

planning for the searches and policy breaches by way of performance matters with the relevant officers. The Authority independently investigated the incident.

THE AUTHORITY'S INVESTIGATION

8. The Authority investigator interviewed Officers C, D, F, and Mr X, Mr Y and Mr Z. The duty manager and a security man were also interviewed. Officers A and B have since left the Police and, although interviewed by Police, they were not interviewed by the Authority investigator.
9. The Authority has reviewed CCTV footage and all Police documents.
10. The Authority identified and considered the following issues:
 - 1) Were Police justified in arresting Mr X, Mr Y and Mr Z?
 - 2) Did officers search Mr X and his associates at the first available opportunity?
 - 3) Did Police use excessive force when searching Mr X?

THE AUTHORITY'S FINDINGS

Issue 1: Were Police justified in arresting Mr X, Mr Y and Mr Z?

11. Mr W, X and Z were part of a work group attending their Christmas function at the licenced premise, and Mr Y, who knew Mr X, was there with friends. At about 11.15pm, the duty manager asked bar security to remove Mr Z from the bar as she believed his behaviour was becoming influenced by his level of intoxication. Mr Z complied with a request to do so and was escorted outside.
12. Mr W, the work group's boss, followed and spoke to the duty manager as he was not happy with her decision that Mr Z must leave. Mr X and others from the workgroup joined Mr W outside. At this time, the six officers arrived to carry out an unrelated check of the premises.

Were Police justified in arresting Mr X?

13. Mr X told the Authority that when he saw the police officers arrive, he said "*the Pirihimana [Police] are here*" to Mr W. When Officer A asked what he had just said, he replied: "*Oh the pigs are here.*" Mr X said then: "*... they pulled me to the side and then just tried to force me to the ground... I tried to resist it... 'cos I didn't know what I'd done.*" He said officers rubbed his head on the ground.
14. Officer A said he could see the situation was "*getting out of hand*" because Mr X's body language was starting to become aggressive and he was "*getting in the doorman's face*". Officer A stood between Mr K (bar security) and Mr X and told him to move along. Mr X said "*F**k off pig shit*" and stood close to him, taking an aggressive stance. Officer A placed an open hand on Mr X's chest to create some distance between them. Mr X said: "*Touch me again c**t and see what happens.*"

15. In his Police statement, Officer B said he then told Mr X it was time for him to go and tried to usher him away from the bar entrance. Mr X grabbed him and said "*let's go c**t*," implying he was going to fight, so Officer B told Mr X he was under arrest. Officer C, who witnessed this, said Mr X grabbed Officer B by the vest and raised his fist as if to punch Officer B.
16. Officers C and D assisted Officer B with Mr X as he vigorously resisted the arrest. (see paragraph 22)
17. Officer E recalled: "*Mr X was so drunk, he was clearly intoxicated from his behaviour and the way he was talking to us...*" Mr X told the Authority he had about six beers over the six hours before the incident occurred.
18. Section 39 of the Summary Offences Act 1981 allows Police officers to arrest someone if they have good reason to suspect they have committed an offence, including common assault and disorderly behaviour.
19. Based on the consistent accounts of the officers involved and other witnesses, the Authority is satisfied that Police were justified in arresting Mr X for disorderly behaviour for the following reasons:
 - Mr X was intoxicated when he was outside the bar;
 - he was verbally abusive toward Police;
 - he was given ample opportunity to leave the area as requested by the Police but failed to do so;
 - he became increasingly aggressive around the Police to the point where he threatened to fight two officers; and
 - he assaulted Officer B by grabbing hold of him.

Was the force used by Officers B, C and D to arrest Mr X, lawful and reasonable in the circumstances?

20. Mr X told the Authority he was lying on his stomach when he was forced to the ground. He said there were "*about five*" officers present and "*I think they all tried to help handcuff me.*" Mr X said the officers were "*rubbing*" his head into the ground, on the concrete.
21. Officer C told Police: "*I pretty much bear hugged him and we fell to the ground. It wasn't like I took him to the ground. Kind of just a scuffle and we ended up on the ground*"
22. Officer D told the Authority he intended to take Mr X to the ground in order to arrest him. In his statement, he said Mr X lunged at Officer B then put his hands out as if to grab him:

"... [Officer C] grabbed [Mr X] around his upper body and I grabbed him around his waist. [Mr X] was resisting and was tensing his body making it hard to effect arrest. This physical altercation ensued for about a minute before we finally managed to get him to ground. Whilst on the ground he stiffened his arms which made it very difficult to place handcuffs on him."

23. Officer C explained that Mr X was “double handcuffed” behind his back, meaning two sets of handcuffs were used due to his size.² (This allowed him some movement which later made it possible for him to access his phone.)
24. Officers may use “such force as may be necessary” to overcome the force used by someone who is resisting arrest, unless the process “can be carried out by reasonable means in a less violent manner.”³
25. Police communicated clearly with Mr X, as witnessed by the bar security staff who assisted Police. Officers showed restraint when Mr X verbally abused them. When Mr X refused to follow their instructions, they took hold of him and went to the ground. The Authority finds the force used by the officers to be lawful and reasonable as they only used as much force as was necessary to overcome Mr X.

