

TRANSCRIPT OF THE INQUIRY

Wednesday, 8 June 2022

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(10.00 am)

LORD BRACADALE: Good morning. Ms Grahame.

PS SCOTT MAXWELL (continued)

Questions from MS GRAHAME (continued)

MS GRAHAME: Thank you.

Good morning. Yesterday we were just turning to you going to see PC Short.

A. Yes, that's correct.

Q. And you spoke about her being at the Transit van or the custody van?

A. Yes, that's correct.

Q. And did you tell me how long after you arrived did you then go to see PC Short?

A. I can't put an exact time on it. As I said, I had come to the scene obviously, had a quick assessment of what was going on with Mr Bayoh, the officers, and then had gone to Nicole, so I can't put an exact time, but 30 seconds to a minute.

Q. So a short period anyway?

A. Yes, a short period.

Q. We talked yesterday about how things were happening

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1 quickly --

2 A. Yes.

3 Q. -- and timings are difficult to gauge?

4 A. Yes.

5 Q. Can I ask you about something you said in your -- the

6 notes that you prepared, so that's PIRC 267, please. If

7 we could have that on the screen. I think it is page 3.

8 I'm looking for -- if you hold on a second, I have

9 missed the page.

10 (Pause).

11 I will read out what it is I'm interested in asking

12 about and I will find the reference in a moment. Oh,

13 I can see it on the screen, thank you very much:

14 "I then turned my attentions to PC Short who I had

15 been advised had been badly injured."

16 And this is the sort of note that I'm interested in

17 asking you about. So who was it that advised you that

18 she had been badly injured?

19 A. Again, that's probably more of a play on words than

20 actually what -- the actual evidence that was given at

21 the time. Obviously I had heard the "officer injured"

22 transmission and then my initial update from Alan --

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- 1 PC Paton in respects to Nicole had been attacked and
2 then I believe the information that I got from
3 PC Tomlinson as well, so I think all of those
4 combinations is that's what's led to me writing that
5 particular statement. I didn't have any information
6 that she had been badly injured as such.
- 7 Q. Right, so when you say you had been advised she had been
8 badly injured --
- 9 A. No one had come to me and said "She is suffering from
10 this injury and it's serious because of this", and I --
- 11 Q. And these notes were written in retrospect?
- 12 A. Yes, and I was emotional, et cetera, so as I say, they
13 were just more for notes. The PIRC statement was more
14 in clarity after reflection.
- 15 Q. So when -- going back to 3 May, when you went to see
16 PC Short --
- 17 A. Yes.
- 18 Q. -- you had said yesterday she was the priority, you
19 wanted to go and see her?
- 20 A. Yes.
- 21 Q. What were your concerns at that time about PC Short?
- 22 A. Obviously when the transmission -- obviously it happened

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1 very fast -- when the transmission came in the
2 correlation between the knife, "Officer injured",
3 automatic assumption is that it's something -- she has
4 been potentially injured with a knife, or through my
5 experience I know officers that have been involved in
6 struggles that have been assaulted, et cetera, so that
7 kind of thought process was going through my head. Once
8 I had assessed that the officers were in control of
9 Mr Bayoh, then my priority and my risk assessment at
10 that time was to check on PC Short to make sure there
11 was no life-threatening injuries.

12 Q. So you were concerned when you went to see her at the
13 van that she maybe had life-threatening injuries?

14 A. Yes, as I say, in this role you think of every
15 connotation.

16 Q. Okay. Can I ask you -- it might be easier if we just
17 look at the spreadsheet actually. Can I ask you to look
18 at an Airwaves message, 7.21.38. It's at the very top
19 of page 5 of the spreadsheet. So this is -- you
20 explained to us yesterday that your police vehicle
21 arrived -- this is at the bottom of page 5 actually,
22 7.22.25, where it said:

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- 1 "A smaller marked police car arrives at the scene."
2 You identified that as your car yesterday?
- 3 A. Yes.
- 4 Q. You were the fifth vehicle there. So at the very top of
5 page 5 there was a transmission from PC Alan Smith at
6 7.21.38 saying:
7 "Officer's been punched to the back of the head. No
8 obvious serious injuries. Male secure on ground."
9 So PC Smith, who we have heard about yesterday, has
10 said "No obvious serious injuries", and I wondered did
11 you hear that transmission first of all?
- 12 A. I can't recall, I can't recall honestly.
- 13 Q. So were you aware when you went to see Nicole Short at
14 the van, at the Transit van, after you arrived, were you
15 aware that PC Smith had seen her and took the view she
16 had no obvious or serious injuries?
- 17 A. I can't recall. I can't recall.
- 18 Q. You don't recall hearing that?
- 19 A. I don't recall hearing that or forming that -- or
20 hearing it and forming that opinion in my head. I still
21 believed it was something more serious than what was ...
- 22 Q. Right. You have mentioned PC Paton telling you about

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1 the situation and can I have a look at page 3 of
2 PIRC 267, please, and it is paragraph 2 I'm interested
3 in. The paragraphs aren't very clearly defined, so the
4 part that I'm interested in relates to page 3,
5 paragraph 2:

6 "PC Paton who was suffering from shock and the after
7 effects of the PAVA and CS spray stated to me something
8 similar to, 'the male came at us, we shouted at him to
9 stop but he continued'. 'We sprayed him with CS and
10 PAVA but he did not stop and he kept coming'. 'He went
11 for Nicole and kicked and punched her to the ground'."

12 Now, we briefly mentioned this kicking and punching
13 to the ground yesterday.

14 A. Yes.

15 Q. Can you explain when was it that PC Paton said those
16 things to you?

17 A. That was when I arrived at the scene when we were
18 standing I was looking to see what the risk assessment
19 was going on with Mr Bayoh, I had asked PC Paton,
20 briefly, obviously what happened, and that's when he has
21 come out with that.

22 Q. So that's when you have -- just shortly after you

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1 arrived?

2 A. Yes.

3 Q. You're standing in the area of the restraint --

4 A. Yes.

5 Q. -- on Hayfield Road, and you asked PC Paton what had

6 happened?

7 A. Yes.

8 Q. And at the time you sketched out these notes, those were

9 the things that you recall him saying --

10 A. Yes.

11 Q. -- that you have put in speech marks, quotation marks?

12 A. Yes, yes.

13 Q. And were those, to the best of your recollection, the

14 words that he used?

15 A. Yes, that's what I believe he said to me at the time.

16 Q. And we have not heard from PC Paton, but can I ask you

17 about this phrase "He went for Nicole and kicked and

18 punched her to the ground". So was PC Paton giving you

19 the impression at that point that Mr Bayoh had kicked

20 and punched her to the ground?

21 A. That was my assumption. He never named specifics or

22 identified Mr Bayoh as responsible, it was just the

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1 assumption was that the male that we had under control
2 had been responsible.

3 Q. We understand that people didn't know who he was at that
4 time.

5 A. Yes, absolutely.

6 Q. But the male who was at that time on the ground was the
7 one who had kicked and punched her to the ground?

8 A. Yes, that was the link I made at the time.

9 Q. So that was the first point at which you understood that
10 had occurred?

11 A. Yes.

12 Q. And that came from PC Paton?

13 A. Yes.

14 Q. Now, we may have heard from PC Walker that when he was
15 watching the strike to Nicole Short in Hayfield Road
16 earlier, before you arrived at the scene, that PC Paton
17 was to his left at the van and incapacitated because of
18 the spray?

19 A. Okay.

20 Q. So did PC Paton give you the impression when he spoke to
21 you and explained what had happened that that was from
22 his own recollection or did he make that clear?

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- 1 A. I can't -- again, in the passage of time it was very
2 quick. At the end of the day he has just given a quick
3 resumé, I've never stopped to ask what the provenance of
4 that was at that particular time, so whether he -- that
5 was his own experience, or he had been told, I don't
6 know. That was the information I received at that time.
- 7 Q. So it was really just PC Paton relaying that information
8 to you?
- 9 A. Yes, that's correct.
- 10 Q. He didn't explain whether he had seen it himself --
- 11 A. No.
- 12 Q. -- or whether he had got the information from anywhere?
- 13 A. No.
- 14 Q. Right. And describe -- when you arrived to see
15 PC Short, describe how she was?
- 16 A. She was sort of doubled over, looking in pain, she was
17 shaking visibly, upset, crying, sort of mumbling, not
18 making much sense. It took me a wee while to get
19 a reaction off her to say sort of, "Look, I'm here, is
20 everything okay?" So I could carry out a quick
21 assessment of her just to make sure there were no
22 obvious injuries or bleeding.

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- 1 Q. And when you made that assessment, what did you do?
- 2 A. Obviously once I had assessed that there was nothing
3 visibly obvious, I put her into the Transit van in the
4 front seat just to get her in one place so she wasn't
5 walking about aimlessly.
- 6 Q. When you say nothing visibly obvious, did you check her
7 head?
- 8 A. No, I didn't do any like physical -- I asked if there
9 was anything obvious but -- it would have been just
10 a very generalised, you know, "Are you okay?" visual
11 check.
- 12 Q. And what was her reply?
- 13 A. I think it was something similar to that she had been
14 kicked and punched. That was my recollection anyway.
15 I can't say for certain without referring back to my
16 statement, what I have put in the statement however.
- 17 Q. I think you mentioned it yesterday?
- 18 A. Yes, that was just my recollection at the time.
- 19 Q. Can we have a look at your Inquiry statement at
20 paragraph 29, please. You were asked by the Inquiry
21 team how you assisted her and you say:
22 "I assessed her and I put her in the van pending the

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1 ambulance's arrival. I did this so she would be warm
2 and more comfortable as she was in shock. I also chased
3 up the ambulance arriving on the scene."

4 Now, we have heard that it was -- it had been
5 raining and it was quite a wet day and it was cool or
6 cold; is that your recollection of the weather?

7 A. Yes.

8 Q. And was that part of the reason you made her more
9 comfortable and made her warm?

10 A. Yes, I was just --

11 Q. Thank you. Can I ask you to look at the spreadsheet,
12 7.23.34, so that's on page 6. So it is two-thirds of
13 the way down page 6, 7.23.34, and it is a message from
14 you and we can play any of these if you wish?

15 A. No that's fine.

16 Q. Scott Maxwell:

17 "PC Short's been struck to the head, is a bit upset.
18 I'm going to need an ambulance here to check her over.
19 No bleeding, no visible injury, over."

20 So, do you remember making that transmission?

21 A. Yes, I think I have heard it in the evidence so yes,
22 that's definitely me that's made that.

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- 1 Q. So was this transmission made after you had been over to
2 the Transit van to see Nicole Short?
- 3 A. I would believe so, yes.
- 4 Q. How long after?
- 5 A. As you can see, the previous entry from Inspector Kay
6 was looking for an update on injury and I think that's
7 why I have responded to that.
- 8 Q. Right, so Kay had the transmission 7.23.30:
9 "Can I get an update on any injury?"
- 10 A. Yes.
- 11 Q. And that's a message that's come over the transmission
12 and then you have replied, effectively, to that then?
- 13 A. I believe so, yes. That's ...
- 14 Q. So when you replied to it, do you remember where you
15 were at that moment?
- 16 A. I would have been standing in the general vicinity of
17 round Nicole or heading back towards where Mr Bayoh was
18 being restrained.
- 19 Q. So near the Transit van or heading back towards the
20 restraint, but you had seen Nicole Short at that point
21 yourself?
- 22 A. Yes, yes, I believe so, yes.

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- 1 Q. There's no mention in that transmission of kicking or
2 punching and if -- just exploring that, if PC Short had
3 said to you at that time -- I know yesterday you said
4 you weren't 100% sure -- if she had said to you at the
5 time she had been kicked and punched, is that the sort
6 of information that you would have updated Stephen Kay
7 with?
- 8 A. Quite possibly, yes. The way, you know, I explain it is
9 when I have arrived there, as I have been receiving
10 information, I have been transmitting it for the call
11 log and clarity and for any potential medical updates,
12 so there's every chance that I would have said that,
13 yes. Absolutely.
- 14 Q. So does it make you wonder now whether your recollection
15 is maybe --
- 16 A. Well, that's what I recollected at the time. I couldn't
17 say whether or not -- I know that she had been struck,
18 but whether she was kicked and punched I couldn't sit
19 here now and say categorically that's the exact -- what
20 was said.
- 21 Q. So if we have not heard that from Nicole Short, you
22 wouldn't dispute that she didn't say that?

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- 1 A. No.
- 2 Q. Thank you. And then Stephen Kay, after your update,
3 says:
4 "Control, can you get an ambulance please for
5 PC Short."
6 A. Yes.
- 7 Q. So that is a request for an ambulance but for PC Short
8 at that point?
9 A. I believe so, yes.
- 10 Q. Was it your understanding that control would then do
11 that because --
12 A. Yes.
- 13 Q. -- they then say "Roger"?
14 A. Yes.
- 15 Q. And I think that's the norm, isn't it, that any request
16 for an ambulance the control room --
17 A. They would facilitate that.
- 18 Q. -- would actually arrange that for your separately?
19 A. Yes. Unless they've got ongoing incidents and they ask
20 us to do that separately, but yes, that would be
21 definitely a control function.
- 22 Q. But that wasn't the case here?

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- 1 A. It wasn't the case, it was control function.
- 2 Q. Then can we have a look over the page please, 7.24.21.
- 3 You start a transmission "Control from 411", and they
- 4 say "Go ahead", and then at 7.24.28 you say:
- 5 "Although there's no visible injuries to PC Short
- 6 she has been stomped to the body a few times et cetera
- 7 and struck to the head. Can see if the ambulance can
- 8 attend as soon as possible."
- 9 So you at least knew at that point that she had been
- 10 struck to the head --
- 11 A. Yes.
- 12 Q. -- and then you mention that she has been stomped to the
- 13 body?
- 14 A. Yes.
- 15 Q. And could we have a look at your Inquiry statement,
- 16 paragraphs 26 and 27, please. You were asked about this
- 17 transmission by the Inquiry team and you say you can't
- 18 confirm the time of the Airwave transmission:
- 19 "... but I have listened to the relevant recording.
- 20 I said stomped."
- 21 A. Yes.
- 22 Q. So that was the word you used?

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1 A. Yes.

2 Q. Not stamped?

3 A. No.

4 Q. And then paragraph 27, you were asked to explain how you
5 had received this information and you say:

6 "I think that prior to this transmission
7 PC Tomlinson had heard my earlier transmission and he
8 then told me that PC Short had been stamped on.

9 "When I was using the word stomped I meant stamped.
10 I was telling the ACR this information so it was logged
11 and so the ambulance crew would know for their
12 assessment purposes."

13 So this Airwaves transmission with the reference to
14 "stomped", that was information that you had received
15 from PC Tomlinson?

16 A. That's correct.

17 Q. And you were relaying that to --

18 A. That's correct.

19 Q. -- the control room effectively.

20 A. I haven't witnessed that; that was PC Tomlinson that
21 told me that.

22 Q. You weren't present?

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- 1 A. No.
- 2 Q. And you didn't witness any of that?
- 3 A. No. It's purely relaying the information back as I was
4 receiving it.
- 5 Q. Right, thank you. And when you made that Airwaves
6 transmission, can you help me understand where you were
7 at that time?
- 8 A. I believe I would have been, again, in the same area,
9 making my way back towards Mr Bayoh, if not already
10 there. It's hard to tell.
- 11 Q. So maybe travelling the distance between the Transit van
12 and the restraint area?
- 13 A. Yes, mm-hm.
- 14 Q. Or maybe had reached the area of the restraint?
- 15 A. Yes, yes.
- 16 Q. So where were you when PC Tomlinson shared that
17 information about the stomp or the stamp?
- 18 A. It was literally PC Tomlinson was walking about in
19 a shocked state and he approached me, I think when he
20 had been hearing radio messages about Nicole's injuries
21 and he has come to pass that information on to me again.
- 22 Q. Where were you when he approached you?

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1 A. I was definitely on the road but I don't know -- like
2 I say, I can't be sure if I was en route or I had
3 already arrived at Mr Bayoh.

4 Q. So not far from the restraint anyway?

5 A. Yes.

6 Q. And when PC Tomlinson shared that information with you,
7 do you remember what he said?

8 A. Not the exact words, just I think it was more to
9 reiterate the further information that I hadn't been
10 told.

11 Q. And then at 7.25.06, if we go back to the spreadsheet on
12 the same page, page 7, you then -- control say they're
13 getting an ambulance now and they want to confirm the
14 actual locus and you then confirm it is Hayfield Road
15 junction with Hendry Road.

16 A. Yes.

17 Q. So you're at that point confirming the locus?

18 A. Yes.

19 Q. Were you back at the restraint by that stage?

20 A. I believe I was very close to it, yes, I was nearby.

21 Q. Right, thank you. Then 7.25.17, PC Smith's transmission
22 says:

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1 "This male now certainly appears to be unconscious,
2 breathing, not responsive, get an ambulance for him."

3 So you are at that area. Did you hear PC Smith make
4 that transmission?

5 A. I don't think I heard him say that particular one.

6 I was privy to the one whereby he was unconscious and
7 not breathing.

8 Q. Right. So if you were in the area of the restraint at
9 that time, how would it be that you wouldn't hear that
10 transmission?

11 A. I can't recall. It's honestly ...

12 Q. So you don't recall hearing that one at all?

13 A. No.

14 Q. So you weren't aware that an ambulance had been sought?

15 A. I think once that had been passed, then that's when
16 I was kind of made aware that it was now going to a more
17 serious situation.

18 Q. Who made you aware?

19 A. I believe it was Alan Smith.

20 Q. So was this -- if you didn't hear this transmission it
21 might be difficult to answer this question, but was it
22 soon after he appreciated that Mr Bayoh was unconscious?

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1 A. I couldn't comment on that, but I would like to think it
2 would have been straight away.

3 Q. Right. When you returned to the area of the restraint,
4 what position was Mr Bayoh in?

5 A. On his left-hand side still --

6 Q. Right.

7 A. -- as I explained yesterday.

8 Q. So the same position as he had been in --

9 A. Yes, the head south, legs north.

10 Q. -- before you went to see Nicole Short?

11 A. Yes, yes, yes.

12 Q. And he was still on the ground?

13 A. Yes.

14 Q. Was he in handcuffs by that stage?

15 A. Yes.

16 Q. And leg restraints?

17 A. Yes.

18 Q. How long after -- we can see that PC Smith made that
19 transmission about the ambulance at 7.25.17 and you have
20 said that you became aware that an ambulance had been
21 called for him. How long after your return to the
22 restraint, or the area of the restraint did you become

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- 1 aware that an ambulance had been called?
- 2 A. I would imagine straightaway.
- 3 Q. Straightaway. Did you consider at that stage, knowing
4 that he was a -- an ambulance had been called, he was
5 unconscious, instructing the removal of his handcuffs?
- 6 A. To be honest it was all happening so fast, that wasn't
7 the first point of reference. It was more making sure
8 that he was being cared for and that the officers were
9 doing what they had to do, I was monitoring that. The
10 handcuffs element was kind of the last thing on my mind
11 at that time. It was more to do with making sure that
12 we can look after Mr Bayoh.
- 13 Q. How did you go about making sure he was being cared for?
- 14 A. Well, he was in what's known as the recovery position on
15 his side. PC Smith, again, I had full confidence in,
16 officer safety trainer, trains first aid, he had the
17 full situation in control. He was monitoring the
18 breathing and I was just making sure that that was all
19 taking place and we were satisfied that we were doing
20 everything we could at that time.
- 21 Q. So you were happy to stand back and leave matters in the
22 capable hands of PC Smith?

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1 A. Yes. I'm a supervisor so I don't do everything, you
2 know, I supervise, so if everything is getting done
3 correctly then I'm happy.

4 Q. Okay. And at that point you were satisfied that
5 everything was --

6 A. Yes.

7 Q. -- being done correctly?

8 A. Yes.

9 Q. Did you consider instructing the removal of his leg
10 restraints?

11 A. Not at that time, no.

12 Q. Why not?

13 A. At the time it just happened, and again, time
14 constraints, it was probably one of the second things
15 I would think about. It was more to do with obviously
16 making sure that he was okay first. There has been past
17 instances where -- I'm not saying that he was putting
18 that on at the time, but there has been occasions where
19 people have been known to feign unconsciousness and then
20 once we remove restraints they kick-off again. I'm not
21 saying that was this in this instance, however, there's
22 a few factors we need to iron out first before we remove

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- 1 restraints.
- 2 Q. Have you personally got experience of people feigning or
- 3 faking unconsciousness?
- 4 A. Yes, yes.
- 5 Q. And has that caused problems in the past?
- 6 A. Yes, it's officer safety and it's a risk to them also.
- 7 If you have removed their restraints and then you're
- 8 having to go and put on another restraint, again, you're
- 9 going back into the territory that you tried to get away
- 10 from at the start. You don't want to have the
- 11 restraint -- physical altercation with anyone once
- 12 you're in control.
- 13 Q. Right. And did you consider instructing a blanket or
- 14 a cover be obtained for Mr Bayoh; we have heard he was
- 15 in a T-shirt?
- 16 A. Well, not at that time. What we'll go onto is it moved
- 17 from unconsciousness to not breathing very quickly, so
- 18 I -- putting a blanket would have impeded any
- 19 resuscitation at that time.
- 20 Q. There was no resuscitation going on at this stage --
- 21 A. Yes.
- 22 Q. -- this is when he was just unconscious, he was still

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- 1 breathing. Did you consider trying to keep him warm?
2 You have talked about in your Inquiry statement keeping
3 Nicole Short warm.
- 4 A. Mm-hm.
- 5 Q. I just wondered about whether you considered keeping
6 Mr Bayoh warm?
- 7 A. Well, at that time he was on his side, just gone
8 unconscious, it's not as if he was lying there for
9 minutes on end. Things were moving quickly and there
10 was a lot of confusion what was going on and, you know,
11 it potentially has slipped my mind or it's not
12 a consideration I would have had exactly at that time.
13 I was more interested in finding out what had gone on
14 and making sure that Mr Bayoh was being -- he was
15 breathing and that officers were able to do what they
16 could at that time. The blanket part of it would have
17 come a bit further on when we're hopefully in recovery
18 stage.
- 19 Q. I mean, I don't know, would it have been part of your
20 role, as being in charge of the incident, to direct that
21 sort of instruction?
- 22 A. I suppose you could put it down to that, yes. Every

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1 officer has trained in operational safety and first aid,
2 and again, it would be a consideration, but not exactly
3 at that time. It was a matter of seconds.

4 Q. Okay. And you mention that there was a lot of confusion
5 going on at that time. We have heard evidence from
6 other officers saying they were shocked about the turn
7 of events?

8 A. Mm-hm.

9 Q. When you say a lot of confusion, what do you mean?

10 A. In terms of I was trying to establish what had gone on.
11 We've got an individual unconscious on the floor, on the
12 ground, people -- officers walking about just trying to
13 ascertain, get a grip on the situation, so I wasn't just
14 thinking about one thing, I was trying to think about
15 everything. I was also trying to think about how to
16 contain the scene as well.

