

Police use of force during arrest in Ashburton

INTRODUCTION

1. On Friday 21 July 2017 at 9.19pm, Police were dispatched to attend an incident in Ashburton involving Mr X, who was reported to be behaving strangely and may have crashed his car into a bollard.
2. Police conducted a roadside breath test on Mr X, which he failed. Police then arrested Mr X for refusing to accompany them for further testing, and used force to extract him from the vehicle in order to take him to Ashburton Police Station.
3. While at the station, an officer used force against Mr X to put him on the ground, resulting in him receiving injuries.
4. The Police notified the Independent Police Conduct Authority of the incident and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

5. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
6. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.

Summary of events

7. At approximately 9.15pm on Friday 21 July 2017, Mr Y, a local security guard, came across a damaged vehicle on the side of the road on East Street, Ashburton. He called Police as he was concerned that the male inside the vehicle, Mr X, *"was in a bit of trouble."*

8. At 9.19pm, Officers A and B were dispatched to attend the incident.¹ The weather was particularly unfavourable, with torrential rain and flooding, strong winds, and poor visibility due to the conditions and the time of night; in fact a state of emergency had been declared.
9. The Southern Police Communication Centre (SouthComms) dispatcher informed the attending officers, that there was *“a male sitting in a damaged vehicle with hazard lights on. He’s slurring and got no pants on.”* The dispatcher also advised the officers that the male (Mr X) was 55-60 years old and of average build, and that Mr Y had spoken to him.
10. Mr X told Mr Y that he had driven into a bollard. After the collision he had driven on a short distance, stopping his car on the left verge of East Street, approximately 250 metres from the crash site.
11. During his conversation with Mr X, Mr Y asked him if he had been drinking, to which he replied *“[I] drink all the time.”* Mr Y subsequently returned to his vehicle but remained at the scene.
12. When they arrived, Officers A and B saw Mr X’s stationary vehicle on the side of the road. They noticed that there was substantial damage to the front right side of the car, the engine was running and the headlights and hazard lights were on.
13. Officer A approached the driver’s open window and saw Mr X slumped behind the wheel. She could see he was not wearing trousers. Officer A reached inside the open window and switched off the engine, removing the keys which she secured to her belt. Officer B was standing to her right as she did this but told the Authority he did not see her remove the keys.
14. As she spoke to Mr X, Officer A noticed some fresh blood under his nose. She asked Mr X if he was all right. He said he was fine and asked what the Police were doing there. Officer A explained that the Police had been called to attend the location in relation to his behaviour and the damage to the vehicle. She asked him if he had had anything to drink that evening. He said *“yep I’ve had a couple.”*
15. Officers A then conducted a breath alcohol test on Mr X, which indicated he was over the legal limit to drive.
16. Officer A showed the breath test result to Mr X. She explained to him that she required him to accompany her to Ashburton Police Station for the purpose of an Evidential Breath Test (EBT), blood test or both.² Mr X refused, telling Officer A to *“get fucked.”*
17. There is a discrepancy between Officers A and B as to what happened next. They agreed that at some stage during this encounter, Officer B asked Officer A to *“look away”* briefly while Officer B checked if Mr X was wearing underpants. However, they have differing recollections of other more pertinent actions at the roadside leading up to and during Mr X’s arrest.

¹ At the time of this event, Officer A was a probationary officer with two months service. Officer B had been a constable for three and a half years.

² Roadside breath testing results provide an indication of intoxication but cannot be used as evidence. An EBT is required if an initial breath screening test shows a positive result. Police have the power to require people who fail the breath screening test to accompany them to a police station or another place where an EBT can be conducted.

