

Summary Report

Complaint of excessive force following an illegal property entry in Hastings

INTRODUCTION

1. On 1 January 2014, Ms X complained to Police about the actions of officers who entered her home on 31 December 2013, looking for her 24 year old son, Mr Y. She also complained that a Police officer “beat” her other son, Mr Z, in the back of a Police car.
2. Police notified the Authority of the complaint and the Authority has conducted an independent investigation into the incident. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

Warrant to arrest

3. On 20 December 2013 the Hastings District Court issued a warrant to arrest Mr Y (the warrant) for a breach of the sentence of community work. On 23 December Mr Y made a voluntary appearance at the District Court, and the Court withdrew the warrant. Mr Y's voluntary appearance and the fact that the warrant was 'withdrawn' were recorded in the Police National Intelligence Application (NIA). The notification of the withdrawal of the warrant was recorded in NIA at 9.46pm on 23 December 2013.
4. On 23 December 2013 Officer A, a sergeant, assigned Officer B, a constable, the task of being the officer in charge of arresting Mr Y. Officer B located the hard copy of the warrant in the Hastings Watchhouse warrant tray on 25 December 2013 and photocopied these documents. Officer B then printed out Mr Y's details, including a photograph of Mr Y, from NIA on 27 December.

5. Although the information that the warrant was withdrawn was recorded in NIA, no member of Police picked this up before they went to Mr Y's address, despite accessing NIA on a number of occasions during the intervening period.
6. In Officer A's case, he checked the warrant's validity at 9.29am on 23 December 2013 before it was withdrawn from the system at 9.46pm that same day.
7. Officer B accessed the file on several occasions but did not notice that the warrant had been withdrawn.
8. On 31 December 2013, Officer B used the above documents to brief Officers A, C, D, F, G and H and at about 12.20pm they went to Ms X's house to action the warrant and arrest Mr Y.
9. Due to concerns that Mr Y would try to escape when the Police attended, several officers were stationed around the property to cover likely escape routes.
10. Ms X, her 16 year old daughter, and Mr Z, aged 19, were at the house when the officers arrived. All parties agree that Police informed Ms X and Mr Z that they were searching for Mr Y, and that the officers were advised that Mr Y was not at the address.

Police Entry to Property

11. Nevertheless, the officers decided to search the house and property for Mr Y. Officer B said that Ms X asked if they had a warrant and asked to see it. He said that he took the paper copy from his protective vest and gave it to Officer A, who then showed it to Ms X. Mr Z was also present. Officer B said that in response to seeing the warrant Ms X put her arms across the doorway and began talking loudly as if to warn somebody inside.
12. Ms X disputes that Police showed her the warrant. Ms X said that one of the officers partially opened his jacket and then closed it and said, "*that's why we are here*", but that she did not see anything.
13. Mr Z told the Police interviewer that he asked to see the warrant and was told by an officer that "*we don't need one*".
14. Although Ms X and Mr Z knew that Mr Y had already made a voluntary Court appearance, they did not inform Police of this. Both Officers A and B say that had they been advised of this, they could have checked whether Mr Y was still wanted for arrest on their Police iPhone/iPad.
15. During the Police attendance, Mr Z tried to leave the house to walk down to the letterbox to see what was going on, but was prevented from doing so by Officer C. Mr Z told the Authority that he said to the officer "*why not it's my house and you aren't looking for me*" and Officer C replied, "*You can't leave until we've done our job*", so he went back inside.
16. Officer C told the Authority that when this conversation took place, he did not know the identity of Mr Z, and suspected that he could have been Mr Y, who they were looking for, so he did not want to let him leave the property.

17. Officer C told the Authority that he could not recall whether he asked Mr Z who he was.

Arrest

18. Mr Z went back up to the house and went into his bedroom which at that time was being searched by Officer A.

19. Officer A said that when he asked Mr Z if Mr Y was in the house, Mr Z said, *"I don't know, why?"* Officer A said that Mr Z was intentionally obstructing the search by yelling, swearing and behaving in a disruptive and abusive manner. Officer A said that he warned Mr Z that he would be arrested for obstruction but Mr Z persisted with his behaviour, lifted up his bed and threw it against the wall and took up an aggressive stance.

