
Pursuit and dog bite in Christchurch justified

Summary of the Incident

1. Shortly after 1am on Monday, 11 November 2019, four unknown offenders broke into a Lincoln liquor store, stealing a large quantity of alcohol. Police used CCTV cameras to identify a green Subaru and silver Subaru used in the burglary. Both cars were stolen.
 2. About half an hour later, Police found the two cars. The drivers fled and a pursuit began, which was abandoned due to the risk it posed to members of the public.
 3. At about 2.30am, an officer saw the green Subaru and a silver Mazda, parked suspiciously behind a liquor store in Shirley. Both cars had their lights off, and quickly left the area when the officer arrived in his patrol car.
 4. Police followed both the Subaru and Mazda for over eight minutes before successfully spiking the tyres of both cars. Police then initiated a pursuit. The two cars split up, so were pursued separately.
 5. The Subaru was pursued at slow speeds for just over three and a half minutes, over a distance of about two and a half kilometres. An officer used his patrol car to nudge the Subaru off the road, bringing it to a stop against a traffic light pole.
 6. During his arrest, Mr X, the driver of the Subaru, was bitten twice by a Police dog. The dog also accidentally bit a Police officer.
 7. The four occupants of the Subaru were arrested and the stolen alcohol was found in the Subaru. The two occupants in the Mazda were also arrested after abandoning the car and fleeing on foot.
 8. Mr X subsequently complained to the Authority, saying Police used excessive and unnecessary force on him during his arrest.
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Issues examined by the Authority

- Issue 1:** Were Police actions justified and reasonable during the pursuit?
- Issue 2:** Were Police justified in using a Police dog during the arrest of Mr X?
- Issue 3:** Did Police provide appropriate medical assistance to Mr X?

The Authority's Findings

9. The Authority found:
- 1) Officer C was justified in using spikes and it was reasonable to do so without first signalling the Subaru and Mazda to stop;
 - 2) Officer B was justified in initiating the pursuit and it was reasonable for Police to continue it;
 - 3) It was reasonable for Officer D to position himself in front of the Subaru in an attempt to slow it down, and he was justified in using a controlled collision to stop it;
 - 4) Officers did not kick Mr X while he was lying on the ground;
 - 5) Officer B was legally justified in using his dog to overcome the force used by Mr X in resisting arrest. The use of force was reasonable and proportionate; and
 - 6) Police provided appropriate medical assistance to Mr X.

Analysis of the Issues

ISSUE 1: WERE POLICE ACTIONS JUSTIFIED AND REASONABLE DURING THE PURSUIT?

10. After seeing the cars behind the liquor store, Officer A followed them as they drove in convoy around the suburb of Shirley, with the Subaru in front of the Mazda. This allowed time for more officers to come into the area to assist, with some preparing road spikes.
11. Officer B, a dog handler, became the lead Police vehicle and provided the commentary for most of the pursuit.
12. Officer B travelled about 70 to 100 metres behind the cars in his marked Police dog van. He reported that they were travelling at about 60 kph in the 50 kph area, driving in a good manner, both staying within their lanes, and that there was no other traffic. They were turning their lights on and off.

13. The cars accelerated when they passed a parked Police car. Officer B reported: *“They clearly know we are there and it’s gonna be a pursuit.”* Mr X told us he was aware Police were following them.
14. Officer B was able to see two letters of the Subaru’s registration and believed it was likely to be the one involved in the Lincoln store burglary and subsequent abandoned pursuit. He told the Southern Communications Centre (SouthComms) he was *“pretty confident”* both cars were stolen, and that the Mazda was not the silver Subaru from the earlier pursuit. Officer B believed the Mazda would also be stolen as it is the type of car that is often stolen in Christchurch.

Were Police justified in using road spikes?

