

Summary Report

Police actions during a pursuit and the subsequent apprehension of three young men in Rotorua

INTRODUCTION

1. At around 4.23pm on Monday 26 May 2014, a stolen vehicle crashed into a traffic light pole following a Police pursuit in Rotorua. Two occupants of the car (X and Y), who were suspects in two armed robberies, ran from the vehicle and were caught a short time later by a Police officer and his dog. The third occupant (Z) was located by Police in the stolen vehicle. The occupants were aged 16, 17 and 18 years old at the time of the incident.
2. The Police notified the Independent Police Conduct Authority of the incident 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 24 May 2014, Police received reports of two aggravated robberies in Rotorua, involving two or three male offenders. The offenders were described as wearing balaclavas and gloves, and armed with an axe and a firearm. In both instances, witnesses saw the offenders leaving the scene of the robberies in a stolen Mazda 323 ('the 323'). Police started looking for the 323 and the offenders.
4. The following day, the 323 was found abandoned in Ti Road, Rotorua. At around the same time another vehicle, a red Mazda MPV ('the MPV') was stolen from nearby. Police suspected that the MPV had been taken by whoever had abandoned the 323, most likely the offenders involved in the aggravated robberies on the previous day.

5. At around 1pm on Monday 26 May 2014 Officer A, a dog handler, started his shift in Rotorua. At the start of his shift Officer A checked the daily deployment report. This contained details of the aggravated robberies and the theft of the MPV, including the vehicle's registration number.
6. Shortly before 4pm, the Police Northern Communications Centre (NorthComms) received a call from a member of the public who reported seeing three men acting suspiciously in a vehicle in Hood Street, Ngongotaha. The description and registration number of the vehicle matched that of the stolen MPV. The caller reported that one of the men was wearing a balaclava and that another appeared to be armed, possibly with a firearm or an axe. The caller saw the MPV leave the address heading towards Ngongotaha Road.
7. Officer A, along with several other Police units, was dispatched to the Ngongotaha area in order to try to locate the MPV. The MPV was being driven by X, aged 16 years, although Police did not know this at the time.
8. Officer A drove north towards Ngongotaha. As he approached the roundabout at the intersection of Ngongotaha Road and State Highway 5 he saw the MPV drive southwards through the roundabout.
9. Officer A then drove around the roundabout and pulled in behind the MPV, activating his warning lights and siren and signalling X to stop. He told the NorthComms dispatcher that he was following the vehicle.

Officer A initiates a pursuit

10. X failed to stop, so Officer A informed NorthComms that he was initiating a pursuit of the MPV (see paragraphs 71 and 72 for the relevant law and policy). The dispatcher issued the standard pursuit safety warning which Officer A acknowledged before advising the dispatcher that he and his vehicle were appropriately certified to engage in pursuits.
11. Officer A believed he was justified in commencing a pursuit because the MPV was stolen and because he believed it contained up to three people who had been seen earlier that day with a weapon. In addition, Officer A suspected the occupants had been involved in the two aggravated robberies a few days earlier and were about to commit another one in Ngongotaha.
12. About 2 kilometres south of the roundabout, Ngongotaha Road becomes Fairy Springs Road and splits into four lanes, two in each direction. Officer A said that X drove through the red light at the intersection of Fairy Springs Road and Kawaha Point Road and continued to head south. Officer A advised Northcomms, *"the lights are red", "they're safely through"*.
13. Following the red light, X suddenly sped up, travelling at about 90 kph in a 60 kph area. He also began overtaking to the right and left of other vehicles. Officer A advised NorthComms, *"He is well within his lane 90 in a 60. He's avoiding traffic, he's braking, ah, driving fine"*.

