

Police use of force during arrest in Christchurch

INTRODUCTION

1. At approximately 7.45pm on 6 March 2017, Police were dispatched to a block of flats in Hei Hei, Christchurch to attend a domestic assault involving Mr X. While arresting Mr X, Police used pepper spray, a Police dog and a Taser on him.
2. Mr X complained to the Authority that Police had used excessive force and that, shortly after Police tasered him, he was again pepper sprayed and bitten by the Police dog.
3. The Authority conducted an independent investigation into the Police's use of force against Mr X. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

4. 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, it is not intended to suggest that the Authority has accepted that particular account.
5. 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

6. Mr Z called Police to attend a domestic assault at a block of flats in Hei Hei, Christchurch at approximately 7.45pm on 6 March 2017. He informed the Southern Police Communication Centre (SouthComms) that he had been punched in the face by Mr X. He said Mr X had also assaulted Ms Y, who was Mr X's partner.
7. On the way to the address, the SouthComms dispatcher advised the attending officers (Officers A, B and C) that Mr Z had stated Mr X liked to use weapons, often hammers.

8. Officer A read on his Police mobility device that Mr X was on bail for common assault (alleged to have occurred in the same locality) and was subject to a condition of bail to reside at his flat in Hei Hei and not to consume alcohol. The officer also noted that the Police database contained an alert that Mr X was known for resisting and assaulting Police.
9. Officers A and B arrived together at the block of flats at approximately 7.55pm. Officer C, the Police dog handler, arrived at the same time.
10. The officers went to Mr Z's flat to speak to him. Mr Z told Police that Mr X had gone into his bail address. He again advised that Mr X had a history of using weapons, but was unsure as to whether Mr X had one on this occasion.
11. Officer C remained with Mr Z, who provided a detailed description of the assault on Ms Y. He said Mr X entered Ms Y's flat uninvited and punched her hard on the head. He pushed her to the ground and stood over her, punching her with both fists. Mr Z reported that the assault lasted 5 minutes before Ms Y managed to escape. Mr X then *"king hit [Mr Z] out of nowhere"*.
12. Mr Z also showed Officer C photographic evidence of the assault on his cell phone. Officer C reported that this consisted of an image of Mr X standing over Ms Y who was on the ground.¹
13. Meanwhile, Officers A and B approached Mr X's flat to speak to him. He did not respond to their door knocks. Officer B went around the south side of the block of flats to check if the flat was accessible via the sliding door on the other side.
14. Officer A remained by the door on the north side of the address. He knocked firmly on the door several more times but there was still no response.
15. Officer A radioed Officer B to advise that the door was locked. Officer B responded that the sliding door was also locked. Neither could see any movement from within the flat by looking through the windows.
16. Officer C approached Officer A outside Mr X's flat, and advised him that Mr Z had shown him evidence on his cell phone of Mr X standing over Ms Y. Officer A returned to speak to Mr Z to confirm what had happened and to make sure he was knocking on the correct door. At this point Mr Z informed Police that Mr X was inside his flat with Ms Y.
17. Officer A advised Officer C of this. Officer B then radioed to say she had heard a loud bang coming from inside Mr X's flat. This new information caused the officers concern about the immediate safety of Ms Y. They decided they now urgently needed to gain entry into the flat.
18. Officer A was carrying a baton, oleoresin capsicum (pepper) spray and a Taser. Officer C was also carrying a baton and pepper spray, and returned to his vehicle to get his Police dog. When he came back with the dog, he stood on the grass to the left of the door to Mr X's flat.

¹ The Authority has not been able to view this as Mr Z was uncontactable and therefore unavailable for interview.

