

Summary Report

Police pursuit of stolen vehicle in Auckland

INTRODUCTION

1. On 26 April 2013 Police notified the Authority of an incident in which an offender had received serious injuries from a Police dog while being arrested in Auckland on 19 April 2013.
2. The Authority conducted an independent investigation into the incident. During its investigation the Authority became aware that the offender had been the occupant of a stolen vehicle that had been pursued by Police immediately prior to his apprehension.
3. After viewing CCTV footage of the pursuit, the Authority raised concerns with Police regarding the conduct of the pursuit and decided to expand the scope of its original investigation to include the pursuit.
4. This report sets out the results of the pursuit aspect of that investigation and the Authority's findings.
5. The Authority has already reported, by way of letter, to Police and the man bitten by the Police dog in relation to its investigation into the dog bite.

BACKGROUND

Summary of events

6. At 10.45am on 19 April 2013, Police Northern Communications Centre (NorthComms) received a call reporting the recent theft of a green Nissan Terrano 4x4 ('the 4x4') from Flexman Place, Silverdale.
7. The caller reported that he had left the 4x4 parked with its keys in the ignition while he worked nearby. He then saw two males take the vehicle. He told NorthComms that he believed they were heading towards the Northern motorway.

8. NorthComms advised all Police units in the area of the theft and also called out the Police helicopter Eagle to assist with the search.
9. Officer A was at the North Shore Policing Centre when he heard the NorthComms broadcast. He told NorthComms that he would head north on the motorway to Oteha Valley Road, 12 kilometres south of Silverdale, where he would wait in case the 4x4 was heading in that direction. Officer A was working as a single crew.
10. As Officer A approached the Oteha Valley Road off-ramp he saw the 4x4 travelling towards him, heading south. He informed NorthComms of this before leaving the motorway and turning around so that he could follow the 4x4.
11. As Officer A entered the on-ramp he saw another Police car, driven by Officer B, ahead of him. Officer B had also headed to Oteha Valley Road to wait for the 4x4, but continued onto the motorway when he heard that the 4x4 had already passed by.
12. Officer C, Officer D, and Officer E also heard Officer A's report that the 4x4 was heading south. Officers C and E were single crews. Officer D was part of a double crew, and was driving.
13. Officer C informed NorthComms that he was turning around at Greville Road, two kilometres south of Oteha Valley Road, where he waited on the on-ramp for the 4x4 to pass. As he waited he saw Officer A and Officer B drive past. He joined the motorway and followed the other officers.
14. Officer D entered the motorway south bound at Constellation Drive, 2 kilometres south of Greville Road. He immediately saw the 4x4 about 100 metres ahead. He caught up to the 4x4 and followed behind it, in front of the other Police units. He informed NorthComms of his location, adding that he hadn't activated his car's warning lights or sirens.
15. Officer E had pulled over to the side of the motorway at the Sunset Road overbridge, about 500m south of Constellation Drive, where he waited for the 4x4 to pass. As it did he saw that it was being followed by Officer D. Officer E then slotted in behind the 4x4, on its right hand side. Officer E pulled alongside the 4x4 in an unsuccessful attempt to identify the occupants, before returning to his original position. All three vehicles were travelling at or below the speed limit.
16. By this time Eagle was overhead and providing commentary to NorthComms regarding traffic conditions and the movements of the 4x4, and Officers D and E. Eagle said that it had located the 4x4 near Sunset Road and that the vehicle was being followed by two Police cars.
17. Officer F was at Northcote Road, about 4.5 kilometres south of Sunset Road. He had been following the 4x4's progress via radio and decided to join the motorway. He was part of a double crew and was driving.
18. Officer F expected that he would be close to the 4x4 and able to act as the secondary vehicle should a pursuit eventuate. However, Officer F mis-timed his entry to the motorway and ended up a considerable distance ahead of the 4x4.

