



# Police Complaints Authority

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REPORT BY THE POLICE COMPLAINTS AUTHORITY  
ON THE INVESTIGATION INTO THE DEATH OF  
DAVID JOHN STENTON IN INVERCARGILL  
5 DECEMBER 1993

## Introduction

On 5 December 1993 at approximately 3.35am, David John Stenton, a 32 year old unemployed man, single but in a de facto relationship, came into collision with a Police Patrol vehicle whilst running across Kelvin Street, Invercargill. Mr Stenton later died in the Accident and Emergency Department of Southland Hospital of internal injuries he sustained in the collision.

The car was an Invercargill Police car driven by Sergeant S S Larking.

## Investigation

The circumstances of Mr Stenton's death required the incident to be immediately reported to the Police Complaints Authority under the terms of Section 13 of the Police Complaints Authority Act 1988. This section of the Act provides for any death or grievous bodily harm sustained by any person which appears to have been caused by a member of Police acting in the execution of his or her duty to be so notified to the Authority.

This notification was made without delay and I travelled to Invercargill on 6 December 1993 to make a preliminary assessment of the circumstances surrounding Mr Stenton's death. I visited the scene and I was thoroughly briefed on the situation and on the enquiries made so far. As a result I

decided to await the results of the Police investigation that was already in progress and to review that investigation, its conclusions and its recommendations in the normal way.

Because of the strong local interest in the tragedy which was being evinced by the general public I resolved at an early stage that the results of my findings would be made public. Hence this report.

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

### Narrative of Facts

The two principal factors bearing on this accident were the two respective circumstances which brought Mr Stenton and the Police car into contact on Kelvin Street. As will emerge, the separate circumstances were nevertheless closely linked. I propose in this report to examine these circumstances separately; those concerning Mr Stenton first. then, having next addressed the circumstances which brought the Police car to the same place at the same time, I intend to evaluate the various contributing factors in each set of circumstances and to arrive at a conclusion.

### Mr Stenton's Movements

To take first then the chain of events that brought Mr Stenton to the centre of Kelvin Street at the material time.

On the afternoon of 4 December, a Saturday, Mr Stenton and a number of friends got together to socialise at a home in Yarrow Street. A certain amount of alcohol was bought and consumed, and some tennis was played at nearby courts before Mr Stenton and the others went back to the house, showered, and had a meal.

As the evening progressed the group went to a hotel and later on to a night club. At about 3.00am on 5 December Mr Stenton and four others were in a taxi driven by Mr P J McMillan travelling south into the city.

At a point on Dee Street near the Cenotaph on the Gala Street Reserve Mr McMillan was asked by one of his passengers to stop, and all but one of the passengers alighted. A brief discussion about the fare then ensued between Mr McMillan and the remaining passenger (who was not Mr Stenton) before that passenger also alighted. No fare was paid. Instead, all five passengers then ran away in the general direction along Gala Street.

Mr McMillan immediately radioed to his Company's base and reported that his passengers had made off without paying their fare. He asked the taxi company despatcher to call the Police.

This radio message was overheard by a number of other taxi-drivers employed by the same company as Mr McMillan, some of whom made their way to his general vicinity.

One of these drivers, Mr M Thompson, saw a person he described as "a blonde haired chap", who he took to be one of Mr McMillan's passengers, running through the Gala Street Reserve. This person was Mr Stenton. Mr Thompson stopped his taxi-cab and was able to apprehend him in the car park of the Queens Park Medical Centre. At this point another taxi-driver, Mr R Molloy, who had parked his cab, came up to Mr Thompson and the man he had apprehended, David Stenton.

Mr Stenton indicated he was ready to go with the two drivers and said "I'll pay for the fare", taking from his pocket a leather pouch and looking into it. He was told the Police had been called, whereupon he broke away from the other two men, and ran back into the Reserve. The two drivers ran after him, Mr Molloy in the lead.

Mr Stenton ran diagonally through the reserve towards Kelvin Street, the chase going at a fast pace and Mr Thompson falling behind. The men ran under trees in the reserve, through some shrubs and came out at the left free-turn lane on Kelvin Street at the junction of Kelvin and Gala Streets. Between the free turn lane and the straight ahead lane is a plot of dividing flower garden roughly triangular in shape. Mr Stenton ran

across the free-turn lane and through the flower garden; Mr Molloy who was still following him stumbled and fell in the garden. Mr Stenton ran on to the roadway.

At that moment a Police car drove down Kelvin Street towards the junction with Gala Street. To Mr Molloy the car seemed to be travelling at about 30kph. He heard what he described as a screech of brakes, and saw the car and Mr Stenton collide. Mr Stenton was thrown slightly forward of the car as it stopped.

