

Kick to the head by officer in Hastings justified

1. At 12.16pm on 20 September 2023, Police received a 111 call from a resident at an address in Hastings saying an unknown person, Mr Z, was inside their house and refusing to leave. The attending officers located Mr Z on the street and arrested him.
2. Mr Z fled and a Police dog was deployed to apprehend him. The officers involved eventually handcuffed Mr Z after a struggle following which he was found to have a knife. During the struggle, Mr Z sustained multiple dog bite injuries, and was struck and kicked in the head. He was transported to hospital in an ambulance where he received surgery.
3. Police notified us of the incident because Mr Z was seriously injured.¹ We conducted an independent investigation into the matter.

The Authority's Findings

Issue 1: Was Officer A justified in using a Police dog to apprehend Mr Z?

The use of the Police dog to bite and apprehend Mr Z was justified.

Issue 2: Was the force used by Officer A against Mr Z justified?

Officer A was justified in striking Mr Z in the head and using a Police dog to bite Mr Z's elbow and leg.

Officer A was also justified in kicking Mr Z in the head.

¹ Section 13 of the Independent Police Conduct Authority Act 1988 says: "Where a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused."

Issue 3: Did the officers provide Mr Z with adequate aftercare for his injuries?

The officers provided Mr Z with adequate aftercare until an ambulance took him to hospital.

Analysis of the Issues

ISSUE 1: WAS OFFICER A JUSTIFIED IN USING A POLICE DOG TO APPREHEND MR Z?

4. In this section we consider whether Officer A was justified in using his Police dog to apprehend Mr Z under section 40 of the Crimes Act 1961. Section 40 requires us to assess whether Officer A believed Mr Z was fleeing and whether the force used to prevent his escape was reasonable and proportionate in the circumstances.

What happened?

5. On the morning 20 September 2023, Mr Z was at his friend's house in Hastings. He says he heard that residents at a nearby address were selling cannabis and, thinking he knew the owner, walked there and engaged with an unknown person inside about selling drugs. When that person telephoned Police, Mr Z took their cannabis and left. Mr Z says he did not take anything else.
6. At 12.16pm, a Police dispatcher reported that a man was refusing to leave an address where the occupants did not know him. The dispatcher provided a description of the man. Officers A and B were nearby in separate Police cars. As Officer B approached the address, a person waved and pointed him towards two men walking down the street.
7. Officer B pulled over and parked near the pair. Officer A, who is a dog handler, also pulled over in his car and saw the two men walking towards him. He recognised one of them as Mr Z due to a recent Police intelligence report (which recorded that Mr Z was a suspect for a burglary, "*of no fixed abode*", and officers had twice found him in possession of a knife). Both Officers A and B thought Mr Z matched the description of the suspect in this case.
8. Officer B got out of his car and told Mr Z: "*I need to talk to you about what happened around the corner.*" Officer A says he initially tried to speak to the other man, but he left. Officer A then turned his attention to Mr Z and heard Officer B say that Mr Z was under arrest.
9. Officer B recalls telling Mr Z: "*You're under arrest for being unlawfully on property*", and Mr Z responding: "*No I'm not*". He says he told Mr Z he was under arrest twice.
10. Officer A says he retrieved the dog after he heard Mr Z reply: "*Nah nah nah*" and it looked like he was going to flee.
11. Officer B also thought Mr Z was going to flee and got out his pepper spray, holding it semi-concealed by his body. He tried manoeuvring to a good position should he have to use it, but concluded the wind was unfavourable and it would not be effective.

