

## **Chapter Twelve**

### **The Evidence (2)**

#### **Luke and forensics**

The claims regarding how Luke apparently managed to remove all forensic traces from himself would be laughable if the situation were not so serious.

According to the police surgeon, Luke's nails were dirty, as were his neck and ankles and his hair was unwashed. But the various attempts at trying to explain how Luke came to have no forensic traces on him stretched all credibility beyond belief. By August 14th, the police appeared to be convinced that Luke had "disposed of" a German army shirt which, they said, "several witnesses" had described seeing him wearing the evening of the murder. That particular line of reasoning was dropped when it was pointed out that the "missing" shirt was actually in police possession.

That story, however, survived, the army shirt being replaced, by trial, with a "missing parka." This extends even further the clothing change implications already discussed earlier - in this new scenario, Luke came home from school in a bomber jacket, changed and went out in a parka. Next, he changed into fishing-style clothing before changing back into the parka to commit the murder. Then, he came back and "disposed" of the parka, changing into a German army shirt (in order to account for the witness statements the police claimed to have.) Then, at a time unknown, he changed back into the bomber jacket before going into the Abbey grounds with his friends. And all of this was supposed to have taken place in the space of less than 45 minutes. A more credible explanation, based on all of the available evidence, is that there was no parka, German army shirt or fishing clothes belonging to Luke on June 30th and that he was wearing the bomber jacket the whole day and evening, up to the point that Jodi's body was found.

It was not until 2008, prior to Luke's appeal, that I was approached at an event and told that the forensic results in Luke's case had never had a second opinion for the defence. Because the Legal Aid Board had refused to fund it, Luke's mother, I was told, was asked to pay, but could not afford the several thousand pounds for the testing and consequently, it had never been done. I knew with absolute certainty that

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Corinne Mitchell never received such a request (indeed, I knew with the same certainty that, had she been asked, she would have raised the money, even if it meant re-mortgaging her house!) But the suggestion, more than three years after Luke's trial, that the DNA results were not checked for the defence, came as something of a bombshell. With the appeal looming, it was impossible to get a straight answer from Luke's legal representatives and it was not until two years later that the truth – or something akin to it – was uncovered.

An application was made, by Luke's legal team, to the Legal Aid Board for funding for the DNA testing. The Legal Aid Board wrote back to the defence team and there ended the correspondence between the two. The defence team insisted that the Legal Aid Board refused funding. The Legal Aid Board insisted that the defence team never completed the application. In the end, it was not possible to discover who was telling the truth, because the Legal Aid Board reported that the file was "lost."

This fiasco was compounded by the fact that Jodi's body was released for burial within three weeks of Luke's Section 14 interview, meaning that, by the time he was finally arrested the following April, it was not possible to obtain a post-mortem examination for the defence.

The defence of Luke Mitchell, therefore, proceeded without the benefit of any defence post-mortem or forensic testing. That could explain why it was claimed that a deal was struck for the DNA results not to be argued at trial – there was, by then, no way of arguing them.

There is a commonly held belief that Legal Aid is automatically granted for all and any defence requirements, but that is far from true and systematic cuts to Legal Aid have left defence teams having to fund defence cases as best they can. The same cuts, however, have not applied to prosecutors, meaning an already uneven playing field has become even more so over time. Concepts of fairness in terms of equality of arms are extremely misleading – while prosecuting teams have almost unlimited means with which to build cases, defence teams are tightly constrained.

As a direct result of the need to cut costs, it has become more and more common for defence teams to rely on cross-examining the prosecution's experts, rather than bringing in their own, but this again misses a vital point – they are forced, in those circumstances, to rely on the prosecu-

tion's results and their (the defence lawyers') understanding of those results.

That is why, I believe, so many convictions based on very questionable scientific evidence are secured. The defence does not have the means to bring in proper experts to refute "scientific" evidence by the prosecution, but neither do they necessarily have the expert knowledge required to properly cross-examine the prosecution experts in order to expose the scientific unreliability of some of their claims.

Luke was under suspicion from the moment Jodi was reported missing, therefore, his movements for the whole evening should have been of primary interest to the police and, according to one expert in this field, tracing his movements via his phone should have been one of their first ports of call. This expert pointed out that although, back then, the accuracy with which they could pinpoint Luke (or anyone else) to a specific spot was not reliable, it would have shown movement from one point to another.

Luke's defence was that he was in Newbattle the whole time - the prosecution case is that he went from Newbattle to Easthouses and back to Newbattle in the early part of the evening - it is absolutely central to the case, yet nothing was done to attempt to verify either version. The particular reference to the 4.54pm call to the speaking clock as proving Luke was "out of the house" is the one which most clearly demonstrates this - mobile phone evidence would have shown movement from west to east just prior to this call and then movement from east to west some twenty minutes later, had the prosecution case been sound.

The excuse for this evidence not being obtained – that the technology in 2003 was not advanced enough - simply does not stand, but the timings of subsequent events meant that any opportunity to have this evidence examined retrospectively was lost. The defence applied for Legal Aid funding for cell site analysis and the Legal Aid Board responded, pointing out that the expert's fees were too expensive and suggesting that the defence attempt to find a less expensive, more local expert. There are no further references to cell site analysis in the defence files. However, back in 2003, it was believed this data was only retained by mobile phone companies for 12 months. Luke's defence team only came into existence midway through April 2004, almost ten months after the murder, so there was very little time for the defence to obtain the data

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for analysis. The delay caused by the refusal of the Legal Aid Board to pay for the original expert and the requirement to find another expert may have meant the defence team ran out of time.

Claims that police investigators failed to obtain cell site analysis are, of course, based on the fact that there was no evidence of this having been carried out in the defence papers. There is a possibility that cell site analysis was conducted, but the results were not released to the defence – if that was the case, one would have to wonder why. But, given the central significance of the Andrina Bryson sighting and in particular, the timing, cell site analysis should have given prosecutors some very strong evidence that the person in the entrance to the path between 4.49 and 4.54pm was Luke – his phone was in use at 4.54pm. Since all of the evidence regarding this sighting was extremely weak, it seems very strange that investigators passed up the chance to obtain such powerful supporting evidence.

### **Blood on the body, the wall, the scene**

Several blood-stained branches were found in the woodland strip. According to SIO Dobbie, Jodi was struck on the head with one of them and a burst lip may have accounted for drips on others. There are a few problems with this.

Firstly, the effects of rain - one forensic report stated that blood on the underside of a branch could either mean that the branch was moved after the blood was deposited, or that the rain washed blood from the top edge of the branch to the underside; this report did not say how likely it was that the branch was moved during the attack, after the attack (perhaps by an animal) or by police officers at the scene. It does, however, highlight the difficulties faced by those trying to piece together what may have happened.

The official claim that Jodi was murdered where her body was found, raises the question of how all those branches, scattered for some distance around the woodland strip, became bloodstained, but Luke did not.

SIO Dobbie, perhaps trying to head off what should have been inevitable questions about the extent and range of the blood staining, introduced the claim that Jodi had been “hit on the head with a limb from a tree.” It can be seen instantly in the woodland strip behind that wall, that

if an attacker wanted to hit someone over the head with something, there are plenty of possibilities to choose from - bottles, bricks, stones etc. It would make no sense for anyone to try the difficult task of swinging a large branch around and raises the obvious question of how effective that would really be.

Three weeks after the murder (almost a week after the path was re-opened to the public), a botanist was brought to the scene. A media interview with the botanist again raises some worrying claims.

He said:

*It was about three weeks after the murder and there was lots of wood lying about covered in blood. I had two policemen with me as I walked around looking. I couldn't see anything unusual though, the wood was all native.*

According to the Scotsman on July 21st (exactly three weeks after the murder)

*"...the path was only re-opened late last week after more than 20 officers had spent two weeks scouring the area for clues."*<sup>9</sup>

So, in an area which had been reopened to the public, there were still lots of bits of wood lying around covered in blood, even though police had been "scouring the area" for two weeks (missing a purse right at the V point for 12 days of that period), before bleaching the scene. According to the Scotsman article above, they also failed to find a knife hidden in bushes, which was found by a member of the public five days after the path was re-opened.

The reason for the botanist being brought in appears to have been because investigators thought an unusual weapon "like a Malacca cane" might have been used. This information did not emerge until nearly two years after Luke was convicted. By deduction, investigators must have found something in those pieces of wood which led them to believe Malacca was potentially involved, yet in the forensic reports, all the blood-stained pieces of wood and bark were simply labelled "piece of wood/bark". In the list of unexamined items, one was listed as a "section of wood". Once again, poor labelling makes it impossible to tell which piece of wood was recognised as different from the others.

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<sup>9</sup> <http://news.scotsman.com/news/Police-still-looking-for-Jodi.2445612.jp>

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Items known to be made from Malacca cane are snooker and pool cues, walking canes and sword sticks – a walking cane with a blade secreted within the cane. Malacca cane is extremely difficult to break – it’s unclear whether the “section of wood” in the unexamined items list was the trigger for the Malacca cane suggestion. The possibility, it seems, was dropped after the botanist’s visit.

The pathologist was unable to ascertain whether the killer was right or left handed. The throat injuries were bi-directional, but the pathologist did make a suggestion that the theory that Jodi’s throat was cut from behind was not the only, or even the most feasible, possibility.

The only way to cut someone’s throat repeatedly in both directions (i.e., left to right and right to left) from behind, would be to use a “sawing” motion, which is definitely not what happened. The injuries themselves were definitely slashing type injuries, according to the pathologist. The other suggestion, perhaps more realistic, is that the victim was on her back and the weapon was swung, from above, side to side. Yet that possibility was never raised at trial – it would have undermined the prosecution contention that Jodi’s throat was cut from behind, which needed to be maintained in order to support the suggestion that the killer would “not necessarily” have been blood stained.

That contention, however, is highly unlikely – even Professor Busuttill agreed, although it was two and a half years after the trial before he publicly said so. The attack on Jodi was extremely bloody – it was not just the cut-throat injuries which produced copious amounts of blood – her lip was bleeding, her face was slashed and her arm was badly cut, all before death. According to the prosecution, Jodi was also stripped of her clothing after her throat was cut, her trousers being used to tie her hands, her body was mutilated after death and moved from the wall where it was claimed she was killed, to the area, a few yards away, where she was found. The prosecution never explained how all of that could be achieved without the killer becoming heavily bloodstained and the police, in their early statements, were convinced that the killer would, indeed, have been covered in blood.

### **Jodi and forensics**

One strange anomaly from the crime scene was the distinct lack of blood on Jodi’s body. Although the wounds themselves were clearly

bloodied, there was a remarkable lack of smeared or spread blood in the areas immediately adjacent to the wounds. So, “blood on the throat” - something all three witnesses stated, was a reasonable description in the circumstances and lighting conditions. If the skin directly below the throat wounds had no signs of blood whatsoever, what might that suggest?

Blood on the chest has connotations which are invoked almost immediately in a cut throat attack, where the victim is said to have been upright at the time of the throat cutting - the blood would have run down onto the chest area. But again, the entire chest area was clean of any smeared or spread blood, the only bloodied area being the slash to the breast itself. It could be argued that the rain washed away blood from the body, but it would be remarkable if these areas retained so many short colourless hairs after being washed by rainwater.

The official story was that Jodi was stripped after she was murdered: the t-shirt was described as “extensively stained” and the bra was only lightly bloodstained (mainly contact traces in “handled” areas). But extensive blood-staining from the t-shirt would have soaked through onto the bra if the fatal injuries were inflicted while Jodi was fully clothed.

Furthermore, there was apparently no pooled blood in the soil directly under where Jodi’s body was found, nor evidence that such pooled blood had soaked into the ground. The same claim was made by forensic scientists about the soil at the foot of the wall where some blood spray evidence was discovered.

There was a wound on Jodi’s hand which Prof Busuttill thought might be a bite mark, or possibly the hand “bashing” against teeth, perhaps when flailing her arms around. The dental expert disagreed - he was quite clear that in his opinion, there was not enough evidence to suggest that it was, in fact, a mark caused by teeth belonging to Luke or anyone else. There was nothing to refute this, as, once again, there was no “double check” for the defence. It is interesting, however, that a man with Prof Busuttill’s reputation and experience raised this possibility in the first place.

At the very least, Prof Busuttill seemed to think that Jodi’s hands came very close to the attacker’s face, so the lack of DNA under her nails is surprising. Since one hand yielded “no reportable result,” (there were

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no results for the other hand in the defence papers) it cannot be assumed that there was nothing there; all that can be deduced is that there was nothing found that could identify or connect to any given individual.

### **Toxicology**

The first toxicology report concluded that Jodi smoked cannabis within approximately two to three hours of her death. Given that she was in school all afternoon and was apparently murdered within an hour and three quarters of finishing school, there are only a few opportunities for her to have smoked in that time - directly after school whilst waiting for the bus, at home before leaving, or after she left home.

It then emerged that there were, in fact, two reports regarding the cannabis levels in Jodi's system. The second report corrected the first - an incorrect calculation was made, because of the timing of the taking of the first sample - re-calculated to take this into account, the second report concluded that Jodi probably smoked a joint less than two hours before her death. There were no smoking-related objects found with Jodi (cigarettes, tobacco, papers, lighters, cannabis, etc.)

In reality, if the 5.15pm time of death is accepted, we are still left with the three possibilities listed above. Directly after school is unlikely - by all accounts, the teenagers only smoked cannabis away from the school grounds. According to people who knew her well, Jodi would not have smoked a joint walking along the street by herself. In fact, according to those people, Jodi didn't smoke cannabis at all when she was on her own - it was only ever something she shared with other people. Since the timing proposed by the prosecution case is so tight, unless she walked down the path smoking a joint, the cannabis most probably did not get into Jodi's bloodstream after she left home - there was simply not enough time. There are only two realistic possibilities left - either Jodi smoked at home, or she was killed later than 5.15pm, having smoked a joint with someone, somewhere, before she was attacked.

There was a large amount of cannabis in her home that afternoon - that is a recorded fact. Family members denied giving Jodi cannabis (although Ferris later admitted she did get it from him, but not on that day) and she was not found with any smoking paraphernalia on her, so where did she get the joint she smoked in the couple of hours before she was killed? Who did she speak to or meet to obtain that joint? Luke has always denied giving Jodi anything cannabis related to take home with

her and none of the others at the China Garden that lunchtime mentioned him doing so.

It could be argued that cannabis got into Jodi's bloodstream through passive or secondary smoking, but that theory cannot hold if Judith and Joseph were telling the truth - according to their statements, Joseph and Ferris went up to Joseph's room to smoke - there was no cannabis smoked anywhere else in the house. Jodi was only upstairs for a couple of minutes, in her own room to get ready to go out - it seems unlikely she would have breathed in enough cannabis, through closed doors, in a few minutes, for it to register as the equivalent of a joint in her bloodstream. And Ferris had left before Jodi arrived home.

Nonetheless, the presence of cannabis in Jodi's bloodstream, coupled with the analysis demonstrating that it was ingested less than two hours before she died, is a significant piece of information, raising the important questions of how and when it got into her bloodstream. Judith's account of Jodi's movements from when she came in from school to when she left made no mention of Jodi smoking and, indeed, left no time for her to have done so. On the basis of Judith's accounts, the only sensible conclusion is that Jodi smoked cannabis after she left home (timescale considerations notwithstanding). None of the witnesses who claimed to have seen Jodi on the Easthouses Road, either just after 4.50pm or just after 5pm, mentioned the girl smoking (and the reconstruction does not depict "Jodi" smoking). Therefore, she has to have smoked either after 4.54pm, if the earlier sighting is accepted, or after 5.05pm, if the later one is accepted.

Since no cannabis, tobacco, papers or lighters/matches were found at the crime scene, either the killer took every trace of smoking evidence away, or Jodi met someone - even if she took a prepared joint with her when she left home, she had no means of lighting it on her person. Since, as this book has demonstrated, the leaving time of 4.50pm is completely unsupported by the known evidence, the more credible time of leaving, at a few minutes after 5pm leaves open a window of less than 10 minutes for Jodi to have smoked that joint before she was murdered at 5.15pm. But, as has also been demonstrated, if Jodi was still on the Easthouses Road at 5.05pm, she could not have been murdered 16.3 metres west of the V break in Roan's Dyke at 5.15pm - the 7 - 8 minutes left after she reached the entrance to the path are not enough for all of the events stated by the prosecution to have taken place. And if Jodi

was not murdered at 5.15pm, Luke Mitchell was not her murderer.

However, this one piece of evidence – the smoking of a joint between leaving home and the murder - further critically undermines the prosecution case and the leaving time of 4.50pm. If Jodi was at the East-houses entrance to the path at 4.54pm, in order to be seen by Andrina Bryson, the very earliest she could have reached the V point would have been 5.03pm. Allowing a bare minimum of 5 minutes for Jodi to climb over the wall and smoke a joint takes the time to 5.08pm, leaving just 7 minutes for the entire attack, up to the point where Jodi's throat was cut. All of the evidence indicates that the initial attack did not take place in one spot. The distribution of blood droplets and splashes covered several yards, indicating that in the fierce fight for her life, Jodi was breaking away and being attacked again at different points until her attacker finally overpowered her. SIO Dobbie, himself, suggested that, after having been struck initially, Jodi “turned towards home,” heading eastward, on the basis of the position of bloodstained branches. In these circumstances, the 5.15pm time of death is implausible – the prosecution never made any mention of the smoking of a joint in any of the events leading up to the murder, even though the evidence that it happened and the most likely time of it happening, were available to them in the case papers. Was the failure to mention this because it fatally damaged the already flawed timings?

The investigating team brought in an analyst to identify a “window of opportunity” for Luke to have committed the crime – something, again, which did not come to light until almost a decade later. There was nothing in the papers to suggest that the same analyst attempted to identify other “windows of opportunity” for other persons, known or unknown. Since there was no time of death ascertained, attempts should have been made to discover whether any other persons known to the investigation had a similar window of opportunity. On the basis of the available evidence, this was an exercise in establishing a time (for which there was no evidential support) and constructing the case around it, even if that meant ignoring other concrete evidence such as the evidence, there in the case files, that the “window of opportunity” apparently identified by the analyst appeared not to have considered the implications of Jodi having smoked a joint in the two hours before she died.

Fifteen years after her death, no-one except the real murderer knows the truth about the last moments of Jodi's life, before that terrible attack.

What we do know is that if all of the other evidence is correct, Jodi must have smoked cannabis after she left home on the evening of June 30th 2003 and, in order to have done so, she must have met someone who either provided her with a joint or provided her with the means to light one. And if she did not leave home until 5pm, that person was not Luke Mitchell. So, who was he? Or she?

### **The Parka and the Log Burner**

The manner in which the suggestion that a parka jacket was burned in Mitchells' log burner emerged is deeply concerning. The following are excerpts from an interview SIO Dobbie gave to the Scotland on Sunday newspaper after Luke was convicted.<sup>10</sup>

*“... information which gave detectives cause for suspicion concerned the wood burning stove in the Mitchell's back garden.*

*Mitchell told police that his mother Corinne and brother Shane were using the stove that night. Corinne said it was not being used and Shane was not able to say either way. “We also had reports from neighbours saying they had smelled burning coming from the Mitchell's back garden that night,” said Mr Dobbie.*

*“Then there was the parka jacket,” he added. “We spoke to friends, school teachers and others who knew Mitchell and established he had a parka jacket. The eye witnesses had also made references to a long parka style jacket. His mother said he had never owned one. When we searched the house, the parka was missing.”*

Luke was asked, during the interrogation on July 4<sup>th</sup>, if the log burner was used on the night of June 30<sup>th</sup>. (Note, it was not a “stove,” it was a semi-circular brick construction built around a barbecue base around 10” high and 14” in diameter. The brick wind shield was around 30” high). He said he thought his mother and brother had a fire that night. During the August 14<sup>th</sup> interrogation, Luke was accused of lying, the police claiming he said Corinne and Shane did use the burner, but they were saying they did not. During a heated exchange, Luke pointed out that he had been out that evening, so he could not have said for sure whether or not the burner was in use. The interrogating officers continued to insist Luke had told them, definitely, that his mother and brother

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10 <http://www.scotsman.com/news/scottish-news/top-stories/the-clues-that-snared-a-murderer-1-959390>

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had a fire.

The suspicion of which SIO Dobbie spoke in this newspaper interview could only, initially, have been based on this discrepancy between Corinne's definite "no" and Luke's "maybe" because statements from the neighbours about the burner were not sought until after the first interrogation.

However, during the July 4th search of the Mitchells' home, the burner was forensically examined and the ashes were taken away by police. Virtually no evidence of anything other than logs being burned there was found. A small number of fibre traces were found, but they could not be linked to any articles of clothing or any other item connected to the case.

Could the ashes have been "swapped" or replaced between June 30th and July 4th? According to Corinne's next-door neighbours, there was wood-smoke from the Mitchell garden around 7 – 7.30pm, then it rained and then there was wood-smoke again around 10pm, the implication being that the earlier fire was doused by the rain. Two and a half hours after this second fire, Corinne was running up the Newbattle Road to the police station. So, in order to have replaced "incriminating" ashes, either Corinne burned the Parka at 7-7.30pm, removed the ashes to somewhere unknown, then lit another fire at 10pm, or she did this between 10pm and 12.30am.

Another neighbour claimed smoke from the Mitchell garden had a "strange smell." Police used that comment to infer that the smell was of the burning/melting Parka jacket. This neighbour put the incident much later than 7.30pm, though not as late as 10pm (he thought around 9 – 9.30pm.) If the jacket was still burning as late as 9.30pm, there would have been no time to clean out hot ashes and all the debris from that fire, in order to have a new, forensically clean fire burning again by 10pm. There has never been any suggestion or evidence that Corinne left the house at any point that evening until she received the message from the police to make her way to the police station – no evidence was ever found in her car or workplace to suggest ashes had been transported or disposed of there (or, indeed, anywhere else).

The neighbours' statements mentioned by SIO Dobbie in this interview expose some very interesting information. Out of 35 statements regard-

ing whether or not there was a fire in the Mitchell garden that night, all but three either said no, or that they did not know. Two of the three affirmative statements were from the husband and wife who lived next door – both said the smell from the fire was wood-smoke. In effect, there was only one “suspicious” statement in all of the statements taken (the one about strange smelling smoke) and, going through the statements I uncovered a probable innocent explanation for that.

The gardens of all the neighbouring houses backed onto each other – there was no way of accessing back gardens other than through the houses. However, as Corinne explained and I witnessed for myself, unless smoke can be seen as well as smelled, there is no way to tell which garden it is coming from.

There were statements showing that one neighbouring family regularly burned citronella candles in their garden in the evenings. One of these candles caught fire just after the murder - the smoke and smell would have been very noticeable - I know - I have accidentally set fire to a couple of them myself!

There were two neighbours who regularly burned garden rubbish, which would also have produced smoke which smelled different to wood-smoke.

There was, additionally, an account that the week prior to the murder, Corinne had a log fire in her back garden, on which she burned pampas grass that she cut down earlier in the afternoon - it would have smelled different to the usual wood-smoke and produced more smoke than normal. Police never took a statement from the witness who gave this account, even though they knew who she was.

The statement which was used in court about the strange smelling smoke made no reference to seeing smoke, only smelling it and this was supposedly from directly over the fence. When there were at least 6 statements about noticeably increased smoke, with noticeably different smells, within days either side of the murder, the failure of investigators to consider the possibility that this neighbour was mistaken about the evening he smelled the strange smelling smoke once again points to an investigation fixed rigidly on only one scenario and refusing to consider other, equally plausible possibilities, especially when all 34 statements from the other neighbours were quite clear that there was nothing unto-

ward that night. Where does the weight of the evidence lead, in reality?

The two other direct neighbours who gave evidence at trial (the husband and wife who lived next door) both said they smelled smoke; they could not be sure of the evening but were absolutely certain it was wood-smoke because (a) they did not have to shut their kitchen window (which was literally feet from Corinne's garden) and (b) they liked the smell of wood-smoke.

The prosecuting QC questioned them intensely about the times of television programmes they were watching (programmes which were on at the same times, on the same evenings, every week of the season) in order to try to force them to agree that it was the evening of the murder, even though they had already said they could not be sure.

In the end, their evidence was clearly ignored – the only “evidence” of the parka burning claim was that of strange smelling smoke, from just one witness.

But what about the missing Parka jacket? Even if it was not burned in the log burner, it must have gone somewhere. That would be absolutely true if there had ever been a “missing” Parka.

A little over a week after the murder, Corinne took Luke shopping for clothes, because the police had taken virtually everything he owned in the raid on July 4th. One of the items she bought was a Parka jacket. The only period, then, in which Corinne could have told police Luke had never owned a Parka jacket (as stated by Mr Dobbie in the newspaper interview) was between July 1st and July 9th (it would have been self-evident that she was lying thereafter, since Luke was there, in plain sight, wearing just such a jacket.)

What SIO Dobbie meant was that Corinne said Luke had never owned a Parka jacket prior to July 9th. The eventual story would be that Corinne bought the Parka jacket to replace the one burned in the log burner so that no-one would notice it was missing. Aside from being utterly illogical (why would Corinne place her son back in clothing which may have been witnessed by others on the night of the murder), there are two interlinked factors which fatally undermine this theory.

The first is the claim that there were witnesses who insisted Luke habitually wore a Parka jacket before the murder. The August 15th

photograph in the media depicted Luke in the Parka his mother bought on July 9th. Just six weeks after the murder, the whole of Scotland saw Luke Mitchell wearing a Parka jacket. How could anyone be sure of when they first saw Luke wearing such a jacket and what reason would they have to notice?

One witness, who hadn't seen Luke for three years previously, said he saw Luke in a local shop wearing a Parka. Asked why he had noted and remembered this, he said it was "because of the murder and everything," demonstrating the influence of the "Parka in the papers" coverage so soon after the murder.

Furthermore, the police took every last photograph from the Mitchell home. Had there been a single picture in there of Luke wearing a Parka jacket, they would have had the proof they needed. Since no such picture was ever produced by the prosecution, it is fairly safe to conclude that there were no pictures of Luke in a Parka, prior to the murder, in the family photographs. Furthermore, they were not able to produce a single photograph of Luke in a Parka jacket prior to the murder from any of his or Jodi's friends either.

Secondly, the Scotland on Sunday article went on to quote Mr Dobbie:

*"In August we detained Luke for further questioning. We searched his house again and his father's house but still there was no evidence of the jacket that we believed to have existed before the murder, or of any knife. ....*

*We made inquiries and discovered that Mrs Mitchell had bought a knife which came with a pouch identical to this one in December 2003. She said she had bought it for him to go on a camping trip. But why purchase that knife. It seemed bizarre, bearing in mind Jodi had been killed and that her son was a suspect.*

*We started to question whether that knife was a replacement to one he had previously."*

This is curious and deeply misleading. First of all, Mr Dobbie claimed that police searched Luke's mother's house on July 4th and his mother's and father's houses on August 14th looking for a Parka jacket. So why, on August 14th, were officers in Dalkeith police station grilling Luke about a German army shirt? The following excerpt is just part of that

grilling:

DC1: Right, you've told us what you were wearing the day Jodi died. We have people saying you weren't wearing that, you were wearing your Murder Dolls t-shirt. We also have people telling us that you were wearing your German army shirt.

Luke: I didn't have a German army shirt at that time.

DC1: People are telling us you did. And not only that, people are telling us you were wearing it the day Jodi Jones died.

DC1: The obvious question is, where is that German army shirt now?

Luke: I only bought the German army shirt on the Wednesday, a week after it happened.

DC1: What I'm telling you, you owned one and you were wearing one prior to Jodi's death.

Later in the interview, DC2 said, "In addition, we've traced another two witnesses ...[who] have given a description which matches you to a tee" (presumably they were describing the same German army shirt.)

No mention of the Parka jacket they 'believed' Luke was wearing the night of the murder. Instead, a German army shirt which they insisted several people were telling them Luke was wearing. If all these people were telling police about a German army shirt, what on earth led Mr Dobbie to 'believe' Luke was wearing a Parka and that his mother had destroyed it in the log burner?

These were recorded, transcribed interrogations. Where did the dozens of witnesses who saw Luke in a German army shirt go? Their statements were never released to the defence and they were never called to give evidence. It may have been that they never existed in the first place (since their statements were not in the defence papers) and those officers, on August 14th, whose behaviour was later described by appeal court judges as "outrageous and to be deplored," were prepared to use anything, even outright lies, to try to force a confession out of a fifteen-year-old boy.

Unfortunately for them, the German army shirt was actually in police possession at the time of this interrogation and at the same time as the

interrogation was taking place, FLO Michelle Lindsay was asking for and being provided with the receipt for the Parka and other clothing bought on 9th July.

It is also curious that the same story – of an article of clothing going missing and being “replaced” after the murder - re-emerged at trial.

Amongst all of this confusion and lack of logical reasoning, there is one blindingly obvious question. If the murderer was “not necessarily” bloodstained (the prosecution’s position at trial), what possible reason would there be for completely destroying an article of clothing alleged to be associated with the murder? It could hardly be claimed it was destroyed because it was covered in blood - the prosecution turned somersaults trying to convince the jury that the murderer got away without becoming bloodstained. So, what, in their burned parka theory, was the reason for burning it at all?

The police claim that Luke’s call to his mother at 7pm was to arrange the burning of the Parka is equally illogical. Luke would have to have somehow got the Parka to his home (or to his mother to take home) before 6pm. Corinne then, we are asked to believe, sat in her home for an hour or more with a bloodstained-not bloodstained jacket, waiting for Luke to call, knowing her son had committed a terrible murder and the victim could be found at any moment. The minute Luke called, she rushed outside, according to this theory, lit a fire (with no accelerant of any sort) and threw the jacket onto it. The rain put the fire out, so two to three hours later, she lit it again (with no accelerant of any sort), managing to so thoroughly incinerate the garment in a log fire that not a single forensic trace remained. This theory required an acceptance that Corinne held onto “incriminating” evidence for at least four hours, even though no-one could have known when Jodi’s body would be found (it was daylight until after 10pm that night).

In the interview with Scotland on Sunday, Mr Dobbie made reference to a knife recovered in April 2004, when police again raided the Mitchell home and arrested Luke, Corinne and Shane. Therefore, their “suspicion” about a replacement knife was not and could not have been part of their reason for finally arresting Luke, because they knew nothing about it prior to the arrest. In other words, at the point where Luke was arrested, the police could not have used the replacement knife theory as part of the case against him.

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Mr Dobbie's assertion that buying Luke such a knife was bizarre of Corinne is only logical if one is of the absolute conviction that Luke murdered Jodi with a knife. The truth is that the Mitchells enjoyed a number of outdoors activities; camping, caravanning, horse riding, tracker training with the dog and so on. Luke and some friends were intended to participate in a "survival" camping trip arranged by an ex-army, adult friend of the family; it was for this trip the knife was bought.

Luke was not allowed to have the knife any time he pleased. Corinne kept it until he needed it for practicing the skills required for the survival trip and it was returned to her afterwards. When the police asked for the knife, Corinne could not remember where she had put it (her house was, at that point, swarming with police). She later remembered where it was and handed it to Luke's solicitor. The solicitor's statement, confirming the handing over of the knife to the police, was in the defence papers. Corinne's account was later discredited, with claims that police officers were so thorough in their search that they even ran their fingers through food in the dog's bowl. Yet the solicitor's statement was there in black and white. The "missing knife" referred to by Mr Dobbie and the knife handed to the solicitor by Corinne were one and the same, meaning, by that stage, there was no missing knife except the actual murder weapon. The prosecuting QC obfuscated this fact by suggesting to the jury that Corinne knew of a "hiding place" for knives belonging to Luke and it was from that hiding place she'd "retrieved" the knife she handed to the solicitor. The implication, therefore, was that the murder weapon, now the only missing knife, was in that hiding place, because it belonged to Luke.

What we have, in essence, are three different stories about missing knives – that a knife police officers were searching for could not be found, but was later handed to them by Luke's solicitor, that the knife handed to police was a "replacement" for another knife (there was no evidence that this other knife ever existed) and that the never-retrieved murder weapon was in a secret "hiding place" that Corinne knew about. Yet charges against Corinne of conspiring to pervert the course of justice were dropped?

Perhaps, most significantly of all, was this police tactic of claiming articles were "missing." How can anyone, anywhere prove they did not have something at an earlier date? On both counts – the knife and the parka - police failed to prove that Luke had owned either prior to the

murder. Given what we have seen already regarding the way police questioned witnesses and given the appearance of pictures in every newspaper of Luke wearing a parka from 15th August onwards, it is no surprise that, between then and the April 14th arrest, all of the witnesses to the German army shirt were replaced by witnesses who had seen Luke in a Parka. Investigators took just such a picture to Rosemary Walsh to “assist” with her “identification” of Luke – what is not known is how many others were offered the same assistance. Mr Dobbie’s claim that the eyewitnesses had made reference to a Parka jacket is also disingenuous. In her first statement, even Rosemary Walsh, herself, said only that the jacket “could have been” a parka and that was purely on the basis of the length of it – the other two eyewitnesses made no reference to a Parka whatsoever until after the pictures of Luke appeared in the media, and that was after the August 14th interrogation. Right up to trial, Andrina Bryson was adamant that it was not a Parka she saw.

One final point on the Parka jacket. Three years after the trial, it would emerge that another youth, similar in appearance to Luke, lived in Newbattle, regularly walked on the Newbattle Road and was known to own a Parka jacket prior to the murder. The sighting by Ms Fleming and Mrs Walsh may have been quite simply a case of mistaken identity (more about this in Chapter 13).

In the same Scotland on Sunday interview, Mr Dobbie was also quoted as saying;

*“When the results came back there was not one DNA profile which could not be accounted for. Every profile belonged to people who knew Jodi, including Luke. However, what we didn’t have was DNA from someone unknown, which ruled out anyone unknown as the killer.”*

The DNA results themselves recorded five unknown males, so this statement can be nothing other than completely dishonest. Further, none of the DNA profiles taken from the scene belonged to Luke. Mr Dobbie could not have known, in 2005, that one of those unknown males would later be identified as someone not believed to have known Jodi and who would admit to masturbating yards from the body on the night of the murder. With four profiles still unknown, on what basis, for fifteen years, has the possibility of an unknown killer been ruled out?



## **Chapter Thirteen**

### **Black Dahlia, Marilyn Manson and a Sexually Motivated Attack**

Two aspects of the case attracted a great deal of attention, although both were based on nothing but speculation. Just like many other examples in this case, they ended up linking to strange and inexplicable events and raising questions which remain unanswered today.

The first was a claim that Jodi's murder was a copy-cat of the 1947 murder of Elizabeth Short in the USA - the "Black Dahlia Murder." The basis of this link was the Goth rock star Marilyn Manson, whose website depicted watercolour paintings of Elizabeth Short's body – she was horribly mutilated and her body was cut entirely in half at the waist. Luke, it was asserted, was "obsessed" with Manson and murdered Jodi in a way that emulated the paintings on the Manson website.

The second was the claim that the crime was not sexual in that Jodi was not raped or sexually assaulted.

It comes as something of a surprise, then, to discover that on 26th October 2004 (about a month before the trial got properly underway), a report was made by a professor of forensic medicine regarding both of these points.

This report stated that there were "no forensically significant similarities between the injury patterns in these two victims" aside from the fact that they were "both apparently sexually motivated homicides of young women with post-mortem mutilations of the body with a sharp instrument."

This report added another piece of significant information regarding the sexual element of the crime. The whole police and prosecution approach was based on an understanding that proof of a sexual element would, of necessity, be what most of us would understand as straightforward or obvious evidence - the presence of semen, injuries consistent with forced sexual contact and so on.

But, what investigators were dealing with was far from obvious or straightforward. The psychological makeup of whoever did this to Jodi was far from straightforward, even if there could be such a thing as a straightforward murder and there were specific clues to that psychologi-

cal makeup in the manner and detail of the attack on Jodi.

The report addressed this issue specifically, pointing out that the post-mortem injuries may have reflected “piquerism” - “that is to say, gaining sexual pleasure from cutting and stabbing.”

This was obviously no ordinary means of gaining sexual pleasure, yet was completely ignored by investigators, the prosecuting team and, sadly, it seems, the defence team as well (although, if the prosecution did not suggest, in court, that the murder was sexual in nature, it would have been difficult for the defence to introduce this evidence).

