

Police mishandle arrest of youth on Auckland motorway causing injury

Summary of the Incident

1. At about 3.33am on Wednesday 29 March 2021, Police attempted to stop a Mazda car in Auckland city. The driver of the car refused to stop. Instead of starting a pursuit¹, Police tracked the car using the Police helicopter, the Auckland CCTV cameras², and Police units following from a long-range distance.
2. When Police noticed that the Mazda had a broken quarterlight window, they believed it was stolen and decided they would stop it using road spikes.³
3. Police tracked the Mazda for nearly an hour and eventually deployed the road spikes when it exited the motorway at Silverdale. The driver of the Mazda then drove back onto the motorway south bound, and at 4.25am the vehicle finally stopped.
4. Around this time, it was confirmed the Mazda was recently stolen.
5. Six males aged between 12 and 14 years were in the car and all were apprehended by Police. While Police were removing the young people from the car, a 13-year-old, Mr X, received a cut to his forehead and a broken left wrist. None of the other youths were injured.
6. The level of force and how it was applied to Mr X by the arresting officer, Officer A, is disputed.
7. Police referred the matter to the Authority due to Mr X's injuries.

¹ As per the Police 'Fleeing driver' Policy, detailed in paragraph 61.

² Auckland Joint Transport Operations Centre (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.

³ Tyre Deflation Devices (road spikes) are explained further from paragraph 62-65.

Issue examined by the Authority

8. Was the force used against Mr X during the arrest necessary and reasonable?

The Authority's Finding

9. We found the degree of force used upon Mr X was not necessary and was therefore unreasonable.

Analysis of the Issue

Background

10. Between 11.30pm and 3.30am on 28 and 29 March 2021, a Mazda was stolen from a roadside in Massey, West Auckland.
11. Entry to the Mazda was gained by breaking the left rear quarterlight window and the ignition barrel was forced. The thieves who broke into the Mazda were youths who intended to take the car for a 'joy ride'. Mr X was in the front passenger seat of the Mazda with a friend, also 13 years old, who was driving. In the back seats were four other friends, aged between 12 and 14 years.
12. At 3.30am, the Mazda was seen by a Police patrol unit in Auckland city. Due to how it was being driven (excessive speed and running a red light), the officers attempted to stop the Mazda using their emergency lights, siren, and loud hailer.
13. The driver of the Mazda refused to stop and sped off, though the officers did obtain the registration number. Police did not initiate a pursuit and instead began tracking the car using the Police helicopter, traffic cameras, and long-range observations.
14. Police tried unsuccessfully to contact the Mazda's registered owner by phone.
15. An officer in the helicopter saw that the Mazda's rear left quarterlight window was broken. This is a common entry point in the unlawful taking of a motor vehicle. The officer also reported that the vehicle was often being driven in a dangerous manner.
16. The Police communications centre gave permission for the Mazda to be stopped using road spikes and began to organise this. An opportunity to use the spikes did not present itself for nearly 50 minutes while the Mazda was tracked across the wider Auckland area, mostly on the motorway network.
17. At 4.17am, when the Mazda took the northbound off-ramp at Silverdale, road spikes were successfully deployed.
18. Road spikes are designed to deflate tyres slowly, so vehicular control is not lost. The driver was able to get the Mazda back onto the motorway, heading south. The car finally lost forward

momentum and came to a stop at 4.25am by the area of Dairy Flat. By this stage, four Police cars containing five officers were present.

19. We consider Police actions to not pursue the Mazda and instead track its journey using other methods and manage the deployment of road spikes in a safe location, to have been appropriate in the circumstances.
20. By the time the Mazda stopped on the side of the motorway, Police had contacted the owner and confirmed it was stolen. The Mazda's six occupants were in a vehicle they knew was unlawfully taken; therefore their arrest was lawful.

Apprehension of the Youths

21. Police officers approached the Mazda and instructed the occupants to get out of the car. The occupants refused to move and locked the car, so an officer smashed the driver's side window to gain entry and unlock the doors.
22. Officers again instructed the youths to get out of the car. When they failed to do so, officers removed four of them and the last two got out on their own. All were arrested, handcuffed, and taken into custody.⁴ Mr X was the only one injured during this process.
23. We believe the lower-level force used to remove the other youths, along with the use of handcuffs, was reasonable in the circumstances.

