

Police dog bite in Ōtāhuhu justified

Summary of the Incident

1. On the morning of 28 May 2020, Police located a high-risk offender, Mr X. They had a warrant to arrest him for assaulting his ex-partner and threatening her with a firearm. Mr X was also suspected of firing shots at her boyfriend's car.
2. The Armed Offender Squad (AOS) apprehended Mr X as he left a shop in Ōtāhuhu and got into his car. A Police dog was used during the arrest.
3. Mr X complained to the Authority, saying he complied with the instructions of officers during the arrest and that the use of the dog was unnecessary.

Issue examined by the Authority

- Was the use of the Police dog lawful and reasonable in the circumstances?

The Authority's Findings

4. The Authority found Officer B was justified in using the dog to assist in the arrest of Mr X.

Analysis of the Issues

ISSUE 1: WAS THE USE OF THE POLICE DOG LAWFUL AND REASONABLE IN THE CIRCUMSTANCES?

5. Officer A (sergeant) received a call from the AOS Commander telling him a car associated with Mr X had been located and was being observed by a Police surveillance team. Mr X was confirmed as the driver and Officer A was given information about him. He and the AOS Commander discussed tactics that could be used to safely arrest Mr X. They decided not to attempt to stop him while he was driving, as he had a history of failing to stop and pursuing him would place members of the public at risk.

6. At about 9am, Mr X parked directly outside the Ōtāhuhu Repco store on Great South Road and went into the store.
7. The AOS arrest team travelled to the area in a large, white, unmarked van. It consisted of Officer B (dog handler), and Officers C, D, and E. Police policy says: *“Qualified AOS dog teams are an integral part of AOS squads. The teams deploy as part of the squad and are used for: apprehension...”*¹
8. The AOS officers were recognisable as they were armed with Bushmaster rifles and were wearing black tactical armour with Police insignia. Officer B was wearing his Police uniform and holding his dog on a leash. He was armed with a Glock pistol.

What did the officers know about Mr X?

9. The team leader, Officer C, provided the officers with up-to-date information about Mr X and the risks he posed. Mr X was believed to be armed and dangerous, violent, and actively avoiding Police. There was a warrant for his arrest due to an incident three weeks beforehand where he had allegedly seriously assaulted his ex-partner and threatened to kill her with a firearm. He was also suspected of shooting at her boyfriend’s car a few days prior. Police investigations gave them good reason to believe Mr X had a shotgun and a pistol in his possession.
10. Officer C says it had taken Police some time to locate Mr X, and they needed to act immediately to stop him committing further offences. He posed a significant threat to the community and Police, and an even larger threat to his ex-partner.
11. Mr X had previously said he would rather die than go back to prison.² Officer D says this comment made him believe Mr X posed *“quite a big threat”* to the officers and to members of the public who may be nearby during the arrest.
12. Officer B had dealt with Mr X several times during his years in Police. In addition to what he was told on the way to the incident, he also knew that Mr X:
 - had an extensive history with Police;
 - had about 230 previous convictions (he actually had about 135 previous convictions, over 130 offences committed while on bail, and over 70 sentences of imprisonment);
 - had gang links;
 - had a history of violent assaults against members of the public and women.
 - had threatened to kill victims on numerous occasions;
 - had previously been found in possession of knives and other offensive weapons;

¹ Police instructions: ‘General information for Police employees about Police dogs’.

² There was an alert on the Police database saying Mr X said this in 2016.

- had a long history of drug-possession charges and using drugs, especially involving methamphetamine, which could make him unpredictable and violent;
 - had an extensive history of dishonesty offending such as burglary;
 - was continuing to commit offences while 'on the run';
 - was known to flee from Police at high speeds and had been in several pursuits where he drove recklessly;
 - had previous charges of resisting and obstructing Police; and
 - was a serious threat to Police if armed with a firearm and in a desperate situation and was likely to use violence while trying to flee.
13. Officer B says he believed Mr X was capable of causing injury or death to the officers due to him having the firearms.
14. The team waited in an adjacent carpark. They planned to use their van to block in Mr X's car so he would not be able to reverse out. Once contained, they would quickly move in to arrest him before he realised Police were there and had the chance to flee.

