

Use of force at end of pursuit in South Auckland not justified

1. In the early hours of 1 September 2022, Police arrested three youths who had been in a stolen car which Police had followed to South Auckland.
2. A social worker for one of the youths subsequently made a complaint to Police. Police notified the Authority of the complaint in accordance with section 15 of the Independent Police Conduct Act 1988.¹ The Authority decided to carry out an independent investigation.

The Authority's Findings

Issue: Was the force used to detain Youths Y and Z justified?

Officers A and B were not justified in the force they used to detain Youths Y and Z.

Analysis of the Issue

WERE OFFICERS A AND B JUSTIFIED IN THE FORCE THEY USED TO DETAIN YOUTHS Y AND Z?

3. In this section we outline the evidence we gathered from our investigation and describe what happened when the officers used force on the youths to detain them. We then assess whether the officers' actions were justified.

Background

4. At just after midnight on 1 September 2022, Police identified a stolen car being driven in the Auckland suburb of Greenlane. Police did not pursue the car, but alerted the Auckland Traffic Operations Centre (ATOC) to watch out for it.

¹ Section 15(1): "The Commissioner shall notify the Authority of every complaint received by the Police, other than a complaint notified to the Commissioner by the Authority."

5. ATOC subsequently located the stolen car, and it was tracked by the Police Eagle helicopter to South Auckland. During this journey, the car was 'spiked' by Police at least twice, puncturing the tyres.² Three Police cars followed at a distance, being guided by Eagle operators.
6. After the car had been followed for 50 minutes, it eventually came to a stop on Great South Road in Papakura, with the tyres having deteriorated and the car appearing to have become undriveable.
7. The Eagle footage shows the driver, Youth Z, leaving the car from the front passenger-side door, running forward about 10-15 metres, then lying face-down with his hands behind his back. Another occupant, Youth Y, gets out of the car by the rear passenger-side door, and lies down next to the car at the edge of the grass verge. A third youth remains in the car.
8. Three Police cars arrive, with one stopping behind the stolen car, one alongside and slightly to the front of the stolen car, and one in front of it.

What does the Eagle footage show happened when Police arrived?

9. The footage shows that, having left his Police car, Officer A walks to Youth Y, who is lying next to the stolen car. Officer A pulls Youth Y to his feet, then pushes him to the side. Youth Y stumbles and falls to the ground. At that point Officer A returns to the stolen car and, together with Officer B, restrains the third youth who is still in the car. He then returns to Youth Y, helps him to his feet, and walks him 5-6 metres near to where Youth Z is lying face down.
10. Shortly after that Officer B walks over to Youth Z and pulls him 2-3 metres across the ground by the hood of his jacket.

What does Officer A say happened?

11. Officer A says that as he arrived he parked in front of the stolen car, blocking it from moving forward. He then approached it and saw the third youth attempting to climb from the back seat into the driver's seat. Officer A says he was concerned the third youth would try to reverse and drive away.
12. He says that he saw Youth Y was lying next to the stolen car, it was dark, and because of where Youth Y was positioned, he believed there was a risk he would be injured if the third youth tried to reverse and drive away. For that reason, Officer A says he wanted to move Youth Y away from the stolen car as quickly as possible.
13. Officer A told us:

"My fear was that this person lying on the ground [Youth Y] wasn't going to be seen because they were lying on the ground and it was dark and [the driver] would not see them in the ... wing mirrors. So my concern is their safety."

² 'Spiked': use of Tyre Deflation Device.

14. Officer A says that he shouted at Youth Y to stand up, but he did not. Consequently, Officer A pulled Youth Y to his feet, and pushed him to the side.
15. Officer A accepts that, as a result of him having pushed him away, Youth Y stumbled and fell. Officer A says he ordered Youth Y to then stay where he was (which can be seen on the footage, with Officer A pointing with what appears some assertiveness at Youth Y).
16. Officer A says that having confirmed that the youth who had remained in the car was being detained, he then went back to Youth Y, helped him to his feet and walked him 5-6 metres towards where Youth Z was positioned, sitting Youth Y down.

What does Officer B say happened?

