

Use of force in arrest of Christchurch youth justified

Summary of the Incident

1. On the evening of 7 November 2020, Christchurch Police attended a family harm incident between Mr Z (17 years old) and his former partner Ms Y (16 years old). Ms Y was visiting Mr Z and staying with their 3-month-old baby. A Temporary Protection Order against Mr Z was already in place, so Police served him with a Final Protection Order. Police also issued Mr Z with a Public Safety Order (PSO), which prevented him from contacting Ms Y until 7am on 8 November 2020.
2. At 5am on 8 November 2020, Ms Y unknowingly 'pocket-dialled' her mother (Ms V). Ms V heard Mr Z and Ms Y arguing, and it appeared to Ms V that Mr Z was physically assaulting Ms Y. Ms V also heard the baby crying before going silent. At the time, Mr Z was trying to stop Ms Y from leaving with the baby to catch a flight home. Ms V and her partner were concerned for the safety of Ms Y and the baby, and so Ms V called Police
3. When Officers A and B arrived, they saw Mr Z walking away from the property. They told him to stop and that he was under arrest for breaching the orders, by being at the property. Mr Z did not stop. Officer A went to arrest Mr Z, who tensed up against him. Officer A then pulled Mr Z to the ground and tried to place him in handcuffs while he resisted.
4. Officer B initially helped Officer A, but then had to stop Mr Z's aunty (Ms X) and Ms Y from intervening in Mr Z's arrest.
5. Officer C arrived and helped Officer A to restrain and handcuff Mr Z. They took Mr Z to the Christchurch Police Station, where he was removed from the patrol car by six officers. He was strip-searched and placed in custody.
6. Mr Z sustained numerous minor abrasions and bruises to his face and body.
7. Ms X complained to the Authority. She says:
 - a) up to five officers assaulted Mr Z at the property;

- b) they punched, kicked, and kneed him while arresting and transporting him;
- c) an officer knelt on Mr Z's neck;
- d) Police stripped and humiliated him at the station; and
- e) Mr Z had been compliant, and the force used against him was unreasonable.

8. Mr Z refused to discuss the incident with our investigator.

Issues examined by the Authority

Issue 1: Was the force used by officers during Mr Z's arrest justified?

Issue 2: Was the force used by officers while transporting Mr Z to the Police station justified?

Issue 3: Was the force used by officers at the custody unit justified?

Issue 4: Did officers appropriately care for Mr Z while he was in custody?

The Authority's Findings

9. The Authority found that:

- 1) Officer A was justified in using force to pull Mr Z to the ground and restrain him when he resisted arrest.
- 2) Officer A mostly likely did not kneel on Mr Z's neck.
- 3) Officer A was justified in striking Mr Z to distract him.
- 4) Overall, the level of force used by Officers A, B and C during Mr Z's arrest was proportionate and reasonable in the circumstances.
- 5) Officer A was justified in using force on Mr Z in the car, to defend himself and other officers from being kicked. The level of force used was proportionate and reasonable in the circumstances.
- 6) Officers used reasonable and proportionate force to remove Mr Z from the patrol car, given his level of resistance.
- 7) Officers were justified in conducting a strip search of Mr Z and did so in accordance with policy.
- 8) Officers at the custody unit were justified in using force to restrain Mr Z and search him. There is no evidence that excessive force was used.
- 9) Police gave appropriate care to Mr Z at the custody suite.

Analysis of the Issues

ISSUE 1: WAS THE FORCE USED BY OFFICERS DURING MR Z'S ARREST JUSTIFIED?

10. Ms Y and the baby were staying with Mr Z in a caravan over the road from the house of his aunt, Ms X.
11. Ms Y says that after Police visited on the night of 7 November, Mr Z was violent towards her, including putting his hands around her neck as if to strangle her. At 4am, when Ms Y was preparing to leave, they argued again. Mr Z slapped her face and told her that he "*should have killed her when she was asleep*". Ms Y says Mr Z kicked her in the ribs and chest multiple times and she also hit Mr Z with her fists.
12. Ms Y had been messaging her mother, Ms V, and forwarded messages which Mr Z had sent to Ms Y saying he was going to kill her. Ms Y then unknowingly-pocket dialled Ms V. Ms V says she heard Ms Y screaming and asking Mr Z to stop strangling her. Ms V and her partner used another phone to ring 111.
13. In the recorded 111 call, Ms Y can be heard screaming and arguing with Mr Z, and the baby can be heard crying in the background, via Ms V's phone.¹
14. Ms Y managed to leave the caravan and went to Ms X's house.

What happened when officers arrived at the property?

