

Non-fatal shooting in Whanganui justified

1. Just before 4am on 12 December 2023 in Whanganui, a Police officer (Officer A) shot a man (Mr Z) who was trying to evade arrest. Mr Z was seriously injured but survived. The shooting happened after two officers had spent several minutes trying to overpower and arrest Mr Z, using sponge rounds, a Police dog, a Taser and pepper spray. When Mr Z broke free, an officer shot him once in the side of his torso.
2. Several people witnessed the arrest and one of the witnesses recorded part of it on her phone. Police tried to seize the phone from her shortly after the shooting, and pepper sprayed her teenage son and father when they intervened.
3. Mr Z suffered internal injuries from the bullet that entered the left side of his torso, along with superficial dog bites and scratches and a Taser wound to his upper eyelid and temple. He was charged with assaulting the officers to which he pleaded guilty.
4. Police notified the Authority of the incident, and we carried out an independent investigation.¹
5. The Authority has concluded the use of force by officers, including the shooting of Mr Z, was justified in law.
6. In cases involving the use of force in self-defence and defence of others, the law requires us to consider an officer's actions based on what that officer genuinely believed the circumstances to be.
7. Our conclusions in this case are based on our acceptance of Officer A's perception of the circumstances.

¹ Section 13 of the Independent Police Conduct Authority Act 1998 states: “Where a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused.”

8. This was a finely balanced decision and required careful consideration of Officer A's evidence when viewed against the background of the circumstances he and the other officers found themselves in.
9. While we consider the officers' uses of force were ultimately justified, we are concerned about the way Police handled this matter.
10. In our view, there was no need for the officers to engage with Mr Z and there were missed opportunities for officers to de-escalate and disengage. An earlier decision by officers to walk away could have avoided what ultimately transpired.
11. The Authority acknowledges the profound impact this event has had on Mr Z. We also acknowledge the impact on those who witnessed the event. Our conclusions do not seek to minimise the distress caused to him as well the witnesses.

The Authority's Findings

Issue 1: Did Police respond appropriately when they encountered Mr Z?

It was reasonable for the officers to stop and try to talk to the men. However, Officer B's demand that Mr Z come out of hiding with his hands up, while armed with a sponge round launcher, was unnecessary and was an obvious contributing factor to what then unfolded. At that stage, Police did not know who the man was, and he was not posing any threat to them.

Issue 2: Was the officers' use of force against Mr Z prior to the shooting justified?

The officers' use of force against Mr Z before the shooting was justified.

Issue 3: Was Officer A justified in shooting Mr Z?

Officer A was justified in shooting Mr Z.

Issue 4: Were Police justified in trying to seize a witness's phone and pepper spraying her son and father?

Police were justified in trying to seize the phone without a warrant as evidence.

Officer B was justified in using pepper spray.

Analysis of the Issues

ISSUE 1: DID POLICE RESPOND APPROPRIATELY WHEN THEY ENCOUNTERED MR Z?

12. In this section we describe what happened when Officers A and B first encountered Mr Z and assess whether the Police's response was appropriate, given they had not yet identified him as being wanted.

What happened?

13. In the early hours of 12 December 2023, Officer A (a dog handler) and Officer B (an AOS officer) were working together in a Police dog van on the night shift in Whanganui. At the start of their shift, they had checked the Police staff safety alerts and noted three people of interest, including Mr Z who had existing warrants out for his arrest. The alerts also noted that Mr Z was likely to have access to firearms.
14. Officers A and B armed themselves with Glock pistols due to the danger posed by the three people with safety alerts.² During their shift, they twice saw a utility vehicle matching the description of one Police had linked to Mr Z, but did not try to stop it because they believed he was too dangerous for them to handle on their own.
15. Just before 4am, Officers A and B were driving along Talbot Street and saw an SUV (not the vehicle linked to Mr Z) parked on the verge of the road with its bonnet up and taillights on. Three men were near the SUV, with one lying underneath it. Officer B told Officer A to stop the Police dog van and opened his door to get out and talk to the men.
16. Officer B saw one of the men (Mr Z, who he did not recognise) run away and hide behind another car parked in the driveway of the nearest house. Officer B secured a 40mm sponge round launcher,³ got out of the Police car and ran up to the picket fence of the property. He says he challenged the hiding man to come out.

Was it reasonable for Officer B to demand that Mr Z come out of hiding with his hands up?

