

8. The release of this report was delayed until after the conclusion of the District Court proceedings.

THE AUTHORITY'S INVESTIGATION

9. We interviewed Officers A and B, a Police PITT trainer, Mr Z, and one of the bystanders.¹ We also viewed CCTV footage, completed a scene examination, and reviewed the Police investigation including various internal reports. Additionally, we reviewed how Mr Z was treated after the arrest when he was taken to the Police station. This involved analysing CCTV footage of Officer A's actions in the custody unit.

10. The Authority identified and considered the following issues:

ISSUE 1 Was Officer A justified in arresting Mr Z?

ISSUE 2 Were the uses of force during the arrest justified?

ISSUE 3 Did Police ensure timely medical assistance was provided to Mr Z following his arrest?

ISSUE 4 Was the use of force against Mr Z in the custody unit justified?

THE AUTHORITY'S FINDINGS

CCTV footage in Tauranga CBD

11. The interaction between Officers A and B and Mr Z on the street was captured on high-definition CCTV footage. This was important to the Authority's investigation because we relied on the footage to provide an independent factual basis for what took place.
12. The CCTV footage captured a five-minute encounter between Mr Z and Officers A and B in the Tauranga CBD. There is no audio accompanying the footage, so it is not possible to hear their conversation.
13. At the beginning of the footage, Mr Z walks across the road towards a bar. Officers A and B pull up in their patrol car. Officer A can be seen talking to Mr Z. Officer B gets out of the car first. He starts speaking with Mr Z by the passenger door and checking the false name Mr Z has given him on the Police database on his mobility device.² Officer A joins them and Mr Z hands him his passport.
14. Two members of the public sitting in the outdoor area of the bar show some initial interest in the interaction between the officers and Mr Z, but quickly turn away and resume their conversation.

¹ 'PITT' stands for Police Integrated Tactical Training, which is training Police staff receive in relation to the use of force and defensive tactics.

² A 'mobility device' is either an iPad or an iPhone that Police officers can use to access Police databases.

15. After a minute, Officer A walks to the driver's side of the patrol car. Records show that Officer A was first to check Mr Z's details in the Police database at 1.18am. Officer B joins Officer A, leaving Mr Z on the passenger side of the patrol car, facing the CCTV camera.
16. Mr Z appears to be cooperating with the officers in the initial two minutes and 15 seconds of the footage. There is no sign of aggression or agitation from either Mr Z or the officers up to this point.
17. There is then a noticeable change in Mr Z's demeanour as he says something to the officers across the bonnet of the patrol car. His body language and facial expression suggest he is frustrated.
18. Both officers walk around the front of the patrol car towards Mr Z. As Officer A approaches him, Mr Z opens his palms in a questioning gesture before folding his arms across his chest.
19. Mr Z leans against the passenger side of the bonnet of the patrol car with his back to the CCTV camera. His arms are folded but he does not show any sign of physical aggression. Officer A is standing very close to Mr Z and is animated as he speaks to him. Officer A appears to poke Mr Z in his left shoulder. He then attempts to turn Mr Z around, and motions for him to do so. Mr Z does not change his posture; his arms stay folded across his chest and his back to the patrol car. Officer B is also standing close to Mr Z and is looking at his cell phone.
20. Without warning, Officer A pushes Mr Z backwards by the throat onto the bonnet of the patrol car, causing Mr Z's head to hit the windscreen. Officer A holds Mr Z down by his chin for approximately nine seconds, while talking to him, then pulls him up from the bonnet.
21. There is no obvious communication or coordination between the officers, and for approximately six seconds they both have hold of Mr Z, before Officer A takes him in a bear hug from behind. Officer A's arms are wrapped around Mr Z's. Officer A pulls Mr Z back and Mr Z's head flicks backwards toward Officer A. We cannot determine whether this was because Mr Z was unsteady on his feet or he was intentionally struggling.
22. Officer A then pivots and throws Mr Z to the road surface. Mr Z lands on his right side and his head hits the ground with significant force, bouncing off the surface of the road as a result of the impact.
23. Officer A, who goes down with Mr Z, puts his right knee on the left side of Mr Z's head. He rubs Mr Z's face and pushes down with his fist on his head. During the 29 seconds Officer A is kneeling on Mr Z's head with his right knee, he readjusts his body weight and shifts his left foot and it comes slightly off the ground behind him on at least 10 occasions. On two occasions he lifts his left foot completely off the ground and shifts his full body weight onto his right knee which increases the pressure on Mr Z's head.
24. Mr Z is motionless on the ground while Officer B handcuffs him. Once Mr Z is handcuffed, Officer A stands up.

