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# Allegation of assault following arrest in Napier

## OUTLINE OF EVENTS

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1. On 14 April 2019, Ms Z crashed her car into a streetlight near her home in Taradale, Napier, knocking it over. She continued to drive home, leaving parts of her damaged car behind.
2. Police soon arrived and a witness directed them to Ms Z's address. There, Officers A and B asked Ms Z to undergo a breath screening test. Ms Z refused and was then asked to accompany the officers to the Police Station for testing. Ms Z again refused and became aggressive, so the officers arrested her and took her into custody.
3. Ms Z later told Police that Officer A strangled her and punched her in the face in the back of the Police car. When she arrived at the Police custody unit that evening, she had a bleeding nose (later confirmed to be broken) and her left eye was swollen and bruised. At the time, custody staff thought these injuries could have been caused by the crash.
4. The Authority independently investigated Ms Z's complaint. Police conducted their own investigation, finding that Ms Z's allegations were not substantiated and the force that Officer A did use in the back of the Police car was justified and reasonable.
5. Ms Z appeared in Court on charges relating to the incident, including assaulting Officers A and B. She pleaded guilty to all charges and was convicted.

## THE AUTHORITY'S INVESTIGATION

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6. The Authority interviewed Ms Z, Officers A and B, three other officers who were involved, two civilians who witnessed the arrest and the doctor who assessed Ms Z's injuries. The Authority also reviewed Ms Z's medical reports and the Police investigation file which included Officer A's Tactical Options Report, photographs of Ms Z's injuries, Victim Impact Statements made by
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Officers A and B to the Court and other documents generated by Police during their investigation of the complaint.<sup>1</sup>

7. The Authority considered whether Officer A use excessive force against Ms Z in the back of the Police car?

## THE AUTHORITY'S FINDINGS

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### Did Officer A use excessive force against Ms Z in the back of the Police car?

#### Arrest

8. Ms Z was arrested for failing to accompany Police to undergo an evidential breath or blood test.<sup>2</sup> She appeared intoxicated and continually refused to comply with instructions from Police, and then began to lash out and resist when Officer B tried to place her in handcuffs. This was witnessed by her aunt, who was at the address, and by Ms Y, the witness who directed Police to the address after the crash and identified Ms Z. Ms Z was kicking, swearing and yelling, and the officers said she also tried to bite Officer B.
9. Ms Z acknowledged at interview that she was aggressive towards Officers A and B, though she said this was in response to being “*manhandled*”. The accounts of the officers and witnesses, however, suggest that Ms Z became physically resistant and aggressive as soon as Officer B tried to apply the handcuffs, and that Officer A came to Officer B’s assistance because of this. Ms Z had also told the Authority that her memory of the majority of what happened in her home was “*blurry*”.
10. According to Officers A and B and Ms Y, Ms Z refused to walk to the Police car, so the officers had to carry her. Ms Y said Ms Z was spitting and trying to bite the officers as they put her into the back seat, and the officers said Ms Z kicked Officer B a number of times. Ms Z told the Authority Officer A “*very forcefully*” pushed her head down when putting her into the back seat.
11. Ms Y watched what was happening between the officers and Ms Z from the time of the arrest until the officers got into the Police car to leave. She described the actions of the officers and the level of force they used as “*very reasonable... [Ms Z] was making their job really hard but they were so calm and patient with her*”.

#### Inside the Police car

12. Before taking Ms Z to the Hawkes Bay Area Custody Unit in Hastings, Officers A and B briefly left her in the back of their Police car, handcuffed and with her seatbelt on, while they spoke with Ms Y about what she had seen after Ms Z crashed her car. A short time later, they noticed Ms Z had taken off her seatbelt and was lying on her back, kicking the rear side car window with both her feet. Officer B was worried that the window might break and opened the door. Ms Z then kicked Officer B in the chest and arms several times with both feet, which was witnessed by

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<sup>1</sup> Officers are required to complete a Tactical Options Report when they have used force on a member of the public. The report includes each tactical option used, and a description of the force used, and the reasons for using it.

<sup>2</sup> Land Transport Act 1998, section 59(b).

Officer A and Ms Y. In her Victim Impact Statement to the Court, Officer B said she suffered bruising and significant swelling to one forearm and bruising to both hands from the kicks.

13. Because of Ms Z's behaviour, Officers A and B agreed it would be best if Officer B drove the Police car and Officer A sat in the back seat with Ms Z.
14. When Officer A got into the back of the Police car, he sat directly behind the driver's seat. Both officers said Ms Z was crying and verbally abusing them, and Officer A said she was spitting at him, though he thought this was unintentional. When interviewed, Ms Z said she spat at Officer A on purpose.
15. Officer A said he reached his right hand across Ms Z to put her seatbelt on, at which point Ms Z went to bite his forearm. He said in response to this he used his left forearm to push Ms Z's head back against the left rear window and asked Officer B to hand him a 'spit hood'.<sup>3</sup> Officer B found a spit hood and said she tried to help Officer A put it on Ms Z from the driver's seat.
16. Officer A said he did his best to put the spit hood on Ms Z with his right hand, while still restraining her head against the window with his left forearm. He said:

*"[Ms Z] started kicking and screaming... I got the spit hood on as best as I could and I managed to get the seatbelt on and I hold her there for a while until she's calmed down somewhat...I don't think I did the best job trying to get it on... she wouldn't have been able to see... the spit hood was meant to be lower than it was".*

17. Ms Z confirmed at interview that she could not see once the spit hood was on. She said as soon as it was on, she felt Officer A put what she believed was the palm of his hand on her neck with such force that she could not breathe. Ms Z believed they had already left her address when this happened, and that she had said, *"Stop the car, I can't breathe"*.
18. Officers A and B said the spit hood was applied before they set off from Ms Z's address. Officer A said that after he put the spit hood on Ms Z, he fastened her seatbelt and continued to restrain her head against the left rear window using his left forearm for a short time, holding this *"along her neck and up her jaw"*. He said Ms Z was still swearing at him, but when she started to calm down, he let her go and moved back to his side of the back seat. When asked to describe the force he was applying when holding Ms Z's head against the window, he said it was *"Not overly hard. Just hard enough to keep her from moving"*. Officer A said he then released his hold on Ms Z, and it was then that they started driving to Hastings.
19. Ms Z said that after Officer A pushed his palm against her neck, he punched her hard in the nose, and she felt it start to bleed. She said she did not see the punch because her eyes were covered by the spit hood, but she clearly felt it and she had no doubt it was a punch. She told the

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<sup>3</sup> A spit hood is a restraint device intended to prevent someone from spitting or biting. The hood slips over a detainee's head. The bottom half is cloth, designed to prevent spitting. The top half is dark mesh so that officers may view the top half of the detainee's head.

Authority her memory of what happened after that was “*extremely blurry*”, and the next thing she could recall was arriving at the Police custody unit.

20. Officer A strongly denied punching Ms Z. He said that at one point Ms Z calmed down, so he momentarily took his attention away from her while he made a phone call to Officer C in connection with the crash. He said Ms Z then kicked him in the face, her foot connecting with his nose and causing him to drop his phone.
21. Officer C confirmed to the Authority that he was on the phone to Officer A and heard “*something happen*”, and that it sounded like Officer A had dropped the phone.
22. Immediately after feeling the kick to his face Officer A saw that Ms Z had managed to undo her seatbelt and was now facing him with her back against the side door, continuing to kick out in his direction. Officer A said he reacted by pushing himself off the right rear car door to close the gap between him and Ms Z. He used his body weight to push Ms Z back and pin her against the left rear door while restraining her head against the window in the same way he had done before. He said he used:

*“The meaty part of my forearm across her neck and to her chin kind of area, just to keep her face pointing forward so her head against the window... and my other hand on top of her head”*
23. Officer B said she did not see the kick connect with Officer A but had looked in the rear-view mirror and seen Ms Z’s foot moving through the air in a kicking motion in Officer A’s direction, and then Officer A’s arm and body moving in Ms Z’s direction. She said she briefly turned to see what was happening and saw that Officer A had restrained Ms Z against the window as described by him. She activated the Police vehicles lights and siren, having decided they needed to get to Hastings as quickly as possible.
24. Officer A said that after he restrained Ms Z, she was still trying to kick out and was swearing at him. He said he held Ms Z against the window for two to three minutes until she stopped kicking and fighting. He said he then held her legs down with one hand, though she continued to verbally abuse him and try to kick out.
25. Ms Z told the Authority she could not remember whether she kicked Officer A, but that she had lashed out and tried to get away from him.
26. Officers A and B said Ms Z’s demeanour changed when they arrived at the custody unit, from being aggressive to quietly crying. They removed the spit hood and could see dried blood on her face, which looked like it had come from her nose, and bruising and swelling developing around her left cheek and eye.
27. The custody sergeant, Officer D, said that when he first saw Ms Z, she appeared to be heavily intoxicated and told him Officer A had strangled her and “*smashed*” her head against the car window. When asked if she told him at that stage that she had been punched, he said she did not.

28. While Ms Z was being processed in custody, her nose began to bleed heavily, so Police took her to hospital. The doctor who assessed her told the Authority that Ms Z denied having been in a car accident and said she had been punched multiple times in the face by Police. She then refused medical treatment, saying she just wanted to go home.
29. Ms Z returned to hospital on 17 April 2019 and a scan confirmed a fracture to her right nasal bone. By that time, her left eye was showing bruising (as well as her right, which was still swollen and bruised).

