



POLICE COMPLAINTS AUTHORITY

**Report by the Police Complaints Authority
on the Investigation into the Death of Brendon Waipuka
in Wellington on 15 September 1994**

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BRENDON WAIPUKA IN WELLINGTON ON 15 SEPTEMBER 1994

Introduction

On 15 September Brendon Waipuka lost his life in an accident on Aotea Quay. Along with three others he was a passenger in a car driven by his brother Ritchie Waipuka. At about 9.50pm that night this car was pursued by three Police cars along Jervois, Customhouse and Waterloo Quays. It sped north and reached the sharp left-hand corner to Aotea Quay known as Round House Corner. At this time its speed was around 140kph. The driver realised too late that at that speed he would not make the corner. He braked, the car went out of control, slid 65.8 metres across the southbound lanes, hit a raised concrete kerb, catapulted onto a gravel verge on the north side of the road and slid a further 64.96 metres before smashing into a concrete post which it tore from the ground.

The point of impact was mainly on the right rear door. Brendon Waipuka was seated beside that door. He was thrown from the vehicle and killed outright.

Earlier in Victoria Street Ritchie Waipuka had been travelling south. He attracted the attention of Police in a marked car. They followed and a very short time later signalled him to stop. He did not stop but turned left into Ghuznee Street and travelled a short distance before suddenly doing a u-turn. He then accelerated heavily and re-entered Victoria Street. Continuing to accelerate he travelled north towards Dixon Street at high speed and it could be said the pursuit had thereby commenced. Other details of the route the vehicle followed until the car went out of control in Aotea Quay will be outlined.

Report to the Police Complaints Authority

Because of the involvement of Police in the circumstances culminating in the fatal accident the Authority was that night, shortly after the event, notified by the District Commander of the death of Brendon Waipuka in the accident.

Section 13 of the Police Complaints Authority Act 1988 requires the immediate notification of the Authority by the Commissioner of Police of any incident in which death or serious bodily harm is caused to any person where a member of Police was acting in the execution of duty.

In this instance the involvement of Police patrols in the lead-up to the accident rendered such notification necessary.

Action Taken

I informed the Commissioner that I would oversee the Police investigation of the incident. There has been no written complaint lodged by any person as the result of this accident and the death of Brendon Waipuka.

There has been a very thorough and wide-ranging investigation of the incident by Police. I have reviewed the Police file and a Senior Investigating Officer has interviewed an eyewitness who was on the spot when the attempt to stop was made earlier in Victoria Street. He witnessed the subsequent u-turn in Ghuznee Street and the beginning of the high speed chase. This is referred to hereafter.

Aim of this Report

This report will describe in narrative form the events of the evening of Thursday 15 September that subsequently led to the death of Brendon Waipuka. It will address Ritchie Waipuka's actions and also those of Police members who became involved in the incident either directly or indirectly.

The report will examine action taken by Police in the incident. It will make recommendations which appear appropriate, especially in relation to vehicle pursuits. The thrust of this report is remedial.

Narrative of Events

On the afternoon of 15 September Ritchie Waipuka decided to travel from his home in Masterton to the Hutt Valley. He had bought a stationwagon from a friend two days before. He wanted to take it for a trial run. The stationwagon was a 1972 Ford Falcon. It had been modified so that it now had a very powerful 7.2 litre V8 motor.

He travelled without incident over the Rimutakas. There were others in the vehicle. They went to Brendon Waipuka's home in Petone. With Brendon and his young daughter they went to visit a friend of Brendon. The friend lived in Naenae and they reached his home around 6.30pm. One of the original passengers had been dropped off so three men arrived in the car with the young girl. There was already a man at the house and another arrived soon after. According to Ritchie Waipuka for the next two or three hours the five drank beer, whisky and vodka and smoked cannabis - he said that he drank beer and vodka and smoked cannabis.

Around 9.00pm all the alcohol was finished and so it was decided to go to Wellington.

With Ritchie Waipuka driving and the other four men as his passengers they arrived in the city about 9.30pm. Shortly afterwards they were in Victoria Street and travelling south.

In Victoria Street was a marked Police car. Constable C J Hurring was the driver and with him was Constable P F Martin. They fell in behind the stationwagon driven by Ritchie Waipuka and decided to question the driver. Both vehicles were travelling at normal speed.