12. Officer A says he challenged Mr Z by shouting: “Police dog handler, stay there or I’ll let my dog go!” Mr Z then dropped cans of alcohol he was carrying, turned and sprinted down the driveway of a nearby property. Mr Z says Officer B pepper sprayed him in the face before he ran away, but we are not satisfied that this happened.²
13. Officer B began to run after Mr Z, intending to spray him, but Officer A told him not to get in the way of the Police dog, so he moved aside.
14. Officer A released the dog and commanded it to chase Mr Z. He ran after the dog, keeping it within sight. He says he only lost sight of Mr Z for half a second as they moved past the house, and then saw Mr Z trying to jump over a fence at the rear of the property. The dog bit one of Mr Z’s hamstrings, pushing Mr Z’s leg into the fence and then pulling him back into the yard. Officer A was about fifteen metres away from Mr Z and the dog at this point.
15. Mr Z recalls that he fell off the fence and onto the ground before the Police dog bit him on his right elbow. However, on the evidence, we have concluded that the dog bit his right leg first, causing Mr Z to fall (as Officer A described).³

Was Officer A’s use of the dog to apprehend Mr Z justified under section 40?

16. In assessing whether Officer A’s use of the Police dog to bite Mr Z was justified under section 40, we must determine two issues:
 - a) Did the officer genuinely believe Mr Z was fleeing to avoid or escape arrest?
 - b) If so, was the officer’s use of force to prevent the escape reasonable?
17. In assessing whether the dog bite was proportionate and reasonable to prevent the escape, we will consider:
 - a) The seriousness of the offence which the officer reasonably suspected the person to have committed;
 - b) The effect of an escape on the likelihood of the person being brought to justice (for example, loss of evidence or difficulties in identifying and/or catching the person later); and
 - c) The degree and severity of the risk that the person was reasonably believed to pose if the escape was not prevented.

² Officer B denied pepper spraying Mr Z. Ambulance records for Mr Z show his breathing was recorded as “effective” and his airway as “clear”. No other injuries other than the wounds from the dog bites were found by the emergency medical technicians. There was also no mention of Mr Z disclosing that he had been pepper sprayed in the ambulance records nor later in the hospital records.

³ Mr Z says he tried to “hurdle” the fence but fell down and was met by the dog. However, both Officers A and B say they saw the dog bite Mr Z’s leg as he attempted to clear the fence. The medical records show three major dog bite injuries, two to Mr Z’s right leg and one to his right elbow. The bite to the elbow and one of leg bites are later accounted for during the struggle, leading us to deduce the other leg bite was the first bite.

Did Officer A genuinely believe Mr Z was fleeing to avoid or escape arrest?

18. Officer A told us that, when he first exited his vehicle, Mr Z was looking over his shoulder and slowly backing away as Officer B was speaking to him. Despite Officer B telling Mr Z he needed to talk to him and then arresting him, Mr Z continued to distance himself. It was this that led Officer A to warn Mr Z not to flee or he would release the Police dog.
19. Mr Z acknowledges he was told he was under arrest and says he wanted to get away from Police as he had the cannabis on him. We are satisfied that Officer A believed Mr Z was fleeing to avoid arrest, and indeed that he was justified in that belief.

Was Officer A's use of force to prevent Mr Z's escape reasonable?

20. Officer B had arrested Mr Z for being unlawfully on a property, which is a minor offence.⁴ However, Officer A says he only heard Officer B tell Mr Z he was under arrest and assumed it was for burglary, a more serious offence.⁵ Although the information reported over the radio by the Police dispatcher was that an unknown male had been found inside an address and refused to leave, three out of the four officers we spoke to all thought the information indicated that a burglary had been interrupted.
21. Officer A told us he had a conversation with another officer that morning about Mr Z and the circumstances of a recent burglary for which he was a suspect. When he saw and recognised the unknown male as Mr Z, Officer A suspected Mr Z had just committed another burglary. Mr Z also disengaged from the officers, fleeing before they could get an explanation from him as to what had happened.
22. We accept Officers A and B reasonably suspected Mr Z had been interrupted in the course of a burglary.
23. Officer A says he considered his options to apprehend Mr Z as he ran, and determined none would have been effective other than releasing the dog. There were no other officers set up in a cordon to contain Mr Z and there was heavy foot traffic in the area which meant tracking Mr Z could be difficult. Officer A also did not think he or Officer B could catch Mr Z on foot.
24. Although the officers knew Mr Z's identity, at the time he was "*of no fixed abode*". If Mr Z did escape it would therefore be hard to locate him. Officer A says he also believed Mr Z would likely continue to offend due to his brazenness and the fact he was suspected of committing another recent burglary. Against that background, our view is that Police – in particular Officer A – had grounds to believe that Mr Z's escape would be against the public interest.
25. Despite Mr Z sustaining a serious injury as a result of the dog bite, in our view, the use of the Police dog was the only realistic option to apprehend him, and was reasonable and proportionate in the circumstances.

