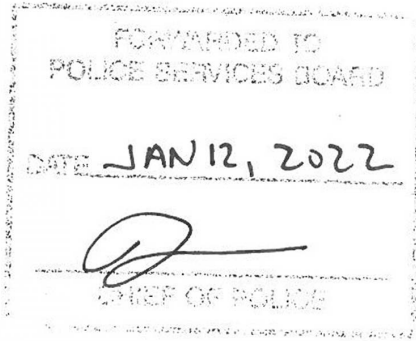


IC08-01-22



REPORT
Police Services Board

For Information

File Class: _____

Cross-Reference File Class: _____

PSB REC: JAN. 12, 2022
MAIL LOG: 03-22
FILE CLASS: M13

DATE: January 4, 2022

SUBJECT: **CLOSED SPECIAL INVESTIGATIONS UNIT FILES 20-OVI-096, 21-OFP-039, 21-OFP-096, 20-OCD-268, 21-OCI-184, 21-OCI-190 AND 21-OCD-204.**

FROM: Nishan Duraipappah, Chief of Police

RECOMMENDATION

It is recommended that this document be received as information concerning Special Investigations Unit (S.I.U.) files 20-OVI-096, 21-OFP-039, 21-OFP-096, 20-OCD-268, 21-OCI-184, 21-OCI-190 and 21-OCD-204.

REPORT HIGHLIGHTS

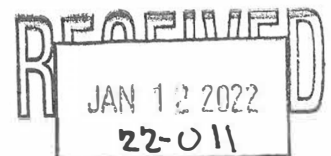
- Details describing the involvement of the S.O.'s and the S.I.U. complainants.
- Findings of the Special Investigations Unit.
- Conclusions concerning the services provided by the police service and the officer's compliance with policies and procedures.
- Subject Officer is abbreviated S.O. and Witness Officer is abbreviated W.O.

DISCUSSION

20-OVI-096 (Mr. S.F)

Executive Summary:

Ms. M. A. resides in the City of Brampton and is the owner of a 2008 Honda CRV, 4-door black, bearing Ontario licence #ATHW 223. On Saturday, April 25, 2020, at approximately 7:20 a.m., her partner started the engine, and left it running while he moved property back and forth into the house. It was left unattended briefly and upon return minutes later, it had been stolen. It was immediately reported to PRP.



OFFICE OF THE CHIEF

On Tuesday, April 28, 2020, at approximately 3:36 p.m., Sergeant A. M., the Subject Official (S.O.), was on routine patrol in the area of Middleton Way, Brampton. He observed two males walking away from a parked vehicle, acting suspiciously. He noticed one of them displaying the characteristics of an armed person. He proceeded past the vehicle, made a note of the marker and checked it on CPIC. It was the above noted Honda CRV and it was still outstanding as stolen.

The following notifications were immediately made:

- (i) Communications,
- (ii) other members of his Tactical team including a member of Canine,
- (iii) 21 Division CIB to assist with surveillance.

His plan was to have CIB position a Piranha under one of the Honda's tires, while the two exits were both monitored with Stop Sticks. At approximately 4:05 p.m., and before the plan could be fully implemented, the Honda was seen exiting the townhouse complex.

It travelled the following route:

- Northbound on Mackay Street North,
- A right turn on eastbound Massey Street, which bends into a southern direction,
- A left turn onto eastbound Marlborough Street,
- A right turn onto southbound Bramalea Road,
- A left turn on eastbound North Park Drive.

At this stage, the S.O. attempted to pull alongside of the Honda CRV and make observations of the occupants. The Honda CRV accelerated rapidly and the S.O. presumed that he'd been identified as a Police Officer. He immediately dropped back and activated his full emergency lighting and siren. He notified the dispatcher and provided all pertinent details.

They were approaching Torbram Road. This is a 4-way intersection governed by a full traffic light signal system and was showing red for eastbound traffic and green for north and southbound traffic. At this time, the complainant was travelling northbound approaching the same intersection, in his 2013 Kia Forte, 2 door black.

The Honda CRV entered the intersection against the red and collided with several vehicles, including the complainants.

