

Pursuit of four teenagers in a stolen camper van in Rotorua

INTRODUCTION

1. At about 4.30am on Sunday 6 December 2015, a stolen camper van driven by a 14-year-old boy crashed into the Pit Stop mechanics building on State Highway 5 in Rotorua following a short Police pursuit. The driver and two of his three teenage passengers were injured in the crash.
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. Mr Z, a 40-year-old Belgian tourist, spent the evening of Saturday 5 December 2015 in Rotorua drinking at bars. In the early hours of the morning on Sunday 6 December 2015, he began walking around the lake front looking for his Toyota Hiace camper van.
4. During his search, Mr Z met a group of young people and one of them (Y) offered to help him find where he had parked his camper van. Once they had found the van, Y asked Mr Z if he could use it to drive one of his friends home. Mr Z agreed to allow Y to use the camper van.
5. Three teenage girls joined Y and Mr Z in the camper van. Y was 14 years old, two of the girls were 13 years old and one girl was 12 years old. However Mr Z later told the Authority that he thought they were all 18 or 19 years old.
6. After driving for a short time, Y stopped the camper van and told Mr Z he thought the van might have a flat tyre. When Mr Z got out to check, one of the girls sitting in the back of the van closed the door on him. Y then drove off without Mr Z.

7. Mr Z went to a nearby house in Grand Vue Road for help, and the occupant called the Police for him at about 4am. Officer A, a dog handler, was the only officer immediately available to attend. He drove to Grand Vue Road in his Police dog van and picked up Mr Z.
8. The officer questioned Mr Z about what had occurred, and Mr Z told him that the four people in the stolen camper van were young (without specifying ages). Mr Z also advised the officer that he last saw the van driving along Kawaha Point Road towards State Highway 5.
9. Officer A arranged to meet another officer on State Highway 5, intending to hand Mr Z over into that officer's care before searching for the stolen camper van.
10. At about 4.26am, Officer A and Mr Z were driving south on State Highway 5, near the intersection with Kea Street, and passed the camper van which was heading north.¹ Officer A did not see who was in the vehicle or what age they were, but Mr Z told Officer A that he was sure it was his van. There was no other traffic around at that time of the morning.
11. Officer A carried out a u-turn and began following the camper van, which was travelling at about 60-70 kph in a 60 kph speed zone. He was initially just observing the van and did not activate his Police vehicle's red and blue warning lights and siren to signal the driver of the camper van (Y) to stop.
12. Regarding Officer A's decision to follow the camper van while he still had a member of the public in his Police vehicle, Officer A told the Authority he had to do it because he could not risk losing the opportunity to apprehend the people who had stolen Mr Z's van (which also contained his belongings, including his passport). He believed it was safer to keep Mr Z with him in the Police vehicle than to leave him behind on the side of the road.
13. Officer A also considered that, if he needed to commence a high-speed pursuit of the camper van, other officers nearby would soon be able to take over the lead position and Officer A and Mr Z could then drop out of the pursuit. He said that Mr Z never appeared uncomfortable or unhappy with the situation. Mr Z confirmed this and said, if he had been given the option, he would have chosen to stay in the Police vehicle. Mr Z advised the Authority that he never felt like he was in danger, and he thought Officer A was *"very good, very professional"*.
14. Officer A radioed the Police Northern Communications Centre (NorthComms) and advised: *"Yeah I have got the complainant on board, and I think I have just seen his van."* The dispatcher asked for his location and Officer A replied: *"Yeah this is not what I wanted to happen, Fairy Springs [State Highway 5] northbound."* He then said *"... I am going to see if I can stop it."*
15. The dispatcher asked Officer A to give her the name of a crossroad (so she could pinpoint his location). Officer A said: *"Standby Comms, just coming up to Mitai village"* and, after checking the licence plate number, confirmed that it was Mr Z's van.²

¹ This stretch of State Highway 5 is straight and has at least two northbound and two southbound lanes, separated by a median strip.

