

Fatal Police shooting of Nicholas Marshall

INTRODUCTION

1. At about 6.30pm on Tuesday 12 July 2016, Nicholas Marshall was fatally shot by Police as they carried out a search warrant at a warehouse in Grasslands Place, Hamilton.
2. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.
3. The Authority has examined issues relating to the initial Police response, command and control of the incident, the use of force, and whether all reasonable assistance was given to Mr Marshall after he was shot.

Index of Police officers

Field Staff	Roles/Comment
AOS Commander	AOS Commander for Waikato Police District.
Forward Commander	Responsible for controlling the AOS tactical response in the field. The forward commander reports to the AOS Commander. Armed with Bushmaster M4 Rifle
Officer A	AOS Operation Planner. Responsible for overseeing the AOS tactical response during an operation or incident. Armed with Bushmaster M4 Rifle and Glock Pistol.
Officer B	AOS Officer. Tasked with breaching the front door. Armed with Glock Pistol.

Officer C	AOS Officer. Provided medical assistance. Armed with Bushmaster M4 Rifle and Glock Pistol.
Officer D	AOS Officer. Tasked to announce entry on the loud hailer. Provided medical assistance. Armed with Bushmaster M4 Rifle, Glock Pistol and Taser.
Officer E	AOS Officer. Police Shooter and trained medic. Armed with Bushmaster M4 Rifle and Glock Pistol.
Officer F	AOS Officer. Police Shooter. Armed with Glock Pistol.
Officer G	AOS Officer. Armed with Bushmaster M4 Rifle and Glock Pistol.
Officer H	AOS Officer. Armed with Bushmaster M4 Rifle, Glock Pistol and Taser.
Officer I	AOS Officer. Armed with Bushmaster M4 Rifle, Glock Pistol and Taser.

BACKGROUND

Events leading up to 12 July 2016

4. In May 2016, Police received information that Nicholas Marshall, an occupant of a warehouse in Grasslands Place, Hamilton, was involved in manufacturing firearms and supplying methamphetamine. Over the months that followed, Police gathered information which supported this allegation. The information also confirmed that gang members were involved and regularly visiting the premises.
5. In mid-June 2016, a Criminal Investigations Branch (CIB) Detective Sergeant approached the AOS Commander and Officer A, the operations planner for the Armed Offenders Squad (AOS), and advised them that they were planning on executing a search warrant for an industrial warehouse in Grasslands Place, Hamilton.
6. The AOS Commander and Officer A were informed that Mr Marshall, who lived at the warehouse with his partner, was suspected of manufacturing firearms and selling them to gang members. Mr Marshall was also suspected of selling methamphetamine and there was a potential that the warehouse was being used as a drug lab. Due to the possible presence of firearms and a drug lab, the CIB Detective Sergeant requested AOS assistance to conduct the initial search. The plan was that once AOS had successfully entered the building and secured it, CIB officers would then conduct the search and interview Mr Marshall and any other occupants that were located.

7. On Monday 27 June 2016, Officer A met with the CIB Detective Sergeant, the AOS Commander and Officer B to determine what action needed to be taken in order to safely execute the search warrant at Grasslands Place.
8. At the meeting, the officers used the AOS risk matrix¹ and assessed Mr Marshall as being “*very low risk*”. Officer A told the Authority that this was based on his lack of criminal history and his previous interactions with Police. He said that there was nothing in Mr Marshall’s history that indicated that he would be a threat to the AOS. However, the officers were concerned about Mr Marshall’s associates who had been seen coming and going from the warehouse. Some of these associates were known to Police as gang leaders with convictions for offences with firearms, serious violence and violence against Police.
9. In order to execute the search warrant, the officers decided to enter the premises while appealing to Mr Marshall to surrender simultaneously at the door and over a loud hailer. The officers thought that by doing this they would have the best chance to contain Mr Marshall quickly.
10. Officer A told the Authority that they believed that it was important for the AOS team to clearly identify themselves as Police so that Mr Marshall would not mistake them for rival gang members. To mitigate this, a loud hailer would be used to announce that they were executing a search warrant. Officers entering the premises would also verbally announce their presence, and all officers would be wearing identifiable Police labels on their AOS uniform. Officer A said that they were also confident that Mr Marshall had a camera attached to the premises facing the driveway and he would clearly be able to identify that they were the Police.
11. Other entry tactics were dismissed as they were believed to be too dangerous and could increase the risk to other people in the vicinity if they became caught up in a confrontation between Police and Mr Marshall.
12. Finally, the officers decided that the search warrant would be conducted in the evening. This was believed to be the best option to minimise the interruption to other businesses in the area and to ensure that those who were legitimately at the warehouse during business hours were gone.

