

obstructed Police in the execution of their duties. Consequently, we will not deal with this issue separately.

6. Mr X was given a verbal warning for assaulting a Police officer and was then released.
7. Following his release, Mr X went to the Gisborne Hospital where he was diagnosed with a fracture to his right knee, requiring surgery.

The Authority's Findings

Issue 1: Why did Police arrest Mr X?

Mr X was lawfully arrested for assaulting a Police officer.

Issue 2: Was the force used in arresting Mr X justified?

Officer B was justified in taking Mr X to the ground in self-defence.

Officer C was justified in placing her foot on Mr X's leg to overcome his resistance to the arrest.

Issue 3: Did Police appropriately deal with Mr X's injury?

Police appropriately dealt with Mr X's injury.

Analysis of the Issues

ISSUE 1: WHY DID POLICE ARREST MR X?

What do Mr X and his family say about his arrest?

8. Mr X says Officer A told him that he needed to leave the property, or he would be arrested for trespassing. He decided to make his way to his family home nearby, and says he planned to return to the party once Police had left. Mr V also heard an officer say to Mr X that he had to leave because he was being trespassed.
9. When he reached the end of the driveway, Mr X was stopped by Officer B, who asked where he was going. He told Officer B that he was on his way to his family home nearby. Officer B did not want to let him leave and insisted on taking him to his address, further away.
10. Mr X says he refused, and Officer B told him he was detained. Mr X challenged the lawfulness of his detention and Officer B tried to grab his shoulders. Mr X put his hands out in front of him (with his palms facing Officer B), and moved them in a circular motion, outwards. Mr X denies that he grabbed Officer B's body armour. Mr X says, Officer B then yelled: "*Assault on Police officer!*" and threw him onto the ground.

11. Ms Z told us that that she saw Police *“hauling”* Mr X out of the house, and down the driveway to the patrol car. She asked Officer A what was happening, and he told her: *“He’s getting arrested. He’s going back to the Gisborne Police Station. He’s getting arrested, and he’s trespassing.”*

What do the Police officers say about Mr X’s arrest?

12. Officer A says he found Mr X and Mr Y inside a room, both men were uninjured. He spoke with Mr X about what had happened, and Officer B spoke with Mr Y. Officer B says Mr Y was intoxicated and only said: *“There was no fight, no fight, no fight, officer.”* All the officers who attended say Mr X was also intoxicated. Officer A asked Mr X about the altercation and he only said: *“No, nothing’s happening, nothing’s happening, everything is fine.”* According to Officer A, Mr X became annoyed and abusive when he was asked further questions about the fight.
13. Officers A, B, C, D, E, and F say it was difficult to find out what had happened; notwithstanding their enquiries with other party goers, nobody wanted to tell Police what had happened during the altercation.
14. Ms W identified herself as the lawful occupier of the property. She told Officer A that Mr X was visiting, and she wanted him to leave the property. Ms W did not want Mr X to be trespassed, she only wanted him to go home to sober up.
15. Officer A suggested Police take Mr X home. Mr X did not want to leave initially, but after some discussion, agreed. Officer A denies that he told Mr X that he would be arrested for trespassing if he did not leave. The other officers present say they did not hear Officer A say anything about trespassing to Mr X.
16. All of the officers say that Mr X was not *“hauled”* out of the house or down the driveway but walked on his own. He was accompanied by Officers B, C, and D. When they got to the end of the driveway, Mr X started walking past the patrol car. Officer B stopped him and asked: *“(Mr X) I thought we were going to give you a ride back to your house?”* Officer B denies he told Mr X that he was being detained. Officers C and D also say Mr X was not told he was detained at this point.
17. Officer B says Mr X turned around and suddenly grabbed him by his body armour, pushing him against the patrol car. Officer D told us: *“Something in (Mr X) just switched and he grabbed (Officer B) by the vest, on the front, by the armpits. (Mr X) then pushed (Officer B) up against the patrol car.”* On seeing this, Officer D took out her Taser and switched it on. Mr X was taken to the ground. The Taser camera activated and recorded footage of Mr X on the ground.
18. Officer B says he arrested Mr X for assaulting him.²

² Assault is the intentional application of direct, or indirect force to the person of another.

Which account do we prefer?

