

Racial violence in ‘action’: police storytelling and narrativisation in the inquiry of Jermaine Baker

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Dr. Carson Cole Arthur

University of Law, Bloomsbury Campus, 14 Store St, London, WC1E 7DE, UK

carson.arthur@law.ac.uk

ORCID ID [0000-0002-8843-1002](https://orcid.org/0000-0002-8843-1002)

Abstract

Police tell stories to make sense of their experiences but also, as this paper argues, they tell stories to establish legal doctrines and support justifications for their decisions. Departing from police ethnography and narrative criminology, adopting a deconstructive and critical Black Studies perspective, this paper reads the narrative W80 (a London Met police firearms officer) provided in the inquiry into the death of Jermaine Baker, a 28-year-old Black man, in 2015, to examine how uncertainty was both conditional and functional in the narrative to sustain the justification of racial violence. W80’s narrative reveals how causality undergird the law of self-defence he cited and related on. Problematising the distinction of story and action, this paper analyses W80’s narrative for its thematic of fiction and truth. Attending to this, the paper argues the conditions of uncertainty and open-endedness of W80’s narrative reserved for racial violence to be reasoned and justified as lawful.

Key terms

Deaths in police custody; racial violence; narrative; deconstruction; police ethnography; blackness

Introduction

When investigating a death in police custody, how should we assess the actions of a police officer? This ongoing question has recently been a pressing issue in English/Welsh appeal courts, with the police regulatory body, London Metropolitan police service, and the UK government, seeking to either raise or lower standards for use-of-force (INQUEST 2023b). This question also has and continues to be a concern for disciplinary fields that critically study the police. Since the mid-twentieth century, police ethnography has sought to understand how a police officer decides to take action, and whether this is simply based on a personal – and often biased – view, or based upon professional rules and policies (Fleming and Charman 2023). Moreover, police ethnography is interested in understanding how a police officer assesses events on the job and how they assess their own actions. According to a police ethnographical perspective, stories are the discursive tools that the police use to make sense of their role, duty, and performance. Thus, stories are considered as the mental product that leads to an officer carrying out an action. While there has been a gradual shift towards studying storytelling – the practice and process of telling a story – police ethnography and narratological studies of policing do not extend its purview to focus on the ontological and epistemological selfhood that is foundational for storytelling (Laws 2022). The police do not merely produce stories for themselves individually but institutionally: to provide explanations and justifications for the internal organisation, public, and political and legal bodies. These explanations and justifications rest upon, and in turn reify, the concepts and principles of decision and belief. Furthermore the identity and autonomy of the self is foundational for such narratives for example the justification of use-of-force in a police officer's account. Rather than story and storytelling, the terms narrative and narrativisation aptly refer to the condition of self-reflexivity and more to the repertoire of defence: e.g. rationalisation, explanation and justification. In this paper I will analyse the account firearms police officer W80 provided to the inquiry of the death of Jermaine Baker, a 28-year-old Black man, in 2015. I argue the subjectivity of the police, in this case W80, is the symbolic scene where experience is not merely shaped by storytelling but ordered from narrativisation, that which also grounds cause and effect: key values to the explanation of self-defence which serves to justify for racial violence. From a critical Black Studies and deconstruction perspective, racial violence is not only embedded within police strategies and practices, as evidenced in critical criminological research (Elliott-Cooper 2021; Williams and Kind 2019),

but also *within* the process of narrativisation that the police account to justify their decisions and actions.

Whereas contemporary police ethnographic scholars focus on the inter-relation of ‘stories’ and actions, this paper approaches the inquiry of the death of Jermaine Baker with more attention to the ‘agency’ or autonomy (Motha 2018), selfhood, and sovereignty of the police (Park 2022). It will assert that police stories or narratives do not strictly go beyond the limitations of professional policies as police ethnography suggests (Kurtz and Colburn 2019). Police narratives do not merely conform to professional policies, but give *form* to such policies. In this sense, the police (re)produce knowledge that is based not simply on professional standards but philosophical and racial logics. Following this perspective, similar to Shearing and Ericson, but more strongly drawing from the Black feminist philosopher Ferreira da Silva, a narrative does more than just provide sense of an experience but knowledge for rationales to determine what is understood as ‘experience’.

In the inquiry of Jermaine Baker, W80 referred to the law of self-defence in his account. Though, even in a legal forum, there is more to account-giving¹ than just citing the law for as I will also analyse – connected to the law of self-defence – W80 narrated about his experience based on a logic of causality. At its root is a metaphysical articulation and a logic that is (re)inscribed into a police discourse of use-of-force. Following my deconstructive reading of the inquiry’s transcription of W80’s account-giving, I will explicate and argue the causality that undergirded the law of self-defence supported the finding that Baker was killed lawfully, thus maintaining the justification of racial violence. In W80’s account-giving we will come across the uncertainty of particular details, yet the unreliability or fallibility of his account was not just indicative of his personal and subjective view but, as will be argued in this paper, was conditional for his and any storytelling, narrativisation, and account-giving. It is within the undecidability of truth and fiction that the death of a Black person (or a Black person as ‘already dead’) collapses into legal and rhetorical ambiguity (Ferreira da Silva 2013).

¹ To distinguish from *accountability*, as I understand it to be a structure of knowledge, I prefer to use the term and concept of *account-giving* when discussing the performative act of giving an account, or, to put another way, providing an explanation to the other, a public, or legal forum. For a further discussion on this, see Arthur (2023).