17 Q. And you have told us that PC Smith was monitoring
18 Mr Bayoh's breathing at that point?

19 A. Yes.

20 Q. You told us yesterday that he was -- I think you used
21 the phrase "ushering his head"?

22 A. Yes.

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1 Q. He had his -- was there anything obtained to put under
2 Mr Bayoh's head at that point?
3 A. Not that I can recall.
4 Q. Is that something else that could have been done at that
5 stage?
6 A. Yes, again, it's first aid recognised but it's usually
7 for the recovery stage.
8 Q. Right. And what's the recovery stage?
9 A. Once, like, any first aid had been done and we're
10 awaiting a recovery time, put them in the recovery
11 position, et cetera.
12 Q. He was in the recovery position, wasn't he?
13 A. Yes.
14 Q. Right. Was there any other assistance or monitoring of
15 Mr Bayoh going on at that time, or was it largely
16 PC Smith?
17 A. PC Smith, yes.
18 Q. Can I ask you about another Airwaves transmission
19 please, 7.26.52, so you will see this on page 8,
20 I think. Yes, page 8. And if we could have your
21 Inquiry statement, paragraph 50 on the screen. You were
22 asked about this Airwaves transmission, it's 7.26.52,

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1 and it says:

2 "Just for the log, the initial on attendance this
3 male's attacked PC Short quite violently ... err ... as
4 a result he was sprayed with CS and PAVA and batoned.
5 There may be a suggestion that he has been batoned to
6 the head area. Four one over.

7 "If not ..."

8 And you were asked about that, and you say:

9 "This is part of the same call as the transmission
10 described at question 49 above. Again, I cannot confirm
11 the time but I can confirm I made that transmission.
12 I did so to ensure that what I had been told about the
13 events by my officers was logged and to advise the
14 paramedics about the potential for head trauma and the
15 use of spray."

16 So by the time of this transmission, you were aware
17 that Mr Bayoh was unconscious --

18 A. Mm-hm.

19 Q. -- and that an ambulance had been called for him. You
20 were aware by this stage, weren't you?

21 A. Yes.

22 Q. And who -- you have said in paragraph 51 that this

TRANSCRIPT OF THE INQUIRY

1 information was provided to you by PC Tomlinson, do you
2 see that?

3 A. Yes.

4 Q. "PC Tomlinson told me this just after I made my first
5 call regarding the ambulance. He told me that he had
6 struck Mr Bayoh on the head with a baton. I believe he
7 also told me that Mr Bayoh had been sprayed with CS and
8 PAVA. PC Tomlinson told me this just after I made my
9 first call regarding the ambulance."

10 Was that the first call that we see on page 8, so
11 you will see at 7.26.41:

12 "I'm just looking to clarify has an ambulance been
13 contacted for this accused?"

14 Or was it in relation to the call you made about the
15 ambulance for PC Short?

16 A. I can't recall. As I say, the information I was feeding
17 back -- as soon as I got that information I fed that
18 back to control. As I said, it was fast-paced and I was
19 getting information fired at me and anything that
20 I thought was pivotal was getting transmitted
21 straightaway.

22 Q. So do you think it's more likely that PC Tomlinson spoke

TRANSCRIPT OF THE INQUIRY

1 to you just prior to this call at 7.26.52?

2 A. More than likely, yes.

3 Q. That's the one about the ambulance for Mr Bayoh. Right.

4 You have said that after PC Tomlinson gave you that

5 information, you pretty much straight away called --

6 A. Yes.

7 Q. -- control about it.

8 A. Yes.

9 Q. And is that because of the seriousness of a baton being

10 used to someone's head area?

11 A. Yes, well, it was the first time of hearing of that and

12 that -- as I said yesterday -- it increases the risk, so

13 the ambulance need to know about that.

14 Q. So as you said yesterday, if you had heard about someone

15 being hit over the head with a baton, you would

16 immediately --

17 A. Yes.

18 Q. -- phone for an ambulance and that's what you have done

19 here?

20 A. Yes.

21 Q. So as soon as you heard about it you phoned for the

22 ambulance?

TRANSCRIPT OF THE INQUIRY

- 1 A. Yes.
- 2 Q. And relayed that information to control?
- 3 A. Yes.
- 4 Q. Right. And was it also Tomlinson that told you that the
5 man had attacked PC Short violently and as a result of
6 that, was sprayed with CS, PAVA and batoned?
- 7 A. Yes, I had a look at this. I have not written that --
8 or that transmission wasn't made in a chronological
9 order. It's just been the facts that I have been
10 getting or the information I have been getting and
11 I have just -- sometimes when you go on the radio you
12 can mix your words sometimes, but that wasn't in any
13 chronological order.
- 14 Q. No, thank you. I was going to ask you that because --
- 15 A. Yes.
- 16 Q. -- we have heard other evidence that this is not
17 correct, the information that was relayed?
- 18 A. No, no, it's just come out that way. I have been
19 obviously just relaying the facts and just saying what
20 I knew, but it's not come out -- because I was aware of
21 that once I read that transmission.
- 22 Q. All right. I don't think you mention that in your

TRANSCRIPT OF THE INQUIRY

- 1 Inquiry statement, but you say as soon as you read it
2 you became aware that that was incorrect?
- 3 A. Yes, when I read it I thought, well, that's potentially
4 how it looks as if that's happened, occurred in that
5 chronological sequence, but from the understanding I got
6 from the officers there, that wasn't the actual ...
- 7 Q. So as far as the Chair is concerned, he can ignore any
8 suggestion that it happened in this order?
- 9 A. Yes.
- 10 Q. You're happy to accept that's wrong. Can I ask you,
11 you -- the start of that transmission says "Just for the
12 log". Why do you use those words "Just for the log"?
13 What does that mean?
- 14 A. I don't know if that's just a sort of phrase I have
15 picked up over the years, but it's effectively what you
16 want for clarity or brevity for any incident you want
17 main points put on to the log, so if there is any view,
18 obviously for evidential as well.
- 19 Q. Is it indicative of a sort of retrospective position
20 being put rather than something that's happening at the
21 time --
- 22 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. -- you do the call.

2 A. Yes. You might receive the information but then you're
3 involved in something and can't get that relayed until
4 a bit later.

5 Q. Yes. Can I ask you to look at another transmission
6 please, 7.29.30. So this is on page 11, I think. Yes.
7 7.29.30, and if we could look at paragraph 52 of your
8 Inquiry statement as well. So paragraph 52, you were
9 asked about this transmission:

10 "Control, can you get a move on with the ambulance,
11 this accused is now not breathing. CPR is commencing,
12 over."

13 And you say:

14 "I cannot confirm that I made this transmission.
15 The recording of this call has not been disclosed.
16 I understand that my solicitor asked for the reference
17 number for this call and the reference number he was
18 given was not this recording. The timing of calls has
19 also not been disclosed. I did make a call ... telling
20 control that chest compressions had been commenced but
21 breaths had stopped due to cross-contamination."

22 If we could maybe play the footage of this call, so

TRANSCRIPT OF THE INQUIRY

1 this is the transmission at 7.29.30, and we will just
2 get that for a moment. 7.29.30 and we will just listen
3 to that. We can play a little bit extra, it's not
4 a problem.

5 (Video played)

6 Thank you. Do you recognise your voice there?

7 A. Yes, that's definitely me.

8 Q. So at this point you have said to control he is not
9 breathing and CPR is commencing. Where were you when
10 you made this transmission?

11 A. I was next to PC Smith.

12 Q. Was that at the restraint?

13 A. Yes.

14 Q. So did you know as soon as Mr Bayoh had stopped
15 breathing and PC Smith became aware of that, you also
16 knew at the same time?

17 A. Yes. PC Smith made it known to me that he had concerns
18 that Mr Bayoh was no longer breathing.

19 Q. So it was PC Smith that told you he wasn't breathing?

20 A. Yes.

21 Q. And you then immediately made this Airwaves
22 transmission?

TRANSCRIPT OF THE INQUIRY

- 1 A. Yes. Well, it has taken -- PC Smith has done the
2 relevant checks straight after and then that's when CPR
3 is commencing -- has commenced and then that's when
4 I have made the call, so within seconds.
- 5 Q. Thank you. What are the relevant checks?
- 6 A. Well, checking for breathing, checking -- looking down
7 the chest, for pulse, et cetera, reactions, and when
8 PC Smith didn't receive any feedback from that that was
9 positive, that's when he has asked and commenced CPR.
- 10 Q. And we have heard other witnesses say when CPR
11 commenced, Mr Bayoh was turned onto his back?
- 12 A. That's correct.
- 13 Q. And is that your recollection?
- 14 A. Yes, that's my recollection.
- 15 Q. So it doesn't sound like there was really any time
16 between you finding out that he was no longer breathing
17 and you making that transmission on the Airwaves?
- 18 A. Yes.
- 19 Q. I would like to ask you about this period of time
20 between Mr Bayoh losing consciousness but breathing and
21 him not breathing, or it's noticed he is not breathing
22 by PC Smith.

TRANSCRIPT OF THE INQUIRY

1 A. Okay.

2 Q. So based on the times of the Airwaves transmissions,
3 that's a period between 7.25.17 and 7.29.30 seconds, so
4 that's over four minutes and you have said in your
5 Inquiry statement -- if we could look at that for
6 a moment, paragraph 41, that -- so you have said you did
7 not see Mr Bayoh lose consciousness. So you have
8 explained earlier you didn't see him lose consciousness
9 and you weren't immediately aware --

10 A. Yes.

11 Q. -- that he had lost consciousness. And then we have
12 heard about the Smith transmission that he called for an
13 ambulance when he was aware Mr Bayoh had lost
14 consciousness. You have said this morning you didn't --
15 you don't remember hearing that transmission.

16 A. Mm-hm.

17 Q. But I would like to ask you what you were doing between
18 this period of time -- so at some point you did become
19 aware that Mr Bayoh had lost consciousness -- up to the
20 point when your transmission was "He is no longer
21 breathing, get an ambulance." Can you give us a sense
22 of what you were doing during that four-minute period?

TRANSCRIPT OF THE INQUIRY

- 1 A. Just waiting for the ambulance effectively. Making sure
2 that the officers were maintaining control in terms of
3 monitoring the breathing and just speaking to people,
4 making sure everything else was getting done, secure --
5 to make sure that everyone else is safe.
- 6 Q. Now, in fairness to you, at 7.26.41 you make another
7 call -- so this is during that four-minute period and
8 7.26.41 you say:
- 9 "I'm just looking to clarify has an ambulance been
10 contacted for this accused?"
- 11 So that's during that period you're chasing up --
- 12 A. Yes.
- 13 Q. -- the ambulance. Why were you chasing the ambulance at
14 that stage?
- 15 A. I think it was just I was willing the ambulance to be
16 there quicker. You've got somebody who is unconscious
17 on the pavement, you want to make sure that they're
18 going to get seen and treated as soon as possible.
- 19 Q. Could you help me with something. We have heard that
20 the hospital is very close along Hayfield Road --
- 21 A. Mm-hm.
- 22 Q. -- there's Victoria Hospital and -- maybe two or three

TRANSCRIPT OF THE INQUIRY

- 1 minutes away. Were you conscious that you were waiting
2 for a while for the ambulance?
- 3 A. It felt like an eternity. I couldn't actually say how
4 long the ambulance was, but it did feel like an
5 eternity.
- 6 Q. And so you chased up whether an ambulance had been
7 contacted. Did you consider it worthwhile to chase up
8 again or did you feel that was sufficient chasing?
- 9 A. Once I have told the control room they -- once they have
10 contacted the ambulance control there's not much else
11 I can do to affect the ETA of an ambulance. That's
12 between control and ambulance control as such.
- 13 Q. We may have heard that other officers were doing points
14 duty, or traffic control --
- 15 A. We need to make sure -- it was a busy main road. We had
16 to make sure there was no further risk to Mr Bayoh or
17 any of the officers that were involved in CPR.
- 18 Q. So there were no cars going backwards and forwards?
- 19 A. No.
- 20 Q. But the ambulance was allowed access to the area?
- 21 A. Yes.
- 22 Q. And after he stopped breathing and CPR commenced and you

TRANSCRIPT OF THE INQUIRY

1 have asked about the ambulance, 7.29.30, you have talked
2 about the possibility that he was faking. Once you
3 realised he was not breathing, you must have realised
4 that there was no sense of feigning or faking on his
5 part?

6 A. Well, I had realised sort of long before then that he
7 was properly unconscious because there was no response
8 to any stimuli and then he has gone into not breathing
9 and then it's obviously heightened the response again.

10 Q. When did you realise that he wasn't feigning?

11 A. After we had done all the relevant checks, the stimuli
12 checks.

13 Q. What are these relevant stimuli checks?

14 A. Pain -- pain -- there's relevant pressure points that
15 you can press on a person's body that will -- they've
16 basically not got a choice, there will be some sort of
17 reaction.

18 Q. Who was doing these checks?

19 A. I can't recall who was doing that check actually.

20 Q. Can you describe some of the checks to us?

21 A. I can't recall exactly, to press a pressure point in the
22 chest.

TRANSCRIPT OF THE INQUIRY

1 Q. We may have heard evidence of knuckles used in that
2 area?

3 A. Yes, Knuckles, that's it, yes, yes, just to apply --
4 which causes a pain that would be difficult to not react
5 to.

6 Q. If you were conscious?

7 A. Yes.

8 Q. And were you aware of anyone slapping Mr Bayoh on the
9 face?

10 A. No.

11 Q. Were you aware of PC Paton slapping or patting or
12 tapping him on the face?

13 A. No, I never witnessed that.

14 Q. No. Were you aware of PC Smith using his knuckle to
15 test the pain response?

16 A. I believe there was -- that process was going on, but
17 I never actually saw it actually happen.

18 Q. Were you aware of which officers were doing the CPR?

19 A. Yes.

20 Q. Who were they?

21 A. PCs Walker, Paton and I believe Alan Smith took over at
22 some point as well.

TRANSCRIPT OF THE INQUIRY

- 1 Q. Were you aware of PC Smith using a face -- a valve,
2 a ...?
- 3 A. Yes, a resuscitation mark, if you like, that stops
4 cross-contamination when doing mouth-to-mouth.
- 5 Q. And how did that go?
- 6 A. It initially was working but then PC Smith made it clear
7 that there was fluid coming from Mr Bayoh's mouth and
8 that cross-contamination was an issue and they had to
9 stop the mouth-to-mouth phase.
- 10 Q. And what did PC Smith do then?
- 11 A. Just continued chest compressions, which is again
12 another valid form of CPR without the mouth -- the
13 rescue breaths.
- 14 Q. So when did -- so after PC Smith left with the valve,
15 there was no mouth-to-mouth at that stage?
- 16 A. No.
- 17 Q. When was that? How long after CPR had commenced?
- 18 A. I can't give you a figure, I'm afraid.
- 19 Q. All right. Can I ask you when CPR was commenced,
20 Mr Bayoh was on his back?
- 21 A. Mm-hm.
- 22 Q. Why were the handcuffs not removed at that point?

TRANSCRIPT OF THE INQUIRY

- 1 A. Again, it was a -- it wasn't a consideration of mine at
2 that time. It wasn't impeding the chest compressions at
3 all in my view.
- 4 Q. In your view -- are you first aid trained?
- 5 A. Yes.
- 6 Q. And you didn't think that it would be better since he
7 was unconscious and not breathing?
- 8 A. At the time I believe the chest compressions were more
9 important. There was no hindering of the chest
10 compressions at the time, and delay of taking off the
11 handcuffs was second fiddle to actually getting the
12 rescue compressions in.
- 13 Q. It wouldn't have been possible to remove the handcuffs
14 at the same time as the chest compressions were being
15 done?
- 16 A. Again, it could have potentially, yes, but again, my
17 foremost thoughts were getting the compressions in.
- 18 Q. We have heard that Mr Bayoh was interested in going to
19 the gym and he had a large chest, large arms, and he had
20 been handcuffed to the front, palm-to-palm, and that
21 position may have restricted access to his chest. Was
22 that anything that you were aware of or noticed?

TRANSCRIPT OF THE INQUIRY

- 1 A. It didn't, in my view, restrict the effectiveness of the
2 CPR that was ongoing at the time.
- 3 Q. Right. Did you consider instructing the leg restraints
4 or the Fast Straps be removed?
- 5 A. Again, similar to the handcuffs it wasn't at the
6 forefront of my mind; it was just to get the rescue CPR
7 done.
- 8 Q. How long did chest compressions go on without the
9 mouth-to-mouth, before the ambulance arrived?
- 10 A. Four to five minutes, maybe.
- 11 Q. Was that information that you shared over the Airwaves?
- 12 A. I did say, I believe -- I made a transmission to say
13 that again, for recording it, for clarity, that we had
14 to cease rescue breaths due to contamination.
- 15 Q. I'm going to come on to those messages. Let's have
16 a look at those now. Let's start first of all with
17 7.31.22 on page 12. I think you're saying there:
18 "Control any update on ambulance we could really do
19 with it here, over."
20 So that's another request for an ambulance. What
21 was going on at this point?
- 22 A. Again, you're dealing with a human life and the CPR

TRANSCRIPT OF THE INQUIRY

1 and -- it probably felt longer than it actually was but
2 I was willing that -- I wanted that ambulance there now
3 and that's why.

4 Q. And control have said "They have been given a hurry up",
5 so they have been in touch with that.

6 A. Yes.

7 Q. And then 7.32.11, just further down the page, you do
8 a transmission saying:

9 "Just for the call card, chest compressions
10 commenced. However breaths have stopped due to
11 cross-contamination, blood et cetera."

12 A. Yes.

13 Q. I think is this the transmission that you mentioned
14 a moment ago?

15 A. Yes.

16 Q. So how long after the breaths had stopped, the rescue
17 breaths as you mentioned, how long after those stopped
18 did you make this Airwaves transmission?

19 A. I can't recall exactly but it would have been
20 transmitted at the time.

21 Q. So as the officers stopped and PC Smith --

22 A. Once it had been ascertained that that was the situation

TRANSCRIPT OF THE INQUIRY

1 and that information was the case, then it would have
2 been transmitted.

3 Q. And was it -- when PC Smith removed himself from the CPR
4 and the valve became contaminated, was it PC Paton and
5 Walker that continued with the chest compressions?

6 A. Yes. If you give CPR it's quite tiring as well so they
7 were taking it in turns to make sure that the
8 compressions were effective.

9 Q. And then the words "Just for the call card", what does
10 that mean? You have mentioned call cards?

11 A. Again, it's just another way of updating the log.

12 Q. So would that indicate that it's not happening at that
13 precise moment?

14 A. No, I would have made that transmission, it's just --
15 I think it's a generalism that you get used to of making
16 transmissions over the years and it's like a learned
17 behaviour with that, "Just for the call card".

18 Q. And then the control say:

19 "Estimated time of arrival two minutes for the
20 ambulance."

21 And then can we move on to page 15 of the
22 spreadsheet, 7.39.50. This is you again:

TRANSCRIPT OF THE INQUIRY

1 "Control, if you cancel the second ambulance due to
2 the delay we have taken PC Short to hospital ourselves,
3 over."

4 So you -- just to put this into context, if you look
5 at page 13, so if we go back the way, there's a call at
6 7.34.08, transmission by you saying "Ambulance at
7 locus".

8 A. Yes.

9 Q. So the first ambulance has arrived by this time?

10 A. Yes.

11 Q. And at 7.39.50 you cancel the second ambulance?

12 A. Yes.

13 Q. And you say that PC Short has been taken to the hospital
14 by yourselves.

15 A. I believe so, that was the message I got that she had
16 been conveyed to the hospital by another officer.

17 Q. Right. Can we look at 7.40.09, please, where you say:

18 "Control say they were told that other officers
19 needed an ambulance because of exposure to
20 contaminants."

21 That will be sprays?

22 A. Yes, yes.

TRANSCRIPT OF THE INQUIRY

- 1 Q. And then you say:
- 2 "No if you stand down all officers here state they
- 3 are safe and well, just walking it off into the air,
- 4 over, we're going to all return back to Kirkcaldy for
- 5 a debrief."
- 6 So what's happening at this moment in time?
- 7 A. I'm not sure if Mr Bayoh has been conveyed to the
- 8 ambulance at that -- to the hospital at that point and
- 9 it's just a kind of a regroup and ascertain what's going
- 10 to happen next.
- 11 Q. Can I show you page 14, please --
- 12 A. Yes, certainly.
- 13 Q. -- just to give you some context. At 7.37.56, so
- 14 page 14, 7.37.56, Samantha Davidson has gone onto the
- 15 radio and said:
- 16 "Roger, that's the male on the stretcher. He's
- 17 going to be going to hospital. Remains in cardiac
- 18 arrest for your information. I'm allocating DC Connell
- 19 to go with him in the ambulance. I will get further CID
- 20 resources from Glenrothes in the near future."
- 21 A. Aye.
- 22 Q. While we're on that, can I ask you, once

TRANSCRIPT OF THE INQUIRY

1 Samantha Davidson arrived, was she the senior officer at
2 the scene?

3 A. It's hard to say. She is the substantive sergeant, if
4 that makes sense, however, I am -- regarding being
5 acting sergeant, I'm still in charge of the response
6 team. She took control of the scene, if you like,
7 making sure that everything was controlled and my focus
8 was more on the officers.

9 Q. So you are still in charge in the sense of the response
10 team --

11 A. Yes.

12 Q. -- and the incident?

13 A. Yes.

14 Q. So although she is a substantive sergeant, she is not
15 taking charge of the scene as such, that still remains
16 with you?

17 A. Again, it was so fast-paced that I was doing my bit, she
18 was doing her bit, and it was then once we had got back
19 to the station then we established who was in charge,
20 et cetera.

21 Q. Right. And can I ask you, you mentioned Stephen Kay
22 yesterday and he was your -- he was senior to you --

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. -- in terms of the organisation. We had previously
3 understood he was based at Dunfermline but you said
4 yesterday that he was in Kirkcaldy that day?

5 A. That was to my recollection he was in Kirkcaldy that
6 morning.

7 Q. Can you explain to me, in terms of the contact that you
8 have with Inspector Kay, or the engagement you have with
9 him during the day, and at the scene in fact, you are
10 acting sergeant, you are in charge of the incident --

11 A. Yes.

12 Q. -- what was Stephen Kay's involvement with that?

13 A. The patrol inspector, if you like, covers the whole of
14 the division.

15 Q. Is that what he was known as, a patrol inspector?

16 A. Yes, if you like, an area inspector, that looks after
17 and has an overview of all the calls in all the areas,
18 all the stations. You would check in with him in the
19 morning and do a handover. At that time it depends what
20 radio channel is on as well. If there's an incident
21 happening in Dunfermline he might tune into Dunfermline
22 to listen to that, but it is basically an overview and

TRANSCRIPT OF THE INQUIRY

1 then if there is an ongoing incident they will come out
2 and take ownership, but due to the swiftness of this
3 action and what's actually happened, again, like I said
4 yesterday, I didn't have much influence in it and then
5 there wouldn't have been much influence that he would
6 have had on it initially until after the event in this
7 particular instance where he took ownership.

8 Q. So when you say the whole division and all areas, you
9 have mentioned -- we know about Kirkcaldy, you have
10 mentioned Dunfermline?

11 A. Yes.

12 Q. Is that the areas that he is in charge of?

13 A. Yes, it's -- it's the sort of divisional areas, there's
14 Dunfermline which is sort of South West Fife,
15 Dunfermline.