17. At this stage Officer B had not identified Mr Z or the other men. In our view it was reasonable for the officers to stop and try to talk to them, given the circumstances. Mr Z was entitled to walk away or go wherever he wished. Although Officer B had the authority to call upon Mr Z, the demand he made to Mr Z to come out with his hands up, while armed with the sponge round launcher, in our view was unnecessarily confrontational.

Was it appropriate for Officer B to arm himself with a sponge round launcher?

18. Officer B said they were in gang territory and, when one of the men ran and hid from Police, he believed it was suspicious and *"there must be a reason"*. He told us he took the sponge round launcher out with him because:

² While NZ Police are not routinely armed, the Police Firearms Policy provides that frontline officers may carry firearms if they believe that there are suspects in the area who remain at large, are armed or have access to firearms, and pose a risk of death or Grievous Bodily Harm.

³ Police use 40mm 'sponge rounds' (eXact iMPact XM1006) as a *"less lethal"* tactical option. Police policy says: *"The sponge round is intended to incapacitate an assaultive, non-compliant person and will commonly cause bruising rather than significant or long-lasting injury. There are no known long-term after-effects to exposure."*

- a) it gave him an extra “less lethal” tactical option to defend himself if needed;
 - b) it has a really good torch to light up the environment; and
 - c) “... it has a lot of presence and it’s big and a lot of people... pretty much give up, you know, it’s all good.”
19. Police policy states that sponge rounds are intended to incapacitate an “assaultive, non-compliant” person and “Under no circumstances must the device be applied to an uncooperative but otherwise non-assaultive person to induce compliance.” Although Mr Z and his two associates were not assaultive when Officers A and B arrived, we consider it was appropriate for Officer B to arm himself with the sponge round launcher.
20. This does not alter our view that it was unreasonable for Officer B to demand that Mr Z come out of hiding by pointing the launcher at him. When Officer B made this demand, he did not know who Mr Z was, Mr Z was not assaultive, Officer B had no information about the threat he posed, and there was no basis to demand that Mr Z come out and speak to him. In taking this step, Officer B’s actions escalated the situation unnecessarily.

FINDINGS ON ISSUE 1

It was reasonable for the officers to stop and try to talk to the men. However, Officer B’s demand that Mr Z come out of hiding with his hands up, while armed with a sponge round launcher, was unnecessary and was an obvious contributing factor to what then unfolded. At that stage, Police did not know who the man was, and he was not posing any threat to them.

ISSUE 2: WAS THE OFFICERS’ USE OF FORCE AGAINST MR Z PRIOR TO THE SHOOTING JUSTIFIED?

21. In this section we describe the officers’ use of force against Mr Z prior to the shooting and assess whether it was justified.

Was Officer B’s first use of the sponge round justified?

What happened?

22. Mr Z came out from behind the parked car in the driveway. While yelling “fuck off!”, he ran out of the carport and turned to run down the side of the house toward the back of the property.
23. Officer B was standing behind the picket fence at the front of the property, about 10 metres from the driveway, when Mr Z appeared from the carport. Officer B told us:

“... he’s run towards me and I’ve gone, pretty much, shit, he’s running at me fast. I couldn’t identify if he had a weapon or anything like that, it was too dark... but [he was] running in my direction, the fence wasn’t big enough to protect me and I’ve... feared that he was running at me, gonna hit me....”

24. Officer B aimed the sponge round launcher at Mr Z and fired. He was unsure whether the sponge round hit him because it had no effect. He says Mr Z then turned and ran in the direction of the back section.
25. A neighbour's CCTV recorded the noise of this interaction (yelling between Mr Z and Officer B and a loud bang when Officer B fired the sponge round) but was not positioned so as to capture on camera what happened. Officer A was getting his Police dog from the van when he heard Officer B fire the sponge round launcher.

Was the first use of the sponge round against Mr Z justified?

26. Police policy on sponge rounds permits their use when a person is *"within or beyond the assaultive range or has the potential to escalate to within or beyond the assaultive range"*. *"Assaultive"* means the person has *"intent to cause harm, expressed verbally, through body language/physical action"*.
27. Section 48 of the Crimes Act 1961 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
28. The s48 assessment involves asking three questions:
- a) What were the circumstances as the officer believed them to be? (a subjective test)
 - b) Was the officer's use of force against Mr Z for the purpose of defending himself/herself or another? (a subjective test)
 - c) Was the officer's use of force against Mr Z reasonable in the circumstances as the officer believed them to be? (an objective test)

What did Officer B believe the circumstances to be?