Halfway between Dixon and Ghuznee Streets Constable Hurring activated the blue and red flashing lights on the Police car and flashed his headlights and signalled Ritchie Waipuka to pull left and stop.

He did not stop. He continued slowly south in Victoria Street. Then he turned into Ghuznee Street using the free left turning lane.

Then the first act leading to tragedy suddenly and unexpectedly happened a short distance into Ghuznee Street.

Far from stopping the vehicle did a u-turn and under heavy acceleration sped the wrong way up this one-way street and cut in on the inside of vehicles stopped at the intersection with Victoria Street and at increasing speed headed back north on Victoria Street. The Police car followed with flashing lights and siren operating.

Constable Hurring estimated the speed of the stationwagon travelling north in Victoria Street at 80-90kph. At that stage the Police car was some 300 metres behind and travelling at no more than 70kph.

The stationwagon ran a red light as it turned left at speed into Manners Street. At that point Constable Hurring estimated its speed as between 90-100kph.

The Police car followed, slowing down to 20kph as it went through the red light at the Manners Street/Victoria Street intersection.

Then the stationwagon swung right against another red light as it turned from Manners Street into Willis Street.

Again the Police vehicle was driven slowly through that red light into Willis Street just in time for the officers to see the stationwagon turning right into Mercer Street. They followed it only to see it turn half right through Victoria Street into Wakefield Street running yet another red light at

the intersection of Mercer, Victoria and Wakefield Streets. It was then estimated to be travelling at 70 to 80kph. At this time the Police vehicle was 100 to 150 metres behind.

Again the Police vehicle had to slow right down to go through that red light. The stationwagon turned left onto Jervois Quay and Police followed. The stationwagon was now 150-200 metres ahead of them and accelerating away.

The stationwagon began to pull ahead. It was travelling at over 120kph. Constable Hurring noted his own speed at just under 100kph. By Queen's Wharf his vehicle was 400 metres behind. The stationwagon again ignored a red light and swerved onto the wrong side of the road to avoid three vehicles stopped at the lights.

The Police car came to an almost complete stop and moved through against the red light in the left-hand turning lane. The lights at Johnston Street and Customhouse Quay were green for the stationwagon and Police.

At the Whitmore Street and Waterloo Quay intersection the stationwagon again totally ignored red lights. It was then 300-350 metres in front and still drawing away.

Again the Police car reduced speed to around 20kph as it went through against the lights. Then it accelerated away again.

Red lights were again completely disregarded by the stationwagon at the Bunny Street intersection. According to Constable Hurring it swerved onto the wrong side of the road to avoid some four vehicles stopped at the lights. It travelled down the right-hand side of the traffic island opposite the Railway Station. Again the Police car went through the light exercising considerable caution.

The speed of the stationwagon at the time was estimated to be 140kph. Constable Hurring accelerated to 120kph.

He estimated that he was 600 metres behind it when it reached the fatal corner.

He did not see brake lights. As the stationwagon disappeared around the corner he saw a cloud of dust.

He slowed to 70kph. As he approached the corner however the stationwagon had not yet come to rest.

He saw it go along the fence, come back across the railway lines, hit a concrete post on the other side of the road and then finally stop on the right-hand side of the road facing him.

He saw the driver leap out and start climbing a fence onto the wharf.

Constable Martin's recollection is very similar to that of Constable Hurring. He estimated that they were 500-600 metres behind at the time of the crash.

Other Vehicles Involved in the Pursuit

Two other Police vehicles took part in the pursuit on the Quays.

The first was a Police car driven by Sergeant Hibma. He picked up a call from a then unknown Police car mentioning Wakefield Street. He sensed an urgency in the call. He advised Control that it seemed somebody needed assistance. Next he heard a call from the car that it was on the Quays and he heard the siren.

He moved quickly to help with flashing lights and siren sounding. He travelled north at 80-100kph. As he passed the Waterloo Hotel he saw in the distance the flashing lights of a Police car. It seemed to be near the corner onto Aotea Quay. He said it was many hundreds of metres ahead of him. He slowed as he approached the corner onto Aotea Quay and then saw the accident scene.

He was clearly travelling an appreciable distance behind the lead car.

The other Police vehicle that became involved was driven by Sergeant B M Erasmuson. It was a black and white Falcon stationwagon. Two other constables were also in this vehicle.

