



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Force used to arrest a man in Matapu, Taranaki

1. On 18 February 2022, Police were trying to find and arrest Mr X. The Courts had issued a warrant for Mr X's arrest in March 2021, and he had avoided Police for 11 months. Due to Mr X's criminal history and information Police had, Police considered Mr X posed a high risk and regarded his arrest as a priority.
2. At about 2.30pm, fifteen officers went to a rural property in Matapu, South Taranaki, to locate and arrest Mr X. Mr X was outside and saw Police approaching in their vehicles. He immediately jumped into a black hatchback car and sped off.
3. An officer fired his Bushmaster M4 (rifle) at the car, aiming at (but missing) the tyres. Mr X's vehicle then struck two Police vehicles coming up the drive, causing it to stop.
4. Jumping from the car, Mr X ran across nearby farm paddocks before being apprehended by Police on the lawn of the neighbouring property, some 350 metres away. During the arrest he was tasered and physically restrained due to his resistance.
5. Mr X later complained to the Authority that he had been shot at, beaten, and tasered without justification. Police investigated and found nothing of concern. We also carried out an investigation.

The Authority's Findings

Issue 1: Was the arrest of Mr X adequately planned and executed?

The arrest of Mr X was adequately planned and executed.

Issue 2: Was Officer B justified in shooting at Mr X's vehicle?

Officer B was not justified in firing at Mr X's vehicle to prevent his escape under section 40, or to defend himself or others under section 48.

Issue 3: Was Officer E justified in shooting a sponge round at Mr X?

Officer E was justified in firing a sponge round at Mr X to prevent his escape under section 40.

Issue 4: Were Officers C, E, and F justified in tasing Mr X?

Officers C, E, and F were justified in using Tasers against Mr X to prevent his escape under section 40.

Issue 5: Did Police use excessive force in the apprehension of Mr X?

Police did not use excessive force during Mr X's arrest.

Analysis of the Issues

Why was Mr X wanted by Police?

6. Between September 2019 and May 2020, Mr X was sought by Police for breaching his parole conditions. The information Police had regarding his behaviour and activities had placed him in the "Top 5" wanted offenders nationally.¹
7. On 21 May 2020, Mr X was found in Taranaki. It took seven officers and the use of Tasers and pepper spray to restrain him. Later, Mr X tried to jump out of a moving patrol car.²
8. Mr X was then released from prison under strict court-imposed bail conditions, including electronic monitoring. At some stage, Mr X stopped complying with his conditions and removed his electronic bracelet.
9. On 15 March 2021, the Court issued a warrant to arrest Mr X. A month later, on 15 April 2021, the Court issued a second warrant to arrest Mr X as he was breaching his release conditions. Since then, Police had been searching for Mr X.
10. Mr X is a gang associate and has an extensive list of convictions, including for violent and drug-related offending. He has a powerful and muscular build. He has a history of carrying weapons, driving dangerously to escape from Police, and attacking Police.
11. By February 2022, for the second time in two years, Police regarded Mr X as one of its "Top 5" priority offenders nationally and were seeking to apprehend him.

ISSUE 1: WAS THE ARREST OF MR X ADEQUATELY PLANNED AND EXECUTED?

¹ Police use a matrix system called the Top 5 Offender prioritisation model. This uses several factors to prioritise individuals who are likely to pose risk to police and the public. A prioritisation score, together with local intelligence and knowledge, assists decision makers to determine a response or preventive action.

² Oleoresin capsicum spray.

What was the plan to arrest Mr X?

12. In mid-February 2022, Police received information about Mr X, including that he may be in possession of a firearm and began an operation which aimed to return him to custody. This involved several specialist officers: Armed Offender Squad (AOS) members, Police dog handlers, and the Police helicopter from Auckland. The officer in charge of the specialist officers was Officer A.
13. On 18 February 2022, Police believed Mr X was at a rural house in Matapu, South Taranaki. At about 2.30pm, officers drove to the property in convoy with a plan to surround the farm dwelling, so that Mr X could be contained and safely taken into custody.
14. Police knew Mr X had access to a black Volkswagen hatchback, and this vehicle was seen parked at the address. The address had a part-tarseal and shingle driveway that ran to the house, 90 metres from the road, and then to a milking shed, 200 metres further on.
15. The first Police vehicle up the driveway was a marked dog van, with two officers. Their objective was to drive past the house and cover the rear. They drove quickly to that location and stopped, the officers getting out.
16. The second vehicle was an unmarked Police station wagon with two officers, Officers B and C, who were armed AOS members. Officer C was driving and came to a stop next to a gap in the driveway that entered the property. Both officers quickly got out of the vehicle as their role was to cover the driveway, on the right side of the property.
17. Four officers, all AOS members, were then in an unmarked station wagon behind the second vehicle. They were slightly delayed due to road conditions. Their role was to be close-by if needed for urgent action, such as entry to the house, or stopping Mr X from getting into a vehicle.
18. The last Police vehicle entering the driveway was a marked patrol car with two AOS officers who were the arrest team.
19. Several AOS officers parked on the road and began moving across the field. Their role was to cover the left and roadside of the property.
20. The Police helicopter filmed the approach by officers and what happened.

