

Police shooting of armed man in Waitara justified

Summary of the Incident

1. During the afternoon of 19 May 2020, Police shot and killed a man (Mr X) in Waitara after he pointed a firearm at an officer.
2. In the hour leading up to the shooting Mr X left his home address in an agitated state (his partner told Police that she saw him raise what she suspected to be a firearm to his head) and stole a nearby work vehicle.
3. Mr X drove the vehicle a short distance and parked in a secluded area adjacent to the Waitara River.
4. A GPS tracking device attached to the vehicle broadcast its location, enabling Police units to locate it a short time later. The tracking device indicated that the vehicle's ignition was switched on.
5. Four armed Police officers approached the vehicle to determine whether Mr X was still present. As the officers got closer to the vehicle they saw a pipe protruding from the vehicle's exhaust and leading into the driver's cabin through the driver's window.
6. Mr X was seen to sit upright in the vehicle's cabin when an officer standing alongside the vehicle announced his presence. After being told to raise both hands, officers standing towards the front of the vehicle saw Mr X produce a firearm, point it to his head and pull the trigger. No shot was discharged by Mr X's weapon.
7. Mr X appeared flustered and agitated following the failure of his weapon to fire and was seen to manipulate it in a way that suggested he was trying to clear a jammed cartridge and chamber another round. He ignored officers' appeals to put down his weapon.
8. Mr X then pointed his weapon towards the officer standing alongside the vehicle. Initial shots fired by Police in response appeared to have no effect on Mr X, whose firearm remained raised. Further shots were fired and Mr X was seen to slump to his left.

9. Eleven rounds were discharged by three officers during this incident. Mr X was hit five times: twice in the back, once in the right hand, once in the right thigh and once in the chest.
10. Police and then Ambulance staff administered first aid, but Mr X died at the scene.
11. Police investigated and found no criminal liability on the part of the officers concerned.

Issues examined by the Authority

Issue 1: Were Police justified in arming and was proper procedure followed?

Issue 2: Was the plan for dealing with Mr X appropriate?

Issue 3: Were Officers B, C and D justified in shooting Mr X?

Issue 4: Was appropriate aftercare delivered after Mr X had been shot?

The Authority's Findings

12. The Authority found Officers B, C and D were justified in shooting at Mr X when he turned his firearm towards Officer B.
13. We also found that:
 - 1) Officers B, C, D and E were justified in arming themselves;
 - 2) the correct arming procedure was followed by all officers in accordance with policy;
 - 3) appropriate and timely steps were taken to locate the vehicle stolen by Mr X;
 - 4) it was prudent to establish whether Mr X was in the vehicle when it was located;
 - 5) it was necessary and appropriate to check on Mr X's welfare by approaching the vehicle;
 - 6) Officers B, C, D and E employed a suitable tactical approach when advancing towards the works vehicle and challenging Mr X; and
 - 7) immediate first aid was provided after Mr X had been shot.

Analysis of the Issues

ISSUE 1: WERE POLICE JUSTIFIED IN ARMING AND WAS PROPER PROCEDURE FOLLOWED?

14. At about 3.38pm Mr X's partner (Ms Y) contacted Police to report that Mr X had stolen a worker's truck and was possibly in possession of a firearm.
15. During the course of the call Ms Y disclosed that, prior to taking the truck, Mr X had pointed what she suspected to be a firearm at his own head and expressed an intention to hurt himself.
16. At about 3.43pm, while Ms Y was speaking to Police, an employee of the company that owned the truck taken by Mr X contacted Police. They reported that the truck was being tracked via a GPS locator and gave its location as Mamaku Road, Waitara. They also disclosed that other employees who had seen Mr X earlier that day thought Mr X was "having a mental breakdown."
17. Officer A, the Shift Commander at the Police Central Communications Centre (CentComms), was made aware of the unfolding event by a dispatcher and deployed a number of units to deal with the matter. This included two double-crewed units who went to the truck's last known location. Officer A directed that the officers be armed.
18. When spoken to by the Authority, Officer A said that the following matters informed his decision-making and were verbalised when directing officers to arm themselves:
 - Mr X was believed to be in possession of a firearm;
 - Mr X had pointed the firearm at himself and might pose a risk to others; and
 - Mr X might have been mentally unwell.
19. Officer A was of the view that "*vehicles responding to that sort of incident need to be in a position where if they have to, they can respond quickly, because a firearm's no good in a safe.*"
20. Officers B and C were working together when CentComms dispatched them to the incident involving Mr X. They immediately returned to Waitara Police Station to arm themselves, in accordance with Officer A's direction.¹
21. Following their arrival at Waitara Police Station, Officer B put hard armour plates (HAP) over his stab resistant body armour and removed a Glock pistol from the safe located in the front passenger footwell of his patrol car. Officer B chambered a round before holstering it.
22. Officer C put on HAP before removing an M4 rifle from the boot of Officer B's vehicle. Officer C also chambered a round and both officers reminded themselves of their 'fire orders'² as they drove towards the truck's last known location.