² Mitai is about one kilometre north of where Officer A and Mr Z first saw the camper van.

16. According to Officer A, the camper van slowed to about 40 kph and began weaving across the two northbound lanes. Officer A believed the occupants may be about to stop the van and flee on foot.
17. Y then did a u-turn and accelerated south on State Highway 5. Officer A completed another u-turn and followed the camper van south.
18. Meanwhile another officer got on the radio, asking Officer A whether the driver (Y) had seen him yet, and Officer A said: *"Yep, he is going to fail to stop guys."* The dispatcher again asked for the name of any crossroads.
19. Officer A notified the dispatcher that he was at Mitai village, *"heading back into town"* (i.e. southbound). Officer A then asked the other officer on the radio for his location and determined that he was nearby.
20. Officer A activated his Police vehicle's warning lights and siren to signal the driver to stop, but Y continued driving at speed heading south on State Highway 5. Officer A reported to the dispatcher that the driver of the camper van was failing to stop, and that his speed was 90 kph in a 60 kph zone. The dispatcher then notified her shift commander (the pursuit controller) of the pursuit.³
21. Police fleeing driver 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 must abandon pursuit immediately, acknowledge."*
22. The dispatcher issued the required warning and Officer A acknowledged it. Officer A reported that the camper van's speed had increased to 110 kph in a 60 kph speed zone, and said: *"it's a big four lane road, two lanes either way"*. He commented that the dispatcher knew the reason for the pursuit, and also stated that he held a Gold licence (and therefore was authorised to engage in pursuits as the lead driver) and was driving a Class A vehicle.
23. Officer A told the Authority that when the speed of the pursuit reached 110 kph, he increased his following distance to 150-200 metres because there was plenty of visibility and he wanted Y to realise that it was unnecessary to drive at such high speeds. Officer A said he did not consider the speed of the pursuit to be unsafe on such a wide, long and straight road with no other traffic.
24. The dispatcher asked Officer A: *"So you are heading back into town?"* The officer replied *"Koutu"* – indicating that the pursuit was approaching the intersection of State Highway 5, Clayton Road and Lake Road (referred to as 'the Koutu intersection'), which is controlled by traffic lights.
25. The dispatcher requested the location of the two other Police units on duty and they reported that they were nearby. Neither of these units had enough time to deploy road spikes (also

³ See paragraphs 38-39 for relevant policy.

known as a tyre deflation device or TDD) before the camper van reached the Koutu intersection.

26. Officer A then reported that the pursuit was “*continuing along*”. Meanwhile, Y drove straight through a red light at the Koutu intersection. No other cars were in the intersection at the time, and Officer A did not consider it necessary to abandon the pursuit at that stage. He told the Authority:

“... that intersection, as you're approaching, you can see quite a long way down each street and especially at night, you'd see car lights, you know, your headlights, so I was happy that we hadn't put anyone at risk and they could see all down every intersection.”

27. Officer A radioed: “... he has just gone through a red light, at 110k. You can see if people are coming, and you can see that nobody was coming.” The dispatcher acknowledged that message and asked Officer A to give her the details of the crossroads and driving conditions when he could.
28. Officer A slowed down before proceeding through the intersection and was about 200-300 metres behind the camper van at this stage of the pursuit. He noticed the van's brake lights come on and saw Y attempt to make a sharp right turn off State Highway 5 into View Road.
29. Y lost control of the camper van and failed to make the turn, instead crashing front-on into the Pit Stop mechanics building on the corner of View Road. Officer A immediately radioed that the camper van had crashed.
30. Officer A did not have enough time to advise the dispatcher of the driving conditions before Y crashed the camper van, however the Police's Serious Crash Report noted that there were fine, dry conditions and good visibility at the time of the crash. The report also commented that the road was in good condition and was well-lit.
31. The pursuit lasted about 90 seconds and covered a distance of about 2.7 kilometres (from the time Y did a u-turn near Mitai and accelerated south). Although the pursuit controller at NorthComms had been notified of the pursuit, it was over before he arrived to supervise the incident.
32. Officer A arrived on the scene very shortly after the crash and removed Y from the camper van. Several other officers then arrived to assist Officer A with handcuffing Y and removing the three passengers from the van.
33. Two ambulances were called to attend the scene, and Y and two of the three passengers were taken to hospital to receive treatment for injuries they sustained in the crash. One of the passengers was unconscious for several minutes and suffered a skull fracture and a brain bleed.
34. As a result of this incident Police charged Y with a variety of charges, which have been dealt with by the Rotorua Youth Court.

