

The Authority's Findings

ISSUE 1: WAS OFFICER A JUSTIFIED IN SHOOTING MR X?

Decision to arm

8. Officer A discussed the reported incident with Officer B and they both made the decision to arm themselves with pistols before leaving the Police station.
9. Police policy states that Police may arm themselves in circumstances where their assessment of a situation is that there is a risk of death or grievous bodily harm.¹
10. Officers A and B were aware that a suspect was armed with a knife and had already threatened to use the knife on a member of the public. They were both certified to carry firearms, and aware of their fire orders and relevant law and policy in relation to the use of firearms.²
11. The Authority considers that, given the serious nature of the suspected crime and the threat Mr X posed, the officers' decision to draw firearms was reasonable in the circumstances. The decision was consistent with Police policy, which states: *"It is better to take the matter too seriously than too lightly."*

Pursuit and stopping

12. Officer A located the stolen car on State Highway 1 (SH1). Mr X failed to stop when signalled, so a pursuit was initiated.
13. Towards the end of the pursuit, Mr X turned into Hardings Road (no-exit). Officer B succeeded in using road spikes to deflate the car tyres as Mr X drove back out towards SH1. Members of the public, Mr Y and Mr Z, assisted by partially blocking Hardings Road with their van and trailer. They were joined by Officer C, an off-duty officer, who arrived a short time later. Mr X drove around them and crossed onto SH1, stopping on the far side of the north bound lane.
14. Officer A stopped in the south bound lane, several metres directly behind the car. He said: *"I considered it vital that [Mr X] be arrested and secured before he was able to come into contact with any other person."* He believed Mr X may attempt to steal another vehicle travelling on SH1, if given the opportunity, and also believed Mr X was a threat to Mr Y and Mr Z, who were nearby.

Mr X exiting the car with a knife

15. Mr X immediately got out of the car and ran toward Officer A.
16. Officer A told Police:

¹ See paragraphs 60 to 66 for relevant firearms policy.

² 'Fire orders' are an explanation of the circumstances under which Police may use firearms.

"[Mr X] exited the vehicle... he was taking big running strides towards me. I could see the blade of a knife in his hand as he ran at me. We locked eyes as he ran towards me with the knife... [He] appeared focussed and was locked on me like nothing else mattered to him but getting to me. At this point I believed that he was charging at me with intent in killing or very seriously injuring me. I knew that if he was able to contact me with the knife he held in his hand that he could very well kill me. I feared for my life."

17. Mr X admitted he ran towards Officer A with a knife to try to scare him.

Witness accounts

18. A photographer who was parked nearby, and Mr W, a resident who witnessed the incident, both saw Mr X run towards the patrol car and jump onto the bonnet. Mr W said he was *"almost standing up at windscreen level on the car."* Photographs taken by Police after the incident show two shoe prints on the windscreen.

19. Mr Y told Police: *"[Mr X] was running around like manic sorta, manic as with a knife ... trying to go the officer with it [the knife]."*

20. Mr Z told Police:

"The whole time the cop was backing back, you know obviously he didn't wanna get stabbed... but... the cop [was] just warning him, you know, get down on the ground, get down on the ground, um you're under arrest...."

21. Officer A did not mention seeing Mr X jump onto the patrol car bonnet, however, the Authority has determined this most likely happened while Officer A was focussed on getting out of the car and moving away from Mr X.

Shot fired

22. Officer A quickly got out of his Patrol car. He drew his pistol while backing away from his car door. Mr X continued to come towards him. He held the knife out in front of him. Officer A said he fired the single shot when Mr X was about four to five metres away from him.

23. Mr W recalled seeing Mr X running at Officer A and hearing one loud 'bang'.

24. Although Officer A did not specifically ask Mr X to surrender before firing, he did repeatedly tell him to drop the knife. Mr Y recalled hearing Officer A yell at Mr X to *"drop the knife"* and to *"get on the ground"*.

25. Officers must ask a person to surrender before firing a shot *"unless it is impractical and unsafe to ask them"*. Given the dynamic situation unfolding and that Mr X was not complying with instructions, the Authority is satisfied that Officer A gave Mr X sufficient warning.

26. In his police statement, Officer A could not precisely recall where he aimed and later told the Authority that his training was to fire at the centre mass of a target.

Mr X in the patrol car

27. Mr X ran away from Officer A and got into the patrol car's driver seat and closed the door. Officer A said he could see Mr X trying to get the car into gear. Mr Y and Mr Z recalled hearing Mr X rev the engine.
28. Images taken by the photographer provide an accurate record of what happened. They were taken at high speed and in quick succession (12 frames per second).
 - 1) Mr X opened the patrol car driver's door, got inside and closed the door.
 - 2) Officer A approached Mr X and presented the pistol at him through the closed window of the driver's door.
 - 3) Mr Y and Mr Z's van pulled up behind the patrol car.

