

Crown Office and Procurator Fiscal Service

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Martin Graves
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Your ref:

Our ref: CA15000454

24 January 2018

Dear Mr Graves

INVESTIGATION OF THE DEATH OF SHEKU BAYOH

I refer to the above and to recent email correspondence and telephone calls with my colleague, Alasdair MacLeod.

The Crown Office and Procurator Fiscal Service (COPFS) is currently investigating the circumstances surrounding the death of Mr Bayoh which occurred on the morning of Sunday, 3rd May 2015 shortly after he had been apprehended and restrained by officers of the Police Service of Scotland.

Evidence suggests that, during the restraint of Mr Bayoh, he lost consciousness, shortly after which he went into respiratory and then cardiac arrest. After a period of attempted resuscitation he was pronounced dead at hospital at 09:04 having been conveyed there by ambulance.

The pathologists who conducted the post-mortem concluded that:

"Taking everything into consideration, death here was sudden in nature. In summary, there was no evidence of gross or histological natural disease that would account for death. Toxicology revealed MDMA and Alpha-PVP and these drugs could potentially have caused sudden death at any time due to fatal cardiac arrhythmia. That said, it is recognised that restraint in itself can be a cause or contributing factor in some deaths and given the circumstances in that this man was restrained at the time of his respiratory arrest and post mortem examination showed petechial haemorrhages that may represent a degree of asphyxia, it cannot be completely excluded that restraint also had a role to play in death here. Overall it is not possible to be sure what has been the most significant factor in death here and as such the cause of death is best regarded as being: **"Sudden death in a man intoxicated by MDMA (Ecstasy) and Alpha-PVP, whilst being restrained"**.

Considerable investigations were undertaken by PIRC and COPFS in relation to the mechanism of death. I enclose a copy of an extract of the overview and opinions

contained in report by Dr William Lawler, who has carried out a review of all the expert medical and toxicological reports obtained.

Given your expertise the Crown wish to instruct you to prepare a report, commenting on the actions of police from the point of engagement with Mr Bayoh and particularly providing opinion on whether the method of engagement with and restraint of the deceased by officers was reasonable and justifiable, taking into account the requirement for their use of force to be necessary, accountable, proportionate, legal and ethical. In general, in providing your opinion please comment on whether the officers concerned seem to have followed their OST training. We would ask that you consider all of the materials supplied to you in reaching your opinion.

I should mention that we may ask for a supplementary report from you at a later stage about the efficacy of the police OST training.

I have enclosed a list of materials for you to consider in your deliberations. These are explained as follows:

Training materials

Copies of the following productions:

- PRO 329 PSOS Use of Force SOP (version 1.03)
- PRO 389 OST SCOPE Record of PC Nicole Short
- PRO 391 OST SCOPE record of PC Kayleigh Good
- PRO 392 OST SCOPE record of PC Ashley Tomlinson
- PRO 393 OST SCOPE record of PC Daniel Gibson
- PRO 394 OST SCOPE record of PC Alan Smith
- PRO 395 OST SCOPE record of PC Craig Walker
- PRO 396 OST SCOPE record of PC Alan Paton
- PRO 432 OST SCOPE record of PC James McDonough
- PRO 528 Fife Constabulary Use of Force SOP
- PRO 530 PAVA guidance
- PRO 531 PSOS Use of Force SOP (duplicate of PRO 329?)
- PRO 532 PSOS General Risk Assessment – CS spray (version 2)
- PRO 533 PSOS Memo 001/13 – PIRC – Operational discharge of CS spray
- PRO 534 PSOS Memo 058/13– discharge of CS spray (amended procedures)
- PRO 535 PSOS Memo 112/14 re PAVA
- PRO 547 Module 1 Officer Safety Theory
- PRO 548 Module 2 Health and Safety
- PRO 549 Module 3 Tactical Report Writing
- PRO 675 PSOS Probationer Officer Safety Course training manual (Version 2)
[Scanned in two separate sections Modules 1 -3, 4 -9]
- PRO 676 OST Record of Training – Annual Requalification Course
- PRO 677 OST refresher Checklist dated 1 December 2013
- PRO 678 SPELS Training package

The following witness statements:

- [REDACTED]
- David Waterston
- James Young
- Ross Crawford

Statements of the following witnesses who describe events in the hours leading up to police engagement.