Police narrative, worldview, and interiority

Since the 1970s, particularly in US criminology scholarship, storytelling has been argued as being integral to police work and culture. Criminological studies that followed this perspective then took an ethnographic approach to its research, yet it was not until *police ethnography* established itself as a criminological field did the significance of storytelling as a practice become deeply linked to police culture. Beginning with observations of police officers in car patrols and on the beat conducted by van Maanen (1972), Manning and van Maanen (1978), and Ericson (1982), the recognition that officers tell stories in a myriad of settings guided subsequent research which sought to understand how police perform their duties and make sense of their profession from further observations of them on-duty and interviews (Fleming and Charman 2023). Following a widening of scope in such research to relate police culture with social and organisational context (Turner and Rowe 2017), there has been arguably a gradual shift “from ethnographies built from stories to an ethnography of storytelling” (van Hulst 2020: 102). Whereas in the late twentieth century research focused on the *content* of the stories that police officers told (to themselves individually, collectively, and to a researcher), more recently research has grown to appreciate the *practice* of storytelling, and to the settings and dimensions that this practice is performed under and within (Dahl and Tjora 2023; Klein 2023; Schaefer and Tewksbury 2018). However, I contend police ethnography, and similarly narrative criminology (Presser and Sandberg, 2015), has yet to explore the philosophical foundations and conditions of storytelling or as I prefer – to be explained soon – narrativisation.

A traditional perspective views police stories as heuristic devices or coping strategies – antithetical to administrative rules and procedural standards (Bittner 1970). However, other scholars examine how police stories also have a particular function in decision-making, with facilitating its rationalisation. Arising from a concern that police officers may not follow standard rules but conform to the stories they are told and tell themselves, police studies scholars have sought to examine the relationship between stories and action, and to what extent the knowledge of police stories and the practice of storytelling lead to the carrying out of duties, physical actions, and its rationalisation afterwards. This approach suggests that stories reflect a police culture: that is, historically and presently, deeply masculine, misogynistic, sexist, and racist, which supports the view that real police work is ‘hard’ policing, involving ‘dirty work’ (Hughes 1962; Cf. Brodeur 2010; Loader 2020). Regarding

the debate over the relationship between “talk (among officers) and action (on the streets)” van Hulst (2020: 105) exposes methodological weakness and oversight, warning that researchers sometimes accept unquestioningly police stories. Such a willingness on part of certain scholars to accept police stories as having a meaningful effect on their decisions and actions, exactly as the officers themselves claim, has been criticised for being individualistic and reductionist in its perspective (Turner and Rowe 2017).

Rather than view police stories as conflicting with administrative rules, Shearing and Ericson’s (1991) theoretical position is that police stories are rules themselves, insofar that they construct a worldview for police officers to make sense of their experience on the job. For Shearing and Ericson police stories have the practical application to facilitate reason. Furthermore, for them, storytelling is understood as the very citation of experience (1991: 490). Thus, a phenomenological perspective informs their view that police stories construct subjectivity and sensibility. According to Shearing and Ericson, stories are figurative and improvisational; they do not contribute to a single form, but are multi-formative, interact and, we could also add, enact different scenarios, and situations, possibilities. The uncertainty of police stories does not simply reflect nor lead to confusion or anxiety, but it is uncertain in the sense that it allows for a reason, that is the rationalisation for and of an action.

To underscore the post-modernist theory that Shearing and Ericson draw from, their general point is that for there to be the practice of storytelling, which gives form to a story, this story must have an “open-ended character” (1991: 500). To rearticulate, with a deconstructive tone, if a story was certain, conclusive, and definitive, its absolutism would not constitute a story, in the discursive, rhetorical, and performative sense (Derrida 2000). To be a story, and thus, reinterpretable and reproduceable, it must have a degree of an open-ended character, so that it can be understood, translated, and circulated. While there may be an ‘ending’ to a story, as a practice and performance, its (re)iteration must always be open to a repetition of this ending. This is to not suggest that a story must be uncertain in the sense that it be wholly unreliable and incredible, but to assert that a story, and moreover storytelling, is conditioned on uncertainty: constantly in the address and addressed as an internal anxiety, an external threat, or mystical opacity. Furthermore, a story cannot ever resolve and disavow uncertainty, for this would be a self-denial, though there is always an element of negation within a story.²

² For a very brief discussion on negation, as conceptualised by Hegel, see Nancy (2021).

More to the point, while on a generic level, stories may help us make sense of the world, no story provides complete sense where its relation and iteration is consequently obsolete. Indeed, we tell ourselves stories, despite knowing or unable to know that there cannot be complete sense. What sense lies behind or within a story may be discernible as a cultural truth (Chan 1997) but the episteme of truth that structures storytelling and a story provides more than just a sensibility but moreover a subjectivity. To focus more on the episteme of truth and the production of knowledge, I approach police stories more as narratives, and storytelling more as narrativisation. This is not simply a preference of terms but an orientation that seeks to understand how through narrativisation a police officer makes a 'world', rather than how they make sense of the world. My interest is less in the shaping of experience but the experience of such shaping, and how this shaping figures racial violence into and within a wording and world-ing of legal justification.

