



POLICE COMPLAINTS AUTHORITY

**Report by the Police Complaints Authority
on the Investigation into the Death of Stewart Cain Murphy
arising out of an Incident in Kawerau on 13 May 1994**



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REPORT BY THE POLICE COMPLAINTS AUTHORITY ON THE INVESTIGATION INTO THE DEATH OF STEWART CAIN MURPHY ARISING OUT OF AN INCIDENT IN KAWERAU ON 13 MAY 1994

Introduction

On the evening of Friday 13 May 1994 Stewart Cain Murphy (hereafter referred to as Stewart) then aged 16 years was in the carpark of the Pinelands Hotel, Kawerau, at approximately 2300 hours. The full circumstances surrounding his attendance in that location will be described hereafter. At about the same time a Police patrol car driven by Constable D (the reason for identifying him by initial only is dealt with hereafter) accompanied by Constable E as his partner entered the said Pinelands Hotel carpark on routine patrol. On arriving in the carpark the Constables attention was drawn to a group situated outside the hotel building in and around a motor vehicle and to the left of the main entrance facing the hotel. The Police vehicle drove slowly in the direction of this group as it was observed that a person whom the Police knew to have been disqualified was suspected of driving. This person was not Stewart. After the Police vehicle stopped at the group it was noticed a person was crouched beside the driver's door and behaved in a furtive manner by moving and hiding in some bushes apparently with the intention of avoiding identification. The partner, Constable E, alighted with the intention of speaking to that person. Stewart immediately commenced to run away passing along the driveway in front of the hotel building pursued by Constable E. There is a designated driveway in front of the hotel entrance and a line of vegetation separating the driveway and the rather large carpark. There is a line of delineated carparks a little longer and facing the line of vegetation and at right angles to it. The Police car driven by

Constable D drove slowly along the carpark side of the vegetation behind some parked vehicles and towards the eastern end of the driveway and the deceased emerged pursued by Constable E. When getting into a lighted area Stewart was identified and it was known he was under curfew and should not have been there. Constable D stopped his vehicle at the eastern end, reversed a metre or two and continued to drive slowly in a right-hand slow arc with the deceased running to the right of his vehicle pursued by the Constable. Suddenly the deceased veered to his left and a collision occurred with the Police vehicle by the deceased being caught under the vehicle and by the time the vehicle braked the deceased was at the rear of the vehicle when it came to an almost immediate halt after the collision.

It was immediately obvious to those present that Stewart was severely injured and an ambulance and doctor were called immediately to the carpark and he was taken by ambulance to the Whakatane Hospital. A doctor attended with the ambulance at the carpark and travelled in the ambulance to Whakatane Hospital. On arrival at the A and E Department at 12.20am the pulse was weak and attempts were made to resuscitate him but the monitor did not register any cardiac activity as at 0045 hours on 14 May 1994 and at this point he was certified as dead.

Report to the Police Complaints Authority

Because of the involvement of the Police in the circumstances surrounding the death the Authority was rung by Inspector Russell Gibson of the Internal Affairs Section at Police National Headquarters at about 7.40am on Saturday 14 May 1994 reporting the death.

Section 13 of the Police Complaints Authority Act 1988 requires the immediate notification to the Authority by the Commissioner of Police, or his representative, of any incident in which death is caused to any person where a member of Police was acting in the execution of duty. In this instance there was no dispute and confirmed at the subsequent District Court trial,

and Coroner's findings, both to be described hereafter that the death was caused by the collision with the Police patrol vehicle driven by Constable D.

Action Taken

On receipt of the advice as aforesaid from Inspector Gibson I informed him that I would make immediate arrangements to travel to Kawerau that day and that I would oversee the investigation to be carried out by the Police into the circumstances surrounding the event which caused the death of Stewart.

I travelled to Kawerau on 14 May and spent the day there examining the scene and being fully briefed by Sergeant John Canning of Kawerau and Inspector Jim Mansell who had attended the scene earlier that morning. Later I met with Detective Chief Inspector Rex Miller who was accompanied by Detective Senior Sergeant Mike Whitehead, both of whom had been assigned to carry out the enquiry which I was overseeing in terms of Section 17(1)(c) of the Act.

I especially requested DCI Miller to keep me closely informed of developments in the investigation. I formally record that DCI Miller faithfully followed those instructions and I was in frequent communication with him for the next two months until he made his formal report dated 7 July 1994 to the District Commander at Hamilton, which was ultimately forwarded to me.

