

**REPORT BY THE POLICE COMPLAINTS AUTHORITY
ON THE INVESTIGATION INTO THE DEATH OF
STEWART RICHARD FOSTER IN ROTORUA ON 1 JUNE 1995**

Introduction

Stewart Foster met his death at 11.38pm on Thursday 1 June 1995 when a car in which he was the rear seat passenger crashed at the end of a 7 kilometre Police pursuit. The time of the pursuit was about four minutes. Speeds of 170 kph were recorded. The pursuit terminated when the car driven by Aaron Donald Cairns (23) and containing Guy William Dunlop (24) and Stewart Richard Foster (24) left the road after failing to negotiate a curve safely on Te Ngae Road, Rotorua, in the vicinity of its intersection with Lee Road. Te Ngae Road is State Highway 30.

At the time the car, a black 1975 Chrysler Valiant, was being pursued by a marked Police patrol car driven by Constable van den Broek and accompanied by Constable Siulepa. The attention of the constables was drawn to the Valiant, shortly before 11.35pm, after it had been seen by them travelling at a speed in excess of the 70 kph limit, and later under surveillance to be exhibiting driving behaviour that suggested to Constable van den Broek that its driver might be under the influence of alcohol. The constable decided to stop the Valiant.

The driver of the Valiant, Aaron Cairns, failed to halt after the red and blue flashing incident lights of the Police car were switched on and the pursuit developed. The pursuit ended as set out in detail hereafter. Tragically in the crash to be described Stewart Foster, a passenger in the Valiant, lost his life.

Report to the Police Complaints Authority

I was notified by a telephone call by an officer at Police National Headquarters early on 2 June 1995 of the death of Stewart Foster and of the known surrounding circumstances. This was in accordance with Section 13 of the Police Complaints Authority Act 1988 which

requires the immediate notification to 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 a duty. Clearly the death of Stewart Foster fell within those criteria and the notification was necessary.

I was advised that a Police investigation into the incident had already begun.

No complaint over this incident has been made to the Police Complaints Authority.

Action Taken

I informed the Commissioner that I would oversee the Police investigation of the incident and I immediately arranged for a senior investigating officer of my staff to travel to Rotorua that morning.

His task was to enquire into the circumstances surrounding the pursuit which led to the death of Stewart Foster and to make a preliminary assessment of the incident. In doing so he met with the Police officers who were conducting the internal Police investigation and visited the scene of the crash which had terminated the pursuit. The documentary material that had up to then been generated in the investigation was examined. This comprised witness statements, Police job sheets and other records.

The route over which the pursuit had extended was driven along by the Police Complaints Authority officer and a Police officer. The wrecked Valiant, which had been secured on Police premises, was seen by the Police Complaints Authority investigator. A visit was also made to the Rotorua Control Room from where the course of the pursuit had been monitored and communication maintained with the Police patrol car crew during the pursuit.

Aim of this Report

This report will describe in narrative form the events of 1 June 1995 that preceded the crash in which Stewart Foster died. It will address the prior actions of the three occupants of the Valiant and of the Police officers who became involved in the incident either directly in the pursuing marked Police patrol car or indirectly at the Rotorua Control Room or elsewhere.

As provided by Section 27 of the Police Complaints Authority Act 1988 the report will also examine the Police policies, procedures and practices relating to the conduct of Police operations in respect of vehicle pursuits. It will assess the effectiveness of their application to

this incident. In this exercise the relevance and appropriateness of the existing Police General Instructions relating to incidents of this nature will be examined.

Finally the report will attempt to draw conclusions on the action taken by the Police during the incident. It will make such recommendations as appear appropriate in the light of those conclusions and other relevant issues.

To assist in the interpretation of the narrative of events a sketch map of the route of the pursuit is included in this report

Narrative of Events

The incident's beginnings can be traced to a weekly get together of a group of about ten young men at a private address in Rotorua. It was their custom to pass the evening together over a few drinks from about 7.00pm. As the next day was a working day for most of those who congregated at the address the evening would generally break up at about 11.00pm. On Thursday 1 June the weekly gathering took place as usual.

Stewart Foster and Guy Dunlop were regular attenders and they arrived at about 7.00pm. With them was Aaron Cairns. A witness present at the address when they arrived didn't think they had been drinking up to then.

The three arrived by car, a black 1975 Chrysler Valiant saloon, this being the car later pursued by a Police patrol car in this incident. Guy Dunlop had bought it a week before from Aaron Cairns. The three brought with them a box of 24 stubbies of beer which they shared during the evening, drinking at their own pace. A few were said to have been left at the end of the social occasion.

At about 11.00pm the group began to disperse. The three decided not to use the car by which they had arrived and a taxi was called. On its arrival they got in and asked the driver to take them to a fast food bar to buy something to eat. The taxi driver objected to food being eaten in his cab. After a brisk discussion he told the three he would not take them whereupon they got out of the cab and it drove off. A second taxi was called, but before it arrived the three became impatient and decided to leave in the Valiant.

