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Death of Penelope Phillips following a Police pursuit in Blenheim

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 9.45pm on Friday 19 March 2010, a Toyota Corolla driven by Frances Carol Stubbs, aged 20, crashed into a Nissan Cefiro at a roundabout in Blenheim following a short police pursuit. The driver of the Nissan, Penelope Rae Phillips, aged 51, died at the scene.
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. On the evening of Friday 19 March 2010, Officers A, B and C set up an alcohol checkpoint on Alfred Street in Blenheim between the Seymour Street and Hutcheson Street intersections.
4. Officer A is certified as a gold licence holder having been trained under the Police Professional Driver Programme (PPDP) and is therefore competent to engage in pursuits as the lead driver. That evening he was the sole occupant of a category B unmarked patrol car. Category B vehicles are approved for use in pursuits but must be replaced by a category A vehicle as soon as possible. As Officer A was alone in the car, he was also responsible for operating the radio and communicating with the Police Southern Communications Centre (SouthComms).
5. Officer A parked his unmarked patrol car on the north side of the road facing east towards the Hutcheson Street intersection, and Officer B parked his marked patrol car on

the south side of the road, facing west. Both vehicles had their rear red and blue flashing lights activated to alert motorists that they were approaching a police checkpoint. Officer C's marked patrol car was parked nearby.

6. At about 9.45pm, Ms Stubbs was driving her Toyota Corolla east on Alfred Street when she came across the alcohol checkpoint. Officer A signalled her to stop by standing in the middle of the eastbound lane and waving his torch.
7. Once the Toyota had stopped, Officer A went to the driver's window and told Ms Stubbs that police were running an alcohol checkpoint. He asked her to count to five and took a sample of her breath with an alcohol detection device. The officer then showed Ms Stubbs the result of the test, which indicated that she had consumed alcohol.
8. Before Officer A could ask her to pull over to the side of the road and undergo a further breath test, Ms Stubbs accelerated away from the checkpoint towards the Hutcheson Street intersection.
9. Officer A immediately called out to Officers B and C that he had "a runner" and got into his patrol car in order to pursue the Toyota. He considered it safe to begin a pursuit because the level of traffic was light and the roads were dry. When he looked up he could no longer see the Toyota, so he assumed the driver had turned left into Hutcheson Street and followed in that direction.
10. Officer A activated his patrol car's warning devices just before he reached the intersection of Alfred Street and Hutcheson Street, which was about 75 metres from the alcohol checkpoint. When he turned left into Hutcheson Street he saw the Toyota's tail lights disappearing over a bridge about 160 metres ahead.
11. Ms Stubbs drove north on Hutcheson Street towards the roundabout at the intersection with Nelson Street, which was about 300 metres from the Alfred Street intersection. Penelope Phillips was also approaching the roundabout at this time, travelling east on Nelson Street in a Nissan Cefiro.
12. On entering the roundabout, Mrs Phillips would normally have been expected to give way to the Toyota, which was entering the roundabout from her right. However, instead of driving in the straight ahead/right turn traffic lane, Ms Stubbs was driving in the left turn lane, which would have led Mrs Phillips to believe that the Toyota was turning left rather than crossing into her path.
13. Ms Stubbs has stated that she was looking in the rear view mirror to see whether the police were following her and did not notice Mrs Phillips' car ahead of her until it was too

late. Ms Stubbs braked heavily but was unable to avoid crashing into the driver's side of the Nissan.

14. Upon reaching the bridge on Hutcheson Street, Officer A saw that the Toyota had crashed into another car at the roundabout about 150 metres in front of him.
15. The pursuit had lasted approximately 15 seconds over a distance of about 400 metres. Officer A and Ms Stubbs had both reached speeds of about 70-80 kph in a 50 kph zone.
16. Mrs Phillips was given first aid by police officers and ambulance staff but died at the scene. Ms Stubbs was taken to hospital to receive treatment for minor injuries.

Families' concerns

17. The families of Ms Stubbs and Mrs Phillips expressed concern to the Authority's investigator – questioning why Officer A did not remove Ms Stubbs' car keys from the ignition before conducting the breath test, which would have prevented her from driving away. This issue is addressed in paragraphs 35 - 38.

Crash analysis

18. The Hutcheson Street/Nelson Street roundabout is on the outskirts of Blenheim's central business district and is a major suburban intersection. Nelson Street is part of the State Highway network (SH6). At the time of the crash it was dark, but the weather was fine and the road was dry. The intersection was well-lit.
19. A vehicle inspector found no mechanical defects in either the Toyota or the Nissan which may have contributed to the crash.
20. The crash investigator calculated that the Toyota driven by Ms Stubbs was travelling at approximately 75 kph when the brakes were applied and at approximately 67 kph when it collided with the Nissan. The Nissan's speed was approximately 29 kph at the time of impact.