Briefing

13. During the week of 4 July 2016, Officer A contacted members of the Waikato AOS and advised them that there was potentially a job on Tuesday 12 July 2016. As per usual protocol, the officers were not provided with any particulars about the job at the time.
14. On Monday 11 July 2016, an application for a search warrant under section 6 of the Search and Surveillance Act 2012 (refer to paragraph 85) was granted by the Hamilton District Court Registrar. Within that application, Police outlined the information they had received during their investigation which corroborated the allegations against Mr Marshall.

¹ This assessment is based on the AOS risk matrix: negligible, very low, low, medium and high.

15. That same day, after receiving confirmation of their availability, Officer A contacted the officers and confirmed the date and time of the job. Officer A also advised that a briefing would be held on Tuesday at 5.30pm.
16. At approximately 5.30pm on Tuesday 12 July 2016, Officer A and the AOS Commander provided a joint briefing to the AOS officers involved in the operation.
17. Due to the possibility of a methamphetamine lab, all officers who were entering the warehouse were told to wear chemical suits and gas masks (grey roll) underneath their AOS body armour and helmet. The officers who were not tasked with entering the warehouse were not required to wear the grey roll and instead, were to be dressed in the full AOS kit, which included AOS body armour and a helmet. The officers were told that due to the potential chemical exposure in the warehouse, the medic kit, which is usually attached to one of the officers, would stay outside the warehouse.
18. The officers were also warned that Mr Marshall was thought to be in possession of a firearm that was kept under a workbench.
19. At 5.55pm, the AOS Commander delivered the Police General Instruction F061 (Fire Orders) to all AOS members as required by Police policy (see paragraphs 94-99).
20. Following the briefing, the AOS Commander contacted the Police Northern Communications Centre (NorthComms) and the District Command Centre (DCC) and advised them that a search was taking place involving AOS staff and that officers were armed.

Execution of warrant

21. At 6.15pm the officers left the Hamilton Central Police Station and assembled on Grasslands Place, outside a neighbouring property, approximately 20 metres away from the warehouse. At about 6.23pm the AOS Commander, who was located at the safe forward point² (SFP) on the corner of Grasslands Place and Kahihatea Drive, gave the authority for the operation to begin.
22. On the AOS Commander's signal, the officers began approaching the warehouse on foot. Driving alongside the officers in a marked Police car was the Forward Commander and Officers C and D.
23. As the officers walked down the driveway, approximately 50 metres in length, Officer C drove the marked Police car into the driveway. He then parked the car on an angle to block any other vehicles from leaving the property, activating the car's flashing red and blue lights as he did so. Officer D, who was in the rear right passenger seat of the Police car, then turned on the microphone of the loud hailer and began saying on repeat, "*Police, search warrant, armed Police, search warrant.*"
24. When the officers reached the front door of the warehouse, Officer B, who was tasked with breaching the door, moved to the front of the line and, using a large ram, began to smash the

² A gathering point for briefings, and the allocation of roles and equipment.

front door open. Officer B told the Authority, *“literally as ... I went to crack the door... the loud hailer started up with “Police search warrant” and the [flashing red and blue] lights came on.”*

25. While Officer B was ramming the door, Officer E was standing to the side, covering the front door with his Bushmaster M4 rifle and yelling, *“Police search warrant, Police search warrant”*. Officer E told the Authority that he continually yelled, *“Police search warrant”* and said that he could hear other officers and the officer over the loud hailer saying the same thing.
26. After about *“three to four hits”* from the ram, Officer B broke the door open wide enough to allow the officers to enter. Officer B immediately moved to the side and Officer E stepped through the door way and into the small foyer. Officer F, who was carrying a second breaching kit in case there was a second door, also stepped through the doorway immediately behind Officer E.
27. Officer E told the Authority that as he stepped through the doorway, he was confronted by a large dog. He said the dog was barking and it caused him to pause for about a second; however, the dog then ran away. As soon as the dog ran off, Officer E pushed through an internal mesh door and entered the warehouse. Officer E said that the lights in the warehouse were on and it appeared to be a large, *“garage workshop ... with lots of car parts and mechanical equipment cluttered everywhere”*³.
28. As soon as Officer E entered the warehouse, he looked right and saw a male walk out of an office, approximately four metres away. Officer E said he began yelling at him, *“Police search warrant, get on the ground, get on the ground”*. As he yelled out, the male turned and looked at him and Officer E was able to positively identify the male as Mr Marshall.
29. Officer E said that as soon as Mr Marshall saw him, he turned away and ran to the back of the warehouse, past a car hoist and towards a workbench which covered half the length of the warehouse. Officer E told the Authority that he was not concerned about Mr Marshall being an immediate threat to him as he could clearly see that he was unarmed.
30. When Mr Marshall ran off, Officer E assumed that he was either attempting to hide from Police or going to destroy some drugs. As a result, he continued to yell *“Police search warrant”* and he began to follow Mr Marshall so he would not lose sight of him.

