

Police use of a Taser during an arrest in Greymouth

INTRODUCTION

1. At about 12.25am on 21 June 2015, Mr X was arrested after Police attended a domestic incident at his house in Greymouth.
2. Police put Mr X into a Police van to transport him to the Greymouth Police station. When Mr X did not comply with officers' instructions a sergeant directed a probationary constable to taser Mr X twice.
3. Mr X did not make a complaint and did not want to be interviewed by the Authority. His lawyer prepared a statement, on his behalf, which was provided to the Police.
4. In accordance with our Memorandum of Understanding with Police, the Authority was notified of this Taser incident. The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

5. On 20 June 2015, Mr X was drinking with his friends and family at his home address in Greymouth. Mr X, who was intoxicated, became upset with the amount of noise coming from a party at his neighbour's house. As a result, he picked up a tomahawk and stood in his neighbour's driveway, in front of the partygoers, and challenged people to go inside and sort out the noise.
6. One of the partygoers took a photo of Mr X holding the tomahawk. He then managed to wrestle the tomahawk off Mr X and Mr X left.

7. At about 9pm, Officers A and B heard over the Police radio that a man had entered a property with a tomahawk in his hand. When the officers arrived at the scene, they were told that the man was Mr X but that he had already left the property. Local Police and the community were aware of Mr X and his mental health issues.
8. As Mr X no longer had the tomahawk, Officers A and B decided not to take any action until Officers C and D, the nightshift officers, came on duty. All four of the officers had had previous dealings with Mr X, and discussed how best to deal with him. Officer C (a sergeant) said that Mr X was *“the strongest and most actively resistant man”* he has dealt with in his extensive Police career.
9. Officer D (a probationary constable) described Mr X as *“a very large man with an imposing physique”*. Officer D told the Authority that Police had come across him before when he was very drunk and knew him for his *“aggressive”* and *“non-compliant”* behaviour. Officer D said that Mr X boasted that the last time the Police dealt with him, it took *“eight cops to get him down”*.
10. The officers made the decision not to arrest him that night as they decided it would be safer to do it in the morning when he was sober and not so many people were around. They considered that as Mr X had left the property he was no longer a risk to the partygoers.
11. However, at about 11.40pm that night, Officer C asked Officer A to go to Mr X’s address to check that everything had calmed down and Mr X had gone to bed.
12. At about midnight, Officer A radioed Officer C to tell him that he could hear yelling and screaming coming from Mr X’s address. Officer C told Officer A that he would come over and help him deal with the situation.
13. Officer C, accompanied by Officer D, drove the Police van to Mr X’s address and parked at the end of the driveway away from the house.
14. Officer D was armed with a Taser and both officers had their batons and pepper spray¹.
15. Officer D checked the NIA database² before going to Mr X’s house and saw that he had alerts for violence against Police. As Officers C and D arrived at Mr X’s address, they received a radio call from the Police Southern Communications Centre (SouthComms) advising them that a drunk male was at Mr X’s address reportedly smashing car windows and was unable to be calmed down.
16. At 12.15am, Officers A, C and D walked up Mr X’s driveway. They could hear male voices and saw two men sitting in a car (Mr X and Mr Y). They noticed that two women (the men’s

¹Pepper spray is also referred to as Oleoresin Capsicum or ‘OC’ spray.

²The National Intelligence Application (NIA) is a Police database which holds information about individuals who have come into contact with Police.

partners) were up at the house. Officer D said that both males appeared very intoxicated and told the officers to “*fuck off*” in a loud, aggressive manner.

17. The attending officers recognised Mr X from the photo provided to them earlier, and saw that he was the man who had threatened his neighbours with the tomahawk.
18. Officer C told Mr X that he was under arrest for possession of an offensive weapon. He asked Mr X and Mr Y to get out of their car. Officer C said that both men became abusive and non-cooperative and the officers then got involved in a “*huge almighty tussle*” with them.

