



POLICE COMPLAINTS AUTHORITY

**Report by the Police Complaints Authority
on the Investigation into the Death of Ross Leslie Ivory
in Lower Hutt on 18 December 1993**



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REPORT BY THE POLICE COMPLAINTS AUTHORITY
ON THE INVESTIGATION INTO THE DEATH OF ROSS LESLIE IVORY
IN LOWER HUTT - 18 DECEMBER 1993

Introduction

Shortly after 9.03pm on Saturday 18 December 1993 Ross Leslie Ivory, a 23 year old, single, meat worker living at Whitby, died when the motorcycle he was riding left the road at High Street, Lower Hutt, at its junction with Taita Drive, and came into collision with a road sign.

At the time Mr Ivory was being followed by a Police patrol having been detected by radar when speeding on Fergusson Drive, Upper Hutt some 6.5km to the north in Upper Hutt City.

This report examines and analyses the incident resulting in Mr Ivory's death.

Narrative of Facts

Shortly before 9.00pm on Saturday 18 December 1993 a marked Police patrol car driven by Constable S H McLardy, an officer of 20 years' service, with Constable D N Whitty was travelling north on Fergusson Drive, Upper Hutt. Near the intersection of Fergusson Drive with Bathurst Street the officers' attention was attracted by two motorcycles travelling one behind the other in the opposite direction. The Hawk radar speed recorder

in the Police car was operated by Constable McLardy and registered the speed of the motorcycles at 108kph. Fergusson Drive is a 50kph area at this point with residential houses on both sides of the Drive.

Only one of the motorcycles had its lights on; this was the following machine. A pillion passenger was on the machine with its rider.

The leading machine, being ridden solo by Mr Ivory, did not have its headlight on as it was not working. The lower half of the rear number plate of Mr Ivory's machine was bent upwards obscuring the letters in the registration mark. Of the registration, 59 SQE, only the figures 59 were visible. This prevented identification of the machine by the Police from centralised computer records and hence also prevented their identifying its owner. Identification of the speeding rider could only be made by the Police stopping him.

Mr Ivory's motorcycle was later found to be unlicensed, the licence having expired on 23 September 1993. The machine carried no current Warrant of Fitness. Mr Ivory did not hold a licence to ride a motorcycle, although he did hold a restricted licence for cars and heavy trade vehicles. He had convictions for driving without a licence, for driving whilst disqualified, excess blood alcohol, excess breath alcohol and exceeding 50km/h.

The two motorcyclists and the pillion passenger had made a social call in Upper Hutt and also called in to an hotel where they shared four jugs of beer. They were anxious to reach their destination in Lower Hutt before dark because Mr Ivory's motorcycle headlight was not working.

Daylight was fading at the time. Sunset had been a few minutes before at 8.52pm and some vehicles on the road were already travelling with their lights on.

Constable McLardy turned the Police car round and set off after the two motorcycles. He switched on the red and blue incident lights on the roof of the Police car and the siren, whereupon the second of the two motorcycles with the pillion passenger slowed but the leading motorcyclist, Mr Ivory, accelerated away. The Police car followed, overtaking the slowing second machine the number of which was clearly visible and was noted.

Mr Ivory continued south along Fergusson Drive which makes a slow right-hand bend to point in a southwest direction. A civilian witness commented on the high speed and dangerous manner in which the motorcycle was being ridden. At that time the following Police car was 200-300 metres behind it.

The 50kph limit changes to a 70kph limit at about the level of the entrance to the Silverstream Railway Station commuter carpark. Some way further on, immediately beyond the light controlled intersection with Field Street, the 70kph limit changes to one of 100kph. By that point Mr Ivory's machine was travelling at about 140kph according to the following Police. Some way further on along Fergusson Drive Mr Ivory's machine slowed and drew to the left, taking the free turn from Fergusson Drive onto the Eastern Hutt Road. Mr Ivory then accelerated south along the Eastern Hutt Road.