Immediately after the collision, the two males in the stolen Honda CRV fled on foot, however, were both apprehended by Canine and Tactical officers. A check of the occupants of each of the other vehicles at the intersection, included injuries of various degree, however, the complainant, one of the more seriously injured, was transported to Brampton Civic Hospital via ambulance. He was diagnosed with a fractured knee.

The Special Investigations Unit was notified and Ms. Pasha McKellop was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the Special Investigations Unit and conduct an administrative review.

The driver of the stolen CRV, Mr. J. M. was charged with the following offences:

- (i) Possession of Property Obtained by Crime, Section 354(1)(a),
- (ii) Flight From Police, Section 320.17, and
- (iii) Dangerous Operation Causing Bodily Harm, Section 320.13.

On June 10, 2020, he plead guilty to counts (i) and (iii) and was credited for 66 days of pre-trial custody as well as the Court issuing a 4-month Community Supervision Order. A 3-year Canada-wide driving prohibition was also issued. Count (ii) was withdrawn.

The passenger, Mr. K. SB. was charged with one count of Possession of Property Obtained by Crime and released on an undertaking. As a result of the driver accepting responsibility and pleading guilty, this charge was withdrawn by the Crown on February 23, 2021.

Findings of the Special Investigations Unit:

On May 19, 2021 Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino states,

"The file has been closed and no further action is contemplated. In my view, there were no grounds in the evidence to proceed with criminal charges against the subject officer."

Furthermore, in his report to the Attorney General, the Director states;

"On my assessment of the evidence, there are no reasonable grounds to believe that the SO committed a criminal offence in connection with the pursuit and the Complainant's injury. The issue is whether the SO's conduct demonstrated a want of care that contributed to the collision in question and / or was sufficiently egregious as to attract criminal sanction. In my view, those questions must be answered in the negative.

The SO was in the lawful discharge of his duties when he began to follow the Honda and initiated a pursuit of the vehicle. By that time, he had confirmed that the vehicle was stolen. I am also satisfied that the SO, once engaged with the Honda, comported himself with due regard for public safety.

The area on North Park Drive had a school zone but was predominantly residential and governed by a 50 km/h speed limit. At speeds well in excess of 100 km/h, at times over 120 km/h, however, was tempered by the fuller context. The officer was not simply pursuing the occupants of the Honda because they were in possession of a stolen vehicle. Rather, he suspected that one of them was armed with a gun. I am unable to dismiss the officer's suspicions as simple pretext or wholly baseless. Moreover, the officer had activated his emergency equipment and was traveling over dry roads in good repair at a time when it appears that traffic in the vicinity was light. On this record, I am unable to reasonably conclude that the SO's speed, weighed in the balance against the extenuating considerations, transgressed the limits of care prescribed by the criminal law.

In the result, as there are no reasonable grounds to believe that the SO conducted himself other than within the confines of the criminal law as he pursued the Honda, there is no basis for proceeding with criminal charges."

Conclusion:

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that the tactics used by the officers was legally justified, there were no grounds for proceeding with charges against the Subject Official notwithstanding the injury sustained by the complainant.

Furthermore, an in-depth analysis of all applicable Federal Legislation, Provincial Legislation, Peel Regional Police policies and procedures was conducted by members of the Investigative Support Bureau pursuant to Section 11(1) and (2) of Ontario Regulation 267/10 of the Police Services Act. There were no identified issues as a result of this review.

21-OFP-039 (Ms. J.N.)**Executive Summary**

On Wednesday February 3, 2021, at approximately 10:46 p.m., the Complainant was visiting friends at 3270 Klaiman Drive, Mississauga. At that time, she was in the midst of a mental breakdown when she took possession of a large kitchen knife and was threatening to commit suicide. The friends called 9-1-1 and in addition to 12 Division uniformed officers, TAC was dispatched.

Within minutes, several officers converged on the home.

Uniformed officers evacuated the home while Tactical officers dealt with the female, who by now, had begun cutting herself and had barricaded herself in the upstairs bathroom.

Efforts to call her out or negotiate with her were unsuccessful. Tactical officers attempted to breach the door; however, she had used her bodyweight to keep the door closed. Tactical officers knocked out the doorknob and deployed Oleoresin Capsicum spray which allowed them to force entry into the bathroom. The Complainant was still holding the knife and a CEW was deployed (twice), however, she still refused to put the knife down. Finally, after exhausting all other less lethal options, the S.O. deployed the ARWEN, striking her twice, causing her to drop the knife. She was immediately handcuffed. There were no injuries to the Complainant other than bruising.

