



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihihihi Motuhake

Force used to arrest man in Inglewood justified

Summary of the Incident

1. On 21 May 2020, Police arrested Mr X at a house in Inglewood, New Plymouth. Police used several tactical options during the arrest, including pepper spray and Tasers. Mr X complained about the level of force used, and that he was kicked in the head four times while on the ground with officers holding on to him.
2. Police had been searching for Mr X to arrest him for eight months. He had previously escaped from Police from an Inglewood address. At about 4pm, seven Police officers surrounded the same Inglewood property. Mr X saw Police, fled out of a side window, and tried to get to a car parked in the driveway.
3. He was tasered as he ran towards the car and he fell into a narrow gap between the car and fence, having ripped out the taser probes and opened the driver's door. Mr X kicked out at officers while on his back and ignored instructions to stop resisting.
4. An officer put his foot on Mr X's left shoulder and upper neck and applied downward pressure to pin him in place. Another officer jumped onto the roof of the parked car and fired his Taser at Mr X's abdomen. Mr X again pulled the probes out and continued to fight Police.
5. The officers tried to apply handcuffs, but Mr X attempted to stand and was able to get back up on to his knees. Officers used a headlock, pepper spray, and a contact stun from the Taser to try and control him.
6. Mr X was pulled away from the car on his stomach, handcuffed and placed in the recovery position. The arrest process took approximately three minutes.

7. Mr X complained his handcuffs were too tight while being driven to the Police station. When an officer loosened the handcuffs, he pulled one hand free from his handcuffs, released his seatbelt and attempted to open the Police car door by reaching through the partially open window. Police used an arm lock technique and pepper spray to restrain him. Mr X was transported in a prisoner van for the remainder of the journey and was assessed by a paramedic at New Plymouth Police Station.
8. Police investigated the use of force and Mr X's complaint and found nothing of concern.
9. The Authority reviewed this investigation material, including Taser camera (TaserCam) footage of the arrest. Attempts to speak to Mr X about his complaint were unsuccessful.

Issues examined by the Authority

- Issue 1:** Were Police justified in tasing Mr X?
- Issue 2:** Was Officer A justified in placing his foot on Mr X's shoulder and neck to pin him?
- Issue 3:** Were the other uses of force justified?
- Issue 4:** Did Police provide appropriate medical treatment to Mr X?

The Authority's Findings

10. The Authority found that Officers C and E were justified in tasing Mr X to prevent his escape.
11. We also concluded that:
 - 1) Officer A was justified in placing his foot on Mr X's shoulder and neck to pin him;
 - 2) Officers were justified in using restraint techniques, pepper spray and a contact stun to prevent Mr X from escaping;
 - 3) Officers did not kick Mr X in the head; and
 - 4) Police provided Mr X with adequate medical treatment.

Analysis of the Issues

ISSUE 1: WERE POLICE JUSTIFIED IN TASERING MR X?

12. Police had been searching for Mr X since 18 September 2019, when a warrant was issued for his arrest. He was wanted for recall to prison for breaching parole conditions.
13. Mr X is a gang associate and by May 2020 was regarded by Police as one of its top five priority violent offenders. Mr X has an extensive list of convictions, including numerous convictions for

violence and drug-related offending. He is powerful and muscular and is known to carry weapons and attack Police.

14. Mr X fled from Police several times between September 2019 and May 2020. In October 2019, Police located him at the same Inglewood address, but he jumped the fence and ran away, having dumped a bag containing methamphetamine and a glass pipe. Between September 2019 and May 2020, he was involved in a car accident and several Police pursuits that were abandoned due to the risk posed to the public. Mr X was thought to be using and dealing methamphetamine, collecting drug debts and to have access to a firearm.
15. On 21 May 2021, Police received information that Mr X was at a house in Bell Block, New Plymouth. By the time Police arrived, Mr X had left in a car. Police located the car in Inglewood but Mr X was not present. Officer A, a sergeant, decided to search the Inglewood address with six officers, including a dog handler. All officers (except Officer A) wore Tasers.¹
16. Police positioned themselves around the property. A car was parked next to the house, facing away from the road, on a driveway running down the right-hand side of the property. Officers A and B knocked on the front door. A child answered and told them to go to a side door. Officer C, positioned on the left side of the house, saw Mr X through a window and entered through a side door. He told Mr X he was under arrest. Mr X ran through the house and jumped out of a window on the right-hand side of the house, next to the driveway, and ran towards the driver's side of the parked car.
17. Officer D, a dog handler, was positioned at the rear of the property with Officer E, covering the right side of the property. Officer E heard Mr X being told he was under arrest. When Mr X jumped out of a window onto the driveway, Officer E challenged him to stop or he would be tasered. Officer E says Mr X moved towards him *"in an assaultive manner."*²
18. Officer E fired the Taser but missed Mr X. Officer D released the dog at the same time, but the effect of the Taser caused the dog to recoil, and it did not bite Mr X. Officer E fired the Taser again as Mr X rounded the front of the car with his hands flat on the bonnet. This time it hit Mr X on the right side of his back.
19. TaserCam footage shows Mr X move into the narrow, 50-centimetre-wide gap between the car and iron boundary fence and rip out the Taser probes. Mr X falls against the fence while opening the driver's door and ends up on his back on the ground. Officer E repeatedly yells: *"Get on the ground!"* and takes hold of Mr X's leg.
20. Meanwhile, Officer C climbed onto the roof of the car and activated his Taser so the TaserCam started recording. The footage shows Mr X on his back with his legs kicking out towards Officer E and another officer positioned behind him. Officer A is positioned behind Mr X's head. The officers are struggling to physically restrain Mr X due to the tight space he is in.

