

Complaint of excessive force following arrest in Putaruru

INTRODUCTION

1. On Friday 12 June 2015, Police arrested Mr X following a pursuit in Putaruru. On 28 July 2015, Mr X complained to the Authority that the officers involved in his arrest had grabbed his broken arm and re-injured it, struck him with a baton, placed him in a chokehold and punched him multiple times in the face. Mr X also complained that he was not told he was under arrest, or advised of his rights and that a Police officer wrongly drove his car when it was impounded.
2. The Authority notified Police of the complaint and advised that this matter would be investigated by the Authority pursuant to section 17(1)(a) of the Independent Police Conduct Authority Act 1988. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

3. At about 2.15pm on Friday 12 June 2015, Officer A, who was driving a marked Police car on Arapuni Street, Putaruru, saw a red Subaru turning onto Barnett Street. Officer A had seen the Subaru two weeks earlier and was aware that it had links to Mr X, a disqualified driver, who Police wanted to interview.
4. As Officer A turned onto Barnett Street, he could see the Subaru accelerating away on Myrtle Grove and he quickly lost sight of it. A member of the public saw the Subaru and directed Officer A towards it on Lichfield Road.
5. When Officer A drove south along Lichfield Road, he saw the Subaru travelling north towards him, at approximately 120kph¹. As the Subaru passed him, Officer A performed a U-turn and activated his Police car's lights and siren to signal the driver of the Subaru to stop. When the driver failed to stop, Officer A notified Police Northern Communications Centre (NorthComms)

¹ The posted speed limit is 100kph

that he was in pursuit of a car for failing to stop, and broadcast the registration number and direction of travel.

6. Following a short pursuit, the driver of the Subaru entered the Putaruru township, slowed down to the posted speed limit and turned into a residential driveway on Scotia Glen Street. The Subaru continued down the driveway, which is approximately 33 metres in length, and stopped at the rear of the house. As Officer A pulled in behind the Subaru, the driver, Mr X, got out of the car. Officer A did not know the identity of Mr X until this point.
7. Mr X and his brothers, Mr Y and Mr Z, have different accounts of what followed than those given by Officer A and Officers B and C, who arrived at the address about one minute later. The different versions of events are set out below.

Use of force

Mr X's version of events

8. Mr X told the Authority that as he got out of the car, Officer A approached him and told him to put his hands behind his back. Mr X said he told Officer A that he could not do that because his arm was broken, and instead he placed both hands on the back of the Subaru.
9. Mr X said Officer A then grabbed the neckline of his jersey and repeatedly told him to put his hands behind his back. Mr X continued to tell Officer A that his arm was broken but Officer A would not listen. At that stage, Mr X said he noticed two other Police officers arrive at his address.
10. Mr X said one of the officers, Officer B, immediately approached him from behind and grabbed him in a "stranglehold" around his neck. As this was happening, the other Police officer, Officer C, struck him with a baton "over the back of my neck... my upper back and shoulders". Mr X told the Authority that he did not see the baton striking him, but said that he could tell he was being struck with something.
11. After being hit with a baton, Mr X said Officer B pulled him backwards onto the ground so that he was lying on his back. Once he was on the ground, Officer B then used his knee to "pin" his head down. Mr X said it felt as though Officer B had most of his bodyweight on him because he was "crushing the back of my head, crushing my jaw [and] cutting the inside of my mouth." As a result, Mr X said he struggled to breathe and "almost blacked out." However, just as he was about to lose consciousness, Mr X said he was able to lift Officer B's knee off his face.
12. Mr X said that he was not trying to resist arrest, and that he was only struggling as he tried to tell the officers that he could not breathe.
13. After a short time, Officers A and B pulled Mr X to his feet. At that point, Mr X noticed that his hands were handcuffed in front of him. Although he was in handcuffs and not resisting, Mr X said Officer B kept bending his right wrist back and "trying his hardest to break it". Mr X said he was "screaming in pain," and that his eight-year-old nephew, who was witnessing the events, started to cry.