A witness who was at the social occasion that evening has stated that the three were not '*staggering drunk*' but doubted whether any of the three would have been fit to drive. There

was evidently some discussion about who should drive, with Dunlop and Foster not wishing to do so.

The witness, who observed the discussion about who was to drive but who did not travel in the Valiant, later stated, "*The little fellow (Cairns) said he was going to and that was virtually it*". Dunlop handed the car keys to Cairns, who was the previous owner of the car, and the three left the address together in the Valiant. Cairns was driving, Dunlop was in the front passenger seat and Foster in the rear seat.

Pursuit

A short time before 11.30pm the Valiant was travelling out of Rotorua along Te Ngae Road, a four lane road with a median strip and a 70 kph speed limit. Guy Dunlop and Stewart Foster lived in Rewarewa Street and Aaron Cairns in the nearby Holdens Bay area to the East of the City. Te Ngae Road leads in that direction. The three were evidently on their way home.

A witness, a 43 year old farmer, had turned onto Te Ngae Road from Sala Street and was pulling away at about 60kph when he heard a vehicle coming up behind him. This proved to be the Valiant and the witness estimated its speed at 120kph, "*it was really motoring... it went flying past*" he later stated.

Shortly before 11.35pm a marked Police patrol car was approaching Te Ngae Road travelling in a south/west direction along a side road, Vaughan Road. The car was driven by Constable van den Broek. He was accompanied by Constable Siulepa. The two constables saw the Valiant pass along Te Ngae Road from their right to their left at what appeared to be an excessive speed. Lighting at this point was good with a number of high fluorescent lamps providing good illumination of the intersection.

This was the patrol's first sighting of the Valiant. Constable van den Broek immediately set off after and caught up with the vehicle. It was travelling when first observed at a speed judged by Constable van den Broek to be in excess of the speed limit, 70kph at this point.

The farmer later stated that the Police car turned left from Vaughan Road onto Te Ngae Road after he had driven past the intersection with Vaughan Road. This meant the Police car first overtook the witness's car as it drove after the Valiant. The witness later stated that on the appearance of the Police car the Valiant appeared to slow down, and he thought the occupants may have seen the Police car coming up behind them.

In the Valiant the occupants had indeed noticed the appearance of the marked Police car, which at that point was travelling with its normal driving lights on and without the red and blue incident lights illuminated. Guy Dunlop later stated that Aaron Cairns reportedly announced to him and Stewart Foster that, "*There's some Police behind us*".

Constable van den Broek driving the Police car followed the Valiant which, he later reported, was travelling at 100kph but that it was slowing down. It slowed to approximately 70kph, weaving within its lane. A 70kph speed limit exists on Te Ngae Road at the point where the Valiant slowed down. The excessive speed at which the Valiant was travelling first drew the attention of Constable van den Broek and prompted his decision to follow the Valiant. Its weaving then caused the Constable to suspect the driver could be influenced by alcohol.

The time at this point in this incident was 11.35pm. Constable Siulepa called Control intending to pass the registration number of the Valiant, which had been taken, to be checked. He was told to stand by as Control was busy at that moment.

The Valiant then moved to the centre of the road into the turning lane and turned right into Iles Road. The intersection is well lit by a fluorescent street light. It is 1.2 kilometres from the point at which the Valiant was first seen by the officers in the Police patrol car. There are no trees or other obstructions likely to limit the view of a turning driver. Iles Road is a wide residential road with street lighting on the right hand side. The Valiant made the right turn, failing to indicate, cutting the corner and going on to the wrong side of Iles Road.

Constable van den Broek later stated that at that point he then decided to speak to the driver about the erratic driving of the Valiant and activated the blue and red flashing incident lights on the Police car.

In the Valiant when the Police car incident lights came on Guy Dunlop later stated that he had asked Aaron Cairns if he was going to stop, to which Cairns reportedly replied "*I don't want to get DIC (Drunk in charge)*". Later in a statement to the Police Cairns said he did not stop because he had been drinking.

It is of note here that Aaron Cairns had been convicted of driving under the influence of alcohol twice before the night of this incident. In 1990 and again in 1992 he was convicted on each occasion of speeding and breath/alcohol offences, being disqualified from driving on each occasion. He was not a disqualified driver at the time this incident occurred.

The Valiant continued along Iles road at about 70kph, but after the headlights of the Police car and its air horn had been activated and at a point about 400 to 500 metres up Iles Road from its intersection with Te Ngae Road the Valiant began to speed up causing Constable van den Broek to believe that the driver was making an effort to avoid the Police.

Constable Siulepa, the passenger in the pursuing Police car, reported to Control that the Valiant was travelling at 100kph in a 50kph area and asked for back-up. The time was a little after 11.35pm. His call was received and logged in the Control Room by Constable M Membery. With him was Constable B Davies. It could be said from this point onwards it was a 'sustained pursuit' in accordance with the General Instruction yet to be reached.

