

Police response to a 111 call reporting a suspicious driving incident

INTRODUCTION

1. On the evening of 6 January 2016, Police responded to a 111 call from a motorist (Mr Z) who reported that a man (Tevita Filo) had been following him from St Heliers to Howick. Police dispatched a patrol and Mr Filo was intercepted a short time later. After the officers had dealt with Mr Filo at the roadside, he drove off on his way.
2. The following morning Mr Filo killed a woman (Joanne Pert) in Remuera.
3. Ms X and Mr Y (both parties independent of this incident itself) each made complaints to the Police that the actions of the officers the previous evening were inadequate and they should have taken Mr Filo to the Police station for further enquiries. The complainants believe that the officers, through their inaction, failed to protect the public, and Ms Pert, and that they were therefore negligent in their duty.
4. Police notified the Authority of these complaints 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

Suspicious person

5. At 11.29pm on 6 January 2016, the Police Northern Communications Centre (NorthComms) received a 111 call from Mr Z who had earlier left an address in St Heliers with his female companion. He alleged that as they were leaving the address, they observed a male walking

suspiciously past them as they got into their car.¹ The male then got into a car parked behind Mr Z's car.

6. Mr Z and his companion drove off and were followed by the male for approximately 25 minutes, causing them sufficient concern to call 111 and request Police assistance.
7. Mr Z told the call taker that he had undertaken some driving manoeuvres to confirm that they were being followed.
8. Two Police officers on patrol from the Counties Manukau District, Officers A and B, were directed to locate and intercept the male, which they did on Chapel Road, Pakuranga. It was at this stage that the male was identified as Tevita Filo.
9. Mr Z and his companion drove on to a nearby petrol station where they waited to hear back from the attending officers, as arranged with the Police call taker.

Before stopping Mr Filo

10. From the time of Mr Z's initial call to the time the patrol stopped Mr Filo, Mr Z provided the following information to the call taker that:
 - he had left a friend's house in St Heliers and as he did so he noticed a Polynesian male walk past his car. When he got into his car he saw the male turn around and get into a car parked behind his car;
 - he drove off and was followed by the same male;
 - he had undertaken some driving manoeuvres to confirm he was being followed;
 - he was now in Howick and was still being followed; and
 - he was travelling at slow speeds of between 40 and 60kph.
11. The key message passed from Mr Z to the call taker was that an unknown male had been deliberately following him since he left an address in St Heliers.
12. The call taker created an event in the Police's Computer Aided Dispatch (CAD) system and the job was entered onto the Event Chronology as a '1U'.²
13. The dispatcher then received the job, read the information received and called Officers A and B to respond. The dispatcher said to Officers A and B, *"Whereabouts are you? It's just that we've got this '1C' job in, it's coded a '1U', but the informant reckons a male waited until he got in his car and then has followed him since St Heliers. He's currently on Cook Street headed towards Meadowlands, over."*

¹ The male's identity was not known by Mr Z. Police discovered the male was Tevita Filo once they stopped and questioned him.

² An 'Event Chronology' is a list of events, and '1U' is a code used for a driving complaint.

14. This message refers to a '1C' job as well as a '1U' code.³ The Authority notes Officer B's comment that he thought they were initially only dealing with a traffic complaint, such as one vehicle following another, not a suspicious person.
15. When interviewed by the Authority, Officer B said *"...sometimes people do that in a road rage type incident, they get angry and they follow another guy so that's initially what we thought it was, some guy following another guy"*. The Authority notes that the officers were not advised and did not know that Mr Z was accompanied by a female companion.

During the vehicle stop

Suspected stolen vehicle

16. The officers told the Authority that, when they first stopped Mr Filo, they suspected his car was a stolen vehicle. Officer B said that when he approached Mr Filo's vehicle, he noticed that the rear quarter light window had been smashed and covered with plastic tape. When Officer A looked through the driver's window, he noticed that the ignition barrel was missing.
17. The officers asked Mr Filo to get out of the vehicle and Officer B recorded his details. Both officers then conducted computer checks on the Police National Intelligence Application (NIA)⁴ using their mobile devices.
18. Their checks verified the vehicle's ownership which was confirmed as previously stolen but recovered. It also showed that Mr Filo was on dialysis, was a restricted driver and was not wanted by Police.
19. When interviewed by the Authority, Officer A described Mr Filo as being *"a bit nervous and agitated"*. Officer B described him as awkward, but cooperative. He said Mr Filo was calm, *"...but calm with a loud voice. I found his whole behaviour strange"*. While Officer B also described Mr Filo as *"really, really weird"*, the NIA records revealed he had no mental health history.
20. After completing his computer check, Officer A noticed a kitchen knife sitting in the console beside the driver's seat. He initially thought it might be used by Mr Filo to start his car given that the ignition barrel was missing.

