

**AFFIDAVIT**

**OF**

**Nicole [REDACTED] Short**

[REDACTED]

[REDACTED]

[REDACTED]

At Glasgow on the 30<sup>th</sup> Day of August Two Thousand and Eighteen in the presence of [REDACTED] Solicitor and Notary Public, [REDACTED] COMPEARED NICOLE [REDACTED] SHORT, of [REDACTED] [REDACTED] who being solemnly sworn DEPONED as follows:-

1. My name is Nicole [REDACTED] Short. My date of birth is [REDACTED] 1986. I am 32 years old. I reside at [REDACTED] [REDACTED]
2. I am a serving police officer with Police Scotland and hold the rank of police constable based at Kirkcaldy Police Station, Fife. I have 9 years' police service.

The Sheku Bayoh Incident

1. Previously, my role within the police was as a response officer to Grade 1 and 2 calls. Grade 1 is when the response deemed to be appropriate is to respond with lights and sirens on, and Grade 2 is a response of lights only. The call handler makes this decision and then allocates the call.
2. On Sunday 3 May 2015 a Grade 1 call came in very early in the morning. I was working day shift 0700-1500 hours and was partnered with Constable Ashley Tomlinson. The call came through our radios during the morning meeting at 0720 hours and related to a black male armed with a knife on Hayfield Road in Kirkcaldy. The report had been made by a member of the public.
3. I left the station alongside Constable Tomlinson. We were travelling in a vehicle immediately behind Constables Alan Paton and Craig Walker. It took only minutes for us to travel to the locus and during that time there were continuous messages received through our police radios from the call handler in relation to the same black male. The messages were of more reports being received from members of the public in relation to a black male suspect armed with a knife and chasing people with a knife. There was also a message from an Inspector advising that he was considering firearms deployment but that the situation would require to be assessed by us upon arrival. I remember hearing that the police dog was in Edinburgh and could not be there soon enough, and the firearms

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team were unavailable for some reason. I remember thinking, "it's just us then". My initial assessment was that a murder was about to take place and our instructions were simply to get to the scene.

4. Upon arrival, I took off my seatbelt and looked out of the windscreen. I could see Constables Paton and Walker. They had already alighted from their marked police van and Mr Sheku Bayoh was walking towards them, heading from the direction of Hayfield Industrial Estate across the grass towards the pavement in the direction of Hayfield Road. Their van was parked at the bus stop immediately outside the Industrial Estate. Mr Bayoh's muscles were bulging and he looked aggressive. He was not listening to their commands and looked very intimidating. He was totally silent at this point and had no expression on his face. Both Constables had their sprays out, I think Constable Walker had PAVA spray and Constable Paton had CS spray. I heard them both shouting at Mr Bayoh, "STAY WHERE YOU ARE, GET BACK, GET BACK OR I'LL SPRAY YOU", and one of them had just sprayed Mr Bayoh. I did not see which one had used their spray and did not see its deployment, but I knew straight away that one of them had. I could taste it in the air. It was a windy day, so I think the wind carried the spray. The spray is attracted to moisture and so it immediately is attracted to the mouth and eyes. Mr Bayoh reacted to the spray by laughing and wiping it away from his eyes like it was just water. It had no physical effect on him and did not deter him whatsoever. The spray was, however, affecting both Constables Paton and Walker as both had their hands over their faces, specifically their eyes, and both were bent over. I could not see a knife but still believed that Mr Bayoh had one on his person somewhere.
5. Constable Tomlinson alighted from our vehicle first and we met outside at the front of the vehicle. Mr Bayoh was now walking along the grass near the pathway outside the Industrial Estate, parallel to the Industrial Estate, in the direction of Hendry Road. He was walking in the opposite direction from Constables Walker and Paton. Constable Tomlinson and I mirrored him. I was in between Constables Walker and Paton and Mr Bayoh walking behind him, and Constable Tomlinson had gone around the other side of our police vehicle and was now in front of Mr Bayoh, and we were both at a distance but walking alongside him. Mr Bayoh appeared to be on a mission from the manner in which he was walking. He appeared out of control and dangerous and given the reports of him chasing people with a knife as well as his demeanour and the way he didn't react to the sprays, I felt that he could not be permitted to leave. I was terrified that he was going to kill a member of the public if he was allowed to leave the street, which is what he was trying to do. I still fully believed that he had the knife in his possession. I issued Mr Bayoh with verbal instructions and commands to stop by shouting, "STOP...STAY WHERE YOU ARE, PUT YOUR HANDS BEHIND YOUR BACK, GET DOWN ON YOUR KNEES". He ignored me. Constable Tomlinson shouted commands simultaneously, including a threat to use his spray if Mr Bayoh did not stop. Mr Bayoh did not stop, and he did not turn back. Constable Tomlinson was facing Mr Bayoh and I was behind him. Constable Tomlinson used his spray on Mr Bayoh and I had my spray out of its holster in preparation to use it. I could see the path of the spray and it hit Mr Bayoh in his face. I could see it running down his face but he kept laughing and just wiped it as if it was water, and kept walking in the same direction. I could see that despite being sprayed on at least two

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occasions which I was aware of, the spray was having no effect upon Mr Bayoh. We had issued verbal commands, we had drawn our sprays, we had threatened to use our sprays, sprays were then used, but nothing was working and we were not in control of the situation at all.