20. Mr Z accepts that he *"...threw the bed, flipped it over towards the wall, I was pissed off then"*. Mr Z said that he told Officer A that his brother was not there.

21. Officer A said that he warned Mr Z a second time for obstruction. Officer A said it had little impact and Mr Z continued to be aggressive and shout abuse.

22. Ms X tried to intervene and move Mr Z away from Officer A but Mr Z threatened to *"smash"* Officer A. Officer A then arrested Mr Z for obstruction.

Use of Force

23. After Mr Z's arrest, Officers A and C escorted him to a Police car parked on the street outside the house. They say that despite requests for Mr Z to *"calm down"*, he continued to struggle. Officer C told the Authority that as they escorted Mr Z to the Police car he tried to head butt the house and kick the gate.

24. Officer A directed Officer C to supervise Mr Z in the Police car. Officer C told the Authority that once Mr Z was in the car, he continued *"looping out"*. Due to concerns for his safety Officer C said that he got into the Police car and put a seatbelt on Mr Z, to try to keep him in one place.

25. However, Officer C said that Mr Z *"unlocked his seatbelt, and was kicking the seat and violently smashing his head against the window"*, so he tried to restrain Mr Z by holding him against the door, using an arm bar (an approved Police tactic), and putting the seatbelt back on him.

26. Officer C said that while he was attaching the seatbelt, Mr Z struck him twice in the head with his knee. Officer C then punched Mr Z once on the side of his nose in order to stop the assault. This had an immediate effect but caused a cut to Mr Z's nose, which bled profusely.

27. Officer D, another constable, told the Authority that she saw Mr Z hit the car window with his head about six times and she was surprised that he did not break it.

28. Mr Z told the Police interviewer that he took his seatbelt off. He said *“the cop kept looking at me. I was yelling at him, calling him a pig. I think I banged my head on the window once”*. Mr Z said, *“He [Officer C] jumped in the car trying to elbow me. I tried to knee him and he got back in the car and punched me.”*
29. Later at the Police station, Mr Z told another officer *“All I did was knee him and he punched me in the face.”* Mr Z told the Authority that he never meant to knee the officer but he was just *“frustrated”*.
30. Ms X said that Mr Z was yelling in the car and a Police officer *“jumped in and started beating [Mr Z]”*. She told the Police investigator that she tried to pull the officer off her son and that the officer swore at her and *“tried to kick [her]”*.
31. Ms X later complained that attending officers were *“unprofessional”* and *“aggressive”* and that officers swore when they were dealing with Mr Z and speaking to her daughter.
32. A neighbour who witnessed the incident said that Ms X and Mr Z were swearing and abusing the Police and said that such behaviour would be difficult for the Police to deal with. Another neighbour heard Mr Z being escorted to the Police car and said that he was angry and swearing, and that this continued while he was getting into the car. This neighbour also heard one of the Police officers use obscene language towards Ms X’s daughter.
33. When spoken to by the Police investigator, Officer A accepts that he may have sworn at Mr Z when dealing with him in his bedroom.

Post incident

34. Police gave Mr Z first aid at the scene and then took him to the Hastings Police station. An ambulance met Police at the station where a paramedic provided further first aid to Mr Z’s nose, before he was taken to the hospital by the ambulance.
35. Mr Z was bailed from the Police station but once it was established that the warrant was invalid, Mr Z was released without charge from hospital.

THE AUTHORITY’S FINDINGS

Issue 1: Did Police have legal justification to enter Ms X’s house in search of Mr Y?

