



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Inadequate investigation into an alleged sexual assault

1. On 25 October 2019, Ms Y arranged to view a rental property owned by Mr Z. While Mr Z showed Ms Y around, she recorded a video. Ms Y asked to use the bathroom, locked the door, and called Police alleging Mr Z had sexually assaulted and threatened her.
2. Once Police arrived, Mr Z was arrested and later charged with two offences. The charges remained before the courts until 5 February 2021. This was 469 days (or one year, three months and eleven days) after the charges were filed.
3. Police reviewed the matter and found shortfalls in the investigation process, including a lack of supervision over the course of the investigation. Police withdrew the charges. We conducted our own investigation.

The Authority's Findings

Issue 1: Were Police justified in arresting Mr Z?

Police were justified in arresting Mr Z.

Issue 2: Did Police appropriately charge Mr Z?

Police should not have charged Mr Z with assault with the intention to commit rape and threatening to kill. If a more thorough assessment of the evidence had been carried out, as required by the Solicitor-Generals' Prosecution Guidelines, it is likely Police would have discovered Ms Y's allegations warranted further investigation.

Issue 3: Was the Police investigation conducted in accordance with best practice?

The initial steps of the investigation were appropriate however we consider that due to a lack of supervision and the lack of ongoing evidential assessments, the charges against Mr Z were active before the Courts for significantly longer than they should have been.

Analysis of the Issues

ISSUE 1: WERE POLICE JUSTIFIED IN ARRESTING MR Z?

What happened?

4. On 25 October 2019, Ms Y and Mr Z arranged to meet at one of his properties so she could view the house and decide if she would rent it.
5. Just before 1.19pm, Ms Y arrived at the house via Uber. Mr Z began showing her around the property. From 1.21pm to 1.23pm, Ms Y took a video of the inside of the house on her mobile phone.
6. At 1.25pm, Ms Y locked herself in the bathroom and called 111. She claimed Mr Z had threatened her and tried to sexually assault her.
7. Police arrived at the property at 1.29pm. Once they arrived, one officer stopped and spoke to Mr Z.
8. The officers said Ms Y was visibly distressed, crying, shaking, and having trouble controlling her breathing.
9. Officer A did not notice any visible injuries on Ms Y. However, one officer said that she had a “*red face*”, and another said that her right cheek was bruised and swelling. Ms Y told the officers her face was very sore and that she felt dizzy.
10. Ms Y told Officer A that Mr Z pushed her onto a bed and asked her for sex. She said that when she refused, Mr Z:
 - hit the right side of her face three or four times with an open hand;
 - punched her three or four times on the right side of her head;
 - ripped the buttons from the front of her dress; and
 - said that, if she moved, he would kill her.
11. Ms Y said she told Mr Z she needed to go to the bathroom first and was able to lock the door and call the Police. She said Mr Z started banging on the door and told her he would pay her if she opened the door and stopped the call.
12. Officer A says she saw that the top three buttons of Ms Y’s dress were undone and pulled loose, but not torn off. Another officer also recalls that Ms Y’s clothing was unbuttoned. The officers observed that the bed looked as though someone had recently lain on it.
13. Meanwhile, Mr Z gave an officer his driver’s licence and said he was the landlord. Another officer came outside and confirmed Mr Z’s name before arresting him for assault and taking him to Avondale Police Station.

Did Police have good cause to suspect Mr Z had committed an offence?

14. The Crimes Act 1961 outlines when an officer may arrest a person who they suspect has committed an offence. Section 32 says:

“Where under any enactment any constable has power to arrest without warrant any person who has committed an offence, the constable is justified in arresting without warrant any person whom he or she believes, on reasonable and probable grounds, to have committed that offence, whether or not the offence has in fact been committed, and whether or not the arrested person committed it.”