Was Officer A justified in arresting Mr Y?

26. Officer A said he saw Mr Y attempt to pull Mr X away from Police, so he placed him under arrest.⁴ The bar security staff assisted him in taking Mr Y to the ground and placing him in handcuffs.
27. Mr Y, who had drunk about six rum and cokes, denied trying to obstruct the Police and felt his arrest was unjustified. He told the Authority:

“... I walked past, behind the cop, [Mr X] pushed, or something happened and the cop came back on me and ... then it just all went from there. I got tackled to the ground by three police officers, ripped my top fully apart... I wasn't aggressive, I wasn't anything.”

28. Mr K told the Authority he thought Mr Y seemed to be in the wrong place at the wrong time and was trying to get away from what was going on when he got caught behind the officer.
29. The Authority believes Officer A was the only officer involved in arresting Mr Y. He was assisted by the bar security staff, which may account for Mr Y believing three Police officers were involved.
30. It is an offence to intentionally obstruct a Police officer who is carrying out their duty. Even if in reality Mr Y was not obstructing Police, the Authority accepts that in the circumstances Officer A reasonably believed he was and was therefore legally justified in arresting him.

Was the force used by Officer A to arrest Mr X, lawful and reasonable in the circumstances?

31. Although the Authority has been unable to discuss this further with Officer A, it accepts his belief that Mr Y was obstructing an arrest, as recorded in his statement. Given the circumstances, taking Mr Y to ground to arrest him was a lawful and reasonable use of force.

² One set of handcuffs was attached to each wrist, then the sets were joined together.

³ See paragraphs 127 to 129 for relevant law on making an arrest.

⁴ Officer A no longer works for the Police or lives in New Zealand and the Authority has been unable to contact him.

Were officers justified in arresting Mr Z?

32. Officer F said he saw Mr Z run in behind Officer B and try to grab him around the neck. Other witnesses gave similar accounts.
33. Mr Z told the Authority he was trying to protect Mr X. When he saw the officers around Mr X, he “*jumped in to grab [Mr X] and I moved them out of the way at the same time*”. He acknowledged this was not a good decision on his part.
34. Mr Z told the Authority he had drunk about nine bourbon RTDs before going to the Elephant Wrestler, and nine glasses of beer at the bar. He believes he was under the influence of alcohol but not drunk.
35. The Authority accepts officers were justified in arresting Mr Z for obstruction based on his behaviour.

FINDINGS ON ISSUE 1

Police were justified in arresting Mr X, Mr Y and Mr Z.

It was lawful and reasonable for officers to use force, taking Mr Y and Mr X to ground in order to effect their arrests.

Issue 2: Did officers search Mr X and his associates at the first available opportunity?

36. Officer C brought the Police van over and parked it “*in the middle of the road*” outside the bar. Officer F said they put the three men in the van then left them there while the officers made sure they had all of the people who had been “*causing issues*”.
37. They then made their way towards Henderson Police Station, about 30 minutes away from the bar. About ten minutes into the journey the officers pulled off the motorway to conduct a search of the three men in Bruce Street, a side street in Northcote Point.

At the bar

38. Officer F, who was the acting Police Support Unit supervisor, gave inconsistent accounts about whether he made a conscious decision not to conduct a search before the men were placed in the van:
 - 1) In his Police statement he said he decided not to due to their demeanour and because he felt it was unsafe to do so.⁵ He said he intended for the three arrested men to be searched as soon as it was practical and safe to do so.
 - 2) In the same statement, he said as they entered the motorway (within 2.5 km of leaving the bar) they were told by NorthComms that a male in the van had phoned them. This prompted him, so he asked the other officers if the three arrested males had been

⁵ See paragraphs 131 to 141 for relevant law and policy relating to conducting a search.

searched properly before they left in the van. He was told they had not been because “*it had been overlooked whilst they finished dealing with the disorder....*”

- 3) Officer F told the Authority he “*incorrectly assumed*” the men had been searched and he accepts they should have been searched as soon as possible. He said it was after NorthComms advised them of the 111 call that they realised the men had not be searched.
39. Officer F said he decided to remove the offenders from outside the bar before conducting the search because:
- they were intoxicated and disorderly;
 - Mr X had been aggressive towards door staff, yelling in Mr K’s face;
 - there were bystanders;
 - Police were uncertain if there were further offenders to deal with;
 - the police van was parked outside the bar, facing on-coming traffic, so needed to be moved as soon as possible.
40. Three other officers also gave similar reasons for not conducting the search outside the bar.
41. These are valid reasons for officers deciding to leave the scene and conduct a search at the first available opportunity, however, they appear to be based on hindsight rather than on a conscious decision that was made at the time. None of the officers made a point of discussing when or where a search would be conducted until they realised one of the men in the van was using a phone. There were a number of places where they could have pulled over and safely conducted the searches almost immediately after leaving the bar, yet they did not.
42. Mr Y later told Police he was searched while standing by the door of the van, before going in the van. He said the officer who searched him took his phone and wallet, which was why nothing was found on him when they conducted the search in Bruce Street. In Officer A’s statement, he said “*the males were not searched properly*” as the officers were dealing with multiple arrests. The Authority believes Mr Y’s account, that some degree of search of him was conducted.
43. Though officers said they needed to move the van quickly due to its position, the three men were left waiting while the officers ensured there were no other offenders, and there was time for Mr Y to be searched. This implies there would have been time to also search Mr Z, who was compliant, and possibly Mr X.

