



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Police justified in fatal shooting of man in Wainuiomata

1. At 11.47am on 16 November 2023, Police received a 111 call saying a man (Mr X) was assaulting his partner (Ms Y) on the driveway of a rural property on the Coast Road in Wainuiomata. The man was extremely agitated and reported to have had a bat, knife, and scissors at various points in time during the incident.
2. Police arrived at the scene at 12.03pm. They found Mr X holding a screwdriver to Ms Y's throat. Police appealed to Mr X to let Ms Y go. At about 1pm, fearing for Ms Y's life, an officer fired a single shot at Mr X's left shoulder. Police immediately provided medical assistance. However, Mr X went into cardiac arrest and died a short time later.
3. Police notified us of the shooting as required by section 13 of the Independent Police Conduct Authority Act 1988.¹
4. We conducted an independent investigation into the incident. We also reviewed the Police investigation and documents such as photos and witness statements. We visited the scene of the incident and interviewed five Police officers, including the officer who engaged with Mr X and the officer who fired the shot. Ms Y did not participate in our investigation.
5. Our investigation independently considered the overall Police response to the incident. We also assessed Police policy, practice and procedures as they relate to the incident. We also examined Officer B's decision to shoot at Mr X. We concluded that the officer was legally justified in taking that action.

¹ Section 13 says: "Where a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused."

The Authority's Findings

Issue 1: Did Police respond to the incident appropriately?

Police responded appropriately to this incident. They made every effort to resolve the situation safely.

The Police Negotiating Team made appropriate decisions regarding using Mr U and his mother to assist in negotiations with Mr X.

Issue 2: Was Officer B justified in shooting Mr X?

Officer B was justified in shooting Mr X. In our assessment, his actions were reasonable and proportionate having regard to the circumstances as he perceived them to be.

Analysis of the Issues

THE AUTHORITY'S ROLE

6. After supervising a Police investigation or conducting an independent investigation, the Authority's statutory responsibility is to:

"... form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which may be the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair or undesirable."

7. The Authority must convey its opinion to Police and may make whatever recommendations it regards as appropriate. The Authority's jurisdiction is wide-ranging and expressly includes reaching a view as to whether or not the Police should consider commencing civil (disciplinary) or criminal proceedings.

What happened before Police arrived?

8. Ms Z and her husband, Mr W, were home with their granddaughter and a friend, Mr V. Ms Z saw a car parked across the bottom of their long, sloping driveway. She saw Mr X lifting the car's bonnet and slamming it down. He kicked and hit the car while loudly yelling: *"It's all your fucking fault!"*
9. Ms Z went to stand outside on a bank overlooking the car. She saw Mr X reach inside the car and then heard an unseen woman (Ms Y) yelling for him to leave her alone. Ms Z yelled to Mr X: *"Leave her alone!"* and told Ms Y to: *"Get out and run up here!"* Ms Y got out of the car and ran up the driveway.
10. Mr X followed Ms Y, catching up with her about two-thirds of the way up the driveway. He picked Ms Y up, carried her further up the driveway, and dropped her onto a patch of grass. He stood

over Ms Y while verbally abusing her and then aggressively began to roll and pull her, grabbing her clothes and yanking her by the hair. Ms Z again yelled at Mr X: *"Leave her alone!"*