29. Officer B says he feared that the man (Mr Z) would assault him because:
- a) they were in gang territory;
 - b) the man had tried to hide from Police;
 - c) the man had then run directly at him while yelling aggressively, when he could have run away in any other direction; and
 - d) he had not identified the man and did not know if he had a weapon.
30. Mr Z says he exited the carport and was running towards the back section when Officer B fired the round at him, hitting him in the upper back. Two witnesses also say that Mr Z was running away toward the back of the property when Officer B fired at him (rather than running toward Officer B). We are mindful that Mr Z's exit from the carport necessarily involved him facing Officer B, fleeing as that may have been, before turning to run towards the back of the property. For this reason, we accept that Officer B genuinely perceived that, initially at least, Mr Z was running towards him.

31. Officer B says Mr Z was about eight metres away when he fired the sponge round, and it would not have taken long for Mr Z to reach him, had he not turned to run to the rear of the section. Officer B said that although his legs were shielded by the front picket fence, he thought Mr Z would try to assault him if he did not stop him from getting closer.

Was Officer B's use of force for the purpose of defending himself?

32. We accept that Officer B fired the sponge round to defend himself.

Was Officer B's use of force against Mr Z reasonable in the circumstances as he believed them to be?

33. Officer B says he did not have time to drop the sponge round launcher and use another tactical option to defend himself. He acknowledged that he could have retreated but says he is not trained to do that and had to deal with the threat in front of him.
34. Police policy provides that officers should not fire sponge rounds at a person until they have first asked them to surrender, unless that would be impractical or unsafe. We accept there was not enough time for that to happen in this case.
35. We are satisfied that Officer B genuinely believed the man posed an immediate threat and intended to assault him. Accordingly, we have concluded that Officer B's use of the sponge round launcher to defend himself was proportionate and justified in the circumstances.

Were the uses of force after the first use of the sponge round launcher (and before the shooting) justified?

What happened?

36. By this point Officer B had seen Mr Z's face including his facial tattoo and thought it *could* be Mr Z or another man he knew Police wanted to arrest. Officer A had already recognised him as Mr Z. Both officers then ran onto the property to find him. Knowing that Mr Z had active warrants for his arrest, we are satisfied that Officers A and B had the power to enter the property under section 162 Criminal Procedure Act 2011 which allows for officers to enter any property if they have reasonable cause to believe that the person against whom the warrant is issued is on the premises.
37. While the officers had earlier decided not to confront Mr Z, they said they now found themselves in a situation where they felt they could not withdraw and had to try to arrest him.
38. Officer B loaded another sponge round into the launcher and followed Mr Z up the side of the house. He says Mr Z suddenly came out from behind a shed and again ran straight at him while yelling. Officer B fired his second sponge round at Mr Z's legs but, as with the first shot, was unsure whether he hit him because it seemed to have no effect.
39. Mr Z described this sequence of events differently. He said that the impact of the first sponge round caused him to fall into a bush and fence at the rear of the section. We think Mr Z is mistaken as to the place where the first sponge round was fired, as the evidence is clear that he was at the front of the property having emerged from the carport. He said when he got back on

his feet he was shot in the chest with the second sponge round. He said he was going to run past the officers when the second round hit him.

40. After the second sponge round was fired, Mr Z ran past Officer B and encountered Officer A with his Police dog.
41. Officer A said Mr Z was hunched over and appeared to be searching for something in his pockets. Officer A said he then decided to command his dog to grab hold of Mr Z because:

“... it’s a good distraction, it keeps [Mr Z] busy... we can get in there and try and get him to the ground, get him handcuffed.”

