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Death of Ricky Allan Forbes following
Police pursuit

December 2010



IPCA
Independent Police Conduct Authority
Whaia te pono, kia puawai ko te tika



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Death of Ricky Allan Forbes following Police pursuit

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 2.42am on Sunday 21 February 2010, a car driven by Danny Ross Forbes, aged 25, crashed into a tree following a short Police pursuit in Murchison. Danny Forbes suffered serious injuries. His cousin Ricky Allan Forbes, a passenger in the car, died at the scene.
2. The Police notified the Independent Police Conduct Authority of 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. On Saturday 20 February 2010, Danny Forbes and his 35 year old cousin, Ricky Forbes, attended the A&P show at Murchison. At about 9.00pm that evening they arrived at the Hampden Hotel.
4. At around 2.00am the next morning they were asked to leave the hotel because of their intoxication and aggressive behaviour. When they protested, a local patron helped the hotel owner to remove Ricky Forbes from the hotel. Danny Forbes followed his cousin outside into the carpark.
5. Having been ejected from the hotel, the men got into a black Subaru Impreza WRX sedan owned by Ricky Forbes' mother. Danny Forbes was the driver, and Ricky Forbes was in the front passenger seat. Both were disqualified drivers.
6. They began driving up and down the main street in front of the hotel and performing 'donuts' in the carpark. Ricky Forbes shouted abuse at the man who had helped to eject him from the hotel, and attempted to engage him in a fight.

7. Hotel staff feared for the safety of their patrons because of the Forbes' aggressive behaviour and their manner of driving. At 2.31am a member of the staff rang the on-call Murchison constable, Officer A, at his home and asked him to intervene.
8. At 2.37am, another staff member called Officer A and asked that he attend urgently before someone was run over and killed. By then Officer A was dressed in his Police uniform and ready to go to the scene in a marked Police vehicle.
9. On his way to the hotel, Officer A advised the Police Southern Communications Centre (SouthComms) that he had been recalled to duty, saying: *"Been called out to the Hampden Hotel pub. There's a couple of guys playing up down there. I'll be there in about 30 seconds."*
10. When Officer A arrived at the hotel at about 2.40am, a member of the hotel staff pointed out the Forbes' black Subaru. Officer A then drove up behind the Subaru, which was driving slowly along the main street, and activated his red and blue warning lights and sounded his siren to indicate to Danny Forbes that he was required to stop.
11. In response, Danny Forbes turned into a nearby carpark. Officer A followed, believing that the driver was going to stop. However, Danny Forbes suddenly accelerated out of the carpark and sped away down Waller Street, the main street in Murchison, heading north towards State Highway 6.
12. Officer A activated his lights and siren full-time and followed the Subaru, which was already 100 metres ahead and continuing to accelerate away. At 2.41am Officer A radioed SouthComms that he had engaged in a pursuit with a black Subaru and stated the car's registration number.
13. Police pursuit policy requires that once a pursuit has been commenced, the communications centre dispatcher must give the warning, *"If there is any unjustified risk to any person you are to abandon pursuit immediately, acknowledge."*
14. In this case the SouthComms dispatcher said: *"Roger, if there is any unjustified risk to any person you are to abandon pursuit immediately, what is the reason for..., do you acknowledge?"*
15. In response Officer A informed the dispatcher that he was pursuing the Subaru because the driver had failed to stop, and there had been reports of the vehicle doing burnouts outside the Hampden Hotel. The officer did not acknowledge the pursuit warning as required by Police policy (see paragraph 47).
16. When asked about the road he was travelling on, Officer A told the dispatcher that he was heading north on State Highway 6 towards Nelson, and that his speed was 150 kph but the Subaru was pulling away.

17. At this point Officer A decided that he would not be able to stop the Subaru without increasing his speed to an unacceptable level, so he began slowing down. In his statement he said:

"...I had it fixed in my mind that someone from Nelson would intercept [the Subaru] as it was heading that way. I had already decided that I was purely following it at a lower speed to see if they had pulled off somewhere down the highway."

18. The dispatcher then asked for Officer A's driver and vehicle classification, which he provided ("Gold and A"). He told the dispatcher that the road was dry and clear, and, when asked, stated that his speed was now 140 kph. The officer could no longer see the Subaru's tail lights ahead of him.
19. Officer A continued to decrease his speed as he entered a series of sweeping bends in the road. He had slowed to approximately 120-130 kph when he came across a dust cloud and a debris field. He then slowed his vehicle to about 50 kph as he drove through an area where road cones had been scattered across the highway.
20. As the officer approached a left hand bend in the road, he saw that the Subaru had crashed and was lying in a paddock adjacent to the highway. The car had been torn into two pieces by the force of its collision with a gum tree at the road edge.
21. Officer A asked the SouthComms dispatcher to call out the emergency services and advised that the Subaru had crashed about 2 kilometres (later confirmed to be 3.5 kilometres) north of Murchison.
22. The pursuit had lasted approximately 1 minute and 10 seconds.
23. Fire and ambulance services attended the scene of the crash within a few minutes. In the meantime Officer A monitored Danny Forbes' pulse and airway. He also checked Ricky Forbes but was unable to find a pulse.
24. Danny Forbes had suffered severe injuries but ultimately survived the crash. Ricky Forbes had died at the scene.