¹ There were not enough Tasers for him to carry one.

² According to Police policy, 'assaultive' means someone who displays intent to cause harm, through body language or physical action.

21. Officer C fires his Taser at Mr X's abdomen, but Mr X again pulls the probes out. Mr X's car keys are visible in his hand. Officer C is heard stating he will taser Mr X again if he does not comply with Police instructions to stop resisting.

Officers' accounts

22. Officers C and E state that they were extremely wary of Mr X due to his history, and that he was aggressive and assaultive as soon as he was confronted by Police.
23. Officer E says he believed Mr X *"was going to use any means necessary to avoid being taken into custody"*. He appeared extremely goal-driven to get to the car and Officer E believed he would assault Police who got in his way. His fists were clenched, and he could have a concealed weapon.
24. Officer E also says he had no doubt that, if Mr X was able to get his car started, he would put Police at risk of serious injury or death in his attempt to escape.
25. Officer C says he fired his Taser because Mr X was kicking and striking officers who were trying to restrain him. He could see the car keys in his hand and his strong motivation to get into the driver's seat of the car.

Was the use of force a justified, necessary and proportionate response in the circumstances?

26. Police may use *"such force as may be necessary"* to prevent the escape of someone who takes flight in order to avoid arrest, or to prevent the escape or rescue of a person after their arrest.³
27. In the Authority's view, *"necessary"* force in this context is force that is proportionate to:
 - 1) the seriousness of the offence for which the person is to be apprehended and the public interest in detaining them in order to bring them to justice; and
 - 2) the consequences that are reasonably believed to be likely to occur if escape is not prevented, including:
 - a. the degree and severity of the risk they pose if escape is not prevented; and
 - b. any other relevant consequences, such as loss of evidence, if escape is not prevented.
28. Police policy provides that officers are justified in using a Taser to arrest a person where they fear imminent physical harm to themselves or another person. Where practical and safe, the person should be warned before the Taser is fired to encourage them to comply.⁴
29. The Authority accepts that all officers present had reasonable grounds to believe that Mr X was trying to escape arrest. He had been told he was under arrest. In response, he jumped out of a

³ Section 40 of the Crimes Act 1961 is set out in paragraph 58.

⁴ See paragraphs 69-70 for relevant policy.

window and ran towards a parked car. It was obvious he intended to use it to flee from Police, and he had a significant history of attempting to escape arrest.

30. Mr X was wanted for arrest for possessing methamphetamine and utensils (both imprisonable offences), and in order to return him to prison for breaching his parole conditions. He had successfully evaded Police for several months and had placed the public and Police in danger during his efforts to get away, particularly while driving. He was extremely motivated to maintain his liberty, and Police had information that he was offending while evading Police. He posed a significant and ongoing risk while he remained at large.
31. Therefore, use of a significant amount of force was justified to prevent Mr X from escaping custody. We accept Officer E's assessment that Mr X was assaultive from the time that he was challenged to stop. His assessment is consistent with what can be seen of Mr X's demeanour and actions in kicking out at officers captured by TaserCam footage seconds later.
32. The Authority applies extra scrutiny to the use of a Taser when the offender is running away. This is because a Taser applies significant force to an individual and must be used in the context of a significant immediate threat, which is not usually the case if the offender is moving away from the Taser operator.
33. However, in this case, we are satisfied that the circumstances surrounding Officer E's use of the Taser were sufficiently serious to warrant its use. Further, Mr X was warned that he would be tasered if he did not stop, but he did not heed that warning.
34. Officer C had seen Mr X avoid a Police dog and overcome being tasered twice. Mr X was fighting four large, experienced officers attempting to restrain him in an awkward, confined space. He was trying to get into the car. For the reasons discussed above, Officer C was justified in firing his Taser at Mr X to prevent his escape.
35. Mr X's actions in resisting the officers would also have given the officers justification to use force to defend themselves, but as their primary focus was to overcome him for the purpose of arrest, we have not needed to deal with the uses of force in those terms.

