

Non-fatal Police shooting in Nelson

INTRODUCTION

1. At 2.19am on Friday 7 July 2017, a Police officer shot Mr X after he threatened to shoot Police at a residential address on Waimea Road, Nelson. Mr X survived the shooting but received injuries to his left arm.
2. Mr X complained to the Independent Police Conduct Authority that Police used excessive force while arresting him. Police also notified the Authority of the incident and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

3. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
4. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.

Summary of events

5. At 12.49am on 7 July 2017, Officers A and B were conducting patrols in the Nelson area. They saw a station wagon travelling in the opposite direction along Washington Road, exceeding the posted speed limit. The officers turned their car around in a side street and observed the vehicle as it continued south towards Saint Vincent Street. They began to follow the vehicle and as it exited the roundabout it appeared to accelerate away from the Police car.

6. Police continued to follow the vehicle onto Vanguard St while carrying out a vehicle registration check.¹ The driver, Mr X (who was the sole occupant in the car and whose identity was unknown to Police), accelerated, increasing the distance between him and the Police car.
7. Officers A and B activated their patrol car's red and blue flashing lights as Mr X's speed increased to 80 kph in a 50 kph zone. They continued following, maintaining a distance of 150-200 metres.
8. Mr X travelled onto Vanguard St, a cul-de-sac, and stopped at the end of the road having been followed by Police for two and a half kilometres. The officers saw Mr X exit the vehicle and run towards Nelson Intermediate School.
9. Officer A attempted to pursue Mr X on foot for a short distance while Officer B waited by the Police car. A dog handler, Officer C, arrived at the scene approximately 15 minutes later.
10. Officer C took his Police dog out of the vehicle. He also had a radio, Officer Safety Alarm (OSA), Stab Resistant Body Armour (SRBA), Taser, oleoresin capsicum (pepper) spray, handcuffs and a baton.
11. Officer B advised Officer C that Mr X was wearing a grey sweatshirt. However, neither she nor Officer A knew where he had gone.
12. Officers A and B maintained cordons in the area at the request of Officer C in case Mr X emerged nearby. Officers D, E, F, and G were notified of the incident over the radio and also set up cordons in the vicinity.
13. At 1.18am, Officer C began tracking Mr X with his dog *"for failing to stop and possible driving offences"*.
14. Officer C's dog indicated a track through the school grounds and across a grass field. They continued along Tipahi St where Officer C and his dog then jumped a fence into a property on Kawai Street and another fence into a property on Waimea Rd. The dog stopped next to a boundary fence on Waimea Rd, which was 1.8 metres high.
15. The Police dog stood up against the fence, indicating to Officer C that the offender was on the other side of it. Officer C looked over and saw a male wearing a grey sweatshirt in a glasshouse attached to the rear of a property. Officer C believed this to be Mr X (which it was), as he matched the description provided by Officer B.
16. Officer C saw Mr X run away from him but decided that instead of jumping the fence, he would go around the front of the property to cut him off. The dog then indicated to another property further along Waimea Rd, specifically on the basement vents of the house.

¹ Police records showed that the vehicle had been involved in a petrol drive off and to have a prohibited driver who was sought in regards to a shoplifting incident. Mr X was not, however, the registered driver of the vehicle, nor was he the person wanted in relation to these offences.

17. Based on his dog's track and having briefly seen Mr X, Officer C was confident that Mr X was likely in the basement under the house. At 1.57am he advised the Southern Police Communications Centre (SouthComms) of his location and then searched for the basement door which he found at the rear and under the house.
18. Officer C kept his dog on a harness and tracking line as he entered. At this stage, he assessed the risk posed by Mr X to be low.
19. Officer C opened the door. He called out: *"I'm from the Police, I have a Police dog and whoever is in there, come out or the dog will be used to find you."* He waited and received no response.
20. The basement was dark, with no apparent source of light, so Officer C used his torch to illuminate the area. He then commanded his dog to search and locate anyone in the basement.
21. The basement was approximately six metres long with a low ceiling and a corridor along the left wall. It was subdivided into five compartments with multiple horizontal, vertical and diagonal beams, creating a large number of obstacles. There was a stack of wood along the far right wall, and due to a gradually rising floor, it created a particularly confined area on the right side of the basement (see Photo 1 below).



Photo 1: The centre of the basement from the far right wall.

