



Report on the pursuit of Thomas Joseph Hancy, causing serious injury to Laura Kate Henry

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At approximately 7.32pm on 5 December 2008, a stolen Subaru Impreza driven by 18-year-old Thomas Joseph Hancy crashed into a Toyota Corolla driven by Laura Kate Henry, aged 24, following a short Police pursuit in Christchurch. Ms Henry sustained life-threatening injuries in the crash. One of her passengers suffered serious injuries, and another, a 5 year old girl, suffered minor injury. Thomas Hancy was also seriously injured.
2. The Police notified the Independent Police Conduct Authority of the serious bodily harm resulting from the pursuit, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

3. At about 7.30pm on 5 December 2008, two officers conducting speed enforcement in an unmarked Police car saw a Subaru Impreza exit a roundabout on Deans Avenue, Christchurch at high speed.
4. Officer A was the driver of the Police vehicle and Officer B was the passenger, with responsibility for radio communications during the subsequent pursuit. At the time Officer B was fulfilling the duties of Acting Sergeant, and was therefore, by rank, the senior of the two officers.
5. The Subaru was initially checked travelling at 74kph in this 50kph area, and after accelerating away, was re-checked at 77kph.
6. The officers decided to stop the Subaru, with the intention of issuing the driver with, at least, an Infringement Notice for speeding. At the time, they were travelling in the opposite direction to the Subaru along Deans Avenue, which is a four-lane road divided by a boulevard. In order to pursue the Subaru, they had to go around the next roundabout.

7. Officer A activated his lights and siren, drove around the roundabout at low speed on the wrong side, and then followed the Subaru along Deans Avenue, reaching a speed of 100kph. At this stage the Police patrol was about 500 metres behind the Subaru, and there was only one other car along that stretch of Deans Avenue.
8. The Subaru turned right into Riccarton Avenue, travelling through Hagley Park towards Christchurch Hospital. The officers did not initially see where the Subaru had gone but decided to turn down Riccarton Avenue, where they soon saw the Subaru ahead. Officer A said that at this stage there was no traffic on his side of the road and no pedestrians that he could see.
9. At 7.31:16pm, Officer B radioed the Southern Communications Centre (SouthComms) to report a *“failing to stop – Riccarton Avenue”* and then *“heading towards the city”*. An earlier attempt to notify SouthComms of the pursuit had failed because the radio channel was busy. This is confirmed by the transmissions recording; however, Officer B said that he did not call in the pursuit until he had sighted the Subaru on Riccarton Avenue, and could confirm they were following in the right direction.
10. At 7.31:28pm, the SouthComms dispatcher gave the following warning, required under the Police pursuit policy: *“If there is unjustified risk to any person you are to abandon immediately, acknowledge”*. Officer B immediately acknowledged the warning, and reported that the pursued vehicle was a dark Subaru Impreza and that they were heading towards the hospital. Officer A later estimated that at this stage he was 300 metres behind the Subaru, that they were travelling at a speed of about 100kph, and that vehicle and pedestrian traffic was getting heavier. None of this information was passed to SouthComms.
11. Just before the hospital there are two sets of traffic lights. A build-up of traffic at these lights caused the pursuit to slow. Officer B estimated that the Police car was 30-40 metres behind the Subaru at this time and travelling at a speed of about 50kph, and said that at this stage he was able to read the Subaru’s registration plate. When asked if he had considered abandoning the pursuit at this stage, Officer B said: *“Yes, the option was going through my mind.”*
12. Just past the hospital, Riccarton Avenue becomes Tuam Street, which is a one-way street for 96 metres before becoming two-way again. The Subaru travelled in the wrong direction along the one-way section, with the officers following. The Subaru then continued along the two-way section, where it overtook other vehicles and was driven on the wrong side of the road.
13. The SouthComms dispatcher twice asked Officer B the reason for pursuit, before Officer B replied *“excessive speed he’s on the opposite side of the road now Comms just approaching”*

the traffic lights giving way”, and then “Green gone the wrong way up Tuam Street one-way.”