Arresting officers

44. Police policy says arresting or detaining officers are responsible for the safety of the person they have taken into custody.⁶ A search allows officers to remove anything a person has that could be used to harm themselves or other people.

⁶ See paragraph 130 for relevant policy.

45. There is some confusion around exactly who made the arrest of Mr X and Mr Z:
- Mr X - Officer B said he told Mr X he was under arrest and others helped handcuff him. Officer C completed the charge paperwork for his arrest.⁷ Officer C told Police: *"I think I'll take the blame for that, that I didn't search him... 'cause he was mine."* Therefore, Officers B and C should both have ensured Mr X was searched before getting into the Police van, or at the earliest available opportunity.
 - Mr Y - Officer A arrested Mr Y and completed the charge paperwork. As mentioned in paragraph 41, the Authority accepts he very possibly did conduct a search of Mr Y.
 - Mr Z - Officer A and Officer F both recall it was Officer F who arrested Mr Z, however Officer B also said it was him. Officer B completed the charge paperwork. Officers B and F should have both taken responsibility for ensuring Mr Z was searched.
46. Given the circumstances, the Authority considers it is possible the reason for the confusion is that more than one officer told Mr X and Mr Z they were each under arrest.
47. As other officers within the team assisted in detaining the men, they also should have assumed some responsibility for ensuring the searches were conducted sooner.

In the Police van

48. Mr Y and Z were placed in the driver's side cell and Mr X was placed in the passenger side cell. Officer B was able to monitor the three men through a hard, plastic window between the crew and the cell area of the van. He said: *"... as we reached the motorway I could see [Mr X] smashing his head against the cell walls and kicking the cell door as hard as he could"*.
49. Officers A, B, C and D also said Mr X behaved in this manner. Officers F and E said they heard a lot of banging and crashing coming from the back of the van.
50. Mr Y told the Authority he heard *"a couple of bangs"* and assumed they were coming from Mr X's cell but could not be 100% sure.
51. Mr Z told the Authority he did not hear Mr X. He suggested any banging or crashing heard by the officers may have been due to the way the van was being driven. He said it was accelerating and braking repeatedly, causing him to slide into Mr Y.
52. Mr X denied hitting his head and kicking or hitting the interior of the cell. He acknowledged he called out because his handcuffs were too tight.
53. Based on the accounts of the officers present and Mr Y, the Authority accepts Mr X was kicking the cell and banging his head against the cell wall.

⁷ Charge paperwork is usually completed by the arresting officer.

111 call

54. Mr X told the Authority:

"... I managed to try call the cops to say that these policemen are abusing me. Like I'm handcuffed and they've just bashed me and then they [NorthComms] ... they hanged up on me 'cos they asked where I was, I said I was in the back of a paddy wagon".

55. Mr X said he called 111 after he had been taken out of the van and searched in Bruce Street, however GPS records show the phone call was made shortly after the van left the bar, before it stopped in Bruce Street. All six officers recalled NorthComms telling them about Mr X's call before they stopped the van to conduct the search. This timing is in keeping with it being the 111 call that prompted the officers to conduct the Bruce Street search.

56. The Authority has had the benefit of listening to a recording of the phone call Mr X made to 111, which lasted 20 seconds. Mr X told the call taker he was in Takapuna in the 'paddy wagon'. When the call taker asked why he was ringing the call became disconnected. There was no mention of Mr X being "beaten up" and it does not appear it was the call taker who hung up. The Authority finds Mr X's recall of the phone call to be inaccurate.

Officer F's concerns prior to stopping to conduct the search in Bruce Street

57. Officer F told the Authority his main reason for deciding to stop and search the three men was to make sure they could not hurt themselves or each other. The Authority considers they also had the option of constantly monitoring all three men through the internal hard plastic windows while the van was moving. Officer F's secondary concern was ensuring the cells were secure. Officer F told Officer C to take the next off ramp and stop in the first available side street as he did not think it would be safe to conduct the search on the side of the 100 kph motorway due to the high risk of injury.

58. As the supervisor, Officer F was obliged to ensure an appropriate, well-considered plan was developed, which he failed to do.

Communication

59. The officers do not appear to have had any significant discussion about what actions to take, once they realised the men had not been searched.

60. Officers did not inform NorthComms of their intentions and actions or update their status using a mobility device.

61. The Authority is concerned the officers did not maintain appropriate communication with NorthComms as required as it ensures accountability and provides opportunity for actions and plans to be considered and assessed.