She was then turned over to paramedics who subsequently transported her to Mississauga General Hospital for medical treatment. She was examined and assessed by Dr. Axler. Sutures were used to close the self-inflicted cuts, a Mental Health Act, Form 1 was issued, and she was admitted for psychiatric observation.

The Special Investigations Unit was notified and Ms. Lusill Chan was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the Special Investigations Unit and conduct an administrative review.

Findings of the Special Investigations Unit:

On June 4, 2021 Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino states,

"The file has been closed and no further action is contemplated. In my view, there were no reasonable grounds in the evidence to proceed with criminal charges against the official."

Furthermore, in the Director's report to the Attorney General he states;

"By all accounts, the Complainant was unwell and in mental distress at the time of these events. Believing she was in danger from unknown persons, she had sought refuge at a friend's home. The Complainant's paranoia escalated, however, to the point that she armed herself with a knife and threatened to take her own life. Concerned for the Complainant's well-being, the CW called police and conveyed what was happening. In the circumstances, I am satisfied that the Complainant was subject to lawful apprehension under section 17 of the Mental Health Act.

Thereafter, I am unable to reasonably conclude that the force used by the officers and, in particular, the SO's ARWEN discharges, was excessive. The Complainant was harming herself with a knife and prompt action was required if serious injury or death was to be averted. One or more of the officers could have rushed into the bathroom to overwhelm and disarm the Complainant with physical force, but that would have placed the officers within arm's reach of someone armed with a weapon capable of inflicting lethal injury.

Instead, they decided, reasonably in my view, to attempt to incapacitate the Complainant from a distance with the use of less-lethal force. Here too, the force deployed by the officers was not indiscriminate. Rather, the ARWEN discharges came only after OC gas and CEW discharges had proven ineffective in neutralizing the threat.

In the result, as I am satisfied that the SO used no more force than was reasonably necessary to safely take the Complainant into lawful custody, there is no basis for proceeding with charges in this case and the file is closed."

Conclusion

As a result of the Special Investigations Unit investigation, the Interim Director, Mr. Joseph Martino determined that the force used by the officers was legally justified, there were no grounds for proceeding with charges against the Subject Officers.

The officers were involved with the armed complainant who was in crisis. The involved officers were presented with a critical incident that had to be dealt with expeditiously in order to prevent loss of life.

Furthermore, an in-depth analysis of all applicable Federal Legislation, Provincial Legislation, Peel Regional Police policies and procedures was conducted by members of the Investigative

Support Bureau pursuant to Section 11(1) and (2) of Ontario Regulation 267/10 of the Police Services Act. There were no identified issues as a result of this review.

21-OFP-096 (Mr. K.G.)

Executive Summary

The complainant, Mr. K. G. and Civilian Witness #2, Ms. S. O. had been involved in an intimate relationship for approximately three months. They did not reside together, but on March 28th, 2021, he was visiting her at her residence, located at 91 Adventura Road, Brampton.

At approximately 2:57 a.m., one of the neighbours on Adventura called 911 as they overheard a females screams emanating from #91.

22 Division officers attended, heard the screaming and breached the front door to gain entry. They followed the noise toward an access door leading to the garage. There, they found the above two parties inside her 2015 Honda Civic, four door black, bearing Ontario Licence #BZHE 247, with Mr. K. G. occupying the driver's seat, and Ms. S. O. in the back seat. Mr. K. G. could clearly be seen waving a weapon at the officers, believed to be a firearm.

Both subject officers pointed their firearms at Mr. K. G. shouting police commands. He refused to comply and both officers fired several shots at the driver. While this occurred, Mr. K.G. reversed the vehicle out of the garage, over the driveway and onto the roadway. In the initial moments of him putting the vehicle back in *drive* and fleeing, one of the officers fired several more shots at the vehicle. It was unknown at that time where on the vehicle the rounds hit, nor if either of the occupants had been hit.

Because "a firearm had been discharged at a person", the Special Investigations Unit was notified, they invoked their mandate and Mr. Rob Watters was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the Special Investigations Unit and conduct an administrative review.