The Police car was, at the said intersection, approximately 100 metres behind Mr Ivory's motorcycle. The red and blue flashing lights remained on, as did the Police car's siren. The officers had no doubt that Mr Ivory would have been aware that he was required by the Police vehicle to stop. The motorcyclist showed no intention of stopping. Noting this Constable McLardy understood, by keeping the lights and siren on, other traffic would be alerted to the approach of the speeding, unlit motorcycle. This was a prudent step. A number of road users later stated they became aware of the approach of the motorcycle and Police car from first hearing the siren.

The slight curves of the Eastern Hutt Road as it transited Taita Gorge were negotiated without any difficulty by Mr Ivory. He slowed appreciably to negotiate corners but at other

times was travelling at speeds noted by the following Police as 140-150kph, and at times on the wrong side of the road. Two other vehicles travelling south were overtaken by the motorcycle and the Police car without incident, having pulled to the side.

Approximately 200 metres before the Stokes Valley roundabout the 100kph speed limit changes to 70kph. At about the same distance beyond the roundabout the 70kph limit reverts to one of 100kph. The configuration of the roundabout allows traffic approaching it from Upper Hutt to have a clear view of traffic on the other side of the roundabout approaching from Lower Hutt or Taita. Both Mr Ivory on the motorcycle and Constable McLardy driving the Police car would have had a good view ahead. The Constable later stated that nothing was coming towards them at this point.

A motorist approaching the roundabout from the Stokes Valley direction heard the siren of the Police car before either it or the motorcycle came into his view, and he gave way.

At the roundabout Mr Ivory, then travelling at a very high speed, according to the following Police, braked and rode round it on the wrong side before resuming the correct side of the road. The configuration of the roundabout and the manoeuvre necessary to regain the correct side meant that the motorcycle's speed was considerably reduced at this point. The Police car had reduced the distance between it and the motorcycle to about 60 metres. Constable McLardy followed Mr Ivory round the wrong side of the roundabout, albeit some distance behind. Mr Ivory then accelerated to about 140 or 150kph and the gap between the two vehicles widened again to about 200 metres. At the roundabout both Mr Ivory and Const. McLardy were presented with a clear view of the road ahead as they approached, lessening the hazardous nature of rounding the roundabout on the wrong side.

Mr Ivory slowed again to take the right-hand bend from the Eastern Hutt Road into High Street. At this point the 100kph speed limit changes to one of 50kph as the road shortly afterwards enters a residential area. The Police car closed to

within 50 metres, as the motorcycle slowed to negotiate the bend before again accelerating away to a speed of about 140kph.

Shortly after the intersection of High Street and the north end of Farmer Crescent the road south curves to the left before going right again and straightening up at the intersection of High Street with the south end of Farmer Crescent. Before the curve a yellow advisory sign for 35kph is displayed at the roadside. Midway on the right-hand side of the curve going south is an intersection with Taita Drive. On that side of the curve is a grassed area backing onto the Hutt River stopbank. On the grassed area are a telegraph pole and a 'chevron' roadsign to warn roadusers of the tightness of the curve. There is a give-way sign displayed to roadusers on Taita Drive when approaching High Street. It is mounted on a white metal pole.

Mr Ivory entered the said curve travelling south. A civilian eye-witness estimated his speed at 150kph. However, other factors tend to indicate that this estimate of Mr Ivory's speed was somewhat higher than the speed at which he was actually travelling. The witness thought the motorcycle would not get round the corner at the speed it was travelling. A second witness stated a similar opinion. Mr Ivory was seen briefly to begin to lean his motorcycle to the left, braking at the same time, but then to straighten it up.