19. Officer A knocked on the door and told Mr X to come out or they would kick the door in. He also activated his Taser, and held it in his hand facing the ground. Switching on the Taser activated the Taser camera (TaserCam) which began recording.
20. There was no response to the warning, so Officer C kicked the door open to gain entry to the flat.
21. Officer C called out "*Armed Police [Mr X]. Come out of the address*", to which there was no response. He stood in the doorway of the property with the Police dog between his legs and shone his torch down the hallway, but could not see any signs of movement.
22. Officer A heard a calm female voice coming from within the flat. Officers A and C began calling out to the occupants from the doorway, but there was no response.
23. Officer A then called out: "*Hey mate, come out or else the dog will end up coming in and that'll be bad news*".² He hoped the threat of a Police dog entering the flat might motivate them to exit the property, so the officers did not have to be in close proximity to Mr X in the confined space of the flat.
24. Officers A and C continued to call out from the doorway. After about a minute, Officer A entered the property. Officer C remained by the doorway with the Police dog.
25. Officer A cleared the kitchen and the bathroom, and heard what he believed to be Ms Y's voice. As he approached the lounge, he saw a male, who he believed to be Mr X, slowly stand up from a couch. Ms Y also stood up.
26. Officer A saw approximately three open beer bottles and what might have been a fourth full bottle of beer on a coffee table in the lounge.
27. Officer A asked Mr X to come outside, and noted that "*both occupants appeared relaxed and the female did not appear to be there under any duress*". Mr X slowly exited the lounge towards the front door and Ms Y followed, with Officer A walking out backwards ahead of them.
28. This was the first the officers had seen of Mr X. In his Tactical Options Report (TOR) Officer C described him as a "*very solid male*".³

Arrest

29. Mr X came out of the property and stood in the doorway. There were a number of independent civilian witnesses who observed the incident from this point. They described Mr X

² This is audible on the TaserCam. The camera is facing the ground. The laser lights can be seen laser painting on the ground. Officer A can be heard calling out in a friendly manner as he steps forward into the doorway. The dog can be heard whining and breathing heavily in the background.

³ A Tactical Options Report (TOR) is required to be completed by an officer when he or she has used 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.

⁴ For consuming alcohol.

as tall and strong, with a muscular build, and confirmed that he was known to be aggressive, particularly towards Ms Y.

30. Officer A advised Mr X that he was under arrest for assault and potentially breach of bail.⁴ He put his Taser away in its holster with the intention of handcuffing Mr X.
31. Officer A asked Mr X to come outside onto the concrete footpath towards him, to the right of the doorway of his flat, and Mr X complied with this request. Officer C stood with the Police dog to the left of the door, approximately four metres away.
32. Officer A asked Mr X to face away from him and put his hands behind his back. Mr X was smoking at the time and wanted to finish his cigarette. He turned away from Officer A, facing Officer C, and put out his right hand.
33. Officer A attached the handcuff. He allowed Mr X to take another puff of his cigarette using his left hand, and then told him that was enough. He instructed Mr X to put his left arm behind his back so he could apply the other handcuff. Mr X did not comply and continued to have another puff of his cigarette. Independent witnesses stated that he was verbally aggressive towards Police at this time.
34. Based on the information Police had received earlier, Officer A was concerned that Mr X may have a concealed weapon. He was also aware that Mr X had previously been resistant towards Police. Officer A later said *“I wanted to get the handcuffs on both arms as soon as possible to avoid any further [risk of] assaults to the public or any Police staff”*.
35. Mr X ignored Officer A’s instruction, so Officer A attempted to grab Mr X’s left wrist to prevent him from smoking any longer. Mr X stiffened his left arm so it could not be cuffed. Officer A attempted to remove the cigarette from in between his lips but missed. Independent witness accounts verify that Mr X was actively resisting arrest.⁵
36. Mr X became agitated and raised both his arms to chest height, tensing his muscles, before swinging his upper body towards Officer A. Officer A believed Mr X was about to assault him and felt he needed to take action quickly in order to take control of the situation. He attempted to ‘bottle top’ Mr X with the handcuff on his right wrist, but did not have sufficient leverage to pull him to the ground.⁶
37. Officer A said:

“... there was no point in trying to outmuscle [Mr X’s] arm behind his back. [Mr X] was older than me but more solid than my frame. I knew that I was not going to succeed if I attempted to use strength to overpower him.”

