

Fatal Police shooting of Shargin Stephens in Rotorua

INTRODUCTION

1. At approximately 12:55pm on Thursday 14 July 2016, a Police officer shot Shargin Stephens twice after he threatened Police and members of the public with a 1.15 metre long ‘slasher’¹ on Te Ngae Road, Rotorua. Mr Stephens died from his injuries 12 days later in Hamilton hospital.
2. The Police officers who responded were unaware of Mr Stephens’ identity until after the shooting.
3. 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.

BACKGROUND

Index of officers

Field Staff	Roles/Comment
Officer A	Senior Constable. Was driving a red marked Police car that was attacked by Mr Stephens. Twenty-two years’ Police service. Current in all relevant certifications.
Officer B	Constable. Partnered with Officer C. Armed with an X26 Taser. Attempted to discharge Taser, then sprayed Mr Stephens with pepper spray ² . Two years’ service. Current in all relevant certifications.
Officer C	Constable. Partnered with Officer B. First officer to confront Mr Stephens. Armed with an X2 Taser. Discharged Taser twice. Nine years’ Police service.

¹ An implement with a long handle and sharp blade used to clear scrub. The slasher carried by Mr Stephens had a blade measuring 25 centimetres.

² Oleoresin Capsicum spray.

Officer D	Sergeant and Police dog handler without an operational Police dog. Nineteen years' Police service. Current in all relevant certifications.
Officer E	Constable and Police dog handler, with an operational Police dog. Seven years' Police service.
Officer F	Senior Constable and Police dog handler, with an operational Police dog. Seventeen years' Police service. Current in all relevant certifications.
Officer G	Constable. Partnered with Officer H. Armed with an X2 Taser and a Bushmaster M4 rifle. Shot Mr Stephens twice. One years' Police service. Current in all relevant certifications.
Officer H	Constable. Partnered with Officer G. Armed with an X26 Taser and a Glock pistol. Discharged Taser. Twelve years' Police service. Current in all relevant certifications.
Officer I	Senior Sergeant. Unarmed. Twenty years' Police service. Current in all relevant certifications.
Officer J	Acting Sergeant. Armed with a Glock pistol. Nineteen years' Police service. Current in all relevant certifications.

Index of civilians

Reference	Roles/Comment
Ms W	Partner of Mr Stephens.
Mr X	Friend and colleague of Mr Stephens.
Ms Y	Registered nurse with specialist training in mental health and addiction care. Witnessed the shooting of Mr Stephens and provided first aid.
Mr Z	Front passenger in a vehicle stopped in the southbound right lane on Te Ngae Road. Witnessed the shooting of Mr Stephens and recorded events on his cell phone.

Events preceding the shooting

4. Shargin Stephens was a 35-year-old man who lived with his partner, Ms W, in Rotorua. Two dogs were kept in the front yard of their property.
5. At the time of this incident, he was facing charges on a number of matters including drug and firearm related offences, and was on electronically-monitored bail at his home³.
6. As part of his bail conditions, Mr Stephens was not allowed to take drugs or drink alcohol, and was required to present himself to Police when they conducted bail checks at his home.

³ Electronically-monitored bail is granted to defendants who would otherwise be held in custody or prison while they wait for a court hearing. Mr Stephens was initially on a 24-hour curfew at his home address, but was later permitted to leave the house to work (see paragraph 11).

7. Mr Stephens' family and friends said that he smoked methamphetamine, but was not a heavy user. Mr X (Mr Stephens' friend) told the Authority that Mr Stephens *"liked his alcohol a lot"* because it *"made him feel like he was invincible."* Alcohol was his *"major downfall"* and often *"why he got into trouble with the law."*
8. Mr Stephens had a very negative opinion of Police. He was particularly angry and frustrated about the frequency with which Police officers conducted bail checks on him. His family said that these checks were unnecessary and disruptive, sometimes occurring 30 minutes apart, in the early hours of the morning.
9. The Authority has reviewed the frequency of Mr Stephens' bail checks. While the Authority found that the checks did not occur quite this frequently, Mr Stephens was checked regularly by Police.
10. For example, on 6 July 2016, Mr Stephens was bail checked four times by Police. On the night of 10 and 11 July 2016, Mr Stephens was bail checked at 11:50pm, and again at 1:30am.
11. Two days before this incident, on 12 July 2016, Mr Stephens' bail conditions were changed to allow him to leave his home to work on an orchard in Maketu on weekdays between 7am and 6pm. Mr X, who lived nearby and worked at the same orchard, drove him there and back.
12. On 13 July 2016, Mr Stephens was bail checked twice, at 12:23am and at 8am. After work that day, Mr Stephens bought a six-pack of Cody's Bourbon and Cola and drank them that evening. He also shared *"a point⁴"* of methamphetamine with three other people. Mr Stephens was bail checked for the last time at 7:21pm, approximately 17 hours before this incident took place.
13. Ms W told the Authority that Mr X didn't sleep that night. Subsequent analysis of Mr Stephens' text messaging shows that, at approximately 2am, he sent a text message to Mr X, complaining, *"fuck this brother they won't let me sleep fuck."*
14. On the morning of 14 July 2016, the weather conditions delayed the start of work on the orchard. Mr Stephens' partner said he seemed *"spaced out"* but normal when she left for work at 9:45am.
15. Mr X did not see Mr Stephens until approximately midday, when he called in briefly to say he would be back soon to pick Mr Stephens up for work. He said that Mr Stephens seemed tired, angry and was *"sulking a bit."*
16. At approximately 12:12pm, Mr Stephens cut off his electronic monitoring bracelet.

Mr Stephens attacks Officer A's Police car

17. At approximately 12:45pm, Officer A was driving a red marked Police car northwards along Vaughn Road, when he heard an object hit the rear left-hand side of his Police car.

