

Transcript of the Sheku Bayoh Inquiry

Wednesday, 8 June 2022

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(10.00 am)

LORD BRACADALE: Good morning. Ms Grahame.

PS SCOTT MAXWELL (continued)

Questions from MS GRAHAME (continued)

MS GRAHAME: Thank you.

Good morning. Yesterday we were just turning to you going to see PC Short.

A. Yes, that's correct.

Q. And you spoke about her being at the Transit van or the custody van?

A. Yes, that's correct.

Q. And did you tell me how long after you arrived did you then go to see PC Short?

A. I can't put an exact time on it. As I said, I had come to the scene obviously, had a quick assessment of what was going on with Mr Bayoh, the officers, and then had gone to Nicole, so I can't put an exact time, but 30 seconds to a minute.

Q. So a short period anyway?

A. Yes, a short period.

Q. We talked yesterday about how things were happening quickly --

A. Yes.

Q. -- and timings are difficult to gauge?

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1 A. Yes.

2 Q. Can I ask you about something you said in your -- the
3 notes that you prepared, so that's PIRC 267, please. If
4 we could have that on the screen. I think it is page 3.
5 I'm looking for -- if you hold on a second, I have
6 missed the page.

7 (Pause).

8 I will read out what it is I'm interested in asking
9 about and I will find the reference in a moment. Oh,
10 I can see it on the screen, thank you very much:

11 "I then turned my attentions to PC Short who I had
12 been advised had been badly injured."

13 And this is the sort of note that I'm interested in
14 asking you about. So who was it that advised you that
15 she had been badly injured?

16 A. Again, that's probably more of a play on words than
17 actually what -- the actual evidence that was given at
18 the time. Obviously I had heard the "officer injured"
19 transmission and then my initial update from Alan --
20 PC Paton in respects to Nicole had been attacked and
21 then I believe the information that I got from
22 PC Tomlinson as well, so I think all of those
23 combinations is that's what's led to me writing that
24 particular statement. I didn't have any information
25 that she had been badly injured as such.

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1 Q. Right, so when you say you had been advised she had been
2 badly injured --

3 A. No one had come to me and said "She is suffering from
4 this injury and it's serious because of this", and I --

5 Q. And these notes were written in retrospect?

6 A. Yes, and I was emotional, et cetera, so as I say, they
7 were just more for notes. The PIRC statement was more
8 in clarity after reflection.

9 Q. So when -- going back to 3 May, when you went to see
10 PC Short --

11 A. Yes.

12 Q. -- you had said yesterday she was the priority, you
13 wanted to go and see her?

14 A. Yes.

15 Q. What were your concerns at that time about PC Short?

16 A. Obviously when the transmission -- obviously it happened
17 very fast -- when the transmission came in the
18 correlation between the knife, "Officer injured",
19 automatic assumption is that it's something -- she has
20 been potentially injured with a knife, or through my
21 experience I know officers that have been involved in
22 struggles that have been assaulted, et cetera, so that
23 kind of thought process was going through my head. Once
24 I had assessed that the officers were in control of
25 Mr Bayoh, then my priority and my risk assessment at

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1 that time was to check on PC Short to make sure there
2 was no life-threatening injuries.

3 Q. So you were concerned when you went to see her at the
4 van that she maybe had life-threatening injuries?

5 A. Yes, as I say, in this role you think of every
6 connotation.

7 Q. Okay. Can I ask you -- it might be easier if we just
8 look at the spreadsheet actually. Can I ask you to look
9 at an Airwaves message, 7.21.38. It's at the very top
10 of page 5 of the spreadsheet. So this is -- you
11 explained to us yesterday that your police vehicle
12 arrived -- this is at the bottom of page 5 actually,
13 7.22.25, where it said:

14 "A smaller marked police car arrives at the scene."
15 You identified that as your car yesterday?

16 A. Yes.

17 Q. You were the fifth vehicle there. So at the very top of
18 page 5 there was a transmission from PC Alan Smith at
19 7.21.38 saying:

20 "Officer's been punched to the back of the head. No
21 obvious serious injuries. Male secure on ground."

22 So PC Smith, who we have heard about yesterday, has
23 said "No obvious serious injuries", and I wondered did
24 you hear that transmission first of all?

25 A. I can't recall, I can't recall honestly.

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1 Q. So were you aware when you went to see Nicole Short at
2 the van, at the Transit van, after you arrived, were you
3 aware that PC Smith had seen her and took the view she
4 had no obvious or serious injuries?

5 A. I can't recall. I can't recall.

6 Q. You don't recall hearing that?

7 A. I don't recall hearing that or forming that -- or
8 hearing it and forming that opinion in my head. I still
9 believed it was something more serious than what was ...

10 Q. Right. You have mentioned PC Paton telling you about
11 the situation and can I have a look at page 3 of
12 PIRC 267, please, and it is paragraph 2 I'm interested
13 in. The paragraphs aren't very clearly defined, so the
14 part that I'm interested in relates to page 3,
15 paragraph 2:

16 "PC Paton who was suffering from shock and the after
17 effects of the PAVA and CS spray stated to me something
18 similar to, 'the male came at us, we shouted at him to
19 stop but he continued'. 'We sprayed him with CS and
20 PAVA but he did not stop and he kept coming'. 'He went
21 for Nicole and kicked and punched her to the ground'."

22 Now, we briefly mentioned this kicking and punching
23 to the ground yesterday.

24 A. Yes.

25 Q. Can you explain when was it that PC Paton said those

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1 things to you?

2 A. That was when I arrived at the scene when we were
3 standing I was looking to see what the risk assessment
4 was going on with Mr Bayoh, I had asked PC Paton,
5 briefly, obviously what happened, and that's when he has
6 come out with that.

7 Q. So that's when you have -- just shortly after you
8 arrived?

9 A. Yes.

10 Q. You're standing in the area of the restraint --

11 A. Yes.

12 Q. -- on Hayfield Road, and you asked PC Paton what had
13 happened?

14 A. Yes.

15 Q. And at the time you sketched out these notes, those were
16 the things that you recall him saying --

17 A. Yes.

18 Q. -- that you have put in speech marks, quotation marks?

19 A. Yes, yes.

20 Q. And were those, to the best of your recollection, the
21 words that he used?

22 A. Yes, that's what I believe he said to me at the time.

23 Q. And we have not heard from PC Paton, but can I ask you
24 about this phrase "He went for Nicole and kicked and
25 punched her to the ground". So was PC Paton giving you

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1 the impression at that point that Mr Bayoh had kicked
2 and punched her to the ground?

3 A. That was my assumption. He never named specifics or
4 identified Mr Bayoh as responsible, it was just the
5 assumption was that the male that we had under control
6 had been responsible.

7 Q. We understand that people didn't know who he was at that
8 time.

9 A. Yes, absolutely.

10 Q. But the male who was at that time on the ground was the
11 one who had kicked and punched her to the ground?

12 A. Yes, that was the link I made at the time.

13 Q. So that was the first point at which you understood that
14 had occurred?

15 A. Yes.

16 Q. And that came from PC Paton?

17 A. Yes.

18 Q. Now, we may have heard from PC Walker that when he was
19 watching the strike to Nicole Short in Hayfield Road
20 earlier, before you arrived at the scene, that PC Paton
21 was to his left at the van and incapacitated because of
22 the spray?

23 A. Okay.

24 Q. So did PC Paton give you the impression when he spoke to
25 you and explained what had happened that that was from

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- 1 his own recollection or did he make that clear?
- 2 A. I can't -- again, in the passage of time it was very
3 quick. At the end of the day he has just given a quick
4 resumé, I've never stopped to ask what the provenance of
5 that was at that particular time, so whether he -- that
6 was his own experience, or he had been told, I don't
7 know. That was the information I received at that time.
- 8 Q. So it was really just PC Paton relaying that information
9 to you?
- 10 A. Yes, that's correct.
- 11 Q. He didn't explain whether he had seen it himself --
- 12 A. No.
- 13 Q. -- or whether he had got the information from anywhere?
- 14 A. No.
- 15 Q. Right. And describe -- when you arrived to see
16 PC Short, describe how she was?
- 17 A. She was sort of doubled over, looking in pain, she was
18 shaking visibly, upset, crying, sort of mumbling, not
19 making much sense. It took me a wee while to get
20 a reaction off her to say sort of, "Look, I'm here, is
21 everything okay?" So I could carry out a quick
22 assessment of her just to make sure there were no
23 obvious injuries or bleeding.
- 24 Q. And when you made that assessment, what did you do?
- 25 A. Obviously once I had assessed that there was nothing

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1 visibly obvious, I put her into the Transit van in the
2 front seat just to get her in one place so she wasn't
3 walking about aimlessly.

4 Q. When you say nothing visibly obvious, did you check her
5 head?

6 A. No, I didn't do any like physical -- I asked if there
7 was anything obvious but -- it would have been just
8 a very generalised, you know, "Are you okay?" visual
9 check.

10 Q. And what was her reply?

11 A. I think it was something similar to that she had been
12 kicked and punched. That was my recollection anyway.
13 I can't say for certain without referring back to my
14 statement, what I have put in the statement however.

15 Q. I think you mentioned it yesterday?

16 A. Yes, that was just my recollection at the time.

17 Q. Can we have a look at your Inquiry statement at
18 paragraph 29, please. You were asked by the Inquiry
19 team how you assisted her and you say:

20 "I assessed her and I put her in the van pending the
21 ambulance's arrival. I did this so she would be warm
22 and more comfortable as she was in shock. I also chased
23 up the ambulance arriving on the scene."

24 Now, we have heard that it was -- it had been
25 raining and it was quite a wet day and it was cool or

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- 1 cold; is that your recollection of the weather?
- 2 A. Yes.
- 3 Q. And was that part of the reason you made her more
4 comfortable and made her warm?
- 5 A. Yes, I was just --
- 6 Q. Thank you. Can I ask you to look at the spreadsheet,
7 7.23.34, so that's on page 6. So it is two-thirds of
8 the way down page 6, 7.23.34, and it is a message from
9 you and we can play any of these if you wish?
- 10 A. No that's fine.
- 11 Q. Scott Maxwell:
12 "PC Short's been struck to the head, is a bit upset.
13 I'm going to need an ambulance here to check her over.
14 No bleeding, no visible injury, over."
15 So, do you remember making that transmission?
- 16 A. Yes, I think I have heard it in the evidence so yes,
17 that's definitely me that's made that.
- 18 Q. So was this transmission made after you had been over to
19 the Transit van to see Nicole Short?
- 20 A. I would believe so, yes.
- 21 Q. How long after?
- 22 A. As you can see, the previous entry from Inspector Kay
23 was looking for an update on injury and I think that's
24 why I have responded to that.
- 25 Q. Right, so Kay had the transmission 7.23.30:

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1 "Can I get an update on any injury?"

2 A. Yes.

3 Q. And that's a message that's come over the transmission
4 and then you have replied, effectively, to that then?

5 A. I believe so, yes. That's ...

6 Q. So when you replied to it, do you remember where you
7 were at that moment?

8 A. I would have been standing in the general vicinity of
9 round Nicole or heading back towards where Mr Bayoh was
10 being restrained.

11 Q. So near the Transit van or heading back towards the
12 restraint, but you had seen Nicole Short at that point
13 yourself?

14 A. Yes, yes, I believe so, yes.

15 Q. There's no mention in that transmission of kicking or
16 punching and if -- just exploring that, if PC Short had
17 said to you at that time -- I know yesterday you said
18 you weren't 100% sure -- if she had said to you at the
19 time she had been kicked and punched, is that the sort
20 of information that you would have updated Stephen Kay
21 with?

22 A. Quite possibly, yes. The way, you know, I explain it is
23 when I have arrived there, as I have been receiving
24 information, I have been transmitting it for the call
25 log and clarity and for any potential medical updates,

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1 so there's every chance that I would have said that,
2 yes. Absolutely.

3 Q. So does it make you wonder now whether your recollection
4 is maybe --

5 A. Well, that's what I recollected at the time. I couldn't
6 say whether or not -- I know that she had been struck,
7 but whether she was kicked and punched I couldn't sit
8 here now and say categorically that's the exact -- what
9 was said.

10 Q. So if we have not heard that from Nicole Short, you
11 wouldn't dispute that she didn't say that?

12 A. No.

13 Q. Thank you. And then Stephen Kay, after your update,
14 says:

15 "Control, can you get an ambulance please for
16 PC Short."

17 A. Yes.

18 Q. So that is a request for an ambulance but for PC Short
19 at that point?

20 A. I believe so, yes.

21 Q. Was it your understanding that control would then do
22 that because --

23 A. Yes.

24 Q. -- they then say "Roger"?

25 A. Yes.

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1 Q. And I think that's the norm, isn't it, that any request
2 for an ambulance the control room --

3 A. They would facilitate that.

4 Q. -- would actually arrange that for your separately?

5 A. Yes. Unless they've got ongoing incidents and they ask
6 us to do that separately, but yes, that would be
7 definitely a control function.

8 Q. But that wasn't the case here?

9 A. It wasn't the case, it was control function.

10 Q. Then can we have a look over the page please, 7.24.21.
11 You start a transmission "Control from 411", and they
12 say "Go ahead", and then at 7.24.28 you say:

13 "Although there's no visible injuries to PC Short
14 she has been stomped to the body a few times et cetera
15 and struck to the head. Can see if the ambulance can
16 attend as soon as possible."

17 So you at least knew at that point that she had been
18 struck to the head --

19 A. Yes.

20 Q. -- and then you mention that she has been stomped to the
21 body?

22 A. Yes.

23 Q. And could we have a look at your Inquiry statement,
24 paragraphs 26 and 27, please. You were asked about this
25 transmission by the Inquiry team and you say you can't

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1 confirm the time of the Airwave transmission:

2 "... but I have listened to the relevant recording.

3 I said stomped."

4 A. Yes.

5 Q. So that was the word you used?

6 A. Yes.

7 Q. Not stamped?

8 A. No.

9 Q. And then paragraph 27, you were asked to explain how you

10 had received this information and you say:

11 "I think that prior to this transmission

12 PC Tomlinson had heard my earlier transmission and he

13 then told me that PC Short had been stamped on.

14 "When I was using the word stomped I meant stamped.

15 I was telling the ACR this information so it was logged

16 and so the ambulance crew would know for their

17 assessment purposes."

18 So this Airwaves transmission with the reference to

19 "stomped", that was information that you had received

20 from PC Tomlinson?

21 A. That's correct.

22 Q. And you were relaying that to --

23 A. That's correct.

24 Q. -- the control room effectively.

25 A. I haven't witnessed that; that was PC Tomlinson that

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- 1 told me that.
- 2 Q. You weren't present?
- 3 A. No.
- 4 Q. And you didn't witness any of that?
- 5 A. No. It's purely relaying the information back as I was
6 receiving it.
- 7 Q. Right, thank you. And when you made that Airwaves
8 transmission, can you help me understand where you were
9 at that time?
- 10 A. I believe I would have been, again, in the same area,
11 making my way back towards Mr Bayoh, if not already
12 there. It's hard to tell.
- 13 Q. So maybe travelling the distance between the Transit van
14 and the restraint area?
- 15 A. Yes, mm-hm.
- 16 Q. Or maybe had reached the area of the restraint?
- 17 A. Yes, yes.
- 18 Q. So where were you when PC Tomlinson shared that
19 information about the stomp or the stamp?
- 20 A. It was literally PC Tomlinson was walking about in
21 a shocked state and he approached me, I think when he
22 had been hearing radio messages about Nicole's injuries
23 and he has come to pass that information on to me again.
- 24 Q. Where were you when he approached you?
- 25 A. I was definitely on the road but I don't know -- like

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1 I say, I can't be sure if I was en route or I had
2 already arrived at Mr Bayoh.

3 Q. So not far from the restraint anyway?

4 A. Yes.

5 Q. And when PC Tomlinson shared that information with you,
6 do you remember what he said?

7 A. Not the exact words, just I think it was more to
8 reiterate the further information that I hadn't been
9 told.

10 Q. And then at 7.25.06, if we go back to the spreadsheet on
11 the same page, page 7, you then -- control say they're
12 getting an ambulance now and they want to confirm the
13 actual locus and you then confirm it is Hayfield Road
14 junction with Hendry Road.

15 A. Yes.

16 Q. So you're at that point confirming the locus?

17 A. Yes.

18 Q. Were you back at the restraint by that stage?

19 A. I believe I was very close to it, yes, I was nearby.

20 Q. Right, thank you. Then 7.25.17, PC Smith's transmission
21 says:

22 "This male now certainly appears to be unconscious,
23 breathing, not responsive, get an ambulance for him."

24 So you are at that area. Did you hear PC Smith make
25 that transmission?

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1 A. I don't think I heard him say that particular one.
2 I was privy to the one whereby he was unconscious and
3 not breathing.
4 Q. Right. So if you were in the area of the restraint at
5 that time, how would it be that you wouldn't hear that
6 transmission?
7 A. I can't recall. It's honestly ...
8 Q. So you don't recall hearing that one at all?
9 A. No.
10 Q. So you weren't aware that an ambulance had been sought?
11 A. I think once that had been passed, then that's when
12 I was kind of made aware that it was now going to a more
13 serious situation.
14 Q. Who made you aware?
15 A. I believe it was Alan Smith.
16 Q. So was this -- if you didn't hear this transmission it
17 might be difficult to answer this question, but was it
18 soon after he appreciated that Mr Bayoh was unconscious?
19 A. I couldn't comment on that, but I would like to think it
20 would have been straight away.
21 Q. Right. When you returned to the area of the restraint,
22 what position was Mr Bayoh in?
23 A. On his left-hand side still --
24 Q. Right.
25 A. -- as I explained yesterday.

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1 Q. So the same position as he had been in --

2 A. Yes, the head south, legs north.

3 Q. -- before you went to see Nicole Short?

4 A. Yes, yes, yes.

5 Q. And he was still on the ground?

6 A. Yes.

7 Q. Was he in handcuffs by that stage?

8 A. Yes.

9 Q. And leg restraints?

10 A. Yes.

11 Q. How long after -- we can see that PC Smith made that

12 transmission about the ambulance at 7.25.17 and you have

13 said that you became aware that an ambulance had been

14 called for him. How long after your return to the

15 restraint, or the area of the restraint did you become

16 aware that an ambulance had been called?

17 A. I would imagine straightaway.

18 Q. Straightaway. Did you consider at that stage, knowing

19 that he was a -- an ambulance had been called, he was

20 unconscious, instructing the removal of his handcuffs?

21 A. To be honest it was all happening so fast, that wasn't

22 the first point of reference. It was more making sure

23 that he was being cared for and that the officers were

24 doing what they had to do, I was monitoring that. The

25 handcuffs element was kind of the last thing on my mind

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1 at that time. It was more to do with making sure that
2 we can look after Mr Bayoh.

3 Q. How did you go about making sure he was being cared for?

4 A. Well, he was in what's known as the recovery position on
5 his side. PC Smith, again, I had full confidence in,
6 officer safety trainer, trains first aid, he had the
7 full situation in control. He was monitoring the
8 breathing and I was just making sure that that was all
9 taking place and we were satisfied that we were doing
10 everything we could at that time.

11 Q. So you were happy to stand back and leave matters in the
12 capable hands of PC Smith?

13 A. Yes. I'm a supervisor so I don't do everything, you
14 know, I supervise, so if everything is getting done
15 correctly then I'm happy.

16 Q. Okay. And at that point you were satisfied that
17 everything was --

18 A. Yes.

19 Q. -- being done correctly?

20 A. Yes.

21 Q. Did you consider instructing the removal of his leg
22 restraints?

23 A. Not at that time, no.

24 Q. Why not?

25 A. At the time it just happened, and again, time

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1 constraints, it was probably one of the second things
2 I would think about. It was more to do with obviously
3 making sure that he was okay first. There has been past
4 instances where -- I'm not saying that he was putting
5 that on at the time, but there has been occasions where
6 people have been known to feign unconsciousness and then
7 once we remove restraints they kick-off again. I'm not
8 saying that was this in this instance, however, there's
9 a few factors we need to iron out first before we remove
10 restraints.

11 Q. Have you personally got experience of people feigning or
12 faking unconsciousness?

13 A. Yes, yes.

14 Q. And has that caused problems in the past?

15 A. Yes, it's officer safety and it's a risk to them also.
16 If you have removed their restraints and then you're
17 having to go and put on another restraint, again, you're
18 going back into the territory that you tried to get away
19 from at the start. You don't want to have the
20 restraint -- physical altercation with anyone once
21 you're in control.

22 Q. Right. And did you consider instructing a blanket or
23 a cover be obtained for Mr Bayoh; we have heard he was
24 in a T-shirt?

25 A. Well, not at that time. What we'll go onto is it moved

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1 from unconsciousness to not breathing very quickly, so
2 I -- putting a blanket would have impeded any
3 resuscitation at that time.

4 Q. There was no resuscitation going on at this stage --

5 A. Yes.

6 Q. -- this is when he was just unconscious, he was still
7 breathing. Did you consider trying to keep him warm?
8 You have talked about in your Inquiry statement keeping
9 Nicole Short warm.

10 A. Mm-hm.

11 Q. I just wondered about whether you considered keeping
12 Mr Bayoh warm?

13 A. Well, at that time he was on his side, just gone
14 unconscious, it's not as if he was lying there for
15 minutes on end. Things were moving quickly and there
16 was a lot of confusion what was going on and, you know,
17 it potentially has slipped my mind or it's not
18 a consideration I would have had exactly at that time.
19 I was more interested in finding out what had gone on
20 and making sure that Mr Bayoh was being -- he was
21 breathing and that officers were able to do what they
22 could at that time. The blanket part of it would have
23 come a bit further on when we're hopefully in recovery
24 stage.

25 Q. I mean, I don't know, would it have been part of your

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1 role, as being in charge of the incident, to direct that
2 sort of instruction?

3 A. I suppose you could put it down to that, yes. Every
4 officer has trained in operational safety and first aid,
5 and again, it would be a consideration, but not exactly
6 at that time. It was a matter of seconds.

7 Q. Okay. And you mention that there was a lot of confusion
8 going on at that time. We have heard evidence from
9 other officers saying they were shocked about the turn
10 of events?

11 A. Mm-hm.

12 Q. When you say a lot of confusion, what do you mean?

13 A. In terms of I was trying to establish what had gone on.
14 We've got an individual unconscious on the floor, on the
15 ground, people -- officers walking about just trying to
16 ascertain, get a grip on the situation, so I wasn't just
17 thinking about one thing, I was trying to think about
18 everything. I was also trying to think about how to
19 contain the scene as well.

20 Q. And you have told us that PC Smith was monitoring
21 Mr Bayoh's breathing at that point?

22 A. Yes.

23 Q. You told us yesterday that he was -- I think you used
24 the phrase "ushering his head"?

25 A. Yes.

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1 Q. He had his -- was there anything obtained to put under
2 Mr Bayoh's head at that point?

3 A. Not that I can recall.

4 Q. Is that something else that could have been done at that
5 stage?

6 A. Yes, again, it's first aid recognised but it's usually
7 for the recovery stage.

8 Q. Right. And what's the recovery stage?

9 A. Once, like, any first aid had been done and we're
10 awaiting a recovery time, put them in the recovery
11 position, et cetera.