¹ Officer C had been assigned to work with Officer B in the absence of Officer B's regular shift partner. Officer C was in his own patrol car, which he left at Waitara Police Station when he armed himself and accompanied Officer B.

² These dictate how, and the circumstances in which, firearms can be used by Police.

23. Officers D and E were at New Plymouth Central Police Station when they were dispatched to the truck's last known location by CentComms.
24. Acting on Officer A's direction, and prior to driving to Mamaku Road, both officers put on HAP, revisited their fire orders, and armed themselves with a Glock pistol and M4 rifle from their patrol vehicle. The officers chambered rounds in each of their weapons prior to them being holstered or carried.

FINDINGS ON ISSUE 1

Officers B, C, D and E were justified in arming themselves.

The correct arming procedure was followed by all officers in accordance with policy.

ISSUE 2: WAS THE PLAN FOR DEALING WITH MR X APPROPRIATE?

25. Officer A told the Authority that his initial objective was to locate the truck. If Mr X was sighted in the vicinity of the truck, he intended to establish a cordon, request AOS attendance and, if necessary, deploy a Police negotiator. Officer A also emphasised the importance of locating the truck before a member of the public inadvertently encountered it and was placed at risk.
26. In accordance with Officer A's plan, Officers B, C, D and E conducted a coordinated search that comprised driving slowly along the length of Mamaku Road from opposite directions (Officers B and C drove south from the direction of State Highway 3, while Officers D and E drove north from the direction of Matarikoriko Road).
27. After the units passed at about the midway point, Officers B and C did a U-turn and followed Officers D and E for a short distance.
28. Officers D and E turned off Mamaku Road and drove north along a track that led to a relatively secluded area of clear ground on the west bank of the Waitara River. Officers B and C continued driving at a low speed on the road.
29. From his position on the road, Officer B saw the left side of a partially hidden flatbed truck that matched the description of the truck taken by Mr X. The truck, whose location matched that relayed by the GPS tracking device (see paragraph 16), was about 50 metres ahead of the other patrol car. Officer B broadcast the truck's location over the radio.
30. CentComms acknowledged Officer B's broadcast and called for radio silence so that the units comprising Officers B, C, D and E could communicate in the event of an emergency. Officer D stopped his patrol car and he and Officer E got out. They could not see the truck from their location due to long grass and other vegetation.
31. Unable to see Mr X from their vantage point, Officers B and C left their patrol car, climbed a roadside fence and approached the truck to determine whether Mr X was present. Officers D and E also walked towards where they believed the truck to be, ultimately taking a route that would take them along the river's edge and bring them to a position alongside and about 10-15 metres from the driver's side of the truck's cabin.