15. Section 315 (2) (a) of the Act states that any officer may arrest a person without a warrant “whom he or she finds disturbing the public peace or committing any offence punishable by imprisonment”.
16. Police arrived at the address and spoke to Ms Y, who claimed that Mr Z had committed serious offences. Officer A was speaking to Ms Y over the phone as they arrived at the address, and once inside, went to the bathroom where she found Ms Y. Officer A told us:
- Ms Y was refusing to leave the bathroom, was backed into the corner, and seemed very distressed.
 - Ms Y told them that Mr Z attacked her and tried to rape her.

Analysis

17. We consider that when Police arrived, they had good cause to suspect that Mr Z had committed offences punishable by imprisonment.
18. The arrest was lawful as, at this stage, Police could not have known with any certainty that the claims were false.

FINDING ON ISSUE 1

Police were justified in arresting Mr Z.

ISSUE 2: DID POLICE APPROPRIATELY CHARGE MR Z?

What happened?

19. Police took Mr Z to Avondale Police Station. Officer B was a trainee detective constable working in the Crime Squad¹. His role was to gather evidence and decide, with guidance, what action to take. Officer B was briefed about the incident before he received custody of Mr Z. Officer B introduced himself to Mr Z and advised him of his rights and gave him a formal caution. He asked if Mr Z wished to speak to a lawyer and use an interpreter to assist with the interviews.

¹ The Crime Squad is a unit of Police investigators who work 24/7 and respond to reports of serious crime.

20. Mr Z readily agreed to be interviewed about the matter. Officer B interviewed Mr Z with a lawyer and interpreter present. Officer B video recorded the interview. Unfortunately, there was no monitor present to assist with the interview and to discuss outcomes with.²
21. We spoke to Officer B about his interview with Mr Z. Officer B told us that Mr Z was angry at the circumstances, and told him:
- He showed Ms Y the house.
 - Ms Y wanted to film the inside of the house, which Mr Z consented to.
 - Ms Y asked Mr Z if she could use the bathroom. In response, Mr Z told her she could and then he told her he would wait outside the house.
 - When he was waiting outside, Police arrived and arrested him.
 - He did not do any of the things Ms Y alleged and he suspected he was being set up by a person who he had previously been assaulted by.
 - Officer B should look at the timings of the allegation, as well as take DNA evidence which Mr Z was willing to provide.
22. The interview began at about 5pm and finished at about 7pm.
23. At the same time, Ms Y was also being interviewed by Police. She said:
- She contacted Mr Z about renting a house. He called her back and told her that he did not have any available at the time, but that he would get back to her once he did. About 2-3 weeks later, Mr Z called Ms Y and told her about a nice property he had available.
 - She went to view the property but was not happy with its condition. In response, Mr Z told her that he had another property, but it ended up being too expensive. Ms Y then viewed the first property again and Mr Z said he could renovate it to make sure it was a satisfactory rental.
 - While at the first property, Mr Z showed her a gun case and explained it was there because he likes to go shooting.
 - Mr Z showed her around the house. When they finally got to the master bedroom, he pushed her, causing her to fall onto the bed on her back.
 - Mr Z said he had a gun and needed her to have sex with him. In response, Ms Y said no.
 - When she tried to get up he “*smashed her face*” by punching her one or two times, and then punched her three to four times in the back of her head.

² A monitor sits in another room and watches and listens to the interview. Their role is to provide guidance and feedback to the interviewing officer during the interview.