18. According to Officer A, when she told Mr X he was required to accompany them to the station, he became verbally aggressive towards her. She warned him that if he failed to accompany Police he could be arrested.
19. Officer A said that Officer B moved around to the driver's window and interrupted her as she required Mr X to accompany them to the station. According to Officer B however, Officer A looked at Officer B in a manner which he interpreted as *"help me."* As the more experienced officer, he decided to move around to the driver's window to assist and said that in the circumstances it was necessary to act immediately, not engage in ongoing dialogue and indefinite negotiation.
20. Officer B told Officer A to look away while he asked Mr X to lift his sweatshirt to check if he was wearing underwear, which he was. Officer B also noticed that Mr X had blood coming from his nose and his face looked puffy and swollen.
21. Officer A told the Authority that Mr X then picked up a pair of wet trousers from the passenger seat and threw them out the driver's window. Officer A perceived this action to be 'actively resistant' and said she saw the trousers hit Officer B.³
22. Officer B told the Authority that Mr X did not throw the trousers aggressively and they did not hit him. He was, however, concerned that they may be contaminated with urine as they were wet.
23. According to Officer A, when Mr X threw the trousers, Officer B immediately grabbed the driver's door handle and pulled it open. This created a physical barrier between Officer B and Officer A, who was standing on the other side of the door.
24. Officer B then reached into the vehicle and grabbed Mr X. Officer A saw Mr X pull the inner door handle towards him in an attempt to close it, but *"it didn't make any difference – there was no struggle"*. She described Officer B extracting Mr X from the car as follows:

"He's grabbed the handful of clothing on the driver's chest ... and he's pulled him out the vehicle and it's been, it's been a pretty swift movement ... quite fluid ... and then it's resulted in [Mr X] ending up face down in the road."
25. Officer A said it took a matter of seconds for Officer B to complete the manoeuvre.
26. However, Officer B recalled that, about the time Mr X threw the trousers, he told Mr X he was under arrest and Mr X subsequently reached forward for the ignition. Officer B then opened the door because he was concerned Mr X might attempt to drive the vehicle, which would make him a risk to the Police and public due to his level of intoxication.
27. Officer B said he had not previously seen Officer A remove the keys, and when he opened the car door there was quite a struggle and he was surprised by Mr X's strength.

³ 'Active resistance' includes physical actions such as pulling, pushing or running away; that is, *"more than verbal defiance"*. See paragraph 109 for relevant Police policy.

28. Officer B told the Authority that he put his hands on Mr X's shoulders and extracted him from the vehicle. He said it took a number of attempts to do so, and Officer A assisted him by pulling Mr X out by his waist.
29. Officer A stated that she did not help extract Mr X and that it would not have been possible as she was on the other side of the door.
30. Mr X landed on his knees and then on his front. Officer B said "[I] didn't drop him, throw him. It was sort of like a controlled sort of place". He put Mr X's hands behind his back to secure the arrest. Officer A stepped in to assist and handcuffed Mr X.

After the extraction

31. Officer B pulled Mr X to his feet and took him to the Police car. When asked by the Authority if the blood around Mr X's face was any worse after extracting him from the car Officer B said he did not notice any difference. However, while he did not believe Mr X received injury as a result of being removed from the car, he acknowledged that he may have received injury while he was struggling on the ground resisting arrest.
32. Officer A got into the back of the Police car with Mr X. She noticed he had a fresh cut to his lower lip, which she understood to be as a result of him landing face down in the road. She used some tissues to help clean the blood from his face.
33. Officer A said, that when in transit to the Police station, Mr X *"was not ... being aggressive. I would describe him as being dazed. He was quite confused ... he was talking a lot of waffle."* She did not perceive him to be a threat. She said he seemed appreciative of her cleaning the blood from his mouth and engaged in conversation.
34. Once she had cleaned his face, Officer A told Mr X he was detained for the purpose of an EBT. She asked him if he understood why he was being detained and if he understood his rights. He acknowledged that he did.
35. As detailed above, the issues in dispute between Officers A and B in relation to the incident at the roadside are whether:
 - a) Officer B interrupted Officer A as she required Mr X to accompany them;
 - b) the extraction was in fact a response to the pants being thrown and not preceded by a warning or arrest by Officer B;
 - c) there was a struggle when Officer B pulled Mr X out of the car;
 - d) Officer A assisted Officer B to pull Mr X out of the car; and
 - e) Mr X sustained a facial injury when he was put on the ground.

