

Non-fatal shooting in Stratford justified

1. On 27 March 2023, a man (Mr X) Police were seeking to arrest was involved in a pursuit. During this pursuit, Mr X fired a shotgun at Police who were following. He eventually abandoned his car and ran away. Police tracked Mr X to a house in Stratford, arriving just after midnight on 28 March 2023.
2. Soon after arrival at the house, an officer (Officer A) fired three shots at Mr X. All three shots missed. Police surrounded the house, and Mr X surrendered 14 hours later.
3. Police notified the Authority of the incident in accordance with the Memorandum of Understanding between Police and the Authority.¹ Accordingly, the Authority conducted an independent investigation into the incident. The report below focuses on the decisions by Officer A to fire three shots at Mr X.
4. During our investigation, we also reviewed the planning of the operation to locate Mr X and the management of the subsequent siege. In our view, the satisfactory conclusion of the siege – with Mr X eventually surrendering, and no further shots fired by Police – indicates a well-executed operation, showing the benefits of a patient and planned approach to a potentially dangerous situation. In addition, families who were evacuated by Police during the siege were complimentary of Police actions and how they communicated with them and ensured their safety.
5. Ms Z, the tenant of the house in which Mr X had hidden, complained to the Authority about the Police response after the incident. We are satisfied that Police actions to support Ms Z after the incident were appropriate.

The Authority's Finding

Issue: Was Officer A justified in deciding to shoot at Mr X?

Officer A was justified under section 48 of the Crimes Act 1961 in deciding to shoot at Mr X in defence of himself and others.

¹ <https://www.police.govt.nz/about-us/publication/memorandum-understanding-between-ipca-and-new-zealand-police>

Analysis of the Issue

WAS OFFICER A JUSTIFIED IN DECIDING TO SHOOT AT MR X?

6. In this section we outline the evidence we gathered during our investigation and describe the circumstances in which Officer A decided to fire at Mr X. We then assess whether Officer A's actions were legally justified under section 48 of the Crimes Act 1961, which deals with force used in self-defence or defence of others.

Initial pursuit of Mr X

7. On 27 March 2023, a Police intelligence report was circulated providing details about Mr X, including photographs.² The report noted that:
- He was wanted for arrest for two offences: *Demands to Steal* and *Fails to Stop*.
 - He was likely to be in possession of a firearm, likely to drive dangerously, and unlikely to stop for Police.
 - He has "*a non-compliant history [and his] recent behaviours indicate aggression and he will possibly be assaultive to Police*".
8. On the evening of 27 March 2023, a Police patrol spotted Mr X driving. The officers attempted to stop Mr X, but he drove away at speed, pursued by Police. During this pursuit, Mr X's car was 'spiked' at least twice,³ causing him to drive more slowly, though still dangerously.
9. At one point in the pursuit, Mr X stopped his car in the road and aimed a shotgun at the following Police. He shouted: "*Fuck off or I'll shoot you!*", and Police pulled back. During the pursuit, Mr X fired the shotgun at least once at Police.
10. Mr X eventually abandoned his car, running away from the area.

AOS deployment

What did Officer B recall?

11. As a result of Mr X firing at Police during his pursuit, the Armed Offender Squad (AOS) had been called. A team of officers, including a Police dog and handler, were assigned as the Urgent Action (UA) Team, led by Officer B.⁴
12. The UA Team tracked Mr X's route from his abandoned car, and eventually they came to a street with which Officer B was familiar, and where the dog indicated a strong track.

² Intelligence reports are regularly circulated to officers to make them aware of ongoing inquiries.

³ This means he drove over a tyre deflation device that was laid across the road in an attempt to stop the car.

⁴ The UA Team included Officer A.