FINDING ON ISSUE 1

Officers C and E were justified in tasering Mr X to prevent his escape.

ISSUE 2: WAS OFFICER A JUSTIFIED IN PLACING HIS FOOT ON MR X'S SHOULDER AND NECK TO PIN HIM?

36. Officer C's TaserCam footage shows that, before Officer C fired his Taser, Officer A, positioned behind Mr X's head, put his booted foot on top of Mr X's left shoulder and neck and applied downward pressure.
37. The footage shows that after Mr X pulled out the probes from Officer C's Taser, Mr X pushes Officer A's foot off his neck with both hands and continues to struggle on the ground.

38. Officer A goes to replace his foot but makes contact with Mr X's head while he is moving on the ground. This contact appears to be accidental. Officers roll Mr X onto his left side, and Officer A replaces his foot between Mr X's neck and right shoulder. Mr X is repeatedly directed to roll over onto his stomach, but he repeats that he cannot in the tight space. He continues to struggle and pushes Officer A's foot away again.
39. Officer A puts his foot on Mr X's left shoulder and Mr X is rolled over onto his stomach but pushes up on all fours. Officer E leans over from behind and attempts to restrain Mr X's arms and push him back down. Officer A removes his foot. Officer F moves forward to handcuff Mr X's right wrist. Mr X continues to tense and struggle.
40. Officer A completed a report after the arrest, explaining his actions. He said:
- The gap between the fence and the open car door was too tight for him to use 'empty hand' tactics to try to control Mr X and prevent him from getting into and starting the car, at which point he would have posed a serious risk to the officers in the driveway.⁵
 - He was wary of getting down to Mr X's level to restrain him as this would impede other officers from using their Tasers or pepper spray.
 - He applied "*medium pressure*" to pin Mr X when he could see that Tasers deployed by both Officers C and E had had minimal effect.
 - He did not put his foot on Mr X's abdomen (as opposed to his neck and shoulder) to avoid being affected by any electric current running between the probe sites.
 - Mr X was able to wiggle free and did so several times. Officer A said he was careful to replace his foot without stomping and applied gradual pressure.
 - As soon as Officer E and others were in a position to restrain Mr X, he removed his foot.
41. The Authority has looked at this carefully because, while the level of force applied by Officer A was not significant, applying force to the neck and head area is to be avoided where possible as there are obvious risks.
42. We accept that the purpose of the force was to try to control the top end of Mr X's body. Officer A gives valid reasons why he could not get down to Mr X's level and use his hands to restrain him or use his boot on Mr X's abdomen.
43. We also accept that Mr X needed to be controlled to prevent him from getting into the car with his keys, and there was very limited space for the officers to work. Four experienced officers were struggling to control Mr X due to the environment they were working in and Mr X's determination to get away.

⁵ 'Empty hand' refers to a weaponless use of force, such as grabbing hold of, pushing, or punching a person. See paragraph 65 for relevant policy.

44. Mr X was not complying with instructions, and the Taser (a more forceful option) was no longer having any effect.
45. Officer A took care when applying force and did not prevent Mr X from adjusting his position to a certain degree. The Taser footage supports Officer A's explanation that he applied measured and gradual pressure for the purpose of restraining Mr X and did not kick or stomp on Mr X. Mr X does not complain about being unable to breathe during this phase of the arrest (he does so later on, once he has been more fully restrained).
46. The force was proportionate and reasonable, and justified under section 40 of the Crimes Act. The level of threat and intent to escape displayed by Mr X (discussed in paragraphs 29-31) had only increased, justifying reasonable force to prevent him from escaping from Police and potentially harming officers in the process.

FINDING ON ISSUE 2

Officer A was justified in placing his foot on Mr X's shoulder and neck to pin him.

ISSUE 3: WERE THE OTHER USES OF FORCE JUSTIFIED?

47. Police used several further instances of force to control and restrain Mr X during his arrest and transportation to New Plymouth Police Station:
 - As Mr X was attempting to move from all fours to standing, Officer E put his arms around Mr X's upper shoulders and neck in a headlock and put pressure on Mr X's right calf to try to force him back down to the ground. Officers A and B applied pressure to his arms to force him downwards onto his stomach.
 - Mr X continued to struggle against being handcuffed despite four officers attempting to physically restrain him, so:
 - Officer B sprayed pepper spray into his eyes; and
 - Officer C used his Taser to apply a five-second stun on his back.
 - While Mr X was being driven to the Police station, he asked for his handcuffs to be loosened. This was done, and Mr X managed to free one of his hands, remove his seatbelt, put his hand through the partially open window, and open the car door. Officer E used an arm lock technique to place him back in his seat. Mr X refused to be handcuffed again or follow instructions, and Officer E pepper sprayed him to bring him under control.
48. Officer A commented that Mr X did not stop fighting until the handcuffs were secured. This is corroborated from what can be seen and heard on the TaserCam footage. Even then, once in the Police car, Mr X made a concerted effort to escape from a moving car at significant risk to himself.