25. Mr Z does not move at all for approximately six seconds until Officer B pulls him up into a seated position. He is barely responsive and needs to be supported by Officer B, who leans Mr Z against his legs. Mr Z slumps to his left side with his head resting on the ground. Officer B pulls him back into a seated position. At this point, it has been one minute since Mr Z's head hit the ground.
26. Officer B prepares to lift Mr Z by holding him under his armpit and waits for 15 seconds or so until Officer A returns to help him stand Mr Z up. Officer A takes hold of the chain between the handcuffs around Mr Z's wrists and pulls Mr Z to his feet. His arms are visibly pulled to the rear.
27. As Officer B escorts Mr Z to the patrol car, Officer A pushes Mr Z from behind. Mr Z is not resisting.

ISSUE 1: WERE POLICE JUSTIFIED IN ARRESTING MR Z?

28. The manager of the bar that Mr Z had tried to enter prior to Officers A and B arriving told Police he had refused entry to Mr Z because he was intoxicated and said he was *"a bit of a clown and was being lippy"*.
29. Officers A and B said they were not going to arrest Mr Z for urinating in a public place and initially intended only to warn him for his actions.

CCTV footage

30. Officer B said Mr Z gave him a false surname which he tried to check on his mobility device. However, at about the same time, Mr Z gave Officer A his passport, so there was no doubt as to his actual identity.
31. While Officer A checked the Police database on his mobility device with Mr Z's correct name, Mr Z was calmly standing nearby.
32. After about two minutes and 15 seconds, Mr Z says something to the officers which prompts them to go around to the passenger side of the patrol car and engage with him directly. It was from this point that Officer A said Mr Z's behaviour became disorderly. There is approximately 20 seconds between Mr Z saying something across the bonnet of the patrol car and Officer A first attempting to turn him around to handcuff him. During that time, Mr Z initially appears frustrated then turns and leans back against the patrol car with his arms crossed and his back to the CCTV camera. His stance does not appear aggressive. Officer A is speaking to Mr Z. He appears agitated and is standing directly in front of Mr Z. Officer A appears to poke Mr Z in the chest quite forcefully.

Mr Z

33. Mr Z chose not to talk to Police initially. He told the Authority in December 2019 that, given the time that had passed since the incident, he could not remember explicit details. Although he could not recall exactly what happened when he was first approached by Officers A and B, he thought he was *"tackled"* to the ground and dragged out into an open area.

34. Mr Z could not recall the conversation with the officers but denied yelling and swearing. He said he was “*absolutely not*” aggressive towards them in a physical way.
35. Mr Z thought he had been arrested for urinating on a roller door. He was released from custody after being given a pre-charge warning for disorderly behaviour.

Officer A’s version of events

36. In an email report about the incident which subsequently formed part of his Police statement, Officer A described Mr Z as intoxicated. At the time he arrested Mr Z, he described Mr Z’s behaviour as “*becoming more and more agitated*” and that he was telling them to ‘get fucked’.
37. When Officer A was interviewed by the Authority, he was shown the CCTV footage. Officer A did not recall specifically what Mr Z said that caused him to walk around to the passenger side of the patrol car and talk to him. He told us, to the best of his knowledge, this was when Mr Z was swearing and being aggressive.
38. When interviewed by the Authority’s Investigator, Officer A struggled to identify the elements required for him to be able to arrest Mr Z for disorderly behaviour. He said “[Mr Z] was yelling profanities and he was behaving in an aggressive manner and I deem that to be disorderly behaviour”.
39. Officer A told the Authority that he and Officer B were the only ones who witnessed Mr Z “*behaving disorderly*”. He also said that he wanted to be “*up close*” to Mr Z to reduce risk as that enabled him to react more quickly.
40. During the Police criminal investigation, Officer A was asked what changed for him to go from intending to reprimand Z for urinating in public to arresting him for disorderly behaviour. He said:

“It was really, it was a time, place and circumstance. It was the fact that we were in the CBD, that there were bars still open, that he’d become agitated to a degree that I considered to be disorderly. He’d become aggressive. There were other patrons drinking in other bars. He was, as I mentioned before he was between moderate and extreme in his level of intoxication. Yeah so sort of all those factors.”

41. Officer A said that Mr Z “*had an angry focused stare*” and a “*tremor*”. He indicated that Mr Z was standing in a reasonably normal stance, and this would not have been picked up on the CCTV footage.
42. Officer A accepted that he was unsure of the elements of a disorderly behaviour charge.