11. Mr X told Ms Z: *"I just want my fucking phone."* Upon realising this is what Mr X wanted, Ms Y passed a phone to him.
12. Mr X repeatedly called Ms Y a *"fucking bitch"* and other derogatory names, saying everything was her fault. He told Ms Z that Ms Y had *"issues"* and said he was leaving. Mr X then returned to the car to try to start it.
13. Meanwhile, Ms Z attended to Ms Y, who had what appeared to Ms Z as *"a small seizure"*. Mr X returned, wanting to help, but Ms Z told him he could best help by standing away. Mr X stood at Ms Y's feet and told Ms Z to: *"... just stay away from me"*. Ms Z then noticed that Mr X was holding a pair of scissors in his hand, which he put into his pocket.
14. Mr X moved back and forth between the car and Ms Y. At some point, he called his friend, Mr U, to pick him up as his car had broken down.
15. According to Ms Z, when Mr X came up the driveway: *"He would make sure that he yelled at [Ms Y] to keep her in her frightened state."* Ms Y stayed quietly on the grass alongside the driveway in a hunched position.
16. Mr W and Mr V came outside. Mr X approached them and asked them to help him start his car. They explained that they were unable to help due to their age and health. Mr X, in a heightened state, stormed back to the car, saying: *"All I wanna do is get outta here!"*
17. Ms Z says: *"[Mr X] was, at the beginning, upset about his car and agitated. As the situation continued and everywhere was going wrong, he just got more and more and more agitated."* According to Ms Z, Mr X said that he wanted to kill himself, and he kept taking the scissors in and out of his pocket.
18. Ms Z says that although she did not feel threatened by Mr X, she nevertheless ensured there was distance between herself and him. According to Ms Z: *"... his full focus appeared to be on his partner, not on anybody else."*
19. Ms Z asked Mr W to go inside and call Police, as she was concerned for Ms Y's welfare. Mr X heard and asked why Police had been called. Ms Z explained it was so they could help Ms Y with the *"issues"* he had talked about. Mr X appeared to accept this and said he was *"outta here"*. He then went to try and start the car again.
20. Mr V went down to Mr X's car to see if he could assist. Mr V looked inside the car and saw a baseball bat on the front seat. Mr X was getting angry, yelling and repeatedly telling Mr V: *"If I don't get outta here, I'm gonna kill myself."* Mr X then picked up a knife from the console by the handbrake. Mr V says it appeared to be a 6 to 8-inch kitchen knife – the type used for peeling.
21. Mr V immediately went up the driveway and told Ms Z to get inside the house because Mr X had a knife. Ms Y remained lying on the ground in a curled-up position.

22. Once inside, Ms Z observed Ms Y and Mr X through a window. She says: “[Mr X] paced either behind [Ms Y] or he would go up and down the drive. It was... the agitated pacing that he was doing between when we went inside and locked the door and (then) the Police arrived.”
23. The events mentioned occurred over a time span of about 10 to 15 minutes before Police were called. Ms Z provided the 111 call-taker with updates until Police arrived. Police arrived about 16 minutes after the initial 111 call was made.

What were Police told during the 111 call?

24. Mr W and Ms Z told the call-taker the following:
- ‘the man’ (Mr X) had a car at the bottom of the driveway that would not start;
 - Mr X was “*real aggro*” and had followed his wife (Ms Y) up their driveway;
 - “he’s been punching her, dragging her around like the, the driveway”;
 - Mr X had a pair of scissors;
 - Mr V had gone down to the car: “... and he said he’s got a baseball bat and knives in the car”;²
 - Mr X knows Police have been called and he is trying to get away;
 - Mr V and Ms Z had returned to the house and locked the door; and
 - Ms Y was still sitting on the side of the driveway and seemed “*too scared to get up*”.
25. Ms Z and Mr W could not provide Mr X’s car registration plate number as their view was obstructed. Police were, therefore, unsure of Mr X’s and Ms Y’s identities at this point.

ISSUE 1: DID POLICE RESPOND TO THE INCIDENT APPROPRIATELY?

26. In this section, we describe what action Police took after receiving the 111 call. We also assess whether the Police’s response complied with the ‘Command and control’ policy.
27. Police policy says that in incidents such as this:
- There must be a clear chain of command and control.
 - Police have an obligation to put safety first. Risk assessments must be undertaken continuously throughout the incident, to identify and manage any risks posed to all those involved.

² Police were told “*knives*” by Ms Z, though it transpires that Mr V had only seen one.

- Plans must be developed and communicated. Intelligence from all available sources should be used to help develop courses of action. Contingencies should be planned for: *“The ability to change readily to meet new circumstances is crucial to achieving an outcome and relies on the response remaining agile, responsive, resilient, and adaptable.”*
- Cordons and roadblocks may be established to restrict and control access to an area. Police must also consider whether people should be evacuated to ensure their safety.
- The Emergency Communications Centre (ECC) and higher levels of command must be provided with regular situation reports.

What action did Police take?