What happened as Police moved into position?

21. The first two Police vehicles (the dog van, and first station wagon) drove quickly up the driveway and stopped. Officer B said:

So, I've got out here, challenged him here, this is a wooden fence actually, I'll call it that, yeah and so he's got back into the car, spun the wheels, leaving marks, I can't remember if he had gone over the grass or not and then straight out that way.

22. We asked Officer B what language he used to challenge Mr X and he explained:
- “Stop armed police, you’re under arrest.” Probably swore: “Don’t f..king move, you’re under arrest,” and he just completely ignored me.*
23. Officer B aimed his rifle at Mr X’s vehicle and fired three shots at the passenger side tyres. No shots hit a tyre.
24. Mr X drove down the driveway, approaching him was the third Police vehicle containing four officers. This vehicle pulled to the left, narrowly avoiding a head-on collision, although Mr X’s car struck the right rear of the Police vehicle, damaging Mr X’s hatchback.
25. Mr X’s damaged hatchback continued but was slowing rapidly. The fourth Police vehicle braked hard but was struck head on by the front of Mr X’s car, activating that vehicle’s airbags.
26. Mr X immediately exited the hatchback and jumped a nearby wooden fence, running across the open paddock.
27. Officers approached on foot from the roadside and tried to intercept Mr X, who was sprinting with his arms above his head yelling: *“don’t shoot, don’t shoot!”* Officers also exited their vehicles and tried running after Mr X. Many officers shouted commands for Mr X to stop and that he was under arrest.
28. No officer came close enough to Mr X to stop him and while officers aimed firearms at Mr X, he was not fired at. Mr X continued running quickly across the first paddock and then across a wire fence into the next. The Police helicopter moved closer as officers re-grouped in their vehicles and on foot to try and catch up to Mr X.
29. When Mr X got onto the second paddock, he approached a Boxthorn hedge and looked for a way through. Officers were nearby. Mr X then tried to push himself through the hedge but was unsuccessful, he then ran towards the neighbouring farm.
30. The neighbouring farm was about 350 metres away from the first property and as Mr X got closer, several officers approached him and called out for him to stop; including Officer D, a Police dog handler who had approached from the road. With him was Officer E, an AOS member armed with a 40mm sponge round weapon.³
31. Mr X did not cooperate and kept running from the officers, his arms above his head. Officer D released his Police dog onto Mr X, and it ran up to and around Mr X but did not bite or engage. Mr X continued running.

³ A XM1006 high density sponge round is fired from a 40-millimetre gas launcher with a range of about 30 metres. The weapon is designed to be less than lethal.

32. Officer E called upon Mr X to stop and when he did not, Officer E fired his sponge round weapon at Mr X's legs. The projectile either missed, or only achieved a glancing strike. Mr X did not stop and dived through an electric fence next to the neighbour's house. The officers had to find a way around the fence.
33. Helicopter video footage shows Mr X running to the neighbour's utility vehicle, which was parked on the driveway. He opened the door and looked in. Another officer, Officer C, had caught up and called out to Mr X to stop. When he did not comply, Officer C fired his Taser, but this did not stop Mr X, who ran onto the lawn of the neighbouring property.
34. Officer C followed and re-fired his Taser at Mr X's back as he ran away, achieving sufficient contact for Mr X to fall to the lawn; but he quickly tried to get up and swept the Taser prongs from himself.
35. Officer C then used his Taser to contact-stun Mr X, as he tried to escape. Officer D approached with his Police dog and tried to subdue Mr X who was resisting aggressively. Other officers, one being Officer F, joined to assist.⁴
36. After a short struggle, Mr X was overpowered, and handcuffs were applied.
37. Mr X suffered cuts to his head, chest, and back and later received medical attention arranged by Police.
38. There are varying accounts of how Mr X received these injuries.

