

Record of Investigation Findings Volume 1

Death in Police Custody
Sheku Bayoh
3 May 2015

Report
for
Crown Office and Procurator Fiscal Service

OFFICIAL - SENSITIVE

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VOLUME 1

INVESTIGATION OF THE DEATH OF SHEKU BAYOH

VOLUME 2

INVESTIGATION OF POLICE SCOTLAND'S ACTIONS POST INCIDENT

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ADDITIONAL INVESTIGATION

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Terms of Reference

Volume 1: Terms of Reference 1 and 2

1. On 3 May 2015, the Police Investigations & Review Commissioner (PIRC) was instructed by the Lord Advocate, in terms of Section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006 to investigate the interaction between the police and the deceased at the time of his arrest and the events thereafter.

2. On 5 May 2015, those terms of reference were expanded to include investigation of:

- (1) *The circumstances leading up to the incident, namely Mr Bayoh's movements late on Saturday 2 May and during the early hours of Sunday 3 May, prior to the contact with police, including his attendance at a house at Craigmount, Kirkcaldy, and events following his attendance there.*
- (2) *The incident in which the police became involved with Mr Bayoh shortly after 7am on 3 May.*

Volume 2: Terms of Reference 3 to 5

3. On 12 June 2015, following concerns expressed by the deceased's family in relation to the events that occurred after the initial involvement of police officers, the PIRC was further directed by the Lord Advocate to also investigate concerns expressed by the family, namely:

- (3) *Allegations by the family that they were provided with misleading and erroneous information concerning the death of Mr Bayoh to family members and a concern as to why they were provided with that information.*
- (4) *Concerns that the initial police investigations and attempts to secure evidence were not thorough meaning that crucial evidence was lost to the inquiry.*
- (5) *There was inappropriate conferring between police officers.*

Volume 3: Terms of Reference 6 and 7

4. On 2 July 2015, the PIRC was further directed by the Lord Advocate:

- (6) *To investigate the allegation of criminal conduct made by Zahid Saeed*
- (7) *To:*
 - (a) *Investigate issues of race and conduct;*

- (b) *Investigate allegations of potential contraventions of The Data Protection Act 1998;*
- (c) *Investigate miscellaneous other matters.*

This report is presented in four volumes:

- VOLUME ONE THE INVESTIGATION INTO THE DEATH OF SHEKU BAYOH (TERMS OF REFERENCE 1 AND 2);
- VOLUME TWO THE INVESTIGATION OF POLICE SCOTLAND'S ACTIONS POST INCIDENT (TERMS OF REFERENCE 3 TO 5); AND
- VOLUME THREE ADDITIONAL INVESTIGATION INSTRUCTED BY COPFS (TERMS OF REFERENCE 6 AND 7).
- VOLUME FOUR APPENDICES

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Volume 1

Investigation into the death of Sheku Bayoh

(Terms of Reference 1 and 2)

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Terms of Reference 1 and 2

1. On 3 May 2015, the Police Investigations & Review Commissioner (PIRC) was instructed by the Lord Advocate, in terms of Section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006 to investigate the interaction between the police and the deceased at the time of his arrest and the events thereafter.
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 - (2) The incident in which the police became involved with Mr Bayoh shortly after 7am on 3 May.

1. Executive Summary

At 0904 hours on Sunday 3 May 2015, Sheku Ahmed Tejan Bayoh, aged 31, (the deceased) of Co Arran Crescent, Kirkcaldy, died in the Accident and Emergency (A&E) Department of the Victoria Hospital, Kirkcaldy.

About 0720 hours that day, the deceased was arrested by officers of Police Scotland in Hayfield Road, Kirkcaldy. Officers had been called to that location after Police Scotland received a number of 999 and 101 phone calls from members of the public who reported they had seen the deceased walking along Hayfield Road armed with a knife, kicking out at and attempting to strike passing vehicles.

Four uniformed police officers (three males, one female) initially attended the incident, followed two to three minutes later by five more uniformed officers and two CID officers. Prior to the arrival of the police officers the deceased appears to have dropped the knife (which was subsequently recovered) onto a grass verge near to where he was arrested.

The first two male police officers, PCs Walker and Paton, to arrive in Hayfield Road confronted the deceased who walked towards them with his hands held open at his side. They did not see the deceased holding a knife. The officers state that they instructed the deceased to stay where he was and describe him as appearing to be determined on confrontation and highly agitated. They state that they again instructed the deceased to stay where he was and, when he did not comply, the officers discharged CS and PAVA spray towards him. They state that the sprays hit the deceased on the upper torso and face but appeared to have no effect on him. According to the officers, the deceased wiped the liquid from his face, laughed and moved towards the officers challenging them. Some of the spray blew back into the officers' faces, temporarily incapacitating them.

The second pair of officers to arrive, PCs Short and Tomlinson, state that they moved to intercept the deceased and that PC Tomlinson discharged his CS spray at the deceased striking him on the face and upper torso. PC Short states that, fearing for her safety, she turned to flee from the deceased who lunged towards her and punched her on the back of her head, causing her to fall to the ground. PCs Tomlinson and Walker and witnesses Robinson and Nelson state that they saw the deceased stamp on PC Short's back. The deceased was then struck repeatedly with a police baton to his head and body by PC Tomlinson.

At this juncture PC Walker states that he had recovered sufficiently from the effects of CS / PAVA to shoulder charge the deceased knocking him to the ground where he struggled to control him. He was assisted by PCs Tomlinson and Paton and by PCs Smith, McDonough and Gibson who had by this point arrived at the scene. According to the officers the deceased was initially restrained face down in the prone position by PCs Walker, Tomlinson, Paton and Smith. PCs Walker and Paton state that they attempted to handcuff the deceased to the rear, PC Walker struggling with the deceased's arm while PC Paton lay across his back attempting to pin him to the ground. They were initially unsuccessful in applying handcuffs due to the deceased's violent struggles. PC Tomlinson and Smith state that they attempted to restrain the deceased's legs and prevent him kicking out, PC Tomlinson lying across the deceased's lower back and upper legs. The deceased was subsequently handcuffed to the front. PC McDonough and Gibson state that they joined their colleagues and placed leg restraints on the deceased. As they were completing this action the deceased is described as going limp.

It quickly became apparent to the officers that the deceased had stopped breathing and they state that they immediately placed him in the recovery position and administered first aid in the form of cardiopulmonary resuscitation (CPR) and attempted mouth to mouth resuscitation. An ambulance was summoned which conveyed the deceased to the nearby Victoria Hospital, Kirkcaldy. Hospital staff continued with medical intervention but the deceased died in the A&E department. Life was pronounced extinct at 0904 hours.

The total time from the initial confrontation with the officers to the deceased being restrained on the ground and requiring CPR was approximately four minutes.

Following post mortem examination, including toxicology analysis, the cause of death was given as:

'Sudden death in a man intoxicated by MDMA (Ecstasy) and Alpha-PVP, whilst being restrained'.

Toxicological analysis revealed Alpha-PVP, which is a class B controlled drug. It is little known in the UK. Research from the USA provides that several deaths have occurred when persons who have taken Alpha-PVP have come into contact with and been restrained by police. The drug is described as having significant side effects. It can cause heart-related problems, agitation, severe aggression, intense hallucinations, and psychosis.

In the hours prior to his confrontation with police the deceased had been in the company of friends at various locations in Kirkcaldy. Between 0405 hours and 0530 hours that day, Sunday 3 May 2015, at the home of witnesses Dick and MacLeod, his mood and personality are described as changing dramatically, with the deceased described as becoming paranoid and agitated. Witnesses Dick and MacLeod state that they suspected the deceased had taken Ecstasy which, they state, he took on a regular basis. About 0530 hours the deceased stormed from the house, later accusing those present of disrespecting him. About 0630 hours he was traced to his own home at [redacted] Arran Crescent, Kirkcaldy, by his friend, witness Saeed, who states that he was handed a bag containing a white coloured paste and three to ten tablets, which the deceased had concealed in his sock. Witness Saeed states that he became increasingly fearful of the deceased, left the house, and was followed into the garden by the deceased who attacked him in the garden and roadway outside [redacted] Arran Crescent, repeatedly punching him on the head and body. This assault was variously [redacted] seen or heard by witnesses [redacted], Andrew Rhodes, Naomi Rhodes, Tegan Morgan, Neil Morgan, Hutchieson, Alan Galloway and Eleanor Galloway. Witness Saeed fled and did not see the deceased again.

Thereafter it appears the deceased re-entered his home, took a large knife from the kitchen and walked into Arran Crescent, making his way to Hayfield Road. He was seen at various points enroute by witnesses Tegan Morgan, Amy Hutchieson, Alan Galloway, Eleanor Galloway, Neil Morgan, Susan Pearson, Alan Pearson, Harry Kolberg, Robson Kolberg, Simon Rowe, McCormick, Howie, Joyce, Grey and Limbert who all describe him as carrying a large knife. At Hayfield Road, the deceased attempted to strike moving vehicles with the knife, walking into the roadway and kicking out at vehicles. Emergency 999 and 101 calls were made to the police by witnesses Harry Kolberg, Rowe, Joyce, Alan Pearson and Limbert. Witness Harry Kolberg also took a video of the deceased on his 'dash cam' and mobile phone. The confrontation between the deceased and police is captured on poor quality CCTV from a local public house and, despite the fact that it has now been enhanced, detailed actions by any individual remains difficult to determine.

The officers involved in the arrest and restraint of the deceased returned to Kirkcaldy Police Office. At 1120 hours Police Scotland implemented post incident procedures (Volume 2 of this report examines this matter).

PC Short was examined at hospital for her injuries and then released returning to the office. Initial medical examination of PC Short revealed scrapes and bruises, with later diagnosis of other underlying injuries. [redacted]

The incident scene at Hayfield Road was cordoned by Police Scotland and later searched. The deceased's body was protected by officers from Police Scotland at the Victoria Hospital before being taken to Edinburgh City Morgue. The home of the deceased at [redacted] Arran Crescent, Kirkcaldy, the home of witnesses Dick and MacLeod at [redacted] Dick/MacLeod home address

and the home of witness Saeed at [Saeed home address] were secured by Police Scotland and later searched.

Background information on the deceased was sought from his family and friends. His family states that they were unaware of his drug misuse. Statements from witnesses Hume, Saeed, Dick and MacLeod, indicate a long-term pattern of steroid use linked to his body building activity and abuse of controlled drugs, particularly Ecstasy. Witness Hume who has knowledge of the drug scene in Fife, states that he is aware that drug dealers 'bulk out' cocaine and Ecstasy with Alpha-PVP in order to maximise profits. This witness describes being in the deceased's company a week before his death [redacted] with what he thought was crystallised Ecstasy [redacted]. Both swallowed the substance and witness Hume describes getting a strange feeling, which in his opinion did not feel like the effects of Ecstasy. He also describes the deceased acting out of character following taking the drug. The witness states that the deceased had more of the substance in his possession that night but considered that the deceased thought it was Ecstasy.

Expert medical opinion on the cause of death and the use of force and restraint by police was sought from:

1. Professor Jack Crane;
2. Dr Jason Payne-James;
3. Dr Anthony Bleetman;
4. Dr Elizabeth Soilleaux;
5. Dr John Parkes;
6. Dr Maurice Lipsedge;
7. Dr Steven Karch;
8. Professor Mary Sheppard.

Summary

The evidence suggests that in the hours prior to his death the deceased consumed an unknown amount of Ecstasy and Alpha-PVP, which caused him to act irrationally and violently. He assaulted his friend witness Saeed at the deceased's home at [redacted] Arran Crescent, Kirkcaldy. The deceased then took a knife from this house and walked the short distance to Hayfield Road, Kirkcaldy, where he was observed to strike out at passing vehicles. Police Scotland was contacted by several witnesses who reported seeing the deceased's actions.

Nine police officers attended at Hayfield Road, Kirkcaldy in response to the calls. On arrival the deceased confronted the officers, ignored their instructions to stay where he was or lie on the ground, and was sprayed with CS and PAVA. He assaulted an officer, was struck with a baton and punched, then forced to the ground where he struggled violently with the officers. After a period of approximately four minutes the deceased suffered respiratory failure then cardiac arrest. The officers summoned an ambulance which arrived about nine minutes later.

The deceased was conveyed by ambulance to the Victoria Hospital, Kirkcaldy, where, despite medical intervention, he died at 0904 hours that day (3 May 2015).

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2. Deceased's Background

2.1 Personal Background

Sheku Ahmed Tejan Bayoh was 31 years of age, having been born on 30 September 1983 in Freetown, Sierra Leone, West Africa. The deceased arrived in the UK in 1995 aged 12 years as an unaccompanied minor to escape the civil war in Sierra Leone, having been sent by his family to reside with relatives in London. In 2008, the deceased was granted indefinite leave to remain (ILR) in the UK. In 2009 he was granted a stay with no time limit. He applied for UK citizenship in July 2014, a process which was on-going at the time of his death.

The deceased was the only son of Sheku [REDACTED] Bayoh (deceased) and Haja [REDACTED] Bayoh. The deceased had three sisters, Kasa Bayoh, Kadijatu Bayoh or Johnson, known as Kadi, and Adama Bayoh or Jalloh. The deceased's father was a diplomat for the Sierra Leone Government. More details are unknown. The current home addresses and full personal details of all members of the deceased's family are unknown at present, with the exception of Kadijatu Johnson and her husband Adeymi Johnson who reside [REDACTED] and have provided statements.

The deceased resided at [REDACTED] Arran Crescent, Kirkcaldy, Fife with his partner of 30 months, witness Collette Eleanor Bell and their then 15 week old son, [REDACTED]. The deceased was employed at the Scottish Gas Call Centre in Edinburgh. He also had a [REDACTED] son from a previous relationship and maintained regular contact with this child.

The deceased was known to his friends and locally in the area he lived as 'Shek' or 'Chris'.

A statement has been obtained from the deceased's mother, witness Haja [REDACTED] Bayoh, in which she describes the birth of the deceased as being normal with no complications during pregnancy. The deceased was described as being a healthy child and his mother cannot recall him having any illness when he was a youth. It is her understanding that the deceased remained healthy throughout the course of his life and she is unaware of any history of a medical condition or illness in her family.

Witness Adeymi Johnson, is the husband of the deceased's sister Kadi and the appointed family spokesman. He stated that the only ailment that he is aware that the deceased suffered from was hay fever and that the whole family appeared to suffer from this condition.

The deceased's family state that he was a Muslim. His partner witness Collette Bell however states that she would not describe him as a strict Muslim.

PIRC appointed two dedicated Family Liaison Officers (FLOs), witnesses Investigators Alistair Lewis and John Clerkin, to liaise with the family and partner of the deceased.

Prod No.635 PIRC Family Liaison Log 1

Prod No.636 PIRC Family Liaison Log 2

Prod No.637 PIRC Family Liaison Log 3

outlines all aspects of family liaison undertaken by PIRC.

The family has been reticent about providing detailed information about the deceased's character, family, and lifestyle. Following the death of Sheku Bayoh the family engaged the services of Aamer Anwar & Co. Solicitors & Notaries to represent them, with Mr Anwar intimating that all communication with the family should be channelled through him.

2.2 Medical Background

The deceased was registered with witness [REDACTED] at [REDACTED]
[REDACTED]

Prod No.249 GP medical notes – Sheku Bayoh

are the deceased's medical notes which were recovered from the [REDACTED]
[REDACTED]. The notes provide that the deceased registered with this practice on 31 July 2002 and was last seen on 10 December 2014. The last entry in the medical notes records that the deceased was a light smoker, no red flags, goes to gym regularly, diet fine, alcohol intake in recommended sensible limits, seasonal rhinitis. He was prescribed a Beclometasone Aqueous nasal spray and Omeprazole Capsules (56 day course).

Examination of the medical notes identifies the following relevant entries:

- [REDACTED] In March 2011 he was referred to an Ear Nose and Throat (ENT) specialist for some audible testing [REDACTED]
[REDACTED]
- The deceased attended regularly with 'Hay Fever Symptoms' being prescribed nasal sprays.
- [REDACTED]
- In March 2011, the notes record that the deceased 'is generally fit, however he has used anabolic steroids in the last few years which I ([REDACTED]) have advised him to

stop today.'

- [REDACTED]
- In July 2013, the deceased was referred to a Respiratory Sleep Clinic with suspected 'Sleep Apnoea', following him attending at his GP as the result of unrefreshing sleep, snoring heavily and being told by his partner that he has had multiple episodes of apnoea per night. The deceased was examined at this clinic on 8 October 2013 where it was found he had a history of loud snoring with breathing pauses. A home visit was arranged to determine whether apnoea was occurring. On 7 November 2013, the deceased was removed from the Respiratory Sleep Clinic list as he failed to keep further appointments.

The medical records contain documentation dated 1997 referring to the deceased being a patient of [REDACTED], [REDACTED]. Enquiries with NHS England have established that this general practice has closed and that NHS England holds no records pertaining to the deceased.

The deceased's family supplied details of the family general practitioner from Sierra Leone who attended to the deceased before he left that country in 1995. PIRC contacted the Sierra Leone High Commission in London to assist in identifying and obtaining medical notes for the deceased during his time in Sierra Leone. No information has been forthcoming to date.

2.3 Steroid Use

Statements taken from witnesses Saeed, Hume, Dick and Macleod provide that the deceased maintained a regular fitness regime and attended the local Templehall gym in Kirkcaldy almost daily, working with weights. Witness Saeed, a close friend of the deceased, who was with him on the morning he died provided a statement to Police Scotland on 3 May 2015, which he refused to sign, in which he states:

*"I know he used to do steroids but I'm not sure if he still did them or even how he took them."
"He was well built with a strong muscly physique. I know that he did take steroids in the past. He told me this over a year ago. He said he was on it for 6 months on and 6 months off. I'm not sure why he did that. He told me the different ways to take 'juice'. I asked him what 'juice' was and he told me it was steroid".*

Witness Hume, a Harm Reduction Officer and another close friend of the deceased who trained at the same gym stated:

"I know that Sheku took steroids to build himself up and give himself a boost in the gym. He would undertake an 8-12 week cycle. That means 8-12 weeks on and then a similar time off it to let his body recover. On the 3rd May I have no idea if Sheku was on the cycle."

The deceased's partner, witness Bell, observed that in the period leading up to his death the deceased had not been attending the gym as regularly as normal. It appeared to her that the deceased was also more tired than normal.

On 3 May 2015, the deceased's dwelling house was secured by Police Scotland and searched on 4 May 2015. During the course of that search a number of items that appeared to link to strength training and performance enhancement were recovered. These items were submitted to the Scottish Police Authority (SPA) Forensic Services for examination. A summary of the findings is included at section 9.

A sample of urine obtained from the deceased during post mortem examination was forwarded by pathologists to Kings College, London where it was subjected to forensic examination by witness Dr Walker. The sample was found to contain anabolic steroids (nandrolone and metabolites), indicative of recent consumption. Full details of the findings are produced in:

Prod No.634 Final Report of Post Mortem.

2.4 Other Drug Use

Samples obtained from the deceased during the course of Post Mortem Examination were submitted to the Forensic School of Medicine, University of Glasgow. Examination revealed that the samples contained MDMA (Ecstasy), MDA (metabolised MDMA), and Alpha-PVP. Full details are produced in,

Prod No.634 Final Report of Post Mortem.

Witness Bell, partner of the deceased, states that she was aware that the deceased had previously smoked 'weed' (cannabis), but as far as she was concerned the deceased did not take controlled drugs. She further states, *"The only time I can think out of character is about 2 months ago. We had an argument because he couldn't control his temper. I asked him if he was on drugs or steroids but he said no. I know he used to take steroids and know they make you aggressive. He was just acting so out of character. He said he definitely hadn't."*

A number of witnesses have stated that they were aware that the deceased took controlled drugs. Witness Hume in a signed statement taken on 27 May 2015 said, *"I was aware that he did take recreational drugs. He worked and was holding down a family. As part of a night out I knew he took the odd Ecstasy tablet and MDMA in the crystallised form. I knew about 18 months ago Sheku did try an illegal high in a powder form. Sheku had a bad experience with it then and I don't know if he ever took it again. I can't remember the name of this illegal high."*

In a second signed statement provided to PIRC investigators, witness Hume states that he was in the company of the deceased on Saturday 25 April 2015 [REDACTED] with a substance [REDACTED] that he believed to be Ecstasy. He and the deceased both took

the substance. Witness Hume states that he experienced 'strange feelings' after taking the substance and he noted the deceased behaving 'out of character'. Witness Hume considered that the substance was not Ecstasy but did not know what it was. He also noted that the deceased had further quantities of this drug which appeared to be a crystalline substance wrapped in paper.

Witness MacLeod, who was in the company of the deceased in her home during the early hours of 3 May 2015 in a signed statement to PIRC states that, [REDACTED] she was not aware of the deceased taking any substances, although she thought from his behaviour that he had taken drugs. She states, "*He became paranoid and I thought that he had maybe taken drugs,* [REDACTED]

[REDACTED]

Witness Saeed states that, about 0630 hours on Sunday 3 May 2015, the deceased took a clear plastic money bag from inside one of his socks which appeared to contain a white coloured paste and a number of purple tablets. Witness Saeed states that he took the bag from the deceased, which he assumed to be drugs, and states that he later flushed the bag and contents down the toilet in his, witness Saeed's, home.

3. The Incident

3.1 Events Prior to Police Scotland's Involvement

3.1.1 Precursor events

About 0700 hours on Saturday 2 May 2015, the deceased left his home and went to his work at the Scottish Gas Call Centre in Edinburgh. During the course of that day the deceased called and sent a number of texts to his partner, witness Collette Bell. The deceased arrived home about 1630 hours and about 1700 hours the deceased and witness Collette Bell went shopping at a nearby store. Witness Collette Bell states that she was aware that the deceased had made arrangements to attend later that evening at his sister's home, witness Kadijatu Johnson, for a family gathering to celebrate his nieces' birthday. Witness Bell was also aware that following this birthday gathering, the deceased intended to go to a friend's house to watch a boxing match: the Mayweather vs. Pacquiao fight.

About 1750 hours witness Collette Bell states that she took the deceased in their car to his sister's home before travelling onward with their child to her mother's, witness Lorraine Bell, home in [REDACTED], where she planned to spend the night.

Witness Kadijatu Johnson states that, at the birthday party, the deceased appeared happy, engaging with everyone, playing with the children and helping to serve food. Witness Adeymi Johnson, husband of witness Kadijatu Johnson states, *"Throughout the evening Sheku was very joyous. He was engaging with everyone in the house, family, friends and children. Everyone was commenting on this. Normally Sheku is one for being in the kitchen and enjoying the company of the men and eating all the food."*

During the evening the deceased was joined at the family gathering by his friend, witness Saeed, who states that he can recall seeing the deceased with a glass in his hand but was unaware whether it contained alcohol.

About 2200 hours, the deceased and witness Saeed left and travelled in witness Saeed's white Seat Toledo motor vehicle to the Asda store in Kirkcaldy where the witness states they bought a bottle of vodka mixer drink. They then continued on to the deceased's home where they consumed the alcohol.

About 2230 hours the deceased sent a text to his ex-partner, witness Barcik, confirming arrangements for him to have access to his son at 1100 hours on Sunday 3 May 2015.

About 0100 hours on Sunday 3 May 2015, witness Saeed states that he left the deceased alone in his house and went elsewhere. Witness Saeed has refused to provide information regarding where he went or what he was doing.

Note: Witness Zahid Saeed appears to have a great distrust of the Police and authority and, whilst he provided a statement to Police Scotland immediately following the death of Sheku

Bayoh, he was extremely reluctant to engage with PIRC investigators. A second signed statement was eventually taken from him on 8 May 2015 after a number of attempts. [REDACTED]

Witness Saeed states he returned to the deceased's home about 0300 hours and that he and the deceased remained there until about 0400 hours when they travelled in witness Saeed's motor vehicle to a friend, witness Dick's house. Witness Saeed had made arrangements by text message with witness Dick for the deceased and him to go to witness Dick's house to watch the Mayweather vs. Pacquiao boxing match which was being screened live on television. Witness Dick's,

Label No.122 Samsung Galaxy mobile phone

was seized and examined by the Police Scotland Cybercrime Unit.

Prod No. 753 Mobile phone examination report witness Martyn Dick & certificate of Authentication

details the following text messages between witnesses Dick and Saeed:

- 0227 hours

Martyn Dick to Zahid Saeed: *"Phone u in a bit". "You can come up for the fight later like"*

Zahid Saeed to Martyn Dick: *"Cool no worries. I'm at Sheks so just gimme a shout when u done"*

Martyn Dick to Zahid Saeed: *"Will do mate"*

Zahid Saeed to Martyn Dick: *"U sure its cool that we come up? If not let me know so we can book it at Sheks. Its only us 2"*

Martyn Dick to Zahid Saeed: *"Of course man but I wont be getting on it, [REDACTED]"*

- 0329 hours

Zahid Saeed to Martyn Dick: *"That OK"*

- 0344 hours

Zahid Saeed to Martyn Dick: *"You Home?"*

- 0355 hours

Zahid Saeed to Martyn Dick: *"Dude we on our way up. U want us over?"*

- 0356 hours

Martyn Dick to Zahid Saeed: *"Just home....was gonna say am feelin a bit shitty and tired"*

- 0357 hours

Martyn Dick to Zahid Saeed: *"But I'm no saying not to come up, just had a long day. Will be fine when I have chilled out a bit LOL"*

- 0400 hours

Zahid Saeed to Martyn Dick: *"Dude we was on our way up. Wish you told us earlier. We would off booked the fight at Sheks, Dude"*

- 0400 hours

Martyn Dick to Zahid Saeed: *"No come up am saying"*

- 0401 hours

Zahid Saeed to Martyn Dick: *"Alright cool. See u in 5. Don't worry we will leave after the fight"*

3.1.2 Home of Martyn Dick and Kirsty MacLeod, Dick/MacLeod home address

The witness Saeed states that he and the deceased arrived at witness Dick's house at [REDACTED] about 0405 hours on Sunday 3 May 2015. Witness Dick's partner, witness MacLeod, was also in the house. The four persons sat talking prior to the boxing match beginning and the witnesses' state that everyone appeared to be in a good mood. Witness Dick states that [REDACTED] the deceased was drinking from a bottle of vodka or rum mixer that he had brought with him.

During the course of the morning the three witnesses state that the deceased's personality and mood changed dramatically. It appears that he believed that the others in the house were being disrespectful towards him and making fun of him. Witness Dick states, *"By the time the fight came on I was feeling very awkward and didn't want to say anything as Shek was taking everything the wrong way. It was unpredictable how he was going to take anything."*

Witness Saeed states, *"Martyn was getting annoyed with Sheku's behaviour. He was worried. He didn't know what to do because he had never seen Sheku in that state of mind before. I told Martyn not to worry because I would deal with the situation as I have seen Sheku in this*

state of mind before. That was in January at the turn of the year in one of our friend's houses. I don't want to discuss this. I don't want to tell you whose house this was in. I don't think this is relevant."

About 0530 hours the deceased suddenly left the house by the back door. Witness Saeed states that he apologised for the deceased's behaviour and followed the deceased out of the house believing that he would be standing outside at his motor vehicle. However witness Saeed states that he could find no trace of the deceased outside the house. After making a cursory search of the nearby streets and attempting to call the deceased on his mobile telephone, which met with no reply, witness Saeed states that he travelled in his car to the deceased's home at [redacted] Arran Crescent, Kirkcaldy.

3.1.3 Home of the Deceased, [redacted] Arran Crescent, Kirkcaldy

Witness Saeed states that he arrived at the deceased's home at [redacted] Arran Crescent, Kirkcaldy. On his arrival he found that the deceased was not there but arrived shortly thereafter. Witness Saeed states that he walked up the pathway to the house with the deceased, questioning him about his earlier behaviour. The deceased told witness Saeed to go away. Witness Saeed states that he knew that the deceased was not behaving normally and he accompanied him into the house. Once inside witness Saeed states that the deceased told him that he believed that he, witness Saeed, and witness MacLeod were making fun of him earlier and disrespecting him. The witness Saeed states that the deceased was mumbling, *"This makes sense now". "You don't respect me"*. Witness Saeed states that he tried to explain to the deceased that his behaviour appeared out of character at which the deceased said, *"You're Right"*.

Witness Saeed then describes the deceased pulling a clear plastic money bag from inside one of his socks. Witness Saeed describes that the bag appeared to contain a white coloured paste and a number of purple tablets. Witness Saeed indicates that he was unsure of how many tablets the bag contained but states that it was more than three but less than ten.

Witness Saeed states that he took the bag from the deceased saying, *"Look I'm against this"* and the deceased said something like, *"Who are you? You're the CID"*. Witness Saeed states that he later flushed the bag and contents down the toilet in his, witness Saeed's, home. A precise time for this action is unknown.

Witness Saeed considers that the deceased's behaviour was erratic, moving from being calm to being aggressive and accusing witness Saeed of various things. After about 40 minutes witness Saeed decided to leave the house. Whilst in the house he had noted that the deceased kept clenching and unclenching his fists and he felt the deceased was staring at him menacingly.

As witness Saeed left by the back door he states that he was followed by the deceased and, on the garden path, he was punched several times to the back of the head by the deceased. Witness Saeed states that he ran from the garden pursued by the deceased who threw a clothes pole at him. He states that the deceased chased him round a number of gardens,

catching up with him when he slid and fell. He states that the deceased straddled him and punched him 10 to 15 times on the face and body. Witness Saeed states he was shouting and pleading for the deceased to get off him. Witness Saeed eventually managed to get up and ran off up a nearby alleyway.

The assault on witness Saeed by the deceased was witnessed or heard by a number of local residents residing adjacent to or overlooking Arran Crescent. Witnesses [REDACTED], Andrew Rhodes, Naomi Rhodes, Tegan Morgan, Neil Morgan, Hutchieson, Alan Galloway and Eleanor Galloway, variously describe being woken or being attracted to the noise of witness Saeed shouting at the deceased to stop. They looked out their homes and saw or heard various aspects of the assault and scuffle between the deceased and witness Saeed. Some of these witnesses identified the assailant as the deceased, whom they knew.

Witnesses Tegan Morgan, Hutchieson, Alan Galloway and Eleanor Galloway all state that a short time later, about 0645 hours, they saw the deceased in the street holding a large knife. Some of them state that they saw the deceased striking a car (witness Saeed's vehicle) with the knife. Witness Neil Morgan states that he was made aware by his daughter witness Tegan Morgan that the deceased, who he referred to as 'Chris', was fighting outside. He states that he went outside and saw that 'Chris' was down a lane at the side of his, witness Morgan's, house. Witness Neil Morgan states that he approached and spoke with the deceased and saw that he was holding a large knife. He said to the deceased, *"If you get caught with that you're going to get done or someone's going to get hurt"*. Witness Neil Morgan states that he got the impression that whilst the deceased was not himself, he did not appear to be psychotic or drunk. He states that he asked the deceased to calm down and come back to his house for a cup of tea. The deceased replied, *"No, no, I'm cool"* and walked off.

Witness Saeed states that, having managed to evade the deceased, he telephoned witness Dick for assistance. He was unable to contact witness Dick and sent him a number of texts using his mobile phone. This phone was not seized by the police but DCs McGregor and Telford examined the phone when witness Saeed was in Kirkcaldy Police Office later that day and noted two text messages,

06:38 hours "I need your help"

06:46 hours "Shek has just attacked me"

Witness Dick states that he telephoned witness Saeed by mobile phone and that on answering he noted that witness Saeed sounded panicked and in shock. Witness Dick states that he travelled in his Transit van and picked up witness Saeed in Glamis Road, Kirkcaldy. He noted that witness Saeed was shaking and appeared traumatised. He states that they drove to where witness Saeed had left his motor vehicle parked outside the deceased's home. Witness Saeed then drove home in his own car. This was observed by various witnesses in Arran Crescent.

Witness Saeed's car was later seized as a production by Police Scotland and forensically examined for damage and comparison against a knife found at the Hayfield Road incident scene. It was later returned to him. No label in lieu was obtained by Police Scotland. Following analysis, no correlation could be found between marks on the car and the knife.

