

**REPORT BY THE POLICE COMPLAINTS AUTHORITY
INTO THE DEATH OF STEPHEN TIHEMA WILSON IN A MOTOR
VEHICLE ACCIDENT IN HAMILTON
ON 6 MARCH 1998**

This fatality occurred at Hamilton in the course of a Police pursuit of a vehicle driven by Stephen Tihema Wilson ("Wilson") on Friday 6 March 1998. It was notified to the Authority that day under section 13 of the Police Complaints Authority Act . An officer of the Authority attended at Hamilton on 9 March 1998 to commence an investigation with Inspector Burgess of Hamilton who was appointed as the investigating officer.

Background to Pursuit

The pursuit commenced about 9.30am on 6 March 1998 after a routine stop of a vehicle in which the driver, Wilson, was not wearing a seat belt. Constable A asked Wilson why he was not wearing a seat belt. He gave no explanation. The officer then observed that the vehicle had no current warrant or registration. Constable A wrote out an infringement notice. Constable B, a passenger in the same patrol car, checked the driver's name and address and found nothing to match. Wilson had given a false name. It then began to rain, and Wilson got back into the car while the two officers returned to the patrol car.

Constable A, suspecting that Wilson had given false details, questioned him further. Wilson started his car and as Constable A tried to remove his keys Wilson sped off and the pursuit then commenced from Richmond Street.

The Pursuit

Constable A activated the flashing lights and siren while Constable B took control of radio communications. The pursuit proceeded south-east on Willoughby Street and turned left into Mill Street after slowing for traffic signals, and then left into Ulster Street heading north-west.

2.

At each set of traffic lights the offender slowed down and looked for traffic. He did not simply go speeding through.

The pursuit turned left into Forest Lake Road. Full commentary was given to the Communications Centre by Constable B on all movements and speed. Constable B who had been involved in a number of pursuits believed at this stage there was no danger to the public. Prior to reaching Forest Lake Road she had requested a unit with spikes to assist. An officer in Forest Lake Road had spikes but was unable to deploy them in time. That vehicle then followed behind the first pursuit vehicle driven by Constable A.

The pursuit continued along Forest Lake Road and turned right at a traffic light controlled intersection into Avalon Drive where Wilson increased speed to about 110kph entering the 80kph zone. Constable B called for a unit trained in performing moving blocks to assist.

Constable C responded. He had been in Te Rapa Road when he first heard the commentary of the pursuit. He drove into Avalon Drive near the intersection with Tasman Road, the last exit road at the northern end of Avalon Drive. At this point Avalon Drive is a straight section of highway with excellent visibility for a considerable distance. Constable C's purpose in going to this position was to be in front of the offending vehicle to moderate its speed or if appropriate, execute a moving block. He placed his patrol car in a position where there was ample opportunity for the offender to see his vehicle and stop. The road at that point comprises a wide carriageway with a large grassed area to the left of the northbound lane, and paddocks beyond the berm. Constable C made a u-turn and stopped his vehicle on the shoulder of the road facing north. He activated the vehicle's overhead lights. Although Constable C had had training in the moving block procedure he had never completed a moving block other than in training.

He observed the approaching vehicles when they were about 400-500 metres away.

Circumstances Leading to Fatal Crash

Constable A, the driver of the leading pursuit vehicle saw Constable C's vehicle with lights flashing from a distance of about 600-800 metres. There is no doubt that Wilson would have had every opportunity and adequate time to observe Constable C's patrol car ahead. Constable C decided the approaching car was travelling too fast (estimated at 110-120kph) to execute a moving block. He drove out to the left of the centre line intending to act as a

moderator to slow the vehicle down and proceeded to drive in a northerly direction up to 30kph. In adopting that position Constable C believed that the approaching vehicle would have an escape route by driving to his left. Constable C observed the approaching vehicle in his rear vision mirror. It did not alter speed and started to fish-tail. At that point he believed the car was going to crash into the rear of his patrol car and he took evasive action by veering to the left to get out of the way. Although Constable C was unaware of it at the time, the car driven by Wilson clipped the right rear corner of the Police car.

At this northern end of Avalon Drive the carriageway makes a sweeping right-hand bend and then rises up a gradual incline to an overbridge. Wilson lost control of his vehicle as he overtook Constable C's patrol car on this sweeping bend, and slewed across the road colliding virtually head on with a van travelling in the opposite direction. Constable C drove past the crash scene and stopped in a position where he could render assistance and warn the Communications Centre to place a patrol car at the intersection of Te Rapa Road and Avalon Drive to stop traffic.

