

Police use of force during arrest in Gisborne

INTRODUCTION

1. On the evening of 2 January 2018 Police went to a residential address in Gisborne and arrested a man for breaching a protection order. The man was handcuffed and escorted to a Police car parked across the road.
2. As one of the attending officers attempted to put the man into the back seat of the Police car, a brief struggle ensued, during which the officer struck the man with his knee. This caused the man facial injuries that later required medical treatment.
3. The man complained to the Police, who notified the Authority. The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

4. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
5. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence are reserved for the 'Authority's Findings' section.

Summary of events

6. At approximately 7.30pm on 2 January 2018, Officer A was sent to an incident in Te Karaka on the outskirts of Gisborne.¹ It was reported that a man, Mr X, had arrived at a property there in breach of a protection order, and had threatened to kill his brother. Mr X was not at the property when Officer A arrived.

¹ Officer A has been a member of Police for 14 years, with all of his service in the Gisborne area. All of his relevant training certifications were current.

7. Officer A confirmed the existence of the protection order and satisfied himself there was sufficient evidence to arrest Mr X for breaching it. A witness told Officer A that Mr X was a large man who may become aggressive if approached.
8. For this reason and because he was working alone, Officer A radioed for assistance before traveling to Mr X's home in Gisborne. Officers B and C were sent to assist Officer A.² Mr X was arrested at his home, and taken into Police custody. The circumstances surrounding this are in dispute.

Arrest - the officers' accounts

9. Officer A arrived at Mr X's street and parked his Police Ute two houses down from Mr X's driveway. He waited there until Officers B and C arrived. Officer B parked their patrol car on the opposite side of the road from Mr X's house and about two houses along.³
10. Officers A, B and C walked together onto Mr X's property. Officer A knocked on the front door, but there was no response. Officers B and C walked around the side of the house and knocked on the ranch slider door. According to Officers B and C, Mr X answered the door and they went inside. Officer B later said that Mr X was not wearing a t-shirt or any trousers. Officer B told Mr X he was under arrest for breaching a protection order.⁴
11. Officer B said that he and Mr X walked through the house and opened the front door, where Officer A was still waiting. Officer A also told Mr X he was under arrest, and Officer B handcuffed him.⁵ Officer A recalls Mr X wearing track pants and no shirt at this time. Officer A escorted Mr X from the doorway out towards the road, with Officer B following behind him. Officer B said that, before leaving the house, Mr X requested a jersey which was on a chair in the dining room and Officer C retrieved the jersey for Mr X.⁶
12. Officer A told the Authority that Mr X walked in front of him out through the front door. Officer A caught up with him and held Mr X by the arm, leading him across the road to where the patrol car was parked. Officer B walked a short distance behind them, while Officer C locked the house. Officers A and B both described Mr X as being compliant as he was handcuffed and led from the house to the patrol car. Officer C got into Officer A's Ute, which she intended to drive back to the station behind Officers A and B and Mr X in the patrol car.
13. As they approached the car, Mr X asked Officer A how long the arrest would take. Officer A said that, because of the nature of the charge, he would be held in custody overnight to appear in court the next day. According to Officer A, Mr X then became angry and aggressive. Officer B told the Authority that Mr X *"was compliant all the way until [Officer A] mentioned that he's gonna stay the night and then he just fired up. Very loud, very, the language, threatening language."*

² Officer B has been a sworn member of the Police since 2013. Officer C graduated from Police College in October 2017.

³ This was directly in front of the house occupied by Mr Y; Mr X's neighbour.

⁴ The Authority considers it probable that at this time Mr X put some track pants on.

⁵ There are some slight variations between the officers' accounts as to where Mr X was handcuffed, and by whom. However all three officers agree that Mr X was handcuffed inside his house, and that he did not resist.

⁶ Officer C did not remember this specifically, but when asked if Mr X got any further clothing before leaving the house, she thought he might have got a jacket.