FINDINGS ON ISSUE 2

Officers B, C and F did not search Mr X and Mr Z at the first available opportunity, as they should have done as the arresting officers, despite there being opportunity to do so.

Once Officer F became aware the men had not been searched, he should have ensured a better plan of action was developed.

Officers should have communicated their plans to NorthComms.

Issue 3: Did police use excessive force when searching Mr X?

62. The van parked in an area where there were no streetlights and it was very dark. Mr X told the Authority it was pitch black as he could not even see a streetlight and it looked to him like they were in a car parking area. Mr Z also described it as being like a car parking area for a park. Mr Y thought they were about 200m down Bruce Street as he could see the main road. Officer C estimates they were stopped there for between five and fifteen minutes. As the officers did not make a notification of the stop, the amount of time they stopped for cannot be exactly determined.
63. Officers say they took the three men from the Police van, one at a time, and conducted rub-down searches of them.
64. There are differing recollections from the three men about the order in which they were taken out of the van:
- Mr Y and the officers recall Mr Y being taken out first, then Mr Z, with Mr X last.
 - Mr X believes he was taken out first, then Mr Z and Mr Y.
 - Mr Z gave different accounts. He initially told the Authority he was taken out first, then officers walked him back to the van as Mr X was removed. He later told the Authority Mr X was taken out first. When they finished with Mr X, the officers pulled Mr Z out. Mr Z does not recall Mr Y being taken out of the van at all.
65. Officer F said Mr Y was searched without incident then placed back in the van. Officer F then assisted in searching Mr Z, without incident. He placed Mr Z back inside the van where Mr Y was. As he was doing this, he heard *“a commotion”* and turned around to see Officers A, B and D restraining Mr X, who was standing up, while he was being searched. He said the search continued without incident. Once Mr X was back in the van, he had *“calmed down a little and was no longer kicking and head-butting the cell wall”*.

The three men’s accounts

Mr X’s account

66. Mr X told the Authority he sat in the back of the van for about 10 or 15 minutes before it suddenly stopped. He thought they had arrived at the police station, so hopped out of the van: *“... and then ... I pretty much knew, like oh f**k, they're gonna give me a hiding.”*

67. He said a police officer said, "Oh, you're not so f**kin tough now are you..." and he replied, "Oh, well what the f**k are you guys going to do?"
68. Mr X said the officers all stood in a circle and then one punched him on the side of the head. Another officer then punched him from behind "at the back of my f**kin kidneys". He fell to the ground and "then all I felt was kicks". He believes more than one officer did the kicking and that he was kicked about ten times. He said he had his eyes closed and tried to put his knees up to cover his face to stop it from getting hit, as he did not want his teeth to fall out when they were kicking him. When the kicking finished, he was told to get up and get back in the van, which he did.

Mr Y's account

69. Mr Y told the Authority after he was searched, he was put back into the van and the internal cell door was closed. He could see through the open van doors as he sat by the closed cell door which had five hard plastic viewing strips on it, while Mr Z sat at the driver's end of the cell. He told the Authority he could see the back half of Mr X, who was bent over, and three or four Police officers were on the side of him:

*"I could see out and I could just see a couple of cheap shots getting put into [Mr X]... they were egging him on like the whole time... they were just talking sh*t..."*

70. Mr Y described the 'cheap shots' as being "just a couple of hits to the stomach, I think." He further explained he could see the back of an officer as he swung his arm two or three times. He said: "It was definitely a punch... it wasn't a 'you're being naughty slap'." Although Mr Y could not see whether the arm connected with Mr X, he assumed it did because he saw blood running down Mr X's face when they got back to the station (see paragraph 87). He also said they gave him "a couple clips around the head" before putting him back in the van. Mr Y did not describe any kicking.
71. Mr Y's recollection was slightly different when he spoke to the Police. He told them he saw one of the officer's arms swing a couple of times, with a closed fist, hitting Mr X in the upper chest/head area.

Mr Z's account

72. Mr Z told the Authority he was sitting in the van when the officers opened the door and he saw Mr X being dragged out: "I was watching the whole time, right in front of me".
73. Mr Z recalled seeing Mr X bent over in an 'L' shape position with officers dragging him. He initially said two other officers ran in and punched Mr X around ten times in the rib and torso area. He later told the Authority: "... everyone was jumping on [Mr X], all five or six cops... they all jumped on him. They were just throwing punches, like just cracking him in the head. Kneeing him..." He recalled one officer was holding Mr X by the handcuffs. He said Mr X did not fall to the ground and he did not describe any kicking. Mr Z could hear Mr X yelling at officers not to punch him in the face as he did not want to lose any teeth.

74. Mr Z estimates Mr X was punched and kneed about 15 times in total, over two or three minutes. He said: *"They were all around him doing their own thing, so it was all parts of his body getting slammed"*.

