

# Fatal shooting of the LynnMall supermarket attacker justified

1. On 3 September 2021, Ahamed Aathil Mohamed Samsudeen attacked people with a knife at the LynnMall Countdown supermarket in Auckland. Police from the Special Tactics Group (STG) shot him within minutes of the attack beginning, and he died at the scene.
2. Mr Samsudeen seriously injured four women and one man with the knife during the attack. One man suffered a minor wound, and another suffered a dislocated shoulder while trying to stop Mr Samsudeen from harming others.
3. Police had been surveilling Mr Samsudeen since his release from prison on 13 July 2021, because he was assessed to be a terrorist threat who wanted to carry out an attack in support of ISIL.<sup>1</sup>
4. This report focuses on the Police's response to the attack on 3 September 2021, and examines the decisions made that day.
5. The Authority, together with the Inspector-General of Intelligence and Security and the Office of the Inspectorate for the Department of Corrections, also reviewed how Police, the Security Intelligence Service and Corrections dealt with Mr Samsudeen in the years before the attack. For more information on this, see the *Coordinated Review of the management of the LynnMall supermarket attacker* (the Coordinated Review).<sup>2</sup>

## The Authority's Findings

### **Issue 1: Were the officers surveilling Mr Samsudeen provided with all the relevant information?**

Police surveilling Mr Samsudeen on 3 September 2021 were provided with enough information to understand the risk he posed.

<sup>1</sup> Islamic State of Iraq and the Levant (also sometimes referred to as ISIS or Daesh/Daish/Da'ish/Da'eesh).

<sup>2</sup> See the IPCA's website for a copy of the Coordinated Review: [www.ipca.govt.nz](http://www.ipca.govt.nz).

**Issue 2: Did the officers responding to the attack have access to appropriate tactical options?**

STG Officers B and C had access to appropriate tactical options.

They did not have time to gather more tactical options and body armour before entering the supermarket.

**Issue 3: Were STG Officers B and C justified in shooting at Mr Samsudeen?**

STG Officers B and C were justified in shooting at Mr Samsudeen to defend themselves and others under section 48 of the Crimes Act 1961.

## Analysis of the Issues

### ISSUE 1: WERE THE OFFICERS SURVEILLING MR SAMSUDEEN PROVIDED WITH ALL THE RELEVANT INFORMATION?

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#### Why were Police surveilling Mr Samsudeen on 3 September 2021?<sup>3</sup>

6. Mr Samsudeen arrived in New Zealand from Sri Lanka in October 2011, and was granted refugee status in December 2013.
7. Police first became aware of Mr Samsudeen in March 2016, when they were alerted to his Facebook account. He had posted photographs and videos of graphic violence against Muslims on a public page, along with comments supporting violent extremism and ISIL terrorist attacks overseas.
8. Police visited Mr Samsudeen in April and May 2016 to warn him that his posts were objectionable. Police and the Security Intelligence Service monitored him over the next year, and he continued to post disturbing and graphic material and express anti-Western views.
9. In May 2017, Mr Samsudeen's former flatmate told Police that Mr Samsudeen had said he intended to travel to Syria and join ISIL, and if prevented from doing so, he would commit a knife attack in New Zealand. Police subsequently arrested Mr Samsudeen for knowingly possessing objectionable material on 19 May, after he bought a last-minute plane ticket to Singapore. Police opposed bail because they assessed him to be a high risk of harming others.
10. Mr Samsudeen was in custody on remand from May 2017 until June 2018, when he pleaded guilty to two charges of knowingly distributing restricted material, two charges of using a document for pecuniary advantage (he had committed fraud, allegedly to fund his trip overseas), and one charge of failing to assist an officer exercising a search power.
11. He was on bail awaiting sentencing when Police arrested him for the second time in August 2018, after he bought a hunting knife in a shop and arranged to have it couriered to him. Police and the Security Intelligence Service had been surveilling him because they believed it was likely

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<sup>3</sup> For more detail on this, see the Coordinated Review.

he would commit an attack. Mr Samsudeen was charged with knowingly possessing objectionable material, possession of an offensive weapon, and failing to assist a Police officer exercising a search power.