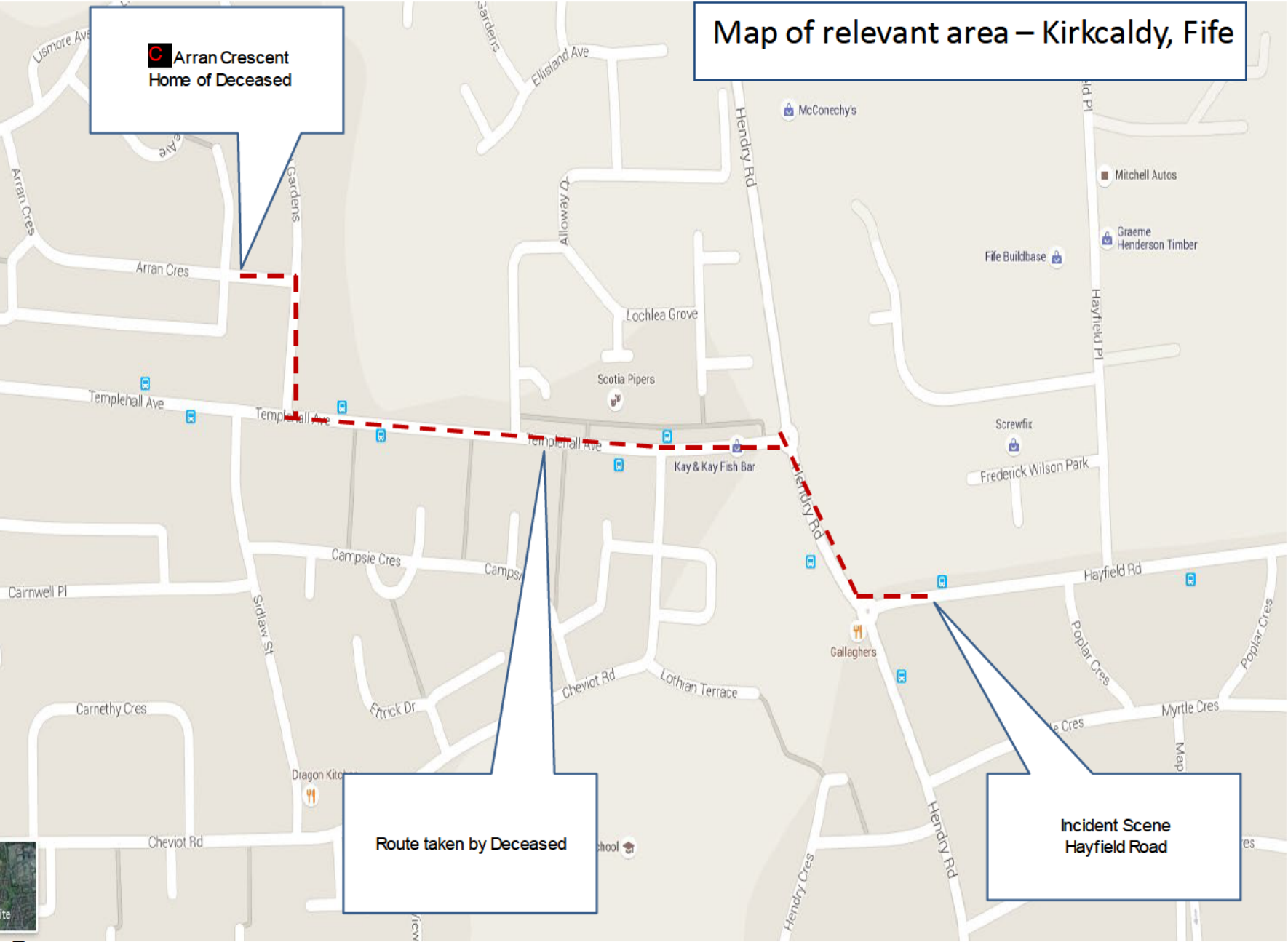
Prod No.710 SPA Forensic Services (Glw) Report – Examination of Articles Operation Quoich

About 0730 hours witness Saeed states that he sent a text to witness Collette Bell asking her to contact him. He states that witness Bell telephoned him and he told her what had happened. Witness Collette Bell states that she thereafter made several attempts to contact the deceased by text and mobile phone, each of which was unanswered. She states that she travelled from her mother's home back to her house at Collette Arran Crescent, Kirkcaldy. On arrival she states that she noted that the rear door was open and on entering she found the house in a state of some disarray. She states that her initial thoughts were that the house had been subjected to a burglary as there were drawers which contained kitchen cutlery pulled open and a television was pulled to the floor. She made further efforts to trace the deceased by driving around the immediate area. She states that when this proved unsuccessful she contacted the police intimating that she was fearful of what had happened to the deceased. This call is timed at being received at 0836 hours.

Label No.650 Audio CD ACR Bilston Glen and certificate of authentication (7 x 101 / 999 calls)

which was transcribed and is produced as.

Prod No. 573 Transcript of telephone call to Police Scotland. Reference 20150503 08:36 01 sec 46435712 Collette Bell



3.1.5 Incident, Hayfield Road, Kirkcaldy

Note: The sequence of events is drawn from witness statements; CCTV footage; and calls to emergency services.

From witness accounts, the deceased appears to have made his way from [redacted] Arran Crescent to Hayfield Road, Kirkcaldy, where he was arrested by the police. Enroute he was observed by a number of witnesses, who variously describe the deceased and his actions. The deceased walked from Arran Crescent, turning right into Cramond Gardens, left into Templehall Avenue, right into Hendry Road then left into Hayfield Road where his eventual confrontation with police occurred.

About 0710 hours witnesses Susan and Alan Pearson state that they were travelling in their car in Templehall Avenue when their attention was drawn to the deceased who was walking along the footpath. Witness Susan Pearson states that she saw the deceased carrying a large knife which he was tapping against his leg.

At the same time witnesses Harry and Robson Kolberg state that they were travelling along Templehall Avenue in their car approaching the junction with Hendry Road. They state that their attention was drawn to the deceased who was walking on the north footpath. Witness Harry Kolberg states that he was unsure if the deceased was going to cross the road. He then states that he observed the deceased walk onto the roadway and start to walk westwards directly towards his car. Just as he passed the deceased he states that the deceased punched at the car. At that point he states that he heard his son, witness Robson Kolberg say, *"I think that he has a knife"*. Witness Harry Kolberg states that he looked in his rear view mirror and he could see the deceased running after his car.

Witness Harry Kolberg's motor vehicle is equipped with a forward facing dash cam. The,

Label No.170 SD card from dash cam – Harry Kolberg,

was seized as a production in the investigation.

Label No.367 Source Files from Working Copy: SD Card from Dash Cam - Harry Kolberg
Compiled into 1 Playable File (and Certificate of Authentication)

was examined and shows the deceased walking onto the road. He appears to be holding an object in his right hand. From the quality of the video it is not clear what that object is. That said, the audio recording accompanying the video was examined and witness Robson Kolberg can be heard to say *"What's he doing"*. *"He's got a knife in his hand"*. Witness Harry Kolberg phoned the police at 0710 hours using the 999 emergency number and reported his observations. This is captured in,

Label No.650 Audio CD ACR Bilston Glen and certificate of authentication (7 x 101 / 999 calls)

Which is transcribed and produced as,

Prod No.574 Transcript of telephone call to Police Scotland reference 20150503 0710 hours: 11 sec 46433879 Harry Kolberg's first call (Call 2),

Prod No. 575 Transcript of telephone call to Police Scotland reference 20150503 0715 hours: 29 sec 46433963 Harry Kolberg's second call (Call 4),

At 0710 hours witness Rowe states that he was driving his taxi eastwards on Templehall Road towards the roundabout adjacent to Hayfield Road, when he saw the deceased walking eastwards along the road in front of him. He states that he could see that the deceased was carrying a large knife in his right hand. He called the police on the 101 non-emergency number. This is captured in,

Label No.650 Audio CD ACR Bilston Glen and certificate of authentication (7 x 101 / 999 calls)

and transcribed in,

Prod No.630 Transcript of telephone call to Police Scotland from Simon Rowe 20150503 - 46433864 (Call 1),

Witness Rowe states that he continued along Hayfield Road to the nearby Victoria Hospital. returning along Hayfield Road a few minutes later and again observed the deceased but at that time he could not see a knife in his hand.

At the same time, witness [REDACTED] states that she was driving her vehicle containing witnesses McCormick and Howie westwards on Hayfield Road towards the junction with Hendry Road. [REDACTED] Witnesses McCormick and Howie state that they saw the deceased carrying a large knife and drew witness Waddell's attention to him. Witness McCormick stated, "He's got a knife, a big knife or a machete or something".

Witness Joyce states that she was driving her car south on Hendry Road at which time she observed the deceased walking across Templehall Road onto Hendry Road. She describes the deceased as "walking like a zombie". She states that as she passed the deceased she saw that he was carrying a large knife in his right hand. She continued down Hendry Road and in her rear view mirror saw the deceased turn left into Hayfield Road. She states that she stopped her car and phoned the police. This is captured in,

Label No.650 Audio CD ACR Bilston Glen and certificate of authentication (7 x 101 / 999 calls)

which was transcribed and is produced as,

Prod No.577 Transcript of telephone call to Police Scotland reference 20150503 0710
hours: 58 sec 46433885 Joyce Joyce (Call 3),

Witness O'Conner states that he was driving [REDACTED] westwards on Hayfield Road approaching the roundabout at the junction with Hendry Road. He states that he observed the deceased run from the footpath and attempt a flying kick [REDACTED] Witness O'Connor states that he swerved [REDACTED] and avoided contact with the deceased. Witness O'Connor states that he [REDACTED] then drove past Hendry Road at Hayfield Road and saw that the deceased was still standing at that location.

This incident where the deceased attempted to kick witness O'Connor's [REDACTED] was observed by witness Alan Pearson who, by that time, had dropped his wife witness Susan Pearson at her sister's home and was driving eastwards on Hayfield Road. As witness Alan Pearson drove towards the deceased he states that he saw him standing in the middle of the road holding a large knife in his right hand. Witness Alan Pearson states that he turned his car around and drove back to the roundabout at the junction of Hayfield Road and Hendry Road, flagging down other cars to stop them travelling along Hayfield Road. He also called the police to report the incident and was told that the police were on their way. This is captured in,

Label No.650 Audio CD ACR Bilston Glen and certificate of authentication (7 x 101 / 999 calls)

which was transcribed and is produced as,

Prod No. 572 Transcript of telephone call to Police Scotland reference 03/05/2015
Reference 20150503 0715 hours: 30 sec 46433962 Alan Pearson (Call 5),

Witness Harry Kolberg who had seen the deceased earlier states that after calling the police he turned his vehicle around and drove south on Hendry Road towards Hayfield Road, halting at a bus stop. He states that he saw the deceased in Hayfield Road jumping in front of other vehicles including a van and a taxi. Whilst his dash cam is still filming it did not capture these incidents as it was pointing in another direction, however the audio from the dash cam records witness Kolberg saying, "He's doing it to that car as well" "He's jumping at taxis". Witness Robson Kolberg took a video on his,

Label No.246 iPhone 6 (Gold)

This item was seized as a production and the video examined. It does not appear to show anything of evidential value due to the phone not being held steady and condensation on the rear window of the witness Kolberg's vehicle.

At this time witnesses Grey and Levy, [REDACTED], state that they were travelling east on Hayfield Road in their [REDACTED] van when they were stopped by a motorist flagging them down. They state that the motorist told them that there was a man with a knife further up the road and that they should turn round. Witness Grey, who was driving the van, did a U-turn and as he did so he states that he saw the deceased

further down the street. He states, *"I could clearly see he had a bladed weapon in his left hand. He had both hands out and it appeared to me that he was on a mission and he was going to take somebody out."*

Their [REDACTED] van, a Van driven by witness Grey vehicle, was fitted with a CCTV system and,

Label No.338 USB Memory Stick Van driven by witness Grey Van CCTV Footage 03/05/15 - 07:12 to 07:20 PDF David Grey Statements 1 & 2, Screenshot, Master copy

was obtained and submitted to a specialist CCTV company, Infratech, for enhancement. They produced,

Label No.475 Infratech Compilation QV1S4CHND 1 CCTV System Master Copy

but despite efforts to enhance the CCTV, it is of poor quality and does not evidence the deceased's actions.

About 0716 hours witness Limbert was travelling to her place of employment at the Victoria Hospital, Kirkcaldy in her car. She travelled along Templehall Road, turning right into Hendry Road and travelled southwards. As she approached the roundabout at the junction with Hayfield Road she states that she saw the deceased in the centre of the roadway walking towards her carrying a large knife in his right hand. As he approached her vehicle she saw that he now had his hands in the air. She states that she was terrified and locked the doors on her car. She drove over the roundabout and continued down Hendry Road. She stopped her car further onwards on Hendry Road and called 999. This is captured in,

Label No.650 Audio CD ACR Bilston Glen and certificate of authentication (7 x 101 / 999 calls)

and transcribed in,

Prod No.576 Transcript of telephone call to Police Scotland reference 20150503 0716 hours: 33 sec 46433980 Linda Limbert (Call 6),

Gallagher's Public House is sited on Hendry Road at the junction of Hayfield Road. The pub has a CCTV system, one camera of which points across the junction into Hayfield Road. On 4 May 2015, police witness George Morrison, Technical Officer, Police Scotland, attended at the premises of Gallagher's Public House and removed the CCTV system.

Label No.275 QVIS 4CHND 1CCTV System

which he took to the technical support unit at Glenrothes Police Office. He downloaded the CCTV footage from 3 May 2015 onto,

Label No.272 Master Copy- CCTV Disc TSU Ref: 2015 00356 (and certificate of authentication)

and

Label No.273 Working Copy- CCTV Disc TSU Ref: 2015 00356 (and certificate of authentication)

which was examined by PIRC investigators. It shows the actions of the deceased and his interaction with various witnesses and vehicles. It also shows his interaction with arresting police officers. However, the coverage is of poor quality and PIRC investigators submitted the,

Label No.275 QVIS 4CHND 1CCTV System

Label No.272 Master Copy- CCTV Disc TSU Ref: 2015 00356 (and certificate of authentication)

Label No. 273 Working Copy- CCTV Disc TSU Ref: 2015 00356 (and certificate of authentication)

to a specialist forensic video company, Infratech, to ascertain if it could be enhanced to provide a clearer picture of the actions of the deceased, witnesses and police officers. Infratech produced,

Label No.475 Infratech compilation QV1S4CHND 1 CCTV System master Copy

In addition a,

Prod No.581 Timeline CCTV (Visual) Gallagher's Public House,

was produced by PIRC investigators detailing the actions of those observed on the CCTV.

Appendix C provides transcripts of each of the 999/101 calls made.

3.2 State of Knowledge of Officers Attending

Breakdown of the information provided to each of the principal officers establishing what their level of knowledge was about the incident prior to their arrival.

A full transcript of Airwave radio traffic showing all officer radio conversations and emergency activations is recorded in,

Label No.197 Audio CD 1 of Calls made on Airwave Talk Group Kirkcaldy, 1 on 3rd May 2015 between 0616 and 0800 GMT,

Label No.198 Audio CD 2 of Calls made on Airwave Talk Group Kirkcaldy, 1 on 3rd May 2015 between 0616 and 0800 GMT,

and is produced as,

Prod No. 588 Transcript of Police Scotland Airwave talk group 'Kirkcaldy 01' on 3rd may 2015 between 0616 and 0800 GMT.

The incident and follow up actions are detailed in,

Prod No.317 Police Scotland STORM Log - Incident 743 03/05/2015 (and certificate of authentication)

Prod No.318 Police Scotland STORM Log - Incident 745 03/05/2015 (and certificate of authentication)

Prod No. 319 Police Scotland STORM Log - Incident 837 03/05/2015 (and certificate of authentication)

PC Alan Paton

In his statement PC Paton provides: *It was whilst we were driving in Nicol Street in Kirkcaldy that I overheard an airwave message dispatching Nicola and Ashley to the call. The gist of this call was a report of a male in the street, Hendry Road, the male had a knife. This message was broadcast over airwave. Myself and Craig heard this message. We were the only mobile crew out at this point and we advised Control that we would take the call. I cannot remember whether it was myself or Craig that made that call.*

ACR Airwave radio transmission broadcast the following

I need you to...divert er...to Hendry Road a disturbance on-going, male armed with a knife....African looking male chasing.....someone...may be carrying a

knife.....described as big with muscles about six foot tall wearing a white t-shirt and dark coloured jeans there's another job coming in about it, stand by

In his statement PC Paton provides: *We done a u-turn on Nicol Street and started making our way towards Hendry Road. Around this time there was a further airwave message from the Control Room of a similar nature. This time it gave the location as Victoria Road.*

ACR Airwave radio transmission broadcast the following

Yeah, that's another grade one call coming in for the Victoria Road Kirkcaldy, 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 his statement PC Paton provides: *Given that I [REDACTED] know the streets well and realised there is about a mile between the two locations, and that sometimes people get Hayfield Road mixed up thinking it is Victoria Road because of the hospital, I pointed out this discrepancy to the Control Room. The rest of the guys on the shift are younger in service and do not have the same local knowledge.*

PC Paton is heard to say over Airwave radio Transmission

We are heading there eh that's two separate locuses, eh we'll go to Victoria Road before Hendry Road. The alarm call can be monitored by Romeo Victor

PC Paton is heard to say over Airwave radio Transmission

Papa control from four one alpha can we try and get a house numbers of the two informants please

ACR Airwave radio transmission broadcast the following

Roger. One is [REDACTED] Poplar Crescent at Kirkcaldy. The second caller is from [REDACTED] [REDACTED] in Dysart so I take it he's passing by. That's a further call advising the male is in Hayfield Road near to a Gallagher's pub.

Roger. That's received its making a bit more sense now. I think the Victoria Road call eh locus is probably incorrect

PC Paton is heard to say over Airwave radio Transmission

Victoria Road's probably a mistaken locus ## Hayfield Road

In his statement PC Paton provides: *I think I continued to Hendry Road. We were using 'blues & twos' (illuminated blue lights and audio system - emergency lights and sirens).*

Around about that point A/Sgt Maxwell came onto airwave advising then that all units would be attending. I assumed from that he had told all the units in the station to go to the incident. At that point I still had not arrived.

There was a further airwave broadcast from the control room of a further report of a 'large black male in Poplar Crescent' and there was also a mention of Gallagher's. I know that Poplar Crescent is a small street off Hayfield Road and that Gallagher's is a public house that sits to the side of the roundabout at the side of Hendry Road at the end of Hayfield Road. I do not remember specifically the wording of this call. I do remember that there was definitely a mention of a knife in this message.

ACR Airwave radio transmission broadcast the following

Roger. Hayfield Road that was the last place he was seen near Gallagher's pub

PC Paton is heard to say over Airwave radio Transmission

Roger. That's us approaching locus

ACR Airwave radio transmission broadcast the following

That's another call saying he was seen walking in the direction of the hospital in the middle of the road

PC Paton is heard to say over Airwave radio Transmission

Yes yes. That's us on Hayfield Road heading in that direction

ACR Airwave radio transmission broadcast the following

He's described as male, black, well built, six foot tall wearing a white t-shirt dark coloured jeans and carrying a very large knife

In his statement PC Paton provides: *I think it took me about a minute to two minutes to arrive at Hayfield Road. When I arrived I came up Hendry Road and turned right at Gallagher's public house into Hayfield Road.*

Upon entering Hayfield Road I was the first police vehicle on the scene.

PC Craig Walker

In his statement PC Walker provides: *There was an instruction from the Control Room for PR41C (PCs Thomlinson and Short) to attend Hayfield Road as there was a male with a knife. Nothing further was broadcast at that stage. I was aware of this location. Right on the back of this message, I heard a radio broadcast from Sergeant Maxwell requesting all*

OFFICIAL - SENSITIVE

units to attend this call. He then asked the Control Room about the availability of an ARV, which is an Armed Response Vehicle with Firearms Officers, and also a dog vehicle. The Control responded by saying there was no ARV and they would check for a dog vehicle, but they thought the dog was through West. I think PC Paton acknowledged we were enroute (Call Sign 41A, a shortened version).

I immediately carried out a U-turn of the van in Nicol Street and started heading towards Hayfield Road. As I drove into Abbotshall Road a second call came over the radio from the Control Room. They said another motorist was reporting a male with a knife in Victoria Road. It could have been at this point he was described as being in possession of a sword, or slightly later, before we arrived. The location, Victoria Road, was confusing to both PC Paton and myself because it and Hayfield Road are about half a mile apart, so we thought it might be a hoax call, trying to get us to run all over the place. By this time we were on Bennoch Road and decided to head generally towards Victoria Road.

About 20 seconds later there was a third call came over the radio. We were at the junction of Bennoch Road and Victoria Road at that time. The report was a male with a knife in the area of the White Heather pub. I knew this location, which was the old name for Gallagher's pub located on Hendry Road, near to Hayfield Road. I started to head for Hayfield Road.

As we were passing the old Forth Park Hospital on Hendry Road there was a fourth radio message along the lines that the Control Room was getting numerous calls about the male being in possession of a knife. While still on Hendry Road I remember getting a fuller description of this male, either I heard it over the radio or PC Paton reiterated what he heard on the radio. The description was a black male, muscular build, white t-shirt, black jeans, in possession of a knife, appeared to be under the influence of a substance and was running out into the roadway attacking passing vehicles.

The blue lights were activated on the van from when I did the U-turn in Nicol Street until I arrived at Hayfield Road.

After the last update I drove the vehicle north along Hendry Road until I came to the roundabout to turn right (eastwards) into Hayfield Road.

During the journey to Hayfield Road I had a brief discussion with PC Paton on tactics and worst case scenario. I was very concerned about the nature of the incident and the number of calls made by the public and the apparent level of violence being shown, there were reports that he was attacking passing vehicles and he might be prepared to attack us in the car when we arrived. It did cross my mind that he was doing this to get the police there, bearing in mind we are on a 'Severe Threat Level' for an attack on the police. PC Paton also mentioned the mental health hospital in Whiteman's Brae was also nearby and he could have been from there, or the main hospital, the Victoria Infirmary, but PC Paton and I did not discuss the hospitals.

Another thing that concerned me that this was early on a Sunday morning. This is not something I have heard of in my police career, an incident of this type at that time of the day. I did even mention to PC Paton if the worst case scenario came to be and he came at the vehicle with a knife or a sword I wasn't getting out and I might hit him with the vehicle.

PC Ashley Tomlinson

In his statement PC Tomlinson states: *Whilst in the sergeants' office a call came in about an incident on Victoria Road, about a black male brandishing a knife.*

ACR Airwave radio transmission broadcast the following

I need you to...divert er...to Hendry Road a disturbance on-going, male armed with a knife...African looking male chasing....someone...may be carrying a knife.....described as big with muscles about six foot tall wearing a white t-shirt and dark coloured jeans there's another job coming in about it, stand by

In his statement PC Tomlinson states: *I requested additional units to assist prior to entering the police vehicle with Nicole Short.*

PC Tomlinson is hear to say over Airwave radio transmission

That's received Control. Is there other units that can assist us?

In his statement PC Tomlinson states: *Craig Walker/Allan Paton shouted in that they would also attend and assist. They were already out in the larger Ford Transit van with the cage. I drove the police vehicle and Nicole was in the front passenger seat.*

Another call or calls came in for Hayfield Road about a black man in possession of a knife.

ACR Airwave radio transmission broadcast the following

Yeah. That's another grade one call coming in for the Victoria Road Kirkcaldy, 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

PC Tomlinson in his statement provides: *I knew that Hayfield Road ran from the roundabout at Gallagher's Pub to the hospital. There was a lot of Airwave traffic and I heard requests for dogs/firearms to attend. My initial thoughts were this was a crank call because of the different locus and it was early on a Sunday morning when nothing ever happens. It was then clarified that the locus was Hayfield Road near to Gallagher's Pub. My route was from Kirkcaldy Office yard, turn left to traffic light junction, right on the junction to Victoria Road, left onto Bennoch Road to mini-roundabout, right onto Hendry*

Road all the way up to Gallagher's from the Valley. I put on my blues and twos when I left Kirkcaldy Police Office.

As I was driving towards the roundabout at the Valley, I saw the 19 van (PR41A) leaving the roundabout in front of me towards Gallagher's. This was the van crewed by Allan Paton and Craig Walker. I approached the roundabout at about 50 mph and drove over the roundabout. I turned the vehicle into Hayfield Road and saw the 19 van parked nose into the bus stop on the left hand side.

PC Nicole Short

In her statement PC Short provides: As I was doing this Ash said to me over the radio "41C I am going to have to divert you" meaning divert me from our call allocated. He said there's a report of a black Afro-Caribbean male chasing people with a knife, he said Hayfield Road and Victoria Road. I think there was confusion on this. Ashley immediately said due to the nature of the call "Can we have an ARV or dog van." I'm not sure. I did not know where I was going so I gave Ashley the car keys the reason being he knows the area better than me and would get there quicker.

We decided to go to the car and ran into the van at the rear yard door as we left the police office. I was conscious of PC Walker and Paton acknowledging that they two were attending the call. I can recall further calls coming out clarifying the location on Hayfield over and above this location being clarified as Hayfield Road. I also recall that there was a further clarification by 3 or 4 calls that were passed over the air advising us that the male had possession of a knife.

PC Walker and Paton drove out of the yard in a marked Ford Transit van, Ashley put on blue lights all the way and sirens intermittently as we did. I think Ashley Tomlinson followed Craig and Alan and stuck with them all the way to Hayfield Road.

The road we took was left from the rear yard on St. Brycedale Road. Then onto Bennoch Road then to Hendry Road at the end of the road that leads onto a mini roundabout and right onto Hayfield Road. We remained seconds behind the car in front. I am sure that our blue lights and the car in front blue lights were on when he arrived at Hayfield Road. I am 100% sure that the sirens were operated on and including a number of traffic lights and roundabouts between the police office and Hayfield road. I am confident that anybody on Hayfield Road would have been able to hear the sirens from certainly our vehicle.

I have been asked if I can recall any discussion within the police vehicle enroute to the call or any updates either given to officers attending or provided by them officers.

I remember whilst we were enroute to the call that I received updates I referred to earlier in my statement from ACR re it being Hayfield Rd and the fear that the male had a knife. I believe there may have been three or so updates as we reached Bennoch Road, Hendry Road. I also remember that an update was provided by ACR to the effect that a

dog van was attending from Edinburgh. My heart sank at this time as I realised this van would be at least 20 minutes away although we were not told this. I know the car crew in front were talking as well but I don't know what this was. My adrenaline was pumping. I was scared. I anticipated that I was going to meet someone eventually in possession of a knife. My PPE (personal protective equipment – baton, handcuffs, CS/PAVA spray) remained in my harness. I simply wanted to address the situation when I arrived. Ashley was quiet concentrating on driving. I actually commented to Ashley "I hate knife calls". He said "I know."

When Ashley drove up Hendry Road at the mini roundabout and we were turning right into Hendry Road the police car in front was 2 car lengths in front of us. We were both driving fast. I did not see anyone fitting the description of Sheku at this point. I recall releasing my seat belt about this time a few lamp-posts later on the left hand side of the road. The vehicle in front turned into the bus stop on the left hand side and they were diagonal across the road. Simultaneously to this, Ashley drove the car and stopped behind the vehicle in front's rear nearside. It was approx. 8 or 9 feet. I know our vehicle screeched to a halt. I don't know if the car in front screeched to a halt.

PC Keyleigh Good

In her statement PC Good provides: I was in the process of logging onto a computer, at about 0720hours or there about. It must have been pretty close to that when I heard a call broadcast over my radio. It was a Controller, male voice, at Bilston Glen Control Room in Edinburgh. The broadcast was to '41C', PC's Short and Tomlinson, and read, "There is a male with a knife at Hayfield Road, Kirkcaldy" or words to that effect. The controller stated that it was from members of the public, after PC's Short and Tomlinson had responded that they would attend. The Controller then passed a description of the suspect with the knife, which I recall was 'a black male, muscly, 10 inch blade'. The Controller described the male's clothing but I'm not sure what he stated. I seem to remember he said jeans and a top of some description, but I'm not sure.

I then heard Sergeant Maxwell broadcast on the radio that he wanted all units to attend the call. I don't recall what his reason was for that. To let you understand, I was still learning how to use the airwave radio at that time, and learning how to listen to the format of the broadcasts, so I missed some of the details of the call. Sergeant Maxwell also made a request to the control room to ensure they were arranging an ARV, armed response vehicle, and also a dog unit to attend the call. I think this was because there was a knife involved and I think this is part of the protocol.

At that point I headed out of the report writing room to find my colleague Alan Smith. At that time, I was relaxed and I have never dealt with such an incident before. Almost immediately, I found Alan at the cleaners room and I said to him, "Did you hear that call?" He had not heard it because his earpiece was out. I told him of the nature of the call and his demeanour changed into a kind of panic / response mode. We immediately grabbed our hats and headed out the back door of the office into the car park.

I remember the diary car (police car which attends appointments booked by members of the public) containing PC's McDonough and Gibson were leaving the office at the same time as us. I believe that PC's Short and Tomlinson had already left the car park, it must have been minutes before us, it wasn't long.

Alan was driving our police van and as we left the car park we turned right onto the main road. PCs McDonough and Gibson turned left, the idea being that we arrived on Hayfield Road from different sides. Hayfield Road is a very long road and at that time exactly we were unsure where the male was actually positioned.

[REDACTED] I am well aware of this area, [REDACTED]. I am aware that Hayfield Road is the main road that leads to Victoria Hospital, however it is a long road, hence Alan had a quick word with the other unit regarding travel directions. I was aware that because the call was a grade 1 call, which is a get there as fast as possible basically, it would only take us a couple of minutes to arrive. As I say, Alan was driving and we had our blue lights and sirens on. We headed right to the end of the road and took a right turn, heading in the general direction of the hospital which I know as the area of Chinatown. [REDACTED] I don't actually know the names of the roads we used even although I know the area itself well.

On route to the locus, we were receiving constant updates, in fact as we left the office Alan Smith asked the control room to repeat the description of the male as he had not originally heard the content of the broadcast. These further updates that were passed were further confirmation that the male who was black was walking on the roadway itself on Hayfield Road, and was still in possession of a knife, but they may have stated blade. This broadcast was being put out over 'Kirkcaldy1' which is the Kirkcaldy channel.

I can also confirm that the direction that we were approaching the incident from was from Victoria Hospital itself, so we would be approaching on Hayfield Road travelling west. I don't recall any specific updates, prior to arrival at locus, or any other update, which pin pointed the male's exact location, but in fairness my adrenaline was running at that point.

As we reached the Victoria Hospital, or just before, I became aware of an emergency activation of someone's airwave radio. The airwave radio itself has a 'red' coloured emergency button situated on the top part of the radio. I am aware that if an officer activated / pushes this button it overrides every other radio on the system, blocks out transmission from other radios, and gives an open transmission to that radio only for a period of 10 seconds, I think that is how long it gives. During that time everything said or noises made near that particular radio will be broadcast.

I don't know exactly who had activated their emergency button but I could hear Nicole's voice. My terminal would have shown who had activated the emergency button, but because of where it was fixed on my body armour I am unable to see the display. I heard Nicole shout "PC Short" but I could not hear her say anything else. I could hear noises in the background but I could not determine what they were. It was a windy day, which

could have been some of the noises itself. The broadcast was not particularly clear and seemed to be coming and going.

At that point my immediate thought was that PC Nicole Short had potentially been stabbed. It is rare that an emergency button is pressed, so when they are pressed you take it seriously, and because of the nature of this call, I made the conclusion that she may have been stabbed. I was also thinking at that point of the Lee Rigby incident in London, mainly due to the fact of the coloured male and the potential terrorist connotations. In addition, I recall that there were many emotions going through my mind and I reminded myself of the briefing of when I first started at the turn of the year, where intelligence had been received by the police that there would be a potential attack on a female police officer. I was actually shaking physically, it was uncontrollable. You don't really get training to deal with this sort of incident. It was fair to say that I was panicking at that point and was fearful for my own safety.

PC Alan Smith

In his statement PC Smith provides: I went to the writing room after the briefing, my recollection is that someone was sent to an alarm call but I do not recall which unit that was, they had left straight from the briefing. I had my radio with me, the earpiece was attached however I may not have had it in my ear or I may just not have heard the call about the male. The first I was aware of the call that led to the incident was PC Good telling me about it. I was in the cleaners cupboard cleaning a cup. She told me we had a call to go to. She told me I think her exact words were "We've got a call to go to". I asked her what it was and she said there was a man with a knife. I can't recall if it was at that time or if it was when we were heading down to the van she said it was Hayfield Road.

I had earlier given PC Good the airwave radio, CS spray canister and notebook that were in my locker, she was in her full uniform when we left the office and I assume she had her PPE with her.

We were in the van within seconds of PC Good telling me where the call was, I was driving the van.

When getting into the van I was aware of the police car parked next to it, PC Daniel Gibson and PC James McDonough were in that car. I left the yard directly ahead of PC Gibson and PC McDonough. When I left the yard I turned right into St Brycedale Avenue and headed along to the junction with Dunnikier Road, turned left into Dunnikier Road along Dunnikier Road all the way up to its junction with Hayfield Road.

I was aware that PC Gibson and PC McDonough had turned left on coming out of the yard.

I had the blue lights on throughout the journey, I did not use the siren as I wanted to listen to the radio broadcasts and the traffic conditions did not necessitate the sirens being used.

