

Family detained by Police during search in Auckland

Summary of the Incident

1. At 2.43am on 9 February 2019 Police received a call advising that two men had used a firearm to rob a bar in Pakuranga, Auckland and had left in a silver car. Shortly afterwards, a member of the public reported a silver car had been abandoned in their driveway, near the scene of the robbery, and the occupants had left on foot.
2. At 3.18am a member of the public in the same area reported that someone with a firearm had knocked on their door and tried to steal their car. An officer who responded to the attempted car theft was in the process of setting up road spikes in the area when he heard what he believed to be a gunshot.
3. Approximately 10 minutes later the Police helicopter, Eagle, saw a male with a firearm in the backyard of a house across the road from the attempted car theft. Eagle saw him again in the same backyard about 40 minutes later, together with two females.
4. Officers from the Armed Offenders Squad (AOS) went to the house. At approximately 5.12am four people, two men and two women, were brought out of the house and taken to four separate Police cars to be questioned while AOS searched inside. Within approximately an hour and 48 minutes they had all been allowed to return to the house, after Police were satisfied they were not involved in the robbery.
5. A representative for the family complained to the Authority about the family being taken into custody, the length of time they were kept in custody, that their dignity was not upheld, and a lack of follow-up by Police after the event. The Authority conducted an independent investigation.

Issues examined by the Authority

Issue 1: Did Police had lawful grounds to detain the family?

Issue 2: Did Police take active steps, while the family were detained, to determine their involvement in the robbery?

The Authority's Findings

6. The Authority finds that:
 - 1) Police had lawful grounds to detain the family; and
 - 2) Police did not take immediate, active steps to determine whether the family members were involved in the robbery. The delay in doing so, and length of time they were held, was unreasonable.
 - 3) The manner of detention, in that the family were transported and confined in Police cars on the street, was unlawful.
7. We also had concerns in regard to the treatment of Ms X and Ms W, in that they were not properly clothed, and were not offered anything to cover themselves with. Police had the means to prevent them from obstructing the search, and while detaining them was legally justifiable, it was neither necessary nor reasonable in the circumstances.

Analysis of the Issues

ISSUE 1: DID POLICE HAVE LAWFUL GROUNDS TO DETAIN THE FAMILY?

8. At 3.38am a man with a rifle (Mr Z) and a dog was seen by Eagle in the backyard of a residential property. Police believed he had been involved in the robbery due to the firearm, and attempted car theft across the road. Eagle saw him again at 4.09am, with two women (Ms W and Ms X) and another male (Mr Y). It was later determined that Mr Z and Mr Y are brothers, Ms W is their sister and Ms X is their mother. They all lived together in the house on the property.
9. At 4.13am, after a call from his father, Mr V, who was outside the cordon, Mr Z became aware that their neighbourhood had been cordoned off and called Police. He advised Officer A, who took the call, that a male had run through their back garden some 35-40 minutes earlier. Officer A did not record the call due to the time that had passed since the man had been seen, and as he was aware Eagle already had observations on a male with a firearm.
10. At 4.55am the Armed Offenders Squad (AOS) was deployed.
11. At approximately 5.03am Officer B, a member of the Police Negotiation Team who had been dispatched with AOS, called the family's house and spoke to Ms X. Mr Y and Mr Z exited the house first, at the instructions of AOS officers, followed by Ms X and Ms W who were told what to do by Officer B. All four occupants of the house had been removed from the house by approximately 5.12am.

Was the detention lawful?

12. Section 118(1) of the Search and Surveillance Act 2012 provides that if Police exercise a search power in relation to a place or vehicle, they may detain any person in the place at the commencement of the search in order to determine whether they are connected to the object of the search.
13. A person may be detained under the section for any period that is reasonable, but not for longer than the duration of the search. A detention commences when an officer directs that person to remain at the place/in the vehicle, and ends when that person is told by the officer (or someone assisting them) that they are free to leave the place or vehicle.
14. Reasonable force may be used for the purpose of effecting and continuing any detention under subsection (1).
15. Police detained the family to search their home for evidence associated with the aggravated robbery on the bar, and the attempted car theft across the road.
16. The officers who detained the family stated that they did so under the Search and Surveillance Act 2012. Although they did not state they were doing so under section 118 specifically, we accept that they had lawful authority to detain them under that section.