42. The dog took hold of the top of Mr Z’s leg, and Officer A went forward to try to drag Mr Z to the ground. The officers say Mr Z continued to yell and resist and appeared determined to escape.
43. Officer A said it turned into *“a massive scrap, kicking, swinging, you know he was just clearly just trying to get away and I was trying to get him on the ground”*. The Police dog yelped and ran off after being injured in the struggle against Mr Z. Officer A activated his Officer Safety Alarm to request more officers to attend and help them with the arrest.
44. Officer B says he fired his Taser twice at Mr Z during this time; to prevent him from assaulting Officer A. Officer B says he first fired his Taser as Mr Z ran past him towards Officer A. He says the Taser barb hit Mr Z in the back and caused him to fall to the ground.
45. Officer B then fired a second time and one of the Taser barbs embedded just above Mr Z’s left eye.⁴
46. Officer A tried to handcuff Mr Z but could not get Mr Z’s right hand out from underneath his body. Officer A then noticed the dog had gone into the house so he went to retrieve it while Officer B commanded Mr Z to stay on the ground. Several witnesses had gathered and were yelling at Police, protesting about the use of force. Officer B yelled at them to back off.
47. Officer B tried to apply the handcuffs with one hand (his Taser was in the other), but Mr Z grabbed hold of his wrist and the handcuffs dropped to the ground. Officer B felt that Mr Z was pulling him down and overpowering him, so he tasered Mr Z again.⁵ It was at this point, he says, that he recognised Mr Z. Mr Z let go of him and Officer B stood up.
48. It is unclear exactly when, but Officer B says he ended up on the ground again with Mr Z, still trying to restrain him. He decided to use pepper spray but wanted to avoid accidentally spraying himself, Officer A, or the dog. He sprayed his hand and wiped it on Mr Z’s face. He says Mr Z continued to resist and scream at the officers.
49. Meanwhile, Officer A had brought the dog back into the fray and they continued to wrestle with Mr Z, who was flailing and trying to stand up. Officer B re-energised the Taser to try to prevent

⁴ The Taser records show that Officer B fired the first cartridge at 3.56:27am and the second at 3.56:35am. He ‘re-energised’ the Taser eight seconds later, and again 14 seconds after that.

⁵ The Taser records show that Officer B ‘re-energised’ the Taser at 3.57:41am and 3.57:58am.

this. He recalled Mr Z grabbing at him and yelling at him to stop. Officer B says he then felt a shock from the Taser, causing him to drop it onto the ground.

50. Mr Z described being pepper sprayed, having an officer jump on his back, and the Police dog latching onto his legs and arm. He says he was kicked in the face while he was yelling for help. He says he believed the officers were trying to kill him and he thought he was going to die.
51. Some of the occupants who had emerged from the house described Mr Z as being unconscious after the Taser was deployed, and said the officers were attacking him while he was on the ground and kicking him in the head.
52. The Taser's camera footage does not provide a very clear picture of what was happening due to the darkness and the overall commotion. However, it is clear that Mr Z is being tasered and the officers are yelling at him to put his hands behind his back. The Taser footage shows that Mr Z is holding a screwdriver in his right hand. However, neither Officer nor Officer B mentioned Mr Z having a screwdriver when interviewed.
53. The footage shows Mr Z is conscious, and he is heard saying, "*I'm dying*". Officer B yelled at Mr Z to get on the ground and put his hands behind his back, and he replied, "*I will, I will*", then yelled "*I can't breathe*" and "*Help me!*" The footage does not capture the entire altercation with the officers but what is captured does not show Mr Z being kicked to the face or head.
54. This altercation between Mr Z and the officers lasted about four minutes.

Was the officers' use of force to detain Mr Z justified?

55. The officers said they used force to effect Mr Z's arrest and defend themselves and each other. Section 48 of the Crimes Act covers self-defence and is discussed in paragraphs 27-28.
56. Section 39 of the Crimes Act 1961 empowers Police to use "*such force as may be necessary*" to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process. "*Necessary*" force in this context is generally accepted as meaning "*reasonable*" and "*proportionate to the degree of force being used to resist*". Under section 39, the Authority must consider:
 - a) Did the officer genuinely believe that the person was using force to resist? (a subjective test)
 - b) If so, was it reasonable for the officer to conclude it was necessary to use force to overcome that resistance? (an objective test)
 - c) If so, was the officer's use of force to overcome that resistance reasonable? (an objective test)
57. Also relevant is section 40 of the Crimes Act, which empowers Police to use "*such force as may be necessary*" to prevent the escape of someone who takes to flight to avoid arrest. Under section 40, the Authority must consider:

- a) Did the officer genuinely believe the person was fleeing to avoid or escape arrest? (a subjective test)
- b) If so, was the officer's use of force to prevent the escape reasonable? (an objective test)

58. We will consider each use of force in turn.

Was Officer B's second use of the sponge round justified?

- 59. Officer B said the circumstances in which he fired the second sponge round were similar to the first: Mr Z suddenly ran directly at him while yelling, and he thought Mr Z was going to hurt him.
- 60. We accept that Officer B genuinely perceived that Mr Z was assaultive, and consider he was justified in firing the second sponge round at Mr Z to defend himself under section 48 of the Crimes Act. It was a proportionate and reasonable use of force.