28. Upon receiving the 111 call at 11.47am, two Police Public Safety Team (PST) units were immediately sent to the scene.³
29. At 11.53am, after being told that the baseball bat and knives had been seen in Mr X’s car, all responding officers armed themselves with firearms in accordance with policy.⁴
30. At 12.03pm, the PST units arrived at the scene, parking their cars at the bottom of the driveway by Mr X’s car. Officer A stood at the bottom of the driveway, about 30 metres away from Mr X, who was at the top of the driveway. He saw Mr X and Ms Y sitting in the grass about 2-3 metres away from each other. Behind them was a wire-fenced grass paddock.
31. Officer A says that as he got out of the patrol car, Mr X: *“... picked up something in the grass and ran at [Ms Y] and grabbed her from the back and held whatever he had in his right fist, up by her neck.”* Mr X stood behind Ms Y, with his left arm around her stomach, pulling her backwards: *“driving this thing lightly against her neck and twisting it”*. According to Officer A, Ms Y was grimacing and squirming, but he was unable to determine from that distance if she was being injured. As Mr X dragged Ms Y, he yelled: *“If you come any closer, I’ll fucking stab her!”*
32. Officer A says the object looked like a thin filleting blade, and he believed it was most likely a knife (it was actually a flat-edged screwdriver). Officer A relates that he raised his firearm and instructed Mr X to put the knife down. Mr X responded: *“I can’t go back to jail bro! I’m not going back to jail! We are both gonna die here today!”* Another officer recalls Mr X also yelled words along the lines of *“you’re going to have to shoot me!”*
33. Officer A and other officers say they were unable to shoot at Mr X without risking shooting Ms Y. Given this, Officer A and the other officers lowered their firearms. Mr X appeared to relax somewhat. He sat himself and Ms Y down in the grass against the wire fence. Mr X sat behind Ms Y, continuing to hold her around the stomach with the ‘knife’ to her neck, sometimes moving it to her chest.

³ The PST perform general policing duties to ensure the safety of members of the public.

⁴ The ‘Police firearms’ policy allows officers to carry firearms if an offender has a weapon and may present a risk of death or grievous bodily harm to themselves or another person.

34. The Police plan was focused on communication as the primary tactic to attempt to resolve the situation. They hoped to calm Mr X down and negotiate Ms Y's release.
35. Mr X's identity remained unknown at this point. The car was not registered to him, and none of the attending officers had previous dealings with or knowledge of him.
36. Officer A began speaking with Mr X and recounts:
- "I tried everything. I looked for every hook that I could, every different way I could try and connect with him... ask him if he's got kids, asked about his relationship ... asked if he's local here in Wainui, trying to ask if he does anything for work, just trying to get his mind off things...."*
37. Mr X engaged somewhat with Officer A, responding to some of his questions. Officer A asked him not to harm Ms Y and to let her move away from him. However, Mr X repeatedly told Police not to come any closer, or he would stab Ms Y. At times, Mr X would put down the weapon to have a cigarette, but he always kept it close by.
38. Members of the Special Tactics Group (STG) were in Wainuiomata on another matter and decided to go and assist the PST officers at the incident.⁵ At 12.15pm, they arrived. In this incident, the STG were not in charge of the operation, and the attending STG members acted in support of the PST staff dealing with the incident by providing advanced tactical options and expertise.
39. As the incident unfolded, several more units arrived to assist, including a Police dog unit and the Offender Prevention Team.⁶ The Co-Response Team also headed towards Wainuiomata to assist, and at 12.50pm, the Armed Offenders Squad (AOS) were deployed.⁷
40. As officers arrived, some stayed by the roadside, while others cordoned the property and blocked the Coast Road to through traffic. Officers mostly stayed out of Mr X's view, so they could monitor his actions while trying not to escalate the situation.
41. Officer A says Mr X became agitated when more officers arrived. However, he was able to calm Mr X down by explaining: *"Bro it's about trust you know it's that knife, you've, you've just got to put that knife down. I promise you, if, if you lower that bro, then these guys will relax."*
42. At 12.21, officers saw that the 'knife' was a screwdriver and Mr X had scissors stuck into the ground by his feet. This was all reported over the Police radio.
43. At 12.25pm, Mr U arrived at the Police cordon. This enabled Police to establish who Mr X was. Information on the Police database showed Mr X had a history of family violence, was known to carry knives and other weapons, and that he had mental health issues, including suicidal

⁵ The Special Tactics Group (STG) respond to high-risk situations which are beyond the scope or capacity of everyday policing. They apply specialist skills and tactics to escalating situations which require more than the capability or capacity of the Armed Offenders Squad (AOS).