What happened when Mr X was removed from the car?

15. Mr X came out of the store and got into the driver's seat of his car, turning the engine on. As he did this, the Police van moved in front of his car.
16. Officer D went straight to the driver's door. He began yelling at Mr X through the closed window: *"Armed Police. Hands up. Don't reach for anything"*. CCTV footage obtained from the Repco shop shows Officer D banging twice on the driver's window with the butt of his rifle, then pointing it towards Mr X.
17. A couple of seconds later, Officer C set off a stun grenade to distract Mr X, which caused two loud bangs and flashes to the rear, right side of Mr X's car. Officer D was outside the car and closer to the stun grenade. He says his hearing was unaffected by it, so he believes Mr X would have been able to hear him yelling instructions at him.
18. Officer D says he repeatedly yelled *"armed Police"*, continuing to instruct Mr X to put his hands up, get out of the car, and to not reach for anything. Mr X refused to follow the instructions. Instead, he leaned towards the passenger seat and moved his hands around his torso area where he had loose clothing, as if he was *"messing around"* with something.
19. Meanwhile, Officer C had moved to the front passenger door. He opened it, and briefly pointed his firearm at Mr X. His notebook shows Mr X had his *"hands around near body"*. Upon reflection, Officer C believes he would only have raised his firearm at Mr X if he had seen him doing something that he believed was potentially dangerous. Officer C then moved behind the car so did not see what happened next.

20. Officer D opened the driver's door while Mr X was still sitting in the driver's seat, leaning towards the passenger seat. With one hand on his firearm, he used his other hand to grab Mr X's clothing around the shoulder area. He continued instructing Mr X and tried to pull him out of the car but this had "no effect whatsoever".
21. Mr X was still moving his hands around his waist, pushing with his foot against the footwell, pulling away from Officer D, towards the passenger's seat. Officer D thought he was trying to reach for a firearm.
22. Officer B initially stood back and observed. Looking through the windscreen, he saw Mr X lean across towards the passenger seat. He recalled that when Police surveillance had been monitoring Mr X earlier that morning, they had said Mr X had a satchel-style bag with him which contained a lot of property. Throughout the morning they had seen Mr X going back and forth from the car boot, moving items around the car, so they knew he had bags in the car. Given Mr X's heightened state of paranoia, and the fact Police had not recovered the pistol and shotgun, Officer B believed there was a high chance Mr X still had the firearms on him. He was wearing loose clothing and could have had the pistol or a knife on him. Officer B could not see the entire car to safely clear it of firearms or other weapons, so believed the shotgun could have been down the driver's seat or on the passenger seat, where Mr X could easily reach it. According to Officer B, Mr X did not put his hands up while in the car. He always kept them down, close to his body.
23. Officer B moved to the driver's side of Mr X's car and stood on the right-hand side of Officer D. He instructed his dog to bite Mr X, using the command: "rouse". The dog took hold of Mr X's right, lower calf. Officer B pulled backwards on the dog's lead so it would pull Mr X from the car, which was not immediately successful. With the dog still latched on, Officers B and D held Mr X by the shoulders, and he was able to be pulled out of the car and onto the ground.
24. The CCTV camera from the Repco store was inside the store, pointing towards the external doors, showing the car Mr X was in. It shows Mr X was in the car for about 8 seconds before Officer D opened the driver's door. It was then 7 seconds before Mr X was pulled out of the car. The dog was set on Mr X some time during this 7 seconds, though it is unclear exactly when, as the dog cannot be seen in the CCTV footage due to smoke from the stun grenade and the angle of the camera.

What happened once Mr X was out of the car?

25. Officer B says as Mr X went to the ground, he put one of his arms under his body and refused to remove it. Officer B says:

"... this was an extremely dangerous situation for Police, now in close quarters, he was still uncompliant and a real risk of having a knife or pistol on his person which could cause GBH [grievous bodily harm] or death to Police."

