

OPENING STATEMENT

ON BEHALF OF

CORE PARTICIPANTS SMITH, GOOD AND TOMLINSON

Introduction

1. This opening statement is made on behalf of core participants Good, Smith and Tomlinson.
2. In short, it is submitted they did nothing wrong on 3 May 2015 and that the race or, perceived race of Sheku Bayoh did not influence their actions in any way.
3. They are three officers with good records who reported for duty on 3 May 2015 and found themselves responding to an evolving and significant event.
4. We know there had been several reports, by members of the public, of a well-built black male, around six feet tall of muscly build, wielding a knife in public, walking in the middle of the road and acting aggressively towards passing cars.
5. The officers had no information regarding the identity of the man. They weren't privy to his motives or his intentions. They didn't know what kind of person he was, where he normally lived, how he normally behaved or, what he had taken in terms of drugs or alcohol.
6. The only information they had to go on was what had been received from the members of the public who had called Police Scotland and who were clearly alarmed by the man and his behaviour.

Actions and use of force

7. We now know that Sheku Bayoh had been at a friend's house in the early hours watching a boxing match. That he had taken drugs and had a violent altercation with his friend whereby he had chased and assaulted that friend. He then returned to his home in Arran crescent where he armed himself with a large knife from the block in

the kitchen. He was then seen by his neighbour in possession of the knife before being seen attacking cars on Hayfield Road.

8. When the officers attended the scene, they were faced with someone who they understood, on the basis of several reports from the public, to be armed with a large knife. The knife was recovered from the scene, approximately 20 metres from where the officer confronted Sheku Bayoh. The blade of that knife was about 5 – 6 inches in length, and it was a kitchen knife.
9. PC Tomlinson arrived along with Nicole Short after PCs Walker and Paton. PCs Smith and Good arrived together thereafter.
10. At the time PC Tomlinson had approximately 17 months police service.
11. In short, from the moment of their arrival at the scene, everything those officers did on Hayfield Road was in line with the Standard Operating Procedure¹ in place at the time, their training and the law. The evidence demonstrates that.
12. More than one member of the public had reported Sheku Bayoh to be in possession of a knife. The officers were not able to disregard that intelligence simply because the knife was not visible to them upon arrival. For all they knew it could have been concealed on his person.
13. At the very least, they could not discount the possibility that Sheku Bayoh was concealing it. They had to act as if he was in possession of a knife. That was in accordance with their training.
14. Upon arrival at the scene PC Tomlinson was unable to see PC Paton.
15. He saw Sheku Bayoh and PC Walker facing one another. PC Walker had his hands covering his face. PC Walker had in fact been contaminated by his own incapacitant spray but PC Tomlinson thought he had been injured. His inability to see PC Paton gave him cause to believe that PC Paton too had been injured.

¹ The applicable Standard Operating Procedure was Use of Force Standard Operating Procedure v 1.03 dated 26 August 2013. In terms of that SOP, officers were to use the confrontational continuum in relation to the escalation and de-escalation of force. It was designed to help officers determine what should be the appropriate level of force to be used in any eventuality.

16. PC Tomlinson tried verbal commands. Sheku Bayoh refused to follow them or, engage with him and PC Short. PC Short and PC Tomlinson then tried incapacitant sprays, but they too had no effect.
17. Sheku Bayoh then chased and violently attacked Nicole Short. He punched her to the head, knocking her to the ground and then stamped on her.
18. PC Tomlinson believed that Sheku Bayoh was trying to kill Nicole Short and in defence of her and himself he used his baton.
19. PC Tomlinson was then involved in the restraint of Sheku Bayoh on the ground.
20. The force used was reasonable, proportionate and necessary in the circumstances. This was a high-risk incident. There was nothing else he could have done in the circumstances.
21. Sheku Bayoh displayed serious and aggravated resistance,² and the officers were entitled to use the force they did in the circumstances. It was proportionate and reasonable.
22. The officers have been neither prosecuted nor disciplined. Tragic as the outcome was, they did nothing wrong.

First Aid

23. PC Smith was at the time a qualified officer safety trainer. In 2015 he was delivering officer safety training several times per year. He attended at the scene with PC Kayleigh Good who was a probationer. She completed her first shift on 6 April 2015 and so she had very little police service when this happened. She was under the supervision PC Smith who was her tutor constable.

² Use of Force SOP para 4.6.7, page 8. The highest level of resistance encountered which generally involves the intended use of weapons as part of the attack where the perceived threat is that of serious injury or is life threatening. It can also include situations without the presence of weapons where the perceived threat is that of serious injury or is life threatening.