14. While this was happening, the officers began to walk Mr X towards a Police car, which was parked on the driveway, behind the Subaru. As Officer B put him in the right rear passenger seat, Mr X said he was told, *"this is what happens when you don't stop"*.
15. Mr X said Officer B then punched him with a closed fist, five times to the side of his face, temple and jaw. Mr X said the punches were *"rapid, just one after the other ... and my head was going to the side, back and forward."*
16. Mr X told the Authority that he was scared and told Officer B to *"please get away"* and not to touch him. Soon after, one of the officers drove him to the Putaruru Police station. Mr X said he was *"not once told [he] was under arrest [and he] was not read [his] rights"*.

Mr Y's version of events

17. Mr Y told the Authority that he went outside after hearing Police sirens coming from the driveway. As he opened the back door, Mr Y said he saw Mr X standing at the back of the Subaru with his hands flat on the boot and three Police officers walking towards him. Mr Y said he could hear his brother telling the officers that he needed to go inside to get his *"medical papers"* because he had a broken arm.
18. Mr Y said one of the officers walked directly behind Mr X and struck him twice with either a black torch or a baton. The strikes hit Mr X on the *"back of his neck and his shoulder"*.
19. After Mr X was struck, the officer and another officer, who Mr Y identified as Officer B, *"grabbed [Mr X] and tackled him to the ground."* Mr X landed on his stomach with his face turned to the side. Mr Y said Officer B then put his knee on Mr X's face, while the other two officers, Officers A and C, twisted Mr X's arms as though they were trying to handcuff him.
20. After a while, Officer B got up and approached Mr Y, who had remained standing at the entranceway to the house. Mr Y said he told Officer B that Mr X had a broken arm and asked him what was going on. Mr Y said Officer B told him, *"we don't give a shit, it's too late for that."*
21. Mr Y said that while he was talking with Officer B, Officers A and C pulled Mr X to his feet and continued to hold his arm as though they were *"trying to break [it] some more"*. The three officers then walked Mr X to the nearest Police car.
22. Mr Y told the Authority that he could see that Mr X was not handcuffed, and that at no stage did he hear any officer advising Mr X of his rights.

Mr Z's version of events

23. Mr Z said he was inside the house when he heard the Police sirens coming from the driveway. Mr Z moved to another room to get a better view of the driveway and saw Mr X standing next to the driver's door of the Subaru.
24. Mr Z said Officer B then approached Mr X from behind and *"grabbed him by the face...and chucked him on the ground."* When Mr X was on the ground, Officer B then kned Mr X in the head.

25. While this was happening, Mr Z said he saw Officer A holding a Police baton. From his location inside, Mr Z said he could not see what Officer A did with the baton, however he later saw Officer A put the baton away in a silver case.
26. While Mr X was on the ground, Mr Z said he could see Mr X being handcuffed with his hands behind his back. However, Mr Z said he did not see anything further as he was distracted by a third Police officer, Officer C, talking to Mr Y.
27. When Mr Z looked back to Mr X, he said he saw the three Police officers pick Mr X up off the ground and put him in the back of a Police car.
28. Mr Z told the Authority that he never heard the Police tell Mr X that he was under arrest, and he estimated that the whole incident lasted about five minutes.

Officer A's version of events

29. Officer A told the Authority that after driving the length of the driveway, Mr X parked his car at a 45-degree angle at the rear of the house and immediately got out of the driver's seat. As Officer A got out of his Police car, which he had parked approximately 5 metres behind the Subaru, he saw Mr X take a step towards the house. Officer A yelled out for Mr X to stop, and told him that *"he was under arrest for failing to stop"*. Officer A said Mr X ignored him and continued to slowly walk to his house.
30. Officer A said Mr X had reached the front wheel of the Subaru when he approached Mr X from behind and grabbed him by his arm. Officer A told the Authority that he could not confirm which arm he grabbed, but believes it was the left.
31. Officer A said he then told Mr X that he was under arrest but Mr X pulled his arm away and told him to *"take it easy because [he had] a sore arm"*.
32. Officer A grabbed Mr X by the left arm for a second time, but Mr X pulled away again saying that his arm was hurting. Officer A said he then took hold of the loose shirt around Mr X's shoulder to stop Mr X walking off. Officer A told the Authority that although Mr X was not *"thrashing around"* he was *"slowly resisting"* by pulling away.
33. Officer A told Mr X to put his arms together in front of his body so he could apply the handcuffs. As he has said this, Officer A noticed a second Police car arrive, containing Officers B and C. Officer A said he could not recall where Officer C went when he got out of the Police car, but said that Officer B walked directly to Mr X, grabbed him around the shoulders, and took him to the ground, face down.
34. Officer A said he was still holding onto Mr X's shirt when this occurred, so he assisted Officer B with handcuffing Mr X's hands behind his back.
35. Officer A told the Authority that Officer B did not throw Mr X on the ground and said that he was taken down in a *"controlled manner"*. Although Officer A cannot recall seeing anyone fall on Mr X, he said it was possible that when Mr X was on the ground, Officer B knelt either beside Mr X or on his face.

