

REPORT OF THE POLICE COMPLAINTS AUTHORITY ON THE INVESTIGATION INTO THE DEATH OF CHRISTOPHER SCOTT MURDOCH IN AUCKLAND ON 4 APRIL 2004

Introduction

At approximately 3.17am on Sunday, 4 April 2004 Christopher Scott Murdoch lost control of his Mitsubishi GTO Coupe sports car on Ti Rakau Drive, Pakuranga, Auckland, colliding first with a Mitsubishi Delica van travelling in the same direction and then with a tree.

Mr Murdoch (aged 35) died instantly from multiple injuries. The two occupants of the van were shaken but uninjured.

Just over a minute earlier Mr Murdoch's vehicle had attracted the attention of two Police officers who were patrolling the East Tamaki industrial area in a marked patrol vehicle.

A pursuit ensued which continued for a little under a minute and which covered a distance of approximately 2.3 kilometres. A map of the area is attached.

Action taken

As Mr Murdoch had been the subject of a Police pursuit immediately prior to the crash, the incident was notified to the Police Complaints Authority. Two Authority investigators travelled to Auckland on 4 April 2004. Prior to their arrival a Police investigation had been initiated to examine the traffic aspects of the fatal collision and the possible criminal liability of any person.

Purpose of this Report

This report will describe the events on the morning of 4 April 2004 which culminated in Mr Murdoch's death. It will examine Mr Murdoch's actions and those of the Police officers who were involved in the incident.

It will also examine the policies, procedures and practices relating to Police pursuits and consider the effectiveness of their application to this incident.

Narrative

The incident giving rise to this report began just after 3.15am on Sunday, 4 April 2004 when two constables (Officers A and B) were patrolling the East Tamaki industrial area in a marked patrol vehicle. Both were in uniform. Officer A was driving the Police vehicle.

In an effort to curb illegal street racing activity in Manukau City, a number of roads in the city are subject to a bylaw prohibiting light vehicles from being driven on those roads between 10.00pm Friday and 5.00am Monday except for specified purposes. One such road is Cryers Road which forms part of the East Tamaki industrial area.

The officers saw a lone vehicle travelling north towards them on Cryers Road. The vehicle's headlights were on and it was not exceeding the 50kph speed limit.

As the vehicles passed each other on Cryers Road in the vicinity of Bostock Place, Officer A noted that the vehicle was a red sports-type vehicle and executed a U-turn with a view to stopping it and ascertaining whether the driver was in breach of the bylaw. The patrol vehicle's red and blue flashing lights were activated.

The vehicle, a Mitsubishi GTO, pulled to the side of Cryers Road approximately 200 metres north of the intersection with Bostock Place and slowed to such a degree that the Police vehicle came to a complete stop behind it. As Officer A prepared to alight from his vehicle to speak with the driver, the Mitsubishi began to pull away slowly and then accelerated quickly, Officer A later stating the driver of the vehicle *"floored it and took off at high speed."*

At that point Officer B made a radio call to the Police Northern Communications Centre (NorthComms) advising *“ASW31 we’ve got a failing to stop.”*

The NorthComms dispatcher acknowledged Officer B’s radio call, stating *“Roger, go details....location.”*

The Police vehicle followed the Mitsubishi in a north-easterly direction along Cryers Road and left into Trugood Drive, both vehicles reaching estimated speeds of 100kph in a 50kph area and with the distance between the two vehicles estimated to be 100 metres. While the Police vehicle maintained a similar speed along Trugood Drive, the Mitsubishi began to pull away, the patrol vehicle making only a momentary gain as the Mitsubishi slowed to make a left turn into Ti Rakau Drive, where the speed limit increases from 50kph to 60kph and where the road widens from two to four lanes.

At this point Officer B made a further radio call to NorthComms stating *“We’re on Trugood coming out onto Ti Rakau, it is a red Mitsubishi FTO....no registration at this stage.”*

Once on Ti Rakau Drive, the distance between the two vehicles continued to increase, Officer A estimating that he *“accelerated up to at least 100kph”* and that the Mitsubishi GTO was travelling *“at not less than 140kph.”*

Officer A’s account is supported by the sole witness to the pursuit, who was working at the Mobil Service Station on Ti Rakau Drive at the time. This witness expressed the view that the Mitsubishi GTO was *“going very quick, like a bullet.”* He further stated:

“...the car went past real quick and the Police went past shortly after, like within a second or two...”

It is hard for me to say what the distance was between the cars but I should say it was around 200 metres. There was nothing dangerous about the distance or driving of the Police car. They were just following... .

