

Police collision with motorcycle following pursuit

INTRODUCTION

1. On 30 August 2017, Officers A and B were parked in Waltham, Christchurch when they saw a dark figure ride past on a motorcycle. The motorcyclist was riding in what they considered to be a dangerous manner, so Police pursued it.
2. The motorcycle turned a corner, and the Police car caught up with it, connecting with the motorcycle. The rider crashed and fell onto the concrete footpath, breaking his ankle.
3. The Police notified the Independent Police Conduct Authority of the incident, and 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, it is not intended to suggest that the Authority has accepted that particular account.
5. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.

Summary of events

6. At about 3.15am on 30 August 2017, on their way back to the Sydenham Police Station, Officers A and B drove past a house they were familiar with in Waltham, Christchurch ("the Waltham house").¹ A few days earlier, Officer A had been involved in a pursuit involving Mr X, who frequented that address. Mr X had outstanding warrants for his arrest, so the officers went there

¹ At the time, Officer A had been a serving member of Police for four years, and Officer B for two years. Officer A was a Gold Class driver and authorised to engage in pursuits.

hoping to arrest him. Officers A and B were armed from a previous incident they had been involved in. They remained armed when they drove past the Waltham house.

7. Officers A and B did not advise their supervisor or the Southern Communications Centre (“SouthComms”) that they were returning to the Police station via Waltham, or that they were remaining armed.² Officer B later told the Authority that they did not communicate via the Police radios in case the occupants of the house could listen in to the Police radio frequency.
8. As they drove past the Waltham house, Officers A and B noticed a car parked outside. They checked the car’s details on the Police computer system and noted that the car was not registered to the address, nor could Officer B see any connection between the car and the address. In light of this, and the known gang connections and previous offending of people known to frequent the house, Officer B suspected that the car may have been stolen.
9. Officer A drove on and parked a street away, where the officers could see the entry and exit points to the street but could not to be seen by people watching from the Waltham house. Officer A liaised via cellphone with other Police officers in the area, organising for them to park close by in the surrounding streets, cordoning the area off. Officers A and B waited in their Police car for backup to arrive. They saw a figure come part way along the street, and then quickly run back. Officer B suspected that this person was on the lookout for Police, and that they may have seen another Police car parked nearby.

Following and collision

10. Less than a minute later Officers A and B heard a motorcycle engine, and saw a figure on a motorcycle travel along the street in their direction. The motorcycle was dark in colour, and appeared to be an off-road motorcycle. It was not equipped with lights or reflectors. The rider, who was later discovered to be Mr X, appeared to be speeding. Officers A and B believed the motorcycle had come from the Waltham house.
11. When the motorcycle was about 80 metres away from their Police car, Officer A turned on the emergency lights and pulled slightly out into the road to signal the motorcyclist to stop. Officer A later said this was due to *“their speed, the vehicle condition, and the rider not wearing a motorcycle helmet”*. Mr X rode past, not stopping for the Police car. Officer A noticed his face was covered with what might have been a bandana.
12. Officer A did a U-turn, activated the car’s siren, and followed the motorcycle. Officer B radioed to advise SouthComms of the pursuit, acknowledging the standard warning given, and giving information about where they were going. Officer A followed the motorcycle, turning right onto the next street. As they rounded the corner, the motorcycle was about half way down the street. Officer A continued following as the rider turned right again. Moments after Officer A drove around the corner, the Police car hit the motorcycle, dragging it along the street for several metres before they came to a stop.

² The Southern Communications Centre is the Police Communications Centre for the South Island. The Communications Centre plays a key role in managing Police pursuits, and can, if necessary, direct a driver to abandon a pursuit.

13. Officers A and B got out of the Police car with their guns drawn but aimed toward the ground. The officers handcuffed Mr X, and, when they realised he was injured, Police called an ambulance.
14. When and how the Police car hit the motorcycle is disputed. The Authority has spoken to Mr X, Officers A and B, and an independent witness about the collision.

Mr X's account

Following

15. Mr X told the Authority that he was at a friend's house on a nearby street. He left on his motorcycle, intending to go to the Waltham house. However as he was riding down the road he noticed a Police car, so he went in a different direction. He rode past another Police car (later determined to contain Officers A and B), which was parked on the side of the road facing towards him. The Police car's red and blue lights started flashing as he approached. Mr X rode past the Police car, and it did a U-turn and followed him.