14. At 7.31:58pm SouthComms asked for the speed of the pursuit. Officer B did not give the speed but called in the registration number of the Subaru. Two seconds later Officer B, having made the decision to abandon the pursuit, said *“We are pulling out Comms, we’re abandoning he’s gone the wrong side.”* SouthComms acknowledged the abandonment.
15. Officer B said later that he made the decision to abandon pursuit based on a belief that Tuam Street was one-way for its entire length.
16. A commissioned officer is directly responsible for managing and controlling all serious incidents at SouthComms, including vehicle pursuits. As pursuit controller the commissioned officer said that, once he had ascertained the manner in which the Subaru was being driven, he told the SouthComms dispatcher to order Officers A and B to *“abandon pursuit”*; however, Officer B advised that the patrol was abandoning before the dispatcher could give this directive.
17. Officer A stated that, following Officer B’s call to abandon the pursuit, he took his foot off the accelerator and started to brake, while looking for somewhere to stop. As he was doing this, he told Officer B that Tuam Street at this point was now two-way again. Two seconds after that, Officer B radioed SouthComms and said *“Ah Comms sorry he’s on the same stretch of road now he’s on the right side. I think we should hang on for that.”* Both officers later agreed that they did not have the approval of the pursuit controller to recommence the pursuit; nor did they assess the risks associated with recommencing the pursuit, especially in light of the fact the pursued vehicle was heading towards a major intersection between Tuam Street and Durham Street South.
18. At 7.32:17pm, Officer B radioed SouthComms saying that there had been a *“big TY”* (a big collision) on Tuam Street.
19. When Officer B indicated that the pursuit was being recommenced, the pursuit controller instructed the dispatcher to say *“no”* and to instruct the patrol to abandon. However, the collision occurred before this directive could be given.
20. Pursuit policy requires that once a pursuit controller has been advised that a vehicle has abandoned the pursuit, the controller is to give the direct order *“All units SouthComms Alpha, abandon pursuit now. I say again, all units abandon pursuit now”*. In the circumstances of this pursuit, the pursuit controller had no time to give this order before the collision occurred.
21. Thomas Hancy had driven through the Tuam Street intersections with Antigua Street and Montreal Street on green lights. At the intersection of Tuam and Durham Street South he drove through a red light, colliding with the Toyota Corolla being driven by Ms Henry.

22. Officer B immediately called for an ambulance. All occupants of the two cars were taken to Christchurch hospital. Ms Henry remained in hospital for two and a half months with injuries from which she has not fully recovered.
23. The pursuit's duration, from the point at which it was called in at the start of Riccarton Avenue to the collision, was one minute. It covered a distance of approximately 1.8 kilometres. The average speed of the Subaru during the pursuit was 108kph, in a 50kph speed zone.
24. Reports differ regarding how far the Police patrol was behind the Subaru at the time of the collision. The adult passenger in the Toyota initially thought that it was the Police car that had collided with them. An off-duty Police officer on Durham Street at the time estimated the gap between the cars was 30-40 metres. Other witnesses say the gap was about 80-100 metres. Officers A and B thought the distance was greater, with Officer A saying they were approximately 200-250 metres behind the Subaru.
25. In every communication from Officer B, the Police siren can be heard in the background and it is clear, from all accounts, that the Police vehicle was travelling at speed with its lights and siren operating at the time of impact.

Thomas Hancy

26. Thomas Hancy's identity was not known during the pursuit.
27. He and an associate had stolen the Subaru about an hour and a half before the pursuit. The associate got out of the vehicle before the pursuit began.
28. Thomas Hancy was disqualified from holding or obtaining a driver licence and had numerous previous convictions for violence, dishonesty, drugs and driving offences. He has been involved in a number of Police pursuits.
29. Thomas Hancy was released from prison, where he had been serving a term of imprisonment for an earlier pursuit and drink driving incident, twenty-three days prior to the crash.
30. Thomas Hancy pleaded guilty to aggravated wounding, two charges of reckless driving causing injury, driving whilst disqualified, unlawfully taking a motor vehicle, and failing to stop for red and blue flashing lights. He was sentenced to a total of four years and three months imprisonment.

Vehicle

31. Neither the Subaru nor the Toyota had any mechanical defect that would have contributed to the crash. Both vehicles were of warrant of fitness standard.

Environment

32. The collision took place at the intersection of Tuam Street (four lanes, two way) and Durham Street South (four lanes, one way) in the city 50kph area. The road surface is bitumen seal in good condition.
33. The traffic lights controlling the intersection were working correctly and clearly visible.
34. Traffic was light on Deans Avenue and Riccarton Avenue. However, traffic and pedestrian volume increased near the hospital and again at the intersection of Tuam Street and Durham Street South.
35. At the time of the collision, the weather was fine and clear, with good visibility and dry road conditions.

