

TRANSCRIPT OF THE INQUIRY

1
2 Tuesday, 7 June 2022
3 (10.01 am)
4 LORD BRACADALE: Good morning.
5 Ms Grahame, who is the first witness today?
6 MS GRAHAME: The first witness today is Constable
7 James McDonough.
8 LORD BRACADALE: Good morning, constable.
9 A. Good morning.
10 LORD BRACADALE: You're going to be asked questions by
11 Ms Grahame. Before we do that, would you say the words
12 of the affirmation after me.
13 PC JAMES MCDONOUGH (affirmed)
14 LORD BRACADALE: Ms Grahame.
15 Questions from MS GRAHAME
16 MS GRAHAME: Thank you.
17 Good morning. Are you James McDonough?
18 A. That's correct, yes.
19 Q. And what age are you?
20 A. I'm 29.
21 Q. And how many years' service do you have?
22 A. I've got seven full years' service now.

TRANSCRIPT OF THE INQUIRY

1 Q. And in 2015?

2 A. Roughly it was about 6 months.

3 Q. Right. Six months since you had left Tulliallan?

4 A. Yes, I think -- yes, that would be correct, yes, end
5 of November.

6 Q. Were you still a probationer?

7 A. Yes, that's correct.

8 Q. Thank you. And who was your -- we have heard about
9 mentors or supervisors. Who was your supervisor?

10 A. So my tutor constable -- I think -- is that what you're
11 referring to, a tutor constable?

12 Q. Yes, sorry, I couldn't remember the name there.

13 A. No, that's fine. My tutor constable at the time was
14 PC Brian Geddes.

15 Q. Now, we've got all your contact details so we don't need
16 you to say that. Have you got a black folder in front
17 of you?

18 A. I do, yes.

19 Q. Have you seen any of the other hearings so far?

20 A. Yes.

21 Q. So you will know that I want you to be as comfortable as

TRANSCRIPT OF THE INQUIRY

1 you can be and I want to make sure you've got everything
2 that you might need during the course of this morning,
3 so in that black folder should be hard copies of your
4 PIRC statement and your Inquiry statement. Do you see
5 that?

6 A. Yes, I do, yes.

7 Q. And you must feel free to refer to that at any time if
8 you wish, so when I'm asking for paragraphs of your
9 Inquiry statement to go on the screen they will come up
10 on the screen in front of you.

11 A. Yes.

12 Q. But if there's anything around that paragraph you want
13 to see, you can refer to your hard copies.

14 A. Okay.

15 Q. Great. Can we look, first of all, at PIRC 273, please.

16 A. Yes.

17 Q. And you will see that this is a PIRC statement dated
18 4 June 2015 and it was taken at 12.20 by Garry Sinclair,
19 investigator, in the presence of William Davidson,
20 investigator. Is that right?

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

TRANSCRIPT OF THE INQUIRY

1 Q. And do you recognise this? It was taken at the Scottish
2 Police College on that date?

3 A. Yes, I remember it, yes.

4 Q. And were you given a chance to look over it, or was it
5 read over to you?

6 A. I think I remember it being read back to me.

7 Q. Right. And I know that there's a few things you would
8 like to comment on as we go through. I will go through
9 those. I have those points highlighted and I will go
10 through those when we come to them if you don't mind?

11 A. Perfect, no, that's fair.

12 Q. But subject to those alterations, which we will come to
13 today, you were doing your best to tell the truth to the
14 PIRC and as accurate as you could be?

15 A. Absolutely.

16 Q. Thank you. And then can we look at SBPI 63, please, and
17 this should be your Inquiry statement. Now, it is
18 headed up "Response to Rule 8 request" and, as you will
19 have heard me say to other officers, you were sent
20 a large number of questions by the Inquiry team and you
21 and your lawyers prepared this statement yourselves and

TRANSCRIPT OF THE INQUIRY

1 sent it into the Inquiry team.

2 A. Yes.

3 Q. So although it is headed up "Response to Rule 8
4 request", I'm just going to call that your Inquiry
5 statement?

6 A. No problem.

7 Q. Great. Can we look at the final page, please, just
8 where -- thank you. After paragraph 89 it says:
9
10 "I believe the facts stated in this witness
11 statement are true. I understand that this statement
12 may form part of the evidence before the Inquiry and be
13 published on the Inquiry's website."
14
15 And in light of that, although we don't see it on
16 the screen, on your hard copy you've got a signature
17 there, your signature?

18 A. Yes.

19 Q. And -- thank you, that's great. My understanding is
20 that that statement was dated 1 May 2022.

21 A. Yes, that probably is about right actually, yes.

22 Q. Is that about right?

23 A. Yes, it is.

TRANSCRIPT OF THE INQUIRY

- 1 Q. Thank you. So are you happy that you've got your
2 statements that you might want to refer to in front of
3 you?
- 4 A. Yes, I am.
- 5 Q. And then in addition, to your left you will see
6 a spreadsheet which is a combined video and audio
7 timeline. You may have seen me refer to this with other
8 people. You will see on the left there's a column with
9 timings on it and then just left of centre you will see
10 transcripts of Airwaves messages?
- 11 A. Yes.
- 12 Q. You can see one at the bottom of page 1 of the
13 spreadsheet.
- 14 A. Yes.
- 15 Q. And to the right-hand side you will see "Description of
16 visible events in video"?
- 17 A. Yes.
- 18 Q. And that's a sort of thumbnail of what can be seen in
19 the CCTV. If you have seen other evidence you might
20 have seen us play footage, combined footage --
- 21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. So you are probably reasonably familiar with that but if
2 you have any questions as we go through this morning,
3 you can ask.

4 A. No problem, thanks.

5 Q. Thank you. And we can dip into that spreadsheet.

6 So when your lawyer, Ms McCall QC, spoke on your
7 behalf on 11 May, which was the day of the opening
8 statements, she said -- and I'm paraphrasing -- that you
9 want the Chair to get to the truth of what happened and
10 that's why you're here today, and does that remain the
11 position?

12 A. Yes, absolutely.

13 Q. Thank you.

14 Let's start by just saying first of all, you weren't
15 at the scene in Hayfield Road when there was an Airwaves
16 transmission saying an officer had been injured. At
17 that time you were on your way to Hayfield Road with
18 Daniel Gibson?

19 A. That's correct.

20 Q. And can we look, please, at the evidence video timeline
21 and I will just play a minute of this footage just to

TRANSCRIPT OF THE INQUIRY

1 let you see it, starting at 7.21. We're just going to
2 play a minute of this. Just watch it and look at the
3 CCTV, if you don't mind.

4 (Video played)

5 Thank you very much. Could we go back to 7.21.46
6 and we will just keep that -- or just slightly -- you
7 see in the footage there a police car at the front
8 coming up Hendry Road, and as it carries on -- and maybe
9 we could play a second or two, Ms Wildgoose -- this car
10 here, thank you, the car that then turns right into
11 Hayfield Road; do you recognise that?

12 A. Yes, I do, yes.

13 Q. And is that the Vauxhall Astra estate car that you and
14 Daniel Gibson were in?

15 A. That's correct.

16 Q. And we have heard that that might have been called the
17 diary car?

18 A. Yes.

19 Q. You recognise that?

20 A. Yes.

21 Q. And who was driving?

TRANSCRIPT OF THE INQUIRY

1 A. PC Daniel Gibson was driving that.

2 Q. Were you in the front passenger seat?

3 A. That's correct.

4 Q. Thank you. Could we maybe have a look now at your

5 Inquiry statement, please, and we will look at

6 paragraph 1 first of all. And here you describe that

7 you were working the day shift that started at 7.00 in

8 the morning and at 10-past you were in the sergeant's

9 room. Who was the sergeant?

10 A. That morning it was PS Scott Maxwell.

11 Q. Thank you. And you heard a call on your Airwave radio

12 about a large male walking down Templehall Avenue in

13 possession of a knife, and Scott Maxwell instructed all

14 units to attend the call and that included yourself and

15 PC Gibson?

16 A. That's correct.

17 Q. And were you on what's known as a response team,

18 response team number 4?

19 A. That's correct, yes.

20 Q. And so did you make arrangements then to go and attend

21 in relation to that knife incident?

TRANSCRIPT OF THE INQUIRY

1 A. Yes, I did, yes.

2 Q. Thank you. And I think you say:

3 "All available units would attend a call of this

4 nature due to the potential danger it presented."

5 What do you mean by that?

6 A. The fact that there's a knife been mentioned, it's

7 a lethal weapon. The more units you can have going

8 there, the better, just simply for if there was anyone

9 to get injured there's more officers there to try and

10 get a hold of the situation.

11 Q. So that was the norm for a knife call in 2015?

12 A. Yes, if the units are available, certainly, yes.

13 Q. Yes. And can I ask you a little about previous knife

14 incidents that you had attended. I appreciate you have

15 told us you had only been a probationer for six months

16 at that stage. As part of the work you were doing, had

17 you attended knife incidents?

18 A. Yes, I would have attended knife incidents. I'm

19 struggling at that time to think of a specific incident

20 that I have attended. It's one of those ones if -- if

21 I knew I was going to get asked that question I would

TRANSCRIPT OF THE INQUIRY

1 probably take a note of them, but I would say that they
2 are relatively common to some degree throughout your
3 working set of shifts.

4 Q. What do you mean by "common"?

5 A. Well, I would put different types of knife incidents in
6 the sort of same bracket as a knife incident, so, for
7 example, a mental health call, someone in possession of
8 a knife harming themselves, cutting their wrists or
9 whatever, I would probably put that in the bracket as
10 a knife incident; a robbery, for example, someone in
11 possession of a knife to gain property from another
12 person or -- obviously that's a knife incident; or just
13 a general disturbance, a fight with people in possession
14 of weapons or knives or sharp implements. So I would
15 probably place all of them in that sort of same
16 category.

17 Q. How often would you be called out to one of those
18 incidents?

19 A. Putting an exact figure is difficult, however -- so in
20 a set of shifts, there's six shifts in a set, I would
21 probably say maybe four or five in that set, set of

TRANSCRIPT OF THE INQUIRY

- 1 shifts that you would maybe attend involving a knife.
- 2 Q. Is a set a week for you?
- 3 A. Yes, yes, essentially.
- 4 Q. Is that what you mean?
- 5 A. Yes.
- 6 Q. So that's like a week you will do six shifts?
- 7 A. Yes.
- 8 Q. And you would maybe attend knife incidents for four out
- 9 of the six of them?
- 10 A. Yes.
- 11 Q. And we have heard that one of the other probationers,
- 12 a PC Good, was attending with her tutor constable,
- 13 Smith, and were you there -- were you not needing
- 14 a tutor constable at that stage?
- 15 A. No, so you are -- the first three months of your
- 16 probationary period is when you are with your tutor
- 17 constable, so I was kind of outwith that period, so
- 18 I was working with other members on the shift.
- 19 Q. Right, and just doing the normal work that they would
- 20 do?
- 21 A. Yes, yes.

TRANSCRIPT OF THE INQUIRY

- 1 Q. Right. Of any of the incidents that you had attended
2 prior to 3 May 2015, had any involved a black man with
3 a knife?
- 4 A. No, I don't believe so, no.
- 5 Q. Had any involved the person being under the influence of
6 drink or drugs?
- 7 A. Again, it's difficult to think of exact scenarios or
8 incidents, but yes, I would say that there would have
9 been probably a fair amount, to be fair.
- 10 Q. What's a fair amount, could you help us?
- 11 A. Again, I would probably -- it's difficult to put an
12 exact figure on it, but maybe again three or four times
13 in a -- maybe even more, actually, in a set of shifts.
- 14 Q. Right. And you mentioned mental health calls where
15 maybe someone is self-harming. How often would that
16 happen?
- 17 A. I would say they're more common now, but they were still
18 relatively common back in 2015 as well. Again, putting
19 an exact figure on it is very difficult, but I would
20 maybe go -- maybe say maybe once a shift.
- 21 Q. Once a shift?

TRANSCRIPT OF THE INQUIRY

- 1 A. Yes.
- 2 Q. Right. And so would that be once a shift, some would
3 have knives or sharp implements and some wouldn't?
- 4 A. Yes.
- 5 Q. In the six months you had been a probationer attending
6 these types of calls, how many had involved you using
7 your CS spray?
- 8 A. I've never used my CS spray and I still haven't to date.
- 9 Q. Right. How many had involved you using your baton?
- 10 A. Again, I've never used my baton and still to this day
11 I have not used it.
- 12 Q. How many had involved restraint?
- 13 A. Restraint -- would you class putting handcuffs on
14 someone as restraint, or hands on? Because I --
15 certainly I have used my Fast Straps before prior to
16 this incident, so yes, again, putting a figure on it is
17 difficult, but I have definitely used some form of
18 restraint to deal with an incident.
- 19 Q. We have heard that there's different levels of
20 restraint.
- 21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. And it can even be just holding someone by the wrist.

2 A. Yes.

3 Q. Or it could be a much more vigorous restraint.

4 A. Yes.

5 Q. You have said you used leg straps or Fast Straps; could
6 you give us some more information about the time you had
7 used Fast Straps?

8 A. Yes, it didn't involve a knife, however, I still used
9 them. So it was -- I can't remember the exact date and
10 time, but essentially we were called to a disturbance
11 within a flat, somewhere in Fife. As always, it's
12 always a top floor flat that you're going to, and the
13 nature of the call, it was like a domestic type call,
14 I can't remember if it was domestic violence or verbal
15 abuse, I can't quite remember.

16 There was a couple of us -- a couple of units
17 attended, maybe three, so you're looking at maybe four,
18 five, six officers attending, and when we arrived there
19 was a male on the outside of the front door to the flat
20 on the landing, banging on the door trying to get in,
21 shouting verbal abuse, so we took him aside. Other

TRANSCRIPT OF THE INQUIRY

1 officers established or tried to establish what the
2 criminal intent was, or what crimes had been committed.
3 We gained enough evidence to bring him into custody, so
4 handcuffs were applied on the gentlemen to the rear and
5 he -- it was at that point when he realised he was
6 getting arrested he started kicking off, he started
7 trying to bite officers, trying to spit on officers and
8 using his legs to kick, and at that point the most
9 reasonable thing to do was to place him on the ground,
10 get the leg restraints on him so that 1, officers were
11 safe, he was safe and it was -- we were able to safely
12 take him down the flights of stairs to the van without
13 him obviously kicking out and people falling down the
14 stairs and that sort of stuff, so that's one incident
15 that I remember using them prior to May 2015.

16 Q. So that was on the top landing of a block of flats?

17 A. Yes, it was about three floors up, I think I remember it
18 being.

19 Q. We have looked previously at a standard operating
20 procedure, a SOP, that says if you're putting leg
21 restraints on, the person should be prone?

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. And is that the method that was adopted when you used
3 them?

4 A. Yes, it was, yes.

5 Q. So the person was prone, the leg restraints went on and
6 then he was escorted down to the van?

7 A. Yes.

8 Q. And were the handcuffs on first?

9 A. Yes, they were, yes.

10 Q. You have told us quite a lot about some of the cases, or
11 calls you had attended prior to May 2015; for the ones
12 that you didn't use your spray or your baton, or
13 restraint, how did you manage to avoid using those
14 pieces of equipment or those techniques?

15 A. You're best to use your voice, communication skills.
16 You generally find that there's no timescale on how long
17 it should take to be able to communicate with someone,
18 but even if someone is at least giving you some sort of
19 response you can generally keep going down the route of
20 communication and eventually they will come down to your
21 level in understanding and become compliant,

TRANSCRIPT OF THE INQUIRY

1 essentially, yes.

2 Q. So you're saying no timescale?

3 A. Yes.

4 Q. What do you mean by that?

5 A. Just be patient with people. Just trying to -- even if

6 you're just getting abuse, to me it's still something,

7 so just keep persevering with them and eventually you

8 may be able to get them to come into custody without the

9 use of having leg restraints and batons, CS sprays, that

10 sort of stuff.

11 Q. What if you're not getting abuse? What if there's no

12 response? What if they don't say anything to you?

13 Would you still be patient and attempt to communicate?

14 A. Yes, it depends what the threat is at the time

15 I suppose, what the circumstances are, the nature of the

16 call. Kind of all the circumstances really kind of need

17 to be weighed up in that situation.

18 Q. What if you're attending a knife call but you don't see

19 a knife and you don't get a reaction from the person,

20 they just basically ignore you, would you still attempt

21 to communicate with them?

TRANSCRIPT OF THE INQUIRY

- 1 A. You still -- it depends what the threat posed in front
2 of you is in that moment in time. Yes, you could do if
3 you can maintain your distance. However, the fact that
4 there's no knife visible, for me that's a bigger threat,
5 the threat goes up at that point. It's one of those
6 ones in the moment you might revert to using some form
7 of restraint, or if it's still relatively safe to do so
8 you can still communicate. You have still got a couple
9 of options there.
- 10 Q. Right, thank you. Can I ask you about your journey to
11 Hayfield Road. As you were leaving Kirkcaldy Police
12 Office I think you were aware that PC Smith and PC Good
13 were leaving at around about the same time?
- 14 A. Yes, I was aware of -- I was aware of officers leaving.
15 I can't remember if I said it was specifically them
16 but --
- 17 Q. Can we have a look at paragraph 3 of your Inquiry
18 statement. That was the next one I was going to come on
19 to, but I think we may have heard that they were leaving
20 at roughly the same time as you and Constable Gibson?
- 21 A. Yes, I've got no reason to dispute that.

TRANSCRIPT OF THE INQUIRY

1 Q. Then paragraph 3, you talk here about the equipment that
2 you were taking with you.

3 A. Yes.

4 Q. So you had your full PPE, baton, spray, leg restraints,
5 and you say you also had slash-proof gloves.

6 A. Yes.

7 Q. And you say "Personal issue given to me by my tutor
8 constable". Tell us about that?

9 A. I just remember one day that my tutor constable just
10 gave me these slash-proof gloves and said "They're quite
11 handy to have". I don't know where he got them from,
12 but basically how it was explained to me is if you come
13 into any contact with any sharp implement, there may be
14 an occasion, I don't know, that you might have to take
15 control of a blade, but not from the handle, so taking
16 control -- or taking possession of the blade on the
17 bladed side, so these slash-proof gloves are -- the
18 material, it's like -- I would probably describe it as
19 being like a wire mesh-type material that's got like --
20 I think I remember them having some sort of, like,
21 rubber beads on the palms and I think that was

TRANSCRIPT OF THE INQUIRY

1 essentially meant to be sort of -- the material would
2 prevent any slashes and injuries to your hand if you
3 came into contact with a sharp implement like scissors
4 or knives.

5 Q. So another piece of protective equipment for you?

6 A. Yes.

7 Q. But you say that was personal issue; was that not
8 standard issue?

9 A. No, it wasn't, no. Like I say, I'm not too sure where
10 he got them from, but he gave them to me as just,
11 looking out for me, I suppose.

12 Q. And was that something that gave you an added layer of
13 confidence as you approached a potential knife incident?

14 A. Yes, absolutely, yes.

15 Q. And you have said that you:

16 "... released the strap on my baton holder for
17 quicker and easier access if required."

18 Tell us what you were thinking at that time?

19 A. So I think at this point I had already heard the
20 emergency button being activated and with the mention of
21 a knife and an officer injured, you can't help but think

TRANSCRIPT OF THE INQUIRY

1 that a knife's still present, so at this point I know
2 it's only a second or two to release that strap on the
3 baton, but seconds are quite valuable in situations like
4 that I suppose. I think I have just tried to gain any
5 sort of advantage whatsoever so that I can get my
6 equipment at the fastest opportunity.

7 Q. So at that point en route to Hayfield Road there was no
8 information available to you that would allow you to
9 exclude the knife as the cause of the injury to the
10 officer?

11 A. Yes, I had absolutely no information whatsoever what
12 caused the injury, how she -- how the officer was
13 injured. So yes, I still had to go on worst case
14 scenario at that point.

15 Q. Right. And then you say:

16 "I considered maintaining my distance."

17 What do you mean by that?

18 A. Again, at this point I wasn't aware that Mr Bayoh was on
19 the ground, so I had to take it into consideration that
20 he was still on his feet, considering his actions, so
21 maintaining your distance if he is still in possession

TRANSCRIPT OF THE INQUIRY

1 of a knife, or if you suspect he is maybe still in
2 possession of a knife, maintain your distance so that
3 the gap is big enough so that you can keep yourself
4 safe, essentially, and not come into contact with any
5 knife.

6 Q. And then you mention:

7 "... tactical cover options if the subject was
8 visibly armed with a knife."

9 What are tactical cover options?

10 A. That's your CUT principle, I think it was mentioned
11 previously, so create distance, utilise cover and
12 transmit. So creating distance would be kind of what
13 I touched on there, just maintaining that gap.
14 Utilising cover could be anything, police car, it could
15 be a wall, a hedge, literally anything, any obstacle in
16 the way to sort of maintain -- again, maintain that gap
17 and transmitting will be transmit what you see on the
18 radio.

19 Q. Transmit as in send a message or feedback on the
20 Airwaves -- on the radio?

21 A. That's correct, yes.

TRANSCRIPT OF THE INQUIRY

1 Q. Thanks. And effectively is this you thinking about your
2 risk assessment and carrying out risk assessment
3 en route to Hayfield Road?

4 A. Yes, yes.

5 Q. Thank you. And you have said you were aware an
6 emergency button had been pressed; can I ask you, as
7 well as that, were you aware of Hayfield Road?

8 A. Yes, I was, yes.

9 Q. So you had spent some time in Kirkcaldy at that stage?

10 A. Yes.

11 Q. You were familiar with the area?

12 A. Yes.

13 Q. And did it make any difference to your risk assessment
14 that you knew the area?

15 A. It certainly helps, I would say, just having an
16 awareness of where it is, having an awareness of the
17 quickest route to get there, the fact that it's within
18 a built-up area and that there's various other
19 hospitals, et cetera, that are in the area, so yes, that
20 does help to know the area, absolutely.

21 Q. So you were aware that there's the Victoria Hospital in

TRANSCRIPT OF THE INQUIRY

1 the area?

2 A. Yes.

3 Q. But also the psychiatric hospital, Whytemans Brae?

4 A. Yes.

5 Q. And did it cross your mind that this might be someone

6 from Whytemans Brae or the hospital?

7 A. To be honest, I can't remember at that moment in time if

8 I did consider that, however, certainly if you got to

9 the position where you were able to control the

10 individual and be able to have some sort of dialogue

11 with him, it would probably be at that point that you

12 would be able to start to think about options like that.

13 Q. So we have heard about the National Decision-Making

14 Model and how people are trying to get more information,

15 new information in and then review, go round the cycle

16 of the decision-making.

17 A. Yes.

18 Q. Is that the sort of thing you were doing?

19 A. Yes, yes.

20 Q. Yes. And at the time you were en route, can you tell us

21 who was in charge of this incident, who was sort of the

TRANSCRIPT OF THE INQUIRY

- 1 senior officer?
- 2 A. I would probably just say at that point PS Maxwell.
- 3 Yes, I would say him at that moment in time, yes.
- 4 Q. Okay. We have also heard about the area control room
- 5 and their involvement. There was some communication
- 6 with them prior to your arrival. What was your
- 7 understanding of their involvement with this incident at
- 8 Hayfield Road when you were en route?
- 9 A. Well, it's difficult to remember exactly what my
- 10 understanding was at that moment in time, but it would
- 11 probably just be that they were monitoring the fact that
- 12 there's a knife involved and they will obviously see
- 13 more calls coming in than what's getting distributed to
- 14 us at the time, so they will be monitoring the calls as
- 15 well to be able to assess it properly if -- what
- 16 resources are needed.
- 17 Q. Do you remember saying anything to Constable Gibson on
- 18 the way?
- 19 A. The only thing that I remember saying to PC Gibson was
- 20 something along the lines of "We may have a problem
- 21 here", and that was -- I think that was in sort of

TRANSCRIPT OF THE INQUIRY

1 response to seeing the emergency button being activated,
2 or I think maybe at that point we had heard two or three
3 calls getting relayed to us about the context of the
4 call.

5 Q. When you say "calls", what do you mean?

6 A. So the controller will be telling us on the radio
7 "That's another call" -- I think they were using the
8 grade 1/grade 2 calls at that time, so "That's another
9 grade 1 call, male walking down Hayfield Road with
10 a knife", something like that.

11 Q. We have heard that officers on the way couldn't actually
12 hear the 999 calls, or the other calls, but they were
13 maybe aware of a number of calls coming in on the way?

14 A. Yes, yes.

15 Q. And you were in the same boat?

16 A. Yes.

17 Q. And then you knew that an emergency button had been
18 activated. Did you know whose it was?

19 A. PC Ash Tomlinson, Ashley Tomlinson is the one that
20 I remember seeing.

21 Q. Thank you. And do you remember who said an officer had

TRANSCRIPT OF THE INQUIRY

1 been injured?

2 A. I was of the impression it was PC Craig Walker. I can
3 obviously see from the -- sort of the transcripts of the
4 radio messages that it was actually PC Alan Paton but
5 I think they probably sound quite similar actually in
6 that moment of shouting.

7 Q. We have heard other evidence from other officers saying
8 they thought it was PC Paton, but would you like to hear
9 that message and see if you can identify him or are you
10 happy to accept it might be a mistake on your part?

11 A. Yes, I'm happy to accept that, it's just my perception
12 at the time.

13 Q. No, that's fine, thank you.

14 Can I ask you, as you were approaching
15 Hayfield Road, in paragraph 8 of your Inquiry statement
16 you mention that you were anxious and we have heard
17 evidence from other officers about this and how they
18 were feeling, and I just wonder if you could maybe
19 explain to us your state of mind at that time?