Analysis

39. Officer A told us that Police initially did not know which address Mr X was at and that they had limited preparation time regarding the property where he was found.
40. Because of the limited preparation time, they adopted a standard approach procedure; to rapidly cordon, contain, and control the property.
41. When the officers moved into position, they were not expecting Mr X to be standing outside in the yard, next to his hatchback. When we spoke to Mr X, he explained that he was airing out the car, as it was a hot summer day.
42. Because Mr X was able to enter his hatchback quickly and drive away, Police did not have enough time to deploy road spikes. Road spikes were the main tool that Police planned to use to disable any vehicle Mr X used to flee.

⁴ "Contact stun" is the term used to describe a Taser being applied directly on a person, without the use of the projectile probes.

43. We note that if Police did get into position around the property, Mr X's hatchback was still close to the house. Mr X would have been able to access the hatchback, and considering his history, this was likely. Police told us that in their plan:
- The third Police car was about to block the gate exit of the property.
 - The role of the arrest team (in the third car) was to enter the house if required, or to detain Mr X if he approached his hatchback.
 - Both the third and fourth cars had road spikes, which would have been deployed.
 - Police had the helicopter nearby to track Mr X if required.
44. Although Mr X was able to flee about 350 metres to the neighbouring property, we are satisfied that Police adequately planned and executed their tactics. It was unfortunate for Police that:
- They did not have time to form a detailed plan, specific to the address.
 - One of the Police cars was delayed due to poor road conditions.
 - Upon their arrival, Mr X happened to be outside (beside his hatchback).
 - Police were unable to deploy road spikes, due to the speed at which Mr X entered his vehicle and fled.
 - The Police dog failed to engage Mr X.
45. Police de-briefed the operation and reflected that they could have better covered-off the left-side of the initial property, the side shared with the neighbouring farm.

FINDING ON ISSUE 1

The arrest of Mr X was adequately planned and executed.

ISSUE 2: WAS OFFICER B JUSTIFIED IN SHOOTING AT MR X'S VEHICLE?

What happened?

46. As described in paragraph [23], Officer B fired three shots from his M4 rifle at the passenger side tyres of Mr X's hatchback.
47. The shots were fired just as the hatchback passed Officer B, who was standing to the left of it. Police did not examine the vehicle forensically but found that none of the three shots had hit a tyre. One bullet hit the front passenger door, a second hit a spoke of the rear passenger wheel, and a third glanced the bottom of the vehicle and probably hit the ground.

48. We spoke to Officer B who told us:

- He feared death or grievous bodily harm for his fellow officers in the driveway, believing as he did, that Mr X may have been in possession of a firearm.
- He wanted to slow down Mr X's hatchback in the least violent way.
- Mr X's previous actions, and information Officer B knew about him, formed part of his risk assessment that Mr X was dangerous, and highly motivated to escape.
- He knew that shooting the tyres of a moving vehicle was a "*low percentage play*" but felt he had no other options to slow down the hatchback.

49. We spoke to Mr X who claimed that upon Police arrival, he was immediately fired at, and bullets were "*whizzing past him*". He also claimed that further shots were fired at him as he fled across the paddock. CCTV footage shows this was not the case. However, we accept Mr X may have believed it at the time due to the high-stress situation.

What are the possible justifications for Officer B's use of force in these circumstances?

50. The following provisions of the Crimes Act 1961 provide legal justification for using force in certain circumstances:

- a) Section 39 empowers 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.
- b) Section 40 empowers Police to use "*such force as may be necessary*" to prevent the escape of someone who takes to flight to avoid arrest.
- c) Section 48 provides that any person is justified in using "*reasonable*" force in defence of themselves or another.

51. Sections 40 and 48 are the relevant provisions here.

Was Officer B legally justified in using force against Mr X to prevent his escape under section 40?

52. Section 40 empowers Police to use "*such force as may be necessary*" to prevent the escape of someone who takes to flight to avoid arrest. "*Necessary*" force in this context is force that is proportionate to:

- The seriousness of the offence for which the person is to be apprehended and the public interest in detaining them to bring them to justice.
- The effect of an escape on the likelihood of the person being brought to justice (such as loss of evidence or difficulties in identifying the person and/or apprehending them later).
- The likelihood and severity of the risk they pose of further offending if escape is not prevented.