12 Q. He was in the recovery position, wasn't he?

13 A. Yes.

14 Q. Right. Was there any other assistance or monitoring of
15 Mr Bayoh going on at that time, or was it largely
16 PC Smith?

17 A. PC Smith, yes.

18 Q. Can I ask you about another Airwaves transmission
19 please, 7.26.52, so you will see this on page 8,
20 I think. Yes, page 8. And if we could have your
21 Inquiry statement, paragraph 50 on the screen. You were
22 asked about this Airwaves transmission, it's 7.26.52,
23 and it says:

24 "Just for the log, the initial on attendance this
25 male's attacked PC Short quite violently ... err ... as

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1 a result he was sprayed with CS and PAVA and batoned.

2 There may be a suggestion that he has been batoned to
3 the head area. Four one over.

4 "If not ..."

5 And you were asked about that, and you say:

6 "This is part of the same call as the transmission
7 described at question 49 above. Again, I cannot confirm
8 the time but I can confirm I made that transmission.
9 I did so to ensure that what I had been told about the
10 events by my officers was logged and to advise the
11 paramedics about the potential for head trauma and the
12 use of spray."

13 So by the time of this transmission, you were aware
14 that Mr Bayoh was unconscious --

15 A. Mm-hm.

16 Q. -- and that an ambulance had been called for him. You
17 were aware by this stage, weren't you?

18 A. Yes.

19 Q. And who -- you have said in paragraph 51 that this
20 information was provided to you by PC Tomlinson, do you
21 see that?

22 A. Yes.

23 Q. "PC Tomlinson told me this just after I made my first
24 call regarding the ambulance. He told me that he had
25 struck Mr Bayoh on the head with a baton. I believe he

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1 also told me that Mr Bayoh had been sprayed with CS and
2 PAVA. PC Tomlinson told me this just after I made my
3 first call regarding the ambulance."

4 Was that the first call that we see on page 8, so
5 you will see at 7.26.41:

6 "I'm just looking to clarify has an ambulance been
7 contacted for this accused?"

8 Or was it in relation to the call you made about the
9 ambulance for PC Short?

10 A. I can't recall. As I say, the information I was feeding
11 back -- as soon as I got that information I fed that
12 back to control. As I said, it was fast-paced and I was
13 getting information fired at me and anything that
14 I thought was pivotal was getting transmitted
15 straightaway.

16 Q. So do you think it's more likely that PC Tomlinson spoke
17 to you just prior to this call at 7.26.52?

18 A. More than likely, yes.

19 Q. That's the one about the ambulance for Mr Bayoh. Right.
20 You have said that after PC Tomlinson gave you that
21 information, you pretty much straight away called --

22 A. Yes.

23 Q. -- control about it.

24 A. Yes.

25 Q. And is that because of the seriousness of a baton being

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1 used to someone's head area?

2 A. Yes, well, it was the first time of hearing of that and
3 that -- as I said yesterday -- it increases the risk, so
4 the ambulance need to know about that.

5 Q. So as you said yesterday, if you had heard about someone
6 being hit over the head with a baton, you would
7 immediately --

8 A. Yes.

9 Q. -- phone for an ambulance and that's what you have done
10 here?

11 A. Yes.

12 Q. So as soon as you heard about it you phoned for the
13 ambulance?

14 A. Yes.

15 Q. And relayed that information to control?

16 A. Yes.

17 Q. Right. And was it also Tomlinson that told you that the
18 man had attacked PC Short violently and as a result of
19 that, was sprayed with CS, PAVA and batoned?

20 A. Yes, I had a look at this. I have not written that --
21 or that transmission wasn't made in a chronological
22 order. It's just been the facts that I have been
23 getting or the information I have been getting and
24 I have just -- sometimes when you go on the radio you
25 can mix your words sometimes, but that wasn't in any

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- 1 chronological order.
- 2 Q. No, thank you. I was going to ask you that because --
- 3 A. Yes.
- 4 Q. -- we have heard other evidence that this is not
- 5 correct, the information that was relayed?
- 6 A. No, no, it's just come out that way. I have been
- 7 obviously just relaying the facts and just saying what
- 8 I knew, but it's not come out -- because I was aware of
- 9 that once I read that transmission.
- 10 Q. All right. I don't think you mention that in your
- 11 Inquiry statement, but you say as soon as you read it
- 12 you became aware that that was incorrect?
- 13 A. Yes, when I read it I thought, well, that's potentially
- 14 how it looks as if that's happened, occurred in that
- 15 chronological sequence, but from the understanding I got
- 16 from the officers there, that wasn't the actual ...
- 17 Q. So as far as the Chair is concerned, he can ignore any
- 18 suggestion that it happened in this order?
- 19 A. Yes.
- 20 Q. You're happy to accept that's wrong. Can I ask you,
- 21 you -- the start of that transmission says "Just for the
- 22 log". Why do you use those words "Just for the log"?
- 23 What does that mean?
- 24 A. I don't know if that's just a sort of phrase I have
- 25 picked up over the years, but it's effectively what you

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1 want for clarity or brevity for any incident you want
2 main points put on to the log, so if there is any view,
3 obviously for evidential as well.

4 Q. Is it indicative of a sort of retrospective position
5 being put rather than something that's happening at the
6 time --

7 A. Yes.

8 Q. -- you do the call.

9 A. Yes. You might receive the information but then you're
10 involved in something and can't get that relayed until
11 a bit later.

12 Q. Yes. Can I ask you to look at another transmission
13 please, 7.29.30. So this is on page 11, I think. Yes.
14 7.29.30, and if we could look at paragraph 52 of your
15 Inquiry statement as well. So paragraph 52, you were
16 asked about this transmission:

17 "Control, can you get a move on with the ambulance,
18 this accused is now not breathing. CPR is commencing,
19 over."

20 And you say:

21 "I cannot confirm that I made this transmission.
22 The recording of this call has not been disclosed.
23 I understand that my solicitor asked for the reference
24 number for this call and the reference number he was
25 given was not this recording. The timing of calls has

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- 1 transmission?
- 2 A. Yes. Well, it has taken -- PC Smith has done the
3 relevant checks straight after and then that's when CPR
4 is commencing -- has commenced and then that's when
5 I have made the call, so within seconds.
- 6 Q. Thank you. What are the relevant checks?
- 7 A. Well, checking for breathing, checking -- looking down
8 the chest, for pulse, et cetera, reactions, and when
9 PC Smith didn't receive any feedback from that that was
10 positive, that's when he has asked and commenced CPR.
- 11 Q. And we have heard other witnesses say when CPR
12 commenced, Mr Bayoh was turned onto his back?
- 13 A. That's correct.
- 14 Q. And is that your recollection?
- 15 A. Yes, that's my recollection.
- 16 Q. So it doesn't sound like there was really any time
17 between you finding out that he was no longer breathing
18 and you making that transmission on the Airwaves?
- 19 A. Yes.
- 20 Q. I would like to ask you about this period of time
21 between Mr Bayoh losing consciousness but breathing and
22 him not breathing, or it's noticed he is not breathing
23 by PC Smith.
- 24 A. Okay.
- 25 Q. So based on the times of the Airwaves transmissions,

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1 that's a period between 7.25.17 and 7.29.30 seconds, so
2 that's over four minutes and you have said in your
3 Inquiry statement -- if we could look at that for
4 a moment, paragraph 41, that -- so you have said you did
5 not see Mr Bayoh lose consciousness. So you have
6 explained earlier you didn't see him lose consciousness
7 and you weren't immediately aware --

8 A. Yes.

9 Q. -- that he had lost consciousness. And then we have
10 heard about the Smith transmission that he called for an
11 ambulance when he was aware Mr Bayoh had lost
12 consciousness. You have said this morning you didn't --
13 you don't remember hearing that transmission.

14 A. Mm-hm.

15 Q. But I would like to ask you what you were doing between
16 this period of time -- so at some point you did become
17 aware that Mr Bayoh had lost consciousness -- up to the
18 point when your transmission was "He is no longer
19 breathing, get an ambulance." Can you give us a sense
20 of what you were doing during that four-minute period?

21 A. Just waiting for the ambulance effectively. Making sure
22 that the officers were maintaining control in terms of
23 monitoring the breathing and just speaking to people,
24 making sure everything else was getting done, secure --
25 to make sure that everyone else is safe.

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1 Q. Now, in fairness to you, at 7.26.41 you make another
2 call -- so this is during that four-minute period and
3 7.26.41 you say:

4 "I'm just looking to clarify has an ambulance been
5 contacted for this accused?"

6 So that's during that period you're chasing up --

7 A. Yes.

8 Q. -- the ambulance. Why were you chasing the ambulance at
9 that stage?

10 A. I think it was just I was willing the ambulance to be
11 there quicker. You've got somebody who is unconscious
12 on the pavement, you want to make sure that they're
13 going to get seen and treated as soon as possible.

14 Q. Could you help me with something. We have heard that
15 the hospital is very close along Hayfield Road --

16 A. Mm-hm.

17 Q. -- there's Victoria Hospital and -- maybe two or three
18 minutes away. Were you conscious that you were waiting
19 for a while for the ambulance?

20 A. It felt like an eternity. I couldn't actually say how
21 long the ambulance was, but it did feel like an
22 eternity.

23 Q. And so you chased up whether an ambulance had been
24 contacted. Did you consider it worthwhile to chase up
25 again or did you feel that was sufficient chasing?

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- 1 A. Once I have told the control room they -- once they have
2 contacted the ambulance control there's not much else
3 I can do to affect the ETA of an ambulance. That's
4 between control and ambulance control as such.
- 5 Q. We may have heard that other officers were doing points
6 duty, or traffic control --
- 7 A. We need to make sure -- it was a busy main road. We had
8 to make sure there was no further risk to Mr Bayoh or
9 any of the officers that were involved in CPR.
- 10 Q. So there were no cars going backwards and forwards?
- 11 A. No.
- 12 Q. But the ambulance was allowed access to the area?
- 13 A. Yes.
- 14 Q. And after he stopped breathing and CPR commenced and you
15 have asked about the ambulance, 7.29.30, you have talked
16 about the possibility that he was faking. Once you
17 realised he was not breathing, you must have realised
18 that there was no sense of feigning or faking on his
19 part?
- 20 A. Well, I had realised sort of long before then that he
21 was properly unconscious because there was no response
22 to any stimuli and then he has gone into not breathing
23 and then it's obviously heightened the response again.
- 24 Q. When did you realise that he wasn't feigning?
- 25 A. After we had done all the relevant checks, the stimuli

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- 1 checks.
- 2 Q. What are these relevant stimuli checks?
- 3 A. Pain -- pain -- there's relevant pressure points that
- 4 you can press on a person's body that will -- they've
- 5 basically not got a choice, there will be some sort of
- 6 reaction.
- 7 Q. Who was doing these checks?
- 8 A. I can't recall who was doing that check actually.
- 9 Q. Can you describe some of the checks to us?
- 10 A. I can't recall exactly, to press a pressure point in the
- 11 chest.
- 12 Q. We may have heard evidence of knuckles used in that
- 13 area?
- 14 A. Yes, Knuckles, that's it, yes, yes, just to apply --
- 15 which causes a pain that would be difficult to not react
- 16 to.
- 17 Q. If you were conscious?
- 18 A. Yes.
- 19 Q. And were you aware of anyone slapping Mr Bayoh on the
- 20 face?
- 21 A. No.
- 22 Q. Were you aware of PC Paton slapping or patting or
- 23 tapping him on the face?
- 24 A. No, I never witnessed that.
- 25 Q. No. Were you aware of PC Smith using his knuckle to

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- 1 test the pain response?
- 2 A. I believe there was -- that process was going on, but
- 3 I never actually saw it actually happen.
- 4 Q. Were you aware of which officers were doing the CPR?
- 5 A. Yes.
- 6 Q. Who were they?
- 7 A. PCs Walker, Paton and I believe Alan Smith took over at
- 8 some point as well.
- 9 Q. Were you aware of PC Smith using a face -- a valve,
- 10 a ...?
- 11 A. Yes, a resuscitation mark, if you like, that stops
- 12 cross-contamination when doing mouth-to-mouth.
- 13 Q. And how did that go?
- 14 A. It initially was working but then PC Smith made it clear
- 15 that there was fluid coming from Mr Bayoh's mouth and
- 16 that cross-contamination was an issue and they had to
- 17 stop the mouth-to-mouth phase.
- 18 Q. And what did PC Smith do then?
- 19 A. Just continued chest compressions, which is again
- 20 another valid form of CPR without the mouth -- the
- 21 rescue breaths.
- 22 Q. So when did -- so after PC Smith left with the valve,
- 23 there was no mouth-to-mouth at that stage?
- 24 A. No.
- 25 Q. When was that? How long after CPR had commenced?

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- 1 A. I can't give you a figure, I'm afraid.
- 2 Q. All right. Can I ask you when CPR was commenced,
3 Mr Bayoh was on his back?
- 4 A. Mm-hm.
- 5 Q. Why were the handcuffs not removed at that point?
- 6 A. Again, it was a -- it wasn't a consideration of mine at
7 that time. It wasn't impeding the chest compressions at
8 all in my view.
- 9 Q. In your view -- are you first aid trained?
- 10 A. Yes.
- 11 Q. And you didn't think that it would be better since he
12 was unconscious and not breathing?
- 13 A. At the time I believe the chest compressions were more
14 important. There was no hindering of the chest
15 compressions at the time, and delay of taking off the
16 handcuffs was second fiddle to actually getting the
17 rescue compressions in.
- 18 Q. It wouldn't have been possible to remove the handcuffs
19 at the same time as the chest compressions were being
20 done?
- 21 A. Again, it could have potentially, yes, but again, my
22 foremost thoughts were getting the compressions in.
- 23 Q. We have heard that Mr Bayoh was interested in going to
24 the gym and he had a large chest, large arms, and he had
25 been handcuffed to the front, palm-to-palm, and that

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1 position may have restricted access to his chest. Was
2 that anything that you were aware of or noticed?

3 A. It didn't, in my view, restrict the effectiveness of the
4 CPR that was ongoing at the time.

5 Q. Right. Did you consider instructing the leg restraints
6 or the Fast Straps be removed?

7 A. Again, similar to the handcuffs it wasn't at the
8 forefront of my mind; it was just to get the rescue CPR
9 done.

10 Q. How long did chest compressions go on without the
11 mouth-to-mouth, before the ambulance arrived?

12 A. Four to five minutes, maybe.

13 Q. Was that information that you shared over the Airwaves?

14 A. I did say, I believe -- I made a transmission to say
15 that again, for recording it, for clarity, that we had
16 to cease rescue breaths due to contamination.

17 Q. I'm going to come on to those messages. Let's have
18 a look at those now. Let's start first of all with
19 7.31.22 on page 12. I think you're saying there:

20 "Control any update on ambulance we could really do
21 with it here, over."

22 So that's another request for an ambulance. What
23 was going on at this point?

24 A. Again, you're dealing with a human life and the CPR
25 and -- it probably felt longer than it actually was but

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1 I was willing that -- I wanted that ambulance there now
2 and that's why.

3 Q. And control have said "They have been given a hurry up",
4 so they have been in touch with that.

5 A. Yes.

6 Q. And then 7.32.11, just further down the page, you do
7 a transmission saying:

8 "Just for the call card, chest compressions
9 commenced. However breaths have stopped due to
10 cross-contamination, blood et cetera."

11 A. Yes.

12 Q. I think is this the transmission that you mentioned
13 a moment ago?

14 A. Yes.

15 Q. So how long after the breaths had stopped, the rescue
16 breaths as you mentioned, how long after those stopped
17 did you make this Airwaves transmission?

18 A. I can't recall exactly but it would have been
19 transmitted at the time.

20 Q. So as the officers stopped and PC Smith --

21 A. Once it had been ascertained that that was the situation
22 and that information was the case, then it would have
23 been transmitted.

24 Q. And was it -- when PC Smith removed himself from the CPR
25 and the valve became contaminated, was it PC Paton and

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1 Walker that continued with the chest compressions?

2 A. Yes. If you give CPR it's quite tiring as well so they
3 were taking it in turns to make sure that the
4 compressions were effective.

5 Q. And then the words "Just for the call card", what does
6 that mean? You have mentioned call cards?

7 A. Again, it's just another way of updating the log.

8 Q. So would that indicate that it's not happening at that
9 precise moment?

10 A. No, I would have made that transmission, it's just --
11 I think it's a generalism that you get used to of making
12 transmissions over the years and it's like a learned
13 behaviour with that, "Just for the call card".

14 Q. And then the control say:

15 "Estimated time of arrival two minutes for the
16 ambulance."

17 And then can we move on to page 15 of the
18 spreadsheet, 7.39.50. This is you again:

19 "Control, if you cancel the second ambulance due to
20 the delay we have taken PC Short to hospital ourselves,
21 over."

22 So you -- just to put this into context, if you look
23 at page 13, so if we go back the way, there's a call at
24 7.34.08, transmission by you saying "Ambulance at
25 locus".

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1 A. Yes.

2 Q. So the first ambulance has arrived by this time?

3 A. Yes.

4 Q. And at 7.39.50 you cancel the second ambulance?

5 A. Yes.

6 Q. And you say that PC Short has been taken to the hospital
7 by yourselves.

8 A. I believe so, that was the message I got that she had
9 been conveyed to the hospital by another officer.

10 Q. Right. Can we look at 7.40.09, please, where you say:
11 "Control say they were told that other officers
12 needed an ambulance because of exposure to
13 contaminants."
14 That will be sprays?

15 A. Yes, yes.

16 Q. And then you say:
17 "No if you stand down all officers here state they
18 are safe and well, just walking it off into the air,
19 over, we're going to all return back to Kirkcaldy for
20 a debrief."
21 So what's happening at this moment in time?

22 A. I'm not sure if Mr Bayoh has been conveyed to the
23 ambulance at that -- to the hospital at that point and
24 it's just a kind of a regroup and ascertain what's going
25 to happen next.

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- 1 Q. Can I show you page 14, please --
- 2 A. Yes, certainly.
- 3 Q. -- just to give you some context. At 7.37.56, so
- 4 page 14, 7.37.56, Samantha Davidson has gone onto the
- 5 radio and said:
- 6 "Roger, that's the male on the stretcher. He's
- 7 going to be going to hospital. Remains in cardiac
- 8 arrest for your information. I'm allocating DC Connell
- 9 to go with him in the ambulance. I will get further CID
- 10 resources from Glenrothes in the near future."
- 11 A. Aye.
- 12 Q. While we're on that, can I ask you, once
- 13 Samantha Davidson arrived, was she the senior officer at
- 14 the scene?
- 15 A. It's hard to say. She is the substantive sergeant, if
- 16 that makes sense, however, I am -- regarding being
- 17 acting sergeant, I'm still in charge of the response
- 18 team. She took control of the scene, if you like,
- 19 making sure that everything was controlled and my focus
- 20 was more on the officers.
- 21 Q. So you are still in charge in the sense of the response
- 22 team --
- 23 A. Yes.
- 24 Q. -- and the incident?
- 25 A. Yes.

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- 1 Q. So although she is a substantive sergeant, she is not
2 taking charge of the scene as such, that still remains
3 with you?
- 4 A. Again, it was so fast-paced that I was doing my bit, she
5 was doing her bit, and it was then once we had got back
6 to the station then we established who was in charge,
7 et cetera.
- 8 Q. Right. And can I ask you, you mentioned Stephen Kay
9 yesterday and he was your -- he was senior to you --
- 10 A. Yes.
- 11 Q. -- in terms of the organisation. We had previously
12 understood he was based at Dunfermline but you said
13 yesterday that he was in Kirkcaldy that day?
- 14 A. That was to my recollection he was in Kirkcaldy that
15 morning.
- 16 Q. Can you explain to me, in terms of the contact that you
17 have with Inspector Kay, or the engagement you have with
18 him during the day, and at the scene in fact, you are
19 acting sergeant, you are in charge of the incident --
- 20 A. Yes.
- 21 Q. -- what was Stephen Kay's involvement with that?
- 22 A. The patrol inspector, if you like, covers the whole of
23 the division.
- 24 Q. Is that what he was known as, a patrol inspector?
- 25 A. Yes, if you like, an area inspector, that looks after

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1 and has an overview of all the calls in all the areas,
2 all the stations. You would check in with him in the
3 morning and do a handover. At that time it depends what
4 radio channel is on as well. If there's an incident
5 happening in Dunfermline he might tune into Dunfermline
6 to listen to that, but it is basically an overview and
7 then if there is an ongoing incident they will come out
8 and take ownership, but due to the swiftness of this
9 action and what's actually happened, again, like I said
10 yesterday, I didn't have much influence in it and then
11 there wouldn't have been much influence that he would
12 have had on it initially until after the event in this
13 particular instance where he took ownership.

14 Q. So when you say the whole division and all areas, you
15 have mentioned -- we know about Kirkcaldy, you have
16 mentioned Dunfermline?

17 A. Yes.

18 Q. Is that the areas that he is in charge of?

19 A. Yes, it's -- it's the sort of divisional areas, there's
20 Dunfermline which is sort of South West Fife,
21 Dunfermline.

22 Q. Glenrothes?

23 A. Glenrothes, Leven, North East Fife and Kirkcaldy.

24 Q. So those sort of areas in Fife. And he has an
25 overview --

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- 1 A. Yes.
- 2 Q. -- I think you said of all those areas?
- 3 A. It's like taking a helicopter management view of
4 everything that's coming into the division and they're
5 there for resources, et cetera, for -- if there's
6 a major incident going on in Levenmouth they would
7 allocate more resources. It's an overview of everything
8 that we have available and to manage major incidents.
- 9 Q. So he has the discretion to take control over one
10 particular incident?
- 11 A. Yes.
- 12 Q. But he didn't do that on this particular occasion?
- 13 A. Again, he was unaware that it was actually ongoing until
14 it was...
- 15 Q. I think we see in some of the Airwaves transmissions
16 that he did --
- 17 A. He did know about -- yes, he did comment.
- 18 Q. Yes.
- 19 A. But as I say, it happened so quickly that he has not
20 been able to influence much.
- 21 Q. We may hear from him in the future.
- 22 A. Yes.
- 23 Q. So you checked in with him in the morning --
- 24 A. Yes.
- 25 Q. -- to do the handover; was that before your muster?

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1 A. Yes.

2 Q. And he gets you up-to-date on what's been happening --

3 A. Mm-hm.

4 Q. -- and then you can share that with your response team?

5 A. Yes.

6 Q. Other than that engagement when you saw him in the

7 morning, did he also attend your muster?

8 A. Not in that particular -- there was nothing pressing

9 from the previous night that had to be said or

10 reiterated as such.

11 Q. So you have had your handover, he has not attended the

12 muster, when did you next see Inspector Kay?

13 A. At Hayfield Road.

14 Q. And when was that?

15 A. That was -- I don't know the exact time, but I believe

16 the ambulance was still there at the time.

17 Q. Right, so he arrived when the ambulance -- were there?

18 A. I believe so, it was still there, that's ...

19 Q. So he actually attended Hayfield Road --

20 A. Yes, he came up.

21 Q. -- from Kirkcaldy Police Office?

22 A. Yes.

23 Q. And when he arrived at the scene are you still in charge

24 or does he take over -- take charge of that?