19. There are inconsistencies in the accounts of Mr X and Ms Z; with Mr X saying that Officer A told him he would be arrested for trespassing if he did not leave; and Ms Z saying he was “hailed” to the patrol car and was already being arrested for trespassing.
20. The accounts of Officers A, B, C, D, E, and F are overall consistent with each other and therefore more reliable. We have no reason to believe that all the officers would be untruthful about what they saw, and we prefer their evidence.

We conclude that:

21. Section 10 of the Summary Offences Act 1981,³ makes it an arrestable offence for any person to assault a Police officer in the execution of their duties. Because Mr X had grabbed and pushed Officer B against the patrol car, he assaulted him, and it was appropriate for Officer B to arrest Mr X for this.

FINDING ON ISSUE 1

Mr X was lawfully arrested for assaulting a Police officer.

ISSUE 2: WAS THE FORCE USED TO ARREST MR X JUSTIFIED?

What do Mr X and his family say about the force used on him?

22. Mr X does not recall how he got onto the ground. Ms Z and Mr V did not see if Mr X grabbed hold of the officer’s body armour. According to Ms Z, Mr X was not aggressive with Police before they took him to the ground. She saw Mr X being taken to the ground and says that he did not fall but was placed onto the ground by Officer B. Mr V, on the other hand, told us that a female officer took Mr X to the ground by pulling him backwards and tripping him with her feet.
23. Mr X says, while on the ground, he held his hands out to his sides and was not resisting the arrest. Notwithstanding this, Mr X says Police, “*roughed me up.*” Ms Z, on the other hand, told us that Mr X resisted while on the ground, because he was being unlawfully detained. Mr V says Mr X was moving around and he took out his phone and started to video record the incident.
24. When asked what he means by ‘roughed up’, Mr X explained: “*I’m not sure... they’re still slamming me up and down, and I’m still getting roughed in the road, and then my leg just breaks.*” Mr X believes he sustained the knee fracture while he was lying on his stomach and a female officer (Officer C) stood on his leg. Mr X says this was when he felt sudden pain in his knee.
25. Ms Z saw a female officer standing with both feet on Mr X’s leg, causing him to yell out in pain. Ms Z clarified that she did not see Mr X being hit with a “bat” on his knee, she meant to say “boot” in her complaint. However, Ms Z did not see an officer kick Mr X with a boot on his knee.

³ See annexure, paragraph 67.

Mr V, on the other hand, says he saw a female officer kneeling with her leg on the back of Mr X's injured leg, right behind his knee. Mr V does not recall, Mr X saying anything about his sore leg while on the ground.

26. According to Mr X, after Police had handcuffed him, they picked him up and dragged him to the patrol car. (Mr V, on the other hand, told us that Police assisted Mr X in taking him to the patrol car). Mr X says he was placed in the back of the patrol car and Police drove with him down the road, towards a nearby school. Mr X thought that: *"These fellows here are going to fucking finish me off. Now they're going to fucking break my other leg, they'll bash me right up. But they didn't."* Ms Z explained that she did not see Mr X being assaulted by an officer after he was taken away. She complained about this because Mr X told her that this had happened. When we asked Mr X, he said it did not happen.

What do the Police officers say about the force they used on Mr X?

27. As Officer B explains (at paragraph 17), Mr X was taken to the ground after he grabbed hold of his body armour and pushed him against the patrol car.
28. This was seen by Officer D, who, took out her Taser and pointed it at Mr X (who was already on the ground). Officers A and C did not see what happened as they had their backs turned to Mr X, in keeping Ms Z and others from trying to interfere with the arrest.
29. Officer C, who had her foot on Mr X's injured leg, does not recall doing this.

Which account do we prefer?

30. The following inconsistencies stand-out in the accounts of Mr X, Ms Z, and Mr V:
- Mr X says he was not resisting the arrest; whereas Ms Z says he resisted because he was unlawfully detained.
 - Ms Z saw a male officer (Officer B) taking Mr X to the ground, where Mr V says it was a female officer.
 - Ms Z and Mr X says a female officer (Officer C) was standing on his injured leg, where Mr V saw her kneeling on Mr X's leg.
 - Mr X claims that Police did not assist him to the patrol car. Mr V saw Police assisting Mr X to the patrol car.
31. The officers' accounts are again more consistent with each other, and also with the video footage we looked at. The footage specifically outlines the following (in support of the officers' accounts):
- The Taser footage does not show Mr X having his arms out to his sides. He can be seen using his hands and arms to pull away from, and push Officer B, thereby resisting the arrest.
 - Mr V's cell phone footage shows Mr X limping when he is lifted up from the ground, and Officers B and C supporting Mr X on either side, on their way to the patrol car.