⁶ The Offender Prevention Team (OPT) members have advanced tactical training (to AOS-level) to undertake warrants and other work involving high-risk offenders.

⁷ The Co-Response Team (CRT) consists of staff from Police, mental health services, and the Wellington Free Ambulance. The team jointly respond to emergency mental health situations, or provide advice to other frontline staff.

tendencies. Mr U also told Police that Mr X was suicidal and that he would not hesitate to kill himself. This, too, was transmitted over the Police radio so all officers were aware.

44. Officers were placed by the house to protect Ms Z and the other occupants inside. To ensure their safety, shortly thereafter, Police moved them to a building further away.
45. Officer A continued to appeal calmly to Mr X and developed a positive rapport with him, but told us that: *“Honestly... at no point did I think [Mr X’s] intent changed... you know, he absolutely... was not going to come with us or let her go....”*
46. At 12.48pm, the Police Negotiating Team (PNT) arrived. They spoke with Mr U with a view to him possibly helping them in negotiating with Mr X. However, as matters turned out, Mr X was shot before they had the opportunity to engage with him, as discussed from paragraph 52.
47. As per Police policy, the Emergency Communications Centre Shift Commander initially assumed the role of Incident Controller; this was communicated over the Police radio. The Incident Controller coordinates the overall response to an incident and appoints a Forward Commander who coordinates specific tactics and the Police response in the operational area.
48. The Incident Controller appointed a suitable officer as Forward Commander at the scene. This was communicated over the Police radio. The Forward Commander provided support and encouragement to Officer A who was appealing to Mr X. He also coordinated the Police response of the various units, such as the STG, OPT, AOS, dog handler, and other members as they arrived. Minutes before Mr X was shot, a senior officer arrived at the scene, took over the role of Incident Controller, and communicated this over the Police radio. Officers at the scene were thus kept informed of who had command and control as the incident developed.
49. Throughout the incident, officers provided real-time information over the Police radio about where they were positioned and what they could see happening. They also had conversations to ensure necessary plans were in place should they need to act.

Were Police actions appropriate?

50. We are satisfied that the Police response was appropriate and in accordance with Police policy.
51. Police:
 - attended the incident in a timely manner;
 - maintained a clear chain of command and communicated this to the staff involved, ensuring a cohesive, coordinated, and planned response;
 - planned to resolve the situation peacefully by using communication, building rapport with Mr X, and appealing to him to release Ms Y;
 - ensured contingency plans were in place so they could act urgently if they believed Ms Y’s life was in imminent danger;

- ensured appropriate teams were called to assist and that they knew what was required of them;
- continually conducted risk assessments, ensuring that all relevant factors were considered;
- maintained control of the scene, cordoning the area;
- used radio communications effectively to ensure all staff had access to up-to-date information;
- were mindful to minimise their visibility, so Mr X was unaware of the extent of their presence and would not be unnecessarily antagonised; and
- ensured safety was their priority, requesting an ambulance be nearby, blocking the road from through traffic, and evacuating the occupants of the house.

Should the Police Negotiating Team have allowed Mr U and his mother to assist in negotiations with Mr X?

