

Summary Report

Police actions during a pursuit in Tawa

INTRODUCTION

1. At about 11.33pm on Thursday 12 June 2014 the 22-year-old driver of a Mazda Familia motorcar, Leslie Paaka, hit an oncoming vehicle while fleeing from Police on the wrong side of State Highway 1 near Tawa, Wellington.
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

Events preceding the pursuit of Mr Paaka

3. At about 11.05pm on 12 June 2014, Officers A and B, on general road policing duties from Porirua, came across three males standing near a parked Mazda Familia on Main Road, Tawa.
4. Officer A searched the registration number of the Mazda and found that it was subject to a non-operation order. This was because the rear suspension of the Mazda had been illegally modified. A vehicle subject to a non-operation order may only be driven if the conditions of the order allow the owner to drive the vehicle home or to a repair station.¹
5. The three males denied driving the Mazda. They said that it had run out of petrol and they did not have the keys. One of them said that his brother had been driving but had left to get petrol.

¹ Section 115 of the Land Transport Act 1998 allows a Police officer to direct that a vehicle may not be driven, either by notifying the driver or affixing a notice to the vehicle, if they believe on reasonable grounds that it does not comply with the rules or regulations detailed in the Act.

6. Officer B conducted identity searches of two of the males on her mobility device. One of them, Mr Paaka, was disqualified from driving. In an interview with the Authority, Officer A said that Mr Paaka *“appeared to me like he was on drugs or alcohol.”*
7. Officers A and B then parked on a nearby side street, north of the parked Mazda. They intended to stop the Mazda once the driver returned, identify the driver and place a new non-operation order sticker on the vehicle.
8. Officer B telephoned Officer C, who was working in the Tawa area with Officer D, and asked him to wait near Takapu Road, south of the parked Mazda. She told him about the conversation with the three males and asked Officer C to stop the Mazda if it drove past. Officer D later said that Officer C told him that during the phone call Officer B conveyed that the three males had been drinking and were all disqualified from driving.

The pursuit of Mr Paaka

9. As instructed, Officers C and D parked near the Takapu Road Railway Station and waited for the Mazda to drive past. Officer C was a gold class driver and they were in a marked category A Police vehicle.²
10. At about 11.33pm they saw the Mazda heading south on Main Road and then turn left at the roundabout onto Takapu Road. Officer C estimated that the driver was travelling at about 70kph in a 50kph zone. Officer C saw that the driver was wearing a white hat and that there were people in the back seats, but no front seat passenger.
11. Officer C began following the Mazda. He activated the patrol car’s lights and sirens to signal to the driver to stop. Both officers said that the Mazda driver failed to stop and appeared to accelerate in response.
12. In an interview with the Authority, Officer C said that it was at this point that he decided to commence a pursuit of the Mazda. This decision was based on the driver’s excessive speed and possible disqualification from driving, and the fact that the vehicle was subject to a non-operation order. He also said that he conducted a risk assessment before commencing pursuit. He said that the road was dry and sealed, the weather was clear, there was only light traffic and the area was well-lit.
13. Police policy requires officers who initiate a pursuit to notify the Police communications centre that they are in pursuit. Officer C told the Authority that he asked Officer D two or three times to notify the Central Communications (CentComms) dispatcher of the pursuit, but that Officer D failed to do so and did not respond to Officer C’s requests. When asked about this by the Authority, Officer D said that he had not been in a pursuit before, and lacked the confidence to provide the pursuit commentary.
14. The Mazda driver, Mr Paaka, continued on Takapu Road through two roundabouts and under the State Highway One (SH1) overbridge that immediately precedes the large left-hand bend

² Category A vehicles are authorised to be lead vehicles in pursuits. Officer C was certified as competent to engage in pursuits as the lead driver.

approaching the intersection of the SH1 off-ramp and the turn-off to Takapu Valley and Grenada North.