The vehicle to me looked like a sports car. It had a flat shape. It had two doors I think. I couldn't tell you what the colour was as it went past so quick.

The Police were going quite fast right at that time. The Police were not gaining on him. They were going about 100-120kph..."

Officer A reported that he lost sight of the Mitsubishi after it went through the intersection of Ti Rakau Drive and Gossamer Drive and rounded an easy right-hand bend on Ti Rakau Drive. Officer A estimated the distance between the two vehicles to be around 300 metres at that point.

Officer A stated that he continued to drive at around 100kph on Ti Rakau Drive until he reached the intersection with Gossamer Drive, where he slowed notwithstanding that he had a green traffic signal, and continued around the right-hand bend approaching Edgewater Drive at approximately 80kph. He stated that when he got to the intersection with Gossamer Drive he resolved to consider abandoning the pursuit if, on rounding the bend, it became apparent that the Mitsubishi was continuing at a similar speed. The officer stated that on rounding the bend, the vehicle was nowhere to be seen and that he continued for a short distance, at which time they came upon a cloud of white smoke and glass on Ti Rakau Drive near the intersection with Wheatley Avenue and realised that the Mitsubishi GTO had crashed. A Mitsubishi Delica van was facing in the wrong direction on the grass verge.

A period of 59.2 seconds elapsed between the time Officer B notified NorthComms of the pursuit and when he reported the crash. The pursuit covered a distance of approximately 2.3 kilometres.

An experienced Police Crash Analyst formed the opinion that when rounding the right-hand bend on Ti Rakau Drive the GTO's speed had been between 148kph and 159kph. He was of the view that Mr Murdoch had suddenly steered to the right to avoid the Mitsubishi Delica van travelling in the same direction. There had then been another directional change by Mr Murdoch, which caused the GTO to lose traction and rotate anti clockwise, clipping the Delica van and causing the driver of the van to lose control of her vehicle, which collided with a tree before rotating 180 degrees and

coming to rest. The GTO then continued for a further 38 metres before it also struck a tree, the force of the impact causing the vehicle to break into three parts.

The occupants of the van were shaken but otherwise unhurt. The driver of the GTO died on impact.

A subsequent examination of the Mitsubishi GTO indicated that its headlights were off before the crash.

An analysis of blood taken from Mr Murdoch found that he had 226 milligrams of alcohol per 100 millilitres of blood (the legal driving limit being 80 milligrams of alcohol per 100 millilitres of blood). The analysis also revealed that he had a Tetrahydrocannabinol (THC) level of 2 micrograms per litre of blood, consistent with him having smoked the equivalent of one cannabis cigarette between 0.5 hours and 4.5 hours prior to his death. The toxicology report commented that blood THC levels are a poor indicator of cannabis intoxication and it is not usually possible to determine from blood THC levels alone whether an individual was intoxicated. However the toxicologist was of the view that the level of THC in Mr Murdoch's blood was such that it was possible that he was affected by the drug at the time of his death. It was noted that the use of cannabis with alcohol tends to accentuate the effect of the alcohol.

Police Pursuit Policy

Following a detailed review in 2003, the Police General Instructions and policy on Police motor vehicle pursuits were changed. The revised policy came into effect on 5 March 2004.

During the investigation it emerged that Officer A had not completed formal training in the revised policy at the time of this pursuit. Officer B had received formal training and the officers' senior sergeant had outlined the policy to staff some two weeks prior to the incident. I am satisfied that the staff involved in the pursuit were aware of the requirements of the revised policy.

Under the policy, a pursuit occurs when the driver of a vehicle which has been signalled by a Police officer to stop, fails to stop and attempts to evade apprehension, and Police take action to apprehend the offender.

The policy provides that the primary responsibility for the initiation, continuation and conduct of a pursuit rests with the officer driving the pursuing Police vehicle. No driver can be directed to commence or continue a pursuit against their judgment and a driver's decision not to commence a pursuit, or to abandon a pursuit in progress, cannot be overridden.

When a sworn member of Police is a passenger in a Police vehicle involved in a pursuit, the revised policy provides that he or she must assist the driver by operating the radio and advising the driver of environmental and other considerations.

When a vehicle fails to stop, the driver of the Police vehicle (assisted by a sworn passenger where applicable) must assess whether a pursuit is appropriate. A risk assessment based on the following factors must be undertaken when considering whether to commence a pursuit:

- speed and other behaviour by the offending vehicle;
- weather conditions;
- occupant characteristics such as identity (if known) and offences suspected or committed. If the identity of the offender(s) is known and apprehension can safely be effected later, a pursuit must not be commenced;
- traffic conditions such as speed and volume;
- environment such as road type, houses, and pedestrians; and
- officer capabilities such as experience, whether they are operating single-crewed, and the limitations of their vehicle.