Sergeant Erasmuson was just leaving Central Police Station when he heard of this pursuit on his radio. He advised Control that he would assist and decided the offending vehicle would shortly pass him if he moved to the intersection of Harris Street with Jervois Quay.

As he drove along Harris Street he saw the red and blue flashing lights of a Police car heading north on Jervois Quay. He estimated its speed about 80kph.

He activated his own flashing lights and went through a red light at the Harris Street/Jervois Quay intersection.

He accelerated after the Police car in front which was about 400-500 metres ahead. He believed that he was following the lead car of Constable Hurring. He was in fact following Sergeant Hibma.

He saw Sergeant Hibma slow right down for red lights at the intersection of Johnston Street/Customhouse Quay and at Whitmore Street/Customhouse Quay. He too had to slow down at the same points.

He saw no sign of the pursued vehicle.

After the Bunny Street/Waterloo Quay intersection where lights were green he accelerated to around 100kph as he followed the car in front which was still around 400-500 metres ahead.

So he reached the crash scene soon after.

Sergeant Erasmuson saw himself in the function of supervisor following one other car.

Traffic Aspects of the Accident

It is elementary to say that the basic cause of this crash was the Falcon being driven at a speed which made it impossible for it to safely negotiate that corner at Waterloo and Aotea Quays.

Sergeant Erasmuson has noted that this corner has a negative camber and is known for its high accident rate, especially if the corner is taken at speed. In any event Waipuka, it seems, had forgotten the corner was there.

A Vehicle Inspector examined the stationwagon the day after the accident. His conclusion was that he found a mechanical defect that in his opinion may have been a contributory cause in the accident, namely the smooth rear tyres with cords showing.

He also noted that the vehicle appeared not to have been properly maintained prior to the accident.

Waipuka too had only owned the high powered vehicle for two days so inexperience could also be a causative factor, coupled with the combined effect of alcohol and cannabis.

Waipuka's Driving Competence

A factor now warranting attention in light of the observed driving conduct of Waipuka was his driving habits and competence but they were not known to any of the officers at the time of the pursuit.

He had a poor recent record in respect of drinking and driving. As a result of the incident he pleaded guilty to a number of charges including refusing an enforcement officer's request for a blood sample to be taken. He has two previous convictions for refusing, one in July 1991 and one in March 1991. Then in August 1993 he was convicted of driving with excess breath alcohol with a reading over twice the permitted level.

He also has three convictions for driving while disqualified, two in 1991 and one in 1993. At the time of this incident too he was a disqualified driver.

The disqualification and recent consumption of alcohol may explain why Waipuka did not stop when signalled to do so by Police.

These convictions show that his attitude to safe driving was dangerously cavalier and are of significance in considering his driving on this occasion.

Civilian Witnesses

In this case over almost the whole route of the pursuit civilian eyewitnesses were present and are able to comment on what they had seen. I consider their evidence from the beginning of the pursuit in Victoria Street until the end on Aotea Quay.

The first witness was a backseat passenger in a car travelling about two lengths behind the Police car in Victoria Street. The Police car he confirms was travelling at normal speed as was Ritchie Waipuka's vehicle which was in front of the Police car. He saw the Police vehicle's flashing lights turned on between Dixon and Ghuznee Streets. The vehicle in front turned left into Ghuznee Street and went about 50 to 60 yards into the street and nearly stopped. The witness thought it was stopping for the Police car. The vehicle he was in was stopped at the traffic lights, being one car back from the lights. Suddenly he saw the stationwagon accelerate and it did a u-turn. It passed in front of the car ahead of his but went diagonally across the road. It travelled north on Victoria Street at high speed. The Police car followed.

The next eyewitness along the route was a pedestrian at the intersection of Dixon and Victoria Streets. As it happens he is a traffic engineer with a special expertise in estimating vehicle speeds. He estimated the stationwagon's speed at between 80-100kph as it sped through the Dixon Street

intersection. He said that the Police car was following at a distance of 300-500 metres. Its lights were flashing and its siren sounding. He estimated its speed at between 50-60kph.