52. The Police Negotiation Team (PNT) is a specialist squad that seeks to resolve hostage and other similar situations by utilising specialist negotiating skills, tactics, and techniques.
53. A Third-Party Intermediary (TPI) is a civilian who may be used to assist in negotiating with a person in crisis. A TPI is usually someone the person knows and whom Police believe may have a positive influence. While family members and friends often believe they are the best people to talk to someone in crisis, this is not always the case.
54. PNT officers must assess the risks involved in using a TPI before involving them in negotiations. If PNT officers determine it appropriate to use someone as a TPI, they brief that person on how to engage with the person in crisis. PNT will typically not introduce a TPI until they have had the opportunity to first speak with the person in crisis.
55. When speaking with Officer A, Mr X referred to Mr U (his friend) and Mr U's mother as his 'brother' and 'mother'. At the time of the incident, Police believed they were his family and treated them accordingly. Mr U believed Mr X would only speak to himself or his mother.
56. Mr U was spoken to by PNT officers who considered introducing him as a TPI and were in the process of assessing his suitability. Mr U's mother also arrived at a cordon, and PNT similarly decided to assess her suitability for engaging in negotiations. Meanwhile, another PNT officer observed Mr X communicating with Officer A to determine how best to approach Mr X.
57. The PNT plan was to introduce a specialist negotiator to take over communications from Officer A. They would thereafter possibly involve Mr U and/or his mother in negotiations with Mr X.
58. The PNT are experts in their field. It was appropriate for them to ensure they were well-prepared to negotiate with Mr X prior to engaging with him. It was in Mr X's best interests, and in

accordance with best practice, for them to complete their assessments of Mr U and his mother before using them to assist in negotiations.

59. It is unfortunate that Mr X's behaviour escalated before the PNT could engage with him and potentially use Mr U and/or his mother to assist.
60. We acknowledge and commend Officer A for his commitment and efforts in engaging with Mr X, in seeking to resolve the situation peacefully. Several officers present were impressed by his professionalism and testified to his resilience in maintaining calm and clear communication with Mr X in trying circumstances.

FINDINGS ON ISSUE 1

Police responded appropriately to this incident. They made every effort to resolve the situation safely. The Police Negotiating Team made appropriate decisions regarding using Mr U and his mother to assist in negotiations with Mr X.

ISSUE 2: WAS OFFICER B JUSTIFIED IN SHOOTING MR X?

61. In this section we will consider:
 - a) whether the use of force was justified; and
 - b) if not, whether we recommend Police:
 - i) commence civil or disciplinary action against the officer; and/or
 - ii) commence criminal proceedings.

What does Officer B say happened?

62. Officer B is an experienced member of the STG and a trained sniper. He was armed with an M4 rifle, equipped with an aim-point and a 3x optical zoom magnifier.
63. Upon arriving at 12.15pm, Officer B stood at the bottom of the driveway, where four other officers had also gathered. He heard Officer A appealing to Mr X.
64. As Officer B headed towards his cordon position, he looked up the driveway and saw Mr X and Ms Y sitting against the wire fence at the top of the driveway, about 20–30 metres away. Mr X was sitting behind Ms Y, holding a knife-like object to her throat. According to Officer B, Ms Y was not offering any resistance and looked terrified.
65. Officer B says he thought: "... *this is actually a hostage situation... there is a risk to her life.*" He believed Mr X only needed to push through Ms Y's windpipe, and he could kill her. He raised his rifle and used his optical magnifier to observe Mr X, considering whether he needed to act immediately to stop him from stabbing Ms Y.

