



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Use of Police vehicle as a weapon and punching in Whitianga unjustified

1. On 9 March 2023, Police were engaged in an alleged family harm incident in Whitianga. When Officer A arrived at the address in a Police car, a man (Mr X) struck the windscreen and driver's window with his skateboard, shattering them which caused some glass to enter Officer A's eyes. The skateboard also hit Officer A's arm. Officer A initially drove away. He then did a three-point turn, drove back towards Mr X and rammed him with the car.
2. Mr X became airborne before landing between the Police car and a fence. Officer A then got out of his car and punched Mr X seven times.
3. Both Officer A and Mr X sustained injuries.
4. Police charged Mr X with intentional damage and intentionally injuring Officer A. On 12 June 2023 he was convicted on both charges. He was fined on the intentional damage charge and sentenced to one year and nine months' imprisonment on the second.
5. Due to the nature of the force Officer A used, Police notified the Authority of this incident and we decided to conduct an independent investigation. Concurrently, Police carried out their own investigation, and in due course charged Officer A with common assault and assault with intent to injure. The case was tried before a judge and jury on 16 May 2024. Officer A was acquitted. Having regard to this, our report does not address the question of criminal responsibility.

The Authority's Findings

Issue 1: Was Officer A justified ramming Mr X with his car?

Officer A was not justified in ramming Mr X with his car.

Issue 2: Was Officer A justified in punching Mr X seven times to the head?

Officer A was not justified in punching Mr X.

Issue 3: Did Police ensure Mr X had adequate medical attention?

Mr X received medical attention once he got to Hamilton. We have concluded that this should not be the subject of criticism.

Analysis of the Issues

THE AUTHORITY'S ROLE

6. After monitoring a Police investigation or conducting an independent investigation, the Authority's statutory responsibility is to:

"... form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which may be the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair or undesirable."

7. The Authority must convey its opinion to Police, and may make whatever recommendations it regards as appropriate. The Authority's jurisdiction extends to making recommendations that Police consider initiating criminal, civil or disciplinary proceedings. However, as already said, in this case, we do not address the question of criminal responsibility.

ISSUE 1: WAS OFFICER A JUSTIFIED IN RAMMING MR X WITH HIS CAR?

How did Mr X come to the Police's attention?

8. At 4.24pm on 9 March 2023, Ms Z reported that her ex-partner, Mr X, had pushed her out of a car and taken their young son. Ms Z wanted to ensure their son was safe. As their son lived with Mr X's mother, Officers A and B visited her apartment to talk to her.
9. Officers A and B arrived at the apartment complex at about 4.45pm. As they did so, a man the officers (correctly) believed to be Mr X skateboarded past them. Officer A checked the Police database and ascertained that Mr X was 'wanted to arrest' in connection with an aggravated robbery. The officers decided to check on the child instead of pursuing Mr X.
10. The officers spoke with Mr X's mother, who said Mr X had dropped off his son and the car, which belonged to her, and left. Police confirmed the child was safe and well.
11. Just after the officers arrived back at the station, Mr X's mother called, saying Mr X had turned up again. The officers decided to go back and arrest him for the aggravated robbery. They agreed to split up in case Mr X tried to flee. They agreed that Officer A would travel by car and enter the complex from the south side, while Officer B would walk and enter from the north side (the complex is very close to the Police Station).

What happened when Officer A encountered Mr X?

12. Officer A drove into the carpark in the apartment complex at about 5.24pm and saw Mr X leaning against a car with his arms crossed and his skateboard beside him. CCTV captured the incident that followed.
13. Mr X started walking towards the Police car. He raised his skateboard, appeared to yell at Officer A and hit the windscreen with the skateboard. Mr X then swung the skateboard twice at the driver's window. Both windows were shattered, and Officer A told us that shards of shattered glass got into his eyes, and that the skateboard struck his right arm.
14. Officer A drove away towards the north exit of the carpark. Mr X walked away in the opposite direction. Officer A told us that, as he drove away he radioed Officer B saying: *"I found him; he's attacked me"*. There was no response.
15. Officer A then did a three-point turn and drove back towards Mr X. When Mr X saw Officer A returning, he turned and walked back towards the Police car. As the Police car approached him, he raised his skateboard again.
16. The CCTV footage shows Officer A then accelerated and rammed Mr X with his car, crashing into the carpark fence. Mr X was launched into the air, flipped upside down and landed upright between the front of the Police car and the fence.

