

Use of Police dog in Hamilton justified

1. At about 4.20am on 6 June 2022, a member of the public phoned Police after hearing a gun shot. CCTV footage from their property captured an unknown person in the driver's seat of a silver coloured station wagon firing a handgun out of the driver's window.
2. About 15 minutes later, a dog handler (Officer A), saw a silver coloured Mazda station wagon being driven at high speed. The driver failed to stop for Police and a pursuit was initiated.
3. The driver pulled over after the station wagon drove over roads spikes.¹ Five teenage occupants, including a 15-year-old (Mr X), ran away. Officer A released his Police dog which bit Mr X on the arm. The other occupants surrendered to Police.
4. Mr X was arrested for unlawfully entering a motor vehicle and was taken to Waikato Hospital for treatment. Police did not find a firearm.
5. Police notified us of the incident as required by section 13 of the Independent Police Conduct Authority Act 1988.²

¹ Road spikes are an approved Police tool used by officers to deflate the tyres of fleeing vehicles. They are essentially an extendable cord with spikes embedded at regular intervals along its length. So as not to cause the spiked vehicle to immediately lose control, the spikes' construction ensures a slow but controlled rate of tyre deflation. This controlled deflation increasingly affects a vehicle's handling characteristics and traction, and should force a fleeing driver to slowly reduce the vehicle's speed. When the tyre(s) are completely deflated, the vehicle can continue with compromised handling. At this point, the tyre will begin to heat and shred, leaving the fleeing vehicle operating only on its rim.

² Section 13 says: "Where a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused."

The Authority's Findings

Issue 1: Were Police justified in initiating the pursuit?

Officer A was justified in signalling for the silver coloured Mazda station wagon to stop and initiating a pursuit when the vehicle failed to stop.

Issue 2: Did Police comply with the fleeing driver policy?

Officer A, and Officers B and C were justified in continuing the pursuit.

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

Officer A was justified in using the Police dog to apprehend Mr X.

Analysis of the Issues

ISSUE 1: WERE POLICE JUSTIFIED IN INITIATING THE PURSUIT?

6. At about 4.20am on 6 June 2022, a member of the public supplied Police with footage of a gun being fired outside their home. Officer B had the camera footage emailed to him and he shared it with other Police staff working that night.
7. The footage shows two vehicles parked side by side on the median strip of a residential road. The vehicle nearest the camera, a silver coloured station wagon, was facing toward the left. The other vehicle, a silver coloured sedan, was facing the opposite direction. The driver of the silver coloured station wagon extended his arm out of the driver's window and fired a handgun into the air. Both vehicles then drive off.
8. About 15 minutes later, Officer A was away from his Police vehicle and heard a vehicle being driven at high speed. As the vehicle neared, he saw it was a silver coloured Mazda station wagon. He believed it was the vehicle he had seen in the footage. He estimated it was travelling between 80 and 100 kph, well above the 50 kph speed limit.
9. About 5 minutes later, Officers B and C, who were patrolling in an unmarked Police car, located the same silver coloured Mazda station wagon. Officer C says he was "99% sure" the vehicle was the one he had seen in the CCTV footage. They followed at a distance and provided updates over the Police radio. This allowed time for more officers to come into the area to assist, with some preparing road spikes.
10. The Mazda station wagon drove behind a set of shops. Officer A took an alternative route, where he attempted to get ahead of the station wagon and into position to set up spikes.

11. Another officer radioed *"I think we should consider an armed 3T³ on this vehicle given the recent job."*
12. The station wagon exited from behind the shops and onto Ohaupo Road in front of Officer A.
13. Officer A followed and radioed the Police Communication Centre (Comms) *"Just given the potential its either this vehicle or the other one, we're obviously now potentially dealing with a firearms incident. All units to be armed"*. This was acknowledged by Comms.
14. Officer A provided updates over the radio which included his location and direction of travel. This enabled other officers to get into position to deploy road spikes if required.
15. Officer B or C came over the radio and said *"Delta (Officer A), we're behind you with longs."*⁴
16. At the time, it was lightly raining, there was good street lighting, and very little traffic on the road. The Mazda station wagon was travelling below the 50 kph posted speed limit.
17. In our assessment, Officer A was justified in signalling for the Mazda station wagon to stop and commencing the pursuit for the following reasons:
 - He believed the occupants of the vehicle were in possession of a firearm which had earlier been shot into the air in a residential area.
 - He had earlier seen the vehicle travelling at a high speed.
 - He suspected the vehicle was stolen because it had a broken quarter light window (it was later established the car was stolen and had not yet been reported stolen).
 - He did not know the identity of the driver of the vehicle or its occupants. He says they were wearing hooded sweatshirts with their hoods up.