22. The dog entered the basement ahead of Officer C but remained within two metres of him, on a lead. As Officer C walked into the basement, along the corridor on the left, he could see to the far wall in front of him and the stack of chopped wood to his right.
23. The dog indicated over to the stack of wood so Officer C shone his torch in that direction and could see Mr X crouched down low, attempting to hide behind the wood. Officer C told Mr X he could see him and to come out.

24. Mr X ignored this instruction and climbed over the stack of wood on the right side of the basement, towards the door, leading Officer C to believe he was trying to escape. As Mr X was now closer to the door than Officer C, and there were multiple obstacles between them, he decided to release the dog to bite Mr X in order to apprehend him.
25. Mr X later told the Authority that the dog bit his right leg and he fought with the dog by prising its jaws open to release the bite and push it away. He heard the dog whimper as he did so.
26. As Mr X struggled with the dog, Officer C contacted SouthComms to advise that he had engaged with the offender and required further assistance. He did not go further into the basement to apprehend Mr X, as the area was confined and he did not have the space to safely control the dog and Mr X by himself.
27. Officer C called the dog off Mr X and it began to return to him, but the dog's harness got caught on a nail in a beam, resulting in the dog becoming stuck.
28. Officer C then saw Mr X moving. He said: *"I could see in my torch light that he was doing something with his sweatshirt and top. Pulling and tugging at something."*
29. Meanwhile, the dog slipped out of its harness and returned to Officer C who stood by the basement door waiting for assistance to arrive. As he put the dog on a chain, Officer D arrived at the door. Officer E was close behind outside the basement door.
30. Officer C advised Officer D that Mr X was in the back of the basement by the wood pile. He told him to be careful as he had seen Mr X *"mucking around with something"* as he called the dog off.
31. Officer D had stepped into the basement towards the wood pile, when Mr X called out to them: *"I've got a gun ... Get the fuck out."*
32. Officer D recalled:

"[Mr X] raised his hands at me holding an object. I can't describe the object as it was in his hands and it was dark ... It happened so fast I felt helpless as I thought I was about to be shot and had nothing to defend myself. I felt my whole world was about to end."
33. Officers C and D immediately exited through the basement door and Officer C shut the door behind them. Mr X later told the Authority that he threatened Police in the hope they would retreat, enabling him to escape.
34. At 2.16am, Officer C radioed SouthComms, and advised that they had an armed offender who had threatened to shoot Police. He requested immediate armed back up, as Mr X had expressed his intent to harm Police and Officers C, D, and E were not armed.

35. Officers D and E immediately returned to their vehicle to arm themselves.² Officer C moved away from the house with his dog to the opposite corner of the property's section, approximately 15 metres away, where he waited to observe where Mr X went if he exited via the basement door.
36. Mr X shouted from inside the basement: *"I'm coming out to fucking kill you with my fucking gun"*, which he repeated several times. Officer C called again on the radio to urgently request armed assistance. Officer D said: *"I could hear [Officer C] calling over the radio to hurry up. I had to be as quick as I could because [Officer C] was still down there without a firearm and something could happen to him."*
37. Officers D and E returned to Officer C's location, armed with a Bushmaster M4 rifle each and a Glock pistol, with the intention of giving the pistol to Officer C so he too would be armed. Due to the speed at which the incident unfolded, Officers D and E did not put on ballistic body armour.³ They both told the Authority they were seriously concerned about Officer C's safety and did not want to delay returning to assist him.
38. Officer C told Officer E to move around to the front of the property to cut off any possible escape routes on the other side. Officer E forgot to give Officer C the pistol and remained in possession of it. Officer D stayed with Officer C, observing any movement coming from the basement door.
39. Mr X called out from inside the basement: *"Get the fuck back, I'm coming out."* He pulled open the basement door and stepped out.
40. Officers C and D were crouched down in the opposite corner of the section. It was dark due to the time of night and a lack of street lights nearby, so Officer C shone his torch in the direction of Mr X.
41. According to Officer C, Mr X stood several feet out from the door *"upright in an aggressive stance"*. He immediately saw that Mr X was holding *"... what appeared to be a medium length firearm ... wrapped in what looked to me like a sweatshirt"* (subsequently referred to as the 'weapon'). Officer C said:

"I saw that [Mr X's] right hand was at the rear of this item like he was holding on to a trigger and that his left hand was holding the front of it. I immediately saw that he was holding it as you would a firearm and thought straight away that it was a sawn-off single barrelled firearm. He was holding it at his chest level pointing it at both of us."