53. Under section 40, the Authority must determine:
- a) whether the officer believed on reasonable grounds that the person was fleeing to avoid or escape arrest; and
 - b) if so, whether the officer's use of force to prevent the escape was reasonable and proportionate.

Did the officer believe on reasonable grounds that Mr X was fleeing to avoid or escape arrest?

54. It is accepted by all parties, including Mr X, that he was attempting to escape arrest. Any reasonable person who saw Mr X get into his hatchback and drive off at speed, upon Police arrival, would have believed he was trying to escape arrest.

Was Officer B's use of force to prevent Mr X's escape reasonable and proportionate?

55. This question requires us to consider the following factors:
- c) the seriousness of the offence which the officer reasonably suspected Mr X to have committed; and
 - d) the consequences that the officer reasonably believed to be likely to occur if he did not prevent Mr X from escaping, including:
 - (i) the effect of an escape on the likelihood of Mr X being brought to justice (for example, loss of evidence, or difficulties in identifying and/or catching Mr X later); and
 - (ii) the nature and degree of risk of further offending that Mr X posed.

The seriousness of the suspected offences

56. Mr X was facing charges before the Courts and had been under direction of the Parole Board who imposed conditions upon his exit of prison, including electronic monitoring.
57. Mr X has an extensive list of previous convictions for offending involving violence and drug use.
58. Police had information that Mr X had recent access to firearms and knew of his history of extreme motivation to escape arrest.
59. We consider that the suspected offences were serious in nature.

The consequences of escape

60. When we spoke to Officer B, he explained that because Mr X was so motivated to escape, he thought that Mr X would pose a high risk to the safety of any persons he came across (whether they were Police, or members of the public).

61. Officer B also noted that Mr X was known for failing to stop when signalled by Police and was a dangerous driver. He considered that Mr X would have posed a high safety risk while fleeing in his car.
62. We consider that Mr X may have been a risk to the safety of members of the public, or other Police officers, if he was to continue his escape. However, the consequences were, by nature, speculative.

Assessment

63. We accept that Officer B, in attempting to shoot Mr X's tyres, was attempting to slow down his escape. We also accept that if his escape was not prevented, Mr X may have been a further risk to the safety of the public, or Police.
64. When the car rapidly approached and passed Officer B, we accept that Officer B had no other way to attempt to slow it down.
65. However, we do not accept that firing three shots at Mr X's tyres was a reasonable or proportionate response, because:
 - Police policy prohibits the use of firearms against moving vehicles unless there are exceptional circumstances. This is because it is extremely difficult to disable a vehicle by discharging a firearm at tyres, or other parts, and the small target area and margin for error imposes a high risk of bullet ricochet and/or misdirection.
 - We do not accept that the circumstances were exceptional. If Police considered the risk of Mr X fleeing in his car was high, then road spikes should have been deployed earlier.
 - There was a low probability that, even if Officer B was successful in hitting the tyre, it would have been effective in slowing Mr X's car. Indeed, it would almost certainly have made the car harder to control for Mr X, elevating the risk of harm.

Was Officer B legally justified in using force against Mr X to defend himself or another?

66. Section 48 of the Crimes Act provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
67. Under section 48, we must assess Officer A's actions on both:
 - a subjective basis (that is, what Officer A genuinely believed); and
 - an objective basis (what a "reasonable" person would have done).
68. This assessment involves three questions:
 - a) What were the circumstances as the officer believed them to be (a subjective test)?
 - b) Was the officer's use of force against Mr X for the purpose of defending himself or another (a subjective test)?

- c) Was the officer's use of force against Mr X reasonable in the circumstances as he believed them to be (an objective test)?

What did Officer B believe the circumstances to be?

69. This is outlined above in paragraph [48]. We accept Officer B genuinely believed that Mr X was attempting to escape by driving his car down the driveway, towards Police. We also accept that Officer B knew Mr X was highly motivated to escape.

Was Officer B's use of force for the purpose of defending himself or another?

70. Officer B told us that he was concerned if he did not do something to slow Mr X's car, his fellow officers, and potentially members of the public, would likely have been in danger, either by being struck by the car, or assaulted by Mr X.

