



Fatal Pursuit of James Dean Miles

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. Just after 5.00pm on 12 November 2012, a stolen Hyundai Accent hatchback driven by James Dean Miles, aged 18, collided with an oncoming vehicle while fleeing from Police during a short pursuit on State Highway 2 north of Katikati. Mr Miles died at the scene. The driver of the second vehicle suffered serious injury.
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. In the late afternoon of 12 November 2012, the Police Northern Communications Centre (NorthComms) received a report that the driver of a Green Hyundai Accent had dangerously overtaken a truck and trailer unit on State Highway 2 (SH2) north of Waihi.
4. At 4.58pm NorthComms dispatched Officer A from Waihi Police station in response to the report. The dispatcher also advised Officer A that the Hyundai was stolen.
5. As Officer A left the Police station a passing motorist stopped in the station car park and informed Officer A that he had just witnessed a Green hatchback being driven dangerously past the Police station. From the witness's description of the hatchback Officer A determined that it was the stolen green Hyundai.
6. After leaving the station Officer A initially followed a different vehicle matching the reported description along Waihi Beach Road for about 2.75 km. When he realised this was the wrong vehicle he returned to SH2 via Trig Road and travelled south toward Katikati.

7. In interview with the Authority, Officer A said that as he tried to catch up to the stolen vehicle on SH2 there was moderate traffic and good visibility and his speed was no more than 110–130kph in a 100kph speed zone due to the slightly wet road conditions. He also said that he had activated his patrol car's lights and sirens. This is in accordance with Police urgent duty driving policy, which permits an officer to drive in excess of the speed limit in certain circumstances (see paragraphs 35–38 for relevant policy).
8. As he travelled south on SH2 Officer A asked the Hamilton dispatcher, covering Waihi, to alert the Tauranga dispatcher that the stolen vehicle was heading toward Katikati. This information was relayed to the Tauranga dispatcher at 5.03pm, who in turn passed it to Officer B, based in Katikati. Officer B was also provided with the Hyundai's registration number.
9. Officer B drove north out of Katikati on SH2, up Young's Hill and toward McMillan Road. At 5.11pm he saw the Hyundai being driven normally in a line of traffic. He also saw the lights on Officer A's patrol car at the end of Tuapiro straight about a kilometre away. After waiting a short time for traffic to clear Officer B performed a U-turn and activated his patrol car's lights and siren.
10. Officer B advised the Tauranga dispatcher that he had located the vehicle and was trying to catch up to it. In doing so Officer B engaged in urgent duty driving (see paragraphs 35–38).
11. As he accelerated Officer B carried out a risk assessment. He took into account the dry road conditions, the medium traffic volume and Mr Miles' ordinary manner of driving and compliance with the speed limit at that time. Officer B concluded that any risk involved in pursuing did not outweigh the need to stop the driver of the Hyundai.
12. At 5.13pm, at the top of the rise just past Kauri Point Road, Officer B saw the Hyundai about 150 metres ahead. The driver had accelerated to about 120–130kph and was overtaking another vehicle. Officer B decided at this point that the driver was attempting to evade apprehension and that a pursuit had commenced.
13. Officer B notified NorthComms that the Hyundai had failed to stop. The Tauranga dispatcher provided the pursuit warning required by Police policy which Officer B acknowledged. As required by policy, the dispatcher also advised the pursuit controller (the NorthComms shift commander) that the pursuit had been commenced and confirmed the pursuit warning had been given.
14. Officer B once again temporarily lost sight of the vehicle before seeing it overtaking a mobile home travelling down Young's Hill. Officer B remained behind the mobile home until it slowed to the left to let him pass. He then advised NorthComms that the road was dry, the traffic volume was medium and that the Hyundai was passing Willoughby Road.