FINDING ON ISSUE 1

⁴ The offence of being found on property without reasonable excuse under section 29 of the Summary Offences Act 1981 carries a term of imprisonment not exceeding 3 months.

⁵ Burglary under section 231 of the Crimes Act 1961 carries a term of imprisonment not exceeding 10 years.

ISSUE 2: WAS THE FORCE USED BY OFFICER A AGAINST MR Z JUSTIFIED?

26. In this section we consider whether Officer A was justified in striking Mr Z in the head, and commanding the Police dog to bite Mr Z's elbow and leg under section 39 of the Crimes Act 1961. Section 39 requires us to assess whether the force Officer A used was reasonable and proportionate to overcome the force Mr Z used to resist arrest.
27. We also consider whether Officer A was justified in kicking Mr Z in the head, by reference to section 48 of the Crimes Act 1961. Section 48 requires us to assess whether Officer A's use of force was reasonable and proportionate to defend himself or one or more others in the circumstances as Officer A believed them to be.

What happened?

What do Mr Z and the officers say about the strikes to the head and dog bite to the elbow?

28. After Mr Z fell off the fence, he grabbed hold of the Police dog's jaw with both hands. Mr Z ended up prone on his stomach with his arms and the dog in front of his head. Officers A and B arrived within seconds, with Officer A yelling at Mr Z to let the dog go.
29. Officer A says he heard Mr Z say: *"I'm going to break you!"* as the dog tried to free itself. Mr Z denies trying to hurt the dog, and says he just tried to stop it from biting. However, he admitted he caused the dog to yelp.
30. Officer A then grabbed Mr Z's hands to pry them from the dog's mouth, but he could not remove them as Mr Z was much stronger. Officer B straddled Mr Z's lower back with his pepper spray in hand but put it away after Officer A told him not to use it as it would blind everyone including the dog. Officer B then stretched out both of his arms past Mr Z's head and tried ripping Mr Z's hands from the dog.
31. Neither of the officers were successful as Mr Z maintained his grip. Officer A kept telling Mr Z to let go of the dog, with Mr Z telling the officers to remove the dog instead. Officer B held onto Mr Z's left wrist and Officer A was on Mr Z's right-hand side.
32. Officer A struck Mr Z multiple times in the head. Officer A says it was about five times with an open palm and fist, and that he did this to distract Mr Z so he would release his hands and they could handcuff him. Officer B recalls seeing Officer A punch Mr Z in the forehead two or three times as Officer A held the dog's vest. As it happens, Mr Z could not recall being struck.
33. Officer A says the strikes caused Mr Z to loosen his grip and free the dog, whereupon Mr Z started reaching down underneath his body towards his waistline as he attempted to get to his feet. Officer A says he could see Mr Z's shoulder *"wriggling"* as he moved his arm.
34. Although Mr Z says at no point did he reach for his waistline, he acknowledges he resisted the officers grabbing hold of his arms.

35. Officer A commanded the dog to bite Mr Z's right elbow. Officer A says he grabbed hold of Mr Z's left wrist and shouted at him to put his arms behind his back, but Mr Z managed to free his arm from the dog, before grabbing its head again. Officer A describes Mr Z wrapping his right arm around the dog's neck in a headlock.

What do Mr Z and the officers say about the kick to the head?

