

REPORT OF THE POLICE COMPLAINTS AUTHORITY ON THE INVESTIGATION INTO A SERIOUS INJURY CRASH IN AUCKLAND ON 14 NOVEMBER 1998

Introduction

At about 5am on 14 November 1998 in Auckland Robert Stevens was driving a stolen Subaru Legacy station wagon west on Greenlane West and was being pursued by two Police vehicles. He ran a red light at the intersection with The Drive. At that time his speed was approximately 120kph. He collided with a Toyota Corolla travelling north. It had a green light in its favour. Mr Ray Neal was the driver of that car. He was accompanied by his wife. They had driven down that morning from Northland to welcome Mrs Neal's son at the airport. He was returning from a working holiday in the United States.

The crash was horrendous. The Subaru did not brake before impact. The Toyota was propelled spinning in a westerly direction along Greenlane West Road. It finally came to rest 65m from the point of impact.

According to Police the driver of the Subaru climbed over an unconscious front seat passenger and fled the scene. A Police dog from the Police van leading the pursuit caught him about 30m from his vehicle just as he was attempting to scale a fence.

Mr and Mrs Neal suffered very serious injuries.

There were four passengers in the Subaru, two men and two women. Only one suffered serious injury.

Charges laid against Robert Stevens

The driver of the Subaru faced serious traffic charges arising from the events of this night. He also faced very serious criminal charges arising from events which had led to the taking of the Subaru car.

He pleaded guilty to the traffic charges and on 14 July 1999 he was convicted and sentenced to a total of three and a half years imprisonment on three charges of reckless driving causing injury, one of driving while disqualified, and one of failing to ascertain injury after an accident.

The Subaru had been taken from a dwelling house after a break-in about 6am on 30 October 1998. It was used to transport stolen property from the house. The sole occupant of the house was woken from sleep and seriously assaulted and left bound hand and foot.

Arising from this event Stevens faced charges of aggravated robbery and kidnapping. He pleaded not guilty to both charges. However after a jury trial he was found guilty on both. On 29 October 1999 he was sentenced to eight years imprisonment on each charge. The total term of eight years was made cumulative on the previous sentence of three and a half years imposed on 14 July 1999.

It was not possible to release this report until the conclusion of the Court proceedings.

Events leading up to the serious injury crash

On Saturday 14 November 1998 about 4.41am Stevens was stopped while driving the Subaru Legacy. As has been noted there were four other occupants in the vehicle. The vehicle was stopped for routine licence and vehicle checks. A Constable asked the driver his name. Stevens correctly gave his full name and date of birth. The officer then recognised the front-seat male passenger. He was a well known and ranking gang member. Police conducted radio enquiries. They were informed that the car was a stolen car. What is more they were advised to exercise extreme caution as the car was believed to have been taken at the time of a serious aggravated robbery. Police called for back-up. A few minutes later a patrol car arrived. A decision was made to request the keys from the driver of the Subaru. An officer approached the car for this purpose whereupon the Subaru took off at high speed. The two Police vehicles set off in pursuit.

It was pursued for 1.6kms through the central city and environs before the driver eluded Police.

A description of the vehicle was broadcast to all patrols. These broadcasts included information that the Subaru was linked to a recent serious aggravated robbery of the type now commonly described as a home invasion.

Second pursuit before the crash

Some fifteen minutes after the Subaru evaded them Police located it again. A member of the public had reported seeing it travelling at speed with its hazard lights flashing. A Police dog patrol unit headed for the area where it had been seen. Shortly after that the unit was travelling south on St Johns

Road. The driver of the unit was alone. He recognised the Subaru when it passed him travelling in the opposite direction. He turned and pursued it with lights flashing and siren sounding. The Subaru did not stop. It accelerated away at about 90kph. So began the second pursuit of this vehicle which was to carry on for a distance of 18.1kms before it crashed.

A second Police vehicle, a patrol car, soon joined the pursuit. There were two officers in that car. The passenger took over the radio commentary with the Communications Centre to free the driver of the dog unit so that he might concentrate on his driving and the apprehension of the other vehicle.

Over the course of the pursuit the Subaru was driven at speeds which ranged from 60kph to 120kph. However the pursuing Police report that speeds in excess of 100kph were not reached until near the conclusion of the pursuit. During the pursuit the Subaru travelled through six red traffic lights and two compulsory stop signs. Police report however that the driver slowed at intersections before going through whether the intersections were controlled by traffic lights or stop signs.