14. Officer A told the Authority that he did not think that the MPV was being driven dangerously, or in any manner that caused him to believe he was a danger to himself or other road users. He told the Authority that the driver *“was anticipating every vehicle in front of him, so he wasn’t like rear ending vehicles or sideswiping them or anything like that”*. He also said that he was relaying X’s manner of driving, and reporting the relevant risk factors, to NorthComms.
15. After about 800 metres, near the intersection of Fairy Springs Road and Maisey Place, X suddenly began driving on the wrong side of the road. The MPV had slowed to about 80 kph. Officer A said that he informed the dispatcher what X was doing and informed them that, due to the long straight road, he could see to the traffic lights at Koutu corner (which was approximately 1km ahead) and there was no oncoming traffic. Officer A advised NorthComms, *“Weather fine, road dry, speed now 80 kilometres an hour. Gone on the wrong side of the road. Oncoming vehicle has stopped. He has anticipated it and gone round the right-hand side of the roundabout”*, indicating to NorthComms that X had negotiated the roundabout safely.
16. The Pursuit Controller had taken up position next to the dispatcher shortly after the pursuit warning was given and had been briefed about the armed robberies. He told the Authority that, based on the information provided by Officer A, he was comfortable with the pursuit continuing despite the MPV being driven on the wrong side of the road and Officer A following the MPV onto the wrong side.
17. In his role as the Pursuit Controller, he was required to balance the risks of continuing the pursuit with the need to apprehend the offenders, and was satisfied that the risk to the public and Police was not sufficient to warrant abandoning the pursuit at this time.
18. He told the Authority that he thought that the fleeing suspects had probably just been disturbed committing a robbery and were going to commit another.
19. X crossed back onto the correct side of the road after about 400 metres, just before the traffic lights at the intersection of Fairy Springs Road and Monokia Street. Officer A later told the Police that he had decided that if the MPV had continued past this point on the wrong side of the road then he would have abandoned the pursuit.
20. X pulled into the left hand southbound lane. Another Police car, driven by Officer B, pulled into the lane ahead of the MPV and stopped in an attempt to get in front of it and moderate its speed. Officer B had activated his car’s warning lights and siren.
21. X drove the MPV onto the footpath, passed Officer B’s car, and pulled back into the lane before turning left at Lake Road. Officer A told NorthComms that there was minimal traffic, and no pedestrians, when this happened.
22. The dispatcher then asked Officer A to confirm the weather and traffic conditions. Officer A told him that the weather was fine and dry, and that he could see one oncoming vehicle. He added that the MPV’s speed was still about 80 kph.

23. X continued along Lake Road, followed by Officers A and B. Other Police vehicles were also following the pursuit and notified NorthComms of their availability. At this point, Officer C requested permission to use road spikes. NorthComms responded, *"affirm"*.
24. After about 400 metres, as X approached the roundabout at the intersection of Lake Road, Dinsdale Road and Railway Street, he again pulled onto the wrong side of the road. He travelled the wrong way around the roundabout before exiting and heading back in the direction he had come from, towards Officer A.
25. Officer B told the Authority that the MPV probably travelled on the wrong side of the road for about 200 metres but *"there were no other cars coming towards it"*. Officer B said that he also *"crossed onto the wrong side of the road, but there hadn't been any real risk to any member of the public at that time"*.
26. Officer A had stopped when he realised the MPV was heading towards him. He informed NorthComms of the vehicle's actions, and also noted that the MPV had three occupants. Officer A told the Police investigator that he considered using his vehicle to block or stop the MPV but because of its speed he could not guarantee the safety of himself or the people in the pursued vehicle so he remained stationary and let it pass.
27. The Pursuit Controller told the Authority that, again based on the information provided by Officer A, he still believed that the need to apprehend the offenders outweighed the risk of continuing the pursuit at this point.

Officer B becomes lead pursuit vehicle

28. As X drove back along Lake Road. Officer B, who had turned around at the roundabout, pulled in behind the MPV and became the lead vehicle in the pursuit and took over the commentary. Officer B told the Authority that at this stage he believed that the risks posed by continuing the pursuit did not outweigh the need to apprehend the offenders in the MPV.
29. Officer B and his vehicle were also appropriately certified to engage in pursuits. The dispatcher issued the standard pursuit safety warning which Officer B acknowledged.
30. Officer B followed the MPV back to the intersection of Lake Road and Old Taupo Road (Fairy Springs Road becomes Old Taupo Road at this intersection, also known as SH5). X began to overtake the stationary vehicles waiting to turn at the traffic lights at this intersection; because of this Officer B believed that the MPV would turn left onto Old Taupo Road.
31. Officer B turned into a carpark on the left hand side of the road, just prior to the traffic lights, which meant he could cut through to Old Taupo Road without having to navigate the intersection. When he pulled out into Old Taupo Road he was directly behind the MPV; and Officer A was about 200 metres behind.

