

Analysis of the Issues

ISSUE 1: WAS THE USE OF THE POLICE DOG JUSTIFIED?

5. In this section we describe what happened when Police followed Ms X who was driving a stolen Toyota car. We then assess whether Police were legally justified in their use of force to arrest Ms X.

Background

6. Between 1:30pm and 4:00pm on 22 April 2022, a Toyota car with seven seats, was stolen from a roadside in Manurewa, South Auckland.
7. At 4:30pm, an off-duty Police officer in the North Shore confronted a young man trying to steal his car. The young man ran to the stolen Toyota car and took off in it. The off-duty officer followed the car and provided updates to Police Communications (Comms).
8. The Police helicopter (Eagle) was used to track the car as it drove south on the Southern Motorway. A Police officer inside Eagle was operating a camera and recording what was unfolding, while another officer provided updates over the Police radio.
9. At 5:00pm, Officer A attempted to stop the car using his emergency lights and siren. Ms X, who was driving the car, did not stop, and fled from Police. Comms gave permission for the car to be stopped using road spikes. The Police evidence is that the driving of Ms X was dangerous and showed an intentional disregard for members of the public. She rammed a stationary vehicle and on multiple occasions drove onto the wrong side of the road.
10. At 5:20pm, when the Toyota car exited the Southern Motorway at Hill Road, road spikes were deployed by Police officers. The car drove over the spikes, which successfully deflated the car's tyres.
11. The Police car Officer A was driving also sustained a punctured tyre. Officer A and the Police dog then got into the back of the patrol car driven by Officer B.

Eagle footage

12. Ms X eventually pulled over and stopped on Alfriston Road, Manurewa. The camera footage from Eagle shows five passengers getting out of the car and running away. Ms X also got out of the car, which began rolling slowly backwards with no one at the wheel. An officer in Eagle spoke over the radio and informed the direction the five people were running, adding: *"Driver at the front of the car."*
13. Ms X did not run away, and instead can be seen walking back towards the Toyota car as it began to roll slowly backwards towards the arriving Police cars. Her arms were outstretched with her empty hands raised to about the level of her hips. Officer A asserts that the Eagle footage shows Ms X turn and start to run away. As far as we are able to discern, it does not.

14. Officer B drove past the right side of the Toyota car and stopped beside Ms X. A second Police car, driven by Officer C (another dog handler) pulled up and stopped on the left side of the Toyota car.
15. Unfortunately, the camera footage does not show the moment Ms X was detained. As the two Police cars arrived, Eagle moved away to follow the five passengers who ran a short distance to a nearby street where they surrendered to other Police officers.

What happened when Police arrived?

16. Ms X says she got out of the car and then heard Ms Y (her friend) yelling for Ms X to help her. Ms X told us: *"I just wanted to get her out of the car. I didn't really care about the cops."* She told us she would not leave Ms Y behind.
17. Ms Y told us: *"I was yelling out to Ms X to come and put the car into 'park' 'cos like I was stuck and couldn't do it."* She says she heard Police officers yelling at Ms X.
18. Officer A told us he saw Ms X go from a walk to a run toward the Toyota car. He says he was sitting in the back of Officer B's Police car when he shouted at Ms X: *"Police dog handler, stay there."*³ He believed Ms X to be around 20 years old, though it subsequently emerged that she was only 13.
19. Officer A says: *"Ms X immediately backed away so no longer going towards the car so... I suppose the threat of her getting back in the car was no longer there."*
20. Ms X told us she was on the road in front of the car. She says:

"They were telling me to get on the ground and then I said I was getting on the ground, but they went into the boot and grabbed the dog and then it started getting feisty and like barking and I got scared and that and then I started crying when the dog was biting my leg".
21. Officer A says Ms X was backing away from him as he got out of the car with the Police dog. He estimated she was 3 to 4 metres from him when he challenged her a second time with *"Police dog handler, get on the ground."* He says Ms X then turned away and he released the dog as she tried to run.
22. Officer B told us he remembered Ms X moving away from his Police car. He further says: *"When I got out of my car I saw the offending vehicle still moving and someone in the car, so I thought they were trying to drive off in the vehicle again."* He says he went around the back of his Police car directly to the Toyota car. He did not see the Police dog apprehending Ms X.
23. Officer C told us he was primarily concerned with the Toyota car rolling down the hill. He got out of his Police car and entered the Toyota car through the back passenger side door. He discovered

³ Dog handlers must issue a warning to surrender before instructing a dog to bite a person, unless it is unsafe or impracticable to do so.