14. Officer A said that Mr X began yelling and swearing, and *“throwing his body around”*. Officer A put his hand on Mr X’s chest and pushed him against the left rear of the patrol car, telling him to calm down. He held Mr X there until Officer B arrived. Officer A said Mr X calmed down a little, so he opened the car door and asked Mr X to get inside.
15. Officer B started walking around the back of the car, intending to assist by pulling Mr X in through the right rear door.
16. With the car door open, Mr X and Officer A were in close proximity to each other in the space between the open door and the car. According to Officer A, Mr X became very aggressive, started *“bending and twisting”* and was *“real[ly] hard to control”*. Officer A struggled to hold on to Mr X, as he was not wearing a shirt. Officer A said he felt at risk of being assaulted and was trying to control Mr X’s body with his hands *“just to keep him away ... ‘cos he was in cuffs and I was very wary of his head”*.
17. Officer A told the Authority that he believed he needed to do something to prevent Mr X from kicking or head-butting him. He said he purposely aimed a forceful knee at Mr X, intending to strike Mr X’s thigh. Officer A told the Authority *“I was trying to give him a dead leg... I didn’t want to get hurt.”* Unfortunately, the knee connected with Mr X at the same time that Mr X bent down at the waist, in a *“staple shape”*. Officer A said that after he had applied the knee strike, Mr X *“was sort of stunned and went a little limp, so I managed to get him into the car”*. This interaction was very brief.
18. Officer A pushed Mr X inside the car onto the back seat, sat him up and put on his seat belt. As Officer A was buckling Mr X into the car, he noticed that Mr X had blood coming from his nose. He then realised that his knee must have connected with Mr X’s face, not with his thigh.
19. During this time, Officer C was sitting in the driver’s seat of Officer A’s Ute. She did not see the interaction between Officer A and Mr X because they were obscured from view. After a little while, she wondered why it was taking Officers A and B so long to leave, so she got out of the Ute and walked across to the patrol car. When she reached the grass verge she could see Mr X sitting in the back seat with blood on his face.
20. Officer C confirmed with Officers A and B that they did not need assistance. Officer A got into the back seat next to Mr X, and Officer B drove them to the Police station. Officer C followed in Officer A’s Ute.
21. At the Police station Officer A wiped the blood from Mr X’s nose with a wet paper towel. Officer A said that Mr X again became agitated, so he removed himself from the situation and left the other Police officers to deal with Mr X.

22. Officer A did not complete a Tactical Options Report form (TOR) in relation to this matter before leaving the station⁷. Police policy requires that a TOR be submitted before the end of the shift, or within three days if their supervisor authorises the late submission of a TOR.⁸
23. On 19 January 2018 Mr X complained to the Police about their treatment of him during this incident. As a result of this, Officer A submitted a TOR, and Officers A, B, and C completed jobsheets outlining their interaction with Mr X on the day.

Arrest - Mr X's recollection

Written complaint

24. In his complaint to Police, Mr X said that five officers had gone to his house and arrested him. He said that he was only able to give a “*sketchy*” description of two of the officers. He described the first officer as a short stocky Pākehā with short brown hair, in his 30s-40s, and the second as quite a tall Pākehā with ginger hair, also in his 30s-40s.⁹
25. Mr X described being handcuffed and led across the road, saying “*one of them beat me while pushing me into the back seat of the car*”. He said he was unconscious for a period and when he awoke, the car was moving and he had blood coming from his face.
26. The Authority has been provided with photographs of Mr X's injuries. These show that he sustained a very bruised and swollen eye. Mr X's medical records show Mr X had a fractured nose and eye socket.
27. When he wrote to the Police, Mr X was concerned about how long his injuries would take to heal, and whether or not that would have an impact on his job. Mr X explained that, as well as the physical injuries, he felt disrespected and that his mana had been compromised.

Interview with the Authority

28. When interviewed by the Authority, Mr X explained that while he could remember being handcuffed inside his house, he could not recall anything further until he woke up in the back of the Police car with a bleeding nose. He therefore assumed that he was knocked out in the house.
29. Mr X told the Authority that on the evening in question he had had “*a few beers*” and gone to bed. He was awoken by a Police officer at the end of his bed.¹⁰ Mr X said that he put on some track pants, and later asked for a jacket, as he was not wearing a shirt at the time. An officer passed him his jacket, which usually hangs on a chair in the kitchen.

⁷ An officer is required to complete a TOR when he or she has used force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it. Police policy requires officers who use force to complete a Tactical Options Report (TOR) before the end of their shift to explain their decision-making process.

⁸ Officer A has provided the Authority with the reasons for the delay in submitting his TOR.

⁹ Officer A is Māori, of medium build, and has brown hair; Officer B is a Polynesian male with brown hair; and Officer C is a blonde, Caucasian female.

