



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Police justified in use of dog to prevent man attempting to escape

Summary of the Incident

1. On 29 April 2020, Police ran an operation to arrest a man, Mr X. He was wanted for multiple offences and believed to be actively evading Police.
2. Mr X was located by Police on Great King Street, Dunedin. When Police approached Mr X to arrest him, he ran off.
3. A Police dog was deployed to prevent Mr X from escaping and he suffered two dog bites in the process of being detained.
4. A complaint was made to the Authority on 7 September 2020 on behalf of Mr X.

Issue examined by the Authority

Issue: Was Officer C justified in using his Police dog to arrest Mr X?

The Authority's Finding

5. The Authority found that the use of a Police dog by Officer C to arrest Mr X was justified in the circumstances.

Analysis of the Issue

ISSUE: WAS OFFICER C JUSTIFIED IN USING HIS POLICE DOG TO ARREST MR X?

Circumstances leading to the arrest of Mr X

6. Mr X was wanted for multiple offences including reckless driving, aggravated failing to stop, obstruction of a Medical Officer of Health, escaping from Police custody and breaching bail conditions.
7. These offences related to an incident on 23 April 2020 when Mr X was seen by Police driving in a reckless manner and, when stopped, found to be breaching his bail conditions and the COVID-19 Level 4 lockdown restrictions.
8. Mr X was arrested for these matters, but he made off from Police in his car, escaping from Police custody and subsequently failing to stop for Police when they pursued him. Police abandoned the pursuit due to the continued dangerous manner of his driving.
9. Following this, Police say efforts were made to locate Mr X in the period up until 29 April 2020, but without success. Police believed Mr X to be actively avoiding arrest.
10. On 29 April 2020, Police believed that Mr X was at a motel in Dunedin and an operation was mounted to apprehend him. A briefing was held at approximately 12pm. The following information was relayed to officers based on intelligence held about Mr X:
 - he posed a significant threat;
 - he was known to flee or fight with officers to avoid arrest; and
 - at least two officers should deal with Mr X, and escape routes should be blocked if possible.
11. Officer A was the forward commander for the operation. He had a team of five other AOS officers to assist him, armed but wearing their blue police uniform.
12. At approximately 12.50pm, Police saw Mr X walking on Great King Street with two other persons, Mr Y and Ms Z.
13. Officer A made the decision to approach Mr X in an unmarked Police car to arrest him. Officer A was in an unmarked Police car being driven by Officer B, with Officers C and D as passengers. Officer C had his Police dog with him.

Accounts of Mr X and Mr Y

14. We obtained accounts from Mr X and Mr Y about this matter. Ms Z did not respond to our attempt to contact her. Mr Y told us he was told to get on the ground, which he immediately did. From here, he was unable to see much of what happened.

15. Mr X says in his peripheral vision he saw Police pull up in an unmarked car. Police were screaming out the window before the car had even stopped, telling him he was under arrest and to get on the ground.
16. On his own admission, Mr X says he went to run. He took one or two steps before looking back and seeing the Police dog. At that point, he says he stopped and put his hands up as he knew the dog was coming for him.
17. He was stepping back as the dog approached. It jumped at him, biting him on the front of the right thigh.
18. Mr X “whacked” the dog on the head to get it off before getting down on the ground as directed by the officers who were there. He got down on his knees before laying down on his stomach with his arms and legs spread out.
19. From here, Mr X says the dog reattached almost immediately and bit him on the rear of his right thigh and buttock region for about 15 – 20 seconds. He says he had surrendered at this point and was not resisting. During this time, Police handcuffed him.
20. After the dog was removed, Mr X says he was brought to his feet and walked to the Police car.
21. As a result of the dog bites, Mr X says the injury to the front of his right thigh resulted in a one-centimetre scar and the injury to his buttock required ten stitches and resulted in a five-centimetre scar.

Accounts of the officers

22. Officer B identified Mr X walking on Great King Street and pulled up in the unmarked vehicle beside him.
23. Officer C told the Authority he got out of the car and called out a challenge to Mr X. Officer C wrote in his tactical options report (TOR)¹ immediately after the incident that he shouted out a challenge of “*Police Dog Handler, stay there.*” However, during interview he told the Authority it was more than likely that he would have added, “*or I will release my dog*”.
24. Officer A told the Authority he also called out to Mr X once he had exited the car, saying he was under arrest.
25. Officers A, B, C and D all describe Mr X as walking away from the Police car when they initially approached. They saw him turn around, notice the Police, and immediately turn back round before running away from Police.
26. Officer C says he had to run past Mr Y and Ms Z with his Police dog, as he did not want to risk the wrong person being apprehended by his dog. Once he had done this, he released his dog.

¹ Officers are required to complete a tactical options report when he or she use force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

27. Officer C describes how his dog attempted to connect with Mr X but appeared to have missed as Mr X tried to evade the dog. As a result, Officer C was able to gain ground on Mr X and take him to the ground in conjunction with his dog connecting with Mr X, biting him in the buttock region.
28. Officers A and D assisted Officer C by holding Mr X's arms and handcuffing him.
29. Officer C removed his dog from Mr X once the other officers had control of him.
30. Mr X was taken from Police custody to Dunedin Public Hospital for medical treatment for his bites.

