

Use of dog to arrest car thieves in New Plymouth justified

1. On 14 February 2021 a Police dog handler arrested three young people after he found them attempting to steal a car in New Plymouth. During the arrests the officer released his dog and two of the young people were bitten. One of the young people received treatment for his bite in hospital the following day and as a result, Police notified us of the incident.
2. In the early hours of Sunday 14 February, an officer received a call from a member of the public advising someone had just tried to break into his car, which was parked on the road. The officer attended and while he was at the scene he heard a loud screeching. The officer went to investigate and found a Mazda dumped and damaged, which he suspected was the same car seen near the attempted break in which he had attended. He communicated this over the radio and asked a dog handler to come and locate the occupants.
3. The dog handler tracked from the Mazda, but he lost the track and after around 20 minutes returned to his van. As he was approaching, he saw people in the process of attempting to steal another car nearby. Two of the occupants fled, before a third, younger person, opened the rear passenger door. The dog handler told him he was under arrest and to stay where he was, then released his Police dog and chased the other two occupants.
4. The dog handler commanded his dog to bite the two young people who had run away from the car. By the time the dog handler returned to his van, the third, younger person had fled but was found and arrested the following day.
5. We interviewed the dog handler (Officer A) and the Police sergeant who was the first officer at the scene (Officer B).
6. We notified the caregivers of the two young people who the dog had engaged (Mr X and Mr Y) of our investigation and invited the young people to speak with us, but they did not respond.

The Authority's Findings

Issue 1: Was Officer A legally justified in arresting Mr X, Mr Y and Mr Z?

Officer A was justified in arresting Mr X, Mr Y and Mr Z.

Issue 2: Was Officer A’s first decision to release the dog, leading to Mr X being bitten, a justified, necessary and proportionate response in the circumstances?

Officer A’s decision to release the Police dog and the subsequent bite of Mr X was justified in the circumstances. Officer A was unaware of the identity of the young people and there was significant risk of further vehicles being stolen if Mr X and Mr Y were not immediately apprehended.

Issue 3: Was Officer A’s decision to command the Police dog to bite Mr Y a justified, necessary and proportionate response in the circumstances?

Officer A was justified in using his dog to track Mr Y, and even though his actions in releasing the dog to bite Mr Y breached Police policy, they were justified in the circumstances.

Analysis of the Issues

ISSUE 1: WAS OFFICER A LEGALLY JUSTIFIED IN ARRESTING MR X, MR Y AND MR Z?

7. The arrests took place in the context of a large increase in the volume of vehicle thefts in and around New Plymouth.
8. Officer B told us there had been 150 reports of unlawful taking of, or interference with, vehicles between November 2020 and April 2021, mainly in the New Plymouth and Waitara area. Young people were routinely stealing multiple cars at night then driving around together before abandoning the cars. Police also told us it was rare that a car had already been reported stolen before it was found by Police. Officer B says:

“It kicked off in about November 2020 and it just was ongoing and every shift you could guarantee vehicles were getting stolen which was totally out of the normal for Taranaki. We’re not immune to having vehicles stolen but this was happening every shift and multiple vehicles were getting stolen in a shift. So we were, as a station, under siege and we couldn’t cope with the volume of cars being stolen and we couldn’t even attend most of the jobs. A lot of the jobs would come in historically, people would wake up in the morning and find their car was stolen. It was becoming very difficult to actually identify right from the word go who was involved.”

Why did Officer A believe Mr X, Y and Z were attempting to steal a car?

9. It was around 1am on Sunday 14 February when Officer B first received the call about an attempted break in. He was the only officer able to attend, until he enlisted the help of the dog handler, Officer A, to track the occupants who had fled from the blue Mazda.

10. A communicator from the Communication Centre (Comms) attempted to contact the registered owner but was unable to make contact.¹

11. Officer B said:

“This was actually like a hot job for us, because of the way these kids have been offending ... we haven’t been getting jobs where we get on to them.”