Knife

21. When Officer B questioned Mr Filo about the knife, he said that he had it *"because it made him feel safe"*.
22. After searching Mr Filo, by giving him a physical pat down, Officer A said that he *"thoroughly searched the remainder of Mr Filo's vehicle and established there were no further weapons in there"*.

³ '1C' is a code for a suspicious person/vehicle.

⁴ This is a Police database which holds information about individuals who have come into contact with the Police.

23. The officers then seized the knife. After considering Mr Filo's general cooperation at the roadside, and the fact he had not been charged with any offences in the previous five years, Officer A decided to warn Mr Filo, at the roadside, for possession of a knife.

Police question Mr Filo about following Mr Z

24. The officers then questioned Mr Filo about following Mr Z from St Heliers (a distance of approximately 14.5 kilometres). Mr Filo denied following Mr Z and said he was on his way home, which was in Mt Roskill (a completely different direction from St Heliers than Howick). He also said he was looking for a friend's place in Howick and had become lost.
25. The Authority asked Officer B whether, given what he knew of Mr Filo's behaviour, he found his explanation "acceptable". Officer B replied:

"... to be honest, yes, I believed him. The information we got from our dispatcher was he was following another guy...I may say that someone's following me, but they say they're lost, so there was no way for me to disprove that".

26. After dealing with Mr Filo at the roadside for about 11 minutes, and considering that he no longer posed any threat to Mr Z, the officers decided to send him on his way. The officers followed him for several kilometres to ensure he did not know where Mr Z lived and that he left the area.
27. While doing this, they contacted Mr Z and advised him of what had happened at the roadside and the action they had taken. Mr Z was satisfied with what the officers had done.
28. The officers then closed the job and returned to other duties.

More information

29. While Officers A and B were out of their vehicle speaking with Mr Filo, Mr Z was providing more detail to the call taker who was recording this on the Event Chronology.
30. There were five main pieces of information that were recorded onto the Event Chronology but were not passed to the officers either before or during the vehicle stop:
- that when Mr Z first noticed Mr Filo get into his vehicle in St Helier's, it looked like he was "hunched over" as if he was hotwiring his car;
 - further detail from Mr Z describing Mr Filo's persistent following, including a manoeuvre where Mr Z made a sudden right hand turn into a car park to evade Mr Filo, only to have Mr Filo do a U turn and accelerate to catch up;
 - that Mr Z was accompanied by a female passenger;
 - confirmation that Mr Filo had been following them for approximately 25 minutes; and
 - that Mr Filo's car was sought in relation to a theft from a shop.

31. It is clear from the Event Chronology that the dispatcher had read this extra information. However, this additional information was not passed to Officers A and B.
32. When interviewed by the Authority on this matter, the dispatcher said she could not remember the entry about the car being sought in relation to a theft but acknowledged that information should have been passed on to Officers A and B. She said that the reason for not passing it on may have been that the entry was historic, and had since been dealt with, but not cleared from the system.
33. The dispatcher also said that she may not have passed on any of the additional information, given by Mr Z, because the officers were out of their vehicle.
34. The Authority notes that the officers also have the ability to view this information themselves on their mobility devices. Officer A told the Authority that he did do a check but the '*sought for theft*' reference did not come up.
35. When the Authority asked Officer B whether he considered contacting the dispatcher for more details, he said he did not think it was necessary. He said "... *I didn't think it would be necessary mainly because of the way the job came across to myself and [Officer A]*". He said that the information passed on only advised that one person was following another, and they were directed to locate and intercept that vehicle.

Restricted Licence

36. Officer A checked Mr Filo's details on his mobility device and established that he held a restricted driver licence. Other than advising Mr Filo that he was driving in breach of his licence, the matter was not dealt with further.
37. When questioned by the Authority on the lack of action, Officer A said that he had considered issuing Mr Filo with a Traffic Offence Notice (TON) the following day (by post) but the ensuing killing overrode that consideration.
38. On 7 January 2016, the following morning, Mr Filo attacked and stabbed Ms Pert to death as she was out exercising in Remuera.

Mr Filo

39. Mr Filo was charged with murder but was acquitted on the grounds of insanity in October 2016.
40. Mr Filo was not known to Mental Health Services prior to the murder of Ms Pert.

Police involved

41. At the time of this incident, Officer A and Officer B had seven years' and two and a half years' service in the Police, respectively. Officer A was the Acting Shift Sergeant on the night in question.

42. Both officers had just commenced duty on night shift.⁵
43. The dispatcher had ten years' service working in the Communications Centre.

