

Non-fatal shooting of Murray Allan by Police in Christchurch

INTRODUCTION

1. At about 2am on Saturday 4 February 2017, a Police officer shot Murray Allan after he presented an imitation pistol at Police in Woolston, Christchurch. Mr Allan survived the shooting but received minor injuries to his head.
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.

BACKGROUND

Summary of events

3. At about 10.30pm on Friday 3 February 2017, Officers A, B and C attended a staff briefing prior to beginning their night shift in Christchurch. At the briefing, the officers were advised that a safety alert had been issued for Murray Allan, who was on bail for dishonesty charges. They were told that Mr Allan was a person of interest in a number of "stand-overs" relating to drug offending.¹
4. It was noted that Mr Allan was a known associate of a motorcycle gang and was likely to be in possession of firearms, including a pistol, a shot gun and an AK47 assault rifle. The officers were informed that Mr Allan was a "significant risk to staff and members of the public" and, as a result, the shift commander advised that they could arm themselves if they believed it was necessary.
5. Officer A, who was working alone, armed himself with a Glock pistol and read over the Police fire orders as required by policy (refer to paragraphs 53-56).

¹ A 'stand-over' involves using intimidation or threat of force to coerce others into submission or compliance.

6. Officers B and C, who were partnered together, were also joined by Mr X, a Police welfare officer, who was observing the shift. Prior to leaving the Christchurch Central Police station, Officer B armed himself with a Glock pistol and considered the Police fire orders. Officer C remained unarmed.
7. In the early hours of Saturday 4 February 2017, Officers B and C were dispatched to an address in Woolston, Christchurch to investigate a report that a male had threatened to harm himself.
8. The officers attended the address and were advised that the male had left the house on foot. Shortly after, at about 2am, the officers left the address to search the local parks in an attempt to locate the male.
9. When the officers stopped their Police car alongside St Lukes Reserve, Officer B observed a small grey car, about 20 metres away, parked on St Marks Street and facing towards them. He could see a person sitting in the driver's seat, which thought was unusual given the location and time of day. As a result, Officer B decided that while Officer C and Mr X searched the reserve, he would speak to the person to see if he had any information on the missing male.
10. As Officer B approached the parked car, he turned on his torch and saw another person sitting in the front passenger seat. When he reached the driver's side he told the driver that he was looking for a male who was missing in the area.
11. Officer B recognised Mr Allan as the person sitting in the front passenger seat. At the same time, he noticed a glass pipe in the passenger's side door pocket by Mr Allan's left knee.
12. Officer B immediately realised that he was in a potentially dangerous situation. However, because he was by himself, he did not want Mr Allan to realise that he knew who he was so he continued to keep the conversation casual.
13. When Officer C returned from the park, Officer B called him over to the car. Mr X stayed at the reserve entrance next to the Police car.
14. As Officer C approached, Officer B told the driver and Mr Allan that he had seen a drug utensil (the glass pipe) in their car and he was going to conduct a search pursuant to the Search and Surveillance Act 2012 (see paragraph 43). Officer B then instructed them to place their hands on the car dashboard and to keep them there. Although the situation was under control and both males were being cooperative, Officer B said that he remained on high alert given Mr Allan's background.
15. When Officer C arrived at the car, Officer B stepped away and radioed SouthComms to request back up and to advise that they had located Mr Allan. Within seconds, Officer A responded that he was on his way.
16. When Officer B returned to the driver's side, he introduced himself and read the driver and Mr Allan their rights under the New Zealand Bill of Rights Act. He then explained that they were waiting for another Police car to arrive before they conducted the search and that the two occupants would be detained until that time.

