

Force used upon a young person at Taupō not justified

1. During the late afternoon on Thursday 5 November 2020, a 17-year-old female, Ms Z, was driving a car on the outskirts of Taupō with a female friend as a passenger. The pair had been drinking alcohol and it was raining. At about 4.45pm, Ms Z lost control of the car and it left the road, rolling at least once before stopping in a paddock.
2. When the farmer arrived at the crash site, he rang Police. The two young women, who he said did not appear injured, left the scene on foot. When Officers A and B arrived, they could not find the young women.
3. Around this time Ms Z rang her grandfather (Mr X) who drove to the scene. Ms Z's mother (Ms W), also drove to the scene, arriving after Mr X. About two hours later a Police dog handler (Officer C) located the two young women hiding in a bush about 300 metres from the crash site. Officer A crawled into the bush and took hold of Ms Z and guided her out.
4. While escorting Ms Z to where Mr X and Ms W were standing, Officer A took her to the ground in a forceful manner and handcuffs were applied. During this process Ms Z claimed her collarbone was broken.
5. Ms Z later went to hospital where it was confirmed she had a broken collarbone. A blood sample revealed a blood alcohol reading¹.
6. Ms Z's mother (Ms W) later complained to the Authority regarding the officer's actions in taking Ms Z to the ground and we investigated. Police also completed an investigation which resulted in Officer A being charged with male assaults a female. He was later acquitted of the charge.

The Authority's Findings

Issue: Was the force used in the arrest of Ms Z justified and reasonable?

¹ There is a zero-alcohol limit for drivers aged under 20 years.

The force used during the arrest of Ms Z was not justified. It was excessive and unreasonable.

Analysis of the Issue

BACKGROUND

7. On the afternoon of Thursday 5 November 2020, Ms Z was driving a family-owned motor vehicle on her learner licence. Despite Ms Z not being licenced to carry a passenger, she had a female friend with her, Ms Y, who was a year older. The pair were drinking alcohol and Ms Z was above the zero-alcohol limit for a person aged under 20 years.
8. At about 4.45pm Ms Z drove a left-turning, downhill corner on the outskirts of Taupō. It had been raining and the road was wet. Ms Z lost control of the vehicle, and it went across the road and down a grass bank. The car rolled at least once through farm fences, coming to rest on its wheels fifteen metres into a paddock.
9. The vehicle's airbags were activated, and a fence strainer post had smashed through the windscreen. Ms Z and Ms Y, who were both wearing seat belts, were able to climb out of the wrecked car.
10. The farmer heard the crash and found the two young women clambering out of the vehicle. As he called emergency services, he saw them walk away from the crash site. They were carrying alcohol. The farmer reported to Police that the pair did not appear to be injured.

Search and location

11. Officers A and B arrived a short time later and could not locate Ms Z or Ms Y. It was raining intermittently, and the officers had growing concerns for their safety. Other officers also arrived to assist with the search.
12. Unbeknown to the officers, the two young women had secreted themselves in a thick bush about 300 metres from the crash site, nearby to where Police parked their vehicles. It was from this bush that Ms Z rang her grandfather, Mr X, telling him she was in trouble and hiding from Police after crashing the car. Mr X told Ms Z to give herself up, but she refused.
13. Mr X, and his daughter Ms W (Ms Z's mother), drove to the scene in separate vehicles and parked by the Police vehicles, unaware they had parked next to the bush where the two young women were hiding.
14. Mr X advised Police that he believed his granddaughter was close by, based on the phone call she had made to him. They called out to the pair, but there was no response. The officers then called for the assistance of a Police dog handler (Officer C) to assist the search, who travelled from Rotorua.

15. Officer C arrived about two hours after the crash. Because of the rain the dog did not initially pick up a scent, but indicated the nearby bush where Ms Z and Ms Y were hiding. Officer C found them hiding in the dense scrub. They appeared wet and cold and had with them alcohol they had taken from the car.
16. Officer C called for them to come out of the bush, but they did not move. Officer C again called for them to come out and Ms Y did so. Ms Z, however, did not. Officer A entered the bush and took hold of Ms Z by her arm or clothing.
17. When Officer A held Ms Z, she swore at him and tried to break free. Mr X, Ms W and Officer B were standing about ten metres away. They could see and hear Ms Z being coaxed from the bush by Officer A and the abuse she was giving him. Officer C was on the other side of the bush and out of view.
18. Once out of the bush, Officer A led Ms Z by her arm towards the others. Ms Z was still abusing him and tried to push his hand away. Ms W tried to calm Ms Z down by calling out to her to not resist.

ISSUE: WAS THE FORCE USED IN THE ARREST OF MS Z JUSTIFIED AND REASONABLE?