49. After Mr X attempted to get out of the Police car, a Police prisoner van was sent from New Plymouth to Inglewood to transport Mr X the remainder of the journey back to the Police station.
50. It is clear that Mr X was prepared to take any opportunity to escape from Police, even if he injured himself in the process. It was necessary for Police to use force to control him and keep him in their custody. Police policy provides that pepper spray can be used in circumstances when a person is actively resisting officers.⁶ The force was proportionate and justified under section 40 of the Crimes Act.

Was Mr X kicked in the head?

51. Mr X has complained that he was kicked in the head four times during his arrest. All officers involved deny kicking Mr X or seeing any of their colleagues do so.
52. It is possible that Mr X interpreted Officer A's use of his boot as a kick. We also note that Officer A appeared to accidentally make contact with Mr X's head while repositioning his foot (see paragraph 38). None of these actions amount to a deliberate kick.
53. Custody documents do note that Mr X had a cut on his head when he arrived at the Police station. However, this was likely a result of him hitting his head when he fell against the fence. Officer C's TaserCam footage shows the right side of Mr X's head bleeding 11 seconds into the recording. At this stage, Mr X is on his back, having pulled the Taser probes out. Officer A's foot is applying pressure on his left shoulder and neck, so is unlikely to be the source of the blood.
54. We note that Mr X did not complain of being kicked or having a head injury while in custody or while being assessed by an ambulance officer at the Police station.
55. We conclude that Mr X was not deliberately kicked in the head by Police during his arrest.

FINDINGS ON ISSUE 3

Police were justified in using restraint techniques, pepper spray and a contact stun to prevent Mr X from escaping.

Police did not kick Mr X in the head.

ISSUE 4: DID POLICE PROVIDE APPROPRIATE MEDICAL TREATMENT TO MR X?

56. Mr X was put in the recovery position after he had been restrained on the driveway because he started to complain that he could not breathe (this was well after Officer A had removed his foot from Mr X's shoulders and neck). He was reassured by officers that he could breathe and told to relax (this is audible from TaserCam footage). He was given an inhaler because he said he had asthma.

⁶ See paragraph 66 for relevant policy.

57. As referred to above, an ambulance officer assessed Mr X at the Police station due to the fact he had been tasered and pepper sprayed. The ambulance officer did not raise any concerns. Mr X was frequently monitored while in custody.⁷

FINDING ON ISSUE 4

Police provided adequate medical treatment to Mr X.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

29 September 2022

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⁷ A detainee assessed to be 'in need of care' must receive frequent monitoring (that is, at least five checks per hour at irregular intervals).

Appendix – Laws and Policies

USE OF FORCE

Law

58. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to “prevent the escape of that other person if he takes flight in order to avoid arrest”, unless the escape can be prevented “by reasonable means in a less violent manner”.

POLICY

Police ‘Use of force’ policy

59. 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, effect 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.
60. 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.
61. The overriding principle when applying TENR is that of “*safety is success*”. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
62. The TENR risk assessment must balance the ongoing exposure to harm, with the current threat and the necessity to respond. This will determine the Police response.
63. 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, the presence or proximity of weapons, similar previous experiences, and the environmental conditions. Police refer to this assessment as an officer’s Perceived Cumulative Assessment (PCA).
64. A key part of an officer's decision about 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.

65. 'Empty hand tactics' refers to a weaponless use of force, such as grabbing hold of, pushing, or punching a person. Officers can use empty hand tactics to distract or control someone and also to defend themselves or others.
66. Oleoresin Capsicum (pepper spray) only be used on someone who is actively resisting, when the situation cannot be resolved by less forceful means. Appropriate aftercare should be provided.
67. The Use of Force 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 takes precedence, and every effort must be taken to minimise harm and maximise safety.
68. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

Taser policy

69. A Taser must only be used on a person whose behaviour is within or beyond the assaultive range or has the potential to escalate to within or beyond the assaultive range. Both the presentation and use of a Taser should be preceded by a warning unless it is impractical to do so.
70. Police policy on Taser aftercare states that a registered medical doctor or specially qualified ambulance officer must examine anyone who is exposed to the application of a Taser as soon as is practicable.

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. 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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