16 Q. Glenrothes?

17 A. Glenrothes, Leven, North East Fife and Kirkcaldy.

18 Q. So those sort of areas in Fife. And he has an
19 overview --

20 A. Yes.

21 Q. -- I think you said of all those areas?

22 A. It's like taking a helicopter management view of

TRANSCRIPT OF THE INQUIRY

- 1 everything that's coming into the division and they're
2 there for resources, et cetera, for -- if there's
3 a major incident going on in Levenmouth they would
4 allocate more resources. It's an overview of everything
5 that we have available and to manage major incidents.
- 6 Q. So he has the discretion to take control over one
7 particular incident?
- 8 A. Yes.
- 9 Q. But he didn't do that on this particular occasion?
- 10 A. Again, he was unaware that it was actually ongoing until
11 it was...
- 12 Q. I think we see in some of the Airwaves transmissions
13 that he did --
- 14 A. He did know about -- yes, he did comment.
- 15 Q. Yes.
- 16 A. But as I say, it happened so quickly that he has not
17 been able to influence much.
- 18 Q. We may hear from him in the future.
- 19 A. Yes.
- 20 Q. So you checked in with him in the morning --
- 21 A. Yes.
- 22 Q. -- to do the handover; was that before your muster?

TRANSCRIPT OF THE INQUIRY

1 A. Yes.

2 Q. And he gets you up-to-date on what's been happening --

3 A. Mm-hm.

4 Q. -- and then you can share that with your response team?

5 A. Yes.

6 Q. Other than that engagement when you saw him in the

7 morning, did he also attend your muster?

8 A. Not in that particular -- there was nothing pressing

9 from the previous night that had to be said or

10 reiterated as such.

11 Q. So you have had your handover, he has not attended the

12 muster, when did you next see Inspector Kay?

13 A. At Hayfield Road.

14 Q. And when was that?

15 A. That was -- I don't know the exact time, but I believe

16 the ambulance was still there at the time.

17 Q. Right, so he arrived when the ambulance -- were there?

18 A. I believe so, it was still there, that's ...

19 Q. So he actually attended Hayfield Road --

20 A. Yes, he came up.

21 Q. -- from Kirkcaldy Police Office?

22 A. Yes.

TRANSCRIPT OF THE INQUIRY

1 Q. And when he arrived at the scene are you still in charge
2 or does he take over -- take charge of that?

3 A. I gave a quick brief overview of what had occurred that
4 I was aware of and my instruction was to get the
5 officers involved back to Kirkcaldy Police Station,
6 await further instruction, not to talk about the
7 incident and that he would take over.

8 Q. So did you feel that he -- from the minute he arrived he
9 is sort of taking over or --

10 A. Yes.

11 Q. Right. And it is for him to sort of issue directions
12 then?

13 A. Yes.

14 Q. And so that was prior to you going back to Kirkcaldy
15 Police Office?

16 A. Yes.

17 Q. Once he is at the scene, he takes charge?

18 A. Yes.

19 Q. Thanks. Now can I ask you to look at paragraph 46 of
20 your statement, please. You were asked about how you
21 were thinking or feeling when they were trying to
22 resuscitate Mr Bayoh and you say:

TRANSCRIPT OF THE INQUIRY

1 "I was concerned for Mr Bayoh and was hoping that he
2 would be all right. I was also hoping that the
3 ambulance would arrive quickly to provide him with
4 further assistance."

5 And is that how you were feeling? Do you want to
6 say any more about that?

7 A. No, I was completely in shock as well. I'm human and
8 we're dealing with another human being and I was very
9 concerned for his wellbeing and, like I said, the
10 ambulance felt like an eternity.

11 Q. And indeed, it didn't arrive until 7 -- I think it is
12 seen arriving on the CCTV at 7.33.35.

13 A. Yes.

14 Q. So it does seem -- you arrived at the scene at 7.22,
15 Mr Bayoh was unconscious by 7.25 and not breathing by
16 7.29, but it wasn't until 7.33 that the ambulance
17 arrives. So do you know why it took so long for the
18 ambulance to arrive?

19 A. I believe --

20 Q. Because it was called when he was unconscious which was
21 7.25?

22 A. My understanding at the time during the incident was

TRANSCRIPT OF THE INQUIRY

1 that our admin assistant at Kirkcaldy realised that the
2 control had sent the ambulance to Seafield Road in
3 Kirkcaldy and not Hayfield Road. Now, I don't know how
4 much of an impact that had on the delay, if at all, but
5 that was certainly -- you'll probably see that in the
6 transmissions as well.

7 Q. We will maybe be hearing about that later today, thank
8 you, but that was one possible explanation that you can
9 think of?

10 A. Absolutely, absolutely.

11 Q. Is there any other explanation you can think of?

12 A. No, just other than the processes that they have to go
13 through in terms of how they get the messages to
14 ambulance crew, geography, et cetera.

15 Q. Can I ask you to look at PIRC 3374 -- 03374, some
16 photographs, and I have been asking all the officers
17 about these photos to make sure that they are correctly
18 identified. There's two photos and you will see it's
19 a snapshot and you are identified as being at the far
20 left, PS Maxwell?

21 A. That's correct.

22 Q. And is that you -- are you leaning against the hedge

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1 there?

2 A. I'm not leaning against it but --

3 Q. Standing near to the hedge?

4 A. Yes.

5 Q. And what was happening at this point?

6 A. I don't know what time that was taken.

7 Q. Do you remember?

8 A. It looks like Mr Bayoh is on his side. I'm not sure if

9 he was unconscious at that point or that was a point

10 where he was still conscious.

11 Q. Right. As you look at the identification -- the writing

12 identifies various officers. Without going through them

13 all in detail, are there any that you are concerned are

14 wrongly identified?

15 A. No.

16 Q. Thank you. And then can we look at photograph 2,

17 please. You will see this photo, fewer people around at

18 this time. You are identified as being on the left with

19 a hat on.

20 A. Yes.

21 Q. "PS Maxwell", is that you?

22 A. That's correct.

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1 Q. And do you see the car towards the centre of the
2 picture? We have heard that's the diary car.
3 A. Yes.
4 Q. The car that you arrived in, can we see that here?
5 A. It's just right behind me.
6 Q. So that's just right behind you.
7 A. Mm-hm.
8 Q. And that's the Corsa that you came in?
9 A. Yes.
10 Q. And that's where you parked it?
11 A. Yes.
12 Q. And did you have your hat on when you first arrived?
13 A. No.
14 Q. No. So why did you put your hat on?
15 A. I'm the supervisor, I need to be identified as that as
16 well.
17 Q. And is that a way that people can recognise your status?
18 A. It's part of the uniform. At the end of the day
19 sometimes you can't go back and get that, but I like to
20 set an example and also be professional.
21 Q. Thank you.
22 Can I ask you about some enhanced Snapchat footage,

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1 A. Yes.

2 Q. Do you recognise those officers?

3 A. I recognise the officers, yes.

4 Q. And it would appear that one of them is outstretched on
5 the ground --

6 A. Yes.

7 Q. -- to some degree. You can see a white band or a pale
8 band between trousers and a vest or a top of some
9 description on the ground. Do you see that?

10 A. Yes.

11 Q. Do you know who that was?

12 A. It will -- probably PC Walker, from power of deduction
13 anyway, from the officers that were there and who is
14 unaccounted for at that point.

15 Q. Are these the officers that were there when you arrived?

16 A. Yes.

17 Q. So we identified yesterday your car arriving at the
18 scene at 7.22.25, so that's just a few seconds after
19 this footage is taken, so I'm wondering if that is what
20 was happening on the ground when you arrived in the car?

21 A. All I can recall was when I arrived at the scene he was
22 on his left side and he was in control.

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1 Q. Mr Bayoh was on his left side?

2 A. Yes, yes.

3 Q. So PC Walker was not in that position when you arrived?

4 A. No.

5 Q. Can I ask you some other -- thank you, that's fine.

6 Can I ask you some other questions about your PIRC
7 notes, 266. This is your PIRC statement and page 5,
8 please, paragraphs 2 to 5. This is what -- we asked you
9 yesterday about your arrival and what you saw and
10 I would like to ask you about this. So this is your
11 statement. Yesterday I asked you about PC Smith and
12 what he was doing when you arrived and what you say here
13 is:

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

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

22 "I saw PC Alan Paton. He was standing up in close

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1 proximity to Alan Smith. He was standing over Alan
2 Smith and Ashley Tomlinson, facing towards me.
3 PC Craig Walker was standing to Alan Smith's immediate
4 right facing me.

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

13 And then if we can have a look at the next
14 paragraph:

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

19 Do you know what that hold is called?

20 A. It's more like a ground pin, if you like.

21 Q. Okay. Yesterday when I was speaking to you, you were
22 talking about the officers kneeling?

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- 1 A. Mm-hm.
- 2 Q. And here you use various descriptions, you say -- if we
3 can go back up the screen, please, Ms Smith, and you
4 say:
- 5 "PC Ashley Tomlinson was next to Alan Smith. He was
6 to Alan's right and he was also on his knees and he was
7 leaning over the black male's right hip and buttock
8 area."
- 9 So was he putting weight on Mr Bayoh, leaning over
10 in the way you describe?
- 11 A. I can't say he was putting weight on him, I wasn't
12 obviously there, but he was on his knees and he was sort
13 of over him.
- 14 Q. Did you -- were you aware of any of the officers putting
15 any weight on Mr Bayoh?
- 16 A. It was more of a containment, making sure he was kept on
17 his left side, that's -- just making sure he wasn't
18 moving.
- 19 Q. So basically by the time you arrived, he is on his left
20 side, handcuffed with leg restraints on?
- 21 A. That's what I can recall.
- 22 Q. So you didn't see them leaning over, or trying to

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- 1 restrain him. Was he struggling at any point during
2 that?
- 3 A. He was actively resisting, but not to a massive extent.
- 4 Q. So what does that mean, can you describe it for us?
- 5 A. He was just still shaking about, trying to establish if
6 he could wriggle free from the cuffs and the restraints.
- 7 Q. We have heard other evidence that when he was turned
8 onto his left-hand side he had stopped moving, but
9 that's not your recollection?
- 10 A. That's certainly how I recall it anyway.
- 11 Q. Is it possible you could be wrong about that?
- 12 A. Potentially.
- 13 Q. Yesterday you talked about, I think, PC Smith holding
14 Mr Bayoh's head and you said it was at the back.
- 15 A. Mm-hm.
- 16 Q. And you used the word "ushering" sort of motion. He was
17 cuffed to the front but PC Smith was kneeling near the
18 head area, I think you said, and Mr Bayoh had just been
19 put on his left-hand side facing west towards Gallaghers
20 pub where you had walked from?
- 21 A. Yes.
- 22 Q. I have read through your notes and your PIRC statement

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1 but I don't see any references to ushering or holding of
2 his head by PC Smith. Is that something you are clear
3 about in your recollection?

4 A. I just know that he was down at the head area protecting
5 the head, and that's what I recall him doing to keep
6 the head safe. It's a sort of recognised tactic.

7 Q. Can you explain why you have not mentioned that in your
8 statements before?

9 A. I think it's just as the Inquiry has progressed it's
10 brought that memory back.

11 Q. Right. Can I ask you now to look at your Inquiry
12 statement please, paragraphs 30, 32 and 33. So you were
13 asked here about the restraint. You weren't involved in
14 the restraint and you say in your Inquiry statement:

15 "On my arrival I could see Mr Bayoh lying on the
16 ground on the pavement. He was on his left side, he was
17 facing me. He was still actively resisting but not to
18 an extent that he was uncontrollable."

19 And then if we could move up the page, please, he
20 was "conscious and breathing", and then at 32 and 33:

21 "When I first arrived, he was on his left side. He
22 was moved onto his back when CPR commenced. I did not

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1 see him in the prone position at any time."

2 So you had never seen him in the prone position --

3 A. Not that I can recall, no.

4 Q. -- from the minute you arrived. Then you were asked
5 about what your location was during the restraint and
6 you say:

7 "I was not involved in the restraint. I only
8 observed Mr Bayoh being restrained on my arrival at the
9 scene and as outlined in my answers above. I then went
10 to see PC Short.

11 "I saw PC [Smith] on the other side of Mr Bayoh as
12 I was looking at the scene. He was near Mr Bayoh's
13 shoulder area, kneeling down, leaning over Mr Bayoh
14 facing towards me."

15 So at the time you arrived is it fair to say you saw
16 no officer applying full body weight?

17 A. Not full body weight, no.

18 Q. Did you see an officer using what's called the kneel and
19 contain technique?

20 A. They were kneeling down and sort of containing him in
21 that position, yes.

22 Q. What does "contain" mean in that context?

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1 A. Just to make sure that they're not going to struggle
2 again. It's hard to explain, but it's just to make sure
3 that we're guarded against him sort of kicking off again
4 or coming out of any particular restraint.

5 Q. Right. In paragraph 35 of your Inquiry statement you
6 say -- if we could just move on to that:

7 "My recollection is that no one was lying on top of
8 Mr Bayoh using their body weight."

9 Can you explain was anyone lying on him without
10 using their body weight?

11 A. No. I don't believe anyone was lying on top of him at
12 the time.

13 Q. You don't think they were lying --

14 A. No, as such, it was more just to do with the kneeling
15 and keeping him in one place.

16 Q. Do you think they were leaning on Mr Bayoh?

17 A. It's a potential, yes.

18 Q. And what distinction do you see between lying and
19 leaning over?

20 A. Lying is physically using your body weight to lie across
21 somebody, right across; leaning is just more putting
22 pressure on.

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1 Q. So less pressure than putting your --

2 A. Yes, you wouldn't need a full body weight on top of
3 another body.

4 Q. What sort of pressure would you need?

5 A. Depending on the actual restraint from the person you're
6 dealing with.

7 Q. Right. Can I ask you to look again at your PIRC
8 statement 266 please, page 5, paragraph 3. So:

9 "PC Ashley Tomlinson was next to Alan Smith. He was
10 to Alan's right and he was also on his knees and he was
11 leaning over the black male's right hip and buttock
12 area."

13 So that we should understand is being leaning over
14 using some pressure but not lying?

15 A. Yes.

16 Q. And then paragraph 5:

17 "I saw PC James McDonough kneeling down at the black
18 male's feet. He had his arms tuck[ed] round [his]
19 feet ... James McDonough maybe looked like he was lying
20 across the black male but I know he wasn't he was just
21 controlling the movement of the black male's legs."

22 So again is that leaning using pressure but not

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1 lying --

2 A. Yes.

3 Q. -- using body weight. And then paragraph 6:

4 "... Tomlinson and ... Smith. It might look to an
5 untrained person they were just lying across the black
6 male but that is a recognised training hold."

7 So again neither of them were lying --

8 A. Not a full lie, no.

9 Q. -- using their body weight, leaning using pressure?

10 A. Yes.

11 Q. And then page 6, paragraph 4:

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

18 So is the distinction you make there's not full
19 weight being put on because they're taking some weight
20 on their knees?

21 A. The impression I got was from my own experience when

22 I have had to restrain people when I'm on my knees in

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- 1 a pivoted position that I can still effect pressure
2 gently and then if I have to, I can go straight onto
3 them.
- 4 Q. Right. The position that you saw PC Walker in in the
5 Snapchat footage, he appeared to be lying out?
- 6 A. Yes.
- 7 Q. Is that what you're describing when you make the
8 distinction between leaning and lying, or is that --
9 does that appear to be lying?
- 10 A. That appears to be -- certainly the way he was splayed
11 out, that was as if he was lying on top of him.
- 12 Q. Can we look at page 6, please, paragraph 3. You talk
13 about:
- 14 "Both were breathing heavily ..."
15 Here it is at the top, sorry. Here we are, the
16 paragraph at the top:
17 "As I approached PC Walker and PC Paton ..."
18 Do you see that one?
- 19 A. Mm-hm.
- 20 Q. "Both had runny noses and blinking heavily as if they
21 had been involved in some form of physical exertion."
22 And when you're talking about leaning and using

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1 pressure, that wouldn't cause breathing heavily, would
2 it as such?

3 A. No.

4 Q. No. So what physical exertion did you understand they
5 had been engaged in?

6 A. Well, I wasn't sure at that time. I didn't have any of
7 the facts at that time really. They were -- they had
8 obviously been running about from what I'm hearing now,
9 but I couldn't exactly say what they were involved in at
10 that time.

11 Q. All right, thank you. Can I ask you about again 266,
12 page 6, paragraph 7, the paragraph that says -- it's
13 towards the bottom of this page:

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

18 I'm interested in what you have said there.

19 A. Mm-hm.

20 Q. Have you come across other examples where people who
21 resist are not verbal?

22 A. Yes, there's some people that I know of that are very

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1 anti-police and they will just not give you any response
2 whatever.

3 Q. Right. And do they engage in some other way with
4 the police --

5 A. They will --

6 Q. -- maybe if they are not vocal?

7 A. -- maybe give you a bit of compliance if you ask for it
8 but other than that they will not communicate with you
9 at any point.

10 Q. So you've got experience of that?

11 A. Yes.

12 Q. Can I ask you about the recovery of the knife at the
13 scene.

14 A. Yes.

15 Q. I don't know if you heard evidence yesterday about
16 DC Connell finding a knife at the scene in a grassy
17 area. Is that something you were aware of?

18 A. I never saw the evidence yesterday, but I was aware that
19 at one point during the proceedings that I had asked if
20 there was a knife and -- or where was the knife,
21 something similar, and there was a comment -- I don't
22 know who made the comment saying: I believe it is on the

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1 grass area, which would have been to the north, north
2 area.

3 Q. Of Hayfield Road?

4 A. Yes, and I believe I said something, "someone go and
5 check".

6 Q. Was this before or after you had been to see
7 Nicole Short?

8 A. I think it was before.

9 Q. Before. So when you have just arrived at the scene --

10 A. Yes, I believe --

11 Q. -- you ask about the knife?

12 A. Yes.

13 Q. Before you go and see Nicole Short --

14 A. Yes.

15 Q. -- at the Transit van. And was that when DC Connell was
16 looking for it or was this just --

17 A. I believe so, I believe so.

18 Q. Right. And then you have talked about prior to leaving
19 the scene, Inspector Kay arrives and you briefly
20 mentioned that you were going to have a debrief with the
21 officers. Did you go round speaking to the officers
22 before you left the scene?

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- 1 A. I think I spoke to a few of them, just saying "Look, we
2 need to go back to Kirkcaldy, we need to obviously
3 regroup and then find out what's going to happen."
- 4 Q. What information or instruction did Inspector Kay give
5 you?
- 6 A. Basically to attend back at the police station in the
7 canteen, regroup, just get everyone there, make sure
8 everyone is safe and well and not to obviously discuss
9 in specifics what's going on.
- 10 Q. And did you then share that with members of your
11 response team?
- 12 A. I did, yes.
- 13 Q. Was that with all of them?
- 14 A. Well, when we got back to the canteen I did address them
15 all at the start; whether they took that in or not is
16 another matter.
- 17 Q. So you didn't speak to all of them before you left the
18 scene --
- 19 A. No.
- 20 Q. -- but you spoke to them in the canteen? Can we look at
21 paragraph 57 of your statement, please. You were asked
22 about speaking to PC Paton and PC Walker when they were

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1 in the custody van and Walker said he wouldn't be
2 speaking to anyone or giving a statement until he had
3 spoken to his Federation rep and you were asked if they
4 had explained why they wouldn't speak to anyone and you
5 say:

6 "No, they didn't explain, that was all they said.
7 No, they didn't give me any information at that time.

8 "I accepted that because I had never been in this
9 situation before. PCs Paton and Walker also appeared
10 very upset. I didn't want to labour the point there and
11 then. I knew we were all to go back to the police
12 office and the investigative phase was about to
13 commence."

14 Was it Inspector Kay that had said that to you or is
15 that something you knew from your own --

16 A. It was just an assumption that we had to go back and
17 make sense of it all, but just through my service I knew
18 the process that was potentially going to have to happen
19 and find out what's gone on that morning.

20 Q. So what was it that prompted PC Walker to say "I won't
21 be speaking to anyone or giving a statement until
22 I speak to my Federation rep"? What had you said?

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- 1 A. I had gone up to them -- Alan had already given me
2 a very brief resumé when I was trying to establish what
3 had happened --
- 4 Q. Is that PC Paton?
- 5 A. Yes, sorry, yes. And then towards the end when I think
6 Mr Bayoh had gone away in the ambulance, they were in
7 the van and I went up to them and just said "Look,
8 what's happened?" You know, for my own information and
9 both of them were extremely upset and in shock and had
10 basically intimated to me that they wanted Federation
11 advice before they said anything else. I was the
12 supervisor so they maybe thought I would report back
13 what they said and they wanted to get advice first.
- 14 Q. And you didn't feel at that stage that you could press
15 that?
- 16 A. Well, I didn't think it was the right time or place at
17 that time we were in still at the locus, they were in
18 clear shock and I knew that processes were now going to
19 work -- sorry, come into place where we would have to
20 provide an explanation of what's happened.
- 21 Q. And then can we look again at PIRC 266--page 9,
22 paragraph 10. So it's towards the bottom. You say:

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1 "I then went round all my officers and informed them
2 individually to return to the canteen at Kirkcaldy
3 Police Office."

4 So did you go round the team --

5 A. To the best of my recollection I managed to get
6 everybody and say we were going to have to go back to
7 Kirkcaldy Police Office and await further instruction.

8 Q. And did you tell them that they shouldn't be speaking to
9 anyone about this?

10 A. I don't know if I said -- I can't recall if I said that
11 exactly at that time, but yes, I did brief that at the
12 canteen when we were all together.

13 Q. And so when you went back to the canteen you have said
14 you gathered them all together and spoke to them and
15 I think you have said on page 4 of 267, PIRC 267, you
16 say that:

17 "No officers were willing to tell me the full
18 circumstances until they had spoken with the Police
19 Federation."

20 So by the time you went back to the canteen, none of
21 the officers wanted to tell you the full circumstances?

22 A. To be fair, when I got back to the canteen all sort of

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1 supervisory capacity was -- not rescinded, but I was now
2 part of the Inquiry, if that makes sense, and I was
3 basically told that someone would come in and take the
4 management function and I was to be involved as the
5 group -- somebody would come in and do post-incident
6 management and advise us what's happening next so -- and
7 I had to be there as a support network as such.

8 Q. Before I move on I've got one last question about the
9 scene. Looking back now, do you feel that officers had
10 sufficient support in relation to -- there was no ARV,
11 there was no dog unit in attendance?

12 A. At the end of the day we didn't have that close by, so
13 I would say no, we didn't have the proper support.
14 However, the way the incident played out, it wouldn't
15 have been relevant at that particular time unless there
16 had been more of a containment situation.

17 Q. You say not relevant?

18 A. Well, not relevant, it's the way it played out in that
19 particular time.

20 Q. There wasn't enough time for the ARV to --

21 A. Yes.

22 Q. -- arrive or the dog unit?

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1 A. Yes.

2 Q. Because it all happened so quickly?

3 A. Yes.

4 MS GRAHAME: I'm going to be moving on --

5 LORD BRACADALE: It's time for the break. We will take

6 a break for 15 to 20 minutes.