- Kadi Johnson (Bayoh's sister) (Sat 2nd May)
- Zahid Saeed (in the company of deceased in early hours Sunday 3 May)
- Martyn Dick, Kirsty MacLeod (in the company of deceased in early hours Sunday 3 May)
- Henry Pratt (Arran Crescent),
- Naomi Rhodes, Andrew Rhodes, (Arran Cresc)
- Tegan Morgan; Amy Hutchison(Arran Cresc)
- Alan Galloway (Arran Crescent)
- Neil Morgan (Arran Crescent)

- Barbara Oliphant; Lisa Bell, Margaret Gray (Hendry Road)
- David Grey; Geoff Levy (Hayfield Rd?)
- Charles Greenhill (Hayfield Road)
- Susan Pearson (with Alan Pearson in car)
- Pauline Waddell, Diane Howie; Carol McCormick - in car Hendry Road)
- Tracey Clive ([REDACTED] - Hayfield Road)
- Andrew O'Connor; Brandon Munro, (in a [REDACTED])

- Simon Rowe (call 1 police at 07:09:43)
- Robson Kolberg (call 2 to police at 07:10:46)
- Joyce Joyce (call 3 to police at 07:07:10:58)
- Harry Kolberg (call 4 to police at 07:15:29)
- Alan Pearson (call 5 to police at 07:15:30)
- Linda Limbert (call 6 to police at 07:16:33)

The statements listed above are provided for background information only and may assist you in understanding the demeanour of Mr Bayoh earlier in the morning of 3 May 2015. However, the police officers under investigation would not have had this information to hand at the time they engaged with the deceased.

Composite disc

The Forensic Services section of SPA have produced at our request a composite disc of various pieces of electronically recorded information. This disc contains the following, all of which can be accessed from the main menu:

1. A **Timeline** with maps providing a chronology and the locations of the early morning events described by the above witnesses up to 07:19:00 hours on 3 May 2015. This also includes a separate link to CCTV footage from Gallagher's pub; to Robson Kolberg's mobile phone footage; to a magnified clip of Gallagher's pub CCTV from 07:04:29 (real time 07:15:27). [It is thought that the deceased is the figure with a white top on which reaches the roundabout just as a car passes, thought to be that of Linda witness Limbert]. The timeline also

includes maps showing positions of witnesses, civilian vehicles and police vehicles

2. A **map** showing the significant locations
3. Audio Recordings of **999 calls** relating to the deceased. The first 6 are made by witnesses (as indicated above). The 7th call was made at 08:36 hours by the deceased's girlfriend. A written synopsis of the content of these recordings is provided for your assistance separately.
4. 40 recorded tracks of **airwave recordings**. Separately a written synopsis of the content and time of these messages is provided for your assistance. The timing of the airwave messages is given in GMT so the time given is an hour out.
5. Copy of **Pro 185** - photograph of the knife where found before being seized by DC Connell.
6. **Photographs** of the locus
7. **360** panorama views of the locus from various locations on Hayfield Road
8. Still photographs taken from snapchat 2 and snapchat 3 by witness Ashley Wyse, used for **identification** purposes
9. **CCTV timeline**. This contains synchronised portions of the various recordings:
 - a. The dashcam provided by witnesses Kolberg. The time recorded is an hour ahead and starts at 08:10:25 but the recording has been synchronised with other footage. At 08:10:47 the now deceased can be seen walking towards the car, near to a pedestrian crossing. This provides a view of his demeanour at that time and of his physique. He is again seen in the distance at 08:15:07 - 08:15:29 crossing Hayfield Road as vehicles turn around
 - b. CCTV footage from Gallagher's pub facing Hayfield Road at the roundabout. The time shown on the recorded footage is 10 minutes and 52 seconds slow. The footage starts at 06:58:57 but again, has been synchronised with other available footage and with airwave recordings.
 - c. Airwave recordings, synchronised with the CCTV and mobile phone footages.

[Please note that there may be a margin of error of between 8 and 10 seconds in the synchronisation of the airwave recordings with the video footage. PC Paton, one of the first two officers on the scene reports that they are on Hayfield Road about 8-10 seconds before their vehicle can actually be seen entering Hayfield Road in the CCTV footage. Also the airwave message " officer down" may relate to PC Short, in which case it seems to be premature on the airwave, although an alternative explanation is that the message relates to his own incapacity as a result of blowback from the CS spray he deployed.]

A written synopsis of all messages recorded on the airwave channel is included in this package separately for information.
 - d. A number of 'Snapchat' clips taken by witness Ashley Wyse, inserted to synchronise with the other recordings.