13. The time was 12.32am.⁵ As the UA Team followed the Police dog tracking down the street, figures were seen by two members of the UA Team (Officers A and C) in the covered entrance of a house. Officer A called on the people to surrender. Two people immediately entered the house shutting the door behind them, leaving one man (Mr Y) outside.
14. The front of the house has a door and covered entrance in the middle, with rooms either side, and windows facing to the front. For clarity in this report, the room on the front of the house to the left of the front door (as one looks at it) will be referred to as 'the sitting room', and the room to the right as 'the bedroom'. A CCTV camera is situated above the front door, pointing towards the garden.
15. Officers A and C were positioned on the pathway directly in front of the house and called to Mr Y to come forward. He walked slowly towards the officers and lay down on the pathway, and Officer A started to handcuff Mr Y.
16. As Officer A was handcuffing Mr Y, Officer B was standing in the road, to the side of the house by a garage or shed. Officer B says that he heard the sound of a window in the sitting room breaking and believed a shot had been fired at Police by Mr X. Officer B shouted, "*Shots fired, shots fired!*"
17. As Officer B shouted out this warning, a woman (Ms Z, the resident of the house) ran from the house towards Officers A and C, who were still handcuffing Mr Y.
18. Officer B says that he saw two shots fired from the bedroom window, and again called out "*Shots fired!*"
19. Officer B saw a figure at the bedroom window pointing a gun outside the house, he believed at Officers A and C. Officer B aimed his rifle with the intention of shooting the person in the house, but the person pulled back out of sight and Officer B did not fire.

What did Officer D recall?

20. Officer D was part of the UA Team, and was standing next to Officer B.
21. Officer D says that he heard breaking glass and a loud noise that he believed was consistent with a gunshot. He says that he heard the gunshot before the woman (Ms Z) ran from the house, and believes a gun had been fired at Officers A and C from the bedroom window.
22. Officer D says that at some stage he saw a person raising a shotgun at the sitting room window, and he believes a shot was fired. Officer D aimed at the figure with the shotgun, intending to shoot if he got a clear shot, but the figure pulled back from the window and Officer D did not fire.

⁵ A CCTV camera situated on the outside of the house in which Mr X was hiding recorded much of what is subsequently described. The times in this report come from the CCTV, and were corrected to show the actual time, as the time indicated on the footage was an hour behind.

23. Officer D believes he heard three shots being fired from the house, but never saw a muzzle flash:
- first shot from the bedroom window;
 - second shot from the sitting room window; and
 - third shot from the bedroom window.
24. Officer D says that he was “*completely unaware*” that Police had fired back at Mr X. He agreed that it was possible that some of the shots he heard could have been fired by Police at Mr X.

What did Officer C recall?

25. Officer C was teamed with Officer A directly in front of the house and provided cover for Officer A as he handcuffed Mr Y. Officer C said that the light from the torch fitted to the 40mm launcher with which he was armed provided good illumination to the front of the house (this can also be seen on the CCTV footage).
26. Officer C says that, as Mr Y was being handcuffed, he heard the sound of the bedroom window breaking and Officer B call out that shots had been fired. Officer C says that he did not hear shots himself but concluded that it was because he was wearing ear defenders, which reduce the volume of loud noises. Officer C says that he saw no muzzle flash that would come from a shotgun being fired.
27. Officer C says that Ms Z then came running from the house, and he and Officer A pulled Mr Y away to behind a hedge that was between the house and the neighbouring house. Officer C says that Mr Y and Ms Z were directed to wait further down the street. Officer C says he and Officer A had no further dealings with Mr Y and Ms Z, although he knew they were nearby.
28. Having returned to their original position to watch the front and side of the house, Officer C says he saw a shadow moving across the bedroom window. He thought he saw a hand holding a shotgun. Officer C considered exchanging the 40mm launcher for a rifle, which he was also carrying. He decided against this as Officer A was armed with an M4 rifle, and Officer C wanted to keep a ‘non-lethal’ option available.⁶
29. Officer C says that he heard Officer A say that he saw a man holding a shotgun, and heard Officer A fire his rifle. Officer C heard Officer A fire on only one occasion, and does not recall how many shots he fired.

What did Officer A recall?

30. Officer A told us that as they arrived at the house, he saw three people at the front door. He recognised Mr X from the earlier briefing.⁷ Officer A saw Mr X and another person (who was Ms Z) enter the house, slamming the door behind them.