On 14 May I examined the scene in the carpark of Pinelands Hotel which had been marked out earlier that morning by Constable Bedford of Eastern Bays who is a trained Traffic Investigator. He was assisted by Constable Rendle. I return to this aspect of the investigation. I asked for a surveyors plan to be prepared of the carpark with the markings before wear started to take place. That was arranged that afternoon and completed the following day, 15 May 1994. A plan was prepared by Mr Ross J. Overington, Registered Surveyor from Whakatane, and his plan was thereafter used in the course of the investigation.

Later that day with the investigators I examined the Police vehicle on a hoist at a local garage. There appeared to be markings and evidence that could be relevant to the enquiry. I arranged with DSS Whitehead to obtain scientific analysis of one possible exhibit found and photographs were also to be taken that day. I understood that the vehicle would be checked for mechanical efficiency in the normal way. I asked DCI Miller to ensure the pathologist's report was obtained as soon as possible and the usual tests carried out. I also indicated that I wished to receive from DCI Miller as soon as possible a full set of all witnesses statements including those of the two Constables who were in the carpark and involved with the deceased immediately prior to the collision. Even at that very early stage of the enquiry a significant number of interviews of Stewart's companions of the previous evening had already been carried out. Sergeant Canning, who had been immediately called to the carpark very soon after the accident, was very helpful in this briefing and ultimately gave a full written report along the lines of the matters he had raised with me that day.

Purpose of this Report

The purpose of this Report is to publish an account of the investigations carried out by the Police into the circumstances surrounding the accident which resulted in the unfortunate death and the subsequent events which included the prosecution taken by the Police against the driver of the Police motor vehicle on a charge of careless driving causing death.

In addition to the full defended hearing which took place over two days in the District Court at Whakatane before District Court Judge H. Gilbert on the days 7 and 11 November 1994 there was also a Coroner's hearing on 12 December 1994 before Mr I. Bentley, Coroner. Both of those hearings will be referred to hereafter. I record here that the prosecution charge against Constable D was dismissed by the District Court Judge.

Narrative of Events

There is little purpose served with a detailed account of the regrettably short life of Stewart but something must be said because the actions by the Police on that night of 13 May must be put in context.

Stewart Murphy was born at Hamilton on 21 June 1977. At the time of the event of his death he had been living in Kawerau away from his parents and at the home of a person who referred to herself in relation to the deceased as his adopted mother but she was not a blood relative. The deceased lived at her house along with several other young persons for whom she offered accommodation and undertook general caring responsibilities for these young people.

Stewart had frequently come to official notice and was known to the Kawerau Police and the Children and Young Persons Service in the Kawerau area. He had appeared before the Courts on a variety of charges and on the day in question, namely 13 May, there was an active charge and that charge had been adjourned until 28 July 1994 for a further Family Group Conference to be conducted in relation to it. At the time of the accident Stewart was on a curfew in that he was not to be allowed out from the home where he was living with his carer after 7.00pm in the evening until 7.00am the following morning. There was also a direction nominating a male adult to be responsible for Stewart and particularly to ensure the curfew hours imposed were adhered to. These conditions had been placed on him at the Family Group Conference on 20 April 1994. On 22 April 1994 Stewart had again been arrested on another charge and was on that occasion released back to his carer's custody with a direction to appear at the Whakatane District Court on 19 May 1994.

It is not possible at this stage to be certain of the movements of Stewart in the early part of the day of Friday 13 May. It would seem that around 5.30pm a group of young people met outside the video shop in Kawerau township. Including Stewart there was a group of about seven or eight. It was decided to

purchase some beer which was done from the Pinelands Hotel and then the group moved down to the river and proceeded to consume the 48 'stubbies' that had been bought. Not all members of the group drank alcohol. They had possession of a car which belonged to the father of one group member. After the group had consumed the beer they had purchased earlier in the evening they returned to the carpark of the Pinelands Hotel and Stewart and another young woman went into the Public Bar to purchase more alcohol. The time has not been set precisely for the return to the carpark of the hotel but it was dark and probably somewhere around about 10.00pm. The car in which a number of the young people sat was the base of their activities in the carpark and it was situated in a park on the left-hand side of the previously described row of parallel parks if one faces the hotel main entrance. In front of the car was the line of vegetation which stretched nearly along the length of the hotel building and served as a barrier between the carpark and the sealed driveway immediately outside the hotel entrance.

After being inside the hotel at the bar Stewart returned to the car where his companions were and was crouched down outside the driver's door window talking to the occupants of the car when the Police vehicle with two Constables on patrol entered the carpark off Paramihana Drive. The carpark itself is quite large and sealed. Distributed in the carpark area are six standard lights with concrete pad all standing independently. The standard of lighting in the carpark was not high but barely adequate providing cars used their own lights during hours of darkness. The District Court Judge said "the level of illumination in the carpark was relatively low". He also found as a fact the lights of the Police vehicle were on. One standard light was not operating and it was the one nearest where the fatal accident occurred.

