read in this book has been taken from the defence papers, information in the media, or was discovered through witnesses who came forward long after the case ended – anything that is missing was also missing from the defence files.

The process by which the story deviated, over seventeen months, so far from the originally agreed facts is both surprising and deeply disturbing. When we compare what we believe happens, or should happen, with what actually happens in these cases, the differences are stark. But this book is not just about highlighting those differences, it is about demonstrating why these things happen, how they are able to happen and why the vast majority of us know little or nothing about them.

To begin with, given that in most murder enquiries, those closest to the victim come under intense scrutiny (statistically, there was a 79% probability<sup>2</sup> that Jodi was murdered by someone known to her), the first task in looking at how this case developed as a whole is to examine the known evidence surrounding all of those known to Jodi, rather than simply the movements of Luke Mitchell. This is not to suggest that any of those people were involved in Jodi's murder, but rather to demonstrate how many anomalies, discrepancies and inconsistencies were ignored in what this book will demonstrate was a tunnel-visioned focus on building a case against Luke Mitchell, rather than a genuine attempt to discover the truth about what happened to Jodi. If those anomalies, discrepancies and inconsistencies were ignored at this first, most rudimentary part of the investigation, it raises serious questions about just how robust the remainder of the investigation actually was.

The false reasoning that has plagued this part of the case for years is easy to spot – many have argued that there was no need to look at anyone else because Jodi was murdered by someone known to her – Luke -

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<sup>2</sup> Based on official crime figures for Scotland in 2003 <http://www.gov.scot/publications/2004/11/20292/47178>

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thereby satisfying the statistical probability. But in reality, the investigation should have considered everyone close to Jodi with the same level of significance until concrete evidence categorically ruled them out, since any one of them would have satisfied the statistical probability.

Choosing one person known to the victim and focussing all attention on that one person is obviously not investigating all potential perpetrators and runs the risk of becoming a self-fulfilling prophecy. If the information you are about to read had been before the jury, would you feel confident that the guilty verdict was based on proof that Luke Mitchell was Jodi's killer, beyond reasonable doubt?

True justice for Jodi demanded that the truth about what happened to her was uncovered and ensured that the real perpetrator was caught. Obtaining a conviction – any conviction – simply to close the case, does not represent true justice for Jodi and, from everything I have come to learn about her, she would have been one of the most vocal protesters about a veritable witch-hunt carried out in her name.



## **Chapter Three**

### **How the stories changed.**

The evidence presented at trial has been largely accepted, over the years, as the only, or only significant, evidence in the case. But that evidence was presented after seventeen months of police and media influence, as well as massive local hostility towards the Mitchell family. In order to understand the consequences of those influences, we have to work backwards from the evidence in court and trace its development from the very first days of the investigation.

There were just five central witnesses whose testimony was critical for the conviction of Luke –Jodi’s mother, the three family searchers and an independent eyewitness, Andrina Bryson whose evidence, it was alleged, placed Jodi and Luke at the Easthouses entrance to the path between 4.49 and 4.54pm on the afternoon of the murder.

Their evidence was presented within the context of a murder trial and, I was to discover, it is possible to make anything appear reliable and logical simply by extracting information from its true context and presenting it in a wholly artificial one.

The following five chapters trace back the narratives surrounding the eventual evidence given in court by these witnesses. Equally importantly, these chapters examine the evidence regarding others who were never called to give evidence and the impact of those narratives on the official case.

By the time the case came to court, one of the most important claims was that Jodi had been grounded right up to the afternoon of June 30th and, around 4.30pm, Judith suddenly and unexpectedly lifted the punishment.

The portrayal of Jodi at trial was one dimensional and restricted to the few months, prior to her death, that she had been seeing Luke. There was nothing to clarify what Jodi did on the weekends when Luke was at his dad’s, very little about where and with whom she smoked cannabis before she met Luke (but there was clear evidence that she did) and it was unclear if there were occasions where Jodi had skipped school other than the one which, ostensibly, led to the “grounding” punishment allegedly in place on June 30th. There were references to “referrals” from the

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school and messages from the guidance department, as well as mention of Jodi's performance "dipping" earlier in the year, before she started going out with Luke.

The Principal Teacher of Guidance at St David's High School gave a statement running to 7 pages, in which she detailed her dealings with Luke. On the very last page, in the last 4 lines, she said, "I have also had dealings with Jodi Jones, I had meetings with her on occasions, however, I am not prepared to discuss the content of those." The double standards and one-sidedness of this part of the investigation are clear. The Guidance teacher was clearly not concerned about confidentiality since she was prepared to talk for seven pages of statement about Luke – why were details of her dealings with Jodi not recorded in the same way? That information could have provided crucial evidence if there were elements in Jodi's life that were troubling her (as her diaries implied).

If there were other occasions of skipping school, where Jodi went, what she did and with whom would have been helpful information for the police investigation; the same is true of what Jodi did when she was not with Luke. Since both the time of Jodi leaving home and the time of death were so uncertain (see Chapter Ten) there was a possibility, supported by evidence already available to investigators, that she did not go directly to the path at around 5pm that evening.

Luke's accounts paint a very different picture to the one presented by the prosecution's "standing arrangement" claim that he would meet Jodi at the Easthouses end of the path if she was coming to Newbattle. According to Luke, there was no permanent meeting place. If they were going to Woodburn, for example, Jodi would take the bus from Easthouses to Woodburn and Luke would walk through the Abbey and over the bridge, meeting her from the bus in Woodburn. Similarly, Jodi would get the bus home alone and Luke would walk back to Newbattle (there was no direct bus route from Newbattle to Woodburn). Like most teenagers, their meeting arrangements were pretty loose and their plans were often last minute. There would be an unspoken understanding that they would probably meet up somewhere after school, with "someones" – i.e., whoever was going to be out and about. Luke told me all of this in 2003/2004 but I had no real way of verifying it back then. I now know there are statements from others which support these accounts, but they were never used in evidence. Although the case relied, almost entirely, on Jodi's family members' accounts of Jodi's claimed habitual, day

to day movements, other statements and evidence undermine them in many critical ways.

This is not, of course, merely a case of demonstrating the relatively simple fact that Jodi's family members' statements were, understandably and as should have been expected, inaccurate, scattered and flawed. It is to expose the decisions of those who should have been investigating the case with open minds and clear reasoning, to rely on the least reliable statements to support their case and ignore or discount other, stronger evidence.

In Judith's first four statements, it was apparent that, on the evening of June 30th, there was no grounding in place and Judith did not know "at all times" where Jodi was, or with whom. Her initial account of Jodi coming in from school and leaving to meet Luke was quite clear – Jodi came downstairs and said she was going out. She said she would be mucking about "up here" – Judith *took that to mean* Jodi would be meeting Luke and hanging out in Easthouses or Mayfield. She mentioned that Jodi had been "kind of grounded" but the grounding had been relaxed to Jodi doing extra chores in exchange for being allowed out. The time was "about 5 o'clock."

In these early statements, Judith's accounts were far closer to Luke's regarding Jodi's movements. The night before the murder, Jodi was meeting Luke somewhere - Judith didn't know where. When Jodi came in, she did not tell her mum where she'd been or with whom and Judith didn't ask, again, simply assuming Jodi had been with Luke. Luke would sometimes come to the house for Jodi, sometimes go to her Gran's for her and sometimes meet her somewhere unspecified on the way. Occasionally, they would hang out at Scott's Caravans (the business owned by Luke's mother, just a few minutes' walk from Alice Walker's and Yvonne Walker's homes). In other words, from her own early statements, Judith only had a vague idea where Jodi was when she was out, which is, perhaps, the truthful experience of most mothers of teenagers.

Both Alice and Janine supported the fact that Judith often did not know where Jodi was. One evening, after she had been barred, by her mother, from Yvonne's flat, Jodi, Luke and another friend had a sleepover there. Jodi had asked her mother if she and her friends could have the sleepover at Yvonne's flat and Judith said no, the ban was still in place.

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Alice, however, lied to Judith, Luke's mum and the other friend's mum, telling them the teenagers were sleeping over at her own house, when in fact, the plan was to allow them to be in Yvonne's flat overnight. Judith later found out the truth by quizzing Yvonne. Again, Corinne told me about the sleepover and her call to Alice to check the arrangements, back in 2004. This is not to cast any sinister inference on Alice – my friends with grandchildren often joke, "If mum says no, ask Grandma." But it does highlight a clear flaw in the evidence on which the prosecution founded their case.

There were two occasions in the couple of months leading up to the murder when Jodi did not arrive at her Gran's by her curfew time and Yvonne Walker lied to Janine and Alice, saying Jodi was not at the flat when, in fact, she was. On one of those occasions, Janine, finding Jodi and some others (none of them Luke) "out of their faces" on cannabis in Yvonne's flat, left Jodi there, not wanting to embarrass her. The contrast of responses to those two occasions with the night of June 30th is marked– no panic, no immediate rush to go out and look for Jodi, no calls to the police – just a two or three hour wait for Janine to get home from work and walk the 20 yards to Yvonne's flat to find out if she told the truth earlier.

One of Judith's statements contained an interesting amendment which raised doubt about the claim that Corinne allowed Luke to do as he pleased. The original statement said that Jodi was begging Judith not to tell Luke's mum the truth about them spending the night at Yvonne Walker's, because, she said, Luke's mum was "quite strict towards Luke" – the implication of the whole statement being that Luke would have been in big trouble. (After all, his mother had gone to the trouble of calling Alice Walker to make sure that the arrangement for the teens to stay over at Alice's house was legitimate.) The words "quite strict towards Luke" were crossed out and replaced with the phrase, "...not as understanding as me." How sad that Jodi was silenced in this way – there would have been nothing wrong with leaving Jodi's opinion of Corinne and her relationship with Luke, as Judith originally reported it, in that statement, since Jodi was the one best placed out of all of the Jones/Walkers to comment on Luke's relationship with his mum.

Another curious anomaly crept into the various versions of the grounding story, demonstrating, I believe, the manner in which Jodi's family members were manipulated. Judith found out from Janine that Jodi

and Luke had begun a sexual relationship. She and Jodi had a mother-daughter chat and Judith was “ok with it” because Jodi was “sensible.” They talked about the possibility of Jodi going on the Pill, so, all in all, Judith appeared not to have had any problem with Jodi having sex. In her first statement addressing these issues, she stated categorically that she grounded Jodi for “skipping school and smoking dope”.

By July 8th, however, Judith stated that she “*barred Jodi from going to Yvonne Walker’s for two reasons - the dope and the sex.*” Yet, in the previous paragraph in this statement, she said, “*I had come to accept that they would have sex as the relationship went on and developed, so I wasn’t really surprised when she admitted it.*” The question of how “the sex” appeared as one of the reasons for barring Jodi from Yvonne Walker’s flat is an important one. Judith herself was “ok” with Jodi and Luke having a sexual relationship, although she did not appear to have asked where this happened. The police focus on the possibility of a sexual motivation for the attack on Jodi is discussed in various parts of this book, but this is, I believe, an example of the dangers of police focus on specific factors influencing witness statements.

Three weeks later, on August 1st, Judith said “*The grounding started the day I found out she had skipped school... I sent a text telling her to get her backside home, I wasn’t happy.*” And in this same statement, “*During this period, I became aware of her smoking dope and having a sexual relationship with Luke. This led me to barring her from going up to Yvonne’s house.*”

Looking behind this statement and considering why it was taken and what investigators were trying to elicit, an interesting pattern emerges. We have to look at the questions which produced the comments that appeared in the final statement, so ... When did the grounding start? Can you explain a little bit more why you barred Jodi from Yvonne Walker’s flat? You said in your last statement it was “because of the dope and the sex” – when did you find out about that? Notice that the “dope and the sex” have become inextricably linked to each other, even though they were not linked in any way in Judith’s original statements – Judith did not, for example, believe that smoking cannabis was what led Jodi to start a sexual relationship with Luke. She was quite clear that she accepted the relationship would become sexual as it progressed. But the case against Luke required sex and drugs to be both linked and central to the prosecution narrative and, almost without Judith even noticing,

her statements were led in that direction.

Judith never said, at any point, that Jodi was grounded for having sex, but somehow, the grounding story and the “barred from going to Yvonne’s flat” story became entangled, with elements from each appearing in the other. Jodi may well have still been barred from going to Yvonne’s, even after her grounding was lifted and that may have accounted for the ongoing confusion about when the grounding ended. What it does not and cannot do is explain Judith’s account in court of the lifting of the grounding - she told the court:

*“I said, ‘That’s you hen, you can go out when you want to. You don’t have to wait till six o’clock.’ She was chuffed and got my mobile phone to text Luke. She sat next to me on the couch in the living room playing games on the phone until she got an answer back.”*

Eighteen months previously, in her statement of July 9th 2003, after saying Jodi came in at 4.05pm, dropped her bag, went into the kitchen for something to eat, went upstairs and then come back down again, she said Jodi “came through to the living room and sat on the couch beside me and Joseph. She was talking to me and I was telling her to “be quiet shoo and go out.” This was before the playing of a Rod Stewart track and was later explained as Judith’s way of telling Jodi she was no longer grounded. Judith still did not know, in this statement, if Jodi used her mobile phone. The difference between the two accounts is stark.

Judith, Janine and Alice also confirmed, categorically, that there was no grounding in place on the night of June 30th. Janine remembered the specific start date of the four-week punishment as beginning on May 14th, because she had an exam that day and, arriving home early, discovered that Jodi had skipped school. Judith told police that, because Jodi had been going to Woodburn in recent weeks, she needed the “extra time” (i.e. ten o’clock curfew) for the additional travelling. The friend Jodi met with in Woodburn was on holiday the week of the murder, therefore, the grounding had to have been lifted before then – according to Janine’s recollection, it was finished by 12th June. Alice said simply that the punishment had petered out until things returned to normal “a few weeks ago.”

Also, Jodi was at Luke’s house on Saturday, June 28th. The two of them lost track of time and realised, just before ten o’clock, that Jodi was

going to be late home for her curfew. A taxi was called in order to get Jodi home on time, so it is clear that there was no grounding in place on the evening of June 28th either.

As late as July 31st, Judith did not know, or could not remember, if Jodi used her (Judith's) phone the evening of June 30th – by that stage, Judith had given almost a dozen statements which either made no mention of Jodi using her phone or, in three particular statements, was clear that she did not know if Jodi used her phone.

This is far from a definitive statement that Judith was sure that Jodi used her (Judith's) phone and further still from the positive account given in court. All of the references to Jodi using a phone were extremely vague - "...playing with her hands" ... "may have had a phone in her hands," ... "account for me thinking she had a phone" ... "possible she sent a text message" ... "possible she was playing a game on the phone" – clearly, a number of suggestions were put to Judith about these possibilities and Judith was agreeing that they were all possible, without actually being able to confirm whether any of them happened.

Yet the police knew, both from phone logs and from Luke's account, that a series of texts between Judith's phone and Luke's took place between 4.34pm and 4.38pm.

A large number of texts between Judith and Alan Ovens, who was at work, on the afternoon of June 30th raises another anomaly. Between 3.32pm and 3.50pm, there was a series of seven texts – that is, on average, one just short of every two and a half minutes. There was one text at 4 o'clock, then a break until 4.16pm. Between then and 4.29pm, there were another five texts sent (again, approximately one every two and a half minutes.) The last text in this series was just five minutes before Jodi's first text to Luke from her mother's phone. None of the content of the texts between Mr Ovens and Judith was ever released to the defence.

It seems odd that, in spite of her phone being in such intensive use that afternoon and in particular, in the hour immediately prior to Jodi's first 4.34pm text to Luke, Judith appeared to have completely lost track of it within 5 minutes of her last text. The series of texts between 4.16pm and 4.29pm obviously occurred after Jodi came in from school. In spite of the incredibly detailed accounts of events that afternoon which would

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eventually emerge, the series of texts in the midst of those events merited only one casual, passing reference.

It is difficult to understand why the whole grounding story and all of the fine detail regarding the lifting of it were allowed as evidence at trial. Judith, Janine and Alice all knew it was not true. All of the available evidence proved it was not true. What was its purpose? It was of no real evidential value to the prosecution. Aside from a tenuous suggestion that Jodi left earlier than she normally would have done, its only other value was in its emotional impact on the jury and on public opinion. It portrayed Judith as a mother in strict control of her daughter's movements, a responsible parent willing to impose punishments, in direct contrast to the portrayal of Corinne as an irresponsible parent, unable and unwilling to discipline her son.

That being the case, it was a risky strategy. If the defence had mounted a robust challenge to this evidence (using the factual information which categorically demonstrated it was incorrect), there would have been nothing, except the altered timing of the Andrina Bryson sighting, (see Chapter Seven), on which to base the presumed time of death or the altered time of Jodi leaving, on which the entire prosecution case depended. Fortunately for the prosecution (and unfortunately for Luke), such a challenge was not made successfully.

What we see here is the beginning of the "good family/bad family" caricatures which came to dominate representations of this case. A statement describing Luke's mother as "quite strict" would not have been consistent with the prosecution claim that Luke was a boy "out of parental control," who was indulged by Corinne and allowed to do whatever he liked.

The heavy emphasis on Judith always knowing Jodi's whereabouts was required to convince the jury that Jodi would not possibly have gone anywhere, with anyone, unless her mother knew about it – again, this was to become the later justification for the argument that Jodi would only have gone over the wall with someone she knew – i.e. Luke.

However, this is not in any way intended to be critical of Judith - common sense tells us that many teenagers do not always tell their parents the truth about where they go, or who they are with and that should have been foremost in the minds of those investigating the case. Instead, it



seems, they were willing to take advantage of a family in disbelief and despair and insert possibilities to support the investigators' own purposes.

Every aspect of the grounding story was discredited by the factual evidence – there was no grounding in place on June 30th, Judith did not suddenly decide to lift a grounding at 4.30pm, she had no idea whether or not Jodi used her phone yet, by the time of the trial, she was utterly convinced these things happened (like Alice had earlier been convinced that calls or texts between Janine and Luke led to Alice telling Luke to come up Roan's Dyke path and meet the search trio half way, as discussed in Chapter Four).

It is critically important to understand that I am not suggesting that either Judith or Alice was being deliberately dishonest. Multiple studies on false memory have shown that recall can be powerfully influenced by some relatively simple techniques, such as the pairing of cannabis and sex (where the original link was cannabis and skipping school), the gradual consolidation of particular parts of an account and the dropping or introduction of doubt about other parts, leading questions and the subtle insertion of expectation – the family was being continually fed the belief that Luke was Jodi's killer and encouraged to examine events in the light of possibly sinister undertones, rather than ordinary, everyday occurrences.

For example, Corinne Mitchell received information about a male known to the enquiry which she believed to be significant. Having told the police, but feeling they were not treating the information seriously, she called Judith to share that information, genuinely believing it would help focus police attention on possible real perpetrators, rather than, as she saw it, wasting so much time focusing on Luke. Judith, on the other hand, perceived sinister intent in Corinne's call and called the police – not to pass on the information Corinne received, but to report the fact that Corinne had called her. A phone tap was set up on Judith's phone, to record whatever Corinne said to her. It is hardly surprising that Jodi's family was re-evaluating every tiny word and action involving Luke and his mother. The police investigators had seventeen months to shape the recall of Jodi's family members and the development of particular narratives, in direct contrast to the earliest information, demonstrates just how effectively they did so. It also explains how the family stories came to be so far removed from their original accounts.

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Judith's first statement, lacking, as it does, any of the very precise detail that would later make up her court testimony, may have contained one of the first inconsistencies on which the Senior Investigating Officer, Craig Dobbie, would later claim his suspicion of Luke was based. At approximately the same time as Judith was giving this statement, insisting Jodi would be mucking about in Easthouses/ Mayfield, Luke was telling police officers in Dalkeith that Jodi's plans had been to come down to Newbattle that evening – there was no arrangement for him to go to either Easthouses or Mayfield. There appears to be no reason, other than his own suspicion, which led SIO Dobbie to choose to believe Judith rather than Luke, within hours of the discovery of Jodi's body.

Yet, Jodi's body was found on the route she would have used as a shortcut to Luke's, suggesting that was where she was headed when she was attacked. The media reports throughout July 1st all stated that Jodi was heading to Newbattle using her "usual shortcut" and both Janine and Alice Walker justified going straight to the path to look for Jodi on the basis that this was the route Jodi would have taken to go to Luke's.

Other evidence, such as Luke's call to his mother at 7pm asking her to send Jodi over to the Abbey if she turned up at the house, had it been taken into account, also suggested that Jodi's definite plan that evening was to go to Newbattle. The police, themselves, initially appeared to believe Luke's account that Jodi was supposed to come down there.

Furthermore, Judith conceded to police at the end of July that the possibility of Jodi walking to Newbattle alone was a real one; one of which she, Judith, was aware.

With so much evidence supporting the fact that Jodi clearly intended to go there that evening and only Judith's account to contradict that evidence, it seems strange that the police and prosecution would stick with Judith's version, that the plan was for Jodi to be hanging out "up here" in Easthouses or Mayfield, all the way to trial.

Or perhaps not. By leaving open the story that Judith believed Jodi would be "mucking about up here," the unspoken implication is that Luke Mitchell was leading Jodi astray by encouraging her to be dishonest with her mother about her whereabouts. The introduction of: "Luke would meet her at the Easthouses end of the path and walk her

down to Newbattle” as a “standing arrangement,” served but one purpose. In order to make the claim that he was Jodi’s killer even remotely credible, Luke had to be placed somewhere close to the crime scene – a wall at the end of his street was not strong enough “evidence.” Yet there was not a single, credible piece of evidence, either in court or in any statements, that such an arrangement existed.

The contradiction here is quite clear but is shrouded by the confusion. On the one hand, Luke was deviously encouraging Jodi to go somewhere she was not supposed to be, but on the other, he was dutifully obeying the supposed standing arrangement to meet her at the Easthouses end of the path and walk with her down to Newbattle to ensure her safety. There would have been no reason for Jodi to lie to her mother about going to Newbattle if going there posed no risk to her because Luke would be with her.

Judith was questioned about why Luke’s 5.40pm call, looking for Jodi, hadn’t raised alarm bells with her – if Jodi left at 4.50pm, this call was 50 minutes later. Judith said she had lost track of time and thought Jodi had just left. Yet Judith’s eventual recall of the two hours between 4.05pm and 6pm was meticulous in every other detail.

If it was believed Jodi was meeting Luke at the Easthouses end of the path and she left home at 4.50pm, she would have been there by 4.53pm – she was in the house just 45 minutes between coming in from school and leaving again. Even if Judith had lost track of time, Mr Ovens, who answered Luke’s call, must have known he did not do so just five minutes after arriving home from work (indeed, if his statements are correct, he was still in the bathroom five minutes after he arrived home).

The development of Mr Ovens’ statements provides an interesting, if utterly bemusing, sub context to the claimed events of Jodi leaving the house that day. In his first statement, he mentioned being “aware of” Judith, Joseph and Jodi in the living room, although he did not claim to have seen anyone other than Judith as he passed the door.

In a later statement, he said that he heard the front door banging when he was in the bathroom and presumed that was when Jodi left. In this statement he mentioned seeing Janine in the living room when he came out of the bathroom, later claiming that he had been “mistaken” about this. His next statement attempted to correct that error but, in fact, only

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created further confusion. He said he did not know why he mentioned Janine, because it was definitely Jodi who was in the living room. That cannot be so, because, in all of his other statements, he said he did not see Jodi that evening – she left before he came out of the bathroom.

So, he could not have seen Jodi, Janine and Judith in the living room after he came out of the bathroom, because Jodi was already gone. His “correction” – that it was Jodi, Joseph and Judith also cannot be correct, leaving some somewhat disturbing possibilities. Either he was aware of three people in the living room as he passed on the way to the bathroom but mistook Janine for Joseph, or he saw three people in the living room when he came out of the bathroom but mistook Joseph for Jodi, or there were, in fact, only two people in the living room when he came out of the bathroom – Joseph and Judith, but somehow Mr Ovens believed he saw three people there.

If, by some strange chance, the correction statement was correct and all of the others were wrong, it leaves the awkward question of who left the house when he was in the bathroom (that leaving being signalled by the banging of the door), since it would mean there were three people in the living room when he passed to go to the bathroom and there were still three people in the living room when he came out of the bathroom, even though someone clearly left the house in the meantime.

Although all of this is enormously confusing, the only logical conclusion that can be drawn is that, when he came out of the bathroom, if he saw three people in the living room, one of those three was not Jodi.

All of this aside, if he believed Jodi left when he was in the bathroom at around 4.50pm, he would be aware that some time had passed between then and answering Luke’s call.

Part way through the police interrogation on July 4th (see Chapter Fourteen), having said that he didn’t think he had spoken to Jodi by phone on June 30th, Luke said, “*No, wait, I did phone. I phoned the house... her mother’s boyfriend answered it. He said Jodi had left... he said **they’d** just left. I think he just meant Jodi.*” If Luke’s recollection is correct, what did Alan Ovens mean by “they’d just left?” Interestingly, police investigators would later claim that Luke did not, or “tried not to” mention that he called Jodi’s house that evening, even though the evidence was there, in black and white in front of them, that he did.

Judith stated that Luke called the house whilst she was making the cheese sauce for the lasagne – it took her about 10 minutes to make the sauce and assemble the lasagne before putting it in the oven. This is a small detail, perhaps, but a very important one.

While it may seem pedantic and perhaps unimportant to focus on small and apparently innocuous details, it is the accumulation of these tiny drips of factual information, airbrushed from the true events, which creates the bedrock onto which the case was eventually built.

If the lasagne was not in the oven prior to 5.40pm, according to Judith's statements, it would not have been ready to eat until 6.10pm at the absolute earliest because Judith's accounts required 30- 40 minutes after that point for the meal to be served. The claim that Judith and Alan left to visit the cemetery just after the six o'clock news headlines came on tv, after eating their meal, cannot be correct on the basis of Judith's own statements.

Does it matter? It is fully understandable that a mother in such terrible shock and suffering could not be expected to recall precise details about what was, up until the point her daughter failed to return home, a completely ordinary Monday evening. Yet so much of the detail in Judith's statements ended up being very precise – the difficulty is that precision clashes between statements. Given the vulnerability of Jodi's immediate family in those first few weeks, if the detail of Judith's statements was inconsistent, either with other statements she made, or with other known evidence, investigators should have been wary about relying too heavily on those details, looking, instead, at what more reliable evidence and accounts suggested.

For example, if Jodi left nearer 5.30pm, as originally claimed, the information that she'd "just left," ten minutes later, would be credible. If the lasagne was not yet ready, "Keep some for me for later, mum" (as Judith said Jodi asked before heading out for the evening), would be credible.

In the event, the lasagne took more than five hours to prepare and cook. (According to other statements, Judith started preparing the lasagne just after lunchtime.)

But if Jodi left at 4.50pm, she was much too early to meet Luke, who would not be expected to be out until at least 5.30pm.

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In their apparent efforts to shoehorn the time of Jodi's death into the only time in which it could possibly be claimed that Luke was the murderer, investigators created a tangled net of events and timings in which Jodi's family members were involved, that could not be substantiated. In the midst of this was the adamant claim that Luke would always meet Jodi at the Easthouses end of the path and walk her to Newbattle. Such an arrangement would be next to worthless if nobody had any idea when Jodi was likely to arrive at the Easthouses end of the path, or even if she was likely to be there.

Alice, Steven and Janine, in court, could not explain why they went straight to Roan's Dyke Path to look for Jodi, just as they could not do so in their police statements. When Janine stated that it was the route Jodi would have taken to Luke's, she was reminded by Donald Finlay that, according to her mother, Jodi was not allowed to use the path alone and asked why would they think she had done so? Janine conceded that her mother knew "perfectly well" that Jodi used the path alone. Mr Findlay gave her a chance to think about what she had just said. "Really?" he asked. "Yes," she replied.

Yet Janine, herself, tried to claim that she did not know where Roan's Dyke path was prior to the night of the murder— it was her grandmother's idea to go there and she (Janine) only discovered the location of the path when they arrived there. Her account of this part of the evening, therefore, was that she and the others headed for Roan's Dyke path because it was "the route Jodi would have taken to Luke's," even though she (Janine) had no idea where that route was.

Steven Kelly told the court there was some discussion, when they arrived at the junction of Roan's Dyke and Lady Path, about whether they should split up and check both paths, but Alice said Jodi would not be on Lady Path.

All three insisted in court that Luke's dog did not react at the wall; Luke went straight through the V point to the body. He showed no emotion, they alleged.

Mr Findlay pointed out that Janine said in her police statements that she could tell "by the concern in his voice" that Luke had found something bad on the other side of the wall, that his "eyes were wider than normal, as if he was in shock," and that "everyone was in hysterics." Steven

Kelly, when it was put to him that he had said, “everyone was so upset,” said that he meant only the family members, the people he cared about.

Statements from Janine and Steven about the dog jumping about and pulling over to the wall, including a particularly detailed one from Steven who said, “It was an Alsatian – it’s a big dog – when it was standing on its hind legs at the wall, its head was level with the V,” had disappeared from the witnesses’ memories by trial. The dog, according to their evidence in court, did nothing at all – Luke simply went to the V break and climbed through. For fully a month after the murder, Janine and Steven were telling exactly the same story as Luke – that the dog alerted a little way past the V break (Alice was behind them and could not say what the dog did or did not do.) After the stories began to change, Alice gave a statement in August that, in her opinion, Luke was “guiding” the dog towards the wall. All of her previous statements stated that she did not see what the dog did until the point where Luke handed her the lead.

I did not know, then, the concept of statements being “adopted.” I thought that someone saying something different in court to what they said in statements would have immediately raised red flags about the reliability of the court testimony. I was wrong. Police statements, in themselves, are not admissible as evidence unless the person giving evidence accepts that the contents of their police statements are correct. In some ways, that is a significant protection, since “police speak” in written statements can change the intended meaning. But it does allow witnesses to simply dismiss direct quotes from their police statements in court, where the narrative involving those witnesses has changed over time.

Because Janine and Steven Kelly refused to accept the content of their police statements as correct at trial, the prosecutor, in his final speech to the jury was able to say, “*in the evidence of all the other people who were there, there is no record whatsoever of [the dog reacting at the wall]*” Those records, of course, were in statements. He went on to ask, “*How could each one of them have missed this most graphic moment of the dog ... up on the wall, paws up on the wall, sniffing away?*”

The changed stories of the search trio all claimed, by the time of trial, that Luke had always been at the front of the search party and had not gone past the V point then doubled back, but, instead went straight to

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it. Their earlier police statements indicated that Steven and Janine had overtaken Luke a couple of times and that they carried on walking down the path after Luke doubled back to the V point - the implication being that they were with him, past the V, when the dog reacted. However, on the basis of the altered stories, a reconstruction of the wall was built for the trial and the prosecuting QC placed each member of the search trio at the V point. He then walked 16.3 metres away (the distance Jodi's body lay from the V point) and then back towards the person standing at the V, asking, "Is this what you saw?" Not one witness (including Luke himself) had ever suggested that was what happened, either in court or in statements, yet this dramatic reconstruction was used to convince jurors that Luke was "lying" about what happened at the V. The prosecuting QC concluded, in his speech to the jury, *"how could it be that ... the family members did not see him coming back towards them, with his torch shining towards them? ...am I being fair and reasonable in saying that if Luke Mitchell was that distance away from the other family members and came back again, it's just inconceivable that they could have missed it?"*

Was he being fair and reasonable?

The other side of this is the danger of police statements being accepted as they have been written. When police officers later took a statement from Corinne about what she said when the police car stopped on Newbattle Road as she made her way to the police station on the night of the murder, there was no question mark after the words, "Jodi's dead." Without the question mark, those words were a statement of fact – a fact Corinne Mitchell could not have known at that early stage unless her son had been the murderer and she knew he had killed his girlfriend. One punctuation mark is all it would have taken for the later line of questioning to be, "You told officers within half an hour of the body being found, without having spoken to anyone, that Jodi was dead. How did you know she was dead?" Fortunately, Corinne argued for the question mark to be inserted – not because she understood the significance of it at the time, but merely because she was pedantic about correct grammar and punctuation!

One vulnerable witness told me, "They wrote it all down, but when they read it back to me, I didn't know what half the words meant – I didn't understand them. They told me, 'Don't worry about it, it means the same as what you said ... anyway, you'll not be called as a witness.'"



That same witness went on to develop mental health issues as a direct result of anxiety that she would be called to give evidence in court and possibly “sent to jail for not telling the truth.” She had just turned 14 years old when the statement was taken.

It is no more than ordinary common sense to realise that the same approaches will be used to elicit supportive statements for the prosecution case and, in this respect, given the significant changes in Jodi’s family accounts from start to finish, there is a very real possibility that a family in the absolute depths of trauma and grief were encouraged to believe that their initial accounts were mistaken and subtle changes were introduced over time, the police, all the while, assuring the family that Luke was Jodi’s killer.

The prosecuting QC must have known about Janine’s statements to the police that the dog started “jumping about at the wall” and Kelly’s description of the dog standing on its hind legs at the wall, but because those accounts were not accepted by Janine and Kelly at trial, the prosecution was able to speak to the jury as if they never existed. Was it a lie to tell the jury that Kelly and Janine had seen “no such thing,” or that the chances of them missing the dog’s behaviour or forgetting about it were next to zero? Not in our legal system.



## Chapter Four

### Alice Walker and the Boys on the Moped

As well as the changed accounts of the discovery of Jodi's body at trial, there were other changes in the evidence of the search trio which was given to police over the course of the investigation, none of which was ever before the jury and all of which may have influenced the likelihood of investigators pursuing other lines of enquiry. (The timings of specific events in the earliest hours after the discovery that Jodi was missing are dealt with separately in Chapter Eight, to avoid confusion.)

