

**Report of the Police Complaints Authority
on the investigation into the death of Grant Siriphong (12)
in Napier on 18 April 1995**

Introduction

At a few minutes after 11.00pm on Tuesday 18 April 1995 a Mazda motor car which had earlier been reported stolen crashed into a stationary truck parked at the side of Kennedy Road, Napier. The driver, 12 year old Grant Siriphong, was killed. His passenger and 13 year old cousin Wigit Siriphong, was seriously injured. The Mazda had been in the previous 5 minutes and 41 seconds pursued for 14.4 kms by an unmarked Police car.

The incident was reported to me under the provisions of Section 13 of the Police Complaints Authority Act 1988. A Senior Investigating Officer of my staff, Mr John Roberts, travelled to Napier on the following morning to make a preliminary assessment of the circumstances surrounding the incident.

An internal investigation was undertaken by the Police at Napier into the pursuit and a separate investigation by an officer from that Police Station was also conducted into the traffic aspects of the incident.

Background

On Tuesday 11 April Grant Siriphong travelled from his home in Auckland to Napier to stay with an uncle and aunt. Grant was due to return to Auckland at 3.00pm on Tuesday 18 April, the day of the fatal crash, but he had missed the bus and was obliged to stay over in Napier for an extra day.

Early in the evening of 18 April Grant went into Napier city centre with two friends, Tui and Kassie Kanthavong, to go to a cinema. The three young people found that the cinema show

had already begun and so instead of going to the cinema they spent the time walking about the town.

The events of the following few hours have not been established with absolute certainty, partly due to the evident reluctance of the surviving young people concerned to give fully detailed accounts of what they did.

What is clear however is that Grant went off alone at one stage and returned to join Tui and Kassie Kanthavong driving a Mazda 626 motor car, registration number JT 2463. This car had been taken from Cathedral Lane in Napier having been parked there at 6.50pm. Home-made tools for opening and starting cars were later discovered amongst Grant's property.

Grant, Tui and Kassie later joined a number of other young people, one of these being Wigit Siriphong (13), Grant's cousin and the passenger in the car when the fatal crash occurred.

It is apparent that also during the evening Grant had obtained a bottle of rum which the group had clubbed together to buy and of which they all partook. Tests later established that Grant had consumed sufficient alcohol to register a reading of 20 milligrams in excess of the allowable limit for drivers under 20 years of age. In any event Grant was not a licensed driver.

Shortly before 10.00pm a motorist, Bevan Kerr, driving on Seapoint and Battery Roads in Napier saw a Mazda car being driven in an alarming manner in front of him. He saw the car driven through an intersection in disregard of a compulsory stop sign. Mr Kerr overtook the Mazda and saw that the two occupants were boys aged about 12-15 years, Mr Kerr thought.

On arriving home Mr Kerr telephoned the Napier Police and reported what he had seen to Constable D T Grant, saying that the car had 'got a kid driving it' and 'there's two, two real young kids in it'. Constable Grant broadcast this information to all Napier Police patrols at 10.10pm.

The Pursuit

The next reported sighting of the Mazda containing Grant and Wigit Siriphong was in Hastings at the junction of Heretaunga Street and Pakowhai Road.

At this time Constable M R Sewter from Hastings Police Station was driving South along Pakowhai Road approaching the Heretaunga Street junction. He was in an unmarked Police car and was on a one man traffic patrol.

When level with the Ikanui Road intersection the constable saw the Mazda approaching along the opposite side of the road. The manner in which it was being driven and its speed attracted his attention as did the fact that the Mazda was travelling faster than other traffic.

Constable Sewter executed a U-turn and drove after the Mazda. He did not at that time switch on the red and blue incident lights which were under the front grille of the car, nor did he use the car's siren. He noted the registration number of the Mazda and at 11.02.54pm he radioed Hastings police asking for the number to be checked.

Before he received the result of the check Constable Sewter saw the Mazda come to a halt just past the Frederick Street intersection with Pakowhai Road on the left hand side. Constable Sewter drew up behind the Mazda and turned on the red and blue grille lights of the Police car. He was about to alight to go and speak to the occupants of the Mazda, but before he could do so the Mazda was driven off. This is not an unusual occurrence in such circumstances.

