

Police justified in use of dog to prevent man attempting to escape

Summary of the Incident

1. On 27 May 2021, Police in Northland attempted to stop a car that had been driving significantly above the speed limit. The driver, Mr X, abandoned the car and ran away.
2. Police dog handler Officer A tracked Mr X and found him a short distance away. However, Mr X ran off when he was called to give himself up, and Officer A deployed the Police dog.
3. The Police dog bit Mr X on his leg, causing serious injuries, and he required hospital treatment for his wounds.

Finding

The use of the Police dog by Officer A in the arrest of Mr X was justified.

Analysis

ISSUE: WAS OFFICER A JUSTIFIED IN USING HIS POLICE DOG IN THE ARREST OF MR X?

4. Section 40 of the Crimes Act 1961 states that Police may use *“such force as may be necessary”* to prevent escape if the offender takes flight in order to avoid arrest, or after their arrest, unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner.
5. The Police threat assessment methodology referred to as ‘TENR’ (Threat, Exposure, Necessity, Response) is a decision-making process used by officers when deciding whether to use force. The TENR process states that the use of any such force must be considered, timely, proportionate, and appropriate given the circumstances known at the time. The Police policy on the use of force states that excessive force is never justified, and an officer may be criminally liable for using it.

6. The Police policy on the use of force and Police dogs states that, before a dog is deployed to bite a person, the offender must be warned or challenged to surrender. Once challenged, the person must be given reasonable time to comply. A dog handler must have immediate physical or voice control of the dog at all times during a deployment. They must stop their dog as soon as possible after the dog has apprehended a suspect or bitten anyone and ensure the extent of force used by the dog is kept to the minimum possible. Any force used must be necessary, reasonable, and proportionate.

Circumstances leading to the arrest of Mr X

Officer B's account

7. At about 9.50pm on 27 May 2021, Officer B (patrolling in a marked Police car) saw a car speeding at 100kph in a 50kph zone. A similar car had been reported earlier for speeding and had evaded Police.
8. Officer B reported the speeding car over his radio, activated his lights and sirens, followed the car and attempted to stop it. The car accelerated to 150kph before stopping in the middle of the road. The car then reversed at speed towards the Police car, and Officer B had to take action to avoid his car being struck.
9. The pursued car was then driven forward a short distance before stopping and turning up a driveway, where the car 'bottomed out' and became stuck. The driver abandoned the car and ran into bush adjacent to the road.
10. As the driver left the car, Officer B recognised him as Mr X, a man well-known to Police in the area.
11. A Police dog unit was called and Officer A attended with his Police dog. Officer B informed Officer A that it was Mr X who had been driving the car and had run off.

Officer A's account

12. On his arrival, and after speaking with Officer B, Officer A used his phone to check Mr X's details on the Police database (NIA). This showed Mr X was currently disqualified from driving and wanted by Police for theft of a motor vehicle, driving while disqualified, driving in a dangerous manner, and failing to stop when required.
13. There were alerts on Mr X's Police file for carrying firearms and knives. He was a patched member of the Tribesmen gang and had been the predominant aggressor in three recent family harm reports.
14. Officer A elected to arm himself with a Glock and, together with his Police dog, started to track from the car abandoned by Mr X.
15. Soon after starting to track, Officer A located Mr X next to a large tree about 30 metres from the abandoned car. Officer A shouted at Mr X: "*Police dog handler! Stay there or I'll release the dog!*"

16. Given his NIA alerts (see above, paragraph 12), Officer A concluded that Mr X was a danger to Police officers and members of the public if they were encountered.
17. Officer A also calculated that, as Mr X was wanted for arrest and there was a high likelihood he would be sent to prison if arrested, this would make Mr X more determined to escape. He had already shown this by his actions in driving at significant speed and attempting to ram the Police car pursuing him.
18. Officer A said, despite being ordered to give himself up, Mr X started to run away. Officer A released his Police dog, as he was not able to use any other means to stop Mr X escaping.
19. The Police dog bit Mr X on his leg, causing him to fall. Officer A said that Mr X started to grab at the dog's face, and Officer A shouted at Mr X to let go of the dog and show his hands. At this point, two other Police officers arrived, and were able to restrain Mr X. Officer A released the dog's grip on Mr X's leg.
20. Mr X was taken to hospital for treatment to his wounds.