For the first month of the investigation, it was stated on a number of occasions by the family search trio that an arrangement had been made between Luke and the trio to meet at the path. In her initial statement, Alice said, *“Janine suggested that she telephone Luke to see what way Jodi would have walked. He said that he would get her at the main road after she'd come down the path... I decided that we would walk the same way and told Janine to tell him to come up from the other end and meet us half way.”*

In this very first statement, recorded around 4 o'clock in the morning, just 5 hours after the decision to go looking for Jodi, Alice was quite certain, even though it is now clear that these events never happened – there was *no* contact by phone or text between Luke and any of the other searchers that night (see Chapter Eight). In this same statement, Alice described the path as *“from Newbattle High School, through the woods to the main road, just up from Basically Tools (a local tool-hire business). It is used by local people as a shortcut from Easthouses to Newbattle Abbey Crescent...”*

Where would there have been any need to call Luke and ask what way Jodi would have walked when Mrs Walker obviously already knew? Since none of the three spoke with Luke that night, how did Alice know Luke would meet Jodi on the main Newbattle Road after she walked, alone, down the path? The only explanation is that Alice already knew that this was what happened when Jodi went to Newbattle to meet Luke, contrary to what would later become the “official line” that Jodi was not allowed to use the path on her own. This statement instantly contradicted the claim of the “standing arrangement” for Luke to meet Jodi at Easthouses and walk with her down to Newbattle, as would others that followed. It is strange that Alice thought she “told Janine to tell him to

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come up from the other end” since, according to all of the available evidence, Luke set out for the path almost quarter of an hour before it was agreed amongst Jodi’s family members that she was definitely missing – the very reason the family search party was required (see Chapter Eight).

But Roan’s Dyke path is a shortcut from Easthouses to the main Newbattle Road, not specifically, as Alice stated, to Newbattle Abbey Crescent (the street where Luke lived), again suggesting that Alice knew exactly where in Newbattle Jodi would go if she was going to meet Luke. Judith was unable to give the officers taking the missing person’s details Luke’s surname or address, although it seems, from this statement, that Alice knew, at least, the street where Luke lived. Furthermore, Roan’s Dyke path does not go “through the woods,” it runs alongside the wall bordering the woodland strip, although there is an alternate route which does run through the woodland itself (*see Map 4 Alternative Routes*). It is not clear why Alice told police that the path Jodi would use was the one that ran “through the woods.” In all of her other statements, Alice appeared to be referring to Jodi using Roan’s Dyke path - the route that did not run through the woods.

Alice said that the intention was to “meet Luke halfway,” yet the trio stopped at the junction of the paths and waited, rather than carrying on down Roan’s Dyke path, even though, at that point, they had not yet spotted Luke approaching. According to Steven Kelly, this was where the discussion about splitting up and checking both Lady Path and Roan’s Dyke path took place, with Alice stating clearly that Jodi would not be on Lady Path.

Given all of the other claims made by the search trio, if they believed Luke to be already heading up the path when they were leaving Alice’s house in Mayfield, they should also have expected Luke to be at, or almost at, Judith’s house and no longer on the path at all by the time they reached the junction of the paths (see Chapter Eight).

The prosecution contention that Luke was part of the search party from the very beginning – the implication being that he “involved himself” in the search in order to lead the searchers to the body - is proven, by the evidence, to be incorrect. When Luke set off for Roan’s Dyke path, there was no search party, (or rather, it was a search party of one – Luke himself) and he could not have known at that stage that the others

would set out to look for Jodi, far less that he would meet up with them. Perhaps more importantly, Luke could not possibly have known Alice would suggest a double check. If she had accepted Luke's account that he saw nothing on the way up, there would have been no opportunity for Luke to "lead the family to the body."

A second statement, to the effect that an arrangement was made with Luke to meet at the path, was recorded on July 5th. In this statement, Alice said she called her daughters (the aunts) after the police took the search party up to the car park. Again, according to all of the other evidence, that cannot be correct, because the aunts were already in the car park by the time Luke and the search trio were taken there. While the others were escorted, together, to the car park, Luke, having refused to go back over the wall with the police officer to show him where Jodi's body lay, was left alone on the path while the officer climbed into the woodland strip, found Jodi's body and climbed back over. Even allowing for the slight delay caused by the police officer going over the wall before taking Luke to join the others in the car park, Steven Kelly stated that the aunts were there by the time he, Janine and Alice, escorted by the other officer, got there. This statement also called into question Alice's claim to have handed her phone to one of the aunts to break the news to Judith that a body had been found. If the aunts were not called until just after midnight (when the searchers arrived in the car park), they could not have reached the car park, from Bonnyrigg, until at least 00:20, by which time Judith was already there. (*See Map 1*)

On July 13th, Alice again claimed that an arrangement was made between Luke and Janine for them to meet on the path, but she could not remember how the arrangement was reached. In this statement, Alice confirmed that Luke asked if anyone had anything of Jodi's for the dog to scent and said, "We didn't and perhaps if we'd been closer to the house then I might have gone back to get something." The Easthouses entrance to the path is a 2 minutes and 40 seconds walk from Judith's house. Luke or Kelly could have sprinted round to the house for something of Jodi's in a few minutes. All three of the search trio confirmed that Luke gave the dog commands to "seek Jodi, find Jodi".

Although Alice was the only one of the search trio who actually touched Jodi's body, she was not asked for her clothing until several days later, by which stage, she could not remember what she had been wearing.

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On July 30th, a full month after the murder, Alice stated that the first call from Judith came in “no more than five minutes” after she’d gone to bed at 10pm. Coincidentally, this is consistent with John Ferris’s claim that Alice called “just after ten o’clock” looking for Jodi but is equally inconsistent with all of the other evidence, because Jodi was not known to be missing at 10 o’clock (see Chapter Eight). After trying to call a couple of numbers, getting dressed and taking a pack of torches from the cupboard, she said that she, Janine and Steven left together between 10.30pm and 11pm. She could not be more precise but said it could only have been five or ten minutes after she spoke to Judith on the phone. Notice that, in this account, Alice also had to get dressed before leaving, because she was in bed when the call from Judith came in – this means the search trio could not have left immediately after Judith’s 11.03pm call, as was claimed throughout the investigation.

In this same statement, however, Alice changed her account of why they went directly to the path. Claims of an arrangement to meet Luke disappeared. Instead, she said she decided before they left the house that they would walk down to Easthouses and look down the path because she thought that would be the route that Jodi may have taken if she had been going to meet Luke – she was not asked why she would think that, since Jodi was supposed to be in Easthouses or Mayfield that evening.

It is reasonable to expect, by then, that the police had pointed out that there was no communication between Luke and any of the other searchers by phone that night. Yet something must have caused the search trio to be so insistent that an arrangement with Luke was made. Without such an arrangement, there was no real explanation for them going to the path at all. If Alice suspected Jodi had either disobeyed or been dishonest with her mother (by using the path alone), she could simply have given that reason to police, but she did not.

Additionally, in this statement, Alice added an extra detail. She claimed that, in the 11.18pm phone call to say the police had arrived, Judith told Janine that Luke was walking up the path, but that she, Alice, did not speak to Judith after leaving her home. Following a month of statements that an arrangement was made to meet Luke at the path before the trio left her house, Alice’s account suddenly changed to claim the trio only found out, via Judith at 11.18pm, that Luke was on the path.

Was it just coincidence that the search trio was almost at the path, not

knowing Luke was walking up it, when they were given the information that he was, indeed, walking up it, as this statement suggests? And if the trio knew Luke was on Roan's Dyke path, why, when they arrived at the junction of the paths, would Kelly have suggested checking Lady Path?

Janine claimed she received the 11.18pm call while the search trio were in "the complex" (before they met up with Luke). But, on the basis of known timings (see Chapter 8), the search party was on its way back down the path at that time, suggesting Janine was mistaken and it was Alice's account – that they were on the path – which was correct. That, in turn, would answer some questions – how Judith knew the trio met up with Luke and had been searching the path (even though she didn't know how they'd met up) and why the police were sent to the back of Newbattle High School and Roan's Dyke path. Like almost everything in this case, it raises further questions. If this scenario regarding Judith's knowledge of the search party meeting up with Luke is correct (and it is the only logical conclusion to be drawn from the evidence), why did the police leave Judith's house under the impression that only Luke was on the path?

Judith, on the other hand, said she "kept calling [her] mum on her mobile" to find out if she had found Jodi and that when she called her mother back, after the 10.59pm call to Luke, Alice had "already started to walk down from Mayfield." There was no mention of Janine and Kelly. If Alice did not speak with Judith after she left the house, Judith could not have known Alice had started walking down from Mayfield.

In another statement, after saying her mother had gone out looking for Jodi, Judith said: "By then, my other daughter and her boyfriend were out looking." From that statement, Judith appeared to be under the impression that Steven and Janine went out looking for Jodi after Alice did and that they left separately from Alice.

Alice did attempt to offer one other explanation about why she decided to check the path, but it makes no sense when taken in the context of the known facts. Alice said she thought Jodi might have been lying hurt somewhere on the path, unable to call for help.

The final claimed time of Jodi leaving home was 4.50pm and the last concrete information about Jodi's whereabouts, insofar as she was not

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where she was supposed to be, was in the 5.40pm phone call from Luke and the response from Alan Ovens that she had left. So, by the time the search trio set out, there was a time frame of around six hours, during which no-one could have had any idea of where Jodi might have gone. Without a moment's hesitation, however, the search trio went looking for Jodi on a path she may have used six hours earlier. Alice also said in later statements that she did not think for a minute that Jodi would have been behind the wall. Logically, this means that the search trio set off for a path where they believed Jodi may have been lying hurt in broad daylight for almost six hours and no-one saw or heard her there, even though it was daylight until after 10pm that evening.

It could not be that Alice thought Jodi may have become hurt on her way back up the path, on her way home, because all of the other statements confirmed that Luke would have walked Jodi home – a standing arrangement that *was* supported by evidence. Also, this claim, of necessity, means Alice thought Jodi was on the path on her own. If Jodi was with someone when she became hurt, that someone would have been able to get help for her.

The question of how Jodi came to be behind the wall has always weighed heavily. Alice made two comments in this respect, in court, revealing a startling observation:

*“I would never have looked over the wall. The only reason Jodi was there was she went there with someone she knew, as no stranger would have got her across that wall.”*

Or, alternatively:

*“The only reason Jodi would have gone there was with somebody she knew. She would not have gone with a stranger. No stranger would have got her across there.”*

Both of these suggest that Alice accepted Jodi *would* have gone over the wall at the V break, the proviso being that it would have to be with someone she knew. In that case, it would make more sense for Alice to have thought of looking over the wall. Long before the trial and certainly within the first week after the murder, Alice knew there were people on the path that day whom Jodi knew very well (people who were not Luke Mitchell). Yet in her evidence in court, almost eighteen months later, the clear inference was that the only person Jodi knew and



would have gone over the wall with was Luke.

However, there was never any concrete evidence that Jodi entered the woodland strip by climbing through the V break. There was no forensic evidence from the wall found on her clothing and there were a number of other possible routes into the woodland – a large break in the wall, all the way down to ground level, at the junction of the paths, a piece of the barbed wire boundary fence opposite the wall, where the barbs had been pushed aside to give clear access and a path leading into the woodland strip from the back of Easthouses. The last two of these provided access to the woodland strip without the need to emerge onto the main Easthouses road. The assumption that Jodi climbed through the V break appears to have been based solely on the fact that her body was found 16.3 metres west from that point. But blood-stained branches were found more than 25 metres from the V point, raising, at least, the possibility that Jodi cut through the woodland strip, rather than walking down the path on the other side of the wall. In spite of there being more than a dozen people on or near the path that evening, not one person saw her there, including a cyclist who cycled up the path in the exact period Jodi would have been on it, if all of the claimed timings are correct.

### **The Boys on the Moped**

The first example of evidence regarding other people which could have significantly influenced the direction of the police investigation emerged within the first week. On the evening of July 4th and the morning of July 5th, police appealed for two youths on a moped, who had been seen near the path around 5pm on June 30th, to come forward. The appeal made it absolutely clear that these boys were being sought as witnesses – they were not suspected of any involvement in Jodi’s death.

Recognising themselves from the police appeal, both youths contacted investigators and gave statements – one on the afternoon of Saturday 5th July, the other on Sunday 6th July. Newspapers reported on the morning of July 7th that the youths had been traced and eliminated from the enquiry. That means they were eliminated immediately (in order for the morning edition papers to report on it) - their statements, one would assume, must have proven categorically that there was no reason whatsoever to view them with suspicion of anything. Let me introduce you to the boys on the moped - John Ferris and Gordon Dickie.

John Ferris was Jodi’s “half-cousin” –Yvonne Walker, Judith’s brother’s

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daughter, was Ferris's half-sister. Ferris was treated as a full member of the family – he referred to Alice Walker as “my Gran” and to Judith's children as his cousins. Gordon Dickie was related to Ferris through his mother's family, but not directly to the Jones/Walkers. Ferris, it would emerge, was living with Alice Walker for four or five weeks prior to Jodi's death, something that did not appear in Alice's police statements until July 23rd. Although Alice had given a number of statements in which she made one passing reference to Ferris “staying the night” on June 29th, the evening before Jodi's murder, it would be more than three weeks into the enquiry before she told investigators that Ferris was living with her for a substantial period of time in the lead up to the murder.

But it was not just Alice who failed to mention Ferris. Initially, Judith did not mention his presence in either her house or Alice's house that fateful weekend and Janine did not mention that he was staying in Alice's house, even though Janine, herself, lived with her Gran. If that all seems surprising then Ferris's accounts are utterly shocking.

According to Ferris, Alice Walker and another male relative (who has never been publicly named and did not give evidence at trial) knew, by the morning of July 1st, that he (Ferris) and Dickie were on the path on the afternoon of June 30th. Yvonne Walker appears to have stated that she also knew and that Ferris originally intended to go to the police on July 1st. The statement in which Yvonne made this claim was not in the defence papers; it is only known because Ferris, in one of his statements, said, “Yvonne is talking rubbish about me saying I was going to the police on July 1st. I never said that.” Clearly, Ferris had to have been told what Yvonne's statement contained, in order to make this comment.

If Ferris was being truthful, there were three other members of Jodi's family, by July 1st, who knew he and Dickie were on the path close to the time Jodi was believed to have been heading there and none of them told the police, leaving investigators, five days into the murder investigation, to issue a public appeal for the youths on the moped.

But it was not just Jodi's family who knew about the two youths being on the path on the afternoon of the murder. Gordon Dickie, in his first statement, said, “*My mum phoned me on Saturday [July 5th] and said the police were looking for me and John, as we had been up the Roman (sic) Dyke.*” Since the police did not name the two youths in the appeal of July 4th/5th – they did not, at that stage, know who they were -

Gordon Dickie's mother must have known, before the police appeal, that they were on the path, in order to have made that phone call.

Ferris said he left from Dickie's home around 4.20pm on the afternoon of June 30th, in response to a phone call from Dickie to pick him up from the Jobcentre in Dalkeith. Dickie's father, Dickie snr, was alleged to be at the house when Ferris left to pick up Dickie jnr from the Jobcentre, so he, also, had to know that they came up the path on the afternoon of the murder, very close to the time that it was claimed Jodi left her home.

By the morning after the murder, therefore, there were between five and seven members of Jodi's family and extended family who knew those two youths were on the path on the afternoon of the murder and for five days, with a massive murder investigation underway, not one of them mentioned this to the police. Ferris claimed not to have heard the police appeals, for the first five days, for anyone who was on the path between 5pm and 10pm to come forward. Are we really to believe that none of the others were aware of those appeals, repeated on every news bulletin and reported in every newspaper? This is, of course, irrelevant, since the evidence demonstrates that at least five of those family members knew, from July 1st, that the two of them were on the path. (There is only Ferris's claim that his Gran and a male relative knew.) Ferris was described as "shaking" when he saw the appeal for the boys on the moped, on television.

One statement available to the defence described Ferris's behaviour in the days immediately after the murder – he was extremely tense and "snappy" and every time a news bulletin about Jodi's death came on tv, he would turn up the volume and concentrate intently on the report. In spite of that (if it was true), he still managed to miss the appeals for anyone who was on or near the path between around 5pm and 10pm to contact police.

Ferris told investigators that the real reason he did not come forward earlier was that his Gran, Alice Walker, and the other male relative in her house that day, told him not to. That is a stunning allegation. He said Alice told him not to go to the police because he and Dickie were on the path too early. But, both lied to police on the weekend of July 5th and 6th, placing themselves on the path almost an hour earlier than they were actually there. Ferris may, of course, have told Alice the same lie.

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It was, in part, on the basis of this lie that both were eliminated from the enquiry, according to police statements to the media, before DNA results from the crime scene had even been obtained.

But that lie should never have been possible. The initial information about the boys on the moped came from no less than six witnesses from the same workplace, through which the boys had driven the moped erratically, before pushing it up the Newbattle Road and onto Roan's Dyke path, *at closing time*. The police knew, categorically, at the time they made the appeal, that the witnesses, all in the same place, saw the boys on the moped just before 5pm. One of those witnesses saw the moped again, propped rider-less against the wall at the V break, at 5.15pm, the exact time which would later be claimed to be the time of the murder. Unfortunately, it was weeks later before the police returned to take formal statements from those witnesses, well after they had eliminated Ferris and Dickie from the investigation. It would later emerge that Ferris and Dickie knew the area in the woodland strip, behind the V break, very well indeed – they had, until recently, had a makeshift “gang hut” close to where Jodi's body was found.

Assuming Ferris told the same lie about the time to Alice, what reason would there be to tell him not to go to the police? The time of Jodi's leaving, by the weekend of 5th/6th July, was adjusted from 5.30pm to 5pm – even if Alice believed Ferris and Dickie were on the path prior to that time, they might have seen someone lurking suspiciously. Ferris's claim about his Gran and the other family member telling him not to come forward was never confirmed or refuted – it appears it was simply ignored. What, though, is to be made of the reference to Yvonne Walker's claim that Ferris intended to contact police on July 1st? Either he intended to do just that, but something changed his mind, or Yvonne was mistaken.

If Judith had mentioned that John Ferris was in her house on June 30th earlier than nine days into the investigation and had Alice Walker remembered to tell police that Ferris was living with her and left her house on the morning of June 30th with Jodi's brother Joseph (more about this later) earlier than twenty three days into the investigation, the delay in tracing the boys on the moped might never have been able to occur, because the police would have had to take statements from Ferris to confirm Judith's and Alice's accounts.

And if Ferris was lying about others telling him not to come forward, he was taking a huge risk. Had the police followed up and discovered from other family members that they said nothing of the sort, Ferris would have placed himself immediately in the frame by telling such an obvious and blatant lie. He would also have brought down the wrath of the entire family upon him, for implicating them in such a terrible way.

Perhaps the most perplexing thing about all of this is why, of those who knew, no-one went to the police with the information that Ferris and Dickie were on the path so close to the time of the murder and were quite deliberately failing to come forward and tell the police that. Given the spread of people involved, it is surprising, to say the least, that all seven came to say nothing.

By the time the evidence of these two was given at trial, they were unable to explain where they were when the bike was seen propped against the wall without them. They did not say, for example, that they left the bike to go and get fuel, or tools to get it started again, or even that they got fed up pushing the bike and went home for a rest, before returning for it later. Their only responses were “I don’t know” and “I can’t remember.” Ferris was not questioned about his claim that his Gran told him not to go to the police and insisted that he had not been to the gang hut in the woodland strip for “a couple of years.” I was told, years later, that that was a lie – the covered area in the woodland strip was the perfect hideaway used for cannabis transactions. I was never able to fully confirm that account.

Originally, they said they spent the first five days “talking about everything” before they realised they might have been on the path at the time of the murder. What was the “everything” Ferris and Dickie were talking about that somehow missed the significance of the 5pm to 10pm period? Interestingly, this claim that they came to realise, after five days, that they might have been on the path at a significant time, makes it sound as if, having made that realisation, they looked at each other and said, “Oh my goodness, we’d better call the police.” The proven facts are, they knew from the very beginning what time they were on the path and, initially, deliberately lied about it. In the first week, there was no suggested time of death – Jodi could have been killed any time between 5pm and 10pm; Ferris and Dickie were on the path for just half an hour of that period and, coincidentally, that half hour later turned out to be the most significant period in the whole investigation. But

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they could not (or, at least, should not) have known that when they lied to remove themselves from the path during that very period. Had the appeal for the youths on the moped not gone out at that five-day point, they would most likely never have come forward at all.

But they also maintained that another of their reasons for not coming forward earlier was that they saw and heard nothing. So, again, what was the “everything” that kept them talking for five full days?

Dickie’s father, David Dickie, was also on the path and in the woodland strip itself, that afternoon, after the time it was claimed Jodi was murdered. Dickie snr also stated he saw and heard nothing, even though he was in the woodland strip with eight dogs “later that evening.” He said he went across the crop field to the V break in the wall, through the break with all eight dogs, walked back up through the woodland strip and then along Lady Path to his home (where the garden opened out onto Lady Path). It’s not clear what time Dickie snr was in the woodland strip – statements place it any time from 5.30pm to 8pm. There were no statements from Dickie snr in the defence papers.

This, of course, means that if Dickie snr spoke to the police before July 5th, he cannot have told them about his son and Ferris being on the path that afternoon. If he did not go to the police before then, questions are raised about why he did not – he, too, knew he was on the path at the very time police were appealing for anyone who had been on the path, regardless of whether they thought they had any information to give, to come forward. The feasibility of the claim that there were eight dogs in the vicinity of a very bloody murder scene and none of them behaved in any way that alerted Dickie snr is questionable. These were supposed to be working dogs – specifically spaniels, which are believed to have some of the best senses of smell of all dogs.

A substance on the sole of Dickie snr’s boot tested positive for the presence of blood. There were no further results for this sample in the defence papers. There is, however, a suggestion (nothing more) that Dickie snr did not go voluntarily to the police about his own presence on the path and in the woodland strip prior to July 5th and that it only became known to investigators as a result of his son’s statements.

The police raided Luke’s house on the morning of July 4th and there were no further statements taken from any member of Jodi’s extended

family until after that point. It is now known that during the period 1st – 4th July, the police were interviewing the boys who were with Luke in Newbattle on the evening of June 30th, after Jodi failed to show up. They were also tracing school friends of Jodi and Luke, asking for information about Luke and telling parents, as early as July 2nd, that they expected to arrest Luke “within the week” - that they should keep their children away from him because he was “dangerous.”

In all of this activity systematically trying to obtain information about Luke, the presence of three people on or very near the path at the claimed time of the murder, people with very close links to Jodi’s family, was completely missed by investigators, even though it was known to several people who were equally close to the investigation. It begs the question, if something this obvious was missed at the centre of the investigation, what else might have slipped through the net?

Also, if Ferris, Dickie jnr and Dickie snr were telling the truth – that they were all very close to the murder scene at, or shortly after, the claimed time of the murder and saw and heard nothing, there could be only one explanation for that; Jodi was not murdered there at 5.15pm and the claimed time of death was wrong. But if Jodi was murdered at any time other than 5.15pm, Luke could not have been the killer.

Both of the initial statements of Ferris and Dickie jnr were focused, for a large proportion, on Luke Mitchell – Luke and knives, Luke and cannabis, Luke and “weirdness.” Both Ferris and Dickie handed knives, which they alleged belonged to Luke, to the police during or immediately after these statements. Ferris spoke openly about supplying Luke with cannabis, so it seems he was not worried about being “treated like a suspect.” He did not mention that he supplied cannabis to anyone else, even though there was clear evidence that he did – it would emerge later, for example, that Jodi obtained cannabis directly from him. The story about Ferris and Dickie being on the path was almost lost in the amount of information they gave about Luke. In fact, both initial statements, after giving their personal details and explaining how they knew Jodi, launched straight into accounts about Luke – the accounts of them being on the path that day did not appear until several pages into the statements and both returned to claims about Luke and knives thereafter.

A witness described a brown handled knife which she presumed was Luke’s, being used to cut cannabis at Yvonne’s house. But Ferris said

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this knife was his (Ferris's) brother's, which he (Ferris) took up to Yvonne's about a week before the murder.

Ferris was shown another knife which he identified as Luke's, before going on to say that he later found out from Dickie that this was a knife Dickie "got from Luke" and handed to the police. Perhaps that is a clue to some of the things they were talking about in the five days before contacting the police. It does demonstrate a willingness for individuals to identify knives as belonging to Luke when they had no real basis on which to do so.

On July 30th, Ferris suddenly remembered another article of clothing he was wearing that night – one he never mentioned in any other statement – a blue sweatshirt with a zip on the front. Prior to this statement, he stated repeatedly that he was wearing a yellow top.

It was in their initial statements that both Ferris and Dickie gave the wrong time that they were on the path. Both had themselves back in Dickie's house by 4.45pm. Ferris later suggested that the mistake was made because of a clock showing the wrong time in the Dickie household, but Dickie cannot be afforded the same benefit of the doubt, because he knew the time and duration of his Jobcentre appointment. Since the call to Ferris to pick him up on the bike was not made until 4.20pm (a fact Dickie could easily have checked on his mobile phone), he had to know it was not possible for them to have been back in the house before 4.45pm. In spite of the five days they had to discuss everything, they stuck with the wrong time, even after they were forced, by the police appeal, to come forward.

Several years later, after I stated on a number of occasions that the police did not treat these two as suspects, Judith posted on a website that I was being dishonest about the matter and that she had asked the police, who told her that Ferris and Dickie were still "very much" being treated as suspects.

By July 30th, a month after the murder, Gordon Dickie had given police just one statement and Ferris had given three; the first was a short statement identifying himself as one of the boys on the moped, the second was his incorrect account of his movements that day and all of the information about Luke and the third was simply the handing over of a knife



he alleged belonged to Luke and adding the information about the blue sweatshirt. By the time Luke's house was raided for the second time, on August 14th, Ferris had given one further statement and Dickie a further three. The focus of most of these additional statements was on a bike Luke swapped with Ferris and a recap of the time of Ferris and Dickie's movements on June 30th (it was obviously apparent by then that the timings they originally gave were wrong.)

It was not until July 30th that Judith corrected her information about Luke coming up the path "on his bike" and it would seem this information did not filter through to the central command driving the investigation for some time, given the amount of attention placed on Luke's bikes which emerged in the later statements from Ferris and Dickie.

Although Ferris handed his phone to the police on July 6th, Dickie's phone was not taken until a month later, on August 6th. Neither house was searched, neither youth was asked to hand over the clothing they were wearing that day and there were no forensic results from the moped available to the defence. If the police were still treating those two as suspects, it does not seem they were doing so with any particular seriousness and it is disturbing that they were prepared to be dishonest with the victim's mother about it.

Dickie jnr said he found out about Jodi's murder at around 1.30pm on July 1st when Ferris's mother's partner (Judith's brother?) came around to his house to tell him. According to Dickie, he immediately called Yvonne Walker, who, he stated, had not been told yet (although he didn't say how he came to think that). He had Alice's number, Ferris's number, Ferris's mother's partner right there in front of him and all of the other statements confirm that Yvonne was told by around 9am that morning. Was Dickie trying to contact Ferris, without being seen to do so directly? He was never asked this question in court.

There was a rather puzzling claim in one of Dickie jnr's statements. Asked why there was a call from Alice's landline to his mobile on the morning of June 30th, he said, "*I was looking for Ferris - that was probably Joseph calling back to see who was calling his Gran's phone.*" Why Joseph? Why not Alice, or Ferris, or Janine, or the other family member, all of whom lived in the house? How could Dickie possibly know who was calling him from Alice's landline?

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Perhaps the most interesting element of this comment from Dickie jnr is how he knew Joseph would be there at all. According to Judith, she was “surprised” when Joseph suddenly decided to go to his Gran’s, on his own, on the night of Sunday 29th June and stay over, since he had been, until that weekend, a complete recluse who never left his house on his own (see Chapter Five). It would later emerge from the case papers that a call to Dickie's mobile was made from Alice's mobile that morning - it is not clear whether this is the same call as the one claimed to be from Alice's landline, or if there were, in fact two calls from Alice's phones to Dickie.

Gordon and David Dickie later gave an interview to a newspaper<sup>3</sup>, in which they said they felt as if they were treated as suspects in Jodi’s murder (not, it should be noted, that they were told they were suspects, or even that they had, in fact, been treated as suspects). David Dickie said that the police suggested Jodi “rejected his advances” and he was so horrified that he put them out of his house. It is hardly plausible that a suspect in a murder enquiry would be able to simply tell investigators to leave and they would do so, especially following such a serious allegation. Remember, there were no statements from Dickie snr in the defence papers – had investigators really been following a potential route of enquiry that an older man made advances to a 14 year old girl (in a case which was originally thought to have been potentially sexually motivated), that information could have been defined as information which had the potential to “assist the case for the defence, or undermine the Crown’s case.” As such, it should have been disclosed to the defence as a matter of law. If it existed. If it did not, it would be an extraordinary claim for Dickie snr to have made in a national newspaper.

But Dickie jnr made some equally interesting comments in the article. He was quoted as saying:

*“If my dad and I are guilty of anything it’s the feeling that we might have been able to stop it happening, if we had been a few minutes either side, or had been paying more attention. I know the motorbike John and I were on was really noisy and we couldn’t hear anything over it, but I just keep wondering if I could have done something to stop her death.”*

According to Ferris and Dickie jnr’s statements, the bike’s engine was

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Link no longer available

not running when it was propped at the V point. They both spoke, in their statements, about having to push the bike, because it had cut out so, at that point, there was no noise. Also, Dickie jnr referred to both his father and himself being able to stop Jodi's murder if they had been "a few minutes either side." That simply is not consistent with all of the other information – Dickie snr could not have stopped anything because, according to all of the statements, he was in the woodland strip between 15 minutes and two and a half hours after Jodi was killed. He and his son always claimed to have been at the V point at different times, yet this interview gave the impression that both Dickie jnr and Dickie snr were at the V point at the same time. Dickie jnr referred to himself and John Ferris not being able to hear anything over the noise of the bike but went on to say "...if **I** could have done something to stop her death," ... he did not include Ferris in this possibility, even though common sense dictates they - both of them – might very well have been able to do something, together, since they were right there at the V point together.

Dickie snr maintained that he helped the police identify a boot print "pointing towards Newbattle," a claim which is patently ludicrous. A boot print pointing at any angle from south west to north west and every degree in between would have been "pointing towards Newbattle." There is, however, documentation that Dickie was asked to reconstruct his walk with the dogs that day – on approaching the V point, he gave the dogs the command "over" and all but one of the dogs jumped through the V. (The other dog was old and had to be lifted through.) A lump of meat was concealed in a polythene bag in the woodland strip. The police concluded that Dickie's account – that the dogs did not alert him on the night of June 30th – was credible because, in this reconstruction, the dogs did not bark. That, of course, misses the point that working dogs will alert in a number of ways, with barking being only one. (Indeed, Mia did not bark to alert Luke that there was something over the wall!) And Jodi's body was not concealed in a polythene bag. If, as appears to have been the case, these were gun dogs or "flushing" dogs (used to force birds into flight for shooting), barking would definitely not have been their method of alerting. This "reconstruction" with Dickie's dogs was later used to suggest Mia would not have reacted the way Luke, Janine and Kelly described her reacting at the wall.

By this stage, it is clear that information was circulating amongst a number of people close to the heart of the investigation but managing to stay below the radar of that investigation. From the very beginning, the

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police were making assumptions on the basis of information that was incorrect and, from those assumptions, were taking decisions that would set the investigation in one particular direction.

The questions of why Ferris and Dickie failed to come forward until after the police appeal for the boys on the moped, whether or not Ferris was told not to go to the police, the failure of others who knew that they were on the path that afternoon to tell the police and the reason for Dickie and Ferris lying about the time they were on the path have never been answered.

## **Chapter Five**

### **Joseph Jones and John Ferris**

At trial, Judith told the court that the family experienced difficulties following the suicide of her husband and the children's father, Jimmy, five years earlier. Her son, Joseph, struggled to come to terms with his father's death and suffered from what Judith described as "paranoia" which sometimes made his behaviour unpredictable. Jodi had not settled well in High School, although in the last year, she seemed happier and had made friends. Janine had lived with her grandmother for approximately three years prior to Jodi's death.

In the early part of the investigation, Joseph and John Ferris were conspicuous by the absence of references to them in the family's statements. The reasons for this appear to have been two-fold – cannabis and mental health. According to the Mitchell family, Judith, when she came to see Luke a few days after the murder, said, "Thank goodness they didn't find out about Joseph's illness." Luke understood, from what Jodi had told him, that that illness involved unpredictable outbursts and violence. When details of these two youths did begin to emerge, they brought some surprising revelations.

Nine days and seven statements into the investigation, Judith's account of the afternoon of June 30th became very detailed. Joseph arrived with John Ferris "just after lunch," while Judith was in the kitchen making sauce for the lasagne they were going to have for tea. Joseph came downstairs "a wee while later" and asked Judith to cancel his weekly home visit by the doctor at 5pm, because he wanted to smoke cannabis with Ferris, but was not supposed to use cannabis because it interfered with his medication. The cancellation call was made at 3.23pm and Judith said she knew then that he and Ferris would be up in Joseph's room smoking cannabis. At some point in the afternoon (between 3.23pm and 4.05pm), John Ferris left, but Judith was not aware of him leaving and only knew because Joseph told her Ferris would be returning at 6pm.

Jodi arrived home at 4.05pm, went upstairs to change out of her school clothes, may have gone into the kitchen for something to eat, then came into the living room. Judith played a Rod Stewart track to Joseph and Jodi. Alan Ovens came in from work as the song was finishing and went straight to the bathroom. Jodi then went back upstairs, came down again

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3 minutes later and left. Mr Ovens came into the room and flitted between the living room and the kitchen, where Judith was making the cheese sauce for the lasagne. It took about 10 minutes to make the sauce and assemble the lasagne, Joseph going upstairs to his room 10 minutes after it went into the oven. Twenty minutes were then spent sitting in the living room listening to CDs, the buzzer went off on the cooker and twice, Judith told Alan to “put it on for another five minutes.” Judith said they ate dinner on their laps, starting to eat at about 5.45pm, and leaving to visit her late husband’s grave at the cemetery around or just after 6pm.

On the rare occasions Joseph left his own home, he needed to be driven to and picked up from wherever he went (usually his Gran’s). But, on the weekend of 28th/29th June, there were a number of what Judith described as “breakthroughs.” She said that she took Joseph to Alice’s house on Saturday 28th June, enticing him there with the promise of cans of beer and he decided to stay the night. The following morning, she was surprised that Joseph didn’t want to come home right away. Instead, she collected him much later in the afternoon. She was surprised, again, when Joseph announced that he was going to walk back up to his Gran’s on his own, later that evening. These were, Judith said, completely out of character developments, but she was pleased that Joseph seemed to have made some sort of breakthrough from his previous refusal to leave his own house, or to go anywhere on his own.

Alice said that Joseph and Ferris returned to her house sometime after 10 o’clock (after midnight according to other statements) on the night of Saturday 28th June but did not say where they came in from. This was clearly another ‘breakthrough’ for Joseph.

