



POLICE COMPLAINTS AUTHORITY

**Report by the Police Complaints Authority
on the Investigation into the cause of a collision
resulting in the death of Mr and Mrs R E Young
in Christchurch on 16 September 1993**



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REPORT BY THE POLICE COMPLAINTS AUTHORITY ON THE INVESTIGATION INTO THE CAUSE OF A COLLISION RESULTING IN THE DEATH OF MR AND MRS R E YOUNG CHRISTCHURCH - 16 SEPTEMBER 1993

Introduction

At about 1.37am on Thursday 16 September 1993 a 1989 Honda Civic car being driven by Mrs Elizabeth Dawn Young (55) and in which her husband Ronald Errol Young (59) was a passenger was struck at a traffic light controlled four-way intersection in Christchurch by a 1982 Mitsubishi Sapporo Eterna GSR Turbo car being driven at high speed by Daniel Raymond Mitchell (37).

In the collision, in which the Mitsubishi struck the left-hand side of the Honda, Mr & Mrs Young were both killed instantly. Mitchell sustained injuries necessitating his hospitalisation.

The traffic light was green for Mrs Young and red for Mitchell. Shortly before and up to the time of the collision Mitchell was being pursued by a Police dog handler's van driven by Constable S A Linney.

Reporting

Later on the same day the circumstances were reported to the Authority by the Commissioner of Police. This was in accordance with Section 13 of the Police Complaints Authority Act 1988. This enactment requires such notification in incidents involving the death of, or serious bodily harm to, any person where a member of the Police acting in the execution of his or her duty may have been involved.

Investigation

The Authority decided, in accordance with s. 17(1)(c) of the Act, to oversee the Police investigation of the incident. To that end an investigator from the Authority's office travelled to Christchurch, still on the same day. The investigator was briefed by the Police on the collision and on what was known at that time of the surrounding and contributory circumstances. A visit was made to the scene. The course to be taken by the Police investigation was discussed.

Narrative of Events

The investigation established the following sequence of events.

At about 1.35am Constable Linney was driving south on Lincoln Road, a Christchurch residential area with a 50kph speed limit. Constable Linney is a dog handler and was driving a Police Ford Falcon van containing his dog. The van is a specialist dog conveyance, although equipped with red and blue roof lights and a siren.

The Constable noticed two vehicles in front of him travelling erratically. A third vehicle was between him and the two but it overtook them and drew away, allowing the Constable to come up behind the two vehicles, the rear one of which was a white Nissan utility. The driver of the utility was a Mr Butson; the driver of the other car, a white Mitsubishi Sapporo, was Mitchell. The Constable first thought from the vehicles' behaviour that either one was towing the other or that the two drivers were playing a game.

As Constable Linney gradually caught up to the two vehicles Mr Butson gesticulated to him. Constable Linney took this to be a request for him to stop the Mitsubishi driven by Mitchell. At this Constable Linney overtook the Nissan driven by Mr Butson.

As soon as he did so, and before he activated the roof lights and siren of the dog van, Mitchell in the Mitsubishi accelerated away from him along Lincoln Road in the direction

of Halswell Road. Constable Linney immediately turned on the dog van's flashing roof lights and followed Mitchell. Constable Linney radioed the registration number of Mitchell's car to Control with the direction in which it was travelling and turned on the siren of the dog van. The radio message was recorded on the Control Room tape as being made at 01.36 15/60am.

At 01.36 51/60 Const. Linney radioed to Control that the pursued vehicle was not going to stop. At a point between the intersections of Whiteleigh Avenue with Lincoln Road and the intersection of Lyttelton Street with Lincoln Road Constable Linney reported the speed of his vehicle as 150kph; Mitchell was accelerating away from him at that point, the report being made at 01.37 7/60am.

I make particular note of these detailed times in order to convey the extremely short timescale within which these events occurred.

Constable Linney, some distance behind Mitchell by now, saw Mitchell's car approach the four way intersection of Lincoln Road, Curletts Road, Hoon Hay and Halswell Road. It was still accelerating. Another vehicle, later found to be driven by a Mr Goh, was in front of Mitchell's car. Mitchell appeared not to notice it and Constable Linney, from his position some distance to the rear, expected the two to collide.

However Mitchell's car was seen by the Constable to pull violently out to the right, to straighten up and then to strike the raised central reservation preceding the intersection.