12. Officer B explained that usually other officers would be placed in set locations on a cordon while the dog was searching to try and contain a potential offender but Officer B had no staff available to him at this time to set cordons. Officer B asked if there were any other staff available from other work groups to assist and was advised by Comms there was no one else available to assist.

13. Officer A used his Police dog to track from the car along nearby streets, before the dog lost the track. After failing to successfully locate the occupants, Officer A was walking back to his car with his dog when his attention was drawn to a parked car by an unusual metallic ‘clink’ noise that sounded out of place. As he approached the car he noticed movement inside the car and saw that the quarter light window in the rear door had been smashed.

14. The lights inside the car were off. Officer A says there was a lot of condensation so he could not see into the car very clearly. At this point Officer A suspected the people in the car were trying to steal it. He thought it may be the same youths who were responsible for taking the abandoned Mazda he had just attempted to track from, which was less than 100 metres away from their current location.

15. Officer A told us his priority was to stop the person in the driver seat from leaving in the car. He grabbed the driver door handle, which was locked, and told Mr X, who was sitting in the driver seat, that he was under arrest for unlawfully getting into a motor vehicle. At that point Mr Y ran from the front passenger seat so Officer A moved around the front of the car. Officer A issued a warning saying he was a dog handler and would release the dog if Mr Y did not stop. While Officer A was moving across the front of the car, Mr X slid across to the passenger door, ran from the car and followed Mr Y down the footpath.

16. As Officer A was preparing to release the dog, another young person, Mr Z, opened the rear passenger door. Officer A says he was surprised to see there was a third person in the car and that he grabbed him, told him he was under arrest and to stay where he was. Officer A then ran after the dog in pursuit of Mr X and Mr Y.

17. Officer A says he decided to leave Mr Z by himself and pursue the other two because;

“to my mind, the other two were a lot bigger, they were older, they were the main offenders ... the one from the driver seat was the primary offender... to prevent further offending I wanted to get those guys ... and prevent them taking further cars.”

¹ The owner subsequently confirmed the car had, unbeknownst to him, been stolen during the night. Mr X and Y later admitted stealing the car.

18. Mr Z left before Officer A returned to the car, having arrested Mr X and Mr Y. Police spoke to Mr Z the following day and charged him with unlawfully taking a motor vehicle and attempted unlawful taking of a motor vehicle.
19. Officer A chased Mr X, and with the assistance of his dog, arrested him. After Officer B took Mr X into custody, Officer A then located and arrested Mr Y with the assistance of his dog.

Were the arrests of Mr X, Mr Y and Mr Z legally justified?

20. Mr X and Mr Z were 14 years old, and Mr Y was 15 years old. They were therefore all “*young persons*” under the Oranga Tamariki Act 1989 at the time of the incident.
21. Section 214(1) of the Oranga Tamariki Act says officers shall not arrest a young person without a warrant unless the officer is satisfied, on reasonable grounds, that it is necessary to arrest for the purpose of :
 - ensuring their appearance before the court; or
 - preventing them from committing further offences; or
 - preventing the loss of evidence or interference with witnesses.
22. Given the reports of stolen cars in the area and Officer A having found the young people inside a parked car before they fled, it was reasonable for Officer A to suspect that the young people were attempting to steal the car. He did not know who they were.
23. It was therefore necessary for Officer A to arrest the youths to ensure their appearance in court and prevent further offending. The requirements for arresting a young person under section 214(1) were therefore met.

FINDING ON ISSUE 1

Officer A was justified in arresting Mr X, Mr Y and Mr Z.

ISSUE 2: WAS OFFICER A’S FIRST DECISION TO RELEASE THE DOG, LEADING TO MR X BEING BITTEN, A JUSTIFIED, NECESSARY AND PROPORTIONATE RESPONSE IN THE CIRCUMSTANCES?

24. When Mr Y ran from the front passenger seat, Officer A issued a warning saying he was a dog handler and would release the dog if Mr Y did not stop. Mr Y did not stop and Mr X also ran from the car and followed Mr Y down the footpath. Officer A released his dog.
25. When Officer A arrived a few seconds later, Mr X was standing by a car with the dog holding onto his arm. Officer A pulled Mr X to the ground, removed the dog, and called for assistance.
26. Officer B arrived within three to four minutes and took Mr X into custody.
27. Mr X was examined by ambulance staff at the Police station and did not require any further medical treatment.