Video footage from the incident

31. The Authority has had the benefit of viewing some video footage of the incident. Mr X is seen to turn and step out of the way of the Police dog, which enables Officer C to catch up and take hold of Mr X. The Police dog also engages with Mr X at about the same time.
32. Mr X appears to get down to his knees before lying down on his front. Officer C attempts to take hold of his arms and the Police dog is attached to his rear.
33. Mr X is on the ground for a few seconds before Officers A and D come into view and assist.
34. Officer A moves in and appears to take hold of Mr X's arms, and Officer C gets up and takes hold of his Police dog around the neck. From the angle of the footage, it is not possible to see exactly when the Police dog is removed.
35. Officer D readies handcuffs and kneels to assist.
36. At about the same time, Officer C has removed his Police dog and is pulling the dog back. Mr X kicks out with his leg and there appears to be brief contact between Mr X's foot and the Police dog.

Officer C's perception of the circumstances

37. Based on Police intelligence and Mr X's recent actions, Officer C told the Authority that Police believed Mr X was actively evading Police and they predicted he would attempt to escape from them.
38. Officer C believed that if Mr X escaped then it was likely he would offend again and this would most likely be in a vehicle, which would put members of the public and Police at risk should a pursuit occur. Officer C conducted a risk assessment and decided he had to act immediately to prevent Mr X from escaping, and he did this by releasing his Police dog.

39. He says he considered all his tactical options. However, because of the distance between him and Mr X, OC spray and Taser were not feasible options. Mr X was getting away from him, although he was running as fast as he safely could with his Police dog. He says the only other non-lethal option to arrest Mr X was to release his Police dog.
40. As mentioned in paragraph 26, Officer C says he had to prevent accidental injury to members of the public by running approximately three metres, past Mr Y and Ms Z, before releasing the Police dog.
41. Officer C was also aware that his colleagues were not able to assist him with detaining Mr X.

Use of Force

42. Section 40 of the Crimes Act 1961 provides for Police to use *“such force as may be necessary”* to prevent the escape of someone who *“takes to flight to avoid arrest.”*
43. *“Necessary”* force is force that is reasonable and proportionate in the circumstances. It is also the minimum force needed to achieve the objective, since it will not be justified if the escape could have been *“prevented by reasonable means in a less violent manner”*.
44. The proportionality of the force should be assessed against two factors:
 - the seriousness of the offence for which the person is to be apprehended (and the consequent public interest in detaining them in order to bring them to justice); and
 - the likelihood and degree of risk the offender poses if escape is not prevented.

The seriousness of Mr X’s offences

45. Mr X was wanted by Police for reckless driving, aggravated failing to stop, obstruction of a Medical Officer of Health (relating to breach of lockdown restrictions), escaping from Police custody and breaching bail conditions.
46. Police considered Mr X posed a significant threat and he was known to be actively evading Police following the incident on the 23 April 2020.
47. His suspected offending was therefore moderately serious and there was a significant public interest in bringing him to justice.

The likelihood and degree of risk Mr X posed

48. Officer C’s belief as to the circumstances are described above (see paragraphs 37-41).
49. We accept that Mr X was aware he was under arrest and running from Police.

50. The harm Mr X could have caused if any of the risks cited by Officer C eventuated had the potential to be serious and potentially involve injury to multiple people. This is based on Mr X gaining access to a vehicle and becoming involved in a pursuit.
51. The likelihood of Mr X gaining access to a vehicle was low at the precise time of escaping. However, if he had escaped, it is highly likely that he would have gained access to a vehicle resulting in a significant risk to members of the public.

Proportionality

52. Given the fact that Mr X had run from Police, we accept that there were no reasonable “*less violent*” tactical options available to Officer C. Taser and OC spray were no longer viable options due to physical distance.
53. The only other “*less violent*” option would have been to let Mr X go.
54. Police made the decision to arrest Mr X while he was on foot to reduce the risk of further offending and likelihood of a pursuit.
55. Mr X had been involved in a pursuit six days before his arrest, in which he told us he was driving about 180 kmph. Members of the public called Police after this pursuit was abandoned advising that the car was speeding and driving on the wrong side of the road.
56. We believe Police made sound operational decisions based on the information and circumstances at the time. It is evident they were acting to avoid putting any person at risk of unnecessary harm.
57. We conclude that, although there was a low likelihood of Mr X gaining access to a vehicle at the time of escaping, the risk to members of the public was significant enough that letting Mr X escape was not an appropriate option.
58. Based on this, Officer C was justified in using his Police dog to detain Mr X.
59. Mr X received two dog bite injuries during this incident. However, Officer C was left with limited options once he had released his Police dog. We accept that Officer C removed his Police dog as soon as practicable once other officers have moved in to assist him and Mr X was suitably restrained.

FINDING ON ISSUE

Officer C was justified in using his Police dog to detain Mr X.

A handwritten signature in black ink, appearing to read 'C. Doherty', with a horizontal line underneath.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

21 September 2021

IPCA: 20-4711

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 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.



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