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Re-presenting Transactions: Prosecuting a Police-involved Shooting with Video Evidence

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Abstract:

The proliferation of videos of violent interactions between police and the public, and the subsequent examinations of those videos in legal proceedings (grand juries, criminal trials, and coroner's inquiries), have occasioned some reflection on what video *does* in understanding such incidents. As was initially shown by Goodwin (1994), videos of violence are far from *self-explanatory*; conducting inquiries into such violent interactions involves a great deal of interpretive work. Here, I discuss a case study of the trial Constable James Forcillo of Toronto Police Service, which led to a paradoxical verdict of guilty of attempted murder relating to an incident where Forcillo shot and killed a young man, Sammy Yatim, onboard a Toronto street car. While videos often give the impression of increased accountability for and of police officers (cf. Harris, 2010; Ariel et al., 2015; Ready & Young, 2015), and the recoverability of police decision-making in their use of violent and lethal force, the question of how that accountability is enacted in legal settings requires attention in order to understand the significance of this particular type of evidence. Here, I demonstrate that video does not do the work of explicating the sense or motive of police actions therein, and as such inevitably must be augmented by further evidence before arriving at a verdict in cases of police-involved violence.

Key Words*:* police shootings; evidence; video; decision-making; violence; socio-legal studies

Introduction

On July 26th, 2013, at approximately 11:45pm, 18-year-old Sammy Yatim boarded the westbound Dundas street car at Dundas Station and sat near the back of the car. Approximately twelve minutes after boarding, Yatim withdrew a 12-centimetre (4-inch) switchblade

knife, which he used to slash at a number of female passengers sitting in close proximity to him — although he did not cut or injure any passengers — exposed his penis, and ordered all passengers off the streetcar. For several moments, Yatim paced around the nearly empty streetcar, conversing with the sole remaining occupant, the streetcar operator, who volunteered to call Yatim's father on Yatim's request. Just after midnight, police arrived on scene and the streetcar operator fled. Constable James Forcillo, a 3-year member of the Toronto Police Service (TPS), and his partner Constable Iris Fleckheisen, a 22-year veteran, were first on scene. Forcillo repeatedly ordered Yatim to drop his knife, while Fleckheisen, at Forcillo's request, radioed for a Seargent to attend the scene and deploy a Taser weapon on Yatim. Fifty seconds after police arrived, while still holding his knife, Yatim stepped toward the streetcar door, and Forcillo shot and killed Yatim. Forcillo initially fired three rounds, which felled Yatim and knocked his knife out of his hand, and subsequently fired six more rounds after a five-and-a-half second pause, in which Forcillo observed Yatim rearming himself. The incident was captured on cellphone video by a number of bystanders as well as security cameras on the streetcar. Several cellphone videos were uploaded to YouTube and other sharing sites and went viral within hours.

Three weeks after the shooting, Constable Forcillo was charged with second-degree murder by the Province of Ontario's Special Investigations Unit (SIU).[1] Nearly a year after the initial charges were laid, following a preliminary hearing, the Crown Prosecution Service (CPS) charged Forcillo with a second count of attempted murder, a paradoxical decision given not only the outcome — that Yatim was killed — but also in light of attempted murder's status as a lesser-and-included offense to second degree murder in Canadian law. If the CPS felt they could not convict Forcillo for second-degree murder, a request to consider attempted murder could have been made of the

[1] The SIU is an 'arm's length' civilian agency that investigates any incident where police are accused of causing death, injury, or sexual assault in the line of service.

jury. The case proceeded to trial in October of 2015. In their introductory statement, the CPS informed the jury that, through a combination of the video and coroner's evidence, they had concluded that the incident was comprised of two separate 'transactions': the first transaction involved only the initial volley of three bullets, which the coroner had concluded led to Yatim's death, and was tied exclusively to the first count of second-degree murder; the second transaction involved only the second six bullets, which the coroner concluded did not lead or contribute to Yatim's death, and was tied exclusively to a second count of attempted murder. On January 25th, 2016, the jury arrived at a verdict of not guilty of the first count of second-degree murder, but guilty of the second count of attempted murder.

