

Use of force on man in Palmerston North justified

On 4 April 2023, Mr X was released on electronic monitoring bail from Manawatu Prison. Two days later, on 6 April 2023, Mr X cut off his electronic monitoring bracelet and absconded from his bail address in Bulls. That same day a warrant to arrest Mr X was issued in the Palmerston North District Court and the Police Offender Prevention Team (OPT) was tasked to locate and apprehend him.¹

On 4 May 2023, after having evaded Police for almost a month, Mr X was seen entering a house in Palmerston North. Police coordinated an approach to the house by the OPT, the Armed Offenders Squad (AOS) and two Police dog handlers. They also established cordons around the residential block.

Mr X was considered a high risk to the public and was the district's number 1 priority offender. He had a number of active charges and was also known to use firearms, knives and other weapons. Mr X had reoffended multiple times while on the run and Police were of the view that, if he managed to escape the cordons, it was extremely likely he would continue to offend, potentially using weapons to do so. This would have put members of the public and Police at considerable risk.

As officers approached the house, Mr X ran off into the neighbourhood, fleeing from Police, jumping fences, hiding and trying to avoid the Police cordons. Mr X was believed to be armed and a firearm was found in the car in which he had arrived at the house.

Officers pursued Mr X and, when he would not stop despite being ordered to do so, an officer fired at Mr X with a less than lethal sponge round launcher. The sponge round was fired from approximately 15 metres away and hit Mr X near his hip. Mr X stopped and dropped to the ground on a driveway which had a waist-high gate across it.

Officers called on Mr X to show his hands, but he refused to do so. Officers believed Mr X was not fully incapacitated and that if they did not act quickly, he would gain his feet and continue to flee. A Police dog handler then sent his dog over the gate and deployed him to locate and hold Mr X while officers breached the gate and moved forward to arrest Mr X.

Our investigation, which began following a mandatory referral from Police,² examined whether Police were legally justified in using force to apprehend Mr X, and focussed on Mr X's complaint that he was assaulted during his arrest.

During the investigation, we examined the scene and interviewed four Police officers as well as Mr X. We also reviewed Police statements and notebooks, Police policies, and Mr X's medical notes.

¹ The Offender Prevention Team is a frontline rapid response Policing team which focuses on dealing with priority offenders. Members have advanced tactical training (to AOS-level) to undertake work involving high risk offenders.

² As required by section 13 of the Independent Police Conduct Authority Act 1988.

We concluded that:

Officer A was justified under section 40 of the Crimes Act 1961 in using a sponge round to prevent Mr X escaping from Police.

- Mr X had continued to flee from Police despite being ordered to stop. Notwithstanding the presence of multiple officers and two Police dogs, Mr X had evaded Police for 30 minutes before Officer A confronted him. It was necessary to stop Mr X.
- Because of the distance between Officer A and Mr X, a sponge round launcher was the least forceful option available to Officer A to apprehend Mr X. In the circumstances, this was a reasonable use of force.

Officer C was justified under section 40 of the Crimes Act 1961 in using a Police dog to prevent Mr X escaping from Police.

- It was unclear how much impact the sponge round had had on Mr X due to the distance it had been fired from. Officers were caught behind a gate and believed that in the time it took to breach the gate, Mr X would gain his feet and continue to flee.
- The use of a Police dog is a serious use of force and can cause significant injuries. However, Officer C needed to make a split-second decision in order to capture a high-risk offender who was believed to be armed and not fully incapacitated. The use of the Police dog to hold Mr X prevented him from continuing to flee, while also allowing officers the opportunity to breach the gate and move forward to apprehend Mr X. In the circumstances, this was a reasonable use of force.

It is not clear whether Police punched and kicked Mr X during his arrest.

- There is a direct conflict of accounts in relation to this question and no corroborative evidence, medical or otherwise, that any such assault occurred. We were therefore unable to reach any conclusion on this aspect.



Judge Kenneth Johnston KC

Chair

Independent Police Conduct Authority

14 May 2024

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