But it is the accounts of June 30th, when they finally began to emerge, two to three weeks into the investigation that are most surprising of all. In spite of all the unexpected breakthroughs over the weekend, Judith said she was waiting for a call from Joseph to pick him up on the morning of June 30th. This is, in itself, odd, since Judith decided to have a lie-in and Alan Ovens had taken the car to work – if Joseph had called looking to be picked up by car, Judith could not have done so.

Judith was surprised again when Joseph arrived home with John Ferris at “about lunchtime,” the two of them having walked down from Alice’s house. Janine also expressed surprise that Joseph was willing to walk

home that morning. It would later emerge that they had walked down with a “9 bar” of cannabis (9 ounces) - another “breakthrough”? They went straight up to Joseph’s room to smoke. For many years, it was believed that this 9-ounce bar of cannabis belonged to Ferris, since he was a known supplier. This, it turned out, was not the case. In a statement attributed to Joseph, he said, “It wasn’t a 9 bar I bought that time, it was only a half bar... no, wait, I’m getting mixed up, that was a 9 bar.”

Since Joseph readily admitted that the cannabis was his, later claims that he was only keeping it for Ferris and that was supposedly the reason for Ferris returning at 6pm that evening cannot be correct.

Judith made the 3.23pm call, using her “usual excuse” that the family was away and would not be home in time for the 5pm appointment. She said that Ferris left the house at some point after the call, but before Jodi arrived home from school – she did not know exactly when, because she had not heard him leave.

Joseph was back and forth between his room and the living room between 4 o’clock and quarter to six, when they ate dinner, according to this statement. He returned to his room and Judith and Mr Ovens went out to the cemetery. She knew Joseph was still in his room when she returned from the cemetery a little before 7pm because he called out to her as she entered the house. He was asleep in his room for the remainder of the evening, until Judith woke him, at around 10.30pm, to tell him Jodi had not been with Luke and was missing.

There are a number of difficulties with this account. According to Ferris and a statement attributed to Joseph himself, Ferris was not in Judith’s house all afternoon – he stayed for approximately twenty minutes to half an hour after 1pm and left. Other accounts said they left Alice Walker’s house between 10.30 and 11am - if they did not arrive at Judith’s until 1 o’clock, they must have gone somewhere else in between - the walk should have taken less than half an hour.

Ferris said he cut a piece from the 9 bar for his mother’s partner and took it to her house from Judith’s house. He and Dickie made contact by phone (it is not clear who called whom first) a little after 2pm and Ferris set off for Dickie’s house at around 2.30pm. Accounts from others place Ferris in Dickie’s house before 3pm.

Ferris gave another account which may explain the time discrepancy be-

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tween leaving Alice's house and arriving at Judith's – he walked down from Yvonne Walker's flat. In this account, he did not mention Joseph or going to Judith's house. But claims would later emerge that Joseph and Ferris smoked "a couple of buckets" before setting off for Judith's house – it is entirely possible this happened in Yvonne Walker's flat, hence Ferris's mention of walking down from there. Several statements indicate that Yvonne's flat was a popular meeting place, where cannabis was freely available, for many of the teens connected to the investigation. None of those present in Alice's house between 10 and 11am made any reference to Joseph and Ferris smoking cannabis.

The undeniable fact in all of this is that Ferris could not have been in two places at once that afternoon. If he was in Dickie's house prior to 3pm, he was not in Judith's house at 3.23pm, when the cancellation call to the doctor was made. But it was his continued presence in her house that Judith gave as part of the reason for the cancellation call.

A number of different accounts of eating dinner were made - Joseph ate in the living room with Judith and Alan; he took his dinner upstairs and ate in his room and (according to one statement attributed to Joseph) the whole family, including Jodi, ate at the table.

What all of this means, essentially, is there is nothing reliable to account for Joseph's movements between lunchtime and "around 10.30pm" on June 30th. Contrast this with the intense focus on the 45 minutes to an hour between 5pm and 6pm in which it was claimed Luke had no alibi and the lengths to which investigators were prepared to go in order to discredit, discount and ignore information and accounts which supported the alibi he had.

The demolition of Luke's brother Shane's evidence at trial is discussed in Chapter 17 and other, concrete evidence such as phone calls, recorded in phone logs, demonstrating that someone was in the Mitchell house when Shane and Corinne were proven to be elsewhere, was ignored. A call made from Luke's mobile to the Speaking Clock at 4.54pm was alleged to be proof that he was out of the house at that time, yet other evidence demonstrated that Luke regularly called the speaking clock when he was at home, at around the same times and the description given at trial by the eyewitness, Andrina Bryson (see Chapter Seven), did not mention a mobile phone, even though this call was timed in the precise timescale of her sighting of someone who was later alleged to be



Luke.

The differences in treatment between the two families are disturbing. Judith repeatedly linked aspects of the afternoon to the preparation, cooking and eating of a lasagne, the result being that the meal took, if all statements are taken into account, almost five hours to complete.

Accounts of who was in the house, when, who ate and where, were conflicting and contradictory, yet this was accepted as reliable, whereas all of the supporting evidence for the Mitchell family was ignored and only the level of police suspicion maintained the claims against them. Shane's initial failure to remember what his family ate for dinner that evening and his mother's reminder two days later, were used to claim that Corinne and Shane were lying to cover for Luke.

Judith's claim that she woke Joseph at around 10.30pm, because Jodi was missing, was clearly mistaken – it was not until 10.40pm that Judith discovered Jodi had not been with Luke, and 10.46pm that she knew Jodi was not at her Gran's. The first police officers to arrive in Judith's house at 11.20pm, responding to the report that Jodi was missing, made no mention of Joseph. There were, they said, two adults in the house – Judith and a “younger man, presumed to be her partner,” yet Judith said both Joseph and Alan came downstairs at 10.30pm.

In her first account of what happened after she was told a body had been found, Judith stated that she ran out of the house towards the school, this report being supported by the police officer who intercepted her at the junction of the paths. This account was later changed to claim that Joseph ran out of the house towards the school, followed by Judith and Alan – in this version, Joseph was led out from the entrance to the path by police.

There is no evidence of the later version of events, other than Judith's statement. The police officer's statement is quite clear that it was Judith who had to be led, by that officer, from the junction of the paths to the car park. With the exception of the questionable claim by Alan Ovens that he mistook Janine for Joseph and the conflicting accounts of dinner, the only other evidence that Joseph was in his mother's house that evening was from Judith herself, who described him asleep in his room between 9 and 10pm. However, Judith described Joseph wearing different clothes whilst he slept, to the ones Joseph himself said he was

wearing.

Asked how she knew Joseph was in his room at various points of June 30th, Judith stated that she heard him moving about and “would have known” if he had gone out. Yet she did not hear Ferris leaving and the suggestion that Jodi might have come in that evening without being heard was made by two other family members. It is not clear how Judith could have been so sure, in those circumstances, that she would have heard Joseph leaving, if he had done so, or how she could be so confident that he was in his room the whole evening. Judith claimed Joseph called out to her when she and Alan came in from the cemetery – that was how she knew he was still in his room. A statement attributed to Joseph stated that he was asleep the whole time until 10.30pm – there was no calling out to or answering anyone. There is, of course, nothing whatsoever to account for Joseph’s whereabouts during the 45 minutes (approximately) his mother and Alan Ovens were out at the cemetery.

Given that a knife, sharp enough to cut a piece from a 9oz bar of cannabis, was present in Judith's house that day, another account from the case papers raises some significant questions. Prior to June 30th, Joseph tried to attack a youth in Judith's house with a knife, injuring his mother, who intervened to prevent the attack. The youth was told not to tell anyone what had happened. This information was never before the jury.

What all of this amounts to, is that investigators did not properly check out the movements of those closest to Jodi, as should have been done on the basis of the statistical probability that Jodi was murdered by someone known to her. The information given here is not intended, in any way, to imply that any of those named had anything whatsoever to do with Jodi’s murder; it is given to demonstrate the enormous failings in the police investigation. The case against Luke weighed heavily on the assertion that he had no alibi for the claimed time of the murder (his mother, of course, was disbelieved), yet Joseph’s only alibi for the claimed time of the murder was his mother. Again, this is not intended to imply that Judith was in any way dishonest – the facts of the matter are that police accepted the word of one mother and discounted the word of another with no evidence upon which to base those decisions.

## More John Ferris

John Ferris crossed the police radar again. A friend of Yvonne Walker's spotted a pair of thick, padded, winter gloves (at the height of summer) behind a radiator in Yvonne's flat. When the gloves were eventually collected, they were either in, or behind, a storage drawer under Yvonne's bed. The gloves were said to be "damp" and "muddy." Yvonne's initial description included "strands of brown hair" on the gloves. Later testing suggested the gloves had been immersed in water, but not washed in a washing machine. Ferris accepted that these were his gloves, although ownership of the gloves needs some clarification.

Initially, Ferris said he borrowed the gloves, without permission, from his brother the previous week and he put them in the drawer with some condoms and a knife he used for cutting cannabis, to stop his three-year-old niece getting at them. He said he also kept his wallet in the same drawer when he stayed at his sister's, for the same reason. According to Ferris, the gloves were definitely dry when he put them in the drawer and he could not explain how they could have become wet or damp, or why they might have been behind a radiator. There was also the obvious question of why it was so important to stop a three-year-old "getting at" a pair of gloves!

However, Dickie stated that the gloves were his and that he had lent them to Ferris. On November 26th, Dickie said, "*The only other thing I remember about gloves is that sometime after the murder, John said something to me about his sister Yvonne finding a pair of wet gloves and giving them to the police. He said, "I don't know if they are mine or yours, but it's a bit dodgy." I don't know what he meant by that but wasn't really bothered about it.*"

Even though Ferris had discussed the gloves with him, Dickie said nothing to investigators about them until he was finally asked, directly, by police.

Forensic results on the gloves returned no reportable results and there was no record, anywhere (aside from Yvonne's initial statement), regarding strands of brown hairs found on the gloves or sent for analysis. The number of forensic tests in this case which returned no conclusive results is surprising, perhaps to the extent of being extremely unlikely, as discussed in Chapters 12 & 13.

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Ferris was questioned in court about cutting off his own hair in the immediate aftermath of the murder, before he spoke to police, making such a mess of it that he had to have it fixed by a barber afterwards. For some time, there was a suspicion that Ferris cut off his hair in response to the description of a “Stocky Man” seen following closely behind Jodi on the afternoon of June 30th. In one statement, Ferris, himself, alluded to this, saying that he was afraid of being wrongly accused and Donald Findlay put it to him in court that he deliberately tried to change his appearance so that he did not resemble Stocky Man in any way.

But, as with so many aspects of this case, this is not necessarily as it seems. The description of Stocky Man was not made public until eleven days after Ferris first spoke to the police. Therefore, prior to him cutting off his hair, he should not have known that he might resemble the mystery man and so would have had no reason to change his appearance in that way. But, as discussed in Chapter Six, the witnesses to Stocky Man had to have spoken to police within the first week of the investigation. One would imagine their descriptions had to be discussed with Jodi’s family in order to ascertain whether or not the girl in these sightings could have been Jodi, the description of Stocky Man, therefore, being available to the family before it was released to the public. If that was the case, it would not be the only example to arise in the case.

The witness descriptions of the two youths on the moped were of one wearing a baseball cap and the other with short dark hair. Dickie had short, dark hair, but said he was wearing a baseball cap. Ferris had reddish-brown, curly hair and said he was not wearing a baseball cap. So, if he knew what the descriptions of the youths were, prior to the police appeal, he also would have had no reason to cut off his hair, for fear of being “wrongly identified” – he was not the youth wearing the baseball cap and he was not the youth with short dark hair. This, of course, raises yet another question. The witness descriptions do not match the descriptions given by Ferris and Dickie themselves – if the youth wearing the baseball cap was Dickie, who was the youth with short dark hair (who was not wearing a baseball cap)?

But, once again, we are brought back to the actions of the wider family during that first week. They knew, as early as July 1st that Ferris was on the path and they knew he cut off his hair, himself, in the first few days following the murder, yet did they not bring his behaviour to the attention of the investigators, even though police appeals were asking

specifically that people report anyone acting strangely or changing their appearance.

The anomalies concerning Ferris continued to pile up. Although he failed to turn up at Judith's house at 6pm, he said there was no contact between him and Joseph about the change of plan (and since there were no phone records available for either of them, there is no way of checking). Ferris stayed in Dickie's house smoking cannabis, drinking beer and watching a movie until around 9pm. The reason Dickie gave for him leaving so early was that Alice Walker was an "early bedder" and liked him in before she went to bed. This appears to be something Dickie made up on the spot, since there is nothing, anywhere, to support it.

But Ferris did not go to Alice Walker's house on the evening of June 30th – he went to Yvonne's flat and stayed the night there. There was no reason given, in any of his statements, for the change of sleeping venue that night, even though, according to both himself and Alice, he was living in Alice's house at the time. The time that Ferris left Dickie's or arrived at Yvonne's has never been confirmed. The statements vary from half an hour to an hour for him to get from Dickie's house to Yvonne's flat, even though it is little more than a ten minute walk. After cancelling on Joseph without warning to stay at Dickie's, Ferris then left abruptly, just a few hours later, half an hour into a film he had expressed an interest in watching. There were statements demonstrating that Ferris met some friends in the street on his way to Yvonne's, but they offer nothing concrete in terms of timings.

Interestingly, a little over two weeks into the investigation, Ferris told police he believed, or was told, that Jodi's body was found "at night – about 9 or 10 o'clock" – coincidentally, the very space of time between him leaving Dickie's house and arriving at Yvonne's. He was the only witness to state this particular time as the time Jodi's body was believed to have been found. By the time this statement was made, the entire family had been talking about the events of that night for some sixteen days – it is inconceivable that Ferris did not know that Jodi's body was found after she failed to return home at her curfew time of 10pm.

Ferris said that he and Yvonne watched tv until about 11 o'clock and saw the search trio of Alice, Janine and Steven leaving at 11pm (he was looking out of the window), but he "thought nothing of it" and went to

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bed. He had given a previous statement that Alice called at around 10pm asking about Jodi and Yvonne failed to respond to a later “two-ring” coded call from her Gran, so it seems questionable that Ferris did not think it strange that the trio were taking a late-night stroll for no apparent reason and that he did not connect the earlier calls with the sight of the trio setting off so late at night.

Alice said, in her third or fourth statement, that she called Yvonne directly (not the two-ring call-back signal) looking for Jodi, but there was no call either from Alice’s phone to Yvonne’s or vice versa in the available phone logs. If Alice spoke with Yvonne, she could only have done so in the 10pm call claimed by Ferris, (since the later two-ring call was ignored), but there would have been no reason for her to have been calling Yvonne at 10pm looking for Jodi, because Jodi was not known to be missing by then. Judith’s call to Yvonne around 50 minutes later was unanswered – Ferris made no mention of a missed call from Judith as well as the two ring call from Alice – if he had, it would seem reasonable to imagine he would have wondered why both Alice and Judith were calling so late, immediately prior to him seeing the search trio leaving. Judith stated that she called Yvonne and found out Jodi was not there but that cannot be the case, since the call was unanswered. There was a strange call to a number listed in the case files as both Janine’s and Yvonne’s which may also have been being used by Ferris, so it is at least possible there was a fourth call to a phone in Yvonne’s flat that night and Ferris thought nothing of any of them. (See Chapters Eight and Nine.)

Ferris single-handedly managed to cast doubt on almost everyone else’s honesty, from day 5 of the investigation without, apparently, raising any suspicions about the veracity of his own statements:

His accounts implied that Alice Walker was lying by omission and covering something up by telling him not to go to the police and withholding what she knew about the two boys being on the path from investigators. However, Alice did not mention for several days that Ferris was staying with her, that he and Joseph had stayed there both Saturday and Sunday nights and she denied doing laundry for Judith, even though Judith said Alice had been doing the whole family’s laundry from July 1st. Alice failed to mention that Ferris did not return home to her house on the night of June 30th and she also failed to mention, for several days, another relative who stayed with her

permanently. By the time the search trio left (whatever time that was in reality) there are only two possibilities concerning Alice's knowledge of Ferris's whereabouts. Either she had no idea where he was (because her call to Yvonne went unanswered) and could not have known his whereabouts by the time she gave her first statement, or she knew exactly where he was because she spoke to him at 10pm when she called (from an unknown number) looking for Jodi, who would not be discovered to be missing for another 40 minutes.

Ferris's accounts also appear to cast doubt on Judith's honesty regarding him being in her house and at the same time, made Gordon and David Dickie appear to be lying by saying he was with them. Judith's accounts were inconsistent and contradictory, as are both Dickies', but it is Ferris's statements that shift them from ordinary confusion to the appearance of outright dishonesty. He also called Judith's honesty into question when she said that Ferris was only tolerated on the relatively rare times he was in her house since Ferris's statements claimed he visited Joseph virtually every day.

Ferris's statements called into question the evidence of witness Andrina Bryson (see Chapter Seven) with respect to whether or not she knew the Jones/Walker family and stated outright that Yvonne Walker was lying about his intention to contact police on July 1st, although, in another statement, he admitted to telling Yvonne that he was on the path the afternoon of the murder.

Yet there is still no way of knowing, for example, if he did tell others that he was on the path that day, or if they told him not to come forward. There is no way of knowing if the gloves were placed under the bed the week before or the day before, or if they belonged to his brother or to Gordon Dickie, or how they came to be damp and muddy. He was in Alice Walker's house on the morning of June 30th - whether, when, or for how long he was in Judith's house, his mother's house, Yvonne Walker's flat or Gordon Dickie's house have never been confirmed.

At the centre of a massive murder investigation, this person is discovered to have been very close to the murder scene at the claimed time of the murder, but cannot say exactly where he was or what he was doing; he cut off his hair in the immediate aftermath of the murder claiming to be afraid of being wrongly accused; he lied to police about the time he was on the path, alleged that relatives told him not to come

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forward to police, appeared to be in two places at once in the period immediately prior to the claimed time of the murder, was carrying around a 9 ounce bar of cannabis and appeared to be trying to hide a pair of damp, muddied winter gloves in the height of summer and not only did he not fall under any degree of suspicion, he ended up giving evidence against Luke Mitchell.

Judith's accounts of Ferris, when she did begin to talk about him, were somewhat unflattering. Initially, she said that Ferris was hardly ever in her house and when he was, he rarely spoke – he just went straight upstairs to Joseph's room. As already stated, Ferris said he visited Joseph “nearly every day.”

Speaking of Joseph's decision to go back up to his Gran's on June 29th, Judith was quite open about John Ferris's connection to all things cannabis – she said she did not know why Joseph had gone back to his Gran's that evening, but “if John Ferris was involved, it would be something to do with cannabis.” It was! To this day, the only person on record as being in possession of a large amount of cannabis, which he admitted was his, is Joseph. Later still, she said she had never liked Ferris, even as a child, and did not trust him.

With Ferris right under the noses of Jodi's family and investigators and the open knowledge that he was supplying everyone else, including minors, with cannabis, there was little mention made of him supplying Jodi. Both overtly and by implication, every member of Jodi's family who was asked gave the impression that it was Luke who supplied Jodi with cannabis. One statement from Judith is particularly perplexing. She stated that a piece of cannabis found on Alice's carpet could “only have belonged to Luke.” She was clearly aware of the connection between Ferris and cannabis, she knew Ferris was living with Alice and she knew Joseph and others smoked cannabis with Ferris – the question has to be, what brought her to the conclusion that this particular piece of cannabis could only have belonged to Luke? Why did the family not just state the obvious and why did the police apparently accept the unsubstantiated claims that Luke and Luke alone supplied Jodi with cannabis? It cannot have been because the police knew nothing of Ferris's cannabis connection and accepted, at face value, that Luke must have been Jodi's “supplier,” since they were aware, from his earliest statements, of Ferris's involvement in supplying the drug.



Further statements confirming that Jodi did obtain cannabis directly from Ferris emerged later— he admitted in one statement that Jodi would smoke cannabis she obtained from him, Yvonne Walker and Luke (all of it, of course, supplied initially by Ferris himself). What was never confirmed was where Ferris got the cannabis he supplied to others – the only clue to emerge out of the entire investigation was the claim that he took a piece of Joseph’s 9 bar to deliver to his (Ferris’s) mother’s partner. And, according to statements attributed to Joseph, buying such large amounts was not an unusual occurrence.

The whole cannabis connection was virtually air-brushed out of the investigation and prosecution case for everyone except Luke. If, as the trial judge, Lord Nimmo-Smith, believed, cannabis was responsible for Luke carrying out such a dreadful attack on Jodi, why, given all of the available evidence, was that possibility never considered for others with access to far larger quantities of cannabis, especially those close to Jodi with known, violent backgrounds?

Indeed, since guilt is supposed to be proven beyond reasonable doubt, would jurors have been quite so doubt-free had they known, as investigators did, that, compared with Luke, who had no history of violence, there was a youth very close to the investigation with a history of violent outbursts, delusions and heavy drug use, whose behaviours on the day could not be adequately accounted for? Or if, in fact, there were two such youths, neither of whom was stripped, swabbed, photographed, shown to witnesses for “identification purposes” or interrogated for 19 hours without legal advice, assistance or representation? To stretch that credibility even farther, what would jurors have made of a third youth, himself facing a serious assault charge against a female at the time of trial, giving evidence against Luke? All three of these youths were in the police files from week two of the investigation. That is not, of course, to say any of them had anything to do with Jodi’s murder – the question is, what would the jury have made of the fact that investigators knew about them but did not investigate further and the information about their propensities for violence was (in at least two cases) deliberately concealed from jurors?

By 24th September, almost three months after the murder, Judith finally turned openly on Ferris. In a statement that day, she said that she “*knew that John Ferris was spoken to by the police on Thursday, July 3rd after an appeal was put out for two boys on a motorbike*” ... she “*knew he*

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*originally said he had been on the path sometime before quarter to five" ... her gut feeling was that "his original version was concocted and rehearsed so that he would remember it", for whatever reason, she didn't know. "He was too precise... how would he remember every single detail exactly?" ... in her mind, "it sounded like it had all been worked out by the two of them (Ferris and Dickie)" ... the only reason she could think of was "they want absolutely nothing to do with it at all."*

This is a strange statement, for a number of reasons. Firstly, the date is wrong. Even if Judith was confused or mistaken, the police investigators knew, for certain, that Ferris and Dickie were not spoken to until July 5th and 6th, the appeal for them to come forward not being made until late afternoon on July 4th. July 3rd, as quoted here by Judith, was before Luke's house was raided and he was first taken in for questioning. Was this an attempt by police to retrospectively convince Judith that Ferris and Dickie had been treated as suspects? She suggested that the story given by Ferris was "too precise," leading her to wonder how he could remember every single detail. Judith's own statements, as they developed over time, recorded, with amazing precision, a huge amount of detail, yet she found it strange that someone else could do the same. As it happens, Ferris's statements were not particularly precise or detailed (except when he was talking about Luke). He went to pick Dickie up, they messed about on the bike for a bit and then returned to the house and in court, Ferris relied almost exclusively on "I don't know" or "I don't remember." But Judith's last comment is odd – "they want absolutely nothing to do with it at all." Whatever made Judith think that wanting nothing to do with it at all would cut any ice with police investigators?

Perhaps the main question raised by this statement is why it was taken in the first place. Why were the police asking Judith what she thought of Ferris's account of his movements that day, three months after the event? Judith should only have known Ferris's personal account of his movements that day – she should not have known the contents of his police statement, yet she was quite clear that it was the precise content of his original version which caused her to begin to doubt him.

She may have been referring to the original time he and Dickie were on the path, since so many of the family members knew about that from July 1st, but if she thought that was too precise and concocted, it was evidently not enough of a concern to mention it to investigators at any point in the first three months of the investigation. It is not known if

Judith was aware of Ferris's claims about his Gran telling him not to go to the police, on the basis that he lied about the time he was on the path – surely that, more than anything else, would have been the main reason she doubted his original account.

It may have been that the police suggested to her that there was something untoward about Ferris's statement and the immediate question would be why they would do so when their sole focus had been on Luke for the preceding twelve weeks. Indeed, this statement was taken the day after media reports that a file had been submitted to the Procurator Fiscal naming Luke as the sole suspect.

Judith later claimed that Ferris and Dickie were “selfish” and said she believed they knew more than they were letting on, but that they lied for their own selfish reasons. Yet Judith has never called for these two youths to be further investigated, to find out exactly what, if anything, they did know, or for any charges to be brought against them. True justice for Jodi would demand that those answers be sought. Corinne and Shane Mitchell were charged with attempting to pervert the course of justice on the basis that they “lied” to investigators (the charges were later dropped). John Ferris and Gordon Dickie both gave evidence against Luke – neither ever faced any charges in relation to the case.

By the time of the trial, Ferris had been ostracised by Jodi's family and moved out of the area. None of Jodi's family members would tell the court why Ferris had been cut out of the family, including Ferris himself.

When he was asked why he moved, Ferris gave two conflicting accounts. In one, he said his Gran told him Joseph was “going to batter him.” In another, he said Luke's brother, Shane, had threatened to “batter” him. If either were true, they would amount to the very serious offence of witness intimidation. But what reasons might there be for either Shane or Joseph wanting to inflict physical violence on Ferris?

Such a threat coming from Shane can be immediately ruled out. According to Ferris, Shane threatened him outside the court. Shane was accompanied, at all times, by police officers when he attended court and Ferris moved away months before the case came to trial – at most, he would have to be claiming that he moved because he was afraid Shane might later threaten him at court.

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But what of the claim that Joseph was intent on violence? Why did the police not intervene? Ferris was, after all, a key witness in the case.

And what level of violence was being threatened that meant Ferris had to move more than sixty miles away? If Alice did not tell Ferris that Joseph was after him, because it was not true, it is surprising that the whole family sat in court and let Ferris say so, without bringing it to anyone's attention that he was lying. After all, he had been ostracised by the family by then, so there would have been no misplaced loyalty issues in exposing him. There was, however, one statement in which Judith made reference to Joseph potentially "having a word" with Ferris, a course of action from which he was, apparently, dissuaded.

By now, it is obvious that much of the evidence on which this first part of the prosecution case depended (that Luke was the killer because he carried knives, led the search trio to the body and was the only person with no alibi at the claimed time of the murder) was deeply flawed. The influence of other members of Jodi's extended family renders much of that evidence unreliable or contaminated and, since many of them gave evidence against Luke, the possibility of collusion, inadvertent or otherwise, is strong. The influence of Ferris on so many aspects of the case cannot be ignored, as you will discover elsewhere in this book.

## **Chapter Six**

### **The Mystery Deepens - Steven Kelly**

We have examined some of the changes in stories over time from the search trio and the claims made by Ferris regarding why he did not go to the police before the appeal for the boys on the moped, but further information emerged from the investigation which, surprisingly, was not considered to undermine the search trio's evidence in any way.

The only full, identified DNA recovered from the crime scene in 2003, from blood on the t-shirt Jodi was wearing when she was murdered, matched Steven Kelly, Janine's boyfriend. This was later explained away as "innocent transfer" – according to this theory, Jodi borrowed Janine's t-shirt without asking and Mr Kelly's DNA was transferred onto it innocently, prior to Jodi borrowing it. But a further claim by the prosecution raised some concerning points – partial DNA profiles on other parts of the t-shirt and on Jodi's bra, "could have been" deposited there by rainwater transfer, since the clothing was left out in the rain overnight. This is an astonishing claim. As the only full DNA profile obtained from the clothing Jodi wore that night was Kelly's, the rainwater transfer theory has to be based on the assumption that it was Mr Kelly's DNA which migrated in this manner to other parts of the t-shirt and the bra. There were no full DNA profiles from these other samples – in the prosecution's attempts to explain away DNA on Jodi's clothing, they inadvertently implicated Mr Kelly further, by suggesting partial profiles, hitherto unidentified, originated from his full profile, by the innocent means of rainwater transfer.

The development of the borrowed t-shirt story is worrying. The DNA results, on which investigators had been so reliant to prove their case against their prime suspect, first appeared in the case papers dated July 14th -16th, but the results came back without any evidence that Luke was Jodi's killer, or even that there were forensic traces of him at the scene.

On July 6th, before any forensic results were known, Janine handed the clothes she was wearing the night Jodi was murdered to police, telling them that they had been washed. Ten days later, on July 16th, she said she had two identical t-shirts - the police had one and she "didn't know" where the other was - Jodi had possibly borrowed it without permission. At this point, Janine appeared not to know what t-shirt Jodi was wearing

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when she was killed. But when she handed over her clothes on July 6th, Janine did not mention that she had two identical t-shirts, so something must have reminded her in the intervening 10 days and made her realise that this was an important piece of information for the investigation.

Strangely, there was another statement, dated July 23rd, in which Janine was recorded as saying that she was asked on that date to hand over the clothes that she was wearing on Monday, 30th June. That cannot be correct. Janine could not tell the police on July 16th that the top she had already handed to police ten days earlier was one of an identical pair if she was not asked until July 23rd to hand over her clothes.

Over several statements after July 16th, Janine told the police she thought the t-shirt Jodi was wearing “could have been” hers. She also said she had several black t-shirts, all similar. On September 9th, she said she had “lots of black tops, mainly plain” - two that she “wears” more than most, but she didn’t have them “at the moment” - the police had one and she did not know where the other was. Several sentences later, she went on to say it was possible Jodi borrowed the “other top” either the weekend of the 28th or the 21st of June.

For two weeks, there was zero focus on Janine’s clothing or black t-shirts of any description, but between July 14th and September 9th, black t-shirts and the possibility of Jodi borrowing them without permission became the source of intense interest. It is inconceivable that Janine did not know, by September 9th, where “the other top” was, if what she was referring to was the top Jodi was wearing when she was killed, since it had been the subject of so many statements for almost two months. There was a further curious anomaly - Janine referred, in this latest statement, to t-shirts she “wears” – in the present tense – rather than “wore”, even though the t-shirts to which she referred had apparently been with the police for just over two months by the time the statement was made.

Eight days after the above statement, Steven Kelly told the police *“Janine had two black t-shirts - she was wearing one that night.”* After describing the logo as being “on the back” he went on to say, *“The black t-shirt Jodi was wearing probably belonged to Janine.”* Immediately, there is a clear discrepancy – Janine said she had lots of black tops, Kelly mentioned only two.

Janine had earlier described a black t-shirt with a red LOGG label inside the neck. Steven Kelly described a black t-shirt with a red LOGG logo on the back. Kelly said its “identical” partner was the one Janine was wearing the night they found Jodi and had been handed to the police, even though he described a different t-shirt to the one Janine described.

Neither could confirm, at that point, ten weeks after the murder, whether the top Jodi was wearing was one which was borrowed from Janine, or, indeed, whether there were two identical tops and, if there were, which two were identical – the ones with the logo on the label inside the neck, or the logo on the back.

There is so much confusion surrounding the statements regarding the t-shirts that unless they are read very carefully, it seems as if the borrowed identical t-shirt story is confirmed. To my knowledge, it never was, until it was accepted as fact in court that the t-shirt Jodi was wearing was borrowed from Janine. That “fact” is crucial to the innocent transfer explanation for DNA from Steven Kelly being found on Jodi’s t-shirt.

Several weeks after the murder, the police took items of clothing from a “washing pile” (Judith’s description) in Jodi’s room. Among them were six black t-shirts. Judith insisted that nothing in Jodi’s room had been touched since the murder. When Janine and Kelly first confirmed the possibility of Jodi borrowing a t-shirt from Janine, it was on the basis that Jodi was wearing *that* borrowed t-shirt when she was killed. But how, at that stage, could anyone (apart from the police) have known the borrowed t-shirt wasn’t one of the six in the washing pile under Jodi’s bed? With the police apparently keen from July 16th to find out if the t-shirt Jodi was wearing belonged to Janine, it seems curious that they waited a further four weeks, after alerting Janine and Kelly to the possibility that Jodi was wearing a borrowed top, to check amongst Jodi’s other clothes for any possible missing t-shirts of Janine’s.

The willingness with which the police accepted the borrowed t-shirt story is surprising – ordinarily, we would expect that DNA of a male so close to a murder victim, which turns up at the murder scene on the victim’s clothing, would require some serious explanation, especially in view of his first comment to police minutes after the body was found.

This was the second time, just over two weeks into the investigation,

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that male DNA at the murder scene was explained away or distanced from the investigation in terms of significance. (More about the other in Chapter 10). There was never any confirmation (or, indeed, suggestion), that the six black t-shirts taken from Jodi's room were checked and ruled out as identical to the one Janine handed to police, that any of those t-shirts had been borrowed (with or without permission) from Janine, or that, if any of them were Janine's, they had been tested to confirm the innocent transfer theory. But why would Janine and Kelly think the top Jodi was wearing had been borrowed from Janine at all? Jodi had at least six black t-shirts, Janine had lots of black t-shirts – how did they come to focus on this one t-shirt in the first place? While the police would have known that Jodi was wearing a black t-shirt with a red LOGG label, the only possible reason for them considering the possibility of it being borrowed from Janine is the presence of Kelly's DNA. Amongst a dozen or more black tops potentially being shared by the sisters, who would have had any idea whether one, in particular, would have been significant? Unless, of course, an exact description of the t-shirt in question was given to the witnesses at the same time as the question "Could Jodi have borrowed this from you?" Again, that is an astonishing suggestion. Rather than the fully justified suspicion we would all expect the presence of such a forensic trace to have caused, investigators appear to have gone out of their way to find ways of rendering that trace completely innocent, going so far as to almost hand an innocent explanation to the person from whom it originated.

None of Janine's DNA was identified on the t-shirt. Had police simply approached Kelly and said, "We have a full DNA profile matching yours on the t-shirt Jodi was wearing when she was killed, can you explain that?" how likely would it be that Kelly's (and Janine's) immediate response would have been, "Of course! Jodi borrowed it from Janine without asking – Janine didn't even know it was missing. My DNA must have been transferred onto it in the washing machine, since you say the t-shirt Jodi was wearing was freshly laundered." Highly unlikely is the obvious answer. Therefore, statements from Kelly and Janine had to have been manipulated quite significantly.

Janine did not mention an identical top, or a missing top, until the statement of July 16th but, even more surprisingly, the first questions about a borrowed t-shirt were put to Kelly two days earlier. It is straying into the bizarre to realise that police investigators thought a teenage lad, who did not live in the same house as his girlfriend, would know if one black



t-shirt of many owned by his girlfriend might have been borrowed by her sister, the murder victim, who lived in a different house again. The most obvious, logical and sensible approach would have been to ask Janine directly.