Mitchell's car was then seen by Constable Linney, who was by this time 100 metres to the rear, to become airborne and to land on the wrong side of the road but still to travel in the same direction. It then entered the intersection on the wrong side at a speed barely reduced from the very high speed at which the car had been travelling. The traffic lights were red, against Mitchell, at the time. At the same time the Honda car driven by Mrs Young also entered the intersection, from the

right in relation to Mitchell's direction of travel.

As the Mitsubishi entered the intersection it struck the left hand side of the Honda Civic driven by Mrs Young. The impact pushed the Honda across the intersection, it coming to rest about 10 metres further on in the northbound lane of Halswell Road.

Constable Linney drove forward to the intersection and reported the collision to Control. The report was made at 01.37 13/60. This was 58 seconds after the Constable's first report of Mitchell's speeding vehicle. The duration of the pursuit can, I believe, be taken to have been barely one minute, allowing for a few seconds between Constable Linney's respective observations and the resultant radio reports.

After reporting the collision and asking control for assistance, Constable Linney immediately went to Mitchell's car, the nearer to him of the two. He saw that Mitchell was trapped. Constable Linney then checked the Honda Civic and was unable to find any sign of life in either of the two occupants.

Other Police were arriving by this time, the first being Acting Sergeant Aitken. At 1.40 14/60 further radio requests and reports were made to Control of the circumstances and fatalities. The requirement for ambulance and fire service attendance was restated and steps taken to close the road and to control traffic.

Events preceding the collision

At the time of the collision Mitchell was 37 years old and unemployed. The car he was driving belonged to a flatmate. He came to be driving it because, when wishing to go out for the evening, his own car was blocked in where it was parked at the flat where he lived. The flatmate suggested Mitchell took the Mitsubishi instead.

Mitchell left the flat at about 7.45pm. He went to the Southlander Tavern where, he later stated, he drank two jugs of beer. At about 11pm Mitchell went on from the Southlander to a

club on Tuam Street called Bourbon Street. According to Mitchell he drank another three beers and left the club sometime between 1.00am and 1.30am.

In the car park of the Bourbon Street club Mitchell reversed his car into a vehicle belonging to Mr D B Petrie. The slight impact caused no apparent damage, but in a statement Mr Petrie said Mitchell appeared to be experiencing some difficulty in manoeuvring the car when leaving the car park.

At about 1.25am Mr J D Butson, previously mentioned, was driving west along St Asaph Street. On turning left into Colombo Street he encountered a car coming towards him; it was on the wrong side of the road. Mr Butson was greatly alarmed and stopped, narrowly avoiding a collision with the other vehicle which swerved left at the last moment. The other car was then driven through a red traffic light and turned onto St Asaph Street, travelling west.

Mr Butson, concerned by the standard of driving demonstrated by the other driver, turned and followed in order to stop him. He noted the registration number of the offending vehicle as OO6969, and noted it was a white Japanese imported car. This was the registration number and description of the car being driven by Mitchell.

Mr Butson followed Mitchell along St Asaph Street and soon caught up with it. Mitchell stopped. Mr Butson stopped alongside Mitchell and spoke to him through his front left hand window. Mr Butson told Mitchell that he was going to call the Police because he didn't think Mitchell should have been driving. Mr Butson then drove on intending to alert the authorities to Mitchell's driving from a telephone at a service station on Moorhouse Avenue.

Whilst driving south along Durham Street Mr Butson saw that the other car was following him. It came up behind him, very near to the rear of his own car. Mr Butson slowed, conscious of Mitchell's erratic driving. At this Mitchell drove alongside Mr Butson for a short distance before pulling in front of him and sounding the Mitsubishi's horn.

Mr Butson stopped; so did Mitchell momentarily, before violently accelerating towards the junction of Durham Street and Moorhouse Avenue where he again stopped. Mr Butson followed. Mitchell then drove through a red traffic signal and again accelerated violently along Moorhouse Avenue. Mr Butson followed, having formed the intention of trying to stop Mitchell himself, concerned that Mitchell by his erratic driving was going to have a bad accident.

Along Moorhouse Avenue Mitchell executed a right turn over the central median divider, turned right again and then executed another right turn over the median divider, coming up behind Mr Butson once more. This manoeuvre, from the traffic lights and twice across the median strip, by Mitchell was also seen by another motorist, Mr C J Erikson.

Mitchell then drove alongside Mr Butson before overtaking him on the left and assuming a position in front of him. During this period Mitchell drove at varying speeds, accelerating away and slowing down and braking in turn.