The shooting –Police version of events

31. Officer E told the Authority that he walked next to the car hoist and stopped approximately two - three metres from where Mr Marshall had stopped at the back of the warehouse. He said he was still yelling at Mr Marshall to *“get on the ground”*, when Mr Marshall suddenly bent down, and with his right hand grabbed a *“long black pump action shotgun”* from the workbench. Officer E said:

“He’s bent down and I again thought he was stashing drugs ... and then immediately he’s presented a shotgun at me ... it was so quick, initially I didn’t even

³ The warehouse has a large open floor plan and is rectangular in shape.

notice it was a shotgun. He just turned around and looked at me and I could see something in his hand”.

32. Officer E said the minute he saw the shotgun *“time completely slowed down”* and his threat assessment went *“from the lowest on the scale to the highest on the scale”*. As Mr Marshall brought the shotgun around to face him, Officer E saw Mr Marshall’s hand squeezing the trigger.
33. When the shotgun failed to discharge, Officer E said Mr Marshall then brought the shotgun up, so that the barrel was facing towards the ceiling and racked the chamber⁴. At this point, Officer E saw a green shotshell come out of the shotgun, and he yelled at Mr Marshall to drop the weapon.
34. Officer E said Mr Marshall did not drop the shotgun and instead continued to work the slide in an attempt to load another round. Although the shotgun was aimed towards the ceiling, Officer E told the Authority that he believed that it was, *“only going to be a matter of seconds before [he was] shot at”*.
35. From his experience with shotguns, Officer E said he knew Mr Marshall was chambering another round and he was concerned that it would only take him a second to bring the shotgun back down and shoot him. He said a shotgun *“is known for its effectiveness in short range use”* and therefore, given the level of threat Mr Marshall posed to him and the other officers, other tactical options such as using empty hand tactics, pepper spray and a Taser were not an option. Officer E said, *“I had only two options, shoot or be shot”*.
36. When Officer E saw Mr Marshall start to bring the barrel of the shotgun down, he said he could no longer delay taking action so he fired five shots at Mr Marshall.
37. Officer F entered the warehouse when Officer E was yelling at Mr Marshall (see paragraph 31). He said he moved into the centre of the warehouse, and after sensing movement, turned to his right so that he was looking underneath the hoist towards the rear of the warehouse. Officer F said that although the *“lighting wasn’t the best”*, from this angle, he could clearly see Officer E standing to the right of the hoist, and Mr Marshall, approximately three – four metres away from him, at the back of the warehouse next to a workbench.
38. As soon as Officer F looked over at Mr Marshall, he saw Mr Marshall holding a shotgun, at belly height, aiming towards Officer E. Officer F said he immediately yelled, *“Firearm, he’s got a fucking gun”*.
39. At the same time as Mr Marshall pointed the shotgun at Officer E, Officer G entered the warehouse and he heard Officer F yell, *“gun”*. Officer G told the Authority that he immediately brought his Bushmaster M4 rifle into the ready position⁵ and moved so that he was standing outside the office door way, behind Officer E. From his position, Officer G said he saw Mr Marshall, at the rear of the warehouse, holding a *“shotgun or long-barrelled rifle from the hip”*.

⁴ To rack a gun is to grip the slide and pull it all the way back then release it. This releases a spent shotshell and puts a fresh shotshell into the breach allowing the next shot to be fired.

⁵ The ‘ready position’ is where the rifle is held level with the upper torso and the muzzle of the gun is angled slightly downwards.

40. Officer F told the Authority that he was “100%” concerned that Officer E would be shot and because Mr Marshall was holding a shotgun, he had the potential to “take out three or four guys”. As a result, immediately after he yelled out that Mr Marshall had a gun, and at the same time as Officer E fired his weapon, Officer F fired three shots at Mr Marshall. Officer F said that it was only later on, after Mr Marshall had been shot, that he realised Officer E “had already been firing as well”.
41. Officer G told the Authority that given his position behind Officer E, he could not fire his weapon as it would have put Officer E at risk. However, “if those officers weren’t there, I would have shot [Mr Marshall] ... in defence of myself ... and the people coming through”.