Independent witness' account

36. The independent witness, Mr Y, was parked approximately three metres behind Mr X's vehicle. He witnessed the two Police officers speak to the driver and carry out a breath test with him. He reported that Officer A then walked away towards the Police car. This conflicts with the officers' accounts which state they both remained by Mr X's vehicle for the duration of the incident.
37. Mr Y saw Officer B speak to Mr X, but was unaware of Officer A's whereabouts while he did so. He said he saw Officer B gesture to Mr X that he wanted him to get out of the vehicle followed by a brief struggle between Officer B and Mr X as Officer B pulled open the driver's door. Mr Y witnessed Officer B pull Mr X out of the car and he told the Authority *"it looked to me like it was one movement ... a couple of seconds."*
38. Mr Y said Officer A was not in the vicinity when Officer B pulled Mr X from the vehicle, but that she arrived to assist by handcuffing him. Mr Y described Mr X lying on the ground *"moving around aggressively, cursing, in my opinion resisting ... he was quite vocal."*

Mr X's account

39. The Authority interviewed Mr X as part of its investigation. While Mr X confirmed being arrested at the roadside, his account was vastly different from that provided by Officers A and B, and Mr Y. His version of events contained assertions that the Authority considers clearly erroneous. Evidence obtained by the Authority tended to confirm the possibility that there were medical reasons for Mr X's obvious confusion. The Authority therefore does not consider Mr X's account of the events at the roadside to be reliable and has put his account to one side.

At the Police station

40. Officer B drove to Ashburton Police Station with Officer A and Mr X in the back of the Police car. Officer B asked Mr X what had happened to his face. Mr X said *"you smacked me"*. Officer B denies hitting Mr X, and Mr Y and Officer A's accounts do not support Mr X's claim.
41. Upon arriving at the Police station, at approximately 9.45pm, Officer A helped Mr X out of the Police car and into the charge room.⁴ Officers A and B were the only officers at the station at the time; there was no sergeant on duty.
42. Mr X repeatedly demanded that his handcuffs be removed. Officer B told him that it was for Police to decide when this happened.
43. Officers A and B, and Mr X remained in the charge room together. Officer A described Officer B's demeanour as calm when he spoke to Mr X. She considered Mr X to be *"demanding ... that's as much as I'd say."* She did not remember hearing Mr X making any threats, verbally or physically, nor did she perceive him to be a threat to her or Officer B's safety.

⁴ The charge room is where detainees are received and processed into police custody.

44. Officer B, however, told the Authority that Mr X was agitated, verbally aggressive, and threatening to hit him. He said:

“[Mr X] said that he was going to get me and he was going to smack me ... which I took as meaning he was going to punch me or something like that ... either he thinks I have punched or assaulted him like he said earlier or he’s just drunk and he’s not quite sure what’s going on.”

45. Officer B believed Mr X said something to him like *“Don’t you want my blood”* and he told the Authority that he was concerned Mr X was going to spit blood at him as *“his body language suggested to me that this was his intention.”*

46. Officer B considered using a spit hood but none were available at Ashburton Police Station.⁵ He explained that he was particularly concerned about blood contamination as he was a medic in the Army for seven years and they emphasised the associated risks. He said:

“It was sort of ingrained in me and I’ve always been very cautious of blood especially around the face when it can be spat and sprayed on you. So that was a bit of a concern for me.”

47. Officer B considered Mr X to be ‘assaultive’ and feared for his own safety.⁶ With this in mind, Officer B stood behind Mr X and placed his hand on Mr X’s shoulder to keep him facing the wall. Mr X then turned his head towards Officer B. Officer B perceived this as a threat to his personal safety, so he executed a leg sweep and spun Mr X round to the left, landing him face to the floor. Officer B described his actions as *“laying [Mr X] on the floor”*.