I recall I may have asked by radio for the details of the call to be repeated, but I'm not 100% sure. As I was driving out the gates of the police station I recall PS Maxwell was on the radio asking if ARVs and a dog unit were going to be deployed to the call. The reply was that ARVs were not being deployed and the nearest dog unit was in Edinburgh. The next message I remember from control was that there were now numerous calls from the public about a male with a knife on Hayfield Road.

As I travelled up Dunnikier Road I passed a message asking for a description of the male to be passed, control replied and passed the description, black male, I think wearing light coloured top in possession of a large knife. Towards the end of that broadcast or directly after it finished I was aware of an emergency activation on airwave, the radio makes a beeping noise and causes the radio to vibrate. I was not aware of who had made the activation, I could not make out what was being said any voices or specific noises, I could not look at the screen of my radio as I was driving.

PC Smith is heard to say over Airwave radio transmission

Control to Bravo. Do you have a description? I think I missed it.

ACR Airwave radio transmission broadcast the following

He's described as male, black, well built, six foot tall wearing a white t-shirt, dark coloured jeans and carrying a very large knife.

In his statement PC Smith provides: *I recall that the Inspector came on the radio saying there had been an emergency broadcast and I think telling people to stay off the radio unless it was necessary.*

ACR Inspector Airwave radio transmission broadcast the following

Inspector Stewart, Area Control Room, to the set attending, eh I'm monitoring this obviously from an ARV perspective. Eh, if you get sightings of the male you need to make an initial assessment yourself and feedback through straight away and I'll listen out on the channel

In his statement PC Smith provides: *I continued driving towards Hayfield Road and I became aware of another emergency activation, this time I recognised it as being PC Paton's voice, he was shouting but I could not make out what was being said. I asked PC Good what was being said and she replied "He said there's an officer injured", I was just turning onto Hayfield Road at that time, that's the last message on the radio that I can really recall.*

I turned into Hayfield Road from Dunnikier Road and drove along Hayfield Road in the direction of Hendry Road.

PC Daniel Gibson

In his statement PC Gibson provides: *The muster had finished and about 5-10 minutes after the muster. I was in the writing room and PC Nicole Short had come through from one of the other rooms to the writing room. It was obvious that she was going to something by her demeanour and I asked her what she was going to. She told me she was going to a call about a man kicking about Hendry Road with a knife. I hadn't heard the call as my radio was not on at that point. I said to her that me and James (PC McDonough) would attend as well. That tends to happen if there is a call of that nature, the whole shift would attend.*

I turned on my airwave radio. I think James (PC McDonough) had heard the call as he came through to the main hall and I met him.

We both (myself and PC McDonough) went down the back stairs to rear yard.

PC Alan Smith and Kayleigh Good left about the same time as myself and James (PC McDonough).

Myself and James (PC McDonough) went to a police vehicle. It was a marked Astra estate car. I do not know the registration number. It is relatively new to Kirkcaldy's fleet of cars. I think the call sign of the Diary Car is Papa Mike 641 (PM641), you would generally use the call sign of the car. If I was speaking on the radio and not using the car call sign I would just say 'PC Gibson'. I don't use my shoulder number or my other call sign to identify myself.

I don't know how I got booked onto the STORM system. I didn't have any involvement in that.

I left the rear yard with PC McDonough. I was driving the police vehicle and PC McDonough was in the front passenger seat. There was no other officer in the vehicle. When we (myself and PC McDonough) left the office we were dressed in our full uniform. We both had hi-viz vests on. The only difference between myself and PC McDonough was that I had my big winter fleece under my vest.

When I left the yard I'm sure that PCs Alan Smith and Kayleigh Good drove out ahead of myself and PC McDonough. They were also in a marked police vehicle. I'm not sure, it might have been one of the vans, but I couldn't say for certain. I was trying to get one of my epaulettes on so I wasn't paying too much attention to who was in the yard or leaving it.

When I left the yard my only knowledge of the incident was what PC Nicole Short had told me, I was not aware of any other updates on the radio.

I left the yard. I turned left into the street. I think it's called Miller Street and drove past the police office (on left hand side) to the traffic lights at the Esso garage. I then turned

up right past the Adam Smith Theatre and the the library and train station. At the next set of traffic lights I turned left over the Bennoch Bridge to the roundabout, where I went straight on up Bennoch Road. At the next roundabout I took the second exit onto Hendry Road. I continued along Hendry Road to one roundabout and then straight onto the next roundabout, which is at the junction of Hendry Road and Hayfield Road.

I had activated the blue lights on the police vehicle when I left the yard and they were on the whole journey to the locus. I may have used the siren but I'm not really sure.

I was on Hendry Road near to Valente's Chippy when I felt my radio vibrating. This usually happens when the emergency button is activated, the radio vibrates and there are a couple of beeps. As I was driving I asked James (PC McDonough) to check his radio to confirm this. He was a bit slow in looking at his radio so I looked myself at my own radio and saw that the screen had the red borders. This happens when an emergency button is pushed.

PC James McDonough

In his statement PC McDonough provides: Around 0710 hours I went to the sergeant's room alone as Daniel (PC Gibson) was going to the writing room to deal with some paperwork and other work related things. I saw that Sergeant Maxwell was at his computer and before I was even able to ask him for a printout of our calls I heard a call over my airwave. I was on Kirkcaldy one channel. It was a male controller and he stated that a report had been made of a large male walking down Templehall Avenue carrying a large knife. The controller then instructed 41C to attend the call. I was aware that was the response vehicle that Ashley Tomlinson and Nicole Short were within. At this time I cannot recall if Ashley and Nicole were still within the office when the call came out. I cannot recall if they acknowledged the call however immediately I saw Sergeant Maxwell pick up his airwave and instruct all units to attend this location. When he instructed this I uplifted the police vehicle keys which were within the sergeants room and headed towards the writing room. Before I got to the room Daniel Gibson exited as he had also heard the call. Daniel is a fully qualified police driver and due to the nature of the call I handed him the vehicle keys so that he could drive.

I cannot recall if I was still in the office at the time but I remember Sergeant Maxwell asking if there was an Armed Response Vehicle or a dog van nearby. Again I'm not sure what one (ARV), but I recall the controller stating that one of them (ARV) wasn't on duty and the other one (ARV) was on the other side of the Forth Road Bridge. The reply call from the controller was very quick after Sergeant Maxwell had asked them.

As far as I'm aware Daniel Gibson had all his equipment on including his baton, handcuffs and CS/PAVA spray. I'm not sure if it's PAVA or CS spray that he has.

Daniel and myself ran out to the yard and got into our marked Astra motor car. Daniel was driving. I was aware that other members of our team were entering other marked

vehicles at this time. I cannot recall who was going into what vehicle. I was just concentrating on Daniel and myself.

We drove out of the police yard and headed towards the train station on St. Brycedale Avenue. I cannot recall if there were any other police vehicles in front or behind us. I do recall someone saying over the airwaves that they would attend via Victoria Road. Although we didn't shout in to the controller or even discuss with each other, Daniel and myself attended via Hendry Road. Whilst we were travelling to the location there were updates from the controller that the male was black, he was muscular, in possession of a knife and was heading towards Hayfield Road. Due to the number of calls that had been made I remember saying to Daniel that we may have a problem here. He didn't reply he was just concentrating on his driving. We were just approaching the mini roundabout at the old hospital when my airwave vibrated. I was aware that this meant someone had activated their emergency button. I looked down at the screen on my airwave. It said 691. I knew that this was Ashley Tomlinson. This informed me that it was Ashley who had activated his emergency button. I said this to Daniel. He was still concentrating on his driving but he looked worried when I told him. Seconds later I then heard Craig Walker's voice coming over the airwaves. He sounded out of breath and he was stating "Officer injured, officer injured". I'd say we were only about 30 seconds away from Hayfield Road. I remember going into a holdall that I carry with me and I took out my slash proof gloves which were given to me by my tutor constable. It was at this point we reached Hayfield Road.

Sergeant Scott Maxwell

In his statement PS Maxwell provides: I was in the muster room briefing the team when I heard the call come over. It was basically a report from a member of the public reporting a large black male in possession of a large knife in Victoria Road in Kirkcaldy.

Victoria Road is on the north outskirts of the town centre maybe a half mile from the office in a vehicle.

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

T/SGT Maxwell is heard to say over Airwave radio transmission

Control from four one one, I want all units to attend that, bearing in mind officer safety, an A-R-V and a dog as well please

T/SGT Maxwell is heard to say over Airwave radio transmission

Control from four one one is there any update of 'A-R-V' or dog units over

ACR Airwave radio transmission broadcast the following

I believe a dog unit is enroute

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

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

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

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

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

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

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

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

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

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

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

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

DS Samantha Davidson

In her statement DS Davidson provides: About 0715hrs I was within the main CID room with both DI Robson and DC Connell. At this time an immediate call came in and was transmitted by the ACR Room Bilston.

My understanding was this was a priority 1 call requiring immediate response.

I do not recall exactly what was said but I remember that it was that a 'black male' was in possession of a knife in the area of Hendry Road Kirkcaldy. I also recall that there was another call mentioning that this male was on Victoria Road. I believe this was wrong. I know that one of the callers possibly the first caller had been within a vehicle. I also recall that part of the description of the male was that he was muscular in build and that the knife was large.

Both myself and Derek Connell decided to attend this call immediately, and responded right away as soon as the call was put out over the airwave.

Whilst at the police office I shouted in over the radio that I was attending. I used my call sign Papa Whisky one-o-one. I do not recall if Derek Connell shouted in with his call sign Papa Whisky one-o-four. I think it may have been me that said this over the air.

The distance between Kirkcaldy Police Office and Hayfield Road is approx a few minutes, 3 to 5 minutes. We did not have blue lights or sirens in our car. We responded as quick as we could. I drove left from the rear yard onto St Brycedale Avenue. It was at this point an emergency airwave activation took place. I do recall a show safety message being passed over the air just before we left the yard. It was along the lines of 'To risk assess the situation on arrival'. It was along these lines. This was due to the fact the male was armed with a knife. I was conscious also of APS Maxwell requesting a dog unit and possibly ARV (armed response vehicle) to attend or respond. This was prior to the emergency activation.

I recall on the radio/airwave the mic became live just as we turned into Brycedale Avenue. From the radio transmission at this point I can only recall screaming and muffled sounds but nothing audible. I did not recognise anyone immediately but shortly after this I heard PC Craig Walker shouting 'officer down'. I was still in the region of Brycedale Avenue. I actually thought at this point that possibly an officer had been stabbed. This was a gut reaction due to the nature of the call. I actually said to Derek Connell that I thought somebody had been stabbed. Derek continued to drive onto Gow Crescent then onto Sang Road then Bennoch Road, then onto Hendry Road.

Enroute I recall the ACR trying to get an update but they did not actually get one due to what was going on. I do remember going from Bennoch Road into Hendry Road, one minute away from locus at Hayfield Road. When I shouted to control to advise them that I would be arriving in one minute and I would update them on arrival.

What I do recall was that PC Nicole Short had been physically assaulted but not stabbed as I thought. This was as a result of a radio transmission from possibly PC Craig Walker. I do not remember when I found out that she had been struck on the head but I do not remember if I heard this before I got to Hayfield Road or once I had arrived there. I do not recall any other particular transmissions at this point. This was as I first arrived at the scene. There was no transmission that identified who was responsible for the assault, I assumed it had been the deceased Sheku Bayoh who had carried out this assault on PC Short. I do not recall any other transmissions that identified PC Short's injuries.

Around 0720 hours same date we arrived at Hayfield Road, turning right from Hendry Road onto Hayfield Road. I just remember getting there.

DC Derek Connell

In his statement DC Connell provides: About 0715 hours, same date, I was made aware of a call to Hayfield Road, Kirkcaldy, where a black male (now deceased) was on the roadway in possession of a large knife.

DS Davidson and I then decided to attend at locus. Due to the mention of the knife, I put on my body armour and picked up my PAVA spray before leaving the office. DS Davidson and I then got into a silver marked CID police vehicle. I was the driver of this vehicle.

On driving out of the rear of Kirkcaldy Police Station, I was aware that there had been an emergency activation of a police radio. It was then passed on the radio that an officer had been assaulted.

About 0720 hours, same date, I arrived at locus with DS Davidson. As I turned right at the roundabout at Hendry Road onto Hayfield road, I observed officers in attendance.

Report to COPFS - Copy 1

3.3 Events following Police Scotland's Involvement

3.3.1 Initial Attendance at Incident

The Police Scotland Area Control Room (ACR) at Bilston Glen received the 999 and 101 calls from witnesses at Hayfield Road who observed the deceased in possession of a large knife and attempting to strike vehicles. Witnesses, Renton, Bain, Ross and Brown, call handlers at the ACR, speak to receiving these calls, recording details and passing them onwards to colleagues to dispatch officers to the incident. Witness Brown also took the call from witness Collette Bell who reported the deceased missing and her house disturbed.

About 0716 hours on Sunday 3 May 2015, PCs Tomlinson and Short state that they were on duty in Kirkcaldy Police Office when they were instructed by ACR staff via Airwave radio to attend the report of a disturbance in Hendry Road, Kirkcaldy. They state that they were advised that an African looking male, described as being big with muscles, about six feet tall, wearing a white t-shirt was chasing someone and may be carrying a knife. In addition they state that they were advised that another call was being received about this incident.

At that point PC Tomlinson asked if there were other units that could assist them to deal with the incident. He states that he was immediately advised by ACR staff that another priority call had been received about a black male wearing a white t-shirt walking in the street with a large knife in his right hand. The location of this call was given as Victoria Road, Kirkcaldy. PCs Tomlinson and Short state that they began to make their way to Hendry Road. PC Tomlinson was driving a Ford Transit van with police markings. Enroute he states that he activated the police vehicle's emergency response equipment (blue lights and klaxon).

PCs Walker and Paton had commenced duty at 0700 hours and were on uniformed mobile patrol duties in Nicol Street, Kirkcaldy. They state that they heard the call for the incident on their radios. Being aware that PCs Tomlinson and Short were still in Kirkcaldy Police Office they state that they told the ACR that they would also attend the incident. PC Walker was driving a standard Ford Transit motor vehicle with police markings (described as being the big general purpose van). He states that he activated the vehicle's blue light only.

Acting Police Sergeant (APS) Maxwell was the shift supervisor at Kirkcaldy Police Office that morning. Having heard the incident on the radio, he states that he contacted the ACR and instructed, *"I want all units to attend that, bearing in mind officer safety. Get an A-R-V and a dog as well please"*

PCs Smith and Good state that they heard the call and attended the incident from Kirkcaldy Police Office in a white coloured Ford Transit motor vehicle with police markings. PCs McDonough and Gibson who were in a marked silver coloured Vauxhall Astra Estate motor vehicle also attended the call. APS Maxwell states that he followed each of the other vehicles from Kirkcaldy Police Office in a marked white coloured Vauxhall Corsa motor vehicle. Also in attendance were DS Davidson and DC Connell who state that they attended the incident in a marked silver coloured Vauxhall Corsa motor vehicle.

Seven officers in their respective police vehicles state that they made their way towards Hayfield Road, Kirkcaldy, approaching from the west via Hendry Road, which took them directly past Gallagher's public house (PH). PCs Smith and Good state they approached Hayfield Road from the east via Dunnikier Road. The arrival of the police vehicles can be seen on,

- Label No.275 QVIS 4CHND 1CCTV System
- Label No.272 Master Copy- CCTV Disc TSU Ref: 2015 00356 (and certificate of authentication)
- Label No.273 Working Copy- CCTV Disc TSU Ref: 2015 00356 (and certificate of authentication)
- Label No.475 Infratech compilation QV1S4CHND 1 CCTV System master Copy

PIRC investigators produced a timeline from the CCTV recording movements of the deceased, witnesses and police officers which is produced as,

- Prod No.581 Timeline CCTV (Visual) Gallagher's Public House,

Whilst enroute, at 0719 hours, APS Maxwell states that he asked the ACR for an update on his request for an Armed Response Vehicle (ARV) and a Dog Unit. He was advised by the police controller at the ACR that he believes a Dog Unit is enroute and that an ARV is being organised.

3.3.2 Actions on Attendance at Incident

PCs Walker and Paton were the first officers to arrive in Hayfield Road at 0720:23 hours. Enroute to the call PC Walker states that he had a discussion with PC Paton regarding tactics and worst case scenarios and he indicates that he was concerned about the nature of the incident and the number of calls made by the public. He further indicates to PC Paton that the UK terror threat level for attacks against police officers was 'severe' and both officers were also aware that Hayfield Road was near to a local mental health hospital.

PC Paton states that, *"Straight away I remembered that there had been the rumour going about Kirkcaldy Police Station that somebody intended to cause harm to a female cop. Numerous officers had asked managers to confirm if there was any known truth in the rumour. But this had never been confirmed to my knowledge. The rumour still remains strong and it is believed by the officers that this had contributed to all officers in Kirkcaldy being double crewed whilst on patrol. For a number of months checks have also been getting carried out by officers at a number of identified locations in Kirkcaldy due to increased terrorist risk. It also ran through my mind that this male could be part of a terrorist plot."*

On 16 January 2015, Police Scotland issued a,

Prod No.642 Police Scotland Counter Terrorism Security Briefing,

to all its staff during which it drew attention to the following matters. 'The terror threat level specific to police personnel working in the UK has increased to Severe. This means that an attack on police service personnel is highly likely'. 'There is no intelligence to suggest a specific or direct threat to Police Scotland personnel.' As part of its investigations, PIRC investigators requested Police Scotland clarify whether there was any intelligence or information on a specific threat to female officers in Kirkcaldy. No information on this has been provided to the PIRC by Police Scotland.

Upon entering Hayfield Road, PCs Walker and Paton state that they observed a male (the deceased) who matched the description of that provided to them by the ACR. They state that the deceased was walking westwards towards them on the north footpath of Hayfield Road, approaching a bus stop. The officers state that they could not see a knife in the deceased's hands which were at his side. PC Walker states that he brought the Ford Transit police vehicle to a halt about eight feet from the deceased. PC Paton states that he exited the passenger door of the vehicle and immediately took out his CS spray as he believed the deceased may still be in possession of the knife.

PC Paton states that, with the CS spray in his right hand and pointing in the direction of the deceased, he shouted "*Get down on the ground*". PC Paton states that the deceased ignored his command and continued to walk towards him. The deceased had his palms out and, whilst PC Paton could clearly see that the deceased was not carrying anything in his hands, he states that he remembers thinking how "*crazy the man looked as if he was on a mission*". Fearing the deceased's actions, PC Paton states that he hit the 'emergency button' on his personal Airwave radio whilst shouting "*Get down on the fucking ground*". The activation of this emergency button is recorded as being at 0720:42 hours. On the emergency button being activated an officers radio becomes a live microphone indicating to the ACR the officer needs assistance and it transmitting all sounds in the immediate area.

PC Walker states that he had also left the police vehicle and had taken his PAVA spray out. He states that he heard PC Paton shouting a command at the deceased and noted that PC Paton was standing holding his CS spray in a 'spray drawn' position (which is the spray in his right hand pulled back towards his body and his left hand fully extended in a fend off position). He also noted that PC Paton was stepping backwards as the deceased approached him in an effort to keep a gap between them.

PC Paton states that, as the deceased was still coming towards him, he sprayed his CS spray towards the deceased's face. He states that he saw some of the spray hit the deceased on the face but due to the wind direction most of the spray blew back and hit him (PC Paton) on the face.

PC Walker states that he stepped around the front of the police vehicle and observed PC Paton discharging his CS spray in the direction of the deceased. Due to the wind direction he states that he saw that the spray dispersed widely and saw that PC Paton was affected by

the spray blowing back onto him, covering his face and ducking down behind the police vehicle.

PC Walker states that, as he stepped around the front of the police vehicle, the deceased turned towards him at which point he shouted at the deceased, "Stay there". PC Walker adopted a 'spray drawn' position, and states he further shouted at the deceased, something like "drop your weapon". As there was no verbal response from the deceased PC Walker states that, believing the deceased may still have a knife concealed on him, he discharged his PAVA spray at him. PC Walker states that he saw the spray hit the deceased on the face, however it appeared him that it had no effect and the deceased wiped the PAVA spray from his face with his left hand and flicked it out to the side. PC Walker states that this took him by surprise as he understood that PAVA took effect on everyone.

PC Walker states that he then began to feel the effects of the PAVA Spray, which he described as, "It felt like burning needles in my eyes". He states that this caused him to become disorientated and he had to drop his PAVA Spray canister and hold his hands to his face. He states that at the same time he attempted to move behind the police van to gain some shelter.

At 0720:40 hours the marked Ford Transit Connect police vehicle containing PCs Tomlinson and Short arrived in Hayfield Road and stopped at the scene. PC Short states that, whilst enroute to the call she was scared, particularly as she was aware from Airwave radio updates that neither a Dog Unit or an Armed Response Unit was available and that she may have to face a person in possession of a knife.

PC Tomlinson states that as he arrived at the scene he saw PCs Paton and Walker's police van parked nose into the bus stop on the north side of Hayfield Road. He states that he saw the deceased on the footpath beside the van walking towards PC Walker, coming face to face with the officer. He states that he saw PC Walker put both his hands up to cover his face and he thought that he (PC Walker) had been slashed to the face. PC Tomlinson could not see PC Paton at this time.

PC Tomlinson then states he saw the deceased turn away and walk off. He states that, "As soon as Craig (PC Walker) held his face, the black guy turned away and did a bouncy type of walk which was almost like he had won a victory or something. He strutted along the pathway"

PC Short states that, on first arriving at the scene, she saw a person she described as, "a black male, very muscular, his arms were very muscular as was his shoulders. He was wearing a white t-shirt exposing his muscular arms. He had dark trousers. He was 6 feet tall. He was standing side on to my police vehicle. It was roughly 10 feet away from us. He was standing with his hands clenched in front of him purposely. He looked to me as if he "wanted to fight". He was an intimidating figure. I was scared of him. I did not see a knife in his hands. I feel if he had a knife at that point in his right hand I would have seen it but not in his left hand due to his position."

PC Short further states that she saw PC Walker standing at the nearside of his vehicle with PC Paton standing at the passenger door. She states that neither officer had PAVA / CS spray or batons drawn at that point. She heard both officers say to the deceased *"stay where you are"*, a firm command which they repeated to him. She states the deceased moved towards PCs Walker and Paton with his hands clenched aggressively *"in front of him to the sides"*. She states that he said nothing to them and she observed PCs Walker and Paton draw PAVA / CS spray from their utility belts, with one officer discharging it into the deceased's face and upper body. PC Short states she remembers both officers warning the deceased prior to discharging their sprays, saying *"Spray"*, *"Get back"* and *"CS spray"*. She indicates that these events happened very quickly after their (PCs Short and Tomlinson's) arrival at the incident. PC Short states she did not hear any officer shout a warning of a knife nor did she see a knife.

PC Short states she saw the deceased wipe his eyes with his left hand, then laugh, turn around and walk to the path leading from the bus stop on Hayfield Road to Hendry Road. She says that she saw both PCs Walker and Paton were clearly affected by the PAVA / CS spray discharge and that both had hands to their faces.

PC Tomlinson states that he followed the deceased onto the path, walking parallel to him and shouting at him to stop. He states that the deceased turned round and looked at him at which point he took out his CS Spray and discharged it towards the deceased. He says that he saw his first discharge miss the deceased and he adjusted his aim and discharged the spray again, this time hitting the deceased in the area of his left neck and shoulder. He states that the deceased stopped walking and he (PC Tomlinson) shouted at him to get on the floor. PC Tomlinson states that he then discharged the remainder of his CS spray at the deceased which appeared to have no effect on him. He states, *"There was no reaction from him and it was almost as if I had squirted him with water"*.

PCs Tomlinson and Short state that they expected to be attacked by the deceased and drew their police batons, shouting at him *"go down on your knees"*. They state that the deceased then adopted a 'boxer's stance' and said to the officers *"come on then"*.

PC Tomlinson states that the deceased then ran towards him and suddenly veered left towards PC Short. He saw her turn and attempt to run before being punched to the back of the head by the deceased, a blow which knocked her to the ground. When on the ground, PC Short curled herself up into a ball in an effort to protect herself. PC Tomlinson states that he went to assist his colleague but states that, before he got there, the deceased raised his foot and stamped twice with great force on PC Short's back. PC Short states that she was unaware of this happening.

About this time, witness Robinson states he was travelling as a passenger in a vehicle in Hayfield Road being driven by witness Mullen when he saw the deceased walking in Hayfield Road towards Hendry Road. Witness Robinson states the deceased was carrying an unidentified object in his hand. At this point he states he saw a police vehicle arrive and skid to a halt near the deceased and two police officers (PCs Walker and Paton) got out. He states one of the officers shouted, 'halt', however the deceased continued walking towards

the officers, who both had their batons out. He states that the police officers started to back off and a female officer sprayed the deceased as she was walking backwards but it had no effect. He subsequently saw the deceased push the female officer, then slam her to the ground, lifting her off her feet with two hands. He states this officer was screaming and the deceased subsequently tripped and fell on top her. He then lost sight of the incident as the vehicle drove away.

Witness Mullen states he saw a male and female police officer (PCs Tomlinson and Short) get out of their police vehicle with their batons and CS Spray drawn. He states he saw them approach the deceased and believes the female officer discharged her CS spray at the deceased, however it appeared to have no effect as the deceased wiped it off as if it was water. He further states that there was a coming together between the officers and the deceased and they all ended up in a struggle on the ground. He states he saw the female officer limp away, apparently injured. As other police cars arrived he states he drove off out of sight of the scene. A short time later witness Mullen states he returned to the scene and saw a number of police officers restraining the man face down on the ground before he drove off.

Witness Nelson states that about 0720 hours he was in his house in Hayfield Road when he looked out a window and saw the arrival of the first police vehicle. He watched the actions of the initial police officers (PCs Walker and Paton) at the scene and the actions of other officers who later arrived. He describes that the first police officer at the scene had an extended police baton in his right hand and that he appeared to be pointing with his left hand to the ground on at least two occasions, however he did not see who the police officer was gesturing at. The witness also saw what he described as 'pepper' spray in this officer's left hand and saw it being discharged a moment later.

At this stage witness Nelson states he saw the deceased for the first time. He was walking towards the police officers apparently ignoring what was being said to him, in particular ignoring the instruction 'Get Down'. He states that it was at this point he was aware of two other police officers, a male and female (PCs Tomlinson and Short), having arrived at the scene. Witness Nelson states he saw the deceased turn and gesture with his hand and shout at the officers. The witness gained the impression that the hand gesture meant, 'Fuck off'. He then saw the deceased punch out at the female police officer at least three times and thought that one punch connected with her head.

PC Tomlinson states that, when he saw PC Short being assaulted by the deceased, he then struck him two or three times to the head with his baton. At that point the deceased turned towards him and adopted a boxing stance at which point PC Tomlinson struck him two or three times across his arms with the baton.

PC Walker, who was becoming free of the effects he had suffered from the PAVA spray, states that he saw the deceased chasing PC Short. PC Walker states that he turned away to locate a police baton and on turning back saw that PC Short was falling to the ground. He states that he began running towards the deceased and saw him stamping on PC Short. Before PC Walker got to the deceased, he states he saw PC Tomlinson move towards him

(the deceased) and, whilst unsure of what PC Tomlinson had done (struck him with a baton) it was enough to make the deceased step away from PC Short.

PC Walker states that he continued to run at the deceased and shoulder charged him, causing both him and the deceased to fall to the ground. PC Walker states that, when they were on the ground, the deceased was initially lying on his back and he (PC Walker) kneeled beside him attempting to get hold of the deceased's shoulders and hands to control him. He states that the deceased was trying to punch him and he punched the deceased a couple of times on the left side of his face. He further stated, *"Eventually I got him (deceased) to the position where I had hold of his right wrist, which forced his arm across his body. I put pressure from my chest into his right shoulder, pushing him onto his left side. My body was in a crouched position over him with my knees on the pavement against his back so he couldn't turn back towards me to lash out."*

PC Tomlinson states that, on seeing PC Walker taking the deceased to the ground, he attempted to take hold of the deceased's legs which were kicking out. He states he struck the deceased on the back of his legs in the achilles area but that he continued to kick out. PC Tomlinson states that, on seeing that the deceased was face down with PC Walker on his back attempting to control him, he, PC Tomlinson, then straddled the deceased's upper thighs in an effort to control his legs. PC Tomlinson stated, *"He started to bench press both of us and was incredibly strong. I tried to pull his right arm to stop him doing this and he started to pull me in. He was overpowering us and we were struggling to keep him on the floor. I would say Craig is about 20 stones, and he was still too powerful for us. He kept pulling me in and I pushed the emergency button for assistance."*

This activation is recorded on Airwave at 0721:19 hours. A full transcript of the Airwave radio traffic showing all officer radio conversations and emergency activations is recorded in,

Label No.197 Audio CD 1 of Calls made on Airwave Talk Group Kirkcaldy, 1 on 3rd May 2015 between 0616 and 0800 GMT,

Label No.198 Audio CD 2 of Calls made on Airwave Talk Group Kirkcaldy, 1 on 3rd May 2015 between 0616 and 0800 GMT,

and is produced as,

Prod No. 588 Transcript of Police Scotland Airwave talk group 'Kirkcaldy 01' on 3rd May 2015 between 0616 and 0800 GMT.

The incident and follow up actions are detailed in,

Prod No.317 Police Scotland STORM Log - Incident 743 03/05/2015 (and certificate of authentication)

Prod No.318 Police Scotland STORM Log - Incident 745 03/05/2015 (and certificate of authentication)

Prod No. 319 Police Scotland STORM Log - Incident 837 03/05/2015 (and certificate of authentication)

A transcript of relevant communications and radio activations is contained at Appendix D.

PC Paton states that, on becoming partially free from the effects of the CS spray, he could hear PC Short screaming and, whilst still being disorientated, he assisted PC Short to get up. He then became aware of the struggle between PCs Walker and Tomlinson and the deceased and went to assist. He observed that the deceased was lying on his back, face up, with PC Walker lying across his chest.

At this time PCs Smith and Good attended the incident, entering Hayfield Road from Dunnikier Road. This arrival is timed at 0721:32 hours on,

Prod No. 581 Timeline CCTV (Visual) Gallagher's Public House.

PCs Smith and Good state that, on arrival, they could see PC Short staggering about the roadway holding her side. PCs Smith and Good got out of their vehicle and went to assist PC Short who, they state, seemed to be dazed, confused and terrified. PC Smith states that he then went to assist the other three officers who he could see struggling on the ground with the deceased.

PC Smith states that he could see PCs Walker, Paton and Tomlinson were all in a kneeling position to the back of the deceased who they were trying to control. He states that he saw PC Tomlinson trying to control the deceased's legs; PC Paton was closest to the deceased's head trying to control his arms, leaning across the top of the deceased's shoulders. He stated "*He (PC Paton) was not lying on the man's head or neck area.*" PC Walker was in the middle of the other two officers, leaning across the deceased's lower torso, trying to control his arms.

PC Smith states that he assisted his colleagues by kneeling on the ground at chest level to the deceased, who he states was on his side and between himself, PCs Walker and Paton. These officers managed to apply handcuffs to the deceased (palm to palm to the front of the deceased's body).

PC Smith states that he moved down to the deceased's legs to assist in restraining him and, at that point, he became aware of PC McDonough coming to their assistance.

Witness Wyse, who resides in Hayfield Road, states that she was awoken by a disturbance outside her home. On looking out a front window she states she saw the deceased going to ground after being struck on the legs by a police officer. He was then surrounded and held on the ground by about six police officers for approximately five minutes. She states the officers were crossing over him from both sides, covering most of his body.

Witness Wyse states that the deceased was lying on his back and that it looked like one of the police officers was using a baton on the deceased's upper chest, towards his throat, to

hold him down. She describes the deceased struggling with the officers and him screaming and shouting for the officers to get off him. She also states she later saw the police placing yellow tape (leg restraints) around his feet and legs and that his wrists were restrained and his hands and arms were to his front.

Witness Wyse used her,

Label No.122 White Samsung S5 mobile phone [REDACTED]

to record some of the events. This was seized by the PIRC investigators and video footage and still images produced as.

Label No. 480 Infratech compilation white Samsung S5 mobile phone master copy

and

Label No. 481 Infratech compilation white Samsung S5 mobile phone working copy

Witness Sinclair who was staying the night with her friend witness Wyse, was woken by witness Wyse and told to come to the bedroom window. She states that on doing so she could see the deceased on the pavement outside the house lying on his back. Witness Wyse was standing with the blinds open and she had her mobile phone in her hand. Witness Sinclair states she could see that the deceased had yellow coloured restraints on his ankles and his legs were straight out. She could also see that his wrists were close together in the area of his chest.