6. In response to the escalating situation, I removed my baton from its holster and shouted a command to Mr Bayoh which was "I HAVE A POLICE BATON, PUT YOUR HANDS BEHIND YOUR BACK, GET ON YOUR KNEES". Mr Bayoh responded at the point when I said, "GET ON YOUR KNEES" by turning his head halfway to the side and stating, "What?" It was like he scoffed. When he turned to his left, to face us, I could tell that he was under the influence of drugs. He was completely unresponsive. His face was expressionless, completely blank. He was not listening. His reaction to being sprayed was consistent with being under the influence of drugs and his eyes were totally black. I have never seen anything like it before, he was like a zombie. Mr Bayoh then looked at Constable Tomlinson, then at Constable Walker. He shouted, "FUCKING COME ON THEN" and then moved towards me. The manner in which he moved was like he was skipping in the way I have previously seen boxers skip. At this time my thoughts were mostly in relation to the knife as I still did not see it and did not know where it was. I believed it to be in his possession somewhere. I tried to step back and tried to keep distance between us. I still thought in my head that he would stop eventually. In all my years of service I have never needed to use my baton or spray at all and usually, because I am so short and petite, this serves to deescalate situations with men. Part of me still believed that is what would happen, but he just kept coming towards me. I swiped my baton at him whilst he was skipping towards me to try to show him that I was serious and that he needed to stop. I swiped towards the middle of his body and I completely missed him. Mr Bayoh was now so close to me that he was right in my face and I decided to turn around and run. I was screaming at this point and desperate to get away from him. I screamed "NOOOOO". I knew that he was chasing me, and I knew that he was right behind me. I could hear him behind me and I knew from what he had said and the way he had moved towards me that he was going to hammer me. I felt an enormous blow to the back of my head over to the lower right side. I remember that I had almost reached the middle of Hayfield Road at the time I was hit. I went flying. My feet actually left the ground and I landed on the ground almost at the other side of the road. I remember thinking that I was going to hit the kerb and afterwards when I saw my boots, they had scuff marks at the front and top whereas they had been brand new before the incident. At the time, I remember thinking that I would not let my head be kicked about like the videos they showed us in Officer Safety Training and so I grabbed my hair which was in a bun and wrapped my arms round my head. I curled my body into a ball to protect myself. I did not feel him hitting me again and am not sure that I was conscious, but I was later told that he stamped on me at least three times.

7. I could not get up. I tried two or three times and I just kept falling back down on to my knees. I rolled on to all fours and tried to stand twice and could not. I felt someone helping me up. It felt like my legs were not working. I was desperate to get up. Constable Paton lifted me up by my vest and I recall that his complexion was grey. His eyes were bloodshot, he was really struggling to keep them open, Constable Paton pulled me on to my feet and

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shouted in my face to "RUN TO THE POLICE VAN". I staggered to my police van, then to the bigger van which had been driven by Constables Paton and Walker. The incident with Mr Bayoh continued, with other officers involved. I wanted to be further away. Whilst I was moving between vans, I tried to press my red emergency button, but my finger kept slipping off the button. I was like jelly. I do not know if I successfully activated the button or not. Once I had arrived at the bigger van, Constables Alan Smith and Kayleigh Good had arrived and approached me. At this time, I was crying and hysterical. The wind had been knocked out of me and I couldn't breathe. Several of the officers asked me if there was blood and specifically stated that they thought I had been stabbed. I said that I had not and told them that I had been punched. I was unable to speak beyond that. I remember looking at myself and my new boots were scuffed, my police radio was upside down, my trousers were soaked and I could feel pain in my head, down my right side, in my knees and in my hands.

- 8. I am aware that Mr Bayoh was ultimately restrained and that he subsequently became unwell, but I do not know at which point this occurred, or when he was successfully brought under restraint. I was driven straight to hospital by Detective Inspector Colin Robson who had arrived at the scene, and I think I had left the locus by the time Mr Bayoh was brought under control or became unwell.

