

Summary Report

Serious injury to youths following Police pursuit in Milford

INTRODUCTION

1. At about 12.20am on 9 July 2014 two Police officers observed a Subaru being driven in a suspicious manner in Hurstmere Road, Takapuna.
2. The officers proceeded to follow the Subaru, at which point the driver accelerated away in an apparent attempt to evade Police. The officers then activated their car's warning lights and siren, signalling the 15-year-old driver of the Subaru to stop. They initiated a pursuit when he failed to do so.
3. The pursuit covered a distance of 1.7 kilometres before the driver attempted to perform a right hand turn while travelling the wrong way through an intersection. The driver lost control of the Subaru which hit a traffic light pole, leaving the 15-year-old front seat passenger with life-threatening injuries and seriously injuring the 13-year-old rear seat passenger.
4. 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

5. At 10pm on 8 July 2014, Officer A, a sergeant and night shift supervisor, and Officer B, a constable, commenced night shift at the North Shore Policing Centre.
6. At the commencement of the shift Officer A briefed Officer B and another officer, and set out the tasks that they were expected to carry out during the shift.

7. One of these tasks was to undertake a directed patrol of the Takapuna area, where a high number of commercial burglaries had recently occurred. It was intended that a visible Police presence in the area would prevent further offending.
8. Officer A also briefed the officers as to the contents of an intelligence report relating to X, a 15 year old male who had recently escaped youth custody and was thought to be on the North Shore.
9. At about 12.15am Officer A and Officer B, who were working as a double crew, arrived in the Takapuna area with the intention of undertaking a directed patrol. Officer A was driving. Officer A is a gold class driver and was driving a category A marked Police car.
10. The officers proceeded to Hurstmere Road, a shopping area that had been the target of recent burglaries. They drove south along the section of Hurstmere Road between Anzac Avenue and Lake Road at 20-30kph. As they did so Officer A noticed a blue Subaru driving towards them.
11. The Subaru was driven by X, who did not have a driver's licence. He had two passengers – Y, a 15 year old male in the front passenger seat, and Z, a 13 year old male in the rear right hand seat. Neither officer was aware of the occupants' identities, nor that the driver was linked to the earlier intelligence report, at this point.
12. Officer A told the Authority that the Subaru was travelling very slowly, close to the kerb. He added that the three occupants appeared to be paying more attention to the shops than the road, and that when he passed them they looked very shocked to see a Police vehicle.
13. Officer A pointed out the Subaru to Officer B, who looked up its registration on his iPad. Officer A then decided that he would stop the Subaru, given the location and type of the vehicle, the time of day, the occupants' interest in the shops and their reaction to the Police's presence. Police later established that the Subaru was stolen, but it had not been reported stolen at this point.
14. Officer A performed a three point turn so that he was on the same side of the road as the Subaru. After turning the Police car around, Officer A noticed that the Subaru was much further along Hurstmere Road than he thought it would be if it had continued travelling at the same speed. This led him to believe that the driver of the Subaru was accelerating away from the Police.
15. Z told the Authority that when he first saw the Police car X was driving at a normal speed, but that after they passed the Police car X sped off straight down the road.
16. The officers followed the Subaru along Hurstmere Road. By the time they reached the intersection of Hurstmere Road and Anzac Avenue Officer B estimated that the Subaru was at least 100-150 metres ahead of them. According to Officer A the Subaru was travelling well in excess of the 50kph speed limit, and he believed that X was deliberately trying to evade the Police.