26. Officer D told Mr X he was under arrest and instructed him to roll onto his stomach and put his hands behind his back. He repeated the instructions several times but Mr X refused to comply.

Officer D attempted to take hold of Mr X's free arm to try to pull it behind his back to restrain him. Officer D says Mr X pulled the arm away "forcefully" and waved it around.

27. Officer E could see Officer D having trouble restraining Mr X. He says Mr X was not complying with instructions to put his hands behind his back so he could be handcuffed. Officer E went to assist and says they were eventually able to get both arms behind Mr X's back but Mr X was still actively trying to pull his arms out of this position. Officer F also came to assist while the dog was latched on. Officer D believes it took the officers between 5 and 15 seconds to handcuff Mr X.

28. Officer C reached the driver's side of the car as the officers were in the process of taking Mr X out of the car. He corroborates the accounts of the other officers, saying:

"At least two members were required to secure plasti-cuffs to [Mr X's] wrist. He refused to remain in a prone position or willingly bring his hands together, which required the members to forcefully complete their task while he continued to struggle."

29. CCTV footage does not clearly show Mr X while he is on the ground, however, there is a moment where one arm can be seen. The arm appears to be relatively still. Officer C clarified that it was once officers managed to bring Mr X's arms together that he resisted the handcuffs.

30. Officer E says:

"During this process I utilised a knee on [Mr X's] back to give me purchase to be able to physically pull his arms behind his back. This is a commonly used technique and the only way to achieve this safely and prevent injury to the target and Police staff involved."

31. Officer E says as he tried to tighten the first pair of plastic cuffs, they broke: "which is uncommon and was at least partially due to the struggle [Mr X] was putting up." He put a second pair of cuffs on.

32. Officer B says once the officers had control of both hands, he was confident they had Mr X under control and it was safe to remove the dog. He used a release tool to get the dog to let go of Mr X's leg, and took the dog away from Mr X.³

33. After Mr X was advised of his rights under the New Zealand Bill of Rights Act 1990, he told Officer D: "I haven't got a gun. I never had a gun. I lied about it". A firearm was not located on him or in the car. When Officer D searched him, he found two boxes containing tools in plastic wrap down his trousers.

34. An ambulance was called to the scene shortly after Mr X was bitten. His two puncture wounds were cleaned and dressed. He was given pain relief and told to keep the wound clean. Back at

³ A release tool is used to remove a dog from a person on the quickest time. It works on a gag reflex and causes the dog no pain or injury.

the station, a Police doctor also checked Mr X's bite, describing it as "*shallow excoriations*" (meaning shallow damage to the surface of the skin).

What did independent witnesses see?

35. Mr Y was in the Repco shop. He went to the door to see what was happening after hearing the two loud bangs. Mr X was already out of the car at this point and the dog had released his leg. He did not see the dog biting Mr X. He recalls Mr X was thrashing about while Police attempted to handcuff him. He believed the Police did a good job.
36. Mr Z was on the opposite side of the road. He heard the bangs of the stun grenade. He did not see Mr X being taken out of the car but saw Police attempting to restrain him on the ground. He noted seeing the Police dog but could not recall seeing it biting Mr X. He recorded some footage on his mobile phone. (see paragraph 47)

What does Mr X say happened?

37. Mr X disputes the account of officers. He says:
 - he complied with their instructions;
 - he did not move towards the passenger seat;
 - he did not have an arm under him;
 - he was not resisting officers while they handcuffed him; and
 - the dog was set on him after he was lying face-down on the ground with his hands handcuffed behind his back.
38. Mr X says after coming out of the store, he got into the car, picked up a cigarette and went to light it. He turned his car on, and at this point, the Police van pulled in front of his car. An officer banged on the window with his firearm. Mr X says his hands were on the steering wheel at this stage.
39. When the stun grenade went off, Mr X heard a bang and felt stunned, dizzy, and disorientated. The officers yelled at him to put his hands on his head and get out of the car. He says he heard their instructions and complied with them: "*I had guns in my face? Why would I refuse?*" He says he held his hands up in the air the whole time.
40. Mr X first told us an officer turned his car off, but later said he believed he turned it off when officers told him to do so.
41. Mr X says he "*definitely remember[ed]*" opening the door, as instructed by officers. However, CCTV footage shows it was Officer D who did this.
42. According to Mr X, officers immediately grabbed him and "*ripped*" him out of the car before he had the opportunity to get out himself and threw him on the ground. He says he did not move towards the passenger side of the car.

