

Fatal shooting of Mr Fakalago in Newlands justified

1. On 7 June 2022, two Police officers fatally shot Mr Samuel Fakalago, who was holding a knife to a woman's throat. Police notified us of the shooting as required by section 13 of the Independent Police Conduct Authority Act 1988.
2. Police went to the Kingsbridge Place, Newlands address after receiving calls that a man had beaten a pregnant woman (Ms Z) on her driveway, threatened to stab her, and dragged her inside the house.
3. When Police arrived, Mr Fakalago threatened to shoot the officers and barricaded the front door. Ms Z's four-year-old daughter was then let out of the house.
4. Police surrounded the house while waiting for the Armed Offenders Squad to arrive. However, before they arrived, Mr Fakalago came to the back door with Ms Z, holding a knife to her throat. Mr Fakalago did not drop the knife when challenged, and two officers each fired four shots. Four of the eight shots hit Mr Fakalago.
5. Officers provided first aid to Mr Fakalago. However, he died at the scene.
6. The Authority investigated the Police response to this incident, from the time of the emergency calls to the shooting of Mr Fakalago and its aftermath.
7. This report focuses on the decision of the two officers to shoot Mr Fakalago.

The Authority's Findings

ISSUE: Were Officers D and E justified in deciding to shoot Mr Fakalago?

Officers D and E were justified in their decision to shoot at Mr Fakalago to save the life of Ms Z.

Analysis of the Issue

BACKGROUND

8. Just before 3pm, the Police Emergency Communications Centre received two 111 calls. The callers reported:
 - a man was “*beating the shit out of his missus*”;
 - the woman was trying to leave and the man would not let her;
 - the woman was bleeding from the face;
 - the man had dragged the woman inside by her hair;
 - the man had threatened to stab the woman if she did not start listening to him;
 - the woman was pregnant;
 - a woman could be heard screaming inside the house;
 - the man could be heard smashing things inside the house; and
 - there was also a young girl in the house.
9. A description was provided of the man including that he had a King Cobra tattooed on him and that he might be mentally unstable.
10. Officers A, B and C were the first to attend the incident, which they believed to be a family harm matter.
11. In accordance with Police firearms policy, they each armed themselves with a Glock pistol and put on hard armour plates.¹ This was appropriate as Police believed the man may have been linked to an earlier incident in the area involving a firearm, and the man had threatened to stab Ms Z. Each of the officers also had pepper spray and Tasers with them.
12. Upon arriving at the front door, one of the officers saw Ms Z had bleeding cuts around her mouth, which led him to believe she had been assaulted.
13. The officers tried to get Mr Fakalago to come outside and speak with them. However, he refused.
14. Mr Fakalago:
 - was aggressive, erratic, and yelled abuse at them;

¹ A metal plate worn over Stab Resistant Body Armour which provides additional protection of vital organs during incidents involving firearms.

- was unsteady on his feet and appeared to be intoxicated (it was later confirmed that Mr Fakalago had high levels of alcohol in his blood.);
 - pointed his finger at an officer, imitating the discharge of a firearm;
 - told an officer that Police had to leave or they were “ *gonna get tooled*”;
 - positioned his hands to mimic holding a rifle and told an officer: “... *if you guys come in here, I’m gonna come out with a heavy hitter*”, mentioning an AR-15 (a lightweight semi-automatic rifle); and
 - barricaded the front door with furniture to prevent entry.
15. At one stage, an officer saw Mr Fakalago and Ms Z in the laundry. Mr Fakalago was standing very close to Ms Z, face-to-face with her, holding a knife in his hand, leaning towards a wall. Mr Fakalago was seen to ‘stab’ or ‘punch’ the wall four or five times with the knife, while Ms Z was holding her hands in front of her chest looking scared. They then disappeared from view as they went further into the house.
16. More armed officers arrived to assist, including a Police dog handler. A decision was made not to release the dog into the house as that could place Ms Z and her daughter at risk of being bitten and injured. The Armed Offenders Squad, including a Police negotiator, were also called to attend.

WERE OFFICERS D AND E JUSTIFIED IN DECIDING TO SHOOT MR FAKALAGO?

What happened immediately before the shooting?

