



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Young tractor driver tasered after pursuit

OUTLINE OF EVENTS

1. Shortly after midnight on 16 April 2018, an intoxicated 15-year-old, Mr X, stole a tractor and damaged the garage of a sports grounds in Kaiwaka. Witnesses followed the tractor and alerted Police.
2. Officer A, the first Police officer to respond, located Mr X when he was 13 kilometres away from the sports grounds, on State Highway 1. She pulled in behind the tractor, and Mr X immediately began "*pulling the fingers*" and yelling at her. Officer A decided to wait for backup from other officers. Mr X started driving the tractor onto the wrong side of the road, so Officer A turned on her Police car's flashing lights and siren to signal Mr X to stop. Mr X failed to stop and appeared agitated. Officer A pursued Mr X and Officer B also joined the pursuit around this time.
3. The tractor covered almost 19 kilometres from Kaiwaka to Wellsford in the hour from when it was first taken, to when it finally stopped. The pursuit lasted 12 minutes. During the pursuit Mr X did several U-turns on the highway, frequently changing direction. He often drove the tractor into the lane of oncoming traffic and turned off the tractor lights on several occasions (though the hazard lights were still operating). There was minimal road lighting between towns, but traffic was light, and the ground was dry. The maximum speed the tractor reached during the pursuit was 18 kph. Officer B got ahead of the tractor and laid road spikes in an attempt to stop it, but Mr X drove around them.
4. Officer C, knowing Officers A and B were already in pursuit, planned to set more road spikes in Rodney Street, Wellsford. As Mr X attempted to avoid going over the road spikes, he drove up onto the footpath towards the officer and stopped the tractor while keeping the engine running. Officer C fired his Taser at Mr X, who rolled off the tractor onto the ground. Police then arrested him.

5. The Taser barbs had attached to Mr X's clothing, rather than his flesh. Mr X said he was "*shocked pretty good*". He was seen by a doctor afterwards, as required by Police policy,¹ and did not complain of any ill effects after being tasered.
6. Police investigated Officer C's decision to use the Taser and concluded it was appropriate in the circumstances. They identified two potential policy breaches which they considered minor.
7. Police also notified the Authority of the incident and the Authority conducted an independent investigation into Officer C's actions. This report outlines the investigation and the Authority's findings.

THE AUTHORITY'S INVESTIGATION

8. The Authority interviewed Officers A, B and C and Mr X. The Authority also reviewed Police documentation of the incident, including statements and reports.
9. Police believed Mr X had committed offences by unlawfully taking a tractor, damaging property, and driving dangerously.² Therefore, officers were legally justified in arresting Mr X. The Authority is satisfied that Police complied with their 'Tyre deflation device' and 'Fleeing driver' policies during the pursuit.³
10. Therefore, this report only addresses whether Officer C was justified in using his Taser on Mr X.

THE AUTHORITY'S FINDINGS

Was Officer C justified in using his Taser on Mr X?

11. As Officer C prepared the second attempt to spike the tractor tyres, he stood on a slight incline near the footpath. He said he did this because he was aware the tractor had good mobility and could quickly change direction. Officer C's patrol car was parked 30 or 40 metres away, with no lights on, as he did not want to draw attention to the road spikes he was about to throw onto the road.
12. Officer C said:

"[Mr X] appeared to see me and drove up the kerb toward the footpath and then came to a stop with the engine revving. I discarded the spikes and withdrew my Taser from the holster. I activated the Taser and pointed it at [Mr X], aware that at any moment he could resume driving."
13. Mr X said driving onto the footpath was the only way he could get around the spikes. He saw Officer C jump out of the way and go up onto a little retaining wall. He then saw Officer C pulling

¹ See paragraphs 42 to 46 for Police policy on Tasers.

² See paragraph 32 for law on power to arrest.

³ See paragraphs 47 and 48 for Police policies on tyre deflation devices and fleeing drivers.

out his Taser, so he ducked to the side. Mr X said he was still driving the tractor when Officer C tasered him, however the three officers present all say the tractor had stopped.

14. Officer C saw Mr X's sudden movement and fired the Taser, while yelling "Taser! Taser! Taser!" Mr X rolled off the left side of the tractor and onto the ground. Officer C said Mr X appeared to have 'neuro-muscular incapacitation' from the Taser.⁴
15. It is unclear if Mr X fell or jumped from the tractor. Mr X said the Taser caused him to fall off the tractor. Officers A and B witnessed the incident from their patrol cars. Officer A said Mr X was jumping off the side of the tractor when he was tasered and rolled onto the ground, and Officer B said it seemed like Mr X was jumping off to run in the opposite direction, towards bushes and houses.
16. The Taser camera footage shows that when Mr X was on the ground, he immediately put his hands behind his back. Officer C held Mr X down until Officers A and B arrived to handcuff him. Officer A said that apart from not wanting to give Police his name, Mr X was compliant at this point.