15. Before arriving at the property, Officers A and B looked at Police intelligence alerts about Mr Z on their Police phones.² They viewed a recent custody photograph and noted that Mr Z had been involved in previous family harm incidents, had warnings around using violence and carrying weapons or knives, had previously been tasered by Police, and had threatened to stab the next Police officer he dealt with. The officers also noted a protection order was in place.
16. Officer A says, given the alerts and the information that the current incident involved strangulation, he believed there was a risk of Mr Z causing serious harm or death to Ms Y and/or Police.
17. Upon their arrival, Officer A recognised Mr Z and saw him leave the caravan, slam the door, and walk off.
18. Officer A told Mr Z to stop walking and told him several times he was under arrest. He says Mr Z "*fronted up*" to him and told him to "*f***k off*", and that he was going to "*f***k him up*". Mr Z then continued to walk away down the driveway.

¹ Ms V took photos of Ms Y when she arrived home after the incident noting the bruising to her body and swollen neck.

² Intelligence alerts are contained within the National Intelligence Application (NIA). This is a Police database which holds information about individuals who have come into contact with Police.

19. Officer A considered using pepper spray, but decided it was not appropriate due to the wet and windy weather conditions and because Mr Z was walking away. Instead, he took hold of Mr Z by the back of his jacket.
20. Mr Z immediately tensed up, resisting him. Officer A pulled Mr Z to the ground, while Mr Z fought and kicked out at him. Mr Z managed to stay on his back, rather than allowing Officer A to roll him face-down and handcuff him.
21. Officer B came to help and Mr Z kicked her in the leg. Officer B attempted to control Mr Z's legs while Officer A was to the right side of his upper body.
22. Officer A managed to roll Mr Z onto his stomach, but Mr Z's arms were tucked by his side and underneath his body. Officer A says he attempted to handcuff Mr Z's arms behind his back, but Mr Z would not follow his instructions and refused to release his arms. Mr Z continuously told him to "f**k off".
23. Officer B says Ms Y ran towards them. She shoved and punched Officer B and then tried pulling Mr Z away from them. Ms X also attempted to interfere with the arrest. Both Ms X and Ms Y were yelling and trying to get to Officer A.
24. Ms Y says she was in the caravan and heard yelling and screaming. She came outside and saw Mr Z on the ground with two Police officers on him. Ms Y says she was worried for Mr Z, so tried to pull him away by the arm. She admits she punched Officer B.
25. Officer B left Officer A with Mr Z so she could warn Ms Y and Ms X for obstruction and move them away.
26. Ms Y says she saw Officer A kneeling on Mr Z's neck and punching him in the face.

Did Officer A kneel on Mr Z's neck?

27. Officer A says during the struggle he put his knee across the back of Mr Z's shoulder so he could try to get Mr Z's arm free. He says his knee was never on Mr Z's neck.
28. Officer B says she saw Officer A's knee on Mr Z's back but nowhere near his neck.
29. We accept that Officer A had his knee positioned on Mr Z's right rear shoulder and not on his neck. We prefer the consistent accounts of Officers A and B rather than Ms X's account which cannot be corroborated.

Did Officer A punch Mr Z in the face?

30. According to Officer A, Mr Z continued struggling with him, would not follow instructions, and was physically assaultive towards him and Officer B.³ Mr Z kept his hands underneath him and

³'Assaultive' in the Police's Tactical Options Framework (a training and operational tool that assists officers to appropriately decide when, how, and at what level to use a tactical option) includes someone who displays intent to cause harm through body language or physical action.

firmly away from Officer A, and Officer A did not have the physical strength to remove them. Both officers believed Mr Z may have been reaching for a weapon.

31. Officer A decided to use four to five 'distraction strikes'. He started with an open palm strike but says he then used a fist, directed to the back of the neck/head area. He used his right hand to strike while trying to hold onto Mr Z with his left hand, and he paused between each strike. He denies punching Mr Z in the face.
32. Officer A says distraction strikes are a trained technique for dealing with an assaultive person. The rationale is that such strikes distract an offender from what they are doing so as to provide a window of opportunity to get control. Officer A hoped the strikes would cause Mr Z to release his hands (which he was keeping from Officer A) and prevent him from reaching for a weapon. However, this technique had no effect on Mr Z.
33. We understand that Police training does not advocate for strikes to the face, head, or throat, and punching is not taught because of the risks to the person and the officer. The exception is where strikes are used to obtain momentary advantage in situations when an officer fears death or serious harm.

How did the officers complete the arrest?

34. A couple of minutes later, Officer C (the on-duty supervisor) arrived to help with the arrest. He says it looked as if Mr Z was trying to get something from his pockets. He recalled one of the alerts saying Mr Z had said he was going to stab the next Police officer he dealt with, and he was fearful Mr Z may be reaching for a weapon. Officer C immediately went to help get Mr Z's arms under control so they could be handcuffed. He was on Mr Z's left side while Officer A remained on Mr Z's right side.
35. Officer C says he had control of Mr Z's arm at one point but had to let go as Ms X had managed to get past Officer B and approach them. He told Ms X that Mr Z was under arrest and instructed her to stop interfering. He had to move Ms X back to where Officer B was keeping Ms Y away. Ms X complied, moving away from them.
36. Officer C says he then used a wrist lock and arm bar technique to move Mr Z's left arm to his back.⁴ He noted that the techniques, which were designed to cause pain to Mr Z so he would comply, had no effect on him.
37. Officer A says Mr Z did not flinch or react to the wrist lock at all. He says he and Officer C had to use their physical strength to overcome Mr Z's resistance and physically move Mr Z's arm behind him. They worked together to secure Mr Z's left arm, and then the right arm appeared from underneath him and they were able to bring it behind his back and apply the handcuffs.