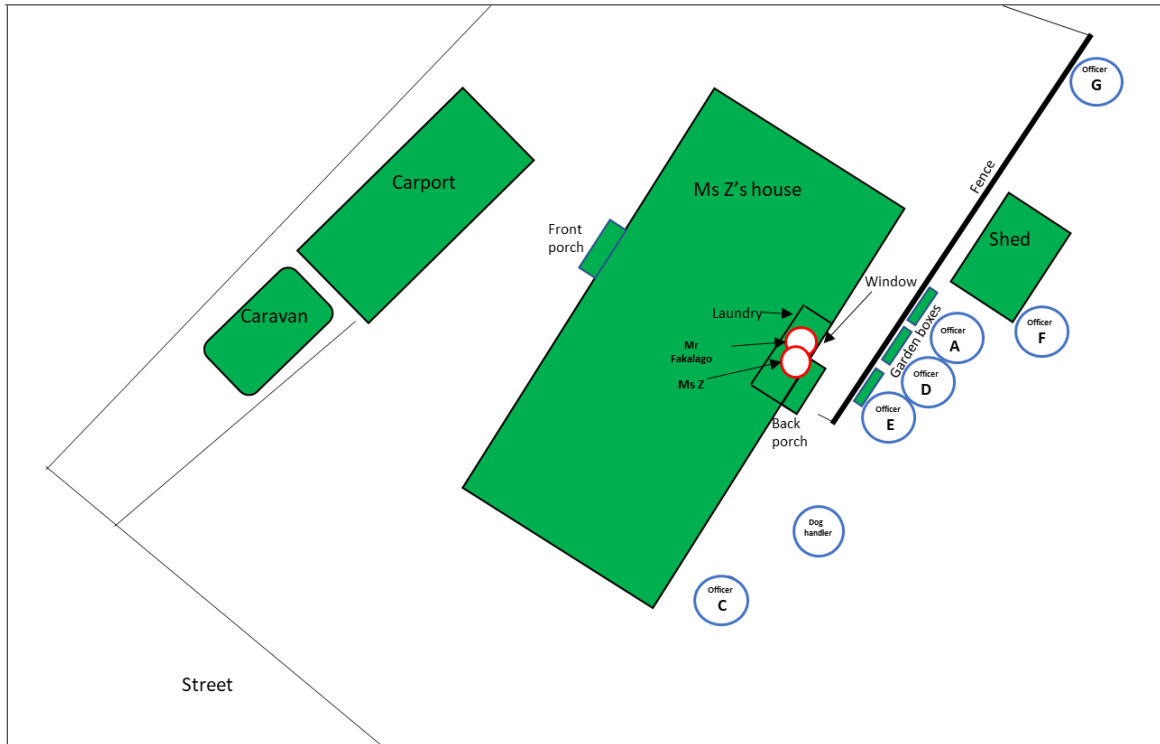
17. By 3.48pm, there were five officers positioned around the property, and five standing by the street-facing wall of the house. The five by the wall included the dog handler and his dog, and Officers A, C, D and E.
18. On the right-hand side of the house, there was a waist-high fence between the house and the neighbouring property, with garden boxes on the neighbour’s side of the fence. Officer F was monitoring the back door, positioned by a shed on the neighbour’s property. Officer G was also by the shed, but further back.
19. The back door led into the laundry, with an internal door into the house. There was a window in the laundry. One step led down from the back door to a covered-in porch, and two steps led from the side of the porch to the ground.
20. From his position, Officer F challenged Mr Fakalago and yelled out: “... *it’s the Police, we have the house surrounded, you just need to give yourself up*”. Officer F heard someone respond from inside the house but cannot recall what was said.
21. Soon after, the back door opened, and Ms Z appeared. Officers F and G believed she was trying to run outside. Officer F recalls thinking: “*Great, she’s managed to get away from him inside the house and she’s trying to flee, she’s trying to run to safety.*”

