

WITNESS STATEMENT

Agency Ref :S183
PF Ref :

Surname : MAXWELL Other or previous surname :

Forenames : Scott DoB : [REDACTED]/1979 Age : 36

Occupation : Police Officer Other Occupation : Temporary Sergeant
080349

Police Station : Years Service : 7

Disclosable address :

Post Code:

This statement was taken :

Date and time : 4th of June 2015 12.40

By : ROSS STEWART
Place : Tulliallan, Scottish Police College

In the presence of : STUART TAYLOR

I have/the witness signed/refused to sign this and all other pages

It was/not read over to the witness and was/not recorded on Audio tape and/or Video tape

States :

I am Scott Maxwell. I am 36 years of age and I have 7 years police service.

I am a Temporary Sergeant, Uniform Response Team 4 based at Kirkcaldy Police Office. I have been carrying out this sergeant role on and off for approximately one year, not exclusively at Kirkcaldy, but essentially Team 4 throughout P Division, the Fife force area.

My call sign when I'm on duty is always Papa Sierra Four One One (PS411) For example the sergeant on Team 5 will have the call sign PS511. The supervisors car which the sergeants use does not have a specific call sign. The controller would contact mobile sergeants using their individual call signs.

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I am a fully authorised officer in relation to officer safety training, SPELLS and I am authorised to carry/use CS spray and PAVA. I last qualified in November 2014. My requalification date therefore is November 2015.

My responsibilities and expectations placed on me as a supervisor/sergeant in relation to incidents of a serious nature, are to have an overview of the situation and to manage the incident, by incorporating safety concerns of the public, safety concerns of all officers and to preserve and gather evidence.

At the present time I am almost finished my Professional Development in Policing Diploma. Due to the fact that I am undertaking this 2 year diploma programme, this makes me suitably qualified to apply for any advertised position of temporary sergeant. Thereafter I will require to make application if I wish to be considered for any substantive position of sergeant.

At the moment or rather at the time of this incident I was the only sergeant on team 4 Kirkcaldy. Team 4, P Division had one inspector covering all the offices. My team inspector is Acting Team Inspector Stephen Kay. He bases himself at Kirkcaldy.

I am 36 years of age, 6 foot 2 tall, stocky well built, short dark brown hair, roundish face. I do not wear spectacles. I have what I would describe as a central Scotland accent, not a Fife accent. I do not have any obvious marks, scars or tattoos. I am always clean shaven. I have blue eyes. Nothing has changed in my appearance since 3 May 2015.

On Sunday 3 May I was dayshift 0700-1600. However I did start earlier to prepare a briefing and hand-over from the nightshift sergeant. I started about 0620 hours and from memory there was very little by way of a handover, a relatively quiet Saturday night for Kirkcaldy.

My plans that morning were to allocate the response vehicles and the diary vehicle where the officers catch up with their outstanding enquiries and writing.

I made up my availability plan and loaded this onto SCOPE. That day, PR41A was PC Alan Paton and PC Craig Walker, PR41B was PC Alan Smith and PC Kayleigh Good, PR41C was PC Ashley Tomlinson and PC Nicole Short and PM601, the diary vehicle was PC Daniel Gibson and PC James McDonough.

That was my full compliment for Sunday 3 May. My intention that day was to give an overview and manage my staff ensuring all calls were covered.

I did not assign any other officer to work with me that day. Inspector Kay was on duty within Kirkcaldy Police Office that morning but he wasn't present at my briefing/muster.

All the above named police constables were present at the muster which commenced at 0700 hours. From memory they were all ready to respond and go out to any calls and by that I mean they all had their officer safety equipment, including vests and airwave terminal, handcuffs, batons and CS or PAVA.

OFFICIAL - SENSITIVE

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Each officer should have their own individual set of leg restraints in a pouch attached to their vest, a basic first aid kit (bandage, plasters and a resuscitation mask).

I informed the officers who was working with who and from memory there were no outstanding calls left over from the nightshift.