7 (11.32 am)

8 (Short Break)

9 (11.53 am)

10 LORD BRACADALE: Ms Grahame.

11 MS GRAHAME: Thank you. We were just coming back to

12 Kirkcaldy Police Office and you had gone back to the

13 canteen.

14 A. Yes.

15 Q. And we have heard quite a lot of evidence about the

16 events in the canteen. Can I ask you, were you told to

17 remain in the canteen that day?

18 A. Yes. As is -- I was able to carry out a few inquiries

19 in terms of going and speaking to senior management,

20 et cetera, but -- as a communication network, but other

21 than that I was with the group.

22 Q. So -- but you had some conversations with others in the

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- 1 Kirkcaldy Police Office, senior management, you said?
- 2 A. Yes. I left a couple of times to go and seek
3 clarification of what was happening because obviously we
4 had a room full of very upset people in shock wanting to
5 know what was going on.
- 6 Q. But you're still the acting sergeant?
- 7 A. Yes, I was still their sergeant in terms of welfare and
8 concern. Any request for statements, et cetera, like
9 that was going to be allocated to someone else.
- 10 Q. Yes, okay. Do you remember having conversations with --
11 I will give you a list of names of people:
12 Conrad Trickett?
- 13 A. Yes.
- 14 Q. Did he come and stay in the canteen for a part of the
15 day?
- 16 A. He came in as the post-incident manager role that
17 I understood -- it's the first time I have been
18 introduced to the post-incident management system, if
19 you like, so I wasn't entirely clear but he came in and
20 kind of explained that he was going to come in and look
21 after us procedural wise, et cetera.
- 22 Q. Did he give you any advice about not speaking to people

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- 1 about what had happened?
- 2 A. I believe he did. However, I make it very clear that
- 3 that morning in the canteen was extremely difficult, the
- 4 officers were in a state of shock, including myself, and
- 5 a lot of messages -- people were coming and going,
- 6 senior management, a lot of messages, some maybe took
- 7 in, some didn't, I -- certainly speaking from my own
- 8 personal experience but --
- 9 Q. Because of the way you were feeling?
- 10 A. Because of the way we were feeling. My role
- 11 specifically was keeping officers -- keeping them sane,
- 12 if that makes sense and keeping them in reality. They
- 13 were very upset, shocked, I had officers that I had
- 14 known for years, senior officers, if you like, crying in
- 15 my arms, things like this. I was there as that role,
- 16 I just want to make that very clear.
- 17 Q. Do you want to say who any of those officers were?
- 18 A. PC Tomlinson was extremely distressed, as we may have
- 19 already heard. PC Paton. Obviously PC McDonough and
- 20 Good who are just into the organisation who were "Is
- 21 this normal? Is this" -- a complete state of shock. So
- 22 my role that time was to just make sure that the welfare

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1 of everybody at that time, so I just wanted to make sure
2 that was understood.

3 Q. Okay. And did Stephen Kay come back to Kirkcaldy Police
4 Office?

5 A. I believe he did come in and address the group. I'm not
6 entirely clear the full context of that, but I'm sure
7 within that he has reiterated about the urgency not to
8 discuss exactly what's gone on.

9 Q. Right. And Superintendent Pat Campbell?

10 A. To my recollection I can't remember that happening.

11 Q. Okay. And then the next day did you speak to Inspector
12 Seath?

13 A. Yes, that's correct.

14 Q. And did he give advice at all?

15 A. He asked us to -- well, he asked me to complete a use of
16 force form, which I wasn't required to do as I wasn't
17 involved in the restraint.

18 Q. We have also heard that a form can be completed in
19 relation to an incident.

20 A. Yes.

21 Q. And if officers involved in that don't complete it,
22 a more senior officer can complete it.

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- 1 A. Yes.
- 2 Q. But you said you didn't feel you had to complete that?
- 3 A. No, well in that respect as I was taken away from that
4 role of any supervisory role, so any forms or admin in
5 relation to -- or requests was taken away from me. My
6 understanding was that it was Inspector Seath that was
7 going to be doing that on behalf of the group. I was
8 a part of the group now, if you like.
- 9 Q. But he asked you to complete the form?
- 10 A. Yes, but I explained that I wasn't involved in any of
11 the restraint, or any use of force.
- 12 Q. So you didn't -- and because you were no longer in
13 charge --
- 14 A. Yes.
- 15 Q. -- you didn't feel able to complete the form?
- 16 A. It's not so much able, it's just I left that with
17 Inspector Seath to -- and if it had been, you know, come
18 back and says "No, you must do it", then I would have.
19 But I left it in his capable hands to address that.
- 20 Q. And he didn't come back to you --
- 21 A. No.
- 22 Q. -- and say "You have to do it"?

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- 1 A. No.
- 2 Q. Do you know if a use of force form was ever completed?
- 3 A. I don't know. I don't know.
- 4 Q. And I would like to ask you about your status. I have
5 asked many officers about whether they knew they were
6 a witness or a suspect, against the background of
7 providing an operational statement.
- 8 Did you -- do you remember when you were advised of
9 your status?
- 10 A. It wasn't until later on, after we sought legal
11 representation through Professor Watson, through the
12 Federation, that we learned about our status. We had
13 not been told up to then.
- 14 Q. We may hear -- we may have heard some evidence that
15 people were saying you were witnesses from an early
16 stage on 3 May. Is that something you remember?
- 17 A. Unless I received something in writing, or from a legal
18 representative I didn't class my status as either/or.
- 19 Q. So you were looking for something more formal in
20 writing?
- 21 A. Yes, yes.
- 22 Q. Did you ever get something formal in writing?

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- 1 A. No.
- 2 Q. Did you complete your notebook?
- 3 A. No.
- 4 Q. Why not?
- 5 A. At that time there was not an opportunity to do so.
- 6 I was involved in looking after my staff. That was the
- 7 last thought on my mind.
- 8 Q. Did you think about completing it later,
- 9 retrospectively?
- 10 A. My notebook was taken off me later that evening.
- 11 Q. On 3 May?
- 12 A. Yes.
- 13 Q. And when -- did you provide an operational statement?
- 14 A. Not at that time, no.
- 15 Q. So the -- you have said you completed notes, which we
- 16 have looked at today and yesterday?
- 17 A. Yes.
- 18 Q. And then you gave a PIRC -- a statement to PIRC --
- 19 A. Yes.
- 20 Q. -- on 4 June?
- 21 A. That's correct.
- 22 Q. Apart from that, no other operational statements were

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1 prepared?

2 A. No.

3 Q. And were you spoken to by officers at the major -- MIT,
4 Major Incident Team?

5 A. Yes, I remember I was taken into an office at Kirkcaldy
6 Police Station by two MIT officers, that was DCI Hardie
7 and I forget the other --

8 Q. Wilson, perhaps?

9 A. Wilson, DI Stuart Wilson, I think, Wilson, and asked if
10 I would provide a statement.

11 Q. Was that on 12 May?

12 A. Potentially, yes.

13 Q. And did they tell you that you were being treated as
14 a witness?

15 A. I cannot recall whether they have said that or not.

16 Q. They asked you for an operational statement?

17 A. Yes. The status I was under the moment I was being
18 legally represented at that time and I understood that
19 any request for that would have had to have gone through
20 my legal team and that was the advice I was given by my
21 legal representative at that time: not to provide
22 anything until my status was confirmed.

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1 Q. And we may have heard some of -- a Nicola Shepherd had
2 asked officers to give statements that day; do you
3 remember that?

4 A. I don't recall -- I remember her coming in to offer
5 support, or what we thought was support at the time.
6 I don't remember exactly what was said, it was more
7 a balanced view that: we're looking after you but we're
8 also wanting to make sure that everything is done
9 proportionately and it is investigated properly and we
10 hope everyone will comply.

11 Q. Okay.

12 A. That's the message I gathered from that. It wasn't like
13 a "You will complete statements".

14 Q. No. Were you given any advice from Amanda Givan? We
15 have heard she was a representative of the Scottish
16 Police Federation?

17 A. Yes. I am not sure who actually contacted her but she
18 arrived at Kirkcaldy Police Station to offer support and
19 as part of that she offered consultations in respect to
20 Federation advice on that --

21 Q. Did she give you any advice about providing statements
22 or completing your notebooks?

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- 1 A. She provided advice that it wasn't recommended until
2 your status was officially confirmed.
- 3 Q. Right. And when she said "officially confirmed", what
4 did she mean?
- 5 A. I think we were actually told if we were witnesses or if
6 there was potentially any criminal action, until that's
7 confirmed the Federation advice would be to contact your
8 legal representatives and await further advice.
- 9 Q. All right. Was there a meeting on the Tuesday 5 May, so
10 a couple of days after the events, attended by officers
11 who had been present at the scene at which officers were
12 given legal advice in relation to the provision of
13 statements and the completion of paperwork?
- 14 A. Yes, that's correct.
- 15 Q. Right. And was that a meeting that you attended?
- 16 A. Yes.
- 17 Q. And is that when you received the legal advice --
- 18 A. Yes.
- 19 Q. -- to wait until your status --
- 20 A. Official legal advice, yes.
- 21 Q. And once you had been given that information from your
22 lawyer, that your official status was as a witness, not

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1 as a suspect, were you then prepared to give an
2 operational statement?
3 A. Absolutely, yes.
4 Q. And how soon after did that happen?
5 A. I can't remember, but when we were officially -- it was
6 a case of -- we were just awaiting until the PIRC had
7 spoken to the relevant people and we made arrangements
8 to have that statement noted.
9 Q. Oh, so it was arrangements for the statement to be
10 taken?
11 A. Yes.
12 Q. Once they were in place?
13 A. I believe so, yes. As quick as we could.
14 Q. So once you had got your status confirmed via your
15 lawyer, you were happy to give that statement?
16 A. Yes.
17 Q. Can I ask you some questions about race, please?
18 A. Yes, certainly.
19 Q. As part of your training to be a sergeant --
20 A. Yes.
21 Q. -- or to take on the role as acting police sergeant, did
22 you have extra training in relation to equality and

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1 diversity?

2 A. No.

3 Q. Have you ever been trained in your current role to

4 potentially -- to identify potential racist attitudes or

5 to identify comments which are prejudicial or

6 disrespectful, that type of thing?

7 A. There's no specific training for that, no.

8 Q. Nothing like that?

9 A. Not to identify, other than the basic training we had

10 at -- or the basic training, 15 weeks we had the

11 diversity training which lasted about a week.

12 Q. Was that at Tulliallan?

13 A. Yes.

14 Q. And how long ago was that for you?

15 A. 14 years ago.

16 Q. And you have had no other training in equality and

17 diversity since then?

18 A. Not official -- we've got an equality and diversity

19 team, inclusion team that liaise with other agencies and

20 pass on messages through our divisional coordination

21 unit, they come out on emails just to keep officers'

22 awareness of certain issues.

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- 1 Q. And is that something officers are obliged to read?
- 2 A. They should be reading it, yes. I can't comment whether
3 they do or not.
- 4 Q. How do you deal in your role as a sergeant with issues
5 of discrimination that appear or appear to exist, say,
6 in attitudes of members of your teams? How would you
7 deal with that?
- 8 A. Well, I have been fortunate that I've never had to deal
9 with such an incident, but if I have to deal with it
10 it's dealt with by the book. I would seek advice as
11 well from HR, but it would not be tolerated. Depending
12 on the level, it could be education, but then
13 potentially it could lead into disciplinary depending on
14 the level and how much investigation we need, et cetera.
- 15 Q. And are HR the department that you would seek support or
16 advice from?
- 17 A. Yes, People Direct -- we've got a People Direct team
18 that they would help us with any HR issue. It would
19 just be for advice initially, but I would also speak to
20 senior officers maybe or officers that had been through
21 a similar process.
- 22 Q. Okay. We have heard that there were no black officers

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1 in Kirkcaldy in 2015. In your role at that time as
2 acting police sergeant, did you feel you were in a good
3 position to identify examples of racist behaviour, or
4 attitudes?

5 A. Yes. I mean from my own personal life standards as well
6 I hold high regard to my personal status, I wouldn't
7 accept that in personal life so that's a good grounding.

8 I was also a community officer for two years in the
9 Templehall area of Kirkcaldy where I was mosque liaison
10 officer and held community groups, community meetings,
11 so I would like to think I had contact with the majority
12 of people in Kirkcaldy in the Templehall area, and again
13 through interaction with the mosque, and also dealing
14 with reports of racist behaviour, investigating crime,
15 so I would like to think that yes, I am in a good
16 position to identify any discriminatory racial
17 behaviour.

18 Q. So you were involved as a community officer for
19 two years?

20 A. Yes.

21 Q. Dealing with and interacting with the community?

22 A. Yes.

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- 1 Q. Including the black community?
- 2 A. Yes.
- 3 Q. And you had interactions with the mosque, or people
4 there?
- 5 A. (Nods).
- 6 Q. And also dealing with reports of racist behaviour?
- 7 A. Yes.
- 8 Q. So crimes that you were investigating?
- 9 A. Yes.
- 10 Q. And as part of that, did you have involvement with black
11 people both as suspects of crimes and as witnesses to
12 crimes --
- 13 A. Yes.
- 14 Q. -- and as victims of crimes?
- 15 A. Yes.
- 16 Q. And how often did you come into contact with members of
17 the black community?
- 18 A. Not very regularly.
- 19 Q. No?
- 20 A. No.
- 21 Q. Can you give us an indication?
- 22 A. I mean there was interactions. Kirkcaldy is quite

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1 a busy town, with a hospital, shopping complexes,
2 et cetera, so, there was a few people that we dealt with
3 on a regular basis that were involved in shoplifting and
4 drugs, et cetera, so there was a few interactions with
5 black individuals as suspects, but again they don't get
6 treated any different to -- as I would deal with a white
7 suspect or Asian suspect, it's not any different. The
8 whole equality training it's -- I try and treat
9 everybody as individuals, it's not, "well, they're black
10 so they must be treated a certain way", that just
11 doesn't happen.

12 Q. Okay. In 2015 were you aware that there had been
13 a number of deaths in the US or in England where black
14 men had been restrained by the police?

15 A. Yes.

16 Q. And how were you aware of that?

17 A. Mostly media.

18 Q. Not specific advice or information or training from
19 within Police Scotland?

20 A. No.

21 Q. So just general watching the news --

22 A. Yes.

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1 Q. -- and seeing things on the internet?

2 A. Personal life.

3 Q. And were you aware that statistically there was an

4 increased risk of death if a black man was restrained by

5 police officers?

6 A. No.

7 Q. No. Were you aware of public concerns about deaths of

8 black men after restraint?

9 A. Certainly from the media.

10 Q. Yes.

11 A. Not in my role as a ...

12 Q. Was it an issue that was raised within Police Scotland

13 in any format?

14 A. No.

15 Q. When you saw Mr Bayoh on the ground, you would be aware

16 that he was black.

17 A. Yes.

18 Q. And that he had been restrained by a number of officers.

19 You have mentioned in your PIRC statement that all

20 officers are aware of positional asphyxia. Can you tell

21 us what positional asphyxia is as far as you are

22 concerned?

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- 1 A. Basically when the organs within the body can't get
2 enough oxygen into -- the increased weight or something
3 is impeding the system to get enough oxygen in.
- 4 Q. And could that be -- that include weight or pressure
5 being put on someone when they're on the ground?
- 6 A. Yes.
- 7 Q. Particularly if they're prone?
- 8 A. Yes, that's the first thing we're taught in operational
9 safety is to try and limit the amount of time that
10 people are on their front while pressure is applied.
- 11 Q. When you saw Mr Bayoh on the ground having been
12 restrained, did you at that time consider "We need to
13 get him up, we need to get him sitting, we need to get
14 him off the ground as soon as possible"?
- 15 A. He was on his side at the time and I considered that
16 appropriate at that time.
- 17 Q. Did you consider at that stage the potential medical
18 implications may be more serious for Mr Bayoh on the
19 ground?
- 20 A. It's difficult to say what my thought process was at the
21 time.
- 22 Q. Okay. As part of your original training in Tulliallan

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1 and just your general awareness, have you been taught or
2 are you aware, and do you recognise that there are
3 a number of black stereotypes that can exist, attitudes?

4 A. Yes, the training did cover stereotypes.

5 Q. Right, so it did cover stereotypes --

6 A. Yes.

7 Q. -- as part of your training in Tulliallan?

8 A. Yes.

9 Q. And did it cover how you can guard against the
10 stereotypes and the risks associated with making
11 assumptions about people?

12 A. I don't think it went into specific detail about that.
13 I think it just mentioned briefly you need to be guarded
14 but it didn't give you techniques or self-reflection or
15 anything like that.

16 Q. So it didn't teach you how to guard against that?

17 A. Not that I'm aware. I can't recall --

18 Q. That's not something you had been taught in
19 Police Scotland?

20 A. No.

21 Q. Can you tell us what sort of stereotypes are you aware
22 of?

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1 A. Certainly from mostly media, that the black community
2 are more likely to be involved in criminality or part of
3 a gang, that sort of thing.

4 Q. Are you aware of any stereotype that black people might
5 be terrorists?

6 A. No, not per se, no.

7 Q. So those aren't assumptions that you have made yourself?

8 A. No, no.

9 Q. Any assumptions made by you that they're more likely to
10 be feigning or faking?

11 A. No, no.

12 Q. No. Any assumptions that they are more violent, have
13 superhuman strength or size?

14 A. No.

15 Q. Not aware of anything like that?

16 A. No.

17 Q. Not aware of any senior officers having any assumptions
18 about that?

19 A. No.

20 Q. And can I ask you about the difference between
21 Nicole Short -- you said she was the priority, so
22 Sheku Bayoh is on the ground, he has been restrained, he

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1 is handcuffed, he is in leg restraints when you arrive.
2 PC Smith has said she has no obvious injuries on the
3 Airwaves transmission but you are still concerned so you
4 have gone to see her. Then there seems to be a number
5 of calls about the ambulance for PC Short. She is not
6 bleeding, she has not got any obvious serious injury.
7 You have seen her yourself and she is shocked, you make
8 sure she is warm and you get her in the van, but in the
9 meantime, Mr Bayoh is in a T-shirt, it's cold, it's been
10 raining, and he becomes unconscious and then has to get
11 CPR. There are fewer calls chasing up his ambulance,
12 and it would seem that on the face of it, there's
13 a difference between the way PC Short is treated and
14 Mr Bayoh is treated.

15 Now, we know PC Short -- former PC Short is white
16 and Mr Bayoh is black. Can you explain why there's that
17 apparent difference?

18 A. Well, firstly, there's absolutely nothing to do with
19 race involved in that, I will make that very clear. My
20 priority when I arrived at the scene -- I wouldn't even
21 say priority, it's more risk assessment, was to look at
22 Mr Bayoh first and he was in control, he was breathing

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1 at the time. Then I said my priority, but my next part
2 was risk assessment for Nicole. I was happy with what
3 was happening with Mr Bayoh at that time. So I'm not
4 saying that she was priority over Mr Bayoh. Once I had
5 done what I had to do with Nicole, I went back to
6 Mr Bayoh and I chased up the ambulance.

7 Q. Right, so if there's any impression given that you were
8 treating him less favourably in terms of seeking medical
9 assistance than PC Short was treated, was that on the
10 basis of the fact he was black and she was white?

11 A. Absolutely not. It was -- there was no difference
12 between the two.

13 Q. And do you think there's any possibility that there was
14 some unconscious bias being demonstrated at that time by
15 you or any member of the team?

16 A. I wouldn't like to think so. I certainly didn't feel
17 that was the case. Certainly if anyone would like to
18 point that out to me I would be happy to listen, but
19 I don't think that's the case.

20 MS GRAHAME: Thank you very much. I have no further
21 questions.

22 LORD BRACADALE: Thank you.

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1 Apart from Ms McCall, are there any Rule 9
2 applications at this stage? Ms Mitchell, Mr Moir and --
3 nobody else.

4 Sergeant, I wonder if you could withdraw to the
5 witness room while I hear submissions.

6 (Pause).

7 Now if you would like to come to -- Mr Moir, if you
8 come as well to the table.

9 Yes, Ms Mitchell.

10 Application by MS MITCHELL

11 MS MITCHELL: Yes, the first issue I would like to ask about
12 is Senior Counsel to the Inquiry asked at page 54 of
13 this witness whether or not his recollection could be
14 wrong when he gave evidence about the fact that he had
15 seen Mr Bayoh wiggling free from the cuffs and the
16 restraints, or trying to do so, and Senior Counsel to
17 the Inquiry said:

18 "Question: We have heard other evidence that when he
19 was turned onto his left-hand side he had stopped moving
20 but that's not your recollection?"

21 And he said:

22 "Answer: That's certainly how I recall it anyway."

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1 "Question: Is it possible you could be wrong about
2 that?"

3 "Answer: Potentially."

4 And the Inquiry has also heard evidence in fact that
5 Police Constable Smith issued a direction to at least
6 one officer to get off Sheku Bayoh while he was still
7 lying on him and what I would like to know of this
8 witness is that is he saying that he is potentially
9 wrong about him being on his side or is he saying that
10 he is potentially wrong about him struggling? What is
11 it he is potentially wrong about?

12 LORD BRACADALE: Yes.

13 MS MITCHELL: Another issue interrelated to arriving at the
14 scene was whether or not he saw batons lying around when
15 he saw Mr Bayoh lying being restrained, and did that
16 suggest to him that batons had been used.

17 And finally, having asked those questions, going to
18 his Inquiry statement where he talks about the issue of
19 risk, to ascertain whether or not when he summed up what
20 he thought was happening at the time, was that correct,
21 was it correct that there was struggling still ongoing
22 and whether or not he had properly assessed that for

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1 risk.

2 LORD BRACADALE: Sorry, assessed what for risk?

3 MS MITCHELL: Well, what happens if the Inquiry has -- it is
4 page 4 of 22 of his Inquiry statement at paragraphs 10
5 and 11. He gives evidence there in his statement that
6 he was still struggling at the time. Now, dependent
7 upon his answers, I would like to explore the question
8 of whether or not he was correct about that and if he
9 wasn't correct about it, would that have impacted upon
10 his risk assessment, ie if he had arrived and Mr Bayoh
11 was already not struggling and there were batons lying
12 about, should his risk assessment have been different.

13 You can see -- I don't know if the Inquiry has
14 paragraph 10 and 11 but he said -- the answer to
15 paragraph 10:

16 "I carried out a risk assessment on arrival.
17 I observed the scene. I noted what the officers were
18 doing and what the subject was doing to establish what,
19 if any, ongoing risk there was. I observed a male who
20 I now know to be Mr Bayoh being restrained by my
21 officers. He was continuing to struggle but as my
22 officers were restraining him effectively and appeared

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1 to have control of the situation I felt that any risk to
2 Mr Bayoh or my officers was low. My assessment then
3 changed to ensuring everyone's safety and preserving the
4 crime scene."

5 And then going on to number 11 he said:

6 "The risk factor I considered on arrival was whether
7 my officers had control of the perceived subject and
8 what risk he was presenting. Once I assessed whether my
9 officers had control of the subject, who I now know to
10 be Mr Bayoh, and determined that they did so, I then
11 assessed whether the restraint of Mr Bayoh was causing
12 a risk to my officers or himself."

13 But the oddity of this police constable's statement
14 is that he says that when he arrives, Mr Bayoh is
15 already on his side, but we have heard the officers give
16 evidence that before Mr Bayoh is placed on his side, he
17 had already stopped struggling.