Constable Membery then despatched two other Police vehicles to support Constables van den Broek and Siulepa. It later emerged that in response to Constable Membery's call Sergeant C I Dobson in one car and Constable R P Campbell, a dog handler in a Police dog-van started to make their way to the Te Ngae Road area. Before either officer could join in or support the pursuit it was over. However, Sergeant Dobson continued to the scene of the crash and took charge there.

The Valiant with Constables van den Broek and Siulepa in pursuit then drove along Iles Road, where the speed limit is 50kph, at speeds of 80 to 100kph, accelerating heavily at times. No other traffic was encountered in this suburban street. The weather was dry and normal street lighting illuminated the area.

The Valiant turned left from Iles Road into and along Blackmore Drive. Blackmore Drive is residential with street lighting on the left hand side of the road, 2.1 kms from the point of first sighting of the Valiant by the Police. It undulates and twists. The Valiant used both sides of the road to negotiate the gently curving route of Blackmore Drive with the Police car 50 metres to the rear.

The pursued Valiant next turned left again from Blackmore Drive into Basley Road, 2.6 kms from the point of commencement of the incident, lit by street lights on the left hand side of the road. The Valiant braked heavily and fishtailed as it negotiated the intersection, accelerating again to a speed of about 80kph. At the intersection of Basley Road with Moray Street, at 3.1 kms, there is a mini-roundabout which the driver of the Valiant apparently failed to see until he came upon it. The Valiant was seen to brake heavily and it appeared to Constable

van den Broek that the driver momentarily lost and then regained control of the Valiant, the rear of the vehicle sliding sideways.

As the Valiant accelerated away from the mini-roundabout at a speed of about 40kph an attempt was made by the constable to draw alongside the Valiant to try to stop it by the 'moving block' technique of forcing the Valiant to stop by driving in front of it and slowing down. This was baulked by the driver of the Valiant swerving to the right hand side of the road forcing the Police car to hang back. In my view the use of a moving block by one vehicle was inappropriate driving and this technique should be carefully re-assessed by Police administration. Up to this point the pursued vehicle had exhibited irresponsibly dangerous driving.

At this point Constable Siulepa was able to pass the registration number of the Valiant to Control. In his report he said, "*Just going, Hotel Quebec 4524, vehicle heading down towards Te Ngae, Ahh, 90-100 kilometres of speed, over*". This was the correct registration number of the Valiant.

I will refer to this stage of the pursuit later, but it appears that this is the point in Basley Road at which the pursuit should have been abandoned in accordance with General Instruction V6(1)(g), and I will give reasons.

The two vehicles rejoined Te Ngae Road turning right from Basley Road with the Police car 50 metres in the rear. This was 3.6 kms from commencement point. Te Ngae Road is lit by powerful street lights on each side of the road except for the final 600 metres of the pursuit where the high powered street lighting reverts to conventional street lighting. No other traffic had been encountered in the residential streets through which the pursuit had just passed.

The Valiant was then accelerated to increasingly high speeds. The Police officers progressively noted speeds of 120, 140, 160 to 170kph which were relayed to Control by Constable Siulepa. In Control Constable Mamberly noted the messages. He asked Siulepa about the prevailing traffic conditions and reminded Siulepa that they might need to back off if there was any danger to other people. Constable Siulepa's response was that the traffic was light. Constable Siulepa reported that the pursuing Police car was 100 metres behind the Valiant.

In the Valiant, Dunlop later stated, he urged Cairns several times to stop without the latter responding.

A number of vehicles travelling in the same direction were overtaken by the Valiant and the following Police car. There were consequently several witnesses' accounts of the closing stages of the pursuit. Witnesses placed the Police car at distances between 75 and 100 metres behind the Valiant.

A witness who is a night forecourt attendant at a service station at the intersection of Te Ngae Road and Owhata Road, 4.7 kms from the point of commencement of the incident, noticed the Valiant pass the service station. He saw the marked Police car with its flashing red and blue lights going following the other car at a speed he estimated as being about 100 kph. He described the Valiant as "*really motoring*". He formed the impression the Police car was being cautious of the vehicle in front and was "*hanging back a bit*".

Another witness, also a night forecourt attendant at a separate service station on Te Ngae Road opposite Wharenui Road, 5.2 kms from the commencement point, saw the Valiant and the Police car pass. This witness estimated the speeds at which the two vehicles were travelling as "*160kph or just under perhaps*". This witness later stated that he didn't think the Valiant would have been able to go much faster. The Police car was said by him to have been 75 to 100 metres behind the Valiant at this point. He considered this to have been a safe distance. Before the two cars passed out of his view he saw them safely overtake another car travelling in the same direction .