71. We accept that Officer B believed his use of force was for the purpose of defending others.

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

72. We do not consider that the level of force used (firing three rounds at a tyre), was reasonable or proportionate to the perceived level of threat posed by Mr X because:

- Shooting at the tyre, even if successful, would not have stopped, or significantly slowed the vehicle. It may have increased the risk as Mr X would have had less control over the hatchback.
- There was a high risk of a stray bullet, or bullet fragment, ricocheting off the car or the ground.
- It was contrary to Police policy as the circumstances were not exceptional.
- Mr X had not been seen with any weapon or firearm; however, we acknowledge that Police believed he may have been in possession of a firearm.

FINDING ON ISSUE 2

Officer B was not justified in firing at Mr X's vehicle to prevent his escape under section 40, or to defend himself or others under section 48.

ISSUE 3: WAS OFFICER E JUSTIFIED IN SHOOTING A SPONGE ROUND AT MR X?

What happened?

73. As discussed above at paragraphs [30] to [32], Officer E, an AOS member, fired a 40mm sponge round at Mr X's legs while he was fleeing across the paddock towards the neighbouring farm. This was after Officer D's police dog failed to properly engage with Mr X.

74. We spoke to Officer E who told us:

- He had placed Mr X at assaultive in his Perceived Cumulative Assessment (PCA).⁵
- He challenged Mr X by calling: “*stop armed Police!*” (or words to that effect).
- Mr X, in response, had his hands in the air while he continued to run, yelling: “*don’t shoot! don’t shoot!*”
- The dog handler commanded the dog to engage Mr X, but it failed to do this and only ran next to Mr X.
- He decided to fire his 40mm sponge round at Mr X’s legs, after seeing that he was about to dive through an electric fence towards the neighbouring property, and he was concerned for the occupants.
- He aimed for Mr X’s legs, as per Police policy on the use of the 40mm sponge round, but it either missed the target, or had no effect.

Was Officer E legally justified using force against Mr X to prevent his escape under section 40?

75. Paragraphs [50] and [51] explain the requirements of a use of force under s 40 and are not repeated here.

Did the officer believe on reasonable grounds that Mr X was fleeing to avoid or escape arrest?

76. A reasonable person in Officer E’s position, observing Mr X’s prolonged run across two paddocks and away from Police, would have thought Mr X was fleeing to escape arrest.

Was the officer’s use of force to prevent Mr X’s escape reasonable and proportionate?

77. This question requires us to consider the following factors:

- the seriousness of the offence which the officer reasonably suspected Mr X to have committed; and
- the consequences that the officer reasonably believed to be likely to occur if he did not prevent Mr X from escaping, including:
 - (i) the effect of an escape on the likelihood of Mr X being brought to justice (for example, loss of evidence or difficulties in identifying and/or catching Mr X later); and
 - (ii) the nature and degree of risk of further offending that Mr X posed.

78. As discussed in paragraphs [56] to [59], the suspected offences were serious in nature.

⁵ PCA is a tool used by officers to gauge the level of risk being presented by an individual, ranging from cooperative, passive resistance, active resistance, assaultive, GBH or death.

The consequences of escape

79. Officer E was concerned about the risk Mr X posed to Police, and members of the public; particularly, the neighbours who appeared to be home (as cars were in the driveway) when Mr X approached their property.
80. Officer E did not want Mr X to come across any members of the public as he considered Mr X to be a violent offender.
81. Officer E further explained that Mr X was placed within the “Top 5” offenders nationally, which spoke to the risk Mr X posed when at large.

Assessment

82. We accept that Mr X posed a safety risk for members of the public, if he was able to continue fleeing, especially if he managed to get access to another vehicle.
83. Officer E was about 30 metres away from Mr X at the time of firing, out of the effective ranges of both his OC spray and Taser. We are satisfied that Officer E had no other less violent options available to him at the time.
84. We accept that Officer E’s firing of the 40mm sponge round was both reasonable and proportionate given the safety risks associated with Mr X escaping arrest.

FINDING ON ISSUE 3

Officer E was justified in firing a sponge round at Mr X to prevent his escape under section 40.

ISSUE 4: WERE OFFICERS C, E, AND F JUSTIFIED IN TASERING MR X?