20 A. Yes, absolutely. So there's a few -- I think "anxious"
21 is probably the best way to describe how I was feeling

TRANSCRIPT OF THE INQUIRY

1 at that time, and probably the best way I can describe
2 it is one, I was able to hear that there was one or two
3 or three calls coming into the police, or making us
4 aware of what was happening, the fact that a knife was
5 involved, you're -- you will have heard it before, but
6 there's always a hope that this could be
7 a misunderstanding or a hoax, but when you hear three
8 calls coming in of all apparently credible witnesses,
9 all mentioning a knife, you can probably start to say --
10 think at that point that this is actually happening.
11 The fact that a radio -- sorry, a red button activation
12 had been made -- I'm also aware now that there was two,
13 but at the time I was only aware of one, and that
14 an officer had been injured with no context or anything
15 whatsoever.

16 But what I would say as well -- so this is kind of
17 touching on what I said previously about mental health
18 calls, or an example of a robbery, or a disturbance,
19 a fight ongoing with knives, you have an idea of all
20 three of them calls what the intentions are, or the
21 motive, so the mental health call, the intent is to harm

TRANSCRIPT OF THE INQUIRY

1 themselves, but you can't discount that maybe an officer
2 could get injured, but you've got an idea. The robbery,
3 again, the intention is to gain property from another
4 person. Again you can't discount that an officer could
5 get injured if you come across it, but again you have
6 an idea what the intent was, and the same for the
7 disturbance call, a fight ongoing, the intent is to harm
8 another person who is involved in that disturbance.

9 With this call it was -- there was nothing
10 immediately jumping out at you of what is the intent
11 here, and I think that probably adds to the anxiousness.

12 Q. So it was out of the ordinary for you to attend a call
13 where you couldn't see that intent?

14 A. Yes, yes.

15 Q. Thank you. And you have told us you were a probationer,
16 you were with PC Gibson. You have had your training,
17 you've got your equipment: did it make any difference
18 that you were with PC Gibson and that you knew the area
19 and that you had your equipment?

20 A. No, it didn't make a difference but I had worked a few
21 shifts with him before, so you start to get to

TRANSCRIPT OF THE INQUIRY

1 understand how other people work, so yes, it didn't make
2 a difference that I was working with PC Gibson and not
3 PC Walker, for example.

4 Q. And when you say you had worked a few shifts with
5 PC Gibson, can you tell us how many or roughly?

6 A. I'm trying to think because -- so there would have been
7 three months at that point where I was going around the
8 team. Honestly it's very difficult to say. Maybe if
9 I had to try and put a figure on it maybe two or three
10 times a set of shifts. Again, it just depends who is
11 on duty. He could be on annual leave for a period of
12 time as well but yes, we certainly had worked a few
13 shifts together.

14 Q. Okay. And then am I right in saying you're 5 foot
15 6.5 inches tall?

16 A. Yes.

17 Q. And in May 2015 you were 10 stone 2?

18 A. That's correct.

19 Q. And are you similar today?

20 A. I'm 11 stone now.

21 Q. Right. You're the first person that has told me his

TRANSCRIPT OF THE INQUIRY

1 weight, thank you.

2 So we have also heard other evidence that the fact
3 that PC Paton and PC Walker were at the scene maybe may
4 have given some others confidence because they were
5 experienced officers; is that something that crossed
6 your mind or not?

7 A. Yes, I think it would, actually, to some degree. You
8 have also got PC Smith as well, but I would say probably
9 back then that maybe our team maybe had -- I can't
10 remember who was on the other teams at Kirkcaldy but
11 I would say that our team was quite lucky with quite
12 a lot of experience on it, so yes, it does make
13 a difference that experienced officers are attending
14 a call of that nature, yes.

15 Q. And in a team dynamic, would the team look to those
16 experienced officers to provide guidance or support in
17 some way?

18 A. Yes. Certainly with me literally just coming out of the
19 college, I have still got a lot to learn, still finding
20 my feet at that point, absolutely I will use the
21 advantages of the experienced officers to get advice,

TRANSCRIPT OF THE INQUIRY

- 1 guidance, how to deal with certain things, yes, so it
2 does reassure you as well.
- 3 Q. So you're not seeking that -- you're not tapping into
4 just the experience of your tutor constable --
- 5 A. Yes.
- 6 Q. -- you're tapping into experience of other more senior
7 officers as well?
- 8 A. Yes.
- 9 Q. Thank you. We looked at video footage a moment ago of
10 your arrival in your diary car with Constable Gibson.
11 I would like to ask you some questions about what
12 happened when you arrived and it would be maybe helpful
13 if I could show you an image because you have probably
14 seen some 3D images on the screen.
- 15 A. Yes.
- 16 Q. And I think if we look at still images 2 and maybe look
17 at image 4 to begin with. We have heard that this is
18 Hayfield Road and on the left-hand side would be the
19 roundabout with Hendry Road?
- 20 A. Yes.
- 21 Q. And we saw you coming round that roundabout in the car,

TRANSCRIPT OF THE INQUIRY

1 and we have also heard evidence that there's a Transit
2 van at the bus stop on Hayfield Road.

3 A. Yes.

4 Q. That was sometimes called the 1-9?

5 A. Yes.

6 Q. Behind that on the same side of the road was the fish
7 van --

8 A. Yes.

9 Q. -- that contained Tomlinson and Good when it arrived.
10 The van in the middle of the road facing towards the
11 roundabout was driven by Smith with PC Good in the
12 passenger seat?

13 A. Yes.

14 Q. And then we see the car on the left-hand side closest to
15 the roundabout; was that the diary car?

16 A. Yes, it was, yes.

17 Q. So do you think that's a reasonable indication of where
18 your car stopped in Hayfield Road?

19 A. Yes, I would say so, yes.

20 Q. When you got out of the car, what could you see?

21 A. So I got -- when I got out of the car I could see,

TRANSCRIPT OF THE INQUIRY

1 I think it was four other officers around Mr Bayoh who
2 was on the ground at this point, just on roughly the
3 pavement kind of where the dip in the kerb is. That's
4 where I remember it roughly to be.

5 Q. So have you seen other people using the red circles?

6 A. Yes.

7 Q. So if you touch the screen, you can create a red circle
8 where Mr Bayoh was.

9 A. Okay.

10 Q. And if you're not comfortable with that position or you
11 want to adjust it, you can put your finger on it and
12 move it about, or we can take it away. If that doesn't
13 work, we can take it away.

14 A. Yes, I'm happy with that position.

15 Q. Are you happy with that?

16 A. Yes.

17 Q. So that's on the pavement area near to a hedge at the --
18 on Hayfield Road.

19 A. Yes.

20 Q. And that's where you recollect Mr Bayoh being?

21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. And can you tell us was his head closer to the hedge or
2 further away from the hedge?

3 A. His head was certainly pointing towards the hedge, the
4 distance, I'm not entirely sure between the hedge and
5 him, I'm not entirely sure of that, but I would say it
6 was relatively close, maybe a couple of yards.

7 Q. And where were his feet?

8 A. His feet were facing the road.

9 Q. Facing the road. And you have come out of the diary
10 car. Was PC Gibson also getting out of the diary car
11 with you?

12 A. Yes.

13 Q. What did -- you said you saw four officers?

14 A. Yes.

15 Q. Tell us where you saw them?

16 A. So I remember seeing -- is it okay just to look at my
17 PIRC statement first?

18 Q. Yes, please do. If you would like we can look at
19 PIRC 273.

20 A. Yes.

21 Q. We can have that on the screen, and maybe page 4. If we

TRANSCRIPT OF THE INQUIRY

1 look at paragraph 1, so you have -- as we finish page 3
2 it says:

3 "I looked down Hayfield Road and saw Nicole Short
4 standing slumped over next to the cell van which was
5 facing towards Daniel and myself and was about 30 yards
6 away. Nicole was holding her stomach area and she
7 looked distressed. I also saw Kayleigh Good walking
8 towards Nicole from the opposite end where I was. She
9 was only a few yards from Nicole. Although I wasn't
10 aware of how bad Nicole's injury was I felt better when
11 I knew that Kayleigh was going to assist her. I then
12 focused my view to the other side of the road, about
13 10 yards where Daniel and myself had stopped.

14 "I observed a black male lying on the ground. He
15 was wearing a white T-shirt and blue jeans. He was
16 lying on his stomach face down. I saw that there were
17 officers dealing with this male. The officers were
18 Alan Smith, Craig Walker, Alan Paton and
19 Ashley Tomlinson."

20 Do you see that?

21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. Let's go back to -- we can come back to this statement
2 in a moment, but let's go back to the 3D image that we
3 had. So you were going to tell us -- so we've got
4 number 1 and the red circle there where Mr Bayoh was.
5 Tell us -- you're obviously getting out the diary car.

6 A. Yes.

7 Q. Tell us where the four officers were.

8 A. So I remember seeing PC Walker on his own knees, round
9 about his -- waist of Mr Bayoh, facing Gallaghers, so he
10 would have been kind of facing towards me and Dan
11 essentially, me and PC Gibson.

12 I remember seeing PC Paton near to his head, again,
13 just kneeling down, and I saw, or my recollection is
14 that PC Alan Smith was at Mr Bayoh's legs and
15 PC Ashley Tomlinson was kneeling down round about his
16 head area as well, facing sort of Craig Walker,
17 PC Walker.

18 Q. Right. I'm going to take you through that a bit more
19 slowly, if that's okay. So you are looking at
20 a restraint where Mr Bayoh is on the ground.

21 A. Yes.

TRANSCRIPT OF THE INQUIRY

- 1 Q. And you said in paragraph 2, on page 4, that he was
2 lying on his stomach face-down.
- 3 A. Yes.
- 4 Q. In terms of face-down, what did you mean?
- 5 A. I didn't literally -- I accept that I have probably said
6 this but I don't literally mean face-down to the
7 pavement. I remember his face being facing towards
8 Gallaghers, so his left ear would be sort of touching
9 the pavement.
- 10 Q. So not nose on the ground?
- 11 A. No, no, that's correct, yes.
- 12 Q. Which might be the impression from "face-down".
- 13 A. Yes.
- 14 Q. We have heard Gallaghers is on the left of image 4.
- 15 A. Yes.
- 16 Q. So his left ear was turned towards Gallaghers, or the
17 roundabout at that end of Hayfield Road?
- 18 A. Yes, so his face was pointing towards Gallaghers.
- 19 Q. But his stomach was on the ground?
- 20 A. Yes.
- 21 Q. Thank you. And then you have talked about PC Walker.

TRANSCRIPT OF THE INQUIRY

- 1 Now, was he on the opposite side of Mr Bayoh from you,
2 or the same side of Mr Bayoh?
- 3 A. So he was on the opposite side to me, so if Mr Bayoh was
4 on his stomach, PC Walker was on his left side, on his
5 knees, at his waist facing Gallaghers.
- 6 Q. So let's just go through that. So Mr Bayoh's on his
7 stomach, face-down, facing towards Gallaghers, his head
8 is closest to the hedge. And could you see the front of
9 PC Walker or the back of PC Walker?
- 10 A. The front.
- 11 Q. The front. So was he on -- as you say, he was on
12 Mr Bayoh's left?
- 13 A. Yes.
- 14 Q. And you described him as being in the waist area of
15 Mr Bayoh?
- 16 A. Yes.
- 17 Q. What I'm going to do is ask you at some point to come
18 out and demonstrate but I will do it all at once if
19 that's okay.
- 20 A. Yes, no problem.
- 21 Q. So he was in the waist; can you describe to us how he

TRANSCRIPT OF THE INQUIRY

1 was positioned?

2 A. He was just on his knees and I'm not entirely sure what

3 he was doing at that point, I can't say that I stopped

4 long enough to see, to check what he was doing, but he

5 was certainly just on his knees, by his side.

6 Q. Could you see what he was doing with his hands or his

7 arms?

8 A. At that point, no, no. Later on I remember, which we

9 will obviously come to it --

10 Q. We can come to that.

11 A. -- but at that moment in time I couldn't see.

12 Q. Okay. Then PC Paton you said, again, kneeling near his

13 head, is that near Mr Bayoh's head?

14 A. Yes.

15 Q. So was he closer to the hedge?

16 A. Yes, he was.

17 Q. So he would be to PC Walker's left?

18 A. That's correct, yes.

19 Q. And then you say PC Smith was at Mr Bayoh's legs?

20 A. Yes.

21 Q. So was he -- as you looked at this, was he on the left

TRANSCRIPT OF THE INQUIRY

1 as you looked at what was happening?

2 A. So he was -- so PC Smith would have had his back to me,
3 so he would have been on -- I think I remember him being
4 on Mr Bayoh's right side.

5 Q. Mr Bayoh's right?

6 A. Yes.

7 Q. In the legs area?

8 A. Yes.

9 Q. What was he doing?

10 A. I remember him just trying to control his legs, they
11 were kicking out at that point and he was just trying to
12 control him just to prevent him from getting back onto
13 his feet.

14 Q. Right. And is there anything else you could see
15 PC Smith doing at that moment?

16 A. No, not that I can remember.

17 Q. Okay. Then you have talked about PC Tomlinson kneeling
18 in the head area. Can you explain to us where
19 PC Tomlinson was at that point?

20 A. So the head area -- I would probably say it's more at
21 his shoulder, like in-between sort of the shoulder and

TRANSCRIPT OF THE INQUIRY

1 head. So he would have been on the same side as
2 PC Smith, on the right side of Mr Bayoh, and I remember
3 him -- or my recollection is that he was trying to
4 control his right arm.

5 Q. Right. So did he have his back to you, PC Tomlinson?
6 A. Yes.

7 Q. So Smith and Tomlinson were on Mr Bayoh's right?
8 A. Yes.

9 Q. And Walker was on Mr Bayoh's left, and PC Paton was near
10 to the head area?
11 A. Yes. I would say maybe PC Tomlinson was maybe more kind
12 of like side on, so that I could see -- I could see what
13 he was doing. He was kind of -- like half back to me
14 but half side-on at the same time, kind of like angled.

15 Q. Thank you. I wonder if you could come and demonstrate
16 for us the different positions that you saw people in at
17 that moment.
18 A. Yes, no problem.

19 Q. I will just give you their names and ask you to
20 demonstrate and I will say it because the audio isn't
21 good in the middle.

TRANSCRIPT OF THE INQUIRY

- 1 A. Okay.
- 2 Q. Thanks. So if you just come in. You will see a bit of
3 sticky tape on the floor and if you stick to that,
4 roughly that area.
- 5 So first of all, if you can demonstrate Mr Bayoh's
6 position, please.
- 7 A. Yes, kind of like that. I'm not entirely sure where his
8 arms were at this point, but it was kind of like that
9 (indicating).
- 10 Q. So you're lying down on your front, stomach to the front
11 with your head turned to your right, with your left ear
12 on the ground?
- 13 A. Yes, that's correct.
- 14 Q. And you're not sure about your arm position?
- 15 A. Yes.
- 16 Q. And then can we see the position, if you could
17 demonstrate, of PC Walker first of all?
- 18 A. So just almost imagine that I'm still lying there --
- 19 Q. So we imagine that Mr Bayoh is lying where you just
20 demonstrated and you are now demonstrating what
21 PC Walker was doing?

TRANSCRIPT OF THE INQUIRY

- 1 A. He is just on his knees, just exactly like this, by his
2 waist, just imagine that sticky tape there is sort of in
3 line with his waist, he is just either side of there.
- 4 Q. So you're actually on your knees and you're upright?
- 5 A. Yes.
- 6 Q. You're not leaning over at all?
- 7 A. Not at that point, no.
- 8 Q. And then PC Paton?
- 9 A. So just to the left of PC Walker, I can't say if he was
10 on his knees. He probably would have been, been that
11 low to the ground, but just at his head. I'm not
12 entirely sure if he was trying to control an arm or
13 anything at that point, I can't be certain.
- 14 Q. So again, you are on your knees, upright, slightly at an
15 angle, that would have been to PC Walker's left?
- 16 A. Yes.
- 17 Q. And then PC Smith?
- 18 A. PC Smith was at the other end, just down at his legs,
19 just trying to control them, again, just on his knees
20 just trying to control his legs.
- 21 Q. Right, and again, you're on your knees, quite upright,

TRANSCRIPT OF THE INQUIRY

1 but your arms were out towards the legs of Mr -- or
2 you're demonstrating PC Smith.

3 A. Yes.

4 Q. And then PC Tomlinson?

5 A. Just to the right of PC Smith, so angled -- that's what
6 I mean, so I have come in from this direction so I can
7 kind of see an angle. He is again just on his knees
8 trying to control the right arm of Mr Bayoh.

9 Q. Right. So again you're on your knees, you're upright;
10 was PC Tomlinson -- were his arms forward, trying to
11 control Mr Bayoh's arms?

12 A. Yes, so there was a lot of movement at this point and he
13 has -- I can see Mr Bayoh trying to lift his arm up and
14 his kind of position is changing at this point.

15 Q. We can't get the audio of that so I will ask you to come
16 back to the microphone and you can describe that to us.
17 Thank you very much.

18 So you were just about to move on to explain to us
19 the movement that you could see from Mr Bayoh when you
20 arrived.

21 A. Yes. So I could see that his legs were sort of lashing

TRANSCRIPT OF THE INQUIRY

1 out. There was a lot of movement in his legs which
2 PC Smith was trying to control, and in terms of his
3 upper body, I just remember it being his right arm that
4 PC Tomlinson was trying to control. He was using that
5 to pull himself up, just like palm to the ground and
6 trying to lift himself, so his body is kind of tilted at
7 this point.

8 Q. So you're putting your right palm on the desk in front
9 of you, palm-down?

10 A. Yes.

11 Q. And you're moving your right shoulder in a sort of
12 upward direction?

13 A. Yes.

14 Q. And that was going on when you arrived?

15 A. Yes.

16 Q. And -- thank you. So in terms of the movement of the
17 legs, could you describe that in any more detail?

18 A. It's just sort of in that sort of lifting motion to try
19 and lift them up or -- he can maybe -- I don't know --
20 he can maybe feel PC Smith having control of him, he is
21 maybe trying to escape that sort of grip, but yes, it

TRANSCRIPT OF THE INQUIRY

1 was just generally sort of thrashing out, lifting them
2 up just repeatedly.

3 Q. And were all the officers there at that time trying to
4 restrain Mr Bayoh --

5 A. Yes.

6 Q. -- to the ground?

7 A. The four that I have described, yes.

8 Q. Yes. And would you be able to describe the force that
9 they were using in trying to restrain Mr Bayoh?

10 A. Force, certainly it's -- there was no body weight on him
11 at that point. The force is literally just using their
12 arms to try and keep his legs down and try to get his
13 arm to put a handcuff on.

14 Q. There were no handcuffs on at that stage, were there?

15 A. No, no, I don't believe there was.

16 Q. Or leg restraints?

17 A. No.

18 Q. Now, in your PIRC statement you did mention seeing
19 PC Short and PC Good.

20 A. Yes.

21 Q. Perhaps on the image on the screen you could show us

TRANSCRIPT OF THE INQUIRY

1 where PC Short was when you arrived?

2 A. Yes. So I think it's the big Transit van. I'm just

3 trying to -- around about --

4 Q. We will take that one away.

5 A. So...

6 Q. Maybe just take that away, Ms Wildgoose, and we can just

7 try and touch the screen where you saw her.

8 A. Let's try that.

9 Q. Sorry, let's try that.

10 A. So, that side of the van.

11 Q. At number 3, at number 3. So that's what we have been

12 calling the Transit van but you may have mentioned that

13 it was the custody van?

14 A. Yes.

15 Q. So she is at the passenger side, the near side to the

16 rear?

17 A. Yes.

18 Q. And where was PC Good?

19 A. I think I remember her being at PC Short's right-hand

20 side just like sort of facing her.

21 Q. Were they both in the region of number 3?

TRANSCRIPT OF THE INQUIRY

1 A. Yes, yes.

2 Q. Thank you. Right. What did you do -- you have told us
3 how you came out of the diary car, you saw the scene,
4 the restraint going on in Hayfield Road.

5 A. Yes.

6 Q. Tell us what you did.

7 A. So I've got out of the car. I can see what I have just
8 described in front of me and I've went to get my leg
9 restraints from -- that were carried on my vest, so they
10 were here (indicating) on like a (inaudible
11 overspeaking) --

12 Q. Your left-hand side?

13 A. Yes, so they were there. I think I maybe said in my
14 statement that I have announced that I'm going to do
15 that, but -- that may be the case, that's my
16 recollection anyway, but I have seen the legs need to be
17 restrained so I have taken my leg restraints out of the
18 holder.

19 Q. Tell us who you're standing near?

20 A. I'm standing near PC Smith, I remember being nearby at
21 that point.

TRANSCRIPT OF THE INQUIRY

1 Q. To his left or right?

2 A. So I would have been to his left.

3 Q. His left?

4 A. Yes.

5 Q. And I wonder if you would look at some leg restraints

6 for us.

7 A. Yes, absolutely.

8 Q. We have heard these are called Fast Straps.

9 A. Yes. Thank you.

10 Q. Do you recognise these?

11 A. Yes, they're all the same.

12 Q. And did you have two Fast Straps?

13 A. Yes, so they come as a pair, in one packet.

14 Q. And you had them with you that day on your left-hand

15 side of your utility belt?

16 A. That's correct.

17 Q. And can you just show us how you unraveled them?

18 A. Just kind of ... well, they're kind of stored in such

19 a way that you can unravel them quickly, so you've got

20 the green tips and it's just a case of pulling them on

21 put and you can just go like that (indicating) with them

TRANSCRIPT OF THE INQUIRY

1 and they extend to obviously its full length.

2 Q. So you have told us you were to the left of PC Smith.

3 A. Yes.

4 Q. What did you do with Mr Bayoh's legs?

5 A. So I think I have come round to the other side, so that

6 I'm on the same side as PC Walker.

7 Q. Right.

8 A. And he is still kicking out at this point, so I'm trying

9 to make -- put his legs into a position that's safer, so

10 that it's harder for him to kick out and I think

11 I remember tilting his ankles slightly -- to a slight

12 angle so that his toes are kind of pointing towards the

13 roundabout and that's purely just so that it's more

14 difficult to get any strength because your muscles

15 are -- muscles in your legs, they're kind of at an

16 angle, it's harder to get more strength, it's more

17 difficult to get the strength to be able to kick out so

18 that's what I remember doing.

19 Q. So his knees weren't facing the ground at that point,

20 you have tilted them?

21 A. Yes. It's just really his ankles that I have kind of

TRANSCRIPT OF THE INQUIRY

1 tilted using, like, the natural movements of, like, your
2 ankle just to tilt them to the side.

3 Q. And they're facing towards Gallaghers pub?

4 A. Yes, more or less, yes.

5 Q. And you're on Walker's side this time?

6 A. Yes.

7 Q. And what was PC Smith doing?

8 A. PC Smith was assisting me with placing the leg
9 restraints on, but I think he was still -- beforehand
10 still moving -- he's helping me positioning his legs
11 essentially to -- so we can get the Fast Straps on
12 effectively.

13 Q. And how did you go about trying to get the Fast Straps
14 on?

15 A. So I remember putting them under his legs just above the
16 knee so you put one leg restraint above the knee to
17 basically control sort of your strongest muscle in the
18 leg, the sort of thighs, so it went underneath his legs
19 so that they come up over the top of the legs.

20 Q. How difficult was that getting it under his legs?

21 A. That's -- that was quite difficult because there was

TRANSCRIPT OF THE INQUIRY

1 still a lot of movement in his legs. You're trying to
2 obviously not get your fingers crushed or kind of stuck
3 in-between the pavement and his legs, so it was quite
4 difficult to do that, but we got there and I remember
5 sort of pulling him round or PC Smith pulled the other
6 end round and I think it was actually PC Smith that
7 I remember tightening the leg restraints.

8 Q. Right. So you got the leg restraint under his -- the
9 lower part of his thigh above his knee, did you say?

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

11 Q. But it was PC Smith that pulled them together?

12 A. Yes.

13 Q. And when you say "We got there", are you talking about
14 you and PC Smith?

15 A. Yes.

16 Q. What did you do then?

17 A. I have then moved down to his ankle. I remember
18 PC Gibson, he was sort of lying across his legs and he
19 has shuffled down as I've got the leg restraints on and
20 then we went to his ankles and just done the exact same
21 procedure, but I think possibly it was -- yes,

TRANSCRIPT OF THE INQUIRY

1 I remember it being me that's tightened them round his
2 ankles at that point.

3 Q. I wonder if you could explain: you have talked about
4 PC Smith and what he was doing and moving the leg straps
5 under Mr Bayoh's knee -- legs; where was PC Gibson when
6 you were trying to do that?

7 A. So PC Gibson would have been -- he is sort of lying
8 across his legs, using his sort of torso, so PC Gibson's
9 legs are out to the side, so they're nowhere near
10 Mr Bayoh, it is just his torso, and you kind of -- when
11 you're lying across somebody you almost, like, cuddle
12 the legs in, and then once that leg restraint has went
13 on, he has moved down the body to then bring in the
14 lower part of -- like his shins, that area, to bring
15 them in closer, the exact same procedure.

16 Q. Could you show us the way that PC Gibson was lying when
17 you were at the legs trying to help with the leg straps?

18 A. Yes, absolutely.

19 Q. Thank you. So if we imagine Mr Bayoh on the ground.

20 A. Yes, just the same sort of format (inaudible
21 overspeaking) --

TRANSCRIPT OF THE INQUIRY

- 1 Q. Same position. And show us where PC Gibson was.
- 2 A. He was feet towards Gallaghers, and he's kind of just
3 leaning over him like that (inaudible overspeaking) his
4 legs.
- 5 Q. So your hips and your legs are on the ground.
- 6 A. Yes.
- 7 Q. Your right shoulder is up, you've got your right palm
8 flat down on the ground.
- 9 A. Yeah.
- 10 Q. And so from your earlier description, that's over the
11 legs of Mr Bayoh.
- 12 A. Yes.
- 13 Q. PC Walker would be to the left of PC Gibson?
- 14 A. (Inaudible - too far from microphone).
- 15 Q. Sorry, PC Walker is on the other side to the right.
- 16 A. Yes.
- 17 Q. And PC Smith was in the leg area --
- 18 A. Yes.
- 19 Q. -- to the left of Gibson?
- 20 A. Yes.
- 21 Q. And PC Tomlinson was to his right?