The driver of the overtaken car was an off duty Police constable on his way home after finishing duty. As he approached the Sunrise Avenue intersection with Te Ngae Road he saw in his rear vision mirror the flashing red and blue lights of a Police car. He then suddenly saw a pair of headlights in front of the Police car and the Valiant overtook him "*at a great speed*" he estimated as in excess of 100kph. Approximately three seconds later the Police car passed him. It was not travelling as fast as the Valiant and the witness thought "*they will never catch that*". Shortly after the two cars passed from his view the street lighting suddenly went out. (This was the moment, referred to below, at which the Valiant crashed.) A second Police car passed him and he then came upon the crash scene.

The failure of the street-lighting and domestic power in the Te Ngae Road vicinity coincided with the collision of the Valiant with an electric power pole, demolishing the pole and bringing down the power lines.

Also overtaken by the Valiant and the pursuing Police car was a woman who was driving home. She was travelling at about 100kph. The Valiant passed her in the vicinity of a bridge near the Robinson Avenue intersection with Te Ngae Road. She did not make an estimate of the speed of the Valiant but later stated "*He was going so fast it felt like I was at a standstill*". The manner in which the Valiant was being driven looked to her as if the driver was drunk.

This woman witness was not at first aware that a Police car was following the Valiant. Crossing the bridge she could see the Valiant in front of her and then the Police car overtook her, about five seconds behind the Valiant. She later stated, "*I am used to seeing cars speed out here, and usually they don't make it past Lee Road if they are going that fast. He didn't slow down as he headed towards the corner. I sped up to see how far he would get because I thought he might crash the way he was driving*". At the intersection with Lee Road Te Ngae Road curves to the left, described by this witness who knew the road as 'deceiving'.

The witness did indeed see the Valiant crash. She described in her subsequent statement how she saw it take the curve, straddling the centre line. A little further round the curve she saw it brake and then, "*I saw the Valiant flying up in the air*". She also saw the Police car in front of her and thought it was then stationary.

Constable van den Broek was also familiar with the curve. He later reported, "*I know this corner well and I know it is a difficult corner to negotiate at high speed. I started to slow considerably as I approached the corner and the Valiant was well ahead by 200-250 metres*". The Police car went through the curve at 140kph finding difficulty in negotiating it at that speed.

As the Police car emerged from the curve Constable van den Broek saw the Valiant approximately 100 metres ahead fish tailing and sliding sideways. The Valiant left the road on the left hand side. It was later established that the car crossed a broad grass verge, hit a ditch, and was launched into the air. It then travelled a distance of 19.8 metres before making contact with the ground where it bounced back into the air and impacted with and demolished a concrete power pole resulting in the localised power blackout previously mentioned.

Crash Scene

At 11.38pm Constable Siulepa reported to Control that the Valiant had crashed into a power pole. He said, "*The vehicle's lost it, mate*" and, moments later, "*Get an ambulance here,*

straight as". Constable Siulepa went on to ask Control to call the Fire Service. He told Control that, "The power pole's over, there's live wires everywhere".

Constable Davies in the Control Room requested the attendance at the scene of Fire, Ambulance and Electric Power services. A tow truck was also called for. Because of the presence of the live power cables which had fallen onto the crashed Valiant it was necessary to ensure that power was turned off. Other Police quickly arrived and arrangements to control the scene were put in place.

Reconstruction

A subsequent reconstruction of the crash found that:

"It appears that as the driver of the car was attempting to negotiate a moderate left hand bend at high speed he lost control of the vehicle. He did not attempt to break (sic) prior to leaving the road surface. Upon entering the gravel the driver braked heavily for a distance of 26.5 metres.

The car was travelling away from the road at about 45 degrees. There is a wide grass verge that is 16.44 metres wide. At about 8 metres from the road there is a ditch it is about 1 metre wide and 900 mm deep.

The skid marks change into yaw marks which suggest that the car started to slide sideways. The vehicle hit the ditch and upon leaving the ditch was launched into the air. It travelled for a distance of 19.8 metres before making contact with the ground.

Only one skid-mark was found at the point where the car hit the ground. This shows that only one part of the car hit the ground. It then bounced into the air and hit a concrete power pole. The point of impact was directly across the boot of the car.

The pole was broken in three places suggesting that the car folded around the pole. It then spun around throwing the deceased out of the car onto the ground.

The car then flipped and landed upside down on a hollow stone block wall. The position of the car was that the front of the car was in the front lawn of No. 698 Te Ngae Road. The front of the car was in the air and the rear of the car was resting on the road side of the property.

The deceased was laying under the rear of the vehicle with the rear bumper on his head. The rest of the body was hidden from view ie. he was trapped under the rear of the car".

The Valiant had come to rest in an inverted position across a hollow stone block wall fronting a residential property. Aaron Cairns and Guy Dunlop were trapped inside the vehicle and were extricated by the Fire Service. Stewart Foster died at the scene. The vehicle inspector's report stated no safety belts were fitted in the rear of the vehicle and this may have been a contributing factor to Stewart Foster's death. Guy Dunlop sustained serious back injuries and was hospitalised. Aaron Cairns was also hospitalised.