Police officer's accounts

75. All officers present said no officer hit, kneed or kicked Mr X at any time.

Officer A

76. Officer A said when he opened the cell door Mr X threw his wallet and cell phone out. He asked Mr X to step out of the van so he could be searched and advised him NorthComms had told them someone had made a phone call from the van. He said he also advised Mr X the search was for his safety and police safety.
77. Officer A said Mr X refused to get out, so he helped him out *"without any issue"*. Mr X then charged towards the officers and stated: *"I'll f**k you up"*. Officer A grabbed Mr X's left arm while Officer B was holding his right arm *"so he couldn't cause any harm to himself or other officers"* while he was searched.

Officer B

78. Officer B's account was the same as Officer A's, other than saying Mr X was *"pulled out of the van"* and Officer D also helped restrain Mr X.

Officer C

79. Officer C said he was the driver of the van and his role was to open and close the van doors. He said he was the one who opened Mr X's cell door (though Officer A also thought he opened it) and he held the doors throughout the search, not interacting with Mr X.
80. His account was similar to Officer A and B's though he said he could not see clearly due to it being so dark.
81. Officer C also told the Authority he received a Facebook message from Mr X the day after the incident. (The men had a mutual friend.) It said: *"Thanks for letting ur crew beat me up I came home to my son an my face is f up thanks [Officer C's name]. Maybe next week u kill the next mother fuker"*.

Officer D

82. Officer D's account is also similar to those of Officers A and B. He told the Authority that when Mr X would not exit the van, he *"grabbed his arm, told him to come out, he still refused and then that's when I pulled him out."* Mr X *"kind of forced his body into us"* like a shoulder barge.

Officer E

83. Officer E said:

“[Mr X] was being held in a standing position, there was one staff member on each side, there was no restraint to his neck or legs so I assume he was just being held by his arms... [Mr X] was making noise and being abusive the whole time, but other than that it seemed pretty uneventful.”

Injuries

84. Medical records show that when seen by a doctor on 3 December 2018, Mr X had multiple grazes and bruises on both arms and legs, back, forehead and scalp, and a contusion on the thigh. The doctor noted these injuries are consistent with an assault.
85. The Authority has viewed photographs taken by a family member soon after Mr X’s arrest. They show significant bruising about his biceps, bruising on his wrist, and a graze and bruising on his forehead. In the Authority’s opinion the bruising on Mr X’s arms, wrist and torso are consistent with that received when someone has had to be restrained/constrained.
86. The Authority has not seen photographs of the bruises on Mr X’s legs so cannot determine if they may be consistent with being taken to the ground when arrested, or the result of being kicked.
87. Both Mr Z and Mr Y recalled seeing Mr X bleeding at the Police Station. CCTV footage from the Police station does not show any blood, however the large graze on Mr X’s head is clearly visible.
88. Police records show that when Mr X was charged, it was noted that Mr X had a graze to his forehead. He was alert and able to engage in coherent conversation. Mr X was intoxicated but could answer questions. He did not ask to see a doctor while in custody and was assessed as being “*not in need of specific care*”.
89. The Authority is unable to determine exactly when Mr X received the wound to his head. There are a number of possible explanations:
- when he first went to the ground during his arrest (see paragraph 20);
 - when he was banging his head in the van cell; or
 - by officers during the Bruce Street search.
90. Mr X’s injuries are consistent with his arrest at the bar, banging his head on the ground or in the van cell, and being restrained by multiple officers while being searched in Bruce Street. However, they also could also be a result of being hit, kneed or kicked.

Racist language

91. Mr Y recalled hearing some officers say racist comments such as: “*think you’re all hard ‘cos you’re black*” and “*Did you see the big f**king... black mitts on the big dude.*”

92. Officer E told the Authority nothing was said that was racially inappropriate and pointed out that the Police unit consisted of people of different cultures, including Māori, Tongan and Samoan. Officer D also said there were no racial overtones in the way Mr X was spoken to.

93. The Authority is unable to determine if racist language was used.

Vape - electronic cigarette

94. Mr X told the Authority that during the road stop one officer deliberately smashed his vape device:

*"My vape was in my pocket, but then it fell out, it fell out when I got out of the [police van]. I asked them [the police] to grab it, but they just f**kin smashed it, they picked up and then smashed it on the ground".*

95. Every officer spoken to by the Authority said they did not remember seeing a vape at all.

96. When interviewed by the Police, Mr X reflected and conceded that he did not know how his vape was broken.

Overall

97. The officers' accounts are consistent with each other.

98. The accounts of Mr X, Mr Y and Mr Z are not always consistent; however, they have some commonalities.

99. The Authority believes Mr X was being truthful in his recollection of events. In assessing the reliability of Mr X's account, the Authority has considered:

- he complained when being processed;
- following the incident, he sent a message to one of the officers accusing him of beating him up;
- his injuries were consistent with an assault;
- Mr Y corroborated that Mr X was punched.

100. The Authority also recognises that there were some inaccuracies in Mr X's account, most likely due to his level of intoxication:

- his account of his behaviour in the van is not consistent with the accounts of most other witnesses;
- he recalled making the 111 call after the search took place, whereas it was actually made some time before the search was conducted; and
- he alleged officers had smashed his vape, then later acknowledged to Police he did not know what had happened to it.

