

**REPORT OF THE POLICE COMPLAINTS AUTHORITY
ON A COMPLAINT BY JOHN ALBERT MENZIES
ARISING OUT OF AN INCIDENT ON 8 JULY 2000
NEAR THE DUNOLLIE HOTEL, RUNANGA**

Background

On 25 July 2000 the Authority was notified by the Office of the Commissioner of Police that Mr J A Menzies had indicated, in a discussion on 10 July 2000 with the Inspector in charge of the Greymouth Police Station, that he intended to make a complaint in respect of an incident in the early hours of Saturday 8 July 2000 near the Dunollie Hotel, Runanga, during which he had been arrested and later charged with assault on Police. The discussion with the Inspector followed a visit to the Station on 9 July 2000 by Mr Menzies, accompanied by two others, wishing to make a complaint. The Inspector was not on duty that day, but he telephoned Mr Menzies and arranged to meet with him on the following day. On that occasion, however, Mr Menzies did not wish to make a formal complaint.

Formal Complaint

Although the Authority had received a brief preliminary report on the matter from Police in August 2000, no formal complaint was made by Mr Menzies until 4 May 2001 when he provided to Police, at the chambers of his counsel, a prepared statement giving his account of the incident leading to his arrest. In that statement Mr Menzies described a confrontation and struggle with Constable T R Hunt after he had banged twice on the bonnet of a car and was then told that he was under arrest. He stated that after other officers arrived on the scene he was handcuffed and *“then picked up bodily by a number of Policemen. They ran me down the road past the second vehicle. I was horizontal with my feet off the ground and going head first down the hill. They lined me up on a concrete power post, I was looking ahead and saw*

it coming. The post was off the track by about a metre. They turned to line me up on it and drove my face straight into it. I can't remember actually hitting the post, but I recall a haze then being lifted upwards through scrub."

That statement (made while the charges against Mr Menzies of assault on Police were still awaiting hearing) was supplemented by a handwritten record of questions on the same date from a Senior Sergeant, and answers by Mr Menzies, in which he said he had drunk "*a considerable amount*" of beer, approximately "\$40 - \$50" worth, between about 8.30pm and the time he left the hotel "*somewhere between 1am and 1.15am*". He said that he was "*merry but not drunk*" when he left the hotel. He said that he was aware of Police in the area as a patron of the hotel known to him had been "*picked up for drunken driving*" earlier in the evening. He said that he did not know the vehicle was a Police car before he banged on the bonnet.

Police investigation prior to hearing of charges

On 14 May 2001 the Authority was notified that a Police investigation was being conducted into the complaint, and the Authority decided that it would not itself require any investigation on its behalf pending the completion of the Police investigation. The charges against Mr Menzies were still awaiting hearing at that time.

Detective Inspector J F Winter, Crime Services Manager, Tasman Police District, was assigned to conduct the Police investigation into the complaint. He arranged to re-interview Mr Menzies on 17 May 2001 in the presence of his counsel and his father. He was later provided with evidence prepared for the defence of the charges, including photographs of Mr Menzies, statements from Drs Sage and Kibblewhite who had been retained by the defence, and a handwritten account of the matter by Mr Menzies dated July 2000.

The Police members involved, who had made reports following the incident, were re-interviewed. Enquiries were made of the Dunollie publican who identified several persons who had heard something happening as they were leaving the carpark of the hotel. Those persons were located and interviewed. The nursing supervisor at Greymouth Hospital was re-interviewed. A tape recording of radio communications between Constable Hunt and Greymouth Police staff was obtained and analysed along with the ambulance logs.

The Detective Inspector completed a report in June 2001 on his enquiries to that date, noting that the allegation by Mr Menzies of assault and the use of excessive force would be addressed during the following month at the trial of the charges brought against him.

Criminal trial at Greymouth 2001

The charges against Mr Menzies were heard before Judge Noble and a jury in the District Court at Greymouth between 23 July and 1 August 2001.

The prosecution called a number of witnesses including the four Police officers involved in Mr Menzies' arrest, the driver of the ambulance called to the scene (Mr J H Piner), the ambulance officer (Ms E Jarden) who attended to Mr Menzies at the scene and on the journey to the hospital, the nursing supervisor at the hospital (Ms R A Larking), and a forensic scientist from the ESR (Dr M C Taylor).