Constable B stated that Wilson's vehicle appeared to her as if it was about to move to the right to overtake the patrol car ahead of it but started to fish-tail and went across the road into the southbound lane. Constable A observed the offender's vehicle fish-tail three or four times before hitting the southbound van head on in a violent collision.

Both drivers were trapped in their respective vehicles. The Fire Service and Ambulance were called. Wilson died at the scene.

The driver of the van was Mr George Eyeington . He had no opportunity to avoid the severe head-on impact of the collision which resulted in massive front-end damage to both vehicles. Mr Eyeington suffered serious injury.

Reconstruction by Senior Constable Day

Senior Constable Keith Day is an experienced investigator in crash reconstruction work. He analysed the damage to the vehicles, the tyre friction marks left by the van and the yaw marks left by the car driven by Wilson, and other physical evidence left at the scene. He concluded that Wilson on approaching the slower moving patrol car braked, lost traction on the wet road surface, and thereby lost control of his vehicle.

Coroner's Finding

Following an inquest hearing and in a reserved decision dated 20 August 1998 the Hamilton District Coroner found as follows: *"The driver of the Laser on observing Constable (C's) vehicle moving to the left then swung to the right clipping the right hand rear of the Police vehicle and at the same time losing traction on the wet surface the tyres creating the yaw marks left on the road surface. The Laser vehicle was out of control at this point and moved into the south bound lane colliding with the Ford Econovan driven by Mr Eyeington. These movements in my view describe the fish-tailing observed by Constables (A) and (B) and in my view give an accurate picture of what happened that day."*

The Coroner found that Wilson had ample opportunity to pull over and stop at any time during the pursuit.

The Coroner made a further finding that *"the deceased, Mr Wilson, could have pulled over safely and stopped from the point when he could have first observed Constable (C's) Police vehicle positioned to the left of the centre line in the north bound lane."*

He went on to review the Police General Instructions for motor vehicle pursuits and said he was satisfied that the actions of all the Constables involved were in accordance with the General Instructions.

Police Investigator's Findings

Inspector M Burgess was assigned to investigate the incident for the Authority. He reported with certain interim conclusions which he later confirmed after the Coroner's findings were published.

He found that the pursuit covered a distance of 7.1km. The speed of Wilson's car as it travelled along Avalon Drive was recorded at between 80-120kph. A marked Police patrol car with flashing lights activated took up a position on Avalon Drive ahead of the pursuit, on the south side of the intersection with Gilchrist Street. Before the car driven by Wilson reached him the driver of this patrol car moved out into the north bound lane ahead of Wilson, travelling about 150m from his stationary position at a speed of up to 30kph.

Wilson made no attempt to slow down before reaching the Police vehicle. He attempted to overtake the Police car and lost control. There was slight damage to the right rear of the Police car consistent with a collision involving the left side of the Laser.

The investigator concluded that the crash was caused by the actions of Wilson in failing to slow down or stop, and attempting to overtake the Police vehicle where it was dangerous to do so.

The pursuit was monitored and controlled by Northern Communications Centre staff in accordance with Police policy, which requires pursuing staff to discontinue a pursuit if it becomes dangerous to themselves or the public. The secondary pursuit vehicle travelled approximately 100m behind the primary pursuit vehicle along Avalon Drive.

The investigating officer concluded that Wilson had ample opportunity to see the Police patrol ahead of him, and to slow down or stop prior to reaching that vehicle. He did not appear to make any attempt to reduce speed until he braked just before losing control of his vehicle and crossing into the south bound lane and into the path of the van driven by Mr Eyeington.

Scope of Inquiry

The Authority's task is to investigate in the public interest any incident involving death or serious bodily harm notified to the Authority under s.13 of the Police Complaints Authority Act 1988.

In the present case there was both a death and serious injury in the course of a Police pursuit.

The following Police General Instructions apply to pursuits.

Motor Vehicle Pursuits

V1 Vehicle Pursuits: General Principles

- 1 A vehicle pursuit may be initiated only where:
 - a there is legal authority to do so; and
 - b the circumstances fall within the Vehicle Pursuits policy.

6.

2 Every vehicle pursuit is inherently dangerous and the Police duty to preserve public safety must be the primary consideration at all times.