15. At this stage the Hyundai was passing another vehicle about 150 to 200 metres ahead. In interview, Officer B said that he considered the driver's speed, about 130kph in a 100kph zone, did not create a risk in pursuit which at that stage required him to abandon pursuit.
16. Officer B advised NorthComms of his location (passing Lindemann Road) and speed (100kph). The dispatcher then twice requested Officer B's vehicle classification and speed, in response to which Officer B made two indecipherable transmissions. The next report from Officer B was that the Hyundai had collided with an oncoming vehicle.
17. After Officer B advised NorthComms of the crash the dispatcher requested that Fire and ambulance units attend the scene. Officer A arrived a short time later and he and Officer B provided assistance to the occupants of both vehicles.
18. Witnesses subsequently told Police that Mr Miles' vehicle had crossed into the oncoming lane moments before the collision. The driver of the oncoming vehicle recalls Mr Miles' vehicle "*sliding towards me from the other lane*" moments before the collision.
19. Mr Miles died at the scene as a result of the injuries he received in the collision. The driver of the oncoming vehicle sustained multiple fractures to his right leg as well as cuts to his left leg and head.
20. The pursuit covered approximately 1.3 km and lasted 42 seconds from Stokes Road, where Officer B notified NorthComms that the Hyundai had failed to stop, to the crash site. The speed zone throughout the pursuit was 100kph.

Witnesses

21. Several witnesses saw Mr Miles' vehicle on State Highway 2 between Waihi and Katikati.
22. The witnesses report that in the period prior to Police locating Mr Miles he was travelling at excessive speed, following other vehicles dangerously closely, and overtaking on blind corners and into oncoming traffic.
23. Witnesses in the vehicles that Mr Miles overtook between McMillan Road and the crash scene estimated his speed was about 130kph.

James Dean Miles

24. Mr Miles did not hold a current driver's licence at the time of the incident. He had previous convictions for the unlawful taking of motor vehicles, dangerous driving and driving while unlicensed.

Officers A and B

25. Both officers were gold class drivers and operating category A marked patrol cars. They were appropriately certified to engage in urgent duty driving and pursuits.

Police Crash Analysis

26. The Police crash investigator concluded that the main cause of the crash was driver error on the part of Mr Miles and that his manner of driving was a causative factor. There were no vehicle or road faults found.
27. The investigator determined that Mr Miles would have travelled the 1.3 km covered by the pursuit in 39 seconds if he was travelling at 120kph, and that this was consistent with the chronology of events and Officer B's radio transmissions.
28. Analysis of Mr Miles' blood showed alcohol in his blood at a level of 68 milligrams per 100 millilitres of blood. The legal blood alcohol limit for a New Zealand driver under 20 years old is zero.
29. Mr Miles' blood also tested positive for cannabis. Due to the small amount, it was not possible to determine whether he was affected by the drug at the time of the crash.

LAWS AND POLICIES

Legislative Authority for Pursuits

30. Under the Land Transport Act 1998, Police are empowered to stop vehicles for traffic enforcement purposes. Under the Search and Surveillance Act 2012 Police may stop a vehicle to arrest a person they have reasonable grounds to believe has committed an offence punishable by imprisonment and is in the vehicle. Where such a vehicle fails to stop, the Police may begin pursuit.

Fleeing Driver Policy

31. Under the policy, a fleeing driver incident occurs when (i) the driver of a vehicle has been signalled by Police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) Police take action to apprehend the driver. The Police tactic to apprehend is referred to as a pursuit.
32. The policy requires the pursuing officer to carry out a risk assessment both prior to initiation and during a pursuit. This must be based on consideration of the speed limit and manner of driving by the offending vehicle; identity and other characteristics of the occupants of the offending vehicle; weather conditions; the environment, including the

location, road type and potential hazards; traffic conditions, including vehicle and pedestrian as well as time of day; and capabilities of the Police driver and vehicle.

33. The policy requires the officers involved in the pursuit to notify the Police communications centre (Comms) when a pursuit commences and to provide situation reports to the pursuit controller (i.e. the shift commander at Comms) in a timely manner to enable the pursuit controller to make an independent assessment of the risks and manage the pursuit, including whether to direct the abandonment of the pursuit.
34. Under the policy, the driver of the lead Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, ensure lights and siren are activated, drive in a manner that prioritises public and police safety, continue to undertake risk assessments throughout the pursuit, maintain constant communication with Comms and comply with all directions from the pursuit controller.

Urgent Duty Driving

35. Urgent duty driving is defined as occurring when:

*“...an officer on duty is **either**:*

- *responding to a critical incident*
- *apprehending an offender for a traffic or criminal offence*
- *engaged in a pursuit; or*
- *engaged in activities approved by the commissioner in writing*

and to comply with traffic rules and regulations would prevent the execution of that duty [emphasis in original].”

36. Critical incidents include situations involving (i) force or the threat of force, (ii) any person facing the risk of serious harm, or (iii) officers responding to people in the act of committing a crime.