Mitchell halted at one point on Moorhouse Avenue. Mr Butson decided to go to the Hagley Mobil Service Station and turned left into Lincoln Road. As he did so Mitchell again overtook him on the left resulting in both vehicles travelling along Lincoln Road with Mitchell ahead of Mr Butson. Mr Mitchell made what Mr Butson considered to be a dangerous lane change at road works after crossing the railway line before recommencing the "cat and mouse" conduct previously described. The harassment that Mr Butson was experiencing from Mitchell since first encountering him in St Asaph Street had now extended over a considerable period of time.

At this point Mr Butson noticed a Police vehicle some distance behind him. He slowed and attracted the attention of the Police driver, who was Constable Linney, by waving his arm out of his window. He pointed to Mitchell's vehicle which accelerated away at high speed and Mr Butson saw the Police vehicle go off in pursuit with its air horn and roof lights on.

When Mr Butson reached a point further along Lincoln Road at the intersection of Halswell and Hoon Hay, he saw that a collision involving Mitchell's car had occurred.

Independent Witnesses

There were a number of people about in the Lincoln Road area during the relatively brief duration of the latter part of this incident. Six private individuals who were either driving, passengers in cars or pedestrians saw Mitchell's car between the time Mr Butson pointed Mitchell out to Constable Linney and the moment of the collision between Mitchell's car and that of Mrs Young.

The witnesses are unanimous in their description and accounts of the reckless way and excessively high speed at which Mitchell was driving. The Mitsubishi was seen to be driven on the wrong side of the road and to be travelling at a speed which witnesses felt far exceeded the ability of the Police dog van, travelling several hundred metres behind it, to match. Mitchell's speed was variously estimated by these witnesses as 120 - 130 kph. One witness described it as "flying".

Movements of Mr and Mrs Young

The investigation established that Mr and Mrs Young were quietly driving home to Westmoreland. Mr Young had shortly before arrived by air from Australia and Mrs Young had collected him from the airport. Both Mr and Mrs Young were killed outright in the collision when their car was hit by that of Mitchell.

Blood/Alcohol Content

Constable D Murrell had arrived at the scene and was present when Mitchell was freed from the Mitsubishi. The Constable went with Mitchell to Christchurch Public Hospital. A blood sample taken from Mitchell at the Hospital was subsequently found to register 228 milligrams of alcohol per 100 millilitres

of blood. A blood sample taken from the driver of the other car, Mrs Young, showed a nil alcohol content.

Accident Enquiry

A comprehensive accident enquiry was carried out by Sergeant P D Brocas. It was established that the entire incident took place within a 50 kph restricted area. The conditions were fine weather with clear visibility under street lighting. The road surface was dry.

Mitchell's vehicle was examined by an automotive surveyor. No mechanical faults which may have contributed to the accident were found. The car's headlights were operating at the time of the collision. The car was currently licensed but displayed a warrant of fitness that had expired on 5 August 1993.

The accident enquiry found that when approaching the intersection where the collision occurred, Mitchell appeared only at the last moment to see the car driven by Mr Goh. Mitchell swerved to the right to overtake and in doing so struck the apex of the raised concrete median strip with the left front wheel of the Mitsubishi he was driving. The car careered into the wrong side of the road and continued, without apparently braking, for approximately six metres up to and into the intersection.

As the Young's vehicle crossed the northern side of the intersection it was struck by Mitchell's vehicle, pushing the Young's vehicle 28 metres across the intersection and partly on to the raised median divider on the Halswell Road side.

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 pursuit was considered necessary not only on the grounds of the Constable's observation but also because of the non-verbal request made of him by a member of the public, Mr Butson. When Constable Linney in the dog van then came up behind Mitchell's car, Mitchell drove off at high speed before the dog van roof lights or siren were turned on. Constable Linney thereupon activated both roof lights and, moments later, the siren of the dog van. In the circumstances, in the early hours of the morning, when a member of the public had in effect called the Police, it was reasonable and necessary for Constable Linney to pursue Mitchell with a view to obtaining from him an explanation of the reason why Mr Butson had asked by gesture for Mr Mitchell to be stopped.

There is no evidence to suggest that Constable Linney drove other than carefully and skilfully. He reported slowing his vehicle when travelling through light controlled intersection on Lincoln Road, even though the lights were in each instance in his favour. Similarly it can be taken that the Constable drove with total control and concentration.

