

Police shooting of a man at Vinegar Hill camp ground

OUTLINE OF EVENTS

1. In December 2017, Mr Z was camping at the Vinegar Hill camp ground in Ohingaiti, Manawatu, with his then partner Ms Y and her son X, then aged seven. On the evening of 18 December, a domestic dispute arose.
2. On the morning of 19 December, Mr Z was driving erratically around the camp ground, threatening Ms Y with a firearm and trying to get her into his car. Ms W, one of the campers, called Police on 111.
3. A Police dispatcher arranged for local officers to attend and called out the Armed Offenders Squad (AOS).¹
4. Four local Police officers, including a Police dog handler, met at a safe forward point about a kilometre from the camp ground entrance.² There they armed themselves and moved forward to the camp ground, to monitor the situation while waiting for AOS to arrive.
5. Mr Z saw the officers and his behaviour escalated, so Police challenged him. Mr Z ended up in the driver's seat of a campervan, pointed a sawn-off rifle at Officer A. Officer B fired one shot at Mr Z, hitting him in the right arm.
6. Officer A deployed his Police dog while arresting Mr Z. Mr Z was bitten on the leg and left arm.
7. Mr Z was given first aid by Police before being taken to hospital. He later pleaded guilty to multiple charges in relation to the day and a custodial sentence was imposed.

¹ Dispatchers are based in the Police Communications Centres. They allocate Police units to attend incidents and pass on relevant information to the field units.

² A safe forward point is a safe location near an incident, from which the forward operations can be supported.

THE AUTHORITY'S INVESTIGATION

8. The Authority conducted an independent investigation into Police actions at Vinegar Hill. As part of its investigation, the Authority:
- Visited the Vinegar Hill camp ground;
 - Interviewed Mr Z, and nine members of the public who were involved;
 - Interviewed Officers A, B, C and D; and
 - Reviewed the Police investigation into the incident, including the Police shooting.
9. The Authority identified and considered the following issues:
- 1) Whether Police armed themselves in accordance with policy;
 - 2) Whether the shooting of Mr Z was lawful and reasonable;
 - 3) Whether the Police dog was appropriately deployed after the shooting; and
 - 4) Whether Police provided appropriate aftercare to Mr Z; and
 - 5) Whether Police exercised appropriate control and command for this incident, including post-shooting procedure.

THE AUTHORITY'S FINDINGS

Issue 1: Did Police arm themselves in accordance with policy?

10. When Police were deployed to the incident, the officers were aware they were going into a situation where an offender had at least one firearm and had been presenting it in a threatening way to members of the public. On this basis, officers assessed Mr Z as posing a credible threat of causing grievous bodily harm or death in the Police tactical options framework.³
11. Officers A, B, C and D met at the safe forward point to plan their response. The officers knew AOS had been called, but were coming from Palmerston North, about 60 kilometres away, so would be some time. Their plan was to go to the camp ground to monitor the situation while being close enough to respond if matters escalated.
12. The officers put on their hard armour plates, prepared their firearms, reviewed the Police fire orders, and notified the Central Communications Centre (CentComms) accordingly.⁴ All officers had current training certifications for all relevant tactical options. Officer A, the dog handler, was armed with his Glock pistol, and Officers B, C and D were armed with M4 Bushmaster rifles.
13. The Authority is satisfied that it was appropriate for Police to arm themselves in readiness to attend this incident, and that they did so in accordance with policy.

FINDING ON ISSUE 1

Police armed themselves in accordance with policy.

Issue 2: Was Officer B justified in firing at Mr Z?

14. The officers entered the camp ground on foot, concealing themselves in bush surrounding the camp ground. Mr Z drove forward and saw the officers. Officer A stepped out of cover and challenged Mr Z, who reversed at speed. AOS were still some distance away.
15. Seven campers had taken cover in Mr V's campervan, on advice from the Police communicator.⁵ Mr Z entered the campervan, carrying a sawn-off rifle. Shortly afterwards, campers began escaping the campervan. Mr V and Ms U remained in the driver's cab.
16. Mr Z held the sawn-off rifle to Mr V's head and ordered him to drive forward towards Police. Mr V drove the campervan slowly forward. The campervan stopped, then Mr V and Ms U opened their doors, jumped out and ran for cover. Mr Z then moved into the driver's seat. Officers did not know whether the keys were still inside the campervan.

