

Death of Eden Nathan following a Police pursuit in Auckland

INTRODUCTION

1. At about 3.37am on Sunday 24 January 2016, a female driver, aged 15, lost control of a stolen Nissan Lucino and collided with another vehicle while fleeing from Police on Buckland Road in Auckland. The driver's passenger, Eden Nathan, died as a result of the collision.
2. The Police notified the Independent Police Conduct Authority of the pursuit and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

3. At approximately 3.26am on Sunday 24 January 2016, Police received a phone call on the emergency 111 line, advising that a Nissan Lucino (the Nissan) was being broken into on Hill Road in Papatoetoe, Auckland.
4. The Police Northern Communications Centre (NorthComms) dispatched two single crewed Police cars, and advised that the Nissan had left the scene and was travelling south on Wyllie Road towards Puhinui Road. NorthComms also broadcast that the Nissan was white and was travelling with a dark coloured vehicle.
5. Officer A¹, one of the single crewed Police officers dispatched to the scene, was travelling along Puhinui Road at the time of the broadcast. He turned left onto Wyllie Road and drove approximately 200 metres north before seeing two cars driving towards him.
6. Although Officer A could not see what type of cars they were, he believed that, due to the time of the morning and the lack of traffic on the road, it was probable that the two cars had just

¹ Officer A is a gold class driver and was driving a category A marked Police car, meaning he is authorised to engage in urgent duty driving and pursuits.

left Hill Road and that one of the cars was likely to be the stolen Nissan. As a result, when they passed him, Officer A performed a U-turn and followed the cars down Wyllie Road.

7. When the two cars reached the intersection with Puhinui Road, Officer A said it became obvious that the drivers were aware of his presence as the cars separated with one car turning left and the other car turning right. Officer A immediately informed NorthComms that the cars had split up.
8. Officer A decided to follow the car that had turned left onto Puhinui Road (the Nissan). He told the Authority that there was no specific reason why he followed the Nissan as it was a split decision and he was not aware of who was in the car.
9. As Officer A turned left, he saw the Nissan driving away from him at speed so he activated his Police car's red and blue flashing lights to signal the driver to stop. At 3.33am, when the driver failed to stop, Officer A turned on his siren and notified NorthComms that he was in pursuit for "*failing to stop*".
10. The dispatcher² immediately alerted the NorthComms shift commander (the pursuit controller³) that a pursuit had commenced and, as required by Police policy, gave Officer A the pursuit warning: "*if there is any unjustified risk to any person you are to abandon pursuit immediately, acknowledge.*" Officer A acknowledged the pursuit warning, said that he was following a white station wagon and advised their direction of travel.
11. Throughout the ensuing pursuit, the dispatcher was supervised by the pursuit controller and relayed his instructions to Officer A.
12. The Nissan continued east along Puhinui Road before making a sharp left hand turn onto Kenderdine Road. Officer A continued to provide NorthComms with updates and advised that the Nissan was travelling at approximately 80kph in a 50kph zone.
13. Officer A told the Authority that he was repeatedly assessing the risk of continuing the pursuit and did not consider the Nissan's speed to be excessive due to the time of day, no traffic on the road, the dry weather conditions and the driver staying within the correct lane.
14. As the Nissan continued north on Kenderdine Road, Officer A notified NorthComms that there was no road traffic and "*we're now doing 115kph*".
15. As the Nissan approached the Kenderdine Road and Wyllie Road intersection, the driver turned right and then hard left onto Station Road. Because the driver slowed to navigate the corners, Officer A was able to get close to the Nissan and confirm the vehicle's registration number. Officer A immediately informed NorthComms and also advised that he was now travelling north on Station Road at 87kph.

² The dispatcher advises the shift commander when a pursuit has commenced, maintains radio communications with the units involved in the pursuit, obtains situation reports from the pursuing units and communicates instructions from the pursuit controller. The dispatcher is also responsible for communicating the pursuit warning to the lead pursuit unit.

³ The pursuit controller supervises the pursuit and co-ordinates the overall response, including the appropriate tactical options. In most cases, the pursuit controller role is taken on by the shift commander in the Communications Centre.