² All officers involved in this event had current training certifications for all relevant tactical options (ASP baton, Bushmaster M4 rifle, first aid, Glock pistol, OC spray, and Police Integrated Tactical Training). Officer C's dog handling certification was also current at the time of this event.

³ Police policy requires officers to wear ballistic body armour – in this case, hard armour plating (HAP) over their standard issue Stab Resistant Body Armour (SRBA) – which provides additional protection of vital organs during incidents involving firearms (see paragraph 137).

42. Officer D said he could see that:

"[Mr X's] hands were up to chest height and the gun was in the ready to shoot position with the gun facing forward. I believed that he was holding a sawn-off shotgun the way he was holding it and how long the barrel was wrapped in cloth. I feared death at that point and for the safety of [Officer C]. Everything was in slow motion."

43. Mr X shouted that he was going to shoot. Officer C later said:

"I was in fear of my immediate death or GBH [grievous bodily harm]. I yelled at him several times to put his firearm down. I could hear [Officer D] yelling at him as well."

44. Officers F and G, who had been providing a cordon nearby, said they could hear two voices yelling: "Drop it now!" and "Drop it, armed Police!" An independent civilian witness also heard the Police tell Mr X to drop his weapon. Mr X, however, denies hearing Police instruct him to drop the weapon.

45. Officers C and D had nowhere safe to move and take cover or extract themselves from the situation. Officer C therefore decided to deploy his dog to bite Mr X for a second time. Simultaneously, Officer D used his rifle to fire a single shot at Mr X which penetrated his left elbow.

46. Officer C described the moment he heard the shot fired, unsure at this point who had fired it. He said:

"I was looking straight at the end of the firearm [that is, the object Mr X was holding] thinking, [Mr X has] shot me, but that I wasn't feeling any pain, thinking apparently the brain doesn't register it when you're dead. That the eyes still work for a few seconds after that, so that's why I was still seeing the dog running in. That we had waited too long to react and he had shot first."

47. Officer C saw the dog engage with Mr X, who fell to his knees as the dog bit him on his lower left leg. Mr X dropped his weapon and Officer C then realised that Officer D had fired the shot, not Mr X.

48. At 2.19am Officer C called SouthComms over the radio to say: "shot fired", less than 24 seconds after Mr X had emerged from the basement brandishing what Officers C and D believed to be a firearm.

49. Satisfied that Mr X was no longer an immediate threat, Officers C and D approached him. Officer C wrapped a chain around the dog's neck to remove him from Mr X, who was fighting with the dog. During the melee the dog also bit Officer C's lower right leg.

50. Officer D was still holding his rifle and his hands were not free, so he placed his foot on Mr X's chest and pushed him down to the ground with it so that Mr X could be controlled. Mr X landed on his back so Officer D swung his weapon behind him to free his hands in order to roll Mr X onto his front. Officer D then lay down his weapon and proceeded to restrain Mr X's right arm behind his back.
51. Officers F and G, who had since arrived at the scene, stepped in to assist. Officer D then moved away from the immediate vicinity and Officer C shone his torch on the area so Officers F and G had light to assist them while they detained Mr X.
52. Officer F restrained Mr X's upper body by putting his knee across Mr X's shoulders, and moved Mr X's right arm behind his back into a wrist lock to be handcuffed.⁴ Mr X had his left arm firmly held under his body but Officer G managed to extract it from underneath him, and pull it behind his back in order to secure the arrest.
53. Officer E returned from the other side of the property. He, as well as Officers F and G, described Mr X's demeanour as aggressive and 'assaultive' as he was struggling by moving his upper body around, and resisting arrest.⁵ The officers asked him for his name but he refused to provide any details.
54. Officer B subsequently arrived at the scene with a first aid kit, while Officer G conducted a full body scan, checking Mr X for injuries. He found what appeared to be a graze above Mr X's left elbow and dog bites to his lower legs.
55. Mr X told the Authority that he called out: "*I've been shot*" multiple times and advised the officers that his arm was broken but they ignored him. Officer C, who was still shining his torch to provide light, noticed a small red dot on the inside of Mr X's left elbow and advised staff to check there. Officer G then conducted another full body scan and found a bullet entry wound above Mr X's left elbow, which was beginning to pulse blood.
56. Officer C called SouthComms again to update them on the situation, before returning with the dog to his vehicle.⁶

Medical assistance for Mr X

57. Meanwhile, an ambulance was called to attend the scene. While waiting for it to arrive, Officer G provided immediate first aid to Mr X by applying pressure to the elbow wound and bandaging Mr X's left arm.
58. Officers F and G described Mr X as "*verbally aggressive*" as they escorted him to the ambulance. Officer G then accompanied Mr X to the hospital.