Police crash analysis

36. The investigator determined that the Subaru was travelling at a speed of not less than 88kph at the time of the crash. The tyre friction marks suggested Thomas Hancy braked just prior to impact.
37. The Toyota was travelling at about 46kph. Ms Henry did not contribute to the crash in any way.
38. Thomas Hancy was not wearing a seat belt at the time of impact.
39. The crash investigator's report concluded *"The driver of the Subaru car, Mr Hancy was travelling at speed and failed to stop for a red traffic light."*

LAWS AND POLICIES

40. Under section 114 of the Land Transport Act 1988, Police are empowered to stop a vehicle for traffic enforcement purposes.
41. Under the Police pursuit policy, an officer who commences a pursuit must have undertaken a risk assessment, which involves consideration of a range of factors including speed and other behaviour of the pursued vehicle, traffic and weather conditions, the identity and other characteristics of the people in the pursued vehicle, the environment, and the capabilities of the Police driver and vehicle. The officer must then determine whether *"the need to effect immediate apprehension of the offender is outweighed by the risks posed by a pursuit to the public, the occupants of the pursued vehicle, or police"*.
42. The policy also sets out requirements for communication between the pursuing vehicle and the relevant Police communications centre, roles and responsibilities of all staff involved, tactics that may be used, and procedures for abandoning and restarting pursuits.

43. Under the policy, the driver of the Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit, and the pursuit controller at the Police communications centre is responsible for coordinating the overall Police response.
44. Throughout a pursuit, Police must continue to assess the risks involved and they must abandon it if the risks to safety outweigh the immediate need to apprehend the offender.
45. If a pursuit controller decides that a pursuit must be abandoned, or if they are advised that a vehicle has abandoned pursuit, they are to give the direct order *“All units, [Comms Centre] Alpha, abandon pursuit now. I say again, all units abandon pursuit now”*.
46. The policy sets out the steps that must be carried out following a direction to abandon a pursuit:

| Step | Action |
|-------------|---------------------------------------------------------------------------------------------------------------------|
| 1 | <i>Acknowledge the direction to abandon pursuit</i> |
| 2 | <i>Immediately reduce speed to increase the distance between the offender’s vehicle and their own</i> |
| 3 | <i>Deactivate warning devices once below the speed limit</i> |
| 4 | <i>Stop as soon as it is safe to do so</i> |
| 5 | <i>Report abandonment to the pursuit controller, confirming that they are stationary and giving their position.</i> |

47. In relation to recommencing a pursuit, the policy states:

“An abandoned pursuit is not to be recommenced without the approval of the Pursuit Controller. Approval is only to be considered if the situation has changed following abandonment, and where risk assessments [referred to in paragraph 41 above]... indicate that the risks involved in pursuit have reduced so that the need to effect immediate apprehension is no longer outweighed by the risks posed by recommencing pursuit.”

THE AUTHORITY'S FINDINGS

Commencement of pursuit

48. Officers A and B and their unmarked patrol vehicle were appropriately classified to undertake pursuits under the Police Professional Driver Programme. Both officers were 'gold' rated.
49. Thomas Hancy was signalled to stop for a traffic infringement under section 114 of the Land Transport Act 1988. Because he failed to stop, Officers A and B had the authority to commence a pursuit.
50. Though the officers signalled the Subaru to stop on Deans Avenue, at that stage the Police vehicle was some distance behind the Subaru. In the Authority's view, the pursuit did not commence until Officer B sighted the Subaru on Riccarton Avenue heading towards the hospital and called the pursuit in to SouthComms.
51. Before commencing and calling in the pursuit, Officers A and B appear not to have given sufficient weight to the following risk factors:
 - The Subaru was heading towards the hospital and the centre of town, including the bar and restaurant area.
 - It was 7.30pm on a Friday night, and vehicle and pedestrian traffic was likely to be significant around the hospital and central city.
 - The initial infringement was exceeding the speed limit (74kph in a 50kph zone).
 - The officers were in an unmarked vehicle – which under the pursuit policy is required to be replaced by a marked vehicle as soon as possible.
 - The officers had already been driving at over 100kph on Deans Avenue to catch up with the Subaru before calling in the pursuit.

FINDING

Officers A and B were not justified in commencing a pursuit under the Police pursuit policy. The officers did not properly consider the risks before deciding that the immediate need to apprehend the offender outweighed those risks.

The pursuing officer's manner of driving

52. Officer A activated his warning lights and siren and drove around the roundabout at Deans Avenue and Old Blenheim Road on the wrong side to save time and catch up to the Subaru. At that time there was only one other vehicle on this section of Deans Avenue.
53. Officer A's speed reached 100kph or more along Deans Avenue. He said that he took into consideration the lack of pedestrians and other vehicles and also the road conditions.
54. Officer A followed the Subaru the wrong way along the one-way part of Tuam Street, and continued to drive with lights and siren operating after SouthComms had been informed that the pursuit had been abandoned.
55. Officer A's speed and roundabout manoeuvre were permitted under the pursuit policy. However, by driving the wrong way along Tuam Street and continuing to drive after SouthComms had been notified that the pursuit had been abandoned, Officer A demonstrated that he had not adequately assessed the risks associated with continuing the pursuit.

FINDING

Officer A drove the Police car in a manner that was contrary to the pursuit policy.