36. Officer A told the Authority that other than the manoeuvre Officer B used to take Mr X to the ground, he did not see any additional force used on Mr X. Officer A said that he did not see any officer use a baton or torch on Mr X. Although Officer A said there *“may have been a reddening of [Mr X’s] cheek”*, he said he did not know if it was the result of Officer B kneeling on his cheek, or when his face came into contact with the concrete ground.
37. After Mr X was handcuffed, Officer A said Officer C came over and helped Officer B pick Mr X up off the ground and walk him to the rear Police car. Officer A told the Authority that he could not recall what he was doing while the other officers were doing this, but believes he was either getting the impound book from his Police car or explaining to Mr Y what was happening.
38. Once Mr X was placed in the back seat of the Police car, Officer A said he talked with the other officers about who would drive Mr X to the Putaruru Police station. He said it was decided that Officer C would drive Mr X to the Police station, while Officer A would follow in his Police car. Officer B would drive the Subaru to the Police station where it would then be impounded.
39. Officer A told the Authority that he did not advise Mr X of his rights at that stage, as the Police station was less than three kilometres away and he thought it would be easier to do it there.

Officer B’s version of events

40. Officer B told the Authority that he was at the Putaruru Police station with Officer C when he heard Officer A radio that he was in pursuit of a Subaru for failing to stop. As he and Officer C got into a marked Police car, they heard that the pursuit was heading towards Golf Street in Putaruru.
41. Officer B said they immediately drove towards the direction of the pursuit, and as Officer A’s radio commentary progressed, they were advised that the Subaru was linked to an address on Scotia Glen Street and that they should head to that location. Within 15 seconds, Officer A advised over the radio that the pursuit had ended at a residential address on Scotia Glen Street. Officers B and C arrived at the address about one minute later and parked behind Officer A’s Police car.
42. Officer B said that as he got out of the Police car, he saw Mr X standing, with his back to the driver’s door of the Subaru, facing Officer A. As he approached Mr X from his right side, Officer B said he could see Officer A reaching forward with his left hand to grab Mr X’s right arm.
43. As Officer A was reaching for Mr X’s arm, Officer B said Mr X was *“flailing”* his arms about, *“either pushing [Officer A’s] hands away, or trying to avoid his hand being grabbed.”*
44. When Officer B reached Mr X and Officer A, he said he heard Mr X say *“nah nah”* several times, to which he heard Officer A reply *“put your hand behind your back, I’m going to handcuff you ... you’re being arrested because of the pursuit.”*
45. At that stage, Officer B said he reached forward with his left hand to grab Mr X’s right wrist. As he grabbed Mr X, Officer B said there was a *“bit of a twist and struggle and we ended ... up on*

the ground.” Officer B told the Authority that he could not recall the exact cause of the fall and said that Mr X landed on his back and he landed on top of him so that they were chest to chest.

46. While they were on the ground, Officer B said Mr X told him to “*watch out*” and that his “*arm was broken*”. In reply, Officer B told Mr X to keep calm and to do as he was told.
47. Officer B said he then grabbed Mr X by the shoulders and rolled him onto his stomach where he then handcuffed Mr X with his hands behind his back. After Mr X was handcuffed, Officer B said he rolled Mr X into a seated position and pushed him forward with his knee in Mr X’s back as support. He then lifted Mr X with his hands under each arm.
48. Once Mr X was standing, Officer B said he walked him to the rear Police car and placed him in the back left passenger seat. Officer B remembered putting Mr X in the left side because Mr X kicked out at him twice with his left leg. Officer B said the kicks were “*pretty trivial*” so he simply lifted Mr X’s leg up and put it into the foot well of the car.
49. Officer B told the Authority that he never struck Mr X while he was in the car, and Mr X “*wasn’t batted, he wasn’t kneed and he wasn’t assaulted.*” He said that he did not see any visible injuries on Mr X and was only aware that Mr X had a sore or broken arm because he told them.
50. Once Mr X was in the backseat of the Police car, Officer B said he told Officer C to take Mr X to the Putaruru Police station. As Officer C left with Mr X, Officer B said he spoke with one of Mr X’s brothers, who Officer B had seen watching the events from the side of the house. Officer B said the brother asked why Mr X was arrested and how they could arrest him on private property. Officer B said he explained that Mr X was involved in a pursuit while driving while disqualified, and that Police can lawfully go onto private property to arrest him. Officer B also advised that he could seize the Subaru regardless of who it belonged to, as it was the car that Mr X was driving during the pursuit.
51. Officer B told the Authority that he had dealt with Mr X and his brothers before and was aware that they could be “*volatile*” and although the brother seemed to accept the situation, as a way to avoid any conflict, he decided it would be easier to drive the Subaru to the Putaruru Police station rather than wait by himself for a tow truck.