Was Officer A justified in ramming Mr X?

17. Officer A relies on section 48 of the Crimes Act 1961, one of the defences to assault contained in Part 3 of the Act.
18. Section 48 provides that any person, including a Police officer, is legally justified in using such force as is reasonable in the circumstances as they believe them to be for the purpose of defending themselves or others.
19. The section 48 analysis involves asking three questions:
 - a) What did Officer A believe the circumstances to be (a subjective test)?
 - b) Was Officer A's use of force against Mr X for the purpose of defending himself or another (also a subjective test)?
 - c) Was Officer A's use of force against Mr X reasonable in the circumstances as the officer believed them to be (an objective test, albeit based on the officer's subjective perception of the circumstances and purpose in acting)?

What did Officer A believe the circumstances to be?

20. Officer A told us that Mr X looked directly at him when he first approached and said: *"What the fuck do you want cunt?"* He went so far as to say that he believed Mr X was trying to kill him when he attacked the windscreen and driver's window with his skateboard.

21. Officer A provided us with a detailed and graphic description of his assessment of the situation he faced at that point, and the degree of danger he says he perceived that he and Officer B faced. He described Mr X's skateboard as a "weapon", and said that it was "bigger than a baseball bat" and "a massive piece of kit". He added that he believed that if Mr X "got [him] in the head [he was] toast". Officer A also told us that during the original encounter he believed Mr X was "aiming at [his] head" and he "thought like I was in the death or GBH range, like I thought if I got collected by that thing I'm right up there. I don't want to get hit by that thing."
22. We accept that, in the course of that initial encounter, Officer A perceived that Mr X presented a threat of the magnitude that he describes.
23. However, the difficulty in this case is that that is not, in our judgment, the correct point at which to assess Officer A's perception of the circumstances.
24. It will be recalled that the initial encounter concluded when Officer A drove away, and that Mr X also walked away from the scene. Whilst Officer A says – and we accept – that he was not aware that Mr X had walked away, he was certainly aware that Mr X's attack had ended, and that he was no longer in the immediate vicinity of the vehicle. Officer A was able to radio Officer B and make some assessment of his next move.
25. At this point, Officer A was facing, and must have perceived that he was facing, a materially reduced level of risk.
26. Against that background, Officer A elected to drive back towards the scene of the original attack, and in doing so invite a second confrontation with Mr X. In the course of his interview, Officer A's explanation for doing so was that he was concerned about Officer B (and any members of the public in the vicinity).
27. Whilst Officer A's concern for Officer B's safety is understandable, the fact of the matter is that Officer B's whereabouts was unknown and any perception that he was in danger was speculative.
28. In short it was Officer A's decision to turn his car around and drive back towards the scene of the first confrontation that led to the second confrontation.
29. Our view is that decision was an ill-judged one. If indeed Officer A's primary concern at that point was for Officer B, it appears to us that the obvious course was to take all possible steps to alert Officer B to whatever danger existed. Officer A could have activated his lights and siren, made further efforts to radio Officer B, attempted to call him on his mobile telephone, or accessed his Glock pistol so as to enable him to challenge Mr X if that became necessary.
30. Officer A says that, having turned his car around, he saw Mr X walking towards him. Mr X still had his skateboard and raised it in a way that suggested he remained assaultive. All of this is borne out by the footage.
31. Officer A says he believed he needed to deal with the threat immediately. He considered other tactical options, but did not think pepper spray or Taser would be effective, given that Mr X had

a weapon (his skateboard) and could quickly close the distance between them. He says that by this stage he did not think he had time to access his Glock pistol from the lock box. Because Officer A had glass in his eyes, he was also concerned his vision was impaired. This added to Officer A's belief that he was vulnerable and needed to act urgently. He says he believed driving into Mr X was the only way to stop him, and protect himself and Officer B.

