

Officer uses his vehicle as a 'weapon of opportunity'

1. Police advised the Authority of an incident at Henderson where an officer had struck a man with his Police vehicle. We investigated the incident by reviewing the Police investigation, visiting the scene, speaking to the man, and interviewing ten officers who were involved.
2. We found that the use of a Police vehicle as a weapon of opportunity in these specific circumstances was justified under section 48 of the Crimes Act 1961. We were delayed in publishing this report until the conclusion of court proceedings.

What happened?

3. At around 4.30am on 5 December 2022, Police responded to reports that a man (Mr Z), had presented a pistol at two different people and attempted to steal their vehicles. During those acts, Mr Z stole a white van.
4. Police searched for the van and, within 20 minutes, a crew member of the Police helicopter (Eagle), located it driving west on the Auckland motorway. Eagle began filming, which included capturing the radio commentary. Footage is usually live streamed from Eagle to the Emergency Communications Centre (NorthComms), so that a shift commander can observe what is happening and give directions.¹ However, the digital link was not operating, so it fell to Eagle to provide a verbal commentary.
5. Eagle tracked the van from the motorway into Cedar Heights Avenue (the Avenue), a dead-end street in Massey. Mr Z parked the van in the Avenue and got out. After speaking to a person he appeared to know, Mr Z left and broke into two nearby houses. It was later established that, in the second of the houses, Mr Z stole the keys to a white sedan which was parked on the driveway.

How did Police plan to apprehend Mr Z?

6. While Eagle was monitoring Mr Z's activities at the Avenue, officers gathered nearby and prepared to approach and apprehend Mr Z.

¹ The shift commander is the senior officer at a Police Emergency Communications Centre.

7. Officer A is a dog handler who was working with another officer. The two officers believed Mr Z might try to make his way from the Avenue onto the adjacent motorway, so positioned themselves nearby, on a motorway onramp.
8. As other officers began driving down the Avenue towards Mr Z's location, Eagle advised that Mr Z was driving towards them in the white sedan. The sedan went past the approaching officers and sped off in the opposite direction. Most of the officers turned to follow.
9. As a result of Eagle's report as to where Mr Z was driving, Officer A set road spikes on the motorway onramp. Mr Z drove over the spikes, and all four tyres began to disintegrate as he drove at speeds up to 140 kilometres per hour. We are satisfied the spikes were deployed in accordance with Police policy.
10. Mr Z took the next offramp, turning into Lincoln Road, Henderson and drove on the wrong side of the road. Due to the danger Mr Z was presenting to the public, authority was broadcast by the shift commander to pursue and apprehend Mr Z. Staff were reminded that he had been armed.

How was Mr Z apprehended?

11. On Lincoln Road, Mr Z managed to steer the sedan directly into vehicles driven by members of the public, sideswiping one vehicle and coming to a stop after crashing into a second. Mr Z abandoned the sedan and ran down the road where he tried to enter two other vehicles which had slowed to avoid him. Eagle reported on the radio that the man was trying to 'carjack' a vehicle.²
12. Officers in three Police vehicles with lights and sirens activated, and two officers on foot, pursued Mr Z. Members of the public were nearby, most in vehicles. One man was standing close-by, on the side of the road. Police attempted to surround Mr Z, while commanding him to surrender, but Mr Z continued trying to escape. After about 80 metres, Mr Z stopped running and turned towards the officers. At this point, Officer A arrived in his dog van.
13. Officer A said he could not see Mr Z initially, but he came into view standing in the middle of the road, facing officers and, to Officer A, he did not look as if he was about to surrender. Officer A says he accelerated and struck Mr Z with the front bumper of the dog van because he believed it was too dangerous to delay apprehending him. The bonnet of the dog van struck Mr Z's torso and he fell backwards onto the road where he was detained by Police and handcuffed.
14. Officers placed Mr Z in the stable side position and tried to make him comfortable. They had concerns he may have sustained non-visible injuries and were cautious when handling him. When no ambulance was readily available, officers took Mr Z to hospital.
15. We consider officers applied appropriate aftercare to Mr Z.

² 'Carjacking' is a phrase that means to steal a car while someone is in it, using force or threats.

What did Mr Z say happened?

16. Mr Z told us he had surrendered before the dog van struck him, saying:

“... I knew I was under arrest, so I put my hands up and I just remember standing there for about five seconds, 10 seconds and then this car, ... just rams me straight away, boom.”

What does the Eagle footage and Taser footage show?

17. Eagle footage shows Officer A’s dog van arriving as Mr Z was running down the road. At the point the dog van enters the scene from behind other Police vehicles, Mr Z has stopped running and has turned to face the officers but does not have his arms up.
18. Brief Taser footage shows the dog van entering the scene and striking Mr Z. Immediately before this, Mr Z had his arms down by his waist.

What does Officer A say happened?