Collision

16. Mr X was unsure how fast he was going, as the motorcycle is not equipped with a speedometer. He said:

"I wasn't going fast because I'd just crossed the main road... I wasn't riding silly or anything, like not bad enough to hit the kerb... I just turned right and then I went to take off again and the Police car that was pursuing me just took out my back wheel."

17. Mr X said he was in the middle of the left-hand lane when the Police car hit his motorcycle. Mr X recalls *"flying through the air"* and landing on the footpath, feeling his leg *"snap"*. He said he was in and out of consciousness because of the pain in his ankle. Mr X is confident he was still riding on the road when the Police car hit his motorcycle.

Arrest

18. Mr X told the Authority he landed on his left-hand side. He tried to roll over onto his right side due to the pain in his left leg. He told Police his leg was broken. Mr X stayed on the ground, and then a Police officer (the male), kicked him. Mr X estimated he was kicked two or three times. The first kick was to his head, Mr X said he then protected himself from the blows by raising his arms, and the second one or two kicks were to his ribs. He also recalled the officer who had been driving the Police car saying *"yip, that's him"*, and possibly saying his name.
19. Mr X recalled that one or both of the officers had guns.
20. A woman approached the Police officers and asked them what they were doing, telling them to leave him alone.

21. Mr X does not recall being handcuffed. He said he was in so much pain he just stayed on the ground. It was possible someone might have suggested he be handcuffed, but that someone else said he wasn't going anywhere. An ambulance arrived soon after and took him to hospital. Mr X said his leg was broken in two places, and the ankle was completely shattered. The Authority has obtained copies of Mr X's ambulance and medical reports. These show that Mr X's ankle was broken.

Officer A's account

Following and Collision

22. Officer A said the motorcycle was about 25 metres in front of them when it turned the last corner. Officer A told Police he did not know what speed they were travelling as *"I was focussed on maintaining observations on the rider and the road."* He said he would usually monitor his speed using *"stalker radar"*, which is easy to see without taking your eyes off the road. However, the radar unit was not working at the time. Officer A estimated he was driving at between 50 and 80 kilometres per hour and the motorcycle was travelling at approximately 50 kilometres per hour.
23. Officer A told the Police he *"slowed for the intersection and was travelling down the centre of the road, as there were vehicles parked on both sides."* Officer A said that as they approached the intersection they were about twenty metres behind the motorcycle. He accelerated as he came around the corner, and moved towards the left hand side of the road, at this point he was about one car length behind the motorcycle. As they turned down the next street, the motorcycle crossed the centre lane, then veered to the left as if to pull into the side of the road. It then suddenly moved towards the right.
24. Officer A did not think they were going to strike the motorcycle because he believed the rider was *"either going to ride up onto the footpath and ditch the bike and run through properties, or just continue on up [the] street"*. The motorcycle was not equipped with brake lights, so he did not realise Mr X was slowing. He therefore gained on the motorcycle much more quickly than he had anticipated.
25. Officer A braked, but the Police car slid for about a car length. He felt *"a large impact as the motorcycle struck the gutter ramp"*. Officer A said he felt the motorcycle impact with the front wheel of the patrol car. He did not see the rider come off the motorcycle. When the Police car came to a stop, he saw Mr X either standing or crouching on the footpath.

Arrest

26. When Officer A came around the front of the Police car towards Mr X, his facial coverings had come off, and Officer A immediately recognised him. He drew his gun and held it out in front of him, angled forwards towards the ground. He yelled at Mr X to get on the ground. Mr X did so.
27. Officer B was near Mr X's head. As Officer A came closer to Mr X he holstered his gun and rolled Mr X onto his side. He put one handcuff on Mr X, and then used a knee on Mr X's back to hold

him while securing the other handcuff. Officer A described Mr X as not being overly resistant, but not complying with instructions.

28. Mr X complained of a sore leg. A lady from a nearby house came out and started yelling at the Police. Officer A called for an ambulance. He then saw Mr X wriggling on the ground, and thought he was trying to reach for something around his front. Officer A searched Mr X, and found a set of knuckle dusters in his pocket. Officer A removed the knuckle dusters and placed them on the ground out of Mr X's reach. Other officers arrived and Officer A stepped away to let them attend to Mr X. When his supervisor arrived, Officer A returned to the Christchurch South Police Station.
29. Officer A denied kicking Mr X in the head or ribs.