The next eyewitness was travelling south on Victoria Street at this time. He saw the stationwagon approaching the Dixon Street intersection at enormous speed. He said that it raced north on Victoria Street and went straight through a red light at the Dixon Street intersection. He estimated its speed at 80kph. This witness too has some expertise which enables him to judge speeds with some precision. Next he saw the Police car. He said that it was just north of the Ghuznee Street intersection when he saw it. He estimated its speed at 40-50kph. He thought it was about 800 metres behind when the stationwagon went through the intersection.

Next eyewitness along the pursuit path was a jogger waiting to cross Jervois Quay at Hunter Street intersection. He was on the harbour side of the Quay. He noted approaching car lights and flashing Police lights. He saw a stationwagon travelling at a speed he estimated to be around 100kph. He saw the Police car travelling behind but apart from saying that it was not travelling so fast he does not estimate its speed or distance behind.

I interpose at this point the evidence not of a civilian eyewitness but a Police eyewitness who was not involved in the pursuit. This is the evidence of Senior Sergeant Rongonui. I do this because it encapsulates the pursuit a little further north at the intersection of Bunny Street and Waterloo Quay. At this point this witness who was travelling south was stopped for a red light. The time was about 9.47pm. He began to move off. He saw two lanes of traffic travelling towards him from the Whitmore Street intersection. There are three northbound lanes at this point. There were four cars in the centre lane and three in the lane next to the centre lane. He then saw the speeding stationwagon. It was travelling to the right of these three lanes. The headlights were being flashed from dip onto full beam and then back to dip again. It was travelling at no less than 100kph.

He watched the vehicle in his rear mirror. It overtook the car ahead by crossing onto the wrong side of the no pass lines on Waterloo Quay near Bunny Street. This confirms the observations of Constable Hurring in the first pursuing Police vehicle.

After he passed through the intersection a Police car passed in pursuit with lights flashing and siren sounding. He estimated it to be 200-300 metres behind it.

He continued south. Near the intersection with Johnston Street was a second Police car and further back by Brandon Street a third Police vehicle, the black and white patrol wagon. All units had flashing lights and sounding sirens. He noticed the second car slow to go through a red light at Bunny Street.

The next eyewitness along the route was a security officer for the Port of Wellington. He was working in the security building which is the checking station for vehicles entering and leaving the Port. This is at Hinemoa Street (on the Harbour side) which is about one third of the way along Waterloo Quay heading north.

He heard the sound of a car engine revving very hard. He concentrated his attention on the Quay. He saw the stationwagon. He estimated its speed at 140-150kph.

He lost sight of it as his view was blocked by another building.

Then he saw a Police car. He estimated its speed at over 100kph but not travelling at the speed of the stationwagon. He estimated it was 200 metres behind the stationwagon.

The next eyewitness was the driver of a six-wheeler truck. He was travelling south in the overtaking lane about opposite the Port of Wellington entrance. He saw the stationwagon travelling north in his lane. He flashed his lights on full to get the driver's attention. He swung his large vehicle to the left to avoid a collision. He said the other driver would have had to cross a set of double yellow lines to get where he was.

He saw the flashing lights of a Police car which he put at 800 metres behind the stationwagon. He said it was those that alerted him to the vehicle on a collision course with him.

The final eyewitness along the route literally had a bird's-eye view of the final moments of this pursuit. He is an electrician employed by New Zealand Rail. At the critical time he was working up a light tower in the Railway yards. It is 120 feet high.

His attention riveted on the scene after he heard the noise of a large vehicle travelling at high speed. He saw the stationwagon. It was then close to the fatal corner. He estimated its speed at 120kph.

Just before it reached the corner he saw the flashing lights of two Police cars in pursuit. He estimated they were 200 metres behind. He said that they were travelling close to each other. He could not say if they were travelling as fast as the stationwagon. He could say they were not going any faster.

He then directed his attention back to the stationwagon. It was entering the corner. He saw it crash.

He saw somebody jump the fence. He couldn't tell if he came from the car. His memory was that as he jumped the fence the Police cars came around the corner. He thought there may have been three Police cars.

These then are the recollections of eyewitnesses not involved in the chase. Especially in the short pursuit on the Quays I appreciate their observation would be measured in a few seconds so accurate estimation of speeds and following distances will inevitably differ.

However certain common factors emerge.