Civilian witnesses who speak to their observations of police engagement with the deceased on Hayfield Road from 07:20 onwards. Their statements and precognitions are enclosed

- Kevin Nelson.
This witness viewed events firstly from his ground floor window and then from his garden gate. A figure can be seen on the Gallagher pub CCTV to approach the gate
- Ashley Wyse
- Sean Mullen
- Danny Robinson
- Akhtar Ali
- Christopher Fenton
- Abdelouhab Guessom

Statements of the police officers who attended the scene during the period of engagement and restraint. The witness statements of the police officers were provided by them, some after a 4 week delay. These are as undernoted:

Police vehicle 1

Craig Walker
Alan Paton

Police Vehicle 2

Nicole Short
Ashley Tomlinson

Police vehicle 3

Alan Smith
Kayleigh Good

Police Vehicle 4

Daniel Gibson
James McDonough

Police vehicle 5

PS Scott Maxwell

Police vehicle 6

DS Samantha Davidson
Derek Connel

Police Vehicle 7

DI Colin Robson

Initial Interaction with Mr Bayoh

You will note from the airwave transmissions that there were two messages provided to the police officers before they arrived at the locus describing Mr Bayoh and his conduct:

- At 07:16:31 of an ongoing disturbance involving an African male armed with a knife chasing someone. The male in question was 'big with muscles about six foot tall wearing a white t-shirt and dark coloured jeans...'
- At 07:17:03 '..male armed with a knife, male in possession of a large knife, a black male wearing white t-shirt and jacket walking along the street with a large knife in his right hand about a nine inch blade'

[In this context you should note that PC Paton states that additional information was provided by airwave messages about the conduct of the black male yet there is no evidence to show that he had any further information at that time by way of calls or point to point communications.]

The first two officers to arrive at the scene and engage with Mr Bayoh were PC Craig Walker and PC Alan Paton. In their statements their position is that neither saw a knife in possession of the now deceased. There is evidence that PC Paton presented his CS spray, issued an instruction to the now deceased to get down, which was ignored. PC Paton then deployed CS spray. Again there is evidence that PC Walker may have deployed his PAVA spray without issuing a verbal warning. The witness Nelson also speaks to seeing a "tall and cuddly" officer (Walker or Paton?) presenting his baton and using it to gesture/point to the ground.

Questions about PCs Walker and Paton initial engagement

Given the information available to those first two police officers, please provide your comment on the profile of the now deceased, the initial risk assessment by those police officers, on their initial engagement with the deceased and on their use of force.

What, if anything, could or should the officers have done differently?

Could you please address in your opinion the question of whether they ought to have been at that time alert to the possibility that Mr Bayoh was suffering from drug induced psychosis , given the information to hand and his response to their initial engagement with him. If so, what if anything, could they or should they have done differently in light of this, in accordance with their training?

Initial engagement by PCs Short and Tomlinson

Constables Short and Tomlinson were the next two police officers on the scene. Neither of these saw a knife in possession of the now deceased.(from their statements) There is varied evidence from the officers themselves and from civilian eye witnesses Nelson, Mullen, Robinson that suggests that PC Short produced her CS spray and baton, issued verbal commands and that she deployed her CS spray; and that PC Tomlinson deployed his full canister of CS spray and then produced his baton, holding that high.

Questions about PCs Short and Tomlinson's initial engagement

Given the information available to those next two police officers, please provide your comment on the profile of the now deceased, the initial risk assessment by those police officers, on their initial engagement with the now deceased and on their use of force. Please address the actions of each officer individually and of their actions collectively with other officers present.

What, if anything, could or should the officers have done differently?

Could you please address the question of whether at that time they ought to have been alert to the possibility that Mr Bayoh was suffering from drug induced psychosis , given the information to hand and their initial engagement with him.

If so what, if anything they could or should have done differently in light of this, in accordance with their training?

Sheku Bayoh is taken to the ground

There is evidence from those first four police officers and from civilian eye witnesses, of a violent response by the now deceased, which culminated in an assault on PC Short. There are varying accounts of the nature of the assault, but there is corroborated evidence from police and civilian accounts that PC Short was punched to the head (possibly repeatedly, but at least once) and as a result she fell to the ground. There is some evidence (Tomlinson and Walker) that when on the ground the now deceased "stomped on her back"; or tried to kick her when she was on the ground but the kick did not connect (Mullen precognition). One eye witness (Robinson) described the female officer being lifted off her feet and slammed to the ground. Following this assault PC Tomlinson himself states that he struck the now deceased on the head and arms two or three times each. PC Walker states that he 'shoulder barged' (other witness describe him wrestling) the now deceased to the ground. The composite CCTV footage shows blurry figures from a distance but may be of some assistance. Airwave recordings just before this time provide some indication of an "officer down". (bearing in mind the potential for some margin of error in relation to synchronisation of the airwave messages)

Question about the officer response by PCs Walker and Tomlinson

Please comment on the profile of the now deceased at this point and on the police officer response/use of force from PCs Walker and Tomlinson.