Overriding principle

37. Under the Police urgent duty driving policy, the overriding principle is: *“No duty is so urgent that it requires the public or Police to be placed at unjustified risk.”*
38. When deciding whether it is appropriate to commence or continue urgent duty driving, an officer must consider the following factors:
 - *“time of the incident – is it in progress?”*

- *nature and seriousness of the incident*
- *proximity of other units to the incident*
- *environment e.g. weather, traffic volume, road type, speed limit and pedestrians etc*
- *driver classification and vehicle classification*
- *whether warning devices are activated or a "silent approach" is being used [emphasis in original]."*

THE AUTHORITY'S FINDINGS

Commencement of the Pursuit

39. Due to reports that the Hyundai was stolen, Officer B was justified under section 114 of the Land Transport Act 1998 and section 9 of the Search and Surveillance Act 2012 to attempt to stop the Hyundai in order to speak to Mr Miles. The Police fleeing driver policy authorised Officer B to commence a pursuit when Mr Miles failed to stop and attempted to evade apprehension.
40. The fleeing driver policy requires Police to conduct a risk assessment prior to commencing a pursuit. After performing the U-turn on State Highway 2 Officer B conducted a risk assessment and concluded that the need to apprehend Mr Miles outweighed any risk involved in pursuing him (see paragraph 11 above).
41. Officer B and his category A marked patrol car were appropriately certified to engage in pursuits.

FINDING

Officer B complied with law and Police policy in commencing pursuit of Mr Miles.

Communication

42. The fleeing driver policy requires an officer initiating pursuit to notify the communications centre that they are in pursuit. Whilst not using the words "*in pursuit*", Officer B advised the dispatcher of the pursuit by stating that the vehicle was "*failing to stop*".
43. Officer B advised relevant risk factors including the road conditions, traffic volume and the Hyundai's location. He also advised his location and speed. Officer B made two indecipherable responses to the dispatcher's last two requests for information.

44. When Officer B commenced the pursuit the Tauranga dispatcher notified the pursuit controller that the pursuit had been initiated and confirmed they had given Officer B the pursuit warning required by Police policy.

FINDING

Police complied with the fleeing driver policy in respect of communication.

Police Speed and Manner of Driving

45. Both the Police urgent duty driving policy and fleeing driver policy require officers to drive in a manner that prioritises public and Police safety. In accordance with these policies, Officers A and B kept their patrol cars' warning lights and sirens activated when undertaking urgent duty driving and Officer B kept them activated during the pursuit.
46. While urgent duty driving, Officer A's maximum speed was 130kph in a 100kph speed zone. The Authority is satisfied that this speed was justified in the circumstances given the risk factors considered by Officer A (see paragraph 7 above).
47. During the pursuit Officer B advised the dispatcher that his speed was 100kph.

FINDING

Officers A and B complied with Police policy in respect of their speed and manner of driving.

Ongoing Risk Assessment and the Option of Abandonment

48. The fleeing driver policy 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.
49. Officer B reassessed the risk involved in pursuing Mr Miles, just prior to the collision, when Mr Miles had increased his speed to about 130kph. He did not consider the increase in speed alone created sufficient risk that it required him to abandon the pursuit.
50. Due to radio difficulties, the pursuit controller was still in the process of gathering relevant information when the crash occurred. There was no time for the pursuit controller to consider the option of abandonment.

FINDINGS

Police complied with the fleeing driver policy in relation to the ongoing assessment of risk.

Due to radio difficulties and the pursuit's short duration, there was no time to consider the option of abandonment before the crash occurred.

CONCLUSIONS

51. Section 27(1) of the Independent Police Conduct Authority Act 1988 requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure was contrary to law, unreasonable, unjustified, unfair, or undesirable. Section 27(2) enables the Authority to make recommendations.
52. Pursuant to Section 27(1) the Authority has formed the opinion that the actions of Police in this case were justified and complied with applicable law and Police policy.
53. The Authority makes no recommendations.

ONGOING DISCUSSIONS WITH POLICE

54. While in this instance the Authority has not found any breaches of policy, the Authority notes that it has begun discussion with Police about a review of policies connected with the pursuit of fleeing drivers. This is due to the conflict between the often prescriptive nature of the relevant policies and the reality of a fast-paced, time-pressured situation.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

14 November 2013

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 on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



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