Statements from both Kelly and Janine made reference to them dropping their clothes in a heap, all mixed up together on the floor. They obviously did not just volunteer that information out of the blue, so they must have been asked about it. But what was the nature of that questioning? If Steven and Janine did not know about the DNA on the t-shirt, it must have seemed like a very strange line of questioning - "What do you do with your clothes, after you take them off, before you go to bed?" They must have wondered what on earth that had to do with Jodi's murder. The questioning would have to continue along the following lines: "So you just drop them on the floor - you don't fold them or put them over a chair or anything? Right, so where on the floor do you drop them? Do you both drop them in separate places - either side of the bed, maybe? Or do you both drop them in the same place?" It's quite a way to go to elicit a statement, out of the blue, in which two people both say, "When we take our clothes off at night, we drop them on the floor and they all land up mixed together with each other in a big bundle."

It is, however, a helpful statement if the explanation for DNA on an item of a murder victim's clothing is required to be "innocent transfer," especially when Janine had already told the police that Kelly's laundry was not done in Alice Walker's home. The forensic report stated that the t-shirt Jodi was wearing "smelled of laundry detergent," the implication being it had been freshly washed when she put it on that evening. So whatever innocent transfer had occurred, it had also survived a cycle in a washing machine - not a cycle in which Kelly's clothes were present.

The t-shirt stories became further confused when Judith stated that she had bought identical black t-shirts, one for Jodi and one for Janine; now, there were two - or possibly three - sets of identical t-shirts floating about in the investigation.

Contrast this with the treatment of Luke Mitchell. Not a single DNA profile connecting Luke to the murder was ever found, but during the interrogation of August 14th, (see Chapters 11 & 12) six weeks after the murder and four weeks after the DNA results identified Kelly's profile

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on Jodi's t-shirt, officers harangued Luke about a partial profile found on Jodi's bra. They insisted the sample was semen and insisted that it was Luke's semen, demanding over and over again that he "explain that." The truth about partial profiles is discussed in Chapters 11 & 12, but the bottom line is that the partial profile they insisted originated from Luke could just as easily have been claimed to have originated from a number of other males known to the investigation – partials do not and cannot identify particular individuals. At the same time as coming up with innocent explanations for a full DNA profile from Kelly, investigators were bombarding Luke with dishonest claims about a partial profile that they believed (without a shred of proof) originated from him.

The "innocent transfer" claims relating to Kelly's profile had not, prior to this interrogation of Luke, given any hint of the bodily fluid from which the DNA profile had been obtained. But the rainwater transfer theory suggested that other, partial profiles on Jodi's clothing may have migrated from the original deposit, identified as originating from Kelly, to other items of Jodi's clothing. By the prosecution's own reasoning, and the claims made by police officers in this interrogation of Luke, the only logical assumption to be drawn is that the DNA profile from Kelly, found on Jodi's t-shirt and migrated to other areas and items of her clothing, was obtained from semen.

They had the clothes Luke was wearing on the night of the murder before 1am on July 1st and took every other item of clothing he possessed, except those he was wearing, on July 4th – the only "evidence" found was a single DNA profile for Jodi from a tiny sample on a pair of trousers not worn on the day of the murder – it could not even be ascertained how old the sample was. Yet investigators did not start collecting clothing from the others until July 6th (by which time most had been washed) and were still recovering items more than six weeks later.

There is another coincidence concerning the borrowed t-shirt story. On July 16th, Jodi's aunts made a media appeal for anyone who suspected someone close to them, who may be "in unacceptance" (*sic*) to come forward. In this appeal, they said,

*"Also typical is the fact that she borrowed her sister's clothes without asking, was untidy and at times liked to tease her brother, sister and*

*other members of the family ...*<sup>4</sup>

Is it just coincidence that the aunts mentioned borrowing clothes without asking, at the very time a DNA profile from Kelly was found on Jodi's t-shirt and he and Janine were being asked about the possibility of Jodi having borrowed a t-shirt without asking? Is it just an amazing coincidence that Janine had two identical t-shirts, one of which Jodi borrowed without her knowledge and both girls ended up wearing those identical t-shirts on the same evening, even though they lived in different houses? And an even more amazing coincidence that it turned out to be correct that Jodi was wearing that particular t-shirt, even though the other black t-shirts in Jodi's room had not been checked?

Or was the entire family being quietly manipulated, without them knowing?

On July 6th, the same day Janine was asked to hand over the clothes she was wearing the night Jodi's body was found, Steven Kelly also handed the clothes he was wearing to the police. They were listed as a pair of jeans, a black jumper and a grey top. The jeans and the grey top had both been washed. But on July 12th, Kelly said, in a statement, that he was already wearing his blue denim jeans and black long-sleeved t-shirt (when the trio decided to go out looking for Jodi) and he put on his green, long-sleeved FCUK t-shirt. On July 14th, Janine gave the same description of the green FCUK top, yet it was not among the items handed to police and the black jumper had turned into a black t-shirt. Also, Kelly said in one statement that he could feel the branches in the woodland strip catching on his hat after he went over the wall. No hat appears to have been handed to police. How did a black jumper and grey top become a black long-sleeved t-shirt and a green FCUK t-shirt in the space of six days and why did no-one notice? If the police had done as they should and taken the search trio's clothing on the night of the murder, questions about the accuracy of the family's accounts, such as this one, would simply not have arisen. Four days after this statement was given, police released details of Stocky Man (see below), including the information that he was wearing a "grey hoodie."

In his initial statement, Kelly said he went to Alice's house on the morning of Monday, June 30th, "stayed and blethered<sup>5</sup> for a while and

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4 As reported in multiple media outlets

5 chatted

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then went back to mine.” He did not say Janine went with him, although he did say, referring to much later in the day, “We all had dinner and Janine and I were getting ready to go back to Janine’s to stay there... we got back at about 7.30pm.” On July 6th, he said he went to Janine’s house in the morning, had a sleep in the afternoon, then “I had gone to mine and had my tea and then went back to Janine’s” – still no mention of Janine being with him.

On July 12th, the same day his clothing description changed inexplicably, his statement regarding his movements that day changed completely – in this version, he spent the whole day at Alice Walker’s house, with Janine, until they left, together, at around 4 o’clock. Janine first mentioned going to Kelly’s dad’s house for dinner two days later, on July 14th, but stated that she could not remember if they walked down, or if Kelly’s father picked them up. There was no statement in the defence papers from Kelly’s father. Alice Walker’s statements said only that Kelly and Janine came to her house “later on.” There was reference to Janine asking her Gran (by phone) whether it was ok to cook some items for breakfast at around 10am on June 30th, but no mention of Janine or Kelly being in Alice’s house the whole day until 4pm.

What does this all mean?

Until July 12th, Steven Kelly could not fully account for his movements on June 30th, specifically and critically, in the crucial hour between 5 and 6pm. If this was really the laser-focus point of the police investigation on which the case against Luke Mitchell was built, what are we to make of the fact that, for the first two weeks of the investigation, others closely linked to Jodi could not corroborate their movements in that hour? What are we to make of the fact that there was evidence, which would take years to emerge, that supported Luke’s claims regarding his whereabouts, claims which never deviated over weeks, months and years of telling? And what, significantly, are we to make of the fact that in those two weeks, those who had no way of accounting for their whereabouts or movements in that hour miraculously came up with new accounts in which another member of the extended family was the principal corroborator?

On the basis of one of Alan Ovens’ statements which placed Janine in Judith’s house when he came in from work at 4.45pm, Janine could not have been at Kelly’s father’s house having dinner for the full period

between 4pm and 7.30pm that evening. Mr Kelly snr has since passed away, but a document claimed to be a copy of a statement he made emerged around 2014 – some 11 years after Jodi was murdered. In this document, Mr Kelly snr apparently reported that Janine and Steven had come to his house for tea; he asked what they wanted to eat, Janine was quite specific about certain items of food which Mr Kelly snr did not have in the house, so he had to go to the local Tesco store to buy them. The police could not have spoken to Mr Kelly snr prior to 12th July about making dinner for his son and Janine, because there was no suggestion, before to that point, that such an event had taken place. One wonders why this statement was not in the defence papers at the time of trial in 2004.

Ask yourself this (without checking calendars, diaries, or anything online) – what did you eat 12 days ago? What time did you eat it and with whom? What reason would you have to remember?

Once again, this does not mean anyone was necessarily being dishonest – it is simply human nature to try to “fill in the gaps” in our memories in order to have them make sense. If my favourite meal when I visit you is bacon and eggs, someone tells you I visited you a few weeks ago and we ate together and asks what it was we ate, you’d most likely say, “Probably bacon and eggs – that’s what we always have when Sandra comes over.” That person then writes down “On January 17th we ate bacon and eggs.” You might say “probably” again, but, unless you insist (and what reason would you have to insist?), that crucial word is not going to be written down and your guess becomes a recorded fact.

The single most important factor (and the most difficult to ascertain) when interpreting statements given to the police is: what questions were asked? These are not recorded and the answers are written by police officers, not the person being questioned. There is an important difference, for example, between “Did you all have dinner together that day?” and “When you had dinner together that day, did you all eat eggs and bacon, or was it only two of you?” The second question begins with the presupposition that everyone ate together and that eggs and bacon were consumed. The only way to answer such a question requires tacit agreement that everyone did eat together and eggs and bacon were consumed.

You may think this is unlikely and that people would know if they were being asked to agree to something they knew to be wrong. But look at

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how such a situation might develop – “Jim and Bob have both told us, independently, that they ate dinner with you that night and that eggs and bacon were eaten.” The night in question is two weeks previously – you often have dinner with Jim and Bob, though not on any set evenings – your default is likely to be, well, if both Jim and Bob say it was that night and that’s what they ate, they must be right. If the investigation is of a brutal murder, you may think that what you ate or when is of no real significance – it can’t help solve the murder in any way – so it doesn’t really matter if it is exactly right.

Again, contrast this with the treatment of the Mitchell family. Five days after the murder and two days after giving his first statement, Luke’s brother Shane voluntarily approached police to amend his statement, because his mother reminded him that Monday was the evening Luke burnt the pies they were having for dinner. (It was another two days until the police formally recorded the amendment.) The change was immediately assumed to be a lie concocted to “cover up” for Luke. At that point in the investigation, police investigators had no evidence that Luke was in any way involved in Jodi’s murder. Yet Mr Kelly snr was first asked what he, his son and Janine ate almost two weeks into the investigation, specifically to confirm that his son and Janine were in his house between 4pm and 7.30pm on the evening of the murder. Common sense dictates that Mr Kelly snr would have to be reminded, yet nowhere did that give rise to any suspicion of lies or covering up.

These are not poor questioning skills on the part of police officers; their aim is to build a case which will be robust enough to result in a conviction, not necessarily to uncover the truth about what happened, so they need to elicit specific information in order to build that case and fill in any gaps in it. It is the process which, I believe, drove so many of Jodi’s family members’ statements in the directions they eventually took.

## **Stocky Man**

Sixteen days into the investigation, police released a statement via the media regarding the “Stocky Man” who was seen following Jodi on the Easthouses Road a little after 5pm on June 30th. According to this report, two independent witnesses (one of whom, it was suggested, knew Jodi) came forward to describe this man as white, around 20 years old, 5’7” – 5’10” with brown or ginger hair, curly on top, wearing a grey hoodie and possibly carrying a backpack. The police referred to

this information as the first “credible” sighting of Jodi. The introduction of Stocky Man became the source even more confusion.

According to police reports in the media on July 19th, one of the witnesses came forward to say he thought he had seen Stocky Man at the reconstruction of Jodi’s last movements on July 7th. The man believed by the witness to be Stocky Man came forward and identified himself and was immediately ruled out (because he was provably nowhere near Easthouses on the evening of June 30th). The headlines ran “Man at Centre of Jodi Appeal Found.”

This all raises a number of issues.

Firstly, Stocky Man was never found (or so it was believed for eleven years) – the man who came forward and identified himself was clearly not Stocky Man. Yet no real attempts appear to have been made to find him thereafter and he was quietly dropped from the investigation. As recently as 2016, I was still talking with people who believed Stocky Man was traced at the time because of the misleading media coverage.

Secondly, these witnesses must have spoken to police prior to July 16th, when the information was released to the media, and most probably in the first week, for the witness to be able to say he thought he had seen the same man at the reconstruction (which took place on July 7th), raising the question of why the police waited so long to release it. If it was, indeed, the first credible sighting of Jodi, surely it should have been circulated as a matter of urgency?

Thirdly, this sighting completely ruled out the possibility of the Andrina Bryson sighting fifteen minutes earlier as credible (see Chapter Seven). At the same time, the Stocky Man sighting pinned down the time of Jodi leaving as just after 5pm and if Jodi did not leave home until after 5pm, there was not enough time for the murder to have occurred behind the wall in the woodland strip at 5.15pm.

What was never released to the defence was information that one of the witnesses came forward, approximately 10 weeks after the murder, to say she had seen Stocky Man again and could show police exactly who she believed him to be. The person she identified (from a group of people who were strangers to her) was a member of Jodi’s family. Yet all statements regarding this person alleged that he did not leave his house at all that afternoon or evening. Nothing, it appears, was ever

done with this information.

The reconstruction, around which all of this information revolves, itself gives rise to some difficult questions. Conducted on July 7th, exactly a week after Jodi's death, the filmed footage began with a police officer, dressed in the clothing Jodi was known to be wearing the evening she was murdered, leaving from the gate of Jodi's family home at a few minutes after 5pm. The reconstruction was intended to jog people's memories about anything they may have seen at critical times. By the final claimed times of events, this reconstruction was at least 15 minutes too late, because the eventual claim was that Jodi left at 4.50pm and for several days at the beginning of the case, the media reported Jodi's time of leaving as 5.30pm.

This was the second time that efforts by investigators to elicit information from the public could not possibly have done so, the flooding of the entire local area with pictures of 5-year-old and 8-year-old Jodi being the first. Indeed, even as this reconstruction was being conducted, posters of a much younger Jodi were staring out from every shop window, billboard and bus shelter in the area, as they had done since July 2nd. Anyone who did not know her could not have known if they had seen 14-year-old Jodi when the only pictures available for the first three days of the investigation were of Jodi as a much younger child.

The reconstruction was referred to as footage of Jodi's last known movements, but closer inspection reveals it was a very selective version of Jodi's last known movements which was finally broadcast. By the time of this exercise, police investigators had Andrina Bryson's statements, the original statements of Ferris and Dickie and almost certainly, the statements of the witnesses to Stocky Man. The reconstruction, therefore, should have included Jodi walking along the Easthouses Road with a Stocky Man following closely behind her, a man in fishing style clothing standing on the track in the entrance to the path and a girl in a blue hooded top with lighter blue boot-cut jeans standing on the pavement at the entrance to the path (see Chapter Seven). None were featured. The reconstruction showed "Jodi" walking alone down the Easthouses Road and into the entrance to Roan's Dyke path. There was no evidence whatsoever to suggest Jodi took this route, a plethora of evidence that other possibilities existed and most importantly of all, a complete failure to reconstruct the actual, evidence-based possibilities of Jodi's movements up to the point where she was last claimed to have



been seen. Even Mrs Bryson, herself, did not claim to have seen the girl walking into the entrance to the path. That is important because, in order to go to her Gran's or Yvonne Walker's, Jodi would have walked straight past the entrance to the path, crossing the road to her left a few yards further on. (*See Map 3 Easthouses <---> Mayfield*)

As well as the changed time of leaving and the absence of up-to-date pictures of Jodi, a third factor – the restriction of the area of interest to the Easthouses Road and Roan's Dyke Path - may have allowed a large amount of information to have slipped away.

Anyone seeing someone who could have been Jodi in Mayfield, for example, would have had no reason to contact investigators, because there was no suggestion that she might have been there, even though that was exactly where Judith believed Jodi was originally headed that night. Anyone who saw someone who could have been Jodi after 5.30pm may have believed it could not have been Jodi they saw, because it was too late.

There was information in the case files about the remains of a fire, which contained remnants of clothing and some sort of cable, on some waste ground behind licensed premises in Mayfield. There is nothing to confirm this was followed up, the suggestion being that it was not considered relevant because it was not in an area of interest to the investigation.

A report appeared in the local media about clothing being burned in another fire in the garden of "a suspect" in Newtongrange, a neighbouring village south of the path, over a kilometre away from Luke's home in Newbattle Abbey Crescent. The report was not picked up and repeated in the national media, but on September 3rd, Luke was asked, in the interview with Sky TV, about burning clothes in his garden (see Chapter 18).

Details of the "female relative" who was questioned about the Newtongrange fire and of the fire itself were not available in the defence papers. By the time the case came to court, it was Corinne Mitchell who was accused of burning clothing in her garden in Newbattle Abbey Crescent, even though there was not a single piece of evidence to support the allegation and the original reports were of a fire in a garden in another village entirely.

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The popular tv show “Crimewatch” offered to feature the case. Lothian and Borders Police declined the offer.

## **Chapter Seven**

### **Eyewitness Testimony and The Parka Jacket**

The second plank of the prosecution case was eyewitness testimony of alleged sightings of Luke, or Luke and Jodi, which were used at trial to allow the prosecution to assert that Luke was seen with Jodi at the East-houses end of the path in the late afternoon of June 30th and 45 minutes to an hour later, on his own, at the Newbattle end of the path. The timings of these sightings were crucial to the prosecution case – the 5.15pm time of death was the only window of time within which the prosecution could maintain that Luke was the killer – other eyewitness identifications and testimony of those who were with Luke that evening meant he had a proven alibi from 6pm onwards. (His alibi for the period prior to 6pm was dependent on his mother and brother, both of whom were treated as suspicious almost from the beginning of the investigation.)

A critical part of the prosecution case was a claim that Luke owned a Parka jacket prior to the murder which had since disappeared, disposed of in a log burner in the family's back garden to destroy incriminating evidence. Therefore, any eyewitness sightings of Luke would, of necessity, have to contain descriptions of him in a Parka jacket, both to support claims that it was Luke that those witnesses saw and the contention that he was forced to destroy the Parka jacket because it became contaminated with Jodi's blood and other evidence during the murder.

The Parka was also used, in part, to explain how no forensic traces of the murder were found on Luke's clothing later that night. The fact is, there were no forensic traces of Luke at the murder scene or forensic traces of the murder on Luke's body, clothing, in his house, garden, his mother's car or workplace, or any bicycle belonging to Luke.

Luke said that he was wearing the same green bomber jacket, baggy jeans and distinctive, light coloured snowboarding boots that he wore to school earlier that day (exactly the clothing taken from him by police on the night of the murder). He did not own a Parka jacket prior to the murder – his mum had to buy him new clothing after the police took everything he owned in the first raid on July 4th – the Parka he owned after the murder was bought in that shopping trip and the receipt for it was taken by the police.

The manner in which these threads were pulled together to convince

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a jury that the evidence supporting them was credible and reliable is shocking, but the jury and the media were not party to many of the events I am about to relate and so did not have the benefit of all of the available information on which to base their decisions about this evidence. Once again, as you read this section, ask yourself, are you convinced that Luke Mitchell was positively identified anywhere near Roan's Dyke path that afternoon? Are you convinced he was seen wearing a Parka jacket and that in a period of less than an hour, he managed to carry out the prolonged attack on Jodi, clean all traces of himself from the scene (whilst leaving forensic traces of others) and all traces of the scene from himself, dispose of incriminating evidence, specifically the murder weapon and the clothing he was supposedly wearing when carrying out the attack, all in time to be seen sitting, perfectly normally, at the end of his street by 6pm on June 30th?

### **Andrina Bryson**

Late on the afternoon of July 1st, an independent witness, Andrina Bryson, contacted police to say she saw two young people on the Easthouses Road, at the Easthouses entrance to the path, the previous afternoon. Jodi was formally identified, in the media, after 3pm on the afternoon of July 1st, so Mrs Bryson contacted police within a few hours of the public confirmation that the murdered girl was Jodi. Mrs Bryson's brother-in-law, Mark "Bill" Bryson, was in her house when she gave her statement to the police.

Andrina Bryson would go on to become the prosecution's "star witness" on the basis that her sighting put Luke and Jodi together at the Easthouses end of the path shortly after the time it was claimed Jodi left home on June 30th. It was stated firmly throughout the trial and appeal that both Jodi and Luke were complete strangers to Mrs Bryson – she had no knowledge of them whatsoever. By the time of her first two statements, there were no up-to-date photos of Jodi in the media and none whatsoever of Luke. But just how independent was Mrs Bryson and how reliable was her evidence?

To begin at the end, her brother-in-law, Mark "Bill" Bryson, a family friend of the Jones and Walker families, was, according to John Ferris, in Alice Walker's home before lunch-time on July 1st, telling people about his brother's (Andrina Bryson's husband's) sighting of a youth with "long messy hair, wearing army clothes and big boots," at the

Easthouses end of the path the previous afternoon. There was no mention of a female in this account, but according to Ferris, there was general agreement that the youth was Luke, on the basis of his membership of the Army Cadets. (Luke had already left the Cadets by then.) Three days later, according to Alan Ovens, Mark “Bill” Bryson was at Judith’s home, discussing the sighting with members of Jodi’s family. Mr Ovens would later claim his suspicion of Luke began to emerge “in the middle of the first week.” He backed that up by saying he did not believe the police would have “arrested” Luke if they had no reason to do so. But on July 4th 2003 – the exact middle of the first week, and the very same day he had the conversation with Mark “Bill” Bryson about the sighting, police did not “arrest” Luke – they were very clear about that. (More about this in Chapter 14, Luke and the Police)

It doesn’t take a great deal of imagination to consider the effect the information about the sighting, being passed to the Jones family within hours of the discovery of Jodi’s body, may have had. The connection between the Brysons and the Jones/Walkers was never properly investigated; the information that there was only a distant connection via Mark “Bill” Bryson was generally accepted at face value. Since this same man was, according to Andrina Bryson, in her house when she gave her statements to the police and he knew, before it was publicly released, that the murdered girl was Jodi, any discussion between them about the sighting and any suggestion that Mrs Bryson was even subtly influenced by his knowledge of Jodi and Luke would raise serious concerns about the reliability of her evidence.

By the time this story made it to court as the central, most important piece of prosecution evidence against Luke, it was Andrina Bryson, not her husband, who spotted the youth and a girl (even though there was no mention of a girl in the original claims). The youth was, by then, wearing fishing clothes, not army clothes and critically, Andrina Bryson insisted she did not know the Jones family at all.

Janine tried, in her evidence, to distance Mark “Bill” Bryson from the Jones family. Asked by Donald Findlay if she knew Mrs Bryson, she said, “I heard that on the news.” She then accepted she knew Mark “Bill” Bryson and had done for years. The questioning which followed demonstrates Janine’s apparent reluctance to disclose the true nature of the relationship between the Jones/ Walkers and Mr Bryson:

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DF: Which members of your family, so far as you are aware, does Bill Bryson know?

Janine: I know Bill through my cousin.

DF: Which cousin?

Janine: JW

Janine then had to be prompted another twice before she agreed that her mother, brother and Gran also knew him. She “could not remember” if he visited the family home when she was younger (when she lived with her mum), but she did remember that “after June 30th, Mr Bryson’s girlfriend came to cut [her] mum’s hair.” She could not remember if Bill Bryson came with his girlfriend, or how often the girlfriend came to cut her mum’s hair.

In a statement in September 2003, Janine said, “I still see him occasionally (Bill) because his girlfriend cuts my mum’s hair at home and sometimes he still calls round to Gran’s house to see [Janine’s cousin]”.

Janine was not asked if she or other members of the family knew Mr Bryson’s brother (Andrina Bryson’s husband), yet if the answer was yes, then the claimed impartiality of Mrs Bryson’s evidence would have been severely compromised. No-one else was quizzed at trial about connections or discussions with any of the Bryson family.

Several years later, photographs were found, posted on the internet, of Mrs Bryson’s husband and his brother, Mark “Bill” Bryson, in the home of a close relative of Jodi’s, with other members of her family, just six weeks after the murder – some 15 months before Mrs Bryson would be called to give her evidence at trial. Mark “Bill” Bryson was never asked to give evidence.

This close chain of interaction linked to a major Crown witness and the victim’s family, especially over such an extended period of time, also raises questions of unwitting collusion. Just as Alan Ovens later said he began to change his viewpoint about Luke by the middle of the first week, it is possible that the advice for Ferris and Dickie not to go to the police, if it was, indeed, given, was given partly on the basis of this “sighting” convincing the family that “Luke” was at the Easthouses end of the path that evening.

If Ferris was telling the truth about Mr Bryson being in Alice Walker's house on July 1st, passing on information about a sighting which would later become a critical piece of evidence against Luke, then it casts very, very serious doubts about the veracity of Andrina Bryson's sighting, the early description of "Jodi" and the testimony of everyone who claimed that any relationship between the Jones/Walkers and the Brysons was distant and tenuous.

Any identification on the basis of this shared information, from the very first day, would have to be seriously questionable, given how many people may have been misled by that early description.

Even though Mark Bill Bryson was with members of Jodi's family from July 1st, there were no defence statements from him regarding his brother's sighting, what it was alleged he told the Jones/Walker families, or how the person making the sighting changed from his brother to his sister-in-law. Even if Ferris was lying, Alan Ovens told investigators that Mr Bryson was telling the family about a sighting matching the one described by Ferris, as early as July 4th. He should, on any view, have been an important witness, yet there was not a single statement from him in the defence papers.

Was it just coincidence that one of the officers taking the missing person details from Judith left her house believing (wrongly) that Jodi had left her home "with her boyfriend" on the afternoon of the murder and the very next morning, a family friend reported a sighting of a youth at exactly the point where Jodi would have turned onto the path, had she been heading for Newbattle? Was the final prosecution case, that there was a standing arrangement for Luke to meet Jodi at the Easthouses end of the path and walk with her to Newbattle, (even though the evidence proves quite solidly that there was no such arrangement), bolstered by this claimed sighting? Or is it more likely that pieces of information which appeared to implicate Luke (even where there was no evidence to support them) were interwoven with other information to make them appear to be true representations of events?

Putting aside the impact of Mark "Bill" Bryson's involvement, let's look at the evidence from Andrina Bryson as it developed over time.

She had gone shopping in a nearby supermarket that afternoon then gone on to view a house for sale in Easthouses. The following day,

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because of news reports, she realised she had passed “that way” – although she drove down the main Easthouses Road, what she appeared to be referring to was the area of the entrance to the path. Only someone who knew of the path would make such a connection – there are a number of ways to get onto Roan’s Dyke path, the entrance from the main Easthouses Road being only one of them. The start of the path, itself, can’t be seen from the main road. This may be important, because the prosecution implied that not only did Mrs Bryson not know Jodi’s family, she also did not know the Easthouses area particularly well. By July 1st, when Mrs Bryson gave her first statement, there was no information in the public domain about how Jodi got onto the path and certainly no claim that she had walked along the main Easthouses Road to access the path from there.<sup>6</sup> (*See Map 4, Alternative Routes to Roan’s Dyke Path*)

The media were reporting from the early hours of July 1st that the body of a teenaged girl had been found near the path and Mark "Bill" Bryson was (according to Ferris) in Alice Walker’s house before 1pm, but Mrs Bryson did not contact investigators until much later in the afternoon – well after details of the “sighting” had been shared with Jodi’s family.

Mrs Bryson originally timed her sighting at around 5.40 to 5.45pm – almost an hour later than was finally presented at trial by the prosecution. She said she got home from the shopping trip/viewing a house for sale at about ten to six; she knew this because she received a phone call on her mobile at around 6.20pm, “about half an hour” after she got back. This estimate of making the sighting 5 to 10 minutes before she got home is consistent with the route she would have taken and the unloading of children and shopping from the car.

The following day, she gave an even more detailed statement about the timing of her sighting - her daughter arrived home from school about 4.05pm, she and the children got in the car immediately and took 5 to 10 minutes to drive to the supermarket and the weekly shop took between 30 and 45 minutes. (The receipt from the supermarket was timed at 4.45pm, so these estimates seem fairly accurate.) After driving round to view the house for sale (getting lost on the way because she was unfamiliar with Easthouses), she arrived home, unpacked the shopping and was preparing tea when the phone call (referred to above) was received. She said she had checked the phone and the call was logged as having been received at 6.17pm, confirming her original account.

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<sup>6</sup> <http://www.scotsman.com/news/14-year-old-girl-found-murdered-1-775078>



By the prosecution's own reasoning, she would have required 5 minutes or so to load her shopping and the children into the car at the supermarket, before driving to Easthouses to view the house for sale. The minimum time for that journey was 12 minutes, so, on the basis of the till receipt time of 4.45pm, she would not have arrived in Easthouses until two minutes past five, at the absolute earliest. Had she taken the longer route (she could not, by the time of the trial, remember which route she took on the day), she would have arrived in Easthouses at 7 minutes past 5. Both times are too late to have sighted someone who could have been Jodi at the entrance to the path at a little after ten to five. The final prosecution case was that Jodi left her house at 4.50pm (in order to claim the 5.15pm time of death), the walk from her front door to the entrance to the path taking 2 minutes and 40 seconds. Mrs Bryson still had to do all the driving around to find the house for sale, stopping in the street to look at it from the outside, then manoeuvring the car out of the cul-de-sac back onto the main road, which is when she claimed the sighting took place.

Why, and more importantly, how did this statement become one of the most critical pieces of evidence in the prosecution case when, by the prosecution's own reasoning, Mrs Bryson was at least 10 – 15 minutes too late to have seen someone who could have been Jodi at the entrance to the path?

Here is how it was dealt with at trial:

The prosecuting QC produced the supermarket till receipt showing the time of the transaction as 16.45 and 31 seconds.

He then produced a bank statement giving the time of the transaction as 16.32 and 45 seconds – thirteen minutes earlier. The only discussion about how the two documents came to show different times was the prosecution claim that the bank statement must be the correct time and the till receipt must be wrong. There were no questions about how this affected what Mrs Bryson said she did prior to checking out at the supermarket – with the new timings, Mrs Bryson would have to have completed her full shop and checkout with two children, one a two-year-old, in just over 15 minutes. The original timings, supported by the telephone call logged on her phone, were thereafter ignored.

The new timings, as a result of the erased 13 minutes, placed Mrs

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Bryson as arriving in Easthouses between 4:49 and 4:54pm – just in time to see Jodi, if she had left home at 4:50pm, at the entrance to the path. Even with this adjusted timing, there is still a huge error in reasoning – by her own account, Mrs Bryson saw the girl and the youth after she drove around to find and view the house for sale and was *leaving* Easthouses and driving home.

Therefore, the claimed sighting at 4:49 – 4:54pm is not supported by any evidence whatsoever, because no time has been allowed for finding the house for sale and so on. This completely unsupported five-minute window would become the official timing of the last “confirmed” sighting of Jodi and the adjusted time of her leaving home.

There is, however, a further difficulty. According to Mrs Bryson, the girl she saw was standing on the pavement at the entrance to the path. If Jodi left home at exactly 4.50pm (and there is no concrete evidence that she did), she would have reached the entrance to the path at 4.52.40, leaving just one minute and 20 seconds for Mrs Bryson’s sighting, had it been possible in the first place. When all of the timing manipulations are taken into account – the time of Jodi leaving, Mrs Bryson’s original sighting and the adjusted supermarket checkout timing, it is quite startling to realise that only one is properly supported by evidence – Mrs Bryson’s original time of 5.45pm. But that means either Jodi was not murdered at 5.15pm, or the person seen by Mrs Bryson was not Jodi.

Perhaps, you may be thinking, the evidence of the sighting was so compelling it negated any doubts about the timing.

Initially, Mrs Bryson described the male she saw as white, early 20s, average height, not noticeably tall or short, medium build, sandy brown hair that appeared to be sticking up in a clump at the back and very thick. He was wearing what she described as a green, fishing-style jacket with lots of pockets and matching trousers. The jacket had a high collar and was waist length – it was because of the collar that she could not estimate hair length. She also referred to a “bulging pocket” on the left arm. He was standing on the track in the entrance to the path, several yards back from the road, his arms by his sides, palms facing forwards towards the girl. She could not offer any information about facial features whatsoever.

The girl she described as having very dark shoulder length hair, wearing

a plain navy hooded top with lighter blue, boot-cut jeans. She did not see her face and could not guess an age.

The problems here are immediately apparent – Luke was a skinny 14-year-old kid with poker straight, thin, blond hair. Jodi was wearing black, very baggy trousers and an equally baggy black hoodie with a large, bright orange “Deftones” logo across the back and smaller versions of the same logo on the left sleeve and upper left front. The pathologist would later note Jodi’s hair colour as auburn.

At no point, ever, did Mrs Bryson claim the person she saw that evening was wearing a Parka jacket, in spite of the prosecution’s best efforts to get her to do so. (The original “army clothes” description to which Ferris referred also did not mention a Parka Jacket.)

By the time her evidence was heard in court, a number of subtle (and not so subtle) changes had been made. Aside from the changed timings, Mrs Bryson told the court that the male was standing *at* the entrance to the path (not *in* it, some yards back from the road) and the female was approximately 20 feet further up the Easthouses Road. The prosecution case (and Mrs Bryson’s original statements) had always been that the two people were seen at the entrance to the path.

What the court had before it, in essence, were two different stories - in one, the girl was 20 feet away from the male, both were on the pavement, the male was at the entrance to the path, the girl further back along Easthouses Road. In the other, the male was more than 10 yards into the path and the girl was at the entrance.

The “20 feet away on the Easthouses Road” claim presented a risk to the prosecution case – if the girl was not standing at the entrance to the path and the male was not already on the entrance track, there was nothing to suggest she was headed down the path at all – she could, in this scenario, have walked straight past the entrance without stopping.

Completely ignoring the claimed position of the female, the prosecution QC produced a photograph of two police officer stand-ins at the entrance to the path, the female on the pavement directly in front of the entrance, the male further back on the track itself and attempted to rectify the anomaly; “About the male,” he asked, “He goes into the path and facing in which direction? When did this happen?”

Mrs Bryson replied, “Facing towards the girl.”

What was being suggested here was that the male was standing on the pavement then walked backwards into the entrance of the path as the girl walked towards him. The whole time, apparently, he had his hands by his sides, palms facing forward. Notice how the prosecution QC began his question with a statement of “fact” (“he goes into the path”). Nowhere, in any statement, did Mrs Bryson attempt to claim that this was what she saw – not one of her statements refers to either the youth or the girl moving from their positions.

Donald Findlay, cross-examining this witness, asked a number of questions about pictures of jackets which Mrs Bryson was shown by police, all of which she had ruled out as being similar to the one she saw the man wearing, then turned to the picture she did pick out – Photograph 8.