19. While leading Ms Z from the bush towards the others who were about five metres away, Officer A forced Ms Z onto the ground, face down. He pulled her arms behind her back and applied handcuffs. Ms Z said she screamed out that he had broken her collarbone. Officer B assisted in handcuffing Ms Z.
20. When Ms Z went to hospital that evening, it was confirmed she had a fractured left collarbone.
21. There is a conflict of accounts as to the circumstances around Officer A taking Ms Z to the ground.

Officer A's account

22. Officer A told the Authority that he was apprehending a person he believed to be the driver of a crashed vehicle, likely to have been driving under the influence of alcohol and who had been hiding in wet weather for over two hours.
23. When the two women were found in the bush, he believed they needed to be escorted to safety and his intention was to lead Ms Z to her mother and grandfather nearby.
24. He said Ms Z was resisting and being abusive towards him and he was mindful she might try to run away again. He was unaware if she had a weapon on her.
25. Officer A told the Authority that, as he was leading Ms Z from the bush, she tried to pull away from him. He says Ms Z then tried to kick him or trip him up: *"I was thinking this girl wants to break away from me, she's trying to trip me up, she's now gone into the assaultive mode of trying to trip me up."*

26. Officer A says he “scoop-kicked”² her leg out of the way in self-defence³. He says this caused Ms Z to slip on her other leg due to wearing jandals on wet grass, and she went to the ground quickly, while he still had hold of her arm. He says it was a controlled take-down, to subdue Ms Z and he did not apply any more force than was necessary. He did not believe his actions would have caused an injury to Ms Z’s collarbone.
27. Ms Y, Ms W, Mr X and Officer B saw what happened from within five to ten metres. Along with Ms Z, they each gave similar accounts with slight differences.

The accounts from the non-Police people

28. Ms Z acknowledged she was abusing and resisting Officer A as she was being led by him away from the bush. She denied trying to trip Officer A and says that suddenly, he put her down to the ground on her hands and knees. She says she tried to push back up, but Officer A forced her down and pulled her left arm back.
29. Ms Z said it was then that her shoulder hurt, saying:

“I felt it snap. My face got thrown into the ground and I was just, I couldn’t see cos my vision just went all tipped and I just went all tipped and I just screamed. And then I started screaming ‘he just broke my collarbone.’”

30. Ms Z recalled her mother, Ms W, yelling at Officer A after he did this.

Ms Y, the friend of Ms Z

31. Police obtained the details of Ms Y but did not obtain a statement from her at the time. Police were initially unable to locate her again to interview her, but finally obtained her statement in late May 2023. The Authority has been unable to contact Ms Y.
32. Ms Y told Police that Ms Z “... was waving her arms about and basically not cooperating at all.”
33. Ms Y also told Police the officer put Ms Z onto the ground, saying: “I wouldn’t say he threw her on the ground like slamming her down, but he did place her quite hard onto her front.”

Mr X, the grandfather of Ms Z

34. Mr X said he tried to calm his granddaughter down as she and Officer A walked towards them. He says he saw Officer A then pick Ms Z up and “dumped her on, dropped her on her side”, and her “legs came off the ground”.⁴
35. Mr X recalls Ms Z calling out in pain when she was on the ground, although he was not sure what she was saying. He said he was in shock with what he saw as he did not feel it was right. He told

² A scoop kick is a tactic indorsed within Police training, where an officer sweeps the legs out from under a person, while holding their upper body, so a person can be safely taken to the ground and controlled.

³ Self-defence as per Section 48, Crimes Act 1961, see paragraphs 57-58.

⁴ From Mr X’s statement to Police.

us he did not see his granddaughter try to trip the officer and could recall Ms Z's mother yelling at Officer A afterwards.

Ms W, the mother of Ms Z

36. Ms W also saw her daughter being abusive and uncooperative towards Officer A. She says as Ms Z was being led out of the bush towards them, Officer A *“threw [Ms Z] onto the ground, it was such a shock. [Ms Z] seemed to bounce back up or partly up and the Constable forced her down again.”* She did not see her daughter try to trip the officer.
37. Ms W says Officer A started to apply the handcuffs and her daughter yelled out in pain that her collarbone had been broken. Ms W says she shouted at Officer A that what he was doing was not right.

The accounts from the other officers

Officer B

38. Officer B told us Officer A appeared to have things under control as he led Ms Z from the bush, even though Ms Z was being abusive and uncooperative. She said she saw Officer A apply something *“like a foot trip”* to force Ms Z to the ground. Officer B said she went forward and assisted in applying handcuffs to Ms Z. Officer B said Ms Z was then screaming something, but she did not recall what it was.
39. Officer B also recalls Ms Z's mother yelling at Officer A after he had taken Ms Z to the ground. She says she placated Ms W by encouraging Officer A to step away from Ms Z. Officer B helped Ms Z into a sitting position and spoke to her to *“try and calm her down”* before taking her to a nearby patrol car.
40. Officer B later told a Police colleague she thought Officer A's actions in taking Ms Z to the ground were excessive, over the top and uncalled for. Officer B also told the Authority she thought Officer A's actions were *“uncalled for and excessive.”*

Officer C

41. Officer C said he was on the other side of the bush when Officer A led Ms Z from the bush, so he did not see the scuffle between them. By the time he appeared, Officer A was applying the handcuffs. He did see Ms W confront Officer A, and he heard her say something like: *“You didn't need to do that.”*⁵

How did Ms Z suffer a fractured collarbone?