⁵ Active resistance includes physical actions such as pulling, pushing or running away; that is, *“more than verbal defiance.”*

⁶ A ‘bottle top’ is a manoeuvre used by Police to restrain someone. When a handcuff is secured on a person’s wrist, the handcuff can be twisted backwards or forwards, which digs the handcuff into the underside of the arm and into the wrist bone. It can then be further twisted, putting leverage onto the wrist, causing the person to flex and enabling them to be pulled to the ground.

Pepper spray

38. Officer C saw that Mr X was becoming increasingly agitated and defiant in his behaviour. He said: *“I thought the assault was imminent or he was going to take off so I deployed the [pepper] spray”*. He aimed the pepper spray at Mr X from approximately four metres away, for one to two seconds.
39. The pepper spray hit Mr X’s chest, then his face. As Officer A stepped back about one to two metres to mitigate the risk of being contaminated by the spray, he released Mr X and left the handcuffs dangling from his right wrist.

First dog bite

40. Independent witness accounts stated that being pepper sprayed had little effect on Mr X, who began wiping his face. He then turned to face Officer C and the Police dog, which was barking loudly, and began to approach the dog.
41. Officer C moved towards Mr X and commanded the Police dog to bite him. He did so because of *“[Mr X’s] body language ... he’s now turned to active resistance bordering on assaultive ... and he’s right down in that sumo fighting stance coming towards me and the Police dog.”*⁷
42. Independent witness accounts confirmed these actions. Due to the speed at which the situation escalated, the Authority is satisfied that both parties moved towards each other simultaneously.
43. Mr X began to attack the Police dog. He told the Authority: *“I went over to the dog and grabbed the dog by the head and started shaking it”*. He explained that he did this because he has suffered a head injury in the past and does not like loud noises, which prevent him from hearing and cause him to become confused.
44. Officer C took hold of Mr X and put him in a headlock in an attempt to stop him attacking the dog. Despite being restrained by the officer, Mr X continued wrestling with the dog. Officers A and C saw the dog bite Mr X’s leg during the melee. Independent witnesses confirmed that Mr X attacked the Police dog and was bitten in the process.
45. Officer C said:

“[Mr X is the] most determined offender that I’ve ever seen with a Police dog ... he was picking up the dog, throwing him down on the ground and really giving a good hiding [Mr X] actually – because I had him in a headlock he was able to pick me up so both my feet were up off the ground and went back down on the ground.”

Taser and second dog bite

46. Meanwhile, Officer A was aware that Mr X still had a loose handcuff attached to his right wrist which could be used as a weapon. He considered trying to grab Mr X’s legs to pull him to the

⁷ ‘Assaultive’ in the Police Tactical Options Framework includes someone who displays intent to cause harm, through body language/physical action.

ground, but thought that due to the close proximity he would be at risk of being bitten by the Police dog.

47. Officer A decided it was best not to get directly involved, but to stand back and draw his Taser: *"In my assessment at that time, [Mr X] was out of control and assaultive"*. He drew his Taser from the holster and switched it on, which again activated the TaserCam. He called out *"Taser 50,000 volts"*, but Mr X did not respond to the warning and continued to attack the Police dog.
48. Officer C heard the warning, released Mr X from his grasp and took a step backwards. Officer A aimed the Taser at Mr X's lower back, shouted *"Taser, Taser, Taser"*, and discharged it.
49. The dog let go of Mr X's leg prior to the Taser discharge. The Taser probes connected to Mr X's right flank, and he fell forward onto the grass on his front.
50. It appears that the Police dog then bit Mr X for a second time as he was tasered, without being commanded to do so.
51. During its investigation, the Authority analysed video footage of the incident provided by the camera in Officer A's Taser. The footage from the TaserCam shows Mr X standing with the Police dog next to him on his left hand side. Officer C is standing approximately one metre behind the dog, which is on a lead. Officer A can be heard calling out *"Taser, Taser, Taser"*.
52. The TaserCam footage shows the Taser probes contacting Mr X's body and him falling to the ground. Four seconds after the Taser is fired, the Police dog's nose can be seen on the back of Mr X's right calf. Mr X then rolls onto his back. The dog is heard whining and barking six seconds after he contacts Mr X's leg, which indicates that he released Mr X within a short time. As the Taser cycle concludes, Mr X is not moving or being assaultive.
53. The Taser cycle lasted five seconds. This part of the incident, including the Taser discharge and second dog bite, lasted no more than 10 seconds.

