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2 **TRANSCRIPT OF THE INQUIRY**

3 Thursday, 26 May 2022

4 (10.00 am)

5 PC ASHLEY TOMLINSON (continued)

6 Questions from MS GRAHAME (continued)

7 LORD BRACADALE: Good morning. Ms Grahame.

8 MS GRAHAME: Thank you.

9 Good morning, PC Tomlinson.

10 A. Morning.

11 Q. Yesterday we were about to move on to the footage, so

12 the evidence video timeline, and I'm going to start with

13 that again this morning, and I'm going to play around

14 one minute of footage.

15 A. Okay.

16 Q. So it will move by reasonably quickly, so it will be

17 from 7.20.39 to 7.21.38, so it's just one second short

18 of one minute, but we will just -- Ms Smith will get

1 that onto the screen at the moment.

2 At the same time, could I ask you to look at your
3 spreadsheet and I will just let you know what it is I'm
4 going to ask you to be looking at. So this one minute
5 spans from the bottom of page 3 of the spreadsheet to
6 the top of page 5.

7 A. Okay.

8 Q. And if you start towards the bottom of page 3, you will
9 see at 7.20.39 that's when the fish van stops at
10 Hayfield Road?

11 A. Yes.

12 Q. And we have already seen that and we have gone through
13 it, but you will see that. There's -- it looks like
14 there's a person getting out of the driver's side.

15 I think yesterday you said that was yourself?

16 A. Yes.

17 Q. And then you will see that Paton's emergency button
18 status is turned on at 7.20.42 and then it appears the
19 person who exited the driver's side door on the smaller
20 van, that's the fish van, moves around in front of the
21 smaller van. Do you see that?

22 A. Yes.

1 Q. I think that's what you described to us yesterday that
2 you were doing.

3 A. Yes.

4 Q. Then if we turn on to page 4 of the spreadsheet you will
5 see at 7.20.46, that's the first line on page 4, it
6 says:

7 "A person who had been standing at the rear of the
8 larger police van ..."

9 We have been calling that the Transit or you called
10 it the 19.

11 A. Mm-hm.

12 Q. "... moves and walks behind the smaller police van
13 towards the direction of the roundabout."

14 Now, when we watch the footage I'm going to ask you
15 if you can see that person, if you recognise who that
16 was, or if you know who that was.

17 A. Okay.

18 Q. Now, that's one of the things I will be asking you, but
19 I'm going to ask you these again when we finish. Then
20 moving on to 7.20.50 you will see that there's an
21 Airwaves transmission, it's apparently from
22 PC Alan Paton, but it says "Inaudible" and I'm going to

1 ask you to listen to that and maybe see if you can
2 remember hearing it and remember what it said.

3 A. Yes.

4 Q. And then 7.20.52 you will see at that section the
5 description of what we can see in the CCTV is that:

6 "There is movement of persons visible through the
7 trees towards the grassy area adjacent to
8 Hayfield Road."

9 And I'm going to ask you if you can either identify
10 who those were, or if you can see.

11 A. Yes.

12 Q. Then we will see the Stephen Kay Airwaves transmission
13 and you will see the description of the CCTV:

14 "Another person who has been near the rear of the
15 larger police van walks towards the smaller police van
16 rear and then appears to pause momentarily."

17 And I'm going to ask you about that person as well.

18 A. Okay.

19 Q. Then we go on to 7.20.57:

20 "The persons who were at the grassy area visible
21 through the trees appear to move backwards towards where
22 the vehicles are."

1 I'm going to ask you about that. Then 7.20.58 to
2 7.21:

3 "A person behind rear of smaller police van [that's
4 the fish van] starts moving towards the larger police
5 van. They are not passed by others."

6 And again I'm going to ask you if you can see that
7 and tell me who that was.

8 Then 7.21.02 it says:

9 "There is an Airwaves transmission from PC Paton,
10 'Officers injured PC Short male'."

11 I'm going to ask you if you recognise that voice and
12 if it is in fact PC Paton.

13 Then 7.21.03 you will see that a number of persons
14 appear behind the light coloured car that's stopped at
15 the roundabout and at least one person appears to fall
16 over to the ground near the pavement on Hayfield Road
17 and again I'm going to ask you if you could see that
18 person and recognise them.

19 Then 7.21.03 to 7.21.13 you will see that there's
20 a description there of:

21 "The car moves forward quite quickly towards the
22 roundabout and appears to skid around the roundabout to

1 face back towards Hayfield Road and at the same time
2 this is happening it appears the persons near the
3 pavement possibly stand again or are joined by other
4 persons and there is some coming together and another
5 fall towards the ground by one or more of the persons."

6 So that seems to be a second fall.

7 A. Mm-hm.

8 Q. And I will ask you about that. And then 7.21.14 to 17:

9 "A person can be observed moving at the rear of the
10 smaller police van and moving towards the passenger side
11 slowly."

12 And I will ask you who that is.

13 Then your emergency status button is turned on,
14 that's 7.21.19, and then 7.21.21 is an Airwave by you
15 and you will see that it says in the spreadsheet
16 "Inaudible shouting" and I'm going to ask you a few
17 questions about that, so if you listen to that, and then
18 finally 7.21.34, again you will see an Airwaves
19 transmission which is said to be inaudible, by you, and
20 I would like you to help us understand what you were
21 saying there.

22 A. Mm-hm.

1 Q. And then you will see at the top of page 5 of the
2 spreadsheet -- and this is the final moment -- 7.21.38,
3 this is said to be PC Alan Smith:

4 "Control Bravo 1 officer has been punched to the
5 back of the head. No obvious serious injuries. Male
6 secure on the ground."

7 So although it is just one minute of footage those
8 are the areas I'm going to be asking you about. So as
9 we go through it I'm going to ask you to focus on the
10 CCTV and what you can see there and you may find it
11 helpful if we play that footage, that minute, twice.

12 A. Okay.

13 Q. And then you will see I'm going to ask you lots of
14 questions about it.

15 A. Yes.

16 Q. Right. I'm going to ask Ms Smith to play that one
17 minute so that's the period from 7.20.39 to 7.21.38, but
18 it may be slightly before when we start, but that's
19 absolutely fine.

20 (Video played)

21 We will listen to that entire message please.

22 (Video played)

1 Thank you very much.

2 PC Tomlinson, would it be helpful for you to see
3 that footage again and to have the chance to concentrate
4 on it, or are you happy to answer questions now?

5 A. Aye, it's difficult to see what's going on in the
6 footage anyway. I mean I'm happy to watch it again.
7 I don't think it's going to -- I don't think I'm going
8 to pick anything else out of it though.

9 Q. All right. Well, what we will do is if we can go back
10 to 7.20.46, so that's at the top of page 4 of the
11 spreadsheet, and I'm going to ask Ms Smith to just play
12 for around 6 or 7 seconds please. So we will start at
13 7.20.46.

14 (Video played)

15 Thank you. Were you able to see at 7.20.46 the
16 person who had been standing at the rear of the larger
17 police van moving towards a smaller van?

18 A. Yes, I can see that, yes.

19 Q. Do you know who that was?

20 A. No because I -- when I've got out of the van I don't
21 actually remember ever seeing anybody else other than
22 PC Walker, but he was at the front of the van, so

1 I don't know who that would be.

2 Q. Right. It wasn't you though?

3 A. No, no, it wasn't me.

4 Q. And then did you hear the transmission said to be by

5 PC Alan Paton at 7.20.50? Now, the spreadsheet that you

6 have in front of you says "Inaudible".

7 A. Yes.

8 Q. Did you actually hear what was being said?

9 A. Yes, but play that again just so I can --

10 Q. All right. That's 7.20.50, so perhaps if we could

11 play -- thank you.

12 (Video played)

13 That's fine, thank you.

14 Could you make anything out there?

15 A. No, I just -- no. I don't even recognise it as

16 PC Paton's voice, like I don't know who I think --

17 I wouldn't be able to say because I don't know what the

18 word is or what they're saying.

19 Q. That's absolutely fine. We have not heard from PC Paton

20 himself yet.

21 Then I'm going to ask you about 7.20.52, so if we

22 could maybe go back to around that area and this is

1 where it said in the spreadsheet:

2 "There is movement of persons visible through the
3 trees towards the grassy area adjacent to
4 Hayfield Road."

5 So you should at that moment, 7.20.52, see some
6 movement between the trees and I would like you, if you
7 can, to identify who those people are, so we will play
8 that.

9 (Video played)

10 Thank you. You're nodding. Did you see that
11 movement?

12 A. Yes, I have seen a movement. It's difficult to see
13 because another tree is kind of unfortunately slap bang
14 in the centre where we're looking. I would say that the
15 person to the left of the tree, kind of where the video
16 is paused just now, is probably Mr Bayoh, given the
17 position, and you can see kind of movement to the right
18 of the tree which I'm -- well, I would think would be me
19 given my position, but I don't know who else would be
20 there, if that makes sense.

21 Q. Do you want to have a look at it again?

22 A. Please, yes.

1 Q. Would that be best? So that's 7.20.52. If we get it
2 close enough, that will be absolutely fine. That will
3 be fine, thank you.

4 (Video played)

5 Thank you. Did that help at all?

6 A. Aye, I would think that was me.

7 Q. So Mr Bayoh to the left --

8 A. Yes.

9 Q. -- and you behind?

10 A. And me to kind of where the tree kind of splits into two
11 with the branches and you can see the two sort of dots
12 on the screen, I think it's Mr Bayoh to the left and me
13 to the kind of right-hand side, but I can't identify
14 anybody else in and around me. I know there's movement
15 but I couldn't say who that was.

16 Q. Okay, that's absolutely fine, thank you. And then
17 I would like to look at 7.20.57 and the description in
18 the spreadsheet says:

19 "The persons who were at the grassy area visible
20 through the trees appear to move back towards where the
21 vehicles are."

22 And we're actually right on that second. It might

1 actually be easier to go back a second or two if we may
2 and we will show you that. That will be fine, thank
3 you. So we're looking at 7.20.57. We will play it now.

4 (Video played)

5 Thank you. And you saw -- did you see the people
6 moving back the way towards Hayfield Road, away from the
7 tree area?

8 A. Yes. Could we play that again, is that all right?

9 Q. Yes. 7.20.57. Thank you.

10 (Video played)

11 Thank you.

12 A. Having seen the movement of the figure to the right of
13 that side of the tree, I don't know if that is me
14 because I don't remember ever moving that far, if that
15 makes sense.

16 Q. Who do you think it was?

17 A. I'm not sure. I wouldn't be able to say who that is but
18 I thought it was initially me because of the way the
19 figure was seen to be kind of standing but then as the
20 video plays on I'm not actually sure if that is me.

21 Q. All right. And then I would like to look at the time
22 period 7.20.58 to 7.21 and the description for that

1 period is:

2 "The person behind the rear of the smaller police
3 van starts moving towards the larger police van, not
4 passed by anyone."

5 So I'm now going to ask you to focus your attention
6 on the vans, if you don't mind, and we will play that
7 period, 7.20.58 to 7.21. We're going to start at 55
8 seconds.

9 (Video played)

10 Thank you. Did you see people moving between the
11 vans?

12 A. Yes, I thought I seen two figures kind of moving from
13 the small fish van towards the big 19 van. Neither one
14 of those figures was me, but I wouldn't be able to say
15 who they are.

16 Q. But neither was you?

17 A. Neither was me because I didn't move towards -- like
18 I never went from the fish van towards the 19 van.

19 Q. Okay. And then can we go back to 7.21 and I'm going to
20 ask you to play 7.21.02. We have heard this Airwaves
21 transmission and we hear "Officers injured PC Short
22 male" and I'm going to ask you just about that voice if

1 we can listen to that again.

2 (Video played)

3 Thank you. Do you recognise that voice?

4 A. Yes, that's the voice of PC Paton.

5 Q. Thank you. And then can we go back to 7.21.03 and you
6 will remember the description here in the spreadsheet
7 describes:

8 "A car moving forward quite quickly towards the
9 roundabout and appearing to skid around the roundabout
10 to face back towards Hayfield Road. At the same time
11 this is happening it appears the persons near the
12 pavement possibly stand again or are joined by other
13 persons and there is some coming together and another
14 fall towards the ground by one or more of the persons."

15 Sorry, I have gone too far forward there. I should
16 be on 7.21.03. I'm reading out the wrong thing. Sorry.
17 7.21.03, so this is where we are on the footage, reads:

18 "A number of persons appear behind the light
19 coloured car that's stopped at the roundabout and at
20 least one person appears to fall over to the ground near
21 the pavement on Hayfield Road."

22 So this is the first time in the spreadsheet there's

1 mention of a fall.

2 A. Okay.

3 Q. And it says:

4 "A number of persons appear behind the light
5 coloured car that's stopped at the roundabout and at
6 least one person appears to fall over to the ground near
7 the pavement on Hayfield Road."

8 So again, I'm going to ask you to look at the CCTV
9 and I will ask you if you can identify anyone. And so
10 that's 7.21.03.

11 (Video played)

12 And if we can stop that there. Now, we were right
13 on 7.21.03. Do you want to go back and look at that
14 again?

15 A. Please.

16 Q. Yes. Could we maybe go back to 7.21 or -- that's fine
17 actually.

18 (Video played)

19 Thank you. Did you see that fall, or would you like
20 to see it again?

21 A. No, I seen the initial fall and then what looks to be
22 now a second fall just as we have kind of stopped that.

1 Q. Who is there?

2 A. From my -- obviously my recollection the first fall
3 would have been PC Short being struck and then falling
4 to the ground. It's quite difficult to see on the
5 actual footage because it's so grainy but I would be
6 close by to the figure that's stood over, or seems to be
7 standing up, and then, again from my recollection, the
8 second fall would be the point at which Mr Bayoh has
9 been taken to the floor so that would be myself and
10 PC Walker.

11 Q. Can we look at that again please. We will just go back
12 to 7.21, or close to 7.21.03. So you said you were
13 close by.

14 A. Mm-hm.

15 Q. Where were you at that point? Were you visible on the
16 CCTV, or were you behind the police van, one of the
17 police --

18 A. I would have been behind -- I would have thought you
19 would have seen me on the CCTV footage because
20 I would -- as I say, when PC Short's been knocked to the
21 ground, I would have been either running or like very
22 close by, so I don't know if I can necessarily pick

1 myself out on the CCTV.

2 Q. Well, let's watch that again for a moment, so we're
3 watching for 7.21.03, but we're starting just prior to
4 that.

5 (Video played)

6 Can you see who is there at that time?

7 A. I can't, it's difficult to see, but I would say probably
8 the figure standing on the left is potentially me. It
9 is so hard to pick out because of the way that the
10 video's blurred, but I don't know who the figure on the
11 right is and I don't even know if that's a figure in the
12 centre because of the way it's, again, sort of blending
13 in with the back of the van but no, it's -- it would
14 be -- aye, it would be a guess to try and pick out
15 individuals.

16 Q. I'm just wondering if having seen this footage you
17 wanted to change anything you said yesterday. You
18 talked yesterday, as I understand it, of you being
19 closer to Mr Bayoh when he was in the tree/grass area.
20 He went past you towards PC Short.

21 A. Yes.

22 Q. Who was on the road.

- 1 A. Yes.
- 2 Q. And you came from the treed area, the grassy area --
- 3 A. Yes.
- 4 Q. -- towards where she had fallen.
- 5 A. Yes.
- 6 Q. So if you thought that was you standing on the right,
7 that wouldn't seem to tie in --
- 8 A. No --
- 9 Q. -- as my understanding of what you said yesterday?
- 10 A. No, that on the video can't be me on the right because
11 I wouldn't have passed that point. So aye, what I said
12 yesterday is what I remember but from this video it's
13 confusing because it's not clear enough to really figure
14 out what's going on.
- 15 Q. All right. So you can't explain what we can see here on
16 the CCTV?
- 17 A. Not properly, no, it's -- it's not -- for me it's not
18 clear enough to accurately give you a description of
19 what I can see.
- 20 Q. Looking at that CCTV, how many people do you think are
21 there?
- 22 A. I think three, but I don't know like -- see the figure

1 on the right, I don't ever remember seeing anybody else
2 so I don't know, like, what distance that figure would
3 be kind of set back, but, aye, from that I think I see
4 three people standing.

5 Q. Okay. But you're not able to provide an explanation,
6 right.

7 We're going to carry on, so from 7.21.03 to 7.21.13.

8 This is the lengthy description where there's the
9 mention of the:

10 "... car moving forward quite quickly towards the
11 roundabout and appears to skid round the roundabout to
12 face back towards Hayfield Road. At the same time this
13 is happening it appears the persons near the pavement
14 possibly stand again, or are joined by other persons and
15 there is some coming together and another fall towards
16 the ground by one or more of the persons."

17 So this is the second fall that appears in the
18 spreadsheet.

19 A. Yes.

20 Q. So let's look at that section, that's 7.21.03 to
21 7.21.13. We're just prior to 7.21.03 so we will just
22 play from there.

1 (Video played)

2 Would you like to see that again?

3 A. No, I think I'm all right.

4 Q. Right. Who do we see there?

5 A. So the second fall would be the point at which Mr Bayoh
6 has been taken to the ground, so again because the video
7 isn't very clear, but obviously I was there, so my
8 recollection is that would be myself kind of following
9 at the back, PC Walker and Mr Bayoh initially, but
10 because of the way that the footage is like you can't
11 really pick it out, it's just kind of blurred, so a blob
12 on the screen.

13 Q. Could we watch that again please, 7.21.03 to 7.21.13.

14 Thank you.

15 (Video played)

16 Thank you. When you said you were behind, does it
17 appear there's a person on the left and a person on the
18 right there, as we look at the CCTV?

19 A. Yes, I mean it's difficult to see, but that's -- that's
20 what I think.

21 Q. Which one would be you?

22 A. So if you're looking at the screen just now, I would be

1 the one on the left because that would be where

2 Mr Bayoh's legs are.

3 Q. And who would be on the right?

4 A. On the right would be PC Walker.

5 Q. And that -- so what we see there is Mr Bayoh being
6 brought to the ground?

7 A. Yes.

8 Q. And if we could now look at -- we will just start from
9 this point and we will continue to around 17 seconds.

10 (Video played)

11 Thank you.

12 Now, can I go back to the spreadsheet. You will see
13 at 7.21.14 to 17 seconds it says:

14 "A person can be observed moving at the rear of the
15 smaller police van [that's the fish van] and moving
16 towards the passenger side slowly."

17 And I would like to go back to that, 7.21.14 to 17.

18 I would like you to focus on the vans and identify that
19 person for us. Thank you. That's lovely.

20 (Video played)

21 Were you able to see that?

22 A. I could see something, aye, or people moving around, but

1 I couldn't say who that was. I wasn't looking in that
2 direction, so I wouldn't have any idea.

3 Q. Right. Then can we move on to 7.21 -- well, 7.21.17.

4 There's a transmission from PC Smith indicating:

5 "It's got blue light, Roger it's got blue light,
6 stopped adjacent to Gallaghers."

7 Then it's "inaudible" and then 7.21.19 it says:

8 "PC Ashley Tomlinson's emergency status is turned to
9 on."

10 And we discussed that yesterday, that's the point at
11 which your emergency status is turned to on.

12 Then can I ask you to look at 7.21.21 and it says:

13 "PC Ashley Tomlinson ..."

14 And then this is the "Inaudible shouting".

15 A. Yes.

16 Q. So I'm going to ask you to listen to that part and tell
17 us what you were saying. So that's from 7.21.21.

18 (Video played)

19 Stop that there. That actually went on a little bit
20 further, so listening to that now -- now, yesterday we
21 talked about your emergency status button going on and
22 you suggested that you pressed the button and said

1 "We're struggling to control, we need more units", but
2 listening to that now do you want to maybe revise that
3 answer?

4 A. No, so see the first time I have actually heard this
5 audio is obviously through the Public Inquiry and it's
6 never been disclosed to me before. I remember pressing
7 the emergency button but hearing it has obviously
8 allowed me to put myself back there, like mentally, and
9 I remember pressing it and saying "We need more units,
10 we're struggling to control", but when you listen to it
11 obviously that's not coming through, just -- I wouldn't
12 be able to say what I'm actually even saying here.
13 I don't think you can make it out. I thought the first
14 word actually that I could make out was the word "Thank
15 you" but I wouldn't have been saying thank you, so yes,
16 I don't know what I'm saying.

17 Q. All right. Then can we look at 7.21.34. We can maybe
18 just play that. And again you will see on the
19 spreadsheet that again that's an Airwaves transmission
20 said to be by you but it's again marked as "inaudible"
21 and I'm wondering if you can listen to it and tell us
22 what you were saying this time.

1 (Video played)

2 We will go back to that please, it's very brief, so
3 it's 7.21.34. If it's easier to play it from an earlier
4 moment, that's fine. 30, that's perfect, thank you.

5 (Video played)

6 Right, can you hear any of that? We can turn that
7 off now, thank you.

8 A. I think I can hear -- well, I know it's my voice but

9 I don't know what exactly I'm saying. I think the first
10 word is "We're" but I don't know what the second word
11 is.

12 Q. All right. Then we heard 7.21.38 which is the entry on
13 the spreadsheet at the top of page 5, the very top, it
14 says PC Smith, and by that stage the male is secure on
15 the ground.

16 Now, I would like to go back to your Inquiry
17 statement, please, if I may. And you have given
18 a detailed number of pages regarding the restraint,
19 paragraphs 30 to 43. That covers two and a half pages
20 and yesterday we, I think, looked briefly at
21 paragraph 30 and you started talking about the actions
22 of PC Walker, wrestling Mr Bayoh to the ground, and you

1 described it as being a dynamic movement.

2 A. Mm-hm.

3 Q. Do you remember? I would like to look at paragraph 31

4 now please and we've got that on the screen, and it
5 says:

6 "Due to the passage of time, I am unable to recall
7 in great detail the body positions of Mr Bayoh. During
8 the initial restraint, my recollection is that he was in
9 the prone position."

10 A. Mm-hm.

11 Q. "I do not know how long Mr Bayoh was in this position
12 and to state a time would be guesswork and this is both
13 unprofessional and unhelpful in terms of the public
14 enquiry. I do recall that due to the level of
15 resistance being issued by Mr Bayoh his body position
16 changed several times. Mr Bayoh was able to take
17 a bench press type position and lift himself from the
18 ground whilst attempts were being made to restrain him
19 by PC Walker and I."

20 Now, you say there that he was in the prone
21 position?

22 A. Yes.

1 Q. And as I understand the definition of prone, that's
2 lying flat, especially face downwards?

3 A. Yes.

4 Q. And there may be some questions as to whether that
5 differs from the demonstration you gave us yesterday, so
6 this is at the point that PC Walker has brought Mr Bayoh
7 to the ground and Mr Bayoh is on the ground at that
8 point?

9 A. Yes.

10 Q. And so what was your -- when you used the words "He was
11 in the prone position" in paragraph 31, what was your
12 understanding of that word "prone"?

13 A. That he was lying on the ground, but like sort of face
14 down, if that makes sense.

15 Q. So that was your understanding as well?

16 A. That would be my understanding, yes.

17 Q. And you say the position changed a number of times?

18 A. Yes, so that position is obviously the position that
19 initially would have been I suppose the fall position,
20 if I could call it that, but then that -- because of
21 Mr Bayoh struggling, that position very quickly changed,
22 like almost instantly, from being flat on the ground to,

1 as I kind of demonstrated yesterday, having like that
2 (indicating) and being able to lift himself up and that
3 was the opportunity for me to try and take control of
4 the rest. I don't know how long that all took because
5 it seemed to -- in my mind it just seemed to last
6 forever, but I know in reality it was going very fast.

7 Q. So at the point that you were straddling his legs --

8 A. Yes.

9 Q. -- which you demonstrated yesterday, that was when he
10 had his right-hand palm down --

11 A. Yes.

12 Q. -- on the ground. Up until then he had been prone,
13 flat?

14 A. I don't know if he had been --

15 Q. Initially flat?

16 A. Aye, initially flat, but because as I said my initial
17 focus was on Mr Bayoh's legs and delivering kind of the
18 strikes to the Achilles area so I wasn't paying
19 attention to what his upper body was doing, so his legs,
20 and then obviously when I've got on his legs and
21 straddled them, that's obviously when I have seen what
22 I believed was an opportunity to take control of

1 a wrist, so at that point when I have obviously glanced
2 up he's not been in what I would describe as the prone
3 position, he's been in like a press-up style position,
4 like that (indicating) so that's what I have tried to
5 use to gain some control by putting a handcuff on and
6 that would be on the right wrist.