TRANSCRIPT OF THE INQUIRY

- 1 A. Yes, so he would be there (indicating).
- 2 Q. Here, to his right on this side and PC Paton would be
3 behind PC Gibson?
- 4 A. Yes.
- 5 Q. And Walker is behind PC Gibson?
- 6 A. Yes.
- 7 Q. On the other side?
- 8 A. Yes.
- 9 Q. And where were you at this point?
- 10 A. I was on the same side as PC Walker, so just kind of in
11 front of -- well, I would have been - to get the first
12 leg restraint on I would have been probably slightly
13 behind PC Gibson, and then as we have moved down to the
14 ankle I probably would have been in front of him at that
15 point.
- 16 Q. Right, again I will get you to repeat that when you are
17 in front of the microphone but I think we've got your
18 position now. Thank you. So when you put on the first
19 leg restraint you said when you were doing your
20 demonstration, you were slightly behind PC Gibson?
- 21 A. Yes.

TRANSCRIPT OF THE INQUIRY

- 1 Q. So was PC Gibson further down the legs than you were
2 when you were trying to put on the first leg restraint?
- 3 A. Yes, because he's got control of the lower part of the
4 legs and gave us access to the upper leg to be able to
5 get the feed -- feed the restraint through.
- 6 Q. And do you remember how PC Gibson moved down the legs
7 after you got the first leg restraint on?
- 8 A. My recollection was that he has kind of like shuffled
9 down the legs.
- 10 Q. He said there was two possibilities: a sausage roll or
11 a shuffle.
- 12 A. Yes.
- 13 Q. Your recollection is it was a shuffle?
- 14 A. Yes.
- 15 Q. And then how did the second leg restraint, the
16 Fast Strap get put on?
- 17 A. So it was just around the ankles. It was the same
18 procedure --
- 19 Q. You have told us you moved slightly in front of
20 PC Gibson?
- 21 A. Yes, that's correct. You generally find it's a wee bit

TRANSCRIPT OF THE INQUIRY

1 easier to do the ankles because they're sort of raised
2 off the ground a wee bit, so it's easier to feed it
3 through from underneath and I remember it being myself
4 who has fed it through and tightened the straps.

5 Q. So it was you that tightened the ankle Fast Straps?

6 A. Yes.

7 Q. Were they still pointing towards Gallaghers pub at that
8 stage?

9 A. Yes, they were.

10 Q. Thank you.

11 Can I ask you to look at your PIRC statement please,
12 page 4. Let's just look at this in a little bit more
13 detail, I think there are some alterations you would
14 like to make on this page.

15 A. Yes.

16 Q. So just to finish where we were before, we moved on --
17 we can move on:

18 "Alan Smith was on his knees and he was attempting
19 to control the male's legs as he was struggling and it
20 looked like the male was attempting to evade detention.

21 "Craig Walker [was] also on his knees and he was

TRANSCRIPT OF THE INQUIRY

1 facing towards me. I can't recall exactly what Craig
2 was doing but he was in the male's waist area.

3 "Alan Paton was also on his knees and was next to
4 the male's head and he was attempting to control the
5 male's left arm and the male was struggling violently as
6 if attempting to escape.

7 "Ashley Tomlinson was also kneeling at the male's
8 head but with his back to me. He was attempting to
9 control the male's right arm.

10 "Even although there were four officers dealing with
11 the male it still looked like they were struggling due
12 to the male's muscular and aggressive manner so
13 I decided to go and assist them. I did not speak to
14 Daniel about my thoughts and I just assume he was
15 thinking the same as myself as we both got out of our
16 vehicle at the same time and went to the assistance of
17 our colleagues."

18 If we can carry on up the page, so you then say:

19 "As I approached the male I did look over towards
20 Nicole who was with Kayleigh ..."

21 And I will move on from that and read that short:

TRANSCRIPT OF THE INQUIRY

1 "I immediately went to Alan Smith's assistance and
2 got hold of the male's left leg. I was on my knees at
3 this time. I grabbed the male's ankle with both of my
4 hands. Alan Smith had a hold of the male's other leg.
5 The male still appeared to have a lot of strength left
6 in his legs as I was struggling to control him."

7 Can I ask you, you say there that you had got hold
8 of the male's left leg and Alan Smith had a hold of his
9 other leg, presumably his right leg; is that what you
10 have described today?

11 A. Yes, so I think what I'm trying to explain there is we
12 have both got a leg each and we're trying to bring them
13 into the middle so that we can make it as tight as
14 possible for the leg restraints to be effective.

15 Q. And you did say earlier that you had come round, so you
16 got his leg left, Mr Bayoh's left leg --

17 A. Yes.

18 Q. -- and Mr Smith had his right leg.

19 A. Yes.

20 Q. Thank you. And then:

21 "I looked at my colleagues and saw that

TRANSCRIPT OF THE INQUIRY

1 Daniel Gibson was trying to control the male's upper
2 body. He was holding the male's arm. The male was
3 still struggling and even although Daniel and myself
4 were assisting we were all having difficulty controlling
5 the male."

6 Now, is that something you want to comment on?

7 A. Yes, so that's -- it's always been my position that
8 PC Gibson assisted with the legs. I maybe have stated
9 it at the time with PIRC, but it's always been my
10 position that I remember PC Gibson assisting with the
11 legs. I think it's just an error.

12 Q. So it's an error: it wasn't Daniel Gibson trying to
13 control the male's upper body, he was helping with the
14 legs?

15 A. Yes, that's correct.

16 Q. So insofar as this differs from your evidence today, the
17 Chair should prefer your evidence today and not this?

18 A. Yes, that's correct.

19 Q. Thank you. Then the final paragraph:

20 "I saw that handcuffs had been placed on the male's
21 left wrist however the others were having difficulty

TRANSCRIPT OF THE INQUIRY

1 getting the male's right wrist into the handcuffs.
2 I can't recall if the male was saying or shouting
3 anything during the struggle. I then said to Alan Smith
4 that I was going to put leg restraints on the male.
5 Alan then grabbed hold of the male's leg that I was
6 holding which allowed me to get my leg restraints from
7 my vest. I then put them around the male's legs just
8 above his knees and with Alan's help managed to secure
9 them around the male's legs. It helped our situation
10 and the male stopped kicking out as violently as he had
11 been."

12 Can we just go back and look at that final paragraph
13 on page 4:

14 "I saw that handcuffs had been placed on the male's
15 left wrist however the others were having difficulty
16 getting the male's right wrist into the handcuffs."

17 A. Yes.

18 Q. Is that correct?

19 A. Yes, that's still my recollection to this date, so when
20 we first got out of the car I didn't see the handcuffs,
21 but as the point I have approached to take my position

TRANSCRIPT OF THE INQUIRY

1 at the legs to prepare the straps, I then remember
2 seeing a handcuff ring on his left wrist. I didn't
3 actually see it being applied, I just remember having
4 a look and could see it.

5 Q. So at the point you're at the legs dealing with the leg
6 restraints, or about to deal with leg restraints --

7 A. Yes.

8 Q. -- you then notice that one handcuff has been applied?

9 A. Yes.

10 Q. Or to one wrist I should say?

11 A. Yes.

12 Q. But not to both wrists at that point?

13 A. No.

14 Q. And then Alan assists -- that's Alan Smith assists you
15 with securing the leg that you had had which was I think
16 the left leg?

17 A. Yes.

18 Q. Thank you. Then can we look just further down onto the
19 next page:

20 "I then took the other leg restraints I had. They
21 come in a pair and pulled them around the male's ankle

TRANSCRIPT OF THE INQUIRY

1 area. This prevented the male kicking out and the
2 threat of violence on my colleagues and myself was
3 reduced.

4 "At this point I became aware of a male and female
5 CID officer. I don't know their names. One of them,
6 I can't recall which one, said 'have you recovered
7 a knife'. I [saw] that the two CID officers had got out
8 of a silver Corsa motor car which was parked near to the
9 cell van, where [PCs Short and Good] had been standing."

10 Now again, I think do you want to talk about the
11 order here of what's happening?

12 A. Yes, absolutely. So once the leg restraints were on we
13 had placed Mr Bayoh on his left side, so my position
14 still remained at the legs just sort of -- make sure he
15 didn't roll over onto his front again, or just having
16 a hold of his legs so that he was in place. I could
17 still feel at that point that there was movement in his
18 legs, the muscles tensing up, like pulling against the
19 straps. I remember at that point -- I'm not sure who it
20 was, but somebody has searched him for the knife,
21 I couldn't tell you who it was, and it was around about

TRANSCRIPT OF THE INQUIRY

1 that point that I heard one of the Alans, either
2 PC Alan Smith or PC Paton, stating that he is motionless
3 and it was at that point that I felt his legs becoming,
4 I would say limp.

5 Q. Right, all right. So let's just go back for a moment.

6 You have put on the ankle straps?

7 A. Yes.

8 Q. And at that point what do you do once you have put on
9 the ankle straps?

10 A. I have just remained on the same side as PC Walker, so
11 Mr Bayoh's left side, but at his legs still, around
12 about the knee area, the thigh area, and he has been
13 rolled onto his left side so that his chest is facing
14 Gallaghers.

15 Q. Who rolls him onto his left side?

16 A. I can't remember who exactly it was, but I was one of
17 them and I can -- I don't want to assume, but I can only
18 assume that it would have been PC Walker because he was
19 next to me, so he would have the upper body. It's just
20 a case of the shoulder and the hip and using it as
21 a natural rotation to pull him onto his side.

TRANSCRIPT OF THE INQUIRY

1 Q. What was the position with the handcuffs?
2 A. Honestly, I don't know. I'm not aware of both handcuffs
3 being on. I can't even remember what position his arms
4 were in at that point. I think I have just been so
5 focused on dealing with the legs, with the leg
6 restraints that I have just not looked, and honestly,
7 I just cannot remember what the position was with the
8 handcuffs at that point.
9 Q. When he was rolled onto his left-hand side, where was
10 PC Smith?
11 A. He was on the opposite side to me, I would say around
12 about his stomach area.
13 Q. Mr Bayoh's stomach area?
14 A. Yes, yes.
15 Q. Right. What was PC Smith doing?
16 A. I'm not entirely sure. I can't remember him having
17 hands on him at that point. I don't know if he was just
18 monitoring. I'm not entirely sure.
19 Q. Can we look at paragraph 26 of your Inquiry statement,
20 please, and you were asked about Mr Bayoh's reaction to
21 the restraint and at what point he stopped breathing and

TRANSCRIPT OF THE INQUIRY

1 you say:

2 "Mr Bayoh was actively resisting by kicking out and
3 pulling against being handcuffed. I cannot recall him
4 saying anything, however I vaguely remember him
5 aggressively groaning whilst kicking out and lifting his
6 body."

7 What did you mean "lifting his body"?

8 A. So with his -- his right arm that I have described
9 PC Tomlinson trying to restrain, using that as leverage
10 to try and lift his upper body up.

11 Q. Lift his chest, trying to lift his chest off the ground?

12 A. Yes.

13 Q. And you're gesturing again -- you're putting your right
14 palm down on the desk and moving your right shoulder in
15 an upwards direction?

16 A. Yes.

17 Q. "I cannot remember at what point he stopped breathing.
18 However, I remember while I was monitoring his legs,
19 I could still feel his legs moving although the
20 Fast Straps were on him. Suddenly his legs stopped
21 moving. At that point I recall someone saying 'he's

TRANSCRIPT OF THE INQUIRY

1 motionless'."

2 You have said you were monitoring his legs. At what
3 stage were you monitoring his legs?

4 A. So he had just been rolled onto his side, his left-hand
5 side, and when I say "monitoring", I just mean making
6 sure that he hasn't -- he is not going to roll back onto
7 the other side because his legs were still moving at
8 that point, just keeping him in place really.

9 Q. Making sure he wasn't going to roll back onto his front?

10 A. Yes, and just making sure that the leg restraints were
11 doing what they were -- their purpose, serve their
12 purpose.

13 Q. So the Fast Straps were on him at that point, both sets
14 of Fast Straps were on him?

15 A. Yes.

16 Q. And then you say "Suddenly his legs stopped moving".
17 How long after you applied the ankle straps, so the
18 second set, did you notice that his legs had stopped
19 moving?

20 A. So he is on his -- been rolled onto his side, so from
21 there on -- sorry, you're asking from at the moment they

TRANSCRIPT OF THE INQUIRY

1 were applied or from the moment he was rolled onto his
2 side?

3 Q. From the moment they were applied.

4 A. I would probably say a minute to two.

5 Q. Could it have been a shorter period?

6 A. It could have been. I'm not entirely sure. It's not
7 something that I was thinking about at the time, so it
8 could have been shorter.

9 Q. We have heard from others that these events took place
10 over a very short period of time; would you agree with
11 that impression?

12 A. Yes, absolutely.

13 Q. Right. And someone said "he's motionless"; you don't
14 remember who that was, do you?

15 A. No. I just have this recollection that it was either
16 PC Alan Paton or PC Alan Smith. I can't quite --
17 I can't -- I have thought about it a lot and I can't say
18 for certain who it was.

19 Q. Okay. You say:

20 "I stood back and I recall PC Smith or Paton
21 checking Mr Bayoh and saying that he was breathing.

TRANSCRIPT OF THE INQUIRY

1 About that time I remember an ambulance was called for."

2 So we've got an Airwaves transmission about this --

3 A. Yes.

4 Q. -- that he is unconscious at this stage and an ambulance
5 is called, but you said "I stood back"; what did you do?

6 A. So at that point he has then been placed on his back so
7 one of the -- sorry, I have said that PC Alan Paton said
8 that he was still breathing, so he has been placed on
9 his back, I have just taken a step back. I was
10 satisfied that the leg restraints were working at that
11 moment in time and the fact that someone said that he is
12 not breathing, I just thought it was relevant just to
13 take a step back just to allow what needs to take place
14 to check for breathing and that sort of thing, medical
15 assistance.

16 Q. So it became a first aid situation at that stage?

17 A. Yes, yes.

18 Q. And he needed to have some air, Mr Bayoh?

19 A. (Nods).

20 Q. And you have mentioned that you were to do traffic
21 control at some point?

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. So who is there at that point when you have stepped back
3 or stood back to give air, who was there at the scene?
4 You have also mentioned other CID officers being
5 present, can you just --

6 A. Yes, so I remember -- so the original officers that we
7 have already discussed, they were still there.
8 I remember PS Maxwell was in the area as well and
9 DS Samantha Davidson and DC Derek Connell.

10 Q. DC Connell?

11 A. Yes.

12 Q. And are Davidson and Connell the CID officers that you
13 mentioned?

14 A. Yes.

15 Q. Samantha Davidson is the female officer and Connell is
16 the male.

17 A. Yes, I think I said that in my PIRC statement.

18 Q. You think you said that in your --

19 A. Unfortunately I didn't know their names but I now know
20 it's them obviously.

21 Q. You know who they are?

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. And where was Sergeant Maxwell?

3 A. I just remember him standing up, roughly just in front
4 of the car but standing sort of at the feet of Mr Bayoh.

5 Q. When you say the car, do you mean your diary car?

6 A. Yes, sorry, the car that me and PC Gibson travelled in.

7 Q. He was at the feet area at that point?

8 A. Yes.

9 Q. And where was Samantha Davidson?

10 A. I think ... roughly in the general area of where
11 PS Maxwell was. It could be that they were discussing
12 things, I'm not entirely sure, but she was certainly in
13 that vicinity.

14 Q. And we have heard that later PC Smith noticed that he
15 was no longer breathing.

16 A. Mm-hm.

17 Q. You weren't with Mr Bayoh at that time?

18 A. No, I had actually walked away at that point.

19 Q. And what were you doing at that point then?

20 A. So it was around about that point where I have kind of
21 taken the opportunity to look for the knife that was

TRANSCRIPT OF THE INQUIRY

1 still unaccounted for and that's -- it's probably just
2 purely by chance I have taken a look over my right
3 shoulder, seen on the grass area on the other side of
4 the road and I can only describe it as -- from where
5 I was standing, it looked like the inside of a crisp
6 packet, like, the shiny sort of foil, and then I have
7 just -- curiosity got the better of me, went and had
8 a look and found a knife lying on the grass.

9 Q. I will come back to your PIRC statement in a moment
10 because I know you want to change one other thing, but
11 can we maybe look at some still images first of all.

12 A. Yes.

13 Q. 8, 9 or 10. Right, let's start with number 8 and I will
14 ask Ms Wildgoose to put a red circle in the area I'm
15 interested on the left-hand side.

16 A. Yes.

17 Q. You will see an item there, it's very small on image 8.

18 A. Yes.

19 Q. Then can we look at image 9, please. This is taken from
20 a different angle, so this is the other side. You will
21 see on the bottom right-hand side of this image you can

TRANSCRIPT OF THE INQUIRY

1 see something small on the grassy area?

2 A. Yes.

3 Q. And then image 10, again, so you will see it is on the

4 left-hand side. This is the closest to the roundabout.

5 A. Yes.

6 Q. And you will see a small white image there.

7 A. Yes.

8 Q. We don't have the facility to zoom in on that at the

9 moment, but we have heard evidence that that was

10 a knife. Is that the area where you located the knife

11 that you have described?

12 A. Yes, it is.

13 Q. Thank you. Can I go back finally to your PIRC statement

14 on page 5 and it is -- just before we finish at this

15 point, it is paragraphs 3 to 6 and I understand that you

16 would like to comment on the order in which things

17 happened. If we just deal with this quickly. If we

18 start with paragraph 3 you say:

19 "At this point I became aware of a male and female

20 CID officer."

21 We mentioned that a moment ago. You say:

TRANSCRIPT OF THE INQUIRY

1 "I had a glance around the male and I couldn't see
2 any knife. My colleagues were still trying to secure
3 the handcuffs on the male. I decided to stand up and
4 have a look for the knife as Alan Smith and myself had
5 secured the leg restraints."

6 What did you mean when you said that colleagues were
7 still trying to secure handcuffs on the male?

8 A. I was of the impression at the time that the handcuffs
9 hadn't been applied. I don't remember. I can't
10 remember if one handcuff had only been applied or if
11 both of them were on at that point. Generally if you
12 have one handcuff ring only applied to one wrist, that's
13 essentially a weapon at that point, so I would like to
14 think that the other wrist had been placed in the
15 handcuffs but honestly I do not know if that was the
16 case.

17 Q. We have heard that it can take time to double-lock
18 handcuffs to make sure they don't become smaller --

19 A. Yes.

20 Q. -- and hurt the person's wrist. When you say they were
21 trying to secure the handcuffs, could they have been on

TRANSCRIPT OF THE INQUIRY

1 but needing double-locked or --

2 A. Potentially. There's every chance. Honestly, I cannot

3 remember what I have meant by that, if it's the other

4 handcuff ring or double-locking them, I can't quite

5 remember.

6 Q. You don't remember now?

7 A. No.

8 Q. And then you say:

9 "I decided to stand up and have a look for the

10 knife."

11 A. Yes.

12 Q. Which you have just told us:

13 "Throughout the whole incident the man was lying on

14 the pavement. I looked over to the grassy area on the

15 opposite side of the road where the male was and saw

16 something shiny. I said this to the CID officers and

17 I walked towards the item. The male CID officer came

18 with me."

19 That's you now know to be DC Connell?

20 A. Yes.

21 Q. "When I got to the grass area I saw that there was

TRANSCRIPT OF THE INQUIRY

1 a knife lying about 3 yards in. It was a silver one
2 with a silver steel handle. The blade was about 5 or 6
3 inches in length. I didn't say anything to the CID
4 officer, I just turned and went back over to assist my
5 colleagues. I saw that nothing had changed. He was
6 still struggling with his upper body and was still
7 handcuffed on one wrist only. I can't recall if any of
8 my colleagues were giving instructions to the male.
9 I decided to stand back as I thought I would get in the
10 way and hinder my colleagues. Although I have said
11 I didn't want to hinder my colleagues I did kneel down
12 at his feet and I still took hold of his legs. However,
13 due to the leg restraints he was unable to kick out. He
14 was able to move his legs slightly with the leg
15 restraints and I could still feel the muscles in his
16 legs tensing up. I then recall suddenly his legs not
17 moving and I'm not sure who said it but somebody said he
18 was motionless."

19 I think having looked at this PIRC statement again,
20 you have concerns about the order in which this reads.

21 A. Yes.

TRANSCRIPT OF THE INQUIRY

- 1 Q. Would you like to clarify for the Chair -- because
2 obviously the order you have given us of events today
3 differs from this paragraph.
- 4 A. Yes. So in this paragraph here that's just been read
5 out it reads as if Mr Bayoh is still struggling and
6 I have walked away from the struggle to then look for
7 the knife and come back to assist the struggle.
- 8 Q. Yes.
- 9 A. That's an error, that's simply not what happened.
10 I wouldn't walk away from somebody who is still
11 struggling, if that makes sense, that's the best way to
12 describe it, so how I have described the events before
13 you have read out this paragraph is the actual events
14 that I remember and what should have been in the PIRC
15 statement.
- 16 Q. So the chronology of events you have given us today in
17 evidence --
- 18 A. Yes.
- 19 Q. -- is the correct version --
- 20 A. Yes.
- 21 Q. -- and that should be preferred?

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. So unlike other people who you have heard where I've
3 said you prefer the PIRC statement, that's not the case
4 with this paragraph for you?

5 A. It's just this one paragraph really, yes.

6 MS GRAHAME: All right, thank you.

7 Would that be an appropriate point?

8 LORD BRACADALE: You mean a point for a break? We will take
9 a break for 15 to 20 minutes.

10 (11.31 am)

11 (Short Break)

12 (11.57 am)

13 LORD BRACADALE: Yes, Ms Grahame.

14 MS GRAHAME: Thank you.

15 I would like to just -- before I leave your
16 statement, your PIRC statement, ask you a little bit
17 about the circumstances that have caused you to make
18 these alterations, or make these comments, so the PIRC
19 statement is 4 June and that might be coming up on the
20 screen, but you've got it in front of you, and you said
21 that you had -- you thought it had been read over to you

TRANSCRIPT OF THE INQUIRY

1 on that date.

2 A. Yes.

3 Q. And then you gave your Inquiry statement on 1 May.

4 A. Yes.

5 Q. Or you agree that it would be there or thereabouts. Can
6 you -- obviously your senior counsel had a word with me
7 yesterday, so I knew that you wanted to make these
8 alterations in advance of today, but could you explain
9 to the Chair why you didn't make the alterations sooner.

10 A. Yes. I hadn't seen my PIRC statement by this point,
11 simply due to I didn't want to read it, I didn't want to
12 go over sort of the memories again, but I am also
13 dyslexic as well, so there is a tendency for me to get
14 things in the wrong order, or just make sort of minor
15 errors that I might pick up on at a later time, so
16 that's sort of the two main reasons why.

17 Q. Right. So when you gave your Inquiry statement had you
18 read your PIRC statement by then?

19 A. I don't think I did at that point. I can't remember
20 reading it at that point, just purely because I was
21 worried, I suppose, to read it, I didn't want to sort of

TRANSCRIPT OF THE INQUIRY

1 relieve it again, but I accepted the fact I was going to
2 have to at some point.

3 Q. And when was that point?

4 A. It must -- I think it was probably a few days after,
5 once I had given the Inquiry statement.

6 Q. Right. All right, thank you. Can I go back to your
7 Inquiry statement please, and I would like to look at
8 paragraph 26 if that's possible. I asked you about this
9 earlier and if we could look at paragraph 1 of answer 26
10 you will remember that I read out:

11 "Mr Bayoh was actively resisting by kicking out and
12 pulling against being handcuffed. I cannot recall him
13 saying anything, however I vaguely remember him
14 aggressively groaning whilst kicking out and lifting his
15 body."

16 And you describe him as "groaning". Can you just
17 give us a little more description of the groaning?

18 A. Yes. I was probably -- I would probably say the best
19 way to describe it would be if you are lifting something
20 heavy, like a piece of furniture, or at the gym working
21 out, and to assist you lifting whatever it is that

TRANSCRIPT OF THE INQUIRY

1 you're lifting, you would generally sort of exhale or
2 give out a little bit of a groan to sort of assist you
3 with lifting. So that's probably how I would describe
4 it.

5 Q. Are you able to replicate that today?

6 A. I think it's difficult to because I'm not in the moment.
7 I feel like I would need to be at the gym, for example,
8 or lifting something heavy. I don't feel comfortable
9 about doing that, it just doesn't sit right. I'm not
10 trying to be awkward, it's just I don't know how I would
11 do it.

12 Q. Oh, right. And you describe that as "aggressively".
13 What was it about the groaning that was aggressive?

14 A. Sort of the loudness, the tone, just -- yes, just how
15 loud it actually is. I wouldn't say loud like the whole
16 street could hear it, but it was enough for me to think
17 that he is trying to get out of the restraint, out of
18 the detention.

19 Q. Is it possible that he was actually struggling to
20 breathe at that stage?

21 A. I don't know. There was nothing verbally coming from

TRANSCRIPT OF THE INQUIRY

1 him. I didn't personally see him gasping for air or
2 making any verbal comments. It was just that groan that
3 I described.

4 Q. And what would you have expected if someone had been
5 gasping for air?

6 A. I would probably expect maybe some sort of communication
7 "I can't breathe", or just something "Get off me",
8 something like that. That's probably what I would maybe
9 expect to hear.

