



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Force used on youth in Tokoroa justified

1. At about 5.00pm on 29 May 2022, a 16-year-old youth (Mr X) was driving through Tokoroa. Due to the poor condition of the vehicle, a Police officer signalled Mr X to stop for a roadside inspection. Mr X drove a further 1.4 kilometres before stopping at the end of a cul-de-sac.
2. Officers approached Mr X, and arrested him for failing to stop his vehicle. Mr X resisted arrest and an officer punched Mr X twice in the face, then pulled him to the ground where he was handcuffed.
3. Mr X was taken to the Tokoroa Police Station where he underwent the youth process for three charges.
4. A family member of Mr X complained to the Authority, saying Mr X was beaten by Police. We advised Police of the complaint and independently investigated.

The Authority's Findings

Issue 1: Was the stopping of Mr X in his vehicle lawful and reasonable?

The stopping of Mr X in his vehicle was lawful and reasonable.

Issue 2: Was the force used on Mr X justified?

Officer A was justified in the force he used upon Mr X.

Analysis of the Issues

ISSUE 1: WAS THE STOPPING OF MR X IN HIS VEHICLE LAWFUL AND REASONABLE?

How did Mr X first come to the attention of Police?

5. On 29 May 2022 Officer A was patrolling in a marked patrol vehicle with Officer B.
6. At about 4:50pm the officers saw a blue ford falcon being driven north on SH1 Tokoroa. The car was in poor condition, with no front number plate, tinted windows, and crash damage on the rear right.
7. Mr X, an unlicensed driver who lives in Hamilton, was driving the vehicle.
8. We tried several times to speak to Mr X but were unsuccessful, therefore we only have detail of what he told Police in an interview later that day.
9. Police followed the car for a short time and then activated their vehicle sirens and lights signalling to Mr X, to stop. Officer A was unsure if he had noticed them, as there was no car parking in that part of Tokoroa.
10. Mr X continued driving at the same speed before speeding up slightly as he turned down several streets. He pulled into a cul-de-sac, coming to a stop at the end of the road.
11. In his Police interview, Mr X acknowledged being aware of the police lights and siren and the requirement to stop. He said he drove off because he believed he would be in trouble.

Requiring a driver to stop

12. Sections 114 and 52A of the Land Transport Act 1998 detail the Police powers to require a driver to stop.
13. Section 114 provides that an enforcement officer in a vehicle following another vehicle may, by displaying flashing blue, or blue and red, lights or sounding a siren, require the driver of the other vehicle to stop.
14. Section 52A states that a person commits an offence if they fail to stop as soon as practicable when signalled or requested to stop.

Assessment

15. We accept that Officer A saw what he considered to be a non-compliant vehicle and endeavoured to stop the vehicle by activating his red and blue flashing lights and siren. Mr X did not stop for about 1.4 kilometres after this, even speeding up slightly.
16. We accept Mr X was aware of the lights and siren, even if he did not see them immediately. It was a quiet town centre and residential area, and the vehicles were in close proximity.

17. We consider that the vehicle stop was lawful and reasonable.

FINDING ON ISSUE 1

The stopping of Mr X in his vehicle was lawful and reasonable.

ISSUE 2: WAS THE FORCE USED BY OFFICER A UPON MR X JUSTIFIED?

What happened?

18. Mr X stopped at the end of the cul-de-sac, outside a house known by Officer A to be connected to gang members. Officer A told us this raised concerns around dealing with the occupants of the car.
19. As Mr X was not from Tokoroa, we consider it unlikely he knew about the address, although Police had no way of knowing this.
20. When Officer A approached the driver's side of vehicle, he could see there were two occupants. Officer B also approached, going to the passenger side.
21. Officer A opened the driver's door and removed the keys from the ignition, advising Mr X that he was under arrest for failing to stop.
22. Officer B began speaking with the passenger, who was cooperative.
23. Another Police unit, Officer's C and D arrived to assist.
24. Mr X was not cooperative with Officer A and ignored him, instead picking up his mobile phone and began to make a call. Officer A took Mr X's mobile phone from him and told him again he was under arrest for failing to stop, telling him to get out of the car.
25. Officer A later stated that Mr X became "*immediately aggressive*" and yelled words to the effect that he was only 16, so couldn't be arrested or be arrested for failing to stop his car.
26. The officer considered he needed to quickly gain control of him, so leant down and tried to grab Mr X's top to remove him from the vehicle.
27. Officer A said Mr X hit out at his arms, pushing his arms away and tensed up, withdrawing back into his seat. Mr X reached for something underneath his hooded sweatshirt at the front of his body.
28. Officer A saw Mr X reaching for this unknown object under his clothing, telling us:

"I've pulled metal bars off people, I've pulled baseball bats off people. I've known people to have firearms down their waistbands. It could've been a number of things. It was just a long cylinder object, that's the way it appeared."

