

Excessive force used after pursuit in Ramarama

OUTLINE OF EVENTS

1. On 26 October 2016 Police received a 111 call from Mr Z, whose Ute had just been stolen from Bombay, South Auckland. Police located the vehicle with the assistance of the Police helicopter, Eagle. Mr X, who had stolen the vehicle, did not stop when Police signalled for him to do so.
2. Police pursued the vehicle for approximately 15 minutes, following Mr X through the countryside and onto a private farm driveway in Ramarama.
3. At one point during the pursuit, Mr X reversed the Ute at speed and rammed the pursuing Police car. Later, when an officer attempted to block his path using a Police car, Mr X drove the Ute into that Police car in an effort to escape.
4. Eventually Mr X surrendered to Police on a private farm. He stopped the Ute and got out with his hands in the air. He then lay face down on the ground with his hands behind his back. Several officers assisted in arresting and handcuffing Mr X. As he was being arrested, Officer A kned Mr X twice in the head, causing facial injuries.
5. While Mr X was lying on the ground handcuffed, Officer B stepped on Mr X's leg.
6. Two Police officers transported Mr X to the Counties-Manukau Police Station, and later to Middlemore Hospital where his facial injuries were assessed and treated.
7. Neither Officer A nor B filed a report about their use of force on Mr X.
8. Mr X complained to the Authority that Police had beaten him, saying he had already surrendered when Police used force on him, and this was excessive. He said Police "*stomped*" on his head, causing him to lose consciousness. He complained he had ongoing headaches as a result of this incident. Mr X provided hospital records to show the extent of his injuries, which noted he sustained significant facial bruising and had blurred vision, as well as possible temporary loss of consciousness.

9. The Authority originally resolved to oversee the Police investigation into the matter. However, after receiving further information about the complaint and viewing the Eagle video footage of Mr X's arrest, the Authority decided to conduct an independent investigation. This report sets out the results of that investigation and the Authority's findings.
10. In the course of its investigation into this matter, the Authority identified issues regarding the Police investigation into Mr X's complaint. Although these matters did not form part of Mr X's complaint, the Authority investigated these issues as well. The Authority's findings are summarised in paragraph 27 below and the Authority has written to the Commissioner of Police setting out the full details in respect of this aspect of the Authority's investigation.

THE AUTHORITY'S INVESTIGATION

11. The Authority's investigation included analysis of Eagle footage, interviewing 15 Police officers and employees, the complainant and a witness (Mr Z, whose Ute was stolen). The Authority also conducted a detailed review of the Police investigation file.
12. The Authority identified and considered the following issues:
 - 1) Did Officer A unlawfully apply force to Mr X?
 - 2) Did Officer B unlawfully apply force to Mr X?
 - 3) Did Police adequately investigate Mr X's complaint?
 - 4) Was the commentary from the officer in Eagle appropriate when Mr X was arrested?

THE AUTHORITY'S ANALYSIS AND FINDINGS

Issue 1: Did Officer A unlawfully apply force to Mr X?

13. Eagle footage of Mr X's apprehension shows him voluntarily walking from the Ute with his hands above his head. He lies face down on the ground and puts his hands behind his back.
14. The footage shows Officer A running towards Mr X, followed by two other Police officers. Officer A arrives at Mr X and deliberately and forcefully knees Mr X in the face as he lay prone on the ground. The two other officers reach Mr X, who still has his hands behind his back, and restrain him in handcuffs. Officer A can then be seen drawing his knee back and striking Mr X in the face a second time.
15. Mr X was not threatening or using force against Officer A or the other officers on either occasion that Officer A kned him. In fact, he was lying face down on the ground, with his hands behind his back, having surrendered and in a vulnerable position. Officer A's use of force was therefore completely unnecessary, and he had no justification for it under Police policy or the law.
16. Through his lawyer, Officer A indicated he was unwilling to answer questions from the Authority about what happened at the time Mr X was arrested, and would instead rely on his right not to answer questions which might incriminate him. Due to the evidence available from the Eagle footage, the Authority determined that it was unnecessary to compel Officer A to answer questions. However, the Authority explained its view that, due to the nature of the Authority's role, and its secrecy provisions, it did not consider that Officer A could incriminate himself in answering its questions. The legislation under which the Authority operates states information provided to it is not admissible in subsequent proceedings which would include a criminal trial. The Authority therefore warned Officer A that if he chose not to answer its questions, it would be open to it to draw "*an adverse inference from that in making any findings*".

17. The Authority showed Officer A the video footage of Mr X getting out of the Ute and surrendering, and Officer A's two knee strikes to Mr X's face. When asked to comment on this footage Officer A replied, "*I decline to answer any questions in relation to what occurred after I got out of the vehicle and rely on my right not to answer any questions which might incriminate me*", or variations of that statement. Officer A has provided no explanation for his use of force.
18. The Authority considers that Officer A's use of force against Mr X was intentional and gratuitous. It is especially concerned that the force was used when Mr X was in such a vulnerable position and considers this to be a gross abuse of power.
19. The Authority notes that a criminal investigation was undertaken by Police in respect of Officer A's actions. Police subsequently charged Officer A with wounding with reckless disregard. He pleaded guilty and was discharged without conviction by a District Court Judge.