All testify to the extreme speed and reckless driving of the stationwagon over the whole 3.4 kilometres of pursuit. All

place pursuing Police at least 200 metres behind the other vehicle at all times. There is no criticism voiced of Police action in crowding the driver and so spurring him to even greater speeds. That all these civilian witnesses came forward to assist the Police investigation is appreciated and I record my thanks. Their statements enabled a quite comprehensive and accurate account of the pursuit to be assembled.

The Pursuit as Recalled by Ritchie Waipuka and his Passengers

Ritchie Waipuka recalled these events during a long video interview on 16 September.

He makes clear that when he saw the flashing lights of the Police car he decided on flight.

He does not recall the colour of lights he passed through in the course of the pursuit.

He had no idea of his speed. He believed with the vehicle he had he could out-distance Police and get back to Masterton.

He agrees with the suggestion that Police were not right up his bumper pushing him and it was his decision to keep going faster.

A chilling aspect of this flight is the statements of two passengers that they were scared and asked the driver to slow down. He ignored them. They were really hostages in this situation. The other one had little accurate recollection of the events in question.

Was this a Sustained Pursuit?

In the introduction to "Vehicle Pursuits" in General Instructions a pursuit is defined as follows:

"A pursuit is an active attempt by a Police officer, in a vehicle, to stop a moving vehicle where the driver of that vehicle is attempting to avoid apprehension."

The term 'sustained pursuit' is not defined in the General Instructions. The relevant definition of 'sustain' from the Concise Oxford Dictionary is 'maintain or keep ... going continuously'. Perhaps an effective way of picturing a sustained pursuit is to visualise it as a prolonged pursuit. The word prolonged connotes keeping going continuously. It also means according to the Concise Oxford Dictionary 'extended in duration' or 'extended in spatial length'. In other words it is contrasted with a pursuit lasting a short time over a short distance. It will always be a question of fact and degree whether a pursuit is short or prolonged. I turn to decide whether on the facts this was a sustained pursuit. This is a threshold question for the General Instructions seem to be designed to control sustained pursuits but again it is not entirely clear.

The pursuing Police car driven by Constable Hurring maintained continuous driving after the pursued car from Victoria Street through Manners, Willis, Mercer and Wakefield Streets to Jervois Quay and then along Customhouse and Waterloo Quays until it reached Aotea Quay.

In my view by any standards this was a prolonged or sustained pursuit.

The distance by which Waipuka drew ahead of Constable Hurring cannot be regarded as a measure of whether the pursuit was or was not maintained. Visual contact was essentially maintained throughout.

There is also the question of the role of the other two Police cars to consider when addressing the matter of a sustained pursuit.

Sergeant Hibma was involved in the pursuit for only some 47 seconds, as will be seen when I analyse the Control Room tapes.

The black and white stationwagon driven by Sergeant Erasmuson elected to join in the pursuit as it left the Police Station in Victoria Street. It activated lights and siren shortly after

in Wakefield Street then joined the chase on Jervois Quay. It too was involved for about the same time as Sergeant Hibma according to the Control Room tapes.

In three separate marked Police cars all these officers were operating their incident lights and sirens. The inescapable inference to be drawn from this is that they had committed themselves to, and intended to assist in, the apprehension of the pursued motorist. They were therefore part of the pursuit.

All three cars were in the immediate vicinity of the fatal crash when it occurred. I find then all of these officers to a greater or lesser degree took part in what was a sustained pursuit leading to the fatal accident.

Having said that there were three Police vehicles involved and committed to the pursuit, I think a commonsense view would conclude it was only the first Police car that had a material bearing on Ritchie Waipuka's driving. There is no evidence either from Waipuka or his passengers that they were aware of more than one pursuing Police vehicle. It was not unreasonable for the two other Police vehicles to ready themselves to assist if it were needed. In fact they were of great assistance at the scene which was one of disarray and if there had been a collision that would have been another additional reason for their presence.

The Control Room

The Control Room transcript graphically spells out how short was the time for Control to become involved in this pursuit.

The Police radio communications were recorded on Wellington Area 1M and 2M channels. I have examined these transcripts.

Notable features are these.

The first record of this pursuit is timed at 21.48.44. This was a call from vehicle DSXZ which Constable Hurring was

driving with Constable Martin responsible for radio communications. The transcript note is brief:

"Control DSXZ (Siren sounding)"

No reply from Control is recorded.

