

Discrimination and policing: case study

Ife Thompson explores how to resist racial profiling and racially discriminatory policing against Black communities in criminal cases.



Ife Thompson

Black and racialised communities have a history of rising up and calling out the racist, violent and even deadly policing exclusively reserved for them. It led to an array of community-based battles for justice in the courts in cases like the Mangrove Nine and the Stockwell Six, and on the streets, in the Brixton uprisings of 1981, Broadwater Farm in 1985, protests following the police shooting of Mark Duggan in 2011, Black Lives Matter protests in 2020, and, most recently, protests following the police shooting of Chris Kaba on 5 September 2022. Inquiries (Macpherson¹), reviews (Lammy,² McGregor-Smith,³ Angiolini⁴ and, most recently, Casey⁵) and reports⁶ have, time and time again, solidified and confirmed to the wider public what the community already knew: that the policing to which our communities are subject is racially discriminatory, disproportionate, unfair and harmful. Lawyers in courts across the UK see the disproportionate and discriminatory outcomes that their Black clients face throughout the criminal justice system. As lawyers, we need to find new and creative ways to call out these injustices and shape them into our arguments at court. In this article, I explore the ways that I have been able to do so, using international and local data and research on anti-Blackness and through the concept of racial trauma, in a matter I dealt with in the youth court.

Background issues

The UN Committee on the Elimination of Racial Discrimination, when reviewing the UK's fulfilment of its legal obligations under the International Convention on the Elimination of All Forms of Racial Discrimination in 2016, expressed concerns at reports that persons of African descent faced institutional racism in their enjoyment of rights, including the specific areas mentioned in the concluding observations, such as health, employment, education, stop-and-search practices and the criminal justice system as a whole.⁷ The committee stated that it remained concerned that the use of stop-and-search powers continued to have a disproportionate impact on people belonging to ethnic minorities, especially young men.

In 2019, the UN Working Group of Experts on People of African Descent (WGEPAD) noted that: 'States fighting the world drug problem must acknowledge the devastating impact of their methods on people of African descent', who are 'more likely to be stopped, searched, arrested, convicted, and harshly sentenced ... for drug crimes', and 'amend them as necessary'.⁸ It stated:

The global war on drugs has disproportionately targeted people of African descent and disregarded the massive costs to the dignity, humanity and freedom of individuals ... [it] has operated more effectively as a system of racial control than as a mechanism for combating the use and trafficking of narcotics.

The criminal justice system reflects racial disparities and stereotypes grounded in history, the UN experts explained, saying that concern over narcotics 'cannot excuse racism in the development of policy or the deployment of resources'.

The type of policing highlighted by the UN not only separates families from their loved ones, but often does so unlawfully and in a racially discriminatory manner. Racially discriminatory policing has a negative impact on people's enjoyment of other human rights, including the rights to life, non-discrimination, liberty and security, privacy, freedom of movement, protection against arbitrary arrest and other interventions, effective remedy, and protection of the best interests of the child.

It also has an effect on the mental health of members of Black communities and communities of colour. The intensified surveillance and profiling have wreaked enormous harms on Black communities. 'Black communities are not only fearful of being stopped or harassed by the police; Black communities live in a state of heightened anxiety surrounding the possibility of bodily harm in the name of law enforcement.'⁹ A genuine fear of law enforcement officers exists among many in the Black community, a response that is rational given the circumstances.

This type of response is known as racial trauma, which is a form of race-based stress, and refers to the reactions of (Black and) people of colour (BPOC) to dangerous events and real or perceived experiences of racial discrimination.¹⁰ Such experiences can be interpersonal and/or institutional. They may include threats of harm and injury, humiliating and shaming events, and witnessing racial discrimination towards other

BPOC. Although similar to post-traumatic stress disorder, racial trauma is unique in that it involves ongoing individual and collective injuries due to exposure and re-exposure to race-based stress. Racism can be life-threatening to BPOC, due to their exposure to racial microaggressions, vicarious trauma, and the invisibility of racial trauma's historical roots.¹¹ Cumulative racial trauma can leave scars for those who are dehumanised. It is important that practitioners dealing with Black and racialised communities within the criminal justice system are alive to these historical and ongoing traumas due to racism, as they impact community relations with police and the justice system in the UK. A holistic and truthful picture needs to be reflected as part of your client's case, as these historical and community traumas may have impacted their choices in any given circumstance.