The Investigation into the Death of Sheku Bayoh

- 9. After I was discharged from hospital later that day, I returned to Kirkcaldy police station. I was numb, tearful and in shock. No one approached me to take a statement from me at that time. However, around June 2015 [REDACTED] [REDACTED] investigators from the Police Investigations and Review Commissioner (PIRC) visited me [REDACTED] I was interviewed for seven hours on that occasion, and later for a further five hours at the Scottish Police Federation Offices in Livingston, again in or around June 2015. I provided the PIRC Investigators with my full account, recollection and memory of events from the incident with Mr Bayoh from beginning to end and in detail. They have not approached me for further information since June 2015. I understood that I was being interviewed as a witness to the incident and I was not informed differently.

- 10. To date, I have never been charged with any criminal offence as a result of the incident. To date, I have never been informed by PIRC or by anyone else that I am suspected of having committed any criminal offence in connection with the incident. To date, I have never been informed by Police Scotland that I am being investigated for misconduct, minor or gross, in relation to the incident. To date, I have never been provided with any information by Police Scotland that I am likely to be investigated for misconduct in connection with the incident.

- 11. To date, I have been provided with no update from PIRC or Police Scotland in relation to the incident, although I am aware that a Fatal Accident Inquiry is going to take place because Mr Bayoh died in police custody and that the date for such an Inquiry is likely to be announced in 2018. I have been given this information by my Solicitors, [REDACTED]

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My Health

12. In relation to my injuries sustained as a result of my involvement in the incident with Mr Bayoh, I have sustained extensive and multiple injuries, [REDACTED]

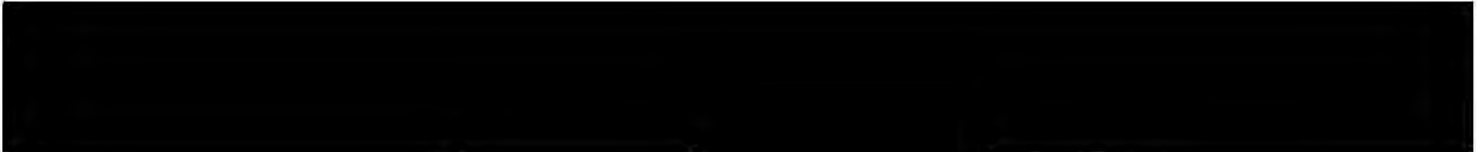
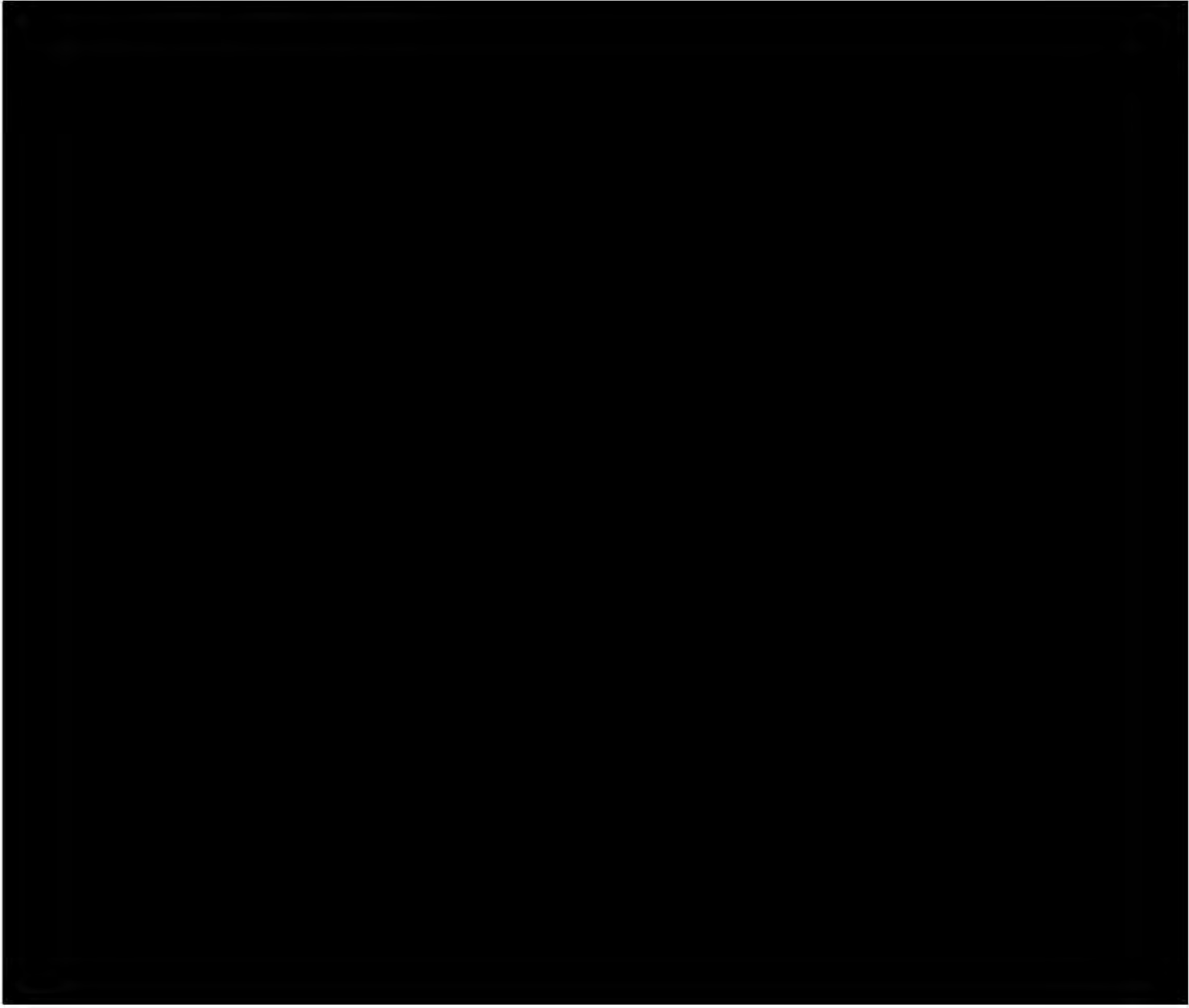
Physical Health