It was later established in a reconstruction by a senior accident inspector of the Traffic Safety Division that the machine was on the wrong side of the road and crossed the outside kerb of the curve at a speed estimated to be in excess of 70kph. Its brakes were not being applied hard. After mounting the kerb it hit and demolished the chevron road sign, the motorcycle having been airborne at the time according to the following Police observer, Constable Whitty, 50 metres behind. The impact was probably sufficient to dislodge the rider. Machine and rider are then believed to have continued in a forward direction, both then striking the metal post supporting the give-way sign. Both were deflected by it and came to rest on the road surface of Taita Drive some distance apart, the rider's helmet being dislodged and deflected also.

The motorcycle and its rider had travelled approximately 37.6 metres from the point at which they crossed the kerb.

The progress of the pursuit from Fergusson Drive to the point where the accident happened has been described in this narrative. To illustrate the final stages of the incident a sketch plan is attached to this report depicting the point at which it ended.

The sketch plan is based on the measured reconstruction of the sequence of events in the motorcycle's progress made by the accident inspector. The sketch depicts the curve of High Street starting at the junction with the northern entrance to Farmer Crescent. It shows the road to the riverbank and the junction and first few metres of Taita Drive where it meets High Street. The positions of the chevron road sign, the give-way sign, the final position of the motorcycle and of its rider and his helmet are relatively indicated.

From the dotted and arrowed line on the sketch plan depicting the track and direction of the motorcycle on crossing the kerb it can be seen that the machine travelled in a virtually straight line from the kerb, through the chevron sign to the give-way sign. The chevron sign is set low and comprised a sheet metal sign supported and attached to two short posts, one of which with the sign itself was dislodged by the impact of the motorcycle.

When it struck the give-way sign the motorcycle was marginally deflected to the left, finally coming to rest on the south side of Taita Drive. Mr Ivory came to rest some distance away from his machine on the south side of Taita Drive with his helmet some metres away as marked on the sketch plan.

Action at Scene

The Police car driven by Constable McLardy which had been following Mr Ivory had difficulty in negotiating the curve of High Street as the Constable immediately braked hard on seeing Mr Ivory leave the road. The Police car came to a standstill

just beyond the intersection of High Street and Taita Drive. The car had covered 6.5km from the commencement of the incident at the intersection of Fergusson Drive and Bathurst Street to the scene of the accident.

Constables McLardy and Whitty alighted and ran back to where Mr Ivory lay on Taita Drive. He was clearly seriously injured and Constable Whitty returned to the Police car and radioed again for an ambulance to attend. An earlier call for an ambulance had been made when Mr Ivory left the road.

First aid was administered to Mr Ivory by Police and passersby, one being a student nurse. On their arrival the ambulance crew continued this aid and attempted to resuscitate Mr Ivory. He was conveyed by ambulance to Hutt Hospital where death was certified by Dr Zimmerman on arrival.

An autopsy later found that death was attributable to the head injuries Mr Ivory had sustained. Some additional injuries were attributable to his helmet coming off; the reason why the helmet came off was not evident.

Basis for PCA Investigation

The Police Complaints Authority by the terms of Section 13 of my enabling Act must be notified where a member of the Police acting in the execution of the member's duty is involved with the death or serious bodily harm of any person. This clearly was such an incident and I was notified on Sunday 19 December 1993 by Assistant Commissioner Neville Trendle of the events leading to the fatal accident. I elected to have the Commissioner of Police carry out an investigation which I would oversee.

I visited the scene on 20 December in company with Superintendent Robinson and Inspector Thompson. After being briefed by the officers of the then known facts of the accident resulting in the death of Mr Ivory, I indicated some specific directions I wished the investigation to follow and established with them reporting procedures to me. I retraced the route

taken by the Police car and Mr Ivory on his motorcycle from the Bathurst Street intersection with Fergusson Drive to the point on Taita Drive where Mr Ivory came to rest.

Requirements of the Investigation

My requirements of the investigation were:

- (a) To ascertain the sequence and nature of the events leading to the death of Mr Ivory.
- (b) To ascertain the involvement of members of Police in these events.
- (c) To address the steps taken by the Police to prevent or avoid the death of, or injury to, any member of the public or the Police.
- (d) To identify any deficiency in steps taken by the Police.
- (e) To identify any wider issues relating to similar situations which might merit further attention elsewhere.

