

Fatal pursuit of Morocco Tai in Auckland

INTRODUCTION

1. At about 5.50am on 9 October 2017 an off-duty officer saw what he believed to be a stolen car being driven on the Mount Wellington Highway. He followed the vehicle until the driver, Morocco Tai (aged 15), stopped outside a residential address. Mr Tai approached and briefly spoke to the off-duty officer, then got back into the car with two passengers, Ms X and Ms Y (both aged 16), and drove away.
2. Meanwhile, three patrol vehicles were en route to the scene. Police proceeded to engage in a short pursuit with Mr Tai before he lost control of the vehicle and crashed into a tree on Bairds Road, Otara. Mr Tai died at the scene. The two female passengers survived but sustained serious injuries.
3. 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

4. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
5. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.

Summary of events

6. At about 5.50am on Monday 9 October 2017 an off duty police officer, Officer A, was driving to work in his personal vehicle when he saw a Honda Torneo at an intersection with the Mount Wellington Highway in Otara. He stopped behind the vehicle at a red light and noticed that:

“There were four occupants in the vehicle and they were of a small stature. The person in the rear left seat ... was moving around like they had no seatbelt on. Honda Torneos are vehicles that I know through my experience are often stolen.”

7. Officer A followed the vehicle onto the motorway and “noticed it was being driven erratically by moving side to side within the lane” at speeds of up to 110kph. Due to the time of day, the manner of driving, and the appearance of the occupants, Officer A was concerned that the vehicle may have been stolen. He completed a vehicle registration check on his Police mobility device which indicated the vehicle was likely to be a stolen vehicle, so he called 111 to notify the Northern Police Communications Centre (NorthComms).¹
8. Officer A advised NorthComms that he was an off-duty Police officer and that he was following what he believed to be a stolen vehicle. He continued to travel behind the vehicle as it exited the motorway towards Otara Road and travelled through a red light. The vehicle carried on into Gilbert Road and then Bentley Road, where it stopped outside a residential address and the occupants (Mr Tai, Ms X, Ms Y, and Mr Z) exited the vehicle. Mr Tai was later determined to have been the driver.
9. At 5.56am NorthComms notified East Tamaki Police that an off-duty officer had followed a stolen vehicle to Bentley Road. Officers B, C, D, E, F, and G left the Ormiston station in three patrol cars with lights and sirens on.
10. Meanwhile, Officer A parked his car nearby on Bentley Road and stayed on the phone to NorthComms. He told the Authority that he initially parked some distance away from the address with the intention of observing the vehicle until marked Police patrol units arrived. He then decided to pull up closer to the address when the occupants got out of the vehicle, as he thought that they had realised he was following them and they might run away.
11. Contrary to what he had anticipated, Officer A observed the occupants lingering in the vicinity. Mr Tai then approached Officer A’s vehicle.
12. Mr Tai leaned down to look at Officer A through the partially opened front passenger window. Officer A told the Authority that he believed Mr Tai was coming over to question what he was doing.
13. Officer A believed that Mr Tai was “trying to check out whether I [was] by myself.” He said that he kept his car doors locked and did not initially tell Mr Tai that he was a Police officer as he felt that Mr Tai was a threat to him. Instead he asked Mr Tai who the vehicle belonged to, to which Mr Tai replied that it belonged to his brother.

¹ A ‘mobility device’ is either an iPad or an iPhone that Police officers carry in their vehicles and can use to access Police databases.

14. NorthComms recorded Officer A saying to Mr Tai:

“Yeah whose car is that? Whose car is that? Which brother? Eh? You’re gonna get locked up. Eh? I’ll lock you up. Get on the fucken ground, get on the ground, yeah get on the ground it’s a stolen car.”

15. During this time Officer A remained in the car and spoke to Mr Tai through the passenger window.

16. Mr Tai then returned to the Honda and he, Ms X (rear left passenger), and Ms Y (front passenger) got back into the vehicle. Mr Z remained at the address on Bentley Road.

17. Ms X later told the Authority that when Mr Tai returned to the car:

“I think he said that there was Police on their way or something ... he said that [Officer A] rang the Police and then he said we just gotta go.”

18. Mr Tai drove away from the address at speed, travelling towards Gilbert Road. Officer A followed the vehicle at a distance of about 300 metres until he saw a marked patrol car (Officers B and C) arrive at the intersection of Bairds Road and Gilbert Road and engage in a pursuit with Mr Tai. Officer A then stopped following and carried on his way to work.