Ms X’s version of events - shooting

42. Ms X, the partner of Mr Marshall, was at the warehouse when the officers entered and shot Mr Marshall. She told the Authority that she was sitting on a couch in the back of the office with Mr Marshall when she heard the front door to the warehouse being broken into. Ms X said, “there was no warning of who it was. They didn’t announce themselves ... [and she] thought they were being home invaded”.
43. As soon as she heard the door being smashed in, Ms X said Mr Marshall got up and walked out of the open office door, turned right and walked to the rear of the warehouse where his workbench was located. She said she knew that Mr Marshall kept an unloaded shotgun by his workbench, and he would have gone there “with the intention to protect them”, as “unsavoury characters had tried to force entry” in the past.
44. When Mr Marshall left the office, Ms X said she hesitated for a moment before deciding to get up and follow him out of the office. As she stepped through the office door into the main warehouse, about eight to twelve armed men entered the warehouse, via the front door on her left. Ms X said they came through the door within a “matter of seconds”, and at this stage, she did not know that they were Police officers.
45. From her position just outside the office, Ms X said she had a clear view of the men standing directly in front of her and of Mr X, to her right, standing by his workbench at the rear of the warehouse. She said when the men entered, they stopped behind a yellow car which was parked underneath a hoist in the middle of the warehouse, approximately one metre away from her. Ms X told the Authority that she did not think they noticed her at first because “they were just honed in” on Mr Marshall.
46. At the same time as the men were entering the warehouse, Ms X said she looked down to where Mr Marshall was standing and saw that he was holding a shotgun and a shotshell in his hands.
47. Ms X said she glanced away from Mr Marshall for a few seconds and looked back at the men entering the warehouse and recognised that they were Police officers. Ms X said she then turned back to Mr Marshall to warn him that they were the Police. When she turned back to Mr Marshall, she saw that, “[he] had no weapon in his hand ... and he was standing there, hands by

his side.” Before she had a chance to warn Mr Marshall, the Police shot him, “*five or six [times] and he just staggered forward a couple of steps and fell on his forehead*”.

48. Ms X told the Authority that it was “*all so quick*” and there was “*no negotiation of any sort*”. She said if the Police had announced themselves, they would have come out willingly and the shooting would not have happened. Ms X also said that the officers were out of range for a shotgun and not in “*harm’s way*” as they were wearing protective gear, so she could not understand why they did not try to disarm him or use pepper spray.

Post shooting

49. Immediately after the shooting, Mr Marshall fell to the ground. His shotgun and a green shotgun shotshell were on the ground next to him. Officer E, who was also the designated medic⁶, turned around, pulled off his gas mask and helmet and yelled for a medic kit to be delivered to him. He then ran directly to where Mr Marshall lay, placed his Bushmaster M4 rifle on the ground and began to provide first aid. At the same time, Officer A, who had entered the warehouse behind Officer G, announced over the AOS radio “*shot’s fired*”. This call was recorded in the AOS log at 6.24pm.
50. At 6.28pm, Police requested an ambulance to attend the scene.
51. Officer C, who had remained outside the warehouse, told the Authority that he believed ten seconds went by from the time he heard the breaching of the door, to the time he heard the gunshots. As soon as he heard the gunshots, he opened the rear door of the Police car and grabbed the medic kit. Then, along with the Forward Commander and Officer D, he entered the warehouse and went directly to Officer E and Mr Marshall.
52. While Officers C, D and E were administering first aid to Mr Marshall, AOS officers continued to enter the warehouse to clear the address. Officer B, who had entered the front doorway during the gun fire, told the Authority that he immediately turned right as he entered the warehouse because that was where the “*threat was coming from*”.
53. As he moved towards the rear of the warehouse, he saw an office with an open doorway to his right. Looking into the office, Officer B said he saw a woman, Ms X, standing at the back of the room, approximately four metres away, between a coffee table and a couch.
54. When asked by the Authority if Ms X could have been standing outside the office when Mr Marshall was shot, Officer B replied that it was only a matter of seconds after the shooting when he entered the warehouse and he did not see her standing in the doorway.
55. This is corroborated by Officer E who said:

“I find it hard to believe that she has come out and seen what’s gone on ... (a) because we’re blocking off all the view to [Mr Marshall] (b), because if she had

⁶ All AOS officers receive a higher level of first aid training than the standard front line Police officer. However, a ‘designated medic’ receives more first aid training than an AOS officer.

popped out prior to me going up I would have seen her and would have come across her first and probably dealt with her”.

