



Serious injury to Palmerston North man from Police dog bite

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 1.45am on 14 November 2012, Mr W was arrested by Police at his Palmerston North home. During the arrest Mr W received significant injuries from a Police dog.
2. The Police notified the Independent Police Conduct Authority, 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

Events preceding the Armed Offenders Squad callout

3. At 3.08pm on 13 November 2012 Police were called to the home of Mr W in Palmerston North. Mr W, a gang associate, had been engaged in a dispute with a group of men and his next-door neighbour who had links to a rival gang. Both parties had weapons during the dispute, but none were actually used. Police attended and arrested one of the group for possession of an offensive weapon.
4. At 4.02pm Police received a report that a man, one of Mr W's neighbours, was outside Mr W's address with a machete. Police attended, seized the weapon, and warned the man.
5. While Police were in attendance Mr W, who was intoxicated and had been taking prescription medication, shouted abuse at his neighbours. He threatened to summon gang members to burn their house down.

6. Police arrested Mr W for disorderly behaviour and took him to Palmerston North Police Station. He was released on bail at 6.30pm. His bail conditions prohibited him from visiting or contacting his neighbours.
7. At 8.10pm Police received a phone call advising that between 15 and 20 people were fighting on the road outside Mr W's house. The caller described seeing at least one weapon, a baseball bat. Police attended but the crowd had dispersed by the time they arrived.
8. At 10.00pm the night shift officers at Palmerston North Police Station came on duty. They were briefed on the earlier incidents involving Mr W, and advised to treat all calls to Mr W's property as urgent.
9. At 10.35pm Police received a hysterical call from Informant X stating that Mr W was threatening his neighbours with a medium-sized firearm and that he had "*lost the plot*" and was "*ready for war*". Informant X had spent the evening at Mr W's house and indicated that this was a continuation of the series of incidents that had taken place earlier that day. The informant terminated the call before the Police call taker could ask more questions.
10. Police rang Informant X a number of times and spoke to her and Informant Y in order to obtain more information about the situation and to ensure their personal safety. They told the Police that Mr W's actions were in response to rival gang members visiting Mr W and threatening to kill him.
11. Police decided to go to Mr W's property. Officer A took initial command and control of the Police response to the incident. She identified a Safe Arrival Point (SAP) near Mr W's property and instructed officers to meet there. Once there, she briefed the other officers present, issued them with their fire orders, and directed them to form a cordon around Mr W's house.
12. Officer A requested more information regarding what was happening at Mr W's property from Police Central Communications. They attempted to gain more information from Informant X, but she had become uncooperative, refusing to answer their phone calls.
13. Very limited information from the scene was available to Police. Because of this, Officer A directed two officers to drive by Mr W's property and assess the scene. The officers saw three or four people outside Mr W's property.

14. Officer A decided that Police should approach Mr W's address, remaining a safe distance from the property. They found Mr W and three others, including Witness Z, standing in the front yard. The officers remained outside the property and directed all four to leave the address. Two did so. Witness Z remained with Mr W, who was having trouble standing unaided and shouted at Police to *"fuck off or I will kill you"*.
15. Witness Z helped Mr W into his house, and sat him in a chair in his hallway. Witness Z then left the property. He told Officer A that Mr W did not have a firearm, but that he was highly intoxicated, upset after having broken up with his partner, and had collapsed several times that day.
16. Given the information provided by Witness Z, Officer A was concerned for Mr W's health. She also believed that Mr W could still be in possession of a firearm and that other people might be inside the address. Mr W had failed to comply with Police instructions and Officer A believed that he posed a threat to himself and others.
17. Because of the threat posed by Mr W, Officer A instructed all officers to retreat to their cordon positions and summoned the Armed Offenders Squad (AOS).

Armed Offenders Squad Attendance

18. At 11.30pm Officer D, the AOS Commander, was informed of the incident at Mr W's address. He agreed that AOS attendance was appropriate, and the squad was paged.
19. A short while later, AOS members arrived at the Palmerston North Police station. They were briefed as to the events that had taken place at Mr W's property that day, and warned about his poor state of health. They were also issued with their fire orders.
20. The AOS arrived at the SAP at 12.30am. They were met there by Officer A. The Police Negotiation Team (PNT) and Officer E, an AOS-qualified dog handler, arrived soon after. Officer A advised Officer D of all the information known to Police at that stage, in particular that Mr W was possibly armed with a firearm and in a poor state of health.
21. Officer D undertook a written threat assessment, and concluded that Mr W posed a high level of direct and specific threat to himself and others, including Police. He decided that the best course of action was to cordon and contain Mr W in his property and appeal to him to leave the house so that he could be arrested safely.
22. The AOS was divided into two teams of four who formed an inner cordon within the outer Police cordon. An AOS member then used a loud hailer to appeal to Mr W to leave the house or contact them. This voice appeal continued for more than an hour without response.