10 Q. So in the absence of that you didn't think he was
11 struggling to breathe?

12 A. No. At that point as well I'm solely focused on his
13 legs so I feel like I'm not in a position to make that
14 sort of judgment when I'm at the other side of his body.

15 Q. Do you know if anyone at that time, when he was prone,
16 if anyone was monitoring his breathing?

17 A. I can't remember. I can't remember at that point. I do
18 remember at one point Alan -- PC Alan Paton being at his
19 head but I think that was at the point when he was on
20 his side.

21 Q. Sorry, say that again, I didn't quite --

TRANSCRIPT OF THE INQUIRY

- 1 A. So not at that point when I first turned up in the car,
2 but more the -- to the point he was on his left-hand
3 side after the leg restraints had been applied, I was
4 aware of PC Alan Paton being at his head at that point.
- 5 Q. And we may have heard that PC Smith was at some point
6 anyway, once he is on his side, monitoring the
7 situation. Is that something you were aware of?
- 8 A. Yes, I was aware of it was either PC Alan Smith or
9 PC Alan Paton, I couldn't remember which one, but they
10 were both in that vicinity.
- 11 Q. Okay. You mentioned about expecting -- or you would
12 have expected someone to say "I can't breathe" or "Get
13 off me". Was it your expectation that someone who is
14 maybe struggling to breathe would be able to say those
15 things?
- 16 A. I honestly don't know. I've never been in that position
17 myself, I suppose. There was never like a pile of
18 bodies on top of him, so -- I think if I maybe expected
19 to see several people on top of him I would -- may be
20 more inclined to think that way.
- 21 Q. All right, thank you. I would like to move on to some

TRANSCRIPT OF THE INQUIRY

1 enhanced Snapchat footage that we have which I hope is
2 available. You may have seen this with other witnesses,
3 Constable McDonough, and you will know that this is two
4 sort of clips, one is just 100% speed. On the left you
5 will see the Snapchat footage that's been incorporated
6 into the evidence video timeline and on the right it's
7 a 400% zoom of that, and then the second time it plays,
8 it plays at 25% speed.

9 I am going to play the full thing through and then
10 I'm going to ask you some questions. You will have seen
11 me ask questions of other officers about who was where
12 and what was happening at the time and I'm going to do
13 the same with you. So let's just watch this whole
14 thing, please.

15 (Video played)

16 Right, with Ms Wildgoose's assistance we will move
17 to the 25% speed and if we stop it at the beginning of
18 that. Thank you. We will just play this for a few
19 seconds and then I'm going to ask you some questions
20 about who is where.

21 (Video played)

TRANSCRIPT OF THE INQUIRY

1 If we stop it there, please. Right, you can see
2 an officer on the right-hand side -- well, on the 400%
3 zoom side of the screen you can see an officer standing
4 up with his back to the camera.

5 A. Yes.

6 Q. And do you know who that was?

7 A. That looks like PC Gibson.

8 Q. PC Gibson?

9 A. Yes.

10 Q. And then to his left we can see an officer with his back
11 to the camera?

12 A. Yes, so you obviously can't identify who that is there,
13 but I can tell from the body vest that -- the vest that
14 he is wearing that was different to all of us, that's
15 PC Alan Paton.

16 Q. We have heard evidence that PC Paton's vest was slightly
17 different to others.

18 A. Yes.

19 Q. In what way was it different?

20 A. It was like it was -- it was like a -- it was almost
21 like a -- it's really difficult to explain. It was like

TRANSCRIPT OF THE INQUIRY

1 someone on the other side facing the camera; who is
2 that?

3 A. That would be PC Tomlinson.

4 Q. And we can see a leg, or a foot between PC Gibson's
5 legs --

6 A. Yes.

7 Q. -- on the ground. And then between the camera and
8 PC Tomlinson we can see a dark area there. There
9 appears to be a white band, or a paler-coloured strip.

10 A. Yes.

11 Q. Do you know what that was?

12 A. It's difficult to say from there. However, that could
13 be sort of the legs of PC Walker.

14 Q. The legs of PC Walker. What is it about the strip, the
15 pale-coloured strip that makes you say that?

16 A. I just thought maybe it would be like the waist, like
17 a waistband of some sort, or a piece of clothing
18 underneath the vest or -- I don't know, it just seems to
19 be in that general area.

20 Q. So we have heard that -- can we actually see part of
21 a yellow hi-vis vest and then a dark area --

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. -- and then the light area?

3 A. Yes.

4 Q. We may have heard evidence that the body armour, the
5 black part, can ride up, and your clothing underneath
6 can poke out --

7 A. Yes.

8 Q. -- above your trousers. Is that your experience?

9 A. Yes, that is, yes.

10 Q. All right, thank you. And the car behind there, is that
11 the diary car?

12 A. Yes, it is.

13 Q. Thank you. So what was happening at this moment?

14 A. So at that moment -- I don't know how long me and
15 PC Gibson were out of the car for by this point, but
16 I could see -- from where I'm standing I could see that
17 his legs were struggling at that point so you can
18 actually see on the footage me taking out the leg
19 restraints from my vest, so it's at that point that I'm
20 doing that.

21 Q. Let's watch that again. I was hoping you would say

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. Thank you. Then can we look at the evidence video
3 timeline, please. I would like to look at it from
4 7.25.34. Now, I'm going to ask you to watch around two
5 and a half minutes of the footage and if you could focus
6 on the CCTV and you will see some movement in the area
7 of the roundabout, so I will play it in full, we will
8 finish about 7.28, just after 7.28 and then I will come
9 back and ask you some questions.

10 A. Yes.

11 Q. For your benefit, it starts at page 7 on the spreadsheet
12 and we're going to start at 7.25.34 and you will see it
13 says:

14 "The larger marked police van appears to move
15 forwards further up Hayfield Road and then a small
16 light-coloured car approaches the roundabout from the
17 south Hendry Road and slows at the entrance to the
18 roundabout."

19 Do you have that?

20 A. Yes.

21 Q. And then it says:

TRANSCRIPT OF THE INQUIRY

1 Q. And we will go back to 7.25.38 or thereabouts. That
2 will be fine. Let's just look at this -- a few seconds
3 of this. So this is from -- this is it. Right, if we
4 pause it there for the moment. Do we see some movement
5 heading towards the roundabout on north Hayfield Road
6 near to the grassy area?

7 A. Yes.

8 Q. Do you know who that is?

9 A. That will be me.

10 Q. That was you?

11 A. Yes.

12 Q. And then can we keep playing, please, Ms Wildgoose.

13 (Video played)

14 Then we see some further movement just behind the
15 car, the car will move out the way. Pause that there,
16 please. So we see two people, or movement of two people
17 there. Who is that?

18 A. I think that's going to be DC Derek Connell. I think it
19 was him that I made him aware of what I had seen.

20 Q. So which one is you? There is one on the left and one
21 on the right with a lighter coloured...?

TRANSCRIPT OF THE INQUIRY

1 A. Yes, I think I'm going to be the one on the right
2 because of the fluorescent vest, the lighter coloured
3 one.
4 Q. You had your hi-vis vest on?
5 A. Yes, that's correct.
6 Q. So you're on the right there, and that's you in the area
7 of the grass area near the roundabout --
8 A. Yes.
9 Q. -- with DC Connell?
10 A. Yes.
11 Q. And is this at the point at which you see the knife?
12 A. Yes, that's correct.
13 Q. And then can we just play that again for a moment or
14 two.
15 (Video played)
16 Then the two people appear to be walking back away
17 from the roundabout, away from the grassy area, and can
18 you pause that there, please. Where were you going at
19 that stage?
20 A. I was just going back to the area where all the other
21 officers were. For what purpose, I don't know, but it

TRANSCRIPT OF THE INQUIRY

1 at that moment, please.

2 (Video played)

3 I think this is ... right, I think it's further back
4 than that, maybe to 24 seconds. Right, let's watch it
5 from there, please, and if you can see him at the boot,
6 if you could point that out to us.

7 (Video played)

8 A. I think he is at the boot at the moment but you will see
9 the actual boot closing when he walks away.

10 Q. Can you point to the area that you're looking at,
11 please, just so everyone can see it.

12 A. Can you draw on this?

13 Q. Yes, you can.

14 A. Just in there (indicating).

15 Q. Right, so everyone can focus their attention there so
16 let's remove that, please, Ms Wildgoose, and people can
17 focus their attention. So that's the rear of a Corsa?

18 A. Yes, that's correct.

19 Q. Right. Do you know who had been driving that car?

20 A. I'm not entirely sure. I would take a bet that it would
21 be either DC Connell or DS Samantha Davidson, but I'm

TRANSCRIPT OF THE INQUIRY

1 not too sure.

2 Q. So it was Davidson or Connell?

3 A. Yes.

4 Q. Right. So let's just play that for a couple of seconds,
5 please, and we will see if we can see the person moving
6 from the boot.

7 (Video played)

8 Can we pause it there. Do we see somebody now
9 moving away from that area?

10 A. Yes.

11 Q. Containing or holding what appears to be something light
12 coloured?

13 A. Yes.

14 Q. And you have talked about evidence bags?

15 A. Yes, I think that's what that is.

16 Q. That's what that is. So that's DC Connell holding an
17 evidence bag.

18 A. Yes.

19 Q. And then just within a few seconds we should see the
20 Snapchat arriving within -- by 31 seconds past. So we
21 can play until that, we can watch ...

TRANSCRIPT OF THE INQUIRY

1 (Video played)

2 So DC Connell appears to be travelling back to the
3 grassy area and if we pause it there, so we can see on
4 the CCTV he is in the grass area with the evidence bag
5 and then just at the very top of the Snapchat footage we
6 can see him still on the road at this point --

7 A. Yes.

8 Q. -- with a blue jacket on, and he may be carrying the
9 evidence bag there?

10 A. Yes.

11 Q. And we will just play that, thank you.

12 (Video played)

13 Thank you. And then that's him just out of view of
14 the person with the camera.

15 A. Yes.

16 Q. Thank you. Then can I ask you to look at 7.27.54, and
17 you will see that on the spreadsheet, this is on page 9,
18 7.27.54 to 59 it says:

19 "The person near the grassy area stops approaching
20 Hayfield Road and pauses. It appears like
21 a light-coloured object is raised up by their arms."

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. And then:

3 "The person near the grassy area returns to where
4 they were a few moments ago and another person walks
5 towards them from Hayfield Road area. The second person
6 stops near the roundabout. A person can be seen walking
7 away from the group of officers on the pavement on
8 Hayfield Road and walking further up Hayfield Road away
9 from the roundabout."

10 So let's just play this footage.

11 (Video played)

12 Can we pause it there for a second. Who is that
13 person coming to the roundabout?

14 A. I think that's PC Good.

15 Q. PC Good. And DC Connell is still in the area of the
16 grassy area?

17 A. Yes.

18 Q. And you saw the image of the knife --

19 A. Yes.

20 Q. -- that is a photograph of what was found at that area?

21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. And if we could just carry on playing that, please.

2 (Video played)

3 So again, in the Snapchat we could see an image of
4 DC Connell's bright blue jacket -- it's not on the
5 screen there, it was just a moment ago.

6 A. Yes.

7 Q. And again, he still seems to be in the grassy area.

8 A. Yes.

9 Q. And if we could maybe rewind that slightly. There,
10 perfect. We see DC Connell, bright blue jacket in the
11 grassy area.

12 A. Yes.

13 Q. And where were you at this point?

14 A. I think I have actually made my way to carry out traffic
15 duties.

16 Q. Where did you do that?

17 A. So just -- so where you can see the officers there in
18 the Snapchat footage, to the right down towards the
19 general direction of the hospital, but I think I was
20 standing at the junction at Poplar Crescent.
21 Poplar Crescent and Hayfield Road, so yes, in that

TRANSCRIPT OF THE INQUIRY

1 Q. That's you. Let's remove it so everyone can see that.

2 So that's you looking towards DC Connell?

3 A. Yes.

4 Q. Thank you. Would you look, please, for me at a label
5 which is in a plastic -- the knife. Oh, we don't have
6 it. I won't need you to identify it at the moment.

7 A. That's fine.

8 Q. Can I now ask you to look at some other photographs,
9 they are stills that have been taken. PIRC 03374.

10 Now, that is still that's been marked up with people
11 identified and you will see in the bright blue jacket
12 near the grass area someone has written "DC Connell"?

13 A. Yes.

14 Q. And I wonder can you confirm that where we see the
15 various names, if they are correct? So let's start with
16 yourself, PC McDonough?

17 A. Yes, that's correct.

18 Q. That's you looking towards DC Connell?

19 A. Yes.

20 Q. And then PC Walker to the right, on the road walking
21 towards the scene?

TRANSCRIPT OF THE INQUIRY

1 A. Yes, that's correct.

2 Q. And then PC Gibson kneeling down or crouched down to
3 your right?

4 A. That's correct.

5 Q. And then to your left it says PC Tomlinson?

6 A. Yes.

7 Q. Looking towards the hedge, if you like.

8 A. Yes.

9 Q. And then opposite PC Tomlinson, PC Good, Kayleigh Good?

10 A. Yes, that's correct.

11 Q. To the left of PC Tomlinson is PC Paton crouched down
12 with his right arm leaning -- stretching over?

13 A. Yes.

14 Q. Opposite him, PC Smith?

15 A. Yes, that's correct.

16 Q. To PC Smith's right, DS Davidson?

17 A. Yes.

18 Q. And then to the far left, PS -- Police Sergeant Maxwell?

19 A. Yes, that's correct.

20 Q. And on the right-hand side, blurred in the image it says
21 DI Robson.

TRANSCRIPT OF THE INQUIRY

- 1 A. Yes.
- 2 Q. Are you able to recognise DI Robson?
- 3 A. Well, to be fair I don't think at any point I've
4 mentioned him in my statement, I actually can't remember
5 him being there but if other people have identified him
6 as being there, that's fine, but I can't actually
7 remember him being there.
- 8 Q. So you don't know that's DI Robson?
- 9 A. No, no.
- 10 Q. All right. Can we look at the next photo on this just
11 down, please, and you see there at the bottom with his
12 back to the camera it says PC Walker?
- 13 A. Yes.
- 14 Q. And do we see a sort of band underneath his top or his
15 black body armour?
- 16 A. Yes.
- 17 Q. And above his trousers, his dark trousers a sort of
18 band, pale-coloured band?
- 19 A. Yes.
- 20 Q. Was that the band, pale band that we saw earlier?
- 21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. Thank you very much. Right, I would like to turn back
2 to your Inquiry statement please, paragraph 43. You are
3 asked about how you were, what you were thinking and
4 feeling when they were trying to resuscitate Mr Bayoh
5 and you say:

6 "I was aware that an ambulance had been called for.
7 As a result of this, I felt anxious and concern for
8 Mr Bayoh."

9 Can you tell us about that?

10 A. Yes, it's never a nice thing knowing that an ambulance
11 has been called for someone. You always kind of fear
12 the worst for someone who is needing an ambulance called
13 for them. I was also aware that he was unconscious at
14 one point as well, so automatically you're thinking has
15 his -- has his condition worsened, so that's kind of the
16 thoughts that are going through my head at that point.

17 Q. You talked about him being unconscious and the ambulance
18 being called; where were you at that point?

19 A. I was at the -- that junction I was telling you about,
20 Poplar Crescent, doing the traffic duties, just
21 preventing foot traffic and vehicles coming into that --

TRANSCRIPT OF THE INQUIRY

- 1 the general area of where the incident took place.
- 2 Q. So you were doing your traffic duties at the other end
3 of Hayfield Road?
- 4 A. Yes.
- 5 Q. Thank you. Now, before you -- how long were you at the
6 scene?
- 7 A. Doing traffic duties?
- 8 Q. Mm-hm.
- 9 A. I think I was maybe there for about an hour and a half
10 because I seem to think that we were waiting on other
11 officers from outwith the area to come in and take over,
12 so that in itself takes a wee bit of time. The reason
13 I say that is I seem to remember it was around about
14 9 o'clockish I get back to the office.
- 15 Q. So you were ultimately relieved by another officer from
16 outwith Team 4?
- 17 A. Yes. I didn't know who that -- what their name was or
18 anything.
- 19 Q. Before you left the scene completely, did anyone -- any
20 senior officer speak to you?
- 21 A. I remember Inspector Kay being there at some point.

TRANSCRIPT OF THE INQUIRY

1 Q. Could we have a look at paragraph 53, please. So you
2 were asked by the Inquiry team if you spoke to any
3 senior officers before leaving the scene and you said:

4 "Prior to leaving the scene, I don't recall being
5 instructed to not discuss the incident with other
6 officers."

7 A. Yes.

8 Q. But you remember speaking to Stephen Kay at some point?

9 A. Yes. I don't remember what the conversation was.

10 I think I have -- I think I remember speaking, or using
11 the point-to-point system on the radio to get in contact
12 with PC Gibson to see if he had -- I can't remember if
13 it was the car or the car keys for the vehicles. I had
14 a feeling that my jacket was in the car because it was
15 cold and it was wet that day, so I think possibly
16 Inspector Kay has maybe asked me if I've got something
17 warmer to wear and then I have kind of explored that
18 with PC Gibson, but I can't say for certain what any
19 conversation was that took place.

20 Q. Did anyone instruct you not to discuss the incident with
21 other officers?

TRANSCRIPT OF THE INQUIRY

- 1 A. Not that I recall, no.
- 2 Q. Okay. And how did you get back to Kirkcaldy Police
3 Office?
- 4 A. So once myself and PC Good were relieved of doing our
5 points duties, I think it was -- I seem to remember it
6 was a female officer who took over from me, and she
7 instructed me that -- she was just the messenger at that
8 point, she was telling me that I have to take PC Good
9 back to the station. I think it was just from one of
10 the vehicles that were left at the scene.
- 11 Q. Right. And you went to the canteen?
- 12 A. Yes.
- 13 Q. Can we look at paragraph 57, please. You went straight
14 to the canteen and other officers were there, you have
15 explained that to us. The only person that wasn't there
16 was PC Short. She was still at the hospital?
- 17 A. Yes, that's correct.
- 18 Q. How long did you remain in the canteen that day?
- 19 A. I was one of the last to leave.
- 20 Q. When did you leave?
- 21 A. I've got this recollection in my head that I remember

TRANSCRIPT OF THE INQUIRY

1 getting in the house, like my own house about 10 o'clock
2 at night, so if I'm right in saying that I probably
3 would have left Kirkcaldy Police Station around about
4 9.15, 9.30 I think, at night.

5 Q. So when I say how long were you in the canteen, were you
6 there the whole time?

7 A. Yes, yes, I was, yes.

8 Q. Had you received instructions to remain within the
9 canteen?

10 A. Yes.

11 Q. Who from?

12 A. I can't remember. So being -- only having six months'
13 service there's still a lot of senior officers that you
14 don't see regularly, so putting names to faces and stuff
15 can be quite difficult when you see that many people
16 coming through the door. I honestly can't remember.
17 I'm also aware at some point Chief Inspector Trickett
18 was there at some point. I don't know if it was him
19 that's maybe said that, I'm not sure.

20 Q. Can we look at paragraph 60. You were asked about
21 instructions. You say you were instructed to remain in

TRANSCRIPT OF THE INQUIRY

1 the canteen:

2 "I think I may have been advised that Federation
3 representatives were being contacted on our behalf."

4 A. Yes.

5 Q. "I can't remember who said this. I discussed the advice
6 I received from the Federation below."

7 So do you remember if Stephen Kay came into the
8 canteen?

9 A. I don't remember if he came in, no.

10 Q. Do you remember a Pat Campbell?

11 A. I don't even know who that is.

12 Q. Right. Do you remember a Garry McEwan being there that
13 day?

14 A. I obviously know who he is but I can't seem to picture
15 him being there.

16 Q. Do you want to have a look at page 8 of your PIRC
17 statement?

18 A. Yes, please.

19 Q. Paragraph 6 and it starts:

20 "At no time on Sunday 3 May ... did anyone ask me to
21 provide an operational statement. A lot of other

TRANSCRIPT OF THE INQUIRY

1 officers entered the canteen whilst we were there and
2 asked us how we were all feeling. One of the officers
3 I know was [Garry] McEwan the Chief Superintendent but
4 to be honest I cannot recall everything he said or any
5 of the other officers said. I think we were all in
6 shock."

7 Do you remember saying that?

8 A. Yes, yes.

9 Q. So you did know a Garry McEwan, a chief superintendent?

10 A. Yes, if I have said that he was there at the time then
11 I'm happy to accept that, that that's what I have said
12 and that's what happened.

13 Q. So in this regard your PIRC statement will be correct?

14 A. Yes.

15 Q. Right. And then could I ask you where you put your
16 equipment?

17 A. Yes, so it was kind of the thing that you would do when
18 you're having your meal break in the canteen that you
19 would just take your vest off, take your belt off and
20 I would generally wrap my belt around my vest to keep it
21 all together and just prop it up against a wall. There

TRANSCRIPT OF THE INQUIRY

1 was no pegs as such, there was no storeroom, it was just
2 a case of leaving it in a safe place and -- where you
3 knew it was and you could keep an eye on it when you're
4 sitting having your meal.

5 Q. And did other officers do the same?

6 A. I believe so, yes.

7 Q. We have heard that other officers had things lying
8 around, leaning against walls and things?

9 A. Yes, yes.

10 Q. And we have heard that some items were kept on a table.

11 A. Mm-hm.

12 Q. Do you remember that?

13 A. Yes, I vaguely remember that. I think it was items that
14 were left at the scene, items being equipment that was
15 used: batons, leg restraints. I don't know if there was
16 anything else, probably -- I'm not sure if maybe CS was
17 involved in that but it was just equipment that
18 I remember being left on the table.

19 Q. And had been recovered at the scene?

20 A. Yes.

21 Q. Look at paragraph 70 of your Inquiry statement, sorry.

TRANSCRIPT OF THE INQUIRY

1 I think you have given some information about this to
2 the Chair, and you say that your stab-proof vest was
3 recovered, your fleece, your black police T-shirt and
4 utility belt and your various pieces of equipment you
5 have detailed.

6 A. Yes.

7 Q. And they were recovered from you, you say on your return
8 to -- the question is what equipment was recovered to
9 you on return to KPO, but from what you said already you
10 had that equipment with you for a while in the canteen?

11 A. Yes.

12 Q. When was it recovered from you?

13 A. So when we were told to go and hand over equipment
14 before we could leave the building, I vaguely remember
15 being told -- I can't remember by who -- to identify
16 what is yours on the table, essentially, and take it up
17 to the room so that it can be forensically seized -- or
18 not forensically seized but seized.

19 Q. What's the difference?

20 A. Forensically seized it would be for the -- for DNA
21 purposes, you don't want cross-contamination, so I'm

TRANSCRIPT OF THE INQUIRY

- 1 aware it was just seized as opposed to forensically
2 seized.
- 3 Q. So how was your equipment seized from you?
- 4 A. I remember it was two females and I think they were
5 wearing gloves, masks and I think a white suit which
6 would probably suggest a forensic seizure, but I can't
7 remember if it was to be forensically seized or not or
8 if that was just standard for them to do that at that
9 time.
- 10 Q. Okay. We may hear more about that in due course. Can
11 I ask you about paragraph 72 and you were asked about
12 the status of yourself. Now, when I say status I mean
13 as a witness or as a suspect.
- 14 A. Yes.
- 15 Q. And you say you didn't know at the time what your status
16 was but you do say, I think at 73, you subsequently
17 received advice from your solicitor, Professor Peter
18 Watson. Do you see that?
- 19 A. Yes, I do, yes.
- 20 Q. So on 3 May, what information were you given about your
21 status at the time?

TRANSCRIPT OF THE INQUIRY

1 A. I don't remember being told that day "You are a witness"
2 or "You are a suspect". I just remember Amanda Givan
3 kind of explaining to us -- or I don't know if it was to
4 us or to me because I was a probationer, I had no
5 experience at all of anything like this, that we
6 would -- that we can receive -- or that she can get in
7 contact with a Federation lawyer on our behalf who can
8 give the relevant advice. That's kind of as brief as
9 I remember it.

10 Q. And that was Amanda Givan?

11 A. Yes.

12 Q. Who we have heard is an SPF representative?

13 A. That's correct, yes.

14 Q. And the Federation lawyer, do you remember who that was?

15 A. It was Professor Peter Watson.

16 Q. So the name you have given there?

17 A. Yes.

18 Q. And can we look at paragraph 75, please. So you are
19 asked about advice given. Did you receive advice or
20 instruction on your return from any senior officers or
21 anyone from the SPF and you say:

TRANSCRIPT OF THE INQUIRY

1 "I do not remember receiving advice or instruction
2 from a senior officer at that time.

3 "I do not remember being given advice by
4 Amanda Givan ... other than being told ... to speak to
5 [a] lawyer."

6 Do you remember seeing -- I'm going to read out
7 a list of names and I'm going to ask you if you remember
8 seeing them or getting any advice from them:

9 Conrad Trickett?

10 A. I remember that he was in the canteen at one point
11 giving advice. I honestly could not tell you if he gave
12 any advice at all.

13 Q. Stephen Kay?

14 A. I don't actually remember him being there.

15 Q. I asked you earlier about Pat Campbell, you said you
16 didn't know him?

17 A. No, I don't have a clue who he is, no.

18 Q. Colin Robson?

19 A. I don't remember him being there either.

20 Q. Can we look at paragraph 77, please, and I would like to
21 ask you about paperwork.

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. You were asked about your obligations in relation to
3 completing paperwork, including your notebooks, use of
4 force form, a use of spray form, insofar as it related
5 to the events at Hayfield Road.

6 A. Yes.

7 Q. So you say at the time you were using your notebook for
8 recording statements, details of the public, if you had
9 cautioned or charged someone, and you understood it was
10 your responsibility to decide if you wished to put
11 entries within your notebook or not.