⁴ A wrist lock is applied by grabbing a person's hand and bending or twisting it to control them.

⁵ 'Assaultive' in the Police's Tactical Options Framework includes someone who displays intent to cause harm, through body language/physical action.

⁶ When Officer C returned to Nelson Police station, he received medical treatment for the dog bite to his right calf from the on duty doctor. He later went to hospital for further treatment.

59. Once in hospital the duty sergeant, Officer H, spoke to Mr X who claimed Police had used excessive force during his arrest. Mr X told Officer H that he had been kicked in the back by Police and was bitten by the Police dog after being shot. Mr X believed he had been shot for no reason.
60. Mr X was charged with presenting an object like a firearm and two counts of Threats to Kill/GBH. He pleaded guilty to all charges.

Police post-shooting investigation

61. Following the incident, Police discovered that the weapon Mr X had used to threaten Police comprised six pieces of kindling wood, measuring 24 to 27 centimetres long, wrapped in a black singlet and fashioned in the shape of a firearm.
62. Police maintained cordons around the area to preserve evidence for further investigation. The firearm was secured and photographs were taken at the scene. Bullet fragments were recovered and preserved for examination.
63. Officers C and D were breath screened for alcohol. No alcohol was detected.
64. At the conclusion of their investigation, Police determined that Officers C and D were acting in self-defence and in defence of each other. They found Officer D not to be criminally liable for wounding Mr X; and Officer C to have complied with relevant policy in deploying his Police dog to affect the arrest.
65. The investigation also noted that Officers D and E did not put on their ballistic body armour. However, given the *“fast paced and dynamic situation”* it found that *“their individual decision making was sound and demonstrated great courage and a strong commitment to protecting the public at large.”*

THE AUTHORITY'S INVESTIGATION

66. As part of its investigation the Authority interviewed Mr X and the Police officers involved. The Authority also visited the scene and reviewed documentation provided by Police.

THE AUTHORITY'S FINDINGS

67. The Authority considered the following issues:
- 1) Was the initial deployment of the Police dog appropriate?
 - 2) Were Officers D and E appropriately equipped to deal with the threat posed by Mr X?
 - 3) Was Officer D acting lawfully when he shot Mr X?
 - 4) Was Officer C justified in deploying his dog for the second time?
 - 5) Did Police use excessive force against Mr X after he had been shot?
 - 6) Did Police provide appropriate medical assistance once Mr X had been shot?
 - 7) Did Police provide appropriate welfare support to Officers C and D after the incident?

Issue 1: Was the initial deployment of the Police dog appropriate?

68. Officer C was confident that the offender he was tracking, Mr X, was in the basement because his dog had indicated to the property, specifically the basement vents. He had also briefly observed a male matching the description provided by Officer B in close proximity to the address.
69. When Officer C opened the basement door, he called out to anyone who might be in there, anticipating that it would be Mr X. He warned that the Police dog would be used to find Mr X if he did not come out. However Officer C received no response. As it was dark, and the basement was a confined space, he decided the most appropriate action was to deploy the dog to seek and locate Mr X.
70. When Officer C saw Mr X, he challenged Mr X to come out. Mr X did not comply with his request and tried to run towards the door. Officer C believed that Mr X was attempting to escape and that he needed to apprehend Mr X immediately and as safely as possible.
71. Police policy on the deployment of a Police dog states that officers must use the least amount of force possible and consider all other tactical options available to them before deploying a dog (see paragraph 138).
72. When interviewed, Officer C stated that Mr X was too far away from him to use a baton or pepper spray. Using his Taser was also not a suitable tactical option, due to the distance between them and the risk that Mr X might move out of the path of the Taser probes, resulting in them hitting a beam instead. Based on this assessment, Officer C decided to deploy the dog to bite Mr X as he felt it was the most appropriate tactical option available to him.

73. Mr X later advised the Authority that it was his intention to escape Police, as Officer C had anticipated. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to “prevent the escape of that other person if he takes flight in order to avoid arrest” (see paragraph 122).
74. The Authority is satisfied that Mr X was attempting to escape and that Officer C considered all tactical options available to him in deciding how best to prevent Mr X from doing so. Due to the confined space and obstacles in his path, the Authority is satisfied that the deployment of the dog was the most appropriate tactical option available at the time.