Mr Findlay asked the witness, “...on October 10th, you very clearly made the point to the police that the jacket shown in photograph 8 is not - **is not** - the same jacket that you saw the person on the path wearing. That’s correct, isn’t it?”

Mrs Bryson agreed, saying she pointed out the differences to police at the time. At first glance, it seems odd that she picked out any of the jackets if none of them were the same as the one she saw. But she was instructed to pick out the picture (from the police photographs) of the one that was “most like it.” If none of the other pictures were anything at all like what she described and this one was somewhat like it, even if it was not particularly similar, then it would, by default, be the one that was “most like” what she saw. Was it just coincidence that photograph 8 was a parka jacket, the very style of jacket the prosecution needed jurors to believe Luke wore and then disposed of that night? There were two significant features of Photograph 8 which ruled it out, categorically – it had no collar and no sleeve pocket anything like the “bulging” pocket Mrs Bryson originally described. It is disturbing that this photograph, rejected by the witness herself as “what she saw,” ended up as evidence before the jury. Mrs Bryson was not shown the pictures of the jackets until October 10th, more than 14 weeks after she first spoke to police about her sighting, yet police had the clothing Luke was wearing on the night of the murder the whole time. Why was so much time allowed to pass before asking her to identify the jacket? Bearing in mind that her brother-in-law was in direct contact with Jodi’s family throughout this

period (something investigators must have known), the opportunity for Mrs Bryson's recall to be influenced by outside factors was obvious.

On August 14th, while police were interrogating just-turned 15-year-old Luke in a Section 14 interview (this is explained in Chapters 15 & 16), a Polaroid photograph of Luke, taken by them that morning, was inserted into a spread of photographs and taken to Mrs Bryson to see if she could identify the person she saw on June 30th. Luke's was the only picture with a light background, the only one with long hair (relatively) and many of the others pictured were clearly much younger. In a Frontline Scotland documentary made in 2007<sup>7</sup>, it was observed that "they didn't have an arrow pointing to him, but they might as well have had," so different was the picture of Luke from the others in so many ways. Other experts have pointed out that, as the only picture on a light background, this photograph would "draw the eye" to it. Mrs Bryson picked out Luke's photo as "very like" the person she saw on the afternoon of June 30th, even though she was clear that she did not see the face of that person. Luke was photographed in a black, short-sleeved T-shirt, his hair, poker straight, hanging down either side of his face to jaw level. In essence, nothing in the photograph she was shown even remotely resembled the description she originally gave to police. The very next day, on August 15th, the first pictures of Luke Mitchell, in a parka jacket, appeared in the media. Mrs Bryson was never asked to identify Luke in an identity parade and it would be more than 15 months before she was asked to identify him, in person, in court.

Mrs Bryson was not happy with a photofit she was asked to create. (Neither, it appears, were the police, since they chose not to use it.) She was not happy with the jacket she eventually picked out, after at least 6 visits from the police and the picture of Luke that she picked out was so markedly different from the others that it could not possibly be said to be a fair, unbiased or impartial identification.

What has never been ascertained is whether, because of the close links between the Jones/Walker families and Mark "Bill" Bryson, Mrs Bryson ever saw a picture of Luke, or was given a description of him, prior to her "identification" from police photographs. In spite of all of this, the Andrina Bryson sighting was claimed to be reliable.

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<sup>7</sup> Luke Mitchell: The Devil's Own? BBC Frontline Scotland May 9<sup>th</sup> 2007  
<https://www.bbc.co.uk/programmes/b007h9fw>

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Perhaps the most telling event of all is the fact that Andrina Bryson did not identify Luke Mitchell in court as the person she saw on June 30th 2003. The dangers of Dock Identification have been documented extensively and this process is known to be a significant factor in wrongful convictions. Although Mrs Bryson did not succumb to the leading nature of the Dock Identification questions, the same cannot be said of others.

### **Lorraine Fleming and Rosemary Walsh.**

Other witnesses were brought by the prosecution at trial to strengthen police claims that Jodi was murdered by Luke at 5.15pm and to close the window of opportunity opened by the claimed leaving time of 4.50pm. Lorraine Fleming and Rosemary Walsh were sisters-in-law, who said they saw a youth who could have been Luke on the Newbattle Road, close to the entrance to the path. This sighting, allegedly, took place between quarter to six and six o'clock. In Rosemary Walsh's first statement on 8th July, a week after the murder, she said she arrived at Lorraine Fleming's house between 20 and 25 past 5pm to take her shopping. As she drove down the hill on the Newbattle Road, her sister-in-law "pointed out someone standing by a wooden gate about 10 – 15 yards past the entrance to Roan's Dyke path."

She described the person as being aged between 14 and 17, about 5'6" to 5'7," but that it was "hard to tell because he was leaning on the gate". He had dark hair which may have been wet or had something like gel on it – straight, straggly looking hair. She was unable to say if he had a fringe or parting at all and she could not see his face because of his hair, which was between chin and shoulder length. His jacket was dark, hip length and might have been waterproof - she could not offer any further description – she was not sure if it was open or closed and could not say if it had a hood. She continued, "*If I was to describe what type of jacket, I'd say a parka, but that's really just because of the length.*" The trousers were black, baggy and "like jeans". He was wearing dark footwear, but she was not sure if they were shoes or trainers. Two hundred yards along the road, she and Lorraine Fleming saw a jogger running towards the bridge on the Newbattle Road. They assumed the jogger had run past the youth. She believed the time was about quarter to six. (*See Map 5, The Newbattle Road*)

Her second statement, on August 6th, added nothing other than the fact

that there were roadworks on the Newbattle Road on June 30th. The third statement, on August 21st (six days after the first picture of Luke appeared in the media), included the comment that Mrs Walsh, having seen those pictures, remarked: “Oh, my god, that’s him!” Like Andrina Bryson, Mrs Walsh was driving when she made this sighting.

Lorraine Fleming’s first statement stated that Mrs Walsh arrived at about 5.30pm and they left to go shopping at about 6pm.

Her description of the youth was similar although she added that he was “very slim” and his hair was “sticking closely to his head”. The jacket was dark; she was quite sure it was not black, but possibly dark green and she could not say if it was zipped up or not. She, too, did not see his face.

By 6th August, Ms Fleming’s account had become more detailed. The youth’s jacket, by now, was dark green (the word “possibly” was missing from this account) and “went down to his bum.” It may have had a zip and was loose fitting. She did not think the trousers were baggy – she would have noticed that. The boy’s hairstyle was “the same as Liam Gallagher’s” – just over collar length and fairly dark. About the timing of her movements that night, in this statement, a month later, she said, “*the time 17:40 sticks in my head, but I don’t know if that’s when Rosemary arrived, or when we left*”.

Neither description matches Luke or the descriptions given by Andrina Bryson, who described an older male with “thick, messy, sandy brown hair, sticking up in a clump at the back.” As late as August 6th, Ms Fleming and Mrs Walsh were agreed that this youth had dark hair - it was a bright, sunny evening around 6pm on June 30th, so the descriptions of dark hair cannot be explained away by bad light.

Just before six o’clock, Luke was identified by people who knew him, sitting on a wall at the end of his street, 400 – 500 metres further along the Newbattle Road, wearing completely different clothes (baggy jeans, green bomber jacket with orange lining and distinctive, light coloured snowboarding boots). The drive from the point Ms Fleming and Mrs Walsh made their sighting and the place Luke was identified just before six o’clock would take less than 30 seconds. Luke said he sat on the wall from a little after 5.30pm, when he left his home, to wait for Jodi. He wandered a short way (around 40 metres) down the Newbattle Road,

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in the direction of the Fleming/Walsh sighting, to the entrance to Barondale Cottages a “couple of times” to see if he could see Jodi coming. The witnesses never mentioned seeing a second youth, 400 yards and less than 30 seconds later “just leaning against the wall” or “just looking at the pavement.”

Pulling together the eyewitness statements and other known evidence brings this part of the case to its logical (and ludicrous) conclusion. Luke left home in a green bomber jacket and baggy jeans, changed into fishing style clothing in order to be seen by Andrina Bryson between 4.49 and 4.54pm, murdered Jodi at 5.15pm, then stripped and mutilated her body before calling Judith’s landline at 5.32pm in order to “cover up” what he had done. Eight minutes later, he called again and five minutes from the point this call connected, he had made his way onto the Newbattle Road, now wearing a Parka jacket (and apparently having dyed his hair on the way), where he stood in full view, leaning against a gate, making no attempt to flee or hide. None of the statements from Ms Fleming or Mrs Walsh described any sign of blood on the youth, nor was he agitated or behaving strangely – he was, they said, simply looking down at the pavement. “Luke” had clearly disposed of the fishing style jacket and trousers by that stage and cleaned all forensic traces of himself from the crime scene.

Somehow, he got from that point to the wall at the end of his street, having changed his clothing back to the bomber jacket and baggy jeans (and dyed his hair back to blond), disposed of the Parka jacket somewhere and cleaned all forensic traces from himself in less than 15 minutes.

Taking all of the eyewitness accounts together, the description of the youth that investigators would later claim was a “dead ringer” for Luke was:

Male, aged 14 – 17, in his late teens or early twenties with thin, straggly, dark hair sticking to his head which was very thick, sandy coloured and sticking up in a clump at the back.

Medium build, very thin. He was wearing a waist length green or khaki fishing style jacket with matching trousers – the waist length jacket “came down past his bum” and the fishing style trousers were black baggy jeans that were not baggy.



I am not being flippant or frivolous – this is exactly what has to be accepted, in order for the prosecution case and the evidence on which it relied, to be accepted. And it was what was accepted by investigators as credible and reliable evidence.

The jogger was traced. She said that she ran her “usual route” through Newbattle Abbey Crescent, turning left onto Newbattle Road. She believed she got to Newbattle Road between twenty and quarter to six (based on a time check at a fixed point on her usual route, just before 6 o’clock.) This is almost certainly the jogger of whom Ms Fleming and Mrs Walsh spoke – their descriptions of her clothing matched what the jogger, herself, said she was wearing. But they were clearly mistaken about seeing her running over the bridge, towards the Abbey, or having run past the youth. She emerged from Newbattle Abbey Crescent onto the Newbattle Road directly opposite the Abbey, at a point already past the bridge, putting the jogger more than 400 yards away from where Ms Fleming and Mrs Walsh claimed to have seen her. If they were at the gate, where they said they saw the youth, they could not possibly have seen the jogger emerging onto the Newbattle Road because of the bends in the road, strongly suggesting they were, in fact, only 200 yards from the entrance to Newbattle Abbey on the right and Newbattle Abbey Crescent on the left – exactly the place Luke was positively identified 10 – 15 minutes later and where he said he had been for around half an hour between 5.30pm and 6pm. But the prosecution case needed “Luke” to be closer to Roan’s Dyke path than that. It’s important to note that, if the jogger was correct about the time (between twenty and quarter to six) the time scale for Luke to be the murderer is impossible, at between 25 and 30 minutes. (*See Map 5, The Newbattle Road Sightings*)

In court, both witnesses identified Luke in the dock as the person they saw on the night of June 30th. Pushed to explain how they could do so when their previous statements were absolutely certain that they did not see his face and would only be able to identify him from his clothing (Luke was wearing a shirt and tie in court) there emerged, for the first time, a story about seeing part of his face and one eye in the rear-view mirror when the youth (obligingly) brushed his hair aside for a moment.

Lorraine Fleming’s dock identification was particularly outrageous. Asked by the prosecution QC if she could identify, in the court, the person she saw that day, she said: “Not sure.” Encouraged by the same QC to say if she could recognise someone in court who resembled him,

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perhaps from a different angle or perspective, she replied: “*Yes, but his head is completely different.*” Unbelievably, that was accepted as a positive identification.

Also, for the first time, in court, both witnesses mentioned commenting that the youth looked like he was “up to no good,” even though neither made such a suggestion in any of their police statements. Like Ferris and Dickie, these witnesses had obviously influenced each other’s evidence.

But there was more than just unwitting collusion between these two witnesses which influenced the evidence they eventually gave in court. By the time both gave their initial statements (in early July), in which their descriptions did not match Luke, Luke’s house had been raided for the first time and it was clear police were treating him as a prime suspect, regardless of their assurances that the raid and questioning were routine procedures.

After Luke’s picture appeared in the media for the first time on August 15th, Rosemary Walsh began telling work colleagues that Luke was the person she and her sister-in-law saw on the evening of June 30th, (fully six weeks earlier). A colleague urged her to go to the police but she did not do so. In the event, the colleague called the police and passed the information to them. On August 21st, police approached Mrs Walsh again to confirm her “recognition” of Luke, taking with them the newspaper picture. The following day, Ms Fleming said in a statement that Mrs Walsh came to her house at around 6.25pm the previous evening and said, “*I know I’m not supposed to talk to you, but just take a look at this*” and handed her the Daily Record from August 15th containing the picture of Luke.

Mrs Walsh was asked directly, in court, “Did you show the newspaper to your sister-in-law?” and she answered “No.” Ms Fleming had already given evidence in court, as well as in statements, that she was shown the newspaper by Mrs Walsh on the evening of August 21st. Mrs Walsh, herself, said in a statement dated 29th September 2003, over a year before she gave evidence at trial, that she took the newspaper to her sister-in-law. Neither witness was warned, as Corinne Mitchell was, about the importance of telling the truth.

Can it reliably be claimed that these witnesses were not being influenced

by investigators? The known evidence demonstrates that the police took newspaper pictures of one person to a witness who had described someone completely different. Further, when the police visited Ms Fleming on the afternoon of August 21st, she made no mention of such a recognition. However, the following day, on August 22nd, after admitting having been given the newspaper by her sister-in-law, Ms Fleming went on to state that she, too, recognised the youth, claiming the August 15th picture was the same youth she recognised from another newspaper picture. This earlier picture she was adamant she had seen prior to July 8th, the first time either she or her sister-in-law had given statements to police.

The earlier picture, Ms Fleming explained, was in a newspaper her partner brought home from work. This account was demolished at trial – firstly, Ms Fleming’s partner was not in Scotland in the period during which she alleged he brought home the newspaper containing the picture and secondly, there were no pictures of Luke in the media prior to August 15th. Ms Fleming was absolutely insistent in court that she definitely saw the earlier picture. None of this explains how either of them could have recognised the youth since they did not see his face. Asked in court what she meant by saying she could tell police nothing about the boy’s face, other than that he was “white,” Mrs Walsh replied “Because... at that stage, I still couldn’t see him properly.” The next time Mrs Walsh claimed to have “seen him properly” was in the newspaper pictures of August 15th.

Although neither witness mentioned, in any statements, a t-shirt worn by the youth (both claiming either that the jacket was zipped up or that they could not remember whether or not it was zipped up), at trial, Rosemary Walsh stated that the youth was wearing a black t-shirt with writing on it – exactly what Luke was wearing in the first newspaper picture.

Seven years later, a witness offered to provide a statement for the SCCRC application, stating that Mrs Walsh, in the week leading up to her first police statement, was telling people that she and her sister-in-law had seen a youth on the Newbattle Road that night “*at the entrance to the Abbey*” – directly opposite where Luke was positively identified by others who knew him that evening and where the evidence about the jogger placed the Fleming/Walsh sighting.

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How did the statements of these two witnesses, as flawed as they were, come to carry so much importance to the prosecution case?

In part, their statements were a product of the questions asked and statements written in “police speak” by investigating officers. But the evidence of Ms Fleming and Mrs Walsh went beyond that, to direct manipulation and influence.

In everyday life, we tend to focus on information that supports our subconscious views, beliefs and perspectives and to filter out information that does not. We make assumptions, based on what we think we know, or what we think is going on and select the pieces of information which best justify our assumptions as correct. That is not to say we are consciously aware of doing this – it is just how we make sense of the world around us – a shortcut to understanding, if you will.

But when that process is deliberately exploited and people don’t realise that it (and they) are being exploited, those doing the exploiting are in a strong position to elicit whatever response they seek.

The “identifications” of Fleming and Walsh can be explained in this manner. Initially, they saw something. They had no idea whether it was important or not, but the police were asking for anyone who was in the area to come forward, so they went to the police with their “something.” Over time, that something was moulded and manipulated into something else. The process was subtle enough not to be immediately apparent to the witnesses until the changes over time were put to them at trial.

They would be unaware of how their accounts changed from their first version to the last, through a series of small, almost imperceptible alterations along the way. But, under oath, their final story was what they were questioned about and, human nature being as it is, they would have to search for ways to make sense of that version in their evidence. Again, I don’t infer a conscious or deliberate process – all of us strive subconsciously for congruence in order to make sense of events.

The jurors also had no idea how the accounts changed from the first to the last versions, so they, too, had to make assumptions. Without the information that the police influenced the various changes, jurors may have assumed the witnesses were mistaken in their early statements, or that they remembered more over time. This was a huge case, the longest trial of a single defendant in Scottish history and the jury was swamped

with confusing, contradictory, technical and illogical information. There was no time for jurors to properly figure out if or how it was possible for witnesses to later “remember” something completely different from what they first saw – that this information was not additional to their early statements but was in complete contradiction to it.

That is not to say the two witnesses themselves did anything wrong – they could not have known what was going on and how it would be ultimately used. It does, however, demonstrate the enormous significance of police influence on what eventually becomes evidence in serious cases.

Ms Fleming’s distress in court also highlights the consequences of this manipulation for witnesses. When Donald Findlay pushed her to explain how she could have seen and commented upon a picture that never existed, she burst into tears, insisting, “I remember that, it definitely happened,” even though, of course, she could not possibly remember something that categorically did not happen.

I am not making a claim that Ms Fleming was deliberately lying. Like the others, she honestly believed what she was saying, because that was the only explanation which made sense of the anomalies in the finished story - ordinary people giving statements to the police simply do not understand the significance of little changes, even if they notice them.

Indeed, this manipulation relies, for its success, on the strength of our need for congruence. We can’t, as a general rule, carry around two opposing views of something we experienced and accept each of them as fact. Mrs Walsh, for example, could not carry the view that this was the person she saw, at the same time as carrying the view that it was not the same person (or she simply didn’t know.) Once she stated to several people that it was the same person, her mind would then look for confirmation to bolster that “reality,” especially after the control was taken from her by someone telling investigating officers about her claims.

It would be stated at trial and in the appeal decision, that the accounts of Ms Fleming and Mrs Walsh corroborated each other and were part of the basis upon which jurors were entitled to conclude that Andrina Bryson’s sighting was of Luke. It was never explained how two sightings, 55 – 70 minutes apart, of two completely different individuals, neither of whom matched known descriptions of Luke that night, corroborated anything.

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The Senior Investigating Officer (SIO) Craig Dobbie, in an interview with the media after Luke was convicted, said:

*It wasn't until July 3 that our suspicions about Luke increased. We had a degree of suspicion, but not enough to detain him. Things were starting to piece together - things his school friends were saying about him carrying knives; the sighting by the witness Andrina Bryson - who claimed she had seen Luke with a girl standing at the top of the Roan's Dyke path on the day she was killed;<sup>8</sup>*

By July 3rd Andrina Bryson's statements claimed she saw a girl and a youth, neither of whom remotely resembled Luke or Jodi, so her information could not have contributed to suspicion about Luke. An application for permission to search Luke's home was made on the morning of July 3rd, so investigators had just 48 hours to gather information about "the things his school friends were saying about him carrying knives." Once again, the priorities of the investigation are laid bare – rather than concentrating on gathering solid, robust evidence about the murder, police were questioning 12 – 14-year-olds about "what they knew" about Luke Mitchell, having ensured they knew the police were expecting to arrest Luke within the week. In those 48 hours, investigators were not soliciting information about others, close to the investigation, with known violent backgrounds, who were known to carry knives.

At the appeal in 2008, the judges ruled that the jury could have concluded, on the basis of Andrina Bryson's evidence, that the sighting was credible, the male was Luke Mitchell and the female 'could have been' Jodi.

What was the factual, verifiable evidence on which jurors could have concluded that the sighting was credible? The wording of the judges' comment is interesting – "was Luke," but only "could have been Jodi." Mrs Bryson could not offer any explanation for how she failed to notice the bright orange logo on Jodi's hoodie, or how her description of black, very baggy trousers was "lighter blue, boot-cut jeans." Newbattle High School was presenting a concert by pupils that evening – the pupils involved would have been making their way back to the school from around 5pm onwards, in order to set up and prepare for the concert. Since the uniform for Newbattle included a blue sweatshirt, it is entirely feasible that the girl seen by Mrs Bryson was heading back to school

for the concert that evening, especially if the original timing of approximately 5.45pm is accepted, but no investigation into that possibility was ever made. The proper conclusion in all of this, common sense dictates, is that the girl described by Mrs Bryson was not Jodi. And if the girl was not Jodi...

Furthermore, if Mrs Bryson's original timing is accepted, the person seen by Fleming and Walsh could not possibly have been the same as the one seen by Mrs Bryson, since the sightings happened at opposite ends of the path at the same time!

The evidence on which the second plank of the prosecution case relied was clearly compromised, not only by the anomalies and discrepancies in the evidence itself, but because of the influence of Mark "Bill" Bryson from the earliest hours of the police investigation.

SIO Dobbie would later tell the media that suspicion focused on Luke by the early hours of July 3rd because of "discrepancies" between his accounts and those of the search trio. At that time, there were no discrepancies – all of the searchers were recounting exactly the same series of events. However, by now, it is apparent that the investigating team paid no heed to discrepancies in the accounts of other witnesses who would all go on to give evidence against Luke Mitchell.





## **Chapter Eight**

### **Phone calls on the night of the murder**

Perhaps one of the most surprising discoveries for me in the earliest days of my involvement in this case was the importance of attention to detail. Some of the tiniest details led to some of the most critical developments in the case, because no-one had picked up on, or corrected, errors in those early findings.

The level of detail in this chapter may appear, at first glance, to be unnecessary or overly pedantic. Yet it is precisely the detail included here that shakes the very foundation on which the case against Luke was built.

Of the three central planks of the prosecution case, plank one, guilty knowledge, was crucial. If the prosecution could not prove beyond doubt that Luke already knew where Jodi's body lay and led the family search trio to it, the rest of the case against him would have collapsed. The evidence on which the prosecution relied to support this accusation came, in its entirety, from the three members of Jodi's family who met Luke on the path that night.

Therefore, the period between the discovery that Jodi was missing and the finding of her body – who was where, doing what, when and with whom, should have been crucial to the investigation. Numerous claims were made about what was discussed in the various calls that night and the actions that were taken as a result of them. In a first-class investigation which left no stone unturned, all of those claims would be checked to ensure they were consistent and that they adequately accounted for the movements of the various people involved – that is perhaps one of our most basic expectations in a murder investigation. In order to understand the significance, not only of the calls themselves, but of the investigation's treatment of them, we have to look at all of the calls and the claims made about them as a whole.

This is where the complexity of the changing stories and how those came about, begin to take on a very real substance. In previous chapters, I have outlined the significant events in the lead up to the evening of June 30th, the evening itself and the immediate aftermath – now, we can fill in some of the blanks by looking at what was said to be going on between the calls and texts to Luke's phone at the very beginning and

the events which subsequently unfolded.

The importance of the timings of claimed events in this chapter cannot be over-stated – if the evidence demonstrates that accounts of specific movements, discussions or events cannot be correct, then something is amiss at the heart of the investigation. All of the following information is taken from telephone logs and witness statements available to the defence. Although it is complicated and confusing, it highlights the next phase of how the case against Luke was built and what had to be ignored, played down, or given ‘innocent explanations’ which, on closer inspection make no sense, in order to maintain the chosen official line. In the space of just 42 minutes, a number of claims and assumptions were made and thereafter treated as fact. It would take years before careful examination of them uncovered the truth – many of them could not be confirmed on the basis of the available evidence.

**10:38pm:** The initial text message, sent from Judith’s mobile to Luke’s, intended for Jodi - “Right Toad, 2 weeks grounding, say bye to Luke,” was the first point at which anyone knew something was wrong on the evening of June 30th. Judith believed, as late as July 31st, a full month after the murder, that this text was sent at 10.15pm or 10.20pm (twenty to twenty-five minutes before it actually was). It may be of some significance that the text did not say “2 weeks grounding *again*,” since the story that ultimately emerged was that Jodi’s previous grounding punishment had only been lifted around 20 minutes before the time she was claimed to have left to meet Luke earlier that evening.

**10:40pm:** When Luke called Judith and told her he hadn’t seen Jodi all evening, the call lasted just over two minutes (ending at 10:42:40) and was the call in which it was agreed by all parties that both Judith and Luke discovered that Jodi had been out of contact for almost six hours.

**10:44pm:** One minute and 20 seconds after hanging up from Luke, Judith’s call to her mother’s landline, to find out if Jodi was there, connected (this call also lasted a little over two minutes, terminating at 10:46:20). By the time this call terminated, just 8 minutes had elapsed since Judith’s first text to Luke.

**10:49pm:** Two minutes forty seconds after hanging up from Alice Judith called Luke back saying that Jodi was not with any of her friends and that she (Judith) was calling the police. Aside from one call to Yvonne Walker’s number at 10:47pm which was unanswered, no call

was recorded from Judith's phone (landline or mobile) to any of Jodi's known friends in the seven minutes between the end of her last call to Luke and the beginning of this one. There is no phone data suggesting Judith had information that others made these calls in those seven minutes – there was no call back from Alice, Janine or anyone else between 10.44pm, when Judith called Alice and 10.49pm when Judith called Luke back.

The anomaly here is that Luke said Judith told him she had called “all of Jodi's friends” and she was nowhere to be found, yet she had only spoken with Alice. The 10.49 call was also the one in which Judith asserted, much later, that she said to Luke, “Just tell me the truth. I won't be angry,” suggesting that Judith suspected Luke might be covering for Jodi, who might have been up to something she should not have been (e.g. smoking cannabis) and hiding out somewhere until the dust settled. Luke has no recollection of Judith saying this – his recollection has always been that she was in tears, “really upset” because Jodi was not with any of her other friends. This was also Corinne's recollection – she told Luke, “Judith's probably just panicking – she couldn't have called all of Jodi's friends within five minutes.” Judith's partner Alan and her son Joseph, both of whom were said to be present while Judith was making those phone calls, never stated, or even suggested, that Judith said to Luke, “Just tell me the truth. I won't be angry.”

Why does that matter? The insertion of this claim later in the narrative gives the impression that Judith suspected Luke may be lying to her, which fits neatly with the later prosecution claims about Luke's coolness and callousness on the night of the murder – in other words, it supports the suggestion that Luke was calmly lying to Judith from the very beginning. The evidence, however, does not support this claim by Judith, since no-one else ever reported hearing that particular comment being made.

It was in this call that Luke told Judith he would set off for Roan's Dyke path to look for Jodi, either keeping Judith updated if he found Jodi on the way or making his way to Judith's house if he didn't find her. Although no times were discussed, both Luke and Judith knew the journey, end to end, would take less than half an hour if Luke did not find Jodi on the way.

**10:53:30pm:** (approximately two and a half minutes after hanging

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up from the 10.49 call to Luke and fifteen minutes since the first text) Judith's phone connected to Alice's landline. During this call, apparently, Alice told Judith to "calm down and have a cup of tea." It was also during this call, apparently, that Alice asked if Judith had checked Jodi's bedroom in case she had come in without Judith hearing her.

**10:59pm:** (approximately three minutes after hanging up from the previous call with Alice and 21 minutes since the first text) Judith called Luke's mobile just as he reached the Newbattle entrance to Roan's Dyke Path. It was in this call, Judith believed, that Luke told her he was coming up the path on his bike, although he actually told her, she agreed a month later, that he was coming up the path "with his dog." It would have taken Luke no more than twenty minutes, from this point, to reach Judith's house, with or without Jodi – he would have been expected to arrive there by 11.20pm at the latest. Had he found Jodi, perhaps injured, on his way up, he would have called Judith from the path.

**11:03pm:** A call from Judith's landline connected to Alice's landline and, it was claimed, Alice told Judith to call the police. Luke had already been out looking for Jodi for around 12 minutes by then, in the belief that Judith was calling the police immediately after their short conversation at 10.49pm.

**11:04pm:** A call was made to directory enquiries from Judith's home, the explanation being that Judith was looking for the number of the local police station (rather than placing an emergency 999 call).

**11:05pm:** Judith reported Jodi missing to the local police, 27 minutes after the first text

**11:06pm:** A call connected to Alice's landline. None of the search trio's accounts mentioned anyone remaining in the house after they left at 11.03pm, nor was there any answering service or machine. The implication from all of the search trio's statements was that the house was empty once they left. It would later emerge that there were two other family members living in Alice's house on the night Jodi was murdered.

**11:17pm:** Judith called Luke's mobile. There was no call duration available to the defence and Luke does not remember talking to Judith once he was on the path, so it's most likely that this call simply rang out or was cancelled immediately by Judith (perhaps because she intended

to call Janine and speed dialled Luke's number by mistake). None of the others mentioned Luke's phone ringing on the walk back down the path.

**11:18pm:** A call from Judith connected to Janine's mobile. Janine said the search trio were in "the complex" at this time, but Alice said they were on Roan's Dyke Path. It was in this call that Judith told Janine the police were in her house in response to the missing person call, according to Janine's account. Alice said she did not receive the information about the arrival of the police directly from Judith, but rather, Janine passed it on to her. All three of the family searchers stated that this call was the point at which all of them knew the police had arrived. Alice would claim, much later, that Judith also told Janine that Luke was making his way up Roan's Dyke Path, although none of Judith or Janine's statements support that claim.

*(Map 3 shows the route from Easthouses to Mayfield and vice versa, via "the complex")*

**11:20pm:** Two officers logged their first call at Judith's address, to take missing person details, with police control.

This forty-two minute period was a pivotal point in the entire case and everything about it should have been scrutinised to ensure the evidence gleaned from it fully supported the allegations against Luke. Police investigators have a duty to consider all explanations or interpretations, rather than simply accepting the explanations and interpretations that best fit with their chosen theory – that is what we all expect in the pursuit of true justice.

Before any further examination of the various calls and statements is made, it is important to point out that there was a call in the police logs, noting the missing person details – I refer to this as the 'first (unidentified) call' for reasons which will become obvious. The information about this call was found in the defence papers almost six years after Luke's conviction. Three separate legal teams had access to the files in that period – none of them brought this information to the attention of Luke, his family, his supporters or any court. The police log of this call noted details of Judith's name, Alice's name (including her maiden name) and the information that Jodi was missing; she had not been with her boyfriend and was not at her Gran's, all given to the operator by the caller, who gave her identity as Judith. The time of that

call was **10:45pm**.

Something is very wrong here. Judith did not know and could not have told anyone else that Jodi had not been with Luke that evening, until after she hung up the call with Luke at 10.42:40pm. Thereafter, she said she simply hung up and called her mother, without asking where Luke was, or what the arrangement had been for he and Jodi meeting up that evening. There was just one minute, twenty seconds between the end of the call with Luke and the connection of the call to Alice, therefore, there was no way of anyone knowing, at 10.45pm, that Jodi was “missing” - Judith could have discovered in the 10.44pm call to Alice that Jodi was at her Gran’s.

According to the phone logs, the 10.45pm call to the police was made while Judith was still on the phone to her mother (the duration of the call to Alice being 10:44 to 10:46:20.) Even allowing for the clocks being out by a few minutes, when Judith called Luke back at 10:49pm, she told him she was *calling* the police, not that she had already called them. The 11.05pm call from Judith to the police was not logged in police records released to the defence but was confirmed by Judith’s phone records. There does not appear to be a call from Judith’s phone (landline or mobile) to the police at 10.45pm.

Whoever made this mysterious call to the police reporting Jodi missing less than three minutes after Judith, herself, discovered Jodi had not been with Luke, before any other checks were made and before it was ascertained that Jodi was, in fact, missing, has never been identified. The number from which this call was made was not logged in police records. By another odd coincidence, Judith said in statements that she called the police twice that night, the first to report Jodi missing and the second to tell police that a body had been found by the searchers. Only the 11.05pm call to police appears in the phone records and it was in this call, according to all of the family statements, that Jodi was first reported missing. This call could not have been one in which the information about a body was passed to police, because Jodi had not been found by then.

However, it is interesting that in the time-space between Judith’s first text to Luke’s phone and her call to the police reporting Jodi missing (a period of 27 minutes), the longest period of time during which Judith was not in phone contact with someone was three minutes (the short-

est being less than one minute). While that is consistent with a frantic mother calling here, there and everywhere looking for her late-home daughter, it does not, and cannot, account for the 10:45pm call to the police, logging all of Judith's, Alice's and Jodi's details and the report that, at that time, Jodi was already "missing".

This anomaly aside, analysis of the treatment of the other calls that evening raises a number of important questions.

Following the 10.49pm call, Luke gathered up the dog and torch and set off towards Roan's Dyke path to look for Jodi. His reasons for doing so seem fairly obvious – he knew Jodi was planning to come down to Newbattle using that path earlier in the evening and she had failed to turn up. It would have made no sense for him to turn around at the East-houses end of the path and head back home if he did not find Jodi, hence the arrangement to carry on to Judith's house. The accounts and actions of the remaining members of the search trio, however, are not nearly so easily explained.

In court, Judith stated that she "just knew" something was very wrong after she spoke with Luke at 10.40pm. According to Steven Kelly, the first call from Judith was answered by Janine on Alice's landline at "about 10.30pm." Like Judith, Kelly "just knew" something was wrong from Janine's reaction to the phone call. He estimated the search trio left at 10.45pm. The later accounts of the various phone calls demonstrate that Kelly was wrong about the times of both events, but, coincidentally, the mistaken time of leaving was exactly the time of the mysterious first, unidentified call reporting Jodi missing.

Janine tried to look up some numbers for Jodi's friends, but couldn't find any and a call was claimed to have been made to Yvonne Walker, from Alice's house, to find out if Jodi had been there. The standing arrangement was for Alice to call Yvonne's phone, let it ring twice and Yvonne would call her back. According to John Ferris, there was a call from Alice just after 10:00pm – he remembered the time because he and Yvonne were watching the ten o'clock news. This was not the usual two ring and call back arrangement – Yvonne answered the call and told Alice that Jodi was not there. Because Alice was pressing Yvonne, Ferris said he took the phone from Yvonne and assured Alice that Jodi was not there. Ferris was clearly wrong about this - it was some 40 minutes before Judith's first text to Luke's phone, so there should have

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been no reason for anyone to be looking for Jodi at 10pm - according to Judith, the first contact with anyone regarding Jodi's failure to return home was the text to Luke. The earliest Alice could have called anyone looking for Jodi would have been 10.47pm, after she hung up the first call from Judith. But the ten o'clock news that Ferris said he was watching when he spoke with Alice would have been finished by then.