FINDING ON ISSUE 1

The family were lawfully detained under section 118 of the Search and Surveillance Act.

ISSUE 2: DID POLICE TAKE ACTIVE STEPS, WHILE THE FAMILY WERE DETAINED, TO DETERMINE THEIR INVOLVEMENT IN THE ROBBERY?

17. At approximately 5.12am Officer C, from AOS, detained Mr Z and Mr Y and escorted them to waiting inquiry team members. They were advised of their rights and placed in plastic handcuffs.
18. Very soon after, Ms X and Ms W followed Officer B's instructions over the phone and walked out of the house. At the time Ms X was wearing a t-shirt, and Ms W was wearing a nightie and cardigan which she gave to Ms X. They stated that, when Ms X asked AOS officers if she could get something to wear, they said no and told her to keep walking. Neither Ms X nor Ms W were handcuffed.
19. Mr Z was detained for approximately an hour and 39 minutes, between 5.12am and his statement being completed at 6.51am. During this time:
 - At 5.18am Officer G advised Mr Z of his rights and took his details. Officer G did not question Mr Z, but told him the Police presence was in relation to a firearms incident. He transported Mr Z up the road, got out of the car, and handed him over to Officer H. He said he was only with Mr Z for a couple of minutes. Officer G was not aware if Mr Z had been told why he had been detained.

- Officer H said Mr Z was handed over to him at 5.24am. He introduced himself to Mr Z and told him what he was there to do. He took Mr Z's statement, which detailed that he had seen someone run across his property and called Police. Mr Z's statement was started at 6.06am and completed at 6.51am. Officer H told us once he had taken Mr Z's statement, they drove Mr Z to his house, and let him out of the car. In his Police statement he said at the conclusion of the statement he left Mr Z in the care of Officer G. Officer G did not refer to this.
- At some stage one of Mr Z's plastic zip ties was cut; it is unclear exactly when¹, but Mr Z he said this was 45 minutes to an hour after being questioned.
- Mr Z referred to being questioned by an AOS officer and telling them he had an air rifle in his room, then being handed over to a uniformed officer. The uniformed officer advised him of his rights and that he was being detained. He was placed in a Police car for no more than five minutes, then sat outside on the grass for about 15 minutes. He was walked to another Police car and spoke to another officer about what had happened. His statement was taken, and he initialled it. He was let out of the car and had his photo taken *"in front of all [their] neighbours, which was embarrassing.*

20. Mr Y was detained for approximately an hour and 48 minutes, between 5.12am and 7am. His handcuffs were removed at approximately 6.20am. During this time:

- At 5.20am Mr Y was transferred into Officer I's custody. He was in plastic handcuffs, which Officer H replaced with metal handcuffs. Officer I arrested Mr Y for unlawful possession of a firearm, advised him of his rights and searched him. At approximately 5.34am he removed Mr Y's handcuffs and transferred him into Officer J's custody.
- Officer J handcuffed Mr Y, advised him of his rights, and obtained his details and a preliminary account of what had occurred. He passed this on to the CIB team.
- At 6.20am the CIB confirmed *"everything was fine"*. Officer J removed Mr Y's handcuffs and took his statement. Mr Y's statement was started at 6.22am and completed at 7am, at which time Officer J said he offered Mr Y a ride home.
- Mr Y told us after they were called out of the house he was handed over to a uniformed officer. He sat in a Police car for 5-10 minutes, and was asked whether he had been told he had been detained, which he had not. He confirmed there was a firearm on the premises, and was then told he had been detained in relation to the firearm. He was transported down the road, and sat on a neighbour's lawn for 5-10 minutes. He was then put in a Police car, his handcuffs were removed, and he was driven down the road. He said there was *"a lot of waiting between things happening"*.
- Mr Y said a further 15 minutes went by before an officer got in the car and questioned him. He believed he was advised of his rights 20-30 minutes after being arrested. Eventually Ms W was put in the car with him, and they were told they were still detained and could not speak to each other. She then got out of the car, and Mr Y's statement and

¹ The other was too tight for Police to cut, and Mr Z removed it himself when he returned home.

photo were taken. Afterwards he was offered a ride home, but walked back to the house to make a point.