Officer A's view of the circumstances

28. Officer A says his purpose in releasing the dog was to arrest the young people for unlawfully getting into the car. He says it was necessary to apprehend them because:

- he did not know the identity of any of the young people;
- Mr X and Mr Y continued to run away after Mr Y was told he was under arrest and warned the dog would be released if he did not stop;
- he believed that if he did not arrest Mr X and Mr Y, they would continue to steal cars and present a risk to themselves and other road users; and
- he had no other options to affect the arrest, such as using other staff to cordon the area.

29. Officer A says he did not consider tracking the young people and using other patrols to arrest them, because he had earlier failed to track from a vehicle. He was concerned if that happened again the young people would continue stealing cars that night and pose a risk to other road users. He also told us that when he looked through the driver's side window, the person he saw was wearing a jacket that matched the description he had heard over the radio of an attempted vehicle break in earlier that night.

30. Officer A says he was aware that groups of young people were stealing cars to drive around in. He says:

"they hadn't just broken into a car to steal change or milk money, they were stealing a car to use on a road ... and they drive like idiots so they're a big risk for themselves and other road users. I've been sitting there, and these kids have been driving around up and down one way systems, no lights on, the Police aren't chasing them or anything, they are a danger on the road, that's my experience and that's why I thought they need to be stopped."

31. When asked if he considered any alternatives to releasing the dog, Officer A said:

"If someone starts running, I'm never going to catch them unless someone is doing area patrols ... I'd located the offenders committing an offence, I was aware of other offences they had committed, and I felt they were going to continue offending. I'd already tried to track them once and for whatever reason didn't, so what happens if I track them and they go steal a car and crash ... as far as I was concerned I was happy with my justification for deploying the dog."

32. Officer A says his knowledge of his dog also weighed into his assessment and decision to deploy it. He has had seven different dogs over his career and so understands the differences between how dogs operate. He describes this dog as a "soft dog" and "very cloth grabby", meaning the dog often just latches onto a person's clothing rather than biting through their skin.

Was Officer A justified in using force on Mr X?

33. Officer A relies on section 40 of the Crimes Act 1961, which empowers Police to use such force as may be necessary to prevent the escape of someone who takes flight, in order to avoid arrest.

34. In assessing whether Officer A's use of the dog is justified under section 40, the Authority must determine:
- a) whether the officer believed on reasonable grounds that Mr X and Mr Y were fleeing to avoid or escape arrest; and if so
 - b) whether the officer's use of force was proportionate and reasonable to prevent the escape.
35. It is not in question that Mr X and Mr Y were fleeing to avoid arrest.

Was Officer A's decision to release his dog to prevent the escape of Mr X reasonable and proportionate?

36. We assessed whether Officer A's use of force to prevent the escape of Mr X was reasonable and proportionate in the light of the following three factors:
- a) the seriousness of the offence which Mr X was reasonably suspected to have committed;
 - b) the effect of an escape on the likelihood of Mr X being brought to justice (e.g. loss of evidence or difficulties in identifying the person and/or effecting apprehension at a later date); and
 - c) the likelihood and degree of risk Mr X posed if escape was not prevented.

How serious was the offence?

37. The offence that the driver of the car may have been responsible for was unlawfully taking a motor vehicle, which Police had successfully recovered, and attempting to take another one.² While this crime has a maximum penalty of seven years' imprisonment, this penalty is only available for the worst hypothetical class of case of that type and is therefore of limited use in assessing the relative seriousness of a particular offence.
38. As we have said in other recent cases, in terms of average sentences, unlawfully taking a motor vehicle is towards the lower end of the scale. This is because the offence generally entails "joy riding", rather than intent to permanently steal the car. Even if it does involve an intent to permanently deprive the owner of possession of their car, thus constituting theft, both the offender's culpability and the degree of harm is significantly lower than it would be for offences such as injuring with intent, burglary, or fraud.
39. However, the circumstances of this incident distinguish it from the average offence of its type. While the seriousness of the offence itself is not elevated, the added factor in this case was that Mr X, Mr Y and Mr Z appeared to be engaging in a prevalent class of offending. As set out in paragraph 8, Police intelligence showed, and we accept that, there had been a significant increase in vehicle theft of this type. That is, young people taking cars, "joy-riding" in them, and dumping them. Police were expending considerable resources in trying to combat the spate of