Officer C’s version of events

52. Officer C told the Authority that when he arrived at Scotia Glen Street with Officer B, he immediately notified NorthComms that he and Officer B had arrived and were at the same location as the fleeing vehicle.
53. After radioing NorthComms, Officer C said he looked towards the house and could see Mr X standing at the back of the Subaru, facing the boot. Officer A was standing behind Mr X, holding Mr X’s left arm behind his back. Officer C said Officer A was trying to handcuff Mr X, but Mr X was not doing what he was told and refused to move his right hand from the Subaru’s boot.

54. Due to Officer B going to assist Officer A, Officer C said he decided to check the Subaru to ensure that there was no one else inside. As he got to the driver's side, Officer C saw the keys in the ignition and removed them.
55. Officer C said that he then looked around the address from where he was standing and saw someone step out of the house. Officer C told the Authority that he instructed that person to go back inside and otherwise had no issues with the occupants of the house.
56. In the time that it took him to remove the car keys and look around the property, Officer C said that Officer B had taken hold of Mr X's right arm, and together with Officer A, had pulled Mr X to the ground. Officer C described the take-down as being "*more of a fall*", as Mr X was "*still offering passive resistance and they sort of fell down on top of him*" (see paragraph 77). Officer C said that Mr X landed face first, but at the time of his interview with the Authority, he could not recall how Mr X reacted, because the whole event "*never stood out in my mind*".
57. While Mr X was on the ground, Officer C saw Officer B put his knee between Mr X's shoulder blades to keep Mr X in place while Officer A applied the handcuffs. Once handcuffed, Officers A and B brought Mr X back up to his feet and with one hand under each arm, escorted Mr X to the rear Police car.
58. Officer C told the Authority that the force used by Officers A and B was "*trivial*" and he did not see any marks or grazes on Mr X. There was "*no striking, no punching, no baton and no spray*."
59. Once Mr X was seated in the back left passenger seat, Officer C said he and Officers A and B discussed who would drive Mr X to the Putaruru Police station. It was decided that Officer C would drive Mr X, Officer A would follow in his Police car and Officer B would drive the Subaru.
60. While Officer C was driving Mr X to the Police station, he said Mr X told him that he had a sore arm and that the officers did not "*have to do that*".

Events post-arrest

61. When Officer C and Mr X arrived at the Putaruru Police station, Officer A took Mr X to be processed. At 2.37pm, Mr X signed a 'Notice to Person in Custody' form acknowledging that he had been advised of his rights and that he was under arrest for driving while disqualified and for failing to stop for red and blue flashing lights.
62. Officer A recorded in the custody records that Mr X had a "*sore wrist from previous injury, not related to arrest*" and he was assessed as not needing specific care.
63. Mr X was bailed from Police custody at 4.04pm.
64. Mr X told the Authority that while at the Police station he remembered feeling "*dazed and concussed*." He said that as a result of his arrest, he had bruising down his back, blurred vision, a five centimetre cut to the inside of his mouth, a sore jaw which affected his ability to eat, and additional pain to his left arm. Mr X said that after he was bailed he did not seek any medical treatment and instead went home to rest.

