

Use of force during arrest in Auckland justified

Summary of the Incident

1. Mr Z was wanted by Police for an aggravated robbery involving a firearm on 12 November 2019. He was well-known to Police as an offender in the Auckland, Counties Manukau and Waitematā West areas and had an active warrant for his arrest.
2. At 1.58pm on 25 November 2019 Police received information that Mr Z was at a commercial address in Glendene, Auckland and that he was thought to be armed. Upon Police arrival at the address Mr Z fled from a vehicle, into a two-storey building.
3. The Armed Offenders Squad (AOS) were called out to assist an Armed Response Team (ART) at the scene. They formed a cordon around the address and appealed for Mr Z to leave the building. At the same time, Mr Z called 111 and told the operator he was in an armed stand-off with Police. He said he had two firearms (an AR15 and a handgun), a bullet proof vest, a hostage, and that he would not let go of the hostage until his demand for a car was met.
4. Mr Z climbed out a window and onto the roof of the building. While he was on the roof, he was seen drinking from a bottle which Police believed contained the drug Gamma-Butyrolactone (GBL). Eventually he climbed down from the roof onto the ground. Three AOS officers, Officers A, B, and C, who had been inside the building, approached Mr Z, and he got into a prone position on the ground and put his hands above his head. He was then handcuffed and arrested by Officer D. The level of force used during Mr Z's arrest is disputed.
5. The Police helicopter, Eagle, was overhead and filmed the stand-off and arrest.
6. On 9 January 2020 Mr Z complained to the Authority alleging he was assaulted by Police during the arrest and not provided with appropriate medical care.

Issues examined by the Authority

Issue 1: Was the use of force when arresting Mr Z justified?

Issue 2: Was the level of care following Mr Z's arrest appropriate?

The Authority's Findings

7. The Authority found that the uses of force to effect Mr Z's arrest were justified and proportionate to the risk he posed.
8. We also concluded that:
 - 1) Officer A should have submitted a Tactical Options Report (TOR)¹; and
 - 2) Mr Z received appropriate medical care following his arrest.

Analysis of the Issues

WAS THE USE OF FORCE WHEN ARRESTING MR Z JUSTIFIED?

9. Police planned an approach using the Police helicopter ('Eagle'), Police dogs, an ART² and investigation staff as cordons. Eagle was filming the area and provided observations to staff on the ground and a live down-load of footage to Police Communications.
10. The footage taken by Eagle shows Mr Z climbing from the roof of the building onto the roof of a car which is on top of a shipping container. An officer who is behind a fence throws a water bottle to Mr Z, which he does not catch, and it falls onto the ground.
11. While Mr Z was on the roof, he consumed what was believed to be the drug GBL, or GHB³ and told Police that he had used methamphetamine. Officer B told the Authority Mr Z threatened to jump off the roof on numerous occasions, shoot Police and himself, shouted at the officers to shoot him in the head and said *"do you want me to jump, I'm going to land on my head"*. Mr Z's call was eventually transferred from Police Communications to a Police negotiator.
12. At one point Mr Z walked out of sight of the officers on the ground. AOS Officers A, B and C took the opportunity to make their way inside the building so they could detain Mr Z if he came back inside.
13. At 4.42pm, while the AOS officers were inside, Officer E, from Eagle, advised over the radio that Mr Z was making his way off the roof onto the ground. Officer C says that normally they would direct a subject come down to them and set up an area where the subject could be brought under Police control. As Mr Z would not listen to their directions, this was not the case, and it *"forced [their] hand a bit"*.

¹ An officer is required to complete a TOR when he or she used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and reasons for using it.

² Police trialled ARTs in three Police districts (Counties Manukau, Waikato and Canterbury) for six months as a new way of deploying the existing armed response provided by the Armed Offenders Squad (AOS). The trial ended on 26 April 2020 and the Police Commissioner announced that ARTs would not be part of the New Zealand policing model in the future.

³ Mr Z accepts having taken GHB. The officers refer to GBL, a more potent version of GHB.