Was Officer A's use of the Police dog justified?

- 61. After running into Officer A and his Police dog, Mr Z turned and ran around the shed to escape. Officer A says he used his Police dog to grab hold of Mr Z and tried to bring him to the ground and handcuff him. The Police dog was injured in the scuffle that followed.
- 62. Mr Z was known to be a dangerous offender and had a warrant for his arrest for an incident where he had driven a motor vehicle at Officer B. He had been at large for some time, and it was reasonable for Officer A to consider it necessary to use force to prevent his escape. The force was not excessive in the circumstances and was justified under section 40 of the Crimes Act.

Was the use of 'empty hand' tactics justified?

- 63. Officers A and B used 'empty hand' tactics (such as grabbing, pushing and pulling) throughout to try to gain control of Mr Z and effect his arrest. We are satisfied this was necessary, proportionate to the resistance Mr Z used, and justified under section 39 of the Crimes Act.

Were Officer B's uses of the Taser justified?

- 64. Officer B says he fired the Taser on Mr Z twice to protect Officer A from assault, and to protect himself when Mr Z grabbed him and pulled him down. He also re-energised the Taser to prevent Mr Z from standing up.
- 65. Officer B's perception of the danger Mr Z posed was informed by his knowledge of Mr Z's history and his willingness to use violence to escape Police. Mr Z did not comply with commands to put his hands behind his back and continued to resist the officers' efforts to arrest him. We consider that Officer B's use of the Taser was proportionate and justified under section 48 of the Crimes Act.

Was Officer B's use of pepper spray justified?

66. Officer B also used pepper spray to try to overcome Mr Z's continued resistance. We are satisfied that this relatively low level of force was reasonable and justified under section 39 of the Crimes Act.

Overall conclusion

67. The melee involving the officers and Mr Z was chaotic, involving the use of several tactical options to arrest him.
68. The incident unravelled very quickly, starting when Mr Z hid from the officers and was commanded to come out with his hands up. We are concerned that the situation escalated as it did, and our sense is that a confrontation of this sort could have been avoided. Ultimately, however, we accept that the use of force by Police was justified.

FINDING ON ISSUE 2

The officers' use of force against Mr Z before the shooting was justified.

ISSUE 3: WAS OFFICER A JUSTIFIED IN SHOOTING MR Z?

69. Here we describe the circumstances in which Officer A shot Mr Z with his Glock pistol and assess whether this was justified.

What happened?

70. The Taser footage and footage from a witness who recorded part of the altercation on her phone shows that Mr Z, after being tasered on the ground, managed to get to his feet and stagger to a fence at the side of the property. Here he is seen flailing his arms about, either trying to push past Officers A and B or attempting to clear the Taser wire from his face.
71. At this time Officer B's Taser is either dropped or knocked out of his hand by Mr Z and lands on the ground as Mr Z staggers past towards the front of the property. About a second later Officer A fires his Glock at Mr Z. The shot is heard but not seen in the footage.
72. Officer A told us that he recalled Officer B yelling "*He's got my Taser*", but he was uncertain exactly when he heard this. For reasons that will become clear, having regard to the circumstances, we think it likely that Officer A misheard Officer B who actually yelled something like, "*I've lost my Taser*". In any event, Officer A fired only a second after Officer B's Taser is heard to hit the ground.
73. Officer A says that when he decided to draw his pistol and fire at Mr Z, he was about three metres away. Mr Z was twisting and moving towards the road. Officer A fired a single shot and Mr Z fell to the ground near the picket fence at the front of the property. The shot struck Mr Z's left flank. Officer A accepts that, though he was yelling at Mr Z, he did not issue a warning before firing.
74. Officers A and B resumed trying to gain control of Mr Z, who was still struggling to get up. Two more officers then arrived and helped handcuff Mr Z.

75. Officer B asked the other officers to take Mr Z out to the road (because the occupants of the house were very angry) and fetched a first aid kit from the Police dog van. He applied initial first aid until the ambulance arrived. Mr Z was then taken to hospital.

Was Officer A justified in shooting at Mr Z in defence of himself or others?

76. We consider whether Officer A was justified in shooting Mr Z under section 48 of the Crimes Act which is the most obviously relevant provision. For an analysis of the s48 requirements, see paragraphs 27-28.

