



Serious injury to Kyle McArtney from a Police dog bite

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 11:30 pm on Sunday 17 November 2013, Kyle McArtney was bitten by a Police dog in a car park near Hathaway Terrace, Nelson. Police had mistakenly identified Mr McArtney as an escaping offender, and he received significant injuries to his left thigh.
2. The Police notified the Independent Police Conduct Authority of this incident. The Authority also received a complaint from Mr McArtney and his father. The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

3. At 10:56pm on Sunday 17 November 2013, Police received an emergency call from the occupant of a Hathaway Court address to inform them that an intruder had just fled the property.
4. At 10:59pm, the Southern Communications Centre (SouthComms) contacted the on-call dog handler, Officer A, and requested that he attend the Hathaway Court address. While en route, Officer A was informed that other Police patrols were in the area.
5. Officer A arrived at the scene with his Police dog at 11:25pm. He spoke to attending officers and the home occupant, and established that the offender had left the property between 15 and 20 minutes earlier. The occupant could not describe the offender.
6. Officer A got his Police dog out of the Police van and put the dog in its tracking harness. The dog quickly picked up a strong and fresh track leading along Hathaway Court in a westerly direction towards the river. At the end of Hathaway Court the Police dog turned right and followed the track northwards along Hathaway Terrace.

7. Officer A and the Police dog continued tracking northwards along the edge of a car park at the end of Hathaway Terrace. The track then turned north-east into a smaller car park area, where the track stopped. While still on a tracking line, the Police dog searched to see if the track could be regained.
8. Officer A thought that it was possible that the offender had been picked up by a vehicle in the car park.
9. Meanwhile, Mr McArtney and four associates were driving along Trafalgar Street in a green Falcon, on their way back from a barbecue. Mr McArtney had been drinking beer, and was in the front passenger seat.
10. As Mr McArtney urgently needed to urinate, he and the driver decided to try to find a private spot near the Trailways Hotel where Mr McArtney could relieve himself.
11. The driver of the Falcon turned right into Hathaway Terrace, but could not find a private enough area. He continued around the corner and into the car park, turning the car's headlights off in order to give Mr McArtney some privacy.
12. The driver stopped the car just in front of the Nelson City Brass club rooms. Mr McArtney got out and moved quickly towards a grassed area near to the river.
13. Officer A was still searching for the track with his dog in the car park when he heard a vehicle entering the car park at speed. Officer A noted that the vehicle's headlights were off, which he thought was suspicious.
14. Officer A says he turned to his left to face the vehicle, which had stopped in a well-lit area beside the Nelson City Brass club rooms. He says that he heard a loud bang coming from the vehicle, and saw a man running from the area around the vehicle. He says he did not see anyone get out of the car.
15. Officer A thought that this vehicle might be returning to pick up the offender from the burglary and help him to escape. Officer A says that he started running with his Police dog towards the man.

The dog bite

16. What happened next is in dispute. Mr McArtney says that he was not aware of anyone else in the car park area until he heard someone yell "stop!" Mr McArtney's associates also recall hearing the Police officer call out "stop!" The driver of the Falcon says that the Police officer was still holding his dog on a leash at this point.
17. Mr McArtney says that, upon hearing the order to stop, he stopped and turned around to see a Police dog on a long white lead running straight at him. He put his hands in the air.

18. Mr McCartney says that he thought the dog would just sniff him and move on, but instead it tried to bite his left arm twice. He pushed it away and it latched on to his left leg. He says that the Police officer did not reach him for another 30 seconds, during which time he was yelling for someone to get the dog off him, and that he had only *"wanted a piss."* His friends were also yelling to the Police officer that he had the wrong man.
19. Mr McCartney says that the Police officer tried to grab the dog by the back of the neck, but the officer couldn't get the dog to release him. He said that the officer took a choker chain from around his neck, and grabbed the dog by the throat as Mr McCartney held the dog's jaws open. The officer finally got the dog to release.
20. In contrast, Officer A says that while he was running towards Mr McCartney with his Police dog on the tracking line, he yelled a challenge: *"This is the police, I have a dog, stop or I will let the dog go!"* Officer A says that Mr McCartney ignored the challenge and continued to hurry away from him and the vehicle.
21. Officer A decided that it was necessary for him to prevent this man from escaping because he thought it was likely that the man was a suspect in the Hathaway Court burglary. Officer A says he considered his options, and released his dog with the command *"rouse"* when they were approximately 40 metres away from Mr McCartney. He continued to run after his dog and says that he did not lose sight of Mr McCartney at any time.
22. Officer A saw Mr McCartney stop and put his hands in the air, but said by the time that he did so the dog had reached Mr McCartney and was committed to its target. Officer A says he was running past the stationary car when the dog bit Mr McCartney.
23. Officer A says that Mr McCartney fell to the ground and began wrestling with the dog while yelling obscenities. Mr McCartney tried to prise the dog's jaws off his leg.
24. Officer A says that he reached Mr McCartney and bent down to choke the dog off. He says he told Mr McCartney to stop fighting with the dog and to remove his hands from the dog's muzzle. When Mr McCartney failed to do so, Officer A repeated his instruction to Mr McCartney.
25. Mr McCartney then stopped fighting the dog. Officer A put the dog on its lead, took it off Mr McCartney and put the dog in a control position. Officer A estimates that the dog was engaged on Mr McCartney for a total of 30 seconds.