³ The Tactical Options Framework (TOF) is a training and operational tool that assists officers to appropriately decide when, how, and at what level to use a tactical option. The TOF guides officers to use force that is necessary and proportionate, given all the circumstances known at the time.

⁴ Refer to paragraphs 76 to 79 below for the policy in more detail.

⁵ Communicators answer 111 calls to Police Communications Centres, gather initial information and determine whether a Police response is required.

17. Officer A, the dog handler, stepped forward towards the van and challenged Mr Z. The other officers raised their rifles toward Mr Z. Mr Z put the sawn-off rifle out of the driver's window, resting it on the wing mirror, pointed towards Officer B, then Officer A. Officer A drew his pistol in response. His Police dog was held on its leash.
18. Officer B could see that Mr Z's sawn-off rifle was pointed towards Officer A. He fired one shot at Mr Z, hitting him in the arm.
19. Officer B told the Authority he fired at Mr Z in defence of Officer A. Section 48 of the Crimes Act provides a justification for the use of force in self-defence or defence of another person.⁶
20. In order to rely on this defence, a person's actions must be assessed on a subjective and objective basis. This assessment involves three questions:
 - 1) What were the circumstances as the person believed (subjectively) them to be?
 - 2) Did the person use force for the purpose of defending himself or herself or another (subjectively)?
 - 3) Was the force used reasonable (objectively) in those circumstances?

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

21. Before Officer B fired his rifle, he knew Mr Z:
 - had been repeatedly challenged by Police;
 - had not relinquished the sawn-off rifle;
 - had pointed the sawn-off rifle to Mr V's head moments before in a hostage-type situation;
 - was continuing to ignore challenges and instructions to put down his rifle; and
 - now had the sawn-off rifle pointed at Officer A.
22. Officer B was only a few metres away from Officer A, so he was certain about the direction of Mr Z's sawn-off rifle. Officer B believed that Mr Z posed a serious threat of death or grievous bodily harm to Officer A.
23. Mr Z told the Authority he had thrown the sawn-off rifle out of the window of the campervan before Officer B fired. All four Police officers stated that Mr Z was holding the rifle and dropped it after he was shot. Mr Z's rifle landed on the grass about one metre from the driver's door. None of the civilian witnesses saw the rifle being dropped from the window.
24. The Authority considers that, on balance, Mr Z's statement is not credible and prefers the evidence of the Police Officers. Mr Z made this claim to the Authority, but later pleaded guilty to two charges of using a firearm against a law enforcement officer, in respect of Officers A and

⁶ Refer to paragraphs 67 and 68 below for more detail.

B. The Authority is satisfied that Mr Z was presenting the sawn-off rifle at Officer A when Officer B fired at him.

Did Officer B fire his rifle for the purpose of defending himself or another person?

25. Officer B could see Mr Z had a sawn-off rifle pointed at Officer A. He could see Officer A raising his Glock, with his dog still on the leash, and that Officer A's hand was shaking. Officer B said, *"The threat to [Officer A]'s life was immediate. He was in critical danger and action had to be taken."*

26. Officer B stepped out of cover and challenged Mr Z again.

"[I] yelled out.... And he didn't drop the gun and I thought, 'Fuck, now what? 'Cause the last thing you want to do is frickin' shoot someone, but I didn't really have any option."

27. Officer B aimed his rifle at Mr Z's pectoral muscle and pulled the trigger. After firing, Officer B saw Mr Z wince in pain, drop the sawn-off rifle onto the ground, then immediately retreat into the living area of the campervan. Officer B returned his rifle to safe mode and looked for Officer A. He recalled seeing Officer A still standing.