101. In assessing the reliability of Mr Z's account, the Authority has considered:
- he had consumed a significant amount of alcohol before his arrest;
 - he was aggressive towards Police during the initial arrest, jumping on an officer's back;
 - Mr Z was the only person (including Mr X) who said Mr X was kneeed;
 - he was reluctant to talk to the Authority, only briefly speaking to them early on in the investigation, then again 14 months after the incident. This allowed time for his memory of the events to be altered by his regular communication with Mr X. Although there were some consistencies in his recall, there were also differences.
102. The Authority believes Mr Y to be the most reliable witness of the three men arrested. He did not show any aggression towards Police and was compliant throughout the incident. His accounts were mostly consistent and appeared to be unembellished. Although he had consumed some alcohol before the incident, his behaviour during the incident and his ability to recall consistently and sequentially, suggests his level of intoxication did not impact his memory of events to the same degree as Mr X and Mr Z's did.
103. Mr Z was the only person who said he believed he saw officers kneeling Mr X, though he said this was when Mr X was surrounded by all of the officers, which would have most likely made it difficult to determine exactly what was happening. The Authority does not have enough evidence to conclude that Mr X was kneeed.
104. Mr X is the only person who said he was kicked. Mr Y and Mr Z only mention seeing Mr X when he was standing bent over, though Mr X said he fell to the ground, where he was kicked several times. It is possible this occurred, but as the only witness to this is Mr X himself, and in some respects his account is unreliable, the Authority cannot determine conclusively that he was kicked.
105. Given that Mr X's account contains inaccuracies, the Authority is unable to fully rely on what he has said. Therefore, the Authority has looked for corroboration of his account. All three men are adamant Mr X was punched by the officers, though the exact details vary. The Authority accepts the men's recall of details and the sequencing of events are likely effected by them being intoxicated, however, believes they did see Mr X being punched. The Authority is satisfied he was punched, however, cannot determine which officer did this, and cannot determine whether he was kneeed or kicked.
106. Mr X actively resisted officers in the execution of their duties therefore the officers were justified in using reasonable force to carry out the search under section 39 of the Crimes Act 1961.⁸ The Authority accepts officers had reason to restrain Mr X physically while conducting the search, but they did not have cause to punch him. Mr X was in handcuffs and he was held by two officers, so there should have been no reason to punch him.

⁸ See paragraphs 142 to 147 for relevant law and policy on the use of force.

Did the officers use excessive force when searching Mr Z?

107. Mr Z claimed officers opened the door and threw him on the ground while he was still handcuffed with his hands behind his back. He alleged he was kicked three or four times by Police, while he was on the ground. Mr Z said he felt that his arm and shoulder would dislocate or break when an officer pulled him up by his arm, and that he was pleading with officers at this stage. He was put into a kneeling position and one officer kned him in the side of his head with significant force. Mr Z said the officer who put him in the van stopped him and said: *you're not so tough now, are you*".
108. Mr Y said Mr Z was taken out of the van after him and he thinks officers searched him. He said he could see out of the cell door but made no mention to the Authority of seeing Mr Z being kicked or kned. Mr X said he thought Mr Z was searched, but also did not say anything about him possibly being kicked.
109. Officer F said he searched Mr Z without incident, and none of the other officers mentioned any incidents during the search.
110. The allegation only came to light as a result of this investigation into the force used on Mr X, as Mr Z did not want to make a complaint or be involved in the investigation.
111. The Authority believes Mr Z's memory is possibly tainted by his discussions with Mr X, soon after the incident, and that his level of intoxication has affected his recall. Mr Z said he was bruised after the incident, however, was not able to provide photographic evidence. There are no witnesses who can support Mr Z's allegation. Therefore, the Authority finds the officers did not use excessive force when searching Mr Z.

Handcuffs

112. Mr Z alleged he repeatedly told the officers his handcuffs were too tight, but no-one checked them. One wrist is noticeably injured in CCTV photos from the Police Station. The Authority investigator has seen the resulting significant scar on Mr Z's wrist, 14 months after the incident, and believes this is likely to be permanent. Mr Z still complains of pins and needles in his wrist since the incident. Although he did not seek medical treatment for this, the Authority accepts the injury was caused as a result of the handcuffs being too tight.
113. Mr X also told the Authority he could barely move his fingers because his hands were so swollen after the incident: *"... they'd done my handcuffs so tight... They'd cut off my circulation in my hands as well."* He said he yelled out to the officers that they were too tight, when he was in the van, but no-one checked them.
114. Mr Y recalled hearing Mr X telling the officers to take the handcuffs off, and said the officers laughed in response.
115. CCTV footage from the custody area shows that Mr X briefly swore and shook his right wrist when his handcuffs were removed. Mr X did not seem to complain any further about the handcuffs.