In his reasons for sentence, presiding Justice Edward Then discussed the video as "powerful evidence" (para 23) that "proves conclusively" that aspects of Forcillo's testimony did not occur as described by Forcillo (para 41), and that "established beyond a reasonable doubt" that Yatim did not pose an imminent threat to Forcillo, his colleagues, or the public (para 19).[2] However it is not immediately clear what the video *does* that other evidence *does not do*. For example, the coroner's evidence, based on the location and tragectory of the bullet wounds entering Yatim's body, concluded that there were two separate transactions. Whether the coroner reviewed the video evidence in arriving at this conclusion is unknown, but the presentation of that finding relied only on descriptions of Yatim's injuries. In court, two videos shot on the streetcar's onboard security cameras were used as the predominate video evidence: one camera was positioned on the ceiling of the

[2] Under sections 25 and 34 of the Canadian Criminal Code (RSC), police officers (sec. 25) and the public (sec. 34) are justified in using lethal force for purposes of defending themselves or others against unlawful force (or against an unlawful threat of force) that they reasonably believe to be occurring, provided their use of lethal force is deemed reasonable in the circumstances. In trial, Forcillo did not contest the facts of the case, that he had killed Yatim, instead using his defence of lawful homicide under sec. 25 and 34 of the RSC (to be discussed in next section).

streetcar near the back door, and looked forward along the length of the streetcar, while the second was positioned on the ceiling and recorded out the streetcar's front door. The rear door camera depicted Yatim's movements throughout his interaction with Forcillo, while the front door camera looked outward at Forcillo, and depicted Yatim in the moments in which he was standing in the door alone. Following the first transaction, Yatim can be seen in the rear door camera and not the front door camera. Neither video is taken from an angle that corresponded to the angle at which Forcillo was observing Yatim, and the resultant experience of Forcillo's perception of Yatim is not represtend or *re-presented* — the viewer does not see the events as Forcillo sees the events. Furthermore, the video is obscure; following the first transaction, Yatim, who is wearing a black t-shirt, falls into a dark section of the streetcar and his movements are not clear.

Crucially for this paper, the video does not explain, *prima facie*, how the incident can *and should be* seen as two separate transactions for the jury to settle the propriety of one, the other, or both. I will address this issue here, by introducing the precedent case law Crown Prosecutor Milan Rupic referred to when questioned about the two transactions argument in the course of this research (Rupic 2016, personal communication). I will discuss video evidence as re-presenting a sequence of events, from which the jury was able to draw further conclusions about the nature of Forcillo's *subjective perceptions* of Yatim's movements, and from which they evaluated the propriety of his decision to shoot in the first and second transactions. My argument is that video evidence does not readily *re-present* (Mair, Elsey, Smith, & Watson, 2016; Bullock, 2016) incidents of police violence (or any other incident, for that matter) in a one-for-one basis — that is, as a re-presentation so specific that it completely covers the details of the transactions as experienced by those involved (Baudrillard, 1994; see also Mieszkowski, 2012). A starting point for examining video evidence in court, then, is to consider how perceptions are achieved and ratified in their conditions

of contest; in other words, the common sense means by which individuals (in this case, jurors) can decide if what was claimed to be perceived could have been perceived, as well as what relevant features of a video *ought to* be perceived (Coulter & Parsons, 1990; Potter, 1996). Video makes certain aspects of transactions salient and demands an account for the situated perceptions of *just those moments* that fall into question in light of what is exposed through the video's gaze. In this sense, video is explicitly provisional, and only gains its sense and 'power' with reference to what is otherwise known and said about the incidents that are captured and *re-presented* therein.

