



17 March 2008

Det. Supt. Gavin Jones
Assistant Commissioner (Acting)
PNHQ
Wellington

Christopher WATSON: Complaint Against Police

Introduction

This file relates to a complaint by Christopher Watson, father of convicted double murderer, Scott Watson, relating to the circumstances surrounding the application for an electronic interception warrant made by (the then) Detective Inspector Rob Pope, Officer in charge of the Operation TAM murder investigation.

Christopher Watson is of the belief that action taken by Det. Insp. Pope amounted to the commission of perjury as per Section 108 of the Crimes Act 1961, or that he made a false oath as per Section 110 of the Crimes Act 1961.

Complaint

The complaint from Christopher Watson concerns the sworn Affidavit of Det. Inspector Robert John Pope and alleges false statements of fact contained within it.

The complaint was made in an undated letter to Detective Sergeant John Hamilton, O/C CIB Blenheim. The letter is a follow on from a complaint made by Mr Watson to the Police Complaints Authority on 6 November 2003 where it appears that the PCA declined to consider his complaint.

The Affidavit was first presented at the High Court in Wellington on 18 February 1998 and was subsequently presented a further four times to support the issue and renewal of the interception warrants applied for.

Mr Watson claims: "Although there are numerous irrelevant, selectively overstated and false statements in his Affidavit, many relate solely to statements by people or matters of opinion and so are open to a defense (sic) of 'belief'". He has restricted his complaint to matters of fact, which, if not known to (Det.) Inspector Pope, should have been known to him in light of his position as officer in charge of the investigation.

The complainant goes further in saying that the information untruthfully presented in his Affidavit resulted in the suspension of the privacy rights of a number of people, including himself, when interception warrants, based on the reliability of the information provided under oath to the court by (Det.) Inspector Pope were issued by various High Court Judges, one of whom, Justice Heron, later became the trial judge.

Mr Watson then outlined details relating to 8 separate areas of complaint relating to the substance of the initial Affidavit of 18 February 1998.

He also complains that one of the High Court Judges (Justice Heron) who issued the interception warrant was also the trial judge. The complaint continues that by being aware of the content of the Affidavits (Justice Heron) took the contents into account when conducting the trial as he had 'inside information' and that it was possible that his decisions may have been coloured by them (the contents). It is not for the Police to consider this matter and there are other avenues for Mr Watson to advance this area should he wish.

These complaints are list under the Tab - Complaints and will be referred to later in this memorandum.

Complainant

The complainant is:

Christopher J Watson

He is the father of Scott WATSON

DOB 28 June 1971

Currently serving Life Sentence for 2 convictions of murder relating to Smart and Hope.

Circumstances

On the 31 January 1997 Ben Smart aged 21 years and Olivia Hope aged 17 years attended a New Years Eve celebration at Furneaux Lodge, Endeavour Inlet, Marlborough Sounds. They knew each other, and met up at the Lodge in the late afternoon or evening that day. They were last seen boarding a

yacht in Endeavour Inlet in the early hours of 1 January 1998 in the company of a lone male who was the apparent owner or person in charge of the yacht.

Both Ben Smart and Olivia Hope met their deaths at the hands of the lone yachtsman in circumstances amounting to murder. Neither bodies nor any trace of their belongings have been located.

A comprehensive homicide investigation was commenced soon after 1 January when the initial missing person's enquiries were exhausted. Det. Insp. Pope was Officer in Charge of the investigation - code-named Operation TAM. The full scale homicide investigation commenced on 5 January 1998.

Circumstantial evidence and accounts from witnesses led Det. Insp. Pope to believe that Scott Watson, son of the complainant in this matter, was involved in the disappearance of Smart and Hope.

After lengthy investigation Scott Watson was arrested on 15 June 1998. He was convicted in the Wellington High Court following a trial and sentenced to Life Imprisonment on each of the murders.

Witnesses

A number of witnesses have been spoken to during this investigation. In particular those witnesses directly involved in the preparation of the application. These included Det Insp (now Deputy Commissioner) Pope (O/C Investigation), Det S/Sgt John Rae (2IC Investigation), D/Sgt (now retired) Simon Moore (O/C Suspects), Det (now Det Insp) Tom Fitzgerald (ultimate interviewer of Watson), and Det Supt (now retired) Jim Miller (O/C Region CIB).