⁶ The 40mm launcher can be used to fire so-called ‘sponge rounds’ to incapacitate a person. These are referred to as non-lethal, or less than lethal, weapons.

⁷ The FLINT report, described above, included two photographs of Mr X.

31. Officer A called Mr Y forward and handcuffed him. However, as he was handcuffing Mr Y, Ms Z came running from the house and Officer A heard a *“loud thud”* and the sound of *“tinkling”* glass, he believes from the sitting room window. He thought, *“that’s weird”*. He says he did not immediately associate the sound with a shot being fired, because of the noise cancelling ear defenders he was wearing.
32. Officer A says that as Ms Z ran from the house, she was shouting that Mr X had a gun and was shooting. Officer A heard Officer B call *“Shots fired”*, and therefore he (Officer A) concluded that Mr X had fired at Police.
33. Officer A quickly moved behind a hedge, taking Mr Y with him. Officer A told Ms Z and Mr Y to stay where they were (on the path in front of the neighbouring house) and took up a position with Officer C at the end of the hedge. From there, Officer A could see the front of the house in which Mr X was hiding. He could also see down the right-hand side of the house in case Mr X attempted to escape using that route.
34. Officer A says he initially aimed his rifle at the windows of the sitting room, as he believed Mr X had fired from that position. Officer A then saw movement at the bedroom window, and he quickly changed his aim. From the illumination provided by Officer C, Officer A says that he saw Mr X raise the shotgun as if to aim and fire at him. Fearing for his life, Officer A fired two quick shots at Mr X. These shots missed Mr X, but Officer A says that Mr X withdrew from the window, out of sight.
35. Officer A told us he did not move to a safer location at this point, as he and Officer C needed to cover the front and side of the house, while still protecting Mr Y and Ms Z who were in a potentially dangerous position.
36. A short while later, Officer A says that he saw Mr X inside the house through the bedroom window. Officer A says that while he could not fully see him, he was confident that he saw Mr X aiming at him with a shotgun. Officer A fired one shot at Mr X; this also missed.
37. Officer A estimated that his third shot was fired 30 seconds to a minute after the first shots, but the CCTV footage shows that it was 3 minutes and 31 seconds later.
38. Soon after this third shot, a Police car collected Mr Y and Ms Z and took them away. Officers A and C then relocated to a position across the road, behind a mound of earth.
39. Officer A did not report at the time that he had fired shots at Mr X. It was only several hours later that he reported he had fired shots.
40. We asked Officer A to summarise why he believed Mr X fired at Police. He said:
 - Mr X had previously fired at Police, showing intent;
 - Mr X still possessed a shotgun, therefore had capability;
 - the sound of a *“loud thud”* was – to Officer A – consistent with the sound of a shotgun blast;

- Ms Z came from the house shouting words to the effect that Mr X was shooting; and
- Officer B called out “Shots fired”.

What did Ms Z recall?

41. Ms Z stated that when Mr X arrived at the house,⁸ she and Mr Y took the shotgun from Mr X and unloaded it, hiding the cartridges in a cupboard.⁹ When Police arrived, they gave the shotgun back to Mr X because he demanded it, but not the cartridges.
42. Ms Z stated that she saw Police firing at the house as she ran from the house.¹⁰

What did Mr X recall?

43. Mr X says that when he arrived at the house, Mr Y and Ms Z unloaded his shotgun, hiding the cartridges.
44. When Police arrived at the house, Mr X demanded Mr Y and Ms Z give him back the shotgun, which they did, but not the cartridges.
45. Mr X says that he ransacked the house to find the shotgun cartridges. However, at the time Police fired at him, the shotgun was not loaded. He agreed that he eventually found the cartridges, and during the siege fired once into the kitchen ceiling, and once into the roof space.
46. When asked to explain how a spent cartridge was found by the front windows, Mr X said he did not know, and suggested it fell from his bag.
47. Mr X says that he broke the house windows, but was adamant he did not fire at Police.

What does the CCTV show?