Severance and Joinder: Seeing 'One Thing' as 'Two Things'

Under Canadian Law and the Criminal Code of Canada (the Revised Statues of Canada chapter C-46, or RSC) there are no a formally defined parameters for 'a transaction.' A significant amount of judicial time has been spent interpreting the Parliamentary intent of the phrase "arises from the same transaction" in the wording of the RSC Section 581(1). It sets out that "each count of an indictment shall in general apply to a single transaction and shall contain in substance a statement that the accused or defendant committed an offense specified therein." S. 589 and S. 591 set forth the abstract conditions under which counts ought to be joined or severed. S. 589(a) stipulates that no count other than murder shall be joined to proceedings for a count charging murder except where the count other than murder *arises out of the same transaction*. Courts are left to interpret through 'common sense' means when an transaction begins and ends. In *Manasseri* (2016) the Court of Appeal for Ontario (CAO) notes:

> Common sense should be our guide in deciding whether separate acts or events can comfortably wear the clothes of "the same transaction." These events should not be subjected to metaphysical examination, artificial contraction or unreasonable expansion to force upon them a different

> complexion than they, in their totality, otherwise display.(*R. v. Manasseri* 2016 ONCA 703)

Paraphrasing the *Manasseri* ruling, courts have been empowered by the legislation in S. 581, S. 589, and S. 591 of the RSC to determine the composition of transactions in a 'common sense' manner. There is not, nor can there be, a formalized set of conditions that affords the court the capacity to authoritatively state when something begins and ends. In paragraph 73 of *Manasseri*, the CAO states: "the term 'transaction' and the phrase 'a single transaction' are not synonomous with a single occurrence or event. Separate acts, which are succesive and cumulative and which comprise a series of acts, can be considered 'a single transaction' for the purpose of s. 581(1)."

Of note from *Manasseri*, the CPS argued that two separate perpetrators, Charlie Manasseri and his associate George Kenny, ought to have counts of manslaughter and agrivated assault respectively, joined in trial, as they arose from 'the same transaction.' In the Forcillo case, the opposite but congruous line of reasoning in reference to the composition of a transaction was applied. In the opening statement to the jury, the Crown argued that Forcillo's actions are best understood as comprised in two separate transactions. Doing so was a clever legal gambit that posited two separate material circumstances prefacing each action. In the first transaction, Yatim was on his feet and holding his knife. Following the first transaction and preceding the second, Yatim was on his back and his feet were toward Forcillo, thus making it more difficult to assert he posed an imminent threat with an edged weapon. With the change in material circumstances, it was also possible for jurors to consider a change in *mens rea* if not *actus reus*: it seems logical to conclude that jurors decided the first transaction did occur in response to the threat Yatim was perceived to present, but that in the second transaction, the CPS theory that Forcillo had been enraged by Yatim's beligerence and refusal to obey his orders motivated the second attack.

These transactions are evidenced through at least two different means: the Chief Coroner for the Province of Ontario had found that the shooting was comprised of two separate transactions, and arrived at this conclusion with reference to the nature of the wounds on Yatim's body. The coroner concluded that there was an initial volley of three bullets that struck Yatim in the chest and upper right arm, piercing his heart, severing his spine toward the bottom of his rib cage (thus paralyzing him from the chest down), and shattering his humerus rendering his arm immobile. These three bullets were the exclusive cause of Yatim's death. The coroner concluded that after the first volley, there was a second volley of six bullets, five of which struck Yatim in his lower extremities and groin, causing serious injury to his legs, abdomen, and genital organs, but which did not contribute to or accelerate his death. The coroner also concluded that Yatim was alive throught the second volley, and that he expired later in an ambulance en route to hospital.

The second body of evidence indicating two separate transactions is formed from the collection of videos — bystander cellphone video, security camera footage from a nearby shop, and the streetcar's security cameras — that indicate in a very specific manner the exact timing of the two transactions. In particular, the videos *re-present* a five-and-a-half second pause between the two transactions. The pause is an addition to the coroner's evidence, which does not indicate the length of time between the two transactions. In this case, the pause was a significant enough feature of the interaction between Yatim and Forcillo as to require some explanation, as well as invoking an assertion of difference of state between Forcillo's perception of Yatim preceding the first and second transactions, which was instrumental in evaluating the propriety of Forcillo's decision to shoot and then shoot again.