15. As the officers approached the second roundabout on Takapu Road, Officer D had not communicated to CentComms that they had commenced the pursuit. Officer C then took the radio to notify the dispatcher of the pursuit and transmitted, *"Comms [call-sign] failing to stop."* Officer C subsequently made all the radio communications during the pursuit.
16. In accordance with the Police fleeing driver policy, the dispatcher responded, *"Roger [call-sign], if you go location and if there's any unjustified risk to any persons you are to abandon immediately, acknowledge."*
17. At the intersection the Mazda driver continued north up the off-ramp and entered the southbound lanes of SH1, travelling in the wrong direction.
18. In this area SH1 is a dual carriageway with a solid concrete barrier between the north and southbound lanes. A long left-hand bend, if one is heading south, precedes the southbound off-ramp. There is no lighting on the motorway in this area, and there is no street lighting for a distance of about 200 metres after the off-ramp.
19. As he drove around the left-hand bend behind Mr Paaka, Officer C acknowledged the pursuit warning and transmitted, *"Affirm Comms, Mazda Familia – it's just gone, ah, northbound in the southbound lanes"*, and that he was a Gold class driver in a category A patrol car, and provided the Mazda's registration number. In this second transmission Officer C did not tell CentComms that he was following the Mazda onto the wrong side of the motorway.
20. The CentComms dispatcher told the Authority that in order to conduct his own risk assessment, he wanted at this stage to know the location of the pursuit and whether Officers C and D were also on the wrong side of the motorway.
21. Immediately after Officer C's second transmission, the pursuit controller, who was the CentComms shift commander, began listening to the pursuit at the dispatcher's desk. The dispatcher told him that the pursuing officer had transmitted, *"North in the southbound lane"*. The pursuit controller then told the dispatcher to confirm the location because he was unsure whether the patrol car was also on the wrong side of the motorway. The pursuit controller and dispatcher both told the Authority that they would have abandoned the pursuit if they had known that this was the case.
22. The dispatcher then asked Officer C, *"Roger and confirm you're State Highway One – what's your location?"*
23. Mr Paaka accelerated to 80kph on the off-ramp and then drove so that his vehicle was straddling the inside southbound lane and large shoulder lane bordering the motorway. Officer C said to the Authority that after coming up the off-ramp he immediately moved to the right and travelled in the shoulder lane, about 100 metres behind the Mazda.

24. Both vehicles travelled at about 70–80kph as they approached the large bend in the motorway. Officer C noted that the road was dry and there was no other traffic. Officer C then saw headlights coming toward the Mazda. The oncoming vehicle, a Mitsubishi driven by Ms Ellen Graham, was in the left lane, travelling south.
25. In her statement to Police following the incident, Ms Graham said that when she approached the large bend she suddenly saw a vehicle travelling toward her. She could not make out what the car looked like *“because it was dark and the lights just suddenly came up on us.”* Because Ms Graham could see the Mazda’s headlights and the red and blue lights of the patrol car, she believed that *“they were from the same car and a Police car was coming towards me.”* She said that, *“from where I was two cars looked like one.”*
26. In an interview with the Authority, Ms Graham said that *“we came around a bend and next minute it was just flashing lights and crash”*, and that she thought she had hit a Police car.
27. Ms Graham’s passenger, Ms Karen Robinson, saw the headlights of a light coloured car, and red and blue lights behind this vehicle. Ms Robinson said that she thought *“that the Police car was directly behind the white car. I just knew there were two cars.”*
28. Ms Graham immediately swerved toward the centre barrier but the Mazda clipped the front left corner of her Mitsubishi. She pulled over to the shoulder lane and saw the *“Police car going north around the bend and past us out of sight.”*
29. At more or less the time of impact, Officer C transmitted to CentComms, *“Currently southbound Comms ... the vehicle’s just crashed ... I repeat, the vehicle’s just crashed.”* This transmission was five seconds after the dispatcher’s request for the location of the pursuit (see paragraph 22).
30. Mr Paaka stopped on the motorway shoulder about 200 metres north of the crash scene.
31. Officers C and D pulled over behind the Mazda and Officer C immediately arrested Mr Paaka. Several minutes later members of the public stopped next to the Mitsubishi and assisted Ms Graham and Ms Robinson. Police officers who had been travelling to the location arrived shortly after this. Ms Graham and Ms Robinson were shaken but uninjured. After his arrest Mr Paaka told Officer C that his foot hurt, and Officer C called an ambulance to meet them at Porirua Police Station.
32. From the point Officers C and D began following Mr Paaka, this incident covered approximately two kilometres and lasted about 45 seconds. Officer C’s maximum speed during the pursuit was about 80kph.
33. During its investigation into this incident the Authority questioned Officer C about his decision to continue the pursuit on the wrong side of the motorway. Officer C acknowledged the risk but said that:

“I believed that there’d be a greater risk if there was no Police car following that vehicle onto the motorway, rather than let it simply go northbound by

itself, on the wrong side of the motorway there. I believed I could mitigate some of that risk by having a bright marked patrol vehicle, especially with lights, going behind it."

