

Force following pursuit in Auckland unjustified

Summary of Incident

1. In the early hours of 11 December 2018 three stolen cars were involved in a ram raid burglary in Te Atatū. One of the cars was left at the scene and the other two were later located by an Auckland Joint Transport Operations Centre (JTOC) camera operator.¹
2. The Police helicopter, Eagle, observed both stolen cars until they split up, heading in different directions. A dog handler unit initiated a pursuit of one car, a grey hatchback. Road spikes (spikes) were successfully deployed, it eventually stopped, and the occupants were apprehended. Eagle continued observing the other car, a white station wagon.
3. After being observed by Eagle and followed by ground units at a distance for some time, the station wagon was spiked. At this point Eagle needed to re-fuel and left. A second dog handler unit signalled the station wagon to stop, it continued, and a pursuit was initiated. The station wagon was spiked again, and eventually drove onto the motorway where other Police cars joined the pursuit and Eagle came back overhead.
4. The station wagon came to a stop on a grass area by the Mt Wellington offramp where it was blocked in by Police vehicles. The driver exited and was arrested. The passenger, Mr X, who was aged 15 at the time, was pulled through the back passenger window by officers. At this point Police realised both occupants were young persons. The level of force used by the officers during Mr X's arrest is disputed.
5. Mr X was remanded into custody at Korowai Manaaki, a youth justice residence. On 12 December 2018 a nurse practitioner, Ms Y, saw Mr X as part of a standard health assessment

¹ JTOC have more than 450 CCTV cameras which relay live pictures of Auckland's urban and highway network to their operations room. JTOC staff are civilians.

carried out on admission. She noticed a bruise and a scratch on his forehead, which he told her happened during his arrest.

The Authority's Investigation

6. The Authority identified and considered the following issues:
 - 1) Was the pursuit managed in accordance with Police policy?
 - 2) Was force used to effect Mr X's arrest? If so, was the level of force used justified?
 - 3) Was Mr X's arrest justified under section 214 of the Oranga Tamariki Act 1989?

The Authority's Findings

7. The Authority found that pulling Mr X from the car was a use of force which was unjustified and unnecessary. The officers who removed him from the car failed to complete a Tactical Options Report,² as required by policy.
8. There was a conflict of accounts about Mr X being punched, kicked, or repositioned while he was on the ground and we could not make a finding on this.
9. Mr X's arrest was justified under s214(a)(i) of the Oranga Tamariki Act 1989.
10. We also concluded that in relation to the pursuit:
 - The use of road spikes prior to the commencement of the pursuit was justified.
 - The initiation and continuation of the pursuit was justified.
 - The use of nudge bars was outside of policy. It should not have been suggested, permitted, or attempted.
 - There was a lack of clarity as to who was in command and control of the pursuit. Officer D should have clearly established herself as the pursuit controller and failed to do so. In addition, her control of the pursuit was inadequate.
 - The commentary provided by Officer C was sufficient. However, Officer D should have directed a multi-crewed unit to take over commentary earlier.
 - Officer H's speed, when urgent duty driving, was not justified.³

² A Tactical Options Report is for officers to explain what their assessment of a situation was and why they chose the tactical option they did.

³ Urgent duty driving (UDD) is when an on-duty Police officer is driving above the speed limit or against the natural flow of traffic and may not be complying with certain traffic rules.

Analysis of the Issues

ISSUE 1: WAS THE PURSUIT MANAGED IN ACCORDANCE WITH POLICE POLICY?

11. At 2.06am a JTOC camera operator notified the Police helicopter, Eagle (Officers A and B), that two cars of interest from the Te Atatū ram raid were in Manurewa. Officer A was operating the camera in Eagle and located a white station wagon, which matched one of the descriptions given by JTOC. A Police car got behind the other car, a grey hatchback. The Eagle officers were “*pretty confident*” they were the two cars involved as:
 - the station wagon had a smashed rear quarter light window, which they said is usually indicative of a stolen vehicle;
 - it was driving at high speed before being signalled to stop; and
 - there was a spate of ram raids at the time, which often involve more than one stolen car.
12. The cars went in separate directions. The hatchback was spiked, and the occupants apprehended. Eagle continued to observe the station wagon until the helicopter left to refuel. At this point Officer C, a dog handler, signalled the station wagon to stop. It continued, and he initiated a pursuit.
13. The Authority identified a number of questions regarding the pursuit:
 - Was the use of spikes justified?
 - Should the pursuit have been initiated and continued?
 - Was the use of the nudge bars in line with policy?
 - Who was in command and control of the pursuit?
 - Was the commentary provided sufficient?
 - Was the use of urgent duty driving justified?