¹⁰ Officers A, B and C denied entering Mr X's bedroom at any stage. The Authority notes that the bedroom and kitchen in Mr X's house are very close to each other, and that there is no door on the bedroom.

30. Mr X recalled five Police officers in his kitchen when he was arrested and handcuffed, none of whom were female.¹¹ He said he told the officers they did not need to handcuff him, and asked them to be careful, as he had a plate in his arm. Mr X described being handcuffed by Police, saying:

“It was done forcefully. I asked [them] not to and that seemed to make it worse...I've got a bung arm, a bung knee. I'd just woken up...”

31. Mr X said he remembers waking up in the Police car, looking down and seeing blood down his front.
32. Mr X could not describe how or where he received his injury, but he believed it must have happened inside his house. This belief, and his view that his injury was caused by Officer A, was based on what he had learned since his arrest.

Arrest - Independent witness account

33. Mr Y was at home on the evening in question and his attention was drawn to what he thought sounded like a fight breaking out across the road. He went to his front door and pulled back the curtain, enabling him to look through his screen door onto the street outside. The street is about 20 metres from his house. It was dark at the time, with some street lighting.
34. Mr Y told the Authority he saw a Police car parked directly in front of his house and a Police Ute on the other side of the road. He also thought there were two other Police vehicles in the vicinity - one parked directly outside Mr X's house, the other obscured from sight further down the road.¹²
35. Mr Y said he saw a person he did not know (Mr X) being escorted across the road towards a Police car by two Police officers. The officers held him under each arm. Mr Y described the man as “limp”, with his feet “dragging” as he was walked across the road. He said there was a third officer nearby. Mr Y also thought he saw other Police officers present “*but there were definitely three that brought [Mr X] to the car in front of my house*”.
36. Mr Y said he saw the two officers “drop” Mr X onto the grass verge beside the Police car while they opened the rear passenger's door, and then about 10 seconds later “*they picked him up and sort of manhandled him head first into the back seat of the car*”. Mr Y said that it did not look like Mr X was resisting; he was not kicking or screaming.
37. When asked to describe how Mr X was put into the Police car, Mr Y said he could not see if Mr X was on his feet because his view was blocked by the two officers. He said there was not much room for the three of them beside the car door but it looked like one of the officers was standing against the door, holding Mr X and “*sort of pushing him in*”, while the other officer had Mr X by the legs and was also trying to push him into the car.

¹¹ Officers A, B, and C were firm in their view that only the three of them attended. Police records have not revealed any other officers attending.

¹² The Authority has undertaken enquiries to determine whether or not any other Police vehicles went to Mr X's street that evening. It seems that at least one other Police unit was dispatched to the area, however it does not appear that any other Police arrived prior to Mr X being taken to the Police station.

38. Mr Y did not see Mr X enter the back seat, but he did notice one of the officers leaning in to put Mr X's seatbelt on and "organise" him "so that he was comfortable". Mr Y did not see Mr X being kneed.
39. Mr Y recalled that once Mr X was in the Police car, another officer got in the car, and the other two went across the road. Soon after this the Police cars left.

Medical attention

40. Mr X was received into custody at the Gisborne Police Station at 9.33pm. The Authority has reviewed CCTV footage, and notes that Mr X entered the Police station wearing track-pants but no shirt or shoes. His face was red and swollen, but Mr X is seen walking and conversing with Police.
41. Mr X was processed by the Watchhouse keeper, and had an initial 'pat down' by Officer D before being placed into a cell. Officer D then received a briefing about the incident, and conducted a more thorough search of Mr X, following which he filled in the Electronic Custody Module. During this process it was determined that Mr X should see a doctor.
42. Officer E arrived to take over as the Watchhouse keeper for the night shift at about 9.50pm. During the handover, Officers D and E visited Mr X to assess his condition. Officer D told Officer E that Mr X had only been in their custody for about half an hour, but that he would probably need to see a doctor.
43. Officer E later described Mr X's injuries, saying he had a "swollen over left eye and it was swollen to the size of about a cut in half apple and I just decided that this fella needs to see a doctor." He told Mr X that he would call him a doctor.
44. Once he had finished the walkthrough of the cells,¹³ Officer E called the on-call doctor at 10.10pm. The doctor arrived at 10.35pm and assessed Mr X. The doctor advised that Mr X did not need to go to hospital, and could remain in custody. The doctor also said that Mr X did not need any specific care or monitoring by Police.
45. Mr X remained in custody until his court appearance the following day. Mr X remained in the monitored cell, so that he could be observed easily while in custody.¹⁴
46. Once he had returned home, Mr X remained concerned about his injuries. He made a doctor's appointment later that week. The Authority has been provided with his doctor's notes, which indicate he was complaining of double vision, and had a swollen and inflamed eye. The doctor therefore referred him to hospital for scans and further assessment. These revealed that Mr X had suffered a fractured nose and eye socket.