Officer B’s version of events

43. In his Police statement, Officer B said when Officer A wound down his window and told Mr Z to use the toilet down the road, Mr Z told him to “*fuck off*”. Officer B got out of the patrol car to speak with Mr Z, who gave him a false name. Mr Z then gave Officer A his passport. Officer B

described Mr Z as “*abusive and aggressive to me*”. Officer B said Mr Z was not able to stand up straight and was stumbling around. He said when Officer A went to arrest Mr Z he “*fronted up*” to Officer A. Officer B described this:

“By fronting up to [Officer A], he sort of was semi-relaxed and then he changed where he pushed his shoulders back and clenched his fists like he was challenging [Officer A].”

44. When Officer B was interviewed by the Authority, he was shown the CCTV footage of the incident up to the point where Officer A was about to use force on Mr Z. He did not think Mr Z was being disorderly and subsequently struggled to identify the elements of a disorderly behaviour charge. He said he did not see any members of the public concerned about Mr Z’s behaviour leading up to Mr Z being pushed back on the bonnet of the patrol car.
45. During the Police criminal investigation, Officer B described Mr Z’s behaviour before being arrested as abusive and arrogant but not aggressive.

Was Mr Z’s behaviour disorderly?

46. Section 3 of the Summary Offences Act 1981 makes it an offence for any person in or within view of any public place to behave, incite or encourage any person to behave, “*in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue*”.³
47. It is accepted by the Courts that “. . . [*disorderly behaviour*] must cause a disturbance of good order which in the particular circumstances of time and place any members of the public could not reasonably be expected to endure because of its intensity or its duration or a combination of both”.⁴
48. We consider the following points to be relevant in considering whether Mr Z was behaving in a disorderly manner:
 - Before the conversation across the patrol car bonnet, Officers A and B agree Mr Z was not disorderly. Afterwards, the CCTV footage records Mr Z leaning against the patrol car with his back to the CCTV camera and his arms folded, while Officer A is reprimanding him. Mr Z does not appear to present a physical threat.
 - Two members of the public, one of whom was Mr Z’s associate, showed some interest when Police first started speaking to Mr Z. However, from the CCTV footage, we cannot see any members of the public expressing alarm, interest or even paying attention to what was happening immediately before Mr Z was arrested. If Mr Z had been “*yelling profanities*,” as Officer A has subsequently alleged, we would expect it would have drawn the attention of the people visible in the footage who were just across the road.
 - Officer B did not refer to Mr Z shouting in the notes he made at the time, in his Police statement or in his interview with the Authority. He told us that while Officer A was talking

³ See paragraph 119.

⁴ *Brooker v Police* [2007] NZSC 30.

to Mr Z just prior to his arrest, he could not see anything disorderly about the situation. He said that it was Officer A's decision to arrest Mr Z and he could not tell what Officer A perceived.

- When we put the proposition to Officer B that it appeared Officer A was the aggressor as opposed to Mr Z, Officer B after a long pause replied, "*no comment*".
49. There are irreconcilable differences between Officer B's statement and the CCTV footage. Mr Z did not "*front up*" to Officer A, nor did he push his shoulders back, appear to clench his fists, or appear to have trouble standing or walking. Nothing else in Officer B's statement to Police provides any evidence that Mr Z was disorderly.
50. While Officer B was evasive when subsequently interviewed by the Authority, when pressed he did accept that his Police statement was inconsistent with the CCTV footage. We therefore accept that there is insufficient evidence for the Authority to be satisfied that Officer B has lied to protect his colleague; it is just as likely that he may simply have been mistaken in his recall of events.
51. Officer A's account was challenged in interview with us. He was clearly uncomfortable answering detailed questions about his actions which are seen in the footage of the incident. Officer A did not provide any plausible justification for the arrest of Mr Z.
52. Although we accept that Mr Z was intoxicated, Officer A had been a frontline Police officer for 11 years and his assertion that he has only met a couple of people behaving like Mr Z, that he was "*internally very agitated*", aggressive, and unpredictable is not believable. We find this comment and his assertion that Mr Z was repeatedly "*yelling profanities*" to be untrue and fabricated by him in order to justify his unlawful actions.

FINDING ON ISSUE 1

Officer A was not justified in arresting Mr Z as his behaviour was not disorderly.

ISSUE 2: WERE THE USES OF FORCE DURING THE ARREST JUSTIFIED AND/OR REASONABLE?

53. In an online complaint to Police on the day of the incident, Mr Z said that Police "*smashed my face into the road and scraped it across the road. Didn't oppose arrest no need for added force and caused damage to face and concussion*". He attached a photograph to his complaint showing some grazing to his head.

