
Police officer used excessive force during arrest

OUTLINE OF EVENTS

1. On 10 February 2019, officers A and B attended a family harm incident involving Mr X. He attempted to run them over in a driveway with his car, narrowly missing them, before fleeing the scene. A short pursuit (approximately 90 seconds) ended when Mr X deliberately crashed his car into a concrete barrier and was then arrested by the officers.
2. Mr X's arrest was captured on CCTV. The footage shows him getting out of his car and immediately lying face down on the ground with his hands behind his head. Officer A is then seen standing on Mr X's head, kicking him several times and punching him before he is handcuffed and arrested.
3. Police conducted criminal and employment investigations of officer A's conduct. Both investigations were overseen by the Authority.

THE POLICE INVESTIGATION

4. Officers A and B and Mr X were interviewed, and the CCTV was reviewed. A legal opinion was sought to assist Police in deciding whether to charge.
 5. The investigation found:
 - (1) Officer A submitted a report which did not accurately reflect the amount of force used in the arrest of Mr X. For example, in the report compiled soon after the incident, Officer A stated he kicked him twice, in his interview with Police after he viewed the CCTV footage, he admitted to kicking Mr X three times whereas the CCTV showed he kicked him four times; and
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- (2) Officer A's risk assessment was flawed as it was based on Mr X's behaviour prior to the pursuit, and not his behaviour after he surrendered to Police.

THE POLICE FINDING

6. Police decided not to charge officer A with any offence.
7. The employment investigation found:
 - (1) Officer A used excessive force without justification which amounted to misconduct; and
 - (2) Officer A should have reconsidered his risk assessment after Mr X surrendered to Police.
8. Officer A received an employment sanction

THE AUTHORITY'S FINDINGS

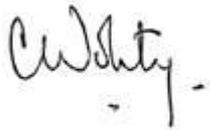
Was the decision not to charge Constable A reasonable in the circumstances?

9. The Authority agrees with Police that officer A used excessive force without justification. It does not agree with the decision not to charge him for assaulting Mr X.
10. The Authority notes that Police documentation contains several reasons for the Police decision not to charge officer A because it was not considered to be in the public interest to do so. Notably these include:
 - The likelihood of conviction was low;
 - An alternative resolution was available through the employment process which was an option for Police under the Solicitor General's Guidelines, and Police believed that a disciplinary outcome for officer A could provide a proportionate outcome and effect behavioural change; Mr X was not injured during his arrest which suggested that the use of force was "trifling"; The kicks were used to achieve compliance, and were not violent, malicious or designed to injure;
 - Mr X's earlier attempt to run officers A and B over put officer A in a heightened state of emotion that impaired his judgment. The officers were then involved in a pursuit and adrenaline would have been running high;
 - Officer B was suffering from shock and was rendered incapable in properly assisting to effect Mr X's arrest; and
 - No complaint had been made by Mr X, he did not want the matter to proceed to court and be called as a witness, and he had no issues with how his arrest was effected.

11. Officer A did not need to kick, or punch Mr X. Mr X was not assaultive and did not present an immediate risk to either officer, as he was voluntarily lying face down on the ground with his hands behind his head. This is supported by Officer B's account of what was happening when he said Mr X "wasn't being aggressive at this stage; he just wasn't complying."
12. The Police Categorisation Panel noted the force appeared to have been used to gain compliance, which is not a justification for the force used by Officer A. The Panel also noted standing on someone's head and kicking them are not taught as tactical options.
13. The Authority agrees with Police that officer A was "in a heightened state where his judgement was impaired" following Mr X's alleged attempt to run him over. The CCTV footage shows an agitated Officer A behaving aggressively from the outset when confronting Mr X. He approached Mr X with his Taser drawn; an indication he was expecting aggression from Mr X. Officer A claims that Mr X approached him with clenched fists with his chest pressed out which led him to believe that Mr X was going to assault him. This is not borne out by the CCTV footage which shows, he was met by a compliant Mr X who immediately surrendered and lay on the ground in supplication. The Authority also notes that in Officer A's interview he implies that Officer B was so affected by Mr X's attempt to run them over, that Officer B did not do much to assist with the cuffing of Mr X, but this is not borne out by the CCTV footage; Officer A is seen surveying the scene for much of this time whilst keeping Mr X's head trapped beneath his foot. Officer A also demonstrates further aggression whilst lifting Mr X off the ground in order to take him to the Police vehicle. Officer A's demeanor displayed in the footage is consistent with Mr X's recollection that when the officers arrived, one of them said "what are you trying to f***** run us down for" or words to that effect. Officer A's behaviour towards Mr X thereafter reinforces the Authority's view that the kicking, the punch and standing on the head were not motivated by Mr X's perceived risk or perceived lack of compliance but was motivated by retaliation for his prior behaviour. The Authority does not consider that the use of force was "trifling" and the fact that Mr X did not make a complaint is irrelevant. Mr X was described as intoxicated when he was arrested and it is likely that this is why he does not recall any issues with his arrest.
14. The Authority believes the evidential test for prosecution was met and a reasonable prospect of conviction existed. It disagrees with the Police view that a prosecution was not "winnable". It also notes Police downplayed the act of standing on X's head even although the officer making the charging decision observed: "The foot on the head is troubling and is not a technique taught." The Categorisation Panel commented that it "looks poor on the CCTV."
15. There are several public interest considerations for prosecution, but the Authority considers those relevant in this matter are:
 - Officer A engaged in several significant acts of violence. Despite the observation by the charging officer that "the kicks were not intended to cause harm or injury but to achieve compliance", the CCTV itself shows the kicks, the punch and the standing on the head by Constable A were all intended and significant applications of force; and

- as a serving Police officer, Officer A was in a position of authority and trust. His use of excessive force after Mr X had surrendered, was an abuse of that position.

The Authority is not aware of any public interest factor which would outweigh the deliberate and gratuitous force used by Constable A so as not to charge him. Certainly, the fact Mr X did not complain, or the availability of an employment sanction are not sufficient factors in the circumstances that existed in this case.

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

Judge Colin Doherty

Chair
Independent Police Conduct Authority

4 August 2020

IPCA: 18-1823

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.



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