Mr X

65. On 31 August 2015, Mr X pleaded guilty to driving while disqualified and for failing to stop for red and blue flashing lights. He was sentenced at the Tokoroa District Court to 80 hours community work.
66. Mr X's medical records show that he was treated on 23 April 2015 for an injury to his left wrist. X-rays showed that there was a "*small bony flake*" on his left wrist. Medical notes dated 28 May 2015 show that Mr X's wrist was slowly improving and that he did not want physiotherapy. Mr X was discharged from regular follow up and advised that he was welcome to return if he had further concerns. He did not seek further treatment following his arrest on 12 June 2015.

THE AUTHORITY'S INVESTIGATION

67. In investigating the incident, the Authority interviewed Mr X, Mr Y, Mr Z and Officers A, B and C. The Authority has also examined the Police investigation file into Mr X's complaint, which included Police custody records and Mr X's medical notes relating to his April injury.
68. Based on Mr X's complaint, the Authority has considered four issues as part of its investigation. The issues identified by the Authority are:
- Were Police justified in arresting Mr X on 12 June 2015?
 - Was the force used by the officers when arresting Mr X reasonable and justified in the circumstances?
 - Did Police advise Mr X that he was under arrest and advise him of his rights?
 - Was the process of impoundment of the Subaru lawful?

Power to require a driver to stop

69. Section 114 of the Land Transport Act 1998 provides that a Police officer may signal or request the driver of a vehicle to stop the vehicle as soon as is practicable.

Use of force by Police

70. Section 39 of the Crimes Act 1961 provides for a Police officer to use reasonable force in the execution of his or her duties such as arrests. 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.”*
71. 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.
72. 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.”*
73. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for any excessive use of force.

General guidelines on use of force

74. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
75. 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.
76. 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)).

77. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions, 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.
78. The policy states that any force must be considered timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

Arrest and detention

79. Section 315 of the Crimes Act 1961 provides that any Police officer may arrest and take into custody without a warrant:
 - *“any person whom he or she finds disturbing the public peace or committing any offence punishable by imprisonment:*
 - *any person whom he or she has good cause to suspect of having committed a breach of the peace or any offence punishable by imprisonment”*
80. Section 8 of the Search and Surveillance Act 2012 provides that a Police officer may enter a place or vehicle without a warrant and search for and arrest a person who he or she:
 - *“suspects has committed an offence punishable by imprisonment, and*
 - *believes is there, and*
 - *believes that, if entry is not affected immediately, either or both of the following may occur:*
 - *the person will leave the place or vehicle to avoid arrest*
 - *evidential material relating to the offence for which the person is to be arrested will be concealed, altered, damaged or destroyed.”*
81. Section 23 of the New Zealand Bill of Rights Act 1990, provides that people who are arrested or detained under legislation have the rights to:
 - *“be informed of the reason for arrest or detention at the time of their arrest or detention.*
 - *Consult and instruct a lawyer without delay and to be told of that right.*

- *Have the arrest or detention's validity determined and to be released if it is not lawful.*
- *Be charged promptly or released."*

Impoundment of vehicle

82. Section 96 of the Land Transport Act 1998 provides that a Police officer must seize and impound a vehicle for 28 days if the officer believes on reasonable grounds that a person drove the vehicle on a road while:

- the driver was disqualified from holding or obtaining a driver licence; or
- the driver's licence was suspended or revoked; or
- the driver has previously been forbidden to drive.

THE AUTHORITY'S FINDINGS

Issue 1: Was Officer A justified in arresting Mr X on 12 June 2015?

83. Under section 315 of the Crimes Act 1961, a Police officer may arrest and take into custody without a warrant any individual *“whom he or she has good cause to suspect of having committed a breach of the peace or any offence punishable by imprisonment”* (see paragraph 79).
84. Officer A told the Authority that he saw the Subaru two weeks prior to the incident and was aware that it had links to Mr X, a disqualified driver who Police wanted to interview. When Officer A saw the Subaru again on 12 June 2015, he was justified under section 114 of the Land Transport Act 1998 in attempting to stop the Subaru in order to establish the identity of the driver.
85. Because Mr X failed to stop and attempted to evade Police, Officer A was entitled under the Police fleeing driver policy to commence a pursuit.
86. As Officer A was pursuing Mr X when he drove into his driveway, section 8 of the Search and Surveillance Act 2012 empowered Officer A to enter the address without a warrant (see paragraph 80). Officer A had reasonable grounds to suspect that Mr X had committed an offence punishable by imprisonment; he knew that Mr X was on the property, and he believed that if he did not enter the address, then Mr X would try and leave the property.
87. When Mr X pulled over and his identity was established, Officer A charged Mr X with driving while disqualified and for failing to stop for red and blue flashing lights. On 31 August 2015, Mr X pleaded guilty to both charges.