32. As always, the Authority is conscious that Officer A was there and faced whatever threat there was at the scene, and that we are reviewing this matter with the benefit of hindsight.
33. However, in our assessment, Officer A's claim that he feared for his life or that of Officer B at this point (as opposed to earlier) is not credible. No doubt Officer A was genuinely – and quite rightly – concerned that Mr X was capable of acting violently and that he might attack either officer, but, in our assessment, Officer A is overstating the risk he perceived in saying it was undiminished by this point.

Was Officer A acting in defence of himself or others?

34. Officer A told us that he acted in defence of himself and Officer B, and, in the absence of any evidence to the contrary, we accept that.

Were Officer A's actions reasonable in the circumstances as he believed them to be?

35. Against the background of the conclusion we have reached, as to the circumstances that Officer A perceived himself to be facing immediately prior to the second confrontation, this issue resolves itself into whether his response was reasonable and proportionate – the objective component of the section 48 test.
36. It is important first to focus on Officer A's response. This was to drive his vehicle at a speed which we estimate as being between 10 and 12 kph at Mr X, effectively trapping him between the vehicle and a fence. This, in our assessment, was an extremely high-risk use of force. The slightest miscalculation or loss of control could have resulted in a fatality.
37. Also important is what other options were available to Officer A.
38. Approaching the matter having regard to our conclusion as to Officer A's perception of the situation he faced, Officer A's response in using his vehicle as a weapon, and the dangers associated with that, and the fact that he had another obvious and viable option namely to remove himself from the situation as he had done earlier, we have concluded that Officer A's actions were an unreasonable and disproportionate use of force. In short, we have reached the same view as Police must necessarily have reached in making their earlier decision to charge Officer A.

FINDING ON ISSUE 1

Officer A was not justified in ramming Mr X with his car.

ISSUE 2: WAS OFFICER A JUSTIFIED IN PUNCHING MR X IN THE HEAD?

What happened after Officer A rammed Mr X with his car?

39. Officer A struggled to get out of the car because there was little room to open the door. He climbed out and slammed the door shut. He paused briefly and appeared to talk to Mr X before turning and taking four steps away. He then turned again and walked back towards Mr X.
40. The footage shows Officer B running towards the car at this point. As Officer B reached the left side of the car, Officer A grabbed Mr X and started punching him. Officer A punched Mr X seven times.
41. Officer B ran around to the left side of the car and came up behind Officer A, who then stepped aside. As Officer B approached, Mr X put both hands up and cowered. Mr X then lay down on the ground and Officer B knelt to apply handcuffs.

Was Officer A justified in punching Mr X?

42. Again, Officer A relies on section 48 of the Crimes Act.
43. We have already outlined the principles that apply.

What did Officer A believe the circumstances were at the time?

44. Officer A told us that when he exited the car, Mr X told him: *“Okay it’s all good bro, you got me, all good.”* Officer A says that, while he heard this, he still had to complete the arrest. At this stage, he had not seen Officer B, so thought he would have to do this alone.
45. Officer A grabbed Mr X’s arm. He told us he did this to get control of Mr X and facilitate the arrest, and believed it was necessary because, on his assessment, Mr X was not immobilised – he believed the car’s position would stop him escaping but not prevent Mr X from attacking him.
46. Officer A said that when he grabbed Mr X he tensed up, clenched his fist, leaned back, started wriggling and said *“Nah, fuck you, cunt”*. The officer said he believed Mr X still intended to fight and was capable of doing so. This belief, he told us, was based on Mr X’s body language. He added that, due to his compromised vision, he was worried about his capacity to control Mr X.
47. Officer A then punched Mr X in the head area seven times. He said he kept punching because he believed Mr X was still trying to come forward to attack him. He said he believed this because Mr X’s head was down, and his fists were still clenched. He said he decided to keep punching until Mr X unclenched his fists.
48. Officer A said he chose to punch Mr X in the head area because it was the most exposed part of his body. He said he punched as hard as he could and believed this was appropriate to overcome the threat Mr X posed. Officer A did not tell us that he considered any other tactical options or warned Mr X before he started punching him.