Mr X's account

21. Mr X accepts he was attempting to get away from Police when he drove off at speed, as he was aware that there was a warrant for his arrest. However, he said he had not reversed intending to cause harm to the pursuing officer and that he was just looking for somewhere to stop.
22. After the car had 'bottomed out,' Mr X said he went to a tree and sat down to sleep as he was tired and had been drinking. He woke to find a Police dog biting his leg, and two officers on top of him.

Whose account do we believe?

23. On balance, we do not accept Mr X's account that he was looking to park his car and inadvertently reversed towards the Police car that had been following him. His account is contradicted by the audio of Officer B's report, saying that the car was reversing towards him at speed, and that (after reversing at speed) Mr X then drove forward a short distance before stopping.
24. Mr X left the car after it had been immobilised by 'bottoming out' on a rural driveway; he was clearly attempting to escape Police, knowing (by his own admission) that he was wanted for arrest. Mr X had driven at speed, failed to stop, reversed at a Police car, and run from his stranded car, knowing that he was likely to be pursued by Police and arrest meant he would be sent to prison. In that context, we do not accept that it is plausible that Mr X chose at this point to go to sleep under a tree.
25. On balance, we accept that the accounts from Officers A and B, supported by the audio recording of the early stages of the incident, are accurate.

Use of force

26. In assessing what force is necessary to prevent escape, the reasonability and proportionality of the force needs to be assessed.
27. The proportionality of the force should be assessed against three factors:
 - 27.1 the seriousness of the offence which the person was reasonably suspected to have committed;
 - 27.2 the likelihood that the absence of immediate apprehension would have impeded or prevented the person from being brought to justice (e.g., because evidence would have been lost or there were no other avenues available to effect apprehension); and
 - 27.3 the likelihood and degree of risk the person posed if escape was not prevented.

The seriousness of Mr X's offences

28. Mr X was wanted by Police for theft of a motor vehicle; driving while disqualified; driving in a dangerous manner; and failing to stop when required.
29. Mr X had driven at 150kph and, by reversing his car towards the pursuing Police officer, Mr X had also used force against a Police officer in an attempt to escape.
30. Mr X's offending was therefore at least moderately serious and there was significant public interest in bringing him to justice.

The need for immediate apprehension

31. Mr X had been evading arrest and had committed further offences that required his arrest.
32. Once located by Officer B, Mr X had driven away at speed and used his car as a weapon by attempting to ram Officer B's Police car. In his subsequent Tactical Options Report written after the incident, Officer A stated:

"There had been a number of pursuits and incidents in the Mid North recently involving firearms and high levels of violence. My first thought was that this incident was potentially going to involve one of the offenders who are on the run in the Mid North and using firearms.

The offender [Mr X] had actively tried to ram [Officer B]. This showed how seriously he wanted to escape, even if it meant putting Police staff in harms way. It showed a high level of recklessness and a brazen determination to avoid apprehension."

33. By his actions, Mr X showed a determination to escape from Police. Accordingly, we accept that there was a need for Mr X's immediate apprehension due to the risks he posed if he managed to escape.

The likelihood and degree of risk Mr X posed

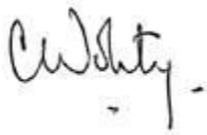
34. Officer A's belief as to the circumstances are described above (paragraphs 16 and 17).
35. Mr X was aware he was being pursued by Police and was attempting to escape from Police. Alerts were on his Police record for carrying firearms and knives, and he was known to be a patched gang member.
36. Given Mr X's history and his apparent determination to evade capture, there was a significant risk that he may cause serious injury to other Police or members of the public if he escaped.

Proportionality

37. In light of this assessment, we accept that it was not appropriate for Officer A to allow Mr X to escape. There was clearly a need for immediate apprehension.
38. We also accept that, given Officer A's distance from Mr X, OC spray, Taser and other "less violent" tactical options were not open to him.
39. Officer A was therefore justified in using his Police dog to detain Mr X.

FINDING

The use of the Police dog by Officer A in the arrest of Mr X was justified.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

24 May 2022

IPCA: 21-7772

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

THIS REPORT

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



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