⁴ 0.1 grams.

18. Officer A pulled over to the side of the road, and got out to inspect the Police car. He left the Police car running, with the keys in the ignition and the driver's door closed. His Taser and Glock pistol ('Glock') were secured in the lockbox in the front passenger footwell.
19. As Officer A looked back down the road, he saw Mr Stephens (who he did not know and had no prior dealings with) pick up an object from the middle of the road and calmly walk towards him along the footpath. As Mr Stephens got closer, Officer A saw that he was holding a round weight in his right hand.
20. Officer A walked towards Mr Stephens and spoke to him, but Mr Stephens walked past Officer A without replying and threw the weight at the rear window of the patrol car. At this point, Officer A saw that Mr Stephens was carrying a slasher in his left hand, and appeared to be in a "trance-like state".
21. CCTV footage from nearby security cameras captured the next sequence of events. The footage shows Mr Stephens position himself next to the front passenger door of the Police car, grasp the slasher with both hands, swing it back and forcefully strike the front passenger and rear passenger windows four times, smashing the rear passenger window.
22. Officer A told the Authority that he feared for his safety because he had no immediate means to defend himself from Mr Stephens. He decided that the best course of action was to get away.
23. The CCTV footage shows Officer A move quickly from his position at the rear of the Police car, get into the driver's seat and start to pull away. As he does so, Mr Stephens raises the slasher above his head and strikes the windscreen twice, smashing the glass. Mr Stephens then strikes the back of the Police car as it moves past him.
24. Officer A drove approximately 20 metres up the road to the intersection with Allen Mills Road, and conducted a u-turn. At 12:52pm, Officer A made a radio call for urgent assistance to the Police Northern Communications Centre (NorthComms):

"10/10, 10/10⁵, Vaughn Road, just had my vehicle damaged by a guy with a slasher"
25. NorthComms directed available Police units to immediately go to assist Officer A.
26. Meanwhile, Mr Stephens had crossed Vaughn Road and was walking along the footpath in the opposite direction, still holding the slasher. Officer A followed Mr Stephens, maintaining a distance of approximately fifty metres. Officer A told the Authority that Mr Stephens appeared to be "a man on a mission" and he was concerned about Mr Stephens coming into contact with members of the public.

⁵ Police radio code conveying that an officer is in an emergency situation and requires immediate assistance.

27. Officer A continued to provide radio updates, advising that Mr Stephens was:
- a male Maori;
 - wearing a black puffer jacket, fawn-coloured shorts and light-coloured work boots;
 - walking back towards Te Ngae Road⁶); and
 - still holding the slasher.

Officers respond from Rotorua Police Station

28. Officers B, C, D, E, F, G, H, I and J (five general duties officers, three dog handlers and a senior sergeant in plain clothes) were at Rotorua Police Station when they heard Officer A's emergency radio call. They immediately ran to their vehicles⁷, put on emergency lights and sirens, and started driving through heavy traffic towards Vaughn Road, a distance of approximately three kilometres.
29. All officers, apart from two dog handlers (Officers E and F), were wearing stab-resistant body armour (SRBA). None of the officers stopped to put on ballistic body armour, as their priority was to reach Officer A as soon as possible.
30. While driving towards Vaughn Road, Officer D (a dog handler with the rank of sergeant) assessed the information provided by Officer A: a man armed with a dangerous weapon had attacked an officer and was now moving through a populated industrial area.
31. Officer D decided that the man posed an extremely serious threat to the public and to responding Police officers. He told the Authority that he radioed the other responding officers, directing them to arm themselves and to remind themselves of Police fire orders⁸. However, he did not realise at the time that this message did not get through because the radio channel was busy. Officer D couldn't immediately get his own Glock from the front passenger lock box, since he was driving and was not carrying a passenger.
32. Officer B was driving the lead Police car along Te Ngae Road, with Officer C in the front passenger seat. Both officers were armed with Tasers, and did not consider arming themselves with firearms. Officer C, in the front passenger seat, removed his Taser from the holster on his hip and held it on his lap so he would be ready to act immediately.
33. Officers G and H were behind Officers B and C and the three Police dog vans. Officers G and H discussed the high level of threat posed by the unknown offender armed with a slasher, and

⁶ A busy main road on the eastern shore of Lake Rotorua, which connects the city to the airport. There are a number of shops, restaurants and businesses along this section of Te Ngae Road, and the connecting streets.

⁷ Officers B and C, G and H, and J drove three marked Police cars respectively. Officer G drove his unmarked Police dog van. Officers E and F drove a marked Police dog van respectively, each containing an operational Police dog. Officer I travelled with Officer E.

⁸ Fire orders instruct officers to always be aware of their personal responsibilities in the use of firearms. The fire orders remind officers of relevant sections of the Crimes Act 1961 and set out the circumstances in which the use of lethal force is justified. See paragraphs 105 and 106 for more detail.

decided that Officer H should arm himself with the Glock from the front passenger lock box. They discussed Police fire orders, and Officer H advised NorthComms that he was armed.

34. Meanwhile, Officer A radioed that Mr Stephens had now turned left into Marino Road, and was still armed with the slasher.
35. Officers B and C and the three Police dog vans turned off Te Ngae Road onto Vaughn Road. Officer G decided to continue along Te Ngae Road, and turn directly into Marino Road. He was mindful that this intersection would need to be cordoned to prevent Mr Stephens from reaching the Redwoods Centre; a group of cafes, shops and businesses. The Redwoods Centre was likely to be very busy because it was lunch-time and school holidays.

