



Serious Injury to passenger during Police Pursuit

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At 3.17am on 10 May 2013 the male driver of a stolen Toyota Corolla lost control of his vehicle and crashed into a roundabout and then collided with a street light while fleeing from Police during a short pursuit in Tauranga. His female passenger was seriously injured.
2. The Police notified the Independent Police Conduct Authority of the incident 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 3.10am on 10 May 2013 a member of the public approached a passing Police patrol to inform them that his blue Toyota Corolla hatchback had just been stolen from the Kings View car park on Harrington Street in Tauranga. The Toyota owner was able to point out his car to the officers as it was being driven out of the car park. Officers A and B saw the male driver turning left from the car park onto Harrington Street and then left again onto Cameron Road.
4. Officers A and B immediately began following the stolen Toyota, with their lights and siren activated, in an attempt to stop it and speak to the occupants. However, the driver did not stop for Police and continued to drive at speed.
5. The officers were in a category A marked patrol car, which is authorised to be the lead car in pursuits.
6. Officer A, the driver of the patrol car, is a gold class response driver and therefore certified as competent to engage in pursuits as the lead driver. In May 2013 he had 25 years policing experience.

7. Officer B, a probationary constable who had been a Police officer for one year, was responsible for operating the radio and communicating with the Police Northern Communications Centre (NorthComms).
8. Cameron Road is a main thoroughfare through Tauranga. It has two lanes going in each direction separated by a raised traffic island median barrier. At the intersection of Cameron Road and Elizabeth Street the driver of the stolen Toyota attempted to turn right into Elizabeth Street but overshot the corner and ended up driving on the wrong side of Cameron Road. From this point, both the Toyota and the Police patrol travelled on the wrong side of the road in the lane closest to the median barrier.
9. Officer A told the Authority that throughout the pursuit the stolen Toyota was travelling at a speed of 60-80kph, in a 50kph zone.
10. Officer B attempted to notify NorthComms of the pursuit from its commencement on Harrington Street. However, due to heavy radio traffic it took Officer B 21 seconds before he was able to advise the dispatcher *"we've got a failing to stop"*. The dispatcher immediately identified that Officer B was trying to call in a pursuit and instructed all other units to standby so that Officer B could give details.
11. Once the radio was clear, Officer B advised the dispatcher of their location and direction of travel *"wrong way down Cameron Road, going past 4th Ave towards 5th Ave"*.
12. The dispatcher then asked Officer B to confirm his location and registration. Once Officer B provided the Toyota's registration the dispatcher gave the officers the warning contained in the Police fleeing driver policy that *"if there is an unjustified risk to any person you're to abandon this pursuit, immediately, acknowledge."*
13. Officer B acknowledged the dispatcher's instruction, and had just commenced transmitting a further update when he saw the driver of the Toyota hit the roundabout at the intersection of Cameron Road and Ninth Avenue, lose control and collide with a street light stand knocking it to the ground. The Toyota then hit a tree on the median strip causing it to spin twice into the two left hand lanes before coming to a stop on the correct side of the road.
14. Officer C, the sole occupant of another marked patrol car, who had followed the pursuit from the intersection of Elizabeth Street and Cameron Road, notified NorthComms that the fleeing driver had crashed, saying *"Comms it's on the wrong side of Cameron Road, its wiped out."* Immediately after, Officer B transmitted *"It's crashed Comms. Car's crashed on Cameron Road."*
15. Officer A immediately went to assist the occupants of the stolen car while Officer B called for an ambulance.

16. Police did not know the offenders' identities during the pursuit.
17. Footage from the Tauranga City Council CCTV cameras (see paragraph 21) shows that the weather on the night was clear and dry and visibility was good. The road surface was dry and there was light traffic on the road.
18. The pursuit covered two kilometres from initiation to crash as measured from Harrington Street to Ninth Avenue. As Officer B was not able to immediately call the pursuit in, radio communications cover only the section of the pursuit from Fourth Avenue to Ninth Avenue, where the fleeing vehicle crashed.

CCTV Footage

Camera at Intersection of Cameron Road and Elizabeth Street

19. A tilt and zoom CCTV camera at the intersection of Cameron Road and Elizabeth Street shows the fleeing Toyota at the intersection with the pursuing patrol car two-three car lengths behind. Both vehicles are being driven on the wrong side of Cameron Road.
20. Another patrol car driven by Officer C is seen driving on the correct side of Cameron Road trying to catch up with the pursuit. In his job sheet Officer C said he was "*travelling in the vicinity of 100km/hr at this time*". A third patrol car driven by Officer D is also captured by the camera driving on the correct side of the road. Both these patrol cars had their red and blue lights on and were engaged in urgent duty driving but were not directly involved in the pursuit.
21. Urgent duty driving includes driving at speed with warning devices activated in order to apprehend an offender for a traffic or criminal offence or engaged in a pursuit, when compliance with traffic rules and regulations would prevent the execution of that duty.