Use of Pepper spray on Mr Y

19. As Mr X and Mr Y refused to get out of the car, Officer A opened the door and grabbed Mr X by his right arm and asked him to get out of the car. Mr X refused and pulled away from Officer A.
20. As the officers tried to get Mr X out of the car, Mr Y held onto Mr X and threatened to use his martial arts’ training on the officers.
21. As Mr Y was preventing the officers from removing Mr X from the car, Officer A directed Officer D to use pepper spray on Mr Y. Officer D told the Authority that a warning, “*spray*”, was given and then Mr Y was sprayed in the eyes for about three seconds. However, the spray had little effect on Mr Y.
22. As the officers had been trying to get Mr X and Mr Y out of the car for about ten minutes by this stage, and Mr Y would not stop pulling on Mr X, Officer A sprayed Mr Y again. Officers A and C were then able to remove Mr Y from the car. They handcuffed him and laid him on the driveway.
23. Mr X, who was still yelling and screaming, and who had put up more of a fight, was finally pulled from the car by Officer C. He sat on the ground, refusing to get up.
24. Officer D said that both officers lifted Mr X, who was now handcuffed in front, and walked him to the Police van, holding one arm each.
25. Officer D felt vulnerable and worried and said that Mr X was still “*non-compliant and threatening and his words were laced with swearing*”.
26. Officer D said that it took about 20-25 minutes to contain and handcuff Mr X and Mr Y due to their continual yelling and screaming, resisting and refusal to follow Police instructions.

Taser Contact Stun

27. The Police van has an inner cage and two cells to escort prisoners. The entrance to the inner cage is small and narrow. The entrance is also raised 61.5cm from the ground and a prisoner is required to negotiate three steps to enter the cage. If the prisoner is unwilling or unable to enter the cell, Police need to lift the prisoner up and forward into the cell.

28. Mr Y was put in the van in the left hand cell. However, Mr X refused to get into the van. After some discussion with Mr X, Officers C and D lifted Mr X up and forward into the cage and then into the cell.
29. Officers C and D told the Authority Mr X was angry about being put in the van and as Officer C attempted to close the cell door, Mr X pushed his bare left foot against the inside of the door to prevent it being closed.
30. Officer D said that Mr X was swearing, using aggressive language, being difficult and belligerent. Officer C told Mr X to move his foot so that they could close the door to which Mr X said, *"I'm not putting my foot in the van, as I've fucking done nothing wrong and I shouldn't even fucking be in here"*.
31. Officer C made several more requests for Mr X to move his foot but Mr X did not comply. Officer C then instructed Officer D to get the Taser out. Officer D had reservations about using the Taser and thought there were other, better, tactical options available. In a statement prepared for the Police, Officer D said, *"I had reservations about discharging the Taser with deployed probes because Mr X was not at that time assaultive, rather he was an actively non-compliant and resistant prisoner"*.
32. However, Officer D said that Mr X was non-compliant and resistant and still a threat to the officers due to his size, anger and level of intoxication. Officer D thought that Officer C would know what was best as he was the supervisor and had more than 20 years' experience.
33. In terms of considering other tactical options, Officer D told the Authority that other options included slamming the door on Mr X's foot or using a baton to get him to move his foot. Officer D said that they did not think pepper spray would be effective, as it had had little effect earlier and they were aware that they were in a confined space where others could be affected.
34. Officer C said that he was worried that if they did not get Mr X secured within the van, intoxicated people at the address might have come and interfered with the arrest. He said that Mr X then pushed the door back and said, *"come on I'll take you all on"* and he felt that the officers needed to do something right away. He therefore asked Officer D to remove the cartridge case from the Taser and use it to contact stun³ Mr X's foot.
35. Officer C told the Authority that he believed that the use of the Taser was lawful and presented the least amount of risk of injury to Mr X and the Police. When asked why he did not use the Taser himself, Officer C told the Authority that it was not best practice for him to have used the Taser on Mr X himself, as he did not sign out the weapon or do the pre-operation safety checks.
36. Officer C said that he considered other tactical options such as talking to Mr X, forcibly pushing his leg, or using his baton or pepper spray but ruled them out. He said that the baton

³ This involves activating the Taser, with the cartridge of probes removed, while the Taser is in contact with the body of the subject, in conjunction with a verbal warning. This method utilises pain compliance to bring the offender under control.

would have caused some “*serious damage*”. He told the Authority that pepper spray had not worked effectively before and it was not appropriate to spray it into the van, especially in a confined space.