The Honda Civic was later found abandoned approximately five kilometers away on Whitepoppy Drive. It was seized and later examined.

On March 29th, under the authority of a Criminal Code Search Warrant, the residence at 91 Adventura Road was searched. A number of case related items were found and seized. This parallel investigation conducted by 22CIB resulted in the following charges being laid upon Mr. K. G.:

- (1) Kidnapping with the Intent to Cause a Person to be Confined or Imprisoned, Section 279(1)(a) Criminal Code of Canada,
- (2) Forcible Confinement, Section 279(2)
- (3) Aggravated Assault, Section 268(1)
- (4) Assault, Section 266
- (5) Possession of a Loaded Prohibited or Restricted Firearm, Section 95(1)
- (6) Possession of a Prohibited Device or Ammunition knowing its Possession is Unauthorized, Section 92(2)
- (7) Possession of a Prohibited Device or Ammunition knowing its Possession is Unauthorized, Section 92(2)

- (8) Knowledge of Unauthorized Possession of Firearm, Section 92(1)
- (9) Dangerous Operation of a Motor Vehicle, Section 320.13(1)

These charges are still before the courts.

Note: Unbeknownst to the officers at the time; Mr. K.G. was also wanted by Toronto Police Service for 1st Degree Murder.

Later that day, the victim was able to escape and shortly before 8:00 p.m., she attended 22 Division. There she spoke with investigators and provided a full KGB statement. Of interest for this review is the fact that none of the shots fired at the vehicle earlier, struck her or Mr. K. G.

Findings of the Special Investigations Unit:

On July 26, 2021 Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino stated,

"The file has been closed and no further action is contemplated. In my view, there were no reasonable grounds in the evidence to proceed with criminal charges against the two officials."

Furthermore, in his report to the Attorney General, the Director stated;

"Section 34 of the Criminal Code sets out the limits of the justified use of force in defence of oneself or another. Defensive force of this nature is legally authorized if it is intended to protect against a reasonably apprehended attack, actual or threatened, and is itself reasonable. Whether the force is reasonable is to be assessed against all the relevant circumstances, including such considerations as: the nature of the force or threat; the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force; whether any party to the incident used or threatened to use a weapon; and, the nature and proportionality of the person's response to the use or threat of force. In the instant case, the issue is whether there are reasonable grounds to believe on the evidence that either of the subject officials transgressed the limits of section 34 in discharging their firearms. In my view, there are not.

I am unable to reasonably conclude that the officers' gunfire was unlawful. At the time, the officers were operating in a confined space and highly volatile atmosphere with the Civic running in the garage and CW #2 in distress in the backseat of the vehicle. They repeatedly directed the Complainant to stop and exit the car, but he failed to do so. Rather, the Complainant was intent on escape. He opened the garage door and started to reverse the Civic while simultaneously coming up with his right hand, holding a black object and pointing it at SO #1. At that moment, an already dire situation had escalated to life and death proportions. SO #1 indicated that she believed that a handgun was about to be fired at her. SO #2 did not provide a statement to the SIU, but the circumstances described by SO #1 and the officer's conduct - immediately discharging his weapon at the vehicle - persuade me that he too believed he was being confronted with a firearm in the hands of the Complainant. Whether the object was in fact a firearm remains uncertain, though I am inclined to believe that it was in fact such on the evidence

gathered by the SIU. Be that as it may, the officers' belief was a reasonable one in the heat of the moment, as was their responsive force.

At the time, the officer had good cause to fear that CW #2's life would be in danger at the hands of the Complainant if he was allowed to escape.

In arriving at these findings, I am mindful of the inherent risks associated with firing at a moving vehicle. However, those risks, including the potential for stray bullets to harm third persons, were not prohibitive in this case given the countervailing risks to the health and wellbeing of CW #2 associated with the Complainant if unchecked.

For the foregoing reasons, and on the aforementioned-record, I am not satisfied on reasonable grounds that either of SO #1 and SO #2 comported themselves unlawfully when they fired their weapons in the course of this incident."

Conclusion

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that the force used by the officers was legally justified, there were no grounds for proceeding with charges against the officer notwithstanding the injury caused to the complainant.