15. Officer C set up road spikes on Lake Terrace Road, just before the intersection with Marshland Road. The cars approached, while travelling at about 70 kph. The spikes successfully punctured tyres on both cars.
16. Police policy currently addresses the use of road spikes during a pursuit, however, does not provide guidance on using them as a tactical option before a pursuit, or instead of a pursuit.¹
17. We believe road spikes are a safe and appropriate tactical option for officers to use to avoid a pursuit, where they have reason to believe a driver is likely to flee if signalled to stop. They are a relatively low use of force, which are designed to deflate tyres slowly so the driver does not lose control.
18. Police policy states the legal grounds for the deployment of spikes is section 39 of the Crimes Act 1961. Section 39 empowers Police to use *“such force as may be necessary”* to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process unless it can be achieved *“by reasonable means in a less violent manner”*.
19. We do not agree that section 39 provides an appropriate power to use road spikes as a driver is not using force if they are driving away from Police.
20. Section 40 of the Act provides a more appropriate legal basis for the use of road spikes. It empowers Police to use *“such force as may be necessary”* to prevent the escape of someone who takes flight in order to avoid arrest.
21. Officer C had sufficient reason to believe the drivers would actively attempt to flee to avoid arrest, if signalled to stop. He believed:
 - the car occupants needed to be arrested as they had been involved in a burglary;
 - the drivers had earlier failed to stop for Police and had driven dangerously (he incorrectly believed the Mazda had been the second car involved in the earlier pursuit);

¹ See paragraphs 107 to 110 for relevant policy on the use of road spikes.

- the drivers would increase their speed and flee from Police if they were signalled to stop, as they had done this in the earlier abandoned pursuit;
- the drivers posed a risk of injury or death to members of the public or Police if they were to get into a pursuit;
- it was very likely that the drivers knew Police were following them; and
- using spikes was the least violent way to stop the two cars.

22. Officer C was justified in using the spikes. It was a safe and reasonable tactic to use to attempt to stop the cars and there was no other immediate or less dangerous means available.

Was Officer B justified in initiating the pursuit?

23. Police policy says pursuits should only be initiated if *“the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing”*.²

24. Officer B says the Subaru’s speed dropped significantly and it was clear to him that all four of its tyres had been punctured. However, he believed both drivers were *“going to do anything they could in order to avoid Police interaction and arrest”*. He knew the occupants of the cars were suspected of committing liquor store burglaries and stealing cars, which he deemed to be serious. He also knew their identities were unknown, which would make it difficult to locate the offenders if they were to get away from Police.

25. It was raining lightly at the time, visibility was good, and there was no other traffic on the road due to the early hour of the morning. Other officers were in the area so could assist in containing the risk posed by the cars. The cars had not been travelling very fast before being spiked and would most likely be slowing down now their tyres were deflating.

26. Officer B turned on his flashing lights and siren to signal the cars to stop. They did not stop so Officer B initiated a pursuit, following standard procedure.

27. Officer B had reasonable grounds to initiate a pursuit, taking into account the seriousness of the offences and the circumstances at the time.

Were Police justified in continuing the pursuit?

28. The Subaru and Mazda turned into Marshlands Road and split up. (The Mazda was pursued by another Police vehicle.) As a result of the tyres being spiked, the speed of the Subaru decreased, and Mr X was driving slowly on the wrong side of the road. He tried to accelerate away from Police despite the Subaru tyres being *“completely incapacitated”* and travelling on its rims.

² See paragraphs 100 to 106 for policy on fleeing drivers.

29. There were single lanes, a cycle lane on either side of the road, and occasional islands in the middle of the straight road, for the first kilometre of the pursuit. The road then widened, with a flush median providing a separation between the lanes.³
30. Officer B drove directly behind the Subaru, on the wrong side of the road. Officer D followed in the correct lane.
31. Officers E and F arrived from the opposite direction. They had to swerve to avoid the Subaru as it was sliding on an angle towards their patrol car. They joined the pursuit, behind Officer B.
32. Officers G and H and Officers J and K, (two officers per patrol car) followed the pursuit with their flashing lights and sirens on, to alert other potential road users of the incident. According to Police policy, there should only be two Police vehicles following a fleeing driver, with an additional dog unit. Although this is a breach of policy, in these circumstances, we accept the officers made this tactical decision to minimise risk to members of the public.
33. Officer J says the Subaru “*was spinning left, spinning right*” before regaining some control and continuing to drive down Marshland Road at about 30 kph.
34. Two other Police cars blocked entry points at the Marshlands Road/Shirley Road intersection. Mr X drove through the red light, still on the wrong side of the road, and onto North Parade.
35. The pursuit controller says Officer B was giving very good commentary, reporting Mr X’s manner of driving, the Subaru’s speed, and giving regular updates of the traffic conditions. He was watching some of the pursuit in real-time, using traffic cameras. He had no concerns or issues with the way officers handled the pursuit.
36. The officers involved also believed it was safe to continue as there was minimal risk, largely due to there being no other traffic on the road.
37. Continuing the pursuit was reasonable, given the slow speed, there was no traffic, and assisting officers were able to help minimise the risks.