Detective Inspector Pope was spoken to on 26 July 2006. Since 1998 Mr Pope has held the rank of Detective Superintendent and Superintendent, and now holds the rank of Deputy Commissioner.

He provided a candid account of his actions during the Operation TAM investigation and also the Operation CELT application preparation. Understandably, the period of 6 years since the preparation occurred makes an exact recollection of the events difficult. This however, did not detract from his overall recollection of the intent of the preparation and the providing of an explanation.

His explanation is supported by the accounts given by other staff and more particularly the manner in which the preparation occurred is in keeping with the normal course of police investigative procedures.

Det Insp Pope has considerable experience in the preparation of interception applications having been the O/C of the Christchurch Drug Squad for a number of years and as Crime Manager for the Canterbury CIB. He was also responsible for the coordination of the advanced drug electronic courses (at the Royal NZ Police College). He was very familiar with the requirements of

the Misuse of Drugs Act (dealing offences) and the Crimes Act (organised criminal enterprise) which were the precursors to the Crimes Act amendments which were the subject of the Operation TAM & CELT investigation applications. He refers to the staff who assisted him on the preparation and had absolute confidence and trust in each of the individuals that were involved in the electronic phase.

He refers particularly to the valuable input by the Senior Legal Advisor, Mr Ian McArthur and his knowledge and experience in application preparations. That experience and knowledge is that of an 'expert' in this field.

Electronic Interception Warrant

In January and February 1998, along with the support of staff on the Operation TAM investigation team, Det. Insp. Pope commenced the preparation of an electronic interception warrant application by way of Affidavit.

The legislation which authorised this interception was governed by Sections 312CA and 312CB of the Crimes Act 1961, as inserted by Section 11 of the Crimes Amendment (No 2) Act 1997.

There will be other reference to this legislation in the Legal Discussion.

Preparation of the Interception phase of the base investigation, Operation TAM, was known as Operation CELT.

Only a minimal number of staff was aware that this phase (Operation CELT) was being prepared and during this phase only a few staff knew that the operation was in existence. Obviously, certain people needed to be aware. These included Det Insp Pope, Det S/Sgt John Rae, D/Sgt Simon Moore, Det Tom Fitzgerald, and Det Supt Jim Miller. The majority of the Operation TAM staff was not brought into the loop about the interception phase but some provided information to some of the staff named. It was essential that some of the information was gleaned from the file and also via the Analyst, File Manager and 2IC.

These key staff had the responsibility of gathering information about Watson and providing this to the investigative staff at conferences, meetings and briefings. They also provided background and summary material to the staff involved in the preparation of the Interception Warrants.

Material gathered in preparation of the interception Affidavit and warrant was forward to Christchurch, in various forms. In the main material was phoned through to Christchurch with faxed or emailed material also being sent to Det Supt Miller for collation. Also, a number of discussions were held with Det Insp Pope about the Affidavit preparation. The Canterbury Senior Legal Adviser, Mr Ian McArthur was also engaged to ensure the legal requirements

of the legislation were addresses and the format of the Warrant and Affidavit were correct.

A pertinent point to recognise is that Mr Ian McArthur was at that time, and still is, a most respected Police Legal Adviser with regard to knowledge of the requirement for Interception Warrants and Affidavits. He is hugely respected by investigative staff. His role was to ensure that the content of the Affidavit met the legal requirements of the legislation and that sufficient information was provided to meet that legislation.

Det Insp Pope's understanding of the content of the Affidavit came from the following sources:

- personal knowledge of events
- the management of conference and analysis of the conference notes
- discussions with various staff regarding directions of investigations,
- analysis of the prior interviews with Scott Watson
- briefings by the various phase O/C's - Suspects, Intel, File Management, General and others
- discussions and analysis with Det Supt Miller as to the significance of that information.

In the role of an O/C of an investigation it not always possible to read all documents. It is not always possible to understand the relevance of each and every piece of information, whether it be fact or opinion, or what might be construed at an early stage as evidence. The whole approach to the information, intelligence and facts gleaned from the investigation has been summarised in the Affidavits and renewals.