The Judicial Significance of the Two Transactions

In short, the key issue at trial was whether or not is was reasonable for Forcillo to believe that Yatim posed an *imminent threat* just prior to either of the first or second volley, in other words that lethal force

was legally justified in his role as a police officer. Forcillo did not contest that he had killed Yatim. He used the defense afforded under S. 25 and S. 34 of the RSC, which state that where police officers or citizens reasonably perceive that they or others face unlawful force or the threat thereof,[3] they may respond with a reasonable degree of force up to and including lethal force. Forcillo testified that preceding the first transaction, he observed Yatim in possession of a knife, that he suspected Yatim was intoxicated,[4] and that Yatim was proceeding toward Forcillo despite Forcillo's warning that if Yatim approached him he would shoot. Forcillo then testified that, during the five-and-a-half second pause, he performed a 're-assessment': he observed that Yatim's knife had been knocked out of his right hand and he watched Yatim reach across his body with his left hand placing the knife back into his right hand (which had been imobilized due to the injury to his upper right arm), and that Yatim made menacing facial gestures directed toward him. Forcillo then testified that he *believed* (i.e., *subjectively percieved*) he saw Yatim raise his body to a 45-degree angle as if in an effort to move into position to attack again, which led to his decision to shoot the second volley of six bullets. When presented with the coroner's evidence, that Yatim had been paralyzed in the first volley and could not have raised his body as Forcillo suggested, Forcillo conceded that he had *misperceived* Yatim's actions, but that *misperception* was reasonable due to Yatim's elevated position on the streetcar deck, approximately five feet above ground level where Forcillo was standing, and the casting of shadows by the lights of the attending police squad cars. The jury was charged with deciding if Forcillo's perception of the threat Yatim posed was one that any reasonable person would also perceive, in light of the video and coroner's evidence and Forcillo's own testimony.

[3] Discussions of the interpretation of 'reasonable threat' are beyond the scope of this paper. Readers with an interest may refer to Watson (2017), Burns (2008) or Lynch & Bogen (1996).
[4] A toxicology report conducted as part of Yatim's autopsy concluded that he had moderate to high levels of MDMA in his bloodstream as well as trace levels of cocaine.

The jury's decision indicates that, in reference to the first count, Forcillo's perceptions were warranted. However, in reference to the second count, not only did Forcillo's version of events contradict what was medically possible as noted through the coroner's findings, but also that a reasonable person would not have come to the same conclusion, and as such they found Forcillo guilty of attempted murder. In Justice Then's interpretation of the jury's decision, he concluded that Forcillo's attention to detail that accorded with what was seen on video (that Yatim rearmed himself) as well as aspects of his testimony that were not recovered on video (that Yatim made menacing facial gestures) ruled out the plausibility of *misperceiving* Yatim raise his body by 45 degrees.[5]

When it comes to evaluating the role of video evidence in the Forcillo trial as summarized by Justice Then, one may be forgiven for arriving at the conclusion that the video was of exceptional and particular significance. However, in reviewing the totality of the evidence, the more subtle aspects of Justice Then's reasons for sentence, and the legal maxim that "all evidence must be taken in context" (Rupic, 2016, personal communication), the video's role in trial becomes much more tenuous. Our understanding of video's role in trial is best understood by the questions that video invokes, rather than answers or explanations about what is seen on video. As Schneider (2016) shows of videos of police-involved shootings, including the Yatim incident, and Doyle (2003) shows of videos of police work more generally, interpretations of police actions on video are highly subjective.

