

Complaint of excessive force following Police pursuit in Auckland

INTRODUCTION

1. On Tuesday 23 August 2016, Police arrested Mr X and his two friends following a 40-50 minute pursuit that ended in Bombay, Auckland.
2. On 12 September 2016, Mr X complained to the Authority that during his arrest, Officer A slammed him face first onto the ground, stood on him, and squeezed his hands hard aggravating a pre-existing injury. Mr X also complained that Officer A pushed him around in the back seat of the Police car as he was being taken to the Police station.
3. The Independent Police Conduct Authority notified the Police of the complaint, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

4. At about 2am on Tuesday 23 August 2016, Police initiated a pursuit of a stolen Nissan Safari 4x4 (the 'Nissan') in the Glen Innes area. The Nissan contained three young men, but Police did not know the number of occupants or their age at the time
5. After approximately 40-50 minutes, the pursuit came to an end in Bombay after deployed road spikes deflated the Nissan's tyres.
6. In his letter of complaint to the Authority, Mr X said that when the Nissan stopped, he opened the car door and started to climb out of the right rear passenger seat slowly, with his hands on his head, to show that he was not a threat. However, when he was halfway out of the car, an officer (Officer A) grabbed the front of his jacket and pulled him out.

7. Mr X's complaint alleged that Officer A "*slammed me face down on the ground. My jaw hit the ground hard*". Officer A then "*stood on my right cheek at least four times. I had a graze on my left cheek where my face was ground into the footpath*".¹ At this point, Mr X wrote that "*several Police officers jumped on top of me. As least one was jabbing me hard with a baton in the side of my body*".
8. However, when interviewed by the Authority, Mr X gave a different account. He said that after the Nissan stopped, Officer A smashed the passenger side window and tried to pull him through it, cutting his wrist. Mr X said he pulled his hand back in and opened the car door before stepping out with his hands up. As he got out of the car, Officer A "*judo tossed*" him to the ground and he fell hard onto his back.
9. Mr X said he was worried that Officer A and the other officers nearby would "*jump on [him]*" so he quickly rolled onto his stomach. At that point, Officer A pulled his hands behind his back, squeezing them hard as he applied the handcuffs. Mr X said this was "*very painful*" because his hands were injured from a previous incident.
10. Mr X said that after he was handcuffed, Officer A then stood on him, with "*one foot on [his] back and the other on the back of [his] head*". At the same time, about "*six to seven*" officers stood over him, screaming "*stop resisting*".² Mr X said he knew it was Officer A who stood on him, as he "*felt him step off and then pick [him] up*".
11. Officer A told the Authority that by the time the Nissan stopped, Police were aware that the vehicle was stolen and he considered the potential risk to officers as being "*fairly high*". He said that this was because the occupants of the Nissan were trying to evade Police for some time and he did not know how many people were in the car or what their motivations were.
12. Given his risk assessment, Officer A said his main priority was to make sure the occupants of the Nissan were removed from the car as quickly as possible to ensure the safety of the officers' as well as anyone else on the motorway.
13. Officer A said he did not slam Mr X's face down on the ground as alleged by Mr X. Instead, he said that while another officer dealt with the driver of the Nissan, he immediately went to the right-hand passenger door where Mr X was sitting, opened the car door and took hold of Mr X's right arm. He said Mr X did not offer any resistance and he pulled him out of the Nissan and "*placed him on the ground as quickly as [he] could*" face first.
14. Officer A told the Authority it was possible that Mr X grazed his face when he was taken to the ground as it was onto the tar seal of the southern motorway. However, Officer A denied standing on Mr X and did not recall seeing anyone jump on him or hit him with a baton.

¹ During Mr X's interview with the Authority, his mother, who was present, said that she saw a "*stomp print*" on her son's face when she collected him from the Police station. She said she took a photograph of the injury at the time. However, she has been unable to locate the photograph.

² The Authority has been unable to identify the officers involved in Mr X's arrest other than Officer A. The officers who arrested the other two young men in the Nissan were dealing with their respective prisoners at the time and did not see or hear Officer A interact with Mr X.

15. It was only after Mr X was handcuffed that Officer A realised that Mr X had injuries to both of his hands. Officer A said that Mr X told him at the time that the injuries were from a previous incident. However, Officer A noticed one hand was bleeding profusely so he applied pressure to the wound and wrapped it with a bandage.
16. Shortly after, Mr X was taken to Officer A's Police car and placed in the left rear passenger seat.
17. In his complaint, Mr X told the Authority that as he was being placed in the Police car, Officer A "*threateningly*" told him not to bleed in the car. Mr X also said that he was in "*serious pain*" and on the drive to Auckland Central Police station he tried to sit as quietly as possible so that he would not bring any attention to himself. However, Mr X said that several times during the journey, Officer A, who was driving, turned around and pushed him.
18. Officer A denies this and told the Authority that Mr X was sitting quietly in the backseat by himself for the entirety of the drive. Officer A said he was transporting Mr X by himself, and it was not physically possible for him to push Mr X while he was driving.

Mr X

19. At the time of the pursuit, Mr X was on bail and in breach of his court-imposed curfew. He was subsequently charged with unlawfully getting into a stolen motor vehicle.
20. A photograph taken of Mr X at the Auckland City Police station appears to show that he had a minor skin abrasion on his right cheek bone. Photographs of Mr X's hands show that he had bandages on both hands, and that he had a bloodied laceration on his right little finger.
21. Mr X's medical records confirm that Mr X had a number of deep cuts and lacerations to both of his hands. The lacerations had been treated at Auckland City Hospital prior to the events on 23 August 2016.
22. At 8.43am, following Mr X's arrest in Bombay, Mr X was taken to the Auckland City Hospital to have his hands re-examined. The medical records show that Mr X told the attending doctor that he received the laceration to his little finger when he punched a glass window earlier that morning. Mr X was released from hospital at 11.26am.