The transcript reveals that this attempt to reach Control is wedged, or submerged, in the middle of an extended call from Neighbourhood Watch at Waikanae reporting a burglary.

There is no indication where the Police car was when the call was made.

Next material call for this incident is timed at 21.49.14. An unnamed car is recorded reporting:

"He's going down Wakefield Street" (Siren Sounds)

This call must have been made by Constable Martin say Police. I agree.

This call too is wedged in other radio traffic concerning a minor traffic accident at Moa Point.

Sergeant Hibma in a nearby car was concerned at the urgency in the caller's voice. He advised Constable Verner, the Control Room Despatcher, that there was a unit wanting assistance on Wakefield Street.

Constable Verner said that he could hear a siren from the Station but did not know the car involved.

Sergeant Hibma's call is timed at 21.49.48. It was this call that first alerted Constable Verner to a pursuit in progress in the City. This call was made 55 seconds before the transcript records Constable Martin reporting the crash at 21.50.43.

Soon after Sergeant Hibma's call Constable Martin established a dialogue with Control for the first time. That was at 21.49.56, 47 seconds before the fatal crash. At this time Constable Martin's car was on the Quays. Just where the transcript does not reveal. Constable Verner asked what the stationwagon had done. Constable Martin replied that the vehicle first under surveillance from Victoria Street had by the time of the call become a runner. This answer was given at 21.50.17, 26 seconds before the end.

He asked the current speed of the Police car. He was told 140kph and Police were 800 metres behind the stationwagon. This response came at 21.50.35, a mere eight seconds before the crash.

At the time of the pursuit Inspector B H Craig was the officer in charge of the Control Room. At about 9.50pm he heard a Police siren on Wakefield Street. He had heard nothing on the radio to explain this.

Next he heard Constable Verner talking to a Police car about a stationwagon doing a "runner" on them.

Mindful of Police policy concerning pursuits he asked Constable Verner to find what speed Police were doing. Constable Verner questioned Constable Martin as to speed and was told 140kph which Constable Verner thought was the speed of the Police car and conveyed that to Inspector B H Craig. Later Constable Martin said that speed figure referred to the stationwagon not his vehicle.

In any event Inspector Craig having heard that figure was about to call off the pursuit and take alternative action. Before he could do this in the eight seconds remaining before the crash it was all over.

He was aware of the pursuit for less than a minute as was Constable Verner.

I accept that in that time everything that required to be done by Control was done.

Review by PCA

I first consider control of this pursuit.

This was a patrol in an area serviced by a Control Room. General Instruction V5(3) spells out the duties of a supervisor in such a situation:

"In areas serviced by control rooms, the control room supervisor shall be responsible for the control of the pursuit."

That of course did not happen in this case. However no criticism can be levelled at the supervisor, Inspector Craig, or the Despatcher, Constable Verner.

I have analysed in second by second detail just what time was available to them from time of notification until time of crash. The total time was a mere 55 seconds. In that time relevant information was sought to comply with General Instructions. It is of course very significant that having learned of speeds of 140kph being attained Inspector Craig was about to call off the pursuit.

There was no time to do so. Within eight seconds of learning the speed it was all over.

My enquiry then must focus on why the Control Room was not advised earlier by Constables Hurring and Martin. Constable Martin was responsible for this. It will be recalled that there had been an initial attempt to speak to Control at 21.48:44. If Control had spoken to Constable Martin then 119 seconds remained before the crash. These could have been valuable seconds for those at Control. This is the call never acknowledged because of an intrusive dialogue with Neighbourhood Watch at Waikanae.

It seems no fault can be attributed to Police or Control for the unfortunate brevity of this call.

Thereafter Constable Martin attempted without success to reach Control on a number of occasions. He did not know which channel he was on as a light bulb on the radio had broken. There was considerable radio traffic on the channels. Finally he resorted to using his portable radio.

He also found it difficult to speak to Control over the noise of the siren.

Constable Verner, the Despatcher, also speaks of considerable difficulty in hearing over sirens in pursuit situations.

Constable Martin was later asked if he considered using two special Police codes to gain access to the radio. He said that there was no point in him doing that as he could not speak over other people speaking.

On the evidence before me Constable Martin did his best to reach Control. His efforts were frustrated by the noise of his own siren, radio traffic and a broken light bulb with ensuing uncertainty as to which channel he was on.