The warning lights were used from the moment that Mitchell drove away from the dog van at speed. The siren was activated as soon as Constable Linney had made his initial radio report to Control. Witnesses have referred to both as being operated during the pursuit. Concerning the requirement to maintain radio contact with the Control Room, despite the very short duration of the pursuit there is clear evidence that this requirement was observed by Constable Linney.

The requirement for the pursuit to be discontinued did not arise in this instance. Its short duration gave no opportunity for this factor to be considered by the Constable or Control. However, Control was able to notify Police at Hornby, in which direction the pursuit was travelling, of the situation.

There was clearly little opportunity during the 58 second duration of the pursuit for Control to direct the course or to give consideration to the question of its continuance. A supervisor, Acting Sergeant Aitken, was in the area of the pursuit in another Police vehicle and he monitored Constable Linney's brief series of radio reports. The Sergeant made his way to Lincoln Road and arrived at the scene of the collision at 01.39, shortly after Constable Linney had reported its occurrence at 01.37 13/60 am.

Assessment

At this point it is necessary to assess the actions of Constable Linney and to form an objective view of the part of the Police in the circumstances surrounding and leading up to the collision and the resultant deaths of Mr and Mrs Young.

It is considered that the Constable would have been remiss had he ignored the gestures of Mr Butson towards Mitchell's car. Having responded, by overtaking Mr Butson's vehicle and coming up on that driven by Mitchell, Mitchell then chose to drive off at high speed, this before any signal to stop was made to him by the Constable.

It is most likely that the mere appearance of the Police vehicle in Mitchell's rearview mirror prompted this response on his part. It cannot be doubted that Mitchell was paying close attention to his mirror as it would have been an integral factor in the 'cat and mouse' game to which he had been subjecting Mr Butson.

Mitchell's action in thus driving off, allied to the gestures Mr Butson had made, were in my opinion sufficient justification for the Constable to turn on his roof lights and then his siren and embark on the pursuit of Mitchell.

The evidence of those several witnesses who saw the pursuit at some point or other leads me to the conclusion that there was little chance of the dog van driven by Constable Linney overhauling the Mitsubishi driven by Mitchell. All the indications are that the van was well back and falling further back as Mitchell accelerated along Lincoln Road.

Conclusion

The question to be addressed here concerns the circumstances surrounding Mitchell's driving behaviour, which directly resulted in the death of Mr and Mrs Young, and what other factors, if any, contributed to the tragedy. Constable Linney's presence is an element in this question but not, I believe, a contributory or even significant one.

My reasons for so believing turn on the driving conduct of Mitchell that had been observed, and reported on in detail, by Mr Butson. Mitchell's grossly negligent alcohol affected driving - it can be described as nothing less - was by any reasonable standard almost certain to bring about some form of accident.

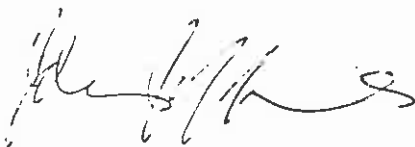
Mitchell's blood alcohol level approached three times the legal limit. He was clearly intoxicated to a very marked extent. He had collided with Mr Petrie's vehicle in the Bourbon Street Club car park. He had driven at Mr Butson on the wrong side of

the road. He had ignored, deliberately it seems, red traffic signals. He had performed convoluted manoeuvres on Moorhouse Avenue across the median divider and around Mr Butson's vehicle. He had maintained his cat-and-mouse tactics through the Christchurch streets to the danger of every other road user. I do not believe that the appearance of the Police dog van driven by Constable Linney materially affected Mitchell's judgement or driving ability. He had adequately demonstrated their pitifully low standard already that morning.

Mitchell was subsequently charged firstly with the manslaughter of Mr and Mrs Young and, secondly, with driving with an excess level of breath alcohol. He was found guilty on both counts and was sentenced to nine years imprisonment on the first charge. On the second charge he was disqualified from driving for ten years from the date of his release from imprisonment, the Judge commenting that this was one of the worst cases to come before the Court.

I am unable to conclude that the Police pursuit of Mitchell was responsible for his coming into collision with the car driven by Mrs Elizabeth Young which had such tragically fatal results.

Finally, I would remark that Court proceedings against Mitchell, before the conclusion of which this review could not have been published, and other factors beyond the control of my office have delayed the production of this report to an undesirable extent. I nevertheless believe that the examination of this tragic incident has not in any way been adversely affected by this unavoidable delay.



(Sir John Jeffries)

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21 April 1994