An independent vehicle inspector later inspected the Valiant and reported that the car appeared to have suffered severe roll over damage and appeared to have flipped end over end. No mechanical faults were detected which may have contributed towards the crash.

Subsequent Action Against the Driver

Aaron Cairns was also hospitalised; an analysis of his blood gave a reading of 181 milligrams of alcohol per 100 millilitres of blood. This reading was more than twice the legal limit. Aaron Cairns has since been sentenced to seven years imprisonment having on 8 March 1996 been found guilty by a jury of the manslaughter of Stewart Foster. The publication of this Report was delayed until his case was dealt with by the Court.

Examination of Transcript

Subsequent examination of the transcript of radio traffic between Control and the Police car showed that a commentary was maintained from the Police car reporting the progress of the pursuit. In response Control sought information from the Police car crew on road and traffic conditions. The road was dry and traffic was reported as being light. As stated, other Police units were alerted to the pursuit and detailed to back up the pursuing Police car, but no other Police vehicle was closely pursuing the Valiant.

Summary of Pursuit

The Police car followed the Valiant for a total of 7 kms, but after the incident lights of the Police car were illuminated 5.8 kms were covered. The duration of the pursuit was not accurately recorded but from the request by Constable Siulepa for a QVR check to determine the vehicle's ownership until he reported that the Valiant had crashed a period of 3 minutes and 43 seconds passed, this being the period of time which elapsed between Constable Siulepa's first call to Control about the Valiant and the recorded time of the crash terminating the pursuit.

Police General Instructions

Under Section 30 of the Police Act 1958 the Commissioner of Police may issue General Instructions and all members of the Police shall obey and be guided by those Instructions. The legislative document promulgated by Police National Headquarters to control Police pursuits of motorists attempting to avoid apprehension is contained in Police General Instructions. These Instructions represent the rules under which Police officers are obliged to act.

They are as their language indicates instructions which officers must obey in the pursuit situation. They also represent the rules by which I make an assessment of their conduct in pursuits that become incidents pursuant to my jurisdiction as outlined earlier and later in this report. So that members of the public and the Police may judge my assessment as set out hereafter I reproduce the pertinent and relevant Police General Instructions on pursuits and comment as they relate to this incident.

“VEHICLE PURSUIT

V1 Introduction

(1) 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.

V2 Basic Principles

(1) A sustained pursuit will not be justified except in very exceptional circumstances and only where:

- (a) An offender’s continued liberty would constitute a greater danger than the continued pursuit; or*
- (b) the offence is serious and constitutes a danger or serious threat to the public or the police.”*

V5 Duties of Supervisors

(1) Supervisors shall, at all times, strictly supervise members who are involved in ‘pursuits’ and shall ensure that the members maintain a high standard of driving behaviour at all times.

(2) Supervisors shall pay particular attention to the deployment of moderator patrols where these can be used to warn and protect the public, and road blocks and the deployment of the hollow spike strip.

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

(4) When notified of a pursuit the supervising officer or NCO shall:

- (a) ensure that the pursuit is justified according to the criteria specified in the paragraph titled Basic Principles;*
- (b) limit the number of vehicles following the offender to not more than two unless there is good reason to authorise additional pursuit vehicles;*
- (c) constantly review the justification for the continuation of the pursuit, and, where the circumstances no longer warrant the pursuit, order its abandonment;*

- (d) *ensure the officer engaged in the pursuit is regularly questioned about the road and traffic conditions. This will compel the officer to take notice of these, and other similar matters and help to overcome the problem of 'tunnel vision' and to keep controllers informed;*
- (e) *where a crash occurs involving the member's and or the offender's vehicle a supervisor is to attend the scene and report;*
- (f) *require the pursuing officer to furnish a pursuit report; if a member is unable to do this a supervisor is to undertake this action on their behalf using *PURSUE.*

V6 Driver Responsibility

(1) *Drivers are legally responsible for their actions. They shall exercise every care to ensure their passengers and the public are not placed at risk by the officer's actions. The fact that a vehicle is being driven at excessive speed is not in itself sufficient grounds for a sustained pursuit. Pursuits should not be continued in an unmarked car where a marked car can be called to take over.*

- (2) *When a pursuit is considered necessary the officer shall:*
 - (a) *Advise the control room or supervisor (as appropriate);*
 - (b) *Drive carefully and skilfully;*
 - (c) *Drive with total control and concentration and, at all times , retain the ability to make a safe emergency stop;*
 - (d) *Use warning lights and siren;*
 - (e) *Reduce speed at intersections and other dangerous places;*
 - (f) *Maintain radio contact with the control room or supervisor (as appropriate);*
 - (g) *Discontinue the pursuit immediately it becomes likely that it is likely to endanger life;*