FINDING ON ISSUE 1

Officer A was justified in signalling for the silver coloured Mazda station wagon to stop and initiating a pursuit when the vehicle failed to stop.

ISSUE 2: DID POLICE COMPLY WITH THE FLEEING DRIVER POLICY

Did Police deploy road spikes in accordance with policy?

18. Officer D, a Police sergeant, told us *"I got the spikes out prepositioned in an area I thought it might come through."* He had parked his patrol car on the side of the road behind a row of cars, placed the road spikes on the opposite side of the road, and hidden behind a power pole.

³ 3T is a Police code for stopping a vehicle a vehicle or person.

⁴ "Longs" is a Police colloquialism to refer to the Bushmaster M4, semi-automatic rifle used by Police.

19. Comms confirmed Officer D was ready to deploy spikes. The station wagon drove toward Officer D's location and Officer A radioed, "Are you ready?" Officer D replied "light it up"⁵ and Officer A activated his lights.
20. The driver of the Mazda station wagon failed to stop and swerved onto the opposite side of the road as they neared Officer D's patrol car. Officer D says this is a common tactic used by fleeing drivers to avoid road spikes. He pulled the spikes across the path of the fleeing Mazda station wagon which drove over the spikes. Officer D radioed "successful spike."

Legal grounds for deploying road spikes

21. Section 40 of the Crimes Act 1961⁶ provides a legal basis for the deployment of spikes, as it justifies the use of reasonable force to prevent the escape of a person who flees to avoid arrest. Failing to stop for Police when signalled to do so is an arrestable offence and the driver's decision to continue driving after being signalled to stop could reasonably be interpreted by an officer as an attempt to avoid arrest.
22. To rely on section 40, the officer must believe on reasonable grounds that the person is fleeing to escape or avoid arrest. If so, the degree of force used must be reasonable and proportionate, considering:
 - the seriousness of the offence for which the person is to be apprehended (and the consequent public interest in detaining them to bring them to justice); and
 - the effect of an escape on the likelihood of the person being brought to justice; and
 - the likelihood and degree of risk the person poses if escape is not prevented.
23. Officer D told us he deployed the road spikes in reliance on section 40 of the Crimes Act 1961. Officer D knew the driver had failed to stop and believed one of the occupants had earlier fired a gun from the vehicle. On the evidence we have concluded that Officer D had reasonable grounds to believe the occupants of the car were fleeing to avoid arrest.
24. We are also satisfied that Officer D safely and effectively deployed the spikes in accordance with Police Policy.⁷

Decision to commence and continue the pursuit

25. When a driver has been signalled to stop and does not do so, the officer must decide whether to pursue the vehicle. The decision is guided by a risk assessment which considers the initial threat posed by the vehicle occupant(s), the necessity of responding, and the risk of harm to any person if the driver fails to stop. Policy states a pursuit is only justified when the threat posed by the

⁵ "Light it up" is a Police colloquialism for activating the Police vehicle's lights and siren.

⁶ Section 40 of the Crimes Act 1961 is set out in the Appendix.

⁷ As per the Police 'Tyre deflation devices' Policy, detailed in paragraph 61.

vehicle occupant(s), and the necessity to apprehend them, outweighs the risk of harm created by the pursuit.

26. Officer A told us he radioed the following briefing to Comms:

“Like I say, believed to be in possession of a firearm, this vehicle most likely stolen. The vehicle possesses a threat to public if we don’t take action now to attempt to stop it and apprehend the offenders, believe we won’t work out who they are, therefore they won’t be held to account. I’ve got another Police vehicle behind me armed with long rifles and I’ve got a Glock on”.

27. Comms advised *“Those units safety is our priority, Comms has command, you can carry on with your pursuit.”*
28. Officer A, and Officers B and C pursued the Mazda station wagon with their sirens and warning lights on.
29. During the pursuit Officer A provided regular updates over the Police radio relating to the station wagon’s speed, its manner of driving, direction of travel, and traffic conditions. Given the time of the morning there were very few other motorists on the roads.
30. In the Authority’s judgement it was reasonable for the officers to pursue the station wagon and the pursuit was well managed and conducted in accordance with the Police policy at the time.

FINDING ON ISSUE 2

Officer A, and Officers B and C were justified in continuing the pursuit.

ISSUE 3: WAS THE USE OF THE POLICE DOG JUSTIFIED?