Events after the dog was taken off Mr McCartney

26. Mr McCartney says that when the dog was removed, he got up and went over to a concreted area to lie down. He asked the Police officer to get him some water, but the

officer didn't have any. He then rang his Dad, told him what had happened and asked him to come and pick him up.

27. Officer A says that after removing the dog he immediately called for assistance. He was aware that the other occupants of the car had alighted and were watching what was happening, but they did not approach. Officer A asked to see Mr McCartney's injuries, and saw that they were bleeding. Mr McCartney was upset and abusive towards Officer A. Officer A said he could smell alcohol on Mr McCartney.
28. Other Police patrols quickly arrived at the scene. The Acting Sergeant informed Officer A, Mr McCartney and his associates that an ambulance was on its way. Other Police officers took statements from Mr McCartney's associates.
29. Officer A says that he took his dog back to the Police van, and rang the Officer in Charge of the Dog Section in the Tasman Police District to inform him of the incident and to ask him to come to the scene.
30. The ambulance arrived and an advanced paramedic assessed Mr McCartney's wounds and provided first aid. Mr McCartney was advised to go to the Emergency Department or see his doctor.
31. Mr McCartney's father arrived and spoke briefly to Officer A about what had happened. Mr McCartney's father drove Mr McCartney to the Emergency Department shortly after midnight where Mr McCartney was treated and released at 1:45am.
32. Officer A met the Officer in Charge of the Dog Section at the scene to demonstrate the track the dog followed and outline the circumstances of the dog bite. Officer A then returned to Richmond Police station and completed a Tactical Options Report, outlining the circumstances surrounding the dog bite, Mr McCartney's injuries and the medical care offered to him.

Mr McCartney

33. Mr McCartney received multiple wounds on his left lower leg and thigh which required 16 stitches. His wounds became infected and required subsequent treatment.
34. Mr McCartney is employed as a fisherman, and at the time of this incident was about to join a boat which was sailing from Nelson down into the Southern Ocean for an extended period of time. Despite Mr McCartney being cleared by doctors, Mr McCartney's employer chose not to allow him to join the boat due to concern about the medical risks associated with his injuries.
35. Mr McCartney was not involved in the burglary at Hathaway Court.

Officer A

36. At the time of this incident Officer A had 21 years of Police service, and had been an operational Police dog handler for 16 years. He had been working with his current Police dog for one year.
37. Both Officer A and his dog were current in all relevant certifications when this incident occurred.

Complaint

38. On 19 November 2013, the Authority received correspondence from Mr McCartney's father outlining several heads of complaint in connection with this incident:
 - 38.1 Officer A had little control over the Police dog;
 - 38.2 The Police dog should not have been released with innocent members of the public in the area; and
 - 38.3 Officer A could not get the Police dog to stop biting his son.
39. Mr McCartney also complained that:
 - 39.1 He was standing still with his arms in the air when he was bitten by the Police dog;
 - 39.2 He was denied medical treatment after the bite; and
 - 39.3 He missed employment on a fishing vessel as a direct result of his injuries.

Police investigation

40. Police investigated this incident. Statements were taken from Mr McCartney, the driver of the Falcon and two other associates. Officer A was interviewed, and job sheet statements from three officers who attended the scene were reviewed. The scene of the dog bite was photographed and examined.
41. The Police investigation concluded that Officer A reasonably believed that Mr McCartney was a fleeing offender. The tactics and force used by Officer A were not excessive and were also justified in the circumstances. While the incident was considered to be unfortunate and regrettable, none of the complaints made by Mr McCartney or his father were upheld.