32. We prefer the accounts of the officers as more reliable.

What force was used in restraining Mr X?

33. There were two instances of force that might have resulted in Mr X's knee injury. The first involves Officer B taking Mr X to the ground; the second, involves Officer C standing on Mr X's leg. We will assess both to determine if they were justified uses of force.

Was Officer B justified in taking Mr X to the ground?

34. Officer B provided different justifications for taking Mr X to the ground to arrest him. The following provisions of the Crimes Act 1961 provide legal justification for using force in certain circumstances:

- 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 a sentence, warrant, or process.
- Section 48 provides that any person is justified in using "*reasonable*" force in defence of themselves or another.

35. We consider section 48 the more relevant justification in the circumstances. This is because Mr X's actions, before he is taken to the ground, is not aimed at resisting a lawful process but amounts to an assault against Officer B. Once Mr X is placed onto the ground, he is told he is under arrest. Arguably, Mr X's subsequent actions then amounted to resistance of a lawful process (i.e., the arrest).

36. Section 48 of the Crimes Act 1961,⁴ provides that any person (including a Police officer) is legally justified in using reasonable force in defence of themselves, or another. Under section 48, we must assess Officer B's actions on both:

- a subjective basis (that is, what Officer B genuinely believed); and
- an objective basis (what a "*reasonable*" person would have done).

37. This assessment involves three questions:

- a) What were the circumstances as Officer B believed them to be (a subjective test)?
- b) Was Officer B's use of force against Mr X for the purpose of defending himself (a subjective test)?
- c) Was Officer B's use of force against Mr X reasonable in the circumstances, as he believed them to be (an objective test)?

⁴ See appendix, paragraph 69.

What did Officer B believe the circumstances to be?

38. Officer B says Mr X grabbed (with both hands) the front of his body armour. Mr X then pushed him against a patrol car behind him. According to Officer B:

He pushed me several times, although, I cannot remember the exact number of times. I do remember telling him repeatedly: 'You need to stop! You need to stop (Mr X)!' I recall that he used more intense force when he pushed the last time.

39. On the basis of this, Officer B assessed that:

- Mr X was intoxicated and had been aggressive with Police;
- Mr X was pushing him against the patrol car, and was not stopping when told to;
- the intensity of Mr X's pushing increased; and
- by pushing him, Mr X was already being 'assaultive'.⁵

40. Officer B says Mr X's violence was escalating and he feared that he could next punch, kick, knee, elbow, spit, or throw him onto the ground. Officer B explains he wanted to prevent any of these from happening. To this end, he took Mr X to the ground; both to arrest him for assault, and to handcuff him.

41. In taking Mr X to the ground, Officer B says he:

grabbed (Mr X) on his right shoulder with my left arm, grabbed a bunch of his t-shirt, with my right arm wrapped underneath him and sort of got my hips in a position where I could twist him and bring him to the ground... When we landed, I landed on top of (Mr X). My – we're sort of lying, landed in a way where I was on top of him, our chests were sort of aligned, but we were at a 90-degree angle to each other.

42. Officer B says Mr X did not "freefall" to the ground but was placed onto it in a controlled movement. When they were on the ground, Officer B told Mr X that he was under arrest for assault.

43. As outlined in paragraph 28, Officer D retrieved her Taser when Mr X grabbed hold of and pushed Officer B. We consider that Officer D would not have retrieved, and activated her Taser, if she did not perceive a real threat to Officer B's safety. Her actions support Officer B's account, about Mr X grabbing and pushing him.

⁵ According to Police policy, 'assaultive' means someone who displays intent to cause harm, through body language or physical action.

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

44. We agree that Mr X's actions against Officer B constituted an assault. We accept that Officer B took Mr X to the ground to stop this assault, and to prevent it from escalating. Officer B's use of force was for the purpose of defending himself.

