



Police Use of Force during Arrest

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. On 12 May 2013 Police used force to arrest a man (Mr X) who was threatening to set himself on fire at a rural address in the North Island. As a result of the force used, Mr X sustained fractured ribs and a collapsed lung.
2. In accordance with section 13 of the Independent Police Conduct Authority Act 1988, Police notified the Authority of the serious injury to Mr X during his arrest. In addition, Mr X made a complaint to Police about the force used on him during his arrest.
3. The Authority conducted an independent investigation into this incident. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

4. At about 3.15pm on 12 May 2013 Police received a report of a domestic incident in which Mr X had assaulted his ex-girlfriend's partner with a weapon before fleeing the property.
5. After attending the scene of the assault, Police drove to Mr X's address, an isolated rural property about 25 kilometres away. The officers found Mr X at the top of the driveway, pouring what they suspected was petrol over himself and threatening to set himself alight if Police came closer.
6. The officers considered that Mr X was capable of carrying out his threat. They retreated and radioed the local on call Duty Inspector, who subsequently requested the Police Northern Communications Centre to call out the Armed Offenders Squad (AOS).

7. At about 7pm AOS members arrived outside the property. They were briefed by the AOS Commander that their objective was to arrest Mr X and prevent him committing suicide. They were informed that: Mr X was suicidal; he was suspected of having committed an assault with a weapon; he potentially had access to a .22 rifle; and Police suspected a second person was on the property and the property was booby-trapped.
8. Shortly after 8pm Police moved toward the property. Officer A moved up the driveway with Officer B, an AOS qualified dog handler and his dog. They were followed by other officers with the remainder proceeding to the rear of the property.
9. Police began trying to communicate with Mr X using a loud hailer when they were close to the house. At this time Mr X was inside the house and did not respond to Police requests to surrender. After about 20 minutes Mr X walked onto the driveway, which was about 30 metres from the house.
10. Officers A and B were about 60 metres from the house and could see Mr X at the top of the driveway. Illuminated by AOS members' torches, Mr X could be seen holding a knife to his throat and a lighter in his other hand. Mr X was yelling that he would set himself on fire if Police did not leave the property.
11. Using the loud hailer, Police ordered Mr X to drop the knife and lighter, place his hands on his head and await further instructions. Mr X refused, swore and continued threatening to kill himself. He also moved in and out of the officers' vision, causing them to fear he would retrieve the rifle believed to be inside the house.
12. After about three minutes, Mr X reappeared still holding the knife to his throat and shouting at Police. When Mr X turned back toward the house Officer B decided to release his Police dog from its lead in order to apprehend Mr X, and gave his dog the command to rouse. In Police interview, Officer B said that he needed to act at this time because the petrol Mr X was covered in and his possession of the lighter limited the officers' options for subduing Mr X. In his view, advancing on Mr X would have created an unacceptable risk to Police.
13. After release, the Police dog ran at Mr X and bit him on the upper thigh, causing Mr X to fall to the ground. Three AOS members and Officer B then ran up to Mr X. A struggle between the officers and Mr X then took place, following which Mr X was arrested.
14. In interview with Police following the incident, Mr X complained that Police had used excessive force during his arrest. Specifically, he complained that one of the officers involved in the arrest had unnecessarily "*dropped his knee onto my back*" when he was cooperating with Police.