FINDING

The initial deployment of the Police dog was appropriate.

Issue 2: Were Officers D and E appropriately equipped to deal with the threat posed by Mr X?

75. Officer D advised the Authority that fire orders had been issued at the start of the shift, and that Officer D and E’s vehicle was equipped with weapons from the central armoury as per usual.⁷
76. On this occasion the armoury did not have enough pistol holsters so Officers D and E withdrew two rifles and one pistol (rather than two). They also had only one set of gun safe keys between them.⁸
77. Officers D and E initially attended the scene to assist Officer C in apprehending Mr X. However, as Officer D entered the basement, Mr X threatened Police that he had a gun and he was going to shoot them. Officers C and D immediately exited the basement, and urgently returned to their vehicle to equip themselves with firearms, based on the imminent threat posed by Mr X.
78. In order to fully comply with Police firearms policy, Officers D and E should have put on ballistic body armour before returning to Officer C’s location (see paragraph 137). Officer E explained to the Authority that: “we had two [ballistic body armour plates] in the car but we were just worried about [Officer C] being down there.” Additionally, Officer D said: “I did not take the bullet proof vest as I had no time to waste as the situation could turn deadly.”
79. Both Officers D and E expressed serious concern for the safety of Officer C and believed they needed to act urgently. Officer E told the Authority that putting on the ballistic body armour while at the police vehicle may have only taken another minute but, due to the speed at which the incident was unfolding, he and Officer D felt they did not have time to spare and any delay could have exposed Officer C to grievous bodily harm or death.

⁷ ‘Fire orders’ are instructions which set out the circumstances under which Police may use firearms (see paragraphs 131-137 for firearms policy).

⁸ Officers are each required to carry a set of safe keys on their person so that they may access firearms as needed. This is particularly important in case an officer is not with their partner at the time access is required. Police have since addressed the issue of insufficient safe keys.

80. However, the Authority is of the view that even if they had not had the time to immediately put the ballistic body armour on, they should have taken it with them to put it on when they returned to Officer C, had time allowed.
81. None the less, Officer C was unarmed, in an exposed position, and anticipating either an imminent escape by Mr X or a confrontation with him. The Authority acknowledges that any delay may have exposed Officer C to further risk, but by failing to wear ballistic body armour Officers D and E also put themselves at risk.

FINDINGS

Officer D and E's decision to return to their car and equip themselves with firearms was correct based on the threat posed by Mr X.

In order to fully comply with Police firearms policy, Officers D and E should also have put on ballistic body armour before returning to assist Officer C.

Issue 3: Was Officer D acting lawfully when he shot Mr X?

82. When Officers D and E returned to Officer C's location after arming themselves with rifles, Officer C advised Officer E to go around the front of the property in case Mr X attempted to escape through another, unknown exit point. Officer D remained with Officer C.
83. Mr X told the Authority that, when he came out of the basement door, Police did not warn him that they were armed, nor did they tell him to drop his weapon. Officer C told the Authority that he called out to Mr X multiple times to put his firearm down and heard Officer D do the same. Officers F and G also said that they heard multiple challenges to Mr X to drop the weapon. An independent witness account confirms that Police shouted to put the gun down. The Authority is therefore satisfied that Police warned Mr X to drop his weapon (and, in effect, surrender), in accordance with Police policy.

Assessment of the weapon

84. Police policy states that when dealing with an offender who is believed to be armed, Police must treat them as dangerous and hostile unless there is definite evidence to the contrary. If an offender is acting in a way that makes casualties likely, Police must act immediately to prevent this (see paragraph 135 for policy).
85. Officers C and D stated that they believed Mr X was in possession of a firearm – although it was later discovered that in fact Mr X had been holding some kindling wrapped in a shirt.
86. The officers did not see Mr X remove any items of clothing while in the basement or see him retrieve any kindling wood. Mr X gave them no reason to believe the item in his possession was anything other than a firearm and indicated to the Authority that he had hoped to escape by instilling this very belief in the officers.