19. As the 4x4 approached the Northcote Road interchange Eagle informed NorthComms that the traffic was moderate and that the 4x4 and Police vehicles were travelling at about 80kph. NorthComms then directed Officer D to activate his warning lights and siren to signal the driver of the 4x4 to stop. Up until this point the 4x4, which was in the slow lane, had been travelling at or below the speed limit in a safe manner.
20. The driver of the 4x4 failed to stop and a pursuit commenced, with Officer D as the lead driver. Officer E was the secondary unit. Upon commencement of the pursuit, NorthComms issued the standard pursuit warning that *"if there's any unjustified risk to any person you are to abandon pursuit immediately."*
21. About 300 meters past Northcote Road, and almost at the same time as the pursuit commenced, Officers A, B and C caught up with the 4x4 and the other Police units.
22. The 4x4 pulled into the middle lane of the motorway, directly in front of Officer E. Officer D remained in his lane so ended up at the left rear of the 4x4. Officer B pulled along the right hand side of the 4x4 to try and identify the occupants. Officer C was directly behind Officer B.
23. Officer A, who had been in front of Officer B, decided to move ahead of the 4x4 and attempt to bring the flow of traffic – including the 4x4 and a number of civilian vehicles – to a stop so that the driver of the 4x4 could be arrested.
24. Appendix A shows the approximate positions of the vehicles at this point.
25. As Officer A began to slow his vehicle, the driver of the 4x4 swerved suddenly into the right hand lane of the motorway, directly in front of Officer B. The driver then accelerated heavily, attempting to pass Officer A who was to the left of the 4x4, in the middle lane. Officer A remained in the middle lane but increased his speed, attempting to stay ahead of the 4x4 in order to bring it to a stop. The officers behind the 4x4 also accelerated, matching speed with the 4x4 and maintaining a line across the motorway behind it.
26. The driver of the 4x4 then swerved back into the middle lane, hitting the rear right hand side of Officer A's car as he did so.
27. Officer A later said that he saw the 4x4 start to accelerate towards him in his rear vision mirror. He tried to accelerate away from the 4x4 but was not quick enough, and the 4x4 hit the right rear quarter of his car. He then began to steer against the force of the 4x4, which was still in contact with his car, because it felt like the 4x4 was trying to force him out of the way and he was concerned that this would cause his car to spin. By applying this pressure Officer A said he was able to keep his car heading straight until it had picked up enough speed that he was able to push in front of the 4x4, which then cut across behind him.
28. Officer A then accelerated away from the 4x4, indicated and pulled over on the hard shoulder, just past the off-ramp. He took no further part in the pursuit.

29. The 4x4 then veered sharply towards the left hand side of the motorway, exiting the motorway via the Esmonde Road off-ramp (about 900 metres from Northcote Road). Officers B, C, D, E and F followed the 4x4 onto the off-ramp.
30. As the 4x4 reached the top of the off-ramp it turned right and travelled west along Esmonde Road before re-joining the motorway via the north bound on-ramp. As the 4x4 entered the motorway the pursuit controller broadcast an order to abandon the pursuit. The pursuit had lasted 31 seconds and covered a distance of about two kilometres.
31. All of the officers turned off their cars' warning lights and siren. All of the officers except Officer D pulled over and stopped. Officer D later said he did not pull over as he had entered the motorway by this point and there was nowhere for him to stop safely. At this stage the 4x4, which had continued north along the motorway, was approximately 300-500 metres ahead of the closest Police unit.
32. There was no communication between the officers, or between the officers and NorthComms, about the position or intentions of each unit during the pursuit. The only communication was between NorthComms and Eagle, who was providing ongoing commentary of what they could see on the ground.
33. The pursuit controller authorised all Police units to enter a search phase, which allowed them to follow the 4x4 at the posted speed limit. Eagle maintained commentary and informed the units that the 4x4 had left the motorway at Northcote Road and was headed west.
34. Two of the Police units entered Northcote Road 11 seconds after the 4x4. Both were travelling at the posted speed limit with their warning lights off. A third Police car followed 13 seconds later, also travelling at the speed limit and with its warning lights off. The Authority has been unable to determine which officer was driving each of these cars.
35. Eagle then reported that the 4x4 had turned left into Onewa Domain, about 300 metres west of the Northcote Road off ramp.
36. As the third Police car drove along Northcote Road, a fourth Police car drove up behind it. The fourth car then crossed onto the wrong side of the road, activated its warning lights, and drove above the speed limit towards Onewa Domain. The Authority has been unable to determine the identity of the driver of this car.
37. Police arrived at Onewa Domain to find that the 4x4 had been abandoned down a long driveway and that the two occupants had fled on foot into nearby bush. The area was cordoned off and the occupants were later apprehended in the bush.