Uses of force

54. The CCTV footage clearly shows the force used during Mr Z's arrest. Officer A can be seen using multiple different types of force against Mr Z. Officer A:
- pokes Mr Z in the chest,
 - pushes him back by the throat onto the bonnet of the patrol car,

- throws him to the ground,
- kneels on his head,
- pulls him to his feet by using the handcuffs, and
- shoves him towards the patrol car.

Officer A's version of events

55. Officer A told us he assessed Mr Z as having the potential to become assaultive.⁵ He said he believed Mr Z was assaultive and resisting arrest and this justified his use of force. He based his assessment on what Mr Z was saying and his demeanour. He said that Mr Z had been told he was under arrest and was not complying with directions. He did not believe that Mr Z was passively resisting, rather than being assaultive.
56. When interviewed by Police, Officer A said that he had not had an opportunity to find out about Mr Z's background, such as his previous dealings with Police, whether he had alerts for carrying weapons, had mental health issues, or if he was a known drug user. As outlined at paragraph 15, records show that Officer A checked Mr Z on the Police database at 1.18am and it is likely that he would have checked Mr Z's 'person summary' in the first instance as this is common practice.⁶
57. Officer A told the Authority he was not sure where he had learned the specific takedown technique he used to throw Mr Z to the ground. He believed the technique he used was necessary as they were able to control Mr Z better on the ground than when he was upright against the patrol car.
58. Officer A told us he was not aware Mr Z's head had hit the ground and did not recall what steps he took to minimise potential injury to Mr Z. He accepted it did not occur to him to try and apply a wrist lock, or to discuss tactics with Officer B. He acknowledged that if someone's head hits the ground it can cause injury.
59. Officer A said Mr Z resisted being handcuffed while he was on the ground, and a "short struggle ensued" before they were able to handcuff him, as he did not bring his hands out from underneath him.
60. Officer A said that, based on Mr Z's previous actions, he needed to be restrained while being handcuffed. He did not recall what prompted him to kneel on Mr Z's head and he denied putting deliberate downwards pressure onto Mr Z's head. He said his weight was on Mr Z's left shoulder, which is obscured from the footage. Regarding the other uses of force:

⁵ Police policy defines 'assaultive' as "showing an intent to cause harm, expressed verbally or through body language or physical action".

⁶ Among other things, a 'person summary' contains a person's contact details and date of birth as well as information about alerts relevant to that person.

- Officer A denied poking Mr Z in the chest.
- Officer A accepted that he pulled Mr Z to his feet by his handcuffs and agreed that this was not an approved method.
- He did not recall any indifference or anger towards Mr Z when he pushed him towards the car. The only possible reasoning he could provide was that he wanted to move the process along to get Mr Z away from his associates and into the car.

61. When interviewed by Police, Officer A stated that his recollection was that Mr Z was “*certainly not semi-conscious*” while on the ground and was communicating very clearly. He thought Mr Z was 100% conscious throughout the entire incident and was deliberately holding his arms underneath his body to prevent being handcuffed.

Officer B’s version of events

62. In his Police statement, Officer B said that when Officer A went to arrest Mr Z, Mr Z “*fronted up*” to Officer A as outlined in paragraph 43 above.

63. Officer B then saw Officer A push Mr Z onto the bonnet of the patrol car and then push him to the ground. He remembered Officer A “*had his hand on [Mr Z’s] back or head to stop him from thrashing around*”. He did not see Mr Z land on the ground and did not recall hearing anything when he hit the ground.

64. In relation to the force use by Officer A, Officer B said:

“I would describe the manner of arrest and the force used was not excessive and appropriate for the circumstances. I am aware that one of the tactics used by [Officer A] is to get the person on the ground to control them and they can’t thrash around as much. It has always been effective. This is [sic] occasions where persons are resistive.”

65. Officer B told the Authority he could not comment on Officer A’s justification for pushing Mr Z back onto the bonnet of the patrol car, as it was based on Officer A’s assessment and not his own. He said it could have been justified by Mr Z’s demeanour and what he was saying to Officer A. He confirmed he did not think Mr Z was a physical threat.

66. Officer B told the Authority that, based on his assessment of the level of risk Mr Z presented, the highest level he saw was active resistance, as Mr Z refused to release his arms from in front of him after being told he was under arrest.⁷

67. During the Police criminal investigation, Officer B said that his assessment of Mr Z before he was arrested was “*he was just being difficult, difficult and abusive*” and confirmed what he told us that Mr Z was “*just active resistive*”. He did not feel threatened or intimidated by Mr Z.