14. The Eagle footage shows Mr Z walking off the roof of the car onto the container, then jumping to the ground and appearing to pick up a bottle. As Mr Z is walking towards a car, Officer A, closely followed by Officer B, comes out of the building with his firearm pointed towards Mr Z. Mr Z gets onto the ground, face down, with his arms above his head but resting on the ground. Officer A reaches Mr Z and kicks him with his right foot. This appears to connect with Mr Z's right shoulder/underneath his raised arm. Officer A kicks out his right foot again and it appears to glance off Mr Z's shoulder and connect with his head.
15. The officers describe Mr Z "*thrashing*" and "*flailing*" on the ground while they were trying to restrain him and screaming for Police to get off him. Mr Z denies resisting arrest and alleges that he was assaulted.
16. The Eagle operated camera then zooms out to capture the whole property, making it difficult to see what happens next in respect of the arrest.
17. Once Mr Z had been restrained, Officer D, a member of the ART, approached from the cordon at the front of the address, handcuffed Mr Z, placed him under arrest for the active warrants and advised him of his rights. Officer D handed Mr Z over to the attending detectives, and he was examined by a paramedic.
18. Officer F transported Mr Z to Henderson Police Station. He was processed in the District Custody Unit at 5.30pm.

Use of force

19. Section 39 of the Crimes Act 1961 provides for Police to use reasonable force to overcome any force used in resisting arrest. The use of force will only be justified if the arrest cannot be made "*by reasonable means in a less violent manner*".⁴
20. Under the Police 'Use of Force' policy⁵ Police officers are taught a range of ways to safely use force without a weapon, known as 'empty hand techniques' (e.g. physical restraints and strikes). Officers can use empty hand techniques to:
 - distract a subject;
 - physically control a subject; and/or
 - defend themselves or another.

Mr Z's version of events

21. Mr Z told the Authority that he was wanted for arrest at the time and was visiting friends who were on a 24-hour curfew. During his visit some officers, with firearms, came to do a curfew

⁴ See paragraph 62 for the relevant section.

⁵ See paragraphs 64-70 for relevant policy.

check and saw him at the address. They detained his friends and said to *“get down on the ground”*. His friends complied but Mr Z got out of the car he was in and ran into the building.

22. More Police arrived, and he believed there were 30 armed officers surrounding the building. Police spoke to him through a loudspeaker for some time and he ended up climbing out the window. He was told to jump down but did not and instead climbed onto the roof.
23. He said he was on the roof for some time with *“lots of guns pointed at [him]”* and Police were trying to talk him into surrendering himself. He accepted that he was telling Police *“all sorts of stuff”*, including that if they came in, he would hurt himself, and that he possibly made threats. He said he was under the influence of GHB and methamphetamine.
24. Although Mr Z accepts telling Police he had weapons, he says he did not actually have any. He says he was not going to hurt himself, or them. He knew he was going to be arrested, but just wanted time and was *“quite mentally unwell”*.
25. Mr Z eventually asked Police for water, and an officer threw a bottle to him, but it fell on the ground. Mr Z jumped down to get the bottle and *“instantly six or seven [officers] jumped over the fence”*. He said the officers had guns. When he saw how close they were he put his hands up. When they got to him, they grabbed him, and threw or *“swung”* him on the ground. One officer was trying to handcuff him, another had his knee on him, and another was hitting him. He said there were *“knees everywhere”* and he could not see as his face was in the dirt. They ripped some of his rings off and went through his pockets.
26. Mr Z says he was recovering from a dislocated elbow at the time, and it was twisted which caused him *“quite a bit of pain”*. He says he was screaming and told them it was his sore arm, but they twisted it even more. He says:

“I felt like I was getting pummelled... it felt like forever from when they handcuffed me to when they actually lifted me off the ground... they were all on top of me and I was still getting hit in the head”
27. Mr Z says he was handcuffed, when a few officers jumped over the fence, ran up and kicked him in the head. He was unsure whether he was punched or kicked, but says it was multiple times *“quite hard”* in his head, nose and eye.
28. At one-point Mr Z felt a boot, or a glove, grab the back of his head and roll it in the gravel. He says this is where he sustained most of his injuries. He had a bleeding and sore nose, cuts and grazes on his forehead, nose, eyebrows and hairline. He also says he was *“dragged through the mud”*. Mr Z was unsure which officers specifically caused his injuries.
29. Mr Z told us he had been arrested many times, but this was the first time Police treated him this way. He says: *“there was no reason to rub my head into the dirt, there was no reason to kick or punch [me] in the head”*. He recalls asking the officers to loosen his handcuffs and that he said he was losing circulation and was really sore. He says he was told they could not, as they were waiting for AOS to clear the scene.