Considering these factors, officers must determine whether the need to effect the immediate apprehension of the offender is outweighed by the risks posed by a pursuit to the public, the occupants of the pursued vehicle, or the Police. Where this is the case, a pursuit is not to be commenced.

Whether or not a pursuit is commenced, the driver (or passenger as applicable) must advise the communications centre immediately, giving details of the risk assessment according to the factors outlined above. Where this information is not supplied by the pursuing Police vehicle, the dispatcher at the communications centre is required to prompt for it.

The investigation determined that the pursuit was initiated at a time when there were no other vehicles, on a dry, well lit, road in a non-residential area. The identity of the driver of the Mitsubishi was not known to Officers A and B.

Given these circumstances, the Authority is satisfied that Officer A was justified in commencing a pursuit when Mr Murdoch failed to remain stopped after his vehicle was signalled to stop and had pulled to the side of Cryers Road.

As to the requirement to advise the communications centre immediately, giving details of the risk assessment according to the factors referred to above, during the investigation it emerged that Officer B, who had operated the radio during the course of the pursuit, had not provided NorthComms with such an assessment. It also emerged that Officer C, the dispatcher at NorthComms, had not prompted Officer B for the information when it was not provided. However I am not critical of Officer B or of Officer C in this regard given the radio system problems which existed at the time (discussed later).

Once a pursuit has been commenced, the driver of the pursuing Police vehicle must:

- comply with relevant legislation;
- drive in a manner that prioritises the safety of the public and staff;
- comply with any directions from the pursuit controller; and
- comply with the directions of a sworn passenger if senior in rank or service.

At interview Officer A stated that:

“I made a considerable effort to slow down at the intersection of Trugood Drive and Ti Rakau Drive, as I knew that Ti Rakau Drive was a major road with potential civilian traffic around.

As I turned left onto Ti Rakau Drive I looked to my right and made sure that the way was clear, the road was clear.”

He also reported slowing his vehicle for the Gossamer Drive/Ti Rakau Drive intersection notwithstanding the fact that he had a green traffic signal, and that he drove around the right-hand bend on Ti Rakau Drive approaching Edgewater Drive at around 80kph, the speed limit in the area being 60kph.

The sole witness to the pursuit expressed the view that there was “...*nothing dangerous about the distance or driving of the Police car...*”

The Authority is satisfied that Officer A complied with relevant legislation and that he drove in a manner which prioritised public and staff safety.

In respect of a requirement in the policy for the Police driver to comply with the directions of a sworn passenger in the vehicle if senior in rank or service; the officers were equal in rank but Officer A was senior in service, Officer B gave no directions and, had he done so, Officer A would not have been required to comply.

Other responsibilities of the driver (or their passenger as appropriate) during the course of a pursuit include:

- activating lights and siren;
- informing the communications centre that they have commenced pursuit and maintaining radio contact with the communications centre, providing situation reports regularly and as requested;
- continually reassessing the continuation of the pursuit according to the risk framework, which prioritises the safety of all involved; and
- abandoning the pursuit if the identity of the offender becomes known during the pursuit and apprehension can safely be effected later.

In addition to the continual risk assessment which must be undertaken, officers must regard a sustained loss of contact with the communication centre as strongly weighing against continuation of the pursuit.

Officers A and B both reported that the red and blue flashing lights on their patrol vehicle were activated either just before or just after Officer A executed a U-turn on Cryers Road with a view to stopping the Mitsubishi GTO. The Authority is satisfied that Mr Murdoch's vehicle was signalled to stop with the use of red and blue flashing lights and that these lights remained on for the duration of the pursuit.

As to the requirement to activate the siren in their vehicle, the officers have reported that the siren was activated as they turned from Cryers Road into Trugood Drive, or in the vicinity of that intersection. No siren can be heard in the audio recording during Officer B's radio call to NorthComms notifying the dispatcher that their patrol vehicle was "...on Trugood coming out onto Ti Rakau..." The Authority considers that the siren would have been heard during this radio transmission had it been activated. The Authority has concluded that the siren was not activated at the point indicated by Officers A and B, although it is noted that the siren can be heard during Officer B's next radio call to NorthComms some 33 seconds later. Although the siren was not activated at the commencement of the pursuit, it is clear that Mr Murdoch was aware of the Police interest in, and pursuit of, his vehicle, and at that point there was no traffic requiring forewarning of the pursuit by means of the siren.