² Mr X was in the driver's seat when Officer A found them in the car.

unlawful takings and Officer B describes this as being a rare occurrence where Police had the opportunity to catch the young people in the process of committing an offence of this class (see paragraph 11). There was therefore arguably greater public interest in the offenders being arrested than there often is for similar crime types.

Effect of escape on likelihood of Mr X being brought to justice

40. Officer A did not know who Mr X and Mr Y were. As described in paragraph 12, Officer B confirmed the number of staff available to assist with finding and arresting the young people was limited. Officer A was aware that a previous attempt earlier that night to track from a stolen vehicle had failed, although on this occasion the dog had a live track to work with, which may have been more successful.
41. Officer A had already arrested Mr Z. He therefore also had the option to stay with him rather than pursuing Mr X and Mr Y (and giving Mr Z the opportunity to escape), and to track them down later through enquiries. However, Officer A clearly believed Mr Z to be a lot younger than Mr X and Mr Y and considered Mr X and Mr Y to be the primary offenders. We accept that this drove his decision to leave Mr Z, perceiving the pursuit of Mr X and Mr Y as an opportunity to arrest and identify some of those responsible for the offending.

The likelihood and degree of risk Mr X posed if escape was not prevented

42. Officer A had found Mr X and Mr Y in a car, attempting to steal it, soon after finding an abandoned vehicle and an earlier failed attempt to steal a car nearby. The incident occurred during a period of high levels of vehicle theft. It was reasonable for Officer A to believe that if their escape was not prevented, Mr X and Mr Y would continue to participate in the spate of unlawful takings on future nights, and that this was an infrequent opportunity to disrupt the momentum of this class of offence.
43. While Officer A's decision to release his dog was reasonable and proportionate because of the specific circumstances within New Plymouth at the time, we do not accept that his knowledge of his dog as "soft" in its attack style (see paragraph 32) was a valid consideration in his assessment.

FINDING ON ISSUE 2

Officer A's decision to release the Police dog and the subsequent bite of Mr X was justified in the circumstances. Officer A was unaware of the identity of the young people and there was significant risk of further vehicles being stolen if Mr X and Mr Y were not immediately apprehended.

ISSUE 3: WAS OFFICER A'S DECISION TO COMMAND THE POLICE DOG TO BITE MR Y A JUSTIFIED, NECESSARY AND PROPORTIONATE RESPONSE IN THE CIRCUMSTANCES?

44. After Officer B arrived to take Mr Z into custody, Officer A harnessed his dog and used it to track Mr Y, who had continued to run.

45. After tracking along a number of walkways running between residential streets, Officer A tracked him to a walkway running between the rear of residential properties and a bush reserve. Officer A says the reserve next to the walkway was a “scrubby area with bushes and trees”. The reserve drops away quite steeply leading to another walkway to further residential properties.
46. Officer A could hear noises in the reserve and by using his torch, identified it was a person moving through the reserve. He says he was “100 per cent sure” that the person in the bush was Mr Y because he had tracked there directly from properties adjacent to the last point he had been seen when Mr X was arrested and “the dog didn’t miss a beat on that track”.
47. Officer A warned Mr Y that he would release the dog if he did not stop. Mr Y continued moving away from him through the bushes and Officer A released the dog.
48. Officer A says the dog grabbed Mr Y on “his right arm with his back to me moving away, he was standing up”. This caused Mr Y to fall over. Officer A says he then approached Mr Y and after checking to make sure he wasn’t holding a weapon, removed the dog. They then walked out of the bush area onto the lawn of one of the nearby properties.
49. Mr Y was examined by ambulance staff at the Police station. Later in the day he attended hospital and received treatment for a three-centimetre laceration and swelling (surgical emphysema) on his right forearm.

