

IN THE MATTER OF THE JERMAINE BAKER INQUIRY

Opening Written Statement dated 15 June 2021

pursuant to Rule 11 of the Inquiries Rules 2006

Essential Position

1. It can be seen from the material before the Inquiry that the essence of the position on behalf of W80 is that on the morning of 11 December 2015, W80 fired one round from his firearm because he genuinely and honestly believed, based upon the information which had been provided to him and upon what he perceived Mr Baker to be doing when challenged, that there was an imminent threat to his life and to the life of his colleagues.

Terms of Reference

2. It is submitted on behalf of W80 that the terms of reference of this Inquiry which are of particular relevance to his role in the events of 11 December 2015 are as follows:

“(1.6) Were those responsible for the implementation of the Operation appropriately briefed?”

...

Implementation

(3.1) What occurred on 11 December 2015?

...

(3.3) What was done on the ground? In particular the actions of officers during the arrest phase

(3.4) The shooting, namely the circumstances in which the officer who fired the fatal shot came to discharge his weapon.

...

(3.6) Was the Operation conducted reasonably on the ground, in particular having regard to the need to minimise to the greatest possible extent the risk of life?

(3.7) In particular, could the shooting (and hence the death) of Jermaine Baker have been avoided?”

W80 – sources of evidence

3. The Inquiry will be aware that W80 has made a number of statements in relation to this matter:

MPS0000123(11.12.15 – initial account)
IPC0000766 (11.12.15 – re. pocket book)
IPC0000016 (21.12.15 – statement under caution)
IPC0001075 (19.2.16 – additional statement under caution)
MPS0000112 (17.8.16 – additional statement under caution)
SLA0000002 (3.3.16 – re anonymity)
SLA0000003 (31.12.10 – re anonymity)
SLA0000006 (4.3.21 - Statement for the Inquiry)

4. In seeking to address its terms of reference, the Inquiry will of course be receiving evidence from numerous sources and addressing a far wider range of issues than those which are touched upon in the evidence of W80. In doing so, the Inquiry will be wishing to test the evidence which it hears and the documents it considers against other available sources of evidence, and will doubtless consider the evidence which it finds to be reliable in the light of any expert opinion which is helpful to the Inquiry.

Expert Opinion

5. In this regard, so far as W80's role in these events is concerned, it is submitted that in due course the Inquiry may wish to consider with care the content of the evidence of Mr Arundale and Mr Burrows.
6. By way of general observation, it suffices at this stage to note, as indeed has been identified by your counsel at paragraph 42 of her opening on Monday that the independent Inquiry Experts have, as they put it, 'urge[d] caution' in relation to the criticism have hitherto been levelled against W80 by the IPCC in relation to:
 - The timing of the fatal shot.
 - The time that W80 had available for decision-making.

- Their general expectations of W80 (See Report page 225, Conclusion 15)

7. Naturally, this is a conclusion which the Inquiry will wish to examine during the course of the evidence it hears. And indeed, a number of issues have been identified over the course of the opening statements which you have heard since Monday.
8. More generally, of particular relevance to the terms of reference identified above, the Inquiry will in due course no doubt wish to consider in detail their evidence and the analysis which underlies the following important paragraphs contained within the body of their report, all of which are pertinent to the position of W80. Sir, your counsel has already brought much of this material to your attention in her opening – so I will avoid repetition. :

Perceptual Phenomena

824-825 (INQ0000004_0189):

824. The individual accounts provided by officers.... require to be read in the full knowledge that the personalised accounts they are providing articulate, often in considerable detail, events that occurred in seconds, or indeed fractions of a second.

825. It is to be expected that officers' accounts also reflect the perceptual phenomena that occur in high stress, life-threatening, fast time decision-making situations. The perceptual phenomena, most commonly reported, relate to perception of time, distance, noise (auditory distortion), narrowing of peripheral vision (commonly referred to as 'tunnel vision'), awareness lapse and colour (this includes colour substitution and mono-chromatic recall) as well as the chronological sequencing of critical events. It is also our understanding that, on this occasion, some of the officers were wearing hearing protection

Context of the Encounter

882- 883 (INQ0000004_203)

882. The reality of Armed Policing is that officers are often placed into situations where they are in the presence of, what is believed to be:

- *An uplifted knife*
- *A reached for, or the holding of, a pointed gun*
- *A movement to press (or release) a button designed to detonate explosives.*

883. *In these situations, an officer's response will be determined by:*

- *Prior information or intelligence regarding the individual, weaponry available to them and their intent*
- *The actions of others during the dynamics of the intervention*
- *Dynamically assessed threats and risks to which they and others are being immediately exposed*
- *Situational and contextual cues as to the action about to be taken by the subject they are confronting*
- *Their assessment of the time available to make decisions and take positive action.*