All information provided including the officers' notes, interviews, reports and video surveillance were examined and weighed against existing policies, best practices and current legislation as it relates to the application of use-of-force.

Although the officers can clearly articulate that they feared for their own safety and fired upon Mr. K. G., it was determined that they put Ms. S.O. in harm's way, firing rounds into the vehicle. The second series of shots by Constable D. C. as the vehicle fled, were also risky, and prohibited by procedure.

For these reasons, these officers were not in compliance with Peel Regional Police Policy "Incident Response" 1-B-102 (F) sections M. 1. and M.5.(a):

M. Firearms

1. Members authorized to use firearms must recognize that this is an exceptional responsibility that shall be exercised with the highest concern for human life.
5. Discharging a firearm at a motor vehicle is an ineffective method of disabling a motor vehicle and presents a threat to both public and officer safety. Officers:
 - (a) are **prohibited** from discharging a firearm at a motor vehicle for the sole purpose of disabling or attempting to stop the vehicle;

Based on these findings the Administrative Review was forwarded to the Incident Response Committee for discussion and action.

20-OCD-268 (Ms. C.F.)

Executive Summary

Ms. C.F. was a 29 year old female that resided alone at #521-1 Edgewater Drive, Toronto. She was employed as a customer service representative with Vena Solutions, but due to Covid-19 restrictions, she had been working from home for a period of time.

On Saturday April 18, 2020, she attended her parents address, 19 Beachville Circle, Brampton, for a visit. Through conversation with her parents, they became aware that she was negatively impacted from the social isolation and was suffering from depression. Being concerned about her safety, her mother contacted PRP for assistance.

At approximately 4:40 p.m., two uniformed 22 Division officers, their Sergeant as well as Ambulance were dispatched to attend the above address. Together, they interacted with the family and Ms. C.F. It was clear that there were no grounds for a Mental Health Act apprehension. The officers facilitated a Face-Time contact with a crisis support worker (CSW). During that conversation, it seemed apparent that there was no imminent danger to Ms. C.F. and a 24-hour plan was put in place for continued communication with the CSW. As a result of this intervention and strategy, the officers departed.

At approximately 6:30 p.m., Ms. C.F. attended a nearby Walmart and purchased a bottle of Windex and a large kitchen knife. She then proceeded to a secluded rear garden area, drank a quantity of the Windex and with the knife, caused a self-inflicted injury sufficient for exsanguination.

At approximately 7:45 p.m., a passerby discovered Ms. C.F.; body and called 9-11 (refer to PR20-0132371 for details). A canvass of the area revealed that the Walmart surveillance system had captured the purchase of the products and the suicide in its entirety.

Some six months elapsed and a representative of the family approached the SIU advising them of the aforementioned details. As a result, they invoked their mandate and Mr. James Troy was assigned as the lead investigator. The Investigative Support Bureau was assigned to liaise with the S.I.U. and conduct an Administrative Review.

Findings of the Special Investigations Unit:

On August 16, 2021 Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino states,

“The file has been closed and no further action is contemplated. In my view, there were no grounds in the evidence to proceed with criminal charges.”

Furthermore, in his report to the Attorney General, the Director stated;

"With the benefit of hindsight, it is clear that the Complainant might well have benefitted from a visit to the hospital and further examination. It is, in fact, one of the chief complaints that she was not taken to hospital despite the family's repeated requests. However, police officers are not simply free to apprehend persons for involuntary admission to hospital in these cases short of lawful grounds for doing so under section 17 of the Mental Health Act. That provision provides that a police officer may only do so where, inter alia, there is reason to believe that the person is suffering from mental disorder that is likely to result in serious bodily harm to themselves or others. A mental health professional working with the police service's COAST had assessed the Complainant and concluded there were no grounds to proceed with a Mental Health Act apprehension..."

In the final analysis, while the Complainant's death was doubtless a terrible tragedy, there is insufficient evidence to reasonably conclude that her self-inflicted chest wound and resulting death were attributable in any way to criminal conduct on the part of the police officers who had dealt with her on that day. Accordingly, there is no basis for proceeding with criminal charges."

Conclusion

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that there were no grounds in the evidence to proceed with criminal charges against the involved officers.