56. In addition, Officer G said told the Authority that Ms X could not have been standing outside the office doorway at the time of the shooting because *“I would have stood on her”*.
57. When Officer B saw Ms X, he remained in the office doorway and told her that they were armed Police and that she was being detained for the purpose of a search warrant. Officer B told her to keep her hands where he could see them, and after he visually cleared the room, he asked her to come forward and sit on the office chair, approximately one metre from the doorway.
58. When Ms X sat down, Officer B said he advised her of her rights and asked her what her name was and if there was anybody else in the warehouse. Officer B said she was *“quite visibly upset and shaking”* and she replied that it was just her and Mr Marshall living at the warehouse. She also kept asking if Mr Marshall had been shot and questioning what had happened to her dog.
59. While he was talking with Ms X, Officer B said he could see a CCTV monitor in the office showing what was happening outside the warehouse. Although the image was in black and white, Officer B said he could clearly see the flashing lights of the Police car and a number of officers moving up and down the driveway.
60. After a short period of time, Officer F approached the office and gave Officer B a set of plastic handcuffs, which he then used to handcuff Ms X. Officer F told the Authority that while he was standing at the office doorway he could hear Ms X crying and asking what had happened.
61. At the same time, the Forward Commander approached Officer E, who was still administering first aid, and asked for a status update. Officer E replied that Mr Marshall was a *“status 1”*⁷. At the Forward Commander’s suggestion, the officers decided to move Mr Marshall from their current location, to outside the warehouse. Officer E told the Authority that this decision was made because the officers were having difficulty working on Mr Marshall in the confined area.
62. After Officer E’s discussion with the Forward Commander, Officers D and C lifted Mr Marshall by holding onto his lower and upper body, and carried him outside. Once Mr Marshall was outside, the Forward Commander and Officers C, D and E continued to administer first aid.
63. While this was happening, Officer B said he continued to remain with Ms X in the office and talk to her about what was happening. When Mr Marshall was carried past them, Officer B said he told her that he was being taken outside as an ambulance had been called.
64. At approximately 6.33pm, a St John Ambulance with two intensive care paramedics arrived at Grasslands Place. The paramedics had been advised on route that they were attending an AOS job and that there had been a shooting.
65. When the paramedics approached Mr Marshall, they saw that he was unconscious and four AOS officers were administering first aid and performing CPR. While the officers continued CPR, the paramedics attached the defibrillator to Mr Marshall and asked about his injuries. At 6.40pm,

⁷ ‘Status 1’ is a patient condition status code and means that the patient is critical and there is an immediate threat to life.

following the paramedic's assessment, the officers were advised to stop performing CPR and Mr Marshall was pronounced dead.

66. After the paramedic's pronouncement, the Forward Commander returned to the warehouse and relieved Officer B, who had remained with Ms X. The Forward Commander told the Authority that he un-cuffed Ms X and explained to her that Mr Marshall had died from his injuries and that he was going to guide her out of the warehouse. The Forward Commander said he walked her out of the warehouse and took her to the St John ambulance where the paramedics then sat with her.
67. While the warehouse was being cleared, a number of officers noticed a dog running around the premises. Officer H told the Authority that he was concerned that the dog would interfere with the scene, so together with Officer I, they cornered the dog on top of one of the cars in the warehouse. After Ms X was taken to the St John ambulance, the officers ushered the dog outside and into a separate garage that was attached to the warehouse.
68. Once the warehouse was formally cleared, the AOS Commander left the SFP and approached the Forward Commander at the warehouse. While the AOS Commander and the Forward Commander were talking, Officer A advised them that there were two shooters. He also reported that he was in possession of Officer F's Glock pistol, and that Officer E's Bushmaster M4 Rifle was still inside the warehouse where he had originally left it.
69. After going through the warehouse with Officer A, the AOS Commander then took control of the Glock pistol and Bushmaster M4 Rifle and secured them in a lock box that was located in the back of a Police van.
70. A short time later, all AOS officers were stood down and, as per protocol, returned to the Hamilton Central Police station where the Forward Commander conducted a general debrief. After the debrief, all officers involved underwent breath alcohol tests, the results of which were negative. Officers E and F also underwent blood toxicology tests and gunshot residue testing.

Ms X's version of events – post shooting

71. Immediately after Mr Marshall was shot, Ms X said the Police then turned their weapons towards her. She said she quickly backed into the office and dropped to her knees with her hands up in the air and said, *"please don't shoot me, please don't shoot me"*. Ms X said she was then handcuffed and put into Mr Marshall's office chair, which was located near the entrance of the office.
72. While Ms X was seated, she said she continued to ask the officers if Mr Marshall was okay and said that the Police lead her to believe that he was still alive. After a short time, Ms X said the Police then, *"dragged [Mr Marshall] past me really inhumanely ... and left him out in the driveway, telling me the medic's with him"*.
73. Ms X told the Authority that the warehouse had a WIFI camera outside pointed towards the driveway. From her position in the office, Ms X said she could see a monitor on the office desk which was showing the flashing lights of an Ambulance at the top of the driveway. She said a lot

of time went past and she could not understand why the paramedics did not take Mr Marshall to the hospital.

74. About 40 to 50 minutes after Mr Marshall was shot, Ms X said a plain clothes Police officer came into the office, un-cuffed her and told her that they were executing a search warrant in regards to the manufacture of methamphetamine. When she asked the officer to tell her how Mr Marshall was doing, she said he told her, “*Oh Nick died*”. Ms X said the officer showed no sympathy when telling her, and she said that he spoke about Mr Marshall’s death very casually.

