

The Authority's Findings

6. The Authority found that all uses of force were reasonable and justified in the circumstances, which we believe were out of the ordinary.

Analysis of the Issue

ISSUE 1: WERE THE OFFICERS JUSTIFIED IN USING FORCE AGAINST MR X?

Mr X's arrest

7. After pulling into the driveway Mr X immediately got out of the car. Officer A says that he recognised Mr X as he has an extensive history of dishonesty offences and drug use. The officers say Mr X presented as calm at the time, but they both believed his appearance indicated that he was a methamphetamine user. Officer B says "*[his] eyes were wide and he was a little twitchy*".¹
8. Mr X was on bail with a residential curfew at the time. Officer A conducted checks on his phone and established that Mr X was wanted for breaching a bail condition two days earlier on 18 January 2020, as he had not been home during a curfew check.
9. Mr X disputes he breached the condition of his bail. He told the Authority he was at home at the time in the shower, however, his partner had answered the door and yelled at Police to leave.
10. Officer A inspected Mr X's car and noticed a bag of cannabis on the driver's seat, while Officer B advised Mr X he was under arrest for breaching the bail condition.
11. Mr X started making his way towards his car and reached for the driver's door. Officer A says he touched Mr X's left shoulder and re-affirmed that he was under arrest. Officer B requested that Mr X turn around and put his hands behind his back a number of times, but Mr X stood facing the car and did not move. Officer A says that Mr X was then advised to comply with the request otherwise force would be used to restrain him. Mr X says he was told his head would be "*smashed against the car*" if he did not comply.

Use of empty hand tactics²

Officer A's version of events

12. Officer B stepped forward, and Mr X ran into the garden beside the driveway. Officer A states in his Tactical Options Report (TOR) that he believed Mr X was 'actively resistant' at this point.³ He says those abusing methamphetamine are often paranoid, unpredictable, and prone to

¹ There is no record/evidence of drug use by Mr X on the day in question.

² Under the Police 'Use of Force' policy Police officers are taught a range of ways to safely use force without a weapon, known as 'empty hand techniques'. See paragraph 72 for more information.

³ An officer is required to complete a TOR when he or she has 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 the reasons for using it. According to Police policy, 'active resistance' includes physical actions such as pulling, pushing or running away, that is, "*more than verbal defiance*".

outbursts of uncontrollable violence. He believed the necessity to respond to Mr X's escape was immediate, and tackled Mr X to the ground.

13. They got into "*a bit of a rolling match*" that ended with Officer A on his back, and Mr X on top of him facing upwards. Officer A put Mr X in a 'bear hug', over his right shoulder and under his left arm. Mr X was throwing punches, but they were not very forceful as he was facing away. Officer B came in with handcuffs, but Mr X started kicking, and may have kicked the handcuffs out of his hand. Mr X continued to kick and punch at Officer B as he tried to put a second set of handcuffs on, despite Officer A trying to restrain him. Officer B punched Mr X twice in the head.
14. Officer A recorded in his TOR that:
 - Officer B's punches had "*zero effect*" on Mr X. This led to Officer A forming the belief that Mr X was affected by methamphetamine or some other drug as "*nothing seemed to slow him down*".
 - Mr X was not handcuffed at the time any of the tactical options (i.e. empty hand tactics, the Taser, or baton) were used.
 - Both officers were telling Mr X to stop resisting and comply, but Mr X swore at them, told them to "*fuck off*", leave him alone and go. He yelled that they were beating him up and was calling for people to come and help him.
15. Officer A recalls Mr X rolled over, and he ended up on top of him. Mr X was "*bucking*" trying to get the officers off, elbowing, and punching them. At this point Officer A assessed Mr X as at risk of causing grievous bodily harm.
16. Officer A says that withdrawing from the situation was an option, but Mr X's behaviour had deteriorated very quickly. He was concerned as to what would happen if they let Mr X go, and believed the arrest had to be completed then and there.