23. During this time Police were approached by Mr W's son who told them about his father's propensity to fall into a deep sleep, often making it difficult to rouse him. The son offered to enter the house and attempt to rouse Mr W, but this option was considered too risky given the circumstances.
24. Police continued to attempt to rouse Mr W from outside the house. AOS members also threw stones onto the roof of the house and through a window. The PNT attempted to contact him via telephone but, unknown to Police, Informant X had taken Mr W's phone when she left his house earlier that evening and so he could not be reached this way. The lack of response from Mr W led Officer D to become increasingly concerned for his safety and well-being.
25. Officer D considered the use of other tactical options, including tear gas or distraction devices, but decided against this because of the risk to Mr W's health. He also considered the possibility that Mr W was waiting for Police to enter the house so that he could use a weapon against them.
26. Officer D decided that the AOS should proceed with a covert entry into Mr W's house. The plan was for a team of four AOS members to enter the front door of the house under the cover of a ballistic shield. They would be followed by Officer E and his dog, who could be used as a non-lethal option if any threats were encountered. The plan was broadcast over the radio twice so that each member knew what their role was.
27. Usual AOS entry procedure dictates that the dog and its handler enter a property first. Officer D decided against this approach as he did not think it was appropriate given Mr W's state of health. If Mr W was unconscious he would have been unable to defend himself against the dog.
28. The covert entry commenced at about 1.45am. Officer G led the team to the front door, which was unlocked. He pushed the door open and waited 10-15 seconds for a response. There was none.
29. Officer G entered the house and moved into the hallway. He immediately saw Mr W standing in the toilet area of his house, which was at the other end of the hallway. Officer G called Mr W by name and identified himself as armed Police. He told Mr W to "*show me your hands and walk towards me*". Mr W did not comply with this instruction.

30. Mr W was partially obscured from Officer G's view by the toilet door. His left hand was hidden and so Officer G could not see if he was holding a weapon. Suddenly, Mr W started closing the door and attempted to shut himself in the toilet. Officer G advanced quickly down the hallway to prevent the door from closing and pushed Mr W to the hallway floor.
31. Mr W dropped face first to the ground and tucked his arms under his body, with his hands under his chin. Officer G and Officer H, who had followed Officer G down the hallway, continued to tell Mr W to show them his hands. They believed that he could be concealing a weapon under his body.
32. At this point, Officer G became aware that there were several rooms off the hallway that had not been cleared by the other AOS officers. Officers I and J were providing cover for the kitchen and lounge, but Officer G was concerned that the uncleared rooms could contain other people or unseen threats. He believed this put himself and Officer H in a very vulnerable position, and that it was therefore necessary to remove Mr W from the hallway and secure these rooms as soon as possible.
33. Officer H attempted to pull Mr W's hands out from under his body, but Mr W was struggling and this was unsuccessful. This struggle continued for about 20-30 seconds. Officer E, who had been observing the struggle, then indicated to Officer F that he could use his dog to remove Mr W from the hallway. Officer F agreed. Officer E had considered using his OC spray but decided against this given the confined area and risk of cross-contamination.
34. Officer E deployed his dog, which was on a lead. The dog grasped Mr W by the shoulder. Mr W still refused to comply and the AOS members were unable to gain control of his arms. Aware of the urgent need to remove Mr W from the hallway Officer E commanded his dog to drag Mr W along the hallway towards the front door. The dog released Mr W on the front porch where he was handcuffed. He was not in possession of a weapon.
35. Mr W suffered puncture wounds to his shoulder and arm as a result of the dog bite he received. He also suffered a deep cut to his cheek, but it is unclear how this occurred. He received immediate treatment for his injuries from the AOS medic before being treated by Ambulance staff and transported to Palmerston North hospital.
36. A subsequent search of the property located a number of weapons, but no firearms. Mr W was charged with possession of offensive weapons.