12 A. Yes.

13 Q. And you say you weren't in a fit state to make an entry
14 about the incident, other than your interactions with
15 the three members of the public you referred to
16 earlier --

17 A. Yes.

18 Q. -- because of all that had gone on. So you say you
19 weren't in a fit state; how were you that day?

20 A. I would probably describe it as just subdued, quite
21 depressed to some degree, not quite -- just staring into

TRANSCRIPT OF THE INQUIRY

1 space. I remember just sitting on the sofa, just
2 staring into space. Kind of emotions are kind of all
3 over the place, bearing in mind I have only got
4 six months' service at that point, there's a lot going
5 through my head: is this right for me, is this normal,
6 does this happen more regularly, so quite upset as well,
7 upset. It's a lot to take in, sitting in the canteen as
8 well, not really knowing what's going on and getting
9 that sense that nobody really knew what was going on and
10 that's not like a sort of criticism that nobody knew
11 what was going on because I understand it doesn't happen
12 that often, but certainly for somebody -- PC Good will
13 be the same -- someone with such little experience,
14 you're kind of looking for a wee bit firmer answers
15 about what's happening.

16 Q. What sort of information would you have liked that day?

17 A. I think probably where we stand, like, how is this
18 incident being treated. Is it a death in custody where
19 you're a witness, is it a death in custody that you're
20 a suspect. I think it's kind of the unknown that you
21 don't really know what's happening, that kind of has an

TRANSCRIPT OF THE INQUIRY

1 emotional effect on you as well because you're thinking
2 all sorts at that point: am I going to get locked up, am
3 I going -- are you going to lose your job? You just
4 didn't know what to think and what to do. So yes, mixed
5 emotions, just all over the shop, really.

6 Q. Can I ask you about an operational statement. Do you
7 remember any conversations, either that day or
8 subsequently about you providing an operational
9 statement?

10 A. No, no, I can't say I do, no.

11 Q. Can we look at paragraph 80, please. There may be
12 a reference here to -- I would like to ask you about:

13 "Some days later I was asked by MIT for an
14 operational statement but I had received legal advice
15 not to provide one at that stage."

16 Was the major incident team, two officers spoke to
17 you, it may have been on about 7 May 2015?

18 A. Yes, that's probably about right, yes.

19 Q. Were you informed that day about your status as
20 a witness?

21 A. I honestly can't remember. There's a chance that

TRANSCRIPT OF THE INQUIRY

1 I maybe would have been, but I can't say for certain if
2 I had.

3 Q. And you were asked to provide an operational statement
4 by the MIT and you declined because of the advice that
5 you had received?

6 A. Yes, that's correct.

7 Q. Who was that advice from?

8 A. That was from Professor Peter Watson and I think
9 I remember that he was looking for confirmation in
10 writing, so there is every chance that we got told we
11 were witnesses, but I want to say that we were maybe
12 given -- that he was looking for it in writing to be
13 clarified.

14 Q. So he was wanting that confirmed in writing --

15 A. Yes.

16 Q. -- before he would advise you to give a statement?

17 A. Yes.

18 Q. Can I move on and ask you some questions about race,
19 please?

20 A. Yes.

21 Q. If you have watched other evidence you will know that

TRANSCRIPT OF THE INQUIRY

1 I have asked some other officers these questions as
2 well.

3 A. Yes, of course.

4 Q. You are obviously telling us today that you had been
5 six months in the job.

6 A. Yes.

7 Q. So you had been at Tulliallan six months prior doing
8 your training, your initial training?

9 A. Yes.

10 Q. Do you remember if you had had training on equality and
11 diversity?

12 A. Yes, so that's always -- or it's on the first week or
13 two. I can't remember if it is over one week or two
14 weeks, but yes, it's your first one or two weeks of
15 being at the college that you get taught that.

16 Q. Do you remember what the course covered?

17 A. It covered a wide variety of things: ethnicity, sort of
18 disabilities, sex, religions, discrimination, quite
19 a few things, but I .honestly can't remember everything
20 that was taught, but it did cover sort of a wide variety
21 of things.

TRANSCRIPT OF THE INQUIRY

- 1 Q. And how did you -- the things you learned on that
2 training, how did you implement that in your day-to-day
3 practice?
- 4 A. Well, before I went to the college I was always brought
5 up to treat everyone the same anyway, so I feel like
6 I was implementing that into the college anyway.
7 Leaving the college, I think the thing that you take
8 away from the college is never be too scared to ask
9 questions if you're unsure about certain things,
10 especially when it comes to like religion or I don't
11 know, gender equality, that sort of thing, just ask
12 people if you're unsure, because at the end of the day
13 for a police officer you need to have a degree of
14 knowledge to be able to educate other people, whether it
15 be colleagues or members of the public, so that's --
16 yes.
- 17 Q. When you say "educate other people, whether that be
18 colleagues", what do you mean?
- 19 A. Well, you never know when you could ever encounter any
20 situation where something could be said inappropriately,
21 whether it be slip of the tongue, in error, or as -- in

TRANSCRIPT OF THE INQUIRY

- 1 a serious way. You need to be prepared for that.
- 2 Q. What would you do if you did encounter, for example,
3 racism or a racist comment?
- 4 A. I would challenge it. Again, you would probably have
5 an idea of how -- in what context it was used in, so you
6 could just be as simple as educating them, making them
7 aware that you can't use that term or -- at all, or if
8 it was something quite sinister or serious you've got
9 line managers, people further up the tree who can take
10 things further, who can take disciplinary action, so you
11 have a couple of options.
- 12 Q. You have told us you were a probationer.
- 13 A. Yes.
- 14 Q. And we have heard evidence about the different ranks,
15 people being more senior. How would you have felt about
16 challenging someone more senior than you?
- 17 A. I appreciate that some people would probably find that
18 quite a daunting thing to do, however, if it's something
19 that needs addressed then I don't think I would have an
20 issue -- an issue doing that.
- 21 Q. In the six months you spent at Kirkcaldy Police Office

TRANSCRIPT OF THE INQUIRY

- 1 had you come across any examples of that?
- 2 A. I have obviously thought about this before, before
3 coming here, and I haven't. I can't say that I have
4 heard or be able to give you any examples of it.
- 5 Q. Okay. Were you taught about unconscious bias on the
6 training course at Tulliallan?
- 7 A. Again, I have thought about that. I don't know if at
8 any point -- I would probably be likely to say no, but
9 I don't know if at another point if unconscious bias has
10 had another meaning or another term to describe it, but
11 I don't remember the words "unconscious bias" being
12 within the learning outcomes of the modules that were
13 taught. I can't remember ever seeing those words.
14 I could be wrong, but I don't remember.
- 15 Q. All right. Are you aware or through your training aware
16 of any assumptions that you make about people because of
17 the colour of their skin?
- 18 A. No.
- 19 Q. In 2015, in around the May when you were doing your
20 probation, how many officers at Kirkcaldy were black?
- 21 A. At Kirkcaldy I don't think at that time ... I don't

TRANSCRIPT OF THE INQUIRY

- 1 think there was any.
- 2 Q. Were you aware either from your training in Tulliallan
3 or just your general awareness about public concern
4 about the use of force by police officers, particularly
5 against black men?
- 6 A. No. The only thing that I would be aware of is in the
7 media mainly in America, so just from watching the news,
8 things like that. In terms of within Scotland, I wasn't
9 aware.
- 10 Q. What about in England?
- 11 A. I can't think of anything specific, if I have seen
12 anything in relation to England, no.
- 13 Q. Do you remember when you were at Tulliallan getting any
14 training about inquests or situations which had occurred
15 in England as a learning exercise?
- 16 A. No. No. Again, if it's something that has been
17 implemented, I can't remember, but there's nothing
18 that's jumping out at me or jogging my memory to say
19 that I had.
- 20 Q. Do you remember being aware at that time about any high
21 profile deaths which had occurred as a result of

TRANSCRIPT OF THE INQUIRY

- 1 restraint by police officers?
- 2 A. Again, no.
- 3 Q. Were you aware of any public concern or issues being
- 4 debated about the use of restraint by police officers?
- 5 A. No.
- 6 Q. Okay. Can I ask you at that time in May 2015 what your
- 7 awareness of the black community in Kirkcaldy was?
- 8 A. What do you mean by the black community? Is that like
- 9 a figure or ..?
- 10 Q. No, not one individual, just black people in Kirkcaldy,
- 11 say.
- 12 A. Yes, certainly you're aware from just doing your duties
- 13 whether it be -- I don't know, walking down the high
- 14 street, for example, driving in the high street, going
- 15 to various shops, there's retail parks in Kirkcaldy,
- 16 there's hospitals in Kirkcaldy, you do see black people
- 17 in Kirkcaldy. If -- I can't obviously say if they live
- 18 in Kirkcaldy, but certainly yes, there is black people
- 19 in Kirkcaldy, yes.
- 20 Q. And what contact had you had with those people?
- 21 A. I can't ever -- I don't recall ever arresting or dealing

TRANSCRIPT OF THE INQUIRY

1 with anyone who was black as a suspect, and there's
2 nothing jumping out at me that I have dealt with any
3 victims or witnesses who are black either. There is
4 a chance that I have, but there's nothing that I can
5 think of that -- nothing specific, no.

6 Q. Had you done any community relation work?

7 A. So I've never -- I've never really done any community
8 roles whilst being at Kirkcaldy. There is also
9 a community team that is based at every station and if
10 they have done any community relations it would
11 generally be them that would be involved in them, but it
12 would be talks at schools or going to community halls to
13 discuss matters in the community and they will probably
14 be best placed to be able to answer that.

15 Q. That's not something you were involved in?

16 A. No, it wasn't, no.

17 Q. Were any of the colleagues you had on the team involved
18 in that as far as you were aware?

19 A. Not that I'm aware, no.

20 Q. Okay. Were you aware of any negative views being held
21 by colleagues about black people?

TRANSCRIPT OF THE INQUIRY

- 1 A. No, no.
- 2 Q. Were you aware of stereotypes which existed about black
3 people generally, or black men specifically in the
4 context of criminal justice?
- 5 A. Yes, I'm aware of stereotypes.
- 6 Q. What sort of stereotypes are you aware of?
- 7 A. In relation to black people?
- 8 Q. Black men or black people?
- 9 A. Black men, so a stereotype that I'm aware of would be
10 that all black males are superior athletes, or good at
11 running, or superior at running. Another one that was
12 mentioned the other day and I was always going to say
13 it, all young black males are involved in gangs, another
14 stereotype. So I am aware of them and I think it's
15 important to be aware of them because again, it's the
16 whole thing of being able to educate people, being able
17 to recognise various stereotypes, and I'm aware of
18 stereotypes in all walks of life, it's not just black
19 people, so I think it's really important that you need
20 to be aware of them.
- 21 Q. You say it's important to be aware?

TRANSCRIPT OF THE INQUIRY

- 1 A. Yes.
- 2 Q. And you mention education. Why do you think it's
3 important to be aware of these?
- 4 A. Just to be able to point out to people that stereotypes
5 aren't facts, they're offensive as well, and you need to
6 be able to tell people -- make them aware that they are
7 offensive for whatever reason, to try and make
8 a difference really and get people to try and change
9 their way of thinking.
- 10 Q. And how do you personally guard against judging people
11 because of stereotypes?
- 12 A. So guarding against unconscious bias, is that?
- 13 Q. Yes.
- 14 A. Constantly asking yourself questions, put yourself in
15 that person's shoes, what would they -- how would they
16 feel if they knew I was thinking that, or how would --
17 why am I thinking that, kind of what's the reasons for
18 thinking that. Educating yourself essentially.
- 19 Q. Is this something that you were taught at Tulliallan
20 during your training?
- 21 A. I'm not entirely sure, so I know I have already said

TRANSCRIPT OF THE INQUIRY

1 that I can't remember the term "unconscious bias" ever
2 being -- that term being used at the college, but
3 there's every chance that it has been taught. I can't
4 remember, I would like to think that I have implemented
5 that way of thinking anyway. At the end of the day you
6 want to treat everyone the same way and with respect, so
7 I think I have probably done that anyway.

8 Q. Have you had any additional training as part of your job
9 at Police Scotland in relation to equality and diversity
10 since May 2015?

11 A. I would like to think I would have remembered if I had.
12 I can't remember.

13 Q. All right. Have you yourself educated -- have you
14 educated yourself about any of these matters since 2015?

15 A. What do you mean, sorry? In like --

16 Q. Well, you have talked about you have to educate
17 yourself. Have you maybe read subjects -- read into the
18 subject --

19 A. Yes.

20 Q. -- or looked at programmes discussing the subject or
21 read things on the internet?

TRANSCRIPT OF THE INQUIRY

1 A. Yes, so what I mean is I'm not an expert at knowing
2 everything. In the police you do come across people
3 with all backgrounds and I think it's important to know
4 where to look for the information, whether it be the
5 internet, to be able to -- how to ask appropriate
6 questions, for example, religion, Hinduism,
7 Christianity, you need to be able to know where to
8 look -- find the information.

9 Q. And do you know where to look to find the information?

10 A. I would generally probably just use the internet, or ask
11 senior officers if they had any other options.

12 Q. Is it possible that you made any assumptions on
13 3 May 2015 that influenced how you acted in relation to
14 Mr Bayoh?

15 A. No. I can safely say I never.

16 Q. Could you give me one moment, please?

17 A. Yes.

18 MS GRAHAME: Thank you very much. I have no further
19 questions.

20 LORD BRACADALE: Apart from Ms McCall, are there any Rule 9
21 applications? Ms Mitchell. Just Ms Mitchell.

TRANSCRIPT OF THE INQUIRY

1 Constable, I wonder if you would withdraw to the
2 witness room while I hear a submission.

3 A. Thank you, sir.

4 (Pause).

5 LORD BRACADALE: Yes, Ms Mitchell, if you come to the table
6 please.

8 Application by MS MITCHELL

9 MS MITCHELL: Yes. The first issue I would like to explore
10 with the witness is whether or not he remembers
11 Chief Inspector Nicola Shepherd coming into the canteen.
12 Now, this witness did arrive a little later than others
13 and it may be that he didn't, but if he does remember
14 Chief Inspector Nicola Shepherd coming in, whether or
15 not he remembered her speaking to them and if so, what
16 did she say.

17 The Inquiry might remember that they have already
18 heard evidence that Chief Inspector Nicola Shepherd had
19 a conversation where she said people should give
20 statements -- I'm paraphrasing -- but also saying that
21 the family has a right to know what happened, so it's to

TRANSCRIPT OF THE INQUIRY

1 find out whether or not this witness recalls that.

2 LORD BRACADALE: I recall the evidence that it was -- was it
3 accepted that she did say that?

4 MS MITCHELL: Yes, I think it --

5 LORD BRACADALE: So the Inquiry has that evidence. I don't
6 think it is necessary to hear it from another witness,
7 particularly one who was much later in arriving.

8 MS MITCHELL: Well, as I say, he may or may not have been in
9 and I would like to ask that question, but I hear what
10 the Inquiry says.

11 The next question that I would like to ask, this
12 witness has already indicated that he has knowledge, or
13 he has an awareness of stereotyping and of course the
14 Inquiry has already heard of a number of descriptions
15 which have been made available and the Inquiry has
16 already heard them, in fact in relation to a number of
17 other witnesses Senior Counsel to the Inquiry went
18 through this list, including: could be part of
19 a terrorist plot, muscular build, how crazy he looked,
20 "I've never seen a more frightening crazy man in my life
21 and I could see he was completely out of control", and

TRANSCRIPT OF THE INQUIRY

1 I was wishing to put to the witness whether or not he
2 recognised these as potential stereotypes of a black
3 man.

4 LORD BRACADALE: Was there anything else?

5 MS MITCHELL: Those are my questions.

6 Ruling

7 LORD BRACADALE: I think having already had a substantial
8 amount of evidence in relation to stereotyping and
9 taking into account what this witness has already said
10 about stereotyping, I think I have sufficient material
11 and it wouldn't be necessary to explore this further
12 with this witness.

13 Thank you, Ms Mitchell. If you would like to return
14 to your seat, please.

15 (Pause).

16 Ms McCall, do you have any matters?

17 MS MCCALL: I have two short matters.

18 LORD BRACADALE: Do you want to come to the table and tell
19 me about them, please.

20 (Pause).

21 Application by MS MCCALL

TRANSCRIPT OF THE INQUIRY

1 MS MCCALL: The first matter, sir, is in the transcript at
2 page 12 Senior Counsel to the Inquiry asked Constable
3 McDonough about whether he had attended any knife
4 incident where restraint was used and
5 Constable McDonough asked what was meant by restraint
6 and there was a discussion about that and then he
7 provided a non-knife example of using the leg straps.

8 I'm aware he does have an example of a knife
9 incident involving restraint if that would be of
10 assistance to the Inquiry. It bears some similarities
11 of multiple officers, a perpetrator actively resisting
12 and requiring to be restrained and taken to the ground.
13 So that was the first matter.

14 The second matter is one of clarification. At
15 page 89 of the transcript, Constable McDonough was asked
16 where he was when Mr Bayoh became unconscious and the
17 ambulance was called. Now, he had already indicated
18 that at that time he was holding Mr Bayoh in position
19 and then got up and went and looked for the knife, but
20 at page 89 he said he was at Poplar Crescent on traffic
21 point, and I simply wanted to clarify with him whether

TRANSCRIPT OF THE INQUIRY

1 that was -- which of those is correct, and the fact that
2 he let the ambulance through the cordon when he was at
3 Poplar Crescent which suggests that he's got the
4 sequence slightly wrong in his latter answer, so those
5 are the two issues.

6 LORD BRACADALE: Now, it is 1.10. How long do you think
7 that would take?

8 MS MCCALL: Five minutes or so.

9 LORD BRACADALE: Very well, we will try and do that now
10 then, if you can rearrange the seats.

11 (Pause).

12 We can have the witness back, please.

13 Constable McDonough, your own counsel, Ms McCall,
14 has some questions.

15 A. Okay.

16 LORD BRACADALE: Ms McCall.

17 PC JAMES MCDONOUGH (continued)

18 Questions from MS MCCALL

19 MS MCCALL: Constable McDonough, there are just two things
20 I want to ask you about.

21 The first is that you were asked by Ms Grahame about

TRANSCRIPT OF THE INQUIRY

1 whether you had been involved in any knife incidents
2 that required restraint and I wanted to ask you about
3 an example of such an incident, if you can recollect
4 one, because the example you gave was not a knife
5 incident earlier.

6 A. Yes. So it's quite difficult to think of one but I am
7 aware that -- it was about a year ago I was involved in
8 a knife incident. I was involved in the restraint,
9 probably played a lesser part in the restraint because
10 I was a CID officer at the time so I didn't have all my
11 equipment on me at the time. The call to police was
12 that a male had his arm almost cut off, essentially, and
13 firearms officers were -- or a taser-trained officer was
14 dispatched. However, there was a suggestion that the
15 persons responsible had left the scene.

16 When the officers arrived, including myself, they
17 found the injured male and identified where it had taken
18 place and that was at the male's back garden. Locus
19 protection was put in place. Locus protection is
20 basically officers standing by a house for -- to make
21 sure that nothing was being interfered with within the

TRANSCRIPT OF THE INQUIRY

1 cordon tape. I was in a nearby neighbour's house
2 getting a witness statement from them. There was two
3 officers in locus protection and then a call came over
4 the radio saying they have been approached by a male who
5 appeared intoxicated, stating that he was responsible
6 for causing injury to the male. They requested other
7 units to attend, I have also made my way out and they've
8 got a male in handcuffs to the rear. He appeared to be
9 under the influence of something, of that I do not know,
10 but whilst talking to him he said "The thing you're
11 looking for is in my pocket", so I kind of took that to
12 mean that it was a knife, so another officer who had
13 already -- had gloves, he searched the male.

14 Once the knife was found, it was at that point he
15 decided to -- I would just use the term kick-off,
16 kicking out, he was spitting at officers, the usual
17 verbal stuff like that and he was trying to bite
18 officers as well. So at that point he was placed into
19 the prone position and leg restraints were applied
20 before being taken into custody.

21 I was involved in the restraint on the ground to be

TRANSCRIPT OF THE INQUIRY

1 able to get the leg restraints on him before he was
2 conveyed into custody.

3 Q. Had you seen him being handcuffed or had that happened
4 before you arrived?

5 A. That happened before I arrived. I think as soon as --
6 the impression I'm getting is as soon as he has
7 approached officers and said "I'm responsible" -- he
8 gave quite specific information about the attack, which
9 led the officers to believe there was absolutely no
10 doubt about it, it was him, so as soon as he approached
11 them he was cuffed straight away. That's what I'm led
12 to believe anyway.

13 Q. And once the knife was recovered and he started, as you
14 put it, kicking off, how many officers did it take to
15 get him to the ground and restrain him on the ground?

16 A. At least four. At least four.

17 Q. Let me come to a different issue, just to clarify
18 something. You described when you were being taken
19 through your PIRC statement and correcting the order of
20 events of one part that at the point where Mr Bayoh had
21 been rolled onto his left side and you were monitoring

TRANSCRIPT OF THE INQUIRY

1 his legs, and he became motionless, that it was at that
2 point that you got up and went and looked over on the
3 grassy area.

4 A. Mm-hm.

5 Q. You were asked at a later stage about where you were
6 when Mr Bayoh became unconscious and the ambulance was
7 called, and at that later stage you said you were on
8 traffic point at Poplar Crescent. Can I just ask you
9 which of those versions is correct?

10 A. Sorry, that's probably been a mistake, maybe I misheard
11 it. I believe that I was still with Mr Bayoh at the
12 time when that request for the ambulance was made.

13 Q. Right. When you were at Poplar Crescent doing the
14 traffic point, did you put the cordon tape across or
15 someone else?

16 A. I think I assisted DS Davidson with that. I think she
17 had the cordon tape and we helped each other because it
18 was a windy day, so it needed two of us.

19 Q. And at the point when you were putting the cordon tape
20 across, did you have to let a vehicle in?

21 A. Yes, it was the ambulance.

TRANSCRIPT OF THE INQUIRY

1 Q. So as you were cordoning off Poplar Crescent, the
2 ambulance was actually arriving, is that right?
3 A. Yes, that's correct.
4 MS MCCALL: Thank you.
5 Thank you, sir.
6 LORD BRACADALE: Thank you.
7 Constable McDonough, thank you very much for coming
8 to give evidence to the Inquiry. We're about to rise
9 for lunch and you will be free to go then.
10 A. Thank you, sir.
11 LORD BRACADALE: So we will rise for lunch and sit at 2.15.
12 (1.15 pm)
13 (The luncheon adjournment)
14 (2.19 pm)
15 LORD BRACADALE: Now, Ms Grahame, who is the witness today?
16 MS GRAHAME: The witness this afternoon is Sergeant
17 Scott Maxwell.
18 LORD BRACADALE: Good afternoon, sergeant.
19 A. Good afternoon, sir.
20 LORD BRACADALE: You're going to be asked questions by
21 Ms Grahame, who you have met, but before that would you

TRANSCRIPT OF THE INQUIRY

1 say the words of the affirmation after me.

2 PS SCOTT MAXWELL (affirmed)

3 LORD BRACADALE: Ms Grahame.

4 Questions from MS GRAHAME

5 MS GRAHAME: Thank you. What's your full name?

6 A. Scott Maxwell.

7 Q. And what age are you?

8 A. 43 years old.

9 Q. And you're a sergeant?

10 A. Yes, that's correct.

11 Q. And how long have you been a sergeant?

12 A. Coming up for four years now.

13 Q. How many years' service do you have?

14 A. Coming up for 14 years.

15 Q. And for a while before you were made a sergeant, were

16 you an acting sergeant?

17 A. That's correct, yes.

18 Q. How long did that period last?

19 A. Two or three years.

20 Q. So prior to four years ago?

21 A. Yes, yes.

TRANSCRIPT OF THE INQUIRY

1 Q. When you were fully promoted?

2 A. Yes.

3 Q. And we will hear that on 3 May 2015 you were an acting
4 police sergeant at that time?

5 A. That's correct, yes.

6 Q. Now, all of your contact details are known to the
7 Inquiry so I won't be asking you to say those.

8 Have you had the chance to watch some of the other
9 evidence?

10 A. Yes, I have seen some of the evidence so I kind of know
11 what the ...

12 Q. So you will know that in front of you there's a black
13 folder, and there are hard copies of statements in there
14 for you to refer to at any time, and first of all.

15 Let's look at PIRC statement 266 and this is a statement
16 dated 4 June 2015, taken at 12.40. So this is around
17 one month after the events, by Ross Stewart in the
18 presence of Stuart Taylor at Tulliallan. Do you
19 remember giving that statement to PIRC?

20 A. Yes, I do.

21 Q. And were you doing your best at that time to give a true

TRANSCRIPT OF THE INQUIRY

- 1 and accurate record of what had happened on 3 May?
- 2 A. Yes, yes.
- 3 Q. And as well as that, did you have a satellite image that
- 4 you were given -- if you could mark that up -- so that's
- 5 COPFS 91. We will let you see that on the screen in
- 6 a moment. It has some markings on it.
- 7 A. Yes, that's correct.
- 8 Q. And was that marked up by yourself?
- 9 A. Yes. I have signed and dated it, yes, I'm happy with
- 10 that.
- 11 Q. Thank you, good. And then can we look at PIRC 267 and
- 12 I think this is a self-penned statement which you
- 13 provided to PIRC?
- 14 A. Yes, it was more notes that I made soon after -- a few
- 15 hours after the incident.
- 16 Q. So a few hours after -- on 3 May 2015?
- 17 A. Yes, that's correct. It wasn't an official statement,
- 18 it was more notes for myself.
- 19 Q. Right, and where were you when you prepared those notes?
- 20 A. In my home address.
- 21 Q. And do you remember what time it was?