Immediately after the Taser

54. Officer A told Officer C to move the dog away as Mr X was no longer being assaultive.
55. Officer B had heard Officer A call out *"Taser 50,000 volts"*. She ran back around the flats to the scene where she saw Mr X lying on his front on the ground. She repeatedly told him to stay on the ground and not move.
56. Mr X reported being pepper sprayed again after being tasered. Independent witness accounts, Police statements, and TaserCam footage do not support this.

Aftercare

57. As recorded by the TaserCam, Officer A explained to Mr X that he had been pepper sprayed and tasered. He offered reassurance and asked if he was alright. He said that if Mr X was

compliant the officers would help him get up, but he needed to be relaxed before they would do so. Mr X agreed to cooperate.

58. Mr X, lying on his front, made his arms accessible behind his back. Officer B assisted Officer A in handcuffing Mr X. Officers A and B then took Mr X to the Police car.
59. Officer A, with permission from Mr X, sprayed water from his personal drink bottle onto Mr X's face to combat the effects of the pepper spray. He also gave him some water to drink.
60. Officer A advised Mr X he still had probes in him from the Taser. He offered to remove them or advised he could wait for a doctor. Mr X said he would prefer to wait for a doctor. The officer stated again that Mr X was under arrest for assault and advised him of his rights.
61. Officer A transported Mr X to Christchurch Police station, where he received treatment from the on call doctor. The doctor removed the Taser probes from Mr X, and checked for any effects from the pepper spray and Taser. The doctor also cleaned and stitched Mr X's dog bite wounds. He received 22 stitches in his right calf.
62. Appropriate evidence was recovered from the scene and, as per Police policy, the incident supervisors reviewed the officers' TORs. They were satisfied that the tactical options deployed by the officers were appropriate in the circumstances.

Police investigation

63. Following this incident the Police conducted a criminal investigation which concluded that the first bite was necessary, reasonable and proportionate to the situation and therefore not excessive.
64. The investigation also determined that the second bite did not comply with best practice and was not necessary to overcome Mr X as he was incapacitated by the Taser. However, the report also noted that this was a violent situation which escalated very quickly and the investigator was satisfied that Officer C *"did not intentionally want or allow his dog to bite [Mr X] on the second occasion"*. Police determined there was not sufficient evidence to lay charges against Officer C.
65. The investigation made a recommendation for Officer C to undergo additional training replicating a similar situation to ensure he has full control of his dog in close proximity to an offender in order to avoid a recurrence. This has been completed.

THE AUTHORITY'S INVESTIGATION

66. The Authority visited the scene of the incident, and interviewed Mr X and the officers involved. The Authority also interviewed a number of independent witnesses who lived in the block of flats, monitored the Police investigation throughout and reviewed all the documentation produced by the Police investigation team.

THE AUTHORITY'S FINDINGS

67. The Authority's investigation considered the following issues:
- 1) Did Police have reasonable grounds to force entry into the property and arrest Mr X?
 - 2) Was the use of pepper spray reasonable in the circumstances?
 - 3) Was the use of the Police dog justified?
 - 4) Was the use of a Taser justified?
 - 5) Was Mr X bitten by the Police dog after he was tasered?
 - 6) Was Mr X pepper sprayed again after he was tasered?
 - 7) Did Mr X receive appropriate aftercare?

Issue 1: Did Police have reasonable grounds to force entry into the property and arrest Mr X?