At the time of the muster I was not wearing my officer safety equipment but where I sat I had all my equipment near to hand at the side of my desk.

Nobody, including myself, had to go to their personal lockers to fetch their CS/PAVA or airwave, or go elsewhere to fetch their officers safety equipment. What they did have to do was walk 10 yards into the sergeants office and collect their allocated police vehicle keys.

I was in the muster room briefing the team when I heard the call come over. It was basically a report from a member of the public reporting a large black male in possession of a large knife in Victoria Road in Kirkcaldy. Victoria Road is on the north outskirts of the town centre maybe 1/2 mile from the office in a vehicle.

In my head that was a grade one call. I can't remember if it was passed out as a grade one call. Initially PR41C was actioned to the call by the male controller. I immediately overruled that and I called in on my airwave and told the controller that I was despatching all my four units and that I would be attending myself as well.

Everybody within the muster jumped up, grabbed keys and attended. Whilst I can't say for definite that the allocated teams took their allocated vehicle and attended, I have to assume and I have no reason to question that now.

Whilst I was still in the office, I remember passing out a message on my airwave information to my team to remind them to stay safe and remember their officer safety training. I think the initial call came to us about 0715.

I also remember asking the controller about the availability of an ARV (armed response vehicle) and a dog unit, and that was basically to assist my officers and through experience I know that knife incidents may result in a stand-off situation and or hostage situation and that ARVs and dog unit are maybe more appropriate.

The initial response I got back was that it would be checked. I remember it took me several radio transmissions to have my request acknowledged. I remember about 5 minutes later the same male controller advised me that there was no ARV on duty and that there was a dog unit on duty and would be attending this call. This reply came when I was off at locus.

I got my stab proof vest on, my airwave terminal, baton, CS spray, handcuffs and leg restraints, first aid kit and pouch on belt. I don't know my serial numbers on my baton, handcuffs, CS spray and airwave. I have no reason to believe that any of these items are not the ones allocated to me and that there are routine checks to check the numbers throughout the year.

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I cannot remember when the last time my CS spray was weighed or indeed if it has been weighed at all. I have never heard of officers having their CS canisters routinely weighed. I know now that PAVA canisters are weighed daily by the officers themselves and record their weights on a proforma which is retained in a team folder in the briefing. This is basically down to the individuals honesty.

I walked into the sergeants' room, picked up my car keys from the keyboard, before I got to the backyard there was an update from the controller about another four reports from independent members of the public about a black male in a white t-shirt running about in possession of a knife, this time in the Hayfield Road area. I knew that this was now the Templehall area and nowhere near Victoria Road.

I got into my car and headed for Hayfield Road. I was single crewed and drove the white-coloured marked vauxhall corsa 5 door and I immediately activated my blue lights and siren. I was approximately 2-3 minutes behind my team.

I drove left out the yard onto St Brycedale Avenue to the traffic lights with Bennoch Road, turned right heading north to traffic lights where I turned left, continued north and as I was approaching the mini roundabout with Hendry Road I was aware that PR41A had arrived or had spotted the black male or had him in sight.

I'm still about 3/4 of a mile away on Hendry Road when I heard the emergency button being pressed. My airwave terminal started to vibrate and I was aware I was listening to an open channel. I heard shouting which I recognised as being a disturbance. My thoughts were that something serious, something bad had happened. I heard PC Paton say something like an officer had been badly injured. I was then expecting to find on arrival that an officer had been stabbed or at least seriously injured. I continued north, through the roundabout until I reached the roundabout at Hayfield. It was teeming down with rain, very sparse traffic and I don't remember seeing any pedestrians on the route to Hayfield. I can't remember any specific vehicles on the road.

I think this journey, given the speed I was travelling at would have taken me no more than 5 minutes. Before I arrived at locus I did not know which of my officers had been injured and how or indeed how serious.

As I turned right at the roundabout into Hayfield Road I parked my car on the mouth of the roundabout basically on the southbound of Hendry Road at the junction with westbound Hayfield road. Effectively I am looking right down the south pavement of Hayfield Road looking towards the hospital end.

