



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Use of force during arrest in South Auckland justified

1. On 10 December 2022, it was reported to Police that two men who were suspected of having committed a serious offence earlier that day were hiding in a house in South Auckland. Having searched the house, Police eventually found the men hiding in the roof space and called on them to surrender.
2. After some time, Mr X came down from the roof space. He was immediately detained by two Police officers, during which Mr X's right arm was broken.
3. Mr X alleged that Police used excessive force to arrest him. Police say the injury was unintentional and came about through the need to use force to arrest Mr X.
4. Once in custody, Mr X was assessed by a doctor and received medical attention for his injury.
5. Police notified the Authority of the incident as required by section 13 of the Independent Police Conduct Authority Act 1988.¹ Accordingly, the Authority conducted an independent investigation into the incident.

The Authority's Findings

Issue: Was Officer A's use of force justified?

Officer A's use of force on Mr X was reasonable and proportionate in the circumstances, and was justified under section 39 Crimes Act 1961.

¹ Section 13 says: "Where a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused."

Analysis of the Issue

ISSUE: WAS OFFICER A'S USE OF FORCE JUSTIFIED?

6. There is no dispute that Mr X's arm was broken when Officer A pulled Mr X's arm from under him while he was lying on the ground.
7. In this section we outline the evidence gathered during our investigation and describe what happened when Officer A used force on Mr X to restrain him. We then assess whether Officer A's actions were legally justified under the Crimes Act 1961, which covers force used by officers to overcome force used by another person to resist an arrest (section 39).
8. This requires us to consider whether the force used by Officer A was necessary, proportionate, and reasonable in the circumstances.

What happened?

9. On the morning of 10 December 2022, Police received reports that two men had threatened a taxi driver with a firearm, stealing his EFTPOS machine and cell phone. The men drove away in a black BMW car. The car was subsequently reported by a member of the public as having crashed, and the two men were seen entering a house in South Auckland.
10. Police arrived and placed a cordon around the house. Police called on the occupants of the house to leave, but only women and children complied. While this was taking place, the Armed Offenders Squad (AOS), including Officer A, arrived at the address.
11. Police called on anyone left in the house to surrender, but no one came out. The AOS team then entered and searched the house, initially not finding anyone inside. Police then used an infra-red camera to search the inner cavities of the house.
12. Officer A used the camera to check the internal walls and ceilings of the house. He eventually detected a heat signature inside the ceiling cavity, which indicated that a person or persons might be in the roof cavity.
13. The AOS team used a ladder to access the roof space through a hatch in the narrow hallway, locating two people. Police called for them to come down from the roof space and, eventually, Mr X complied.

What happened when Mr X descended the ladder?

14. Police instructed Mr X to descend facing *towards* the ladder. However, he descended facing *away* from it. Officer A described this as Mr X "*climbing down the ladder facing towards officers, akin to walking down a set of stairs*".
15. As Mr X reached the bottom of the ladder, he was immediately taken hold of by Officers A and B and taken to a bedroom off the hallway.

What does Officer A say happened next?

16. Officer A told us that he does not have a good memory of the incident, as it occurred eight months before our interview with him.
17. Officer A did recall being concerned that Mr X may possibly have a firearm concealed on his person, and therefore needed to be restrained quickly.
18. In his Tactical Options Report (TOR), written five days after the incident,² Officer A described his actions as Mr X reached the floor:

“As [Mr X] stepped onto the floor, I took hold of his left arm,³ turning him away from the hallway and into an adjacent room, holding his left arm out straight and forcing him to the ground.

I lost control of his left arm as [Mr X] went to ground, rolling away from me, and placing his hands under his body.

I gained control of his left arm in a hammer lock. His arm made a popping sound, and he began complaining that I had broken his arm.”

19. When interviewed by us, Officer A stated that he could not recall specific details of the incident. He did recall Mr X was struggling and preventing his arm from being freed to be handcuffed. Officer A recalls hearing a “popping sound”, and Mr X exclaiming his right arm was broken. After this, Mr X was compliant and the officers were able to handcuff him. Mr X was then taken out of the house and handed over to the other officers. Officers A and B then returned to the house to assist with arresting the second man in the roof.⁴
20. Officer A justified his use of force by section 39 of the Crimes Act 1961, which justifies force used to arrest a person (discussed further, below).