Legislative Authority for Pursuits

38. 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 also empowers Police to stop and speak to the driver of any vehicle.

Fleeing Driver Policy

39. Under the policy, a fleeing driver incident 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. The Police tactic to apprehend is referred to as a pursuit.
40. The policy requires the pursuing officer to carry out a risk assessment both prior to initiation and during a pursuit, and to abandon the pursuit if the risks of continuing outweigh the need for immediate apprehension of the fleeing driver. This must be based on 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, including the location, road type and potential hazards; traffic conditions, including vehicle and pedestrian as well as time of day; and capabilities of the Police driver and vehicle.
41. The policy requires the officers involved in the pursuit to notify the Police communications centre (Comms) when a pursuit commences and to provide situation reports to the Pursuit Controller (i.e. the shift commander at Comms) in a timely manner to enable the Pursuit Controller to make an independent assessment of the risks and manage the pursuit, including whether to direct the abandonment of the pursuit.
42. However, where aerial surveillance is utilised the aircraft providing surveillance must take over primary responsibility for providing commentary, in order to reduce pressure on those units involved in the pursuit.
43. Under the policy, the driver of the lead Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, ensure lights and siren are activated, drive in a manner that prioritises public and police safety, continue to undertake risk assessments throughout the pursuit, maintain constant communication with Comms and comply with all directions from the Pursuit Controller.
44. Additional Police units must not actively participate in a pursuit unless they are responding to a direction or have received permission from the pursuit controller. Additional units must not tag along behind the pursuit if they have not been assigned a role.

45. The Policy also states that in situations involving an armed offender, a non-compliant vehicle stop may be authorised. This tactic must be:

- authorised by an Armed Offenders Squad (AOS) or Special Tactics Group (STG) commander and carried out by AOS or STG members trained in its use;
- used only where there is no other practical method of stopping the offender and the driver does not comply with requests to stop; and
- undertaken only in response to a life threatening situation.

THE AUTHORITY'S FINDINGS

Commencement of the pursuit

46. Based on the information provided to NorthComms by the owner of the 4x4, Police had reasonable grounds to suspect that the occupants of the 4x4 had committed an offence punishable by imprisonment. Under the Search and Surveillance Act 2012 Police were therefore entitled to attempt to stop the 4x4 to arrest the occupants.
47. The driver of the 4x4 failed to stop when signalled to do so. Police were therefore entitled to commence a pursuit.
48. The Authority is satisfied that a thorough risk assessment had been carried out prior to initiation of the pursuit, based on the information provided to NorthComms by Eagle.

FINDING

Police were justified in law and policy to commence a pursuit of the 4x4.

Communication

49. As required by policy, NorthComms requested that Eagle take responsibility for providing commentary throughout the pursuit.
50. The information provided by Eagle allowed the Pursuit Controller to make a thorough assessment of the risks involved in the pursuit and manage it accordingly. This included the fact that that the 4x4 had hit a Police car.
51. It is unlikely that NorthComms was aware, at least initially, that Officers A, B and C were involved in the pursuit. Although Eagle was providing pursuit commentary to NorthComms, upon catching up with the 4x4 these units should still have made NorthComms aware of their location, so that NorthComms could undertake a risk assessment accordingly.

FINDINGS

The Pursuit Controller and Eagle followed policy with respect to communication throughout the pursuit.

Officers A, B and C should have informed NorthComms of their involvement in the pursuit.

Police speed and manner of driving

Primary and secondary units

52. The Police fleeing driver policy requires officers involved in a pursuit to drive in a manner that prioritises public safety.
53. Officer D, the primary driver, drove in a safe manner at or below the posted speed limit with his car's warning lights and sirens activated throughout the pursuit.
54. Officer E, the secondary driver, also drove in a safe manner at an appropriate speed with his car's warnings lights and sirens activated.