ISSUE: WAS THE FORCE USED AGAINST MR X IN THE ARREST NECESSARY AND REASONABLE?

24. Mr X was sitting in the front passenger seat of the Mazda, which he knew had been unlawfully taken. He was wearing rubber gloves, which he told us was to avoid leaving fingerprints. After the Mazda had stopped, Officer A opened the door and forcefully removed Mr X, placing him under arrest.
25. We consider the arrest was lawful and the decision to use force was reasonable. However, the degree of force and way it was applied is disputed.

Mr X's account

26. Mr X told us he did not get a chance to exit the car before the door was opened and he was grabbed by his upper clothing and pulled out. He says he was thrown to the motorway tarseal by an officer, who then *"stomped on my head with his boot, at least twice and I was dazed"*.
27. Mr X says he was lying on his front while being kicked and tried to pull his hands up over his head for protection. The officer then placed a knee on his shoulder and pulled his left arm up to put handcuffs on. The officer used a lot of force on his arm, as described by Mr X:

⁴ Arrests were for the offence of converting a vehicle, section 226 (1) of the Crimes Act 1961.

“His knee was on my shoulder and like, he was trying to physically break my arm. I thought my shoulder would break. My broken wrist was from this, him trying to put handcuffs on me.”

28. The officer put metal handcuffs on Mr X, then stood him up and took him to wait at the side of the motorway with his friends.
29. Mr X realised his forehead was bleeding but did not notice pain in his wrist until about half an hour later.

Officer A's account

30. Officer A accepts that the injuries to Mr X occurred when he arrested him.
31. Officer A says as the Mazda was coming to a stop, he could see 5 or 6 people in the car, so he thought the officers might be outnumbered. He says he knew that offenders in stolen vehicles sometimes have weapons with them and says he believed that *“given any opportunity they would have resisted, or run, or drive, if they could, so I just wanted to get them under control, under arrest, get to side of the motorway for safety purposes”*.

32. Officer A first went to the driver's side, but other officers were already there. He then ran across to the front passenger's door and pulled it open, yelling *“get out of the car”*. He says Mr X did not acknowledge him.

33. Officer A reached in to arrest Mr X, saying:

“As I've done that he's, as he's sitting back, he's pushed my arms away, or hand away. Almost instantaneous, I've sort of forced my hands back onto him, taken control of him by the scruff (of his clothing), pulled him back and down onto the ground. He's landed stomach down.”

34. Officer A says he had used that manoeuvre many times before, but on this occasion, he accepts that he lost physical control of Mr X in the process of pulling him out of the car and down onto the ground for *“just the briefest of moments”*. He says it was a *“regretful error of simply losing physical control of him”*.

35. Officer A says he tried to apply handcuffs but had trouble due to Mr X's rubber gloves getting caught in the handcuff mechanism. Mr X was not fighting back but he was locking his arms and hands which, with the gloves, made applying the handcuffs difficult.

36. Officer A says he had his knees on Mr X's back and pulled his arm to apply handcuffs. Once handcuffs were on, Officer A stood Mr X up and walked him to the side of the motorway.

37. When he noticed Mr X had blood on his face, he looked closer and saw a cut on his forehead. He told the Authority:

“The obvious thing to me is when I've pulled him out and down to the ground, he's hit his forehead onto the tarmac.”

38. It was not until Officer A was back at the Police station that he became aware of Mr X's broken wrist. He did not know when this occurred, but thinks it was probably when he pulled Mr X onto the ground.

Accounts from others present

39. Officer B smashed the driver's side window and took custody of the 13-year-old driver. He did this by grabbing his arm and pulling him out and onto the ground where he applied handcuffs. The driver did not suffer an injury.
40. Officer B took the driver to the side of the motorway where the other youths were taken. Once the officers had things under control, Officer B checked on the youths and noticed blood on Mr X's face.
41. Officer A approached Officer B, telling him the injury happened when he (Officer A) had arrested Mr X, and that he would report it.⁵
42. Officer B says he did not witness this, having been involved in arresting the driver. However, he believes the cut probably did occur in the way described by Officer A, and as Officer A said he would report the matter, Officer B took no further action.
43. We spoke to the other three officers present and none could provide an account of the force used by Officer A on Mr X due to being focused on their own actions and not seeing it.
44. We also spoke to two of the other five youths. We were unsuccessful in contacting three of the five with the contact details available to us.
45. The driver says he saw Mr X have his arm bent up his back "*further and further*" by an officer while standing up against the car (standing against the car is disputed by Officer A). The driver says he then saw the officer throw Mr X to the ground and that "*he hit his head on the concrete*".
46. A passenger in the rear seat (aged 12) says he saw Mr X being pushed to the ground "*sort of fast*", by an officer and said, "*his head could have hit the ground*". This youth says Mr X's arm was broken when the officer put handcuffs on him.