Differences in accounts of when the shot was fired

29. Mr Y and Mr Z recall the timing of the shot differently, saying Mr X chased Officer A and was shot **after** he got out of the patrol car rather than beforehand. The Authority is aware that people can perceive and recall the same situation differently. The Authority believes Mr X was shot **before** he got into the police car because:
 - Officer A recalled firing the shot before Mr X got into the patrol car;
 - the position of the ejected bullet casing was consistent with the shot being fired adjacent to the rear of the patrol car, as Officer A described;
 - photographs showed Mr X getting out of the patrol car and immediately lying on the ground; and
 - the Scene of Crime Officer who examined the interior of the patrol car said there were fresh droplets of blood on the driver door sill area and in the driver's door internal panel.

Mr X taken into custody

30. Officer A approached the patrol car and pointed his pistol at Mr X while yelling at him to get out of the car. He opened the driver's door and told Mr X to get on the ground. Mr X did as he was instructed and lay face down on the road. The photographs support this account.
31. Officer B arrived at the scene, as Mr X was getting out of the patrol car and going to ground. Officer B pointed his Taser at Mr X. Officer C also arrived around this time and assisted Officers A and B.
32. As Officer A handcuffed Mr X he noticed that he was bleeding. It was at this point Officer A realised he had shot Mr X.
33. Officer A reported to SouthComms he had shot Mr X and requested an ambulance.

Was Officer A legally justified in firing the shot?

34. Officer A said he fired his pistol in self-defence. Section 48 of the Crimes Act 1961 states:³

“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.”

35. To rely on this justification for his use of force, Officer A’s actions must be assessed on the following three questions:

- 1) What did he believe the circumstances to be at the time he shot Mr X?
- 2) In light of that belief, did he fire the shot for the purpose of defending himself?
- 3) If he did, was shooting Mr X reasonable in the circumstances as he believed them to be?

What did Officer A believe the circumstances to be at the time he fired the shot at Mr X?

36. Officer A:

- suspected Mr X was responsible for stealing the car and threatening a member of the public with a knife;
- believed Mr X was still armed with the knife and that he posed an ongoing risk of serious harm to members of the public and Police;
- believed Mr X was intent on causing him injury or death when he ran towards him with a knife;
- was not aware of any other Police officers being present, though he knew Officer B was making his way towards the location from behind him; and
- knew Mr Y and Mr Z were “nearby, but behind [him]”.

Did Officer A fire the shot for the purpose of defending himself?

37. Officer A told the Authority: “My intention was to stop [Mr X] from getting to a distance where he would be able to stab or slash me with the knife”.

38. The Authority accepts Officer A genuinely believed Mr X would hurt or kill him and fired the shot to defend himself.

Was shooting Mr X reasonable in the circumstances as Officer A believed them to be?

39. Officer A said he continually considered his available tactical options. He believed it would be nearly impossible to use the Taser effectively and there was a chance pepper-spray would be ineffective against Mr X, due to his “goal-driven” state. He was also aware he would not have

³ See paragraphs 52 to 59 for relevant law and policies on the use of force.

time to transition to another tactical option if the first one he chose was ineffective, as Mr X was running towards him with a knife in hand.

40. The Authority accepts there was no less violent means available for Officer A to use, given the circumstances.
41. Witnesses all agree that Mr X was presenting his knife at Officer A in a threatening manner. Mr Y told the Authority he believed Mr X was “*definitely a danger*” and agreed Officer A “*needed to do something*”.
42. The Authority finds the shot to be a reasonable use of force in the circumstances:
 - Mr X continued to advance toward Officer A seemingly intent upon using the knife to cut or stab him or worse;
 - Officer A considered less violent options of safely dealing with Mr X that were available to him, and reasonably discounted them before firing the shot;
 - Officer A attempted to move away from Mr X, to try to minimise the threat; and
 - Officer A repeatedly instructed Mr X to drop the knife and get on the ground before firing the shot.

FINDINGS ON ISSUE 1

Officers A and B were justified in arming themselves.

Officer A was justified in shooting Mr X as it was a reasonable use of force, given the circumstances.

ISSUE 2: DID OFFICER A ACT REASONABLY WHEN HE FAILED TO REMOVE THE KEYS FROM THE CAR?