⁴ A wristlock is a trained technique where someone takes hold of another person's hand and twists or bends it in a non-natural direction. If applied suddenly and/or forcefully, a wristlock can cause ligament tears or possibly even dislocation or bone fractures. 'Arm bars' are also approved manual restraint techniques which officers can use to control a person's movements or to gain control over a person who may try to escape.

38. Officers A and C each took hold of one of Mr Z's arms, stood him upright, and walked him to the patrol car. Mr Z did not support his own weight at all and kicked out at the officers.
39. Officers A, B and C say that despite the handcuffs being applied, Mr Z continued to physically struggle against Police, including spitting, biting, and kicking.
40. Officer B says she did not see Officer A strike Mr Z's head.
41. Officer C says he did not see Officer A or any officer strike Mr Z to the head at any time.
42. We noted that Officer B mostly had her back to Officer A and was focused on keeping Ms X and Ms Y some distance from Officer A. When Officer C came to assist, he also had to leave Officer A to move Ms X away from where Mr Z was being arrested.⁵

What did Ms X complain about?

43. Ms X says:
 - a) Ms Y's relatives made a false call to Police alleging Mr Z was strangling Ms Y. It was actually Ms Y that hit Mr Z.
 - b) As a result of the call, four patrol cars and a dog unit arrived at their address.
 - c) She saw four officers manhandle Mr Z. She saw one officer punch Mr Z's face four times in a row while he was handcuffed and then put a knee into his neck. At the time, Mr Z was not resisting Police in any way.
 - d) She went to assist Mr Z and was aggressively pushed back and threatened with being arrested for obstruction.
44. Following her initial complaint to the Authority, Ms X did not make herself available to our investigator and provided no further assistance to our investigation.
45. Two other people present say they did not see the arrest and another potential witness was not able to be contacted.
46. We have been unable to reconcile Ms X's account with those of the other people present and with the evidence available to us, which includes the Police Communications Centre chronology

⁵ Under section 23 of the Summary Offences Act 1981, every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who resists or intentionally obstructs, or incites or encourages any other person to resist or obstruct any constable acting in the execution of his duty.

of the incident showing who attended the incident. We are satisfied Officers A, B and C were the only officers at the incident and there were two patrol cars.⁶

47. Regarding the justification for the arrest, Police reasonably suspected Mr Z of having committed a serious family harm offence. Mr Z was also in breach of the PSO relating specifically to the protection of Ms Y and the baby, and Police saw him leaving the address he was not supposed to be at. Mr Z was uncooperative with attending Police.
48. The law requires that a young person should not be arrested unless the officer is satisfied on reasonable grounds that arrest is necessary to prevent them from committing further offences.⁷ In our view, the decision to arrest and charge Mr Z was necessary and appropriate in the circumstances.
49. We are also satisfied there were only two officers involved in trying to restrain Mr Z at any given time, and that Mr Z was not compliant and was physically resisting his arrest.
50. We also accept Officer C acted reasonably when he pushed Ms X away from where he and Officer A were dealing with Mr Z.
51. We will now assess whether the officers' use of force on Mr Z during the arrest was reasonable and proportionate.

Were the uses of force during the arrest justified?

52. The law allows Police to use "*such force as may be necessary*" to overcome force used in resisting arrest.⁸
53. In assessing this, the Authority must determine:
 - a) whether the officer believed on reasonable grounds that the person was using force to resist arrest; and if so
 - b) whether the degree of force used to overcome that resistance was proportionate and reasonable in the circumstances as the officer reasonably believed them to be.

Did the officers believe on reasonable grounds that Mr Z was using force to resist arrest?

54. After Officer A told Mr Z he was under arrest, Mr Z resisted by:
 - refusing to comply with instructions;
 - continuing to walk away while making threats of violence toward Police;
 - tensing up and pulling away when Officer A reached out to take hold of him;

⁶ A police dog handler arrived once Mr Z was in the patrol car but was not involved in his arrest and did not interact with Mr Z.

⁷ Section 214(1)(a)(ii) of the Oranga Tamariki Act 1989.

⁸ Section 39 of the Crimes Act 1961 see paragraph 148.

- struggling with Officers A, B and C on the ground, and kicking Officer B; and
- refusing to present his hands to allow officers to place him in handcuffs.

55. We accept these things occurred and that it was reasonable for the officers to believe Mr Z was using force to resist arrest.