The defence called Mr Menzies and several other witnesses.

Mr Menzies' evidence at criminal trial

In his evidence Mr Menzies stated (in summary) that:

- between about 8.30pm and the time he left the hotel he had drunk about \$40 worth of beer in seven ounce glasses, "*maybe a little bit more*".
- he was aware that during the evening a patron of the hotel had been apprehended for drink driving.
- he decided to leave his truck at the hotel and walk home up the left hand side of the road.
- he saw a vehicle facing downhill, and he "*banged on the bonnet twice*" and asked "*what are you doing?*", following which "*A tall fella got out and told me that I was under arrest*" (this was Constable Hunt).
- he resisted the officer's attempts to arrest him, and during the initial physical confrontation the officer made a call on his radio and then attempted to handcuff him. Mr Menzies said that to prevent the officer doing so he "*rolled on to my right side and propped myself up by my right elbow, and grabbed him around the collar and jersey area, below the neck on the, roughly the right hand side*".

- after the officer made another radio call, he “*tried to go for my windpipe*” by pushing against his throat. Mr Menzies then “*pulled him over in an arc*” and put his hand on the back of the officer’s neck until other Police officers arrived on the scene.
- he was pepper-sprayed, and after being handcuffed he was picked up bodily by three officers and carried face down along the road towards a post. He stated that as he went towards the post:

“Next thing I feel a blur, or I mean, I got a blur, and I’m getting lifted upwards through the scrub.

Q. What was the last view of the post?

A. The last view of the post was when I was going towards it.

Q. How far were you from it?

A. Oh, maybe a foot or so, maybe, just - that’s what I can recall, very close.

Q. Did you form any view then as to whether you were gonna hit the post or not?

A. Not, well, I knew. I know I was gonna hit the bloody post but I did not feel that post.

Q. So, you can’t actually remember the feeling of impact?

A. No, I cannot recall impact.”

- when asked whether he could recall saying to witnesses that he not only hit the bonnet of the car but had also reached in through the window, Mr Menzies said that he “*never reached into the window of the car*”. He did recall making comments about a “*re-match*”, and “*when I’m sober*” and “*I’m pissed*”.
- he had become aware before he left the hotel that another hotel patron had been stopped by the Police earlier that evening for drink driving.
- in answer to a question from the Judge Mr Menzies stated that he had had no trouble keeping the officer down on the ground with his hand on him.
- he heard the Constable say to the other officers “*I thought I was going to die*”.

Other Defence Witnesses

For the defence, Mr Menzies’ brother-in-law and partner in a coal mine, Mr K C Tiller, stated that he went to the scene on the day of the incident and took some film on a video camera,

including photographs of a concrete pole with blood stains on it, and a broom bush with what looked like blood on it.

Ms Lesley Polatsek, the bar manager at the hotel on the night of the incident, said that Mr Menzies was drinking beer in seven ounce glasses which she thought were \$1.10 or \$1.20 per glass at the time. She said another patron's apprehension earlier that evening became common knowledge at the hotel that night, and patrons were "*a bit brassed off*" about that incident.

Other witnesses called for the defence were Dr K E Kibblewhite, a medical practitioner, who described injuries to Mr Menzies including bruising to his body and face, and discussed the condition of temporary memory loss known medically as post traumatic amnesia; Ms Patricia Williams, a friend of Mr Menzies, who said she was at the hotel that night and did not recall him expressing any views about the other patron "*being picked up leaving the hotel, drink driving*"; Mr Robin A Nicholl, a private investigator and a former detective in the Police, who examined the scene on 10 July 2000 and gave estimates of travel time between the Police Station and the scene of the incident; and Dr Martin Sage, a forensic pathologist, who gave evidence that in his opinion Mr Menzies was "*most likely*" to have been bleeding before he made contact with the pole. Dr Sage accepted as a possibility the evidence of Dr M C Taylor, a witness for the Crown, that Mr Menzies could have been in a falling position when he struck the pole.

