

Excessive use of force by a police officer

8 May 2023



ISBN : 978-0-6453426-7-3

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CHAPTER ONE

Overview

- [1] The role of a police officer is not easy. They are routinely required to deal with agitated, drug affected, mentally unwell, or simply uncooperative members of the public.
- [2] Police officers must make split-second judgements in volatile situations. They are given training to help develop the skills required to make immediate and appropriate decisions. Officers also learn by experience, and from observing others, including their superiors.
- [3] Police officers may use physical force¹ against members of the public if the situation requires. The authority of a police officer to use force is not, however unlimited. Police officers are in a position of authority and power over other citizens, particularly those in custody. Given this, strict rules govern both when force can be used, and what level of force is acceptable.
- [4] Police officers are authorised to use force to exercise their powers or to overcome resistance to the exercise of their powers. For example, force can be used by a police officer to restrain a person; prevent an escape; effect an arrest or execute a warrant. However, police officers must not use excessive force, and in particular must not use force where none is needed, use more force than is needed, or use a greater level of force after the necessity for it has ended.²
- [5] Empty hand tactics are a use of force option available to police officers. Empty hand tactics are self-defence or control techniques that do not involve the use of a weapon; for example strikes, punches, kicks and compliance holds.
- [6] Empty hand tactics can be used:
 - a. to prevent bodily injury to any person;
 - b. as a technique to effect arrest;
 - c. to prevent escape from arrest; and
 - d. to prevent damage to property.
- [7] While empty hand tactics may present a lower risk of injury than other use of force options, there are risks associated with any use of force.
- [8] Provided the use of force is justified or necessary, those risks must be accepted as part of the requirement for police officers to keep the peace and protect the community. Any use of force, including empty hand tactics, must be reasonably

¹ Force is defined in the Western Australia Police Force (WAPF) Use of Force Policy as 'the application of a physical action exerted upon a subject with a view to reducing a threat and gaining control'.

² WAPF Use of Force Policy; *Criminal Code* s 260.

necessary in the circumstances, or police officers may face criminal or disciplinary action.

- [9] Under current WA Police Use of Force Policy, when empty hand tactics are used, police officers are required to submit a use of force report only when the person on whom force is used suffers a bodily injury and/or requires medical care, whether or not medical care was received. All other instances of empty hand use of force are not subject to mandatory reporting requirements. A use of force may on occasion be excessive even if it does not cause bodily injury.
- [10] In its response to a draft of this report WA Police advise:
- Where another officer, or the subject of the empty hand tactic, believes excessive force was used, the means of reporting this (complaint or PCR) already exist. Further, the Good Governance Practice Guide 2022-23 - Duty - Body Worn Camera (BWC), directs supervisors to 'dip sample' BWC vision to ensure officers are executing their duty within statute law, policy and procedure. The application of these audits provides additional opportunity for independent review of officer behaviour.*
- [11] The Commission receives notifications of suspected police misconduct and conducts an assessment for each one. While most notifications are returned to WA Police for action, the Commission oversees a number of notifications to ensure the WA Police is competently dealing with the matter.
- [12] In September 2021 an incident occurred during the arrest and detention of a man named Mr L, for the purposes of this report.
- [13] The incident was investigated by WA Police. The Commission considered that the investigation was inadequate and has conducted its own investigation.
- [14] In the Commission's opinion, contrary to that of WA Police, one officer used excessive force against Mr L and an opinion of serious misconduct is appropriate.