37. Officer D said that when Officer C said to contact stun Mr X, as a probationary Constable, they could not question or disobey an experienced frontline sergeant. Officer D said that Mr X was warned several times that he would be stunned with the Taser if he did not move his foot, and in response Mr X laughed, was abusive and refused to comply.
38. As a result, Officer D removed the Taser cartridge (which contained the probes), made contact with the bottom of Mr X’s foot and pulled the trigger, but the stun had no effect. Officer D said that Mr X was warned again and the Taser placed on the shin of his lower left leg. This time it was effective and Mr X moved his foot from the cell door.

Back at the Police station

39. Officer C then drove Mr X and Mr Y back to the Greymouth Police station. Officers A and D remained at the scene to take statements and returned to the station an hour later.
40. Mr X was later taken to Greymouth hospital where he was checked by a doctor, in accordance with Police Taser policy.

Post incident procedures

41. Officer D filled out a Tactical Options Report (TOR)⁴ as is required by policy.
42. Officer C filled out the supervisor’s section of the TOR, in which he approved both of Officer D’s contact stuns on Mr X. Officer C stated in the TOR that he had viewed the Taser Cam footage and firing log, as required (see paragraph 70), and found “*no issues*”. He said, “*a reasonable amount of force was used to effect arrest on a very belligerent male*”.
43. Officer C did not include on the form that he had been present when the Taser was used or that he had directed Officer D to use it.
44. Officer E, the TOR Reviewer⁵, viewed the Taser Cam footage and reviewed and signed Officer D’s TOR. He stated that he disagreed with the decision to contact stun Mr X twice. He recorded that Mr X was handcuffed and not ‘assaultive’ at that point. He stated that other tactical options could have been used, such as empty hand tactics and pain compliance, to make Mr X move his foot.
45. Officer E also noted on the TOR that Officer D is reasonably inexperienced but Officer C, the supervisor, should have “*exercised better judgement*”.

⁴ A report that an officer is required to complete when he or she has used 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.

⁵ A senior officer, who is an inspector or above, must view the Taser cam footage after the supervisor and decide whether the use of the Taser was justified in accordance with policy. They enter their comments on the TOR after the first supervisor has done so.

Mr X

46. Mr X was 44 years old at the time of this incident. He is approximately 184cms and of large build. He has a history of mental illness and is well known to Police.
47. As previously stated, Mr X did not make himself available to the Police or Authority for interview. In an unsigned statement prepared by Mr X's lawyer and provided to the Police, he denied being angry, aggressive or threatening which is at odds with the evidence of the three officers.
48. Following this incident, Mr X was charged with resisting Police and possessing an offensive weapon.
49. He pleaded guilty to possessing an offensive weapon, and was convicted and fined, and the resists Police charge was withdrawn.

Police officers involved

50. At the time of this incident:
 - 50.1 Officer A (a constable) had served about four years in the Police;
 - 50.2 Officer B was a probationary constable;
 - 50.3 Officer C had served about 28 years in the Police, including 11 years at the rank of sergeant; and
 - 50.4 Officer D was a probationary constable, had served less than a year in the Police and had never used a Taser operationally before this incident. Officer D's Taser certification was current.

LAWS AND POLICIES

Law on the use of force

Use of force by Police officers

51. 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."*

Use of force for self-defence or defence of others

52. Section 48 of the Crimes Act 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."*

53. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Policy on the use of force

Police guidance on use of force

54. The Police's *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.
55. 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.
56. 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).
57. A key part of an officer's decision to decide 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. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
58. Police 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.

Oleoresin Capsicum (Pepper) spray

59. Pepper spray is used by Police to subdue people; it causes a stinging sensation and generally makes people very compliant so as to avoid further aggressive behaviour.

60. The Police Manual states that an officer only use OC spray when it is *“lawful and reasonable i.e. necessary, proportionate to the situation, and with minimum risk to the public, Police and the subject.”*
61. The policy states that OC spray may only be used on someone who is actively resisting and then only when the situation cannot be resolved by less forceful means. Active resistance includes physical actions such as pulling, pushing or running away – that is, *“more than verbal defiance”*.
62. The policy requires that, before OC spray is used on a person, the person is warned that non-compliance will result in them being sprayed, the person is given a reasonable opportunity to comply, and other people nearby are warned that spray will be used.