As included in the Affidavits, Det Insp Pope has sworn that "The statements of fact contained in this application are true and correct and all statements of opinion are true **to the best of my knowledge and belief.**"

It is Det Insp Pope's explanation that he believed to the best of his knowledge that the statements and opinions were true.

The reason the Affidavit and warrant were being prepared in Christchurch was for the secrecy of this phase. Det Supt Miller used the services of his Personal Assistant to type the material and along with the faxed and email material other material sourced via the file management held on the computer.

As will be referred to later in this memorandum, new legislation had been introduced, for electronic interceptions, and was due to become law on 1 February 1998. Knowing that this legislation was available provided the opportunity for investigators on Operation TAM to consider this as a phase in their investigation.

The Affidavit and Warrant were considered by Det Insp Pope prior to the 18th February when the Affidavit was sworn in Wellington. Liaison took place

between Det Sup Miller and Det Insp Pope as to the content and format of the Affidavit with the input from Mr Ian McArthur. Det Insp Pope explains that Blenheim is in close proximity to Wellington and there was no High Court in Blenheim. The reason that the Affidavit and Warrant were taken to Wellington was also that Police staff and Court staff in Christchurch knew full well what operation he was working on, he was a familiar figure in and around the legal and investigative circles of Christchurch. His mere presence in a Christchurch Court would have provided others, particularly the media, with the knowledge that some legal matters were being attended to, with the possibility of knowledge regarding an application for an Interception Warrant.

To that end he travelled to Wellington with Mr McArthur to have the Affidavit considered.

The first Warrant was issued on 18 February 1998 and the subsequent renewals of 19 March 1998, 16 April 1998 and 1 May 1998. On 20th May the last application for an Interception Warrant occurred.

The application on the 20th May 1998 was an application for a fresh warrant. The fresh application was made as there were significant changes in the circumstances which supported the application for the interception warrant and that this was more appropriate than a renewal. The content of the prior applications was not necessarily repeated but the contents affirmed as true and correct to the best of Det Insp Pope's knowledge.

Each of the renewals and the fresh application on 20 May 1998 included "that the information contained in the application (and/or previous renewals) is still ***to the best of my knowledge true and correct***".

Complaint Analysis

I have not traversed the whole of the file to compare areas of complaint with a full analysis of the file. The purpose of the Court hearing was to hear from witnesses, see their evidence being given and open them to cross-examination by the Defence.

Complaint 1.

In this complaint Christopher Watson makes reference to a statement made by a witness Mahorrey which was included in the Affidavit. Research of the file shows that this was an incorrect transfer of name and that the name of the witness should have been recorded as Eastgate.

Complaint 2

In this complaint Christopher Watson makes reference to the extent of Scott Watson's facial hair. There is debate over the definition of clean shaven - is it unshaven; not shaven; just shaven; or recently shaven? Other witnesses refer to one of two days of stubble. Consideration must also be taken into the

extent of growth - light, dark, thin, heavy, etc. The interpretations differ from persons to person. The specifics of this allegation may not necessarily be included in the Job Sheets but could be interpreted from the video from the supermarket or from the 2 other occasions when he was spoken to by local Police staff. There is no specific recollection as to the origins of the paragraphs in the Affidavits.

Complaint 3

In this complaint Christopher Watson makes further reference to the extent of Watson's facial hair and the number of witnesses who describe the 'third person'. By association of the witness analysis it was concluded that the 'third person' was Scott Watson. To that end there are witnesses who describe the extent of his facial hair in various ways. There is no specific recollection as to the origins of the paragraphs in the Affidavits.

Complaint 4

In this complaint Christopher Watson makes further reference to Scott Watson's appearance. This complaint comes from the analysis of the photographs but it appears that the overall impression provided by witness and the subsequent appearance that Scott Watson later portrayed. Other witnesses refer to his appearance as being different to that in the photo montage. There is no specific recollection as to the origins of the paragraphs in the Affidavits.