CHAPTER TWO

The arrest and detention of Mr L

- [15] Mr L is an Indigenous male, who was 43 years old in September 2021. On the afternoon of 14 September 2021, Mr L assaulted a Public Transport Authority (PTA) officer at the Mirrabooka Bus Port before walking away through the Mirrabooka Shopping Centre carpark. PTA officers notified WA Police officers, who set about attempting to locate Mr L. Police officers reasonably believed that he was under the influence of drugs.
- [16] Senior Constable S and Constable G, both from Mirrabooka Police Station, were on duty in a marked police car. They located Mr L on Chesterfield Road in Mirrabooka. Senior Constable S placed Mr L under arrest while Constable G searched Mr L's bag.
- [17] In the meantime, Sergeant Ratcliffe and Senior Constable O, both also from Mirrabooka Police Station, arrived in a second marked police car.
- [18] Sergeant Ratcliffe has been a WA Police Force officer for 20 years. In response to a draft of this report Sergeant Ratcliffe advises that throughout his career he has been a front-line officer. He has been assaulted on numerous occasions and was seriously assaulted in October 2021 shortly after this incident. He was the most senior police officer at the arrest of Mr L. Both Constable G and Senior Constable S are members of his team and directly reported to Sergeant Ratcliffe. On the afternoon of 14 September 2021, Senior Constable O also reported to Sergeant Ratcliffe.
- [19] Officers S, G and Ratcliffe each activated their body worn cameras (BWC). Senior Constable O did not.
- [20] Footage from the BWCs reveals that while Mr L was verbally uncooperative and somewhat erratic in his interactions with WA Police officers, he provided them with his driver's licence, cooperated with a search of his person and bag, and cooperated with Senior Constable S as he handcuffed him behind his back.
- [21] After he was handcuffed, Mr L was placed in the secure pod at the rear of officers S and G's police car. As he entered the vehicle, he said 'buddy, I ain't going to behave'.
- [22] Sergeant Ratcliffe closed the door and attempted to secure the latch. He was unsuccessful in doing so. At this point, believing the arrest to have been completed, Senior Constable S turned off his BWC.
- [23] Mr L then kicked the door from inside the pod causing the door to partially open, striking Sergeant Ratcliffe who was directly behind the door.
- [24] Sergeant Ratcliffe pulled the door all the way open. Mr L's legs were inside the pod, well back from the doorway. Sergeant Ratcliffe pointed towards Mr L using

his left index finger and leaned his upper body into the pod, both his feet remaining on the ground. Moments later he withdrew from the pod, both hands holding Mr L's right leg, pulling Mr L towards him. Mr L, still handcuffed behind his back, braced his left foot against the door frame in an apparent effort to avoid being dragged out of the pod. Sergeant Ratcliffe's BWC was filming.

- [25] Sergeant Ratcliffe returned his upper body back into the pod. He engaged in a struggle with Mr L inside the pod, however his body obstructed the view from Constable G's BWC. Constable G at the time was standing behind the pod and Sergeant Ratcliffe, and slightly to the right.
- [26] Sergeant Ratcliffe's camera turned off during this part of the struggle. It is therefore not possible to ascertain what was occurring inside the pod, however Sergeant Ratcliffe can be heard on Constable G's BWC footage saying 'don't you fucking, don't you kick me' to Mr L in response to Mr L saying '...cunt, don't try and fucking kick me'
- [27] Approximately 15 seconds after Mr L kicked the door open (by which time Senior Constable S's BWC had turned back on), Sergeant Ratcliffe punched Mr L four times using his right arm. Sergeant Ratcliffe's body takes up most of the entrance to the pod, so Constable G's BWC does not capture the blows landing. Sergeant Ratcliffe's right arm is visible on the BWC moving in rapid motions. That he can be heard grunting with every blow suggests the blows were forceful.
- [28] Sergeant Ratcliffe's explanation was that he struck Mr L four times to the thigh as a 'distracting technique'. Immediately after striking Mr L, Sergeant Ratcliffe called him a 'fucking piece of shit', and Mr L says, 'you can't hit me, motherfucker'. Sergeant Ratcliffe's use of insulting and offensive language immediately after striking Mr L suggests his application of force was punitive. The language used towards a person in his custody was unprofessional.
- [29] Approximately 20 seconds after Mr L kicked the door open, it was closed and he was secured inside the pod.
- [30] While Mr L was in the pod, none of the other officers attempted to engage with Mr L or intervene in any way in what was occurring. Nor did Sergeant Ratcliffe request their assistance to help deal with Mr L or to secure the pod door. At no time did Sergeant Ratcliffe direct Mr L to move his legs nor did he attempt to give him any directions apart from saying 'don't you fucking, don't you kick me' and 'fucking piece of shit'.
- [31] Mr L was conveyed to Perth City Watch House. He made no complaint of injury to Watch House officers.