⁷ Police officers use an assessment tool – see paragraph 122 for more details. There are five categories of behaviour – cooperative, passive resistance, active resistance, assaultive, grievous bodily harm (GBH) or death.

68. He thought Mr Z had ‘fronted up’ to Officer A by clenching his fists and pushing his shoulders back but acknowledged that the CCTV footage appeared to show Mr Z with his arms folded at the time. Officer B said he tried to assist with Mr Z being taken to the ground so that he did not hit the ground hard. He acknowledged that the footage did not show Officer A with his hand on Mr Z’s back or head after he was taken to the ground, as he had thought, but showed Officer A’s knee on the back of Mr Z’s head or neck. He accepted that the CCTV footage did not show Mr Z resisting after he had been taken to the ground.

Was the force used necessary?

69. Under section 39 of the Crimes Act 1961, Police are justified in using necessary force to overcome any force used in resisting arrest.
70. Section 62 of the Crimes Act 1961 states that anyone who is authorised by law to use force is criminally responsible for any excessive use of force.
71. Police policy states that the use of any force must be considered, timely, proportionate, and appropriate given the circumstances known at the time.
72. It must first be noted that, as the arrest was unlawful, Mr Z was entitled to use reasonable force to resist. Any force used by Officer A to overcome Mr Z’s resistance was, accordingly, unlawful.
73. However, even if the arrest had been lawful, there are serious concerns about the level of force used by Officer A. He said he assessed Mr Z as assaultive when he arrested him. Police policy defines someone who is assaultive as showing an intent to cause harm, expressed verbally or through body language or physical action. The CCTV footage does not show Mr Z’s facial expressions. However, his body language and posture, including the fact his arms were crossed across his chest, do not indicate he was assaultive. The footage does not show Mr Z shouting as alleged by Officer A, and Officer B did not support these claims.
74. We accept it is likely that Mr Z presented as verbally belligerent and self-entitled as described by Officer B. However, he did not pose a physical threat.
75. In his Police statement, Officer A said:
- “I have only met a couple of people who were behaving like that. I could see that he was shaking with internal rage ... It was almost that he was beyond communicating. The potential was definitely there for him to become assaultive or throw a fist. I really believe that he would not have realised what he was doing if he did become assaultive.”*
76. Instead, the evidence shows that Officer A was the physical aggressor. He was animated while he was speaking to Mr Z, and was the one who stepped forward and poked him in the chest. He appeared angry at Mr Z, although he denied this. We therefore do not accept Mr Z was assaultive, nor do we believe Officer A when he said that he reached that conclusion. His assertion as to his perception is simply too far removed from the evidence on the CCTV footage to be credible. We are satisfied that the evidence he provided to us was deliberately falsified.

77. Police policy states that communication is the preferred tactical option. Officer A was obliged to de-escalate the situation and consider the range of tactical options that were available to him on an ongoing basis throughout the interaction with Mr Z. He made no effort to do so. Officer A acknowledged that he could have stepped back, as he is trained to do. If he had done so, it is likely any perceived threat, if it had existed, would have been removed. The reality is that Officer A appears to have deliberately provoked the situation.
78. Both officers admit there was no communication between them and no plan on how to safely deal with the situation.
79. Officer A had 11 years of policing experience at the time. He told the Authority he was approximately 188 centimetres and 100 kilograms at the time. He believed Mr Z was between 75-80 kilograms and around 183 centimetres. Officer A was equipped with a range of tactical options and his colleague was standing next to him. During the six distinct uses of force that were applied during the arrest process, Officer A was obliged to reassess and consider whether the force was necessary to safely resolve the situation. Officer A had every opportunity to resolve this situation in a less violent way but failed to do so. Therefore, even if the arrest had been justified, every component of the force that Officer A used throughout the process was excessive and unjustified, sometimes egregiously so.
80. While Officer A may argue that Mr Z's head hitting the ground during the takedown was not intentional, he should not have taken Mr Z to the ground in the first place. The reckless and violent nature of the takedown exposed Mr Z to the risk of serious injury.
81. Equally, Officer A's subsequent action in kneeling on Mr Z's head for 29 seconds was unjustified, excessive, and exposed Mr Z to the risk of serious harm. Officer A referred to a "*struggle*" on the ground in his Police statement and Officer B said Mr Z was "*thrashing about*". These statements are not consistent with the CCTV footage which shows Mr Z was not moving or offering any resistance. He looks like he was unconscious. We reject both versions of events and again find that Officer A's version of events has simply been fabricated in an attempt to justify his actions. Officer B's Police statement also lacks credibility, although as we acknowledge at paragraph 50 above, this may be the result of a mistaken recollection.
82. On at least two occasions while he had his knee on Mr Z's head, the CCTV footage shows Officer A deliberately forcing down with all his weight onto Mr Z's head while Mr Z was vulnerable and unable to protect himself. This was deliberate, dangerous, unnecessary, and constituted a serious assault.
83. Police policy requires a Tactical Options Report (report)⁸ to be completed before the end of the shift in which the force was used but no later than three days after the event with a supervisor's approval. Officer A failed to submit a report despite his obligation to do so. This denied his supervisors the opportunity to assess his actions.