Use of Taser

63. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive (defined as *“actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm”*) and cannot be used on a person who uses passive resistance in relation to Police.
64. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance.
65. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the deployment of a Taser unless it is impractical or unsafe to do so. The warning relevant to the presentation of a Taser is *“Taser 50 000 volts”*. The warning relevant to a discharge or contact stun is *“Taser, Taser, Taser”*.
66. A ‘discharge’ is an *“application by firing two probes over a distance from an air cartridge attached to the Taser, or subsequent applications of electrical current via the probes, which are in contact with the subject after firing, in conjunction with a verbal warning”*. A ‘contact stun’ is *“activating the Taser with or without the air cartridge attached while the device is applied to the body of the subject, in conjunction with a verbal warning”*.
67. Police policy also states that subsequent applications and extended cycles of the Taser should be avoided, but where they are unavoidable must be reasonable, necessary and proportionate in the circumstances.
68. The Taser policy further provides that supervisors must:
 - attend the scene as soon as possible and ensure proper aftercare and any appropriate medical attention has been provided;
 - preserve and photograph the scene;

- ensure that all evidence, including discharged cartridges, wires, probes and sufficient (4-5) cartridge identification tags (CIT) are recovered from the scene and secured appropriately;
- determine whether the use of the Taser was in accordance with policy;
- ensure the operator fills out the Taser register;
- ensure the operator submits a Tactical Options Report;
- ensure the operator uploads the incident into Evidence.Com; and
- informs the District Taser coordinator of the incident.

69. The Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable. It also states that mental health patients are among those at greatest risk from any harmful effects of a Taser.

Tactical Options Report

70. On the TOR form there is a requirement that the senior officer/inspector reviewing the use of the Taser must view the Taser camera footage and firing log and note that they have done so in their comments.

ISSUES CONSIDERED

71. The Authority's investigation considered the following issues:

- 1) Was the use of pepper spray by Officers A and D on Mr Y justified?
- 2) Was Officer D's use of the Taser to contact stun Mr X twice justified?
- 3) Was the appropriate medical care given to Mr X after he was tasered?
- 4) Did Officer D's supervisors correctly determine whether the use of the Taser was in accordance with policy?

THE AUTHORITY'S FINDINGS

Issue 1: Was the use of pepper spray by Officers A and D on Mr Y justified?

72. Sections 39 and 48 of the Crimes Act 1961 provide legal justification for Police to use reasonable force to arrest an offender and in defence of themselves or another.
73. Police policy (see paragraph 61) states that an officer may only draw and deploy pepper spray against a person that is actively resisting an officer (defined as physical actions such as pulling, pushing or running away – that is, "*more than verbal defiance*"), and where the situation may not be resolved by less forceful means. The officer must also verbally warn an offender that the pepper spray will be used.

74. The Authority accepts that Mr Y's behaviour, in fighting with Mr X, refusing to get out of the car and pulling away from the officers, amounted to active resistance. He was also interfering in Mr X's arrest and pulling him back so that the officers could not remove him from the car.
75. Therefore, the Authority considers that Officers A and D were entitled to use pepper spray on Mr Y in order to arrest him.
76. The Authority is satisfied that, as there were no innocent passengers in the car, deploying pepper spray into a confined space was an appropriate tactical response on this occasion.
77. As required by Police policy, the officers warned Mr Y that he would be pepper sprayed if he continued to resist.

FINDING

Officers A and D were justified in using pepper spray on Mr Y when he actively resisted arrest and interfered with Mr X's arrest.

Issue 2: Was Officer D's use of the Taser to contact stun Mr X twice justified?

78. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive (defined as "*actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm*") and cannot be used on a person who uses passive resistance in relation to Police.
79. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance.
80. Notwithstanding his history and previous encounters with the Police, at the time Mr X was simply refusing to remove his foot from the inner cell door of the van, preventing the officers from closing it. He was not kicking out or being 'assaultive', he was just being non-compliant.
81. Officer C told Officer D to contact stun Mr X with the Taser. Officer D was hesitant about using such an option because of the availability of other tactical options, such as slamming the door on Mr X's foot.
82. In a statement prepared for the Police, Officer D said, "*I had reservations about discharging the Taser with deployed probes because Mr X was not at that time assaultive, rather he was an actively non-compliant and resistant prisoner*".
83. Mr X's behaviour had therefore not reached the required threshold of being assaultive. Officer D told the Authority in interview that while the Taser was not the first choice, it was used twice, because Officer C said to use it and he was the supervisor.

84. Officer D was a probationary constable at the time, with less than one year's experience, and had never used a Taser before. The Authority accepts that Officer D was put in a difficult position and felt that refusal to act was not an option.
85. In the Authority's view, there were other, less violent, options available to the three officers. They could have continued with communication, physically picked up Mr X's foot to move it or used a baton to attempt pain compliance (see paragraph 54).

FINDINGS

Officer D's use of the Taser to contact stun Mr X twice was a breach of policy and a disproportionate and unjustified use of force.

Officer C should not have directed Officer D to use the Taser in a situation where Mr X was not assaultive.

Issue 3: Was the appropriate medical care given to Mr X after he was tasered?

86. The Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable. It also states that Mental Health patients, like Mr X, are among those at greatest risk from any harmful effects of a Taser (see paragraph 69).
87. Officer C ensured that Mr X was taken to Greymouth Hospital, where he was checked by a doctor after being tasered, in accordance with policy.

FINDING

Officer C complied with the Taser aftercare requirement of the policy.

Issue 4: Did Officer D's supervisors correctly determine whether the use of the Taser was in accordance with policy?

88. The Taser policy requires a supervisor and an inspector to determine whether the use of the Taser was in accordance with policy (see paragraph 68).

Officer C

89. Officer C, as supervisor, approved Officer D's use of the Taser, recording in the TOR that there were no issues with the use of the Taser and that "*a reasonable amount of force was used to effect arrest on a very belligerent male*".
90. Officer D's TOR makes it clear that Officer C was present by the van door when the tasing occurred. However, Officer C, did not record, in the supervisor's section of the TOR, that he instructed Officer D to use the Taser.

91. As Mr X was not assaultive, the Authority has concluded that Officer C incorrectly determined that Officer D's use of the Taser complied with policy.
92. As Officer C instructed Officer D to use the Taser, ideally he should not have signed off Officer D's TOR as the supervisor. However, the Authority accepts that staffing in Greymouth is limited. If Officer C was the only supervisor available, he should have, at the minimum, declared his conflict on the TOR and clearly stated that he had directed Officer D to contact stun Mr X.

Officer E

93. Officer E, the TOR Reviewer, viewed the Taser Cam footage, as is required (see paragraph 70), and reviewed and signed Officer D's TOR in accordance with policy. He stated that he disagreed with the decision to contact stun Mr X twice. He identified that Mr X was handcuffed and not 'assaultive' at that point. He stated that other tactical options could have been used to make Mr X move his foot and referred the matter to Police Professional Conduct for further consideration.

FINDINGS

Officer C incorrectly recorded that Officer D's use of the Taser complied with policy.

Officer C should have declared in the supervisor's section of the TOR that he had directed Officer D to contact stun Mr X.

Officer E reviewed the use of Taser and correctly determined that its use was in breach of policy.

CONCLUSIONS

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

- 94.1 Officers A and D were justified in using pepper spray on Mr Y when he actively resisted arrest and interfered with Mr X's arrest.
- 94.2 While Officer C should not have directed Officer D to use the Taser in a situation where Mr X was not assaultive, Officer D's use of the Taser to contact stun Mr X was a disproportionate and unjustified use of force.
- 94.3 Officer C complied with the Taser aftercare requirement of the policy.
- 94.4 Officer C should have declared in the supervisor's section of the TOR that he directed Officer D to use the Taser.
- 94.5 Officer C incorrectly recorded that Officer D's use of the Taser complied with policy.
- 94.6 After reviewing the same footage, Officer E correctly determined that Officer D's use of the Taser was in breach of policy.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

12 January 2017

IPCA: 15-0055

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.



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