Camera at intersection of Eleventh Avenue and Cameron Road

22. Another tilt and zoom CCTV camera at the corner of Eleventh Avenue and Cameron Road shows the headlights of the Toyota and the Police car driven by Officers A and B, both on the wrong side of the road. The pursuit is heading towards this camera. The camera is approximately 300 metres from the Ninth Avenue roundabout. The camera captures the fleeing vehicle's crash into the median island.

Occupants of the Stolen car

23. Following the incident, the officers learnt that the male and female had assaulted the Toyota owner and his passenger as they got into the car and then smashed the driver's window.

24. The male driver's injured hand was bandaged at the scene by ambulance staff. It was not determined whether the injury to his hand was caused from the car crash or smashing the car window whilst stealing the Toyota. He was taken back to the Tauranga Police station where it was decided that he needed further medical treatment. A Police doctor was called and recommended that the driver be taken to hospital for X-rays and further treatment.
25. His evidential breath test result was 908 micrograms of alcohol per litre of breath. The legal alcohol limit for a New Zealand driver over 20 years old is 400 micrograms of alcohol per litre of breath.
26. As a result of this incident, he was charged with driving with excess breath alcohol causing injury, reckless driving causing injury and aggravated robbery. He was convicted and sentenced to four years and six months imprisonment.
27. The female passenger was taken directly to hospital with a ruptured spleen.
28. She was convicted of aggravated robbery and was sentenced to three years' imprisonment for her offending.

Police Crash Analysis

29. A crash investigator from the Police Serious Crash Unit attended the scene. The crash investigator concluded that there were no signs of damage to the Toyota which would have contributed to its loss of control.
30. Using the CCTV cameras the Police investigating officer calculated that the average speed of the fleeing vehicle was 95.4kph based on the time it took to travel between the Elizabeth Street and Cameron Road intersection and the Ninth Avenue roundabout. The investigating officer said that the speed of the fleeing vehicle just prior to crash was "*in the order of twice the posted speed limit*", in a 50kph zone.

THE AUTHORITY'S FINDINGS

Commencement of the Pursuit

31. Officers A and B had reasonable grounds to believe that the occupants of the Toyota had just committed conversion of a vehicle and so they were 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 Toyota in order to speak to the driver.
32. The Police fleeing driver policy authorised the officers to commence a pursuit when the driver of the stolen Toyota failed to stop and attempted to evade apprehension by speeding along Cameron Road.

33. The fleeing driver policy requires Police to conduct a risk assessment prior to commencing a pursuit. The Authority is satisfied that Officer A conducted a risk assessment before deciding that the immediate need to apprehend the driver outweighed any risks involved in commencing a pursuit.

FINDING

Officers A and B complied with law and policy in commencing this pursuit.

Communication

34. Due to heavy radio traffic it took 21 seconds before Officer B could notify NorthComms that the driver had failed to stop, and confirm that he and Officer A were in pursuit.
35. NorthComms provided the standard warning required by policy upon a pursuit's commencement. This was acknowledged by Officer B.
36. Officer B advised the dispatcher of their location and direction of travel, and that the fleeing vehicle was on the wrong side of the road. He did not have time to relay any other risk factors before the crash occurred.

FINDING

Officer B complied with the fleeing driver policy in respect of communication as far as he was able to in the circumstances.

Police Speed and Manner of Driving

37. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety. In accordance with the policy, Officers A and B kept the patrol car's warning lights and siren activated at all times during the pursuit.
38. The Police investigator has calculated the average speed of the fleeing car on Cameron Road as 95.4kph. As the CCTV footage shows the Police car following closely behind the Toyota along Cameron Road, the Authority estimates that Officers A and B were doing a similar speed.
39. The CCTV cameras establish that the Police car pursued the Toyota at a distance of 2- 3 car lengths on the wrong side of the road from the intersection of Cameron Road and Elizabeth Street until just before the crash, a distance of just over one kilometre.