[5] The reader may conclude that that this is tantamount to accusing Forcillo of lying about his perceptions, which would invoke a series of complex legal arguments that could be used to overturn the decision. However, Justice Then notes that Forcillo could reasonably *believe* he observed Yatim elevate his body after the fact, but that such a belief could not correspond with his observations in the moment. In other words, if this is what Forcillo believes or believed, it would be explained as a product of Forcillo's mind, after the fact, rather than a description of what he experienced at the time.

In this case, the video explicitly called for an explanation or account of what occurred in the five-and-a-half second pause, as a way of distinguishing what level of threat may be perceived directly preceding both the first and second transactions. It could not be said to settle, beyond a reasonable doubt, what Forcillo was perceiving in those moments, or settle a potential "reality disjuncture" (Pollner, 1975) between the coroner and Forcillo. For a number of reasons, the video did not re-present the incident as Forcillo had experienced it. The first is as addressed above; the angle from which the cameras captured the incident were not at the same angle from which Forcillo was perceiving the incident. In addition to this, Forcillo's psychological state during the interaction is markedely different than that of jurors, as was noted during courtroom deliberations. Forcillo's defense introduced the argument that Forcillo was in a hightened state of alert and was experiencing 'tunnel vision' associated with highly stressful incidents. Viewing the video after the fact does not re-present the experience as the lived experience of Forcillo through the interaction (cf. Mieszkowski, 2012). Perhaps most significantly, jurors observed the incident from an 'interpretively assymetical' location (Coulter, 1975; Mair, Elsey, Watson, & Smith, 2013); jurors knew the outcomes of the incident and were using video to account for the precipitating factors, and knew Yatim had been paralyzed by the first volley, which Forcillo could not have known. As such, jurors were not using the video as a way of settling what Forcillo had perceived — they did not use the video as a one-for-one re-presenation of what Forcillo had perceived and how he had perceived it. Instead, the video called into question the relevance of what Forcillo *must have been perceiving in the second transaction that he could not have been perceiving in the first transaction* because these two transactions had clearly different starting points and material differences in how Yatim could be reasonably perceived in relation to the video and the coroner's conclusions. As a result, the incident, broken in two constituent parts, is comprised of the same *actus reus* (shooting) but, in accordance with the jury's decision, two separate *mens rea* (non-culpable homicide in the first transaction, culpable

homicide in the second). The video raises questions about Forcillo's (mis)perception, but does not singularly answer those questions. Because Yatim's physical presence and condition were not — and could not have been — the same at the start of the first transaction and the start of the second transaction, Forcillo's perception of threat should also, common sensically, have been different. The common sense understanding of the 're-assessment' Forcillo testified to performing during the five-and-a-half second pause implies that Forcillo was cognizant that the conditions of the situation had changed, to the degree that he was re-evaluating those conditions prior to deciding to shoot a second time. The video alone does not rule out Forcillo's *subjective perception* of Yatim's movements; while the video recovers some aspects of the nature of the interaction between Forcillo and Yatim, it is Forcillo's testimony and the coroner's report, combined with the video, that discredit Forcillo's suggestion that he saw Yatim raise his body by 45 degrees. The video is best understood as establishing the length of time between transactions, and that the length of time was significant enough that Forcillo could not reasonably perceive the threat Yatim posed to be the same between the first and second transaction.

Videos as 'Immutable Mobiles,' 'Signs,' and as Occassioning Requests for Explanation

The idea that images, either still or moving, provide some form of 'objective' account of an incident's occurrence may continue to have some cachet, but decades of scholarship have called this into question. Goodwin's (1994) analysis of the trials (one criminal, one civil rights) of the police officers involved in the Rodney King beating demonstrated how different approaches to interpreting events re-presented through video can lead to different judicial outcomes. Goodwin's analysis showed that, in the criminal trial, the prosecution presumed that what was seen on video was a "self-explicating objective record" (1994, p. 615) that "spoke for itself" (1994, p. 616). However, by using an expert witness in police use of force to 'code' the individual strikes as in accordance with police procedures and as a response to King's bodily movements, the defense in the criminal

trial successfully argued that the actions of the police were within reason.