7 Q. Right. And you mentioned a press-up. I did want to ask
8 you about the phrase "Mr Bayoh was able to take a bench
9 press type position and lift himself from the ground
10 whilst attempts were being made to restrain him by
11 PC Walker and I."

12 A. Mm-hm.

13 Q. Now, when you wrote "a bench press position", what was
14 your understanding of that?

15 A. Like I suppose for me a bench press and a press-up
16 position are interchangeable. It's the same movement.
17 So you would lie on a bench and you would bench press in
18 the gym, so it would be like that, or a press-up
19 obviously you're lying like that (indicating) but again
20 it's the same movement, the pushing out of the arms.

21 Q. That may be clear. Could you maybe demonstrate both
22 positions for us.

- 1 A. Yes.
- 2 Q. There may be some issue about what you're talking about.
- 3 A. Okay.
- 4 Q. So I will just ask you to come out and first of all do
5 a press-up position please.
- 6 A. Yes. (Inaudible - too far from microphone).
- 7 Q. So you're face down with both hands palm flat on the
8 ground?
- 9 A. Yes.
- 10 Q. Could you now demonstrate a bench press position?
- 11 A. (Inaudible - too far from microphone).
- 12 Q. And you're lying on your back and your arms are moving
13 vertically upwards away from your chest?
- 14 A. Yes.
- 15 Q. Normally there would be a weight, a bar with weights at
16 either end. Thank you, that's very clear.
- 17 So you have used both references today when we were
18 talking. So when you said in paragraph 31 he was taking
19 a "bench press type position [lifting] himself from the
20 ground whilst attempts were being made to restrain him",
21 do you mean a bench press type position or a press-up
22 type position?

1 A. It would be a press-up type position. The bench
2 press -- what I have probably tried to describe there,
3 or what I have tried to describe there is the movement
4 of the arms and they're kind of coming from that
5 position to that position, that's what I'm trying to
6 describe is that kind of movement.

7 Q. And we may have heard and we may also hear from others
8 talking about a press-up type position.

9 A. Yes.

10 Q. Is it fair for me to say that you're talking about the
11 same sort of thing?

12 A. Yes, I mean mostly I go to the gym, I would probably use
13 them as interchangeable kind of -- I know they're not
14 interchangeable and obviously one is on the back and one
15 is on the front but what I'm trying to get at there is
16 the movement of solely the arms.

17 Q. There's weight trainers all around the world screaming
18 at the moment.

19 A. Probably.

20 Q. So you have talked about "attempts ... being made to
21 restrain him by PC Walker and I", so was this at the
22 point he is doing the press-up point position, this is

1 at the point that you and PC Walker are trying to
2 restrain him, restrain him to the ground?

3 A. Yes.

4 Q. Was there only the two of you at this moment?

5 A. That I can remember, yes. There was -- I felt like it
6 was just me and PC Walker.

7 Q. Do you remember PC Paton being there?

8 A. No.

9 Q. No. Is it possible that PC Paton was also there?

10 A. I mean I -- PC Walker's back was blocking my position.

11 I don't ever remember him being there, so I mean it's
12 possible but again, I don't think I could answer that
13 because I couldn't actually see past.

14 Q. So if the Chair has heard that Mr Bayoh was doing
15 a press-up with three officers attempting to restrain
16 him, that's possible but you don't recollect it?

17 A. I don't -- no. It's possible but I don't have that
18 recollection.

19 Q. Thank you. How were you trying to restrain Mr Bayoh at
20 the time he was trying to do his press-up type position?

21 A. So it's kind of as I described yesterday. So that's
22 obviously the position of his right arm (indicating), so

1 my attempt to restrain would have been to take my left
2 hand, go around the wrist in a kind of C motion so
3 you've got that control (indicating) to the movement of
4 the wrist, and that would allow me my hand -- my
5 right-hand free because on my right-hand side of my
6 utility belt is where my handcuffs are positioned, so
7 once I have taken control and tried to pull that wrist
8 and the arm back so I can come round and it would be
9 that motion so I wasn't getting tangled up and put the
10 top cuff on, onto the wrist, and that would allow me
11 then to click that in and then bring the arm around and
12 try and secure in a rear stack.

13 Q. So as you were gripping his right wrist, was his back
14 pushed up off the ground?

15 A. Well, aye, it must have been because he was -- the way
16 his -- the way his arm was, he wouldn't have been flat
17 to the floor because that allowed me to get kind of in
18 and grab.

19 Q. And when you were trying to grab his right wrist, where
20 was your left arm?

21 A. So it would have been -- so if you've got that, just
22 over the top but like grabbing.

1 Q. Where was your elbow?

2 A. My elbow? It would have been straight because

3 I couldn't -- like, see, to bend my elbow I would have

4 been off-balance and I would have been falling forward

5 whereas if I've got that and I've got a straight elbow

6 it gives me stability because that hand is on the

7 pavement so I can use that as obviously my base, if that

8 makes sense, so straight and then it allows me to come

9 in.

10 Q. So had you leaned over the top of Mr Bayoh's arm, or

11 under, between his arm and his body?

12 A. I think it would have probably been -- it wouldn't have

13 been over, it must have been under because I don't think

14 I had enough reach to get round.

15 Q. So between his arm and his body towards the ground?

16 A. Yes. When you do that there's obviously a natural space

17 created there and that would have been -- so if you can

18 imagine this hand not coming from this side but coming

19 from behind it would have been like that (indicating)

20 and then to try and pull back.

21 Q. And you were straddling his legs at that time?

22 A. Yes.

- 1 Q. So what of your weight was on Mr Bayoh?
- 2 A. Not very much because where I'm grabbing, probably a lot
- 3 of my weight was on his wrist to try and -- because
- 4 I would have been having to lean as well, you know like
- 5 lean across to get that, so my weight would have been
- 6 primarily on my knees through my hand and then --
- 7 Q. So you have talked about being on your knees.
- 8 A. Yes.
- 9 Q. And you have talked about grabbing his right wrist --
- 10 A. Yes.
- 11 Q. -- with your -- you're demonstrating with your left
- 12 hand.
- 13 A. Mm-hm.
- 14 Q. So where was the weight of your body, your hips, your
- 15 torso?
- 16 A. It would have been primarily going through my own knees
- 17 because --
- 18 Q. Even when Mr Bayoh was pressing up to try and lift his
- 19 body off the ground?
- 20 A. Yeah, I mean I can't imagine I would put that much of my
- 21 own weight. It probably wasn't the most stable position
- 22 for me to be in, which is why I obviously subsequently

1 lost balance when he flicked his legs and that jerking
2 movement has caused me then to lose my grip of the
3 handcuffs.

4 Q. And what level of force -- can you describe the level of
5 force you were using to try and grab his right wrist
6 whilst balancing on your knees and leaning through with
7 your left hand?

8 A. I was trying to pull -- I was trying to pull the wrist
9 back and I thought I was using like enough force to do
10 that but it would have just been through my like -- just
11 the strength of my bicep muscle, trying to pull back,
12 but that wasn't enough force to pull back. His hand was
13 just going kind of --

14 Q. So you don't think you were using any force from your
15 leg muscles or your back, just from your bicep?

16 A. I don't know how I would use my leg or my back to pull
17 with my arm.

18 Q. Okay. Did you consider shouting to someone to get an
19 ambulance?

20 A. At that point I didn't have any opportunity even to do
21 that. When I have tried to obviously shout on the radio
22 I thought my messages came through saying "More units".

1 Obviously from the transmission it's not came through
2 but at that point there was nothing to suggest we needed
3 an ambulance. We were still in the process of trying to
4 control him.

5 Q. Okay. And you were in the process of trying to control
6 him and that was you and at least PC Walker?

7 A. Yes.

8 Q. Now, in paragraph 33 you say:

9 "I am unable to say without guessing exactly how
10 much weight I applied to Mr Bayoh. My body position was
11 on [his] legs and as such the weight and force I applied
12 would have been focused in this area. It would have
13 been physically impossible for me to apply all my body
14 weight to Mr Bayoh given the positions I have described
15 in point 32. Due to the passage of time I am unable to
16 say how long I applied restraint to Mr Bayoh.

17 "I am aware from my recollection that Mr Bayoh had
18 handcuffs applied. I do not recall who applied the
19 handcuffs or to whom the handcuffs belonged. Due to the
20 passage of time, I am unable to recall with detail the
21 way in which Mr Bayoh's handcuffs were applied."

22 So you have talked to us about your handcuffs

1 bouncing away out of reach.

2 A. Yes.

3 Q. So at some point someone else has produced handcuffs --

4 A. Yes.

5 Q. -- and applied them, is that right?

6 A. Yes, that's correct.

7 Q. But you don't remember who that was?

8 A. No. I was, I think I was surprised actually we had even
9 managed to -- I say "we" -- that handcuffs had even been
10 applied. I just remember losing my handcuffs and then
11 being aware that he now had handcuffs on.

12 Q. Was it PC Walker, as far as you could tell?

13 A. I don't know who it would have been.

14 Q. So had other officers arrived at the point of the
15 handcuffs being applied?

16 A. I don't know because basically -- you see when I lost my
17 handcuffs my focus then was on trying to control his
18 legs, so I wasn't actually then paying that much
19 attention and I was trying to actually shout up for more
20 units. I hadn't -- I mean when you look at the CCTV
21 I think probably when I have shouted that up they may
22 already have been there, or certainly the Airwaves

1 transmissions would suggest that but as I say, it felt
2 like we were there on our own and it was lasting
3 forever.

4 Q. Okay. Can we look at the next paragraph, paragraph 35:

5 "Mr Bayoh was making continued efforts to break free
6 from the restraint and using his strength to lift myself
7 and PC Walker upwards."

8 So at that time he was using his strength to lift
9 both you and PC Walker upwards, away from the ground?

10 A. Yes.

11 Q. And how was he managing to do that?

12 A. Just with the kind of like -- the bench press -- the
13 press-up position.

14 Q. The press-up?

15 A. Aye.

16 Q. Right?

17 A. And where my position was on his legs, you can still --
18 even with that kind of restraint you can still get
19 lifted up by a person's legs just because your legs are
20 quite strong muscles, so actually you do get lifted up,
21 so that's what I remember feeling, being -- the feeling
22 of being like moved away from the ground and lifted up.

1 Q. Now, earlier when we looked at paragraphs 33 and 34 you
2 were talking about the handcuffs being applied?

3 A. Mm-hm.

4 Q. When we're looking at paragraph 35 and Mr Bayoh using
5 his strength to lift you and PC Walker upwards, were the
6 handcuffs applied at that moment, or was this -- were
7 the handcuffs after this moment?

8 A. I couldn't say -- I couldn't say with any degree of
9 accuracy. I just remember the continued like resistance
10 to like us trying to restrain him, so I don't know
11 exactly at what point the handcuffs had been on. The
12 first I became aware of the handcuffs being on was
13 obviously when the other units were there but I don't
14 know exactly what point the handcuffs were applied.

15 Q. Can I look at paragraph 39 please, so this is towards
16 the bottom of that page and it says:

17 "During the restraint, I recall that PC Alan Smith
18 attempted to apply a fast strap (leg restraint) to
19 Mr Bayoh. I am aware of this because I recall my leg
20 being pulled backwards and felt pressure being applied
21 as if it was being gripped or wrapped. I recall being
22 confused about what was going on and shouting in the

1 direction of PC Smith someone had grabbed my leg having
2 mistaken it for that of Mr Bayoh's. I was aware other
3 officers had arrived during the restraint but my focus
4 was on trying to maintain control of Mr Bayoh's legs.

5 Due to the passage of time, I am unable to recall in any
6 further detail what individual officers were doing."

7 A. Mm-hm.

8 Q. "I was aware PC Walker was also carrying out restraint
9 of Mr Bayoh."

10 So I think you mentioned leg restraints yesterday.

11 A. Yes.

12 Q. And are fast straps the same as leg restraints?

13 A. Yes, again probably just an interchangeable term, yes.

14 I would just call them fast straps.

15 Q. Right. And it was PC Smith that was attempting to apply
16 the fast straps?

17 A. As I recall, yes.

18 Q. So he had arrived at this point?

19 A. Yes. I don't know when he had arrived. I just remember
20 being aware of PC Smith, as I say, when my leg was
21 grabbed, because I didn't actually know who had grabbed
22 it, what was going on, and I remember being really

1 confused because I had no idea why my leg was now being
2 like grabbed.

3 Q. You have described your position. You have described
4 PC Walker's position. Where was PC Smith in relation to
5 both of you?

6 A. So when -- you mean when my leg was grabbed?

7 Q. When he arrived and you have talked about him attempting
8 to put on the fast straps.

9 A. So the first I have been aware obviously of PC Smith is
10 when my leg's been grabbed and then I've kind of looked
11 around as I have been shouting "Someone's got my leg",
12 so PC Smith would have been at the feet area, so behind
13 my leg and towards the feet.

14 Q. So by this stage you are not simply straddling Mr Bayoh
15 with your knees --

16 A. No.

17 Q. -- you have moved into the next position --

18 A. Yes, I've moved into the next -- yes.

19 Q. -- which you demonstrated yesterday with your legs to
20 the side.

21 A. Yes, so you would splay your legs out to give you more
22 balance, otherwise you become again unbalanced, so

1 I tend to kick one leg forward and then bend one leg and
2 then that gives you a greater kind of like surface area
3 contact with the road, and it stops you getting like
4 moved about as much.

5 Q. And that's what you demonstrated yesterday?

6 A. Yes.

7 Q. So it was at that point that PC Smith has arrived, or --

8 A. Yes.

9 Q. -- you're aware of him, and you're aware of him trying
10 to apply fast straps?

11 A. Yes, but the fast straps I think initially were being
12 applied to me.

13 Q. Right. Well, you have said -- you have used the words
14 your legs were "gripped or wrapped" -- sorry "my leg
15 being pulled backwards and [I] felt pressure being
16 applied as if it was being gripped or wrapped". What
17 does that mean?

18 A. So like the grip -- I wasn't sure if it was -- so see
19 when you apply fast straps you have to wrap them round
20 and you basically wrap them round tightly, but
21 I couldn't figure out if it was the wrapping I could
22 feel or whether someone had come across and grabbed --

1 when I refer to my leg I actually probably mean my ankle
2 more, so it's like that (indicating). I remember
3 feeling that getting grabbed.

4 Q. So it was one ankle that got grabbed?

5 A. Yes.

6 Q. And you may have felt the wrap, as in the leg strap, the
7 leg restraints, being applied, the fast straps?

8 A. Yes, I don't know if it was just simply the grab or the
9 leg restraint.

10 Q. I wonder if you could look at some fast strap leg
11 restraints please. Do these look familiar to you?

12 A. Yes. They're normally in a little pouch. I think
13 yesterday I kind of described having them docked here
14 (indicating) on my body armour. They wouldn't normally
15 come out like this either because they're all now
16 tangled up.

17 Q. Sorry.

18 A. No, that's all right. The way I store them is -- so
19 they're effectively a long strap, Velcro, hooks on one
20 side and loops on the other, and you tend to either have
21 it rolled up in a way that all the hooks are on the
22 outside for both straps, otherwise you end up in

1 a situation where you then --

2 Q. Stick together?

3 A. Yes. So the idea is once they're wrapped -- once
4 they're wrapped, if they're wrapped in the packet like
5 that (indicating) so all the straps -- all the hooks are
6 to one side, what it allows you to do is very quickly
7 open and then you would -- I don't know how to
8 demonstrate it, but you would effectively then like wrap
9 them and so in naturally doing that the hooks then meet
10 the loops and it sticks together.

11 Q. Would you find it easier if you came out into the middle
12 and maybe put your legs out in front of you yourself and
13 demonstrated for the Chair and the Assessors?

14 A. Yes, I can do that.

15 Q. Thank you. Remember, I will have to speak for the audio
16 to be picked up.

17 A. Okay.

18 Q. Just really as a demonstration for the Chair and the
19 Assessors -- so you are sliding them underneath your own
20 legs. Is the smooth side touching your trousers?

21 A. It doesn't really matter which side. I have just done
22 that because it's sticking to the carpet (Inaudible -

1 too far from microphone) stick on my trousers. It would
2 then ... (indicating).

3 Q. So they're quite -- they stick together quite
4 effectively?

5 A. Yes, they stick together so that is -- that is me now.

6 Q. And that ties someone's legs together?

7 A. Yes.

8 Q. So they're slid under the legs and wrapped round the
9 legs?

10 A. Yes.

11 Q. And that's the -- that's the sensation that you felt,
12 was it, when it was --

13 A. (Inaudible - too far from microphone).

14 Q. -- your leg was -- your ankle was gripped or wrapped?

15 A. Yes.

16 Q. Thank you. Come back to the microphone please.

17 Could we briefly look at PIRC 263, page 5,
18 paragraph 6. I think in your PIRC statement, so that's
19 page 5, paragraph 6, the one that begins "The
20 ambulance", there we go. I think you say that the fast
21 straps were to his lower knee. Let me just see if I can
22 find that position. Yes, so it's line 10 of that

1 paragraph, so that's the paragraph beginning "The
2 ambulance had already arrived ...".

3 A. Yes.

4 Q. And it is line 10, so it's just three up from the
5 bottom -- sorry, slightly further up than that:

6 "We put him onto a stretcher on his back still
7 handcuffed to the front and one fast strap to his lower
8 knee."

9 A. Mm-hm.

10 Q. So is that the position that the fast straps had been
11 applied, that you could see?

12 A. Yes, I mean if that's -- I don't remember now where they
13 were applied but if that's what I said in my statement,
14 that's where they have been applied.

15 Q. Did you have two fast straps in front of you but you
16 used one on yourself?

17 A. Yes, just -- I couldn't like -- I'm not flexible enough
18 to get like further down.

19 Q. No, absolutely no problem. What I meant was the one you
20 used, that was one fast strap?

21 A. Yes, sorry, that was just one fast strap.

22 Q. Thank you.

1 A. You could link them together, like, if you've got an
2 individual that's particularly large.

3 Q. So they stick to each other as well as sticking to
4 things?

5 A. They can stick to each other, yes, you could make
6 a longer strap as well, but that in instance we just
7 used the straps individually.

8 Q. Thank you. That can be taken off the screen.

9 So once the handcuffs are applied and then the fast
10 strap or fast straps are applied, was it at that point
11 that the officers had control of Mr Bayoh?

12 A. Yes, effectively.

13 Q. Now, we have heard that you pressed your emergency
14 button at 7.21.19.

15 A. Mm-hm.

16 Q. And I just want to be clear, what were you doing -- what
17 position were you in when you pressed your emergency
18 button?

19 A. So I had gone from -- my recollection is I had gone from
20 the straddle position to the like lying --

21 Q. The lying?

22 A. The kind of lying across because what that does is it

1 allows me obviously to balance but then use my free hand
2 to push and then I can then brace myself like that
3 (indicating), but it also -- being in that position it
4 does allow me to use my hand to access my radio, if,
5 you know, if I needed to use it.

6 Q. So Mr Bayoh was already on the ground by the time you
7 pressed your emergency button?

8 A. Yes.

9 Q. How long had he been on the ground by the time you
10 pressed that button?

11 A. I don't know.

12 Q. Right. Can you give us an estimate?

13 A. As I say, for me it felt like we had been there forever,
14 but I don't know. We were talking maybe seconds, but
15 that would just be a guess.

16 Q. All right. I don't want you to guess.

17 A. No, that's the thing, I couldn't say with any accuracy.

18 Q. Right. How long after you pressed your emergency button
19 did you remain over Mr Bayoh's legs?

20 A. Until the fast straps had been applied.

21 Q. And once they had been applied, what did you do?

22 A. So I then went to basically the side, so like if

1 Mr Bayoh was lying I would then have gone to the side,
2 I don't know if it was left or right, but I've got to
3 a side so that when we roll Mr Bayoh onto his side that
4 gives me access then to, 1, assist in the rolling and
5 then, 2, to then carry out a search.

6 Q. So you get off his legs?

7 A. Yes.

8 Q. He is then rolled to the side?

9 A. Yes.

10 Q. Which side was he rolled onto?

11 A. I think left because -- I would need to maybe refer back
12 to my original statement. Whatever side it was on,
13 I searched the pocket of the opposite side.

14 Q. Right and when you say you searched the pocket, what
15 were you looking for?

16 A. A knife.

17 Q. What did you find?

18 A. Chewing gum and -- so that was in -- I think it was
19 his -- from what I remember I think it was in his
20 right -- like right -- that pocket (indicating),
21 whatever you would call that pocket, right trouser
22 pocket, and there was also a gold mobile phone, but

1 I don't --

2 Q. Where was that?

3 A. But I don't remember the mobile phone coming out of
4 a pocket. I remember it being already out so I wasn't
5 sure if it was Mr Bayoh's or if it was like a member of
6 the public, or if it was one of the cops' phones.

7 I just remember I think it was gold.

8 Q. Okay. Did you find any knife?

9 A. No, but I didn't also have time to search the opposite
10 side.

11 Q. So he was on one side and you searched the pocket on the
12 opposite side?

13 A. The opposite side, yes.

14 Q. The side that was exposed?

15 A. The side that was exposed, yes, so it gives me
16 an opportunity to carry out a search.

17 Q. Now, can we look at paragraph 44 of your statement
18 please. This says:

19 "Due to the passage of time my recollection as to
20 the exact point Mr Bayoh lost consciousness is no longer
21 clear. From my recollection, Mr Bayoh was handcuffed to
22 the front in a palm to palm position wearing leg

1 restraints."

2 So this is the point at which the handcuffs and the
3 leg restraints are on?

4 A. Yes.

5 Q. "I recall Mr Bayoh was on his side having been searched
6 for possession of a knife."

7 That was by you?

8 A. Yes, that was by me, yes.

9 Q. "At this time I would have been somewhere near
10 Mr Bayoh's legs. As soon as it was recognised Mr Bayoh
11 had lost consciousness, CPR was carried out immediately.
12 I did not continue to restrain Mr Bayoh at this time,
13 however I remained vigilant to the fact he could regain
14 consciousness and may need to be restrained again if he
15 continued resisting his arrest."

16 A. Yes.

17 Q. I'm interested in when he stopped moving.

18 A. Mm-hm.

19 Q. So you describe him being moved onto his side?

20 A. Yes.

21 Q. Had he stopped moving prior to being moved onto his
22 side?

1 A. No, I don't think so. So like the leg restraints being
2 applied to the legs because that's the area I was at,
3 immobilised the legs, so for me the legs had obviously
4 stopped thrashing about to the extent that they were
5 initially, but I wasn't obviously at the up -- like the
6 upper half of Mr Bayoh, so I couldn't say the point at
7 which obviously he lost consciousness.

8 Q. So you don't remember when he lost consciousness?

9 A. No.

10 Q. Do you remember when he stopped moving?

11 A. No.

12 Q. Or stopped struggling?

13 A. No because it all happened -- like I said, the restraint
14 all happened so quickly and we were in so many different
15 positions, it's difficult to like pick out exactly when.

16 Q. Looking back now, was your impression that he had lost
17 consciousness before he was turned on his side or after?

18 A. After.

19 Q. After. Why do you say that?

20 A. Because -- I'm sure that an officer, I can't remember
21 who and again I would have to rely on my original
22 statement, I'm sure someone was checking because there

1 was an officer at the head, you know, checking that.

2 Q. Who was that?

3 A. I want to say it was PC Smith.

4 Q. We may hear that PC Paton was towards the head of
5 Mr Bayoh.

6 A. Aye, I know there was an officer at the head. I thought
7 it was PC Smith but I could be mistaken on that.

8 Q. But you say:

9 "As soon as it was recognised Mr Bayoh had lost
10 consciousness ..."

11 A. Mm-hm.

12 Q. So how soon was it that it was recognised he had lost
13 consciousness after he was turned on his side?

14 A. Again I don't know. I wouldn't -- it would be a guess
15 if I kind of gave an answer.

16 Q. And who started CPR?

17 A. From what I remember, I think it was PC Walker, I think.

18 Q. Okay. And again can we look briefly at your PIRC
19 statement, page 5, this time it's paragraph 2, and it
20 says:

21 "Craig Walker started CPR. Alan Paton and
22 Alan Smith tried to apply the mouthpiece which would

1 allow them to give breaths. They couldn't manage to get
2 it in properly. I think they were carrying out SPELS
3 30/2, but Alan Smith got contaminated with something
4 from the man and rinsed out his mouth with his hand
5 sanitizer before getting a glass of water from
6 a resident nearby. Craig and Alan Paton did the CPR
7 between them and they were getting tired. I heard Craig
8 mention that there were broken ribs from the CPR he
9 heard breaking."