Fleeing driver policy

14. The overarching principle of the Fleeing Driver policy is that public and Police employee safety takes precedence over the immediate apprehension of an offender. Police must continually assess the threat and risks when deciding to begin, continue, or abandon a pursuit. The pursuit should be “*resolved as safely and as quickly as possible whilst using the least amount of force.*”
15. The Threat-Exposure-Necessity-Response (TENR)⁴ risk assessment used by officers must balance the ongoing exposure to harm the pursuit poses, or is creating, with the current threat that the

⁴ Police policy provides a 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.

fleeing driver poses and the necessity to respond. This will determine the Police response. As part of a flexible response model, all suitable tactical options should be considered to safely apprehend the fleeing driver. This could include not pursuing, or abandonment. An inquiry phase is preferred over a fleeing driver incident wherever possible.⁵

16. A joint 'Fleeing Driver' review by Police and the Authority found that officers must:⁶
- determine whether the initial reason for signalling the vehicle and the failure to stop justify pursuing the driver in light of the potential risks of doing so; and
 - consider whether the risk of pursuing outweighs the need to apprehend an offender, particularly for a low-level, known offender.
17. We note that while we refer to the review throughout this report, it was published in March 2019, after this incident occurred. We have used references to the review in this report, not as criticism of Police regarding implementation of the recommendations in the review, but rather to highlight the importance of the recommendations being implemented.

Was the use of spikes justified?

Legal authority for deploying spikes

18. Spikes are generally only deployed in the context of pursuits, where a driver is fleeing after being signalled to stop and failing to do so.⁷ Deploying spikes is a tactical option to stop a fleeing driver in a safe manner, using the minimum force necessary. Police policy states that spikes can be deployed where no other, less dangerous, means of stopping the vehicle are reasonably available and where they can be deployed without unjustified risk to any person, on the authority of the pursuit controller.
19. Where permission to spike is not given by the pursuit controller, officers are able to make the decision to deploy spikes themselves, provided they use their TENR assessment to determine whether it is appropriate in the circumstances.
20. Since there is no published policy on the use of spikes outside of a pursuit, it is understandable that there is confusion around the practice.
21. Police policy states the legal grounds for the deployment of spikes is section 39 of the Crimes Act 1961.⁸ Section 39 empowers Police to use "*such force as is reasonably necessary*" to overcome force used in resisting arrest or the execution of a process unless it can be achieved by reasonable means in a less violent manner. It is our view that section 39 is not applicable to the use of spikes to stop a driver unless the driver has used some force to resist arrest

⁵ If a fleeing driver is not apprehended at the time of a fleeing driver event all viable lines of inquiry should be undertaken to identify and hold a fleeing driver accountable. An inquiry phase does not involve urgent duty driving or frontline units actively searching the immediate vicinity for a fleeing vehicle.

⁶ <https://www.ipca.govt.nz/Site/publications-and-media/2019-media-releases/2019-mar-15---fleeing-drivers-joint-thematic-review.aspx>

⁷ See paragraphs 106 and 107 for policy on Tyre Deflation Devices (TDD), referred to as spikes.

⁸ Section 39 is set out in paragraph 94.

immediately prior to the deployment of spikes. An example of this could be using their car to ram a Police car. This was not the situation here.

22. The Authority considers that section 40 of the Crimes Act 1961 provides a more appropriate legal basis for the deployment of spikes, as it justifies the use of reasonable force to prevent the escape of a person who flees to avoid arrest.⁹ Although it is somewhat stretching the statutory language to regard the use of spikes as an application of “force” to prevent the escape, the Authority accepts that it is reasonable to do so in the absence of any other statutory power to lay spikes.
23. To rely upon section 40, the officer must believe on reasonable grounds that the person is fleeing to escape or avoid arrest (a purely objective test). If so, the degree of force used must be reasonable and proportionate, considering:
 - the seriousness of the suspected offence for which they are liable to arrest and the public interest in bringing them to justice; and
 - the degree and severity of the risk that they are reasonably believed to pose if escape is not prevented.