Was it appropriate for Officer D to move in front of the Subaru to slow it down?

38. North Parade has a long traffic island between the lanes before the road goes down to single lanes with no island. There are bike lanes on either side and the road contains some bends.
39. Officer D became the lead pursuer, so Officer B could focus on getting his dog out when the Subaru stopped. Officer D believed the level of risk to other road users was increasing:
 - Mr X was driving dangerously, struggling to control the car on the damp road; and
 - Mr X had no intention of deliberately stopping. Despite the wheels deteriorating, he was trying to drive it “*under heavy acceleration*”.

³ Flush medians are white diagonal lines, painted down the centre of some urban and semi-urban roads, marking an area about one-car-width wide.

40. Officer D could see the Subaru was slowly losing momentum and decided that if its speed got low enough, he would move in front of it to force it to slow down and bring it to a stop.
41. He says the Subaru came to the end of the island, travelling at less than 50 kph, then :
- “I’ve taken the opportunity to move in front of [Mr X] and start applying the brakes, gently closing the gap between him and I, essentially forcing him to stop. He’s maintained heavy acceleration. I could hear his engine revving loudly.”*
42. Officer D explained he did not brake heavily but applied enough pressure to illuminate the brake lights to show Mr X that he was slowing down.
43. Officer D says:
- “Again [Mr x’s] all over the road, both sides of the road, and he’s rammed the rear of my patrol car a couple of times whilst I’ve tried to just maintain my position and impede his path.”*
44. Officer D tried to drop back, positioning himself parallel to the Subaru. He says, Mr X: *“... moved first to the passenger side of my car and rammed the passenger side and then moved back to the driver’s side and rammed me twice on that side.”*
45. We considered whether the move caused the situation to escalate as Mr X only rammed the Police car once Officer D tried to move in front of him. We are satisfied that Officer D believed the risks were increasing and chose a tactic that would allow him to slow the Subaru down without using force, which was reasonable in the circumstances.

What did Mr X say about the rammings?

46. Mr X says Officer D was *“repeatedly whacking and smashing against the car”*.
47. Mr X recalls seeing a four-wheel drive coming towards him (also see paragraph 51) and says:
- “... [for] the safety of myself and people that was in the vehicle I made the decision to pretty much run straight into the same cop car that was smashing into us to get us away from avoiding a head-collision with the four-wheel drive....”*
48. Mr X also told us: *“... I wasn’t going to let this cop fuckin win... I wasn’t ready to give in...”*. He says at that point: *“... they all started trying to hit me off the road and I’m hitting them back you know, kind of playing demolition derby”*.
49. We do not accept Mr X’s account. There is no evidence that the Subaru was rammed by any officer, based on the damage to vehicles and accounts of others there.

Was Officer D justified in using a controlled collision to stop the Subaru?

50. A controlled collision is a tactic where an officer deliberately uses a Police vehicle to make contact with a fleeing vehicle in order to stop it, after it has been successfully spiked and when it is travelling at 30 kph or less. The term was developed during the joint Police/IPCA Fleeing

Driver Review (2019) however, it is not an approved Police tactic and officers are not trained in them.⁴

51. Officer D says the Subaru's speed started tapering off and he started formulating a plan to take it off the road. At this point he saw an oncoming vehicle's headlights and realised he needed to act immediately to stop the Subaru colliding head-on with it.
52. Officer D says he considered:
 - road spikes had already been used, so there was no point using them again;
 - the Armed Offender Squad, who are trained in vehicle stops, were not on the scene; and
 - Mr X was travelling very slowly.
53. The Subaru went around a bend in the road, at about 30 to 35 kph. Officer D said he: *"got alongside the driver's side... put my patrol car against the side of the Subaru and forced it to the side of the road."* He explained he *"simply applied a little bit of... left-hand down on the steering wheel"*.
54. The Subaru stopped on the left side of the road with its front end against the traffic light pole. Officer D stopped against the driver's side of the Subaru, close to the driver's door. Officer B stopped right behind the Subaru, so Mr X could not back it out.
55. The oncoming car drove up onto the footpath.
56. Mr X alleges Officer D *"T-boned"* him into the pole.⁵ This is disputed by every officer who saw the collision and damage to the Subaru is more consistent with it being nudged.

Was the collision legally justified?