Were the officers' uses of force proportionate and reasonable in the circumstances?

56. Mr Z's intelligence alerts led the officers to believe he could be carrying weapons. They were also mindful that Mr Z had previously said he wanted to stab the next officer he dealt with.

57. In the circumstances, we find that Officer A was justified in pulling Mr Z to the ground. As determined above, we accept Officer A did not kneel on Mr Z's neck but had his knee on Mr Z's left rear shoulder in an attempt to gain control over his arms. We think the level of force officers used to restrain Mr Z, and to try to place him in handcuffs, was justified and reasonable given his level of resistance.

58. Officer B then had to move away to deal with Ms Y and Ms X, which left Officer A to continue restraining Mr Z on his own.

59. As Officers B and C did not see Officer A strike Mr Z, we have relied solely on Officer A's account that he used up to four or five distraction strikes to the back of Mr Z's neck and head area.

60. Officer A says that, before using the distraction strikes, he considered what other options were available to him. He decided to use the strikes because:

- other less violent efforts to handcuff Mr Z had been unsuccessful;
- the officers were outnumbered, as Officer B had to deal with Ms Y and Ms X;
- he was alone with Mr Z at that point (Officer B was busy with Ms Y and Ms X and Officer C had not yet arrived);
- he was not able to use pepper spray or a baton because of Mr Z's body position, the weather, and because a baton would have been excessive in the circumstances;
- he was physically unable to get the handcuffs on Mr Z by himself; and
- Mr Z may have been reaching for a concealed weapon to carry out his stated threat of stabbing an officer.

61. We accept that communicating with Mr Z and trying to manoeuvre him had been unsuccessful and that Officer A had limited options while trying to deal with Mr Z on his own. We also accept that Officer A only increased the level of force, going from an open palm strike to a fist, when the open-handed techniques proved to be ineffective, and that he paused between each strike to reassess the situation.

62. We find that Mr Z was verbally and physically assaultive towards attending Police and was resisting arrest. Mr Z was uncooperative and his stated intention to stab the next officer he dealt with was a concerning factor for the arresting officers in getting Mr Z physically controlled in handcuffs.
63. We generally think that strikes to the head should be avoided because of the increased risk of serious harm or death. We note that Police training includes distraction strikes, including open-handed techniques (such as slaps and palm strikes) to the side of the head. Closed handed techniques (such as punching) and distraction techniques to the face and throat area are not taught. However, in this instance, Officer A reasonably feared serious harm and/or death if he could not overpower Mr Z. He administered the strikes in an escalating and proportionate manner given the level of resistance and threat Mr Z was presenting. He stopped the strikes when it became clear they were not effective.
64. In conclusion, for these reasons, we find that Officer A's decision to slap and then punch Mr Z's head area was reasonable and proportionate in the circumstances.
65. Officer C arrived shortly afterwards to help Officer A with the arrest. He unsuccessfully applied a wrist lock and arm bar technique. Officers A and C together eventually managed to overpower Mr Z and handcuff him.
66. We find the wrist lock and arm bar technique, which are also trained pain compliance techniques, were a force applied by Officer C in a manner not exceeding that which was required to overcome the resistance of Mr Z.
67. In conclusion, we find that the force used at this stage of the arrest was reasonable and proportionate in the circumstances.

FINDINGS ON ISSUE 1

Officer A was justified in pulling Mr Z to the ground and restraining him when he resisted arrest.

Officer A did not kneel on Mr Z's neck.

Officer A was justified in slapping and punching Mr Z.

Officer C was justified in pushing Ms X away.

Officer C was justified in forcing Mr Z's arm behind his back to handcuff him.

Overall, the force used by Officers A, B and C was proportionate and reasonable in the circumstances.

ISSUE 2: WAS THE FORCE USED BY OFFICER A WHILE TRANSPORTING MR Z TO THE POLICE STATION JUSTIFIED ?

What occurred when Officers A and B were transporting Mr Z to the Police station?