Sequence and Nature of Events

The general sequence and nature of events leading to the death of Mr Ivory are set out in the narrative section of this report under that heading. There are some additional sequential aspects which require inclusion at this point. These aspects relate to the actions of Constables McLardy and Whitty during, and after the conclusion of, the incident. Also related are witnesses' observations.

Finally, in this section it is necessary for completeness to address factors to do with Mr Ivory likely to bear on his apparent decision to disregard the blue and red light and siren signals of the Police requiring him to pull over and stop.

Actions of the Following Police

The actions of Police officers attempting to stop a moving vehicle where the driver of that vehicle is attempting to avoid apprehension, as in this case, are governed by a section in the Police General Instructions.

The specific Instruction is quite detailed and sets out in clear terms the responsibilities of the drivers of Police vehicles attempting to apprehend the driver of a moving vehicle. The relevant responsibilities of the Police driver are set out in the following manner:

"When a pursuit is considered necessary the officer shall:

- a advise the control room or supervisor (as appropriate);*
- b drive carefully and skilfully;*
- c drive with total control and concentration and, at all times, retain the ability to make a safe emergency stop;*
- d use warning lights and siren;*
- e reduce speed at intersections and other dangerous places;*
- f maintain radio contact with the control room or supervisor (as appropriate);*
- g discontinue the pursuit immediately it becomes likely that it is likely to endanger life;"*

In this instance the pursuit was considered necessary. Mr Ivory had been observed travelling at 108kph, exceeding the posted speed limit of 50kph by 58kph. An unlit motorcycle travelling at such a speed, at dusk (sunset was at 8.52pm) constituted a danger to other traffic. An unlit motorcycle is not always immediately visible to other road users even in full daylight. At the time of this incident daylight was fading, and some vehicles on the road already had their lights on.

Visibility was described by the Police driver as generally pretty good. At the termination of the incident, on Taita Drive, another Police driver described the lighting as "still light but dusk". Nevertheless, the speed at which Mr Ivory was travelling clearly required his motorcycle to display lights to render it immediately visible to other road users.

Another factor necessitating the pursuit was that the identity of the machine or its owner could not be ascertained from checking the registration number. This was partly obscured making apprehension of the rider essential in establishing his identity. An attempt to stop the motorcyclist by pursuing him and signalling him to stop was therefore justifiable and necessary.

The first responsibility of the Police driver, which is to advise a control room or supervisor of the commencement of the pursuit, was observed by Constable Whitty. The transcript of the taped record of radio traffic shows that a report was radioed to Control that the patrol was in pursuit of the motorcycle, that it had failed to stop and that it was travelling south on Fergusson Drive at 140kph. Other reports followed over the succeeding minutes until after Mr Ivory had come off his motorcycle. Reports of his apparent condition were radioed as were requests for the attendance of an ambulance.

Quite clearly the Police Control Room was kept aware of what was happening throughout the incident. On 20 December I had given specific instructions to Superintendent Robinson to have the Control Room tape secured for future reference.

The responsibilities of the Police driver also embrace several factors pertaining to the maintenance of a safe pursuit. In this instance most were observed during the course of the incident. The Police car was driven carefully, in a manner commensurate with the traffic conditions. No complaints were made by any other road users about the driving of the Police car. The weather was fine and roads dry. Warning lights and siren were activated, speed was reduced at intersections and radio contact with Control was maintained. Other road users were warned in advance by siren of the approach of the motorcycle and Police car. However, there were two aspects of Constable McLardy's driving during the pursuit of Mr Ivory which warrant some critical attention.