Environment

25. It was a clear night with fine weather, and there was no other traffic on the road.
26. The speed limit was 50 kph on the main street of Murchison and 100 kph on State Highway 6. The road was dry. The section of highway where the crash took place had recently been resealed. This stretch of road was marked with orange road cones and signs advising a temporary speed limit of 50 kph.

27. Officer A was not aware of these road works prior to coming across them during the pursuit.

Police crash analysis

28. The Subaru had a current warrant of fitness and had no mechanical fault that would have contributed to the crash. The vehicle inspector was unable to fully test the brakes, steering and electrical components due to the severity of the crash damage.
29. The crash investigator's report determined that Danny Forbes initially lost control of the Subaru while attempting to negotiate a left hand curve at high speed (estimated to have been between 168 and 185 kph), which caused the vehicle to cross the centre line and leave the road. The Subaru then travelled for about 110 metres along the grass verge without any noticeable braking attempt, and re-entered the highway at a point where fresh chip-seal had been laid.
30. At this stage Danny Forbes attempted to regain control of the Subaru, but lost traction and veered off the road into a gum tree. Expert analysis determined that the Subaru was travelling at a speed of approximately 160 kph at the time of the impact, which destroyed the tree and severed the vehicle in half behind the front seats.
31. The crash investigator concluded that:

"In total the Subaru had travelled approximately 300 metres from having first crossed over the centre line to impacting with the tree, taking approximately 6.6 seconds, during which no apparent effort was made by the driver to slow his vehicle."

Danny Forbes

32. The identities of Danny and Ricky Forbes were not known to Officer A during the pursuit.
33. Danny Forbes had previous convictions for driving with excess blood alcohol and driving whilst disqualified. At the time of the crash, he was disqualified from driving until June 2011.
34. He sustained serious injuries in the crash, including traumatic brain injury, multiple vertebral fractures, and a collapsed lung.
35. On 3 June 2010 he was charged with the manslaughter of Ricky Forbes. He pleaded guilty and was sentenced to four years imprisonment on 31 August 2010. He was also disqualified from driving for seven years.

Toxicology

36. Blood taken from Danny Forbes approximately two and a half hours after the crash was found to contain 208 milligrams of alcohol per 100 millilitres of blood. Based on this reading, Danny Forbes' blood alcohol concentration was calculated to be within the range of 230 to 260 milligrams per 100 millilitres at the time of the crash. The legal blood alcohol limit for a driver in New Zealand aged 20 years and over is 80 milligrams per 100 millilitres.
37. Traces of tetrahydrocannabinol (THC), the active ingredient of cannabis, were also detected in Danny Forbes' blood. Due to the small amount, it was not possible to determine whether he was affected by the drug at the time of the crash.
38. Officer A was breath-tested shortly after the incident and returned a negative result.

Cause of death

39. A post mortem examination concluded that Ricky Forbes died from "*severe head injuries with basal skull fracture*".

LAWS AND POLICIES

Legislative authority for pursuits

40. Under the Land Transport Act 1988, the Police are empowered to stop vehicles for traffic enforcement purposes. Under the Crimes Act 1961, the Police are empowered to stop vehicles in order to conduct a statutory search or when there are reasonable grounds to believe that an occupant of the vehicle is unlawfully at large or has committed an offence punishable by imprisonment. Where such a vehicle fails to stop, the Police may begin a pursuit.

Police pursuit policy

Definition

41. A pursuit occurs when (i) the driver of a vehicle has been signalled by Police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) Police take action to apprehend the driver.

Overriding principle

42. Under the Police pursuit policy, the overriding principle for conduct and management of pursuits is: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*

Risk assessment

43. Under the Police pursuit policy, before commencing a pursuit an officer is required to first undertake a risk assessment. This involves consideration of the speed limit and manner of driving by the offending vehicle, identity and other characteristics of the occupants of the offending vehicle, weather conditions, the environment, traffic conditions, and capabilities of the Police driver and vehicle. The officer must then *“determine whether the need to immediately apprehend the offender is outweighed by the potential risks of a pursuit to:*

- *the public*
- *the occupants of the pursued vehicle*
- *Police.”*

44. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.

45. 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.

Communication requirements

46. When a pursuit commences, the communications centre must be notified as per the communications procedure contained in the pursuit policy. That procedure states that the words to be used by a patrol when calling in a pursuit are “Comms Centre [call sign], in pursuit.” Once the dispatcher acknowledges this radio call, the patrol must give details of location, direction of travel, description of the vehicle and reason for pursuit.
47. The communications centre must then provide the pursuit warning referred to in paragraph 13, which the pursuing officer[s] must acknowledge. The pursuing officer[s] must provide information about the pursued vehicle, its location and direction of travel, and the reason for pursuit. The communications centre must prompt for information about speed, road and traffic conditions, weather, the offender’s manner of driving and identity, and the pursuing officers’ driver and vehicle classifications.