32. Officer B withdrew his Glock and held it ready close to his chest as he approached from behind. The truck's engine was still running. When Officer B reached a position about 10 metres away, he saw a black plastic pipe running from the exhaust into the driver's cabin via a small gap at the top of the driver's window. He immediately notified CentComms of this.
33. When interviewed by Police in relation to this matter, Officer B said:
- "I feared at that time, because I could not see anyone sitting up in the vehicle and due to the time delay in finding it, that if [Mr X] was still inside he was likely to be dead or in need of urgent medical assistance...I knew I had to immediately approach the vehicle because any further delay could've meant [Mr X] could die if he wasn't dead already."*
34. Officer A told the Authority that he did not direct Officers B, C, D or E to approach the truck but agreed with their decision to do so *"because the longer we didn't know where [Mr X] was, he was a danger to us and our staff that were in that area, or anybody else, because he may have left the vehicle."* The *"increased concern regarding [Mr X's] welfare"* following the discovery of the pipe further reinforced the need to approach.
35. The Authority is satisfied that the officers' actions in approaching complied with Police tactical training and maximised their ability to deal safely with Mr X. That each officer was aware of their role in the absence of a verbal briefing is testament to the effectiveness of this training. As detailed at paragraph 25, and articulated by the officers when spoken to by the Authority, it was imperative that Mr X's presence, or absence, be established so that an appropriate tactical response could be developed and implemented.
36. In addition, the Authority accepts that the situation rapidly evolved and urgent action was required to determine whether Mr X was in immediate need of medical assistance. It was not feasible to simply remove the pipe from the exhaust and withdraw as any delay may have had adverse consequences that would likely be subject to criticism. Their tactical positioning around the truck enabled the officers to deal effectively with Mr X when he brandished a firearm and pointed it towards Officer B.

FINDINGS ON ISSUE 2

Appropriate and timely steps were taken to locate the truck taken by Mr X.

It was prudent to establish whether Mr X was in the truck when it was located.

It was necessary and appropriate to check on Mr X's welfare by approaching the truck.

Officers B, C, D and E employed a suitable tactical approach when advancing towards the truck.

ISSUE 3: WERE OFFICERS B, C AND D JUSTIFIED IN SHOOTING MR X?

37. As Officer B approached the truck, Officer C stopped 5-10 metres from its rear and covered the passenger side door and the driver's cabin's rear window with his rifle. Officer B, Glock raised, continued walking alongside the driver's side and loudly called: *"Armed Police!"* as he approached the driver's window. Mr X was not visible to either Officer B or Officer C at this time.

38. At the time of Officer B's verbal challenge, Officers D and E were drawing alongside the driver's cabin, which was roughly 10-15 metres from their position on the riverbed. Their view of the vehicle was slightly obscured by vegetation and the elevated bank.
39. After announcing the presence of armed Police, Officer B saw Mr X sit up from a lying down position and look directly at him: "[Mr X's] *eyes were wide.*" Officers D and E were still approaching their observation point at this time. When they reached their final observation point seconds later, they had a clear view of Mr X through the large driver's side window. They saw that Mr X was sitting upright.
40. From his position, Officer B could see Mr X's empty right hand, which was visible through the driver's window. Mr X ignored Officer B's repeated direction to show his hands and instead leaned forward and to his left, dropping his right hand out of view.
41. According to Officer E, she, along with Officers B and D, yelled for Mr X to show his hands. Officer D saw Mr X move from an upright position "*with a blank sort of stare*" and begin a frantic search of the passenger side of the front seat (the seat in the truck was a bench-like seat that extended the width of the cabin).
42. Officer B aimed his Glock in the general direction of Mr X as he drew nearer to see what Mr X was reaching for. He saw what he believed to be a "*a .22 semi-automatic rifle that had been cut down to a pistol due to its length*" in Mr X's right hand. Officer B could also see that a magazine was attached to the weapon and the bolt was closed, which suggested to him that a round was chambered, and the weapon was capable of being fired.
43. Officer E saw Mr X "*look down towards his lap and he was fumbling around with something.*" The low sill of the driver's side window afforded Officer E a direct view of Mr X's lap and she saw that he was holding a small firearm.
44. Officer B immediately called out: "*He's got a gun*" to alert the other officers that Mr X was armed. He repeatedly yelled at Mr X to put the gun down as Mr X raised the weapon.
45. From his position at the rear of the vehicle, Officer C observed Officer B look into the vehicle and suddenly jump back, yelling: "*Put it down! Put it down!*" Through the rear window of the driver's cabin, Officer C saw Mr X appear to move sideways before turning his head towards Officer B.
46. Officer D saw Mr X turn to the front and raise a gun towards his chest. Both he and Officer E saw Mr X perform a sequence of actions that they thought were consistent with him loading the weapon before pointing it at his own head and pulling the trigger. The gun did not fire.
47. According to Officer D, Mr X "*had a seriously deranged, angry look on his face then turned his weapon and aimed it at [Officer B].*" Officer E also saw Mr X raise his weapon as if he was going to shoot Officer B.