¹³ A walkthrough is part of the handover between staff going off duty and staff coming on duty. It involves the officers walking around the Police cells, and the incoming Police officer being advised of any information they may need to know about those in custody.

¹⁴ Officer E explained that although the doctor had said Mr X did not need to be monitored, he put him in the cell where he could be seen, due to his concern about Mr X's injury.

SUBSEQUENT POLICE ACTION

47. After Mr X complained to Police, they conducted an investigation into this matter. As part of this investigation, Police went to Mr X's house and spoke with him. They explained that Officer A had intended to knee him in the thigh, and that his knee striking Mr X's face was accidental.

THE AUTHORITY'S INVESTIGATION

48. The Authority interviewed the complainant and an independent witness (Mr Y); Officers A, B and C; three officers involved in the care and custody of Mr X at the Police station, and two doctors who examined Mr X's injuries.
49. The Authority also visited the scene of the arrest and reviewed all of the documentation provided by Police and Mr X relating to this complaint.

THE AUTHORITY'S FINDINGS

50. The Authority identified and considered the following issues:

- 1) Were Police justified in arresting Mr X?
- 2) Use of force:
 - a) Where was Mr X when he sustained his injury?
 - b) What was the intended use of force?
 - c) Was the use of force appropriate in the circumstances?
- 3) Did Police ensure that appropriate medical assistance was provided to Mr X?

Issue 1: Were Police justified in arresting Mr X?

51. At approximately 7.30pm on 2 January 2018, Officer A went to a property in Te Karaka, following a complaint that Mr X had gone to the address in contravention of a protection order. Mr X was not at the property when Officer A arrived. However, Officer A was told that Mr X had been at the address, wielding a bat, and had threatened to kill his brother, the protected person. Officer A spoke to witnesses at the scene, confirmed the existence of the protection order, and gathered what he considered to be sufficient information for Mr X to be charged with breaching the protection order.

52. Section 315(2)(b) of the Crimes Act 1961 provides that:

“any constable ... may arrest and take into custody without a warrant ... any person whom he or she has good cause to suspect of having committed a breach of the peace or any offence punishable by imprisonment.”

53. The Authority agrees that on the information given, Officer A had good cause to suspect that Mr X had breached his protection order. As breaching a protection order can result in a sentence of imprisonment,¹⁵ the Authority is satisfied that Officer A could arrest Mr X without a warrant. Accordingly, the Authority finds that Mr X's arrest was lawful.

FINDING

Police were justified in arresting Mr X.

¹⁵ Section 49 of the Domestic Violence Act 1995 states that anyone who breaches a protection order “is liable to imprisonment for a term not exceeding 3 years.”

Issue 2: Use of force

a) Where was Mr X when he sustained his injury?

54. In his original complaint, Mr X said:

"I was handcuffed and led across the road, then they, or one of them beat me while pushing me into the back seat of the car. I was unconscious for a period. When I awoke, the car was moving and I had blood coming from my face."

55. However, when the Authority spoke with him, Mr X said he could not remember being injured. He explained that, after being handcuffed, the next thing he remembered was *"blowing blood out of [his] face"* in the Police car, which was moving. As he cannot remember anything after he was handcuffed inside his house, and from conversations he has since had with his neighbours, Mr X now believes he was assaulted by Police inside his house.

56. The independent witness, Mr Y, did not see Police use force against Mr X but believed he saw the Police *"carry"* Mr X from his house to the Police car. Mr Y explained that Mr X appeared to be:

"...handcuffed behind his back and there was an officer on each side of him ... they had their arms wrapped around his, under his shoulders to support him and half carry, sort of drag him across the road."