32. Officer A told the Authority that at this stage his speed was approximately 90 kph in a 50 kph area.
33. Officer B told the Authority that, at this stage, he did not believe that the pursuit was dangerous enough to consider abandoning it, especially given the serious nature of the offences that the occupants of the MPV were suspected of committing. He told the Authority that *“because it was violent offenders committing aggravated robberies that put the stakes a bit higher. The vehicle speeds were not excessive”*.
34. The vehicles drove along Old Taupo Road at 80 kph for about 700 metres before reaching the roundabout at the intersection with Tallyho Street. The traffic at the roundabout was built up, so X drove onto the grass berm on the left hand side of the road, travelling with all four wheels on the berm for a distance of 20-50 metres. Officer B followed. The officer said that he believed this was safe as the MPV’s speed was not excessive and there were no pedestrians.
35. X then drove through a red light at the intersection of Old Taupo Road and Sunset Road at about 50 kph. Officer B told the Authority that this did not pose a risk to other road users as they had all heard the Police vehicles approaching and had stopped. X continued along Old Taupo Road before turning left into Pukuatua Street. Officer B reported that he advised NorthComms that the MPV was being driven in a *“fairly good”* manner at about 72 kph.
36. Officer B said that there were at least two other Police vehicles behind him including Officer A and an unmarked car (carrying Officers D and E).
37. As X neared the intersection of Pukuatua Street and Tarewa Road he again drove onto the wrong side of the road. Officer A told the Authority that he saw another officer, Officer C, deploy a set of road spikes, which the MPV evaded by driving around them, causing his vehicle to fish tail.
38. The Pursuit Controller had approved the use of the road spikes in accordance with Police policy.
39. At this point Officer B decided that the pursuit had become too risky and advised NorthComms that he was pulling out. He advised NorthComms, *“I’m abandoning”*, but did not give the reasons why.
40. Officer B later told the Authority that he was concerned that the MPV was being driven in an increasingly erratic fashion, on the wrong side of the road towards a blind corner. Its speed had also increased to 70-100 kph.
41. Officer B pulled over and stopped his vehicle before the roundabout. He complied with the abandonment procedure set down in Police policy (see paragraph 86) and took no further part in the pursuit.
42. The Pursuit Controller told the Authority that he did not know why Officer B had decided to pull out of the pursuit, but that obviously something had happened that meant he did not want to continue.

Officer A becomes lead vehicle again

43. After Officer A heard Officer B tell NorthComms that he was abandoning the pursuit, and he had passed Officer B's stationary vehicle, he contacted NorthComms to inform them that he was directly behind the MPV, on Amohau Street, and requested permission to continue the pursuit, saying: "*Comms Delta [which means dog handler] permission to take up the pursuit again I'm in behind the vehicle*". Before he asked permission, Officer A conducted a risk assessment and considered that it was safe for him to continue to pursue.
44. While the Pursuit Controller was considering whether to give permission for Officer A to continue the pursuit, X continued along Amohau Street, driving through a red traffic light at the intersection with Ranolf Street. Officer A informed Northcomms of this and the Pursuit Controller then directed him to immediately abandon the pursuit. This occurred 49 seconds after Officer B had abandoned.
45. In accordance with Police policy, Officer A acknowledged this and slowed to the posted speed limit, before deactivating his car's lights and siren and pulling over near the intersection of Amohau Street and Amohia Street. Officer A advised NorthComms of his location.
46. The Pursuit Controller told the Authority that he had hoped to let the pursuit run long enough to allow another officer to get into a suitable position to deploy road spikes but it became obvious that this was not going to happen quickly. This, combined with X's increasingly dangerous driving and going through a red light, led him to believe that the pursuit had become too risky, so he ordered Officer A to stop.