Prior to the mobile phone being seized by PIRC investigators, witness Sinclair watched the footage taken by witness Wyse on,

Label No.122 White Samsung S5 mobile phone [REDACTED]

Witness Sinclair states that it shows footage prior to her looking out onto the scene. She describes the footage as, *“There was a policeman lying on top of him almost straight up and down, as if he had rugby tackled him. The man was either on his front or in the recovery position in this still. The video quality was very poor but there was a group of about five or six other police officers crouched down but not on the man.”*

Witness Guessoum was driving his car northwards on Hendry Road and as he approached the roundabout with Hayfield Road he states his attention was drawn to a number of police officers holding someone on the ground. He states that he could see that there were between four to five police officers and, whilst he only looked for about ten seconds, he thought it looked like the police officers were controlling someone on the ground and it was a normal arrest.

Witness Fenton was driving his car north on Hendry Road heading to his nearby place of employment as a psychiatric nurse. As he did so he states he was passed by two police

vehicles which were also heading northwards, each of the police vehicles had their blue lights and sirens activated. As he approached the roundabout with Hendry Road and Hayfield Road, he saw that there were a number of police vehicles that he describes as being abandoned on the roadway of Hayfield Road, some of which had their doors lying wide open. Upon turning right (eastwards) onto Hayfield Road, witness Fenton, observed a male (deceased) lying prone on the south footpath. He is unsure if the male was face down or face up. He states that he could only see the male from the shoulders up as the rest of his body was obscured by a number of police officers. Witness Fenton glanced towards the group and he states his impression was that the police officers were on top of the male on the ground however he was unable to recall individual actions. Witness Fenton stated, *"I regularly have to restrain patients at my work in volatile situations and have received training in this regard, namely 'Safe and Therapeutic Interventions', which includes physical restraint. In what I saw, at a glance, there was nothing that jumped out at me as being overly excessive."*

About this time, witness Ali was driving his van south on Hendry Road approaching the roundabout with Hayfield Road when he became aware of a small silver motor vehicle doing a U-turn then stopping in the middle of the roundabout. He states that he could see that there were two males in this car (witnesses Robinson and Mullen) and both were looking down Hayfield Road. On looking witness Ali states that he could see that there were two police vehicles parked on the north side of the roadway. Across the road from the police vehicles he states that he could see that two police officers were holding a male person down on the ground. He states that he also saw a female police officer running from the direction of the two police officers towards the two police vehicles. Witness Ali states that there was a man standing further down the road, standing on the pavement and that this man had a clear view of what was happening (potentially witness Nelson).

Witness Ali states that he could see that the two male police officers had to put pressure on the male on the ground with their hands and knees. He describes one officer being at the male's head area, whilst the other was at the male's waist area. Witness Ali got the impression that the male was trying to get up and the officers were using force to keep him down, he could not say whether the male was face up or face down. He states, *"At the time I saw this I thought at any time that the two male police officers were just restraining and arresting somebody. I wasn't shocked at what I seen. It was just an arrest."*

Witness [REDACTED] was travelling south on Hendry Road in her car approaching the roundabout with Hayfield Road, intending to turn left into Hayfield Road. Due to the presence of a number of police vehicles she was unable to enter Hayfield Road. She states that she saw a number of police officers trying to hold someone on the ground. She continued on Hendry Road and performed a U-turn and drove back up the way she had come and saw that the police were still on the ground. She states she got the impression that the police officers were just restraining someone.

Prod No.581 Timeline CCTV (Visual) Gallagher's Public House

Shows that at 0721:44 hours, police witnesses PCs McDonough and Gibson attended the scene in their silver coloured marked Vauxhall Astra estate car, entering Hayfield Road from

OFFICIAL - SENSITIVE

Hendry Road. PC McDonough states that, on arrival, he observed that a black male was lying on his stomach face down on the ground and that four police officers were restraining him. He observed that, PC Smith was on his knees attempting to control the deceased's legs as he was struggling, PC Walker was also on his knees at the deceased's waist area, PC Paton was on his knees at the deceased's head area and was attempting to control the deceased's left arm, whilst PC Tomlinson was kneeling at the deceased's head area attempting to control the deceased's right arm. PC Gibson only remembers two officers, PCs Tomlinson and Walker, struggling with the deceased on the ground. He states there could have been other officers but he did not notice them.

PC McDonough states that he went to assist PC Smith at the deceased's legs while PC Gibson assisted to control the deceased's upper body. PC Gibson states that he lay across the deceased's legs and was aware of PCs McDonough and Good applying fast straps to the deceased's legs.

Prod No.581 Timeline CCTV (Visual) Gallagher's Public House

Shows that at 0722:26 hours, police witness APS Maxwell attended the scene in his marked white coloured Vauxhall Corsa motor vehicle. He entered Hayfield Road from Hendry Road.

APS Maxwell states that, on arrival, he could see that there was a black male lying on the ground on the south footpath. He states that the male's head was facing towards a house on the south side of the road, his feet were towards the road and he was lying on his side facing westward towards APS Maxwell. At that time he could see that PC Smith was on the other side of the male kneeling down over his shoulders. PC Tomlinson was next to PC Smith again facing towards APS Maxwell, leaning over the male's hip. Both PCs Walker and Paton were standing next to these officers. PC McDonough was kneeling down at the male's feet, with PC Gibson standing near to PC McDonough.

APS Maxwell states that he could see that the male (deceased) was handcuffed to the front and he believes that leg restraints had been applied. Further down the street he states that he could see PC Short, who was standing crouched over on her own in the middle of the road.

APS Maxwell stated, *"I saw officers still applying force to restrain the black male. The officers were on their knees and leaning on the male. Nobody was lying on top of him. They were applying pressure to restrain the male however it was not fully body pressure because they were anchored from their knees."*

APS Maxwell was given an account of events by PC Paton and he states that he asked this officer if he knew the whereabouts of the knife, which had been mentioned in the received telephone calls and broadcast on police radio. He states that, he cannot recall who, but someone shouted that a knife was on the grass on the opposite side of the road. At this time APS Maxwell became aware that two CID officers had arrived.

Prod No.581 Timeline CCTV (Visual) Gallagher's Public House

OFFICIAL - SENSITIVE

Shows that at 0723:03 hours DS Davidson and DC Connell arrived at the scene in their marked silver coloured Vauxhall Corsa motor vehicle, entering Hayfield Road from Hendry Road. On arrival they parked their car on the north side of the roadway. DS Davidson states that she could see that immediately to her right a black man (deceased) was lying face down on the ground. The majority of his body, head and upper legs were on the footpath, with his feet stretched out on the road with his head nearer to a hedge. DS Davidson could see that the male was moving. She saw PC Paton on the deceased's right hand side; PC Walker lying on the deceased's left side at his upper shoulder area, PC Tomlinson was at the deceased's feet along with PC Gibson. DS Davidson states that she could see that PC Walker was stressed in his speech and he said to her *"he is struggling"*.

DS Davidson states that she recalls at this time that she advised the control room through her Airwave radio that the male was restrained. This is timed on Airwave at 0723:12 hours.

DS Davidson then attended to PC Short who by that time was sitting in a marked Ford Transit Police Van. She noted that PC Short appeared to be visibly shaken and in shock. She recalls that Detective Inspector (DI) Robson had now attended the scene and she advised him that PC Short needed to go to hospital as she had been struck on the back of the head. DI Robson decided to personally convey PC Short to hospital. The exact time they left the scene cannot be determined.

PC McDonough states that after he applied fast straps to the deceased's legs he became aware that, all of a sudden, the deceased's body appeared to go limp.

DS Davidson states that as she returned to where the deceased was being restrained she became aware that someone was shouting that the deceased was unresponsive and requesting an ambulance.

From examination of,

Prod No.581 Timeline CCTV (Visual) Gallagher's Public House

the first police vehicle is seen to arrive at 0719:45 hours. Although difficult to determine from the poor quality of the video, it appears that CPR was started at 0724:15 hours, four and a half minutes after initial contact between the deceased and police.

Six police officers engaged in the restraint of the deceased:

- | | |
|------------------|----------------------------------|
| 1. PC Paton: | arms, head and upper torso area; |
| 2. PC Walker: | arms and upper torso area; |
| 3. PC Tomlinson: | upper thigh area; |
| 4. PC Smith: | lower torso area and legs; |
| 5. PC McDonough: | legs, applied fast straps; |
| 6. PC Gibson: | upper torso area, then legs. |

3.3.3 Police action when Deceased became unresponsive

At 0725:16 hours PC Smith made an Airwave radio transmission to the ACR stating, *"This male now certainly appears to be unconscious, breathing, not responsive get an ambulance for him"*

When the deceased became unresponsive, the officers who had been restraining him placed him on his side in the recovery position. PC Smith, who is trained in first aid, states that he began to check the deceased, running through an aftercare procedure. He noted that the deceased's eyes were closed and he tried to get a verbal response from him which proved negative. PC Smith then tried physical stimulus, putting his knuckles in the bone in the top of his chest which also provided a negative response. At that point the deceased appeared to be unconscious. PC Smith states that he checked the deceased's breathing by putting his face towards his mouth, upon which he heard and felt breath. PC Smith states that he could see at this point that the deceased's chest was moving.

PC Smith states that he also visually checked the deceased's head for any injury, having been advised by PC Tomlinson that he had hit the deceased on the head with his baton. Fearing a head injury, PC Smith did not move the deceased's head. He states that he could see no obvious injury to the deceased at that time.

The deceased was kept in the recovery position for about 3 minutes. At that point PC Smith states that he became concerned that the deceased was not breathing normally and that his chest was not moving. PC Smith states that he moved the deceased from his side onto his back and he put his ear over the deceased's mouth and looked down the line of his chest. PC Smith states that he could not feel, hear or see breathing and he immediately said to the other officers that they needed to start CPR (cardiopulmonary resuscitation).

Witness Nelson who had earlier witnessed the struggle between the deceased and the officers states that he later observed the police undertaking chest compression on the deceased. Witness Wyse states that she saw that the deceased had stopped struggling and that police officers tried to communicate with him. Eventually she came to the conclusion that the deceased may have passed out and says that she saw police officers checking his condition and trying to get a pulse from him. Witness Wyse states that she saw officers start CPR and mouth to mouth on the deceased.

PC Walker states that he began to carry out chest compressions on the deceased in accord with his police first aid training. After about two or three compressions he states he heard the sound of what he believed to be one of the deceased's ribs breaking (the deceased was found to have a broken rib at post mortem examination). PC Walker states that he was not overly concerned about this as he could recall from his training that such an event may occur.

Whilst PC Walker was performing chest compression on the deceased, PCs Paton and Smith states that they attempted to fit a one way valve face shield into the deceased's mouth to enable them to provide rescue breaths. They state that they were unable to fit the face shield

correctly as the deceased's teeth were clenched shut. They attempted to open the deceased's mouth with their fingers but this also proved negative. PC Smith states that he attempted on three occasions to provide rescue breaths with the ill-fitting mask, but he was aware that the breaths appeared to be escaping out of the side of the deceased's mouth. In addition he states the face mask appeared to be getting contaminated with saliva and mucus and that mucus was also coming out of the deceased's nose.

At this point PC Smith states that he made a decision that the officers would continue with chest compressions only and this was continued alternately by PCs Walker and Paton. PC Smith thereafter approached witness Nelson for a glass of water, which he used to rinse out his mouth.

Witness Sinclair who was in witness Ashley Wyse' home states that she could see that there were a number of police officers around the deceased. She saw that one of the officers was kneeling down undertaking mouth to mouth resuscitation and another officer, who she describes as being of hefty build, was kneeling over the deceased undertaking chest compressions.

Witness Sinclair, who is a midwife, states that she considered that the police officers were doing a good job. She was aware of a number of other officers at the scene, some of whom were kneeling beside the deceased, but she was not aware of what they were doing as her attention was focused on the officers undertaking CPR. She states that she thought that the CPR lasted for about ten minutes until the arrival of an ambulance. She states that the ambulance paramedics used a resuscitation bag and mask on the deceased before he was placed in the back of the ambulance.

Label No.197 Audio CD 1 of Calls made on Airwave Talk Group Kirkcaldy, 1 on 3rd May 2015 between 0616 and 0800 GMT,

Label No.198 Audio CD 2 of Calls made on Airwave Talk Group Kirkcaldy, 1 on 3rd May 2015 between 0616 and 0800 GMT,

and is produced as,

Prod No. 588 Transcript of Police Scotland Airwave talk group 'Kirkcaldy 01' on 3rd May 2015 between 0616 and 0800 GMT.

show communications between the police officers at the scene and the ACR regarding the ambulance (summarised in Appendix D). The relevant communication are:

07:26:40 "I'm just looking to clarify. Has an ambulance been contacted for this accused also? Over"

07:29:29 "Control can you get a move on with the ambulance this accused is now not breathing CPR is commencing. Over"

- 07:31:22 "Control any update on ambulance? We could really do with it here. Over"
- 07:31:56 "ETA for the ambulance three minutes"
- 07:32:55 "ETA two minutes for the ambulance"
- 07:34:07 "Ambulance at Locus"

An ambulance containing witnesses Finlayson and Taylor, both Paramedics with the Scottish Ambulance Service, attended the incident scene at 0734 hours. On arrival they state that they observed a male police officer undertaking CPR on the deceased. They state that they ventilated the deceased with a bag valve mask to force oxygen into his lungs and felt for a pulse, while an officer continued with CPR. They state that they did not find a pulse and they decided to get the deceased into the ambulance as quickly as possible to take him the short journey to the Victoria Hospital, Kirkcaldy. They state that they radioed to the hospital to inform staff that a male in cardiac arrest would be arriving shortly.

With the assistance of police officers witnesses Finlayson and Taylor state that they placed the deceased into the ambulance and continued to administer medical assistance to the deceased. They state that they requested that a police officer drive the ambulance to the hospital in order that both witnesses could continue to attempt to resuscitate the deceased. They state that they applied a defibrillator to the deceased in the ambulance and obtained a trace of a pulse and, therefore, did not apply a shock to the deceased.

PC Smith states that he drove the ambulance to the Victoria Hospital, Kirkcaldy, whilst DC Connell travelled in the rear along with the deceased and both paramedics, assisting the paramedics with CPR.

DI Robson states that he conveyed PC Short to the Victoria Hospital for treatment to her injuries prior to the ambulance leaving the incident scene. On being made aware that there had been complications with the deceased and that he had stopped breathing, DI Robson states that he immediately returned to the scene. On arrival, and in conjunction with DS Davidson, DI Robson states that he instigated locus protection measures instructing officers to isolate the scene using police barrier tape and positioning police vehicles to prevent vehicular access. He also states that he placed a number of uniform police officers on cordon duties to prevent access to the scene.

Inspector Kay, who had attended the scene, states that he arranged to have the officers involved in the incident return to Kirkcaldy Police Office.

3.3.4 Recovery of items at the scene

On arrival at the scene, DC Connell states that he saw a number of officers engaged in a struggle with the deceased and that,

Label No.180 Police Issue Baton 1 #MP027381

OFFICIAL - SENSITIVE

Label No.181 Police Issue Baton 2 #379526

Label No.182 Police Issue Baton 3 #MP163969

Label No.183 Police Issue handcuffs - 162349

were lying on the ground adjacent to them. DC Connell states that he lifted each of the items and placed them in the boot of his police vehicle. The seizure of these items is corroborated by DS Davidson. The items were not photographed or subjected to forensic recovery.

DC Connell also recovered the following item at the scene,

Label No. 189 Mobile Phone (Gold coloured - deceased)

DC Connell states that he began a search of the immediate area for other items which may be connected to the incident and, whilst doing so, he was alerted by PC McDonough to an area of grass on the north footpath of Hayfield Road near to the roundabout with Hendry Road. PC McDonough told him he could see something shiny lying in the grass and DC Connell states that he walked to this area where he observed a,

Label No.184 SD 918-Knife

lying on the grass at this location (the knife was found approximately 20 metres from where the deceased initially confronted police officers and in an area where he was observed to be standing by witnesses Rowe, Waddell, McCormick, Howie, O'Conner, Alan Pearson, and Limbert prior to police arrival).

DC Connell states that he spoke to DI Robson and DS Davidson about 0724 hours and informed them of the discovery of the knife. He states that he was instructed by DI Robson to photograph the knife in situ with his own phone and seize it. DI Robson states that he took the decision to seize the knife at that time due to the inclement weather conditions, a need to preserve best evidence and on grounds of public safety.

DC Connell states that he took photographs of the knife on his personal mobile phone and later sent a copy of the photograph by email to his Police Scotland email account.

PIRC has secured,

Prod No.185 Photograph of Locus (Photograph of Knife at locus taken by DC Connell)

which shows the knife in situ and,

Label No.248 1 x LG Nexis Mobile Telephone Black in Colour (telephone number [REDACTED] [REDACTED] (belonging to DC Connell).

This knife was later submitted to SPA Forensic Services for examination. Two impressions were found on the knife which, following fingerprint examination, revealed insufficient detail to allow attribution to any person. A DNA profile was obtained from the knife which, following analysis showed that the DNA profile was from at least three individuals and unsuitable for any meaningful comparison.

Prod No.707 SPA Forensic Services (Glw) Report fingerprint case examination results

Prod No.709 SPA Forensic Services (Glw) Report knife ,radio, vest, deceased boots, DNA swabbing of FP impressions on knife.

Report to COPFS - Copy 1

4. Use of Force

4.1 Police Scotland's Standard Operating Procedures on Use of Force

Prod No.531 Police Scotland's Standard Operating Procedures on Use of Force v1.03

establishes the criteria and guidelines relative to the use of force, including use of personal protective equipment (batons, handcuffs and CS / PAVA spray). The SOP states:

Para 2.2, 'Any force used by a Police Officer must be legal, proportionate, and reasonable in the circumstances and the minimum amount necessary to accomplish the lawful objective concerned.'

Para 2.5, 'The decision to use any defensive technique or equipment in a confrontational situation is for each individual to assess based on the circumstances involved.'

Para 2.6, 'Indiscriminate or unnecessary use of force is unacceptable and individuals will be personally accountable for such improper use. There are only two criteria for any use of physical force, those being:

- Justification: Where the force used is reasonable and proportionate to the perceived threat; and
- Preclusion: Where other reasonable response options have, either, been attempted and failed or are considered inappropriate.

Para 2.7, 'The overriding principle is that any force used by Police Officers must never be excessive. Any force used must be reasonable based on the individual person's perception of the threat that they are immediately facing.'

Section 4, 'Confrontational Continuum'

Para 4.1, 'When engaged in confrontational situations, Police Officers must at all times consider the force continuum with regards to the escalation and de-escalation.'

Para 4.2, 'The confrontational continuum assist officers to determine what may be considered to be the appropriate level of force to be used in any eventuality and should be used to assist officers to subsequently justify the extent of any force used.'

Para 4.3, 'Before using any force an officer must consider:

- The impact factors affecting the situation;
- The physical, mental and sensory condition of the assailant;
- The seriousness of the attack;
- The presence of any weapons; and

- That the response must not be excessive.

Para 4.6, 'Profiled Offender Behaviour. This term encompasses the actions and behaviour of the subject and comprise of the Warning and Danger signs they exhibit coupled with Impact Factors. Profiling a person's behaviour may assist in determining an officer's reasonable response.'

Para 4.6.4, 'Level 3 – Passive Resistance. This is a typical tactic used, but not exclusively, by demonstrators. It is best described as non-active conduct with no compliance to lawful instruction.'

Para 4.6.5, 'Level 4 – Active Resistance. This is more of a physical form of resistance, in that the subject is actively doing something to prevent or obstruct an officer from carrying out their duty. This type of resistance, although physical in nature, falls short of an assault upon another. It can include holding on to an object or person either physically or mechanically, struggling to break free from an officers grasp, trying to dispose of evidence.'

Para 4.6.6, 'Level 5 – Assaultive Resistance. This is when there is a deliberate intention by another to cause a physical effect upon a person, either directly or by indirect means (assault by menaces).'

Paragraph 4.7 of the SOP outlines an officer's reasonable response (force options) to the situations outlined above. In the case of Passive and Active Resistance, officers are expected to use 'Control Skills' to restrain an offender. This may include hold and restraint techniques, use of handcuffs and leg restraints. In the case of Assaultive Resistance, officers may use 'Defensive Tactics' including use of batons and CS spray.

Paragraph 21.2 of the SOP outlines considerations in respect of Positional Asphyxia.

Para 21.2.1, 'Positional asphyxia can occur when a subject is placed in a position that interferes with their ability to breathe. Death can occur rapidly as a consequence, and there have been cases where Police Officers have been found liable'.

Para 21.2.3, 'When a subject has been involved in a physical and violent struggle, the exertion involved causes the muscles to use oxygen at an increased rate. The process can cause oxygen debt in the muscles and the physiological response to that is accelerated breathing.

Para 21.2.4, 'During restraint, where the subject is placed in a prone position, ventilation can become more difficult, due to the internal organs exerting pressure on the diaphragm. When the subject's hands are restrained to the rear, this has the effect of isolating the pectoral muscles, which further restricts breathing ability.

Para 21.2.5, The process of restraining often requires the upper body to be held down, sometimes by a Police Officer's body weight. The subject, who already has restrictions in

breathing, may struggle against the restraint, which in turn may be interpreted by the Police Officer as violence directed towards them, causing further downward pressure or restraint to be applied. This is the cycle of events that could trigger positional asphyxia.

Para 21.2.6, 'Police Officers are encouraged to remove a subject from the prone position as soon as reasonably practicable following restraint. An advantage is that the subject can breathe without further restriction than is absolutely necessary.'

All police officers receive an initial five day training course on officer safety techniques including use of personal protective equipment, i.e. batons, handcuffs and CS / PAVA spray. The course includes inputs on the SOP, the force continuum and appropriate levels of threat response. Thereafter, officers requalify on a yearly basis in officer safety training (OST) – this does not include training on the SOP. Where a Police Scotland SOP is updated, such updates may be drawn to officers' attention during daily or weekly briefings. No records are kept in this regard.

4.2 Principal Officer's Training Records

PIRC investigators undertook examination of the training records,

Prod No's.388 to 396 9 x Police Scotland officer training records (showing the officers safety equipment and CS/PAVA training qualifications)

of the principal officers in respect of OST (training in the use of baton, handcuffs and restraint techniques) and SPELS first aid training. All officers were within current yearly qualification periods. In addition, PC Smith was a trained first aid officer and OST instructor.

The nine officers involved in the incident requalified on the following dates:

- PC Short 25 February 2015;
- APS Maxwell 6 November 2014;
- PC Good 2 February 2015;
- PC Tomlinson 23 November 2014;
- PC Gibson 4 March 2015;
- PC Walker 5 November 2014;
- PC Paton 4 January 2015;
- PC McDonough 11 November 2015

PC Smith is an OST Instructor, which carries a two year qualification period. He qualified on 11 November 2013. In addition, PC Smith qualified in first aid on 12 March 2014.

PIRC Investigators obtained,

Prod No's.388 to 396 9 x Police Scotland officer training records (showing the officers safety equipment and CS/PAVA training qualifications)

Label No's. 9 x CS / PAVA spray canisters (Label No's. 5, 19, 23, 39, 49, 70, 77, 94, 100)

in possession of and / or used by the officers attending the incident and their personal,

Prod No's. 287, 289 to 296 9 x Police Scotland printouts of personal CS / PAVA spray records

In addition, PIRC confirmed with the Scottish Police College that all officers who have under six years' service have received two day Diversity Awareness training, while officers with six or more years' service received three days training.

4.3 CS/PAVA Use

Prod No.531 Police Scotland's Standard Operating Procedures on Use of Force v1.03

establishes the criteria and guidelines relative to the use of force, including use of personal protective equipment (batons, handcuffs and CS / PAVA spray).

This SOP outlines processes and procedures for the issue, storage, use, recording and retention of CS/PAVA Spray. Examination of Appendix M of the SOP provides that, 'Every canister of CS spray has a unique serial number and will be issued to individual officers against production of their Authorisation Card and signature in the daily control log. The issue and return of CS canisters will be strictly managed and recorded. Supervisors, authorised in use, will be responsible for ensuring that there is strict control on the upkeep of records.'

On 23 March 2015 the PIRC issued a,

Prod No.754 PIRC Report of Investigation – Use of CS Spray within Accident and Emergency Department, Victoria Hospital, Kirkcaldy & certificate of Authentication

following an investigation into the use of CS spray by officers of Police Scotland at the Victoria Hospital, Kirkcaldy on 18 October 2014.

As part of that report, the PIRC recommended that Police Scotland provided fuller guidance to officers in Fife Division in relation to the issue, use and storage of CS Spray and standardised those procedures throughout Scotland. This recommendation followed a finding that Kirkcaldy Police Office was not following guidance on the control, storage and recording of usage of CS spray.

PC Shirley Buttercase has responsibility for administering the acquisition, retention, distribution and receipt or return of CS/PAVA canisters for P Division (Fife) of Police Scotland.

Following discussion with PIRC investigators and anticipating PIRC's recommendation, in November 2014, PC Buttercase states that she introduced revised procedures for monitoring CS/PAVA use by officers in P Division (Fife). When interviewed on 10 June 2015, PC Buttercase states these procedures were *"the introduction of CS Canister Receipt detailing Officer's name, station, shoulder number, CS canister, number, expiry date, date issued, received by, place stored, weight out and date weighed. It is normally a supervisor that signs for this. These receipts were kept on file by me."* *"I have no idea of what the individual officers or supervisors do on a daily basis as regards the CS canisters. As far as I know, it is meant to be signed out and in on a daily basis although I don't think that is written down anywhere. I don't think there is anything that says it should be weighed"*.

PC Buttercase further stated *"on 3 June 2015 I attended at Kirkcaldy Police Station with the intention of recovering the CS canisters and completed PAVA schedules (in relation to the incident on 3 May 2015). On arrival, I spoke to both Sergeants Graeme Ross and Kim Stuart. I learned that a number of the PAVA canisters had been stored in a locked notebook store temporarily, however there was no trace of the PAVA schedules. The Sergeants could not trace these records, which had been sent around 16 April 2015. Some efforts were made to trace these without success. These records included those for Team 4, who were involved in the incident on 3 May 2015. The same day, I spoke personally to Inspector Alan Seath, the Community Inspector and made him aware. I explained to him that I needed the sheets and he said "leave it with me". I later sent replacement sheets to be signed by the relevant officers. These have not yet returned. Thus, I cannot produce the paper records for PIRC at present"*.

"I have been asked if the CS and PAVA canisters are audited. This happens, but I am not sure how often as I am not responsible for it. As regards the teams, including Team 4 at Kirkcaldy, the Sergeants are responsible for doing this. I don't know what is involved in the audit. I have no written audit record for Team 4, Kirkcaldy".

Effectively PC Buttercase appears to have no knowledge of the auditing process for CS and PAVA canisters used on 3 May 2015 and is unable to produce up to date records for them.

In seeking to establish the quantity of CS and PAVA Spray that was used by police officers when attempting to control the deceased, PIRC investigators obtained details of the weight of the relevant CS and PAVA Spray canisters when they were last recorded as being issued to the officers, as outlined below, from PC Buttercase.

Following analysis by SPA Forensic Services, the weight of the canisters following the incident was calculated along with the potential volume of Spray discharged.

Prod No.631 SPA Forensic Report CS / PAVA.

PCs Tomlinson and Paton state they discharged CS Spray at the deceased during the incident, PC Walker states he discharged PAVA Spray.

PC Tomlinson's CS Spray is recorded as having been issued on 22 December 2013 when it weighed 55 grams. Following the incident, it was found to weigh 43.05 grams with a potential discharge of 11.95 grams.

PC Paton's CS Spray is recorded as having been issued on 22 July 2014, when it weighed 55 grams. Following the incident, it was found to weigh 39.28 grams with a potential discharge of 15.72 grams.

PC Walker's PAVA Spray is recorded as having been issued on 15 April 2015 when it weighed 88 grams. Following the incident it was found to weigh 67.43 grams with a potential discharge of 20.57 grams.

In addition, examination of records for PC Smith provides that PC Smith's CS Spray is recorded as having been issued on 3 April 2014 when it weighed 55 grams. Following the incident it was found to weigh 50.05 grams, with a potential discharge of 4.95 grams.

Procedures in Fife Division continue to show deviation from national policy in respect of regular record keeping and daily management of issue and return of CS spray. Additionally, once issued, no checks are undertaken to determine whether a canister has lost any of its content unless officers report they have used CS spray during an incident. Fife Division's poor record management of CS/PAVA sprays prevents any accurate determination to be made about the volumes of spray used by officers against Sheku Bayoh.

In relation to the use of CS / PAVA spray, the following documents were submitted to pathologists for their consideration,

- Prod No.265 Home office comparison report on CS and PAVA sprays (pub num) 24/14
- Prod No.266 Comparison of CS and PAVA operations and toxicological aspects.
- Prod No.267 Faculty of Forensic and Legal Medicine: Incapacitant Spray Clinical Effects and Management.

5. Closed Circuit Television (CCTV) and Image Recovery

On 3 May 2015, Police Scotland commenced a scoping exercise to identify and ingather all available CCTV footage of the various incident scenes. On 5 May 2015, following the provision of additional Terms of Reference (2) to the PIRC, this task was later transferred to the PIRC investigators however, in the interim, Police Scotland seized some CCTV and other imagery. PIRC identified and seized further CCTV and other imagery from other sources.

5.1 Gallagher's Pub, Hendry Road, Kirkcaldy

Gallagher's public house is sited on Hendry Road, Kirkcaldy at the junction of Hayfield Road. It has a number of CCTV cameras one of which has a view of the car park of the premises. This camera also looks onto the junction and captured the incident, including movements by the deceased, police officers and witnesses to the incident. The video is of poor quality.

On 4 May 2015, witness Morrison, Technical Officer from Police Scotland attended at the premises of Gallagher's public house, Hendry Road, Kirkcaldy and removed the CCTV system

Label No.275 QVIS 4CHND 1CCTV System

which he took to the technical support unit at Glenrothes Police Office and downloaded the CCTV footage onto

Label No.272 Master Copy- CCTV Disc TSU Ref: 2015 00356

and

Label No.273 Working Copy- CCTV Disc TSU Ref: 2015 00356

The footage shows the deceased initially walking along Hendry Road towards the junction of Hayfield Road then onto the footpath which runs behind this junction. Shortly thereafter the deceased's interaction with witness Limbert can be seen. The witness Limbert was travelling to her place of work as a Staff Nurse in Victoria Hospital, Hayfield Road, Kirkcaldy and she speaks to the deceased taking a position in the centre of the road, carrying a knife with a 20 cm blade in his right hand. Witness Limbert later saw the deceased as he was brought into a resuscitation cubicle in Victoria Hospital where she was involved in his medical interventions.

Following the deceased's interaction with witness Limbert, a short time later a police vehicle arrives, shortly followed by a second. Interaction between the police and deceased is observed although no precise details can be determined from the footage. The interaction is seen to result in a police officer falling to the ground, after which the deceased is seen to be restrained, initially by two officers. These officers are shortly followed by additional officers, who are seen to arrive on scene and assist in the restraint. A period of approximately 14 minutes passes before the deceased is seen to be moved into an ambulance.

The footage also shows a plain clothed officer (DC Connell) moving towards the grassed area at the junction of Hendry Road and Hayfield Road, and retrieving an item (knife) from the grassed area and passing it to other officers.

The footage also shows a police cordon being set up which blocks the entrance to Hayfield Road.

Prod No. 581 Timeline CCTV (Visual) – Gallagher’s Public House

Compiled by by PIRC witnesses Rhodes and McGuire provides details on what can be seen on the CCTV.

5.2 CCTV Enhancement

In an effort to establish whether improved quality footage could be obtained, Infratech Forensics (ITF), which is a firm that was identified through the National Crime Agency directory of known experts, were contacted and asked to examine the potential for image enhancement. The following items,

- Label No.275 QVIS 4CHND 1CCTV System
- Label No.338 USB Memory Stick Van driven by witness Grey CCTV Footage 03/05/15
- Label No.246 1x Phone 6 (gold)
- Label No.122 White Samsung S5 mobile phone [REDACTED]
- Label No.170 SD Card from Dash Cam - Harry Kolberg

were submitted to ITF for potential image enhancement. The video footage contained on each was downloaded by witness Buxton, Forensic Video Examiner, onto various laboratory computers and the productions returned to the PIRC.

ITF was requested to enhance the images in order that any events captured could be shown more clearly. The CCTV footage and other images were examined using a Home Office approved Imix Impress image enhancement suite and a Final Cut Studio video editing suite. Still image processing and enhancement for analysis and prints production was carried out using both Impress and Adobe Photoshop CS4.

Label No.476 Infratech Compilation QV1S4CHND 1 CCTV System Master Copy

provides enlarged and enhanced video footage from Gallagher’s public house.