16. The driver of the Nissan continued on Station Road before slowing to 60kph as it turned left onto Portage Road and then right onto Buckland Road. As the Nissan turned onto Buckland Road, Officer A said the front seat passenger began to throw clothing out of the car window. Officer A notified NorthComms, and slowed down in order to avoid the debris.
17. After driving about 500 metres, the driver of the Nissan increased its speed. Officer A radioed NorthComms advising, *"they've picked up their speed, they're still throwing crap out of the car, it's 115 over 50 [and] they're approaching a red light with Massey Road"*. Officer A also advised that there was no traffic on the road and he was approximately 300 metres behind the Nissan.
18. Officer A advised NorthComms that the driver of the Nissan did not slow for the red light and was now pulling away from him. As he approached the intersection, Officer A said he slowed down, and after ensuring that there was no traffic, he continued through the red light.
19. Officer A told the Authority that, although the Nissan drove through the red light, he did not consider abandoning the pursuit due to the time of day, there was no other road traffic, the weather and road conditions were dry, and the driver was staying within the correct lane and slowing for corners.
20. Similarly, the pursuit controller told the Authority that he did not consider abandoning the pursuit at that point, because there was no other traffic on the road and the distance between Officer A and the Nissan had increased. As Officer A was not putting pressure on the driver, the pursuit controller believed that the Nissan's speed would decrease again, as it had done so previously.
21. In addition, the pursuit controller also believed that Eagle, the Police helicopter,⁴ was available and would possibly be able to monitor the Nissan from overhead.
22. As Officer A came through the Massey Road intersection he said he sped up to shorten the distance between himself and the Nissan. However, from his location, Officer A said he was only able to see the Nissan's tail lights in the distance. Shortly after, Officer A advised NorthComms that the Nissan had gone through a second set of red traffic lights at Ashley Avenue.⁵
23. Officer A said he temporarily sped up to try to shorten the gap again. However, after slowing at the second set of traffic lights, he lost sight of the Nissan as it travelled around a left hand bend on Buckland Road.
24. Within seconds of losing sight of the Nissan, Officer A said he drove around the bend and saw that the Nissan had lost control and collided with a Toyota Prado travelling in the opposite direction.
25. At 3.37am, Officer A radioed NorthComms and advised that there had been *"a major crash"* and Police units would be required. An ambulance arrived at the scene at 3.53am.

⁴ Although the Pursuit controller was under the impression that Eagle was available, Eagle had landed at 2.40am and was not available at the time of the pursuit.

⁵ There is approximately 700 metres between the Massey Road and Ashley Avenue intersections.

26. Two teenage females were found in the Nissan. Neither female was wearing a seatbelt. The driver was transported to Middlemore Hospital in a critical condition and Eden Nathan, the front seat passenger, died at the scene. The driver of the Toyota Prado was uninjured.
27. As at September 2016, the driver had not regained consciousness and as such, has not been interviewed in any capacity by Police or the Authority.

Crash analysis

28. A Police crash investigator examined the scene and determined that no environmental factors contributed to the crash. The investigator concluded that the Nissan was being driven at high speed when the driver lost control. The Nissan then rotated clockwise into the opposite lane and collided, passenger side, into an oncoming car.
29. The crash investigator was unable to determine if there were any pre-existing faults with the Nissan due to the extensive damage caused to the vehicle during the crash.

Power to require a driver to stop

30. Section 114 of the Land Transport Act 1998 provides that a Police officer may signal or request the driver of a vehicle to stop the vehicle as soon as is practicable.
31. Section 9 of the Search and Surveillance Act 2012 provides that a Police officer may stop a vehicle without a warrant to arrest a person if the constable has reasonable grounds:
 - a) to suspect that a person—
 - is unlawfully at large; or
 - has committed an offence punishable by imprisonment; and
 - b) to believe that the person is in or on the vehicle.

Fleeing driver policy

32. The overriding principle of the Police fleeing driver policy is that: *“Public and staff safety takes precedence over the immediate apprehension of the offender”*.
33. During a pursuit, warning lights and siren must be activated at all times. The Communication Centre must also be advised immediately if there is a fleeing driver and that a pursuit has been initiated.
34. Officers are required to carry out risk assessments before and during a pursuit in order to determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police vehicle.
35. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if:
 - the identity of the offender becomes known,
 - the distance between the primary unit and the offending vehicle is too great,
 - any of the risk assessment criteria conditions change, and
 - there is a sustained loss of contact between the primary units and the Communications Centre.

