

Wrongful arrest of man in Westgate

1. At about 5pm on 23 May 2024, Police responded to a reported rubbish fire on a vacant property in Westgate, Waitakere. On arrival at the scene, Officers A and B spoke to the caretaker of the property, Ms Y, while the Fire Service extinguished the fire.
2. Ms Y told the officers that she believed the fire had been deliberately lit and she provided details of the person she believed was responsible (Mr X). Ms Y said that she had had problems with Mr X frequenting the property over the past few months and that she had recently trespassed him and removed a container of his from the property. Ms Y also told the officers she had seen Mr X's van parked outside the property about two hours earlier. Ms Y then left the scene.
3. Officer A then conducted a Police computer check on Mr X and obtained his details which included his photograph.
4. Shortly after this, a man from a neighbouring property, Mr Z, approached Officers A and B. According to Officer A, Mr Z was aggressive in his approach and yelled at them: *"You wanna know who lit the fire, it was that bitch! Same one that took my container!"* Officer B says, when he asked Mr Z for his name, he refused to give it to him. Based on Mr Z's comment about the container, and his similarity in appearance to the photograph of Mr X, they believed the person they were talking to was Mr X. We think this was a reasonable assumption to make in the circumstances.
5. After refusing to give his name, Mr Z started to walk back in the direction from where he had come. At that stage, Officer A told Mr Z that he was under arrest for arson. A struggle then took place between Mr Z and the two officers, as Mr Z resisted being handcuffed.
6. According to Officers A and B, it was soon after being handcuffed that Mr Z gave his name and date of birth and, after checking these details on the computer, they were able to confirm he was not Mr X. Mr Z's handcuffs were then immediately removed, and Officer A apologised for arresting him.
7. Mr Z walked away from the scene and returned to his home nearby. He complains that he was wrongfully arrested, and that Officer A and B used *"excessive"* force to arrest and handcuff him.
8. In his complaint, Mr Z said he approached Officers A and B to provide them with information about the fire, and that he gave them his details before Officer A arrested him for arson. He said

that one of the officers (Officer B) searched his pockets and, while doing so, he “*managed to grab my genitals hard*”. On receipt of the complaint, the Authority conducted an independent investigation.

9. Our investigation included interviews with Officers A and B and Ms Y. We also interviewed three witnesses who saw Mr Z approach the officers, and saw the force used by the officers while struggling to handcuff him. From the accounts provided, we are satisfied that Mr Z approached Officers A and B in an aggressive manner, and that he did not initially provide his details as he says.
10. In relation to Mr Z’s arrest, Section 315(2)(b) of the Crimes Act 1961 requires that an officer has ‘good cause to suspect’ that a person has committed an offence before they can arrest them. The courts have determined that ‘good cause to suspect’ means having a reasonably grounded suspicion (rather than mere suspicion).
11. In this case, although we accept that Officers A and B believed it was Mr X they were talking to, we have concluded that the information known by the officers at the time only justified a mere suspicion that he may have committed arson, not ‘good cause to suspect’. Therefore, Officer A’s arrest of Mr Z, although made in good faith, was unlawful.
12. In relation to Mr Z’s complaint of excess use of force, we are satisfied from witness accounts that the force used to handcuff Mr Z was not excessive. In relation to the specific allegation that Officer B grabbed Mr Z’s genitals, this is strongly denied by Officer B, and we accept this. We consider if there was any connection with Mr Z’s genitals, it was likely inadvertent during the search of Mr Z’s pockets.

FINDINGS

Although made in good faith, the arrest of Mr Z was unlawful as Officer A did not have ‘good cause to suspect’ he may have committed arson.

The officers did not use excessive force on Mr Z.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

1 May 2025

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