77. Officer A told us that when Mr Z got back onto his feet and was flailing his arms, he posed a threat because:

- a) he was moving towards the street;
- b) the tactical options they had tried had not worked;
- c) he now had a Taser (Officer A believed), and might have or obtain another weapon;
- d) he had shot at and driven at Police in the past.

78. Officer A's evidence was:

"[Mr Z]'s a seriously dangerous, scary man and we've now lost complete control of him. He's running towards the road... we know that vehicle's out there that we saw, I had no idea whether it was mobile, or you know could drive or not, assumed [because] the lights were on [it] must've been. If he got into that what weapons did he have in it, these are all stuff going through my mind.... So that's when we get to the point of I need to arrest him. I need to, I need to make this safe. He's a danger to me, he's a danger to [Officer B], any other staff that are approaching, yeah he was a danger to them."

79. As outlined at paragraph 72, Officer A told us he believed Mr Z had a Taser. He knew Mr Z's criminal history and that he was prepared to use violence to escape Police. He told us that as Mr Z staggered in the direction of the front of the section, he believed that Mr Z remained a danger because he could turn around and reengage with him and Officer B. He was also concerned that Mr Z could reach the SUV parked on the front verge and possibly access weapons from it or drive the SUV at Police officers arriving at the address. Officer A said he could not have lived with himself if he had let Mr Z run away and Mr Z had gone on to kill or seriously harm someone. He felt he had to act immediately and made a split-second decision.

80. While we accept Officer A may, at some point, have come to think that Mr Z had Officer B's Taser, we do not accept that he could have had that belief at the time he fired his Glock at Mr Z. This is because he fired within a second of the Taser hitting the ground. There was insufficient time for Officer B to have yelled anything before Officer A fired. As already said, Officer A acknowledges being unsure when he heard Officer B call out about his Taser.

81. As described in paragraph 52, Taser footage shows Mr Z holding a screwdriver. It is not clear whether he still had the screwdriver at the time of the shooting. Officer A does not mention

seeing a screwdriver or the possibility that Mr Z would use a screwdriver as a weapon. Officer A says he didn't know what Mr Z had in his hands.

82. Objectively, it is difficult to see that the risk posed by Mr Z at this point was as serious or imminent as Officer A says he believed it to be. However, as explained earlier, section 48 calls for a subjective starting point – the issue is not the circumstances as a reasonable person in Officer A's position would perceive them to be, but rather what Officer A in fact perceived them to be.
83. We have considered the question of the veracity or reliability of Officer A's evidence. In particular, we have considered whether his description of his claimed perception of risk reflected a genuine attempt to recall his state of mind at the time, or a description that evolved over time to justify his use of force.
84. In the end, having regard to contextual considerations, we accept that Officer A's perception of the circumstances he faced was as he described to us. Those contextual considerations include that Officer A (along with Officer B) had been engaged in an unfamiliar location, at night, in a prolonged and difficult struggle with Mr Z. During that struggle, Police had pepper sprayed Mr Z, employed a dog which had bitten Mr Z, tasered him multiple times on various parts of his body, including his face, and fired two 40 mm sponge rounds, at least one of which had struck him. Officers A and B had then wrestled with Mr Z in an attempt to subdue and detain him. While this was going on, others in the neighbourhood had arrived and begun yelling at Police and attempting to intervene. Despite all of the above, Mr Z, who is a large and powerful man, had bested Officers A and B and regained his feet.
85. Against that background, it is not difficult to imagine that Officer A's genuine - if somewhat elevated - perception of the threat that Mr Z posed was as he described it to us. We accept then that Officer A perceived there to be a serious, imminent risk that if he and Officer B did not arrest and detain Mr Z, Mr Z would do serious harm of one sort or another to them, any other officers who might be arriving to assist them, or any members of the public who Mr Z happened to encounter if he fled.
86. Having accepted that Officer A perceived that Mr Z presented a serious, imminent threat, and recognising that Officer A had only a split second within which to make a decision and act, we have ultimately concluded that he acted reasonably, and therefore justifiably, in shooting Mr Z.
87. This conclusion may seem counter-intuitive. A superficial view of the case may be that the Police shot a man who was moving away from them. The point that needs to be emphasised is that our conclusion is based on our acceptance of Officer A's evidence as to his perception that Mr Z presented a serious, imminent risk as earlier described.
88. The Authority wishes to emphasise that the decision to shoot (and potentially kill) someone cannot be justified simply because it is the next step in escalating tactical options. There will be circumstances in which it is appropriate for an officer to progress through other non-lethal tactical options, and yet the threat they perceive will still not be sufficient to justify lethal force. This may be so even if the consequences allow the offender to escape. We acknowledge that such a

circumstance necessitates a difficult decision in what, almost by definition, will be a challenging situation.