The collision was also seen by a motorist and his two passengers. They were in a stationary car in the free-turn lane behind a parked taxi: the taxi of Mr McMillan who had driven to this point during his search for his absconding passengers. Both Mr McMillan and the motorist whose car was stationary behind Mr McMillan's parked taxi in the free-turn lane saw Mr Stenton run out of the reserve, across the garden and into the road as the Police car approached. One of the motorist's passengers who saw Mr Stenton run out into the road mistakenly thought he had just emerged from Mr McMillan's taxi. The other of the motorist's passengers didn't see where Mr Stenton came from before witnessing him running out into Kelvin Street.

#### Police Involvement

At this point in the report I now propose to address the circumstances which brought the Police car to that point on Kelvin Street at which Mr Stenton ran out into the carriageway.

The direct involvement of the Police began when at 3.30am. The taxi company despatcher, to whom Mr McMillan had reported that his passengers had fled without paying their fare, in turn reported Mr McMillan's predicament by telephone to a constable on duty in the Watchhouse at Invercargill Police Station. This was Constable S J Ditmer. The call was received on the Police station switchboard and not via the 111 emergency facility.

The message which was passed by the despatcher to Constable Ditmer was recorded. The transcript of that recording has it as: "Could you send someone to Tappers, one of our guys has just had some blokes taken off on him." (Tappers is the name of a premises close to Mr McMillan's reported position).

To convey an accurate sense of the prevailing atmosphere and conditions it is noted that the call was made by the despatcher over the telephone from the taxi company base against a background of radio calls by taxi-drivers who were anxious to assist in the location and apprehension of the absconding passengers. The message was conveyed, and received, with a sense of urgency.

Constable Ditmer interpreted the message to mean that a taxi-driver had been robbed and that the offenders were still in the immediate area. He went from the watchhouse into the adjacent Police Operations Room and told the constable on duty, Constable Deborah Wilson, that: "Blue Star Taxis need help at Tappers on Dee Street as a driver has been robbed there."

Also in the Operations Room were Sergeant Larking, the officer in charge of the station that night and a number of officers from mobile patrols. Some prowlers had been reported elsewhere in Invercargill and the Police response to that report was being set up. When Constable Ditmer told Constable Wilson of the apparent robbery of a taxi-driver, Sergeant Larking decided to respond to the incident himself taking with him Constable S J Harvey. Another patrol comprising Constables Smith and Harrington was available in the city to assist the Sergeant. The location of the incident was confirmed over the radio by Constable Ditmer in response to a request by either Constable Harvey or the Sergeant.

During the next few minutes Constable Ditmer again spoke on the telephone to the despatcher at the taxi company base. It was clarified by the taxi company despatcher that the incident was not one of robbery but of the taxi passengers absconding. "They took off without paying the money, that's what I meant," the taxi company dispatcher said.

This information was clarified in a broadcast by Constable Ditmer in a further radio message to Police patrols.

Sergeant Larking, who was driving the Police vehicle, and Constable Harvey were in the Gala Street area on Victoria Avenue. A number of taxis were in the nearby museum grounds. The Sergeant drove west along Victoria Avenue from the museum towards the intersection of Victoria Avenue with Kelvin Street. At the intersection the Police vehicle he was driving was spotted by Mr McMillan who had by this time driven to Kelvin Street and was in a position just short of the Kelvin Street left free-turn lane at the intersection of Kelvin Street with Gala Street. Mr McMillan had stopped. Seeing the Police vehicle he sounded several short sharp blasts on the air horn of his taxi-cab. This horn has a particularly penetrating tone and is considerably more audible than an electric horn.

Hearing the sound of the airhorn, Sergeant Larking stopped and then turned left from Victoria Avenue into Kelvin Street, and drove on. As he did so Sergeant Larking saw two people at the left hand free-turning lane. Constable Harvey in the front passenger seat of the Police vehicle saw a person with long white hair run from the bushes at a point a little behind the stationary taxi of Mr McMillan. This person, who was Mr Stenton, was followed by a smaller older man, Mr Molloy.

The two ran onto the traffic island; Constable Harvey prepared to jump out as Sergeant Larking applied the brakes. Mr Stenton was still running but, Constable Harvey said, "he appeared out of control, sort of stumbling and unco-ordinated like he'd lost his balance." Sergeant Larking, with brakes on and the car decelerating attempted to turn away from Mr Stenton but an impact occurred and Mr Stenton fell as the car skidded to a stop.

Forensic testing later established that the speed of the vehicle at the moment of impact would have been no greater than 12kph.