In his decision letter the Director commented that;

"I note for the record that this incident was not reported to the SIU by the police service in possible contravention of section 3 of O. Reg. 267/10. I acknowledge that cases of this type, involving self-inflicted injuries and their potential connection to police conduct, can at times be difficult to gauge vis-à-vis a police service's reporting obligations. However, it would appear that the information available at the time established a sufficient nexus between the two that the SIU should have been contacted. As it was, the SIU only heard of the incident when it was notified by counsel for the Furtal family in October 2020, six months after the incident. Needless to say, late and non-notifications undermine the SIU's independence, detract from the credibility of its investigations and compromise the public's confidence in police oversight and, ultimately, policing. I ask that your service review this matter and take such steps as may be appropriate to mitigate the risk of non-notifications moving forward."

Careful consideration was taken to review this position taken by the Director. The decision to not apprehend Ms. C.F. was made by a Mental Health practitioner. The practitioner's decision takes any authority to apprehend under the Mental Health Act from the officers. Furthermore, since the practitioner is not a police officer; the SIU have no jurisdiction to

investigate them. It should be noted that over the course of the SIU's 10 month long investigation, they did not designate any of the involved officers as a Subject Official.¹

Furthermore, in his report to the Attorney General, the Director commented,

"Some ten to 15 minutes later, the Complainant left the house telling her parents she was going for a walk. WO #3, who was still in his cruiser on the roadway writing his notes, noticed the Complainant and asked what she was up to. They went over the plan for the night again, after which the Complainant continued on her way..."

"Though it might be that WO #3 should have adopted a more proactive posture, perhaps by returning to the home to re-assess the situation with CW #1 and CW #2, I am not satisfied that any shortcomings along these lines, considered in context, amounted to a marked deviation from a reasonable level of care, much less a marked and substantial departure."

It should be noted that the complainant was a 27 year old adult who resides alone and was not in a position of dependency on her parents. As a result, neither the officers nor her parents had any ability to control the complainant's comings and goings. The complainant told WO #3 that she was going for a walk to clear her head and that her parents were okay with it. The officers had no reason to disbelieve her.

Lastly, an in-depth analysis of all applicable Federal Legislation, Provincial Legislation, Peel Regional Police policies and procedures was conducted by members of the Investigative Support Bureau pursuant to Section 11(1) and (2) of Ontario Regulation 267/10 of the Police Services Act. There were no identified issues as a result of this review.

21-OCI-184 (Mr. R.T.)

Executive Summary

On June 12, 2021, at 8:10 p.m., officers responded to 68 Cranberry Crescent in Brampton, responding for a Neighbour Dispute.

At this time, the Complainant was in the backyard of his neighbours residence causing a disturbance, complaining about their volleyball game and the fact the ball on occasion ends up in his backyard (66 Cranberry). At one point, the Complainant grabbed a recycle bin and attempted to throw it at his neighbour.

Upon arrival, the Complainant followed police to the front of the residence where officers attempted to diffuse the situation and convince him to remain in his home. The Complainant was displaying obvious signs of intoxication.

¹ "subject official" means, in respect of an incident referred to in subsection 15 (1), an official whose conduct appears, in the opinion of the SIU Director, to have been a cause of the incident; (Special Investigations Unit Act, 2019, S.O. 2018, C.1, Sched.5).)

The Complainant refused to take the advice following the officers onto the sidewalk where he challenged the officers to arrest him, stating that when they left there would be big problems with the neighbour.

The Complainant was arrested for being intoxicated in a public place and to prevent a breach of the peace. The complainant resisted being handcuffed and was taken to the ground where was handcuffed without further incident. Once placed in the rear of the police vehicle, the Complainant repeatedly banged his head against the partition. Fearing a head injury, the officers asked paramedics to attend.

The Complainant was transported to BCH where he was eventually diagnosed by Dr. Jayangir with two broken ribs on his left side.

The Special Investigations Unit was notified and Mr. Barry Millar was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the Special Investigations Unit and conduct an administrative review.

Findings of the Special Investigations Unit:

On September 27, 2021 Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino states,

"The file has been closed and no further action is contemplated. In my view, there were no grounds in the evidence to proceed with criminal charges against the official."