Given the information available to Constables Walker and Tomlinson, please comment on the profile of the now deceased, and on their officer response and use of force.

What, if anything, could or should the officers have done differently?

Restraint on the ground

You will notice that on the composite CCTV timeline a stop-clock appears on the left of the screen at the moment when the now deceased is taken to the ground and stops at 4 minutes and 2 seconds, when PC Smith contacted Force control to ask for an ambulance for the now deceased. For the first minute of restraint it can be ascertained from the footage that Walker and Tomlinson are first engaged in restraint. They are then joined by Paton (figure seen to approach at 15 seconds into restraint). At 23 seconds vehicle 3 (in which Smith and Good arrive) draws up and at 29 seconds Smith provides an update to Force control. Vehicle 4 arrives at 44 seconds with PCs Gibson and McDonough.

The snapchat footage taken by witness Wyse (inserted at 1 minute, 1 second into the restraint) contains a brief glimpse of the methods of restraint being used at that time. Six officers are in various positions on/ around the now deceased. From that snapchat footage it appears Mr Bayoh was lying on the southern pavement on Hayfield Road,

surrounded by five police officers namely PC Smith, PC Tomlinson, PC Paton, PC Gibson and PC McDonough. A sixth officer, believed to be PC Walker, appears to be lying lengthwise on top of or beside Mr Bayoh, his high visibility clothing visible momentarily. Towards the end of the clip a further officer PC Good can be seen making her way to assist her colleagues having checked on the welfare of PC Short.

During that (4 minutes 2 seconds) period the now deceased was restrained physically by various methods described by the officers and witnesses, was handcuffed to the front and a set of two fast straps were applied to his legs.

The accounts from each officer as to what he/she was doing during this time are somewhat inconsistent. PS Maxwell, DS Davidson, DC Connel and DI Robson can all speak to their observations. They did not take part in the restraint.

Aside from these police accounts, the eye witnesses Mullen, Robinson, Nelson, Wyse, Ali and Fenton assist. The account of witness Guessom is also provided although it is not certain at what point in the chronology of events he viewed the incident.

To help place the evidence of these witnesses in context:

- Mullen and Robinson were in the car seen on Hayfield Road (position 1) as the incident began; at position 2 on the roundabout between the start of the restraint until 23 seconds had elapsed of the restraint period; moving to position 3 on Hendry Road facing away from the incident from 26 seconds until 59 seconds had elapsed from start of restraint; and returning to position 4 at the opposite side of Hendry Road from between 2 minutes 22 seconds and 3 minutes 9 seconds into the restraint period
- Witness Nelson arrived at his gate at 00:15 seconds and remained there until 2 minutes 39 seconds into the restraint (figure in grey on CCTV and also visible in snapchat) (for 2 minutes 24 seconds)
- Witness Ali's van came to a halt at the roundabout 30 seconds after the restraint and remained until 47 seconds elapsed (for 17 seconds).
- PC Walker provided an airwave message 1 minute and 14 seconds in to the restraint : 'Update male in cuffs still struggling'
- PS Maxwell arrived 1 minute 21 seconds after restraint started
- Fenton's car is thought to be the dark car which turned right at the roundabout from Hendry Road into Hayfield Road between 1 minutes 33 seconds and 1 minute 46 seconds into the restraint period (for 13 seconds)
- DS Davidson and DC Connell arrived in an unmarked car 2 minutes after restraint started (and, if the airwave recordings are correctly synchronised, Davidson seems to have provided an almost immediate update to control by radio)
- DI Robson arrived in a dark car 2 minutes 51 seconds after restraint started.

Questions about the period of restraint on the ground

Please provide comment on the methods of restraint used, on the use of force applied, so far as you can ascertain from the information and on the length time of the restraint period.

Please provide a commentary on the actions of each of the officers individually and all collectively during the restraint period.

What is your opinion about the methods of restraint used by the officers, particularly those who are identified as using their body position and/or weight to hold the now deceased on the ground, bearing in mind police training in relation to the potential for positional asphyxia? Please also comment also on PC Paton's use of his baton in the restraint.