Summing Up by Judge Noble

In the course of his summing up to the jury Judge Noble described in the following passage the principal factual issue for its determination:

"It is, you might think, of crucial importance that you first decide unanimously what happened in the period between the time the accused banged on the bonnet of the car, and the time that Constable Hunt then opened the door and got out of the car. Now, you might think that that is a very short period of time. It really does not matter how long it was, but I suggest to you that your findings of fact, your findings as to what happened in those few seconds, because that may be all that it was, is crucial to your determination of the whole case. You have to decide therefore what was said and done, respectively between the accused and Constable Hunt, during that crucial period and essentially it comes down

to a contest, does it not, between Constable Hunt and the accused. Who do you believe? That is a matter for you.”

The Judge made reference in the following passage to the “*diametrically opposed versions of what happened*”:

“On Constable Hunt’s evidence, the accused says, and it is common ground the window of the car was open, he says, ‘we’ve had a gutsful of this’, his hand comes through the window and he pushes the Constable in the chest back against the seat.

On the other hand, the accused gives a different account, says words to the effect ‘what are you doing’ or ‘what are you doing here’, a complete denial of putting his hand in the window, and therefore a complete denial that that pushing in, or shoving, whatever it was, in the chest ever happened.”

The Judge also invited the jury to have regard to what Mr Menzies said to the Police, and to the ambulance officers, and at the hospital, and to have “*very careful regard*” to the evidence of Ms Jarden that Mr Menzies said in her presence that he had put his hand through the window of the car. The Judge indicated that her evidence, if accepted, was capable of supporting Constable Hunt’s evidence to that effect. The Judge said it was common ground that Mr Menzies had resisted arrest.

Verdicts in criminal trial

On 1 August 2001 the jury returned verdicts of not guilty on the three counts of assaulting Police.

Intended civil proceedings

After correspondence from Mr Menzies and from his counsel the Authority was informed on 30 November 2001 that Mr Menzies intended to commence civil proceedings against the Police and the officers concerned.

An action for damages was commenced in the High Court at Greymouth in May 2002 against the New Zealand Police as first defendant and the four officers who had been involved in Mr Menzies’ arrest as co-defendants. On completion of all preliminary proceedings (including a

change of venue application) the case was set down for trial before Justice Fogarty and a jury in the High Court at Christchurch commencing on 2 November 2004.

Evidence for Plaintiff at civil trial

The transcript of Mr Menzies' evidence recorded by the High Court indicates that he:

- admitted that his banging on the bonnet of the Police car was "*a silly thing to do*".
- denied that he was bleeding after the struggle with Constable Hunt and the "*tailgating*" he said he received at the front of the Police car.
- admitted hearing Constable Hunt call twice for back-up.
- said that Constable Hunt "*was lying about being assaulted*" when he made the first call.
- said that there was a flattened grass area "*where we were lying when the other officers arrived*".
- disputed sketches drawn by Constables Little and Andrews indicating the positions of Constable Hunt and himself on their arrival at the scene.
- denied that he was bleeding before he hit the pole.
- claimed that there was no blood anywhere "*other than near the pole*".
- said that he was picked up and carried 10m to the pole.
- admitted that he could not remember hitting the pole, and that his memory of the incident was "*refreshed yes to a degree*" by what the publican had told him the following day.
- admitted making a comment about a "*rematch*", and laughing and joking with one of the other Police officers in the ambulance.
- denied the evidence of Ms Jarden that he had told her in the ambulance that he had pushed his arm through the open window and that he had started the confrontation.
- said that he did not want to talk about his physical strength.

Dr Sage expressed the view that if Mr Menzies had had no bleeding wounds when he first hit the pole a laceration from that contact was unlikely to result in the "*smearing of blood that we*

actually see. Therefore either he has blood on his face, head or clothing that has transferred to the post as a smear or there had been more than one contact and he was bleeding from perhaps the first contact with the post". He also referred to "fairly generous" blood contamination on the broom bush and said, with reference to three cuts on Mr Menzies' face, that while it was not possible to say what caused those cuts, any one of them was consistent with impact with the pole or with a blow from Constable Hunt's torch.

Ms Polatsek stated that "*the locals were brassed off because the hotel had been subject to Police (sic) for the purpose of picking up drink drivers*".