On Monday, 6 December, when I was in Invercargill I examined the front left hand side of the vehicle in the headlight region and detected the barest evidence of a collision. There was a slight indentation in the panel.

At first Mr Stenton did not appear to have been seriously injured. He was conscious, able to speak and attempted to rise. He was prevailed on to remain still until an Ambulance and medical assistance arrived, when he was taken to the hospital where he unfortunately died.

#### Post Mortem Examination

The post mortem examination that was subsequently carried out discovered few visible injuries to Mr Stenton's person. Such injuries as were visible were confined to superficial small abrasions on the left forehead, small grazes on the back of each elbow, a graze on the rear of the right shoulder and a slight lengthways graze in mid-back of the shoulders slightly towards the right shoulder. There was a laceration on the upper left forearm. Internal examination disclosed transverse fractures of the fifth, sixth and seventh ribs on the left side of the front of the chest.

A ruptured thoracic aorta, however, was recognised as an untreatable fatal injury and the cause of Mr Stenton's death. Death was due to blood loss from the ruptured aorta.

Rupture of the thoracic aorta is an injury associated with deceleration, usually found in car accidents and air crashes. The victim's own velocity would be a contributing factor.

The form that this fatal injury takes is that rupture or complete severance of the aorta occurs when shearing forces are encountered causing the body to twist and for the internal organs to turn in different directions relative to each other. The aorta, at one point fixed to the spine, is in such cases unable to accommodate the turning or twisting movements and rupture occurs, blood then flowing into the internal body cavities.

Relating this to the collision between the vehicle and Mr Stenton, the nature of the fatal injury and the observed circumstances of the collision suggest that when the vehicle and Mr Stenton came into forceful contact the glancing, twisting effect on Mr Stenton's forward running progress was probably responsible for the rupture of the aorta. The fatal nature of the injury, basically internal blood loss, would not immediately be apparent. Hence Mr Stenton's initial ability after the collision to speak and his wish to get to his feet.

The post mortem also established a blood alcohol level of 113mgms per 100mltrs in Mr Stenton. This level exceeds the legal limit for driving. Mr Stenton was not, of course, driving. In an average person this could be expected to produce some, but not marked, impairment of normal faculties.

#### Review

I have considered the facts revealed by the close scrutiny paid to these events by the separate Police traffic accident and sudden death investigations. In the former a comprehensive series of scientific and practical tests were made to determine the behaviour of the Police vehicle which was being driven by Sergeant Larking at the point in Kelvin Street where the collision occurred.

#### Collision Analysis

A detailed report with input from independent civilian specialist engineers, a forensic scientist and an automotive engineer established that the vehicle was being driven safely and that the observations of the several witnesses who saw the collision were compatible with the scientifically established mechanical performance and handling of the vehicle, and with the road, lighting and weather conditions prevailing at the time. The examination confirmed Sergeant Larking's having attempted to turn away from Mr Stenton as the possibility of the impact became apparent.



### Possible Criminal Liability

After the completion of the investigation by Invercargill Police the conclusions and findings of that investigation were then referred by the District Commander at Invercargill to Police National Headquarters for the information and scrutiny of the Commissioner of Police.

The Commissioner's staff made some further enquiries, and the Crown Law Office was invited to address the question of any criminal liability that may be attributable to Sergeant Larking. The outcome of these additional enquiries and consultations was that no liability for the collision could be attributed to the Sergeant.

Part of the function of my subsequent quite independent review of the entire matter addressed that outcome. I accept the opinion obtained from the Crown Law Office that there is no offending arising out of the accident.

### Conclusions

In bringing this review to a close I have arrived at the conclusion that the circumstances resulting in the tragic and unfortunate death of Mr Stenton came about after Police received a report that passengers in a taxi driven by Mr McMillan had decamped without paying their fare.

The resultant quite independent action taken on the one hand by the Police in response to the report, and on the other hand by other taxi drivers to try to locate the offending passengers, resulted in Mr Stenton running away from a pursuing taxi-driver and into the path of a patrolling Police car driven by Sergeant Larking. I am unable to find any evidence which might suggest that the Sergeant acted negligently or dangerously in the way he was driving the car or in the way he responded to the appearance of a person being pursued from the side of Kelvin Street into the path of the Police vehicle.

I have considerable sympathy with the relatives of Mr Stenton for whom his death was such a tragic event.

I am satisfied that the circumstances of this incident have been thoroughly and objectively examined. No blame however attaches to the actions of Sergeant Larking.

A handwritten signature in blue ink, appearing to read 'J. Jeffries', written in a cursive style.

Sir John Jeffries

POLICE COMPLAINTS AUTHORITY

21 April 1994