Ms Y on the seat in front of him. He pulled the hand brake up and stopped the car. He says he did not see the dog bite Ms X.

24. Ms Y told us: *"I could just hear the cops yelling and swearing."* She did not see Ms X get bitten by the Police dog.
25. The dog took hold of Ms X's right leg below the knee. Ms X told us: *"I wasn't gonna run. I was just gonna get down on the ground."* Ms X was screaming and kicking at the Police dog as it was biting her.
26. Officer B says as soon as the Toyota car had stopped, he saw Ms X on the road about a car length in front of the Toyota car. The dog was biting her. He went directly to her and placed handcuffs onto her wrists. Officer A removed the dog which he estimated had been biting Ms X for about 5 seconds.

What happened to Ms Y?

27. Ms Y was inside the car on the second row of seats. She says:

"They like ripped me out of the car and then they like slammed me on the floor and then picked me up, slammed me on the floor, picked me up, slammed me on the floor."

28. She told us she was then pinned face down on the road and an officer had a knee on her while he was handcuffing her.
29. Officer C says he told Ms Y to get out of the car as he grabbed hold of her by her upper arms. He told us she wasn't a very big person, *"so I didn't need to man-handle her or anything."* He pulled her from the car, walked her across to the footpath and told her to sit down against a fence. He denies pushing her into the ground.
30. Officer B told us: *"I didn't really see what [Officer C] was doing other than he was with [Ms Y] and removed her from the car."*
31. There is a direct conflict of accounts as to whether Officer C repeatedly pushed Ms Y onto the ground. He denies doing this, and there are no independent witnesses to confirm Ms Y's account. We have not been able obtain any evidence to substantiate what Ms Y told us.
32. Officer C did not remember if he or another officer had handcuffed Ms Y. We are satisfied it was Officer C who handcuffed Ms Y.

What happened after the dog bite?

33. Officer B said he handcuffed Ms X and moved her off the road and sat her down against the fence near to Ms Y. He described Ms X as abusive, obnoxious, and having a complete disregard for Police authority. Ms X and Ms Y both told us the officers were swearing at them.

34. Ms X told us: *“My leg was like ultra-bleeding, like there was blood dripping everywhere, and my leg just felt ultra-numb, and it was ultra-sore.”* Ms Y says Ms X struggled to tell her what happened because she was crying and in pain.
35. Officer A was holding onto the Police dog and asked Officer C to pull up Ms X’s pants leg so he could see the dog bite.⁴ Officer A says: *“It was a fairly minor laceration. It was sort of a small tear to her calf. It wasn’t bleeding at the time.”* He did not believe it required immediate first aid.
36. Officer A says he told Ms X that she would be taken to the Police station where she would be seen by a doctor.
37. Officer D (a Constable) arrived at the scene and was tasked by Officer B to deal with Ms X. Officer D said Ms X was crying and struggling to talk. He reassured her and took her to the patrol car to keep her warm. He and another officer then took Ms X to the Counties Manukau Police Station where a doctor provided her with medical treatment.

Was Officer A legally justified in using the Police dog against Ms X to prevent her escape?

38. Section 40 of the Crimes Act 1961 empowers Police to use *“such force as may be necessary”* to prevent the escape of someone who is reasonably believed to be fleeing 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; and
 - 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); and
 - the likelihood and degree of risk the person poses if escape is not prevented.
39. 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 if so
 - b) whether the officer’s use of force was reasonable and proportionate to prevent the escape.

Did Officer A believe on reasonable grounds that Ms X was fleeing to avoid or escape arrest?

40. Officer A says that, before he released the dog, he had concluded that Ms X was fleeing in order to avoid arrest. He reasoned:

⁴ Policy dictates that all people bitten by Police dogs are to receive appropriate medical treatment. Following a dog bite, dog handlers must provide or direct other staff to provide immediate first aid as necessary in the circumstances and call for medical support to the scene if necessary.