21. Ms X and Ms W exited the house soon after 5.12am and were handed over to Officer D. He says he advised them they had been detained under the Search and Surveillance Act, and of their rights, around 5.33am and obtained their details. Officer D said Officer E came and took Ms W, and Officer D stayed with Ms X for 40-50 minutes. With regard to Ms X:

- Officer D says he detained Ms X as he was instructed to do so, but could not recall by whom. He did not recall either Ms W or X complaining of being cold, asking for clothing, or making any general complaints about their treatment.
- Officer D believed he gave Ms X a vague explanation as to the incident at the bar, and that Eagle had seen a male with a firearm at their house. He thought she mentioned that her son had an air rifle, and they had heard someone outside. He did not confirm what time she said this. At 6.25am he was instructed to transport her back home. He told her she was no longer detained and drove her home.
- Ms X told the Authority she was worried as while she was detained it was becoming light, and she did not want her neighbours to see her and her family handcuffed in the back of Police cars.
- Ms X was detained for approximately an hour and 13 minutes. She was not handcuffed.

22. With regard to Ms W:

- Officer E said he thought he had removed handcuffs from Ms W at approximately 5.35am. However, she did not refer to being handcuffed. He did not record the time she was released.
- At 5.40am Officer E advised Ms W she had been detained under the Search and Surveillance Act. He obtained her details and confirmed she had been advised of her rights. He recalled as he "*delved into things*" he suspected she and her brothers did not have anything to do with the robbery. He considered if Police needed more information they could arrange an interview. He got Ms W to sign his notebook acknowledging what he had recorded and arranged for her to be taken home. The time of signing was not recorded.

23. Based on Ms W's interview with the Authority it appears she was back at the house before Ms X, who was released at 6.25am. Ms W was therefore detained for less than an hour and 13 minutes.

Did Police take immediate, active steps to determine whether there was any connection between the family, and the object of the search?

24. Section 118 provides that a person may be detained under subsection (1) (outlined at paragraph 0) for any period that is reasonable, but not for longer than the duration of the search. Active

steps must be taken during the period of detention to determine whether the person is connected to the object of the search. When those inquiries are finished, the person must be free to leave even if the search is ongoing. As outlined at paragraph 12, they must be specifically told they are free to leave.

25. The Comms event chronology² included that they were advised of the following:
- 5.07am – One male in custody.
 - 5.08am – AOS are securing the persons.
 - 5.10am – two males in custody, two females out of the address.
 - 5.45am – AOS have cleared the house.
 - 5.50am – One long barrelled air rifle located.
 - 7.12am – Scene all clear.
26. As outlined above at paragraph 9 Officer A, who took Mr Z's call to 111, did not enter this in the system. We consider, and Officer A accepted, that he should have done so. This may have informed AOS there were people at the address who were concerned about someone outside. If the call was recorded, AOS's approach to the house and the family's treatment may have been different.
27. Police suspected that Mr Y and Mr Z were involved in the robbery. AOS called them out of the house, and handed them over to the inquiry team whose role, in accordance with section 118, was to determine whether they had any connection to the object of the search of their house, i.e. finding evidence in relation to the robbery. The Authority considers that Police were required to take immediate, active steps to do so. They did not have authority to detain people to give themselves time to locate evidence.
28. Based on the evidence provided by Mr Y and Mr Z, it appears there was some delay, albeit not excessive, before they were questioned. The Authority considers they should have been questioned immediately. As soon as Police determined the brothers were not involved, they should have released them regardless of whether the search was ongoing.
29. Neither Ms W or Ms X were formally questioned, or had written statements taken from them. However, the officers who spoke with them both refer to discussing what had occurred. Officer E specifically stated that he suspected she was not involved. There is no evidence that Police suspected the females were involved in the robbery at any point, and therefore it is unclear why they were detained and held in Police cars, as opposed to simply being removed from the property while the search was conducted. We find that Police had the means to prevent them from obstructing the search, and while detaining them was legally justifiable, it was neither necessary nor reasonable in the circumstances.