Commonly, for a study of how subjectivity is produced, criminology would defer to Foucault, who, as is well known, argues the subject emerges and is supported from the episteme of truth (Lorenzini 2023). Hypothetically, in regard to this essay, a Foucauldian perspective would posit the law of self-defence, as contested within the inquiry, (which I shall explain more later on) is a discourse that evokes Baker as an outside threat to legal authority and advocates W80 as the embodiment of what he claimed: honest, rational, and diligent. Importantly, this would emphasise that the shaping of experience, through storytelling, is not purely a sensory activity but a discursive exercise; that is to say, a social meaning as constructed from power relations. However, this perspective reduces the construction of race, the racial, and structural racism, to historicity. As radical Black feminist Ferreira da Silva argues, Foucault, along with other critical European continental philosophers, fails to locate subjectivity to scientific principles and values of capital.³ If, from a cultural studies or historical materialism perspective, race/racism is an ever-changing genealogical signifier over space and time, from a critical Black Studies perspective the racial is an operation of representation or signification that produces temporality and spatiality. Thus, for philosophers such as Ferreira da Silva, interiority and exteriority speaks of subjectivity more explicitly in scientific terms.

³ On this specific critique see Ferreira da Silva (2007: 25-26).

Interiority is in another word self-consciousness and exteriority stands to mean as that which is outside self-consciousness. Yet, when Ferreira da Silva (2007) argues the exterior is racial, she is not conforming to a mainstream sociology in suggesting the ‘racialised’ (e.g. cultural difference) is excluded from society, but, instead, towards a metaphysical perspective, proposes what is marked, mapped, and measured as exterior operates following a knowledge system of *raciality* – or racial knowledge. The point here is that the very idea of the exterior is conceptualised from a mode of thought and reason where race is the productive force for knowledge and cognition. Yet, exteriority and interiority are inseparable, just as the distinction between the subject and stories is uncertain and undecidable.

Generally speaking, Foucault would say this uncertainty is down to the constant revaluation of truth. For Ferreira da Silva, this uncertainty, as understood as excessive, is the exorbitant value of blackness. This has a bearing on the ordering of cause and effect – and on the *order* of cause/effect, which is narrativity. Narratives do not merely express a causality but are mediated from an internal causality or self-reflexivity (Richardson 1997). What I am interested in is not just the narrative of cause and effect within the account of W80 but the narrativisation that is grounded on the logic of causality. Or in other words, the causality that narrates the event of cause and effect. Such an order and logic I find operating in W80’s narrative and his explanation for self-defence. What is at stake is the distinction between cause and effect (see Raffoul 2020; Lukacher 1988: 38). How can we, and can we ever, be able to make the distinction between a story and the world? This is precisely the open-ended question that is the character (not just the characterisation) of narrativisation, from which, in the legal death investigation, racial violence writes its justification.

It is my intention to focus not simply on how W80 represented Baker as the cause of his death but how causality structured this operation of representation, of narrativisation, which spoke as much about providing an explanation for Baker’s death as it did about the event of the death itself. This paper is not concerned with the truth as it happened but the truth claims a police officer makes. It is interested in addressing how a police officer *speaks* ‘truthfully’ of an experience for a narrative not merely to make psychological and cultural sense but to epistemologically *make* (construct/produce) belief and decision, which by extension establishes the doctrine of honestly held belief and justifies use-of-force. As will be brought up later in this paper, this raises the issue of the eventfulness of narrativisation, and the question of whether the event of an experience can be distinguished from the narrativisation

of such an experience. Simply put was W80's narrative made before or after the 'event'? This precisely underscores why cause and effect is important and integral to narrativisation for at stake is whether narrative is to be understood as the cause and/or effect of an experience. Such an inquiry is beyond the scope of this paper but I will explore how this indistinguishability and uncertainty mediates and serves in an explanation that comes to be the justification for the death of Black people.

This paper addresses this following a deconstructive reading of a police officer's narrativisation in the inquiry of a death in custody. A deconstructive reading "contains both a "dominant", reproductive reading and a "critical", productive reading" (Kakoliris 2022: 17). Deconstruction doubles reading in that the first (dominant) and second (critical) reading is enfolded and entangled. This reading is not a straightforward matter of simply reversing the hierarchical positions of interpretations (e.g. making the critical reading dominant and subordinate to the first reading). Deconstruction troubles the distinction and boundaries of what is considered first and second, centre and marginal, displacing authorship, authority, and authenticity. While this may seem to undermine its project, deconstruction is not strictly a method, but more an infrastructure of thought and language. For the purposes of this paper, what is important to make clear is that, to declare it is following a deconstructive reading means it shall trace such a reading within the very text itself of the police officer's narrative. Though in some respects this is my reading, this reading nevertheless is inseparable from the writing/speech of the text itself.

Use-of-force standard and police killings of Black men

In England and Wales since the 1990s, when deaths in police custody began to be recorded, police restraint has been the most common feature – if not contribution – where the deceased has been a Black person (INQUEST 2022; 2023). Police restraint includes physical restraint and mechanical restraints, such as handcuff and leg restraints. When someone is restrained, the risk of death increases if they are experiencing a mental health episode, have been drinking alcohol, have taken drugs, or a combination of the three. A significant number of Black people who die in police custody following restraint have a history of mental health issues and/or drug dependency (Angiolini 2017). This has led campaign groups to maintain

that police forces are institutionally or structurally racist (INQUEST 2023a), though many forces are in denial over this finding.