Mr Tiller stated that he had taken a video film of the scene before discussing the incident with Mr Menzies. He described "*a very large pool of blood on the ground at the base or just up from the pole*". He was asked in cross-examination:

“Q. It’s right isn’t it that you concluded that there had been foul play by the Police in the way in which he got his injuries.

A. Yes I did. John’s not that type of person to cause trouble.”

Mr Nicholl stated that he had visited the scene on the Tuesday after the incident. He accepted the measurements presented by Dr Taylor of ESR. He advanced the theory that "*the first impact [with the pole] caused the bleeding injury and a second or subsequent impacts have caused the dispersal*". He acknowledged that he had no qualification in blood pattern analysis. He conceded that it was possible that Mr Menzies had blood on his face before he had a single impact with the pole. He accepted that there was blood on the bonnet of the Police car, but believed that it was not from Mr Menzies' bloodied nose after being punched by Constable Hunt (as the Police contended). He agreed that a single impact with the pole was consistent with Mr Menzies having blood on his face from torch blows delivered by Constable Hunt prior to his contact with the pole. He accepted Dr Taylor's opinion that blood stains on the pole (at 1.35m and 1.52m) were consistent with contact by Mr Menzies from an upright or near upright position.

Evidence of Constable Hunt at civil trial

Constable Hunt stated that after Mr Menzies banged on the bonnet of the Police car and said “*what are you doing?*”, he wound down his window and asked him what his problem was. He stated that Mr Menzies said “*we’ve had a gutsful of this*” and then reached in through the window and grabbed him with such force that he was pushed into the back of the seat. The Constable then got out of the car to arrest Mr Menzies who resisted his efforts. The Constable said that he drew his short baton and hit Mr Menzies on his upper arms in an attempt to force him to release the grip that Mr Menzies had on his neck. During the struggle the Constable’s tie was ripped off and his jersey torn. At approximately 0139 he used his radio to call for assistance.

The Constable stated that during this part of the incident he used OC spray on Mr Menzies (which had no effect) and punched him twice in the face.

At 0141 the Constable made a second call for assistance saying “*I’ve got him down but he’s a bloody handful*” and that he (Constable Hunt) was “*knackered*”. After that call he obtained his torch from the patrol car and the struggle between them resumed.

The Constable stated that before the arrival of the other officers he struck Mr Menzies several times on the head with his torch.

It was the Police case at both trials that Constable Hunt believed that he was dealing with an irrational and powerful offender who wanted to kill him or at least do him serious harm. The Constable stated that he had fears for his own safety and called for assistance as his use of a baton and OC spray, in his endeavour to restrain and arrest Mr Menzies, appeared to have had no effect.

Evidence of other Officers

Constable Little stated that on his arrival at the scene Mr Menzies “*had his hand or hands around Constable Hunt’s throat area and he was forcing him backwards towards the bush area on the edge of the gravel road*”. His notebook entry recorded that he put his knee into Mr Menzies’ chest and stomach and pushed him into the bush area where he struck a concrete

pole with the side of his face. He said that the scene was “*pitch black*” and “*very dark*”, and that he did not know the pole was there.

Constable Andrew and Sergeant Merry arrived on the scene shortly after Constable Little. Constable Andrew stated that he assisted Constable Little to restrain and handcuff Mr Menzies, and later seized as exhibits the OC spray canister, baton and torch.

Sergeant Merry stated that when he arrived at the scene he saw Constable Little struggling with Mr Menzies part way up the hill. He saw Constable Andrew go to Constable Little’s assistance to restrain Mr Menzies who was still resisting their efforts.

Injuries Sustained

Mr Menzies sustained bruising to the left side of his body in the region of his rib cage and under his left eye, and a number of lacerations to his forehead. Medical evidence of the injuries was given at both trials.

Evidence of Independent Witness

Ms Jarden, the ambulance officer, gave evidence that Mr Menzies told her that he had started the confrontation with Constable Hunt by banging on the bonnet of the car and pushing his arm through the window of the car and hitting the officer.

Ms Jarden had made the following record of what Mr Menzies had told her:

“on the way to the hospital and also at the scene the patient kept telling myself and also the Police officer present that he did not want to press charges as he had started the confrontation by banging on the bonnet of the patrol car and then by going up and hitting the officer through the open window”.