CHAPTER THREE

WA Police investigations

- [32] As a result of this incident, Mr L was charged with assaulting Sergeant Ratcliffe.
- [33] On 15 November 2021, a WA Police prosecutor reviewed, and ultimately discontinued, the charge of assault. The prosecutor referred Sergeant Ratcliffe to the Police Conduct Investigation Unit, who then referred the matter to the Internal Affairs Unit (IAU) for IAU to consider whether Sergeant Ratcliffe had committed an offence.
- [34] On 17 November 2021, IAU decided that a criminal investigation should be undertaken.
- [35] IAU allocated the investigation to Detective Senior Sergeant B from Mirrabooka Detectives. Detective Senior Sergeant B found that there was insufficient evidence to draw a conclusion that Sergeant Ratcliffe criminally assaulted Mr L, but recommended a managerial investigation.
- [36] A managerial investigation was undertaken by Inspector T of the Mirrabooka District Office. That investigation involved compulsory interviews of officers O, G, S and Ratcliffe.
- [37] Inspector T exonerated Sergeant Ratcliffe on the basis that the force used was reasonable in all of the circumstances and that it allowed the pod door to be closed and secured without further issue. He also noted that staff at the Perth Watch House later had to forcibly remove Mr L from the pod due to his 'ongoing obstruction'. With respect to Inspector T, this conclusion does not address the issue of Sergeant Ratcliffe pulling on Mr L's leg and overlooks the fact that there was no attempt to close the pod door before Sergeant Ratcliffe struck Mr L four times. Further, Mr L's conduct at the Watch House has no relevance to what occurred at the scene of his arrest, and may in fact have been influenced by it.
- [38] The Commission conducted a review of the actions taken by WA Police and the investigation into the allegation of excessive use of force by Sergeant Ratcliffe.³
- [39] In the Commission's opinion, the managerial investigation was inadequate. The investigation failed to properly consider the entirety of the incident, including force used by Sergeant Ratcliffe before he punched Mr L, and the investigators did not seek the opinion of a use of force expert.
- [40] In the Commission's opinion, because the investigation was inadequate it was not open to the WA Police to exonerate Sergeant Ratcliffe.

³ CCM Act s 18(1); the Commission has a responsibility to ensure allegations of serious misconduct are dealt with in an appropriate way.

- [41] Based on BWC footage of the incident, Sergeant Ratcliffe engaged in acts of force and unprofessional behaviour which were not identified or considered excessive by WA Police investigators.
- [42] Because it regarded the investigation conducted by the District and overseen by IAU as inadequate, the Commission commenced Operation Althorpe, an investigation into the circumstances of Mr L's arrest and detention.
- [43] In its response to the draft report, WA Police advise:

The behaviour of Ratcliffe upon the entry and securing Mr L into the security pod requires further investigation. WA Police will reopen and allocate the matter to an independent officer to review the outcomes of the investigation.

CHAPTER FOUR

The Commission's investigation

- [45] As part of its investigation, the Commission:
- a. obtained and viewed the BWC footage and CCTV footage from the Perth Watch House;
 - b. obtained and listened to the audio recordings of officers O, G, S and Ratcliffe's managerial interviews;
 - c. obtained the officers' police statements in Mr L's prosecution;
 - d. examined officers O, G, S and Ratcliffe under oath; and
 - e. obtained a report from the Capability Advisor - Use of Force, WA Police Operational Skills Training Faculty.
- [46] Mr L was offered the opportunity to attend and give his account to the Commission but chose not to attend or cooperate with the Commission.
- [47] During the Commission's examination, Sergeant Ratcliffe was taken through the BWC footage in detail, at normal speed and then frame by frame. His explanations for what can be seen in the footage were as follows.
- [48] When the door was kicked open, Sergeant Ratcliffe, whose right hand was on the door attempting to engage the locking mechanism, bent both knees into a squatting position and pulled the door open using both hands. Mr L's legs can be seen inside the pod, with his feet tucked near his bottom and his knees angled outwards.
- [49] In his managerial interview, Sergeant Ratcliffe said he believed Mr L's legs were sticking out of the vehicle as the basis for him opening the door. Despite having viewed the footage prior to his interview, he maintained at the interview that he believed Mr L's legs were sticking out of the vehicle. It is clear from the BWC footage, and he conceded during his examination before the Commission, that they were not.
- [50] In his examination before the Commission, Sergeant Ratcliffe said that he pulled the door open:⁴
- to stop [MR L] from kicking the door again and for me to reach in and manoeuvre his legs in.*
- [51] He accepted that Mr L's legs were well back but said:⁵

⁴ Examination transcript p 32.