48. Mr X’s head made contact with a wall heater on the way down to the ground, resulting in him receiving an additional injury to his face. Officer B acknowledged that this occurred but stated it was *“100 percent an accident.”*

CCTV footage

49. During its investigation, the Authority analysed CCTV footage of the incident in the charge room.

50. In the footage:

- a) Mr X can be seen saying something to Officer B, but there is no audio recording available. Officer B then takes Mr X by his arm and moves him to face the search wall. He stands behind Mr X and firmly places him against the wall by pressing his hand on his upper arm.
- b) Mr X turns his head to the left and Officer B immediately reacts by swinging him to the floor. Mr X lands face down, hitting his face on the wall heater on the way down. As Mr

⁵ A spit hood is a restraint device intended to prevent someone from spitting or biting.

⁶ ‘Assaultive’ includes someone who displays intent to cause harm, through body language/physical action.

X is still handcuffed behind his back at the time, his face takes the full impact of the fall. This manoeuvre takes two seconds.

- c) Mr X is not resisting. He is incapacitated and compliant. Officer B then puts his knee into Mr X's back as he releases the handcuffs.
- d) Officer A steps in and lifts Mr X's shoulders up by pulling on the back of his sweatshirt. As Mr X lifts his head from the ground a substantial amount of fresh blood can be seen on the floor under his face.
- e) Officer B then grabs Mr X by the back of his sweatshirt and assists him up so he is on his hands and knees. Mr X struggles to get up, and is bleeding heavily from his face onto the floor. Mr X slumps back down to the floor and Officer B once again pulls him up by his sweatshirt, this time sitting him up but nearly removing his clothing in the process. Officer B pulls Mr X to his feet and escorts him to a cell.

After the incident

- 51. The officers left Mr X unattended in a cell for approximately five minutes, while Officer B took a moment to gather his thoughts and set about getting gloves and first aid materials to clean the blood from Mr X's face. Officer A went to set up the EBT machine for testing.
- 52. Officer A told the Authority that Officer B said to her: *"I thought he was about to spit blood at me, shit I think he hit his face on the heater on the way down."*
- 53. Officer B returned to the cell to check on Mr X. He said: *"[Mr X] appeared to have calmed down and was being much more cooperative."*
- 54. Officer B attended to Mr X's face, and told the Authority in a later submission that he conducted a head injury assessment at which time he noticed a fresh cut to Mr X's top lip. Officer B provided Mr X with some tissues to quell the bleeding. He then brought him into the EBT room and showed him where he could wash his face.
- 55. Officer A noticed that Mr X's left cheek had begun to swell and the cut on his lower lip had opened up more. He sat in a chair holding a paper towel to his lip. Officer A asked if he was alright and he said he had had a *"tussle"* with Officer B. Officer A later said: *"He was almost unaware that something had happened. He kept asking where all the blood had come from."*
- 56. Officer A commenced the EBT procedures at 9.52pm. After several unsuccessful attempts, the result was an incomplete test, meaning a blood test was required. She advised Mr X of his rights following the 'no result' EBT. He then spoke to his lawyer.
- 57. Meanwhile, Officers C and D arrived at the station to commence their shift at 10.00pm. Officer C asked if Officer B needed any assistance, which he declined. Officer D assisted by cleaning up the blood in the charge room.

58. Officer A attempted to contact the on-duty nurse who would usually attend the station to complete blood tests. However, on this occasion she was unavailable. Officer A then contacted Ashburton Hospital and informed them that they would be bringing Mr X in for blood tests. At 10.32pm they left the Police station to attend the hospital.

Hospital

59. On arrival, Officer B *“advised the doctor [Mr X] was there for blood alcohol [testing], but he also had some injuries.”* The doctor attended to Mr X’s facial injuries and took a blood specimen from him.
60. Hospital staff advised the officers that they would keep Mr X in overnight for further assessment. Mr X had sustained lacerations to his upper lip and chin which required stitches, as well as bruising to his left cheek.

Police investigation

61. A Police supervisor reviewed the incident at the roadside and, based on the limited information he reviewed, stated that the need to extract Mr X from the vehicle was not immediate and the method of doing so was unnecessary.
62. The Police conducted a criminal investigation into Officer B’s actions, and decided not to lay charges in relation to either of the incidents at the roadside or at the Ashburton Police Station.
63. Police also undertook an employment investigation into Officer B’s actions in the charge room at Ashburton Police Station. However, Police have determined no further action is to be taken in relation to the incident at the roadside due to insufficient evidence.
64. Officer B went through a disciplinary process and received an appropriate outcome. He has since resigned from the New Zealand Police.