However, the August 14th interrogation, with its heavy emphasis on a perceived sexual element to the crime (see chapters 15 & 16), appeared to be driving at exactly such a possibility. It is difficult to reconcile how a case which began from a real conviction that the murder was sexually motivated, shifted to an outright rejection of that possibility by the time it came to trial, when evidence was being uncovered, right up to a month before the trial (and 16 months after the murder) that sexual motivation was a very real possibility.

Furthermore, this report was absolutely clear that the similarities in the details between the two murders were insignificant, yet, by the time this part of the evidence was presented at trial, the jury was led to believe that the number of similarities left no other conclusion than that the murder of Jodi was a direct copy of the murder of Elizabeth Short.

The manner in which both of these aspects developed is confusing, contradictory and raises some extremely uncomfortable possibilities. A 14-year-old girl, stripped naked, her face, breast and abdomen mutilated, should have suggested a sexual element in their own right, even before DNA results. That the police suddenly became so adamant that it was not sexually motivated after finding out that there were sperm heads and semen deposits on Jodi’s body and clothing is something of a contradiction in terms.

The ripping and cutting of Jodi’s clothing suggest a frenzied urgency to remove it, again indicating sexual motivation.

On July 6th, the day before the police reconstruction of Jodi’s “last known movements”, the following article appeared in the Sunday Mail newspaper:

*The murder team believe there is a growing body of evidence to suggest she interrupted a flasher, peeping tom or someone else committing a sex act. It is now their strongest line of inquiry.*

*A police insider said: "The attack on Jodi as she walked to Luke's from her home in Easthouses was not planned or pre-meditated. It was frenzied, rushed and amateurish.*

*Jodi was not sexually attacked but the team are working on the theory the killer is a sexual deviant or was committing a sex act. It may or may not have been someone she knew but we believe he was on his own.*

*He may have been disturbed by Jodi's arrival or her reaction and attacked her. He just flipped. We are also interested in the fact the killer appears to be somebody who habitually carries a knife...*

*...Detectives initially discounted a sexual motive as there was no evidence of an indecent attack on Jodi. Now they believe the killer was "sexually embarrassed" before he started the attack on the Roman Dyke pathway between Jodi's home in Easthouses and Luke's home in Newbattle, near Dalkeith<sup>11</sup>*

Such a scenario would potentially account for the numerous semen deposits found on Jodi's body and clothes, even though she was not sexually assaulted in the accepted definition of the term.

In another bizarre coincidence, it emerged three years later that there was, in fact, a male committing a sex act in the woodland strip on the very evening Jodi was murdered. Investigators were in his home just four days before this article appeared in the media but he was never questioned –indeed, it seems his residence there completely escaped their notice.

Although the house to house enquiry stopped just one house away, there is nothing on record to indicate that the officers attending the Falconer household in relation to the hoodie spotted by the two younger brothers made any enquiries about others living in the house at the time.

And, of course, this article suggests that investigators were working

<sup>11</sup> <https://www.thefreelibrary.com/JODI-KILLED-BY-PERVERT%3B+Police+-say+tragic+girl+confronted+sexual...-a014710785>

## *Innocents Betrayed*

from the assumption that Jodi was already in the woodland strip when she “disturbed” this person, undermining later claims that she was enticed or coerced over the wall.

Two days before this article, during Luke’s first interview as a Voluntary Attender on July 4th, Marilyn Manson was mentioned several times – each time the investigating officers came back to the music Luke liked, even though he’d told them his favourites were Eminem and Nirvana, he was “reminded” about Manson. The question is why? Luke did not express any particular interest in Manson, yet the investigating officers added his name to any list of preferred bands or musicians that Luke volunteered.

The week after Jodi’s murder, Luke picked up a music magazine in a local supermarket – inside was a “bonus” promotional Marilyn Manson DVD (not the full version). Aside from a torn up calendar, that was the only item Luke owned related to Manson. Jodi had been a fan, as was her sister Janine; Luke had no real interest until Jodi introduced him to her favourite track. The DVD depicted two naked young women being bound and gagged, amongst clips of stage footage, leading the prosecution to demand of the jury, “Why would he choose to watch such a thing after finding his girlfriend murdered?” It is important to note that Luke did not know, when he bought the magazine, what the bonus DVD contained. As a result, he could not have “chosen” to watch “such a thing” – until the DVD started playing, he did not know what he was about to see.

Of the August 14th raid on the Mitchell home, one officer said in a statement that he was told to look specifically for anything Manson related. Also, the officer who found the Dahlia paintings said that the images were “not easy” to find on the internet and that someone looking for them would have to know what they were looking for – which clearly suggests this officer did! (One wonders where the prosecuting QC got the information, which he passed to the jury in his closing speech, that the images were “easy enough to find.”)

What was it that focused attention on Marilyn Manson and, in particular, the Black Dahlia images? I was told, early in the case, that the Dahlia link had been suggested to senior officers and they jumped on the information. However, the original suggestion was not in relation to Luke, but another male who would not become of interest in the case

until three years later – I will explain this in more detail later in this chapter. It does seem to be quite a leap to suggest someone looked at the details of Jodi’s murder and, within three days, came up with similarities to a 50+ year old unsolved murder case, making the information that I was given – that police were pointed to the Black Dahlia/Marilyn Manson connection in relation to another person, but then incorporated that information into the case they were building against Luke - much more plausible.

There is another possible explanation for the public assertions that the attack on Jodi was not sexual. It may have been an attempt to try to obtain “special knowledge” from Luke – if investigators made it very publicly believed that there was no sexual element to the crime, whilst all the time knowing there was, then, if a suspect made reference to sexual elements, he must already have known about them. It is in this respect that the role of Michelle Lindsay, the Family Liaison Officer, cannot be underestimated. It was she who took bottles of urine from Luke’s bedroom and questioned Luke, without caution or corroboration, about why he kept them. It was she who told the Mitchell family, a week into the investigation that Jodi had not been sexually assaulted. Luke did not understand why news reports were saying that Jodi’s partially clothed body was found when she had been naked apart from her socks. Michelle Lindsay noted down his “interest” in this, along with a number of her own opinions about why Luke had asked - all slanted to make his “interest” look sinister. She made more than half a dozen references to this claimed interest in various different statements. She would introduce subjects for conversation (and lead those conversations in specific directions) all in attempts to get some sort of “special knowledge” out of Luke and noted down the most minute details in Luke’s responses, in the clear hope that they would constitute the legal definition of special knowledge. (The role of the FLO is discussed in greater detail in Chapter 14 – Luke and Police.)

All the while, behind the scenes, a vast amount of investigation into potential links to sexual motivation continued. No DNA results were obtained from semen and skin cells on the outside of the condom found 20 yards from Jodi’s body. On November 25th, it was noted that there were contamination issues with the condom – swabs used to take other samples may have contained the same silicon substance or base that condom lubricant would contain, meaning any testing would be inconclusive. Why was analysis on condom lubricant being carried out?

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This is, again, a confusing and contradictory subject. There appeared to be an attempt to link the condom in Luke's bin to condoms found near the murder scene. A local sexual health organisation provided free condoms to teenagers and the condom found in the woodland strip was discovered to have come from a batch supplied by this organisation (Mr Falconer helpfully dropped the wrapper, complete with batch number, beside the condom).

Initially, the aim appeared to be to link Luke's condom to this organisation, but the idea was dropped because of the sheer number of others who would also be "linked" in that way.

The next attempt was to try to identify the type of condom lubricant used in the various condoms. The reason, I later discovered, was to find out if it was possible sex with Jodi had occurred, consensual or otherwise. The report concluded that even non-consensual sex, in the circumstances, had a condom been used, would not necessarily have resulted in the sort of identifiable injuries one would ordinarily associate with sexual assault. (The claim that Jodi had been strangled into unconsciousness or semi-unconsciousness, for example, could have accounted for just such a scenario.) However, because of the contamination issues, this analysis could not be carried out and the expert noted in her report that condom lubricant breaks down over time, becoming impossible to identify after about six months (presumably to forewarn investigators that if they had any other condoms requiring such an analysis, they would have to get them to the labs quickly).

On May 11th 2004, one month after Luke was arrested, the condom was sent for lubricant analysis. Investigators had already been told in November that within 6 months, the lubricant would be untraceable. The only possible explanation is that the inevitable inconclusive test results would have allowed an expert witness to claim that "Luke Mitchell cannot be ruled out" of the possibility that sex with Jodi, with a condom, may have taken place.

Investigators knew the DNA inside the condom was not Luke's – what they did not know, at that time, was the identity of the person from whom it had originated. The very fact that an expert was asked to give an opinion on whether sex with a condom was a possibility in the case, speaks volumes in terms of whether, at that time, police believed the attack to have been sexually motivated. Until at least late November, they

were clearly still open to the possibility, even though the official line, since the end of July, was that it was not a sexually motivated attack.

It may be that by the time the case came to trial, the prosecution could not have claimed any sexual element to the attack on Jodi, because there was no forensic evidence to link Luke in that way – perhaps, realising the case was already flimsy, they could not afford to take the risk.

The Manson/Dahlia connection did that job for them. Having asserted forcefully that Luke was “obsessed” with Manson and the Dahlia paintings, it was but a short hop to introduce other “evidence” of Luke as a dark, sinister youth with dark sinister intentions. Quotes scribbled on his school jotters were held up as examples of his warped interests, Satanism being one of them. “I have tasted the devil’s green blood” was one of the most often quoted examples. In 2007, the Frontline documentary exposed the truth – the “sinister quotes” were, in fact, lines from popular computer games and songs. An essay he wrote for school was produced as further evidence of his weirdness and interest in Satanism. Ironically, the instruction for the essay was for pupils to debate the concept of religion. Although St David’s High School was a Catholic school, Luke’s family did not follow any religion and Luke had taken the opportunity to rebel against the religious foundations of the school – although the essay made reference to “satanic people like me” it was clearly an immature attempt to wind up his teachers.

Teachers willing to attest to the fact that they had seen far worse scribbles on jotters and far worse essays, teachers willing to give evidence of Luke’s normally polite, well-mannered, easy-going character were not called as witnesses.

At the same time as James Falconer was identified as the person who had discarded the condom in the woodland strip, another person was brought to the attention of Luke’s legal representatives in the run up to the appeal. Some of the parallels between Luke and this person are striking; the actions of police investigators regarding him are shocking.

### **Mistaken Identity?**

In 2006, a man not previously known to the Mitchell family walked into Scott’s Caravans and introduced himself to Corinne. The story Scott Forbes had to tell was staggering. In 2003, he was a student at Newbattle Abbey College. Another student who was resident in the college,

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Mark Kane, had, according to Mr Forbes, turned up at Mr Forbes' flat the day after the murder with scratches on his face, a bloodshot eye and was behaving erratically. He gave a number of different explanations for his injuries and could not remember what he had done the previous evening. All he remembered was going to an off-license at the end of the Newbattle Road for alcohol early in the evening. A few days into the investigation, Mr Forbes drove Mark Kane to Dalkeith Police Station and dropped him off, believing he would go into the police station and make himself known to officers.

After Luke was convicted, Mr Forbes was shocked to discover the student had never been spoken to by police and said he tried repeatedly to contact Luke's legal team to tell them about the student, but they never called back, or refused to accept his calls. In frustration, he decided to approach Corinne directly. At last, the legal team began to pay attention; Mr Forbes gave a sworn affidavit and the BBC Frontline documentary makers picked up the story.

At appeal, Mr Forbes' account was completely annihilated –the Advocate Depute, John Beckett QC, said police investigations had been carried out into Mr Forbes' claims;

“He indicated Kane had written an essay, ‘Killing a girl in the woods’. The Crown had police take a statement from a lecturer and the lecturer confirmed that Kane wrote no such essay. I have information that Scott Forbes told Mark Kane, ‘Just admit it ... we will get 50,000 from the newspapers’,” Mr Beckett said.<sup>12</sup>

It was further stated that there were no other witnesses to Mark Kane's injuries or strange behaviour and that CCTV footage from a local off-license cleared him of any potential involvement in the murder.

The Court of Appeal accepted that account – exactly as they should have done, had the reasons given been truthful and accurate. They were not, but it would take another two years to discover that.

Mark Kane's name appeared in the case files within the first week of the investigation. He was living in Newbattle Abbey's residential student accommodation until six weeks after the murder and references to him in the case papers flagged him as “to be traced and interviewed.” The

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<http://www.scotsman.com/news/mitchell-legal-team-drops-interest-in-jodi-suspect-1-1154608>

documents relating to him passed from officer to officer, the planned interview never taking place until, eventually, the record was marked – NFA – No Further Action. The police would later claim they had been unable to trace him, yet the Abbey is directly opposite the end of Luke’s street and Mark Kane was living there right up to the point of Luke’s Section 14 interview. One officer was tasked with interviewing residents on the Newbattle Road. On July 2nd, he took the names of the remaining students and staff in the college ... but interviewed only some of them. Not only had investigators collected his name as a routine part of the investigation, he was also brought to their attention on at least three other occasions at the beginning, all of them also logged in the case files and all while he was easily traceable because he was still living in the Abbey. The first part of Scott Forbes’ account – that Mr Kane had been brought to police attention at the very beginning of the investigation was substantiated.

One witness said in a statement that Mr Kane told him police had spoken to him (Mark Kane) because he had been seen running on the Newbattle Road on the evening of the murder. He had gone to one of the local stores to buy alcohol – either Morning Noon and Night (the store where Corinne stopped to buy cigarettes on her way home and where the boys on pushbikes, who recognised Luke sitting on the wall at the end of his street, were captured on CCTV footage around ten to six), or Eskbank Trading, a convenience store in the opposite direction. Both of these stores would require Mr Kane to traverse the Newbattle Road in order to get to them and return to the Abbey.

There are two difficulties with this. Firstly, Mr Kane was never spoken to by police during the investigation, according to the police records. The witness who gave this account was not connected in any way to Scott Forbes’ claims, but, interestingly, he *did* give this account to police during the murder investigation. So, officers who claimed to be unable to trace Mr Kane took a statement from another witness, who was telling them Mr Kane had already spoken to police and they failed to ask the witness where they might find him. There has never been any explanation of why this witness believed police had spoken to Mr Kane because he was “seen running on the Newbattle Road” and why he was quite clear that it was Mr Kane, himself, who told him that.

Secondly, the CCTV footage which the Crown said “cleared” Mr Kane was not one of the two stores mentioned above, but another off-license

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in Dalkeith. The footage, it was stated, showed Mr Kane in this store “just before closing time” on the night of the murder (the footage was never shown in court). Closing time for that store, like the others, was 10pm. There was no logical way that footage of Mr Kane at a few minutes before 10pm provided evidence of where he was (or might have been) between 5pm and 6pm that evening. This claimed footage, however, allowed Mr Kane to give an account of his movements there and back which did not require him to emerge, at any point, onto the Newbattle Road (because the store was in Dalkeith and could be accessed via the woodland surrounding the Abbey to the north and east). CCTV footage from the other two stores at the earlier time does not appear ever to have been checked to see if Mr Kane was in either on the evening of June 30th.

Two other witness statements supported Mr Forbes’ claims that Mr Kane had facial injuries, gave conflicting accounts about how they came about and was acting strangely the day after the murder. A third witness stated that a colleague with whom she worked in the college told her a similar story (she was unaware of the other witnesses’ accounts) and gave the name of the colleague who witnessed it directly. The colleague was never asked for a statement.

Therefore, three further aspects of Scott Forbes’ account were substantiated by evidence the Crown claimed did not exist.

The essay entitled “Killing a girl in the woods” was mired in confusion. A tutor at the college was asked if she had such an essay from Mr Kane. She said she did not. That was, almost certainly, entirely true – it was three years later, so there would have been no reason to retain such a document, had it existed; coursework essays were handed back to students after marking, so there would have been no reason for the tutor to have retained the essay, even at the time. The tutor “did not recall” marking an essay on that subject from Mr Kane, although she did recall an essay about beating up an old lady for her pension money. The tutor did not, therefore, confirm that “*no such essay was written by Mr Kane,*” as claimed by the Crown at appeal – at best, she could not recall such an essay being written.

Perhaps the most preposterous claim by the Crown in all of this is that Scott Forbes and Mark Kane planned to take their concocted story to the newspapers for money.

The claim about selling the story to the newspapers was introduced by Mr Kane himself, to discredit the claims made by Mr Forbes. Looking carefully at the story he told, it is absolute insanity. His claim was that he was to go to the police and say he could not remember what he did that evening, but he turned up the following day with scratches on his face and when the police cleared him, he and Mr Forbes would get £50,000 from the newspapers for their story, which they would split between them. The risk to Scott Forbes from this plan was zero. The risk to Mark Kane, however, was enormous. There would have been nothing to suggest, far less guarantee, that police would “clear him.” No-one with a modicum of sense would have considered such a risk worth taking. It was a ludicrous suggestion, yet it was accepted at face value, with nothing, other than Mr Kane’s word, to support it. What is surprising is that the Advocate Depute merely claimed to have information about this supposed plan – no evidence was produced at appeal (other than reference to Mr Kane’s account) – to support it\*.

Had Mr Forbes motivation been money, “going to the papers” may have made some sort of sense (although not in the scenario described above). But there was nothing to suggest he was motivated by personal gain. Everything he did regarding these circumstances is on record and none of those records, right up to the Crown claim that “selling it to the papers” was the way to go, indicates any advantage, monetary or otherwise, for Scott Forbes. He had nothing to gain from the actions he took - potentially, he had much to lose. He had rebuilt his life from a criminal past and was moving forward to a bright and positive future – he had, at the time, no compelling reason to come forward other than his deep concern that investigators had not properly investigated the murder of “a wee lassie.”

It took four years before access to the case papers substantiated a great deal of what Mr Forbes told Corinne in 2006. The only way he could have known, for example, that Mr Kane was brought to police attention but was never interviewed, was through direct experience, since that information was buried in the case files and had never been in the public domain. He could not have known that another independent witness would place Mr Kane on the Newbattle Road after buying alcohol in a local store or that yet another would attest to scratches on Mr Kane’s face and strange behaviour, yet those accounts were also in the case files.

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None of this, of course, means Mr Kane had anything to do with Jodi's murder. A student getting high on drugs and alcohol is not an unusual event and the fact that he lived in the immediate vicinity of the murder scene is nothing more than a matter of circumstance. The reason I raise it in this book is two-fold.

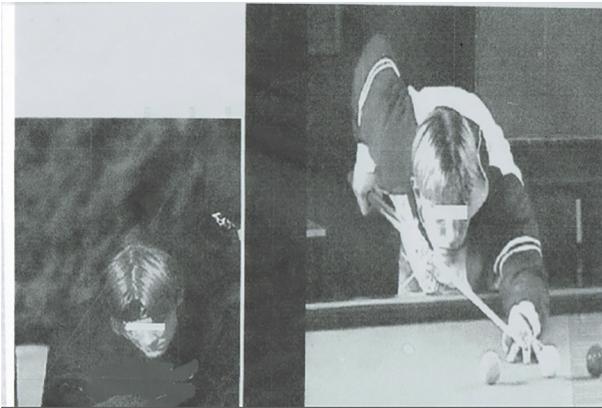
In the first instance, it exposes, again, the claim that this was a first-rate investigation as deeply questionable. While the police would have the public believe that every male in the immediate vicinity that evening was scrutinised, they clearly were not. One officer, asked why Mr Kane had been missed time and time again in the trace and interview process, conceded that officers were so busy building the case against Luke, there was not the time or manpower to properly trawl through the torrent of information flooding into the investigation.

The second point is the one of critical importance to this case. In 2010, I was able to obtain pictures of Mr Kane. Although taller than Luke, he was of the same build, had a very similar hair-style and colour and the same face shape – in short, he bore a striking resemblance to Luke. In the case papers was a credible and reliable statement confirming that Mr Kane regularly wore a Parka jacket from 2002. He was reported to have had an interest in disturbing images on the internet and was aware of, and showed others, Marilyn Manson's Black Dahlia pictures.

The implications are immediately obvious. Evidence placing him on the Newbattle Road in the early evening of June 30th fatally undermines the sightings by Rosemary Walsh and Lorraine Fleming – in that fleeting moment as they drove past a youth on the Newbattle Road, how could they be certain that the youth they saw was not Mark Kane, on his way to the convenience store? Had a picture of Mr Kane been placed in a spread with others, including Luke, it is extremely unlikely they would have been able to pick out Luke with any degree of certainty. It is possible that this was how Rosemary Walsh's first reference to the jacket ("it could have been a parka") came to exist, especially since all of the other evidence had Luke wearing a green bomber jacket with orange lining. And this may be a clue to where and how the investigation came to focus on the Black Dahlia/Marilyn Manson connection. Remember, I was told many years before these papers became available (and before Scott Forbes made contact with Corinne) that investigators were made aware of a person with an interest in gruesome internet images who was particularly interested in the Dahlia case, but, for all those years, I had nothing to substantiate that claim.

**I want to make it absolutely clear that I am not suggesting for a moment that any other youth who may have been in the vicinity of Newbattle on the evening of June 30th and who may have been mistaken for Luke, had anything whatsoever to do with the death of Jodi Jones. I make this point purely to demonstrate the dangers inherent in eyewitness identifications, especially when made in the absence of other pertinent information.**

These are two pictures of two different youths, both of whom lived a few minutes off the Newbattle Road (each of their streets adjoining the Newbattle Road at the same place, on opposite sides of the road), both of whom were regularly present on the Newbattle Road. I have deliberately chosen pictures with very different clothing (these pictures were taken from publicly available internet sites). You will have time to study these pictures.... someone catching a fleeting glimpse whilst driving past in a car would not. Could you be certain enough to choose one of these youths rather than the other? If you were not allowed to rely on clothing to support your identification, could you differentiate them in any other way? Both faces have been obscured - all of the witnesses said they did not see the faces of the individuals they described, but neither youth shown here had any particular distinguishing features, such as facial hair, prominent nose, birthmarks or scars.



Had the investigation been properly conducted, it could have been clarified that Mark Kane may have been the youth seen on the Newbattle Road by Ms Fleming and Mrs Walsh, meaning that their already fragile identifications of Luke could not stand. The source of the link to the Black Dahlia/Marilyn Manson connection would have been evident, seriously weakening the prosecution's claims about Luke based on one

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DVD he acquired after the murder.

In 2014, the CCRC review of the case verified another of Scott Forbes' claims, eight years after he first reported them. Mark Kane stated that he attended Dalkeith Police Station within days of the murder but was told that officers were "busy" and he should call back.

The Dahlia/Manson connection did not end with the evidence, however. The judge, Lord Nimmo Smith, when sentencing Luke said:

*"It lies beyond any skill of mine to look into the black depths of your mind. I can only look at what you have done. I have no idea what led you to do what you did. Maybe it was a desire for notoriety, to achieve something grotesque. I leave it to others to fathom.*

*I do not think that your interest in Satanism can be ignored as mere adolescent rebellion. I think that is a sign that you found evil attractive and that you thought that there might be a kind of perverted glamour in doing something wicked.*

*I do not feel able to ignore the fact that there was a degree of resemblance between the injuries inflicted on Jodi and those shown in the Marilyn Manson paintings of Elizabeth Short that we saw. I think that you carried an image of the paintings in your memory when you killed Jodi.*

*It may be that a lack of emotional response made you more readily able to inflict harm on others.*

*I do not subscribe to the notion that [cannabis] is a harmless recreational drug. In your case, I think that it may well have contributed to your being unable to make the distinction between fantasy and reality which is essential for normal moral judgments.*

*Jodi regarded you with affection and trust. She went out joyfully to meet you and she did you no harm. Yet you inflicted a horrible death on her and mutilated her body. Looking back over the evidence, I still cannot fathom what led you to do what you did. Perhaps you do not even know yourself."*

These are astonishing claims from a judge whose role is supposed to be impartial and whose views are only supposed to be based on the evidence before the court. The reference to the “black depths” of Luke’s mind flies in the face of the psychiatric reports which concluded Luke had no mental abnormalities or personality disorders – there was, in short, nothing in his psychiatric or psychological makeup which indicated any propensity to do what was done to Jodi. Since the judge conceded that it was beyond his capabilities to “look into the dark depths” of Luke’s mind, he was, by his own admission, dependent on the reports of those who were qualified to do so. Yet he went on, having made this concession, to suggest a number of reasons why he believed Luke did what the prosecution claimed he did, irrespective of the expert reports.

Similarly, the “interest in Satanism” which the judge took to be a sign that Luke found evil attractive was a very selective interpretation when the source of many of the quotes on which this apparent interest was based were song lyrics or lines from popular computer games. It was as if, having secured a guilty verdict, the judge was free to place whatever retrospective interpretation of events he chose onto the known facts of the case.

It is surprising that the judge felt unable to ignore the “similarities” between Jodi’s murder and the Elizabeth Short murder since all of the factual evidence before the court demonstrated that the similarities between the two cases were superficial. But his suggestion that Luke “carried an image of the paintings” in his memory has no basis in fact whatsoever – there was not a single piece of evidence to suggest, far less prove, that Luke had ever seen the Marilyn Manson paintings or, indeed, ever knew anything about the Black Dahlia case.

Lack of emotional response was not a professional observation from medical specialists – the fact that Luke was heavily medicated from the afternoon of July 1st was never before the court and his perceived lack of emotional response on the finding of Jodi’s body was the opinion of some police officers – the evidence of the control operator and the original evidence of Janine and Kelly all made reference to clear emotional responses – in a bit of a panic, as if he was in shock, the concern in his voice, everyone was so upset. The other reference to lack of emotional response came from Judith, who saw Luke the day after he was first medicated.

Had the judge’s comments about Luke not being able to distinguish

between reality and fantasy been based on any sort of factual evidence, Luke Mitchell would not have been mentally fit to stand trial – in order for a person to be found guilty of a crime, they must know that what they are doing is wrong and carry an intention to do the crime knowing it is wrong. In Scotland, the requirement, in law, is that the accused willingly committed a criminal act entirely aware of his actions and their consequences. Clearly, if Luke was unable to distinguish reality from fantasy and was unable to form normal, moral judgements, he would not have been entirely aware of his actions and their consequences. Further, it was not a scientific finding on which the judge concluded that cannabis is not a harmless recreational drug, or that Luke's use of it caused the mental imbalances the judge postulated – there was not a single expert called to give evidence about the effects of cannabis, or the likelihood of Luke's level of consumption causing such behaviour. This part of the judge's opinion, however, is in complete opposition to his suggestion that Luke thought there might be a "perverted glamour in doing something wicked." How could Luke hold such a thought if he could not distinguish between wicked and not wicked?

Then, in blatant contradiction to everything that was said before, the judge said he could not fathom what had led Luke to do what he did, musing that perhaps Luke, himself, did not know.

What is important about all of this is that it demonstrates how far from accepted processes this case was allowed to stray. There was no evidence that Luke could not distinguish between fantasy and reality, there was no evidence that he carried pictures of the Dahlia murder in his memory, there was no evidence that there were dark depths to Luke's mind, or that he found evil attractive, or that Jodi's murder was a copy-cat of the Dahlia murder, or that Luke lacked emotional response. There were some (non-specialist) opinions on some of these factors and nothing more. It is extremely concerning that, after 42 days of evidence, the judge, himself, appeared to mistake conjecture for fact, opinion for evidence and suggestion for reality.

At the end of the trial, the judge made a remarkable decision. Instructing the jury on what they must and must not do during their deliberations, he told them that they would be sent home, rather than being sequestered in a hotel. There had, he said, been cases in the past where the dangers of others influencing jurors meant they could not go home to their normal lives, but that he did not see any such danger in this case. It

was the longest trial of a single accused in Scottish history. It had been headline news for more than eighteen months and was a massive story in the local area. The trial was held locally (the High Court in Edinburgh is less than eight miles from the murder scene and many people from the Easthouses/ Mayfield/ Dalkeith/Newbattle areas work in Edinburgh). In the event, the jury let the court know at a little after 4pm on January 19th 2005 that they were “nowhere near” a decision and were sent home to “relax, not think about the case and come back refreshed tomorrow.” Within an hour of returning to deliberations on the morning of January 20th, the jury intimated that they had reached a verdict. In total, deliberations lasted a little under 5 hours for a case which had taken eight weeks to hear.

There were complaints of jurors seen talking with members of Jodi’s extended family, but no action was taken. Returning to the courtroom with their verdict, one juror was seen to give a “thumbs up” sign towards where Jodi’s family were sitting. Again, no action was taken.

It was, at the least, a surprising conclusion that there was no danger of outside influence on jurors, given the massive and intense interest in the case. There is no way of knowing whether there was or not or, indeed, whether it would have made little difference, since the enormous and relentlessly negative media coverage which followed the case from the morning of July 1st had already convinced a large swathe of the local populace that Luke was Jodi’s killer long before the case was ever brought to trial.

\*The Scotsman, on 12th February 2008, reported on another of Mr Beckett QC's claims (unrelated to Mr Kane) in court. Referring to the DNA match with James Falconer and the condom found near the murder scene, the Scotsman reported:

*The DNA link, however, has been disputed in court, with prosecutor John Beckett QC telling a recent hearing that DNA from Mr Falconer was "no match whatsoever" with samples collected.*

It was, in fact, the Crown that discovered the match between Mr Falconer's DNA and the condom, when his profile was entered into the

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database in relation to another matter. And it was the Crown that brought the full DNA match to the attention of Luke's defence team, so it is difficult to understand how Mr Beckett could legitimately make the claim reported here, before the Court.

## Chapter Fourteen

### Luke and the Police

The concept of Noble Cause Corruption has a long history and a remarkably resilient base of broad support. Fictional police productions are often premised on the need for Noble Cause Corruption to “get the bad guys” – bad guys, so the storylines go, who are able to break the law by capitalising on the fact that police officers are bound by rules and regulations which prevent them from making “official” arrests. The police, then, have to come up with ingenious ways of trapping the bad guys and sometimes that means bending the rules, engaging in dishonest conduct and so on but, in these cases, the end justifies the means.

Closely related to Noble Cause Corruption is the concept of police following “gut instincts” or “police hunches.” Again, these are often applauded in fictional representations and research supports the idea that a police culture exists in which police officers see themselves in particular ways, especially as having particular talents related to their police work. That same research, however, strongly suggests that police officers over-estimate their abilities to detect deception and use flawed reasoning to support their conclusions.

Supporters of Noble Cause Corruption, or “gut instinct” policing, are sometimes of the opinion that such approaches are reserved for “real criminals” and that there would be no need for them in the investigation of innocent individuals. This, of course, misses the point – investigating officers approaching an investigation on the basis of a gut instinct that their prime suspect is guilty before any evidence has been gathered are not considering that suspect to be potentially innocent. In fact, the likelihood is that protestations of innocence will be interpreted as evidence of dishonesty or attempts to cover up what has been done by the person under investigation.<sup>13</sup>

There is also a common belief that the misuse of police powers, police dishonesty, or bending and breaking of rules will somehow show up in records, allowing claims of unfair policing to be investigated and convictions obtained on the basis of them re-examined. The reality is that a great deal of police work is unsupervised, only loosely structured and justified on the basis of a very broadly defined reasonable suspicion.

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13 Power, Resistance Knowledge, Green A, Midwinter & Oliphant 2008

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Whilst this is an interesting subject, worthy of debate in its own right, the reason for introducing it here is to examine the ways in which honesty and policing affected the investigation, trial, conviction and aftermath in this case.

Was the suspicion of Luke Mitchell, from the very beginning of the investigation into Jodi's murder, reasonable?

There is nothing remotely surprising about police investigations, following a brutal murder, focussing on those closest to the victim in the first instance on the basis of statistical probability. It was no real surprise that Luke's home was raided on July 4th and he was taken in for questioning. Police insisted, both to the public and to the Mitchell family, that this was just a routine procedure. What is surprising is the fact that he was the only person in the entire investigation who was treated this way.

In Scotland, prior to November 2011, what were known as Section 14 Interviews allowed police to detain a suspect for 6 hours for questioning, without access or reference to legal advice or assistance. Only one such interview was allowed in any given case. Luke's questioning on July 4th was not a Section 14 Interview - he was classed as a Voluntary Attender, meaning he was free to leave any time he wanted. In reality, that was not going to happen – after he was taken to the police station, other officers removed bags and bags of what was repeatedly referred to as “evidence” from his home in a blaze of publicity. How did all of those reporters and photographers know to be at Luke's house just in time to capture this dramatic (but routine?) development in the case, just 3 full days after Jodi's body was discovered?

Although Luke was read his rights (in a fashion), he and his mother were assured repeatedly that he was not a suspect and this was just a routine procedure (even the officer stumbling through the caution – a cynic might say in order to disguise the fact that that was what it was – assured Luke it was “just a procedural thing.”) The form Luke was asked to complete, at a part marked “Reason for Interview,” had been completed, “Interview as witness in murder investigation,” but we would not, ordinarily, expect police to obtain a search warrant for the house of a mere witness, or to conduct such an interview under caution.

By the end of that interview, when Luke was released without charge, police had already interviewed him for a total of twelve and a half

hours without a solicitor present – the six and a half hours following the finding of Jodi’s body and the six hours as a voluntary attender. But the Family Liaison Officer assigned to the Mitchell family on the afternoon of July 1st had been covertly interviewing Luke and his family throughout those three days as well and through it all, Luke was heavily medicated to counter the shock and trauma of finding Jodi’s body. Six weeks later, his house was raided in a blaze of publicity again and he was detained in a Section 14 interview, before, again, being released without charge (more about this in chapters 15 & 16.)

Identifying the point at which Luke became an official suspect in the investigation is critical because a suspect is entitled to certain protections in law (to which a mere witness is not), whether that is in England, Portugal, or anywhere else in Europe. Those protections are: (a) to be made aware that they are suspected of a crime and the nature of that crime, in language they understand, (b) the right to legal advice or assistance in answering questions about their potential involvement in that crime and (c) the right to protection against the possibility of self-incrimination.

I’ll take the last first because that was one I imagined to be self-evident. Nothing I could say or do could possibly incriminate me in a crime in which I played no part, or about which I had no knowledge. That is the concrete belief of every innocent but wrongly accused or convicted person I have ever met and it was, with absolute certainty, a concrete belief of mine. If a person was telling the truth, they had nothing to fear about talking to police investigators.

In Scotland, the Voluntary Attender and Section 14 interviews allowed investigators to obtain information onto which they could cast sinister inferences and go and find “evidence” to support those inferences. In neither interview was it made clear to Luke at the outset that he was being treated as an official suspect and information from each of those interviews was used against him, both to build the case and as evidence in court. You might be thinking, if he was innocent, what information could they possibly have obtained? I was to discover that virtually anything a person says or does can become “evidence” against them if a sufficiently suspicious or sinister approach is taken to the interpretation.

Perhaps the question is not so much “was police suspicion of Luke reasonable,” but “was it reasonable that Luke was the only person viewed with such suspicion?”

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Legally and technically, Luke should have had certain rights and specific procedures and protections should have been in place and observed, immediately investigating officers started to treat Luke as a “substantial” suspect. At the very beginning of any police investigation, pretty much anyone and everyone could be considered a suspect, in the loosest sense of the term and it would be ludicrous to suggest that all of these people should be interviewed under caution, with legal representation and so on. Police investigations, in those circumstances, would never get off the ground. But the protections and procedures which do exist came into being, in part, because of police investigations in the past which resulted in wrongful convictions or accusations. The police practice of “verballing,” for example, allowed police officers to claim that a suspect had said something which incriminated them – without taped interviews and legal representation and advice, there was no way of countering such claims. The same was true of police intimidation and bullying leading to false confessions, or the production of incriminating evidence against others. Immediately someone is considered by investigators as a significant suspect, the rules and protections apply.

Perhaps far more importantly in this case, was the *effect* of police suspicion crystallising on Luke. There is a reliable body of evidence to make a solid argument that the murder squad, headed up by SIO Dobbie, were so convinced that they had Jodi’s killer right in front of them and all they needed to do was find the evidence to prove it, that they failed to properly investigate other possibilities or to interpret evidence in any way other than on the basis that Luke was Jodi’s killer.