24. En route to Hayfield Road they heard the emergency airwave button and Nicole Short's voice. Activation of the emergency button is rare. Just as they arrived, they heard a further activation and a male officer's voice say "officer injured".
25. On arrival, PC Good was initially concerned that Nicole Short had been stabbed. She was shaking, injured. Sheku Bayoh was by this point on the ground.
26. PC Smith assisted with the restraint of Sheku Bayoh. PC Good assisted Nicole Short at first, before assisting with the application of leg restraints to Sheku Bayoh.
27. DCI Robson also attended the scene and had no concerns about the restraint, or the care being provided to Sheku Bayoh.
28. PC Smith noted that Sheku Bayoh was unresponsive and thereafter administered CPR. He was unable to continue with the rescue breaths, but chest compressions were continued.
29. PC Smith then drove the ambulance to the hospital, allowing paramedics to continue administering medical treatment to Sheku Bayoh in the rear.

Kirkcaldy police office

30. When the officers returned to Kirkcaldy station they were in a state of shock. PC Tomlinson arrived before Good and Smith. Good remained longer at the scene to secure the locus and Smith had to make his way back from the hospital after driving the ambulance there.
31. They were directed into the canteen and separated from others in the station. By this point they were all in an emotional state. They were shocked and stressed. PC Tomlinson was visibly upset by the whole incident.
32. At that time, no clear message had been provided to PCs Tomlinson, Smith and Good by senior officers regarding what was going on, their status in the investigation or, the procedures to be followed. The situation was made more confusing by the fact that other, more senior officers who had been present while the restraint took place had

returned to their desks. That led to confusion as to why, if they were witnesses, they were being treated differently to other witnesses.³

33. Any suggestion that there was collusion between the officers at that stage is refuted. It is refuted not only by officers themselves, but also by all the other evidence in the case. That evidence confirms that PCs Tomlinson, Good and Smith told the truth.

Delay in providing statements

34. The delay in the officers providing statements has been highlighted.
35. There was nothing untoward about it. Initially it was not clear to them what their status was.
36. They agreed to provide statements on 4 June 2015 after their status as witnesses was confirmed. In waiting until 4 June they were following the legal advice they had received. It is inappropriate to criticise them for that.

Race

37. The officers have been asked by the inquiry about the extent to which Sheku Bayoh's race or, perceived race, influenced their actions.
38. Put simply, race did not influence their actions at all. Indeed, there is absolutely no evidence to the contrary.
39. PC Good, in particular, was asked about a comment in a statement about a thought she had en route to Hayfield Road upon hearing the emergency button. The thought was that this might be an act of terrorism. She explained that was merely a fleeting thought she had at the point she heard the emergency button and thought Nicole Short had been stabbed. It was prompted by a previous briefing on the level of the terrorist threat and a rumour circulating about there being intelligence suggesting there may be an attack on a female officer.

³ Statement of PC Smith provided to the inquiry.

40. It is clear what was foremost in PC Good's mind as far as her assessment of the risk was concerned was the fact that the man was reported to be in possession of a large knife.
41. What is also clear, from all of the statements and other evidence, is that this was an unusual call for a Sunday morning in Kirkcaldy and that the man they were looking for was causing fear and alarm amongst the public. With limited information about the man in question, it is natural that they would have considered any number of possible scenarios, from the possibility it was terror related to the possibility it was in fact a hoax.
42. Police officers are trained to be aware, vigilant, and professionally curious. Policing doesn't operate in a vacuum. One has to remember that, at the time officers were under instructions to avoid wearing uniform when travelling to and from work so as not to reveal that they were serving police officers. Terrorism is something they are trained to be aware of in the assessment of risk. It is an ever present danger of which police officers are taught to be mindful at all times. The public relies upon them to do so.

Conclusion

43. As already stated, Core Participants Smith, Good and Tomlinson did nothing wrong. The events of 3 May 2015 were undoubtedly tragic, but they did not arise as a result of any wrongdoing on the part of PCs Smith, Good and Tomlinson. That they have not been prosecuted nor disciplined reflects that fact. What they did on 3 May 2015 was in line with their training and the law.
44. They responded to the dynamic, high risk situation they were faced with in an appropriate manner, reflecting the information they had available at the time.
45. They were tasked with dealing with a man who we now know to have been under the influence of drugs, who had been brandishing a knife and causing fear and alarm amongst the public, and who ultimately violently attacked a female police officer. The evidence shows that they acted proportionately, in line with their training and the law at all times.

46. As a final closing remark, I would also just mention that Core Participants Smith, Good and Tomlinson welcome, and indeed wish to engage with, the inquiry.
47. The events of 3 May 2015 have attracted significant media attention. It has been publicly suggested Sheku Bayoh was treated differently because of his race and that had he been white the outcome would have been different.
48. The decision of the Lord Advocate not to prosecute the officers was publicly criticised by the family's legal team.
49. The result has been that the officers have effectively been subjected to trial by media, a trial not properly informed by the evidence.
50. The allegations which have been laid at their door, particularly regarding the import of race, are without foundation. They have nevertheless had a significant impact on the officers, who have nevertheless sought to continue in their duties in service to the public.
51. It is on that basis Core participants Smith, Good and Tomlinson welcome the start of this inquiry. They are confident it will demonstrate that the accusations which have been made in the media are baseless, and that their treatment of the high risk, evolving situation with which they were presented on 3 May 2015 was appropriate, proportionate and in line with their training and the law.