² These times are approximate as they are based on Comms entries into the chronology after having been communicated the information by officers on the ground.

30. Moreover, section 118 provides a power of detention at the scene of the search. It does not provide a power to transport persons to another location, or to confine them in Police vehicles on the street. Thus, even if the length of the detention had been lawful, the manner of detention was not.

Explanation by Officer F

31. While the family were detained Mr V arrived home from work and was eventually allowed through the cordon. He was speaking with Officer F as his family returned to the house. Officer F told the Authority he introduced himself to Mr V and explained why they had removed everyone from the address. They had come to the area after an aggravated robbery where a shotgun had been discharged. The offenders' vehicle was located a street over, and two offenders had tried to steal a vehicle on their street. Eagle then noticed two males walking around his property and entering the house with a firearm, leading Officer F to believe that there was a possible hostage situation. Officer F told the Authority when specialist units clear addresses they handcuff all occupants for safety reasons. While we accept, in these circumstances, AOS were justified in handcuffing Mr Y and Mr Z, we believe occupants of searched premises should not be handcuffed as a matter of course.
32. Officers D and H were present during Officer F's explanation. Officer D did not recall any hard feelings or complaints from the family. Officer H also stated that Officer F apologised to the family for any inconvenience caused.
33. During this conversation Mr Z and Mr Y confirmed they walked outside with the long-barrelled BB gun to intimidate anyone on their property. Officer F told them this was incredibly dangerous, and if they had encountered the offenders they could have been seriously hurt. It was just luck this did not happen. Officer F said Mr Y and Z both apologised, Mr V agreed they were lucky, apologised for being angry with Police and thanked Officer F for speaking with them.
34. Officer F said he apologised for any duress or stress as a result of AOS attending and asked the family if they had any questions or concerns. He said there were no concerns voiced and the family thanked him for taking the time to explain what had happened. He told the Authority he advised the family of their ability to contact Victims Support or other agencies and offered to arrange for them to come. He could not recall their response. He also gave them his details and said they could call him and may also have left his card. Officer E was also present during this discussion and recalled giving Mr V his business card and contact details.
35. Officer F stated when he carried out enquiries along the street only two people were awake: the man who had called Police about the attempted car theft, and the family's elderly neighbour who they had asked Officer F to check on.
36. The family raised concerns with the Authority as to how long it took for Police to realise they were not involved in the robbery and release them. They did not understand why they were targeted after having called Police themselves. They felt Police were dismissive of their call. They referred to being "walked out" or "parading around" in front of their neighbours in daylight, and

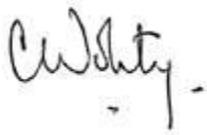
this was “*embarrassing*” and “*degrading*”, particularly as Ms W and Ms X were not properly clothed and prevented from getting anything to cover themselves.

37. They believed Police failed to apologise or express concern for their welfare and cared more about “*tidying it up and making sure they weren’t at fault*”. Ms W said there was no follow up phone call or wellness check. During the interviews with the Authority the family also raised the lasting impacts resulting from the matter. Mr Z said due to the tightness of his handcuffs he lost feeling in his thumb for months afterwards. Ms X said she was unable to sleep, stay home by herself and had trouble concentrating at work.
38. The Authority is particularly concerned with Ms X and W’s treatment with regard to their clothing. Although Police do not recall them raising that they were uncomfortable in the clothing they were wearing when they left the house, they should have been offered clothing so they were able to maintain their dignity as much as possible given the circumstances.
39. Officer F’s account of his apology and de-brief with the family, and the number of neighbours who were awake at the time, is at odds with the concerns raised by the family in their complaint to the Authority.
40. We accept Officer F took the time to explain Police actions to the family and apologised at the time. Two other officers confirmed this. They were offered his, and Officer E’s, contact details but did not utilise these after the fact. Officer F stated that he also advised the family of Victim Support. However, there is no written record of this. We appreciate given the circumstances the family may not have recalled being advised at the time and therefore did not access Victim Support.

FINDING ON ISSUE 2

Police did not take immediate, active steps to determine whether the family members were involved in the robbery. They should have made inquiries immediately and released them as soon as they were aware of their lack of involvement. The delay in doing so, and length of time they were held was unreasonable.

