



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihihi Mana Motuhake

Fatal shooting of Hitesh Lal in Auckland justified

Summary of the Incident

1. Just after 1am on 20 April 2020, a Police officer fatally shot Hitesh Lal in Papatoetoe, Auckland, because Mr Lal was attacking him with a machete.
2. A number of people had called Police reporting that a man was damaging property in the street with a machete.
3. A Police dog handler responded and went to the area. He tried to tell Police Comms that he had arrived, but could not get through on the radio because other officers were transmitting. When he stopped, he heard the sound of *"fearful"* screams and crying. He then saw a man (Mr Lal) who appeared to be trying to get through a smashed window at the front of the house from where those cries were coming.
4. Mr Lal had also made a 111 call in which he said *"you can shoot me or kill me I don't care"*. The dispatcher in Police Comms broadcast this over the radio but the officer did not hear, possibly because he was busy taking his dog out of the van. As the officer approached the man, he challenged him. Mr Lal turned and moved towards him. He was armed with a machete, which he held above his head and was swinging at the officer. The officer immediately started backing away, and at the same time he drew his pistol and presented it at Mr Lal. The officer was screaming instructions at Mr Lal to surrender (recorded on a nearby resident's cell phone) and Mr Lal was screaming, *"shoot me, shoot me"*.
5. While still backing away, the officer made an emergency call for assistance over the radio. He backed up about 30 metres before Mr Lal corralled him down a driveway. The officer said that Mr Lal was making slashing motions with the machete throughout the encounter and he made the assessment that he should not deploy his dog in these circumstances.
6. After backing down the driveway for about 15 metres, the officer realised he had nowhere to go and stood his ground while Mr Lal continued to approach with the machete. The officer told us that he feared for his life and so fired a single shot at Mr Lal. The bullet hit Mr Lal, who momentarily stopped and bent forward. He then straightened and again moved towards the

officer, who fired a second shot. Mr Lal then fell to the ground. Other Police officers arrived very shortly afterwards and immediately provided first aid, including CPR. Emergency Medical Technicians arrived and continued with first aid, however Mr Lal died at the scene.

7. A post-mortem examination revealed Mr Lal died of a gunshot wound to the stomach.

Issue examined by the Authority

Issue: Was the officer justified in shooting Mr Lal?

The Authority's Findings

8. The Authority found that the officer was justified in shooting Mr Lal.

Analysis of the Issue

WAS THE OFFICER JUSTIFIED IN SHOOTING MR LAL?

9. The officer tells us that when he saw Mr Lal apparently trying to get through a smashed window and heard screaming and what sounded like a young child crying or shouting in distress, his threat perception shifted from someone damaging property to someone who posed an immediate serious threat to others. The officer says that his "*clear assessment was that these people required urgent...assistance from me*". He felt he needed to act immediately to deal with the threat, and so got out of his van and got his dog out.
10. The officer describes how when Mr Lal started to move towards him it was at a pace faster than a walk but slower than a run. He says that when Mr Lal had closed the gap to between two and five metres, he slowed his advance very slightly and began swinging the machete, raising it above his head before bringing it down in a cutting motion.
11. The officer relies on section 48 of the Crimes Act 1961 to justify his shooting of Mr Lal. For the officer to rely on this, his actions must be assessed against the following three questions:

What did the officer believe the circumstances were at the time he fired his pistol at Mr Lal?

12. The officer describes how he viewed the circumstances by the time he fired his pistol as set out in paragraphs 3 and 6:

"At this point I feared that my life was in serious and immediate risk. The offender had advanced on me the second he turned around after I challenged him. During that time he's swung the machete wildly at me. I've screamed at him to stop, to drop the machete continuously. All this has proved to me that he's absolutely committed on striking me with the machete. I was now backed into a corner and I couldn't retreat any further. The threat was getting closer and closer to me and I believed that if I didn't respond, then I would have been seriously injured or killed."

13. He says that he believed that he was seconds away from being struck with the machete and also considered that the residents of nearby houses were also exposed to the threat posed by Mr Lal because of Mr Lal's apparent attempts to break into a house as the officer first arrived at the scene:

"As soon as he's turning around and come, start coming at me, I, in my head I'm like holy crap, he's actually gonna attack me with this machete, whether I had both hands free or one hand free or, I was, I was reaching for my Glock. I wasn't taking a chance on my own life."

Was the officer acting in defence of himself or others?

14. It is evident that the officer was acting in defence of himself.

Was the officer's use of force reasonable in the circumstances as he believed them to be?

15. We spoke with the officer about the other tactical options he had available to him. The Tactical Options Framework is a training and operational tool that assists constables to appropriately decide when, how, and at what level to use a tactical option(s). It guides constables to use force that is necessary and proportionate, given all the circumstances known at the time.

Capsicum spray

16. We accept the officer's explanation that capsicum spray does not always have immediate effect, and would have required the officer to stand closer to Mr Lal, making it unsuited to the circumstances.

Taser

17. The officer says that his taser was not a viable option for the following reasons:
- he has seen tasers not work to their full effect, or to no effect at all, on numerous occasions and did not feel he had the time to risk an option that might fail;
 - discharging a taser at a moving offender while the officer was walking backwards would have made it difficult to achieve the required separation of the wires¹; and
 - Mr Lal could have cut through the wires with his machete.
18. We accept that the officer needed to control his dog with one hand, therefore he had to decide between arming himself with the Taser or the firearm in his other hand. Given the officer's reservations stated above and the imminent risk of serious harm, we accept that the officer's decision to choose the firearm was reasonable.