⁸ A Tactical Options Report must be completed when empty hand techniques are used (excluding touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground).

FINDINGS ON ISSUE 2

Officer A's actions in poking Mr Z in the chest, pushing him onto the bonnet of the patrol car by his throat, pulling him to his feet by the handcuffs, and shoving him in the back were all unnecessary and therefore unjustified uses of force. They were excessive and unlawful.

In throwing Mr Z to the ground and deliberately kneeling on his head, sometimes with his full weight, Officer A's actions posed a significant risk of serious harm to Mr Z. He assaulted Mr Z with intent to injure him.

Officer A was deliberately dishonest in his accounts to the Authority and Police about Mr Z's behaviour after being taken to the ground. Officer B's version of events lacked credibility.

Officer A should have submitted a report about his uses of force in accordance with policy.

ISSUE 3: DID POLICE ENSURE APPROPRIATE MEDICAL ASSISTANCE WAS GIVEN TO MR Z AFTER HIS ARREST?

84. Mr Z said he received a concussion, although he did not provide any medical evidence to support this claim.
85. The first two minutes and 15 seconds of the CCTV footage shows Mr Z was steady on his feet, engaged and compliant. After Mr Z's head hits the ground, he appears to be unconscious in that he is unresponsive and not moving. Approximately 29 seconds passes before Officer A stands up after kneeling on Mr Z's head. A further 50 seconds passes before Officer A returns and pulls Mr Z to his feet by the chain between the handcuffs. During this time, Mr Z is barely responsive and Officer B has to prop him up.
86. While both officers told us they did not realise Mr Z's head had hit the ground, the noticeable change in Mr Z's physical state after he was taken to the ground should have alerted them to the likelihood he had suffered injury.
87. Officer C, the custody supervisor at Tauranga Police Station, processed Mr Z after he was arrested. He said Mr Z swore at him when he approached the counter. When he asked Mr Z whether he was under the influence of any alcohol, drugs, and/or solvents, he said Mr Z replied "heroin". When Officer C asked how much heroin, Mr Z replied "all of it". As Mr Z would not answer any questions around his health and wellbeing, Officer C assessed him as requiring frequent monitoring.⁹
88. Police records show that Mr Z was placed in a cell at 2.15am. He was checked 14 times between then and 5.45am. Although this number of checks does not strictly adhere to frequent monitoring requirements, we are satisfied that it substantially does so.

⁹ A detainee assessed as 'in need of care and frequent monitoring' must be checked at least five times every hour at irregular intervals.

89. Officer C was not aware that Mr Z may have suffered a head injury because Officers A and B did not tell him. Both officers should have ensured that Officer C was aware of the potential head injury and ensured medical treatment was sought.

FINDINGS ON ISSUE 3

Officers A and B failed in their duty of care to ensure appropriate and timely medical attention was provided to Mr Z. This failure exposed Mr Z to unjustified risk from a potential head injury.

Officer C acted appropriately by placing Mr Z on frequent monitoring and Mr Z was appropriately monitored for the duration of his time in custody.

ISSUE 4: WAS THE USE OF FORCE AGAINST MR Z IN THE CUSTODY UNIT JUSTIFIED?

CCTV footage

90. CCTV footage shows the patrol car drive into the sally port at Tauranga Police Station at approximately 1.24am.¹⁰
91. Officer B opens the rear door on the passenger side of the patrol car and appears to be speaking to Mr Z. After about a minute, Officer B leans into the car to pull Mr Z out. He is unsuccessful and moves to the other side of the car. At the same time, Officer A successfully pulls Mr Z from the rear passenger side by his clothing near his shoulder. Mr Z does not appear to be putting up much resistance.
92. Mr Z is handcuffed behind his back and is facing the wall of the sally port while Officer B searches him. Officer A comes back into full view approximately 20 seconds later. He places his hand on Mr Z's shoulder and pushes him up against the wall. Both he and Mr Z move along the wall about a metre before Officer B returns and Mr Z is pulled back to his original position against the wall. Mr Z is still facing the wall and handcuffed.
93. The search lasts approximately 75 seconds before Officer B goes to the watchhouse, leaving Mr Z and Officer A alone. Mr Z is still standing facing the wall in handcuffs and Officer A has his hand on Mr Z's shoulder. After approximately 10 seconds, Officer A forces Mr Z against the wall and throws him onto the floor.
94. As the patrol car is blocking the view, the CCTV footage does not show how Mr Z lands or what happens while he and Officer A are on the ground behind the patrol car. Officer B and another officer arrive at this point and shortly afterwards Mr Z is escorted into the watchhouse.
95. The CCTV footage from the sally port was provided to the Authority after our interviews with the officers were conducted. Therefore, their versions of events in respect of what occurred in the sally port were obtained by Police during the criminal investigation.