18 LORD BRACADALE: Are these all the issues you wish to raise?

19 MS MITCHELL: So that is one issue.

20 The next issue is in relation to the PIRC statement
21 that he gave where he says PC Paton on and Walker "set
22 out their stall early", and it's to enquire by what he

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1 meant by "setting out their stall early" and what was
2 said in them "setting out their stall early".

3 LORD BRACADALE: Sorry, which statement is that?

4 MS MITCHELL: That's their PIRC statement, I think that's
5 page 10 of 13.

6 LORD BRACADALE: There are two -- there's his own self-made
7 statement which has a PIRC number.

8 MS MITCHELL: It is 266, my Lord.

9 LORD BRACADALE: 266, right.

10 MS MITCHELL: And that's page -- I think that's page 10 of
11 13. It says:

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

18 And it is to explore what was the anger and what was
19 the frustration, what were the officers angry about,
20 what did they say -- what were they frustrated about and
21 what did they say?

22 He also says in that statement further on "There was

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1 no collusion", and simply to ask him how he knew that.

2 The next issue was whether or not he was ever asked
3 by Police Scotland or PIRC during their enquiries
4 whether race might have been a factor in Sheku Bayoh's
5 treatment.

6 I would like to ask whether or not he gave
7 a statement to the Federation, I'm not sure whether he
8 did or not, so that answer might just be answered there
9 and then.

10 Finally, given that he had a particular role as
11 a sort of -- he has described his caregiving role and
12 his comforting role during the breaks, to ask whether or
13 not anyone at all mentioned race as a factor, that being
14 an issue in particular that it was a black man that had
15 died.

16 LORD BRACADALE: That's back at the police station?

17 MS MITCHELL: Yes.

18 LORD BRACADALE: Are these all your issues?

19 MS MITCHELL: Yes, my Lord.

20 LORD BRACADALE: Thank you.

21 Mr Moir?

22 MR MOIR: May I speak to Ms Mitchell for one moment, please?

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1 LORD BRACADALE: Yes.

2 (Pause).

3 MS MITCHELL: I think my learned friend has got a series of
4 questions in that regard and perhaps that last question,
5 if I take that away, and my learned friend asks that
6 question instead.

7 LORD BRACADALE: Mr Moir?

8 Application by MR MOIR

9 MR MOIR: Yes, sir, there was a slight crossover, I think,
10 of the questions that my learned friend Ms Mitchell and
11 I were going to ask.

12 The question I would like to ask follows on from
13 [draft] page 80 of the live transcript. The Chair will
14 see that Police Sergeant Maxwell was aware of deaths of
15 black men in US and English situations and at page 80,
16 lines 23 to 25, he was aware of public concern about the
17 death of black men after restraint from the media.

18 The question I would like to ask him is when he was
19 in the canteen with his police colleagues, did those
20 issues occur to him, and if they did, was he concerned
21 that allegations of racism may arise, and did he discuss
22 that, or did anyone raise that issue with him in the

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1 canteen and by anyone, I mean fellow police officers,
2 sir.

3 LORD BRACADALE: Thank you.

4 MR MOIR: That's all I wish to ask.

5 LORD BRACADALE: Yes, thank you. I'm going to rise to
6 consider these submissions.

7 (12.27 pm)

8 (Short Break)

9 (12.44 pm)

10 Ruling

11 LORD BRACADALE: I shall allow Ms Mitchell to ask questions
12 in relation to page 54 of the transcript and the
13 relevant paragraphs in the Inquiry statement.

14 I shall not allow her to ask questions in relation
15 to PC Walker and Paton setting out their stall earlier.
16 I have looked at that and it is to my mind perfectly
17 plain what the position is.

18 I shall allow Ms Mitchell to ask whether
19 Police Scotland or PIRC raised any questions of race as
20 a factor, and I shall allow her to ask whether he gave
21 a statement to the Federation and I shall allow Mr Moir
22 to ask his questions.

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1 So can we have Ms Mitchell then to the table,
2 please, and the witness back.

3 (Pause).

4 PS SCOTT MAXWELL (continued)

5 Sergeant Maxwell, you're going to be asked some
6 questions by Ms Mitchell who represents the Bayoh
7 family.

8 Ms Mitchell.

9 Questions from MS MITCHELL

10 MS MITCHELL: Sergeant Maxwell, we have heard evidence from
11 officers involved in restraining Sheku Bayoh that when
12 he was placed on his side he had stopped moving.

13 Now you say in your evidence that when you arrived
14 he was already on his side but he was still struggling.
15 Earlier this morning my learned friend asked you
16 questions about that and you responded -- you were asked
17 about how he was moving and the question was:

18 "Question: So what does that mean, can you describe
19 it for us?"

20 And you said:

21 "Answer: He was just still shaking about, trying to
22 establish if he could wriggle free from the cuffs and

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1 the restraints."

2 And it was said:

3 "Question: We have heard other evidence that when he
4 was turned onto his left-hand side he had stopped moving
5 but that's not your recollection?"

6 And you said?

7 "Answer: That's certainly how I recall it anyway."

8 And again you were asked:

9 "Question: Is it possible you could be wrong about
10 that?"

11 And you said possibly. First of all, what it is
12 I want to explore with you is what is it that you're
13 saying you are possibly wrong about? Are you saying
14 that you're potentially wrong about him being on his
15 side at that point, or are you potentially wrong about
16 him struggling?

17 A. It's the movement. I was sure he was on his side, it
18 was the movement aspect of it.

19 Q. So if we have heard evidence from police officers who
20 were effectively hands-on during the restraint and they
21 said that by the time they moved him to his side he was
22 no longer struggling, would the Inquiry be better at

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- 1 preferring their recollection of events to your
2 recollection of events on that point?
- 3 A. I would say they were in a better position to confirm if
4 he was moving or struggling at that time.
- 5 Q. When you arrived, you would have seen the area where
6 Sheku Bayoh was lying. Did you see batons lying around
7 that area?
- 8 A. I can't recall actually seeing them lying about the area
9 at that time.
- 10 Q. Do you recall at any point becoming aware of the batons?
- 11 A. I believe towards the end of my time at locus, I believe
12 DC Connell had intimated that he had collected some
13 batons off the street.
- 14 Q. But had you not been aware of them --
- 15 A. No, no --
- 16 Q. -- or seen them before?
- 17 A. -- no, no.
- 18 Q. By the time that you arrived at the scene, you were
19 aware that PAVA or CS gas had been used, is that
20 correct?
- 21 A. Not by the time I had arrived, no.
- 22 Q. Just when you arrived you were made aware?

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1 A. When I spoke to PC Paton, yes.

2 Q. I wonder if we can go to page 4 of your Inquiry
3 statement, that's number 44, and if we can go to
4 paragraphs 11 -- sorry, 10 and 11, that's page 4.

5 Now, do we see that you were asked by the Inquiry:

6 "What risk assessment, if any, did you carry out on
7 arrival at the scene of Hayfield Road ..."

8 And you indicated that you had carried out a risk
9 assessment. You said that you noted what the officers
10 were doing and the subject was doing to establish -- and
11 you say you observed a male:

12 "... who I now know to be Mr Bayoh, being restrained
13 by my officers. He was continuing to struggle, but as
14 my officers were restraining him effectively and
15 appeared to have control of the situation, I felt that
16 any risk to Mr Bayoh or my officers was low. My risk
17 assessment then changed to ensuring everyone's safety
18 and preserving the crime scene."

19 Now, given what you have just explained to us about
20 the possibility of you being wrong about struggling,
21 would the Inquiry be correct if they took the view that
22 if you arrived, Mr Bayoh was on (inaudible) seen and

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- 1 already not struggling, that your risk assessment was
2 carried out based on incorrect information?
- 3 A. No, I wouldn't necessarily say that. Mr Bayoh was under
4 control at that time and he was being tended for by
5 experienced officers who I had confidence in, they have
6 done restraints many a time before, so the risk in that
7 respect was just the same.
- 8 Q. So the fact that Mr Bayoh at that stage may not have
9 been moving in your view would have made no difference
10 to your risk assessment?
- 11 A. Well, the movement that I potentially have seen hasn't
12 been of mass resistance which is going to cause any
13 major problem.
- 14 Q. I'm sorry, I just want to clarify that with you. You
15 said that if -- by the time Mr Bayoh had been placed on
16 his side he wasn't moving, the Inquiry might prefer that
17 as that was the officers.
- 18 A. Yes, okay, but what I'm trying to say is that any
19 movement I may have seen, or what I recalled at the
20 time, it wasn't of any status that would have caused
21 injury to him or any officers.
- 22 Q. Had you seen the batons lying around, would that have

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1 caused any change to the way that you risk-assessed the
2 situation when you arrived?

3 A. It would have prompted me to ask, probably, if they had
4 been used.

5 Q. Okay. I wonder then if I could move on to another
6 issue, which is whether or not you were ever asked by
7 Police Scotland as a body, a professional body, whether
8 race might have been a factor in Sheku Bayoh's
9 treatment?

10 A. I was never asked that directly by Police Scotland.

11 Q. When you say you were never asked that directly by
12 Police Scotland --

13 A. Well, I was never asked, sorry.

14 Q. Were you ever asked by PIRC whether race might have been
15 a factor in Sheku Bayoh's treatment?

16 A. I can't recall if that was done during the statement
17 process, but I can't recall being asked any direct
18 question along that line.

19 Q. Did you ever give a statement to the Federation about
20 your involvement in this incident?

21 A. It wasn't the Federation, it was -- I gave a -- I was
22 visited by Mr Sallens who took some details down of my

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1 recollection of that day.

2 Q. When you say he took some details down, did he obtain

3 a statement from you as you would understand it?

4 A. Yes.

5 Q. Do you know where Mr Sallens gave that statement to?

6 A. I believed it went to my legal representative, Peter --

7 Professor Watson.

8 Q. Can you recall when that statement was taken?

9 A. I can't recall specific dates.

10 Q. I appreciate that, given the time, but in the -- you

11 will recall obviously there was a period of time where

12 no statements were taken.

13 A. Yes, absolutely.

14 Q. Was it before that?

15 A. It was before I provided the statement to the PIRC.

16 MS MITCHELL: Just one moment.

17 (Pause).

18 No further questions.

19 LORD BRACADALE: Thank you. If you can return to your seat

20 and Mr Moir, if you can come to the table.

21 Sergeant, you're going to be asked some questions by

22 Mr Moir QC who is the senior counsel for the Coalition

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1 for Racial Equality and Rights.

2 Mr Moir.

3 Questions from MR MOIR

4 MR MOIR: Sergeant Maxwell, you may recall giving evidence
5 earlier on this morning that you were aware of deaths of
6 black men in custody in the US and in England in 2015,
7 and later on, that you were aware of public concerns
8 about the deaths of black men in police restraint
9 situations. Do you remember that?

10 A. Yes.

11 Q. When you were returned to the canteen -- I think you
12 were in the canteen for several hours, is that correct?

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

14 Q. Did you have any concerns that there may be allegations
15 that Mr Bayoh's race had played a part in his death in
16 police custody during that time you were in the canteen?
17 I'm actually talking about the time you were actually in
18 the canteen. Did that occur to you or did you have any
19 concerns?

20 A. Can I just clarify: that his race had caused the death,
21 is that what you're saying?

22 Q. No. You raised the issue of the fact that you were

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1 aware that there was public concerns about black men
2 dying in police custody, and you had been aware of that
3 in 2015, you had been aware that in the US and in
4 England that this had happened, and in that knowledge,
5 in that awareness, did you have any concerns at that
6 time when you were in the canteen on that day that there
7 may be allegations that Mr Bayoh's race had played
8 a part in his death in police custody? Did that occur
9 to you?

10 A. There was a lot of things that went through my mind that
11 day. Obviously what -- you know, the -- if I'm going to
12 be criminalised or classed as a murderer, or anything
13 like that, and it did go through my head that the race
14 involved -- due to the media speculation -- might invoke
15 a response.

16 Q. So in the knowledge that there had been deaths in police
17 custody --

18 A. Yes.

19 Q. -- particularly in the US and in England, during
20 restraint situations --

21 A. Yes.

22 Q. -- when you went back to the canteen it certainly -- and

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- 1 I think you were there for several hours --
- 2 A. Yes.
- 3 Q. -- so you would be able to reflect on a number of
- 4 things --
- 5 A. Yes, absolutely.
- 6 Q. -- so in those several hours, it certainly went through
- 7 your mind that Mr Bayoh's race may, in other people's
- 8 perception, shall we say, raise itself, is that what
- 9 you're saying?
- 10 A. Yes.
- 11 Q. When you spoke to your team members, did any of them
- 12 raise this concern with you?
- 13 A. No.
- 14 Q. So that hadn't -- that wasn't something you discussed
- 15 with them?
- 16 A. No, no. As I say, it was more -- at that time when
- 17 I was involved it was more of a: don't talk about the
- 18 incident, it's everyone's welfare, we didn't really
- 19 speak about anything like that. It was -- certainly it
- 20 was just in my own reflection; it wasn't voiced
- 21 publicly, if you like.
- 22 Q. So it was something that went through your mind --

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1 A. Yes.

2 Q. -- but something you did not verbalise with anyone else?

3 A. Yes, absolutely.

4 Q. And nobody else verbalised it with you; is that correct?

5 A. That's correct, yes.

6 MR MOIR: Thank you very much, Sergeant Maxwell.

7 LORD BRACADALE: If you would like to return to your seat.

8 Thank you, Mr Moir.

9 Now, Ms McCall, do you have an application?

10 MS MCCALL: Yes.

11 LORD BRACADALE: If you would like to come to the table,
12 please.

13 Are you content to outline it to me in the presence
14 of your client?

15 MS MCCALL: That's a matter for you, sir. There are
16 a number of issues. I'm aware there has been
17 a different practice with different witnesses.

18 LORD BRACADALE: I think when it is your own client I'm
19 happy for him to sit here.

20 Application by MS MCCALL

21 MS MCCALL: I'm content.

22 The first issue is in relation to his understanding

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1 of radio messages and this was dealt with yesterday in
2 evidence at page 131 and 132 of the transcript with
3 reference to the evidence video timeline and there's two
4 messages initially to be clarified in terms of his
5 understanding. The first is the message from the
6 controller and you have heard, sir, repeatedly Senior
7 Counsel to the Inquiry refer to the message about
8 "chasing" and then the pause and then "someone". In my
9 submission there is also a pause after the word
10 "someone", and I wanted to play that message to
11 Sergeant Maxwell and see whether that second pause
12 impacted his understanding of the meaning that he
13 described yesterday.

14 The second question in terms of his understanding of
15 that message is whether, regardless of any pauses, it
16 was clear from the messages from the controller that
17 there was an ongoing disturbance.

18 The third matter to do with understanding of
19 messages relates to the message from Inspector Stewart
20 at 07.20.13, which Inspector Stewart purported to be
21 a stay safe message. Sergeant Maxwell described his own
22 stay safe message, and it was to ask him whether he

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1 understood whether Inspector Stewart was issuing
2 a recognisable stay safe message.

3 The second issue is around the availability of
4 specialist resources and the confirmation of the
5 position and this is for clarification. So yesterday at
6 page 136, reference was made by Sergeant Maxwell to the
7 message from the controller that he believed a dog was
8 en route and it was to ask Sergeant Maxwell at which
9 point -- and to point to the message which provided him
10 with the confirmation which he said was later when he
11 was at the locus, and the message is 07.24.11, I think,
12 from the dog handler.

13 The next issue is for clarification in relation to
14 Sergeant Maxwell's consideration of terrorism in respect
15 of this incident. This is around page 158 of
16 yesterday's transcript with reference to his statements
17 and notes and what his final position is on that,
18 whether it was considered by him, what conclusion he
19 reached about that and whether it had any impact on his
20 decisions or actions.

21 The next issue is in relation to the questions he
22 was asked with reference to his PIRC statement 266 about

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1 officers lying on Mr Bayoh or leaning on him and
2 a comment he made about civilians -- to civilians or
3 untrained people it might look like they were lying on
4 him. It was simply to ask him about the process of
5 taking that statement by the PIRC and whether he was
6 responding to questions from the PIRC about what others
7 might have said they saw.

8 The next issue is in relation to the notes
9 PIRC 00267, the self-penned notes, to ask
10 Sergeant Maxwell about the status of those and what
11 potential use they may be to the Inquiry, because he has
12 been asked a number of questions about their content,
13 and it was to ask him about the purpose of those,
14 whether they were ever intended to be a statement, and
15 what the Inquiry should take from those notes if
16 something that's in them is not repeated in any formal
17 statement, or is expressed in a different way and that
18 is designed to let the Inquiry understand whether
19 Sergeant Maxwell ever intended that document to be
20 a statement made by him.

21 The next issue is in relation to today's evidence,
22 page 73, and the question of the MIT asking for what

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1 Senior Counsel to the Inquiry described as an
2 operational statement, and you are aware, sir, there
3 have been a number of questions asked of the officers
4 about their obligations to do with operational
5 statements, and it is to explore with Sergeant Maxwell
6 whether there is a difference in terms of his
7 understanding between an operational statement and
8 a witness statement.

9 The next matter is a matter raised by Senior Counsel
10 to the Inquiry today at page 84 of the transcript in
11 relation to an impression of bias in favour of Constable
12 Short and against Mr Bayoh because of their respective
13 races in the pursuing of the calls for the ambulance,
14 and Senior Counsel to the Inquiry put it to
15 Sergeant Maxwell that there were more calls to the
16 ambulance about Constable Short being prioritised than
17 there were in respect of the ambulance and the state of
18 Mr Bayoh, and it was to take Sergeant Maxwell to the
19 communications that he made about those two individuals
20 to demonstrate that in fact he made four communications
21 about Mr Bayoh and only two about Constable Short and so
22 any impression, as put by Senior Counsel to the Inquiry,

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1 would be wrong.

2 And the last matter is whether it would be of
3 assistance to the Inquiry for Sergeant Maxwell to
4 describe any previous experience of knife incidents.
5 That's a question that's been asked of every other
6 officer but not of him, and it seems to me, sir, that
7 there are two relevant reasons for asking that question
8 of officers at the scene. The first -- and this doesn't
9 apply to Sergeant Maxwell -- is whether officers have
10 acted differently in the past when confronted with
11 a suspect potentially in possession of a knife in terms
12 of their restraint and so on, but also what risks there
13 are for officers at this kind of call and whether the
14 sort of force employed on this occasion has been used on
15 other occasions, and the unpredictability of what can
16 occur at a knife incident, and Sergeant Maxwell has
17 experience of two incidents, one with an actively
18 resistant perpetrator and one with a fully compliant
19 suspect which resulted on both occasions in an officer
20 being stabbed. It's a question of whether that's of
21 assistance to the Inquiry.

22 Ruling

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1 LORD BRACADALE: Those are all the points.

2 Well, I think with the exception of the last matter
3 in respect of which I think I have adequate
4 understanding from the evidence already given, I shall
5 allow you to ask these questions. In the light of the
6 number of them, we will do that after lunch at 2.05.

7 (1.07 pm)

8 (The luncheon adjournment)

9 (2.04 pm)

10 PS SCOTT MAXWELL (continued)

11 LORD BRACADALE: Yes, Ms McCall.

12 Questions from MS MCCALL

13 MS MCCALL: Thank you, sir.

14 Sergeant Maxwell, can I ask you first of all about
15 your understanding of one or two of the radio messages
16 that you have been referred to?

17 A. Certainly.

18 Q. And I wonder if you could just have the transcript
19 timeline in front of you, so that you can read the
20 relevant messages.

21 I'm hoping we can also play one to you. So the
22 first message I'm interested in -- you will see it, it's

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1 on page 1, and it is 07.16.32 from controller 1 and it
2 is the message that you were referred to yesterday about
3 "diverting to Hendry Road, disturbance ongoing, male
4 armed with a knife", et cetera, and I'm hoping, with
5 assistance, that we can play that message to you and
6 I wonder if you could listen in particular to the part
7 of the message that follows "African looking male". So
8 the part that is "Chasing someone may be carrying
9 a knife described as ..." so that part of the message
10 and then I will ask you about.

11 (Video played)

12 Thank you.

13 So yesterday, Sergeant Maxwell, Senior Counsel to
14 the Inquiry pointed out to you that a pause can be heard
15 between "chasing" and "someone". In your view is there
16 a pause between "someone" and "maybe carrying a knife"
17 or not?

18 A. Yes, there is a gap.

19 Q. And did that second pause between "someone" and "maybe
20 carrying a knife" have any impact on your interpretation
21 of the message that the male was chasing someone and
22 that he had a knife?

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- 1 A. Yes. The way it came across to me is that the person
2 described as having the knife was actively chasing
3 someone.
- 4 Q. All right. And you were asked yesterday by senior
5 counsel would it have made a difference if he was just
6 chasing cars, or just walking around the street with
7 a knife and you said no, it would still be a grade 1
8 call. From your understanding of the message from
9 control, did you think that this was an ongoing incident
10 or not?
- 11 A. It was an ongoing incident, with a potential threat to
12 life.
- 13 Q. Thank you. I wonder if you could turn, then, to page 3
14 of the timeline and yesterday you had said to Counsel to
15 the Inquiry that when you issued your message about all
16 units attending and you said "Bearing in mind officer
17 safety", that was you issuing a stay safe message --
- 18 A. Yes.
- 19 Q. -- put short because your officers would know what you
20 meant, do you remember saying that?
- 21 A. Yes.
- 22 Q. Just looking on page 3 at 07.20.13, do you see there

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1 there's a message from the area control room

2 Inspector Stewart?

3 A. Yes.

4 Q. I'm just going to read that to you:

5 "Inspector Stewart area control room to the set
6 attending, I'm monitoring this obviously from an ARV
7 perspective. If you get sightings of the male you need
8 to make an initial assessment yourself and feed back
9 through straight away and I will listen out on
10 the channel."

11 There was a suggestion earlier in evidence to the
12 Inquiry that what Inspector Stewart was doing there was
13 conveying a stay safe message from the control room. Do
14 you recognise that as a stay safe message from the
15 control room?

16 A. No.

17 Q. What would a stay safe message from control contain?

18 A. There's a specific -- I'm not sure if there was
19 a specific script at the time, just in relation to
20 officers to observe their safety in terms of reaction
21 gap, CUT principle if required. It's very specific to
22 stay safe, rather than look for an overview.

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1 Q. All right, thank you.

2 LORD BRACADALE: Just before you leave that, would you
3 understand that to be an order given by
4 Inspector Stewart to the set arriving?

5 A. Only if they assessed it as requiring an armed response
6 vehicle at that time, sir.

7 LORD BRACADALE: Is that the way you understand it?

8 A. Yes.

9 LORD BRACADALE: Thank you.

10 MS MCCALL: And just following up on that, if I may, sir,
11 does that, Sergeant Maxwell, accord with your evidence
12 yesterday that the officers attending retain autonomy --

13 A. Yes.

14 Q. -- in how they initially deal with the incident?

15 A. That's correct.

16 Q. I wanted then to ask you, please, about your
17 understanding at the time of the availability of
18 specialist resources and confirmation about the
19 position. This is just to clarify a matter. So
20 yesterday you were referred at page 2 of the timeline to
21 your message at 07.19.12:
22 "Control from 411, is there any update from ARV or

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1 dog units, over?"