The Authority's investigation

42. The Authority interviewed Mr McCartney, his father and associates, as well as Officer A and his supervisor as part of its investigation. A scene visit was also carried out.

43. The Authority was made aware of mobile phone footage taken of the incident by one of Mr McCartney's associates. However, the mobile phone had subsequently been damaged, and the footage is unrecoverable.

LAWS AND POLICIES

Power to arrest

44. Section 32 of the Crimes Act 1961 provides that a constable is justified in arresting any person whom he believes, on reasonable grounds, to have committed an offence; whether or not the offence has been committed or the person committed it.

Use of force by Police

45. Section 39 of the Crimes Act 1961 provides for a Police officer 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."*
46. 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.
47. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for excessive use of force.

General guidance on use of force

48. The Police have a range of tactical options available to them to help restrain a person, make an arrest or otherwise carry out lawful duties. They range from communication or 'empty hand' tactics, such as distracting or punching an offender, to the use of Police dogs, Tasers and firearms.

Tactical Options Framework

49. The Tactical Options Framework sets out a range of options available to Police in responding to a situation, depending on the actions of the offender.
50. Which option is appropriate in a set of circumstances depends on whether the offender:
- is cooperative;
 - is resisting, either passively or actively (such as running away);

- is actively hostile and intending to cause physical harm; or
- presents a threat of death or grievous bodily harm.

Use of force with Police dogs

51. The Police Manual of Best Practice states that a dog handler is personally responsible for any use of force by their dog.
52. Dog handlers must consider all tactical options available to them when considering the use of force with Police dogs. Before releasing the dog, the dog handler must be satisfied that the use of force is:
 - justified in the circumstances; and
 - the minimum possible in the circumstances.
53. Before releasing the dog, the handler should warn the suspect and give them a reasonable time to comply, unless it is unsafe or impracticable to do so.
54. Dog handlers must have control of their dog at all times during deployment. This means that the dog is under physical or voice control and responds to that control.
55. Dog handlers must stop their dog from biting as soon as possible after the dog has bitten any person.
56. People bitten or injured by Police dogs must be given appropriate medical care as soon as practicable.

THE AUTHORITY'S FINDINGS

Was Officer A's suspicion that Mr McCartney was a fleeing offender reasonable in the circumstances?

57. A constable is justified in arresting a person if the constable has reasonable cause to suspect that they have committed an imprisonable offence.
58. Officer A was pursuing an offender who had recently fled the scene of the burglary. He had followed a strong track from the scene which ended in a car park. This had led Officer A to believe that it was likely that the offender had access to a vehicle.
59. Officer A then witnessed a car drive into the car park at speed with no headlights on. He did not see Mr McCartney get out of the car, only seeing him moving quickly away from the vicinity of the car.

60. Officer A's belief that the offender had access to a vehicle, together with the sudden appearance of an unlit car and a man apparently running from the area, led Officer A to believe that Mr McArtney was a fleeing offender and that the car had arrived to pick him up. The Authority is satisfied that this suspicion was reasonable in the circumstances.

FINDING

Officer A's belief that Mr McArtney was an offender attempting to escape arrest was reasonable in the circumstances.

Was Officer A justified in using his dog to apprehend Mr McArtney?

61. Officer A said in his Tactical Options Report that before releasing his dog he considered other tactical options to stop Mr McArtney. These other tactical options were a baton or oleoresin capsicum spray (OC spray). However, they would not have been effective since Officer A at that time was approximately 40 metres away from Mr McArtney. Officer A also considered that he was the only Police officer in the immediate area, and that multiple escape routes were open to Mr McArtney. A Police dog was therefore the only realistic tactical option available to Officer A to apprehend Mr McArtney, in the circumstances.
62. The Authority accepts that Officer A yelled a challenge to Mr McArtney, requiring him to stop. This challenge was heard by the sober driver of the Falcon who said that Officer A was still holding his dog on the leash when he yelled "stop!" It cannot be determined whether or not Mr McArtney heard this command. In any event, he continued to move away from Officer A.
63. Officer A perceived that Mr McArtney was ignoring instructions, and believed he was therefore justified in using his Police dog to prevent Mr McArtney from escaping as set out in the Crimes Act 1961, and Police policy.
64. Mr McArtney says that he had stopped and was standing with his hands in the air when the Police dog bit him. The Authority accepts that this is true; however the Authority also accepts that the Police dog was nearly upon Mr McArtney when he stopped and placed his hands in the air, and there was insufficient time to recall the dog. Officer A says that it would have taken the dog approximately six seconds to reach Mr McArtney, and the time between Mr McArtney stopping and the dog biting was "virtually one thing after another."
65. Mr McArtney's father has complained that the Police dog should not have been released with innocent members of the public around. However, Officer A believed that Mr McArtney was a suspected escaping burglar and not an innocent bystander.