19. Officers B and C had deactivated their patrol car’s siren as they got nearer to Gilbert Road, intending to make a ‘silent’ tactical approach which would give them the opportunity to lay road spikes.² Officers D and E were in another patrol car behind them, while Officers F and G had taken an alternative route in an attempt to contain Mr Tai if he drove off in a different direction.

20. As Officers B and C pulled into Gilbert Road from Otara Road, they saw Mr Tai’s vehicle travelling in the opposite direction. Officer B reactivated the patrol car’s lights and sirens, did a U-turn, and followed the vehicle as Mr Tai turned left onto Bairds Road. Officers D and E were close behind the patrol car driven by Officer B and they too conducted a U-turn and followed Officer B and C’s patrol car.

21. Although Officer B had activated the red and blue flashing lights and sirens to signal Mr Tai to pull over, Mr Tai began to accelerate away so Officers B and C initiated a pursuit and advised NorthComms.³ Officers D and E travelled approximately five to ten metres behind them while Officers F and G also joined the pursuit a few seconds later on Bairds Road.⁴

22. Officer B recalled that at the time of the pursuit the traffic volume was low, and it was dark but the streets were well lit and visibility was good. He was able to see clearly ahead, and estimated that Mr Tai was driving at approximately 90-100kph (in a 50kph zone) as they matched his speed and followed about 30 metres behind.

² Police refer to road spikes as tyre deflation devices (TDD).

³ Officers B is a Gold class driver, enabling him to engage in pursuits and urgent duty driving. Officer C is a Silver class driver and was the passenger providing radio communications.

⁴ Officer D is a Silver class driver but his passenger, Officer E, is a Gold class driver, enabling them to engage in the pursuit.

23. Mr Tai drove on the correct side of the road but travelled through a red light at the East Tamaki Road intersection with Bairds Road, continuing at 95-100kph. Officer B slowed down before proceeding through the red light at the intersection, increasing the distance between the two vehicles.
24. Officers B and C were then only able to see the vehicle's tail lights approximately 100 metres ahead as it approached a small rise in the road. They lost sight of the vehicle as it went around a corner and Officer B advised Officer C that *"the pursuit [is] now unsafe and [we are] going to abandon."*
25. Officer B said that Officer C was unable to get through on the radio to advise NorthComms that they were abandoning the pursuit, so he decided to continue driving along Bairds Road at a reduced speed until Officer C could contact NorthComms.
26. Officer C, however, said they did not have time to tell NorthComms that they were abandoning the pursuit because a couple of seconds later, they rounded a corner on Bairds Road and saw that Mr Tai had crashed the vehicle into a tree on the right hand side of the road. The pursuit lasted one and a half minutes over a distance of two kilometres. The crash occurred at 6.05am.
27. Officer B advised NorthComms that the vehicle had crashed and they would require fire and ambulance services to attend immediately. Officer C approached the vehicle and tried to open the driver's side doors but they were jammed shut. Officer B joined him and used a glass breaker to break the driver's side window so he could check for the vital signs of Mr Tai, who was unresponsive but still breathing.
28. Officers D, E, F, and G arrived at the scene within a minute; Fire and Ambulance shortly after. Police set up cordons across the road while the Fire services began to cut the car, enabling paramedics to provide emergency medical assistance to the vehicle's occupants.
29. The paramedics attempted to resuscitate Mr Tai but he died at the scene.
30. Ms X and Ms Y were trapped in the vehicle for approximately 75 minutes before being released and taken to Middlemore Hospital. They sustained significant injuries which required extensive stays in hospital and ongoing medical treatment.

Police investigation

31. Police conducted a criminal investigation which determined that the officers involved were not liable for their actions during this incident.
32. The toxicology report identified that Mr Tai was under the influence of alcohol at the time of the incident. The results showed that he had 22 milligrams of alcohol per 100 millilitres of blood. The legal blood alcohol limit for New Zealanders under 20 years of age is zero milligrams of alcohol per 100 millilitres of blood.

THE AUTHORITY'S INVESTIGATION

33. As part of its investigation the Authority interviewed Officers A, B, and C, Ms X and Ms Y. The Authority also visited the scene and reviewed documentation provided by Police.

THE AUTHORITY'S FINDINGS

34. The Authority identified and considered the following issues:
- 1) Was it appropriate for the off-duty officer, Officer A, to intervene?
 - 2) Did Police comply with the law and Police policy when engaging in the pursuit with Mr Tai?