57. As stated above, section 40 of the Crimes Act 1961 empowers Police to use *"such force as may be necessary"* to prevent the escape of someone who takes to flight in order to avoid arrest. We assessed Officer D's use of force against two factors:
 - a) the seriousness of the offence for which Mr X was to be apprehended (and the consequent public interest in detaining him in order to bring him to justice); and
 - b) the likelihood and degree of risk he posed if escape was not prevented.

⁴ The Armed Offenders Squad and Special Tactics Group are the only Police officers trained to conduct non-compliant vehicle stops.

⁵ A T-bone occurs when the front of one vehicle strikes the side of another, forming the shape of a "T" at the point of impact.

How serious were Mr X's offences?

58. Mr X had committed a burglary at the liquor store, stolen a car, failed to stop and driven dangerously. He had also rammed a Police vehicle, risking injury or death. We consider his offences to have been serious and therefore, the public interest in arresting him was substantial.

What was the likelihood and degree of risk Mr X posed?

59. Mr X posed a high risk of injury to himself, his passengers, Police, and members of the public. He was clearly not willing to stop of his own accord. He was frequently driving in the wrong lane, driving recklessly, and having difficulty controlling the car. He had also shown he was prepared to risk injury or death when he rammed the patrol car. With an oncoming car approaching, the need to stop him became more urgent in order to avoid a head-on collision.
60. The accounts of all the officers involved, and the damage to the cars, indicates the amount of force used to push the Subaru was not excessive, considering the circumstances.
61. We accept Officer D's use of force was justified in the circumstances.

FINDINGS ON ISSUE 1

Officer C was justified in using spikes. It was reasonable to do so without first signalling the Subaru and Mazda to stop.

Officer B was justified in initiating the pursuit.

It was reasonable for Police to continue pursuing Mr X.

It was reasonable for Officer D to position himself in front of the Subaru to attempt to slow it down.

Officer D was justified in using a controlled collision to stop the Subaru.

ISSUE 2: WERE POLICE JUSTIFIED IN USING A POLICE DOG DURING THE ARREST OF MR X?

62. Officers E and F approached the right side of the Subaru, both mindful that the occupants were unknown and may have weapons. Officer F stood by the back, right passenger door and told the occupants to get out of the car. The back passenger door remained locked so he smashed its window. Officer F then moved to the driver's door to deal with Mr X while Officer E remained by the passenger door and tried to unlock it.
63. Officer F told Mr X to turn the car off and get out. He banged on the window several times before Mr X eventually unlocked and opened the door. Mr X refused to get out of the car so Officer F *"forcefully remove[d] him from the car by his shoulders and arms"*.
64. Officer E was aware that Mr X was refusing to get out of the car and Officer F was trying to pull him out. She heard Officer B behind her, urgently yelling at her to move out of the way. She thought maybe he had seen a weapon or there was another type of threat that he had become aware of. She *"did a bit of a leap backwards"* and turned sideways. As she stepped back, Officer B's dog bit her on her left arm. He quickly made the dog release her. Officer E stepped back to

assess her injury and returned to her patrol car, so did not see what happened when Officer B and the dog approached Mr X.

65. Meanwhile, Mr X was pulling away from Officer F, twisting and turning, waving his arms about as they moved across the road. Officer F says the situation was *“starting to get ugly”*. He put two hands on Mr X’s shoulders and tried to get a firm grip so he could take him to the ground. He says Mr X was using more force than he was. He believes Mr X was attempting to get away rather than trying to assault him. Officer F says: *“I can’t categorically say that he was trying to hit me or anything like that...”*
66. Officer F says after about 20 seconds, Mr X suddenly went to the ground, landing on his back. Officer F did not know what had caused this. He recalls being pulled from behind and initially thought another occupant of the car was pulling him. He turned and realised Officer B was trying to move him out of the way as his dog had a hold of Mr X’s lower leg.
67. Officer F believes the dog released Mr X’s leg about eight to twelve seconds after he first became aware the dog was there. He did not realise the dog had bitten Mr X twice until later, when Mr X was seen by a doctor.
68. Once the dog had let go, Officer F pulled Mr X’s arm out from under him and placed him in handcuffs, with the help of another officer who had arrived.
69. Officer F could not say whether or not he would have been able to gain control of Mr X on his own if Officer B had not intervened when he did.

What does Officer B say happened?