Can you assess, from all the evidence available, the point at which it can be said that control of Mr Bayoh was gained by those restraining him?

Please assess and comment on the now deceased's position throughout this period of restraint. Do you consider that he could or should have been moved into a different position at an earlier time?

Could you please address the question of whether these six or seven police officers ought to have been alert to the possibility that Mr Bayoh was suffering from drug induced psychosis, given the information to hand and their individual engagement with him during this period of restraint; and what, if anything they could or should have done differently in light of this, in accordance with their training.

Following PC Smith's message to control seeking an ambulance, the witnesses describe how attempts were made to ascertain if Mr Bayoh was breathing and when it was obvious that he had stopped breathing, CPR was commenced.

Do you have any comment about the way the now deceased's condition was monitored until CPR commenced?

I would be obliged if you could respond to this formal request to prepare a report on your opinion as an expert about the matters raised.

Please do not hesitate to contact me if you have any difficulty in accessing any of the materials enclosed.

You indicated during initial discussions that you hoped to provide a report by mid February 2018. Please let me know if you anticipate any difficulty with this timescale on receipt of these materials.

Yours sincerely



Senior Procurator Fiscal Depute

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Criminal Allegations Against Police Division



Martin Graves

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Your ref:
Our ref: CA15000454

22 February 2018

Dear Mr Graves

INVESTIGATION INTO THE DEATH OF SHEKU BAYOH

I refer to my letter of 24th January 2018 in connection with the above matter. In that letter various training materials were listed for your perusal.

Since then I have received further relevant information about the nature and content of training delivered to the subject officers and I now write to provide you with these further materials as undernoted.

All the trainers interviewed by PIRC were clear that the (Pro 329) Use of Force SOPS were not used in training.

The content of training, whether to Probationers or in recertification or refresher courses, was based on the content of the training manual version 2.00 (Pro 675).


A presentation PRO 859 - Power point (historic) has been provided. It has been clarified that this presentation would have been delivered during the Probationer course and during the OST instructor course (taken by PC Alan Smith). It seems that the presentation would have been delivered to all of the officers certainly from 2004 (when witness Agnew started in his role). The only subject officer who joined the force before 2004 was PC Paton, who joined in 2001.

However the OS trainers who delivered refresher or recertification courses to these subject officers all spoke about including the issues of positional asphyxia and excited delirium within the refresher courses. The inclusion of such topics was included in the OST recertification checklists in use at that time (either Pro 676 or 677).

I hope that these additional materials are of some assistance to you in understanding the content of training provided to the officers concerned.

Please do not hesitate to contact me if you require any further information.

Yours faithfully


Alasdair McLeod
SPFD
Criminal Allegations Against Police Division

UNDERNOTE:

Additional Production:

PRO 859 Police Scotland Safety Training Power-point (historic)

Additional Statements:

James Young 11/12/17 and 12/01/18

Ross Crawford 01/02/18

Richard Wood 24/01/18

[Note that this contains an error about PC Smith's Instructor course. This took place between 2 and 13 December 2013 and not in 2015 as Wood states. PC Agnew's statement confirms correct dates which accord with his SCOPE record]

Alisdair Shaw 05/02/18

Graham Patience 07/02/18

David Agnew 06/02/18

Precognition of David Agnew 22/02/18

Crown Office and Procurator Fiscal Service

Procurator Fiscal's Office, Cameronian House, 3/5 Alameda Street
Hamilton ML3 0HG



CRIMINAL ALLEGATIONS AGAINST POLICE DIVISION

Martin Graves
[REDACTED]

Enquiries:
0300 020 3000
[REDACTED]

Your ref:
Our ref:
Date: 27/2/18

Dear Mr Graves,

RE DEATH OF SHEKU BAYOH

I refer to recent correspondence in connection with the above.

I enclose for your attention a pen drive containing a multimedia file of body positions. These represent possible positions of the body of the now deceased Mr Bayoh during the time after he was taken to the ground by the police and his subsequent restraint by them. The images on this disc are based on the description provided by the witnesses who observed the restraint in conjunction with the various accounts provided by the police officers themselves.

I would be grateful if you could review these images as part of the reporting process. In terms of timescale, can you please provide a report by Monday 19th March 2018?

I look forward to hearing from you.

Yours sincerely
[REDACTED]

Alasdair MacLeod
Criminal Allegations Against Police Division