43. Officer A quickly got out of his patrol car and in his haste, left the keys in the ignition and the engine running. He told Police if he had taken time to remove the keys from the ignition, Mr X would have been very near his door when he opened it: “*I attempted to create distance between myself and the offender by retreating towards the rear of my vehicle.*”
44. Officer A was concerned that Mr X would take the patrol car and would have access to firearms because the key to the vehicle firearms safe was on the ignition key ring. He was worried that if Mr X took the car, he would pose a risk to motorists and could potentially evade police.
45. Officer A had been involved in a similar incident in the past where he had become trapped in his patrol car while an offender used a weapon to try to attack him. This contributed to his instinct to get out of the car and distance himself from Mr X.

46. At the time of this incident, policy did not specifically address leaving keys in a Police vehicle, therefore Officer A did not breach policy.⁴ He was aware of the risks posed by Mr X having access to the keys and vehicle and acted swiftly to address this.
47. Officers are expected to continually assess the level of threat in a situation, in order to make reasonable decisions, with safety being of paramount importance. The Authority accepts it was a fast-moving situation, and Officer A genuinely believed he should immediately get out of his car for his own safety.

FINDING ON ISSUE 2

Officer A acted reasonably when he failed to remove the keys from the Police car.

Subsequent Police Action

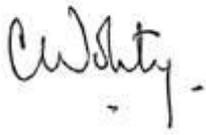
48. Police conducted a Critical Incident Investigation which found the force used to be legally justified and *“objectively reasonable, proportionate and necessary in light of the circumstances that Officer A believed them to be”*.
49. A separate Police review looked at policy, practice, and procedure issues, to consider lessons to be learned from this incident.
50. As a result of a similar case that occurred before this incident, Police have taken actions to minimise the chance of offenders gaining access to Police vehicles and firearms. The actions include a national instruction on the security of ignition and firearm keys; the carriage of keys will be further enhanced when new items of personal uniform are issued next year the Anti-Theft Ignition System (ATIS) as part of the Police Professional Driving Programme; a training package on vehicle security as part of the cyclical tactical training for staff; and developing a stand-alone policy on vehicle security and the use of the ATIS policy.

⁴ See paragraphs 67 to 70 for relevant policy on keys.

Conclusions

51. The Authority concluded that:

- a) Officers A and B were justified in arming themselves.
- b) Officer A was justified in shooting Mr X as it was a reasonable use of force for the purposes of self-defence.
- c) Officer A acted reasonably when he failed to remove the keys from the Police car.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

7 July 2020

IPCA: 19-0309

Appendix – Laws and Policies

LAW

52. Section 39 of the Crimes Act 1961 allows 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.”*
53. Section 40 of the Crimes Act 1961 allows Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest”*, unless the escape can be prevented *“by reasonable means in a less violent manner”*.
54. 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.”*

POLICY

‘Use of Force’ policy

55. 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.
56. 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.
57. Police officers must 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).
58. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely deescalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.

59. 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. 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' policy

60. An officer may carry a firearm when they have assessed a situation as being within, or likely to escalate to be within, the death/grievous bodily harm range. They must advise their immediate supervisor and the Police Communications Centre of their decision to carry a firearm as soon as practicable, and also carry a Taser where one is available.
61. Officers must wear approved ballistic body armour, or hard armour plate (HAP) over stab resistant body armour (SRBA).
62. Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape where:
- *"... Police believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm to any person; and*
 - *the offender flees to avoid arrest or escapes after arrest; and the flight or escape cannot reasonably be prevented in a less violent manner."*
63. Officers should not use a firearm unless it can be done without putting other people in danger.
64. An offender is not to be shot until all of the following conditions have been satisfied:
- *"they must have first been asked to surrender (unless it is impractical or unsafe to do so);*
 - *it is clear that the person cannot be disarmed or arrested without first being shot; and*
 - *further delay in apprehending the offender would be dangerous or impractical."*
65. 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.
66. When dealing with an armed offender or an offender believed to be armed, Police should observe these basic principles:
- *"It is better to take the matter too seriously than too lightly."*

- *Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.*
- *Caution is not cowardice.*
- *When the offender's actions permit, focus on de-escalation, communication, and prevention, cordon the area, and adopt the wait and appeal role in order to negotiate a surrender.*
- *Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, Police must act immediately to prevent this."*

67. Supervisors must make sure that at the start of their shift, officers are given their own set of keys to access the vehicle and firearms security cabinet.

'Physical Security' policy

68. Each Police district must ensure they implement physical security measures which minimise or remove the risk of people being harmed, and of *"assets being compromised, made inoperable or inaccessible"*.

69. Some key critical points are:

- *"Occupational Health and Safety considerations arising from hazards and security measures must be applied to all physical security environments.*
- *Access to Police premises and assets must be controlled."*

70. Physical security measures are dependent upon attentive personnel.

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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