13. In relation to my physical injuries, I was initially assessed in the Victoria hospital on Sunday 3 May 2015. I was discharged with advice to take ibuprofen and a leaflet on head injuries. The following day on Monday 4 May 2015 I telephoned NHS24 and reported that I felt dizzy, as if drunk. I then returned to the Victoria hospital [REDACTED] [REDACTED] I was prescribed co-codamol and ibuprofen [REDACTED] [REDACTED] On Tuesday 5 May 2015 I visited my General Practitioner, Dr Erica Ellison [REDACTED] [REDACTED] and was prescribed sleeping tablets, anti-inflammatory medication and painkillers. By this time my face had swollen up and I had lost sensation in my face from the top to my chin on the right side. My face had also drooped. On Sunday 10 May 2015, I had pain in my arm, felt that I could not lift any weight, my face had drooped to the side and I could not speak. I phoned NHS24 and got an emergency appointment in hospital whereby I underwent a CT scan and was kept in overnight. I was advised that I had sustained nerve damage in my face which was causing the drooping and was discharged the next day. The same week, I attended my GP and was referred to the Maxillofacial department at Victoria Hospital for another CT scan and an MRI scan. On 25 August 2015 I saw the ophthalmologist at the hospital in relation to my eyesight and was advised that I would require to wait for the swelling to go down. In September 2015 I returned to the Maxillofacial department at the hospital and was advised by the Maxillofacial consultant that I had swelling behind my right eye and within my head. No resolution has really ever been found to this problem other than to wait for the swelling to go down. I still suffer from face drooping to date, particularly when I become stressed, and I still suffer from pain. I have been told that it could be linked to [REDACTED] and could be a physiological response to that. I have been seeing a neurologist, [REDACTED] since May 2018 and he is trying to help me with the nerve damage.

14. I have undergone physiotherapy at [REDACTED] and was treated by [REDACTED] [REDACTED] informed me that my back was still swollen by November 2015, six months after the incident, and that the ligaments in my back were overstretched because of the trauma caused by being stamped on. [REDACTED] diagnosis was that ligaments which connected my back to my pelvis had been torn. This also affected my sciatic nerve, my sacral nerves at the bottom of my spine were inflamed, and generally my musculo-skeletal framework was also inflamed as a result of the incident. I also suffered from pain in my hips and knees. I saw [REDACTED] every fortnight until the beginning of 2016. I was originally meant to have ten sessions with [REDACTED] to address both my back and knee injuries, and these were paid for by Police Scotland. However, during treatment

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both injuries were found to be more serious than [REDACTED] originally thought and Police Scotland would not pay for any further sessions. I could not afford to pay privately and so, for this reason, I had to stop seeing [REDACTED] without full treatment. [REDACTED] gave me exercises to do and I did them for four months after I stopped seeing [REDACTED]. My knees, in particular, are still painful. I saw my GP and was referred to the Orthopaedics Department at Victoria Hospital, but they told me that there was nothing surgical they could do which would help me. I still have pain in my spine and in my knees.



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[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] I thought that Mr Bayoh was going to kill me. [REDACTED]

[REDACTED]

[REDACTED]

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