



Fatal Police pursuit of Martyn Dillon

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 11.24pm on Saturday 19 December 2009, a motorcycle driven by Martyn Dillon, aged 22, crashed into a wooden fence on Milson Line in Palmerston North, following a short Police pursuit. Mr Dillon died at the scene and his pillion passenger was seriously injured.

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

2. At about 11.20pm on Saturday 19 December 2009, Officer A was driving a marked Police car on Ruahine Street, Palmerston North when he saw a motorcycle being driven at speed towards him.
3. Officer A was the sole occupant of the Police car and was the Acting Sergeant for the shift on duty at the time.
4. Officer A recorded the speed of the motorcycle on radar as 79kph in a 50kph area.
5. Ruahine Street is a two-way road (one lane in either direction) with a traffic island that runs down the middle. In order to follow the motorcycle, Officer A continued along Ruahine Street for a short distance before doing a u-turn that placed him behind the motorcycle.
6. Officer A was able to clearly observe the motorcycle because there were no vehicles between them. The motorcycle continued along Ruahine Street to the intersection with Tremaine Avenue, where the driver stopped at red traffic lights, in the right hand turning lane. Officer A drove up behind the motorcycle and noticed a female pillion passenger who was not wearing a helmet. The identities of the driver and pillion passenger were not known to Officer A.
7. When the traffic lights turned green, Officer A activated his red and blue warning lights to indicate to Mr Dillon that he was required to stop. Officer A said that Mr Dillon's immediate response was to accelerate heavily, straight through the intersection and on to Milson Line, a main suburban street with one lane in each direction and space for parked vehicles adjacent to each lane.
8. Officer A turned on his siren and followed the motorcycle at a speed he later estimated to be about 90kph. At about 11.23pm Officer A radioed the Central Communications Centre (CentComms) to report, *"Just intercepted a motorcycle on Milson Line. It's just gunned it from me."*
9. CentComms acknowledged this and asked for the direction of travel. Officer A advised that the motorcycle was heading towards John F Kennedy Drive, and also gave the registration number.
10. 45 seconds after the pursuit commenced, Officer A discovered the motorcycle crashed on John F Kennedy Drive. He radioed CentComms advising that two people were on the ground and that an ambulance was required.

11. Police pursuit policy requires that once a pursuit has been commenced, the communications centre dispatcher must give the warning, *"If there is unjustified risk to any person you are to abandon immediately, acknowledge."* In this pursuit the dispatcher had no time to give this order before the crash occurred.
12. The motorcycle driven by Mr Dillon was a Kawasaki ZX1000, a powerful sports model that quickly left the Police car behind.
13. Mr Dillon lost control of the motorcycle at the intersection of Milson Line and John F. Kennedy Drive. This intersection has a large roundabout with a central light standard and directional signs facing each of the four converging roads. Each road has a raised island between the opposing lanes at the point of the intersection, on which is placed a 'Give Way' sign and another smaller sign of directional arrows.
14. Skid marks on the road indicate that the motorcycle hit the raised island before entering the intersection. It passed over the roundabout striking a sign, hit the road on the other side and continued until it struck a wooden fence.
15. Both Mr Dillon and his pillion passenger were thrown from the machine. Mr Dillon lost his helmet and sustained serious head and body injuries. He died at the scene. The female pillion passenger was seriously injured.
16. On discovering the crash, Officer A radioed the details to CentComms and asked for the immediate attendance of an ambulance.
17. The pursuit had covered a distance of 1.32 kilometres and lasted approximately 45 seconds. The average speed of the motor cycle is estimated to have been 158kph, all in a 50kph zone.

Witness accounts

Officer A

18. In interview a few days after the crash, Officer A said that there was a ramp near the beginning of Milson Line that crosses railway lines and that the motorcycle had already disappeared from his view by the time he had reached the top of the ramp. Further along Milson's line, Officer A came across road works controlled by temporary traffic lights. He said: *"Due to these road works I pulled my speed right back from what I had been travelling. I slowed right down so I was nearly stationary, somewhere in the region of 20 to 30 kilometres per hour."*
19. Officer A said he was considering turning off his lights and siren, as he could no longer see the motorcycle, when he came upon the crash scene at the intersection of Milson Line and John F Kennedy Drive.