70. Officer B moved towards the driver’s door, holding his dog by its harness. He recalls seeing Officer E standing by the pillar between the passenger and driver doors and Officer F by the driver’s window. From his viewpoint, he says it looked like they were either struggling with the door or with Mr X. Officer B says it was clear that their efforts to persuade Mr X to leave the Subaru were unsuccessful.
71. Officer B was attempting to get into a space where he had a clearer view, when Officer E stepped back towards him *“at speed”*. He thought Mr X had pushed her.
72. Officer B does not recall telling Officer E to get back, but agrees it was most likely him. He assumed there was more space than there actually was between the Subaru and Officer D’s car, and admits he got too close to her with his dog.
73. Officer B says he moved past Officer E and saw Officer F pulling Mr X out of the car. Mr X was clearly resisting Officer B’s efforts to remove him. Once out, Mr X flailed his arm about, trying to break free of Officer F’s grip. Mr X moved forwards, causing Officer F to move backwards across the road while also trying to gain control of him.
74. Officer B approached them when they were about five metres away from the Subaru. He yelled: *“Police dog handler! You are under arrest. Stop resisting or the dog will be deployed.”* However, Mr X continued to grapple with Officer F.

75. Officer B commanded the dog to “rouse”, while keeping hold of its harness. He says the dog “*instantly engaged with the back of the offender’s right leg in one secure bite*”, pulling Mr X to the ground.
76. Officer B’s dog became trapped underneath Mr X as he fell. Officer B pushed Mr X’s upper body forward to try to pull the dog out from underneath him, and to put Mr X into a position where he was lying on his stomach on the road. He thinks this is when the dog may have regripped Mr X’s leg, causing the second bite.
77. Once Officer F had repositioned and put weight onto Mr X’s upper body, Mr X began following instructions, placing his hands behind his back. At this point, Officer B removed the dog. He believes the dog was engaged with Mr X for about five to eight seconds.

What did other people see?

78. The officers who were there at the time of the bite were either dealing with the passengers or just arriving at the scene. They did not see the dog bite Mr X, or the lead up to it:
 - Officer D’s door was stuck, and he took at least 20 seconds to get out of his patrol car. He heard Police officers giving loud, clear instructions to the occupants of the Subaru.
 - Officer G dealt with the back passenger on the left side while Officer H dealt with the front passenger.
 - Officer K estimates it was about 20 to 30 seconds before they got to the Subaru, whereas his partner, Officer J estimates it took about one minute. When they approached, Mr X was on the ground, yelling and swearing, resisting Officer F’s efforts to handcuff him.
 - After being bitten, Officer E did not see Mr X again until he was face-down on the ground, with the dog latched on to his upper thigh.
79. The other passengers were unwilling to give accounts. One said she was intoxicated at the time and was therefore unclear about what happened.

What does Mr X say happened?

80. Mr X alleges that he followed the instructions of officers and did not resist being arrested. He says he put his hands up in the air as he got out of the car.
81. Mr X says:
 - officers grabbed his hand, pulled him backwards, and threw him to the ground;
 - ten or more officers stood around him in a circle, taking turns to kick him in the face, while also trying to put handcuffs on him behind his back;
 - he was on the ground for at least two minutes before the dog bit him;
 - the dog bit him on the upper thigh, (which he says he was unable to feel at the time);

- the dog released him, then latched on to his lower leg;
 - he tried to look at his leg when a “*cop booted me straight in the face*”, causing him to be knocked out; and
 - when he became conscious again the dog was already off him. He was already handcuffed and was getting dragged to a Police car.
82. After interviewing officers and reviewing statements and medical records, our investigation found no evidence to support Mr X’s claims that he was kicked, on the ground before the dog bit him, or knocked unconscious.
83. Mr X’s accounts to Police and us lacked consistency. For example, in his complaint to Police he said he did not know how many officers were there, but later told us there were 20 or more officers on the scene when he got out of the car. Mr X’s recollection of other parts of the incident were inaccurate, such as, he said there were 20 to 30 officers parked on the side of the road when the cars were spiked, which was certainly not the case.
84. We believe Mr X’s recollection of events was compromised due to his being under the influence of “*alcohol and stuff*”. He says he had been drinking RTDs, Malibu and beer, for many days previously, had taken Tramadol (which should not be taken with alcohol). He also says he had not been sleeping.
85. We do not accept Mr X’s account as being accurate and do not believe he was kicked by officers.

Was Officer B’s use of the dog legally justified?