85. Mr X was Tasered multiple times, by various officers. In short:
 - Officer C fired his Taser probes twice; once when Mr X was next to the neighbour’s car, and once at Mr X’s back (in the neighbour’s yard).
 - Officer E contact-stunned Mr X while he was on the ground on his thigh, for a total activation time of 11 seconds.
 - Officer F contact-stunned Mr X’s calf while he was on the ground, using Officer C’s Taser in order to free up Officer C’s hands.
86. It was consistent in all officers’ accounts that Mr X was fighting, being assaultive, and resisting them, until he was successfully handcuffed.
87. When Officer F arrived and took possession of Officer C’s Taser, Mr X was still resisting aggressively, so Officer F applied the Taser in a contact-stun manner, saying:

“He’s (Mr X) being assaultive, it’s an assaultive range of what was going on and it was the least, it was least likely to injure anyone by doing a contact stun than anything else. So, I

was trying to go for the minimal force we could possibly use to get him arrested. And so, I therefore applied contact stun to him and again he, it was just, it was like nothing was happening. And when we get to the point where (Officer C) sort of got hold of him that's when I stopped."

88. The Taser camera footage supports the officers' accounts that Mr X was trying to get away and was not complying with directions from them. The footage is shaky, close-up, fast-moving, and is often unclear; but it shows Mr X resisting arrest. At the end of the footage, injuries can be seen above his right eye. It is unclear how these have been sustained.

Was Officer C justified in Tasing Mr X, while his back was turned to the officer?

89. We will consider this issue separately before assessing the officers' use of Tasers generally under section 40 of the Crimes Act 1961; as using a Taser on somebody who is fleeing may be contrary to Police Policy.
90. Policy requires officers to consider (as part of their assessment) the risk of someone falling in an uncontrolled manner if they are tasered, while fleeing. A Taser is only to be used when someone is at least *assaultive*; it is not often the case that someone is considered assaultive while running away.
91. However, Mr X was described by officers involved as assaultive. In the circumstances, we consider it was appropriate for Officer C to have fired his Taser after Mr X had driven his car into two Police cars, had potential access to firearms, was aggressively resisting Police, and was near members of the public.

Were Officers C, E, and F legally justified in tasing Mr X to prevent his escape under section 40?

Did the officers believe on reasonable grounds that Mr X was fleeing to avoid or escape arrest?

92. As discussed above, all officers had reasonable grounds to believe Mr X was fleeing to escape arrest.

Was the officer's use of force to prevent Mr X's escape reasonable and proportionate?

93. As discussed in paragraphs [56] to [59], the suspected offences were serious in nature.

The consequences of escape

94. From the first discharge of Officer C's Taser (with Mr X being next to the neighbour's car), to the final contact stuns by Officers E and F, Mr X was inside the neighbour's property.
95. All officers interviewed were concerned about how close Mr X had gotten to the neighbour's house and considered that if Mr X encountered them, they may be in harm's way. This is supported by the information Police knew about Mr X; specifically, that he had a long history of evading Police, being assaultive, and his use of weapons.

Assessment

96. In a vacuum, multiple Taser discharges by three officers may appear to be an unreasonable amount of force; however, the force was used to subdue Mr X, whom multiple officers described as being the most resistant person they had ever encountered.
97. The CCTV, Taser, and helicopter footage all confirm the officers' accounts that Mr X actively resisted, and was assaultive, right until the moment he was handcuffed.
98. In the circumstances of this case, we conclude that the use of Tasers by Officers C, E, and F were reasonable and proportionate.

FINDING ON ISSUE 4

Officers C, E, and F were justified in using Tasers against Mr X to prevent his escape under section 40.

ISSUE 5: DID POLICE USE EXCESSIVE FORCE IN THE APPREHENSION OF MR X?

99. Mr X complained that Police used excessive force when arresting him, including:
 - Officer B immediately firing at him when exiting the vehicle.
 - Being clubbed with a Taser.
 - Being kicked and stomped on his head, face, throat, and back.
100. As discussed in paragraph [49], we do not consider that Mr X was shot at by Officer B, or any other officers, aside from when his car was fired at. This is supported by the CCTV and helicopter footage, as well as the officers' accounts.

Was Mr X clubbed with a Taser?