48. Officer B thought that Mr X may have attempted to shoot himself as he raised his weapon but could not be sure. He recalled Mr X's expression "*go from confusion to being resolute and deliberate*" as Mr X pointed his gun at him.
49. Believing that he was about to be shot, Officer B fired his Glock at least twice as he moved back along the side of the vehicle and out of Mr X's line of sight.
50. Officer C heard gunshots and believed that Mr X had fired at Officer B because "*I saw [Officer B] jump backwards and recoil. I remember the look on his face of alarm and shock.*" He thought the movements of Mr X's upper body were consistent with somebody holding a weapon out to their side and taking aim. Believing Mr X to be armed and capable of seriously injuring or killing the other officers present, Officer C fired several shots at Mr X from his position behind the truck. Officer C saw Mr X slump below the sill of the rear window before sitting upright again.
51. Officer E saw the glass in the driver's window shatter and Mr X "*fall down over the passenger seat.*" She immediately took a step to her right to increase the distance between herself and Officer D in the event that she had to fire her M4 rifle but slipped and fell over.
52. Officer D saw Officer B retreat backwards as a shot was fired, shattering the driver's side window. Officer D feared that Officer B had been shot by Mr X. Officer D could see Mr X still pointing his weapon towards Officer B and shouted at Mr X to put his gun down.
53. When Mr X failed to respond to Officer D's direction and made a movement that "*looked like the weapon was being straightened up and aimed again,*" Officer D aimed his M4 rifle at Mr X and fired. Officer C also believed that Mr X was actively attempting to use his weapon against his colleagues and fired a further shot at this time.
54. Officer E regained her feet at this time and saw Mr X looking "*sort of frantic and panicked and angry*". He was still holding his firearm and Officer E feared for her life and those of her colleagues. She released her weapon's safety as Officer D fired a second shot – Officer D could see that Mr X was continuing to aim his weapon towards Officer B.
55. Officer D "*saw that [Mr X] had dropped his weapon and slumped forwards and towards the passenger side of the truck*" following his second shot. Seeing that Mr X had been incapacitated, Officer D applied his weapon's safety catch. No shots were discharged by Officer E.
56. As he continued to withdraw, Officer B saw Mr X continue to aim at him before he appeared to stiffen, falling forwards and to the left.

Analysis

57. The Authority recognises that events unfolded quickly after Mr X produced a firearm. This was a high-stress situation and the officers knew that they would probably be confronting somebody armed with a weapon, and who may have been mentally unwell and therefore unpredictable. It is likely that the stress of the moment and the speed at which the shooting happened prevented Officer B from fully comprehending or registering Mr X's attempt to shoot himself.

58. Officer C's view of Mr X was confined to what was visible through a relatively small, letterbox-style rear window, which was further obscured by evenly spaced vertical bars and stacked sections of wire mesh fence. The Authority is therefore satisfied that, due to his relatively restricted view of Mr X, Officer C did not see Mr X attempt to fire his weapon while pointing it at his own head.
59. Section 48 of the Crimes Act 1961 provides that 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. The Authority is satisfied that Officer B's, Officer C's and Officer D's actions were justified in self-defence under this section because:
- Officer B believed that Mr X was going to shoot him when Mr X pointed his gun at him. Officer B discharged his Glock pistol at Mr X in order to defend himself. No other tactical option was appropriate in the circumstances.
 - Although Officer C did not see a firearm, he believed that Mr X was in possession of one and believed Mr X had just discharged a shot at Officer B. Officer C fired his M4 rifle at Mr X in order to protect Officer B. No other tactical option was appropriate in the circumstances.
 - Officer D saw that Mr X was in possession of a firearm, was pointing it at Officer B and may have discharged a shot at him. Officer D fired his M4 rifle at Mr X in order to protect Officer B. No other tactical option was appropriate in the circumstances.
 - Mr X did not comply with the officers' instructions to put his weapon down and pointed it at Officer B after attempting to take his own life.
 - Officers B, C and D continuously assessed the risk posed by Mr X and stopped firing when he no longer presented a threat.