LAWS AND POLICIES

Possession of a knife in a public place

44. Possession of a knife without lawful excuse constitutes an offence under section 13A of the Summary Offences Act 1981 (punishable by a maximum of 3 months imprisonment or a \$2,000 fine), or section 202A of the Crimes Act 1961 (punishable by a maximum of 2 years imprisonment).

Arrest without Warrant

45. Police policy on arresting without warrant is based around section 315 of the Crimes Act 1961 and section 39 of the Summary Offences Act 1981. It provides that arresting without warrant is discretionary and alternative resolutions should be used in appropriate circumstances.

Restricted Licences

Breach of graduated driver licence conditions

46. Section 212A of the Land Transport Act 1998 provides officers with a number of options for dealing with breaches of certain driver licence conditions. While officers have a discretion in deciding how to deal with these breaches, the overriding consideration must be the safety of the driver and other road users.

ISSUES CONSIDERED

47. The Authority's investigation considered the following issues:
 - 1) Was the initial response to Mr Z's call by Police appropriate and timely?
 - 2) Did the dispatcher provide all relevant information to Officers A and B?
 - 3) On the information available to Officers A and B, did they properly enquire into Mr Z's complaint and deal with Mr Filo appropriately?
 - 4) Did the officers deal appropriately with Mr Filo's breach of his restricted driver licence?
 - 5) Can any link be drawn between the officers' actions at the roadside and the subsequent killing of Ms Pert?

⁵ Nightshift usually goes from 10pm to 7am.

THE AUTHORITY'S FINDINGS

Issue 1: Was the initial response to Mr Z's call by Police appropriate and timely?

48. The time between Mr Z phoning Police and the patrol vehicle stopping Mr Filo was just over four minutes. This was a rapid response which was appropriate to the nature of the incident.
49. Mr Z was happy with the Police response.

FINDING

The Police response to Mr Z's call for assistance was appropriate and timely.

Issue 2: Did the dispatcher provide all relevant information to Officers A and B?

Before the vehicle stop

50. The relevant information provided by Mr Z in the first four minutes of his call was that he had been followed by a suspicious man from St Heliers to Howick.
51. This information was dispatched to the officers and was the only information known by them before they stopped Mr Filo (see paragraph 13 for the words used).

During the vehicle stop

52. While Officers A and B were out of their vehicle speaking with Mr Filo, Mr Z was providing the additional detail (referred to in paragraph 30 above) to the call taker who was recording this on the Event Chronology.
53. As part of its investigation, the Authority spoke to Communications Centre managers and established that running vehicle checks is part of the role and function of the dispatcher and the information that Mr Filo's vehicle was wanted for an incident involving theft from a shop should have been passed on to Officers A and B.
54. Had this information been passed to the officers, along with the more detailed information from Mr Z, the officers may have asked Mr Filo more questions, with respect to him following Mr Z, and they may have asked him about the theft from a shop. The Commissioner has advised, however, that the volume of updates experienced by a dispatcher when skim reading an event chronology, particularly during busy periods or an unfolding event, can sometimes result in pertinent information being missed.

55. The officers' checks on Mr Filo did not bring up any alert for mental illness or show that he was a danger to the community requiring further investigation. His medical records, obtained after this incident, confirm that he was not known to Mental Health Services.

FINDINGS

The dispatcher passed on all of the available relevant information to the officers before they stopped Mr Filo.

The dispatcher should have given the attending officers the subsequent and more detailed information received from Mr Z. The dispatcher should also have passed on the '*sought for theft*' reference relating to Mr Filo's car.

Issue 3: On the information available to Officers A and B, did they properly enquire into Mr Z's complaint and deal with Mr Filo appropriately?

56. When the officers stopped Mr Filo, they discovered the knife on the console floor before questioning him about following Mr Z.
57. The manner in which an offender is dealt with for unlawful possession of a knife is at the discretion of the officer. Officer A initially believed that the knife was being used by Mr Filo to start his car because of the damage to the ignition barrel. However, when he learnt of Mr Filo's explanation to Officer B that he had the knife because it made him feel safe, he considered that Mr Filo had no lawful excuse for possessing it.
58. Officer A then decided to warn Mr Filo for possession of a knife. In making this decision, Officer A took into account the fact that Mr Filo had no recent criminal history. He said he was comfortable with that decision because Mr Filo did not know where Mr Z lived and checks made on NIA did not flag any mental health alerts for Mr Filo.
59. However, in the Authority's view the decision to warn Mr Filo was premature.
60. The officers had limited information when they stopped and dealt with Mr Filo. This is partly due to the fact that their rapid response to the job meant that they located Mr Filo before more detailed information was known or passed on to them.
61. In a statement to Police and later to the Authority, Officer A said that he heard Mr Filo say he was looking for a friend's place in Howick and a road he knew as Howick Road.⁶ Officer B told the Authority that Mr Filo denied following Mr X and said he was on his way home. When Officer B asked Mr Filo why he was in Howick, if he was heading home to Mt Roskill, Mr Filo said he was lost and asked the officers if they could follow him out of the area.