Search Phase and re-engagement

47. The dispatcher then advised all units that they were authorised by the Pursuit Controller to enter a 'search phase' which means that Police units in the area are directed to look for the vehicle that has evaded Police, but are not allowed to engage in urgent duty driving (to drive at speed with lights and siren activated) while doing so.
48. Officer A had seen the MPV turn right into Fenton Street so proceeded in that direction. He then heard another unit advise that they had seen the MPV drive down Ti Street towards Te Ngae Road.
49. A short time later the MPV pulled out onto Te Ngae Road, about 10 metres in front of Officer A. He informed NorthComms of his location and that he was directly behind the MPV, and requested permission to re-engage the pursuit. The Pursuit Controller asked him to "*confirm location first*". Officer A advised that the location was, "*Te Ngae Road coming up to the Sala Street intersection*". He said that the weather was still fine, the road was dry and traffic was light. Permission was granted from NorthComms, and the dispatcher again issued the standard pursuit warning.
50. Officer A reactivated his warning lights and sirens and followed the MPV east along Te Ngae Road. As the vehicles approached the intersection of Te Ngae Road and Sala Street, Officer A noted that the lights were red and that there was a build-up of traffic. At this stage he

believed that the pursuit posed only a minor risk, with X now reducing his speed to less than 40 kph. However, Officer A decided that he would abandon the pursuit if the MPV significantly increased its speed once it had passed through the traffic lights.

51. The Pursuit Controller requested his speed and Officer A said, *“Slowing down, lights are red. Slowing down from 80. Gone through the lights, slowing down and all vehicles have stopped safely and cleared the intersection”*.
52. X pulled into the cycle lane on the left hand side of the queue of traffic stopped at the lights, travelling at about 40 kph. As he neared the front of the queue, a car pulled out and turned left into the driveway of a rugby club. X swerved, hit the car, and then hit a traffic light pole and came to a stop.
53. No one suffered injury as a result of the crash and damage to the vehicles was minor.
54. Officer A immediately drove towards X’s door to try and stop him escaping. However, X jumped out and ran off into the rugby club grounds. One of X’s passengers, Y, also ran into the rugby grounds. Z remained in the stolen vehicle and Police later arrested him.
55. The pursuit lasted about 21 minutes and covered 10.8 kilometres.

Use of Police dog to arrest X and Y

56. As X and Y ran into the rugby grounds towards a large open area of bush and scrub, Officer A retrieved his dog and followed them on foot.
57. Two other officers (Officers D and E), who had also been following X in their patrol car, assisted with the search.
58. Officer A lost sight of X and Y as they ran ahead into the bush. However, as he moved forward he saw X run towards Te Ngae Road.
59. Officer A challenged X, shouting, *“Police dog handler, stay there or I will let the dog go.”* X continued to run towards the road. Officer A believed that X’s speed and direction suggested that he would try and escape across the road. Officer A then released his dog, instructing it to *“rouse.”*¹
60. The dog chased X before hitting him in the upper body, knocking him off balance and causing him to stumble. It then bit X on his upper left leg before releasing him and biting him on his left calf. X then fell to the ground and attempted to kick the dog a number of times.
61. When Officer A caught up with X and the dog, he jumped on X to try to stop him kicking the dog. There was a brief struggle before X complied with Officer A’s instructions. Officer A then called the dog off and it immediately released X.

¹ While there is no standard Police definition of the command *“rouse”*, it is generally used in training and operational deployment to command a dog to bite.

62. Another officer arrived and handcuffed X. Officer A informed NorthComms that X was in custody before heading back into the bush with his dog to try and locate Y.
63. As Officer A entered the bush he challenged Y by shouting that he was a Police dog handler and that if Y did not come out of hiding then the dog would be used to find him. He repeated this challenge three times but did not hear a reply.
64. Officer A and the dog continued to move through the bush. As they came into a clearing the dog indicated Y was close by. Officer A again issued a verbal challenge but did not hear a reply, so he released his dog and commanded it to "*find him.*" The dog remained within sight of Officer A and, as it entered the bush, Officer A saw Y move nearby.
65. Y attempted to punch the dog and the dog reacted by biting Y on the left forearm. Officer A then jumped into the bush and landed on top of Y and a brief struggle occurred. Officer A pulled Y to a clearing where Y began to comply with Officer A's verbal instructions.
66. Officer A called the dog off and it immediately released Y. Another officer then arrived to arrest Y and Officer A informed NorthComms that Y was in custody. He was then informed by NorthComms that Z, the third occupant of the MPV, was in custody.

X, Y and Z

67. X said that he did not stop for the Police as he was in a stolen vehicle and was on a 24 hour curfew for active theft charges.
68. As a result of this incident, all three occupants were charged in relation to the events of 24-26 March.
69. X and Y received prompt medical attention for their dog bite injuries.