Turning now to the requirement to inform NorthComms of the pursuit and to maintain radio contact, providing situation reports regularly and as requested, the policy requires the following officer announcement to be given:

"I am in pursuit of (make/regio of vehicle) on (road/street name) travelling in the direction of (direction). Reason for pursuit is (reason)."

If this information is not given by the pursuing Police vehicle, the policy requires the dispatcher to request it.

It is apparent from the radio transmissions made during the pursuit that:

- Officer B advised NorthComms that the patrol had a "*failing to stop*";
- Officer C, the dispatcher at NorthComms, prompted Officer B for details of the incident stating "*Roger go details...location*"; and

- Officer B responded *“We’re on Trugood coming out into Ti Rakau, it is a red Mitsubishi FTO...No reggo at this stage.”*

While the precise approved format for the officer announcement was not followed by Officer B, I am satisfied that the information given by him complied with the basic requirements of the pursuit policy.

As to the requirement to maintain radio contact with the communications centre, providing situation reports regularly and as requested, Officer B reported that he *“...radioed Comms and said that we had turned left on Ti Rakau, that we were doing 100 (or that our speed was 100), that there were no other vehicles in sight, and that the road was dry.”* This commentary is not on the audio recording of the radio transmissions made during the pursuit. The Authority accepts that problems with the radio system at the time meant that not all radio transmissions were received or captured on the recording. The Authority is satisfied that Officer B provided situation reports to NorthComms to the extent that he was able given the short duration of the pursuit and the radio problems which existed at the time.

With regard to the requirement to continually reassess the continuation of the pursuit according to the risk framework, the Authority is satisfied that Officer A was appreciative of the required balance between immediate apprehension of the driver and the risks posed by continuation of the pursuit and had resolved to consider abandoning the pursuit if, on rounding the bend on Ti Rakau Drive, it was apparent that the Mitsubishi GTO was continuing at a similar speed. The Authority is also satisfied that Officer A was justified in continuing the pursuit in line with his on-going assessment. Had Mr Murdoch not lost control of his vehicle and crashed near the intersection with Wheatley Avenue, continuation of the pursuit from that point would not have been justified given the speeds Mr Murdoch’s vehicle had reached as it approached Edgewater Drive, and the fact that he was entering a residential area.

As to the requirement to regard a sustained loss of contact with the communication centre as strongly militating against continuation of the pursuit, during the investigation it was established that there had been two breaks in communications during the relevant period, for 4 seconds and 9.2 seconds. A third break of 18.6 seconds occurred after NorthComms had been advised of the crash. The Authority

does not consider that communication breaks of 4 and 9.2 seconds amounted to a *“sustained loss of contact with the Communications Centre”*.

Turning now to the responsibilities of the dispatcher and the pursuit controller, Officer D, the policy provides that the dispatcher is to maintain communications with frontline staff, to give the safety reminder and to request information from the pursuing officers if it is not forthcoming from them. The dispatcher is also required to communicate instructions from the pursuit controller, a sworn shift supervisor at the communications centre, who is responsible for supervising the pursuit and co-ordinating the overall response.

It is apparent from the audio recording of the radio transmissions that Officer C sought information from Officer B about the details and location of the pursuit and that he issued the standard pursuit warning, advising Officers A and B that *“if there’s unjustified risk to any person you are to abandon immediately, do you understand?”*

Officer C’s warning was not heard by Officers A and B, or other officers who heard the radio calls between the pursuing Police vehicle and NorthComms. This failure was attributed to radio system problems.

It was Officer C’s responsibility to request information from the pursuing officers as to speed, road and traffic conditions, manner of the offender’s driving, identity of driver and weather conditions. Officer C did not prompt the pursuing officers for such information when it was not forthcoming. Neither did he request situation reports from the officers during the course of the pursuit. The Authority recognises that Officer C was hindered in his ability to seek information from the pursuing Police vehicle given the short duration of the pursuit and radio problems.

The pursuit controller has responsibility for taking over control of a pursuit; however the Authority is satisfied that by the time Officer D was in a position to take control, the pursuit had ended.

Radio Transmissions

The investigation confirmed that there were problems with the radio system during the morning of 4 April 2004. Various Police staff experienced interference with both

transmission and reception of radio communications and short radio communication breaks had occurred prior to the pursuit.

Officer C stated that he was aware of technical problems on the night of 3/4 April and that he had advised staff of the problem by radio on two occasions prior to the pursuit.

