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Fatal pursuit resulting in the deaths of Jaycheree Makakea and Joseph Tawhai

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 8:51pm on 17 September 2010, a Honda Integra driven by Aaron Tulafono, aged 20, crashed into two power poles at an intersection in Onehunga, Auckland, following a short police pursuit. There were four passengers in the vehicle including Jaycheree Makakea and Joseph Tawhai, both aged 20. Ms Makakea and Mr Tawhai died at the scene of the crash. The two other passengers suffered serious injury. Mr Tulafono survived the crash without 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. At about 8.49pm on Friday 17 September 2010, Mr Tulafono was driving a Honda Integra on Seacliffe Road in Onehunga. Ms Makakea was in the left rear passenger seat, and Mr Tawhai was in the centre rear passenger seat. The group had just shared one cannabis cigarette and the rear seat passengers had been drinking. The Honda was owned by one of the occupants.
4. At the same time Officer A and Officer B were patrolling the Hillsborough and Onehunga area of Auckland in response to reports that a laser¹ was being directed into the eyes of motorists from a motorway over-bridge.

¹ It has not been established that the occupants of the Honda were involved in the laser incident.

5. Officers A and B were in an unmarked category B patrol car. Category B cars are suitable for participation in pursuits, but should be replaced with a marked category A patrol car at the first available opportunity. Officer A was the driver of the vehicle and held a gold classification license under the Police Professional Driving Programme (PPDP) and was therefore qualified to engage in pursuits as the lead driver. Officer B was responsible for operating the radio and communicating with the Police Northern Communications Centre (NorthComms).
6. While driving along Seacliffe Road the officers saw the Honda travelling in the opposite direction and decided to pull it over and speak to the occupants to find out whether they were responsible for using the laser.
7. The officers wanted to obtain the registration details, so followed the Honda, at the 50kph speed limit, for a short time until they reached Hendry Avenue. They then checked with NorthComms to see if the Honda was stolen.
8. Mr Tulafono drove the Honda down Hendry Avenue, a dead-end street, before performing a u-turn. Officer A positioned the patrol car so that its headlights lit up the Honda, revealing five young occupants, including a male driver. Neither of the officers recognised any of the occupants.
9. Officer A activated the patrol car's warning lights indicating to Mr Tulafono that he was required to remain stopped.
10. Mr Tulafono ignored the warning lights and sped off, past the police car, along Hendry Avenue towards Queenstown Road. According to the surviving passengers, Mr Tulafono ignored their pleas for him to pull over and stop.
11. As the officers followed the Honda back along Hendry Avenue, it was clear to them that Mr Tulafono was attempting to evade apprehension and, at 8.49pm, as required under Police pursuit policy, Officer B advised the NorthComms dispatcher that they were in pursuit on Queenstown Road. He also advised the registration number of the Honda and that there were five occupants.
12. Police pursuit policy requires that once a pursuit has been commenced, the communications centre dispatcher must give the warning: *"If there is any unjustified risk to any person you are to abandon pursuit immediately. Acknowledge."* The NorthComms dispatcher gave the warning but Officer B did not acknowledge it, as required by the policy, and the dispatcher did not prompt Officer B for his acknowledgement.
13. As soon as the pursuit warning was given, Officer A activated the siren. Officer B then advised the dispatcher that the driver had turned onto Beachcroft Avenue and was heading

- towards Onehunga. Mr Tulafono made a right turn, at slow speed on the wrong side of the road and over a grass verge, onto Beachcroft Avenue heading towards Onehunga Mall.
14. The dispatcher then asked Officer B for the speed of the pursuit. Officer B advised that the speed was 80kph, that Officer A was the holder of a gold licence, that the police car was category B, and that the pursuit had just passed Arthur Street.
 15. The dispatcher immediately asked Officer B for the reason for the pursuit. Officer B advised that they were making enquiries regarding the use of the laser; and when they signalled to the driver of the Honda to pull over, he *“took off”*.
 16. The dispatcher was joined by a supervisor who assumed the role of ‘pursuit controller’ as required under the pursuit policy. For more on the roles of dispatcher and pursuit controller see paragraphs 57 and 58.
 17. Mr Tulafono continued down Beachcroft Avenue through a roundabout, which took him on to Church Street. The speed limit on Church Street is 50kph and Mr Tulafono reached speeds in excess of 100kph through this stage of the pursuit. Officer B advised the dispatcher of the speed and location of the pursuit, as well as the traffic conditions and weather.
 18. At the intersection of Selwyn Street and Church Street Mr Tulafono failed to stop for a red light.
 19. Officers A and B immediately made the decision to abandon the pursuit. Officer B advised the dispatcher:

“Going through the red light Comms, didn’t stop. Didn’t stop Comms. We’re abandoning Comms. Too dangerous.”
 20. At the same time, the pursuit controller had become concerned at the increasing risks in continuing the pursuit and instructed the dispatcher to order its abandonment.
 21. As required by the pursuit policy (see paragraph 53) the dispatcher, on the instruction of the pursuit controller, directed all units to abandon pursuit. Officer A starting slowing the police car and turned off the warning devices. A few seconds later, but before the police car had come to a complete stop, Officer B witnessed the driver of the Honda lose control and, realising that there was about to be a serious crash, he told Officer A, who reactivated the warning devices, increased his speed, and drove to the crash scene.
 22. Mr Tulafono had continued along Church Street at speeds later reported, by Officer A and the front seat passenger of the Honda, to be between 120-130kph. At the intersection between Church Street and Onehunga Mall Mr Tulafono clipped a kerb and lost control.

The car struck a traffic island and became airborne before striking an aluminium lamp post and then a concrete power pole. The Honda came to rest upside down.

23. Ms Makakea and Mr Tawhai died at the scene of the crash. The two other passengers suffered serious injuries.
24. Mr Tulafono managed to extract himself from the vehicle wreckage and ran from the scene before Officers A and B arrived.
25. The pursuit had lasted 1 minute 35 seconds and covered a distance of approximately 2.1 kilometres.

Environment

26. It was dark but Beachcroft Avenue and Church Street have good street lighting, are well sign-posted and have well sealed surfaces. The area has a mixture of light industrial, shop and residential properties and a speed limit of 50kph. At the time of the pursuit the weather was clear but the roads were wet.
27. Little traffic was encountered in the early stages of the pursuit. However, once the pursuit had entered Church Street more traffic was present, particularly around Onehunga Mall.
28. Church Street has one lane in either direction, separated initially by a painted white centre line. 200 metres before Onehunga Mall the lanes are separated by a 3.4 metre painted white centre line with chevrons². Both sides of the street have parallel parking spaces interspersed with yellow no parking lines and bus stops. The distance from the beginning of Church Street to the intersection with Onehunga Mall is 750 metres; within this distance, eight side streets come off Church Street.
29. Beachcroft Avenue has one lane in either direction, separated by a white centre line. Residential properties are along one side of the Avenue, while Onehunga Bay Reserve is on the other side. There is a mixture of yellow 'no parking' lines and parking spaces on both sides. The pursuit travelled along Beachcroft Avenue for about 900 metres; within this distance, four side streets come off Beachcroft Avenue.

Police crash analysis

30. The Honda was examined by an independent vehicle inspector who found that the vehicle was not of warrant of fitness standard. In particular, he found defects in the left front

² Slanted white lines between the two external and parallel lines, making a painted island separating the two lanes, about 3.4 metres wide.

brake components that would have caused a degree of brake imbalance. The inspector did not consider that this was a contributing factor in the crash.

31. The Police crash investigator could not determine the exact speed of the Honda when it crashed because the vehicle struck several objects (see paragraph 22) and its position changed as it continued forward after the initial impact. The investigator determined the vehicle was travelling at between 87kph and 131kph at the moment of impact and, on the basis of eye witness accounts, was of the view that its speed was likely to be over 100kph at that point.
32. The crash analysis investigator concluded:

“I believe the main causative factor in this crash was excess speed and the driver fleeing police. The vehicle did not play a part and the environment was satisfactory for drivers travelling at the prescribed limit.”

CCTV footage

33. Closed Circuit Television (CCTV) footage was obtained from two cameras.
 - The first is from a camera attached to a building at the corner of Beachcroft Avenue and Church Street, approximately 500 metres before the point at which the pursuit was abandoned. This footage shows both the Honda and the police car travelling at a speed significantly greater than other vehicles recorded on camera at the time.
 - The second footage was taken at the intersection of Church Street and Onehunga Mall. It shows the Honda airborne about to strike the power pole. 19 seconds later the patrol car arrives at the scene with warning lights activated. Another 19 seconds later a marked police car, also with warning lights activated, arrives at the scene.

Cause of death

34. The post mortem examinations of Ms Makakea and Mr Tawhai found that their injuries were consistent with a motor vehicle collision and would have caused immediate death.
35. The pathologist additionally reported that neither of the young people had bruising that would indicate that a seat belt was being worn at the time of the crash.
36. A coronial inquest has yet to take place.

Aaron Tulafono

37. Mr Tulafono was a disqualified driver at the time of the crash and had a number of convictions for driving whilst disqualified and one for driving with excess blood alcohol.
38. After initially running from the scene, Mr Tulafono surrendered to police some hours later. He said that he ran from the scene because he panicked.
39. Mr Tulafono was charged with the manslaughter of Ms Makakea and Mr Tawhai; dangerous driving causing injury to the other two passengers; failure to stop to ascertain injury after crash; driving whilst disqualified and failure to stop for blue and red flashing lights.
40. On 8 February 2011 Mr Tulafono pleaded guilty and was sentenced to six years and six months imprisonment.