36. Officer A told us he was thrown off Mr Z as Mr Z attempted to stand, but that Mr Z fell back to the ground on top of the dog. Officer A says that during this manoeuvre Mr Z's shirt lifted and he saw the handle of a knife on the right-hand side of Mr Z's front waistband. Officer A told us Mr Z then reached with his left arm underneath and across his own body towards the knife.
37. By this point Officer A was standing in front of Mr Z, and he kicked him in the head. Officer A says the kick made contact on the top of Mr Z's head, above his right eye. The kick apparently dazed Mr Z causing him to slump and let go of the dog, which Officer A grabbed and pulled away.
38. Officer B says he did not see the kick. His account of Mr Z's position at the time it happened conflicts with Officer A's account. Officer B says Mr Z was continuously grabbing the dog in front of him with both arms until a third officer, Officer C, arrived. In addition to not mentioning Mr Z trying to get to his feet, Officer B maintains he held onto Mr Z's left wrist the entire time, and he did not think Mr Z was reaching for anything during the struggle.
39. Mr Z says it was when the officers removed his hands from the dog's jaw that Officer A said: "Don't hurt my dog" and kicked him in the face, hitting his lip causing him to release his grip. Mr Z was certain there was another officer holding him when he was kicked and following that two officers jump on his back. He also told us at no point did he ever reach for the knife.
40. Officer C arrived to assist the other officers moments after the kick. Officer C says he saw Mr Z lying face down on the ground, shouting, kicking out with his legs, and waving his left arm. Officer B was on the ground struggling to hold onto Mr Z's left wrist. Officer A was in front of Mr Z with his back to him, holding onto the dog's lead and pulling it away from Mr Z.
41. Officer C dropped to his knees, placing one on Mr Z's back next to Officer B and the other on the ground next to Mr Z's shoulder, applying pressure against Mr Z's arm. Mr Z was resisting his left arm from being pulled behind his back. Officer C says he looked at Officer B, who appeared exhausted, holding onto Mr Z's left wrist "for dear life". Officer C helped by also grabbing Mr Z's left wrist and applying a handcuff. They eventually pulled Mr Z's left arm out from under him and restrained it behind his back.

What do Mr Z and the officers say about the dog bite to the leg?

42. Once it had been released, Officer A moved the dog down to Mr Z's legs to stop Mr Z from getting up. He told us he noticed Mr Z trying to do a 'push up' to get to his feet and overpowering Officers B and C. Having lost sight of the knife, Officer A commanded the dog to bite Mr Z's leg. He then pulled on the dog's vest, pulling Mr Z back and preventing him from standing. Officer A says that at this point he heard one handcuff go on.

43. Officer C then moved to Mr Z's right arm. Officer C says Mr Z's right arm was tucked under his body and he was reaching in and out of his waistband. He directed Mr Z to release his arm several times but was unable to grab and secure Mr Z's arm. At about this time, Mr Z yelled out in pain due to the dog bite and yielded to Officer C, who finally seized his right wrist and finished applying the handcuffs.
44. Once the handcuffs were applied, the officers stopped holding Mr Z down to the ground and Officer A released the dog from his leg.
45. Mr Z told us the final dog bite happened after both his arms were restrained behind his back. However, he also said he was not sure he was handcuffed until the officers all got off him. We are satisfied the bite occurred before, if very shortly before, Mr Z was restrained.
46. Mr Z also says the dog bit his leg for about two minutes. Officer A says it was only about ten seconds. Given the whole struggle was over in approximately two minutes, we accept the officers' accounts as more likely.
47. Officers B and C then assisted Mr Z onto his back, revealing the knife in Mr Z's waistband. Officer C says the knife was "obvious" with the handle protruding out. Both Officers B and C told us this was the first time they were aware Mr Z had a knife. Mr Z says he forgot about the knife during the incident.

What do we conclude was the sequence of events?

48. The accounts given by Mr Z and Officers A, B, and C contain material differences with respect to the details and sequence of events. Set out below is our view of what likely occurred after Mr Z fell off the fence onto the ground, based on our assessment of the available evidence.
 - a) Mr Z wrestled with the dog, ending up lying on his front with both his hands on the dog's muzzle.
 - b) Officers A and B unsuccessfully fought to remove Mr Z's outstretched grip from the dog. Officer B straddled Mr Z's back and tried to secure Mr Z's left arm.
 - c) Officer A struck Mr Z in the head, causing Mr Z to release the dog temporarily.
 - d) Mr Z moved his right arm down to his waistline. In response, Officer A commanded the dog to bite Mr Z's right elbow. Mr Z wrapped his right arm around the dog in a headlock.
 - e) Mr Z flipped the dog in front of him and threw Officer A off. Officer B remained straddled over Mr Z holding his left arm.
 - f) At this point Officer A says he saw the knife in Mr Z's front right waistband and kicked Mr Z in the head. Whether Officer A saw the knife at this point, and whether he saw Mr Z reaching for it is controversial and assessed as a standalone point in paragraphs 65-76.
 - g) Mr Z released the dog, and Officer A grabbed it and pulled it away from Mr Z.