Complaint 5

In this complaint Christopher Watson makes reference to the description given by various witnesses as to Scott Watson's behaviour and the deterioration of that behaviour after taking drugs and alcohol. There are two sets of persons mentioned in this paragraph and the consideration given is that the word 'each' is referring to all persons mention in the early part of paragraph 7.1; however, it is only the persons on the yacht 'Mina Cornelia' that attribute Scott Watson's deteriorating behaviour. The play on the word 'each' has been a mistake.

Complaint 6

In this complaint Christopher Watson makes reference to the time in which Scott Watson left Endeavour Inlet. The photograph of the Inlet was taken at 6am. Watson says that he left at ".... about half past 6, 7 o'clock....." Watson also made other interviews which have not been alluded to in this complaint, whilst not in-depth, mention is made that he departed at 7am.

Reference is made in the complaint to Document 20112 as the interview of Scott Watson. This is an incorrectly described Document. Watson's interview with the Police appear in Documents 10083, 12592, 12738, 20029

There is no difficulty in assessing the information in the paragraph in the Affidavit is a correct interpretation. Sub-paragraph 8.26.5 is one of 6 points alluded to regarding the assessment of Scott Watson's intentions to mislead. Also to be taken into account were photographs used in the Court hearing that depicted positions of boats which hadn't arrived or were obscured at the time the photographs were taken.

There appears no substance to the alleged endeavour to mislead.

Complaint 7

In this complaint Christopher Watson makes reference to the descriptions given of Scott Watson. The Affidavit paragraph refers to "...a similar description to Scott Watson....." Each of the witnesses referred to by Det Insp Pope and also to by Christopher Watson have some elements which go towards the description being 'similar'. This is a matter of word interpretation by the reader.

There appears no substance to the alleged endeavour to mislead.

Complaint 8

In this complaint Christopher Watson alludes to identification of Scott Watson's boat. Interpretation given by Christopher Watson of the words used by Det Insp Pope has been his assessment. Witness Harvey says the boat was 'similar' and witness Brown gives a description which could be interpreted as being 'similar'. To that end Det Insp Pope in his Affidavit has used his interpretation to match the 'similar' descriptions.

Complaint Assessment

With the exception of Complaint 1 (where there was an incorrect name included) there has been a selective reference in each of the areas of complaints by Christopher Watson to statements made by various witnesses. I have not traversed the whole of the file to determine what was available at the time of the Affidavit preparation, but it is obvious that Det Insp Pope has taken into account other witness statements, conference notes, discussions and intelligence summaries - which have not been referred to by Christopher Watson. Some of these witness statements, discussions and intelligence summaries have been available in disclosure form and others not available for disclosure.

My assessment is that Det Insp Pope has not represented the interpretation of the facts that would cause his actions in swearing the Affidavits and renewals to be considered as perjury, nor that has he made a false oath.

Legal Issues

Consideration of the this complaint involved understanding the legal issues involved in the application and obtaining of a interception Warrant; the appropriate legislation and the introduction of evidence obtained through the use of an interception warrant.

Case Legal Summary

No evidence was adduced by the Crown in the trial against Watson that was obtained through the interception warrant.

None of the Court Rulings at Watson's trial or Court of Appeal hearings related to the interception warrant.

No matters relating to the interception warrant were raised formally through the process of Watson's prosecution.

Legislation

The legislation used to obtain the interception devices is governed by Sections 312 CA and 312CB of the Crimes Act 1961. Renewals are governed by Section 312F of the Crime Act 1961. Copies of this legislation can be found in the folder relating to Legal Matters.

The Crimes Act 1961 was amended when Sections 312CA and 312CB were inserted, as from 1 February 1998, by s 11 Crimes Amendment Act (No 2) 1997 (1997 No 93).

This was the first interception warrant application dealt with by the Courts after the new legislation came into being on 1 February 1998.

Southern Legal Services

I sought an opinion from the Southern Legal Service Office as to the consequences of including inaccurate information in applications for Interception warrants.

To be considered:

- the significance of the alleged inaccurate assertions to the statutory prerequisites necessary to obtain a warrant
- the degree of 'good faith' (or alternatively deception) surrounding the assertion of fact, and
- the potential for the Court to issue a Warrant after the disputed assertion has been excised from the Application.