12. Mr Samsudeen was then in custody on remand for almost three years, from August 2018 until July 2021. During this time, the Crown Solicitor applied to lay a Terrorism Suppression Act 2002 charge against Mr Samsudeen, but the High Court declined the application. The High Court also dismissed two charges of possession of an offensive weapon.
13. In May 2021, a jury in the High Court found Mr Samsudeen guilty of two possession of objectionable material charges and one charge of failing to assist a Police officer exercising a search power. He was found not guilty of one possession of objectionable material charge and one possession of an offensive weapon charge.
14. On 6 July 2021, Mr Samsudeen was sentenced to 12 months' supervision. He remained in custody awaiting trial for charges of assaulting two Corrections officers, but was subsequently granted bail and released on 13 July 2021.
15. Police believed Mr Samsudeen still posed a high risk of committing an attack, so they immediately began a surveillance operation using a variety of methods, one of which was physical surveillance. Teams of 'plain clothes' Police surveillance officers were supported by officers from the Special Tactics Group (STG). The STG officers' role was to assist and protect the surveillance officers, and to stop and arrest Mr Samsudeen if necessary.
16. Police reduced their surveillance gradually over time. Auckland went into a COVID-19 level 4 lockdown on 18 August 2021, and from that point Mr Samsudeen mainly stayed at his bail address in Glen Eden. By 3 September 2021, Police had decreased their physical surveillance to three days a week (but the surveillance teams were still on call for the rest of the week).
17. Police acknowledged that surveilling Mr Samsudeen in public did not mean they could prevent him from committing an attack. However, they believed it would enable them to respond more quickly and reduce the harm if an attack happened, and that this was all they could do in the absence of any lawful grounds to detain Mr Samsudeen.

#### **What did the officers know about Mr Samsudeen on 3 September 2021?**

18. Some of the Police officers conducting the 2021 surveillance of Mr Samsudeen had also been involved in the earlier surveillance operations. The officers knew:
  - a) Mr Samsudeen had been recently released from prison after being arrested for trying to join and fight for ISIL in Syria, possessing objectionable ISIL-related material and buying a hunting knife while out on bail in 2018.
  - b) He had a violent extremist view of Islam, posted online about his beliefs and persistently viewed violent material such as beheading videos.

- c) Police believed, based on intelligence they and the Security Intelligence Service had collected, that Mr Samsudeen posed a high risk of committing an attack.
  - d) He was a “tricky” target who took counter-surveillance measures. This made it difficult for the officers to keep sight of him and not blow their cover.
  - e) He was reportedly quite volatile, short-tempered and anti-authority.
19. In the weeks following Mr Samsudeen’s release from prison, Police received intelligence that Mr Samsudeen wanted to commit an attack in a crowded place (like the Auckland CBD or a transport hub) with a vehicle and/or a knife, and had identified Friday as his preferred day for an attack. This information was passed on to the officers surveilling Mr Samsudeen as part of their regular briefings and intelligence updates. Police briefed the officers that Mr Samsudeen posed a high threat of a “*low sophistication terrorist attack*” and that this could occur with little or no warning.
20. On Thursday 2 September 2021, Police noted that Mr Samsudeen had driven his friend’s car up and down the street in front of his bail address. Mr Samsudeen had no driver’s licence and this appeared to be a driving lesson, possibly to help him get a job. However, Police were also wary because Mr Samsudeen had talked about committing an attack using a vehicle.
21. Additionally, Corrections had issued Mr Samsudeen with non-association orders on 1 and 2 September 2021, relating to one of his former lawyers and a Police detective. This happened because Mr Samsudeen had been repeatedly calling and sending unwanted messages to them. Police had plans in place if Mr Samsudeen headed towards his former lawyer’s office or home.

#### **Why did Police decide not to follow Mr Samsudeen into the supermarket?**

22. The early shift of Police surveillance on 3 September 2021 included Surveillance Officer A (the team leader) and two other officers. The impact of the COVID-19 level 4 lockdown and the long duration of the surveillance operation (as officers had to be stood down if they were at risk of blowing their cover) had reduced their staffing numbers by half.
23. A team of three STG officers supported the surveillance officers. They parked their vehicle near (but out of sight of) Mr Samsudeen’s bail address, the Masjid e Bilal.
24. At 1.32pm, Police staff monitoring cameras on the street outside the Masjid e Bilal called Surveillance Officer A to report that Mr Samsudeen had left and was walking towards West Coast Road.
25. At 1.41pm, the late shift of STG officers (STG Officers B, C and D) took over from the early shift. These three officers had all been involved in the surveillance operations in 2018 and 2021.
26. The surveillance and STG officers tracked Mr Samsudeen as he walked towards the train station. Police later discovered that Mr Samsudeen had used his phone at about 2pm to search online for MP3s of two nasheeds (hymns) co-opted by ISIL that were classified as objectionable and

formed part of his charges in 2018.<sup>4</sup> Police believe he listened to them to build up motivation for the attack.