¹⁰ A 'sally port' is a secure controlled entryway where officers bring detainees to be searched and received into Police custody.

Officer A's version of events

96. Officer A told Police that, on arrival at the station, he told Mr Z to get out of the patrol car, which he did. He accepts that Mr Z did not try to assault him at any point at the station and was handcuffed behind his back. However, he described Mr Z as *"quite belligerent and agitated, obviously still intoxicated"*. He says Mr Z did not want to be searched and would not stand still. Mr Z was *"sort of pulling away"* back towards the patrol car as they were trying to move him. Officer A says there is obviously a risk in searching someone who is actively resisting. If they are still wearing footwear, as Mr Z was at this point, they are able to knee and kick Police staff. He assessed Mr Z as still capable of being assaultive, despite being handcuffed.
97. Officer A initially thought that Officer B helped him take Mr Z to the ground *"to be able to search him safely and take his shoes off and search his pockets ..."*. It is clear from the footage this is not the case. After viewing the CCTV footage, Officer A accepted that his recollection was not correct. He says he did not realise that they had started the search process before he deemed it necessary to take Mr Z to the ground.

Officer B's version of events

98. Officer B recalls Mr Z swearing at him and refusing to get out of the patrol car. He tried to grab Mr Z by his arm and clothing but Mr Z placed his feet on the ground and braced himself so Officer B could not physically pull him out. Officer B recalls there being one or two officers behind him. He says he went to the other side of the patrol car to try and push Mr Z out but once he had got around to the other side, Mr Z was already out of the car. He believes he then went back around and saw Mr Z on the ground with Officer A and another officer.
99. Officer B says Mr Z was on his side and he could not recall Officer A's exact position. He believes Officer A was not standing but was *"just over the top of him"*. He was unsure where Officer A's hands were.
100. Officer B then recalled Mr Z standing, although he could not recall how, and that a search was completed at this point. He could not recall what was said during the search but that Mr Z was saying derogatory things about him and his wife. He says Mr Z was trying to push off the wall and was being difficult while they were trying to search him. This is inconsistent with the CCTV footage, which shows Mr Z being searched prior to being taken to the ground.
101. Officer B could not recall seeing any marks on Mr Z. He recalls his face being quite red but put that down to him being intoxicated and having struggled with them. He did not consider that Mr Z had suffered a head injury.

Was the use of force in the sally port justified?

102. Section 11 of the Search and Surveillance Act 2012 allows an officer to search a person who is about to be locked in a cell.
103. Mr Z does not recall what happened in the sally port. We cannot be sure whether this was due to his level of intoxication or the head injury he sustained during his arrest.

104. Prior to being taken to the ground, Mr Z had been searched by Officer B who had taken items from him and took these items to the watchhouse. This search was completed without incident, although it is likely Mr Z was being verbally abusive and difficult.
105. Officer A says the justification for taking Mr Z to the ground was that he would not stand still to be searched and needed to be taken to the ground to be searched safely. It is accepted that at no time did Mr Z try to assault Officer A. While Officer A considered the possibility that he may be assaulted, and he had seen other officers be assaulted while searching people in custody, neither his statement to Police nor the CCTV footage indicate that he was acting in self-defence.
106. By Officer A's own admission, Mr Z was not violent and did not threaten anyone. We also note that Mr Z was in a secure location, was handcuffed, and other officers were nearby and could have assisted if necessary.
107. Officer A has since asserted that Mr Z had not been fully searched when he took Mr Z to the ground. Officer A states he was acting under section 39 of the Crimes Act 1961 when he used force to take Mr Z to the ground to complete the search. Under this section, an officer can only use "*such force as may be necessary*" to overcome any force used in resisting the process. Mr Z may have been verbally abusive and difficult, but he did not use any force to resist the search. Officer A did not need to use any force at all. We do not believe Officer A when he says he believed Mr Z was using force to resist being searched. The CCTV footage and Officer B's account do not support this.
108. Officer A's actions in throwing Mr Z to the ground with force, when he was handcuffed and could not break his fall, exposed Mr Z to a risk of serious harm. Officer A's use of force was unnecessary and unjustified.
109. We are satisfied that Officer A assaulted Mr Z in the sally port and this assault was an extension of the disdain that Officer A clearly developed for Mr Z throughout the incident.