Although Ms Jarden had initially been spoken to by one of the other officers involved in the incident, she denied in cross-examination that her evidence was in any way affected by anything said to her by him. Her evidence, she said, was the same as recorded in handwritten notes she had made when she got home after the incident and which were typed up later that day.

It was put to Ms Jarden that the other officer “*conned you into mentioning this hands through the window*”:

Answer: “*He didn’t, no*”.

Question: “*And while you were prepared to do that then in the same way you were equally prepared to make the changes in your evidence for your brief to fit the evolving situation, weren’t you*”.

Answer: “*I wasn’t, no*”

Ms Jarden said that when she arrived at the scene she knew of Mr Menzies but “*I didn’t know his full name*”, and that prior to that night “*I had had nothing to do with him*”, although “*I knew he was a Menzies*”. She also stated that she did not know any of the Police officers involved in the incident, and that she did not have any reason to side with the Police against Mr Menzies.

Summing Up by Justice Fogarty

In his summing up of the case to the jury Justice Fogarty said that it was common ground that “*Mr Menzies was badly injured on the night*”. The first task for the jury was to “*decide what happened, decide how you think Mr Menzies received his injuries*”. Mr Menzies’ case was that his injuries were sustained in two separate episodes, the first when he was with Constable Hunt alone, and the second when the other Police arrived. The defence case was that all of Mr Menzies’ injuries (except injury from contact with the pole) were sustained during the first episode.

The second task for the jury, the Judge said, was to decide whether “*Constable Hunt or any other police officers were justified in inflicting Mr Menzies’ injuries*”. It was the defence case that the injuries (apart from the contact with the pole) were sustained while Constable Hunt was either discharging his duty to make an arrest after Mr Menzies assaulted him, or while he was acting in self-defence, responding to an attack on him by Mr Menzies. The test was whether the jury thought “*the force the constable used was reasonable given what the constable believed was happening at the time*”, or whether “*the type or amount of force used by Constable Hunt was excessive, given what he believed at the time*”, in which case his actions would not be justified.

Before addressing the jury on legal aspects of the issues which they were to decide, the Judge read the following summary agreed by the parties:

“It is common ground that most of the injuries received by Mr Menzies were the result of blows deliberately inflicted on Mr Menzies by at least one Police officer, Constable Hunt. It is common ground that Mr Menzies’ head did hit the power pole. There is a dispute as to whether any Constable, other than Constable Hunt, deliberately inflicted the blows on Mr Menzies. There is a dispute whether or not Mr Menzies was deliberately rammed into the power pole or alternatively fell into the power pole in a struggle after being tackled by Constable Little. There is a positive defence that any injuries inflicted by Constable Hunt were justified”.

Following the summing up the jury retired to consider its verdict on each of the issues formulated by the Court for its determination. These are set out in the following series of questions together with the jury’s answers.

Issues and Verdicts of Jury

Question 1: Did Mr Menzies reach into the car and grab Constable Hunt?

Answer: No (by a majority verdict of 8/3)

Question 2: If the answer to Question 1 is yes, was the force subsequently used by Constable Hunt, including the blows he applied with his baton and later his torch and his feet so much as may have been necessary to overcome Mr Menzies’ resistance to being arrested?

Answer: -

Question 3: While Constable Hunt was trying to arrest and subdue Mr Menzies were all the blows he landed with the baton, torch and foot justifiable self-defence?

Answer: No

Question 4: Did Constable Little by himself or together with any other Constables deliberately inflict injuries on Mr Menzies?

Answer (with names of any other officers):

No

Question 5: Did Constable Andrew by himself or in conjunction with any other Constables deliberately inflict injuries on Mr Menzies?

Answer (with names of any other officers):

No

Question 6: Did Sergeant Merry by himself or in conjunction with any other officers deliberately inflict injuries on Mr Menzies?

Answer (with names of any other officers):

No

Question 7: If you have found that one or more of the defendants assaulted Mr Menzies then you need to examine whether that or those assaults were outrageous, flagrant and/or inflicted in contemptuous disregard for Mr Menzies' rights?