Facts

I represented a child of colour, aged 17, who was racially profiled by undercover police officers as a Mixed Black child due to his lighter complexion and braids. One of the grounds that the officers used to justify the suspicion leading to an arrest was: 'Child Y was noticeable due to his large black puffer coat and his braided hair'. The officers also believed that he was dealing drugs as he was in a part of the city where that was known to take place.

The officers, who were in plain clothes, ran towards Y shouting 'police, police' without showing a warrant card, thus preventing him from being able to prove that they were in fact who they said they were. He ran away as he believed that they would attack him. One of the officers caught up with him and subjected him to a number of knee and hand strikes to the fleshy part of his upper legs and his torso, with the intention, according to the officer, of causing transient pain and shock to gain control of his arms. After being subjected to high levels of police force, Y ran away from them as a means of protecting himself from further force being used against him. He was then charged with possession of cannabis and obstructing a police officer.

Court appearance

Y was originally advised by the agent who represented him during his first appearance to plead guilty on the basis that he was running away from the police and that this was an obstruction. Reading the facts, I immediately noticed the officers were in plain

clothes and used anti-Black stereotypes to justify their grounds for suspicion. This is not in line with the Police and Criminal Evidence Act 1984 and would give rise to a claim against the police (something to tell the client about). I also noted the disproportionate level of force from one of the officers, which he accepted he used on my client, before my client attempted to maintain his distance from the police by moving away from them after being subjected to this high level of force.

I asked Y to tell me more about the decision to plead guilty as, from what I had read on the papers, I considered he had a defence. Y stated he was advised to plead guilty, but explained that he had only run away because he was scared of the police due to his past experiences as a person of colour and he really did not understand the charge. He also explained to me that he had seriously high levels of anxiety when he was around police, especially when subjected to a stop and search. I affirmed that his feelings were valid and that they were in line with the research around racial trauma encounters and its effects on communities of colour. I advised Y to see a racial trauma expert who could talk to him about this issue and see if and how his race-based trauma played a part in his decision-making that day. Y agreed.

Y also told me that he had learning difficulties and needed things to be explained to him a number of times before he understood. This was not done for him at his first appearance or when the undercover police questioned him.

Decision/outcome

I successfully applied to the court to vacate the original guilty plea entered to obstructing a police officer, arguing three grounds:

1. Mens rea was not met due to the racial trauma my client experienced from the police that day and the violent policing to which he was exposed.
2. He had learning difficulties and an education, health and care plan. I was able to rely on my knowledge of education law to ask Y about this, as it was not noted anywhere in papers or former reports by the youth offending team, despite the team being aware he had this plan in place.
3. He had a defence that he was not previously aware of and should be allowed to explore this at trial.

The lay bench granted the application to vacate the guilty plea. I completed

the preparation for effective trial (PET) form and wrote in the form that a racial trauma expert would be required to attend court. The court legal adviser mentioned that they had never heard of a racial trauma expert before and asked why one was required. I stated that an expert of this sort would be required to show that my client did not have the required mens rea to wilfully obstruct the police as he was subject to violent policing during the encounter that would have triggered a trauma-based response leading him to avoid staying around the police. I also made it clear that the force used against my client was disproportionate and harmful, and because people of colour die at the hands of the police in such high numbers, he was right to believe that he would be safer away from the police after they had subjected him to high levels of force.

I then drafted 10-page representations, focusing on the prosecutorial test not being met, drawing on public interest in the context of the recent BLM protests and the move towards anti-racism work in the UK and fair and racially equitable policing and the standard of policing expected by the public. One of the ways in which I drew out the issues of anti-Black racism was as follows:

'[T]he officer stated in his [witness statement] Child Y was noticeable due to his large black puffer coat and his braided hair.'