- (h) *Complete a pursuit report using preformat *PURSUE on the Wanganui system before finishing duty.'*

Evaluation of Facts Against General Instructions

By way of introduction I say the General Instructions are exactly what they say they are, firm, detailed instructions to Police officers which must be obeyed on pain of breach of discipline if they are not. In terms of the legislation they represent the "work rules" determined by the employer to be followed by the employee, to adopt and use ordinary commercial terminology. If the Instructions or rules are faulty, which I have in the past clearly stated they are, and continue to do so, the obligation is on the Commissioner of Police to change them. I will refer in greater detail to this point hereafter. These particular General Instructions have been in force since March 1993 and represent the standard by which I am obliged to assess the conduct of Police officers engaged in frontline duty. I know of no other.

Was This a Sustained Pursuit?

For reasons concerned in Simon Wright Report (1 August 1994) and Ronald Hopkins (27 May 1996), as examples, I think it is necessary applying the Instructions to decide whether this was a "sustained pursuit" and therefore one to which the full General Instructions apply.

I have no doubt this was a sustained pursuit by the Police vehicle. The time over which it took place was approximately four minutes. The distance was 7 kilometres which measuring time against distance confirms some alarmingly high speeds were reached. The pursuing officers had time to call Control, as they were obliged to do, and to place themselves under the strict supervision of Control Room, as set out in "Duties of Supervisors". I comment on the level of supervision hereafter.

Was This a Justified Pursuit Under Basic Principles?

V2(1) states unambiguously in the opening words that:

"A sustained pursuit will not be justified except in very special circumstances and only where: (underlining added by me)

- (a) *an offender's continued liberty would constitute a greater danger than the continued pursuit; or*
- (b) *the offence is serious and constitutes a danger or serious threat to the public or the police."*

I return to the facts. The Police vehicle first encountered the fleeing Valiant at the corner of Vaughan Road and Te Ngae Road at about 11.35pm. Its driving raised at first a conclusion

of excessive speed and later into the pursuit the possibility that the driver, at that time of night, driving very fast for apparently no reason and somewhat erratically, had excessively consumed alcohol. I believe the officers were acting properly in focussing attention on the vehicle and commencing to follow it to gather more facts and information with a preliminary intention of stopping it to carry out further enquiries. It is perfectly reasonable that the Police vehicle crew would not at that point address Basic Principles.

An exact point in time or place cannot be fixed for when the pursuit became a “sustained pursuit” but it was that in my opinion at the latest about the time the Valiant took what seemed a deviation off the main State Highway into Iles Road. Also at this time it became clear that the behaviour of the driver, as defined in V1(1) made the driving of both cars a pursuit for the objective evidence conveyed to the Police vehicle the other driver was attempting to avoid apprehension. The continued chase of the Valiant after this point became a sustained pursuit.

In my view it is at the point that the pursuit becomes a sustained pursuit the Basic Principles under V2(1)(a) and (b) must be raised in the minds of the officers occupying the Police vehicle and when Control Room is contacted that is the first matter for clarification that must be subject of the exchanges between Control Room and pursuit vehicle. I need not dwell on the term Basic Principles for they are stipulated as the fundamental criteria for sustained Police pursuits.

I do not wish to subject V2(1)(a) and (b) to exhaustive and repetitive analysis. “Sustained pursuits” are not justified. However that is qualified by exceptional circumstances limited to two situations only set out in (a) and (b). I suggest on the facts known to the officers (b) had no application. Instruction V6(1) states: *The fact that a vehicle is being driven at an excessive speed is not in itself sufficient grounds for a sustained pursuit.*” The only apparent transgression was excessive speed late at night and later suspicion of possible excess blood alcohol. In (a) there is a difficult and complex comparison to be made (one of the serious faults of these Instructions) but it really boils down to an assessment of all observed facts of the driving. There was no other information available to the Police officers than excessive speed at the start of the pursuit. In my view as an exception to Basic Principles that sustained pursuits are not justified (a) is not available.

I therefore conclude that the pursuit was not justified in these circumstances.

Did the Supervisors Fulfil Their Duties?

Under V5 there are mandatory instructions which begin in downright language:

“(1) *Supervisors shall, at all times, strictly supervise members who are involved in pursuits*” etc.

I have examined the transcript but will confine my comments to the following. Giving those “Duties of Supervisors” as sympathetic an interpretation as I am reasonably able they were deficient in “*strictly supervising members who are involved in pursuits*” but most notably made no realistic attempt, or any attempt at all, to discuss with the members the fundamental points of ‘Basic Principles’. Instruction V5(4)(a) “*Ensure that the pursuit is justified according to the criteria specified in the paragraph titled Basic Principles.*” It might reasonably be observed that supervisors in “*strictly supervising members*” in a pursuit have a greater obligation than the vehicle officers themselves to address these issues at the first opportunity. The supervisors are there in the equation to bring the cool, objective assessment to assist the frontline officers engaged in the highly charged and potentially dangerous exercise of a sustained pursuit. The supervisors also apparently breached V5(4)(b) in allowing, or sending, another two vehicles into the pursuit, although more than one vehicle was actually never involved directly in the pursuit. I do not regard this as particularly important on these facts.