17. Hurstmere Road runs for about one kilometre past Anzac Avenue before it rounds a left hand bend and becomes Kitchener Road. By the time the Subaru reached this point Officer A estimated that it was 300-400 metres ahead of the officers and was continuing to accelerate away from the Police car, towards Milford, at about 70kph.
18. The officers lost sight of the Subaru after it rounded the bend into Kitchener Road. Officer A contacted NorthComms to ask if there were any Police units in the Milford area available to try and stop the Subaru, but there were none in the immediate vicinity.
19. Officer A then accelerated to about 80kph in order to catch up to the Subaru so he could signal it to stop, intending to talk to X about his speed and suspicious behaviour.
20. Officer A decided not to activate the Police car's warning lights or siren. He told the Authority that, at this point, he was too far away from the Subaru to signal it to stop and thought that using the lights and siren may provoke X into taking greater risks. He planned to make a tactical approach (see paragraphs 39-41 for more information) before signalling X to stop when he was close enough to do so effectively.
21. About one kilometre later, the officers caught up to the Subaru shortly before it reached the Milford shopping area on Kitchener Road.
22. Both officers said that, other than its excessive speed, the Subaru was not being driven dangerously. However, a few seconds later, as the vehicles reached the intersection at the eastern end of the Milford shops X drove the Subaru onto the wrong side of the road. The Police car was about 30-40 metres behind the Subaru at this point.
23. Officer A immediately activated the Police car's warning lights and sirens, signalling X to stop. X failed to do so, instead continuing through the shopping area on the wrong side of the road at about 70kph. Officer A informed NorthComms of X's failure to stop and his manner of driving.
24. X then proceeded to the intersection of Kitchener and Shakespeare Roads, about 250 metres from the beginning of the shopping area. As he approached the intersection he pulled back onto the correct side of the road and turned left into Shakespeare Road.
25. Officer B, who had taken over commentary, advised NorthComms of the Subaru's registration and confirmed that X had failed to stop and that they had commenced a pursuit. The NorthComms dispatcher then issued the standard pursuit warning that *"if there's any unjustified risk to any person you are to abandon pursuit immediately,"* which Officer B acknowledged.
26. Once on Shakespeare Road, which was wide and well lit, X accelerated and began to drive down the middle of the road, straddling the centre line separating the opposing lanes. Officer A followed on the correct side of the road, but said that he remained about 30-50 metres behind the Subaru so as not to unduly pressure X.

27. The vehicles continued to travel along Shakespeare Road towards Wairau Road, a distance of about 1.5 kilometres, at speeds of 80-100kph in a 50kph area. Officer B maintained regular communication with NorthComms as they did so.
28. Throughout the pursuit the vehicles passed three other cars. Two of these were oncoming vehicles which pulled over to get out of the way of the Subaru. The other was travelling in the same direction as the vehicles and pulled over to let the Police car pass safely.
29. The intersection of Shakespeare and Wairau Roads is a large, multi-lane intersection controlled by traffic lights. A raised median strip splits the opposing lanes of Shakespeare Road approximately 75 metres before the intersection.
30. As X approached the intersection he drove completely onto the wrong side of the road, and was unable to return to the correct side due to the median strip. He then attempted to make a right hand turn into Wairau Road via a slip lane dedicated to traffic turning left from Wairau Road into Shakespeare Road. Officer A estimated that the Subaru was travelling at 80kph at this point.
31. As X attempted to make the right hand turn he lost control of the Subaru, which skidded across the road. It then mounted a traffic island before the front passenger side of the vehicle hit a steel traffic light pole. A Police Crash Analysis Report estimated that the Subaru had been travelling at 73-79kph when it hit the pole.
32. Both officers saw the crash occur. Officer A immediately stopped the Police car and both officers went to the aid of the Subaru's occupants. X told the officers his name, and that the Subaru had been stolen earlier that evening.
33. The pursuit had lasted about 65 seconds and covered a distance of approximately 1.7 kilometres. Y, the Subaru's front seat passenger, suffered life-threatening head injuries. Z suffered a serious injury to his leg.
34. Officer A told the Authority that he had carried out a continual risk assessment from the time he started following the Subaru on Hurstmere Road, and that this was ongoing at the time of the crash. He said that if the pursuit had continued his assessment of the risks may have led him to abandon the pursuit, but that he was satisfied that the risks to himself and Officer B, the Subaru's occupants, and other road users were minimal up until the crash.

Police Crash Analysis Report

35. The Crash Analysis Report undertaken by the Police concluded that the crash occurred as a result of X losing control of the Subaru as he drove on the incorrect side of Shakespeare Road, causing the Subaru to hit the traffic light pole.
36. The report also concluded that, at the time of the crash, the road was dry and visibility was good, and that neither the weather nor the performance of the Subaru contributed to the crash.

Legislative authority for pursuits

37. Under the Land Transport Act 1998, Police are empowered to stop vehicles for traffic enforcement purposes. Where such a vehicle fails to stop, the Police may begin a pursuit.