The evidence discloses that there was a significant increase in speed just prior to the crash. The Subaru travelled along Greenlane West through green traffic signals at Great South Road and Wheturangi Road. At that time its speed was about 110kph. It then crossed onto the incorrect side of the roadway to overtake another vehicle travelling in the same direction. There was no other traffic about at that time.

The dog unit was at this time about 300-400m behind the Subaru and the other patrol vehicle 100-150m behind the unit.

The Subaru continued to increase speed and reached a speed of about 120kph while passing Greenlane Hospital grounds.

The driver of the dog unit records that at this point the manner of driving of the Subaru was a lot more dangerous and its speed was higher than it had been previously. His decision then was that he would back off and no longer pursue the Subaru but would attempt to monitor it from a distance. The passenger in the following patrol car states that at that time the dog van slowed down by about 20-30kph and the patrol car did the same.

The Subaru continued at speed and proceeded against a red light into the intersection where the crash occurred. After the crash Police immediately went to the aid of the victims and it appears that their skills in first aid in swiftly dealing with injured persons may well have saved lives.

Evidence of independent witness

The only independent witness was a truck driver who was preparing to go to work at this very early hour. He lives in a flat on the corner of the intersection of Manukau Road and Greenlane West. This intersection is some 400m from the intersection where the crash occurred. He heard sirens in the distance. He looked from his bedroom window and saw a car flash through the intersection speeding along Greenlane West to its intersection with The Drive. That car would have been the Subaru. He said he could not estimate its speed "*but it was motoring*". It was, he said, way over the limit. This witness could see up Greenlane West whence the car had come for some 72m. He said that after the car went through the intersection the Police cars were not yet in sight. He said they came into sight a few seconds after but he could not recall exactly when. He said there was no other traffic around. He did not see or hear the crash.

Evidence of Robert Stevens

In the course of a video interview speaking of events just before the crash Mr Stevens stated that he was approaching a red light and he was travelling at about 120kph. He stated that the vehicles in pursuit were close behind him, however at that point he believed that some of them started to back off. He saw the other vehicle involved in the crash travel through the green light from his left. He said that he swerved left to avoid hitting the other vehicle. However he said that he believed that he was nudged from behind by a Police vehicle causing him to veer to the right so that he hit the other vehicle.

In the course of this interview he also claimed that he did not try and flee from the scene.

I am satisfied that the investigation has established that Mr Stevens was mistaken in his belief that he was nudged by the dog unit. Paint analysis by an ESR scientist establishes this. This conclusion is reinforced by the relative placement of vehicles by the independent witness when they were only 400m from the crash site. Other evidence confirming this is a photograph showing the point where the dog unit stopped and the complete absence of any brake marks from it.

Was the pursuit justified?

There are two main reasons to initiate pursuits. The first is the so-called imperative pursuit where a Police officer sees an existing risk to the public that demands immediate action. The second is an elective pursuit where a driver is signalled to stop for a relatively minor offence and then speeds off to avoid capture.

The Police investigation has categorised this incident as an imperative pursuit. I agree. The dangerous driving of the Subaru prior to the pursuit, as reported by the civilian witness, was seen by the officers

as an important reason for undertaking the pursuit. Further, home invasion type aggravated robberies are, with good reason, of great concern to the public. There have been a number of homicides as a result of such robberies. It is not overstating the case to say that to apprehend suspected home invaders may potentially save lives and help to guarantee the safety of persons within their own homes.

In this case the driver of the Police dog unit said that the driver of the Subaru was known to him as someone who had committed serious violent offences. He said that, because of the circumstances surrounding the taking of the vehicle and his knowledge of the driver, he believed that it was imperative that the vehicle be stopped and the driver apprehended.

The officer who was a passenger in the patrol car said that a reason that car joined in the pursuit was because of the serious nature of the offence surrounding the taking of the Subaru and the officer said that she also had had previous dealings with the driver and she knew that he had a history of violent offending.

Did the pursuit conform with General Instructions relating to motor vehicle pursuits?

There has been an extremely thorough investigation of all aspects of this pursuit. I am satisfied that there is no need for me to direct any further investigation. I agree with the conclusions reached by senior Police that there was compliance with General Instructions relating to pursuits.