3 All staff involved in a vehicle pursuit have a continuous responsibility to assess and reassess the evolving circumstances and the consequences for public safety.

4 Every pursuit is to be abandoned as soon as its continuation is no longer justified in accord with this policy.

5 Police drivers are ultimately responsible for their own driving and are required to observe the law except where a statutory exemption applies.

V2 Definitions

1 Pursuit: A pursuit exists when the driver of a motor vehicle knowing that they are being signalled by a Police officer to stop, fails to stop, takes deliberate action to escape apprehension and Police commence action to pursue the escaping vehicle.

2 Controlling officer: is the dispatcher or communications centre supervisor, or the officer's immediate supervisor.

V3 Authority to Initiate Pursuit

1 Section 66 Transport Act and s.317A Crimes Act empower a Police officer in uniform, or in a vehicle displaying flashing lights and sounding a siren to stop a vehicle:

a for a traffic enforcement purpose, or

b for the purpose of arresting a person in the vehicle if there are reasonable grounds to suspect that person is unlawfully at large or has committed an offence punishable by imprisonment.

A driver who fails or refuses to stop following a signal to do so under the Transport Act may be arrested.

7.

2 In terms of s39 Crimes Act 1961, the justification for an arrest extends to the use of such force as may be necessary to overcome any force used in resisting arrest, unless the arrest can be made by reasonable means in a less violent manner. A vehicle pursuit may be a necessary use of force to arrest a person referred to in General Instruction V3 (1).

3 When a driver has been signalled to stop in accordance with s66 Transport Act or s317A Crimes Act and knowingly fails or refuses to do so, a pursuit may be initiated.

4 The object of the pursuit is to facilitate the arrest of the driver in the safest possible manner and with the minimum force necessary in the circumstances.

5 While the statutory defences to exceeding the speed limit on urgent police business will apply to a vehicle pursuit, the statutory exemptions for proceeding against a red light, stop or give way signs will not apply unless:

- a the police driver reduces speed to not more than 20 kph; and
- b the police driver takes due care to avoid a collision with pedestrians and other traffic.

The responsibilities of the Police drivers and passengers engaged in a pursuit are set out in General Instructions V4, V5, V6 and V7 as follows:

V4 Police Driver's Responsibilities

1 The primary responsibility for the initiation and conduct of a pursuit rests with the police officer driving the primary pursuing patrol vehicle. The police driver must exercise every care to ensure the safety risks of undertaking a pursuit are reduced as far as is possible in all the circumstances.

2 When undertaking a pursuit the police driver shall:

- a immediately advise the communications centre or supervisor (as appropriate) giving concise reasons for initiating the pursuit, the description of the vehicle and its occupants, direction of travel, actions of the fleeing vehicle and traffic and pedestrian conditions;
- b use warning lights (in daylight this should also include headlights) and siren;
- c drive at a safe speed at intersections and other potentially dangerous places;

8.

- d maintain radio contact with the communications centre or supervisor giving accurate updates on conditions surrounding the pursuit;
- e constantly reassess the situation to ensure the continuation of the pursuit is justified and that no other less dangerous means of stopping the vehicle is reasonably available;
- f if the pursued vehicle stops, ensure it remains stopped using such reasonable force as may be necessary;
- g abandon the pursuit when directed by a controlling officer;
- h complete a pursuit report using preformat screen PURSUE and submit a copy to his or her supervisor.

V5 Continuation of Pursuit

1 The following factors should be taken into account in considering whether the continuation of a vehicle pursuit is justified;

- a the safety of the public, police officers involved in the pursuit and the offending driver;
- b the influence the pursuit appears to be having on the offender's driving;
- c number of people in the vehicle giving immediate potential for innocent parties to be injured;
- d when the suspect's identity becomes known or can reasonably be established by other means;
- e whether or not the suspect's identity is known and an arrest can be made later.

V6 Abandonment of Pursuit

A pursuit will no longer be justified and is to be abandoned when the continuation of the pursuit poses an immediate and serious risk to the safety of any person and that risk:

- a exceeds the risk for which the pursuit was initiated; or
- b is not outweighed by the need to apprehend the suspect.

V7 Police Passenger's Responsibilities

When a Police member is a passenger in a patrol vehicle engaged in a pursuit, the passenger is to:

9.