It is apparent that the response of the Court to inaccurate information will very much depend on two factors: the extent of the inaccuracy and the reason for the inaccuracy. The determination of admissibility is the consideration given by the Court. Discussion by the Senior Legal Advisor referred to obtaining a warrant for an organised criminal enterprise and the important safeguard against "... invalid or abusive intrusion on personal privacy." Mention was also made of the statutory requirement that (only) a Commissioned Officer of Police can apply for an Interception Warrant.

R v Lupton (1995) 13 CRNZ 413 - also cited as R v L was discussed as it applied to 'continuing course of criminal conduct' and whilst the WATSON interception application did not relate to a 'continuing course of criminal conduct' but to a 'serious violent offence' (murder) and therefore a lack of factual basis for an assertion in the application could later be deemed void if the serious violent offence had not been committed. In this case the assertion was that Hope and Smart had been murdered.

Where a factual assertion is made in an Application and that assertion is later found to be incorrect, unless the incorrect assertion is deliberately made or related to a statutory prerequisite, or is so extensive as to significantly undermine the whole application, the warrant need not be declared automatically invalid.

Genuine errors of fact do not negate a statutory prerequisite and errors of fact that are of no significance to the central issues of fact that are needed to obtain a warrant, will not undermine the evidence obtained. This is particularly so when those errors of fact are not deliberate or negligently made.

Lupton referred to the 'balance of probability' and related to evidence being obtained and the judgment focused on evidence presented and adduced in Court. R V Crowe 3 July 1996 Eichelbaum CJ, Thomas, Heron JJ, CA 10/96 was a case where the Court which precipitated the argument as to whether the evidence presented in the Application was tainted or inaccurate information, but was able to conclude that if the Application contained other untainted and accurate assertions then it ruled the Warrant is valid.

In the Watson case no evidence obtained from the Interception Warrants was adduced in Court, and despite there being perceived inaccurate assertions in the Application it is not necessarily invalid, or at best a criminal (deliberate or negligent) assertion.

Taken into consideration is that Mr Ian McArthur was involved in the preparation of the Affidavits and Warrants.

Crown Law

I requested assistance from Crown Law in relation to the complaint by Christopher Watson. The request was for information about issues raised and

dealt with by the Court either at pre-trial, during the trial, or at the Court of Appeal which had a relationship to the complaints made.

I also requested copies of decisions, Judge's notes or summing up which may have shed light on the theme of the complaints.

Crown Law was able to provide me with copies of the Trial Judge's rulings and the Court of Appeal Judgment which confirmed discussion regarding the complaint that no matters relating to the interception warrant or the renewals were formally raised through the process of Scott Watson's prosecution.

Copies of these rulings and the Court of Appeal judgment are enclosed in the Legal folder.

Crown Law also considered the consequences for the officer who was responsible for obtaining the search warrant and that a qualitative assessment of the evidence made by the applicant (Det. Insp. Pope). He refers to criminal aspect of an allegation would be likely to arise only where relevant information was *deliberately* withheld, or information *known* to be untrue was used to support an application.

Crown Law goes on to consider the (possibility of) adverse ruling by the Court as to the admissibility of evidence (obtained through the interception).

There is reference to the consequences of deliberately misleading or deliberately withholding information but alludes only to those cases where evidence was obtained and put before the Court.

In this case no evidence was adduced in Court. However, there is no evidence available to suggest that Det Insp Pope, or any other Police member involved in the preparation of the application deliberately mislead the Court, or deliberately withheld information which was known to be relevant. To the contrary, Police staff involved have explained the method and process used to gather the material information and the task involved to analyse all information gleaned throughout the investigation at various dates.

Other Legal Authority

In R v Williams & Ors CA CA372/05, CA373/05, CA374/05 [29 November 2006] Hammond J Hammond says at Para 215

"The person applying for the warrant does not need to have personal knowledge of the facts set out in the application. However, where he or she does not have personal knowledge, the basis for believing in the truth of the facts must be set out. Where an applicant relies on information of which he or she does not have personal knowledge, the source of that information must be clearly stated so that the issuing officer may assess its reliability and cogency - see Baptista and Sanders."

Perjury Considered

Perjury is defined as:

"....an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial hearing as part of his evidence on oath, whether the evidence is given in open Court or by affidavit or otherwise, that assertion being known to the witness to be false and being intended by him to mislead the tribunal holding the hearing".