17. After a minute or so, Officer C observed Mr Allan started to become agitated; he appeared uneasy and he kept taking his hands off the dashboard to grab his cell phone. As time went on he became more *"fidgety"*.
18. Officer B also found Mr Allan's behaviour concerning. He said he became very conscious of the fact that Mr Allan had an alert for firearms and he started to get a feeling that *"something was not right"*.
19. A few minutes later, Officers B and C heard Officer A's car approaching them from behind.
20. Officer A parked his Police car on the corner of St Lukes Street and St Marks Street, a short distance from Mr Allan and the officers. As Officer A got out of his Police car to walk towards them, Officer B directed Mr Allan to exit the car with his hands up and, once outside the car, to put his hands on the roof; he intended to handcuff Mr Allan as soon as he was out of the car.
21. Officer B observed Mr Allan immediately reach into the foot-well of the front passenger seat and pull up a backpack with his left hand, reach inside the bag with his right hand and pull out a brown pistol.
22. Officer B recalled that Mr Allan then began to extend his right arm to aim the pistol in Officer B's direction. Officer B feared he was going to die and immediately yelled *"Firearm!"* to warn the other officers.
23. While he was standing next to the front passenger seat and was aware of the backpack, Officer C now has no recollection of what was withdrawn from it by Mr Allan. However, as soon as he heard Officer B yell *"Firearm!"* Officer C said he stepped away from the car and ran down the street into a neighbouring property.
24. Officer B said he did not have enough time to draw his Glock, but even if he had drawn it, the driver would have been in his line of fire. The only action Officer B thought he could take to *"prevent this threat being carried out"* was to quickly step away from the car, and so he did.
25. Officer A also saw Mr Allan reach down between his legs, grab a backpack, and then pull out a small pistol. Almost simultaneously, Officer A said he heard Officer B yell *"Firearm!"*. At this stage Officer A was adjacent to the front wheel on the driver's side of the vehicle.
26. Officer A immediately reached for his Glock pistol and fired seven shots in quick succession towards Mr Allan, aiming for his *"centre mass"*. The first bullet went through the windscreen and fragmented on the window frame. A fragment of the bullet then struck Mr Allan in the forehead. The other six shots went into the bonnet of the car.
27. Officer A said that he continued firing until he believed that Mr Allan was incapacitated and was no longer a threat.
28. As Officer A fired, Officers B and C ran clear of the vehicle to get cover. Once they had cover, one of them advised SouthComms that shots had been fired.

29. Mr Allan was interviewed by the Authority. He admitted that as soon as he saw Officer A beginning to walk towards him, he reached down for his backpack intending to pull out his pistol and point it in Officer B's direction in order to "get away".² He said he only managed to get the pistol above the height of the dashboard before Officer B yelled "Firearm!" and he was then shot in the head.
30. Mr Allan believed that Officer A was "shooting to kill [as] the first shot was a head shot". He said that as soon as the bullet hit him in the head, he ducked down in his seat to protect himself.
31. When the shooting stopped, Officer B observed Officer A standing in the middle of the road pointing his Glock towards the passenger seat of the vehicle. He could hear a male yelling that he had been shot. The driver had got out of the car during the shooting and was now lying on the road unharmed.
32. On approaching the vehicle, Officer A could see Mr Allan sitting upright in the front passenger seat, with both hands covering his face and blood coming out between his fingers. He observed that Mr Allan's pistol was lying on the dashboard.
33. Mr Allan had a "gash" to the left side of his forehead and he appeared to Officer A to go in and out of consciousness.
34. Officers A and B pulled Mr Allan from the front passenger seat and put him into the recovery position on the ground and Officer A radioed SouthComms to request an ambulance.
35. Mr X, who had remained next to Officer B and C's Police car during the shooting, brought over the medic kit and the officers began applying first aid. The officers continued to talk to Mr Allan to help him maintain his consciousness. During this time, Mr Allan told Officer A that his pistol was only an imitation gun and he had pulled it so he could run away.
36. While this was happening, Officer C monitored the driver, who remained lying on the ground next to the car.
37. The ambulance arrived shortly after and took Mr Allan to Christchurch Hospital. He was admitted at 2.45am and was treated for a laceration to the left side of his forehead. At about 8.45am that same day, he was discharged and transported to the Christchurch Central Police station.
38. The officers involved in the incident were all up-to-date with their first aid and weapons/tactical training. Following the shooting, they underwent breath-alcohol and firearms residue testing. No alcohol was detected.

² During his interview, Mr Allan told the Authority that although he knew his pistol was a blank firing pistol, it contained two nine millimetre live rounds, which he believed it was capable of firing.

Mr Allan

39. Mr Allan pleaded guilty to charges of assaulting a person with a blunt instrument, unlawfully carrying an imitation firearm, and unlawfully possessing ammunition. On 10 August 2017, in the Christchurch District Court, he was sentenced to one year and six months' imprisonment.

Police investigation

40. Police carried out a criminal investigation into the use of force against Mr Allan and determined that the Officer A's actions were justified.

Issues identified by the Authority

41. As required under section 13 of the Independent Police Conduct Authority Act 1988, on 4 February 2017, Police notified the Authority of the shooting of Mr Allan. The Authority immediately commenced an independent investigation.
42. The Authority's investigation considered the following issues:
- 1) Were Police justified in arming themselves at the start of their shift?
 - 2) Was Officer A justified in firing at Mr Allan?
 - 3) Did Mr Allan receive appropriate aftercare after the shooting?

Search and Surveillance Act 2012

43. Under section 20 of the Search and Surveillance Act 2012, an officer may enter and search a place or vehicle without a warrant if: he or she has reasonable grounds for believing the place or vehicle contains certain illegal drugs, a drug offence is taking place or about to take place, and it is not practical to get a warrant.

Use of force

Relevant law

44. 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.”*
45. 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 or she believes them to be, it is reasonable to use.”*
46. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Relevant policy

47. 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.
48. 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.
49. An officer 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)).