10 Now, this isn't mentioned in your Inquiry statement
11 but is it fair -- yesterday you told us your memory was
12 fresher when you gave this statement to PIRC on
13 4 June --

14 A. Yeah.

15 Q. -- 2015, so would this paragraph be correct?

16 A. Yes, to the -- aye.

17 Q. And would the -- if the Chair is looking at this, should
18 he prefer this statement?

19 A. He should prefer my original statement, yes, because it
20 was fresh in my mind at the time.

21 Q. Right. So do you -- reading that now, that paragraph,
22 do you remember this happening?

1 A. No, not really.

2 Q. No. Tell us what SPELS is.

3 A. So SPELS is -- I can't remember what actually the

4 acronym stands for but it's basically like you're --

5 I think it might actually stand for Scottish Police

6 Emergency Life Saving, or Life Support or something.

7 It's basically something I would refer to as first aid,

8 like the first aid we get taught, and that includes

9 obviously like placing bandages on people, tourniquets,

10 treating them if somebody goes into shock, finding out

11 body positions and things like that to put people in the

12 recovery position, and the reference to 30/2 at the back

13 of that is when you carry out CPR, so it's 30 chest

14 compressions to two breaths, so that's what I mean when

15 I say 30/2.

16 Q. Right and then there was an issue with PC Smith.

17 A. Mm-hm.

18 Q. We have not heard from PC Smith yet, although we should

19 be hearing from him soon. And you say:

20 "I heard Craig mention that there were broken ribs

21 from the CPR he heard breaking."

22 A. Yes.

1 Q. So do you remember that?

2 A. Having read this, again I can't remember. This is
3 obviously fresh in my mind at the time, but like this
4 part of it now looking back I can't really remember.

5 But Craig wouldn't have been saying it like to me. He
6 would have been saying it to the other officer carrying
7 out CPR, but I don't know who that -- Alan Paton, sorry.

8 Q. Well, we have heard that Alan Smith was involved with
9 CPR.

10 A. Okay. So aye, they would have been communicating with
11 each other.

12 Q. Right, okay. At this point in time when CPR is being
13 performed, do you remember where PC Paton was?

14 A. No.

15 Q. Right. Where were you?

16 A. I think I was near Mr Bayoh's legs, or stood up near his
17 legs, like I was either kneeling down near his legs or
18 stood up near his legs.

19 Q. Right. We will come back to that, but I would quite
20 like to -- I will stay with this statement for the
21 moment please and I would like to go back to page 3. We
22 looked at some of that yesterday.

1 A. Okay.

2 Q. I would like to look at the final paragraph. I'm going
3 to read a number of paragraphs from the bottom of page 3
4 onto page 4, so if you have the copy in front of you or
5 you can see it on the screen, I'm going to read it all
6 and then I'm going to ask you some questions, if that's
7 okay. So we will start at the bottom of page 3:

8 "I struck him with my baton once to his head. It
9 was to the left hand side to his head, diagonally from
10 the back of the head to his jaw. He stopped stomping on
11 Nicole at that point. I think I hit him again which was
12 about 2 or 3 times in total to the head area. He turned
13 around and took up a boxing sort of stance, with both
14 fists clenched in at his chest. I thought he was going
15 to attack me again so I struck him 2 or 3 times with my
16 baton to his arms. At that time I thought he was trying
17 to kill me now after killing Nicole. Craig Walker came
18 in at this point and grabbed the man like a bear hug and
19 wrestled him to the floor. Craig was trying to control
20 his arms so I tried to get a hold of his legs, which
21 were kicking out in the air. I struck the back of his
22 legs at his achilles area a few times but he didn't stop

1 and it failed to control him. I threw my baton to one
2 side and jumped on the legs to try to control him.

3 "The man was face down, Craig was on his back trying
4 to control him and I was on his upper thighs straddled
5 over him trying to control his legs and facing his head.

6 "He started to bench press both of us and was
7 incredibly strong. I tried to pull his right arm to
8 stop him doing this and he started to pull me in. He
9 was overpowering us and we were struggling to keep him
10 on the floor. I would say Craig is about 20 stones, and
11 he was still too powerful for us. He kept pulling me in
12 and I pushed the emergency button for assistance.

13 "My thoughts now were to try and get one of the
14 handcuffs on him to control his arm, but he again
15 flicked his legs, causing me to lose balance and drop my
16 handcuffs. I managed to get back onto the back of his
17 legs and at this point other officers started to
18 arrive."

19 I would like to look back at page 3, to the final
20 paragraph. I'm just going to go through these
21 paragraphs and ask you if you want to comment on
22 anything.

1 A. Yes.

2 Q. So you say:

3 "I struck him with my baton once to his head ... He
4 stopped stomping on Nicole at that point. I think I hit
5 him again which was about 2 or 3 times in total to the
6 head area."

7 Now, yesterday when you were giving your evidence
8 you talked about that first strike with the baton.

9 A. Yes.

10 Q. And you said:

11 "It didn't stop him, so I delivered two more baton
12 strikes to that general area ..."

13 A. Yes.

14 Q. "... I don't know where [it] connected ... but that
15 stopped him."

16 And you talked about that.

17 So yesterday you seemed to indicate that the first
18 baton strike didn't stop him and that's why you
19 delivered two more.

20 A. Yes.

21 Q. In this statement you seem to be saying you struck him
22 and he has then stopped stomping on Nicole and then you

1 hit him again two or three times in total to the head.

2 A. Yes. My fear there is that he was going to continue
3 because just because he had stopped, he didn't change
4 his body position, he didn't move and my fear was that
5 he was going to actually, as I kind of described
6 yesterday, reload and again deliver another stomp.

7 Q. Right. So in this statement you say:

8 "... I hit him again 2 or 3 times in total to the
9 head area. He turned around and took up a boxing sort
10 of stance ..."

11 A. Yes.

12 Q. So it was only after the third strike with the baton
13 that he changed his position?

14 A. Yes, that he basically came away from a position that
15 I would say was ready again to stomp on Nicole, ready in
16 a position to further injure or kill Nicole.

17 Q. Right. I'm trying to work out in relation to the
18 stomping how many stomps had taken place prior to the
19 first strike to the head with the baton?

20 A. I know there were two stomps, but I don't know if it
21 was -- if he had stomped twice already, or whether it
22 was stomp and then as I have struck it was a second

1 stomp, if that makes sense.

2 Q. Is that something you can remember clearly now?

3 A. Not now.

4 Q. Okay. So should the Chair prefer this version, or ...?

5 A. I would prefer the original version, yes.

6 Q. The original version. And then you have said:

7 "... I was on his upper thighs straddled over

8 him ..."

9 Now, yesterday I think I understood you to say it

10 was in the middle of his legs and his knees were under

11 your bum.

12 A. Mm-hm.

13 Q. Here you seem to be talking about upper thighs -- sorry,

14 if we go down slightly, you will see the second

15 paragraph on page 4, you say:

16 "... I was on his upper thighs straddled over

17 him ..."

18 So again, should the Chair prefer --

19 A. Yeah.

20 Q. -- your evidence yesterday or the evidence here?

21 A. I would go with my original statement, yeah. It's

22 obviously just been a -- because I can't remember, but

1 I thought I recalled yesterday I thought it was more the
2 knee area, but if I have said that in my original
3 statement, that will be it.

4 Q. That's fine. I'm just clarifying so the Chair knows
5 what to prefer.

6 A. Yes.

7 Q. Then you talk about:

8 "Craig was on his back trying to control him and
9 I was on his upper thighs straddled over him trying to
10 control his legs and facing his head."

11 And yesterday you talked about Craig being on
12 Mr Bayoh's upper body towards his left-hand side. Is
13 there any difference between what you said yesterday and
14 what you have said there, because you say Craig was on
15 his back trying to control --

16 A. No --

17 Q. -- him.

18 A. Aye. I see it says obviously he was on his back. He
19 wasn't fully on his back because if he had been fully on
20 his back I would never have been able to reach and get
21 the arm so when I say he was on his back it's in that
22 general area, like. So to kind of help you understand,

1 there was no way Craig could have been lying on his back
2 because I would never have been able to reach round
3 Craig and get a position on Mr Bayoh's right wrist.

4 Q. So in this case you have given more detail yesterday --

5 A. Yes.

6 Q. -- and that should be preferred. And then you said the
7 man was face down and I think you have explained that
8 today?

9 A. Yes.

10 Q. In detail. And then you say:

11 "I would say Craig is about 20 stones, and he was
12 still too powerful for us."

13 A. Yes.

14 Q. "He kept pulling me in and I pushed the emergency button
15 for assistance."

16 Now it may be suggested that you're mentioning
17 PC Walker's weight there, you think it's about 20
18 stones, because you were trying to describe the weight
19 that was on Mr Bayoh and yet he was still overpowering
20 you and PC Walker.

21 A. Mm-hm.

22 Q. Did you want to say anything about that?

1 A. No, I'm not trying to suggest that Craig's --
2 PC Walker's full 20 stones was on Mr Bayoh, but kind of
3 obviously give you a better understanding, I'm not
4 saying that PC Walker was stick thin and, you know, like
5 easy to move around, you know. Craig is obviously
6 a larger gentleman and as such wouldn't be very easy to
7 move around, so that's what I'm trying to like describe
8 there. I'm not saying that 20 stone was on him. I'm
9 saying that, you know, 20 stone of an individual's very
10 difficult to shove out of the way which is obviously
11 what I mean by that.

12 Q. All right, thank you. Then remaining on page 4 of that
13 statement, paragraph 6:

14 "That was the first time I remember seeing
15 Alan Paton."

16 A. Mm-hm.

17 Q. Let's just get that so page 4, paragraph 6, starts:

18 "That was the first time ..."

19 So it's -- there we go:

20 "That was the first time I remember seeing
21 Alan Paton."

22 Do you see that paragraph?

1 A. Yes.

2 Q. And you say:

3 "I remember Alan Smith trying to put fast straps on
4 the man, but he grabbed my leg by mistake and I asked
5 him what he was doing. The man was still face down and
6 still struggling."

7 A. Yes.

8 Q. So that was Mr Bayoh was still face down and still
9 struggling?

10 A. Yes.

11 Q. At the point that Alan Smith was trying to put fast
12 straps on him?

13 A. Yes.

14 Q. Thank you. Right, and staying on page 4 please, can we
15 look at paragraph 7:

16 "Craig shouted for someone to check for a knife."

17 There we are:

18 "I checked the right side from his waist to ankle
19 and by that time he had been rolled onto his side and
20 was handcuffed from the front, palm to palm."

21 Do you see that?

22 A. Yes.

- 1 Q. Do you remember that now?
- 2 A. Yeah, aye -- aye. I just remember whatever side he had
3 been rolled onto I was able to access the opposite
4 pocket.
- 5 Q. And then you mention the chewing gum --
- 6 A. Yes.
- 7 Q. -- in the right-hand pocket and the gold coloured mobile
8 phone you mention as well.
- 9 A. Yes.
- 10 Q. You then go on to say:
- 11 "When he was on his side I took hold of the fast
12 strap to control his legs."
- 13 A. Yes.
- 14 Q. How did you take hold of that?
- 15 A. So if you imagine that there's a set of legs in-between
16 that it would have just been a case of like that
17 (indicating) and that's just to stop Mr Bayoh rolling
18 and basically face planting the road. It's just a way
19 of stabilising a person that's on their side.
- 20 Q. And you say:
- 21 "I was there with Craig to my left controlling his
22 upper body. I was controlling his legs. Alan Smith and

1 Alan Paton were at his head area."

2 A. Yes.

3 Q. So by this point, which is the final paragraph on page 4
4 of your PIRC statement, you seem to be saying
5 Craig Walker was to your left --

6 A. Yes.

7 Q. -- controlling his upper body, that's Mr Bayoh's upper
8 body.

9 A. Yes.

10 Q. You were controlling his legs, you have described
11 holding onto the fast straps and then PC Smith and
12 PC Paton were at Mr Bayoh's head area.

13 A. Yes.

14 Q. And is that your recollection?

15 A. Again, at the present time I don't recall it was
16 PC Paton being there, but if I have said it in my
17 original statement he must have been there.

18 Q. Right. And then can we turn on to page 5 of your PIRC
19 statement please, just at the top, paragraph 1 and you
20 say:

21 "The man had calmed down and wasn't moving or
22 struggling. Alan Smith went down and put his ear to the

1 man's mouth and confirmed he was breathing. He wasn't
2 responding so Alan Smith or someone asked for an
3 ambulance. Shortly after that Alan Paton said that the
4 wasn't breathing", maybe the man wasn't breathing.
5 "Alan Smith checked and confirmed this so we rolled him
6 onto his back to carry out CPR."

7 So this is the point at which from his -- he is on
8 his side and then he has moved on to his back?

9 A. Yes, that's correct.

10 Q. So by this time he had calmed down, he wasn't moving or
11 struggling by this stage?

12 A. Mm-hm.

13 Q. And it's at that point PC Smith bends down, put his ear
14 to Mr Bayoh's mouth and he confirms at that point he
15 wasn't breathing.

16 A. No, I think initially Alan -- PC Smith bent down and put
17 his ear to the man's -- sorry, Mr Bayoh's mouth and he
18 confirmed he was breathing.

19 Q. Sorry, he was breathing.

20 A. Yes.

21 Q. He wasn't responding, so Alan Smith or someone asked for
22 an ambulance.

- 1 A. Yes.
- 2 Q. And shortly after that Alan Paton said that he wasn't
3 breathing.
- 4 A. Mm-hm.
- 5 Q. Sorry, I misread that. So it was PC Paton that noticed
6 that he wasn't breathing.
- 7 A. Yes.
- 8 Q. According to this recollection.
- 9 A. Yes.
- 10 Q. Do you remember this now, reading this paragraph?
- 11 A. Again I still don't really remember that.
- 12 Q. But you have described already that this version was
13 fresher?
- 14 A. This would be, yes, this is more accurate, yes, because
15 as we kind of go on I don't really -- I don't now
16 remember the ambulance arriving at all, obviously it
17 does arrive and I've got some involvement with that but
18 I don't remember that just now.
- 19 Q. Okay. So looking between sort of the end of page 4 and
20 the beginning of page 5 of your PIRC statement, you talk
21 about Mr Bayoh being on his side and taking hold of the
22 fast straps and the position of everyone.

1 A. Yes.

2 Q. And you then immediately go on to say:

3 "The man had calmed down and wasn't moving or
4 struggling."

5 And looking at that now, I'm trying to get a sense
6 of the timing of that. By the time he is turned onto
7 his side, he is no longer struggling or moving, is that
8 right?

9 A. Aye, if I have said that in my original statement, yes.

10 Q. So by the time he is turned onto his side he is not
11 moving or struggling?

12 A. If I'm on -- I wouldn't know if his upper body was
13 moving or -- like I said, I'm on the legs so that's the
14 only area I was kind of focused on so that's the only
15 area I can comment on but certainly the legs weren't
16 struggling.

17 Q. That was your impression at the time anyway?

18 A. Yes.

19 Q. Or shortly after. Right. And then very quickly after
20 that, after he has been moved, PC Smith realises he is
21 breathing and PC Paton then realises he wasn't
22 breathing.

1 A. Mm-hm.

2 MS GRAHAME: All right. I would like to go back to the
3 evidence video timeline, but I'm also conscious that
4 it's nearing half past.

5 LORD BRACADALE: We will have a break at this point. We
6 will have a break of 15/20 minutes please.

7 (11.25 am)

8 (Short Break)

9 (11.55 am)

10 LORD BRACADALE: Yes, Ms Grahame, when you're ready.

11 MS GRAHAME: Thank you.

12 PC Tomlinson, we were about to look again at the
13 evidence video timeline and I would like to play
14 a section of this from 7.21.38. If we look at page 5 of
15 the spreadsheet, just to put it into context for you
16 while Ms Smith prepares, this -- page 5 is the point at
17 which your emergency button has been pressed on. You
18 see that on the previous page.

19 PC Smith has transmitted on the Airwaves that the
20 male is secure on the ground.

21 A. Mm-hm.

22 Q. And 7.21.38 you will see the description:

1 "A white man enters the roundabout from north
2 Hendry Road and turns right to go south on Hendry Road.
3 It pauses behind the other light coloured vehicle that
4 is stopped at the entrance."

5 And you will see as we move down page 5, can I refer
6 you to the right-hand side column. Now, I have not
7 referred you to this yesterday or today, but you will
8 see this is actually -- we have heard this is the source
9 of what you can see and you will see that there's
10 Gallaghers' CCTV listed there. That's the footage at
11 the bottom of the screen that we looked at earlier
12 today. And you will also start to see references to
13 Snapchat, first of all 7.22.10, Snapchat, and then
14 another one two down. And as we look at the screen
15 you're going to see on the screen some images appear
16 which are actually taken from Snapchat footage, so
17 that's what I'm going to ask you to look at as we look
18 through the footage.

19 A. Okay.

20 Q. It won't last for a long time but you will expect it, it
21 will be coming, and I'm going to ask you. So there's
22 that section and then there's another section. I'm

1 going to go through both of them.

2 A. Okay.

3 Q. But the first section is 7.21.38 between phase 4, which
4 is 7.21.38 to 7.25.17, but the Snapchat footage actually
5 starts at 7.22.10 and lasts until 7.22.16.

6 A. Okay.

7 Q. So that's on page 5 of the spreadsheet. What I'm going
8 to do is ask Ms Smith to play that and then I'm going to
9 ask you some questions.

10 A. Yes.

11 Q. Thank you.

12 (Video played)

13 Right, so did you see that Snapchat come onto the
14 screen there?

15 A. Yes.

16 Q. At the right-hand side?

17 A. I did, yes.

18 Q. I'm going to ask Ms Smith to go back and -- there we
19 go -- and we will watch that again. So that starts at
20 7.21.38, so we will just play that for a few seconds.

21 (Video played)

22 If we can pause it there please. We can see the

1 Snapchat there and we see officers on Hayfield Road, so
2 this is at the moment it's on screen it's 7.22.13.

3 A. Yes.

4 Q. Looking at that -- and I can show you a number of times
5 if that makes it easier, but looking at that, can you
6 identify where you are?

7 A. So from looking at that I think I am the officer -- so
8 you see you've got -- if you look at the bottom kind of
9 tile of the Snapchat footage you've got the officer
10 stood up at the feet and then the officer immediately in
11 front of that that you see kind of crouching down,
12 I think that is me. I know it might not look like it,
13 I've got hair there and I believe when the footage plays
14 you can maybe see I've got glasses as well. I had hair
15 and glasses at the time. So whichever officer has hair
16 and glasses is the one I believe to be me.

17 Q. So at the time you had glasses --

18 A. Yes.

19 Q. -- and hair.

20 A. Yes and I didn't have a beard either.

21 Q. Did you have a beard then?

22 A. No.

- 1 Q. No.
- 2 Q. So you did look a little different then in 2015?
- 3 A. Yes, aye, significantly different.
- 4 Q. Right. So who is the officer standing up there?
- 5 A. The one at the feet?
- 6 Q. The one on the right at the feet.
- 7 A. I don't know if that's PC Gibson, Daniel Gibson. We
- 8 have not mentioned him yet. Or PC James McDonough.
- 9 Because I know who the other officers are, so if you
- 10 look at the officer that you can see kneeling at what
- 11 would be the head area, you can't see the head of that
- 12 officer --
- 13 Q. On the far left?
- 14 A. The far left. That is -- I think it's PC Alan Smith.
- 15 Q. Right.
- 16 A. And then --
- 17 Q. To his right with his back towards us?
- 18 A. I think that's PC Alan Paton and I say that based upon
- 19 the body armour cover, the yellow cover. I knew that
- 20 I think PC Paton maybe had a bad back, or there is
- 21 a reason why he had a different body armour cover and
- 22 I always remember that his was different.

1 Q. And then on the other side there seem to be two
2 officers. There's one sort of standing as we look at
3 the screen, it's slightly to the left, and then one
4 crouched down between the two standing officers and that
5 one's you, is it?

6 A. Yes, I think the one crouched down between the two
7 standing officers is me but I don't know in which order,
8 if the two standing officers are PC James McDonough and
9 PC Daniel Gibson, I don't know what way round they would
10 feature.

11 Q. Can you explain to the Chair and the Assessors at what
12 stage we see the Snapchat footage, at what stage this
13 was in terms of what you have described, because
14 previously you hadn't described or mentioned PC Gibson
15 or PC McDonough.

16 A. If they're there that must be the point at which the leg
17 restraints have already been applied.

18 Q. Right, so this is towards the end?

19 A. Towards the end, yes.

20 Q. After you, the police, had control of Mr Bayoh?

21 A. Yes, or certainly I had control of his legs. I couldn't
22 speak to what other officers had control of but it was

1 at the point at which I believe leg restraints were
2 applied and that I had control of his legs.

3 Q. That's your impression?

4 A. Yes.

5 Q. Where's PC Walker?

6 A. I don't even know if I can see him on that picture.

7 Q. Right. And I would like to play this part of the
8 footage again, so probably from 22.10 and we will watch
9 it again and if ...

10 (Video played)

11 Could you pause it please. So we see by this stage
12 there's a police car quite close to the officers.

13 A. Yes.

14 Q. In Hayfield Road, facing the officers, with the blue
15 lights on. Do you know who came from that vehicle?

16 A. No.

17 Q. Right. And we see the officer to the right walking
18 round?

19 A. Yes.

20 Q. Please play that.

21 (Video played)

22 At the end of that Snapchat footage did you see

1 another officer near to the van?

2 A. I did, yes, the one that was kind of like coming off the
3 pavement onto the road.

4 Q. Yes, let's have another look at that if we can rewind
5 slightly. And if we have to play it again, that's
6 absolutely fine. It is back the way I think. There we
7 go. Yes, sorry, we had it.

8 Maybe let's play it again and that might make life
9 easier.

10 (Video played)

11 We will pause it just there. Did you see that the
12 camera panned round and we could see the fish van?

13 A. Yes.

14 Q. And now we're looking towards the Transit van or the 19?

15 A. Yes.

16 Q. And to the right of that there's another police vehicle
17 there?

18 A. Yes.

19 Q. Do you know who came out of the vehicle that's on the
20 far right?

21 A. No.

22 Q. Right and the person who is on Hayfield Road appears to

1 be at the pavement area --

2 A. Yes.

3 Q. -- behind the Transit van.

4 A. Yes.

5 Q. Do you know who that was?

6 A. No.

7 Q. If you watched it again would it help --

8 A. It's the first time I have ever -- like I have been

9 following along with the Inquiry but it's the first time

10 I have ever actually noticed anybody at that point in

11 the van but I don't know who that would be.

12 Q. Right. We also see the back of someone with a grey

13 T-shirt --

14 A. Yes.

15 Q. -- through the venetian blinds?

16 A. Yes.

17 Q. All right. So you're not sure who that is?

18 A. The person in the grey or ..?

19 Q. No, no, you're not sure who the police officer is?

20 A. No, sorry, no.

21 Q. All right, thank you. Then I'm going to look at the

22 later piece of Snapchat footage which starts about

1 7.27.31. So this is later again. 7.27.31. This is in
2 phase 5 and you will see it on page 8 of the
3 spreadsheet, so we're just going to -- just to let you
4 see page 8, you will see at the bottom of page 8 on the
5 right-hand side it says "Snapchat"?

6 A. Yes.

7 Q. So again this is going to be footage from Snapchat and
8 you will see that's at 7.27.31.

9 A. Okay.

10 Q. And we will play that as well.

11 (Video played)

12 Thank you. I would like to go back to look at that
13 again. So this is at a later stage. This is after
14 7.27, and again let's look at the officers that are
15 there.

16 (Video played)

17 If we pause it there. Do you recognise any of the
18 officers that we see there?

19 A. Is it possible to make that bigger? I don't know if
20 that's something we can do.

21 Q. Yes. I'm going to show you some enhanced footage.
22 Would you rather see --

- 1 A. Just --
- 2 Q. No, the enhanced footage is the earlier section, sorry.
- 3 A. Just something that I can -- I don't know if we can pull
- 4 that tile up?
- 5 Q. No, I don't believe I can pull that particular tile up.
- 6 I do have a photograph but I'm not going to be able to
- 7 show you the photograph on the screen at the same time
- 8 as the video footage. Do you see the officer on the
- 9 right-hand side with the yellow vest standing?
- 10 A. Yes, that's PC Walker.
- 11 Q. Right and immediately in front of him there's someone
- 12 with his back to PC Walker with dark hair and a dark
- 13 sleeve and a yellow hi-vis jacket. Do you know who that
- 14 is?
- 15 A. I think with the dark hair it's maybe PC James McDonough
- 16 just because I know he had a -- kind of dark hair.
- 17 Q. And on the far left? There seems to be an officer
- 18 standing again with a dark sleeve and a hi-vis yellow
- 19 jacket.
- 20 A. Yes, I think that's Sergeant Maxwell.
- 21 Q. That's Sergeant Maxwell. In front of Sergeant Maxwell
- 22 there's someone dressed in dark clothing, dark hair.