Force in defence of himself and others

17. Officer C said he had used the Taser to defend himself and others from Mr X, in accordance with section 48 of the Crimes Act 1961.⁵ In order to rely on this justification for his use of force, Officer C's actions must be assessed based on the following three questions:
 - 1) What did Officer C believe the circumstances to be at the time he used the Taser on Mr X?
 - 2) In light of that belief, was Officer C's use of the Taser for the purpose of defending himself and others?
 - 3) If it was, was the force used reasonable in the circumstances as Officer C believed them to be?

What did Officer C believe the circumstances to be at the time he used the Taser on Mr X?

18. Officer C said that, at the time he fired the Taser at Mr X:
 - a) He believed Mr X needed to be immediately stopped so he could not continue driving the tractor:

"It was dark, the speed limit on SH1 was mostly 100 kph... and while not travelling fast, the offender was showing deliberate intentions to either evade police or elevate the risk level to the point where Police would abandon [the pursuit].... Had a member of the public crashed into the tractor, they could have been seriously hurt or killed...."

⁴ Neuro-muscular incapacitation is when the nervous system and muscles are temporarily not able to permit movement.

⁵ Section 48 of the Crimes Act 1961 states: "Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use."

... I considered that there was no time to delay affirmative action if the opportunity presented itself to resolve the matter."

b) He knew Mr X had managed to avoid the road spikes and believed that due to the low speeds, even if the tractor tyres had been deflated by the spikes, Mr X could have possibly continued driving.

c) He thought Mr X might try to ram a Police patrol car using the tractor as a weapon. His risk assessment was that Mr X posed a high risk to himself and others:

"I put him in the serious, death or GBH [grievous bodily harm] band because of his previous driving and the risk he posed to members of the public using the road if he did drive off again and other officers who tried to apprehend him and myself obviously."

d) Police had not yet identified who Mr X was and it was unknown how aggressive he would be towards Police.

e) He feared for his own safety, because Mr X was *"highly unpredictable"*. He could not see if Mr X had a weapon because it was dark.

f) He did not know Mr X was intoxicated but said he could have assumed he was based on his behaviour throughout the pursuit.

g) He had not seen that Officers A and B had arrived nearby in their patrol cars.

h) He thought it would be unsafe to grab Mr X from his elevated position in the driver's seat, as he would be in line with the offset wheels of the tractor. He believed he needed to maintain a safe distance from the tractor, so tried to stay 2-3 metres away. He said:

"For this reason I chose to draw the Taser and had to make a quick decision to discharge in order to ensure [Mr X] was incapacitated so that he could be removed from the cockpit of the tractor safely... I saw a window to resolve the matter and discharged the Taser... That is why I chose the Taser. It seemed like the best option to maintain distance from the offender and the tractor, and to take control of the situation."

i) He was not concerned that Mr X would intentionally run him over with the tractor: *"I didn't have the feeling that he was aiming for me."* However, Officer C also said he did not know if Mr X saw him standing there and felt *"quite exposed"*, not knowing what the driver was going to do next. He said he believed the tractor would have probably struck him if he had not moved.

j) He was not sure what Mr X was doing when he moved in the tractor seat after Officer C had pointed the Taser at him. He did not believe the move was to surrender but acknowledged it could have been an effort to avoid the Taser.

19. Officer C wrote in his Tactical Options Report that Mr X was not ‘assaultive’ at the time he used his Taser on him.⁶ He said, *“While the offender was not assaultive at the time, I considered the potential for harm occurring while apprehending him to be too high.”* When questioned about this, Officer C said:

“... he wasn’t assaultive, but I put him in the higher/GBH [grievous bodily harm threat] because of his driving and the risk he posed to everybody if he continued to drive... he sort of missed the assaultive stage and went straight to the death and GBH.”