I have carefully related evidence of Police officers to that of civilian eyewitnesses at various points over nearly the entire route of the pursuit. I am satisfied that Police throughout kept an acceptable distance behind the stationwagon and passed through red lights as required by General Instructions.

Was the Pursuit Justified?

Although the pursuing Police cars were being operated within the parameters of General Instruction V6 and no censure is warranted, the question of whether the pursuit was justified warrants examination.

General Instruction V2 'Basic Principles' instructs that a sustained pursuit is only justified in very exceptional circumstances. These are set out as the offender's continued liberty constituting a greater danger than the continued

pursuit or when the offence committed is serious and constitutes a danger or serious threat to the public or Police.

I note that General Instruction V6, in instructing pursuit drivers as to their responsibilities, instructs that the fact that a vehicle is being driven at excessive speed is not in itself sufficient grounds for a sustained pursuit.

Police at the time did not know that Waipuka was a disqualified driver or one who had recently used alcohol and cannabis.

However it was soon apparent that this was not just a speeding driver that was being pursued. This was a driver out of control, one with no regard for his life or the lives of others whether passengers or members of the public. With chilling indifference he passed at great speed through red light after red light and his driving ultimately was lethal.

I believe that Police had a duty to warn innocent motorists by use of lights and siren of impending disaster, especially at intersections.

In short the offender's continued liberty constituted a greater danger than the continued pursuit.

Should the Pursuit Have Been Abandoned?

However as the speed of the stationwagon soared to 140kph the answer is a qualified yes in my judgement. That was certainly the view of Inspector Craig at Control who given another few seconds would have done just that.

Whether abandoning the pursuit of a driver as much out of control as this, whether due to alcohol or drugs or whatever, would cause him to slow down is and must always be a debatable point.

After all if Police did simply let him go and he carried on along the motorway like this and he crashed into another

vehicle or vehicles causing death or serious injury to innocent people then there would be many who would be highly critical of Police.

Conclusion

It is extremely fortunate that more people were not killed or seriously injured on this night by the driving of Ritchie Waipuka. Likewise it is a tragedy that his brother died in the accident but I do not hold that his death was caused by the Police pursuit. It would be hard to imagine a worse case of dangerous driving and Waipuka to his credit has acknowledged this by pleading guilty to manslaughter and two charges of dangerous driving causing injury, for which he has been sentenced to a total of six years imprisonment. On this night he posed an extreme risk to himself and others.

As in all pursuits with tragic ends, the irrefutable fact is that had Waipuka stopped when first requested there would have been no serious accident and no fatality.

The pursuing Police cars cannot be said to have pressured Waipuka into any dangerous driving. The speed at which he drove, well in excess of the Police cars engaged in the pursuit, was within his own control. No pursuing Police vehicle was close enough behind him to directly influence this or to push him to make driving misjudgements.

I am not moved to recommend any disciplinary action against any Police officer. As I said earlier, the thrust of this report is deliberately remedial.

What this case again demonstrates is that a sustained pursuit can be of relatively short duration. I need not repeat what I said in my report on the death of Simon Keith Wright about looking again at the overly detailed catch-all instructions in terms of time parameters.

What this case does highlight however is this. If there is to be control from the Control Room it is absolutely imperative

that there be clear lines of communication between the supervisor there and Police cars. This did not happen here but no fault lies on Police officers concerned.

However attention must be directed to this elementary but fundamental problem. Attention must be directed to eliminating siren noise as much as possible and ensuring channels are not cluttered with unnecessary traffic when a pursuit emergency develops. Such channels should if possible be cleared for the short duration of pursuits. Such traffic as reporting a burglary in Waikanae Beach by Neighbourhood Watch should not block out a Police car calling Control when its siren is sounding demonstrating that there is an emergency pursuit. Other cars should keep off the air to give Control a channel as unimpeded as possible for the few minutes of those pursuits. This I think is the real lesson to be learned from this case. These are all issues to be addressed by those with technical and operational expertise in the Police service.

Recommendation

Urgent attention must be given to ensure much better lines of communication exist between Control and pursuing Police cars for the short but critical period of such vehicle pursuits.



Sir John Jeffries
POLICE COMPLAINTS AUTHORITY
23 November 1994