Officer B's account

Following and Collision

30. Officer B thought the rider was travelling "*faster than the 50 kilometre speed limit*" when he passed their Police car. Officer B did not know how fast the motorcycle was going during the pursuit, as she was not paying attention to it at the time. Officer B did not know how fast they were travelling, but said it was "*fast... to catch up*". Her focus was instead on working out where they were so she could update SouthComms on their movements.
31. Mr X made a wide turn. They got quite close behind the motorcycle; "*[p]erhaps ten metres as we were turning*". As Mr X turned the corner, he moved close to the left hand side of the footpath. Officer B thought Mr X was going to go into one of the nearby properties, or leave the motorcycle and run away on foot. However, Mr X then pulled the motorcycle back onto the road.
32. Officer B thinks Mr X came off the motorcycle before the Police car hit it, "*but it was quite quick...he was almost right on...the footpath... and then his bike's jerked and he's come off and we've hit the bike and that was kind of all at once*". When queried about the cause of the crash, Officer B said she thought Mr X lost control of the motorcycle, and that they were probably following too closely.

Arrest

33. After the collision, Officer B recalls seeing Mr X standing about one and a half metres away from her Police car door. She drew her gun as she got out of the car, yelling at Mr X to get on the ground. Officer A came around from the other side of the car. Officer B cannot remember exactly how they got Mr X to the ground, but believes she grabbed one of his sleeves. They got Mr X onto his stomach, and she holstered her gun and got out her handcuffs. Mr X did not put his arms behind his back as instructed, so Officer A grabbed Mr X's arms and put them behind his back so that Officer B could handcuff him.
34. At this stage Officer B recalls Mr X complaining of a sore leg. She noticed blood on the footpath where his leg had been, so she and Officer A rolled Mr X onto his right side to make him more comfortable. Mr X then started reaching around to his left side and "*seemed to be trying to get something out of his pocket*". Officer A searched him and found a set of knuckle dusters and a

beanie. At this point other Police arrived. When Officer B moved away from Mr X's head, she saw his face from the front, and recognised him from photographs she had seen.

35. A woman came up to the Police and yelled at them, asking if they had hit Mr X, and whether or not they had called an ambulance. Officer B called for an ambulance, and then advised the woman of this.

Independent Witness account

36. Ms Y lives on the street where the vehicles collided. The witness saw the lead up to the crash. She did not see the crash itself.
37. Ms Y estimated that the Police car was travelling at double the speed of the motorcycle. She said the rider went onto the right-hand side of the road as he turned right, cutting the corner. The Police car followed closely. The motorcycle moved onto the left hand side of the road, but the Police car remained more on the right. Ms Y felt sure the left hand side of the Police car was going to hit the motorcycle. The motorcycle and Police car went out of her view; however, moments later she heard a loud noise, and thought the Police car had hit the motorcycle.
38. Ms Y then went outside and spoke with the Police. She is firm in her view that the Police hit the rider on purpose, saying:

“he was right up his bum. He was going to get him no matter what. ... it was like he wanted to knock him off his bike, just from the way the vehicle was... I could tell it was going to happen so I'm pretty sure he would've been able to tell that's what he was doing.”

39. When Ms Y got outside, she saw Mr X lying on the ground. Officer B was on Mr X's left, and Officer A was “on the guy's back”, it looked like Officer A was searching Mr X for weapons. Ms Y heard Mr X say the Police had broken his leg.
40. Ms Y did not see Police punch or kick Mr X at any time. She did say they “*may have been a little bit rough*”, but said by the time she got to them, Mr X was on the ground, and it looked like he was being searched. Ms Y was certain she did not witness Police assaulting Mr X.

Police investigation

41. The Police investigation into the matter included interviewing Officers A and B and Ms Y, and obtaining a crash report from the Police Serious Crash Unit (SCU). The Police investigation concluded that, based on the Police Serious Crash Unit Investigation report, Officer A did not hit the motorcycle while Mr X was riding it. However, it noted that Officer A was following too closely behind Mr X. The Police investigation determined that the allegation of assaulting Mr X was not upheld. Because of the conclusions of the crash report, Police did not consider bringing any driving charges against Officer A. The Police investigation identified some elements of policy not adhered to during this incident. They have been addressed with Officers A and B.

Police Serious Crash Unit Investigation Report

42. The scene and two vehicles were examined by the SCU. The SCU Investigation Report concluded that Mr X lost control of his motorcycle and fell off it before the Police car connected with it. The report found that Mr X used his rear brake to slow down to make the right hand turn. As he exited the turn, Mr X released the brake, and the back tyre temporarily regained traction, causing Mr X to move from a right-leaning attitude towards the left (referred to as a “high-side flip”). This resulted in Mr X being thrown from the motorcycle, and the motorcycle flipping onto its left side.