5.3 Kolberg Dashcam

About 2117 hours on Sunday 3 May 2015, DCs McKnight and Peoples seized,

Label No.170 SD Card from Dash Cam - Harry Kolberg

This shows footage taken from inside the vehicle of witness Harry Kolberg. The vehicle was travelling along Templehall Avenue when it passed the deceased at which time he was walking in a westerly direction along the kerb and road. As the vehicle passes, the deceased walks towards the vehicle and a voice inside the car can be heard saying *"He's got a knife in his hand"*.

The vehicle then travels north on Hendry Road where witness Harry Kolberg stops to make a telephone call to the police before travelling south on Hendry Road and turning left into Hayfield Road and stopping. Whilst stopped on Hayfield Road several vehicles are seen to pass and make U-turns in the road. As a white van makes a U-turn the now deceased is visible walking in a westerly direction in the middle of the road before reaching the pavement and continuing in same direction.

Witness Harry Kolberg is heard in conversation with another driver stating *"Aye I have seen him, I have already phoned"*. The footage continues until all vehicles leave the scene. The car then continues along Hendry Road where it stops and witness Kolberg can be heard making a second telephone call to the Police.

Label No.626 CCTV Audio & Visual Timeline Harry Kolberg Dash Cam

Compiled by PIRC investigators Patrick and McAuley provides details on what can be seen on,

Label No.170 SD Card from Dash Cam - Harry Kolberg

In addition PIRC had

Label No.170 SD Card from Dash Cam - Harry Kolberg

enhanced by ITF in an effort to provide clearer footage. The resultant video was reproduced as a master & working copy DVD marked as,

Label No.482 Infratech Compilation SD Card from Dash Cam- Harry Kolberg Mastercopy

Enhanced still images were printed as,

Label No.513: MJB/1 – 4 x Still Images Generated from PIRC Prod 482 (Dash Cam-Kolberg)

Label No.515 MJB/2 - x Still Images Generated from PIRC Prod 482 (Dash Cam-Kolberg)

OFFICIAL - SENSITIVE

5.4 Robson Kolberg iPhone

About 1120 hours on Friday 8 May 2015, PIRC investigators Stewart and Karran seized from witness Robson Kolberg,

Label No.261 1 x Phone 6 (gold)

Video footage from the phone was recovered and examined. The footage is of poor quality and little can be determined.

Label No.628 CCTV Audio & Visual Timeline R. Kolberg iPhone

Compiled by PIRC investigators Patrick and McAuley provides details on what can be seen on,

Label No.246 1 x Phone 6 (gold)

In addition PIRC had this video enhanced by ITF in an effort to provide clearer footage. The resultant video was reproduced as a master & working copy DVD marked as,

Label No.479 MJB/DVD/2 Infratech compilation iPhone 6 (gold).

Enhanced still images were printed as,

Label No.517 MJB/5 - 6 x Still Images Generated from PIRC Prod 478 (I Phone- Kolberg)

5.5 Ashley Wyse Mobile Phone footage

About 2155 hours on Sunday 3 May 2015, DS Ferrier and DC Martin seized from witness Wyse,

Label No.122 White Samsung S5 Mobile Phone

Examination revealed that there were four video clips on the phone taken by witness Wyse from an upper flat on Hayfield Road looking at the incident.

- Clip 1: shows the Police Cordon set up running along the front of Hayfield Road and around the trees at the grass area behind the main road.
- Clip 2: This footage shows five officers attending to the now deceased on the ground; he appears to be lying on his left side. There are at least four police vehicles present at this time.
- Clip 3: Footage shows one officer walking north westerly along Hayfield Road towards the grass area. As the camera turns it shows up to six officers (PCs Paton,

Walker, Tomlinson, Smith, McDonough and Gibson) attending to the now deceased on the ground. The camera then turns to show a police van further east on Hayfield Road.

- Clip 4: Footage shows seven officers in total around the now deceased, who appears to be lying on his left side. There are two plain clothed and a uniformed officer who are walking around the vicinity of the main incident.

Label No.620 CCTV Audio & Visual Timeline Ashley Wyse 882

produced by PIRC investigators Patrick and McAuley provides details on what can be seen on the video. In addition the PIRC had this video enhanced by ITF in an effort to provide clearer footage. The resultant video was reproduced as a master & working copy DVD marked as,

Label No.480 MJB/DVD/4 - Infratech Compilation White Samsung S5 Mobile Phone Master Copy.

Label No.418 MJB/DVD/4 - Infratech Compilation White Samsung S5 Mobile Phone Working Copy.

Enhanced still images were printed as,

Label No.518 MJB/6 – 4 x Still Images Generated from PIRC Prod 480 (Ashley Whyte Samsung)

Label No.519 MJB/7 - 2 x Still Images Generated from PIRC Prod 480 (Ashley Whyte Samsung)

Label No.520 MJB/8 – 2 x Still Images Generated from PIRC Prod 480 (Ashley Whyte Samsung)

5.6 Van driven by witness Grey

Witnesses Grey and Levy, [REDACTED] by [REDACTED] were travelling east on Hayfield Road in their [REDACTED] van when they were stopped by a motorist flagging them down. They state that the motorist told them that there was a man with a knife further up the road and that they should turn round. Witness Grey, who was driving the van, did a U-turn and as he did so he could see the deceased further down the street and stated that he could see the deceased had a bladed weapon in his hand. The witnesses van, a Van driven by witness Grey vehicle, was fitted with a CCTV system,

About 1200 hours on Thursday 7 May 2015, PIRC investigators Rooney and McAuley attended at the premises of [REDACTED] and seized from witness Lake,

Label No.338 USB Memory Stick Van driven by witness Grey

The van has three cameras, one front facing, one at rear and one at the side. On examination, the footage is unclear while the vehicle is moving. It can be seen to drive along Hayfield Road and make U-turn. At the point where the van turns, a faint image of the deceased can be seen walking across the middle of the road. Little detail can be discerned. The footage was submitted to ITF for potential enhancement.

CCTV from the forward looking camera on the **Van driven by witness Grey** was reproduced as a master & working copy DVD marked as,

Label No.474 MJB/DVD/5 - Infratech Compilation USB Memory Stick **Van driven by witness Grey**
CCTV Footage 03/05/15 07:12-07:20 PDF David Grey
Statements 1 & 2, Screenshot, Master copy

Label No.475 MJB/DVD/5 - Infratech Compilation USB Memory Stick **Van driven by witness Grey**
CCTV Footage 03/05/15 07:12-07:20 PDF David Grey
Statements 1 & 2, Screenshot, Working copy

Still images were printed as,

Label No.515 MJB/3 - x Still Images Generated from PIRC Prod 474 **Van driven by witness Grey**

Label No.516 MJB/4 - 4 x Still Images Generated from PIRC Prod 474 **Van driven by witness Grey**

5.7 Shell Garage, Hendry Road, Kirkcaldy

The Shell garage is situated on Hendry Road, Kirkcaldy. It has CCTV covering the forecourt which provides some coverage of Hendry Road near to the junction with Templehall Road. About 1050 hours on Monday 4 May 2015, DC Quinn was engaged in a CCTV scoping exercise when he had cause to seize from witness **██████████**, employee at the garage:

Label No194 CCTV Disc 0600 - 0730 03/05/15 (Master)

Label No.195 CCTV Disc 0600-0730 3/5/15 (Copy)

There are eight separate cameras from the garage, however, on examination, there was no footage of the deceased. The footage shows several vehicles travelling in an out of the Shell Garage and along Hendry Road from 0600 hours to 0730 hours.

5.8 Poplar Gardens, Kirkcaldy

It was identified by PIRC investigators that the house at **██████████** Poplar Gardens, Kirkcaldy had CCTV installed covering the garden area. On 6 May 2015, PIRC Investigators Rooney and McAulay obtained from the householder, witness **██████████**,

Label No.341 USB Memory Stick **██████████**, **██████████** Poplar Gardens CCTV Footage 03/05/15 0600 - 0900

This footage contains video from eight cameras, three of which provide views of the roadway outside the house. On examination the video revealed nothing of evidential value.

5.9 Police Vehicle Registration Number [REDACTED]

During the course of the CCTV scoping exercise it was identified that the Ford Transit police vehicle registration number [REDACTED] was fitted with an internal CCTV system. Previous investigations have identified that such a CCTV system has a camera that would record activity at the rear of the vehicle.

About 1230 hours on Monday 3 May 2015, DC Clayton accompanied by witness Wilson, Technical Support Officer, Police Scotland seized,

Label No.191 CCTV Hard Drive - [REDACTED] (Police cell van)

On initial examination it appeared that no power had been reaching the system and that it had not been recording since March 2015. Witness Lawson stated the system fault appeared to be vehicle based and not as a result of the hard drive itself.

5.10 Victoria Hospital, Kirkcaldy

About 1300 hours on 11 May 2015, PIRC investigators Rooney and McAuley attended at the Victoria Hospital, Kirkcaldy where they met with NHS Security Officer, witness Park. Some of witness Park's duties involved the operation of the CCTV security cameras at the hospital. Witness Park was asked to check the CCTV footage for Sunday 3 May 2015 at approximately 0730 hours, and in particular cameras covering the Accident and Emergency External Entrance and the Ambulance Entrance Internal. PIRC Investigators Rooney and McAuley viewed the footage and ascertained that neither of the hospital entry cameras showed the arrival of any patients. The cameras were found not to be pointing in the direction of the entrances at the appropriate times. The external hospital camera was directed at the pedestrian entrance and showed only the front cab of an ambulance arriving with its blue lights illuminated. The internal hospital camera movement function was defective and the available footage showed only the ceiling. This footage was not seized.

5.11 Kirkcaldy Police Office

CCTV from Kirkcaldy police office was seized by PIRC investigators and examined to determine whether any matters relevant to the investigation of the death were contained thereon. While CCTV does show matters of relevance to the second volume of the PIRC

investigation (Investigation of Police Scotland Actions Post Incident) no matters of relevance to the Terms of Reference investigated in Volume One (this volume) were discovered.

CCTV covering the yard area of the office, which would have shown officers departing from Kirkcaldy Police Office and arriving back from the incident, was not working. Enquiries with Police Scotland discovered that this CCTV has not been working for a considerable period of time.

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6. Medical Evidence

6.1 Hospital Intervention

About 0734 hours on 3 May 2015, the deceased was taken from the incident scene at Hayfield Road, Kirkcaldy to the nearby Victoria Hospital. Prior to arrival, the hospital was contacted by the Scottish Ambulance Service (SAS) and informed that a young male was enroute who was in cardiac arrest. About 0745 hours the deceased arrived at the A&E Department and was attended to by a number of medical staff, headed initially by witness Dr Pickering. She states she was advised of the circumstances by the paramedics and deduced that when the SAS had called the hospital that the deceased was actually in respiratory arrest. On arrival, witness Dr Pickering checked the deceased's carotid artery and states that she found a pulse.

When the deceased arrived at the hospital he was handcuffed to the front and had leg restraints applied. These were removed by PC Smith at the direction of witness Dr Pickering. (Comment: Dr Pickering has been interviewed regarding what effect the application of handcuffs and restraints would have had on the CPR. She stated, *"This would not have impeded in any way attempts to perform CPR as this requires work on the sternum"*)

Despite extensive intervention by hospital staff the deceased died at 0904 hours. From the deceased's initial admittance until life was pronounced extinct by witness Dr Anderson, medical intervention was undertaken by seven doctors, namely witnesses Dr Pickering; Dr Panpher; Dr Clark; Dr Hall; Dr Downie; Dr Rollings; and Dr Anderson. They were assisted by nursing staff.

Prod No.254 A & E Notes containing x-ray card, continuation notes and ambulance patient report form

details medical the intervention undertaken.

Following life being pronounced extinct the deceased was removed to a side room by medical staff accompanied by DCs Balsillie and Brown, who had been in attendance whilst the deceased was being treated. DCs Balsillie and Brown remained in this room until the deceased's body was forensically recovered by PIRC investigators at 1930 hours.

Prod No.254 A & E Notes containing x-ray card, continuation notes and ambulance patient report form

detailing medical intervention provided to the deceased were initially incorrectly labelled and misfiled by hospital staff. These were later recovered by PIRC investigators; however they were not available to pathologists at the time of the post mortem examination of the deceased.

6.2 Post Mortem Findings

On 4 May 2015, witnesses Dr Shearer and Dr BouHaidar performed a post mortem examination on the body of Sheku Bayoh at Edinburgh City Mortuary.

Prod No.634 Final Report of Post Mortem

outlines the findings of the post mortem examination. The following are extracts from the post mortem report:

- MDMA is a stimulant drug that can result in sudden death from a fatal cardiac arrhythmia and/or seizure, albeit there was no history of seizure in this case. Alpha-PVP is a substituted cathinone and the database of New Drugs reports a number of health risks associated with this drug including neuropsychic (euphoria, psychomotor agitation, hallucinations / delusions, seizure / tremor and paranoia) and cardiovascular (hypertension, tachycardia). This may explain his behaviour prior to death.
- Toxicological analysis of the deceased's urine also revealed the presence of nandrolone and metabolites, consistent with the recent administration of the anabolic steroid nandrolone. Given there was no evidence of heart disease, pathologists considered this drug is unlikely to have played a role in death here.
- With regards to the role PAVA and/or CS sprays may have played in the death, from the information made available from police officers it would appear that the use of these substances had no immediate effect on Mr Bayoh. From the literature available (outlined in Section 6.2.6 of this report), it would appear specific side effects include bronchospasm and laryngospasm and patients with pre-existing respiratory disease (which did not appear to be the case here) are more at risk from severe effects. Pre-existing cardiac problems can be worsened but there was no post mortem findings to suggest Mr Bayoh had a pre-existing heart abnormality. There was no information found in literature of cases, especially when there was no pre-existing cardiac or lung problems, where these sprays played a direct role in death.
- Given the circumstances provided, toxicological findings and a lack of another cause of death at post mortem, the possibility of excited delirium syndrome has been considered in this case. It is however a psychiatric and not a pathological diagnosis and there is some debate in the forensic community with regards to its application as a cause of death. That said, there is a great deal of literature looking at this syndrome especially with regards to the circumstances described in this case, but it has to be remembered that it should be considered in conjunction with circumstantial information (namely a history of restraint) and toxicological findings.
- Excited delirium syndrome is described as a life threatening condition that has a variety of causes but is largely associated with drug intoxication, in particular stimulant drugs (MDMA and Alpha-PVP are both stimulant drugs). It can include paranoia and

aggressive behaviour as was reported in this case and has no pathognomonic findings at post mortem. Individuals suffering from this condition, due to their behaviour often come to the attention of police services and often die shortly after restraint, as was the case here. However, it is not completely understood why such individuals die.

- In terms of history of restraint here, Mr Bayoh was reportedly face down with his hands cuffed in front of him, his legs were tied around the knees and ankles and at least four officers were restraining him. Post mortem examination showed the presence of petechial haemorrhages in the eyes and whilst these are not specific and can be seen in someone who has been resuscitated, they could indicate a degree of asphyxia. In this case, given the reported circumstances, possible causes of asphyxia would include positional (the position of the body interferes with breathing) and mechanical (something impeding the body's ability to use muscles for breathing).
- 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.*

6.3 Injuries to Police Officers

The nine police officers who attended the incident were examined by witness Dr Norrie, Forensic Medical Examiner. Apart from PC Short, witness Dr Norrie noted many of the officers were suffering minor cuts, scratches and abrasions. Her medical examination notes are produced as,

Prod Nos.490 to 498 9 x FME Examination forms

PC Short was examined at the instance of the officer herself and the Scottish Police Federation solicitor Professor Peter Watson by witness Ian Anderson, Consultant, acting in a private capacity. He produced

Prod No.594 Medical Report on Nicole Short prepared 21 May 2015,

In which he provides opinion that PC Short suffered blunt head injury and contusions to her head; an associated neck sprain injury; contusions to the right side of her torso consistent with blunt injury; and abrasions and soft tissue injuries consistent with falling on the ground after being struck on the head. He found that she suffered post-traumatic amnesia and post-concussional symptoms. Additionally, witness Anderson found PC Short suffered right sided facial weakness which he considers, on the balance of probabilities, has been the result of local injury to the main nerve supply to the muscles over the right side of her face. On examination 18 days after the incident, he found that PC Short continued to suffer concussional symptoms, slowly resolving right sided facial weakness and resolving focal neurological signs of weakness affecting her right upper limb. [REDACTED]

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7. Expert Medical Evidence

Summary of Opinion of Medical Experts

Following direction from the Lord Advocate, PIRC sought opinion from the following medical experts on the cause of death, potential contributory factors and on the use of force and restraint by police. Each of these experts was provided with letters of instruction.

- Prod No.758 Copy of expert witness Letter of instruction to Dr Jason Payne James dated 10 August 2015.
- Prod No.759 Copy of expert witness letter of instruction to Dr Steven B. Karch dated 13 August 2015.
- Prod No.760 Copy of expert witness letter of instruction to Dr Steven B. Karch dated 8 September 2015.
- Prod No.761 Copy of expert witness letter of instruction to Dr Jason Payne James dated 8 September 2015.
- Prod No.762 Copy of expert witness letter of instruction to Dr Maurice Lipsedge dated 19 November 2015.
- Prod No.763 Copy of expert witness letter of instruction to Dr Anthony Bleetman dated 24 November 2015.
- Prod No.764 Copy of expert witness letter of instruction to Dr John Parkes dated 24 November 2015.
- Prod No.765 Copy of expert witness letter of instruction to Professor Mary Sheppard dated 24 November 2015.
- Prod No.766 Copy of expert witness letter of instruction to Dr Elizabeth Solleux dated 24 November 2015.
- Prod No.767 Copy of expert witness letter of instruction to Professor Jack Crane dated 8 December 2015.

And a copy of the,

Label No.768 Expert witness package (master copy) provided to Expert Witnesses,
which contained:

- Copy of Redacted Civilian Witnesses Statements

- Copy of Redacted Police Statements
- Copy of A & E Notes
- Expert Witness Package
 - Briefing Paper
 - Post Mortem Examination Report dated 18/06/2015
 - Drug Control Independent Analysis Report
 - Neuropathy Report - Brain Examination
 - Certified Disc of CCTV and Video Footage
 - Certified Disc of Post Mortem and other photographs of Deceased
- Drug Control Centre Independent Analysis Report
- Copy of GP Medical Notes
- Use of Force Police Scotland Standard Operating Procedure.
- Disc of all the paper work supplied above.

In addition, expert witnesses Professor Crane, Professor Sheppard, Dr Soilleux and Dr Karch were provided with pathology slides for microscopic examination. These are retained by Dr Shearer, pathologist.

7.1 Professor Jack Crane

Professor Jack Crane CBE, MB, BCh, FRCPath, FFPATHRCPI, FFFLM, DMJ(Clin et Path),
Acting State Pathologist for Northern Ireland and Professor of Forensic Medicine at the
Queens University of Belfast.

His report is produced as,

Prod No.746 Expert Report Professor Jack Crane

In his opinion:

A toxicological analysis revealed that, at the time of his death, there were two drugs circulating in the bloodstream, MDMA (popularly known as 'Ecstasy') and Alpha-PVP, a synthetic cathinone. Both these drugs are psychostimulants affecting the activity of dopamine, serotonin and noradrenalin in the brain. Whilst MDMA is typically associated with elevation of mood and a feeling of wellbeing, Alpha-PVP has been reported to induce paranoia, and hallucinations. It thus seems likely that the Alpha-PVP was responsible for the bizarre, aggressive and violent behaviour demonstrated by the deceased. In addition to their psychostimulant affects both drugs affect the cardiovascular system and specifically the heart, causing change in heart rate and blood pressure and predisposing to cardiac arrhythmias. It is my opinion that it was the combined effects of these two drugs which precipitated a fatal upset in the heart rhythm.

The role of restraint in deaths such as these is invariably problematical as restraint, which impedes or restricts breathing, may not be associated with any diagnostic signs at autopsy. Furthermore, whilst petechial haemorrhages may be an indicator of asphyxia where venous return to the heart is impeded, these pinhead-sized haemorrhages may also occur in other circumstances including terminal convulsive seizures and following attempted cardiopulmonary resuscitation. I am satisfied that the application of handcuffs to the wrists and where the arms were to the front of the body would not have caused any degree of respiratory embarrassment or interference with breathing. Similarly, the application of restraints to the legs would not have impeded breathing in any way. If, on the other hand, the deceased was lying on the ground either on his back, or face-downwards, and pressure was applied to his trunk e.g. by a person or persons kneeling or sitting on him, then a serious and potentially life threatening degree of asphyxia could have been induced. In an individual where cardiac instability had already been induced by drugs, then any form of respiratory embarrassment causing hypoxia would have rendered an unstable myocardium more prone to the development of a fatal arrhythmia (upset in the heart rhythm). Thus asphyxia could have been a contributory factor in the death if, at the time of his cardio-respiratory arrest, restraint of the type described above was taking place.

I am satisfied that the use of CS and/or PAVA spray played no part in the fatal outcome.

The deceased had sustained a number of injuries including abrasion to the left side of the forehead associated with bruising of the undersurface of the scalp. These injuries could have been sustained if he had been struck on the head with a baton or if he had struck his head on a hard unyielding surface such as the ground. There was also some bruising on the muscles beneath the skin of the face consistent with his having been punched on the face. An injury to his left wrist was probably caused by the application of handcuffs whilst subcutaneous bruising to his thighs and shins would be consistent with blows from a hard object such as a baton.

A fracture of the back of the end of the first left rib is, in my opinion, extremely unlikely to have been caused during cardiopulmonary resuscitation. It is likely to have been caused by the application of firm localised pressure to the upper part of his back, possibly by a person kneeling on the deceased whilst he was lying face-downwards on the ground. The application of pressure sufficient to fracture a rib is also likely to have been sufficient, if sustained, to impede breathing.

7.2 Dr Jason Payne-James

Dr Jason Payne-James, MBBS, FRCS, FFFLM, FCSFS, LM, MSc, DipFM is a forensic physician and a General Medical Council recognised Specialist in Forensic and Legal Medicine. He has provided forensic medical services to the Metropolitan Police and City of London Police for over 25 years. He has assessed approximately 1500-2500 individuals in connection with police matters each year.

His current relevant roles are:

- Practising Forensic Medical Examiner for the Metropolitan Police Service;
- Honorary Senior Lecturer at Cameron Forensic Medical Sciences, Barts & the London School of Medicine & Dentistry;
- Honorary Consultant in the Adult and Paediatric Emergency Medicine Departments of St George's Hospital, London;
- Editor-in-Chief of the Journal of Forensic & Legal Medicine;
- President of the Faculty of Forensic & Legal Medicine of the Royal College of Physicians.

His report is produced as,

Prod No.740 Expert Report Dr Jason Payne-James

In his opinion:

The drugs present in his system and are stimulants can individually or in combination have an effect on his heart, which may cause longer term damage or heart irregularities. Unfortunately literature is very limited on the effects of alpha-PVP, although a death has been reported in association with other substances. There is nothing specific to support heart abnormality (although fatal rhythm episodes may leave no post-mortem evidence). It would be appropriate for a cardiac pathologist to review his heart, in the light of the history of drug use and anabolic steroid use.

Mr Bayoh appears to be an individual who does not respond to irritant spray. This happens in about 10% of exposure. Their effects are discussed in previous sections, but in my opinion, the lack of effect make it unlikely either together or in isolation, PAVA and CS were significantly implicated in his death.

I believe the weight of officers on his upper torso may have reduced his capacity to breathe properly resulting in his cardio-respiratory arrest. The injuries to the lips suggest that he has had blunt force applied to his mouth area – it is not possible to exclude that some of these were caused during resuscitation, although the degree of injury appears more than might be expected, but it also may represent his face/mouth being pushed into the ground surface. The petechial haemorrhage to the eyes may represent chest compression, although they can be incidental post-mortem findings. The history from the accounts provided and the presence of the petechial haemorrhages would be consistent with a mechanical asphyxia.

In the absence of cardiac pathology it's not possible to exclude the possibility of a cardiac event. The absence of clinical effect of irritant sprays, in my view, excludes them as a contributing cause.

I am not of the opinion that the front handcuffing or leg restraints would have had a physical, mechanical effect on his ability to breathe effectively or to necessarily reduce the effectiveness of cardiopulmonary resuscitation.

The fracture that appears to be present on the first rib is not likely to be caused in resuscitation settings. It is more likely to be caused by direct blunt force contact – for example from a heavy police officer landing on his upper torso.

7.3 Professor Mary Sheppard

Professor Mary Sheppard, MB, BCh, MD, FRCPath, is head of the CRY Cardiovascular Pathology Unit of St George's Medical School. She is an expert cardiopulmonary pathologist and has written the guidelines on the investigation of sudden cardiac arrest issued by the Royal College of Pathologists.

Her report is produced as,

Prod No.741 Expert Report Professor Mary Sheppard

In her opinion:

While the drugs may have an effect on the heart, there is no evidence pathologically of any damage to the heart due to drugs. Expert toxicological opinion is required.

While the CS/PAVA may have an effect on the heart, there is no evidence pathologically of any damage to the heart. Expert toxicological opinion is required.

Restraint can be linked to sudden cardiac death. There is no evidence pathologically of any damage to the heart.

The deceased has no cardiac abnormality identified at death. However this does not rule out sudden cardiac death due to an electrical abnormality in the cardiac channelopathies.

I do not think being handcuffed to the front and leg restraints applied could have contributed to any positional asphyxiation. However a forensic opinion would probably provide a superior opinion to mine.

7.4 Dr Anthony Bleetman

Dr Anthony Bleetman, PhD, FRCSEd, FCEM, DipIMC, RCSEd, is Honorary Clinical Associate Professor at the University of Warwick Medical School and a Consultant in Emergency Medicine. He was awarded a PhD by the University of Birmingham for work on developing body armour for the police, which arose from his development work for the Home Office and the Police Federation on officer safety programmes, addressing protection from knives and bullets. He is the first doctor in the UK to qualify as a police instructor for unarmed defensive tactics, safe prisoner restraint, handcuffing, tactical communication skills, incapacitant sprays and knife defence. As such, he has been able to offer opinions on use of force, and injuries sustained during arrest and detention.

He has been involved in developing strategies to protect health workers against aggression and violence in the Health Service and has completed studies for the Department of Health and other national bodies to identify ways of improving staff and subject safety. He is engaged in developing safe physical interventions and effective training strategies across a number of agencies. He serves as a medical advisor to the Ministry of Defence on less lethal weapons.

His report is produced as,

Prod No.742 Expert Report Dr Anthony Bleetman

In his opinion:

Sheku Ahmed Tejan Bayoh (the Deceased) collapsed during a restraint executed by police officers and died shortly afterwards in hospital.

There is nothing in his previous medical history to suggest that he would have been particularly susceptible to collapse or vulnerable to sudden death.

The post mortem examination similarly excluded any identifiable pre-incident pathology that would have rendered the Deceased susceptible to collapse and death. There are conditions however, that would not have been identifiable at post mortem examination that could have rendered him susceptible to sudden death. These include cardiac conduction abnormalities such as Brugada Syndrome.

The post mortem examination also excluded acute physical injury as a cause of death. Specifically, there was no significant structural damage to the vital organs or evidence of major blood loss.

However, the Deceased was a regular user of anabolic steroids and recreational drugs. There is evidence that preceding his death, the Deceased was using MDMA and alpha PVP. MDMA and alpha PVP have the propensity to cause mania and psychosis and the latter two are associated with sudden death in adults. Alpha PVP has been associated with the so-called Excited Delirium state [Drugs of Abuse Emerging Trends. National Institute on Drug Abuse. 6 April 2015.]

It is of note that the Deceased's partner noticed that he was bad-tempered in the weeks preceding his death. Anabolic steroids and the recreational drugs that he was taking can all change mood and may have powerful psychological effects.

On the night before the incident, the Deceased's demeanour had changed. He became agitated, expressed paranoid thoughts and was violent towards a friend (Witness B) and appeared not to know him. There is evidence that he was taking drugs in the hours preceding his death.

There is much debate over the term 'Excited Delirium'. It has not been formally recognised as a psychiatric entity in its own right. Other epithets to describe the constellation of

psychological and physical manifestations of a manic state associated with drug abuse include 'Acute Behavioural Disorder,' Cocaine-Induced Psychosis' and 'Serotonin Syndrome'. Historically, the condition was called 'Bell's Mania'. Notwithstanding the lack of consensus on a name for the condition; there is a condition in which (usually) an adult male, often with a history of mental illness, and on the background of recreational drug abuse (often Cocaine or PCP), displays paranoid, agitated and violent behaviour. They often disrobe (thought to be as a result of hyperthermia) and attack random objects or people. Their behaviour is described as 'bizarre' and the subjects are often drawn towards water or shiny objects such as glass or metal. They are said to display superhuman strength and are impervious to pain, often fighting to the point of physical exhaustion and collapse. It is thought that physiologically, they are hyperthermic, acidotic and hypoxic.

It is now believed that it is very important to terminate an episode like this rapidly. In the hospital setting, rapid tranquillisation is offered, sometimes a general anaesthetic is given to terminate the ongoing physical struggle and arrest the worsening of the physiological derangements. Once the violent behaviour is terminated, doctors will replace fluids, correct electrolyte abnormalities, address the lactic acidosis through oxygenation and in hyperthermic individuals, sometimes cooling will be required.

Failure to terminate the physiological derangements in an individual who does not feel pain or fatigue will allow the individual to continue to accrue an oxygen debt, worsen the acidosis and continue to overheat and dehydrate. All this on the background of drugs ingestion which by themselves, potentiate life-threatening arrhythmias even without the physiological derangements caused by the mania and extreme physical activity of the excited delirium state.

Due to the bizarre behaviour and violence displayed by individuals in this state, the police are often involved. As these individuals are non-compliant and violent, and often impervious to pain, incapacitant sprays and baton strikes, and display superhuman strength, police will struggle to restrain them.

Without the availability of Taser (that has a greater chance of terminating the individuals' violent behaviour) or medical staff to administer rapid tranquillisation, police officers will have to physically restrain these individuals with manual force or body weight. Pain compliance techniques will often fail to terminate the struggle.

This use of force and eventual restraint will result in a degree of immobilisation of the individual. Before any restraint, the individual will have already accrued a significant oxygen debt and any immobilisation carries the risk of restricting chest and diaphragmatic movement. This, even if modest, may compromise the individual's ability to restore adequate oxygenation and address the oxygen debt. Current thinking is therefore that individuals in this state need to be controlled rapidly so that the psychological and physiological abnormalities can be addressed. A prolonged struggle on the ground will compound the individual's physiological derangements and increase the risk of death. In this state, a restraint which compromises breathing efforts may exacerbate an already grave situation.

The Excited Delirium state was reviewed by the American College of Emergency Physicians and its landmark paper appears as an attachment to this report.

The term 'Excited Delirium' is explained in the Police Standard Operating Procedure that I have read. Police officers are taught about this condition in training and are generally familiar with the challenges and dangers of managing individuals in this state.

In this case, the Deceased had been exposed to drugs that are known to cause Excited Delirium and displayed almost all of the characteristics associated with this condition. Specifically:

- *He was wearing only a T shirt in cold weather*
- *He displayed paranoid behaviour, attacking a friend, apparently not recognising him*
- *He displayed violent activity towards objects and the Police*
- *He was non-compliant*
- *He was impervious to repeated exposures to incapacitant sprays, baton strikes and punches*
- *He was very violent*
- *He displayed 'superhuman' strength, bench pressing two heavy police officers who were on top of him and lifting a female police officer with his two hands and throwing her.*

Prior to contact with the Police, the Deceased attacked cars and was seen to be carrying a weapon this resulted in calls being made to the police.

One of the first officers on scene activated the emergency button on this radio and the Deceased was reportedly secured on the ground just under a minute later. 3 ½ minutes later, a call was made for an ambulance as the Deceased was unconscious but still breathing. The restraint could therefore not have lasted for more than 3 and a half minutes before the Deceased collapsed. A second call for an ambulance was made a further four minutes later as the Deceased was no longer breathing and CPR was commenced.

It seems from the statements of both the police and bystanders that the Deceased was in a prone position for at least some of the duration of the restraint. Witness R reported that a police officer appeared to be kneeling on the ground using the weight of his upper body on the back of the Deceased's shoulders or neck area. Other officers appeared to be lying across the Deceased's body in an attempt to keep him on the ground.

It is generally believed (but without evidence) that prone restraint is more dangerous than supine restraint as it is postulated that chest movement will be more restricted in a prone position and inhibit the individual's ability to breathe adequately to address the oxygen debt. Any weight across the torso is likely to further restrict breathing efforts and may lead to a condition known as Positional Asphyxia in which progressive asphyxia occurs due to the individual's inability to breathe adequately and correct the oxygen debt. In an individual already in a severe oxygen debt due to the Excited Delirium state, further compromise of breathing efforts through either prone restraint (possibly), or restriction of chest wall

movement by putting weight across the torso (certainly), will put the restrained individual at more risk of asphyxia and will hinder recovery from hypoxia and acidosis. This may reach a critical point at which cardiac arrest occurs. Given the poor physiological state of these individuals at the onset of cardiac arrest, recovery is rare in spite of adequate resuscitation attempts.