Furthermore, in his report to the Attorney General, the Director stated,

"I am unable to reasonably conclude that the force used by the SO – a takedown – was excessive. The Complainant struggled with the officer as the SO attempted to place him in his cruiser for transport to the station. In the circumstances, the officer was entitled to resort to a measure of force to overcome the Complainant's resistance. In my view, the takedown, which does not appear to have been conducted with undue force, was a tactic reasonably available to the officer, who could either continue to struggle with the Complainant on his feet, or seek to gain a positional advantage by placing the Complainant on the ground. Once on the ground, aside from holding the Complainant until his struggle abated, there is no indication of additional force having been brought to bear by the officer."

On the aforementioned-record, while it is possible that the Complainant suffered broken ribs when he was grounded by the SO, I am satisfied that the officer comported himself lawfully throughout the interaction. Accordingly, there is no basis for proceeding with criminal charges in this case, and the file is closed."

Conclusion

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that the force used by the officers was legally justified, there were no grounds for proceeding with charges against the officer notwithstanding the injury caused to the complainant.

Furthermore, an in-depth analysis of all applicable Federal Legislation, Provincial Legislation, Peel Regional Police policies and procedures was conducted by members of the Investigative Support Bureau pursuant to Section 11(1) and (2) of Ontario Regulation 267/10 of the Police Services Act. There were no identified issues as a result of this review.

21-OCI-190 (Ms. V.M.)

Executive Summary

On Wednesday June 9, 2021, at approximately 12:23 p.m., officers were on routine patrol in the parking lot of 110 Courtney Drive East, Mississauga.

At this time, they found an unoccupied Ford Van, Alberta licence #CBX 7767, with an unattended dog inside. The front window was open a quarter inch and the driver's door was unlocked. The officers stopped and attempted to provide the dog with some water. This went on for some 15 minutes and the owner finally returned.

When conversing with her, she became irate and confrontational. She proceeded to spit on one of the officers and punched him in the side of the head.

She was immediately arrested and as a result of the physical interaction with officers, complained of pain to her right knee. An ambulance was called, and attended, however, she refused any type of treatment. She was subsequently released.

In the days that followed, she attended Credit Valley Hospital, was examined by Dr. Weisleder and provided with an Aircast for her left foot and immobilizer for her right knee.

On Wednesday June 16, 2021, she attended 11 Division in order to lodge a complaint against the officers involved. When asked to describe the nature of her injuries, she was unable to articulate precisely how she'd been injured.

On Monday June 21, 2021, she provided medical documentation to members of Professional Standards confirming:

- (a) A fracture to her right kneecap, and
- (b) A fracture to the left foot base of the 5th metatarsal.

The Special Investigations Unit was notified and Ms. Marian Abs-Eskharon was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the Special Investigations Unit and conduct an administrative review.

Findings of the Special Investigations Unit:

On October 19, 2021 Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino states,

"The file has been closed and no further action is contemplated. In my view, there were no reasonable grounds in the evidence to proceed with charges against the official."

Furthermore, in his report to the Attorney General, the Director states;

"With respect to the takedown, while I am not altogether satisfied that it was strictly necessary in the circumstances, I am unable to reasonably conclude that it constituted unlawful force. The Complainant, though hostile and belligerent, was a small statured woman. The SO and WO #2, both tactical officers, were significantly larger in comparison. One would have thought that the SO, with WO #2's assistance if necessary, could have arrested the Complainant with lesser force and a lower prospect of injury. That said, the case law provides that officers are not expected to measure their use of force with precision; what is required is a reasonable response, not an exacting one. The fact remains that the Complainant had just assaulted the SO, and was in a position to continue the assault, when the officer reacted. In this context, the officer's resort to a takedown made sense as it would assist in immediately deterring any further violence on the part of the Complainant. In the circumstances, if the force used by the SO was not tailored perfectly to the situation at hand, the evidence falls short of establishing it fell afoul of the latitude of justifiable force prescribed by the criminal law.

There is some evidence that the Complainant was held in a chokehold by the SO while on the ground, but it would be unwise and unsafe to place any credence in this evidence. Once again, this was not corroborated by the civilian eyewitness who observed the interaction.