Whose account do we believe?

47. There was no video footage of the incident.
48. Officer A accepts the two injuries to Mr X occurred at the time of arrest, acknowledging that a momentary loss of physical control in taking Mr X to the ground was the likely cause.
49. Officer A denies kicking or stomping on Mr X. Two of the youths said they saw the arrest but there was no kick or stomp.

⁵ Police are required to submit a Tactical Options Report (TOR) where force is used that is more than trifling.

50. Therefore, we believe there was no kick or stomp on Mr X, and he suffered the cut to his forehead when his head struck the motorway surface. It is possible Mr X was dazed after his head hit the ground, as he said.
51. We also believe it is most likely Mr X's wrist was broken when he was thrown to the ground by Officer A; but it is also possible this occurred, or was made worse, when the officer applied handcuffs in the way he describes.

Was the degree of force necessary, and therefore reasonable?

52. Section 39 of the Crimes Act 1961 allows 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
53. To rely on section 39, Officer A's actions must be assessed on the following:
- Did Officer A use force to overcome force which he believed was being used to resist arrest?
 - Was Officer A's belief that Mr X was using force to resist arrest reasonable?
 - If Officer A's belief was reasonable, was his use of force reasonable (i.e. proportionate to the force being used to resist)?
 - If the use of force was reasonable, could Mr X's arrest have been effected in a less violent manner?

Did Officer A use force to overcome force which he had a reasonable belief was being used to resist arrest?

54. Officer A told us that after giving commands to Mr X to get out of the vehicle and receiving no cooperation, he reached in to apprehend him and Mr X pushed the officer's arm or hand away with his hand. Officer A says he immediately pushed back past Mr X's hand and grabbed him by the scruff of his clothing, then pulled him from the vehicle (paragraphs 33 and 34).
55. We accept Officer A had a reasonable belief that Mr X was attempting to forcefully resist arrest, based on Mr X being a passenger in a stolen car that failed to stop for Police, the occupants then locking all the doors and refusing to get out, and Mr X then pushing Officer A's arm or hand away.

Was Officer A's use of force reasonable (i.e. proportionate to the force being used to resist)?

56. Officer A says he pulled Mr X out of the car and down to the ground by grabbing the front of Mr X's clothing. Mr X ended up on the ground face down and Officer A then pulled Mr X's hands behind his back to apply the handcuffs.

⁶ As detailed in paragraph 60.

57. Officer A acknowledges losing physical control of Mr X when pulling him from the car and onto the ground (paragraph 34), an action which we are satisfied resulted in a cut forehead and broken wrist when his head and hand hit the tarseal with significant force.
58. We accept Officer A did not deliberately harm Mr X. However, even disregarding the injuries, we consider the level of force used by Officer A was not necessary in the circumstances, and so was therefore unreasonable.
59. Officer A was responding to a 13-year-old who, by Officer A's own account, pushed his hand away. The response was not proportionate and the arrest of Mr X could have been achieved in a less forceful manner.

FINDING ON THE ISSUE

We believe the degree of force used upon Mr X was not necessary and was therefore unreasonable.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

21 April 2022

IPCA: 21-7160

Appendix – Laws and Policies

LAW

Crimes Act 1961

60. Section 39 provides for law enforcement 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 unless the process “can be carried out by reasonable means in a less violent manner”.

POLICY

‘Fleeing driver’ policy

61. 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.”

Tyre deflation devices’ (Road spikes) policy

62. 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.”
63. 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 assess the risks when deciding to use and retrieve road spikes.
64. 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.
65. An officer may self-authorise the use of spikes if they assess 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-authorized the use of the spikes.

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. 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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