29. Thinking it may have been a weapon, Officer A used a closed fist and struck Mr X twice in the face.
30. The officer said he did this to distract Mr X from grabbing the object, telling us:
- "I didn't hit that hard... It was more to, distraction pain to, you know, take his focus away from what he was doing."*
31. Immediately after this, Officer A pulled Mr X from the vehicle and forced him facedown, onto the road.
32. Officer A noticed Mr X's hands were tucked under his stomach area, so applied knee pressure on Mr X's upper back which resulted in Mr X bringing his arms around where he was handcuffed by Officer C.
33. The object was removed and discovered to be a glass bong¹, about 35cm in length and 7cm across. Police later took a photo of it before it was destroyed.

Other officers

34. We spoke to the other officers involved, being Officer B, and Officer's C and D.
35. Officer B told us, *"Mr X was aggravated, like he was yelling at us and just refusing our instructions."* But, from where he was standing by the passenger door, Officer B could not see what Mr X was doing with his hands and did not see Officer A punch Mr X.
36. Officer C was standing by Officer A and told us:
- "From memory, he (Mr X) grabbed onto the steering wheel and would not get out and (Officer A) was pulling him to try and like loosen him out of his seat and then he (Mr X) grabbed onto an item that was concealed under his top."*
37. Later that day, Officer C completed a video interview of Mr X, in the company of his mother, where Mr X acknowledged how police could have thought it was a weapon. Mr X also said that it was his favourite bong, and he did not want it to be taken by Police.
38. Officer D was close to Officer's A and C and saw an item under Mr X's clothing, saying:
- "I can see an object under his (Mr X's) shirt, sort of, you know, like a, yeah, it's a large cylinder. Like, almost like a bat to me, like it looked like, that's what I sort of thought (Officer A) had seen... I stepped back, and I did unclip my OC spray because I believe (Officer A) had seen something."*

¹ A bong (also known as a water pipe) is a water filtration device generally used for smoking cannabis, tobacco or other illicit substances.

Was Officer A legally justified using force against Mr X to effect his arrest under section 39?

39. Section 39 empowers Police to use “*such force as may be necessary*” to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process. “*Necessary*” force in this context is generally accepted as meaning “*reasonable*” and “*proportionate to the degree of force being used to resist*”.
40. Under section 39, the Authority must determine:
- whether the officer believed on reasonable grounds that the person was using force to resist arrest; and if so
 - whether the degree of force used to overcome that resistance was proportionate and reasonable in the circumstances as the officer reasonably believed them to be (that is, whether the officer could reasonably have overcome the resistance and effected the arrest by using less force or some other method short of force such as tactical communications).

Did Officer A believe on reasonable grounds that Mr X was using force to resist arrest?

41. Officer A states that Mr X was not compliant after being told he was under arrest and told to exit the vehicle, and that he was actively resisting Officer A’s attempts to remove him by hitting out at Officer A’s arms and withdrawing into his seat.
42. Other officers confirm that Mr X was not cooperating with the instructions of Officer A, with Officer C saying Mr X, “*grabbed onto the steering wheel and would not get out ...*”
43. Officer B noted that Mr X was yelling things along the lines of, “*I’m 16, you can’t arrest me*” or words to that effect.
44. We accept that Mr X was not complying with Officer A’s lawful instructions, and that Mr X was likely using some force when hitting Officer A’s arms to avoid being pulled from the vehicle.

Was Officer A’s use of force reasonable and proportionate?

45. The level of force Mr X used in resisting Officer A’s attempt to remove him from the vehicle was low.
46. Officer A said he was mindful that they had stopped outside a gang address, and he wanted to quickly arrest and gain control of Mr X, so tried to grab his clothing and pull him from the vehicle and apply handcuffs.
47. We consider the force being used by Officer A at that stage was proportionate to that being used in resistance. Therefore, the actions taken by Officer A in response to Mr X’s resistance were justified under section 39.
48. When Officer A saw Mr X grabbing something under his clothing, which he considered might be a weapon, the justification for him using force switched to section 48.

Was Officer A legally justified in using force against Mr X to defend himself or another under section 48?

49. Section 48 of the Crimes Act provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
50. Under section 48, we must assess Officer A's actions on both:
- a subjective basis (that is, what Officer A genuinely believed); and
 - an objective basis (what a "reasonable" person would have done).
51. This assessment involves three questions:
- a) What were the circumstances as the officer believed them to be? (a subjective test)
 - b) Was the officer's use of force against Mr X for the purpose of defending himself or another? (a subjective test)
 - c) Was the officer's use of force against Mr X reasonable in the circumstances as the officer believed them to be? (an objective test)

What did Officer A believe the circumstances to be?