Witness 'S' estimated the time of the restraint to have been approximately five minutes. The same witness reports that about six officers were crossing over him from both sides, covering most of his body. Witness S reports that the Deceased was lying on his back at one point. Officer B was described as laying across the chest of the Deceased.

The police officers' statements suggest that most of the restraint was in the prone position. It seems that towards the end of the restraint, the Deceased was on his side then on his back.

Officer I considered that six officers holding the suspect down with their body weight is a recognised method of control. A use of force expert is recommended to comment on this point.

The multiple handcuff marks on the Deceased's wrist indicate that he struggled against the handcuffs. This is consistent with accounts that he struggled during the restraint.

It is of note that a THUMPER was used during the resuscitation attempts in hospital. This is a pneumatic device used to provide effective and powerful chest compressions. It is also of note that it had to be repositioned twice during the resuscitation in hospital. The use of mechanical chest compression devices is associated with rib fractures. It is unusual to fracture a first rib (in isolation) through blows to the body. It is difficult to see how this injury identified at post mortem could have been caused by the violence with the police and the subsequent restraint. I say this because the first rib is very well protected by muscle; lower ribs are not and are therefore more prone to fracture following blunt trauma or crushing. It seems more likely that the first rib fracture was caused by the use of the THUMPER.

It is clear from the post mortem that the Deceased sustained multiple blunt traumatic injuries to his body, including to the mouth. These could have been from punches, baton strikes or heavy contact with the ground.

The presence of petechial haemorrhages in the eyes is consistent with CPR attempts (particularly as the THUMPER was used in hospital) but is also consistent with the Deceased straining during restraint and could also have been caused by the effects of pressure applied to the upper body during the restraint and positional asphyxia. It is perhaps less consistent with positional asphyxia as there were no reported petechial haemorrhages in the oral mucosa or the cheeks or neck as one might expect had they been caused by prolonged pressure across the torso during the restraint.

It seems that after the initial prone restraint and the application of handcuffs and leg restraints, the Deceased was turned onto his side at the earliest practicable opportunity. Officer I reports that as the Deceased became more compliant, officers de-escalated the

restraint. This seems to be reasonable and demonstrates an attempt to de-escalate the violence as soon as was practicable. Once the Deceased collapsed, this was recognised early and a call for the ambulance service was made. Officers commenced resuscitation attempts and maintained them until the ambulance service arrived.

The Police in this situation were faced with a violent individual who was suspected of carrying a knife, who was feared by one officer to be a terrorist and who was roaming the streets attacking cars. The Police officers had limited use of force options. A call was made for firearms and dog units. There were not immediately available.

After incapacitant sprays, punches and baton strikes failed to terminate the Deceased's violent behaviour, Police officers initiated a manual restraint and de-escalated as soon as the resistance declined. It is difficult to see what other options they had available to them at the time. I defer to a use of force expert to comment further on the techniques used and in particular, whether the force used was reasonable, proportionate and necessary.

The restraint was relatively short. One can expect complications from prolonged restraints. In this case, the restraint was for a short number of minutes and was de-escalated once the Deceased had been secured and controlled.

On first contact with the police, the Deceased was already at very high risk of cardiovascular collapse due to fatigue, the effects of excited delirium and powerful potentiating drugs, even had there been no restraint.

It is reasonable to assume that the actions of Police officers are likely to have had a contributory role in the evolution of the Deceased's collapse and subsequent cardiac arrest by adding one more factor to an already lethal brew. In effect, the restraint precipitated the cardiovascular collapse that was already likely to have occurred.

It is my view that the police officers should not be held responsible for the Deceased's death.

7.5 Dr Elizabeth Soilleux

Dr Elizabeth Soilleux, MA, MB, BChir, PhD, FRCPath, is a Consultant Pathologist and Histopathologist at John Radcliffe Hospital, Oxford. She is an honorary Senior Clinical Lecturer at the Nuffield Department of Clinical Laboratory Sciences at Oxford University, and is a lecturer in Pathology at St Hugh's College, Oxford. She holds an expert witness certificate from the University of Cardiff.

Her report is produced as,

Prod No.745 Expert Report Dr Elizabeth Soilleux

In her opinion:

My examination of the histological material sampled shows no evidence of any specific heart abnormality or particular abnormality of other system. I am unsure about how certain one can be about the presence of a rib fracture and, if one was present, whether it occurred before or after death. If it did occur before death, then it indicates that significant restraint force was applied and I am not in a position to give any judgment in this report about the necessity of proportionality of this.

A posterior fracture, such as that described, is, in my experience, very unlikely to be related to CPR. It would be more consistent with restraint by having weight applied to his back while lying on his front.

It is most likely that the death occurred due to a combination of restraint and the presence of significant levels of the drugs MDMA and alpha-PVP.

The process of restraint may have caused physiological stress in two ways, one or both of which may be relevant. Restraint may have led directly to asphyxia (of either positional or mechanical type) or may have precipitated an abnormal heart rhythm, as a consequence of the very significant self-induced physiological stress due to the struggle put up by the deceased (e.g., doing a "bench press" and lifting up a 25 stone police officer).

MDMA and alpha-PVP would have significantly increased the risk of an abnormal heart rhythm developing under conditions of physiological stress.

Prior to being entirely conclusive about the factors leading to death, it might be helpful, in the interests of a complete picture of the likely contributing factors to death, to investigate the following two avenues: firstly, whether the deceased had a genetically determined red blood cell abnormality (haemoglobinopathy), which is relatively common in those of West African origin and can cause sudden death, particularly under conditions of physiological stress (e.g., restraint); secondly whether the deceased had any genetic abnormality that might predispose the heart to developing an abnormal rhythm (e.g., a genetic heart condition known as a channelopathy), which was unassociated with any visible heart abnormality. Both the possibility of a genetically determined red blood cell abnormality and a genetically determined heart abnormality could be investigated by sending blood or frozen tissue from the deceased to one of the larger specialist hospitals in the UK, where Genomic sequencing is available for the investigation of such conditions. (Crown may wish to consider whether further expert analysis and opinion is appropriate in respect of the matters outlined by Dr Soilleaux).

7.6 Dr John Parkes

Dr John Parkes, PhD, M.Med.Sci, is a Senior Lecturer at the Faculty of Health and Life Sciences at Coventry University. He has undertaken an extensive body of work studying and researching the safety of restraint and has conducted laboratory research on lung function and other physiological variables during restraint and has provided advice on restraint safety to multiple government agencies and inquiries, both nationally and internationally. This has included HM Prison Service NTRG (national tactical response group), high security mental

health hospitals (Broadmoor Hospital), and police forces. His expertise is in the safety and effectiveness of restraint, and particularly 'positional asphyxia.'

His professional background is in forensic mental health nursing and he had a twenty year career in the direct care of mentally disordered offenders in secure mental health facilities, including extensive practical experience of restraint involving highly disturbed people.

His report is produced as,

Prod No.744 Expert Report Dr John Parkes

In his opinion:

I am instructed to provide expert witness opinion on the following:

a) The physiological effect of the restraint of the deceased in the circumstances of his arrest and the impact that had if any upon the cause of death.

b) Whether, in the circumstances outlined in the attached package, the restraint was appropriate.

c) Whether the officers who arrested and restrained the deceased adhered to police standard operating procedures on restraint and use of force, including whether the measures they took were concomitant with the threat presented or perceived to be presented by the deceased.

a) The Physiological Effect Of The Restraint Of The Deceased In The Circumstances Of His Arrest And The Impact That Had If Any Upon The Cause Of Death.

There is a body of research evidence, including that conducted at Coventry University, which suggests that holding people in certain bodily positions may restrict their ability to breathe. However, the actual effect of restraint in any specific case must always be considered with care.

In evaluating this, I have considered factors which might impact upon the risk of restraint asphyxia. Persons with existing ill health may be at increased risk of restraint asphyxia. Sheku Bayoh is reported as being in previous good health. Persons who are obese or heavily built may be at increased risk. Sheku Bayoh is reported to have a BMI (body mass index) of 25.6 which I would take to be neither obese nor overweight in the context of his muscular build. In particular he did not have a large abdomen, which may increase risk when held in a face down position. Sheku Bayoh was a muscular man, which has been associated with restraint death. Heavily muscled persons may be capable of increased resistance, thereby prolonging restraint, and the large muscle mass may increase ventilatory demand (the need to breathe) which would increase the risk of asphyxia if his ability to breathe was limited by restraint. In particular I note the post-mortem toxicology findings which demonstrate the presence of illicit drugs, namely alpha-PVP and MDMA. I would consider the presence of illicit drugs to be a significant risk increasing factor.

I note the post-mortem finding of petechial bleeding; small areas of bleeding in this case found on the eyes. Petechial bleeding is commonly found in cases of death following restraint. However, petechial bleeds are not always present following asphyxia. These bleeds are due to increased blood pressure in small blood vessels, which burst. Where a person has been restrained on the ground with officers holding them down to the ground, petechial bleeds would most likely result from compression of the deceased, but do not necessarily prove that the compression was of a nature and duration sufficient to cause asphyxia. Due to the presence of petechial bleeds it is more likely than not that Sheku Bayoh was subject to compression during the restraint.

I have read the witness accounts. I have also watched video of the incident and restraint, although the detail observable in this is limited. Based on all the information, there appear to be three positions in which the deceased was restrained:

- 1. Face down, held down to the ground by one officer.*
- 2. On his side, held down to the ground, initially by one officer. Subsequently restrained by more than one officer and handcuffed in front of his body.*
- 3. On his back, face upwards, handcuffed in front of his body.*

In relation to restraint asphyxia I consider it likely that both (1) face down position, with the body weight of the restraining person causing compression, and (2) side position, with the body weight of the restraining person causing compression, would reduce the restrained person's ability to breathe. I note that the officer who initially restrained Sheku Bayoh, officer B, is reported to be a large man of 25 stones bodyweight (159kg) and this would be likely to increase the level of compression and restriction of breathing caused by the restraint.

It appears that the deceased was subsequently moved to position (3), on his back, handcuffed with hands in front of him. I would consider both the supine positioning (on his back) and also the placement of his hands in front of him to be a risk reducing factor compared with the previous positions. I would consider moving a restrained person from lying face down to lying on his back, at the earliest opportunity, to be good practice in terms of safety.

The document 'Expert Witness Package: 'Death Following Police Contact Sheku Bayoh (p.9)' gives the time between first contact and unconsciousness as 3 minutes and 39 seconds.

The logged timings of police radio messages given to me are as follows:

07:20:23 First arrival of officers (officers A & B)

07:25:16 Officer F - "This male now certainly appears to be unconscious, breathing not responsive get an ambulance for him"

From this, it can be verified that restraint could not have occurred earlier than 07:20:23 and that unconsciousness had occurred not later than 07:25:16. This is 4 minutes and 53 seconds. On the CCTV video the time from officers being visible, on foot, on the street until when the deceased is taken to the ground is 41 seconds (3:45 into the video until 4:26 into the video). During this 41 seconds, the deceased is upright and moving about. This gives time from when the deceased is taken to the ground until when he is reported to be unconscious of 4 minutes and 12 seconds. The first officers may have reported on scene before leaving their vehicle and the radio call confirming unconsciousness may have come sometime after actual unconsciousness. Therefore, the duration of restraint is likely to be less than 4 minutes 12 seconds, but it cannot be longer than this.

Taking into account both the analysis by PIRC and my own analysis, the duration of forcible restraint on the ground prior to unconsciousness was less than four minutes.

Even where a person's breathing is severely restricted by restraint and compression, the length of time for which they are unable to breathe must be long enough to cause harm before this could be seen as directly causing death. A relatively short period of restraint, such as in this case, would make it much less likely that death could occur due to restraint asphyxia alone.

In addition to the effects of restraint on breathing there is also body of scientific research and opinion regarding the effects of restraint on the heart and blood vessels. Laboratory research which involved compressing the chests of volunteers to simulate restraint has demonstrated changes in both the heart and the major blood vessels. It must be noted that this research is less extensive than the work on breathing during restraint and, in laboratory studies, the effect of compression on the heart and blood circulation has not been sufficient to cause potentially fatal effects in the healthy volunteer participants.

The level of knowledge regarding this phenomenon is not sufficient to comment with certainty on the effects which may have occurred in the restraint of Sheku Bayoh. However, it must be acknowledged that this mechanism may have had an effect.

Overall, my opinion on the contribution made by restraint to the death of Sheku Bayoh is as follows:

- *The precise contribution of restraint to the death cannot be determined with certainty.*
- *It is unlikely that the nature and duration of the restraint would be directly and solely causal of death.*
- *It is unlikely that death occurred immediately following this level of restraint nor at any other time and that the restraint made no contribution to the death.*

On balance of probabilities, the most likely impact of restraint is that the restraint contributed to the death of a man who was also at risk of sudden death due to the consumption of illicit

drugs. Both restraint and illicit drugs are noted in the cause of death and I would fully concur with this.

7.7 Dr Maurice Lipsedge

Dr Maurice Lipsedge, MPhil, FRCS, FRCPsych, FFOM, is Emeritus Consultant at the South London and Maudsley NHS Foundation Trust and a Visiting Senior Lecturer in the Department of Psychological Medicine at Guy's, King's and St Thomas' School of Medicine.

His report is produced as,

Prod No.743 Expert Report Dr Maurice Lipsedge

Dr Lipsedge was asked to provide opinion on the undernoted aspects of the death.

- a) the psychological and behavioural adverse effect of the drugs taken by the deceased, and
- b) any behavioural science aspects of the case including, in particular, reference to whether the actions of the officers are indicative to particular mind set indicating that the officers were behaving as a group rather than as individuals.

In his opinion:

Review of the psychological and behavioural adverse effects of these drugs

Anabolic Androgenic Steroids

Early research on the association between the use of anabolic androgenic steroids and violence appeared to show a strong temporal relationship between the use of anabolic steroids and violent offences in individuals who have no previous history of severe violent outbursts.

Aggressive or violent behaviour often accompanied steroid associated mania or hypomanic episodes in a study of 88 athletes using anabolic steroids. Psychotic symptoms were diagnosed in 3 per cent of these anabolic steroid using athletes when "on-cycle" but in none "off-cycle". The risk of developing psychotic symptoms seemed to be related to high-dose testosterone.

Furthermore, randomised controlled studies of the neuropsychiatric effects of some anabolic steroids in male normal volunteers showed increased levels of hostility and anxiety on psychological tests in the laboratory.

However, it has been suggested that in the community setting, anabolic androgenic steroids might interact with psychoactive drugs such as alcohol to produce significant behavioural and neurophysiological effects.

Furthermore, recent research shows that concurrent polysubstance abuse explains most of the relatively strong association between any anabolic androgenic steroid use and conviction for a violent crime.

ALPHA –PVP

Toxicological analysis has shown that Mr Bayoh had taken Alpha- PVP; which is a synthetic stimulant drug of the cathinone class. As a recreational drug it resembles methamphetamine in its potent stimulant effects. It is available as a powder. It can be smoked, snorted, swallowed or injected. The psychoactive effects last for 3 to 5 hours and can be of slow onset, which can prompt users to re-dose while waiting for the euphoriant effect to set in.

Like amphetamines or cocaine, substituted cathinones are CNS stimulants which cause the release of catecholamines (dopamine, noradrenaline and serotonin) and block their reuptake in the central and peripheral nervous system. The effects sought by users include increased energy, empathy and sex drive.

Common adverse psychiatric and neurological effects include agitation, paranoia, hallucinations and seizures and the release of noradrenaline causes rapid heartbeat and raised blood pressure. The overall clinical picture resembles that caused by the well-established psychostimulants cocaine and amphetamine.

According to an early report on intoxication with psychoactive "bath salts", they are promoted as producing a high similar to that induced by methamphetamine and other illegal stimulants. Ross et. al. (2011) describes the clinical picture as one of "extreme sympathetic stimulation and profoundly altered mental state". The adrenergic effects may include rapid heartbeat, high blood pressure, raised temperature and seizures.

Fatalities have been reported. As with other stimulant drugs, the psychiatric effects include severe panic attacks, extreme agitation, paranoia, hallucinations and violent behaviour. Ross et. al. (2011) warns about the potential lethality from overdoses of "bath salts" which can be cut with other psychoactive substances. They state that patients may need physical restraint and high doses of sedatives to prevent harm to themselves or to others. They recommend intravenous benzodiazepines and intravenous fluids.

Synthetic analogues of cathinones ("bath salts") are increasingly used recreationally as substitutes for cocaine, MDMA (Ecstasy) and methamphetamine.

In a retrospective case series of 236 patients reported to two poison centres after exposure to "bath salts", common psychiatric symptoms included agitation, combative behaviour, hallucinations, paranoia and confusion.

Prosser and Nelson (2012) state users of these drugs are seeking enhanced energy, empathy and libido.

More recent papers, e.g. Lehner and Baumann (2013) also refer to the psychiatric and behavioural effects of "bath salts" overdoses including agitation, combative behaviour, delusions and hallucinations.

At a neurochemical level the adverse psychiatric and behavioural reactions are thought to be mediated by dysregulation of noradrenaline and dopamine rather than serotonin.

ECSTASY/MDMA

Ecstasy (MDMA) use alone is not generally associated with aggressive behaviour. On the contrary, it induces a feeling of increased camaraderie and closeness to others.

Although MDMA (Ecstasy) can be associated with an acute paranoid psychosis this appears to be a relatively rare event with this drug.

However, it is recognised that Ecstasy users can also be polydrug users, as in the study by Parrott, Sisk and Turner, 2000, and the concurrent use of amphetamine or cocaine or other drugs can be the cause of psychiatric disorders in these Ecstasy users

Retrospective Psychiatric Diagnosis

The rapid changes in Mr Bayoh's mental state and behaviour from apparent normality at about 4 am on 3rd May are consistent with psychostimulant intoxication.

His condition evolved rapidly in a pattern that is well recognised in descriptions of drug-induced intoxication following the recent ingestion of sympathomimetic drugs such as amphetamines and cocaine.

The adverse behavioural and psychological effects of psychostimulants (such as mood, ability and belligerence) are caused by the direct physiological impact of the drug or drugs on the central nervous system and develop during or shortly after ingestion or other exposure.

Psychostimulant psychosis evolves from a period of increasing restlessness, suspiciousness and ideas of reference. The patient misinterprets everyday events or conversations in a delusional fashion, believing that people are plotting against him or are about to attack him. The patient may act on these beliefs with extremely violent behaviour.

Although some pathologists and toxicologists use the term "Excited Delirium" to describe this clinical picture, most British psychiatrists prefer to use the term Psychostimulant Psychosis when there is toxicological evidence of the use of amphetamines, cocaine or cathinones.

The deceased's previous use of stimulants might have sensitised him to the psychosis-inducing potential of these drugs.

In addition to the psychostimulants Mr Bayoh appears to have drunk a significant amount of alcohol shortly before he began to express paranoid ideas. Alcohol consumption can be

associated with the development of violent and aggressive behaviour through its psychostimulant effects, diminished anxiety and pain perception and impaired inhibition, compounded by additional drugs (Hoaken and Stewart, 2003).

From my understanding of the recent medical literature, anabolic androgenic steroids are unlikely to have contributed significantly to the paranoid and violent behaviour, which can be better accounted for by the combination of psychostimulants and alcohol.

I have not attempted to address question (b) because the subject of group behaviour as opposed to individual behaviour lies outside my expertise as a psychiatrist. Group behaviour is the province of social psychologists.

7.8 Dr Steven Karch

Dr Steven Karch, MD, FFLM, FFSSoc, is a fellow of the faculty of Forensic and Legal Medicine of the Royal College of Physicians and is a retired Assistant Medical Examiner in San Francisco. He received his MD degree from Tulane University School of Medicine in New Orleans, trained in Neuropathology at the Royal London Hospital and Cardiac Pathology at Stanford University. He has undertaken extensive research on the effects of drugs on the heart and is the author of numerous papers and books on the subject, including 'Karch's Pathology of Drug Abuse', considered to be one of the definitive text books on this subject. He is a fellow of the American Academy of Forensic Sciences, the Society of Forensic Toxicologists, the National Association of Medical Examiners and the Royal Society of Medicine.

Dr Karch has significant experience of the effects of Alpha-PVP on the heart.

His report is produced as,

Prod No.739 Expert Report Dr Steven Karch

In his opinion,

Question #1: What was "the physiologic effect of the drugs detected in the toxicology sample, individually or in combination on the deceased in the circumstances of his arrest?"

Answer: All of the drugs detected (alpha=PVP, MDA and MDMA) cause acute and chronic cardiotoxicity. Any, or all of them, might have been the cause of death, but it is impossible to determine which drug actually did.

Explanation

1. Alpha-PVP (a-pyrrolidinovalerophenone)

a. Alpha-PVP belongs to the class of drugs known as synthetic cathinone derivatives, modified versions of the primary stimulant molecule (cathinone) found in the khat plant.

Laboratory evidence suggests this molecule acts more or less like other members of the cathinone group and exerts amphetamine-like effects. There are no controlled autopsy studies of this drug, not has its metabolism been characterized in the living. A number of case reports and two collections of human case reports have been published, but none of these cases, save for two, contain any detailed descriptions of the changes in the heart. The changes that are described exactly mirror those observed in Mr. Bayoh (uneven staining pattern of the myocardium, fragmentation and waviness of fibers, perivascular connective tissue growth, intramuscular fibrosis and scarring, disintegration of cardiomyocytes, nuclear disintegration, loss of cross-striations and thickening of blood vessel wall). The single case report by Nagi et al, showed extensive contraction band necrosis, a morphologic alteration that is non-specific, but which is often encountered in cases of sudden death. These case reports are, of interest because they demonstrate there is no relationship between measured postmortem blood concentrations and apparent toxicity. MDMA and MDA which were also found at autopsy share some of the same cardiotoxic actions as synthetic cathinones, but the results of vitro studies suggest that alpha-PVP is many times more powerful and more dangerous than either MDMA or MDA.

b. MDA, MDMA, and alpha-PVP are each classified as Monamine Oxide Inhibitors (MAOI); they were the first group of drugs designed to treat depression. They do so by disrupting the mechanism of drugs that transmit messages from nerve cell to nerve cell. These transmitters are called monoamines (dopamine, norepinephrine and serotonin). MAOIs are antidepressant by virtue of their ability to increase brain dopamine concentrations resulting in improved mood or even euphoria. Their dangerous side effects have rendered them a second line drug. However, if the increase in brain dopamine is too great, disruption of normal brain function may occur with lethal consequences, sometimes in the form of a disease known as excited delirium syndrome (ExDS). Mr. Bayoh, the decedent, exhibited many of the features of excited delirium.

In clinical practice 10-13 symptoms are generally recognised as components of the Excited (or Agitated) delirium, depending upon who is drafting the list. The list includes:

- extremely aggressive or violent behaviour
- constant or near constant physical activity
- does not respond to police presence
- attracted to/destructive of glass or other reflective surfaces
- naked or inadequately clothed
- attempts at "self-cooling", or skin hot to the touch
- rapid breathing
- profuse sweating Keening (makes unintelligible animal-like noises)
- insensitive to/extremely tolerant of pain
- excessive strength (out of proportion)
- does not tire despite heavy exertion

The results of thorough in vitro studies of human brains harvested from those who succumb suggest that most, probably all, of the symptoms listed are a consequence of dopamine

excess. As is apparent from a review of the list, dopamine excess could account for most of the behaviour observed in Mr. Bayoh. What clouds the situation is that the decedent would have been suffering from three different syndromes at the same time; excited delirium, serotonin syndrome and hyperadrenergic syndrome (due to an excess of norepinephrine caused by the drugs).

If too much serotonin accumulates, a different, but related disorder called “serotonin syndrome” occurs. Serotonin syndrome has been observed in other users of alpha-PVP related cathinones. When too much norepinephrine accumulates, “hyperadrenergic syndromes” result. Excess adrenergic activity compromises circulatory status, damages the heart, and sometimes leads to the occurrence of lethal cardiac arrhythmias. Both the clinical history and the observed cardiac lesions, suggest a scenario where all three drugs detected combined to cause death in this case.

2. Methylenedioxyphene (MDA)

a. This drug belongs to the amphetamine family of drugs, but seems to be taken more for the psychogenic effects than for the stimulant actions normally associated with amphetamines. MDA and MDMA (“ecstasy”) have slightly different structures than drugs like alpha-PVP, but nonetheless exert many of the same effects. Pharmacologically, MDA acts as a serotonin-norepinephrine-dopamine releasing agent and reuptake inhibitor, essentially the same effects produced by the cathinones. Its effects, when taken with alpha-PVP can be presumed to be addictive, which means that the same type of toxicology and the same syndromes can be produced as those caused by the cathinone alpha-PVP.

3. Nandrolone

a. High doses of nandrolone elicit cardiotoxic effects including cardiac remodelling and injury. There is also laboratory evidence that they may provoke arrhythmias. As myocardial remodelling of both ventricles was apparent on my examination of the heart, it seems only reasonable to conclude that nandrolone contributed to the process, as did all of the other stimulant drugs. There is also evidence that, by methods yet to be determined, nandrolone facilitates the occurrence of myocardial arrhythmias, the apparent cause of Mr. Bayoh’s demise.

4. Myocardial Disease

a. Myocardial remodelling and necrosis; Myocardial remodelling is the term general used to describe changes in the size, shape and structure of the heart after it has been injured [16]. It was first introduced to describe the increased muscle mass that can be found surrounding areas of healing myocardial infarction. The increase occurs to compensate for the muscle lost in a heart attack, and to that extent is beneficial. However, remodelling is not always beneficial or always the result of infarction. It is commonly caused by chronic high blood pressure, heart valve disease, and often by stimulant drug abuse. In all of these later situations remodelling is detrimental. In fact, the presence of remodelling is an established independent risk factor for the occurrence of sudden cardiac death (SCD). My microscopic

examination disclosed remodelling changes throughout the heart. These changes included the presence of enlarged heart cells within abnormal cell nuclei and abnormal fibrous tissue located between the heart cells and around blood vessels. The blood vessels themselves were abnormally narrowed and many of the vessels were surrounded by abnormal fibrous tissue that would act to diminish blood flow to the rest of the heart, favouring arrhythmia and sudden death.

b. In addition to changes characteristic of remodelling, other areas of cellular destruction were apparent throughout the heart and some of these areas were surrounded by the type of cells normally seen in cases of "heart attack"; the term "micro-infarction" seems most descriptive. This sort of destruction is seen whenever concentrations of norepinephrine or norepinephrine-like drugs are present in excess, especially in methamphetamine and cocaine abusers. Since alpha-PVP elevates norepinephrine blood concentrations (as do MDA and MDMA), one would presume the drugs detected at autopsy cause these acute changes. Cellular damage of this type facilitates the occurrence of myocardial arrhythmias as well.

Question #2 was about "the physiological effects of the CS/PAVA spray individually, or in combination, on the deceased in the circumstances of his arrest."

Answer: These agents are toxic to the extent that they cause damage to the respiratory tract. Respiratory tract damage was not found at autopsy, only pulmonary edema, which can occur as complication of either spray component, but only if the spray directly enters the lungs. The exact same type of fluid accumulation occurs as a consequence of heart failure, as well as stimulant and narcotic abuse. In other words, it is a non-specific finding. It is reasonable to conclude that neither of these agents found in the spray contributed to the cause of death, because autopsy disclosed no evidence that either of the agents had entered the throat (there would have been visible damage to the respiratory tract).

Explanation: According to the recent paper in the Journal of the Royal Army Medical Corps, CN, CS and OC are effective riot control agents. In the majority of exposures, significant clinical effects are not anticipated. Other controlled experiments with human volunteers have shown no significant effect of these agents when applied as directed. There is no evidence that CS/PAVA was applied incorrectly. The irritant effects can be minimized both by rapid evacuation from sites of exposure, decontamination and appropriate supportive care. When toxicity has been reported it is almost always after exposure to very high concentrations in confined spaces. If there is underlying disease, the outcome is likely to be even worse.

In the most recently published study, 10 lethal cases of death from riot control agents (RCA) were analysed. In three cases, RCAs (riot control agents) were found to be the sole cause of death; in three cases, RCAs were ruled a secondary cause of death due to asphyxia or asthma subsequent to exposure to RCAs; and in four cases, RCAs were contributory factors to death. In three cases the responsible agents are identified as Chloroacetophenone (CN), Chlorobenzylidene malononitrile (CS) and Oleoresin capsicum (OC) and in the remaining seven cases, the agent was OC alone. As there are no specific findings in suspected cases of death associated with RCA use, establishing cause of death and whether RCAs are the sole cause or only a contributory factor will be based on the elimination of other possible

causes of death. I have highlighted the fact that the authors say the diagnosis of death by OC is a diagnosis of exclusion. Given all the operative factors in this case, exclusion of other, much more compelling causes is impossible.

PAVA spray is a synthetic form of pepper spray, i.e., a synthetic capsaicinoid (the abbreviation stands for pelargonic acid vanillylamine) found in chilli peppers, and sometimes used as a food ingredient. The only significant difference is, to the best of my knowledge, no deaths have ever been attributed to PAVA.

Finally, another experiment testing the effects of capsicum spray on humans should be noted. A randomized, cross-over controlled trial was performed. Thirty-five subjects were exposed to OC or placebo spray, followed by 10 minutes of sitting or prone maximal restraint position (PMRP). Spirometry, oximetry, and end-tidal CO₂ levels were collected at baseline and throughout the 10 minutes. Data were compared between groups (ANOVA) and with predefined normal values. In the sitting position, OC did not result in any significant changes in mean percent predicted forced vital capacity (%predFVC); percent predicted forced expiratory volume in 1 s (%predFEV₁), oxygen, or CO₂ levels. When the subjects were fully hogtied there was no evidence of hypoxemia or hypercapnia in either group. OC exposure did not result in abnormal spirometry, hypoxemia, or hypoventilation when compared to placebo in either sitting or “hogtying” positions.

Question #3: “What is the physiological effect of restraint of the deceased in the circumstances of his arrest?”

Answer: Given the details of this situation the effect of physical restraint would have been di minimus.

Explanation

a. Mechanical Asphyxia

It has been postulated by some that the mechanical obstruction of chest movement, called asphyxia, because air exchange within the lungs is diminished, could be caused by multiple officers overlying the body, thereby leading to asphyxial death. There is no evidence that sufficient pressure was applied to the decedent’s lungs. Petechiae, subconjunctival haemorrhage, and pulmonary edema were present but both of these abnormalities are utterly non-specific findings. Even if weight was placed on the decedent’s back, experiments with human volunteers, published in peer-reviewed journals, have shown that when increasing amounts of weight were placed on the backs of maximally restrained volunteers (up to 250 pounds – 100 kg) no clinically significant effects were observed. Indeed, the whole “concept” of restraint asphyxia, as applied in this case, has been refuted many times in the peer-reviewed literature.

b. Primary Effects of Prone Positioning

Theories involving the “hogtie”, properly known as MPRP or “Maximum Prone Restraint Positioning” or “hobble restraint”, as a cause of death, also called “positional asphyxia”, were first proposed late in 1992. However, the results of the initial research were ultimately withdrawn (in open court) by the very author who first suggested the idea. It is surprising, given the lack of evidence, that anyone would suggest that it can. It is equally surprising that this outmoded idea remains in the vocabulary of modern forensic pathologists, given the complete lack of supporting evidence.

c. Epidemiologic and Laboratory Studies

Measurable circulatory effects can be produced by placing large amounts of weight on volunteer’s backs, but the effect produced is not clinically significant (barring the presence of serious underlying disease). Hall studied 4828 consecutive use-of-force events (August 2006-March 2013) in seven Canadian police agencies. It was observed that 81.5% (an almost universal finding when “positional asphyxia” is invoked as a cause of death) of the subjects were alcohol-drug intoxicated, and/or emotionally distressed at the scene. Significantly more subjects remained in a non-prone vs. prone position; but over 2000 subjects remained prone. One individual died during the course of the study. Death was sudden and unexpectedly occurred in the non-prone position. The individual who died exhibited all 10 features of excited delirium syndrome. No subject died in the prone position. In a second study the same researcher found that out of 1269 physical encounters, the majority (57.2%) of subjects were also left in a non-prone position; the remainders were left in the prone position.

Question 4: What was “the physiological effect of (a), (b) and (c) on the deceased in combination in the circumstances of his arrest?”