Police confront Mr Stephens on Marino Road

36. Officers B and C drove along Vaughn Road, turned right into Marino Road and saw Mr Stephens approximately 50 metres from the intersection. Officer B said that Mr Stephens was yelling, waving his arms, and looked *“really angry and wound up like he wanted to fight...”* Officer C got on the radio and warned other arriving Police units, *“He’s amped!”*
37. Officer B parked the Police car and both officers got out and confronted Mr Stephens. Officer C said that Mr Stephens turned to face them, with both arms raised above his head in an *“aggressive stance.”* Both officers saw that he had a long spanner in his right hand and the slasher in his left hand. Officer C aimed his Taser at Mr Stephens and yelled, *“Put it down!”*
38. Officer C said that Mr Stephens lunged at him, then half-turned with his right arm raised and poised to throw the spanner. Officer C switched his Taser on, and repeatedly commanded Mr Stephens to drop his weapons.
39. Mr Stephens backed away from the officers, waving his weapons and then turned and ran down a driveway towards a mechanic’s workshop. Officer C and Officer B (who had also turned her Taser on), chased after Mr Stephens.
40. Footage from both officers’ Taser cameras and nearby CCTV cameras recorded what happened next. The Taser cameras also recorded Officers B and C yelling at Mr Stephens to drop the slasher.
41. Mr Stephens ran a short distance down the driveway before again turning to confront the officers. He raised his right arm as if to throw the spanner at Officer C. In response, Officer C fired his Taser at Mr Stephens⁹. Both probes made contact, but only delivered a limited electrical charge, not enough to incapacitate Mr Stephens¹⁰. At almost the same second, Mr Stephens threw the spanner at Officer C, narrowly missing him.

⁹ Officer C was armed with an X2 Taser, a semi-automatic two shot device. This meant that Officer C did not need to manually reload a second cartridge onto his Taser in order to fire it a second time.

¹⁰ Both probes fired from a Taser cartridge must hit the target to allow the electrical current to be delivered to the subject. Baggy clothing, such as a puffer jacket, can hold probes away from the subject’s skin, preventing the discharge from being effective. Taser probes were later found in the feather lining of Mr Stephens’ puffer jacket.

42. Realising that Officer C's Taser discharge had been ineffective, Officer B attempted to fire her Taser at Mr Stephens. However, the mechanism jammed and she was unable to fire it.
43. Meanwhile, Officer D, who had stopped his unmarked Police dog van next to Officer B's and C's Police car, got out and witnessed the confrontation between the officers and Mr Stephens.
44. When Mr Stephens ran down the driveway, Officer D immediately got back into his Police dog van and drove after him. As he turned into the driveway Officer D could see several people standing at the roller-door entrance to the workshop. Officer D briefly considered driving straight into Mr Stephens in order to protect those people from him, but decided instead to use his Police dog van to try to pin Mr Stephens against the fence.
45. As Officer D drove towards Mr Stephens, Mr Stephens side-stepped, raised the slasher above his head, and swung it at the passenger-side wing mirror of the Police dog van, breaking it.
46. Mr Stephens then turned back to face Officer C, who was standing approximately three metres in front of him, and brought the slasher up above his head with both hands, poised to strike.
47. At this moment, Officer C fired his second Taser cartridge towards Mr Stephens, causing Mr Stephens to turn away to his left. One probe became lodged in his forehead, but the other probe did not connect. Officer C had now used his two available Taser cartridges, and could not fire his Taser again.
48. Officer B manually loaded a new cartridge¹¹ and again tried to discharge her Taser, but it still would not work¹².
49. Mr Stephens ran around the back of the Police dog van and towards a group of cars parked against the side of the workshop. Officer B chased after Mr Stephens and sprayed a full canister of pepper spray towards him, with no effect. Mr Stephens then ran into the workshop, still holding the slasher.
50. Meanwhile, Officer E and Officer F had parked their Police dog vans near the entrance of the driveway on Marino Road and got their Police dogs out.
51. Officers G and H had also arrived from the other end of Marino Road and parked near the Police dog vans. Both had observed Officer B's and C's unsuccessful attempts to stop Mr Stephens with Tasers and pepper spray in the driveway. Officer H got out of the Police car and told the Authority that he heard an officer call for a Taser. He reasoned that none of the other officers must have a Taser available, so got his Taser out and ran towards workshop with his Taser ready in his hand.
52. Officer G assessed the situation and decided that, as Tasers seemed ineffective against Mr Stephens, he required a firearm. He opened the boot of the Police car, removed a Bushmaster

¹¹ Officer B was armed with an X26 Taser, which requires the operator to manually reload a new cartridge in order to fire it a second time.

¹² Officer B's Taser was examined by the Police armourer after the incident and found to have a mechanical fault which prevented it from firing.

M4 rifle ('rifle') from the rear lock box and racked it to make it ready to fire. Officer G, Officers E and F and their Police dogs ran into the workshop.

Police confront Mr Stephens in the workshop

53. As above, this phase of events was captured on a combination of Taser camera footage, CCTV and cell phone footage.
54. At least four mechanics were in the workshop when Mr Stephens entered. Mr Stephens ran towards the right of the workshop, and through a doorway leading to a small hallway and office area. He then turned to face the pursuing Police officers, holding the slasher horizontally in front of him.
55. Officer H turned his Taser on as he ran into the workshop. He confronted Mr Stephens from a distance of six metres, with his Taser drawn, and yelled, "*Put it down, put it down!*" Officer H said he received no acknowledgment from Mr Stephens.
56. Officer H went on to say that Mr Stephens made "*jabbing motions*" with the slasher towards him, then raised his arms and took a "*big swing*" while moving to his left behind the semi-closed door. Mr Stephen's actions were captured on the Taser camera footage.
57. Officer H told the Authority he had no option other than to fire his Taser at Mr Stephens, however the probes hit the door. Officer H manually loaded a new cartridge on to his Taser¹³. By the time he had done so, Mr Stephens had disappeared from view.
58. While Officer H was confronting Mr Stephens, Officers B, C, D, G and I were positioned in the workshop, just behind Officer H's right shoulder, to prevent Mr Stephens from escaping back through the roller-door. Officer F had positioned himself and his Police dog at the roller-door to guard the exit.
59. Officer E had positioned himself and his Police dog inside the workshop, to the right of the office doorway. He told the Authority that he heard (but did not see) Officer H fire his Taser at Mr Stephens, followed by a thud, which he assumed was Mr Stephens falling over. Officer E brought his Police dog towards the office doorway, but Mr Stephens had gone. Officer E heard an officer shout, "*He's run off!*"
60. The officers searched the hallway and realised that Mr Stephens had run through the reception area, and back outside on to Marino Road. Officer A, who had parked his Police car on Marino Road and was standing in the driveway, saw Mr Stephens running towards Te Ngae Road and advised NorthComms.