87. Officer D recalled Mr X pointing an object at him in the basement, and threatening to shoot him with it, but he could not see what the item was since the basement was dark and he had limited visibility.
88. When Mr X emerged from the basement he held the 'weapon' like a firearm, pointing it directly at Police, continually threatening to shoot and kill them. The weapon was a similar length and shape to a sawn-off shotgun.
89. Officers C and D had limited visibility with only Officer C's torchlight to see Mr X who was standing approximately 15 metres away from them. They believed that in the circumstances Mr X posed an immediate risk to their safety, or to the safety of the public if he were to escape, and that they needed to act accordingly.
90. Given the speed at which the incident escalated, Police did not have time to further assess the situation and establish whether or not the item wrapped in cloth was in fact a firearm. Based on Mr X's demeanour both immediately before and after he emerged from the basement, combined with the sudden presentation of what Officers C and D reasonably believed to be a firearm, the officers feared that they were in immediate danger of death or serious injury and simultaneously used the tactical option at their disposal to address the threat they believed Mr X posed.
91. As required by Police policy, Officers C and D responded to the situation presented to them, treating Mr X as a dangerous offender with the potential to cause serious harm.

Deployment of the firearm

92. Police policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm. Officers must give an offender the opportunity to surrender if practicable, and employ less lethal tactical options to affect an arrest or disarm an offender if they are available. However, if further delay in apprehending the offender would be dangerous or impractical, officers are justified in firing at an offender (see paragraphs 134-136 for policy).
93. Officer D stated that he believed he and Officer C were at risk of death or grievous bodily harm, and was therefore acting in self-defence and in defence of his colleague by using his firearm, in accordance with section 48 of the Crimes Act (see paragraph 123).
94. In order to rely on this defence, a person's actions must be assessed on a subjective and objective basis. This assessment involves three questions:
 - 1) What were the circumstances as Officer D believed them to be (subjective)?
 - 2) Did Officer D use force for the purpose of defending himself or another (objective)?
 - 3) If force was used for the purpose of defending himself, was the force used reasonable in the circumstances as Officer D believed them to be (objective)?

1) What were the circumstances as Officer D believed them to be?

95. Prior to firing his weapon, Officer D was mindful of the following:

- Mr X had attempted to evade capture and resisted attempts to apprehend him;
- Mr X had told Police he had a firearm and would shoot them;
- Mr X approached Police with a weapon raised in their direction;
- Mr X had ignored verbal appeals from Police to drop his weapon;
- there were no other suitable tactical options available to Officer D due to the distance between him and Mr X (15 metres), and the level of threat posed by Mr X;
- Police had no available cover or means of escape; and
- If Mr X escaped, he potentially posed a serious threat to members of the public.

2) Did Officer D fire his firearm for the purpose of defending himself or another?

96. Attempts to de-escalate the situation and disarm Mr X by challenging him to drop his weapon had been unsuccessful. Instead the situation escalated quickly, and Officer D believed that he and his colleague were about to be shot by Mr X.

97. Officer D told the Authority that his justification for shooting Mr X was “... *that I’m fearing death ... or yeah, death for me and [Officer C] and our safety.*” He could not retreat from the situation without leaving Officer C unarmed and exposed to risk. He also considered it to be unsafe to approach Mr X in an attempt to deploy a less lethal tactical option.

98. Police needed to swiftly apprehend Mr X in order to prevent his escape and potential harm to Police staff or the general public. In the circumstances Officer D’s only suitable, available tactical option was to use his rifle.

3) Was the force Officer D used reasonable in the circumstances?

99. The visibility was poor due to the time of night and lack of street lighting, so Officers C and D were unable to determine what Mr X was pointing at them. However, based on the threats made by Mr X, they reasonably believed that he was in possession of a firearm and it was his intention to cause grievously bodily harm or death.

100. The Authority finds that Officer D was lawfully justified in firing his rifle at Mr X to defend himself and his colleague from the perceived threat of death or grievous bodily harm. Officer D's actions complied with the law and Police policy.

FINDING

The Authority is satisfied that Officers C and D warned Mr X to drop his weapon.

In accordance with section 48 of the Crimes Act 1961 and Police firearms policy, Officer D was legally justified in firing at Mr X.

Issue 4: Was Officer C justified in deploying his dog for the second time?

101. When Mr X exited the basement and confronted Police, by pointing what the officers believed to be a weapon at them, Officer C anticipated that Mr X was going to shoot at him and Officer D. There was nothing the officers could hide behind so no cover was available to protect them.
102. Officer C had only a baton, pepper spray, and Taser. As Officer C was approximately 15 metres away from the basement door, the above tactical options would have had insufficient reach to disarm or incapacitate Mr X.⁹ Officer C therefore decided to deploy his dog for a second time as this was the only viable tactical option available to him to deal with the threat posed by Mr X in the circumstances.
103. In accordance with Police policy, Officer C gave Mr X the opportunity to desist (see paragraph 139). As Mr X did not comply with this challenge, and there was no lesser tactical option available to safely apprehend Mr X, the Authority is satisfied that Officer C's deployment of the Police dog was reasonable and appropriate.
104. Officer C was legally justified under section 48 of the Crimes Act 1961 in using force to defend himself and his colleague, Officer D. Officer C complied with Police policy and legislation.