Det Insp Pope's affidavit did not form part of him being a witness in the Court hearings against Scott Watson.

False Oaths Considered

False Oaths is defined as:

".... being required or authorised by law to make any statement on oath or affirmation, thereupon makes a statement that would amount to perjury if made in a judicial proceedings".

The salient point is that Det Insp Pope **did not knowingly** make an assertion that the facts, opinion, beliefs or knowledge to be false or intended by him to mislead.

He swore on oath that "The statements of fact contained in this application are true and correct and all statements of opinion are true **to the best of my knowledge and belief.**"

With regard to the renewals and the fresh application (of 20 May 1998) he included "that the information contained in the application (and/or previous renewals) is still **to the best of my knowledge true and correct**".

Legal Summary

Legislation only permits a Commissioned Officer of Police to make application for an Interception. (Section 312CA (2) Crimes Act 1961)

That there are reasonable grounds for believing. (Section 312CA (2)(a) and (e) Crimes Act 1961)

Content of the applications was not tested in Court as no evidence obtained through the use of the interception devices was used in any Court hearing and reference to the interception warrants was not alluded to during the hearings.

Complainant Liaison

Very little liaison has taken place with Mr Christopher Watson. I am aware of numerous complaints that he has made to various judicial agencies over the past 8-10 years. Many of these have been dealt with, with others yet to be concluded.

The latest letter (8 February 2008) to the Commissioner of Police from Mr Watson makes the claim that I have been placed in an invidious position of investigating an officer (Det Insp Pope) who is, in effect, my employer, with all of the connotations this might have on my employment. Whilst not responding to Mr Watson on this particularly claim, I have felt no pressure or influence in conducting this investigation. Det Insp (Deputy Commissioner) Pope has had no direct involvement in the course of this investigation or the conclusions reached. He has been accommodating with regard to this matter and totally independent to this investigation.

Investigation Timings

I received this complaint in mid 2004. I apologise for the length of time taken to address the matters in this complaint. Various factors have contributed to the length of time taken including a transfer from one posting to another, involvement in a number and range of criminal investigations, and other responsibilities as Southern District Crime Services Manager.

The conclusions reached in this investigation, however, have been supported by recent legislative conclusions since 2004.

Conclusion

1. That Det Insp Pope (and others) spent a considerable amount of time preparing for the applications for electronic interception. Material obtained through the investigation and assessments and analysis of witness statements, non verbal observations, discussions, meetings and conferences was considered during the application preparation.
2. That the staff involved in the preparation of the application (Pope, Miller, Rae & McArthur) were experienced police staff and were ensuring that the Courts were provided with all the facts and opinions available.
3. That it is not unreasonable that the Commissioned Officer of Police (Det Insp Pope) who was charged with the responsibility of applying for the Interception Warrant does not have personal knowledge of (all) the facts set out in the application.

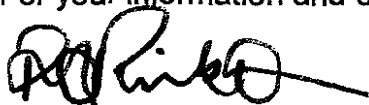
4. That Det Insp Pope has made no deliberate intention to mislead the Court or to deliberately withhold facts which are relevant to the application.
5. That the interpretation afforded by the complainant in this matter, Christopher Watson, to the conclusions he reaches could be interpreted by others reading the material in a different way, therefore reaching a different conclusion.
6. That Christopher Watson has been selective in highlighting various portions of the application and witness accounts, whereas the totality of the application needs to be considered.
7. That the claim by Christopher Watson that the offences of perjury and making a false statement having been committed are not substantiated.

Recommendations

It is recommended:

1. That this file be reviewed by a Police Legal Adviser, (other than Mr Ian McArthur).
2. That my conclusions be reviewed.
3. That liaison takes place with the IPCA (Mr Bob Grinstead) who is dealing with other complaint matters related to, or made by, Mr Christopher Watson.
4. That once completion of those reviews that I consult with the complainant Mr Christopher Watson to explain the out come of the investigation.
5. That Deputy Commissioner Pope is advised of the conclusions and outcome of this investigation.

For your information and direction.



Ross H Pinkham
Detective Inspector
District Crime Services Manager