Frances Stubbs

21. Ms Stubbs had no previous convictions at the time of the crash.
22. Blood taken from Ms Stubbs approximately one and a quarter hours after the crash was found to contain 120 milligrams of alcohol per 100 millilitres of blood. The legal blood alcohol limit for a driver in New Zealand aged 20 years and over is 80 milligrams per 100 millilitres.

23. After pleading guilty to driving with excess blood alcohol causing death, Ms Stubbs was sentenced on 17 August 2010 to eight months home detention and 160 hours of community work. She was also disqualified from driving for 3 years and six months.

Cause of death

24. A forensic pathologist concluded that the cause of Mrs Phillips' death was *"high energy impact injuries ... from road vehicle crash."*

LAWS AND POLICIES

Legislative authority for pursuits

25. Under the Land Transport Act 1998, police are empowered to stop vehicles for traffic enforcement purposes. Under the Crimes Act 1961, police are empowered 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 policy¹

Definition

26. 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

27. 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."*

¹ 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.

Role of Police driver

28. The driver of a police vehicle has the primary responsibility for the initiation, continuation and conduct of a pursuit, including notifying the communications centre that they have commenced a pursuit. Further, before commencing a pursuit an officer is required to undertake a risk assessment. The driver must then determine whether the need to immediately apprehend the offender is outweighed by the potential risks of a pursuit. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.

THE AUTHORITY'S FINDINGS

Commencement of pursuit

29. Officer A was authorised under the Land Transport Act 1998 to stop Ms Stubbs for traffic enforcement purposes. Ms Stubbs initially complied but then fled the checkpoint when she saw that the breath test had detected alcohol.
30. Because Ms Stubbs fled the checkpoint, Officer A had the authority to commence a pursuit. Officer A immediately followed her in his patrol car. He considered it safe to begin a pursuit because the road was dry and the level of traffic was light.
31. The officer held a gold licence and was driving a category B unmarked patrol car; he and his car were appropriately classified to commence a pursuit under the PPDP (see paragraph 4). If the pursuit had continued, a category A vehicle would have been required to take over as soon as practicable. However the pursuit was so short that there was no opportunity for this.

FINDING

Officer A complied with the law and Police policy in commencing this pursuit.

Communication

32. Officer A did not notify the Southern Communications Centre (SouthComms) that he had commenced a pursuit.
33. In interview with the Authority, Officer A said he did not have enough time to call in the pursuit before he discovered that the Toyota had crashed. He explained that, had the pursuit continued, the first *“safe and practical opportunity”* to radio SouthComms would have been after he had crossed the Hutcheson Street/Nelson Street roundabout, where the crash occurred.

FINDING

Due to the circumstances in which the pursuit commenced and its short duration, there was no practicable opportunity for Officer A to call it in.

Speed and manner of driving

Officer A reached an estimated speed of 70-80 kph in a 50 kph zone during the pursuit, and drove with his patrol car's warning devices activated. The patrol car was over 150 metres behind the Toyota when it crashed.

FINDING

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

Ongoing risk assessment/abandonment

34. The pursuit lasted for approximately 15 seconds. There was no opportunity for Officer A to reassess the risk factors involved or consider abandoning the pursuit before he discovered that the Toyota had crashed.

FINDING

Due to the short duration of the pursuit, there was no opportunity for Officer A to comply with pursuit policy in respect of ongoing risk assessment and abandonment.

Should Officer A have removed Ms Stubbs' car keys from the ignition?

35. At the time Ms Stubbs fled the checkpoint she had completed only the first part of the breath alcohol test, which detects the presence of alcohol. It is not standard procedure for police to remove the keys of a vehicle at this point.
36. When interviewed, Officer A said:
- "The first part of the test does not tell us whether they are over the legal limit. I think we would probably be criticised if we tried to take control of a person's vehicle at that point."*
37. Officer A also said that Ms Stubbs did not outwardly appear to be intoxicated therefore there was no obvious need to remove her car keys before conducting the test.
38. The second part of the test would have determined whether or not Ms Stubbs was over the legal breath alcohol limit. If she had failed that test, Officer A would have had the

power to remove her to a police station or other place to undertake an evidential breath test. Officer A did not have authority to take Ms Stubbs' car keys until she had failed the second part of the test, unless he believed on reasonable grounds that she was incapable of having proper control of the vehicle.²

FINDING

Officer A did not have authority to remove the car keys from Ms Stubbs.

CONCLUSIONS

39. Officer A complied with policy, insofar as he was able, during this short pursuit.
40. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that none of Officer A's actions were contrary to law, unreasonable, unjustified, unfair or undesirable.
41. 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

² Section 121(1)(a)(i)(A) of the Land Transport Act 1998

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.



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