At this Constable Sewter formed the opinion that the Mazda was a stolen car. He followed in the Police car and at 11.04.10pm he was advised by Hastings Police that the Mazda had indeed been reported as stolen. By that time the Mazda, followed by the Police car, was travelling North along Pakowhai Road.

The two cars were in an area where a 100kph limit existed. Constable Sewter increased his speed from 100kph at Richmond Road to 120kph, attempting to pull alongside the Mazda in order to instruct the driver to stop. As he drew up to the Mazda however that car swerved on

to the opposite side of the road in an apparent attempt to prevent the constable from coming any closer.

At this the constable fell back to a distance of about 100 metres, a separation which he then maintained.

Constable Sewter then made a series of radio reports of the progress of the cars towards Napier. Shortly before 11.05pm he reported they were coming up to the Chesterhope Bridge at a speed of 140kph. He added that there were two youths in the Mazda aged approximately 16/17 years. The constable later stated he based this assessment of their age on their dress and headgear.

The pursuit continued at speeds of 120 - 140kph. The traffic lights at the intersection of State Highway 50 and Meeanee Road were reached at 11.07.46pm.

By this time two other Police vehicles had responded to the situation and had taken up positions at the Meeanee Road traffic lights, one on each of the intersecting roads.

They were stationary and their red and blue incident lights were operating. Their function was to prevent traffic entering State Highway 50 in the path of the Mazda and Police car as well as to deny to the driver of the Mazda any exit from State Highway 50 to the left or right at that point. These precautions were obviously for the safety of other road users.

After the Mazda and the Police car had passed through the intersection the other two Police vehicles turned and were driven in the direction taken by the pursued and pursuing vehicles. What the respective crews of these two Police vehicles saw of the pursuit appears later in this report.

At 11.08.51 Constable Sewter reported that the Mazda was approaching the intersection of State Highway 50 and Kennedy Road. This is a traffic light controlled intersection with the large adjacent areas grassed and clear of buildings. At night it is brilliantly illuminated.

Approaching the intersection from the South, the direction being taken by the Mazda and the pursuing Police car, State Highway 50 is a two carriageway road with a central median strip

and a speed limit of 100kph.. The first road sign encountered on the approach is a large information sign which indicates that the road ahead is straight with a normal cross intersection.

The road then takes a descending left hand turn and the 100kph limit on State Highway 50 changes to a sign-posted 50 kph limit. There is no sign warning of the bend the road takes or that there are traffic lights ahead.

In the pursuit Constable Sewter then reported to the Control Room that it looked as if the Mazda was going to go straight on, adding that the driver of the Mazda appeared to have lost control.

The constable later stated that the Mazda swerved into the shingle (metal) at the left side of the road. It then went straight across both carriageways and the median strip of State Highway 50, passing out of his sight as he drove round the left hand corner towards the intersection with Kennedy Road. The Mazda, as observed by Constable Sewter, was clearly being driven in a manner dangerous to other road users.

As Constable Sewter turned right from State Highway 50 into Kennedy Road at the traffic lights he saw that the Mazda had crashed into the back of a truck. Constable Sewter had not himself witnessed the crash. At 11.09.09pm it was reported on the air that the Mazda had crashed. This was the fatal crash which took Grant's life.

The subsequent investigation into the traffic aspects of this incident established that the Mazda had crossed from the left hand carriageway of State Highway 50, gone over the median strip and the right hand carriageway before continuing on in virtually a straight line across the large grassed area in the angle created by the intersection of the State Highway with Kennedy Road. It had then crossed Kennedy Road, going over the median strip and colliding with the rear right corner of the parked truck.

The red and blue lights and siren of the Police car driven by Constable Sewter were activated throughout the pursuit from its commencement.

The Police investigator who addressed the traffic aspects of the crash has commented that the raised median in the centre of State Highway 50 at this point shows evidence of having been struck by several vehicles in the past.

That officer suggested that the signposting of this section of roadway is misleading to motorists unfamiliar with the layout of the intersection and adjacent area. At night the brilliant lighting could give the impression that State Highway 50 goes straight ahead rather than taking a descending curve to the left.