68. Section 8 of the Search and Surveillance Act 2012 provides that an officer may enter a place without a warrant to search for and arrest a person that the officer suspects has committed an offence which is punishable by imprisonment. The officer must also have good cause to believe that the person is there (see paragraph 108).
69. Police received a 111 call from Mr Z, who stated that Mr X had assaulted him and Ms Y. On the way to the incident the officers checked the details of Mr X and his bail conditions. They established he had previously been charged for resisting Police. He also had an active charge for assault as well as previous convictions for assault.
70. Mr X also had a bail condition not to consume alcohol. Prior to entering the address, Officer A spoke to an independent witness who informed him that Mr X was *"a nice guy but an alcoholic. He... normally [begins] drinking at 8am in the morning"*. The Police were then aware that Mr X might be under the influence of alcohol when they spoke to him.
71. The officers believed Mr X was in his flat as they had been advised so by Mr Y. The address Mr Y provided was also Mr X's bail address, which the officers had verified before attending the incident. Based on the information available to the officers at the time, the Authority is satisfied that they had good cause to believe that Mr X was in the property.
72. The officers attempted to speak to Mr X, but he did not respond to their door knocks. Officer B went around to the south side of the address to look for another point of access. She heard a loud bang coming from within the flat and the officers then learned that Ms Y was inside the flat with Mr X. This gave them cause for concern for the immediate safety of Ms Y, elevating the seriousness of the situation so they decided to force entry.
73. Section 315 Crimes Act 1961 provides that a constable can arrest without warrant any person whom he or she has good cause to suspect has committed an offence punishable by

imprisonment. Assault is punishable by imprisonment. The Police were aware of the following prior to entering the property and arresting Mr X:

- The Police database contained an alert that Mr X was known to resist and assault Police.
- Mr X had previous convictions for assault.
- Mr Z had informed them of two assaults he alleged Mr X had committed that night.
- Ms Y was in the flat with Mr X, who he had allegedly assaulted.

74. The Authority considers that relying on the above information, the officers had good cause to suspect Mr X was the offender.
75. When he entered the flat, Officer A saw evidence of alcohol consumption, indicating Mr X was in breach of his condition of bail.
76. The Authority is therefore satisfied that Officers A and C lawfully entered the address without a warrant and the arrest of Mr X was justified.

FINDING

Officers A and C lawfully entered the address without a warrant.

The arrest of Mr X was justified.

Issue 2: Was the use of pepper spray reasonable in the circumstances?

77. Police policy states that OC spray may only be used on someone who is 'actively resistant' and then only when the situation cannot be resolved by less forceful means (see OC spray policy, para 119).
78. Mr X was compliant when he exited the flat, and presented his right hand to be cuffed.
79. However, Mr X resisted when Officer A attempted to cuff his other wrist, firstly by tensing his body and then lifting his arms up to his chest. Officer A considered that Mr X had become 'actively resistant' and attempted an empty hand manoeuvre, a 'bottle top', to gain control of him but this was unsuccessful.
80. Officer C believed that Mr X was becoming increasingly defiant in his behaviour, and thought an assault was imminent. When interviewed, Mr X acknowledged that he resisted arrest and that he understood why the officers believed he may be about to assault them.
81. Police policy requires officers to give a warning before using pepper spray unless it is impracticable to do so. Officer C did not warn Mr X that he was going to use the pepper spray. When interviewed, Officer C explained that this was due to the speed at which the situation had escalated, which the Authority accepts.

82. The Authority is satisfied that based on the officers' perception of Mr X's behaviour and demeanour at the time and Mr X's acknowledgement of his own actions, the use of pepper spray was justified as being the most appropriate tactical option available.

FINDING

The use of pepper spray was reasonable in the circumstances.

Issue 3: Was the use of the Police dog justified?

83. Officer A, Officer C, independent witnesses and Mr X himself, all confirmed that he (Mr X) immediately moved towards the dog after being pepper sprayed. Mr X admitted that he intended to attack the dog.
84. The level of aggression displayed by Mr X before he approached the dog, as described by independent witnesses, provides a useful indication of his demeanour when he then attacked the dog. The less forceful tactical options of communication, empty hand techniques and pepper spray had all been unsuccessful and Mr X was now assaultive.
85. Officer C commanded his dog to bite as he believed Mr X was going to be assaultive towards him and his dog. The Authority is satisfied that, due to the speed at which Mr X approached, Officer C did not have time to give a warning that he was about to deploy the dog.
86. The Authority finds that it was appropriate for Officer C to use the Police dog in response to Mr X's behaviour and the threat he posed to Officer C, and that the use of the dog complied with the law and Police policy (see paragraphs 120-122).