31. The driver of the station wagon pulled over and stopped on the wrong side of Te Rapa Road. Officers A, B and C stopped on the opposite side of the road. The lanes were separated by a raised median strip which was planted with small bushes.
32. The officers saw five occupants of the car get out and run away. Officer A says he did not know who had got out of which seat and did not know how old the occupants were.
33. Officer C told us he was concerned they might be armed: *“And at that time, you know, I’m like, are they going to shoot us, sort of thing”.*
34. Officer A told us he immediately got out of his Police vehicle and gave the warning, *“Police dog handler, stay where you are, or I’ll let the dog go”*, then went to the rear of his vehicle to get the dog. He and his dog pushed through the plantings on the median strip, and he yelled a second warning for the occupants of the vehicle to stop or he would release the dog. Officer A says the young people continued to run, and he released the dog.

What do Mr X and Mr Y say happened?

35. Mr X says he was two to three steps away from the car when heard Police say, *“get on the ground”*. He told us he immediately laid down onto the ground and *“the dog jumped straight on my arm”*. Mr X told us the dog was on his arm for three to four minutes before it was removed.
36. Mr Y, who was the front seat passenger, told us that he and Mr X ran from the car and into a car park area behind businesses. He says, *“the dog came running through and then two Police officers with assault rifles, and then the dog latched on to Mr X’s arm.”*

What do the officers say happened?

37. Officer A says that having released the dog, he had quickly to recall it as another officer started running between the dog and the offenders. By this time, the occupants of the vehicle had split into two groups, with three running to the right and two (who we now know to be Mr X and Mr Y) running towards a large car park behind the petrol station. Officer A says, *“I’ve grabbed my dog and redirected him around and after issuing another challenge sent the dog after that pair.”*
38. Officer C ran behind the Police dog and saw Mr X and Mr Y climbing a fence. Officer C says the dog latched onto Mr X’s arm and pulled him to the ground. Mr Y surrendered and got onto the ground. Officer C told us he was armed with a firearm and had it raised as he watched Mr X and Mr Y. Other officers arrived to assist, including Officer A who had not seen the dog apprehend Mr X.
39. Officer A told us Mr X was lying on his front with the Police dog pulling on his left arm. Officer A told us that he and Officer C were instructing Mr X to show them his right hand. Mr X moved his right arm out to the side.
40. Officer A says, *“We still didn’t know where the firearm is, or any other weapons that they’ve got, so to be safe, the safest thing for Police safety and the offender’s safety was that the dog stayed there.”* Officer A told us he called the dog off once other officers arrived and took control of Mr X. He and Officer C estimated the dog was on Mr X’s arm for 30 seconds.
41. Another Police officer radioed Comms to organise an ambulance to attend the scene. After Officer A had secured his dog, he examined Mr X’s arm and decided he needed to go to hospital. Instead of waiting for an ambulance, Police took Mr X directly to Waikato Hospital for medical treatment.

What happened to the three other occupants?

42. The other three occupants, including Ms Z, ran to the right and out of sight behind a business premise where they were prevented from escaping by a high fence. Officers B and D apprehended them at gun point. Ms Z says the officers told them, *“Put your weapons down”*.
43. Ms Z told us the officers *“chucked them”* onto the ground and told them they were under arrest. She says that while she was handcuffed and lying on the ground, she was kicked in the face by one of the officers.

44. Officer D told us he was there for the entire arrest process, and while he may have had his back turned to Ms Z at times, he did not see anyone go anywhere near her, and he did not kick her.
45. Officer B told us Ms Z was screaming and swearing. He also says he did not, nor did he see anyone else strike Ms Z.
46. There is a direct conflict of accounts as to whether Police kicked Ms Z. They say they did not, and there are no independent witnesses to confirm Ms Z's account. She did not have visible injuries on the night and has not provided any medical evidence to support her assertion.
47. On balance, our conclusion is that the officers did not kick Ms Z.
48. None of the occupants were in possession of a firearm. Police officers searched the Mazda station wagon and did not locate a firearm.

Was Officer A legally justified using his Police dog against Mr X to prevent his escape under section 40?

49. Section 40 of the Crimes Act 1961 empowers Police to use *“such force as may be necessary”* to prevent the escape of someone who is reasonably believed to be fleeing to avoid arrest. The proportionality of an officer's use of force under section 40 should be assessed against three factors (see paragraph 22).
50. Officer A believed Mr X and the other occupants were fleeing arrest for the following reasons:
 - the vehicle Mr X was in had failed to stop when signalled to do so.
 - when Mr X and the other occupants got out of the vehicle, they ran from the Police officers; and
 - Mr X and the other occupants ignored his commands for them to stop.
51. Based on these factors, our assessment is that Officer A had reasonable grounds to believe Mr X and the other occupants of the car were fleeing to avoid arrest.

Was the officer's use of force to prevent Mr X's escape reasonable and proportionate when weighed against the offences for which Mr X was to be arrested, and the likelihood and severity of the risk that he posed?