Control and Monitoring

The pursuit was being monitored from Hastings and Napier Police Stations.

At Hastings Sergeant B M Smith was in charge of the Police on night shift. The Sergeant confirmed to Constable Sewter the information that the Mazda had been reported stolen and remained to monitor the continuance of the pursuit incident.

At 11.04pm Sergeant Smith telephoned Constable Grant in the Napier Police Station Control Room. The Sergeant asked for assistance from the Napier Police in providing further patrol resources to support the pursuit. As a result Napier Police patrols switched to the Hastings radio channel.

Three Napier units became involved in the incident. These were the marked Police patrol car driven by Senior Constable Gibson accompanied by Constable Corkery; a dog van driven by Constable Sandford and, in another marked Police car, Sergeant de Lange.

When Sergeant de Lange heard Constable Sewter's reports on the radio he informed other patrols that he would go to the intersection of State Highway 50 and Kennedy Road and if necessary try to deploy the hollow spike device. The function of this device is to bring a

vehicle which passes over it to a standstill by puncturing and causing a rapid but not immediate disinflation of its tyres.

The Sergeant's decision was made in the knowledge that after that intersection the road passed through heavily populated areas where the Mazda may have encountered other traffic and pedestrians and public safety could consequently have been put at risk.

He accordingly decided to place the device on the left hand lane at the Kennedy Road traffic lights on State Highway 50. The area was unimpeded by buildings and there was a wide grass verge on each side.

When Sergeant de Lange heard from the direction of State Highway 50 the sound of an approaching car travelling at high speed he put the spikes into position and withdrew to his Police car parked on the grass verge.

When the Mazda came into Sergeant de Lange's view it was on the shingle shoulder of the left hand carriageway of State Highway 50. It was travelling at a speed the Sergeant estimated to be 120kph and instead of turning to follow the curve of the road leftwards it continued straight ahead. It became airborne as it crossed the right hand carriageway and hit the concrete curb on the opposite side of the road to that on which it had been travelling. Thus it did not traverse that part of the road where the hollow spikes were laid out.

It then crossed the lanes and median strip of Kennedy Road and struck a large truck parked on the left hand far side of Kennedy Road. The car did not appear to be under control or to slow down as it traversed the intervening area. This was the fatal collision.

After the impact Sergeant de Lange looked back along State Highway 50 and saw approaching the unmarked Police car driven by Constable Sewter with its siren and red and blue incident lights operating. The Sergeant judged there to have been a pause of 5 to 10 seconds after the crash until the Police car came into his view. He estimated there to have been a minimum 150 metre separation between the Mazda and the Police car.

Civilian witnesses who saw the Mazda appear and crash into the truck also saw the pursuing Police car. Their accounts put the separation between the Mazda and the Police car at a distance somewhat greater than that stated by Sergeant de Lange.

Constable Sewter was said by Sergeant de Lange to have been driving in a controlled manner and had no difficulty in pulling up when signalled to do so by the Sergeant before reaching the extended hollow spike device.

Following Constable Sewter at a distance of 5-600 metres were the dog van and marked patrol car that had been positioned at the Meeanee Road traffic lights.

The officers in these two vehicles were clearly committed to the apprehension of the occupants of the Mazda but cannot be regarded as having been in pursuit of that car.

Constable Sandford driving the dog van stated that the Mazda had gone over the Meeanee Road intersection on State Highway 50 at a speed he estimated at 140kph. The unmarked Police car driven by Constable Sewter was about 100 metres to its rear.

Constable Gibson driving the marked patrol car estimated that the Mazda was travelling at a speed definitely in excess of 100kph. His estimate of the distance separating the Mazda from the pursuing unmarked Police car was 80 metres. His partner, Constable Corkery, estimated the Mazda's speed and the distance separating it from the Police car as 140kph and 50-100 metres respectively.

Hastings Control

At Hastings Sergeant Smith paid attention to the reports of Constable Sewter. Knowing it was a clear dry night, the road long and straight and sensing from Constable Sewter's voice that there was no panic and that the constable was very calm, Sergeant Smith saw no need to stop the pursuit.