27. Police had access to the train station's cameras, and saw Mr Samsudeen board a train heading towards Auckland city via New Lynn at 2.14pm.
28. The officers decided not to follow Mr Samsudeen onto the train, because it was mostly empty due to the COVID-19 lockdown and the risk that Mr Samsudeen would spot an officer surveilling him was too great. The officers also thought the lack of passengers made it less likely Mr Samsudeen would commit an attack, as Police had intelligence that he wanted to target a crowded place.
29. Police anticipated that Mr Samsudeen might travel to New Lynn, as he had shopped at LynnMall before. At 2.19pm, a surveillance officer confirmed Mr Samsudeen had got off the train at the New Lynn station. Police followed Mr Samsudeen as he walked to the mall and joined the queue to enter the Countdown supermarket.
30. Surveillance Officer A also joined the queue. At 2.28pm Mr Samsudeen entered the supermarket, grabbed a trolley and walked off through the fruit and vegetable section.
31. Surveillance Officer A told us she decided not to follow Mr Samsudeen into the supermarket because:
  - a) The surveillance officers had been watching Mr Samsudeen for seven weeks and did not see anything out of the ordinary in his movements, behaviour or demeanour that day. They were expecting him to do his grocery shopping and had waited outside on previous occasions.<sup>5</sup>
  - b) Surveillance Officer A could not see many people inside the supermarket and therefore thought it was an unlikely place for an attack to occur.
  - c) The lack of crowds and the layout of the supermarket aisles would have made it more difficult to watch Mr Samsudeen without him noticing.
  - d) Police had not given them any information that suggested he was planning to attack that day. Although the surveillance teams knew Friday was apparently Mr Samsudeen's preferred day, they approached every day the same way as he might commit an attack at any time.
  - e) Mr Samsudeen did not appear to be carrying any weapons.
  - f) Surveillance Officer A did not know the supermarket sold knives.

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<sup>4</sup> MP3 is a file format for the compression and storage of digital audio data.

<sup>5</sup> After the attack on 3 September 2021, Police reviewed CCTV footage of Mr Samsudeen visiting the LynnMall Countdown supermarket for about 18 minutes on 12 August 2021. The footage shows Mr Samsudeen looking at the knife display for about 10 seconds.

32. Surveillance Officer A left while another surveillance officer waited outside the mall entrance for Mr Samsudeen to reappear. The STG officers parked their vehicle in the LynnMall carpark and also waited. Surveillance Officer A advised the Police control room for the surveillance operation of her decision not to follow Mr Samsudeen into the supermarket, and they agreed with that decision.
33. Police told us that, while they had followed Mr Samsudeen into some other shops and were particularly concerned about him trying to obtain a hunting knife, they understood that he could easily obtain a kitchen knife or other sharp item if he wanted to change his preferred instrument of attack. We accept that the decision not to follow Mr Samsudeen into the supermarket was carefully considered, and consistent with decisions made regarding Mr Samsudeen's other visits to supermarkets and convenience stores. In the absence of any other indications that there was a heightened risk of an attack on that day, Police's actions were reasonable.
34. Some people we spoke to during our investigation suggested that Mr Samsudeen may have suspected someone was following him in the supermarket, and this caused him to lash out. However, as we have explained, there were no surveillance officers inside the supermarket with him.<sup>6</sup>

#### FINDING ON ISSUE 1

Police surveilling Mr Samsudeen on 3 September 2021 were provided with enough information to understand the risk he posed.

#### ISSUE 2: DID THE OFFICERS RESPONDING TO THE ATTACK HAVE ACCESS TO APPROPRIATE TACTICAL OPTIONS?

35. The tactical options available for the surveillance officers were limited due to the need to remain covert in 'plain clothes' while they were out on the street following Mr Samsudeen. They wore covert ballistic vests for their own protection, and carried pepper spray and batons. They were not carrying Tasers or firearms.<sup>7</sup>
36. The STG officers were also in 'plain clothes' but had access to tactical options stored in their vehicle, including M4 rifles, a sponge-round launcher, Tasers, handcuffs, ballistic body armour and helmets. However, they were only carrying Glock pistols and pepper spray on them. These items could easily be concealed if the officers needed to get out of the car and remain covert.
37. STG Officer B was wearing covert ballistic armour, but STG Officer C was not. STG Officer C told us he assessed the risks, and decided not to wear the covert armour that day because he was worried it would show through his clothing and there was no information that Mr Samsudeen had a firearm.

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<sup>6</sup> We do not know why Mr Samsudeen decided to attack on this particular day and at this particular place. However, the Coordinated Review details events that may have contributed to his decision to commit an attack.

<sup>7</sup> Surveillance officers were not then permitted to carry firearms. They have since been trained and approved to carry Glock pistols.