22. When Officer F saw this he yelled at Ms Z to run to him. However, she appeared unable to move any further than a metre or so from the door. Officer F then saw that the collar of her t-shirt was being pulled hard against her neck. He could not see Mr Fakalago, but assumed it was him holding onto Ms Z.
23. From where he was standing, Officer G could see Mr Fakalago's face, hair, and part of the right side of his body in the doorframe. He saw Mr Fakalago was holding onto the back of Ms Z's collar, with his right hand. Officer G says Mr Fakalago "... was throwing his weight round... inside the laundry area, just to get her inside. Or get some sort of traction and drag her inside."
24. Officer G says he and Officer F repeatedly yelled at Mr Fakalago to let Ms Z go, however neither could recall their exact words. Officers A, D and E however described them shouting: "They're coming out", "He's got a knife", and commands such as: "Drop the knife" and "Let her go".
25. Hearing these challenges, Officers A, D and E immediately ran from their position at the front of the house to the fence and garden boxes on the neighbour's property. From this position they each had a direct line of sight into the porch and laundry area about five metres in front of them.²
26. Officer A says as she ran past the porch, she saw the right side of Mr Fakalago's head and his right shoulder. He was standing behind Ms Z, "using her to cover him". Officer A saw Mr Fakalago was holding a knife to Ms Z's throat,³ while pulling Ms Z backwards.
27. Officer A recalls immediately raising her Glock pistol, repeatedly yelling at Mr Fakalago to "drop the knife". She could see some straps of Ms Z's singlet and bra had been cut. Officer A told us: "I genuinely thought he was gonna kill her, like he was pressing the knife against her throat, tryna rip her back into the house".
28. As Mr Fakalago pulled Ms Z backwards into the doorway, Ms Z fell down, landing on the back doorstep, in the doorway. Officer A recalls Ms Z was screaming, crying, and clearly distressed.
29. Officer A says Ms Z was struggling against Mr Fakalago and pushing upwards at times. They did not stop moving: "... one minute they'd be up... high and then the next minute they'd kind of drop down a bit and the knife never moved. Just their bodies and how they were twisting...".
30. Officer A recalls Mr Fakalago was in a 'high' position, holding Ms Z from behind, "she was screaming and he was just pulling her back in with the knife to her throat". Officer A said she then heard shots fired (by Officers D and E). She says Mr Fakalago did not initially fall. She says he "kind of stumbled back" while still holding Ms Z and the knife, before falling to the ground.

² Officer G's view of Mr Fakalago and Ms Z became obscured when the other officers arrived.

³ Following the incident, the knife was found with a broken blade. The blade remaining attached to the handle was approximately 68 millimetres long.

The below map shows the approximate positions of the key officers at the time Mr Fakalago was shot.



What does Ms Z say?

31. Ms Z denied that Mr Fakalago had assaulted her in the driveway or that she was in any danger from him inside the house. She did confirm however that Mr Fakalago had a knife to her throat when they were in the laundry, but said he had no intention of hurting her. She says:

“... he did have the knife but he was showing the Police that if you come in, this is what’s gonna happen, even though I knew that was not gonna happen... I knew I wasn’t in danger but him, he needed to show the Police that I was in danger so that it would buy us more time.”

Were Officers D and E justified in firing at Mr Fakalago?

32. Officers D and E had been following the incident on the Police radio prior to arriving at Kingsbridge Place. They initially planned to assist in cordoning the property until the Armed Offenders Squad arrived.
33. Neither Officer D or Officer E had been to the address or dealt with Mr Fakalago before. They did not know who Mr Fakalago was until after the incident.
34. Officers D and E said they were at the street-facing wall of the house when they heard Officers F and G yelling: “They’re coming out”, “He’s got a knife” and “Let her go”. Officer D says Ms Z was screaming intermittently and sounded terrified.

35. Officer D ran towards the porch with a Bushmaster rifle raised, stopping at the point by the garden boxes where the inside of the porch could be seen. Officer D saw Mr Fakalago struggling to push Ms Z back inside the house before they both appeared to stumble.
36. Officer E followed with a Bushmaster rifle pointing downwards and ran to stand next to Officer D by the garden boxes.⁴ Officer E could see Ms Z on the floor in the porch area. Mr Fakalago had his arms around Ms Z's neck and shoulder area and was moving backwards, towards the inside of the house.
37. As they entered further into the laundry, Mr Fakalago appeared through the laundry window. From where they were positioned beside each other, Officers D and E could see Mr Fakalago's upper body. Officer E says although Ms Z could no longer be seen, Mr Fakalago's actions indicated he was dragging her backwards.
38. Mr Fakalago was standing side-on to Officer D, looking down towards the floor. Officer D believed Ms Z was on the ground in front of Mr Fakalago and could hear her screaming.
39. Officer D yelled at Mr Fakalago to let Ms Z go. Mr Fakalago did not look in Officer D's direction and ignored his instructions, looking down towards Ms Z.
40. Officer D then saw Mr Fakalago's upper arm moving in an upwards and downwards motion in what Officer D described as a stabbing motion. He says he believed Mr Fakalago was stabbing Ms Z.
41. Seeing this, using the scope of the rifle, Officer D aimed just below the laundry windowsill and fired four bullets, aiming for Mr Fakalago's centre mass.
42. At almost the same time, Officer E, still standing next to Officer D, raised the Bushmaster rifle and also fired four bullets at Mr Fakalago.
43. Section 48 of the Crimes Act provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
44. To rely on a defence under section 48, the actions of Officers D and E must be assessed on both a subjective and an objective basis. This assessment involves three questions:
 - a) What were the circumstances as each of the officers believed them to be? (a subjective test);
 - b) Did Officers D and E shoot at Mr Fakalago for the purpose of defending Ms Z? (a subjective test) ; and
 - c) Was shooting at Mr Fakalago reasonable in the circumstances as each officer believed them to be? (an objective test).