Examination of the scene

75. Police commenced a scene examination of the warehouse, assisted by forensic scientists from the Institute of Environmental Science and Research (ESR).
76. ESR found a 12-gauge pump action shotgun located on the ground next to the workbench where Mr Marshall was shot. The serial number had been removed and the shotgun safety catch⁸ was in the ‘off’ position.
77. Three unfired 12-gauge shotgun shotshells in green plastic cases were located at the scene. Two shotshells were found within the shotgun (one between the loading ramp and the loading port, and the other in the magazine). However, neither shotshell was found in the chamber ready for firing. The third shotshell was located on the ground, next to the shotgun.
78. The ESR report further states:

“In my opinion, the shotshell on the ground had been chambered in this shotgun four times. The shotshell within the shotgun and the shotshell in the magazine of the shotgun had each been chambered twice in this shotgun.

None of the shotshells had any firing pin impressions indicating that a misfire had occurred. There was no evidence that would allow me to conclude that any of the shotshells had been previously jammed in this shotgun.”

79. A number of firearms, either operational or in parts, and machinery used for the manufacture of firearms were located during the subsequent search of the warehouse.
80. Mr Marshall did not have a firearms licence.

Post mortem and ESR testing

81. On 13 July 2016, a forensic pathologist conducted a post mortem examination of Mr Marshall. The forensic pathologist determined that the cause of Mr Marshall’s death was “*multiple gunshot injuries*”.

⁸ A safety catch is a mechanism used to help prevent the accidental discharge of a firearm. When the safety switch is set to ‘safe’, the firearm will not discharge when the trigger is pressed. When the safety switch is set to the ‘off’ position, the firearm is able to be discharged.

82. The post mortem revealed that Mr Marshall received five gunshot wounds. Three gunshot wounds were to the left side of his body, and two gunshot wounds were towards his upper back. The pathologist determined that *“any of these injuries could have been fatal”*.
83. Results from ESR testing show that there was a trace (.04 milligrams per litre) amount of methamphetamine located in Mr Marshall’s blood. The amount is consistent with recreational use.
84. ESR testing also shows that gunshot primer residue was detected on the samples taken from Mr Marshall’s hands.

LAWS AND POLICIES

Search and Surveillance

85. Section 6 of the Search and Surveillance Act 2012 states that a Police officer *“may issue a search warrant, in relation to a place, vehicle, or other thing, on application by a constable if the issuing officer is satisfied that there are reasonable grounds—*
 - (a) *to suspect that an offence specified in the application and punishable by imprisonment has been committed, or is being committed, or will be committed; and*
 - (b) *to believe that the search will find evidential material in respect of the offence in or on the place, vehicle, or other thing specified in the application.”*

Law on the use of force

Use of force by Police officers

86. Section 39 of the Crimes Act 1961 provides for Police officers to use reasonable force in the execution of their duties such as arrests. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*

Use of force for self-defence or defence of others

87. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*
88. Section 62 of the Crimes Act 1961 makes a Police Officer criminally responsible for any excessive use of force.

General Guidelines on use of force

89. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation,

restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), pepper spray, batons, Police dogs, Tasers and firearms.

90. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
91. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
92. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions, or potential actions, of the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
93. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

Use of firearms

94. The Crimes Act provisions are mirrored in Police General Instruction F061 (Fire Orders) in the 'Police Firearms' chapter of the Police Manual. F061 instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act and also sets out the circumstances in which the use of lethal force is justified.
95. General Instruction F061 provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm and cannot reasonably protect themselves or in a less violent manner.
96. General Instruction F061 directs that an offender is not to be shot until all of the following conditions have been satisfied:
 - *“they have first been asked to surrender (unless it is impractical and unsafe to ask them)*

- *it is clear that cannot be disarmed or arrested without first being shot*
 - *further delay in apprehending the offender would be dangerous or impractical.”*
97. In operational situations where firearms are issued, General Instruction F061 also requires that an officer’s attention is drawn to the fire orders printed in their Police issue notebook *“if time and circumstances permit”*.
98. Police policy also requires officers to notify their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms.
99. The Police Manual states that authorised ballistic body armour must be worn when a firearm is carried or when Police attend or expect to attend an armed incident.

Police involvement in deaths and serious injuries

100. The ‘Police involvement in deaths and serious injuries’ chapter of the Police Manual provides that Police must treat the scene (where an officer has caused death to serious injury to someone) as they would any other serious crime scene.

101. The policy also states that:

“The incident controller, O/C of the Police operation or of any specialist squad involved in the incident, or the area commander (whoever is most appropriate) must:

submit a report to the district commander, Commander AMCOS, or the employee’s national manager outlining the circumstances of the incident before going off duty. This will enable an initial investigation to be commenced prior to the full interviewing of those involved.”