The question of when Luke officially became a suspect arose at trial because evidence was about to be led from the Family Liaison Officer (FLO), Michelle Lindsay, when Donald Findlay objected. The argument was fairly straightforward, initially. If Luke was a suspect at the time the evidence about to be heard was obtained, then he should have been cautioned. If he was not, then the evidence should not be allowed to be led, as it had been obtained by a degree of deception – Luke, considering himself to be a witness, gave information to the liaison officer in the belief that it could not later be used against him. It must be stressed that Luke (and all other innocent people I have encountered in these circumstances) believed that nothing they said could be used against them because they did not commit the crime –it was not a case of giving police investigators questionable information, safe in the knowledge that they were protected in law from that information being

used as evidence in a prosecution case. These people never dreamed that they would become the subject of a prosecution case in the first place.

It was decided that there should be a trial within a trial to ascertain precisely the point at which Luke became a suspect. Three police officers took the stand – SIO Craig Dobbie, DI Tom Martin and the FLO, Michelle Lindsay. Donald Findlay argued that Luke had been a suspect from the moment he was separated from the other members of the search party, segregated from other people in the back of a police vehicle and taken to the police station to be stripped, swabbed, examined, photographed and questioned. The fact that none of the other members of the search party was treated this way led Donald Findlay to argue that this was because Luke was being treated as a suspect, whilst the others were not.

The first officer to give evidence was Mr Dobbie himself. Asked when he became SIO in the case, Mr Dobbie replied: “Later that same day, very much by 9 or 10 o’clock” (on the morning of July 1st). Asked why Luke was treated differently to the other members of the search party, Mr Dobbie offered two related answers – the first was that officers were not aware that any of the others had been over the wall to where the body lay. Secondly, Mr Dobbie stated that none of these things (the taking of Luke’s clothing, medical examination and so on) were his decision. He said, *“These officers who had initially taken him for interview made these decisions for themselves.”*

Pushed to explain why the other members of the search party were not treated the same way, Mr Dobbie firstly stated, “As you can well imagine, they were considerably distressed when they were being interviewed. But their clothing was subsequently taken and also blood samples for DNA analysis as well.” Pushed further on the fact that their clothing and blood samples were not taken on the same day, Mr Dobbie replied: *“That’s something you’d have to explore with the officer who made that decision.”*

It’s interesting to contrast Mr Dobbie’s evidence at trial with his previous statements and those of other officers involved that night. In his own words, he said he was the “Senior Detective Officer with on-call responsibility for the Lothian and Borders area” on Monday, June 30th 2003. He received a call at 00:47 on the morning of July 1st, from the Operations Room at Dalkeith Police Station, advising him about the

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finding of the body, after which he “immediately attended” the meeting point at the back of Newbattle High School, where he was met by DI Ronnie Millar and ADS Derek Fulton, who brought him up to date with “the circumstances and information known to them at that time.”

Mr Dobbie went on to say that he caused a full call out of Identification Branch and Forensic Science personnel, before satisfying himself that the scene and all access points had been “suitably cordoned off.” But it is the next paragraph of Mr Dobbie’s statement which is most interesting in relation to the evidence he gave in court. He said, *“I also caused the witness DC Bowsher to be informed that he should, on a voluntary basis, obtain the now accused Luke Mitchell’s clothing and mobile telephone and have him medically examined by a Forensic Medical Advisor.”*

Put in the simplest of terms, both cannot possibly be true. Either the officers made their own decisions, about which Mr Dobbie knew nothing, or they did not.

Mr Dobbie’s assertion in court that he did not become SIO in the case until 9 or 10 o’clock on July 1st is also curious. Someone had to be co-ordinating the dozen officers, pathologist, doctor and Procurator Fiscal who had all attended the crime scene and taken various actions between the finding of the body and 6.40am the following morning. A crime scene manager was appointed, the SOCOs (including the photographer) arrived at the scene, FLOs for Jodi’s family were briefed twice, the doctor attended to pronounce death, all before 3am. Following a briefing at 5.25am, the Pathologist and Procurator Fiscal attended to view a video of the scene before attending the locus at 6.40am. It is beyond ridiculous to suggest that all of these people were just “doing their own thing”.

Mr Dobbie, himself, was initially quite clear that he was SIO well before 9 or 10 o’clock – in his statement, he said that, after attending the scene at 6.40am, he returned to Dalkeith Police Station to *“establish a squad to commence the murder investigation. At this point, I was appointed as the SIO for the enquiry...”*

There was no obvious reason why Mr Dobbie did not simply answer this question honestly. Perhaps he was arguing that there is a qualitative difference between doing the job of an SIO and being assigned the title

of SIO; if so, he did not make that clear and in many ways, the general response to such an argument would be, “so what?” The question, in its simplest terms, was, who was responsible for the various decisions taken that night and when did he become responsible? The answer to that question alone would have provided the answer to the much more important question – when did police suspicion crystallise, or come to focus upon, Luke Mitchell?

Discussing the other members of the search party, Mr Dobbie appeared to try to claim that clothing and DNA samples were taken when he became aware “later that day” that this had not been done, even though he said earlier that the failure to obtain these items the same day was something that would have to be explored with “the officer who made that decision.” In this classic example of “police speak,” Mr Dobbie first tried to suggest to the court that the items were obtained later the same day, then that they were supposed to be collected later that same day (presumably either by himself, or as a result of an instruction from him) and finally that someone else decided not to bother obtaining the items later that same day, in spite of the decision of the SIO that they should be obtained that day! The records show that the only items collected from the family search trio on July 1st were their shoes. Their clothing was not collected until later in the week.

Donald Findlay put to Mr Dobbie, “So, it was alright to wait 2 or 3 days before you got Alice Walker’s clothing, which she could have, for example, disposed of, washed, laundered, changed... done anything with?”

Mr Dobbie responded, “But she hadn’t.” That may or may not be correct– since she could not remember what she was wearing, no-one will ever know. It is certainly not something Mr Dobbie could positively claim, under oath, to be the fact of the matter. What is known is that Steven Kelly handed police items which did not match the description he later gave of what he was wearing that night and nearly all of the clothing handed to the police had been washed.

Almost unbelievably, Mr Dobbie indicated that police officers looking for items of clothing in a murder investigation would only go looking for them in a person’s home if the people in the home “would let us.” Donald Findlay had to prompt him further with, “And then, if they don’t, you go and get a warrant,” to which Mr Dobbie agreed. What

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was not clarified was whether individuals were asked for access at all in those first few days – from all of the evidence available, it seems they were not.

As far as Mr Dobbie was concerned, in response to claims that Luke was treated differently to the other three searchers by police from the outset; *“It may appear that way, but as far as I was concerned, he was not.”* It’s not rocket science and it does not require particularly well developed observational skills to conclude that this response is utter nonsense.

Whilst pressing home the point about Luke being treated differently, Donald Findlay asked, “Of the four who were in the search party, who was taken to a police station and kept there until six o’clock in the morning?” Mr Dobbie (correctly) answered “Luke,” before going on to say, *“But again, other people were in another police station and kept in well beyond six o’clock in the morning.”*

Wherever Mr Dobbie got this information, it is, quite simply, wrong. The other members of the search party were taken to Judith’s home by 2am; their statements were not even commenced until after 4am. Judith and Alan, who had not formed part of the search party, were not kept at the police station until after 6am.

Asked how many other houses were searched, Mr Dobbie first replied “None,” before correcting himself by saying, “Sorry, no, there is one other house.” Asked to clarify whose house that was, Mr Dobbie replied: “I believe it was his [Luke’s] father’s house,” leaving Donald Findlay to summarise, “So no-one, outwith Luke, had their house searched under warrant in the whole of this enquiry?”

The significance of Mr Dobbie’s assertion that it was believed only Luke had been over the wall and his insistence in his statements that everyone, in those first early hours, was sharing the “circumstances and information known to them at that time” demonstrates a remarkable lack of consideration that there may have been other possibilities than those accepted at the very beginning.

This misinformation may explain that strange decision to take statements from only Judith and Alan Ovens at Newbattle Police Station. Quite simply, because of the apparent jump to earlier, mistaken conclusions, none of the officers involved that night discovered that Steven

Kelly, Janine Jones and Alice Walker were extremely important witnesses until more than four hours into the enquiry.

The use of the word “voluntary” in relation to the treatment of Luke is disturbing. He was no more in a position to make any voluntary decisions that night than he was in the interrogations of July 4th and August 14th. There was no choice in the matter for him - the police took his phone from him, the police put him in a police car, the police told him they were taking him to the station, the police took his clothes and had him photographed, examined and swabbed and the police kept him there until almost 7am the following day.

I am not suggesting that investigators should not have taken a statement from Luke at the earliest opportunity. What I am saying is that he should have been treated with the same care as the others (arguably more so, given his age) - in fact, I'd go as far as to say he would have been treated with the same care, had they not believed he was their prime suspect. But the utterly disingenuous use of the term “voluntary,” in a cynical attempt to make what they were doing somehow acceptable, is what makes accounts such as Mr Dobbie's so unpalatable, especially since, as a minor, Luke should not have been allowed to “volunteer” to anything without an adult's agreement and permission. Mr Dobbie's comment that the three other searchers were “considerably distressed” when they were interviewed more than four hours later betrays, in itself, a pre-conception amongst investigators – that Luke was not “considerably distressed”.

None of the others was subjected to the fast-moving pace of events that was enforced on Luke – not one of them was separated from others experiencing the initial numbing shock giving way to the horrific reality of the situation over time, not one of them was forced to start answering questions, having been stripped and placed in a paper suit within an hour of the finding of Jodi's body – the initial shock, for Luke, was compounded over and over again in that first hour. He was 14 years old, completely isolated from everyone else within minutes of arriving in the car park behind Newbattle High School and facing hostility from police officers from the very beginning.

Having established, despite Mr Dobbie's valiant efforts, that Luke Mitchell was, indeed, the sole suspect in everything but name from the outset, the trial proceeded in an effort to ascertain whether the use of the

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FLO was unfair. What you are about to read shocked me to the core – I'd heard of the use of Family Liaison Officers in many cases and was under the impression that they are officers assigned to the families of victims, in order to protect them from media intrusion and to keep them informed of developments in the case.

DI Tom Martin took the stand and told the court that the role of an FLO is primarily as an investigator. In a case where an FLO is deployed to a family which contains a potential suspect, special procedures are implemented, including, amongst others, that the liaison officer would have “corroboration with them at all times” – another officer would always accompany them any time they were in contact with such a family. Mr Martin told the court that, following the search of Luke's house on July 4th and the questioning of him under caution for 6 hours that day, Luke's family were asked if they were happy to continue with the deployment of Michelle Lindsay as the FLO and they indicated that they were “more than happy” for the relationship to continue. Cross-examination on this point makes interesting reading:

- DF: When you are discussing with [Mr and Mrs Mitchell] do you explain to them the role of the FLO?
- TM: The role of the FLO had been explained to them at the start of the deployment [*on July 1st*]
- DF: So, you told them quite specifically that the FLO would be investigating them?
- TM: I didn't explain to them, I'd no contact with them up to the evening of 4th July
- DF: Would it have been explained to them that as well as liaising, the FLO would be investigating *them*?
- TM: They would have been informed that the primary role of the FLO was that of an investigator.
- DF: Would it have been explained to them that the FLO would be investigating *them*?
- TM: It would have been explained to them that the primary role of that officer was an investigator.
- DF: The question is either yes or no, surely?

TM: I believe I've answered the question.

DF: The answer is yes or no, isn't it?

TM: I've answered the question

DF: You don't want to answer it?

TM: Well, I have answered it

BY THE COURT: Do you mean what is said to people is the primary role of the FLO is as an investigator?

TM: That's correct

COURT: And they're left to work it out for themselves – if it occurs to them – that the officer may be investigating *them*?

TM: It would be explained to them their function and the roles that they would take to meet that function

DF: What does that mean?

TM: Just as I've said

DF: I don't understand, please explain it to me.

TM: As part of their introduction to the family, they would explain exactly what they did in their roles and their functions. That would include intimating to them that their primary role is that of an investigator. Not as a counsellor, not as a support agency, as an investigator.

DF: Well, I'll try again. Specifically, does an FLO tell the family that they might be investigating *them*?

TM: By going through the various functions that they require to carry out, I think it's self-explanatory.

DF: Why don't you just answer the question?

TM: (no answer)

Later, after more of the same, Donald Findlay finally got something of an answer.

DF: "So, the situation is that an FLO might actually be with a family

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which contains a suspect, but the FLO himself or herself would not know unless and until the senior investigating officer specifically decided to tell them?"

BY THE COURT: I must say, I'm a bit concerned about that, because it would make the FLO something of a Trojan horse, wouldn't it?

The claim by Mr Martin (repeated by Mr Dobbie), that the Mitchell family was told, quite clearly, after the July 4th interview and search of their home, that the role of the FLO was to investigate them, but that they (the family) were "quite happy to continue with the deployment" is ludicrous. The entire content of the July 4th interview, including the form at the beginning referring to Luke as a witness, demonstrates that the officers did everything in their power not to alert Luke and his mother to the fact that he was being treated as a suspect rather than a witness.

This is the transcript of the very end of the July 4th interview:

Corinne: The liaison officer, is it Michelle, she didn't say to us that any of this would be likely to happen. Why was that?

DC: Michelle probably wouldnae know... eh... we certainly never said to her

Luke: Is she not meant to know, though, to be able to tell us about this?

ADS: Well, she's got a specific

DC: She's got a specific role, a very important role wi' yourselves eh, basically what happens in an enquiry like this is people get allocated things to do from time to time on a day to day basis sometimes on an hour to hour basis and what we were told to do [today] was trace, interview and eliminate you wi' the information to hand which is your previous statement and eh a couple of other things and this is the only way we could do it.

Corinne: And why was I not told down at the house that the house was going to be searched, why was that left until I was up here – that was a bit of a shock?

ADS: Well we were provided with a warrant, do you just want to conclude this and we'll ... we'll answer

DC: aye...

ADS: address any concerns Mrs Mitchell's got?

DC: We'll do that, aye. Eh, we'll just, I'll switch the tapes off

ADS: So that's eh

DC: In case they stop again.

Those questions alone show that the Mitchell family had no idea that the FLO was investigating them, believing, instead, that she was there to advise them on developments in the case which might involve them and, also, that they were completely unaware that Luke had been questioned, on that day, as an official suspect.

What was Michelle Lindsay's "specific role"? At what point did those officers tell Corinne or Luke that Michelle Lindsay was part of the investigating team, sent into their home to collect any evidence she could against them and that anything Michelle Lindsay took from them (including sketches she asked Luke to draw) may be used in evidence against Luke?

Most important of all is the officer's claim that they were told to "*trace, interview and eliminate you wi' the information to hand which is your previous statement and ... a couple of other things and this is the only way we could do it.*" Since there was no need for them to "trace" Luke – they knew exactly where he was – and the information they "had to hand" was obvious - it's reasonable to conclude that Luke and Corinne believed that the wording of this comment was merely a formality, so eliminating Luke was a mere formality also. The lie at the end - "this is the only way we could do it" - most likely reinforced that belief, since the truth of the matter was they could have asked the same questions, in the same way, in Luke's home at any point in the previous three days. Bringing them to the police station to "formalise" their accounts really only makes sense in an "it's just one of those things we have to do" scenario.

The final part of the interview, where the officers were reluctant to have discussions on tape about why the search warrant was not presented until after Luke and Corinne were removed from the house, is telling. Also, from the early hours of July 1st, the assignment of FLOs to Jodi's family demonstrates that a decision had been made at the highest level that Jodi's family did not contain a suspect – although they were deployed at 1.45am, two-and-a-quarter hours after Jodi's body was

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found – they parted company almost immediately and dealt separately with members of Jodi’s family thereafter. There was no requirement for them to provide corroboration for each other – the special arrangement Mr Martin insisted had to be in place if a family contained a significant suspect. How, at that point, could investigating officers have had any idea who may or may not emerge as a significant suspect?

So far, in the course of this part of the court proceedings, a senior officer claimed that Luke was not treated differently to the other members of the search party, even if it may appear so and that suspicion did not crystallise on Luke prior to July 3rd, at some point in the early morning. Another senior officer refused to confirm whether a family under investigation is told that the FLO in their midst may, in fact, be gathering information to use against them. This officer, however, was quite clear that the FLO in such circumstances would always have corroboration with them, which I will come to soon.

For completion, the evidence of the FLO herself brought together the whole sorry saga. Michelle Lindsay told the court she was appointed as FLO to the Mitchell family on July 1st, visiting their home, alone, that evening at approximately 5.40pm and again, the following morning, at around 7am, having attended the morning briefing at Dalkeith Police station. There was at that point, she said, no-one who was under “substantial suspicion.” (This is, at first glance, supportive of Mr Martin’s claim about corroboration only being required where the family contains a suspect.) Although she tried to explain that everyone who had been at the locus was a witness who was under suspicion, her argument became undone when she was questioned as to why, if that were the case, all four searchers were not treated in exactly the same way. Donald Findlay continued:

“The answer is obvious. Luke was being viewed differently from the word go. And with that, the police operation was a botch up from the word go. That’s the due choice, isn’t it? Isn’t it?”

ML: I just said yes, sir.

Just over three weeks into the trial, a police officer central to the investigation admitted, in court, that Luke had been the only suspect from the beginning and as a result, the police investigation was botched.

Asked if she explained to the Mitchells that part of her role as FLO would be to investigate Luke's role in all of this, her response was, "... I don't know if I used the word investigate."

This officer brought numerous influences to bear on the recollections and understandings of the Mitchell family and she was instrumental in shaping the case against Luke. Her influence, had the family been aware of what was happening, was evident as early as July 4th, when Luke was first taken into the police station for questioning and his house was searched in a blaze of publicity. In his statement that day, Luke said he thought Judith had mentioned something to him about the search trio making their way to the path, although he did not mention such an arrangement in his statement on the night of the murder. Because all of the other evidence, whether from statements or timings, shows that there was not and could not have been an arrangement for the family search trio to meet Luke at the path that night, only one sensible conclusion can be drawn. Luke, heavily medicated and deeply traumatised, was led to believe, in the space between the early hours of July 1st, when he and his mother left the police station and the morning of July 4th, when dozens of police officers descended on his home in an early morning raid, that some sort of arrangement was in place to account for his meeting up with the search trio at the Easthouses end of the path. It would be very easy to suggest that in the shock and distress, Luke somehow forgot that arrangement and to "remind" him of it. Michelle Lindsay was in the Mitchell household for significant periods of time over those three days and was actively misleading and lying to the family, who trusted that she was there to support them.

The judge hearing this trial within a trial concluded

*"I do not ... draw the inference... that the accused was treated differently – as he was - because suspicion had, by then, centred on him. The officers who interviewed him no doubt followed best practice, but they took their own decisions how to proceed without any reference to any superior. By then, the inquiry team had not been formed. There was no directing mind in the shape of a senior investigating officer or one of his deputies. And there is no evidence of co-ordination between the officers who interviewed the accused and his mother and those who interviewed the other three at a different police station."*

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This is clearly wrong and the records prove it to be so. Ronnie Millar was a senior officer at the time – a Detective Inspector. He was contacted at 00.10 on July 1st. ADS Fulton was with officers Towers and Bowsher (the officers who physically transported Luke to the police station) when the call came in at 11.55pm reporting the finding of Jodi’s body. These three officers all made reference to the other members of the search party and other members of Jodi’s family being in the car park at that time. Officers Bowsher and Towers both made mention of asking Luke to sit in the police Land Rover whilst arrangements were made to interview witnesses. Officer Bowsher reported receiving a call from ADS Fulton instructing him to have Luke medically examined, an instruction SIO Dobbie claimed he, himself, issued. The call out of identification officers and forensics personnel, claimed by SIO Dobbie to have been “caused” by him, was actually claimed earlier by DI Millar, on arriving at Newbattle High School, having left “immediately” after the 00.10am call. Since DI Millar was present at the scene before Luke was taken to the police station, there was, indeed, “a senior investigating officer or one of his deputies” when that decision was taken.

Further, the FLO who met with Jodi’s family at Newbattle Police Station did so following a briefing by ADS Fulton who was, at that point, with DI Millar, at 00.45am.

Perhaps most importantly of all, in respect of the judge’s conclusion that different officers were taking different decisions and actions in the absence of a senior, guiding officer, is the simple and irrefutable fact that ADS Fulton, one of the first officers on the scene, was the officer who relayed Mr Dobbie’s instructions regarding a medical examination of Luke and was also the officer who, in the presence of DI Millar, organised the FLOs to come and take statements from Jodi’s family members. The only part of Luke’s treatment that night in which ADS Fulton and DI Miller may not have played a part was the decision to place Luke in the back of a police vehicle.

There is no possibility, then, that these were a bunch of officers just doing the best they could (or the best they could think of) without access to senior guidance. The judge, himself, made a clear error in this statement; he stated that Luke was taken to one police station for questioning and the other three members of the search party were taken to a different station for questioning. That is wrong, plain and simple, but it is a significant error, in that it completely played down the extent of the

differences in the treatment of Luke and the other searchers.

If Mr Dobbie's original accounts are correct (and all of the known evidence supports them as such), then suspicion crystallised on Luke within less than an hour of the body being found, rendering the appointment of the liaison officer a form of entrapment.

There are other facts which place the spotlight firmly on questions of police honesty in relation to this particular aspect of the case. The claims that the Mitchell family knew that Michelle Lindsay was investigating them and Luke, specifically, from July 4th to August 13th (the day before Luke was detained under section 14) and that Luke was fairly and properly treated as a suspect now lie in ruins.

From her own statements, Michelle Lindsay admitted that, on July 23rd, almost three weeks after the police decided Luke Mitchell was an official suspect, she spoke to a distressed Corinne Mitchell and told her that Luke was definitely only being viewed as a witness at that point. That is an obvious and provable lie. In spite of adamant assertions that an FLO would always have corroboration, on July 15th, Michelle Lindsay entered Luke's bedroom alone with him. She asked him for videos in his possession, which he handed over and asked about liquid in bottles in his room. On opening these bottles and smelling them, she concluded that they contained urine.

The "bottles of urine" evidence, used to devastating effect to suggest that Luke Mitchell was weird, was obtained by trickery – Luke was never cautioned, Michelle Lindsay was not corroborated and she was actively misleading the family, not only about her role, but about their status in the investigation as suspects. (Both Shane and Corinne were arrested and charged with attempting to pervert the course of justice). But Michelle Lindsay's influence went further still.

Despite claims that she was never alone with Luke after July 3rd, this officer should never have been alone with Corinne or Shane either, as both were also under investigation for the aforementioned crime. But on July 9th, July 13th, July 28th (twice) and August 8th, she noted in her statements that she spoke with either Corinne or Shane, or both, alone, without corroboration.

Is it justifiable for police to mislead, trick and lie to suspects, in the hope of obtaining "incriminating" information? Or is it more likely that

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innocent information will assume a sinister slant entirely because of the manner in which it is being obtained? More to the point, does any of this actually lead to reliable information which will identify a murderer and allow police to properly apprehend him?

It was not just Michelle Lindsay, later referred to at appeal by Donald Findlay as a “vixen in the henhouse,” who was planted in the Mitchell home in attempts to obtain information. Two of Luke’s friends – fourteen-year-old kids - were in his house on a number of occasions when Michelle Lindsay was present. Information from both was included in Michelle Lindsay’s notes and used against Luke at trial. But perhaps the most shocking and distasteful example of this police manipulation of people and information is that of Jodi’s mother.

On the evening of July 2nd, Judith visited the Mitchell home because, she said, she wanted to comfort Luke. Later that week, she said she felt compelled to return again, to ask Luke why he didn’t call back that night when Jodi failed to turn up. From Judith’s statements and other case papers, this visit took place on the evening of Saturday, 5th July, the day after Luke’s house was searched and he was questioned for 6 hours. By that time, Luke had been, officially, a suspect for fully three days (since the early hours of July 3rd). The evidence given by Judith in court about this visit was wholly uncorroborated.

But it does beg a very serious question. Why was the victim’s mother allowed to visit the sole suspect and attempt to elicit information from him, information which was later used against him in court, even though it was unsubstantiated and should have been treated as hearsay? Under any other circumstances, such a process would be considered entrapment.

It is inconceivable that the police, with Luke and his family under such intense scrutiny and their own conviction that he was their prime suspect, were unaware that Judith was visiting the Mitchell household that evening. During the six hour questioning the day before, police specifically asked about phone calls to Jodi, why Luke thought Jodi hadn’t turned up and why he didn’t call back. Was it mere coincidence that Judith, the very next day, arrived at Luke’s house to ask the same questions and police did nothing to prevent her from going there?

John Ferris, at trial, told the court that he continued dealing cannabis un-

til Christmas 2003, claiming that Luke “still owed him” for his last lot. For six months, a youth dealing substantial amounts of cannabis at the very heart of a murder investigation was allowed to carry on supplying the sole suspect. Three and a half months later, when Luke was arrested, he was also charged with “being concerned in the supply of cannabis.” In the August 14th interrogation, Luke was told the police “knew” who he was supplying with cannabis, yet they failed to bring charges, choosing, instead, to allow him to continue to “do so” for another eight months. There was no evidence of Luke selling cannabis to anyone – his “concern in the supply of cannabis” was, in reality, sharing joints with others. John Ferris never faced drug charges of any sort. Given his closeness to Jodi’s family, it is deeply concerning that he was allowed to maintain contact (in criminal behaviour) with Luke.

There is one other aspect to suspicion of Luke which raises extremely worrying questions. In an undated statement by Mr Dobbie, he said

*“On Friday 4th July 2003...Luke Mitchell was interviewed whilst attending Dalkeith Police Station on a voluntary basis*

*At 09:45 hrs, same date, I was advised by witness GR that ... Luke Mitchell may have the propensity to self-destruct in line with goth culture and to reoffend, if he was the offender. This, allied to the obvious pressures Luke Mitchell was experiencing, was grounds to believe he may seriously self-harm ... at 17:15, same date ... I advised [Luke’s parents] of the concerns in respect of their son and that they may wish to ensure he is appropriately supervised.”*

Luke’s interview that day began at 09:34, 11 minutes before the witness GR advised of the various “propensities” and concerns regarding Luke. GR, from what I was eventually able to ascertain, was a criminal psychologist based at some point in the past at Carstairs (The State Psychiatric Hospital). On what did he base his advice to SIO Dobbie? Judge for yourself:

At 09.34, the two police officers in the interview room with Luke introduced themselves for the tape, as did Luke. He was asked his age, date of birth, place of birth, “occupation”, name of school, where the school was located and home address. They noted that Corinne was in the room and went through the same process with her.

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The first officer explained why they were there – “a further interview to get a better idea of Jodi from her immediate friends.” He explained that they needed Luke to complete a declaration of Voluntary Attendance, read out various parts of the form, pointing out the parts to be filled in by Luke and the parts to be filled in by Corinne then asked Luke to fill in his part. Luke did so – the officer said “ok ... if you could sign it and time and date it. It’s 9.42am”

He then asked Luke to complete his address and sign his agreement that he may terminate the interview at any time – the time now was 9.44am.

That is all the criminal psychologist had to go on in order to provide his expert opinion about Luke’s propensities to self-destruct, re-offend if he was the offender and so on – Luke and Corinne’s basic personal details.

Mr Dobbie’s claim about advising Luke’s parents of concerns at 17:15 is horrifying. That was seven and a half hours after the initial concerns were noted and during that period, they allowed Luke to be subjected to intense questioning, without any medical or psychological professionals on hand. Where was the duty of care to a 14-year-old child? Mr Dobbie openly admitted he was warned by a professional (albeit that this professional had not actually examined Luke in any way) that the obvious pressures may be damaging to Luke’s psychological wellbeing, to the point where he might seriously self-harm, yet they went ahead with a 6 hour interrogation, before advising his parents that the pressure might be harmful to him.

This professional also made an observation regarding behaviours being in line with goth culture before it was even investigated, far less confirmed, that Jodi and Luke’s culture was in line with anything at all gothic.

Luke’s parents have always denied that such a warning was given. If there were genuinely such concerns about Luke’s mental state, the police should have arranged an assessment under the Mental Health Act (or, at the very least, strongly suggested that Luke’s parents do so) on the basis of their belief that Luke was a serious danger to himself and others. Instead, we are asked to believe they simply let a youth whom they believed to have the propensity to re-offend (bearing in mind the terrible nature of the attack on Jodi), or to self-destruct, to walk out of the door with no professional supervision or treatment in place.

This chapter deals specifically with the question of police honesty in terms of when Luke Mitchell became a suspect. Regardless of the technical interpretations of the police and courts in this respect and the sleight of hand accounts which turn the self-evident on its head, the actual evidence - the accounts of the various officers on the scene that night, the actions taken and not taken and the recorded order of events, for example - all point to one inescapable conclusion – Luke Mitchell was the prime suspect for the murder of Jodi Jones from the moment the police became aware a body had been found.

Ascertaining that fact is critical to the analysis of the remainder of the case against him. If investigators were not looking for anyone else, then two outcomes become increasingly likely – that the investigation itself became a self-fulfilling prophecy and that any evidence which was not supportive of the case against Luke would be deemed irrelevant.

This is not the first case in which this has happened and sadly, it will not be the last.

In the case of Billy Allison and Steven Johnson, the senior officer in the case, Richard Munro, was convicted in 2012 of perverting the course of justice, six years after the convictions were overturned (the first time a police officer in Scotland had been convicted in those circumstances). The real murderer has never been identified and has been at large for 22 years at the time of writing. A former Assistant Chief Constable, David Clapperton, said

*“What Mr Munro failed to do was recognise the possibility that there might be other explanations and when he came across evidence that didn’t support his case, rather than investigate it, he closed it down and suppressed that information and actually, in some respects, concealed it.”<sup>14</sup>*

Investigators in the Jodi Jones murder enquiry failed in their duty to investigate “reasonable lines of inquiry,” as a result of their absolute conviction that their chosen interpretation of the events of June 30th was not only correct but was the only possible interpretation.

It is not enough to resort to the default thinking that, because a conviction was obtained, the correct person must have been brought to justice.

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<sup>14</sup> <http://news.bbc.co.uk/1/hi/scotland/7314997.stm> & <https://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-18556183>

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It's a tempting way of thinking about these matters because it comforts us and lets us believe that justice has been done, that a dangerous killer has been apprehended and our communities are safer as a result. But it is a false comfort if it leaves dangerous killers free and, instead, convicts innocent people in their places. Steven Johnson and Billy Allison lost 10 years of their lives because of the conviction of a senior officer that they were the only possible suspects. It would take another six years before there was any official recognition that their suffering was caused specifically because of the determination of one senior officer to close the case by ensuring they were convicted.

In June 2014, the SCCRC concluded its examination of Luke's conviction. The final report stated that, in the opinion of the Commission, Luke was a suspect from the moment he was taken to the police station (less than half an hour after police confirmed that a body had been found), his clothing taken, his body examined and photographed and samples taken for DNA. They also concluded that Luke was not afforded the rights to which he should have been entitled when he was interviewed without legal advice and representation and information from those interviews was used against him at trial. The SCCRC declined to refer the case back to the court of appeal, on the grounds that it did not believe a miscarriage of justice had occurred.

## **Chapter Fifteen**

### **Section 14 Interrogation Part I**

The August 14th, Section 14 Interview was another pivotal point of the case. It was the last time Luke was formally interviewed until his arrest exactly eight months later and a number of concerns arose from it. It would later be pointed out by Donald Findlay that the interrogating officers had “lost it,” leading appeal judges to conclude that their behaviour was “outrageous and to be deplored.” Information from this interrogation was allowed to be led at trial, despite objections from Donald Findlay. Three years after the appeal was refused, the Supreme Court ruled in another case (known as “the Cadder ruling”) that information obtained in exactly this way would not be able to be used in evidence against an accused person and any further information obtained as a result of it should also be inadmissible.

This was because Section 14 interviews did not afford suspects protection against self-incrimination or access to their rights to legal advice and representation. While some people may consider the protection of such rights to be allowing criminals to “get off on technicalities” or that criminals have “more rights” than victims, the fact of the matter is that the state has enormous resources from which to draw when constructing a case against a person. The right to be presumed innocent until proven guilty is a fundamental right and the basis on which our entire justice system is built. In a case where even the judges agreed that investigating officers behaved “outrageously” and “deplorably” in their treatment of a fifteen-year-old boy who had never been in serious trouble before, the fact that they did so with nothing and no-one whatsoever to curtail them should concern all of us.

Many people believe it is not possible to self-incriminate if you have done nothing wrong, but that is based on a serious misunderstanding about what can be and is considered incriminating in legal terms. In Luke’s case, it was the fact that he eventually reacted, in sheer frustration, to hours of goading, bullying and intimidation by grown men, with no-one to help or advise him. There are several parts of the interrogation that demonstrate the impossibility of Luke’s position and this chapter will look at them in some depth. The Section 14 interview took place just six weeks after Jodi was murdered.

The first hour of the interview was reasonably civil, with one officer

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asking Luke detailed questions about his friends, his access to computers, his phones and so on (there were two police officers in the room). In the second hour emerged what appeared to be confusion, but was, in retrospect, the laying of the groundwork for what was to come later. Talking about Mia's tracker training, after some discussion about when the training started and what was involved, the officer told Luke he had spoken to the person who was training Luke, his mum and the dog and that the trainer mentioned a harness. The police officer asked Luke what happened with the harness and what it meant. Clarifying that his only personal training was laying the track for the dog, Luke explained that the harness could be a trigger for the dog to recognise that it is "working," going on to say that, really, it was just a game to the dog.

The following exchange ensued:

DC1: I'm talking specifically about the harness. What does Mia understand the harness to mean?

Luke: I couldn't say what Mia understands the harness to mean, I'm not a dog psychologist

DC1: No, but you've been trained, partially trained to train Mia...

Luke: I've not been trained to train Mia

DC1: Through your mum, you've just said that, did you not?

Luke: I've not been trained

DC1: Is that not what you've just

Luke: ... I've not been trained to, like, totally understand what the dog feels ... I've just been trained to ... tend to ... the track

Up to this point, Luke had stated clearly that his "job" in the training of the dog was to lay the track – he was not involved in training Mia how to actually track. The DC came back repeatedly to what the dog understood the harness to mean, trying to get Luke to agree that Mia would only track if the harness was on. Eventually, this officer said, "Can you tell me how you understand the harness and the leash?"

Luke: The leash would, is their playtime basically

DC1: Right and how do you understand the harness?

Luke: The harness, well, to us, it's working, but to them, I'd say it's sort of a game for them

DC1: Right, so if you wanted Mia to track you would put the harness on?

Moving onto Luke's relationship with Jodi, two hours into the interview, the interrogation took a disturbing turn. This was a crime that police and prosecution would later claim was not sexually motivated and, at the time of the interrogation, Luke had just turned 15. During the change of tapes, Luke asked if he would be allowed to speak with his mother – a second officer said: "I told him [he could speak to her] later on."

DC1: You've mentioned that you had a sexual relationship with Jodi. When did that start?

Luke: When we started going out

DC1: How many times did you have sex with Jodi

Luke: about 5 or 6 times

DC1: And where did that usually happen?

Luke: eh, my room

DC1: Every time? Every time you had sexual intercourse with Jodi it was in your room?

Notice the shift from where it "usually happened" to "every time."

The DC asked about protection - Luke told the officer they used condoms and that he did not know if Jodi was on the Pill, then the officer asked, "Right, did you withdraw before ejaculation or anything like that?"

Luke had already answered, in detail, questions about protection – this further question appeared to have no justification, other than keeping an intense and uncomfortable focus on sex.

After more back and forth questions and answers about condoms, the officer asked

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OK, now, with your sexual relationship, what did it involve?

Luke: Just sex

DC1: was there oral sex ... masturbation... with Jodi, was that part of your sexual act?

Luke replied that there was no oral sex and what masturbation there was, to him, was part of foreplay.

DC1: What about the use of pornographic books... did Jodi see those books... you didn't look at them together or anything?

Again, Luke answered, "No."

Questioning Luke about the last time they had sex, the officer asked whether they were naked, where it was, what position they used, whether they had experimented with other positions, whether Jodi touched the condom and what Luke did with the condom afterwards.

The questioning moved on:

DC1: Do you have a particular sexual fantasy, Luke?... Nothing especially turns you on sex wise? Do you masturbate? Have you got a particular sexual fantasy you think about [when you masturbate]? How d'you get an erection? What do you think about when you get an erection? What do you find erotic? What parts of the female body do you find erotic?