⁵ Examination transcript p 32-33.

it takes less than a second. When he's kicked the door, he's pulled his leg straight back in. So what's to prevent him doing it again if I close the door, he still might kick out again.

Because he was in - it was in that position, as you can see there by his legs, you know, he's - he's got an advantage. I didn't want to - even for him to damage the police vehicle. There was chances it could damage the door as well.

[52] Once the door was fully open, the BWC footage shows Sergeant Ratcliffe lean his upper body into the pod, with both feet on the ground. His own BWC footage shows Mr L's legs then retract further into the pod, before Sergeant Ratcliffe can be seen holding Mr L's right foot with both hands and pulling him forcefully towards the door of the pod. Mr L's left foot can be seen bracing against the door frame in an apparent attempt to prevent Sergeant Ratcliffe from pulling him out.

[53] Sergeant Ratcliffe's BWC is still on at this point. The camera was situated in the centre of Sergeant Ratcliffe's chest. His torch was on his left shoulder.⁶ A kick to the shoulder, as would be required to dislodge his torch, would be expected to involve Mr L's legs moving past the camera, which would be visible on the BWC footage. No kick can be seen on the BWC footage.

[54] In his examination, the following exchange occurred:⁷

Okay. So you've gone in with your upper body to grab his legs. What's happened after that?---So a minute after I've grabbed his right leg, he's then kicked me under the chin. And he's also kicked my - I wear, like, a foldable torch on my ballistic vest. So he's kicked me once, hit the camera. This was in a matter of seconds. He's kicked me once and hit the camera and I think he's turned the camera off. And then he's kicked me and knocked my torch - into the van.

...

No. All right. And if I've understood you correctly, his - the first kick's turned off your body worn camera?---Yes.

The second kick's knocked off your torch?---Yes.

So there were two kicks?---I think there were more than two kicks. I can't remember exactly. I was more concentrating on just trying to secure his legs. So I couldn't remember if he kicked me once, twice. All I remember is it hit my chin. It hit my chin. I looked down again to try and secure him and then I saw my torch fall off.

You actually saw your torch fall off?---Yeah, yes. Saw my torch fall off, yes.

Okay. And when it fell off, where did it go?---Well. So, if he was sitting this position here and I was standing there, my torch fell off here on the into the van. And then he, like, tended to shuffle his backside over the torch to try and - I don't know. Cover my torch, I don't know.

⁶ Examination transcript p 15.

⁷ Examination transcript p 15.

So your observation was that your torch hit - the floor of the pod and then he's moved to sit on it?---Yes.

- [55] The timing of the kick that dislodged Sergeant Ratcliffe's torch is significant, and was clarified later in his evidence:⁸

Can you tell us what's happening here?---So I grabbed hold of his leg now and I'm trying to pull him towards me.

Why?---Why? To dislodge the camera (sic) torch that he was trying to sit on.

My torch had already come off, yes. As soon as I leant in the vehicle, my - my camera was kicked and my torch was dislodged within seconds. As soon as I leant in - - as soon as I leant in the vehicle, yes.

Do you agree your camera's still on here?---My camera? My camera is not on. No.

It's - that's not your camera on the top right-hand corner that's - - ? Yes. Sorry. I wasn't looking at the screen. Yes. That's - that's my camera there, yes.