Answer (with identification of such defendant):

No

Question 8: [did not require answers]

Tort of Malicious Prosecution

Question 9: Did the defendant(s) fabricate their evidence in order to prosecute Mr Menzies?

Answer: *Yes (8/3 - Constable Hunt)*

Question 10: If the answer to Question 9 is yes:

i. Was this so serious as to warrant an award of general damages?

Answer: *No*

ii. If yes, what sum of money is sufficient to compensate the plaintiff?

Answer: -

iii. Was this so serious as to warrant an award of aggravated damages?

Answer: *Yes*

iv. If yes, what sum of money is sufficient to compensate the plaintiff?

Answer: *\$35,000*

v. Was that fabrication outrageous conduct so as to attract an award of exemplary damages against the defendants?

Answer: *No*

vi. If yes, what sum of money is sufficient to punish such defendants for that outrageous conduct?

Answer: -

Tort of False Imprisonment

Question 11: Was Mr Menzies imprisoned wrongfully and without reasonable cause?

Answer: *Yes*

Question 12: If yes:

i. Was this so serious as to warrant an award of general damages?

Answer: *No*

ii. If yes, what sum of money is sufficient to compensate the plaintiff?

Answer: -

iii. Was this so serious as to warrant an award of aggravated damages?

Answer: *No*

iv. If yes, what sum of money is sufficient to compensate the plaintiff?

Answer: -

v. Was that imprisonment outrageous conduct so as to attract an award of exemplary damages against the defendants?

Answer: *No*

vi. If yes, what sum of money is sufficient to punish such defendant(s) for that outrageous conduct?

Answer: -

Tort of Misfeasance in Public Office

Question 13: Were any of the officers knowingly or recklessly indifferent as to whether they were or were not acting outside the limits of their power and knowing it was likely to harm Mr Menzies?

Answer: *No (10/1)*

Question 14: If the answer to the previous question is yes, which officers?

Answer: -

The remaining questions (15 to 21) are not relevant to this report.

An analysis of its verdicts, some of which were reached by a majority, suggests that the jury had difficulty in deciding some of the issues placed before it.

Role of the Authority

Given the separate criminal and civil proceedings in the Courts arising from the incident it is appropriate to note that the principal task of the Authority is to consider and determine

whether or not there was any misconduct or neglect of duty on the part of any member of the Police who dealt with Mr Menzies on that occasion or subsequently. This has involved an analysis of all of the relevant information available to the Authority, including the Court records of the sworn evidence given in the two trials.

It is to be kept in mind that there were different standards of proof applied in those trials. In the prosecution of Mr Menzies the case was determined on the basis of the burden of proof resting on the Crown in criminal cases, namely, proof beyond reasonable doubt. In the civil proceedings subsequently brought by Mr Menzies the allegations made were determined by the jury applying the burden of proof resting on the plaintiff in such proceedings, namely, proof on the balance of probabilities.

The Authority is not a forum for the review or re-litigation of issues already determined by the Courts, but the evidence given in the Courts, on oath and subject to cross-examination, is very helpful in assisting the Authority to make its findings.

History of Complaint to Authority

In brief, Mr Menzies alleged that the Police officers who dealt with him deliberately picked him up while handcuffed and drove him into a concrete pole. That was the thrust of his complaint in the first written account he gave to Greymouth Police (some 10 months after the incident) in May 2001, and was repeated in the allegations made in his civil claim.

Following the conclusion of the criminal prosecution in August 2001 Mr Menzies wrote to the Authority advising that he was considering the issue of a civil claim, and requesting the Authority to “*look into the matter of the Police officers’ actions on the day in question*”. The Authority advised Mr Menzies that it would defer completion of its investigation of the complaint pending the outcome of any civil proceedings which might be issued. In November 2001 the Authority was informed by Mr Menzies’ counsel that civil proceedings would be filed, as they were in May 2002.

Following the High Court trial in November 2004, Mr Menzies' counsel wrote to the Authority stating that "*the essence of his complaint is as found in the Amended Statement of Claim*" (as filed in that Court).

Particulars of Complaint

Mr Menzies alleged that he was assaulted by Police in two separate episodes, the first being his confrontation and struggle with Constable Hunt, and the second after the arrival of the other officers.