Deploying the AOS

102. The ‘Armed Offender Squads (AOS)’ chapter of the Police Manual states that AOS squads are maintained in each Police district to deal with people who are, or are believed to be, armed and a danger to themselves, the public or police. The AOS may be deployed for risk situations or duties where the potential use or possession of firearms is likely.

Tactical commander’s responsibilities at an AOS incident

103. An AOS Operation Report is completed by the tactical commander⁹ for each deployment. This records the nature of the call-out, and the deployment planning undertaken by the tactical commander.

104. Officers conducting AOS operations are expected, where practicable, to consider the adverse impacts an armed operation might have on the community, and how that impact could be minimised.

⁹ In terms of this report, the tactical commander was the ‘Forward Commander’.

105. During an AOS incident, the tactical commander is responsible for establishing an AOS base and commanding and directing the AOS in the forward area. This includes applying TENR and deciding on the use of tactics.

ISSUES CONSIDERED

106. The Authority's investigation considered the following issues:

- 1) Was it appropriate for AOS to be used to execute the search warrant and was the search appropriately planned?
- 2) Were Officers E and F justified in shooting Mr Marshall?
- 3) Was all reasonable assistance given to Mr Marshall after he was shot?

THE AUTHORITY'S FINDINGS

Issue 1: Was it appropriate for AOS to be used to execute the search warrant and was the search appropriately planned?

107. The Marshall family raised concerns with the Authority about the validity of the information contained in the Police application for the search warrant of Grasslands Place. During its investigation, the Authority has had access to the full Police file. The Authority is satisfied that Police provided reliable information to the Hamilton District Court and that this provided a substantive basis for making the search warrant application.

108. Police policy states that the AOS may be deployed for risk situations or duties where the potential use or possession of firearms is likely (refer to paragraph 102).

109. In May 2016, Police received information which suggested that Mr Marshall was using his warehouse at Grasslands Place, Hamilton to manufacture firearms and supply methamphetamine to gang members. Police continued to gather information which supported this claim, and in June 2016 a CIB Detective Sergeant approached the Waikato AOS Commander and Officer A requesting that the AOS take the lead in executing a search warrant. The CIB Detective Sergeant sought AOS involvement due to the possibility that Mr Marshall was in possession of a firearm and that the warehouse was being used as a drug lab. It was therefore appropriate for the AOS to be called in to deal with the execution of the search warrant (see paragraph 102).

110. After accepting the operation, the AOS Commander worked with the CIB Detective Sergeant and Officers A and B to assess what risks were involved and to determine what action needed to be taken in order to execute the search warrant safely (refer to paragraphs 8-12).

111. On the day of the shooting, the AOS Commander briefed the AOS at the Hamilton Central Police station, outlining:

- 111.1 that they were executing a search warrant at a warehouse on Grasslands Place, Hamilton;
 - 111.2 that the occupant, Mr Marshall, was in possession of a firearm that was kept under a workbench;
 - 111.3 that Mr Marshall was known to associate with violent gang members;
 - 111.4 that there was a possibility that the warehouse was being used as a methamphetamine lab;
 - 111.5 that the officers were to breach the primary entry point while simultaneously yelling out Mr Marshall to surrender; and
 - 111.6 the circumstances in which lethal force could be used as per the Police General Instructions F061 (Fire Orders).
112. Following the briefing, the AOS Commander contacted the Police Northern Communications Centre (NorthComms) and the District Command Centre and advised them of the search warrant.
113. The Authority considers that the decision to use the AOS to help execute the search warrant was appropriate in the circumstances and complied with Police policy. It is evident that when planning the AOS operation, the AOS Commander and Officer A thoroughly assessed the situation and took into consideration all the potential risks involved when deciding on which tactical option would best suit the circumstances.

FINDING

The deployment of the AOS to execute the search warrant was justified. The AOS performed their duties in a manner consistent with Police policy.

Issue 2: Were Officers E and F justified in shooting Mr Marshall?

114. Law and Police policy state that Police officers may use reasonable force in the execution of their duties, and that they are criminally responsible for any excessive use of force. Officers must give an offender the opportunity to surrender if practicable, and employ less lethal tactical options to effect an arrest or disarm an offender if they are available. However, if further delay in apprehending the offender would be dangerous or impractical, officers are justified in firing at an offender.
115. Section 48 of the Crimes Act 1961 also provides that everyone is justified in using force which, in the circumstances as they believe them to be, it is reasonable to use in defence of themselves or in defence of another person. The Authority has considered whether the lethal force used by Officers E and F was lawfully justified under the relevant provisions of the Crimes Act.