- she had been driving erratically, putting members of the public at risk;
 - he believed that she was trying to get into the vehicle to continue fleeing, and members of the public would again be placed at risk;
 - he believed that she had no intention of allowing herself to be arrested; and
 - in his assessment, she had several opportunities to give herself up and become compliant but had chosen not to.
41. Officer A says he was not aware Ms Y was inside the car, nor that Ms X was returning to the car to help her.
 42. Officer A told us that when he first challenged Ms X, she immediately backed away and was no longer moving toward the car.
 43. When Officer A got out of the patrol car with his Police dog, he estimated Ms X was 3 to 4 metres from him. He told us: *“I’ve challenged her and that’s when she turned around with the second challenge.”* He says his experience and training tells him: *“If you issue a warning or a challenge to someone twice while they are backing away from you and they turn around, they’re about to run.”* His evidence is that Ms X was either making or about to make an attempt to flee.
 44. The evidence of Ms X is to the contrary. She accepts the Police were telling her to get onto the ground. She says she was not intending to run and was going to get onto the ground.
 45. On balance of the evidence, we are not satisfied that Ms X was attempting to flee.
 46. Ms X told us she was scared. We accept she probably was backing away from Officer A and the barking Police dog. In his Tactical Options Report,⁵ Officer A said he was left with no other reasonable option but to intervene immediately. He told us: *“The safest and less violent method to apprehend was using the dog.”* We do not accept that. It appears to us that Officer A had alternatives. He could have kept the dog inside the Police vehicle and apprehended Ms X himself. There were two other officers (Officers B and C) present and Eagle above; he had assistance at hand had Ms X attempted to flee.
 47. In summary, we do not accept that Officer A had reasonable grounds for concluding that Ms X was attempting to escape at the time he released the dog. Accordingly, we have not further analysed section 40 in respect of Officer A’s understanding of the seriousness of Ms X’s offending, or the degree of risk she posed had her escape not been prevented.
 48. Our conclusion is that the use of the Police dog to apprehend Ms X was unjustified.

⁵ A Tactical Options Report is a report that an officer is required to complete when he or she has used force on a member of the public. The report includes each tactical option and a description of the force used and the reasons.

FINDINGS ON ISSUE 1

The use of the Police dog to bite Ms X was not justified in the circumstances.

We are not able to substantiate the allegations made by Ms Y.

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

24 April 2024

IPCA: 22-13429

Appendix – Laws and Policies

LAW

Use of force to prevent escape

49. Section 40 of the Crimes Act 1961 says:

Preventing escape or rescue

“(1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary—

(a) to prevent the escape of that other person if he or she takes to flight in order to avoid arrest; or

(b) to prevent the escape or rescue of that other person after his or her arrest—

unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:

provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

POLICE POLICY

Use of force

50. The Police’s ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray (pepper spray), batons, Police dogs, tasers and firearms.
51. Police policy provides a Tactical Options Framework (TOF) for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this assessment as the TENR (Threat, Exposure, Necessity and Response).
52. 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).

53. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are; cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
54. The policy states any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public, and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

Use of force with Police dogs

55. Dog handlers are personally responsible for force used by the dog. The law sees little difference between dogs, when used as a means of force, and other methods and implements used by Police, such as firearms, Tasers and batons. Dog handlers must believe the use of force is justified, and that the force used is as minimal as possible in the circumstances.
56. A Police dog should only be used if the offender cannot be apprehended by other means. Dog handlers must consider all tactical options when considering the use of force. Just because the handler has a Police dog with them, does not mean they should use the dog as a means of force instead of a more appropriate option. According to the Tactical Options Framework, Police dogs can be used if the suspect is considered assaultive.
57. Dog handlers must usually issue a warning before instructing a dog to bite a person, however, policy notes that a warning may not be given in AOS or other critical situations *"if it is not practicable or would be dangerous to do so."*
58. Police dog handlers must always have control of their dog during deployment. Control means that the dog is under immediate physical or voice control, and that the dog responds to that control. The extent of the force used by the dog must be kept to the minimum possible in the circumstances.
59. Policy dictates that all people bitten by Police dogs are to receive appropriate medical treatment.

About the Authority



WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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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