57. Mr Y's account could be interpreted as supporting Mr X's view that Police used force against him inside the house, because it suggests that Mr X was not fully conscious and needed assistance to walk to the Police car. However the Authority notes that Mr Y's view was from inside a lit house, through a screen door, onto a dark street at least twenty metres away and at times was obscured. For these reasons, the Authority can put limited weight on his observations in determining what happened.

58. Officers B and C were both inside the house with Officer A while Mr X was arrested and handcuffed. The officers all deny using force against Mr X at that time, and their accounts conflict with Mr Y's description of the officers 'half-carrying' or 'dragging' Mr X across the road. According to the officers, Mr X walked towards the patrol car in a compliant manner, with Officer A holding one arm and Officer B walking slightly behind them.

59. Officer A stated that Mr X became agitated as they were walking towards the patrol car, and the injury occurred as he was trying to restrain Mr X and place him in the back seat.

60. Neither Officer B nor Officer C witnessed Officer A using a knee strike against Mr X, because Officer C had gone to the Police Ute, and Officer B went to the other side of the patrol car. It was not until Officer B leaned into the Police car to assist with putting on Mr X's seatbelt that he noticed that Mr X's face was bleeding. Therefore, the only first-hand account of how Mr X sustained his injury is from Officer A himself.

61. Given the general consistency of the officers' accounts, together with Mr X's account in his original complaint to Police, the Authority is satisfied that Mr X sustained his injuries outside by the patrol car, rather than inside the house.

b) What was the intended use of force?

62. When interviewed by the Authority, Officer A stated that he intended to strike Mr X's thigh with his knee. He was adamant that the connection with Mr X's face was accidental. Officer A demonstrated to the Authority how he and Mr X were positioned near the door to the Police car, indicating that although Mr X was handcuffed with his arms behind his back, Mr X was twisting and moving his body. He also said that Mr X made continuous threats against both him and Mr X's brother.
63. Officer A pinned Mr X against the car, telling him to calm down. He held Mr X against the car until Officer B arrived. Officer A told the Authority: *"I didn't want to let him go in case he did something to me"*. Officer A then opened the left rear door and Officer B moved behind the car, intending to open the rear door on the other side and assist by pulling Mr X into the back seat.
64. Due to Mr X's state of agitation and his movements, Officer A was worried that Mr X would head-butt him. He explained that, as Mr X was not wearing a shirt, he had nothing to grip onto to try to control him. He said he thought:

"[Mr X] wanted to do something to me and 'cause [of] his size and all that I felt threatened, yeah. I thought I was at risk of being assaulted. You know, whether it be a kick or a head-butt or whatever."

65. Officer A told the Authority he decided to knee Mr X in the thigh in order to give him a *"dead leg"* and gain some control of the situation. Officer A said that Mr X was twisting and turning and bending over. Mr X bent over in a *"staple shape"* and twisted his torso to the side at the same time that Officer A brought his knee up to strike Mr X in the thigh. Officer A said it was not until Mr X was in the car that he realised his knee had connected with Mr X's face and not his thigh.
66. These events unfolded quickly. The Authority accepts on the balance of probabilities that Officer A's intention had been to strike Mr X's thigh with his knee, and considers that the resulting knee to Mr X's face was accidental.

c) Was the use of force appropriate in the circumstances?

Self-defence

67. Section 48 of the Crimes Act 1961 provides legal justification for any person, including Police officers, to use reasonable force in defence of themselves or another. 'Legal justification' in this sense means that this person is not guilty of an offence or liable to any civil proceeding in connection with their use of force. Police policy is separate from but related to the legal test, and provides guidance on what is considered *"reasonable"* force.

68. In order to rely on a defence under section 48 of the Crimes Act, a person's actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:

- a) What were the circumstances as the officer believed them to be? (a subjective test)
- b) Did the officer use force for the purpose of defending himself or herself or another? (a subjective test)
- c) Was the force used reasonable in the circumstances as the officer believed them to be? (an objective test)

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

69. The following factors contributed to Officer A's assessment of the situation:

- Mr X was bigger than Officer A;
- Mr X was threatening Officer A;
- Officer A was struggling to control Mr X;
- Mr X was moving in a manner which made Officer A think he would be assaulted; and
- Although Mr X was handcuffed, with his arms behind him, Officer A was worried that Mr X might try to kick or head-butt him.