66. Section 32 of the Crimes Act 1961 provides that an officer is justified in arresting a person if they have a reasonable belief that they committed a crime, even if it later becomes evident that they did not.

FINDINGS

Officer A was justified under the Crimes Act in using his Police dog to prevent Mr McArtney from escaping. This was the only realistic tactical option available to Officer A in the circumstances.

Officer A did not have a reasonable opportunity to prevent the Police dog from biting Mr McArtney once Mr McArtney had stopped and raised his hands.

Was the Police dog under Officer A's control at all times?

67. Mr McArtney's father has complained that Officer A appeared to have little control over the dog, and was unable to stop it biting his son. A dog handler is required to have control over his dog at all times. This includes when deployed, and while biting an offender.
68. Some of Mr McArtney's friends reported that Officer A attempted to prevent his dog from attacking Mr McArtney by yelling "stop!" and the dog did not comply.
69. After weighing up the evidence, the Authority is satisfied that the command to 'stop' was to Mr McArtney and not the Police dog. As discussed in paragraph 61, the Authority is satisfied that Officer A did not attempt to prevent the dog bite. 'Stop' is not the command given to a Police dog if its handler wants to prevent it from biting an offender.
70. Once a Police dog has bitten an offender, a dog handler is required to remove a dog in the quickest possible time. However, fighting or resisting a Police dog will stimulate the dog to continue biting.
71. Mr McArtney says that he was trying to prise the dog's jaws from his leg. However, the Police dog interpreted this as resistance which encouraged the dog to continue to bite. Officer A repeatedly instructed Mr McArtney to stop fighting so he could remove the dog. After Mr McArtney complied, Officer A was able to use the choke chain to remove the dog and put it in a control position.
72. Officer A and his Police dog were put through a control test on the day after the incident, which they passed. The purpose of the test was to ensure that there were no issues surrounding bite work control.

FINDING

Officer A had control over his dog at all times, and removed the dog from Mr McArtney as quickly as he could in the circumstances.

Was Mr McArtney given appropriate medical care following the dog bite?

73. Mr McArtney has complained that he was denied medical treatment following the dog bite, and that he was unable to take up employment due to his injuries.
74. An advanced paramedic attended the incident and provided first aid. The Patient Report form completed by the paramedic states that Mr McArtney declined further treatment but was advised to go to the Emergency Department or see his doctor, and that Mr McArtney would arrange his own transport.
75. Officer A also recorded in his Tactical Options Report that Mr McArtney had declined treatment from a Police doctor, and an offer from Police to take him to the Emergency Department.
76. Whilst it was unfortunate that Mr McArtney was not able to take up employment on a fishing boat because of the medical risks associated with his injuries, this was the choice of his employer and was not caused by any failure of Police to offer appropriate medical care.

FINDINGS

The Authority is satisfied that Police offered Mr McArtney appropriate medical care.

Mr McArtney's loss of employment following this incident was not caused by any failure of Police to offer appropriate medical care.

CONCLUSIONS

77. The Authority acknowledges that this incident was traumatic for Mr McArtney, his friends and family, and has caused him ongoing discomfort and inconvenience. However, in the Authority's view, the series of events and coincidences which led to Mr McArtney being bitten by a Police dog were rare and not reasonably foreseeable by Officer A.
78. The Authority has concluded on the balance of probabilities that:
 - 78.1 Officer A's belief that Mr McArtney was an offender attempting to escape arrest was reasonable in the circumstances;

- 78.2 Officer A was justified under the Crimes Act in using his Police dog to prevent Mr McArtney from escaping. This was the only realistic tactical option available to Officer A in the circumstances;
- 78.3 Officer A did not have a reasonable opportunity to prevent the Police dog from biting Mr McArtney once Mr McArtney had stopped and raised his hands;
- 78.4 Officer A had control over his dog, and removed the dog from Mr McArtney as quickly as he could in the circumstances;
- 78.5 Police offered appropriate medical care; and
- 78.6 Mr McArtney's loss of employment following this incident was not caused by any failure of Police to offer appropriate medical care.

A handwritten signature in black ink, appearing to read 'David Carruthers', with a long horizontal flourish extending to the right.

JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

21 August 2014

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 Sir David J. Carruthers.

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 on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



IPCA

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