Ferris said that there was a later call from Alice's phone to Yvonne's which hung up after two rings, but Yvonne did not call her Gran back and they "thought no more about it." If Ferris was mistaken about the 10pm call (as he would have to be) and the later "two ring" call was never returned, the search trio could not have confirmed that Jodi was not in Yvonne's flat when they set out to search for her.

By their own admissions, after the search party set off, they did not look for Jodi. At the time they left, the information available to them was that Jodi was supposed to have met Luke "up here" - in either Easthouses or Mayfield - but had not turned up. Judith did not ask Luke where he was when he called her, although, by 10.40pm, it's reasonable to expect she would imagine he was at home. Nor did she ask what their arrangements had been that evening - she was adamant throughout that she knew they were meeting and hanging out "up here."

The search party should, then, have been looking in the places Jodi was believed to have been headed - Easthouses and Mayfield. Yet they walked past Yvonne Walker's flat and Scott's Caravans without checking, through the route Jodi would have taken to get to Mayfield without checking and made directly for the path. According to their statements, they only turned on their torches (even though the shortcut from Mayfield to Easthouses through the "complex" is unlit) and started calling out for Jodi after they turned into the entrance to the path. While it could be argued that they did not check Scott's Caravans because they knew Jodi had not met Luke earlier that evening, they could not have known if something might have happened to Jodi in the grounds there which prevented her meeting Luke.

The search trio was never able to explain why all the places Jodi was believed to be going were completely ignored. Nor did they explain why, when Yvonne failed to call Alice back, they did not simply knock on her door to check if Jodi was there, especially since they had to walk past her flat on the way to the path. After they set off for the path, Alice



called one of Jodi's friend's houses. One other friend had been called before they left, but the call was not answered. In short, the search trio set out for the path with only the information that Luke had not seen Jodi to support their belief that she was missing.

This seems odd because of the two earlier occasions when Jodi had failed to return to her Gran's by her 10pm curfew. Rather than the immediate assembly of a search party, Alice waited until Janine came home from her bar job well after midnight and sent her to Yvonne's flat to see if Jodi was there. The urgency with which the search trio was formed on the evening of June 30th was at odds with other incidents where Jodi did not arrive home by her curfew time and was late by hours.

The search trio tried, in various statements, to explain that their decision to go directly to the path was because they knew Luke was coming up the path. This would, of course, still not explain why they headed directly there – if they knew Luke was searching there, the obvious thing would have been for them to search elsewhere, especially since Jodi was not expected (by them) to be in Newbattle that evening. But the information they gave in this regard was also incorrect.

Alice thought Janine either spoke with Luke or texted him and that was how they knew Luke would be on the path. Janine thought she contacted Luke to ask what way he would travel if he was coming from Newbattle to Easthouses or Mayfield (not, as was later claimed, what route Jodi would have taken to go to Newbattle). Kelly was a little more vague – he said that “somehow” the search trio found out that Luke was making his way from Newbattle via the path – he could not remember how or when but was sure it was after the search trio left Alice's house. Although he could not be precise about an arrangement to meet Luke, he said, *“I certainly wasn't surprised to see him, although I wouldn't have been surprised to see anyone that night.”*

As previously stated, **there was no phone contact between Luke and any of the search trio that night**, so none of the above claims can be correct.

Is it possible that Judith told the trio that Luke would be on the path? Technically, yes, but none of them gave that as the reason they headed straight to the path, even when they were asked directly, in court. Alice

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Walker, for example, said, “We just did.” Janine said, at one point, they went straight to the path because “that was the route Jodi would have taken” if she was going to Luke’s. But, once again, according to all of the information which was available to them, none of them should have known, or even thought that Jodi was heading to Newbattle at that stage. The only point at which Judith could have told the search trio that Luke was heading up the path was in the 11.03pm call, since she, herself, only found out that Luke was at the entrance to the path in her 10.59pm call to him. None of the family’s statements ever said this information was passed to them in the 11.03 call.

Regardless of the claimed reasons for the search trio heading straight for the path, one particular point stands out. There was a 14-year-old boy, alone on a “dangerous” path at 11 o’clock at night, looking for Jodi; Alan and Joseph were in a house less than three minutes from the path, yet neither of them went along to meet him. The search trio knew it would take them at least 20 minutes to walk down to the path from Mayfield. If their sole intention was to check the path, it made no sense to waste 20 minutes, when Alan or Joseph could have been there in three. If either of the men had set off immediately after Judith spoke to Luke at 10.59pm, they would have met him on the path, ensuring his safety as the search for Jodi progressed.

In her evidence in court, Janine said, “*We were only going to the path; we weren’t going all the way to Newbattle.*” So, as well as the search trio not looking for Jodi in all of the places she was supposed to be, they also had no intention of checking the entire route she would have taken to go to Luke’s – the path and only the path was their single area of interest. The question, of course, is why?

Judith said in one statement that she could not understand why the search trio all headed for the path; no-one explained this to her. In another, she said: “Somehow, my mum and Steven and Janine met up with Luke.” It could not be, then, that Judith was involved in any arrangement, because, in these statements, she did not know how the searchers came to meet up with Luke.

One of the most glaring anomalies in the search trio going to the path story is that of the timing. If Luke was, indeed, at the Newbattle entrance at 10.59pm (as all of the known evidence suggests) and if he made his way directly up the path after that phone call, he would be

expected to have reached the junction of the paths, where the search trio was waiting, at around 11.10pm.

The trio spotted Luke's torch when he was between half and two-thirds of the way up the path and waited for him to reach them, therefore, they must have been there before 11.10pm. There was a short discussion before the decision was taken to "double check" the path and they all started walking slowly back down. Janine and Steven reported having to slow down to allow Alice to catch up on a few occasions.

The police timings set the walk from Alice's house to the junction of the paths straight through, without stopping, at 20 minutes in daylight. The timing from the junction of the paths to the V point (again in daylight) was 6 minutes 40 seconds. Allowing for the darkness, Alice's slow pace and the fact that Luke was now looking in other places (shining his torch over the wall and checking in the crop field), some extra time needs to be added to the journey back down the path. Allowing 10 minutes for the return journey and perhaps 2 minutes for the short conversation, the search party would have arrived just past the V point, where Mia reacted, at 11.22pm (from 11.10pm, when Luke arrived at the junction of the paths).

There would then have been 13 minutes left for Luke to double back to the V point and climb over the wall, to call out to Steven who ran back to the V and climbed over the wall, for Steven then to climb back to the path side and help Alice over the wall before Luke's 999 call to the police at 11.35pm.

But if the search trio did not leave Alice's house until 11.03pm, they could not, according to police timings, have been at the junction of the paths before 11.23pm. As a result, using the same timings as above, for the same reasons, the extra 12 minutes for the double check take the time they would have reached the V point to 11.35pm - the time of Luke's 999 call. If any time at all is added to allow for the duration of the 11.03pm call and the gathering of coats and torches, then the conclusion would have to be that the search party would not even have reached the V point, far less had time for three of them to climb over the wall, find Jodi and climb back again, before the police call-back at 11.38pm. Even adding no extra time at all to the return journey and leaving just the two minutes for the conversation about what to do next,

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Mia's tracking ability and so on, the absolute earliest the search party could have arrived at the V point is 11.32pm, just three minutes before Luke's 999 call.

According to Alice's timed reconstruction, the call to Janine at 11.18pm was nine minutes after they left the house, which means they left the house at 11.09pm. The 20 minutes' walk from this leaving time would place their arrival at the junction of the paths at 11.29pm. The 9 or 12 minutes required for the return journey down the path (with and without extra time) takes the arrival at the V point to 11.38pm or 11.41pm respectively— both times are after Luke's 999 call to the police. Yet bizarrely, this is the only scenario, impossible as it is, supported by the search trio's own accounts (those accounts centring on the 11.18pm call being received in the complex).

This is a serious anomaly – based on all the known facts, the search trio could not have been waiting for Luke at the junction of the paths prior to 11.10pm if they left Alice's house at 11.03pm or 11.09pm. But all of the evidence demonstrates that they *were* waiting for Luke by the time he was a little over half way up the path.

The explanation seems obvious, at first glance. Luke's timings must be wrong. The 10.59pm call placed Luke at the Newbattle entrance to the path at that point, so it is worth noting at this stage that police timed the walk from Luke's house to the entrance to the path at seven minutes at a "brisk pace." Luke arrived at the Newbattle entrance exactly 10 minutes after picking up Judith's 10.49 call, leaving him just 3 minutes to have the phone conversation with Judith and the short conversation with his mother, get the torch from his brother, put the dog back on the lead and set off. The timing for this part of Luke's journey to the path, therefore, is confirmed.

If the search trio arrived at the other end of the path at 11.23pm to be waiting for him, (which, if they left Alice's house at 11.03pm, is the earliest they could have been there), then Luke must have taken at least 24 minutes to travel the path to the point where the search trio saw his torch approaching. That would be nearly 4 times longer than the police timings suggested, which is a suspiciously long time.

But, once again, looking at the whole picture, this possibility cannot be fitted with the other, known evidence. If Luke and the search trio spot-

ted each other at 11.23, once the 9 or 12 minutes required for the return journey are added, the search party, in this scenario, would not reach the V point until 11.32 or 11.35pm, again leaving not enough time for climbing over the wall and finding Jodi.

Whichever way this is viewed, according to their own statements, the search trio could not have been at the junction of the paths any earlier than 11.23pm and, that being the case, there was not enough time for the return journey down the path and the events surrounding the finding of Jodi's body, before Luke's 999 call and the police call-back. That means, in order for the actual, recorded evidence (including their own statements) to make sense, they had to be there *before* 11.23pm.

Furthermore, if either of the later times is accepted, it would also have to be accepted that the two police officers responding to the missing person report were driving into the school car park and setting off along Lady Path towards Reed Drive at the same time as the search trio were waiting for or meeting up with Luke at the junction of Lady Path and Roan's Dyke Path, but neither party saw the other. The inability of the police to locate the search trio further undermines the proposition that the search trio arrived at the junction of the paths at 11.23pm or 11.29pm

The reason this is so important is that it demonstrates, right from the very beginning, the failure of investigators to ensure that the facts of the various claims were verified. These would be three of the most important prosecution witnesses in the case against Luke, yet, in this crucial period - from the discovery that Jodi was missing to the finding of her body - straight away there is a huge anomaly – based on the fixed time of the police call to Luke, the search trio could not have left Alice's house when they said they did. There are a number of possible explanations –

the search trio did *not* leave from Mayfield at 11.03pm or 11.09pm, but from somewhere much closer to the path;

the search trio *did* leave from Mayfield, but were transported to the junction of the paths, rather than walking there;

or the search trio left from Mayfield, but much earlier than the claimed time of 11.03pm or the reconstruction time of 11.09pm.

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The significance of all of this can be easily lost in such confusing and contradictory information.

In a nutshell, prior to 10.40pm, no-one in Jodi's family knew she had not been where she was supposed to be that night and it was not until 10.46pm (at the conclusion of Judith's call to Alice) that the family search trio knew. Aside from the strange decision to go straight to the path, if they walked to the junction of the paths, on hearing Jodi was missing, then, in order for them to be waiting there for Luke prior to 11.10pm, they had to have left Alice's house between 10.45pm and 10.50pm – there is simply no getting around the required 20 minute walk between the two points. Since they did not say they were driven there, or that they left from somewhere other than Alice's house, reliance on the search trio's evidence requires an acceptance that they did, in fact, walk from Alice's house to the path.

That, of course, means the search trio would have to have set off immediately after Judith's first call to Alice looking for Jodi (or, more realistically, during that call, before any other checks had been made) and, coincidentally, at the same time as the first (unidentified) call to the police – the same time that Steven Kelly initially told police they left. That, in turn, would mean that they went searching for Jodi 15 – 20 minutes before Judith reported Jodi missing to the police and that all of the apparent discussions during that period could not have happened the way the family reported them. It also means that the accounts given for the later calls, at 10.53pm and 11.03pm cannot be correct since the trio could not have been in Alice's house for the calls to be answered.

Coincidentally, nearly every member of Jodi's family gave wrong timings in their recollection of events that night and every one of them was wrong by the around the same amount of time.

Judith believed she texted Luke at 10.15pm or 10.20pm (approximately 20-25 minutes earlier than she actually did). She, Joseph and Alan Owens all believed it was around 10.30pm that Judith woke Joseph and Alan, who had gone to bed, came back downstairs, because by then, Judith knew Jodi was missing (15 – 20 minutes earlier). Steven Kelly and Alice Walker both believed they left to look for Jodi prior to 11pm – Kelly thought it was 10.45pm (approximately 20 minutes earlier than they later claimed they left) and Alice put it between 10.30pm and 11pm. Kelly thought the original call from Judith to Alice's landline came in at about

10.30pm (15 minutes earlier than it actually did) and, coincidentally, the same time that the people in Judith's house mistakenly believed they knew Jodi was missing. John Ferris believed that the first call from Alice Walker to Yvonne, looking for Jodi, was "just after" 10pm. The only person to get the time of the first call to Alice's house correct was Janine.

One other interesting point is that Judith did make telephone contact with a male at 10.15pm. That person was not Luke or any of the family members or friends who have ever been mentioned in relation to the case and there was no reference, in the defence papers, to what this contact was about, or whether it related to Jodi being late home. Judith insisted she was "clock watching" from 10.00pm, when Jodi should have come home. This record shows she did, indeed, contact someone at 10.15pm, but not Luke. Who this person was and the significance of Judith's contact with him has never been established.

Of course, confusion and error are perfectly natural and to be expected in such circumstances, but due to the difference in police treatment of the search trio, several of Jodi's family members were allowed to discuss events amongst themselves for more than four hours before the search trio's statements were taken. It is possible that the family members inadvertently influenced each other's recollections of times. If that is the case, it raises another interesting possibility – that inadvertent influence led nearly every family member (including those who were not involved in searching for Jodi) to believe that all of the events of that evening took place earlier than they did. And by another odd coincidence, the earlier times are consistent with the earlier, unidentified call to the police reporting Jodi missing.

In 2008, five years after the murder, it was stated in the court decision following Luke's appeal, that the family search party left "*from the victim's house*, just a few minutes from the path."

Was that simply a mistake or misunderstanding on the part of the judges? Or is it a more realistic explanation of how the search trio got there so quickly? If it was a mistake, it was a very significant one, since it throws into doubt everything said about the family search trio. If they were in Judith's house just before 11 o'clock (in order to be waiting at the junction of the paths by around 11.06pm, when they and Luke spotted each other), why were they there and how did they get there? In

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order to walk there, they would have to have left Alice's house at 10.35pm - *before* Judith's first text to Luke. Yet this claim, by the appeal judges, is one of the only plausible explanations for the search trio reaching the junction of the paths before Luke.

However badly the family's recollection was affected by shock, the police should have been aware that the accounts of the search trio were not consistent with the known facts. If they left much earlier than they said they did, a significant question for investigators should have been *why did they do so?* If the claimed time of leaving was correct, investigators should have realised it was not possible for the trio to have walked to the junction of the paths in the time available— the failure to look elsewhere on the way and the claim that torches were not turned on until they were in the entrance to the path could, for example, support the suggestion that they were driven to the path, yet no questions about other modes of transport were ever put to them. Even though investigators went to the time and trouble of reconstructing and timing the search trio's route, those timings cannot have been examined in comparison to the other known facts, otherwise, the anomalies raised here would have been obvious.

The timings of movements for Luke's family were scrutinised to the second – at one point, an attempt was made to claim Corinne was 'dishonest' about her movements after work that evening. She said she drove straight home from work, but investigators discovered she was 'caught' on CCTV footage in a local shop on the way home, buying cigarettes. When it was realised this detour added less than three minutes to her journey, the claims of dishonesty were dropped and the more sensible explanation – that she forgot she had popped into the shop – was accepted.

However, the CCTV cameras which captured footage of Corinne leaving work that evening may have also captured the search trio later that night, allowing the time the search trio left to be accurately pinpointed. The entrance to Scott's Caravans is just a few yards, on the other side of the road, from the point where the search trio said they emerged from the housing estate on their way to the path and crossed the road. They would, then, have been directly under the gaze of the same camera that captured the footage of Corinne. There was nothing in the defence papers to suggest such a check was ever made.



For completion, there were another 11 calls after the police arrived at Judith's house to take the missing person details. Some of those confirm specific timings, others raise even more anomalies.

**11.35pm:** Luke called 999 to ask police to get to the V point immediately because the search party had "found something."

**11:37pm:** Another officer radioed control to log his arrival at Judith's address. There is no evidence that he entered the house or spoke with any member of Jodi's family.

**11.38pm:** The police control operator called Luke back to find out where he was. During this call, Luke told police that the "something" they had found was a body.

**11.44pm:** Steven Kelly dialled 999 demanding that the police get there quickly, as the search party had found a body.

**11.53pm:** A call connected for 26 seconds between Judith's phone and Alice's mobile. There was no account of what this call was about in the defence papers.

**11.55pm:** A police officer at the scene radioed in confirmation that a body had been found.

**00:13am:** A call was made from Yvonne Walker's phone to Alice's landline.

**00.32am:** A call was made from Judith's mobile to Alice's mobile. Statements show that both were in the car park behind Newbattle High School at that time.

**01:10am:** A call was made from Yvonne Walker's phone to Alice Walker's landline.

**01:47am:** A call was made from Alice's mobile to Judith's landline. Both Alice and Judith were in, or en route to, Newbattle police station at this time.

The two calls from Yvonne Walker to Alice's landline at 00:13am and 1:10am have never been explained. According to Ferris, he and Yvonne had been in bed an hour and a quarter to two hours before the calls from Yvonne's phone were made. Since she ignored the previous two-

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ring code to call her Gran back and Ferris said they “thought no more about it,” it seems unlikely that Yvonne then got out of bed twice (with a young child in the house) to make that call back so much later. By 00.13, and certainly by 1.10am, a number of Jodi’s family members were gathered in the car park behind Newbattle High School, so it is possible that someone called and woke Yvonne with the terrible news. But both Yvonne and Ferris stated that they did not find out about Jodi’s murder until the following morning, around 9am.

The 00:32 call from Judith’s mobile to Alice’s, on the surface, makes no sense. Both Judith and Alice were in the car park by then, so there would have been no reason for Judith to call her mother’s mobile. However, somewhere in the confusion arose the suggestion that Alice handed her phone to one of her other daughters, Agnes, in response to an incoming call from Judith, so that Agnes could break the news that a body had been found. (Judith initially stated that it was Alice who broke the news about the finding of the body).

Since Agnes and her sister (Jodi’s aunts) were already in the car park by the time the search party was taken there by police a little after midnight and they would have needed at least 15 minutes to drive there from Bonnyrigg, they would have to have been informed about Jodi’s murder before the first police officer radioed in confirmation that a body had been found. Although there would have been nothing wrong with Alice calling the aunts from the crime scene, perhaps in total shock, the later claim that one of the aunts broke the news to Judith after the search trio was taken to the car park is not supported by the evidence, since at 00.32, Judith was already in the car park.

According to the statements, the aunts remained in the car park with the other members of Jodi’s family until the whole group was taken to Newbattle Police Station and from there to Judith’s home so, again, there should have been no real reason for Judith to call Agnes on Alice’s phone, unless Agnes left the car park, taking Alice’s phone with her.

There is nothing in the defence papers to confirm exactly which people were taken to the police station and then returned to Judith’s home – in fact, there was no comprehensive list of who was present in the car park at any point. At this critical, early stage in the investigation, within that crucial first hour of Jodi’s body being found, investigators had no idea who was there, who may have left, or who else may have arrived in that

hour.

The 1.47am call from Alice's phone to Judith's landline is strange. According to all of the records, at 1.45am, a Family Liaison Officer (FLO) reported meeting with the search trio and other members of Jodi's family at Newbattle Police Station, then transporting them back to Judith's home (by 2am, according to at least one statement), whilst another FLO took a statement from Judith and Alan, beginning at 2.45am. So, at the time Alice's phone called Judith's landline from Newbattle Police Station, Alice should have been of the belief that the house was empty. It may have been the case that other family members had already been called and told to make their way to Judith's house and someone was calling from Alice's phone to let them know the search trio et al were on their way. That would, of course, be perfectly understandable – this was a large, extended family - but the confusion surrounding who was in possession of Alice's phone makes it difficult to draw any reliable conclusions. The ramifications of allowing the three members of the search trio to be mingling and talking with so many people before their statements were given, before their clothing was taken for testing and the possibility of phones which may have borne trace evidence being passed to others, are obvious.

There was one other troubling call that night, hidden away in the case papers. At 10:55pm, a call was listed from Judith's landline to Janine. Almost half an hour later, a second call to Janine appeared in the logs – this was the 11.18pm call informing Janine that the police had arrived in Judith's house.

The two calls were made to two different mobile phone numbers.

Why did Judith call Janine on two separate phones within half an hour? There is no suggestion that she called one and, getting no response, then called the other – each call is a stand-alone call to that specific number. Information in the files indicated that one phone used by John Ferris previously belonged to Janine and, bizarrely, the number called at 10.55pm, listed as belonging to Janine, was also listed as being used by Yvonne Walker. No other calls to that number from Judith's phone were listed in the phone records and every other call to Janine was made on the second number.

What has never been clarified is who was using that number on the

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night of June 30th – Janine, Yvonne Walker, or John Ferris? Since Ferris and Yvonne claimed they were in the same flat from around 10pm onwards, the number could have been used to contact either of them and, of course, could have been used by either of them to call anyone else. Who was Judith trying to contact at 10.55pm and why was the owner of that number listed as Janine when it is perfectly clear that every other call made by Judith to Janine was on the other number? It is, of course, possible that this information came into being through an error in recording the details of the various phones (see next chapter).

But perhaps the most important question of all is why was this call completely absent from the accounts of calls made immediately after it was discovered Jodi was missing?

The lack of attention to detail regarding those closest to Jodi is in stark contrast to the laser-focus on Luke and his family. This is the danger when police investigators become too convinced, too quickly, that they know who the perpetrator is. While no-one would imagine, far less expect, that Jodi's immediate family members would be able to remember precise times of phone calls, or exact detail of what was discussed, police investigators had a responsibility to ensure that accounts broadly lined up with other, established facts and, if they did not, to seek reasonable and plausible explanations. That did not happen. There may be perfectly innocent explanations for how the search trio got to the path so quickly, why they went directly there without looking anywhere else, how and when Judith came to know that Jodi's body was found in the woodland strip, and so many other anomalies but, fifteen years later, there is nothing to say what those explanations are.

## Chapter Nine

### Phones

The enormous popularity of mobile phones should have been a godsend to police investigations. Communications could be tracked, timed and retrieved. Movements of the phone (and potentially, its owner) could be plotted with varying degrees of reliability and certainty and forensic evidence from the handset itself could be analysed. A huge amount of information crucial to serious investigations was available just from the phones of anyone involved. It is this which makes the treatment of all phone evidence in this case so surprising and may account, at least in part, for the failure to check that the accounts of the search trio were consistent with other evidence.

Investigators purportedly believed that Luke made calls and sent messages on his phone soon after it was claimed he killed Jodi and immediately after her body was found, yet there were no forensic traces of Jodi or the murder found on the phone. The 5.32 and 5.40pm calls to Judith's house would have to have been made literally from the murder scene, but no blood, cells or fibres from the murder were ever detected. The police officer who took Luke's phone from him in the car park was not wearing gloves and the phone was not securely packaged in a sterile environment – instead, the officer switched the phone back on to call Luke's mum. This was back in the days before touch screen phones – it would have been virtually impossible to remove every forensic trace from the tiny crevices between the keys.

A civilian employee of Lothian and Borders Police analysed the mobile phone's call records during the investigation. He said that only one number – Corinne's - was stored in the phone's recently made calls list. Asked by the prosecuting QC why no more calls were listed, Mr Morris said: "*Basically because the call register had been deleted,*" adding that "in all probability" the register had been deleted just after half past midnight in the early hours of July 1st, 2003... when the phone was already in the possession of the police.

It was put to Luke that he erased the texts between 4.34pm and 4.38pm, arranging to meet Jodi on the evening of June 30th. Luke had no recollection of deleting the texts but accepted the police contention that he must have done so and was then quizzed on why he would have deleted those messages. The series of texts was also deleted from Judith's

phone.

But not only was the call log deleted after the police took Luke's phone - a text was also sent while the phone was in the hands of police investigators (who were prepared to lie about Luke checking his voicemail immediately after Jodi's body was found – see Chapters 15 & 16), so it can no longer be accepted at face value that it was Luke, himself, who deleted those earlier texts. If police officers were interfering with phone evidence so early in the investigation, there can be little confidence in the reliability of any claims later made on the basis of that evidence.

The content of those texts (and any others which had been deleted from either phone) could easily have been recovered. Both service providers, at the time, saved these details for 12 months. Luke was arrested eight and a half months after the murder – while the timing may have been tight for the defence to acquire the relevant information, the same cannot be said of police investigators. The centrality of those texts to the whole case was apparent from the very beginning, when Luke told officers Jodi was going to Newbattle, but Judith said Jodi was going to be mucking about in Mayfield/Easthouses. Yet for reasons never explained, the actual content of those texts was never recovered or, if it was, it was never released to the defence.

Something else emerged from the phone logs which was never addressed during the investigation. Following a received call on Judith's phone at 18.17 from Janine (no duration was disclosed, so there is no way of knowing if this was a conversation, a missed call, or a call that went to voicemail), there were four attempts to contact Judith's sister Agnes at 18.54, 18.55, 19.04 and 19.05. None of these calls appear to have connected. According to Janine and Kelly, they were still at Kelly's father's house at 18.17– neither ever mentioned trying to contact Judith from there. Judith's account of the trip to the cemetery between 6pm and 7pm made no mention of trying to contact her sister. Even if Janine, Kelly and Judith had all forgotten about the calls, investigators had details of them in the phone logs. Had there been just one call to Agnes, then it would be easy to assume it was of no importance, but there were four attempts to call her over a ten minute period. Explaining her call to Agnes when Jodi's body was found, Alice told police that she "always called Agnes if there was trouble." But the impression given in the family statements was that no-one was in touch with anyone else that evening until it was discovered that Jodi was missing. Again, there

may be no particular reason for Judith trying so hard to get in touch with her sister immediately after a drive to the cemetery – indeed, it may have been part of a pattern in which Judith habitually called her sister at around 7pm on a Monday evening – but the questions were never asked. It does not appear, from the available phone logs, that Agnes called Judith back that evening, but it's clear from the defence papers that the phone data was selective and incomplete.

Alice's call to Agnes on the night of the murder remains a mystery. Since she could not have called Agnes once the search trio was in the car park (because Agnes was already there) and Agnes could not have broken the news to Judith, on Alice's phone, at 11.53pm (because Alice was still on the path) there is no information about when Alice called Agnes, or where the story about Agnes breaking the news to Judith came from. There were 11 minutes between the police call to Luke's phone and the officers on the ground locating the search party so, by deduction, Agnes must have been called during those 11 minutes. There is nothing untoward about Alice calling Agnes immediately – realising she was going to have to wait for the police, it's only natural that Alice wanted to ensure Judith had immediate family with her when the terrible news was broken. But that did not happen. Both of Judith's sisters waited in the car park behind the school, rather than going to her house.

The reason I include this information is simple – if, as stated by Lothian and Borders Police, this was a “first rate” investigation, anyone coming along afterwards to review it should have been able to see clearly where various lines of enquiry were followed, which were not and why. The level of confusion and omission regarding phones in this case is disturbing and raises a number of questions about the thoroughness of the investigation.

The next aspect of the phone evidence is confusing in the extreme. I have tried to clarify the information as far as possible, but, as you will see, it remains a tangled mess.

During the first five weeks of the investigation, some attempts appeared to be made to collect mobile phones that may be of some significance to the murder enquiry. During that process, three different mobile numbers were given to investigators for Joseph - the first was Judith's number, the second was a number Joseph did not recognise and the third, eventually, was the actual number he was using.

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Judith said she had bought phones for Joseph and Jodi at Christmas, but mistakenly registered them to the wrong names, so Jodi was using the phone meant for Joseph and Joseph was using the phone registered to Jodi. But Joseph didn't like the new phone and he swapped it with his mum, putting his old sim card in the swapped phone. Now, Judith was using the phone registered to Jodi, which may explain why a different number, again, for Judith was given to police - the phone number she was using before she swapped phones with Joseph, perhaps?

Janine, it appears, was the only one in the family with a contract phone. But the phone used by Janine was registered to Judith. There was also the suggestion that a number previously used by Janine was later used by John Ferris, although, at first glance, that did not appear to be confirmed. Ferris suggested several numbers he may have been using, all phones given to him by other people. There were no records of Ferris's phone activity in the defence papers. There were also no records of Janine's phone activity – any references to the phone activity of these individuals has been gleaned from phone records belonging to other people.

There is no actual record in the defence files of a phone bought by Judith and registered to Joseph (the one that ended up being used by Jodi). Documentation confirming that the one initially used by Joseph, which ended up with Judith, was registered to Jodi, *was* available in the files, which means either there is paperwork missing, or the police accepted the whole “phone swapping” saga at face value.

Breaking down the claims about which phones were used by which persons is extremely confusing, even with the benefit of retrospect – it can only be guessed how difficult it must have been for investigators to work out. When I first uncovered this material, I felt like I was dealing with an explosion in a Carphone Warehouse.

Beginning with Judith's claims that she bought two phones for Joseph and Jodi, but registered them to the wrong names, we can begin by assuming (hypothetically) that the phone number intended for Joseph ended in 001 and the phone number intended for Jodi ended in 002. That would mean, in reality, that the phone actually used by Joseph ended in 002, and the phone actually used by Jodi ended in 001. The claim was that Joseph swapped handsets with his mum. He wanted to keep his old number, (not the new 002 number), so the number that



Judith ended up using was the 002 number – in other words, Joseph gave his mum the handset and sim. There was no explanation about what happened to the number Judith was using when she gave her handset to Joseph to use with his old sim.

But, by the time of the murder, the phone numbers given to the police as Joseph's ended in 002 (as his current number) and 007 (his previous number)? That, of course, could not be correct because, by then, it was Judith who was using the 002 number. The number logged in Judith's phone contacts list for Joseph was completely different to any of the numbers discussed so far – for the purposes of this example, I will say it ended in 008. Both Joseph and Judith *knew* that the number being used by Joseph was 008, but the police were initially given the 002 number, (Judith's number, originally registered to Jodi) and an old number 007, which was later explained as a "mistake" since Joseph *did not know* whose number that was.

In the phone logs, there was evidence that the phone originally registered to Jodi did, indeed, end in 002 - the number used by Judith by the time of the murder. The number recorded as being *used* by Jodi ended in 004. That number could have been the hypothetical 001 number above, but since there was no record of the phone registered originally to Joseph, there is no way of knowing if it is or not! Although Janine was the only one with a contract phone and had no part in all of this phone swapping, her phone number, ending in 005 was the number originally registered to Judith. But 005 could not have been the number Judith was using when she swapped handsets with Joseph, since, at that stage, Janine was using it.

By July 8<sup>th</sup>, 8 days after the murder, the police were being told that the number 002 was registered to Jodi but was both Joseph's and Judith's phone number. The number 008, in Judith's phone, known (by her) to be the number used by Joseph was *not* given to the police (he was not noted in Judith's phone contacts by his own name, but by a nickname). It would not be until August 6<sup>th</sup> that Joseph's proper number came into police possession and the explanation that the old number given must have been a mistake.

There is a further anomaly - the call made to a phone, which was said to be registered to Janine, at 10.55pm on the night of the murder. The number – 006 – was possibly used at some point by John Ferris and was

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also claimed to be Yvonne Walker's number.

To summarise this totally baffling situation:

<b>Number</b>	<b>Actually Used by</b>	<b>Claimed to be used by</b>	<b>Registered to</b>
002	Judith	Joseph and Judith	Jodi
004/001	Jodi		Joseph
005	Janine		Judith
007		Joseph	Unknown
008	Joseph		Unknown
006	Ferris/Yvonne Janine		Unknown

I am not suggesting any of this is sinister, just terribly confusing. However, there is no doubt that it was not properly checked out by police investigators at the time - they appear to have taken the whole muddle at face value for at least the first 5 weeks to August 6th (by which time, Luke was firmly in the frame) and the full logs were not obtained until five months after Luke had been arrested and locked up (fourteen and a half months in total after the murder.)

The logs detailing calls from the mobile being used by Judith were clearly incomplete because they stopped at 22.41 on June 30th 2003, yet the numerous calls said to have been made by Judith to Alice and Janine while they were out searching must have been made on a mobile, since, with the exception of the 11.18pm call they did not appear on the landline logs.

The two calls to Luke whilst he was out searching were also made from Judith's landline. The next attempted call to Alice's landline and then her mobile was 10 minutes after the body was found and the police had been on the phone to Luke and Kelly. It follows, then that either there was a failure to obtain the mobile logs after 22.41 (or release them to the defence), or there were none to obtain, which would mean that all claims of telephone contact between Judith and Alice after 11.03pm using Judith's mobile cannot be correct. That, in turn, raises questions about why Judith believed and told investigators she called Alice repeatedly to find out if she had found Jodi and appeared to believe that Alice was not initially out looking with Janine and Kelly.

What appear to have been selective requests for phone logs by the police (or which may, in fact, have been a selective report on logs produced by investigators) only added to the confusion. For example, the phone records of another person who should have been of interest were requested, but the record for the day of the murder was missing and the phone was, in fact, registered to someone else. Some people claimed to have lost phones by the time they were asked about them. Eventually, I found another statement which created even more uncertainty – this was one of the most frustrating, confusing and difficult aspects of this case.

A phone Judith handed to police, saying it was her old number, was registered to someone else - a friend. This was followed by the statement, “I have also handed over [a] mobile phone....it is the one I bought at Christmas for Joseph, but it was registered to Jodi. The handset broke 5 - 6 weeks ago and I used its sim in the (brand) mobile phone I borrowed from Joseph.”