Officer B's version of events

17. Officer B says when he advised Mr X he was to be arrested he became agitated. Mr X started walking towards his car, but Officer A stopped him. Officer B told him he was under arrest, and to put his hands behind his back. Mr X refused and stood there with a blank look on his face, he appeared to be "*weighing up his options*". Officer B asked Mr X to put his hands behind his back again, but he refused, so Officer B told him that he would put him up against the car and complete the arrest there. He denied telling Mr X his head would be "*smashed against the car*".
18. Officer B says communication with Mr X had failed. He believes when Mr X ran into the garden, he was actively resisting by trying to escape. Officer B ran into the garden and saw Mr X punching out at Officer A and trying to bite him. His Perceived Cumulative Assessments (PCA) of Mr X was that he was assaultive, intending to cause harm.⁴ Officer B believes Mr X may have been on top

⁴ 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.

of Officer A but could not clearly recall. Officer B went to restrain Mr X's feet, but Mr X started kicking out at his chest, connecting multiple times.

19. Officer B describes Mr X as *"quite strong for his size"*, and believes his strength was consistent with someone under the influence of methamphetamine. He thought he would have been able to overcome Mr X easily given his size, however, Mr X was too strong for him.
20. Officer B lost his handcuffs in the struggle and was concerned they could be used as a weapon. He considered, and discounted, using pepper spray. Everyone was in close proximity, the pepper spray may have affected the officers and Mr X may have been able to fight through it.
21. Officer B recorded in his TOR that Officer A was on his back, trying to contain Mr X with an arm around his neck/shoulder. Mr X began putting his fingers into Officer A's eyes and mouth. Officer B's assessment at this point was that Mr X was at risk of causing them grievous bodily harm. Officer B considered using his Taser, however, he was too close for it to have the desired effect.
22. Officer B punched Mr X several times in the face to prevent him from hurting Officer A. He cannot recall the number of punches. This stopped Mr X from gouging Officer A's eyes, but he became more agitated, and continued to fight them. Officer B accepts that punching Mr X was a significant use of force, but he believes it was necessary at the time. Officer B recalls being punched in the head, and body multiple times by Mr X.

Mr X's version of events

23. Mr X told us he ran into the garden as he did not want to be *"smashed against the car"*, and Officer B looked *"quite angry"*. He says he was tackled to the ground, a handcuff was put on his left wrist, and the other was handcuffed to one of the officers. This meant he was unable to use his left arm at all. Mr X does not accept that the handcuffs were lost in the garden, as the officers claim.
24. He says Officer B punched him *"quite hard"* five or six times on the left side of his face which he tried to deflect with his free right hand. Mr X denies punching or kicking the officers, or resisting in any way, describing himself as non-violent by nature, with no history of physical violence.

Use of the Taser and baton

Officer A's version of events

25. Officer A pulled out his Taser, but Mr X grabbed it and put his fingers through the trigger guard, which locked Officer A's hand on to the Taser. Both officers yelled at Mr X, but he ignored them and *"only stared blankly"*. Officer A warned Mr X that he was going to Taser him if he did not start complying.
26. Officer A was able to manipulate Mr X's fingers to release his grip on the Taser. At this time Officer B radioed for backup. As their radios had been dislodged during the struggle, he had not had the opportunity to do so earlier.

27. Mr X did not respond to Officer A's warning and *"continued his barrage of punches and elbows with both arms"*. Officer A discharged the Taser into Mr X's chest area which *"seemed to have zero effect"* and Mr X continued to resist arrest and assault both officers.⁵
28. Officer A discharged the second Taser cartridge into Mr X's chest area, which also had minimal effect. He then placed the Taser on Mr X's lower abdomen and applied a contact stun, however, *"despite screaming profusely [Mr X] did not seem to be really affected at all"*. Officer A says there was no neuro-muscular incapacitation (NMI) and Mr X continued to punch Officer B, while *"kicking and bucking"* with his feet.⁶
29. Mr X reached for Officer A's face and put his fingers into Officer A's mouth. Officer A considered Mr X posed a risk of causing grievous bodily harm at this point, so he again used the Taser to apply a contact stun, this time to Mr X's neck/throat area. Mr X immediately let go of Officer A's face and grabbed his arm. Once the contact stun cycle had finished, Mr X continued to punch and fight both officers.
30. At this point Officer A was able to apply one handcuff and handed the other to Officer B. Mr X was holding Officer A by his body armour at the time and continued to throw punches. Officer A then got his baton out and struck Mr X on his ankle twice before Mr X moved his leg, however, it had limited effect. Officer A struck Mr X again on his ankle a third and fourth time, which distracted him, enabling Officer B to get a grip on him.
31. Mr X attempted to bite Officer A on the hand, but he was able to pull away in time. Mr X continued to *"tense his body and prevent us from completing the handcuffing process"*. He continued to yell out to people asking them to remove the cannabis from his car, that Police were beating him up, asking for help and saying that there were only two of them. Officer B said he was able to prevent the intervention of the two people who came out of the house, and four other officers arrived.