### *Analysis of accounts*

30. It is clear that Officer A used force to restrain Ms Z in the back of the Police car, and that, at some point during the evening's events, she suffered facial injuries including a broken nose.
31. The doctor who examined Ms Z on 14 April 2019 told the Authority that the officers who brought Ms Z to hospital informed him that Ms Z had been in a car accident, and that he had considered at the time whether her facial injuries could have been caused by this. He said her injuries were the result of blunt force trauma, possibly consistent with her head hitting a steering wheel, though they could also have come from her being punched. The Authority also asked the doctor whether the injuries could have occurred as a result of someone using their forearm and hand to forcefully push Ms Z's head sideways against the inside of a car window, and he confirmed that this was possible. He was unable to say which of these three possibilities, was more likely to have caused the injuries.
32. The accounts of Ms Z, her aunt Ms Y, and Officers A and B are consistent in stating that Ms Z had no visible facial injuries prior to her arrest; therefore, the Authority is satisfied that the injuries are more likely to have been caused by the force used by Officer A in the back of the Police car on the way to Hastings.
33. The Authority is not, however, able to determine whether Officer A punched Ms Z, because of the conflicting accounts of Officer A and Ms Z and inconclusive medical evidence.
34. If Ms Z's injuries were caused by Officer A restraining her in the back of the Police vehicle in the way described by Officers A and B, it seems probable that they occurred when Officer A did this the second time, after Ms Z kicked him, because:
  - 1) Officer A said he pushed himself off the right rear car door and used his body weight to push Ms Z backwards and pin her against the left rear door while restraining her head against the window.
  - 2) Officer D described Ms Z complaining, on her arrival in custody, that Officer A had "smashed" her head against the car window but made no reference to being punched by him.
  - 3) The doctor spoken to confirmed that Ms Z's injuries could have come from someone using their forearm and hand to forcefully push Ms Z's head sideways against the inside of a car window.

*Was the force used by Officer A justified?*

35. Officer A said he pushed Ms Z backwards and restrained her against the left rear car door and window to stop her from kicking him again. 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. To rely on this justification for his use of force, Officer A’s action must be assessed on the following three questions:

- 1) What circumstances did Officer A believe he was facing at the time?
- 2) In light of that belief, did Officer A use force for the purpose of defending himself?
- 3) If so, was the force used reasonable in the circumstances as Officer A believed them to be?

*What circumstances did Officer A believe he was facing at the time?*

37. Officer A had just been kicked in the face by Ms Z and said he could now see that while he had been distracted by his phone call, Ms Z had again undone her seatbelt and was facing him with her back against the left rear side door of the Police car.
38. In his Tactical Options Report, he wrote that he deemed Ms Z to be ‘assaultive’ because by this time she had tried to bite both him and Officer B and she had kicked them both causing them pain and injuries.<sup>4</sup> He said he feared for his safety and that of Officer B, and he believed it necessary to take immediate action to prevent Ms Z from kicking him in the face again.
39. The Authority accepts that Officer A believed Ms Z was ‘assaultive’, because of her actions leading up to this point, and that she might kick him again if not restrained.

*In light of that belief, did Officer A use force for the purpose of defending himself?*

40. Based on Officer A’s assessment of the threat Ms Z posed to him in that moment, the Authority accepts that when he pushed Ms Z backwards and restrained her head against the car window his primary aim was to defend himself from being kicked again with a secondary aim to subdue her from a safety point of view.

*If so, was the force used reasonable in the circumstances as Officer A believed them to be?*

41. Officer A said he believed that his response was reasonable and proportionate because Ms Z was assaultive.

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<sup>4</sup> ‘Assaultive’ in Police’s Tactical Options Framework includes someone who displays intent to cause harm, through body language/physical action.

42. The Police Tactical Options Framework guides Police in determining the appropriate level of force to use in certain situations.<sup>5</sup> When someone is assaultive, policy permits the use of pepper spray and ‘empty handed tactics’, such as physical restraint holds or strikes.
43. Officer A recorded in his Tactical Options Report that he considered using pepper spray on Ms Z but did not because they were in a confined space with too much potential for cross-contamination.
44. The Authority considers the force used by Officer A to restrain Ms Z against the window was sufficient to cause the injuries that she received. However, the Authority accepts that the force was a proportionate response to the threat Officer A perceived in the circumstances, and that there were no less forceful tactical options available to him at that moment.

## FINDINGS

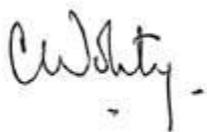
The Authority is unable to determine whether Officer A punched Ms Z in the back of the Police car.

The Authority concludes that Officer A used force to restrain Ms Z in the back of the Police car, and that this was the likely cause of her injuries.

The force Officer A has acknowledged using in restraining Ms Z was justified and proportionate in the circumstances.

## CONCLUSIONS

45. The Authority concludes that there is insufficient evidence to support Ms Z’s allegation that she was punched by Officer A in the back seat of the Police car. However, her facial injuries were likely the result of force used by Officer A.
46. The force Officer A has acknowledged using in restraining Ms Z was justified and proportionate in the circumstances.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

19 March 2020

**IPCA: 18-2306**

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<sup>5</sup> See paragraph 49 onwards.

### Law on the use of force

47. 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 or she believes them to be, it is reasonable to use.”*
48. 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

49. 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.
50. Police policy provides a Tactical Options 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.
51. 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)).
52. 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.
53. 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

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### 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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