

New Zealand policeman acquitted in private prosecution for murder

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A landmark private prosecution for murder has resulted in the acquittal of a New Zealand police constable after a three-week trial shortly before Christmas. The prosecution was brought by Jim Wallace, the father of Steven Wallace, a 23-year-old Maori gunned down by police in an early morning incident in the rural township of Waitara in 2000.

This was the first time in the country's legal history that a police shooting has been opened up to such public scrutiny. As soon as the verdict was announced, the Police Commissioner, with the support of the Police Association and opposition politicians, called for changes to the law to exempt the police from private prosecutions and to provide for the automatic suppression of the names of police officers involved in shootings.

The case only proceeded after a two-year legal battle. An internal investigation carried out by the Police Complaints Authority initially exonerated Constable Keith Abbott, a 48-year-old policeman with over 20 years' experience. After mortgaging their house and launching a public appeal for funds, the Wallace family gathered sufficient resources to force a deposition hearing in January 2002.

The hearing was presided over by two local Justices of the Peace—one a businessman, the other a farmer—who dismissed the case, declaring that the police had acted in self-defence. On appeal, however, Chief Justice Sian Elias decided that the JPs had overstepped their authority and ruled last June that a *prima facie* case existed for a jury trial.

Steven Wallace was shot in the early hours of April 30, 2000. He had been confronted in the main street of Waitara by Abbott, the local police chief and member of the Armed Offenders Squad, accompanied by a second armed constable. They were called to the scene after Wallace smashed the windscreen of a police car during a window-breaking spree. Abbott shot Wallace four times. The first two shots seriously injured the victim's arms. The third, which lodged in the liver, was according to a pathologist's report, the fatal shot. A fourth entered Wallace's back as he turned and fell to the ground.

John Rowan QC, lawyer for the Wallace family, told the court that the "last, ultimate and lethal option" was the first and only one that Abbott took. He and his fellow officer, Jason Dombroski, had hastily grabbed their pistols from the Waitara

police station. New Zealand police do not carry weapons as a matter of course, but have ready access to pistols that are kept at local stations. Within a minute of approaching Wallace in the town's main street, Abbott had shot him. The prosecution argued there was no reason for firing so many shots at a person who did not have a projectile weapon. "If he [Abbott] had stopped and assessed after the first or second shot, Steven Wallace would still be alive today," said Rowan.

In fact, there was no justification for the police to shoot Wallace at all. Abbott and other officers rushed to the scene and fired on Wallace, with little or no consideration of any alternative course of action. Although a call had been put through for a dog unit, which was only 10 minutes away, there was no attempt to contain or subdue him by other means. The police outnumbered Wallace three-to-one, but Abbott took no steps to direct the two other constables in a coordinated approach. There was only the briefest of discussions, which included a reference to Wallace being a "nutcase"—indicating the police had already ruled out reasoning with the young man.

Four former police officers were called as prosecution witnesses at the deposition stage to give expert evidence on alternative procedures. All were highly critical of the police actions and pointed to other options, including the use of batons and pepper spray. The four were subsequently vilified by the Police Association as "card carrying members" of the "disaffected ex-coppers club" and accused in the *Sunday Star Times* of being failed officers with dubious records.

Their testimony was, however, supported by two overseas witnesses. One, a retired German police officer, said there was no need, under any circumstances, for a police officer to draw a gun on an offender who was not armed with one. In such a case, where "only property" had been damaged, a "reasonable police officer" had to take time and not react impulsively. There was no need, he said, to present a gun in an "aggressive, irrational manner".

Abbott claimed he was in imminent danger and had shot in self-defence. His defence lawyer painted a picture of Wallace as "mad, crazed, dangerous and possessed with devils in his head". He had woken neighbours by hitting a golf club on a shed then driven to town and begun smashing windows. His mother, who was concerned about her son's erratic behaviour,

rang the emergency number but aborted the call.

