



Death of Adam Palmer in Police custody

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 11.52pm on the evening of 14 August 2012 Hamilton Police were called to a report of a disturbance at the home of Laura Marston.
2. Officer A arrived to find Ms Marston's former partner Adam Palmer, aged 26, in an altercation with Luke Sheppard. Mr Sheppard was the father of Ms Marston's children and was visiting at the time. The altercation had begun after Mr Palmer refused to leave the property. He was heavily intoxicated. Officer A arrested Mr Palmer for trespassing and placed him in handcuffs.
3. Shortly afterwards, Officer A noticed that Mr Palmer had stopped breathing. His handcuffs were immediately removed. Despite attempts to revive Mr Palmer he died at the scene.
4. The Police notified the Independent Police Conduct Authority of Mr Palmer's death, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Events prior to 14 August 2012

5. Prior to 14 August 2012 there had been two previous incidents at Ms Marston's address involving Mr Palmer and Ms Marston. On each occasion Mr Palmer arrived at the address heavily intoxicated and refused to leave.
6. One of these incidents occurred on 17 May 2012. On this occasion Mr Palmer damaged a vehicle at the address, and then fled in his own vehicle. He was pursued by Police and attempted to escape on foot after crashing his vehicle. He was located and arrested. This incident was attended by Officer A.

7. While on remand Mr Palmer was served with a trespass notice forbidding him to visit Ms Marston's address. This notice was still in force on 14 August 2012.
8. On 14 August 2012 Mr Palmer was convicted and sentenced on charges arising from the events of 17 May 2012. He was released that day having already served his sentence on remand.

Events of 14 and 15 August 2012

9. Following his release from custody on 14 August 2012 Mr Palmer consumed a large quantity of alcohol over several hours.
10. At about 11.40pm Mr Palmer arrived at Ms Marston's home. This was a breach of the trespass order against him.
11. Present at the address were Ms Marston, her two young children and her mother. Luke Sheppard, the father of Ms Marston's children, was also visiting.
12. Because Mr Palmer was heavily intoxicated and trespassed from the address Ms Marston asked him to leave. He refused and went inside the house where there was a small struggle between himself and Ms Marston's mother.
13. Ms Marston again asked Mr Palmer to leave. He refused, so Ms Marston asked Mr Sheppard to assist in removing Mr Palmer from the property. Mr Sheppard attempted to guide Mr Palmer outside. Mr Palmer reacted violently and a fight ensued. Both Mr Sheppard and Mr Palmer inflicted heavy blows on each other. Eventually both men ended up on the floor.
14. At 11.52pm Ms Marston phoned Police and reported that Mr Palmer and Mr Sheppard were fighting. She requested assistance. Mr Sheppard had begun to tire and decided to hold Mr Palmer in a head lock, with his arm around Mr Palmer's neck, until Police arrived. Mr Sheppard later told Police that he loosened and then re-tightened his grip around Mr Palmer's neck three to four times during this time.
15. Officer A arrived at the property first, and alone, at 12.05am. He had been informed that Mr Palmer was at the property. He had attended the incident on 17 May 2012 and remembered Mr Palmer from that occasion.
16. Officer A entered the house and found Mr Sheppard and Mr Palmer lying on the hallway floor. Mr Palmer was restrained in a headlock by Mr Sheppard. The light in the hallway was not working and visibility was poor.