- h) Mr Z held his right arm back underneath his body near his waistline. Officer C arrived and dropped onto Mr Z to assist Officer B handcuff Mr Z's left arm. Officer A moved the dog to Mr Z's right leg.
- i) Mr Z tried to get to his feet. Officer A commanded the dog to bite Mr Z's right leg which allowed Officer C to control and handcuff Mr Z's right arm.
- j) Once handcuffed, Officer A removed the dog from Mr Z and Officers B and C rolled him over to find the knife in his front waistband.

What are the possible justifications for Officer A's use of force in these circumstances?

49. In assessing this issue, it is necessary to employ the language of the Crimes Act 1961, because the power to use force in particular situations is derived from that Act.
50. The relevant provisions here are sections 39 and 48.
51. Section 39 empowers Police to use "*such force as may be necessary*" to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process. "*Necessary*" force in this context is generally accepted as meaning "*reasonable*" and "*proportionate to the degree of force being used to resist*". Under section 39, we must consider:
- a) Did Officer A genuinely believe that Mr Z was using force to resist?
 - b) If so, was it reasonable for Officer A to conclude it was necessary to use force to overcome that resistance?
 - c) If so, was Officer A's use of force to overcome that resistance reasonable?
52. Section 48 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 must consider three questions:
- a) What were the circumstances as Officer A believed them to be?
 - b) Was Officer A's use of force against Mr Z for the purpose of defending himself or another?
 - c) Was Officer A's use of force against Mr Z reasonable in the circumstances as the officer believed them to be?

Were Officer A's strikes to Mr Z's head justified under section 39?

Did Officer A genuinely believe that Mr Z was using force to resist?

53. As already recorded, Mr Z acknowledged that Officer B had arrested him. Mr Z says he grabbed the dog's jaw to stop it from biting him, but also acknowledged he was resisting the officers who were trying to get his arms behind his back. We accept Officer A believed at the time Mr Z was resisting arrest.

Was it reasonable for Officer A to conclude it was necessary to use force to overcome that resistance?

54. Officer A told us he directed Mr Z to let go of the dog. Officer B also told us he directed Mr Z to stop resisting and place his hands behind his back. Mr Z did not comply. We accept that, as Mr Z was not complying with the officers' instructions, it was reasonable to use force to overcome Mr Z's resistance.

Was Officer A's use of force to overcome that resistance reasonable?

55. Officer A says he considered his options at the time and believed that striking Mr Z with his hand was the least violent option available. He told us the strikes were intended to distract Mr Z, and he did not "wind up" on the strikes so they did not land hard to Mr Z's head.
56. We note the difficulty both Officers A and B were having in prying Mr Z's hands away from the dog's jaw. We accept Officer A's evidence that the less violent option of strikes to Mr Z's body was not available. The way Mr Z was positioned, with his body away from Officer A, meant that for Officer A to strike him to the body he would have had to release his hold on Mr Z and move position, causing further delay and freeing Mr Z's arm. Further, we accept that it would have been reasonable for Officer A to doubt whether strikes to the body would be sufficient to distract Mr Z.
57. We also agree with Officer A that the less violent option of pepper spraying Mr Z was not practical in the circumstances.
58. Although Officer A struck Mr Z several times in the head, Mr Z did not recall this, indicating the level of force was minimal. With no less violent options available, we accept Officer A's strikes were reasonable and proportionate to overcome Mr Z's resistance in the circumstances. They were therefore justified.

Was Officer A's use of the Police dog to bite Mr Z's elbow justified under section 39?

Did Officer A genuinely believe that Mr Z was using force to resist?