THE AUTHORITY’S INVESTIGATION

65. As part of its investigation the Authority interviewed Officer A, Officer B, Mr X, and Mr Y. The Authority also monitored the Police investigation throughout and reviewed all the documentation produced by the Police investigation team.

THE AUTHORITY'S FINDINGS

66. The Authority considered the following issues:
- 1) Was the arrest of Mr X lawful?
 - 2) Was the force used in arresting Mr X at the roadside justified?
 - 3) Was the force used on Mr X in the charge room excessive?
 - 4) Was appropriate medical assistance provided to Mr X?

Issue 1: Was the arrest of Mr X lawful?

67. The Authority has been provided with conflicting versions of the events prior to the arrest, which are relevant to whether the arrest was justified and lawful.
68. Both officers recall that Mr X was verbally aggressive towards them and that he refused to accompany them to the Police station. Section 69 of the Land Transport Act 1998 states that a person commits an offence if they fail or refuse to accompany, without delay, an enforcement officer to a place where they may undergo an evidential breath test, blood test, or both (see paragraph 102). Based on the accounts provided by Officers A and B, and Mr Y, the Authority is satisfied that Mr X refused to accompany Police. Therefore it was legally justified for Officer B to arrest Mr X.
69. However, Officer A told the Authority that she was still in the process of negotiating with Mr X to accompany her to the Police station, and she considered that Mr X had not been given sufficient opportunity to comply before Officer B intervened.
70. Officer B said he believed Officer A was seeking his assistance, so he stepped in to help. He told the Authority that *"there were several other steps and communication between myself and [Mr X] before he was taken from the vehicle."*
71. Mr Y said he saw Officer B speak to Mr X and gesture to him to get out of the vehicle. The Authority is satisfied that there was a brief interaction between Officer B and Mr X before he was pulled from the car and handcuffed.
72. Officer A said she did not hear Officer B tell Mr X that he was under arrest before extracting him from the vehicle. She said this was possibly due to the weather conditions but doubted it due to her close proximity to Officer B at the time.
73. Officer A said that the situation escalated quickly when Mr X threw his trousers out of the window. She believed Officer B was angry and upset that Mr X threw the trousers at him, and pulled Mr X from the vehicle as an immediate reaction to this, not because he was refusing to accompany them. She said *"the whole demeanour of [Officer B] changed after the pants had been thrown"*

74. Officer B denied that the trousers hit him, and said he gave Mr X a final chance to comply before he arrested him.
75. The Authority is unable to determine exactly what happened prior to the arrest; however the elements to enable an arrest to be made were met, as Mr X failed to accompany Police, therefore the arrest was lawful.
76. The Authority is, however, of the view that it would have been better practice to continue to communicate with Mr X, as Officer A said she intended, rather than pull him out of the vehicle.

FINDING

The arrest was lawful.

Issue 2: Was the force used by Officer B in arresting Mr X at the roadside justified?

77. 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 and enforcement of warrants (see paragraphs 103-110 for an explanation of relevant law and policy). Police policy states that the use of any force must be considered, timely, proportionate and appropriate given the circumstances known at the time.
78. Officer B said he believed his actions when removing Mr X from his car were necessary, as the communication he used had no effect and Mr X still refused to exit the vehicle. He said Mr X continued to be aggressive and was capable of resisting arrest, or assaulting him or Officer A. He also considered that Mr X was a risk to public safety while intoxicated and in charge of a vehicle.
79. However, Officer A had already removed the keys from the ignition, securing the vehicle. Officer B said he was not aware of this, but even so, he had the opportunity to take steps to secure the vehicle himself when he intervened to speak to Mr X.
80. Officer B stated that he struggled to open the door to extract Mr X, as he was resisting by pulling the inner door handle closed. He said it took several attempts to get Mr X out of the vehicle. However, both Officer A and Mr Y reported that there was minimal resistance as Officer B opened the vehicle door. Their accounts described the extraction from the car as a quick, fluid movement, resulting in Mr X landing face first in the road.
81. Officer A also believed Mr X may have received additional injury to his face following the extraction while Officer B did not notice any. As Mr X sustained further injuries in the charge room, the Authority is unable to determine whether or not Mr X received injuries during the incident at the roadside.