Circumstances of spiking

24. Officer D, the pursuit controller, was located at the Northern Communications Centre (North Comms). She did not believe they could deal with two separate pursuits at the same time and thought it would be safer to stop them through the use of spikes before initiating a pursuit. At 2.12am the North Comms dispatcher responded “*affirm*” to a request by a unit to spike the grey hatchback. Soon after, the hatchback was successfully spiked, and the occupants apprehended. A unit reported that they had spiked the hatchback and were waiting for the station wagon, to which North Comms responded “*roger*”. There was confusion as to whether the officers had also been given permission to spike the station wagon.
25. A short time later, Officer E successfully spiked the station wagon on Browns Road. His partner, Officer F, said spikes had been authorised to be used by North Comms and said the car was not being pursued. Officer E stated: “*it was travelling very fast and had to brake heavily when it came to the spikes*”. He estimated it was going between 80-90 kph in a 50 kph zone. He applied his TENR methodology and assessed the offenders to be actively resisting Police by fleeing: they were in a stolen vehicle, travelling over the speed limit and putting road users and Police at risk. He believed they needed to be stopped immediately. Officers E and F initially thought the station wagon had evaded the spikes, however, it “*got clipped*” while trying to avoid them, spiking one tyre.

Did the officers believe on reasonable grounds that the driver was fleeing to avoid arrest?

26. The commentary provided by Eagle describes how prior to the spikes being deployed, the driver of the station wagon would have seen Police cars moving around it in the area. Early in the incident, Officer C moved his vehicle behind to follow the station wagon, which resulted in the

⁹ Section 40 is set out in paragraph 95.

driver dramatically increasing their speed. This is when Eagle first raised the idea of using spikes. Officer C backed off at this time but continued to follow 300-400 metres behind.

27. Over the next 12 minutes Eagle staff observed the following dangerous driving behaviours:

- The station wagon's headlights were at times turned off.
- It was travelling at both low and high speeds at various stages including travelling at 100 kph on Mahia Road (50 kph speed limit) and going between 120-130 kph in the 100 kph speed limit zone.
- It crossed onto the wrong side of the road to overtake traffic at speed.
- It almost crashed while going around a corner and the driver appeared to struggle for control due to high speeds.
- It went the wrong way around a roundabout, narrowly missing a head on collision with a member of the public.
- It crossed onto the wrong side of the road while turning.
- It went straight through two roundabouts, without giving way.

28. Due to the driving behaviour described above after being followed by Police, we find that it is reasonable that the officers believed that the driver was aware of Police presence and was fleeing to avoid being arrested for the ram raid burglary.

Was the officers' use of force to prevent the driver's escape reasonable and proportionate?

29. In this case the group drove to the scene of the ram raid in three stolen vehicles and used one of those vehicles to drive through the shop front. At least one of them carried a weapon into the store. The offence they were liable to be arrested for is aggravated burglary which carries a penalty of 14 years imprisonment. This is a serious offence, which in this case caused both significant damage to the building and loss and damage of property belonging to the shop owners.

30. The officers believed that, if the offenders managed to avoid arrest, they would pose a risk by continuing to drive in the manner displayed, placing both themselves and members of the public at risk.

31. Road spikes are designed to deflate tyres slowly over time so that the driver does not lose control of the vehicle. As such, they are a relatively low-level use of force.

32. It is the Authority's view that the pre-emptive use of road spikes in this case was reasonable and proportionate in the circumstances and is justified under section 40 of the Crimes Act.

Should the pursuit have been initiated and continued?

33. After the station wagon was spiked, Officer C continued to follow the vehicle at a distance with Eagle overhead providing commentary. Shortly after this, Eagle needed to refuel, and Officer C moved closer to the station wagon and signalled it to stop by activating the vehicle lights and siren.
34. Officer C provided commentary and directed other units into positions to be able to assist, rather than following in a line behind his vehicle.
35. Officer C advises that the station wagon's speed had reduced to 70 kph and, from the commentary provided, did not go over 80 kph for the remainder of the pursuit.
36. Once the vehicle was spiked it continued to slow down and officers were aware that it would eventually stop. Due to this and the fact that Eagle had to leave the scene, the Authority believes it was reasonable for Police to signal the driver to stop and when they failed to do so, initiate a pursuit. The vehicle was spiked at least once more, with several other attempts made by staff.
37. The Authority believes that it was reasonable for the pursuit to continue due to the vehicle having been spiked, resulting in reduced speeds, and the lack of avenues of inquiry to identify the offenders if the pursuit was abandoned.
38. We did however consider the following additional factors in relation to continuation of the pursuit:
 - The officers should have considered abandonment at every stage of the process. Once Eagle came back overhead there was an opportunity for the officers on the ground to pull back. None of the officers on the ground, in Eagle, or at North Comms mentioned this in the Comms record or their interviews with us.
 - The 'Fleeing Driver' policy states the pursuit controller is responsible for ensuring the number of Police vehicles following a fleeing driver should be no more than two, unless tactically appropriate. In this case six Police cars (a dog handler and five I-cars¹⁰) were involved. When Eagle returned overhead the station wagon was approaching the motorway and all six Police cars were behind it.
 - Officer D did not have sufficient control of the pursuit. She stated that she was unaware of how many units were involved, and that North Comms are reliant on being told this. We do not accept this. There is no evidence of her, or the dispatcher, prompting the officers for this information, and she should have done so rather than waiting for it to be provided.