Compared to deaths from restraint, there are a fewer number of police shootings, though they attract more public attention, due to the fatal weaponry police use and arguably the higher level of violence involved. In the past three decades, notable killings of Black people from police shootings in England/Wales have been Azelle Rodney, Mark Duggan, Jermaine Baker, and recently Hassan Yahya and Chris Kaba.⁴ In some cases where a Black person has been shot and killed by the police this has resulted from a pre-planned operation; meaning, in such cases, a specialist firearms unit, have “develop[ed] a strategy, identif[ied] tactics and produce[d] contingency plans” (College of Policing 2024) for the pursuit of a suspect, or suspects, who police have intelligence to believe will commit criminal activity. The killings of Rodney, Duggan, Baker, and Kaba, involved a hard-stop: a police manoeuvre where a suspected car is boxed in by unmarked police vehicles. Following these hard-stops, the shooting/killing of the respective person occurred immediately after officers exited their vehicles. The phrase ‘split-second decision’ has epitomised such shootings and stressed by the police to underscore the apparent threat to life.

A police officer, particularly a firearms police officer, is authorised to use force, in self-defence, where it is necessary and reasonable to do so. In the four killings mentioned, the police officer involved in the shooting expressed, based on the law of self-defence, that they believed there was a threat to life and therefore it was necessary to discharge their weapon and eliminate the threat – that is, kill the subject.

Under common law, someone may use force in self-defence. The Criminal Justice and Immigration Act 2008 clarifies the law of self-defence in that it “allows an individual to rely upon a genuinely held belief, regardless of whether or not that belief turns out to be mistaken or the reasonableness of the mistake made” (Martin 2021: 663). For a police officer, authorised with the power to stop suspects and make arrests, self-defence or more specifically the ‘use-of-force standard’ is legislated in the Police (Conduct) Regulations 2020. In the case of the police, to determine the lawfulness of self-defence there is a two-staged assessment

⁴ Since the start of the 2000s, other notable shootings, of people of colour and White people, include Jean Charles de Menezes, Yassar Yaqub, and Anthony Grainger.

framework. To constitute self-defence, there must have been 1) an honestly held belief for the necessity to use force and 2) that the force used was necessary (reasonable or proportionate) (Martin 2021: 665). The proviso to the first part is that if a belief is considered unreasonable, so long it can be understood as held *honestly*, the claim of self-defence will suffice, dependent also that the force used was necessary (Martin 2021: 665).

The first stage of the assessment framework is a question/test of honestly held belief and the second is a question/test of necessity. The former is regarded as being subjective and the latter as being objective. This raises the question of the normative values of subjective and objective, and its distinction (see Norrie 2010), particularly about the dispute over how a criminal court or a human rights court assesses the argument of self-defence, and whether other legal forums, for example a disciplinary hearing, should apply the criminal test or civil test.

Prior to the publication of the Report into the Death of Jermaine Baker, which this paper will discuss more in the next section, W80 and the Met police challenged the Independent Office for Police Conduct (IOPC)'s instruction that disciplinary hearings should be brought against the officer. What legal test and standard of proof is to be applied in disciplinary hearings was considered by the appeal courts and Supreme Court. First, on 14 August 2019, the Divisional Court decided that the IOPC was wrong to have argued the civil test should be applied. On 9 October 2020, "The Court of Appeal [...] held that neither the criminal law test nor the civil law test applies but that a tribunal in police disciplinary proceedings should simply apply the test contained in the wording of the use of force standard in the 2012 Regulations, namely whether the force used was necessary, proportionate and reasonable in all the circumstances" (*R (on the application of Officer W80) (Appellant) v Director General of the Independent Office for Police Conduct and others (Respondents)* [2023] UKSC 2020/0208: 2). On 5 July 2023, the Supreme Court ruled in favour of the IOPC, "that the test to be applied in disciplinary proceedings in relation to the use of force by a police officer in self-defence is the civil law test" (*R v IOPC* [2023]: 42).

This paper is not interested in the doctrinal argumentations, normative values, and law of evidence, related to the legal jurisdiction of police use-of-force (see Norrie 2010; *Cf.* Pavlich 2017), but notes the legal cases about this to highlight the imbrication of subjective and objective; criminal and civil. What will be of concern for this paper is how the principle of

honestly held belief is reaffirmed by a police officer, in this case W80, and made knowledgeable in a legal forum. That legal forum was the inquiry of Jermaine Baker where W80 provided an account and related a narrative. As I will later explore, the subjectivity and interiority of W80 was a scene of racial violence (Ferreira da Silva 2017) for his narrative deferred and referred to notions of causality to justify his shooting/killing of Baker.

The shooting/killing of Jermaine Baker

The shooting and killing of Jermaine Baker in 2015 occurred during a pre-planned police covert operation. Police had intelligence there would be an attempt to break Izzet Eren and another defendant from Crown Court in Wood Green. Eren and this other person were arrested in possession of two firearms and were charged with intent to endanger life and pleaded guilty on 29 October 2015. Based on intelligence, police believed it was highly likely that a stolen vehicle would be involved in the transportation of Eren and the co-defendant. W80 was part of the firearms unit that accompanied the specialist surveillance team. The firearms unit was provided with intelligence that the occupants of a stolen Audi A6 had in their possession live firearms. On 11 December 2015, around 9 AM, the firearms unit were instructed to deploy. In three different unmarked cars, the police blocked the parked Audi, and the officers exited their vehicles. Baker sat in the front passenger seat and his door was opened by W80 who on foot came around the Audi. W80 drew his firearm between the door and the frame of the Audi. He claimed to have ordered Baker to put his hands on the dashboard and alleged that Baker moved his hands to a small cross-over shoulder bag that rested on his chest. W80 claimed that at the time he believed Baker was reaching for a firearm and based on this belief he discharged his firearm. As the Report into the Death of Jermaine Baker stated, “there was no gun in it [Baker’s bag], real or imitation. There was an imitation firearm in the rear of the car in the footwell” (Goldstone 2022: 141).