FINDING

Officer A's entry onto private property to arrest Mr X was lawful.
The arrest of Mr X was justified under the circumstances.

Issue 2: Was the force used by the officers when arresting Mr X reasonable and justified in the circumstances?

88. The law provides that Police can use reasonable force in the execution of their duties such as arrests, where the force is necessary to overcome any force used in resisting. However, Police are criminally responsible for any excessive force (see paragraphs 70-78).

Force used during arrest

89. Mr X complained to the Authority that Police put him in a *“stranglehold,”* struck him with a baton across his neck, upper back and shoulders, pulled him to the ground and kned him in his face, which *“crushed”* his head and jaw and caused him to *“almost black out”* (see paragraphs 9-

- 11). Mr X denied that he was trying to resist arrest, and said that he was only struggling as he tried to tell the officers that he could not breathe.
90. Mr Y and Mr Z are Mr X's brothers and witnessed the events. Mr Y told the Authority that he saw Officer B strike Mr X twice with either a black torch or a baton on the *"back of his neck and his shoulder."* Officer B then *"tackled [Mr X] to the ground"*, where he landed face first. Mr Y said Officer B then kned Mr X in the face.
91. Mr Z said he saw Officer B *"grab"* Mr X from behind and *"chuck him on the ground"* before kneeling him in the head. He also saw Officer A holding a Police baton, although from his location he was unable to see what Officer A did with the baton.
92. In contrast, the three Police officers present during the incident all deny using excessive force on Mr X at any point during his arrest. Specifically, Officers A and B deny using a baton or torch on Mr X. Officer A told the Authority that Mr X was *"slowly resisting"* arrest by trying to walk away instead of allowing him to apply handcuffs. Similarly, Officer B said that when he arrived he saw Mr X *"flailing"* his arms about in order to prevent Officer A handcuffing him.
93. Officer A said that when Officer B arrived, he grabbed Mr X around the shoulders, and took him to the ground, face down. Officer A said the take-down was done in a *"controlled manner"* and that Officer B did not throw Mr X on the ground. However, Officer B said there was a *"bit of a twist and struggle and we ended ... up on the ground."* Mr X landed on his back and he landed on top of him. As Officer A was still holding Mr X's shirt, he assisted Officer B with handcuffing Mr X.
94. Officer B told the Authority that he did not see any visible injuries on Mr X and was only aware that Mr X had a sore or broken arm because Mr X told him when they were on the ground.
95. Officer C recalled seeing Officers A and B fall to the ground with Mr X, due to Mr X offering *"passive resistance"*. Officer C said the whole event *"never stood out in my mind,"* and that there was *"no striking, no punching, no baton and no spray."* Officer C told the Authority that the force used by Officers A and B was *"trivial"*.
96. There is a clear conflict of accounts regarding the level of force used by Police when they arrested Mr X. Mr X and his brothers detail significant force involving a torch or baton which re-injured Mr X's arm and caused bruising down his back. The accounts given by Police deny any such force was used. There is no medical evidence or photographs to assist in establishing what injuries Mr X had following his arrest. Therefore, due to the conflicting accounts, the Authority is unable to determine, on the balance of probabilities, what force was used by Police on Mr X during his arrest.

Force used in the Police car

97. Mr X complained to the Authority that when he was put in the right rear passenger seat of the Police car, Officer B punched him with a closed fist, five times to the side of his face, temple and jaw. Mr X described the punches as *"rapid, just one after the other ... and my head was going to the side, back and forward."*