The following allegations (in summary) were made against Constable Hunt in respect of the first episode:

- Constable Hunt placed his body over the top of Mr Menzies causing them to fall to the ground and Mr Menzies to hit his head on the ground;
- When Constable Hunt tried to handcuff Mr Menzies, he grabbed the Constable by the jersey and held the Constable away from him;
- At this point the Constable called a second time for assistance, after which he struck Mr Menzies twice in the face and then punched him repeatedly on the face and head;
- After a further struggle Mr Menzies pulled the Constable over in an arc resulting in the Constable ending up on the ground, where Mr Menzies held him down until other officers arrived.

It was alleged in respect of the second episode that:

- Mr Menzies was kicked on the left side of his upper body, and was held down while being kicked and then sprayed with pepper spray.
- Three of the officers dragged Mr Menzies around to the front of a Police car where he was struck several times with a torch or a baton;
- Mr Menzies was then handcuffed and picked up by at least three of the officers and driven head first into a concrete pole.

Review by Authority

In March 2005 the Authority was notified that all issues outstanding following the civil trial had been resolved. The Authority was then able to embark on its review of Mr Menzies' complaint.

In undertaking the task of considering whether there has been misconduct or neglect of duty, the Authority applies a standard of proof commensurate with the gravity of the allegations made. In this matter the allegations were plainly serious and a high standard is appropriate.

The transcripts of the evidence given at both trials have been examined, and I do not consider it necessary for the Authority to undertake further investigative work as it is unlikely that further enquiries would produce any additional evidence of significance, given the exhaustive consideration of the matter in both the District Court and the High Court. I have also had regard to correspondence received by the Authority from Mr Menzies and from his counsel.

Conclusion in respect of Complaint against other Officers

After consideration of all the evidence relating to the actions of the other officers, Constables Little and Andrew and Sergeant Merry, I find that while they used force to arrest and handcuff Mr Menzies whom they had found struggling with Constable Hunt on their arrival at the scene, I am unable to uphold the complaint of assault or the use of excessive force against any of those officers. The weight of evidence in my view indicates that Mr Menzies' impact with the pole occurred in an accidental, rather than a deliberate, manner when he was tackled by Constable Little on his arrival at the scene.

It follows that the Authority is unable to uphold the most serious allegation made against Police, namely, that Mr Menzies was picked up horizontally by at least three of the officers and driven forcefully and head first into a concrete pole.

Complaint against Constable Hunt

I turn now to deal with the complaint against Constable Hunt of assault and the use of excessive force.

At the outset I record the following circumstances which preceded the physical confrontation between Mr Menzies and the Constable:

- Mr Menzies had drunk a considerable quantity of beer over a period of about 4½ hours before he left the Dunollie Hotel.
- Mr Menzies was aware that another patron of the hotel known to him had been apprehended earlier that evening for a driving offence.
- As he walked up a road from the hotel Mr Menzies banged twice on the bonnet of a Police car.
- After an exchange of words Constable Hunt alighted from the car and told Mr Menzies he was under arrest.

Evidence of struggle before other Police arrived

It was common ground in the High Court that most of the injuries sustained by Mr Menzies were the result of blows inflicted by Constable Hunt in the struggle between them before the other officers arrived, and that during the incident (after the arrival of the other officers) Mr Menzies' head came in contact with the power pole.

The struggle between Mr Menzies and the Constable took place near the Police vehicle. Mr Menzies alleged in the Amended Statement of Claim that during the first episode he was hit in the face twice, and then punched in the face and head, before pulling the Constable over in an arc to the ground where he held him down until the arrival of the other Police.

It was also common ground that during the incident Mr Menzies was sprayed with O/C spray (which had no effect on him) and was handcuffed before being treated by ambulance staff at the scene and then taken to hospital.

As earlier noted the presiding Judge at Mr Menzies' trial in the District Court in 2001 expressed the view that an issue "*of crucial importance*" for the jury in that case was to decide what happened in the short period of a few seconds between the time Mr Menzies banged on the bonnet of the car and the time that Constable Hunt opened the door and got out of the car. The Judge also referred to the "*diametrically opposed versions of what happened*".

