



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Unjustified use of force in Counties Manukau Custody Unit

1. On 31 October 2022, staff in the custody unit at Counties Manukau District Court attempted to restrain an aggressive and uncooperative detainee, Mr X. During this restraint, two custody officers struck Mr X.¹
2. Police notified the Authority of the incident due to the circumstances of the force used by the custody officers. The Authority conducted an independent investigation into the incident.

The Authority's Findings

Issue: Were Custody Officers A and B justified in the force they used during Mr X's restraint?

Custody Officer A was not justified in stomping on Mr X's left leg and twice striking Mr X with an open hand.

Custody Officer B was not justified in stomping and standing on Mr X's right leg and repeatedly striking Mr X in the back with his knee.

Analysis

WERE CUSTODY OFFICERS A AND B JUSTIFIED IN THE FORCE THEY USED DURING MR X'S RESTRAINT?

3. In this section we outline the evidence we gathered during our investigation and describe the officers' use of force on Mr X.
4. We then assess whether the officers' actions were legally justified under the Crimes Act 1961, more specifically section 39, which requires us to assess whether the force used by the officers was reasonable and proportionate to overcome Mr X's resistance.

¹ Custody officers (or 'Authorised Officers') are non-sworn Police employees who have responsibility for managing the health, safety, and secure custody of detainees.

Counties Manukau Custody Unit

5. Two sets of custody cells (known as “custody units”) service the Counties Manukau Police Station and the District Court. The custody unit in the police station is connected by a tunnel to the custody unit in the District Court building, referred to as “court-side”. The two custody units have a combined staff of custody officers, supervised by experienced Police officers, usually sergeants or acting sergeants.
6. Detainees due for a court appearance are admitted and processed at the police station custody unit and transferred to the court-side custody unit in preparation for their appearance.
7. The incident discussed below occurred while Mr X was in a court-side cell. A camera (CCTV) is fitted in each cell to observe detainees to ensure their safety. The incident was therefore recorded.

What happened on 31 October 2022?

8. Mr X had been transferred from prison to a court-side custody unit cell for a court appearance. However, the sergeant in charge of the court-side custody unit, Officer C, assessed that it was not appropriate for Mr X to remain there because he had become aggressive and disruptive, shouting and kicking the cell door. There were two other occupants of the cell at the time, also awaiting court appearances.
9. When Officer C spoke to Police, he advised their procedures were to move anyone who was violent or aggressive in a court-side cell to a police-side one. This is to limit the number of altercations on the court-side and avoid disrupting the Court.
10. Officer C decided that Mr X should therefore be transferred to the police station custody unit, and Custody Officer A entered the cell to advise Mr X of this decision. Custody Officer A had dealt with Mr X in the court-side custody unit two days earlier, when Mr X became upset after his lawyer advised him, he would be remanded in custody, and been shouting and banging on the door.
11. CCTV footage shows that when Custody Officer A entered the cell on this occasion Mr X took up an aggressive stance, facing Custody Officer A with raised fists. Mr X told us he was upset because Custody Officer A was antagonising him about his shouting and kicking the door.
12. Custody Officer A says he tried to talk to Mr X to persuade him to come peacefully but, because of Mr X’s stance, Custody Officer A concluded that Mr X was going to assault him, and he took Mr X to the ground to avoid being struck.
13. The CCTV footage shows that Custody Officer A reached out to grip Mr X’s top and Mr X retaliated by pushing Custody Officer A. Custody Officer A then took hold of Mr X around his upper body and took him to the ground. Custody Officer B and three other custody officers restrained Mr X on the ground, as he was resisting attempts to handcuff him.

14. Officer C observed most of this incident from the doorway. When he spoke to Police he said he kept reminding the custody officers involved in the restraint to be “*mindful of their techniques*”, meaning to ensure Mr X’s safety during the restraint.
15. Mr X recalls he was struck several times in the back while being restrained on the floor of the cell, causing pain both at the time and later. He also says he was struck in the face after he had been handcuffed.
16. After a struggle, Custody Officer B eventually handcuffed Mr X and officers walked him from the cell. Mr X was transferred back to the police cells, and then to prison.
17. Although Mr X had no lasting injuries, and did not seek medical attention, he told us he did have a sore wrist and back after the incident.