The first of these occurred at the Stokes Valley roundabout. Here Constable McLardy followed Mr Ivory's track round the wrong side of the roundabout. This was a very hazardous option for the Constable to have taken, despite the fact that no other traffic was put at risk or inconvenienced, the way being quite clear. However, the demandingly audible and highly visible appearance of the Police car with lights and siren operating would have alerted other traffic to its approach. Three witnesses to various stages of the incident have stated that they became aware of the approach of the motorcycle before it appeared by hearing the Police car siren. This serves to lessen the hazard presented by this manoeuvre. Notwithstanding these features, to have driven around the wrong side of the roundabout was quite clearly an error of judgement on the Constable's part.

The second exception occurred at the curve on High Street at which Mr Ivory came to grief. An examination of the scene showed that the Police car's tyres rubbed the inside kerb of the curve. Under braking, which produced a 108 metre tyre mark, the car then came to a standstill at the junction of High Street and Taita Drive. In analysing this phase of the pursuit it is evident that Mr Ivory's leaving the road on or near the apex of the curve was an unexpected and unpredictable development. The Police car was travelling at speed with Constable McLardy's attention being focussed on negotiating the curve rather than watching Mr Ivory. However, when Mr Ivory's mishap occurred Constable McLardy caught sight of this from the corner of his eye and braked hard, thereby disturbing the set up of the car into the curve. I think the momentary distraction of this might have caused a lapse of concentration on Constable McLardy's part which ameliorates the fact of momentarily not having full control of his vehicle.

Immediately following Mr Ivory's crash Constables McLardy and Whitty took all possible steps to expedite the arrival of trained medical assistance and to monitor Mr Ivory's condition, assisted by other officers and passersby.

Control Room Supervision

The incident was monitored from Wellington Central Control Room. There Constable J R Mackie was the recipient of the initial radio report that Constables McLardy and Whitty were attempting to apprehend a fugitive road user.

The comparatively brief duration of the pursuit phase of the incident, from shortly before 9.00pm until 9.03pm when the radio call reporting the crash was logged, did not allow for the generation of any significant monitoring or controlling role by Wellington Central other than compiling a log of radio reports, and alerting other patrol cars to the situation. During the incident Constable Mackie was receiving reports from the pursuing Police car at intervals of ten or so seconds, giving the location and speeds at various stages. I have examined the transcript of the Control tape relating to this pursuit phase and I am satisfied as to its accuracy and integrity.

The Control Room Inspector on duty was alerted to the incident but it had terminated before supervision of the Constables in the Police car could be undertaken. A field supervisor, Senior Sergeant Knox, was on patrol elsewhere and was able to monitor the radio traffic between Control and the pursuing Police car. He went to the scene of the crash and oversaw and reported on the action which followed.

Independent Witnesses

In considering the course and nature of the pursuit of Mr Ivory the observations of independent witnesses are highly relevant. A number of witnesses saw the pursuit at various stages between Fergusson Drive and the High Street/Taita Drive intersection. Taken together these accounts confirm that the motorcycle was travelling at very high speeds, sometimes on the wrong side of the road, was unlit and was followed by the Police car with red and blue flashing roof lights on and siren sounding. Witnesses commented on the dangerous manner in which the motorcycle was being ridden. Witnesses reported the Police car as being 50 to

200 metres behind the motorcycle at various stages during the incident. A witness voiced the opinion that the Police appeared justified in attempting to catch the speeding motorcyclist and that the Police car was not being driven dangerously. No civilian witness complained or was critical about the driving of the Police car at the respective stages of the pursuit which the witnesses observed.

Post Mortem Analysis of Blood and Urine

An analysis of samples of blood and urine noted respective quantities of 94 and 121 milligrams of alcohol per millilitre, 80/100 being the blood alcohol limit. Traces of THC indicating cannabis ingestion were also present in Mr Ivory's blood. The level, 3.8 nanograms, indicated ingestion between 15 minutes and three hours prior to death. Scientific opinion is that some impairment exists 4 to 6 hours after ingestion of that quantity.