59. We accept Officer A believed Mr Z was continuing to use force to resist his arrest. Mr Z ignored the officers' directions, placed his right arm underneath his body momentarily, and pulled his left arm free in front of him. Officer A also says Mr Z was attempting to get to his feet.

Was it reasonable for Officer A to conclude it was necessary to use force to overcome that resistance?

60. Again, in our assessment, Mr Z's actions justified a degree of force. Although Officer A does not say that at this point he was aware that Mr Z had a knife, he was aware that he had carried weapons in the past, and we accept that he was apprehensive that he might be armed on this occasion.

Was Officer A's use of force to overcome that resistance reasonable?

61. We accept Officer A believed that Police were not gaining control of the situation. He says Mr Z was able to overpower attempts to restrain him. Officer A told us he considered other options,

but determined that transitioning to one of these options and releasing pressure on Mr Z would give Mr Z an opportunity either to get to his feet or reach for any concealed weapon.

62. It would also mean that Officer A would no longer have control of the Police dog, in which case the dog could reattach anywhere on Mr Z's body causing unjustifiable injuries, or even bite Officer B. Officer A concluded that re-engaging the dog was the best option.
63. On balance we accept Officer A's use of the Police dog was reasonable and proportionate to overcome Mr Z's resistance in the circumstances, and therefore justified.

Was Officer A's kick to Mr Z's head justified under section 48?

What were the circumstances as Officer A believed them to be?

64. This is the most difficult issue by some margin. The key issue concerns Officer A's perception of the circumstances he faced, and particularly when he first saw the knife Mr Z was carrying.

When did Officer A see the knife?

65. Officer A provided Police and the Authority with a detailed account of what occurred, including that he saw the knife tucked in the front of Mr Z's waistband prior to kicking him in the head (see paragraph 36). He was not clear whether he told Officers B and C that Mr Z had a knife. Officer A says he recalled thinking "knife" and feeling sick and fearful upon seeing it, but cannot remember what, if anything, he said.
66. Both Officers B and C say they only became aware of the knife when they saw it on Mr Z after the struggle finished, and he had been handcuffed and rolled over (see paragraph 47). Officer B told us no one said anything about a knife during the struggle and that there was no indication that Mr Z was trying to gain access to a weapon. Officer C told us nothing was said between the officers after he arrived. Apart from Mr Z yelling throughout, the only other thing Officer C recalled was directing Mr Z to release his arm. Officer C also recalls the knife being located more towards Mr Z's groin area, meaning he had no way of seeing the knife by the way Mr Z was positioned during the struggle (lying prone face down on the ground).
67. Officer A's lack of communication about a knife during the incident casts doubt as to whether he saw it during the incident or came to believe that he had seen it after the event. Officers are trained to alert colleagues to the presence of a threat, such as a knife, as a reflex. We would expect an officer engaging in a violent struggle with an alleged offender who sees a weapon to inform colleagues of the threat.
68. We note Officer A did say he was completely exhausted after the kick, to the point where he found it difficult to talk. However, Officer A also told us he recalled telling Officer B to handcuff Mr Z straight after the kick as well as later commanding the dog to bite Mr Z's leg after Officer C arrived.
69. We accept the struggle was fast moving and dynamic. It is conceivable that Officer A caught a glimpse of the knife, but failed to say anything and, and on balance, we cannot discount the possibility.

70. We therefore analyse the case on the basis that Officer A did, as he said, see Mr Z's knife prior to the kick.

Did Officer A see Mr Z reaching for the knife?