Urgent Duty Driving Policy

38. Urgent duty driving involves a Police officer driving above the speed limit, possibly in contravention of other traffic rules as well. Urgent duty driving may be undertaken where an officer is apprehending an offender for a traffic or criminal offence, and to comply with traffic rules and regulations would prevent the execution of that duty.
39. Generally, Police must use flashing lights and siren at all times while urgent duty driving. However, they are not required to do so if a tactical approach is being used.
40. A tactical approach involves urgent duty driving without the activation of either warning lights or sirens. It may be used, for example, by an officer wishing to get closer to an offending vehicle without alerting the driver of that vehicle to their presence, or if they are concerned that use of lights and sirens may aggravate the driver.
41. Any tactical approach must be proportional to the incident, justifiable, and able to be executed safely. Any officer making a tactical approach must also take into account the increased risks of driving without warning devices, and their speed and manner of driving should reflect this.
42. In addition, any officer undertaking urgent duty driving must constantly re-assess the situation in light of relevant risk factors, including:
- the nature and seriousness of the incident;
 - proximity of other units to the incident;
 - environmental factors, including weather, traffic volume, road type and speed limit; and
 - whether warning devices are activated or a tactical approach is being used.

Fleeing Driver Policy

43. Under the policy, a fleeing driver incident 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. The Police tactic to apprehend is referred to as a pursuit.
44. Safety is the overriding principle of the policy, which states that *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*

45. The policy requires the pursuing officer to carry out a risk assessment both prior to initiation and during a pursuit. This must be based on 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, including the location, road type and potential hazards; traffic conditions, including vehicle and pedestrian as well as time of day; and capabilities of the Police driver and vehicle.
46. The policy requires the officers involved in the pursuit to notify the Police communications centre (Comms) when a pursuit commences and to provide situation reports to the pursuit controller (i.e. the shift commander at Comms) in a timely manner to enable the pursuit controller to make an independent assessment of the risks and manage the pursuit, including whether to direct the abandonment of the pursuit.
47. Under the policy, the driver of the lead Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, ensure lights and siren are activated, drive in a manner that prioritises public and police safety, continue to undertake risk assessments throughout the pursuit, maintain constant communication with Comms and comply with all directions from the pursuit controller.
48. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender.

THE AUTHORITY'S FINDINGS

Was Officer A justified in commencing urgent duty driving?

49. Under Police policy, urgent duty driving is permitted when an officer would be prevented from apprehending a driver for a traffic offence (amongst other things) if required to comply with the traffic rules and regulations.
50. Officer A engaged in urgent duty driving when he began to follow the Subaru at a speed that exceeded the posted speed limit. This was justified, as he was attempting to get close enough to the Subaru that he could signal the driver to stop to talk to them about their manner of driving and suspicious behaviour.
51. X was driving at speeds of up to 70kph, and the distance between the Subaru and the Police car was increasing. To comply with the 50kph speed limit would have seriously reduced Officer A's ability to respond to the situation in an effective manner.

FINDING

Officer A was justified in commencing urgent duty driving.

Did Officer A comply with policy while engaged in urgent duty driving?

52. When deciding to commence or continue urgent duty driving an officer must consider several factors, including: the environment, the urgency of the situation, the proximity of other units and whether warning devices should be used.
53. Officer A told the Authority that he had carried out a continual risk assessment from the time he started following the Subaru on Hurstmere Road. He established that both Hurstmere and Kitchener Roads were dry, wide, well lit, and clear of other traffic and pedestrians. Officer A considered that X was deliberately trying to evade Police by speeding, which posed a risk to other road users. Officer A also enquired if there were any Police units in the Milford area available to try and stop the Subaru, but there were none available.
54. Officer A did not activate his car's warning lights or siren. He told the Authority that, initially, he was too far away from the Subaru to signal the driver to stop and was concerned that using the lights and siren may aggravate X and lead his driving to deteriorate further. This amounted to a tactical approach, as per Police policy.
55. While any decision not to use a car's warning devices is inherently risky, the Authority is satisfied that the speed and manner of Officer A's driving safely mitigated any increased risk and his use of a tactical approach was appropriate in the circumstances.