Mechanical

Afterwards the motorcycle was examined by an independent automotive surveyor who found that it had no mechanical defects which may have been a contributing cause in the accident. Examination confirmed that the rear number plate was probably folded into an L shape prior to the crash; as observed. It was not possible to ascertain the serviceability of the motorcycle headlight which was damaged in the crash. However, one of Mr Ivory's companions on the other motorcycle stated that the headlight was not in working order that day.

Factors Influencing Mr Ivory's Actions

The reasons Mr Ivory's actions, firstly in disregarding the Police signals to stop and, secondly, in leaving the road at the point observed, are unknown. Some attention has therefore been directed to factors personally relating to Mr Ivory in an attempt to establish those reasons.

As stated earlier, there had in the past been a number of instances in which Mr Ivory had incurred traffic convictions, including two for driving with excess breath alcohol and one for speeding. He was not licensed to ride a motorcycle. The motorcycle he was riding was later found to be unlicensed. It may therefore be inferred that Mr Ivory, fearing a further excess breath alcohol charge, may have chosen to attempt to evade apprehension by riding away.

According to the rider of the motorcycle which was in company with Mr Ivory when the two were first seen by the Police, the two motorcyclists and the pillion passenger were on their way to an address in Lower Hutt. They were anxious to get there before dark, Mr Ivory's motorcycle headlight being inoperative.

The reason for Mr Ivory's leaving the road to follow the path he did is more obscure. Two particular reasons suggest themselves. There may possibly be others. It would not add to this review's findings by speculating as to which of the following factors, if either, caused his machine to leave the road:

- a. Loss of control due to trying to negotiate the curve at too high a speed.
- b. A deliberate attempt to cut the corner and enter Taita Drive by crossing the grass.

There is no evidence to suggest either of these possible explanations for Mr Ivory's motorcycle leaving the road is more likely than any other.

Conclusions

It is concluded that Mr Ivory apparently consciously decided to evade apprehension by a Police patrol after he had encountered the Police patrol when he was riding his motorcycle at a speed more than double the permitted limit in a full residential area.

It is also concluded that for reasons which are unable to be positively established, Mr Ivory's motorcycle left the road at a left hand curve on High Street, Lower Hutt. This brought machine and rider into violent contact with two roadsigns with fatal results.

With the possible exceptions noted, neither of which caused any other road user to be put at risk or inconvenienced in any way, the Police car in pursuit of Mr Ivory was driven safely and professionally.

The short duration of the pursuit phase of the incident did not allow the generation of positive control of the pursuit from Wellington Central Control Room. Such contact and Control as did eventuate were effective and in accordance with the General Instructions governing the subject.

Swift action was taken by the Police after the crash to monitor Mr Ivory's condition and to call for trained medical attendance.

The evidence suggests that Mr Ivory's decision to evade apprehension may have been motivated by worry of further charges being brought against him.

A thorough and comprehensive investigation into the circumstances was made in timely fashion by the Police.

Recommendations

The substance of this matter was the Police pursuit of Mr Ivory. In the course of the investigation two areas were identified as calling for comment and that has already taken place. I repeat again that the two aspects identified in the report as lapses in driving were independent and had no effect whatsoever on the ultimate accident that occurred. Nevertheless, if in the course of an investigation lapses are identified, attention must be drawn to them.

They were departures from the Police General Instruction which requires drivers engaged in pursuits to drive carefully and skilfully and with total control and concentration at all times.

The first of these departures occurred at the Stokes Valley roundabout. The actions of Constable McLady in driving around the wrong side of the roundabout were contrary to the requirements of the General Instruction.

The second departure occurred on the curve of High Street at the time Mr Ivory's motorcycle left the road.

Because of the necessity of adhering strictly to General Instructions I recommend that Constable McLady be informally counselled in respect of these two departures from the requirements of the Instruction.

Other than as specified above, I have no criticism of the role of the Police in this incident.



Sir John Jeffries

POLICE COMPLAINTS AUTHORITY

10 March 1994