25 A. I gave a quick brief overview of what had occurred that

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1 I was aware of and my instruction was to get the
2 officers involved back to Kirkcaldy Police Station,
3 await further instruction, not to talk about the
4 incident and that he would take over.

5 Q. So did you feel that he -- from the minute he arrived he
6 is sort of taking over or --

7 A. Yes.

8 Q. Right. And it is for him to sort of issue directions
9 then?

10 A. Yes.

11 Q. And so that was prior to you going back to Kirkcaldy
12 Police Office?

13 A. Yes.

14 Q. Once he is at the scene, he takes charge?

15 A. Yes.

16 Q. Thanks. Now can I ask you to look at paragraph 46 of
17 your statement, please. You were asked about how you
18 were thinking or feeling when they were trying to
19 resuscitate Mr Bayoh and you say:

20 "I was concerned for Mr Bayoh and was hoping that he
21 would be all right. I was also hoping that the
22 ambulance would arrive quickly to provide him with
23 further assistance."

24 And is that how you were feeling? Do you want to
25 say any more about that?

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1 A. No, I was completely in shock as well. I'm human and
2 we're dealing with another human being and I was very
3 concerned for his wellbeing and, like I said, the
4 ambulance felt like an eternity.

5 Q. And indeed, it didn't arrive until 7 -- I think it is
6 seen arriving on the CCTV at 7.33.35.

7 A. Yes.

8 Q. So it does seem -- you arrived at the scene at 7.22,
9 Mr Bayoh was unconscious by 7.25 and not breathing by
10 7.29, but it wasn't until 7.33 that the ambulance
11 arrives. So do you know why it took so long for the
12 ambulance to arrive?

13 A. I believe --

14 Q. Because it was called when he was unconscious which was
15 7.25?

16 A. My understanding at the time during the incident was
17 that our admin assistant at Kirkcaldy realised that the
18 control had sent the ambulance to Seafield Road in
19 Kirkcaldy and not Hayfield Road. Now, I don't know how
20 much of an impact that had on the delay, if at all, but
21 that was certainly -- you'll probably see that in the
22 transmissions as well.

23 Q. We will maybe be hearing about that later today, thank
24 you, but that was one possible explanation that you can
25 think of?

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1 A. Absolutely, absolutely.

2 Q. Is there any other explanation you can think of?

3 A. No, just other than the processes that they have to go
4 through in terms of how they get the messages to
5 ambulance crew, geography, et cetera.

6 Q. Can I ask you to look at PIRC 3374 -- 03374, some
7 photographs, and I have been asking all the officers
8 about these photos to make sure that they are correctly
9 identified. There's two photos and you will see it's
10 a snapshot and you are identified as being at the far
11 left, PS Maxwell?

12 A. That's correct.

13 Q. And is that you -- are you leaning against the hedge
14 there?

15 A. I'm not leaning against it but --

16 Q. Standing near to the hedge?

17 A. Yes.

18 Q. And what was happening at this point?

19 A. I don't know what time that was taken.

20 Q. Do you remember?

21 A. It looks like Mr Bayoh is on his side. I'm not sure if
22 he was unconscious at that point or that was a point
23 where he was still conscious.

24 Q. Right. As you look at the identification -- the writing
25 identifies various officers. Without going through them

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1 all in detail, are there any that you are concerned are
2 wrongly identified?

3 A. No.

4 Q. Thank you. And then can we look at photograph 2,
5 please. You will see this photo, fewer people around at
6 this time. You are identified as being on the left with
7 a hat on.

8 A. Yes.

9 Q. "PS Maxwell", is that you?

10 A. That's correct.

11 Q. And do you see the car towards the centre of the
12 picture? We have heard that's the diary car.

13 A. Yes.

14 Q. The car that you arrived in, can we see that here?

15 A. It's just right behind me.

16 Q. So that's just right behind you.

17 A. Mm-hm.

18 Q. And that's the Corsa that you came in?

19 A. Yes.

20 Q. And that's where you parked it?

21 A. Yes.

22 Q. And did you have your hat on when you first arrived?

23 A. No.

24 Q. No. So why did you put your hat on?

25 A. I'm the supervisor, I need to be identified as that as

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1 well.

2 Q. And is that a way that people can recognise your status?

3 A. It's part of the uniform. At the end of the day
4 sometimes you can't go back and get that, but I like to
5 set an example and also be professional.

6 Q. Thank you.

7 Can I ask you about some enhanced Snapchat footage,
8 please.

9 A. Mm-hm.

10 Q. And this is taken at 7.22.10 to 7.22.16. What I'm going
11 to do is ask Ms Smith to play this. It's a very small
12 clip. You will see -- you maybe just saw a moment ago,
13 there's a Snapchat sort of footage window that opens up
14 on the right-hand side of the screen --

15 A. Okay.

16 Q. -- which we have heard was taken at the time. So as we
17 watch it, it will be over quite quickly and I can play
18 it more than once if you would like to see it more than
19 once. I'm going to ask you questions afterwards. So if
20 we could just play that, please.

21 (Video played)

22 Thank you. If we can rewind it. Did you get the
23 chance to see that there?

24 A. Yes.

25 Q. And if we have that back on the screen, please, so

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1 that's 7.22.10. That's fine. Thank you, just stop that
2 there.

3 Do you recognise that scene? So we have heard that
4 the car behind those officers was the diary car.

5 A. Yes.

6 Q. Do you recognise those officers?

7 A. I recognise the officers, yes.

8 Q. And it would appear that one of them is outstretched on
9 the ground --

10 A. Yes.

11 Q. -- to some degree. You can see a white band or a pale
12 band between trousers and a vest or a top of some
13 description on the ground. Do you see that?

14 A. Yes.

15 Q. Do you know who that was?

16 A. It will -- probably PC Walker, from power of deduction
17 anyway, from the officers that were there and who is
18 unaccounted for at that point.

19 Q. Are these the officers that were there when you arrived?

20 A. Yes.

21 Q. So we identified yesterday your car arriving at the
22 scene at 7.22.25, so that's just a few seconds after
23 this footage is taken, so I'm wondering if that is what
24 was happening on the ground when you arrived in the car?

25 A. All I can recall was when I arrived at the scene he was

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1 on his left side and he was in control.

2 Q. Mr Bayoh was on his left side?

3 A. Yes, yes.

4 Q. So PC Walker was not in that position when you arrived?

5 A. No.

6 Q. Can I ask you some other -- thank you, that's fine.

7 Can I ask you some other questions about your PIRC
8 notes, 266. This is your PIRC statement and page 5,
9 please, paragraphs 2 to 5. This is what -- we asked you
10 yesterday about your arrival and what you saw and
11 I would like to ask you about this. So this is your
12 statement. Yesterday I asked you about PC Smith and
13 what he was doing when you arrived and what you say here
14 is:

15 "I saw PC Alan Smith on the other side of the body
16 as I was looking at it. He was nearer the shoulder area
17 of the male, kneeling down over the male facing towards
18 me.

19 "PC Ashley Tomlinson was next to Alan Smith. He was
20 to Alan's right and he was also on his knees and he was
21 leaning back over the black male's right hip and buttock
22 area. He was also facing my direction.

23 "I saw PC Alan Paton. He was standing up in close
24 proximity to Alan Smith. He was standing over Alan
25 Smith and Ashley Tomlinson, facing towards me.

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1 PC Craig Walker was standing to Alan Smith's immediate
2 right facing me.

3 "I saw PC James McDonough kneeling down at the black
4 male's feet. He had his arms tucked round the black
5 male's feet. This is a trained officer safety tactic to
6 prevent somebody lashing out with their feet until such
7 times as the police have control of the person. James
8 McDonough maybe looked like he was lying across the
9 black male but I know he wasn't he was just controlling
10 the movement of the black male's legs."

11 And then if we can have a look at the next
12 paragraph:

13 "That goes for Ashley Tomlinson and Alan Smith as
14 well. It might look to an untrained person that they
15 were just lying across the black male but that is
16 a recognised training hold."

17 Do you know what that hold is called?

18 A. It's more like a ground pin, if you like.

19 Q. Okay. Yesterday when I was speaking to you, you were
20 talking about the officers kneeling?

21 A. Mm-hm.

22 Q. And here you use various descriptions, you say -- if we
23 can go back up the screen, please, Ms Smith, and you
24 say:

25 "PC Ashley Tomlinson was next to Alan Smith. He was

Transcript of the Sheku Bayoh Inquiry

1 to Alan's right and he was also on his knees and he was
2 leaning over the black male's right hip and buttock
3 area."

4 So was he putting weight on Mr Bayoh, leaning over
5 in the way you describe?

6 A. I can't say he was putting weight on him, I wasn't
7 obviously there, but he was on his knees and he was sort
8 of over him.

9 Q. Did you -- were you aware of any of the officers putting
10 any weight on Mr Bayoh?

11 A. It was more of a containment, making sure he was kept on
12 his left side, that's -- just making sure he wasn't
13 moving.

14 Q. So basically by the time you arrived, he is on his left
15 side, handcuffed with leg restraints on?

16 A. That's what I can recall.

17 Q. So you didn't see them leaning over, or trying to
18 restrain him. Was he struggling at any point during
19 that?

20 A. He was actively resisting, but not to a massive extent.

21 Q. So what does that mean, can you describe it for us?

22 A. He was just still shaking about, trying to establish if
23 he could wriggle free from the cuffs and the restraints.

24 Q. We have heard other evidence that when he was turned
25 onto his left-hand side he had stopped moving, but

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- 1 that's not your recollection?
- 2 A. That's certainly how I recall it anyway.
- 3 Q. Is it possible you could be wrong about that?
- 4 A. Potentially.
- 5 Q. Yesterday you talked about, I think, PC Smith holding
- 6 Mr Bayoh's head and you said it was at the back.
- 7 A. Mm-hm.
- 8 Q. And you used the word "ushering" sort of motion. He was
- 9 cuffed to the front but PC Smith was kneeling near the
- 10 head area, I think you said, and Mr Bayoh had just been
- 11 put on his left-hand side facing west towards Gallaghers
- 12 pub where you had walked from?
- 13 A. Yes.
- 14 Q. I have read through your notes and your PIRC statement
- 15 but I don't see any references to ushering or holding of
- 16 his head by PC Smith. Is that something you are clear
- 17 about in your recollection?
- 18 A. I just know that he was down at the head area protecting
- 19 the head, and that's what I recall him doing to keep
- 20 the head safe. It's a sort of recognised tactic.
- 21 Q. Can you explain why you have not mentioned that in your
- 22 statements before?
- 23 A. I think it's just as the Inquiry has progressed it's
- 24 brought that memory back.
- 25 Q. Right. Can I ask you now to look at your Inquiry

Transcript of the Sheku Bayoh Inquiry

1 statement please, paragraphs 30, 32 and 33. So you were
2 asked here about the restraint. You weren't involved in
3 the restraint and you say in your Inquiry statement:

4 "On my arrival I could see Mr Bayoh lying on the
5 ground on the pavement. He was on his left side, he was
6 facing me. He was still actively resisting but not to
7 an extent that he was uncontrollable."

8 And then if we could move up the page, please, he
9 was "conscious and breathing", and then at 32 and 33:

10 "When I first arrived, he was on his left side. He
11 was moved onto his back when CPR commenced. I did not
12 see him in the prone position at any time."

13 So you had never seen him in the prone position --

14 A. Not that I can recall, no.

15 Q. -- from the minute you arrived. Then you were asked
16 about what your location was during the restraint and
17 you say:

18 "I was not involved in the restraint. I only
19 observed Mr Bayoh being restrained on my arrival at the
20 scene and as outlined in my answers above. I then went
21 to see PC Short.

22 "I saw PC [Smith] on the other side of Mr Bayoh as
23 I was looking at the scene. He was near Mr Bayoh's
24 shoulder area, kneeling down, leaning over Mr Bayoh
25 facing towards me."

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1 So at the time you arrived is it fair to say you saw
2 no officer applying full body weight?

3 A. Not full body weight, no.

4 Q. Did you see an officer using what's called the kneel and
5 contain technique?

6 A. They were kneeling down and sort of containing him in
7 that position, yes.

8 Q. What does "contain" mean in that context?

9 A. Just to make sure that they're not going to struggle
10 again. It's hard to explain, but it's just to make sure
11 that we're guarded against him sort of kicking off again
12 or coming out of any particular restraint.

13 Q. Right. In paragraph 35 of your Inquiry statement you
14 say -- if we could just move on to that:

15 "My recollection is that no one was lying on top of
16 Mr Bayoh using their body weight."

17 Can you explain was anyone lying on him without
18 using their body weight?

19 A. No. I don't believe anyone was lying on top of him at
20 the time.

21 Q. You don't think they were lying --

22 A. No, as such, it was more just to do with the kneeling
23 and keeping him in one place.

24 Q. Do you think they were leaning on Mr Bayoh?

25 A. It's a potential, yes.

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1 Q. And what distinction do you see between lying and
2 leaning over?

3 A. Lying is physically using your body weight to lie across
4 somebody, right across; leaning is just more putting
5 pressure on.

6 Q. So less pressure than putting your --

7 A. Yes, you wouldn't need a full body weight on top of
8 another body.

9 Q. What sort of pressure would you need?

10 A. Depending on the actual restraint from the person you're
11 dealing with.

12 Q. Right. Can I ask you to look again at your PIRC
13 statement 266 please, page 5, paragraph 3. So:

14 "PC Ashley Tomlinson was next to Alan Smith. He was
15 to Alan's right and he was also on his knees and he was
16 leaning over the black male's right hip and buttock
17 area."

18 So that we should understand is being leaning over
19 using some pressure but not lying?

20 A. Yes.

21 Q. And then paragraph 5:

22 "I saw PC James McDonough kneeling down at the black
23 male's feet. He had his arms tuck[ed] round [his]
24 feet ... James McDonough maybe looked like he was lying
25 across the black male but I know he wasn't he was just

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1 controlling the movement of the black male's legs."

2 So again is that leaning using pressure but not
3 lying --

4 A. Yes.

5 Q. -- using body weight. And then paragraph 6:

6 "... Tomlinson and ... Smith. It might look to an
7 untrained person they were just lying across the black
8 male but that is a recognised training hold."

9 So again neither of them were lying --

10 A. Not a full lie, no.

11 Q. -- using their body weight, leaning using pressure?

12 A. Yes.

13 Q. And then page 6, paragraph 4:

14 "As I said when I first arrived I saw officers still
15 applying force to restrain the black male. The officers
16 were on their knees and leaning on the male. Nobody was
17 lying on top of him. They were applying pressure to
18 restrain the male however it was not fully body pressure
19 because they were anchored from their knees."

20 So is the distinction you make there's not full
21 weight being put on because they're taking some weight
22 on their knees?

23 A. The impression I got was from my own experience when

24 I have had to restrain people when I'm on my knees in

25 a pivoted position that I can still effect pressure

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- 1 gently and then if I have to, I can go straight onto
2 them.
- 3 Q. Right. The position that you saw PC Walker in in the
4 Snapchat footage, he appeared to be lying out?
- 5 A. Yes.
- 6 Q. Is that what you're describing when you make the
7 distinction between leaning and lying, or is that --
8 does that appear to be lying?
- 9 A. That appears to be -- certainly the way he was splayed
10 out, that was as if he was lying on top of him.
- 11 Q. Can we look at page 6, please, paragraph 3. You talk
12 about:
- 13 "Both were breathing heavily ..."
- 14 Here it is at the top, sorry. Here we are, the
15 paragraph at the top:
- 16 "As I approached PC Walker and PC Paton ..."
- 17 Do you see that one?
- 18 A. Mm-hm.
- 19 Q. "Both had runny noses and blinking heavily as if they
20 had been involved in some form of physical exertion."
- 21 And when you're talking about leaning and using
22 pressure, that wouldn't cause breathing heavily, would
23 it as such?
- 24 A. No.
- 25 Q. No. So what physical exertion did you understand they

Transcript of the Sheku Bayoh Inquiry

1 had been engaged in?

2 A. Well, I wasn't sure at that time. I didn't have any of
3 the facts at that time really. They were -- they had
4 obviously been running about from what I'm hearing now,
5 but I couldn't exactly say what they were involved in at
6 that time.

7 Q. All right, thank you. Can I ask you about again 266,
8 page 6, paragraph 7, the paragraph that says -- it's
9 towards the bottom of this page:

10 "The black male was not vocal at any time as I was
11 aware. Most people who do resist are abusive and give
12 plenty of verbal, but this wasn't entirely unique but
13 unusual."

14 I'm interested in what you have said there.

15 A. Mm-hm.

16 Q. Have you come across other examples where people who
17 resist are not verbal?

18 A. Yes, there's some people that I know of that are very
19 anti-police and they will just not give you any response
20 whatever.

21 Q. Right. And do they engage in some other way with
22 the police --

23 A. They will --

24 Q. -- maybe if they are not vocal?

25 A. -- maybe give you a bit of compliance if you ask for it

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1 but other than that they will not communicate with you
2 at any point.

3 Q. So you've got experience of that?

4 A. Yes.

5 Q. Can I ask you about the recovery of the knife at the
6 scene.

7 A. Yes.

8 Q. I don't know if you heard evidence yesterday about
9 DC Connell finding a knife at the scene in a grassy
10 area. Is that something you were aware of?

11 A. I never saw the evidence yesterday, but I was aware that
12 at one point during the proceedings that I had asked if
13 there was a knife and -- or where was the knife,
14 something similar, and there was a comment -- I don't
15 know who made the comment saying: I believe it is on the
16 grass area, which would have been to the north, north
17 area.

18 Q. Of Hayfield Road?

19 A. Yes, and I believe I said something, "someone go and
20 check".

21 Q. Was this before or after you had been to see
22 Nicole Short?

23 A. I think it was before.

24 Q. Before. So when you have just arrived at the scene --

25 A. Yes, I believe --

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- 1 Q. -- you ask about the knife?
- 2 A. Yes.
- 3 Q. Before you go and see Nicole Short --
- 4 A. Yes.
- 5 Q. -- at the Transit van. And was that when DC Connell was
- 6 looking for it or was this just --
- 7 A. I believe so, I believe so.
- 8 Q. Right. And then you have talked about prior to leaving
- 9 the scene, Inspector Kay arrives and you briefly
- 10 mentioned that you were going to have a debrief with the
- 11 officers. Did you go round speaking to the officers
- 12 before you left the scene?
- 13 A. I think I spoke to a few of them, just saying "Look, we
- 14 need to go back to Kirkcaldy, we need to obviously
- 15 regroup and then find out what's going to happen."
- 16 Q. What information or instruction did Inspector Kay give
- 17 you?
- 18 A. Basically to attend back at the police station in the
- 19 canteen, regroup, just get everyone there, make sure
- 20 everyone is safe and well and not to obviously discuss
- 21 in specifics what's going on.
- 22 Q. And did you then share that with members of your
- 23 response team?
- 24 A. I did, yes.
- 25 Q. Was that with all of them?

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1 A. Well, when we got back to the canteen I did address them
2 all at the start; whether they took that in or not is
3 another matter.

4 Q. So you didn't speak to all of them before you left the
5 scene --

6 A. No.

7 Q. -- but you spoke to them in the canteen? Can we look at
8 paragraph 57 of your statement, please. You were asked
9 about speaking to PC Paton and PC Walker when they were
10 in the custody van and Walker said he wouldn't be
11 speaking to anyone or giving a statement until he had
12 spoken to his Federation rep and you were asked if they
13 had explained why they wouldn't speak to anyone and you
14 say:

15 "No, they didn't explain, that was all they said.
16 No, they didn't give me any information at that time.

17 "I accepted that because I had never been in this
18 situation before. PCs Paton and Walker also appeared
19 very upset. I didn't want to labour the point there and
20 then. I knew we were all to go back to the police
21 office and the investigative phase was about to
22 commence."

23 Was it Inspector Kay that had said that to you or is
24 that something you knew from your own --

25 A. It was just an assumption that we had to go back and

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1 make sense of it all, but just through my service I knew
2 the process that was potentially going to have to happen
3 and find out what's gone on that morning.

4 Q. So what was it that prompted PC Walker to say "I won't
5 be speaking to anyone or giving a statement until
6 I speak to my Federation rep"? What had you said?

7 A. I had gone up to them -- Alan had already given me
8 a very brief resumé when I was trying to establish what
9 had happened --

10 Q. Is that PC Paton?

11 A. Yes, sorry, yes. And then towards the end when I think
12 Mr Bayoh had gone away in the ambulance, they were in
13 the van and I went up to them and just said "Look,
14 what's happened?" You know, for my own information and
15 both of them were extremely upset and in shock and had
16 basically intimated to me that they wanted Federation
17 advice before they said anything else. I was the
18 supervisor so they maybe thought I would report back
19 what they said and they wanted to get advice first.

20 Q. And you didn't feel at that stage that you could press
21 that?

22 A. Well, I didn't think it was the right time or place at
23 that time we were in still at the locus, they were in
24 clear shock and I knew that processes were now going to
25 work -- sorry, come into place where we would have to

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1 provide an explanation of what's happened.

2 Q. And then can we look again at PIRC 266-page 9,
3 paragraph 10. So it's towards the bottom. You say:

4 "I then went round all my officers and informed them
5 individually to return to the canteen at Kirkcaldy
6 Police Office."

7 So did you go round the team --

8 A. To the best of my recollection I managed to get
9 everybody and say we were going to have to go back to
10 Kirkcaldy Police Office and await further instruction.

11 Q. And did you tell them that they shouldn't be speaking to
12 anyone about this?

13 A. I don't know if I said -- I can't recall if I said that
14 exactly at that time, but yes, I did brief that at the
15 canteen when we were all together.

16 Q. And so when you went back to the canteen you have said
17 you gathered them all together and spoke to them and
18 I think you have said on page 4 of 267, PIRC 267, you
19 say that:

20 "No officers were willing to tell me the full
21 circumstances until they had spoken with the Police
22 Federation."

23 So by the time you went back to the canteen, none of
24 the officers wanted to tell you the full circumstances?

25 A. To be fair, when I got back to the canteen all sort of

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1 supervisory capacity was -- not rescinded, but I was now
2 part of the Inquiry, if that makes sense, and I was
3 basically told that someone would come in and take the
4 management function and I was to be involved as the
5 group -- somebody would come in and do post-incident
6 management and advise us what's happening next so -- and
7 I had to be there as a support network as such.

8 Q. Before I move on I've got one last question about the
9 scene. Looking back now, do you feel that officers had
10 sufficient support in relation to -- there was no ARV,
11 there was no dog unit in attendance?

12 A. At the end of the day we didn't have that close by, so
13 I would say no, we didn't have the proper support.
14 However, the way the incident played out, it wouldn't
15 have been relevant at that particular time unless there
16 had been more of a containment situation.