Civilian witnesses

20. Two witnesses who were in a vehicle at the beginning of Milson Line, travelling in the same direction as the pursuit, described being overtaken by the speeding motorcycle and the Police car in the vicinity of the railway over-ramp. They reported that the vehicles were close together at that stage. Witnesses further along Milson Line reported that there was some time and distance between the two vehicles and also confirmed that the Police car was being driven at a much lower speed than the motorcycle.

CCTV footage

21. CCTV footage from a point on Milson Line, several hundred metres before the crash site shows the light of the motorcycle pass then 15 seconds later the Police car appears. On this basis, it is estimated that the motorcycle would have been between 400-500 metres ahead of the Police car when it crashed.

Nearby residents

22. A number of residents in the area heard the high pitch of the motorcycle engine as it was ridden along Milson Line. Witnesses estimated its speed to have been 150 - 180 kph.
23. A witness living near the intersection heard the engine noise of the approaching motorcycle and realised that the rider was in trouble because of its speed. The witness, who is familiar with motorcycles, described the 'graunching' of the gears as Mr Dillon attempted to slow the machine down nearing the intersection.
24. The noise of the crash was heard by a number of residents who went to assist. Several described seeing Officer A arrive and park at the scene.

Pillion passenger

In a later statement the pillion passenger described the motorcycle being driven at high speed, at one stage reaching over 200 kph. She had little recollection of the crash itself.

Environment

25. The crash took place at the intersection of Milson Line and John F. Kennedy Drive. As stated in paragraph 13, this intersection has a large roundabout in the middle, with a raised island between the opposing lanes of each of the four roads feeding into the roundabout.
26. The road conditions at the time were wet with very light rain falling.
27. The road surface was sealed with chip-seal and was in good condition, with clear road markings and signage. The intersection was well illuminated by street lights.

28. There were few other vehicles on the road and none at the intersection at the time of the crash.

Police crash analysis

29. The investigator determined that the motorcycle was travelling at a speed of between 81 – 85kph at the time of the crash. The tyre friction marks suggested Martyn Dillon braked heavily just prior to impact.
30. The motorcycle, a Kawasaki ZX1000, had a current warrant of fitness and had no mechanical fault that would have contributed to the crash.
31. The pillion passenger was not wearing a helmet.
32. The crash investigator's report concluded that: *"Dillon's decision to flee from Police at speed combined with his level of impairment [alcohol and cannabis] must be considered the prime causative factor for this crash."*

Martyn Dillon

33. The identities of neither Martyn Dillon nor his pillion passenger were known during the pursuit.
34. Mr Dillon had never held a driver licence of any class, and at the time was disqualified from holding or obtaining a driver licence.
35. Mr Dillon had numerous previous convictions for violence, dishonesty, drugs and driving offences. At the time of his death he was facing two charges of disqualified driving and one of assault with intent to injure.
36. The motorcycle had been stolen from the Paraparaumu area three days before the pursuit and the number plate had been altered.
37. Police enquiries found that Mr Dillon had spent the afternoon drinking alcohol at a party and that he had smoked cannabis. Earlier in the evening there had been reports of a motorcycle, similar to the Kawasaki, being driven around the streets near the party and doing 'donuts' and 'burnouts'. The Police responded but did not find the motorcycle or rider.

Toxicology

38. Mr Dillon's blood contained 151 milligrams of alcohol per 100 millilitres of blood. The legal limit for a driver is 80 milligrams of alcohol per 100 millilitres of blood.

39. Mr Dillon had a tetrahydrocannabinol (THC) level of 4 micrograms per litre of blood. This is consistent with Mr Dillon having smoked a cannabis cigarette within about 3.5 hours prior to his death. The ESR report commented that the use of cannabis with alcohol tends to accentuate the effects of the alcohol.