What force did Custody Officers A and B use during Mr X’s restraint?

Custody Officer A

18. In addition to Custody Officer A’s attempts to restrain Mr X (which included taking him to the floor of the cell), the CCTV footage shows Custody Officer A also stomp on Mr X’s left leg twice and deliver two open hand strikes to Mr X after both his arms were restrained behind his back.
19. Custody Officer A did not mention the stomping nor the hand strikes in his Tactical Options Report.²
20. When shown the CCTV footage, Custody Officer A said he did not recall stomping on Mr X’s legs and did not offer an explanation for this use of force.
21. Custody Officer A says that he struck Mr X once on the shoulder with an open hand during the restraint. He says this was to obtain his compliance, as Mr X had his hands under his chest (although the CCTV footage contradicts this). Custody Officer A said he does not recall the second open hand strike, which happened after Mr X was handcuffed.

Custody Officer B

22. While Mr X was on the ground, lying on his right side or front, Custody Officer B was crouched behind Mr X, assisting with his restraint. The CCTV footage shows Custody Officer B striking Mr X in the lower back forcefully with his knee approximately 15 times. Custody Officer B also stomped and then stood on Mr X’s lower leg or ankle.
23. Custody Officer B says that he struck Mr X “*several*” times with his knee in the lower back in an attempt to get Mr X to release his arms so handcuffs could be applied. When Officer C spoke to Police he said he saw Custody Officer B’s knee strikes having no effect on Mr X’s struggles.

² An officer is required to complete a Tactical Options Report (TOR) when they have used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

24. Custody Officer B eventually managed to apply the handcuffs, after which the CCTV footage shows he delivered a final knee strike.
25. Custody Officer B says he cannot recall stomping or standing on Mr X's lower leg and ankle. He says he delivered the final knee strike after Mr X had been handcuffed because Police were still struggling to control Mr X (although, again, the CCTV footage contradicts this).

Were the officers' uses of force justified under section 39 of the Crimes Act 1961?

26. Custody Officers A and B both relied on section 39 of the Crimes Act 1961. In assessing whether the officers' various uses of force are justified under section 39, we must determine three issues;
 - a. Whether Custody Officers A and B themselves perceived that Mr X was using force to resist the process of being transferred to another cell;
 - b. If so, whether it was necessary for Custody Officers A and B to use any degree of force to effect the process of moving Mr X to another cell; and,
 - c. If so, whether the degree of force used by Custody Officers A and B respectively was proportionate in the circumstances.
27. The first issue can be dealt with briefly. When Custody Officer A entered the cell, Mr X squared up to him and was plainly determined to resist whatever Police wanted him to do. Accordingly, we have no difficulty in concluding that Officers A and B perceived Mr X to be resisting. They say he was, and all the evidence supports this.
28. The second issue is equally straight forward. The relevant evidence is again that Mr X was squaring up to Custody Officer A and flailing around when the other custody officers enter the cell, demonstrating he was determined not to comply with their legitimate directions. It is clear that a degree of force was required to ensure Mr X was restrained so that he could be transferred to another cell.
29. As to the third issue, we accept that it was reasonable and proportionate for Custody Officer A to take Mr X to the ground in order to restrain him. Mr X was uncooperative and aggressive, and taking him to the ground was an appropriate action. Whilst there is no evidence that Mr X posed a risk to the other two occupants in the cell, we accept that leaving Mr X there was not practical.
30. The CCTV footage shows that Custody Officer A stomped twice on Mr X's lower left leg, with Custody Officer B also stomping and standing on Mr X's lower right leg. Although Mr X was struggling, at these times, his legs were being controlled by another custody officer. Neither Custody Officer A nor B recall these actions and offered no justification for them. We do not accept these actions had any material impact in restraining Mr X. They were unnecessary and may have injured Mr X who was face down on the concrete floor of the cell with multiple officers on top of him. In our view, these actions by the custody officers were gratuitous, excessive, and thus, unjustified under section 39.