Officer B's version of events

32. Officer B confirms Officer A's use of the Taser and baton as described above. He confirms that Officer A's first and second Taser deployments were not effective. Officer A then contact-stunned Mr X by pressing the Taser against his throat, however, Mr X stared into Officer A's eyes, grabbed the Taser, and tried to fight through it. Officer B believes this was *"pretty unusual"*, as the Taser normally has a *"pretty good"* effect on people. He and Officer A are both *"fit individuals"*, but Mr X was not tiring or slowing down. Mr X then went straight back to fighting against them.
33. Officer A was able to get a handcuff on one of Mr X's arms but was unable to roll him over. Officer B believes this was *"a good couple of minutes"* into the struggle. He was concerned that Mr X could have used the handcuffs as a weapon, so he punched Mr X in the face as hard as he could, which had no effect. He thought Mr X was not trying to escape, but instead wanted to hurt the officers. He radioed Police Communications for assistance.

⁵ See paragraphs 74-77 for more information on the deployment of a Taser.

⁶ Neuro-muscular incapacitation is when the nervous system and muscles are temporarily not able to permit movement.

34. Officer A struck Mr X four times with his baton, on the leg, as he was still struggling. Officer B believes it was an appropriate use of force.
35. Mr X yelled out for occupants of the address to come out and help him. Officer B said a male then came out of the address with his *“chest puffed out”*, in a *“fighting stance”*. Officer B was on his knees at the time. He drew his Taser at the male and told him to *“bugger off”*, which he did. At this point two other officers, Officers C and D, arrived and directed the male away. One of them attempted to assist with Mr X, who was still struggling. Further units also arrived, and were able to fully handcuff Mr X.
36. Mr X refused to walk to the Police car and had to be carried by four officers. His car was searched, and the officers found cannabis.

Taser footage

37. The Taser footage is unclear, however the audio recorded:
 - An officer referring to the Taser before it goes off.
 - Mr X yelling *“help”* repeatedly and kicking out (although it does not appear to be with much force).
 - An officer hitting Mr X in the leg with a baton, telling him to stop resisting and roll onto his stomach.
 - An officer saying *“...fucking biting me c**t”*, and Mr X responding, *“I’m not”*.
 - Mr X yelling *“somebody come help [Mr Y] help it’s [Mr X] come get me. Get the shit off the seat of the car. Grab the weed off the seat of the car. Fuck these c**ts.... Help me, help me [Mr Y] there’s only two of them hurry up. Help me these c**ts are beating me up hurry up...”*
 - The officers repeatedly direct Mr X to put his hands behind his back. Officer C also tells him to do so, and that if he does it will stop.
 - An officer saying, *“cooperate and we’ll get off you”*.
38. The footage and audio confirm that a struggle was in progress when the Taser was discharged on each occasion. The footage lasts for five minutes and 28 seconds, indicating that the struggle was prolonged.

Officers C’s and D’s evidence

39. When Officers C and D arrived, they could not see Officers A or B, or Mr X. Officer D says she heard a male shouting out that he was being *“beaten up”* from the bushes. Officer C heard Officer A call for help and went to assist, while Officer D stayed with Mr Y and Ms Z to ensure they did not get involved.