- 1 A. Yes that would be Detective Sergeant Davidson.
- 2 Q. And who is standing next to her left?
- 3 A. I think that's PC Alan Smith.
- 4 Q. And in front of PC Smith someone's crouching on the
5 ground with the hi-vis jacket.
- 6 A. Yes, I think that's PC Alan Paton.
- 7 Q. And to PC Smith's left, someone standing?
- 8 A. PC Good, Kayleigh Good.
- 9 Q. And in front of PC Good, somebody is crouching down?
- 10 A. (Inaudible) I think it's maybe me because I think I can
11 see glasses on that individual, so I would say the
12 person crouching down in front of PC Good is me,
13 although it does look like the person at the end next to
14 that figure also has glasses so I'm not sure.
- 15 Q. What were you doing at this time? So this is at
16 7.27.32.
- 17 A. Again, just -- it looks like I'm just crouching by
18 Mr Bayoh's legs.
- 19 Q. And then further away from you there's also someone else
20 crouching down there. Do you know who that was?
- 21 A. The only person left would be PC Daniel Gibson.
- 22 Q. All right, thank you very much.

1 I would like to look at some enhanced Snapchat
2 footage now please, so Ms Smith will bring that up, and
3 this is from the 7.21.38 period, so this is the earlier
4 period of Snapchat that I showed you.

5 A. Yes.

6 Q. Now, what I'm going to ask Ms Smith to do is to play the
7 whole thing. You will see first of all that the
8 Snapchat has been removed and is shown at normal time,
9 normal speed, and then the second time it's shown on
10 this footage you will see it's 400% zoom and it is 25%
11 speed.

12 A. Yes.

13 Q. So you will see it twice, but I appreciate you won't
14 have seen it before so we can play it again if you wish
15 and thank you.

16 (Video played)

17 Thank you. So that image, the first phase of that
18 is from the 7.21 period and I would like to look at that
19 again but to the 400% zoom and the 25% speed. So this
20 footage is timed after you have hit the emergency
21 button?

22 A. Yes.

1 Q. After the Airwaves transmission saying the male is
2 secured on the ground.

3 A. Yes.

4 Q. So it's after that period and I just want to ask you
5 what's happening there. Do you see that -- and we will
6 go back over that again. You may see that someone is
7 bending a leg up.

8 (Video played)

9 Did you see that?

10 A. Yes.

11 Q. So who was that that was bending the leg up?

12 A. It looks like PC Daniel Gibson.

13 Q. All right, Daniel Gibson who came towards the end of the
14 restraint?

15 A. Yes. Because the person -- now that I see it blown up,
16 the person that's standing with the dark coloured hair
17 I would say is James McDonough because there's
18 a difference in the colour of James and Dan's hair,
19 so ...

20 Q. Right, so the person bending the leg is PC Gibson?

21 A. Yes.

22 Q. That's your -- that's who you --

1 A. That would be my view from viewing that, yes. I don't
2 remember that happening, but from viewing this, yes.

3 Q. Where were you at this point?

4 A. I think I'm currently blocked out of view by the figure
5 standing up, but I'm crouching -- I think I'm crouching
6 next to the legs.

7 Q. Right. So let's play this again just briefly.

8 A. So that's me coming into view just now.

9 (Video played)

10 Q. So you're facing the camera?

11 A. Yes.

12 Q. On the other side?

13 A. Yeah.

14 Q. Right. And PC Gibson is now crouching down besides you
15 on your left?

16 A. Yes.

17 Q. So we can pause it there. So this is the stage at which
18 you're on the other side of Mr Bayoh.

19 A. Mm-hm.

20 Q. Where is PC Walker?

21 A. So from this I could see what looks like a strip in
22 front of my face, like a light coloured strip, and it

1 looks like PC Walker is lying down, like next to

2 Mr Bayoh.

3 Q. Right. So PC Walker's lying down at that point?

4 A. Yes.

5 Q. And that strip, the white strip or pale strip next to
6 your face you think is PC Walker's -- part of what he is
7 wearing?

8 A. I can only think it's maybe his -- it's PC Walker's top
9 has ridden up, that's the -- I don't know what else it
10 could be. It doesn't look reflective.

11 Q. So you talked yesterday about the vest.

12 A. Yes.

13 Q. And the belt, the utility belt is under -- positioned
14 below the vest and the vest can lift up.

15 A. Yes, but the way that the kind of -- see if like --
16 whenever I wear body armour and you've got your utility
17 belt on, the utility belt obviously is buckled or
18 Velcroed, but if you bend over in your vest your vest
19 will drag your T-shirt with it as well so you can end
20 up -- there will be occasions when you have bent over in
21 dealing with somebody or bent over for whatever reason
22 and you stand up and your black T-shirt is just flapping

1 about because it has actually been ridden up and removed
2 itself from your trousers.

3 Q. So it can poke out underneath your vest?

4 A. Yes, your T-shirt can ride up underneath your vest.

5 Q. So if you're wearing something pale under your vest,
6 that can poke out the back?

7 A. Yes, aye. Certainly in my experience anyway, I don't
8 know if it happens to every officer, but certainly I've
9 had it where I've bent over and my T-shirt has been
10 lifted out of my trousers.

11 Q. So if you had somebody pale underneath your vest you
12 would have the pale thing poking out between your
13 trousers and your vest and then the vest above it would
14 be the black vest.

15 A. Yes. I don't know if it's necessarily something that he
16 is wearing, or it could be PC Walker's skin. I don't
17 know.

18 Q. No, that -- thank you. And then I would like you to
19 look at the photograph I mentioned a moment ago, that's
20 PIRC03374, and this is a snapshot taken and you will see
21 that there are names applied. We have not heard from
22 the witness who did this, but we will start on the

1 right-hand side. We see PC Walker, the tall person on
2 the right?

3 A. Yes.

4 Q. To his right the markings say DI Robson, so in jeans and
5 a dark coloured top.

6 A. Yes.

7 Q. Did you recognise DI Robson? I appreciate in that
8 snapshot you don't really see the face.

9 A. Yeah, no, I will be honest I don't know who DI Robson
10 is. I haven't encountered him since that incident but
11 he could be sitting in this room right now and
12 I wouldn't be able to identify him.

13 Q. Right. Then looking on the far left someone says Police
14 Sergeant Maxwell which I think is what you just said
15 a moment ago?

16 A. Yes.

17 Q. And then next to Maxwell moving right we see a line
18 saying DS Davidson which I think is what you said
19 a moment ago?

20 A. Yes.

21 Q. And then down crouched on the ground PC A Paton, which
22 I think is also what you said.

- 1 A. Yes.
- 2 Q. And then opposite PC Paton, PC Smith standing facing the
3 camera which is what you said.
- 4 A. Yes.
- 5 Q. To the left of PC Smith it says PC Good which I think
6 you said Kayleigh Good.
- 7 A. Yes.
- 8 Q. And then in front of Kayleigh Good, sort of crouched
9 down, it says PCA Tomlinson.
- 10 A. Yes.
- 11 Q. That would be you and that's I think what you said, you
12 were identified --
- 13 A. Aye, I think that's me.
- 14 Q. And then in-between -- slightly to the left of PC Good
15 there's a mark that says PC Gibson in relation to the
16 person crouching down.
- 17 A. Yes.
- 18 Q. So that would be opposite you really, opposite your
19 right side?
- 20 A. Yes.
- 21 Q. And then to the right of PC Gibson -- sorry, to
22 PC Gibson's left but to the right as we look at this

1 photo, it says PC McDonough?

2 A. Yes, James McDonough.

3 Q. So are you comfortable with those identifications?

4 A. Yes, I'm happy with that.

5 Q. And in the distance towards -- besides that white car
6 there's the marking DC Connell with a blue jacket on.

7 A. Yes.

8 Q. And do you know DC Connell?

9 A. No. My interactions at that time in my service with the
10 CID were fairly limited, so I knew DS Davidson just
11 because as a supervisor if I had any questions for CID
12 then she would be a face that I would be able to point
13 out, but no, I couldn't like identify who DC Connell
14 would be.

15 Q. All right, thank you very much. We can put that away.

16 I would now -- do you remember yesterday I spoke to
17 you about the images and the positions and I said to you
18 we will be able to fine tune this tomorrow with some
19 other images?

20 A. Yes.

21 Q. So I would now like to refer you to six images that have
22 been prepared by Mr DeGiovanni, who is here today, and

1 this is the first image and it shows the two vans. You
2 will see the 19, the Transit van, and the fish van.

3 A. Yes.

4 Q. And I think when you talked about getting out of the
5 fish van you pointed with red circles to yourself and to
6 PC Short and I would just now like to fine tune this so
7 that you're comfortable with it.

8 A. Yes.

9 Q. I appreciate it's a static image and it's a glimpse or
10 a snapshot, but Mr DeGiovanni's here to allow you to
11 start fine-tuning. We start with you, PC Tomlinson,
12 because I think you did talk about being near the front
13 of the fish van.

14 A. Yes.

15 Q. Maybe nearer to the front driver's wheel.

16 A. Yes, so just basically --

17 Q. Would you --

18 A. -- having exited the vehicle I would have just --

19 I don't know whether I would have touched the vehicle
20 but certainly that would have been the general direction
21 I would have been heading towards.

22 Q. Would you like that character to be moved further

1 forward towards the front of the vehicle?

2 A. Aye, put it in contact with what would be like the wheel
3 arch area, aye.

4 Q. And closer to the wheel? There.

5 A. I'm trying to think if I've got out of the car -- the
6 van, sorry, and shut the door -- I don't know whether
7 I would be like a door's length away, if that makes
8 sense, because I don't know if I would have shut the
9 door and then gone back into the -- you know, like
10 moving towards -- like a door's length away.

11 Q. So are you more comfortable with that position?

12 A. Yes, yes.

13 Q. And what direction were you facing in?

14 A. So if you turn me left. That's it, aye. So that's the
15 direction -- so basically where you see the first me and
16 the second me, I was -- this is weird. The first me was
17 like facing the second me, if that makes sense. I don't
18 know if that is just confusing things.

19 Q. Let's just start with the beginning first of all and
20 then we will move on to later. So you're quite
21 comfortable with that position at the moment?

22 A. Yes, I'm comfortable with that.

1 Q. And PC Short when she got out of the fish van, are you
2 comfortable with her position?

3 A. Yeah. I had an awareness she had got out of the van but
4 I wasn't really paying that much attention to what her
5 position in relation to me was.

6 Q. So are you -- subject to that, are you reasonably
7 comfortable with where she is?

8 A. Yes, I would be comfortable with that.

9 Q. And then let's look at the other van and you will see
10 that we have PC Walker there. Are you comfortable with
11 that position, showing PC Walker?

12 A. I don't know if -- looking at this, whether or not
13 PC Walker was a little bit further in towards the kerb.

14 No -- are you able to do my line of sight from that
15 position?

16 Q. Yes, from the one where you're at the fish van?

17 A. Yes -- no, from -- aye, from the fish van, sorry, yes.

18 Q. Yes.

19 A. If you move PC Walker --

20 Q. Obviously at the moment we see --

21 A. No, that's fine.

22 Q. Yes.

1 A. If you move PC Walker like back towards the wheel arch,
2 the --

3 Q. Closer to the van?

4 A. Yes, so move him closer to the van, but then push him
5 further away from me so he is towards --

6 Q. What direction was he facing?

7 A. So he was facing just a little bit -- so if you turn
8 PC Walker to the right just a tad so he is facing
9 Mr Bayoh.

10 Q. So more with his back to the van?

11 A. More with his back to the van. Probably too much,
12 sorry. Aye, there or thereabouts.

13 Q. Right. Are you comfortable with that position?

14 A. Maybe just slightly more towards like the front --
15 I don't know -- I can't quite tell from this angle but
16 more towards like the front of the van.

17 Q. Okay. You mean the front of the van, so pushed away
18 from you, more towards the front of the van?

19 A. Yes, just pushed slightly away, so more in line with the
20 wheel.

21 Q. Oh, right.

22 A. Yeah.

- 1 Q. Would you like to see your line of sight again?
- 2 A. Please, yes. Yeah, I think --
- 3 Q. If you're not comfortable, please tell us.
- 4 A. No, I'm just trying to remember, like trying to like put
5 myself back there and remember. Aye, again there or
6 thereabouts, that would be --
- 7 Q. Is that a reasonable indication?
- 8 A. Yes, I would say that's a reasonable indication, aye.
- 9 Q. Let's move on to Mr Bayoh.
- 10 A. So he was facing PC Walker which I think that model is
11 already doing, but like within an arm's reach, so
12 a little bit closer.
- 13 Q. A bit closer to PC Walker?
- 14 A. Yes, but he wasn't like blocking my view, so I could see
15 the two of them, if that makes sense, because I was able
16 to see PC Walker do that (indicating) so my view of that
17 wasn't blocked, so again there or thereabouts probably
18 where we've got that just now.
- 19 Q. Are you quite comfortable with that position?
- 20 A. Yes.
- 21 Q. That's a reasonable indication?
- 22 A. Yeah, I think so.

1 Q. So that was your view when you came out of the fish van?

2 A. Yes.

3 Q. And then you talked yesterday about you being in an area

4 before the Hayfield Road pavement curves to the left

5 there at the bus stop?

6 A. Aye, I don't -- I don't recall ever being in the bus

7 stop.

8 Q. I think you said that yesterday.

9 A. So by the time I had kind of got from the van to

10 probably where I am just now, that's when Mr Bayoh had

11 turned around and started to do the kind of like

12 purposeful walk away, down like the path that you see

13 starting at the bus stop.

14 Q. And you can see that Mr Bayoh has been positioned on the

15 path?

16 A. Yes.

17 Q. And I think that's in line with one of the circles that

18 you put on the image yesterday.

19 A. Yes.

20 Q. So you talked about -- but if we focus for the moment on

21 the second you --

22 A. Yes.

1 Q. -- are you comfortable with your position on the road,
2 or would you like to be moved?

3 A. I can't remember if I was on the road or the pavement.

4 Q. Had you got as far as the yellow lines of the bus stop?

5 A. I don't know. I just remember not being in the bus
6 stop, so I don't know if I had got as far as those
7 yellow lines, but I certainly don't remember being in
8 the actual like -- the cut-in of the bus stop.

9 Q. And your own position, what direction were you facing
10 when you were in that position?

11 A. So it would have been a position of turning because at
12 this point as I've got to that point Mr Bayoh has
13 obviously started to walk back down the path, so I have
14 just -- I would have been in the process of turning and
15 then following sort of alongside, but instead of being
16 on the path, being on the pavement.

17 Q. So you are facing the direction of Mr Bayoh as he moves?

18 A. Yes.

19 Q. Is that fair to say?

20 A. Yes.

21 Q. So your position would have been moving as he moved?

22 A. Yes, so as he has moved -- it's quite difficult to kind

1 of say because it's a snapshot.

2 Q. Because it's static.

3 A. Yes, as he has gone past me, so if he had been parallel
4 with me just there I would have been looking at him, but
5 as he has then gone further down the path I would have
6 kind of been walking sort of like shoulder to shoulder
7 sort of thing, direction-wise anyway.

8 Q. So are you happy now that the second you has been moved
9 to reflect that as you --

10 A. As I've turned, yes.

11 Q. -- start to turn, subject to those limitations, and then
12 Mr Bayoh is shown walking up the path, or along that
13 path there.

14 A. Yes.

15 Q. And is his position a sort of reasonable indication of
16 the way he was going?

17 A. Yeah, it's a -- he would never have been like that far
18 ahead of me.

19 Q. That far from you. What was the most that he was apart
20 from you?

21 A. If you bring him closer. Yes, probably about that
22 because we're talking that as he has passed I have had

1 to turn and then start to mirror his image -- mirror his
2 image, mirror his movements. So maybe even a bit closer
3 actually, at the point at which I have turned, because
4 I have been able to keep up with him so I can't have
5 been too far behind.

6 Q. Is that more of a reasonable indication?

7 A. Yeah, probably, yes. I would be more satisfied with
8 that than where he was initially placed, yes.

9 Q. And he was facing -- you said, I think yesterday you
10 said in the direction of the public house, Gallaghers
11 public house.

12 A. Yes, so like in just that general direction but largely
13 walking up that path, so whatever way that path
14 contoured around the grass, that would have been the way
15 he was kind of facing.

16 Q. Facing towards the path and walking in that direction?

17 A. Yes.

18 Q. So looking at that image now, with the explanation that
19 you have given us, are you satisfied that that's
20 a reasonable indication?

21 A. Yes. Yes.

22 Q. Thank you. Let's move on to the second one. So this

1 will be along the path. It does take a little bit of
2 time to load up the software. So you will see we're
3 still on Hayfield Road but the fish van is to the right
4 of this screen and you will see that the trees and the
5 grassy area has been recreated and again, we talked
6 about refining this scene because I think with the red
7 circles it was quite difficult to pinpoint where you
8 were.

9 A. Yeah and it's now probably much easier to see the trees.

10 What I remember was there was no shrubbery in front of
11 me, so at the point I deployed my CS spray there was no
12 shrubs in front of me, so that was the reason I placed
13 two circles down because I can see from the trees
14 obviously where Mr Bayoh is placed just now there's
15 a clearing, but I don't think we ever got as far as that
16 so then the other clearing is pretty much where I am
17 just now, in front of me you can see there's obviously
18 just one tree there but it's certainly a clearing.

19 Q. Yes. So when we see you there, PC Tomlinson, let's talk
20 about -- where would you like that character to be
21 standing?

22 A. If you face that character more -- so face that

- 1 character towards the path.
- 2 Q. Towards the path?
- 3 A. Yes. Sorry, the other way around.
- 4 Q. At the moment that character is standing on the roadway.
- 5 A. Yes.
- 6 Q. Are you comfortable with that position?
- 7 A. Yes, there or thereabouts. I don't necessarily know
- 8 again if I was on the dirt, the pavement or the roadway,
- 9 but given the distance I think between the pavement and
- 10 the path probably more likely where I am right now.
- 11 I don't recall that gas box so I don't think I got as
- 12 far as that, so I think probably that position is
- 13 reasonable.
- 14 Q. Do you want to move yourself closer towards the van, or
- 15 are you happy being that distance from the gas box or
- 16 the electricity box?
- 17 A. Could you move the camera so --
- 18 Q. Yes. Do you want a more pulled out view?
- 19 A. Yeah, just like -- it's kind of hard to describe.
- 20 Q. Do you want to see the van?
- 21 A. Yes please.
- 22 Q. There we go.

1 A. Right, okay. Aye, now that I see the van, if you move
2 my figure to the right so you've got three trees there,
3 you have got the first tree on the far right, you've got
4 the second tree next to that. Probably in line with
5 that second tree. Yes. Somewhere like that, maybe just
6 slightly to the left. Yeah. Again, roughly there or
7 thereabouts. I just remember the clearing, there wasn't
8 any bushes.

9 Q. And when you were there where was Mr Bayoh?

10 A. So if you bring Mr Bayoh back down the path because
11 I would have been mirroring his image so he would have
12 been --

13 Q. I think at one point yesterday I asked you how far along
14 the path he'd got, so maybe the -- was his current
15 position as far along as he had reached perhaps?

16 A. Seeing it like this in the 3D model I don't think he had
17 quite got as far as that. Again it's quite difficult to
18 tell. I don't remember -- I just remember there being
19 a clearing so it's either at that clearing or the second
20 clearing, I can't remember which one, I just know there
21 wasn't any shrubbery in front of me.

22 Q. But you would like Mr Bayoh's character to be brought

- 1 back to closer to you?
- 2 A. Closer to me, yes, so that he was probably just level
3 with me, or just in fact -- if you bring him like
4 further back down the path towards the fish van, like --
5 aye, keep going back. Back a little bit further. Aye.
6 So I would maybe having looked at this and the way
7 I have deployed my CS and it has obviously curved
8 around, so I must have been slightly in advance of
9 Mr Bayoh on the path.
- 10 Q. Do you want to see your line of sight --
- 11 A. Please, yes.
- 12 Q. -- from that position?
- 13 A. No that wouldn't have been it because I could see him.
- 14 Q. So would you like Mr Bayoh to be in front of or behind
15 that tree?
- 16 A. Probably be like -- if you bring him --
- 17 Q. Back towards the van?
- 18 A. Back towards the van, sorry. Yeah. Maybe just back
19 a little bit more. Is this from what would be my eyes,
20 the view?
- 21 Q. Well, it's all indicative. Obviously we don't have your
22 exact measurements and suchlike --

- 1 A. It's just I feel like I'm quite close.
- 2 Q. -- but this is an indication.
- 3 A. As an indication, aye, I feel like I'm quite close. If
4 this is me looking through my own eyes, I feel like I'm
5 a little bit closer.
- 6 Q. Well, we can either -- we can move your position
7 a little bit back and let you see that line of sight if
8 you would prefer.
- 9 A. Yes. Yeah, try that. Aye, I feel like -- yes. Because
10 I don't feel like I was ever --
- 11 Q. As close as before?
- 12 A. -- as close as that. I know it's only an indication.
- 13 Q. Are you more comfortable with that viewpoint now --
- 14 A. Yes.
- 15 Q. -- or would you like to be moved further back?
- 16 A. No, I think that viewpoint ...
- 17 Q. And Mr Bayoh's position on the pathway, are you
18 comfortable that that's a reasonable indication of his
19 position?
- 20 A. Yeah because he wasn't -- aye, he only became -- so he
21 only came onto the grass shrubbery area when obviously
22 he's charged but like I say, there was nothing, there

1 was no shrubs in that area so it must either be this
2 clearing or the next clearing up but I don't think we
3 ever got as far as the next clearing up.

4 Q. Can we come out slightly so we can now look -- are you
5 happy with Mr Bayoh's direction that he's facing in?

6 A. Yes.

7 Q. Now, yesterday I think when you described where PC Short
8 was you weren't entirely certain. You thought she was
9 behind you but you didn't know if it was left or right
10 of you.

11 A. Yes, I just had an awareness that she was somewhere
12 close by, but just behind me somewhere. Like I don't --
13 when I say just behind, I don't mean she was breathing
14 down my neck but she was behind me but not very far.
15 She is way too far away there.

16 Q. Would you like her to be closer to you?

17 A. Yes, just move it closer and off-set to either --
18 I don't know if it was left or right, I don't know.

19 Q. So subject to that caveat --

20 A. Yes, I don't know -- yeah.

21 Q. If we can get the position of how far she was from you,
22 that would be helpful.

1 A. Yeah. I couldn't tell you how close she was to me but
2 like I knew she wasn't like -- I couldn't feel her right
3 behind me but I knew she was there.

4 Q. What about that position, or are you just not confident
5 about her position?

6 A. No, I'm not confident enough to commit her to a position
7 because I wasn't actually looking at her.

8 Q. That's fine, right. So looking at you, do you want to
9 see your line of sight again or are you happy --

10 A. No, I'm reasonably happy with what we're seeing.

11 Q. And was there anyone else around at that time?

12 A. No, I don't know where -- because my focus now was off
13 PC Walker so I don't know where PC Walker had gone.

14 Q. Then let's look at image number 3 please.

15 I think this is the positioning in relation to where
16 you were when you used your spray.

17 A. Yes.

18 Q. So you will see as the image starts to load, again in
19 this image the character that is you is still quite
20 close to the verge of the grassy area.

21 A. Yeah.

22 Q. Mr Bayoh has now turned towards you.

1 A. Mm-hm.

2 Q. So I would like to try and pin down a reasonable
3 indication of where you were when you used your spray.

4 A. So see the other -- the slide we have just came off,
5 that I would say is a reasonable indication as to where
6 I used my spray.

7 Q. Oh, I see, right.

8 A. I don't know if I have maybe jumped a step ahead and
9 described because that's what I thought we were sort of
10 describing there.

11 Q. No, that's fine, so if we try and replicate that here in
12 image 3.

13 A. Yes.

14 Q. So I think you were slightly further back on the
15 pavement of Hayfield Road, facing in the direction of
16 Mr Bayoh?