TRANSCRIPT OF THE INQUIRY

1 A. It must have been early morning on the 4th. I can't
2 recall exactly.

3 Q. So it was during the sort of early hours of the
4 following day?

5 A. Yes, after a few hours' sleep.

6 Q. Okay. And again, although you said they're notes, were
7 they your best recollection of the events on 3 May?

8 A. At that time, yes.

9 Q. And what did you do with those -- with those notes or
10 self-statement, as it is called?

11 A. That was kept for my own personal use. I did provide
12 a copy to Professor Watson, my legal representative,
13 when they took over my representation, but other than
14 that, it was for my eyes only.

15 Q. And did you give a copy to PIRC at some point?

16 A. Yes, I did. When I got my statement taken at Tulliallan
17 I provided them with a hard copy.

18 Q. Thank you. And can we look at your Inquiry statement,
19 number 44, SBPI 44. It is headed up "Response to Rule 8
20 request", but you will know I'm calling this your
21 Inquiry statement.

TRANSCRIPT OF THE INQUIRY

- 1 A. Yes.
- 2 Q. So this was in response to almost 100 questions from the
3 Inquiry team, which you were then asked to collate
4 a statement, or responses to those questions, you and
5 your solicitors, and this is the statement that you sent
6 in?
- 7 A. Yes, that's correct.
- 8 Q. And can we look at the last page of that, please. We
9 will see a paragraph that says at the end of the
10 questions:
- 11 "I believe the facts stated in this witness
12 statement are true. I understand that this statement
13 may form part of the evidence before the Inquiry and be
14 published on the Inquiry's website."
- 15 And in light of that, you then have signed that. We
16 don't have a copy of your signature, but your hard copy
17 should contain your signature?
- 18 A. Yes, that's correct, that's my signature.
- 19 Q. And that was signed on 21 April this year.
- 20 A. Yes.
- 21 Q. Is that correct?

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. And also when you gave this statement to the Inquiry,
3 were you doing your best to give a true and accurate
4 record of the events of 3 May 2015?

5 A. Yes.

6 Q. Thank you. Now, the other thing that you might have in
7 front of you is a spreadsheet to your left, and if you
8 have watched any of the other evidence you may have seen
9 I have been playing some footage of CCTV and Snapchat
10 and dash cams, and this is a spreadsheet containing
11 information of what was contained in the footage.

12 A. Yes.

13 Q. You will see on the left there's times, to the left of
14 centre there's transcripts of Airwaves transmissions and
15 just to the right of centre there's a sort of thumbnail
16 sketch of what you see in the CCTV footage.

17 A. Yes, yes.

18 Q. So you can please feel free to refer to any of that
19 during your evidence.

20 A. Thank you.

21 Q. Although I will put statement paragraphs up, it will be

TRANSCRIPT OF THE INQUIRY

1 maybe one paragraph we see on the screen. If you want
2 to refer me to something else, please just let me know.
3 All right?

4 Can I ask you first of all how long you had been an
5 acting police sergeant by 3 May 2015?

6 A. For around a year.

7 Q. Had you always been based at Kirkcaldy?

8 A. I was based at Kirkcaldy, however, part of the role to
9 get experience is to go and cover at different stations,
10 should another substantive sergeant be used for
11 a specialism, I would go and fill in there and run that
12 response team for that shift.

13 Q. And had you done that?

14 A. Yes, quite a lot, yes.

15 Q. But largely based at Kirkcaldy?

16 A. Yes, that's correct.

17 Q. And were you in charge of Response Team 4 on 3 May 2015?

18 A. Yes.

19 Q. And although you have talked about your acting -- your
20 role as acting police sergeant, who was in charge of
21 you, or who was your supervisor?

TRANSCRIPT OF THE INQUIRY

- 1 A. Police Inspector Kay, he was the patrol inspector for
2 certainly my area and other areas around Kirkcaldy at
3 that time.
- 4 Q. We may have heard he is based in Dunfermline, or was
5 based in Dunfermline?
- 6 A. He can be. I believe he was based at Kirkcaldy that
7 day.
- 8 Q. So he was present in Kirkcaldy Police Office that day?
- 9 A. I believe so.
- 10 Q. You believe so. Can I ask you about paragraph 11 of
11 your Inquiry statement, please. You are asked about
12 risk factors you considered and you say from memory, if
13 I can see it -- no, I think that's -- I think I have
14 maybe got the wrong paragraph number there. Can I ask
15 you about -- it's not that paragraph. Can we move up
16 please, Ms Wildgoose.
- 17 I wanted to ask you about some equipment issues
18 before we move on, so first of all, you were involved in
19 the muster in the morning?
- 20 A. Yes.
- 21 Q. Tell us what a muster is.

TRANSCRIPT OF THE INQUIRY

1 A. What happens is I come in prior to the shift starting at
2 handover from, it would have been the night shift
3 sergeant. We have what's known as a log of everything
4 that's happened which contains any custodies we have,
5 any domestic incidents, various -- it's just broken down
6 into categories so it's a handover for me. It will tell
7 me whether we have any actions that we need to continue
8 from the night shift, if maybe someone has been arrested
9 it requires interview or further inquiry done.

10 So I get that handover. I then work out who is
11 working with who in terms of line up and allocate
12 tasking out to them, and that sets up my muster and then
13 I go into that muster and I will tell the officers
14 what's happened last night, if there's any intelligence
15 briefings we need to know of and task them out.

16 Q. And when you say task them out, does that mean
17 allocating them tasks for the day?

18 A. Yes, so if we had a suspect we were looking for I might
19 say to one of the units "Can I please allocate that to
20 you, your job today will be to try and trace the suspect
21 and interview and try and bring that to conclusion".

TRANSCRIPT OF THE INQUIRY

- 1 Q. So you are in charge but they have some autonomy in
2 terms of how they carry out these tasks?
- 3 A. Yes. Effectively I'm in control of the team's business.
4 Officers -- when I was an officer as well I've got
5 autonomy, I make the decisions based on the legislation,
6 law, human rights, et cetera. I carry out my duties due
7 to that. I am there as sergeant to oversee if they
8 maybe have a problem and need advice, if they're needing
9 guidance on something. I'm there to deal with the
10 bureaucratic admin side of it as well and the calls that
11 are coming in, risk-assess them, along with the control
12 room, just to manage the team as a whole, but the
13 officers -- when they go to an incident, they are wholly
14 responsible for their actions at that particular time
15 unless I hear something, or whatever that I wish to come
16 in and say "Look actually can we do it this way".
- 17 Q. You can intervene?
- 18 A. I can intervene, but the trust is there, they're fully
19 trained, fully up to speed. When they go to an incident
20 I shouldn't have to worry about what they are doing as
21 such, they should know what they're doing.

TRANSCRIPT OF THE INQUIRY

- 1 Q. Okay. And from memory that day, was everyone present
2 who was supposed to be present on the team?
- 3 A. Yes, that I can recall. I had all the staffing that was
4 allocated to me on that day.
- 5 Q. And you said everyone was trained. Did they all have
6 their officer safety equipment with them?
- 7 A. No one has approached me on that day stating otherwise.
- 8 Q. We may have heard -- the Chair may have heard some
9 evidence that one of the officers did not have a baton,
10 that a clip had been broken the week prior and it hadn't
11 been ordered -- a replacement hadn't been ordered or
12 hadn't arrived. So if someone did not have a baton,
13 which is obviously a piece of equipment, is that
14 something they should draw to your attention?
- 15 A. Yes, it should have been.
- 16 Q. And how do they go about -- how would someone go about
17 doing that? Would they just speak to you or --
- 18 A. They would approach me, yes, approach me and say -- and
19 we'd try and source an alternative bit of kit (inaudible
20 overspeaking) --
- 21 Q. And that's something that you could do?

TRANSCRIPT OF THE INQUIRY

- 1 A. I could certainly try, yes.
- 2 Q. If they could not source an alternative source of kit or
3 they couldn't source a baton or a suitable clip, what
4 should they be doing?
- 5 A. Well, to be honest if I had been told that and I had
6 awareness of that it might have been that the -- we
7 would have talked about other strategies in terms of
8 officer safety, but we had a lot of staff on at that
9 time and I could have moved that officer on to the diary
10 car which is more appointment-based and least likely to
11 get involved in a confrontation. There's no set purpose
12 as such, there's no set technique, but it's ensuring
13 that they're safe and if I had been told that,
14 I potentially would have done that, rather than let them
15 go out on the street.
- 16 Q. So you have a discretion as part of your role --
- 17 A. Yes.
- 18 Q. -- to allocate --
- 19 A. Yes.
- 20 Q. -- officers --
- 21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. -- with one or other of the team?

2 A. Yes.

3 Q. Right. Can I ask you about the Airwaves transmissions.

4 Now, you may have heard some of this, if you have

5 watched any of the evidence, but at one point you made

6 a request for "All units to attend", for an ARV and for

7 a dog unit.

8 A. Yes.

9 Q. Maybe we could just look at the spreadsheet for the

10 moment, it might assist. If you look at page 2, at

11 7.17.23, and I wouldn't plan to play this unless you

12 want to hear it, but this says it is yourself, Acting

13 Police Sergeant Scott Maxwell:

14 "Control from 411, I want all units to attend that

15 bearing in mind officer safety is there an ARV and a dog

16 as well please."

17 A. Yes.

18 Q. And I would like to ask you about that. You have said

19 in your Inquiry statement you thought this was a grade 1

20 call. You classify -- that it was classified as

21 a grade 1, which meant immediate threat to life?

TRANSCRIPT OF THE INQUIRY

- 1 A. Yes.
- 2 Q. And so what was your understanding of the significance
3 or the seriousness of that call about the man in --
4 holding a knife?
- 5 A. The information that came over the radio was that there
6 was a male in possession of a knife and that he was
7 running about the street with it and that he had been
8 chasing somebody. Soon after that I believe there was
9 a second call come in corroborating that and that
10 instance for me that is an immediate threat to life.
11 I can go into it later on, but there's certain
12 categories of knife incidents that I kind of work
13 across, but for that being a Sunday morning, it was
14 quite out of the ordinary, coming in, quite a concerted
15 message that there's a male in possession of a knife,
16 chasing somebody. That means immediately someone's life
17 is in danger, no matter what if it had been fake call
18 whatever, you receive that information, you don't deal
19 with that lightly.
- 20 Q. Right. Can I ask you about that. You have talked about
21 chasing somebody.

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. So that's an immediate threat to life.

3 A. Yes.

4 Q. Could you look at page 1, please, at 7.16.32 we see
5 Con 1, so we have heard that this is the control room on
6 the Airwaves transmission:

7 "I need you to divert to Hendry Road, a disturbance
8 ongoing. Male armed with a knife. African looking male
9 chasing someone maybe carrying a knife described as big
10 with muscles."

11 I think I would like to play from this point,
12 please, so this is the evidence video timeline from
13 7.16.32. It's just prior to that, you will hear it
14 coming on, so you can read the transcript and we will
15 play through to 7.17.10.

16 (Video played)

17 Thank you very much. So you will have heard both of
18 those messages.

19 A. Mm-hm.

20 Q. Now in the first one -- you have told us just a moment
21 ago that your understanding was that a male armed with

TRANSCRIPT OF THE INQUIRY

1 a knife was chasing somebody?

2 A. Mm-hm.

3 Q. When you listened to the transmission at 7.16.32 on
4 page 1 of the spreadsheet, we have also heard that this
5 is someone reading off a screen:

6 "I need you to divert to Hendry Road a disturbance
7 ongoing. Male armed with a knife, African looking male
8 chasing ..."

9 And then there's a pause and then it says "someone
10 may be carrying a knife" and then it says "described as
11 big with muscles". You're telling us today your
12 recollection is that someone was chasing somebody with
13 a knife. Was that your understanding of that message?

14 A. Yes, they were being chased and also there was a male in
15 possession of a knife, yes.

16 Q. So was it -- but did you understand that message to be
17 someone was chasing -- a male armed with a knife was
18 chasing somebody?

19 A. Yes. That was my understanding.

20 Q. That was your understanding at the time.

21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. If your understanding at the time had been that he was
2 just chasing cars or maybe just walking around the
3 street with a knife, would that have made a difference
4 to how you graded the call?
5 A. Not really, no.
6 Q. You would still have seen that as immediate threat to
7 life?
8 A. I would still have seen it as immediate threat to life.
9 Q. So immediate threat to life and you make a request for
10 all units, the ARV and the dog unit.
11 A. Yes.
12 Q. And in making that request what was your intention, why
13 did you ask for those things?
14 A. One of the jobs as sergeant as well, I have to plan for
15 every contingency. My thinking in that is that if I had
16 an armed response vehicle or a dog unit and it was close
17 by, that they could maybe potentially come in and deal
18 with the situation along with us. There's different
19 tactical options, different ways that could have come to
20 a conclusion. Also, when we arrived there it may have
21 been a stand-off situation potentially, may have been

TRANSCRIPT OF THE INQUIRY

1 suicidal, might have been a cry for help, so there's
2 different ways -- when that call came in I didn't
3 immediately think that's what was going to happen, but
4 you've got to account for all different possibilities
5 and having the specialisms of an armed response vehicle
6 or a dog helps with those tactical responses and also
7 for officer safety and for keeping the public safe as
8 well.

9 Q. So how can it help with officer safety?

10 A. Well, again, it depends how it pans out. If a dog is
11 with you at the scene or locus, the dog may be able to
12 go and deal with the individual rather than a human
13 being having to go and deal and see if they can bring
14 that to a conclusion. It's just different tactics
15 rather than officers having to go face-to-face with
16 anybody, and again, these specialist officers are
17 trained in this and obviously the control room is also
18 trained in this, firearms commander, et cetera, so if
19 they were available the potential that they would take
20 over on scene and they would deploy their tactics. It's
21 not up to me per se to deploy and use their specialism,

TRANSCRIPT OF THE INQUIRY

1 they would then -- I would seek advice from them when
2 they arrived.

3 Q. So having them on the scene gives you a wider range of
4 tactical options, including them taking over -- taking
5 charge --

6 A. That's correct.

7 Q. -- or taking command? And you said if they were close
8 by so what do you mean by that?

9 A. It (inaudible) centralised and we're kind of depending
10 on where the shifts were starting, et cetera, it would
11 depend on the availability of specialist resources, so
12 one of the reasons that I did shout up is to obviously
13 find out where and if there was anyone on duty at that
14 particular time to assist us in that.

15 Q. Can I ask you to look at PIRC 266, which is your PIRC
16 statement, page 3, paragraph 11, so that's right at the
17 bottom of the page.

18 A. Mm-hm.

19 Q. And you say -- right, sorry, three up:

20 "I also remember asking the controller about the
21 availability of an ARV ... and a dog unit, and that was

TRANSCRIPT OF THE INQUIRY

1 basically to assist my officers and through experience
2 I know that knife incidents may result in a stand-off
3 situation and/or hostage situation and that ARVs and dog
4 unit are maybe more appropriate.

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

12 And we will leave that there for the moment. So
13 your understanding was that there was no ARV on duty
14 that day?

15 A. At that particular time, yes.

16 Q. Right. And -- but there was a dog unit on duty and they
17 would be attending?

18 A. That was when I was at the actual scene by then, but
19 there had been no confirmation from any of the
20 controllers stating that there was one en route.

21 Q. Right. Can I ask you to look at the spreadsheet again

TRANSCRIPT OF THE INQUIRY

1 please, so page 2, I referred you to 7.17.23, that was
2 your initial request for all units, ARV and dog unit and
3 then we see at 7.19.12 you say:

4 "Control from 411 is there any update from ARV or
5 dog units over?"

6 So that was you seeking an update from your original
7 request and then 7.19.17, Con 1:

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

9 Which confirms what you have said and then Con 2:

10 "411 be aware organising an ARV as well, stand by."

11 So what was your understanding of that phrase "Be
12 aware organising an ARV as well"?

13 A. Yes, that to me confirms that there's no confirmed
14 resource been allocated to the call. They're trying to
15 resource one or find one.

16 Q. So if there had been one confirmed, what would you have
17 expected control to say to you?

18 A. Just confirming that a certain call sign is available
19 and they're making their way from X, Y, Z, ETA X amount
20 of minutes.

21 Q. So where with the dog unit they have said "I believe

TRANSCRIPT OF THE INQUIRY

1 a dog unit is en route"?

2 A. Again, that wasn't confirmed.

3 Q. So what did that mean when you say not confirmed?

4 A. Well, "I believe a dog unit en route" isn't "a dog unit
5 is on its way". It's not a confirmation.

6 Q. And as a confirmation about a dog unit, what information
7 would you have expected?

8 A. Again, I would have expected from control "Sierra Delta
9 12 is en route, it's currently in Edinburgh, 40-minute
10 ETA", and then that's a rubber stamp to say there's
11 definitely resource on the way.

12 Q. So the identifying number and then an estimated time of
13 arrival?

14 A. Some form of communication to say that they're en route.

15 Q. So this -- in relation to both the dog unit and the ARV
16 there was no clarity on that --

17 A. No.

18 Q. -- as far as you were concerned. So in terms of your
19 approach to this situation and your mindset, what did
20 you think the situation was with the dog unit, the ARV,
21 the sort of specialist resources?

TRANSCRIPT OF THE INQUIRY

1 A. I didn't believe they had been allocated so we didn't
2 have them available.

3 Q. Right, so you were approaching this incident --

4 A. Without that support.

5 Q. Without that support. And had there been that support
6 available, had you had that clarity in relation to the
7 allocation and the estimated time, what difference would
8 that have made to the way you approached this incident?

9 A. Well, certainly I -- as I said earlier in terms of
10 officers having autonomy, we still need to go to the
11 locus and ascertain what's going on. I have asked for
12 the dog unit and the ARV as a tactical option as well.
13 The fact that they were 40 minutes away, if they had
14 been available, would still negate of them being readily
15 available. Officers have decided to engage Mr Bayoh at
16 that time rather than communicate, so for me there's
17 nothing much else I can do as a supervisor in that
18 situation: I've got an ARV, dog unit requested, there's
19 no confirmation, officers en route to scene. The main
20 thing for me is that I have staffing available, I've
21 got -- I have requested the resources to assist, and

TRANSCRIPT OF THE INQUIRY

1 effectively that's me managing what I can do at that
2 particular time.

3 Q. So you have effectively reached the limit of your
4 authority?

5 A. Yes.

6 Q. And when you use the words "readily available", how
7 close would those specialist resources have to be for
8 them to be readily available?

9 A. Well, again it depends on the circumstances and the
10 circumstances in this particular incident have played
11 out pretty quick, but if the subject had had a knife and
12 engaging with officers, 40 minutes might be plenty of
13 time. It really just depends on what we're faced with.

14 Q. When you say "engaging", what do you mean?

15 A. Well, in terms of if the subject is in control in terms
16 of they're speaking to officers, maybe they've got
17 the knife -- if they're suicidal they've got the knife
18 at their own neck, or they are just standing contained,
19 but police have got some sort of verbal control,
20 et cetera, keeping their distance, then a dog unit or an
21 ARV could potentially make it in time to then affect

TRANSCRIPT OF THE INQUIRY

1 their tactical options in dealing with the person.

2 Q. So depending on the circumstances, there could have been

3 a period --

4 A. Yes.

5 Q. -- where they waited for those specialist resources, but

6 it would be dependent on the circumstances?

7 A. Absolutely the way in which it plays out. Every

8 situation is unique.

9 Q. There's something else that you mention in your PIRC

10 statement I just want to ask you about before we move

11 on. PIRC 266, page 4, paragraph 1. You mention you

12 don't remember when the last time your CS spray was

13 weighed or indeed if it has been weighed at all:

14 "I've never heard of officers having their CS

15 canisters routinely weighed. I know now that PAVA

16 canisters are weighed daily by the officers themselves

17 and record their weights on a pro forma ... retained in

18 a team folder in the briefing ... basically down to the

19 individuals' honesty."

20 Could you explain a little bit about this. We have

21 not heard any evidence so far about weighing.

TRANSCRIPT OF THE INQUIRY

1 A. Yes, I mean the CS it was more -- you had your CS, you
2 would sign that and then out to say that you had taken
3 that out of the controlled police building and then it
4 is signed back in at the end of the evening. I can't
5 recall there was any requirement to have that weighed.
6 PAVA was different where we had to sign it in and out
7 and clarify the weights in and out as well.

8 Q. Right. And in May 2015, was it your understanding that
9 there was some sort of weighing process being carried
10 out?

11 A. Yes. And there were some were still on CS were signing
12 in and out because it was just being introduced then.

13 Q. Thank you. And did you understand that it would have
14 been possible for the area control room to take command
15 of the incident as it panned out in Hayfield Road?

16 A. Yes. I mean certainly -- if it turned in -- or it had
17 been declared a firearms incident then yes they would
18 have taken ownership of that. Again, as it panned out
19 in this particular circumstance, it happened in a matter
20 of minutes and for any ownership such as my
21 management -- the management of the overview, it

TRANSCRIPT OF THE INQUIRY

1 happened that quick that personally I can't see how we
2 could have affected much more, other than the officers
3 being autonomous and dealing with it within their
4 training.

5 Q. So prior to the -- I would like to get an understanding
6 of your ability to control a situation before you have
7 actually even arrived at the scene?

8 A. Okay.

9 Q. What does it mean to be in charge, or in command of
10 a situation that's ongoing, before you even actually
11 arrive yourself?

12 A. Yes, as I said earlier, it's about making sure that you
13 have the correct amount of staff to go to it. If it had
14 been vandalism at a primary school, one unit would
15 suffice; someone in possession of a knife it's as many
16 officers as we can get, because it's not just a case of
17 this particular person may be in one area, they could
18 have moved so we need area search, containment
19 potentially, different type of tactics, so I've got to
20 look at that. I've got to look at specialist resources,
21 ensure that the officers stay safe and obviously

TRANSCRIPT OF THE INQUIRY

1 risk-assess the area in which it's in as well, so I'm
2 just keeping a complete overview, I'm looking at other
3 factors such as -- you know, has someone left the
4 hospital, especially what the time of day it is as well.
5 There's numerous factors you need to look into, but
6 ultimately, until we can get there and actually see
7 what's going on and I have some feedback or whatever it
8 might be, it's difficult to get a complete overview.
9 I mean I could have said to them "No one go near that
10 area". However, we need to see what's going on at that
11 particular time.

12 Q. Is it possible for you to say to officers "I want you to
13 wait, to hold back and observe what's going on"?

14 A. I mean potentially I could have said that, yes.
15 However, as I said before, officers that were
16 attending -- heading there are extremely experienced
17 officers and they know what to do in that set of
18 circumstances. They know that when they get there if
19 it's a situation they can't deal with, or they feel that
20 I need to know about straight away, they would contact
21 me over the radio or let control know.

TRANSCRIPT OF THE INQUIRY

- 1 Q. So it's open for all of those officers to provide, we
2 have heard it called feedback?
- 3 A. Well, some sort of feedback, sort of -- what I would
4 normally do is when I got to a scene I would say "That's
5 me here, I can see a particular individual, they're in
6 possession of -- they're not in possession", et cetera.
7 Some sort of feedback. However, in this case officers
8 have deemed it suitable enough to go and deal with the
9 incident and have approached Mr Bayoh by themselves
10 without providing any feedback to myself or the control
11 room.
- 12 Q. We have heard evidence that there wasn't feedback to the
13 control room but also other officers in the area, such
14 as yourself --
- 15 A. Yes.
- 16 Q. -- can also hear those Airwaves transmissions. We have
17 also heard that the officers who attended were
18 up-to-date in their training?
- 19 A. Mm-hm.
- 20 Q. So it sounds like you are relying to some extent on
21 their training and their experience to allow them to act

TRANSCRIPT OF THE INQUIRY

1 with autonomy when they arrive at the scene?

2 A. I wouldn't use the word "relying". They're trained
3 professionals. I supervise a team of trained
4 professionals. I'm not relying or hoping that they will
5 deal with it; I know that they will deal with it
6 professionally.

7 Q. Okay. And you might be two or three minutes behind
8 those officers?

9 A. Yes.

10 Q. So what are your expectations of the officers when they
11 first arrive at a scene?

12 A. Well, again, as I have said, the two officers that did
13 arrive first at the scene were extremely experienced and
14 I had full trust in them.

15 Q. We have heard they may have been the most experienced?

16 A. Yes, they were, they were. Now, through all that
17 experience I was very confident in their assessment of
18 what the situation would be and I was confident that
19 they would deal with that situation in a professional
20 manner and let me know if there's anything in particular
21 I need to know about straight away, (a) for other

TRANSCRIPT OF THE INQUIRY

1 officers attending but also for me and to be recorded on
2 our call card system which you have seen, which is here.
3 Anything that's pertinent should be recorded on this for
4 circumstances such as reviews, et cetera, or review of
5 training progress.

6 Q. Things like the Airwaves transmissions?

7 A. Yes, yes. Now, they have decided to engage Mr Bayoh.
8 Officers knew -- they shouted out that they were at the
9 scene, at the locus, and the way they have dealt with it
10 they have -- they thought they could deal with it
11 initially and they haven't shouted back up, but
12 personally I would have preferred some form of feedback
13 to say "We're here, we can see this, we're going to get
14 out and engage", and that sets the scene to everybody.