¹⁰ Incident cars.

Was the use of the nudge bars in line with policy?

39. As the station wagon approached an on-ramp to the motorway, Officer I (partnered with Officer H) requested permission from North Comms to push it onto the grass. North Comms gave permission, provided it was safe to do so. Officer I responded they would wait until the station wagon slowed down a bit. As it entered the on-ramp Officer H, who was driving, shunted the station wagon twice. This was unsuccessful, and it continued and headed on to the motorway northbound.¹¹
40. Officer I confirmed it was his idea to use the nudge bars on his vehicle. He believed if the station wagon was pushed onto the grass, it would have stopped instantly, which would be safer than following it until it ran out of fuel or crashed. He could not recall the legal justification for the use of force at the time. In carrying out his TENR risk assessment he considered it was a fleeing driver, the occupants were unknown, a pursuit was high risk, and it would be good to bring them to a stop. He said the tactic is not common, but it is used. He considered Officer H was capable of pulling the manoeuvre off.
41. Officer H was unaware of the legal authority for the use of nudge bars. He stated most frontline cars do not have the bars, but as he was working on the motorway their vehicle was equipped with them. He further stated nudge bars are primarily used for shifting breakdowns. He was surprised using them was suggested and authorised. Officer H's attempt to stop the car was somewhat feeble and ultimately unsuccessful.
42. Officer D confirmed she permitted the officers to nudge the station wagon if it went under 50 kph and it was safe to do so. She accepted this was outside of policy but wanted to bring the station wagon to a stop safely. She stated officers must do their own risk assessment, and her permission was given within parameters, which she hoped were conveyed.
43. There is no policy on the use of nudge bars in a pursuit. They are normally used by motorway units to remove broken down cars from the motorway.
44. The Authority understands Officer D gave permission to use the nudge bars with the proviso that it needed to be safe to do so. She should not have done so. Officers are not trained in this manoeuvre and it is outside of policy. Officer I should not have suggested it in the first place, and Officer H should not have attempted to carry it out.

Who was in command and control of the pursuit?

45. The 'Fleeing Driver review' found *"an efficient and effective Police response to critical incidents requires that everyone involved in the process clearly understands their roles and responsibilities and those of others"*.
46. There was confusion by some of the more junior officers on the ground regarding who had command and control of the pursuit, particularly due to Eagle's presence. Command and control rested with Officer D as the pursuit controller at North Comms. Officer D has been in the Police

¹¹ In the correct direction.

for over 14 years. She has substantial experience in the Police communications area and has been involved in managing a significant number of pursuits. She should have known she needed to clearly establish that she had command and control of the pursuit, either directly or via the dispatcher, and failed to do so.

Was the commentary provided adequate?

47. The 'Fleeing Driver review' found providing commentary to Communication Centres is a "*heavy burden*" for single crewed vehicles. Where possible, it should be undertaken or transferred to a multi-crewed vehicle as soon as practicable.
48. Initial commentary was provided by Eagle. When Eagle left to refuel, Officer C, who was alone, initiated the pursuit and took over commentary. Although he initially required some prompting from North Comms, we are satisfied he provided adequate commentary. Officers H and I indicated they were the second vehicle to join the pursuit, therefore it is likely they were present soon after it was initiated. They eventually took over commentary when asked to do so by Officer C. It was Officer D's role to control the pursuit, and she should have ensured Officers H and I took over commentary earlier.

Urgent duty driving

49. 'Urgent duty driving' is when an on-duty enforcement officer is driving above the speed limit or the natural flow of traffic and may not be complying with certain traffic rules. It includes when they are:
 - responding to a critical incident;¹²
 - gathering evidence of an alleged offence;
 - apprehending an offender for an alleged traffic or criminal offence; and
 - apprehending a fleeing driver.
50. Police must use red and blue flashing lights and sirens at all times while undertaking urgent duty driving unless a 'tactical approach' is used.
51. In respect of pursuits, policy says urgent duty driving should not be used before a car has been signalled to stop. However, it would be unrealistic in most instances for officers to be restricted to driving at road speed when there is a need for them to be involved in what would likely be a fleeing driver incident. The concerning factor for the Authority in this incident was Officer H's speed when urgent duty driving. After the incident he received a notification that the car he had been driving activated a fixed speed camera travelling at 105 kph on Mahia Road, a 50 kph zone.