Did the Driver Fulfil His Duty under Driver Responsibility?

The vehicle officers did advise Control Room early in the pursuit. Likewise they did maintain radio contact with the Control Room. I am also satisfied that the driver adhered at all times to the obligations under V6(2)(a) to (f). As I have already stated, the sustained pursuit should have been discontinued in Basley Road. The driver of the pursued vehicle was displaying erratic and dangerous driving and his driving had “*become(s) likely that it is likely to endanger life*” (a very clumsily worded Instruction on a vital point).

However the occupants of the vehicle did not get past the threshold of Basic Principles as I have already stated. In any event they should have discontinued as stated above.

Findings

1. The Police officers were obliged to pursue the Valiant for a short distance after Vaughan Road/Te Ngae Road intersection at which point the Valiant was first observed.
2. This was a sustained pursuit.
3. The criteria for “sustained pursuit” contained in the General Instructions under “Basic Principles” were not present and therefore the sustained pursuit was unjustified.
4. In any event the sustained pursuit should have been abandoned in Basley Road.
5. The supervisors in the Control Room did not strictly supervise the pursuit.
6. Subject to the foregoing the driver of the Police vehicle met his other responsibilities under General Instructions.

Conclusion

I have reviewed this pursuit by setting out the facts of the pursuit and applied the current General Instructions to the conduct of the officers in the situation. For the reasons I have already expressed I have found that the Instructions were not applied by either the officers in the Police vehicle, or the supervisors in the Control Room, in some important parts of those Instructions.

I do not believe I have too strictly applied those General Instructions and I say that for two reasons. The first is as stated earlier those Instructions represent the current legislation on the issue and they are the rules promulgated by the Commissioner and are the ones all members of Police, and I must apply. It has been well known that for some time I have expressed strong disagreement with those Instructions and that issue is more fully developed under the heading Recent History of Pursuits Instructions. The second reason is that in my view the departures from the Instructions were not minor, or technical, but quite material ones that I simply could not overlook. It has not gone unnoticed that Constable Van den Broek stated that towards the end of the pursuit and before the crash he had made the decision to abandon the pursuit. As stated, in my view it should have been done earlier. In order to ensure fairness to the officers themselves who I consider are endeavouring to do a very difficult and dangerous frontline job under trying circumstances, I do not recommend any

disciplinary action against them but that the contents of this report be brought to their attention by their senior officers and discussed fully with them.

Finally under this heading I want to state that nothing I have said about deficiencies in applying General Instructions leads to the conclusion that Police officers were responsible for the driving of Cairns and the subsequent crash that resulted in the loss of life of a passenger in his vehicle. It is to be remembered the Valiant before even it was observed by the Police officers had been driving at a speed estimated by a witness to be 120 kph. The cause of the subsequent crash was the exclusive responsibility of Cairns as was decided by the jury. He drove late at night, grossly under the influence of alcohol, at high speeds and dangerously later for the purposes of escaping from officers of the law. That conduct was the sole cause of the crash.

Recent History of Pursuits Instructions

I regard this as an appropriate place to recapitulate the Authority's position on pursuit policy at the present time. My publicly stated position on pursuits was brought to a head with the Simon Wright report published on 1 August 1994. The main recommendation in that report was as follows:

- “1. *That the Commissioner of Police confer with appropriate Ministers to have a multi-disciplinary group assembled to examine in-depth high speed Police vehicle pursuits with a view to making recommendations. It is important to stress vehicle pursuits is a community problem, and not exclusively that of the Police.*” (I have for this Report added the underlining which has application later under this heading)

Before I go on to outline the progress of that recommendation I think it is appropriate to state in the course of preparing the Wright Report I was told by Police administration that the General Instructions were then currently under review. I specifically mentioned then that fact under 2A of my further recommendations in the Wright Report. Therefore before it was known that the Ministers of Transport and Police were prepared to agree to establish the multi-disciplinary group I had recommended I had been informed the General Instructions were under review. That is in effect nearly two years ago and I believe is an important point to stress here.

I return to the progress of my principal recommendation for the multi-disciplinary group. That did eventuate and I was personally invited by the then Deputy Commissioner Ian Bird to address the first meeting which I did on 24 November 1994 to explain to the Committee my

concerns on Police pursuits. After that I was consulted by the Chairman, Mr J A L Gibson QC, before Christmas of that year but from then on I have had virtually no further contact with the Committee. The Committee reported to the Commissioner some 15 months later on 29 February 1996. The Gibson Committee Report was sent to me by the Commissioner on 8 March 1996 and in that letter the Commissioner stated: "*The Police will be working to progressively implement those recommendations that can be actioned within the constraints under which we operate.*" No further explanation was offered about that sentence. However it most certainly did not provide me with anything like an assurance that 20 months after I had officially raised my deep concern about the General Instructions on pursuits prompt action would be taken. On 22 March 1996 after I had time to read the Report I informed the Commissioner that I would withhold comment on the Report until I was informed of the procedure of the Police after having received it. In that letter I also stated I was prepared to make myself available to assist the Police in the implementation of the Report. I received an acknowledgment of that letter, but I have heard nothing further.