30. Mr Z accepts that prior to coming down from the roof he was probably resisting arrest for an hour or two. However, he denies resisting once he got on the ground. He says: *“I knew it was all over so I put my arms in the air and they threw me to the ground. I complied with the arrest”*. He says there was no way he was going to resist once he was on the ground, as it *“would’ve made things a whole lot worse”*.

The officers’ actions during Mr Z’s arrest

31. Officer A told the Authority that while he was inside the building Officer E said over the radio that Mr Z had climbed down, was on the ground, and had picked something up. Officer A came out of the garage and saw Mr Z walking towards a car. He called out something along the lines of they were armed Police, and to get on the ground. He believed it was key to make sure Mr Z did not have anything in his hands, and to make contact and physically maintain control of him to ensure he did not have any chance to harm Police. He believed Mr Z would remain a threat until he had been handcuffed and searched.
32. In assessing the risk Mr Z posed at that stage, Officer A still thought Mr Z may have had a firearm. That risk could not be mitigated, until they had controlled and searched him.⁶
33. Officer A says that he kicked Mr Z once on his shoulder (with his foot) to dislodge what he was holding, then kicked him again while he was moving around Mr Z’s head. He does not believe he used much force and says that it was just enough to kick Mr Z’s arm and dislodge what he was holding. The second kick was the same. He says he *“wouldn’t say it was hard”*, it would not have caused injury. Both kicks were aimed at Mr Z’s shoulder and were for the purposes of *“distraction and pain compliance”*. Officer A says if he kicked Mr Z’s head it was *“totally accidental”*.
34. Officer A then pinned down Mr Z (who appeared to be wearing body armour) by putting his left foot between Mr Z’s shoulder blades. He did so to keep distance between them and ensure Mr Z could not access anything he may have had on his front. He says the pressure on Mr Z’s back was just enough to maintain control and stop Mr Z from thrashing about.
35. Officer B, who was directly behind Officer A, believed that Mr Z had the capacity to cause grievous bodily harm or death to the officers, or himself. As Mr Z lay on the ground Officer B approached his legs to control them. He placed the sole of his foot on Mr Z’s calf. He was concerned that Mr Z may be able to draw his gun and shoot at them. They were unsure if there were other threats in the property and he wanted to be able to access his other tactical options if need be. Mr Z was struggling and kicking out which meant Officer B was unable to keep his foot in place so he moved to control Mr Z’s left arm instead. He says he did not witness Officer A kick Mr Z.
36. Officer C’s recollection of the arrest was somewhat unclear. He says Officers A and B were already dealing with Mr Z when he arrived. Mr Z was *“flailing around”*, but he could not

⁶ The PCA is an officer’s subjective assessment, and continuous reassessment, of an incident using the TENR model, based on information known about the situation and the subject’s behaviour. There are five categories in the PCA – cooperative, passive resistance, active resistance, assaultive, grievous bodily harm (GBH) or death.

remember who was doing what. He was unsure whether he grabbed Mr Z's legs or arms but recalled that they were having issues getting his arms out from underneath him to handcuff him.

37. Officer A says Mr Z put his hands under his body and began moving his face from left to right on the ground, "*rubbing it in gravel and dust*". Mr Z was saying something, but Officer A could not make sense of it. Officer A told Mr Z to stop moving his head, and that it was bleeding, but Mr Z took no notice and kept doing so. He believes this caused the injuries to his face.
38. Officer B says Mr Z was "*screaming and shouting*" and pulled his arms under his chest. He pushed and pulled as he thrashed about face down in the gravel and was shouting something along the lines of "*fucking kill me*", "*hurt me*". Officer B recalls thinking that Mr Z was "*as high as a kite*", because of his irrationality and physical strength in resisting arrest. He repeatedly told Mr Z to give him his arm and stop resisting.
39. Officer D arrived and they were eventually able to take control of Mr Z's arms and handcuff him. At this point Officers A and B moved away. Officer A said the process was "*pretty quick*". Officers B and C believed Mr Z would have been on the ground for approximately a minute. They believed Mr Z did not receive any injuries as a result, although he had a few small lacerations as a result of turning his head from side to side.
40. The officers responded to Mr Z's allegations as follows:
 - Officers B, C and D did not see anyone putting their knees on Mr Z's back, or recall doing so themselves. However, Officers B and C both acknowledged that they may have done so in their attempts to control Mr Z's arm. This would have allowed them to remain stable and stop Mr Z from getting up.
 - Officers B, C and D denied punching and kicking Mr Z, or rubbing his face in the gravel. Neither of them saw anyone else do so. Officer G, who was in the ART team, did not see anyone kick Mr Z.
 - Officers B, C and D did not believe Mr Z's arm was "*twisted excessively*", or that excessive force was used in order to handcuff him. Officer B stated he would feel comfortable reporting this if it were the case.
 - None of the officers specifically recall Mr Z shouting out in pain or complaining of injuries. However, Officer C says, "*he could have done*". Officer B says Mr Z seemed angry and was in a drug fuelled "*erratic rage*".
 - Officer A recalled himself, Officer B, and Officer D being present before he stepped back for Mr Z to be searched. The other officers did not believe there would have been between six and eight officers on Mr Z. Officer B refers to there being at least 3 officers trying to restrain him.
41. The officers say they considered alternative tactical options. Officers A and B say Police had attempted to communicate with Mr Z as a tactical option, but it was ineffective. They believed pepper spray, and a Taser would also have been ineffective. Officer B says this was due to Mr