40. Officer A told the Authority's investigator that he decided to follow the fleeing driver as closely as he did in an attempt to prevent him from turning right onto the Takitimu expressway where there would have been more traffic and greater risk to members of the public. He subsequently told the Authority that following this closely *"was a deliberate strategy and one which [he] was fully in control of at all times"*.
41. Officer A said, in interview with the Authority, that he told Officer B that if the fleeing driver hit the centre of the roundabout at Ninth Avenue he's going to *"bounce off it"*. Officer A said that because of this he backed off from the fleeing driver just before the roundabout in order to give him a chance to slow down and *"perhaps make a decision to cross back over into the correct lane"*. Officer B confirms this.
42. Officer A told the Authority that he continually assessed the risks related to driving on the wrong side of the road. Officer A was concerned that the fleeing driver would turn right down one of the exiting avenues off Cameron Road and that if he remained on the correct side of the road and therefore the opposite side of the centre median strip he would be disadvantaged in his pursuit.
43. Officer A also considered that because the pursuit was taking place in the inner most central lane, closest to the median strip, it gave other vehicles the option to pull to the left or exit Cameron Road. He also factored in the time of night (it was 3.10am), the good road conditions, the lack of traffic and the fact that it was a straight road and he could see ahead as far as Sixth Avenue if other cars were coming towards him.
44. Officer A told the Authority that he thought his decision to drive on the wrong side of the road was *"justifiable under the circumstances"*. He has subsequently told the Authority that he felt that he had *"an obligation to warn any possible approaching vehicles of the fleeing driver's actions"*. Officer A further said that *"if [he] had been on the correct side of the road the attention of any possible approaching drivers would have been diverted to his lights and siren and therefore averted from the fleeing driver, which would clearly be a danger"*.
45. It is clear to the Authority that Officer A did conduct a continuous risk assessment as required by policy. However the Authority has concluded that Officer A did not give enough weight to the increased risk created by him driving at almost double the speed limit, on the wrong side of the road and at such a close following distance. Officer A's failure to consider the risk posed by his own driving behaviour was compounded by the fact that the reason for the pursuit was theft of a motor vehicle. The fact that the offenders had committed the more serious offence of aggravated robbery was unknown to the officers at the time.

46. There are a number of side streets along Cameron Road which unsuspecting motorists could have come out of and into the path of the pursuit.
47. In addition, the Authority believes that the pursuit may have placed the fleeing driver under further pressure, leading him to take greater risks with his driving.
48. In addition the CCTV camera shows that Officer A failed to slow to 20kph when entering the intersection of Cameron Road and Elizabeth Street on a red arrow as required by the Land Transport (Road User) Rule 2004.
49. This rule requires Police, when undertaking a pursuit, to reduce speed to not more than 20kph when proceeding against a red light, stop or give way.

FINDINGS

Officer A did not comply with the fleeing driver policy in respect of his manner of driving. He followed the stolen car too closely, at high speed and on the wrong side of the road for a kilometre. These actions in combination placed the fleeing driver, members of the public and Police at unjustified risk.

Officer A should have slowed to 20kph when entering the intersection of Cameron Road and Elizabeth Street.

Ongoing Risk Assessment and the Option of Abandonment

50. The fleeing driver policy requires a pursuing officer to carry out a risk assessment both before and during the pursuit and to abandon if the risks outweigh the need to immediately apprehend.
51. Due to the pursuit's short duration, there was not enough time for the pursuit controller (the NorthComms Shift Commander) to become involved in directing the pursuit.
52. Officer A told the Authority that had the pursuit continued past the Ninth Avenue roundabout he would have considered abandoning it as there was a major intersection coming up.
53. During his interview with the Authority, Officer B said that by the time they reached the roundabout at Ninth Avenue they "would definitely have needed to have taken some other action".
54. As it happened the fleeing driver hit the side of this roundabout and crashed before any such action could be taken.

FINDING

Given the pursuit's short duration, Police did not have time to consider the option of abandonment before the crash occurred.

CONCLUSIONS

55. 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.
56. Pursuant to section 27(1) the Authority has formed the opinion on the balance of probabilities that Officer A's actions in driving at high speed on the wrong side of the road at a distance of only 2 – 3 car lengths behind the Toyota were unjustified.
57. The Authority is aware that Officer A has undergone further training following this incident. In light of this, the Authority makes no recommendations.

ONGOING DISCUSSIONS WITH POLICE

58. As expressed in other reports, the Authority wishes to confirm that it is working with Police on a review of policies connected with the pursuit of fleeing drivers, which is well advanced. This is due to the conflict between the often prescriptive nature of the relevant polices and the reality of a fast-paced, time-pressured situation.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

1 May 2014

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 has 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;
- 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 can make findings and recommendations about Police conduct.



IPCA

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