- a constantly assess the situation developing;
- b offer advice to the driver regarding the route being followed, the general environment and the dangers of the situation;
- c record as far as practicable all facts that go towards later evidence;
- d make all radio calls and operate the warning devices as necessary.

Findings

I am satisfied that there was lawful authority to initiate this pursuit. Further, although it is clear that Wilson committed some breaches of Traffic Regulations, in all the circumstances of this daytime pursuit I am not of the view that the officers in the pursuit vehicle should be the subject of criticism for not abandoning the pursuit. Both the controller and the pursuing Police officers appear to have been conscious of their continuous responsibility to assess the evolving circumstances and to decide whether to continue the pursuit. The officers in the primary pursuit vehicle provided accurate situation reports to the controller.

However when the file first reached the Authority after the conclusion of the inquest and the investigation report, the Authority was of the view that careful attention should be focused on the actions of Constable C who made the decision to move his car into Wilson's line of travel with the intention of acting as a containment or moderating vehicle.

After a preliminary review the file was returned to the investigator to make further enquiries. The purpose was to ascertain whether it was possible to conclude with more precision the position of the respective vehicles when Constable C first pulled out and the time during which Wilson would have had Constable C's car in sight before Wilson's car struck it.

Most witnesses were seen for a second time and a specialist crash analyst made calculations on the evidence that had been gleaned.

There were varying accounts of the final stage of the pursuit from a number of Police and civilian witnesses and varying statements by those witnesses of relative positions and distances between the several vehicles involved, such that it has not been possible to make precise findings.

In particular it has not been possible to conclude with precision the distance between the vehicles of Wilson and Constable C when the latter pulled out in front of the approaching Wilson, although it is likely to have been several hundred metres.

A crash analyst has made calculations of the time that Wilson would have had Constable C in view, from the time Constable C pulled out to the time the patrol car was struck by Wilson's car, but these calculations were dependent on the evidence of the stationary position of Constable C's vehicle. Again there were varying recollections of that.

Taking into account those varying recollections it would appear that the distance that Constable C travelled from his stationary position to the point where the impact between Wilson's car and the patrol car probably occurred could have been between 151.5m and 47m. That distance would have been covered by Constable C, accelerating to 30kph, at between 36.36 seconds and 11.3 seconds. Upon that analysis Wilson would have had a view of Constable C's vehicle from the time he pulled into Wilson's path to the time he hit the Police vehicle for a maximum of 36.36 seconds or a minimum of 11.3 seconds. Furthermore there would have been a period of time before that in which Constable C's stationary vehicle would have been visible to Wilson.

Wilson would have had time to slow and stop behind the Police vehicle if he had chosen to do so.

With the benefit of hindsight it is possible to harbour some doubt about the wisdom of the action of Constable C in pulling out when and where he did and accelerating to the speed of only 30kph. It is recognised however that the officer said he was conscious of the fact that the road would shortly lead into the busier state highway nearby where he perceived risk to the public could have been increased. Furthermore these decisions are made under pressure and within seconds.

Constable C had moved out from his parked position to the centre line of the road with flashing lights operating and travelled at up to 30 km/h in the same direction as Wilson in the belief that the offender had a lengthy, unobstructed view of the patrol car allowing him time to react and slow down. Constable C understood from the radio commentary that while the offender was driving fast he had not been driving dangerously or erratically. He estimated

that when he pulled out on to the road Wilson was 400-500 metres away. He believed the position of his vehicle allowed Wilson an escape route to the left of him.

The differing recollections of the witnesses as to their observations of the position of the vehicles on the roadway, combined with the factors just referred to lead the Authority to conclude that it would not have been appropriate for any charge to be laid against Constable C in respect of his driving. This is a view that was shared by a Police legal adviser by whom the file was also reviewed.

The primary cause of this fatal accident was Wilson's refusal to slow down or stop for the pursuing Police vehicles followed by his attempt to overtake at speed the patrol car positioned ahead of him in the north bound lane of Avalon Drive. During this last manoeuvre Wilson lost control of his vehicle and crossed into the path of a vehicle travelling in the opposite direction.

The driver of the van involved in this head on collision, Mr George Eyeington, was in no way responsible for the crash. He suffered serious injuries for which he is still undergoing medical and surgical treatment. I extend my sincere sympathy to Mr Eyeington who was an entirely innocent victim of this crash.

Judge N C Jaine
POLICE COMPLAINTS AUTHORITY

8 June 1999