Napier Control Room

Constable Grant in the Napier Control Room was satisfied with the way in which that the pursuit was being executed and with Constable Sewter's reports. He knew that Sergeant de Lange was aware of the situation and that the Sergeant was going to the State Highway 50 and Kennedy Road intersection to set out hollow spikes.

Constable Grant also knew that the road along which the pursuit was travelling was straight and that it was normally quiet at that hour on a Tuesday night. He considered the situation was under control and it was just a matter of waiting for the Mazda to reach the hollow spikes. There was, he felt, nothing more to be said and was conscious of the need not to block radio traffic.

Reconstruction

The reconstruction of the crash and the sequence of events immediately preceding it indicated that the impact speed was in the vicinity of 100kph. Tyre marks suggested that the Mazda was out of control shortly after the brakes were applied immediately after the Mazda passed the 50kph speed limit sign on State Highway 50 at the approach to the intersection 243 metres short of the impact point.

The pursuit extended over a distance of 14.4kms, this being the distance from the point at which the driver of the parked Mazda drove off and ignored the red and blue flashing grille lights of Constable Sewter's unmarked Police car as it drew up behind him. The pursuit lasted 5 minutes and 41 seconds.

The conclusion reached by the reconstruction was that the driver of the Mazda had at the last moment realised he was approaching the intersection at too high a speed and had braked hard, gripping the steering wheel in the straight ahead position.

Wigit Siriphong the surviving passenger in the Mazda had no detailed recollection of the crash other than stating that "*all I can remember is a picture of going across grass skidding*".

Review

In reviewing the circumstances surrounding the pursuit and death of Grant Siriphong it is necessary to relate the various steps taken by the Police to the Police General Instructions governing the execution of pursuits. These are contained in Police General Instructions V1 to V8.

In previous reviews of incidents where Police have been involved in Pursuits which have led to death or serious injury, I have drawn attention to the need for these Police General Instructions to be reviewed. I have observed that the instructions should be framed to better assist staff in the effective discharge of their responsibilities.

To that end a multi disciplinary group was set up at my recommendation to address the subject of high speed pursuit of apparent offenders by Police.

In this instance I am satisfied that the Police General Instructions were not breached in any material way.

Analysis of the Pursuit

The first issue to establish in analysing the incident is whether it constituted a pursuit.

A pursuit is defined by Police General Instructions V4.1 as:

“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”.

There can be no doubt that this was a pursuit and that it was sustained over a considerable distance. The Police officer who investigated this incident has described it as a pursuit, and so it was.

I emphasise this definition to dispel any interpretation of this incident as a Police car merely following another vehicle.

Justification

Was the pursuit justifiable under the criteria that applied at the time?. This is contained in Police General Instructions V2(1) which provides that:

“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.”*

In this case the manner in which the Mazda was being driven was unquestionably dangerous. When first seen the Mazda was being driven faster than other traffic and was considered to have been exceeding the 50kph speed limit which applied at that point.

The Mazda then drove off from a stationary position when Constable Sewter drew up and turned on the red and blue grille lights on the Police car. Along the road the Mazda swerved to the right to baulk the constable as he tried to draw abreast. Elsewhere during the pursuit the Mazda swerved into the roadside loose metal causing the constable to believe the driver of the Mazda was trying to shower the Police car with stones.

Shortly after the commencement of the pursuit Constable Sewter was notified from Hastings Police Station that the Mazda was a stolen car.

A serious offence had been committed. The driver of the Mazda was driving in a manner that did constitute a danger to other road users and to the pursuing Police car.

I find the pursuit was justified in terms of Police General Instructions V2.1b.

Duties of Supervisors

The pursuit was being monitored by Sergeant Smith at Hastings, and by Constable Grant in the Control Room at Napier Police Station. Sergeant Smith was Constable Sewter's supervisor and primarily responsible for the control and monitoring of the pursuit.

The transcript of the radio traffic shows that both Constable Grant and Sergeant Smith kept their broadcasts to a minimum to avoid blocking radio traffic but were adequately informed of progress and conditions in the pursuit.