Cause of death

40. The Pathologist concluded that the cause of Mr Dillon's death was multiple injuries sustained in a motor vehicle incident.

LAWS AND POLICIES

Legislative authority for pursuits

41. 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

42. 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

43. 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

44. 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.”*
45. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.
46. 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

47. 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.
48. The communications centre must then provide the pursuit warning referred to in paragraph 11, 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.

Roles and responsibilities

49. 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.
50. The passenger in a pursuing vehicle must assist the driver by operating the radio and advising of possible hazards. If senior in rank or service, the passenger may also direct the driver to abandon the pursuit.
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 11, and communicate instructions from the pursuit controller.
52. The pursuit controller (i.e. the shift commander at the communications centre) 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 marked patrol car were appropriately classified to undertake pursuits under the Police Professional Driver Programme. Officer A was a 'gold' rated driver.
54. Martyn Dillon was signalled to stop for a traffic infringement under section 114 of the Land Transport Act 1988. Because he failed to stop, Officer A had the authority to commence a pursuit.
55. The reaction of Mr Dillon to the signal to stop was to immediately accelerate away, reaching a speed of over 200kph, in a 50kph area, in an attempt to avoid detection.
56. Officer A activated his warning lights and siren when commencing the pursuit. At that time, he considered that the risks involved in the pursuit were low. He noted that: *"There were no vehicles between my vehicle and the motorbike at this time."*

FINDING

Officer A complied with the Land Transport Act 1988, and with the Police pursuit policy in commencing this pursuit. He considered the relevant risk factors and formed the view that the immediate need to apprehend the offender outweighed the risks.

Communication by the pursuing officer

57. Officer A said that when he first commenced the pursuit, the radio was busy, and he was unable to notify CentComms that he was in pursuit. He said: *"I followed the bike and called 10/9 to Comms in order to try and get on the air. I believe I was able to get a response from the Comms operator as I was travelling up the over-ramp on Milson Line."* A 10/9 call to CentComms means 'urgent message' and the transcript of radio communications confirms that the radio was busy and that Officer A called 10/9.
58. Officer A then notified CentComms that he was in pursuit of a motorcycle which had driven off at speed. The dispatcher immediately sought clarification of the location, the direction travelled and the registration number of the motorcycle. Officer A advised: *"There's a guy on the back with no helmet"*, and further that the driver was speeding, and had *"gunned it"* when he had tried to stop him.
59. The warning required under the pursuit policy (see paragraph 11) was not given to Officer A because 45 seconds after the initial notification, and immediately after the last communication in relation to location, Officer A advised the dispatcher that he had come across the crash scene and that ambulance services were required for two injured people.

FINDING

Police complied with the pursuit policy in respect of communication.

Speed and manner of driving

60. Independent witnesses and the pillion passenger attest to the high speed at which the motorcycle was being driven by Mr Dillon. It was driven through a red light and Mr Dillon eventually lost control when he entered the John F. Kennedy Drive intersection at speed.
61. Witnesses have said that the Police car following the motorcycle was being driven at a lower speed. CCTV footage shows that the Police car was well behind the motorcycle shortly before the crash. Officer A states that he was considering turning off his lights and siren, and was travelling at about 60kph when he came across the accident scene.

FINDING

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

Oversight of the pursuit by CentComms

62. CentComms was involved in this pursuit for a very brief period. The dispatcher communicated appropriately with Officer A. There was no time to involve a pursuit controller.

FINDING

This pursuit was properly overseen by CentComms given its short duration.

Ongoing risk assessment/abandonment

63. Officer A considered the risks during the short pursuit. He said that, due to the high speed of the motorcycle and because he had lost sight of it, he was considering turning off his lights and siren when he came across the crash scene.
64. The inability to meet all the requirements of the pursuit policy was a consequence of the short duration of the pursuit rather than failures on the part of Officer A or the dispatcher.

FINDING

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

CONCLUSIONS

This short pursuit complied with Police policy.

The Authority makes no recommendations.

A handwritten signature in black ink, appearing to read 'L P Goddard', written in a cursive style.

HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

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IPCA

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