68. Once at the patrol car, Mr Z would not get into it voluntarily. Officer A went to the rear driver's side of the car and pulled Mr Z in by his clothing while Officer C tried to push Mr Z in from the rear passenger's side.
69. Ms Y recalls seeing two officers putting Mr Z into the patrol car and Mr Z kicking one of them in the mouth. We note that none of the officers mentioned this to us, and we are unsure which officer it was.
70. Officer C says Mr Z caught one leg in the door. As Officer C bent down to remove the leg, Mr Z lunged at him, possibly trying to head butt him. Officer C did not want to put his head or hands where they could be kicked, so he used his foot to push Mr Z's leg into the car to close the door. Officer C says he did not kick Mr Z. We accept Officer C's account and find that Mr Z remained uncooperative and assaultive towards Police.
71. Once in the vehicle, the officers moved the front passenger's seat backwards to restrict Mr Z's movements as he was trying to kick out and there were no leg restraints available. They put Mr Z's seatbelt on him.
72. Officer A says Mr Z's behaviour escalated even more. He became more aggressive and assaultive, continuing to kick out at Police and threatening that he was going to "*f**k them up*".
73. Ms X says that when Mr Z was in the patrol car, officers punched him in the ribs and kicked his shins. She says Mr Z was not resisting Police.
74. We were unable to speak with Ms X and confirm what she witnessed.
75. Officer B drove with lights and sirens to the Christchurch Police Station, about ten minutes away. They drove 'under urgency' due to Mr Z's assaultive behaviour, to get him to the custody unit as quickly as possible.⁹
76. Officer A sat in the rear of the patrol car and on the right side as is practised in transporting arrested persons. The area is confined and Officer A was physically close to Mr Z and not in a position to remove himself safely. We note by sitting next to a person in the back seat of a patrol car there are no natural or designed safety features that provide protection for officers.
77. The officers say that, during the journey to the station, Mr Z continued to swear and make noises "*like an angry cat or snake*". He began hissing, blowing, and spitting at the officers.

⁹ Urgent duty driving is where an officer is driving above the speed limit and may not comply with certain traffic rules. Police are required to use flashing red and blue lights and siren and rely on defences under the Land Transport Act (Road User) Rule 2004 and the Land Transport Act 1998 for not complying with certain rules.

78. Mr Z was facing Officer A and his spit was “*flying everywhere*”. Officer A took hold of Mr Z’s hoodie and used it as a shield across Mr Z’s face to prevent the spit hitting him and Officer B.
79. Mr Z bit Officer A’s hand but the bite did not break the skin through his glove. Mr Z then tried lifting his legs from out of the footwell and began thrashing around, banging his head against the car door frame and attempting to strike Officer A with his head.
80. Officer A used his forearm and body weight to try to restrict Mr Z’s movements against the seat and door of the car. However, Mr Z managed to put his back against the door, get his legs out and knees up, and began kicking out inside the car. Some of Mr Z’s kicks hit Officer A in the face and shoulders and upper body, causing him to fall backwards in the patrol car.
81. Officer B also recalls being kicked by Mr Z a couple of times while she drove.
82. Officer A says he felt that Mr Z was starting to physically overpower him with multiple kicks. He was also concerned Mr Z was making it difficult for Officer B to drive safely. He again considered the options available to him. He was unable to use any other tactical options, such as pepper spray or a baton, due to the confined space they were in. The officers considered stopping the car, but as they were a short distance from the station they continued to drive.
83. Officer A again used escalating distraction strikes, beginning with open handed techniques to gain control. As he considered the kicks to be the biggest threat, he struck Mr Z’s legs, and then abdomen, about 8 to 10 times in total, trying to get his legs down and under control and to slow him down. These strikes had no effect on him. Officer A said it was “*like he couldn’t feel pain ... yeah it was weird ... once again there was just nothing*”. Mr Z continued to threaten that he was going to “*f**k him up*”.
84. Officer A says that, as a last resort, he used further punches to the right side of Mr Z’s head. Officer A could not recall the number of times he struck him but said after each strike he paused and assessed what effect it had on Mr Z. Mr Z did stop kicking and went limp for about ten seconds. Officer A told us this enabled him to reposition Mr Z and get his legs down. However, as soon as he moved away from Mr Z and sat down, Mr Z spun around and kicked him “*straight in the face*”. Mr Z continued to kick out, hitting the roof of the car. He caused significant damage to the interior of the patrol car. Officer A says he believes Mr Z had been faking when he went limp.
85. One kick hit Officer A’s hand, bending his finger back at an odd angle and causing immediate pain. This kick caused ligament damage and required medical treatment.
86. Officer B did not see Officer A strike Mr Z, as she was driving. She said she heard a lot of noise and movement and heard Officer A telling Mr Z to calm down and stop kicking him, including to the face.
87. Mr Z was later charged with assaulting Police but was not charged with damaging the patrol car.
88. Officers A, B and C all say Mr Z was displaying abnormal strength and endurance, unlike any they had seen or experienced before. He did not stop moving, fighting, yelling, or kicking, and he did

not tire. Officers A and C say their compliance techniques at the address had no effect on him.¹⁰ Both Officers A and B expressed their view of the unnatural behaviour exhibited by Mr Z. Officer A also suspects Mr Z was possibly under the influence of an unknown substance.

Was Officer A's use of force in the patrol car justified?

89. Officer A says he used force under section 48 of the Crimes Act 1961 to defend himself from Mr Z.
90. Section 48 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
91. Under section 48, we must assess Officer A's actions on both:
 - a subjective basis (that is, what Officer A genuinely believed the situation to be); and
 - an objective basis (what a 'reasonable' person would have done in that situation).
92. This assessment involves three questions:
 - a) What did Officer A believe the circumstances to be? (a subjective test)
 - b) Was Officer A's use of force for the purpose of defending himself or another? (a subjective test)
 - c) Was Officer A's use of force against Mr Z reasonable in the circumstances as he believed them to be? (an objective test)

What did Officer A believe the circumstances to be?