Conclusion

89. Officer A's use of force in shooting Mr Z was justified in self-defence and the defence of others under s48 of the Crimes Act 1961.
90. This conclusion is not inconsistent with our view that, initially, it was a viable option for the officers not to engage with Mr Z. However, we accept that Police could not have anticipated how events would unfold. We recommend Police use this case as a training example to, where possible, try and take a step back in the most heightened circumstances and consider all of the available options including the option to disengage.

FINDING ON ISSUE 3

Officer A was justified in shooting Mr Z.

ISSUE 4: WERE POLICE JUSTIFIED IN TRYING TO SEIZE A WITNESS'S PHONE AND PEPPER SPRAYING HER SON AND FATHER?

What happened?

91. While Mr Z was being helped into an ambulance, disorder broke out in the street when another officer (Officer C) tried to seize a phone from the female witness (Ms Y) who had recorded some of the altercation between Mr Z and the officers. She had told Police that she recorded the shooting, and Officer C decided to seize the phone as evidence.
92. Officer C says he identified himself and told Ms Y he needed to take the phone as evidence. According to Ms Y, Officer C said this very quickly then tried to grab her phone straight away. Her reaction was to hide her phone in her top.
93. Officer C and Ms Y fell on to the grass berm while grabbing for the phone. Ms Y's mother (Ms X), son (Child W- who was 13) and father (Mr V) then intervened.
94. Ms X came over first and tried to get in between Ms Y and Officer C. Ms X says, "*(Ms Y) was on the ground and I was on top of her like: 'leave her alone'.*"
95. Child W was watching from the driveway and saw Ms Y and Officer C on the ground. Child W was shouting at Officer C to leave his mum alone; he ran towards and tried to "*jump on... grab*" Ms Y. He says he was about "*two steps away*" when Officer C pushed him over onto the road.
96. Officer B was standing behind Officer C. Child W says he stood up and saw Officer B point something at him then pepper spray him immediately.
97. Mr V saw Child W running towards Ms Y and intervened to "*help my moko out.*" Officer B also pepper sprayed Mr V.

98. Officer B says he saw Officer C on the ground struggling with someone and believed there were three or four other people around him trying to grab Officer C and pull him away.
99. Officer B determined Officer C was being assaulted, so he came over and pepper sprayed the two or three people who he believed were intervening. Officer B thought he gave a warning before using the pepper spray although he was not sure he had done so. None of the witnesses heard the officer give a warning. He did not know he had sprayed a 13-year-old until after the event, when someone in the crowd became angry and yelled at him.
100. Officer B's account is supported by Officer C who recalls there were several people trying to pull Ms Y away from him and two or three people pulled the phone out of his hand. Another officer also supports Officer B's account. This officer recalls intervening after he saw people running over to Officer C and Ms Y, then pushing and shoving. He remembers pulling a person away from Officer C. During this scuffle he heard Officer B yell "spray."
101. A neighbour recorded some of this interaction on her phone. The footage does not provide a clear view of the full incident:
- We cannot see Ms X or Ms Y.
 - We can see Officer C kneeling on the ground by the boot of a Police car.
 - We can hear Child W shout at Officer C three times to leave his mum alone.
 - We can see Child W standing in the middle of the road then falling to the ground after being sprayed.
 - We can see Mr V approaching the officers after Child W is sprayed and complaining about this action.
102. Child W says Police did not offer him any aftercare after being sprayed. However, one of the witnesses recalls that Police did attempt to do so, but this was refused due to distrust because of what had just happened. It is our expectation that aftercare is offered in all cases when spray is used, if practicable.

Were Police justified in trying to seize the phone?

103. Section 16 of the Search and Surveillance Act 2012 provides that a Police officer may search a person without a warrant in a public place if they have reasonable grounds to believe that the person is in possession of evidential material relating to an offence punishable by imprisonment for a term of 14 years or more (in this case, the offence was potentially culpable homicide if Officer A was not justified in shooting Mr Z).
104. A "warrant preference" rule has been developed by the Courts. This means that even if Police have a warrantless power, they should obtain a warrant where possible. Police should only exercise a warrantless power in urgent circumstances, where it would be impractical for Police to obtain a warrant from the Court.