17 A. Yes.

18 Q. And at this point he has turned to face you --

19 A. No, so when I have deployed my CS it's only after that
20 he has turned then to face, so the deployment of CS
21 would have been -- which is why I have only contacted
22 this area rather than sort of on the face.

- 1 Q. I see.
- 2 A. So Mr Bayoh would have been facing towards --
- 3 Q. Right, so in fact maybe what we should simply do is say
- 4 the previous image that we worked on, you're content
- 5 that that shows and reflects the position you were in
- 6 and Mr Bayoh was in when you used your spray?
- 7 A. Yes, so when the initial, first --
- 8 Q. So the previous image the Chair can rely on for that?
- 9 A. Yes, that's correct.
- 10 Q. And that was -- you described yesterday using a short
- 11 sharp burst and then a long --
- 12 A. Yeah.
- 13 Q. Holding your thumb on the button and pushing it into the
- 14 wind. Or moving it round into the wind.
- 15 A. Yes, sort of moving my kind of arm into the wind so that
- 16 naturally the spray of the CS canister would curve with
- 17 the wind and then take it to its intended target.
- 18 Q. And so that was the previous -- that's image 2. Then at
- 19 some point after you had used your spray, then Mr Bayoh
- 20 turned to face you.
- 21 A. Yes and I would say this is more reasonable as to where
- 22 he was positioned then.

1 Q. Right. Let's show an indication of where Mr Bayoh was.

2 A. Yes.

3 Q. And so this is -- this character -- the green figure is
4 now facing towards you?

5 A. Yes.

6 Q. So you have remained in position on Hayfield Road?

7 A. Yes. I don't think again --

8 Q. But it would reflect the one previously?

9 A. Yes, it would reflect wherever I was positioned from
10 kind of like line of sight, but aye, roughly that's kind
11 of the position we ended up in after the spray was
12 deployed.

13 Q. So after the spray he turns to look at you?

14 A. Yes and again I had no -- no real knowledge of where
15 PC Short was other than I knew she was behind me.

16 Q. So let's not worry about PC Short but what we see on the
17 screen here is a reasonable indication of where Mr Bayoh
18 was when he turned to face you?

19 A. Yes.

20 Q. After the spray has been used.

21 A. Yes.

22 Q. Thank you. Right, let's move on to number 4.

1 (Pause).

2 Now, this image was created -- it was -- you
3 described it as a dynamic thing, but you tried to
4 demonstrate using the purple arrow and line.

5 A. Yes, aye, it was quite difficult to do that.

6 Q. So this has been recreated on this image but we will
7 talk through it and make sure you're comfortable with
8 the positions.

9 A. Yes.

10 Q. So you will see to the right-hand side in the area near
11 the trees that I think this is where you described you
12 had used your spray --

13 A. Yes.

14 Q. -- Mr Bayoh had turned to face you and then he started
15 moving towards PC Short?

16 A. Yes.

17 Q. So let's look at Mr Bayoh first. His position when he
18 starts moving towards PC Short, are you happy with that
19 position? Again it's a snapshot.

20 A. When he starts moving he is on the path.

21 Q. Yes, so he has moved from the path that we saw on the
22 previous image.

- 1 A. Yes and he is -- aye.
- 2 Q. He is now moving across the grassy tree area.
- 3 A. Yes, aye, when the charge happens, aye.
- 4 Q. Is that a reasonable position, or would you like to move
5 him or the direction of him?
- 6 A. No, I think that's reasonable.
- 7 Q. Reasonable. And your position standing close to him?
- 8 A. So my position would be -- now that I have seen the line
9 of sight, more towards the centre of that footpath.
- 10 Q. So in the footpath rather than nearer the grassy area?
- 11 A. The pavement, sorry, rather than the footpath. That's
12 fine, but then turned around so facing the direction of
13 Mr Bayoh, but not facing directly at him because that
14 was the point I was kind of a bit confused as to what
15 his intentions were.
- 16 Q. Does that seem --
- 17 A. So yes that's --
- 18 Q. So you're in a similar position to your position in the
19 previous image really?
- 20 A. Yes and there would be enough space -- I don't know how
21 much space there would necessarily be but there would be
22 enough space for me to draw my baton and get it out to

1 the side.

2 Q. So would you like to be moved further away?

3 A. No, I think that's -- maybe push me slightly to the
4 left. I just -- I know that I wasn't close enough,
5 pulling my baton out I didn't connect with Mr Bayoh.
6 I can't recall whether or not I had managed to get it
7 out fully by the time he came past but yes, I think
8 that's -- I'm more satisfied with that.

9 Q. Happy with that? And happy with the direction you're
10 facing?

11 A. Yeah.

12 Q. All right. Then we moved on to the roadway of
13 Hayfield Road.

14 A. Mm-hm.

15 Q. And this was the point that you described of the --
16 Mr Bayoh striking PC Short and then her falling. So
17 when you look -- well, let's start with Mr Bayoh. When
18 you see his position there, and you may want to see it
19 more closer to ground level I think, you will see that
20 the fish van is on the right, the silvery grey car is on
21 the left. Are you comfortable with the sort of general
22 area that they're in because you spent quite a bit of

1 time yesterday talking about not seeing cars or not
2 being aware of cars?

3 A. Aye, it's the cars that confuse me because I don't
4 remember -- I'm not saying they weren't there, but
5 I just don't recall seeing the cars.

6 Q. Right. Well, let's look at Mr Bayoh's position. So he
7 has moved from the tree area into the -- towards the
8 middle of Hayfield Road.

9 A. Yes.

10 Q. In terms of the direction in which he is facing, at the
11 moment he is facing the south side of Hayfield Road.

12 A. Yes.

13 Q. Is that -- this is the moment before he strikes
14 PC Short. Are you comfortable with his position there?

15 A. Yes, but I would maybe say more -- so you see the
16 direction I think is generally correct, but bring
17 Mr Bayoh -- like move him up the screen a bit.

18 Q. So closer to the island that we see?

19 A. Closer to the island, yes. Yes, probably more like
20 that. No, that's too far, sorry. Bit closer. Aye that
21 will do.

22 Q. And PC Short in line with him or to one side?

1 A. She is closer than that. I don't know -- probably just
2 to his left side.

3 Q. Slightly to his left?

4 A. So yes, slightly to his left and not like close as in
5 touching but close enough that a punch -- aye, if that's
6 an arm's length.

7 Q. So she is just past the white -- the centre line?

8 A. Mm-hm.

9 Q. Slightly to the left of Mr Bayoh. Could we -- is it
10 possible to see that from behind. How does that look?

11 A. I think everything needs to come closer, like to the
12 camera.

13 Q. Closer to the camera?

14 A. Because that pushes us near the cars and, as I say,
15 I don't remember the cars. Maybe slightly closer again.
16 Sorry.

17 Q. No, not at all.

18 A. Yeah.

19 Q. Does that look more like it?

20 A. Yes, I think so.

21 Q. And he used which hand to strike PC Short?

22 A. I can't remember if it would be right or left.

1 Q. Okay. And then are you comfortable with both of the
2 positions of those figures?

3 A. Yes, the two standing up, yes.

4 Q. Right, let's look at the blue figure on the ground.

5 A. Yes.

6 Q. You will see that that reflects a movement by PC Short
7 onto the other side of the road, the Hayfield Road.

8 A. Yes.

9 Q. Are you reasonably comfortable with that position?

10 A. I think she was more towards -- having looked at it now
11 at this angle I think more towards the centre line, not
12 lying across the centre line but certainly more towards
13 it. Bring her back just a little bit more so maybe her
14 feet touch.

15 Q. Bit closer to you, closer to us?

16 A. Yes. Closer to what would be the direction of
17 Gallaghers.

18 Q. So that's the right-hand side of the screen.

19 A. Yes.

20 Q. So closer to that.

21 A. Yeah.

22 Q. What about that? So at an angle but really from the

1 centre of the road?

2 A. Yeah. Aye. Because the -- the punch to the back of
3 PC Short's head sent her like kind of falling, but, as
4 I say, it wasn't just a -- she didn't fall where she was
5 stood, she went some distance, so I would say from what
6 I remember I think that's reasonably accurate.

7 Q. Great, thank you.

8 Then let's look at image 5. So this is in relation
9 to the stamp that you have described.

10 (Pause).

11 I think yesterday you talked about Mr Bayoh being on
12 her right-hand side.

13 A. Yes, so I'm just trying to imagine it, if like ...

14 Q. You talked about her landing face forward with her arms
15 stretched out.

16 A. Yeah. Obviously the model's not got their arms
17 stretched out but if -- if you bring -- I'm trying to
18 think how to describe it. You've got to --

19 Q. Will we start with Mr Bayoh?

20 A. Aye -- so like -- aye, do that.

21 Q. We will work on his position first of all.

22 A. Yes, so he was -- you see where you've got PC Short

1 lying on the floor, his position was more towards where
2 her -- what would be her right hand is, if that makes
3 sense.

4 Q. So closer to her right hand.

5 A. Yes. And then tilt Mr Bayoh.

6 Q. And what direction was he facing?

7 A. So he was facing this direction but more tilted so --

8 Q. When you say "this direction" you mean towards you?

9 A. Sorry, towards me, yes.

10 Q. And tilted -- does it help if you relate that to the
11 fish van?

12 A. Yes, so see -- that's too far, sorry. So tilt a little
13 bit back more to the left and probably about that.

14 Q. Okay. So he is facing down Hayfield Road away from
15 Gallaghers pub?

16 A. Yes.

17 Q. Away from the roundabout at Hendry Road?

18 A. Yes.

19 Q. At a slight angle?

20 A. At a slight angle.

21 Q. And Nicole Short is flat out --

22 A. Yes.

- 1 Q. -- on the roadway at that time?
- 2 A. Yes.
- 3 Q. And he is to her -- she is face down, so he is to her
- 4 right?
- 5 A. To her right, yes.
- 6 Q. Are you comfortable with those positions?
- 7 A. Yes, aye.
- 8 Q. And then you, let's look at you, the figure
- 9 "PC Tomlinson".
- 10 A. So obviously seeing it as figures, I was much closer
- 11 than that because I was within striking distance with my
- 12 arm and a baton. Take me closer still. A bit closer
- 13 still. Aye, just keep going a little bit closer.
- 14 Probably about there.
- 15 Q. All right.
- 16 A. It's whatever -- like whatever the distance would be for
- 17 my arm and also the baton.
- 18 Q. Do you want to see the line of sight from there?
- 19 A. Please.
- 20 Q. Let's do that.
- 21 A. Yes.
- 22 Q. Are you comfortable with that? Yes? All right.

1 I would like to -- before we finish that, please,
2 I would like to just check your direction. Were you
3 comfortable with the direction you were facing?

4 A. Yeah, I would say so. It's reasonable anyway.

5 I couldn't say exactly but I think that's reasonable.

6 Q. Thank you. And then if we could look at the last image,
7 image 6. This is the one leading to the restraint that
8 we spent some time on yesterday.

9 (Pause).

10 So again we see -- we can start to see the image
11 developing. PC Short on the ground face down. I think
12 on this occasion she is -- her legs are slightly over
13 the central line.

14 A. Yes.

15 Q. You've got Mr Bayoh turning towards you and then we had
16 Walker on the screen, but we will focus on what's
17 happening in the middle of the road first.

18 A. Yes.

19 Q. So Mr Bayoh is there and he seems to be facing you by
20 this stage.

21 A. Yes.

22 Q. So this is after you have struck him.

1 A. Yes.

2 Q. And you have explained that earlier. Are you
3 comfortable with his -- the direction he is facing?

4 A. Yes. I don't know necessarily the direction -- I just
5 know we were like face-to-face, so whatever -- I mean
6 I'm reasonably happy with those positions. Obviously
7 they may vary slightly in terms of what we have created
8 where Nicole is lying on the roadway, but again that
9 general area we have kind of discussed, but in terms of
10 me and Mr Bayoh who were face-to -- like facing each
11 other.

12 Q. Facing each other?

13 A. Facing each other.

14 Q. And these are reasonable indications, they're not
15 precise exact measurements. And then PC Short is still
16 lying in the same position on the ground.

17 A. Same position.

18 Q. So I think in this case we start to see the arrow or the
19 dart in the road and that might be in a slightly
20 different position from the previous image.

21 A. Yeah.

22 Q. But are you reasonably comfortable? I think you moved

1 the image closer to the island yesterday because you
2 were concerned about the cars?

3 A. Aye, I just -- like I say, I don't remember the cars
4 being there but I wasn't paying attention to them so
5 they could have been there, I just don't remember them
6 being there. For me that's the most confusing part of
7 the whole like setup is seeing those cars.

8 Q. So is it fair to say that you're not 100% sure whether
9 it was a central line, a single central line or part of
10 the dart in the road as you approach the roundabout?

11 A. Yeah, I'm not sure where --

12 Q. Subject to that.

13 A. It's subject to kind of moving up and down that section
14 but, as I say, I don't -- I never paid attention to the
15 cars, but the kind of layout, the cluster that you've
16 got PC Short, Mr Bayoh and myself I would say is pretty
17 reasonable. It's just that location kind of moving up
18 and down the road --

19 Q. Yeah.

20 A. -- might vary.

21 Q. Your recollection isn't as clear.

22 A. No.

- 1 Q. And then can we pan out of this please. We had
2 PC Walker in Hayfield Road. You will remember yesterday
3 you gave evidence about him coming from your left.
- 4 A. Yes.
- 5 Q. And I wondered if using the figure of PC Walker you
6 could provide the Chair with some further assistance on
7 where he came from?
- 8 A. Yes, so see where you've got PC Walker now, I wouldn't
9 have been able to see that far because my peripheral
10 vision wouldn't go that far. The first of me being
11 aware was just when he was in my peripheral vision to my
12 left.
- 13 Q. So will we move his figure closer to you?
- 14 A. Closer to me, yes. But he wouldn't be behind, so he
15 would be slightly in front of me.
- 16 Q. So he is now closer to the central line.
- 17 A. Yeah, he would be in line with Mr Bayoh which I think he
18 is probably there anyway but ...
- 19 Q. Yes. Closer to you again or is that a reasonable -- he
20 is almost at the fish van, in line with the fish van
21 there.
- 22 A. Are you able to go like the line of sight view for me.

1 Q. Line of sight?

2 A. So I was facing Mr Bayoh and I don't ever remember

3 looking to my left, so --

4 Q. So maybe PC Walker would be closer?

5 A. Maybe -- yeah, so closer. I don't know if that makes it

6 more difficult to move him in that picture.

7 Q. I don't know either. We will leave that to

8 Mr DeGiovanni. If we could maybe move PC Walker closer

9 to ... then let's see the line of sight from

10 PC Tomlinson's character. Do you want him closer?

11 A. Aye, closer again I think.

12 Q. I'm sensing maybe you want him quite a bit closer?

13 A. Yes, sorry, aye. Quite a bit closer.

14 Q. Let's bring him quite a bit closer because you said it

15 was out of your peripheral vision on the left.

16 A. Yeah.

17 Q. Right.

18 A. So if I was to face Mr Bayoh a little bit more -- aye,

19 that's probably where -- you see that kind of like

20 generalised direction towards Mr Bayoh, that's when

21 I first became aware of PC Walker is when he emerged

22 kind of from my left and that's the first of me really

1 being aware that --

2 Q. Being aware of him?

3 A. Aware that he was there.

4 Q. So it really was in your peripheral vision from the

5 left, PC Walker is approaching from the left and he is

6 facing Mr Bayoh?

7 A. Yes.

8 Q. Right. Let's pan out and just see if you're comfortable

9 with that image. So that's you facing Mr Bayoh at the

10 sort of centre of the road?

11 A. Yes.

12 Q. PC Walker approaching from the left?

13 A. Yes.

14 Q. And Nicole Short face down on the ground?

15 A. Yes, that's -- aye, I'm reasonably happy with that, yes.

16 Q. Okay. And we were talking yesterday about PC Walker --

17 I think you have used various descriptions, wrestle, or

18 bringing him to the ground. It was from that point --

19 A. Yes.

20 Q. -- he then brought Mr Bayoh to the ground?

21 A. Yes, aye.

22 Q. All right. Thank you. Are you comfortable with that?

1 A. Yes, aye, I'm comfortable with that.

2 Q. Thank you. Well, that's very helpful.

3 I am going to move on now to some other questions in
4 relation to standard operating procedures.

5 LORD BRACADALE: That would be a convenient point to stop?

6 MS GRAHAME: It would, yes.

7 LORD BRACADALE: Yes, thank you. Detective Constable

8 Tomlinson, there is a member of the public, a Mr Akhtar

9 Ali, coming in to give evidence this afternoon and in

10 order not unduly to inconvenience him I propose to

11 interrupt your evidence to hear his evidence, I'm told

12 it will not be very long, and then we will come back to

13 your evidence.

14 A. Aye, that's fine, sir.

15 LORD BRACADALE: So I hope everybody understood that. We're

16 going to interrupt to hear a short witness and legal

17 representatives will be aware of his presence.

18 So 2 o'clock, thank you.

19 (1.02 pm)

20 (The luncheon adjournment)

21 (2.03 pm)

22 LORD BRACADALE: Good afternoon, Mr Akhtar. You're going to

1 be asked questions by Ms Grahame, who is sitting at the
2 end of the table here. Before we do that will you
3 repeat the words of the affirmation after me.

4 MR AKHTAR ALI (affirmed)

5 Ms Grahame.

6 MS GRAHAME: This witness is going to be taken by my learned
7 junior, Ms Thomson.

8 Questions from MS THOMSON

9 MS THOMSON: Thank you. Good afternoon.

10 A. Good afternoon.

11 Q. What is your full name please?

12 A. Akhtar Ali.

13 Q. How old are you, Mr Ali?

14 A. 66 -- 65, sorry.

15 Q. Thank you. And am I right to understand that you have
16 provided the Inquiry with your contact details?

17 A. Yes.

18 Q. There's a black folder in front of you, Mr Ali, if you
19 could perhaps open that up and I will talk you through
20 what's in it.

21 A. Yes.

22 Q. At the front of the folder there should be a statement

1 that you gave to the Inquiry, it's got the reference

2 SPBI00012. Do you see that there?

3 A. Yes -- no, there's no 2.

4 Q. It may not have the reference number on it, don't worry
5 about that.

6 A. Okay.

7 Q. That's just so I can make sure the right document comes
8 up on the screen in front of us.

9 A. Okay.

10 Q. But just to be sure that we are looking at the same
11 document, can we look at the first page of the document
12 please and we see that it's a statement given by
13 yourself via telephone on 13 December 2021. Is that the
14 same as the hard copy in front of you, Mr Ali? It
15 should be at the very front of the file I think.

16 A. No, it's to the back. It's to the back.

17 Q. It's not where I thought it was.

18 A. Yes.

19 Q. It's the final document in the bundle.

20 A. Yes, by telephone call on 13 December 2021, yes.

21 Q. That's right. I just wanted to be sure that we each had
22 the same document in front of us.

1 If we can perhaps scroll through that document to
2 the final page, page 5, and paragraph 16. Do we see --
3 do you have that before you?

4 A. Yes -- page 5, yes.

5 Q. If it's easier for you, Mr Ali, anything that I refer to
6 is going to be brought up on the screen in front of you.

7 A. Right, okay.

8 Q. If you find it easier to look at the screen, please do
9 so. If you would rather work from the hard copy in the
10 folder, you're welcome --

11 A. This one, yes, thank you.

12 Q. So at paragraph 16 your statement reads:

13 "I believe the facts stated in this witness
14 statement are true. I understand that this statement
15 may form part of the evidence before the Inquiry and be
16 published on the Inquiry's website."

17 Do you see that?

18 A. Yes, mm-hm.

19 Q. And do we see at the bottom of the page your signature?

20 A. That's right, yes.

21 Q. And have you in fact signed every page of the statement?

22 A. Yes, I have.

1 Q. Do we see on the final page that the date on which you
2 signed the statement was 31 March of this year?

3 A. That's right.

4 Q. Thank you. You should also find within that folder
5 a statement that you gave to the PIRC, the Police
6 Investigations and Review Commissioner, and that
7 statement is reference PIRC00084 and the statement was
8 noted by an investigator Stewart on 11 May 2015. Do you
9 have that in the bundle before you too?

10 A. Yes.

11 Q. And is that the copy of the statement that you provided
12 to the PIRC?

13 A. Yes, that's right.

14 Q. So the statement is dated 11 May 2015.

15 A. Mm-hm.

16 Q. Just over a week after the incident that I'm going to
17 ask you questions about. The statement that you gave to
18 the Inquiry of course was given nearly seven years after
19 the incident --

20 A. That's right.

21 Q. -- that brings us here today and in fact if we can
22 return to your Inquiry statement please and look at

1 paragraph 15, do we see that you have said:

2 "If there is any difference between this statement
3 [that's your Inquiry statement] and the statement I gave
4 previously to PIRC in 2015, this earlier statement
5 should be preferred. My memory of the incident was much
6 clearer at that time."

7 Do we see that?

8 A. That's right, yes.

9 Q. All right. So both of those statements, Mr Ali, are in
10 that black folder and you can refer to them at any time
11 as you give your evidence if you would find it helpful
12 to do so.

13 A. Okay.

14 Q. So I'm going to ask you to cast your mind back to
15 3 May 2015 and you have explained in your statements
16 that you are a shopkeeper and you were on your way to
17 your shop in Kirkcaldy at about 7.30, quarter to 8 in
18 the morning. You have explained that your journey took
19 you south along Hendry Road and that as you approached
20 the mini-roundabout with Hayfield Road a car had stopped
21 on the roundabout and you also had to stop?

22 A. That's right.

1 Q. What I would like to do, Mr Ali, is show you some CCTV
2 footage taken from a nearby pub called Gallaghers, or
3 the White Heather.

4 A. Aye, it's just on the roundabout, yes.

5 Q. Just on the roundabout. Can you picture it?

6 A. Yes, I know where it is.

7 Q. We have some footage from a camera there. It's not of
8 very high quality but I would like to ask you to watch
9 a chapter of that footage to see whether we can identify
10 your vehicle in it.

11 A. Yes, sure.

12 Q. Can you tell me what vehicle you were driving that day?

13 A. Well, as I said, at the time I would have known. It
14 would have been either a Mercedes, a red Mercedes, which
15 I used to have, or a Vivaro that I have now, so it would
16 be in the statement and it will be in the pictures and
17 things.

18 Q. Don't worry. Please help me with that. I'm not an
19 expert on cars. The Mercedes, would that have been
20 a car or a van?

21 A. No, it's a van, Mercedes is a van, a Vito van.

22 Q. And it was red in colour did you say?

1 A. That was red in colour and obviously I changed it, after
2 that I have had the white Vauxhall Vito[sic].

3 Q. And is that also a van?

4 A. That's also a van, yes.

5 Q. So one way or another it's a van we're looking out for?

6 A. It's a van I'm driving, yes.

7 Q. So it might be red, it might be white, but it's a van
8 that we're looking out for?

9 A. That's right, that's right.

10 Q. Can we go to the video evidence timeline please and can
11 we start please at about 7.21.30. I'm going to ask you
12 to play, Ms Taylor-Smith, just until I ask you to stop,
13 so starting here would be perfect.

14 (Video played)

15 A. That's my van there.

16 Q. You can stop there please. That's your van, Mr Ali?

17 A. That's my van and that's the car that was parked over
18 there that I couldn't get past.

19 Q. I see. What we will do is just play on I think until
20 your van is out of our field of view and then go back to
21 the beginning to try to establish some timings.

22 (Video played)

1 If we can stop there please and go back to 7.21.30.

2 Mr Ali, I should perhaps have explained that you will
3 hear in the background 999 calls, emergency Airwaves and
4 transmissions and so on. There's no need to have regard
5 to those. It's simply the footage at the bottom of the
6 screen that we're concerned with just now.

7 A. Right, okay.

8 Q. So if we can perhaps watch again and see if we can
9 capture the time at which your van first comes into
10 view.

11 A. Mm-hm.

12 (Video played)

13 Q. Stop there please. So I saw the van come into the field
14 of view at about 38 seconds past. There's a little time
15 clock in the top left-hand corner.

16 A. Right, okay, yes.

17 Q. And we see that at 7.21.41 you're right in the centre of
18 the roundabout?

19 A. That's right.

20 Q. Let's watch a little further and see if we can ascertain
21 the time at which your van stops.

22 (Video played)

1 If we stop there. Did we see that you were

2 travelling very, very slowly --

3 A. That's right.

4 Q. -- and at about 48 seconds past the minute you appear to

5 have come to a stop --

6 A. Mm-hm.

7 Q. -- behind the silver car that's parked in front of you?

8 A. That's right.

9 Q. And again if we can watch a little bit further please.

10 (Video played)

11 If we stop there.

12 A. It's just a matter of seconds.

13 Q. It is, isn't it?

14 A. Yes, it's not even a minute.

15 Q. So we see that about 55 seconds past, you begin to

16 manoeuvre around the parked car and you head on your

17 way.