The broken handset originally was Jodi’s, not Joseph’s. The sim from the broken phone was used by Jodi (but registered to Joseph) – until this statement, there had been no suggestion that Judith was using Jodi’s sim as well as Joseph’s. An explanation of sorts eventually emerged – the handset given to Joseph, which he swapped with his mum, also broke, which means Joseph and Judith were using the same handset (the one Judith swapped previously with Joseph), but each putting their own sim into it. If that was the case on the night of the murder, the explanation for no phone activity on Judith’s number could have been that her sim was not in the handset because Joseph was using it. It seems an unlikely explanation - knowing that Jodi was missing and people were out looking for her, Judith would most probably not have made her mobile unavailable and, since Joseph was apparently asleep all evening, there would have been no need for his sim to be in the handset once it was discovered that Jodi was missing unless, of course, Judith was out of calling credit.

If Judith’s phone was out, or almost out, of calling credit, it may be that she was using someone else’s sim to make those calls – immediately, the failure to collect other phone data that might have been relevant to the investigation becomes obvious.

Aside from the existence of at least two numbers in the case papers for

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Judith, Joseph and Janine, they and others had two numbers in their phone's address book for John Ferris, listed as (1) and (2) (even though Ferris, himself, suggested various numbers of phones given to him by other people) and in the midst of all of this, the phones and their numbers were initially wrongly labelled by the police.

The most obvious question to arise from all of this is, why were the numbers first given for Joseph and Judith not the numbers they were using that day? (These are noted in statements, so are not a result of the officer labelling them wrongly.) If they had only just got new phones it would have been understandable that they might have simply quoted their old number by mistake. But by all accounts, the phones for Joseph and Jodi were bought 6 months earlier and there was no suggestion of Judith getting a new phone (i.e. new number) at all until she started using Joseph's phone. And, of course, there were the practical difficulties of two (or perhaps three) sims sharing one handset – at any given time, only one would be able to make calls or send and receive texts.

Gordon Dickie's phone was a contract phone, registered in his father, David Dickie's name. There was a record of some activity on this phone, but not on the day of the murder. Yet it is known the phone was in use on the day of the murder, because the police were able to ask Dickie about a phone call from Alice Walker's landline to his mobile on June 30th.

As previously stated, the 999 operator who received the call from Steven Kelly when the body was found, logged a completely different number from Janine's - Kelly said he used Janine's phone but, since there were no details of Kelly's number, there is no way of knowing if the number logged by the operator was a very strange mistake, or Kelly's own number. By the time the phone call was transcribed, the number calling 999 had been changed to Janine's.

A police officer who gathered in a number of the family phones and later realised the phones had been labelled wrongly, changed the labels accordingly. There was no record of how the phones were originally labelled – this re-labelling may well have been as a result of the enormous confusion surrounding which phone number belonged to, or was being used by, whom.

The series of texts between Judith and Alan Ovens that afternoon was

never recovered, although an earlier text from Judith to Mr Ovens was recovered.

There was a statement from the officer who collected Jodi's sim which noted that she "collected sim card," but did not note a single identifying feature – not even the phone number. But there was nothing in the records that said Jodi's phone records were checked from the sim - even though it was known that she used her sim (by putting it in other people's phones) after her own phone was broken. The number from Jodi's sim should have corresponded with the number of the phone claimed to have been registered to Joseph, but this could not be checked, because of the lack of records for the phone registered to Joseph. There was evidence, in a statement, that Jodi called a known drug dealer within the two to three weeks before her death, in order to make a purchase from him - this call was witnessed and that is how I found out about it. One would have imagined people Jodi may have spoken to or texted in the lead up to her death should have been of interest even if only for elimination purposes, yet this information does not appear to have been sought.

Even though mobile phones were eventually collected from a number of people, the logs related to them never appeared in the defence papers - I have never seen complete records of Alice Walker's landline or mobile, Janine, Kelly, Joseph or John Ferris's mobiles, or Yvonne Walker's landline or mobile.

This seems like a very strange omission since phone logs could have provided concrete evidence for some of the unsupported claims made by some of those people. Investigators appear to have accepted, at face value, that there was no communication between Ferris and Joseph about the changed arrangement to meet at 6pm, yet phone records would have easily confirmed the situation. Similarly, a suggestion that Ferris may have received a text or phone call sometime before 9pm, causing him to up and leave Dickie's house so abruptly, could easily have been confirmed or otherwise. The only evidence available that he did, in fact, turn up at Yvonne Walker's flat at 10 o'clock is the word of Yvonne herself – the telephone conversation at 10pm with Alice has (a) never been confirmed and (b) would make no sense, since Jodi was not known to be missing at that time.

References to Alice Walker's landline records were made at trial, but

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these were extremely selective, referring only to the calls up to 11.06pm and then, only the calls made from Judith's phones.

It may be, of course, that all of the phone information was in police files, but was never released to the defence, being filed, instead, in the "unused evidence" files. But if that is the case, with so many unanswered questions about the case and the clear difficulties with the safety of the conviction, then a full, independent review of all of the evidence gathered is the only way to know, for sure, what questions really remain unanswered.

All of this phone juggling should have been properly checked out at the time, especially with so much emphasis on texts said to have been sent by Jodi from her mother's phone and later deleted and especially when, by Judith's own admission, to begin with, she knew absolutely nothing about Jodi sending texts from her (Judith's) phone.

The delay in collecting phones from those closest to Jodi is concerning, for a number of reasons. Firstly, investigators could not have known for sure, in spite of their instant focus on Luke, who might have been involved in Jodi's murder, but they left wide open the opportunity for evidence to be destroyed or disposed of for up to five weeks. Secondly, there was no way of telling whether the phones collected later were the actual phones in use on the night of the murder- any of them could have borne physical trace evidence that may have linked them to the murder or the crime scene. Ferris and Dickie could not say where they were or what they were doing when their bike was propped against the wall at 5.15pm and it was known, for sure, that Dickie had a phone with him (and should at least have been presumed that Ferris did, too, since Dickie called him to arrange to be picked up). A check of their phones (as well as their clothes, the bike and Dickie's house) could have confirmed their accounts, at least in terms of trace evidence.

If Joseph was, indeed, asleep all night, there should have been no outward activity on his phone records and any inward activity should have registered as unanswered or diverted to voicemail (assuming his sim was actually in a handset). And, of course, some effort should have been made to trace the number from which the 10.45pm call reporting Jodi missing was made, since the female who made that call knew Jodi was missing before anyone else did and identified herself as Judith, even though Judith was still on the phone to her mother at that time.

The prosecution contended that Jodi may have found out at lunchtime on June 30th that Luke had another girlfriend and was planning to visit her the following week. Jodi, they suggested, set out that evening to confront Luke about the other girl.

The other girl, Kimberley Thomson, lived some 60 miles away. Luke met her the previous year when the family were on holiday and the two thirteen-year-olds had a “holiday romance.” They kept in touch by phone and met up again in the New Year period of 2003. Luke had not seen Kimberley since, although they still chatted on the phone. The claim that he was planning to visit her again in July 2003 was based on Corinne’s plan to holiday in the same place – a plan that had since been cancelled. Jodi and Luke were, in fact, planning a sleepover at a friend’s house the following weekend as part of a birthday celebration – the very weekend the prosecution alleged Luke would be going to see Kimberley.

None of the available evidence supported either the claim that Luke was seeing another girl, or that Jodi set out that evening to confront him about it. Firstly, as Corinne put it, Luke’s only mode of transport was a pushbike – a 120 mile round trip on a bicycle for a 14-year-old to see a girl is a preposterous suggestion.

According to Judith, Jodi was “chuffed” to be going out to see Luke and according to Lord Nimmo-Smith, she left “joyfully” to do so. But Jodi’s diaries indicated that she would have been devastated if Luke had finished with her, so it has to be assumed she would have been equally distraught if she had found out he was cheating on her.

What any of this had to do with claims that Luke murdered Jodi is anyone’s guess. Although, by the time of trial, the suggestion was that an argument ensued following Jodi’s “confrontation,” investigators initially tried to claim that Luke murdered Jodi in a jealous rage. The only evidence that Kimberley Thomson was Luke’s “other girlfriend” was her own evidence that she “thought of herself as” or “believed herself to be” Luke’s girlfriend, even though, by the time Jodi was murdered, Kimberley had not seen Luke for six months.

There were more than fifty pages of phone records for Kimberley Thomson’s parents and/or grandparents and all of Luke’s phone records from the beginning of the year. Having failed to recover so many

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significant other records, this inordinate amount of attention on phones to which Kimberley Thomson had access is surprising. What evidence of a brutal murder is to be found in proving that a 14-year-old boy was speaking on the phone with a 14-year-old girl, sixty miles away?

Luke was not entirely honest with the police when they asked about his phone contact with Kimberley, which he explained later was because he thought the police would make it out to be something it was not (a factor that is more indicative of his age and level of maturity than his honesty. Most adults would not expect talking on the phone with a friend of the opposite sex to be viewed suspiciously).

The suggestion that Luke murdered Jodi either because she found out about Kimberley or because he wanted to be with Kimberley and not Jodi is patently nonsense. The police investigators appear to have lost sight of the fact that they were dealing with young teenagers whose relationships are often fickle and fleeting.

But it is not just the phone logs that may have provided evidence about the various claims made for that evening. Judith stated that Joseph was asleep in his room the whole evening and that she and Alan Ovens drove to the cemetery and were going to “go for a drive” but changed their minds after a short time. Ferris said he walked from Dickie’s to Yvonne Walker’s between 9pm and 10pm. Dickie and Ferris claimed to have been in Dickie’s house from 5.30pm to between 9pm and 9.30pm, when Ferris left and the time that David Dickie was in the woodland strip was never confirmed.

Cell site analysis, as well as refuting or confirming claims that Luke travelled from Newbattle to Easthouses and back could have confirmed the movements of all of the others as well – assuming, of course, the correct phones could be connected to the correct people. Although in 2003 it may not have been possible to pinpoint precise places (as it still is not in 2018) there were two particular phone masts in the area which demonstrated movement from east to west – I know this because I walked the path with a friend (who had technical expertise that I did not), who set the phone to display which mast it was communicating with. A little over halfway down the path, it swapped from one mast to the other. There was no need for any enormously technical data or analysis – if everyone who said they were in Easthouses or Mayfield



was, indeed, there, the phones would not have connected at any point to the other mast and the same would be true of anyone who was in Newbattle the whole evening.

While I accept that sometimes, signals will “bounce” to the next available mast during busy periods, there was a very small timeframe of interest to the investigation and the most important evidence - that of the movements of individuals - could have been confirmed.

Given the recent collapse of alleged rape cases where it has become apparent that police investigators either failed to disclose evidence from mobile phones or, in some cases, failed to even look for it in the first place, the consequences of the confusion and omission surrounding mobile phones in this case are potentially significant.

Having focused so immediately and completely on Luke, it seems the investigation simply swept aside the entire question of mobile phone data relating to others as either irrelevant or of little importance, those decisions being made at the very beginning of the investigation. What, other than an unshakeable conviction that Luke was the killer, could be the reason for decisions with such far-reaching implications?



## **Chapter Ten**

### **Crime Scene Management**

In the first three weeks of the enquiry, while statements were being collected, the crime scene itself was being “combed” for clues. Once you have read the following section, I invite you to decide for yourself – was the crime scene being properly managed and “combed,” or was some other priority driving events?

We really have to start from one crucial question - what is a crime scene? Initially, the answer seems self-evident – a place where a crime has occurred. The question really should be – what is a potentially significant scene (or location, or area) for a murder investigation?

Immediately, it becomes clear that other locations may yield critical information which could assist in the investigation of a serious crime like murder – again, this seems self-evident. The scene where the crime occurred should, hopefully, provide clues and evidence about what happened there. But other locations – cars, homes, walkways... anywhere, in fact, that the victim and the perpetrator may have been, might also provide vital information.

We tend (and are, in fact, encouraged) to assume that a range of standard procedures exists, to ensure that potential evidence in police investigations is preserved, collected, analysed and ultimately used to provide proof, not only of the guilt of the perpetrator, but also to exonerate the innocent and to demonstrate events as they unfolded.

The massive advances in technological ability in the last few decades have given the impression that “forensics” can produce all of the answers, from the tiniest fragments of information – skin cells, hairs, DNA traces, fibres, mobile phone data and a multitude of other minute particles and fragments found in the course of a murder investigation.

The combination of the two – rigorous procedural adherence and technological brilliance, comforts us with a sense of security and certainty that, no matter what happens, the answers will be found, the perpetrators brought to justice and innocent explanations will exist for everything else.

That may be true in a thorough, meticulous case, but this case was

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neither thorough nor meticulous. “Forensics” can only provide information from items which are properly collected, labelled and stored to avoid contamination and the data properly interpreted. Evidence from crime scenes can only be properly and accurately assessed if the scenes are protected, preserved and all of the evidence, without prior judgement about what is and is not important, is collected.

The crime scene(s) management in this case may be shocking, but it is by no means unusual. Because it never occurs to us to find out what actually happens in criminal investigations, the vast majority of us simply assume that everything is being done as it should be – without actually knowing what we mean by “as it should be.” Meantime, investigations far, far removed from what we expect are building cases against innocent individuals the length and breadth of the country.

Perhaps one of the most disturbing discoveries I made early in this work involved the true nature of police investigations. Like so many others, I’d always believed the process of a police investigation resembled the building of a jigsaw puzzle – pieces were found and carefully fitted together until a picture began to emerge. From that emerging picture, it would be clear where pieces were missing, or if pieces were in the wrong place, or even if there were some pieces that did not fit the picture at all (and may provide a separate, but related picture). That way, I believed, investigators could make reasonable assumptions about what might have happened, who might be responsible and who was not.

Pieces of a jigsaw puzzle can’t be fitted together in a number of different ways to create “alternative” pictures. Nor can a jigsaw puzzle be made to look complete if a significant number of pieces are left in the box. The finished picture can’t be made to look like something else – something decided before the puzzle has even begun to be put together.

The truth, I discovered, in too many cases, is that the investigation process is much more akin to children’s building blocks. Pieces of information (blocks) are gathered and thrown in a box. Later, blocks can be selected and fitted together to create a model that will look “right” – there will be no missing pieces or pieces out of place. But what the jury and the public will never know is how many blocks were left in the box once that model was built. How many times was the model dismantled and re-created before it fitted seamlessly with the prosecution case? How many other models, including a model of complete innocence,

could have been built and how many blocks were never collected at all, because they did not meet the criteria of the “areas of importance” to the investigation? If, for example, investigators are convinced the perpetrator was wearing blue socks, a red sock at the murder scene may not be investigated because it is “irrelevant” in the search for a blue socked perpetrator. Or a fire, burning clothing and some sort of cable, in a murder which involves potential strangulation with a ligature and a murderer with blood-soaked clothing, may be ignored because it is found in an area not thought to be “of significance” to the enquiry.

I had always believed in “all of the evidence” being just that. When a jury announced a guilty verdict, I believed, it was on the basis of all of the evidence (or, at least, all of the important evidence) for both prosecution and defence, which had been presented in court. It had never occurred to me that “all of the evidence” is, more truthfully, “all of the evidence that supports this prosecution case and whatever evidence the defence is able to find and use (within the rules of the law) to refute that specific case.”

But a widespread belief in police investigations resembling the piecing together of a jigsaw puzzle keeps the public believing that it would be “obvious” if the final picture presented was incomplete, wrongly constructed, or looked nothing like the case being presented in court. Most people simply do not know that the process is nothing like the jigsaw puzzle process.

In this particular case, a crime scene was created on the evening of June 30th 2003. According to Lothian and Borders Police, the crime of murder occurred at 5.15pm, 16.3m westward from the V break in Roan’s Dyke, on the woodland side of the wall. The crime of assault must have happened before 5.15pm because Jodi was beaten and strangled prior to the cut-throat injuries which killed her. The locations in which these assaults took place are also crime scenes. The prosecution case was that Jodi was somehow persuaded or coerced from the path side of the wall to the woodland side, so both the path and the woodland strip beyond the area where her body was found are crime scenes.

The main Easthouses Road, where Stocky Man was seen following Jodi, was also a potential crime scene, since the mystery man may have been stalking Jodi, with intent to harm her.

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Every potential escape route from the place where Jodi's body was found should have been part of a crime scene. Every potential escape vehicle, location where incriminating evidence may have been disposed of, place where the murderer may have hidden out, changed clothing, cleaned himself up...

Of great assistance to any murder investigation would be the victim's home or places the victim was known to have been immediately prior to the murder.

Imagine the exact place where a body is found as the nucleus of the crime scene and the actual crime scene radiating out in concentric circles. At every point where a person or item of interest is located, a sub-nucleus is created, also radiating out in concentric circles. That is the enormous task faced by investigating officers when a person disappears from their normal day-to-day activities and is later found dead in suspicious circumstances. It was exactly the task which faced Lothian and Borders Police at 11.38pm on June 30th 2003. Professor of Forensic Science, Jim Fraser, said, in relation to another case, that the investigation of murders, like this, which happen in an outside setting, face special challenges, since it is difficult to know where the crime scene starts and finishes.

While that is true, it is not *as* true in this case, because escape routes by vehicle were restricted to the Newbattle Road, the Easthouses Road and "the Beeches," all around 500m from the path. All other escape routes had to be via the woodland strip, over an area of just under one square kilometre.

By the time the first two officers on the scene reached the search party, it was already known that a body had been found, so the minute that first officer radioed in confirmation, the whole area was a crime scene. (Arguably, from the moment Steven Kelly shouted down the phone to the police operator "there's a fucking body," it should have been treated as a crime scene.)

Three officers left Dalkeith police station immediately after the 11.55pm confirmation to join their colleagues in the car park behind Newbattle High School. Detective Inspector Ronnie Millar was advised of the situation at 00.10am and also reported leaving "immediately" for the locus.

What happened next, in the innermost ring of this crime scene is quite

unbelievable. Lothian and Borders police have always denied that Luke Mitchell was their prime suspect from the minute the body was found. The manner in which the investigation was conducted suggests that this is not and was never the truth. Virtually every aspect of the crime scene and other points of interest were contaminated, compromised or rendered evidentially worthless because of the way the crime scene and witnesses were treated.

As well as the area behind the wall where the body was found (and the routes leading to this point), the school grounds should have constituted part of the crime scene, given that the entrance to the path runs along one of the school's perimeter fences, Lady path runs along another and one of the quickest ways to a road (and any escape vehicle) would have been through the school grounds themselves. But that area was compromised, before the searchers were even taken to the car park, by the dozens of police vehicles that descended on the school and members of the public driving in and parking up.

Although police officers were in Judith's house less than 20 minutes before the call to Luke, they failed to send a police officer to break the news that a body had been found. As a result, Judith ran from her home and into the 130m track leading to the junction of the paths where she was intercepted by a police officer. This created an opportunity for further contamination, one which never needed to have arisen (the track could have been used as an escape route for the attacker and it was never ascertained that it was, in reality, the route assumed to have been taken by Jodi at around 5pm). It also highlights that another area which should have been considered part of the extended crime scene was left open to the public in those critical first hours. The officer who radioed in his arrival at Judith's address at 11.37pm does not appear to have entered the house but, neither, it seems, was he still stationed outside when his colleague radioed confirmation that a body had been found.

Explaining, later, why she ran into the entrance to the path on hearing that a body had been found, Judith said that she knew the searchers had been searching "in the woods," and her mother later told her, on the phone, that a body had been found. But, according to all of the family members' statements, Judith's included, right up to the point where she was told about the body, Judith had no idea that the search party were on or had been on Roan's Dyke path. Yet, in a later statement, Judith said it was her sister, Agnes, who told her about the finding of Jodi's body,

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after answering Judith's call to Alice's phone.

The 26-second call from Judith's phone to Alice's mobile at 11.53pm is the only point at which Judith could have been given the news, in a call to Alice's phone, that a body had been found. That call was two minutes before the first officer radioed in confirmation that Jodi's body had been found. If this was the call in which the terrible news was broken to Judith, then it would explain how Judith knew where Jodi was found, but it would then raise more questions. Agnes could not have had Alice's phone at 11.53pm, because the police did not locate the search party until 11.49pm – there was not enough time for the police to take the trio's details then walk back up the path to the car park in just four minutes, in order for Alice to hand her phone to Agnes.

There do not appear to be any further calls between Judith's phone and Alice's in the time from 11.53 to 00.32, by which time Judith definitely knew about the dreadful discovery and was in the school car park – the available information indicates that there were none. This is also the only logical explanation – phone calls made from the murder scene – for how the aunts came to be in the car park by the time the search trio were taken there. It would also explain how the aunts arrived in the car park before the first responding officers got there, which, in turn, would explain them “being allowed to drive in and park up” – there was no-one there to stop them. What it does not explain is how they knew to go there – the search trio could not have known they would be taken to the school car park before the police reached them. Why the aunts went into the school car park, rather than directly to Judith's house, has never been addressed.

Following Luke's 999 call, the information that “the laddie says he's found something” was passed to the two officers on the ground before the control operator called Luke back to ascertain his whereabouts (even though he had already given that information). Luke did not, in his initial call, say it was a body they had found – he later explained that, at that stage, he was in complete shock and could not get his mind to accept that the “dressmakers' mannequin” that he thought he saw was, in truth, the naked, mutilated body of his 14-year-old girlfriend. Alice and Janine were screaming in the background – he just wanted the police there immediately.

The taking of the search trio from the school car park was equally odd.



There is no record of how long the family members were left in the car park, only that by 1.45am, all of them (the search trio, the aunts, Judith, Alan and Joseph) were taken to Newbattle Police Station. Then, for no apparent reason, there was a change of plan and everyone was transported back to Judith's house, with the exception of Judith and Alan, who stayed at Newbattle Station to give their statements. The initial failure to separate the search trio from the others, as had been done with Luke, was further compounded by moving them, along with others who were not immediate witnesses to three separate locations.

Luke, on the other hand, was separated from the other members of the search party almost immediately upon arrival at the car park. His phone was taken from him and switched off whilst he was speaking to his mum, even though Alice Walker had been allowed to use her phone and possibly to pass it to one of the aunts to speak with Judith. The significance of the taking and not taking of phones has already been discussed. Luke was taken to Dalkeith police station, where he was stripped, forensically examined by the police surgeon, his body photographed, samples taken (blood for DNA and scrapings from his nails) and questioned until 6.30am the following day.

The contamination issues which so concerned the officers taking Luke to Dalkeith clearly were not believed to be in any way significant in relation to the other searchers.

SIO Craig Dobbie, the most senior officer on duty that night, later stated that the police did not know that any of the others in the search party had been over the wall to where the body lay. Even if this was true, Mr Dobbie could not explain *why* they did not know. Three crucial witnesses, two of whom were at the scene itself, one of them actually touching the body and all of whom were present when the body was found and in the minutes immediately prior to that, were missed by all of the first officers at the scene (including the DI).

Certainly, this would explain the decision of the first officer on the scene to ask Luke, the youngest member of the search party and the only child present, to go over the wall with him to show him where the body lay. In any other circumstances, Luke should have been the last person to be asked to do something so traumatic, but if this officer believed that Luke was the only one who knew where the body was, it may explain his request. This was later used, tainted with a suspicious

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slant, to claim Luke “refused” to go back over the wall and show the officer where Jodi’s body was, the implication being that he was cold, callous and belligerent.

It could (and very probably does) account for the assertion by Mr Dobbie that none of the officers was aware that the others had been over the wall – they simply were not asked, on the initial belief that it was Luke who found the body under what were, on the surface, very suspicious circumstances.

Meanwhile, the police enquiry had swung into action. Within an hour of the finding of the body, a family liaison officer (FLO) for the Jones family was instructed to attend Dalkeith police station. Another hour later, this officer and a colleague, also a liaison officer for the Jones family, had been briefed and deployed. At this stage, in another strange anomaly, no FLO had been instructed, briefed or even assigned to the Mitchell family. SIO Craig Dobbie, according to statements from him and other officers at the scene, arrived just after 01.00am, giving instructions for Luke’s clothing to be taken and a medical examination to be arranged. He also arranged for the pathologist and the procurator fiscal to attend, whilst his colleague, DI Millar organised the liaison officers and a doctor to pronounce life extinct officially. (This happened between 02.10 and 02.20am). Mr Dobbie arranged a full call out of Identification Branch and Forensic personnel and at 3am, two identification officers, a photographer and the Crime Scene Manager, officer Bowie, arrived. By 3.50am, this “group of four” officers was at the scene where Jodi’s body lay. Mr Dobbie requested a video of the scene to be ready for 6am, calling a briefing at 5.25am, before viewing the video, along with DI Millar, officer Bowie, the pathologist, Prof Busuttill and the Procurator Fiscal, at 6am. Thereafter, at 6.40am, these individuals made their way to the locus together.

From that description, with the exception of the inexplicable decision to take Luke and only Luke to the police station for the “full works,” it looks as if the standard procedures we would all have expected had, indeed, clicked into place and the enquiry was functioning like a well-oiled machine, under the direction of two senior officers. But appearances can be deceptive and, in this case, drastically so.

Two of the identification officers gathered up items of Jodi’s clothing from the scene before forensics officers arrived. There is no record of

how those items were gathered up and packaged. Jodi's body was rolled onto a plastic sheet, again, before forensics officers were in attendance. Overhanging branches were cut down to allow better access for the videographer. At least three officers, including Mr Dobbie himself, made direct reference to ensuring the scene was properly cordoned off and taking action to properly preserve the scene. The sad reality is that, in spite of more than 12 experienced officers attending the scene between midnight and 8am the following day, Jodi's body lay, uncovered, in the rain, throughout that whole period. The immediate crime scene was clearly contaminated by the actions of the identification officers, the Crime Scene Manager and the photographer/videographer. SIO Dobbie was at the scene from at least 1am and DI Miller from shortly after midnight. Both were there when the "group of four" arrived at 3am. Mr Dobbie returned to the scene at 6.40am, then left DI Millar there to "co-ordinate" events, yet neither they, nor the Crime Scene Manager, saw fit to ensure that the body was covered, that surrounding areas were properly secured and that items at the crime scene were left untouched until forensics officers had examined the scene.

According to officer Monteath, whose responsibility it was to guard the scene, the first forensics officer did not arrive until 4.45am – more than five hours after the discovery of Jodi's body. The officer was unable to examine the body and left. It later emerged that the forensics officer had a bad back and was unable to climb through the V break. There was never any explanation of why an unfit officer was sent to a scene such as this or why s/he did not walk to the top of the path and enter the woodland strip via the large break at the top of the wall, where no climbing was required. As a result, Jodi's body lay, unexamined, for another three-and-a-quarter hours. Strangely, officer Monteath noted that "nobody had entered the scene" prior to this time; from all of the other statements, that cannot possibly be correct. Yet this assertion appeared as "fact" in the statement of a police officer right there at the scene, an officer who had to have seen the group of four entering the woodland strip almost an hour earlier and who knew that other officers had already been over the wall.

No attempt was made to estimate time of death. From a doctor attending to confirm death, to the first forensics officer failing to get to the body, to the pathologist being informed and his attendance at the scene with Mr Dobbie at around 6.40am, there are no records of body temperature or signs of rigor or livor mortis which might have assisted in estimating

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time of death. Again, this failure suggests a belief that there would be no need to know what time Jodi died, because the driving belief was that Luke killed her sometime that evening.

Whatever incompetence might be attributed to the lower ranked officers, the first forensics officer, or the first doctor, it is inconceivable that Mr Dobbie, DI Millar and Prof Busuttil did not know that the body should have been covered, yet Mr Dobbie, who, by his own admission, was the officer with “full, on-call responsibility,” having first arrived at 1am, walked away from that scene at 5am and left the body uncovered for a further 3 hours. Such disrespect for Jodi is difficult to fathom.

Forensics officer Derek Scrimger, who was the first forensics officer to finally attend at 8am on July 1st, deserved an award for understatement of the year for his evidence at trial, in which he admitted that the scene had not been “ideally managed.”

By the morning of July 1st, steps had been taken (and had failed to be taken) from which there was no return. The contamination of the scene itself, the failure to cover the body, the effect of failing to obtain the other searchers’ clothing and to forensically examine them, the instant decision to treat Luke the way he was treated - all were done and could not be undone. Whatever evidence was lost in those early hours was lost forever. It should not come as a surprise, then, that by 8.30am that day, council gardeners were out cutting hedgerows in the direct vicinity of the murder. Bin collections went ahead as normal and Newbattle High School carried on with its usual routine. Even though the car park was rendered “contaminated” in evidential terms by the movements of police officers and vehicles from midnight, this was still a strange decision. Although Lady Path was cordoned off, students were still able to walk across the school playing fields and to enter the school grounds from the entrance nearest Easthouses, as well as the main school entrance. In the event, some 900 pupils attended morning classes and spilled out into the playground for morning break, whilst the mutilated body of a 14-year-old child lay just a few hundred yards away. Jodi’s body was not placed into a police vehicle and transported from the murder scene to the morgue until well after 10 o’clock on the morning of July 1st.

Within the next few days, arrangements were made to bring in specialist sniffer dogs from Yorkshire to assist in the murder investigation. There were three sets of police dogs available to the investigation, the

Yorkshire dogs being the third.

Lothian and Borders Police (and Dalkeith station in particular) had access to their own sniffer dogs. I know this because not long after the murder, a friend of mine had his car broken into in Dalkeith, while it was parked outside the house. The police arrived around 11.30pm with sniffer dogs that checked out the car to see if the thieves had left any scent traces. Yet when police officers turned up in their droves in the car park of Newbattle High School on the night of June 30th, they did not take the dogs with them. On what basis can the argument be made that a car break-in warrants the deployment of sniffer dogs, but the murder of a 14-year-old girl does not?

Dog handlers from Strathclyde were brought in initially, ostensibly to see if their dogs would have reacted in the same way that Luke's dog did. (This was the same reason given, in part, for the "reconstruction" of Dickie snr's movements in the woodland strip on June 30th.) In a rather bizarre experiment, two dog handlers walked up the path. One climbed over the wall and hid behind a tree, near to where Jodi's body was found. The other walked the dog up past the V break – it failed to react to the presence of the other officer behind the wall, leading the investigation to conclude that a dog walking up the path side of the wall "would not react" to someone on the woodland side. There is one obvious fault with this experiment. The officer behind the wall was very much alive and there was no spilled blood on or near his person. This exercise highlights an important point – at the time it was carried out, two of the family search trio's accounts were still supportive of Luke's – that Mia alerted him to something behind the wall. Producing an expert report to demonstrate why recollections "may be inaccurate" is a reasonably reliable way to convince ordinary people, especially in such traumatic circumstances, that they may have been mistaken. These dogs were, quite simply, brought in to discredit Luke's account, rather than the far more important task of trying to uncover evidence about the murder and the perpetrator.

The decision to (finally) bring in the Yorkshire dogs may have been justified as being for precisely the purpose of finding evidence about the murder and the murderer, but the manner in which the exercise was carried out immediately negated that justification. Rather than checking whether they would have reacted as Mia did, these so-called "cadaver dogs," were brought in to detect, amongst other things, information

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about the killer's potential escape routes. Since the dogs could not possibly be following the scent of Jodi's attacker, it follows that they would have to be following the scent of blood from Jodi which was deposited on the murderer (undermining later police claims that the murderer was "not necessarily blood-stained"). The South Yorkshire Dog team was reported, in one newspaper article, as Lothian and Borders Police's "first port of call." Many people will find it difficult to believe that, in reality, the first port of call was the cleaning products section of the local supermarket.

By the time the Yorkshire dogs arrived (between July 10th and 12th), the scene had been bleached. The handlers reported that the dogs' abilities to carry out their tasks were impeded by the bleach. Since there was no mention of bleach in Lothian and Borders Police's own accounts of the original murder scene, the obvious conclusion has to be drawn that it was the police, themselves, who bleached the scene, or caused it to be bleached, prior to the arrival of the dogs.

A decision was taken to limit the areas the dogs were to cover – only routes leading to Newbattle were to be checked. Had the dogs simply been allowed to cover the whole (preserved) area, there is no knowing in what direction they may have taken their handlers. Setting up a restricted scenario where the dogs were only going to react in one direction is not "proof" of anything, especially given the spread of branches in the woodland strip bearing traces of blood – it is nothing more than a staged exercise to produce "evidence" to support a specific theory.

There was other evidence potentially pointing to the attacker escaping via a different route, in a different direction (the observation of a trampled and flattened area at the opposite side of the woodland strip to the wall), but it was never properly examined, evidence from it was not properly collected and it did not fall within the area to be checked by the dogs. There were other potential escape routes which did not involve the Newbattle direction. Had the scene been preserved and the correct questions asked ("what direction might the killer have taken?" rather than "is it possible the killer escaped towards the Newbattle area?"), then the dogs may have supported other evidence and other routes - now, there is no way of ever knowing.

On July 12th, a police officer moved a stone which had been dislodged from the V break in the wall and was lying on the ground. Underneath

this stone, a purse was found, complete with cards. Although the owner was traced, the purse and its contents had not been reported lost or stolen. The V point was absolutely central to the whole investigation. It has to be assumed that the purse was there from the beginning – the alternative is unthinkable. But assuming it was, the questions have to be, how did it get there ... and when? Was the female owner of the purse present when the purse was dropped and why was it never reported lost or stolen and the cards stopped? The answers to these questions were not in the defence files (if, indeed, they were ever asked).

Twelve days is a long time into a murder enquiry. If the purse was there from the start it should, in all likelihood, have been found much sooner. What else might not have been found, so close to the murder itself, by the time the path was re-opened to the public 4 days later?

But twelve days is also a long time to be without a purse, credit cards, debit cards and so on. The other possibility - the unthinkable one - is that the purse had only been dropped very recently and the owner had not yet noticed it was missing. This was a crime scene, the very centre of a massive murder investigation – if the purse was dropped eleven or twelve days into that investigation, serious questions arise about how that could have been possible. The owner of the purse does not appear to have been in any way linked to the investigation, or to have been someone with a legitimate reason for being at the V break in that period – the lack of further information in the defence files makes it impossible to take this any further.

Blood was also found on a boulder at the foot of the wall, beside the V break on the path side, but it was considered contaminated because the police used the V point for entry to the murder scene, that contamination making it evidentially useless in suggesting that the murderer came back over the V point to the path side. But Luke, Alice and Kelly had all been over the wall and back. Of course, with so many people going over the wall both ways, that blood could not prove anything, but it does seem odd that the forensics expert was only interested in police contamination and not the others.