Legislative authority for pursuits

35. Police may stop a vehicle without a warrant under section 9 of the Search and Surveillance Act 2012, to arrest a person when they have reasonable grounds to suspect that the person is (a) unlawfully at large or has committed an offence punishable by imprisonment, and (b) in or on the vehicle. Where such a vehicle fails to stop, the Police may begin a pursuit.

Fleeing driver policy

Overriding principle

36. Under the Police 'Fleeing driver' policy, the overriding principle for conduct and management of pursuits is: *"Public and staff safety takes precedence over the immediate apprehension of the offender."*

Roles and responsibilities

37. 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 the communications centre, comply with all directions from the pursuit controller (i.e. the Police communications centre's shift commander), and comply with all directions from a Police passenger if the passenger is senior in rank or service.
38. The dispatcher at the Police communications centre must advise the shift commander (pursuit controller) that a pursuit has commenced, maintain radio communications with staff involved in the pursuit, give the pursuit warning and communicate instructions from the pursuit controller.
39. The pursuit controller is responsible for supervising the pursuit and coordinating the overall Police response, and for selecting and implementing appropriate tactics.

Risk assessment

40. Pursuing officers must carry out a risk assessment before and during a pursuit. The 'Fleeing driver' policy states that *"... assessing the risks must be a continuous process until the pursuit is resolved or abandoned."*
41. The officers involved in the pursuit must provide situation reports to the dispatcher and pursuit controller 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.
42. The risk assessment must be based on the following: consideration of the speed limit and manner of driving by the offending vehicle; the 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 the capabilities of the police driver and vehicle. The pursuing officers and the pursuit controller must then use the risk assessment factors to:

“...determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to:

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

43. The ‘Fleeing driver’ policy instructs that if there is no need to immediately apprehend the fleeing driver, or the risks are too great, a pursuit must not be initiated, or should be abandoned.

Communication requirements

44. When a pursuit commences, the communications centre must be notified. The dispatcher must provide the following warning to the pursuing officers: *“If there is any unjustified risk to any person you must abandon pursuit immediately”*.
45. The pursuing officers must acknowledge the pursuit warning; and provide information about their location and direction of travel. The communications centre must prompt for information about the reason for the pursuit, vehicle description, driving speed and posted speed limit, road and traffic conditions, weather, the offender’s manner of driving and identity, and the police driver and vehicle classifications as well as confirmation that warning devices are activated on the police car.

Abandonment

46. The driver of the lead Police vehicle or the pursuit controller can abandon a pursuit. A pursuit must be abandoned when (among other criteria):
- an offender’s identity becomes known and apprehension can be effected later, so long as there is no immediate threat to the public or staff safety or the fleeing vehicle’s location is no longer known; or
 - any of the risk assessment criteria conditions change, such as road or weather conditions, that mean the risks of continuing with the pursuit outweigh the need for immediate apprehension of the fleeing driver.

THE AUTHORITY'S FINDINGS

Issue 1: Was Officer A justified in commencing the pursuit?