Luke answered, as best he could, this barrage of questions – he found “nice looking females,” in general, “erotic” and sex was ... “just sex.”

Not to be put off, the officer continued, now trying to lead Luke to answer more specifically:

DC1: Men, most men, usually have a particular part of a female's body that he finds particularly erotic. Do you find a particular part of a female body erotic? One particular part?

Again, Luke answered in the negative.

DC1: So, what you're telling me, you're just... what do you find erotic about a female?

Remember, this was a boy who had just turned 15 years old. What was this officer about to say - “So what you’re telling me, you’re just a fifteen-year-old boy who finds girls generally sexually attractive”? Of course, that could not have been used to cast a sinister slant on Luke’s answers and may explain why the officer dropped the question halfway through to return to a more specific question, one Luke had already answered a number of times.

DC1: Have you ever asked Jodi to perform a ... a specific sexual act?

Luke: No

DC1: Oral sex, for example? Have you ever asked her to perform oral sex?

What could any of this have revealed about a murder that police investigators had decided was not sexually motivated? It seems more probable that this line of questioning was simply intended to humiliate and degrade. Or that the officer was making assumptions on the basis of the forensic deposits found on Jodi’s hands, face and body, even though the results did not identify them as originating from Luke. After half an hour of this, following another break to change the tape, the officer returned to the beginning again, starting with Luke’s account of June 30th, confirming everything he had said since the beginning of the interview and producing sketch maps for Luke to point out where various aspects of his account happened. During this part of the interview, two allegations about assaulting other girls were put to Luke, who flatly denied them. A few minutes before 10.30am, two and three-quarter hours since the interview began, it was halted for a break.

Returning at 10.50am, Luke was again reminded that he was under caution and that he did not have to answer any questions. By now, there were three officers present. Asked if he understood he was still under caution, Luke responded: *“I don’t want to comment on any further questioning until I can speak to my mother.”*

DC1: Why is that?

Luke: I just want to speak to my mother.

The officer explained why that was not possible: “Your mother cannot be present at this interview for the same reason that was explained to

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you when you were first detained, the reason being that your mother is potentially a crucial witness in this *defence*, ok? Alistair is here from the Social Work Department to make sure fairness is seen to be done and that fairness is indeed being done.”

If that was the role of Alistair, the trained appropriate adult, then he failed miserably. Not once, throughout the interview and particularly in the following exchanges, did he intervene. And what did the officer mean that Corinne was potentially a crucial witness in this ‘defence’? By this stage, there was no defence, because there was no official accusation. The reason for Luke’s sudden request to speak with his mother was two-fold. During the break, he asked to use the toilet. He was accompanied by an officer who, Luke says, pushed him up against the wall and told him, “Just confess, you little bastard. It’ll be much worse for you if you don’t.” The trained appropriate adult was nowhere to be seen.

Luke then asked to speak with his solicitor because, he said, “I feel that I’m being arrested under suspicion of murder ... I feel I should be entitled to speak to a criminal lawyer.”

The officer pointed out to Luke that he was not under arrest – he was detained, under Section 14, “on suspicion”.

Luke tried again: “*The word used when they appeared at my house was “arrested.”*”

DC1: No, they wouldn’t, I can guarantee you they wouldn’t. I wasn’t there but I can guarantee you that your status is very firmly “detained.” Now, under that act that I quoted you, a lawyer has no right of access.

It is important to notice here that the officer was telling Luke that what he truly believed he had been told *did not* happen, even though this officer admitted he wasn’t there. What can anybody do when what they know for certain happened is flatly denied by someone in a position of power? Also, while the lawyer had no right of access, the senior officer in the investigation had discretion to allow access, especially if the witness was vulnerable. Six times, Luke stated that he did not want to answer any further questions until he could speak to his mum or his lawyer. By that stage, it was clear he was aware that officers suspected him of being Jodi’s killer, but the officer ploughed on regardless. When

Luke refused another three times to answer questions, the officer returned to the beginning again, getting Luke to confirm (again) things he had already said. This is a well-known tactic – getting the suspect back onto comfortable territory; eliciting affirmative answers may trick the suspect into answering, or agreeing with, further questions or suggestions. Within minutes, the tone of the interview changed completely, the officer openly accusing Luke of lying, the accusations against him escalating:

DC1: You told us you had 2 joints a day on average from October to April this year. That is an out and out lie. You are an out and out Hash and Cannabis addict ... we have numerous people telling us you're an out and out hash head ... You've only had sex with Jodi in your room ... you told us that. You've had sex with Jodi outside ... we have someone telling us you have ... a witness telling us you have.

Denying this accusation, Luke asked, "And someone's been watching us, have they?"

It is an important point. For the claims here to be true, someone had to be willing to approach the police and tell them he or she had watched a couple of teenagers having sex outside. For such information to be used as evidence, it would have to be corroborated, meaning two people, or sets of people, would have to have made such an allegation. The immediate difficulties with this are clear – why would anyone, in the middle of a massive murder investigation, take the chance of making themselves suspects by telling police they watched teenagers having sex outside so closely that they could actually identify those teenagers?

Police officers had asked Janine what she knew about Jodi's sexual activity. Initially, Janine was quite sure Jodi had never had sex outside. It was put to her in another statement that she had said Jodi "may have had sex outside" and Janine responded that there must be a mistake, she did not say that. A month into the investigation, a statement from Janine stated that she thought she remembered "something about the back of Newbattle High School" and "the path." Notice the statement did not say Janine stated specifically that Jodi had told her about sex outside – just that Janine remembered something undefined. If this was the "evidence" on which the officer based his accusations against Luke, it is an interesting indication of how far those investigators were prepared to go

to pin the crime on Luke, just six weeks after Jodi's murder.

This officer, obviously on a roll, threw accusation after accusation – Luke did not walk home from school with the boy he said he did, they had numerous witnesses telling them about Luke and knives, his phone conversations with the girl they would later claim he was two-timing Jodi with showed he was “in constant contact with her,” they had witnesses saying Luke told them he would like to cut the heads off horses and pull their insides out, claiming he threatened a girl with a knife while wearing a black balaclava ... there was no time or space for Luke to respond. Seven more times, he tried to say he did not want to answer questions and was ignored. No matter what responses he did try to give, those, too, were ignored as the officer ranted on and on. After a tape change, the officer continued unabated:

DC1: RT says you've got a huge big Bowie knife...you had it the last time he saw you; you took it home... where is that knife now?

Luke, having been goaded in this way for over an hour responded, “*I don't even know what a fucking Bowie knife looks like, so how do I know?*”

DC1: It's a hunting knife similar to a fishing knife... people call them Rambo knives, people call them hunting knives. Have you ever owned something like that? No? Why should RT say that, then? Why should... we have numerous people talking to, talking about you having a Bowie style knife. Are they all lying? Every single one of them? People who actually don't even know each other are lying?

Apart from the abject dishonesty in these claims, what exactly was the officer hoping to elicit? Luke had told him he did not know what a Bowie knife was – he could not possibly know why anyone else said what they did. Once again, though, there is trickery in this passage – having been told that Luke had no idea what a Bowie knife looked like, the officer told Luke “It's a hunting knife, similar to a fishing knife. Have you ever owned something like that?” The officer knew Luke owned a fishing knife – photographs of it would be produced later in the interrogation, but Luke, once again, was in an impossible position. Saying “No” to the Bowie knife was now saying “no” to “something like a fishing knife.” However he answered, because of the way the question was put, he could be accused of lying – not because he was being dishonest,

but because the question did not allow for an honest answer.

The second officer took over, listing a number of descriptions various witnesses were alleged to have given about knives belonging to Luke, all of them different. Of one of these witnesses, Luke responded: “I haven’t seen him since I was 11.” This witness claimed to have seen 11-year-old Luke (still in primary school) with a “big knife” about 250 millimetres long – an eleven-year-old with a ten-inch knife and nobody, apart from one school friend, noticed? The officer continued “Yes, I’m talking about a couple of years ago.” It was the first reference to Luke carrying knives over a number of years ... and the last. The first officer backed up the second, telling Luke, “D’you get the idea, Luke? Everybody’s speaking about you carrying knives.”

Officer 2, straight away showed Luke a photograph, asking, “Do you recognise that knife?” Luke confirmed that it was his fishing knife.

DC2: Where’s that knife now?

Luke: I don’t know, the police have probably got it.

DC2: You’ve no idea where it is?

Luke: Well, considering you’ve got photos of it, I take it you’ve got it.

Undeterred by the logic of this response, the officer carried on, showing Luke a photograph of a knife, which Luke confirmed was a knife from work, used for opening boxes.

DC2: Where did that go to?

Luke: Well, considering you’ve got the photos, you’ve got it, haven’t you?

DC2: Well, how did we get it then?

What was the officer implying by that last question? Having twice raided the family homes and searching the business premises, taking every knife the family owned, it was fairly obvious, as Luke pointed out, that the police had taken it. This was clearly an attempt to imply, after getting Luke to identify the knife as one to which he had access, that this knife had been “found” elsewhere. It had not. This officer carried on

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naming people who, he insisted, had told police about Luke and various knives, finishing with the claim “In all, there’s about 45 different people that we’ve spoke (*sic*) to ... all say you have knives, you take them out in public... you have a fascination for knives. Where are all these knives?”

DC1 took over again, moving on to what happened after Jodi’s body was found. Again, Luke tried to say he did not want to answer questions until he had spoken to his solicitor. Again, he was ignored, the officer claiming that Luke showed no emotion on finding Jodi’s body. Just as that exchange was beginning, another officer entered the room to explain why Luke would not be allowed to speak with his solicitor. The officer stated that the solicitors would not get access while Luke was detained under section 14, although the solicitors had been advised that Luke was being questioned. Luke asked, “Do I have the right to speak to *anyone*?” The answer was no.

That one question, from a just-turned 15-year-old kid, should be a wake-up call to all of us. He was in the loneliest, most alien place in the world - no one to rescue him, no-one to help him, no-one to guide him, no-one to keep these three grown men under control. Until this case, I had no idea that people, far less youngsters, could be locked in a room with police officers for six hours, without access to anyone other than those officers.

DC1 returned immediately to his interrogation:

DC1: Your actions after the event, finding Jodi’s body, the coolest person there. Not fazed, not bothered. I’ve heard you on the treble 9 call on the tape to the police... don’t mention you’ve found a body, you *do not* mention you’ve found a body.

Luke: I did.

DC1: On the first phone call. The second phone call, mid-way through it you mentioned you found a body.

So even the officer, himself, conceded that Luke told the police a body had been found, at the same time as trying to claim Luke did not do so. There were just three minutes between Luke’s initial 999 call and the police calling him back.

DC1: Not only that, you check your voicemail

Luke: When did I check my voicemail?

DC1: After you found Jodi

Luke: What time?

DC1: Eh, oh, yeah, 23.42, 18 minutes to midnight, you standing on the path when all hell was letting loose

Luke: Can you turn that around, please?

DC1: No, your girlfriend... and you've just... sit down Luke

Luke: I would like to read that, I would like to see the evidence

DC1: Luke, I am telling you, you phoned your voicemail

There was a very good reason why the officer did not simply show Luke the “evidence” that he called his voicemail - Luke was on the phone with the police at the time this officer said Luke was checking his voicemail – the 11.38pm call from police to Luke’s phone as he climbed back over the wall lasted just over 11 minutes. Long after Luke was convicted, it was discovered in the case files that the Voicemail message was, in fact, a received message as a result of Corinne trying to contact Luke.

DC1: Right, not only do you phone your voicemail, at 27 minutes past midnight, again, your girlfriend is lying dead after you had found her, you send someone a text

Luke: No

DC1: No? At 27 minutes past midnight, you sent someone a text message

Luke continued to deny having sent any text message at this time. He was told it was a joke text and still he denied it. He was absolutely correct - by 27 minutes past 12, according to *all* statements, the phone was in the possession of the police. After another 20 minutes of this, the officer made the outrageous claim about DNA:

DC1: Forensic tests have been carried out on the clothing of Jodi Jones, specifically and including others, that on the bra Jodi was

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wearing, tests have revealed a partial DNA profile. Do you understand what I'm saying here? A partial DNA profile has been obtained from a stain that is on Jodi Jones' bra the night she was murdered. This matches your profile, Luke.

Luke tried to point out that a partial match does not mean the DNA matches his profile. The officer swept this aside, demanding, "Can you explain this to me, Luke? Can you explain it?"

Luke tried to explain that his DNA may have been transferred to Jodi's bra on the Saturday night. DC1 told him "It's a different bra, Luke," before carrying on:

DC1: It is believed, Luke, that the partial DA profiling on Jodi's bra has come from semen. We believe this to be your semen. Tell me how your semen could have got on Jodi's bra recovered from the scene of the murder... I'm asking you how could your semen get on Jodi Jones' bra... that she was wearing the night she was murdered?

The leap from "a partial DNA profile" to "your semen" was totally dishonest and was clearly intended to trick Luke into believing police "had something on him" when they did not. It would later emerge that there was no conclusive evidence that the bra Jodi was wearing on the evening she was murdered was a different bra from the one she wore on the last Saturday night she spent with Luke. After a further series of quick succession allegations about Luke not calling Jodi back the night of the murder, DC 2 turned his attention to Mia, claiming that all of the expert witnesses brought in by police said Mia would not have reacted as Luke said she did and that the three family members of the search party said the dog did not alert Luke, but that he went straight to the wall, meaning that Luke's version, that the dog led him there, was a lie. Again, Luke lost his cool:

Luke: Don't point your finger at me and call me a liar

DC2: I *am* calling you a liar. You *are* a liar. We've indicated a number of times... that you're not telling us the truth. You're not telling us the truth. That means what you're saying about finding Jodi's body, i.e. your dog indicated it was over that side of the wall on the left-hand side is a lie so, therefore, when you went through that hole in the wall you couldn't have known to go to the left.

You could not have known that. So you're going over there in the pitch black and when you go over that wall, you've got three different ways you can go ... left, right and straight on and the obvious way when you go over that wall, cause I've been over there during the day and at night and the obvious way is to go straight on 'cause that's where the path was, the path over the wall led straight on through the wood, but you, yet you've gone over the wall and immediately gone left.

Luke: Well, that's funny 'cause that's where the dog showed to go

DC2: But that, I've just told you, that's a complete lie. These witnesses are telling us it's a lie

DC1: A lie

DC2: That's a lie

DC1: An out and out lie

Try to imagine, for a moment, what it would be like to be just-turned fifteen years old, locked in a room with two grown men who have clearly lost control of themselves, unable to stop them throwing accusation after accusation, no matter what you say or do. Imagine every time you open your mouth, these two aggressive adults talk right over the top of you, cutting off every attempt you make to get them to understand that they are wrong and there is no-one there to step in to help you to get them to listen. They are demanding answers but refusing to accept the answers you give them – what can you do? That is what we, in Scotland, allowed in police interrogations of minors until 2011.

In their determination to “prove” that because, in their belief, Mia did not alert past the V, Luke must have known where Jodi's body lay and gone straight to her, these officers missed a significant fact. Steven Kelly and Alice Walker did not see where Luke went once he was over the wall – both were absolutely clear about that. Yet both turned to their left once over the wall. Alice stated that she did not know why she did so – she had no recollection of anyone pointing her in that direction. Steven Kelly, without saying so directly, alluded to the dog reacting on the other side of the wall as being the possible reason he turned left. Luke was standing to the right of the V by the time Kelly got there, so there was no clue from Luke before Kelly went over the wall. If Luke

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“knew” where Jodi’s body lay, so, on the basis of their own statements, must have Kelly and Alice. Also, there was no path "straight ahead."

In the midst of all this, Luke was trying to explain his version again. After a few minutes telling Luke the search trio all said Luke did not go past the V but went straight to it, DC2 told Luke that a reconstruction they had conducted and statements from the search trio showed that Luke could not have seen what he said he did, because he was not behind the wall long enough to have got close enough to Jodi’s body to describe her injuries.

“Put it frank,” Luke said. “Are you accusing me of the murder of Jodi Jones?”

DC2: I’m asking you to account for these inconsistencies.

Luke: Are you accusing me of the murder?

DC2: Inconsistencies in your statement

Luke: Are you accusing me?

DC2: Have I said to you that I’m accusing you of the murder of Jodi Jones? Have I said that?

Luke: What you’re saying is meaning that you’re accusing me, now are you accusing me, yes or no?

DC2: I’m not accusing you at the moment, no. I’m asking you to answer these questions and clear up inconsistencies.

The reason this officer would not answer the question honestly was because, if he had done so, the Section 14 interview would have to have ended there and they would have had to formally arrest Luke on suspicion of Jodi’s murder. How could Luke account for the inconsistency of the search trio’s statements changing at the end of July? Returning to questions and claims about Mia, the reason for the earlier questioning about the harness became apparent.

DC2: How would your dog know to do a track? How would Mia know...

Luke: ‘Cause she’s known to track

DC2: But only when you put the tracking lead on

Luke: No, that's not

DC2: I wrote it down... when you put the tracking thing on the dog knows it's now working... When you don't have it on it doesn't know that. That's what all the experts are saying as well about all the dogs... maybe, maybe I'm getting this wrong, maybe this is your dog that is exceptional.

After some further arguing back and forth, Luke said, "The dog will work at any point – any dog will work at any point."

Enter DC1 again: You didn't, you didn't say that earlier

The truth, of course, is that Luke said the harness *may* indicate to the dog that it was working, but, to the dog, it was all just a game – it was the human handlers who considered it "work." Doubling back to their claim that Luke could not have seen what he said he did, DC2 offered to show Luke a filmed reconstruction of what Luke said he did when he found the body, with a dummy placed in the woods where Jodi was found. The video was switched on and, after a few moments, Luke said, "A body."

DC1: Just hold on, let's watch this, ok

Luke: Is there a point where you can freeze it?

DC1: No, just keep watching....

Luke: Can I just show you something a second?

DC1: No

Luke: Just that I've noticed

DC1: Just leave it, leave it, please. Just leave it – it doesn't have a pause facility anyway.

Luke: I was rewinding to a bit that just, I've seen

DC1: No, just leave it, just leave it.

Luke: That's cause I cannae show you the fucking evidence

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DC1: No, I'm showing you

The tape continued, the officers claiming that the sketch map Luke helped them create earlier was “quite exact” about where Luke said he went behind the wall. In fact, by the officers’ own admission, the sketches were not to scale and every point Luke agreed to having an X marked on the sketches was on the basis of “it was *about* there...”

DC1: I'm telling you that point there which is 2 metres closer to where you said you were and you still can't see the body.

Luke: Actually, if you were to check, I could see it

DC1: Luke, yes, from that point you could see a very small part of that dummy

DC2: You say you recognise it as Jodi and you say you can see that it had throat and you said you could see it was completely naked. Now that's just nonsense 'cause you've just watched that and you cannae tell that, you say you can see you barely see something there. What you've said, you're a liar, you're a liar. Everything you've been constantly lying to us all the way through this interview. You've lied to us about cannabis – you use cannabis all the time, we've had loads of people tell us you use cannabis three times as much as anybody else. You buy. We know who you buy the cannabis from, do you think we've not done an enquiry blah, blah, blah, blah, blah. We know who you bought the cannabis from, we know the amounts he sells it to you, we know the people that you sell it to a day after, we know that. You've lied about that, you've lied about all these knives, you say, well, I dinnae have these knives there's, as I say, 45 people telling us you had knives, you...are they all lying as well? These three people down the path Alice, Steven and Janine, are they lying as well? That video reconstruction there shows you could not have seen Jodi and recognised it as Jodi.

Just notice what happened there. Luke spotted the body, but the officers refused to stop and rewind the tape to allow him to show them properly (going as far as to blatantly lie about the ability to pause or rewind the video). From there, they claimed he had not seen the body in their reconstruction, launching instead into yet another tirade of accusations and claims to which Luke could not and was not allowed to respond.

What on earth was he supposed to do in those circumstances? In his original statement, Luke said he saw something initially (he could not identify what it was), and, moving a little closer, thought, at first, it was a dressmaker's mannequin, before realising it was Jodi.

But what makes it much, much worse is the claim in the quote above:

*“Now that's nonsense 'cause you've just watched that and you cannae tell that, you say you can see you barely see something there”*

Luke did not, at any point say he could “barely see something there.” But this officer knew that his version of what Luke said would be accepted, even though the full tape proves categorically that Luke said nothing of the sort. Having first tried to deny the blatantly obvious fact that Luke had seen the “body” on the reconstruction, this officer then went on to act as if his (the officer's) denial was a fact, putting words (on tape) into Luke's mouth which Luke never uttered. And it was this passage which was used in evidence.

That the appeal judges swallowed this whole is doubly concerning. The exchange where Luke saw the “body” and asked for the tape to be rewound to prove it, was immediately before the passage that was used in evidence. There was no good reason on this earth that just one paragraph before could not have been checked, to verify (or not) that officer's claims. One wonders what is the point of recording interviews if this is how the results of those recordings are used?

The last line of the passage above was another, quite deliberate tactic to reinforce something as fact that was, in reality, the exact opposite of what did happen - the video reconstruction proved categorically that Luke could see Jodi, because he was able to spot the dummy from a distance slightly further away than he did on the night Jodi's body was found.

There was a further difficulty with this attempt to “prove” Luke could not have seen what he saw from where he said he did – if Luke was lying, so were Steven Kelly, Alice Walker and one of the Scenes of Crime Officers (SOCO).

In the July 4th interview, Luke was asked in some detail about what happened behind the wall.

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DC: When you first arrived there, did you go, when you first saw something, did you go any closer?

Luke: Well, obviously, I stepped to stop, you know, when I saw her... and that was it. I stopped and stared for a second and I turned and ran.

DC: How far do you reckon you were away?

Luke: About the width of this room. (He clarified this as “about 12 feet”)

DC: Right, I think you spoke about a tree as well?

Luke: Yeah, the tree was in the road (*sic*), so you couldn't see it from the V in the wall. (The “it” to which Luke referred here was Jodi's body.)

DC: I'm just trying to clarify, where would you be in relation to the tree to where you stopped.

Luke: The tree and me, basically about 6, 7 feet from the tree.... about that, I'm not sure.... she was a couple of feet beyond the tree.

He then clarified that he went “a wee bit further” when Kelly went over, stopping “about a foot closer.” He said that Kelly went “almost parallel” to the tree, but not quite, making the difference in distance between their viewing points around 3 or 4 feet.

The police officer then altered what was said:

**“So, we've established you were about the width of the room away roughly where the tree was fae the body, eh?”**

They had established nothing of the sort! The whole distance, including from Luke to the tree and from the tree to the body was what Luke described as “about 12 feet” or “about the width of the room.” He then went on to point out that the tree was “in the road, (in the way)” yet this officer claimed to have established that the body was about 12 feet from the tree, or that Luke was 12 feet from the tree and Jodi's body lay even further away. Luke also made it clear he could not be absolutely sure how far he was from the tree when he saw Jodi's body – his guess was six or seven feet.

Luke: I was a wee bit back from the tree - I didn't go right up to it.

We can see, just from this passage, that the interrogating officer added several feet to the distance. It was this "extending" of the distance that allowed them to claim that Kelly went "much closer" to the body (to allow for accepting his detailed recollection of a naked Jodi with blood at her throat and on her chest) and that also allowed the later claim that Luke could not have seen the injuries to Jodi from "where he said he did." From his very first statement, his own words were being altered and manipulated to say something quite different.

Both Alice Walker and Steven Kelly said they took a few paces along the track running along the wall, saw something (like a slab of meat on a butcher's slab and an old speckled log, respectively), took a few more paces, peered round a big tree and were able to see it was Jodi - exactly the same explanation as the one given by Luke. Although Luke said he did not go right up to the tree, he also said (and Kelly confirmed) that Kelly did not go right up to the tree. The scenes of crime officer said, "I walked west from the hole in the wall, along the side of the wall, for a distance of 11 metres... I saw the body of the deceased, approximately 3 metres west from the fallen tree. 1st July 2003."

Jodi's body was found 16.3 metres from the V break in the wall. All of the witnesses, by their own estimates, saw Jodi from a distance of 10 – 12 feet (between 3 and 4 metres), Luke's original estimate being between 8 and 12 feet. The SOCO's introduction of the fallen tree created some confusion, because the tree to which all three of the search party referred was a standing tree, slightly further west than the fallen tree. The claim, in the interrogation of August 14th that Luke could not have seen what he did because he was 2 metres too far away was destroyed by the SOCO's evidence – the 11 metres he said he walked, plus the 3 metres from the fallen tree, were still 2 metres short of the 16.3 metre distance between the V break in the wall and Jodi's body, meaning the SOCO must also have seen what he did from 2 metres "too far away".



## Chapter Sixteen

### Section 14 Interrogation Part II

The officer responsible for analysing the reconstruction video said in his report:

*Photographs were taken from the V in the wall and the dummy could not be seen.*

The testimony of every member of the search party and the SOCO confirms this.

*Photographs were then taken from close to the wall, 7.5 meters from the head of the dummy. From this position, part of the body and legs could be seen but not the head.*

This was nearly 25 feet from the body and possibly the point at which Luke, Alice and Kelly made their original observations about there being “something” there, having taken “a few paces.” Again, the police perspective clashes with the real people in real circumstances perspective – the “head of the dummy” was the furthest point from what could be seen from “close to the wall” – Jodi’s body was at right angles to the wall, her feet being closest to it, her head furthest away into the woodland strip. What, exactly, was meant by 7.5 metres from the head of the dummy? Diagonally? Across the whole range of what was visible at that point? Or by adding the distance down the side of the wall to the distance, at right angles, from there to the head of the dummy?

*Further photographs were taken from close to the wall, 5.3 meters from the head. This is the point at which the head could be seen, however with the poor light source, it would have been impossible to make out any detail. To make out detail using the torch as the only source of light, I would estimate that a person would have to position themselves close to the wall and be beside the tree at a distance of no more than 3 meters. 31st July.*

5.3 metres from Jodi’s head was still 17 feet away. Not a single member of the search party and, indeed, not even the SOCO, claimed to have been this far from the body when they recognised it as Jodi. But the claim that it was “poor light source” actually undermines the testimony of Alice Walker and Kelly far more than it does Luke’s – Luke was using a powerful searchlight, while the others were using standard, single

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battery-powered torches and all three of them said they were able to see, via the light available to them, the injuries to Jodi's throat (Kelly was the only one to mention blood on the chest area).

It is the last line of this analysis, again, that raises the biggest questions when examined carefully.

*To make out detail using the torch as the only source of light, I would estimate that a person would have to position themselves close to the wall and be beside the tree at a distance of no more than 3 meters.*

No more than three metres from what? The tree or the body? Is it nothing more than coincidence, again, that two officers involved in this investigation came to an apparently independent, but identical distance of 3 metres? The searchers themselves made no such claims – “a couple of feet” ... “just past the tree” ... “I looked round the tree and I could see the blood on her throat and chest ...”

The analyst was clearly making all his observations in daylight, otherwise he would not have had to estimate how far away anyone would have to be to make out detail by torchlight. A genuine analysis would have done the obvious thing – taken a torch, in darkness, and recorded exactly what could be seen and from where, in circumstances which properly reflected those of the night in question.

The interrogation of Luke continued:

DC1: where you got to in the woods you could not possibly, impossible to see what you said you saw, impossible. The only way you know that was Jodi, the only way you know that Jodi had her throat cut and the only way you know the body was covered in blood is because you were there and you were far, far closer to that body than you're making out. You were there earlier that evening, that's why...you knew exactly where to go...All your lies, all this about oh, I was there, the dog went there, all lies, all lies.

There can be no doubt that this officer was, indeed, accusing Luke of the murder, yet the interview continued. Luke never, at any point, said Jodi's body was “covered in blood.” After several minutes of demonstrating how and why Luke was “lying,” DC 1 left the room and DC2 took over again:

DC2: Okay, we've spoken to psychologists during this enquiry and

what they are telling us that the circumstances surrounding Jodi's body was, eh, probably a sexual motive, right. Is that the reason why you did this? Was it some sort of arousal you get from, the reason you've done this?

All pretence of not accusing Luke was gone and the reason for the earlier intense focus on all things sexual became apparent.

Luke: Did what?

DC2: Did this to Jodi

Luke: I didn't do anything to Jodi

DC2: Well, that's what you're saying, but all the circumstances are tending to make me believe that you have. All the circumstances we've presented to you and what you've told us is all lies. Was the reason you did this to Jodi some sort of sexual thing?

Luke: I didn't do anything to Jodi.

By this stage, the interrogating officers had lied about or selectively interpreted a number of things – the German army shirt, the DNA, Luke's ability to see the body, the descriptions of the witnesses at either end of the path fitting Luke "to a T," the amount of cannabis they "knew" Luke bought and sold (there was never any evidence that Luke sold cannabis to anyone), the dog only working when the harness was on, the witnesses to "sex outside," their ability to allow access to a lawyer, police "finding" a knife somewhere other than his home or mother's work-place, Luke not mentioning to the police that it was a body the search party had found, checking his voicemail, sending a text and the biggest lie of all – that they were not accusing Luke of Jodi's murder.

Luke repeated, "I didn't do anything to Jodi."

DC2: ... this thing with your urine when you retain it and that... the psychologist is telling us, well, there's some sort of strange sexual thing with that as well... there's something strange about that... is that some sort of sexual thing as well?

Luke told officers that he urinated in bottles in his room because he fell out of bed one night getting up for the toilet and woke everyone up. What he did not even know himself at the time was that urinating in bottles and storing them was most likely a psychological OCD reaction to

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the finding of Jodi's body and the immediate and intense police scrutiny. Luke pointed out that the psychologists hadn't even spoken to him.

DC2: The psychologist knows what they're talking about, they deal with offenders all the time... they deal with offenders all the time.

Luke: They haven't spoken to me, so how can they know what I'm meaning?

DC2: They don't have to speak to you, they can look at the crime and say what kind of crime this is ... and what kind of person would do this... and the profile they've given is...similar to you. And this thing about your urine retention, what's that all about?... Did you get some sort of sexual kick out of this?

There is so much wrong with this series of claims by DC 2. He referred, twice, to "offenders" whilst still maintaining the official stance that Luke was not being accused of Jodi's murder. (The concept of the right to be presumed innocent also appears to have eluded him). Offender profiling cannot identify any individual and was never intended to do so. The "similar to you" claim is a repetition of the misleading DNA "conclusion" – a profile that is similar to someone cannot be used to definitively identify that particular person (and this claim is further negated by the fact that the psychologists had not spoken to Luke to confirm whether or not his psychological makeup was "similar" to their profile). The claim that the psychologists did not need to speak to Luke was nothing more than a lie. If DC2 had spoken with psychologists, he would have been able to understand the keeping of urine as a reaction to trauma and not "some sort of sexual thing."

However, if the police were making use of offender profiling, it seems strange that they did not rely on the "foundation" of such profiling – the definitions of organised and disorganised crimes first introduced in the 1970s by Roy Hazelwood, an American Criminologist with the FBI.

Basic guidelines to identify a disorganised offender are:

1. Usually below average intelligence.
2. He is generally a loner type, who usually is not married, lives either alone, or with a relative in close proximity to the crime scene.
3. He experiences difficulty in negotiating interpersonal

relationships and is described as socially inadequate.

4. He acts impulsively under stress and will usually select a victim from his own geographic area.
5. In most instances, this type of offender will not own a vehicle but will have access to a vehicle.
6. Generally, he will avoid people.
7. He is described as sexually incompetent without any meaningful sexual relationships.
8. He uses a “blitz” style of attack, which catches the victim off guard. This spontaneous action in which the offender suddenly “acts out” his fantasy does not allow for a conscious plan or even a thought of being detected.

According to this approach,

*The disorganized offender usually depersonalizes his victim by facial destruction or overkill type of wounds. Any sexually sadistic acts are performed post-mortem. Mutilation to the genitalia, rectum, breasts of females, neck, throat and buttocks are performed because these parts of the body contain a strong sexual significance to him.<sup>14</sup>*

From this basic framework, it would have been immediately apparent that Luke did not fit the accepted profile of the type of offender most likely to have carried out the attack on Jodi – with the exception of No 5 (access to a vehicle), none of the points apply. Coincidentally, there was at least one male known to the investigation and known to be close to Jodi to whom every single point in this list applied, including, in his history, No 4 (acting impulsively under stress) and No 8 (“blitz” style of attack catching the victim off guard). Another male who was never part of the investigation but was alleged to have confessed to murdering Jodi in 2004, also matched every point in this profile.

That is not to say, of course, that either of these males was the killer – my intention is simply to demonstrate the selective use and interpretation of so many elements available to the investigation to make unsupported claims about Luke, while ignoring both the contradictions of this approach and the use of those elements to analyse the potential evidence against others.

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(Gerberth 2006, P457, Sex related death and homicide investigation)

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Returning to the Section 14 interview, in true good cop/bad cop fashion, the third officer took over, after hours of aggressive interrogation:

DS: Luke, sometimes things happen...that we dinnae mean to happen... now, I've not got any problem with you or anything like that...all I'm saying is sometimes... when things happen and you dinnae mean it to happen, that is a natural thing, ok?

Luke: That is my point, nothing happened

DS: ... you seem to be the type of kid, you've not been in trouble before... you seem a decent enough kid... and it's been shown on numerous occasions...that something's happened for some reason which nobody ever meant to happen and what I'm saying to you is that all we want to find out is the truth, right?

Luke: The truth is, I didn't do anything to Jodi to incur this. I did not rape Jodi Jones, I did not kill Jodi Jones, I did not do anything to her that night.

DS: Well, nobody's saying that you raped her or you killed her. Sometimes people get hurt and that doesn't mean...

How could this officer possibly claim, after what had gone before, that nobody was accusing Luke of harming Jodi? The DS tried to introduce jealousy as a motive, claiming that jealousy is a "natural" reaction, but dropped the subject when Luke pointed out that he had no reason to be jealous about Jodi. (Even the officer himself seemed to accept the illogicality of the suggestion that Jodi, being jealous that Luke had spoken to another girl on the phone, could have been the cause of what happened.) Going on to list all of the things that "don't add up," this officer continued the litany of lies – "we've got a witness describing somebody who is, honestly, a dead ringer for you at the bottom of the path." He then returned to the "accidental" approach:

DS: ... puberty's a difficult time for kids... strange things go through their heads sometimes, they're a bit mixed up

Luke: Stop trying to make excuses so that it sounds like I did do it, okay. You're trying to think up excuses of why... you think... I'll admit it... but I can't admit it because I didn't do it.

DS: Luke, I'm not going to argue

Luke: I've had umpteen and one different excuses of puberty... jeal-

ousy...

DS: Let, let me stop you there

Luke: Maybe she's been...

DS: Let me, no, let me...

Luke: with someone else

DS: Let me stop you there, let me stop you there.

The officer told Luke he was giving him a “final opportunity” to tell the truth because the circumstantial evidence “strongly suggests” Luke was responsible for the murder. Six times, Luke told this officer he did not know what happened, he was not there, he did not know who did it, but he, himself, did not.

While we would all expect robust questioning in a police investigation into a brutal murder, there is a difference between that and bulldozing a suspect to a point where nothing the suspect says is heard or accepted. This interrogation jumped from subject to subject, allegation to allegation, escalating in severity and hostility as the officers, frustrated by their inability to get Luke to confess and apparently outraged that he had the audacity to answer them in a similar vein after hours of goading and bullying, lost control of themselves and their responsibilities.

This type of interrogation used what is known as the “Reid technique” – *“repeated accusations of guilt, the presentation of evidence — real or invented — and the slow build-up of pressure that makes admitting a crime seem like the easiest way out.”*<sup>15</sup>

However, there is a body of research demonstrating that it is not an effective way of eliciting truthful information and is, in fact, far more likely to elicit whatever the interrogators want to hear:

*it can create confirmation bias in the minds of investigators while overwhelming a suspect to such an extent that the truth no longer seems like the best option.*

What is, perhaps, surprising to those of us who have never had reason to think about police interrogations is that these are standard, common-

15 <http://www.businessinsider.com/reid-technique-false-confession-law-enforcement-2017-3?IR=T>

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ly used techniques, quite deliberately based on trickery and deception. The officers in this case knew exactly what they were doing up to the point where it became apparent that the approach was not “working” as it should – Luke was not being railroaded towards confession, no matter what they threw at him – it was then, it seems, that the officers lost control of themselves – the techniques had to work because, by that stage, they had so much invested in obtaining their desired outcome.