15 Q. So we have heard you weren't present at the scene at the
16 time they arrived?

17 A. No.

18 Q. And we have heard from the control room that they needed
19 eyes on the ground --

20 A. Yes.

21 Q. -- to be able to see what was happening. And they

TRANSCRIPT OF THE INQUIRY

- 1 wanted that so they could get more information to
2 process that through this National Decision-Making
3 Model.
- 4 A. That's correct.
- 5 Q. And is that the sort of thing that you're also doing,
6 getting more information in --
- 7 A. Yes.
- 8 Q. -- to then go round the National Decision-Making Model?
- 9 A. Yes, that's correct. The more information we have at
10 our disposal, the more informed decisions we could make.
- 11 Q. So although you were confident in your officers and
12 their assessment, you would have liked further
13 information from them --
- 14 A. As I said, I would have liked that. It's not necessary
15 because if you were -- if every officer was to go to
16 every call and give you feedback you wouldn't get
17 anything done because there's calls coming in "I'm here,
18 I'm doing this, I'm doing that", but on this particular
19 call I might have expected some form of feedback.
- 20 Q. Because this is a grade 1 call?
- 21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. And you have called for an ARV and a dog unit and all
2 units?
3 A. That's correct.
4 Q. So it is a high priority call?
5 A. Yes.
6 Q. Which you have considered to be an immediate threat to
7 life?
8 A. That's correct.
9 Q. So basically, would you expect as much information to be
10 shared as possible --
11 A. Yes, yes.
12 Q. -- in those circumstances?
13 A. As much as I can, based on the circumstances that the
14 officers are met.
15 Q. And although you have told us earlier that you can issue
16 instructions prior to your arrival, would you have
17 considered that appropriate without any feedback from
18 the officers on the scene?
19 A. Again, I had worked with the team for a while, I covered
20 the team so I know how each individual works. If it had
21 maybe been two probationers new to service that were

TRANSCRIPT OF THE INQUIRY

1 teamed together and had gone into a situation like that,
2 I would have been more vocal, but again, it's down to
3 experience and trust of the professional officers that
4 you have at your disposal. When they have gone I felt
5 confident that I had my best people going to deal with
6 that and that they would pass back what was pertinent to
7 me to help -- they obviously knew that the request had
8 been made for specialist resources and other officers
9 were en route as well.

10 Q. So they would know that you expect some feedback if they
11 can?

12 A. Yes.

13 Q. And would they know that ACR expects some feedback?

14 A. Yes, yes, as I say, it's not necessary, but again, it
15 would probably be the best practice in terms of making
16 everyone aware.

17 Q. Can I ask you, you left Kirkcaldy Police Office to go to
18 the scene at Hayfield Road?

19 A. Yes.

20 Q. And was that two or three minutes behind the others in
21 your team?

TRANSCRIPT OF THE INQUIRY

1 A. Yes, yes.

2 Q. You mentioned earlier that you have quite a bit of
3 discretion about who is put with who.

4 A. Mm-hm.

5 Q. Can you tell us, when you're pairing up the officers, we
6 have heard that Walker and Paton went out together, we
7 have heard that Tomlinson and Short went out together,
8 Smith went with Good who was a probationer --

9 A. Mm-hm.

10 Q. -- we have heard about Gibson and McDonough -- sorry,
11 I'm forgetting -- and we have heard about Gibson going
12 out with McDonough. Is it you that decides who to pair?

13 A. Yes, to an extent. Like so PC Smith and Good, PC Smith
14 was PC Good's tutor constable, so we try and keep them
15 together as much as possible. You try and -- the fact
16 is you don't make judgments. They're all professionals,
17 they all know what they're doing, they're fully trained.
18 Obviously some are more experienced than others and you
19 try to marry up the experience, okay. It might be
20 a case where you've got two people just out of probation
21 and you put them on together because they need to get

TRANSCRIPT OF THE INQUIRY

1 the experience and they work together to build the
2 expertise in their job role, so it's -- it is up to me
3 essentially who goes out unless -- I was an acting
4 sergeant at the time so I was covering. Unless I'm left
5 specific instructions saying "This pairing must work
6 together, this pairing must work together", but there's
7 no set formula for pairing officers together, and
8 ideally you try and keep them together as much as
9 possible because if they're dealing with a particular
10 case and one of them goes off sick, the other person has
11 knowledge of that case if they get hold of the suspect
12 or have to take other statements, so it's best practice
13 to offer best customer service that way.

14 Q. So continuity is important?

15 A. Continuity, if possible.

16 Q. From the outside you might think that someone very
17 experienced should be paired with someone slightly less
18 experienced to help bring that person on. That's not
19 what you're saying, you're talking about marrying-up
20 experience?

21 A. You can do. You can have -- marry-up experience but you

TRANSCRIPT OF THE INQUIRY

1 can also have people that are out of their probation --
2 I found it very useful when I was out of probation I was
3 put in a car myself and I went out and dealt with
4 incidents. I learned a lot quicker, I made mistakes,
5 I did good work, but I learned a lot quicker. You work
6 with someone a bit younger service than you, you feel
7 that you are the person in charge and you develop a lot
8 quicker in your understanding so it's not just about
9 marrying experience, it's about building officers'
10 confidence as well.

11 Q. So does that explain why Walker and Paton, the most
12 experienced officers, were put out together?

13 A. Yes, I mean there were other reasons as well. They had
14 certain casework they were doing. I tend to put them
15 out on what's known as the 1-9 van crew. They're in
16 charge of the warrants and they would go round and get
17 the warrants as well because they had the custody van.
18 So there's a lot of operational reasons as well which
19 I won't go into today unless I have to, but really
20 there's no specific formula. It's about your priorities
21 at the time when you turn up.

TRANSCRIPT OF THE INQUIRY

1 Q. So there's not a simple answer to how --
2 A. No.
3 Q. -- you pair people?
4 A. No -- well, the simple answer for the tutor cop and the
5 officer is for that reason, but other than that, there's
6 no set formula.
7 Q. Not for the others?
8 A. No.
9 Q. And can I ask you to look at a message that was -- we
10 have heard evidence about on page 3 of the spreadsheet,
11 7.20.13:
12 "Inspector Stewart area control room to the set
13 attending. I am monitoring this obviously from an ARV
14 perspective. If you get sightings of the male you need
15 to make an initial assessment yourself and feed back
16 through straight away and I will listen out on
17 the channel."
18 And looking at that message, what does that say to
19 you as an officer?
20 A. Well, that's the area control room inspector stating
21 that he is looking for a bit of feedback, like I was,

TRANSCRIPT OF THE INQUIRY

1 but also from an ARV perspective, he is a tactical
2 firearms commander and from information that he would
3 potentially get from the scene would determine whether
4 or not that the ARV was required and it met the criteria
5 to dispatch it to our area.

6 Q. And again, he is expecting feedback from officers on the
7 scene?

8 A. Again, if needed.

9 Q. Can I ask you to have a look at paragraph 2 and
10 paragraph 3 of your Inquiry statement, please. Let's
11 look at 2 first of all. So here you are asked about the
12 receipt of the call and the grade 1 call and the
13 immediate threat to life. We have talked about that
14 already.

15 Can I ask you to look at paragraph 3, please, and
16 I would just like you to look at paragraph 2 of that
17 answer, first of all, and there's a reference to:

18 "One unit alone would not have been sufficient to
19 carry out full street searches and once found to assess,
20 control, and contain the subject. I also had in mind
21 the 'Contact and Cover' principle."

TRANSCRIPT OF THE INQUIRY

1 I would just like to ask you about the "assess,
2 control and contain the subject" and then the "contact
3 and cover principle". Can you explain to us what you
4 meant by those phrases?

5 A. Yes, certainly. We obviously had the reports of a male
6 in possession of a knife in that area, there's a mixture
7 of main arterial routes to hospitals and housing
8 estates, et cetera, so there's lots of different places
9 that a potential suspect could move off into, so again,
10 one unit alone -- and certainly I would have been
11 irresponsible sending one unit alone to look for a male
12 armed with a knife should anything happen and then I'm
13 having to explain why I only sent one unit. So we're
14 sending as many people as we can, to carry out a street
15 search and then as we have talked about before,
16 potentially to feed back and say where that person is,
17 would it be possible to control and contain the subject,
18 and contact and cover in terms of approaching the male
19 from an officer safety point of view.

20 Q. So can you explain what you mean by contact and cover?

21 A. Contact and cover is effectively an officer safety

TRANSCRIPT OF THE INQUIRY

1 technique whereby one officer may talk to the subject
2 and try and gain their attention, while the other
3 officer is coming at a different angle should they be
4 required to restrain or use any other officer safety
5 techniques, so effectively there's one person focused on
6 one individual so it leaves that other officer --
7 because if they both approach at the same side at the
8 same time then there's the potential both could get
9 injured or incapacitated, so it's an officer safety
10 technique.

11 Q. So the officer in front of the subject will communicate
12 with them or attempt to communicate with them --

13 A. Yes.

14 Q. -- ie speak to them?

15 A. Yes, in other words, there is a precautionary measure
16 should it go wrong.

17 Q. If something goes wrong they can take a different angle?

18 A. They can take -- yes.

19 Q. And then "assess, control and contain", what does that
20 mean?

21 A. Again, that would have been if it was in a position to

TRANSCRIPT OF THE INQUIRY

1 do such-like, again, if the subject was standing
2 stationary. It might be a case of we get out, we try
3 and contact them, speak to them and other officers may
4 form a form of cordon to try and keep them in that
5 particular area, so it's not a risk to anyone else.

6 Q. How many officers would you need to contain one subject?

7 A. It depends on the location itself. It really is
8 dependent on that. Where you are, how many officers
9 you've got, the scenario I was thinking up in my head at
10 that time is when you get somebody in a street scenario
11 where you can have both ends closed. I mean, if they
12 run through the garden, you know, at least you've got
13 officers in that area who can then double back and come
14 back and try and sort of trace them again. There's no
15 easy answer to that one, but there's -- to form some
16 form of cordon and show police presence.

17 Q. What about Hayfield Road, how many officers would you
18 need to contain a subject in Hayfield Road?

19 A. You would need quite a lot, to be honest. To put a full
20 cordon on, an inside and outer cordon, you're looking at
21 over 20 officers.

TRANSCRIPT OF THE INQUIRY

1 Q. How many were in Response Team 4?

2 A. There was eight, I believe, and then obviously we could
3 have got officers from other areas should -- if it had
4 been required.

5 Q. That isn't something that you anticipated at that stage?

6 A. No. Again, very early stages of that, right in its
7 infancy. Until you get there and see what's happening,
8 it's very difficult.

9 Q. So again, it's very important to see what's happening on
10 the ground?

11 A. Yes. I mean if every incident you were to ask for 20
12 officers from another area, I don't think it would be
13 favourably received.

14 Q. You wouldn't be very popular. Can we look at
15 paragraph 5, please. You will see that's split into
16 different paragraphs. You are asked about the
17 perpetrator's race here:

18 "The race ... had no bearing whatsoever on how the
19 incident was managed. I would have responded to
20 a credible threat to life call in the same manner, no
21 matter the description of the perpetrator.

TRANSCRIPT OF THE INQUIRY

1 "For the avoidance of doubt and because I know the
2 Inquiry is going to examine this issue, I was aware of
3 the threat level to national security and police
4 officers as being severe and that there had been high
5 profile incidents in relation to terrorism in the
6 United Kingdom. However, my risk assessment at that
7 time did not take terrorism into account and only would
8 have if credible evidence was available."

9 I would like to explore this in more detail with
10 you. You say that because you know the Inquiry is going
11 to examine this issue you are mentioning the -- your
12 awareness of the threat level?

13 A. Yes.

14 Q. So is that only because the Inquiry is going to examine
15 it, or was this something that you considered on the
16 day?

17 A. As I said, when the initial call came in, it's my job to
18 think of every sort of avenue, contingency, what's going
19 on, and obviously the nature of it with all the
20 heightened security and terrorism, that did go into my
21 mind, but, however, at that time there was no credible

TRANSCRIPT OF THE INQUIRY

1 evidence to suggest that was the case until I actually
2 arrived at scene and see what actually happens, mental
3 health, death by suicide, different -- lots of different
4 contingencies. If I wasn't doing that, I wouldn't have
5 been doing my job right.

6 Q. And when you say "credible evidence", "only would have
7 taken terrorism into account", "only would have if
8 credible evidence was available", what is it you
9 envisage by credible evidence?

10 A. Well, if the information that had been received had been
11 terrorism-related. I mean there have been religious,
12 you know, remarks or if the witnesses had been phoning
13 in -- something that would indicate a terrorism threat.

14 Q. Right, and what did your risk assessment take into
15 account if not race, if not terrorism?

16 A. Sorry, just repeat, my risk assessment --

17 Q. You said:

18 "My risk assessment at that time did not take
19 terrorism into account and only would have if credible
20 evidence was available."

21 So if your risk assessment didn't take race into

TRANSCRIPT OF THE INQUIRY

- 1 account and if it didn't take terrorism into account,
2 what did it take into account?
- 3 A. It took into account that there was a male armed with
4 a knife running through the streets chasing people.
5 Again, which is not a -- it's a very rare occurrence and
6 again, that was my main priority, making sure we had
7 enough staff, specialist resources and trying to find
8 the person first off, but, as I say, mental health, the
9 terrorism part, you know, anything could have come into
10 play there.
- 11 Q. Can I ask you to look again at your notes, 267, page 4.
12 It is paragraph -- the paragraphs aren't easy to
13 decipher.
- 14 A. Yes (inaudible overspeaking).
- 15 Q. But paragraph 3, I was going to say. We can go through
16 from the beginning actually. You talk about the team at
17 paragraph 2 being in shock and being upset. You see:
18 "On arrival at the canteen ..."
19 So you have mentioned that.
- 20 A. Okay.
- 21 Q. It is on the screen and you say you had:

TRANSCRIPT OF THE INQUIRY

1 "... not seen them so upset and in shock. They were
2 in fear for their lives and the life of their fellow
3 colleague PC Short who had been attacked by the male."

4 A. Yes.

5 Q. If we move down a little bit. And you say you were:

6 "... required: To give hugs and reassurance to male
7 officers who were ... strong-willed and not easily
8 phased."

9 And if we could move down a bit you say "They may
10 never have seen their families again". And move down
11 a little and then:

12 "I strongly believe that the officers involved were
13 faced with an extremely hostile and dangerous situation
14 and that the actions described to me were fully
15 justifiable."

16 So fully justifiable, you understand that officers
17 who use force have to justify that use of force?

18 A. Yes, there has to be full account of their actions.

19 Q. So the phrase "fully justifiable" is a reference to
20 that?

21 A. Yes. They have looked at all other options and they

TRANSCRIPT OF THE INQUIRY

1 have deemed it proportionate and necessary to use that
2 force.

3 Q. Right. So you know that to justify the use of force
4 they have to have used the minimum force necessary?

5 A. Yes.

6 Q. That it has to be proportionate, as you have just said?

7 A. Yes.

8 Q. And reasonable?

9 A. Yes, and necessary, yes.

10 Q. And then it goes on to say:

11 "A part of me considered this to be
12 terrorism-related incident based on recent intelligence
13 and the threat level to serving police officers in
14 the UK."

15 A. Yes.

16 Q. So it seems to indicate that you had considered that it
17 was terrorism-related based on recent intelligence?

18 A. Yes, yes. Again, these notes were made very early on in
19 the morning after it. I don't consider that to be --

20 I consider my PIRC statement to be more accurate. I did
21 consider terrorism but I have maybe not said it in such

TRANSCRIPT OF THE INQUIRY

1 an articulate way there.

2 Q. Right. So you did consider terrorism and you say that

3 was based on recent intelligence and the threat level.

4 A. Yes.

5 Q. Do you want to explain what you mean by that?

6 A. The threat level being severe, basically indicating an

7 attack on UK territory very likely. We were given

8 safety briefings and as a supervisor I was made very

9 clear to make sure my officers were following that for

10 their own safety and to be aware of that and make sure

11 they are complying with that, so again, that seed was

12 planted as such in my head and obviously when that call

13 came in -- to be honest it could have come in to any

14 other call as well, of any large disturbance or anything

15 like that, but it did come into this, to my risk

16 assessment.

17 Q. So it came into your mind?

18 A. Yes.

19 Q. It came into your risk assessment?

20 A. Yes, yes.

21 Q. And it may be suggested that if it's a terrorist

TRANSCRIPT OF THE INQUIRY

1 incident that police officers are justified in using
2 more force; is that something you would agree with?

3 A. I wouldn't say justified in using more force, just based
4 on it's terrorism. You still need to go and assess the
5 situation. I wouldn't say that you have to immediately
6 go and your threat level is up here (indicating).

7 Q. So again, it's all about getting information at the
8 scene?

9 A. Yes, mm-hm.

10 Q. And factoring that into your National Decision-Making
11 Model?

12 A. Yes, yes.

13 Q. And for some officers we have heard evidence that they
14 didn't connect this knife incident with terrorism. Do
15 you think that that connection there that we see is
16 because of your senior role as an acting sergeant?

17 A. Yes, well, at the end of the day some of the officers
18 were still young in service. The briefs I had got,
19 et cetera, was to make sure that I look after the
20 community in which we serve and officers and we do get
21 messages in relation to that, keeping people safe, in

TRANSCRIPT OF THE INQUIRY

1 terms of coming to their work in plain clothes rather
2 than identifying yourself as a serving officer, so if it
3 is in front of you a lot more, you will consider it.

4 Q. And that's the position you were in?

5 A. Yes.

6 Q. And then to go back to you when you're travelling
7 en route, you went yourself?

8 A. Yes.

9 Q. You weren't paired with anybody that day?

10 A. No.

11 Q. And what car were you driving?

12 A. It was a marked Vauxhall Corsa.

13 Q. Do you remember what the colour of it was?

14 A. Just white with the police embossed markings.

15 Q. And as you travelled there, I think in your statement
16 you said you became aware that Paton's emergency status
17 had been switched on.

18 A. I now know that was Craig Walker. When the emergency is
19 notified on your radio, in order to actually look and
20 see who it is you need to actually take your eyes off
21 the road and I just heard a male's voice which I thought

TRANSCRIPT OF THE INQUIRY

1 to be Alan Paton at the time, but if I really wanted to
2 check I would have to take my eyes off the road which
3 would be extremely dangerous so ...

4 Q. You're driving en route to Hayfield Road?

5 A. Yes.

6 Q. Your team have arrived already?

7 A. Yes.

8 Q. And you know that an emergency button has been pressed?

9 A. Yes.

10 Q. And did you know that one or two had happened?

11 A. I just believe it was one. I don't know sometimes on
12 the radio if you press 2 there's already one activated.

13 Q. We have heard that Paton's button was pressed and
14 Tomlinson's was pressed?

15 A. I only got the one notification through when I heard
16 "officer down injured".

17 Q. Right. So let's look at the spreadsheet for a moment
18 and you see on page 4 of this spreadsheet at 7.21.02, it
19 says "Officers injured PC Short male". That's page 4 of
20 the spreadsheet. Have you got that? And we have heard
21 evidence that that was PC Paton.

TRANSCRIPT OF THE INQUIRY

1 A. Oh, right, okay. I've got this wrong, I thought it was
2 PC Walker that made the transmission, but it was
3 actually PC Paton.

4 Q. Well, let's listen to it --

5 A. Yes, yes.

6 Q. Because --

7 A. I can't remember what --

8 Q. So that's 7.21.02 and you can tell us now what you
9 think.

10 A. Yes.

11 (Video played)

12 Q. Can you just pause it there?

13 A. That's Alan Paton, yes.

14 Q. That's Alan Paton?

15 A. Yes, apologies.

16 Q. No, not at all, not at all. So you will see just
17 shortly prior to that at the bottom of page 3 you will
18 see in red it says PC Alan Paton's emergency status is
19 turned on and that's at 7.20.42. Then the "Officer
20 injured PC Short male" message on page 4 that we just
21 listened to and then after that, 7.21.21, you will see

TRANSCRIPT OF THE INQUIRY

1 PC Ashley Tomlinson's emergency status is turned to on.
2 Which one were you aware of?
3 A. It was the one by PC Paton, the very first one.
4 Q. The first one. You weren't aware of Tomlinson's being
5 turned on?
6 A. No.
7 Q. And you were still driving to the scene at that time.
8 When you realised an emergency button or emergency
9 status is on, what was going through your mind at that
10 time?
11 A. It's obviously extreme worry. I knew it was either one
12 of Alan or Craig who are my most experienced officers
13 and who wouldn't use an emergency button unless there
14 was something extremely wrong. I believe I shouted out
15 where the locus was exactly, so I knew exactly where to
16 go, and then basically because I was so close to it by
17 then I just continued making my way to assess the scene
18 myself rather than clutter the Airwave transmissions in
19 case there had to be more emergency messages passed.
20 Q. Do you want to look at page 4, at 7.21.13 we see that
21 your Airwaves transmission at that time says "What's the

TRANSCRIPT OF THE INQUIRY

1 locus"?

2 A. Yes.

3 Q. Is that what you're just referring to?

4 A. Yes, yes.

5 Q. So this is after Paton's emergency status is on and the
6 message "Officers injured PC Short" has been made so
7 you're checking what the locus is at that time?

8 A. Yes.

9 Q. So you're still on your way there. Then I think
10 7.21.48, which is on the next page, page 5, you say you
11 are 30 seconds out, that's until you arrive at the
12 scene, and then 7.21.55, you will see Stephen Kay:
13 "PS Maxwell can you arrive there and give me an
14 update please."

15 So at this point there's been no updates given and
16 you have told us the importance to you of getting an
17 update or feedback. You explained the ACR. Does it now
18 look like Stephen Kay is actually looking for an update
19 and he is asking you to give that?

20 A. Again, when you're sitting en route to an incident or in
21 an office at that instance, you're trying to get as much

TRANSCRIPT OF THE INQUIRY

1 information as possible to assist, so yes, it's likely
2 he is wanting to know exactly what's going on.

3 Q. So why is he asking you specifically:

4 "PS Maxwell can you arrive there and give me an
5 update please"?

6 A. I think what he means by that is because I have said
7 "I'm literally at locus", he is wanting me to provide
8 a supervisor's update to him as soon as I get there.

9 Q. What's a supervisor's update?

10 A. It's just -- I would say it would potentially give
11 a more strategic situation of what's going on, what we
12 might need resource-wise, who is injured, you know,
13 anyone injured, life-threatening, so he can risk-assess
14 as well.

15 Q. Right. So are you still in charge of things at that
16 point, not Stephen Kay?

17 A. Again, the in-charge question is I'm in overall charge
18 of team 4. I'm aware an incident has happened, I'm not
19 there yet, I don't know exactly what's happened,
20 Inspector Kay is not entirely sure what's happened, so
21 technically the charge is still at the locus with

TRANSCRIPT OF THE INQUIRY

1 officers.

2 Q. With officers at the scene?

3 A. It's difficult to explain. Until I get there in some

4 sort of supervisory capacity, I can't affect much.

5 Q. So until you see for yourself what's happening --

6 A. Yes.

7 Q. -- you can't really -- you don't feel in a position to

8 change what's going on?

9 A. Well, I can't offer anything other than what I'm hearing

10 as well as everyone else.

11 Q. All right, thank you. And is that the same for

12 Stephen Kay and the same for the control room?

13 A. Yes.

14 Q. But you understood that from Stephen Kay's perspective

15 he wanted you to give him an update when you arrived?

16 A. Yes.

17 Q. And then at 7.22.04 do we see just very shortly after

18 that message from Stephen Kay, that Samantha Davidson

19 provides an Airwaves transmission:

20 "We're just approaching and I will give you an

21 update."

TRANSCRIPT OF THE INQUIRY

- 1 So you then -- did you hear that?
- 2 A. I can't actually recall if I heard that as such, it was
3 that long ago. I don't know -- if I've not written it
4 in my statement I can't ...
- 5 Q. It's 9 seconds after your message starts.
- 6 A. Potentially. I was driving in response mode at the time
7 so ...
- 8 Q. And we have heard other people describe -- your using
9 the phrase "Response mode", what does that mean for you?
- 10 A. Effectively you've got advanced driver training that you
11 can drive up to 20 miles an hour over the speed limit to
12 make progress to get to an emergency scene but within
13 that training you've got to maintain a good overview in
14 front of you so you can react to certain situations
15 a lot more. It's to make sure you are making progress
16 safely.
- 17 Q. Yes. And so you -- we have heard that DS Davidson and
18 DI Connell were travelling, or DC Connell, sorry, were
19 travelling together to Hayfield Road as well as everyone
20 else?
- 21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. And they are CID officers, is that right?

2 A. Yes. To be honest I wasn't even aware they were on that
3 day. That was probably my ignorance of not checking
4 that morning.

5 Q. No, that's fine. So this was news to you that they
6 would even be at Hayfield Road?

7 A. Yes, I expected it just to be myself and my team.

8 Q. And then we see at 7.22.24 we see that Craig Walker
9 gives an Airwaves transmission update:

10 "Male in cuffs still struggling."

11 Right. By this time, sorry, I should have pointed
12 out at the top of page 5, 7.21.38, PC Smith has said:

13 "Officer has been punched to the back of the head.
14 No obvious serious injuries. Male secure on the
15 ground."

16 A. Yes.

17 Q. So he was already on the ground before you even arrived
18 at the scene.

19 A. That would suggest so, yes.

20 Q. Can I ask you -- before I move on to you actually
21 arriving at Hayfield Road, can I ask you about something

TRANSCRIPT OF THE INQUIRY

1 in your PIRC 267, your notes, and I'm interested in
2 page 2, paragraph 1. Paragraph 1, at the end of that
3 paragraph, you say:

4 "I communicated the stay safe message to officers in
5 attendance. This meant that officers should not engage
6 unless absolutely necessary."

7 Now, these are obviously your notes but I'm trying
8 to work out what your "stay safe" message was. Now,
9 we've got the messages on the spreadsheet and could you
10 have a look through those first few pages and tell us
11 which message of yours is it that you mean when you say
12 you communicated your stay safe message.

13 A. I'm trying to see the exact one ... okay, it's the
14 transmission at 07.17.23.

15 Q. 07.17.23?

16 A. Yes, I remind officers --

17 Q. So that's page 2 of the spreadsheet you say:

18 "I want all units to attend that bearing in mind
19 officer safety. Is there an ARV and a dog as well
20 please."