17 Q. You say not relevant?

18 A. Well, not relevant, it's the way it played out in that
19 particular time.

20 Q. There wasn't enough time for the ARV to --

21 A. Yes.

22 Q. -- arrive or the dog unit?

23 A. Yes.

24 Q. Because it all happened so quickly?

25 A. Yes.

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- 1 MS GRAHAME: I'm going to be moving on --
- 2 LORD BRACADALE: It's time for the break. We will take
3 a break for 15 to 20 minutes.
- 4 (11.32 am)
- 5 (Short Break)
- 6 (11.53 am)
- 7 LORD BRACADALE: Ms Grahame.
- 8 MS GRAHAME: Thank you. We were just coming back to
9 Kirkcaldy Police Office and you had gone back to the
10 canteen.
- 11 A. Yes.
- 12 Q. And we have heard quite a lot of evidence about the
13 events in the canteen. Can I ask you, were you told to
14 remain in the canteen that day?
- 15 A. Yes. As is -- I was able to carry out a few inquiries
16 in terms of going and speaking to senior management,
17 et cetera, but -- as a communication network, but other
18 than that I was with the group.
- 19 Q. So -- but you had some conversations with others in the
20 Kirkcaldy Police Office, senior management, you said?
- 21 A. Yes. I left a couple of times to go and seek
22 clarification of what was happening because obviously we
23 had a room full of very upset people in shock wanting to
24 know what was going on.
- 25 Q. But you're still the acting sergeant?

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1 A. Yes, I was still their sergeant in terms of welfare and
2 concern. Any request for statements, et cetera, like
3 that was going to be allocated to someone else.

4 Q. Yes, okay. Do you remember having conversations with --
5 I will give you a list of names of people:
6 Conrad Trickett?

7 A. Yes.

8 Q. Did he come and stay in the canteen for a part of the
9 day?

10 A. He came in as the post-incident manager role that
11 I understood -- it's the first time I have been
12 introduced to the post-incident management system, if
13 you like, so I wasn't entirely clear but he came in and
14 kind of explained that he was going to come in and look
15 after us procedural wise, et cetera.

16 Q. Did he give you any advice about not speaking to people
17 about what had happened?

18 A. I believe he did. However, I make it very clear that
19 that morning in the canteen was extremely difficult, the
20 officers were in a state of shock, including myself, and
21 a lot of messages -- people were coming and going,
22 senior management, a lot of messages, some maybe took
23 in, some didn't, I -- certainly speaking from my own
24 personal experience but --

25 Q. Because of the way you were feeling?

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- 1 A. Because of the way we were feeling. My role
2 specifically was keeping officers -- keeping them sane,
3 if that makes sense and keeping them in reality. They
4 were very upset, shocked, I had officers that I had
5 known for years, senior officers, if you like, crying in
6 my arms, things like this. I was there as that role,
7 I just want to make that very clear.
- 8 Q. Do you want to say who any of those officers were?
- 9 A. PC Tomlinson was extremely distressed, as we may have
10 already heard. PC Paton. Obviously PC McDonough and
11 Good who are just into the organisation who were "Is
12 this normal? Is this" -- a complete state of shock. So
13 my role that time was to just make sure that the welfare
14 of everybody at that time, so I just wanted to make sure
15 that was understood.
- 16 Q. Okay. And did Stephen Kay come back to Kirkcaldy Police
17 Office?
- 18 A. I believe he did come in and address the group. I'm not
19 entirely clear the full context of that, but I'm sure
20 within that he has reiterated about the urgency not to
21 discuss exactly what's gone on.
- 22 Q. Right. And Superintendent Pat Campbell?
- 23 A. To my recollection I can't remember that happening.
- 24 Q. Okay. And then the next day did you speak to Inspector
25 Seath?

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- 1 A. Yes, that's correct.
- 2 Q. And did he give advice at all?
- 3 A. He asked us to -- well, he asked me to complete a use of
4 force form, which I wasn't required to do as I wasn't
5 involved in the restraint.
- 6 Q. We have also heard that a form can be completed in
7 relation to an incident.
- 8 A. Yes.
- 9 Q. And if officers involved in that don't complete it,
10 a more senior officer can complete it.
- 11 A. Yes.
- 12 Q. But you said you didn't feel you had to complete that?
- 13 A. No, well in that respect as I was taken away from that
14 role of any supervisory role, so any forms or admin in
15 relation to -- or requests was taken away from me. My
16 understanding was that it was Inspector Seath that was
17 going to be doing that on behalf of the group. I was
18 a part of the group now, if you like.
- 19 Q. But he asked you to complete the form?
- 20 A. Yes, but I explained that I wasn't involved in any of
21 the restraint, or any use of force.
- 22 Q. So you didn't -- and because you were no longer in
23 charge --
- 24 A. Yes.
- 25 Q. -- you didn't feel able to complete the form?

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1 A. It's not so much able, it's just I left that with
2 Inspector Seath to -- and if it had been, you know, come
3 back and says "No, you must do it", then I would have.
4 But I left it in his capable hands to address that.

5 Q. And he didn't come back to you --

6 A. No.

7 Q. -- and say "You have to do it"?

8 A. No.

9 Q. Do you know if a use of force form was ever completed?

10 A. I don't know. I don't know.

11 Q. And I would like to ask you about your status. I have
12 asked many officers about whether they knew they were
13 a witness or a suspect, against the background of
14 providing an operational statement.

15 Did you -- do you remember when you were advised of
16 your status?

17 A. It wasn't until later on, after we sought legal
18 representation through Professor Watson, through the
19 Federation, that we learned about our status. We had
20 not been told up to then.

21 Q. We may hear -- we may have heard some evidence that
22 people were saying you were witnesses from an early
23 stage on 3 May. Is that something you remember?

24 A. Unless I received something in writing, or from a legal
25 representative I didn't class my status as either/or.

Transcript of the Sheku Bayoh Inquiry

1 Q. So you were looking for something more formal in
2 writing?

3 A. Yes, yes.

4 Q. Did you ever get something formal in writing?

5 A. No.

6 Q. Did you complete your notebook?

7 A. No.

8 Q. Why not?

9 A. At that time there was not an opportunity to do so.
10 I was involved in looking after my staff. That was the
11 last thought on my mind.

12 Q. Did you think about completing it later,
13 retrospectively?

14 A. My notebook was taken off me later that evening.

15 Q. On 3 May?

16 A. Yes.

17 Q. And when -- did you provide an operational statement?

18 A. Not at that time, no.

19 Q. So the -- you have said you completed notes, which we
20 have looked at today and yesterday?

21 A. Yes.

22 Q. And then you gave a PIRC -- a statement to PIRC --

23 A. Yes.

24 Q. -- on 4 June?

25 A. That's correct.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. Apart from that, no other operational statements were
2 prepared?
- 3 A. No.
- 4 Q. And were you spoken to by officers at the major -- MIT,
5 Major Incident Team?
- 6 A. Yes, I remember I was taken into an office at Kirkcaldy
7 Police Station by two MIT officers, that was DCI Hardie
8 and I forget the other --
- 9 Q. Wilson, perhaps?
- 10 A. Wilson, DI Stuart Wilson, I think, Wilson, and asked if
11 I would provide a statement.
- 12 Q. Was that on 12 May?
- 13 A. Potentially, yes.
- 14 Q. And did they tell you that you were being treated as
15 a witness?
- 16 A. I cannot recall whether they have said that or not.
- 17 Q. They asked you for an operational statement?
- 18 A. Yes. The status I was under the moment I was being
19 legally represented at that time and I understood that
20 any request for that would have had to have gone through
21 my legal team and that was the advice I was given by my
22 legal representative at that time: not to provide
23 anything until my status was confirmed.
- 24 Q. And we may have heard some of -- a Nicola Shepherd had
25 asked officers to give statements that day; do you

Transcript of the Sheku Bayoh Inquiry

1 remember that?

2 A. I don't recall -- I remember her coming in to offer
3 support, or what we thought was support at the time.
4 I don't remember exactly what was said, it was more
5 a balanced view that: we're looking after you but we're
6 also wanting to make sure that everything is done
7 proportionately and it is investigated properly and we
8 hope everyone will comply.

9 Q. Okay.

10 A. That's the message I gathered from that. It wasn't like
11 a "You will complete statements".

12 Q. No. Were you given any advice from Amanda Givan? We
13 have heard she was a representative of the Scottish
14 Police Federation?

15 A. Yes. I am not sure who actually contacted her but she
16 arrived at Kirkcaldy Police Station to offer support and
17 as part of that she offered consultations in respect to
18 Federation advice on that --

19 Q. Did she give you any advice about providing statements
20 or completing your notebooks?

21 A. She provided advice that it wasn't recommended until
22 your status was officially confirmed.

23 Q. Right. And when she said "officially confirmed", what
24 did she mean?

25 A. I think we were actually told if we were witnesses or if

Transcript of the Sheku Bayoh Inquiry

1 there was potentially any criminal action, until that's
2 confirmed the Federation advice would be to contact your
3 legal representatives and await further advice.

4 Q. All right. Was there a meeting on the Tuesday 5 May, so
5 a couple of days after the events, attended by officers
6 who had been present at the scene at which officers were
7 given legal advice in relation to the provision of
8 statements and the completion of paperwork?

9 A. Yes, that's correct.

10 Q. Right. And was that a meeting that you attended?

11 A. Yes.

12 Q. And is that when you received the legal advice --

13 A. Yes.

14 Q. -- to wait until your status --

15 A. Official legal advice, yes.

16 Q. And once you had been given that information from your
17 lawyer, that your official status was as a witness, not
18 as a suspect, were you then prepared to give an
19 operational statement?

20 A. Absolutely, yes.

21 Q. And how soon after did that happen?

22 A. I can't remember, but when we were officially -- it was
23 a case of -- we were just awaiting until the PIRC had
24 spoken to the relevant people and we made arrangements
25 to have that statement noted.

Transcript of the Sheku Bayoh Inquiry

1 Q. Oh, so it was arrangements for the statement to be
2 taken?

3 A. Yes.

4 Q. Once they were in place?

5 A. I believe so, yes. As quick as we could.

6 Q. So once you had got your status confirmed via your
7 lawyer, you were happy to give that statement?

8 A. Yes.

9 Q. Can I ask you some questions about race, please?

10 A. Yes, certainly.

11 Q. As part of your training to be a sergeant --

12 A. Yes.

13 Q. -- or to take on the role as acting police sergeant, did
14 you have extra training in relation to equality and
15 diversity?

16 A. No.

17 Q. Have you ever been trained in your current role to
18 potentially -- to identify potential racist attitudes or
19 to identify comments which are prejudicial or
20 disrespectful, that type of thing?

21 A. There's no specific training for that, no.

22 Q. Nothing like that?

23 A. Not to identify, other than the basic training we had
24 at -- or the basic training, 15 weeks we had the
25 diversity training which lasted about a week.

Transcript of the Sheku Bayoh Inquiry

1 Q. Was that at Tulliallan?

2 A. Yes.

3 Q. And how long ago was that for you?

4 A. 14 years ago.

5 Q. And you have had no other training in equality and
6 diversity since then?

7 A. Not official -- we've got an equality and diversity
8 team, inclusion team that liaise with other agencies and
9 pass on messages through our divisional coordination
10 unit, they come out on emails just to keep officers'
11 awareness of certain issues.

12 Q. And is that something officers are obliged to read?

13 A. They should be reading it, yes. I can't comment whether
14 they do or not.

15 Q. How do you deal in your role as a sergeant with issues
16 of discrimination that appear or appear to exist, say,
17 in attitudes of members of your teams? How would you
18 deal with that?

19 A. Well, I have been fortunate that I've never had to deal
20 with such an incident, but if I have to deal with it
21 it's dealt with by the book. I would seek advice as
22 well from HR, but it would not be tolerated. Depending
23 on the level, it could be education, but then
24 potentially it could lead into disciplinary depending on
25 the level and how much investigation we need, et cetera.

Transcript of the Sheku Bayoh Inquiry

1 Q. And are HR the department that you would seek support or
2 advice from?

3 A. Yes, People Direct -- we've got a People Direct team
4 that they would help us with any HR issue. It would
5 just be for advice initially, but I would also speak to
6 senior officers maybe or officers that had been through
7 a similar process.

8 Q. Okay. We have heard that there were no black officers
9 in Kirkcaldy in 2015. In your role at that time as
10 acting police sergeant, did you feel you were in a good
11 position to identify examples of racist behaviour, or
12 attitudes?

13 A. Yes. I mean from my own personal life standards as well
14 I hold high regard to my personal status, I wouldn't
15 accept that in personal life so that's a good grounding.

16 I was also a community officer for two years in the
17 Templehall area of Kirkcaldy where I was mosque liaison
18 officer and held community groups, community meetings,
19 so I would like to think I had contact with the majority
20 of people in Kirkcaldy in the Templehall area, and again
21 through interaction with the mosque, and also dealing
22 with reports of racist behaviour, investigating crime,
23 so I would like to think that yes, I am in a good
24 position to identify any discriminatory racial
25 behaviour.

Transcript of the Sheku Bayoh Inquiry

1 Q. So you were involved as a community officer for
2 two years?
3 A. Yes.
4 Q. Dealing with and interacting with the community?
5 A. Yes.
6 Q. Including the black community?
7 A. Yes.
8 Q. And you had interactions with the mosque, or people
9 there?
10 A. (Nods).
11 Q. And also dealing with reports of racist behaviour?
12 A. Yes.
13 Q. So crimes that you were investigating?
14 A. Yes.
15 Q. And as part of that, did you have involvement with black
16 people both as suspects of crimes and as witnesses to
17 crimes --
18 A. Yes.
19 Q. -- and as victims of crimes?
20 A. Yes.
21 Q. And how often did you come into contact with members of
22 the black community?
23 A. Not very regularly.
24 Q. No?
25 A. No.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. Can you give us an indication?
- 2 A. I mean there was interactions. Kirkcaldy is quite
3 a busy town, with a hospital, shopping complexes,
4 et cetera, so, there was a few people that we dealt with
5 on a regular basis that were involved in shoplifting and
6 drugs, et cetera, so there was a few interactions with
7 black individuals as suspects, but again they don't get
8 treated any different to -- as I would deal with a white
9 suspect or Asian suspect, it's not any different. The
10 whole equality training it's -- I try and treat
11 everybody as individuals, it's not, "well, they're black
12 so they must be treated a certain way", that just
13 doesn't happen.
- 14 Q. Okay. In 2015 were you aware that there had been
15 a number of deaths in the US or in England where black
16 men had been restrained by the police?
- 17 A. Yes.
- 18 Q. And how were you aware of that?
- 19 A. Mostly media.
- 20 Q. Not specific advice or information or training from
21 within Police Scotland?
- 22 A. No.
- 23 Q. So just general watching the news --
- 24 A. Yes.
- 25 Q. -- and seeing things on the internet?

Transcript of the Sheku Bayoh Inquiry

- 1 A. Personal life.
- 2 Q. And were you aware that statistically there was an
3 increased risk of death if a black man was restrained by
4 police officers?
- 5 A. No.
- 6 Q. No. Were you aware of public concerns about deaths of
7 black men after restraint?
- 8 A. Certainly from the media.
- 9 Q. Yes.
- 10 A. Not in my role as a ...
- 11 Q. Was it an issue that was raised within Police Scotland
12 in any format?
- 13 A. No.
- 14 Q. When you saw Mr Bayoh on the ground, you would be aware
15 that he was black.
- 16 A. Yes.
- 17 Q. And that he had been restrained by a number of officers.
18 You have mentioned in your PIRC statement that all
19 officers are aware of positional asphyxia. Can you tell
20 us what positional asphyxia is as far as you are
21 concerned?
- 22 A. Basically when the organs within the body can't get
23 enough oxygen into -- the increased weight or something
24 is impeding the system to get enough oxygen in.
- 25 Q. And could that be -- that include weight or pressure

Transcript of the Sheku Bayoh Inquiry

- 1 being put on someone when they're on the ground?
- 2 A. Yes.
- 3 Q. Particularly if they're prone?
- 4 A. Yes, that's the first thing we're taught in operational
- 5 safety is to try and limit the amount of time that
- 6 people are on their front while pressure is applied.
- 7 Q. When you saw Mr Bayoh on the ground having been
- 8 restrained, did you at that time consider "We need to
- 9 get him up, we need to get him sitting, we need to get
- 10 him off the ground as soon as possible"?
- 11 A. He was on his side at the time and I considered that
- 12 appropriate at that time.
- 13 Q. Did you consider at that stage the potential medical
- 14 implications may be more serious for Mr Bayoh on the
- 15 ground?
- 16 A. It's difficult to say what my thought process was at the
- 17 time.
- 18 Q. Okay. As part of your original training in Tulliallan
- 19 and just your general awareness, have you been taught or
- 20 are you aware, and do you recognise that there are
- 21 a number of black stereotypes that can exist, attitudes?
- 22 A. Yes, the training did cover stereotypes.
- 23 Q. Right, so it did cover stereotypes --
- 24 A. Yes.
- 25 Q. -- as part of your training in Tulliallan?

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. And did it cover how you can guard against the
3 stereotypes and the risks associated with making
4 assumptions about people?
- 5 A. I don't think it went into specific detail about that.
6 I think it just mentioned briefly you need to be guarded
7 but it didn't give you techniques or self-reflection or
8 anything like that.
- 9 Q. So it didn't teach you how to guard against that?
- 10 A. Not that I'm aware. I can't recall --
- 11 Q. That's not something you had been taught in
12 Police Scotland?
- 13 A. No.
- 14 Q. Can you tell us what sort of stereotypes are you aware
15 of?
- 16 A. Certainly from mostly media, that the black community
17 are more likely to be involved in criminality or part of
18 a gang, that sort of thing.
- 19 Q. Are you aware of any stereotype that black people might
20 be terrorists?
- 21 A. No, not per se, no.
- 22 Q. So those aren't assumptions that you have made yourself?
- 23 A. No, no.
- 24 Q. Any assumptions made by you that they're more likely to
25 be feigning or faking?

Transcript of the Sheku Bayoh Inquiry

1 A. No, no.

2 Q. No. Any assumptions that they are more violent, have
3 superhuman strength or size?

4 A. No.

5 Q. Not aware of anything like that?

6 A. No.

7 Q. Not aware of any senior officers having any assumptions
8 about that?

9 A. No.

10 Q. And can I ask you about the difference between
11 Nicole Short -- you said she was the priority, so
12 Sheku Bayoh is on the ground, he has been restrained, he
13 is handcuffed, he is in leg restraints when you arrive.
14 PC Smith has said she has no obvious injuries on the
15 Airwaves transmission but you are still concerned so you
16 have gone to see her. Then there seems to be a number
17 of calls about the ambulance for PC Short. She is not
18 bleeding, she has not got any obvious serious injury.
19 You have seen her yourself and she is shocked, you make
20 sure she is warm and you get her in the van, but in the
21 meantime, Mr Bayoh is in a T-shirt, it's cold, it's been
22 raining, and he becomes unconscious and then has to get
23 CPR. There are fewer calls chasing up his ambulance,
24 and it would seem that on the face of it, there's
25 a difference between the way PC Short is treated and

Transcript of the Sheku Bayoh Inquiry

1 Mr Bayoh is treated.

2 Now, we know PC Short -- former PC Short is white
3 and Mr Bayoh is black. Can you explain why there's that
4 apparent difference?

5 A. Well, firstly, there's absolutely nothing to do with
6 race involved in that, I will make that very clear. My
7 priority when I arrived at the scene -- I wouldn't even
8 say priority, it's more risk assessment, was to look at
9 Mr Bayoh first and he was in control, he was breathing
10 at the time. Then I said my priority, but my next part
11 was risk assessment for Nicole. I was happy with what
12 was happening with Mr Bayoh at that time. So I'm not
13 saying that she was priority over Mr Bayoh. Once I had
14 done what I had to do with Nicole, I went back to
15 Mr Bayoh and I chased up the ambulance.

16 Q. Right, so if there's any impression given that you were
17 treating him less favourably in terms of seeking medical
18 assistance than PC Short was treated, was that on the
19 basis of the fact he was black and she was white?

20 A. Absolutely not. It was -- there was no difference
21 between the two.

22 Q. And do you think there's any possibility that there was
23 some unconscious bias being demonstrated at that time by
24 you or any member of the team?

25 A. I wouldn't like to think so. I certainly didn't feel

Transcript of the Sheku Bayoh Inquiry

1 but that's not your recollection?"

2 And he said:

3 "Answer: That's certainly how I recall it anyway."

4 "Question: Is it possible you could be wrong about
5 that?"

6 "Answer: Potentially."

7 And the Inquiry has also heard evidence in fact that
8 Police Constable Smith issued a direction to at least
9 one officer to get off Sheku Bayoh while he was still
10 lying on him and what I would like to know of this
11 witness is that is he saying that he is potentially
12 wrong about him being on his side or is he saying that
13 he is potentially wrong about him struggling? What is
14 it he is potentially wrong about?

15 LORD BRACADALE: Yes.

16 MS MITCHELL: Another issue interrelated to arriving at the
17 scene was whether or not he saw batons lying around when
18 he saw Mr Bayoh lying being restrained, and did that
19 suggest to him that batons had been used.

20 And finally, having asked those questions, going to
21 his Inquiry statement where he talks about the issue of
22 risk, to ascertain whether or not when he summed up what
23 he thought was happening at the time, was that correct,
24 was it correct that there was struggling still ongoing
25 and whether or not he had properly assessed that for

Transcript of the Sheku Bayoh Inquiry

1 risk.

2 LORD BRACADALE: Sorry, assessed what for risk?

3 MS MITCHELL: Well, what happens if the Inquiry has -- it is
4 page 4 of 22 of his Inquiry statement at paragraphs 10
5 and 11. He gives evidence there in his statement that
6 he was still struggling at the time. Now, dependent
7 upon his answers, I would like to explore the question
8 of whether or not he was correct about that and if he
9 wasn't correct about it, would that have impacted upon
10 his risk assessment, ie if he had arrived and Mr Bayoh
11 was already not struggling and there were batons lying
12 about, should his risk assessment have been different.

13 You can see -- I don't know if the Inquiry has
14 paragraph 10 and 11 but he said -- the answer to
15 paragraph 10:

16 "I carried out a risk assessment on arrival.
17 I observed the scene. I noted what the officers were
18 doing and what the subject was doing to establish what,
19 if any, ongoing risk there was. I observed a male who
20 I now know to be Mr Bayoh being restrained by my
21 officers. He was continuing to struggle but as my
22 officers were restraining him effectively and appeared
23 to have control of the situation I felt that any risk to
24 Mr Bayoh or my officers was low. My assessment then
25 changed to ensuring everyone's safety and preserving the

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1 crime scene."

2 And then going on to number 11 he said:

3 "The risk factor I considered on arrival was whether
4 my officers had control of the perceived subject and
5 what risk he was presenting. Once I assessed whether my
6 officers had control of the subject, who I now know to
7 be Mr Bayoh, and determined that they did so, I then
8 assessed whether the restraint of Mr Bayoh was causing
9 a risk to my officers or himself."

10 But the oddity of this police constable's statement
11 is that he says that when he arrives, Mr Bayoh is
12 already on his side, but we have heard the officers give
13 evidence that before Mr Bayoh is placed on his side, he
14 had already stopped struggling.

15 LORD BRACADALE: Are these all the issues you wish to raise?

16 MS MITCHELL: So that is one issue.

17 The next issue is in relation to the PIRC statement
18 that he gave where he says PC Paton on and Walker "set
19 out their stall early", and it's to enquire by what he
20 meant by "setting out their stall early" and what was
21 said in them "setting out their stall early".