82. Officer B told the Authority that Officer A assisted him in extracting Mr X from the vehicle. However, Officer A said that when Officer B opened the door, she was on the other side of it, creating a physical barrier which meant it would not have been possible for her to assist with the extraction. Mr Y also stated that Officer A was not in the vicinity when Officer B extracted Mr X. The Authority prefers the direct evidence of Officer A that she did not assist Officer B to remove Mr X from the vehicle.
83. The discrepancies in the accounts provided by Officers A and B, and Mr Y, mean it is difficult to determine exactly what happened when Mr X was extracted from the vehicle. In any event, resolution of those discrepancies would not help determine the degree of force used by Officer B. Certainly, the force used was sufficient to remove Mr X, who was showing at least some resistance, in *“a quick fluid”* movement. That observation goes to the result of the force used rather than the degree of the force used. The fact that Mr X landed *“face first in the road”* is also not determinative of the degree of force used. The manoeuvre was carried out by Officer B using both of his hands. It is difficult to imagine how else Officer B could have extracted someone refusing to leave the vehicle. On the available evidence, the Authority is unable to make a finding as to whether or not the force used by Officer B to extract Mr X from the vehicle was justified.

FINDING

The Authority is unable to make a finding on whether the force used by Officer B during Mr X’s arrest was justified.

Issue 3: Was the force used by Officer B on Mr X in the charge room excessive?

84. Officer B said he believed he was acting in self-defence in the charge room, in accordance with section 48 Crimes Act 1961 (see paragraph 104).
85. In order to rely on this defence, a person’s actions must be assessed on a subjective and objective basis. This assessment involves three questions:
- 1) What were the circumstances as the person believed (subjectively) them to be?
 - 2) Did the person use force for the purpose of defending himself or herself or another (objectively)?
 - 3) Was the force used reasonable (objectively) in those circumstances?

What circumstances did Officer B believe he was facing?

86. Officer B and Mr X were both in the secure charge room of the Police station. Mr X’s hands were cuffed behind his back. Officer A was also present in the room. At the time Officer B took action, Mr X was standing facing up against a wall and Officer B was standing directly behind him.

87. Officer B said that Mr X had threatened to “smack” him and he was concerned Mr X was going to spit blood at him as “his body language suggested to me that this was his intention.” These factors caused him to fear for his personal safety. He said the risk of blood contamination if Mr X spat at him was “a bit of a concern” to him.

Did Officer B use force for the purpose of defending himself?

88. The Authority has considered Officer B’s risk assessment while taking into account the following:

- Mr X was 59 years of age and of slight build. Officer B on the other hand was in his late 20s and of a strong, muscular build.
- Mr X was handcuffed behind his back for the duration of the incident. It would therefore have been impossible for Mr X to hit Officer B using his hands or fists.
- The CCTV footage does not indicate that Mr X attempted to spit at Officer B and it is difficult to interpret anything Mr X physically did as an intention to spit at Officer B. When Mr X was facing the wall, it would not have been possible for him to spit at Officer B who was standing behind him.
- Officer A did not hear Mr X threaten to spit blood, nor did she perceive him to be a risk or threat to either her or Officer B.
- The CCTV footage shows that Mr X was not resisting Police.

89. Mr X was restrained and Officer B had a physical advantage over Mr X in terms of age and stature, indicating that lesser tactical options such as communication or firmly holding Mr X into the wall would have sufficed.

90. Officer A’s perception of the situation was vastly different to that of Officer B’s, and the CCTV footage also confirms that Mr X was compliant.