40. Officers C and D both describe Mr X as at least actively resistant, and Officer C says he was non-compliant. She says Officers A and B were trying to use force to control Mr X, but were struggling to hold him down. Officer C realised she would not be able to assist in handcuffing Mr X, so she attempted to use tactical communications with him instead.
41. Officer C says Mr X was face down trying to roll over, and Officer B was using his body weight to hold him down. Officer A was on Mr X's left trying to control his arms. The officers had one handcuff on Mr X, but were unable to get control of Mr X's other arm to put the other on. She attempted to help control one of his arms but did not get involved in the struggle. Officer C describes Mr X as behaving like someone who *"was on P or drugs"*, and no matter what Officers A and B did it did not make a difference. Eventually he was handcuffed, lifted, and taken to the vehicle.
42. Officer C says based on Officers A's and B's appearance it was clear they had been involved in a struggle. She recalls Officer A had a baton out, but she did not see him use it.
43. Officer D says another Police car arrived within a couple of minutes of them getting there. The officers assisted in restraining Mr X and he was carried from the garden, although she was unsure by who. Officers C and D were tasked to search Mr X's vehicle and collect exhibits, including a bag of cannabis.

Mr X's version of events

44. Mr X denies having been drinking or taking drugs that day. He says when he was tasered he *"didn't have much control over what [he] was doing"*, but that the Taser did not have much of an effect.
45. He says Officer B (rather than Officer A) was throwing punches (15 in total), and batonning his legs. There was no way Officer A could have as they were handcuffed to each other.
46. Mr X states that from the time he was tackled, to being batonned, about five or six minutes passed. He was not resisting during this time, and was just trying to avoid the officers. The most contact between his free hand and the officers was when he grabbed the Taser and tried to turn it away.
47. Mr X says when other officers arrived to assist, the cuff was taken off his left hand so *"it looked like I was free"*. He had been flipped onto his front, had his face in the bushes and could not breathe. He was handcuffed by the other officers and dragged to a separate Police car. He says he was *"moaning about [his] leg as it was broken"*.
48. Mr X says he received five or six *"whacks"* to his leg. He denies trying to bite, kick or punch anyone. He was trying to alert the attention of anyone throughout the arrest *"so they'd stop beating me up"*, and they did so when Mr Y arrived.
49. Mr X says he received a lot of damage to his eye, a broken leg, a concussion, and a puncture wound from the Taser. He now suffers from migraines, and recurring blackouts.

Mr Y's and Ms Z's evidence

50. Mr Y and Ms Z were inside the house when they heard Mr X shouting for help. They came outside and walked towards the “prickly” bush area where the officers and Mr X were. A neighbour had also come down the driveway. Ms Z recalls hearing a Police officer telling Mr X to calm down.
51. Mr Y was in front of Ms Z. He says he saw one officer over Mr X's legs and another over his head tasing him. Mr X was screaming “help me”, but the officer continued. He was unsure whether he saw the officer pulling the Taser trigger. He believes Mr X was assaulted by Police, and he was just “trying to get them off him”. He says Mr X was handcuffed, and the officer close to Mr X's head was “elbowing him”, trying to get him to calm down. He believes Mr X was struggling in pain and had “blood all over his face”. Mr Y asked what was going on, and the officer at Mr X's feet turned around with his Taser pointed towards Mr Y and told them to go away.
52. We accept Mr Y's version of events. However, as Mr Y says he only witnessed approximately 10 seconds of the struggle, he was not aware of what had occurred prior to Mr X being tasered. We therefore understand why he believed the force he witnessed was excessive, but as stated below, we consider that it was justified in the circumstances.
53. Ms Z saw an officer on his knees holding Mr X's feet but could not see the top of his body or the other officer. She did not recall seeing any uses of force. She believes Mr X was on his front.
54. She says a policewoman came down the driveway and told them to go inside, which they did. Ms Z saw Mr X being taken down the driveway and recalls that he had blood on him. He was struggling and yelling. He was taken onto the road and put in the back of a Police car.
55. Mr Y and Ms Z say the officers came back to their house later in the day, asked to see Mr Y, and apologised for pointing the Taser at him.

Were the uses of force justified?