An issue with video's presentation in relation to the Forcillo trial is the question to be settled was not a 'factual' issue that could be resolved by looking at a tape of the incident (as was also evidently the case in the trials of the officers who beat King). The jury was not asked to settle if Forcillo had indeed killed Yatim, but instead whether or not the decision to shoot was *justified* by reasons of Forcillo's perception of the threat Yatim posed to himself and those in his proximity. Not only was the video used in court not physically alligned with Forcillo's perceptions of the incident, but videos do not capture things like a police officer's subjective orientation to fear or assessements of threats. What the video did do in this case was make salient a change-of-state in the incident following the first volley of three bullets. That change of state not only set the possibility of seeing the incident as comprised of two transactions, but also demonstrated the material difference in the possible threat that Yatim could pose to the officers and bystanders in his proximity. This material difference opened the opportunity for the prosecution to question Forcillo's motives and perceptions leading up to deciding to shoot the second volley, but the video did not settle beyond a reasonable doubt whether those motives and perceptions were reasonable under the circumstances. Instead, Forcillo's testimony and the coroner's evidence settled beyond a reasonable doubt that what Forcillo stated he perceived during the incident was not what he was perceiving in the moments just prior to deciding to shoot.

This calls into question how sociologists and criminologists may treat video, not only in response to the proliferation of videos of various incidents that may or may not be treated as crimes, but also in response to the types of questions that are asked of accuseds in accounting for their actions as seen on video. Perhaps one way to think of videos is as 'immutable mobiles,' as discussed by Latour (1990). Latour warned of the folley of treating objects only at the

level of visualization, rather than attending to the way arguments of the visual presentation are informative of what is perceived in those objects. The perception of threat is not 'inscribed' into a video in the same way that bodily movements are; perceptions of threat are interpreted by official auditors (judges and juries) in relation to the 'immutable' aspects of what is seen in those videos. Videos 'immutably' (and with increasing mobility) occasion opportunities to ask the question 'why this now?'— perhaps in a way that a coroner's report and eye-witness testimony do not. It seems at least partially arguable that knowing the prescise length of the pause between volleys occassions not only the explanation that the pause was comprised of a 'reassessement' activity, but also that the conclusions during that reassessment were not reasonable in light of what possible perceptions could have occurred, especially considering what became known after the fact (i.e., that Yatim could not have moved as Forcillo testified). Videos seem to be particularly effective records of sequences of events, and securing either a conviction or an acquittal involves finding the relevant aspects of videos — those aspects that require further explication in order to understand the significance of the actions inscribed in video against the prohibitions of criminal codes — and asking the appropriate questions about these incidents as experienced *on the occasion of the first time through* (Garfinkel, Lynch, & Livingston, 1981). How judges and juries observe these incidents is not how those involved experience them, regardless of how compelling video may be at giving this impression (cf. Coulter, 1975; Coulter & Parsons, 1990; Mair et al., 2012; Mieszkowski, 2012).

A second way to understand video in legal settings is to treat video as *signs* of the nature of incidents rather than records thereof. Following Baccus (1986, p. 6):

> That visibility is a "criterion" for the real-worldliness of social objects is to say that social objects, the objects of analytic social theorizing, are constituted so as to provide for their visibility via *some means*. One such "means" is the

> establishment of sign-reading and indication as an account of their visibility to analysis, i.e., those analytic practices of social theorizing engaged in by investigators which produce visible topics of analysis are accountably seen as "indication" or sign-reading practices.