52. This is outlined above in paragraphs 19 to 34 and expanded here. Officer A told us:
- Mr X was aggressive and actively resisting from the moment his mobile phone was taken. By tensing up, batting away Officer A's hands, and grabbing for something under his clothing.
 - He could see an object underneath Mr X's clothing which he could not identify and was concerned that it may be a weapon.
 - If he was to withdraw and create more space between himself and Mr X, it may have elevated the risk of Mr X using any potential weapon against him or the other officers.

Was Officer A's use of force for the purpose of defending himself or another?

53. Officer A was very close to Mr X, as were three other officers. He believed it was not safe to withdraw if Mr X had a firearm or other weapon which could then be used against himself or the officers present.
54. The officer told us he struck Mr X twice in the face with half-strength blows which were intended to shock and distract him in response to Mr X reaching for what he thought may have been a weapon.
55. We accept Officer A was acting to defend himself and the other officers present, in acting to prevent Mr X from accessing a then unknown object.

Was Officer A's use of force against Mr X reasonable in the circumstances as he believed them to be?

56. In assessing if Officer A's use of force was reasonable, we must consider if the level of force was proportionate to the level of threat, and if there were other tactical options available at the time.
57. In the moment, Officer A was dealing with a person unknown to him outside a gang address, who had failed to stop, had resisted being removed from the vehicle, and was reaching for an unknown object under his clothing. Given the circumstances, we consider it reasonable for Officer A to believe Mr X had a weapon of some kind.
58. Officer A thought other tactical options would not have had immediate effect.
59. The other tactical options available to Officer A were pepper spray² and a Taser. In the circumstances we consider it reasonable for the officer to think these tactical options would not have been appropriate due to his proximity to Mr X.
60. We consider that the two strikes used by Officer A to ensure compliance and avoid Mr X gaining access to the unknown object, was proportionate to the level of perceived threat. The strikes were not at full force, and the perceived threat was high.
61. Mr X appeared to have no injuries from the punches by Officer A. Medical attention was offered to him once back at the Police Station, but Mr X declined.

Assessment

62. The threat perceived preceding a section 48 use of force must be real and imminent, rather than speculative and distant. We accept that the threat posed was real in that Officer A could see an object, although did not know what it was, and it was imminent, in that an unknown object was underneath Mr X's clothes which he was reaching for.
63. We accept that Officer A believed Mr X was resisting being removed from the vehicle, and Mr X may have had a concealed a weapon which he was about to use.
64. We accept that Officer A was justified in using the force he used to prevent the risk of Mr X causing harm to himself, or other officers, with what he believed was potentially a weapon.

² Oleoresin capsicum (OC) spray.

FINDING ON ISSUE 2

Officer A was justified in pulling Mr X's clothes and using force to attempt to remove him from the vehicle.

Officer A was justified in using two restrained strikes to Mr X's face in self-defence and the defence of others.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

26 April 2023

IPCA: 22-13771

Appendix – Law and Policy

TRANSPORT ACT 1988

Section 52A – Contravention of section 114

65. A person commits an offence if they are the driver of a vehicle that fails to stop as soon as practicable when signalled or requested to stop under section 114.
66. The maximum penalty on conviction for an offence is a fine not exceeding \$10,000.

Section 114 – Power to require driver to stop and power of arrest

67. An enforcement officer in a vehicle following another vehicle may, by displaying flashing blue, or blue and red, lights or sounding a siren, require the driver of the other vehicle to stop.
68. An enforcement officer may arrest a person without warrant if the officer has good cause to suspect the person of having failed to comply with this section or a signal or request or requirement under this section.

CRIMES ACT 1961

Section 39 – Use of force in execution of duty

69. Section 39 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrest 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.*”

Section 48 – Self defence and defence of another

70. Section 48 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
71. To rely on a defence under section 48, the individual officer’s actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
 - d) What were the circumstances as the officer believed them to be? (a subjective test)
 - e) Was the officer’s use of force against Mr X for the purpose of defending themselves or another? (a subjective test)
 - f) Was the officer’s use of force against Mr X reasonable in the circumstances as the officer believed them to be? (an objective test)

Use of force

72. The Police 'Use of Force' policy provides guidance to Police officers about the use of force and sets out the options available to 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.
73. 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.
74. The overriding principle when applying TENR is that of "safety is success". Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
75. The TENR risk assessment must balance the ongoing exposure to harm, with the current threat and the necessity to respond. This will determine the Police response.
76. Police officers 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 about 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.
78. 'Empty hand tactics' refers to a weaponless use of force, such as grabbing hold of, pushing, or punching a person. Officers can use empty hand tactics to distract or control someone and to defend themselves or others.
79. 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 takes precedence, and every effort must be taken to minimise harm and maximise safety.
80. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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