I accept that radio problems interfered with communications between the pursuing Police vehicle and NorthComms. I am satisfied that this had no impact on the overall outcome of the pursuit. I have however expressed concern to the Police about the effect of breakdowns in radio transmission in view of the pursuit policy which:

- designates the sworn shift supervisor at the communications centre as the pursuit controller;
- requires the dispatcher to repeatedly run through pursuit parameters and environmental checklists, and call for responses from the patrol;
- requires the dispatcher to issue the pursuit warning; and
- requires the dispatcher to identify other Police units involved, and communicate with them.

The Police have advised that various radio upgrades since the incident have successfully addressed the cause of the problems.

Vehicle Inspections

The Mitsubishi GTO and the Mitsubishi Delica van were examined by a qualified vehicle inspector. Neither vehicle was found to have any mechanical defect that may have contributed to the crash.

The Police vehicle driven by Officer A was also examined and found to have no mechanical defects or faults, and no damage to indicate that it had been involved in the crash.

Inquest

An inquest into the death of Mr Murdoch was held at Papakura in December 2004. The Coroner's provisional findings were released on 31 March 2005 and a final written decision was released on 9 May of that year.

The Coroner was not critical of the Police in respect of the pursuit and expressed the view that there was no requirement to make any formal recommendation or comment aimed at preventing similar deaths. She did however comment on three issues.

1. Alcohol Testing Procedures

The Coroner noted that there was forensic evidence about Mr Murdoch's blood alcohol level and found that alcohol was a contributing factor to the cause of the crash.

She noted that no alcohol testing procedures had been undertaken in relation to the driver of the Mitsubishi Delica van. While accepting the evidence of the van driver that she had not consumed any alcohol prior to the incident, and evidence that the officer dealing with her had not detected any signs of recent alcohol intake, the Coroner referred to Police General Instruction T004, which relates to fatal and potentially fatal crashes and directs Police staff to carry out breath testing procedures of the drivers of all vehicles involved in such crashes.

While concluding that it was *"...unlikely that alcohol was a factor for this driver"*, the Coroner commented that *"...without direct evidence obtained from standard breath testing procedures in accordance with General Instructions, I am unable to make any safe, conclusive determination as to whether alcohol was a factor in relation to the driver of the second vehicle."* As a result she made no specific finding on the point.

As to the breath testing of Police staff, the Coroner noted that consideration had been given during the Police investigation to the role of the Police officers and whether their involvement was such that they could be considered to be a vehicle or driver "involved" in a fatal crash, and if so whether breath testing should extend to Police staff in such situations. She expressed the view that this should be considered by the Police.

2. Police Northern Communications Centre

The Coroner considered the role of NorthComms and was of the view that staff were complying with newly introduced procedures for the conduct and management of pursuits. The Coroner noted that the new policy had a commencement date of 19 April 2004, two weeks after the crash. However the Police have advised this Authority that the new policy had come into force on 5 March 2004.

The Coroner noted that the policy required a safety reminder to be given by the dispatcher, *“If there is unjustified risk to any person you are to abandon pursuit immediately. Do you understand?”* While satisfied that this safety reminder had been given by the dispatcher at NorthComms, the Coroner recognised that it had not been heard because of radio communication problems.

3. Police Pursuits Policy and Training of Staff

The Coroner noted that only one of the officers in the pursuing Police vehicle had undergone formal training in the new pursuit policy at the time of the crash and expressed the view that it would have been preferable if all staff had received such training. She acknowledged that her comment was made with the benefit of hindsight and she had no criticism of individual Police staff.

The Coroner found that:

- Christopher Scott Murdoch died on 4 April 2004 as a result of multiple injuries received in a motor vehicle crash.
- The motor vehicle crash occurred at a time when Mr Murdoch was aware of the Police interest in, and pursuit of, his vehicle.
- The main contributing factors to the cause of the crash were alcohol and speed.

In respect of the Coroner’s comments on breath testing, the Police position is that the Police vehicle was not physically involved in the crash and therefore Officer A was not required to undergo testing.

The Authority notes that the issue of the alcohol or drug testing of officers involved in critical incidents has from time to time been the subject of discussion in New Zealand

and elsewhere, and it made reference to this issue in its recent report on the fatal shooting of Haidar Ebbadi Mahdi. The Authority recommends further consideration by Police of the merits or otherwise of such a policy.

It is emphasised that there is no suggestion that any Police member involved in this incident was affected by alcohol or drugs.

The failure to breath test the van driver was a breach of Police policy; however the Authority accepts that this was overlooked by an officer unfamiliar with crash investigation and did not amount to misconduct or neglect of duty.

Conclusion

There was no misconduct or neglect of duty on the part of any member of the Police.

The Authority expresses its sympathy to the family and friends of Mr Murdoch.

Judge I A Borrin
POLICE COMPLAINTS AUTHORITY

5 February 2007