17. Officer A placed Mr Palmer in handcuffs and Mr Sheppard released his grip. Officer A noted that Mr Palmer smelt strongly of alcohol and was non-responsive, which he believed was due to his level of intoxication. He placed Mr Palmer under arrest for trespassing.
18. Officer B arrived at the property at 12.06am, shortly after Officer A. He entered the house and found Mr Palmer in handcuffs, lying on the floor. He was confident that Officer A had control of Mr Palmer, and immediately notified the Police Northern Communications Centre (NorthComms) that Mr Palmer was in custody.
19. Mr Palmer started making sounds which Officer A described as *"like he was going to vomit."* Officer A placed Mr Palmer in a sitting position, so that his back was leaning against Officer A's legs. Mr Palmer sat with his legs straight out and head slumped forward. At this point, Officer A recorded in his notebook that he had given Mr Palmer the required Bill of Rights caution when in fact he had not done so.
20. Officer B spoke briefly to Ms Marston outside before returning to the house to help Officer A stand Mr Palmer up and attempt to move him outside. Officer B also contacted NorthComms to request that additional staff be sent to the property to help transport Mr Palmer to the Police station.
21. When the officers attempted to move Mr Palmer outside, he did not respond to the officers' requests and was unable to support his own weight, so they laid him back on the floor. Mr Palmer was still in handcuffs.
22. At about 12.11am Officer A shone his torch on Mr Palmer and noticed that his lips and fingertips had turned blue. He immediately ordered Officer B to remove the handcuffs. Officer B did this, and checked Mr Palmer for a pulse but did not find one. Officer B immediately contacted NorthComms to request an ambulance.
23. The officers then moved Mr Palmer to the lounge and placed him in the recovery position. Officer B again checked Mr Palmer for a pulse but couldn't find one. Officer A also checked for a pulse. He found a weak pulse and signs of breathing. Ms Marston's mother, a registered nurse, also found a weak pulse. Because Mr Palmer appeared to have a pulse the officers did not commence CPR.
24. Officers C and D arrived at the property at 12.15am. They had been called earlier to help transport Mr Palmer from the property, before the severity of his condition became apparent. Officer C asked Officer B if they should commence CPR, but Officer B said no because Mr Palmer appeared to have a pulse.

25. An Ambulance Officer arrived at about 12.22am. He was unable to detect Mr Palmer's heartbeat and instructed Officers C and D to commence CPR. CPR continued until Mr Palmer was pronounced dead at 12.36am. 29 minutes had elapsed since Mr Palmer was taken into custody.
26. Mr Sheppard was later charged with manslaughter in relation to the incident. He is awaiting trial.

Adam Rawiri Palmer

27. Mr Palmer had a significant Police and criminal record. He was known to Police, including Officer A.
28. Mr Palmer had a chronic addiction to alcohol and a history of committing violent offences when intoxicated.
29. In his report following Mr Palmer's autopsy on 16 August 2012, the pathologist recorded Mr Palmer's cause of death as asphyxia caused by neck compression. He noted that the application of an arm around a person's neck may obstruct either the arteries supplying blood to the brain or the airways.
30. The pathologist also outlined Mr Palmer's post-mortem toxicology results, which showed that he had a blood alcohol level that may have made his heart susceptible to an abnormal rhythm if his blood oxygen levels were low.
31. There was no evidence of any significant natural cause that contributed to Mr Palmer's death.
32. In his report, the pathologist concluded that Mr Palmer was already deeply unconscious and was "*probably in the process of dying*" when Officer A arrived at the property. The pathologist was unable to say whether commencing CPR earlier would have increased Mr Palmer's chances of survival, but said that earlier resuscitation would have been preferable.

Officer A

33. At the time of this incident Officer A had served with the Police for 13 years. He is an experienced supervisor, and was the Acting Senior Sergeant when this incident occurred. His Police First Aid and Carotid Hold training was current.

34. During the Police Code of Conduct investigation following Mr Palmer's death, Officer A accepted that in this instance he failed to give Mr Palmer his Bill of Rights caution, despite recording in his notebook that he had done so. He later explained to the Authority that it was his usual practice, for reasons of efficiency, to give a person their Bill of Rights caution as he was walking them to the Police car, when they were more likely to listen and understand. He intended to do this with Mr Palmer, but was clearly unable to after Mr Palmer's condition deteriorated.

Internal Police investigations

35. Police engaged a Detective Inspector from outside the Waikato Police District to conduct a criminal and Police Code of Conduct investigation into Mr Palmer's death. This involved an assessment of whether Police actions contributed in any way to Mr Palmer's death.
36. The criminal investigation concluded that there was enough evidence to charge Mr Sheppard with manslaughter.
37. Police concluded that there was no evidence to support an allegation that anyone other than Mr Sheppard contributed to Mr Palmer's death.
38. A Code of Conduct investigation was undertaken following disclosure by Officer A that he did not give Mr Palmer his Bill of Rights caution despite having recorded so in his notebook. Police have adequately addressed this issue with Officer A.

Coroner's investigation

39. Mr Palmer's death has been referred to the Coroner for investigation.

APPLICABLE LAWS

Law on use of force

Use of force by law enforcement officers

40. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties, such as arrests. 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*".

41. Section 40 of the Crimes Act 1961 provides for law enforcement officers to use force in order to effect a lawful arrest or rescue, to prevent a person from escaping from lawful custody, or to recapture a person who has escaped *but only if* these cannot be achieved by reasonable means in a less violent manner.