Officer A’s view of the circumstances

50. Officer A says it was necessary to release the dog because Mr Y was not complying with his request and was continuing to flee.
51. Officer A says he did not consider any alternatives because he was satisfied that the use of the dog was justified in the circumstances. Officer A says he feared that if Mr Y was not caught he would steal another car and pose a risk to himself and other road users. He says:

“it was even more justified than the first offender... [Mr Y] thought he was going to avoid being apprehended and once again [I] feared he was going to steal another car. He’d been challenged again and was non-compliant.”

52. Officer A says that knowledge of his dog as a “soft dog” as described in paragraph 32 also weighed into his assessment. As stated in paragraph 43 we do not believe that is a valid consideration.

Was Officer A’s decision to release his dog to prevent the escape of Mr Y reasonable and proportionate?

53. Officer A once again relies on section 40 of the Crimes Act 1961, described at paragraph 33.
54. As discussed in Issue 2 it is not in question that Mr Y was fleeing to avoid arrest and we think it was reasonable for Officer A to use his dog to track Mr Y.
55. As set out at paragraph 69, Police policy requires a dog-handler to be confident the dog can see a suspect before the dog is released. For the reasons described at paragraph 46 Officer A was

confident that the person in the bushes was Mr Y, but it is likely that the dog did not positively sight Mr Y in the bushes before it was released, given the topography, nature of the vegetation and time of day.

56. While Officer A was in breach of Police policy, our analysis set out at paragraphs 35 to 43 applies equally to Officer A's decision to deploy his dog against Mr Y. Given that no one else was in the vicinity who could have been bitten by the dog, we find that even though Officer A's actions were contrary to policy they were nonetheless justified in the circumstances.

FINDING ON ISSUE 3

Officer A was justified in using his dog to track Mr Y, and even though his actions in releasing the dog to bite Mr Y breached Police policy they were justified in the circumstances.

Subsequent Police Action

57. As well as referring the matter to us under the Memorandum Of Understanding, Police conducted an investigation of the incident and found no wrongdoing by Police.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

31 January 2023

IPCA: 21-6749

Appendix – Laws and Policies

LAW

Crimes Act 1961

58. Section 40 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 prevent the escape of a person “if he or she takes flight in order to avoid arrest”.

POLICIES

‘Use of force’ policy

59. The Police’s ‘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, retrain 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.
60. 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).
61. 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).
62. 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.

63. The policy states 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.

'Use of force with Police dogs' policy

64. Dog handlers are personally responsible for force used by the dog. The law sees little difference between dogs, when used as a means of force, and other methods and implement used by Police, such as firearms, Taser and batons. Dog handlers must believe the use of force is justified, and that the forced used is as minimal as possible in the circumstances.
65. A Police dog should only be used if the offender cannot be apprehended by other means. Dog handlers must consider all tactical options when considering the use of force. Just because the handler has a Police dog with them, does not mean they should use the dog as a means of force instead of a more appropriate option. According to the Tactical Options Framework, Police dogs can be used if the suspect is considered Assaultive.
66. Dog handlers must usually issue a warning before instructing a dog to bite a person, however, policy notes that a challenge may not be given in AOS or other critical situations "if it is not practicable or would be dangerous to do so."
67. Police dog handlers must always have control of their dog during deployment. Control means that the dog is under immediate physical, or voice control and the dog responds to that control. The extent of the force used by the dog must be kept to the minimum possible in the circumstances.
68. Policy dictates that all people bitten by Police dogs are to receive appropriate medical treatment.
69. Dog handlers should not release a dog to apprehend a suspect unless they are sure that the dog has sighted the suspect.
70. If on releasing the dog it is obvious or there is doubt that the dog does not have sight of or has lost sight of the suspect then the dog should be recalled or placed in a control position (down).

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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