Mr W

37. Mr W is well known to Palmerston North Police. At the time of this incident he had 37 previous criminal convictions. He had a record of involvement in incidents involving domestic violence, drug use, carrying a knife and violence against Police.
38. At the time of this incident Mr W was a sickness beneficiary. He was receiving treatment for cancer and other serious health issues, including heart problems and severe depression.
39. As part of his treatment Mr W took a variety of medication, including Diazepam. According to Mr W, on the day of this incident he had taken more than five times his normal dose of Diazepam and consumed about 18 bottles of beer.
40. According to a Police Forensic Medicine expert the combination of Diazepam and alcohol would have made Mr W's behaviour unpredictable. It is also likely that his memory would have been impaired and that he would have been prone to confusion, sleepiness and disorientation.
41. Mr W told the Authority that he tends to "lose control" and black out if he mixes his medication and alcohol. He also told the Authority that he had been the victim of harassment and abuse from his neighbours for a number of months leading up to this incident, which he believes was partly the result of his gang affiliation. He said he coped with this victimisation by taking more medication and drinking alcohol.
42. Mr W told the Authority that, prior to Police being called at 10.35 pm, he had been inside his house but could hear a lot of noise outside. He went to his front door and began waving his walking stick telling the people present to "shut the fuck up" and that he would "fuckin' kill them." He heard someone "freak out" because they thought that his walking stick, which was not the one he usually used, was a gun.
43. Mr W's last recollection is of being helped inside by Witness Z, where he says he passed out. He does not remember Police asking him to leave the house, being confronted by the AOS, or being bitten by the Police dog.
44. Mr W suffered a deep laceration to his face and three deep puncture wounds to his right arm, which required significant medical treatment.

Officer E

45. At the time of this incident Officer E had been a Police officer for 17 years and was current in all relevant certifications.

Internal Police investigations

46. An internal Police investigation into this incident was undertaken by a Senior Sergeant.
47. The Police investigation concluded that the tactics used by the AOS were appropriate and that the force used by Officer E was not excessive and was reasonable and justified in the circumstances.

APPLICABLE LAWS

Law on use of force

Use of force by law enforcement officers

48. 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. 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”*.
49. Section 40 of the Crimes Act 1961 provides for law enforcement officers to use force in order to make a lawful arrest but only if the arrest cannot be achieved by reasonable means in a less violent manner.

Search and Surveillance Act 2012

50. Section 18 of the Search and Surveillance Act 2012 states that where a Police officer has reasonable grounds to suspect that a person is in possession or control of a firearm and that they may kill or cause bodily injury to any person, then that officer may search that person or anything in their possession or under their control without a warrant. The officer may also enter any place, such as a house, without a warrant in order to carry out that search.

APPLICABLE POLICE POLICIES

General guidance on use of force

51. 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. These range from using handcuffs and open hand tactics to use of batons, OC spray, Tasers and firearms. They include the use of Police dogs.

Manual of Best Practice

52. The Police Manual of Best Practice sets out the circumstances in which use of force by Police is legally justified. These include executing an arrest, preventing escape, preventing suicide or injury, preventing breach of the peace, taking fingerprints, self-defence and defence of others and a range of other lawfully justified circumstances. The Manual notes that an officer who uses excessive force may be civilly or criminally liable.

Tactical Options Framework

53. 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.
54. Options range from communication with the offender, to 'empty hand' tactics such as distracting or punching the offender, to 'intermediate options' which are those unlikely to cause death or serious injury such as OC spray or baton, to use of lethal force which includes use of firearms or strikes to the head or neck.
55. Which option is appropriate depends on whether the offender:
- is cooperative;
 - is resisting, either passively or actively;
 - is actively hostile and intending to cause physical harm; or
 - presents a threat of death or grievous bodily harm.

Use of Police dogs

General Instructions

56. Under General Instruction D182, a dog handler is personally responsible for any use of force by that dog.
57. Before releasing the dog, the handler must be satisfied that the use of force is justified under the circumstances, and must call on the offender to desist unless it is impractical to do so.
58. The handler must also ensure that any force used by the dog is the minimum possible in the circumstances.

Manual of Best Practice

59. The Police *Manual of Best Practice* states that Police dogs may be used as a means of force to apprehend suspects and violent offenders who cannot be apprehended by other means.
60. Police dogs are trained to take controlled bites on the limbs and fleshy parts of the body in order to secure a hold on the suspect. Dog bites can cause damage to clothing, bruises, and more serious wounds.
61. Dogs cannot assess how much force is appropriate in a given situation. They may react independently according to instinct or training and should therefore be used as a last resort.
62. A handler using a dog must consider whether the use of force is justifiable and appropriate in the circumstances. They must also consider the possible consequences and whether there are other members of Police who could carry out the arrest.
63. Before releasing the dog, the handler should warn the suspect. However, in some circumstances – such as armed offender incidents – the suspect should not be warned.
64. Following apprehension, the dog should “*generally*” be removed as quickly as possible to avoid unnecessary injury.
65. If the suspect has been bitten, all possible steps must be taken to ensure that he or she receives medical attention as soon as practicable.