86. Officer B’s assessment of the overall situation included that:⁶
- Mr X had put members of the public at risk through his manner of driving;
 - Mr X’s behaviour had escalated to the point he had risked injuring or killing Officer D when he rammed his patrol car, which showed an assaultive mindset;
 - if Mr X escaped he would continue to commit burglaries and flee from Police, putting members of the public and Police at risk;
 - Mr X’s state of mind was unknown; and
 - Police did not know if Mr X had any weapons on him.
87. Section 39 of the Crimes Act 1961 empowers Police to use “*such force as may be necessary*” to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process.

⁶ Also see paragraphs 116 to 122 for Police policy on the use of dogs.

Was Officer B legally justified using force against Mr X to effect his arrest under section 39?

Did Officer B believe on reasonable grounds that Mr X was using force to resist arrest?

88. Officer B's belief that Mr X was using force to resist arrest was based on:
- seeing Mr X ram Officer D's patrol car, using force to escape arrest;
 - seeing Mr X not responding to Officers F and E's instruction to leave the Subaru;
 - seeing Officer F needing to pull Mr X out of the car;
 - assuming Mr X had assaulted Officer E by pushing her; and
 - seeing Mr X struggling with Officer F.
89. We accept Officer B had reasonable grounds to believe Mr X was using force to resist arrest.

Was Officer B's use of force proportionate and reasonable in the circumstances?

90. Based on the timeframes provided by officers, Mr X was bitten between 20 seconds and one minute after the Subaru stopped. We are unable to determine exactly how quickly Officer B acted, however, we accept he assessed the situation first.
91. Officer B believed there were no other Police officers in close proximity who could assist. He says: *"I didn't know of anyone there... they weren't in my immediate field of view anyway"*. He believed if Mr X were able to break free he would have a *"prime opportunity"* to assault Officer F before other officers arrived and that he had to intervene immediately to stop Mr X from seriously injuring Officer F.
92. Police dog handlers have limited options available to them while controlling their dogs in heightened situations such as this. It is difficult to operate a Taser and they cannot be close to other people, which rules out using empty-hand tactics such as restraining someone or pulling them to the ground. Officer B ruled out using pepper-spray *"due to the fast fluid-moving environment and risk of cross-contamination"*.
93. Ideally, Officer B would have communicated with Officer F before deciding whether to engage the dog. However, there were at least two Police sirens going, the dog was barking, others were yelling while dealing with the passengers, and he could not take his dog near to them without risking an unintentional bite. Communicating would have been very difficult.
94. Officer B's decision to use the dog was reasonable and proportionate, based on the resistance and level of force being used by Mr X. He was legally justified under section 39 of the Crimes Act 1961.

FINDINGS ON ISSUE 2

Officers did not kick Mr X while he was lying on the ground.

Officer B was legally justified in using his dog to overcome the force used by Mr X in resisting arrest. The use of force was reasonable and proportionate.

ISSUE 3: DID POLICE PROVIDE APPROPRIATE MEDICAL ASSISTANCE TO MR X?

95. Mr X says Police did not care that he was hurt and made him walk despite him fainting or collapsing. He says the doctor did not check his head. According to Mr X, he sustained serious head trauma (including mild concussion), facial injuries, eye damage, and leg injuries from the incident.
96. Officers F and E took Mr X to Christchurch Central Police Station in their patrol car. Officer E said Mr X told them his leg hurt and he was “*pretty mellow*”. Officer F had a look at Mr X’s leg while in the patrol car and recalls there “*wasn’t a massive amount of blood coming out*”.
97. The Police doctor assessed Mr X at about 4am. He reported:
- Mr X appeared to be uncomfortable with pain and was suffering muscle spasms in his lower right leg;
 - his wounds from the dog bite were cleaned, sutured and dressed;
 - he had superficial grazes and bruising to the right of his forehead and cheek, which Mr X said were from when he was restrained on the ground during and after the arrest;
 - there was no sign of significant head or facial bruising and was alert, fully oriented, and functioning well; and
 - while it is possible Mr X later developed a concussion, there was no evidence of a significant head injury at the time.
98. We are satisfied Police sought a medical assessment and appropriate care for Mr X. There is no evidence that Mr X sustained any injuries, other than those stated by the doctor, during this incident.

FINDING ON ISSUE 3

Police provided appropriate medical assistance to Mr X.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

22 June 2021

IPCA: 20-2999

Appendix – Laws and Policies

LAW

Crimes Act 1961

99. 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.