SIO Dobbie, via the media, suggested that it was Luke’s ability to fight back that made him even more suspicious – a week after Luke was convicted Mr Dobbie was quoted, regarding the Section 14 Interview, thus:

*[Luke] was challenging. He was totally in control of himself and challenged the abilities and authority of the police. It was almost like taunts. He had the mental ability to sit and take control of the interview and that’s incredible from someone who has not previously been part of the criminal process, or not come from a criminal family. He was not fazed or shocked or panicking. I have never seen someone so cool and calm and who needed to control the situation.”<sup>16</sup>*

Who was taunting whom? Why did Mr Dobbie think it unusual that Luke challenged the abilities and authority of the police when the police, themselves, had lost sight of their abilities and authority, their behaviour crossing all professional or recognised standards into an outright attack on a minor in the effort to coerce a confession? Given the truth about that interrogation, Luke Mitchell was literally fighting for his life, struggling to stay afloat amongst a barrage of lies, accusations, denials of his experiences and explanations – even at fifteen, he could see where the interrogators were trying to take him and was trying to do whatever he could, with no-one to help or support him, to make them see his truth. In the six weeks since Jodi’s death, apart from medication from his GP, Luke had had no counselling or psychological assessment. Still reeling with shock and coping with the relentless police and media attention, the Mitchell family had no time to properly consider the effects of events in such fast-moving and increasingly hostile circumstances.

Five years later, the appeal court agreed that the behaviours of those officers on August 14th were unacceptable. Then, almost unbelievably, they concluded that those behaviours did not make Luke’s conviction

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<http://www.scotsman.com/news/natural-born-killer-1-1401861>

unsafe, even though excerpts from the interrogation were “cherry picked” (to use Donald Findlay’s phrase at appeal) to portray Luke as an aggressive, belligerent, arrogant young man apparently “goading” the police. The appeal judges said:

*It might be that, if any effects of the improper questioning could plainly be said to have persisted and, for example, if the appellant had, in fact, confessed guilt during the course of this interview, the view could have been taken that the whole of the part of the interview objected to was unfair and that any confession that might have been made was improperly obtained. However, that is not what happened. Examination of the appellant’s answers shows quite clearly that he was not cowed or overwhelmed by the improper questioning to which he was subjected. Indeed, he can be said to have responded forcefully, from time to time using colourful language as an expression of his disapproval of what was happening. It is also worth observing that the social worker who was present at the interview, as a responsible adult, at no time felt it necessary to intervene to protect the appellant.*

Are we really to accept that police officers can resort to any sort of behaviour in order to achieve their desired outcome and, so long as that does not result in an improperly obtained confession, they have done nothing wrong? Does anyone really believe if Luke had cracked under such intense pressure (as others have done in the past) and just said whatever they wanted him to say to make it all stop, that such a confession would have been deemed improperly obtained or considered to be a false confession? By the time of this interview, there could be no question that the entire investigation was focused on Luke as the killer – who would have been minded to look at the circumstances of such a confession, had one been obtained in this way?

The judges’ interpretations that Luke was not “cowed or overwhelmed” by what the judges themselves referred to as improper questioning, or that the effects of the improper questioning had not persisted, are surprising. At virtually every turn, Luke’s attempts to be heard were overwhelmed. There are passages throughout the interrogation where officers hurled, rapid-fire, ten to twenty allegations at a time, without leaving a single space for Luke to respond. The shutting down of Luke’s attempts to prove his truth... “Just leave it, just leave it,” refusing to stop or rewind the video tape, or show him the evidence of a call to his voicemail, “Let me just stop you there....” all were designed to overwhelm any possibility of Luke’s accounts being heard or acknowledged,

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far less accepted. The questioning was improper – the judges accepted that. The responses it elicited, therefore, were improperly obtained, and the effects did persist – the responses were used to blacken Luke’s character at trial.

While the argument is always that the jury is impartial, the only reason for introducing “evidence” that blackens someone’s character is to attempt to influence the jury. The justice system in the UK, of course, is covered in this respect, because no-one is permitted to know how juries come to their verdicts and the courts assume jurors have followed instructions to decide only on the evidence presented in court – assuming, in the process, jurors know the difference between information and legally defined evidence.

There are examples throughout this case of information being passed off as evidence. For example, witnesses are not allowed to give opinions – they can only say what they saw, heard or experienced. The prosecutor asked Judith, on the stand, why she thought Luke told police he thought Jodi might have been grounded again and that was why she did not show up on June 30th. No matter what Judith thought those reasons might have been, none of them could be considered “evidence,” because Judith could not have seen, heard, or experienced what Luke Mitchell was thinking. Although Judith answered in court, “I’ve no idea, it’s unbelievable,” in her police statements, she admitted that her punishments for Jodi were often unpredictable, with Jodi not knowing if or when a punishment would begin or end. The evidence that, by Judith’s own accounts, Luke could quite easily have thought Jodi had invoked an unexpected punishment was not before the jury. Judith’s opinion on Luke’s thoughts was.

In spite of six hours of intensive interrogation, multiple accusations, claims of dozens of witnesses and repeated dishonesty, all the police could find to use from this interrogation was the disingenuous presentation of excerpts which portrayed Luke’s behaviour in specific ways. The argument could be, what harm was really done? It can be easy to lose sight of the fact that all of the energy, time and resources being poured into this ultimately futile exercise were not available for proper investigation into Jodi’s murder. And, had Luke’s right not to answer further questions (in light of the out of control behaviour of the officers involved) been upheld, his outbursts of anger and frustration would never have been able to be used to suggest to the jury (and later, via the media,

to the wider public) that this was an aggressive, controlling young man with no respect for authority.

Indeed, to return momentarily to Mr Dobbie's words in the media interview, we see again directly opposing claims being offered simultaneously as explanations and justifications:

*“He had the mental ability to sit and take control of the interview and that’s incredible from someone who has not previously been part of the criminal process, or not come from a criminal family.”*

You have read a detailed account of the interview. Does it sound to you like Luke was “sitting and taking control of the interview”? If that was true, the bursts of anger and frustration would not have happened and could not have been used at trial, yet it was those very responses which were claimed, at trial, to demonstrate how “out of control” Luke was.

The latter part of this comment is telling. Mr Dobbie subtly acknowledged that those who have been part of the criminal process, or come from criminal families, *do* have the mental ability to take control of the interview process – he would, it appears, expect them to be able to do so. By implication, he would expect an innocent person to become some sort of quivering wreck in the face of such interrogation and not challenge the abilities and authority of the police. It seems not even to have occurred to him that someone being accused of such horrendous crimes in such an aggressive and intimidating manner, knowing themselves to be innocent, would fight with everything they had to be heard and acknowledged.

Mr Dobbie had, it seems, no mental construct within which to assess the behaviour of an innocent, wrongly accused person. The only framework within which he could make sense of Luke's responses was that of criminals who “knew the system,” leading him, as a result, to re-frame Luke's behaviour within the only model he knew – that of the criminal.

*“He was not fazed or shocked or panicking. I have never seen someone so cool and calm and who needed to control the situation.”*

Again, this is disingenuous in the extreme. Luke was clearly fazed, shocked and panicking – just not for the reasons Mr Dobbie believed he should be. Again, he appears to be completely unaware of how a polite, well-mannered boy, trying to answer questions put to him as honestly

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and fully as possible, is not “cool” or “calm” or “needing to control the situation” – he is doing, as far as he can, what he has been brought up to do. If asking to see the proof that he checked his voicemail (when he knew, categorically, he did not), going as far as to say “please”, or asking for a video tape to be paused and rewound so that he can show officers what they asked him to point out, are indications of “needing to control the situation,” then those are perfectly acceptable, indeed, expected reactions, not something into which adverse inferences can be injected.

None of this reasoning formed any part of the run up to trial, the trial itself, or the appeal process, but almost eight and a half years after Jodi’s death, hope momentarily raised its head for Luke’s family. The “Cadder ruling” in November 2011 found, unequivocally, that Section 14 interviews in Scotland breached fundamental human rights and evidence from those interviews contained within it the possibility that an accused person had not been afforded a fair trial, or that their right to protection against the risk of self-incrimination had been breached, or that evidence obtained by unfair means undermined their defence ... or all three.

I am aware that there will be those reading this who will already be bristling with indignation, in the belief that such rights provide protections for individuals who have no right to such protections – indeed, the victims and their families were unable to rely on similar protections when terrible crimes ripped their families apart. I fully understand that reaction, especially where people are absolutely convinced the correct person has been convicted and is trying to invoke these rights as a way to “wriggle out” of their punishment.

There are two perspectives I would offer those thinking this way.

The first is the practical, legal, impersonal perspective. If police investigations were required to approach serious crimes from the “jigsaw puzzle” mentality, where each piece of information uncovered is analysed to see if or where it fits with other pieces, if every potential suspect is presumed to be an innocent person until there is substantial proof to the contrary and if legal personnel are present every step of the way to insert checks and balances to prevent investigations turning into the pursuit of pet theories, convictions, once obtained, are far more likely to be correct. Turn that on its head. Why do we have rules and

regulations about what can or cannot be done in our justice systems? They were introduced, primarily, to ensure the system operated in an arena of fairness and robustness which removed as much doubt about the guilt of the eventually convicted person as possible. Why? Because not only is it torture for victims' families to endure appeal after appeal that the wrong person has been convicted, it is deeply damaging to our collective psyche to have to live with the doubt that maybe the justice system got it wrong. There has to be protection for the innocent – police investigations pursuing convictions at any cost serve no-one, least of all the victims and their families.

Investigations into serious crimes, properly done (and able to demonstrate they have been properly and fairly carried out) are far more likely to produce real evidence, solid reasoning and compelling arguments for juries and later, the rest of us. For fifteen years I have looked at information not in the public domain which casts serious doubt on convictions already obtained and that information was never before the critical decision makers – jurors.

There is a strong (but ultimately flawed) argument that such approaches would be too costly, too time consuming and too uncertain to be workable. In the UK, the opposite is true. If everything was done properly in the first place, the costs of the Courts of Appeal, the S/CCRC and the Supreme Courts would be massively reduced. The costs of incarcerating the wrong people and ultimately having to compensate those people for the wrong done to them would plummet. The costs of supporting victims' families, again and again, through the labyrinthine processes of our legal system, as it currently stands, would vanish.

That is not to say, of course, that the system would not sometimes still get it wrong – it is a human system and, as such, will always be susceptible to human error. But the level and impact of that error can be massively reduced.

The other costs – those that cannot be measured in financial terms – are equally and arguably even more important. The human suffering of those wrongly incarcerated and the victims and families for whom closure never comes (and who may have to “start over” when it becomes clear that the wrong person has been convicted) is enormous. The rest of us, knowingly or not, face the risk of the real culprit striking again, inflicting terrible crimes on one of our loved ones.

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Back in 1992, a young mum, Rachel Nickell, was brutally murdered on Wimbledon Common in broad daylight. Her two-year-old son was found clinging to her body. Investigators fairly quickly identified what they believed was their prime suspect – a man called Colin Stagg. Those investigators focussed all of their energies on Mr Stagg, going as far as to set up a honey trap, with an undercover female officer trying to get Mr Stagg to, if not confess, at least slip up and give information only the killer would know.

Just over a year later, another young mum, Samantha Bissett and her 4-year-old daughter Jazmine were murdered in a savage attack in their home in nearby Plumstead. The murderer, a man named Robert Napper, had been brought to police attention for a number of attacks on women in the area since 1989. Yet police investigating the murder of Rachel Nickell never made the connection because they were so focussed on the wrong man.

Rachel need not have died, if police had connected sooner all the information about Napper that had been in the system for three years. But - and there is no getting away from this - Samantha and Jazmine definitely could have been saved. They died, in part, because the utter certainty amongst investigators that Mr Stagg was Rachel's killer (and that on the basis of not a single piece of solid evidence) meant that Napper and all the information in police records about him, was ignored, leaving him free to strike again.

That is why the second perspective - the humanitarian, empathic, personal approach is important. How must Samantha and Jazmine's family have felt, realising that their horrific murders were avoidable? How must Rachel's family have felt, being assured by investigators that they knew who had done such a terrible thing to her, only to have the entire case against that person collapse? How much more did they suffer, unnecessarily, having to wait sixteen years for the truth? These are the risks to all of us, every time the wrong person is targeted for, or convicted of a serious crime.

Try to imagine, if you can, what it is like to have a mother, sister or daughter, father, son or brother suddenly snatched from you and locked in prison for something they did not do. This is the one thing, over the years, I have discovered people find almost impossible to do. The belief that it could never happen to you, or that there are systems in place to

ensure your innocence would be quickly recognised make it too distant, too unlikely to be able to seriously consider such a thing happening to you or someone you love. Every single wrongly convicted person and all of their family members that I have met over the years felt exactly the same way until the unthinkable happened to them.

Like Luke and his family, they kept waiting for the “mistake” to be rectified. They kept expecting that someone, somewhere, was going to halt the runaway train that had become the case against them. Not until the foreman of the jury stood up and announced the verdict ... GUILTY... did it begin to dawn on them that no-one was coming to help them, there was no-one there to save them. Even then, many families held on in the absolute belief that the appeals system would put right what had gone wrong. For the vast majority, to this day, it has not.

All the while, victims’ families are assured over and over again that the correct person has been convicted, their suffering compounded every time a suggestion is raised that it is not the correct person, every time an appeal is permitted, every time a documentary or book or article questioning the case is produced.

Where is the justice in leaving open the level of doubt raised in cases such as this one?



## **Chapter Seventeen**

### **Shane Mitchell and Corinne Mitchell**

Apart from Corinne, Luke's brother, Shane, was the only other person who could definitively place Luke at home between 4.50pm and 5.30pm, thereby eliminating Luke as the murderer. Given what we already know about the lengths to which investigators were prepared to go in order to preserve and promote their chosen theory, it goes without saying that the need to negate any of Shane's information that might support Luke's innocence would be of a high priority.

The manner in which that negation was achieved is, nonetheless, shocking and disturbing. At trial, the prosecution QC was absolutely intent on securing an admission from Shane that he did not see Luke in his home at 5.15pm on the evening of 30th June and that he (Shane) had conspired with his mother to lie about Luke's whereabouts, in order to provide him with an alibi.

Monday, June 30th, 2003 was an ordinary day for Shane – he went to work, came home, had dinner and changed before going out to see a friend. Even after he came home later that night, the only untoward event was that his little brother's 14-year-old girlfriend had failed to turn up as planned earlier in the evening. It's easy to understand, given the age gap between the two brothers (Shane was seven years older) and Shane's advanced maturity in comparison with Luke, why Shane would not have placed much importance on what he viewed as a "kids" relationship.

It would not be until the early hours of the following morning that the seriousness of the situation became known to Shane – Corinne and Luke were in the police station throughout the night with no means of contacting anyone until Corinne was able to call and ask Shane to bring some clothes for Luke. His first statement to police on July 3rd was fairly cursory – there was really nothing he could tell police that would assist with the enquiry into Jodi's murder. He believed he got home from work at his usual time of around 3.30pm, he couldn't remember what he had for tea and could only place a rough estimate of the time he went back out based on the time the family usually ate in the evening.

It is almost impossible to understand how such an innocuous, bland statement could have become the focus of an almost hysterical furore

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yet that was exactly what happened. Two events sparked this chain into motion. Firstly, a friend reminded Shane that he had stopped in on his way home on the Monday evening to help fix a problem with the friend's car. The police did not appear to infer from this that Shane was trying to "hide" details of his movements from them, perhaps because Shane was completely up-front about having forgotten that was what he did, or perhaps because the later time of Shane arriving home fell perfectly into the hands of officers building a case in which it could be claimed Luke may not have gone home from school but headed directly for the woodland strip instead. Put simply, if Shane was not at home, there would be no-one to confirm whether or not Luke arrived home from school. But the double standards evidenced throughout this case emerged again in the treatment of the second event.

Discussing his police statement with his mother, Shane mentioned that he didn't remember what he ate for dinner – he must have thought it a strange question in a murder enquiry and, like others whose evidence has already been discussed, probably assumed it was of no real import anyway. Corinne reminded him that he had complained about dinner on the Monday evening because Luke burnt the pies the two boys were having for dinner (Corinne was vegetarian, so did not eat the same as the boys). Perhaps because of the strange emphasis police officers put on trying to discover what Shane ate for tea, or perhaps because of a commonly held belief that accounts to police should be as accurate as possible (even if the information cannot possibly assist the investigation) Shane arranged with police investigators to give a second statement, adding the information about the burnt pies to his previous statement. Until the discussion with his mother, Shane had no real recollection of the events of June 30th, including whether or not he had seen Luke. He did recall, once prompted, the burnt pies, although he was dependent on his mother and brother for confirmation of the day in question. The response to this addition to his account was catastrophic for Luke – by the time the case came to court, it was used to claim that Shane and Corinne had conspired to create a cover story for Luke.

In comparison to the number of anomalies in the statements of other witnesses in this case, Shane's amendment was minor – it was also the only significant change ever made to his account of that evening. Yet his original version, just four days earlier – that he could not remember if he had seen Luke or not, became the one on which investigators focused. Had they done the same with other witnesses, Luke Mitchell

would never have been convicted – although Shane’s amended statement was recorded on July 7th, just one week after the murder, Janine and Steven Kelly were still maintaining, for the first *month* of the investigation that the dog alerted Luke to something over the wall. Janine and Kelly were not even questioned about why it took almost two weeks for them to claim they ate together at Kelly’s father’s house and it was not considered suspicious that it took Judith 9 days to remember what her family ate that evening.

It is not enough to justify the difference in treatment of the two families retrospectively – Luke was convicted, therefore, the police were justified in viewing Shane’s lack of memory as suspicious – because the argument can just as easily be made that it was because of such unfounded suspicion that Luke was convicted. There was no evidence whatsoever, at the time, to consider Shane’s lack of memory of the evening as any more or less suspicious than that of Janine, Steven Kelly and Judith.

The role of Michelle Lindsay, the FLO, once again became central to the building of the case against Luke; this time, in terms of how Shane’s evidence was influenced and manipulated over time. She took both of Shane’s early statements.

In court, Shane tried very hard to explain that it was she who was the single most influential factor in interfering with his recall - she would not accept any of his answers to her initial questioning, telling him they were “not good enough” or that she “couldn’t accept that.” She told him repeatedly that she would not accept “I don’t know” or “I don’t remember” – even, it seems, if they were Shane’s honest answers. She then went on to literally plant pictures in Shane’s mind - “see it in your mind’s eye, Shane, picture this ...,” right at the beginning of the investigation. If a police officer taking your statement not only refuses to accept your honest answers to her questions, but then begins offering not only verbal suggestions of alternatives, but encourages you to make pictures of those alternatives in your mind so early in the process, it is not difficult to guess the outcome – how, in those circumstances, could anyone be certain, almost ten months later, about what they truly remembered before and after such manipulation?

Amending the time of his return to the family home to around 4.40pm to account for stopping off at the friend’s house, Shane’s updated account was supported by the friend, two other witnesses, a series of text mes-

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sages and calls and till receipts for parts he bought for fixing the car. Yet by the time the case came to trial, the implication was that Corinne had “persuaded” Shane to change the time of his arrival to provide an alibi for Luke and that she and Shane were both “lying” – Shane, it was implied, did not get home until almost five minutes to five, when he logged onto the internet and Luke was not at home at that time. This was clearly intended to cover the time between the last text from Jodi to Luke at 4.38pm and to imply Luke left immediately following that text, in order to allow the prosecution to claim Luke was out when he made the call to the speaking clock at 4.54pm. The entire argument defies logic. Essentially, the prosecution case was covering all bases – either Luke went straight to the woodland strip from school, or he left immediately after the 4.38pm text from Jodi – either way, he was “not at home” at five to five when his mobile phone connected to the speaking clock.

When Corinne reminded Shane about the pies, she was unaware that the friend with the car had already reminded Shane that he stopped there on the way home. That meant, in prosecution terms, she had persuaded Shane into a lie that was independently supported by other witnesses, none of whom were ever accused of lying or attempting to pervert the course of justice and none of whom Corinne could knowingly have relied upon to back up her “lie”.

The whole treatment of Shane and Corinne’s accounts of the evening is perplexing - had police wanted to make a claim that Shane had been persuaded to lie about the time he got home in order to provide Luke with an alibi, the obvious piece of evidence on which such a claim could be based was the fact that he told police initially he got home around 3.30pm, yet that suggestion was never used. There may be a very good reason for that. At 4.05pm, Shane called the home landline from his mobile phone. The call was answered, lasted less than two minutes and was not diverted to the answering service. (Luke told police in the interview in the early hours of July 1st that Shane would sometimes call ahead to say whether or not he would be in for tea.) Twenty minutes later, a call from the home landline to Scott’s Caravans which Corinne, her mother Ruby and Luke all maintained was a discussion about what was being cooked for dinner, was logged. The most rudimentary logic reveals that calls could not be answered or made from a landline in a house where there was nobody home. Once again, the double standards are apparent. Luke, Corinne, Shane and Ruby did not significantly alter their statements to match new suggestions or scenarios – their accounts remained

consistent throughout, from the first week of the investigation and were supported by other evidence (phone logs, other witness statements, CCTV footage), completely independently of those accounts.

Luke told investigators on July 4th, “Shane was not in when I left.” He believed that Shane was going back out again straight after tea. Somehow, the official version of that account became that Luke told investigators that Shane was out on the afternoon/early evening of June 30th. This subtle shift, containing, as it does, a nugget of truth (Shane was not home when Luke got in from school and he left shortly before Luke, himself, went out to meet up with Jodi) had a two-fold effect. On the one hand, it left Luke with no apparent alibi whatsoever until 5.15pm, when his mother came in from work and, on the other, it allowed prosecutors to claim one of the brothers must be lying.

In his own first statement (the one beginning within an hour or so of Jodi’s body being found), Luke explained that sometimes his brother would be home in time for tea and sometimes his meal was plated up to be heated in the microwave later, if Shane was not going to be home in time. In the early hours of July 1st, Luke could not immediately remember if Shane was home in time for tea or not the previous afternoon - it was hardly the most important detail on his mind in the circumstances. Yet it was this statement on which the entire claim about lies to provide Luke with an alibi was built – a statement started within less than two hours after a fourteen-year-old boy found his girlfriend’s naked, mutilated body, with no assessment of his mental state or offer of legal advice or assistance. It is also important to remember that Michelle Lindsay was in the Mitchell home from the early evening of July 1st onwards and there is a great deal of evidence demonstrating that she was quite deliberately both leading and misleading the family.

By the time the matter got to court, the question was not about whether Shane remembered Luke being in the family home or not in reality - what the prosecuting QC focused on was the fact that Shane had not remembered in his first statement (the completely innocuous one).

The questioning of Shane was specifically structured to get him to appear to say in court, “No, I don’t know if Luke was in or not”, or perhaps, “Luke was not in,” when what Shane was actually saying was, “*No, I did not remember when I gave my first statement, because I was recalling the wrong evening.*” The way the prosecuting QC went

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about this line of questioning backed Shane down blind alley after blind alley with questions designed to elicit strict “yes” or “no” answers until he got what he wanted - an apparent agreement that during the whole period and right up to trial, Shane had never remembered whether Luke was at home or not. That was never the case, but the information was so successfully manipulated that it appeared to be so.

But the line of questioning at trial did not take place in a vacuum – the police interrogation of Shane on April 14th 2004 followed a similar process to Luke’s Section 14 interview, laying the groundwork for what would later become “evidence” in court. Shane had no solicitor present and was supposedly being questioned about attempting to pervert the course of justice. The interrogating officers “lost it” in this interview every bit as much as they did eight months earlier with Luke.

Leaving for work on the morning of April 14th, Shane was stopped at a roadblock on the Newbattle Road. He assumed a tyre check was being carried out because a number of other cars were stopped as well. His account of what happened next is horrifying:

“The policeman put his hand up, told me to stop. And at that instant, the car was surrounded by police. [There were] about 4 or 5 cars hidden further up the road... They ripped my keys off me and they were shouting and screaming.”

Donald Findlay, asking Shane to clarify what was happening said,

“They dragged you out of the car? Were you resisting getting out of the car in any way?”

Shane: No, not at all... they ripped the keys out of the ignition then they started shouting and screaming at me [at the] top of their voice asking where my fucking house keys were.

Repeating back Shane’s previous sentence, Mr Findlay asked:

“Well, where were your fucking house keys?”

Shane: On the ring of car keys they’d ripped out the car.

Donald Findlay: So, you were making no attempt to conceal them?

Shane: No. I tried to shout that they’re on the car keys... I think I was

being held at the time and I couldn't get the words out.

Shane was not told, until he was locked in the back of a police car, what was going on – that he was being arrested on suspicion of attempting to pervert the course of justice. Why a roadblock was needed, why four to five carloads of police officers were required, why Shane was hauled from his car and laid out on the road have never been explained. As Shane stated in court, had the police come to his house with their allegation, he would willingly have gone with them to answer their questions. But following the roadblock arrest, Shane, distressed, confused and in shock, was taken directly for questioning and told he would not be allowed access to a solicitor. The content of his interview, like Luke's, was riddled with police lies, exaggerations, threats, refusals to accept his answers... what Donald Findlay referred to as an attempt to break Shane, just as they had tried to break Luke.

Mr Findlay objected to evidence from the interrogation being allowed as evidence, on the basis that it was unfairly obtained – an interview, purportedly concerning an attempt to pervert the course of justice was, in reality, he said, “a sham or pretence by the police... it was an attempt by the police, by a variety of means, to secure evidence against his brother, Luke.”

Shane was cautioned only once, at the beginning of the six-hour interrogation and even then, he was not told what he was supposed to have done to attempt to pervert the course of justice. Having told Shane he would not be allowed access to a solicitor and asking if he had made any false statements or destroyed anything which may have been evidential, the interrogation moved quickly on to Luke. “*Do you think Luke is capable of murdering Jodi? No? Why do you not think Luke is capable of murdering Jodi?*” That, of course, had nothing to do with perverting the course of justice, but the direction was set.

Asked about the events of June 30th, and in particular exactly when he saw Luke, Shane replied, “I can't remember if that's when I saw Luke.”

DC: I think it's more...

Shane: ... but I was sure at the time

DC: I think it's more than that, Shane. I'm not accepting cannae remembers, because that to me, that's an obvious thing to say if

you're hiding something.

Not only did this officer appear to have forgotten that Shane did not have to answer any of his questions, he was clearly implying that Shane *must* answer his questions and answer them in a specific way.

The interrogation moved on to Luke's alleged interest in Marilyn Manson and Shane was shown the ripped up calendar and the pictures from the Manson website. He was asked about who washed and ironed Luke's clothes, what jackets Luke owned with German flags and whether or not Shane believed Luke had a relationship with the other girl, none of which had anything to do with perverting the course of justice.

Of the other girl, the officer said; "I'm not asking you to give a definitive – I'm asking what you think she would have said. I have an opinion on what she would have said. I'm asking what your opinion is, you know her more than I did. What do you think she would have said and how do you think she would have reacted?"

Shane: "I think she would have been upset."

DC: Upset, okay. She would have been annoyed, perhaps, I'm not trying to put words into your mouth...

Which, of course, is exactly what he was doing. But Shane's opinion about the thoughts of a fourteen-year-old girl who lived 60 miles away and believed herself to be Luke's girlfriend on the basis of a holiday romance the previous summer, when she was thirteen years old, could not, in any way, provide one iota of evidence regarding an alleged attempt to pervert the course of justice. Then, just like Luke's interrogation earlier, the whole tone of the exchange altered:

DC: OK, there are several discrepancies...from what you've told us... and the facts we've gathered over the last nine and a half months and I'm going to question you on these inconsistencies to establish whether you have committed some sort of crime.

This was three hours into the interrogation, begging the question of what the previous three hours had been about, if not establishing whether Shane had committed "some sort of crime." The bombardment of questions on a number of different matters commenced and, like Luke, there was little opportunity for Shane to answer – when he did, his

answers, like Luke's, were ignored or dismissed. At one point, Shane managed to get in a comment – “I don't know.”

DC: That's another convenient 'don't know,' Shane... That's nonsense, absolute nonsense, okay. I want to know, we need to know if anything else, for your sake...

Shane: I haven't done anything

DC: I'm not saying you've done anything... I'm not accusing you of murdering Jodi Jones

Shane: I've not covered anything

DC: I need to know exactly

Shane: I've not covered anything, I've told no lies

DC: I need to know exactly who was in that house at 5 o'clock and thereafter

Shane: I don't know

DC: You do know, you do know. You're trying to protect your brother and you're trying to protect your mother. You *do* know.

So much for the officer's claim that he was not accusing Shane of anything. After a few more minutes of the same, the officer said: “*Well, give me something that I'll believe you then.*” That is exactly the sort of technique that has been used time and time again to obtain false confessions and to extract false evidence against a chosen suspect.

Shane: I'm trying to tell you everything I can remember. It's not my fault if I can't remember things.

DC: Dinnae raise your voice, Shane, calm down. Dinnae raise your voice... we're here to get this sorted... Shane, keep your voice down.

The psychological pressure here was enormous. First, it was clear the interview was nothing to do with perverting the course of justice. Pressure was exerted on Shane that the interrogating officers fully expected him to answer questions (even though he did not have to do so). When Shane tried to answer those questions, none of his answers were ac-

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cepted – instead, he was accused of lying - and then came the offer ... *tell me something I can believe*. The interview moved on to why Shane was worried about the way the police investigation into Luke had been conducted.

DC: We don't arrest people unless there is evidence, be sure of that. So why were you worried about it?

Shane: Because you were trying to go ahead without a lot of evidence. You were...

DC: How d'you know what evidence we had?

Shane: I didn't exactly, but if you had evidence at the time you would arrest...

DC: You're not familiar with the way police investigations work, particularly ones of this nature. Why were you so worried?

Shane: Because everyone else was worried

DC: Do you... do you... does a part of you think that Luke has maybe done this? You don't want to believe that... Is there a part of you that Luke's maybe done this?

Shane: "I don't know, I don't know."

DC: It's a fair question, it's a fair question.

DC: Would it be fair to say... and I'm conscious of putting words into your mouth... can you sit there with 100% and discount it and say that he no, no, no way?

It is difficult to see what was "fair" about the question when the officers themselves were deliberately planting doubt in Shane's mind by telling him they had evidence they did not have, that Luke was Jodi's killer. After a break to change the tapes, the interrogation moved onto the "science" of micro-expressions, claiming that the evidence from experts in this "science" had concluded, "Fear was written on your mum's face."

DC: Can you explain that?

Shane: I can't.

DC: Why would that be, d’you think?

Shane: I can’t explain it

DC: Why would it be, though?

Shane: I don’t know

DC: Any idea? Want to hazard a guess?

Just like the supposed psychological profile in Luke’s interrogation, this reference to micro-expressions and fear “written on Corinne’s face” was nothing more than a ploy or technique to attempt to convince Shane that the police had evidence to back up their claims. The obvious (and sensible) reason why fear might have been evident in Corinne’s expression was that she was afraid her son was being wrongly targeted for a murder he did not commit, but that was not an answer that was available to Shane – the nature and tone of the investigation made that perfectly clear. The claimed number of witnesses attesting to Luke and knives increased; *“Over these months of enquiry, we’ve spoken to 63 – 63 people okay, who speak to Luke carrying knives”* and again, the evidence did not support those claims.

DC: A witness has seen a burgundy coloured Frontera parked at the bottom of Roan’s Dyke path... inquiry has been done with all local keepers of Fronteras. All of them except your mum have been accounted for their movements that night... according to you, your mum was in the house at the time. Was your mum’s Frontera at the bottom of the ... lane?

Shane: I don’t know

DC: You don’t know? I don’t think so. You’ve already told me your mum was in the house, remember?

Shane: I didn’t say I saw the car.

Aside from the fact that, once again, the claim about movements of Fronteras being accounted for was a lie, the level of confusion this passage introduced was intended to ensure that the question could not be honestly answered other than by “I don’t know” – if Shane was at home, he would not have known where his mother’s car might be. If his mother was at home, as he had already told police, her car could not be

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elsewhere and if his mother's car was seen elsewhere when she was at home, he would have no way of knowing how it got there because he was at home. It was never conclusively proven that the vehicle reported to have been seen by a witness at the bottom of Roan's Dyke path was a Frontera, or even that it was seen on the evening of June 30<sup>th</sup>.

The final hour of the interrogation was, in the words of Donald Findlay, an onslaught – an “endless series of propositions, statements of fact” to which Shane was barely given any opportunity to respond. References to things Luke was supposed to have said, their belief that “it's all lies,” claims about dog experts... at this stage, officers were literally “throwing everything they had” at Shane.

DC: He has managed to disguise every single injury on that body in the pitch black... Don't take it from other people because I spent a lot of time with people up there at the locus and you need x-ray vision even in broad daylight to see where Jodi was lying, never mind in the dead of night.

These were not just claims intended to increase the pressure on Shane, they were complete, outright lies. The injuries on Jodi's body were not disguised and at no other point in the entire investigation was such a claim made. All of the evidence, including the statements of Jodi's own family members, proved without a shadow of a doubt that Jodi's body was clearly visible that night. The officer told Shane:

We really need the truth now ...you *can* remember, Shane and you're wanting to tell us... don't be misguided by loyalty, there's a 14-year-old girl dead.

The next passage demonstrates exactly the dangers I have tried to point out with regard to this type of interrogation. The officer introduced “evidence” he said the police had obtained about Shane's use of the internet that evening – in particular, that he had been looking at pornography (this is the same scattergun approach used in Luke's interrogation, jumping from subject to subject to confuse and disorient the witness). Out of nowhere, this officer questioned Shane about “gay sites” which, he asserted, had been accessed during Shane's internet usage.

Shane replied that the gay sites had come up “by accident”.

**There were no gay sites.** What happened here was that the interroga-

tion had created so much confusion and psychological pressure that Shane was responding to police assertions where he had no other information on which to rely, as if they were facts, trying desperately to find explanations. By this stage, he had endured five and a half hours of the most intense psychological manipulation imaginable.

Back, again, to claims that Luke was not in the house: “*We have witnesses... we have witnesses saying he wasn't in the house at that time... independent witnesses*” – another lie.

The onslaught continued to the end of the interrogation – Shane tried again to insist he was telling the truth, to the best of his recollection.

DC: I do not think you are. You have already lied to us [about] this. Ok, now you [are] saying you were under pressure. That is a blatant lie... that is a lie... On two occasions, you've been asked was Luke Mitchell in the house when you got home that night and twice, No (*sic*), which begs the question, why have you said this? He has put you up to saying this...

Shane: Nobody has put me up to it

DC: Right, let's discuss... we've established Luke wasn't in the house

(They had done nothing of the sort)

DC: Let me know, Shane, what's this all about, whose idea is this? Have you went (*sic*) along with the crowd...

Shane: The crowd? What crowd?

DC: ... for fear of your brother getting locked up for life?

Back, again, to the food that was eaten that evening

DC: That is a lie. That is the wrong answer. A lie, you've lied here, we can prove it, you're lying... I don't think you've not thought of this... there is no danger you've actually thought of this... there is evidence here... I told you, we cannot lie to you

The fact of the matter is that they lied to Shane throughout. They said they had evidence they did not have, witnesses they did not have, expert

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evidence that would never have been allowed in a court of law; they lied about the visibility of the crime scene and the nature of Jodi's injuries, about gay internet sites, about cars having been confirmed and accounted for when they had not.

This is a very, very serious question because, at any given time, it could apply to any one of us. How can anyone have their truth heard when the context in which they are trying to tell that truth is built on an entire framework of lies? When those purporting to be trying to get to "the truth" have already decided not to accept a single word on the basis that their interpretation of "the evidence" available to them demonstrates a different truth, even when that different truth is rooted in lies, manipulation, psychological trickery and a driving intent to force people down a pre-destined route?

Unbelievably, at the end of this interrogation, Shane was asked; "*Would you agree you've been treated fairly in this interview this morning with us? You've been asked fair questions?*"

Would you?

The judge agreed that the way in which that interrogation was carried out and the information obtained as a result would have been unfair if Shane had been a suspect, but not if he was a witness. But Shane was not being interrogated as a witness against Luke - not at all. He was being interrogated, supposedly, regarding perverting the course of justice, in which case, he was a *suspect*. The evidence was allowed to be led at trial.