Evidence of Constable Hunt

It was the evidence of Constable Hunt at both trials that after banging on the bonnet of the Police car Mr Menzies said “*we’ve had a gutsful of this*” and then thrust his hand through the open window of the car and pushed the Constable in the chest and into the back of the seat. He said that during the struggle which followed he used his baton to hit Mr Menzies on his arms in an attempt to force him to let go of his grip on his neck. He also said that during the struggle and before the other officers arrived he punched Mr Menzies twice and struck him on the head with his torch.

Evidence of Mr Menzies

Mr Menzies’ evidence at both trials was that his first words to the Constable were “*what are you doing*”, and he denied that he put his hand in the window or that he pushed the Constable.

Discussion

The evidence given at both trials was lengthy and many issues were in considerable dispute.

It is clear that Mr Menzies sustained serious injuries in the course of a violent confrontation with Police before he was restrained and then provided with ambulance and medical treatment for his injuries. The Authority accepts that most of Mr Menzies’ injuries (other than those arising from impact with the pole) were sustained in the struggle between him and Constable Hunt before the arrival of the other officers.

As already noted, the task of the Authority is to consider whether on all the evidence and information available to the Authority it is established that any officer who dealt with Mr Menzies during the incident was guilty of misconduct or neglect of duty. In discharging that task, the Authority is not bound by the decisions made in the two jury trials, but it has taken into account all of those decisions and in particular the verdicts in the civil proceedings which were adverse to Constable Hunt.

In regard to the complaint against Constable Hunt of assault and the use of excessive force, there is on the one hand Mr Menzies' account that he did not believe he had done anything to justify being arrested, and that "*I did not do anything until he tried to cut my wind off, I had to breathe so I shifted him, I did no more than that*". He acknowledged that he pulled the Constable over in an arc and held him on the ground until the other officers arrived.

On the other hand there is the account of Constable Hunt that he believed he had cause to arrest Mr Menzies for assault, and that his use of a baton and a torch occurred in the course of the struggle during which Mr Menzies was strongly resisting his efforts to restrain and handcuff him.

There is sharp conflict between the respective accounts of Mr Menzies and Constable Hunt as to:

- exactly what occurred in the short space of time between Mr Menzies' action in banging on the bonnet of the Police car and the Constable getting out of the car;
- the detail of the struggle which followed between Mr Menzies and Constable Hunt, and the precise sequence of events, before the other officers arrived;
- the extent of the injuries sustained by Mr Menzies during that struggle.

It was the Police contention that most of Mr Menzies' injuries were caused during the struggle with Constable Hunt, whereas Mr Menzies' initial contention was that he sustained little or no injury at that stage and that he was not bleeding at all before the impact with the pole. At the civil trial, however, it was agreed that injuries had been sustained by Mr Menzies during the struggle.

After consideration of all the information available to the Authority I find that:

- the incident which led to Mr Menzies' arrest commenced when he banged on the bonnet of a Police car when walking home after an evening at the Dunollie Hotel.
- Constable Hunt believed he had cause to arrest Mr Menzies and called for assistance to enable him to do so given Mr Menzies' resistance.

- Mr Menzies exhibited considerable strength during a violent struggle with Constable Hunt such that he was able (notwithstanding his injuries) to restrain and hold down the Constable on the ground until the arrival of the other officers.
- most of the injuries sustained by Mr Menzies resulted from punches and blows from a baton and a torch struck by Constable Hunt during the struggle between them before the other officers arrived.
- Mr Menzies was bleeding from those injuries before his impact with the pole.
- there was a single, accidental impact with the pole after Mr Menzies was tackled by Constable Little.

Conclusion on Complaint against Constable Hunt

In the absence of independent evidence to establish which of the conflicting accounts given by Mr Menzies and Constable Hunt should be preferred, I find that I am unable to uphold the complaint against Constable Hunt.

I do, however, emphasise that this conclusion does not mean that I disbelieve the account of Mr Menzies on the one hand, or of Constable Hunt on the other, as to the exact circumstances which led to the confrontation and struggle that developed after Mr Menzies banged on the bonnet of the Police car. It means no more than that the Authority has not been able to resolve the differences between the parties on this critical aspect of the incident.

Judge I A Borrin
POLICE COMPLAINTS AUTHORITY

30 September 2005