Wallace was obviously agitated but how much a threat he posed is not clear. Abbott claimed that Wallace, who was armed with a softball bat, made “a beeline” towards him and ignored a verbal warning and a warning shot. Abbott said his escape route was cut off and he fired in the belief that Wallace was about to smash his head “to a pulp”. However, testimony from two witnesses contradicted the police version of events. One—a taxi-driver—confirmed that Wallace approached the two policemen, but he did not agree that their line of retreat was about to be cut off.

In a crude attempt to blame the victim, the defence claimed that Wallace wanted to die. Abbott’s lawyer told the jury that the young man “decided that life was not worth living and he employed the services of the New Zealand police to die.” No evidence was offered to indicate that Wallace was suicidal. Nor did the defence explain, why, even if Wallace wanted to end his life, the police were obliged to kill him.

The police also conducted a poll of 77 Waitara businesses to see if they had ever had any “difficulty” with the Wallace family. The judge overruled this attempt at vilification, declaring that such a “survey” was utterly irrelevant to the case and “contributed to the impression that the Wallace family are on trial”

After deliberating for three hours, the jury found in Abbott’s favour. Outside the court Wallace’s mother, clearly distraught at the verdict, said that it opened the way for any person found breaking windows or committing similar misdemeanors to be shot by police. She said it was a “sad day” for the country, but was glad the prosecution had reached the courts and that it had shown the “incompetence” of the police. She reiterated that Steven was a “loving son”, who “wasn’t a bad person” and did not deserve to be killed.

The case has received significant coverage in the New Zealand media. Most, like the *New Zealand Herald*, blamed Wallace for the events that led to his shooting and claimed that the causes of his “rampage” remained a “mystery”. But there is nothing mysterious about the reasons underlying Wallace’s actions and the police response.

Working class youth in rural towns like Waitara are facing major social problems. Waitara’s main industries—a small car assembly plant, a clothing factory and meat processing works—have all been shut down over the past 15 years, throwing most of the workforce into long periods of unemployment and poverty. In order to secure a future, many young people have been forced to move away, because the town has few educational or training opportunities.

In such circumstances, anger, frustration and a profound sense of injustice are not unusual. Wallace was by all accounts, a popular and outgoing person. Newspaper photos show him as a confident young man with a broad smile, flanked by sports trophies. He had been an above-average student, and a fine sportsman. He had left Waitara in order to pursue university

study. University students, however, face huge tuition costs and competitive pressures. Just prior to the shooting, Wallace had dropped out of his studies and returned home to live.

Rather than address the sharpening social crisis in towns like Waitara, successive New Zealand governments have insisted on tougher policing. The purpose of these “youth crime” campaigns, which have resulted in the systematic harassment of working class youth, is to deflect attention from their own responsibility for creating the social disaster.

The reactionary character of this law-and-order rhetoric is summed up in a comment by prominent columnist Frank Haden on the Wallace case. Arguing that Abbott should never have been put on trial, Haden declared in the *Sunday Star Times* that Wallace was a “rubbish person” with a “worthless life” who deserved no sympathy. In other words, the police had every right to act as judge, jury and executioner.

There has, however, been significant support for the stand taken by the Wallace family among ordinary working people, who were outraged by the police shooting. Various Maori spokesmen have attempted to channel this discontent into allegations of police racism and demands for greater Maori representation in the police force. In the wake of the shooting, demonstrations took place in Waitara, New Plymouth and Wellington.

Following the trial, Willie Jackson, a former MP and reporter for a Maori radio network, again blamed racism for the shooting. According to Jackson, the problem is that “you can count on one hand the number of Maori managers in the police force.” He endorsed the verdict in the Wallace case, simply calling for more Maori “decision-makers” with the police and criminal justice system.

Tragedies like the police shooting of Wallace are, however, not going to be halted by appointing more Maori police. Abbott himself was part-Maori. Further incidents are certain, as governments respond to the deepening social crisis by promoting intolerance and resorting to the ruthless use of the police.



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