The manner in which claims of Shane looking at pornography on the internet were dealt with in court was appalling. Having introduced evidence that Shane's computer was connected to the internet for approximately 12 minutes up to 5.06pm and, during that period, pornographic sites had been accessed, the prosecuting QC put it to Shane that he might have been doing "something else" whilst looking at pornographic pictures. Shane said he may have been, it was a possibility (exactly as he said during the police interrogation). It was at that point, without warning, that the prosecution QC demanded he look at the pictures of Jodi's mutilated body. The level of shock and trauma caused by such an action can never be over-stated – other witnesses were warned before they were shown such images, Shane was not. From a psychological

perspective, that level of shock would have made it virtually impossible for Shane to think rationally in the immediate aftermath. Ignoring Shane's obvious distress, the QC told him

*"I'm not surprised at your reaction. These are not pleasant. The reason I've asked you to view them is so you can appreciate what we're dealing with here. Do you appreciate I can't let embarrassment stand in the way of getting to the bottom of this?"*

In what possible way could the question of whether or not a youth was masturbating in his own bedroom in any way provide evidence of anything in a murder trial? The treatment of Shane in this particular aspect of the case is in disturbing contrast to the treatment of others. When Steven Kelly was asked to look at the pictures of Jodi's body (having been forewarned that was what he was about to see), he ran from the dock and the court was adjourned. Shane was not allowed any break. It was nothing less than a deliberate shock tactic intended to shatter Shane's composure. It is, frankly, despicable that pictures of Jodi's mutilated body were used in this way, purely to break a witness.

A number of media articles covered Shane's reaction and the court's response to it:

*LUKE Mitchell's brother recoiled in horror yesterday as he was shown gruesome pictures of Jodi Jones' naked and mutilated body. Witness Shane Mitchell, 23, turned away after being shown the first photo of the teenager and immediately asked for a break. After wiping away tears he was forced to look at four more photos.<sup>17</sup>*

The prosecution QC returned immediately to the question of whether Shane was masturbating or not - Shane responded, "I think I might have been."

Notice that Shane did not agree that this was something he was definitely doing. But it was all the prosecution needed to drive Shane's evidence in a direction which appeared to demolish Luke's alibi – from this point, the aim was to get Shane to admit he would not have been "doing that" if he thought someone else was in the house (even though Shane had not confirmed that he was, in fact, doing anything).

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<sup>17</sup> <https://www.thefreelibrary.com/Luke+brother%27s+horror+at+pics+of+-Jodi+injuries%3B+THEN+HE+ADMITS+PORN...-a0126989011>

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The media reported:

*He then described how, when he returned home on the day Jodi died, he watched porn on his computer because he thought he was alone in the house... He then admitted he had committed a sex act on himself and that he wouldn't have done so if he thought he wasn't home alone. Mr Turnbull added: "Who did you think was in the house?"*

*Shane: "No one at that time."<sup>18</sup>*

It is plain to see that Shane admitted no such thing. In fact, he did not "describe" anything - everything claimed in this media report was as a result of the QC's leading questions and claims – "We have evidence that you were looking at pornography on your computer between 4.55pm and 5.06pm, do you agree that you were looking at pornography at that time?" Shane originally told investigators he was looking at car sites - the computer records demonstrated that the links to pornographic sites each connected for a few seconds, indicating that they were, almost certainly, pop-ups.

The evidence was extensively manipulated. Look at the wording – "he then "admitted" he had committed a sex act on himself and... wouldn't have done so if he thought he wasn't home alone." So, it was put to him that he had done something and it was put to him that he was alone at the time. But in none of this did Shane say that he did what the prosecuting QC was suggesting, or that he was definitely home alone. Still reeling from the shock of being forced to look at the pictures of Jodi, he was now being driven down a humiliating line of questioning and, in exactly the outcomes described by the use of Reid Technique interrogation, Shane, by that stage, was trying to tell his own truth, but in a way that would be accepted by the prosecution QC, just to make it stop. Agreeing that he "might have been" doing something, or that he thought something that the prosecuting QC suggested "could have been the case" is not the same as making these claims for definite – these were the only answers Shane could give that would be accepted. Prior to the introduction of the photographs, Shane argued repeatedly that investigators would not accept his answers, that they were putting words into his mouth and altering the responses he gave them. He told the court that he did see Luke when he (Shane) came down for tea, but the police would not believe him because he had not said so in his first statement.

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<https://www.thefreelibrary.com/Luke+brother%27s+horror+at+pics+of+-Jodi+injuries%3B+THEN+HE+ADMITS+PORN...-a0126989011>

Shane did not, ever, say there was no-one in the house when he went onto the internet. His first statements said that he came through the front door, yelled “Hello” and made his way straight upstairs. He would not have been expecting his mother to be home from work yet, as it was too early, so he must have believed he was yelling “hello” to someone. The “no-one in the house” allegation was developed through questioning on the stand by the prosecuting QC.

Shane also did not say he was doing anything other than looking at pictures on the internet. It was put to him by the police in the interrogation on April 14th 2004 that he could have been masturbating and he conceded that it was possible. That was far as it went.

Once again, had the statements of others been treated in the same way, the outcome of this case would have been very different – Judith did not correct her statements about Joseph or John Ferris or Luke’s bike until weeks later. Alan Ovens had both Jodi and Janine in Judith’s house, but his explanation that he had somehow made a mistake about that was accepted at face value. Steven Kelly and Janine’s sudden remembering, more than two weeks later, of quite different events to those they had originally described (which, coincidentally provided Kelly with an alibi that, until that point, he did not have) was accepted without question. All Corinne Mitchell did was remind her son what he ate for dinner the evening of the murder and all Shane did was report that reminder, within two days, to the police.

The question has to be, since the prosecution maintained that the circumstantial case against Luke was so strong, why it was necessary to go to such lengths to “prove” that Shane conspired with his mother to give Luke an alibi. (Charges of perverting the course of justice against Shane and Corinne were dropped at Luke’s trial). The evidence about Shane, what he did or did not see, what he was or was not doing, was nothing more than a huge smokescreen.

The time of death was never ascertained, the sightings of someone who could have been Luke were so flimsy as to be worthless, the timescale for all of the events which were supposed to have taken place between 5.15pm and 6pm was far too tight to be credible and there was concrete evidence that there was someone - who was not Shane or Corinne - in the Mitchell household at 4.05pm and 4.25pm, when only three people lived there. The last text from Jodi to Luke at 4.38pm would have been,

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according to the prosecution's own evidence, the first point at which Luke knew Jodi was going to be out that evening, derailing the "lying in wait" theory and simultaneously negating the Andrina Bryson sighting as having been of Luke. (If he did not leave his home until 4.38pm, he could not have been at the Eashouses end of the path at 4.49 – 4.54pm - the window of time for the Andrina Bryson sighting, since he needed a minimum of 18 minutes to walk there.) The evidence of the police doctor who examined Luke in the immediate aftermath of the finding of Jodi's body and the results of forensic testing proved that, although there was no forensic evidence connecting Luke to the murder, neither was there a scrap of evidence that he had cleaned or destroyed forensic evidence from his body or clothes. All that was left to the prosecution was to savage the only two witnesses who could definitively state that Luke was nowhere near Roan's Dyke path at 5.15pm on June 30th, truth and justice be damned.

Over the years, discussing the case with people, many have said, "It was said in court that....." What some people do not understand is that just because the prosecution *said* it, doesn't mean it is actually true, or even that they have evidence to back it up. The prosecution can claim pretty much anything - "I put it to you, Mr Mitchell, that you checked the house and there was nobody in, otherwise you would not have been doing what you have just told us you were doing." There does not have to be any evidence of "checking the house." In the April interrogation, nine and a half months after the murder, after being bombarded with questions, Shane agreed that he may have popped his head round the living room door – that is hardly checking the house and is not even a definitive answer - the truth was, all along, that he simply could not remember.

This is very similar to Judith's responses to questions about whether Jodi used her mother's phone that evening – a number of suggestions were put to Judith, all of which were possible and none of which she could confirm actually happened. And, by the same process, Judith's non-committal answers became the "fact" that Jodi used her mother's phone and Judith saw her do so. The truth, of course, is that it was only known Jodi used her mother's phone from the phone logs and Luke's accounts.

The interrogation of Luke on August 14<sup>th</sup> was deemed by the appeal judges to be outrageous and to be deplored, with comments about

officers being “out of control,” yet this apparently did not raise any misgivings whatsoever about police conduct in the rest of the case, allowing the judge to dismiss concerns about the way in which information had been extracted, unfairly, from Shane. It is difficult to separate the terms “outrageous,” “deplorable” and “out of control” from the strong suggestion that something had gone terribly wrong with this investigation.

### **Corinne Mitchell**

Because they are so inseparably linked to the experiences of Shane and Luke, the accounts of Corinne Mitchell have, in the main, already been covered. It is no exaggeration to say that, at least in the local area, Luke’s mother was hated as much, if not more, than Luke himself. Yet, prior to the murder, she had been a respected, middle-class business-woman, living in an affluent suburb just outside Dalkeith. Although she and Luke’s father had separated some four years previously, the couple were still on speaking terms and Luke visited his dad most weekends.

At the time Luke was finally arrested in April 2004, Corinne and Shane were also detained on suspicion of perverting the course of justice. In a most bizarre manipulation of Scots law, as it stood at the time, Corinne and Shane were detained under the Section 14 legislation, meaning neither was entitled to advice, assistance or reference to legal representatives. Luke was also “detained,” in section 14 terms, for alleged drug offences at the same time as being arrested on suspicion of murder. What that meant, in short, is that all three could be held and questioned, with no access to, or contact with, the outside world, for six hours.

Meanwhile, the media had a field day reporting that a 15-year-old boy who “could not be named for legal reasons” had been arrested on suspicion of murder and a 45-year-old woman had been detained in connection with attempts to pervert the course of justice. The legal protections against being identified in such circumstances failed miserably – by the time I dropped my daughter off at school that day, the gossip in the playground was that the authorities had arrested “the boyfriend and his mother.”

From our first meeting in September 2003 to the day she and both of her sons were arrested, one of the traits I most respected in Corinne was her ability to find humour in the darkest moments. The day after the arrests, I went to see her. There were dark circles under her eyes, her hands shook and she chain smoked constantly as she recounted the previous

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day's events. *"I needed to go to the toilet,"* she told me. *"The female cop wouldn't let me close the door. They'd taken everything from me – my belt, hair tie, rings, everything I suppose, they thought I might use to harm myself – but still, she wouldn't let me close the door to pee. What did she think I was going to do ... escape down the u-bend?"*

Another time, when some police officers arrived at Scott's Caravans, (having followed me there in my car) and wanted to question me outside, in their car, Corinne walked outside with us and stood directly in front of the police car in case they tried to drive off with me! My offence, apparently, was having accidentally let my MoT certificate run out of date by exactly 5 days, even though the car was Road Taxed and insured. She told me later, *"they might think they've got away with what they've done to Luke, but they'd have a pretty hard time explaining running me over on my own premises with 10mph signs everywhere."*

It would be seven more months before the case came to trial, during which rumour and speculation ran amok. There was no doubt in the local area that Corinne had been arrested for allegedly trying to cover up for Luke and the earlier innuendo about an improper relationship had burgeoned into accepted fact.

In part to maintain the theatrics of the longest trial of a single accused in Scottish history, Corinne was the last witness to be called. But there were other strategic reasons for leaving her to the very end. Firstly, she could not be in court until after she gave evidence, which meant she would miss the entire trial and Luke would face each day in the dock without the support of his mother. Secondly, Corinne would be the last witness the jury (and the media) heard before the closing speeches. Thirdly, all of the evidence which had gone before already painted Luke as a boy who was out of parental control, so, before she even took the oath, Corinne's reputation as a mother had been demolished.

The Sky interview and the media coverage after Jodi's funeral had not helped – the media were scathing of Corinne's clothing and behaviour at the graveside as "disrespectful," and it was from the Sky interview that the first murmurings of an inappropriate relationship had emerged.

Part way through Corinne's evidence at trial, Donald Findlay raised a robust objection. The Prosecution had announced its intention to call some last minute witnesses. The defence had not been forewarned

about these witnesses or the prosecution's intentions in calling them. Despite the objection, the judge allowed the line of questioning regarding the evidence of these witnesses to be put before the jury and then to Corinne.

After Jodi's death, Luke wanted to get a tattoo. Corinne had no objection and went with him to a tattoo parlour in Edinburgh known not to be too strict about checking the age of its customers. A form was produced, which Luke filled in, giving a false name (the name of a family friend) and date of birth. The false name was given because of the massive publicity surrounding Jodi's murder, the false date of birth for obvious reasons – he was under eighteen years old.

A design was chosen and the tattoo completed while Corinne sat in the waiting room. The tattoo staff, however, alleged that Luke had produced false photographic identification documents matching the name on the form. Corinne flatly denied that such documents had been produced – had there been advance warning, the defence could have called the friend to give evidence. It would have been immediately evident that there was something amiss with the claims of the tattoo staff – the identification documents Luke was claimed to have produced were of a 45-year-old man. It is difficult to imagine any circumstances in which a 15-year-old boy could pass himself off as a 45-year-old man, but because of the way this ambush evidence was introduced, there was no opportunity for the defence to properly refute it. The photographic ID documents (or rather copies of them) were never presented to the court – all that the jury was offered were the claims that they had been given to the tattoo staff.

There are two problems with this. Firstly, if the tattoo staff had, indeed, accepted such photographic evidence, they would have left themselves wide open to prosecution for knowingly tattooing someone they believed to be under eighteen. Secondly, guidelines to prevent exactly such a situation arising stated that tattoo parlours should photocopy and keep any documents produced as proof of age.

The next piece of evidence introduced to the court was a fingerprint, found on the form from the tattoo parlour, belonging to Luke. To this day, it is unclear why that evidence was presented as evidence against Corinne – it was Luke's fingerprint and Corinne had never denied that Luke filled in the form.

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These two incidents, it was suggested, proved that Corinne was (a) prepared to allow Luke to have and do whatever he wanted and (b) that she was prepared to lie for him. Corinne's position (and Luke's although he did not give evidence) was that they were simply not asked about Luke's age – Luke was handed the form, he filled it in and handed it back and then a tattoo design was chosen.

The particular tattoo parlour in question behaved in exactly the same way a few years later – my 14-year-old daughter had a body piercing – no questions asked, yet because she was under 16, proof of age should have been sought.

The tattoo staff gave evidence about the “demonic” nature of the tattoo, reinforcing perceptions of Luke as a youth obsessed with Satanism – again, the jury was not shown the tattoo design, leaving this evidence entirely reliant on the word of the tattoo staff.

The significance given to the tattoo evidence was wildly exaggerated and, it could be argued, utterly irrelevant, but the damage was done – there in the courtroom was “evidence” that Corinne was prepared to lie to cover for Luke. No-one, it seems, stopped to question whether the two situations were even remotely similar, if one had a bearing on the other, or even if Corinne being prepared to lie so that Luke could get a tattoo *after* the murder (if she *had* done so), said anything at all about her dealings with him before and at the time of the murder.

The bare fact is that there was only the tattoo parlour staff's claim that Corinne lied by omission by allowing Luke to hand over fake ID without informing the parlour staff that it was fake – there was nothing, other than the form filled in by Luke himself, to support their claims. They did not suggest, overtly, that Corinne stated categorically that Luke was over eighteen. That in itself is something of an odd proposition – how many eighteen-year-old youths would take their mum along to a tattoo parlour to verify their age? And, of course, the fingerprint on the form proved nothing whatsoever about Corinne.

She did not deny in court that she was in the tattoo parlour when Luke was tattooed, a fact which allowed the prosecution, once again, to create something out of nothing, putting it to Corinne that she went into that parlour knowing perfectly well that it was an offence for her son to be tattooed. In fact, the offence was on the tattooist – it is not and never has

been an offence to have a tattoo under the age of eighteen. The offence is committed when a person knowingly tattoos someone who is under that age.

However, the failure of the tattoo staff to produce copies of the supposed fake photographic evidence raises another anomaly. The female who said she accepted the ID documents and handed Luke the form claimed in a statement that she did not know who he was at that time. After the tattoo was completed and Luke and Corinne left the parlour, another member of staff made her aware of Luke's identity. Given the massive publicity and the expectation throughout that Luke would be arrested at any moment, it would be at least a little surprising that the tattoo staff did not think it might be worth hanging onto copies of the fake documents, just in case. If, of course, they ever existed in the first place.

The trial judge, appeal judges and Criminal Cases Review Commission all agreed that the sole purpose of this evidence was to discredit Corinne Mitchell before the jury.

Both in the run up to trial and the aftermath of the conviction, Corinne was hounded in the local area. Her business premises were vandalised, a brick was thrown through the rear windscreen of her car as she drove out of the gates there and a number of caravans, many of them belonging to customers who kept them at the premises in rented storage, were set alight. A police panic alarm was fitted at her home but that did not provide the sense of safety or security that it should have done – Corinne doubted whether the police would come, or come quickly enough, if she ever had reason to use it.

On the day of the verdict, police barriers were erected either side of the court doors to keep back the crowds waiting outside. When Corinne and a friend emerged, they were escorted to the car by police officers, the crowd hurling abuse at them from all sides. She refused the offer of being smuggled out of a side door with her face covered - she and her son had done nothing wrong, she said, and she was not going to hide or sneak away. That was to be her approach right up to the present date. She refused to leave the area, in spite of the constant threats and attacks on her properties. For 19 months, the media had followed her every move. Immediately following the conviction, they were free to broadcast and print whatever they chose about her and there was nothing she

could do about it.

In 2012, seven years after the conviction, both Luke and Corinne passed polygraph tests, three months apart. Neither knew, until the day of the tests, what questions they would be asked and both agreed, prior to taking the tests, that the results, whatever they were, would be made public. The chances of both passing the polygraph, not knowing what questions they would be asked, if either or both of them were lying, would have been minute. (See Chapter 19). Once the results were published, a number of mainstream outlets began to shift, finally asking questions about the safety of the conviction. It seemed, at last, that the tide was turning.

## Chapter Eighteen

### Media

Because of the sheer amount of media coverage in the case, I have restricted quoted articles in this chapter to those most representative of the wider coverage to avoid the chapter becoming a book in its own right.

From the very beginning of the case, media coverage was highly emotive. Pictures of Jodi as a young child were placed at the centre of articles bearing the headline “*Innocence Betrayed*” and the focus was firmly on the fear, anger and suspicion generated by the murder.

For nine and a half months, the media ran stories naming Luke and leaving readers and viewers in no doubt that he was the only suspect in Jodi’s murder. For eight months of that period, they regularly printed pictures of him, even though he was only 15 years old. Before this case, I believed it was not lawful to identify, either by naming or printing photographs of, a minor suspected of a serious crime. I was wrong. So long as the individual was not “involved in court proceedings,” the media were doing nothing wrong (at least in the eyes of the law).

Once he was arrested, reports naming Luke or displaying pictures of him were restricted because there were now active legal proceedings and Luke was a minor. Two newspapers, the Edinburgh Evening News and the Aberdeen Press and Journal did name Luke when he was arrested and both were subsequently cleared of any wrongdoing. The official reason given was that the Crown released the information to the media on the day he was arrested but, since he was not due in court until the following morning, there was a “window of opportunity” during which the restriction in reporting was judged not to have applied because he was, in that period, not “involved in live proceedings.”<sup>19</sup> Until that ruling, the general interpretation of reporting restrictions was that they applied from the point at which a person under sixteen was arrested, since there will always be a gap between arrest and the first appearance in court – the court decision on this incident made an absolute mockery of the “youth who cannot be named for legal reasons” protection, since he had already been named.

The timing of the arrest and the effect on media coverage was concern-

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<sup>19</sup> <http://www.scotsman.com/news/evening-news-cleared-over-naming-killer-luke-mitchell-1-1068244>

ing. After the Edinburgh Evening News report, on August 25th stating,

*“After an eight week enquiry, officers believe they have gathered as much evidence as they are likely to get, and it is now down to the fiscal to decide if there is enough proof to bring a murder charge against the suspect,”*

the police could have arrested Luke at any time.

Two days later, The Scotsman reported that Jodi was expected to be buried the following Wednesday. Therefore, a decision had been made to release the body for burial before any report had been submitted to the fiscal. This demonstrates how sure were the investigating officers that they had their man.

On Friday 5th September 2003, two days after Jodi’s funeral, under the headline “detectives send Jodi case report to fiscal,” it was reported that “Police today refused to confirm a report that Jodi’s boyfriend Luke Mitchell had been named as the sole suspect.”

And on September 6th, the headline was *“Jodi’s boyfriend ‘the only suspect.’”*

Why, then, did it take until April 2004, 8 months later, for Luke to be charged? Either the investigating team had enough evidence in August 2003, or they did not. The Procurator Fiscal obviously thought they did not - another report was sent to the Procurator Fiscal in November 2003 and the wording of the article covering this development is interesting:

*“It is understood William Gallagher, the procurator fiscal in charge of the investigation, has remained in constant contact with officers in the case, but police sources claimed yesterday’s report was the first to have been lodged with the fiscal. The source said: “Speculation the fiscal returned an original report due to lack of evidence isn’t true.”<sup>20</sup>*

The only logical conclusion to be drawn from all of this is that the investigating team believed they had as much evidence as they were likely to get by August 25th and they were sure they knew who had killed Jodi, but they sat on the information for another 3 months before submitting a report of their findings to the fiscal. Why would any inves-

investigating team make such an extraordinary decision?

This passage from the media article highlights another insidious practice in media reporting – the use of un-named sources. Sometimes, the use of an un-named source is an indication that the story is merely a fabrication. For example, one of the tabloids ran a story about Luke and Corinne having a “stand up fight” during a prison visit. Anyone who has ever visited a prisoner in a maximum security prison knows that the prisoner cannot move from his seat throughout the visit. Had Luke even attempted to stand up to fight with his mother, the guards would have been on him in seconds. But when Corinne called the editor to complain that the story was an outright lie, the editor insisted the story had come from a “reliable source.”

The other use of un-named sources claimed to be from official organisations, such as police forces, is more concerning. If it was true that there had been no previous application to the Procurator Fiscal, the “source” would have been named and his or her rank and connection to the case identified. This article allowed the actual investigating team to wriggle off the hook about whether or not the first application had been rejected by the PF due to insufficient evidence, whilst making it appear that they had, in fact, answered that question.

There was a ruling in Scotland known as the 110 day rule – once charged, a person had to be brought to trial within 110 days of being remanded in custody or “*the accused will be free for all time from the charges*” and can never be tried again.<sup>21</sup> The 110 day period directly after the arrest on 14th April, ended on August 2nd - just 9 days after Luke’s 16th birthday, meaning, by then, he could be tried as an adult, rather than a child. (Had he been arrested at any point prior to that, the 110 day rule would have ensured he was tried as a minor.) It also meant that the media was only restricted from reporting for the 14 weeks between Luke’s arrest and his sixteenth birthday.

In spite of the 110 day rule, by the time the trial started, Luke had been held for 224 days – more than double the time normally allowed. The defence applied to the courts for extra time to prepare – the police, having strung the case out for nine and a half months, potentially to ensure Luke would be tried as an adult, included additional aspects to the charge after he was arrested (the missing/ replacement knife and Parka

<sup>21</sup> <http://www.govscot/Publications/2003/06/17498/22830>

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theories, for example). At the same time, all of the information about their original approaches – that it was a sexually motivated attack, that Luke was wearing an army shirt and so on – were all in the case files and the defence team had only fifteen and a half weeks to trawl through all of that information, much of it on which the prosecution case no longer relied, to prepare a defence.

As soon as Luke turned sixteen, the media returned to naming him. In total, up to the beginning of the trial, the media reported for 59 out of the 72 weeks between the murder and the beginning of the trial – the vast majority of it negatively disposed to Luke and his family.

Right from the beginning, over and above reporting about Luke himself, media influence was central to the case. On July 3rd, the BBC issued a description of Jodi's clothing which included a "dark blue hooded top" (the Andrina Bryson description, which was wrong), accompanied by a picture of a very young Jodi. Yet this article was quite clear – there had been "no confirmed sightings of Jodi." The Andrina Bryson description was obviously shared, by investigators, with the media, but I have never seen, in the entire 15 years since the murder, any appeal in any media outlet for a man who was near the path wearing fishing style clothing. Or, indeed, for any girl on the Easthouses Road that evening who was wearing a blue sweatshirt and lighter blue bootcut jeans.<sup>22</sup>

Four days after the early description of Jodi's clothing was widely reported by the media, came the footage and images of the reconstruction, again, with no reference to the man in fishing clothes. Over a week after that, appeals were broadcast for Stocky Man, or anyone who recognised him, to contact police. If investigators were unsure of the Andrina Bryson sighting, common sense dictates that it should have been treated in the same way as the Stocky Man sighting – an appeal to the public for anyone who recognised themselves, or someone else, as Fishing Clothes man or the girl in the blue jeans and top. It is an indication of the power of the media that the contradictions in all three accounts, in a period covering less than two weeks went unnoticed by the majority of people. No-one questioned why the appearance of the girl in the reconstruction video was completely different to the description four days earlier, on July 3rd.

On July 4th, while Luke was being grilled for the second time by

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22 <http://news.bbc.co.uk/1/hi/scotland/3040056.stm>

police, the Scotsman ran an article offering the views of “leading forensic psychologist” Ian Stephen, regarding the murderer.<sup>23</sup>

He said it was “*very unusual for the killer and victim not to know each other*” in cases such as this and that the killer would be “*someone full of anger,*” continuing with “*...police will focus their inquiry on people close to her...It’s likely to be a white male under 30 and he lives in the local community - that explains his knowledge of the pathways* ”

The timing of these comments was significant, since police were, indeed, focussing on someone close to Jodi, a white male under 30 who lived in the local community and knew the paths and, via the media, everyone knew it.

Mr Stephen went on to say, “*Police will be also looking at people who suffer from hallucinations, who become agitated and might be driven by voices or some sort of anguish to kill...They will be looking for people with a record of violence whether it’s to household pets or people.*”

There was nothing in Luke’s history to suggest any of this, yet, as the months passed, stories of Luke and cruelty to animals, completely unsubstantiated, began to emerge, including the utterly ludicrous claim that Luke and his brother had hung an Alsatian dog from a doorframe in suburban Newbattle. There was, however, someone known to investigators who was a white male, under 30, who knew Jodi and lived in the local community, who did suffer a number of the mental imbalances alluded to by Mr Stephen, but that person was never a suspect.

Mr Stephen then added a helpful insight into the behaviour of the killer afterwards:

“*The police will be interested in people with unusual patterns of behaviour, who have changed since Monday night. They may have become agitated...But the outburst of violence can also act as a release so they then become very docile afterwards. The crime serves to terminate all the feelings of anger and depression.*”

So, in essence, anyone who was not agitated before but was afterwards, or someone who was agitated before but became docile afterwards could be the killer – another example of covering all bases. Anyone, fol-

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23 <http://news.scotsman.com/jodijonesmurder/Cracker-adviser-says-killer-prob-ably.2441126.jp>

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Following the horrific murder of a loved one, may become agitated – that is basic common sense. Everyone in Jodi’s circle would have changed since Monday night, but the only person being interrogated in a police station, at the time these comments were published, was Luke.

According to the National Institute for Mental Health in the US Department of Health and Human Services:

*“Children and adolescents who may require the help of a mental health professional include those who show avoidance behavior, such as resisting or refusing to go places that remind them of the place where the traumatic event occurred, and emotional numbing, a diminished emotional response or lack of feeling toward the event. Youngsters who have more common reactions including re-experiencing the trauma or reliving it in the form of nightmares and disturbing recollections during the day, and hyperarousal, including sleep disturbances and a tendency to be easily startled, may respond well to supportive reassurance from parents and teachers”.*<sup>24</sup>

Not only are young people likely to naturally respond to shock and trauma in the very ways Mr Stephen suggests would arouse police suspicion, Luke’s behaviour in the immediate aftermath of such a traumatic experience, followed by heavy medication, was used to imply that he was cold and emotionless toward Jodi’s death.

Following the summer break, Corinne was told that Luke was not to return to school with the other pupils on August 20th. The media reported that Luke was being kept away “for his own safety,” although the Scotsman reported that Midlothian Director of Education, Donald MacKay, stated that the move was concerned with everyone’s safety. There were reports of police presence at both St David’s High School and Newbattle High School, fear in the community and personal safety instructions for pupils.

Over the next few days, the story was headline news – after Luke was allowed to return, the media reported on a “furious row” between Corinne and Luke’s head-teacher, followed by Luke’s removal from school again. The basis of the row was that even when he was allowed to return, Luke was kept in isolation from his classmates, something that had not been discussed with Luke or Corinne before his return. All

of the reports stated that Luke had been questioned twice by police in relation to the murder (The Scotsman reporting that he was formally interviewed three times), some stated that he found the body (without mentioning the other searchers), all repeated the information that Jodi was going to meet Luke when she was murdered and all finished with the statement that 2000 – 3000 people had been interviewed but no-one had been arrested and the murder weapon still had not been found. Although no media outlet, by the end of August, stated outright that the police believed Luke to be Jodi's killer, there was no missing the underlying assumption.

While we tend to think of the right to the presumption of innocence as something that applies during court cases, in our modern age of mass media and internet, it is clear that it is easy to have someone presented as guilty before a single piece of evidence has gone before the courts. What explanation could there be for isolating Luke from other pupils, other than a presumption of guilt? Either the belief amongst teachers and officials that Luke was a danger to the other children because he murdered Jodi, or that Luke was in danger from others who believed he was a murderer. Have we really come to the stage where we treat someone in these ways because we have been told, without any real evidence to support the claims, that that person *may* have done something terrible?

At the end of August, Luke was visited by police officers and Jodi's aunts to be told he was not to attend Jodi's funeral because, he was told, the family did not want it turning into a media circus. It was this decision that led Corinne to accept the offer from Sky to film the tribute to Jodi that she and Luke were having at home instead. The main reason Corinne allowed this was because she felt it was the only opportunity Luke had been given to demonstrate that he was not a cold, uncaring, emotionless fiend.

On September 3rd, sitting in the living room, with his mother's protective arm around his shoulders, the interview proceeded. Asked whether he felt the finger had been pointed at him as the person responsible for Jodi's death, Luke replied:

*I feel it has been left to the media and public to decide. It is trial by media. They haven't actually come out and totally accused me, apart from in interviews, the police have accused me, but I feel it has been left to trial by media to see what the public decide, who's guilty and who's not.*

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*The way the police are handling it, they have searched other houses and they have other suspects but I seem to be really the only person they are mentioning by name in specific detail.* <sup>25</sup>

At that stage, three weeks after the August 14th interrogation, Luke clearly believed there were other suspects, even though they were not being viewed with the same amount of suspicion as he was and that other houses were being searched – it would be more than a year before he and his family discovered the truth.

Referring to the experience as “worse than a nightmare,” Luke was asked directly, “Did you kill Jodi?” Having tricked his way into the Mitchell home on the dishonest premise of covering his private farewell to Jodi, the interviewer was asking questions, for public broadcast, that the police were required to ask under caution. Could Luke account for every minute of his time that evening? The burning of clothes – was that him or his family? Did the friends he was with that evening vouch for him? Sky aired the footage just hours after Jodi’s funeral.

It is inconceivable that Sky was unaware of the impact such footage would have. While some might argue that the interview allowed Luke to publicly deny being involved, in any way, in Jodi’s murder, the fact remains that he should not have had to publicly deny anything. He had the right, as do all of us, to be presumed innocent until proven guilty by a jury of his peers. That the Sky interview was used as a basis to release even more negative portrayals of Luke (even though they, too, were based on nothing of substance) only highlights the central role of irresponsible media coverage in miscarriages of justice.

The negative backlash to the Sky interview was exacerbated by media coverage of a second event that day – the visit to the cemetery. Although he was asked not to attend the funeral, there was no request that Luke should stay away from the grave. All three of the visitors to the cemetery remember, with disgust, one reporter screaming into her phone, “*They’re here – get fucking back here now!*”

Under the headlines “How could you?” the media coverage the following day was vicious. Pictures of Luke and the friend at the grave were published - although the two teenagers were both fifteen, the girl’s face was concealed, but Luke’s was not.

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25 <http://news.sky.com/home/article/13287116>

It is easy for people to say, retrospectively, that Corinne should never have agreed to the Sky interview, but how could she, or Luke, have known what was planned for that interview or how they would be portrayed as a result of it? For nine weeks, their lives had been turned upside down by extremely negative reporting without anyone bothering to speak directly with them. In those circumstances, the Sky “offer” must have felt like a godsend.

A copy of the interview was requested by the police, who sent it to Professor Paul Ekman, an American psychologist whose website describes him as “*the world’s deception detection expert, co-discoverer of micro expressions,*” for analysis of Luke’s facial expressions. The analysis was not used in evidence (largely because the “science” is not reliable), but, as Luke, himself, pointed out in the interview, this was every bit as much a trial by media as a trial by law – details of the analysis became widely available via the media.

The Sky interview and photographs from the graveside gave rise to another sinister suggestion – the alleged untoward relationship between Luke and his mother – their physical intimacy, it was claimed, was unnatural. Later, un-named sources would be quoted stating that police at one point found Luke and Corinne “sleeping in the same bedroom,” the connotations of an improper relationship there for all to see. There was only one place that information could have come from and that was the police.

Even if it was true, it should not, by the police’s own reasoning, have suggested anything sinister because that was exactly the situation with Judith and Joseph. But the room in which investigators found Luke and Corinne asleep was the living room, Corinne on the couch along one wall, Luke on another couch in front of the window. This arrangement came about because Corinne was worried about Luke potentially coming to harm as a result of the heavy medication he had been prescribed – perhaps choking or falling down the stairs. Why was the “sleeping in the same bedroom” claim transferred from the Jones family to the Mitchell family and why was it imbued with such negative inference in the transfer? This was a horrific situation for both families – the idea of mothers being close by, especially when nightmares are likely to strike, is the most natural thing in the world.

From July 4th to September 4th, the linking of media suggestions about

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the killer with a mix of fact and insinuation about Luke and his family created a very, very strong impression that Luke was Jodi's killer and it was just a matter of time before he was arrested. That impression slipped over into almost outright accusation between September 3rd and 6th with accounts of the report to the Procurator Fiscal coming hot on the heels of the Sky interview and the visit to the cemetery. But throughout the whole period since the murder, another influence on public perceptions and those most closely involved was created – that of the roles designated for each family.

Jodi's family was portrayed in an idyllic, perfect-family role, with Jodi teasing her siblings and writing sweet notes on gifts for her mum, while the Mitchells were cast into the role of a dark, dysfunctional family, with Luke indulged and out of control. There was no evidence for either. But the existence of those illusory roles trapped both families. Jodi's feisty, headstrong, independent nature had to be played down and Luke's easy going, laid back nature had to be ignored completely in spite of strong evidence of both.

In many ways, coverage of the case gripped the public's imagination like a soap opera and the fact that these were real people, with real lives behind the media hype, was lost.

Three years after Jodi's death, Judith was found guilty of drunk driving, being well over the acceptable blood/alcohol range at the time. In spite of generally strong public hostility towards drunk driving, one newspaper called for sympathy for Judith, blaming the trauma of Jodi's death. Until then, I had never seen media coverage sympathetic to a drunk driver anywhere and I was criticised for asking how forgiving others would have been if Judith had killed someone through driving after consuming so much alcohol. As usual, I was portrayed as a heartless bitch, even though I had, in fact, had a relative seriously injured by a drunk driver some years previously.

Two years after that, following Luke's appeal, Judith arrived at Corinne's workplace under the influence of alcohol and attacked Corinne. The police were called and Judith was escorted from the premises before a statement was taken from Corinne. In initial media reports, which not only played down the significance of the attack (for example, one headline ran "I was hit by Jodi Jones' mother," before going on to refer to the attack as a "scrap" with "mainly hair-pulling" and no ev-

idence of injuries or damage), Judith denied the attack, being quoted as saying “It’s rubbish – it never happened.”<sup>26</sup> She was later forced to admit that she had been escorted from the premises by police when the police, themselves, confirmed it. But, once again, the behaviour was excused, the reports quoting an un-named source: – “Everyone has a breaking point and [Judith] may have reached hers.” Almost half of the article was devoted to repeating the case against Luke, including the information that “the public always treated Corinne with suspicion.”