On the basis of protecting national security, as the death occurred during a covert police operation, the government launched an inquiry, instead of an inquest. Like with the inquiry of Rodney and inquest of Duggan, the design and scope of the Jermaine Baker inquiry ensured sensitive material was not submitted to the court and released to the public. As Chair HHJ Clement Goldstone QC noted in his final report, “a public inquiry is not bound by any statutory or common law principles to apply either the civil or criminal standard of proof”

(2022: 202), though he decided the Jermaine Baker inquiry would follow the civil standard of proof; “the same as the standard of proof that would have applied had this investigation been an inquest concerning the same matters” (2022: 205). In his conclusion, Goldstone QC found “on the balance of probabilities, that the perceived threat from the actions and movement of Mr Baker was such that W80 honestly believed that it was reasonably necessary for him to shoot at Mr Baker” (2022: 213), and thus, “Mr Baker was lawfully killed” (2022: 217).

W80 at the Inquiry of Jermaine Baker: police intelligence and state of mind

On an operational level, W80’s belief was based on intelligence, which the inquiry found to be less than reliable, but on a narratological level, as I will shortly examine, W80’s belief was based on a metaphysics of cause and effect, which protected his status of being ‘reasonably’ mistaken. On the subject of intelligence, yet related to the assessment of an honestly held belief, Martin highlights that an issue for the courts to consider “is the extent to which the individual officer can be said to have made an unreasonable mistake if the basis for the unreasonableness is a consequence of the intelligence the officer, quite properly, relied upon in deciding the fatal shot was necessary” (2021: 675). Referring specifically to the Court of Appeal case in 2000, Martin explains, “[i]n *R. (W80)*, for example, it was because of operational briefings that the firearms officers came to believe that the men in the car were dangerous, armed and prepared to use their weapons. Where the officer’s (mistaken) belief is based on an (mistaken) intelligence assessment of their fellow officers, perhaps even attached to orders, it seems extremely unlikely a disciplinary panel would single out the officer who fired the fatal shot as having acted on an unreasonably mistaken belief” (2021: 674). Yet, “the real question of the reasonableness of W80’s belief arose because he shot Mr Baker at a very early stage of the interception and almost immediately after opening the front passenger door and issuing the warning” (Martin 2021: 675). This last point relates to the seemingly contradictory messaging in the verbal commands W80 gave to Baker: telling him to put his hands up yet firing a shot at him based on the perception that those very hand movements indicated to W80 that Baker was going to draw a gun from his bag.

The intelligence formed W80’s state of mind to expect an attack. In his witness statement W80 wrote: “At the end of this briefing my state of mind was that the attack was likely to happen, that it would be undertaken by a group of experienced and dangerous individuals

who would be armed and would use firearms in the course of the offence. The fact that the main suspect had previously been caught in possession of a loaded machine pistol caused my threat assessment to be very high” (Jermaine Baker Inquiry 2021b: 81). This passage was read out to him at the inquiry to establish what his ‘state of mind’ was at the end of his briefing at 5:00 AM that morning of 11 December – though DI Keely Smith during the briefing assessed the risk to individuals and organisations was low. Regardless, W80 confirmed to the Chair that for him it was “very high” at that precise time (Jermaine Baker Inquiry 2021b: 83). On that day, as W80’s unit in an unmarked car proceeded towards Wood Green Crown Court, the unit “received information that the Audi was moving. This confirmed in my mind that the attack was going to happen that day. The intelligence was proving to be good and it seemed certain the attack was going to happen that day” (Jermaine Baker Inquiry 2021b: 92). Again, this was cited from his witness statement and he explained what had confirmed in his mind an attack was going to happen was “[t]hat the stolen Audi was now moving around the area, [...] things were happening, things were developing” (Jermaine Baker Inquiry 2021b: 94).

Based on a radio message the firearms unit received, W80 was “in no doubt” that the occupants had “live firearms” (Jermaine Baker Inquiry 2021b: 99). The three units in their separate cars intercepted and attempted the extraction of the occupants. There was no discussion between the officers as to what positions they would take once they boxed in the Audi and exited their own vehicles (Jermaine Baker Inquiry 2021b: 118). To establish W80’s state of mind as he reached the Audi, Counsel to the inquiry read from his witness statement that claimed he thought he was going to get shot and that “the occupants would fight their way out rather than surrender” (Jermaine Baker Inquiry 2021b: 129). W80 at the inquiry explained further: “I had been told these were dangerous individuals, I had been told that. My perception was that on confronted by armed police that they wouldn’t surrender and they would try and fight their way out”, to which the Counsel to the inquiry asked, “But surely, wouldn’t it take intelligence or information in the positive that they would be likely to fight their way out, to get you to that state of mind?” To which W80 replied: “With everything that I had been told that -- I believed that they would try and fight their way out” (Jermaine Baker Inquiry 2021b: 131). W80 had the thought the occupants would fight the police before he encountered them. Thus, it could be argued, from an ethnographical and narrative criminological perspective, that the intelligence influenced his actions; that he composed and interpreted a narrative from the intelligence that was provided, which led him to carry out the

actions of opening the door and shooting at Baker. Yet, this narrative was not merely a ‘state of mind’, but, in terms of its narrativity, a scene of self-consciousness – the interiority of which iterated a narrative. There may well have been ‘intelligence’ provided to W80 yet structuring this knowledge was the *intelligence* to reason the provided information into a narrative to ‘swear by’. The question is whether intelligence provided for the ‘action’ or the ‘story’, or both, yet this cannot be properly made certain, and it is precisely this uncertainty that allows for racial violence or anti-blackness to be justified in a legal forum.