28. The Authority is satisfied that Officer B fired his rifle at Mr Z for the purpose of defending Officer A.

Was the force used reasonable in those circumstances?

29. Officer B explained that tactical communication wasn't working, and he was too far away to effectively use his baton, pepper spray, or his Taser. He said: *"there's always 'do nothing', but that's never an option when someone's got a firearm pointed at your colleague."* He knew the Police dog wasn't an option while Mr Z was inside the campervan with doors closed.

30. The Authority is satisfied that use of a firearm was a reasonable use of force in the circumstances.

31. The Authority is satisfied that Officer B's use of force was justified and reasonable in the circumstances.

FINDINGS ON ISSUE 2

Officer B fired at Mr Z in defence of Officer A.

The use of force was justified and reasonable in the circumstances.

Issue 3: Was the deployment of the Police dog lawful and reasonable?

32. After Mr Z was shot, he moved back into the rear of the campervan. Officer A was the first officer to approach the campervan, with his dog still on the leash. He said

"I don't know if he's been hit or what has happened, but I know we've got an offender. He's potentially – he might have another firearm... I need to move forward straight away and clear this campervan."

33. Officer A knew his dog was a good tactical option to enter the campervan. In addition to the possibility of Mr Z having another firearm, Officer A was aware there were likely to be kitchen knives and other weapons of opportunity at Mr Z's disposal. Officer A opened the side door to the rear of the campervan. A screen door was closed behind that.
34. Officer A could see an amount of blood on the floor of the campervan. He opened the screen door, and Mr Z appeared. He repeatedly screamed at Officer A, *"Get your fucking dog away from me."* Officer A still had his dog on the leash. Mr Z then entered the cab of the campervan again.
35. Officer A put his dog into the rear of the campervan, but the floor was slippery with blood. He realised there was a risk that Mr Z may try to drive the campervan away, so pulled the dog back out. He moved forward to the passenger's door of the cab, and put the dog in. He gave the dog a command to 'rouse', which is a command to bite. Mr Z continued to scream at Officer A, and the dog bit Mr Z on the leg. Officer A was then able to pull Mr Z out of the van.
36. Officer A tried to restrain Mr Z, who continued to struggle violently. Officers C and D joined Officer A, but none could get a hold of or restrain Mr Z due to the strength of his resistance. Officer A said:

"I couldn't believe how much he kept fighting. In my career I've had a few tussles with some meth driven people and they're just on another planet and I just put it down that this guy's absolutely pinging on meth so pain's not an issue."

37. Officer A deployed his dog a second time, and the dog bit Mr Z on the left arm. Mr Z paused in his struggle as a result, and Officers C and D were able to take Mr Z down to the ground and handcuff him. Officer A returned his dog to his vehicle and returned with a first aid kit for Mr Z.
38. Police are justified in using force to effect an arrest under section 39 of the Crimes Act 1961.⁷ The deployment of a Police dog is a use of force so must be justified and proportionate, and in accordance with the Police 'Use of a Police dog' policy.⁸
39. Officer A was challenging Mr Z prior to giving the 'rouse' orders to his dog. Mr Z was actively resisting arrest, and assaultive. Officer A considered that deploying his dog was safer than deploying his pepper spray in a confined space, or near to Officers C and D. He was too close to Mr Z to effectively deploy his Taser. He discounted the use of his baton because of the risk that Mr Z had another weapon, whether another firearm or a weapon of opportunity from the campervan.
40. Mr Z suffered two dog bite injuries, but neither bite classified as a 'serious dog bite injury', which is one that requires hospitalisation from the bite, or could result in permanent disability.

⁷ See paragraph 66 for more detail.

⁸ Refer to paragraphs 81 to 84 for more detail.

41. The Authority is satisfied that Officer A was legally justified in deploying his Police dog to effect the arrest of Mr Z.
42. The Authority is satisfied that deployment of the Police dog was reasonable in the circumstances.

FINDINGS ON ISSUE 3

Officer A was justified in deploying the Police dog to effect the arrest of Mr Z.