101. The Taser camera footage makes it difficult to see the whole interaction in detail, because of how close the Taser cameras are to Mr X, the unsteadiness of the cameras, and the camera angles.
102. The helicopter footage did not reveal a Taser being used to club Mr X, although we note that the helicopter moved away during the arrest process.
103. We have conflicting accounts from Mr X and Police so cannot conclude, with certainty, if Mr X was clubbed with a Taser, or not.
104. We accept that Mr X may genuinely believe he was clubbed with a Taser (similar to his belief that he was fired at). However, we do not think, this likely happened.
105. In the end, we are unable to determine if this happened or not, however we prefer the accounts of the officers, as they are overall consistent with the footage on other issues.

Manual force used on Mr X when arrested

106. Once Officer C had tasered Mr X, and forced him onto the grass lawn, Police used force to control and restrain him during his arrest.

107. Officer C told us:

“He (Mr X) was kicking, swinging, trying to get back to his feet. Trying to break the Taser wires. I was by myself. I was in full AOS kit with a rifle, so I continuously pushed him to the ground, contact stunned him to the ground while he continuously tried to fight me, tried to attack me, tried to get to his feet. There was no way I could let him get to his feet and he was at an assaultive level. If he’d got to his feet, I had no doubt he would’ve tried to get control of my weapon....”

108. Officer C was then assisted by Officer D (the dog handler), who told us:

“... now he’s (Mr X) up again, so that Taser hasn’t had the required effect to carry out an arrest with him. So now he’s trying to sweep the wires and also knock out the AOS guys legs.”

109. Mr X was not complying with instructions, and the Taser was not stopping his resistance. Officer D says he tried to defend Officer C and commanded his dog to bite Mr X.

110. Mr X grabbed the dog by its harness and Officer D yelled at Mr X to let the dog go. When he did not comply, Officer D struck down to Mr X’s head (in a chop-like punch); this forced him to let the dog go. Officer B explains:

“... all the while this is happening, we’re, myself and the AOS officer are yelling at him like ‘you’re under arrest, get on the ground, put your hands out.’ You know we’re getting him to try and comply with us, but his actions are saying otherwise. He’s still trying to move away from us.”

111. With Mr X still resisting, Officer D tried to use the Police dog again to engage Mr X’s arm, so that he could be controlled and handcuffed. Mr X again grabbed the dog by its neck, or harness, and Officer D again punched downwards (to Mr X’s head) to break his hold on the dog.

112. The force was proportionate, reasonable, and justified under section 40 of the Crimes Act. Mr X’s extreme intent to escape increased the level of threat, justifying reasonable force to prevent his escape and potentially harming officers, and members of the public.

113. Officers commented that Mr X did not stop fighting and resisting until he was handcuffed. This is corroborated, by what can be seen and heard on the Taser and helicopter video footage.

114. In our view, Mr X was prepared to take any and every opportunity to escape from Police, even at the cost of injuring himself, or others, in the process. This is supported by his dangerous driving, his attempt to squeeze through the Boxthorn hedge, and his dive through the electric fence. It was necessary for Police to use the force they did to control him and keep him in their

custody. The force Police used was proportionate and subsequently justified under section 40 of the Crimes Act 1961.

FINDING ON ISSUE 5

Police did not use excessive force during Mr X's arrest.

Subsequent Police Action

115. Police undertook their own assessment and found that no officers used excessive force and that Officer B's attempt to shoot the tyres of Mr X's vehicle, was inline Police policy because the circumstances were exceptional.
116. As outlined above, we disagree with the conclusion reached by Police in relation to Officer B's actions, in discharging his weapon at the car. We consider the circumstances did not warrant this action.
117. In 2018, Police completed a review of shooting at moving vehicles, and from that created a lesson learnt document which was circulated internally. Following this 2022 event at Taranaki, the 2018 document was re-circulated, which outlines the following:
 - It is recognised around the world that shooting at moving vehicles is a highly ineffective method of stopping it.
 - In 1972, following a high-profile death of a child, the New York Police Department (NYPD) imposed a ban on shooting at moving vehicles, which is still in force.
 - In international cases where officers have fired at moving vehicles, this may technically be "*lawful*," although if officers had applied a robust threat assessment (like TENR), the situation would have been avoided. This is known as "*lawful but awful*".
 - While a "*defence of self or another*" under section 48 may (on occasion) be relied upon, Police judgment and decision making should consider that "*lawful but awful*" is not consistent with "*Safer communities together*", "*Be safe, feel safe*", or "*What we do keeps people safe*".
118. Taranaki AOS used the 2018 lesson learnt document, when they conducted refresher training regarding the policy as it relates to firing at moving vehicles.
119. The Authority completed our investigation in March 2023, although the publishing of this report was delayed as we engaged with Police regarding a policy re-assessment. This resulted in us making a recommendation to Police.