The windscreen of the Audi was claimed to have been steamed. There was also a parked car next to it, with only 18 inches between the two vehicles, impeding the passenger door to open fully, which apparently did not give W80 the thought that it may be difficult to ‘extract’ the passenger at the time (Jermaine Baker Inquiry 2021b: 127). According to W80 he “had clear vision through that gap that you can see between the open car door and the sill of the Audi” (Jermaine Baker Inquiry 2021b: 142), and he “saw a male sitting in the passenger seat wearing dark clothing, and what I thought was a balaclava. And the bag on his chest, man bag” (Jermaine Baker Inquiry 2021b: 141-142) – though he could not remember the exact position of the bag (Jermaine Baker Inquiry 2021b: 143). He claimed the passenger, Baker, was not asleep in the Audi. As he had written in his statement, W80 reiterated the claim that he shouted for Baker to put his hands on the dashboard (Jermaine Baker Inquiry 2021b: 142) – though this was not audible on the audio footage, as played in the inquiry (Jermaine Baker Inquiry 2021b: 156).

The Chair in his report stated: “W80 may have been tragically wrong in his belief but I am unable to conclude that it was not honestly held, nor is my conclusion negated by the errors in his account to the Inquiry, in particular as to the number of times that he shouted to Mr Baker to put his hands on the dashboard” (Goldstone 2022: 214). One of the contentious issues was the number of times W80 commanded Baker to put his hands on the dashboard and whether he was articulating and verbalising this clearly to Baker at the time. For the Chair, to put it simply, he was satisfied that W80 had at least made this command once.

W80’s statement of 19 February 2016 read: “He [Baker] had the opportunity to put his hands on the dash. Had he done so, I would not have fired. His lifting of his hands quickly from low in his lap area towards his chest caused me to believe he was going for a gun and that is why I shot him” (Jermaine Baker Inquiry 2021b: 146), and he confirmed in the inquiry this

reflected his recollection. He went on claim that: “My perception was that his hands were moving towards the bag” (Jermaine Baker Inquiry 2021b: 147). The Counsel to the inquiry asked, “Do you agree that the description that you have given of the movement of his hands at the time that the weapon was fired is consistent with him putting up his hands in an indication of surrender?”, to which W80 disagreed, and was adamant Baker’s “hands were on the way towards the bag” (Jermaine Baker Inquiry 2021b: 148). Yet, later during his questioning, W80 agreed with the Chair, that, as he put it, “the words “put your hands on the dashboard” are arguably in conflict with “put your hands up”?” (Jermaine Baker Inquiry 2021b: 181). In trying to understand why there was not a discussion between the officers about what orders they individually should use to the occupants, and how they were meant not to “avoid the risk of inconsistency of instructions”, W80 answered: “You are taught to, having got a view of the subject, to direct them - to direct them in response to your perception of what is going on” (Jermaine Baker Inquiry 2021b: 181). This notion of directing a subject in response to a firearms officer’s perception is an articulation of causality, more profoundly expressed by W80 when he explained in part why he decided to shoot Baker.

Analysis: the maxim of ‘action beats reaction’

Once the door was opened and W80 drew his gun within the gap of the door and sill, the laser from the gun was pointed at the upper area of Baker’s body (Jermaine Baker Inquiry 2021b: 150). W80 claimed he did not remember if the bag was open or not but maintained Baker’s hands were moving towards the bag (Jermaine Baker Inquiry 2021b: 151). The following is the exchange between the Counsel to the inquiry and W80:

Q. Why didn't you wait until you saw any part of a weapon before you fired yours?

A. Because my training is that action beats reaction, so I couldn't wait until Mr Baker's hands reached the bag.

Q. But you would have had an opportunity once his hands had reached the bag, and grappled with a weapon, to shoot then, wouldn't you, given the proximity that you had to him?

A. I couldn't wait for his hands to reach the bag.

Q. He was sitting in a chair in a car, wasn't he?

A. Yes, he was.

Q. You were standing over him, pointing your weapon at close range. You were keeping your absolute focus on him?

A. On his hands, yes.

Q. Yes. So you could have waited a few seconds more to establish whether or not he was indeed about to take a weapon out of that bag, couldn't you?

A. No, my training is that -- is that his actions could beat my reactions, so I reacted to his actions moving towards the bag. (Jermaine Baker Inquiry 2021b: 151--152)

To ascertain whether the killing was lawful, one of the main questions for the inquiry – part of its assessment of use-of-force – was whether W80 had the honestly held belief that Baker was a threat; whether this belief, as it was mistaken (considering Baker did not have a gun), was unreasonable; and, was the force used – shot to the upper body which resulted in Baker’s death – necessary. W80 claimed he did have an honestly held belief as it was based on intelligence and the perceived threatening movements of Baker. As previously discussed, the intelligence was wrong about there being a real gun in the car. W80 attempted to mitigate the unreasonableness of his mistaken belief with reference to the maxim of ‘action beats reaction’. Thus, based on this maxim, it was necessary to shoot and kill.