31. By repeatedly striking Mr X with his knee, Custody Officer B used a technique that, according to Officer C, was having no effect on Mr X. Custody Officer B was being supported by at least four other custody officers (and other staff). Despite Custody Officer B saying the knees were to get Mr X to release his arms, what in fact achieved this was other custody officers physically pulling Mr X's arms from underneath his body. Mr X recalls having a sore back after the incident. Repeated strikes in the Mr X's lower-back, some appearing to have been delivered by Custody Officer B with considerable force, no doubt had the potential to injure Mr X.
32. In addition, Custody Officer B delivered the final knee strike *after* he himself had handcuffed Mr X. Custody Officer B says he did this because they were still struggling to control Mr X. However, the CCTV footage shows Mr X was lying on the ground motionless as Custody Officer B stood above him. Again, this was gratuitous, excessive, and therefore, unjustified.
33. Lastly, Custody Officer A struck Mr X twice with an open hand. The first strike was when both of Mr X's arms were fully restrained and held behind his back; and the second was *after* he had been handcuffed. The CCTV footage contradicts Custody Officer A's account that he struck Mr X's shoulder once with an open hand to get Mr X's hands out from under him. Mr X clearly had both of his arms restrained behind his back at the time of the first strike and was handcuffed for the second. It also shows that the blows likely landed to Mr X's head. Mr X recalls being struck in the face after he had been handcuffed. We reach the same view in relation to these strikes, that is to say that they were gratuitous, excessive and unjustified.

Could the officers' uses of force be justified under 48 of the Crimes Act 1961?

34. Accepting the initial taking of Mr X to the ground was justified, we considered whether the uses of force by Custody Officers A and B that followed could have been justified under section 48 of the Crimes Act 1961.
35. Section 48 would require us to assess whether the stomping, standing, knee strikes and slaps were reasonable and proportionate to defend the custody officers in the circumstances as they believed them to be.
36. Whilst initially we accept that, Custody Officers A and B believed Mr X was assaultive and intent on resisting being transferred to another cell, and therefore there was a risk they or others could be harmed, ultimately, our view is that section 48 has no application here. We do not accept that Custody Officers A and B genuinely believed, at the time Mr X was prone on the cell floor with multiple custody officers holding him down, that he presented a risk that necessitates the actions we have described.
37. More particularly, the evidence is that the custody officers hit Mr X in the face, kned him several times, and stomped on his legs after they had him subdued. It is especially telling that there were six officers involved. Our view is that there was no prospect from the point Mr X was held on the ground, of him causing any significant damage.

Conclusion

38. It is clear in our view that, assessing their actions on the civil standard, both Custody Officers A and B both breached Police policy in the use of force in this case, and in our view Police would be justified in commencing disciplinary action.
39. It is also our view that the officers' unjustified uses of force, when assessed by the criminal standard constituted a series of unlawful assaults. In our assessment, the evidential sufficiency test is met, as are public interest considerations. We therefore take the view that Police would have grounds to prosecute both officers.

FINDINGS

Custody Officer A was not justified in stomping on Mr X's left leg, and twice striking Mr X with an open hand.

Custody Officer B was not justified in stomping and standing on Mr X's right lower leg, and repeatedly striking Mr X in the back with his knee.

Subsequent Police Action

40. Police performed a criminal investigation into the incident and considered there was an unintentional breakdown in communication between all custody officers involved and that the actions of Custody Officer A were justified.
41. Police however, charged Custody Officer B with common assault for the knee strike which occurred after the handcuffs were applied. Custody Officer B pleaded guilty to the charge and completed diversion. Police considered the knee strikes prior to the handcuffs being applied by Custody Officer B to be poorly executed but reasonable.
42. Neither custody officer is employed by Police any longer.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

10 September 2024

IPCA: 22-16239

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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