38. About ten minutes after Mr Samsudeen had entered the supermarket, a surveillance officer reported that people were running out of the mall. The STG officers had already noticed this, and initially thought a fire alarm may have gone off because people were stopping outside the main doors.
39. The driver, STG Officer D, drove them to the mall entrance to find out what was happening. A bystander told them a man inside was stabbing people.
40. STG Officers B and C immediately ran towards the supermarket. Although they were no longer concerned about remaining covert, they did not stop to collect any other weapons or armour from their vehicle. Both STG Officers B and C say they did not have time to do this, because they needed to act as quickly as possible to stop Mr Samsudeen from harming people.
41. STG Officer B also says:
- he was satisfied that his pistol was a better option than a rifle because:  
*“Another thing to think of in an environment like this is that with a high powered rifle, the rounds could possibly go through him, or if the rounds miss they would be going... probably through the whole shop”*; and
  - he would not rely on a Taser to stop *“a goal-driven person with a knife”*, because it will not work if one of the two probes misses the target.
42. Although we think it would have been preferable for STG Officers B and C to be carrying Tasers as well as pistols, we accept that the officers needed to act urgently. We find it was reasonable for them to go straight into the mall without first stopping to get more tactical options.

## FINDINGS ON ISSUE 2

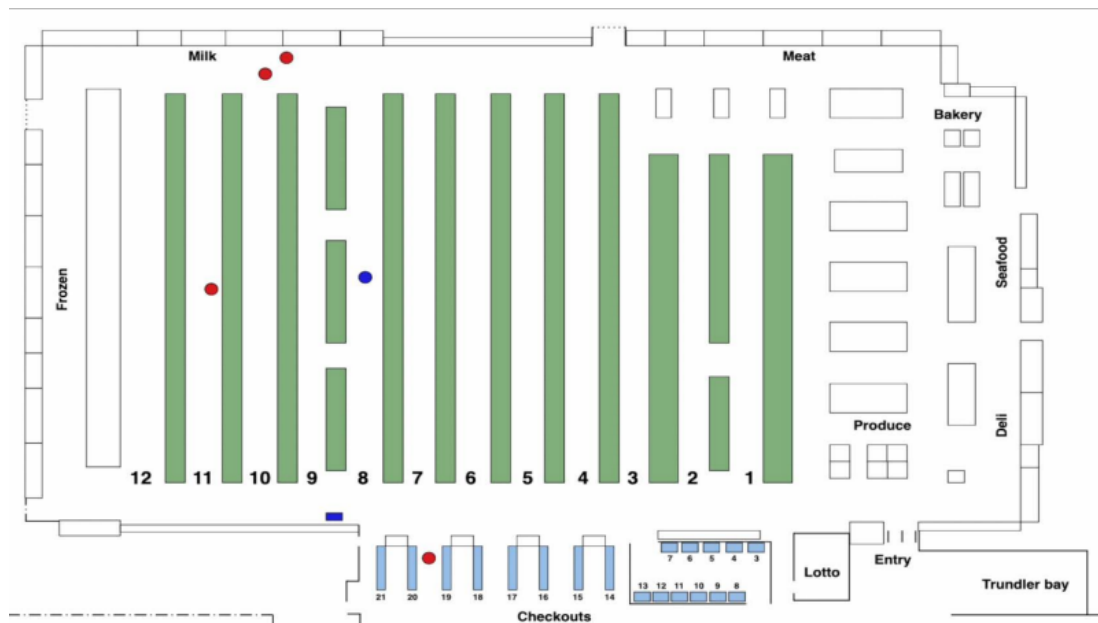
STG Officers B and C had access to appropriate tactical options.

They did not have time to gather more tactical options and body armour before entering the supermarket.

## ISSUE 3: WERE STG OFFICERS B AND C JUSTIFIED IN SHOOTING AT MR SAMSUDEEN?

### What happened?

43. After Mr Samsudeen entered the supermarket, he grabbed a trolley and moved through the aisles as if he were shopping normally. He had brought with him a single glove for his right hand, which he would use to wield the knife.



This diagram shows the layout of the Countdown supermarket in LynnMall. The blue dot in Aisle 8 shows Mr Samsudeen's location when he was shot. The red dots show the locations of the seriously injured victims when Police entered the supermarket. One victim who was seriously injured ran out of the mall as Police went in. The blue rectangle below Aisles 9 and 8 (to the left of the checkouts) is where Mr Samsudeen picked up the knife.

44. Mr Samsudeen made his way over to the 'Frozen' section of the supermarket before taking a knife from a kitchenware display near the checkouts, moving into Aisle 10 and putting on his glove. He removed the knife from its packaging, ran to the end of Aisle 10 (near the 'Milk' section) and, at 2.36:41pm, began attacking his first three victims. All were seriously injured, but one was able to get up and move to the checkouts area. People began running out of the supermarket.
45. Mr Samsudeen ran into Aisle 11, attacking two more people. He then returned to the end of Aisle 10, scaring off people who were drawn by the noise of the attack and were trying to help the victims. Witnesses reported that Mr Samsudeen was saying "Allahu Akbar". He walked along the back of the supermarket towards the 'Meat' section, gesturing with his knife. He began chasing a woman down Aisle 7 before giving up and returning to the back of the supermarket, again heading towards the Meat section. There he slashed his knife at a man who had retreated behind some storeroom doors and was trying to hold them closed, causing a minor wound, before going back to the area in front of the Milk section. He then repeatedly stabbed one of the victims he had already attacked.
46. About this time, several men began confronting and trying to distract Mr Samsudeen. One tripped over a fallen trolley and suffered a dislocated shoulder, but managed to get up and escape.
47. At 2.38:42pm, STG Officers B and C ran into the mall carrying their pistols. STG Officer D followed 17 seconds later. As they ran in, STG Officers C and D saw a woman running out of the mall, bleeding from her side. She was one of the people Mr Samsudeen had attacked in Aisle 11.