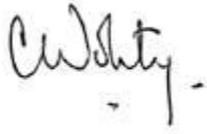
FINDING ON ISSUE 4

The use of force against Mr Z in the sally port was an assault, being unnecessary and unjustified. Officer A's actions again posed a significant risk of serious harm to Mr Z.

Conclusions

110. Officer A was not justified in arresting Mr Z, therefore all subsequent uses of force were unlawful.
111. In throwing Mr Z to the ground and deliberately kneeling on his head, sometimes with his full weight, Officer A's actions posed a significant risk of serious harm to Mr Z. He assaulted Mr Z with intent to injure him.
112. Officer A's actions in poking Mr Z in the chest, pushing him onto the bonnet of the patrol car by his throat, pulling him to his feet by the handcuffs, and shoving him in the back were all unnecessary and therefore unjustified uses of force. They were excessive and unlawful. The cumulative effect of all the uses of force showed that Officer A had no regard for Mr Z's wellbeing.
113. Officer A was deliberately dishonest in his accounts to the Authority and Police about Mr Z's behaviour after being taken to the ground. Officer B's version of events lacked credibility.
114. The use of force against Mr Z in the sally port was an assault, being unnecessary and unjustified. Officer A's actions again posed a significant risk of serious harm to Mr Z.
115. The Authority also concluded:
 - 1) A Tactical Options Report should have been submitted by Officer A.
 - 2) Officers A and B failed in their duty of care to ensure appropriate and timely medical attention was provided to Mr Z. This failure exposed Mr Z to unjustified risk from a potential head injury.
 - 3) Officer C acted appropriately by placing Mr Z on frequent monitoring and Mr Z was appropriately monitored for the duration of his time in custody.

116. The Authority is simultaneously releasing a second report regarding another use of force by Officer A in the Bay of Plenty District. That report also concludes the force used was excessive and unnecessary.

A handwritten signature in black ink, appearing to read 'C. Doherty', with a horizontal line underneath.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

5 May 2022

IPCA: 18-0591

Appendix – Laws and Policies

LAW

Crimes Act 1961

117. Section 39 of the Act 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”*.
118. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Summary Offences Act 1981

119. Section 3 of the Act makes it a summary offence, liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000, for any person in or within view of any public place to behave, incite or encourage any person to behave, *“in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue”*.
120. Section 32 of the Act provides that every person who urinates or defecates in any public place other than a public toilet is liable to a fine not exceeding \$200.

Search and Surveillance Act 2012

121. Section 11 of the Act confers a warrantless power to search a person who is in lawful custody and at a Police station (or in other premises or is in, or about to be placed in, a vehicle, being used for Police purposes) and is, or is to be, locked up.

POLICY

Use of force

122. 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.
123. 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.

124. 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 officers Perceived Cumulative Assessment (PCA).
125. A key part of an officers 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 activity); 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.
126. 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.

Tactical communications

127. The Police 'Use of force' policy states that tactical communication is the preferred option for resolving incidents where Police action is necessary in response to uncooperative subjects. Tactical communication may enable incidents to be de-escalated and resolved without the use of force. Where possible, tactical communication should be used throughout an incident, alone or with other tactical options.
128. Police provide a five-step communications process for officers which includes passing on information, making requests, commanding responses, and ordering lawful directives.

Empty hand techniques

129. 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.

130. 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.

Tactical Options Reporting forms

131. A Tactical Options Reporting form must be completed when empty hand techniques are used (excluding touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground).
132. An officer must submit the Tactical Options Reporting form (TOR) to their supervisor before the end of the shift in which they used force, or with their supervisor's approval, within 3 days/72 hours of this shift and prior to any rostered days off or leave during this period.

People in Police Detention

133. The 'People in Police Detention' policy provides that all Police employees are responsible for the care, safety and security of everyone detained including at scenes, during transport, within Police stations and cells at courts. This starts from the moment a person is arrested or detained and does not end until they are released or transferred into the care of another agency, individual or family member.

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.

It is not part of the Police – the law requires it 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. It does not answer to the Police, the Government or anyone else over those findings. In this way, its 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 complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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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