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

45. Officer B assessed that Mr X's actions were escalating and might result in a more serious assault. Officer B was legally entitled to use reasonable force to defend himself against assault.
46. We note that Officer B first tried to use tactical communication to get Mr X to stop, and that Mr X did not stop. Following communication, Police policy recommends the use of empty hand tactics,⁶ as the least forceful tactical option when responding to someone who is assessed as assaultive on the Tactical Options Framework (TOF) (as Officer B assessed Mr X). The TOF is a training and operational tool that assists officers to appropriately decide when, how, and at what level to use a tactical option. The TOF guides officers to use force that is necessary and proportionate, given all the circumstances known at the time.
47. Police officers are trained (as part of their Police Integrated Tactical Training) to secure assaultive persons by taking them to the ground and handcuffing them. The TOF increasingly scales-up the degree of force officers may use, from empty hand tactics to the use of pepper spray, baton, and Tasers. We believe these tactical options are more likely to adversely affect someone than taking a person to the ground.
48. Police have asked Mr X's doctor for his view on what could likely have caused the fracture. Mr X told his doctor that Police had tackled him to the ground. In the doctor's opinion, Mr X's injury was in keeping with: *"a flexion, valgus, rotation to the knee (the knee was forced into a bent position) as the body rotated over a planted foot and a force was applied from the outside to the inside of the knee."*
49. This suggests to us, that the fracture to Mr X's knee, was likely sustained when Officer B used a twisting motion in taking Mr X (still in a standing position) to the ground. The injury was thus an unforeseeable consequence of the force used. The manner in which Officer B took Mr X to the ground was not out of the ordinary, or on the face of it, dangerous. We conclude that the force Officer B used was reasonable and proportionate in the circumstances as he believed them to be. Officer B was justified in taking Mr X to the ground in self-defence.

Was Officer C justified in standing, or kneeling on Mr X's leg?

What force did Officer C use against Mr X?

50. Mr V's video footage is brief, but it does show Officer C standing on Mr X's right side while he is on his stomach on the ground. Officer C is standing, with the centre of her weight resting on her left leg. The footage is not clear, but it appears that Officer C's left foot is placed on the ground.

⁶ 'Empty hand' tactics refers to weaponless uses of force; such as grabbing hold of, pushing, or striking a person.

Officer C's right leg is bent and extends in front of her (suggesting that she is not resting with her full weight on it). Officer C's right foot is placed on top of the rear of Mr X's right upper leg (above the rear of his knee).

51. In her interview, Officer C identified herself as the officer who had her foot placed on Mr X's leg. However, Officer C says that she honestly does not remember doing this. Officer C explains that because she does not recall this action, she cannot say what legal justification she relies on for the use of this force. Although Officer C does not remember doing this, it is reasonable to assume that she did so, to assist in restraining Mr X, as (prior to this) she saw Mr X on the ground: *"yelling and trying to kick around, as (Officer B) tried to handcuff him."*
52. Section 39 of the Crimes Act 1961,⁷ 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.
53. Section 39 is a wholly objective test. This means that, if Officer C believed that Mr X was using force to resist arrest, we must determine both whether that belief was reasonable, and whether the force used to overcome resistance was reasonable.
54. This assessment involves two questions:
 - a) Did Officer C believe (on reasonable grounds) that Mr X was using force to resist arrest?
 - b) Could Officer C have reasonably overcome Mr X's resistance in a less forceful way?

Did Officer C believe (on reasonable grounds) that Mr X was using force to resist arrest?

55. Officer C says Mr X was resisting the arrest. She describes his actions as follow:

(Mr X) was with his chest on the ground, yelling, and trying to kick around as (Officer B) tried to handcuff him. (Officer B) was on one side and I walked over to them. I remember that (Mr X) was kicking his legs and trying to resist... I don't remember if anyone was restraining his legs.
56. Officers B also says that Mr X was resisting, *"he was thrashing about, kicking his legs, trying to push off things, and trying to grab things."* Officer D similarly described Mr X as resisting, saying that he: *"was kicking and punching out, just flailing his limbs around. I specifically remember (Mr X) kicking out... yeah, just kicking out at everybody."*
57. The Taser footage corroborates the accounts of Mr X resisting the arrest. We accept Officer C reasonably believed Mr X was using force to resist the arrest.

Was Officer C's use of force reasonable and proportionate?