- [56] The BWC footage then shows Sergeant Ratcliffe return his upper body into the pod. Senior Constable O can be seen holding the door open. Senior Constable S can be seen standing to the side. When the footage is viewed frame by frame, Mr L's knee can be seen obscuring Sergeant Ratcliffe's BWC, which then turns off. In his examination, Sergeant Ratcliffe was asked why he returned his upper body back into the pod after pulling Mr L's leg, and he said:⁹

Just to manoeuvre his legs again, same thing. When I tried to pull his leg, I knew I wasn't going to get the torch free so then I've decided to push him back in and then my own objective was to manoeuvre his legs. That was the whole purpose of me sticking my torso into the van.

- [57] Sergeant Ratcliffe can then be seen placing his right knee in the pod and then moving his right arm in a downwards motion four times. While the blows cannot be seen, Sergeant Ratcliffe admits them, and each downward motion is accompanied by an audible grunt. Sergeant Ratcliffe says the blows were to Mr L's thigh.

- [58] At this point, Senior Constable S finally intervenes, reaching his right arm into the pod and saying, 'stop it, stop it'. Constable G then places a hand on Sergeant Ratcliffe's back and says 'Paul'. Sergeant Ratcliffe's torch is visible on the BWC footage, by his right knee, at the entry to the pod. When asked the purpose of the punches, Sergeant Ratcliffe said:¹⁰

It was a distraction technique to stop him from kicking out. And then the minute he bent his leg, then that was my opportunity to manoeuvre his legs around so I could get the hell out of there and close the door.

⁸ Examination transcript p 34.

⁹ Examination transcript p 36.

¹⁰ Examination transcript p 19.

What do you mean by "distraction technique"? --- it's like something is not what's going to happen type of thing. So it's a distraction. So if he's kicking out at me, I am hitting his leg, it's going to cause numbness to his leg and it's going to stop him from kicking out and then it's going to enable me time to - to manoeuvre his legs around. So it's basically distraction technique. I would class as it's like, I give you a totally opposite scale of the spectrum. It's like I'm going to punch you on the leg so you - you're well aware of it, aren't you? Whereas, if you hit him without telling him, he's not aware. It's like a distraction to see him, you know, manoeuvre his legs. That was basically what it was. Yes.

And is "distraction technique" something that you are taught - part of your training at WA Police? ---Yes. All the time, yeah.

- [59] Sergeant Ratcliffe then withdrew from the pod and closed the door. Mr L can be seen in virtually the same position in the pod when the door is closed as he was when it was opened.¹¹ Constable G can be heard asking 'What the hell. What was that?' to which Sergeant Ratcliffe replied, 'kicked me in the...'. When asked about this, the following exchange occurred:¹²

Okay. So when she said, "What was that?" - - -?---Yeah.

- - - your response was that he kicked you?---Kicked me in the face. Yeah.

You agree that you don't make any mention there of your torch or anything?---I agree, yes. I don't make no mention of my torch, no.

- [60] The Commission requested a report from WA Police Operational Skills Training Faculty to assist in its investigation. The conclusion of the author of that report was that Sergeant Ratcliffe's actions were not reasonably necessary in the circumstances and that his actions were not in accordance with WA Police Use of Force policy and the training and guidelines of the Operational Safety and Tactics Training Unit.

¹¹ In his managerial interview, Sergeant Ratcliffe said that he had turned Mr L vertically. In his examination he confirmed that he had not.

¹² Examination transcript p 30.