¹² A critical incident includes situations where: force or threat of force is involved, any person faces the risk of serious harm, or Police are responding to people in the act of committing a crime.

52. We do not believe this speed was justified, given that at this time the vehicles were on the motorway and there were already five Police cars in pursuit of the station wagon. Policy states there should be no more than two.

FINDINGS ON ISSUE 1

The use of road spikes prior to the vehicle being signalled to stop was justified.

The initiation and continuation of the pursuit of the station wagon was also justified.

The use of nudge bars was outside of policy. It should not have been suggested, permitted, or attempted.

There was a lack of clarity as to who was in command and control of the pursuit. Officer D should have clearly established herself as the pursuit controller and failed to do so. In addition, her control and management of the pursuit was inadequate.

The commentary provided by Officer C was sufficient, however, Officer D should have directed a multi-crewed unit to take over commentary earlier.

Officer H's speed when urgent duty driving was not justified.

ISSUE 2: WAS FORCE USED TO EFFECT THE ARREST? IF SO, WAS THE LEVEL OF FORCE USED JUSTIFIED IN THE CIRCUMSTANCES?

Was force used to effect the arrest?

53. Once the station wagon came to a stop Officer H pulled up close to the passenger side to prevent the doors being opened. Officer I got out of the Police car and broke the station wagon's front passenger window, where Mr X was sitting.
54. Mr X climbed into the back seat, so Officer I broke the back left hand passenger window and told him to get out. Officer H could not recall what Mr X was doing but did not think he posed a risk. Officer I said Mr X was leaning away from him and was out of his reach. Officer I reached in and pulled him out through the broken window, and Officer H assisted. They pulled him across the bonnet of their Police car and placed him face down on the ground where he was handcuffed.
55. The officers' versions of events differ in the detail of the handcuffing, including who was involved.
56. After Mr X was handcuffed and lifted to a standing position, Officer I asked Officer J to swap handcuffs. Officer J put his own handcuffs on Mr X and walked him to his patrol car. He said Mr X was compliant.
57. Officers J and K transported Mr X to Manukau Police station. Both observed a small, approximately 2cm, graze/cut on his forehead. It was not bleeding, although there may have been dry blood. There was no bruising or lumps. Mr X did not request or appear to need medical attention and they did not seek it. It is accepted his injuries were likely to have resulted from being taken to the ground.

58. Ms Y reported that Mr X told her he was kicked and punched while he was on the ground, although he was not sure exactly which officers did so. The officers all deny this and say they did not see any other officer do so. None of the officers recall anyone saying, *“that’s enough”* (as alleged by Mr X and referred to below).
59. None of the officers submitted a Tactical Options Report.
60. We note that the officers who joined the pursuit and were present when Mr X was apprehended were from various Police districts. Understandably, this meant they did not all know or recognise each other and were unable to identify who was present when interviewed by the Authority.

Ms Y’s account

61. Mr X did not provide a statement to Police or engage with the Authority. His allegations were brought to our attention because of the concerns raised by Ms Y.
62. Ms Y saw Mr X at a clinic room at Korowai Manaaki to complete outstanding elements of his health assessment as part of his admission. She noticed a bruise on the left side of his forehead, a scratch which extended down onto his temple, and slight bruising in his left eye socket. She believed the injuries were consistent with his face having been on a rough surface.
63. Mr X did not raise the injuries himself and she said it looked like he *“was trying to hide it a little bit”*. When she asked about it, Mr X told her it had happened during the arrest. She recorded:
 - Mr X said closed fists were used;
 - at one point his face was on the ground on its right side, and his head was lifted and turned to the left side;
 - he recalled what he thought was a foot kicking the back of his head on the left; and
 - someone said: *“that’s enough”*.
64. Mr X was unable to provide detail as to which officers had done what. He told Ms Y he was sober at the time and could recall the events well.

Officer H’s account

65. Officer H said when he and Officer I put Mr X on the ground he was on his belly, lying on the gravel. Officer H said he would not have placed his knee directly on Mr X, but it *“sort of hovers”* above the middle of the neck area. He denied kicking Mr X, but accepted it was possible his foot connected with Mr X’s head from the position he was in.
66. He said Officer I took Mr X’s right arm, and he took his left. They were the only officers involved in the handcuffing process. They grabbed Mr X’s bicep area on each arm, stood him up and handed him over to another unit. This did not need much effort as he was quite light and was not resisting.