58. As discussed above (at paragraph 47), empty-hand tactics are at the lower end of the scale of force that officers may use, not only when someone is assaultive, but also when someone is using force to resist a lawful arrest. Officer C says, she did not want to kneel down and get

⁷ See appendix, paragraph 68.

“hands-on” with Mr X, as she was armed with a Glock pistol. As such, she did not want to risk everyone’s safety by bringing the pistol within Mr X’s reach. This is a reasonable consideration. Officer C, having considered options, adopted the first workable option available.

59. The video footage does not show any excessive force when Officer C had her foot on Mr X’s leg. In the circumstances of Mr X’s kicking, it was reasonable for Officer C to have placed her foot on his leg to restrain it. We find this force was proportionate to the level of Mr X’s resistance.

FINDINGS ON ISSUE 2

Officer B was justified in taking Mr X to the ground in self-defence.

Officer C was justified in placing her foot on Mr X’s leg to overcome his resistance to the arrest.

ISSUE 3: DID POLICE DEAL APPROPRIATELY WITH MR X’S INJURY?

What do Mr X and his family say about the care provided for his injury?

60. Mr X says, upon his release, he was uncuffed and told to get out the patrol car. He told Officer B that his leg was broken and that he could not exit on his own. Mr X told us that he could not remember if he asked Police to call an ambulance for him, but he thinks he would have. Officer D exited from the driver’s seat, came to the car’s backdoor, opened it, and “yanked” him out.
61. Ms Z went to the patrol car when it returned and saw Mr X sitting in the back. Police wanted to release him, and Mr X told them that he could not move his leg. According to Ms Z, Police assisted Mr X in getting out of the car. Ms Z says she asked the officers to call an ambulance for Mr X, but they just laughed and drove off.

What do the Police officers say about the care provided for Mr X’s injury?

62. Officer B was in the back of the patrol car with Mr X; and Officer D was driving.
63. Both officers say that Mr X had calmed down considerably, and he complained about his leg being sore. Officer B says he looked at Mr X’s leg to see if there were any visible injuries. He could not see any cuts, scrapes, bruises, or swelling. Mr X could manage to move his leg but was in pain when he did this. Officer B told Mr X that he might have sustained an internal injury. Officer B says, Mr X thanked him for looking at his knee and said: “Sweet as bro, I’ll take care of it.”
64. Officer B asked Officer A, over the radio, if he could release Mr X on a verbal warning. Officer A agreed and Mr X asked if he could leave with family who approached them. Officer B does not recall Ms Z asking for Police to call an ambulance for Mr X. Officer D, on the other hand, says that Ms Z did say something about her phoning an ambulance for Mr X.

We conclude that:

65. Police had an enhanced duty of care towards Mr X; not only because he was in their custody, but also because his injury was likely sustained as result of Police actions.

66. Officer B was a credible witness, and we believe that he looked at Mr X's injury and that Mr X had told him that he would take care of it himself. Officer B could not have known that Mr X sustained a fracture to his knee. On Mr X's assurance, it was reasonable for Officer B to release him into the care of family.

FINDING ON ISSUE 3

Police appropriately dealt with Mr X's injury.

A handwritten signature in blue ink, appearing to read 'Kenneth Johnston', is centered on the page.

Judge Kenneth Johnston KC

Chair

Independent Police Conduct Authority

5 October 2023

IPCA: 22-13783

Appendix – Laws and Policies

LAW

Assaulting a Police officer

67. Section 10 of the Summary Offences Act 1981 provides that every person who assaults a constable, acting in the execution of his duty, is liable to imprisonment.

Use of force defences

68. 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.”
69. 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 or she believes them to be, it is reasonable to use.”
70. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

POLICY

Police ‘Use of force’ policy

71. 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.
72. 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.
73. The overriding principle when applying TENR is that of “safety is success”. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
74. The TENR risk assessment must balance the ongoing exposure to harm, with the current threat and the necessity to respond. This will determine the Police response.

75. 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)).
76. 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: 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.
77. 'Empty hand tactics' refers to a weaponless use of force, such as grabbing hold of, pushing, or punching a person. Officers can use empty hand tactics to distract or control someone and also to defend themselves or others.
78. 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 takes precedence, and every effort must be taken to minimise harm and maximise safety.
79. Ultimately, the legal authority to use force is derived from the law and not from Police policy.



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