The first car I saw was a white corsa marked police vehicle in the middle of the road, abandoned really, facing east. This car was between 20-30 yards down Hayfield Road.

The second vehicle I saw was the marked big long wheel base transit, our custody van, I would say another 20 yards east of the corsa, parked on the east side of the carriageway, short of the bus stop and facing. I don't recall blue lights or sirens activated on any of these two vehicles.

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I got out my car and I could clearly see the black male lying on the ground. He was on the south footpath, he was beyond the corsa but not as far up as the custody van. His head was towards the houses and his feet were towards the road. He was lying on his left side and he was facing me.

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

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

I saw PC Alan Paton. He was standing up in close proximity to Alan Smith. He was standing over Alan Smith and Ashley Tomlinson, facing towards me. PC Craig Walker was standing to Alan Smith's immediate right facing me.

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

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

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

Further down the street I saw PC Short, Nicole Short, she was standing on her own in the middle of the road beyond the custody van, she was crouched over and looked to me as if she was in pain.

I also saw PC Kayleigh Good. She was standing on the road just beyond the feet of the black male and I got the impression she was just taking observations.

I have been shown:

Label No: Satellite view of Hayfield Road Kirkcaldy & map of Hayfield Road/Hendry Road Kirkcaldy.

I have marked the map with the following:

- A. my parked vehicle facing east in the direction of the hospital
- B. first marked police vehicle, white corsa facing east
- C. 2nd marked police vehicle, white custody van, facing east
- D. black male fully on south pavement head towards the houses and feet towards the road.

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- E. PC Alan Smith, east side of the black male on his knees near to head area facing west.
- F. PC Ashley Tomlinson, next to Alan Smith kneeling down to Alan Smith's right, facing west.
- G. PC Alan Paton was standing over PC Smith and PC Tomlinson
- H. PC Craig Walker standing to right of Alan Smith
- J. PC James McDonough at black male's feet
- K. PC Danny Gibson to James McDonough's right
- L. PC Nicole Short in roadway
- M. PC Kayleigh Good standing beyond feet of black male

I got out my car and walked towards my team of officers.

As I approached PC Walker and PC Paton I saw they were in a heightened state. They both were suffering from the after effects of CS or PAVA spray. Both their eyes were red and watering. Both had runny noses and blinking heavily. Both were breathing heavily as if they had been involved in some form of physical exertion.

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

From what I seen, I thought the level of resistance given by the black male was reducing and quite quickly maybe as short as twenty seconds he appeared to be fully compliant, but when I first saw him there was definite movement, struggling with his full body moving although the officers as I seen it had full control.

As the black male became compliant my officers visibly started to back off and reduce the pressure applied. This was a natural phase, it was not as if I had to give verbal direction.

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

When I saw PC Alan Smith, knowing that he was a officer safety and SPELS trainer, force trainer, I was confident in his abilities to control that situation in respect to restraint techniques and the after care of the male.

I was standing about 1 metre away on the pavement to the south of the black male's head, so I had a clear unobstructed view of the ongoings. From my observations, the actions of the police officers was appropriate, textbook stuff in line with their training, It was a bonus that PC Alan Smith was present with his expertise and that was evident to me by his actions.

It was at this point that PC Alan Paton spoke to me in response to me asking him to give me an account of what had happened.

He told me in words to the effect that the black male had come to him and that he and Craig Walker shouted at him to stop but the black male had continued to come

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towards him so he had refused to comply and that both he and PC Walker had sprayed the male with CS and PAVA, but the male did not stop and kept coming towards them and had went for Nicole Short, kicked and punched her to the ground.

I should have said that during my assessment of the black male I did not see any obvious injuries, marks or blood.

I asked PC Paton where the knife was. I can't remember who it was but somebody shouted that the knife was on the grass on the opposite side of the road.

By this time two CID officers had arrived, DS Samantha Davidson and DC Derek Connell. I didn't see them arrive and don't know how they got there. I didn't even know they were on duty so I took relief from their attendance because they took over scene management.