93. Officer A's view of the circumstances is set out in paragraphs 77-88.
94. Officer A says Mr Z kicked his face and body, and he says he believed at one point Mr Z was overpowering him. He provided medical evidence supporting ligament damage to his hand.
95. His view of Mr Z's behaviour in the car is supported by others' accounts where:
 - Ms Y saw Mr Z kick an officer in the mouth;
 - Officer B says Mr Z kicked her while she was driving;
 - Officer C described Mr Z's kicking out and attempting to headbutt him; and
 - Officer F witnessed Mr Z attempting to kick Officer A.

¹⁰ Pain compliance techniques involve the direct and intentional use of force by an officer that causes pain to the subject, usually evidenced by the subject showing and/or verbalising pain.

96. Officer A believed Mr Z posed a risk to his and Officer B's safety due to his spitting, his trying to bite and head butt him, and his kicking both officers. He was mindful that Mr Z kicking Officer B could affect her driving and lead to an accident and harm to themselves or other motorists.
97. We think it is evident that Mr Z continued to assault Police from within the patrol car, based on the officers' accounts, witness accounts, damage to the patrol car, documented injuries, and CCTV footage on arrival at the Christchurch Police Station.

Was Officer A's use of force for the purpose of defending himself or another?

98. We noted that the circumstances of Mr Z's arrest had changed from placing him under arrest to taking him to the custody unit. Mr Z's behaviour also changed from resisting the officers arresting him to assaulting police within the patrol car.
99. We accept Officer A acted to protect himself and Officer B, and other motorists who could potentially be harmed if Officer B lost control of the patrol car.

Was Officer A's use of force against Mr Z reasonable in the circumstances as he believed them to be?

100. Officer A initially tried to distract Mr Z by striking less-vulnerable parts of his body, he assessed the force he used each time, and only moved to Mr Z's head when the lesser force had been ineffective.
101. We believe these are reasonable applications of force where lesser options proved to be ineffectual.
102. Despite being handcuffed, it is evident from photographs of the damage to the patrol car that Mr Z had successfully used significant force against Police from the confined area of the back seat.
103. Officer A was required to travel in the back seat of the patrol car with Mr Z as is Police practice. There were no natural or designed barriers that prevented Officer A from being kicked and he had no means of escape from a moving vehicle. Officer B was at risk of being kicked from behind and losing control while driving, which placed them and other motorists at considerable risk. The officers did consider stopping but they needed to get Mr Z to the station which was not far away. Officer A was not able to use less forceful options, such as spray and a baton, due to the confined space. They would have been unsuitable and excessive.
104. We are of the view that Mr Z's kicks to Officer A's face and head were more powerful and dangerous than the distraction strikes Officer A used to overcome them.
105. We therefore accept that the force Officer A used was reasonable and proportionate to the force Mr Z was using against the officers.
106. Whilst we have analysed the force used by Officer A under section 48, we consider that the force used would also be justified under section 39 (see paragraphs 52-53 above), where Officer A's use of force was reasonable and proportionate to the force used by Mr Z.

FINDINGS ON ISSUE 2

Officer A was justified in striking Mr Z in the car to defend himself and others from being kicked. The level of force used was proportionate and reasonable in the circumstances.

ISSUE 3: WAS THE FORCE USED BY OFFICERS AT THE CUSTODY UNIT JUSTIFIED?

107. Ms X raised concerns about how Police treated Mr Z at the custody unit. She says Police stripped and humiliated Mr Z, and that he was a youth, was not resistant in anyway, and was brutally treated and beaten by officers while there.
108. As mentioned above, Mr Z did not wish to speak to us, so we have been unable to establish his version of events.
109. Ms X did not observe the processing of Mr Z as she was not present.
110. Officers A and B did not deal with Mr Z once they arrived at the unit. He came under the care of the custody staff from that point.
111. Officer A took care of his own first aid needs on arrival and then arranged for a doctor to see Mr Z.

How was Mr Z removed from the patrol car?

112. Officers A and B had asked for help on the police radio as they were leaving the address due to Mr Z's behaviour.
113. When they arrived at the custody unit, Officers D, E, F, G, H and I came to remove Mr Z from the patrol car. CCTV footage shows that, on arrival, the car was moving unnaturally on its suspension.
114. Officer F says he saw Mr Z was violent and assaultive in the patrol car. When the car door was opened, Mr Z had his back to the door and was attempting to kick Officer A.
115. While removing Mr Z from the car and placing him on the ground:
 - Officer D had control of Mr Z's left leg. At one point he lost control of it due to Mr Z's aggressive kicking. He used a leg locking technique to regain control.¹¹
 - Officer F took control of Mr Z's head, so he did not hit his head or spit on staff.
 - Officer H, the supervisor at the custody unit, says he also helped to control his head and used an open palm to shield officers from Mr Z spitting at them. Once on the ground, the officers rolled Mr Z onto his stomach.