43. The report states:

“The Police vehicle which was right behind the motorcycle has not had sufficient time to stop and shunted the motorcycle (which was lying on its left side) along the road and onto a gutter bridge before coming to rest.”

44. According to the report, the Police car and motorcycle were travelling at about 34 kilometres per hour at the time of the crash. The Police crash report also noted that Mr X sustained “*minor injuries*” as a result of the crash.

THE AUTHORITY’S INVESTIGATION

45. The Authority conducted an independent investigation into this incident. This included attending the scene of the incident, interviewing Mr X, Ms Y, and Officers A and B, and obtaining an independent crash report.

THE AUTHORITY'S ANALYSIS AND FINDINGS

46. The Authority identified and considered the following issues:

- 1) Did Officers A and B comply with pursuit policy?
- 2) Did Officer A cause or contribute to the crash?
- 3) Did Police assault Mr X during his arrest?
- 4) Did Officers A and B comply with Police firearms policy?
- 5) Were Officers A and B justified in drawing their firearms when approaching Mr X?

Issue 1: Did Officers A and B comply with fleeing driver policy?

47. When managing fleeing drivers, Police are required to balance protecting community safety against their duty to apprehend those who fail to stop, and to enforce the law.
48. Police use the TENR risk assessment methodology (Threat, Exposure, Necessity, and Response) to continuously assess foreseeable and identified risks, and plan a response that prioritises public and Police safety. Both the threat posed by the fleeing driver and the risks of intervention must be actively managed.
49. The TENR risk assessment must be applied during four distinct phases of fleeing driver events: pre-initiation (before signalling a driver to stop); initiation (before deciding whether to pursue the fleeing vehicle); continuation (the duration of the pursuit) and resolution or abandonment.

Pre-initiation: Were Police justified in signalling Mr X to stop?

50. Officer A signalled the rider to stop because of *“speed, the vehicle condition [no lights or reflectors], and the rider not wearing a helmet”*.
51. The Authority considers that this was appropriate. A person riding a motorcycle in such a condition and manner poses a risk to themselves and to members of the public. Riding a dark coloured motorcycle with no lights or reflectors, and with no helmet on is also against the law, therefore Police were justified in attempting to stop Mr X from continuing to ride in such circumstances.

Initiation: Were Police justified in pursuing Mr X?

52. Once it was apparent Mr X was not going to stop for Police, Officer A was required to undertake a second risk assessment and decide whether to commence a pursuit. This risk assessment would weigh the risks of initiating a pursuit against the need to stop the rider from continuing, at what Officer A considered to be excessive speed.

53. Officers A and B have both said they did not know that the motorcyclist they were pursuing was Mr X until after the pursuit ended. The information they based their decision to pursue on was therefore what they observed on the night.
54. Pursuits involving motorcycles are known to create greater risks. Police policy specifically highlights that “[a]ny decision to pursue a motorcyclist must balance the severity of the offending against the current risks in accordance with TENR”.³
55. Unfortunately, it appears that Officer A did not turn his mind to pursuing Mr X, as a separate consideration from signalling him to stop. The Authority understands that the entire pursuit lasted a very short time and covered approximately 350 metres. It accepts, therefore, that there was little time for Officer A to reconsider his TENR assessment.
56. Police policy states that tyre deflation devices must not be used on motorcycles. Once it was clear the motorcyclist was not going to stop for him, Officer A had no viable options for bringing the motorcycle to a stop. Pursuing the motorcycle would likely have only presented a greater risk to the public, the rider, and Police.
57. The Authority considers that Officer A was justified in signalling Mr X to stop; however, it has concluded he should not have initiated a pursuit when it became clear Mr X was not going to stop.

Did Police comply with fleeing driver policy during the pursuit?

Continuation vs Abandonment

58. Having chosen to pursue Mr X, Officer A had an obligation to continue to assess the risks involved in the pursuit, and to abandon the pursuit if the risks outweighed the need to stop Mr X.

Speed

59. The Authority engaged an independent crash investigator to assist in its review of this file (see commentary at paragraph 69). The Authority notes from the independent crash report that Officer A was travelling at approximately twice the speed of Mr X. It is clear from forensic evidence and Police accounts that the Police car gained on the motorcycle rapidly. The Authority is concerned that both Officers A and B have said they were unsure what speed the Police car and the motorcycle were travelling at. The Authority considers that knowing your own speed and its relativity to the vehicle being pursued, is an integral part of an officer’s TENR assessment during a pursuit. Not knowing their speed meant Officer A was not able to continually assess his TENR of the pursuit.
60. The Authority accepts that there is an inherent risk in a dark motorcycle being ridden around residential streets with no lights on, possibly at speed. However, it is impossible to accurately assess that risk with reference to any increased risk in involving the motorcycle in a pursuit, without an awareness of the motorcycle’s or the Police car’s speed.