¹ A discharge of a Taser is "application by firing two probes over a distance from an air cartridge attached to the Taser, or subsequent applications of electrical current via the probes, which are in contact with the subject after firing, in conjunction with a verbal warning".

Dog

19. The officer finished his training as a dog handler about four months before the incident. He tells us that the initial dog handler training does not cover how to deal with armed offenders and understands that to be a skill acquired over time as the dog handler and dog become more experienced. The officer's dog was also relatively junior. The officer says that he had deployed the dog no more than six times before this incident and on all of those occasions the offender was unarmed and running away from them.
20. The officer tells us that the difference between an offender running away and an offender coming towards Police is significant for a dog, particularly for a new one, and that he would not expect the dog to perform as effectively as it might in a more familiar scenario. In this case, not only was the offender advancing towards the officer, but he was also waving a machete.
21. The officer tells us that generally when his dog sees an offender he starts barking:

"he's trying to dominate and trying to be alpha, that's his natural way of demonstrating that [he's] up to this challenge".

On this occasion, however, the dog was quiet, and the officer got the impression that the dog was confused, because he had never been chased or on the defensive, and also would have sensed the officer's fear:

"it's massive how much they feed off us so the fact that I was absolutely shitting myself and backing away from the threat, he would've been like what the hell, why are we doing this, like usually we're yelling at people and dominating people".

22. The officer also tells us that that every time the dog had previously engaged an offender, he had bitten the offender's legs, making the officer doubtful that the dog would engage Mr Lal's arm that was holding the machete. He says that if the dog had bitten Mr Lal's leg, Mr Lal could have continued to swing the machete, harming the dog and allowing Mr Lal to continue. Furthermore, the officer says that even if the dog had bitten Mr Lal on the arm, for the dog to be effective he would have to hold onto the dog's leash to encourage the dog to bite harder and potentially pull the offender off balance. He was concerned that given the length of the lead this would have required him to get too close to the offender and his machete, putting himself at further risk of serious harm.
23. A circular that was sent around to frontline Police in 2017 supports the officer's view on the capability of his dog.² That document states that dogs will generally only be successful in responding to an offender armed with a bladed weapon, if two, similarly capable, dogs are deployed together.
24. We also spoke with the National Manager of the Police dog section. He emphasises that, while dog handlers and their dogs are trained to a certain standard, ultimately an individual officer needs to do his own risk assessment based on his knowledge of his dog:

² *Lessons Learnt - February 2017 Dogs*, information circular distributed to frontline Police staff in 2017.

“He knows his dog, he knows how many bites he's had, he knows where he's going to bite, how he's going to bite and if he's not 100% confident that the dog would do it then there's no point.”

25. In this case, the officer's assessment was based on the dog's experience and demeanour at the time, and led him to believe that deployment of the dog was not a viable tactical option, as described in paragraphs 19 to 22.
26. Given all of these considerations, it was still possible for the officer to command his dog to bite Mr Lal, letting go of the leash. The worst case scenario would have been that Mr Lal killed the dog and then continued to attack the officer. The best possible outcome would have been that the dog distracted Mr Lal enough for the officer to use other means, such as Taser, to bring him under control. However, given that the officer was acting in self defence in circumstances where the threat he faced was either imminent death or grievous bodily harm, we believe that his decision not to deploy his dog was reasonable.

Conclusion

27. Under the Police threat assessment methodology that is laid out at paragraph 30, the response to a situation must be considered, timely, proportionate and appropriate. At the time the officer fired each of the two shots he was cornered by Mr Lal who was attacking him with the machete. The only possible alternative the officer had was to deploy his dog. He made the assessment that this was not an appropriate tactical option for the reasons outlined above, namely:
 - having never engaged an approaching offender and having never latched onto an offender anywhere other than the legs, the dog was highly unlikely to be effective;
 - the demeanour of the dog suggested it was confused and facing unknown circumstances, which further reduced the officer's confidence in its ability to engage Mr Lal; and
 - if he had deployed his dog, to do so effectively he would have had to hold onto the dog's lead, putting himself within, or close to, striking range of Mr Lal's machete;
28. We therefore find that the officer was justified in firing at Mr Lal twice in self defence.

FINDING

The officer was justified in shooting Mr Lal.

Subsequent Police Action

29. Police have concluded an investigation of this incident and found that the officer was justified in firing his pistol and therefore not criminally culpable for the death of Mr Lal.

A handwritten signature in black ink, appearing to read 'C. Doherty', with a horizontal line underneath.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

2 February 2021

IPCA: 20-3022

Appendix – Laws and Policies

POLICE RISK ASSESSMENT AND THREAT FRAMEWORK

30. The Police threat assessment methodology 'TENR' (Threat Exposure Necessity Response) is a decision making process that supports the timely and accurate assessment of information directly relevant to the safety of Police and others. The response to any given situation must be considered, timely, proportionate and appropriate. The overriding principle when applying TENR is that of 'safety is success'.
31. The Tactical Options Framework (TOF) is a training and operational tool that assists constables to appropriately decide when, how, and at what level to use a tactical option(s). The TOF guides constables to use force that is necessary and proportionate, given all the circumstances known at the time.

USE OF FORCE IN SELF DEFENCE

32. Section 48 of the Crimes Act 1961 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"*.

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.

We are not part of the Police – the law requires us 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. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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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