What does Officer B say happened?

21. Officer B was the other officer who took hold of Mr X as he came down the ladder. In his subsequent statement to Police, Officer B described his actions:

“I grabbed [Mr X’s] left arm and directed him into the bedroom

[Mr X] had his left arm tucked under his body while lying on the ground. I could hear [Mr X] state that his arm was broken. I continued to tell [Mr X] to put his arms behind his back.”

22. Officer B told us that, despite Mr X struggling and resisting, he was able to free Mr X’s left arm and assist with his handcuffing.

² An officer is required to complete a Tactical Options Report (TOR) when they have used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

³ As discussed below, we believe that Officer A grasped Mr X’s right arm.

⁴ The second man broke through the tiles and climbed onto the roof of the house, and eventually surrendered to Police some hours later without further incident.

What does Mr X say happened?

23. The Authority has made a number of attempts to speak with Mr X, who since this incident has absconded from electronically monitored bail. Our only contact with Mr X has been a brief telephone call.
24. Mr X told us that he was coming down the ladder when the officers put him on the ground, and he felt they were trying to break his arms. Mr X also said he was hit in the face by one of the officers.

Was Officer A's use of force justified under section 39 of the Crimes Act 1961?

25. 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. "*Necessary*" force in this context is generally accepted as meaning "*reasonable*" and "*proportionate to the degree of force being used to resist*".
26. Under section 39, we must determine:
 - whether Officer A believed on reasonable grounds that Mr X was using force to resist arrest; and if so
 - whether the degree of force used to overcome that resistance was proportionate and reasonable in the circumstances as Officer A reasonably believed them to be (that is, whether Officer A could reasonably have overcome Mr X's resistance and effected the arrest by using less force).

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

27. Without a detailed account from Mr X of what happened from his perspective, we have only the accounts of the officers who were present when Mr X was injured. The two other members of the AOS team who were present did not see Mr X being restrained by Officers A and B. Their attention was on the roof space where the second man was still hiding.
28. When interviewed, Officer A described to us how he was standing at the bottom of the ladder as Mr X came down. Officer A said the expectation was that Mr X would come down facing the ladder as instructed. Officer A was therefore positioned to take hold of Mr X's left arm. However, because Mr X came down the ladder facing the other way, this necessitated Officer A taking hold of him by the *right* arm.
29. Officer A conceded that it was likely his account in his TOR stating he held Mr X's *left* arm was incorrect, and he in fact took hold of Mr X's right arm as he came down the ladder.
30. Whatever the order of events, Mr X having been taken to the ground, Officers A and B both say he was preventing them from pulling his arms out from under him to be handcuffed. Officer B managed this without causing injury, but Officer A's actions resulted in a fracture to Mr X's right arm.

31. In the absence of any contradictory evidence, we conclude that it was reasonable for them to believe that Mr X was using force to resist arrest. Officer A was therefore justified in using force to free Mr X's arm in order to handcuff him.

Was the degree of force Officer A used to overcome Mr X's resistance proportionate and reasonable?

32. Mr X's subsequent medical record describes the injury as a fracture of his right arm, and the orthopaedic surgeon described it likely being caused by a "twisting" motion. This is consistent with Officer A's account described in paragraph 18.

33. Ultimately, we accept the accounts of Officers A and B, that Mr X was resisting arrest and it was necessary to use force to restrain him.

34. That Mr X sustained a broken arm is of course unfortunate. However, we have no evidence indicating that Officer A's use of force was excessive or unreasonable in the circumstances. Furthermore, we cannot corroborate Mr X's assertion that he was struck in the face by an officer.

FINDINGS

Officer A's use of force on Mr X was reasonable and proportionate in the circumstances, and was justified under section 39 Crimes Act 1961.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

19 October 2023

IPCA: 22-16240

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 Johnston 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.



Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140

Freephone 0800 503 728

www.ipca.govt.nz