Answer: I concluded Factor (c) is irrelevant as there is no proof that such disease entity even exists. Factor (b) is similarly irrelevant as there is no evidence of toxicity present, and as there are many more convincing elements, in particular, all of the drugs as enumerated in Question (a). The inherent cardiotoxicity of these drugs, together with obvious pre-existing heart disease just makes the probability of cardiac arrests even greater.

7.9 Dr Paul Rice

Dr Paul Rice, is the Chief Medical Officer, Chemical, Biological & Radiological Division, Defence Science and Technology Laboratory, Porton Down. He was contacted in June 2015 and his opinion sought regarding the effects of CS and PAVA Spray on the deceased. He intimated in an email, that his department had done some work in developing an analytical method for the detection of a substance in urine called 2-chloro-hippuric acid which is one of the breakdown products of CS in the body. This work had shown that this substance can be detected in the urine of the subject exposed to CS for a number of hours following exposure. However this chemical substance is almost completely absent from the urine by 24 hours following exposure.

Dr Rice has intimated that if a post mortem urine sample had been examined by his department within 24 hours of exposure, then it may have been possible to detect the chemical substance 2-chloro-hippuric acid. However given the passage of time the possibility of any marker remaining within the urine sample was negligible.

Dr Rice intimated further this particular analytical technique was regarded as an experimental tool, it was not a forensically accredited method and he had done no further research to relate the level of 2-chloro-hippuric acid present in urine to the initial concentration of CS and lastly he was unsure whether 2-chloro-hippuric acid is a signal which is unique for CS.

He also stated that they had done no work in relation to blood or lung tissue analysis of CS, PAVA or their respective metabolites.

Given this information, a statement was not sought from Dr Paul Rice.

Further expert opinion on Alpha PVP

Crown Office may consider it appropriate to instruct that further expert opinion is obtained on Alpha-PVP.

Report to COPFS - Copy 1

7.10 Expert opinion on deployment, use and effect of CS / PAVA sprays

PIRC investigators obtained expert medical opinion from various of those persons detailed above in respect of the deployment, use and effect of CS/PAVA sprays on the deceased.

Dr Jason Payne-James

Considers that, the lack of effect make it unlikely either together or in isolation, that PAVA and CS were significantly implicated in his death.

Dr Steven Karch

Comments that, CS and PAVA are toxic to the extent that they cause damage to the respiratory tract. Respiratory tract damage was not found at autopsy, pulmonary edema was found but as that is a non-specific finding, it is reasonable to conclude that neither of these agents found in the spray contributed to the cause of death, because autopsy disclosed no evidence that either of the agents had entered the throat. To the best of his knowledge, no deaths have ever been attributed to PAVA.

Professor Mary Sheppard

Advised that, while the CS/PAVA may have an effect on the heart, there is no evidence pathologically of any damage to the heart.

Dr Elizabeth Soilleaux

Advised that , it is unlikely that the CS and PAVA sprays had a significant effect.

8. Scene Management and Evidence Recovery

8.1 Introduction

It appears from the initial approach adopted by Police Scotland that the incident at Hayfield Road, Kirkcaldy was considered to be the scene of a serious but not a major incident.

DI Colin Robson, the officer in charge at the incident scene, states that on his arrival at the scene he was briefed by DS Davidson. He states, *“She told me that when the cops arrived at the locus the man came from the area of the bus stop”. “He immediately engaged with the cops and was in possession of a knife, then there was an altercation with him during which Constable Nicole Short was assaulted”. “She confirmed that he was thereafter restrained by the officers”. “As regards the man on the ground, I was quite happy that situation was well under control and the situation had been defused. It appeared to me that PC Alan Smith was in control of the care and welfare of the man. He appeared to be going through a care and welfare process and I heard him make reference to the man being, ‘in the recovery position’ and ‘his airway is open’, or words similar.”*


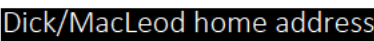
DI Robson stated that, on the deceased’s condition rapidly deteriorating, the investigation very quickly became a major incident and the locus at Hayfield Road was then treated as such. He directed that the scene should be cordoned and contacted police senior management to make them aware of the circumstances. Police Scotland appointed Detective Superintendent (D/Supt) Campbell as the Senior Investigating Officer (SIO) and he directed the Police Scotland East Area Major Investigation Team and other specialists to assist with the investigation.

Police Scotland contacted Mr David Green, Head of the Scottish Fatalities Investigation Unit of COPFS about 0930 hours on 3 May 2015 and informed him of the death. He instructed that the death would be investigated by the Police Investigations and Review Commissioner (PIRC) while the preceding events would be investigated by Police Scotland. On 5 May 2015 that position changed and COPFS directed PIRC to undertake all aspects of the investigation.

Appendix F provides a schedule of productions in the investigation.

8.2 Identified Incident Scenes

Initial enquires conducted by Police Scotland identified five incident scenes which they considered were connected to the investigation:

- Hayfield Road at its junction with Hendry Road, Kirkcaldy;
-  Arran Crescent, Kirkcaldy – home of the deceased;
-  – home of witnesses Martyn Dick and Kirsty MacLeod;

- Saeed home address – home of witness Zahid Saeed
- Victoria Hospital, Kirkcaldy;

Later the following scenes were identified by PIRC as being of relevance to the investigation:

- Kirkcaldy Police Office;
- Mortuary, Edinburgh Royal Infirmary, Edinburgh.

In addition, Police Scotland identified that witness Saeed's motor car Reg No [REDACTED] should be forensically examined. This vehicle was later seized by Police Scotland at witness Saeed's home, examined and returned to the witness. No label in lieu was submitted.

Despite the fact that Police Scotland identified at 0725:16 hours on 3 May 2015 that the deceased was unresponsive, no scene management procedures were put in place for the scene at Hayfield Road until 1045 hours that day. Scene management protocols were put in place for Co Arran Crescent and Dick/MacLeod home address about 0930 hours. [REDACTED] had scene entry protocols put in place at 1330 hours that day. Two detective officers were assigned to the incident scene at the Victoria Hospital to ensure the integrity of the deceased's body.

About 1225 hours on Sunday 3 May 2015, Detective Chief Inspector Houston was appointed as Crime Scene Coordinator for the incident scenes. In addition he was tasked with seizing the outer clothing, footwear and all equipment of the police officers who initially attended the incident. DCs Monteith and Bellingham seized clothing and equipment from the male police officers and Inspector Combe and DC McAulay seized clothing and equipment from the female officers.

The timings for the recovery of items from each of the nine officers is recorded in,

Prod No.277 PIM Log

From investigation carried out by PIRC investigators, it appears that when the officers returned to Kirkcaldy Police Office immediately after the incident no thought was given at that time to their clothing or equipment being taken as productions. It was found that, the officers had removed their outer clothing and equipment and stored it at various locations in the office, such as locker rooms, the canteen or other areas.

About 1645 hours on 3 May 2015, D/Supt Campbell chaired a Forensic Strategy meeting with PIRC. At this meeting it was agreed that the PIRC's priorities for crime scene examination and evidence recovery would be the body of the deceased and the incident scene at Hayfield Road.

Full details of the strategy for each of the initial five loci and the seizure of items from the nine police officers is contained in,

Prod No.651 Police Scotland Forensic Strategy Document

8.2.1 Incident Scene – Hayfield Road, Kirkcaldy

Police Scotland established incident scene protocols at Hayfield Road, Kirkcaldy at 1045 hours on Sunday 3 May 2015, some 3 hours and 20 minutes after the deceased became unresponsive and was then removed to hospital. A,

Prod No.406 Scene Entry Log – Hayfield Road, Kirkcaldy

details all personnel who entered the scene and their purpose for doing so. It does not record any details for the period between the incident taking place at circa 0720 hours until inception of the incident scene at 1045 hours.

Prior to the scene management protocols being put in place a number of items,

Label No.180 Police Issue Baton 1 #MP027381

Label No.181 Police Issue Baton 2 #379526

Label No.182 Police Issue Baton 3 #MP163969

Label No.183 Police Issue handcuffs - 162349

Label No.189 Mobile Phone (Gold coloured - deceased)

Label No.184 SD 918-Knife

had been recovered from the scene by DC Connell.

DC O'Neill, was appointed as Police Scotland Scene Manager, and attended at 1530 hours that day to assess the scene. About 1645 hours, Police Scotland and the PIRC Scene Manager, Investigator Sinclair, met and established the following strategy for this scene:

- To examine and forensically recover any items in the scene;
- To examine any vehicles in the scene for damage;
- To identify and maximize all forensic opportunities at the scene;
- To record the position of all items, vehicles and street furniture in the scene utilising the services of the Collision Investigation Unit of Police Scotland;

- To conduct a POLSA led search of the roadway, adjacent gardens and common spaces;
- Obtain photographs and video of the scene

About 1812 hours DC O'Neill, PIRC Investigator Sinclair, Scenes of Crimes Officers (SOCOs) Paterson and Foy attended the scene. They took still and video photographs which were recorded on and are produced in,

Prod No.251 Photographs of incident scene – Hayfield Road,

Label No.251 3-D 360 degree camera scene – Hayfield Road,

Label No.360 Video of incident scene – Hayfield Road.

Each vehicle in the cordon was detailed and visually examined for signs of fresh damage. The examination proved negative.

Label No.175 CS Spray Cap (PC Smith),

was found at the scene. In addition a number of other items were found there which, although seized, do not appear to have any bearing on the investigation. All items were noted by Police Scotland productions officer DC Gilzean in,

Prod No. 236 Police Scotland Major Incident Scene Property Register No.2,

photographed in situ and subjected to 3-D imagery before being seized.

About 2130 hours a systematic search of the grass area, the public footpath and the public roadway was undertaken by Police Scotland search advisors (POLSA) under the direction of the PIRC Scene Manager Investigator Sinclair. The street drains in the incident scene were emptied by Scottish Water then searched. This search was stood down at 2330 hours and recommenced at 1240 hours the next day (Monday 4 May 2015). At that time,

Label No.229 Mobile Phone

which was later confirmed to be unconnected to the incident was found by the POLSA search officers. The scene examination was concluded at 1410 hours on 4 March 2015, at which time the scene was stood down.

8.2.2 Incident Scene, [REDACTED] Arran Crescent, Kirkcaldy (Collette Bell and Deceased's Home)

Police Scotland maintained control of this scene between 0900 hours on 3 May and 2045 hours on 4 May 2015.

Witness Collette Bell returned to her home about 0810 hours on 3 May 2015 to discover her partner, the deceased, was missing and her home had been disturbed. She reported the deceased missing in a phone call to Police Scotland at 0836 hours,

Label No.650 Audio CD ACR Bilston Glen and certificate of authentication (7 x 101 / 999 calls)

which was transcribed and is produced as.

Prod No. 573 Transcript of telephone call to Police Scotland. Reference 20150503 08:36 01 sec 46435712 Collette Bell

About 0900 hours, DCs Clayton, Mitchell and Parker were instructed to attend at [REDACTED] Arran Crescent, Kirkcaldy to carry out a welfare check on witness Collette Bell. DS Dursley states that he considered that witness Collette Bell's call to the police may have been related to the incident in Hayfield Road due to the description of the deceased provided by her. About 0920 hours witness Collette Bell returned to the address with her mother and young baby and they and the police witnesses entered the house.

Witness Collette Bell explained to DCs Clayton, Mitchell and Parker that she had called the police after finding her house disturbed, her partner was missing following a telephone call she had received from one of her partner's friends, witness Saeed. She informed the officers that witness Saeed had told her that the deceased had been with him the night before and he had 'flipped' because someone had been disrespectful. She advised that, witness Saeed described to her that he and the deceased had fallen out in the house and that the deceased had chased him down the street. She stated that witness Saeed had told her not to go back to the house because of the deceased's behaviour and state of mind.


DC Clayton undertook a 'walk through' of the house to make sure there was nobody else inside. The officers asked witness Collette Bell if the deceased had a phone, as a phone had been found at the incident scene in Hayfield Road. Witness Collette Bell pointed out a black coloured phone which was lying on a television stand in the living room (this phone was not seized). She advised that the deceased had another phone which was gold in colour (this phone was recovered by Police Scotland at the Hayfield Road scene).

Label No.189 Mobile Phone (Gold coloured - deceased)

About 1030 hours the officers were instructed by DS Dursley that [REDACTED] Arran Crescent, Kirkcaldy was to be secured and protected as a crime scene. The officers stated to witness Collette Bell that there had been an incident that morning that might be related to the

insecure property. They asked witness Collette Bell and her mother to attend at Kirkcaldy Police Office for interview. The house was secured and keys given to PC McGlashen who thereafter protected the house.

Police Scotland held a Forensic Strategy Meeting later that day at which it was determined that the house would remain in their control with,

Prod No.219 Scene Entry Log –  Arran Crescent, Kirkcaldy,

recording all access.

About 1920 hours DC Finch and witnesses SPA Scene Examiners Young and Harley entered the house, searched and photographed it. The photographs and video is produced as,

Label No.251 2 x Discs All Images 2015-FS-011305 & Certificate of Authentication

They also seized a number of items that do not appear to have relevance to the investigation (two watches and four fridge magnets).

About 2010 hours on Monday 4 May 2015, PIRC investigator Little was made aware that witness Collette Bell had requested entry to the house in order to retrieve a number of personal items for her baby. In this regard, given the interim findings of the Post Mortem, a decision was taken by Police Scotland to return the dwelling to witness Collette Bell before a full forensic examination was undertaken.

The house was then further searched at 2025 hours by DCs Finch and Stanford. At 2030 hours, during the course of the search, the following items were seized from on top of the fridge in the kitchen of the house,

- Label No.209 Bottle of 56 Tablets Labelled Creatine;
- Label No.210 Bottle of 33 Tablets Labelled Herbal Vy for Men;
- Label No.211 Bottle of 48 Tablets Labelled Rhodiola Root;
- Label No.212 Bottle of 38 Tablets Labelled Testosterone Booster;
- Label No.213 Box of 27 Tablets Labelled Omeprazole;
- Label No.214 Box of 7 Tablets Labelled Omeprazole;

From the pocket of a red coloured rucksack found on top of a tumble dryer in the kitchen, the officers recovered,

Label No.215 16 Loose Tablets.

From a kitchen drawer the officers seized,

Label No.216 Knife 1;

Label No.217 Knife 2;

Label No.218 Knife 3.

The knives were photographed in situ prior to seizure which are produced in,

Label No.251 2 x Discs All Images 2015-FS-011305 & Certificate of Authentication.

It was noted the three knives were visually similar to the knife recovered from the Hayfield Road incident scene. Witness Collette Bell later identified the knives as her own to PIRC investigators. She was not shown the knife seized at the incident scene in Hayfield Road as it had been submitted to SPA and subject to forensic examination.

About 2045 hours that day, DCs Finch and Stanford concluded the search of the locus and the address was re-secured and thereafter returned to Collette Bell.

It is noted that Police Scotland did not seek or gain the permission of witness Collette Bell to search the property at [redacted] Arran Crescent, Kirkcaldy, nor did they obtain a warrant to do so.

8.2.3 Incident Scene, [redacted] (Martyn Dick and Kirsty MacLeod's Home)

Police Scotland maintained control of this incident scene between 1305 hours on 3 May and 1839 hours on 4 May 2015.

During interview by police, witness Saeed told them that he had been in the deceased's company at the home of witnesses Dick and MacLeod at [redacted], in the early hours of the morning of Sunday 3 May 2015 and informed them of the deceased's strange behaviour. Police Scotland decided that the address at [redacted] should be searched.

About 1305 hours on 3 May 2015, DCs Bellingham, Monteith, Stark, Cox, Forbes and O'Neill attended at this address and spoke to the occupiers, witnesses Dick and MacLeod. The nature of the police enquiry was explained to them and they were requested to attend Kirkcaldy Police Office to provide statements.

At this time DCs Monteith and Bellingham spoke briefly with witness MacLeod and told her that the house would be seized and secured as it may be part of the enquiry due to the deceased having been there the previous night. Witness MacLeod handed over a set of keys to the property to DC Monteith. DCs Forbes, O'Neill, Cox and Stark then conveyed witnesses Dick and MacLeod to Kirkcaldy Police Office for interview.

About 1330 hours DCs Monteith and Bellingham secured the premises and maintained locus protection at the address until the arrival at 1400 hours of PCs Murphy and Dougan. PCs Murphy and Dougan were informed that a uniformed presence was required at both the front and rear of the premises until further notice.

About 1345 hours at Kirkcaldy Police Office, DCs O'Neill and Forbes obtained from the witness Dick,

Label No.221 Evidential DNA Mouth Swab MD1 + MD2 (Martyn Dick)

About 1705 hours at Kirkcaldy Police Office, DCs Cox and Stark obtained from the witness MacLeod,

Label No.223 Evidential DNA Mouth Swab KM1 + KM2 (Kirsty MacLeod)

At the Police Scotland Forensic Strategy Meeting of 3 May 2015 it was determined that the house would remain in the possession of Police Scotland with a scene entry log in place.

About 1400 hours on Monday 4 May 2015, DC Finch and witnesses SPA Scene Examiners Young and Harley entered the house in order to make an initial assessment. A visual examination was thereafter carried out and general still photographs taken, which are produced in,

Prod No.251 2 x Discs All Images 2015-FS-011305 & Certificate of Authentication.

In the main bedroom of the house, DC Finch observed a small quantity of herbal material that he believed to be Cannabis. It was located in a clear plastic tub in the rear right side drawer of the bed which was open. Two grinders were also visible at this location which appeared to contain traces of herbal material. About 1505 hours, the assessment was concluded and the address was re-secured.

About 1700 hours, DC Finch spoke with the on call Procurator Fiscal, Mr Kapadia, and informed him of the herbal material seen in [redacted]. Mr Kapadia advised him that in the circumstances he did not intend to seek a search warrant.

DC Finch thereafter spoke with DI Wilson who instructed him to recover the herbal material and caution the occupiers that they would be reported for offences under the Misuse of Drugs Act 1971 pending the result of any analysis.

About 1818 hours, DCs Finch and McGregor re-entered [redacted] and seized,

Label No.200 Grinder 1 – [redacted]

Label No.201 Grinder 2 – [redacted]

OFFICIAL - SENSITIVE

Label No.199 Tub containing herbal matter – Dick/MacLeod home address

from in the rear right drawer of the bed in the bedroom. It was noted the two grinders both contained traces of herbal matter. The items were placed in suitable drugs production bags and sealed.

About 1825 hours, DCs Finch and McGregor exited and re-secured the house. About 1839 hours the officers met with the occupiers, witnesses Dick and MacLeod, outside the house at which time they returned the keys to witness Dick.

Prod No.202 Scene Entry log – Dick/MacLeod home address

records persons entering and leaving the house. About 1842 hours, in Dick/MacLeod home address in the presence of DC McGregor, DC Finch gave to witnesses Dick and MacLeod a statutory caution in respect of the Misuse of Drugs Act 1971. Witnesses Dick and MacLeod both intimated they understood but made no reply.

Again it is noted that Police Scotland did not seek or gain the permission of witnesses Dick or MacLeod to search the property nor did they obtain a warrant to do so. No Standard Prosecution Report has been submitted by Police Scotland in respect of the herbal material.

8.2.4 Incident Scene, Saeed home address (Zahid Saeed's Home)

Police Scotland maintained control of this incident scene between 1340 hours and 2135 hours on 3 May 2015.

About 1120 hours on Sunday 3 May 2015, DS Dursley instructed DCs Telford and McGregor to trace and speak to the witness Saeed in relation to his involvement with the deceased prior to his death. DCs Telford and McGregor attended at Saeed home address about 1157 hours where they spoke to the witness Saeed. Witness Saeed stated that he had been assaulted by the deceased and asked the officers to take him to hospital for treatment. DCs Telford and McGregor took witness Saeed to the Victoria Hospital, Kirkcaldy, where he was treated for mild head injuries. Thereafter he was taken to Kirkcaldy Police Office where a signed statement was obtained from him.

At the Forensic Strategy Meeting on 3 May 2015 it was determined that, as witness Saeed had conveyed the deceased in his motor vehicle, it should be seized and examined. In his statement witness Saeed told officers that, following the altercation with the deceased he had driven home and had placed his clothes in a laundry basket in the house. It was decided by D/Supt Campbell that witness Saeed's home would also be secured and searched.

Witness Saeed's home was found to be occupied by his parents, his severely disabled brother and other family members. No permission was obtained from witness Saeed's parents for the search and seizure of their home, nor were alternative arrangements made by Police Scotland to house the occupants during this period.

The Police Scotland forensic strategy for [Saeed home address] was determined as:

- To examine and forensically recover the clothing and any other items in the scene as described by Zahid Saeed
- To record and forensically recover the motorcar registered number [REDACTED].
- To identify and maximize all forensic opportunities at the crime scene

DCs Miller and Petrie arrived at [Saeed home address] at 1340 hours accompanied by PCs Fraser and Aitken. They informed the occupants that Police Scotland were seizing the house and instructed the occupants to leave, which they did.

Following his release from hospital, DCs Telford and McGregor took the witness Saeed to Kirkcaldy Police Office where at 1430 hours they obtained a signed statement from him.

About 1700 hours DC Telford took,

Label No.222 Evidential Mouth Swabs - Zahid

from the witness Saeed in the presence of DC McGregor.

About 1830 hours the witness Forensic Medical Examiner (FME) Dr Norrie carried out a medical examination of the witness Saeed and took the following swabs from him.

Label No.227 Left Hand Fingernails Wet + Dry

Label No.226 Right Hand Fingernails Wet + Dry

Label No.224 Right Hand Wet + Dry

Label No.225 Left Hand Wet + Dry

Following the examination, the witness Norrie completed the,

Prod No.508 Forensic Medical Report – Zahid Saeed

Witness Saeed was found to have swelling and grazing to the face, arms and left leg. DCs Telford and McGregor witnessed the examination, however they did not have the injuries photographed.

About 2110 hours DCs Telford and McGregor attended at [Saeed home address] accompanied by witness SPA Scene Examiner Foy and the witness Saeed. The following items were initially

seized from the house after being photographed in situ but later returned to witness Saeed with labels in lieu submitted,

Label No.144 Shoe 1- Zahid (Saeed) (Label in Lieu)

Label No.145 Shoe 2 – Zahid (Saeed) (Label in Lieu)

Label No.146 Belt – Zahid (Saeed) (Label in Lieu)

Label No.147 Trousers – Zahid (Saeed) (Label in Lieu)

Label No.148 Jacket – Zahid (Saeed) (Label in Lieu)

Label No.149 Jumper – Zahid (Saeed) (Label in Lieu)

The photographs are produced as,

Label No.251 2 x Discs All Images 2015-FS-011305 & Certificate of Authentication.

About 2200 hours, DCs Telford and McGregor seized

Label No.150 Mobile Phone – Zahid (Saeed)

The locus at **Saeed home address**, was secured between 1330 hours to 2135 hours on Sunday 3 May 2015 as noted in the,

Prod No.282 Scene Entry Log **Saeed home address**

The witness Saeed provides that the Seat Toledo motor vehicle registration number **[REDACTED]** was forensically removed to Ace Recovery, Methil, at some time after 2100 hours on Sunday 3 May 2015 on the instructions of the police.

On Thursday 7 May 2015, this vehicle was examined by police witness DC Roxburgh and witnesses SPA Scene Examiner Gilchrist and Forensic Scientist Marvin. A number of small indentations and scratches were noted. The vehicle was photographed which are produced in,

Prod No.251 2 x Discs All Images 2015-FS-011305 & Certificate of Authentication.

and a number of cast impressions and paint samples obtained. Details of this examination are contained within,

Prod No.710 SPA Forensic Services (Glw) Report - examination Of Articles Operation Quoich

Label No.184 SD918-Knife

was then examined against,

Label No.230 Cast Impression AM1 - Labelled Front offside door, [REDACTED] at 10.50 on 07 May 2015

Label No.231 Cast impression AM2 - Labelled Rear offside door, [REDACTED] at 1055 on 07 May 2015

Label No.232 Cast Impression AM3 - Labelled Rear offside door, [REDACTED] at 1100 on 07 May 2015

that had been obtained on the initial examination of the Seat Toledo motor vehicle registration number [REDACTED]. Full details are contained within:

Prod No.711 SPA Forensic Services (G/w) Report - examination Of Articles Operation Quoich knife, and cast impressions AM1, AM2 and AM3

Again Police Scotland did not seek or gain the permission of witness Saeed or any of the other occupants of the house to search the property nor did they obtain a warrant to do so.

As described above, DCs Miller, Petrie, Fraser and Aitken required the family, including witness Saeed's mother, disabled brother, his sister and her two [REDACTED] children ([REDACTED]) to leave their home around 1300 hours on 3 May. Witness Saeed's father, Saeed Ahmed, stated to PIRC investigators that the police provided the family with no explanation for the move other than that it was a crime scene. He noted that the enforced move was particularly difficult given the extent of his son's disabilities. Police Scotland made no alternative accommodation arrangements for the family. Later that afternoon Saeed Ahmed attended at Kirkcaldy police station to express his concerns. The family were allowed to return to their home about 2115 hours. Two weeks following the incident, Saeed Ahmed complained to the Chair of Glenrothes Islamic Centre about his family's treatment, following which the Centre submitted formal a complaint to Police Scotland.

Saeed Ahmed states that Police Scotland responded to this complaint around two to three weeks later and arranged a meeting with him, at which they apologised on behalf of the detectives who had attended at Saeed Ahmed's home, stating that there had been a breakdown in communication. Saeed Ahmed accepted the apology and stated that he did not wish to take the matter further. He has since received confirmation of the apology in writing.

8.2.5 Incident Scene, Victoria Hospital, Kirkcaldy

Police Scotland maintained control of this incident scene between 0904 hours and 1910 hours on 3 May 2015, when responsibility transferred to the PIRC. At 2230 hours, the deceased body was removed by undertakers to Edinburgh City Mortuary.

At 0904 hours on Sunday 3 May 2015, Sheku Bayoh died in the Accident and Emergency Department of the Victoria Hospital, Kirkcaldy. Medical records and samples, the deceased's clothing, and numerous other relevant items taken at the hospital or at post mortem investigation were seized as productions.

Initially DC Connell had accompanied the deceased to the hospital. He was relieved by DCs Balsillie and Brown. At 0904 hours these witnesses were informed by witness Dr Anderson that the deceased had been pronounced life extinct. The body of the deceased which had been in the resuscitation area of the A&E Department was moved to a private room nearby. DCs Balsillie and Brown ensured the evidential integrity of the deceased's body until responsibility was later passed to the PIRC at 1910 hours. While at the hospital witness Cunningham, Staff Nurse, handed to DCs Balsillie and Brown,

- Label No.166 GAY016 Right Boot – deceased,
- Label No.167 GAY 017 Left Boot – deceased,
- Label No.165 GAY015 – Bag and contents
- Label No. GAY018 Blood Samples x 4 – deceased.

About 1910 hours witness PIRC investigators Ferguson and Taylor, DC Grady and witnesses SPA Scene Examiners Young and Harley attended at the hospital where they took over responsibility from DCs Balsillie and Brown. DCs Balsillie and Brown handed the above items which, while contained in individual bags, were not labelled and the bags were not sealed, to PIRC investigators.

Evidential photographs of the deceased's body were taken by the SPA Scene Examiners and are produced in,

- Prod No.251 2 x Discs All Images 2015-FS-011305 & Certificate of Authentication.

Witness Dr Jackson then removed the following articles from the body of the deceased and placed them into a,

- Label No.155 GAY005 Medical Intervention (bag):

These items were:

- Tube inserted into mouth of deceased,
- Sodium chloride "viaflo bag" suspended at end of trolley,
- "Fusor bag" suspended at end of trolley
- "Skintact" adhesive contact (s) on chest
- Tape/bandage on middle left arm and cannula inserted
- A cannula inserted in his right groin (connected to by tube to suspended "Fusor bag").

The SPA Scene Examiners Young and Horsley then undertook the following actions:

- The body of the deceased was taped - head, face, neck and exposed arms;
- Removal of the clothing of the deceased;
- Body of the deceased bagged (including, head, hands and feet);
- Body placed into a plastic body bag;

The following productions were seized during the course of this process:

- Label No.151 GAY001 Hospital Blanket;
- Label No.152 Gay002 Neck Brace;
- Label No.153 Gay003 Nylon Bag - control;
- Label No.154 GAY004 Intubation Tubes;
- Label No.156 GAY006 T-Shirt;
- Label No.157 GAY007 Belt;
- Label No.158 GAY008 £110 In Notes;
- Label No.159 GAY009 £1.46 Change;
- Label No.160 GAY010 Tissues;
- Label No.161 GAY011 Trousers;
- Label No.162 GAY012 Sock 1;
- Label No.163 GAY 013 Sock 2;
- Label No.164 GAY 014 Boxer Shorts;
- Label No.165 GAY 019 Tapings from deceased.

Label No.653 PIRC Scene Management Log - Hospital

At 2230 hours undertakers The Co-op, Glenrothes, removed the body of the deceased by private ambulance to Edinburgh City Mortuary, Cowgate, Edinburgh. The body was accompanied by PIRC investigators Ferguson and Taylor and DC Grady.

8.2.6 Incident Scene, Edinburgh City Mortuary – Post Mortem Examination

The deceased body arrived at Edinburgh City Mortuary at 2330 hours on 3 May 2015 and remained in the control mortuary staff until 1200 hours on 4 May 2015, when the post mortem examination was undertaken.

At 1200 hours on 4 May 2015 a post mortem examination of the deceased was undertaken at Edinburgh City Mortuary by witnesses Dr Shearer and Dr BouHaider, pathologists. Prior to post mortem examination a Quasar (high intensity light) examination of the body was undertaken by SPA Scene Examiner Carroll. Mr David Green, Head of SFIU at COPFS instructed that formal identification of the deceased was undertaken by fingerprint comparison as, at that stage, the family of the deceased had refused to attend at the post mortem to formally identify the body.

The purpose of Quasar examination is to discover bruising to the body of the deceased which may not be apparent during a visual examination. Scene examiner Carroll advised that no bruising was identified during this examination.

PIRC investigator Ferguson briefed the pathologists on the circumstances known at that time and advised that his information from Police Scotland was that CS / PAVA spray had been used against the deceased. Medical records in relation to intervention by staff at the hospital were not available to the pathologists as they had been mislaid by the hospital. These records were not recovered until 12 May 2015 and are produced as,

Prod No.256 X- ray card signed unknown dated 3.5.15 by Consultant Dr Panpher

Prod No.257 Patient report form (within A&E Notes V802512L) – Deceased.

The

Prod No.249 GP Medical Notes – Sheku Bayoh

were unavailable at that time. These records were later provided to pathologists for consideration when preparing their final report.

The following persons were present at the post mortem: Dr Shearer, Dr BouHaider, SPA Scene Examiner Carroll; Procurator Fiscal Ablett, DCI Hardie, DCs Gilzean and Grady, PIRC Investigators Ferguson, Casey and Little.

Label No.633 Initial Report of Post Mortem

outlines the initial post mortem findings which were, 'unascertained' pending further examination and analysis.

The following productions were seized during the post mortem examination:

- Label No.124 Plastic bag right hand Bayoh;
- Label No.125 Plastic bag left hand Bayoh;
- Label No.129 Fingernail scrapings Right hand wet Bayoh;
- Label No.130 Fingernail scrapings Right hand dry Bayoh;
- Label No.131 Fingernail scrapings left hand wet Bayoh;
- Label No.132 Fingernail scrapings left hand dry Bayoh;
- Label No.126 Plastic bag head Bayoh;
- Label No.133 Nasal swabs wet and dry Bayoh;
- Label No.134 Mouth swabs wet and dry Bayoh;
- Label No.135 Mouth swab Bayoh;
- Label No.136 Right face swabs wet and dry Bayoh;
- Label No.137 Left face swabs wet and dry Bayoh;
- Label No.127 Body sheet Bayoh;
- Label No.128 Body bag Bayoh;
- Label No.138 Head hair Bayoh;
- Label No.139 Blood for toxicology x2 - Bayoh;
- Label No.140 Blood for DNA x1 Bayoh;
- Label No.141 Urine for toxicology (1) Bayoh;
- Label No.142 Urine for toxicology (2) Bayoh;
- Label No.143 Lung sample for toxicology right and left Bayoh;

OFFICIAL - SENSITIVE

Label No.654 PIRC Scene Management Log - Mortuary

Brain samples were later examined by an expert Neurologist however they did not show anything of significance. Details of the results of this examination are contained in the,

Label No.634 Final Report of Post Mortem.

Toxicology examination of blood and urine samples was undertaken at Glasgow University, Department of Forensic Medicine. The results which are included within,

Label No.634 Final Report of Post Mortem

which provides the outcome of this examination. In summary, this analysis revealed nandrolone and metabolites in the deceased's system, consistent with the recent administration of the anabolic steroid nandrolone and MDMA (Ecstasy), MDA (metabolised MDMA), and Alpha-PVP.