FINDING

The use of the Police dog was justified.

Issue 4: Was the use of a Taser justified?

87. At the time Officer A discharged the Taser, Mr X was still attacking the Police dog. Officer C was actively struggling with Mr X and had responsibility for his dog, which had bitten Mr X.
88. Officer A knew that Mr X had a loose handcuff attached to his right wrist, which could be used as a weapon. Officer A considered trying to grab Mr X's legs to pull him to the ground but thought he may be accidentally bitten by the Police dog.
89. If Officer A had simply withdrawn and not engaged further, this may have prolonged the struggle and Mr X could have sustained further dog bite injuries.

90. The Authority considers that it was reasonable in the circumstances for Officer A to use the Taser to prevent Mr X from further attacking the dog and resisting arrest. Given the speed in which this melee unfolded, there were no other suitable tactical options available.
91. The Authority is satisfied that Officer A's use of the Taser was justified in the circumstances and complied with law and Police policy (see paragraphs 123-125).

FINDING

The use of the Taser was justified.

Issue 5: Was Mr X bitten by the Police dog *after* he was tasered?

92. Mr X complained to the Authority that he had been bitten by the dog twice; once before being tasered and once after.
93. When the TaserCam started recording, the dog was not in contact with Mr X. According to the footage, the time between Mr X being tasered and hitting the ground is two seconds, and the dog is not engaged or biting him as he falls. Approximately two seconds after landing on the ground, there is a split second glimpse of what appears to be the dog's nose on the back of Mr X's right leg.
94. The total time from the Taser discharge to the dog's nose on the back of Mr X's leg is four seconds. Six seconds later, the dog is heard barking and panting, indicating he was no longer engaged with Mr X.
95. It is not possible to say conclusively that the dog's jaws were open and biting when its nose was on the back of Mr X's leg, but this appears highly likely and is consistent with the doctor's examination of the bite injuries to the back of Mr X's right calf. It is also consistent with Mr X's account.
96. It is apparent that Officer C did not command his dog to bite for a second time, after the Taser was fired. However, as he was in such close proximity to Mr X, who was attacking the dog, Officer C did not have sufficient time or space to pull the dog away and prevent him from engaging for a second time.
97. As the Taser cycle and second dog bite overlap in such a short timeframe, the Authority accepts that this was a short-lived continuation of the melee, not a fresh and deliberate application of force after Mr X was incapacitated.
98. However, while the Authority accepts that the second bite was unintentional, it did not comply with best practice (see paragraph 122). Officer C has since been retrained to prevent similar occurrences.

FINDINGS

The dog engaged Mr X both immediately before and after he was tasered. Due to the speed at which the situation escalated, the Authority is satisfied that Officer C did not have sufficient opportunity to prevent the second bite.

The second bite was unintentional but did not comply with best practice. However the Authority is satisfied that Officer C has since received appropriate training to prevent similar occurrences.

Issue 6: Was Mr X pepper sprayed again after he was tasered?

99. Mr X said that Officer A used pepper spray on him again after he was tasered and on the ground.
100. The TaserCam footage does not show or give any indication of Mr X being sprayed while on the ground. Officer B, who arrived when Mr X was on the ground, has stated that he was not sprayed while she was there. Nor do the independent witness accounts mention him being sprayed again.
101. The Authority considers a second spraying to be highly unlikely as Officer A would have had to have used the spray while also holding the Taser.
102. The Authority finds that there is no evidence to support Mr X's assertion that he was sprayed after being tasered.

FINDING

Mr X was not pepper sprayed after being tasered.

Issue 7: Did Mr X receive appropriate after care?