THE AUTHORITY'S FINDINGS

Was the AOS justified in entering Mr W's property?

66. Throughout the days leading up to this incident, Police had been called to several serious incidents at Mr W's address. The final call out was as a result of a report of Mr W threatening others with a firearm. This incident was attended by general duty officers.
67. On 13 November 2012 Police had been called to several serious incidents involving Mr W. Each of these involved threatening behaviour and weapons were present. Based on information provided by witnesses, and the events of that day, the Police officers present reasonably believed that Mr W was in possession of a firearm and threatening to use it against others.
68. Given the information provided by Witness Z, Officer A was concerned for Mr W's health. She also believed that Mr W could still be in possession of a firearm and that other people might be inside the address. Mr W had failed to comply with Police instructions and Officer A believed that he posed a threat to himself and others.
69. Police relied on section 18 of the Search and Surveillance Act 2012 to enter Mr W's address. That gave them the power to enter and search Mr W's house without a warrant because they believed Mr W had a firearm and would use it to harm himself or others.

FINDING

The AOS was justified in entering Mr W's house.

Was the force used against Mr W justified?

70. It is clear that, on the information available to them, Police reasonably believed that Mr W was in possession of a firearm and therefore capable of causing death or serious injury to himself or others. Police had not received any credible evidence to contradict the initial advice from Informant X that Mr W was armed and had "lost the plot". They believed that they had to act in order to contain the threat posed by Mr W. The officers were entitled to use force, as set out in the Crimes Act 1961.
71. Following the AOS callout, several tactical options were used, or considered, in an attempt to gain Mr W's co-operation.

72. Initially Police attempted to communicate with Mr W, using a loud hailer to ask him to leave his property. They received no response. They considered using tear gas or a similar distraction device but, because of Mr W's state of health, decided against this.
73. Once inside Mr W's property, Police were unable to establish whether or not Mr W had a weapon. Because he kept his hands concealed they proceeded to engage with him on the basis that he was armed.
74. Mr W resisted Police attempts to arrest him. Officers G and H used physical force in an attempt to pull Mr W's hands from under his body. Officer E considered using his OC spray on Mr W, but decided not to given the confined nature of the hallway and the risk of cross-contamination.
75. Mr W's behaviour had created a level of risk that led Police to believe that the use of a Police dog would be an appropriate tactical option in the circumstances.
76. Police General Instructions relating to the use of dogs state that a dog should be used as a last resort, when all other means of apprehension have been exhausted.
77. Mr W had resisted all attempts to arrest him. The layout of the hallway and the risk that people were concealed in unchecked rooms posed a significant threat to the officers and so it was important that Mr W was removed as quickly as possible. The use of OC spray was impractical. Other tactical options, such as use of a Taser, would also have been unsuitable for this purpose.
78. After all other options had been considered and rejected, Officer E decided to deploy his dog in order to gain control of Mr W. This was the least violent option available to him in the circumstances.
79. Officer E did not warn Mr W before deploying his dog but, because Mr W was thought to be an armed offender, was not required to do so.
80. Officer E did not immediately order his dog to release Mr W. Instead, he used the dog to pull Mr W along the hallway and to the front door. This was the most effective way to quickly remove Mr W from the hallway and allow the other officers to get out of their vulnerable position, surrounded by uncleared rooms. This tactic was appropriate in the circumstances.

FINDINGS

Officer E was lawfully justified under section 39 of the Crimes Act 1961 in using force against Mr W.

The level of force used by Police was reasonable in the circumstances.

Officer E complied with Police General Instructions relating to the use of Police dogs.

Actions following use of force

81. Mr W was given immediate medical treatment for his wounds by the AOS medic.
82. Police immediately summoned an Ambulance crew who provided further care and transported Mr W to hospital.
83. Officer E submitted a Tactical Options Report to his supervisor at the first opportunity.

FINDINGS

Police provided appropriate medical assistance to Mr W after his injury.

Officer E submitted a Tactical Options report as required by policy.

CONCLUSIONS

84. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable. In the Authority's view:
- i. Police complied with all relevant law and Police policy in the arrest of Mr W.
 - ii. The use of force by Officer E was justified.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

30 January 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:

- a) 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;
- b) 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.



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