First, we should note that what the parties in court see in the Forcillo-Yatim video is seen as being *real*, and that at no point, to our knowledge, is the argument advanced that the video does not capture some aspects of the incident that demand explanation. From here, one may note that the five-and-a-half second pause witnessed in the video is a *sign* or mark of a change-of-state, and that the perception of threat can, and in this case *should*, be markedly and perceivably different between the two transactions. The question then becomes how to read what is signified in the video in light of Forcillo's testimony. Aspects of Forcillo's testimony apparently map quite readily to what is signified in the video — that Yatim appears to drop his knife during the first volley, and retreives it during the five-and-a-half second pause. Other aspects are not clearly signified in the video — whether or not Yatim made threatening facial gestures, and whether or not the shadows and Yatim's elevated position relative to Forcillo's made it reasonable to subjectively perceive Yatim raising his body to a 45-degree angle — and the significance of these aspects only gain their sense when considered against the coroner's evidence, as opposed to the video. Rather than settling the incident, the video signifies aspects of the incident that can be seen and understood as not corresponding to proper police procedures or in contradiction to written law. These signs invite speculation or questions about how Forcillo was perceiving the incident, and the account Forcillo provided of his *subjective perceptions* was held to scrutiny. Again, the video does not single-handedly settle for viewers if what Forcillo was perceiving was reasonable to perceive — indeed, the claim is never made that what is shown on video even corresponds with what Forcillo was perceiving. The video signified an occasion for questions about what Forcillo was perceiving at specific points.

When understood this way, the 'powerful' evidence is the conflicting nature of Forcillo's testimony (that he recalls certain aspects with great accuracy, but does not match that accuracy in his assessment of Yatim raising his body) moreso than the video. The video only made questions about Forcillo's momentary perceptions relevant.

Of course, such theorizing is only useful so far as it disturbs our orientation to video as solving problems for prosecuting and defending police who kill, rather than imposing new problems. Theories of video's use cannot anticipate the spectrum of arguments prosecution and defense counsel may make when evaluating police actions as *re-presented* through video. The point here is to challenge the notion that video resolves an issue of police accountability, and while this path is now well worn, arguments in support of increasing video surveillance of police officers as a means to enforcing accountability are still prevalent. In order to understand the benefits of adopting, for example, police-worn body cameras or dashboard cameras, or to come to terms with the significance of cellphone and surveillance video, it is worth considering how the evidence derived from these devices is employed while evaluating police actions.

Conclusion: A Visual Jurisprudence?

Following from Brodeur's skepticism of surveillance and policing, it can seem quite reasonable to draw the conclusion that "[w]ith the development of multifunctional technologies such as the portable phone, in which video camera and other things are integrated, it would seem that we are regressing into a renewed natural condition characterized by multi-focused surveillance of everyone by everyone else" (2010, p. 249). This is a conclusion that Brodeur demonstrated (and I echo) is fairly easily dismissed with cursory attention to the various treatments that video have received. A recent *New York Times* article (Bosman, Smith, & Wines, 2017) catalogued some prevalent themes in juries' deliberations of police killings caught on video. Among them were such issues as the complications of angles and not seeing events as police officers saw them; knowledge of the limits of police training and the (un)availability of less-lethal

weapons and tactics; subjective perceptions of fear experienced by the officer on scene and testified to in court; and the speed at which videos are played and how this affects the understanding of police action *in situ*. In other words, videos have been shown to create problems of interpretation rather than *re-presenting*, for all intents and purposes, how police officers interact with the individuals they kill.

Recently, issues of 'visual jurisprudence' have come to the fore in legal theorizing (Biber, 2009; Marusek, 2014; Mezey, 2013; Sherwin, Feingenson, & Spiesel, 2006). The general consensus in this field of study is that visual evidence is particularly prone to being overly persuasive, especially given the quality of most visual evidence used in court. As a result, these scholars contend that a more critical understanding of how meaning is attached to visual (video and photographic) evidence is warranted. Paraphrasing Mezey (2013), we lack a legal vernacular for interrogating image evidence in the way we interrogate witness testimony or other forms of evidence. For scholars working in this domain, visual (video) evidence is far too often accepted as an unproblematic *re-presentation* of the circumstances under legal scrutiny. While broadly in agreement with this line of reasoning, here another issue comes to the fore: what types of questions are even asked if and when video evidence emerges from an incident? What the Forcillo case shows us — along with a number of recent cases of officer-involved violence in the United States — is what is depicted in the video is often of questionable relevance to the key factors to be considered at trial (i.e., whether or not an officer felt threatened by an individual they used physical or lethal force upon).