Action and Reaction in Life-Threatening Situation

Sir, you heard from your counsel on Monday (between paras 463-469) that action versus reaction is a concept that is embedded in officers' training (See experts report para 913 *INQ0000004_209*), to the extent that it has become a maxim which informs their tactics in life-threatening situations. Of course, as His Honour Judge Teague QC identified in the Grainger Inquiry at para 6.106 it all depends on the particular circumstances of the individual case (*INQ0000004_209*). With regard to those circumstances, you may in due course of course, having heard the primary evidence, wish to consider the conclusion of the experts in this area at paragraph 938 of their report (*INQ0000004_215*).

9. Further, in relation to the one page summary (contained at page 225) of their report, you may well wish to consider both the expert analysis and the reasoning underlying their conclusions at *INQ0000004_0226*:

6) The dynamic 'intervention and extraction' tactic places officers in highly vulnerable positions raising the threat level against them.

8) The intelligence that the OCG were having difficulty obtaining a 'real gun' but would have at least an 'imitation firearm' should have been included in the briefing to CTSFOs

11) *The TFC's threat and risk assessment to all parties was assessed and documented as low. The CTSFOs' threat assessment, at the point of intervention, was high*

15) *We would urge caution about some of the assertions in the IPCC report regarding:*

- *The timing of the fatal shot*
- *The time that W80 had available for decision-making*
- *Their general expectations of W80.*

10. All of which are pertinent to W80's role in these events.

Supplementary matters

11. A number of brief observations should also be made at this stage on behalf of W80 in light of the submissions you have heard since Monday:

Tinted Windows

- (i) In relation to the suggestion that W80 has said that he thought the windows on the Audi were tinted (CTI Opening para 243, 377), sir you might consider that detailed analysis of the expressions which were used in the statements which have been made by W80, and the context in which they were made, perhaps suggests otherwise. In his case, the matter only arose as a result of questions he was asked during interviews under caution. First, on 17 December 2015 he was asked by an interviewer whether the windows were tinted or not (IPC0000647_19). Secondly, in a further interview on 4 February 2016 (IPC0000653_13) when W80 was asked to account for or, at least, to comment upon the content of another officer's witness statement, a positive and as we know erroneous suggestion was made to him about there being a slight tint in the window ("*cause I understand there was a slight tint on the window*" IPC0000653_15). It appears that is the context before the topic of tinted windows is addressed at all in his statements. He made a subsequent statement in August 2016 (MPS0000112_0002) in which this passage appears "*In the interview I was asked whether the windscreen and passenger door window were steamed up and when exactly I first had visibility into the car. I am certain that the front windscreen was steamed up. I cannot be certain whether the nearside front passenger window was steamed up but I am sure I did not have vision into the car through this window and this maybe because it was steamed up or because it was tinted glass.*" The thrust of this was essentially repeated in his statement made for the inquiry

(SLA000006_020 (para82): “*In my statement of 17 August 2016 in the final paragraph on MPS0000112_0002 I have said that I did not have visibility into the car until I opened the passenger door. I cannot say now whether this was because it was steamed up or because it was tinted or because the reflection obscured my vision. I had some vision but not clear vision.*” There does not appear therefore to have been a positive assertion, or an expression of belief, by W80 at any stage that the windows were tinted. It would appear that in fact it was an issue which was first raised with him on the basis of an interviewer’s understanding of other evidence.

Legal Framework

- (ii) The submissions on behalf of the Family at paragraphs 17-19 in which certain proposed questions are identified for you sir are noted. As is the approach of CTI at paragraph 49. The nature of the jurisdiction you are exercising is recognised on behalf of W80, as of course are the origins of these proceedings in the coroner’s court. It is recognised that it would perhaps be premature to make developed submissions on this issue this afternoon and at this early stage of the Inquiry; suffice it to say, however, at this stage on behalf of W80 that it is submitted that the approach adopted by His Honour Judge Teague QC in the Grainger Inquiry (INQ0000002_168-172 at paragraphs 6.1-6.13) is the correct approach. It may be noted that, just as in the Grainger Inquiry, the four familiar coronial questions (how, when, where and in what circumstances) are specifically incorporated into the Inquiry’s terms of reference under the heading “Purpose”. The principles of law when investigating a death in the coroner’s court are clear (See *Regina (Duggan) v North London Assistant Deputy Coroner* [2017] 1 WLR 2199 (at paragraphs 84, 93-95, 97).

Duncan Penny QC

15 June 2021