43. He recalls there was only one officer restraining him on the ground. However, the accounts of everyone else present is that there were at least two at any given time.
44. Mr X recalls seeing the dog on its leash close to him while he was lying on the ground. He says he pleaded with officers to take it away from him.
45. Mr X says an officer was kneeling on his back, and his hands were handcuffed behind his back when the dog was set on him, and it *“started chewing on my leg”* for about one minute.
46. However, Officers A, C, D, E and F all dispute Mr X’s claim that the dog was set on him after he was handcuffed. They all say the dog was used **before** he was able to be handcuffed. Officer A watched the incident unfold from nearby. He says: *“I observed the dog handler removing his dog off [Mr X] before the handcuffing process was completed.”* Their accounts make it quite apparent Mr X was resisting being handcuffed and that the dog was removed once the arresting officers had control of both of his arms, before applying the handcuffs to the second arm.
47. Mr Z’s footage shows Officer B and the dog standing away from Mr X. Given the short period of time that elapsed between him hearing the bangs and beginning to record, it indicates the dog was not set on Mr X when he was out of the car. It also suggests the dog was not engaged for about one minute, as Mr X claims.

Which account do we believe?

48. We believe the officers’ accounts are more reliable than Mr X’s. We accept Mr X was not complying with instructions from officers and was resisting arrest, and we accept the dog latched onto Mr X while he was still in his car, before he was handcuffed.
49. The accounts of the officers present, the two independent witnesses, and video footage are consistent, whereas we have found no evidence to support Mr X’s claims.
50. Medical records show Mr X told the doctor he had taken the drug Gamma butyrolactone (GBL) that morning. GBL is a prohibited class B tranquiliser, with known side effects including sedation, amnesia, hallucinations, and memory loss. This may be a factor in his different version of events.

Was Officer B’s use of the dog justified?

51. Section 39 of the Crimes Act 2961 allows Police to use *“such force as may be necessary”* to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process.⁴

Did Officer B reasonably believe Mr X was using force to resist arrest?

52. We accept Officer B had reasonable grounds to believe Mr X was using force to resist arrest:

⁴ Also see paragraphs 64 to 73 for Police policy on uses of force.

- he was wanted for serious offences, had a history of fleeing from Police, and was ‘on the run’;
 - he was not complying with instructions, despite the officers being identifiable as Police;
 - he had remained in his car and Officer B thought the engine was still running. This led him to believe there was a risk Mr X would run officers over if he was not removed from the car. Mr X’s history showed he was prepared to drive dangerously and recklessly; and
 - he was leaning towards the passenger side and moving his hands in a manner that suggested he may be trying to locate a weapon that Police believed he most likely had in his possession.
53. Officer B believed he had to act immediately, overcoming Mr X’s resistance to arrest before he had a chance to find the weapon and use it on officers, or members of the public. His previous comment that he would rather die than go back to prison indicated he may attempt to commit suicide by acting in a way that caused Police to fire at him.
54. Officer B says: *“I was left with no option but to intervene now, especially given the risks to the female victim [ex-partner] and Police safety and risk of reoffending.”*

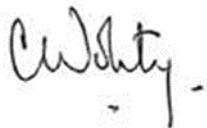
Was Officer B’s use of the dog reasonable to overcome Mr X’s resistance to being arrested?