Z's thick clothing, body armour, and because he was 'high'. Officer A was concerned that he needed to "get on top of him physically" before he had time to draw a weapon.

42. As the officers moved in around Mr Z, Officer E, who was operating the camera in Eagle, zoomed the camera out so that it captured the wider area. This meant the footage does not clearly show Mr Z's arrest beyond Officer A approaching and kicking him. However, it appears to show approximately three or four officers proximate to Mr Z, including a dog handler at one stage.

Was the use of force justified?

43. The Authority prefers the accounts of the officers, over that of Mr Z for the following reasons:
- By his own admission, and as witnessed by the officers, Mr Z had taken GHB (although the officers believed this was GBL) and methamphetamine prior to his arrest. It is likely this would have impacted both his perception and later recollection.
 - For whatever reason, Mr Z's account in respect of how many officers were present, and what they were doing is inconsistent with the Eagle footage. Mr Z is seen getting onto the ground of his own volition, whereas he told the Authority the officers grabbed him, and threw or "swung" him on the ground. He also states that six or seven officers grabbed him, whereas only three are shown in the footage, and only four are referred to in the officers' statements.
 - There is no evidence of officers running in and kicking him after he was handcuffed.
 - The officers' statements are largely consistent.
44. We accept that Officer A's initial kick, in order to dislodge the item in Mr Z's hand, was justified and necessary in order to effect Mr Z's arrest. He was lying on the ground, with his hands above his head, meaning that empty hand techniques were the only viable tactical option open to Officer A to restrain Mr Z so he could be handcuffed. In the fast unfolding of the process of arrest, it was reasonable for Officer A to have thought Mr Z had a firearm in his hand. His location in the building meant he did not see the water bottle throwing action and he had heard on the radio only that Mr Z was picking up something unknown off the ground immediately prior to Officer A confronting him. Additionally, during the standoff Mr Z had said he had two firearms. There was the possibility one may have been concealed in his clothing. Mr Z had a history of using firearms.
45. Officer A kicked Mr Z a second time and this appeared to glance off his shoulder to connect with his head. We accept that he did not intend on connecting with Mr Z's head and may have inadvertently done so as he attempted to kick him in the shoulder a second time.
46. Although we note that Officer A's reasoning for the second kick was to establish "dominance" and "compliance", given how close the kicks were to each other and the moderate degree of force used, we find the second kick was also justified as a means of distracting Mr Z. We believe Officer A's risk assessment and intention at the time would have been largely the same as when he first kicked Mr Z.

47. The force applied by Officer A placing his foot on Mr Z's back, and Officers B and C attempting to control Mr Z's arms and legs was justified in order to prevent Mr Z from resisting, or accessing any weapon he may have had on him. For the reasons outlined above at paragraph 43 we do not accept Mr Z's claim that he did not resist Police at this point.
48. Mr Z's injuries are consistent with what you would expect to see from someone struggling, face down, on a rough surface. We believe they are likely to have resulted from a combination of Mr Z moving around on the ground, and the force Officer A used to pin him down (which was justified). We do not believe the officers intentionally inflicted the injuries on Mr Z. Given that Mr Z embellished aspects of his account, we prefer the officers' accounts as to how he sustained his injuries.