CHAPTER FIVE

The Commission's opinion

- [61] The difficulties police face in placing people in the back of a police pod are obvious. That Mr L was able to kick the door open (whether that was his intention or whether he simply kicked out in frustration is unknown) demonstrates this difficulty.
- [62] The incident was unexpected and required a quick response. The time between the pod door being kicked open and it being successfully closed was brief, totalling around 20 seconds.
- [63] There was no need for Sergeant Ratcliffe to enter the pod at all. He could have simply shut the door.
- [64] The Commission does not accept Sergeant Ratcliffe's evidence that he pulled Mr L's leg as Mr L had shuffled his backside over his torch and he was attempting to retrieve it because it posed a security risk. At the time he was said to have performed this manoeuvre Mr L was handcuffed behind his back in the pod, engaged in an altercation with Sergeant Ratcliffe.
- [65] Three seconds had passed between Sergeant Ratcliffe entering the pod and his pulling Mr L by the leg. It is implausible that Mr L could have kicked the torch off Sergeant Ratcliffe's vest and shuffled himself onto it, and for Sergeant Ratcliffe to see this and react, in less than three seconds.
- [66] Further, Senior Constable S¹³ and Senior Constable O¹⁴ both confirmed that Sergeant Ratcliffe did not express any concerns to them about the torch in the pod posing a safety risk. Constable G's evidence¹⁵ was that Sergeant Ratcliffe told her something had been kicked off his vest and that when she learned it was a torch she held no concerns that it was a safety risk. In all of the circumstances the Commission does not accept Sergeant Ratcliffe's explanation that his conduct was motivated by the need to retrieve his torch.
- [67] It is far more plausible that, as Sergeant Ratcliffe himself initially said, his torch was knocked off his vest after his camera was kicked and turned off. It is apparent from the BWC footage that this occurred after Sergeant Ratcliffe had pulled Mr L by the leg, not before.
- [68] Mr L was handcuffed behind his back. Had he not braced his left leg against the pod door, it is entirely possible that he would have been pulled from the pod onto the ground when Sergeant Ratcliffe pulled on his leg with force. With no hands free to brace his fall and no means to protect his head, the consequences

¹³ S examination transcript p 24.

¹⁴ O examination transcript p 21.

¹⁵ G examination transcript p 14.

of such a fall could be serious. Sergeant Ratcliffe's use of force by pulling Mr L by the leg was unnecessary and excessive.

- [69] The Commission does not accept that the four blows to Mr L's legs once Sergeant Ratcliffe re-entered the pod were distraction blows. Immediately after he struck Mr L, Sergeant Ratcliffe called him a 'fucking piece of shit'. Mr L was in virtually the same position inside the pod when the pod door was eventually closed as he was when it opened. It had not been necessary to move his legs to close the door.
- [70] After the incident, when asked 'what was that?' by Constable G, Sergeant Ratcliffe responded 'he fucking kicked me'. At no time during the incident did Sergeant Ratcliffe direct Mr L to move his legs, to move off his torch or to not kick out, despite acknowledging that Mr L was otherwise physically cooperative with police in the lead up to the incident in the pod.¹⁶
- [71] It was put to Sergeant Ratcliffe during his examination that he punched Mr L because he was angry and he answered, 'that is not correct'.¹⁷
- [72] The probabilities are however that Sergeant Ratcliffe was angry that Mr L had kicked the door into him. And it was his anger that caused him to pull and strike Mr L, rather than an intention to move his legs and/or retrieve his torch.
- [73] Sergeant Ratcliffe's use of force both by pulling Mr L, a handcuffed man in his custody, by his leg and by punching him repeatedly was punitive, unnecessary and excessive. Further, the language Sergeant Ratcliffe used towards Mr L was unnecessary, improper and offensive. Sergeant Ratcliffe's conduct towards a person in custody as both a team leader and a senior WA Police officer, was unacceptable.
- [74] In his response Sergeant Ratcliffe maintains that the force used against Mr L was not excessive, appropriate and in line with the WA Police training. He does not agree with the Commission's opinion.

Conclusion

- [75] The Commission has formed an opinion of serious misconduct by Sergeant Ratcliffe. An opinion that misconduct has occurred is not to be taken as a finding or opinion that a particular person is guilty of or has committed a criminal or disciplinary offence.¹⁸
- [76] Had the District investigation under IAU oversight been adequate there would have been no need for Operation Althorpe.

¹⁶ Examination transcript p 9.

¹⁷ Examination transcript p 47.

¹⁸ CCM Act s 217A.

[77] The response of WA Police:

The Professional Standards Command encourages all officers, in particular supervisors, to be proactive and engage officers who exhibit any at-risk behaviour including any perceived excessive use of force. These observations, discussions and action plans are to be recorded within the officer's Electronic Management File (EMF). The agency supports early intervention to engage officers exhibiting these behaviours, to provide the opportunity to change those behaviours through the provision of greater supervision, coaching or further training. Alternatively, it may require the reporting of breaches of legislation, policy or procedure to manage that behaviour through the Agency's Managerial Intervention Model.

[78] As noted the WA police will review the outcome of the investigation.