50. 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.
51. 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

Authorisation to carry firearms

52. The Police Manual authorises officers who hold the position of sergeant or above, and officers who are authorised by a district or communications centre supervisor, to carry firearms when there is "*clear and specific evidence*" that they may encounter circumstances in which they may be required to use a firearm.

Use of firearms

53. The 'Police firearms' chapter of the Police Manual 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.
54. Police General Instruction F061 (Use of Firearms) provides that Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape, in the circumstances referred to in paragraph 52 and in accordance with the Crimes Act provisions referred to in paragraphs 44-46.
55. The instruction reminds officers that "*An overriding requirement in law is that minimum force must be applied to effect the purpose.*" It also says that: "*Where practical, Police should not use a firearm unless it can be done without endangering other persons.*"
56. General Instruction F061 directs that an offender must not 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; and*
 - *further delay in apprehending the offender would be dangerous or impractical.*"

57. Any officer issued with a firearm is personally responsible for ensuring that he or she is thoroughly familiar with relevant law and all relevant instructions and guidelines in the Police Manual. When firearms are issued, if time and circumstances permit, supervisors must draw officers' attention to the 'Fire Orders', which set out the circumstances in which Police officers may use firearms. These are printed on the inside cover of Police notebooks and are also stored in vehicle firearm security cabinets.

THE AUTHORITY'S FINDINGS

Issue 1: Were Police justified in arming themselves at the start of their shift?

58. 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.
59. The Authority finds that Officers A and B were justified in arming themselves at the beginning of their shift, due to the potential threat posed by Mr Allan. These risks included his use of drugs and the information indicating that he had access to firearms. The officers complied with Police policy by reminding themselves of the Police fire orders.

FINDING

Officers A and B were justified in arming themselves at the start of their shift.

Issue 2: Was Officer A justified in firing at Mr Allan?

60. When Officer B heard Officer A's Police car arrive at the scene, he instructed Mr Allan to exit the car with his hands up.
61. Mr Allan ignored Officer B's instruction and instead reached for his backpack, which contained his pistol. Mr Allan admitted to the Authority that he intended to point the pistol at the officers so that he could "get away".
62. Officer B saw Mr Alan reach for the pistol and yelled out "Firearm!" He said he feared for his life and did not have sufficient time to draw his own Glock.
63. Officer A was approaching the car when he saw Mr Allan pull out a pistol and heard Officer B yell "Firearm!" Officer A immediately drew his Glock and aimed for Mr Allan's "centre mass". Officer A's first shot entered the windscreen and fragmented, causing Mr Allan to be hit by a fragment of the bullet on his forehead. He stopped shooting when he believed Mr Allan was no longer a threat.
64. The Authority finds that Officer A was justified in firing shots at Mr Allan, because he believed on reasonable grounds that Mr Allan posed an immediate threat of death or grievous bodily harm and that he needed to shoot Mr Allan to defend himself and the other officers. The fact

that Mr Allan's pistol was found on the dashboard supports Officer A's statement that the pistol was visible to him and being brought to bear.

65. Officer A was aware that a safety alert had been issued for Mr Allan and that he was considered a “*significant risk*” to Police officers and members of the public. Given Mr Allan’s decision to present a pistol at the officers, it was not practical or realistic for Officer A to use a lower level of force.

FINDING

Officer A was justified in firing at Mr Allan in the circumstances.

Issue 3: Did Mr Allan receive appropriate aftercare after the shooting?

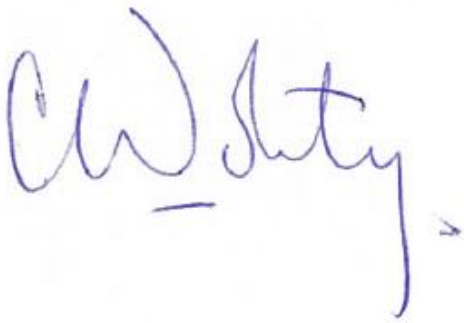
66. When it was apparent that Mr Allan no longer posed a threat to Police, Officers A and B pulled Mr Allan from the car and placed him in the recovery position. The officers applied first aid until the ambulance arrived.
67. Mr Allan was treated for a laceration to the left side of his forehead at the Christchurch Hospital and was discharged later that morning.

FINDING

Officers A and B provided Mr Allan with appropriate and timely medical assistance.

CONCLUSIONS

68. The Authority has determined that Officer A was justified under section 48 of the Crimes Act 1961 in firing at Mr Allan. At the time he fired the shots, Officer A reasonably believed that Mr Allan posed an immediate threat of death or serious bodily harm.
69. Additionally, Officers A and B were justified in arming themselves at the start of their shift and provided Mr Allan with appropriate medical assistance after he was shot.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

26 October 2017

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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 Colin Doherty.

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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