POLICY

'Fleeing driver' policy

100. The 'Fleeing driver' policy states that the overarching principle for conduct and management of pursuits is: *"Public and Police employee safety takes precedence over the immediate apprehension of a fleeing driver."*
101. The decision to commence, continue, or abandon a fleeing driver pursuit must be continually assessed and reassessed in accordance with the TENR (Threat-Exposure-Necessity-Response) risk assessment tool. The assessment required of officers includes consideration of the following:
- The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.
 - Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
 - Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.
 - Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
102. The TENR risk assessment must weigh up:
- "... 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."*
103. Additional principles include:
- *"an inquiry phase is preferred over a fleeing driver pursuit wherever possible and when circumstances allow;*
 - *fleeing driver incidents will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing;*

- *the fact that a driver is fleeing does not in itself justify a fleeing driver pursuit; and*
 - *decisions to abandon fleeing driver incidents will be supported.”*
104. Officers in the lead or secondary Police vehicles, the field supervisor and the pursuit controller *“all have a responsibility to make decisions about the safe management and apprehension of the fleeing driver.”* They are all authorised to abandon a pursuit.
105. The pursuit controller must *“direct abandonment if the identity of the fleeing driver becomes known, the fleeing driver does not pose an immediate threat to the public or police employee safety, and they can be apprehended later.”*
106. A pursuit controller is responsible for limiting the number of Police vehicles following a fleeing driver in a pursuit to *“no more than two, unless tactically appropriate”*. A dog unit may also join the pursuit, if it is *“tactically desirable”* and safe to do so. The pursuit controller should also co-ordinate tactical vehicles and options, to support the lead and secondary vehicle, and maximise safety by controlling traffic at critical points.

Tyre deflation devices’ (Road spikes) policy

107. Policy states: *“Deploying a tyre deflation device (TDD) is a tactical option to stop a fleeing driver in the safest possible manner, with the minimum force necessary.”*
108. Officers should always prioritise safety over the immediate apprehension of a fleeing driver. They should always ensure road spikes are only used when it is justified and can be used safely *“without unjustified risk to any person”*. Staff must conduct an assessment of the risks when deciding to use and retrieve road spikes.
109. Officers can use road spikes when there are no other, less dangerous, ways of stopping a vehicle available and on the authority of a pursuit controller.
110. An officer may self-authorise the use of spikes if they conduct an assessment of the risks and believe an immediate response is justified and they are unable to gain prior approval from a pursuit controller. The officer must notify the pursuit controller as soon as possible if they have self-authorised the use of the spikes.

‘Use of force’ policy

111. 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.
112. 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).

113. 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).
114. 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.
115. 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.

'Use of force with Police dogs' policy

116. Dog handlers are personally responsible for the amount of force used by the dog. The law sees little difference between dogs, when used as a means of force, and other methods and implement used by Police, such as firearms, Taser and batons. Dog handlers must believe that the use of force is justified, and that the forced used is as minimal as possible in the circumstances. The extent of the force used by the dog must be kept to the minimum possible in the circumstances and dog handlers must stop their dog from biting the person as soon as possible.
117. A Police dog should only be used if the offender cannot be apprehended by other means. Dog handlers must consider all tactical options when considering the use of force. Just because the handler has a Police dog with them, does not mean they should use the dog as a means of force instead of a more appropriate option. According to the Tactical Options Framework, Police dogs can be used if the suspect is considered assaultive.
118. Before using their dog, handlers should ask themselves:
 - *“Are there already sufficient members present and available to affect the arrest safely?”*
 - *“Is there significant risk of injury to innocent bystanders which, in the circumstances, outweighs the need to use the dog?”*

119. Before instructing a dog to bite a person, dog handlers must warn or challenge the person to surrender *“unless it is unsafe or impracticable to do so.”* The person must then be given reasonable time to comply. The challenge must include that the officer is a Police employee who has a Police dog present which will be used to bite the suspect if they do not surrender to Police. The challenge must be loud enough to reasonably expect the suspect can hear it.
120. Dog handlers must consider the proximity of the dog to any person. They *“must be alert to circumstances that could cause a Police dog to contact or bite person when not intended.”*
121. Police dog handlers must have control of their dog at all times during deployment, whether that be using immediate physical or voice control.
122. Policy dictates that all people bitten by Police dogs are to receive appropriate medical treatment.

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.



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