91. Based on the available evidence, the Authority considers that Officer B was not acting in self-defence.

Was it reasonable for Officer B to use force in the circumstances he was facing?

92. As Officer B was not acting in self-defence this question need not be answered.

FINDING

Officer B was not acting in self-defence, his use of force against Mr X in the charge room was not justified and prima facie constituted an assault.

Issue 4: Was appropriate medical assistance provided to Mr X?

93. All Police employees are responsible for the care, safety and security of everyone in their custody, and must act professionally at all times (see paragraph 111 for relevant policy).
94. Officer A provided initial first aid to Mr X's face while in the Police car on the way to the station, which was appropriate in the circumstances.
95. Following the incident in the charge room, where Mr X suffered a head injury, Officer B left Mr X unattended in a cell for approximately five minutes, while bleeding from his face. When Officer B returned, he provided Mr X with some tissues to quell the bleeding.
96. As a result of the failed EBT, the officers took Mr X to hospital. On arrival, Officer B advised the doctor that Mr X was there for blood testing. He also informed the doctor that there had been an altercation at the Police station, which had resulted in Mr X receiving injuries to his face.
97. The officers took Mr X to hospital primarily for blood alcohol testing; treatment for Mr X's injuries was a secondary consideration. Necessary medical assistance was delayed by a number of attempts to complete an EBT.
98. Police policy states that Police should contact a health professional if the detainee has been injured, particularly if they have a head injury (see paragraph 113). Officers A and B should therefore have sought immediate medical treatment for Mr X at hospital as there was no Police doctor available at the time.
99. Mr X received hospital treatment approximately an hour after the incident in the charge room.⁷ Medical staff confirmed he had sustained a laceration to his upper lip, bruising to his left cheek and a cut to his chin which required stitches. He was kept in hospital overnight for further assessment and treatment due to the severity of his injuries.

FINDINGS

Officer A provided appropriate medical assistance to Mr X when in the Police car.

Mr X received appropriate medical assistance once he was in hospital. However, necessary treatment was delayed by Police attempting to conduct an EBT rather than addressing his injuries.

⁷ The incident in the charge room occurred at approximately 9.45pm. The officers took him to hospital at 10.32pm and he was admitted at 10.41pm.

CONCLUSIONS

100. The Authority has determined that Officer B did not act in accordance with the law and Police policy when dealing with Mr X in that the force he used against Mr X in the charge room was not in self-defence and was unjustified.
101. The Authority also found that:
- 1) The arrest of Mr X was lawful; and
 - 2) Officer A provided appropriate medical assistance to Mr X when in the Police car. Mr X received appropriate medical assistance once he was in hospital. However, necessary treatment was delayed by Police attempting to conduct an EBT rather than addressing his injuries.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

3 July 2018

IPCA: 17-0222

Legislation

Power to arrest

102. Section 69 of the Land Transport Act 1998 states that a person commits an offence if they fail or refuse to accompany, without delay, an enforcement officer to a place where they may undergo an evidential breath test, blood test, or both.

Use of force

103. 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 and enforcement of warrants. 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.”*
104. Section 48 of the Crimes Act states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*
105. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police policy on use of force

106. The Police ‘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, restrain a person, affect 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.
107. Police policy provides a framework 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 as the TENR (Threat, Exposure, Necessity and Response) assessment.
108. 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)).

109. A key part of an officer's decision regarding 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.
110. The policy states that 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.

Duty of care

111. All Police employees are responsible for the care, safety and security of everyone in their custody, and must act professionally at all times.
112. The 'People in Police detention' policy provides that:
- “All people identified as in need of care because of their health, medical condition or the presence of any suicidal warning signs must be examined as soon as practical by a:*
- *Police medical officer, or*
 - *duly authorised officer, or*
 - *(CAT) - Community Assessment Team member.”*
113. The 'People in Police detention' policy also states that Police must: *“Call a health professional (use Police medical officers where practical) for advice / assistance if the detainee has been injured (especially where a potential head injury has occurred proximate to the detention).”*

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 Colin Doherty.

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 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 of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