When the Police vehicle entered the hotel carpark it travelled directly towards the hotel. Constable D stopped the vehicle parallel to a car parked at the front of the hotel on that car's left. He spoke to one of the persons in the vehicle.

Constable D then noticed the shape of a person on the other side of this vehicle by the driver's side and observed the person move away in a crouched position towards the front where the vegetation was growing. At this stage Constable D was unable to identify that person but thought the presence of the Police had caused the furtive action. After discussion Constable E alighted from the Police vehicle to further investigate the identity of this person by him travelling by foot in the driveway in front of the hotel and Constable D driving more or less parallel in the carpark. The headlights of the vehicle were on. At about this point Constable D recognised the person as Stewart Murphy. At the end of the line of vegetation Constable D stopped his vehicle. At this point Stewart was being pursued by Constable E. Constable D put his car into gear and moved forward with Constable E and Stewart on his right. Within a second or two the accident occurred when Stewart apparently swerved unexpectedly left into the path of the Police vehicle.

Results of Investigation of Incident

In the following two month period a very intensive and thorough investigation was carried out by DCI Miller assisted by a number of Police investigators. All persons known to the Police who could supply information relevant to the enquiry were interviewed. All such persons were co-operative and actively assisted the Police with their enquiries.

A total of seven persons who can be collectively described as friends of Stewart and companions during the hours preceding the accident were interviewed, many within a few hours after the occurrence of the accident. All of this group of seven were able to give direct evidence relevant to the enquiry as they were in the immediate vicinity of the accident scene itself. By their statements, all of which I have read, they were to the best of their respective abilities determined to give an accurate account of each ones observations. Some were able to give information about the events leading up to their presence in the carpark and as to Stewart's overall condition

at about the time of the accident. Four of this group of witnesses were called at the trial yet to be described.

Beside that group just mentioned there were statements taken from those who attended the scene such as ambulance officers, the medical doctor, fire officers (two appliances attended the scene) and others.

The two Constables who were in the Police vehicle when it entered the carpark were also interviewed and full written statements taken from them.

As stated earlier in this report, a surveyor's plan was prepared almost immediately and the scene photographed.

A post mortem report was prepared by Dr David E M Taylor, a clinical pathologist attached to the Rotorua Public Hospital. This report recorded the injuries found and the noted injuries about the abdomen, pelvis and left thigh were consistent with a crush injury to the pelvis and abdomen such as being run over by a motor vehicle. Other injuries found by him were consistent with being rolled, dragged and otherwise abraded by dependent under parts of a motor vehicle. There was never any question as to the cause of death.

Dr Taylor obtained body fluids and these were submitted to Environmental Science & Research for examination. A report signed by Susan L. Nolan, Managing Scientist of Drugs and Toxicology, certified that on analysis for alcohol content the blood sample contained 203 micrograms per millilitre and the urine sample showed 249 micrograms per millilitre. As a result of the cannabinoids screen no traces of cannabis were found in either blood or urine. The readings of alcohol contained indicate Stewart would have been considerably affected by alcohol on the night of his death. This was the evidence given by Dr Taylor at the hearing.

The vehicle involved was tested by a Vehicle Inspector attached to the office Vehicle Testing New Zealand Limited based at Rotorua. As a result of his inspection he found no mechanical

defects which, in his opinion, could have contributed to the cause of the accident.

As stated earlier, an investigation concentrated on the actual accident itself was carried out by Constable Bedford who is a qualified accident investigator. He prepared and made available a full written report and as a result of his investigation of the scene he considered speed was not a contributing factor and that the vehicle appeared to be under full driver control throughout all the manoeuvres. In reaching this conclusion Constable Bedford had carried out scene reconstruction in conjunction with the investigation.

Events Following Completion of Investigation

At the conclusion of DCI Miller's investigation in early July 1994 the results of the investigation contained in a report together with all relevant files and material assembled were forwarded by DCI Miller to Internal Affairs at Police National Headquarters in Wellington.

In accordance with the system a review is made of the results of the investigation at PNHQ and decisions are made by the Commissioner, or his representative, as to future action before a file is forwarded to the Authority for final review. In due course I was informed that a decision had been made to prosecute the driver of the Police vehicle at the time of the accident for careless driving causing death, being an offence pursuant to section 56(1) of the Transport Act 1962. I understand an independent legal opinion from Crown Law had been obtained at Headquarters before this decision was made. When a prosecution is to take place in the ordinary Court system it is the practice of this Authority to delay its report following review until the prosecution has been concluded and the findings of a full hearing together with judicial decision are made available. There are several very important reasons why this course is adopted but it serves no useful purpose in this report to explore them here.