48. The house had a CCTV camera pointing towards the road, covering the front garden and path. The arrival of Police and the shots fired by Officer A occurred just after midnight on 28 March 2023, over a six-minute period:
 - Police arrived at the house at 12.32am.
 - Mr Y left the house at 12.33:06am.
 - Ms Z left the house at 12.33:34am.
 - Officer A fired shots 1 and 2 at 12.34am.
 - Officer A fired shot 3 at 12.38am.
 - Officer A and B moved position at 12.40am.

⁸ The CCTV footage shows Mr X arriving at the house at 11.19pm.

⁹ We have been unable to contact Mr Y to obtain an account from him.

¹⁰ No evidence has been found to suggest that Police fired shots as Ms Z ran from the house.

Siege

49. During the following hours, Police attempted to persuade Mr X to surrender. While Police fired no more shots, Mr X fired two shots inside the house during the night: once into the kitchen ceiling, and once into the roof space through the open manhole.¹¹
50. Mr X eventually surrendered at about 3pm, having unloaded the shotgun and thrown it from the house.

Did Mr X fire at Police soon after their arrival at the house?

51. In our assessment, had Mr X fired a sawn-off shotgun at Police from the front window, this would have been heard by officers (all of whom were AOS officers) 10-15 metres away. Further, the failure of some officers to identify a sound definitively as a gunshot, see a muzzle flash or see smoke from a discharge, tends to support the conclusion that Mr X did not fire at Police in those first few minutes.
52. This is further supported by the fact that there is no flash of a gunshot on the CCTV at the time Officers A and C were directly in front of the house arresting Mr Y, and no associated smoke from a shotgun discharge. This can be contrasted with a shot Mr X fired at 1.38am (one of the two shots fired by Mr X during the siege), when significant amounts of smoke and debris can be seen on the CCTV footage.
53. On the other hand, at the scene examination,¹² three spent shotgun cartridges were found in the house: two at the rear of the house, and one near the bedroom window at the front of the house. It is known that Mr X fired two shots into the kitchen ceiling and roof space during the siege. Therefore, it is at least possible that Mr X fired one other time, perhaps from the front window of the house where the spent cartridge was found.¹³
54. In the face of this conflicting evidence, we are not able to reach a definitive conclusion as to whether Mr X fired at Police before Police fired at him. However, this does not affect our assessment of Officer A's actions under the Crimes Act 1961.

Was Officer A's decision to shoot at Mr X justified under section 48 of the Crimes Act 1961?

55. Officer A relies on section 48 of the Crimes Act in justifying his decisions to shoot at Mr X. Section 48 provides that any person is legally justified in using reasonable force in defence of themselves or another.
56. Officer A made two separate decisions to fire, approximately four minutes apart: two shots at 12.34am, then a third shot at 12.38am. We consider Officer A's decisions separately.
57. Under section 48, we must assess Officers A's actions on both:

¹¹ The shots were fired at 1.38am and 3.43am.

¹² The house was entered for a scene examination at 9.10am the following day, 29 March 2023.

¹³ The shotgun fired by Mr X was semi-automatic. This means that a cartridge is ejected as the shotgun is fired.

- a subjective basis (that is, what he genuinely believed); and
- an objective basis (what a “reasonable” person would have done in that situation).

58. This assessment involves three questions:

- 1) What were the circumstances as Officer A believed them to be (a subjective test)?
- 2) Was Officer A’s shooting at Mr X for the purpose of defending or protecting others (a subjective test)?
- 3) Was Officer A’s shooting at Mr X reasonable in the circumstances as Officer A believed them to be (an objective test)?

What were the circumstances as Officer A believed them to be?