Police confront Mr Stephens on Te Ngae Road

61. Rather than follow Mr Stephens through reception, the majority of the officers ran out the roller-door and back down the driveway towards Marino Road.

¹³ Officer H was armed with an X26 Taser. See footnote 11.

62. Officers D, E and F ran towards their Police dog vans with the intention of driving after Mr Stephens¹⁴.
63. Officer G (still armed with a rifle) and Officer I sprinted out of the roller door, down the driveway (overtaking Officers B and C), and back out onto Marino Road. When Officer G reached the end of the driveway, he looked to his left and saw Mr Stephens approximately 20 metres ahead of him, near the intersection of Marino Road and Te Ngae Road. This intersection was controlled by a roundabout, with the Redwoods Centre on the opposite side.
64. Officer G saw other officers getting into their vehicles behind him, and decided that he would pursue Mr Stephens on foot. He told the Authority that he believed that he had to stop Mr Stephens from reaching the Redwoods Centre, and he knew that, other than Officer H, he was the only armed officer at the scene. At this stage, Officer G didn't know where Officer H was.
65. Mr Stephens ran across the corner of the intersection and on to the two northbound lanes of Te Ngae Road, chased by Officers G and I. Officer G said that he saw Mr Stephens cross directly in front of a dark coloured vehicle and a white SUV that had stopped beside each other in the two northbound lanes before the roundabout. A line of traffic had built up behind these two vehicles.
66. As Mr Stephens ran in front of these vehicles, Officer G yelled, *"Stop, armed Police!"* Officer G said that Mr Stephens looked behind him, then stopped beside the bonnet of the white SUV and turned to face him.
67. Officer G again challenged him to drop his weapon. Officer G said that Mr Stephens looked back at him, then looked at the driver of the white SUV and raised the slasher as if to strike. Officer G said he saw the terrified look on the driver's face, and felt *"helpless"*. The drivers of the white SUV and the dark coloured vehicle both sped forward through the roundabout. Mr Z, a witness in a vehicle positioned behind these two vehicles, also saw Mr Stephens threaten these motorists. A short while later, Mr Z got out his cell phone and started filming (the footage is described in paragraphs 75-79).
68. Officer G signalled to the other traffic to stay back, and continued to chase after Mr Stephens, who was now running along the raised grassed median strip ('median strip') towards the Redwoods Centre. Officer G could see lots of people standing in Redwoods Centre carpark watching what was happening. He told the Authority that he thought, *"If I don't stop him... someone's gonna die."* He continued to call out to Mr Stephens, desperately trying to draw his attention away from where people had congregated.
69. Officer G said that he considered shooting Mr Stephens at this point, but decided not to because people at the Redwoods Centre were also in his line of fire. As he continued to chase, Officer G told the Authority that he deliberately adjusted his track so that trees formed the background behind Mr Stephens, minimising the risk that a bystander would be accidentally

¹⁴ Officer E had loaded his Police dog into his Police dog van, and had reached the roundabout (where traffic was heavy) when he heard an officer announce *"shots fired"* over the radio (see paragraph 87). Officer F was still loading his Police dog into the Police dog van when he heard two shots ring out.

shot. The traffic on the southbound lanes had stopped near the roundabout, and the road behind Mr Stephens was clear for approximately one kilometre.

70. At this point, Officer J, the acting sergeant, arrived at the scene and parked his patrol car on the median strip, several metres south of Mr Stephens' position. Officer J moved around the front of his Police car with his Glock drawn and aimed it at Mr Stephens. Officer J said that the situation was "escalating" as Mr Stephens moved towards the Redwoods Centre.

The shooting

71. Officer G said that Mr Stephens stepped off the median strip onto the inside southbound lane of Te Ngae Road, and turned around to face him. He told the Authority that Mr Stephens looked him directly in the eye from a distance of approximately six metres, and "licked his lips" like he was "on something". Officer G said that he thought to himself, "Holy Jesus, this guy's, it's real now, he's focused on me."

72. Officer G explained his thought process at this point:

"If he turns left, goes into the shopping centre where it is, we're screwed. What we can do is limited...If he turns right he's gonna jack a car and I couldn't let that happen. So I confronted him, told him, "Put your weapon down." I brought my rifle up. "Put your weapon down." He didn't listen. "Put your weapon down." He didn't listen and then it was like slow motion."