The Authority has concerns in regard to the treatment of Ms X and Ms W, in that they were not properly clothed, and were not offered anything to cover themselves with. Their detention, although legally justifiable, was neither necessary nor reasonable in the circumstances.

A handwritten signature in black ink, appearing to read 'C. Doherty'.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

3 November 2020

IPCA: 18-1866

Appendix – Laws and Policies

LAW

Search and Surveillance Act 2012

Section 7 – Entry without warrant to arrest person unlawfully at large.

41. A constable may enter a place or vehicle without warrant to search for and arrest a person if they have reasonable grounds to suspect that a person is unlawfully at large; and to believe that person is there.

Section 8 – Entry without warrant to avoid loss of offender or evidential material

42. If a constable has reasonable grounds
- (a) To suspect that the person has committed an offence that is punishable by imprisonment and for which he or she may be arrested without warrant; and
 - (b) To believe that that the person is there; and
 - (c) To believe that, if entry is not effected immediately the person will leave there to avoid arrest; and/or evidential material relating to the offence for which the person is to be arrested will be destroyed, concealed, altered, or damaged.
43. They may enter a place or vehicle without warrant; and search for and arrest a person that the constable suspects has committed the offence.

Section 14 – Warrantless entry to prevent offence or respond to risk to life or safety

44. A constable who has reasonable grounds to suspect
- (a) An offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property;
 - (b) There is risk to the life or safety of any person that requires an emergency response.
45. in relation to a place or vehicle may –
- (a) Enter the place or vehicle without a warrant; and
 - (b) Take any action that he or she has reasonable grounds to believe is necessary to prevent the offending from being committed or continuing, or to avert the emergency.

Section 18 – Warrantless searches associated with arms

46. A constable who has reasonable grounds to suspect that a person is carrying arms, or is in possession of them, or them under their control and:

- a. Is in breach of the Arms Act 1983
- b. They are, by reason of their physical or mental condition (however caused)
 - i. Incapable of having proper control of the arms; or
 - ii. May kill or cause bodily injury to any persons; or
- c. Under the family violence Act 2018 there a protection order or police safety order against them, or grounds to apply for one.

47. May, without a warrant:

- a. Search the person
- b. Search any thing in the person's possession or under his or her control (including a vehicle):
- c. Enter a place or vehicle to carry out any activity under a) or b)
- d. Seize and detain any arms found
- e. Seize and detain any licence under the Arms Act 1983 that is found.

Section 118 - Powers of detention incidental to powers to search places and vehicles

48. If any constable or other person, or a person assisting any constable or other person, exercises a search power in relation to a place or vehicle, that constable or other person may, for the purposes of determining whether there is any connection between a person at the place or in or on the vehicle and the object of the search, detain any person—

- a) who is at the place or in or on the vehicle at the commencement of the search; or
- b) who arrives at the place or stops at, or enters, or tries to enter, the vehicle while the search is being carried out.

49. A person may be detained under subsection (1) for any period that is reasonable, but not for longer than the duration of the search.

50. A detention commences when the constable or other person exercising the search power directs that person to remain at the place or in or on the vehicle and ends when that person is told by the constable or other person, or a person assisting the constable or other person, exercising the search power that he or she is free to leave the place or vehicle.

51. Reasonable force may be used for the purpose of effecting and continuing any detention under subsection (1).

52. Section 115(2) provides that the power under section 118 may only be exercised by a person who has power to arrest the person to be detained for a suspected offence to which the search

relates; or for a suspected offence to which evidential material that is discovered in the course of the search relates.

Principles applying when offenders are armed

53. When dealing with an armed offender or an offender believed to be armed, Police should observe these basic principles:

- It is better to take the matter too seriously than too lightly.
- Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.
- Make every effort to prevent casualties.
- Caution is not cowardice. When the offender's actions permit, cordon the area, and adopt the wait and appeal role to negotiate a surrender.
- Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, Police must act immediately to prevent this.

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.

We are not part of the Police – the law requires us 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. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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.



PO Box 25221, Wellington 6140
Freephone 0800 503 728
www.ipca.govt.nz