I noted that large puffer jackets are a distinctive part of urban youth wear and are often seen in music videos of young people of colour. Braiding is also a hair maintenance requirement for afro-textured hair, there is nothing specifically notable about having braided hair. The officer has not made it clear why it is notable that Child Y had braided hair. In the absence of such an explanation, we are concerned with the link of braided hair as one of the reasons to subject Child Y to stop and subsequent arrest. The officer explicitly states Child Y is a suspicious person due to his braiding hairstyle, braiding is a style that is closely associated with Black people due to cultural and historic reasonings and there is concern that [his] proximity to Blackness through his hairstyle led to him being criminalised, as we know Black communities are disproportionately policed out of all other BAME groups. We are concerned there is a racialised nature to this arrest as it could have been a key factor as to why there was a disproportionate use of force.

I was able to build on research that spans on cultural heritage, Black youth culture, institutionalised racism and anti-Blackness to support our position that the policing reserved for Child

Y was racially discriminatory. Racial trauma points were also addressed in these representations.

We did not receive a response from the Crown Prosecution Service (CPS) before the trial date, but I nonetheless pushed for submissions to be read on the day of trial by the CPS agents, for the matter to be reviewed, and that we receive an official response. I made it clear in court that we should have received a response and the trial should not start until the matter was reviewed. The agent read the submissions and immediately called the reviewing lawyer, and, in light of all that had happened on the case, decided it would not be in the interests of justice to proceed.

Comment

Throughout this case, I was able to use my knowledge of racial trauma to understand my client's experience and position, and to expose his experience of racially traumatic and discriminatory policing to the court in a manner that would positively support his case and position.

As an advocate, it is paramount that you can respond to, empathise with and understand the issues that your clients face, and bring them to the forefront of the court's mind. We must be creative in using the law to support our clients' positions, even when a point may seem niche. If we apply our legal skills effectively, we can use them to highlight and combat the racial injustice that our clients face.

1. *The Stephen Lawrence Inquiry: report of an inquiry by Sir William Macpherson of Cluny*, Cm 4262, February 1999.
2. *The Lammy Review: final report*, 8 September 2017.
3. *Race in the workplace: the McGregor-Smith Review*, Department for Business, Energy and Industrial Strategy, 28 February 2017.

4. *Report of the Independent Review of Deaths and Serious Incidents in Police Custody*, Home Office, January 2017.
5. See Mark Townsend, "'Sack sexist and racist officers' Met Police report rules", *Guardian*, 16 October 2022.
6. Dr Laura Connelly, Roxy Legane and Dr Remi Joseph-Salisbury, *Decriminalise the classroom: a community response to police in Greater Manchester's schools*, Kids of Colour and Northern Police Monitoring Project, August 2020 and Jessica Perera, *How Black working-class youth are criminalised and excluded in the English school system: a London case study*, Institute of Race Relations, 2020.
7. *Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland*, CERD/C/GBR/CO/21-23, 3 October 2016, para 22, page 6.
8. 'Fight against world drug problem must address unjust impact on people of African descent, say UN rights experts', WGEPAD news release, 14 March 2019.
9. Robyn Maynard, *Policing Black lives: state violence in Canada from slavery to the present*, Fernwood Publishing, October 2017, page 274.
10. Robert T Carter, 'Racism and psychological and emotional injury: recognizing and assessing race-based traumatic stress', *The Counseling Psychologist*, vol 35, issue 1, January 2007.
11. Janet E Helms, Guerda Nicolas and Carlton E Green, 'Racism and ethnoviolence as trauma: enhancing professional and research training', *Traumatology*, vol 18, issue 1, March 2012.

Further reading

Making Black lives matter in the criminal justice system: a guide for antiracist lawyers, Howard League for Penal Reform, 2021.

Ife Thompson is a pupil barrister at 1MCB Chambers and the founder of Blam UK and Black Protest Legal Support.

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