67. Officer H believed there was “*not much*” force used, and it was reasonable. He did not believe he needed to complete a report on the force used. He accepted he did not know what the policy said around completing a report when handcuffs are applied, and a person is taken to the ground.¹³

Officer I’s account

68. Officer I said after he and Officer H pulled Mr X through the window Mr X was “*ripped*” from his hands but was not aware who by. He said two officers held Mr X down on the loose gravel and he handcuffed Mr X, who was not resisting. He assumed he would have knelt while applying the handcuffs, and could not recall whether he required any assistance but did not believe so based on the size difference between him and Mr X. He did not recall Mr X’s position on the ground but did not think any officers had their feet near his head. He said the other officers were crouching as well.
69. One or two officers stood Mr X up, although he could not recall who specifically. Mr X was crying.
70. Officer I believed the amount of force he used was “*very mild*” and was reasonable to keep himself safe and effect the arrest. He denied Mr X was “*bashed*” by Police and said if that had happened, he “*would have a bit more than a gravel rash on the side of his head*”.
71. Officer I did not complete a tactical options report. He told us a report is for when someone is actively resistant. It is “*a waste of time and not practical for every time you put your hand on someone*”. He accepted he should be familiar with the policy and probably should have completed a report, but it is “*probably the last thing on your mind at the time*” and believed he may not have done so as it was not his arrest.

Officer J’s account

72. Officer J said he observed around six officers pulling Mr X from the back passenger side window. Once Mr X was on the ground (face down), Officer J’s view was initially obscured because of the officers around him. Mr X did not appear to be actively struggling, but the officers seemed to have trouble handcuffing his left arm. Officer J grabbed Mr X’s left arm just above the elbow and bent it so it could be handcuffed. His body weight was not on Mr X, because he was kneeling next to him. He did not recall what was being said. He did not use force, and Mr X did not resist at any stage. Once Mr X was in handcuffs other officers pulled him to his feet.
73. Officer J was advised to take Mr X to Manukau Police Station so he could be handed off to Waitemata staff. Officer I came and took his handcuffs off Mr X, and Officer J applied his own. Officer J did not recall Mr X having any visible injuries aside from a small scratch on his forehead. Mr X was compliant and did not seem panicked or emotional. Once they got to the Police station there was “*a bit of bravado*”, which was probably as his friend was close by.

¹³ The use of force policy states that a Tactical Option Report must be completed where empty hand techniques are utilised **excluding** touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground.

Other officers' accounts

74. Officer C said he initially went to the driver's door and thought the driver had been pulled out of the window. He went around the station wagon and saw others had already been pulled out. He started looking for exhibits and did not see anything that caused concern or excessive force. He may have assisted in pulling someone out of the window but could not remember. We note that Officer C's account is quite vague and is inconsistent with the other officers' accounts.
75. Officer L told us she arrived when Mr X was being taken down to the ground. He was being carried by a couple of people, and was thrashing about, wriggling, not giving his hands up, and trying to get into the foetal position. There were three male officers by his head, one was leaning on his back and one was trying to get his hands out. One of the officers was a dog handler who was wearing overalls. While Mr X was on the ground Officer L restrained one of Mr X's feet for maybe 30 seconds.
76. Officer L recalled Officer I "*bragging*" about dragging Mr X out of the window. He was saying how awesome his job is, that his hand was really sore, and that he punched the window to get Mr X out. Officer L stated Mr X is quite a small person and was not a huge risk. She believed the officer who took him down could have been gentler with the same result. She did not recall Mr X having any injuries.
77. Officer K told Police she observed a young male being removed by Police officers from the passenger window. He was placed face down on the ground. Officers were attempting to handcuff him. She momentarily applied downwards pressure to his right leg before she was replaced by a male officer who assisted in bringing Mr X to his feet. It appeared the officers were having issues handcuffing Mr X, but Officer K was not sure why. She thought Mr X was on the ground for no longer than 15 seconds.
78. Officer O told Police that he observed there were enough officers attempting to remove the two offenders. He witnessed Mr X being removed but did not see him being handcuffed.

Justification for the use of force

79. The officers justified their use of force under section 39 of the Crimes Act 1961. Police officers are taught a range of ways to safely use force without a weapon, known as 'empty hand' techniques. The Police 'Use of force' policy states that officers can use empty hand techniques to:
 - distract a subject;
 - physically control a subject; and/or
 - defend themselves or another.
80. Use of empty hand techniques must be fully reported in a report, except for touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground. An officer must submit the report to their supervisor before the end of the shift in which they used force, or with their

supervisor's approval, within 3 days of the end of shift and prior to any rostered days off or leave during this period.