The playing down of such an attack and the media role in getting Judith’s denial of it published first, demonstrated the reluctance of many media outlets to deviate from the established roles for both families. Where else would it have been acceptable to report an attack on a lone woman in her workplace in such terms?

The effects of the long-lasting influences of the roles into which both families were cast were still evident as late as 2011, when Jodi’s brother came to my home and threatened me. Initially, Judith outright denied that Joseph had come to my house, openly calling me a liar on the website set up to highlight the case. Later, she conceded that Joseph had come to my house, insisting that he had “visited” me and that it was perfectly understandable that he should come and let me know his feelings about the website. She insisted that I was painting the incident in a deliberately negative light and that I should understand why Joseph was upset. She continued to deny that Joseph had behaved in any way that was unacceptable or that he had threatened me, in spite of the fact that he received an official warning in relation to the matter.

Although I accept, completely, that Jodi’s family are utterly convinced that Luke murdered Jodi, that belief cannot be allowed to excuse threats of physical assaults and actual physical assaults on others. Our mainstream media must shoulder some responsibility for encouraging an atmosphere in which it is perceived to be perfectly acceptable that others can be attacked or threatened by reason of mere association with an individual believed to have committed a terrible crime. Every wrongly convicted, eventually exonerated person in this country has had to run the gamut of public hatred and hostility, sometimes even years after their convictions have been quashed.

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<sup>26</sup> <http://www.dailyrecord.co.uk/news/scottish-news/hit-jodi-jones-mother-claims-968478>

## Innocents Betrayed

Before this case, I had never heard of the concept of “key runners.” In cases such as this one, it was standard practice for there to be a “key runner” – that is, one media outlet which was at the forefront of coverage supportive of the police approach. That outlet would fall in with the police line and would be the one that never printed anything negative about the police or the official narrative of the case. Of course, the other side of this arrangement was that the media organisation in question received inside information from officers at the centre of the investigation. As a result, stories within this sort of set up achieved disproportionate positive coverage for the police case in the key runner’s output. The practice and variations of it were examined in the Home Affairs Committee Report into Police and Media following a number of incidents which flagrantly breached rules and safeguards for those under suspicion who had not been charged with any offence.<sup>27</sup>

Another interesting discovery I made was that odd numbered pages in newspapers are the pages of most impact, so newspapers place certain stories on those pages for maximum effect. In Luke’s case, over 90% of articles printed were on odd numbered pages.

Throughout the entire case, from investigation through trial, appeal, the Cadder ruling and the Supreme Court application, media coverage was wildly inaccurate, almost entirely negative and often, quite dishonest.

Media reports following the conviction displayed glaring contradictions and no-one, it seemed, noticed or cared. For example, the Herald, like so many of the others, reported the following:<sup>28</sup>

*It is still unclear, despite the biggest investigation mounted by Lothian and Borders Police in 20 years, whether the murder was planned or the result of an argument that began on that sultry June evening, perhaps about the girl, Kimberley Thomson, that Mitchell was seeing behind Jodi’s back... of course, there are other theories. Did it happen because she had refused to have sex with him? Was it the product of Mitchell’s interest in goth subculture, in Satanism or his chronic cannabis abuse*

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27 <https://books.google.co.uk/books?id=q0qOChrXm4C&printsec=frontcov-er&dq=policy+and+the+media&hl=en&sa=X&ved=0ahUKEwicnubg0abUAhWQK-VAKHQgXD5sQ6AEILDAB#v=onepage&q=policy%20and%20the%20media&f=false>

28 [http://www.heraldsotland.com/news/12401131.WHY\\_\\_\\_Silent\\_and\\_defiant\\_to\\_the\\_end\\_\\_\\_Luke\\_Mitchell\\_denied\\_the\\_family\\_of\\_Jodi\\_Jones\\_the\\_one\\_answer\\_they\\_needed/](http://www.heraldsotland.com/news/12401131.WHY___Silent_and_defiant_to_the_end___Luke_Mitchell_denied_the_family_of_Jodi_Jones_the_one_answer_they_needed/)

*that led him to kill? ... Was the killing rooted in the upheaval of his early years, the breakup of his parents [marriage] when he was 10 years old? Or had he been acting out some sick fantasy... to replicate the murder of Elizabeth Short? The answers, more than 18 months on, are still curiously absent.*

This one passage demonstrates the amount of speculation still surrounding the case even after the jury's verdict. There was never any evidence that Jodi refused to have sex with him and from everything you have read so far, any planning on Luke's behalf was impossible. There was no evidence of Luke belonging to a goth subculture; the claims about Satanism have already been explained and there was nothing before the court that demonstrate any link whatsoever to the Elizabeth Short murder. But the article went on to say:

*Certainly, nothing in Mitchell's early years gives any clue to the evil that would involve him as an adolescent. Two years before he murdered, aged 12, he is pictured at school in his uniform, his hair short and fair. A year later, another picture in the family album shows him uniformed, as a disciplined army cadet.*

Next, the article would have readers believe that Luke was unbelievably calculating and in control right up to the point of conviction, but, at the height of all of this control and calculation, he made a "stupid mistake":

*With unbelievable speed of thought and coolness, 14-year-old Mitchell set about putting his cover-up plan in place almost immediately after he murdered Jodi. At 5.40pm, he calmly called Jodi's house...Again, with a composure that belied his age, Mitchell phoned back [at 10.40pm] to say he had not seen Jodi all night ... His crucial mistake was to join the search for Jodi and then to "find" her at a place that nobody else had thought to look.*

Had these reporters sat through the trial and reported accurately, it would have been clear that Luke did not join the search party – in fact, the search trio appeared to be intent on joining him.

But most worryingly, something that was repeated in article after article from a variety of different publications, was the reporting of local conviction that Luke was the killer from the off:

*"To me, from day one, I really thought it was him." ... She says that*

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*there had never been much sympathy for Mitchell on this side of Roan's Dyke... Residents have responded to every call by the police for information, they have shared every rumour and followed every twist of the court case... He says he felt that only one man had ever been guilty, and that man was Luke Mitchell... "The whole community got right behind [Jodi's] family when the thing first happened. It's one of those communities where they tighten up and keep things to themselves"... Nowhere here is there much doubt that Mitchell is the murderer. The impression given is that everyone has presumed his guilt from the very beginning, even if most were reluctant to say it publicly before.... We all say in the village that he's guilty...."*

And, for good measure:

*Some have said that the relationship between Luke and Corinne Mitchell went beyond the "normal" mother-son bond. The relationship was said to be extraordinarily physically close.*

What chance did Luke stand of a fair investigation or trial in the face of such prejudicial local feeling, fed by the police and the media and from which so much information about Luke was being sought? Two comments are particularly telling – that the locals “shared every rumour” and “It’s one of those communities where they tighten up and keep things to themselves.” I know, because I lived here, that people were not reluctant to say publicly that Luke was guilty – I heard it everywhere I went and experienced the level of aggression that daring to suggest otherwise provoked. I also know of others who were privately expressing concerns about individuals other than Luke but dared not say so publicly for fear of the backlash that might bring. Is that what was meant by people in the local community “keep[ing] things to themselves?” As for sharing rumours, the entire area was awash with rumour – how could that, in any way, assist the murder investigation? I heard one rumour repeatedly up to ten years after the murder – that Luke, in the presence of police officers, threw himself on Jodi’s body to account for any of her DNA on his clothing. That particular rumour was stated by a number of people to have originated from one of the officers on the scene that night, who recounted the tale in a local pub.

Also, the reference to Luke as a “man” is deeply misleading (and continues to be so today). Although Luke was only 14 years old when Jodi was murdered, he was 16 by the time he was convicted and 19 by the

time the appeal was rejected. With every passing year, media reports gave Luke's current age, but Jodi's age at the time she died, making it seem, with the passage of time, that a grown man murdered a 14-year-old girl.

Less than a month after the guilty verdict, SIO Craig Dobbie was featured in Lothian and Borders Police Newsletter.<sup>29</sup> He was quoted as saying:

*One of the clearest lessons I learned from this case was that police work is about doing the basics right. Nothing can compensate for thorough and careful examination and cross examination of the facts to maximise our chances to gain evidential opportunities.*

What is an "evidential opportunity?" Forensic evidence from the clothing of those who have been present at a murder scene? Statements from those who found the body? Keeping an open mind about potential suspects? Mr Dobbie is absolutely right – nothing *can* compensate for thorough and careful examination of the facts and nothing, *ever*, can compensate for the failure to establish those facts. He continued:

*I must make mention, too, of the impact Jodi's murder had on the local community. They responded remarkably well and displayed their own very strong moral code. The crime was reprehensible and they did what they could to help bring a resolution ... they resisted the temptation to take the law into their own hands and clearly supported what we were trying to do.*

Did that strong moral code include keeping things to themselves and allowing themselves to be influenced by every rumour? The temptation to take the law into their own hands was brought about, in large part, by the relentless leaking of information to the media and the local public that investigators "knew" that Luke was the killer. Mr Dobbie did not say locals supported what the police were doing but, instead, what they were "trying to do" – i.e. build a case against Luke Mitchell, against whom public hostility had been ramped up to almost hysterical proportions in the nine and a half months before he was arrested.

This interview, I believe, demonstrates a willingness within police investigations to pander to popular opinion (even, or perhaps especially

<sup>29</sup> [http://www.lbp.police.uk/freedom-of-information/publications/e\\_newsletters/February%20Newsletter05.pdf](http://www.lbp.police.uk/freedom-of-information/publications/e_newsletters/February%20Newsletter05.pdf)

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when those opinions have been deliberately manipulated from the very centre of investigations.) Creating and maintaining massive public hostility and anger towards an individual decreases the likelihood of scrutiny or criticism of the investigation and increases the probability of obtaining a conviction.

The blanket negativity began to change in 2007 when the BBC's Frontline Scotland aired the documentary "Luke Mitchell; the Devil's Own?" and the Edinburgh Evening News ran a story about my first book, "No Smoke; The Shocking Truth about British Justice," featuring Luke's case.

However, in 2010, when the website set up to highlight the flaws in Luke's case was launched, mainstream media coverage was, in the main, still mostly negative.

The website featured a forum where members of the public could discuss aspects of the case that had not previously been publicly available. In spite of intensely negative coverage in the mainstream media, the site achieved thousands of hits and discussion on the forum, in the beginning, focussed on all of the anomalies in the case. Fairly quickly, however, the attacks began. Trolls, who had initially appeared supportive of Luke, began to disrupt discussions and repeatedly post inaccurate information. The level of intensity of these posters was exhausting – the site had to be continually monitored to correct the hundreds of deliberate "errors" in their posts. These same posters would post the same misinformation on other sites, linking them to the discussion on Luke's case and it became almost a full-time job just trying to correct the misinformation everywhere it appeared. Looking back, it is clear to see that the intention was to get the website closed down as quickly as possible to prevent the information available there being widely disseminated. One of the most virulent trolls claimed to be an ex police officer.

In 2011, when it was announced that Luke would apply to the Supreme Court following the Cadder ruling, mainstream reporting took a strange turn.

A number of articles reported that Luke's conviction was set to be quashed by the Supreme Court on the basis of the Cadder ruling. Eminent legal experts were quoted as saying that "*judges in London will have no choice but to free him on the grounds his human rights*

were breached.” One solicitor, Nicholas Scullion, said:

*I do not think the public of Scotland will be behind any court that releases Luke Mitchell, but the reality is the Supreme Court probably will call this in and if so they have to release him.*

*There are three bullet points of Cadder and Luke Mitchell fits every one. If they don't quash the conviction it really calls into question the legitimacy of the Supreme Court.*

*The only reason for not doing it would be because they are afraid of Alex Salmond [Scottish First Minister at the time] and that would be a breach of European Convention.*

In the same article, advocate Niall McCluskey was quoted as saying:

*I can't really comment on Luke Mitchell's chances but in a case where there are categoric admissions in interview or things said that undermine the accused's credibility, I can envisage circumstances where a court might be inclined to say because of that interview that has affected the fairness of the trial and quash the conviction.”<sup>30</sup>*

The Cadder ruling caused uproar in Scotland, with claims that an English Court was undermining the independence of Scots Law and dictating how Scotland should do justice. The facts were that Scotland signed up to the European Convention on Human Rights and it was those rights which were breached again and again by Section 14 interviews, something Scotland had been warned about by the European Court for a number of years. The Supreme Court was not an English Court – it was the UK-wide Court set up to hear cases involving compliance with the EU directives to which the different parts of the UK had agreed.

Following the Cadder ruling, the Scottish Courts made it clear that only cases with live proceedings at the time of the ruling would be able to make an application to the Supreme Court unless there were exceptional circumstances. Luke's case still had an outstanding appeal against sentence (i.e., live proceedings) and the exceptional circumstances of the case have been highlighted throughout this book.

In a case which ticked every box for a Supreme Court ruling, Luke's

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30 <https://www.express.co.uk/news/uk/253701/Luke-Mitchell-set-to-have-his-conviction-quashed-by-Supreme-Court-in-England>

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application was refused by the Supreme Court on the grounds that his case was closed at the time of the Cadder ruling – outstanding appeals against sentence, it appeared, did not count as live proceedings for Cadder purposes.

There was only one route left open to Luke – an application to the Scottish Criminal Cases Review Commission. In July 2012, that application was submitted.

While the Commission trawled through the case papers, an opportunity arose for Luke to undertake a polygraph test. Although we were all aware that results of the test could not be used as evidence in the court of law, there was nothing to stop them being utilised in the court of public opinion which had played such a large part in the conviction.

## Chapter Nineteen

### Lie Detectors

On February 23rd 2012, nine years after Jodi was murdered, Corinne Mitchell undertook a polygraph test. She and Luke had requested such a test right at the beginning, after Luke was first interrogated in the Section 14 interview and again, after he was arrested. She was told repeatedly there would be no point in taking the test because the result would not be admissible at trial.

The conditions of the test she was eventually able to take in 2012 were clear from the outset – the results would be publicly reported, whatever those results were. If Corinne Mitchell had anything to hide, she would have been taking an enormous risk, yet she did not hesitate to agree.

Prior to entering the room where the test would be conducted, Corinne had no knowledge of the questions that would be asked. She had no contact with polygraph examiner Terry Mullins, a full member of the British and American Polygraph Associations, until the point at which he arrived to conduct the test.

She was asked three specific questions –

Did she falsify Luke’s alibi?

Did she burn any clothing or evidence that would have incriminated Luke?

Did she lie in her court testimony?

She answered “no” to all three questions and passed the test, the official result being “No Deception Detected.”<sup>31</sup>

The Scottish Mail on Sunday ran a double page article with the headline, “*She was telling the truth.*” It was the first truly positive media coverage the case had in almost nine years and, with the help of freelance journalist Bob Smyth, we began to explore the possibility of arranging a second test ... for Luke himself.

Two months after Corinne’s test, I entered Shotts Prison with Terry Mullins, as an observer – we had managed to obtain permission, in large

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31 <https://www.youtube.com/watch?v=dS5gs81NvOc>

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part through the efforts of Bob Smyth, for Luke to undergo the polygraph.

Like Corinne, Luke did not know until the day of the test what the questions would be, so there was no opportunity for he and his mother to discuss or prepare their answers. The final questions for Luke were:

Did you stab Jodi?

Were you present when Jodi was stabbed?

Did you know where Jodi's body would be found?

Like Corinne, he answered "No" to all three questions and, like Corinne, he passed the test to the "No Deception Detected" standard.<sup>32</sup> Terry Mullins stood by the results – he said:

*I'm certain of the test result. It's absolute. I can't believe that Luke Mitchell was convicted on the evidence presented.*<sup>33</sup>

The double standards evident throughout this case emerged again. In spite of strong arguments that polygraphs were unreliable, at the time of Corinne's test, politicians were calling for a country-wide rollout of a pilot scheme using polygraphs to assess whether sex offenders were safe to be released and to monitor whether they remained safe to be at liberty. Given the extent of sexual offending in the UK, there was clearly a belief in some official quarters that the tests were reliable, if the decision on whether a sex offender was allowed to remain at liberty or not depended on successfully passing the polygraph.

Interestingly, the police and many critics of the case for Luke's innocence over the years have been happy to quote experts in a number of disputed fields, in their attempts to prove that the Mitchell family "lied" about events on June 30<sup>th</sup>.

Forensic Psychologist Ian Stephen, who was a consultant to the TV programme *Cracker*, gave a number of interviews to the media after Luke was convicted. In one, he said:<sup>34</sup>

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32 [https://www.youtube.com/results?search\\_query=luke+mitchell+polygraph](https://www.youtube.com/results?search_query=luke+mitchell+polygraph) <https://www.pressreader.com/uk/the-scottish-mail-on-sunday/20120429/281526518062572>

34 [http://www.heraldscotland.com/news/12401131.WHY\\_\\_\\_Silent\\_and\\_defiant\\_to\\_the\\_end\\_\\_\\_Luke\\_Mitchell\\_denied\\_the\\_family\\_of\\_Jodi\\_Jones\\_the\\_one\\_answer\\_they\\_needed/](http://www.heraldscotland.com/news/12401131.WHY___Silent_and_defiant_to_the_end___Luke_Mitchell_denied_the_family_of_Jodi_Jones_the_one_answer_they_needed/)

*“Children who kill like this are few and far between but they tend to be reasonably intelligent children. Mitchell, by all accounts, was considered an intelligent boy. People like that are usually loners who are isolated or different from their peer groups. Often there are unusual circumstances in their family life. There is very clear evidence for all of this in this case.”*

It is not known where Mr Stephen got the information on which he based this claim, but he was, according to all of the known evidence, wrong. There was nothing in Luke’s background to suggest that Luke was a loner, isolated or different from his peer group, or that there were unusual circumstances in his family life, unless divorced parents count as unusual circumstances. (The statistics prove they are not – in 2003, 45% of marriages ended in divorce with 48% of those families containing children under sixteen in England and Wales alone – over 150,000 children). Indeed, if Luke was an isolated loner, he was one who was out with friends in his home town most week nights, out with friends he met in his dad’s home town on the weekends, easily made friends on holiday, made friends at the stables where his horse was kept and attended cadets regularly until he started going out with Jodi.

Mr Stephen continued:

*“...In the case of [Mary] Bell, who was found guilty in 1968 of killing two young boys in Newcastle, she went out to help in the search for her victims after they had been reported missing.*

*It was this same act that led to Mitchell’s downfall. His crucial mistake was to join the search for Jodi and then to “find” her at a place that nobody else had thought to look”.*

As previously shown, Luke did not join the search for Jodi, he was joined by the others and could have had no way of knowing that Alice would suggest they re-check the path he had just come up. It was not so much a question of looking where no-one else had thought to look, as a question of *why* nobody else thought to look there. On the walk back down the path, Luke was checking the crop field and shining his torch over the wall at different places, while Steven Kelly was, somewhat bizarrely, checking polythene bags in ankle deep weeds that could not have concealed an injured Jodi. Of Luke’s behaviour, Janine said she did not know why he was doing these things – it was, she said, “as if he

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*was looking for something.*” That was, ostensibly, what all four of them were supposed to be doing, yet Janine appeared surprised that Luke was actually doing it!

Indeed, on the basis of Mr Stephen’s reasoning, it is the search trio, rather than Luke, who should have been treated with suspicion – it was they who joined the search and led Luke back towards where the body was ultimately found.

But Mr Stephen had never examined Luke and, to my knowledge, he never had access to the case papers. In the Frontline Scotland documentary two years later, he was asked about the “satanic slogans” on Luke’s jotters. Mr Stephen asserted that they were “worrying” and indicated various propensities in Luke’s psychological makeup. Told that these were lines from popular computer games, Mr Stephen changed tack and stated that some people are influenced by such games, unable to separate reality from fantasy.

This was the same line used by the judge at the end of Luke’s trial and the legal argument remains the same – if Luke was genuinely unable to separate reality from fantasy, he was not mentally fit to stand trial. All of the psychology and psychiatry reports on Luke have concluded that he suffers no mental health issues or personality disorders.

Paul Eckman, the “Human Lie Detector”, (on whose “Micro-expressions” theory police officers relied in their interrogation of Shane) concluded, in his analysis of the Sky interview with Luke, that Luke displayed “duping delight” in the video, claiming Luke was “enjoying” fooling people into believing he was innocent. However, the science underpinning this form of lie detection has never been proven, with statistics demonstrating that detection rates are barely higher than chance. According to James Matthews, who conducted the interview with Luke that day, *“It was a time in the murder investigation when Detectives had precious little evidence. The findings of Prof. Ekman kept the focus of the inquiry on Mitchell.”*

It took almost a year to obtain permission to publicise the results of Luke’s polygraph test. Because it was taken and filmed in prison, we could not release the film footage without the permission of the prison governor. The reaction to film of the test being uploaded to Youtube was staggering – the footage very quickly received over 40,000 views and

the number of visitors to the website rocketed. On the one hand, for the first time in almost a decade, questions began appearing in a number of media outlets about the safety of the conviction. On the flip side, the predictable negative reaction was vicious, not so much regarding the test itself, but because it had been posted on the internet. MSP John Lamont criticised the posting of the video as “insensitive in the extreme” and a “crass stunt” and The Herald reported

*“Sources at the Scottish Prison Service (SPS) said they agreed to give the video to the Luke Mitchell Is Innocent campaign but did not authorise it being made public. The source added: “The campaign asked for the video and we agreed to release it. We did not expect to see it surface in this way.”*

Notice, again, the use of un-named sources. In this instance, it was, quite simply, because the information in the report was dishonest. (That is not to say the Herald was dishonest, but rather that the information given to their journalists or editors about authorisation to release the video publicly was dishonest.) It took a year to obtain permission to release the video footage precisely because we were following the rules to the letter.

A question was tabled for First Minister’s Questions in the Scottish Parliament regarding whether or not permission had been given to Luke’s campaign to release the video. To say it was a nerve-wracking moment would be something of an understatement. Although I had all of the emails and correspondence with the SPS, as did a media colleague as a safety measure, knowing what I knew by then, there was nothing to stop them denying permission had been obtained and that would have left me with a serious problem. There is a ruling in Scotland that anyone working within the media must declare that before visiting prisoners and must agree not to make public any information obtained as a result of visits. I sat in on Luke’s polygraph test as an observer, so, had there been a denial of permission, I was in the direct line of fire.

To make matters worse, I had challenged the MSP John Lamont directly in a series of emails. Mr Lamont had been one of the most vocal supporters of introducing the polygraph for sex offenders in Scotland and I questioned him repeatedly about his apparent double standards. Annoyed by his refusal, as a public figure, to answer important questions about why he thought the polygraph was reliable for proving guilt but

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not for supporting innocence, I eventually published the entire correspondence online.

Fortunately, the question at First Minister's Questions was answered honestly and I allowed myself to breathe again.

Rather than embrace the fact that these events opened the door for a number of important debates (double standards, the need for a robust system for challenging potentially unsafe convictions, the role of the media in helping to secure convictions in high profile cases and so on), some politicians, via the media, threw a harsh spotlight on the "rights" of prisoners to undertake polygraph tests at all. In the six years since Luke's test, polygraph experts have reported greater difficulties and additional obstacles in gaining access to prisoners to carry out the tests than previously, blaming, specifically, the Scottish crackdown on tests for those who had no live proceedings at the time requests for testing were made.

This is a worrying development for two reasons. Firstly, if, as the official stance dictates, these tests cannot be relied upon in any court proceedings, what was the justification for restricting applications only to those with live proceedings in their cases? It matters not a jot whether there are live proceedings or no proceedings at all if the outcomes cannot be considered evidence in the traditional interpretation of the term. The only sensible conclusion is that there is a desire for cases with no official means of raising further awareness about serious concerns to die – to disappear from the public gaze, from public interest, to be forgotten.

Secondly, it subtly and quietly reinforces the idea that prisoners sentenced to long prison sentences should have no rights at all. Yet, if we look at every proven miscarriage of justice, the one thing all of these cases had in common was some public interest in demonstrating that the cases were flawed. Someone, or someones, on the outside, chipping away at the official story.

Whether it is refusal to allow investigative journalists to publish what they uncover as a result of speaking with prisoners, as in Scotland, sanctions against prisoners who dare to tell their truth to media personnel, as was the case with Suzanne Holdsworth, or a concerted effort by authorities to downplay the role of overconfident expert testimony and the ac-

ceptance of that by the courts, as in the cases of Angela Cannings, Sally Clark, Donna Anthony or Ian and Angela Gay, the interplay between the official desire to close down information about these cases and the determination of others to get that information into the public domain, to encourage support, independent thinking and a demand for transparency and accountability has always existed...until now.

Now, the risk of imprisonment and complete silencing of those disposed to chipping away from the outside is greatly increased. At the same time, the role of mainstream media in convincing people that there is nothing wrong is so powerful that the struggle to have the problem of wrongful accusation and conviction heard, acknowledged and acted upon is harder than it has ever been before.

The following is by no means a complete and exhaustive list of proven miscarriages of justice— Derek Bentley, The Birmingham Six, The Guildford Four, The Maguire Seven, Stefan Kiszko, Stephen Downing, Judith Ward, Barry George, Sam Hallam, Winston Silcott, Suzanne Holdsworth, Angela Cannings, Sally Clark, Donna Anthony, Victor Nealon, The Bridgwater Four, The Cardiff Newsagent Three, The Cardiff Three (an entirely separate case), Barri White and Keith Hyatt, Sion Jenkins, Sean Hodgson, Paul Blackburn, Eddie Gilfoyle, Ian and Angela Gay.

These cases involved (directly) 47 people who, between them, served an official total of 532 years in prison. Some died before their convictions were overturned (Derek Bentley was executed) and the evidence showed, eventually, that not one of them was guilty, on the basis of the requirements of our legal system for the prosecution to prove that guilt, beyond a reasonable doubt. In some cases, it would take decades to prove the innocence of those wrongly convicted, in a system where every person has the right to be presumed innocent, unless and until guilt is proven. It took 46 years for Derek Bentley's conviction be overturned and 31 years for DNA to prove that Stefan Kiszko was not the rapist and murderer of an 11-year-old girl. Even after Sally Clark, Angela Cannings, Donna Anthony and the Gays were cleared, the courts continued to support Professor Sir Roy Meadow, whose flawed expert testimony convicted them, for years. In 2009, ten years after he helped secure the conviction of Sally Clark and three years after she died as a result of the ordeal, he stood down as a registered practitioner with the General Medical Council. Having been struck from the medical register

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in 2005 after being found guilty of serious professional misconduct, he was reinstated in 2006 following an appeal finding that he was guilty of “some” professional misconduct, but that it fell short of serious misconduct.

The challenges surrounding what is allowed in our courts as evidence – and in particular, expert evidence – are clear. The misuse of expert evidence and the ability of the Justice System itself to decide which types of evidence it will accept as credible and reliable has created a morass of claims and counter-claims about so much of what is used in our courts to obtain convictions. And, of course, that which is not allowed, perhaps because it could prevent those convictions from being obtained in the first place.

DNA evidence, for example, is accepted as virtually infallible, yet polygraph evidence is still shunned as unreliable (except, of course, where it is convenient for the CJS to rely on it in dealings with sex offenders). Yet many, many aspects of DNA evidence have been exposed as unreliable, overstated or “bad science.” As long ago as 2007, the use of Low Copy Number (LCN) DNA evidence was temporarily suspended because it was considered “so unproven” that only three countries in the world allowed it to be used in evidence at trials and even then, in those three countries (UK, Netherlands and New Zealand), cases were rarely solely dependent on LCN evidence. Today, even though there are still serious questions about the reliability of claims regarding LCN in our courts, the procedure is widely and routinely used.

The last fifteen years have exposed to me the might of the Criminal Justice System and the media and it has been a shocking and deeply disturbing experience. The reluctance of the CJS to consider the possibility that mistakes have been made is equalled by its determination to uphold convictions by any means - including, if necessary, choosing to refuse to hear solid evidence that categorically proves a murderer is walking our streets whilst an innocent man serves a life sentence in his place.

The wilful blindness and silence of much of our mainstream media have been disgraceful. Rather than holding our institutions and organisations to account, recent years have seen a swing towards upholding official narratives, even if it requires outright dishonesty to do so. The argument that this is purely financially incentivised does not hold up – series like the US documentary “Making a Murderer” demonstrate that examina-

tion of flaws in our justice systems can be financially lucrative for those who take the time and effort to carry out those examinations.

Neither can the argument, that readers and publishers alike want sensational content, be upheld. Think of how a mass readership would respond to headlines such as these:

*“Murderer strikes again because court refused to hear evidence”*

*“Real murderer still unidentified because of failures in police investigation”*

*“Police Lies Exposed”*

The truth is, there are many, many stories just as sensational and shocking as this one and every one of them involves real people, real suffering and appalling injustice. Thankfully, things are beginning to change, as mainstream media is beginning to catch onto what has been lighting up social media for a number of years, but it is a slow process. People are talking about truth and justice. They are talking about trust and fairness. In the last year, scandals involving tampering with forensic results in laboratories and police failures to disclose evidence to defence teams have hit the headlines. The April 2016 verdicts of the Hillsborough Inquests, which took twenty-seven years to achieve, were a damning indictment of police cover-up, media dishonesty and intransigence within the Judicial System which allowed all three to ignore and, in some cases, falsify the truth that many had known all along.

Ninety-six football fans were unlawfully killed at a match which was being televised at the time – terrible images of people being crushed to death filled television screens and newspaper front pages – and still, it would take twenty- seven years for the truth about what unfolded before the eyes of thousands of viewers to be acknowledged. That is the combined power of the police, media and Criminal Justice System.

When the website covering Luke’s case was launched and throughout the time it was available online, I was repeatedly criticised for being biased and only presenting one side of the story. Those critics clearly missed the irony! This book will be the first time, in 15 years, that all of the known evidence in this case (as opposed to the information selected by the courts and the media to be presented as “evidence”) has been available to the public in one place. (The website had to be taken down

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before the findings of the SCCRC were able to be made public.)

### **No similar attacks since Luke was convicted?**

Over the years, there have been claims that the conviction of Luke is safe because there have been no similar attacks on girls or young women in the area since 2004. Putting aside the flaws in the case against Luke, there could be any number of explanations for there being “no similar attacks in the area” – the killer may have died, been imprisoned or incarcerated in a mental institution, moved away (or abroad) and he may have struck again, but the attacks have not been linked (as happened in the Rachel Nickell and Samantha and Jazmine Bissett cases).

The fact is, there have been a number of similar attacks on women in Scotland, all of the attackers having been at liberty at the time Jodi was murdered. Of course, I am not suggesting that any of these people killed Jodi – the information here merely refutes the often repeated (and incorrect) assertions that there have been no similar attacks. It is not enough to say that someone has been convicted for other similar attacks if the people who carried out those attacks were at liberty at the time of the attack on Jodi – any attempt to establish a potential pattern can only be found if it is actively sought. It is generally accepted that individuals do not just wake up one morning as fully-fledged psychopathic killers – there is usually a history of escalating violence and mental health issues.

It is also important to realise how small Scotland is - from the southern border to the northernmost land point is only 393 miles and from east to west, at its widest, a little over 230 miles. It is possible to drive from north to south in eight hours and east to west in six.

The murder of 19-year-old Laura Milne in Aberdeen in 2007 was horrific. Her throat was cut and her killer tried to cut off her head, breast and legs after killing her. The lifestyle of Stewart Jack, who was convicted of the murder in 2008, was described as “chaotic” and “nomadic” – it is unclear where he lived in 2003 (he would have been 17 or 18 years old at the time). There were similarities in the murder/mutilation of Laura and Jodi, although the location is different.

Robert Greens, in 2005, attacked a woman in Roslin Glen (woodland a little under 6 miles from Easthouses) with a knife, but she managed to break free. The attack began in a similar fashion - he chased her through woodland, tearing at her clothing and hitting her repeatedly about the

face, dragging her along the ground, and so on. His sister lived within a few minutes' walk of Roan's Dyke path and there was some evidence that he visited her the afternoon Jodi was murdered. He was convicted in 2006.

The tabloid media had a field day when questions were raised regarding whether or not Robert Greens was checked for any potential link with Jodi's murder. "Luke Mitchell tries to blame da Vinci Rapist for Jodi Murder" screamed one headline. (The Robert Greens attack took place near to Roslyn Chapel, where part of the movie "The da Vinci Code" was filmed.) Others made similar claims, although at no time had I actually made such a suggestion. The aim was to ascertain what, if anything, investigators knew, or tried to find out, about his movements at the time, since he was known to them. The questions were:

(1) Did he cross the police radar during the murder investigation? If not, why not? Police reports indicated that there were plans for DNA testing hundreds of local men at the time and that the investigation would be checking known sexual and violent offenders

(2) Was his DNA ever checked against unidentified profiles in the Jodi Jones murder? A simple yes or no would have sufficed – instead, police responses relied on the elusive "We are not looking for anyone else" comment. It would be reasonable to consider that the failure to answer this question indicates that such a check was never made.

In spite of all the media hysteria surrounding these questions, they were never answered.

"Rape Kit Man", Allan Roberts, was convicted in November 2004 of attacking a young woman in East Lothian, just five miles from where Jodi was murdered. A psychiatrist reported that he had violent sexual fantasies involving attacks on women who were strangers to him. He had a history of stalking young women and was known to traverse the area via secluded cycle paths, carrying a bag containing masks and ties (his "rape kit"). The "intent to rape" part of the charge against him in 2004 was dropped when he pleaded guilty to a lesser charge. The attack took place in May 2004, ten and a half months after Jodi's murder, just after Roberts completed a "diversion from prosecution" scheme for stalking another young woman. A consultant psychiatrist from the State Hospital who examined Roberts told the court, 'I can't imagine a time at

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any stage where Allan Roberts would present no risk.’ A witness wrote to Luke’s legal team later to claim that on the day Luke’s trial began, Roberts confessed to the murder of Jodi.

In 2013, the remains of a woman who had been murdered and dismembered were found in a shallow grave in woodland in Edinburgh. The remains of Saima Ahmed, a librarian from London, were found spread over woodland and a golf course on the western outskirts of Edinburgh in February 2016. According to those who knew her, Ms Ahmed had no ties to Scotland whatsoever and they could think of no reason why she would have gone there.

Betty Brown was last seen alive in Edinburgh in 2010. She was believed to have taken the X95 bus south (the route for this bus runs along the Newbattle Road). Eight months later, her remains were found in Longtown, around 85 miles from Newbattle, just over the Scottish border, in woodland. The cause of death has never been ascertained, but did not, according to police, appear to be death from natural causes and, although there has been no further progress in discovering what happened to her, the death is still considered to be suspicious.

The murder of Anne Nicoll in 2001 bore striking similarities to the murder of Jodi Jones two years later. Ms Nicoll, aged 34, had 29 knife wounds inflicted to her neck, face, head, back, chest, abdomen and left arm during the “frenzied attack” in woodland as she walked her dog. Her voicebox was pierced at the beginning of the attack, making it impossible for her to scream or cry out for help. Sixteen-year-old Robbie McIntosh, who was 15 at the time of the murder, denied being the attacker but was found guilty and convicted. Mr McIntosh said he had seen the victim’s partner finding her body and blamed a sixteen-year-old friend for the murder.

Three “tiny stains” found on Mr McIntosh’s sock and baseball cap were said to be a match to Ms Nicoll’s blood – since he was convicted in 2002, that match would be based on the old six marker system. The defence, however, argued that the murderer would have been “spattered, smeared and stained” in blood and that fibres and hairs from the victim should have been found on Mr McIntosh, but were not. The friend blamed by Mr McIntosh habitually carried a knife, he had not been taking medication (which helped modify his behaviour) for a condition in which one of the symptoms was violence. His mother disposed of

a knife two days after the murder and a witness told the court that this boy had produced a knife and boasted about the murder the day after it happened.

What is interesting about this case is that a number of the experts used by the prosecution were the same experts used in the Luke Mitchell case including, in the case of the match to the victim's blood, the witness who tried to claim at Luke's trial that a "partial" DNA profile "matched" Luke's profile. Could it have been that in the changeover from the 6 marker system to the 10 marker profile (which took place over 2002/2003), this witness, by the time of Luke's trial, was still working on the basis that 6 markers constituted a full match?