52. Officer A believed the occupants needed to be arrested because the driver had unlawfully discharged a firearm in a residential area, which was a clear threat to public safety. He told us he believed the person who discharged the firearm was probably still in possession of it, but he did not know which occupant that was. We agree that at least one of the car's occupants committed a serious offence.
53. Officer A says the occupants had shown an intention to use a firearm, and if they didn't apprehend them, they could commit a robbery or steal another car at gunpoint.

54. Officer A did not know the identity of the occupants and so could not arrest them in safer circumstances. He was concerned they were running into an industrial area bordered by a residential area which he says is a *'hard to track area'* with multiple escape routes, hiding options, and dogs roaming free. Officer A says he did not believe they would have been caught and arrested had he not released the dog.
55. Officer A had a range of tactical options from within the Tactical Options Framework⁸ available to him to prevent Mr X and the other occupants from escaping. He had warned them before releasing the dog, but they had not heeded the warnings. He considered the less forceful options available to him like pepper-spray, a baton, and Taser but these were not viable options because of the distance between himself and the fleeing occupants. His Glock pistol was not a proportionate option because he did not fear he or his colleagues were facing a serious threat of harm or death.
56. Officer A says he used the dog because it was the only option available where he could safely apprehend at least one of them. He only allowed the dog to remain on Mr X's arm for as long as it took to safely secure him. We accept the evidence of Officers A and C that the dog was engaged for about 30 seconds.
57. Overall, we have concluded that the use of the dog was a proportionate use of force in the circumstances. Officer A conducted a sound assessment of the risks. He had reason to believe at least one of the occupants was in possession of a firearm and needed to be apprehended immediately as this posed a risk to the public. Given the circumstances, Officer A used the most appropriate tactical option available to him.

FINDING ON ISSUE 3

Officer A was justified in using the Police dog to apprehend Mr X.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority
15 August 2023
IPCA: 22-14169

⁸ The Tactical Options Framework (TOF) is a training and operational tool that assists officers to appropriately decide when, how, and at what level to use a tactical option. The TOF guides officers to use force that is necessary and proportionate, given all the circumstances known at the time.

Appendix – Laws and Policies

CRIMES ACT 1961

Section 40 – Preventing escape or rescue

“(1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary—

(a) to prevent the escape of that other person if he or she takes to flight in order to avoid arrest; or

(b) to prevent the escape or rescue of that other person after his or her arrest—

unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:

provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

(2) Where any prisoner of a prison is attempting to escape from lawful custody, or is fleeing after having escaped therefrom, every constable, and every person called upon by a constable to assist him or her, is justified in using such force as may be necessary to prevent the escape of or to recapture the prisoner, unless in any such case the escape can be prevented or the recapture effected by reasonable means in a less violent manner.”

POLICE POLICY

‘Tyre deflation devices’ Policy

58. Tyre deflation devices (TDD), commonly known as road spikes, can be used under section 40 of the Crimes Act 1961.
59. The overriding principle is Police and public safety take precedence over the immediate apprehension of an offender. Deploying a TDD is a tactical option to stop a fleeing driver where there is no other less dangerous way of resolving an incident involving a moving vehicle, and where the deployment can be carried out without unjustified risk to any person, including the deployment officer.

'Fleeing driver' Policy

60. The overriding principle of the Police fleeing driver policy is: *"Safety of the public, vehicle occupant(s) and Police staff takes precedence over the immediate apprehension of a fleeing driver."*
61. A pursuit is only justified when the threat posed by the vehicle occupant(s) prior to signalling the driver to stop, and the necessity to immediately apprehend the driver and/or passengers(s), outweighs the risk of harm created by the pursuit.

'Use of force and Police dogs' policy

62. Dog handlers are personally responsible for force used by the dog. The law sees little difference between dogs, when used as a means of force, and other methods and implements used by Police, for example firearms, TASER, and batons. Dog handlers must believe the use of force is justified, and that the force used is as minimal as possible in the circumstances.
63. Dog handlers must consider all tactical options when considering the use of force. Just because the dog handler has a Police dog with them, does not mean they should use the dog as a means of force instead of a more appropriate option.
64. Dog handlers must issue a warning to surrender before instructing a dog to bite a person, unless it is unsafe or impracticable to do so.
65. Dog handlers must stop the dog from biting as soon as possible after the dog has apprehended a suspect or bitten any person.
66. Policy dictates that all people bitten by Police dogs are to receive appropriate medical treatment. Following a dog bite dog handlers must provide or direct other staff to provide immediate first aid as necessary in the circumstances and call for medical support to the scene if necessary.

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 Kenneth Johnston KC.

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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