THE AUTHORITY'S FINDINGS

70. The Authority has looked at whether the pursuit and the subsequent apprehension of X and Y complied with law and Police policy.

THE PURSUIT

Were the officers justified in commencing a pursuit of the stolen vehicle?

71. Under the Search and Surveillance Act 2012, Police may stop a vehicle to arrest a person they have reasonable grounds to suspect is unlawfully at large or has committed an offence punishable by imprisonment. Section 114 of the Land Transport Act 1998 empowers Police to stop any vehicle for traffic enforcement purposes.
72. Under the Police fleeing driver policy, officers may commence a pursuit when a driver who has been signalled to stop by Police fails to stop and attempts to evade apprehension.
73. Officer A believed that he was justified in commencing a pursuit because he knew the MPV was stolen and because it contained up to three people who had been seen earlier that day with a weapon. In addition, Officer A had good cause to suspect that the occupants had been involved in the previous aggravated robberies. These offences are all punishable by imprisonment. Because Officer A did not know the identities of the people in the MPV he was not in a position to apprehend them at a later time.
74. Officer A was therefore justified in signalling the driver of the MPV to stop. When X failed to stop and attempted to evade apprehension by driving off down Ngongotaha Road, Officer A was justified in commencing a pursuit in accordance with the Police Fleeing Driver Policy.

FINDING

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

Did communication between the officers and NorthComms during the pursuit comply with Police policy?

75. The Police fleeing driver policy requires officers who commence a pursuit to provide notification of this to the Police communications centre (Comms). The policy requires the dispatcher to provide a safety warning. After acknowledging this warning officers must provide information about their location and direction of travel to the dispatcher. Both Officers A and B complied with this aspect of the policy.

76. Comms is required to then request certain information from the pursuing officers about the reason for pursuit, vehicle description, posted speed limit, road and traffic conditions, weather, the offender's manner of driving and identity, and the Police driver and vehicle classifications, as well as confirmation that warning devices are activated on the Police car. This was done by both Officers A and B.
77. The policy also requires Police to conduct a risk assessment prior to commencing a pursuit. Officers A and B maintained consistent contact with Northcomms, reporting the relevant risk factors. This gave the Pursuit Controller the information for him to assess whether the pursuit should continue.
78. For example, Officer A informed NorthComms when X suddenly sped up, began undertaking and overtaking to the right and left of other vehicles and drove on the wrong side of the road. Officer A said that despite these actions he did not consider that the MPV was being driven dangerously because traffic volume was low, the speed was low and there were not many pedestrians around.
79. The Pursuit Controller told the Authority that, based on the information provided by Officers A and B, he was comfortable with the pursuit continuing despite the MPV being driven on the wrong side of the road. He balanced the risks of continuing the pursuit with the need to apprehend the offenders, and was satisfied that the risk to the public and Police was not sufficient to warrant abandoning the pursuit at this time.

FINDING

Communication between Officers A and B and NorthComms complied with the fleeing driver policy.

Did the officers comply with Police policy in relation to their speed and manner of driving during the pursuit?

80. The Police fleeing driver policy's overriding principle is that, "*Public and staff safety takes precedence over the immediate apprehension of the offender.*" The policy requires officers to drive in a manner that prioritises public and Police safety, and to abandon a pursuit if at any stage the risk to the safety of the public and the Police outweighs the immediate need to apprehend the driver. Pursuing officers and the Pursuit Controller must conduct an assessment of relevant risk factors to determine this.
81. Both Officers A and B had their lights and siren activated throughout the pursuit. There is evidence that both officers undertook thorough and continuous risk assessments in relation to their manner of driving.