- Mr Z told her she “*had no choice now*” and that he “*really enjoys the violence*”. She tried to get up but could not as he was holding her down and had ripped the top of her dress.
 - Mr Z tried to pull her underwear off. At this moment, he told her that he was very powerful in New Zealand and could get any girl he wanted and had done the same with over 100 girls before.
 - Mr Z said he knew boxing and kung fu, and, if she had sex with him, he would not hurt her. Ms Y then said she agreed but needed to go to the bathroom first.
 - She then went into the bathroom and locked the door behind her and called the Police.
 - While she was on the phone to the Police, Mr Z was banging on the door and threatening her, explaining that Police would not have any evidence and he would be free that night.
 - Mr Z offered to pay her money if she cancelled the 111 call and if she didn’t, he would come and find her as he knew where she lived.
 - She felt scared and was worried that, if Mr Z was free to go, he would come and find her that night.
24. After the interviews, Mr Z was charged with assault with intent to commit rape (section 129(2) of the Crimes Act 1961) and threatening to kill/do grievous bodily harm (section 306 of the Act). These offences carry maximum sentences of ten and seven years’ imprisonment respectively.
25. Mr Z provided Police with details of the previous assault case involving the person he believed was attempting to set him up. Officer B checked NIA³ for any link between Ms Y and this person, but no such link was found. Officer B spoke to a supervisor and decided to charge Mr Z based on the claims made by Ms Y.

The information put forward by Mr Z

26. We consider that Mr Z raised multiple issues that should have caused Police to doubt Ms Y’s reliability. They were:
- he had stayed at the scene calmly waiting outside when Police arrived;
 - he was perfectly happy to speak to Police and did not offer any resistance to the process;
 - the timing between Ms Y arriving via Uber and taking the video inside before Police arrived would not have left any significant time for the alleged offences to have happened; and
 - he suspected he was being set up by a person who had previously attempted to extort money and property out of him, and who had been charged with assaulting him.

³ NIA is the Police National Intelligence Application and is used for information sharing and keeping records.

27. We consider that these issues are persuasive, especially the one about timing. The Uber arrival time, minus the length of the video recorded by Ms Y, left approximately 2 minutes and 23 seconds as the window of opportunity for Mr Z to commit the offences she detailed to Police. The timing breaks down as:

- 13:18:44 – the Uber vehicle drops Ms Y off at the scene.
- 13:21:01 – Ms Y begins recording the inside of the house.
- 13:23:04 – Ms Y stops recording (the video is 2 minutes and 3 seconds long).
- 13:25:27 – Ms Y calls 111.

28. It appears that a thorough analysis of this timeline was not done at all until over a year after the charges were laid against Mr Z.

Other information available to Police before charging

29. Police charged Mr Z after he was interviewed. By this time, in addition to the matters Mr Z raised above, Police were aware of other factors that ought to have cast some doubt on the claims.

30. Apart from one officer thinking Ms Y looked red faced, no officers saw any injuries on Ms Y, despite her claims of being punched multiple times in the head by Mr Z.

31. We spoke to Officer C who was one of the first attending officers, alongside Officer A. Officer C first arrested Mr Z and told us:

- When he found Mr Z outside the property, he arrested him due to the nature of Ms Y's complaint as he had good cause to suspect an offence had been committed.
- He took down Mr Z's details, advised him of his rights and gave him a formal caution. Soon after this, Mr Z asked Officer C to arrange an interpreter.
- Mr Z told him he did not know Ms Y, but that she was a potential tenant of his.
- Throughout the process Mr Z *"wasn't angry, he wasn't aggressive, he wasn't upset, he was just calm."*

How do Police decide if someone should be charged?

32. Prosecution guidelines are set by the Solicitor-General.⁴ In short, for a charge to be laid against a person two main criteria must be met:

- 1) The available evidence must be sufficient to provide a reasonable prospect of conviction – the Evidential Test; and

⁴ The latest full guidelines are dated 1 July 2013, the specific guidelines for prosecuting sexual violence were published on 28 June 2019 and last updated 20 December 2022.

- 2) Prosecution is required in the public interest – the Public Interest Test.
33. The Evidential Test must be satisfied before the Public Interest Test is considered. The decision maker must analyse and evaluate all of the evidence and information in a thorough and critical manner.
34. The Solicitor-General releases separate guidelines for prosecuting sexual violence matters. For decisions made by the Police to prosecute, the same tests are applied. However, the evidence of the complainant may be enough without corroborative evidence. This is done on a case-by-case basis.