Should a Tactical Options Report (TOR) have been submitted?

49. Police policy states that officers must complete a TOR for uses of empty hand techniques excluding touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground.
50. The report includes each tactical option, a description of the force used, and the reasons for using it. An officer must submit the TOR to their supervisor before the end of the shift in which they used force, or with their supervisor's approval, within 3 days of the end of shift and prior to any rostered days off or leave during this period.
51. Officer A accepted that he did not complete a TOR and in hindsight, he should have done and would do so in future. He did not believe the injuries sustained were caused by Police.
52. Officer B says he did not complete a TOR and did not think it was necessary at the time. He believed it was an *"almost run of the mill procedure"*.
53. Officer C could not recall the force used but says it would have been *"reasonably low level"* in either controlling Mr Z's legs or getting his arms out from underneath him. He says if he had used any level of force and felt he needed to complete a TOR he would have written a lot more in his notebook. However, it was not noteworthy from his point of view. He did not complete a TOR as he did not think it was necessary.
54. Officer A should have submitted a TOR in regard to the two kicks while Mr Z was on the ground. They constituted strikes that can be categorised as 'empty hand techniques' that, when utilised, require a TOR.

FINDINGS ON ISSUE 1

The uses of force to effect Mr Z's arrest were justified and proportionate to the risk he posed.

Officer A should have submitted a Tactical Options Report.

ISSUE 2: WAS THE LEVEL OF CARE FOLLOWING MR Z'S ARREST APPROPRIATE?

Mr Z's version of events

55. Mr Z believes he was "*brushed off*" by the ambulance. He says when he was taken to the station he was in a lot of pain and had a headache. A doctor was called, although Mr Z did not believe he was really a doctor. He was told he would be alright and given Panadol.
56. He believes he was concussed and says by the time they got to the station his head was "*really eggy*" or swollen. He did not understand why Police did not believe he had a concussion.

Doctor's assessment

57. Mr Z was assessed by a doctor at the Police Station at 10.30pm. The doctor recorded that Mr Z had recently taken methamphetamine, morphine, GHB and THC, and complained of pain in his face, head, chest, abdomen, hands and feet.
58. On examination the doctor noted:
 - Mr Z had multiple minor grazes and small lacerations to his forehead.
 - The bridge of his nose was swollen.
 - Mr Z complained of pain in his right elbow and reported he had recently had surgery.
 - Mr Z complained of intermittent numbness in his finger and feet.
 - Mr Z had superficial lacerations and a contusion (bruise) to his forehead, a likely nasal fracture, and an old laceration to his hand.

The officers' versions of events

59. Officer B was unaware of Mr Z's injuries and did not hear him complain of them at the time. Officer D was not aware of Mr Z's injuries at the time of his arrest. He could not recall Mr Z making any complaints at the time.
60. Officer H, who was in charge of the scene, noticed a scrape on Mr Z's face, but did not think it was bad or think a great deal of it.

Did Mr Z receive appropriate medical attention following his arrest?

61. Mr Z does not appear to have complained to Police staff at the time of his arrest. In any event, he was assessed by ambulance staff at the scene, and a Police doctor at the Police station. We believe Mr Z received appropriate medical care following his arrest.

FINDING ON ISSUE 2

Mr Z received appropriate medical care following his arrest.

A handwritten signature in black ink, appearing to read 'C. Doherty'.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

19 January 2021

IPCA: 20-2016

Appendix – Laws and Policies

LAW

Crimes Act 1961

62. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrest 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.”*
63. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

POLICY

Police ‘Use of Force’ policy

64. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect and 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.
65. Police policy provides a framework for officers to assess, reassess, manage, and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
66. 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 officers Perceived Cumulative Assessment (PCA).
67. A key part of an officers 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 activity); actively resisting (pulls, pushes or runs away); assaultive (showing an intention 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.

68. 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.

Tactical communications

69. The Police 'Use of Force' policy states that tactical communication is the preferred option for resolving incidents where Police action is necessary in response to uncooperative subjects. Tactical communication may enable incidents to be de-escalated and resolved without the use of force. Where possible, tactical communication should be used throughout an incident, alone or with other tactical options.
70. Police provide a five-step communications process for officers which includes passing on information, making requests, commanding responses, and ordering lawful directives.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

THIS REPORT

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



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