48. STG Officers B and C entered the supermarket (at the point marked 'Entry' in the diagram above) with their pistols drawn and pointed down at the ground. They told the nearby supermarket staff they were Police and asked: "Where is he?" A woman told them the attacker was in Aisle 10.
49. STG Officers B and C turned left from the entry point and ran alongside the checkouts, looking into each aisle as they passed. STG Officer D also ran in and began heading to the back of the supermarket in search of Mr Samsudeen. STG Officer B says he noticed an injured person lying on the ground near the end of the checkouts as they ran past, and heard yelling and shouting.
50. Aisles 8 and 9 are divided by three sets of shelves that are only about 1.5 metres high (see the diagram above). Just before STG Officers B and C arrived at the checkouts end of Aisle 8, Mr Samsudeen was walking down Aisle 9 from the Milk end to confront a man with a trolley. Two other men were trying to distract Mr Samsudeen from the Milk end of Aisle 8.
51. As Mr Samsudeen walked down Aisle 9, the man with a trolley backed away from him through the first gap in the shelves and crossed over into Aisle 8, retreating towards the Milk end of Aisle 8 with the trolley in front of him. One of the two men in Aisle 8 also backed away towards the Milk end of the aisle, while the other went towards the checkouts end, where another man was standing and began to back away from Mr Samsudeen.
52. Mr Samsudeen crossed over into Aisle 8 through the gap in the shelves, walking towards the two men who were retreating towards the checkouts end of that aisle. As he entered Aisle 8, he briefly turned to look at the men at the Milk end of the aisle, but continued walking towards the checkouts end.
53. The supermarket's CCTV footage shows that, as Mr Samsudeen was walking, he raised his knife in the air twice at the two men retreating to the checkouts end of Aisle 8 and appeared to be shouting something. While doing this he briefly turned his head again to look at the men behind him at the Milk end of the aisle, then turned back towards the checkouts end and lowered the knife back down.
54. At about the same time (2.39pm), STG Officer B rounded the corner into Aisle 8 from the checkouts end, closely followed by STG Officer C. The STG officers ran around the two men who were retreating, and down the aisle towards Mr Samsudeen with their pistols aimed at him. As he was running, STG Officer B quickly gestured for the men behind Mr Samsudeen to get out of the way. There were now three of them at the Milk end of Aisles 8 and 9 (one with the trolley and the other two carrying bollards to defend themselves). They were several metres behind Mr Samsudeen.
55. About three seconds after the STG officers first appeared at the end of Aisle 8, Mr Samsudeen started backing away from them as they ran towards him. The men behind Mr Samsudeen also backed away. The next four seconds of CCTV footage show Mr Samsudeen stumbling backwards into the corner of the middle set of shelves between Aisles 8 and 9, and then lurching forwards and falling onto the ground.

56. It is not clear from the CCTV footage (which does not include audio) exactly when the STG officers fired at Mr Samsudeen. The footage shows that Mr Samsudeen lurched forward in an uncontrolled manner after backing into the middle set of shelves, and after a few steps he fell to the ground and dropped the knife. We think there is an argument that this indicates Mr Samsudeen was shot at or about the time he backed into the shelves, but from the footage it is difficult to be conclusive.
57. The officers say they kept shooting until Mr Samsudeen hit the ground. STG Officer C said:
- “When I initially fired I couldn’t understand why [Mr Samsudeen] didn’t hit the ground, even though I knew from training it won’t always happen. It still surprised me that [Mr Samsudeen] didn’t hit the ground earlier.”*
58. STG Officers B and C backed up a few steps as Mr Samsudeen fell towards them onto the ground, and continued aiming their pistols down at him until they were sure he no longer posed a threat.
59. The STG officers, members of the public and Police who arrived at the scene then provided vital first aid to the seriously injured victims until the paramedics arrived. We commend all these people for their care and professionalism in a very difficult and stressful situation.
60. STG Officer B and a former paramedic who had witnessed the attack checked on Mr Samsudeen, but it was clear that his wounds were not survivable. He died at the scene shortly after the shooting.
61. Mr Samsudeen had 12 gunshot wounds altogether, though several may have been re-entry wounds (meaning some bullets possibly caused multiple wounds each). Six bullets and a fragment were recovered from his body.
62. The officers told us they each loaded 17 bullets into the magazines of their pistols. Police examined the officers’ pistols after the shooting. Ten out of 17 bullets were left in STG Officer B’s pistol, indicating that he fired seven shots. Twelve out of 17 bullets were left in STG Officer C’s pistol, indicating that he fired five shots. However, Police only found 11 fired cartridge cases at the scene, so we cannot be certain whether 11 or 12 shots were fired in total.