When the pursuit began the driver of the dog unit immediately advised the Communications Centre that a pursuit had commenced. The link with the Centre was taken over by the patrol car when it joined the pursuit. The pursuit was closely monitored from the Centre.

As required by General Instructions both vehicles activated flashing lights and sirens.

I endorse the view expressed by a former superintendent in charge of the Traffic Safety Branch that the Police vehicles were driven safely in spite of speeds at times reaching in excess of 100kph.

As he pointed out this was early morning, traffic was exceptionally light, road conditions were good and visibility was excellent.

In this case the use of road spikes, although contemplated, did not become a realistic option because of the short time factor involved in the pursuit linked to the obvious difficulty of predicting what route might be taken by the Subaru within the extensive boundaries of suburban Auckland.

Radio communication with the Communications Centre

I have considered the report from the Inspector in charge of the Northern Communications Centre. He was the nightshift duty shift manager during the pursuit. He confirms that the Vehicle Pursuit Policy was followed. He notes that at the outset the despatcher issued the prescribed warning to officers that they were to abandon the pursuit if it became a danger to others or to themselves.

He records that near the end of the pursuit the driving pattern changed as the Subaru started to speed up. When the Inspector heard the speeds reported he told the despatcher to order the pursuit stopped but the accident occurred before the direction could be given, although by then the two Police vehicles had already implemented their decision to slow down.

I am satisfied that the Communications Centre and the driver of the dog unit were very alert to the necessity of abandoning this pursuit if it became dangerous. They had been given explicit directions to that effect and were implementing them at the time of the crash.

I am satisfied from the information available that there was continual and precise dialogue between the Communications Centre and Police officers involved.

Miscellaneous matters arising from this investigation

In the course of the investigation questions were raised as to the use of the dog vehicle as the lead vehicle in the pursuit. The matter was fully investigated by senior officers. The conclusion was that there was no evidence to suggest the involvement of that van in the chase was contrary to policy or a contributing factor to the crash.

The driver of the vehicle had been involved in a number of pursuits and was familiar with the Police Pursuit Policy. I accept that the involvement of the van in no way contributed to the crash. However I do note a comment made by the driver. When he was the only pursuit vehicle he records that he was giving sitreps as to where vehicles were. He made the comment that it is a difficult position to be in, being a sole occupant of a vehicle and being required to drive and operate the radio at the same time.

I am aware that the reason for a dog handler being in pursuit situations is to be on hand to track an offender early. This of course is what happened successfully in this case.

In view of the problems in maintaining radio communication for a dog handler alone in his vehicle I believe that Police acted prudently in this case by arranging for the passenger in the following car to take over that duty.

Another matter which was raised during the course of the investigation was whether tiredness involving staff at the Communications Centre may have played any part. Senior Police were alerted to this by the report from the Inspector in charge of the Northern Communications Centre who pointed out that it was near the end of a nightshift that this occurred and, as Police had just changed over from day shift, some had been on duty for a lengthy period.

The matter has been fully investigated and I am satisfied that tiredness in no way impaired the quality of communications with the pursuing cars on that night.

Conclusion

This was a most tragic accident. Mr and Mrs Neal were the innocent victims of criminal behaviour. They suffered very serious injuries. What was to have been a joyful occasion welcoming a son returning from overseas was transformed into a nightmare. I am satisfied that the blame for this must lie fairly and squarely with the driver of the Subaru. The investigation does not reveal any evidence of Police misconduct or neglect of duty in carrying out the pursuit.

In this case as in many pursuit situations the dilemma faced by Police officers is just how to balance the risk to the general public flowing from a pursuit against allowing suspects for a serious crime to escape to the likely detriment of the same general public.

This is a problem which is acutely raised especially in cases of imperative pursuits.

However Police General Instructions lay down very strict guidelines which must be followed in such situations. These are particularly designed to minimise risk to the public.

I am satisfied that on this occasion those General Instructions were followed.

I associate myself with commendations of the Police officers in respect of their actions at the scene in assisting the crash victims.

Finally I express my profound sympathy to Mr and Mrs Neal.

Judge I A Borrin
DEPUTY POLICE COMPLAINTS AUTHORITY
21 December 1999