73. Officer G told the Authority that he saw Mr Stephens start to move purposefully towards him while raising the slasher above his head, and feared Mr Stephens would "take my head off." Officer G said he thought about retreating, but believed that he couldn't as Mr Stephens was probably already close enough to strike him down with the slasher, and, regardless, he couldn't leave the people in the Redwoods Centre exposed and unprotected.
74. When Mr Stephens took a third step forward and was approximately five metres away, Officer G said he aimed the rifle at Mr Stephens, flicked the safety catch off and shot Mr Stephens twice. Mr Stephens dropped to the ground.
75. Officer G's account is corroborated by footage recorded by Mr Z (see paragraph 67), who was in a vehicle that had stopped in the inside southbound lane of Te Ngae Road, approximately twenty metres from Mr Stephens. The contents of this footage is described in paragraphs 76-79.
76. The footage shows Mr Stephens walking backwards at an angle across the inside southbound lane of Te Ngae Road, holding the slasher upright in both hands, across his body.
77. Officer G, with his rifle in the aim position, advances across the median strip towards Mr Stephens. Two other officers (Officer I and Officer J, armed with a Glock) also advance towards Mr Stephens from positions to the left and right of Officer G.

78. Mr Stephens walks backwards until he is about to cross the centreline into the outside southbound lane. Mr Stephens takes a couple of steps into the outside lane and starts to raise the slasher above his head in a striking position. He then shifts his weight forward and takes several steps towards Officer G, who has stepped from the median strip onto the road. Officer G takes a step backwards.
79. The final frame shows Mr Stephens facing Officer G, holding the slasher in his right hand above his head, poised to strike from approximately four to five metres away. The cell phone footage ends at this point.

Ms Y's account

80. Ms Y is a registered nurse who specialises in mental health and addiction care. She was driving southwards along Te Ngae Road when the car ahead of her was stopped by a Police officer just past the roundabout. She saw Mr Stephens run onto the road approximately 20 metres ahead. He was yelling and “violently” swinging a weapon with a long silver blade.
81. Ms Y also saw people, including teenagers and young children, gathering on the footpath outside the Redwoods Centre. Mr Stephens was heading towards them and Ms Y thought, “*Oh gosh, this isn't going to end nicely.*”
82. Ms Y told the Authority that, based on her experience, Mr Stephens looked like he was under the influence of an “*illicit substance*”:
- “I could just tell, just by his behaviour and his absolutely (sic) lack of insight, like he wasn't aware that there was traffic pulling up behind him. He wasn't, you could just see he wasn't aware.”*
83. Ms Y said that Mr Stephens “*upped the ante as far as violence went*”. He was close to the middle of the southbound lanes, swinging his weapon and yelling, “*I'm gonna fucking kill you!*” Police officers shouted at him repeatedly to drop his weapon and get on the ground.
84. Ms Y said that, by this point, she had got out of her car as she believed that either Mr Stephens was going to hurt or kill someone, or he would be shot by Police. She intended to provide first aid.
85. Ms Y was at the front of the queue of vehicles when a Police officer shot Mr Stephens. She estimated that the officer was approximately two and a half metres away from Mr Stephens when he fired. Ms Y then went forward to assist Mr Stephens.

After the shooting

86. Immediately after Mr Stephens was shot, Officers H and J ran forward to secure him with handcuffs. Officer H said that Mr Stephens continued to struggle violently, despite his injuries. Officer G kicked the slasher away from Mr Stephens' reach, and directed another officer to remove a kitchen knife from Mr Stephen's back pocket. Officer E and his Police dog arrived, and remained close by until Mr Stephens was brought under control and handcuffed.

87. At 12:55pm, Officer D radioed NorthComms about the shooting and requested an ambulance.
88. Officers then started to give first aid, assisted by Ms Y and several other medical professionals who were in the vicinity. Ms Y told the Authority that Mr Stephens spoke to her while she was tending him, and told her that he had taken methamphetamine and cannabis, as well as alcohol (she could smell this on him). He also told her that he was *“sick of Police”* and *“wanted to teach them a lesson.”*
89. Ms Y advised Police to keep Mr Stephens handcuffed because his demeanour was extremely volatile, he was still struggling and making threats, and she believed that he was still a danger to himself and others. At 1:14pm the ambulance arrived, having been held up by the heavy traffic.
90. Officer D briefly took command of the scene, and co-ordinated officers who were providing first aid, controlling the traffic, identifying exhibits, and managing witnesses before handing command to Officer I. At 1:23pm, NorthComms formally handed incident control to another senior sergeant.
91. Mr Stephens was taken to Rotorua Hospital, but was transferred to Waikato Hospital that evening. On 26 July 2016, Mr Stephens died as a result of his gunshot injuries.
92. Following the shooting, all officers directly involved with the incident underwent testing for the presence of alcohol, returning negative results. They were formally interviewed about their part in the incident, and were stood down from work in accordance with the Police trauma policy.
93. On 25 July 2016, Police carried out an operational debrief.

Police investigation

94. Police carried out a criminal investigation into the use of force against Mr Stephens and determined that the officers’ actions were justified.
95. Police also conducted a review of their handling of this incident. It found that, in general and given the circumstances, the Police response was well-handled.
96. The Institute of Environmental Science and Research (ESR) analysed samples of Mr Stephens’ blood and urine, and found evidence of alcohol, methamphetamine and methadone.

LAWS AND POLICIES

Use of force

Law on the use of force

97. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. 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.*”

98. Section 48 of the Crimes Act states: “*Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.*”
99. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police policy on the use of force

100. 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), OC spray, batons, Police dogs, Tasers and firearms.
101. 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.
102. 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)).
103. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions of, 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.
104. 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.

Firearms

Use of firearms

105. 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.
106. 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. 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.”*

Use of Taser

107. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive (defined as *“actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm”*) and cannot be used on a person who uses passive resistance in relation to Police.
108. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the deployment of a Taser unless it is impractical or unsafe to do so.