98. During the assault, Mr X said he told Officer B to *“please get away”* and not to touch him. Once he was at the Police station, Mr X said he felt *“dazed and concussed.”* He said that as a result of the force used, he had a cut inside his mouth, blurred vision, and a sore jaw which affected his ability to eat.
99. In contrast, Officer B recalled that when he put Mr X in the back left passenger side of the Police car, Mr X kicked out at him twice with his left leg. Officer B said the kicks were *“pretty trivial”* so he simply lifted Mr X’s leg up and put it into the foot well of the car.
100. Officer B denies striking Mr X while he was in the car, and told the Authority that Mr X *“wasn’t battered, he wasn’t kneed on and he wasn’t assaulted.”*
101. Neither, Mr Y, Mr Z nor Officers A and C saw any interaction between Officer B and Mr X inside the Police car.
102. Custody records show that Officer A assessed Mr X as not needing specific care . His only injury was noted as a *“sore wrist from previous injury, not related to arrest.”*
103. Mr X was detained in custody for approximately one hour, 12 minutes. Following his release, Mr X did not seek any medical assistance.
104. Mr X and Officer B have conflicting versions of the force used on Mr X while he was seated in the rear of the Police car. In the absence of independent witnesses, photographs or medical evidence, the Authority is unable to come to a conclusion, on the balance of probabilities, as to whether Mr X was punched by Officer B while seated in the Police car.

FINDING

Due to the significant conflict in evidence, the Authority is unable to make a finding as to what force was used by Police on Mr X either during his arrest or when Mr X was placed in the car.

Issue 3: Did Police advise Mr X that he was under arrest and advise him of his rights?

105. Section 23 of the New Zealand Bill of Rights Act 1990 states that anyone who is arrested or detained should be informed at the time of their arrest or detention of the reason for it. It is also Police policy that when arresting or detaining a person, officers must advise the person of their rights (see paragraph 80).
106. In his complaint to the Authority, Mr X said Police did not tell him that he was under arrest or advise him of his rights. His complaint is supported by witnesses, Mr Y and Mr Z, who both told the Authority that they did not hear Police advise Mr X that he was under arrest.
107. Officer A said he told Mr X that *“he was under arrest for failing to stop”* when he initially went to grab Mr X’s arm to apply the handcuffs. This is supported by Officer B, who said he heard Officer A tell Mr X to *“put your hand behind your back, I’m going to handcuff you ... you’re being arrested because of the pursuit”*.

108. After Mr X was handcuffed, he was taken directly to the Police car by Officer B before Officer C drove him to the Police station. Officer A told the Authority that he did not advise Mr X of his rights at that stage, as he was sorting out the impound notice for the Subaru and he believed it would be easier for him to give the advice to Mr X at the Police station once he arrived.
109. Police records indicate that Officer A formally advised Mr X of his rights at 2.37pm, approximately 16 minutes after the pursuit ended at Scotia Glen Street. Mr X signed a Police form acknowledging that he had been told of his rights.
110. The Authority is satisfied that Officer A told Mr X that he was under arrest and advised Mr X of his rights as soon as he was in a position to do so.

FINDING

Mr X was told he was under arrest and advised of his rights under the New Zealand Bill of Rights Act 1990.

Issue 4: Was the process of impoundment of the Subaru lawful?

111. Mr X complained to the Authority that Officer B drove the Subaru to the Putaruru Police station after it was impounded, when he should have waited for a tow truck.
112. Mr X was arrested for driving while disqualified. Under section 96 of the Land Transport Act 1998, Officer B was lawfully allowed to seize and impound the Subaru that Mr X was driving, as Mr X was disqualified from holding a driver licence at the time (see paragraph 82).
113. Officer B told the Authority that Mr X and his family members were known to Police and said that they could be “*volatile*”. Due to his knowledge of Mr X and his family, Officer B said that he had reservations about remaining alone at the residential address and said that he did not want to cause any further conflict. As a result, Officer B said he decided it would be preferable to drive the Subaru to the Putaruru Police station rather than wait by himself for a tow truck.
114. The Authority is satisfied that Officer B’s decision to drive the Subaru to the Putaruru Police station was justified in the circumstances.

FINDING

The Authority is satisfied that Officer B lawfully impounded the Subaru.

CONCLUSIONS

115. The Authority has reached the following conclusions on the balance of probabilities:

- Officer A's entry onto private property to arrest Mr X was lawful. The arrest of Mr X was justified under the circumstances.
- Due to the significant conflict in evidence, the Authority is unable to make a finding as to what force was used by Police on Mr X either during his arrest or when Mr X was placed in the car.
- Mr X was told he was under arrest and advised of his rights under the New Zealand Bill of Rights Act 1990.
- The Authority is satisfied that Officer B lawfully impounded the Subaru.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

7 July 2016

IPCA: 15-0175

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 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