22 LORD BRACADALE: Sorry, which statement is that?

23 MS MITCHELL: That's their PIRC statement, I think that's
24 page 10 of 13.

25 LORD BRACADALE: There are two -- there's his own self-made

Transcript of the Sheku Bayoh Inquiry

1 statement which has a PIRC number.

2 MS MITCHELL: It is 266, my Lord.

3 LORD BRACADALE: 266, right.

4 MS MITCHELL: And that's page -- I think that's page 10 of
5 13. It says:

6 "Both PC Walker and PC Paton had set their stall
7 early. They are looked upon by the rest of the shift as
8 being senior and role models. In the conversations
9 there was no direction from anybody as to what to do or
10 not to do. There was anger and frustration which came
11 from worry."

12 And it is to explore what was the anger and what was
13 the frustration, what were the officers angry about,
14 what did they say -- what were they frustrated about and
15 what did they say?

16 He also says in that statement further on "There was
17 no collusion", and simply to ask him how he knew that.

18 The next issue was whether or not he was ever asked
19 by Police Scotland or PIRC during their enquiries
20 whether race might have been a factor in Sheku Bayoh's
21 treatment.

22 I would like to ask whether or not he gave
23 a statement to the Federation, I'm not sure whether he
24 did or not, so that answer might just be answered there
25 and then.

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1 Finally, given that he had a particular role as
2 a sort of -- he has described his caregiving role and
3 his comforting role during the breaks, to ask whether or
4 not anyone at all mentioned race as a factor, that being
5 an issue in particular that it was a black man that had
6 died.

7 LORD BRACADALE: That's back at the police station?

8 MS MITCHELL: Yes.

9 LORD BRACADALE: Are these all your issues?

10 MS MITCHELL: Yes, my Lord.

11 LORD BRACADALE: Thank you.

12 Mr Moir?

13 MR MOIR: May I speak to Ms Mitchell for one moment, please?

14 LORD BRACADALE: Yes.

15 (Pause).

16 MS MITCHELL: I think my learned friend has got a series of
17 questions in that regard and perhaps that last question,
18 if I take that away, and my learned friend asks that
19 question instead.

20 LORD BRACADALE: Mr Moir?

21 Application by MR MOIR

22 MR MOIR: Yes, sir, there was a slight crossover, I think,
23 of the questions that my learned friend Ms Mitchell and
24 I were going to ask.

25 The question I would like to ask follows on from

Transcript of the Sheku Bayoh Inquiry

1 [draft] page 80 of the live transcript. The Chair will
2 see that Police Sergeant Maxwell was aware of deaths of
3 black men in US and English situations and at page 80,
4 lines 23 to 25, he was aware of public concern about the
5 death of black men after restraint from the media.

6 The question I would like to ask him is when he was
7 in the canteen with his police colleagues, did those
8 issues occur to him, and if they did, was he concerned
9 that allegations of racism may arise, and did he discuss
10 that, or did anyone raise that issue with him in the
11 canteen and by anyone, I mean fellow police officers,
12 sir.

13 LORD BRACADALE: Thank you.

14 MR MOIR: That's all I wish to ask.

15 LORD BRACADALE: Yes, thank you. I'm going to rise to
16 consider these submissions.

17 (12.27 pm)

18 (Short Break)

19 (12.44 pm)

20 Ruling

21 LORD BRACADALE: I shall allow Ms Mitchell to ask questions
22 in relation to page 54 of the transcript and the
23 relevant paragraphs in the Inquiry statement.

24 I shall not allow her to ask questions in relation
25 to PC Walker and Paton setting out their stall earlier.

Transcript of the Sheku Bayoh Inquiry

1 I have looked at that and it is to my mind perfectly
2 plain what the position is.

3 I shall allow Ms Mitchell to ask whether
4 Police Scotland or PIRC raised any questions of race as
5 a factor, and I shall allow her to ask whether he gave
6 a statement to the Federation and I shall allow Mr Moir
7 to ask his questions.

8 So can we have Ms Mitchell then to the table,
9 please, and the witness back.

10 (Pause).

11 PS SCOTT MAXWELL (continued)

12 Sergeant Maxwell, you're going to be asked some
13 questions by Ms Mitchell who represents the Bayoh
14 family.

15 Ms Mitchell.

16 Questions from MS MITCHELL

17 MS MITCHELL: Sergeant Maxwell, we have heard evidence from
18 officers involved in restraining Sheku Bayoh that when
19 he was placed on his side he had stopped moving.

20 Now you say in your evidence that when you arrived
21 he was already on his side but he was still struggling.
22 Earlier this morning my learned friend asked you
23 questions about that and you responded -- you were asked
24 about how he was moving and the question was:

25 "Question: So what does that mean, can you describe

Transcript of the Sheku Bayoh Inquiry

1 it for us?"

2 And you said:

3 "Answer: He was just still shaking about, trying to
4 establish if he could wriggle free from the cuffs and
5 the restraints."

6 And it was said:

7 "Question: We have heard other evidence that when he
8 was turned onto his left-hand side he had stopped moving
9 but that's not your recollection?"

10 And you said?

11 "Answer: That's certainly how I recall it anyway."

12 And again you were asked:

13 "Question: Is it possible you could be wrong about
14 that?"

15 And you said possibly. First of all, what it is
16 I want to explore with you is what is it that you're
17 saying you are possibly wrong about? Are you saying
18 that you're potentially wrong about him being on his
19 side at that point, or are you potentially wrong about
20 him struggling?

21 A. It's the movement. I was sure he was on his side, it
22 was the movement aspect of it.

23 Q. So if we have heard evidence from police officers who
24 were effectively hands-on during the restraint and they
25 said that by the time they moved him to his side he was

Transcript of the Sheku Bayoh Inquiry

- 1 no longer struggling, would the Inquiry be better at
2 preferring their recollection of events to your
3 recollection of events on that point?
- 4 A. I would say they were in a better position to confirm if
5 he was moving or struggling at that time.
- 6 Q. When you arrived, you would have seen the area where
7 Sheku Bayoh was lying. Did you see batons lying around
8 that area?
- 9 A. I can't recall actually seeing them lying about the area
10 at that time.
- 11 Q. Do you recall at any point becoming aware of the batons?
- 12 A. I believe towards the end of my time at locus, I believe
13 DC Connell had intimated that he had collected some
14 batons off the street.
- 15 Q. But had you not been aware of them --
- 16 A. No, no --
- 17 Q. -- or seen them before?
- 18 A. -- no, no.
- 19 Q. By the time that you arrived at the scene, you were
20 aware that PAVA or CS gas had been used, is that
21 correct?
- 22 A. Not by the time I had arrived, no.
- 23 Q. Just when you arrived you were made aware?
- 24 A. When I spoke to PC Paton, yes.
- 25 Q. I wonder if we can go to page 4 of your Inquiry

Transcript of the Sheku Bayoh Inquiry

1 statement, that's number 44, and if we can go to
2 paragraphs 11 -- sorry, 10 and 11, that's page 4.

3 Now, do we see that you were asked by the Inquiry:

4 "What risk assessment, if any, did you carry out on
5 arrival at the scene of Hayfield Road ..."

6 And you indicated that you had carried out a risk
7 assessment. You said that you noted what the officers
8 were doing and the subject was doing to establish -- and
9 you say you observed a male:

10 "... who I now know to be Mr Bayoh, being restrained
11 by my officers. He was continuing to struggle, but as
12 my officers were restraining him effectively and
13 appeared to have control of the situation, I felt that
14 any risk to Mr Bayoh or my officers was low. My risk
15 assessment then changed to ensuring everyone's safety
16 and preserving the crime scene."

17 Now, given what you have just explained to us about
18 the possibility of you being wrong about struggling,
19 would the Inquiry be correct if they took the view that
20 if you arrived, Mr Bayoh was on (inaudible) seen and
21 already not struggling, that your risk assessment was
22 carried out based on incorrect information?

23 A. No, I wouldn't necessarily say that. Mr Bayoh was under
24 control at that time and he was being tended for by
25 experienced officers who I had confidence in, they have

Transcript of the Sheku Bayoh Inquiry

1 done restraints many a time before, so the risk in that
2 respect was just the same.

3 Q. So the fact that Mr Bayoh at that stage may not have
4 been moving in your view would have made no difference
5 to your risk assessment?

6 A. Well, the movement that I potentially have seen hasn't
7 been of mass resistance which is going to cause any
8 major problem.

9 Q. I'm sorry, I just want to clarify that with you. You
10 said that if -- by the time Mr Bayoh had been placed on
11 his side he wasn't moving, the Inquiry might prefer that
12 as that was the officers.

13 A. Yes, okay, but what I'm trying to say is that any
14 movement I may have seen, or what I recalled at the
15 time, it wasn't of any status that would have caused
16 injury to him or any officers.

17 Q. Had you seen the batons lying around, would that have
18 caused any change to the way that you risk-assessed the
19 situation when you arrived?

20 A. It would have prompted me to ask, probably, if they had
21 been used.

22 Q. Okay. I wonder then if I could move on to another
23 issue, which is whether or not you were ever asked by
24 Police Scotland as a body, a professional body, whether
25 race might have been a factor in Sheku Bayoh's

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- 1 treatment?
- 2 A. I was never asked that directly by Police Scotland.
- 3 Q. When you say you were never asked that directly by
- 4 Police Scotland --
- 5 A. Well, I was never asked, sorry.
- 6 Q. Were you ever asked by PIRC whether race might have been
- 7 a factor in Sheku Bayoh's treatment?
- 8 A. I can't recall if that was done during the statement
- 9 process, but I can't recall being asked any direct
- 10 question along that line.
- 11 Q. Did you ever give a statement to the Federation about
- 12 your involvement in this incident?
- 13 A. It wasn't the Federation, it was -- I gave a -- I was
- 14 visited by Mr Sallens who took some details down of my
- 15 recollection of that day.
- 16 Q. When you say he took some details down, did he obtain
- 17 a statement from you as you would understand it?
- 18 A. Yes.
- 19 Q. Do you know where Mr Sallens gave that statement to?
- 20 A. I believed it went to my legal representative, Peter --
- 21 Professor Watson.
- 22 Q. Can you recall when that statement was taken?
- 23 A. I can't recall specific dates.
- 24 Q. I appreciate that, given the time, but in the -- you
- 25 will recall obviously there was a period of time where

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1 no statements were taken.

2 A. Yes, absolutely.

3 Q. Was it before that?

4 A. It was before I provided the statement to the PIRC.

5 MS MITCHELL: Just one moment.

6 (Pause).

7 No further questions.

8 LORD BRACADALE: Thank you. If you can return to your seat
9 and Mr Moir, if you can come to the table.

10 Sergeant, you're going to be asked some questions by
11 Mr Moir QC who is the senior counsel for the Coalition
12 for Racial Equality and Rights.

13 Mr Moir.

14 Questions from MR MOIR

15 MR MOIR: Sergeant Maxwell, you may recall giving evidence
16 earlier on this morning that you were aware of deaths of
17 black men in custody in the US and in England in 2015,
18 and later on, that you were aware of public concerns
19 about the deaths of black men in police restraint
20 situations. Do you remember that?

21 A. Yes.

22 Q. When you were returned to the canteen -- I think you
23 were in the canteen for several hours, is that correct?

24 A. Yes, that's correct, yes.

25 Q. Did you have any concerns that there may be allegations

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1 that Mr Bayoh's race had played a part in his death in
2 police custody during that time you were in the canteen?
3 I'm actually talking about the time you were actually in
4 the canteen. Did that occur to you or did you have any
5 concerns?

6 A. Can I just clarify: that his race had caused the death,
7 is that what you're saying?

8 Q. No. You raised the issue of the fact that you were
9 aware that there was public concerns about black men
10 dying in police custody, and you had been aware of that
11 in 2015, you had been aware that in the US and in
12 England that this had happened, and in that knowledge,
13 in that awareness, did you have any concerns at that
14 time when you were in the canteen on that day that there
15 may be allegations that Mr Bayoh's race had played
16 a part in his death in police custody? Did that occur
17 to you?

18 A. There was a lot of things that went through my mind that
19 day. Obviously what -- you know, the -- if I'm going to
20 be criminalised or classed as a murderer, or anything
21 like that, and it did go through my head that the race
22 involved -- due to the media speculation -- might invoke
23 a response.

24 Q. So in the knowledge that there had been deaths in police
25 custody --

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1 A. Yes.

2 Q. -- particularly in the US and in England, during
3 restraint situations --

4 A. Yes.

5 Q. -- when you went back to the canteen it certainly -- and
6 I think you were there for several hours --

7 A. Yes.

8 Q. -- so you would be able to reflect on a number of
9 things --

10 A. Yes, absolutely.

11 Q. -- so in those several hours, it certainly went through
12 your mind that Mr Bayoh's race may, in other people's
13 perception, shall we say, raise itself, is that what
14 you're saying?

15 A. Yes.

16 Q. When you spoke to your team members, did any of them
17 raise this concern with you?

18 A. No.

19 Q. So that hadn't -- that wasn't something you discussed
20 with them?

21 A. No, no. As I say, it was more -- at that time when
22 I was involved it was more of a: don't talk about the
23 incident, it's everyone's welfare, we didn't really
24 speak about anything like that. It was -- certainly it
25 was just in my own reflection; it wasn't voiced

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1 publicly, if you like.

2 Q. So it was something that went through your mind --

3 A. Yes.

4 Q. -- but something you did not verbalise with anyone else?

5 A. Yes, absolutely.

6 Q. And nobody else verbalised it with you; is that correct?

7 A. That's correct, yes.

8 MR MOIR: Thank you very much, Sergeant Maxwell.

9 LORD BRACADALE: If you would like to return to your seat.

10 Thank you, Mr Moir.

11 Now, Ms McCall, do you have an application?

12 MS MCCALL: Yes.

13 LORD BRACADALE: If you would like to come to the table,
14 please.

15 Are you content to outline it to me in the presence
16 of your client?

17 MS MCCALL: That's a matter for you, sir. There are
18 a number of issues. I'm aware there has been
19 a different practice with different witnesses.

20 LORD BRACADALE: I think when it is your own client I'm
21 happy for him to sit here.

22 Application by MS MCCALL

23 MS MCCALL: I'm content.

24 The first issue is in relation to his understanding
25 of radio messages and this was dealt with yesterday in

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1 evidence at page 131 and 132 of the transcript with
2 reference to the evidence video timeline and there's two
3 messages initially to be clarified in terms of his
4 understanding. The first is the message from the
5 controller and you have heard, sir, repeatedly Senior
6 Counsel to the Inquiry refer to the message about
7 "chasing" and then the pause and then "someone". In my
8 submission there is also a pause after the word
9 "someone", and I wanted to play that message to
10 Sergeant Maxwell and see whether that second pause
11 impacted his understanding of the meaning that he
12 described yesterday.

13 The second question in terms of his understanding of
14 that message is whether, regardless of any pauses, it
15 was clear from the messages from the controller that
16 there was an ongoing disturbance.

17 The third matter to do with understanding of
18 messages relates to the message from Inspector Stewart
19 at 07.20.13, which Inspector Stewart purported to be
20 a stay safe message. Sergeant Maxwell described his own
21 stay safe message, and it was to ask him whether he
22 understood whether Inspector Stewart was issuing
23 a recognisable stay safe message.

24 The second issue is around the availability of
25 specialist resources and the confirmation of the

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1 position and this is for clarification. So yesterday at
2 page 136, reference was made by Sergeant Maxwell to the
3 message from the controller that he believed a dog was
4 en route and it was to ask Sergeant Maxwell at which
5 point -- and to point to the message which provided him
6 with the confirmation which he said was later when he
7 was at the locus, and the message is 07.24.11, I think,
8 from the dog handler.

9 The next issue is for clarification in relation to
10 Sergeant Maxwell's consideration of terrorism in respect
11 of this incident. This is around page 158 of
12 yesterday's transcript with reference to his statements
13 and notes and what his final position is on that,
14 whether it was considered by him, what conclusion he
15 reached about that and whether it had any impact on his
16 decisions or actions.

17 The next issue is in relation to the questions he
18 was asked with reference to his PIRC statement 266 about
19 officers lying on Mr Bayoh or leaning on him and
20 a comment he made about civilians -- to civilians or
21 untrained people it might look like they were lying on
22 him. It was simply to ask him about the process of
23 taking that statement by the PIRC and whether he was
24 responding to questions from the PIRC about what others
25 might have said they saw.

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1 The next issue is in relation to the notes
2 PIRC 00267, the self-penned notes, to ask
3 Sergeant Maxwell about the status of those and what
4 potential use they may be to the Inquiry, because he has
5 been asked a number of questions about their content,
6 and it was to ask him about the purpose of those,
7 whether they were ever intended to be a statement, and
8 what the Inquiry should take from those notes if
9 something that's in them is not repeated in any formal
10 statement, or is expressed in a different way and that
11 is designed to let the Inquiry understand whether
12 Sergeant Maxwell ever intended that document to be
13 a statement made by him.

14 The next issue is in relation to today's evidence,
15 page 73, and the question of the MIT asking for what
16 Senior Counsel to the Inquiry described as an
17 operational statement, and you are aware, sir, there
18 have been a number of questions asked of the officers
19 about their obligations to do with operational
20 statements, and it is to explore with Sergeant Maxwell
21 whether there is a difference in terms of his
22 understanding between an operational statement and
23 a witness statement.

24 The next matter is a matter raised by Senior Counsel
25 to the Inquiry today at page 84 of the transcript in

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1 relation to an impression of bias in favour of Constable
2 Short and against Mr Bayoh because of their respective
3 races in the pursuing of the calls for the ambulance,
4 and Senior Counsel to the Inquiry put it to
5 Sergeant Maxwell that there were more calls to the
6 ambulance about Constable Short being prioritised than
7 there were in respect of the ambulance and the state of
8 Mr Bayoh, and it was to take Sergeant Maxwell to the
9 communications that he made about those two individuals
10 to demonstrate that in fact he made four communications
11 about Mr Bayoh and only two about Constable Short and so
12 any impression, as put by Senior Counsel to the Inquiry,
13 would be wrong.

14 And the last matter is whether it would be of
15 assistance to the Inquiry for Sergeant Maxwell to
16 describe any previous experience of knife incidents.
17 That's a question that's been asked of every other
18 officer but not of him, and it seems to me, sir, that
19 there are two relevant reasons for asking that question
20 of officers at the scene. The first -- and this doesn't
21 apply to Sergeant Maxwell -- is whether officers have
22 acted differently in the past when confronted with
23 a suspect potentially in possession of a knife in terms
24 of their restraint and so on, but also what risks there
25 are for officers at this kind of call and whether the

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1 A. Certainly.

2 Q. And I wonder if you could just have the transcript
3 timeline in front of you, so that you can read the
4 relevant messages.

5 I'm hoping we can also play one to you. So the
6 first message I'm interested in -- you will see it, it's
7 on page 1, and it is 07.16.32 from controller 1 and it
8 is the message that you were referred to yesterday about
9 "diverting to Hendry Road, disturbance ongoing, male
10 armed with a knife", et cetera, and I'm hoping, with
11 assistance, that we can play that message to you and
12 I wonder if you could listen in particular to the part
13 of the message that follows "African looking male". So
14 the part that is "Chasing someone may be carrying
15 a knife described as ..." so that part of the message
16 and then I will ask you about.

17 (Video played)

18 Thank you.

19 So yesterday, Sergeant Maxwell, Senior Counsel to
20 the Inquiry pointed out to you that a pause can be heard
21 between "chasing" and "someone". In your view is there
22 a pause between "someone" and "maybe carrying a knife"
23 or not?

24 A. Yes, there is a gap.

25 Q. And did that second pause between "someone" and "maybe

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1 carrying a knife" have any impact on your interpretation
2 of the message that the male was chasing someone and
3 that he had a knife?

4 A. Yes. The way it came across to me is that the person
5 described as having the knife was actively chasing
6 someone.

7 Q. All right. And you were asked yesterday by senior
8 counsel would it have made a difference if he was just
9 chasing cars, or just walking around the street with
10 a knife and you said no, it would still be a grade 1
11 call. From your understanding of the message from
12 control, did you think that this was an ongoing incident
13 or not?

14 A. It was an ongoing incident, with a potential threat to
15 life.

16 Q. Thank you. I wonder if you could turn, then, to page 3
17 of the timeline and yesterday you had said to Counsel to
18 the Inquiry that when you issued your message about all
19 units attending and you said "Bearing in mind officer
20 safety", that was you issuing a stay safe message --

21 A. Yes.

22 Q. -- put short because your officers would know what you
23 meant, do you remember saying that?

24 A. Yes.

25 Q. Just looking on page 3 at 07.20.13, do you see there

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1 there's a message from the area control room

2 Inspector Stewart?

3 A. Yes.

4 Q. I'm just going to read that to you:

5 "Inspector Stewart area control room to the set
6 attending, I'm monitoring this obviously from an ARV
7 perspective. If you get sightings of the male you need
8 to make an initial assessment yourself and feed back
9 through straight away and I will listen out on
10 the channel."

11 There was a suggestion earlier in evidence to the
12 Inquiry that what Inspector Stewart was doing there was
13 conveying a stay safe message from the control room. Do
14 you recognise that as a stay safe message from the
15 control room?

16 A. No.

17 Q. What would a stay safe message from control contain?

18 A. There's a specific -- I'm not sure if there was
19 a specific script at the time, just in relation to
20 officers to observe their safety in terms of reaction
21 gap, CUT principle if required. It's very specific to
22 stay safe, rather than look for an overview.

23 Q. All right, thank you.

24 LORD BRACADALE: Just before you leave that, would you
25 understand that to be an order given by

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1 Inspector Stewart to the set arriving?

2 A. Only if they assessed it as requiring an armed response
3 vehicle at that time, sir.

4 LORD BRACADALE: Is that the way you understand it?

5 A. Yes.

6 LORD BRACADALE: Thank you.

7 MS MCCALL: And just following up on that, if I may, sir,
8 does that, Sergeant Maxwell, accord with your evidence
9 yesterday that the officers attending retain autonomy --

10 A. Yes.

11 Q. -- in how they initially deal with the incident?

12 A. That's correct.

13 Q. I wanted then to ask you, please, about your
14 understanding at the time of the availability of
15 specialist resources and confirmation about the
16 position. This is just to clarify a matter. So
17 yesterday you were referred at page 2 of the timeline to
18 your message at 07.19.12:

19 "Control from 411, is there any update from ARV or
20 dog units, over?"

21 So you were chasing up a response. And at 07.19.17,
22 controller 1:

23 "I believe a dog unit is en route."

24 And I think what you told us yesterday was that you
25 didn't take that to be clear information that a dog was

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- 1 coming, is that right?
- 2 A. Yes, that's correct.
- 3 Q. And what you also said yesterday was it was only when
- 4 you were at the scene that it was confirmed to you that
- 5 a dog was coming?
- 6 A. That's correct.
- 7 Q. Can I ask you please to look at a message at 07.24.11,
- 8 which is on the top of page 7, and at the top there do
- 9 you see it's a message from "Gary Wood, dog unit":
- 10 "Yeah, I'm en route from Edinburgh. I take it this
- 11 is the same male with the knife, yeah?"
- 12 Do you see that?
- 13 A. Yes.
- 14 Q. Was that the message that provided you with confirmation
- 15 that a dog was definitely coming?
- 16 A. Yes, that was a form of confirmation that a dog had been
- 17 allocated. The officer within that unit had come onto
- 18 our channel and stated that they're on their way.
- 19 Q. And I think what he has told you in terms of the
- 20 information that you said yesterday you would want to
- 21 get, he has told you he is coming from Edinburgh, is
- 22 that right?
- 23 A. Yes.
- 24 Q. He has not given you an ETA but I suppose at least you
- 25 have some idea of the distance he is travelling?