Oleoresin Capsicum (Pepper) spray

109. Pepper spray is used by Police to subdue people; it causes a stinging sensation and generally makes people very compliant so as to avoid further aggressive behaviour.
110. Police policy states that OC spray may only be used on someone who is actively resisting and then only when the situation cannot be resolved by less forceful means. Active resistance includes physical actions such as pulling, pushing or running away – that is, *“more than verbal defiance.”*

THE AUTHORITY'S FINDINGS

111. The Authority visited the scene of the shooting and interviewed Mr Stephens' family and friends. The Authority also interviewed Mr Z and Ms Y, Officers A, B, C, D, E, G, H and J, monitored the Police investigation throughout and reviewed all the documentation produced by the Police investigation team.

Issue 1: Was the frequency of the bail checking reasonable and did it contribute to Mr Stephens' actions on 14 July 2016?

112. Mr Stephens' family complained about the frequency with which he was bail checked while on electronically monitored bail (see paragraph 8).

113. As discussed in paragraphs 8-12, while the bail checks were not as frequent as Mr Stephens' family stated, Mr Stephens was bail checked frequently. Between 7 June 2016 and 13 July 2016, 64 checks were made. Fifteen of these were made between the hours of 11pm and 6am, when Mr Stephens could reasonably be expected to be sleeping. On seven occasions, Mr Stephens was checked at least three times in a 24-hour day.

114. The requirement on Mr Stephens to stay at his home was monitored through the electronic monitoring bracelet that he wore. It alerted authorities if he left his home without permission. The primary purpose of the Police bail checks was to ensure that Mr Stephens adhered to the court imposed conditions not to consume alcohol or drugs (see paragraph 6).

115. However, several Police officers who bail checked Mr Stephens told the Authority that the presence of the dogs in the front yard prevented them from safely approaching the house to talk to Mr Stephens and assess his condition. The officers repeatedly told Mr Stephens to lock the dogs away, but he did not.

116. An officer also told the Authority that Mr Stephens *"was always up, it didn't matter what time of the day or night it was..."* and it never looked like he had *"just rolled out of bed."*

117. On the face of it, the frequency of the bail checks on Mr Stephens do appear to be problematic. However, in the context of the suspicions raised by Mr Stephens' uncooperative behaviour and restless demeanour, and the officers' inability to get close enough to check whether Mr Stephens had taken alcohol or drugs, it was reasonable for Police to check Mr Stephens as often as they did.

118. The Authority accepts that Mr Stephens was angry with the frequency of the bail checks, and with Police in general. However, Mr Stephens was last checked at a reasonable time in the early evening, approximately 17 hours before this incident took place. He consumed alcohol and methamphetamine during this time (see paragraphs 12 and 96), which was likely to have impaired his decision-making and judgment. Given these facts, the Authority is satisfied that Police cannot be said to have contributed to Mr Stephens' actions.

FINDINGS

In the circumstances, it was reasonable for Police to bail check Mr Stephens as frequently as they did.

The frequency of the bail checking did not contribute to Mr Stephens' actions.

Issue 2: Was the initial tactical response to Mr Stephens' actions properly considered and appropriate in the circumstances?

119. From the start of this incident, Mr Stephens behaved in an extremely aggressive and irrational manner towards Police. He attacked Officer A's Police car without provocation, and would not respond to Officer A when he tried to speak to him (see paragraph 20).
120. Officer A feared that Mr Stephens intended to attack him with the slasher. Officer A's Taser and firearm were locked away in his Police car (see paragraph 18), meaning he was not equipped to effectively defend himself from attack or disarm Mr Stephens. Consequently, Officer A had no choice but to try to get away from Mr Stephens and make a '10/10' radio call requesting urgent back-up (see paragraph 24).
121. Officer A managed to get into his Police car and trail Mr Stephens, while providing detailed updates to responding officers (see paragraphs 24-27). This information allowed officers to prepare appropriate tactical options as they travelled to the scene.
122. A '10/10' emergency radio call is rare, and triggers an urgent response from other officers. Officers at Rotorua Police Station could hear that Officer A was in serious danger, and, justifiably, did not wait for direction from NorthComms to go to his immediate assistance. Officers travelled to the scene quickly, mindful that it was important to stop Mr Stephens from reaching shops and cafes on Te Ngae Road.
123. Police may carry firearms when they perceive that a situation involves, or is likely to escalate to involve, a risk of death or grievous bodily harm (see paragraphs 105-106). It was apparent from Officer A's radio transmissions that the unknown offender was aggressive, armed with a dangerous weapon, and on the move in a busy area, and therefore presented an extreme risk to those he came across.
124. Consequently, Officer D, a sergeant, tried to transmit a direction to responding officers to arm themselves and consider Police fire orders while travelling to the scene (see paragraph 30). Several officers carried out their own risk assessment and armed themselves with Tasers and Glocks. The Authority finds that the officers were justified in doing so given the level of threat posed by Mr Stephens.

FINDINGS

Officer A acted appropriately to the direct threat posed by Mr Stephens, and ensured that responding officers received detailed updates about Mr Stephens' appearance, actions and direction of travel.

Police responded swiftly to Officer A's emergency call, and were justified in arming themselves.

Issue 3: Were officers justified in using force to try and stop Mr Stephens in Marino Road and at the workshop?

125. Law and Police policy states 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. 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 (see paragraphs 97-104 for a full explanation of relevant law and policy).
126. As set out in paragraphs 107-108, Police may use a Taser to arrest an offender if they reasonably believe the offender poses a threat of physical injury and they cannot be arrested in a less forceful way.
127. Police made several attempts to incapacitate and disarm Mr Stephens using Tasers throughout this incident, none of which were successful. Mr Stephens continued to evade and threaten Police. Footage and audio recorded by the Taser cameras of Officers B, C and H show the high level of aggression that Mr Stephens directed at the officers confronting him, and how close those officers came to receiving serious injuries.