82. Officers A and B followed X onto the wrong side of the road on two occasions during the pursuit (see paragraphs 15, 24 and 25).
83. Whilst the current fleeing driver policy does not explicitly address situations where offenders and Police drive on the wrong side of the road, the Authority has previously noted² that there is always a degree of inherent risk in driving in the wrong direction on the wrong side of the road. However, the Authority is satisfied in this case that, given the very serious offending involved, Officer A and B's manner of driving did not present an unjustified degree of risk to other drivers for the following reasons:
- a) On the first occasion (at the intersection of Fairy Springs Road and Maisey Place), Officer A said that when X suddenly began driving on the wrong side of the road he had slowed to about 80 kph. Officer A told NorthComms that due to the long straight road he could see approximately 1 kilometre ahead and there was no oncoming traffic. He also reported that the weather was fine and the road dry. Officer A had also decided to abandon the pursuit if the MPV had continued past this point on the wrong side of the road. As it was, X and Officer A travelled on the wrong side of the road for about 400 metres before crossing back to the correct side.
 - b) On the second occasion (at the roundabout at the intersection of Lake Road, Dinsdale Road and Railway Street), Officer B followed X around the roundabout on the wrong side of the road for about 200 metres before pulling back onto the correct side. Officer A advised NorthComms that this had occurred. There were no cars coming towards the roundabout at the time and the officers felt that there was no real risk to any member of the public during this manoeuvre.
84. Both Officers A and B travelled at a maximum speed of about 90 kph in a 60 kph area during the pursuit. The Authority finds that this was justified in the circumstances.

FINDING

Officers A and B complied with law and Police policy in relation to their speed and manner of driving throughout the pursuit.

Did the officers comply with Police policy in relation to their ongoing risk assessment and the option of abandonment?

85. The fleeing driver policy requires Police to abandon a pursuit if at any stage the risk to the safety of the public and the Police outweighs the immediate need to apprehend the driver. Pursuing officers and the Pursuit Controller must conduct an assessment of relevant risk factors to determine this.

² *Death of a Youth following the Police pursuit of Fabian Jessie Mika* (published 2 October 2014) and *Police actions during a pursuit in Tawa* (published 5 February 2015) see www.ipca.govt.nz

86. When officers abandon a pursuit they are required to advise the Pursuit Controller of this, deactivate their emergency lights and sirens and stop the Police car when it is safe to do so. The Pursuit Controller may then authorise the officer to begin searching for the fleeing driver.
87. The Pursuit Controller considered the use of road spikes throughout the pursuit as a good way of bringing the pursuit to a safe conclusion. Officer C laid road spikes but X avoided them by driving around them.
88. In interview with the Authority, both Officers A and B and the Pursuit Controller explained why they believed that the pursuit was justified and should continue, based on their risk assessments.
89. Both Officers A and B and the Pursuit Controller considered that the serious nature of the suspected offending by the MPV's occupants, and the likelihood that they were armed (see paragraph 6), put the threshold for abandonment of this pursuit at a higher level.
90. Officer A accepted that the decision was finely balanced and that the risk could become too great quite quickly.
91. When X drove onto the wrong side of the road for the third time, Officer B made the decision to abandon, as he thought the pursuit had become too risky to continue (see paragraphs 37 and 39).
92. However, a short time later, as Officer A passed Officer B's stationary vehicle, Officer A conducted another risk assessment and concluded that it was safe to continue to pursue. Officer A was some distance behind Officer B, and was not aware why Officer B had abandoned pursuit. Officer A then contacted NorthComms to inform them that he was directly behind the MPV, on Amohau Street, and requested permission "*to take up the pursuit again*".
93. Officer A told the Authority that the fact that the occupants of the fleeing vehicle were probably armed and were suspects in an aggravated robbery was a crucial determinant in wanting to continue with the pursuit.
94. As the Pursuit Controller was considering whether to grant permission, X continued along Amohau Street, driving through a red traffic light at the intersection with Ranolf Street. Officer A informed NorthComms of this. The Pursuit Controller then directed Officer A to immediately abandon the pursuit.
95. In accordance with policy, Officer A acknowledged this and slowed to the posted speed limit, before deactivating his car's lights and siren and pulling over near the intersection of Amohau Street and Amohia Street.
96. Under the Police fleeing driver policy, literally interpreted, Officer A should not have continued the pursuit after it had been abandoned by Officer B.

97. However, the Authority accepts that the pursuit was a fast moving situation. Officer A immediately contacted the Pursuit Controller to request permission “to take up the pursuit again”, and, after undertaking a further risk assessment, the Pursuit Controller abandoned it. The time between Officer B abandoning the pursuit and the Pursuit Controller directing Officer A to abandon was only 49 seconds.
98. In light of this, the Authority has concluded that it is not appropriate to criticise Officer A’s actions, notwithstanding the technical breach of policy.

FINDINGS

Officers A and B conducted continuous risk assessments as required by Police policy.