This is not to suggest that video cannot shed some light on these issues, but rather to note that frequently video does not and cannot depict things like perceptions of threat that will, for all intents and purposes, be used to settle criminal proceedings against police officers. Before arriving at the conclusion that videos of (violent)

police interactions with the public will somehow increase police accountability by authoritatively *re-presenting* police actions in an 'objective' manner, it is likely worth considering how the legal system, including various criminal codes and legislation pertaining to police use-of-force, frame the parameters for use-of-force, as well as the conventional explanations police officers use in explaining the decision to deploy lethal force. When perceptions of threat are the threshold for deciding the propriety of a police officer's decision to deploy lethal force, video evidence, and visual jurisprudence, will almost certainly take a back seat to other forms of evidence, especially officer testimony. In other words, there is not so much a concern for settling what can or cannot be seen on video in these cases, but rather the limits of what video affords as evidence are exceeded, and judges and juries are reliant on more than the visual in order to come to conclusions about the propriety of police actions in such cases.

In this article, I encourage skepticism for the prospect of video evidence of police-involved violence by examining an aspect of the legal reasoning required to come to the conclusion that Constable James Forcillo of the Toronto Police Service ought to be understood as performing two separate transactions, *re-presented* in security camera footage of an incident where he shot and killed Sammy Yatim. While the video made salient a five-and-a-half second pause between the first and second transactions, which occasioned the question of what Forcillo had perceived just prior to either transaction that led him to decide to shoot Yatim, the full social and legal significance of the pause could not be arrived at without reference to Forcillo's testimony about what he had perceived, and a coroner's report that indicated what Forcillo claimed to have seen could not have been the case. While the video was described as particularly 'powerful' evidence, it was not so powerful as to explicate its own sense. Instead, the CPS argued, and Forcillo in effect agreed to through his testimony, that the video demonstrated the incident was comprised of two separate transactions, and the pause separating those transactions made the issue of Forcillo's perception of Yatim in

each transaction an issue for scrutiny. In this case, video showed a sequence of events rather than a singular event, and the consequence of this was that Forcillo's actions were ruled justified in the first transaction and not justified in the second.

It should be noted that in various cases brought to court (i.e., Officer Betty Jo Shelby who shot and killed Terence Crutcher; Officer Michael Slager who shot and killed Walter Scott; and Officer Jeronimo Yanez who shot and killed Philando Castile) the facts as they could be *re-presented* on video have always been the same; the officers in these shootings do not contest that they are responsible for these deaths, but rather argue that their experience of 'fear' justified their decision to shoot. Forcillo expressed a similar sentiment, both in his testimony about the threat he perceived Yatim to be and in his statement, "Police officers don't get paid to get stabbed and shot… We're to go home to our families" (Blatchford, 2015). The consequence of this is, until such time as the advent of cameras that objectively captures a police officer's subjective experience of fear, videos will remain, at best, partial records of instances of police use of force. This is not to say that videos are not significant, but only to also attend to the fact that videos do not do the work themselves; they require significant interpretation in reflection of what they *re-present* of an individual's unique experience in the occasion, of how they are meant to be seen — especially in relation to the sequential nature of evaluating how the actions precipitating the decision to shoot are used to justify that shooting — and what relevant legislation and legal reasoning apply to what is seen on tape. As a result, any suggestion that video can resolve the pertinent factors contributing to a police-involved shooting are, at best, ambitious, and, at worst, beyond the scope of plausibility. Video can be an important form of evidence in legal proceedings so long as we avoid ascriptions of special power to video evidence and instead consider the manner in which video is employed alongside all relevant evidence in a particular case to establish the propriety, or lack thereof, in deciding to deploy lethal force.

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