Officer A's deployment of the Police dog was reasonable in the circumstances.

Issue 4: Did Police provide appropriate aftercare to Mr Z?

43. At about 10.30am, Police had removed Mr Z from the campervan and handcuffed him. Aware he had been both shot and bitten by a Police dog, officers promptly began first aid. Police moved Mr Z into a shady area out of the sun and providing him with some water.
44. Officer A had an extensive first aid kit in his dog handler's vehicle and applied a pressure bandage to the gunshot wound. When ambulance officers arrived, they commented on the excellent standard of first aid given to Mr Z.
45. The Authority is satisfied that Police provided appropriate and timely aftercare to Mr Z.

FINDING ON ISSUE 4

Police provided appropriate and timely aftercare to Mr Z.

Issue 5: Did Police exercise appropriate control and command for this incident, including post-shooting procedure?

46. CentComms received a 111 call from Ms W at 9.23am on 19 December 2017. Ms W told the Police communicator that Mr Z was threatening Ms Y with a rifle, possibly a .22 calibre.
47. While the Police communicator was speaking with Ms W, a dispatcher was relaying information to local officers who were on their way to the scene. They were sent to a safe forward point to meet and plan their response.
48. In accordance with standard operating procedures the Police response to this incident was controlled by CentComms who dispatched staff to attend. The DCC was also engaged in a support role, and the AOS were deployed.⁹
49. Officers B and D arrived at the safe forward point first, with Officers A and C arriving within a few minutes. Updates from CentComms let the officers know that Mr Z was still brandishing his

⁹ The District Command Centre (DCC) has access to all communications information and maintains an overall view of policing within a Police District with a focus on crime prevention. The DCC may also act in an incident response capacity and is able to deploy a wide range of staff and resources, including staff that would not normally be deployed in response to an incident.

sawn-off rifle and the situation at the campsite was escalating. Officers knew that AOS were still about twenty minutes away.

50. The officers agreed an initial plan, to move into the camp ground and make observations of Mr Z while remaining concealed, and to be ready to respond quickly if the situation escalated further. Subsequent events necessitated the officers challenging Mr Z and arresting him before the AOS arrived. It was appropriate, in the Authority's view, for officers to engage Mr Z before AOS arrived.
51. The Authority is satisfied that Police exercised appropriate control and command over the incident.
52. Transition from incident control to scene management was timely and appropriate. Officer E arrived as Mr Z was being given first aid and assumed initial incident control of the scene. When officers from the Criminal Investigations Branch arrived, Officer E handed over incident control with an appropriate briefing.
53. Transition from a response phase to the investigation phase was appropriate. Officer B was tested for drugs and alcohol as required by policy, returning negative results.
54. The Authority is satisfied that Police followed appropriate post-shooting procedures.

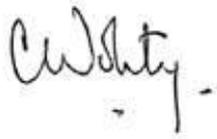
FINDINGS ON ISSUE 5

Police exercised appropriate control and command over the incident.

Police followed appropriate post-shooting procedures.

CONCLUSIONS

55. Officer B was justified in firing at Mr Z in defence of Officer A. The use of force was reasonable in the circumstances. Officer A was justified in deploying his Police dog to arrest Mr Z, and the use of force was reasonable in the circumstances.
56. The Authority also found that:
- 1) Police armed themselves in accordance with policy;
 - 2) Police provided timely and appropriate first aid to Mr Z; and
 - 3) Police exercised appropriate control and command over the incident; and
 - 4) Police followed appropriate post-shooting procedures.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