Communication by the pursuing officers

56. In interview with the Authority, the SouthComms dispatcher and pursuit controller both commented that Officer B's commentary lacked detail, and obtaining the necessary information required constant prompting. They said that Officer B did not provide enough information, quickly enough, to allow a proper risk assessment.
57. The recording of the pursuit commentary shows that the dispatcher had to ask twice for the reason for initiation of the pursuit before one was given. There is no recorded evidence that any indication of speed was given by Officer B, although Officer B says that he tried to give this information but a simultaneous transmission from SouthComms blocked it. In addition, Officer B did not clearly inform SouthComms that the pursuit was being recommenced (see paragraph 17), or obtain permission from the pursuit controller before recommencing.

FINDING

Notwithstanding the short duration of the pursuit, there was inadequate communication by Officer B with SouthComms. Officer B did not fully comply with the pursuit policy's communication requirements.

Oversight of the pursuit by SouthComms

58. As soon as the dispatcher became aware that a pursuit was taking place she notified the pursuit controller. The pursuit controller began listening in, and assumed responsibility for the pursuit as the dispatcher was giving the pursuit warning.
59. Having ascertained the manner of driving, the pursuit controller ordered the abandonment of the pursuit (see paragraphs 16 and 17 for detail). On learning that the pursuit had been recommenced, the pursuit controller again ordered its abandonment. However, the dispatcher did not have time to formally give the direct order to abandon and not to recommence before the crash occurred.

FINDING

In the circumstances this short pursuit was overseen as competently as possible by SouthComms.

Abandonment and recommencement

60. As the pursuit continued along Riccarton Road, pedestrian and vehicle traffic became heavier as the vehicles progressed past the hospital and towards the one-way section of Tuam Street and towards the city. All of these factors increased the risks inherent in a pursuit. Officer B considered abandonment at that time and, in the Authority's view, the pursuit should have been abandoned before it reached Tuam Street.
61. After the Subaru went the wrong way down Tuam Street, Officer B advised SouthComms they were abandoning pursuit. SouthComms acknowledged this advice. While Officer A slowed down he did not stop and did not follow the abandonment procedure set out in paragraph 46 (under which pursuing vehicles must turn off warning devices, stop, and report their position).
62. SouthComms did not have time to formally give the order to abandon (paragraph 45), and it might therefore be argued that the pursuit policy did not require the officers to follow the abandonment procedure. However, as the pursuit policy clearly allows for the driver or passenger to abandon a pursuit, in the Authority's view once the officers had informed SouthComms they were abandoning they should have followed the abandonment procedure and come to a stop.
63. Having informed SouthComms that they were abandoning the pursuit, Officers A and B required approval from the pursuit controller before recommencing. Under the pursuit policy, recommencement will only be considered if the situation (and therefore the risk assessment) has changed following abandonment. The officers did not receive approval to recommence the pursuit, and did not fully consider the risks before making the decision to recommence.

FINDING

Based on the risks involved, the pursuit should have been abandoned before it reached Tuam Street.

Officers A and B did not comply with the intent of the pursuit policy when they failed to follow the abandonment procedure. The officers' recommencement of the pursuit was also contrary to policy.

CONCLUSIONS

64. Officers A and B did not comply with the Police pursuit policy in making the decision to commence this pursuit, nor in failing to follow the abandonment procedure and recommencing the pursuit after making the decision to abandon. Furthermore, Officer A in going the wrong way down a one-way street drove in a manner that was contrary to policy, and Officer B failed to comply with the pursuit policy regarding communications with SouthComms.
65. Given the clear risk factors, the pursuit should have been abandoned before it reached Tuam Street.
66. Despite failures by Officers A and B to properly adhere to policy, they did not cause the crash. The primary reason for the crash was Thomas Hancy's reckless driving, at speed, through a red traffic signal.
67. In the Authority's view, the actions of Officers A and B amounted to misconduct. The Authority notes that the internal Police inquiry also concluded that the actions of Officers A and B amounted to misconduct and that the officers were dealt with under the provisions of the Police Code of Conduct.

Note: In October 2009, the Authority released a review of Police pursuits, recommending that clearer guidance be provided in respect of the justification for commencing and continuing a pursuit.

RECOMMENDATIONS

68. The Authority recommends that Police amend the pursuit policy to provide clear guidance on whether, in the absence of a direct order to abandon, pursuing officers who have themselves abandoned pursuit must follow the abandonment procedure.



Hon Justice L P Goddard

CHAIR, INDEPENDENT POLICE CONDUCT AUTHORITY

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About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is chaired by a High Court Judge and has two other members.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority has two investigating teams, made up of highly experienced investigators who have worked in a range of law enforcement roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- Receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority can make findings and recommendations about Police conduct.