When I first arrived and on approaching the black male when he was on the ground I could clearly see he was handcuffed to the front. To my recollection leg restraints were already applied to the lower part of the black male's legs close to the ankles.

In my head I believed that the black male was in possession of a knife at the initial confrontation with the police. I did not witness this and nobody told me at the time when I asked the questions anything different. Nobody told me he wasn't in possession of the knife.

It is possible that the two detectives overheard the officer say that the knife was over in the grass area. I definitely heard somebody, I don't know who, say that the knife was in the grass area. Somebody, and I don't remember who, pointed over to the grass area and it was nearer to the roundabout junction than it was to the bus stop. It is possible that the detectives saw this as well. I definitely spoke to DC Derek Connell and asked him to recover the knife from the grass area. I did see Derek Connell walk over to the pointed out area and I did see him pick something up from the grass. I can't say for sure what it was he picked up. I didn't see him with any production bags or cameras or anything. I was satisfied that the CID were in control of the knife.

I then walked over and turned my attention to PC Nicole Short. She was still standing by herself. She was starting to straighten up and that might possibly have been when she saw me approaching. I asked her if she was okay at the same time as giving her a visible examination. She said she was fine but she clearly wasn't. She looked in pain, grimacing, both arms across her chest as if she was consoling herself. She was crying and shaking. Nicole is petite, maybe about 5'2" slim build and physically there is not much to her. I carried out a quick assessment. I did not see any obvious injuries, marks, signs of physical assault. It was really her mental state. She was in an obvious state of shock.

She told me that the male had tried to kill her, that she had been kicked and punched and she continued to ramble on that she was in fear for her life. But I didn't see any obvious marks that would corroborate her being punched and kicked.

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I placed Nicole into what I think was the custody van, the front passenger seat. I left her in the van herself knowing that she was safe. At no time did I ask Nicole Short anything about the knife and she never mentioned anything about a knife.

Somebody had previously requested an ambulance, and at that time when I was speaking to Nicole I asked the control room that an ambulance was en-route.

I walked the short distance back to the black male who was still on his left side. He still wasn't saying anything. Up until this point I don't remember any of the officers speaking to the black male, giving him instructions or anything else.

When I first arrived I remember seeing a male standing about 20 yards further down Hayfield Road on the same pavement as where the black male was lying.

He was in his late 30s and something tells me he was wearing his pyjamas or robe. That's all I remember about him. He would have had a clear view of the full incident. I remember him walking out from the houses and going back into the same house on the right across from the bus stop.

PC Alan Smith remained down at the male as if he was keeping the male balanced on his left side. At this point Alan said to me as I walked to him that the male wasn't breathing he was unresponsive and clearly wasn't right.

I watched as Alan carried out some checks. I saw him place his head or his ear to the male's nose and mouth area. He then checked the male's wrist, I don't know which one because he was still cuffed at this point. Alan then said that we needed to start CPR. He said this in a cool calm manner. Alan instructed PC Craig Walker to start chest compressions. Craig then bent down, both he and Alan were still on the east side of the body although Alan was moving about. Alan Paton was standing nearby. At the time when he became unresponsive the black male was turned onto his back by Alan Smith who also checked that the male hadn't swallowed his tongue.

From my awareness the time period between when the male became unresponsive to when Alan Smith declared CPR required was quite short.

Whilst all this was going on, I basically was there as a supervisor. There was sufficient officers on the ground dealing with the male. At no time did I go down and touch the male. I am aware that I was on the radio a number of times.

I don't remember exactly what I was doing in between the times of when he moved from unresponsive to CPR required.

Initially Craig Walker commenced chest compressions. I watched Alan Smith get his resus aid out, in effect a clear mask with a tube to prevent cross contamination. Craig and Alan then co-ordinated with each other, chest compressions, two rescue breaths and continue to alternate. At one point Alan Paton took over from Craig Walker. I saw it myself when saliva came up from the tube on the mask that Alan Smith was using. This was a couple of minutes into the CPR. Alan Smith made a conscious decision to stop mouth to mouth after a couple of minutes. Craig Walker and Alan Paton continued to carry out chest compressions and on one occasion

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Alan Smith gave them a break. This went on continuously until the ambulance arrived.