### **What are the possible justifications for the officers’ use of force?**

63. The following sections of the Crimes Act 1961 provide legal justification for using force in certain circumstances:<sup>8</sup>
- a) Section 39 empowers Police to use “*such force as may be necessary*” to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process.
  - b) Section 40 empowers Police to use “*such force as may be necessary*” to prevent the escape of someone who takes to flight to avoid arrest.

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<sup>8</sup> See the Appendix of this report for the full wording of these Crimes Act provisions.

- c) Section 48 provides that any person is justified in using “reasonable” force in defence of themselves or another.

64. Mr Samsudeen did not have time to flee or to attempt to use force to resist the STG officers before he was shot, so sections 39 and 40 do not apply. However, section 48 potentially applies.

### Were the officers justified in shooting Mr Samsudeen under section 48 of the Crimes Act?

65. Under section 48, we must assess the officers’ actions on both:

- a subjective basis (that is, what they genuinely believed); and
- an objective basis (what a “reasonable” person would have done).

66. This assessment involves three questions:

- a) What were the circumstances as the officers believed them to be? (a subjective test)
- b) Was the officers’ use of force against Mr Samsudeen for the purpose of defending themselves or another? (a subjective test)
- c) Was the officers’ use of force against Mr Samsudeen reasonable in the circumstances as each officer believed them to be? (an objective test)

### What did the officers believe the circumstances to be?

67. Both STG Officers B and C had been involved in surveilling Mr Samsudeen when he was out on bail in 2018, and during the seven weeks since he was released from prison in July 2021. They knew his background, that he was “anti-authority”, and that Police believed he posed a high risk of attacking members of the public with a knife (see paragraphs 18-21).

68. The officers also knew shoppers had reported that someone was stabbing people in the supermarket, and correctly assumed Mr Samsudeen was responsible. Both officers believed they needed to get to Mr Samsudeen as quickly as possible to stop him from seriously injuring or killing people. Their sense of urgency was so high, they did not stop to gather more tactical options or body armour. As they ran into the supermarket, STG Officer C saw one of the injured victims running out, and STG Officer B saw an injured victim by the checkouts. This confirmed that the attacker had in fact already harmed people.

69. We questioned whether, given the high risk they knew he posed, the officers had already decided to shoot Mr Samsudeen before they saw him in the supermarket. However, they denied that was the case and STG Officer C said:

*“Had he tripped or like dropped the knife then you rush him and tackle him, you know it’s not, it wasn’t predetermined that this guy’s going to get shot and I know that’s kind of what we’re talking about here. That was never a predetermination, you react to what’s happening in front of you.”*

70. STG Officers B and C say that, when they entered Aisle 8, they saw Mr Samsudeen holding a big knife as he came through the gap in the shelves about 10 metres away. He was looking at some members of the public at the other end of the aisle. STG Officer B told the members of the public to move away. STG Officers B and C say they believed these people did move out of the line of fire, but the CCTV footage shows they were still in the aisle several metres behind Mr Samsudeen at the time of the shooting.
71. Both STG officers say they aimed their pistols at Mr Samsudeen and yelled “armed Police!”, “drop the knife!” and/or “Get on the ground!” several times. Witnesses confirmed this.
72. STG Officer B says:
- a) Mr Samsudeen turned from looking at the people behind him, looked surprised to see him and STG Officer C, and stepped back into the side of the shelving between Aisles 8 and 9.
  - b) Mr Samsudeen’s expression changed from that split second of surprise to “hatred”.
  - c) After a very brief pause, Mr Samsudeen ran towards him and STG Officer C “at speed as he held the knife out in front of him”.
  - d) STG Officer B “planted” his feet in a shooting stance and fired his pistol at Mr Samsudeen. Mr Samsudeen was two to three metres away when he fired.
  - e) He shot at Mr Samsudeen because he feared for his and STG Officer C’s safety, “knowing his hatred for Police”. He also “knew that if we didn’t stop [Mr Samsudeen] ... He’s either gonna stab me if I run off or he’s gonna hurt more people.”
73. STG Officer C says:
- a) He was concerned that Mr Samsudeen was about to attack the members of the public at the other end of the aisle, who were about five metres from Mr Samsudeen. He yelled at Mr Samsudeen to distract him from attacking those people.
  - b) “I was very aware that I couldn’t let [Mr Samsudeen] get away from us because there were still multiple people inside the store, and I was aware that there could be multiple people injured and dying that would need help.”
  - c) He believed Mr Samsudeen intended to “kill as many people as possible”.
  - d) Mr Samsudeen turned towards him and STG Officer B. He initially looked surprised and stepped backwards, holding the knife down by his side. STG Officer C thought he may be about to surrender and drop the knife as instructed.
  - e) Instead, Mr Samsudeen stood his ground, lowered his head and started walking towards STG Officers B and C. Mr Samsudeen then began running at them down the aisle with the knife raised: “I was initially surprised, and I can remember thinking ‘oh shit he’s going to try and kill us’.”