‘Action beats reaction’ “has become a maxim which informs their [Metropolitan firearms police’s] tactics in life-threatening situations” (Jermaine Baker Inquiry 2021a: 230). The phrase expresses the notion that, for a police officer, it would “take longer to perceive that a civilian is firing on them and fire their own gun than it takes for a civilian to fire” (Page 2023: 316; see also Blair at el. 2011). In W80’s case, he suggested it would have taken longer to *react* to Baker taking a gun (if he had one) out from his bag, than it would have taken the *action* to shoot Baker first. Thus, according to this logic – this causality – W80 shot Baker to eliminate the risk that he may have not been able to return fire if he waited for Baker to draw and aim a gun at him (again, if Baker had a gun).

In his statement of 19 December 2016, W80 claimed: “I cannot be precise as to the exact moment I perceived that he was going for the bag and the precise moment that I made the decision to shoot. It would have been at some stage after he started to move his hands and before he reached the top of the bag. I was very aware that action beats reaction and that I could not wait until he removed the gun from his bag. It is likely that having made the decision to fire, the male’s hands would have moved further up before the rounds struck him and that is why the shot has struck his left wrist” (Jermaine Baker Inquiry 2021a: 230).

As experience is shaped by a story as much as a story shapes experience, to what extent is there certainty of the distinction between story and experience or event, within the story itself? This question is important for what is at stake is the veracity of the narrative of a death

in custody – not simply whether W80 was telling the truth or not, but how he *meant* (the intention of his meaning) to speak truthfully of his story, his narrative, his experience.

In giving a truthfulness by way of referring – deferring – to a maxim, it could be read that W80 was making sense of his experience (past and then present). Yet, which experience was he speaking of when account-giving in the inquiry? Was this a narrative of W80's 'lived experience' or a narrative he produced after the event? A deconstructive perspective would attend to how the experience of the past (e.g. the shooting/killing of Baker) crosses over with the narrative accounted in the then present (e.g. at the inquiry). How was W80 making sense of his experience not just as a firearms officer on active duty but also as a police officer required to account for his decisions and actions? To problematise and to radicalise the ethnographical and narratological notion of the sense-making of stories, I contend this giving and making of sense is articulated from the provision of narrativisation. Put another way, it is the value and veracity of honesty and frankness (Harrison 1995) that preserves the idea of sense-making. Yet, we need to be alert to that in legal proceedings, a police officer does not just make sense but make and give themselves law (e.g. auto-nomos), in the sense that they refer to a range of legal statutes, codes, but moreover give themselves, and makes re-presentable, laws of nature (Ferreira da Silva 2017; see also Lamb 2024): 'common-sensical' maxims and axioms. Though, it is also imperative that one does not to confer too much of the concept of intentionality and rationality to the autonomy of the police, for its sovereignty is not strictly and properly grounded in a pure identity and selfhood (Park 2022). In other words when the police give themselves laws this does not follow a simple, clear and transparent exchange and delivery.

For the purposes of this article what is germane is that the maxim underpins and supports the law or at least the justification of self-defence. This maxim is constituted and expresses causality, however what is the sequence of cause and effect is not entirely clear and certain. Indeed, with causality, it does not always follow that a cause precedes an effect. European Continental and analytical philosophers have been concerned with the relationship of cause and effect, which relates to theories on the event (Raffoul 2020), including, relatedly, the issue regarding activity and passivity; for example, to what extent is a subject affected by others and objects, and how are others and these objects affected by a subject (Johnston and Malabou 2013)?

This line of inquiry is relevant for this paper, for if we integrate the maxim of *action beats reaction* we find that it is not strictly teleological as it assumes to be. Following a deconstructive reading, the maxim problematises itself, for W80's action *was* a reaction: he reacted to the perception that Baker was going to fire – in other words, in a manner of speaking, W80 *reacted* to prevent having *to react*. It is important to stress that W80 claimed to have (re-)acted upon a perception (“I perceived that he was going for the bag”), not only to maintain the status of Baker as unarmed, but also to address how a perception becomes an object of experience. At the time of Baker's death, W80 both perceived through his senses and re/acted to this perception. To repeat Page again, *action beats reaction* means it would “take longer to *perceive* that a civilian is firing on them and fire their own gun than it takes for a civilian to fire” (2023: 316, my emphasis). The target was Baker but more so the *perception of Baker* rather than his ‘physical body’, though his corporeality (blackness) undergirded W80's perception.

The maxim is *narrativised* into the narrative about ‘neutralising’ Baker and it also neutralises the question over the precise moment Baker went to reach for his bag, which in turn mutes the fact that he did not have a gun. Supposedly, W80 acted before he had to ‘react’, which when understood as following a maxim suspends the temporality, the possibility, the actuality, that Baker would have revealed there was no gun in his bag, if indeed he was reaching for his bag. To reiterate, the risk and threat was not objectively the person or body of Baker but the perception of Baker. This is not to reaffirm the claim of perception and thus support W80's version of events but to underscore how causality structured W80's narrative that expressed how he experienced and comprehended his perception.

Despite *pre*-scribing to the maxim, in his statement of 19 December 2016, W80 claimed: “I cannot be precise as to the exact moment I perceived that he was going for the bag and the precise moment that I made the decision to shoot.” So close was *action* to its appositional relation of *reaction*, perception and decision slid into one another. The inquiry suggested this convergence could have been explained due to ‘perceptual phenomena’, which arguably excuses actions based on the fallibility of a witness, especially those who have experienced high levels of stress or trauma.