Assessment

35. Once the Police had gathered all available information, they needed to decide whether to charge Mr Z.
36. The allegations made by Ms Y were very serious, including sexual assaults, physical violence, and threats of further harm. However, in this case, Mr Z had raised several matters that should have raised concern to the veracity of Ms Y's allegations.
37. We do not consider that it was appropriate for Police to charge Mr Z with threatening to kill and assault with intent to commit rape.
38. Police could have charged Mr Z with a lesser offence, such as an assault, under the Crimes Act so that bail conditions could be imposed. This would have ensured the safety of Ms Y while allowing more time to assess and investigate the available information.
39. Police should have:
- Seized Ms Y's cellphone under search warrant and arranged for it to be interrogated. This then could have been used to assess if there was any link between the person who had previously had dealings with Mr Z, and who Mr Z suspected was behind the sexual assault allegations.
 - Investigated the timeline, which cast doubt on Ms Y's allegations.

FINDINGS ON ISSUE 2

Police should not have charged Mr Z with assault with the intention to commit rape and threatening to kill. If a more thorough assessment of the evidence had been carried out, as required by the Solicitor-Generals' Prosecution Guidelines, it is likely Police would have discovered Ms Y's allegations warranted further investigation.

ISSUE 3: WAS THE POLICE INVESTIGATION CONDUCTED IN ACCORDANCE WITH BEST PRACTICE?

Initial actions at the scene

40. After Mr Z had been arrested, Officer A preserved the scene, photographed Ms Y and the scene, recorded a brief sketch of the scene in her notebook, and returned to Avondale Police Station to pass on the relevant information to the Crime Squad. The scene was then secured by another officer under section 117 of the Search and Surveillance Act 2012, pending the execution of a search warrant.
41. Officer F was part of the Auckland City Criminal Investigation Branch and was briefed by Officers A and C. He coordinated the search warrant for the scene address and when the search warrant was authorised at 6.25pm, he went to the address and executed the warrant at 6.42pm. He photographed the property, drew a scene diagram, and seized a blanket, two pillowcases, and a bedsheet. He did not find any items torn from Ms Y's clothing. At 7.30pm, he secured the property and left. At 8.50pm, he exhibited the property he had seized at the Auckland City Hub Property and Exhibit Counter.
42. Officer D took possession of Ms Y's dress and underwear as evidence. He said in his statement that a button had been pulled from the dress. The photographs taken at the time by Officer A showed all the buttons were still attached to the dress, but the stitching was pulled loose.
43. We consider that the initial actions by the attending officers were appropriate.

Interviews

Ms Y

44. Officer D conducted an interview with Ms Y. Officer D was not trained in specialist interviewing techniques which are used for victims of alleged sexual assault and other serious offences. The statement he took from Ms Y formed the main basis for the charges laid against Mr Z.
45. We consider that, due to the serious nature of Ms Y's complaints and the immediate explanations offered by Mr Z, Ms Y's statement should have been assessed against the other available evidence. In particular:
 - Despite the number of strikes to the head Ms Y said she had suffered, she had no visible injuries. We acknowledge that she refused to see a doctor.
 - Despite Mr Z insisting that his DNA be taken as evidence, no DNA comparison sample was taken of Ms Y during the investigation.
 - Although Ms Y claimed that Mr Z was banging on the bathroom door and threatening her, aside from Ms Y's own voice, no other sounds were audible during the nine minute long 111 call.

46. A video recorded structured interview carried out by an appropriately experienced and qualified Police interviewer may have helped illuminate the inconsistencies at a far earlier stage.

Mr Z

47. Mr Z was interviewed once both an interpreter and lawyer could be arranged. This delayed the interview by about two hours.

48. We appreciate that needing to use an interpreter slows down the interview process and makes things more difficult for both the interviewer and interviewee.