- f) He and STG Officer B shot at Mr Samsudeen at about the same time. Mr Samsudeen was about five metres away.
74. The STG officers' accounts are not consistent with our analysis of the supermarket's CCTV footage of the shooting, as outlined above in paragraphs 53-56. To recap, our analysis is that Mr Samsudeen was initially walking at a steady pace down Aisle 8 towards the two retreating men. STG Officers B and C suddenly appeared at the end of the aisle, running towards him with their pistols drawn. Mr Samsudeen initially backed away down the aisle for several paces (apparently in surprise to see them). The footage shows him stumbling back into the corner of the shelves about halfway down the aisle. Contrary to the STG officers' accounts, he did not charge towards the officers at that point but lurched three paces forward, possibly having already been shot, and quickly fell forward onto the ground. The knife was still in his hand, but he dropped it as he fell. The officers did not stop to fire their shots, but were running from the moment they entered the aisle until Mr Samsudeen fell down, by which point they were so close to him they had to back away.
75. Our analysis of the footage led us to consider the possibility that the cause of Mr Samsudeen stumbling backwards into the shelving was that he had been shot. That is a possibility, but in the absence of audio with which to assess the sequencing of shots, we cannot be certain of that. The STG officers are adamant they only shot Mr Samsudeen when he was coming towards them.
76. Other independent witnesses who were at the checkouts end of Aisle 8 also recalled Mr Samsudeen running at the officers before he was shot.
77. One witness said the Police officers "*stopped in their tracks and were hip to hip next to each other*" as they commanded Mr Samsudeen to drop the knife, and that Mr Samsudeen "*held the knife up to his chest*" and charged the officers before they shot him. The other witness said Mr Samsudeen "*held the knife up with the blade towards the officers and ran at them*" before the officers fired. Neither of these accounts are consistent with what we saw on the CCTV footage, we think primarily because their vantage points were not as advantageous as the CCTV cameras.
78. When STG Officer B saw the CCTV footage, he maintained that it showed Mr Samsudeen running towards him after backing into and colliding with the shelves. When we pointed out that it looked like Mr Samsudeen had already been shot and his head was facing down, STG Officer B said: "*to me it looks like... he's gonna charge at me with his head down, that's how I'd look at it. But he has advanced on me.*"
79. STG Officer C acknowledged that the CCTV footage was different from his memory of the shooting, but also maintained that he saw Mr Samsudeen coming towards him with the knife before he shot him:
- "The way I saw it was that he had taken that step towards me and that's the reason I fired. So that, that's just the way I saw it at the time and that's how I remember it."*
80. Although we are satisfied from the footage that Mr Samsudeen was not "*charging*" at the STG officers when they shot him, we accept that he may have begun moving towards them with the

knife in the moments before they fired at him and that the officers may well have perceived that he was deliberately advancing on them.

81. In reaching this conclusion, we have taken into account that the CCTV footage is taken from a totally different vantage point from that which STG Officers B and C had. The cameras were in the supermarket ceiling some metres above the floor. The footage creates a perspective STG Officers B and C would not have had. They were at floor level and positioned directly in front of (and at the same level as) Mr Samsudeen. His demeanour and affect from that position would not necessarily have depicted a lurching man, and could have been perceived as someone advancing with a determined gait.
82. Thus, while we think the reality was different, we accept that both STG officers are likely to have perceived Mr Samsudeen as posing an immediate lethal threat to them at the time they fired the shots.
83. The STG officers also noted that others in the supermarket were still at risk if they did not stop Mr Samsudeen as soon as possible, including the people who had been confronting him in Aisles 8 and 9 and were only metres away, and the already-injured victims who needed urgent medical care.
84. In summary, we therefore accept that the STG officers believed Mr Samsudeen had advanced on them with the knife, posed an immediate threat of serious harm or death to them at the time they fired the shots, and posed a continuing serious threat to others if they were unable to stop him.

*Was the officers' use of force for the purpose of defending themselves or another?*

85. We accept that both STG Officers B and C were acting in defence of themselves and each other, as well as the members of the public who were still in the supermarket.