Officers B and C

128. Officers B and C were the first officers to arrive at the scene and confront Mr Stephens. They had armed themselves with Tasers because information communicated by Officer A indicated Mr Stephens was clearly assaultive and willing to attack Police.
129. As soon as Officer C confronted Mr Stephens with his Taser drawn, Mr Stephens threatened both officers with the slasher and the spanner (see paragraphs 37-38). Mr Stephens ignored Officer C's repeated instructions to drop his weapons (which were recorded on the Taser camera's audio), before running down the driveway towards the workshop.
130. Officer C fired his Taser in response to Mr Stephens' feigned attempt to throw the spanner at him (see paragraph 41), but the discharge had no effect on Mr Stephens.
131. Officer C fired his Taser a second time when Mr Stephens' aggressive and violent behaviour had escalated to the point where he had attacked the Police dog van with the slasher, and was poised to strike Officer C, who was within range of the slasher's blade (see paragraphs 45-47).

132. Officer B also attempted, unsuccessfully, to fire her Taser twice to incapacitate Mr Stephens, having seen that Officer C's discharges had not worked (see paragraphs 42 and 48). Finally, she tried to pepper spray Mr Stephens when he started running towards the workshop, having no other tactical options left to stop him (see paragraph 49, and paragraphs 109 and 110 for explanation of the relevant policy).
133. Officer C fired his Taser to defend himself on both occasions, and Officer B also tried to fire her Taser to protect herself and Officer C from Mr Stephens' actions. However, both officers told the Authority that they also acted to try and stop Mr Stephens from reaching, and potentially hurting, members of the public. It was apparent to both officers that Mr Stephens was drug-affected and unpredictable.
134. For these reasons, the Authority finds that both officers were justified in using Tasers against Mr Stephens, who posed an immediate and significant threat and would not comply with Police instructions.
135. Officer B was justified in spraying Mr Stephens as a last-ditch attempt to stop Mr Stephens from running away from them towards the workshop.

Officer H

136. When Mr Stephens ran into the workshop, it became even more urgent for Police to stop him as he had become a direct threat to the people working in the workshop (see paragraph 54). Mr Stephens had entered an office area, and Police did not know if these offices were occupied, or what Mr Stephens intended to do.
137. Officer H was armed with a Glock, but confronted Mr Stephens with a Taser in the doorway to the office area. At the time, Mr Stephens was using his slasher to prevent the officers from getting close to him. Officer H was the only officer in a position to use his Taser (see paragraphs 47 and 48). It was a further few seconds before Officer G arrived at the workshop, armed with a Taser and a rifle.
138. Officer H told the Authority that he fired his Taser when Mr Stephens swung the slasher at him. Mr Stephens' actions, and Officer H's challenges to drop the slasher, were recorded by the Taser camera.
139. Officer H was justified in firing the Taser at Mr Stephens in order to defend himself from serious injury, and to try to incapacitate Mr Stephens so he could be disarmed and apprehended. Officer H missed and had to manually re-load his Taser, and Mr Stephens took the opportunity to escape out onto Marino Road.

FINDINGS

Officers B, C and H were justified in using Tasers to attempt to incapacitate Mr Stephens in Marino Road and the workshop.

Officer B was justified in using pepper spray to try to stop Mr Stephens.

Issue 4: Should Police have deployed Police dogs to incapacitate Mr Stephens?

140. Police may use Police dogs as a means of force to apprehend offenders who cannot themselves be apprehended by a less violent means. The Police dog must remain under the dog handler's control at all times.
141. Officers E and F each responded with an operational Police dog. By the time both officers arrived at the workshop with their Police dogs, Mr Stephens had run into the doorway to the office area and was being challenged by Officer H (see paragraphs 58-59).
142. Officer E and his Police dog went towards the doorway as Officer H fired his Taser. However, when Officer E moved around to look through the doorway, it was empty. It was not immediately apparent where Mr Stephens was, and Officer E explained to the Authority that he could not safely release his Police dog at a target that it could not see.
143. Officer F and his Police dog had positioned themselves behind Officer E, near the roller door, and also could not see Mr Stephens (see paragraph 58). Officer F could not release his Police dog for the reason explained by Officer E above.
144. When it became apparent that Mr Stephens had run through reception and back onto Marino Road, both dog handlers decided to run back to their Police dog vans, reload their Police dogs and drive towards the general direction in which Mr Stephens was heading (see paragraph 62). Officer E told the Authority that he thought it would be quicker to try to find Mr Stephens using his van.
145. However, Officer E became caught in traffic and was at the roundabout on Te Ngae Road when he heard over the radio that shots had been fired. Officer F was still loading his Police dog when Mr Stephens was shot (see the footnote in paragraph 62).
146. Officer E parked and brought his Police dog over to where Mr Stephens was being secured by other officers. Once Mr Stephens was under control, Officer E put his Police dog away. The Police dog did not bite Mr Stephens at any point during the incident.

FINDINGS

Officers E and F did not have a reasonable opportunity to effectively and safely deploy their Police dogs to incapacitate Mr Stephens.

Mr Stephens was not bitten by a Police dog at any point during the incident.

Issue 5: Was Officer G justified in shooting Mr Stephens?

147. As set out in paragraphs 105-106, Police policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm. Officers must give an offender the opportunity to surrender if practicable, and employ less lethal tactical options to affect 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.