With the Simon Wright recommendations this Police Complaints Authority committed itself to bringing about some legislative reform in a most vital part of its work in reviewing the results of Police pursuits, many of which have ended in death. The validity of my criticisms of the current General Instructions have never been challenged by the Commissioner and those criticisms could be summed up in these statements taken from the Wright Report:

"I feel the General Instructions require revision in that the requirements they impose on Supervisors are too rigid, complicated and unrealistic in light of the conditions likely to be encountered in pursuit situations. Clearly in this case there was insufficient time in which to implement the fairly wide requirements of General Instructions. For that reason no finding of censure in respect of the Control Room staff is made here...."

"It is not enough to lay down detailed catch-call instructions, the wide requirements of which are difficult or impossible to implement by operational staff attempting to deal with the immediacy of such situations. The instructions should be framed to better assist staff in the effective discharge of their responsibilities."

My position is absolutely unchanged since I made those comments in the Wright Report.

After the Gibson Committee was appointed I had the difficult task of reviewing two further deaths that occurred in pursuits, being Desra Ratu Compain (death 10 August 1994 - Report 24 July 1995) and Brendon Waipuka (death 15 September 1994 - Report 23 November 1994). Both those Reports were sent by me to the Gibson Committee. In both those Reports I criticised General Instructions in strong terms.

I have been empowered under s12(1)(b) of the Police Complaints Authority Act to investigate where I am satisfied that there are reasonable grounds to carry out an investigation in the public interest any incident involving death or serious bodily harm notified to the Authority by the Commissioner under Section 13 of the Act. Where there have been deaths arising out of Police pursuits I have carried out investigations in conjunction with the Police and published Reports. Under Section 27 of my controlling Act I shall form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice or procedure which was the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair or undesirable. In Simon Wright I decided the policy, practice and procedure in Police pursuit as represented by the General Instructions were unreasonable, unfair and undesirable. I did not say so in Simon Wright in those words because I thought them unnecessary as they are contained in the empowering Act but clearly enough from the two extracts from the Report I have set out above that was my conclusion.

Police pursuits are, in my view, the responsibility of the Police Complaints Authority given to it by Parliament, and not the exclusive business of Police administration. The Ministers of Transport and Police and Police administration accepted my recommendation for a multi-disciplinary committee after I had personally waited on the Ministers on 13 September 1994 in support of my recommendation. After that date the Committee was established by the Commissioner and the first meeting took place on 24 November 1994.

One of the most important tasks this Authority is empowered by the legislation to undertake is to review death or serious injury arising out of Police pursuits. The findings of the Authority are important to the general public, to relatives of people killed and to the frontline officers engaged in pursuits. It apparently needs to be explained this is the core work of the Authority.

As evidence of the prominence the Authority has given this area the adoption of my recommendation for the multi-disciplinary committee was progressively reported in two Annual Reports being 30 June 1994 and 30 June 1995 which I made to Parliament pursuant to my statutory obligations. In the Annual Report for 1995 I stated this:

“Since I have occupied the office of the Authority no other single subject has given me as much concern as the number that have met their deaths as a result of Police pursuits. I return to the Simon Wright case. In that case I criticised the General Instructions of the Police which govern procedures in pursuit situations. It was obvious in that case and in others that the General Instructions were inappropriate and not being adhered to

My view is unchanged that the present General Instructions are in need of radical review.”

In view of the foregoing I consider it is my duty now to publicly state my disappointment that nearly two years after I was told by the Commissioner that the General Instructions on Police pursuits were then under review followed by the Report of the Gibson Committee, I have not been informed of any substantial progress towards that promised review. In my opinion Police administration has given insufficient attention to the difficult and complex decisions that the Authority is faced with in reviewing any given incident involving a pursuit. It is the Authority that has the final responsibility to make the decision and report to the public and it cannot adequately fulfil those obligations unless Police administration play their full role.

Recommendations

1. Although I have found material departures from the General Instructions in the way I have set them out applying both to the crew of the Police pursuit vehicle and the Control Room supervisors I do not recommend any disciplinary action because in my view the General Instructions are faulty. I do recommend this Report be discussed with all officers involved in this incident.

2. I consider the Commissioner should give the utmost urgency to the revision of General Instructions on pursuits that have been under consideration for two years.

Sir John Jeffries
POLICE COMPLAINTS AUTHORITY
4 June 1996