Other Police units

55. During the pursuit the 4x4 was surrounded by five Police cars and another was visible a short distance ahead. Only Officers D and E had a formal role in the pursuit.
56. The presence of so many Police vehicles in such close proximity may have alarmed the driver of the 4x4, causing him to drive in an increasingly unsafe manner. This ultimately put all road users, including civilian drivers close to the 4x4, at risk of harm.
57. Upon catching up to the 4x4, Officers A, B and C should have seen that Officers D and E were in close proximity to the 4x4 and remained a good distance behind the vehicles. They had no formal role in the pursuit and, if acting as support vehicles, should have remained behind the pursuit and controlled the flow of traffic (see paragraph 44). They should also have been aware that Eagle was overhead and able to provide commentary and aerial support.
58. The Authority is satisfied that Officer A's decision to pull ahead of the 4x4 and attempt to slow the traffic amounted to an attempt to initiate a non-complaint vehicle stop. Use of this tactic was unauthorised and breached Police policy. By attempting to remain ahead of the 4x4, Officer A ultimately created a situation that put himself, and other road users, at unjustified risk.

FINDINGS

Officers D and E complied with Police policy in respect of speed and manner of driving throughout the pursuit.

Officers A, B and C breached Police policy by involving themselves in the pursuit.

Officer A breached policy by attempting to initiate a non-compliant vehicle stop. Attempting this manoeuvre placed Police, the occupants of the 4x4, and other road users at unjustified risk.

Ongoing risk assessment and option of abandonment

59. Police policy states that a pursuit must be abandoned when any of the risk assessment criteria conditions change. These include the manner of driving of the offending vehicle.
60. In this case, the manner of driving of the 4x4 clearly deteriorated soon after the commencement of the pursuit. The actions of the driver of the 4x4 in swerving towards and hitting a Police car showed that he was willing to put himself, Police, and other road users at significant risk to evade apprehension.
61. The Pursuit Controller abandoned the pursuit as soon as it became apparent that the manner in which the 4x4 was being driven had become dangerous. He then authorised the Police vehicles to enter a search phase.
62. In addition, Eagle was available to observe the 4x4 and provided updates regarding its location and actions.
63. Upon abandonment, all Police vehicles involved in the pursuit are required to immediately reduce their speed, deactivate warning lights and sirens and pull over as soon as it is safe to do so.
64. All units complied with this procedure, except Officer D who said that he did not pull over as he was not in the position to do so safely. After assessing the route that the Police vehicles took, the Authority is of the opinion that, in fact, there were ample opportunities for Officer D to pull over safely following abandonment of the pursuit and his failure to do so breached Police policy.

FINDINGS

Police officers generally complied with policy with regards to abandonment of the pursuit.

The Pursuit Controller correctly decided to abandon the pursuit when the risks involved in continuing became unjustified.

Officer D could have stopped safely following the abandonment of the pursuit, and should have done so.

Police actions following abandonment of the pursuit

65. Upon abandonment of the pursuit NorthComms authorised all units to enter a search phase.
66. During a search phase there is no justification for units to exceed the posted speed limit, because the pursuit has been formally abandoned.
67. The first three units that entered Northcote Road following the 4x4 adhered to Police policy by travelling below the speed limit without warning lights or sirens activated.

68. The fourth unit failed to comply with policy and put other road users at risk by driving on the wrong side of the road at speed. The Authority considers that this manoeuvre was dangerous and unnecessary, and contrary to law. However, the Authority has been unable to identify the driver of the fourth vehicle.

FINDINGS

The actions of a Police officer in driving at speed on the wrong side of the road were dangerous and contrary to law.

The Authority has been unable to establish the identity of that officer.

CONCLUSIONS

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

- 69.1 Police generally complied with law and policy with respect to commencement, communication and abandonment of the pursuit.
- 69.2 The involvement of Officers A, B and C in the pursuit failed to comply with Police policy.
- 69.3 Officer A's attempt to initiate a non-compliant vehicle stop failed to comply with Police policy.
- 69.4 The actions of the unknown officer who drove on the wrong side of the road were contrary to law.