59. On arrival at the house, Officer A identified Mr X from an earlier briefing (which included photographs) as one of the people present at the house entrance. That same briefing had warned Mr X was likely to be armed and may assault Police.
60. Officer A knew that Mr X had fired at least once at Police during the car chase and before running away to the house.
61. While handcuffing Mr Y, Officer A heard a loud noise which he described as a “loud thud” and “tinkling glass”. He also heard the UA Team leader call out that shots had been fired.
62. Having moved to a position of minimal cover – while still being able to observe the front and side of the house – Officer A says he saw by the light of Officer C’s torch Mr X take aim at him with a shotgun from inside the house.
63. Officer A says he feared for his life, that of Officer C, and of those who might be in the vicinity if and when Mr X should fire. Officer A therefore decided to fire at Mr X.
64. Officers B and D both said they saw Mr X aiming a shotgun from the window, with both of them individually (and independently) deciding to fire – but not doing so as Mr X pulled back from the window, out of sight. In addition, on seeing Mr X in the house carrying what appeared to be a shotgun, Officer C considered whether he needed to change his 40mm launcher to a ‘lethal’ option.
65. Before Officer A fired his last shot, he and Officer C were in the same exposed position, and Mr Y and Ms Z were close by. Again, Officer A says he saw Mr X take aim at him, and we accept that the light from Officer C’s 40mm launcher continued to provide adequate illumination so that Officer A could see clearly. The circumstances in which Officer A had first fired (as described above) had not appreciably altered.
66. In such circumstances, on both occasions on which Officer A fired, we accept that he believed there to be a risk of death or serious harm to himself or others.

Was the force used by Officer A for the purpose of ensuring the safety of himself and others?

67. On the occasions when Officer A fired, he saw Mr X raising his shotgun, and believed that he needed to shoot to prevent Mr X from firing and potentially seriously injuring or killing himself (Officer A) or others (in particular, Officer C, Mr Y, and Ms Z).
68. We accept that Officer A fired in order to protect himself and others when he fired all three shots.

Was the force used by Officer A reasonable in the circumstances?

69. Prior to his first two shots and the subsequent third shot, Officer A saw Mr X taking aim at him. According to Officer A, he had minimal time within which to act.
70. Although Mr X may or may not have fired at Police in the first few minutes after Police arrived, and the shotgun may or may not have been loaded, the situation Officer A faced was as follows:
- Mr X had previously fired at Police;
 - the briefing report stated that Mr X was likely to be aggressive towards Police;
 - Mr X had refused to surrender when Police arrived at the house, instead retreating inside the house when called to surrender;
 - Officer A could see Mr X aiming at him with a shotgun on both occasions Officer A fired (a description which is supported by Officers B and D from their positions);
 - there was no reason for Officer A to believe the shotgun was not loaded;
 - Officer A was in a necessarily exposed position to both observe the house and protect Mr Y and Ms Z; and
 - the UA Team leader had called out that shots had been fired.
71. The only alternative action available to Officer A would have been to withdraw after he had fired the first two shots. However, he explained that he and Officer C believed that they needed to observe the front and side of the house and protect Mr Y and Ms Z, who were still in a vulnerable position.
72. We accept that it was reasonable for Officer A to believe that Mr X had fired at Police and was intending to do so again. Even if Mr X's shotgun had not been loaded when Police arrived at the house, this could not have been within Officer A's knowledge. Accordingly, in our view, Officer A's decisions to fire on both occasions were reasonable.
73. We also note that Officers B and D had reached the same decision as Officer A, but did not fire as Mr X withdrew from sight. In addition, Officer C was contemplating changing his 40mm launcher for his rifle – all basing their decision on the same circumstances.

FINDING ON ISSUE

Officer A was justified under section 48 of the Crimes Act in deciding to shoot at Mr X in defence of himself and others.

Subsequent Police Action

74. During the Authority's investigation, we raised with Police that there is no specific reference in policy or training that requires officers to report – as soon as practicable – that they had fired shots.
75. We considered that it is a key requirement for an officer to report when they have fired, for the following reasons:
- so all officers present at an incident can differentiate between shots fired at them and shots fired by Police;
 - to assess whether a person may have been hit and injured by the shots fired; and
 - the overall risk assessment may change, as being shot at may affect a person's behaviour.
76. Police subsequently advised that the issue was discussed internally, and the reporting of shots at earliest opportunity will be included in firearms training.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

29 February 2024

IPCA: 23-17502

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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