³ Further detailed at paragraph 108 below.

Helmet

61. Officer A noticed Mr X was riding the motorcycle without a helmet. Although motorcyclists are required by law to wear a helmet, pursuing a rider without a helmet on also increases the risk of danger to the rider should a crash occur.
62. In light of the above factors, the Authority finds that, having decided to pursue Mr X, Officer A should have abandoned the pursuit when it became clear that Mr X was not going to stop. Police had no viable means of bringing the motorcycle to a stop, and pursuing Mr X could only add to the danger of the situation.

Pursuit commentary

63. The Authority notes the importance of providing ongoing updates to the Police Communications Centre (“Comms”). For Comms to appropriately manage the pursuit, it is vital that they are advised of all details of the pursuit, including speed, location, direction, and manner of driving.
64. Police policy on pursuit commentary requires that the officer calling a pursuit
 - *“Must undertake radio communications if in the lead vehicle.*
 - *Advises the lead vehicle driver of possible risks or any other considerations.*
 - *May direct the lead vehicle driver to abandon the fleeing driver pursuit. [Comms] must be notified when safe to do so including the reason for abandonment.”*
65. The Authority has considered the pursuit commentary provided by Officer B over the radio during the pursuit. The commentary lasts less than a minute. Officer B can be heard advising SouthComms of the pursuit, acknowledging the warning, and stating the streets on which they were driving. There are periods of time when nothing is said over the radio, and SouthComms asks for updates. Officer B told the Authority that she did not say much over the radio because she was unfamiliar with the area and was trying to work out where they were, and also because the pursuit did not last very long.
66. The Authority notes that Officer B did undertake some responsibilities of communication as the officer calling the Police pursuit. However, it seems likely that the purpose of the policy requirement to “undertake radio communications” during the pursuit, includes the need for SouthComms to be kept up to date about the progress of the pursuit, and to determine its safety. The Authority considers that information about the vehicles’ speeds, the fact that the rider was riding with no lights on, as well as the direction of travel, would have been beneficial so that SouthComms could make an appropriately informed decision as to whether or not the pursuit should continue. However, the Authority accepts that due to the brevity of the pursuit, Officer B did not have the opportunity to relay this information.

FINDING

Officer A was justified in signalling Mr X to stop; however, he was not justified in initiating the pursuit. Having started to pursue, Officer A should have abandoned the pursuit when it became clear that Mr X would not stop.

Issue 2: Did Officer A contribute to or cause the crash?

Independent crash investigation report

67. The Authority engaged an experienced independent crash investigator to carry out a high-level review of the Serious Crime Unit Investigation Report and photographs, along with Police statements from the two officers, Mr X and Ms Y, and interviews conducted by the Authority. The crash investigator noted:

“Given that the driver of the Police car is a ‘gold class’ driver, I would have thought they might be more aware of their vehicle, speed, and their position on the road...”

68. Both Police and civilian witnesses accept that as the Police car turned the first corner, the motorcycle was about half way down the next street. When the motorcycle entered the intersection, the Police had almost caught up to it. The independent investigator determined the distance of these roads, and concluded that the Police car travelled approximately 200 metres in the time it took the motorcycle to travel 100 metres. The Police car must therefore have been travelling about twice the speed of the motorcycle in order to catch up to it. The report suggests that the Police car may have been travelling too fast for the driver to be able to react to the motorcycle.
69. The report also notes some discrepancies with the evidence in the scene photos and the SCU report. The independent crash report suggests that:
- The SCU description that the motorcycle was ‘high-siding’ is not borne out by the witness information or the scene evidence.
 - The SCU do not appear to have sufficiently examined the curved tyre mark found at the scene. The Police crash report attributed this to the motorcycle; however a motorcycle could not have made this length of tyre mark at such a curve when braking. SCU should have examined this tyre mark more closely to determine whether it could have been made by the front left tyre of the Police car, or was not a result of this crash at all.
 - The SCU report indicates (as discussed above at paragraph 42) that the motorcycle ‘high-sided’. However, the tyre marks are not consistent with a motorcycle high-siding, rather, the tyre marks are more consistent with the rear tyre of the motorcycle being compressed on the road surface underneath the front left of the Police car. This conclusion is supported by a mark on the front left of the Police car, which seems to be consistent with the shape of the motorcycle’s back tyre. This has a slight right-angled lean, which would be consistent with the motorcycle turning right.