Assessment of evidence

81. Pulling Mr X out of the broken back passenger window was not necessary. Although Mr X did climb into the back seat he did not appear to be trying to get out of the car, and there was no urgency in removing him. The officers could have gone to the driver's side and removed him through a door or waited for him to get out on his own, which would have presented significantly less risk of injury. From the evidence available to us, Mr X appeared small for his age and of very slight build.
82. There are differing versions of events as to who handcuffed Mr X. Officers H and I stated they did so without assistance. However, Officer J said he saw them struggling to handcuff Mr X's left hand, so he assisted. Officer K also referred to this. We believe they had no reason to make this up, and it is possible in the rush to apprehend Mr X, Officers H and I did not notice Officer J assisting.
83. The officers all deny kicking, punching, or re-positioning Mr X while he was on the ground. It is possible one of the officers handcuffing Mr X unintentionally contacted the back of Mr X's head. As he was face down, Mr X may have felt the impact and believed it was a kick. None of the officers recalled anyone saying, "*that's enough*". Mr X was unable to identify to Ms Y who he believed punched him, and we are unable to reconcile this claim with the officers' statements.
84. There is a clear conflict between the accounts given by the officers and Mr X (to Ms Y) about him being punched, (intentionally) kicked or re-positioned while on the ground. There were no independent witnesses. We are unable to resolve this conflict with the evidence we have available to us.
85. Officers H and I should have submitted reports in relation to their use of force, as opposed to the arrest itself. Breaking a window, removing Mr X through it, and taking him to the ground warranted completion of a report by the officers, regardless of whether they were the arresting officers or not. Both officers had been with Police for just over a year at the time. They should have been aware they were required to complete reports. Their understanding of the policy was insufficient.

FINDINGS ON ISSUE 2

Pulling Mr X from the car was a use of force which was unjustified and unnecessary.

Due to the clear conflict of accounts about Mr X being punched, (intentionally) kicked or re-positioned on the ground, we are not able to make a finding on this.

Officers H and I should have completed reports on their use of force.

ISSUE 3: WAS MR X'S ARREST JUSTIFIED UNDER SECTION 214 OF THE ORANGA TAMARIKI ACT?

86. None of the officers were aware of the offenders' ages until the pursuit concluded. Once Mr X was removed from the station wagon, he was clearly identified as a young person.
87. Officers M and N apprehended and arrested the driver, who was also a young person. No concerns have been raised regarding the driver's arrest.

Arrest of a young person without a warrant

88. A young person cannot be arrested without a warrant unless the arresting officer is satisfied on reasonable grounds that the arrest is necessary for the purpose of:
- ensuring the appearance of the child or young person before the court;
 - preventing that child or young person from committing further offences; or
 - preventing the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the enforcement officer has reasonable cause to suspect that child or young person of having committed or preventing interference with any witness in respect of any such offence.¹⁴

Was the arrest justified and carried out in accordance with relevant law/policy?

89. Although it was not specifically referred to by the officers, the Authority considers Mr X's arrest was justified under section 214(1)(a)(i) of the Oranga Tamariki Act, which refers to "*ensuring the appearance of the child or young person before the court*". This subsection is used when the Police do not know the identity of the young person and need to ensure their details are obtained. If the Police know who the young person is then they can summons them to appear at court, rather than arrest them, then take appropriate action regarding prosecution.
90. The officers were not aware of Mr X's identity at the time and needed to ensure his details were obtained. Although they had some difficulty in articulating their legal justification for the arrest, the Authority considers they were justified, and appear to have understood the criteria which needed to be satisfied.
91. Officer J acted in accordance with policy by advising Mr X he was under arrest and ensuring he understood his rights.

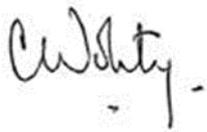
FINDING ON ISSUE 3

Mr X's arrest was justified under s214(a)(i) of the Oranga Tamariki Act 1989.

¹⁴ Oranga Tamariki Act section 214 is set out in paragraph 96.