On 10 June 2015, PIRC Investigators provided the following additional material to pathologists to inform their considerations:

- Prod No.249 GP Medical Notes – Sheku Bayoh
- Prod No.256 X- ray card signed unknown dated 3.5.15 by Consultant Dr Panpher
- Prod No.257 Patient report form (within A&E Notes V802512L) – Deceased
- Prod No.251 2 x Discs all images 2015 - FS-011305 (Sheku Bayoh, Victoria Hospital)
- Prod No.265 Home office comparison report on CS and PAVA sprays (pub num) 24/14
- Prod No.266 Comparison of CS and PAVA operations and toxicological aspects.
- Prod No.267 Faculty of Forensic and Legal Medicine: Incapacitant Spray Clinical Effects and Management.
- Prod No.268 Weapons and protective systems technologies center: Special Panel Review” of excited delirium.
- Prod No.270 Working copy compilation disc Gallagher's PH
- Prod No.271 4 images from witness Wyse mobile phone

and copies of statements from witnesses, Hume; Wyse; Macleod; Saeed; Lees; Hutcheson; Barcick; Dick; Dr Panpher (consultant); Dr Clark (anaesthetist); Nicol (Nurse) and Limbert (Nurse). In addition, copies of the statements from the police officers involved in the arrest

and restraint of the deceased were provided, these were: PCs Short, Paton, Tomlinson, Walker, McDonough, Good, Smith, Gibson and PS Maxwell.

Witnesses Dr Shearer and Dr BouHaider provided a,

Prod No.634 Final Report of Post Mortem,

which 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.**”*

8.2.7 Incident Scene, Kirkcaldy Police Office

No control of this incident scene was exercised by Police Scotland (see Volume 2 – Police Scotland Post Incident procedures).

The nine police officers who were involved in the arrest and restraint of the deceased returned to Kirkcaldy Police Office (eight officers almost immediately after the incident and PC Short following examination at hospital). These officers had their outer clothing seized as productions by Police Scotland. All these items are listed in the schedule of productions at **Appendix F**.

CCTV from Kirkcaldy Police Office was seized and provided to PIRC Investigators by witness McGregor from Police Scotland Technical Support Unit and is produced as,

- Prod No.555 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800 DVR (Label Only)
- Prod No.556 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX8000 DVR (Label Only)
- Prod No.557 CCTV Section 283 Certificate, PELCO DX4800 DVR Kirkcaldy Police Station
- Prod No.558 CCTV Section 283 Certificate, PELCO DX8000 DVR Kirkcaldy Police Station
- Prod No.559 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800 DVR Disc A Master Copy (and certificate of authentication)

- Prod No.560 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800 DVR Disc B Master Copy (and certificate of authentication)
- Prod No.561 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800 DVR Disc A Working Copy (and certificate of authentication)
- Prod No.562 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800 DVR Disc B Working Copy (and certificate of authentication)
- Prod No.563 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX8000 DVR Disc A Master Copy (and certificate of authentication)
- Prod No.564 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX8000 DVR Disc B Master Copy (and certificate of authentication)
- Prod No.565 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX8000 DVR Disc A Working Copy (and certificate of authentication)
- Prod No.566 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX8000 DVR Disc B Working Copy (and certificate of authentication)
- Prod No.638 Pen Drive, Sandisk make

It covered the areas:

- Custody entrance (internal and external);
- Custody processing area (internal);
- Custody cells area;
- Public Front counter (internal);

Although there were CCTV cameras covering the car park of the office, no video was available and, following enquiry, Police Scotland stated that the cameras covering this area had not worked for a number of years.

CCTV for the cell area, which details observations and conversations between a number of police officers, was examined by PIRC investigators Patrick and Pattenden and is produced as,

Prod No. 652 Operation Quoich – CCTV Audio and Visual Timeline Camera 12

Examination of this footage from the cell area captures a number of conversations between police officers about the incident. It shows PC Geddes in conversation with other officers and, between approximately 0800 hours and 1030 hours, he imparts significant detail about the incident; information which, it appears, may only have come from conversations with the

principal officers. PC Geddes has been interviewed by PIRC investigators and stated that he discussed aspects of the incident with PC Walker. PC Tomlinson and APS Maxwell also visited the cell area during this time and, although no audio or video footage of them discussing the incident can be determined, from the level of detail imparted by PC Geddes it may be the case that this occurred.

8.3 Other Evidence recovered by PIRC

On their return to Kirkcaldy police office the officers involved at the initial incident in Hayfield Road were instructed to remain in the canteen of the office. During the course of that morning they were spoken to by a number of other officers, representatives of the Scottish Police Federation and senior police officers. Advice given to the officers by PC Givan of the Scottish Police Federation, was that the officers should not give statements until their position was clarified. In this regard,

- At 1022 hours on 3 May 2015, PIRC Investigator Harrower spoke to D/Supt Campbell by telephone and informed him that he considered the position of the officers to be that of witnesses.
- At 1240 hours on 3 May 2015, PIRC Investigator Harrower again spoke to D/Supt Campbell by telephone and informed him that he considered the position of the officers to be that of witnesses.

On his attendance at Kirkcaldy Police Office, PIRC Investigator Harrower requested statements from the officers, namely:

- At 1405 hours on 3 May 2015, PIRC Investigator Harrower attended a meeting with ACC Nicolson, Det Chief Supt Lesley Boal, Chief Supt Gary McEwan, D/Supt Campbell, Chief Inspector Nicola Shepherd and DI Colin Robson. PIRC Investigator Harrower confirmed to those present that he considered the officers to be witnesses and requested statements from them.
- At 1515 hours on 3 May 2015, D/Supt Campbell discussed the request for statements with PIRC Investigator Harrower and informed him that the officers involved in the incident had been advised by Scottish Police Federation representatives not to provide witness statements. PIRC Investigator Harrower offered to meet with the officers and clarify their status. Police Scotland did not progress this matter.

PIRC investigators made a number of subsequent requests for statements from the principal officers, namely:

- 4 May 2015, when PIRC Investigator Little informed Police Scotland that the outcome of the post-mortem was inconclusive. At that time, he again advised D/Supt Campbell that the status of the officers was that of witnesses and requested statements from them.

- 5 May 2015, Professor Peter Watson, the police officers' legal representative contacted the PIRC Director of Investigations John Mitchell by telephone to discuss the provision of statements by the officers. He stated that that he had advised officers to make "no comment" until the full details of the post-mortem results were known.
- 6 May 2015, PIRC Investigators McSporran and Little, again requested the provision of statements from the officers from DCI Hardie, Police Scotland. No statements were provided.
- 7 May 2015, PIRC Investigator McSporran wrote to Police Scotland stating that, notwithstanding Professor Watson's advice to the officers involved in the incident. The PIRC wished to confirm the individual position of each of the officers in relation to the PIRC request for statements. This correspondence also confirmed the status of the officers as witnesses to the event. In response, Police Scotland advised that each of the officers had been contacted, their status as witnesses clarified and that they had been asked if they were willing to provide a statement. Police Scotland advised that each of the officers did not wish to provide a statement at that time, following legal advice.
- 2 June 2015, PIRC Director of Investigations John Mitchell e-mailed Professor Watson and again reiterated the request to interview the police officers involved. The email again confirmed that the officers were to be interviewed as witnesses. On this occasion, the officers agreed to be interviewed.

In the absence of statements, on 25 and 26 May 2015 PIRC seized,

Label No.364 Police issue notebook PC Paton 019121

Label No.593 Police issue notebook 1 PC Walker 019166

Label No.571 Police issue notebook 2 PC Walker Fife/KY/1448/13

Label No.360 Police issue notebook 1 PC McDonough 019161

Label No.361 Police issue notebook 2 PC McDonough 019120

Label No.362 Police issue notebook PC Short 019158

Label No.357 Police issue notebook PC Good 019122

Label No.359 Police issue notebook PC Tomlinson 019160

Label No.358 Police issue notebook PC Smith 019179

Label No.363 Police issue notebook PC Gibson 019114

Prod No.369 Police issue notebook PS Maxwell 019115

Prod No.445 Police issue notebook DS Davidson Fife/KY/1443/13

In respect of the nine principal officers, their notebooks were examined for entries made in relation to the incident. No entries were found. When taking statements from the officers PIRC investigators asked them why there were no notebook entries and why they have not generated other relevant required paperwork regarding the incident, for example, Use of CS/PAVA forms, Use of Force Forms. Some of the officers stated that they had not completed this documentation on the advice of PC Givan of the Scottish Police Federation. PC Givan, in her statement, said that she did not give such advice nor recollects giving such advice.

A detailed examination of this is contained in Volume 2 of this report at **section 12.3.1**

PIRC investigators seized or recovered the following items as part of the investigation:

Prod No.317 Police Scotland STORM Log - Incident 743 03/05/2015 (and certificate of authentication),

Prod No.318 Police Scotland STORM Log - Incident 745 03/05/2015 (and certificate of authentication)

Prod No.319 Police Scotland STORM Log - Incident 837 03/05/2015 (and certificate of authentication)

These documents show the Police Scotland Area Control Room management of the incident and provide a chronological record of actions undertaken by various officers and staff and recorded in the STORM Command & Control system. In addition to the above, PIRC investigators obtained from Police Scotland the undernoted relevant standard operating procedures which have a bearing on the investigation or actions of police in this matter.

Prod No.326 Care and Welfare of Persons in Police Custody Standard Operating Procedure Version 2.01 and certificate of authentication 26.1-A.13 and doquet 26.1-B.3

Prod No.327 Death or Serious Injury to Persons in Police Custody Standard Operating Procedure Version 1.01 and certificate of authentication 26.1-A.13 and doquet 26.1-B.3

Prod No.328 Crime Investigation Standard Operating Procedures Version 2.00 and certificate of authentication 26.1-A.13 and doquet 26.1-B.3

Prod No.331 Record Retention Standard Operating Procedure Version 1.02 and certificate of authentication 26.1-A.13 and doquet 26.1-B.3

Prod No.332 Notebooks and PDAs Standard Operating Procedure Version 2.00 and
certificate of authentication 26.1-A.13 and doquet 26.1-B.3

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9 Forensic Examinations

This section provides a synopsis of the results of the various forensic examinations undertaken.

9.1 Seat Toledo Motor Vehicle Registration Number [REDACTED]

On 7 May 2015, witness Marvin, SPA Forensic Services, attended at ACE Recovery, Methil, where she conducted an examination of the Seat Toledo Motor vehicle Registration number [REDACTED]

A small triangular impression was noted on the front door, this impression was photographed with a scale and then this impression was cast and labelled,

Label No.230 Cast Impression AM1 " Labelled " Front offside door, [REDACTED] at 10.50 on 07 May 2015

On the rear door two deep scratches were noted. Each of the scratches were cast,

Label No.231 Cast impression AM2 " Labelled " Rear offside door, [REDACTED] at 1055 on 07 May 2015

And

Label No.232 Cast Impression AM3" Labelled " Rear offside door, [REDACTED] at 1100 on 07 May 2015

Paint samples were then obtained from the damaged areas designated AM2 and AM3 and labelled,

Label No.233 Paint Sample 1 (from AM2) Labelled Rear offside door, [REDACTED] at 1135 on 07 May 2015

And

Label No.234 Paint Sample 2 (from AM3) Labelled Rear offside door, [REDACTED] at 1140 on 07 May 2015

The results of this examination are produced in,

Prod No.706 SPA Forensic Services (Glw) Report sampling of Seat Toledo with Registration Mark [REDACTED]

And

Prod No.711 SPA Forensic Services (Glu) Report - examination Of Articles Operation Quoich knife, and cast impressions AM1, AM2 and AM3

It provides that no match could be made between a small fragment of white material on the blade of the knife and the paint samples taken from the car. Additionally, no physical match could be made between the knife and the areas of damage to the vehicle.

9.2 Knife recovered at Hayfield Road incident scene

On 14 May 2015, the

Label No.184 SD918-Knife

recovered by Police Scotland from the grass verge at Hayfield Road at its junction with Hendry Road, Kirkcaldy was submitted to SPA for fingerprint examination. Two impressions identified as LM 1 and LM 2 were recovered on the blade of the knife, however the impressions proved insufficient to allow identification.

Details of this examination are produced in,

Prod No.707 SPA Forensic Services (Glu) Report fingerprint case examination results.

Label No.184 SD918-Knife,

was thereafter examined for traces of blood, which proved negative. The handle of the knife was swabbed to recover DNA. The swabs were analysed and a DNA profile was obtained which contained DNA from at least three individuals and was deemed to be unsuitable for comparison purposes.

The fingerprint impressions identified as LM1 and LM2 ,were swabbed, however on analysis were found to contain insufficient DNA to produce a DNA profile.

Details of this examination are produced in,

Prod No.709 SPA Forensic Services (Glu) Report knife, radio, vest, deceased boots, DNA swabbing of FP imp on knife

Label No.184 SD918- Knife,

was then physically examined and it was observed that the tip of the blade was broken off and missing. A small fragment of white material was noted on the blade surface. This small fragment of white material was examined and compared with,

Label No.233 Paint Sample 1 (from AM2) Labelled Rear offside door, [REDACTED] at 1135 on 07 May 2015.

They were found to be different in appearance and chemical composition and in the opinion of the forensic scientists the white material recovered from,

Label No.184 SD918- Knife,

did not originate from the damaged area of the Seat Toledo motor vehicle registration number [REDACTED].

Details of this examination are produced in,

Prod No.711 SPA Forensic Services (Glu) Report - examination Of Articles Operation Quoich knife, and cast impressions AM1, AM2 and AM3

Label No.184 SD918-Knife

was then examined against,

Label No.230 Cast Impression AM1 - Labelled Front offside door, [REDACTED] at 10.50 on 07 May 2015,

Label No.231 Cast impression AM2 - Labelled Rear offside door, [REDACTED] at 1055 on 07 May 2015,

Label No.232 Cast Impression AM3 - Labelled Rear offside door, [REDACTED] at 1100 on 07 May 2015

which had been obtained during the initial examination of the Seat Toledo motor vehicle registration number [REDACTED]. In the scientists opinion it was not possible to link the submitted casts with the submitted knife or any other tool. Details of this analysis are produced in,

Prod No.711 SPA Forensic Services (Glu) Report - Examination Of Articles Operation Quoich knife, and cast impressions AM1, AM2 and AM3

9.3 Knives found in home of Deceased

The following knives, which had been removed on 4 May 2015 by Police Scotland from the dwelling house situated at [REDACTED] Arran Crescent, Kirkcaldy,

Label No.216 Knife 1,

Label No.217 Knife 2,

Label No.218 Knife 3,

were examined and their general characteristics noted. It was found that these knives were similar in general appearance and markings to each other and that of

Label No.184 SD918-Knife.

The forensic scientists were of the opinion that all four knives could have come from the same set, or any other set of knives with similar appearance and markings.

9.4 Stab Proof/High Visibility vest worn by PC Nicole Short

On 14 May 2015, the stab proof vest worn by PC Short labelled,

Label No.051 Vest JM 019 - PC 1014 Nicole Short,

was submitted to SPA for fingerprint examination, one impression identified as LM 3 was recovered from the top left hand area of the "Police" badge on the rear of this vest, however this impression proved insufficient to allow identification. The result of this fingerprint examination is produced in,

Prod No.707 SPA Forensic Services (Glw) Report fingerprint case examination results

Label No.051 Vest JM 019 - PC 1014 Nicole Short

was examined for the presence of blood. This proved negative. Details of this examination are produced in,

Prod No.709 SPA Forensic Services (Glw) Report knife, radio, vest, deceased boots,DNA swabbing of FP imp on knife

Label No.051 Vest JM019 - PC 1014 Nicole Short

was also examined to establish if any foot impressions were visible or existed for comparison against the footwear of Sheku Bayoh. Areas of discolouration were noted in the area of the front left pocket, front right pocket and near the neckline. A darker partial mark was noted below the 'Police' marking. Further examination failed to establish further detail and the partial mark on the high visibility vest was found to have insufficient detail for a meaningful comparison with the tread pattern from the footwear worn by Sheku Bayoh.

Full detail of the examinations is produced in,

Prod No.710 SPA Forensic Services (Glw) Report - examination Of Articles Operation Quoich

9.5 Footwear and Socks recovered from Sheku Bayoh

The footwear recovered from Sheku Bayoh namely,

OFFICIAL - SENSITIVE

Label No.166 GAY016 – Right Boot Sheku Bayoh

Label No.167 GAY017 – Left Boot Sheku Bayoh

was examined and the characteristics noted. They were examined for the presence of blood, which proved negative. Details of this examination are produced in,

Prod No.709 SPA Forensic Services (G/w) Report knife, radio, vest, deceased boots, DNA swabbing of FP imp on knife

Also examined were:

Label No.162 GAY012- Sock

Label No.163 GAY013- Sock

These socks were worn by the deceased at the time the witness Saeed observed him remove a clear plastic bag containing white powder and blue tablets from his sock. On examination a small amount of off-white powder was recovered from each of the socks. It was insufficient to be weighed and initial analysis proved negative for the presence of controlled drugs. The result of this examination is produced in,

Prod No.708 SPA Forensic Services (G/w) Additional joint drugs report deceased Sheku Ahmed Tejan Bayoh dob 30/9/1983.(for controlled drugs)

Following discussion with the SPA a decision was taken to submit the samples which had been obtained from the deceased's socks to the company LGC for further examination in an effort to identify the powder.

On 16 October 2016, analysis was carried out by witness [REDACTED], LGC, Purity and Calibration, Teddington, Laboratory. She found that due to the small amount of the samples provided, combined with the complexity of the resultant spectra, structured elucidation with standard NMR experiments was not possible. The spectra however suggested that only two major aromatic species were present and that identification may be possible through additional NMR experiments.

On 19 November 2015, further forensic analysis was undertaken by witnesses [REDACTED] and [REDACTED] of LGC. Both samples were found to contain some major organic components in different ratios. Whilst some structural elements of the major components have been identified, the complexity of the matrix does not allow unambiguous ab initio identification of any drug substances in the two samples.

It should be noted that the spectra provided enough of a chemical fingerprint to allow matching against proposed drugs and it is on this basis that the presence of alpha-PVP as a

major component of the samples investigated were discounted. Details of each of the examinations are produced in:

Prod No.715 Report - Identification of two samples labelled as 12153/15 26 (Label No. 162A) and 12153 /15 25 (Label No.163A) (21/10/15)

Prod No.714 Report - Identification of two samples labelled as 12153/15 26 (Label No. 162A) and 12153 /15 25 (Label No.163A) (19/11/15)

9.6 Items Recovered at Arran Terrace, Kirkcaldy

The following items recovered from the dwelling house occupied by the deceased were subjected to examination by witnesses Murphy and McNeil, SPA Forensic Scientists:

- Label No.209 Bottle of 56 tablets labelled Creatine;
- Label No.210 Bottle of 33 tablets labelled Herbal VY for Men;
- Label No.211 Bottle of 48 tablets labelled Rhodiola Root;
- Label No.212 Bottle of 38 tablets labelled Testosterone Boost.
- Label No.215 16 Loose Tablets
- Label No.213 Box of 27 tablets labelled Omeprazole
- Label No.214 Box of 7 tablets labelled Omeprazole

The result of this examination is produced in,

Prod No.705 SPA Forensic Services (G/w) Joint drugs report deceased Sheku Ahmed Tejan Bayoh dob 30/9/1983.

On 19 June 2015 these items were re-examined for the presence of controlled drugs in particular Alpha PVP and MDMA as identified following toxicology. This examination was conducted by witnesses Murphy and McNeil, Forensic Scientists. This examination proved negative. However caffeine was detected following examination of,

Label No.215 16 Loose Tablets


The result of this examination is produced in,

Prod No.708 SPA Forensic Services (G/w) Additional joint drugs report deceased Sheku Ahmed Tejan Bayoh dob 30/9/1983.(for controlled drugs)

Following the detection of caffeine, further analysis was undertaken by Dr Shearer and Dr BouHaidar on the post mortem blood and hospital samples. The results indicate that the level of caffeine within each of the samples was minimal. The result of this examination is produced in:

Prod No.713 Supplementary Report - NHS Lothian University Hospital Division,
interpretation and opinion, caffeine deceased Bayoh

9.6.1 Opinion about the tablets seized from the home of the deceased

Witnesses Alexander and Brahma, Forensic Scientists, Scottish Police Authority (SPA) examined the tablets seized from the home of the deceased at  Arran Cescent, Kircaldy. The results of their analysis is produced in,

Label No.705 SPA Forensic Services (Glu): Joint drugs report deceased Sheku Ahmed
Tejan Bayoh dob 30/9/1983

It provides that:

- Label No. 209 Bottle of 56 Tablets Labelled Creatine: Creatine is commonly ingested by professional and amateur athletes as a dietary supplement to increase capacity to perform physical work and increase muscle mass.
- Label No. 210 Bottle of 33 Tablets Labelled herbal VY for Men: Herbal VY is a food supplement targeted at the male population, it is thought to increase energy, fertility and enhance sexual performance.
- Label No. 211 Bottle of 48 Tablets Labelled Rhodiola Root: The Rhodiola plant is a herb that has been used for thousands of years for a variety of medicinal properties ranging from cold and flu treatment to tuberculosis. Other reported uses include treatment of stress, to enhance memory, help with weight loss, shorten muscle recovery time after exercise, reduce stress induced cardiac problems, increase sexual function.
- Label No. 212 Bottle of 38 Tablets labelled Testosterone Booster: Testosterone is an endogenous anabolic steroid hormone and can be used clinically for the treatment of hypogonadimism in men and breast cancer in woman. It is widely abused by athletes, weightlifters and bodybuilders, who use it for its anabolic properties that help to build muscle bulk. Some users of anabolic steroids report experiencing a 'high' that can make them feel powerful, confident and increase their sex drive.
- Label No. 213 Box of 27 Tablets Labelled Omeprazol: This is widely used for the treatment of gastric or duodenal ulcers and gastric-oesophageal reflux that acts by reducing the amount of gastric acid produced.

9.7 Items recovered at Dick/MacLeod home address

The following items recovered from the house occupied by the witness Dick were submitted for analysis, specifically to determine the presence of Alpha-PVP and/or MDMA,

Label No.200 Grinder 1 - Dick/MacLeod home address

Label No.201 Grinder 2 - Dick/MacLeod home address

Label No.199 Tub containing herbal matter – Dick/MacLeod home address

Whilst traces of Cannabis was recovered on each of the grinders and the material within the tub was consistent with Cannabis bud material, no trace was found of Alpha-PVP or MDMA. The result of this examination is produced in,

Prod No.708 SPA Forensic Services (Glw) Additional joint drugs report deceased Sheku Ahmed Tejan Bayoh dob 30/9/1983.(for controlled drugs)

9.8 Personal Radio PC Craig Walker

The personal radio recovered from PC Craig Walker,

Label No.008 AM008 – Personal Radio PC 040523 Craig Walker (Bloodstained),

was examined. Contact bloodstaining was noted on the screen and keypad. This was analysed and a DNA profile was obtained which matched the DNA profile of Sheku Bayoh. The examination was carried out by witnesses Strahorn and Myres, SPA Forensic Scientists and the result produced in,

Prod No.709 SPA Forensic Services (Glw) Report knife, radio, vest, deceased boots, DNA swabbing of FP imp on knife

9.9 Examination of CS/Pava Sprays

Prod No.632 Forensic Examination Report CS / PAVA (PIRC Copy)

The CS/PAVA spray of each of the principal officers was examined by witnesses Bilsland and Connelly, SPA Forensic Scientists, and provides the content and weight of each of the CS/Pava Sprays. CS Spray canisters should weigh 55 grams when full, PAVA canisters should weigh 88 grams when full.

PC Tomlinson's CS Spray is recorded as having been issued on 22 December 2013 when it weighed 55 grams. Following the incident, it was found to weigh 43.05 grams with a potential discharge of 11.95 grams.

PC Paton's CS Spray is recorded as having been issued on 22 July 2014, when it weighed 55 grams. Following the incident, it was found to weigh 39.28 grams with a potential discharge of 15.72 grams.

PC Walker's PAVA Spray is recorded as having been issued on 15 April 2015 when it weighed 88 grams. Following the incident it was found to weigh 67.43 grams with a potential discharge of 20.57 grams.

PC Smith's CS Spray is recorded as having been issued on 3 April 2014 when it weighed 55 grams. Following the incident it was found to weigh 50.05 grams, with a potential discharge of 4.95 grams.

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10. Ambulance and Police Scotland Communication Errors

On 5 October 2015, COPFS directed the PIRC to enquire into the circumstances of the despatch of an ambulance to attend at the locus of the incident, whether there was an error by the Police Scotland Area Control Room (ACR) in communicating the correct location and, if so, the effect this had on the arrival time of the ambulance and whether this could have had any effect on the survival chances of Sheku Bayoh.

Full details of all calls and contact with the Police Scotland ACR are outlined previously. The witnesses who called the Police Scotland ACR reporting the deceased in the street armed with a knife, gave different locations for the incident, variously: Victoria Road, Hendry Road, Templehall Road and Hayfield Road, Kirkcaldy.

The ACR despatched officers initially to Victoria Road, then Hayfield Road at Hendry Road. Prior to the officers arrival, the location was established as Hayfield Road. At 0723 hours on 3 May 2016, the officers at the incident initially requested the attendance of two ambulances, one for the deceased and one for an injured officer.

At 0724 hours, the ACR contacted the Scottish Ambulance Service (SAS) control room requesting the ambulances and gave the location as Victoria Road then, in the same call, changed the location to Seafield Road, all Kirkcaldy. The Police Scotland ACR member of staff had misheard Hayfield Road as Seafield Road as they were managing multiple radio and telephone traffic at that time.

The ACR member of staff on realising the location should be Hayfield Road immediately contacted the SAS control room and gave the correct location of Hayfield Road.

Label No: Scottish Ambulance Service DISC / CD

was provided to PIRC investigators by witness Beveridge of the SAS and contains recordings of all telephone calls and Airwave radio communications between Police Scotland and the SAS.

The SAS depot is in Glenrothes and an ambulance was immediately despatched at 0724 hours to attend at Kirkcaldy, initially at Seafield Road but, enroute, was given the correct location of Hayfield Road. The ambulance arrived at 0733 hours. Witnesses Paramedics Taylor and Finlayson were in the ambulance despatched to the call. They clearly state that the change in location made no impact on their time of attendance. Witness Taylor states, *"These changes didn't alter my arrival time because Hayfield Road was on the natural route to drive from where we were."*

11. PIRC Findings

- Sheku Bayoh died at 0904 hours on 3 May 2015 in the Victoria Hospital, Kirkcaldy, following his arrest by officers of Police Scotland in Hayfield Road, Kirkcaldy about 0720 hours that day.
- The cause of death provided following Post Mortem examination was, 'Sudden death in a man intoxicated by MDMA (Ecstasy) and Alpha-PVP, whilst being restrained'.
- The Post Mortem examination revealed a number of injuries including:
 - A large number of cuts and abrasions to the head, face, hands and arms;
 - A number of bruises and haemorrhages to various areas of the head and body;
 - Subcutaneous bruising to the thighs and shins;
 - An injury to the left wrist;
 - A fracture of the first left rib.
- Toxicological samples taken from the deceased revealed the presence of:
 - Nandrolone (Anabolic Steroid);
 - MDMA (Ecstasy);
 - A-pyrrolidinovalerophenone (Alpha-PVP).
- The deceased had no known underlying serious health issues.
- The deceased abused anabolic steroids and illegal controlled drugs on a regular basis.
- In the hours prior to his death, the deceased consumed an unknown amount of MDMA (Ecstasy) and Alpha-PVP, which caused him to act irrationally and violently.
- About 0630 hours on 3 May 2015, the deceased assaulted his friend, witness Saeed, at Co Arran Crescent, Kirkcaldy. let
- The deceased armed himself with a large knife taken from his home at Co Arran Crescent, Kirkcaldy and between 0700 and 0720 hours on 3 May 2015, in Hayfield Road, Kirkcaldy, he attempted to strike and kick out at passing vehicles, the occupants of which telephoned Police Scotland to report the deceased's actions. let
- Around 0720 hours on 3 May 2015, nine police officers attended at Hayfield Road, Kirkcaldy, in response to telephone calls reporting the deceased's actions.
- A number of police vehicles activated their klaxons enroute to Hayfield Road which would have been audible as they approached the scene.

- Shortly before the police arrived at Hayfield Road, witnesses saw the deceased in possession of a large knife.
- The deceased appears to have dropped the knife onto the grass verge of the roadway immediately before the police arrived. This knife was later recovered by police approximately 20 metres from where the deceased was initially seen by police officers.
- This knife was similar in appearance and markings to another three knives recovered from the deceased's home.
- When confronted by police officers, the deceased ignored their commands to stay where he was or lie down, was sprayed with CS and PAVA, assaulted a female police officer, was struck repeatedly with a police baton and punched by an officer, then was taken to the ground by officers. He struggled violently with the officers who handcuffed him to the front and, following restraint, suffered respiratory failure and later cardiac arrest.
- The error in identifying the location of the incident by the Police Scotland, Bilston Glen Area Control Room, and informing the Scottish Ambulance Service of the correct location of the incident was quickly identified and corrected. There was no effect on the arrival time of the ambulance or the survival chances of Sheku Bayoh.
- DI Robson's decision to seize the knife and other items at the incident scene in Hayfield Road appears to have been based on the weather conditions, the need to preserve evidence, public safety and on information available to him at the time, i.e. that the incident was a criminal investigation into the conduct of the deceased, but not a major investigation, as at the time he took this decision it appears that Sheku Bayoh was still alive.
- The use by police officers of their personal mobile phones to record evidence at the incident scene is not regarded as best practice.
- Once DI Robson was informed that the deceased had entered respiratory failure, he immediately ordered full scene protection measures at 0740 hours, however, a scene entry log was not commenced until 1045 hours. It is considered that this should have been commenced earlier. Officers thereafter protected the scene with cordons and vehicles until its release the following day.
- Once full scene protocols were put in place in relation to the Hayfield Road incident scene, the approach of Police Scotland to securing evidence at that scene was thorough.
- The decision by the Police Scotland Senior Investigating Officer D/Supt Campbell to seize and search the homes of witnesses Bell, Saeed and Dick, without their or the owner/occupier of the houses' permission or under the authority of search warrants was questionable and in particular, in relation to witnesses Saeed and Dick's houses, appears to have had no legal basis.

- Once Police Scotland determined at their Gold Group meeting around 0930 hours that Post Incident Procedures should be adopted, those procedures should have been strictly followed and accounts and statements obtained from the principal officers.
- Within hours of the incident occurring on 3 May 2015, PIRC Investigators made it clear to Police Scotland's SIO D/Supt Campbell that the principal officers were considered to be witnesses to the events. This position was clearly stated to D/Supt Campbell along with other Police Scotland senior officers on at least four occasions on 3 May 2015 and requests were made for statements from the principal officers.
- The principal officers' status as witnesses and further requests for their statements were repeated to senior officers within Police Scotland and the principal officers' legal representative between 3 May 2015 and 2 June 2015, when the officers agreed to be interviewed.
- On 7 May 2015, the deputy Senior Investigating Officer, DCI Hardie, confirmed to the PIRC that the principal officers had been approached to give statements, that their status as witnesses had been clarified with them, and that all declined to provide statements on the advice of their solicitor Professor Peter Watson.
- The refusal of the principal officers to account for their actions until 32 days after Sheku Bayoh died and their refusal to complete mandatory Police Scotland paperwork regarding use of force and CS/PAVA spray, undermines confidence in Police Scotland and their application of post incident processes.
- There are significant discrepancies between the accounts given by some of the principal officers and the account given by PC Amanda Givan, the Scottish Police Federation representative, regarding advice that they allege she gave to them not to provide statements and other information. PC Givan has denied that she proffered such advice.
- The Police Scotland guidance issued by the Deputy Chief Constable (Designated Deputy) in relation to providing statements about 'on duty criminal allegations' appeared to create confusion in the minds of the officers and Scottish Police Federation representatives, despite the fact that it had been confirmed on a number of occasions that the statements were being sought from the principal officers on the basis that they were witnesses.
- Although Police Scotland instituted some Post Incident Management (PIM) processes, these were not fully implemented in accord with the guidance contained in the Authorised Professional Practice on armed policing.
- Police Scotland procedures following such incidents would benefit greatly from the PIM process being adopted and rigourously followed in all cases of death in police custody or death following police contact.

- Management and recording of the storage, issue and use of CS/PAVA spray by officers at Kirkcaldy Police Office, Fife Division, is extremely poor and frequently appears to breach compliance with Police Scotland's Use of Force Standard Operating Procedure.
- The significant delay in the provision of some information and documents by officers of Police Scotland, undermines public confidence generally and has been unhelpful to the PIRC in expediting this investigation.

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