2 So you were chasing up a response. And at 07.19.17,
3 controller 1:

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

5 And I think what you told us yesterday was that you
6 didn't take that to be clear information that a dog was
7 coming, is that right?

8 A. Yes, that's correct.

9 Q. And what you also said yesterday was it was only when
10 you were at the scene that it was confirmed to you that
11 a dog was coming?

12 A. That's correct.

13 Q. Can I ask you please to look at a message at 07.24.11,
14 which is on the top of page 7, and at the top there do
15 you see it's a message from "Gary Wood, dog unit":

16 "Yeah, I'm en route from Edinburgh. I take it this
17 is the same male with the knife, yeah?"

18 Do you see that?

19 A. Yes.

20 Q. Was that the message that provided you with confirmation
21 that a dog was definitely coming?

22 A. Yes, that was a form of confirmation that a dog had been

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1 allocated. The officer within that unit had come onto
2 our channel and stated that they're on their way.

3 Q. And I think what he has told you in terms of the
4 information that you said yesterday you would want to
5 get, he has told you he is coming from Edinburgh, is
6 that right?

7 A. Yes.

8 Q. He has not given you an ETA but I suppose at least you
9 have some idea of the distance he is travelling?

10 A. Yes.

11 Q. All right, thank you. You can set that timeline to the
12 side.

13 I wanted to ask you to clarify your evidence about
14 your consideration of terrorism in relation to this
15 incident.

16 A. Yes.

17 Q. So just to assist you with where it is in your
18 statements, in your Inquiry statement, if you have that,
19 you will find it at paragraph 5. I think it might be
20 helpful for you, sergeant, to have the document -- the
21 hard document in front of you.

22 So you will see at the second paragraph of that

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1 answer you say:

2 "For the avoidance of doubt because I know the
3 Inquiry is going to examine this issue, I was aware of
4 the threat level to national security and
5 police officers as being severe and that there had been
6 high profile incidents in relation to terrorism in the
7 United Kingdom. However, my risk assessment at that
8 time did not take terrorism into account and would only
9 have if credible evidence was available."

10 So that's one thing you have said about terrorism
11 and its connection to your risk assessment.

12 Can I ask you then to look at your PIRC statement
13 266 -- sorry, 267, your notes, forgive me, and it is at
14 page 4 of those. It is just towards the bottom. That's
15 great, thanks. So it is about 12 lines up from the
16 bottom:

17 "A part of me considered ..."

18 Do you see that?

19 A. Yes.

20 Q. "A part of me considered this to be a terrorism-related
21 incident based on recent intelligence and the threat
22 level to serving officers in the United Kingdom."

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- 1 So those are two things you have said in writing --
- 2 A. Yes.
- 3 Q. -- prior to the Inquiry commencing, and what you said
- 4 yesterday to Senior Counsel to the Inquiry is that you
- 5 explained that it crossed your mind that terrorism might
- 6 be a factor, as did a number of other things?
- 7 A. Yes.
- 8 Q. And you mentioned mental health, you mentioned the
- 9 possibility of suicide and so on. So just to try and
- 10 clarify that, did you come to the view that this
- 11 incident was connected with terrorism or not?
- 12 A. I came to the view that it was not linked to terrorism.
- 13 Q. Did that go through your mind at any point as
- 14 a possibility that you should think about?
- 15 A. Yes, it did.
- 16 Q. Did you or did you not discount that possibility?
- 17 A. I discounted it through the decision-making process
- 18 I made in my head, yes.
- 19 Q. And did the fact that that went through your mind as
- 20 a possibility, albeit you discounted it, affect any of
- 21 your actions or decisions that you made that day?
- 22 A. No.

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1 Q. Thank you. Can I move on then to ask you about your
2 PIRC statement which is 266, and you have been asked
3 a number of questions about your description of what
4 officers were doing in this document and you will
5 remember being asked to explain the difference between
6 lying on someone and leaning on someone.

7 When you were giving this statement to the PIRC, did
8 they ask you questions as you were giving the statement?

9 A. Yes.

10 Q. And when you have described what civilians or untrained
11 people might think something might look like versus what
12 it was in terms of lying on someone or not, and you have
13 said a number of times no one was lying on them, did the
14 PIRC indicate to you at any point that someone had told
15 them that they thought police officers were lying on
16 Mr Bayoh, or words to that effect?

17 A. I can't recall specifically if there was any mention of
18 that.

19 Q. Did the PIRC ask you if anyone was lying on Mr Bayoh?

20 A. Again, I can't 100% say that they asked that directly.

21 Q. All right. But should we understand from you saying
22 that they did ask you questions that some of what's

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1 contained in that statement is a response to questions
2 they asked you?

3 A. Yes, prompts, yes.

4 Q. Prompts?

5 A. Well, questions along the lines of ... yes, yes.

6 Q. To be fair, perhaps prompted as to a topic they were
7 interested in, is that fair?

8 A. Yes, yes.

9 Q. All right, thank you. Now can I ask you about your
10 notes which are PIRC 00267, and you have been asked
11 a number of questions about these notes and referred to
12 them a number of times. I just want to assist the Chair
13 in what he should make, if anything, of these notes.

14 You have described writing them, I think, early the
15 following morning, I think you said you had had a little
16 bit of sleep that night. What sort of condition were
17 you in when you wrote these notes?

18 A. Still upset and in shock from not necessarily the
19 incident as a full, but more how the people reacted, and
20 seeing my colleagues in that state, trying to ascertain
21 what was going to happen with it all. These notes were
22 made for my consumption only and it was a kind of

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1 self-coping mechanism to get -- to make me feel better
2 and also to try and give me prompts as well so I could
3 remember sort of key points, but ultimately they were
4 for my benefit only. I have not written them in any
5 specific statement writing skill or any style, it's just
6 been notes.

7 Q. Right, and we see them here in a particular form.

8 I take it this is not the form in which you produced
9 them?

10 A. No.

11 Q. Were they handwritten by you or computer --

12 A. No, they were word processed.

13 Q. Word processed. And I take it the form we see them in
14 here is a form generated by the PIRC from what you
15 handed them?

16 A. Yes.

17 Q. Did you ever intend those notes to be for an external
18 audience?

19 A. No.

20 Q. If there is information in those notes, or something is
21 expressed in a particular way in those notes that's not
22 repeated in either your formal PIRC statement or your

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1 statement to the Inquiry, should the Chair take it that
2 on reflection either that wasn't accurate or it wasn't
3 the way you wanted to express it?

4 A. Yes. As I mentioned yesterday in my evidence, there was
5 some of -- the way in which things were conveyed
6 wouldn't be how I would put it in a statement or
7 certainly not how I would choose to present my evidence.

8 LORD BRACADALE: Can I just clarify that because the
9 question you were asked was whether I should take it
10 that on reflection either it wasn't accurate or it
11 wasn't the way you wanted to express it. Now, these are
12 two different issues and there's an important
13 distinction between them. Are you saying that there are
14 inaccurate things in this statement?

15 A. There are a couple of inaccuracies that on reflection
16 when I gave my PIRC statement, I prefer the PIRC
17 statement to stand.

18 LORD BRACADALE: Perhaps you could tease that out,
19 Ms McCall.

20 MS MCCALL: I will have to return to my position to get the
21 note of that.

22 LORD BRACADALE: Very well.

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1 MS MCCALL: Thank you, sir.

2 (Pause).

3 Sergeant Maxwell, I'm going to go through one or two
4 of these and perhaps you can indicate whether from your
5 recollection there are other things that are perhaps
6 expressed differently, but if you look first of all at
7 your notes, 267, at page 2, towards the bottom of the
8 page, it is perhaps about ten lines up. Do you see it
9 says "On arrival at locus"?

10 A. Yes.

11 Q. You describe:

12 "I witnessed a black-coloured male wearing a white
13 T-shirt and jeans lying on the pavement on the southern
14 side of Hayfield Road with officers trying to restrain
15 him."

16 Just bear with me. And if we turn to your formal
17 PIRC statement, 266, it is at the top of page 5:

18 "I got out of my car and I could clearly see the
19 black male lying on the ground."

20 You give a description of the direction and so on,
21 and the last sentence there:

22 "He was lying on his left side and he was facing

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1 me."

2 Now, in terms of the difference, if there's
3 a difference between those two, is the Chair to prefer
4 your PIRC statement as opposed to your notes?

5 A. PIRC statement, please.

6 Q. And then going back to your notes, in relation to the
7 actions of other officers -- just bear with me. At the
8 top of page 3, you say:

9 "From my observations I believe PCs Smith, Walker,
10 McDonough, Good, Paton and Gibson were initially
11 involved in trying to restrain the male."

12 And then you give a description of that.

13 A. Yes.

14 Q. And then if we turn to your formal PIRC statement at
15 page 5, and you were taken to this by -- in large part
16 by Senior Counsel to the Inquiry this morning, but do we
17 see at the second paragraph you have described what
18 Alan Smith was doing and where he was, then
19 Ashley Tomlinson, then Alan Paton, then James McDonough
20 and then you get further on and you say:

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

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1 And then two paragraphs below that you say:

2 "I also saw PC Kayleigh Good. She was standing on
3 the road just beyond the feet of the black male taking
4 observations."

5 Do you see that?

6 A. Yes.

7 Q. So as far as that suggests that unlike your own notes
8 that Gibson and Good at that moment were not involved in
9 the restraint of Mr Bayoh, would you prefer your PIRC
10 statement or your notes?

11 A. PIRC statement.

12 Q. Lastly, in relation to the matter we were just
13 discussing a moment ago that in your notes, your own
14 notes, you had made reference to consideration of
15 terrorism. You said a part of me -- this is page 4:

16 "A part of me considered this to be
17 a terrorism-related incident."

18 That is not contained at all in your formal PIRC
19 statement and you have given an explanation of that in
20 your Inquiry statement, that you didn't take it into
21 account.

22 A. Mm-hm.

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- 1 Q. So should the Chair prefer your notes or your formal
2 PIRC statement and your Inquiry statement?
- 3 A. I did have the reference to the terrorism, so probably
4 the notes in that respect.
- 5 Q. So in the notes when you say a part of you considered
6 this to be terrorism-related, I think what you said to
7 me a few moments ago was that that was something that
8 went through your thought process?
- 9 A. It went through the -- yes, absolutely.
- 10 Q. But that you discounted it?
- 11 A. Yes.
- 12 Q. Thank you. Now, were there any other points of your
13 notes that you are aware of at this stage,
14 Sergeant Maxwell, that you would like to correct?
- 15 A. I don't think so.
- 16 Q. Thank you. The next issue I wanted to address with you
17 is the expression "Operational statement" and whether,
18 from your perspective, there is any difference between
19 being asked for an operational statement, or producing
20 an operational statement and being asked for a witness
21 statement. Is there any difference?
- 22 A. Witness statement would be in terms of being a witness

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1 to an incident. An operational statement more
2 involving -- my context anyway, if I have been involved
3 in anything that's happened that's been a major incident
4 or serious incident, like a murder or various, that
5 I would provide an operational statement before
6 I terminated duty that day, which is a police
7 operational statement.

8 Q. And in terms of the police process of investigating
9 a crime and reporting it to the Procurator Fiscal, you
10 will have experience I suppose of at some stage being
11 asked to provide a witness statement of some kind,
12 a statement of some kind to the Procurator Fiscal in
13 support of a prosecution, is that right?

14 A. Yes.

15 Q. Would that be described as an operational statement or
16 a witness statement?

17 A. A witness statement.

18 Q. So when you met with DCI Hardie and DI Wilson from the
19 major investigation team, Senior Counsel to the Inquiry
20 put it to you this morning that they asked for an
21 operational statement and the Inquiry has heard evidence
22 they were asking for statements on behalf of the PIRC

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1 because the PIRC was conducting an investigation. Did
2 that cause you any confusion about what you were being
3 asked for?

4 A. As I say, the stance I had at the time was that I was
5 taking legal advice. I never really thought of it that
6 way, operational/witness statement, but you put it
7 that -- operational statement sounds more formal police
8 process rather than a witness statement.

9 Q. All right, thank you. Now, could you have the timeline
10 back in front of you, please. It was put to you this
11 morning by Senior Counsel to the Inquiry that there may
12 be an impression that you were more anxious to pursue
13 the ambulance attending for PC Short than you were for
14 [Mr] Bayoh, and a distinction was drawn between them on
15 the basis of their race, and I want to just ask you to
16 comment on that.

17 In that respect, can I take you to the transmissions
18 that you made, please, and if you turn, first of all, to
19 07.23.34, which is on page 6. So this is not long after
20 you have arrived. Stephen Kay has asked you for an
21 update on any injury to Constable Short and do we see
22 that you say:

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1 "PC Short has been struck to the head, is a bit
2 upset. I'm going to need an ambulance here to check her
3 over. No bleeding, no visible injury, over."

4 Do you see that?

5 A. Yes.

6 Q. And I think that's the first time that you have asked
7 for an ambulance for Constable Short, is that right?

8 A. Yes.

9 Q. And then if you look on, please, to page 7 at 07.24.28,
10 I think you confirmed this this morning, you make
11 a transmission:

12 "Although there's no visible injuries to PC Short
13 she has been stomped to the body a few times, et cetera
14 and struck to the head. Can you see if an ambulance can
15 attend ASAP."

16 And you have explained that was after
17 Ashley Tomlinson --

18 A. Yes.

19 Q. -- told you about the stamping, is that right?

20 A. Yes.

21 Q. So do you see that's the second time you have chased the
22 ambulance -- well, it's the first chase but the second

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1 request for the ambulance?

2 A. Yes, yes.

3 Q. If you could turn then please to page 8 and at 07.26.41
4 this is your next reference to an ambulance and do we
5 see that you say:

6 "I'm just looking to clarify that -- has an
7 ambulance been contacted for this accused also, over."

8 Do you see that?

9 A. Yes.

10 Q. So that's a reference, "this accused" to Mr Bayoh, is
11 that correct?

12 A. Yes, that's correct.

13 Q. And then if you turn, please, to page 11, I think this
14 is your next transmission about an ambulance or
15 someone's condition: at 07.29.30, towards the top of the
16 page do you see:

17 "Control, can you get a move on with the ambulance.
18 This accused is now not breathing. CPR is commencing,
19 over."

20 Do you see that?

21 A. Yes.

22 Q. And again "this accused" is a reference to Mr Bayoh, is

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1 that right?

2 A. That's correct.

3 Q. And then if you turn over to the following page, please,

4 page 12, this is your next communication about someone's

5 condition and do we see at the top of the page,

6 07.31.22:

7 "Control, any update on the ambulance. We could

8 really do with it here, over."

9 You see that?

10 A. Yes.

11 Q. Was that a chase for PC Short's ambulance or for

12 Mr Bayoh's ambulance?

13 A. Mr Bayoh's ambulance.

14 Q. And then lastly, do we see at the same page, 07.32.11 --

15 now, there's no specific mention of the word "ambulance"

16 here but what you say is:

17 "Just for the call card, chest compressions

18 commenced however breaths have stopped due to

19 cross-contamination, blood, et cetera."

20 A. Yes.

21 Q. Was that a reference to Mr Bayoh's condition?

22 A. Yes, that's correct.

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1 Q. And a change in his condition?

2 A. Yes.

3 Q. And does it appear from the controller's response that

4 he has understood that to be another chase for the

5 ambulance because he says "ETA two minutes for the

6 ambulance"?

7 A. Yes.

8 Q. So in terms of any impression that people might have

9 should they understand from that that four times you

10 reported on Mr Bayoh's condition and chased the

11 ambulance --

12 A. Yes.

13 Q. -- and two times you did that in respect of Constable

14 Short?

15 A. That's correct.

16 MS MCCALL: Thank you, sir. Those are my questions.

17 LORD BRACADALE: Thank you. Sergeant Maxwell, thank you

18 very much for coming to give evidence to the Inquiry.

19 I'm going to rise briefly to allow the next witness to

20 be introduced and you will be free to go then.

21 A. Thank you.

22 (2.34 pm)

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1 (Short Break)

2 (2.37 pm)

3 LORD BRACADALE: Now, Ms Grahame, the next witness?

4 MS GRAHAME: The next witness is Ashley Wyse and she will be
5 taken by my learned junior, Ms Thomson.

6 LORD BRACADALE: Good afternoon, Ms Wyse. You're going to
7 be asked questions by Ms Thomson who I think you have
8 met, but before that will you say the words of the oath
9 after me. Raise your hand, please.

10

11 MS ASHLEY WYSE (sworn)

12 LORD BRACADALE: Ms Thomson.

13 Questions from MS THOMSON

14 MS THOMSON: What is your full name, please?

15 A. Ashley Isabel Wyse.

16 Q. Is that Miss Wyse?

17 A. Miss.

18 Q. May I ask how old you are?

19 A. 37.

20 Q. And am I right to understand that in May of 2015 you
21 lived in Hayfield Road in Kirkcaldy?

22 A. Yes.

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1 Q. I would like to begin by showing you an image of the
2 street. Can we please look at the stills catalogue, the
3 first of the stills catalogue, image 16, please.

4 (Pause).

5 While we are waiting for that image to come up, can
6 I ask you perhaps just to have a look in the folder in
7 front of you because I want to make sure that you've got
8 everything you need for giving your evidence today.

9 A. Okay.

10 Q. And I think you should see -- oh, here we are now,
11 sorry. Can I have page 16, please. So in May of 2015
12 you lived in Hayfield Road, Ms Wyse, and if you can look
13 at the screen in front of you, is that an image of
14 Hayfield Road?

15 A. Yes.

16 Q. We have technology that allows you to leave a mark if
17 you touch the screen, so I wonder whether you could put
18 a circle on your house so that we can see where you
19 lived. So that's the upstairs part of that building, is
20 that right?

21 A. Yes.

22 Q. And we have heard that a Kevin Nelson lived in the lower

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1 part of that building?

2 A. Yes.

3 Q. Where is your entrance door, is it to the right or the
4 left of that window as we look at it?

5 A. To the right.

6 Q. Perhaps if you touch that and another circle will
7 appear. So that's your main door, up the path and in
8 the main door there. And the number 1 where you have
9 put that marker, that's your property and which room
10 within your property is that?

11 A. That is the bedroom.

12 Q. The window to the left of that, again on the first
13 floor, is that also part of your house?

14 A. Yes.

15 Q. What room would that be?

16 A. That's the living room.

17 Q. So your bedroom faces out onto Hayfield Road, as does
18 your living room, and you lived upstairs from
19 Kevin Nelson?

20 A. Yes.

21 Q. Let's return to the folder in front of you. There
22 should be a number of documents there and the first

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- 1 should be a statement that you gave to a member of the
2 Inquiry team on 22 February and 8 March of this year.
3 Do you see that in the folder?
- 4 A. Yes.
- 5 Q. If we could have that on the screen too, please. So
6 this is your statement. If we could go to the final
7 page, please, do we see that you signed the statement on
8 29 May. You will see that your signature has been
9 blanked out on the screen but your signature should
10 feature in the hard copy in front of you. There should
11 in fact be your signature on every page.
- 12 A. Okay.
- 13 Q. And if we look at the very last paragraph of your
14 statement, do we see that it reads:
- 15 "I believe the facts stated in this witness
16 statement are true. I understand that this statement
17 may form part of the evidence before the Inquiry and be
18 published on the Inquiry's website."
- 19 A. Yes.
- 20 Q. Do you see that?
- 21 A. (Nods).
- 22 Q. And if we look at the statement -- sorry, the paragraph

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1 immediately above, that will be paragraph 35, do we see
2 that you said:

3 "I feel that my memory of the incident is good in
4 places and other parts are hard to remember. My memory
5 of the event would have been better at the time of
6 giving statements to the police and PIRC."

7 That's the Police Independent Review Commissioner:

8 "The statement given to the police and PIRC would
9 have been truthful and to the best of my memory at that
10 time. I think that my statements were read out to me
11 but I'm not 100% sure. Looking back maybe the words
12 that are used would not be what I would choose. I am
13 not saying that they are wrong, I'm just saying that it
14 wouldn't be how I would phrase it. If there is any
15 difference between what I have said now and my earlier
16 statement to the police or PIRC, those earlier
17 statements should be preferred."

18 Do you see that?

19 A. Yes.

20 Q. So you acknowledge in your Inquiry statement that
21 seven years after the event that we're here to talk
22 about today your memory is not so good in places and

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1 that if there are differences between your Inquiry
2 statement and your earlier statements, the Chair should
3 prefer your earlier statements?

4 A. Yes.

5 Q. Is that right?

6 A. Yes.

7 Q. Your earlier statements should also be in that folder so
8 let's just check that they're there. There should be,
9 first of all, PIRC 44.

10 A. Yes.

11 Q. And this is a statement that you gave to
12 police officers, DC Cox and a DC Stark, on 3 May at 7.45
13 in the evening. Do you see that?

14 A. Yes.

15 Q. And if we look, we will see that you gave that statement
16 at your home address to those detective constables.
17 Now, when you gave the statement, Ms Wyse, did you tell
18 the truth and do your best to give a complete and
19 accurate account of what you had seen?

20 A. Yes.

21 Q. Moving through the folder, the next document that should
22 be there is PIRC 43. Do we see that this is a statement

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1 that you gave two days later on 5 May 2015 to PIRC, an
2 Investigator McGuire at your home address?

3 A. Yes.

4 Q. Again, were you telling the truth and doing your best to
5 give a complete and accurate account of events?

6 A. Yes.

7 Q. Next in your folder should be PIRC 45, and this is
8 a statement that you gave to an Investigator Rhodes from
9 the PIRC on 25 August 2015, again, at your home address.
10 Do you have that statement before you too?

11 A. Yes.

12 Q. And once again, did you tell the truth and do your best
13 to give a complete and accurate account?

14 A. Yes.

15 Q. For completeness, I think there will be two
16 precognitions that you gave to the Crown Office in your
17 folder too. We don't need to put these up on the screen
18 but they are COPFS 46 and 47. Are they also in the
19 folder?

20 A. Yes.

21 Q. And do we see that COPFS 47 was a precognition statement
22 that you gave on 4 October 2016 at the Fiscal's office

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1 in Kirkcaldy?

2 A. Yes.

3 Q. And COPFS 46 is a precognition statement that you gave
4 on 2 November 2016, again, at Kirkcaldy?

5 A. Yes.

6 Q. So if it would assist you at any time to look at these
7 statements and what you said on previous occasions, then
8 you should feel free to do so.

9 There's also a spreadsheet in front of you. You can
10 put that to one side for now and we will perhaps look at
11 it together in a little while.

12 A. Oh, right, okay.

13 Q. So I want to ask you questions about 3 May 2015 and
14 I want to do that by reference to your Inquiry statement
15 that you gave relatively recently, and you might find it
16 helpful to have the hard copy handy, but the paragraphs
17 I'm going to refer you to will pop up on the screen in
18 front of you.

19 So if we could perhaps pull up the statement,
20 please, Ms Taylor-Smith, thank you, and if we scroll
21 down to paragraph 3, do we see that you say you recall
22 it was 3 May 2015. You had been out the night before

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1 and you had been celebrating your birthday with friends.