116. When Mr Z's handcuffs were removed, he swore and moved his right wrist, indicating it was sore. Mr Y, Mr X and one officer turned to look, but no officers made any comment or looked at it closely. Mr Z mentioned the cuffs again and at one point showed his arm to the Custody officer.
117. The officers should have checked Mr Z and Mr X's handcuffs when they stopped in Bruce Street, to ensure they were double-locked and were not getting tighter when they moved their wrists. Not only was it poor practice to not check them, but it was also a failure in their duty of care. The officers were repeatedly told the handcuffs were too tight, which suggests the officers deliberately did not attend to them.

Reporting the incident to the custody officers

118. Mr X told the Authority he tried to tell the custody officers at the station that the officers had assaulted him. He said when he went to have his photograph taken, he told Custody Officer G he had been beaten up and asked if there was anything he could do. He said she told him there was "nothing we can do" and "that's what [Team Policing] do, they're a bit rough".
119. Custody Officer G told the Authority, Mr X asked why there were so many Police officers and she explained they were a Team Policing Unit. She said: "At no time did [Mr X] say he had been beaten up by Police." When the Authority told her what Mr X alleged, she did not recall the detail of this conversation with him and was adamant it was not something she would say. An acting inspector reviewed the CCTV footage for Police and said to the Authority:

"The body language of [Mr X] is relaxed and he appears to have calmed down... the body language doesn't appear to show any animosity or tension... During his time in Police Custody he does not attempt to advise staff of his concerns of being assaulted."

120. The Authority has reviewed CCTV footage from the custody area and believes there are instances where Mr X expresses his dissatisfaction at the way officers have treated him, such as when he indicates his shoulder was pushed back while swearing and looking towards the officers. Mr Z also appears to complain about the way the officers have treated them. Some audio can be heard, though it is often unclear. At one point, while answering questions by a custody officer, Mr X is heard to say "someone punched my f**king (inaudible) in". He then points to Officer A and said, "I think it was this c**t".
121. The Authority is satisfied that in the charge room and while being photographed, Mr X did complain that he had been assaulted. He should have been given the opportunity to make a formal complaint there and then.

FINDINGS ON ISSUE 3

Mr X was punched at least once though the Authority cannot determine which officer did this.

The Authority is unable to determine if racist language was used.

Officers did not smash Mr X's vape (electronic cigarette).

Officers did not use excessive force when searching Mr Z.

Officers should have checked Mr Z and Mr X's handcuffs had not become too tight. By not doing so, they demonstrated poor practice, and a failure in their duty of care.

Mr X should have been given the opportunity to make a formal complaint directly to Police.

Issue 4: Should Police have submitted a Tactical Options Report after the men were arrested?

122. Policy says the use of empty hand techniques on someone must be fully reported in a Tactical Options Report (TOR) if the person falls to the ground,⁹ however, none of the officers involved submitted one.
123. When the Authority requested further information from Police, Officer H, a supervisor who was not present during the incident, confirmed no tactical option reports were completed because as he understood it *"the force used was trifling and did not meet the threshold for completion of a report."* His understanding was incorrect. Accounts indicate a significant amount of force was used during the arrest of the men, to the point where two of them were taken to ground, Mr Y's shirt was ripped completely down the middle, and injuries were sustained. In such cases policy dictates a TOR should have been completed by Officers A, B, C and D.
124. During the Police and Authority investigations, three of the officers indicated they knew they should have completed a report. They said:
- Officer C: *"...I said I'd do one but once we got back to base... I just forgot."*
 - Officer D: *"... I should have submitted one ... I guess it just didn't go through my head at the time."*
 - Officer F: *"...in hindsight, absolutely."* (regarding Officers C and D)
125. In light of this force used, it is unacceptable for officers to have forgotten to submit a report or to have not considered submitting one. The amount and degree of force used by the officers during this incident meant that Tactical Options Reports should have been submitted by all of them, with the exception of Officer E who did not use force during the incident.

FINDING ON ISSUE 4

Officers A, B, C and D should have each submitted a Tactical Options Report following the incident.

CONCLUSIONS

126. The Authority found that:
- 1) Police were justified in arresting Mr X, Mr Y and Mr Z;
 - 2) it was lawful and reasonable for officers to use force, taking Mr Y and Mr X to ground in order to effect their arrests;

⁹ See paragraphs 148 for relevant policy.

- 3) Officers B, C and F did not search Mr X and Mr Z at the first available opportunity, as they should have done as the arresting officers, despite there being opportunity to do so;
- 4) once Officer F became aware the men had not been searched, he should have ensured a better plan of action was developed;
- 5) officers should have communicated their plans to NorthComms;
- 6) Mr X was punched at least once though the Authority cannot determine which officer did this;
- 7) the Authority is unable to determine if racist language was used;
- 8) officers did not smash Mr X's vape (electronic cigarette);
- 9) officers did not use excessive force when searching Mr Z;
- 10) officers should have checked Mr Z and Mr X's handcuffs had not become too tight. By not doing so, they demonstrated poor practice and a failure in their duty of care;
- 11) Mr X should have been given the opportunity to make a formal complaint; and
- 12) Officers A, B, C and D should have each submitted a Tactical Options Report following the incident.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

8 September 2020

IPCA: 18-1148

Making an arrest

Law on power to arrest

127. Section 315 of the Crimes Act 1961 says for Police officers to arrest without warrant any person whom he or she has good cause to suspect has committed an offence punishable by imprisonment.
128. Under section 39 of the Summary Offences Act 1981, a Police officer can arrest someone if they have got good reason to suspect they have committed an offence against the Summary Offences Act. This Act deals with a range of less serious crimes like common assault, tagging, disorderly behaviour, and drinking in public.