47. Officer A commenced a pursuit of the stolen camper van after following it north on State Highway 5 for a short time. When Y did a u-turn and accelerated south on the highway, Officer A did the same and signalled Y to stop by activating his Police vehicle's warning lights and sirens. Y failed to stop and continued speeding in an attempt to avoid arrest.
48. Officer A was justified in attempting to stop the camper van under section 9 of the Search and Surveillance Act 2012, because he had reasonable grounds to suspect the driver had committed an offence punishable by imprisonment (stealing the camper van).
49. The officer considered the risks involved in pursuing the camper van, and decided to proceed because there was no other traffic; driving conditions were good; and the road was wide, straight and long with a good field of vision. He knew the people inside the camper van were young, but was not aware that they were in their early teens.
50. While it was an added risk to commence a pursuit with a member of the public in his Police vehicle, Officer A determined that it was important for him to try to apprehend the people who had stolen Mr Z's van. He reasoned that it was safer to keep Mr Z with him than to leave him on the side of the road, and that other nearby Police units could take the lead position in the pursuit if necessary.

FINDING

Officer A was justified in commencing the pursuit, and properly conducted an initial risk assessment.

Issue 2: Did Police comply with policy in respect of communication during the pursuit?

51. Officer A notified NorthComms as soon as he and Mr Z had seen the camper van and began following it. He advised the dispatcher and other nearby officers of the location, and then confirmed that he had identified the van as the one that was stolen from Mr Z. He also alerted the dispatcher that Mr Z was in the Police vehicle with him.
52. Once Officer A signalled Y to stop, and he failed to do so, the dispatcher provided Officer A with a pursuit warning and he acknowledged it. As required by Police policy, Officer A kept the dispatcher updated with the progress of the pursuit and provided information about the speeds involved, the type of road, and his driver and vehicle classification.
53. The pursuit ended quite quickly, so there was not enough time for Officer A to describe the driving conditions (as requested by the dispatcher), or for the pursuit controller at NorthComms to provide oversight while the pursuit was in progress. Officer A quickly notified the dispatcher that the camper van had crashed and asked for an ambulance to attend.

FINDING

Police complied with policy in respect of communication.

Issue 3: Were Officer A's speed and manner of driving during the pursuit appropriate?

54. During this short pursuit, Officer A reported speeds of 90 kph and then 110 kph in a 60 kph zone. Officer A said that when the speed increased, he increased his following distance to 150-200 metres because he had good visibility and did not want the driver of the camper van to feel pressured into driving at high speeds.
55. The Authority considers that the high speeds reached by Officer A for a short time during the pursuit were justified in the circumstances (see paragraph 58 below).
56. Officer A slowed down while proceeding through the Koutu intersection, which is controlled by traffic lights. His Police vehicle's warning lights and siren were activated throughout the pursuit, as required by policy.

FINDING

Officer A's speed and manner of driving were appropriate.

Issue 4: Was Officer A's assessment of the ongoing risks during the pursuit adequate?

57. As noted above, Officer A considered the risks involved in commencing this pursuit and determined that he should proceed (see paragraphs 49-50). As the pursuit continued, the primary source of risk was speed.
58. Officer A considered that the speed of the pursuit was acceptable because, although it was a 60 kph zone, the road was wide and straight enough to handle higher speeds and there was no other traffic around at that time of the morning (4.30am). The officer explained that, when Y drove through the red light at the Koutu intersection, he would have been able to see that there were no other vehicles approaching. Therefore Officer A did not believe it was necessary to abandon the pursuit.
59. Up until the point when Y suddenly attempted to make a sharp right turn off State Highway 5, he was driving within his lane and, other than his speed, did not give Officer A any cause for concern about his manner of driving. The Authority finds that Officer A adequately assessed the risks throughout the pursuit.

FINDING

Officer A conducted an adequate ongoing assessment of the risks involved in the pursuit.

CONCLUSIONS

60. The Authority has determined that Police complied with the law and Police policy throughout this pursuit, particularly in respect of his justification for commencing the pursuit, communication, speed and manner of driving, and risk assessment.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

15 September 2016

IPCA: 15-1079

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 about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.



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