15. The Authority has interviewed the arresting officers regarding what they saw when they reached Mr X, who was struggling with the Police dog.
 - Officer A said that Mr X resisted Officer B's attempts to extract the Police dog and was making *"what I took to be a stabbing motion or punching motion into the dog."*
 - Officer C stated that he believed Mr X had seriously injured the Police dog and still held the knife and lighter, posing a threat to himself and Police. Officer C further stated that, because it was unsafe to place his rifle on the ground, his only option was to *"ruck the shoulder blades with my boot."* Officer C then put his knee onto Mr X's left shoulder area to turn him and expose his hands. He did this while *"mindful of my proximity if [Mr X] lunged towards me with the knife."*
 - Officer D was at the back of the group that approached Mr X and provided cover as the other officers restrained Mr X. Officer D said that when he heard Mr X struggling with the officers, he helped to restrain Mr X's arms behind his back.
16. Officer C kept his foot on Mr X's shoulder so that Officer B could extract the Police dog. Officers A and D then restrained Mr X's arms and Officer B pulled the Police dog away from Mr X. From a standing position, Officer A handcuffed Mr X and placed him under arrest.
17. In interview with the Authority, Officers A, C and D said that they did not witness any officer deliberately put their knee onto Mr X's back, in the manner alleged by Mr X, when he was compliant.
18. After he applied handcuffs, Officer A, the attending AOS medic, administered first aid and washed the dog bites on Mr X's left forearm and right leg. In interview with the Authority, Officer A said that about five minutes after this Mr X's breathing appeared laboured. When Officer A questioned him about this Mr X told Officer A that he had broken his ribs a couple of months earlier.
19. Officer A waited with Mr X for about 45 minutes while other officers searched the property for the second person suspected to be there. Once the property was cleared Mr X was escorted to ambulances at the bottom of the driveway.
20. Paramedics subsequently treated Mr X and assessed that he needed to go to hospital for potentially broken ribs.

Mr X

21. Mr X suffered puncture wounds, caused by Police dog bites, on his left arm and left leg and a punctured lung and fractured ribs. The Authority accepts that these injuries occurred during his arrest.

THE AUTHORITY'S FINDINGS

Was the force used by Police to arrest Mr X justified?

22. Sections 39 and 41 of the Crimes Act 1961 give Police the power to use force when making an arrest or in order to prevent someone committing suicide, unless the arrest can be made (or the suicide attempt prevented) *“by reasonable means in a less violent manner”*. Section 62 of the Act provides that Police are criminally responsible for the use of any excessive force.
23. The Authority accepts that the officers involved in Mr X’s arrest believed that he posed an immediate threat of serious bodily harm to both himself and the officers present. Police had been briefed that Mr X was suicidal, aggressive and was suspected to have access to a firearm. When confronted, Mr X was covered in flammable liquid and had a knife and lighter. He repeatedly refused to comply with Police instructions and threatened to kill himself.
24. Officer B said that he released the dog because the petrol Mr X had poured over himself left Police with few options to restrain Mr X. In the Authority’s view, the deployment of the Police dog to subdue Mr X was in the circumstances a reasonable and proportionate use of force.
25. As discussed in paragraph 14, Mr X complained that one officer unnecessarily dropped his knee onto his back when he was compliant during arrest.
26. On the available evidence, Officer C was the only officer that used his knee in any manner to gain Mr X’s compliance during the arrest procedure. As stated in paragraph 15, Officer C said that he rucked Mr X’s shoulder blades, put his knee onto Mr X’s left shoulder and then placed his foot on Mr X’s left shoulder.
27. In interview with the Authority, Officer C said that he believed at the time that Mr X still held the knife and lighter and was capable of using either, posing a threat of death or serious bodily harm to himself and the officers.
28. Whilst the Authority accepts that Mr X’s injuries were caused by Police, it finds that Mr X was not compliant during his arrest and that due to his behaviour the officers faced a high level of risk. The Authority finds that Officer C used a degree of force reasonably necessary to minimise this risk.

FINDINGS

AOS members were entitled to use a degree of force reasonably necessary to subdue Mr X and prevent his causing harm to himself or Police.

In the circumstances, the use of the Police dog was a necessary and proportionate use of force.

Officer C's use of force was justified in the circumstances. The degree of force used by Officer C during arrest was reasonably necessary to restrain Mr X, who was not compliant, and to prevent Mr X harming himself or the officers present.

CONCLUSIONS

29. Section 27(1) of the Independent Police Conduct Authority Act 1988 requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure was contrary to law, unreasonable, unjustified, unfair, or undesirable.
30. The Authority has formed the opinion that the actions of Police in this case were justified and complied with applicable law and Police policy.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

10 April 2014

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 Sir David J. Carruthers.

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 has highly experienced staff who have worked in a range of law enforcement 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 on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



IPCA

Independent Police Conduct Authority
Whaia te pono, kia puawai ko te tika

PO Box 5025, Wellington 6145

Freephone 0800 503 728

www.ipca.govt.nz