49. Officer B advised Mr Z of his rights, cautioned him, and allowed Mr Z to take him through his version of the events. Mr Z gave clear explanations as to:

- How he knew Ms Y and the reason she was at the property.
- What had happened since she arrived at the property and why he was standing outside.
- That he suspected he was being set up by a person who had previously assaulted him.
- Potential issues with what Ms Y had claimed that warranted further investigation.

50. We consider that the information raised by Mr Z should have prompted a thorough review of the evidence and in turn potentially raised doubt about Ms Y's credibility.

Reviews of evidence

51. The Police 'Adult Sexual Assault Investigation' policy requires that the evidence available be assessed on an ongoing basis:

"Ongoing analysis and reassessment of the information and evidence available to the investigation team should be undertaken as part of usual practice. There may also need to be a formal assessment which could include seeking the opinion of Legal Section or the Crown Prosecutor. Assessment of inconsistencies in information gathered and gaps in evidence should be made with background knowledge of the known dynamics of sexual violence. It is crucial to remain impartial throughout the investigation, and all information should be stringently and constantly reassessed to ensure the appropriate outcome is reached."

52. In our assessment, the evidence was not appropriately reviewed and tested, nor were the correct enquiries made until very late, as detailed below.

Attempts by Mr Z and others to prompt lines of enquiry

53. The following matters were made known to Police, either by Mr Z himself, his advocate, or his solicitors:

- **25 October 2019 (day of arrest)** – Mr Z requests that Police review the timeline of the Uber arrival, the video taken, and the 111 call. Mr Z requests that Police search for any link between Ms Y and the person who he suspected was trying to set him up.

- **19 November 2019** – Mr Z’s lawyer at the time writes a letter to Police requesting information about the Uber arrival time and the video start time, and mentions Ms Y’s fraudulent history.
- **20 January 2020** – Mr Z’s lawyer receives disclosure of the recording Ms Y took and makes further enquiries about it to Police.
- **11 February 2020** – Mr Z’s lawyer requests Police investigate an extortion attempt made by the person Ms Y was working with on 19 January 2020, but receive no response.
- **26 February 2020** – The next lawyer engaged by Mr Z writes to the Crown explaining the extortion allegations and details the lack of evidence against Mr Z. They provide a photograph of Ms Y eating with the person Mr Z believed was attempting to extort property from him.
- **1 April 2020** – Mr Z’s lawyer again writes to the Crown, explaining there is no evidence to support the charge against Mr Z. The Crown responds that the charge would not be dropped.
- **(Various dates) October 2020** – Mr Z, through his lawyer, complains that no clone was made of Ms Y’s mobile phone, and that the case lacks evidence. Police confirms that no metadata was taken from Ms Y’s mobile phone. Mr Z pays privately for an independent forensic analysis of the phone.

Investigations by Police and the Crown Prosecution Service

54. On 1 January 2020, Officer B received the video Ms Y took from the rental house, although it lacked any time stamping or metadata.
55. On 22 February 2020, Officer B submitted a request to the company Uber to get the exact arrival time of Ms Y on 25 October 2019.
56. On 2 June 2020, Officer B received an email from the Crown which had been sent by Mr Z’s lawyer, about more links between Ms Y and the person said to be attempting to extort property from Mr Z. In response to this, on 10 June 2020, Officer B asked a Chinese speaking colleague to make enquiries with the person who owns the restaurant that Ms Y and the person Mr Z said was attempting to extort property from him were seen eating at. This enquiry found that the photograph was taken in a different restaurant.
57. On 28 July 2020, Officer B followed up with Ms Y about the photograph of her with the person potentially extorting Mr Z. On 31 July, Ms Y provided a formal written statement to Police denying the allegation that she had made a false complaint.
58. After some back and forth about her phone being broken and poor contact, Ms Y gave her mobile phone to Officer B on 16 September 2020. The data was extracted by Police the same day.