⁴ Officers D and E stood within a metre of each other.

What did Officers D and E believe the circumstances to be?

What did Officer D believe?

45. Officer D believed:

- by barricading the door, Mr Fakalago was trying to prevent Police from rescuing Ms Z;
- as a member of a gang, Mr Fakalago would be violent; and
- officers at the scene had seen Mr Fakalago with a knife so he had the capability to cause death or grievous bodily harm to Ms Z.

46. Although Officer D could not see the knife in Mr Fakalago's hand, his arm movements led him to believe Mr Fakalago was stabbing Ms Z multiple times. Officer D believed it was necessary to act immediately to save Ms Z's life.

What did Officer E believe?

47. Officer E could see Ms Z on the ground in the porch area. Mr Fakalago had his arms around Ms Z's neck and shoulder area and was moving backwards. He then appeared through the laundry window. Although Officer E could no longer see Ms Z, Mr Fakalago's actions led Officer E to believe he was dragging her backwards.

48. Officer E was fearful for Ms Z's life. Officer E believed Mr Fakalago had a knife, and he was ignoring the instructions of Police. Officer E believed if Mr Fakalago was able to drag Ms Z back into the house, she would die and it was therefore necessary to act immediately to prevent that from happening.

49. In our assessment, both officers' beliefs, as described, were genuine.

Was Officers D's and E's use of force for the purpose of defending Ms Z?

50. Officers D and E decided to fire at Mr Fakalago because they believed he was about to kill Ms Z. Their use of force was undoubtedly for the purpose of defending her.

Was Officers D's and E's use of force against Mr Fakalago reasonable in the circumstances as they believed them to be?

51. Although neither Officer D nor Officer E saw the knife in Mr Fakalago's hand when they shot him, they could hear other officers yelling at him to "drop the knife". Therefore, it was reasonable to conclude that he had one.

52. It was reasonable for both officers to believe Mr Fakalago intended to cause serious harm or death to Ms Z. Mr Fakalago:

- had a knife and had shown an intent to injure Ms Z;
- was positioned in a way that indicated he had control over Ms Z,

- was dragging Ms Z backwards and raising his arm up and down in what Officer D believed was a stabbing motion; and
 - was refusing to let Ms Z go.
53. In total, eight shots were fired in the space of about three seconds. Footage shows three shots were fired, followed by a brief pause of less than one second, then a volley of five shots.⁵ Three of the bullets went through the laundry window, two through the window frame, and three through the cladding under the window. We cannot determine which of the two officers fired the final shot. Both officers fired shots which proved fatal to Mr Fakalago.
54. Both Officers D and E say they fired until Mr Fakalago dropped from sight, and they believed he no longer posed a threat to Ms Z.
55. Officer D initially considered transitioning to a Taser while running into position by the garden box but thought it would be difficult to hit Mr Fakalago without also hitting Ms Z. Officer D also believed it would not be possible to run to Mr Fakalago quickly enough to stop him from continuing to stab Ms Z, given the garden box and fence were in the way. Officer D believed the firearm was the best option as it was immediate and accurate at a distance.
56. Officer E also considered other tactical options but did not consider it viable to go “hands on” with Mr Fakalago, given he had a knife. Officer E says: “I couldn’t come up with any other way that we were gonna be able to stop him”.
57. We note Officer A also considered firing a Taser, however she was further away from Mr Fakalago than Officers D and E, and she thought a Taser would be ineffective. She was also concerned that a Taser might accidentally hit Ms Z.
58. We acknowledge there was a real risk of Ms Z being accidentally shot by Officers D and E when they discharged their weapons. We have considered this carefully and remain satisfied that Officers D and E needed to act immediately to prevent Mr Fakalago from seriously injuring or killing Ms Z, and the opportunity to pause or deploy less lethal options was not available to them.

FINDING

Officers D and E were justified in their decision to shoot at Mr Fakalago to save the life of Ms Z.

⁵ Mr Fakalago received two shots to the head, one to his chest, and one to his arm.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

2 November 2023

IPCA: 22-13894

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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