71. Officer A says, immediately before the kick, Mr Z was lying on the ground and still had the dog in a headlock with his right arm. He says that, with his right arm occupied, Mr Z was reaching with his left arm under his body. He says he was certain from the way Mr Z's shoulder was wriggling he was reaching for the knife.
72. Although neither Officers B or C told us they saw Officer A's kick, they do both describe Mr Z's position at the time. Their accounts, set out in paragraphs 38, 40 and 41 do not support Officer A's recollection that Mr Z was reaching for a knife. In summary,
- a) Officer B says Mr Z was holding both his arms out in front grabbing the dog's jaw up until Officer C arrived (which was after the kick). Officer B maintains he held onto Mr Z's left wrist the entire time as he was on Mr Z's back. At no point did he consider Mr Z was reaching for anything during the struggle.
 - b) Officer C says, when he first arrived, he saw Officer B struggling to hold onto Mr Z's left wrist. Officer C assisted Officer B to hold his left arm.
73. Officer A himself told us he recalls Officer B grabbing an arm after stunning Mr Z with the kick and grabbing the dog.
74. In our assessment, the accounts of Officers B and C were more consistent with Mr Z's evidence as to his position at the time of the kick.
75. On balance, we consider it more likely Mr Z's arms were occupied at the time of the kick. We do not accept that Officer A perceived Mr Z was reaching for the knife in the moment.
76. Despite this, we also accept that Officer A was dealing with an uncontrolled situation which he believed he was slowly losing. Officer A believed that if he did not do anything Mr Z would eventually gain access to the knife and use it.

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

77. We accept Officer A kicked Mr Z in self-defence and in defence of Officer B. The kick occurred moments after Officer A says he saw the knife which made him fearful. Officer A told us the intention of the kick was to stop Mr Z obtaining access to the knife.

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

78. Officer A told us he feared that if Mr Z accessed his knife he would use it to stab him, Officer B, or his dog.
79. Whilst we have found that Mr Z's arms were both occupied at the time of the kick, with Mr Z's left arm fending off Officer B and his right arm wrapped around the dog, Officers A and B

certainly did not have control of the situation. We have also found this perceived risk was nonetheless still present.

80. Moments prior to this Mr Z had an arm down by his waistline requiring Officer A to intervene with the Police dog. We note the desperate nature of the situation Officer A faced, having seen the knife in an uncontrolled situation. Officer A told us he had to make a split-second decision in the heat of the moment, and he had no other options to reliably and quickly subdue Mr Z to prevent him from accessing the knife. We agree.
81. Officer A told us he kicked Mr Z's head with the inside of his right foot from about a metre away. Officer A explained it was like a soccer kick, but that it was very quick, with no wind up or step back. Officer A was wearing his normal Police boots, which are not reinforced. However, Officer A also told us his intention was to render Mr Z unconscious or daze him, stopping him from getting the knife. A kick to the head with such an intention raised a risk of serious harm.
82. It is a very fine call whether the kick was proportionate and reasonable. We are concerned by the risk of serious permanent harm involved in any kick to the head. However, we acknowledge the level of fear Officer A felt for himself and his colleagues on seeing the knife. A kick to the head will be an unjustified use of force in all but extreme circumstances. At very least, the use of a kick to the head in this case was poor practice. However, on Officer A's evidence that he saw the knife and reacted to that risk, we accept that he believed he had no other option.
83. It remains a matter of concern that Officer A did not alert his colleagues to this risk at this time.

Was Officer A's use of the Police dog to bite Mr Z's leg justified under section 39?

Did Officer A genuinely believe that Mr Z was using force to resist?

84. Mr Z continued to resist the officers' attempts at controlling and handcuffing him despite being struck to the head and bitten multiple times by the Police dog. As with our earlier assessments, we accept Officer A genuinely believed Mr Z was still using force to try and evade arrest.

Was it reasonable for Officer A to conclude it was necessary to use force to overcome that resistance?

85. Although Officer C arrived to help restrain Mr Z, Officer A says Mr Z was still threatening to overpower Police. Worried Mr Z would be successful at getting to his feet and accessing his knife, Officer A concluded that he needed to act. Again, we agree that further force was necessary to overcome Mr Z's resistance and restrain him.

Was Officer A's use of force reasonable?

86. Officer A says he considered using his hands to apply force, but did not think grabbing Mr Z's leg, which was slippery from the grass, would be effective. He considered other less violent options, but did not think they would subdue Mr Z in the moment. Officer A was again worried that using his hands or transitioning to another option would risk losing control of the dog. To secure Mr Z's leg and prevent Mr Z from standing, he commanded the dog to bite.