Abandonment

48. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The pursuit controller must then give the direct order “All units, [Comms Centre] Alpha, abandon pursuit now. I say again, all units abandon pursuit now.”
49. The policy sets out the steps that must be carried out following a decision 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> |

Roles and responsibilities

50. Under the policy, the driver of a Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, drive in a manner that prioritises public and Police safety, continue to undertake risk assessments throughout the pursuit, comply with all directions from the pursuit controller (i.e. the shift commander at the Police communications centre), and comply with all directions from a Police passenger if the passenger is senior in rank or service.

51. The dispatcher at the Police communications centre must maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph 13, and communicate instructions from the pursuit controller.
52. The pursuit controller is responsible for supervising the pursuit and coordinating the overall Police response, and for selecting and implementing appropriate tactics. When a shift commander is unavailable, a communications centre team leader may take over as pursuit controller.

THE AUTHORITY'S FINDINGS

Commencement of pursuit

53. Officer A and his patrol vehicle were authorised to conduct pursuits under the Police Professional Driver Programme. Officer A was a 'gold' rated driver.
54. The officer was investigating two reports of dangerous driving and 'burnouts' by the occupants of the Subaru. He initiated the pursuit because Danny Forbes failed to stop when signalled to do so under section 114 of the Land Transport Act 1988.
55. Officer A also witnessed the dangerous manner and speed of Danny Forbes' driving as the Subaru exited the carpark and drove through Murchison. Because Danny Forbes failed to stop, Officer A was acting within his authority in commencing a pursuit.
56. The Police vehicle's warning lights and siren were activated at all times during the pursuit. Officer A considered the risks involved in the pursuit, and decided that there was limited danger due to the time of night and the good road and weather conditions.

FINDING

Officer A complied with the law and Police pursuit policy in commencing this pursuit.

Communication

57. Officer A quickly advised SouthComms he was in pursuit, once the pursuit was initiated.
58. The dispatcher then provided the safety warning required under the pursuits policy (see paragraph 13). The dispatcher went on to enquire about the reason for the pursuit before Officer A had acknowledged the warning (see paragraph 47).
59. As a result, Officer A was distracted from acknowledging the safety warning and instead gave the dispatcher the reasons for the pursuit (see paragraphs 14-15). The dispatcher did not repeat the request for the officer to acknowledge the warning.

60. Officer A's failure to acknowledge the warning was a simple oversight due to the rapid manner in which the safety warning and enquiry as to reasons for pursuit were given.
61. However, largely in response to prompts from the dispatcher, Officer A provided enough information about the reason for the pursuit, the speeds involved, his driving classifications and the road and weather conditions to enable SouthComms to assess the situation and the risk factors involved.
62. This pursuit lasted for 1 minute and 10 seconds only, before Officer A discovered that the Subaru had crashed. There was not enough time for the pursuit controller (the SouthComms shift commander) to become involved in directing the pursuit.

FINDING

Police compliance with the pursuit policy in respect of communication was satisfactory.

Speed and manner of driving

63. At the time Danny Forbes lost control of the Subaru he was driving at a speed, estimated by the crash investigator, to be between 168-185 kph.
64. Officer A stated that once his speed had reached 150 kph, he decided to slow down because he would not be able to catch up with the Subaru without increasing his speed to an unacceptable level.
65. The officer had decreased his speed to approximately 120-130 kph when he came upon debris and a dust cloud, caused by the Subaru coming off the road. He slowed to 50 kph as he drove through an area where the Subaru had scattered traffic cones as it re-entered the highway. Very shortly after this he encountered the scene of the crash.
66. The high speed reached by Officer A, for a short time, during the pursuit was justified in the circumstances. Officer A correctly decided to reduce his speed when he saw the offending vehicle was travelling too quickly for him to pursue safely.

FINDING

Officer A complied with the pursuit policy in respect of the speed and manner of his driving.

Ongoing risk assessment/abandonment

67. During the pursuit, Officer A continued to evaluate the risks involved. In a statement made a few days after the pursuit he said:

“At no time did I see any other vehicle lights approaching or behind me and although it was a very short distance that I travelled I was always mindful of any risks to any outside public and my own safety.”

68. The officer quickly decided that he would have to abandon the pursuit due to the extreme speed of the Subaru. He had begun slowing down but had not formally abandoned the pursuit at the time he came across the crash.
69. Not meeting the full requirements of the pursuit policy with regard to abandonment (see paragraphs 48 and 49) was a consequence of the short duration of the pursuit.

FINDING

Officer A complied with the pursuit policy, insofar as he was able, in relation to ongoing risk assessment and abandonment.

CONCLUSIONS

70. In the circumstances, Officer A had a duty to take steps to apprehend the driver of the Subaru and was justified under law and the pursuit policy in commencing the pursuit. The officer had begun the process of abandoning the pursuit when the crash occurred.
71. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that no decision, act, omission, conduct, policy, practice or procedure which has been subject of the Authority’s investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
72. The Authority makes no recommendations pursuant to section 27(2) of the Act.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

December 2010

About the Authority

WHAT 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 four 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 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 must determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



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