Law on resisting or obstructing a Police officer

129. Under section 23 of the Summary Offences Act 1981, every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who resists or intentionally obstructs, any constable acting in the execution of his duty.

Policy on responsibility of arresting or detaining officers

130. According to the 'Arrest and detention' policy, the officer who arrests or detains a person has the responsibility to protect that person while they are in Police custody, keeping them safe from self-harm, suicide, or harm from others. The officer's responsibility starts from the moment the person is arrested or detained at the scene and continues while the person is being transported to the Police station and while processed. Responsibility ends when the person is transferred into someone else's custody or released.

Conducting a search on a person

Law on searching an arrested or detained person

131. Searches must be reasonable under section 21 of the New Zealand Bill of Rights Act 1990.
132. According to section 11 of the Search and Surveillance Act 2012, a person is able to be searched without a warrant if they are about to be placed in a Police vehicle and is to be locked up. A search may be conducted after the person is locked up if they were not searched beforehand, or if there are reasonable grounds to believe the person may be in possession of anything that may be used to harm themselves or others.
133. Section 85 of the Search and Surveillance Act 2012, states that for an officer to carry out a 'rub-down' search of someone who has been arrested or detained, in order to ensure they are not carrying anything that may be used to harm someone or to help them escape.
134. A 'rub-down' search is conducted on a clothed person. The person conducting the search is able to run or pat their hand over the body of the person being searched, either inside or outside of

their clothing (excluding underclothing) and put their hand inside pockets or pouches in the clothing. In order to visually inspect the person, they can require the person being searched to open their mouth, show them the palms of their hands or the soles of their feet, and lift or rub their hair. Section 86 also says the person being searched may also be required to remove head coverings, gloves or footwear and that the search may include any items the person has on them.

'Searching people' policy

135. People being searched must be treated with as much dignity, privacy, respect and sensitivity as possible in the situation. Search powers must be used in a manner that is appropriate to the place and circumstance.
136. When officers are making a decision to search someone, they must consider their tactical options and assess the situation using the principles of TENR (Threat, Exposure, Necessity, Response).
137. Officers must always conduct a risk assessment taking into account:
 - Whether the search can safely wait until the person can be taken to another safe and private place;
 - The persons' demeanour;
 - Location and environmental factors such as whether there is enough lighting to conduct a search, hazards, and the presence of others who may interfere with the search; and
 - Whether reasonable force may be required.
138. A rub-down search should take place *"as soon as practicable after a person's arrestor detention and before placing them in a vehicle"*. This should be done out of the public's view, if possible. If it is not practicable to conduct a full rub-down search immediately, officers should do a visual examination, looking at their head, torso, arms and legs, and should remain with them, closely observing them.
139. When conducting a search, officers must identify themselves, and state the name of the Act under which the search is taking place and the reasons for it, unless it is not practicable in the circumstances.
140. Records of warrantless searches should be kept on an officer's mobility device or notebook as they are exercising a warrantless power. The reason for the search should be recorded.
141. *"Any force or restraint used on a person being searched must always be reasonable in the circumstances."*

The use of force

Law on the use of force

142. Section 39 of the Crimes Act 1961 allows for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcements of warrants. Specifically, it says 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.”*
143. Section 40 of the Crimes Act 1961 allows for law enforcement officers to apply necessary and reasonable force when someone is attempting to avoid arrest by escaping or fleeing.
144. Section 48 of the Crimes Act 1961 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.”*
145. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

‘Use of force’ policy

Empty hand tactics

146. Empty hand techniques, such as such as grabbing hold of, pushing, or punching, are an option in the Tactical Options Framework and can be used to physically control someone.
147. When considering whether to use empty hand techniques, officers must be aware of the following risks:
- their own abilities versus the potential abilities, size, and strength of the offender;
 - the reduced distance between the officer and the offender, increasing the risk of assault, and injury;
 - the need to focus on the offender, making the surrounding environment more difficult to monitor;
 - the effectiveness of the empty hand techniques if offenders are experiencing slow pain recognition, for example, because they are under the influence of alcohol or drugs;
 - the transfer of contagious disease through subject body fluids and broken skin;
 - the offender’s access to their appointments such as a firearm or Taser, carried in a holster on the officer’s body, increasing the risk of serious assault or injury to the officer.

Reporting requirements

148. The Policy instructs:

“Other than touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground, uses of empty hand techniques must be fully reported in a Tactical Options Report (TOR) form.”

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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