After completion of the prosecution (referred to in more detail hereafter) the file and all material assembled has been

forwarded to me for final review.

As stated, Constable D was charged under s.56(1) of the Transport Act that he did cause the death of Stewart Cain Murphy by carelessly using a motor vehicle. The Constable defended the charge and a hearing took place in the Whakatane District Court before District Court Judge H. Gilbert. The Police prosecution was conducted by Mr J. McDonald, a Barrister and Crown Solicitor at Rotorua, and Mr D L Bates, a Barrister practising in Hamilton appeared for the defendant. The hearing took place over two days on 7 and 11 November 1994. At the conclusion of the hearing a very full and careful analysis was made of the evidence in an 18 page decision which resulted in dismissal of the charge.

The verdict on issues of fact, which such a prosecution is largely concerned with, after a full hearing presided over by a District Court Judge, is of inestimable value to my findings under a Section 13 investigation. The Judge heard all the witnesses, including the defendant and his companion in the vehicle both of whom went into the witness box and gave their evidence under oath, as a result of which on hearing all the evidence the Judge would have had the most secure grasp of the events of that night. All witnesses would have been examined and cross-examined and the Judge was thereby able to make his objective assessment of their evidence. As stated his decision was to dismiss the charge against the Constable.

Permanent Suppression Order

From the time the defendant had first been charged an interim suppression order preventing publication of any identification of the defendant was made. After the hearing, which I have described, an application for permanent suppression was advanced by defendant's counsel following acquittal. The Judge delivered a separate ruling giving his reasons for making a final suppression order in these terms:

"There will be a final order in precisely the same terms as the interim order to date."

Evaluation of the Event

The thrust of my report following an investigation under s.13 is remedial, and I hope constructive, to ensure that what lessons can be usefully gained from this incident are used in the future. That allows me greater scope in the evaluation of the event than a District Court Judge has who is concerned to deliver a verdict on a charge of an offence which determines basically whether the prosecution has discharged the burden of proof resting on it. In this case the Judge found it had not and dismissed the charge.

Both the District Court Judge who presided over the trial and the Coroner who after the District Court trial heard evidence basically described the exact incident which began with the foot pursuit by Constable E and ended with the collision with the Police vehicle as a true accident. Judge Gilbert described the event in this way:

"On my view of the evidence there is not proof beyond a reasonable doubt of that element of fault in that narrow area to which these proceedings come down I am not satisfied beyond reasonable doubt that there is that element of driver fault which is at the very nub of these proceedings. My personal view is indeed the opposite, that it was a most unfortunate accident."

The Coroner expressed similar views in this way:

"I don't believe there has been enough evidence presented today for me to comment on whether Police procedures are sufficient except to say that in my opinion from what evidence has been given today those Police Constables on that night felt they had this situation under control until there was an unfortunate accident."

I do not disagree in any way with the manner in which those two Judicial officers expressed themselves and neither do I wish in any way to detract from the value to Constable D of the full verdict of acquittal. However in their different ways it seems both confined their remarks to the narrow area to which offence proceedings related. Because I have a different function I am not so constrained.

I do not wish to add a great deal but with the emphasis on remedy I think some useful points can be made. The first is that the participants directly involved in the event being the two Police officers will have themselves been detrimentally affected by the tragic death of Stewart Murphy. Constable D has been prosecuted and acquitted but undoubtedly those proceedings would have adversely affected his life in the months following the accident. I do not recommend that any disciplinary action be taken against the Constable.

It is unlikely that the exact sequence of events with which we have been concerned will repeat themselves, but I take this opportunity to draw attention to the reiterated point made by me that motor vehicles used in any form of Police pursuit have the capability of causing unexpected accidents and injury or death. Driving a motor vehicle at anytime anywhere always requires concentrated attention, but pursuit is itself a distraction from driving and necessarily adds to the complexity of the undertaking and possibility of accident. It is obvious that a motor vehicle with its weight and speed has the potential in exigent circumstances of defeating the purposes for which it is used by the Police. Training of Police officers must stress that the motor vehicles with their huge advantages cannot be allowed to convert to instruments of harm for to allow that to happen would be to misuse them. This exact event illustrates that accidents can occur even at very slow speeds with care being exercised by the driver. Every use of a motor vehicle in a pursuit situation must be approached with unrelenting vigilance and after appraisal of all material

factors the more, or most, conservative alternative should be adopted. To the forefront of every Police officer's thinking involved in pursuit in a motor vehicle should be the real possibility of injury and loss of life.

A handwritten signature in black ink, appearing to read 'John Jeffries', with a stylized flourish at the end.

Sir John Jeffries

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10 February 1995