New Zealand Bill of Rights Act

42. Under section 23, everyone who is arrested has the right to be informed of the reason for arrest at the time of arrest, and the right to consult or instruct a lawyer without delay and to be told of that right.

APPLICABLE POLICE POLICIES

General guidance on use of force

43. The Police have a range of tactical options available to them to help restrain a person, effect an arrest or otherwise carry out lawful duties. These range from handcuffing and use of open hand tactics to use of batons, OC spray, Tasers, carotid holds and firearms.

Manual of Best Practice

44. The Police Manual of Best Practice sets out the circumstances in which use of force by Police is legally justified. This includes executing a process (such as a search warrant) or arrest, preventing escape, preventing suicide or injury, preventing breach of the peace, taking fingerprints, self defence and defence of others, and a range of other lawfully justified circumstances. The Manual notes that an officer who uses excessive force may be civilly or criminally liable.

Use of Handcuffs

Use of handcuffs during Arrest and Detention and Mechanical Restraint Policy

45. The Arrest and Detention chapter of the Police Manual says that restraints (including handcuffs) may be used when a person is detained or arrested.
46. When deciding whether to use restraints, an officer must determine whether this use of force is justifiable, and level of force – if any – is appropriate in applying the restraints. In making these decisions, officers are required to consider:
- Their own safety and the safety of others

- The nature of the charge against the person they are restraining
- The person's conduct and temperament, including criminal history and previous behaviour
- The likelihood of the person escaping (which is reduced if the person is restrained).

THE AUTHORITY'S FINDINGS

Arrest procedure

47. Mr Palmer had been engaged in a sustained period of fighting with Mr Sheppard. He was heavily intoxicated, trespassing, and refused to leave the property.
48. From his previous experience, Officer A believed that Mr Palmer may attempt to escape Police if given the opportunity. Officer A wanted to arrest Mr Palmer as soon as possible to ensure everyone's safety. Although Mr Palmer was no longer fighting, the Authority accepts Officer A's assumption, that Mr Palmer may have resumed struggling when released by Mr Sheppard, was reasonable in the circumstances.
49. Officer A stated that the reason he arrested Mr Palmer and not Mr Sheppard was that Mr Palmer had turned up intoxicated and uninvited. Mr Palmer was trespassing and Ms Marston asked that he be removed from the property.

FINDING

Officer A's arrest of Mr Palmer was justified in the circumstances.

Use of force

50. The only force used by Officer A in the arrest of Mr Palmer was the application of handcuffs.
51. Upon arriving at the scene, Officer A believed that it was necessary to handcuff Mr Palmer. Given the violent situation and his previous experience of Mr Palmer, Officer A decided that he needed to gain physical control of Mr Palmer for both his own and Mr Palmer's safety.
52. Mr Palmer offered no resistance to his arrest. Officer A believed this was due to his level of intoxication. Officer A applied the least amount of force necessary to secure Mr Palmer in handcuffs. As soon as Officer A realised the seriousness of Mr Palmer's condition he ordered Officer B to remove the handcuffs.

FINDING

The only force used by Officer A was the application of handcuffs. The use of handcuffs was appropriate in the circumstances.

Actions following use of force

53. When Officer A arrived at the property he found Mr Palmer unresponsive. Officer A did not immediately recognise the cause of Mr Palmer's unresponsiveness, and assumed it was a result of his level of intoxication.
54. As soon as it became obvious that Mr Palmer was having trouble breathing Officer A, and all other Police officers present, took appropriate and timely action. These actions included:
- immediately removing handcuffs;
 - sitting Mr Palmer up against Officer A's legs;
 - placing Mr Palmer in the recovery position;
 - checking for a pulse and signs of breathing, and asking for assistance from Ms Marston's mother to confirm the presence of a pulse.

FINDING

All Police officers at the scene provided appropriate medical assistance to Mr Palmer after his condition became apparent.

CONCLUSIONS

55. Mr Palmer's arrest was justified in the circumstance, and Police took all possible steps to try and resuscitate him once his condition became apparent.

A handwritten signature in black ink, appearing to read 'David Carruthers', written in a cursive style.

JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

17 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 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 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.



PO Box 5025, Wellington 6145
Freephone 0800 503 728
www.ipca.govt.nz