17. Having stopped his Police car in front of the stolen car, and nearest Youth Z, Officer B told Youth Z to get off the road. Officer B then checked the other youths were being detained and returned to Youth Z, still lying on the ground.
18. Officer B says he told Youth Z to stand up so he could be moved, but he swore back and did not stand. Officer B then pulled Youth Z along by the hood of his jacket for one to two metres, off the pathway and onto the grass nearer Youth Y (who had by now been moved by Officer A to this position).
19. Officer B told us:

“This is a pretty busy main road. [Youth Z] basically said ‘Fuck you’ or something to that extent. I’ve grabbed the back of his hoodie and dragged him off the road so I can safely arrest him.”

Allegation by Youth Y

20. Youth Y was 12 years old at the time of this incident. He told a social worker that he had been “*stomped on the eye*” by an officer when detained. The social worker subsequently complained to Police.
21. Youth Y advised us through his social worker that he did not wish to engage with the Authority’s inquiries.

Was the officers’ use of force justified?

22. The officers told us that they were relying upon section 48 of the Crimes Act as justification for their use of force. Section 48 provides that any person is legally justified in using reasonable force in defence of themselves or another.
23. The original complaint alleged that Youth Y was “*stomped on the eye*” by an officer. We have seen no evidence of this, and Youth Y has chosen not to engage with our investigation to provide any further information. Consequently, we will consider only the use of force by Officers A and B when they moved Youths Y and Z while they were lying on the ground.

24. As described above, Officer A said that he used force against Youth Y because he was concerned that he might be run over by the third youth attempting to escape in the car. Officer B said he used force against Youth Z because it was a busy road and Youth Z needed to be moved so that he could be arrested safely.
25. Section 48 is primarily directed towards the actual or threatened application of force by one person against another. A more obvious possible defence in these circumstances is the common law defence of necessity, which excuses the use of force where there is a belief on reasonable grounds of imminent peril of death or serious injury; there is no other realistic option for averting that peril; and the response is proportionate to the peril.³
26. Although upon reviewing the Eagle footage we found Officer A had not sufficiently blocked the stolen car from moving forward, we accept Youth Y was in risk of injury from where he was positioned should the car be reversed.
27. Despite the stolen car coming to a stop with disintegrated tyres, in considering Officer A's position, we agree it may nevertheless have been capable of being driven. The third youth, by getting into the driver's seat indicated an intention to move the car. Youth Y also failed to respond to Officer A's directions to move to a safer position. In those circumstances, we accept it was reasonable for Officer A to conclude that he needed to act.
28. Although the Eagle footage shows Youth Y still in a position of risk after being moved should the car travel forward (as well as Officer A for that matter), at the same time another officer had approached the driver's seat and detained the third youth, reasonably eliminating this risk.
29. However, what is also clear from the Eagle footage is the manner in which Officer A grabs Youth Y to move him. Upon approaching Youth Y, Officer A firstly crouches down to lay on top of him. Officer A then hauls Youth Y to his feet and throws him violently to the ground several meters away. Whilst we acknowledge Officer A's sense of urgency to move Youth Y, the level of force towards Youth Y here is excessive. It is therefore unjustified.
30. Officer B told us that Youth Z was in an unsafe position and was in danger of being hit by passing traffic. However, the Eagle footage shows that this was not the case. Youth Z was well off the road surface, and three Police cars were positioned in such a way as to ensure he was not in harm's way. Officer B could not have conceivably thought otherwise.
31. Whilst the amount of force used against Youth Z was minor, we do not accept that this was with the intention of moving Youth Z to a safer position. Moving Youth Z may have been more *convenient* (by positioning Youths Y and Z closer together), but we do not accept that it was *necessary* to ensure Youth Z's safety. Our conclusion is therefore that Officer B's actions too were unjustified.

FINDINGS ON ISSUE

Officers A and B were not justified in the force they used to detain Youths Y and Z.

³ *Kapi v Ministry of Transport* (1991) 8 CRNZ 49 (CA)

Subsequent Police Action

32. Police performed criminal investigations into the actions of Officers A and B, concluding there was insufficient evidence to charge either officer.
33. Police ultimately accepted Officer A's explanation and considered his actions as appropriate and justified. No further action was taken against Officer A.
34. However with Officer B, although Police accepted he had a reason to move Youth Z, they also accepted his method of doing so was unjustified as he had other less violent options available to him. Police subsequently took employment action against Officer B.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

23 April 2024

IPCA: 22-15271

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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