116. Officer E told the Authority that when he first saw Mr Marshall, he did not view him as an immediate threat as he could see that Mr Marshall was unarmed. As a result, he told Mr Marshall that he was conducting a Police search and he appealed for him to *“get on the ground”*.
117. When Mr Marshall ignored his appeal and picked up a *“black pump action shotgun”*, Officer E said his threat assessment immediately increased to the *“highest [point] on the scale”* and he yelled at Mr Marshall to drop the weapon.
118. Officers F and G told the Authority that when they entered the warehouse they saw Mr Marshall holding a shotgun at hip height, aiming it towards Officer E. They both believed that they and Officer E were at risk of being shot.
119. Other than the use of firearms, options that can be considered by Police when dealing with a violent offender include:
- cordon and containment;
 - retreat or delaying an arrest;
 - using CS gas;
 - using pepper spray and/or a baton;
 - using a Taser; and
 - using Police dogs.
120. Officer E said that given the level of threat that Mr Marshall posed to him and the other officers, other tactical options such as using empty hand tactics, pepper spray and a Taser were not appropriate, and a Police dog was not immediately available. As a result, Officer E believed that he *“only had two options, shoot or be shot”*.
121. The Authority accepts Officer E’s reasoning and finds that the options of cordon and containment, and retreat or delay in arresting Mr Marshall were not viable options considering the immediate threat he posed to Officers E, F and G, as well as the officers still entering the warehouse.
122. Due to the threat of being shot, Officers E and F fired on Mr Marshall simultaneously. Although Officer G did not fire his weapon, he told the Authority that this was because he was standing behind Officer E, who was in his line of fire: *“if those officers weren’t there, I would have shot [Mr Marshall] ... in defence of myself ... and the people coming through”*.
123. Ms X, Mr Marshall’s partner, told the Authority that she was standing outside the office doorway and witnessed the officers coming through the front door and shooting Mr Marshall. She disputes the officer’s version of events.

124. Ms X said the Police did not announce themselves when they entered the warehouse and as a result, she did not know who they were. Because of this, Mr Marshall grabbed his shotgun for protection.
125. Ms X accepts that she saw Mr Marshall holding a shotgun and a shotshell. However, she denies that the Police were “*in harm’s way*” as they were wearing protective gear and out of range for the shotgun. Ms X said the officers “*just honed in*” on Mr Marshall and there was “*no negotiation of any sort*”. The Police made no attempt to disarm Mr Marshall or use pepper spray on him, and at the time he was shot, Ms X said Mr Marshall was no longer armed and his hands were empty by his side.
126. Officer’s E and G do not agree with the statement that Ms X witnessed the shooting from a position outside the office doorway, as they were both positioned close to the doorway at the time. Officer E said, if this was so, he would have blocked Ms X’s view of Mr Marshall, while Officer G said he would have been “*standing on her*” (refer to paragraphs 54-56). The first officer to see Ms X was Officer B, who told the Authority that he saw Ms X standing at the rear of the office, only a few seconds after the shooting.
127. After considering all the available evidence and on the balance of probabilities, the Authority prefers the officers’ version of events and finds that Mr Marshall had his shotgun in his hands, aimed at Officer E, at the time he was shot.
128. The Authority is satisfied that Officers E, F and G believed that Mr Marshall posed an immediate threat of death or grievous bodily harm to them, and the other officers, when he confronted them with his firearm.
129. The Authority finds that Officers E and F were lawfully justified in using a firearm to try to prevent Mr Marshall from shooting them or their fellow officers. This was the only viable tactical option available to Officers E and F when Mr Marshall refused to drop his weapon and aimed it at Officer E.

FINDING

Both Officers E and F were justified under section 48 of the Crimes Act 1961 and Police policy in shooting Mr Marshall.

Issue 3: Was all reasonable assistance given to Mr Marshall after he was shot?

130. Immediately after Mr Marshall was shot, Officer E, the designated medic on the AOS squad, began administering first aid. Officer C, who was outside the warehouse when he heard the gunshots, grabbed the medic kit from the Police car and, along with Officer D, ran to help Officer E. A few minutes later, an ambulance was called.
131. Given the confined area where Mr Marshall was shot, the Forward Commander suggested Mr Marshall be moved outside. The decision to carry Mr Marshall outside was made so that officers could work on him more efficiently until the paramedics arrived.

132. Nine minutes after Mr Marshall was shot, a St John Ambulance with two intensive care paramedics arrived at the scene. The paramedics, with the help of the officers, continued to administer first aid until Mr Marshall was pronounced dead.

FINDING

Police provided all reasonable assistance to Mr Marshall after he was shot.

CONCLUSIONS

133. The Authority has concluded on the balance of probabilities, that Officers E and F were justified in shooting Mr Marshall. At the time the officers fired, Mr Marshall was pointing his shotgun at them and they feared for their lives.
134. The Authority also finds that the deployment of the AOS to execute the search warrant was justified. The AOS performed their duties in a manner consistent with Police policy.
135. Police provided all reasonable assistance to Mr Marshall after he was shot.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

21 June 2017

IPCA: 16-0072

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.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its 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 complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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.



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