148. Officer G had decided to arm himself with a rifle prior to entering the workshop, having seen that other tactical options (Tasers and pepper spray) were proving to be ineffective against Mr Stephens. Officer G had considered Police fire orders when driving towards Marino Road with Officer H (see paragraphs 33 and 52).
149. When Officer G chased Mr Stephens across the median strip of Te Ngae Road (as described in paragraph 71), he knew that Mr Stephens:
- was acting in an extremely unpredictable and aggressive manner;
 - was potentially under the influence of drugs (see paragraph 71);
 - was armed with a slasher, which he had repeatedly used against Police;
 - had threatened a motorist with the slasher (see paragraph 67);
 - had been called on by multiple officers to drop the slasher, but had failed to comply; and
 - had been tasered and pepper sprayed with no effect.
150. Mr Stephens was now heading towards a busy shopping centre, where members of the public would almost certainly be exposed to the threat of grievous bodily harm or death (see paragraph 68). Officer G told the Authority that he tried to stop Mr Stephens by chasing after him and yelling to attract his attention.
151. As well as fearing that Mr Stephens might attack and potentially kill any members of the public that he came into contact with (see paragraph 68), Officer G also realised that there was a risk that Mr Stephens might try to steal a car (see paragraph 72). As described in paragraphs 67, Mr Stephens had already approached and threatened one motorist (see paragraphs 67).
152. The incident had reached a critical point. Other tactical options, including verbal instructions, pepper spray and Tasers had failed to stop Mr Stephens. The Police dog handlers had not yet reached the scene (see paragraph 62), so there was no opportunity to use a Police dog to incapacitate Mr Stephens. As far as Officer G was aware, he was the only armed officer in close proximity to Mr Stephens (Officer G was unaware that Officer J had arrived and was armed with a Glock, as described in paragraph 70).
153. Once Officer G had succeeded in stopping Mr Stephens and drawing his focus, he realised that he was now in serious danger and feared for his own life (see paragraph 69). Despite Officer G's continued challenges to drop the slasher, Mr Stephens advanced towards Officer G with the slasher raised (see paragraphs 72-73).

154. Officer G told the Authority that he could not retreat and allow Mr Stephens to resume his progress towards innocent bystanders. In any case, Officer G believed that Mr Stephens was now close enough to strike him down with the slasher and Mr Stephen's actions clearly indicated to Officer G that this was what he intended to do (see paragraphs 73-74).
155. Footage taken by Mr Z (described in paragraphs 75-79), and an eyewitness account (outlined in paragraphs 80-85), corroborates Officer G's recall of the moments before the shooting occurred. Mr Stephens turned and started to advance towards Officer G with the slasher raised and poised to strike. The Authority accepts that Officer G reasonably believed that Mr Stephens was about to seriously hurt or kill him, and that he needed to fire at Mr Stephens to prevent that from happening.
156. The Authority finds that Officer G was justified in acting in defence of himself by shooting Mr Stephens. Mr Stephens posed an immediate threat of grievous bodily harm or death, and it was reasonable for Officer G to use his firearm in the circumstances.

FINDING

Officer G was justified in shooting Mr Stephens.

Issue 6: Did Police exercise good command and control?

157. This incident arose without warning, and was extremely quick (approximately six minutes from the time that Mr Stephens attacked Officer A's Police car, until he was shot). There was no time for a planned Police response.
158. Police policy on command and control of incidents provides that the shift commander of the communications centre (in this case, NorthComms), retains responsibility for the initial incident control, until control is formally passed to a suitable officer in the field. This officer is designated the 'Incident Controller', and assumes control once they have been fully briefed about the incident, and have formed a response plan.
159. While NorthComms was nominally in command and control of this incident, its brevity meant there was little that it could do other than direct officers to go to Officer A's assistance, before Mr Stephens was shot. In the most part, the officers on the ground had to think on their feet and make their own tactical decisions as events unfolded.
160. Senior responding officers took command at the scene to the extent that circumstances permitted.
161. Officer D, a sergeant, recognised the severity of the potential threat presented by Mr Stephens, and directed the responding officers to arm themselves and consider fire orders (see paragraph 30).

162. He, and Officer I took command of the incident for a short period of time after the shooting (see paragraph 90), until an incident controller was appointed at the scene approximately 28 minutes after Mr Stephens was shot.

FINDING

Police exercised good command and control during this short, fast-paced incident.

Issue 7: Was all reasonable assistance provided to Mr Stephens after he was shot?

163. After the shooting, Police quickly called an ambulance to come to the scene, but it took some time to arrive due to heavy traffic (see paragraphs 87 and 89).
164. Meanwhile, Mr Stephens was brought under control and provided with first aid by officers and medical professionals who offered to assist (see paragraphs 86 and 88). It was necessary to keep Mr Stephens handcuffed while he was given medical treatment as his behaviour remained aggressive and unpredictable (see paragraph 89).

FINDING

All reasonable assistance was provided to Mr Stephens after he was shot.

CONCLUSIONS

165. Officer G was justified under section 48 of the Crimes Act 1961 in shooting Mr Stephens. At the time he fired, Officer G feared that Mr Stephens would seriously wound or kill him with a slasher.
166. The Authority has also determined that:
- 1) In the circumstances, it was reasonable for Police to bail check Mr Stephens as frequently as they did.
 - 2) The frequency of the bail checking did not contribute to Mr Stephens' actions.
 - 3) Officer A acted appropriately to the direct threat posed by Mr Stephens, and ensured that responding officers received detailed updates about Mr Stephens' appearance, actions and direction of travel.
 - 4) Police responded swiftly to Officer A's emergency call, and were justified in arming themselves.

- 5) Officers B, C and H were justified in using Tasers to attempt to incapacitate Mr Stephens in Marino Road and the workshop.
- 6) Officer B was justified in using pepper spray to try to stop Mr Stephens.
- 7) Officers E and F did not have a reasonable opportunity to effectively and safely deploy their Police dogs to incapacitate Mr Stephens.
- 8) Mr Stephens was not bitten by a Police dog at any point during the incident.
- 9) Police exercised good command and control during this short, fast-paced incident.
- 10) All reasonable assistance was provided to Mr Stephens after he was shot.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

6 July 2017

IPCA: 16-0086

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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