66. Officer B saw Mr X apparently engaging with Officer A. Officer B says he lowered his rifle as: *“I obviously hoped that this would be resolved peacefully.”*
67. Officer B considered his available options in case he needed to act urgently to stop Mr X from injuring Ms Y. He knew he could not run the distance up the driveway in time to prevent harm and decided to move to a better position so that if he had no other option than to shoot, the shot would be more accurate.
68. Officer B moved to the back door of the house, about 20 metres from where Mr X and Ms Y were. Mr X saw Officer B standing by the door with his slung rifle. Officer B says Mr X seemed indifferent to his presence and diverted his attention to another officer holding a 40mm sponge round launcher before turning his attention back to him.
69. Officer B says he watched Mr X’s movements closely and described what he saw over the Police radio, so the officers involved were aware. He recalls hearing over the radio that Mr X was using a screwdriver rather than a knife.
70. Officer B describes Mr X’s behaviour as erratic, saying he regularly became heightened, agitated, and aggressive. Mr X reportedly pulled Ms Y in different directions, grabbing her by the head, neck, and waist. He would periodically calm down, and then his behaviour would escalate again. He wrapped his leg around Ms Y from behind her, locking her into position. At times, he would hold the screwdriver behind Ms Y as if to stab her, then he would relax and pick up his mobile phone.
71. Officer B says Ms Y stayed silent throughout, did not provide any resistance, and continued to look *“absolutely terrified”*.
72. Officer B continued moving to a better position, where he could mitigate any risk that would be posed to Ms Y if he had to shoot at Mr X. He climbed onto the gabled roof of a large shed, about 42 metres away from Mr X. Officer B was at a 90-degree angle to Mr X and had a clear view of him.
73. Officer B wanted to ensure his presence did not antagonise Mr X, so raised his head and allowed Mr X to see him and his firearm. As negotiations continued, Mr X’s attention remained on Officer A, and there was no indication that Officer B’s presence on the roof influenced his behaviour.
74. The AOS Commander spoke with Officer B about a contingency plan. Officer B told him that due to Mr X’s movement, he did not consistently have a clear shot, and he was only going to shoot at Mr X if he began stabbing Ms Y. To this effect, the AOS Commander transmitted their plan over the AOS radio, saying:
- “A team... is in position to intersect should the offender cause imminent threat to the victim... at this stage we have PNT en route... we’ll continue negotiations and try and get the offender to surrender.”*
75. Officer B could hear Mr X’s loud outbursts but could not determine what he was saying. He focused on Mr X’s body language and noticed that the outbursts coincided with Mr X pushing

the screwdriver into Ms Y's throat and her wincing. He assessed: "... it was clear to me that there was a threat to her life."

76. Officer B says Mr X's aggressive behaviour towards Ms Y then dramatically escalated with little respite for Ms Y. He would pull Ms Y's hair back, sharply pull her off balance, and jab several times into her back and lower body. Officer B recalls watching Mr X's shoulders intently for any sign he was going to use a large movement to strike her in the neck or back with the screwdriver.

77. Mr X started rummaging around under his and Ms Y's shirts and also around her waist. Officer B was concerned that he may have looked for another weapon that Police were unaware of.

78. Officer B describes:

"I could see [Ms Y] wincing as she's being harmed, and with her body position, I just knew that he was pushing it into her lower, like her kidneys ... low-lower spine. Um, and then he'd go back threatening to stab her through the throat, and then he'd go straight back to the lower back, back to the throat... back and forth, back and forth."

79. Officer B recalls: "[I'm] trying to read his body language for when's he gonna make that final movement and kill her and watching her body language for when he's starting to kill her."

80. Mr X then grabbed Ms Y on the side of her neck and "just squeezed the side of her neck with all his strength" to the point that Officer B thought Ms Y might lose consciousness. Just as Officer B prepared to radio for officers to 'move in' immediately, Mr X relaxed his hold.

81. Mr X then pulled Ms Y's head back, causing her to arch her back and create space between them. Mr X hid behind her head, using Ms Y as a human shield. He then significantly shifted his body weight. Officer B says Ms Y: "... cried out in pain and fear, and I just knew."

82. Officer B recalls: "... there's that big movement, and [Mr X's] gonna go forward, and that's the decision to fire".

83. Officer B fired one shot at Mr X's shoulder to stop him from being able to use his arm to stab Ms Y. He saw Mr X freeze and knew there was no need to fire any further shots. Mr X was shot after about 57 minutes of Police trying to negotiate Ms Y's release.

84. Police medics immediately approached Mr X and began applying first aid. Before Mr X passed away, he thanked the officers for saving Ms Y's life.

Do witness accounts corroborate Officer B's account?

85. The accounts of other officers and radio transmissions corroborate Officer B's account of what occurred prior to the shooting.

86. Officer A describes the period just before Officer B fired the shot:

“... this was the worst it had been, his behaviour, and I can't state it enough, I couldn't tell if he was already stabbing her or not from the way she was crying out and how forceful he was being....”

87. Multiple officers say Mr X started yelling and his level of aggression dramatically escalated. They all believed Mr X was about to seriously injure or kill Ms Y.⁸ Several officers stated that they were prepared to fire at Mr X but were unable to do so because they did not have a clear line of sight. Additionally, Mr X was using Ms Y as a shield.

Was Officer B justified in shooting Mr X to defend himself or another?