70. In light of the above, Officer A decided to knee Mr X in the thigh.

2) *Did Officer A use force for the purpose of defending himself or another?*

71. Officer A wrote in his Tactical Options Report (TOR) that Mr X became aggressive, and told him to take the handcuffs off, "*and I'll smash your fucken head in*". Officer A believed he "*was at risk of being head-butted*" by Mr X. He stated that Mr X "*kept trying to turn towards me with an angry/aggressive look in his eyes while repeating his threats*". Officer B's opinion that Mr X was "*fired up*" supports Officer A's assessment of Mr X's demeanour.

72. Although Mr X was handcuffed, the Authority accepts that Officer A feared for his safety, and that when he kneed Mr X, it was a pre-emptive strike in order to protect himself from a potential headbutt or kick. The Authority notes that at a stage in his interview Officer A said "*he decided to knee Mr X in the thigh in order to give him a "dead leg" and gain some control of the situation*" and that this might be interpreted as the use of force for compliance rather than in defence of himself. However, in the context of the situation Officer A found himself, the Authority is satisfied Officer A's motivation was one of pre-emptively protecting himself.

3) *Was the force used reasonable in the circumstances as Officer A believed them to be?*

73. Police policy on using force states:

“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 absolutely necessary to protect yourself or others from GBH [grievous bodily harm].”

74. Striking the head area should be avoided wherever possible. However, the Authority accepts that Officer A intended to strike Mr X’s thigh. Therefore it is appropriate to assess whether a knee strike directed to the thigh would have been reasonable in the circumstances, rather than considering whether a strike to the face was appropriate.
75. The Authority has sought advice from a Police trainer about whether knee strikes are taught to Police officers as an approved technique. The Authority was advised that knee strikes are an approved technique and are trained in both recruit and Police Integrated Tactical training.
76. The Authority accepts that knee strikes may be appropriate in certain circumstances. In this case, Officer A believed he was going to be head-butted. He had tried communicating with Mr X and had already handcuffed him. Officer A struggled to hold onto Mr X, so he pushed Mr X against the car in an attempt to control him.
77. After communication, further options available to Officer A to protect himself were empty hand techniques, baton, or pepper spray.¹⁶ Officer A said he considered using pepper spray, but did not have sufficient time to remove it from his belt.
78. The Authority notes that using a baton would have been difficult, given Officer A’s proximity to Mr X, and the need to keep hold of him. Therefore using a baton would not have been appropriate in the circumstances.
79. This same logic applies to the potential use of pepper spray. There would be additional complications in using pepper spray as Officer B was nearby, and Mr X was moving in an unpredictable manner. The risk of missing Mr X, and/or potentially hitting Officer B with the pepper spray meant that this was not an appropriate option. Police practice is also not to use pepper spray from closer than 1 metre away from the person being sprayed. In light of this, the Authority concludes that a knee strike was an appropriate method of defending himself.
80. The Authority finds that a knee strike to Mr X’s thigh was a practical and proportionate response to the threat Officer A perceived, that Mr X would head-butt him. It was a minimal use of force which enabled Officer A to continue to try to hold onto Mr X, and to gain control of him.

Overall, was Officer A’s use of force reasonable in the circumstances?

81. In addition to examining the legality of the officer’s use of force, the Authority must consider whether, as a whole, it believes that his actions complied with Police policy and were reasonable in the circumstances.
82. As discussed above, the Authority has accepted on the balance of probabilities that Officer A intended to strike Mr X in the thigh, rather than the face.

¹⁶ ‘Empty hand’ refers to a weaponless use of force, such as grabbing hold of, pushing, or manually restraining an offender.

83. The Authority has considered whether, instead of using a knee strike, it might have been possible for Officer A to:
- use further communication to prevent Mr X from harming him;
 - let go of Mr X and step back, so that he was out of harm's way; or
 - ask for assistance from Officer B, who was within close proximity of Officer A and Mr X.
84. Officer A told the Authority that he tried to communicate with Mr X to calm him down. Although this briefly worked, Mr X again began acting in an aggressive manner when Officer A attempted to put him into the back of the patrol car. The Authority accepts that Officer A had therefore tried communication, but this was ineffective.
85. Given the close proximity of Mr X to Officer A, and the speed with which this interaction took place, the Authority does not think it would have been feasible for Officer A to move out of the way, or ask Officer B for assistance. Officer A felt that there was an imminent threat presented by Mr X, and that he needed to respond immediately.
86. The Authority is therefore satisfied that it was reasonable for Officer A to attempt to strike Mr X's thigh with his knee. However, the knee strike was poorly executed and caused a significant injury to Mr X's face, which although undesirable, was accidental.