THE AUTHORITY'S FINDINGS

Was Officer A justified in commencing a pursuit?

36. Officer A was dispatched to Hill Road following a report of a Nissan being broken into. Information relayed by NorthComms suggested that another car was also involved and they were likely to be leaving the scene and travelling south towards Puhinui Road.
37. When Officer A neared Hill Road, he saw two cars matching NorthComms' description travelling away from the area. Due to the location, time of day and absence of other vehicular traffic, Officer A believed that it was likely that these cars were involved in the theft. When he performed a U-turn, Officer A's suspicions were confirmed as the cars attempted to avoid him by splitting up and driving in opposite directions.
38. Officer A chose to follow the Nissan, which was the car that turned left. When he saw the Nissan drive off at speed, Officer A was justified under section 9 of the Search and Surveillance Act 2012 in attempting to stop the car, as he had reasonable grounds to suspect the driver had committed an offence punishable by imprisonment.
39. When the driver failed to stop and attempted to evade Police, Officer A was entitled under the Police fleeing driver policy to commence a pursuit.

FINDING

Officer A was justified in commencing a pursuit.

Was the pursuit conducted in accordance with law and policy?

40. The fleeing driver policy requires an officer initiating a pursuit to notify the Communications Centre that they are in pursuit. When Officer A turned onto Puhinui Road, he notified NorthComms that the car was "*failing to stop*", and the dispatcher issued the pursuit warning as required by policy (refer to paragraphs 32-35).
41. Officer A acknowledged the warning, and provided NorthComms with regular updates on speed, direction of travel and actions of the Nissan's occupants throughout the pursuit.
42. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety. In accordance with policy, Officer A kept his Police car's red and blue flashing lights and siren activated at all times, and showed due care when slowing down and checking that there was no traffic before driving against a red light.
43. Although Officer A was single crewed, both he and the vehicle he was driving were authorised to engage in pursuits.

44. The fleeing driver policy also requires Police to abandon a pursuit if at any stage the risk to the safety of the public and the Police outweighs the immediate need to apprehend the driver. Pursuing officers and the Communications Centre pursuit controller must conduct an assessment of relevant risk factors to determine this.
45. Officer A said he assessed the risks of continuing the pursuit when they reached speeds of 115kph in a 50kph zone and the Nissan drove through the first red traffic light. Officer A decided to continue the pursuit because there was no traffic on the road, the weather conditions were dry and the fleeing driver's manner of driving, although fast, was "*fine*".
46. The driver of the Nissan then increased speed and pulled away from Officer A, who had slowed to navigate the first red light. Officer A briefly sped up to try to close the distance between the two cars. However, he saw the tail lights of the Nissan go through the second red light at Ashley Avenue and then disappear from view.
47. As there was only seconds between Officer A's report that the Nissan had gone through the second red light and the crash, neither Officer A nor the pursuit controller had time to consider abandoning the pursuit before the crash occurred.
48. The pursuit controller was of a similar view and believed that because the Nissan was pulling away from Officer A, there was no pressure being applied to the fleeing driver and it was likely the Nissan's speed would decrease.
49. The Authority acknowledges that the speed of 115kph in a 50kph zone reached by Officer A on two occasions was high, and would be unjustified if it had continued for any length of time. In this case, on both occasions, it was reached for a very short time before Officer A slowed significantly to navigate a bend in the road and to travel through a red light. In addition, at the time the high speeds were reached, the other risk factors were low: there was little traffic on the road, the manner of driving was "*fine*", the weather was clear and there was good visibility and road conditions. For these reasons, the Authority finds the speeds reached by Officer A were justified in the circumstances.

FINDING

Officer A complied with law and policy during the pursuit.

CONCLUSIONS

50. The Authority finds that Officer A was justified in commencing a pursuit and complied with relevant law and policy throughout.

A handwritten signature in black ink, appearing to read 'David Carruthers', written in a cursive style.

Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

21 September 2016

IPCA: 15-1364

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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