Issue 1: Was it appropriate for the off-duty officer, Officer A, to intervene?

35. Police policy states that the powers and responsibilities of constables apply 24 hours a day and that off-duty officers are justified in taking lawful, appropriate action in situations where they believe intervention or assistance is necessary.⁵
36. Officer A saw what he believed to be a stolen vehicle travelling on the motorway, so he called NorthComms to report the incident and identified himself as an off-duty officer, as per Police policy. He decided to follow the vehicle while staying on the phone to NorthComms, to provide updates of the vehicle's whereabouts so Police could be dispatched to attend.
37. Officer A was particularly concerned that the occupants of the vehicle were young and that the car was being driven unsafely on the motorway and later driven through a red light. He was aware that this could have exposed the occupants, or members of the public, to risk. He therefore decided to follow the vehicle until marked patrol units could take over.
38. When Mr Tai arrived at the address on Bentley Road, he and the other occupants got out of the car and remained in the vicinity. Mr Tai approached Officer A's vehicle to speak to him.
39. Officer A said his intention was to stay at the location to observe the situation until assistance could arrive. He had not anticipated speaking with the occupants, as he believed they would likely flee from the stolen vehicle once they pulled over.
40. When Mr Tai approached, Officer A spoke to him through the open passenger window and challenged him about who owned the vehicle.⁶ Officer A told the Authority that he said this to Mr Tai in an attempt to encourage Mr Tai to move away from his vehicle. Officer A said:

"I was trying to come up with something to say in order to delay taking immediate action and hoping back up staff wouldn't be too far away."

⁵ See paragraphs 55-59 below for relevant policy.

⁶ See paragraph 14 above.

41. Officer A said he initially decided not to identify himself as a Police officer or get out of the car for a number of reasons, including that he:
- a) was concerned that Mr Tai may attempt to damage, enter, or steal his car;
 - b) was not familiar with the address and did not know who or how many people may be in the house;
 - c) was conscious that the occupants of the vehicle may have weapons;
 - d) believed Mr Tai may try to assault him; and
 - e) was outnumbered as he was alone.
42. Based on the above assessment, Officer A believed it was safest to remain in his car and stay on the phone to NorthComms while maintaining sight of the occupants so he could provide updates as the situation progressed.
43. When Mr Tai returned to the vehicle and drove away, Officer A initially followed Mr Tai but he withdrew approximately 300 metres later when he saw a marked patrol vehicle arrive to take over.
44. Officer A did not intentionally become directly involved in the incident, although he spoke to Mr Tai when approached, in the hopes he could delay Mr Tai taking any further action until Police arrived. The Authority is satisfied that it was appropriate for Officer A to intervene, and to follow Mr Tai until Police arrived to assist. His actions complied with Police policy.

FINDING

It was appropriate for Officer A to intervene in this incident.

Issue 2: Did Police comply with the law and Police policy when engaging in the pursuit with Mr Tai?

45. NorthComms advised East Tamaki Police that Mr Tai was driving a stolen vehicle. Under section 9 Search and Surveillance Act 2012, Police have the power to stop a vehicle without a warrant and arrest a person if they have reasonable grounds to suspect that the person has committed an offence punishable by imprisonment.⁷ Stealing a car is an offence punishable by imprisonment, so Officers B and C had the lawful authority to request Mr Tai to stop.
46. Officers B and C pulled into Gilbert Road in a marked patrol car (without lights and sirens activated) and saw a vehicle with the registration which matched the details provided by NorthComms. Officer B activated his patrol car's lights and sirens to signal Mr Tai to stop but he failed to do so, and Police initiated a pursuit.⁸

⁷ See paragraph 60.

⁸ See paragraphs 61-65 for relevant policy.