¹¹ Officer D had been trained in leg control techniques.

116. CCTV footage shows the five officers removed Mr Z from the patrol car and lowered him to the ground in a controlled manner.

What occurred during Mr Z's search?

117. CCTV footage shows the officers gaining control of Mr Z on the ground. Five officers then carry him to the search room, with an officer on each arm and leg, as Mr Z refused to walk. This was the first occasion that Mr Z was able to be searched following his arrest.
118. Police are permitted to search any person taken into custody that has not previously been searched, or where there are reasonable grounds to believe that the person is in possession of anything that may be used to harm themselves or others.¹²
119. Officers decided to conduct a strip search of Mr Z, rather than a general rub-down search.
120. Police policy says a strip search may be carried out when a risk assessment gives officers reasonable grounds to believe:
- “*things such as weapons may be concealed on the person, or*
 - *any thing is on the person that may be used to:*
 - *facilitate their escape, or*
 - *harm any person*
 - *and a less intrusive search may not sufficiently reduce or remove that risk.”*
121. We find that the officers were justified in conducting the strip search due to their ongoing concerns that Mr Z:
- may have a weapon on him;
 - continued his assaultive behaviour towards Police;
 - refused to engage and answer questions about his wellbeing; and
 - had alerts on his record for self-harm and threatening to stab an officer.
122. There is no CCTV footage showing what occurred in the search room, for privacy reasons. However, according to CCTV footage outside the room, Mr Z was in the search room for less than eight minutes.
123. The alerts for previous self-harm attempts prompted Police to place Mr Z in a tear resistant gown for his own safety.

¹² Section 11 of the Search and Surveillance Act 2012; see paragraph 151.

124. Police policy for managing people in custody allows for detainees to be placed in tear-resistant gowns when they are considered to be a suicide risk. Therefore, it was appropriate for officers to place Mr Z in the gown.
125. The officers all say Mr Z continued to be very difficult to deal with. Accounts indicate he was swearing, aggressive towards officers, refused to be searched, would not follow instructions, and refused to answer questions.
126. Mr Z was placed on the ground in the search room. Officer E recalls holding Mr Z's arm out from his body while he was on the ground so he could be strip searched and put in the gown. The strip search was done in accordance with Police policy. The officers (all male) removed Mr Z's clothing and dressed him in the tear resistant gown.
127. Officer J, the senior officer present, supervised the search of Mr Z. He says Mr Z was very difficult to deal with, thrashing his arms and legs about. He did not see any behaviour from officers that caused him concern. He believes the officers were being very patient with Mr Z.

Were the officers' actions to restrain Mr Z in the custody unit justified?

128. As discussed above, Police may use such force as is reasonably necessary to overcome force used in resisting arrest or the execution of a lawful process (such as processing an arrested person into a custody unit).
129. To assess this, the Authority must determine:
 - a) whether the officer believed on reasonable grounds that the person was using force to resist arrest; and if so
 - b) whether the degree of force used to overcome that resistance was proportionate and reasonable in the circumstances as the officer reasonably believed them to be.

Did the officers believe on reasonable grounds that Mr Z was using force to resist them in executing the process of taking him into custody and searching him?

130. We note from the accounts provided that the officers who dealt with Mr Z at the custody unit were aware that Mr Z had been uncooperative in his arrest, being verbally and physically aggressive towards the officers dealing with him. They also knew he had alerts relating to the use of violence and carrying weapons and had previously told Police he intended to stab the next officer he dealt with.
131. Upon arrival at the custody unit, the custody officers saw Mr Z continuing to be uncooperative, non-compliant, and lashing out at officers in the patrol car. Mr Z behaved in the same manner throughout the process of removing him from the car and searching him.
132. In conclusion, we find that the officers believed on reasonable grounds that Mr Z was using force to resist being processed into custody.

Were the officers' uses of force proportionate and reasonable in the circumstances?

133. Mr Z was not complying with the officers' instructions. The officers independently and consistently said Mr Z was assaultive and non-compliant towards Police. Officers say they needed to have a heightened response to ensure Mr Z's safety and the safety of themselves while he was in their care.
134. Based on the footage, we believe the officers acted quickly and professionally to de-escalate Mr Z's assaultive behaviour by removing him from the patrol car without delay.
135. In our view, Mr Z's past and current behaviour posed a significant risk to arresting officers, custody staff, other people, and himself. We consider the force used during his custodial processing was appropriate and reasonable in the circumstances.
136. There is no evidence to suggest Mr Z was beaten by Police at the custody unit, as Ms X claimed.

FINDINGS ON ISSUE 3

Officers used reasonable and proportionate force to remove Mr Z from the patrol car, given his level of resistance.

Officers were justified in conducting a strip search on Mr Z and did so in accordance with policy.