36. Section 7 of the Search and Surveillance Act 2012 gives the Police the power to enter a place and arrest a person who is ‘unlawfully at large’. A person is ‘unlawfully at large’ if they are the subject of an arrest warrant or otherwise liable to arrest under a specified enactment.
37. The warrant to arrest Mr Y was invalid, as he had made a voluntary appearance at Court, and this was apparent in NIA. Therefore Mr Y was not ‘unlawfully at large’ and the Police had no legal authority to enter the address. Even if the officers were acting in good faith, their actions were not lawfully justified.

38. The warrant was actioned on 31 December, 11 days after it was issued on 20 December and eight days after it was recorded as 'withdrawn'. The Authority considers that Officer B had a duty to re-check that the warrant was still valid before Police actioned it.

FINDINGS

Before actioning the warrant, Officer B should have re-checked that Mr Y was still wanted for arrest.

As no valid warrant existed, Police had no legal authority to enter Ms X's house or to search the address.

Issue 2: Was Officer C justified in refusing to let Mr Z leave the property?

39. Section 118(1) of the Search and Surveillance Act 2012 states that a constable can detain a person who is at a place being searched for the purpose of determining whether there is any connection between that person and the object of the search (locating Mr Y). Subsection (3) provides that the detention of any person commences when the constable exercising the search power directs that person to remain at the place and ends when that person is told by the constable that he or she is free to leave the place.
40. Mr Z complained that Officer C would not let him leave the house to go down to the letterbox.
41. Officer C told the Authority that at that time he did not know the identity of Mr Z, who had told him that he wanted to go down to the letterbox to see how many Police cars were there. Officer C told the Authority that Mr Z was uncooperative and would not give him any details regarding his identity, either on the driveway or in the patrol vehicle. As the officer suspected that Mr Z was Mr Y, he said that he instructed Mr Z to stay at the house.
42. However, Officer C had an obligation to take steps to ascertain the identity of Mr Z as soon as practicable, and thereafter to allow him to leave. He did not do so. He instead required Mr Z to stay there. The Authority has therefore concluded that Mr Z's detention was unlawful.

FINDING

Officer C should have established whether or not Mr Z was the person Police were looking for as soon as practicable. He did not take sufficient steps to do so and his detention of Mr Z was therefore unlawful.

Issue 3: Was Mr Z's arrest for obstruction justified given that the search was unlawful?

43. Section 23(a) of the Summary Offences Act 1981 states that every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who resists or intentionally obstructs, or incites or encourages any other person to resist or obstruct, any constable acting in the execution of his duty.

44. Officer A said that despite being warned for obstruction, Mr Z continued to behave aggressively and threw a metal framed bed at the wall. Mr Z accepts that he threw the bed as he was “*pissed off then*”.
45. Officer A warned Mr Z a second time. Officer A said it had little impact and Mr Z continued to be aggressive and shout verbal abuse. Mr Z accepts this.
46. Ms X said that she tried to intervene and move Mr Z away from Officer A but Mr Z threatened to “*smash*” Officer A, so the officer arrested him for ‘obstructing an officer in the execution of his duty’.
47. In order to arrest him, Officer A needed to have reasonable cause to suspect that the offence was being committed. The difficulty in this case is that Officer A was not ‘acting in the execution of his duty’, because the warrant was in fact invalid.
48. However, Officer A had reasonable cause to suspect that he was ‘acting in the execution of his duty’ because he thought that the warrant was valid..
49. Officer A held the genuine but mistaken belief that he was acting in good faith and lawfully executing his duty.
50. The Authority notes that as soon as the error regarding the warrant to arrest was discovered, Officer A advised a supervisor who contacted Ms X and advised her of the error and took a statement of complaint from her. No charges were laid and Mr Z was not required to appear in Court.

FINDING

Officer A had reasonable cause to suspect that Mr Z was committing the offence of obstruction and was therefore justified in arresting him.

Issue 4: Was the force used by Officer C on Mr Z in the Police car reasonable in the circumstances?