It was at this time that Ashley Tomlinson approached me. He looked in shock and he appeared to me as if he had done something wrong. He said to me something along the lines of "I may have struck this male on the head with my baton".

From that I assumed that he meant only once. I never questioned him, I went straight onto the radio for the ambulance to be made aware and also for it to be recorded for transparency. I asked for an ETA for the ambulance. I worried for the male, I suspected his condition was as a result of being hit on the head with a police baton.

I remember learning at this time that the ambulance had been dispatched to Seafield Road. I clarified the exact position of where we were. I told Ashley to go and sit in his vehicle and to calm down. Ashley was in a state but at least he was being honest.

I was told at this time that no ARV was available, but the dog unit was attending from Edinburgh. I cancelled the dog unit.

The ambulance arrived from the hospital direction.

DI Robson did turn up and I think he went to attend to Nicole Short. I didn't see much of him really, he disappeared. I think DI Robson turned up just after the two detectives turned up. I remember seeing PC Mark Hay sometime before the ambulance arrived. He is based in Glenrothes. I don't know how he got there but I did see him. I don't remember seeing any other officers there, although Inspector Kay did appear after the ambulance had left. He may have been there before but I never seen him. When the ambulance arrived, two male paramedics got out. They asked for CPR to be continued. I think Alan Smith continued with chest compressions whilst the paramedics loaded the male onto a stretcher and then into the back of the ambulance.

I assumed DC Connell got into the back of the ambulance. I heard DS Samantha Davison mention this but I didn't see DC Connell get in. I don't know who drove the ambulance. I was sure I had accounted for all my officers when I got back to the office.

I liaised with Inspector Kay who turned up after the ambulance had left. He arranged for staff to manage road closures and locus protection.

After I spoke to Inspector Kay I radioed in to the controller and informed control room all PAPA Romeo officers involved in this incident would be returning back to Kirkcaldy Police Office for a debrief. I then went round all my officers and informed them individually to return to the canteen at Kirkcaldy Police Office.

I remember standing the second ambulance down because I knew somebody had conveyed PC Nicole Short in a police vehicle to the nearby hospital. There was no need for a second ambulance to attend.

I was not affected by CS spray or PAVA at anytime.

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I travelled back to Kirkcaldy Police Office on my own. Prior to leaving Inspector Kay reaffirmed to me not to allow the officers to discuss the ins and outs of the case.

Again before I left and whilst speaking to PC Alan Paton and PC Craig Walker who were sat in the custody van, I asked them what had happened, Craig Walker stated "I wont be speaking to anyone or giving a statement until I speak to my federation rep". PC Alan Paton confirmed that that was his position as well. I had to accept that.

At no time after that did I ask anybody to provide their operational statement. Similarly nobody asked me for an operational statement before I went off duty, which I would have expected to be done.

When I got back to Kirkcaldy Police Office, it took me about 20 minutes to regroup everybody. We all met in the canteen. I confirmed nobody else was injured.

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

There was definitely no collusion with regards to making up a story and sticking to a story, not in my presence anyway.

I did not take any notes either at the locus or within the police office. My notebook has no entries in it with regards to this incident.

I have now been shown my

Label No Police Notebook No 019115

and I confirm there are no entries.

I have not made any notes in any other format with the exception of the personal account that I believe happened during this incident. I typed my statement up on my home computer.

I am now handing over

Label No my description of events

This is not an operational statement.

I prepared this description of events on the Monday 4th May in my house. Nobody else has seen this "statement" other than Professor Watson the appointed federation lawyer and one of his employees John Salens who came out to interview me at my house about 10 days ago.

I can't remembr exactly when I got back to Kirkcaldy Office that morning, sometime after 8am. I was still wearing all my officer safety equipment that I went out with.