Officers at the custody unit were justified in using force to restrain Mr Z and search him. There is no evidence that excessive force was used.

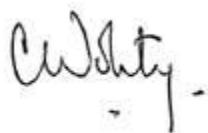
ISSUE 4: DID OFFICERS APPROPRIATELY CARE FOR MR Z WHILE HE WAS IN CUSTODY?

137. Police policy outlines the ongoing responsibility for the care and security of detainees until they are released into the care of another agency or person. We have considered the officers' actions in accordance with this.
138. CCTV footage shows:
 - At 5.34am, four officers walk Mr Z to his cell, one on either side and two behind. The officers on either side hold on to his gown and arms. The other two observe.
 - At 5.35am, Mr Z is placed face-down on a mattress on the floor of the cell. Three officers use a coordinated and controlled method to remove the handcuffs from him and to leave the cell safely, which is in accordance with their training.
 - Officers check Mr Z at 5.45am. Mr Z stands in a fighting stance and lunges at the cell widow towards the officer outside the cell.
 - At 6.52am, Mr Z is compliant and appears calm. He is escorted, unaided and unrestrained, for fingerprinting.
 - At 7.31am, Mr Z is fully-clothed and released from custody.
139. There is nothing in the footage to suggest officers acted inappropriately towards Mr Z.

140. Police policy directs 17-year-old detainees be kept separate from other detainees. We note that Mr Z was placed into his own CCTV-monitored cell.
141. Police policy requires a health professional to be consulted for advice if the detainee has been injured or it is necessary. Officer A arranged for a Police doctor to examine Mr Z.
142. We have viewed the medical records and are satisfied that the injuries Mr Z sustained were very minor.
143. There were several instances where Mr Z could have received the bruises and grazes: from the initial family harm incident, throughout his arrest, in the Police car, and at the custody unit. We believe the injuries were most likely a direct consequence of Mr Z's own actions while physically resisting Police.
144. None of the officers' accounts suggest Mr Z was mistreated in any way. The accounts were consistent with Mr Z's behaviour, as seen on the CCTV footage.
145. We were unable to find evidence that Mr Z was compliant in his dealings with Police, up until being placed in the cell, or that Mr Z was assaulted or humiliated. In fact, his behaviour was quite the contrary; Mr Z was uncooperative, aggressive and violent to an extreme.
146. We believe the officers acted professionally and showed commendable restraint.
147. Police can generally only detain a youth in custody for 24 hours, unless jointly authorised by Oranga Tamariki and Police to hold them for longer. Police released Mr Z into the care of his family two hours after his arrival. He was bailed to appear in the Christchurch Youth Court. We note the charges laid against Mr Z were consistent with the accounts provided.

FINDING ON ISSUE 4

Police gave appropriate care to Mr Z at the custody suite.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

3 May 2022

IPCA: 20-5488

Appendix – Laws and Policies

LAW

Use of force

148. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests 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*”.
149. Section 48 of the Crimes Act states: “*Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use*”.
150. Under section 62 of the Crimes Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Searching

151. Section 11 of the Search and Surveillance Act 2008 empowers Police to search people after they are “*locked up*”. ‘Locked up’ means a person taken into lawful custody and placed behind a closed or locked door that prevents them from leaving. Examples are a cell or charge room at a Police station, or a vehicle used for Police purposes (other than for the immediate purposes of transport). After a person has been locked up, Police can search them if they were not searched before being locked up, and there are reasonable grounds to believe the person is in possession of anything that may be used to harm themselves or others.

POLICE POLICY

‘Use of force’ policy

152. The Police ‘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, restrain 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.
153. 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).

154. 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).
155. 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.
156. 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.

Distraction strikes training

157. Distraction techniques are described within Police training. They are techniques that allow joints to become more pliable without the need to escalate force to perform control and restraint techniques, allowing an officer to obtain an advantageous position.
158. Techniques may include a kick, knee or open palm. The open-handed palm technique offers a safer option to the officer because there is less risk of injuries associated with the closed hand punch.
159. Distraction techniques can be applied to the body in general. Palming has been taught as a slap to the head in the case of attempting to get a wrist lock on an actively resisting offender. In these cases, it is more of a slap than a strike.
160. The wording of distraction technique is not clearly defined, and also refers to pressure points and with pain compliance techniques. There is nothing in the current syllabus that directly refers to distraction techniques and punching to the head is not taught.

'Searching people' policy

161. The primary purpose of a search is not to look for or seize evidential material but to protect the detained person's property and remove items that might be used to harm themselves or others.
162. An officer conducting a search may require the person being searched to undress, or to remove, any items of clothing so that they are uncovered or covered only by underclothing ('strip

search'). The safety of the person to be searched and those conducting the search is of paramount importance. Strip searches must be justified by either necessity or risk assessment.

163. A risk assessment is required for everyone locked up in Police custody. It is used to identify risks such as suicidal tendencies, so that the care and safety of the person in custody can be appropriately managed.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

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

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

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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