34. Officer C said that he knew that on the large bend after the off-ramp and subsequent straight there was good visibility, which would allow other drivers to see the oncoming pursuit. He said that based on this his goal was to stop where he could warn oncoming (southbound) drivers.
35. Officer C also acknowledged that the bend after the off-ramp was a blind corner, and that oncoming vehicles would not be able to see the patrol car before this point. However, he said that there was very light traffic, and that his intention was to *"get to that bend to alert drivers so I could warn them."* He said that oncoming vehicles would not be able to see the Mazda because it was a *"grey vehicle with the headlights hardly working"*. Officer C said that he did not consider abandoning the pursuit because the Mazda driver would still have gone the wrong way on the motorway without anything to warn oncoming drivers.
36. Officer D told the Authority that he thought that it was necessary to continue the pursuit on the wrong side of the motorway because, *"I think we needed to alert people that something was happening."* He said that *"we could only do that if we had our red and blues on."*

Mr Paaka

37. Mr Paaka suffered minor injury as a result of the collision. At the time of the pursuit he was disqualified from driving for an indefinite period. As a result of the incident Police charged Mr Paaka with failing to stop, dangerous driving, driving while disqualified and driving with excess breath alcohol.
38. Mr Paaka was convicted of these charges in the Porirua District Court on 17 November 2014.

Police involved

39. At the time of this incident Officer C had been a general duties Police officer for five and a half years. Officer D was a probationary constable, having graduated from Police College in late 2013.

Police investigation

40. Police conducted a review of the radio communications during this incident. That review concluded that the dispatcher or pursuit controller would likely have abandoned the pursuit if they had appreciated that the pursuit had continued on the wrong side of the motorway.
41. The Police investigation into the actions of Officers C and D during the pursuit is ongoing.

THE AUTHORITY'S FINDINGS

Commencement of the pursuit

42. Section 114 of the Land Transport Act 1998 empowers Police to stop any vehicle for traffic enforcement purposes. Under section 115 of the Act, an officer may prohibit a vehicle from being driven if they reasonably believe that the vehicle does not comply with any Land Transport Act 1998 rule or regulation.
43. 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.
44. Officers C and D saw Mr Paaka travelling at about 70kph at the Takapu Road roundabout, a 50kph zone. Section 114 of the Land Transport Act 1998 empowered the officers to attempt to stop the Mazda for traffic enforcement purposes and in order to speak to Mr Paaka. Officer C also said that he was aware that the Mazda was subject to a non-operation order and therefore prohibited from being driven.
45. When Mr Paaka failed to stop and attempted to evade apprehension by accelerating on Takapu Road, Officers C and D commenced a pursuit in accordance with the Police fleeing driver policy.
46. The policy requires Police to conduct a risk assessment prior to commencing a pursuit. As discussed above in paragraph 12, Officer C took into account relevant risk factors before commencing pursuit and decided that the need to apprehend the Mazda driver outweighed any risk in pursuit.

FINDING

Officers C and D complied with law and Police policy in commencing the pursuit.

Communication

47. Under the Police fleeing driver policy, officers who initiate pursuit must notify the Police communications centre that they are in pursuit.
48. The policy requires officers to provide information about their location and direction of travel to the dispatcher. 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.
49. As discussed above in paragraphs 13–15, Officer C asked Officer D to notify CentComms of the pursuit two or three times. However, Officer D did not do this. Due to Officer D's inaction, when the Police car was at the second roundabout on Takapu Road, and Mr Paaka was

entering the large left-hand bend prior to the SH1 off-ramp, Officer C gave the notification to the dispatcher by transmitting, “Comms [call-sign] failing to stop.” At the time of this transmission Mr Paaka had not gone onto the wrong side of the motorway.

50. The dispatcher then provided the pursuit warning that is required by policy. Officer C acknowledged the warning and transmitted that the Mazda driver had “*just gone northbound in the southbound lanes*”. This second transmission did not convey that Officers C and D were also going onto the wrong side of the motorway.
51. After this the dispatcher requested the location of the pursuit. Officer C did not provide this information due to the crash occurring five seconds later. The dispatcher told the Authority’s investigator that he would have told Officers C and D to abandon the pursuit if he had known its particular location and that the pursuing officers were also on the wrong side of the motorway.
52. The Authority acknowledges that due to Officer D’s inaction and inexperience, Officer C had to take over the communication with CentComms as well as drive during the short pursuit. However, during his second transmission Officer C became aware that Mr Paaka was going onto the wrong side of the motorway. Consequently, the Authority finds that Officer C had an obligation to inform CentComms that he was also going to do so. The Authority makes this finding based on the very significant risk posed by travelling on the wrong side of the motorway at speed.