⁶ There is no road called Howick Road.

62. The Authority asked Officer B whether he found Mr Filo's explanation acceptable and Officer B said that he believed Mr Filo and did not consider contacting the dispatcher for more details.
63. The Authority notes the differing explanations provided by Mr Filo to the officers and considers them implausible. Mr Filo's explanation that he was looking for his friend's house was not supported by any clear account of where his friend lived and was inconsistent with his request for the officers to follow him out of the area. His explanation to Officer B that he was heading home but had become lost was also implausible, given that Mr Filo lived in Mt Roskill.
64. The Authority considers that these contradictory and implausible explanations combined with the possession of the knife and the officers' observations of Mr Filo being "weird" should have prompted the officers to make enquiries with the dispatcher or Mr Z before determining what action to take.
65. If they had made those enquiries and learned of the full extent of Mr Filo's actions, it is likely that they would have interrogated Mr Filo about the reasons for his actions. In the absence of a more plausible explanation, they might have arrested him and taken him to the station.

FINDING

The officers should have made more enquiries at the roadside into the complaint that Mr Filo had been following Mr Z.

Issue 4: Did the officers deal appropriately with Mr Filo's breach of his restricted driver licence?

66. Officer A checked Mr Filo's details on the Police computer and established that he was on a restricted driver licence. Other than advising Mr Filo that he was driving in breach of his licence, the matter was not dealt with further.
67. The Authority has established that the best practice for dealing with breaching a restricted driver licence depends on the circumstances of each case. It is often inappropriate to forbid the restricted driver to drive and leave him or her stranded, particularly in a remote location. It is common practice to issue the driver with a TON and direct him or her to drive straight home or to a specific location.
68. On this occasion a TON was not issued to Mr Filo, and no direction was given to him before he was allowed to go. The officers were satisfied that they had intercepted him and met Mr Z's expectations for Police intervention.
69. Officer A said that he had considered issuing Mr Filo with a TON the following day but the tragic killing of Ms Pert overrode that consideration.

70. The Authority is satisfied that it is common not to issue a TON on the spot and it finds nothing untoward in the decision made by Officer A.

FINDING

Officer A's decision not to issue a TON to Mr Filo at the scene was justified.

Issue 5: Can any link be drawn between the officers' actions at the roadside and the subsequent killing of Ms Pert?

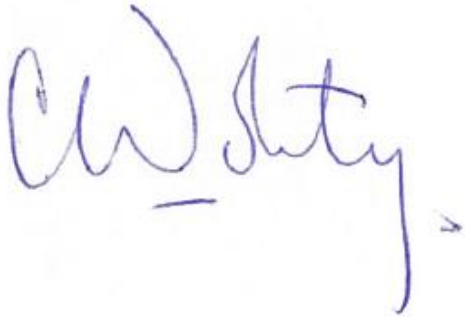
71. If Mr Filo had been charged with possession of a knife and taken to the Police station the previous evening, it is not possible to determine what would have happened if he had been questioned further. The probability, however, is that he would have been processed and then released on a pre-charge warning as Officers A and B predicted. In that event, no Police action would have seen Mr Filo remain in custody.
72. The Authority is of the view that it is not possible to draw any link between the officers' actions that evening and the killing of Ms Pert the following morning.

FINDING

It is not possible to draw any link between the officers' actions that evening and the killing of Ms Pert the following morning.

CONCLUSIONS

73. The Authority has reached the following conclusions on the balance of probabilities:
- 1) The Police response to Mr Z's call for assistance was appropriate and timely;
 - 2) The dispatcher passed on all of the available relevant information to the officers before they stopped Mr Filo;
 - 3) The dispatcher should have given the attending officers the subsequent and more detailed information received from Mr Z, and the '*sought for theft*' reference relating to Mr Filo's car;
 - 4) The officers should have made more enquiries at the roadside into the complaint that Mr Filo had been following Mr Z;
 - 5) Officer A's decision not to issue a TON to Mr Filo at the scene was justified; and
 - 6) It is not possible to draw any link between the officers' actions that evening and the killing of Ms Pert the following morning.



Judge Colin Doherty

Chair

Independent Police Conduct Authority

12 October 2017

IPCA: 16-0826 and 16-1088

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 Colin Doherty.

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.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