It is entirely possible that the shoes of anyone who went over the wall could have picked up traces of blood (Dickie snr's boot produced a sample testing positive for the presence of blood, for example). Luke, Kelly, Alice and the first officers on the scene travelled part way along

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Lady Path before turning into the school grounds. Had the sniffer dogs been allowed to search the whole area, any traces of blood on Lady Path beyond the school gate would have been of significance to the investigation (and may have led investigators to James Falconer at the time of the murder, rather than tracing him three years later, as discussed later in this chapter). In short, everyone who was known to have been at the scene for legitimate reasons was also known not to have traversed the full length of Lady Path – the dogs picking up any scent south of the school gate would have indicated to officers (a) the fact that someone who was not part of the search party/first police response was at the murder scene, innocently or otherwise and (b) the killer could potentially have escaped along Lady Path.

Roan's Dyke path was re-opened on July 16th, a date which came to have some significance to the case, although that was not discovered until Luke had been in prison more than seven years.

Three weeks into the enquiry and almost a week after the path was re-opened to the public, a blood-stained piece of wood was logged as having been found in the woodland strip. An investigative strategy which involved bleaching the crime scene a week and a half into the investigation yet left potential evidence at the scene after it had been re-opened to the public is an alarming strategy. But many of the decisions taken in the course of this investigation were apparently illogical at best and negligent, at worst.

Two items found in the vicinity of the crime scene turned out to be linked, although the link was not discovered until years later. A condom was found, according to the original report, 20 metres from the body. Somehow, this later changed to "within a 20 metre radius of the body," making it impossible, later, to identify exactly where it was found. Some time later again, that distance was increased to 40 or 50 metres (this may have been simply a doubling of the previous radius to a potential diameter). A full DNA profile from semen in the condom (described as "fresh" semen) was obtained, but police were not able to identify the person from whom this DNA profile originated.

Even at that early stage, attempts were being made to distance this condom and its contents from the murder. The question is why? Under any other circumstances, this would have been considered a significant piece of evidence - perhaps, in the circumstances of this case, the most



significant piece of evidence obtained by that stage. It would have been clear, very quickly, that the DNA profile from the condom did not originate from Luke Mitchell – his blood was taken in the early hours of July 1st for the precise purpose of obtaining his DNA profile.

On the morning of July 1st, two local youths found a blue “hoodie” lying on waste ground at the back of Reed Drive, just off Lady Path, some 700 metres from the murder scene. They brought the hoodie to the attention of police officers manning the police cordon. According to their accounts, they were inside the area said to have been cordoned off by police when they saw the hoodie.

The mother of one of those youths called the police at midnight on July 1st (going into July 2nd) to report that the hoodie, brought to police attention by her son A, actually belonged to another of her sons, B. The police attended this family’s house on July 2nd and took statements from brothers A and B – brother B said he lent the hoodie to a friend a week or so previously, but the friend did not want it, so threw it away. The police also photographed the hoodie in situ and sent it off for forensic analysis.

Almost three years later, it emerged that the originator of the DNA profile from the discarded condom was a third brother from this same family. James Falconer was identified in 2006 when his DNA profile was entered into the national database in relation to another matter. He gave a statement to police accounting for the presence of the condom (but not for his failure to identify himself to police earlier). According to Mr Falconer, he went into the woodland strip to masturbate – he had, he said, no privacy at home because he shared a room with his brother. He offered an estimate of the time he was there and the distance he travelled behind the wall before stopping to masturbate. Although it was daylight until after 10pm on June 30th, Mr Falconer’s statement noted that it was getting “grey dark” when he first made his way down the woodland strip behind the wall at, he believed, around 8 or 9pm. It is not possible, if he took the route and travelled the distance he claimed he did, that he did not see Jodi. Of course, Mr Falconer’s estimate may have been mistaken, three years after the event (although that would not change the proximity of the condom to the body). But Mr Falconer’s statement includes an even more worrying assertion – the following morning, having heard that a young girl had been murdered behind a wall just yards from his home, Falconer claimed he went out onto Lady

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Path and masturbated again, behind a tree, towards the waste ground adjacent to Lady Path and the back of Reed Drive. This area was also inside the claimed police cordon and there should have been police officers everywhere. The only verifiable part of Falconer's statement – that he borrowed the condom from a friend – turned out to be a lie. He did not even know the named friend until two years later. Asked why he told police he borrowed the condom from this friend, Falconer is on police record as responding "I had to say something." The matter was not pursued. Falconer, like the Dickies, lived in Reed Drive, very close to Lady Path, but door-to-door enquiries, carried out after the murder in 2003, stopped just one house before the address where Falconer lived.

The official reason given for police not taking Falconer's account more seriously was that the case was closed, because Luke Mitchell had been convicted, so there was no obligation for them to pursue the matter further. Whilst that may be technically correct, it does not explain why, three years earlier, for the second time within hours of the murder, members of the public were freely accessing what was supposedly a secure crime scene and it does not reflect what we, the general public, expect in the pursuit of true justice.

Given that the police took the reports of the blue hoodie seriously, ensuring that the item was photographed, packaged, labelled and sent off for forensic testing, another curious anomaly arises. In the woodland strip, eleven footprint marks, a maroon sweatshirt and a pair of black joggers were all found. For reasons which have never been explained, this sweatshirt and the joggers were never photographed in situ, packaged, labelled or sent off for forensic analysis. Indeed, apart from the mention of them having been noticed, there are no further references to them in the defence papers. Although these were found in the woodland strip behind Newbattle High School, they were the colours of the school uniform for St David's High School, the school Jodi and Luke attended a mile away, as the crow flies.

Of the footwear marks, casts were taken of only four. Again, there was no explanation for why only four casts were taken, or what criteria were used to decide which of the eleven marks should have casts made. Given the existence of the "trampled and flattened" area, which could have been indicative of the attacker's escape route, it becomes apparent that chunks of information, which may very well have pieced together to provide a wholly different picture to the one being pursued by in-

vestigating officers, were lost through a series of inexplicable actions, decisions and omissions. Indeed, it was later discovered that barbs in the barbed wire fence beside the trampled and flattened area had been pushed aside to leave a clear area of fence over which access to the woodland strip could be easily made without snagging clothing or skin.

As this chapter shows, management of the crime scene raises some disturbing questions, not only about the scene itself, but also about decisions taken regarding what was, and was not, important to the investigation in the first two weeks.



## **Chapter Eleven**

### **The Evidence (1)**

Since the narrative of the case was so weak, illogical and flawed and the accounts of so many central witnesses do not stand up under scrutiny, all that was really left on which the jury could base its verdict was the evidence itself – as the verdict was “guilty,” one would expect that the evidence – forensic, physical, photographic – would have been robust. No murder weapon was ever recovered and no forensic evidence linking Luke to the crime scene was ever found. Since DNA has become the “magic bullet” in serious crime investigations and there is a widespread belief that DNA evidence can provide the sort of irrefutable evidence these cases need, that is probably the best place to begin examining the evidence available in this case.

Any illusions we may have harboured about the reliability and infallibility of forensic testing were shattered in this case. The broad statement, that there was no forensic evidence linking Luke to the murder is, in itself, very surprising, in view of the prolonged and bloody nature of the attack on Jodi. But that is only a tiny fraction of the forensic data available for inspection in the case and that inspection leaves some deeply disturbing questions unanswered.

Research has shown that biasing information included with test instructions can significantly influence results and given some of the surprising and, in some cases, unlikely results returned in this case, it may well be that it was the nature of the instructions given to the labs which yielded such unsatisfactory results. Because there was never any opportunity for the defence to obtain second opinions on the forensic results, the nature of the instructions sent to the labs is currently unknown – it has not been possible for Luke’s legal teams or supporters to obtain copies of the paperwork which accompanied samples sent for testing.

It is important, also, to understand, that it is not only biasing information which can skew results – an instruction that says something along the lines of “Analyse to determine any link with X” will, of necessity, return a “no reportable result” if there is nothing to link it specifically to X. The problem with this, which is not immediately obvious, is that the lab does not have to report, or even look for, any link with any other person, as that is not part of the instruction. So, although the sample may have thrown up links to Y or Z, that information will not necessar-

ily be available, because the instructions did not specifically request lab staff to look for it. TV portrayals of forensic testing which begins with a blank canvas and tests for every possibility are wildly misleading – in real life investigations, investigators are looking for specific results in response to specific theories or suspicions and so samples are sent to the labs with very specific instructions. A result which states “No reportable result,” therefore, does not necessarily mean that there was nothing at all from that sample which could be reported on (although, obviously, in some cases, that will be exactly what it means.) It could simply mean that there were no results consistent with the specific instruction given. A further discussion of samples which returned no reportable results is included later in this chapter.

In this case, part of the problem with the results themselves is that the labelling is confusing and contradictory – there is a sample which is labelled in one report as “semen,” yet in another report as “no semen.” This was not a case of the sample having been labelled as possibly semen in one report and the other report being the result of testing, because, in the first report, the sample returned a positive result for the presence of semen and sperm heads were found. The question, then, is how it later ended up being labelled “no semen.” Another example is that of two separate samples which somehow ended up with the same label, so there is now no way of knowing to which one of those samples the results belong.

One extremely confusing result, from the sperm fractions of a number of samples labelled “semen” read, “The DNA identified, which was female in origin, matches the profile of Jodi Jones,” before going on to give the usual statistical data about the chances of the profile originating from anyone else who is not a direct relative being millions to one. There are two important points here. How can a sperm fraction (in very simple terms, the sample is whizzed around and the sperm heads, being bigger, separate themselves from the smaller cells present) - a sperm fraction being, as I understand it, sperm heads - be female in origin? Although an explanation of these results has been sought several times, the only answer that has ever been offered is “That’s not what it means.” When this is countered by the (obvious) question – “then, why is that what it says?” there has never, ever been an answer given.

The labelling and recording of the results were extremely poor - there are several mixed profiles (e.g., showing the presence of both male

and female DNA) which are simply labelled “Jodi Jones” - that cannot possibly be! If there is male DNA present, then someone other than Jodi herself has to have contributed to the sample - this part of DNA profiling, at least, is not rocket science!

There are results recorded showing both male and female DNA, but they are recorded in such a way that it is impossible to tell which “numbers” correspond to which contributor - the male or the female. That, in turn, makes it equally impossible to tell who may have been the male contributor(s).

Yet in other results, the male contribution is recorded in brackets, to differentiate it from Jodi’s contribution - there is absolutely no consistency to the labelling and recording of these results. Is it acceptable that there is no explanation for these anomalies, which make it extremely difficult to interpret the results that were available to the defence?

Popular perceptions of DNA testing and profiling would have us believe that it is transparent and obvious whose DNA profiles appear in what samples and that there are specific, standardised and recognisable ways of recording those results so that anyone looking at them will be able to tell which profiles have been definitively identified.

The other point about these results, along with many others which were labelled positively as originating from Jodi, with a specific statistical likelihood, is that there were three direct female relatives of Jodi very close to the investigation – her mother, her sister and her grandmother. This became particularly important with some of the “partial” profiles which were deemed to have originated from Jodi herself, especially as the wording of the results states quite clearly that the statistical probability only applies to other persons who were not direct relatives of Jodi.

The DNA profiles, in these results, were noted as ten pairs of numbers, or markers, plus an x or y element, denoting male or female DNA. The ten pairs must appear in exactly the right order, to be considered a full profile. (This is explained in greater detail below.) Yet some of the samples had as few as one pair of numbers (one marker) but were labelled as profiles originating from Jodi. That is simply wrong. There is no way of telling if some of those samples may have originated from Janine, Alice or Judith (or, indeed, have been mixed samples of Jodi and one, or any, of the others.)

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The extent to which the DNA results attempted to implicate Luke, when there was no basis for doing so, is shocking. One of the forensic reports referred to a minute sample with a specific maker in it. The report says this single marker “Could be found in one in two of the population.” It then goes on to say, “We cannot rule out Luke Mitchell as a contributor.”

That, of course, is only half of the story – they cannot rule out Luke Mitchell *or every second person in the population*. It is very common to find forensic results couched in these terms, where a level of suspicion or doubt is implied, but which the ordinary lay person would not readily understand is not, in fact, any real or significant level of suspicion.

“Expert speak” is the manner in which the scientists and other experts give their evidence, such that whilst it sounds, to the lay person, like one thing, it means, in reality, something quite different. This can be as a result of extremely confusing jargon, or more often, by simply only giving half of the information, such as the “cannot be excluded” example above.

Professor Busuttil, the pathologist in this case, was asked if the knife produced in court “could have been” the murder weapon. It is important to understand that the knife produced in court was not one of Luke’s knives – the claim was that it was said to be similar to one which Luke had owned, but which had “disappeared.” In essence, any knife could have been introduced in court and this question asked and the professor could, in all conscience, answer in the affirmative. The professor agreed (perhaps unsurprisingly) that the knife produced in court could have been the murder weapon, although it was “perhaps too small.” All of the knives taken from the Mitchell home, including basic kitchen knives, were tested and came back with no incriminating evidence. A pouch, taken from Luke’s home, was said to belong to the “missing” knife. But it is worth noting that the size of the blade used to inflict the wounds found on Jodi would have to have been considerably larger than the knife which fitted the pouch. Indeed, when the professor was asked about the wound inflicted on Jodi’s tonsil (by the blade being plunged into her mouth), he demonstrated what should have been the ridiculous suggestion that the knife produced in court could have been the one which inflicted this injury – the professor showed the court that only by holding the knife at the very end of the handle, with the tips of his fingers, could that knife have inflicted the injury without causing, for



example, damage to the teeth and corresponding damage to the hand of the attacker (which was not found on Luke's hands).

But, once again, it is the nature of the questions asked and the attempts to answer them in the positive, which create the confusion that is "expert speak." Had Prof Busuttil had been asked "how likely is it that this weapon (or one identical to it) could have been the murder weapon?" rather than the leading "is it possible that it could have been?" the answer may have been very different. (Indeed, Professor Busuttil participated in the later Frontline Scotland documentary about the case, in which he stated, quite plainly, that it was "highly unlikely" that the killer had avoided becoming bloodstained, contaminated with trace evidence, or leaving traces of himself at the scene. Unfortunately, none of the questions asked of him at trial allowed him to give those answers.)

One claim about DNA profiling appears to have caused the biggest misunderstanding of all – the claim that everyone's DNA profile is "unique." Whilst this is true, it is also deeply misleading. In the UK, DNA profiles in 2003 were recorded as a series of ten pairs of numbers, each pair forming a single "marker." So, for example, three full DNA profiles would be recorded like this:

1      2      3      4      5      6      7      8      9      10

Person A:

x,x|Female|13,14|15,18|11,11|16,18|6,9.3|28,29|24,25|10,12|16,17|19,20|

Person B:

x,x|Female|13,13|17,18|10,11|17,18| 6,7 |28,32 |21,24| 12,13 |15,17|20,22|

Person C:

x,x|Female|12,13|18,19|11,13|18,19 |6,9 |27,28 |22,24| 11,12 |17,18|17,20|

While it is immediately apparent that each configuration of numbers and markers is unique, the numbers and markers themselves are not. At each position, from 1 through to 10, there are numbers which are common to more than one person. For example, Persons A and B both have the number 13 as the first half of marker number one. Persons A and C have the number 11 as the first half of marker number 3, and so on.

And that is where DNA profiling becomes both confusing and misleading for non-experts. Compare the following incomplete (partial) DNA

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profile (hypothetically recovered from a crime scene) with the three profiles above:

Suspect Z:

x,x|Female|13, |18, |11, | ,18| 6, |28, | ,24| ,12| ,17| ,20|

None of the three persons A, B or C can be excluded from our suspect DNA sample, but that does not mean that any one of the three of them is actually a contributor – it just so happens that elements of their individually unique profiles are common with elements of each other’s profiles and the partial profile from the crime scene. It would not be possible to tell, for example, whether the number 13 at position 1 originated from Person A, Person B, or someone else entirely who happened to have a number 13 at that position in their DNA profile. That is why partial samples cannot be claimed to be partial “matches” to any given person.

Another expert stated, at trial, that “Jodi’s DNA was found on the accused’s trousers.” The DNA to which this expert referred was, in fact, on another pair of trousers taken from Luke’s home – there was no way of telling how long the DNA trace from Jodi had been there and there was no evidence whatsoever that Luke had worn them the day of the murder. The witness conceded, on cross-examination, that the DNA on the trousers that were not worn on the day of the murder, could have been deposited at any time by innocent transfer. The question, really, is why were these trousers even mentioned in court? If they were not worn (or alleged to have been worn) by Luke on the day of the murder, then Jodi’s DNA being on them was of no consequence – it could not prove anything at all about the murder. However, the suggestion was now before the jury that DNA from Jodi had been found on an article of Luke’s clothing and that suggestion was embedded in highly technical, extremely confusing expert testimony. Would the jury necessarily have understood that these trousers were not, in any way, alleged to have been linked to the murder?

Comments made on internet forums and online newspaper comment sections demonstrate that members of the public were confused about this particular matter – some insisted that DNA from Jodi was found on Luke and that those claiming there was no DNA found were “lying.” Jodi’s family made similar claims, both online and, on one occasion, directly to me.

According to the DNA reports, samples 336A and 336B from the trousers Luke was wearing on the night of the murder, returned a mixed result with Luke and an unknown female, but that information was never before the jury. I've had people claim that because this female was unknown, she could have been Jodi, but there were just not enough markers to identify the profile as hers. In fact, some of the markers found are not the same as those in Jodi's profile at the same places.

The same expert witness at trial then went on to make an outrageously misleading claim - that a stain on the bra Jodi had been wearing showed DNA traces from more than two individuals – “some of which matched parts of Luke Mitchell's genetic profile.” Whilst this is technically true, it is, as previously discussed, meaningless. The implication was that this was a partial DNA profile originating from Luke, something that could not legitimately be claimed.

The witness above was forced to concede that the partial profile found on Jodi's bra could not possibly identify Luke from the markers present- it could, in fact, have been anyone, on the basis of the explanation just given. Whilst it is reasonable to expect that lay people may not understand this, if it is not properly explained, it is inconceivable that a forensics expert did not know that what she was trying to claim, whilst being technically correct, was extremely misleading.

This is “expert speak” at its most dangerous – jurors may have been led to believe that DNA of Luke's was found on Jodi's underwear. Alternatively, jurors may still have believed, despite the robust defence against the claim, that “some” of Luke's DNA was found and the defence was simply arguing it away on a technicality that there was not enough of it for the prosecution to use. In fact, that is what Jodi's family appeared to have been told and still believed almost ten years later. (This is discussed further in Chapter 18.)

Jodi's brother and mother have stated repeatedly that there were “strands” of Luke's DNA all over the body and the crime scene. By that, they mean samples from the body and clothing produced mixed samples, which had some markers that “matched” some of the markers in Luke's profile. The way they have been led to understand it, these matching “bits” must have come from Luke and the only reason the prosecution couldn't use them was because they were “not allowed” to link them all together to make full profiles.

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This failure to explain DNA profiling basics to ordinary members of the public allows suspicion to be maintained by expert witnesses, when, scientifically, there is no basis whatsoever for that suspicion. Out of some 92 reference samples taken for this investigation alone, more than 40 had at least one common marker. Immediate family members are likely to have a number of common markers. Also, jurors are invited to base their decisions about a case on what evidence they believe – not, necessarily, what evidence they understand.

One interesting discovery, which Jodi's family members have refused to accept, is that those "bits" of samples that they believed matched Luke's profile, also "match" (by this form of reasoning) at least 5 other males of interest to this case. Of course, all of them are no match because there is no way of saying from, say, four half markers, which full profile those markers may have come from. The (mis)information given to the family was used to try to convince them that there were strands of Luke's DNA; by that reasoning, they should have been told (and clearly were not) that there were also "strands" which "matched," in the relevant places, others much closer to home. Those partials were ignored (as they rightly should have been) by investigators, but when their existence was later pointed out to Jodi's family members, they either insisted that those partials must have been Luke's as well, or that I am twisting the information to support Luke's innocence.

Luke's family were told that a strategic decision was taken by the defence team not to be too hard on Jodi's family members at trial, so as not to antagonise the jury. But they also heard, from another source, that a deal was made not to use the DNA evidence, although this was never confirmed and there seemed to be no logical reason for the defence agreeing to such a deal. It could have been possible that the prosecution wanted to avoid arguing the DNA evidence, precisely because it would have allowed the argument that those other partials could have originated from others known to the investigation. Using the same expert speak, the defence could have elicited "could not be excluded" responses for a number of people who were not Luke.

Judith later stated, on an internet discussion forum, that an agreement was, indeed, made between the defence and the prosecution not to use the DNA evidence, but if that was the case, then Donald Findlay broke that agreement by pointing out that there was no forensic evidence linking Luke to the murder. That left the prosecution free to roll out all and

any DNA evidence they had to prove their case, but they failed to do so. With the exception of the innocent transfer sample on a pair of trousers not even related to the murder and the outrageous claim about the DNA on Jodi's bra, there was nothing – because they had nothing.

Other attempts to implicate Luke via forensic results demonstrate just how far the police were prepared to try to go to make the evidence fit their chosen theory. In this reference to a jacket sent for testing, the wording of the forensic report is as follows:

*A jacket, which was said to be similar to one which may have been worn/owned by Luke Mitchell.*

“Said to be” - by whom, in what circumstances? “Similar” - not identical, not the same, just similar; “may have been” - and, of course, may not have been; “worn/owned by” - which is it?

There is no information in the case papers that answers any of the above questions, but the real question has to be why this jacket was given so much attention, when other, far more credible evidence was studiously ignored. If the jacket was only similar to one which may have been worn or owned by Luke, then the investigators appear to have conceded, before testing, that this jacket was not one worn or owned by Luke, it was just one that was similar. What possible evidence did they hope to obtain from a jacket that they had already conceded was not one of Luke's?

It is not so much the scientists who concern me in this respect (although, as I have shown, there are a number of dangers related to expert speak and biasing information), but the police officers whose combined lack of understanding of the science and determination to get a result, can misuse this information to drastic effect.

One of the officers interrogating Luke told him, “We've got DNA that's similar to your DNA. So explain that - how did your DNA get on her bra?” The exchange went on for some time, with the officer asking Luke if he knew what DNA is (and Luke gave a scientifically accurate reply) and still this officer continued to bombard Luke with questions about how “his” DNA got there. Luke eventually said, “If it's only similar, then it's not mine, is it?” before going on to explain that the profile must be complete, unique and a full match. Then, and only then, was the subject dropped. But it is strange that the forensics expert at trial tried to

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make the same claim before the jury.

Another surprising aspect of the forensic evidence in this case was the sheer number of samples which came back from the labs labelled “no reportable result.” A person of interest to the enquiry (not Luke) was found to have bloodstains on his jacket and trainers and blood was found on the blade, handle and sheath of a knife belonging to him. The knife blade was 153mm long and 16mm wide (around 6.5 inches long, and  $\frac{3}{4}$  inch wide). Every sample pertaining to this person was on the 121 item “no reportable result” list.

The following is a list of some of those items. Have we been terribly misled as to the abilities of scientists to obtain DNA profiles from ‘minute samples’? Even Lothian and Borders police themselves were boasting in one of their bulletins (prior to this investigation) - that they can extract DNA profiles from the ‘tiniest’ samples.

- \* Lower back- one short colourless hair
- \* Upper back - two brown hairs and many short colourless hairs
- \* Right side of face - 7 long brown hairs, cut at both ends (one with a root), and a few short colourless hairs
- \* Right upper arm - a few short colourless hairs
- \* Left upper arm - one short colourless hair
- \* Rear of right and left thighs - a few short colourless hairs
- \* Upper chest - 2 long hairs, cut at both ends, a few short colourless hairs
- \* Middle of abdomen - a few short colourless hairs
- \* Jacket - several white stains on outer lower back, inside of hood and upper back of left sleeve. No semen found.
- \* Back of T-shirt - saliva stain outside lower back, large saliva stain inside mid back. One sperm head lower back.
- \* Front of T-shirt - small area of semen staining inside back of left sleeve (3 separate samples). A few sperm heads on both upper left and upper right front.
- \* Bra - semen and sperm heads, outside left cup. Semen and sperm heads, padding, left cup. Reactions indicating the presence of semen (no sperm heads) right cup. Area on right cup 2

sperm heads.

- \* Trousers - small cuts lower front, right leg (ranging from 1mm - 19mm), curved cut in the hem at lower back of left leg. A single sperm head found in white stain on lower front of right leg.
- \* Five white stains, tested for saliva. None present. One contained many intact cells.
- \* Underpants - sperm head and many cells.
- \* Right and left shoe - 'no semen found.' Yet two of the samples from this report, which are labelled as 'blood,' turn up in another report labelled 'semen'.

The almost throw-away references to "a few" sperm heads are worrying. These were found in several different areas but the term "a few" makes these deposits appear to be inconsequential. The same is true of the short colourless hairs - they were found all over Jodi's body, yet there was no sense of importance attached to them. How many hairs or sperm heads are "many"? How few are "a few"? What is "a small number"? Is that really an acceptable way of noting items being processed for apparently scientific testing? A "small number" of these hairs was sent for analysis and came back "no reportable result." Given the number of hairs found and the number of places on Jodi's body they were deposited, it is surprising that no results could be obtained from any of them, not even a distinction between human and animal hair.

The small cuts on the bottom of the trousers may have indicated that Jodi either entered or tried to leave the woodland strip over the barbed wire fence (at the opposite side to the wall), especially given the discovery of the flattened, trampled area in the grass there, on the woodland side. Such a possibility never appears to have been considered, perhaps because it undermined the prosecution case that Jodi walked down the path and either climbed or was coerced through the V break in the wall.

It is also worrying that so many semen and sperm head samples which were sent for analysis came back "no reportable result." Of 27 samples labelled "semen," six came back as "female," the DNA attributed to Jodi, 15 had "no result," 3 were mixed samples with DNA from "unknown males," 1 was a mixed sample between a named male and an unknown male and the remaining 2 reported "unknown male" (one of these was later identified as Falconer).

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Some stains were reported as “visible”, some were recorded as areas “showing a reaction consistent with” (with no explanation of whether these areas were visible or not) and some were recorded as “no visible staining, but reaction suggesting the presence of X.” As if that’s not confusing enough, by the time the results were returned, it was (and still is) virtually impossible to tell which results correspond to items originally labelled “visible”, “not visible”, or neither. Bearing in mind that at least 6 labs were involved, all using their own labelling systems, one would have to be a little suspicious that the testing processes were poorly tracked and recorded at best and a hopeless shambles at worst.

There has never been any professional opinion regarding what the white stains on Jodi’s hoodie and trousers might have been, or whether the saliva stains on both the inside and outside of the t-shirt were human or animal.

Semen staining on the inside left sleeve of the t-shirt appears to have been visible to the naked eye. It is unlikely that a 14-year-old girl would go out to meet her boyfriend in a borrowed t-shirt with visible semen staining on it. Since the t-shirt reportedly smelled of washing powder, indicating it had been freshly laundered, the conclusion would have to be that the visible stains on Jodi’s clothing were deposited either during or after the attack – in no way can it be claimed, for example, that a visible semen stain on a t-shirt got there by transfer in a washing machine or by rainwater. In the midst of an investigation which was failing over and over again to identify the origin of those stains and any DNA profile from them, the police appeared to go to inordinate lengths to produce innocent explanations for the one full DNA profile they did manage to identify.

### **Transfer theories**

As mentioned earlier, part of the prosecution contention was that semen was “diffused” by rainwater from one area of fabric to another (leaving aside, for the moment that those areas of fabric were not in contact with each other.) According to this theory, sperm on one side of Jodi’s t-shirt could also account for sperm on the other side, having been “diffused” by the rain. The same was suggested about the sperm heads found on different areas of the bra. (The prosecution would appear to be conceding, however, that rainwater is not enough to dissolve or wash away traces of semen or sperm, only to migrate it from one area to another.)



This was a 14-year-old girl, brutally murdered and there were semen deposits and/or sperm heads on her hoodie, t-shirt, bra, trousers, shoes, underwear, face and hands, yet not only the police, but also the lab personnel, seem to have accepted the presence of all these deposits as quite normal and ordinary and then gone to extraordinary lengths (including the questionable rainwater diffusion theory) to make them so.

Had the supposed transfer occurred when both the t-shirt and bra were on the body and it was rainwater that caused the transfer, then it would have to be assumed that Jodi was dressed and being rained on. But it did not rain until after 7 o'clock that evening and the prosecution case is that Jodi was killed at 5.15pm. So, the rainwater diffusion, if it occurred at all, did not occur whilst the clothes were on the body. But it could not have occurred when the clothing was lying on the ground, because the items were too far apart.

There is a possible clue and an innocent explanation for the possibility of transfer. Derek Scrimger, the forensic officer who arrived at the scene at 8am, said in court that the body had been moved and items “gathered up.” Those items would have been soaked in rainwater - they were left lying out in the rain all night - it is entirely possible that whoever gathered up the items placed the t-shirt and the bra together and that is how the transfer occurred. If that was the case (although such a suggestion has never been made by any forensic scientist in the case), it's an example of the damage done by the failure to adequately manage the crime from the moment the body was found. It does not, however, explain the existence of semen and sperm deposits in the first place.

Alternatively, no transfer ever occurred and the semen deposits were exactly that – individual, separate deposits. But if that is the truth of the matter, then it would be expected that serious attempts be made to find out from where and whom that number of semen deposits originated. Instead, we have what appears to be virtually no serious investigation, but two, interlinked theories – the first, we have already seen, is the “rainwater diffusion” theory. The other is “washing machine transfer.”

Steven Kelly's DNA could have found its way onto Janine's t-shirt in the washing machine. (There are some studies which demonstrate this possibility.) However, it is important to understand that the only particles which would survive such a wash are sperm heads. Seminal fluid would be completely destroyed by the enzymes in the detergent. Any

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DNA from Kelly on Janine's t-shirt had to have been transferred once (to any item of Janine's before the item was washed), then potentially a second time, during the wash cycle, or alternatively, if the DNA was transferred directly onto the t-shirt, it survived being washed and was then transferred again by rainwater diffusion. In the midst of all this transferring was the suggestion that sperm heads on Jodi's t-shirt (already there by innocent transfer and having survived machine washing), then transferred both across her t-shirt (from one side to the other) and through it, to her bra beneath and from there, into the padding of the bra as well.

But since the enzymes in laundry detergent would have destroyed semen deposits, what was the explanation for areas testing positive for the presence of semen on an item that was apparently "freshly washed"?

There were, in total, DNA profiles from five unidentified males and one – Steven Kelly – identified, in the DNA results. One of the unidentified males was later found to be James Falconer, whose used condom was found discarded 20 metres from Jodi's body. A condom, found in a cave near the murder scene, also yielded a full DNA profile. The investigation had called for some vagrants who were believed to have been living in the cave to come forward because a sleeping bag and boots were also found, an attempt having been made to burn them and police statements noted that it looked as if the occupants had left "in a hurry."

Once again, the police appeal carefully pointed out that the vagrants were not considered suspects, but potentially vital witnesses and once again, they were traced and eliminated. However, the unidentified DNA from the condom in the cave remains unidentified. If it originated from one of the vagrants, the DNA results do not say so. It is difficult to accept that vagrants would deliberately set fire to such valuable items as a sleeping bag and boots, yet there is nothing in the papers to say the fire was accidental, or to explain why the scene looked as if the occupants left "in a hurry" (although, of course, they would have done so to escape an accidental fire).

By a strange coincidence, some years after the murder, a group of four of us was out doing some investigating of our own. Our original intention was to follow the cycle paths which criss-crossed the area, in order to ascertain how easily the murderer could have escaped without having to emerge onto well used roads and public pathways. We stumbled

upon an area in nearby woodland which was obviously the temporary residence of a vagrant, who returned as we were searching the area. In his “den,” we found a large number of articles of female clothing. The vagrant told us he was questioned by police about Jodi’s murder, but he couldn’t tell them anything. As we were leaving, he told us the reason he thought the police spoke to him was that he had been in trouble before for approaching and following little girls and they just wanted to check where he was on the night of the murder. We can never know, for sure, if that was the extent of the police interest in the vagrants – there were no statements attributed to them in the defence papers.

Nonetheless, convictions are supposed to be obtained on the basis that the accused has been proven guilty “beyond reasonable doubt.” Would the jurors have been so convinced of Luke’s guilt if they had been told that DNA profiles from five males remained unidentified, especially one from a condom discarded so close to the victim’s body?

In the early days of the investigation, the police were reported to be just waiting for DNA results to confirm or disprove their “main line of enquiry,” the statement going on to say that if the results disproved that line, investigators would be “right back to square one.” When those results came back, the police did not issue a statement saying that the DNA did not support their main line of enquiry and as a result, they would now be taking a different approach.

I mentioned earlier the significance of July 16th. It took years for all of the events which emerged on that date to become apparent and it’s interesting to consider both how interlinked the various factors are and the possibilities that emerge from them. On that date:

Police took a statement from Judith about how often Jodi changed her clothes, bathed, etc.

Janine’s statement about being asked if the t-shirt Jodi was wearing might belong to Janine was taken (two days after Kelly was asked the same question).

John Ferris suddenly mentioned that he “should have gone to Joseph’s at 6pm that night” and was asked about cutting his hair, not coming forward more quickly – it was in this statement he alleged that his Gran told him not to - and he told police about Mark “Bill” Bryson’s presence in Alice’s house on July 1st

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Ferris claimed to believe that Jodi's body was found between 9 and 10pm on the night of June 30th

Information about Stocky Man appeared in the media, even though he had been known about, by investigators, for at least 8 days (and probably more) by then.

The aunts' media interview mentioned Jodi borrowing her sister's clothes without permission.

Several DNA samples were finally collected for analysis, including samples from Joseph and John Ferris, after the initial samples came back with nothing on Luke.

Significant changes were made to several witness statements

Several witnesses, who would later become significant, received a second visit from investigators to "firm up" their statements.

Roan's Dyke path was re-opened to the public.

What was it about July 16th 2003 that set the direction of this case in concrete (or at least set the concrete which had been poured from the early hours of July 1st?) Could it be that, having failed to gather critical evidence in the first two weeks, on the basis of supreme confidence that Luke was the murderer, when the DNA results came back not only with nothing on Luke, but with full DNA profiles of two other males who were not Luke, investigators had backed themselves into a corner? They could not retrieve evidence which was lost in those first two weeks, media focus was firmly set on Luke as the killer and, in such a high-profile case, they had to secure a conviction . If the breaking hours of July 1st were the point at which police suspicion homed in on Luke, was July 16th the date the construction of the case against him began in earnest? Not because investigators genuinely believed he was guilty, but because there was no other option open to them by that stage? The failure to obtain DNA profiles from other males known to Jodi prior to that date, at the very least, suggests investigators were not looking any further than Luke for those first two weeks.