Police investigation

23. The Police investigation found no evidence to support Mr X's complaints. Photographs taken of the Nissan after the pursuit show that the passenger windows were intact.
24. Police also spoke with the two other young men who were arrested at the same time as Mr X. Both young men report that they did not see anything happen to Mr X.
25. However, the investigator found that Officer A, in taking Mr X to the ground, most likely caused the red graze on Mr X's face. The investigator found that the use of force was justified in the circumstances, although careless.

Law on the use of force

Use of force by Police officers

26. 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.”*
27. Section 40 of the Crimes Act 1961 provides that a Police officer may use necessary force in order to prevent a person from fleeing to avoid arrest, unless the escape can be prevented by reasonable means in a less violent manner.
28. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in 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.”*
29. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for any excessive use of force.

Policy on the use of force

Police guidance on use of force

30. The Police’s 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.
31. 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.
32. Police define TENR as:
 - ‘Threat’ is about how serious the situation is (or could be), and the present or potential danger the situation, environment, or suspect presents to themselves, other members of the public or Police. Police must assess the threat posed by the suspect, based on all available information including what they see and hear, and what is known about the suspect.

- ‘Exposure’ is about the potential harm to Police employees, Police operations, Police reputation and to others. Exposure can be mitigated through assessment and planning.
 - ‘Necessity’ is the assessment to determine if there is a need for the operation or intervention to proceed now, later or not at all.
 - ‘Response’ means the proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
33. The overriding principle when applying TENR is ‘safety is success’. 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.
34. An officer 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).
35. 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.
36. Police 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.

THE AUTHORITY'S FINDING

Was excessive force used on Mr X during his arrest?

37. The law provides that Police can use reasonable force in the execution of their duties, such as arrests, where the use of force is necessary to overcome any force used in resisting. However, Police are criminally responsible for any excessive force.
38. Mr X has provided the Authority with two different accounts of how he was removed from the Nissan and taken to the ground following the Police pursuit (see paragraphs 6-8). Once on the ground, Mr X complained that Officer A stood on him, another officer hit him with a baton and multiple officers screamed at him. Mr X also said that Officer A hurt his hands when applying handcuffs and that he pushed him around in the backseat of the Police car.
39. Officer A told the Authority that Mr X was removed from the car as quickly as possible and placed face first on the tar seal motorway. Officer A said this was necessary for Mr X's safety as well as the safety of Police. Officer A denied standing on Mr X and said he could not recall seeing any other officer jump on Mr X or strike him with a baton.
40. After Mr X was handcuffed, Officer A said he noticed Mr X's hands were injured and Mr X told him it had happened during a previous incident. However, because one of Mr X's hands was bleeding, Officer A said he applied pressure to the wound to stem the flow. Lastly, Officer A said it was not physically possible for him to push Mr X in the backseat of the Police car as he was driving at the time.
41. Mr X and Officer A have conflicting versions of what happened during Mr X's arrest. Mr X's differing accounts and the photographic evidence of the Nissan's passenger windows raise doubts about the credibility of Mr X's complaints.
42. The photographs show that the Nissan's back windows were not smashed as Mr X told the Authority, and there is no supporting evidence to suggest that Mr X was struck with a baton. There are also no independent witnesses who saw Mr X's interaction with Police. Despite a request by the Authority for a copy, the photograph taken of the "stomp print" on Mr X's face has not been produced. The minor skin abrasion shown in the photograph taken by the police immediately after the incident does not look like a "stomp print".
43. After considering all the available evidence, the Authority prefers the version of events provided by Officer A. If Officer A had slammed Mr X on the ground and stood on his cheek as Mr X alleged, the Authority would expect to see more significant injuries to Mr X's face. Instead, the minor abrasion on Mr X's right cheek appears consistent with Officer A's version that Mr X was placed on the ground as quickly as possible.
44. Officer A had reasonable cause to suspect that Mr X was involved in the theft of the Nissan, and therefore had grounds to arrest him. His decision to pull Mr X out of the car quickly was to ensure the safety of the officers' as well as anyone else on the motorway.

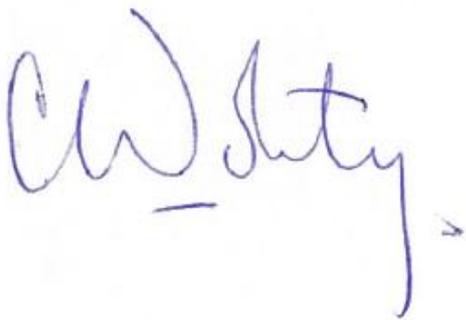
45. The Authority is satisfied, on the balance of probabilities, that Officer A used force to remove Mr X from the Nissan, but this force did not include slamming Mr X on the ground, standing on his face or striking him with a baton. In the circumstances, the Authority finds that the force used by Officer A in removing Mr X from the Nissan was reasonable and justified. Furthermore, there is no evidence to suggest that excessive force was used in the arrest of Mr X after he was placed face first on the ground.

FINDINGS

The force used by Officer A in removing Mr X from the Nissan was reasonable and justified. There is no evidence to suggest that excessive force was used in the arrest of Mr X after he was placed face first on the ground.

CONCLUSIONS

46. The Authority has reached the following conclusions on the balance of probabilities:
- The force used by Officer A in removing Mr X from the Nissan was reasonable and justified. There is no evidence to suggest that excessive force was used in the arrest of Mr X after he was placed face first on the ground.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

5 October 2017

IPCA: 16-0492

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.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