FINDING

Due to the significant risk involved, Officer C should have advised CentComms in his second transmission that he was pursuing on the wrong side of SH1.

Police manner of driving, risk assessment and abandonment

53. 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. As previously noted by the Authority,³ the policy does not explicitly address situations where officers and other fleeing drivers drive on the wrong side of the road.
54. In his statements to Police and the Authority Officer C said the risk factors he considered when he made the decision to pursue the Mazda were: that the driver was possibly disqualified; that the vehicle travelled at excessive speed around the first roundabout on Takapu Road; and that the vehicle was subject to a non-operation order. Officer C said that, subsequent to this, he did

³ See the Authority’s summary report *Death of a Youth following the Police Pursuit of Fabian Jessie Mika* (2 October 2014) at [62].

not abandon the pursuit when Mr Paaka drove onto SH1 in the wrong direction because he wanted to warn oncoming drivers of the fleeing Mazda using the Police car's emergency lights and sirens, and intended to stop at a point after the off-ramp where the emergency lights would provide this warning (see paragraphs 33–36 above).

55. Officer C subsequently told the Authority that he was also aware that one of the three males possibly driving the Mazda was under the influence of alcohol or drugs, and this further informed his risk assessment.
56. The Authority is satisfied that Officer C's primary reasons for pursuing the Mazda were that the driver was travelling at excessive speed and probably disqualified, and that the vehicle was subject to a non-operation order. However, the Authority accepts that Officer C was probably also aware that the driver was under the influence of alcohol or drugs, and that this was likely to have been a secondary reason for Officer C's actions.
57. The Authority accepts Officer C's evidence that his motivation for continuing the pursuit and driving in the wrong direction on SH1 was to warn oncoming drivers.
58. However, regardless of Officer C's reasons for the initial pursuit, the Authority does not believe that he was justified in going onto the wrong side of the motorway during the pursuit to warn oncoming drivers. The Authority considers there is little evidence to support this justification, and finds that continuing a pursuit in such circumstances is more likely to increase the risk by distracting and confusing oncoming drivers and decreasing the likelihood that they will take effective evasive action. In this instance Ms Graham, the driver of the oncoming vehicle, provided some support for this view by saying to the Authority that immediately before the collision all she saw was the Police car's flashing lights.
59. The test for whether a Police officer has unjustifiably engaged in dangerous driving is whether a competent and experienced Police officer would reasonably have engaged in that driving after having assessed the full range of risks in doing so. Applying this test, the Authority considers that Officer C's driving on the wrong side of the motorway amounted to dangerous driving, and does not accept that it is a course of action which a competent and experienced Police officer would take.
60. The Authority has reached this conclusion on the civil standard of the '*balance of probabilities*'. This standard sets a lower threshold for proof than that required for criminal liability, the threshold for which requires evidence sufficient to demonstrate guilt '*beyond reasonable doubt*'. Therefore, the Authority's finding does not necessarily mean that the threshold for criminal prosecution has been met in this case.

FINDINGS

The actions of Officer C in driving on the wrong side of SH1 were dangerous and contrary to law. Officer C should have abandoned the pursuit when Mr Paaka began driving on the incorrect side of the motorway.

CONCLUSIONS

61. The Authority has concluded on the balance of probabilities that:
- 1) The commencement of the pursuit was in accordance with Police policy.
 - 2) Due to the significant risk involved Officer C should have advised CentComms in his second transmission that he was pursuing on the wrong side of SH1.
 - 3) Officer C should have abandoned the pursuit when Mr Paaka began driving on the incorrect side of the motorway.
 - 4) The actions of Officer C in driving on the wrong side of SH1 were dangerous and contrary to law.

RECOMMENDATION

62. The Authority reiterates the recommendation made in its previous report, *Death of a Youth following the Police pursuit of Fabian Jessie Mika*,⁴ that Police introduce in the ongoing revision of the fleeing driver policy a strong presumption against pursuits on the wrong side of a dual carriageway that may be overridden only in extreme circumstances.
63. The Authority also recommends that Police commence disciplinary proceedings under the Police Code of Conduct against Officer C in respect of his actions during the pursuit.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

5 February 2015

⁴ 2 October 2014.

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 on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



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