- The damage to the Police car is not consistent with the damage which would occur if the motorcycle had been on its side when the two vehicles collided. This damage is more consistent with the motorcycle being upright, on a slight right-angled lean.

70. The independent crash investigation report concludes:

“The description of the crash as provided by the SCU report is not supported by the witness or either of the Police officers, nor is it fully supported by the damage evidence to the Police car or road evidence.”

Analysis

71. The Authority notes with concern the assessment by its independent crash investigator that the Police car was travelling at about twice the speed of the motorcyclist shortly before the two vehicles collided. It is also concerned by Officer A’s statement that he was only a car’s length behind Mr X, despite travelling at speed. Officer A has accepted that he was following the motorcycle too closely.
72. There are discrepancies between the Police SCU report and the Authority’s independent expert report. The independent expert commissioned by the Authority is a court recognised expert, with extensive experience as a crash investigator within Police, and then as a private consultant in motor vehicle crash analysis and road safety. From the photos and documents provided, he undertook various calculations to determine the vehicles’ speeds, and the cause of the crash. The Authority has reviewed both reports, and formed the view that, on the balance of probabilities, the independent investigation more accurately reflects the speed of the vehicles and the cause of the crash.
73. Officer A’s driving appears to meet the careless driving (causing injury) threshold, if not that of driving in a dangerous manner. The Authority is satisfied on the information provided, including its independent expert’s report, that Officer A’s driving was the primary cause of the crash. The Authority notes that Mr X’s ankle was broken as a result of this crash.

FINDING

Officer A’s manner of driving was unlawful. It was the primary cause of the collision and the resultant injury to Mr X.

Issue 3: Did Police assault Mr X during his arrest?

74. Mr X claims that he was punched and/or kicked in the head and ribs by Police during his arrest. Police deny this, and the independent witness did not see Police assault Mr X.
75. The Authority has reviewed Mr X’s medical records, which show that Mr X sustained a broken ankle during this incident. It seems clear that this damage was caused by the motor vehicle accident. There is no indication that he received other injuries at that time, such as from being punched or kicked.

76. Officer A accepts that he put a knee on Mr X's back when handcuffing him. This was because Mr X was not complying with instructions to put his hands behind his back.
77. Police have the power under section 39 of the Crimes Act 1961 to use force to arrest someone. The force used must be necessary and proportionate given the level of threat and risk to themselves and the public. Putting a knee on an uncooperative and potentially dangerous member of the public's back in order to handcuff him is not, in and of itself, concerning. The force used to do so is minimal, and is a practical and effective means of controlling a person sufficiently to handcuff them. The Authority considers that this was reasonable in the circumstances.
78. The Authority has not found any evidence corroborating Mr X's claim that he was punched or kicked during his arrest. It accepts that the minimal force used in kneeling on Mr X's back was reasonable to affect his arrest. The Authority therefore finds that unreasonable force was not used on Mr X in this instance.

FINDING

Police did not assault Mr X; however some degree of force was used during the arrest. This was justified under Section 39 of the Crimes Act.

Issue 4: Did Officers A and B comply with Police firearms policy?

Did Officers A and B comply with policy when they chose to remain armed?

79. In his interview with Police, Officer A said that when he left the earlier incident he "*didn't think it was appropriate at that scene to [disarm], because of the close proximity of all the houses and there were still members of the public outside*". He also told Police and the Authority that he decided to remain armed as the house that they were going to is known to be connected with a gang, and some of the people who live at or frequent the address are known to carry firearms. Officer A said that from Police intelligence, he was aware that drugs, weapons, and stolen property were being moved to and from the house. He explained his view that "*anyone coming or going from the address was likely to be carrying weapons of some sort*". However, Officer A accepted that when he and Officer B returned to observe the Waltham house the following day, they were unarmed.
80. In an interview with the Police, Officer B said she and Officer A remained armed following the previous job because they were heading back to the Police station, and it would be easier to disarm there.
81. When spoken to by the Authority, Officers A and B both said they had kept their firearms on because they were aware the house they were going to observe is a gang house, and that several of the people who frequent that house are known to carry guns.
82. Police policy on arming says that for an officer to arm with a gun, the officer must have assessed the threat of the situation to be faced to be, or to have the potential to be, within the death or

grievous bodily harm range. Officers A and B noted that people who frequent the Waltham house were known for carrying firearms. Officer A explained that his reason for going to the house originally was to try to locate Mr X, who had fled from Police a few days prior. There was an alert in the Police database indicating Mr X may carry firearms, and Officer A said Mr X was known to carry weapons.