FINDING

Officer A's intended use of force (a knee strike to the thigh) was appropriate in the circumstances. However, the knee-strike was poorly executed, resulting in significant injury to Mr X.

Issue 3: Did Police ensure that appropriate medical assistance was provided to Mr X?

87. Police policy requires that:

“If a person receives an injury or health issue which is more than minor as a result of Police using force on them, they must be medically examined by a qualified medical practitioner as soon as practicable, providing it is safe to do so.”

88. Officer B said that when he saw that Mr X’s face was bleeding, he asked him if he was OK, and Mr X nodded. The officers then drove Mr X straight to Gisborne Police Station, where he was given into the custody of the Watchhouse staff. Officer A wiped Mr X’s face with some paper towels, however, he became agitated again, so Officer A left and the Watchhouse staff took over.
89. A doctor was called to assess Mr X at 10.10pm on the night in question; forty minutes after Mr X arrived in custody. The doctor arrived by 10.35pm, and examined Mr X. As a result of the doctor’s advice, Mr X remained in custody.
90. As discussed above, the Authority has viewed the CCTV footage from the Police station, and Mr X can be seen walking into the station. Mr X’s injuries were to the head, and therefore potentially significant. However, as he was able to walk and speak normally, the Authority finds the slight delay between Mr X being brought into custody, and the doctor being called was acceptable. The Authority understands that processing Mr X into custody, and the handover period, were the main causes of the delay, and considers that this was reasonable in the circumstances.
91. Officer E put Mr X into a cell which enabled him to be monitored more regularly. The Authority considers that this was an appropriate precaution, given Mr X’s injuries.

FINDING

Police ensured that appropriate aftercare was provided to Mr X.

CONCLUSIONS

92. The Authority has found that Officer A's intended use of force (a knee to the thigh) was reasonable. However, the knee strike was accidentally connected with Mr X's head rather than his thigh and caused injury to Mr X's face. Police have explained this to Mr X.
93. The Authority also determined that Mr X was lawfully arrested and that Police provided appropriate medical assistance.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

31 January 2019

IPCA: 17-1586

Use of force

Law

Use of force by Police officers

94. Section 39 of the Crimes Act 1961 allows Police officers to use reasonable force in carrying out their duties, such as arrests and enforcement of warrants. Specifically, officers may use “*such force as may be necessary*” to overcome any force used in resisting the officer carrying out their duty.
95. Section 40 of the Crimes Act 1961 empowers a Police officer to use necessary force in order to prevent a person from fleeing to avoid arrest.
96. The justification to use force under sections 39 and 40 are both limited by the requirement that force is not used where the Police’s purposes “*can be carried out by reasonable means in a less violent manner*”.
97. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Use of force for self-defence or defence of others

98. Section 48 of the Crimes Act 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 guidance on use of force

99. The Police’s ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of options available to them to help de-escalate a situation, restrain a person, make an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), pepper spray, batons, Police dogs, Tasers and firearms.
100. Police policy provides a framework for officers to assess, reassess, manage and respond to potentially dangerous situations. This helps them to ensure their response is necessary and proportionate to the risk to themselves and the public.
101. An officer must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs and alcohol,

and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).

102. An officer's decision about using force will largely depend on the actions of, or potential actions of, the people involved. These are categorised as:

- cooperative; passively resisting (refuses verbally or with physical inactivity);
- actively resisting (pulls, pushes or runs away);
- assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or
- presenting a threat of grievous bodily harm or death to any person.

103. Police policy provides guidance as to what level of force by Police may be appropriate depending on the response they are faced with. Ultimately, the authority to use force is derived from the law and not from Police policy.

104. Police policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

105. Police policy also states that:

"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 absolutely necessary to protect yourself or others from GBH."

Tactical Options Report

106. Police policy requires that:

"Other than touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground, uses of empty hand techniques must be fully reported in a Tactical Options Report (TOR) form."

107. The TOR must be completed and submitted to their supervisor before the end of their shift, unless an officer receives approval from their supervisor, in which case it must be submitted within 3 days/72 hours of this shift, and prior to any rostered days off or leave during this period.

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.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its 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 complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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 of investigators, report writers and managers. 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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