Witnesses

41. In interview, one of the Honda passengers said that Mr Tulafono acted contrary to the wishes of all the other people in the car. The passenger added:

“It was more like telling Aaron to stop, he was telling us he couldn’t stop, cause of the disqualified driver and he reckons if he got caught he was off to jail.”

42. Several people on Church Street, or in the vicinity of Onehunga Mall, witnessed the Honda being driven through the red light and the subsequent collision. All witnesses, other than the three mentioned in paragraph 43 below, saw the unmarked police car some distance behind the Honda at the time of the crash. Several of these witnesses said the police car had slowed for the lights at the intersection of Church Street and Selwyn Street.
43. Three friends who were standing on Church Street at the time of the collision said that the patrol car did not slow down or stop for the red light at the intersection of Selwyn Street and Church Street but continued to pursue the Honda at high speeds along Church Street until the crash took place.

Toxicology

44. A sample of Mr Tulafono’s blood was taken for testing for alcohol and drugs following his surrender to police nearly five hours after the collision. No alcohol was detected but the test indicated the presence of cannabis
45. Officers A and B were breath tested following the pursuit and both returned a negative result.

LAWS AND POLICIES

Legislative authority for pursuits

46. Under the Land Transport Act 1998, police are empowered to stop vehicles for traffic enforcement purposes. Under the Crimes Act 1961, police are authorised to stop vehicles in order to conduct a statutory search or when there are reasonable grounds to believe that an occupant of the vehicle is unlawfully at large or has committed an offence punishable by imprisonment. Where such a vehicle fails to stop, police may begin a pursuit.

Police pursuit policy³

Definition

47. A pursuit 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.

Overriding principle

48. Under the Police pursuit policy, the overriding principle for conduct and management of pursuits is: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*

Risk assessment

49. Under the Police pursuit policy, before commencing a pursuit an officer is required to first undertake a risk assessment. This involves 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, traffic conditions, and capabilities of the police driver and vehicle. The officer must then *“determine whether the need to immediately apprehend the offender is outweighed by the potential risks of a pursuit to:*

- *the public*
- *the occupants of the pursued vehicle*
- *Police.”*

³ The Police policy in place at the time of this incident was called the pursuit policy. On 18 October 2010 the pursuit policy was replaced by the fleeing driver policy. All references to Police policy in this report relate to the pursuit policy unless otherwise stated.

50. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.
51. Throughout a pursuit, police must continue to assess the risks involved and must abandon it if the risks to safety outweigh the immediate need to apprehend the offender.

Communication requirements

52. When a pursuit commences, the communications centre must be notified. The communications centre must provide the warning referred to in paragraph 12, which the pursuing officers must acknowledge. The pursuing officers must provide information about the pursued vehicle, its location and direction of travel, and the reason for pursuit. The communications centre must prompt for information about speed, road and traffic conditions, weather, the offender's manner of driving and identity, and the pursuing officers' driver and vehicle classifications.

Abandonment

53. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The pursuit controller must then give the direct order *"All units, [Comms Centre] Alpha, abandon pursuit now. I say again, all units abandon pursuit now."*
54. The policy sets out the steps that must be carried out following a decision to abandon a pursuit:

| Step | Action |
|-------------|---|
| 1 | <i>Acknowledge the direction to abandon pursuit</i> |
| 2 | <i>Immediately reduce speed to increase the distance between the offender's vehicle and their own</i> |
| 3 | <i>Deactivate warning devices once below the speed limit</i> |
| 4 | <i>Stop as soon as it is safe to do so</i> |
| 5 | <i>Report abandonment to the pursuit controller, confirming that they are stationary and giving their position.</i> |

Roles and responsibilities

55. Under the policy, the driver of a police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, drive in a manner that prioritises public and police safety, continue to undertake risk assessments throughout the pursuit, comply with all directions from the pursuit controller (i.e. the shift commander at the police communications centre), and comply with all directions from a police passenger if the passenger is senior in rank or service.

56. The passenger in a pursuing vehicle must assist the driver by operating the radio and advising of possible hazards. If senior in rank or service, the passenger may also direct the driver to abandon the pursuit.
57. The dispatcher at the police communications centre must maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph 12, and communicate instructions from the pursuit controller.
58. The pursuit controller (i.e. the shift commander at the communications centre) is responsible for supervising the pursuit and coordinating the overall police response, and for selecting and implementing appropriate tactics. When a shift commander is unavailable, a communications centre team leader may take over as pursuit controller.