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1 A. Yes.

2 Q. All right, thank you. You can set that timeline to the
3 side.

4 I wanted to ask you to clarify your evidence about
5 your consideration of terrorism in relation to this
6 incident.

7 A. Yes.

8 Q. So just to assist you with where it is in your
9 statements, in your Inquiry statement, if you have that,
10 you will find it at paragraph 5. I think it might be
11 helpful for you, sergeant, to have the document -- the
12 hard document in front of you.

13 So you will see at the second paragraph of that
14 answer you say:

15 "For the avoidance of doubt because I know the
16 Inquiry is going to examine this issue, I was aware of
17 the threat level to national security and
18 police officers as being severe and that there had been
19 high profile incidents in relation to terrorism in the
20 United Kingdom. However, my risk assessment at that
21 time did not take terrorism into account and would only
22 have if credible evidence was available."

23 So that's one thing you have said about terrorism
24 and its connection to your risk assessment.

25 Can I ask you then to look at your PIRC statement

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1 266 -- sorry, 267, your notes, forgive me, and it is at
2 page 4 of those. It is just towards the bottom. That's
3 great, thanks. So it is about 12 lines up from the
4 bottom:

5 "A part of me considered ..."

6 Do you see that?

7 A. Yes.

8 Q. "A part of me considered this to be a terrorism-related
9 incident based on recent intelligence and the threat
10 level to serving officers in the United Kingdom."

11 So those are two things you have said in writing --

12 A. Yes.

13 Q. -- prior to the Inquiry commencing, and what you said
14 yesterday to Senior Counsel to the Inquiry is that you
15 explained that it crossed your mind that terrorism might
16 be a factor, as did a number of other things?

17 A. Yes.

18 Q. And you mentioned mental health, you mentioned the
19 possibility of suicide and so on. So just to try and
20 clarify that, did you come to the view that this
21 incident was connected with terrorism or not?

22 A. I came to the view that it was not linked to terrorism.

23 Q. Did that go through your mind at any point as
24 a possibility that you should think about?

25 A. Yes, it did.

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- 1 Q. Did you or did you not discount that possibility?
- 2 A. I discounted it through the decision-making process
- 3 I made in my head, yes.
- 4 Q. And did the fact that that went through your mind as
- 5 a possibility, albeit you discounted it, affect any of
- 6 your actions or decisions that you made that day?
- 7 A. No.
- 8 Q. Thank you. Can I move on then to ask you about your
- 9 PIRC statement which is 266, and you have been asked
- 10 a number of questions about your description of what
- 11 officers were doing in this document and you will
- 12 remember being asked to explain the difference between
- 13 lying on someone and leaning on someone.
- 14 When you were giving this statement to the PIRC, did
- 15 they ask you questions as you were giving the statement?
- 16 A. Yes.
- 17 Q. And when you have described what civilians or untrained
- 18 people might think something might look like versus what
- 19 it was in terms of lying on someone or not, and you have
- 20 said a number of times no one was lying on them, did the
- 21 PIRC indicate to you at any point that someone had told
- 22 them that they thought police officers were lying on
- 23 Mr Bayoh, or words to that effect?
- 24 A. I can't recall specifically if there was any mention of
- 25 that.

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1 Q. Did the PIRC ask you if anyone was lying on Mr Bayoh?

2 A. Again, I can't 100% say that they asked that directly.

3 Q. All right. But should we understand from you saying
4 that they did ask you questions that some of what's
5 contained in that statement is a response to questions
6 they asked you?

7 A. Yes, prompts, yes.

8 Q. Prompts?

9 A. Well, questions along the lines of ... yes, yes.

10 Q. To be fair, perhaps prompted as to a topic they were
11 interested in, is that fair?

12 A. Yes, yes.

13 Q. All right, thank you. Now can I ask you about your
14 notes which are PIRC 00267, and you have been asked
15 a number of questions about these notes and referred to
16 them a number of times. I just want to assist the Chair
17 in what he should make, if anything, of these notes.

18 You have described writing them, I think, early the
19 following morning, I think you said you had had a little
20 bit of sleep that night. What sort of condition were
21 you in when you wrote these notes?

22 A. Still upset and in shock from not necessarily the
23 incident as a full, but more how the people reacted, and
24 seeing my colleagues in that state, trying to ascertain
25 what was going to happen with it all. These notes were

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1 made for my consumption only and it was a kind of
2 self-coping mechanism to get -- to make me feel better
3 and also to try and give me prompts as well so I could
4 remember sort of key points, but ultimately they were
5 for my benefit only. I have not written them in any
6 specific statement writing skill or any style, it's just
7 been notes.

8 Q. Right, and we see them here in a particular form.

9 I take it this is not the form in which you produced
10 them?

11 A. No.

12 Q. Were they handwritten by you or computer --

13 A. No, they were word processed.

14 Q. Word processed. And I take it the form we see them in
15 here is a form generated by the PIRC from what you
16 handed them?

17 A. Yes.

18 Q. Did you ever intend those notes to be for an external
19 audience?

20 A. No.

21 Q. If there is information in those notes, or something is
22 expressed in a particular way in those notes that's not
23 repeated in either your formal PIRC statement or your
24 statement to the Inquiry, should the Chair take it that
25 on reflection either that wasn't accurate or it wasn't

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1 the way you wanted to express it?

2 A. Yes. As I mentioned yesterday in my evidence, there was
3 some of -- the way in which things were conveyed
4 wouldn't be how I would put it in a statement or
5 certainly not how I would choose to present my evidence.

6 LORD BRACADALE: Can I just clarify that because the
7 question you were asked was whether I should take it
8 that on reflection either it wasn't accurate or it
9 wasn't the way you wanted to express it. Now, these are
10 two different issues and there's an important
11 distinction between them. Are you saying that there are
12 inaccurate things in this statement?

13 A. There are a couple of inaccuracies that on reflection
14 when I gave my PIRC statement, I prefer the PIRC
15 statement to stand.

16 LORD BRACADALE: Perhaps you could tease that out,
17 Ms McCall.

18 MS MCCALL: I will have to return to my position to get the
19 note of that.

20 LORD BRACADALE: Very well.

21 MS MCCALL: Thank you, sir.

22 (Pause).

23 Sergeant Maxwell, I'm going to go through one or two
24 of these and perhaps you can indicate whether from your
25 recollection there are other things that are perhaps

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1 expressed differently, but if you look first of all at
2 your notes, 267, at page 2, towards the bottom of the
3 page, it is perhaps about ten lines up. Do you see it
4 says "On arrival at locus"?

5 A. Yes.

6 Q. You describe:

7 "I witnessed a black-coloured male wearing a white
8 T-shirt and jeans lying on the pavement on the southern
9 side of Hayfield Road with officers trying to restrain
10 him."

11 Just bear with me. And if we turn to your formal
12 PIRC statement, 266, it is at the top of page 5:

13 "I got out of my car and I could clearly see the
14 black male lying on the ground."

15 You give a description of the direction and so on,
16 and the last sentence there:

17 "He was lying on his left side and he was facing
18 me."

19 Now, in terms of the difference, if there's
20 a difference between those two, is the Chair to prefer
21 your PIRC statement as opposed to your notes?

22 A. PIRC statement, please.

23 Q. And then going back to your notes, in relation to the
24 actions of other officers -- just bear with me. At the
25 top of page 3, you say:

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1 "From my observations I believe PCs Smith, Walker,
2 McDonough, Good, Paton and Gibson were initially
3 involved in trying to restrain the male."

4 And then you give a description of that.

5 A. Yes.

6 Q. And then if we turn to your formal PIRC statement at
7 page 5, and you were taken to this by -- in large part
8 by Senior Counsel to the Inquiry this morning, but do we
9 see at the second paragraph you have described what
10 Alan Smith was doing and where he was, then
11 Ashley Tomlinson, then Alan Paton, then James McDonough
12 and then you get further on and you say:

13 "PC Danny Gibson was standing near to James
14 McDonough slightly to the right."

15 And then two paragraphs below that you say:

16 "I also saw PC Kayleigh Good. She was standing on
17 the road just beyond the feet of the black male taking
18 observations."

19 Do you see that?

20 A. Yes.

21 Q. So as far as that suggests that unlike your own notes
22 that Gibson and Good at that moment were not involved in
23 the restraint of Mr Bayoh, would you prefer your PIRC
24 statement or your notes?

25 A. PIRC statement.

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1 Q. Lastly, in relation to the matter we were just
2 discussing a moment ago that in your notes, your own
3 notes, you had made reference to consideration of
4 terrorism. You said a part of me -- this is page 4:

5 "A part of me considered this to be
6 a terrorism-related incident."

7 That is not contained at all in your formal PIRC
8 statement and you have given an explanation of that in
9 your Inquiry statement, that you didn't take it into
10 account.

11 A. Mm-hm.

12 Q. So should the Chair prefer your notes or your formal
13 PIRC statement and your Inquiry statement?

14 A. I did have the reference to the terrorism, so probably
15 the notes in that respect.

16 Q. So in the notes when you say a part of you considered
17 this to be terrorism-related, I think what you said to
18 me a few moments ago was that that was something that
19 went through your thought process?

20 A. It went through the -- yes, absolutely.

21 Q. But that you discounted it?

22 A. Yes.

23 Q. Thank you. Now, were there any other points of your
24 notes that you are aware of at this stage,
25 Sergeant Maxwell, that you would like to correct?

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- 1 A. I don't think so.
- 2 Q. Thank you. The next issue I wanted to address with you
3 is the expression "Operational statement" and whether,
4 from your perspective, there is any difference between
5 being asked for an operational statement, or producing
6 an operational statement and being asked for a witness
7 statement. Is there any difference?
- 8 A. Witness statement would be in terms of being a witness
9 to an incident. An operational statement more
10 involving -- my context anyway, if I have been involved
11 in anything that's happened that's been a major incident
12 or serious incident, like a murder or various, that
13 I would provide an operational statement before
14 I terminated duty that day, which is a police
15 operational statement.
- 16 Q. And in terms of the police process of investigating
17 a crime and reporting it to the Procurator Fiscal, you
18 will have experience I suppose of at some stage being
19 asked to provide a witness statement of some kind,
20 a statement of some kind to the Procurator Fiscal in
21 support of a prosecution, is that right?
- 22 A. Yes.
- 23 Q. Would that be described as an operational statement or
24 a witness statement?
- 25 A. A witness statement.

Transcript of the Sheku Bayoh Inquiry

1 Q. So when you met with DCI Hardie and DI Wilson from the
2 major investigation team, Senior Counsel to the Inquiry
3 put it to you this morning that they asked for an
4 operational statement and the Inquiry has heard evidence
5 they were asking for statements on behalf of the PIRC
6 because the PIRC was conducting an investigation. Did
7 that cause you any confusion about what you were being
8 asked for?

9 A. As I say, the stance I had at the time was that I was
10 taking legal advice. I never really thought of it that
11 way, operational/witness statement, but you put it
12 that -- operational statement sounds more formal police
13 process rather than a witness statement.

14 Q. All right, thank you. Now, could you have the timeline
15 back in front of you, please. It was put to you this
16 morning by Senior Counsel to the Inquiry that there may
17 be an impression that you were more anxious to pursue
18 the ambulance attending for PC Short than you were for
19 [Mr] Bayoh, and a distinction was drawn between them on
20 the basis of their race, and I want to just ask you to
21 comment on that.

22 In that respect, can I take you to the transmissions
23 that you made, please, and if you turn, first of all, to
24 07.23.34, which is on page 6. So this is not long after
25 you have arrived. Stephen Kay has asked you for an

Transcript of the Sheku Bayoh Inquiry

1 update on any injury to Constable Short and do we see
2 that you say:

3 "PC Short has been struck to the head, is a bit
4 upset. I'm going to need an ambulance here to check her
5 over. No bleeding, no visible injury, over."

6 Do you see that?

7 A. Yes.

8 Q. And I think that's the first time that you have asked
9 for an ambulance for Constable Short, is that right?

10 A. Yes.

11 Q. And then if you look on, please, to page 7 at 07.24.28,
12 I think you confirmed this this morning, you make
13 a transmission:

14 "Although there's no visible injuries to PC Short
15 she has been stomped to the body a few times, et cetera
16 and struck to the head. Can you see if an ambulance can
17 attend ASAP."

18 And you have explained that was after
19 Ashley Tomlinson --

20 A. Yes.

21 Q. -- told you about the stamping, is that right?

22 A. Yes.

23 Q. So do you see that's the second time you have chased the
24 ambulance -- well, it's the first chase but the second
25 request for the ambulance?

Transcript of the Sheku Bayoh Inquiry

1 A. Yes, yes.

2 Q. If you could turn then please to page 8 and at 07.26.41
3 this is your next reference to an ambulance and do we
4 see that you say:

5 "I'm just looking to clarify that -- has an
6 ambulance been contacted for this accused also, over."

7 Do you see that?

8 A. Yes.

9 Q. So that's a reference, "this accused" to Mr Bayoh, is
10 that correct?

11 A. Yes, that's correct.

12 Q. And then if you turn, please, to page 11, I think this
13 is your next transmission about an ambulance or
14 someone's condition: at 07.29.30, towards the top of the
15 page do you see:

16 "Control, can you get a move on with the ambulance.
17 This accused is now not breathing. CPR is commencing,
18 over."

19 Do you see that?

20 A. Yes.

21 Q. And again "this accused" is a reference to Mr Bayoh, is
22 that right?

23 A. That's correct.

24 Q. And then if you turn over to the following page, please,
25 page 12, this is your next communication about someone's

Transcript of the Sheku Bayoh Inquiry

1 condition and do we see at the top of the page,

2 07.31.22:

3 "Control, any update on the ambulance. We could
4 really do with it here, over."

5 You see that?

6 A. Yes.

7 Q. Was that a chase for PC Short's ambulance or for
8 Mr Bayoh's ambulance?

9 A. Mr Bayoh's ambulance.

10 Q. And then lastly, do we see at the same page, 07.32.11 --
11 now, there's no specific mention of the word "ambulance"
12 here but what you say is:

13 "Just for the call card, chest compressions
14 commenced however breaths have stopped due to
15 cross-contamination, blood, et cetera."

16 A. Yes.

17 Q. Was that a reference to Mr Bayoh's condition?

18 A. Yes, that's correct.

19 Q. And a change in his condition?

20 A. Yes.

21 Q. And does it appear from the controller's response that
22 he has understood that to be another chase for the
23 ambulance because he says "ETA two minutes for the
24 ambulance"?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. So in terms of any impression that people might have
2 should they understand from that that four times you
3 reported on Mr Bayoh's condition and chased the
4 ambulance --

5 A. Yes.

6 Q. -- and two times you did that in respect of Constable
7 Short?

8 A. That's correct.

9 MS MCCALL: Thank you, sir. Those are my questions.

10 LORD BRACADALE: Thank you. Sergeant Maxwell, thank you
11 very much for coming to give evidence to the Inquiry.
12 I'm going to rise briefly to allow the next witness to
13 be introduced and you will be free to go then.

14 A. Thank you.

15 (2.34 pm)

16 (Short Break)

17 (2.37 pm)

18 LORD BRACADALE: Now, Ms Grahame, the next witness?

19 MS GRAHAME: The next witness is Ashley Wyse and she will be
20 taken by my learned junior, Ms Thomson.

21 LORD BRACADALE: Good afternoon, Ms Wyse. You're going to
22 be asked questions by Ms Thomson who I think you have
23 met, but before that will you say the words of the oath
24 after me. Raise your hand, please.

25

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1 MS ASHLEY WYSE (sworn)

2 LORD BRACADALE: Ms Thomson.

3 Questions from MS THOMSON

4 MS THOMSON: What is your full name, please?

5 A. Ashley Isabel Wyse.

6 Q. Is that Miss Wyse?

7 A. Miss.

8 Q. May I ask how old you are?

9 A. 37.

10 Q. And am I right to understand that in May of 2015 you
11 lived in Hayfield Road in Kirkcaldy?

12 A. Yes.

13 Q. I would like to begin by showing you an image of the
14 street. Can we please look at the stills catalogue, the
15 first of the stills catalogue, image 16, please.

16 (Pause).

17 While we are waiting for that image to come up, can
18 I ask you perhaps just to have a look in the folder in
19 front of you because I want to make sure that you've got
20 everything you need for giving your evidence today.

21 A. Okay.

22 Q. And I think you should see -- oh, here we are now,
23 sorry. Can I have page 16, please. So in May of 2015
24 you lived in Hayfield Road, Ms Wyse, and if you can look
25 at the screen in front of you, is that an image of

Transcript of the Sheku Bayoh Inquiry

- 1 Hayfield Road?
- 2 A. Yes.
- 3 Q. We have technology that allows you to leave a mark if
4 you touch the screen, so I wonder whether you could put
5 a circle on your house so that we can see where you
6 lived. So that's the upstairs part of that building, is
7 that right?
- 8 A. Yes.
- 9 Q. And we have heard that a Kevin Nelson lived in the lower
10 part of that building?
- 11 A. Yes.
- 12 Q. Where is your entrance door, is it to the right or the
13 left of that window as we look at it?
- 14 A. To the right.
- 15 Q. Perhaps if you touch that and another circle will
16 appear. So that's your main door, up the path and in
17 the main door there. And the number 1 where you have
18 put that marker, that's your property and which room
19 within your property is that?
- 20 A. That is the bedroom.
- 21 Q. The window to the left of that, again on the first
22 floor, is that also part of your house?
- 23 A. Yes.
- 24 Q. What room would that be?
- 25 A. That's the living room.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. So your bedroom faces out onto Hayfield Road, as does
2 your living room, and you lived upstairs from
3 Kevin Nelson?
- 4 A. Yes.
- 5 Q. Let's return to the folder in front of you. There
6 should be a number of documents there and the first
7 should be a statement that you gave to a member of the
8 Inquiry team on 22 February and 8 March of this year.
9 Do you see that in the folder?
- 10 A. Yes.
- 11 Q. If we could have that on the screen too, please. So
12 this is your statement. If we could go to the final
13 page, please, do we see that you signed the statement on
14 29 May. You will see that your signature has been
15 blanked out on the screen but your signature should
16 feature in the hard copy in front of you. There should
17 in fact be your signature on every page.
- 18 A. Okay.
- 19 Q. And if we look at the very last paragraph of your
20 statement, do we see that it reads:
- 21 "I believe the facts stated in this witness
22 statement are true. I understand that this statement
23 may form part of the evidence before the Inquiry and be
24 published on the Inquiry's website."
- 25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. Do you see that?

2 A. (Nods).

3 Q. And if we look at the statement -- sorry, the paragraph
4 immediately above, that will be paragraph 35, do we see
5 that you said:

6 "I feel that my memory of the incident is good in
7 places and other parts are hard to remember. My memory
8 of the event would have been better at the time of
9 giving statements to the police and PIRC."

10 That's the Police Independent Review Commissioner:

11 "The statement given to the police and PIRC would
12 have been truthful and to the best of my memory at that
13 time. I think that my statements were read out to me
14 but I'm not 100% sure. Looking back maybe the words
15 that are used would not be what I would choose. I am
16 not saying that they are wrong, I'm just saying that it
17 wouldn't be how I would phrase it. If there is any
18 difference between what I have said now and my earlier
19 statement to the police or PIRC, those earlier
20 statements should be preferred."

21 Do you see that?

22 A. Yes.

23 Q. So you acknowledge in your Inquiry statement that
24 seven years after the event that we're here to talk
25 about today your memory is not so good in places and

Transcript of the Sheku Bayoh Inquiry

1 that if there are differences between your Inquiry
2 statement and your earlier statements, the Chair should
3 prefer your earlier statements?

4 A. Yes.

5 Q. Is that right?

6 A. Yes.

7 Q. Your earlier statements should also be in that folder so
8 let's just check that they're there. There should be,
9 first of all, PIRC 44.

10 A. Yes.

11 Q. And this is a statement that you gave to
12 police officers, DC Cox and a DC Stark, on 3 May at 7.45
13 in the evening. Do you see that?

14 A. Yes.

15 Q. And if we look, we will see that you gave that statement
16 at your home address to those detective constables.
17 Now, when you gave the statement, Ms Wyse, did you tell
18 the truth and do your best to give a complete and
19 accurate account of what you had seen?

20 A. Yes.

21 Q. Moving through the folder, the next document that should
22 be there is PIRC 43. Do we see that this is a statement
23 that you gave two days later on 5 May 2015 to PIRC, an
24 Investigator McGuire at your home address?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. Again, were you telling the truth and doing your best to
2 give a complete and accurate account of events?

3 A. Yes.

4 Q. Next in your folder should be PIRC 45, and this is
5 a statement that you gave to an Investigator Rhodes from
6 the PIRC on 25 August 2015, again, at your home address.
7 Do you have that statement before you too?

8 A. Yes.

9 Q. And once again, did you tell the truth and do your best
10 to give a complete and accurate account?

11 A. Yes.

12 Q. For completeness, I think there will be two
13 precognitions that you gave to the Crown Office in your
14 folder too. We don't need to put these up on the screen
15 but they are COPFS 46 and 47. Are they also in the
16 folder?

17 A. Yes.

18 Q. And do we see that COPFS 47 was a precognition statement
19 that you gave on 4 October 2016 at the Fiscal's office
20 in Kirkcaldy?

21 A. Yes.

22 Q. And COPFS 46 is a precognition statement that you gave
23 on 2 November 2016, again, at Kirkcaldy?

24 A. Yes.

25 Q. So if it would assist you at any time to look at these

Transcript of the Sheku Bayoh Inquiry

1 statements and what you said on previous occasions, then
2 you should feel free to do so.

3 There's also a spreadsheet in front of you. You can
4 put that to one side for now and we will perhaps look at
5 it together in a little while.

6 A. Oh, right, okay.

7 Q. So I want to ask you questions about 3 May 2015 and
8 I want to do that by reference to your Inquiry statement
9 that you gave relatively recently, and you might find it
10 helpful to have the hard copy handy, but the paragraphs
11 I'm going to refer you to will pop up on the screen in
12 front of you.

13 So if we could perhaps pull up the statement,
14 please, Ms Taylor-Smith, thank you, and if we scroll
15 down to paragraph 3, do we see that you say you recall
16 it was 3 May 2015. You had been out the night before
17 and you had been celebrating your birthday with friends.

18 A. Yes.

19 Q. At the top of page 2 you explain that you had had a few
20 drinks and you were merry but you weren't drunk.

21 A. Yes.

22 Q. In paragraph 4 you explain that you woke up to a lot of
23 noise in the morning and flashing lights. It was early
24 morning. You think it was the back of 7 and it was
25 light outside:

Transcript of the Sheku Bayoh Inquiry

1 "I had venetian blinds in my room and I slept with
2 them partially open: they were half tilted so you could
3 see out but nobody could see in. It was the flashing
4 lights that woke me up."