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The use of force form was not asked for that morning. I remember it was asked for the next morning. Inspector Alan Seath asked me personally to submit a form. I know he asked everybody on duty to submit a form.

I hadn't used force so I wasn't required to submit a form. I was aware that there was a reluctance on the Monday for any officer to submit one of these forms due to the fact it could incriminate or used against. That was just a holding position, it wasn't at that time as a result of federation advice. However on the Monday afternoon, the officers who were on duty including myself went through to a forum in Federation offices in Livingston, where we were met by Professor Watson, Amanda Given and another federation male rep. This was actually on the Tuesday.

At that time the advice we were given was not to complete any use of force form or indeed any other commitment to paper in relation to this incident until such time as our position of being a witness or suspect was clarified.

Going back to the Sunday morning, Amanda Given, the Kirkcaldy Federation Rep turned up in the canteen about 10am.

I don't know who called her out. I don't recall any other federation rep being there. In essence she told me and the team as a group not to provide any operational statement until our status was confirmed.

She offered to be available for anybody who wished to speak to her in private. I think Nicole Short took up this option. Nicole had turned up at the office from the hospital about 11.30am.

I then went to speak to Amanda Given in the kitchen off the canteen in private. I asked her to clarify the position with me providing a statement. I told her that I wasn't directly involved in the confrontation and I asked her for advice. The advice she gave me was that it was entirely up to myself but that the federation was advising me not to submit any statement. I did take this advice and I have waited for further guidance on this matter.

On the 12 May I was asked to attend within the DCI office within Kirkcaldy Office. This was sometime in the afternoon. DCI Hardie and DI Stuart Wilson both from the MIT were present. DCI Hardie asked me to submit an operational statement. I told him I would not be submitting my operational statement as a result of the legal advice I had previously got from the federation.

On the Sunday 3 May about 1600 hours I was requested to hand over my full uniform and OST equipment for a forensic examination.

Going back to the locus on the Sunday morning I remember DC Connell picking up 3 batons from the roadway near to where the male was lying. I don't know what DC Connell did with them. I know that one of the batons was PC Tomlinson's because he told me he had lost his. I don't know who belonged to the two other batons.

I don't know whose handcuffs or leg restraints were used on the male.

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I remember on the Sunday within Kirkcaldy Police Office, after Amanda Given had given us advice, so this would be about 11.30am, Chief Inspector Conrad Trickett turned up in his role as PIM Co-ordinator from a welfare point of view. At no time did he ask me personally for me to provide an operational statement or an account of any kind, basic account or detailed. He explained his role and asked for open questions. He confirmed nobody was suspended and he explained the process to be followed.

I did not know Sheku Bayoh. I had never heard him. I was the Templehall Community Officer for 2 years and I have never come across him.

Just to clarify the point surrounding the fact I have made no entries in my official police notebook with regards to this incident. This is down to the initial advice given to me by Amanda Given, the federation rep on the morning of Sunday 3 May.

I confirm that the PIRC afforded me the opportunity to liaise with [REDACTED], the federation rep prior to me giving this statement. Amanda Given was also present and I appreciate that she is a witness and there is an obvious conflict of interest. [REDACTED] made [REDACTED] available to me during the course of this interview, however I have had no requirement to speak to [REDACTED]

I also confirm I have been given sufficient breaks, comfort breaks and refreshment breaks.

I confirm that this statement is a true and accurate record.

Signed :

(Witness)

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WITNESS STATEMENT

CONFIDENTIAL MATERIAL - NOT TO BE DISCLOSED

Surname : MAXWELL Forenames: Scott
Alias/known as :

Place of birth : [REDACTED] Age : over 18

Home address : [REDACTED] Telephone :

Post code : [REDACTED]

Business address : Police Scotland
Kirkcaldy Police Office
St. Brycedale Avenue
Kirkcaldy

Post Code :

Mobile : [REDACTED]

Email :

Fax/Pager :

Other :

Dates when unavailable in next 12 months :

Other Confidential Material :