18 A. That's right.

19 Q. So just to recap, we see that your van comes into our

20 field of view, approaching the roundabout, at about 38

21 seconds past the minute and you begin -- having slowed

22 down, you begin to move off and manoeuvre your way

1 around the little silver car at about 55 seconds past
2 the minute. Would you agree with that?

3 A. Yes, I would agree with that.

4 Q. So your van was on the roundabout, or just beyond the
5 roundabout, for a period of less than 20 seconds?

6 A. True.

7 Q. All right. We may return to that but we can put that to
8 one side for now and I would like to ask you some
9 questions about what you were able to see when you were
10 stopped on or close to the roundabout.

11 Am I right to understand that Hayfield Road would
12 have been to your left as you drove through that
13 roundabout?

14 A. Yes.

15 Q. As you looked along Hayfield Road, would you have been
16 looking out of your front windscreen or out of the
17 passenger side of the car?

18 A. As I approached it would be from the front and then as
19 I stopped it would be from the side.

20 Q. What could you see happening on Hayfield Road?

21 A. Well, as I approached I noticed that there was an
22 incident taking place and there was two police officers

1 that had pinned down someone and also seen a woman
2 police officer crossing the road towards the parked
3 vehicles. There was a car and a van, a police car and
4 a van there at the time.

5 Q. Let me begin by asking you some questions about the
6 person who you say was being pinned down. Could you see
7 whether that was a man or a woman?

8 A. No, I couldn't really see whether it was a man or
9 a woman, but obviously I presumed with it being the two
10 officers that were pinning him down, it would have been
11 a man. I couldn't really say.

12 Q. Why did you make that assumption?

13 A. Obviously there was two police officers pinning him
14 down, I didn't presume it would have been a woman that
15 they would be trying to pin down like that.

16 Q. Can you describe the position that the person was lying
17 in?

18 A. He's -- I think it would have been face down and his
19 face would be towards the houses and his feet towards
20 the road.

21 Q. I'm going to ask you some questions about the officers.
22 You said that there were two police officers?

- 1 A. That's right.
- 2 Q. Did you see whether they were male or female?
- 3 A. They were male.
- 4 Q. The first of those officers, where was he in relation to
5 the person on the ground?
- 6 A. Well, one was facing me, the one that would be further
7 away from me, and the one towards -- to my side would
8 be -- his back would be towards me.
- 9 Q. All right, so if I understand correctly, the person who
10 was lying on the ground had their head towards the
11 houses and their feet towards the road?
- 12 A. Mm-hm.
- 13 Q. And as you were looking at them, one officer was on the
14 side of the person closest to you and the other officer
15 was on the side of the person furthest away from you?
- 16 A. That's right.
- 17 Q. Do I understand correctly?
- 18 A. That's right.
- 19 Q. And do I also understand correctly that both of the
20 officers were facing the person who was on the road?
- 21 A. Yes.
- 22 Q. And that would explain why the officer closest --

1 A. It was on the pavement. It was on the pavement this
2 was, yes.

3 Q. I beg your pardon. And that would explain why the
4 officer closest to you had his back to you?

5 A. That's right.

6 Q. Let's call the officer who had his back to you the first
7 officer. I would like to ask you more about what he was
8 doing. What position was he in?

9 A. I mean they had -- he had his knee on the body and
10 obviously -- and hands laying him down. I think they
11 had his -- both his arms were folded onto the back like
12 that (indicating) you know.

13 Q. Whose arms were folded onto the back?

14 A. The person they were pinning down.

15 Q. I see. So you have described this person lying -- did
16 you say he was lying face down?

17 A. Face down, yes.

18 Q. With his arms being held behind his back, do
19 I understand correctly?

20 A. Mm-hm, that's right.

21 Q. And the officer who had his back to you -- I wonder in
22 fact could I ask you perhaps to come into the centre of

1 the room and demonstrate the position that officer was
2 in. That would be very helpful.

3 A. Yes, sure.

4 Q. Would you come forward please Mr Ali and I think there
5 is a mark near the middle of the carpet. If you could
6 place yourself about there and the microphones may not
7 pick you up but if you could perhaps demonstrate the
8 position.

9 A. The person that they're pinning down is facing this way.
10 This is the pavement, on the pavement and the
11 officers -- obviously I can't really bend with my knee
12 and that but he had his arm to his back and his knee on
13 his body, like that (indicating).

14 Q. Thank you. I don't want you to be uncomfortable. If
15 you would perhaps come back to the microphone I will ask
16 you more questions about that.

17 A. The other officer was facing the other way and in a
18 similar --

19 Q. And in a similar position?

20 A. Yes, a similar position, obviously facing towards me.

21 The other one was facing that way.

22 Q. I see. Please come back round, thank you.

1 In the demonstration that you gave, Mr Ali, you got
2 down onto your knees and I think you explained that it
3 wasn't very comfortable for you to get down onto your
4 knees there?

5 A. No, I have had a knee replacement so I can't really bend
6 properly.

7 Q. I'm sorry. If I had known I might not have asked. But
8 should we understand that the officers were in the
9 position you adopted --

10 A. That's right, yes.

11 Q. -- or was their position different from that?

12 A. That position that I have shown, you know, like one knee
13 on the body and the other one holding his arm with his
14 hands.

15 Q. So the position that you adopted there you had one knee
16 on the floor and the other knee at a sort of right angle
17 to your body.

18 A. No, only one of ... aye, similar to that, that's right,
19 just one knee onto the body, yes.

20 Q. So should we understand that the officers had one knee
21 on the ground and one knee on --

22 A. That's right.

1 Q. -- the man's body, have I understood that correctly?

2 A. Yes.

3 Q. Both officers were in the same position facing each
4 other?

5 A. That's right.

6 Q. Mirror opposites effectively, so each had one knee on
7 the ground and one knee on the body of the man?

8 A. Mm-hm.

9 Q. And help me to understand what they were doing with
10 their arms. You mentioned the man's arms being behind
11 his back?

12 A. They were just holding him down. As I said, it's only
13 a matter of seconds that I was there and that's
14 basically all I seen and then I drove off.

15 Q. I appreciate that. It was just a moment in time.

16 A. Yes.

17 Q. I'm just keen to understand as much as I can about what
18 you saw in that moment in time.

19 What part of the man's body were the officers' hands
20 or arms coming in contact with?

21 A. What part of the body of the man that they were --

22 Q. With the man -- sorry, the person who was on the ground.

- 1 A. Well, just on his back.
- 2 Q. On his back.
- 3 A. Yes.
- 4 Q. What was the person on the ground doing?
- 5 A. Just lying there.
- 6 Q. Was the person moving or still?
- 7 A. No, as I said, I wasn't there that long that I could see
- 8 any movement or anything. He was just being pinned down
- 9 and that was it.
- 10 Q. Can I take you to your PIRC statement please, to the
- 11 second page of that statement.
- 12 A. Is that -- which date is that? The 13th one or the
- 13 other one?
- 14 Q. This is the one from 2015.
- 15 A. Right, okay.
- 16 Q. From 11 May 2015.
- 17 A. Right, okay.
- 18 Q. The passages I would like to refer to will come up on
- 19 the screen. If we can scroll down a little more please
- 20 Ms Taylor-Smith. Perfect.
- 21 Do we see that what is recorded in your PIRC
- 22 statement is that you said:

1 "The two male officers were down on the ground when
2 I first seen them. There was movement from the person
3 on the ground, and they were [definitely] putting
4 pressure on the person to keep the person on the ground.
5 I couldn't say if the person was face up [or] face
6 down."

7 Do you see that?

8 A. Yes, I see that, yes.

9 Q. You go on to say:

10 "One of the officers had his back to me facing the
11 hospital and the other was facing me. The officer with
12 his back to me was closer to me. Both officers were
13 kneeling on the person. The officer facing me and
14 furthest from me was kneeling down around about the head
15 area of the person. I can't say definitely kneeling on
16 the person's head, just towards the head area.

17 "The second officer with his back to me was kneeling
18 towards the middle to the bottom of the person's body.
19 Both officers were using their both hands to restrain
20 the person as well as one of their knees. At the time
21 I saw this I thought at any time that the two male
22 police officers were just restraining and arresting

1 somebody. I wasn't shocked at what I seen. It was just
2 an arrest. I got the impression that the person on the
3 ground was trying to get up and the officers were using
4 force to keep him down."

5 Do you see that there?

6 A. Yes, I see that, yes.

7 Q. And it will be what you told the PIRC at --

8 A. Yes, obviously the memory would have been fresher at
9 that time so ...

10 Q. So should the Chair and the Assessors, when considering
11 your evidence, prefer the evidence that you have given
12 today or the statement that you gave to the PIRC in
13 2015?

14 A. I would prefer it if that evidence on 2015 would be
15 used.

16 Q. All right. Mr Ali, you also said that there was a lady
17 officer.

18 A. Mm-hm.

19 Q. You said I think that you saw her cross the road towards
20 the vehicles?

21 A. That's right.

22 Q. In the footage that we looked at there were vehicles on

1 both sides of the road so I want to understand what
2 direction she was crossing from. As you were looking
3 down Hayfield Road did she cross from your right to your
4 left, or from your left to your right?

5 A. Well, from the side that the incident was happening to
6 the other side, so if you're looking from my point of
7 view it would be to the left she would be crossing.

8 Q. I'm sorry, I didn't hear that. From the side that the
9 incident was taking place --

10 A. To the opposite side of the road.

11 Q. Opposite side?

12 A. The opposite side of the road. The vehicles were parked
13 on the opposite side of the road, the van and the car.

14 Q. After you manoeuvred your way around the car that had
15 stopped in front of you, did you go to your shop and
16 carry on with your day?

17 A. Yes, that's right.

18 Q. Bear with me just a moment please, Mr Ali.

19 (Pause).

20 Can we return to the officers pinning the person
21 down. You said that they had their hands on the man --
22 sorry, on the person, and also their knees. Whereabouts

1 on the person were the officers putting their hands?

2 A. It would be holding his arms I suppose. As I said, it's
3 that long now ...

4 Q. You described his hands being behind his back?

5 A. That's right.

6 Q. Where were their knees, which part of his body?

7 A. Just towards the back body, you know.

8 Q. The back part of his body?

9 A. Mm-hm.

10 Q. Would the back part of his body be his back or the rear
11 of his legs? What part of his body?

12 A. As I say, I can't say that much, not now. I mean it's
13 not that fresh at the moment, you know, but it is
14 definitely obviously they're pinning him down with
15 a knee and that on his body, but which part of the body
16 I couldn't say, you know.

17 MS THOMSON: All right. I have no further questions for
18 you. Thank you for your time, Mr Ali.

19 A. Thank you.

20 LORD BRACADALE: Are there any Rule 9 applications in
21 respect of this witness? No.

22 Mr Akhtar, thank you very much for coming to give

1 evidence to the Inquiry. That's the end of your
2 evidence. You are now free to go.

3 A. Thank you.

4 LORD BRACADALE: I think in fact the Inquiry will adjourn
5 for a short time in order to get the necessary
6 arrangements in place to have Detective Constable
7 Tomlinson back.

8 (2.27 pm)

9 (Short Break)

10 (2.34 pm)

11 LORD BRACADALE: Now, Ms Grahame.

12 PC ASHLEY TOMLINSON (continued)

13 Questions from MS GRAHAME (continued)

14 MS GRAHAME: PC Tomlinson, when we were on image 6 I forgot
15 to ask you something.

16 A. Right.

17 Q. Can we immediately go back to that and I will just deal
18 with it before we move on. We had in that image
19 Mr Bayoh positioned on the south side of Hayfield Road
20 and I didn't invite you to fine-tune that position.

21 A. Okay.

22 Q. So can we look at that now please. You will see the

1 hedge on the left, the pavement, the island on the right
2 and I think yesterday you had given us the position of
3 Mr Bayoh when he landed on the ground.

4 A. Yes.

5 Q. Are you comfortable that that's a reasonable indication
6 of the position, or would you like to move that?

7 A. I mean all I remember is it was flat like, so what
8 I mean by that is there was no difference in height so
9 if we were going to move Mr Bayoh it would either be
10 onto the pavement or somewhere in that general area,
11 I don't know exactly where, but I just know that there
12 wouldn't have been a step up or a step down in height,
13 so all of Mr Bayoh would have been either on the
14 pavement or somewhere where the pavement was the same
15 height as the road.

16 Q. So either entirely on the pavement or entirely on the
17 road?

18 A. Yes, but I know it wasn't on the road, so it must be
19 entirely on the pavement.

20 Q. On the pavement. So subject to those caveats are you
21 content with that position or would you like to refine
22 it or change it in any way?

1 A. Yes, just that position just move Mr Bayoh so his feet
2 aren't hanging off the pavement. Aye that will do.

3 Q. Comfortable that that's --

4 A. Yes.

5 Q. Thank you very much. Thank you for clarifying that.
6 I'm sorry I forgot to do that before lunch.

7 Can I move on to use of force, so we're going to
8 move away from the footage and the images now and can
9 I ask you what do you remember about the training you
10 received on use of force?

11 A. It would have been through officer safety training but
12 I couldn't specifically say like --

13 Q. Do you remember in what circumstances use of force is
14 justified by a police officer?

15 A. When you arrest someone you can use force if a person is
16 obviously compliant -- I mean the use of force, you kind
17 of use that term -- even the, like, kind of the
18 come-along hold which would be kind of guiding somebody
19 by the hand, it's a degree of force, showing up as
20 a degree of force, so there's different levels of force
21 in situations when you can use different levels of force
22 as well.

1 Q. And we may hear that it has to be reasonable,
2 proportionate and the minimum necessary?

3 A. Yes.

4 Q. Do you remember that from your training?

5 A. Yes.

6 Q. And what have you been told in officer safety training
7 about baton strikes to the head?

8 A. We're obviously made aware in training that baton
9 strikes to certain areas of the body, not specifically
10 just to the head, carry a greater risk and it's
11 something to be aware of. It's not in training -- it's
12 not a case of you should never strike there, but it's
13 a case of you must be aware there's obviously
14 a significant risk with some areas of the body.

15 Q. When you say a significant risk, if you're enforcing
16 a blow to the head, are you made aware that there's the
17 possibility of death or serious injury because of that?

18 A. Yes.

19 Q. And so you may only strike a blow to the head when the
20 use of deadly force is justified?

21 A. Yes.

22 Q. And I would like to ask you to look briefly at a use of

1 force SOP, a standard operating procedure, and we have
2 heard that officers know about these and they are aware
3 of them. This will come onto the screen. It's PS10933.

4 (Pause).

5 Well, maybe we don't worry about it. That's
6 absolutely fine. I'm going to read out some levels. We
7 have talked already about the different levels of force
8 that can be used. So if you take it from me that the
9 use of force SOP talks about something called the
10 confrontational continuum. Do you remember anything
11 about that?

12 A. I'm aware of it. I couldn't -- I don't know if I can
13 say it.

14 Q. I'm looking at paragraph 4.2 and it:

15 "... assists officers to determine what may be
16 considered to be the appropriate level of force to be
17 used in any eventuality and should be used to assist
18 officers to subsequently justify the extent of any force
19 used."

20 And there are, in paragraph 4.6:

21 "Profiling a person's behaviour may assist with
22 determining [the appropriate] response."

1 And behaviours are categorised as follows, and there
2 are six levels of categorisation. There's compliance,
3 level 1; level 2, verbal resistance and/or gestures;
4 level 3, passive resistance; level 4, active resistance;
5 level 5, assaultive resistance; and level 6, serious or
6 aggravated assaultive resistance. So this is the
7 person's behaviour --

8 A. Yes.

9 Q. -- the way it is categorised. Do you recognise those
10 levels and those terms I have read out?

11 A. Yes, I do, yes.

12 Q. So could you help us to understand the different types
13 of behaviour that Mr Bayoh exhibited in Hayfield Road
14 and I would like you to help us understand how you
15 categorised his behaviour. So when you used your
16 spray -- so you have talked about him being on the path
17 and using your spray, can you tell us the level of
18 behaviour that he was demonstrating at that time?

19 A. Non-compliance.

20 Q. Non-compliance.

21 A. Yes. It's difficult because I can't obviously refer to
22 it on the screen.

1 Q. Yes, I'm sorry about that. So level 1 is "Compliance",
2 it's not that?

3 A. It's not that.

4 Q. And level 2 is:

5 "Verbal Resistance and/or Gestures.

6 "This includes shouting, swearing and verbal
7 challenges to requests and/or instructions given. It
8 normally includes non-verbal gestures and posturing
9 (body language) and can consist of Warning and Danger
10 signs of potential attack."

11 That's level 2. Level 3 is:

12 "Passive Resistance.

13 "This is a typical tactic used but not exclusively
14 by demonstrators. It is best described as non-active
15 conduct with no compliance to lawful instruction."

16 A. Yes, that's what Mr Bayoh demonstrated.

17 Q. So that's level 3?

18 A. Yes.

19 Q. When you used your spray?

20 A. When I used my spray, yes.

21 Q. And then what category would you say of behaviour did he
22 demonstrate when you used your baton?

1 A. The most serious one, so point 6.

2 Q. So level 6:

3 "Serious/Aggravated Assaultive Resistance.

4 "The highest level of resistance encountered which
5 generally involves the intended use of weapons as part
6 of the attack where the perceived threat is that of
7 serious injury or is life threatening. It can also
8 include situations without the presence of weapons where
9 the perceived threat is that of serious injury or is
10 life threatening."

11 And so when you used your baton that's the level of
12 behaviour of Mr Bayoh that you --

13 A. Yes, his actions towards PC Short were such that
14 I thought he was going to kill her. Obviously we have
15 had reports of a knife as well, so there's
16 a consideration that the weapon is still in play and
17 what I mean by that is it is unaccounted for at that
18 time, so yes.

19 Q. You have told us that at no time you saw him produce or
20 brandish the knife.

21 A. No, but there's an opportunity to produce that from
22 a concealed location on a person's body.

1 Q. Yes. Then when you -- when PC Walker engaged him and
2 brought him to the ground and you both engaged in
3 restraint of Mr Bayoh and you have described using your
4 baton to his Achilles area --

5 A. Mm-hm.

6 Q. -- and you have described straddling his legs, what
7 category of behaviour would you say he was demonstrating
8 then?

9 A. That's active resistance.

10 Q. Active resistance. That's level 4.

11 A. Level 4 -- aye. Again without them being on the screen
12 it's kind of difficult to --

13 Q. I will read that out.

14 A. Please, thank you.

15 Q. "This is more of a physical form of resistance, in that
16 the subject is actively doing something to prevent or
17 obstruct an officer from carrying out their duty. This
18 type of resistance, although physical by nature, falls
19 short of an assault upon another."

20 We've got another copy here. Here it is. So let's
21 look at paragraph 4.6 please, and the different
22 levels -- we're looking at level 4 at the moment. You

1 see I was reading that, "Active Resistance", and:

2 "This type of resistance, although physical by
3 nature, falls short of an assault upon another. It can
4 include holding on to an object/person either physically
5 or mechanically; struggling to break free from
6 an officer's grasp; trying to dispose of evidence."

7 A. Yes.

8 Q. And that's when you were, as I have said, brought to the
9 ground, baton to the Achilles and straddling his legs.

10 A. Yes.

11 Q. And having categorised that behaviour, what was --

12 I would like to go through what the appropriate officer
13 use of force option was, so if we can go down the page
14 please, we will see at paragraph 4.7 there's a list of
15 officer use of force options, so this is "Officers
16 reasonable response (force options)" and you will see
17 there 4.7.2 "Level 1 - Officer Presence" and:

18 "This is a broad term encompassing the physical and
19 psychological aspects of an officer, especially in
20 uniform or other specialist equipment, having a visual
21 impact and effect on the mind or will of another merely
22 by attending to or arriving at the situation. Adopting

1 a professional approach and conduct can enhance this."

2 A. Yes.

3 Q. Then level 2 "Tactical Communications" and you have
4 talked to us yesterday about communications and this is
5 the ability to give out and take in information.

6 A. Mm-hm.

7 Q. And then level 3 is "Control Skills":

8 "... the lowest level of physical use of force where
9 there is some form of restraint applied to an offender."

10 It may be as little as placing a hand on an
11 offender, or applying hold and restraint techniques,
12 handcuffing techniques and use of leg restraints.

13 A. Yes.

14 Q. And you talked a moment about ago about just holding
15 a hand -- touching someone and directing them.

16 A. Yes.

17 Q. That's level 3. Then level 4, "Defensive Tactics":

18 "These tactics are generally perceived to be
19 strikes, whether delivered by means of empty hand
20 techniques or baton strikes, but also include the more
21 robust defensive handcuffing techniques and the use of
22 CS ... Spray."

1 A. Yes.

2 Q. And then level 5 is "Deadly or Lethal Force" and:

3 "This is a level of force that has the potential to
4 cause serious injury or even death when it is applied.
5 It may in certain circumstances, where there is
6 a serious risk of severe injury or life threatening
7 risk, be a deliberate choice of option, but in all
8 circumstances must be proportionate to the perceived
9 threat and degree of imminent danger. If this is the
10 chosen option there must be high degree of jeopardy
11 involved; ie the subject has the Means,
12 Ability/Opportunity and is displaying Intent to cause
13 serious injury or kill. All elements of Jeopardy must
14 be present immediately at the time that lethal force is
15 applied. Officers using empty hand strikes, baton
16 strikes as well as Authorised Firearms Officers use of
17 conventional firearms could potentially deliver lethal
18 force."

19 And you recognise that description?

20 A. I do, yes.

21 Q. So I would like to go through with you what level of
22 force -- how you would categorise your use of force in

1 Hayfield Road. So first of all, when you used your
2 spray --

3 A. Yes, so if you --

4 Q. Do you want to go up the page again please.

5 A. Yes.

6 Q. We read out specific reference to spray I think in --
7 could you go down again please.

8 A. Aye, go down a bit. So you can see it there on level 4.

9 Q. Level 4?

10 A. Yes.

11 Q. And when you drew your baton and --

12 A. Well, initially the draw of the baton would have been in
13 a defensive technique because I perceived that I was
14 going to be attacked, so the initial draw of the baton
15 was level 4 defensive.

16 Q. And then the strikes with the baton?

17 A. When I perceived that PC Short was about to be killed,
18 it was level 5 because I was under the genuine belief
19 that he had or was in the process of killing PC Short.

20 Q. And then when you were on the ground involved in the
21 restraint with PC Walker?

22 A. It would have been a combination of level 4 and level 3.

1 I say level 4 because my fear was that he was going to
2 still potentially use his legs to manoeuvre out of the
3 restraint and obviously it's defensive as well as
4 an attempt to control. It wasn't used to cause injury,
5 but merely pain compliance and by that what I mean is
6 I had already viewed and witnessed Mr Bayoh using his
7 legs as effectively weapons and I didn't want to be in
8 a position where I was on the floor, so the blow would
9 have been a combination of 4 and 3.

10 Q. Thank you. And do you consider that you used the
11 appropriate use of force option at all times in
12 Hayfield Road?

13 A. I do.

14 Q. And do you consider that the situation you have
15 described yesterday and today was one where the use of
16 deadly force was justified?

17 A. I do.

18 Q. And I think you have already explained why that is the
19 case. And -- thank you, I will leave that SOP to one
20 side now.

21 Can I ask you if you remember the recovery of
22 a knife before you left the scene that day at

1 Hayfield Road?

2 A. The first time I have ever seen the knife is during the
3 Public Inquiry. I had an awareness that there was some
4 interest in a patch of grass. I don't know if you want
5 to bring a map up and I can kind of point to it but
6 certainly it was a patch of grass towards which Mr Bayoh
7 was walking back towards -- obviously at the time
8 I wouldn't have known that he was walking back towards
9 a knife, but obviously having seen the -- you know, the
10 pictures at the Inquiry, that's the first time I have
11 physically seen the knife.

12 Q. Well, it may be that we can show one of the images from
13 the 3D reconstruction scene which will show that. We
14 will have that in a moment.

15 Can I ask you first of all to look at PIRC 263.
16 That's your statement that you gave to PIRC in June 2015
17 and it is page 5 of that statement. It is paragraph 7.

18 So it is the final paragraph on that page. It says:

19 "With regards to a knife being found ..."