20. The Authority does not accept that, at the moment Officer C fired the Taser at Mr X, he believed Mr X posed a genuine and immediate threat of death or serious bodily harm. While officers should consider the potential for harm when making their risk assessments, their decision about which tactical option to use should be based on the immediate situation, rather than a potential threat.
21. Mr X had clearly been trying to evade Police and persuade them to abandon the pursuit by driving onto the wrong lane. However, the tractor was only able to travel at low speed, and the level of traffic was low because it was shortly after 1am. The pursuing Police cars’ warning lights would have alerted other drivers to the danger posed by the tractor, and Mr X had not rammed or assaulted anyone during the incident. Nor had any officers seen him carrying a weapon.
22. At the time Officer C fired the Taser, neither he nor anyone else was in immediate danger from Mr X, as the tractor had stopped several metres away. Mr X and Officers A and B all said Officer C had jumped up on a small retaining wall (though Officer C could not remember whether he did). By doing this, Officer C was in a position where the tractor most likely could not run over him.

Was Officer C’s use of the Taser for the purpose of defending himself and others?

23. Officer C said he used the Taser because he needed to maintain a safe distance from Mr X, and he *“saw a window to resolve the matter”* by incapacitating him. This suggests that the officer’s use of the Taser was primarily motivated by trying to resolve the incident as quickly as possible, rather than responding to an immediate and direct threat of death or serious bodily harm.
24. Since Officer C’s use of the Taser was not for the purpose of defending himself or others, it cannot be justified under section 48 of the Crimes Act 1961. Therefore, the question of whether the force used was reasonable is redundant.

⁶ ‘Assaultive’ is defined as *“Intent to cause harm, expressed verbally and/or through body language and/or physical action,”* in Police policy. See paragraphs 37 to 41 for Police policy on the use of force.

Use of force to effect arrest/prevent escape

25. According to sections 39 and 40 of the Crimes Act 1961, Police can use reasonable force if someone is resisting arrest or fleeing to avoid arrest, unless the arrest can be effected or the escape prevented “*by reasonable means in a less violent manner*”.⁷ Mr X had clearly shown during the pursuit that he was fleeing to avoid arrest. It is also reasonable to assume that if he had stopped the tractor, Mr X may have intended to jump off and try to escape. Officer C said Mr X showed no sign of giving up, such as raising his hands.
26. Officer C did not think he had much time to make the decision about which tactical option to use to apprehend Mr X (he thought he used the Taser on Mr X less than ten seconds after the tractor drove towards him and stopped).
27. When asked if he considered using a less forceful tactical option than his Taser, Officer C said he considered using pepper spray to stop Mr X but decided it was not an appropriate option as it could cross-contaminate, affecting other staff at the scene. However, Officer C also said he did not know where the other officers were at the time he acted, which suggests cross-contamination was not his primary concern.
28. Officer C said another reason he did not use pepper spray was because Mr X was in control of a vehicle that was still running. When asked how pepper spray differed from the Taser in this respect, Officer C said the Taser’s ability to incapacitate Mr X was a better option as Mr X would have no ability to resist, whereas Mr X could have still driven with pepper spray in his eyes. Officer C also said the Taser allowed him the option of firing another cycle if needed, and allowed him to stay two or three metres away from Mr X. Using the spray would have meant he had to get closer.
29. Officer C wrote in his Tactical Options Report that he did not give Mr X a warning before firing the Taser, as there was not enough time: “*The necessity to apprehend the offender quickly negated the use of extended verbal communication*”. However, Officer C later said he believed he probably called out “*Taser 50,000 volts*” before using the weapon, because that is what he is trained to do.
30. The Authority’s view is that it was not appropriate for Officer C to fire the Taser in the circumstances. As discussed above, Mr X did not pose an immediate threat once the tractor had stopped. Furthermore:
 - a) Officer C should have tried communicating with Mr X to de-escalate the situation before using force. If Officer C had managed to convince Mr X to jump off the tractor, or waited for him to do so, then his dangerous driving would no longer be an issue.
 - b) The Authority does not accept that Officer C did not have time to warn Mr X about the Taser before he fired it. If Officer C did call out “*Taser 50,000 volts*” before firing the Taser,

⁷ See paragraphs 33 to 36 for relevant law on the use of force

it appears from his and Mr X's evidence that he did not give Mr X much opportunity to comply.