5 Do you see that?

6 A. Yes.

7 Q. So you have explained in your Inquiry statement that it
8 was the lights that first drew your attention to the
9 fact that something was going on outside.

10 If we scroll down to paragraph 5 you explain in
11 paragraph 4 that you then went to the window and in
12 paragraph 5 you say:

13 "I seen police cars and then I seen a couple of
14 police officers across on the other side of the road on
15 the big grassy part. There was a man on the ground
16 surrounded by police. While there was a hedge there,
17 I had a clear view of the police officers and the man.
18 When I say 'he' I didn't know the man then, I now know
19 it was Sheku Bayoh. I could hear the noise of shouting.
20 It was muffled through the window. The window was
21 closed. It was more the muffle of noise that you heard
22 so I could hear shouting but I couldn't make out what
23 was being said and then I literally ran and got Hazel."

24 Who is Hazel?

25 A. Hazel is my friend.

Transcript of the Sheku Bayoh Inquiry

1 Q. And she spent the night at your house?

2 A. Yes.

3 Q. At paragraph 6 you say:

4 "Hazel was still sleeping when I went through to the
5 back bedroom ..."

6 So should we understand that she had spent the night
7 in the back bedroom and you were in the front bedroom?

8 A. Yes.

9 Q. "I shook her on the shoulder and said 'Oh God, come and
10 see what's happening out here'. She followed me into my
11 bedroom and we looked out of the window. I could still
12 hear muffled noise and shouting. The man was on the
13 ground with police officers around him. It was possibly
14 three or four officers. I don't remember what the
15 police officers looked like or whether they were in
16 uniform. I do remember there was a lady walking about
17 in a suit, I think it was grey. She looked smart
18 compared to the rest of them and I thought she was the
19 one that was in charge. I think there were batons lying
20 on the ground. I think a police officer picked one up
21 and put it in their pocket."

22 So you recall a lady police officer being there. Do
23 you recall whether she was there when you first looked
24 out of the window, or do you just recall that she was
25 there at some point during the event?

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1 A. Some point during the event.

2 Q. You say there were possibly three or four officers
3 around the man. Do you recall whether they were male or
4 female officers?

5 A. I wouldn't be able to tell you.

6 Q. Okay. At paragraph 7 you say you could see what the
7 police officers were doing. You weren't sure why the
8 man was on the ground:

9 "... it seemed that the man was getting arrested for
10 something. I had seen that they were restraining him,
11 and taping his legs and I thought the man must have been
12 kicking off. I couldn't see the man moving. I could
13 only see the police officers around him. I could see
14 the yellow tape on the man's legs. The man was lying on
15 his back -- I could tell because I could see his feet
16 pointing up. I couldn't see the man's face. You
17 couldn't really see very much of the man. You could
18 just see the man's knees and his legs. This was because
19 the police officers were around him but that's the best
20 I can remember. I couldn't describe the man on the
21 ground."

22 I will ask you more questions later about the
23 position that the man was lying in, but is it your
24 recollection that when you first saw him, his legs were
25 taped and he was lying on his back?

Transcript of the Sheku Bayoh Inquiry

1 A. I think they were in the middle of doing the tape.

2 Q. In the middle of doing the tape?

3 A. Yes.

4 Q. All right. And is it your recollection that he was

5 lying on his back?

6 A. I think so.

7 Q. You think so?

8 A. I think so.

9 Q. Is it possible that you could be wrong about that or

10 mistaken about that?

11 A. I would say lying on his back.

12 Q. At paragraph 8 you say:

13 "The police officers were kneeling beside the man.

14 They were down beside him. I'm asked if any of them

15 were lying on the man. I can't be sure about the

16 position of the police officers and whether any of them

17 were lying or leaning on the man. One of the officers

18 was quite alert and seemed to realise the man wasn't

19 breathing. I'm sure he checked his pulse and then he

20 done CPR. I don't remember what the police officer

21 looked like who did the CPR but I remember the guy that

22 did it got a glass of water to rinse his mouth out. He

23 got the glass of water from my downstairs neighbour,

24 Kevin Nelson. Kevin lived in the flat directly

25 underneath me."

Transcript of the Sheku Bayoh Inquiry

1 In later paragraphs you go on to describe the CPR.
2 Would it be fair to say that your recollection of the
3 restraint perhaps isn't as good now seven years later as
4 it was at the time?

5 A. Yes.

6 Q. And indeed after you gave your best recollection of the
7 incident in the paragraphs that we have just looked at,
8 did the statement-taker take you to passages within your
9 Police Scotland and PIRC statements to jog your memory?

10 A. Yes.

11 Q. If we can move on to paragraph 12 then of your Inquiry
12 statement so that we can see what parts of your earlier
13 statements were read over to you and what you had to
14 say. Paragraph 12 reads:

15 "I'm asked about the statement I gave to PIRC on
16 5 May 2015. In this statement at page 1, I described
17 getting home at about 3.00 am and going to bed about
18 3.30 am. That sounds right. I'm told that my statement
19 says, at page 2, that when I woke that morning and
20 looked out of the window 'I could hear shouting and
21 a disturbance outside. It was right outside my room
22 window. When I looked out of my window I could see lots
23 of police officers running about. I think there was
24 about 10 to 15. There was lots of police vehicles,
25 a grey one, a van, one at an angle at the tree and the

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1 blue lights on the vehicles were on'."

2 And you said:

3 "That sounds right to me. I accept that it's
4 correct if that's what I told the PIRC at the time."

5 A. Yes.

6 Q. So you have essentially adopted what you said on
7 5 May 2015 as being accurate.

8 If we carry on, at paragraph 13 you say:

9 "I'm told my statement goes on to say at page 2
10 'I looked to the right along Hayfield Road to where
11 the police vehicles were. The lights were on.
12 I thought it might have been something happening in the
13 park opposite. There have been problems there in the
14 past and I looked across there at first to see what was
15 happening and there was nothing happening there. I then
16 looked along the other way, along Hayfield Road towards
17 the roundabout to the left, down from my window. I saw
18 a black man in the street. He was nearly down on the
19 ground. He was surrounded by police officers. There
20 was at least six police officers surrounding him. I saw
21 the police all over him. What I mean is that they were
22 holding him on the ground'."

23 And you said to the statement-taker:

24 "That is right. The roundabout I'm talking about is
25 the roundabout at the end of Hayfield Road where it

Transcript of the Sheku Bayoh Inquiry

1 joins with Hendry Road. The police officers were
2 holding him to restrain him and putting the tape on him.
3 I don't remember what I meant by saying he was nearly to
4 the ground but it would have been what I told the PIRC
5 at the time. I got asked this question about a million
6 times, was he up, was he down, and I think he must have
7 been nearly down, meaning as in they were at the point
8 of getting him down on the ground and that's when all
9 the police officers went on him."

10 Ms Wyse, do you recall anything today about how the
11 man came to be on the ground?

12 A. No, just what you have seen prior to in the video that
13 I had is what is in my memory.

14 Q. All right, all right. We will come to the videos
15 because we're going to watch those together in a little
16 while, but before we look at the video, I'm keen to know
17 what you can remember relying on your memory. So it
18 would appear to be the case that you said something to
19 the PIRC about the man being nearly down on the ground
20 and you have told me that you told the PIRC the truth --

21 A. Yes.

22 Q. -- and did your best to give a complete and accurate
23 account, but should we understand that you can't assist
24 us any further today, simply because of the passage of
25 time and you perhaps don't recall this part of the

Transcript of the Sheku Bayoh Inquiry

1 incident?

2 A. Yes.

3 Q. Moving on to paragraph 14:

4 "I'm told my statement continues 'what it looked
5 like to me was that I saw a police officer striking the
6 man on his legs to get him down. I am not sure whether
7 he was completely lying on the ground or was going down
8 at that point. There was at least six police officers
9 lying on top of him. They were crossing over him from
10 both sides. They pretty much covered his whole body.
11 It was only when I moved that I could see his arm and
12 definitely knew it was a black man. It looked like one
13 officer was using a baton to hold the man down. It was
14 on his upper chest towards his throat. When the man was
15 on the ground with the police officers on top of him
16 I could see him struggling with them. I saw them put
17 some sort of yellow tape around his feet and legs over
18 the ankle'..."

19 And you said to the statement-taker:

20 "If I said that at the time, then it will be true.
21 But I don't remember that now. It's seven years ago
22 now, the main thing that I remember now is him on the
23 ground with the yellow tape on his legs and then getting
24 resuscitated. I remember the batons on the floor but
25 I don't remember seeing them used."

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1 In your PIRC statement that you were taken to by the
2 Inquiry team you said that you recalled an officer
3 striking the man on the legs to get him down. Do you
4 remember that today?

5 A. No.

6 Q. And you said you recalled at least six officers lying on
7 top of him, covering his body. Again, today looking
8 back, do you have any recollection of that?

9 A. No, I just remember them being round him.

10 Q. Although as you said to the Inquiry officer, if you said
11 it at the time, then it would be true, and you have told
12 me that you were doing your best to tell the truth when
13 you spoke to the PIRC?

14 A. Yes.

15 Q. Moving on to paragraph 15, you were then taken to
16 a passage in your PIRC statement which read:

17 "When the man was on the ground, I heard him
18 screaming. It was a horrible sound, it sent chills
19 through me. I heard the man shout to the police to get
20 off him. They never moved from him at that point.
21 I think the black man was on his back when lying on the
22 ground. I'm not sure if he was moved whilst on the
23 ground. I saw him lying on the ground. I could see
24 that his wrists were restrained. His hands and arms
25 were in front of him and the police officers were still

Transcript of the Sheku Bayoh Inquiry

1 lying on top of him."

2 You said:

3 "I can't remember this now. There was lots and lots
4 of shouting but I remember more muffles. It's more
5 muffled sounds that I've got in my head. What's in my
6 memory is the police officers were restraining him and
7 trying to get the tape on his legs but if my statement
8 says that, then I must have told PIRC that at the time.
9 I just don't remember now. It's so long ago."

10 A. Yes.

11 Q. So again, can you assist us by telling us more today
12 about what you could hear at the time?

13 A. I can't remember. I just have the more muffled noises.
14 My window was shut, so I can't -- like it was just --
15 you know, you see that it was -- people must have been
16 speaking to each other, like, but I couldn't make out
17 what it was or ...

18 Q. Okay. And it appears that you did say to the PIRC at
19 the time that you heard the man screaming, it was
20 a horrible sound and it sent chills through you. Should
21 we understand that you have no recollection of that
22 today?

23 A. No, I can't remember that now.

24 Q. But if you said that to the PIRC, then would that have
25 been you telling the truth and doing your best to give

Transcript of the Sheku Bayoh Inquiry

1 a complete and accurate account?

2 A. Yes.

3 Q. Moving to paragraph 16 you were asked about
4 a precognition you had given to the Crown Office which
5 reads:

6 "The police officers holding the man, Sheku, down
7 and lying on him so he couldn't move. There was one at
8 the top, one at the side and one at his feet. There
9 were a lot of police officers around him. I might be
10 wrong in saying six, but there was a few. Sheku or Shek
11 was putting up a fight. I could hear mumbling and
12 shouting, but I couldn't hear what was being said
13 because my window was closed'."

14 And again you said to the statement-taker:

15 "I just remember there was a lot of noise but
16 I don't remember that. I just remember everybody was
17 shouting at each other. I remember muffled, muffling
18 noises. The window was shut. I don't remember the
19 police officers lying on Sheku now. I just remember
20 them being around him. As I have said before, what
21 comes into my head now is I remember the tape round his
22 feet, him lying on the ground and the police officers
23 round him."

24 A. Yes.

25 Q. There's a reference there to Sheku putting up a fight.

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1 Again, do you have any recollection of that now?

2 A. No.

3 Q. So can you assist us at all as to how he was putting up
4 a fight or you simply have no recollection of that
5 today?

6 A. No.

7 Q. Okay. At paragraph 17 you were then taken to your
8 police statement from 3 May, so that's the first of the
9 statements that you gave, in which you said:

10 "The man kept making roaring noises and shouted
11 something similar to 'get off me.' I'm also reminded
12 that in my PIRC statement of 5 May I said 'I heard the
13 man shout to the police to get off him'. I'm asked what
14 version of events is more accurate. I am aware that the
15 Crown Office statement was given 18 months or so after
16 it happened. I'm assuming the statement given closest
17 to the time when it happened would be the most accurate,
18 which would be the PIRC and police statements. If my
19 police statement and PIRC statements say that then
20 I must have said that at the time and that must be what
21 happened but as I say, I don't remember that now.
22 I just remember a lot of muffling and lots of activity
23 and noise. My memory would be clearer when I first gave
24 a statement but at the same time it all happened so
25 fast."

Transcript of the Sheku Bayoh Inquiry

1 Moving on to paragraph 18, a further passage from
2 your PIRC statement from 5 May was read to you:

3 "'There then seemed to be a pause, a break. The man
4 had been quiet for a little while. In this period, the
5 police officers appeared to be speaking with him.
6 I could not hear any of his responses but it appeared
7 the police officers were having a conversation with him.
8 I think the police officers were lying on top of him
9 a long time. I think it was at least five minutes they
10 were lying on top of him, it may have been about
11 ten minutes. This includes the time when he was being
12 taped to his legs. At all times he was surrounded by
13 police officers. There were at least six
14 police officers around him at all times'."

15 And you said to the statement-taker:

16 "I don't remember the police officers having
17 a conversation with the man. I also don't remember the
18 police officers lying on him now. I just remember the
19 police officers around him restraining him and putting
20 the tape on. I remember him getting restrained and the
21 officers holding him down. Again, if I told PIRC that
22 back then, then I accept it must be right."

23 Ms Wyse, is there anything more that you can add to
24 the passages that we have looked at from your Inquiry
25 statement today?

Transcript of the Sheku Bayoh Inquiry

- 1 A. No.
- 2 Q. Nothing more comes back to you at all?
- 3 A. No, sorry.
- 4 Q. There's no reason to apologise, I just want to be sure
5 that we have your complete and full evidence today.
- 6 All right. I would like to take you now to some of
7 the footage that you mentioned because we understand
8 that you recorded parts of this incident on your mobile
9 telephone and that you later gave your phone to
10 the police, is that right?
- 11 A. Yes.
- 12 Q. Was that fairly soon after the event?
- 13 A. Yes.
- 14 Q. Was it when you spoke with the police on 3 May?
- 15 A. There or there -- there around.
- 16 Q. There or thereabouts. Certainly I think when you spoke
17 with the PIRC on 5 May you said that you had given your
18 phone to the police and you had given the police
19 permission to examine it and to look at the footage --
- 20 A. Yes.
- 21 Q. -- and you were also happy for the PIRC to do the same,
22 is that right?
- 23 A. Yes.
- 24 Q. So it must have been somewhere between 3 May and
25 5 May --

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. -- that you gave your phone to the police, would that
3 make sense?
- 4 A. Yes.
- 5 Q. Now, when you went to the window that morning to see
6 what was happening outside, where was your phone?
- 7 A. At the side of my bed, then I took my phone in my hand
8 and took the video.
- 9 Q. What I'm wondering is whether you had to move away from
10 the window to get your phone, or whether you had taken
11 your phone with you when you went to the window?
- 12 A. I can't remember. I think I had my phone in my hand
13 maybe or ...
- 14 Q. Do you recall whether you watched much of what was
15 happening outside before you started to film?
- 16 A. I can't remember.
- 17 Q. All right. Now, I mentioned a spreadsheet earlier, and
18 I think this would be a good time to ask you to have the
19 spreadsheet in front of you because what I would like to
20 do is try to be clear about where the bits of footage
21 that you took fit into the timeline of events.
- 22 A. Okay.
- 23 Q. So I don't know whether you have had the opportunity to
24 watch any other witnesses give their evidence on our
25 channel, but if you have, then you will perhaps realise

Transcript of the Sheku Bayoh Inquiry

1 that we have got footage from a number of different
2 sources, we've got some CCTV footage from the Gallaghers
3 pub, the White Heather at the roundabout, from
4 dash cams, from other mobile phones and your Snapchat
5 footage. We also have an Airwaves -- police Airwaves
6 transmissions and 999 calls, and what we have done, with
7 a little professional help, is put that in a real
8 evidence timeline so all of the footage and all of the
9 transmissions are played against a real time clock and
10 the timings have all been checked and that allows us to
11 see and hear what was happening at any given point in
12 time.

13 So this spreadsheet is essentially a record of what
14 can be seen and heard in this real evidence timeline, so
15 if you have a look at the spreadsheet, you will see that
16 we've got the actual real times in the far left column.

17 A. Okay.

18 Q. And then -- and not all of this will be relevant for our
19 purposes, but we have then got the caller ID, so where
20 Airwaves transmissions have been made by the police
21 there's a note of who made the transmission. In the
22 next column headed "Event Airwave transcription",
23 there's a transcript of what is said over the Airwaves
24 and in the next column along "Description of visible
25 events in video" there is a written description of what

Transcript of the Sheku Bayoh Inquiry

1 can be seen happening in the video footage, and in the
2 very final column at the far right there's confirmation
3 as to the source of any video footage at that time.

4 So, for example, you will see on the first page that
5 some of the footage is from a dash cam, some is from
6 Robson Kolberg's mobile phone, and some is from
7 Gallaghers pub, and as we work our way through our
8 spreadsheet you will see entries that relate to the
9 footage from your mobile phone.

10 A. Okay.

11 Q. So before we look at the first of the pieces of footage
12 that you took, I think there were three or four -- there
13 are certainly three that have been included in this
14 timeline, I thought it might be helpful if we can just
15 be clear about what had happened before you came to the
16 window and started to film, just so that we can see
17 where the footage fits in with the overall timeline of
18 events.

19 A. Okay.

20 Q. So I just want to draw a few entries to your attention
21 just to give some context to the footage that you took.
22 We can perhaps begin at 7.20.13 seconds, which you will
23 find on page 3 of the footage, and the entry that
24 I would like to draw your attention to there is the
25 column just to the right of the mid-point of the page

Transcript of the Sheku Bayoh Inquiry

1 that's got the description of what can be seen on the
2 Gallaghers CCTV footage and you will see that it records
3 that a large marked police van arrives from the south on
4 Hendry Road and turns right at the roundabout into
5 Hayfield Road. Do you see that?

6 A. Yes.

7 Q. And we have heard evidence that that was the first of
8 the Police vehicles to arrive. There are two officers,
9 Constable Paton and Constable Walker and that was their
10 van arriving at the scene and if you stay in that column
11 and skip down two entries you will see that the van
12 stops on Hayfield Road within the field of view of the
13 camera and that's at 7.20.23. Do you see that?

14 A. Yes.

15 Q. The next entry that I would like to draw your attention
16 to is at 7.20.30 and again, it's the description column
17 that is relevant here and it records that a smaller
18 marked police van arrives travelling north on
19 Hendry Road, turning right at the roundabout into
20 Hayfield Road. Do you see that entry?

21 A. Yes.

22 Q. And staying in the same column, if you skip down three
23 entries you will see that at 7.20.39 that smaller police
24 van stops behind the large police van?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. Do you see that? And we have heard evidence that that
2 was the second police vehicle on the scene and
3 Constables Tomlinson and Short were within that vehicle.

4 If you turn over to page 4, Ms Wyse, if you can look
5 at the entry timed 7.21.02, it's a transmission by
6 PC Paton, do you see that?

7 A. Yes.

8 Q. "Officer's injured PC Short male."

9 And if you look just a little bit to the right and
10 the next entry down in the description column you will
11 see that a second after that transmission was made you
12 can see on the footage a number of persons appearing
13 behind a light-coloured car and at least one person
14 appears to fall over. Do you see that?

15 A. Yes.

16 Q. And the Chair has heard evidence that that may have
17 been Constable Short falling to the ground. If you look
18 at the description immediately beneath that -- and it is
19 quite a long description and it spans 10 seconds of CCTV
20 footage from 7.21.03 to 7.21.13:

21 "A car moves forward quickly towards the roundabout
22 and appears to skid. At the same time this is happening
23 it appears the persons near the pavement possibly stand
24 again or are joined by other persons and there is some
25 coming together and another fall towards the ground by

Transcript of the Sheku Bayoh Inquiry

1 one or more of the persons."

2 Do you see that?

3 A. Yes.

4 Q. And the Chair has heard evidence that may lead him to
5 the conclusion that that was the point at which Mr Bayoh
6 was taken to the ground. At 7.21.19 you will see in red
7 that a Constable Tomlinson's emergency status on his
8 police radio was turned to on, do you see that?

9 A. Yes.

10 Q. And we have heard evidence from Constable Tomlinson, and
11 he told us that by the time he pressed his emergency
12 button, Mr Bayoh was on the ground, okay?

13 A. Okay.

14 Q. And briefly over the page, Ms Wyse -- I'm sorry,
15 I missed out one entry at the bottom of page 4, my
16 apologies. At the bottom of page 4 at 7.21.28, there is
17 a description of another police vehicle with flashing
18 lights arriving at the scene and stopping on
19 Hayfield Road, do you see that?

20 A. Yes.

21 Q. And we have heard that that was the third vehicle to
22 attend and Constables Good and Smith were within that
23 vehicle and then over the page, on page 5, there's an
24 entry at 7.21.46, and the description is of a fourth
25 vehicle arriving at the scene and stopping on

Transcript of the Sheku Bayoh Inquiry

1 Hayfield Road, do you see that?

2 A. Yes.

3 Q. And we have heard that that was the fourth police
4 vehicle to arrive carrying Constables Gibson and
5 McDonough.

6 So I realise I have taken quite a lot of your time
7 going through that and you won't have seen this before,
8 but I thought it might be of some assistance because if
9 you cast your eye down at the spreadsheet you will see
10 that we're just about to come to the first snippet of
11 footage that you took, and it gives some context in
12 terms of what had happened before you started filming
13 from your bedroom window.

14 So I wonder if we could perhaps now play the first
15 piece of Snapchat footage which is at 7.22.10 to
16 7.22.20, please.

17 (Video played)

18 Okay, if we stop there for a moment. Do you
19 recognise that, Ms Wyse?

20 A. Yes.

21 Q. And you recognise that as being the piece of footage
22 that you took?

23 A. Yes.

24 Q. From your bedroom window?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. Now, there's no sound there. Was there nothing to be
2 heard or were you not sound recording? Can you say?

3 A. I wouldn't be able to tell you why there wasn't any
4 sound. Maybe it was on mute or something like that.

5 Q. All right. Now, it is a very short piece of footage and
6 it happens very quickly but I think we do have a version
7 which has been slowed down and enlarged, and I wonder if
8 we can perhaps watch that.

9 (Video played)

10 So this is the same footage, Ms Wyse, but it has
11 been slowed down.

12 (Video played)

13 Can you pause that for a moment, please. Before we
14 looked at that footage I drew your attention to a number
15 of the entries on the spreadsheet, including the entry
16 at 7.21.03 which was when Sheku Bayoh was taken to the
17 ground, between 7.21.03 and 7.21.13. So this first
18 piece of footage was taken at 7.22.10 to 7.22.20, so
19 it's roughly one minute into the restraint, okay, just
20 to put that in context. You said it was familiar to
21 you, it was the footage that you took, you recognised
22 the view from your bedroom window. I wonder if we can
23 look at the slow version of the footage again. Does
24 watching this -- and in particular watching it in slow
25 motion, jog your memory at all about what you saw that

Transcript of the Sheku Bayoh Inquiry

1 day?