ONGOING DISCUSSIONS WITH POLICE

70. 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.

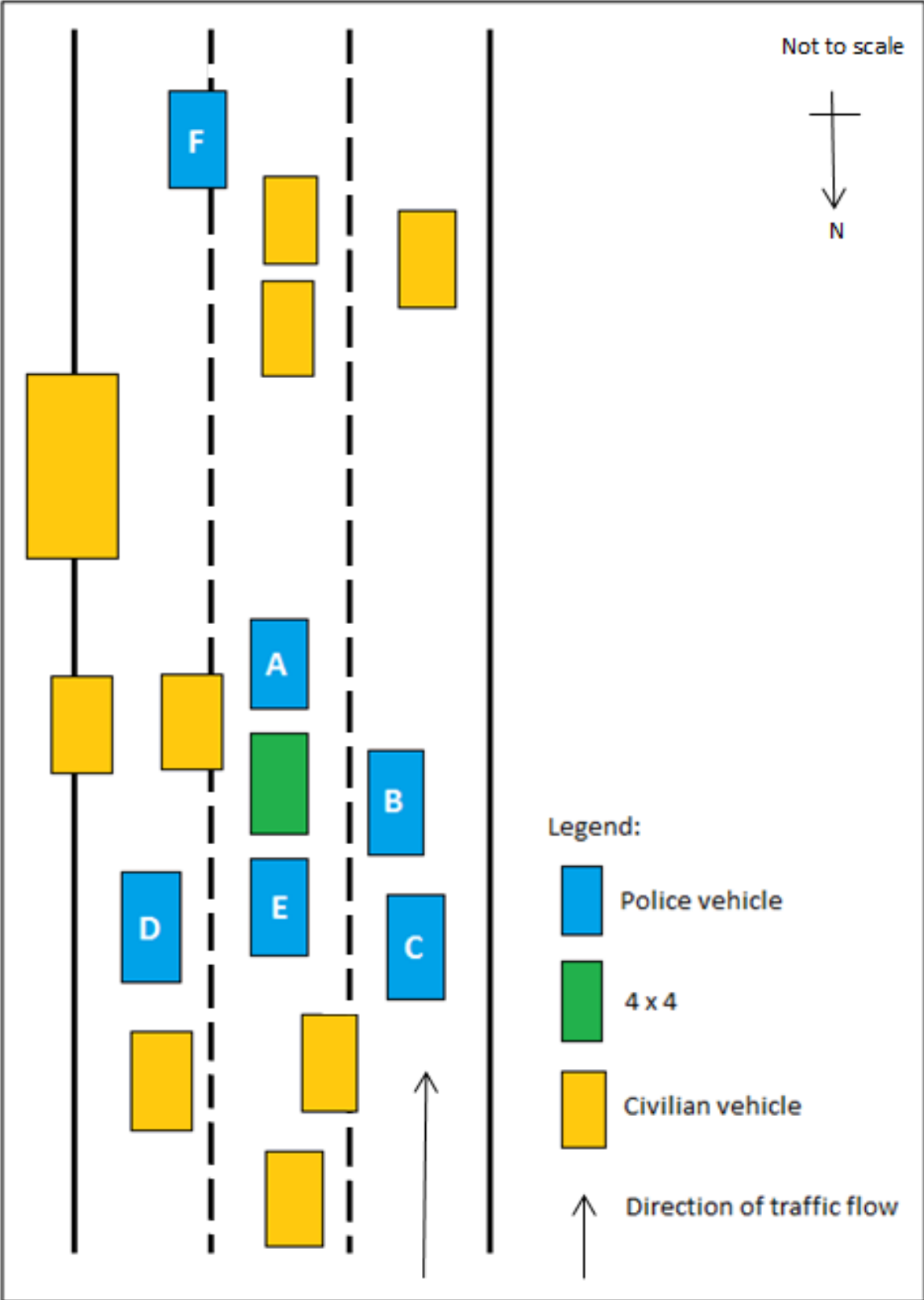


Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

20 November 2014

APPENDIX A – POSITION OF POLICE VEHICLES RELATIVE TO 4X4



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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