The obligations placed on supervisors in pursuit situations by the relevant Instruction, V5.4, are very detailed and clearly designed to accommodate all exigencies. In this instance Sergeant Smith was familiar with the route being taken by the pursuit. Traffic at that hour on a Tuesday night was light and the road and weather conditions were good.

He also knew from Sergeant de Lange's radio message that the Napier Sergeant planned to use the hollow spike device to stop the pursued Mazda. This was an appropriate step to take and one for which provision is made in the relevant Instruction, V7.4. Sergeant Smith therefore kept his broadcasts to a minimum as the transcript shows.

The relevant Police General Instructions also, at V6, address driver responsibility. The information emergent from the investigations into the traffic and pursuit aspects of this fatality and my own independent review have identified no factor to suggest that the requirements of this Police General Instructions were in any way breached or disregarded.

The Police General Instructions require that a pursuit by an unmarked car should not be continued where a marked car can be called to take over. I do not believe proper or safe opportunity for such a change to be made existed in this case. In any event the lights under the grille were sufficient to disclose the identity of the vehicle as belonging to the Police.

Fatality

I believe there are a number of factors that must be considered in addressing the fact that the pursuit ended with the death of Grant Siriphong.

One factor that took this incident from being the routine apprehension of a joy riding youth to a fatal crash is in my opinion bound up in the improper response of an errant motorist when driving under the attention of a Police vehicle. The motorist should then respond to the Police signal to stop and do so, but this did not happen in this case.

Wigit Siriphong stated afterwards:

“I remember Police lights flashing inside our car. I remember sitting in the passenger seat, Grant was driving. I asked Grant what we are going to do. He didn’t answer me. I remember his face, he was really shocked. I remember Grant shaking all over”.

From these telling remarks, fright and panic clearly influenced the deceased in the way he drove the Mazda. Stopping did not, from the evidence, present itself to him as an option.

A second, more material, factor was the configuration of State Highway 50 where it approaches the intersection with Kennedy Road and the apparent deficiencies in the signage which traffic encounters when approaching the intersection from the South.

The Police traffic investigator has recommended the information sign currently warning of an intersection should indicate that the road curves as it approaches the intersection, that a warning sign denoting the existence of traffic lights at the intersection be installed and that a chevron board with a speed advisory sign be erected at the bend.

These recommendations are sensible and I support them.

Police General Instructions

I remain convinced that the Police General Instructions relating to Police pursuits generally are in need of some radical redevelopment, but this particular pursuit was able to be conducted within the boundaries of the Police General Instructions, reasonably interpreted.

There was a reasonable expectation that the pursuit would end at the State Highway 50 and Kennedy Road intersection when the Mazda encountered the hollow spike device. This failed because of the dangerous driving and the almost instant crash at the scene of the spikes.

Conclusions

It is concluded that the decision to pursue and the pursuit by Constable Sewter of the car driven by the deceased was in accord with the criteria set out in Police General Instructions.

The supervision exercised by the constable's supervisor, Sergeant Smith, whilst not in some respects conforming entirely with the Duties of Supervisors set out in Police General Instructions, was nevertheless appropriate and adequate in relation to the situation with which the Sergeant was presented. Supervisors must be able to exercise reasonable discretion.

The driving conduct of the deceased and the report that the Mazda was a stolen vehicle justified the sustained pursuit.

However other factors not known to the pursuing officer also may have borne on the tragic outcome of the pursuit. These other factors included the youth and consequent driving inexperience of the deceased combined with the effects of the alcohol he had consumed and the effect of this on his judgment and driving ability.

I find there to have been no neglect of duty or procedural irregularity in the responses by the Police to the situation that terminated in the death of Grant Siriphong and the serious injury of Wigit Siriphong.

Recommendations

It is recommended that the Commissioner of Police draw the attention of the appropriate authorities to the deficiencies in road signage in the approaches of State Highway 50 to the Kennedy Road intersection

I recommend that this report be referred to the recently established Gibson Committee on Police pursuits for their further attention.

(Sir John Jeffries)

POLICE COMPLAINTS AUTHORITY

22 August 1995