47. NorthComms warned Officers B and C that *“if there is any unjustified risk to any person you must abandon pursuit immediately”* which Officer C acknowledged.
48. Officers B and C assessed the environmental conditions and the risk posed by Mr Tai before and during the pursuit. They initially felt comfortable that the road conditions and speed of driving were safe given the time of day and low traffic volume.
49. Officers B and C, in the lead pursuit vehicle, matched Mr Tai’s speed (approximately 90-100kph in a 50kph limit) along Bairds Road approaching the intersection with East Tamaki Road. CCTV footage reviewed by the Authority confirms that Officers B and C were travelling approximately 30 metres behind the stolen vehicle, with Officers D and E approximately 30 metres behind them. The third patrol vehicle (Officers F and G) was approximately 200 metres behind Officers D and E.
50. As Mr Tai drove through a red light at speed, Officer B slowed down to look for traffic before following, resulting in Officers B and C losing sight of the fleeing vehicle as it continued ahead. The Authority accepts that they agreed to abandon the pursuit when they lost sight of Mr Tai, before he crashed.
51. Once they arrived at the crash scene, Officer B provided NorthComms with a situation report, advising of their location and details about the occupants of the vehicle, all three of whom were unconscious and non-responsive at the time. Officers B and C immediately attended the scene and requested additional emergency services to assist.
52. The Authority is satisfied that Officers B and C complied with the law and Police policy throughout this incident.
53. Police policy states that no more than two vehicles should be directly involved in a pursuit.⁹ In this instance there were three patrol vehicles in attendance. However, Officers F and G were a significant distance behind the first two patrol cars as they had initially taken an alternate route to the address in order to contain Mr Tai if he drove away in a different direction. Officer G said they were far enough behind that they could not see the stolen vehicle or pursuing patrol cars ahead. As they approached the intersection with East Tamaki Road, they heard on the radio that Mr Tai had crashed into a tree, meaning they would have been approximately 350 metres away from the crash scene at this time. The Authority is therefore satisfied that they were not directly involved in the pursuit.

FINDING

Police complied with the law and Police policy before and during the pursuit.

⁹ See paragraph 65.

CONCLUSIONS

54. The Authority finds that Officer A complied with Police policy by intervening in this incident as an off-duty officer. The Authority is also satisfied that Officers B and C complied with the law and Police policy when they attended the incident and engaged in a pursuit with Mr Tai.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

2 August, 2018

IPCA: 17-0774

Off-duty officer intervention policy

55. The powers and responsibilities of constables apply 24 hours a day and nothing prevents an off-duty constable from taking lawful, appropriate, and justified action in situations where they believe intervention or assistance is necessary in the circumstances.
56. Where practicable, it is preferable to observe and call in on-duty staff to deal with the incident. Call a Communications Centre to report the incident and identify yourself as a constable to the call taker.
57. Before deciding to intervene, constables should consider the TENR (Threat-Exposure-Necessity-Response) principles. Off-duty officers should consider:
 - How serious is the offending?
 - Does action need to be taken immediately to resolve the situation or can it wait for on-duty constables to arrive?
 - Will the off-duty officer's actions breach the law in any way?
58. If a constable decides to intervene or provide assistance, they must seek on-duty constable as soon as is practical and follow normal Police procedures (as far as possible in the circumstances) until the suspect is handed over to on-duty constables.
59. If practical, the constable should present their Police identification or clearly identify themselves to the offender and any bystanders as an off-duty officer. They should continually re-assess the situation and withdraw if it becomes difficult to safely or effectively resolve the situation.

Legal power to stop drivers

60. Section 9 of the Search and Surveillance Act 2012 allows Police to stop a vehicle without a warrant to arrest a person, if the constable has reasonable grounds to suspect that a person has committed an offence punishable by imprisonment.

Fleeing driver policy

61. The decision to commence, continue, or abandon a fleeing driver pursuit must be continually assessed and reassessed in accordance with the TENR (Threat-Exposure-Necessity-Response) risk assessment tool. The overriding principle of the Police fleeing driver policy is that: "Public and staff safety takes precedence over the immediate apprehension of the offender".
62. During a pursuit, warning lights and siren must be simultaneously activated at all times. The Communications Centre must also be advised immediately if there is a fleeing driver and a pursuit has been initiated.

63. The pursuing staff member who is responsible for undertaking radio communications should provide the pursuit controller with timely and consistent situation reports (when it is safe to do so). Where additional information is required or yet to be transmitted, the dispatcher or pursuit controller should prompt for the required details. The lead vehicle driver must also comply with all directions from the pursuit controller.
64. The policy states that no more than two vehicles should actively participate in a fleeing driver pursuit unless they are preparing tactical options, undertaking a temporary road closure, or responding to a Pursuit Controller direction.
65. As part of a flexible response model, all suitable tactical options should be considered, or requested, to safely apprehend the fleeing driver. This may include not pursuing or abandonment.

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 Colin Doherty.

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.

This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