FINDING ON ISSUE 3

Officers B, C and D were justified in shooting at Mr X when he turned his firearm towards Officer B.

ISSUE 4: WAS APPROPRIATE AFTERCARE DELIVERED AFTER MR X HAD BEEN SHOT?

60. Officer D told CentComms that an ambulance was required at the scene immediately after Mr X had been incapacitated.
61. Satisfied that he no longer posed a threat, Mr X was removed from the driver's cabin of the truck and placed on the ground. Officers B, C and D administered first aid while Officer E returned to Mamaku Road to direct the ambulance to the scene.
62. Records show that an ambulance was requested by CentComms at about 4.11pm. This corresponds with the time Mr X was removed from the truck and its engine switched off.³

³ The works vehicle was fitted with a GPS transmitter that was capable of relaying whether the vehicle's ignition was on or off.

63. Cardiopulmonary Resuscitation (CPR) was performed on Mr X and his wounds were treated. CPR continued following the arrival of an Intensive Care Paramedic at about 4.24pm. AOS members who arrived at the scene following the shooting continued to administer first aid under the supervision of the paramedic, who directed that resuscitation be stopped at 4.50pm due to Mr X exhibiting no signs of life.

FINDING ON ISSUE 4

Immediate first aid was provided after Mr X had been shot.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

25 May 2021

IPCA: 20-3417

Appendix – Laws and Policies

POLICY

Use of force

64. 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 or arrest a person, 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.
65. 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 assessment:
- Threat: Any individuals or any actions or anything likely to cause harm.
 - Exposure: Potential for harm to people.
 - Necessity: Whether to respond to a given situation.
 - Response: An officer must consider all the circumstances and must be timely, appropriate and proportionate.
66. The overriding principle when applying TENR is 'safety is success'. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
67. 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 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).
68. 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.

69. The policy states 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

70. Officers who hold the position of sergeant or above, and officers who are authorised by a district or communications centre supervisor, may carry firearms when there is *“clear and specific evidence”* they may encounter circumstances in which they may be required to use a firearm.

Responsibilities when firearms are carried

71. Police policy on firearms requires that when an officer carries a firearm because 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 deploy with firearms as soon as practicable, and also deploy with a Taser where one is available.
72. When deploying to an incident where firearms are or may be present, officers must wear approved ballistic body armour.

Use of firearms

73. 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 sets out the circumstances in which the use of lethal force is justified.
74. The Police ‘fire orders’ state that *“Every Police employee issued with a firearm is personally responsible for ensuring they are thoroughly conversant with relevant law, particularly sections 39, 40, 41, 48, and 62 of the Crimes Act 1961 ...”*.
75. It outlines that the circumstances justifying Police firing at an offender can change very rapidly. Any officer who fires a shot *“must be personally satisfied through their perceived cumulative assessment that there exists justification for doing so”*.
76. Officers are required to consider the following before shooting:
- Communication – they must first have been asked to surrender (unless it is impractical or unsafe to do so), and
 - Less violent alternatives (proportionality) – It must be clear they cannot be disarmed or arrested without first being shot, and
 - Delay (necessity) - it must be clear that further delay in apprehending the offender would be dangerous or impractical.

77. Police must only use a firearm for the following lawful purposes:
- Section 48 - to defend themselves or others if:
 - They fear death or grievous bodily harm to themselves or others, and
 - Cannot reasonably protect themselves or others in a less violent manner.
78. There is no justification for firing at a suspect when they are no longer a threat to life. This applies regardless of the suspect's previous actions.
79. As a general rule, warning shots should not be fired. However, there may be circumstances where a warning shot may be appropriate, e.g.: the suspect has been asked to surrender (if practical) and has not done so, and it can be clearly aimed as a warning shot. Take extreme caution to safeguard the safety of others.

Principles applying when offenders are armed

80. Police policy states that, when dealing with an armed offender or an offender believed to be armed, Police should observe these basic principles:
- *“Conduct an ongoing TENR assessment during the course of an incident.*
 - *It is better to take the matter too seriously than too lightly.*
 - *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.*
 - *Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.*
 - *Where practical, police should not use a firearm unless it can be done without endangering other persons.”*

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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