103. Officer A used water from his drink bottle to wash out the pepper spray from Mr X's eyes. He also gave him some water to drink. This was witnessed by Officer B, and Mr X acknowledged that water was provided to him as described.
104. Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable (see para 126).
105. Once back at the Police station, Mr X received medical treatment from the on call doctor. The doctor removed the Taser probes from Mr X, and checked for any effects from the pepper spray and Taser. The doctor also cleaned and stitched Mr X's dog bite wounds. Mr X did not require hospitalisation.

FINDING

Police provided appropriate aftercare to Mr X.

CONCLUSIONS

106. The Authority is satisfied that Officers A and C were justified in their use of force while arresting Mr X.

107. The Authority also determines that:

- 1) Officers A and C lawfully entered the address without a warrant.
- 2) The arrest of Mr X was justified.
- 3) The use of pepper spray was reasonable.
- 4) The use of the Police dog was justified.
- 5) The use of the Taser was justified.
- 6) The dog engaged Mr X both immediately before and after he was tasered. Due to the speed at which the situation escalated, the Authority is satisfied that Officer C did not have sufficient opportunity to prevent the second bite.
- 7) Mr X was not pepper sprayed after being tasered.
- 8) Police provided appropriate aftercare to Mr X.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

25 January 2018

IPCA: 16-2076

Power to enter

108. Section 8 of the Search and Surveillance Act 2012 provides that an officer may enter a place without a warrant to search for and arrest a person that the officer suspects has committed an offence which is punishable by imprisonment. They must also have good cause to believe that the person is there and if entry is not affected immediately the person will leave there to avoid arrest and evidential material relating to the offending will be destroyed, concealed, altered, or damaged.

Power to arrest

109. Section 315 Crimes Act 1961 provides that a constable can arrest without warrant any person whom he or she has good cause to suspect has committed an offence punishable by imprisonment.

Use of force

Law on use of force

110. 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.”*
111. 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.”*
112. 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

113. 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.
114. 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.

115. 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)).
116. A key part of an officer's decision to decide 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.
117. 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.

Use of oleoresin capsicum (pepper) spray

118. Pepper spray is used by Police to subdue people; it causes a stinging sensation and generally makes people very compliant so as to avoid further aggressive behaviour.
119. Police policy states that pepper spray may only be used on someone who is actively resisting and then only when the situation cannot be resolved by less forceful means. Active resistance includes physical actions such as pulling, pushing or running away – that is, *“more than verbal defiance”*.

Use of a Police dog

120. Police dog handlers must consider all tactical options in situations that require use of force. They must consider whether a lesser, more appropriate use of force is available before deploying a Police dog. The law sees little difference between dogs, when used as a means of force, and other methods and implements used by Police, such as firearms, Taser and batons.
121. Police officers operating a Police dog are personally responsible for the use of force by the dog. They must be satisfied, before releasing the dog, that the use of force is justified in the circumstances. They must call on the person to desist unless impracticable to do so and ensure that the extent of the force used by the dog is kept to a minimum possible in the circumstances.

122. Police dog handlers must have control of their dog at all times during deployment. Control means that the dog is under immediate physical or voice control and the dog responds to that control.

Use of a Taser

123. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive (defined as *“actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm”*) and cannot be used on a person who uses passive resistance in relation to Police.
124. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the deployment of a Taser unless it is impractical or unsafe to do so. The warning relevant to the presentation of a Taser is *“Taser 50,000 volts”*. The warning relevant to a discharge or contact stun is *“Taser, Taser, Taser”*.
125. A ‘discharge’ is an *“application by firing two probes over a distance from an air cartridge attached to the Taser, or subsequent applications of electrical current via the probes, which are in contact with the subject after firing, in conjunction with a verbal warning”*. A ‘contact stun’ is *“activating the Taser with or without the air cartridge attached while the device is applied to the body of the subject, in conjunction with a verbal warning”*.
126. Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable. It also states that mentally impaired people are among those at greatest risk from any harmful effects of a Taser.

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 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.



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