87. Officer A told us this dog bite was the turning point which finally allowed the officers to get control of Mr Z and secure the handcuffs, with Mr Z dropping to his stomach and screaming out in pain: “I give up!” This was confirmed by Officer B who told us Mr Z was still pulling his arms away until he yelled out and they were able to get his right arm handcuffed.
88. Although Mr Z did not access his knife, we accept the situation was still serious enough to justify the use of the dog to control Mr Z. We agree with Officer A that no less violent alternatives were realistically available to him. We are satisfied Officer A’s use of the dog was reasonable and proportionate.

FINDINGS ON ISSUE 2

Officer A was justified in striking Mr Z in the head and using a Police dog to bite Mr Z’s elbow and leg. Officer A was also justified in kicking Mr Z in the head.

ISSUE 3: DID THE OFFICERS PROVIDE MR Z WITH ADEQUATE AFTERCARE FOR HIS INJURIES?

89. We considered whether Officer A complied with Police policy which requires all people bitten by Police dogs 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 medical support to the scene if necessary.
90. We also considered general Police policy which provides that the officers have a primary duty of care for persons in custody.

What happened?

91. After the officers searched Mr Z, they sat him down on the ground handcuffed as Officers A and C both assessed his injuries.
92. Officer C says he took primary care of Mr Z and organised for an ambulance to be called. He then sat down with Mr Z, reassuring him. He had identified two visible wounds on Mr Z’s leg, a tear to his knee and a puncture to his thigh. Neither were bleeding. He decided to wait with Mr Z until the ambulance arrived.
93. Officer A was not sure if he himself called for the ambulance or organised someone else to. He outlined having additional specialised Police training as a trauma medic and says he scanned Mr Z for injuries, including checking his pulse. He too identified a wound to Mr Z’s knee, along with a wound to the elbow and scratches on the hand, none of which were actively bleeding. He assessed Mr Z as coherent. Officer A was then dispatched to another incident. He says he confirmed that Officer C would wait with Mr Z until the ambulance arrived before leaving.
94. Mr Z told us he was dazed and left on the ground losing “heaps of blood.” However, we are satisfied this was not the case. We reviewed photographs captured by an officer of Mr Z’s injuries after he was handcuffed. These show a puncture wound to Mr Z’s right thigh and a wound to the rear of Mr Z’s right knee, neither of which appear to have been bleeding. Mr Z is shown wearing a long-sleeved hoodie, covering the puncture wound to his right elbow, with

small amounts of blood visible. There is no blood visible on the ground. The ambulance report noted Mr Z was alert with no active bleeding to his wounds. Mr Z's patient status was deemed as the lowest being "no threat to life".

95. The ambulance arrived eight minutes after being called and assessed Mr Z before transporting him to hospital, accompanied by Officer C.
96. Mr Z told us that the officers celebrated his arrest, high-fiving and cheering after he was handcuffed on the ground. We found no evidence to support this. Although there appears to have been a genuine expression of relief on behalf of the officers that the struggle was over, all the officers we spoke to specifically deny high-fiving and cheering.
97. Mr Z also says he was not "read his rights" when he was first arrested. We accept this is true, however we do not think there was an appropriate opportunity to do so as he fled from the officers. We note Officer C's Police statement records that he later explained to Mr Z his rights as soon as the situation had settled.

Did the officers provide Mr Z with adequate aftercare?

98. The officers promptly sat Mr Z up and called for an ambulance after he was handcuffed. We reviewed recordings of the Police radio which show an officer requesting an ambulance for Mr Z about a minute after the dispatcher was advised Mr Z was handcuffed.
99. Although Mr Z sustained multiple dog bites, and his injuries were serious, we agree with the officers that there was no urgent need for medical intervention. Mr Z was coherent and was not bleeding. We accept that it was appropriate for the officers to wait for an ambulance in the circumstances.
100. In assessing the officers' actions, we are satisfied they complied with Police policy, including Officer A with the policy on using Police dogs.

FINDING ON ISSUE 3

The officers provided Mr Z with adequate aftercare until an ambulance took him to hospital.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

13 August 2024

IPCA: 23-19675

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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