2 A. My memory is kind of what's -- what you see there is
3 what I remember.

4 Q. What you remember, all right.

5 (Video played)

6 I think we can pause it there, thank you. You said,
7 Ms Wyse, that what we see is what you can remember. Can
8 you assist us at all in terms of what we can see on the
9 screen in front of us there?

10 A. Just the restraint and the vehicles being in the street
11 and kind of --

12 Q. Okay. If we could watch the slow motion footage again
13 please and I will ask you to pause part of the way
14 through this.

15 (Video played)

16 If you could pause there, please. You have made
17 a number of references in your statements to the man's
18 legs being taped and we have heard evidence that leg
19 restraints were indeed applied, and if you look at the
20 footage, do you see there are two officers who are
21 standing up?

22 A. Yes.

23 Q. One on the right and one just in front of the police
24 car?

25 A. Mm-hm.

Transcript of the Sheku Bayoh Inquiry

1 Q. If I can ask you to look at the officer just in front of
2 the police car because he has given evidence that we can
3 see him in this footage unfolding the restraints before
4 applying the restraints, so if we could watch from here
5 just for a second or two, please.

6 (Video played)

7 Do you see that he appears to have something in his
8 hands?

9 A. Yes.

10 Q. That he appears to be unfolding?

11 A. Yes.

12 Q. And we heard from him that those were the leg restraints
13 and he was preparing the leg restraints, so it would
14 appear to be the case that this footage was taken before
15 the leg restraints were applied, but if I understand
16 your evidence correctly, and if I have read your
17 statement correctly, your best recollection is at the
18 moment in time that the restraints are being put on or
19 in fact on, is that correct?

20 A. Yes.

21 Q. All right. And do you recall whether the screams or
22 shouts or muffled sounds that you have spoken about were
23 happening at this point in the events?

24 A. I think there was lots of activity at that time, so yes,
25 there was kind of -- police officers must have been

Transcript of the Sheku Bayoh Inquiry

1 talking to each other or something, but I wouldn't be
2 able to tell you what they were saying. As I said, it
3 was more a muffled noise that I could hear.

4 Q. Sure. I'm just wondering whether you can help us with
5 whether your phone wasn't picking up the sound for
6 whatever reason, or whether in fact there was no noise
7 at that point in time?

8 A. I wouldn't be able to tell you that.

9 Q. All right. Before we go to the second piece of footage,
10 again if you will bear with me, can we go back to the
11 spreadsheet just to put it in context.

12 A. Okay.

13 Q. So I have advised you that that first piece of footage
14 was about a minute into the restraint. If we then look
15 at the entry at 7.22.24, which is on page 5 of the
16 spreadsheet, it's a transmission from PC Walker, do you
17 see that?

18 A. Oh, yes.

19 Q. Are you with me?

20 A. Mm-hm.

21 Q. "Update male in cuffs still struggling".

22 Then immediately down from that and to the right we
23 see at 7.22.25, another vehicle arrives on the scene.

24 Do you see that?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. It's the entry:
2 "A smaller marked police car arrives at the scene."
3 Do you see that?
4 A. Yes.
5 Q. So that's the fifth vehicle to arrive and we have heard
6 that there was a Sergeant Maxwell in that vehicle. If
7 we move over the page to 7.23.57, again, the description
8 column. There's a reference to a dark-coloured vehicle
9 approaching and it appears to have flashing lights at
10 the rear window, do you see that?
11 A. Mm-hm.
12 Q. And we may hear evidence that that is CID or plain
13 clothes officers arriving. And then at 7.25.17 -- this
14 is on page 7, and it's an Airwaves transmission,
15 7.25.17, do you see that?
16 A. Yes.
17 Q. It's a transmission by PC Alan Smith:
18 "This male now certainly appears to be unconscious,
19 breathing, not responsive, get an ambulance for him."
20 So at 7.25.17 seconds, Mr Bayoh was unresponsive and
21 the officers radioed for an ambulance.
22 Now, the next piece of Snapchat footage is less than
23 15 seconds later at -- sorry, two minutes and 15 seconds
24 later, it's at 7.27.31, and I wonder if we could perhaps
25 look at this. So this footage that we're about to look

Transcript of the Sheku Bayoh Inquiry

1 at is two minutes and some seconds after Mr Bayoh became
2 unresponsive, to put this in context. So 7.27.31.

3 Thank you.

4 (Video played)

5 Okay, stop that there. Again, did you recognise
6 that?

7 A. Yes.

8 Q. Is that footage that you took from your bedroom window?

9 A. Yes.

10 Q. And whose voice is that that we hear?

11 A. Mine.

12 Q. That's your voice. Okay. How did that image fit with
13 your overall recollection of what happened that day?

14 A. It's just kind of how I remember it, kind of the
15 police officers coming off -- like stepping away from
16 him and then they were doing the resuscitation.

17 Q. Can you tell me any more about that?

18 A. The guy checked to see if he was breathing. Obviously
19 he knew something wasn't right so he started doing CPR
20 and then he got a glass of water from my downstairs
21 neighbour, Kevin.

22 Q. Okay. The next piece of footage is at 7.29.30 seconds,
23 please. I beg your pardon, sorry, 7.28.18. It's my
24 mistake.

25 (Video played)

Transcript of the Sheku Bayoh Inquiry

1 That was a very short piece of footage but again, do
2 you recognise that as footage taken by you from your
3 bedroom window?

4 A. Yes.

5 Q. There doesn't appear to be any sound there, and again,
6 can you help us as to whether there simply was no noise
7 in the background or whether your camera wasn't
8 recording sound for whatever reason?

9 A. I don't know.

10 Q. You can't say, all right. And was that familiar to you
11 in terms of your overall memory of the scene?

12 A. Yes.

13 Q. What did you see going on there?

14 A. Just the police officers walking around.

15 Q. Okay. So that was at 7.28.18, so that was about three
16 minutes after Mr Bayoh became unresponsive, and I can
17 advise that at 7.29.30 -- if we have a look at that
18 entry in the spreadsheet, it's on page 11. 7.29.30, do
19 you see that?

20 A. Yes.

21 Q. That's another transmission, this time by Acting
22 Sergeant Scott Maxwell:

23 "Control can you get a move on with the ambulance.
24 This accused is now not breathing. CPR is commencing,
25 over."

Transcript of the Sheku Bayoh Inquiry

1 Do you see that?

2 A. Yes.

3 Q. So this third piece of footage is about three minutes
4 after Mr Bayoh became unresponsive and about a minute
5 before there was a radio message to control to say that
6 he had stopped breathing and CPR was commencing. And
7 you do recall seeing the CPR take place, is that right?

8 A. Yes.

9 Q. Can you tell us anything about that today, what you
10 remember of it?

11 A. No, just the police officers kept going until the
12 ambulance arrived, you know, they didn't stop. And then
13 the ambulance people came and took over and that's it.

14 Q. You said one of the officers went and got a glass of
15 water from Kevin Nelson.

16 A. Yes. Yes, he did.

17 Q. Okay. We can put the spreadsheet to one side for now
18 and if we could go back to your Inquiry statement
19 please, to paragraph 6 which we have looked at before.
20 At the bottom of that paragraph you say -- if we can
21 scroll to the top of the next page, please, thank you:

22 "I do remember there was a lady walking about in
23 a suit, I think it was grey. She looked smart compared
24 to the rest of them and I thought that was in charge."

25 And I had asked you earlier whether you could

Transcript of the Sheku Bayoh Inquiry

1 remember whether she had been there at the outset when
2 you looked out of the window or whether she arrived
3 later. Now, I don't think we saw her in the first video
4 clip but she was there in the second and third video
5 clips. Is it possible that she didn't arrive on the
6 scene until a little bit later on?

7 A. She may have. I can't recall that though. When she
8 arrived, I wouldn't be able to tell you.

9 Q. Okay, but would you accept that we don't see her in the
10 first of the video clips?

11 A. Yes.

12 Q. Now, we have looked at these three pieces of footage and
13 we have looked at the time stamps on them. The time
14 stamp on the first is 7.22, the time stamp on the second
15 is 7.27, so five minutes passed between the first video
16 clip that you took and the second video clip that you
17 took. What were you doing during that five-minute
18 period?

19 A. Just looking out the window and I think I got Hazel at
20 one point and then Hazel came to the window as well so
21 she was with me.

22 Q. Okay. So was there a period of time then that you were
23 watching what was happening but you weren't actively
24 filming it?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. And do you remember anything about what happened during
2 that period of time?

3 A. No.

4 Q. If we can go back to your Inquiry statement to
5 paragraph 25, you were shown the footage, I think, by
6 the Inquiry team when you gave your statement and about
7 halfway down is a sentence that begins:

8 "What is in [the] third video ..."

9 It's about halfway down that paragraph there you
10 say:

11 "What is in this third video is largely how
12 I remember what I saw that morning. I'm unsure of the
13 order of these three videos in terms of what was
14 happening. The videos don't jog any further memories of
15 that day."

16 Do you see that?

17 A. Yes.

18 Q. So we have looked at all three pieces of footage and
19 that third video was the one that was shortly before the
20 call to control to say that Mr Bayoh was no longer
21 breathing, when there were a number of officers around
22 him, and you say that that is essentially what you saw
23 that morning, that is how you remember what you saw that
24 morning; is that correct?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. Is there anything at all that you can add to your
2 recollection or to what you have told the Inquiry team
3 or told us today in your evidence about what you saw
4 that day?

5 A. No.

6 Q. Okay. And you say that watching the clips didn't jog
7 your memory and I think you were also shown some still
8 images that had been taken --

9 A. Yes.

10 Q. -- from the clips and did they jog your memory either?

11 A. No.

12 Q. I want to ask you a few more questions about the
13 position that the man was lying in. If we can go back
14 to paragraph 7 of your statement, about halfway down you
15 say that the man was lying on his back, and above that
16 you say -- sorry, it is perhaps easier if I read from
17 the beginning rather than jumping around. You said you
18 could see what the officers were doing, you weren't sure
19 why the man was on the ground:

20 "I had seen they were restraining him and taping his
21 legs and I thought the man must have been kicking off."

22 So this is your memory at the point in time at which
23 his legs were being taped, is that right?

24 A. Yes.

25 Q. You say:

Transcript of the Sheku Bayoh Inquiry

1 "I couldn't see the man moving. I could only see
2 the police officers around him. I could see the yellow
3 tape on the man's legs. The man was lying on his back.
4 I could tell you because I could see his feet pointing
5 up."

6 So you recall him being on his back at the point in
7 time that the tape is around his legs, is that right?

8 A. Yes, because then they went straight to resuscitation
9 after.

10 Q. They went straight to resuscitation after that?

11 A. Yes.

12 Q. All right, what do you mean by they went straight to
13 resuscitation after?

14 A. That's just how my memory is of what I have, you know,
15 like of how it took place, kind of thing. You know, the
16 tapes was on and then -- then they knew there was
17 something wrong when they went to the resuscitation.

18 Q. I see, so your memory is that as soon as the tape was on
19 the next thing to happen was --

20 A. The next thing to happen, yes.

21 Q. -- was the CPR. All right. Are you able to help us
22 with what position he was in during the earlier part of
23 the restraint before the tape was applied to his legs?

24 A. I couldn't be sure.

25 Q. Okay, I want to move away from the events of 3 May and

Transcript of the Sheku Bayoh Inquiry

1 ask you some questions about statements and people
2 asking you to give them statements or otherwise give
3 them information.

4 So we know that you gave a statement to the police,
5 two statements to the PIRC, and two statements to
6 the Crown. I understand from reading your Inquiry
7 statement that other people also came to the door
8 wanting to ask you questions about what you had seen, is
9 that right?

10 A. Yes.

11 Q. If we can go to paragraph 27 of your Inquiry statement
12 where again you were taken back to an earlier statement
13 that you gave to the PIRC, and it related to a man
14 coming to your door and you had said to the PIRC:

15 "He didn't introduce himself but I just assumed he
16 was Sheku's brother. He continued by talking about his
17 mother and that they were 'looking for answers'. He
18 stated that they had been given 'five different stories'
19 or 'five different states of events' and he told me that
20 the police stated that Sheku had been carrying a knife
21 when he wasn't. He was calm with me, not aggressive,
22 and I did not feel threatened by him but I did feel that
23 he was 'putting me on the spot'. This made me feel
24 uncomfortable because I didn't know what to say to him
25 and didn't want to lie to him."

Transcript of the Sheku Bayoh Inquiry

1 You said to the statement-taker:

2 "Yes that's all correct. And what I mean by saying
3 'uncomfortable' was because they were looking for
4 answers that I don't have. I felt I can't keep going to
5 my door and not knowing who was going to be there.
6 Often the door had chapped but I didn't answer it
7 because I had to go down a flight of stairs. However,
8 this time obviously I did."

9 And I beg your pardon, I should have taken you
10 firstly to paragraph 26. I understand that in
11 paragraph 27 you were describing a second visit from
12 this gentleman. My apologies, I have taken this out of
13 sequence but in paragraph 26 you say:

14 "I'm asked about when I was visited by a member of
15 Sheku's family. I think it was his brother. He was
16 very pleasant. He wasn't aggressive. But he was asking
17 me questions. I can't remember what they were but he
18 was just going around things of 'my family and I are
19 looking for answers'. That's what made me twig that it
20 was his brother or a cousin or something because he was
21 black. By that point I knew that it was a black man
22 that had passed away. And that's when I just got to the
23 point and said enough was enough. You were trying to
24 live your life and people was coming to the door asking
25 you questions and I don't have the answers. It's all

Transcript of the Sheku Bayoh Inquiry

1 the other people that it affects as well, like seeing
2 someone coming to my door and wondering what it's all
3 about."

4 In paragraph 27 when you said you didn't know what
5 to say and you didn't want to lie, what did you mean by
6 that?

7 A. I guess when, you know, you had lots of people coming to
8 the door and looking for answers, I didn't have the
9 answers and, you know, I just kind of wanted to move on
10 with my life.

11 Q. You said lots of people were coming to the door; who was
12 all coming to your door?

13 A. There was media and people would be sitting in cars
14 outside the house and it was just one of those things
15 that I just wanted to kind of -- enough was enough, so,
16 you know, something had to be done. You know, as much
17 as we lived there, we still had to live our own life and
18 not feel like you were looking out of your window to see
19 who was there before you could exit your house.

20 Q. Okay. If we can look at paragraph 28. You said you
21 didn't remember a second visit from someone in Sheku's
22 family but again, you were taken to a previous statement
23 where you said:

24 "I heard a knock at the door and I looked out the
25 window into the street to see if I could see anyone's

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1 car. I was not expecting anyone to be calling, so I
2 ignored the door and it's not uncommon for me to do that
3 if I don't know who is there. I continued to look out
4 of the window saw a black male walking away from the
5 house. Again, the male was very smartly dressed and
6 I got the impression it was the same male that had been
7 at the door a fortnight previously. He began to lean
8 over the hedge and I wondered what he was doing and as
9 such I didn't pay attention to his description.
10 I immediately felt intimidated and felt that I was
11 having to hide behind my own curtains. I came away from
12 the window and didn't go back. Later on that night,
13 about a quarter-to-eight, I went to my door to give
14 access to my male friend and saw a leaflet lying on the
15 floor inside the door. On lifting the leaflet I could
16 see it had a picture of Sheku Bayoh on it and that it
17 had the title 'Justice for Sheku Bayoh Campaign'. Below
18 the title and picture there was a paragraph of events
19 which was typed and below that a framed box in which
20 there was written in pen, 'Hi, the family have seen
21 footage/stills/photos of a video that was handed to
22 the police/PIRC. Can you talk to us about the family
23 about what you saw? I thought immediately the
24 handwritten note was specifically a reference to my
25 footage and that information and footage had been given

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1 out by Police Scotland or PIRC without them telling me
2 they were doing it. I felt betrayed by this information
3 being exposed and I felt that I should have been made
4 aware so that I could have been more prepared. I felt
5 this was a personal threat and I panicked that they may
6 be watching my house. I was scared."

7 So did you understand this footage or the reference
8 to the footage to be the footage that you had taken from
9 your phone, taken on your phone?

10 A. Yes.

11 Q. And given to the police. Okay. When you said that you
12 felt betrayed, can you explain what you meant by that?

13 A. I guess I just wish I knew that the police was giving
14 the evidence to the family so I was more aware of what
15 they saw and, you know, what I saw.

16 Q. And when you said you felt that this was a personal
17 threat, what did you mean by that?

18 A. I just felt like I should have been told prior to my
19 images being shared.

20 Q. And when you said that you panicked, can you help me to
21 understand why you panicked?

22 A. I guess I was just trying to protect my little one at
23 the time, you know, so I was kind of more worried about
24 him at that point.

25 Q. And you said that you were scared. What were you scared

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- 1 of?
- 2 A. I think just the -- I would maybe say panic more would
3 be the word, I would just -- looking back thinking,
4 you know, well, I was trying to protect my little one,
5 you know, and for his wellbeing and not wanting media
6 and people coming to the house and asking me questions
7 in front of him because he didn't know anything that was
8 going on.
- 9 Q. And had there been times that the media had come to your
10 door?
- 11 A. The door had chapped a good few times.
- 12 Q. Did you answer it?
- 13 A. No.
- 14 Q. Did you look out to see who had been at the door?
- 15 A. Yes, I looked out the window but other than that,
16 I wouldn't -- I never answered it.
- 17 Q. Can you say who it was that had been coming to your
18 door?
- 19 A. I couldn't tell you.
- 20 Q. And you mentioned cars sitting outside as well?
- 21 A. Yes.
- 22 Q. Do you know who was sitting in the cars?
- 23 A. No.
- 24 Q. Did you form a view as to who was likely to be sitting
25 in the cars?

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1 A. No, I just ignored and walked the other way.

2 Q. And you said in your evidence you got to the point where
3 you thought enough is enough?

4 A. Correct.

5 Q. Was it at that point that you made contact with the PIRC
6 to make them aware that all of this was going on?

7 A. Yes.

8 Q. Okay. And did you give a statement to them about what
9 had been going on?

10 A. I think so. I couldn't be sure.

11 Q. Bear with me a second, please.

12 (Pause).

13 Just one final thing, Ms Wyse. Was your bedroom
14 window open or closed throughout this incident?

15 A. Closed.

16 Q. Was it closed the whole time? Did you open it at any
17 point?

18 A. No, it was closed.

19 MS THOMSON: I have nothing further.

20 LORD BRACADALE: Thank you.

21 Are there any Rule 9 applications for this witness?
22 Ms Mitchell and -- nobody else.

23 Right, Ms Wyse, I wonder if you could go back to the
24 witness room just for a little while, while I hear some
25 legal submissions.

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1 A. Okay.

2 (Pause).

3 LORD BRACADALE: Yes, Ms Mitchell.

4 Application by MS MITCHELL

5 MS MITCHELL: Just two matters, briefly, my Lord.

6 The first is in a PIRC statement, PIRC 43, given by
7 Ashley Wyse on 5 May, that being two days after the
8 incident. At page 4 of 6 on the third paragraph from
9 the bottom she indicates:

10 "In my mind I thought they were being really rough
11 with this guy. I did not know what happened before.
12 I mean, it was the way they were pouncing on the guy.
13 I felt that they were very close to him, that he had no
14 space."

15 And I was wondering whether or not she might add to
16 her recollection, if she has any, of what she means by
17 those phrases.

18 The next issue I would like to raise is in relation
19 to one of the last points touched upon which was her
20 experience of receiving a letter through her door asking
21 about whether or not the family of Sheku Bayoh could
22 speak to her and to ascertain whether or not she
23 understood that they may have been going to other houses
24 in the area as well and may have spoken to other people
25 and the Inquiry will recall of course that evidence has

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1 paragraph there. Do you see the paragraph that starts,
2 the short paragraph, just three lines that starts "In my
3 mind"?

4 A. Yes.

5 Q. Could you read that for us?

6 A. "In my mind I thought they were being really rough with
7 this guy. I did not know what had happened before this.
8 I mean it was the way they were pouncing on the guy.
9 I felt that they were very close to him and he had no
10 space."

11 Q. Now, do you remember saying that at the time?

12 A. I can't remember that now.

13 Q. No. Do you remember that feeling that you had that they
14 were being rough with this guy? Do you remember
15 thinking that?

16 A. I can't -- I can't remember, sorry.

17 Q. No. It said:

18 "I mean, it was the way they were pouncing on the
19 guy."

20 Can you help us in any way with what you might have
21 meant there?

22 A. I think what I meant was I don't know how you would
23 restrain somebody so if -- you know, maybe they were
24 having to be a little bit more straight to the point to
25 do what they needed to do to restrain.

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1 Q. What do you mean, if you can help the Inquiry with what
2 do you mean by straight to the point?

3 A. Just if he wasn't doing what the police officer was
4 asking them to do.

5 Q. If they weren't doing what the police officers asked
6 them to do then what?

7 A. Well, as I have said, I don't know how you restrain
8 someone.

9 Q. Yes.

10 A. So if the police officers were being more rough -- like
11 rougher, if that's what I have said, to restrain
12 someone, I don't know how you would do that, so I can't
13 answer your question any more.

14 Q. Okay. You also said:

15 "I felt that they were very close to him and that he
16 had no space."

17 Can you help us with what you meant when you said
18 that?

19 A. Just what I have said before, the police officers being
20 around him, you know ... that's what I have said.

21 Q. Okay. Can we move on to another issue now and at the
22 end of your evidence you were speaking to my learned
23 friend about a leaflet coming through the door.

24 A. Yes.

25 Q. And there was some handwriting on it --

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- 1 A. Yes.
- 2 Q. -- asking about footage. Now, were you aware that the
3 family might have been going to other houses nearby you?
- 4 A. I don't know.
- 5 Q. No? Do you know Kevin Nelson?
- 6 A. Yes.
- 7 Q. Did you ever speak to Kevin Nelson at all about anyone
8 approaching you?
- 9 A. Not really.
- 10 Q. When you say "not really" are --
- 11 A. No.
- 12 Q. No, okay.
- 13 The final issue I would like to ask you about was
14 you talked about various people coming to your door and
15 you said that you were contacted by the media. Were you
16 ever contacted by someone called John Sallens?
- 17 A. I can't remember.
- 18 Q. Okay. Does that name ring a bell with you at all?
- 19 A. Not really.
- 20 Q. Did anybody ever leave a card asking you to call them
21 back?
- 22 A. There was cards and leaflets that got put through the
23 door, but I just used to pick them up and put them in
24 the bin.
- 25 Q. Okay, and did the cards or leaflets relate to the

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1 incident?

2 A. Yes.

3 Q. And did any of the cards or leaflets ask you to call
4 back?

5 A. I can't remember what was on them.

6 Q. But you just disposed of them in any event?

7 A. Yes.

8 Q. Okay. No further questions.

9 LORD BRACADALE: Ms Wyse, thank you very much for coming to
10 give evidence to the Inquiry. We're about to stop for
11 the day and when that happens you will be free to go.

12 A. Okay.

13 LORD BRACADALE: Tomorrow morning at 10 o'clock.

14 (3.51 pm)

15 (The Inquiry adjourned until 10.00 am on Thursday,

16 9 June 2022)

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