*Was the officers' use of force against Mr Samsudeen reasonable in the circumstances as they each believed them to be?*

86. Section 48 requires us to consider whether the STG officers use of force was reasonable in the circumstances *as they believed them to be*. We have accepted that Mr Samsudeen did walk towards them holding the knife moments before the shooting, that they believed he intended to kill them, and that they feared for the safety of the people still in the supermarket if they failed to stop him.
87. In assessing the reasonableness of the STG officers' use of force, we must consider:
  - a) What was the nature/seriousness of the perceived risk?
  - b) How imminent was it and were there other less forceful options?
  - c) What was the perceived likelihood of the risk materialising?

- d) What was the nature/seriousness of the likely harm resulting from the use of force to avert the risk?
88. As the Courts have made clear, these four factors cannot be judged to a nicety; their analysis must take into consideration the volatility of the situation and how much time officers had to react.
89. The STG officers had had weeks to consider how they would respond if Mr Samsudeen began attacking people with a knife, as they anticipated that this was a real possibility and were surveilling him to reduce the harm he could cause. However, considering a hypothetical situation is very different from being confronted with actual violence in progress. When the STG officers were alerted to the attack on 3 September, Mr Samsudeen had already injured people and was moving freely through the supermarket. The officers did not know how many victims there were or how badly they were wounded. They believed they could not delay and had to act immediately to prevent Mr Samsudeen from harming more people. The STG officers were the closest Police available to respond, and in fact were there for that very purpose.
90. As already noted, the STG officers' confrontation with Mr Samsudeen only lasted several seconds from the point when they entered Aisle 8 and saw him holding the knife. There was very little time for them to process exactly what he was doing and how they should react.
91. At the time of the shooting, the STG officers were at imminent risk from Mr Samsudeen. Both officers were also clearly focused on not letting Mr Samsudeen escape. STG Officer C said:
- "I'm not letting that person get away from me and I'm not letting them go and find other victims and I'm not having that on my conscience."*
92. Although STG Officer B's and STG Officer C's actions at the time they fired the shots were in defence of themselves, they also knew the people behind Mr Samsudeen in Aisle 8 were at risk because they were only metres away from him when the STG officers arrived. Mr Samsudeen was not walking towards them, but he could easily have changed direction and attacked them with the knife. The two men behind the STG officers at the checkouts end of the aisle could also have been at risk if the STG officers did not stop Mr Samsudeen.
93. We consider that the probability Mr Samsudeen would have killed or seriously injured someone if the STG officers did not shoot him at that moment was high in respect of the other people still in the supermarket, and high in respect of the STG officers. The potential consequences if Mr Samsudeen continued his attack with the knife were very serious – namely death or serious injury.
94. As discussed above, the STG officers were only carrying their pistols and pepper spray. Therefore, communication and pepper spray were the only tactical options available that were less forceful than firing their pistols.
95. The officers did not consider pepper spray to be a reliable way to stop Mr Samsudeen in the circumstances, because it is not always effective and they needed to get very close to him to use it. We accept this. In respect of communication, the STG officers say (and witnesses confirm)

that they did try calling on Mr Samsudeen to drop the knife and surrender. However, the CCTV footage shows that they did not give Mr Samsudeen much time to register and comply with that direction.

96. As the likely consequence of the STG officers firing their pistols is death or serious injury, they must give people a reasonable opportunity to surrender whenever possible. However, we accept that the officers believed they could not further delay firing at Mr Samsudeen without risking that he would seriously injure or kill them or others in the supermarket.
97. We therefore find that STG Officers B and C were justified in shooting at Mr Samsudeen in defence of themselves and others.

### FINDING ON ISSUE 3

STG Officers B and C were justified in shooting at Mr Samsudeen to defend themselves and others under section 48 of the Crimes Act 1961.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

14 December 2022

**IPCA: 21-8874**



## Appendix – Laws and Policies

### CRIMES ACT 1961

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#### Section 48 - Self-defence and defence of another

*“Every one 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.”*

#### Section 39 – Force used in executing process or in arrest

*“Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him or her of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner:*

*provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.”*

#### Section 40 – Preventing escape or rescue

*“(1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary—*

- (a) to prevent the escape of that other person if he or she takes to flight in order to avoid arrest; or*
- (b) to prevent the escape or rescue of that other person after his or her arrest—*

*unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:*

*provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.*

*(2) Where any prisoner of a prison is attempting to escape from lawful custody, or is fleeing after having escaped therefrom, every constable, and every person called upon by a constable to assist him or her, is justified in using such force as may be necessary to prevent the escape of or to recapture the prisoner, unless in any such case the escape can be*

*prevented or the recapture effected by reasonable means in a less violent manner.”*

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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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?

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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

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This report is the result of the work of a multi-disciplinary team. 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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