6 August 2019

IPCA: 17-1353

Control and Command

57. Police have adopted the Coordinated Incident Management System (CIMS) as the model for command, control, and coordination of emergency incidents in New Zealand. From time to time, Police may partner with other agencies under this model to respond to an incident.
58. ‘Control’ refers to the responsibility for coordinating and directing the response to an incident. Control sets priorities and objectives and determines how best to implement them. This can include assigning tasks to another agency and coordinating that agency’s wider actions so that it integrates with the wider response.
59. ‘Command’ refers to the authority that a Commander in the New Zealand Police lawfully exercises over assigned staff by virtue of rank or assignment. Command includes the authority and accountability for effectively using available resources and for planning, organising, directing, coordinating, and controlling Police resources.
60. The CIMS model describes five response levels, depending on the scale of the event:
- Community (business-as-usual);
 - Incident;
 - Local (events affecting a Police district);
 - Regional (events affecting more than one Police district);
 - National (events requiring a whole-of-government response, such as the 2011 Christchurch earthquake, or a terrorist attack).
61. Different response levels are activated as the event grows in seriousness and scale. The lower-level response is supported and/or coordinated from the next-higher level, when this is activated.
62. A ‘Controller’ is responsible for coordinating and controlling the response at each level.
63. Controllers and Commanders must be competent, trained, and qualified for their respective roles. Control and command is role rather than rank specific. Officers of a senior rank nominated to take a control or command role, should not automatically assume superiority, solely on the basis of rank or territorial responsibility.
64. Most incidents will be responded to following a report to the Communications Centre. The Shift Commander of the Communications Centre will take initial control or command until an operation or tactical commander in the field can safely be handed incident control at the appropriate time.

65. The District Command Centres (DCCs) exist to support or enable the control and command of critical incidents in the early stages. A relationship must exist between the Incident Controller and the DCC.

Law on use of force

66. 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.*”
67. Section 48 of the Crimes Act 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.*” This provides legal justification for any person, including Police officers, to use reasonable force in defence of themselves or another. ‘Legal justification’ in this sense means that this person is not guilty of an offence or liable to any civil proceeding in connection with their use of force.
68. In order to rely on this defence, a person’s actions must be assessed on a subjective and objective basis. This assessment involves three questions:
- 1) What were the circumstances as the person believed (subjectively) them to be?
 - 2) Did the person use force for the purpose of defending himself or herself or another (objectively)?
 - 3) Was the force used reasonable (objectively) in those circumstances?
69. Section 62 of the Crimes Act makes a Police officer criminally responsible for any excessive use of force.

Police ‘Use of force’ policy

70. 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. Specialist groups, such as the AOS and STG, have additional tactical options available to them.
71. Police policy provides a decision-making methodology 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.

72. 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. Officers 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's 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)).
73. 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.
74. 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

75. The Crimes Act provisions are mirrored in the 'Police Firearms' chapter of the Police Manual. The policy 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.
76. The Police firearms policy 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.
77. Policy 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 they cannot be disarmed or arrested without first being shot*
 - *further delay in apprehending the offender would be dangerous or impractical."*
78. In operational situations where firearms are issued, the policy also requires that the officers' attention is drawn to the fire orders printed in their Police issue notebooks *"if time and circumstances permit"*.

79. At the time of this incident, policy required officers to wear approved ballistic body armour (hard armour plates) when deploying to an incident where they believe firearms are present or could be present.
80. When a Police employee has fired shots that caused death or injury, the incident controller must take control of the scene and ensure first aid is given. The scene must be managed, firearms involved must be secured and employees involved in the shooting are subject to alcohol and drug testing. Officers involved are stood down temporarily and welfare provided.

Use of a Police dog

81. Police dog handlers must consider all tactical options in situations that require use of force. They must consider whether a lesser, more appropriate use of force is available before deploying a Police dog. The law sees little difference between dogs, when used as a means of force, and other methods and implements used by Police, such as firearms, Taser, and batons.
82. Police officers operating a Police dog are personally responsible for the use of force by the dog. They must be satisfied, before releasing the dog, that the use of force is justified in the circumstances. They must call on the person to desist unless impracticable to do so and ensure that the extent of the force used by the dog is kept to a minimum possible in the circumstances.
83. Police dog handlers must have control of their dog at all times during deployment. Control means that the dog is under immediate physical or voice control and the dog responds to that control.
84. Everyone bitten or injured by a Police dog must be given appropriate medical attention as soon as practicable.

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.

This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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