105. We accept Officer C had the power to seize the phone under section 16 and acted correctly by identifying himself and advising Ms Y why he needed to seize the phone as evidence.
106. We also accept that it was not practical or reasonable for Police to obtain a warrant before trying to seize the phone. There was an urgent need to secure and preserve this evidence for potential culpable homicide proceedings.
107. That said, matters escalated quickly from Officer C telling Ms Y that Police needed the phone for evidence to the tussle on the ground with other parties intervening and the officers using force.
108. We consider there was an opportunity here for officers to engage differently with Ms Y. This might have included:
- asking Ms Y to consent to a search of her phone for any relevant footage;
 - providing reassurance that the phone would be returned once examined; and
 - explaining the consequences of her failing to comply with the search.
109. We accept tensions were high and there is no guarantee that such further action would have resulted in Ms Y giving up her phone without the need for force. However, it would have been preferable for officers to have considered and exercised some de-escalation tactics prior to using force.

Was Officer B justified in using pepper spray on Child W and Mr V in defence of Officer C?

110. Officer B says he used pepper spray against Child W and Mr V to defend Officer A from assault. Using force in defence of another is covered by Section 48 of the Crimes Act which is discussed at paragraph 27-28 above.

What did Officer B believe the circumstances to be?

111. The officer's view of the circumstances is outlined above in paragraphs 98-99.
112. The available video footage does not show anyone surrounding Officer C and attempting to grab or pull at him, as described by Officer B, although his account is supported by Officer C and another witness officer, who describe a struggle with other people running over, pushing, shoving, and pulling at Ms Y.
113. The evidence of Ms Y, Ms X, Child W and Mr V supports that:
- Ms X intervened before Child W did, telling Officer C to "*leave her alone*".
 - Child W ran towards Officer C and angrily shouted at him to leave Ms Y alone.
 - Child W got within a few steps of Ms Y and Officer C and tried to intervene before Officer C pushed him back.

- Child W got back onto his feet before he was sprayed. He was standing away from, but in proximity to, Ms Y and Officer C at the time he was sprayed.
- Mr V also approached officers and tried to intervene to help Child W. He was also standing away from, but in proximity to, Ms Y and Officer C.

114. It is conceivable that Officer B witnessed Ms X, Child W, and Mr V intervening, as described above, and in his heightened state genuinely perceived they were going to assault Officer C. On that basis, we accept Officer B believed Child W and Mr V posed a risk of assault to Officer C and believed it was necessary for him to intervene to prevent this.

115. We also accept that Officer B did not know the age of Child W when he deployed the pepper spray.

Was Officer B's use of force for the purpose of defending another?

116. We accept Officer B's evidence that he used pepper spray against the people surrounding Officer C (Child W and Mr V) to defend him.

Was Officer B's use of force against Child W and Mr V reasonable in the circumstances as he believed them to be?

117. We are satisfied that Officer B genuinely believed Child W and Mr V posed a risk to Officer C. We consider it likely that Officer's B perception of risk was heightened due to his involvement in the recent and prolonged struggle with Mr Z.

118. As previously outlined, we must assess the reasonableness of Officer B's action on his perception of the circumstances. We have concluded that Officer B's use of pepper spray to defend Officer C was justified in the circumstances as he believed them to be.

119. We think it likely that Officer B failed to give any warning before deploying the pepper spray. He was unable to say confidently that he did and none of the witnesses heard him give any warning.

Conclusion

120. We accept the officers' actions were justified. However, the way Police handled this situation is a matter of concern for us and should be also for Police.

121. Officer B failed to give a warning to Child W and Mr V before deploying the spray and there was therefore no attempt to communicate with them and de-escalate prior to using force.

122. We think it highly likely that Officer B's perception of risk was heightened and this may have affected his ability to take a step back and consider disengaging and allowing other officers to handle the situation.

123. Again, while it is clear that tensions were high, in our view it remained an option for Officer B to take a step back, attempt de-escalation tactics, and even consider disengaging and allowing other officers to take over.

124. We accept it may not always be practical or appropriate for Police to attempt de-escalation by verbal communication or warnings. However, it is our expectation that attempts to do so should be made in all but the most exceptional cases.

FINDINGS ON ISSUE 4

Police were justified in trying to seize the phone without a warrant as evidence.
Officer B was justified in using pepper spray.

Subsequent Police Action

125. Police determined that Officer A's and Officer B's use of force was justified and that no criminal charges should be laid against them.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

27 August 2026

IPCA: 23-20791

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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