20 Do you see that paragraph?

21 A. I do, yes.

22 Q. "... when I was searching for a knife on the man, James

1 McDonough ran towards the grass area where the man had
2 been walking towards and pointed to the ground.

3 I didn't know what he was doing, but I saw Chuck (DC
4 Connell) move to the same area with a brown paper bag.
5 I didn't see him pick anything up, and never paid any
6 attention to it after that."

7 And I wonder if we could see one of the images on
8 the screen.

9 A. What I would say as well, I think where it says "I saw
10 Chuck", I think that should say Chunk.

11 Q. Chunk?

12 A. Chunk.

13 Q. Is that his nickname?

14 A. I believe so. I don't really know who DC Connell is.

15 I just know or think Chunk is DC Connell. I could be
16 mistaken. But certainly Chuck is a typo, it should be
17 Chunk.

18 Q. All right. So it's a typo, thank you.

19 A. Yes.

20 Q. Now, we have Mr DeGiovanni here. I'm wondering if image
21 3 might be the best. Let's not use the stills then,
22 let's use the live and Mr DeGiovanni will take control

1 of the situation.

2 So we're back, you will see, in the 3D
3 reconstruction.

4 A. Yes.

5 Q. And this is actually one of the scenes where you have
6 placed characters and you see again on the left-hand
7 side we can see the markings on the road that would show
8 the roundabout at Hendry Road and Hayfield Road?

9 A. Aye.

10 Q. And then if we zoom in we can probably see the position.

11 Now, if I remember rightly there was a paper clip or
12 such-like at one point. Right, so if we could look into
13 where the roundabout is -- thank you. So on the left of
14 the screen we can see the roundabout at Hayfield Road
15 and Hendry Road and then at the top of the screen
16 there's what appears to be a lamp post in front of the
17 trees nearer to the road and there is a red circle with
18 an exclamation.

19 A. Yes.

20 Q. And can we look at that more closely please and we may
21 hear evidence at some point in the hearing that that is
22 the area where a knife was found.

- 1 A. Yes.
- 2 Q. Is that the area where you saw Chunk or DC Connell?
- 3 A. Yes, aye, it was just that generalised area. I just
- 4 remember it being the grass.
- 5 Q. But if we can pan out please, so when you talk about
- 6 Mr Bayoh going towards the area --
- 7 A. Mm-hm.
- 8 Q. -- on this image you will see that the area where you
- 9 had placed Mr Bayoh near the trees --
- 10 A. Yes.
- 11 Q. -- is over to the far right of that image.
- 12 A. Yes.
- 13 Q. Now, you're not suggesting that he threw the knife, or
- 14 he disposed of the knife?
- 15 A. I couldn't say how --
- 16 Q. You can't see anything like that?
- 17 A. No, I didn't see that but in a generalised walking
- 18 direction, that was back towards the location of the
- 19 knife.
- 20 Q. So Mr Bayoh was on the path walking towards the
- 21 direction of the roundabout effectively?
- 22 A. Roundabout, yes.

1 Q. On Hendry Road and the area we see with the red circle
2 is where the knife was located?

3 A. Yes.

4 Q. Thank you. Thank you very much. We can remove that
5 from the screen.

6 Now, before you left the scene we briefly touched on
7 the arrival of the ambulance and I think I had referred
8 you to page 5 of your statement, to PIRC, paragraph 6,
9 which was just above the one we looked at a moment ago,
10 and within that statement when you're talking about the
11 ambulance arriving it says:

12 "A stretcher appeared and I helped the man onto it
13 face up, helped by Alan Smith, Craig Walker and
14 Alan Paton. We put him onto a stretcher on his back
15 still handcuffed to the front and one fast strap to his
16 lower knee."

17 Now, by this stage I think you have already told us
18 that he's unconscious and that's what prompted the
19 ambulance being called. He's not been breathing and CPR
20 has been performed. Can I ask you why when he was put
21 onto the stretcher and taken to the ambulance his
22 handcuffs and the fast strap weren't removed?

1 A. I don't actually remember putting him on -- or helping
2 to assist putting him on the stretcher. What I can
3 remember is PC Alan Smith is driving the ambulance, but
4 I wouldn't necessarily remove the handcuffs or the fast
5 strap because the time taken to do that would obviously
6 be time taken away from the paramedics trying to do
7 their work, and to my awareness it wasn't actually
8 interfering with their work but obviously I can't speak
9 to that, so ...

10 Q. Well, we may hear from the paramedics about that.

11 A. Yes.

12 Q. How long would it normally take to remove handcuffs?

13 I know you have told us previously they weren't your
14 handcuffs.

15 A. Yes, so it's as long as it takes to get a key which the
16 keys are obviously kept on our person. I mean as
17 an example, there's my key, it's a small key, so then
18 you've got to unclip that key because that lanyard can
19 get interfered with obviously the handcuffs.

20 Q. Are the keys generic or --

21 A. The keys are generic, yes, so anybody can produce a key.
22 There's different styles you can get, larger keys,

1 smaller keys, but it generally would be the time taken
2 to produce a key and then you've got to -- depending on
3 which way the handcuffs have been applied -- and by that
4 I mean on one side of the handcuff there is no hole and
5 the other side of the handcuff there's a hole for the
6 key to go into, so depending on whether that hole is
7 facing away or to the body also then may increase the
8 time taken to find the holes, locate the holes. You
9 have to turn the key one way -- when you lock a set of
10 handcuffs there's a safety mechanism that stops them
11 ratcheting further on and getting tighter. You double
12 lock them, so you push a little bar in at the top, and
13 to overcome that double lock mechanism to undo the
14 handcuffs you have to turn the key one way and then the
15 other way and then you have to unloop.

16 So that all takes time and you wouldn't unloop just
17 one because if a person regains consciousness that
18 becomes a weapon. You've got a hand in a handcuff which
19 potentially -- I have been made aware that officers have
20 succumbed -- not succumbed but have sustained injuries
21 when a hand is flailing around with a single cuff on.
22 It could be used basically to strike an officer. So

1 you're talking the amount of time to find a key, to
2 overcome the double lock, to undo the handcuff and then
3 repeat the same process on the opposite side, so
4 you know, that, we're talking quite a number of seconds.

5 Q. And how long does it take for fast straps to come off?

6 A. Again it just depends like how tangled up they are. You
7 might have wrapped them round a couple of times so again
8 it's a case of trying to undo them, trying to untangle
9 them, if they have maybe been twisted around at the top,
10 you know, so again you're talking seconds which those
11 seconds could be better spent performing CPR rather
12 than, you know, trying to do something that's maybe not
13 interfering with that.

14 Q. Thank you. Can I ask you about your return to Kirkcaldy
15 Police Office. So let's go back to your Inquiry
16 statement please and you have given us information about
17 this part of the events that day at paragraphs 55 to 69.

18 So that's three pages. When did you get back to
19 Kirkcaldy Police Office?

20 A. I don't know what time it was that I got back. I just
21 remember being given a set of keys and I think I'm the
22 one that drove back. I think I was with PC Gibson.

1 I don't know like where in the yard -- when I say yard,
2 I mean like the carpark area at the back of the station,
3 I don't know where I would have parked or how long it
4 would have taken me to get back, so it would have been
5 the morning still but I don't know what time.

6 Q. How long does it normally take to get from Hayfield Road
7 to Kirkcaldy Police Station?

8 A. Maybe five or ten minutes, something like that. I don't
9 know, maybe a bit less time depending on traffic.

10 Q. Who was in charge when you got back to the station?

11 A. I don't really know to be honest because obviously
12 Sergeant Maxwell was still at the locus. Obviously he
13 was the Chief Sergeant that day so -- I don't know.

14 Q. Okay. I would like to ask you if you saw any senior
15 officers that morning.

16 A. Mm-hm.

17 Q. Can I ask you did you see Inspector Kay at any time?

18 A. I don't even know if Inspector Kay was at Kirkcaldy.

19 Q. Okay.

20 A. I don't remember seeing him. I don't --

21 Q. You don't remember seeing him at all?

22 A. No, I don't remember seeing him, no.

1 Q. Do you remember seeing Conrad Trickett, Chief Inspector
2 I think.

3 A. See I remember speaking -- or being in Conrad Trickett's
4 presence and the only reason I remember is because the
5 name is unusual. It's just a name that's always stuck
6 with me, Conrad and Trickett. One, I've never met
7 anyone called Conrad, and I just thought the surname
8 Trickett was unusual, so that is a name that's stuck
9 with me, it's a name that I'm aware that obviously
10 I have come into contact with that day and I know he was
11 sitting in the canteen with us but I don't know what
12 conversations I had with him.

13 Q. Do you remember when you saw him?

14 A. It wasn't -- like he wasn't sitting there waiting for
15 us. I don't know when he appeared -- sorry, when he
16 arrived. I just remember him being in the canteen at
17 some point. I don't know who introduced him or if he
18 introduced himself, I don't know. You know, the canteen
19 you can come in two doors and again I don't know which
20 door he came in or who would have shown him. He is not
21 a name I would recognise around the station so I would
22 recognise him as somebody from outwith Kirkcaldy.

1 Q. Do you remember if Conrad Trickett gave you any advice
2 not to confer with other officers about what had
3 happened at Hayfield Road?

4 A. No.

5 Q. Okay. And did you see any other senior officers such as
6 Pat Campbell?

7 A. No, I don't even know who Pat Campbell is.

8 Q. So you don't remember if a senior officer came in and
9 gave you advice about not conferring or about your
10 status --

11 A. No.

12 Q. -- or about giving statements?

13 A. No.

14 Q. All right. And did you remain in the canteen that day?

15 A. So the -- initially when we arrived we went back to the
16 writing room but then got directed down to the canteen.

17 Q. Who was in the writing room?

18 A. I don't know. I want to say -- Scott Maxwell,
19 Sergeant Maxwell was there.

20 Q. So he was there when you went to the writing room?

21 A. I don't know if he was initially there though.

22 Q. Who was there when you got to the writing room?

1 A. I don't know. I remember Scott Maxwell couldn't have
2 been there when I arrived because he was still at the
3 locus, but who I remember in the writing room is
4 Scott Maxwell, so I don't know for how long I was in the
5 writing room until Scott Maxwell appeared and I think
6 PC Gibson was there, so Daniel Gibson.

7 Q. Right. And how were you feeling at that time when you
8 got back?

9 A. Pretty shit.

10 Q. Do you remember having a conversation with Walker and
11 Paton?

12 A. No.

13 Q. No. Do you want to say any more about how you were
14 feeling?

15 A. Just that ...

16 (Pause).

17 I was probably like glad I had survived I suppose.

18 I didn't think that I would have got back, so ... aye.

19 Q. Okay. Did you leave the canteen? You have said in
20 paragraph 61 of your statement that you recall leaving
21 the canteen once to retrieve a sleeve of polystyrene
22 cups?

1 A. Yes.

2 Q. But you don't remember much about it?

3 A. I just remember we were in the canteen and the
4 canteen -- to say it's a canteen, it's not, it's a room
5 where like a -- I suppose you could call it a dining
6 table, it's not even really a dining table, it's just
7 tables pushed together where you would sit and eat your
8 lunch, and I remember there being no cups to have
9 a drink of water, tea, coffee and the only place I knew
10 there were cups in the station was the custody area, so
11 I went and got cups from the custody area basically so
12 that we could at least drink something.

13 Q. Did you speak to other police officers either en route
14 to the custody area or during your time there?

15 A. I don't think so.

16 Q. Do you have much of a recollection of the events?

17 A. No.

18 Q. Can I ask you about your equipment and clothing. You
19 mention this at paragraph 70 to 73. Actually can I go
20 back for a moment and just ask you to look at the
21 previous page. I think at paragraph 67 you talk about
22 PC Short, so we have heard that she returned to the

1 canteen after being to the hospital that day.

2 A. Yes.

3 Q. Do you remember what time she came back?

4 A. No. Again, it just felt like forever. I don't know
5 when she came back or how long I had been sitting in the
6 canteen.

7 Q. Right and then I think in your statement, paragraph 67,
8 you say:

9 "I recall explaining that Mr Bayoh had stamped on
10 her back and that I had tried to protect her by striking
11 him with my police issue baton."

12 A. Yes.

13 Q. So you have addressed that there. Can we then turn on
14 to the recovery of the equipment on the following page,
15 from paragraph 70 to 73. And you talk about putting
16 your -- paragraph 71:

17 "On my return to Kirkcaldy Police Station I removed
18 my police body armour and utility belt and placed it on
19 the carpeted floor near to a locker room located at
20 Kirkcaldy Police Station. This would have been an area
21 I always used as a way of dekitting whilst within the
22 police station. The body armour and belt would have

1 been propped against the wall to avoid other officers
2 falling over my equipment."

3 Is this in the canteen?

4 A. No, sorry, so see the -- see to kind of describe it, you
5 go in the rear of the police station, which is where
6 like the operational officers go in and out of, rather
7 than the front door. You go up a set of stairs and then
8 presented to you is a carpeted corridor off which is the
9 writing room and the vest room and various other like
10 offices and toilets. I would have -- or I de-kitted
11 myself in that carpeted corridor leading to the writing
12 room and propped it up against the side, and the reason
13 for that is that carpeted corridor can sometimes become
14 like almost a runway when officers are leaving the
15 station and I didn't want anybody to go to a call and
16 then trip over it and fall.

17 Q. Was there any instruction given to you about preserving
18 your equipment, or your uniform or any of those items?

19 A. No.

20 Q. No. And is that where you normally left things when
21 you --

22 A. Yes.

1 Q. -- de-kitted?

2 A. Or whenever I was -- if I was in the canteen I wouldn't
3 go up there and dekit, I would dekit in the canteen
4 because if I had a call you have to leave the station --
5 well, you don't have to but the quickest way would be to
6 leave the station out the back and then in another door
7 to the canteen. Otherwise it's down a series of
8 corridors and it's just an old building that's probably
9 not fit for a modern layout.

10 Q. We have heard other evidence about items being left in
11 the canteen lying about on the floor.

12 A. Yes.

13 Q. Did you see other items of equipment from other officers
14 in the canteen?

15 A. I think at one point I probably would have taken my body
16 armour down there as well and it just would have been
17 a case that for me the common practice was there's
18 always -- there's a set of like coat hooks on the wall
19 where traditionally you would probably hang your tunic
20 if you wore a tunic, but latterly it's where you would
21 hang your belts or your hat or like a high visibility
22 jacket, but that day all I can remember is just like

1 body armour stacked up against the side and I don't know
2 what about the belts.

3 Q. And that was in the canteen?

4 A. Yes.

5 Q. So things were stacked up --

6 A. Stacked up, yes, but out of the way, like against the
7 wall and again for the same reason in that if someone is
8 going to run through the canteen -- because it is again
9 another what I would class as a runway out on the back
10 yard --

11 Q. Do you remember people coming in and out of the canteen
12 that day?

13 A. There was people -- there was a couple of folk that came
14 in without being made aware that obviously something had
15 happened and like folk arriving at their work had kind
16 of came in and mistakenly found themselves in the
17 canteen and then swiftly left but never said anything.

18 But I don't know -- I couldn't say who came and went in
19 that space of time.

20 Q. Thank you. Then can I ask you to look at paragraph 74,
21 so that's on the next page, and you were asked by the
22 Inquiry team to look at your -- the statement you had

1 given to PIRC and you say:

2 "I do not recall how I became aware of the mark to
3 the rear of PC Nicole Short's body armour other than it
4 was a dirty mark that was clearly out of place and
5 foreign to the normal appearance of the item of
6 clothing."

7 So I want to ask you about this mark.

8 A. Yes.

9 Q. Do you remember what time it was when you saw it?

10 A. It was still like daytime because we were sat in the
11 canteen all day and I think it was maybe even dark when
12 we left, but it was still daytime and it was after
13 PC Short had come back. I don't know how long she had
14 been with us in the canteen but as she was taking her
15 vest off to put it to one side I just remember looking
16 and being like -- I don't think she had seen it and
17 I said "What's that?" and pointed it out and my initial
18 thought was it looked like a footprint, or the shape of
19 a footprint on the back of the body armour.

20 Q. And I wonder if you could look at a vest for me please
21 and -- no, the actual vest, sorry. Just point out on
22 the actual vest where you saw the mark.

1 A. So it's somewhere in this kind of region (indicating)
2 below the word "Police", but like there (indicating).

3 Q. In the panel immediately beneath the "Police"?

4 A. Yes. Not as low as this (indicating) but like somewhere
5 here (indicating).

6 Q. Above the horizontal band of silver material that's just
7 immediately below the "Police" badge?

8 A. Yes because the way I remember it, obviously the -- like
9 it looked like mud or dirt or something, but I don't
10 know if the mud or dirt would have stuck to these bits,
11 like looking back now, and that's why I just remember it
12 being out of place.

13 Q. So you remember it being on the yellow part of the vest?

14 A. Yes, aye, and normally they're quite clean like that
15 and, you know, if it gets ripped or that you would tend
16 to replace them.

17 Q. Thank you. And can I ask you about your status and what
18 you knew about your status. Now, when I use the word
19 "status" I'm talking about as a witness or as a suspect.

20 A. Yes.

21 Q. Now, you mention this at paragraph 75 of your Inquiry
22 statement and you said you don't remember exact

1 conversations and then at 76 you say you didn't receive
2 any advice:

3 "... regarding my status at the time of the incident
4 and it was only later ..."

5 And then 78 you say:

6 "I do not recall what advice or instructions
7 I received on my return to the police station other than
8 being told not to leave the canteen."

9 A. Yes.

10 Q. "I do recall other senior officers being around but do
11 not recall whom other than Conrad Trickett and
12 Amanda Givan."

13 We have heard she is an SPF representative.

14 A. Yes, I don't know what rank she is.

15 Q. "I was aware of being spoken to but due to my state of
16 mind at the time I did not retain these conversations."

17 Was your state of mind as you have described for us
18 already?

19 A. Aye, I mean another way of describing it would be I just
20 felt like a burst spring. Like if you can imagine
21 a spring in your head, I just felt like it was
22 everywhere.

1 Q. You say there that you were told not to leave the
2 canteen. Do you remember who told you not to leave the
3 canteen?

4 A. No.

5 Q. And were you told to do that before you went to get
6 cups?

7 A. I can't remember when. I think if I was probably told
8 that I wouldn't have left the canteen to get cups.
9 I probably would have just said to somebody else to get
10 them.

11 Q. So normally you would comply with that type of
12 instruction?

13 A. Yes.

14 Q. And can I ask you, you have said you didn't get advice
15 or instructions but what would you have expected, or
16 what would you have wanted at that stage?

17 A. I don't know what I would have expected. I don't know.
18 I've never obviously been involved in something like
19 that and my expectation was that somebody would know
20 what to do, but like obviously I didn't know what the
21 process was, so I don't know what my expectation was
22 other than that somebody would come in and have a clear

- 1 like plan, or -- I don't know.
- 2 Q. But you didn't get that during that day.
- 3 A. No.
- 4 Q. And then can I ask you do you remember at some stage
- 5 a suggestion about a welfare meeting at Kirkcaldy Police
- 6 Office? Not necessarily on the 3rd, but being arranged
- 7 by an Inspector Seath?
- 8 A. Yes.
- 9 Q. Do you remember when that was going to be?
- 10 A. It was some time like -- it wasn't that day and I don't
- 11 think it was the day after.
- 12 Q. Right.
- 13 A. Because -- the reason I say that is because I came into
- 14 work and then I got signed off sick.
- 15 Q. How long were you signed off sick?
- 16 A. Around about a month.
- 17 Q. Okay.
- 18 A. So that immediate day after there was an expectation we
- 19 would simply return to work and carry on with paperwork.
- 20 Q. Can I ask you if you met with a DCI Keith Hardie and
- 21 a DI Stuart Wilson from the MIT or the MIT team, major
- 22 incident team, on 7 May 2015? Would that sound about

1 right?

2 A. That would probably sound about right. I can't now
3 remember the names but if I've said them in my original
4 statement that would be because obviously it would be
5 fresh in my mind, but I don't --

6 Q. This is information --

7 A. Yes.

8 Q. -- I have been given. Were you informed by them of your
9 status as a witness?

10 A. No.

11 Q. No? You don't remember being informed of that?

12 A. No, I --

13 Q. Or you weren't informed of that?

14 A. I don't remember being informed of that, or -- like
15 I was aware that it was now being run by the PIRC, so my
16 confusion as to why the MIT team from Police Scotland
17 would be involved was -- I couldn't figure that out, but
18 certainly my status, I didn't think it would be coming
19 from Police Scotland, I thought it would come from PIRC.

20 Q. And were you asked by those officers to provide
21 a statement that day?

22 A. I was, yes.

1 Q. And you refused to provide that statement?

2 A. I mean I wouldn't say refused. I was advised not to by
3 my solicitor and the statement that I provided to them
4 was such that based upon my legal representative's
5 advice that I wouldn't be providing a statement until my
6 status was clarified.

7 Q. So that was advice you had received from your solicitor
8 at that time?

9 A. Yes.

10 Q. And is it possible that there's some confusion maybe
11 about the context, in your mind, in which those
12 officers, the MIT officers, were being -- were there and
13 making the request from you? Were you maybe perhaps
14 confused about what they were trying to do that day?

15 A. Again, I was -- I mean I was still off sick and I was
16 still -- like my head was all over the shop but for me
17 I don't recall it ever being made very clear. I had the
18 expectation that I was going in for a welfare point of
19 view and that never happened.

20 Q. So maybe some confusion there about what you expected
21 and --

22 A. Yes.

1 Q. -- what they were expecting. Thank you.

2 Can I ask you about paperwork. You have helped us
3 in your statement from paragraph 80, you have talked
4 about -- first of all, let's look at paragraph 82 in
5 relation to Amanda Givan. You have said that your
6 status wasn't officially clarified until some days
7 later:

8 "I acted on the advice of the Scottish Police
9 Federation representative, Amanda Givan, that I had the
10 right to delay in the providing of a statement until
11 such time as it was received in writing."

12 A. Yes.

13 Q. So you were expecting that status to be confirmed in
14 writing to you?

15 A. Yes, I think that advice probably -- maybe Amanda Givan
16 was like a -- like the middle person, but that advice
17 was coming from my solicitor.

18 Q. When you say the middle person, what do you mean?

19 A. Like so she was the -- like the point of contact so
20 I could -- I didn't --

21 Q. A sort of an intermediate type, middle --

22 A. Aye, because of how we all were she helped us like with

1 the welfare point of view. I think it was so that we
2 could kind of get the correct advice.

3 Q. Okay. And then in paragraph 83 you say:

4 "I followed the advice provided by the Scottish
5 Police Federation and sought legal advice; as it was my
6 right to do so. In any event I was not in a fit state
7 of mind to complete relevant paperwork having just been
8 involved in the incident. I was emotional and unable to
9 clearly focus. This was not just the case for the hours
10 immediately following the incident but also for the days
11 that followed."

12 Can I ask you, after you regained your equilibrium,
13 did you complete the paperwork at that stage?

14 A. I was still off sick.

15 Q. And you were off sick for how long?

16 A. For a month and then I got transferred stations.

17 Q. So you didn't ever go back to Kirkcaldy Police Office?

18 A. (Shakes head).

19 Q. And having been transferred, did you complete any
20 paperwork?

21 A. No.

22 Q. Right.

1 A. And that was again on legal advice.

2 Q. On the basis of your legal advice?

3 A. Yes.

4 Q. So in relation to paragraph 84 please, you say that:

5 "Due to the passage of time I cannot accurately
6 recall the details of conversations had with other
7 officers. I took advice from the Scottish Police
8 Federation representative, Amanda Givan to seek legal
9 advice before filling in such paperwork with a view to
10 clarifying my status as a witness or a suspect. As
11 I understood it, Police Scotland was not in a position
12 to make this decision and this was a decision for PIRC
13 following an investigation."

14 So your understanding at the time was that PIRC
15 would decide if you were a witness or a suspect.

16 A. Yes, because they were in charge of the --

17 Q. They were in charge of the investigation?

18 A. Yes.

19 Q. And you were anticipating that that would be shared with
20 you in writing?

21 A. Yes.

22 Q. Yes. Before you would have that position clarified?

1 A. Yes.

2 Q. So if people did tell you, or say to you "You're
3 a witness", that wasn't what you were expecting, you
4 wanted it written down?

5 A. I wanted it in writing, yes.

6 Q. Thank you. Can I ask you about your PIRC statement
7 please, 263. And I would like to look at page 6 please,
8 paragraph 8 or 9. So this is the bottom half of the
9 page.