2 A. Yes.

3 Q. At the top of page 2 you explain that you had had a few
4 drinks and you were merry but you weren't drunk.

5 A. Yes.

6 Q. In paragraph 4 you explain that you woke up to a lot of
7 noise in the morning and flashing lights. It was early
8 morning. You think it was the back of 7 and it was
9 light outside:

10 "I had venetian blinds in my room and I slept with
11 them partially open: they were half tilted so you could
12 see out but nobody could see in. It was the flashing
13 lights that woke me up."

14 Do you see that?

15 A. Yes.

16 Q. So you have explained in your Inquiry statement that it
17 was the lights that first drew your attention to the
18 fact that something was going on outside.

19 If we scroll down to paragraph 5 you explain in
20 paragraph 4 that you then went to the window and in
21 paragraph 5 you say:

22 "I seen police cars and then I seen a couple of

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1 police officers across on the other side of the road on
2 the big grassy part. There was a man on the ground
3 surrounded by police. While there was a hedge there,
4 I had a clear view of the police officers and the man.
5 When I say 'he' I didn't know the man then, I now know
6 it was Sheku Bayoh. I could hear the noise of shouting.
7 It was muffled through the window. The window was
8 closed. It was more the muffle of noise that you heard
9 so I could hear shouting but I couldn't make out what
10 was being said and then I literally ran and got Hazel."

11 Who is Hazel?

12 A. Hazel is my friend.

13 Q. And she spent the night at your house?

14 A. Yes.

15 Q. At paragraph 6 you say:

16 "Hazel was still sleeping when I went through to the
17 back bedroom ..."

18 So should we understand that she had spent the night
19 in the back bedroom and you were in the front bedroom?

20 A. Yes.

21 Q. "I shook her on the shoulder and said 'Oh God, come and
22 see what's happening out here'. She followed me into my

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1 bedroom and we looked out of the window. I could still
2 hear muffled noise and shouting. The man was on the
3 ground with police officers around him. It was possibly
4 three or four officers. I don't remember what the
5 police officers looked like or whether they were in
6 uniform. I do remember there was a lady walking about
7 in a suit, I think it was grey. She looked smart
8 compared to the rest of them and I thought she was the
9 one that was in charge. I think there were batons lying
10 on the ground. I think a police officer picked one up
11 and put it in their pocket."

12 So you recall a lady police officer being there. Do
13 you recall whether she was there when you first looked
14 out of the window, or do you just recall that she was
15 there at some point during the event?

16 A. Some point during the event.

17 Q. You say there were possibly three or four officers
18 around the man. Do you recall whether they were male or
19 female officers?

20 A. I wouldn't be able to tell you.

21 Q. Okay. At paragraph 7 you say you could see what the
22 police officers were doing. You weren't sure why the

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1 man was on the ground:

2 "... it seemed that the man was getting arrested for
3 something. I had seen that they were restraining him,
4 and taping his legs and I thought the man must have been
5 kicking off. I couldn't see the man moving. I could
6 only see the police officers around him. I could see
7 the yellow tape on the man's legs. The man was lying on
8 his back -- I could tell because I could see his feet
9 pointing up. I couldn't see the man's face. You
10 couldn't really see very much of the man. You could
11 just see the man's knees and his legs. This was because
12 the police officers were around him but that's the best
13 I can remember. I couldn't describe the man on the
14 ground."

15 I will ask you more questions later about the
16 position that the man was lying in, but is it your
17 recollection that when you first saw him, his legs were
18 taped and he was lying on his back?

19 A. I think they were in the middle of doing the tape.

20 Q. In the middle of doing the tape?

21 A. Yes.

22 Q. All right. And is it your recollection that he was

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1 lying on his back?

2 A. I think so.

3 Q. You think so?

4 A. I think so.

5 Q. Is it possible that you could be wrong about that or
6 mistaken about that?

7 A. I would say lying on his back.

8 Q. At paragraph 8 you say:

9 "The police officers were kneeling beside the man.
10 They were down beside him. I'm asked if any of them
11 were lying on the man. I can't be sure about the
12 position of the police officers and whether any of them
13 were lying or leaning on the man. One of the officers
14 was quite alert and seemed to realise the man wasn't
15 breathing. I'm sure he checked his pulse and then he
16 done CPR. I don't remember what the police officer
17 looked like who did the CPR but I remember the guy that
18 did it got a glass of water to rinse his mouth out. He
19 got the glass of water from my downstairs neighbour,
20 Kevin Nelson. Kevin lived in the flat directly
21 underneath me."

22 In later paragraphs you go on to describe the CPR.

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1 Would it be fair to say that your recollection of the
2 restraint perhaps isn't as good now seven years later as
3 it was at the time?

4 A. Yes.

5 Q. And indeed after you gave your best recollection of the
6 incident in the paragraphs that we have just looked at,
7 did the statement-taker take you to passages within your
8 Police Scotland and PIRC statements to jog your memory?

9 A. Yes.

10 Q. If we can move on to paragraph 12 then of your Inquiry
11 statement so that we can see what parts of your earlier
12 statements were read over to you and what you had to
13 say. Paragraph 12 reads:

14 "I'm asked about the statement I gave to PIRC on
15 5 May 2015. In this statement at page 1, I described
16 getting home at about 3.00 am and going to bed about
17 3.30 am. That sounds right. I'm told that my statement
18 says, at page 2, that when I woke that morning and
19 looked out of the window 'I could hear shouting and
20 a disturbance outside. It was right outside my room
21 window. When I looked out of my window I could see lots
22 of police officers running about. I think there was

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1 about 10 to 15. There was lots of police vehicles,
2 a grey one, a van, one at an angle at the tree and the
3 blue lights on the vehicles were on'."

4 And you said:

5 "That sounds right to me. I accept that it's
6 correct if that's what I told the PIRC at the time."

7 A. Yes.

8 Q. So you have essentially adopted what you said on
9 5 May 2015 as being accurate.

10 If we carry on, at paragraph 13 you say:

11 "I'm told my statement goes on to say at page 2
12 'I looked to the right along Hayfield Road to where
13 the police vehicles were. The lights were on.
14 I thought it might have been something happening in the
15 park opposite. There have been problems there in the
16 past and I looked across there at first to see what was
17 happening and there was nothing happening there. I then
18 looked along the other way, along Hayfield Road towards
19 the roundabout to the left, down from my window. I saw
20 a black man in the street. He was nearly down on the
21 ground. He was surrounded by police officers. There
22 was at least six police officers surrounding him. I saw

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1 the police all over him. What I mean is that they were
2 holding him on the ground'."

3 And you said to the statement-taker:

4 "That is right. The roundabout I'm talking about is
5 the roundabout at the end of Hayfield Road where it
6 joins with Hendry Road. The police officers were
7 holding him to restrain him and putting the tape on him.
8 I don't remember what I meant by saying he was nearly to
9 the ground but it would have been what I told the PIRC
10 at the time. I got asked this question about a million
11 times, was he up, was he down, and I think he must have
12 been nearly down, meaning as in they were at the point
13 of getting him down on the ground and that's when all
14 the police officers went on him."

15 Ms Wyse, do you recall anything today about how the
16 man came to be on the ground?

17 A. No, just what you have seen prior to in the video that
18 I had is what is in my memory.

19 Q. All right, all right. We will come to the videos
20 because we're going to watch those together in a little
21 while, but before we look at the video, I'm keen to know
22 what you can remember relying on your memory. So it

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1 would appear to be the case that you said something to
2 the PIRC about the man being nearly down on the ground
3 and you have told me that you told the PIRC the truth --

4 A. Yes.

5 Q. -- and did your best to give a complete and accurate
6 account, but should we understand that you can't assist
7 us any further today, simply because of the passage of
8 time and you perhaps don't recall this part of the
9 incident?

10 A. Yes.

11 Q. Moving on to paragraph 14:

12 "I'm told my statement continues 'what it looked
13 like to me was that I saw a police officer striking the
14 man on his legs to get him down. I am not sure whether
15 he was completely lying on the ground or was going down
16 at that point. There was at least six police officers
17 lying on top of him. They were crossing over him from
18 both sides. They pretty much covered his whole body.
19 It was only when I moved that I could see his arm and
20 definitely knew it was a black man. It looked like one
21 officer was using a baton to hold the man down. It was
22 on his upper chest towards his throat. When the man was

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1 on the ground with the police officers on top of him
2 I could see him struggling with them. I saw them put
3 some sort of yellow tape around his feet and legs over
4 the ankle'..."

5 And you said to the statement-taker:

6 "If I said that at the time, then it will be true.
7 But I don't remember that now. It's seven years ago
8 now, the main thing that I remember now is him on the
9 ground with the yellow tape on his legs and then getting
10 resuscitated. I remember the batons on the floor but
11 I don't remember seeing them used."

12 In your PIRC statement that you were taken to by the
13 Inquiry team you said that you recalled an officer
14 striking the man on the legs to get him down. Do you
15 remember that today?

16 A. No.

17 Q. And you said you recalled at least six officers lying on
18 top of him, covering his body. Again, today looking
19 back, do you have any recollection of that?

20 A. No, I just remember them being round him.

21 Q. Although as you said to the Inquiry officer, if you said
22 it at the time, then it would be true, and you have told

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1 me that you were doing your best to tell the truth when
2 you spoke to the PIRC?

3 A. Yes.

4 Q. Moving on to paragraph 15, you were then taken to
5 a passage in your PIRC statement which read:

6 "When the man was on the ground, I heard him
7 screaming. It was a horrible sound, it sent chills
8 through me. I heard the man shout to the police to get
9 off him. They never moved from him at that point.

10 I think the black man was on his back when lying on the
11 ground. I'm not sure if he was moved whilst on the
12 ground. I saw him lying on the ground. I could see
13 that his wrists were restrained. His hands and arms
14 were in front of him and the police officers were still
15 lying on top of him."

16 You said:

17 "I can't remember this now. There was lots and lots
18 of shouting but I remember more muffles. It's more
19 muffled sounds that I've got in my head. What's in my
20 memory is the police officers were restraining him and
21 trying to get the tape on his legs but if my statement
22 says that, then I must have told PIRC that at the time.

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- 1 I just don't remember now. It's so long ago."
- 2 A. Yes.
- 3 Q. So again, can you assist us by telling us more today
4 about what you could hear at the time?
- 5 A. I can't remember. I just have the more muffled noises.
6 My window was shut, so I can't -- like it was just --
7 you know, you see that it was -- people must have been
8 speaking to each other, like, but I couldn't make out
9 what it was or ...
- 10 Q. Okay. And it appears that you did say to the PIRC at
11 the time that you heard the man screaming, it was
12 a horrible sound and it sent chills through you. Should
13 we understand that you have no recollection of that
14 today?
- 15 A. No, I can't remember that now.
- 16 Q. But if you said that to the PIRC, then would that have
17 been you telling the truth and doing your best to give
18 a complete and accurate account?
- 19 A. Yes.
- 20 Q. Moving to paragraph 16 you were asked about
21 a precognition you had given to the Crown Office which
22 reads:

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1 "'The police officers holding the man, Sheku, down
2 and lying on him so he couldn't move. There was one at
3 the top, one at the side and one at his feet. There
4 were a lot of police officers around him. I might be
5 wrong in saying six, but there was a few. Sheku or Shek
6 was putting up a fight. I could hear mumbling and
7 shouting, but I couldn't hear what was being said
8 because my window was closed'."

9 And again you said to the statement-taker:

10 "I just remember there was a lot of noise but
11 I don't remember that. I just remember everybody was
12 shouting at each other. I remember muffled, muffling
13 noises. The window was shut. I don't remember the
14 police officers lying on Sheku now. I just remember
15 them being around him. As I have said before, what
16 comes into my head now is I remember the tape round his
17 feet, him lying on the ground and the police officers
18 round him."

19 A. Yes.

20 Q. There's a reference there to Sheku putting up a fight.

21 Again, do you have any recollection of that now?

22 A. No.

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1 Q. So can you assist us at all as to how he was putting up
2 a fight or you simply have no recollection of that
3 today?

4 A. No.

5 Q. Okay. At paragraph 17 you were then taken to your
6 police statement from 3 May, so that's the first of the
7 statements that you gave, in which you said:

8 "The man kept making roaring noises and shouted
9 something similar to 'get off me.' I'm also reminded
10 that in my PIRC statement of 5 May I said 'I heard the
11 man shout to the police to get off him'. I'm asked what
12 version of events is more accurate. I am aware that the
13 Crown Office statement was given 18 months or so after
14 it happened. I'm assuming the statement given closest
15 to the time when it happened would be the most accurate,
16 which would be the PIRC and police statements. If my
17 police statement and PIRC statements say that then
18 I must have said that at the time and that must be what
19 happened but as I say, I don't remember that now.
20 I just remember a lot of muffling and lots of activity
21 and noise. My memory would be clearer when I first gave
22 a statement but at the same time it all happened so

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1 fast."

2 Moving on to paragraph 18, a further passage from
3 your PIRC statement from 5 May was read to you:

4 "'There then seemed to be a pause, a break. The man
5 had been quiet for a little while. In this period, the
6 police officers appeared to be speaking with him.

7 I could not hear any of his responses but it appeared
8 the police officers were having a conversation with him.

9 I think the police officers were lying on top of him
10 a long time. I think it was at least five minutes they

11 were lying on top of him, it may have been about
12 ten minutes. This includes the time when he was being

13 taped to his legs. At all times he was surrounded by
14 police officers. There were at least six

15 police officers around him at all times'."

16 And you said to the statement-taker:

17 "I don't remember the police officers having
18 a conversation with the man. I also don't remember the

19 police officers lying on him now. I just remember the
20 police officers around him restraining him and putting

21 the tape on. I remember him getting restrained and the
22 officers holding him down. Again, if I told PIRC that

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1 back then, then I accept it must be right."

2 Ms Wyse, is there anything more that you can add to
3 the passages that we have looked at from your Inquiry
4 statement today?

5 A. No.

6 Q. Nothing more comes back to you at all?

7 A. No, sorry.

8 Q. There's no reason to apologise, I just want to be sure
9 that we have your complete and full evidence today.

10 All right. I would like to take you now to some of
11 the footage that you mentioned because we understand
12 that you recorded parts of this incident on your mobile
13 telephone and that you later gave your phone to
14 the police, is that right?

15 A. Yes.

16 Q. Was that fairly soon after the event?

17 A. Yes.

18 Q. Was it when you spoke with the police on 3 May?

19 A. There or there -- there around.

20 Q. There or thereabouts. Certainly I think when you spoke
21 with the PIRC on 5 May you said that you had given your
22 phone to the police and you had given the police

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1 permission to examine it and to look at the footage --

2 A. Yes.

3 Q. -- and you were also happy for the PIRC to do the same,

4 is that right?

5 A. Yes.

6 Q. So it must have been somewhere between 3 May and

7 5 May --

8 A. Yes.

9 Q. -- that you gave your phone to the police, would that

10 make sense?

11 A. Yes.

12 Q. Now, when you went to the window that morning to see

13 what was happening outside, where was your phone?

14 A. At the side of my bed, then I took my phone in my hand

15 and took the video.

16 Q. What I'm wondering is whether you had to move away from

17 the window to get your phone, or whether you had taken

18 your phone with you when you went to the window?

19 A. I can't remember. I think I had my phone in my hand

20 maybe or ...

21 Q. Do you recall whether you watched much of what was

22 happening outside before you started to film?

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1 A. I can't remember.

2 Q. All right. Now, I mentioned a spreadsheet earlier, and
3 I think this would be a good time to ask you to have the
4 spreadsheet in front of you because what I would like to
5 do is try to be clear about where the bits of footage
6 that you took fit into the timeline of events.

7 A. Okay.

8 Q. So I don't know whether you have had the opportunity to
9 watch any other witnesses give their evidence on our
10 channel, but if you have, then you will perhaps realise
11 that we have got footage from a number of different
12 sources, we've got some CCTV footage from the Gallaghers
13 pub, the White Heather at the roundabout, from
14 dash cams, from other mobile phones and your Snapchat
15 footage. We also have an Airwaves -- police Airwaves
16 transmissions and 999 calls, and what we have done, with
17 a little professional help, is put that in a real
18 evidence timeline so all of the footage and all of the
19 transmissions are played against a real time clock and
20 the timings have all been checked and that allows us to
21 see and hear what was happening at any given point in
22 time.

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1 So this spreadsheet is essentially a record of what
2 can be seen and heard in this real evidence timeline, so
3 if you have a look at the spreadsheet, you will see that
4 we've got the actual real times in the far left column.

5 A. Okay.

6 Q. And then -- and not all of this will be relevant for our
7 purposes, but we have then got the caller ID, so where
8 Airwaves transmissions have been made by the police
9 there's a note of who made the transmission. In the
10 next column headed "Event Airwave transcription",
11 there's a transcript of what is said over the Airwaves
12 and in the next column along "Description of visible
13 events in video" there is a written description of what
14 can be seen happening in the video footage, and in the
15 very final column at the far right there's confirmation
16 as to the source of any video footage at that time.

17 So, for example, you will see on the first page that
18 some of the footage is from a dash cam, some is from
19 Robson Kolberg's mobile phone, and some is from
20 Gallaghers pub, and as we work our way through our
21 spreadsheet you will see entries that relate to the
22 footage from your mobile phone.

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1 A. Okay.

2 Q. So before we look at the first of the pieces of footage
3 that you took, I think there were three or four -- there
4 are certainly three that have been included in this
5 timeline, I thought it might be helpful if we can just
6 be clear about what had happened before you came to the
7 window and started to film, just so that we can see
8 where the footage fits in with the overall timeline of
9 events.

10 A. Okay.

11 Q. So I just want to draw a few entries to your attention
12 just to give some context to the footage that you took.
13 We can perhaps begin at 7.20.13 seconds, which you will
14 find on page 3 of the footage, and the entry that
15 I would like to draw your attention to there is the
16 column just to the right of the mid-point of the page
17 that's got the description of what can be seen on the
18 Gallaghers CCTV footage and you will see that it records
19 that a large marked police van arrives from the south on
20 Hendry Road and turns right at the roundabout into
21 Hayfield Road. Do you see that?

22 A. Yes.

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- 1 Q. And we have heard evidence that that was the first of
2 the Police vehicles to arrive. There are two officers,
3 Constable Paton and Constable Walker and that was their
4 van arriving at the scene and if you stay in that column
5 and skip down two entries you will see that the van
6 stops on Hayfield Road within the field of view of the
7 camera and that's at 7.20.23. Do you see that?
- 8 A. Yes.
- 9 Q. The next entry that I would like to draw your attention
10 to is at 7.20.30 and again, it's the description column
11 that is relevant here and it records that a smaller
12 marked police van arrives travelling north on
13 Hendry Road, turning right at the roundabout into
14 Hayfield Road. Do you see that entry?
- 15 A. Yes.
- 16 Q. And staying in the same column, if you skip down three
17 entries you will see that at 7.20.39 that smaller police
18 van stops behind the large police van?
- 19 A. Yes.
- 20 Q. Do you see that? And we have heard evidence that that
21 was the second police vehicle on the scene and
22 Constables Tomlinson and Short were within that vehicle.

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1 If you turn over to page 4, Ms Wyse, if you can look
2 at the entry timed 7.21.02, it's a transmission by
3 PC Paton, do you see that?

4 A. Yes.

5 Q. "Officer's injured PC Short male."

6 And if you look just a little bit to the right and
7 the next entry down in the description column you will
8 see that a second after that transmission was made you
9 can see on the footage a number of persons appearing
10 behind a light-coloured car and at least one person
11 appears to fall over. Do you see that?

12 A. Yes.

13 Q. And the Chair has heard evidence that that may have
14 been Constable Short falling to the ground. If you look
15 at the description immediately beneath that -- and it is
16 quite a long description and it spans 10 seconds of CCTV
17 footage from 7.21.03 to 7.21.13:

18 "A car moves forward quickly towards the roundabout
19 and appears to skid. At the same time this is happening
20 it appears the persons near the pavement possibly stand
21 again or are joined by other persons and there is some
22 coming together and another fall towards the ground by

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1 one or more of the persons."

2 Do you see that?

3 A. Yes.

4 Q. And the Chair has heard evidence that may lead him to

5 the conclusion that that was the point at which Mr Bayoh

6 was taken to the ground. At 7.21.19 you will see in red

7 that a Constable Tomlinson's emergency status on his

8 police radio was turned to on, do you see that?

9 A. Yes.

10 Q. And we have heard evidence from Constable Tomlinson, and

11 he told us that by the time he pressed his emergency

12 button, Mr Bayoh was on the ground, okay?

13 A. Okay.

14 Q. And briefly over the page, Ms Wyse -- I'm sorry,

15 I missed out one entry at the bottom of page 4, my

16 apologies. At the bottom of page 4 at 7.21.28, there is

17 a description of another police vehicle with flashing

18 lights arriving at the scene and stopping on

19 Hayfield Road, do you see that?

20 A. Yes.

21 Q. And we have heard that that was the third vehicle to

22 attend and Constables Good and Smith were within that

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1 vehicle and then over the page, on page 5, there's an
2 entry at 7.21.46, and the description is of a fourth
3 vehicle arriving at the scene and stopping on
4 Hayfield Road, do you see that?

5 A. Yes.

6 Q. And we have heard that that was the fourth police
7 vehicle to arrive carrying Constables Gibson and
8 McDonough.

9 So I realise I have taken quite a lot of your time
10 going through that and you won't have seen this before,
11 but I thought it might be of some assistance because if
12 you cast your eye down at the spreadsheet you will see
13 that we're just about to come to the first snippet of
14 footage that you took, and it gives some context in
15 terms of what had happened before you started filming
16 from your bedroom window.

17 So I wonder if we could perhaps now play the first
18 piece of Snapchat footage which is at 7.22.10 to
19 7.22.20, please.

20 (Video played)

21 Okay, if we stop there for a moment. Do you
22 recognise that, Ms Wyse?

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1 A. Yes.

2 Q. And you recognise that as being the piece of footage
3 that you took?

4 A. Yes.

5 Q. From your bedroom window?

6 A. Yes.

7 Q. Now, there's no sound there. Was there nothing to be
8 heard or were you not sound recording? Can you say?

9 A. I wouldn't be able to tell you why there wasn't any
10 sound. Maybe it was on mute or something like that.

11 Q. All right. Now, it is a very short piece of footage and
12 it happens very quickly but I think we do have a version
13 which has been slowed down and enlarged, and I wonder if
14 we can perhaps watch that.

15 (Video played)

16 So this is the same footage, Ms Wyse, but it has
17 been slowed down.

18 (Video played)

19 Can you pause that for a moment, please. Before we
20 looked at that footage I drew your attention to a number
21 of the entries on the spreadsheet, including the entry
22 at 7.21.03 which was when Sheku Bayoh was taken to the

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1 ground, between 7.21.03 and 7.21.13. So this first
2 piece of footage was taken at 7.22.10 to 7.22.20, so
3 it's roughly one minute into the restraint, okay, just
4 to put that in context. You said it was familiar to
5 you, it was the footage that you took, you recognised
6 the view from your bedroom window. I wonder if we can
7 look at the slow version of the footage again. Does
8 watching this -- and in particular watching it in slow
9 motion, jog your memory at all about what you saw that
10 day?