Recommendations

92. The Authority and Police published a report in March 2019 entitled ‘Fleeing Drivers in New Zealand – a collaborative review of events, practices, and procedures.’ A detailed action plan to implement the recommendations in the report provided that Police should “*strengthen TDD training and identify opportunities for ensuring staff are confident and competent in using the devices*” as well as “*develop best practice for use of TDDs, drawing on international practice and experience*”. This work is ongoing and involves Police reviewing and updating Tyre Deflation Devices (spikes) policy.
93. The Authority recommends, pursuant to section 27(2) of the Independent Police Conduct Authority Act 1988, that by 31 October 2021 Police:
- 93.1 change the TDD policy to remove section 39 of the Crimes Act 1961 as the general justification for the deployment of TDDs;
 - 93.2 determine what other changes to the TDD policy are needed to clarify deployment of TDDs under section 40 of the Crimes Act 1961 and develop a plan for the implementation of those changes; and
 - 93.3 consider whether Police should seek legislative change to provide a specific power to deploy TDDs.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

10 August 2021

IPCA: 18-1400

Appendix – Laws and Policies

LAW

Use of force

94. Section 39 of the Crimes Act 1961 provides for officers to use reasonable force in the execution of their duties such as arrest and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process.
95. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest”*, unless the escape can be prevented *“by reasonable means in a less violent manner”*.

Arrest of a young person

96. Section 214 of the Oranga Tamariki Act 1989 refers to arrest of a young person without a warrant. An officer must be satisfied on reasonable grounds that the arrest is necessary for the purpose of:
 - Ensuring the appearance of the child or young person before the court; or
 - Preventing that child or young person from committing further offences; or
 - Preventing the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the enforcement officer has reasonable cause to suspect that child or young person of having committed, or preventing interference with any witness in respect of any such offence; and
 - Where the child or young person may be proceeded against by way of summons, that proceeding by way of summons would not achieve that purpose.

POLICY

Fleeing driver policy

Engaging in a pursuit

97. The overarching principle of the Fleeing Driver policy is that public and Police employee safety takes precedence over the immediate apprehension of a fleeing driver.
98. It is the responsibility of the driver of the lead vehicle, or their passenger, to notify Police Communications as soon as practicable and when it is safe to do so that a vehicle has failed to stop, location, direction, fleeing driver description, and reason that it is being pursued (failure to stop is not a reason to commence a pursuit). Lights and sirens must be activated throughout the pursuit.

99. Under the policy the pursuing officer/s must carry out a TENR (Threat-Exposure-Necessity-Response) risk assessment when deciding to commence or continue a pursuit. The assessment required of officers includes consideration of the following:
- a) The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.
 - b) Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
 - c) Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.
 - d) Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
100. 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.”*
101. Officers must regularly assess the risk to determine whether the need to immediately apprehend the driver is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicles, and/or the occupants of the Police vehicle.
102. Unless there is an immediate threat to public or staff safety a pursuit must be abandoned if:
- The identity of the offender becomes known,
 - the distance between the primary unit and the offending vehicle is too great,
 - any of the risk assessment conditions changes,
 - there is a sustained loss of contact between the primary units and the Communications Centre.

Pursuit abandonment

103. Officers in the lead or secondary Police vehicles, the field supervisors and the pursuit controller are all authorised to abandon pursuit.
104. Field staff should notify the Police Communications Centre of the abandonment, the reason for it and their current location. Once the decision to abandon has been made, the pursuit controller must advise all vehicles involved that the pursuit has been abandoned by stating *“all vehicles, abandon pursuit now”*.
105. The ‘Fleeing driver’ policy also states that the pursuit controller can direct abandonment if the identity of the fleeing driver becomes known, the fleeing driver poses an immediate threat to public or Police employee safety, and they can be apprehended later.

Tyre Deflation Devices (TDD or 'spikes')

106. Police policy on spikes provides that they can be deployed where no other, less dangerous, means of stopping the vehicle are reasonably available and where they can be deployed without unjustified risk to any person on the authority of the pursuit controller.
107. Deployment staff must monitor the situation using TENR. They must continually assess all variables (not just those identified in the policy) that could impact on the TDD deployment and if the risks outweigh the benefits the deployment of the TDD must be abandoned. The pursuit controller must be notified of this action if they are aware of the deployment.

Use of force

108. Under the Police 'Use of Force' policy Police officers are taught a range of ways to safely use force without a weapon, known as 'empty hand techniques'. The Police 'Use of force' policy states that officers can use empty hand techniques to:
 - distract a subject,
 - physical control a subject, and/or
 - defend themselves or another.
109. Use of empty hand techniques must be fully reported in a tactical options report, except for touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground. An officer must submit the TOR to their supervisor before the end of the shift in which they used force, or with their supervisor's approval, within 3 days of the end of shift and prior to any rostered days off or leave during this period.

Arrest of a young person

110. The Police 'Youth Justice' policy states that the arresting officer must ensure the explanation of the Bill of Rights provided to the child or young person is given in a manner and language that is appropriate to their age and level of understanding.
111. If an officer arrests a child or young person, they must make a written report to the Commissioner of Police within three days of making the arrest.

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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