51. Sections 40 and 48 of the Crimes Act 1961 authorised Officer C to use reasonable force both to prevent the escape of Mr Z and to defend himself in the circumstances as he believed them to be.
52. Section 62 of the Crimes Act 1961 renders officers criminally responsible for any excessive use of force.
53. Officer C said that he thought that Mr Z needed to be restrained immediately as he could injure himself or damage the Police car by breaking the window or by escaping. Officer C first tried to restrain Mr Z by holding his head against the car door, using an arm bar, but he continued to bang his head on the window and kick out with his legs. Officer C said that as he tried to put the seatbelt back on Mr Z, Mr Z struck him twice in the head with his knee and in

response Officer C punched Mr Z once in the face, which had the immediate effect of controlling Mr Z who then modified his behaviour.

54. Officer C said that he considered other tactical options but did not consider the back of the Police car to be a suitable place to use OC spray and did not think a Taser was necessary.
55. Mr Z accepts that he head-butted the car window and kned the officer in the head. The number of punches is disputed but after considering all of the evidence, the Authority is satisfied that Mr Z was punched once in the head.
56. The degree of force used (an arm bar followed by a punch to Mr Z's head) was reasonable in the circumstances as he believed them to be.
57. Officer C correctly submitted a Tactical Options Report as required by policy.

FINDINGS

Officer C was entitled to use reasonable force to restrain Mr Z, to defend himself and prevent Mr Z's escape.

Officer C's use of force was reasonable and justified in the circumstances as he believed them to be.

Issue 5: Was the general demeanour and attitude of officers unprofessional and aggressive?

58. Ms X complained that attending officers were "*unprofessional*" and "*aggressive*" and that officers swore when they were dealing with Mr Z and speaking to her daughter.
59. Officer A accepts that he may have sworn when dealing with Mr Z in his bedroom.
60. A neighbour who witnessed Police putting Mr Z in the Police car said that Ms X and Mr Z were swearing and abusing the Police and said that such behaviour would be difficult for Police to deal with. One neighbour heard an officer swear at Ms X's daughter. However, neither the Police nor the Authority have been able to identify this officer.
61. From its investigation, the Authority is satisfied that the attending officers advised Ms X of the grounds for searching her house and they conducted a routine search for a wanted person. Some officers searched areas of the house, while others blocked escape routes around the property.
62. The Authority does not find that the attending officers exacerbated the situation.

FINDING

Generally, attending officers conducted the search for Mr Y in a professional manner.

SUBSEQUENT ACTION

63. The Police investigation into this complaint resulted in all officers who attended the incident receiving training on attention to detail in briefings, the use of mobility devices in the field to check the status of warrants and the use of professional language.
64. Police have reported that appropriate supports and training have been put in place to ensure that the officers involved are adequately supervised to prevent the failings that occurred in this case from happening again.
65. A message was distributed to all Hawkes Bay Police staff on 8 April 2014 reminding them to use their mobility devices to *“check all information immediately before actioning”*.
66. On 6 January 2014 Officer E, a senior sergeant, apologised to the family for Police actioning the invalid arrest warrant. On 14 July 2014 he met with and apologised to Ms X again.

CONCLUSIONS

67. The Authority has concluded on the balance of probabilities that:

- before actioning the warrant, Officer B should have re-checked that Mr Y was still wanted for arrest;
- as no valid warrant existed, Police had no legal authority to enter Ms X's house or to search the address;
- Officer C should have established whether or not Mr Z was the person Police were looking for as soon as practicable. He did not take sufficient steps to do so and his detention of Mr Z was therefore unlawful;
- Officer A had reasonable cause to suspect that Mr Z was committing the offence of obstruction and was therefore justified in arresting him;
- Officer C was entitled to use reasonable force to restrain Mr Z, to defend himself and prevent Mr Z's escape;
- Officer C's use of force was reasonable and justified in the circumstances as he believed them to be; and
- generally, attending officers conducted the search for Mr Y in a professional manner.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

5 March 2015

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.



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