To quote directly from the Report into the Death of Jermaine Baker: “According to the policing expert witness Colin Burrows QPM, “*perceptual phenomena*” refers to what happens “*in high-risk situations*”, when “*the senses become flooded ... particularly if it is life threatening*”. The phenomena include: “*auditory exclusion or auditory amplification*”, “*a narrowing of our vision and a focusing in on the threat*” and other issues “*in relation to time and distance*”” (Goldstone 2022: 213, emphasis in original). In short, perceptual phenomena is a term of psychology for when over-stimuli of sensation lead to the distortion of perception, and thus causing difficulties for recollection. Philosophically, we could ask, what perception is not compromised by a degree of distortion, if we would accept that there is no such thing as a perception objectively equivalent to a reality. My intention is not to dismiss outright the term but highlight its narrative function to support a justification for fatal force. Furthermore, I locate its narrativity belonging to the general thematic of fiction. While, arguably, sensation alters and distorts our perception (where we may mistake qualities and objects of our senses for reality or be unable to make sense of our reality) when it comes to speaking and explaining our experiences, the possibility of being mistaken is conditional and characteristic of us bearing witness (Derrida 2000). Thus, in the case of W80 and the inquiry of Baker, we should be cautious not to ascribe perceptual phenomena only to the ‘event’ of the shooting/killing. That is not to suggest that perceptual phenomena also occurred as W80 was providing his account in the inquiry but that the more general thematic of fiction was at play.

By fiction I do not merely mean the fantastical and false but following Derrida (2000) and Shearing and Ericson (1991) the poetic: the multiplicity of meaning, and thus, uncertainty, undecidability, and polysemy. By no means am I arguing that W80 could not have been expected to provide a clear account with a sufficient level of certitude, but rather to underscore that distortion or misattribution is not merely a sign of inaccuracy and inauthenticity but also an essence of narrativisation. This raises the question what should we expect from the police when they are called to provide an account if there is an acknowledgement of the uncertainty to their narrativisation, with the danger that this may actually reaffirm the violence of their words. The paper has not focused on this for before we can tackle the latter issue we must explore and understand the violence of police narrativisation. It is important that any proposed change to how police are investigated, whether regulatory or independently, appreciate that a police narrative is not simply cultural nor institutional but epistemological and symbolic.

Conclusion

This paper has explored the uncertainty of narrative *and* the uncertainty of narrativity. It is precisely this uncertainty that is the opening of racial violence for it situates and represents irreconcilable events according to apparently sound explanations. This paper has gone where narrative criminology retreats from and has followed more closely the deconstructive approach that Shearing and Ericson drew from to problematise the distinction between story and experience, narrative and event. Moreover, this paper has analysed W80's accounts from a critical Black Studies approach, specifically informed by Ferreira da Silva (2017) that views epistemological and legal representations as violent and anti-black as is the event of the death and killing of Black people. Yet, it is not simply the representations that are violent but the logic undergirding representation that is a structure of violence. Thus, it was not solely the decision to shoot Baker that killed him but epistemologically speaking the construction and articulation of a 'decision' that rendered his death lawful. Police narratives thus provide not only sense but moreover law and knowledge for them so that they produce evidence and recall memory. What is inseparable is the decision to shoot and the decision-making process – whether, however much it is claimed, decision-making is made at the time of a shooting or made afterwards as provided in an account. Hence, as this paper has argued, there is uncertainty not only over the events of the killing but within what a narrative is and what conditions narrativisation. When aimed towards the finding of a lawful killing, this uncertainty serves then to suspend Black life-death in-between truth and fiction.

In the inquiry of Jermaine Baker, we have seen how causality was integral to the reasonableness and necessity to shoot and in effect kill him. W80's account did not just describe Baker as violent, based on his belief Baker was a threat, but inscribed causality (i.e. 'action beats reaction') as an explanative for the death/killing. The notion of perceptual phenomena ameliorated the uncertainty within this inscription. Perceptual phenomena came to stand as a narrative descriptor, specifically in Chair Goldstone QC's conclusion of lawful killing. This conclusion was based on the presumption that any finding that W80 did not have an honestly held belief needed to demonstrate the firearm officer was a cold-blooded killer. Goldstone explained, "if he were a cold-blooded killer, he would in all likelihood not have ordered Mr Baker to put his hands on the dashboard at all" (2022: 214). Apparently cold-

blooded killers do not lie and give false information to conceal their homicidal act. Interestingly, the Chair evoked the characterisation of a cold-blooded killer (maintaining and attributing the value of honesty and the willingness to plead guilty to such an offender) in distinction from W80, viewed as a traumatised victim from shooting/killing Baker, affected by the experience, who was honest in his recollection, albeit this was distorted. The Chair stated, “to jump to such a conclusion,” that W80 was a cold-blooded killer, “even though on one view of the evidence it might be *justified*, would be to ignore the effect of “perceptual phenomena” and distortions in recollection about which I heard clear evidence” (Goldstone 2022: 214, my emphasis).

This paper has not ignored perceptual phenomena however it has not viewed it purely as an *effect*. Similarly, it has not accepted the maxim *action beats reaction* as expressing a fact but a fiction. A subsidiary of narrativisation, through a poetics of calculation, this causality, as iterated in W80’s account, aimed to ameliorate any doubt, mistake, and uncertainty. To put another way, *action beats reaction* articulated the reasonableness of being mistaken for the credibility of the honestly held belief.

The intention of this paper has not been to ‘jump’ to the conclusion W80 is a killer. Neither has it sought to simply give a counter-narrative to the inquiry. Rather, this paper has argued that a police officer’s narrative is never completely conclusive, having to remain open-ended, and open to iterating different narratives and interpretations, which in turn reserves for racial violence to be reasoned and justified as lawful.

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