Early 2021

59. Following a request from Mr Z's lawyer, on 6 January 2021 a clone of Ms Y's phone was dropped off at an independent company specialising in data extraction.
60. On 26 January 2021, Officer B noticed inconsistencies between Ms Y's formal written statements and the data extracted from her phone.
61. Officer B made various enquiries in early 2021 in response to the concerns about Ms Y's reliability. On 29 January 2021, Officer B emailed the Crown Prosecution Service explaining that Ms Y had provided him with two phone numbers and some inconsistent information.
62. Officer B discovered a link between Ms Y and the person who Mr Z had explained may be trying to set him up to extort property from him. The link was previous communication using a messaging app. Further digging and enquiries led Officer B to discover that Ms Y and the other person were closely connected and likely working together in a property business.
63. At about 11.30pm on 29 January, Officer B visited the business address and enquired if anybody knew Ms Y. Through this visit, Officer B discovered the name of another company that listed Ms Y as the owner, with the person potentially extorting Mr Z, as the sole shareholder.
64. At 2am on 30 January 2021, Officer B visited Mr Z's home address. This concerned Mr Z and his family as they were suspicious that Officer B was not a real Police officer and was a part of the extortion attempt, given the late hour of the visit. Officer B explained to us that he was about to go on leave, and it would be his last shift before the trial was due to start on 8 February 2021.
65. During this visit, Officer B explained to Mr Z that Police may be investigating Ms Y for making a false statement and that the charges against him may be withdrawn.

Supervision of investigation

66. Officer B reported to three different senior officers during the investigation.
67. When a supervisor reviews a Police prosecution file, it is usual practise for the supervisor to make a note in NIA that they have reviewed it, including writing any comments they have about the file. During the whole investigation, it appears that only six of these entries were made, none of which mention any assessment of the evidence. The entries were all procedural and mainly discussed updates to the Court dates.
68. On 17 February 2020, Officer E (ranked three levels above Officer B) emailed Officer B about having a meeting in relation to the investigation, however it appears this meeting never occurred.
69. When we spoke to Officer E, he told us "*I don't see the level of supervision*" that he would expect to on a case like Mr Z's.

Overall assessment

70. In our view, the initial steps taken by Officer B in the investigation were orthodox and appropriate. The shortfalls in the investigation were the subsequent thoroughness and timeliness of collecting and assessing the evidence, and a lack of supervisory oversight.
71. The time it took Police to discover that Ms Y's claims were false is aggravated by the fact that right from the day of his arrest, Mr Z put forward explanations and methods that Police could have used to expose Ms Y's claims as untrue, such as the issues with timing and the links between Ms Y and the person potentially extorting Mr Z.
72. We consider that if Officer B had requested more assistance from senior officers, Police would have concluded that Ms Y's claims were false much more quickly.
73. Police should have conducted a more thorough ongoing assessment of the evidence as required by the 'Adult Sexual Assault Investigation' policy.
74. As a result of the charges and the length of time before they were withdrawn, Mr Z and his family suffered significant financial, emotional, and reputational damage.

FINDINGS ON ISSUE 3

The initial steps of the investigation were appropriate; however, we consider that due to a lack of supervision, and the lack of ongoing evidential assessments, the charges against Mr Z were active before the Courts for significantly longer than they should have been.

Subsequent Police Action

75. Police reviewed the investigation and prosecution of Mr Z. Their findings were similar to those of the Authority. Police found the initial actions of the officers involved were appropriate, as well as the initial investigatory steps. Police found a lack of coordination, and that some lines of enquiry weren't investigated at an early enough stage.
76. Police considered that it was a complex investigation that could have been handled by a full team as opposed to one junior officer, and encouraged seeking help from supervisors when investigations are as complex as this one.
77. Police charged Ms Y with making false statements regarding her allegations against Mr Z. These charges have since been withdrawn.
78. After we made a formal recommendation to Police, they have engaged with Mr Z to negotiate to pay his reasonable costs, which, in our view is the appropriate course.

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

7 May 2024

IPCA: 21-7159

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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