83. At the time Officers A and B turned their mind to remaining armed, they were sitting in their Police car on their way to observe the Waltham house, with no specific plan to engage with anyone from the house. They had not yet seen Mr X, and did not know whether or not he was at the house.
84. The threat to Officers A and B was not sufficient to warrant arming or remaining armed. The Authority finds that Officers A and B breached Police policy by remaining armed when they went to the Waltham house.

Advising Communication Centre

85. Police policy requires that when an officer arms with a gun, they must advise the Communications Centre (Comms) of this as soon as possible.⁴ Officers equipping firearms must also wear Hard Armour Plate (HAP) body armour. Officers A and B were not wearing their HAP during this incident. Both Officer A and Officer B accept that they should have advised Comms that they were still wearing their firearms when they went to observe the house in Waltham.
86. Officers A and B should have disarmed at the end of their previous job. When they decided to remain armed to go to the house in Waltham, they were making a fresh decision regarding arming, and therefore should have followed arming procedures again, donning their HAP, going through fire orders, and advising Comms. The Authority finds that Officers A and B breached Police policy by failing to do so.

FINDINGS

Officers A and B breached Police policy by remaining armed when they attended the Waltham house, when there was no specific need to do so.

Officers A and B breached Police policy by not advising Comms that they were remaining armed, and by failing to wear their HAP body armour.

Issue 5: Were Officers A and B justified in drawing their firearms when approaching Mr X?

87. In light of the conclusion above at paragraph 84, it follows that the officers were not justified in drawing their firearms when they approached Mr X.
88. Further, even if the officers had been justified in remaining armed when they were observing the Waltham house, they were not justified in drawing their guns when they approached Mr X. Mr X had not presented any threat to the officers or any members of public at the time the

⁴ See Police policy below at paragraph 102.

officers drew their weapons. At the time they drew their firearms, Officers A and B knew the following:

- They had pursued someone who had been riding on a motorcycle in what they considered to be a dangerous manner; and
- The person they were pursuing had come from (they believed) the direction of a known gang house. However they did not see the rider leave the Waltham house.

89. Officer A has also said that he saw Mr X's face and recognised him, thus his decision to draw his firearm. Officer B did not see Mr X's face until later.

Threat presented by Mr X

90. Mr X says he was lying on the ground when he was approached by Officers A and B. Officers A and B both say that he was standing. Officer B said this added to her assessment of the situation, as:

“at the time I didn't know that he had an injured leg so I thought that there is a reason that he's not just running, not doing the bolt and so I have drawn my pistol as I've got out of the car”.

91. The Authority considers it unlikely that a person who had just sustained a broken ankle would be standing, as the officers have said. However, even if Mr X was standing, the Authority does not consider that this would have added to the danger of the situation sufficiently to warrant the officers drawing their weapons. The Authority notes that, if the officers felt threatened by the man, they had other more appropriate tactical options available to them, including communication or presenting a Taser.

92. The Authority finds it was inappropriate for Officers A and B to present their firearms when approaching Mr X on the footpath.

FINDING

Officers A and B breached Police policy by drawing their firearms when approaching Mr X, as the threat they faced was not significant enough to warrant the presence of a firearm.

SUBSEQUENT POLICE ACTIONS

93. On receipt of the draft version of this report, Police sought an independent crash analysis from an independent expert. This concluded that the Police car struck the motorcycle while it was upright, contrary to the SCU investigator's finding that the motorcycle rider fell off before the impact.

94. Police acknowledged that the view of the independent investigator differed from the view expressed by the Police Serious Crash Investigator. Police considered this incident to be a

training opportunity for the SCU investigator and it is currently reviewing the peer review process.