11 A. My memory is kind of what's -- what you see there is
12 what I remember.

13 Q. What you remember, all right.

14 (Video played)

15 I think we can pause it there, thank you. You said,
16 Ms Wyse, that what we see is what you can remember. Can
17 you assist us at all in terms of what we can see on the
18 screen in front of us there?

19 A. Just the restraint and the vehicles being in the street
20 and kind of --

21 Q. Okay. If we could watch the slow motion footage again
22 please and I will ask you to pause part of the way

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1 through this.

2 (Video played)

3 If you could pause there, please. You have made
4 a number of references in your statements to the man's
5 legs being taped and we have heard evidence that leg
6 restraints were indeed applied, and if you look at the
7 footage, do you see there are two officers who are
8 standing up?

9 A. Yes.

10 Q. One on the right and one just in front of the police
11 car?

12 A. Mm-hm.

13 Q. If I can ask you to look at the officer just in front of
14 the police car because he has given evidence that we can
15 see him in this footage unfolding the restraints before
16 applying the restraints, so if we could watch from here
17 just for a second or two, please.

18 (Video played)

19 Do you see that he appears to have something in his
20 hands?

21 A. Yes.

22 Q. That he appears to be unfolding?

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1 A. Yes.

2 Q. And we heard from him that those were the leg restraints
3 and he was preparing the leg restraints, so it would
4 appear to be the case that this footage was taken before
5 the leg restraints were applied, but if I understand
6 your evidence correctly, and if I have read your
7 statement correctly, your best recollection is at the
8 moment in time that the restraints are being put on or
9 in fact on, is that correct?

10 A. Yes.

11 Q. All right. And do you recall whether the screams or
12 shouts or muffled sounds that you have spoken about were
13 happening at this point in the events?

14 A. I think there was lots of activity at that time, so yes,
15 there was kind of -- police officers must have been
16 talking to each other or something, but I wouldn't be
17 able to tell you what they were saying. As I said, it
18 was more a muffled noise that I could hear.

19 Q. Sure. I'm just wondering whether you can help us with
20 whether your phone wasn't picking up the sound for
21 whatever reason, or whether in fact there was no noise
22 at that point in time?

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1 A. I wouldn't be able to tell you that.

2 Q. All right. Before we go to the second piece of footage,
3 again if you will bear with me, can we go back to the
4 spreadsheet just to put it in context.

5 A. Okay.

6 Q. So I have advised you that that first piece of footage
7 was about a minute into the restraint. If we then look
8 at the entry at 7.22.24, which is on page 5 of the
9 spreadsheet, it's a transmission from PC Walker, do you
10 see that?

11 A. Oh, yes.

12 Q. Are you with me?

13 A. Mm-hm.

14 Q. "Update male in cuffs still struggling".
15 Then immediately down from that and to the right we
16 see at 7.22.25, another vehicle arrives on the scene.
17 Do you see that?

18 A. Yes.

19 Q. It's the entry:
20 "A smaller marked police car arrives at the scene."
21 Do you see that?

22 A. Yes.

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1 Q. So that's the fifth vehicle to arrive and we have heard
2 that there was a Sergeant Maxwell in that vehicle. If
3 we move over the page to 7.23.57, again, the description
4 column. There's a reference to a dark-coloured vehicle
5 approaching and it appears to have flashing lights at
6 the rear window, do you see that?

7 A. Mm-hm.

8 Q. And we may hear evidence that that is CID or plain
9 clothes officers arriving. And then at 7.25.17 -- this
10 is on page 7, and it's an Airwaves transmission,
11 7.25.17, do you see that?

12 A. Yes.

13 Q. It's a transmission by PC Alan Smith:

14 "This male now certainly appears to be unconscious,
15 breathing, not responsive, get an ambulance for him."

16 So at 7.25.17 seconds, Mr Bayoh was unresponsive and
17 the officers radioed for an ambulance.

18 Now, the next piece of Snapchat footage is less than
19 15 seconds later at -- sorry, two minutes and 15 seconds
20 later, it's at 7.27.31, and I wonder if we could perhaps
21 look at this. So this footage that we're about to look
22 at is two minutes and some seconds after Mr Bayoh became

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1 unresponsive, to put this in context. So 7.27.31.

2 Thank you.

3 (Video played)

4 Okay, stop that there. Again, did you recognise
5 that?

6 A. Yes.

7 Q. Is that footage that you took from your bedroom window?

8 A. Yes.

9 Q. And whose voice is that that we hear?

10 A. Mine.

11 Q. That's your voice. Okay. How did that image fit with
12 your overall recollection of what happened that day?

13 A. It's just kind of how I remember it, kind of the
14 police officers coming off -- like stepping away from
15 him and then they were doing the resuscitation.

16 Q. Can you tell me any more about that?

17 A. The guy checked to see if he was breathing. Obviously
18 he knew something wasn't right so he started doing CPR
19 and then he got a glass of water from my downstairs
20 neighbour, Kevin.

21 Q. Okay. The next piece of footage is at 7.29.30 seconds,
22 please. I beg your pardon, sorry, 7.28.18. It's my

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1 mistake.

2 (Video played)

3 That was a very short piece of footage but again, do
4 you recognise that as footage taken by you from your
5 bedroom window?

6 A. Yes.

7 Q. There doesn't appear to be any sound there, and again,
8 can you help us as to whether there simply was no noise
9 in the background or whether your camera wasn't
10 recording sound for whatever reason?

11 A. I don't know.

12 Q. You can't say, all right. And was that familiar to you
13 in terms of your overall memory of the scene?

14 A. Yes.

15 Q. What did you see going on there?

16 A. Just the police officers walking around.

17 Q. Okay. So that was at 7.28.18, so that was about three
18 minutes after Mr Bayoh became unresponsive, and I can
19 advise that at 7.29.30 -- if we have a look at that
20 entry in the spreadsheet, it's on page 11. 7.29.30, do
21 you see that?

22 A. Yes.

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- 1 Q. That's another transmission, this time by Acting
2 Sergeant Scott Maxwell:
3 "Control can you get a move on with the ambulance.
4 This accused is now not breathing. CPR is commencing,
5 over."
6 Do you see that?
7 A. Yes.
8 Q. So this third piece of footage is about three minutes
9 after Mr Bayoh became unresponsive and about a minute
10 before there was a radio message to control to say that
11 he had stopped breathing and CPR was commencing. And
12 you do recall seeing the CPR take place, is that right?
13 A. Yes.
14 Q. Can you tell us anything about that today, what you
15 remember of it?
16 A. No, just the police officers kept going until the
17 ambulance arrived, you know, they didn't stop. And then
18 the ambulance people came and took over and that's it.
19 Q. You said one of the officers went and got a glass of
20 water from Kevin Nelson.
21 A. Yes. Yes, he did.
22 Q. Okay. We can put the spreadsheet to one side for now

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1 and if we could go back to your Inquiry statement
2 please, to paragraph 6 which we have looked at before.
3 At the bottom of that paragraph you say -- if we can
4 scroll to the top of the next page, please, thank you:

5 "I do remember there was a lady walking about in
6 a suit, I think it was grey. She looked smart compared
7 to the rest of them and I thought that was in charge."

8 And I had asked you earlier whether you could
9 remember whether she had been there at the outset when
10 you looked out of the window or whether she arrived
11 later. Now, I don't think we saw her in the first video
12 clip but she was there in the second and third video
13 clips. Is it possible that she didn't arrive on the
14 scene until a little bit later on?

15 A. She may have. I can't recall that though. When she
16 arrived, I wouldn't be able to tell you.

17 Q. Okay, but would you accept that we don't see her in the
18 first of the video clips?

19 A. Yes.

20 Q. Now, we have looked at these three pieces of footage and
21 we have looked at the time stamps on them. The time
22 stamp on the first is 7.22, the time stamp on the second

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1 is 7.27, so five minutes passed between the first video
2 clip that you took and the second video clip that you
3 took. What were you doing during that five-minute
4 period?

5 A. Just looking out the window and I think I got Hazel at
6 one point and then Hazel came to the window as well so
7 she was with me.

8 Q. Okay. So was there a period of time then that you were
9 watching what was happening but you weren't actively
10 filming it?

11 A. Yes.

12 Q. And do you remember anything about what happened during
13 that period of time?

14 A. No.

15 Q. If we can go back to your Inquiry statement to
16 paragraph 25, you were shown the footage, I think, by
17 the Inquiry team when you gave your statement and about
18 halfway down is a sentence that begins:

19 "What is in [the] third video ..."

20 It's about halfway down that paragraph there you
21 say:

22 "What is in this third video is largely how

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1 I remember what I saw that morning. I'm unsure of the
2 order of these three videos in terms of what was
3 happening. The videos don't jog any further memories of
4 that day."

5 Do you see that?

6 A. Yes.

7 Q. So we have looked at all three pieces of footage and
8 that third video was the one that was shortly before the
9 call to control to say that Mr Bayoh was no longer
10 breathing, when there were a number of officers around
11 him, and you say that that is essentially what you saw
12 that morning, that is how you remember what you saw that
13 morning; is that correct?

14 A. Yes.

15 Q. Is there anything at all that you can add to your
16 recollection or to what you have told the Inquiry team
17 or told us today in your evidence about what you saw
18 that day?

19 A. No.

20 Q. Okay. And you say that watching the clips didn't jog
21 your memory and I think you were also shown some still
22 images that had been taken --

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1 A. Yes.

2 Q. -- from the clips and did they jog your memory either?

3 A. No.

4 Q. I want to ask you a few more questions about the
5 position that the man was lying in. If we can go back
6 to paragraph 7 of your statement, about halfway down you
7 say that the man was lying on his back, and above that
8 you say -- sorry, it is perhaps easier if I read from
9 the beginning rather than jumping around. You said you
10 could see what the officers were doing, you weren't sure
11 why the man was on the ground:

12 "I had seen they were restraining him and taping his
13 legs and I thought the man must have been kicking off."

14 So this is your memory at the point in time at which
15 his legs were being taped, is that right?

16 A. Yes.

17 Q. You say:

18 "I couldn't see the man moving. I could only see
19 the police officers around him. I could see the yellow
20 tape on the man's legs. The man was lying on his back.
21 I could tell you because I could see his feet pointing
22 up."

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1 So you recall him being on his back at the point in
2 time that the tape is around his legs, is that right?
3 A. Yes, because then they went straight to resuscitation
4 after.
5 Q. They went straight to resuscitation after that?
6 A. Yes.
7 Q. All right, what do you mean by they went straight to
8 resuscitation after?
9 A. That's just how my memory is of what I have, you know,
10 like of how it took place, kind of thing. You know, the
11 tapes was on and then -- then they knew there was
12 something wrong when they went to the resuscitation.
13 Q. I see, so your memory is that as soon as the tape was on
14 the next thing to happen was --
15 A. The next thing to happen, yes.
16 Q. -- was the CPR. All right. Are you able to help us
17 with what position he was in during the earlier part of
18 the restraint before the tape was applied to his legs?
19 A. I couldn't be sure.
20 Q. Okay, I want to move away from the events of 3 May and
21 ask you some questions about statements and people
22 asking you to give them statements or otherwise give

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1 them information.

2 So we know that you gave a statement to the police,
3 two statements to the PIRC, and two statements to
4 the Crown. I understand from reading your Inquiry
5 statement that other people also came to the door
6 wanting to ask you questions about what you had seen, is
7 that right?

8 A. Yes.

9 Q. If we can go to paragraph 27 of your Inquiry statement
10 where again you were taken back to an earlier statement
11 that you gave to the PIRC, and it related to a man
12 coming to your door and you had said to the PIRC:

13 "He didn't introduce himself but I just assumed he
14 was Sheku's brother. He continued by talking about his
15 mother and that they were 'looking for answers'. He
16 stated that they had been given 'five different stories'
17 or 'five different states of events' and he told me that
18 the police stated that Sheku had been carrying a knife
19 when he wasn't. He was calm with me, not aggressive,
20 and I did not feel threatened by him but I did feel that
21 he was 'putting me on the spot'. This made me feel
22 uncomfortable because I didn't know what to say to him

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1 and didn't want to lie to him."

2 You said to the statement-taker:

3 "Yes that's all correct. And what I mean by saying
4 'uncomfortable' was because they were looking for
5 answers that I don't have. I felt I can't keep going to
6 my door and not knowing who was going to be there.
7 Often the door had chapped but I didn't answer it
8 because I had to go down a flight of stairs. However,
9 this time obviously I did."

10 And I beg your pardon, I should have taken you
11 firstly to paragraph 26. I understand that in
12 paragraph 27 you were describing a second visit from
13 this gentleman. My apologies, I have taken this out of
14 sequence but in paragraph 26 you say:

15 "I'm asked about when I was visited by a member of
16 Sheku's family. I think it was his brother. He was
17 very pleasant. He wasn't aggressive. But he was asking
18 me questions. I can't remember what they were but he
19 was just going around things of 'my family and I are
20 looking for answers'. That's what made me twig that it
21 was his brother or a cousin or something because he was
22 black. By that point I knew that it was a black man

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1 that had passed away. And that's when I just got to the
2 point and said enough was enough. You were trying to
3 live your life and people was coming to the door asking
4 you questions and I don't have the answers. It's all
5 the other people that it affects as well, like seeing
6 someone coming to my door and wondering what it's all
7 about."

8 In paragraph 27 when you said you didn't know what
9 to say and you didn't want to lie, what did you mean by
10 that?

11 A. I guess when, you know, you had lots of people coming to
12 the door and looking for answers, I didn't have the
13 answers and, you know, I just kind of wanted to move on
14 with my life.

15 Q. You said lots of people were coming to the door; who was
16 all coming to your door?

17 A. There was media and people would be sitting in cars
18 outside the house and it was just one of those things
19 that I just wanted to kind of -- enough was enough, so,
20 you know, something had to be done. You know, as much
21 as we lived there, we still had to live our own life and
22 not feel like you were looking out of your window to see

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1 who was there before you could exit your house.

2 Q. Okay. If we can look at paragraph 28. You said you
3 didn't remember a second visit from someone in Sheku's
4 family but again, you were taken to a previous statement
5 where you said:

6 "I heard a knock at the door and I looked out the
7 window into the street to see if I could see anyone's
8 car. I was not expecting anyone to be calling, so I
9 ignored the door and it's not uncommon for me to do that
10 if I don't know who is there. I continued to look out
11 of the window saw a black male walking away from the
12 house. Again, the male was very smartly dressed and
13 I got the impression it was the same male that had been
14 at the door a fortnight previously. He began to lean
15 over the hedge and I wondered what he was doing and as
16 such I didn't pay attention to his description.
17 I immediately felt intimidated and felt that I was
18 having to hide behind my own curtains. I came away from
19 the window and didn't go back. Later on that night,
20 about a quarter-to-eight, I went to my door to give
21 access to my male friend and saw a leaflet lying on the
22 floor inside the door. On lifting the leaflet I could

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1 see it had a picture of Sheku Bayoh on it and that it
2 had the title 'Justice for Sheku Bayoh Campaign'. Below
3 the title and picture there was a paragraph of events
4 which was typed and below that a framed box in which
5 there was written in pen, 'Hi, the family have seen
6 footage/stills/photos of a video that was handed to
7 the police/PIRC. Can you talk to us about the family
8 about what you saw? I thought immediately the
9 handwritten note was specifically a reference to my
10 footage and that information and footage had been given
11 out by Police Scotland or PIRC without them telling me
12 they were doing it. I felt betrayed by this information
13 being exposed and I felt that I should have been made
14 aware so that I could have been more prepared. I felt
15 this was a personal threat and I panicked that they may
16 be watching my house. I was scared."

17 So did you understand this footage or the reference
18 to the footage to be the footage that you had taken from
19 your phone, taken on your phone?

20 A. Yes.

21 Q. And given to the police. Okay. When you said that you
22 felt betrayed, can you explain what you meant by that?

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- 1 A. I guess I just wish I knew that the police was giving
2 the evidence to the family so I was more aware of what
3 they saw and, you know, what I saw.
- 4 Q. And when you said you felt that this was a personal
5 threat, what did you mean by that?
- 6 A. I just felt like I should have been told prior to my
7 images being shared.
- 8 Q. And when you said that you panicked, can you help me to
9 understand why you panicked?
- 10 A. I guess I was just trying to protect my little one at
11 the time, you know, so I was kind of more worried about
12 him at that point.
- 13 Q. And you said that you were scared. What were you scared
14 of?
- 15 A. I think just the -- I would maybe say panic more would
16 be the word, I would just -- looking back thinking,
17 you know, well, I was trying to protect my little one,
18 you know, and for his wellbeing and not wanting media
19 and people coming to the house and asking me questions
20 in front of him because he didn't know anything that was
21 going on.
- 22 Q. And had there been times that the media had come to your

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1 door?

2 A. The door had chapped a good few times.

3 Q. Did you answer it?

4 A. No.

5 Q. Did you look out to see who had been at the door?

6 A. Yes, I looked out the window but other than that,
7 I wouldn't -- I never answered it.

8 Q. Can you say who it was that had been coming to your
9 door?

10 A. I couldn't tell you.

11 Q. And you mentioned cars sitting outside as well?

12 A. Yes.

13 Q. Do you know who was sitting in the cars?

14 A. No.

15 Q. Did you form a view as to who was likely to be sitting
16 in the cars?

17 A. No, I just ignored and walked the other way.

18 Q. And you said in your evidence you got to the point where
19 you thought enough is enough?

20 A. Correct.

21 Q. Was it at that point that you made contact with the PIRC
22 to make them aware that all of this was going on?

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1 A. Yes.

2 Q. Okay. And did you give a statement to them about what
3 had been going on?

4 A. I think so. I couldn't be sure.

5 Q. Bear with me a second, please.

6 (Pause).

7 Just one final thing, Ms Wyse. Was your bedroom
8 window open or closed throughout this incident?

9 A. Closed.

10 Q. Was it closed the whole time? Did you open it at any
11 point?

12 A. No, it was closed.

13 MS THOMSON: I have nothing further.

14 LORD BRACADALE: Thank you.

15 Are there any Rule 9 applications for this witness?
16 Ms Mitchell and -- nobody else.

17 Right, Ms Wyse, I wonder if you could go back to the
18 witness room just for a little while, while I hear some
19 legal submissions.

20 A. Okay.

21 (Pause).

22 LORD BRACADALE: Yes, Ms Mitchell.

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1 Application by MS MITCHELL

2 MS MITCHELL: Just two matters, briefly, my Lord.

3 The first is in a PIRC statement, PIRC 43, given by
4 Ashley Wyse on 5 May, that being two days after the
5 incident. At page 4 of 6 on the third paragraph from
6 the bottom she indicates:

7 "In my mind I thought they were being really rough
8 with this guy. I did not know what happened before.
9 I mean, it was the way they were pouncing on the guy.
10 I felt that they were very close to him, that he had no
11 space."

12 And I was wondering whether or not she might add to
13 her recollection, if she has any, of what she means by
14 those phrases.

15 The next issue I would like to raise is in relation
16 to one of the last points touched upon which was her
17 experience of receiving a letter through her door asking
18 about whether or not the family of Sheku Bayoh could
19 speak to her and to ascertain whether or not she
20 understood that they may have been going to other houses
21 in the area as well and may have spoken to other people
22 and the Inquiry will recall of course that evidence has

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1 already been heard that family members did go and speak
2 to other people and were asked various things about it
3 as well.

4 And finally, a question as to whether or not she was
5 ever contacted when she was speaking about all the
6 people that were contacting her, was she ever contacted
7 by John Sallens, or was there a card left by him asking
8 to get in contact.

9 Ruling

10 LORD BRACADALE: Yes. Very well, I shall allow you to ask
11 these questions so if we could perhaps rearrange the
12 seating please.

13 (Pause)

14 MS ASHLEY WYSE (continued)

15 Ms Wyse, you're going to be asked some questions by
16 Ms Mitchell QC who is at the end of the table now and
17 she represents the Bayoh family; do you understand?

18 Yes, Ms Mitchell.

19 A. Okay.

20 Questions from MS MITCHELL

21 MS MITCHELL: I would like to ask you about something that
22 you said in one of your statements and I will have it

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1 brought up. This is a statement which was given by you
2 on 5 May 2015, so that was just two days after the
3 event. We're looking at page 4 of 6 and the third last
4 paragraph there. Do you see the paragraph that starts,
5 the short paragraph, just three lines that starts "In my
6 mind"?

7 A. Yes.

8 Q. Could you read that for us?

9 A. "In my mind I thought they were being really rough with
10 this guy. I did not know what had happened before this.
11 I mean it was the way they were pouncing on the guy.
12 I felt that they were very close to him and he had no
13 space."

14 Q. Now, do you remember saying that at the time?

15 A. I can't remember that now.

16 Q. No. Do you remember that feeling that you had that they
17 were being rough with this guy? Do you remember
18 thinking that?

19 A. I can't -- I can't remember, sorry.

20 Q. No. It said:

21 "I mean, it was the way they were pouncing on the
22 guy."

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1 Can you help us in any way with what you might have
2 meant there?

3 A. I think what I meant was I don't know how you would
4 restrain somebody so if -- you know, maybe they were
5 having to be a little bit more straight to the point to
6 do what they needed to do to restrain.

7 Q. What do you mean, if you can help the Inquiry with what
8 do you mean by straight to the point?

9 A. Just if he wasn't doing what the police officer was
10 asking them to do.

11 Q. If they weren't doing what the police officers asked
12 them to do then what?

13 A. Well, as I have said, I don't know how you restrain
14 someone.

15 Q. Yes.

16 A. So if the police officers were being more rough -- like
17 rougher, if that's what I have said, to restrain
18 someone, I don't know how you would do that, so I can't
19 answer your question any more.

20 Q. Okay. You also said:

21 "I felt that they were very close to him and that he
22 had no space."

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1 Can you help us with what you meant when you said
2 that?

3 A. Just what I have said before, the police officers being
4 around him, you know ... that's what I have said.

5 Q. Okay. Can we move on to another issue now and at the
6 end of your evidence you were speaking to my learned
7 friend about a leaflet coming through the door.

8 A. Yes.

9 Q. And there was some handwriting on it --

10 A. Yes.

11 Q. -- asking about footage. Now, were you aware that the
12 family might have been going to other houses nearby you?

13 A. I don't know.

14 Q. No? Do you know Kevin Nelson?

15 A. Yes.

16 Q. Did you ever speak to Kevin Nelson at all about anyone
17 approaching you?

18 A. Not really.

19 Q. When you say "not really" are --

20 A. No.

21 Q. No, okay.

22 The final issue I would like to ask you about was

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1 you talked about various people coming to your door and
2 you said that you were contacted by the media. Were you
3 ever contacted by someone called John Sallens?

4 A. I can't remember.

5 Q. Okay. Does that name ring a bell with you at all?

6 A. Not really.

7 Q. Did anybody ever leave a card asking you to call them
8 back?

9 A. There was cards and leaflets that got put through the
10 door, but I just used to pick them up and put them in
11 the bin.

12 Q. Okay, and did the cards or leaflets relate to the
13 incident?

14 A. Yes.

15 Q. And did any of the cards or leaflets ask you to call
16 back?

17 A. I can't remember what was on them.

18 Q. But you just disposed of them in any event?

19 A. Yes.

20 Q. Okay. No further questions.

21 LORD BRACADALE: Ms Wyse, thank you very much for coming to
22 give evidence to the Inquiry. We're about to stop for

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