88. Section 48 of the Crimes Act 1961 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another. Under section 48, we must assess Officer B's actions on both:

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

89. This assessment involves three questions:

- a) What were the circumstances as the officer believed them to be (a subjective test)?
- b) Was the officer's use of force against Mr X for the purpose of defending himself or another (a subjective test)?
- c) Was the officer's use of force against Mr X reasonable in the circumstances as the officer believed them to be (an objective test)?

What did Officer B believe the circumstances to be?

90. Officer B says he tried to work out why Mr X was behaving as he was; there was no apparent reason, as Mr X had nothing to gain from holding Ms Y as a hostage.
91. Officer B says he thought Mr X was possibly acting in a way that would force Police to use lethal force against him (often referred to as ‘suicide by cop’), particularly in light of Mr U's disclosure that Mr X was suicidal (referred to in paragraph 43). Officer B was aware that Mr X was not using Ms Y as a ‘bargaining chip’ to try to gain anything from Police, as is generally the case in hostage situations. He formed the view that Mr X was motivated by anger at Ms Y, and his intention was likely to harm her. Officer B says: *“... he was just taking his anger out on her physically, and she was helpless. He wanted to hurt her, and I was watching her, watching him hurt her.”*
92. Officer B had been closely observing Mr X and Ms Y for about 45 minutes. He says that when Mr X significantly shifted his body weight and pulled Ms Y backwards: *“I knew it was gonna happen.”* Officer B believed:

⁸ It is not known why Mr X's behaviour suddenly escalated at this point.

- Mr X was about to stab Ms Y with the screwdriver;
- Ms Y would be seriously injured or killed;
- there were no other less-lethal options available to anyone that would prevent Mr X from harming Ms Y; and
- he could not delay any longer – he had to act immediately to stop Mr X from killing or seriously harming Ms Y.

93. We accept Officer B genuinely believed Mr X was about to seriously harm or kill Ms Y.

Was Officer B's use of force for the purpose of defending Ms Y?

94. There is no doubt that Officer B shot Mr X for the purpose of preventing death or serious harm to Ms Y.

Was Officer B's use of force against Mr X reasonable in the circumstances as he believed them to be?

95. Throughout the incident, Officer B remained hopeful Police would be able to negotiate for Mr X to release Ms Y. To this effect, he earlier reiterated over the radio that Police's goal was to negotiate a resolution. Officer B positioned himself to ensure that if he needed to shoot at Mr X, he could do so from a position that would minimise risk to Ms Y.

96. Officer B is highly skilled as a specialist sniper and had an appropriate level of confidence in his ability to shoot at Mr X's shoulder with precision, ensuring that Ms Y was not exposed to greater risk than necessary.

97. Although other officers were present who had less-lethal options, such as 40mm sponge round launchers, Tasers, and a Police dog, for tactical reasons (described below) none of these options could reasonably have been executed in a way that would prevent harm to Ms Y.

98. Tasers and the 40mm sponge round would only be effective within a limited range, and Mr X was outside the effective range. Also, Mr X threatened to stab Ms Y if Police came any closer. This was further complicated by those officers not having a clear target, as Mr X used Ms Y as a human shield. Because of Mr X and Ms Y's close proximity to each other, the dog handler could not ensure that the Police dog would attack only Mr X and not Ms Y. Further, Mr X might still have harmed Ms Y after being shot with a sponge round, or if the Police dog was released.

99. We conclude that shooting Mr X was the only viable option available to Police (and Officer B specifically) to ensure Ms Y did not come to serious harm in the circumstances at play.

Conclusion

100. Officer B had grave concerns for Ms Y's safety since he arrived at the scene. In the time before Mr X was shot, Officer B considered all the options available and hoped the situation would be resolved safely through negotiation. Officer B delayed shooting Mr X until he believed it to be absolutely necessary. He acted to save Ms Y's life.

FINDING ON ISSUE 2

Officer B was justified in shooting Mr X. In our assessment, his actions were reasonable and proportionate having regard to the circumstances as he perceived them to be.

A handwritten signature in blue ink, appearing to read 'Kenneth Johnston', is centered on the page. The signature is written in a cursive style.

Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

14 November 2024

IPCA: 23-20407

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

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

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

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

THIS REPORT

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