49. Officer A said he believed Mr X remained assaultive and continued to pose a threat. He believed he needed to respond immediately and thought punching him in the head area was the only option.
50. The Authority does not accept that by this point Officer A genuinely believed Mr X posed a threat or that punching him was the only available response. In reaching this decision we have considered footage of the incident, and the evidence of Officer B and Mr X.
51. Footage following the ramming shows Mr X was effectively wedged between the car and the fence. He appeared to be motionless, and his upper body was slumped against the fence. When Officer A exited the car, Mr X did not move except to rest his head further into the fence. On Officer A's own account, Mr X told him that any struggle was over.
52. Officer B confirmed to us that by the time he reached the car, although Mr X was mobile from the torso up, Mr X's legs were wedged so he could not get out, at least towards the passenger side of the vehicle.
53. Officer A took a few steps away but after six seconds he came back, grabbed Mr X's arm and pulled. It appears as if he was trying to pull Mr X out from behind the car. Mr X did not move. He does not appear to have been resistant. Two seconds later, Officer A started punching Mr X in the head area.
54. Officer B ran around the car, at which point Officer A stopped punching. Mr X slumped so his torso was resting on the car bonnet. Officer A pulled Mr X into a standing position. Mr X appeared to be unsteady on his feet and swayed slightly. His hands were in fists but held up to his face as if he were cowering. The two officers swapped positions and Officer B took hold of one of Mr X's arms. Mr X immediately fell forward so he was lying on the ground. Mr X appeared motionless and compliant as Officer B handcuffed him.
55. Mr X said the punching was unprovoked. He told us that when the car hit him, he hit his head hard and blacked out. Mr X did not have a good recollection of the events that followed. He believed rightly or wrongly that this was because he had suffered concussion. Nevertheless, he told us, before Officer A started punching him, he told him he gave up and said "*yeah, no, no more drama all good... just arrest me*". Mr X told us that he did not try to run away or attack Officer A. Mr X's account appears entirely consistent with the available footage.

Was Officer A acting in defence of himself or Officer B?

56. Having concluded that Officer A did not genuinely believe that Mr X posed a continuing threat, it follows that we do not accept that Officer A punched Mr X in defence of himself or Officer B.

Were his actions reasonable in the circumstances as he believed them to be?

57. It also follows that Officer A's actions in punching Mr X were not reasonable or proportional and were therefore unjustified.

FINDING ON ISSUE 2

Officer A was not justified in punching Mr X.

ISSUE 3: DID POLICE ENSURE MR X HAD ADEQUATE MEDICAL ATTENTION?

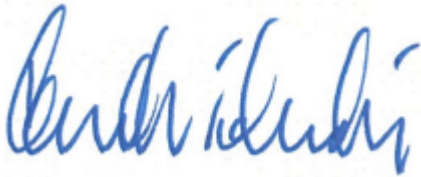
58. After Mr X was taken into custody, Officer A walked to the neighbouring medical centre and was seen by a doctor.
59. Officer B told us Mr X complained of pain while in custody and said he may have been aware that Mr X had been struck by the car. However, he did not think Mr X needed emergency care. Mr X confirmed with us that he saw a doctor once he got to Hamilton.
60. It is our view that every attempt should have been made to provide Mr X with medical care at the earliest opportunity. Given that from a practical point of view Police were probably not able to arrange for Mr X to receive medical treatment any earlier than he received it in, our assessment is that Police acting in this regard is not open to serious criticism.

FINDING ON ISSUE 3

Mr X received medical attention once he got to Hamilton. We have concluded that this should not be the subject of criticism.

Subsequent Police Action

61. Police charged Officer A with 'Assault with a Weapon' under Section 202C(1)(a) of the Crimes Act 1961 and Assault under Section 196 of the Crimes Act 1961. As recorded earlier in this report, following a trial before a judge and jury, he was acquitted. That outcome is not inconsistent with the adverse conclusions the Authority has reached. Different issues arose in the criminal proceedings from those we are dealing with, and of course different standards of proof apply in criminal and civil proceedings.
62. Police acknowledged and accepted our substantive conclusions. Officer A made it clear to us that he did not agree, and while we have not changed the findings, we have had regard to his submissions.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

8 April 2025

IPCA: 23-17139

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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