THE AUTHORITY'S FINDINGS

Commencement of pursuit

59. Officers A and B and their unmarked category B patrol vehicle were appropriately classified to undertake pursuits under the PPDP. Officer A was a 'gold' rated driver.
60. Mr Tulafono was signalled to stop under s.114 (2) of Land Transport Act 1998. Once he failed to stop, the officers were authorised to commence a pursuit.
61. Mr Tulafono's reaction to the signal to stop was to accelerate away in an attempt to avoid apprehension.
62. Before commencing and calling in the pursuit, Officers A and B assessed the risk factors involved in pursuing, including that the identity of the driver and passengers was unknown; traffic was light; visibility was good; and the road was wet but the weather was clear. The officers deemed that the risk involved in pursuing Mr Tulafono was justified and that it was prudent for them to continue.

FINDINGS

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

Communication

63. When it became apparent that the Honda driver was not going to stop, Officer B correctly notified NorthComms that they were in pursuit on Queenstown Road. He also provided the dispatcher with details of the registration number and number of occupants.

64. The dispatcher then gave the officers the safety warning required under the pursuit policy (see paragraph 12). Officer B did not acknowledge this warning as required by policy; nor did the dispatcher prompt Officer B for his acknowledgment. These breaches of policy had no bearing on the outcome of the pursuit.
65. Officer B went on to provide the dispatcher with details such as the direction of the pursuit; speed; driving conditions; police licence and car classification; manner of driving; and the reason for initiating the pursuit.
66. As the risks increased, Officer B properly advised NorthComms of the increased speed and traffic volume, wet conditions, and that the driver had run a red light, before advising that they were abandoning pursuit.
67. The pursuit controller then ordered the general abandonment of the pursuit, in accordance with the pursuit policy (see paragraph 53).

FINDINGS

Officer B and NorthComms complied with the pursuit policy in respect of communication, except for minor oversights in respect of the acknowledgment of the warning

Speed and manner of driving of police

68. The police car's warning lights and siren were activated during the pursuit as required by policy.
69. Prior to the pursuit reaching Church Street, the maximum reported speed was 80kph in a 50kph speed zone. In the Authority's view that this speed was acceptable because the traffic volume was low, there were few pedestrians, and the roads were wide and well lit.
70. Officers A and B have stated that they recall their speed on Church Street to have been between 100 - 109kph. This is consistent with Officer B's report to NorthComms that the patrol car's speed was "*upward of 100ks*".
71. However, a sustained speed of between 100 – 109kph on Church Street, a 50kpm speed zone, would not have been acceptable had it continued for any length of time.
72. In continuously carrying out risk assessments and in abandoning the pursuit a few seconds later, the actions of the officers were entirely appropriate.

FINDINGS

Officers A and B complied with the pursuit policy in relation to speed and manner of driving.

Abandonment

73. Officer A decided to abandon the pursuit when the risks involved in pursuing Mr Tulafono increased significantly on Church Street, as they approached Onehunga Mall (see paragraphs 17-19). This was a prudent decision.
74. On an assessment of all the evidence available, the Authority is satisfied that Officer A had begun to follow the abandonment procedure (see paragraph 54) and had slowed significantly and turned off the patrol car's warning devices by the time they reached the red light at the intersection of Church Street and Selwyn Street.
75. In reaching this conclusion the Authority has considered the witness statements alleging that the patrol car did not slow down but continued through the red light at high speed (paragraph 43); the contrasting witness statements (paragraph 42); the accounts of Officers A and B (paragraph 21); and the CCTV footage recorded at the intersection of Church Street and Onehunga Mall, which shows the police car arriving at the scene 19 seconds after the crash (paragraph 33). On the basis of all this evidence the Authority is satisfied that the officers were following the abandonment procedure and had reduced their speed and deactivated warning devices before the crash occurred.
76. As noted in paragraph 20, at the time Officer B radioed that the patrol was abandoning the pursuit, the pursuit controller had separately decided that the risks were too high and had instructed the dispatcher to abandon the pursuit.

FINDING

Officer A's decision to abandon the pursuit was sound and in compliance with pursuit policy. The officers were in the process of following the prescribed abandonment procedure when the crash occurred.

CONCLUSIONS

77. Aaron Tulafono demonstrated by his actions that he was prepared to take great risks to avoid being caught by police.
78. Officers A and B were justified in law and the pursuit policy in commencing the pursuit.
79. The pursuit was conducted in accordance with policy.
80. Officers A and B correctly decided to abandon the pursuit when the risks involved no longer justified its continuance.
81. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1998 (the Act), the Authority has formed the opinion that no police actions were contrary to law, unreasonable, unjustified, unfair or undesirable.
82. The Authority makes no recommendations pursuant to section 27(2) of the Act.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

SEPTEMBER 2011

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 chaired by a High Court Judge and has other members.

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 investigators who have worked in a range of law enforcement 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 must determine whether any police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



IPCA

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