Recommendations

120. We recommended that Police:

- Better differentiate between the situations of shooting at, and shooting from a moving vehicle, as these are quite different scenarios and warrant separate and greater clarity.
- Better align policy with Police's Lessons Learnt document – Shooting at moving vehicles.
- Provide scenario-based clarification of the meaning of "*exceptional circumstances*" in this context.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

22 August 2023

IPCA: 21-6824

Appendix – Laws and Policies

Law on the use of force

121. 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”*.
122. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest”*, unless the escape can be prevented *“by reasonable means in a less violent manner”*.
123. Section 48 of the Crimes Act states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use”*.
124. Section 62 of the Act says anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police policy on the use of force

125. 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 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.
126. Police policy provides a framework for officers to assess, reassess, manage, and respond to use of force situations, and ensure 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.
127. 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:
 - 1) the incident type, location, and time;
 - 2) the officer and subject’s abilities;
 - 3) the subject’s emotional state;
 - 4) the influence of drugs and alcohol and the presence or proximity of weapons;
 - 5) similar previous experiences with the subject; and
 - 6) environmental conditions.

Police refer to this assessment as an officer’s Perceived Cumulative Assessment (PCA).

128. A key part of an officer's decision about 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:
- 7) cooperative;
 - 8) passively resisting (refuses verbally or with physical inactivity);
 - 9) actively resisting (pulls, pushes or runs away);
 - 10) assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action);
 - 11) 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.

129. 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.

Police Firearms

Police policy on the use of firearms

130. The Crimes Act provisions are mirrored in Police General Instruction F061 (Fire Orders) in the 'Police Firearms' chapter of the Police Manual. F061 instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act, and also sets out the circumstances in which the use of lethal force is justified.
131. General Instruction F061 provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm, and if they cannot reasonably protect themselves or in a less violent manner. An offender is not to be shot until all the following conditions have been satisfied:
- they have first been asked to surrender (unless it is impractical and unsafe to ask them)";
 - "it is clear that cannot be disarmed or arrested without first being shot"; and
 - "further delay in apprehending the offender would be dangerous or impractical."

Police policy on shooting at moving vehicles (current policy)

132. Shots may only be fired at moving vehicle in exceptional circumstances. It is extremely difficult to disable a vehicle by discharging a firearm at tyres or other parts. The small target area and the margin for error impose a high probability of misdirection or ricochet increasing the risk of causing death, injury or damage.

Use of Taser

133. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive and cannot be used on a person who uses passive resistance in relation to Police.

134. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the deployment of a Taser, unless it is impractical or unsafe to do so.

Use of the sponge round weapon

135. The New Zealand Police's mid-range less lethal tactical option is a 40mm sponge round projectile deployed by a 40mm launcher, the eXact iMPact XM1006. It is one of several tactical options under the Tactical Options Framework and can only be applied in situations within and beyond the assaultive range, as outlined in the framework.

136. The sponge round weapon is only to be used by qualified Armed Offenders Squad (AOS) and the Special Tactics Group (STG) members.

137. Sponge rounds are designed to be used from between 1.5m and 35m and the Police optimal distance for deployment is between 5 to 25 metres. This is beyond the range of a Taser, which is out to 4.5m with OC Spray and baton being used at closer ranges.

138. Police may use a sponge round weapon to:

- defend yourself or others if you fear physical injury to yourself or others, and you cannot reasonably protect yourself or others less forcefully.
- arrest an offender if you believe on reasonable grounds that the offender poses a threat of physical injury, and the arrest cannot be effected less forcefully.
- prevent the escape of an offender if you believe on reasonable grounds that the offender poses a threat of physical injury to any person, and the escape cannot be prevented less forcefully.
- resolve an incident where a person is acting in a manner likely to physically injure themselves and the incident cannot be resolved less forcefully.
- deter attacking animals to defend yourself or others.

139. The sponge round weapon must not be deployed until:

- The subject has been asked to surrender unless it is impractical and unsafe to do so.
- It is clear they cannot be arrested without first deploying the weapon.
- Further delay in apprehending the subject would be dangerous or impractical.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

THIS REPORT

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



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