10 A. Yes.

11 Q. Paragraph 8 starts:

12 "I still had my leg restraints and CS Spray."

13 That's on the screen and we can see that there and
14 you have said, about five lines down:

15 "During this time Nicole arrived ..."

16 Do you see that?

17 A. Yes.

18 Q. "... back from hospital about 11 am. She still had all
19 her kit on. She took off her body armour and put it
20 down beside my kit in the canteen. Amanda Givan arrived
21 as she went with Scott Maxwell to get everybody a KFC
22 meal. Amanda and Scott came back and Chief Inspector

1 Conrad Trickett came in to speak with us in the presence
2 of the Federation Representatives about Post Incident
3 Procedures. He was there all day and didn't say
4 anything to do about conferring etc but we watched TV
5 and played pool mostly. After the KFC I asked
6 Amanda Givan if I should fill in my notebook, she said
7 not to and I asked her if I needed a solicitor and she
8 said yes because by that time the man had died and we
9 would need legal advice. She said that it was a death
10 in custody and the PIRC would investigate. She told us
11 not to give statements to the police and if anyone
12 approached us to ask for statements, we had to refuse
13 and seek legal advice. Amanda also told us not to fill
14 in a Use of Force or CS spray form because that would
15 have outlined our actions without speaking to
16 a solicitor first."

17 So was this your -- obviously you have told us
18 already this is a fresher recollection --

19 A. Mm-hm.

20 Q. -- to the events when you gave this statement to PIRC --

21 A. Yes.

22 Q. -- rather than your evidence now. So again, should the

1 Chair prefer this paragraph than the evidence you have
2 given us today?

3 A. Aye, yes.

4 Q. So looking at that now, does it -- do you have any
5 recollection of receiving that advice from
6 Constable Givan or --

7 A. I just remember asking what I should be doing and she
8 said to seek legal advice before I did anything, so by
9 that I took it that not to fill in things.

10 Q. All right, so when you said:

11 "... I asked Amanda Givan if I should fill in my
12 notebook, she said not to ..."

13 A. Yes.

14 Q. That sounds like you saying to Amanda Givan "Should
15 I fill in my notebook?" and she says not to.

16 A. Aye, until I have spoken to somebody. So I wasn't
17 actually sure what I should be doing. As I said, like
18 the shock of what had just happened and then I hadn't
19 the slightest clue what the procedure was afterwards, so
20 I had asked and I was told no, go and seek legal advice.

21 Q. So she tells you not to complete the paperwork and to
22 seek legal advice?

- 1 A. Yes.
- 2 Q. Thank you. Do you recollect that now?
- 3 A. Yes.
- 4 Q. Thank you. I would like to move on to ask you some
5 questions about race please.
- 6 A. Yes.
- 7 Q. You have obviously in your Inquiry statement given a lot
8 of answers that touch on this subject. I would just
9 like to ask you some additional questions, if I may.
- 10 You mentioned yesterday about attending previous
11 knife incidents and I wondered did any of them involve
12 black men?
- 13 A. I wouldn't be able to -- again, it would be a guess but
14 I wouldn't be able to say for certainty.
- 15 Q. I'm not going to ask you to guess.
- 16 Had you had training, equality and diversity
17 training, training on race --
- 18 A. Yes, that would have been --
- 19 Q. -- prior to May 2015?
- 20 A. Yes, when I was a probationer at the Scottish Police
21 College the initial part of your training is dedicated
22 in and around sort of race and diversity awareness.

1 Q. And how much time did you spend on that during your
2 training course?

3 A. It was one or two weeks. It was quite -- I remember it
4 being quite lengthy. It wasn't just like one session,
5 it was numerous sessions, but I couldn't like say how
6 many.

7 Q. No, that's fine. We understand you were up-to-date with
8 your training in May 2015?

9 A. Yes.

10 Q. Do you ever take someone's physical characteristics or
11 skin colour or religion and make any assumptions about
12 them, such as a black person is a terrorist?

13 A. No.

14 Q. Can I ask you what, if anything, you learned during your
15 training about unconscious bias?

16 A. It wouldn't -- sorry, it would have been in that initial
17 phase. I can't say exactly what the input would have
18 been, but I'm aware that there was obviously sessions
19 around unconscious bias.

20 Q. And were you personally able to identify any areas of
21 unconscious bias in your own mind during that training?

22 A. No.

- 1 Q. Were you asked to do that?
- 2 A. I think I was asked to do that, aye, but I don't --
- 3 Q. You weren't able to identify any?
- 4 A. No.
- 5 Q. And of the training that you received, how did you
- 6 implement any learning points or education that you
- 7 obtained from that into your day-to-day work?
- 8 A. Just to be mindful and I think one of the -- you know,
- 9 that people do come from different backgrounds and one
- 10 of the things is if you're uncertain about how to
- 11 approach a situation, ask. You know, there's no --
- 12 I was always under the impression there's no problem
- 13 with asking somebody to take the time to maybe explain
- 14 that if that's a gap in your knowledge and it actually
- 15 shows that you're -- you know, you're seeking to do the
- 16 right thing by the person as well.
- 17 Q. Okay. And had you -- before May 2015 had you ever come
- 18 across any situations or examples of racial
- 19 discrimination in Kirkcaldy Police Office?
- 20 A. No.
- 21 Q. Any racist jokes or comments?
- 22 A. No.

1 Q. If you had come across situations like that in
2 Kirkcaldy, how would you have responded to them?

3 A. I would have challenged it. That's --

4 Q. What do you mean?

5 A. What I mean is you know if somebody uses kind of
6 inappropriate language you would pull them to one side
7 and say "That's not on" and explain the reasons why, but
8 aye, I wouldn't let something like that lie.

9 Q. Okay. And what was your impression of senior officers
10 at the time? Is that how they would have responded if
11 they had heard anything like that?

12 A. Yes.

13 Q. And had any of your colleagues exhibited any behaviour
14 of that sort, racist discrimination or ...?

15 A. No.

16 Q. No. At the time in May 2015 what awareness, if any, did
17 you have about public concern about the use of force by
18 police officers, particularly against black men?

19 A. I don't know if it was maybe necessarily in and around
20 that time, but I'm certain they were obviously -- it's
21 reported on quite heavily from America, but, aye, I've
22 got an awareness of that obviously from the news and

1 that.

2 Q. So you keep up-to-date with that on the news?

3 A. Yes.

4 Q. And from your own experience in Kirkcaldy, you have told
5 us you had been there for around 18 months by May 2015,
6 to what extent was that a concern for Police Scotland or
7 in the Kirkcaldy area?

8 A. I don't think it was a concern, certainly not one that
9 I was aware of.

10 Q. And at that time were you aware of high profile cases in
11 other parts of the UK, such as down south, where
12 a person has died in police custody having been
13 restrained, or being restrained face down and public
14 concern and debate about that?

15 A. If it was reported on the news probably at the time.
16 I can't now sit here and say aye, I remember, but
17 certainly if it was something that was on the news it
18 probably would have been something I would have read.

19 Q. All right. Thinking back to 2015 and the training you
20 had had up until that point, was there much information
21 sharing about, say, learning points from down south and
22 other cases with officers in Police Scotland?

1 A. I don't know, like -- we don't get -- so like stuff gets
2 obviously shown on an electronic briefing system, or
3 when we go to OST, but we never get told necessarily
4 where it's come from. It would be maybe some
5 information that's provided to us and kind of brought to
6 our attention but we would never necessarily get told
7 this has come from, as an example, Greater Manchester or
8 Wales police or something. We would never get told
9 specifically where.

10 Q. So the source wouldn't be identified?

11 A. No but it would filter its way down. There would be
12 things that we would get told.

13 Q. Did you recognise any from cases that you had heard
14 about on the news? Any examples that you were given?

15 A. No.

16 Q. Can I ask you, in May 2015 what was your awareness of
17 the black community in Kirkcaldy?

18 A. I don't know.

19 Q. Do you not remember?

20 A. No.

21 Q. You don't remember having an awareness?

22 A. I don't remember having -- I'm not saying I didn't have

1 an awareness, but I don't know what like ...

2 Q. Had you been involved in any community relation work
3 with the black community in and around Kirkcaldy?

4 A. No.

5 Q. Had any of your fellow officers been engaged in that
6 sort of work as far as you know?

7 A. I don't know.

8 Q. What experience did you have of the black community,
9 either as witnesses, as suspects, or as victims of
10 crime?

11 A. It would just be through my normal sort of daily
12 engagements with members of the community.

13 Q. So how often would you come into contact with members of
14 the black community?

15 A. I don't know. I wouldn't be able to put a figure on it
16 like. Again it would be just a guess.

17 Q. All right, okay. So did you have much experience prior
18 to May 2015 of interacting with any members of the black
19 community in Kirkcaldy?

20 A. Again, I can't put a number on it, but, you know,
21 I would have interacted with the community as a whole
22 through my kind of duties as a police officer, so

1 I would have interacted with all members of the
2 community but I couldn't put a number on it.

3 Q. Okay. Were you aware at that time of any tensions
4 between the black community and the Police Force?

5 A. In Kirkcaldy?

6 Q. In Kirkcaldy.

7 A. No.

8 Q. I would like to ask you some questions about
9 stereotypes. What sort of stereotypes are you aware of
10 about black people generally, or black men specifically
11 in the context of criminal justice?

12 A. Like in what sort of ..?

13 Q. Are you aware that black men may be perceived as more
14 likely to resist, or less compliant, or be more likely
15 to be violent, or to have superhuman strength or size?

16 A. That's not something that I would ever -- like that's --
17 for me personally I would never hold that opinion or
18 thought.

19 Q. Are you aware of those sorts of stereotypes?

20 A. I am obviously aware of those stereotypes existing and
21 again that is through the media and how the media
22 reports and obviously through training, but that's not

- 1 views that I would ever hold.
- 2 Q. They're not views you hold.
- 3 A. No.
- 4 Q. Yesterday you used the word "swagger" when you were
5 trying to find a way to describe the manner in which --
- 6 A. Yeah.
- 7 Q. -- Mr Bayoh walked towards and along the path and I'm
8 wondering whether you consider that use, that word
9 "swagger" as exhibiting any type of underlying bias?
- 10 A. No, because it described the kind of walk. It wouldn't
11 necessarily -- I don't know how else to describe that
12 walk, you know what I mean. I would struggle otherwise
13 for kind of words for that.
- 14 Q. Would you use that word in relation to a white man?
- 15 A. Yes, because, for example, I would say that Mick Jagger
16 like would swagger round on the stage, like that is kind
17 of a word that I would use to describe that kind of
18 like -- that kind of style of walking, you know, like an
19 exaggerated style of walking, like a swagger.
- 20 Q. Thank you. We have heard some evidence that at one
21 point Mr Bayoh was described as being the size of
22 a house. Is that the sort of view that you held?

1 A. Until I actually heard the phrase "the size of a house",
2 like, it's not a phrase that I would use and if somebody
3 asked me what the size of a house meant I would think it
4 would mean somebody that was fat.

5 Q. Okay. Was it possible in May 2015 that any of those
6 assumptions or stereotypes influenced you and your
7 perception of the events --

8 A. No.

9 Q. -- as they occurred in Hayfield Road?

10 A. No.

11 Q. So if you had arrived at Hayfield Road in May 2015 and
12 it had been a white man who was five foot 10 and 12
13 stone 10 pounds and there had been calls from the public
14 about someone with a knife, but you couldn't see that
15 knife, and you're there with other officers who have
16 equipment, what would your first level have been in
17 terms of communicating with that person?

18 A. Again, it would be exactly the same as how I have
19 described with Mr Bayoh. So a person's race or
20 perceived race wouldn't affect my decision-making
21 process and it wouldn't have changed, you know.

22 Q. And if you had been first on the scene what would you

1 have done?

2 A. What do you mean, sorry?

3 Q. If you had arrived first on the scene --

4 A. Yes.

5 Q. -- and Mr Bayoh had been standing in Hayfield Road and

6 there's no knife visible and his behaviour is not -- he

7 is not shouting, he is not brandishing a weapon --

8 A. Yes.

9 Q. -- and perhaps he is ignoring you, what would you have

10 done initially?

11 A. Again, I mean -- I don't know how I can kind of answer

12 that because it's hypothetical, but again started off

13 with trying to use (inaudible) comms communication,

14 speaking.

15 Q. That was examples you gave of that yesterday --

16 A. Yes.

17 Q. -- when you were giving your evidence.

18 If that person had been non-compliant and ignored

19 the commands, would you have immediately moved to your

20 CS spray or your PAVA spray?

21 A. Again, I don't know how I can answer -- it's kind of

22 hypothetical again. The situation played out as it did,

1 but, aye ...

2 Q. Right. Do you think if Mr Bayoh had been white you
3 would have made greater attempts to communicate with him
4 than you did?

5 A. I think I made sufficient attempts to communicate and
6 again race or perceived race wouldn't ever influence
7 that. I would try as best as possible in every
8 circumstance.

9 Q. So do you think if he had been white it would have
10 altered the use of your spray or the use of your baton,
11 or any of the other actions that you took?

12 A. No.

13 Q. If he had been white would you have been more likely to
14 place greater reliance on assessing whether he was maybe
15 suffering from a mental health crisis, or he was under
16 the influence of drink or drugs?

17 A. Again, like race or perceived race doesn't come into it,
18 so no. Again, to go in there and focus on specifically
19 something would be then to put blinkers on for something
20 else and you could potentially miss things by doing that
21 so no, I would always go in there with an open mind.
22 I would never make any judgments.

1 Q. If he had been white do you think you would have called
2 for an ambulance sooner?

3 A. No.

4 Q. Can you give me one second please.

5 (Pause).

6 There's one thing I haven't asked you and I'm
7 grateful to my learned junior for reminding me. The
8 Chair and the Assessors may hear evidence that Mr Bayoh
9 didn't stomp on Nicole Short when she was on the ground.
10 Is there any comment you would like to make about that?

11 A. I can only tell you what I saw and that's what I saw.

12 Q. Right. Well, subject to any issues that you or the
13 Assessors may wish me to explore further in any more
14 detail, then I have no further questions at this time.

15 LORD BRACADALE: Thank you, Ms Grahame.

16 Do any legal representatives, with the exception of
17 Mr Jackson, have any applications under Rule 9? Just
18 Ms Mitchell, thank you.

19 Detective Constable, would you withdraw from the
20 room while I hear a submission please.

21 (Pause).

22 Now, Ms Mitchell, if you would come to the table

1 please. Yes, Ms Mitchell.

2 Application by MS MITCHELL

3 MS MITCHELL: I'm obliged. My learned friend Counsel to the
4 Inquiry has incorporated within her questioning a lot of
5 questions of the Section 9 applications that we made, so
6 these are additional and follow-up questions to
7 questions that have already been asked.

8 The first question I would like to ask is in
9 relation to evidence that the officer gave in relation
10 to the training around unconscious bias. He was asked
11 if he was personally able to identify any areas of
12 unconscious bias during that training and his answer was
13 no and what I would like to ask the officer is if he can
14 remember how that was done, how he interrogated himself
15 in relation to unconscious bias.

16 And following on from that, whether or not any
17 training was given in relation to guarding against
18 unconscious bias.

19 There was also questioning by my learned friend in
20 relation to racist stereotyping and depending on the
21 answer which he may give, was there any part of the
22 training on unconscious bias that related to the use of

1 racist stereotyping. So just trying to explore that in
2 a little more detail.

3 The second matter was that the officer indicated
4 that he wasn't aware of racist jokes, for example, in
5 Kirkcaldy, or people saying such things. What I would
6 like to ask him was whether or not he ever heard any of
7 his colleagues describing anyone black as being
8 "coloured" and what he would have done if it he had
9 heard that.

10 Moving on, in relation to the issue of risk, this
11 witness spoke about attending a scene in consideration
12 of the issue of risk. He identified three areas of
13 risk: the risk to the public, the risk to the police and
14 the risk to Mr Bayoh. And he was taken to his Inquiry
15 witness statement where page 3, paragraph 6, he
16 states -- he states this in the current tense:

17 "A person's race or perceived race does not increase
18 or reduce the risk to those involved in the incident."

19 Now, the Inquiry may well come to hear from reports,
20 including the Independent Review of Deaths and Serious
21 Incidents in Police Custody by the Right Honourable Dame
22 Elish Angiolini and also the 2016 Lammy report in

1 relation to the fact that there is evidence of
2 a disproportionate number of deaths of black people in
3 restraint related deaths, so if an incident involves
4 restraint, race or perceived race can increase the risk
5 if a person who is being restrained is black. And what
6 I would like to know from the witness is at the time of
7 2015 had he received any training in relation to any
8 increased risk to black people, was there any training
9 given in that regard at that time, and whilst
10 I appreciate it might not be immediately focusing on
11 that, if the Inquiry would also like to know whether or
12 not that's a matter of training now I can certainly add
13 that to the questioning.

14 The last issue arises as a result of the questions
15 about handcuffing. You may recall that the witness was
16 asked by Counsel to the Inquiry about the removal of
17 restraints prior to being placed in the ambulance and
18 the answer to that from the officer was to explain about
19 the speed at which that would take and that you wouldn't
20 want to be interfering with the paramedics doing their
21 work and also that it was better to concentrate on
22 performing CPR. And what I would like to explore with

1 the witness was that they were waiting for an ambulance
2 for a number of minutes and during that time -- I think
3 it was about 8 minutes and a few seconds -- Mr Bayoh was
4 to start off with unconscious and then he was not
5 breathing and CPR was being done during that time, and
6 to ask him whether or not he considered during that
7 period of time taking off the handcuffs and if not then
8 why.

9 LORD BRACADALE: Does that complete your questions?

10 MS MITCHELL: Those complete those questions.

11 LORD BRACADALE: Well, I would not find it helpful at this
12 stage for you to explore the present training that you
13 mentioned, but otherwise I'm content to allow you to ask
14 these questions.

15 Perhaps if we just rearrange the seating so that ...

16 (Pause).

17 Yes, bring the witness back now please.

18 Detective Constable, you're going to be asked some
19 questions by Ms Mitchell who is senior counsel for the
20 Bayoh family.

21 A. Yes.

22 LORD BRACADALE: Ms Mitchell.

1 Questions by MS MITCHELL

2 MS MITCHELL: I'm obliged. Earlier in your evidence today
3 you spoke about unconscious bias and you explained that
4 you had sessions around unconscious bias and you were
5 asked were you personally able to identify any areas of
6 unconscious bias in your own mind --

7 A. Yes.

8 Q. -- during that training, and you responded no. Can
9 I ask how that was done?

10 A. As far as I recall, I think there was maybe scenarios
11 given and you were asked to write down maybe what you
12 thought. I'm not really sure. I can't really remember,
13 but I know it was an exercise that you had to write
14 things down in a classroom scenario.

15 Q. Was that self assessment?

16 A. No, I don't think so. So the classes when you're broken
17 up you get like a tutor constable and the tutor
18 constable would obviously look at your answers and help
19 you identify areas.

20 Q. Were you given any training in relation to guarding
21 against unconscious bias?

22 A. I don't know. I can't remember that.

1 Q. Do you think you would remember had you been given
2 training about how to guard against unconscious bias?

3 A. Not necessarily. My training was like seven and a half,
4 eight and a half years ago.

5 Q. How do you guard against unconscious bias?

6 A. You have an awareness obviously through training, but --
7 I don't know. I suppose you rely on your own sort of
8 self to pick it up in yourself and be aware of, do you
9 know, if there's anything that -- you know, like, for
10 example, you know you see someone and you decide --
11 a group of kids for example and you think "I'm going to
12 cross the road there", that would be, you know, an
13 unconscious bias because you wouldn't necessarily have
14 to think about that. But being aware of that you would
15 look into -- like for me I would look into myself and
16 think "Right, that's something I need to be aware of"
17 and you wouldn't act upon that.

18 Q. I think what you're describing there is conscious bias.

19 A. Right, okay.

20 Q. I'm wondering how you would guard against unconscious
21 bias?

22 A. I don't know. We have had training on it but I don't

1 know how to answer that question.

2 Q. Were there discussions about racist stereotyping as part
3 of your training on unconscious bias?

4 A. Again, I would be guessing, do you know, if I said aye
5 or no. I would imagine as part of the syllabus more
6 than likely, but again, you would need to have a look at
7 the kind of college notes that we were provided at the
8 time.

9 Q. And I take it that because you're referring simply back
10 to the time that you were training --

11 A. Yes.

12 Q. -- there hasn't been any training in the meantime that
13 you can refer to to answer these questions?

14 A. Not that I recall.

15 Q. You have explained that you haven't heard, for example,
16 any racist jokes in Kirkcaldy and that if you did you
17 would call that out. Did you ever hear any of your
18 colleagues using the expression "coloured" in relation
19 to describing a black person?

20 A. No.

21 Q. What would you do if you had heard them say that word?

22 A. Well, that's not right, so I would challenge them.

1 I would say it's not -- "That's not the correct thing to
2 be saying" and -- aye.

3 Q. Earlier on in your evidence you spoke about arriving at
4 the scene and the assessment of risk and it was right
5 back at the start of your evidence at arriving on the
6 scene and you identified three categories --

7 A. Yes.

8 Q. -- of people or groups that would be at risk. Can you
9 remember what those were?

10 A. Officers, members of the public and the subject, so
11 Mr Bayoh.

12 Q. In your statement -- I don't think we need to take you
13 to it, we can if we want but it's only one phrase -- you
14 say -- this is in your statement to the Inquiry given on
15 13 April 2022, you say:

16 "A person's race or perceived race does not increase
17 or reduce the risk to those involved in the incident."

18 A. Mm-hm.

19 Q. Do you remember writing that?

20 A. Mm-hm, it has no influence on the incident.

21 Q. The Inquiry will come to hear that there is evidence of
22 a disproportionate number of deaths of black people in

1 restraint-related deaths, so if an incident involves
2 restraint, race or perceived race can increase the risk
3 if the person being restrained is black. Have you been
4 given or were you given, in 2015 -- by 2015 any training
5 on that issue?

6 A. Again, you would have to have a look at the training
7 notes. It would be, you know ...

8 Q. Well, do you recall being given any training on that?

9 A. No.

10 Q. I would like to take you on to an issue which you
11 covered close to the end of your evidence about
12 handcuffing.

13 A. Yes.

14 Q. Senior Counsel to the Inquiry asked you about removing
15 the handcuffs while Mr Bayoh was being put into the
16 ambulance.

17 A. Yes.

18 Q. And I think, if I can paraphrase your evidence, you
19 indicated that it would -- you didn't want to interfere
20 with time taken away from the paramedics.

21 A. Mm-hm.

22 Q. And you explained it would take a couple of -- quite

1 a number of seconds to remove the handcuffs and also
2 again you indicated that -- in relation to the leg
3 restraints:

4 "... you're taking seconds which those seconds could
5 have been better spent performing CPR ..."

6 A. Mm-hm.

7 Q. Now, we know from the timeline that a call for an
8 ambulance was put out in respect of Mr Bayoh when people
9 were aware he had stopped breathing at 7.25. And we
10 know the ambulance didn't arrive until 7.34. So there's
11 at least eight minutes between Mr Bayoh -- being clear
12 Mr Bayoh was unwell and required an ambulance and the
13 paramedics arriving. During that time he was
14 unconscious and then it was clear as well as being
15 unconscious he wasn't breathing and CPR was started.

16 A. Mm-hm.

17 Q. There's only one person doing CPR at a time, I take it?

18 A. You work in a team.

19 Q. Okay, so two at the most?

20 A. Yes.

21 Q. Why were his handcuffs not removed during that period of
22 time?

1 A. Again, you would require access so to actually unlock
2 the handcuffs it would still involve stopping CPR and it
3 wasn't interfering, so again, the handcuffs weren't
4 removed.

5 Q. Why were his leg restraints not removed during that
6 period of time?

7 A. Leg restraints don't restrict CPR.

8 Q. But why weren't they removed?

9 A. Because they just weren't removed.

10 MS MITCHELL: Just allow me one moment.

11 (Pause).

12 Thank you.

13 LORD BRACADALE: Thank you. Mr Jackson, as Constable
14 Tomlinson's counsel do you have an application?

15 MR JACKSON: I don't, sir.

16 LORD BRACADALE: Thank you very much.

17 Thank you very much, Detective Constable, for coming
18 and giving evidence to the Inquiry. That's the end of
19 your evidence and you will be free to go when the
20 Inquiry rises.

21 So we sit again tomorrow at 10 o'clock.

22 A. Thank you, sir.

1 (3.54 pm)

2 (The Inquiry adjourned until 10.00 am on Friday,

3 27 May 2022)

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