Like Jodi, Ms Nicoll was murdered in daylight. Initial descriptions of a man seen near the murder scene were of someone in his "late teens or early twenties." Like Luke's trial, a number of crucial witnesses were young people under the age of 16. The distance between the two murders is around 70 miles, or an hour and a half's drive.

This is such a common occurrence that I am no longer shocked by it - similar attacks are not checked for possible links on the basis that a case is closed. Yet that approach means, without question, we are all being left at risk. In this case, it was not only the focus on Luke and Luke alone from the very beginning which prevented the investigation of others; once the conviction was obtained there was no will whatsoever to check out information which emerged thereafter for the possibility of any links not recognised at the time, even when that information contained documents alleging a direct confession from one of these people.

Robert Greens and Allan Roberts may not fit anywhere in the case, but there should not still be doubt all these years later - it should be able to be taken absolutely for granted that anyone living in the local area, with the type of history which may have flagged them up as potential suspects, should have been checked out and positively eliminated from the investigation.

I am not making the claim that any of these people have been involved in other attacks, or that other people have been convicted for crimes they did not commit - I am simply making the point that we do not and cannot know for certain.

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In February 2004, two months before Luke's arrest, senior officers flew to the USA in order for the FBI to provide a psychological profile of the killer. They came up empty-handed insofar as producing a profile that could be applied to Luke was concerned. The matter was never mentioned at trial. Years later, a copy of the profile was released to a journalist working on Luke's case. The document was so heavily redacted as to be worthless – not a single finding in the whole report was readable. However, some conclusions can be drawn, even from a document with so little useable information. Had anything in that profile been able to be fitted to Luke Mitchell, there is little doubt that it would have been used at trial, if for no other reason than to justify the expenditure of time and money obtaining it. Since it was not and all of the information raised by it was concealed, the only sensible conclusion is that the profile indicated a killer whose profile was nothing like Luke's. Another possible interpretation is that the profile fitted others known to the enquiry – information which the investigating team and the prosecution could not afford to have available in the public domain because it could have seriously undermined the case against Luke. The un-redacted profile was never released to the defence.

The justice system sometimes gets it wrong, there can be no doubt about that. Closing off avenues that allow questioning and highlighting cases where the system has gone wrong denies a fundamental aspect of keeping our justice practices fair, transparent and accountable. So many people believe this is not an important issue because it could never happen to them, or because they believe the police and courts must have had something on which to base their suspicion, prosecution and final conviction. Time and time again, a closer look at these cases reveals nothing but unfounded suspicion, an overconfident zealotry to build a particular narrative around a case and ignore compelling evidence to the contrary and victims and the public convinced by a colluding media that the official story is not only correct, but the only viable explanation of events.

## Chapter Twenty

### The Scottish Criminal Cases Review Commission (SCCRC)

The SCCRC, set up in 1999 to review potential miscarriages of justice in Scotland, states on its website:

*Our review of all cases is carried out independently of Parliament, the Scottish Government, the Crown, the Judiciary and the Defence. All cases accepted by us are subjected to a robust and thoroughly impartial review before a decision on whether or not to refer a case to the High Court is taken.*

From its inception in 1999 to March 2016, the Commission had concluded reviews for 2136 applications. Of those, just 127 were referred back to the courts (only 72 on the basis of convictions, rather than sentences) and, of those, only 34 convictions were successfully appealed. That is just two convictions overturned by the Appeal Court, on average, per year following a robust and thoroughly impartial review by the Commission.

In 2010, following the Cadder ruling, a new provision was introduced:

*“In determining whether or not it is in the interests of justice that a reference should be made, the Commission must have regard to the need for finality and certainty in the determination of criminal proceedings.”*

The same year Luke’s application to the Commission was made, I sat through the appeal hearing and the judges’ decision in another case and saw for myself the impact of having regard to the need for finality and certainty.

Sean Toal was convicted in 2005. For seven years, his family and legal teams battled to get his case to appeal, facing delay after delay caused by the Criminal Justice System itself. Out of more than 30 procedural hearings, Sean, himself, was not responsible for a single one – they were the result of judges, lawyers or court administration actions and decisions. By the time the appeal was ready to be heard, Sean’s legal team had some stunning new evidence – the murder weapon had finally been identified and bore the DNA and fingerprints of another man. The appeal court judges’ response was devastating.

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The case had, they said, taken far too long to bring to appeal. The Lord Justice Clerk, Lord Carloway, (Scotland's second most senior judge), said:

*The indulgence afforded by the court to this appellant can only be described as extreme ... this degree of latitude cannot, in the interests of justice, be allowed to recur ... any properly functioning system of appeals from jury verdicts must have, as a central feature, means by which appeals can be concluded within a reasonable time...*

In other words, the evidence clearing Sean Toal had, according to the Appeal Court, taken too long (at 7 years) to be brought before the court. Clearly, any innocent person trying to get the evidence that exonerates him or her before the Court of Appeal would not consider it an "indulgence" to be forced to wait seven years, in prison, for that to happen. With a black irony, the same year, Strathclyde police (at the time Scotland's largest police force) announced the setting up of a cold case review squad which would reinvestigate cases 20 – 30 years old.

At the same time as the new provision regarding certainty and finality, the court was granted a new power to refuse a referral from the Commission (which did not previously exist), if the court thought it was not in the interests of justice to proceed. Appeals which were accepted would only proceed on the grounds contained in the referral from the Commission, unless leave was granted by the High Court for other grounds to be included. Previously, the court had to hear any case referred to it by the SCCRC and other grounds could be added following referral.

These new rules were apparently intended to tighten up both the process by which the Commission referred cases and the scope of the court's mandate for dealing with cases once referred. Since less than 4% of all applications to the Commission resulted in referrals regarding conviction and just half of those were successful, it is not clear what created the requirement for such tightening up. From 1st April, 2008 to 31st March, 2013, just 43 cases were referred. Of those, 25 were conviction referrals and 18 were sentence referrals. None of the 5 murder conviction referrals was successful at appeal.

This was the daunting background against which the application to the Commission in Luke's case had to be constructed.

Something I had been warned about time and again while working on the case was the danger of inadvertently rendering new evidence inadmissible or unusable - asking questions of new witnesses who approached me, that could be considered leading, would render their testimony worthless. As a result, I explained to anyone who made contact that I could not discuss the case with them, nor could I ask them any questions – all I could do was take the details of their stories and pass them on for further investigation by the appropriate authorities – Luke’s legal team in the lead up to the appeal, or the Commission thereafter. I believed that, because of the restrictions on what I (or anyone else who was not a lawyer) could do with new information, the Commission would investigate that information further with the appropriate legal protections.

I was wrong and that discovery highlights the impossible predicament of anyone trying to draw attention to errors, omissions, new evidence and so on in cases such as this. Even after the information is found, because it is incomplete, the Commission can (and does) conclude that it is not relevant, or that its significance is weak or unclear, without any further investigation – the very investigation people believe the Commission will undertake as part of its review (and which ordinary people are prevented from thoroughly investigating for fear of rendering the information unusable). It is an impossible catch 22 for anyone trying to fight injustice in Scotland.

The Commission concluded that by the time Luke gave his first statement to police in the early hours of July 1st he was “charged” for the purposes of Article 6 of the European Convention on Human Rights<sup>35</sup> and should have had legal advice and representation. The UK Supreme Court considers a person to be charged if their liberty has been significantly curtailed or their liberty of movement has been deprived to any material extent. The Section 14 interview on August 14th 2003 fell within this definition. Luke’s rights, therefore, were violated and the statement (or information from it) should not have been admitted in evidence.

However, the Commission went on to conclude that excluding the police interviews from evidence would have limited Luke’s defence. The logic for that conclusion is baffling.

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35 [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

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The Commission's interpretation of the effect of the breach was that, if the information from the Section 14 interview had been excluded at trial, there would have been nothing before the court to refute the claims of others (because Luke did not give evidence). Since the Commission cannot speculate what might have happened had the trial been conducted differently, it has to base its conclusions on the case as it was presented at trial.

But, had Luke had access to legal advice and representation, the entire case would have been constructed differently – the Section 14 interview, which was used to such damning effect at trial, would not have been able to be used. It formed a central part of the case against which Luke's legal team had to defend him – had it not been part of the case, the defence, of necessity, would have been different. But that, of course, is speculation. The Commission could only look at the case on the basis that nothing, other than the infringement of Luke's rights, changed. It did not look at the *effect* of that infringement which, in turn, allowed it to conclude that having his rights upheld would have had a negative effect on his defence.

Aside from this strict interpretation of the impact of the violation of Luke's rights, the Commission noted that around one half of the Advocate Depute's speech to the jury attacked the credibility of Luke "very largely" on grounds stemming from the police interviews. Since the speeches to the jury are a hugely important part of the case, being the last chance both prosecution and defence have to persuade the jury, the level of importance of the information from the section 14 interview is clear.

It is quite shocking to discover how narrow the interpretation of information by the Commission really is. Accepting that rights have been breached and then ignoring the effects of that breach on the actual events negates the protection those rights are supposed to provide.

The Commission devoted a number of pages to the identification evidence. Discussing the lack of identity parade for any of the eyewitnesses, the Commission noted:

*...the crucial point in this case, so it seems to the commission, is that neither the applicant or his representatives at the trial indicated that he wished to attend a parade on August 14th 2003.*

That interrogation was three weeks after Luke Mitchell's 15th birthday and was conducted with no legal representation. How could he have known that an identity parade, at that point, was even possible, far less required? The Commission also noted that "the applicant did not exercise his statutory right" after he had been charged (in April 2004) to ensure an identity parade was held. The law states that an accused person is not entitled to complain about the absence of a parade unless he has formally requested one. Neither side, in 2004, exercised its rights in this respect, for the same reason – Luke Mitchell's photographs had been all over the media for the previous eight months.

Indeed, requesting an identity parade in 2004 would, potentially, have been catastrophic for Luke's defence – by then, his pictures had been all over the media for eight months along with the unmistakable message that he was Jodi's killer. Witnesses whose previous identifications had been questionable would have been given an opportunity to make those identifications appear much more certain, had they picked out Luke so long after the murder (the obvious influence of the media would, most likely, have been ignored).

Notwithstanding the lack of identity parade and Mrs Bryson's failure to identify Luke at trial, the Commission concluded that the inclusion, in evidence at trial, of the identification made by Mrs Bryson from the photographs shown to her by police on August 14th 2003, did not render the trial unfair.

Of the dock identifications made by Ms Fleming and Mrs Walsh, it was the Commission's view that these identifications were "peripheral," going on to say,

*"it is difficult to argue against the Advocate Depute's submission that their descriptions of the man they saw sounded very similar to the male Mrs Bryson said she saw at the top of the path."*

The whole treatment of the eyewitness evidence by the Commission demonstrates the extent to which official interpretations of the law and the evidence presented can be twisted out of all recognition in order to uphold previous decisions.

There is a large body of evidence demonstrating that, even when done "properly," eyewitness accounts are one of the single biggest factors in wrongful convictions because human recall and recognition are so

fallible. But the eyewitness evidence in this case was not obtained properly – far from it. Failure to hold an identity parade, failure to investigate potential influence on the main eyewitness from someone closely involved with the victim’s family, a demonstrably leading photo spread shown to Andrina Bryson, highlighting someone who did not, in any way, resemble the descriptions she gave and the showing of newspaper photographs of the prime suspect to the other two eyewitnesses must, by any form of right thinking, have influenced the “identifications” made by these witnesses. But the Commission’s logic-defying claim about the similarities between the descriptions of the eyewitnesses sweeps away all those concerns as immaterial. The descriptions by Fleming and Walsh were *nothing like* the description given by Andrina Bryson and none of the three descriptions was anything like Luke Mitchell. If anything is difficult to argue, it is that this part of the Commission’s findings was the result of a robust, thoroughly impartial review.

The claim that the dock identifications by Fleming and Walsh were peripheral is nothing less than a re-writing of history. The significance of their sighting was critical to the case against Luke, as has been shown throughout this book. Their dock identifications were false identifications – they could not have been anything else, based on their own evidence – they never saw the face of the youth and could only have identified him again by his clothes. Nowhere in any of their statements was there any description of the youth’s facial features (nor, indeed, were there any in Andrina Bryson’s statements) and Lorraine Fleming’s claim that her dock identification was based on the person in the dock’s head being “completely different” is farcical. Without confirmation of those sightings, there was nothing to place Luke Mitchell anywhere near Roan’s Dyke path prior to 11pm on the night of June 30th. But the crucial point, according to the Commission, was that neither Luke nor his (non-existent) legal representatives indicated that Luke wanted to take part in an identity parade on August 14th 2003.

Even the new evidence suggesting the very real possibility that the Fleming/Walsh identification was a mistaken identification was treated with suspicion and summarily dismissed.

The Commission began by conceding a level of similarity between the two youths:

*“If the photograph of Mr A from 2003 ... that Dr Lean sent to the Com-*

*mission (according to Dr Lean) is, indeed, a photograph of Mr A from 2003, there was, so it seems to the Commission, a resemblance between Mr A and the appellant from around that time.”*

Aside from the obvious question of why the Commission had any doubts about the identity of the person in the photograph, they could have done what I did – found the photographs freely available on the internet, complete with Mr A’s name and then checked with others that the name and photograph matched and that the person in the picture was, indeed, Mr A.

Why the Commission appeared to question my honesty in this particular matter is a mystery and it is surprising, to say the least, that they were willing to leave that question mark over my integrity, rather than simply confirming the matter for themselves.

But, having conceded there were similarities, the commission went on to conclude

*The Commission is not persuaded, however, that the photograph and the information from [two other witness statements], even if taken to be credible and reliable, are likely to have had a material bearing on, or a material part to play in the determination by ... a [reasonable] jury of a critical issue at trial: they do not affect the evidence against the applicant, they do not link Mr A to the murder. They are not, in other words, significant.*

Once again, there is the immediate negative inference - “even if taken to be credible and reliable.” Compare the evidence of these witnesses to the police treatment of two of the them and ask yourself, which is more credible and reliable?

According to the statement of one witness (D), Mr A, himself, told D the police had spoken to Mr A because he was seen running on the Newbattle Road on the evening of the murder. It is now known that Mr A was never interviewed by police at the time of the murder and the statement from D was in police files from the earliest stages of the investigation. Why did Mr A say he had spoken to police when he had not? And, since investigators insisted they were trying to trace Mr A at precisely the time D made this statement, why did the investigators not simply ask D if he knew where they could find Mr A?

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Mr A said he went to the police in 2003 but was told they were “busy” and he should call back. Mr A had been brought to police attention, in particular with regard to “vicious” images accessed by him on Newbattle Abbey College’s computers – in November 2003, DI Ronnie Millar instructed that there was to be no further action to examine computers at the college (none had been taken by that point) and in December 2003, that there was to be no further action to trace Mr A and take a statement from him.

The Commission noted that there was no information on HOLMES (Home Office Large Major Enquiry System) which cast any suspicion on Mr A, that no statement was taken from the English tutor regarding the alleged essay about murdering a girl in the woods and that there was no “reasonable explanation” for this information not coming out at trial.

The reasonable explanation for the information not coming out at trial is that it was not known about at trial because the police investigation failed to trace or investigate Mr A. Similarly, the claims about the essay were not discovered until three years later. The fact that there was no information on HOLMES about Mr A is clearly retrospective – investigators at the time of the murder could not have known that and there was nothing on HOLMES to cast any suspicion on Luke, but that did not stop a full-scale investigation into him and his family!

A point I have made many times since starting this work concerns police disclosure. Investigating officers cannot be accused of failing to disclose evidence if they simply did not collect it in the first place, as was the case here.

But it is the conclusion about this information having a material bearing or part to play in any critical issue at trial that is difficult to fathom.

The critical issue is identification. The evidence against Luke Mitchell was that two eyewitnesses identified him on the Newbattle Road just before 6pm. Any evidence that reliably and credibly undermines those identifications is critical to the case. Also, the Commission was at pains to point out that it cannot speculate on what might have happened if the case had been conducted differently, yet in this example, it does exactly that! Who knows what the jury might have done with information that the man seen by Fleming and Walsh may not have been Luke Mitchell, but another man entirely? The Commission preferred to speculate that the information would have had no influence on the jury whatsoever.

Furthermore, at no point in the application was any suggestion made that Mr A was “linked to the murder” – the entirety of the point was the possibility of mistaken eyewitness identification.

It is difficult to understand how the Commission could have concluded that the likeness between Luke and this other youth did not affect the evidence against Luke, since it seriously undermined a critical aspect of the case (one that, in the same report, the Commission had already deemed “peripheral”).

The circumstantial nature of the case allowed the court at trial to argue that the various strands of the case only become significant when taken as a whole – while any one strand may not be significant in its own right, when taken together with other strands, the combined information takes on a new meaning. So, for example, the search party evidence, along with the Andrina Bryson evidence and the fact that no-one came forward to say they had seen Jodi alive after 5.05pm, when taken together, allowed the jury to infer that Luke killed Jodi and that was how he knew where her body was, in order to lead the family search trio to it.

Why, then, does the commission seem reluctant to utilise the same process when reviewing the case?

The cumulative effect of the failure to allow Luke access to legal advice and assistance allowed improperly obtained evidence, that severely damaged his defence, to be put before the jury. Together with the real possibility that two of the eyewitness identifications may have been mistaken and the jury misled as to that possibility, the safety of the conviction is compromised. That would be a starting point. But the Commission took each of these in isolation from all other aspects of the case to allow it to conclude that no miscarriage of justice had occurred.

Curiously, the Commission did use the circumstantial reasoning process in order to dismiss another aspect of the application. It concluded that the Parka and log burner evidence, when taken in the context of the wider case, was “imbued with more significance” than if that information had been viewed in isolation. The jury, therefore, was entitled to infer that the parka was burned in log burner, even though there was not a scrap of real evidence to support that inference. In turn, if the jury inferred that Luke disposed of the Parka, then they were entitled to infer he disposed of the “missing” knife and pouch as well (even the Com-

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mission put the word “missing” in inverted commas) and that the missing knife was the murder weapon. This, they suggested, was supported by the evidence of Prof Busuttill, the pathologist, that the sample knife “could have caused” the injuries.

The lack of solid, reliable evidence for any of this was not addressed. It was enough, it seems, for a series of claims to be linked together to make them seem more solid than they really were. The inference that a parka was burned anywhere, far less in the log burner, was not supported by evidence. The inference that there was a “missing” knife was not supported by evidence – in fact, the case papers included a statement from Luke’s solicitor indicating that he handed the “missing” knife to investigators. Can it really be enough that a convincing story, no matter how lacking in real evidence, is enough to create a “circumstantial” case that carries a life sentence if a conviction is obtained on the basis of it?

What is the point of a review commission that does not pick apart that story and look for the evidence to support it? And, if the evidence is not there, does not send the case back to the court of appeal on the basis that the case has not been proven, beyond reasonable doubt, because there is no evidence on which to do so?

The Commission examined lies Luke was said to have told the police: that he thought Jodi had done something not to be allowed out and might have been grounded, the level of his cannabis use, phone calls to Kimberley Thomson and Jodi possibly “giving her mum cheek.” What significance any of these “lies” had on the claim that Luke was the murderer – even if they had been proven to be lies – is not clear.

It was stated that Luke could not have seen the scrunchie in Jodi’s hair on the night of the murder, but that he had made mention of it. That information confused me for a long time since I had never seen anything in Luke’s interrogations making reference to it.

That was because Luke never actually said it in any police interview. A BBC journalist, Iain Overton, had spoken “off the record” with Luke and made a note in his notebook that said “Bobble out of hair” – there was no context to the note and Mr Overton could not say whether or not it was a direct quote of Luke’s that he had written down. He agreed that it was not a term he would normally have been familiar with. That is all the evidence the court had on which to base its claim that Luke had spo-

ken about seeing the scrunchie in Jodi's hair when it would have been impossible for him to do so unless he had been much closer to Jodi's body. (My girls were 11 and 13 years old at the time; "bobble" was not a term they would use either – they referred to hair ties and scrunchies.)

Information in the defence files indicates that Mr Overton was unhappy with handing over his notes because the interview with Luke was informal and there was no clarity surrounding exactly what the "bobble out of hair" note meant.

*Having noted that it would be fatuous to argue that submissions about the inconsistencies in his accounts to the police and the lies he told police were anything other than damaging to his defence, the Commission's report went on to say, with regard to the section 14 interview, in addition, it appears to the commission that the Advocate Depute could not have made the specific submission about the bobble/scrunchie because... there would not have been any evidence before the jury about the point the applicant reached after he had gone through the V and down the other side of the wall.*

What the Commission was saying here is that alleged inconsistencies in Luke's accounts that were put before the jury were obviously damaging to his defence. The evidence from the Section 14 interview provided the jury with information about how close to Jodi's body Luke got that night – without that information, the prosecution could not have claimed that it would have been impossible for Luke to see the scrunchie in Jodi's hair because, according to his Section 14 interview, he did not get close enough to the body.

There are so many aspects to this one small point which are far removed from what we perceive as justice. The Section 14 interview breached Luke's rights to legal advice and assistance, but, had information from it not been allowed at trial, the Commission concluded, Luke's defence would have been compromised by its omission. However, since it was put before the jury, it allowed the Prosecution to link in another piece of information (again with nothing to support it) that Luke had seen something he could not have seen unless he was the murderer. Whatever damage not having the Section 14 evidence before the jury might have done to Luke's defence, it's unlikely to have been as damaging as the claim that there was "evidence" to suggest that Luke had been much closer to Jodi's body at some earlier point that evening.

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It was also the second time the media had been involved in conduct which led to apparently incriminating evidence against Luke being produced, the Sky interview being the first. There is no point in systems designed to protect against the danger of self-incrimination if they can be circumvented by the media.

Of all of the prejudicial evidence put before the jury: bottles of urine, satanic references on jotters, possession of a Manson DVD, the purchase of a knife and pouch after the murder and the attack on his mother's character (the tattoo evidence), the Commission noted that Donald Findlay objected only to the bottles of urine and the tattoo evidence, concluding that the failure to object to the others could only be framed as defective defence. But the court has a responsibility to ensure that trials are fair—allowing the tattoo evidence because (as was later accepted at appeal) it attacked the credibility of Corinne Mitchell is hardly “fair.”

However, in the event, the Commission did not consider that the leading of the evidence about satanic writings and the Manson DVD were an attack on Luke's character, or that the references to the bottles of urine were “significant.”

The knife and pouch were “not relevant” but the Commission agreed that these objects, possessed by Luke, were “particularly inappropriate mementoes about the murder” and all of this had “probative value,” rather than being an attack on character.

What do slogans from computer games and lines from songs prove about the murder of a 14-year-old girl? The Commission had before it the information that the so-called satanic slogans were nothing of the sort – the jury did not. Whether Donald Findlay objected or not is irrelevant – the jury heard the evidence about the bottles of urine and the supposed Manson/Black Dahlia connection. Again, what was their probative value? Here, we see the reach of circumstantial cases – the suggestion that holding onto bottles of urine and being “obsessed” with Marilyn Manson and the Black Dahlia is enough, when taken together with other, equally flimsy circumstantial information, to conclude that this “weird” teenager was capable of such a brutal murder and worse, to make the leap from there to the conclusion that he did, in fact, carry out such a murder.

When we look at this carefully, the attack on Luke's character was cen-

tral to the prosecution case – even the Commission alluded to that in its comment about the Advocate Depute’s speech to the jury. So, the probative value of the evidence as led at trial, lay in its success at attacking Luke’s character and credibility. And still, the Commission concluded that that evidence was not an attack on his character. Is there a difference between credibility and character? Can credibility be maintained when character has been assassinated?

The Commission’s treatment of the witness who identified “Stocky Man” back in 2003 is somewhat surprising. In her first statement, the witness was quite vague about the youth she saw but, some weeks later, she saw a man on television and returned to the police to say she was sure he was the stocky man she saw on the evening of the murder. The Commission interviewed this witness ten years later. Perhaps unsurprisingly, she could not remember what she had told police officers at the time. She also appeared, in the commission’s report of the interview, to be distancing herself from the identification she made all those years earlier. That would not be surprising – at the time the original statements were given, the case had not fully developed into the massively prejudicial media coverage of Luke as the sole suspect. Nor, by then, was hostility to those who had reservations about the treatment of the Mitchell family obvious.

The Commission concluded that there had been a failure to disclose this witness’s statements to the defence, but that there would have been limited opportunity for the defence team to use them. This was based on questions put to Donald Findlay about how he would have used that information, had it been disclosed. Once again, the Commission relied on speculation whilst maintaining that it does not speculate about what might have happened if the case had been conducted differently.

Finally, the Commission concluded that the witness’s recall was likely to be more reliable ten years later than it was at the time of the events she spoke of.

What the Commission did not comment on was the potential impact of the stocky Man sighting on the Andrina Bryson sighting. If the information about him had been disclosed at the time, the defence may very well have used it to undermine Andrina Bryson’s evidence – how could she have not only failed to see the logos on Jodi’s sweatshirt, but also the Stocky Man, whom Mrs Bryson would have driven past at literally

the same time she made her sighting? Furthermore, all of the information given to police about the person identified as Stocky Man stated that he did not leave his house that afternoon – since the prosecution case relied on claiming that Luke had no alibi for the time of the murder, the defence could have made a significant impression on the jury by demonstrating that another male, close to Jodi, may not only have been seen within feet of her before she disappeared, but may also have lied about his whereabouts at the time. But, since the matter was not raised in court, the Commission was under no obligation to comment on it.

On the basis of the Commission’s findings, I would like to take the opportunity to speculate in ways the Commission is not allowed to do.

If Luke had been afforded legal advice and assistance, all of the information in the Section 14 interview would have been unavailable to the prosecution and would have restricted their ability to construct the case the way it was constructed. There would have been no Manson/Dahlia evidence, no bottles of urine evidence, and no lies to the police before the jury. There would be no portrayal of a boy “taking control” of police interviews, cool, calm and unfazed. If his mother and brother had been afforded the same protections, there would have been no basis for claims of a “cover-up” by them, no basis for the claim that Shane was lying about dinner that evening, and no humiliating evidence to destroy Shane at trial.

There would have been an opportunity for the defence to start building its case in August 2003, some eight months earlier than the defence team ultimately came into being and, perhaps, the circumstances then would have been more conducive to Luke giving evidence at trial.

If the police deployment of the Family Liaison Officer had been conducted within the rules, Luke’s family would have been aware much sooner that he was being treated as a suspect and their every word was being recorded for use against them later. There would have been no sketches on which to cast sinister inference, no evidence about Luke’s “questionable” music tastes and no suggestion that he asked the FLO about the Eminem song “Kim” (a song about a man murdering his partner). The only evidence about this came directly from the FLO – there is nothing, anywhere, to support it – when questioned about the mention of this song, Luke answered that it was the FLO who had raised the subject.

If information about Stocky Man had been disclosed to the defence, they would have been able to show the jury evidence that a man seen following Jodi just after she left home that evening was not Luke. And if investigators had followed up on Mr A, the defence could have put it to the jury that the eyewitnesses may have mistakenly identified the youth on the Newbattle Road that evening.

If the influence of Mark “Bill” Bryson had been before the jury, the credibility and impartiality of Andrina Bryson’s evidence would have been compromised and if the claims of John Ferris, that his gran and another relative told him not to tell police he and Dickie were on the path at the exact claimed time of the murder had also been put to the jury, any evidence he, Dickie and potentially Alice Walker gave would have been seriously undermined.

If claims about the parka, the log burner and the “missing” knife had been required to be supported by evidence before being put before the jury, none of that information would have been allowed at trial.

And, perhaps most importantly of all, if investigators had not jumped to conclusions about who murdered Jodi, within half an hour of the finding of her body, the opportunity to find the real killer would have remained open. Instead, fifteen years later, a young man remains incarcerated, having now spent almost as much of his life in prison as he did free (and he has just turned 30 years old) while a mountain of unanswered questions remains ignored. And justice for a young girl, whose life was just beginning, has never been achieved.

The Commission’s review of the case took two years to complete. That is not intended as a criticism of the Commission – it was a large application and a complex case but the effect of waiting for this final resort to report its findings was immense. By early 2014, my relationship with Corinne had become strained, difficult and verging on unsustainable. Eleven years of relentless campaigning, media and local hostility, continuous frustration and disappointment had taken their toll. Corinne and I strongly disagreed on a number of aspects of how to proceed, always mindful of a hostile media ready to pounce.

Corinne did not understand much of the legal technicalities in Luke’s case. Again, that is not a criticism of Corinne - I’ve met so many people whose loved ones have been wrongly convicted and whose focus remains on what the system *should* have done. I was different, in that

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I hadn't had the emotional trauma of having someone I loved treated that way, so I was able to step back and take a more analytical approach. But it was the difference in understandings about the legal technicalities, in particular, that led to so many misunderstandings and disagreements about how to proceed

In July that year, I received the SCCRC's decision in the mail stating that they would not be referring the case back to the Court of Appeal. It was a shattering blow and brought the already fragile relationship between myself and Corinne to breaking point. Less than two weeks later, after eleven years working relentlessly on Luke's behalf, I arrived home on the day of my daughter's birthday to a note, hand-delivered through my letterbox. It stated simply that Power of Attorney, granted to me several years earlier to allow me access to documents and individuals related to the case, was revoked with immediate effect.

As a result, the website set up to campaign for Luke had to be taken down. So long as I had access to the case papers, I could back up everything I put out publicly on the site – without that access, I left myself and the Wrongly Accused Person organisation that hosted the site, wide open to allegations of dishonesty and even legal challenge. It was a difficult development to accept, pushing me to the brink of mental and emotional collapse. Everything, it seemed, had been for nothing.

### **Some final thoughts**

One important thing I have discovered over the last fifteen years is that innocent, wrongly convicted individuals and their families are strongly dependent on hope to sustain them through the many battles they face in their fight for justice. In 2014, following the SCCRC conclusion in Luke's case and my removal from the case, hope, for me, was gone.

The strength of the system, the lack of public interest and the duplicity of much of the media led me to a place where I no longer believed what I was doing was worth doing any more. I felt the pain of those families screaming into the void. My heart broke over every suicide, every death brought about by the stress and trauma, every family torn apart by the disbelief, confusion, conflicting advice and the impossible situation of life on the outside carrying on as normal when there was nothing normal left.

I packed away all my papers and books and took a nine-to-five office job. For the first time in eleven years, my working day was a mere eight hours and my weekends were free, compared to the sixteen and seventeen hours I spent, seven days a week, working on cases or studying and researching aspects of the justice system. I withdrew from all internet activity concerning wrongful convictions and tried to rebuild a life similar to the one I lived prior to 2003.

For 19 months, I almost succeeded. I still maintained contact with two families, with whom I'd been involved for almost as long as Luke's case and I still got the occasional request for help or advice but, in general, I managed to shut out the whole subject until February 2016. All that time, I realised how fortunate I was to have a choice in the matter – the families trying to challenge wrongful convictions did not have the option to throw in the towel and walk away.

Then, in February 2016, a new work colleague asked me one day, “Are you the Sandra Lean who was involved with the Luke Mitchell case?” I was slightly taken aback – as a general rule, I didn't discuss the case at work and only a select few colleagues knew about my involvement ... this person wasn't one of them. I was also wary – the office was staffed mainly by local people and I had no idea whether this person was a Luke supporter or not. I told him I was that Sandra Lean and asked why he wanted to know. He had been a school friend of Luke's and had always doubted the case against him, as had his mother, but they had not been particularly vocal about their concerns because of the level of hostility in the area. This was almost thirteen years after the murder!

Our discussions about the case were enlightening on both sides and I found my passion for the case re-emerging. My work colleague asked if I'd ever considered writing a book about the case. I had! In fact, I'd written thousands of words about it over the years but had never had the time to pull all of the work together into a comprehensive account. My first attempts to do so in 2016, at this colleague's urging, were discouraging – the case was so wide, so sprawling, so confusing and contradictory that I doubted I'd ever manage to complete it.

Later that year, I was sent details of a case where conviction had been obtained following the removal of the Double Jeopardy protection – that a person, once tried and acquitted, could never again be tried for the same crime. The young man at the centre of the case, Matthew Hamlen,

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had been arrested and held on remand in mid-2010, before being acquitted at trial in January 2012. Two years later, in 2014, police investigators came after him again on the basis of “significant new evidence” – DNA apparently found on the victim’s blouse six years after the murder. In January 2016, almost exactly four years after the acquittal, a jury found him guilty. The case against him, in both trials, was appallingly weak. Both trials involved deeply flawed forensic evidence and failures to disclose evidence to the defence. The selection of this man as the “prime suspect” contradicted everything the police investigation had previously claimed about the murderer – he was 4” too short, his shoe size was at least 2 sizes too small and he had no history of burglary in a case that was portrayed as a burglary gone wrong. But it was the DNA evidence in the second trial that locked me into the case. Quite simply, there was a massive possibility – probability even - that the DNA evidence was the result of contamination. What was not clear was whether that contamination was accidental or deliberate.

The realisation that things were even worse in 2016 than they had been in 2003 was all it took. I could not let all the knowledge and experience I had amassed go to waste, when it could be helping people fight to clear their names. After much thought and discussion, I decided that the best way I could help others (without destroying myself ) was to get information into the public domain.

It was not my place to worry about whether or not people took notice of it; it was my responsibility to ensure that information was there for anyone who might need it. I realised that the best way I could assist the attempt to obtain justice for Luke and Jodi now would be to put the entire story into the public domain – I knew that so many aspects of that story turned up again and again in other cases of wrongful conviction, so, at the same time as raising awareness about Luke’s case, the story might be helpful to others who found themselves in the same circumstances.

By the end of 2017, the book was complete and, as it filtered through the editing process, I found myself facing an old, familiar dilemma. In putting out the book, I was casting myself into the role of messenger and we all know what tends to happen to messengers when the message they are delivering is not well received.

Was I prepared to face the same levels of hostility and aggression that had hounded me from 2007?

I was acutely aware that, in exposing the failings in the police investigation and trial processes, I left myself wide open to accusations of being disrespectful to Jodi's family and her memory. Despite these concerns, I still believe that only by making public all of the aspects of the case can there be any chance of true justice – for Jodi and for Luke – ever being obtained. With all of the facts before them (rather than the selective and distorted information that has been in the public domain for the last fifteen years), people are free to decide for themselves what they do or do not believe.

Around the same time, I received a phone call that presented me with a further dilemma. The Miscarriages of Justice Organisation (MOJO), which had taken on Luke's case following my departure in 2014, was putting together a team to conduct a full review of Luke's case. Would I be willing to be part of that team?

I was surprised by the request; apart from the two cases in which I'd remained actively (but privately) involved, to all intents and purposes, I no longer had any connection with wrongful accusations and convictions. I explained that I had just finished writing the book, in case that would have any bearing on my being part of the review team, but it was decided that, since everything had been written prior to MOJO's request, that should not be an issue.

Even still, becoming part of the review team was more than just putting information into the public domain – it meant becoming actively involved in Luke's case again. I thought long and hard about it.

After much soul searching, I realised there was only one thing I could do – a young man, who had spent almost half of his life in prison with not a scrap of evidence to prove he did anything wrong, was still there. And, until the truth about what happened to Jodi is fully revealed, justice, for her, has not been served.

The pursuit and conviction of Luke and the resultant failure to obtain true justice for Luke and Jodi were done in my name and on my behalf, as they are for everyone whom our Justice System is supposed to serve. I could not know that and do nothing to try to help put right what went

so terribly wrong all those years ago.

The truth about Hillsborough was only officially acknowledged after all of the evidence was released to the Hillsborough Independent Panel for a thorough review. If the Scottish Justice System had nothing to hide about the Luke Mitchell case, it should have nothing to fear in releasing all of the documents to a review panel. Perhaps a Full Case Review team might be able to make such an argument successfully? As I was considering these matters, a quote serendipitously appeared on my Facebook page:

*If you are neutral in situations of injustice, you have chosen the side of the oppressor ... Desmond Tutu*

As this book goes to print, work on the case review has begun.

*Profits from this book are being donated to a new organisation, Long Road to Justice, which aims, in conjunction with other organisations, to assist and highlight cases of claimed wrongful conviction and to educate the wider public about injustice in the UK.*