The Pursuit Controller appropriately considered the use of tyre deflation devices to conclude the pursuit.

When Officer B saw that the MPV was being driven in an increasingly erratic fashion, on the wrong side of the road towards a blind corner, he believed that X’s driving posed an unjustifiable risk to the public and Police and complied with Police policy in abandoning the pursuit.

Despite being a technical breach of policy, Officer A’s actions in continuing the pursuit until the Pursuit Controller later directed it be abandoned were justified in the circumstances.

Officer A’s actions following the Pursuit Controller’s direction to abandon the pursuit complied with Police policy.

Was the Search Phase and subsequent pursuit carried out in accordance with policy?

99. After abandoning the pursuit, the Pursuit Controller authorised all units to enter a ‘search phase’ (see paragraph 47) in accordance with policy.
100. A short time later the MPV pulled out onto Te Ngae Road in front of Officer A. Officer A informed NorthComms of his location and that he was directly behind the MPV, and requested permission to commence a new pursuit, which was granted. The dispatcher again issued the standard pursuit warning.
101. Officer A reactivated his warning lights and sirens and followed the MPV east along Te Ngae Road until it collided with another vehicle, hit a traffic light pole and came to a stop.

FINDING

The search phase and subsequent short pursuit complied with Police policy.

THE USE OF FORCE

Was Officer A's use of his Police dog to apprehend X and Y justified in the circumstances?

102. Section 39 of the Crimes Act 1961 provides that Police can use reasonable force in the execution of their duties such as arrests, where the use of force is necessary to overcome any force used in resistance.
103. The Police *Use of Force* policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
104. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
105. An officer must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
106. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actual or potential actions of the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from police policy.
107. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.
108. Before releasing a Police dog, the handler must be satisfied that the use of force is justified under the circumstances, and must call on the offender to desist unless it is impractical to do so.
109. As X and Y were trying to avoid arrest, Officer A was entitled to use force against them. When they failed to comply with his verbal instructions to stop and ran into the bush, Officer A was justified in using a tactical option that would be effective at a distance – his dog (see paragraph's 56-66).

110. As required by Police policy, Officer A issued a warning that a Police dog was present and might be used if X and Y did not stop. As they did not comply with instructions Officer A released his dog, instructing it to “rouse”.
111. As soon as X and Y complied with his instructions Officer A called the dog off and they were taken into custody.

FINDINGS

In the circumstances, Officer A was justified under law and Police policy in using his Police dog to apprehend and arrest X and Y. This was the only realistic tactical option available to Officer A in the circumstances.

Officer A removed his dog from X and Y as soon as they complied with his instructions. X and Y were both given prompt medical treatment for their dog bite injuries.

ONGOING DISCUSSIONS

112. As expressed in other reports, the Authority wishes to confirm that it is working with Police on a process of discussing and improving policies connected with the pursuit of fleeing drivers. This is due to the conflict between the often prescriptive nature of the relevant policies and the reality of a fast-paced, time-pressured situation. This process is well advanced.

CONCLUSIONS

113. The Authority has concluded on the balance of probabilities that:

- 113.1 Officer A's commencement of the pursuit and Officer A's and B's speed and manner of driving during the pursuit complied with law and Police policy;
- 113.2 the Pursuit Controller and Officer A's and B's communication during the pursuit complied with law and Police policy;
- 113.3 Officer A's and B's actions in driving on the wrong side of the road were justified in the particular circumstances of this case;
- 113.4 Officer A's and B's ongoing risk assessment and Officer B's decision to abandon the pursuit complied with Police policy;
- 113.5 despite being a technical breach of policy, Officer A's actions in continuing the pursuit until the Pursuit Controller later directed it be abandoned were justified in the circumstances.
- 113.6 when the Pursuit Controller directed Officer A to abandon the pursuit, Officer A immediately did so in compliance with Police policy;
- 113.7 the Pursuit Controller appropriately considered the use of tyre deflation devices to conclude the pursuit;
- 113.8 the search phase and subsequent short pursuit complied with Police policy; and
- 113.9 Officer A was justified under the Crimes Act in using his Police dog to capture X and Y. He removed his dog from X and Y as soon as they complied with his instructions.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

11 June 2015

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 overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

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 employs highly experienced staff who have worked in a range of law enforcement and related 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 in a personal capacity;
- 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 form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.



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