55. Officer B says he considered, but ruled out, other tactical options for the following reasons:
- communication - this was proving to be ineffective, given that Mr X was not responding to the challenges of officers;
 - baton - Mr X was in a small, confined area which would make it difficult to effectively use a baton;
 - pepper spray – this was inappropriate due to Mr X being in a small, confined area. It would not necessarily stop Mr X from reaching for a firearm and would negatively affect the dog and other officers. Pepper spray does not always work effectively on drug users, and if it was ineffective, it would limit their ability to use other tactical options; and
 - a Taser would be difficult to effectively discharge and would not achieve the goal of removing Mr X from the vehicle.
56. Officer B also recalls taking into account that the Police helicopter was not available, so could not be used to assist in cordoning and searching for Mr X, should he flee.
57. With Mr X potentially reaching for a firearm, Officer B believed using the dog was the only less-than-lethal tactical option available at the time. He believed his dog was an effective way to minimise the risk towards Police officers while they arrested Mr X.

58. Officer B explained the dog could be used to pull Mr X, helping to get him out of the car, which made it more appropriate than, for example, pepper spray. He says, considering the risk of Mr X having a firearm, it was safer for the dog to go into the car than officers. Officer B could then pull back on the tactical harness, to remove Mr X from the car.
59. The dog provided a layer of protection for the officers. If Mr X had managed to reach a weapon as the dog latched onto him, his natural response would most likely have been to immediately focus his attention on the dog. This would allow officers time to make critical decisions around how best to respond.
60. The CCTV footage shows the dog took hold of Mr X's leg and Mr X was removed from the car about 7 seconds after Police opened his door. Officer B believes Mr X was given "ample time" to follow the instructions of Police and get out of the car before the dog was used. He says:
- "... he knew what we were there to do was arrest him... all he had to do was put his hands up and get out and that doesn't take long... The risk for Police at that time was very high. No cover for ballistic protection, so if he had a firearm it would have been easy for him to pull it out and shoot us."*
61. Officer D agrees that Mr X had time to comply with instructions before the dog was set on him. He says they could not have waited any longer in case Mr X managed to reach a firearm.
62. The officers believed that Mr X likely had a weapon on him. He had one arm tucked under his body which he was refusing to bring it out. It was reasonable for Officer B to keep the dog latched onto Mr X's leg until he was confident officers had both of his hands under control.
63. We accept that the use of the dog was a reasonable tactic to use. Mr X was resisting arrest. Given his recent history and actions at the time, it was reasonable for Officer B to believe he may be reaching for a weapon to use against officers. His actions were justified under section 39 of the Crimes Act 2961.

FINDING ON ISSUE 1

Officer B was justified in using the dog to assist in the arrest of Mr X.



Judge Colin Doherty

Chair

Independent Police Conduct Authority

17 August 2021

IPCA: 20-4268

Appendix – Laws and Policies

POLICIES

'Use of force' policy

64. The Police's 'Use of Force' policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, tasers and firearms.
65. Police policy provides a Tactical Options Framework (TOF) 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 assessment as the TENR (Threat, Exposure, Necessity and Response).
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 officer's Perceived Cumulative Assessment (PCA).
67. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are; cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
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.

'Use of force with Police dogs' policy

69. Dog handlers are personally responsible for the amount of force used by the dog. The law sees little difference between dogs, when used as a means of force, and other methods and implement used by Police, such as firearms, Taser and batons. Dog handlers must believe that the use of force is justified, and that the force used is as minimal as possible in the circumstances.

70. A Police dog should only be used if the offender cannot be apprehended by other means. Dog handlers must consider all tactical options when considering the use of force. Just because the handler has a Police dog with them, does not mean they should use the dog as a means of force instead of a more appropriate option. According to the Tactical Options Framework, Police dogs can be used if the suspect is considered Assaultive.
71. Dog handlers must usually issue a warning before instructing a dog to bite a person, however, policy notes that a challenge may not be given in AOS or other critical situations *“if it is not practicable or would be dangerous to do so.”*
72. Police dog handlers must have control of their dog at all times during deployment. Control means that the dog is under immediate physical or voice control and the dog responds to that control. The extent of the force used by the dog must be kept to the minimum possible in the circumstances.
73. Policy dictates that all people bitten by Police dogs are to receive appropriate medical treatment.

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. 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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