56. Section 39 of the Crimes Act 1961 provides that when “executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest”, Police may use “such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner”.
57. The Authority considers that all uses of force were justified under section 39 of the Crimes Act 1961. They were reasonable and proportionate to the level of risk posed, and resistance offered, by Mr X.

Empty hand tactics

58. From analysing the Taser camera footage and Police Communication Centre recordings, we are satisfied that the struggle lasted approximately five minutes before the officers were able to handcuff Mr X. We consider this is a significant length of time to struggle with someone, and do not believe the officers would have used the force they did if Mr X was not resisting. Both officers

have significant experience in Police and state that this was very out of the ordinary. We have no reason to disbelieve them.

59. Mr X pleaded guilty to charges of assaulting Officer A with intent to injure him, and resisting and assaulting Officer B. He accepted a summary of facts which described him punching, kicking, and elbowing the officers, and placing his fingers in the eyes and mouth of one officer (Officer A). Mr X also wrote to Officer A after the fact and apologised for his resistance but stated that he was only trying to avoid Officer B's "attacks".
60. Officer B accepts punching Mr X in the face numerous times, to prevent him from causing harm to Officer A by 'gouging' Officer A's eyes, which he believed posed a risk of causing grievous bodily harm.

Taser

61. At the point Mr X was tasered the officers considered that he posed a risk of grievous bodily harm. He had been punching and kicking them and was 'eye gouging' Officer A. Officer B had tried empty hand tactics, but believes they had no effect. He considered using pepper-spray but did not think it was appropriate. The appropriate warnings were given in relation to the Taser.
62. On its face, four discharges of a Taser appears excessive. However, having considered and accepted the officers' version of events including the length of the struggle, we find that this situation was out of the ordinary, and the uses of the Taser were justified. As mentioned above, we accept that Mr X was resisting throughout the struggle, and that communication and empty hand tactics had not worked.

Baton

63. On viewing the Taser footage, Mr X does not appear to be putting up much resistance at the time Officer A batons him on the leg. However, the footage only covers his legs, and does not include his upper body. Officer A says Mr X was about to bite him, and he used the baton to give him an extra level of control, and distract Mr X.
64. Mr X denies trying to bite Officer A. However, the Taser footage records one of the officers saying: "stop fucking biting me c**t", and Mr X responding, "I'm not". We accept that Mr X was trying to bite them.

65. Without the context of the whole event, the use of the baton seems gratuitous. However, we are satisfied the situation was out of the ordinary.

FINDING

The officers use of force to arrest Mr X was justified and proportionate to the resistance faced.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

27 January 2021

IPCA: 20-2509

Appendix – Laws and Policies

LAW

66. Section 39 of the 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.”*

POLICY

Use of force

67. 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.
68. 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.
69. 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).
70. 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.
71. 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.

Empty hand tactics

72. Under the Police 'Use of Force' policy Police officers are taught a range of ways to safely use force without a weapon, known as 'empty hand techniques'. The Police 'Use of force' policy states that officers can use empty hand techniques to:
- distract a subject,
 - physical control a subject, and/or
 - defend themselves or another.
73. Use of empty hand techniques must be fully reported in a tactical options report, except for touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground. 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.

Taser

74. The Police 'Taser' policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses an imminent risk of physical injury and the arrest cannot be affected less forcefully. A Taser must only be used on a person whose behaviour *"has the potential to escalate to within or beyond the assaultive range"*.
75. To encourage de-escalation and to warn others nearby, officers should give a verbal warning in conjunction with the deployment of a Taser unless it is impractical or unsafe to do so. The warning relevant to the presentation of a Taser is *"Taser"*. The warning relevant to a discharge or contact stun is *"Taser, Taser Taser"*.
76. A 'discharge' is an *"application by firing two probes over a distance from a cartridge attached to the Taser, or subsequent applications of electrical current via the probes, which are in contact with the subject after firing, in conjunction with a verbal warning"*.
77. A 'contact stun' is an activation of a Taser while the device is applied to the body of the subject. Contact stuns should only be applied in situations where the operator finds themselves in close proximity to the subject and it is necessary to use force to create distance to discharge or apply alternative tactical options and/or considerations.

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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