21 A. Yes, during those notes that's what -- I believed I had

TRANSCRIPT OF THE INQUIRY

1 sent out a more substantial stay safe message rather
2 than that but that effectively was it. Officers -- more
3 experienced officers would already know what they were
4 going to, et cetera, and I have said that --

5 Q. So when you used the words "Bearing in mind officer
6 safety", is that a sort of trigger --

7 A. Yes, yes.

8 Q. -- for other officers that they understand that officer
9 safety is to be prioritised?

10 A. Certainly when I was -- well, still involved
11 operationally, but any call that involves a knife
12 it's -- you don't really need the stay safe message,
13 it's almost just me as a supervisor trying to get that
14 across. I know if I'm going to any call I need to stay
15 safe, but especially anything to do with a confirmed
16 knife or a knife -- sometimes the control room send out
17 a stay safe message as well, just depending on how
18 things are moving.

19 Q. Okay. So we have still got the PIRC notes on your --
20 the notes that you prepared, PIRC 267 on the screen.

21 And you say:

TRANSCRIPT OF THE INQUIRY

1 "I communicated the stay safe message to officers in
2 attendance. This meant that officers should not engage
3 unless absolutely necessary."

4 And it is that last part that I'm interested in.

5 A. Yes.

6 Q. You said "Officers should not engage unless absolutely
7 necessary". What did you mean by that?

8 A. Again, it's probably poorly worded. Part of the stay
9 safe message is to approach if safe and engage if safe,
10 that's what I meant to get across there. It's not
11 saying that I'm telling you not to go anywhere near the
12 subject. I think that's been -- that's not been put
13 very well there, but basically it's -- if I go into that
14 scene, I can look at the subject and go "Right, okay,
15 I feel safe enough to start some dialogue or approach,
16 I will do that."

17 Q. So again, is it about the officers -- the individual
18 officer making an assessment based on what they see at
19 the scene?

20 A. Yes, yes.

21 Q. And for that officer to decide whether they feel it's

TRANSCRIPT OF THE INQUIRY

1 safe to approach or --

2 A. Yes.

3 Q. -- or safe to engage?

4 A. Yes, yes. I would never say to an officer "Don't go and
5 speak to them if I'm not there". It's up to them, risk
6 assessment. When I was responding to calls I would use
7 my training and risk assessment of a situation to know
8 whether "Right, I'm not going anywhere near that", or
9 I will stand off, or try and engage or approach.

10 Q. Would you at that time have felt comfortable in saying
11 to an officer "Wait, observe from a distance" or "Stay
12 back"?

13 A. Again, I could have, again sometimes when you're going
14 to an incident like that you need to try and keep radio
15 traffic down to a minimum. I had extremely experienced
16 officers going to that and they might think I'm being
17 overprotective by saying stuff like that.

18 Q. You don't want to be overprotective?

19 A. Well, as such sometimes I've said it myself, when you
20 hear messages, "I know, I know, I know", but at the same
21 time it's -- again, I have the experienced officers

TRANSCRIPT OF THE INQUIRY

1 there and I had no reason to think that they were going
2 to do anything outwith their training or anything to put
3 themselves at any risk.

4 Q. Okay. In terms of the words there, in what
5 circumstances would it be considered absolutely
6 necessary to approach somebody or engage with somebody?

7 A. Officers should engage.

8 Q. They should engage?

9 A. If there's a possibility to bring the situation to
10 an end quickly, swiftly. If you get there and they've
11 got a knife, or there's a knife next to them and you can
12 safely say I could get to that knife before them, you
13 could do that. Again, I could sit here and talk to you
14 forever about different scenarios, what ifs, what ifs,
15 but if there's a member of the public that was in
16 immediate danger I certainly would go and take action,
17 but again, that's heavily risk assessed in your own
18 head.

19 Q. And can I ask you about communication. We have heard
20 a lot about having a discussion with somebody when you
21 arrive, tactical communications we have heard about. Is

TRANSCRIPT OF THE INQUIRY

1 that the sort of engagement that officers can carry out
2 or perform?

3 A. It's one of the tactics, yes, absolutely.

4 Q. Without actually approaching the person or --

5 A. Mm-hm.

6 Q. -- touching them or using any sort of force?

7 A. Yes.

8 Q. And is that something that's encouraged and prioritised?

9 A. Absolutely. We work on it in officer safety training.

10 The mark of trying to get a resolution to any scenario
11 is trying to get engagement with them. Some
12 circumstances don't dictate that, more extreme
13 circumstances, but if you've got a chance to engage with
14 them and speak to them then yes, ideal. You want to
15 speak to them, find out what the issue is, if there's
16 something we can help with and try and resolve it
17 without any further issues.

18 Q. Are there time limits on that type of engagement and
19 approach?

20 A. Well, not really. If the subject is cooperating and,
21 you know, is engaging with you, but if you've got

TRANSCRIPT OF THE INQUIRY

1 a subject who is not engaging and walking towards you,
2 running towards you, or running away from you, then
3 tactical communication's clearly failed.

4 Q. Okay. So what would you say when you have used the
5 words cooperation or engagement, if the person is
6 cooperating with you, what type of thing would you
7 expect to see in someone who was cooperating or
8 engaging?

9 A. Eye contact, answering your questions, potentially
10 confiding in you, saying "Look, I don't want to speak to
11 you, can I speak to a female officer", or vice versa.
12 You know, there's some sort of engagement between the
13 two, there's give and take, there's something going on
14 there. It might be as simple as just yes/no answers but
15 you can build on that.

16 Q. What if there's no eye contact or no verbal engagement;
17 how long would you try to communicate?

18 A. Again, there's no prescriptive time. Again, if they're
19 not causing any threat to me or any member of the public
20 then I would continue, but it will get to some point
21 however though you might have to take some more,

TRANSCRIPT OF THE INQUIRY

1 you know, positive action to come to -- to bring it to
2 resolution.

3 Q. What would happen to make that time occur where you have
4 to then take positive action?

5 A. Well, I mean if you have been -- there's a process in
6 terms of we might have got a negotiator out who is
7 trained specifically to try and get a reaction, but
8 again, that's all based on your subject being --
9 complying. It might be the case that we've got other
10 measures in place that by then you may have had a dog
11 unit and an ARV present, so if they were to then become
12 assaultive or aggressive then you have got that tactical
13 option. Again, there's no specific -- you just have to
14 take each scenario uniquely.

15 Q. What if the person's not assaultive or aggressive, but
16 isn't communicating verbally with you?

17 A. At the end of the day if they're not communicating and
18 the negotiator is not working you might just have to go
19 and put hands on. We don't know what's going on with
20 that person, okay. We've got a duty of care to that
21 person as well. Usually if they're not communicating

TRANSCRIPT OF THE INQUIRY

1 like that there's potentially an underlying issue,
2 whether it be alcohol, drugs, mental health, something
3 like that.

4 Q. And is that something officers are trained to be aware
5 of?

6 A. Yes, and it's something that they build up through their
7 experience through being on the street as well and
8 actually going out to calls.

9 Q. So experienced officers may be better able to identify
10 those things?

11 A. I wouldn't -- that's a loose statement. However, you
12 get some people that have maybe worked in a mental
13 health background before, before joining the police, we
14 can't discount that, but you can usually tell and it's
15 more apparent as you get more service that you can
16 recognise that a bit better, but not always.

17 Q. Right, thank you. I would like to talk about your
18 arrival at Hayfield Road. Can we look at 7.22.25 on the
19 spreadsheet. So we're back to page 5 and you will see
20 that the entry next to 7.22.25 says:

21 "A smaller marked police car arrives at the scene

TRANSCRIPT OF THE INQUIRY

1 approaching going north on Hendry Road towards the
2 roundabout. The vehicle does a hard right just prior to
3 the roundabout and stops just off the roundabout into
4 Hayfield Road and just before another marked police
5 vehicle that arrived earlier."

6 I'm going to play the footage of this and I'm going
7 to ask you some questions about it.

8 A. Sure.

9 Q. Thank you. So we will start at 7.22.25 and we will play
10 to maybe 33, maybe 10 seconds, thanks.

11 (Video played)

12 Thank you. Did you see that vehicle arriving from
13 Hayfield Road and turning right into Hendry Road on the
14 wrong side of the road?

15 A. Yes.

16 Q. Who was that?

17 A. I can only assume that was myself from my statement.

18 Q. Yes.

19 A. I don't think I have ever ran that fast before though
20 but that's certainly -- I think that's me.

21 Q. You think that's you, your car?

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. And the person coming out of that car then runs towards
3 the scene which is playing out slightly up
4 Hayfield Road.

5 A. Mm-hm.

6 Q. Yes. And if we look onto page 6 of the spreadsheet at
7 the very top, it says:

8 "During this time the officer that exited the marked
9 vehicle arrives at the other group of officers and
10 appears to move around the group walking first towards
11 the end of the group nearest the residential properties
12 and then further round back towards the road."

13 We may need to go back to 33 to just show that
14 section. We will just play that.

15 (Video played)

16 Did you see yourself?

17 A. Yes.

18 Q. Going round and then round to the -- we have heard the
19 top of Mr Bayoh -- the head of Mr Bayoh was nearer the
20 hedge; was that what you recollect?

21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. And so that was your arrival at the scene and you were
2 the fifth police car to arrive.

3 A. Okay.

4 Q. And do we see on the reconstruction tile at the top, on
5 the footage, that there is now a car sort of parked just
6 to the right of the roundabout.

7 A. Yes.

8 Q. Behind a vehicle we have heard was called the diary car?

9 A. Yes.

10 Q. And that was your Vauxhall Corsa?

11 A. Yes.

12 Q. Thank you. Can I ask you to look at some images on a --
13 3D reconstruction images. You will have seen with other
14 witnesses that I have asked them to look at this.

15 A. Yes.

16 Q. And I would like to ask you some questions about what
17 was happening when you arrived and it may assist if we
18 look at still images 2, images 6 or 7, so let's look at
19 6 first of all, please. So you will see that there are
20 two cars on the left-hand side of this image. One
21 parked on the markings of the road and near the

TRANSCRIPT OF THE INQUIRY

- 1 roundabout and one parked slightly in Hayfield Road?
- 2 A. Yes.
- 3 Q. Near to the pavement. Now, looking at that car on the
- 4 far left, closest to the roundabout, does that seem
- 5 a reasonable indication of where you had parked?
- 6 A. Yes, I would say so, yes.
- 7 Q. Yes, okay, thank you. And can you tell us when you got
- 8 out of the car where was Mr Bayoh?
- 9 A. Do you want me to put --
- 10 Q. You can touch the screen and a red circle will appear
- 11 and if you don't like the position, Ms Wildgoose will
- 12 remove it.
- 13 A. He was lying on the pavement there, with his head
- 14 nearest the bush, the south side, with his feet towards
- 15 the northern end, nearer the road.
- 16 Q. Nearer the road. And which officers could you see when
- 17 you got to that point?
- 18 A. It was Alan Smith, Ashley Tomlinson, Craig Walker,
- 19 PC Paton and Daniel Gibson.
- 20 Q. So Smith, Tomlinson, Walker --
- 21 A. Smith, Tomlinson, Walker --

TRANSCRIPT OF THE INQUIRY

- 1 Q. -- Paton and Gibson?
- 2 A. -- Paton and Gibson, and I'm sure McDonough was in and
3 around.
- 4 Q. McDonough. Tell us what they were all doing. Let's
5 start with Smith.
- 6 A. I believe when I got there he was to the east side of
7 Mr Bayoh, he was on his left side.
- 8 Q. So you have arrived from -- we see here the left-hand
9 side.
- 10 A. Yes.
- 11 Q. And we have heard that the pavement side is known as the
12 south side?
- 13 A. Yes.
- 14 Q. And the grassy tree area is known as the north?
- 15 A. Yes.
- 16 Q. And so the west would be where the roundabout was?
- 17 A. Yes.
- 18 Q. And the east would be further along Hayfield Road where
19 the hospital was?
- 20 A. Hospital was, yes.
- 21 Q. Right. So tell us -- thinking about Smith first of all,

TRANSCRIPT OF THE INQUIRY

- 1 tell us where PC Smith was.
- 2 A. To the rest of my recollection he was kneeling down on
- 3 the east side of Mr Bayoh, on his knees, nearer
- 4 the head.
- 5 Q. Near the head.
- 6 A. Yes.
- 7 Q. And where -- what was he doing at that time?
- 8 A. I can't recall as such. I believe at that time he was
- 9 in cuffs that I can recall and they were just making
- 10 sure that he was stable and that he was supporting
- 11 the head, I believe, to make sure that that wasn't
- 12 subject to any banging or anything like that which is
- 13 part of the hold process.
- 14 Q. So you're saying supporting the head and you're moving
- 15 your hands in front of you. The Chair might not be able
- 16 to see that because of the screen.
- 17 A. Oh sorry. In a sort of supported manner.
- 18 Q. You've got your palms out in front of you?
- 19 A. Yes, just to make sure that during -- if there's any
- 20 further struggle he doesn't bang his head.
- 21 Q. Right. Was there anything under his head at that point?

TRANSCRIPT OF THE INQUIRY

1 A. No.

2 LORD BRACADALE: Can I just understand that: are you saying
3 that the officer had his hands under the head of --

4 A. I believe so, I believe so, when he arrived.

5 LORD BRACADALE: Which part of his head?

6 A. Just the back. Well, it was on his side, so it was just
7 making sure it was safe, not touching the road, sort of
8 ushering sort of motion.

9 LORD BRACADALE: Thank you.

10 MS GRAHAME: How was Mr Bayoh lying when you arrived at the
11 scene?

12 A. He was on his left-hand side. I think he had just been
13 put onto his left-hand side.

14 Q. Right. And which direction was he facing?

15 A. He was facing west, towards Gallaghers pub where
16 I walked in from.

17 Q. And so you're telling us about PC Smith holding or
18 ushering under his head?

19 A. Yes.

20 Q. And by this time you said Mr Bayoh had cuffs on?

21 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. Where was he cuffed?

2 A. To the front.

3 Q. His arms were to the front?

4 A. Yes.

5 Q. And you have said that PC Smith was kneeling near

6 the head area?

7 A. Mm-hm.

8 Q. Where was PC Tomlinson?

9 A. I think he was to his right-hand side on the east side,

10 so --

11 Q. Is that to PC Smith's right?

12 A. -- it was as if he was north of PC Smith.

13 Q. North of PC Smith.

14 A. Yes.

15 Q. And you have said PC Smith was at Mr Bayoh's head.

16 A. Yes.

17 Q. How is it that PC Tomlinson could be at his right but

18 north of PC Smith?

19 A. Well, if it PC Smith is at his head at the side, then --

20 so if he is here (indicating), PC Tomlinson is to his

21 right.

TRANSCRIPT OF THE INQUIRY

- 1 Q. Oh, so PC Tomlinson was to PC Smith's right-hand side?
- 2 A. Yes.
- 3 Q. What area of Mr Bayoh was he --
- 4 A. I think it was like the upper chest, sort of rib --
- 5 waist area.
- 6 Q. Right. What was he doing?
- 7 A. He was down on his knees also. I think he was leaning
- 8 over, just stabilising him, Mr Bayoh.
- 9 Q. How was he stabilising him?
- 10 A. Just with his arms, just bringing them -- keeping them
- 11 in that position.
- 12 Q. On his left-hand side?
- 13 A. Yes.
- 14 Q. Where was PC Walker?
- 15 A. He was standing up at the time.
- 16 Q. Where was he standing?
- 17 A. I can't remember exactly if it was behind PC Tomlinson
- 18 or behind PC Smith.
- 19 Q. Right. Was he doing anything?
- 20 A. No.
- 21 Q. Where was PC Paton?

TRANSCRIPT OF THE INQUIRY

- 1 A. Again, standing up behind Smith and Tomlinson.
- 2 Q. Up towards the head area?
- 3 A. Yes.
- 4 Q. Doing anything at that stage?
- 5 A. No. Both were clearly under distress from it looked
6 like PAVA or CS contaminant.
- 7 Q. So did they have red eyes?
- 8 A. Yes, snotty, red eyes, teary.
- 9 Q. PC Gibson, where was he?
- 10 A. He was on the legs of Mr Bayoh.
- 11 Q. When you say on the legs, what do you mean?
- 12 A. In a hold, whereby I believe he had his weight on the
13 legs and he puts his arm underneath just to contain the
14 legs to make sure there's no kicking or further lashing
15 out.
- 16 Q. And PC McDonough?
- 17 A. I can't recall if he was down near the legs or he was
18 standing up at that time.
- 19 Q. When you arrived you have talked about seeing handcuffs;
20 what about Fast Straps?
- 21 A. I believe they were also applied.

TRANSCRIPT OF THE INQUIRY

- 1 Q. So they had also been applied. Where to on Mr Bayoh?
- 2 A. Down at the sort of ankle area.
- 3 Q. Only the ankle area?
- 4 A. That's the only one I can specifically recall.
- 5 Q. Could you see his knee area?
- 6 A. Again, I would have been able to see it. I can't recall
- 7 whether or not they were on at that time -- I knew there
- 8 was a strap on, but I don't know if there was two or
- 9 one, unless it's in my statement but --
- 10 Q. What was PC McDonough doing?
- 11 A. As I say, I can't recall. Either he was down near the
- 12 legs or he was standing just off to the side.
- 13 Q. At any time when you or after you arrived did you see
- 14 Mr Bayoh in the prone position?
- 15 A. Not that I can recall, no, there was just on the side to
- 16 the best of my recollection I arrived there, he has been
- 17 moved up onto the -- he was getting moved onto the side
- 18 sort of, like the recovery position.
- 19 Q. How long after you arrived did you become aware that
- 20 Mr Bayoh was unconscious?
- 21 A. I would need to refer to my statement, but once I had

TRANSCRIPT OF THE INQUIRY

1 ascertained that Mr Bayoh had been controlled and he was
2 getting suitably looked after by PC Smith, I then went
3 to see Nicole Short because I was aware she had been
4 involved in the officer down scenario, so I believe it
5 was when I came back from that that I had been made
6 aware that he was unconscious.

7 Q. Right. So how long did you stand in the area of
8 Mr Bayoh before you left to go and see PC Short.

9 A. It might have been 30 seconds, I can't really say
10 specifically. Everything was going so fast. I was
11 trying to take in everything at once.

12 Q. We have heard some people say it went very quickly?

13 A. Yes.

14 Q. And they had difficulty judging the time?

15 A. Yes, that's -- the time is something that was out of the
16 window.

17 Q. Right. So you arrived where Mr Bayoh was.

18 A. Mm-hm.

19 Q. You then went to see PC Short. Why did you not remain
20 with Mr Bayoh?

21 A. I had PC Smith who was an officer safety trainer and

TRANSCRIPT OF THE INQUIRY

1 first aid trainer was in control of the situation. He
2 wasn't unconscious at that time and he was breathing.
3 I know it sounds silly, but it seemed like a standard
4 scenario at that time in terms of dealing with a custody
5 that's kicked off. Conscious, breathing, just waiting
6 on getting him into the custody van and I was aware
7 obviously one of my officers had been injured so I had
8 to then go and check on them to make sure if they were
9 needing any medical assistance, and also I needed to
10 know myself what was going on.

11 Q. So you have said you knew that Mr Bayoh was conscious --

12 A. Yes.

13 Q. -- and breathing. How did you know that?

14 A. Just by communicating with officers at the scene.

15 Q. Who did you communicate with?

16 A. I believe I spoke to PC Smith. I also spoke to
17 Alan Paton as well, just to try and ascertain what had
18 actually happened. At this time I was still completely
19 in the dark to what had actually went on there.

20 Q. What were you told by PC Smith, first of all?

21 A. I can't recall what he has actually said to me in

TRANSCRIPT OF THE INQUIRY

1 terms -- I think it was just "Is everything okay? Are
2 we needing any other staff? Is there any other
3 assistance required?" and then it's that point where
4 I have spoken to Alan Paton and he has said that the
5 male had not listened to him and he had continued
6 walking towards them and Nicole had been assaulted.

7 Q. Right. You have then -- when you were there at that
8 point, did anyone tell you that Mr Bayoh had been prone
9 for a period of time?

10 A. No.

11 Q. Did anyone say anything about thinking he was under the
12 influence of drink or drugs?

13 A. No. That assessment really wasn't -- I didn't really
14 ask those questions at that time. As I say, I just
15 stopped, made sure everything was okay there and then
16 moved off to check on PC Short.

17 Q. Did anyone say there was a question about whether he was
18 having a mental health crisis?

19 A. Not at that time, no.

20 Q. And is there any reason you didn't think to ask those
21 questions?

TRANSCRIPT OF THE INQUIRY

- 1 A. Mr Bayoh -- the subject was under control, he was
2 conscious and breathing, there didn't appear to be any
3 other questions I had to ask at that time. Again, split
4 seconds and then went to check on PC Short, trying to
5 gather a picture of what's happened here.
- 6 Q. When you saw that PC Paton and PC Walker had been
7 affected by spray, did you ask any questions about the
8 circumstances that gave rise to that?
- 9 A. Well, PC Paton had said that they had said to the male
10 to stop and he had kept coming at them and they had
11 sprayed and then PC Short had been assaulted.
- 12 Q. And did you ask for any more information about the
13 spraying?
- 14 A. No, my priority at that time is to -- well, just to
15 establish they're okay, but my priority at the time was
16 to get to Nicole. I didn't know at this time whether
17 she was in a heap, struggling to breathe or whatever.
18 I had no information on that.
- 19 Q. Right. Did anyone volunteer at that time that Mr Bayoh
20 had been batoned to the head?
- 21 A. Not at that time, no.

TRANSCRIPT OF THE INQUIRY

1 Q. No. So can I ask you to look at paragraph 11 of your
2 Inquiry statement, please. So you say:
3 "The risk factor I considered on arrival was whether
4 my officers had control of the perceived subject and
5 what risk he was presenting.
6 "Once I assessed whether my officers had control of
7 the subject, who I now know to be Mr Bayoh, and
8 determined that they did so, I then assessed whether the
9 restraint of Mr Bayoh was causing a risk to my officers
10 or himself.
11 "Once I was satisfied that the restraint was not
12 posing a risk, the next issue I considered was what
13 risks there might be to Mr Bayoh and the officers given
14 that the locus was an active public road."
15 A. Yes.
16 Q. "Another risk factor I considered was the whereabouts of
17 the knife."
18 And his "... race played no part in my assessment".
19 So you assessed whether the officers had control of
20 Mr Bayoh, you determined they did so and you then
21 assessed whether the restraint of Mr Bayoh "was causing

TRANSCRIPT OF THE INQUIRY

1 a risk to my officers or himself", and you were
2 satisfied the restraint was not posing a risk, either to
3 the officers --

4 A. Mm-hm.

5 Q. -- or Mr Bayoh. Did you consider asking more questions
6 about what had been happening prior to your arrival?

7 A. Again, my priority at that time -- once I had
8 established that officers were in full control, there
9 was no injuries there, and from what I looked at at the
10 time he was in handcuffs, in control and there didn't
11 appear to be any risk to him at that time. My priority
12 was to check on PC Short.

13 Q. If you had been given additional information by the
14 officers at this moment about the use of spray, CS and
15 PAVA, the baton to the head or body, would that have --
16 and how he had got onto the ground and the restraint
17 itself and being prone during part of the restraint,
18 would that have affected your assessment of the risk to
19 Mr Bayoh?

20 A. Potentially, yes. If I had known that he had been
21 struck to the head with a baton, I would be getting an

TRANSCRIPT OF THE INQUIRY

- 1 ambulance straight away.
- 2 Q. So if you had been provided with that information you
3 would have -- how would you have sought that ambulance
4 straight away?
- 5 A. At the end of the day it's any baton strike to the body
6 would be significant, but if it's to a head, you know,
7 with the brain, et cetera, the trauma that could cause,
8 then unfortunately that's a high priority, we need to
9 get that seen to.
- 10 Q. So if you had been given that information, how soon
11 after you arrived at the scene would it have taken you
12 to transmit for an ambulance?
- 13 A. Pretty much straight away.
- 14 Q. Straight away. Right, so you have said that in your
15 state of knowledge at that time your priority was
16 Nicole Short.
- 17 A. Yes.
- 18 Q. Tell us where she was.
- 19 A. I believe she was standing next to the custody van. She
20 was sort of bent over, grimacing in pain.
- 21 Q. Where was she in relation to -- we have heard it called

TRANSCRIPT OF THE INQUIRY

1 a Transit van, we have heard it called a custody van.

2 A. Yes, the Transit van. I can't remember exactly her
3 location, if she was in front or just past it. I could
4 just see her in the background.

5 Q. She was still out of the van?

6 A. Yes.

7 Q. So you went over to speak to her?

8 A. Yes, that's correct.

9 Q. And what was your assessment of her at the time?

10 A. Well, first off was to get some verbal response and see
11 if she was okay. She was clearly in shock, shaken and
12 I did a very quick visual survey to make sure there was
13 no bleeding, or any other significant injuries, tried to
14 ask her what happened, whereby she said that she has
15 been attacked by the male, kicked and punched I believe.
16 Again, with my assessment not seen anything immediately
17 wrong. It was just to try and get her -- because it was
18 raining, to try and get her in the car and just get the
19 ambulance, which I believe I shouted up for after that.

20 Q. You have said "kicked and punched"; are you sure she
21 said to you at that time that she had been kicked and

TRANSCRIPT OF THE INQUIRY

1 INDEX

2 PC JAMES MCDONOUGH (affirmed)1

3 Questions from MS GRAHAME1

4 Application by MS MITCHELL113

5 Ruling114

6 Application by MS MCCALL115

7 PC JAMES MCDONOUGH (continued)116

8 Questions from MS MCCALL116

9 PS SCOTT MAXWELL (affirmed)121

10 Questions from MS GRAHAME121

11

12

13

14

15

16

17

18

19

20

21

TRANSCRIPT OF THE INQUIRY

1

2

3