FINDING

Officer C was legally justified in deploying his Police dog for the second time.

Issue 5: Did Police use excessive force against Mr X after he had been shot?

105. Mr X complained to the Authority that, following the shooting, Police used excessive force to arrest him. He said "[Police] kicked me in the back ... One's got basically his knee in my shoulder blades and then like, you know, I've got a whack in the back of the head." Mr X told the Authority that he was calling out to Police that he had been shot but they did not acknowledge this as they restrained and searched him.

⁹ The optimum operating distance for a Taser is two to four and a half metres.

106. Officer D stated that once he had fired the single shot and Mr X fell to his knees, he approached Mr X. Officer D told the Authority that he put his foot on Mr X's chest to bring him to the ground as he had his firearm in his hands but needed to secure Mr X immediately, particularly as he did not know if Mr X had access to other weapons. Mr X does not recall this happening and his medical records do not note any injuries to his chest area. The Authority is therefore satisfied that this use of force was not excessive.
107. Officer G, who with Officer F stepped in to carry out the arrest, told the Authority that Mr X *"was physically trying to fight and get away from us and roll around. He's just – he's a big guy, big muscular guy. Very difficult to hold him."*
108. Mr X complained that an officer put a knee between his shoulder blades during the arrest which resulted in injury. Officer F stated that during the arrest he restrained Mr X's upper body by putting his knee across Mr X's shoulders and moved Mr X's right arm behind his back in a wrist lock to be handcuffed. However, Mr X's medical records do not indicate bruising or injury to his back or neck, suggesting that this use of force did not result in additional or unnecessary harm.
109. When interviewed by the Authority, Mr X revealed a scar on the back of his head and indicated that it was caused by Police when they arrested him. However, it is not possible to confirm this as it does not appear to be documented in his medical records or elsewhere.
110. Mr X's mother advised the Authority that she had taken photos of Mr X's injuries. The Authority requested these photographs but was advised by Mr X's mother that they were no longer available.
111. No independent witnesses were able to provide an account of the Police restraining Mr X during the arrest, and the officers present did not provide any information to support the assertion that Police used excessive force against Mr X.
112. It is likely that Mr X sustained superficial grazing and bruising as a result of resisting attempts to restrain him. However, there is no medical record of any injuries apart from the bullet entry wound on his arm and the dog bite wounds to his lower legs, and no further evidence has been provided to the Authority to support Mr X's complaint.
113. Police reported that Mr X resisted arrest and he was restrained accordingly. They were acutely aware that Mr X had threatened to shoot Police and may have had other weapons on him. The Authority determines that, on the balance of probabilities, the Police's use of force on Mr X after he was shot was not excessive.

FINDING

On the balance of probabilities, the Authority is satisfied that Police did not use excessive force against Mr X after he had been shot.

Issue 6: Did Police provide appropriate medical assistance once Mr X had been shot?

114. Officer C advised SouthComms that a shot had been fired at 2.19am. An ambulance was called to attend the scene, and it arrived at 2.33am.
115. While awaiting the ambulance's arrival, Officer G conducted a full body scan of Mr X, looking for any potential injuries. He noted dog bite wounds to Mr X's lower legs and on completing another full body scan, noticed that the graze on Mr X's left elbow was in fact a bullet wound. Officer B provided a first aid kit and Officer G bandaged the wound.
116. Officers F and G escorted Mr X to the ambulance. Officer G then accompanied Mr X in the ambulance to the hospital where he received pain relief and treatment for his wounds.

FINDING

Mr X received immediate and appropriate medical assistance after being shot.

Issue 7: Did Police provide appropriate welfare support to Officers C and D after the incident?

117. Following the incident, Officers C and D were placed in separate motel units, accompanied by Police Association representatives, for approximately three hours. This was to give Police sufficient time to complete firearms residue and alcohol testing. Both officers were then taken home to their families between 3am and 4am.
118. Police identified a number of shortcomings in the welfare management of Officers C and D following the incident. However, these have since been addressed internally and, when interviewed by the Authority; both officers expressed overall satisfaction with the way in which Police managed their welfare.