19. Officer A arrived in his vehicle behind other officers, having been delayed retrieving the road spikes. He told the Authority that, initially, he could not see Mr Z and was driving slowly forward when Mr Z suddenly appeared between two Police vehicles. Officer A said it appeared to him that Mr Z was taunting the officers and he thought Mr Z was trying to provoke officers into exiting their cars. Officer A says he believed Mr Z was looking for ways to escape and, if given the opportunity, he would attempt to take a Police vehicle.
20. Officer A says he felt he needed to defend himself, other Police and the public, and quickly determined that the best option was to use his vehicle as a “*weapon of opportunity*” to strike Mr Z, thereby temporarily incapacitating him and bringing the event to an end.³

Was Officer A legally justified in using force against Mr Z to defend himself or another?

21. Section 48 of the Crimes Act provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another. Under section 48, we assess Officer A’s actions on both a subjective (that is, what Officer A genuinely believed at the time) and objective basis (what a “*reasonable*” person would have done in those circumstances). We do this under the following headings.

What did Officer A believe the circumstances to be?

22. Officer A’s account of his understanding of the situation and the threat Mr Z posed to Police officers and members of the public nearby is outlined above. Only 15 minutes had elapsed from when Eagle initially spotted Mr Z on the motorway and no-one had seen Mr Z drop or dispose of a firearm. Officer A told us:

³ A weapon of opportunity includes an object, or substance taken from the immediate environment, for use in self-defence or defence of another, where no other appropriate and approved tactical option is accessible or available.

“... there was no evidence at any time, to suggest...the offender was no longer armed with a pistol. A pistol is easily secreted under a top or in a pocket, I believed that the offender was still armed with a pistol.”

23. From Eagle footage, we initially considered that Mr Z was contained by the officers in vehicles and on foot, and there appeared little prospect of him escaping. However, Officer A says he saw things differently and believed that Mr Z was not fully blocked on the side nearest to a service station and there was still a chance he could move in that direction. It is certainly the case that there was a gap on that side of the road.
24. When speaking to us, Officer A appeared genuine. In viewing the footage, having regard to the direction and his speed as he arrived at the scene, together with what he knew about Mr Z's behaviour and the probability he was armed, we accept that Officer A honestly believed that Mr Z was a continued risk to members of both the public and Police and that any delay in apprehending Mr Z would exacerbate that risk.

Was Officer A's use of force for the purpose of defending himself or another?

25. We also accept Officer A's assertion that his use of force was for the purpose of defending both himself and others.

Was Officer A's use of force against Mr Z reasonable in the circumstances as he believed them to be?

26. When he drove into the scene, Officer A considered the use of force options open to him, stating:

“There was no less violent means available to me at the time. I could not stop and get [the Police dog] out of the vehicle and deploy him. If I had stopped to deploy and prepare [the dog], the offender could have harmed another member of the public or other Police staff.

If I had got out of my vehicle, I would have unnecessarily exposed myself and lost any form of protection that the engine block offered, should I have come under fire from an offender who I believed to be armed with a pistol.

Other tactical options such as taser or O/C Spray could not have been deployed from a moving vehicle at a moving target with accuracy. I deemed using my vehicle, as a weapon of opportunity to effect the arrest, was the least violent means available to me.”

27. Police policy in relation to using weapons of opportunity, such as a vehicle, states that it *“should be seen as a ‘last resort’ when there is a real risk of injury to yourself or another and no approved tactical options are available.”*
28. Using a vehicle as a weapon of opportunity is an option with an extremely high risk of death or serious injury due to the difficulty in controlling the resulting amount of force and impact. It is also not a tactic that officers receive training in, which could potentially reduce some of the risk.
29. In these specific circumstances, when viewed from the perspective of Officer A, the use of his dog van to strike Mr Z and bring an end to this serious incident appears to be a proportionate

use of force. On that basis, we conclude that his use of force was justified to defend himself and others.

30. It should be noted, however, that use of vehicles in this way is extremely dangerous and brings with it a considerable risk of death or serious injury. We do not wish to encourage officers to regularly use this option or see the use of vehicles in this way as simply another tactical option at their disposal.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

16 May 2024

IPCA: 22-16062

Appendix – Laws and Policies

LAW

Crimes Act 1961: Use of Force

31. Section 48 of the Crimes Act 1961 states: “Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use”.

POLICY

Police policy on weapons of opportunity

32. A weapon of opportunity includes an object, or substance taken from the immediate environment, for use in self-defence or defence of another, where no other appropriate and approved tactical option is accessible or available.

Use of a weapon of opportunity

33. Using a weapon or opportunity should be seen as a ‘last resort’ when there is a real risk of injury to yourself or another, and no approved tactical options are available. As with all uses of force, using a weapon or opportunity must be necessary and proportionate, and thereby reasonable. All employees are criminally responsible for any excessive use of force.
34. A weapon of opportunity can take a variety of forms and may provide a variety of defensive capabilities, including the capability for placing restraining holds on violent or struggling offenders or positively repelling an assault.
35. If a striking action is required, you should avoid vulnerable areas of the body (head, neck, spine, tail bone and groin), unless you believe it to be necessary to protect yourself or others from GBH.

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.



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