- c) Other officers were nearby to help carry out the arrest. While Officer C said he did not know other officers had arrived, he knew other officers were following Mr X and had heard their sirens at the same time that he heard the tractor approaching. Although possible, the chances of Mr X being able to escape on or off the tractor were low. Even if Mr X had jumped off the tractor and managed to escape from the officers, he would not likely have been an immediate threat to anyone else when he was on foot.
- d) Police policy states that:
 - i) Tasers should not be used on people operating machinery due to the risk of the person losing control of the machinery and causing injury. Mr X was sitting at the controls with the engine running, so even if the tractor was not moving at the time, (and there is dispute about that) there was the potential for it to go out of control when Mr X was tasered.
 - ii) Intoxicated people are considered to be at greater risk when a Taser is used on them.
 - iii) Tasers must not be used when the person being tasered may fall, risking serious injury or death. Officer C said he was aware of the restriction on using a Taser when the person may fall, but the tractor was small, and he felt that the risk was low because Mr X was close to the ground and on a grass verge. In the Authority's view, the elevated position in this case increased the risk of injury to an unacceptable level.

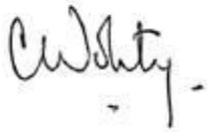
FINDINGS

Officer C's use of his Taser was an unreasonable and excessive use of force in the circumstances.

Officer C's breaches of policy could have resulted in unnecessary injury to Mr X.

CONCLUSIONS

31. The Authority has found that Officer C's use of his Taser was an unreasonable and excessive use of force in the circumstances. Mr X did not pose an immediate danger to Officer C or others at the time the officer fired the Taser, and a less forceful tactical option could have been used to apprehend him.

A handwritten signature in black ink, appearing to read 'C. Doherty', with a horizontal line underneath.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

10 October 2019

IPCA: 17-2290

Law on arresting a person believed to have committed an offence

32. Section 315 Crimes Act 1961 provides that a constable can arrest without warrant any person whom he or she has good cause to suspect has committed an offence punishable by imprisonment.

Law on the use of force

33. 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 enforcements 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”*. Section 39 also allows for Police to pursue fleeing drivers when making an arrest.
34. Section 40 of the Crimes Act 1961 provides for law officers to use *“such force as may be necessary”* to stop an offender from escaping if they flee to avoid arrest.
35. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*
36. Under section 62 of the Crimes Act 1961, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

‘Use of Force’ policy

37. 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 tactical options available to them to help de-escalate a situation, retrain 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.
38. Police policy provides a Tactical Options Framework (TOF) 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 assessment as the TENR (Threat, Exposure, Necessity and Response).
39. 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).

40. 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.
41. 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.

'Taser' policy

42. Using a Taser is a use of force. Therefore, it must be "*necessary, proportionate and reasonable in the circumstances*". It can be used where an officer fears imminent physical harm to themselves or some other person. If there is no longer the likelihood of physical harm the use of a Taser is not necessary or reasonable.
43. A Taser is one of a number of tactical options available for use within the Police's Tactical Options Framework. An officer may use the Taser when their PCA makes them honestly believe that someone poses an imminent threat of physical harm to a person. A Taser can never be used on a person whose behaviour is below the 'assaultive' range, for example when someone is merely actively or passively resistant. Officers should submit a Tactical Options Report after they have used a Taser on someone.
44. When carrying a Taser, it must be in the load state inside an approved holster. Officers should give a verbal warning of "*TASER, TASER, TASER!*" when showing or using a Taser, unless it is not practical or safe to do so. This is to warn others nearby and to try to de-escalate the situation.
45. Tasers must not be used where the offender may fall, risking serious injury or death. Fleeing subjects are at a greater risk of an uncontrolled fall. When an officer believes the use of a Taser against someone who is fleeing is justified, they must consider the added risk of injury to the offender if they may fall. Tasers also must not be used on a person who is in a vehicle or in control of machinery if there is a risk that it may go out of control and cause injury to anyone. Research suggests that some people are most likely to be at greater risk when a Taser is used on them. This includes people who are intoxicated.
46. A registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is reasonably practical.

'Fleeing Driver' policy

47. Police must continually assess the threat and risks when deciding to begin, continue, or abandon a pursuit. The pursuit should be "*resolved as safely and as quickly as possible whilst using the least amount of force.*" In a pursuit, the environment changes quickly so risks must be identified and managed as efficiently and safely as possible.

'Tyre Deflation Devices' (TDD) Policy

48. Tyre deflation devices (TDDs, commonly known as road spikes) are often used as a tactical option to stop fleeing vehicles in the safest possible manner, with minimum force necessary. Officers must use the risk assessment tool, TENR (Threat-Exposure-Necessity-Response), when deciding whether to use TDDs. They may only be used when there is no other, less dangerous, way of stopping the vehicle, and when there is no unjustified risk to anyone. The pursuit controller must give authority to use them, other than in special circumstances.

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:

49. 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;
50. 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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