FINDING

Overall, the welfare management of Officers C and D was satisfactory.

CONCLUSIONS

119. The Authority has found that Mr X threatened to shoot Police and presented a weapon at Officers C and D. The officers reasonably believed that they were in imminent danger of grievous bodily harm or death and responded accordingly. Both Officers C and D deployed the most appropriate tactical option available to them as a means to defend themselves and each other. The Authority is satisfied that the force used to affect the arrest of Mr X was appropriate and legally justified in the circumstances.

120. The Authority also determined that:

- 1) The initial deployment of the Police dog was appropriate.
- 2) Officer D and E's decision to return to their car and equip themselves with firearms was correct based on the threat posed by Mr X. In order to fully comply with Police firearms policy, Officers D and E should also have put on ballistic body armour before returning to assist Officer C.
- 3) The Authority is satisfied that Officers C and D warned Mr X to drop his weapon. In accordance with section 48 of the Crimes Act 1961 and Police firearms policy, Officer D was legally justified in firing at Mr X.
- 4) Officer C was legally justified in deploying his Police dog for the second time.
- 5) On the balance of probabilities, the Authority is satisfied that Police did not use excessive force against Mr X after he had been shot.
- 6) Mr X received immediate and appropriate medical assistance after being shot.

Overall, the welfare management of Officers C and D was satisfactory.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

16 August 2018

IPCA: 17-0064

Legislation

121. Section 39 Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*
122. Section 40(1) Crimes Act 1961 provides for Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest”*.
123. Section 48 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.”*
124. Under section 62 Crimes Act 1961, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.
125. Section 315 (2) (a) Crimes Act 1961 provides for Police officers to arrest and take into custody without warrant any person who he or she has good cause to suspect of having committed any offence punishable by imprisonment.

Police policy on use of force

126. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
127. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
128. 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 option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer’s Perceived Cumulative Assessment (PCA)).

129. 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.
130. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

Firearms policy

131. The Police Manual authorises officers who hold the position of sergeant or above, and officers who are authorised by a district or communications centre supervisor, to carry firearms when there is *"clear and specific evidence"* that they may encounter circumstances in which they may be required to use a firearm.
132. Policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm.
133. The policy instructs officers that *"An overriding requirement in law is that minimum force must be applied to effect the purpose."* It also says that: *"Where practical, Police should not use a firearm unless it can be done without endangering other persons."*
134. An offender must not be shot until all of the following conditions have been satisfied:
- *"they have first been asked to surrender (unless it is impractical and unsafe to ask them;*
 - *it is clear that cannot be disarmed or arrested without first being shot; and*
 - *further delay in apprehending the offender would be dangerous or impractical."*
135. The following principles are to be applied when offenders are armed, or believed to be armed:
- It is better to take the matter too seriously than too lightly.
 - Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.
 - Make every effort to prevent casualties.
 - Caution is not cowardice. When the offender's actions permit, 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.

136. Any officer issued with a firearm is personally responsible for ensuring that he or she is thoroughly familiar with relevant law and all relevant instructions and guidelines in the Police Manual. When firearms are issued, if time and circumstances permit, supervisors must draw officers' attention to the 'Fire Orders', which set out the circumstances in which Police officers may use firearms. Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape. These instructions are printed on the inside cover of Police notebooks and are also stored in vehicle firearm security cabinets.
137. When deploying to an incident where firearms are or may be present, officers must wear approved ballistic body armour, or hard armour plate (HAP) which must be worn over stab resistant body armour (SRBA).

Use of a Police dog

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

Police welfare

141. When officers have been involved in incidents involving the use of lethal force resulting in deaths or serious injuries, the Police 'Trauma' policy provides for employee welfare support. Immediately following an incident, officers involved must be removed from the scene and necessary support arrangements put in place.
142. Police officers, colleagues, next of kin, and media are required to maintain confidentiality of Police employee's details. Investigators must also ensure employees are directed not to discuss the incident with each other as this may influence their own accounts.
143. Interviews should be conducted at a time that takes into consideration the employees' welfare needs as well as the need to conduct the interviews as near to the incident as possible. This may be some time after the incident, in order to enable the employees time to rest or compose themselves. During the interview, employees should have representation available to them such as a representative from their service organisation and/ or legal counsel.
144. Employees may be granted up to two weeks special leave if considered appropriate.

ABOUT THE AUTHORITY

Who is the Independent Police Conduct Authority?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

145. receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
146. investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

This report

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



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