CONCLUSIONS

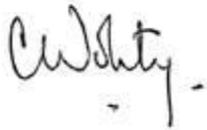
95. The recently released review of Fleeing Drivers in New Zealand jointly conducted by the Authority and Police found that the manner in which the TENR framework is applied in practice is very dependent on the way an officer identifies, assesses and manages risk, based on their own frame of reference.⁵ It shows that more risk tolerant staff may take unnecessary risks to apprehend offenders for relatively minor offences, which is inconsistent with tenets of the fleeing driver policy.
96. The review concluded that a risk-averse approach to fleeing driver events more effectively balances the risk of not pursuing against the risk of commencing or continuing a pursuit. This approach needs to be embedded into the Police mind-set when it comes to managing fleeing driver events.
97. This incident demonstrates the inadequate training Police have received to date on this topic. If Officer A's training and consequent approach to a fleeing driver incident had been risk-averse, the outcome might have been avoided. Police have accepted a recommendation in the review to reassess training to ensure it is fit for purpose for enabling staff to effectively manage fleeing driver events, including the application of TENR.
98. The Authority finds that Officer A's manner of driving was, at the very least, careless, and was the primary cause of the collision between the Police car and the motorcycle. It considers that Officer A did not drive in accordance with best practice for a pursuit, as he was following the motorcycle too closely, and was not aware of the speed at which the Police car or motorcycle were travelling.
99. The Authority also determined that:
 - 1) Officer A was justified in signalling for the rider of the motorcycle to stop. However, he should not have initiated the pursuit, as there was no reasonable means of bringing the rider to a stop. Having started the pursuit, Officer A should have abandoned immediately when he realised Mr X was not stopping for him;
 - 2) Police did not assault Mr X; however, some degree of force was used during the arrest. This was justified under Section 39 of the Crimes Act;
 - 3) Officers A and B breached Police policy by remaining armed when they attended the Waltham house, when there was no specific need to do so;
 - 4) Officers A and B breached Police policy by not advising Comms that they were remaining armed, and by failing to wear their HAP body armour; and

⁵ *Fleeing Drivers in New Zealand: A collaborative review of events, practices and procedures*, March 2019.

- 5) Officers A and B breached Police policy by drawing their firearms when approaching Mr X, as the threat they faced was not significant enough to warrant the presence of a firearm.

RECOMMENDATION

100. The Authority notes that Police are reviewing the peer review process in relation to Serious Crash Unit reports.
101. Pursuant to section 27(2) of the Independent Police Conduct Authority Act 1988 the Authority recommends that the Commissioner of Police ensures that Serious Crash Unit investigators receive ongoing specialised training in relation to motorcycle crash investigations and that a robust peer review process for such investigations is maintained.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

15 August 2019

IPCA: 17-0466

Firearms Policy

Responsibilities when firearms are carried

102. Police policy on firearms requires that when an officer carries a firearm because they have assessed a situation as being within, or likely to escalate to be within, the death/grievous bodily harm range, they must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms as soon as practicable, and also deploy with a Taser where one is available.

Ballistic armour

103. Police policy requires that Police wear approved hard armour plate (HAP) bullet proof body armour, as well as their usual stab resistant body armour when attending to an incident where they believe firearms are or could be present.

Fleeing driver policy

Decision to pursue

104. Given how quickly a fleeing driver pursuit can develop and circumstances change, Police must constantly assess the risks during a pursuit. Police do this using the Threat, Exposure, Necessity and Response (TENR) assessment process. The response to any given situation must be considered, timely, proportionate and appropriate.
105. The TENR risk assessment must balance the ongoing exposure to harm that the fleeing driver incident poses, or is creating, with the current threat that the fleeing driver poses and the necessity to respond.
106. As part of a flexible response model all suitable tactical options should be considered or requested to safely apprehend the fleeing driver. This could include not pursuing, or abandoning the pursuit.
107. If the driver is known and does not pose an imminent threat, as determined by the TENR risk assessment, the preferred approach is for the offender to be apprehended through subsequent lines of inquiry.

Obligations on constabulary passenger during pursuit

- *Must undertake radio communications if in the lead vehicle.*
- *Advises the lead vehicle driver of possible risks or any other considerations.*
- *May direct the lead vehicle driver to abandon the fleeing driver pursuit. The Pursuit Controller must be notified when safe to do so including the reason for abandonment.*

Motorcyclists

108. Motorcyclists often flee at high speeds, undertaking high risk driving behaviours, which place increased risks on all involved. Any decision to pursue a motorcyclist must balance the severity of the offending against the current risks in accordance with TENR.

Police Presence

109. If a fleeing driver was not driving in a dangerous or reckless manner prior to being signalled to stop, but now is, the Officer must determine as part of their risk assessment if they should continue to pursue the fleeing driver due to the potential impact of their presence.

Use of force

Law on use of force

110. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*

111. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police policy on use of force

112. The Police 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 tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.

113. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.

114. Police officers 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 (use of force), 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)).
115. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: 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. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
116. The 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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