FINDING

Officer A complied with Police policy while engaged in urgent duty driving.

Commencement of the pursuit

56. X had been travelling at about 70kph in a 50kph zone prior to reaching the Milford shopping area, where he began to drive on the wrong side of the road. Officer B was accordingly justified under section 114 of the Land Transport Act 1998 to attempt to stop the Subaru for traffic enforcement purposes and in order to speak to X.
57. When X failed to stop and attempted to evade apprehension, Officer A commenced a pursuit in accordance with the Police fleeing driver policy.
58. That policy requires Police to conduct a risk assessment prior to commencing a pursuit. As discussed in paragraphs 34 and 53 above, before commencing the pursuit Officer A took into account relevant risk factors. He decided that the need to apprehend X outweighed any risk in commencing a pursuit.

FINDING

Officer A was justified in commencing a pursuit.

Communication

59. Under the Police fleeing driver policy an officer that initiates a pursuit must notify the communications centre that they are in pursuit. In this instance Officer A informed NorthComms that the Subaru was on the wrong side of the road and had failed to stop, before Officer B took over communication and confirmed that they were in pursuit.
60. During the pursuit Officer B provided NorthComms with a steady flow of information regarding the pursuit and relevant information. However, the short duration of the pursuit meant that not all relevant risk factors, including X's speed and manner of driving on Shakespeare Road, had been conveyed to NorthComms at the time of the crash.

FINDING

Officer A and Officer B complied with the fleeing driver policy in respect of communication.

Police speed and manner of driving

61. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety.
62. In accordance with the Policy, Officer A kept his patrol car's warning lights and siren activated during the pursuit.
63. The speed limit along Kitchener and Shakespeare Roads is 50kph. Officer A told the Authority that he reached a maximum speed of 100kph during the pursuit, while he was attempting to catch up to the Subaru.
64. Officer A also said that, once he had caught up with the Subaru, he slowed down and created a gap of about 30m between himself and the Subaru, so that he would have sufficient time to react should the Subaru make any unexpected movements.
65. Officer A remained on the correct side of the road at all times.
66. The Authority is satisfied that the speeds reached by Officer A during the pursuit were justified in the circumstances and that his manner of driving did not jeopardise the safety of himself, Officer B, or other road users.

FINDING

Officer A complied with the fleeing driver policy in respect of speed and manner of driving.

Ongoing risk assessment and option of abandonment

67. The fleeing driver policy requires Police to abandon a pursuit if at any stage the risk to the safety of the public and the Police outweighs the immediate need to apprehend the driver.
68. Officer A told the Authority that he had carried out a continual risk assessment since he first starting following the Subaru on Hurstmere Road, and that this was ongoing at the time of the crash.
69. Based on his assessment, Officer A did not think that there were any factors with respect of X's speed and manner of driving, weather and road conditions, or traffic conditions that meant it was necessary to abandon the pursuit.
70. The Authority considers that there is a significant risk to the safety of other road users in any pursuit where the fleeing driver drives on the wrong side of the road. In this case, however, although X drove in the middle or the wrong side of the road for about 1.5 kilometres, Officer A concluded that the risk posed by the Subaru to other road users did not outweigh the need to apprehend X, whose identity was still unknown to the officers. The Authority accepts that Officer A's decision not to abandon was justified in the circumstances.
71. In addition, Officer A told the Authority that, had the pursuit continued, his assessment of the risks may have led him to abandon the pursuit.
72. The short duration and dynamic nature of the pursuit meant that not all of the relevant risk factors had been communicated to NorthComms by the time of the crash, which meant that the pursuit controller was not in a position to make an informed decision as to whether the pursuit should be abandoned.

FINDING

Officer A complied with the fleeing driver policy with regards to ongoing risk assessment. His decision not to abandon the pursuit was reasonable in the circumstances.

CONCLUSIONS

73. The Authority is of the opinion that:

73.1 Officer A was justified in commencing urgent duty driving and complied with all aspects of the urgent duty driving policy.

73.2 Officer A was justified in commencing a pursuit of X, and both he and Officer B complied with all relevant aspects of the fleeing driver policy.

ONGOING DISCUSSIONS WITH POLICE

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



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

5 November 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 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 on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



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