42. Ms Z, and her friend, were in a serious motor accident. The farmer who reported the accident said he saw the two young women walk away and they appeared uninjured.

⁵ From Officer C's statement to Police.

43. Ms Z says when Officer A pulled her arm behind her back, her collarbone broke, and she yelled this out. Ms W and Mr X heard Ms Z yell out in pain. Officer A said he did not believe his actions would have caused the injury. We accept Ms Z experienced pain during this action.
44. A later medical examination was not able to indicate how or when the injury occurred.
45. Although Ms Z claimed Officer A broke her collarbone, it is reasonably possible the injury occurred in the crash and that adrenaline and alcohol consumption masked the affliction until Officer A took the young woman to the ground.
46. On the information available to us, the cause of this injury to Ms Z is unclear.

The law on use of force and self-defence

47. Officer A told the Authority that the legal justification he relied on for taking Ms Z to the ground was section 48 of the Crimes Act 1961.
48. 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.
49. To rely on a defence under section 48, the officer's actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
 - a) What were the circumstances Officer A believed them to be? (a subjective test)
 - b) Was Officer A's use of force against Ms Z for the purpose of defending himself or another? (a subjective test)
 - c) Was Officer A's use of force against Ms Z reasonable in the circumstances he believed them to be? (an objective test).

What did Officer A believe the circumstances to be? (a subjective test)

50. Officer A told us Ms Z was resisting and being abusive towards him and he was mindful she might try to run away again.
51. Officer A said that when Ms Z tried to trip him, he believed she was being assaultive, and he needed to immediately defend himself.
52. We do not accept Officer A believed Ms Z was trying to trip him:
 - 1) Ms Z denies trying to trip Officer A, and none of the four eyewitnesses who were less than ten metres away said they saw her do so.
 - 2) Three of the witnesses expressed being surprised by Officer A's actions in taking Ms Z to the ground. It is clear Ms W remonstrated with Officer A when he did this. We consider Ms W's reaction to be compelling as it was a natural response by her in the circumstances.

Was Officer A's use of force against Ms Z for the purpose of defending himself? (a subjective test)

53. Having concluded that Officer A was not being assaulted by Ms Z, we must also conclude that Officer A was not acting to defend himself or any other person.

What have we concluded?

54. Section 48 of the Crimes Act does not justify Officer A's use of force. Nor is any other legal defence available.
55. We find that the force used by Officer A against Ms Z was both unjustified and excessive.

FINDING ON THE ISSUE

Officer A's actions in taking Ms Z to the ground were not for the purpose of self-defence. His actions were unjustified and an excessive use of force.

Subsequent Police Action

56. Police conducted their own investigation and subsequently charged Officer A with being a male, assaults a female, namely Ms Z. In the Rotorua District Court on 6 September 2023, after a Judge alone trial, Officer A was acquitted of the charge.
57. We acknowledge that in his judgement, District Court Judge A J S Snell expressed views that differ from the conclusions we have reached.
58. The Authority completed our investigation in May 2022, although were delayed publishing this report until the conclusion of Officer A's court proceedings.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

28 November 2023

IPCA: 20-5651

Appendix

LAW

Crimes Act 1961: Use of Force

59. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties, such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner”*.
60. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest”*, unless the escape can be prevented *“by reasonable means in a less violent manner”*.
61. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use”*.
62. Section 62 of the Crimes Act 1961 says anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

POLICE POLICY

Arrest and Detention

63. Force used during an arrest must be reasonable and be used only when it is not reasonable to make the arrest in a less violent manner.

Use of Force

Police policy on the use of force

64. 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.
65. Police policy provides a framework for officers to assess, reassess, manage, and respond to use of force situations, and ensure 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.

66. 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:

- 1) the incident type, location, and time;
- 2) the officer and subject's abilities;
- 3) the subject's emotional state;
- 4) the influence of drugs and alcohol and the presence or proximity of weapons;
- 5) similar previous experiences with the subject; and
- 6) environmental conditions.

Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).

67. 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:

- 7) cooperative;
- 8) passively resisting (refuses verbally or with physical inactivity);
- 9) actively resisting (pulls, pushes or runs away);
- 10) assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action);
- 11) 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.

68. 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.

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 Kenneth Johnston KC.

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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