FINDING ON ISSUE 1

Officer A unlawfully applied force to Mr X.

Issue 2: Did Officer B unlawfully apply force to Mr X?

20. Officer B arrived at the scene immediately after Mr X had been arrested and handcuffed. Mr X was still lying face down on the ground, with his hands handcuffed behind his back and had three officers around him. Eagle footage shows Officer B jogging towards the Ute. On his way there, he can be seen stepping on Mr X's leg.
21. It is clear from the Eagle footage that Officer B did this intentionally; there were no obstructions preventing Officer B from walking around Mr X and he could have stepped over Mr X had he wanted to. When Officer B stepped on Mr X's leg, Mr X posed no threat to Officer B or anyone else present.
22. Until shown the Eagle footage, Officer B had no recollection of applying force to Mr X. However, when shown it he accepted responsibility for this, Officer B said there was no "*real reason*" or necessity to use force on Mr X at that time, saying it was "*just in the heat of the moment I guess*", and noting that it was a "*dumb thing to do*".
23. The Authority notes that Officer B has accepted responsibility for intentionally stepping on Mr X. This was deliberate and gratuitous force used on a vulnerable person, although at the lower end of the scale in terms of seriousness. The Authority is particularly concerned that the force applied was used while Mr X was handcuffed and lying on the ground. As with Officer A, the Authority considers this to be an abuse of power. It does, however, accept that Officer B has reflected on this matter and acknowledged that it was inappropriate.
24. Police carried out an employment investigation into Officer B's actions and Officer B has received a sanction.

FINDING ON ISSUE 2

Officer B unlawfully applied force to Mr X.

Issue 3: Did Police adequately investigate Mr X's complaint?

25. The Authority assessed the quality of the initial Police investigation into this complaint, including how it was categorised, managed, and the initial finding that the complaint should be closed as not upheld.
26. Due to the complex technical nature of this part of its investigation, the Authority has determined to send Police a separate letter outlining its analysis and findings in this regard, rather than traverse the detail here.
27. In summary, the Authority found that there were a number of initial errors or miscommunications in examining and categorising the complaint for investigation. Further delays and errors within the process meant that the initial investigation was substandard. However, once further information came to light, the Police reassessed and then undertook a thorough investigation and appropriately managed the complaint.

FINDINGS ON ISSUE 3

The initial investigation into Mr X's complaint was inadequate.

The subsequent investigation by the Criminal Investigation Branch was thorough.

Issue 4: Was the commentary from the officer in Eagle appropriate when Mr X was arrested?

28. Eagle footage shows Mr X getting out of the Ute of his own volition, with his hands in the air, and laying himself face-down on the ground. He did this before the Police officers reached him. However, the officer in Eagle reported over the radio *"he has been removed from the vehicle"*.
29. The Authority was concerned that this was an ambiguous and potentially misleading comment from the officer, as its natural interpretation is that Police had physically removed Mr X from the vehicle, rather than Mr X voluntarily surrendering. As the officer in Eagle was the primary source of information for Comms at the time, this misleading comment would have had the effect of giving Comms an inaccurate account of events.
30. The Authority was also concerned that Officer A's use of force may have been witnessed by the Eagle officer, who deliberately chose not to report it.
31. In light of these concerns, the Authority spoke with the officer in Eagle who had made the comment over the radio. The officer explained that he had simply meant that Mr X *"was removed from the vehicle"*, meaning that Mr X was no longer in the vehicle. He accepted that this was a poor choice of words. He also said that he did not see Officer A knee Mr X to the face.

32. The Authority is aware from its experience with other cases, that in conducting searches using the Eagle helicopter, officers are undertaking many tasks at once, and that they are not necessarily looking at the same place the camera is pointed. The Authority accepts the statement of the officer that he did not see any force used against Mr X.
33. Although it finds his choice of words puzzling, the Authority cannot conclude that the officer in Eagle was trying to be deliberately deceptive in his comment.
34. Eagle officers have since discussed learnings from this case in respect of clear communication and the need to report any use of force seen.

FINDING ON ISSUE 4

The commentary from the officer in Eagle when Mr X got out of the Ute was poorly expressed rather than deliberately misleading.

CONCLUSIONS

35. The Authority found that:

- 1) Officer A unlawfully applied force to Mr X.
- 2) Officer B unlawfully applied force to Mr X.
- 3) The initial investigation into Mr X's complaint was inadequate.
- 4) The subsequent investigation by the Criminal Investigation Branch was thorough.
- 5) The commentary from the officer in Eagle when Mr X got out of the Ute was poorly expressed, rather than deliberately misleading.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

11 July 2019

IPCA: 16-1090

Use of force

Law

Use of force by Police officers

36. 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.
37. 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.
38. 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”*.
39. 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

40. 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

41. 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.
42. 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.

43. 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).
44. 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.
45. 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.
46. 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.

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.

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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