For the foregoing reasons, while I accept that the Complainant's injuries were incurred in the takedown executed by the SO, I am not satisfied on reasonable grounds that the officer comported himself other than lawfully throughout their engagement. Accordingly, there is no basis for proceeding with criminal charges, and the file is closed."

Conclusion

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that the force used by the officers was legally justified, there were no grounds for proceeding with charges against the officer notwithstanding the injury caused to the complainant.

In the Director's report to the Attorney General, he states;

"With respect to the takedown, while I am not altogether satisfied that it was strictly necessary in the circumstances, I am unable to reasonably conclude that it

constituted unlawful force. The Complainant, though hostile and belligerent, was a small statured woman. The SO and WO #2, both tactical officers, were significantly larger in comparison. One would have thought that the SO, with WO #2's assistance if necessary, could have arrested the Complainant with lesser force and a lower prospect of injury."

Based on review of the officer notes, police and Civilian interviews with the SIU as well as video, the following information provides an explanation for the SO's actions;

- The complainant had just spit on the officer and landed a 'haymaker' punch to the left side of his head below his ear and was in the process of setting up for another assault when the SO grabbed her using what was described, as a bear hug to prevent a further assault.
- At this time the WO was in the Tactical vehicle reading the CPIC and was not aware of the assault and therefore was not in a position to assist with the arrest to this point.
- Following the complainant being grabbed in a bear hug by the SO, the two bounced from the complainant's vehicle then into the Tactical vehicle as a result of the complainant's resistance before being taken to the ground.

Based on this information the force applied by the S.O. was not deemed to be inappropriate in the circumstances.

Furthermore, an in-depth analysis of all applicable Federal Legislation, Provincial Legislation, Peel Regional Police policies and procedures was conducted by members of the Investigative Support Bureau pursuant to Section 11(1) and (2) of Ontario Regulation 267/10 of the Police Services Act. There were no identified issues as a result of this review.

21-OCI-190 (Ms. V.M.)

Executive Summary

On July 1, 2021, officers responded to 95 Charolais Boulevard in the City of Brampton, for reports of possible gunshots that had been fired in the fifth-floor stairwell of the apartment building.

Upon arrival, while officers were attempting to gain entry to the building, the Complainant walked through lobby seemingly oblivious to the banging on the door by the officers. Whether because of a physical condition, mental illness or the ingestion of drugs, or some combination of the three, the Complainant appeared to not be of sound mind and was believed to be a person of interest for their call for service. Officers forced their way through the secured entrance to the building and gave commands for the complainant to stop. The Complainant's physical movements became erratic and unstable. He eventually sat himself down on the hallway floor and then lay on his back. The complainant began frothing at the mouth and convulsing.

Paramedics were requested. The officers began to administer first aid. While waiting for the ambulance, officers located a clear plastic bag on the Complainant's person with what was believed to contain cocaine.

The Complainant was transported to Brampton Civic Hospital.

The Special Investigations Unit was notified and Ms. Marian Abs-Eskharon was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the Special Investigations Unit and conduct an administrative review.

The complainant died the following day.

Findings of the Special Investigations Unit:

On October 29, 2021, Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino states,

"The file is closed and no further action is contemplated. In my view, there were no reasonable grounds in the evidence to proceed with criminal charges against the official."

Furthermore, in his report to the Attorney General, the Director states,

"...the officers had a duty to ensure his health and safety, an obligation I am satisfied they discharged within the limits of care prescribed by the criminal law. WO #3 and WO #5, having handcuffed the Complainant, quickly realized they were dealing with a medical emergency and placed him in a recovery position while multiple calls were made for a rush on an ambulance. As they waited, the SO and WO #3 considered the use of naloxone given the possibility that the Complainant had overdosed on illicit drugs, particularly in light of the bag retrieved from his person, but dismissed the idea as the Complainant was still breathing and conscious. In hindsight, it might have been better to administer naloxone – an opioid antagonist – out of an abundance of caution, especially as the Complainant's breathing was not without difficulty and it was unclear what, if any, illicit substances he had taken. That said, both officers, in their interviews with the SIU, referred to training they had received in which they were taught that naloxone was not to be administered to a person who was still breathing. Indeed, the SIU obtained the online training given the officers, which provides that naloxone be administered when the overdose victim's breathing is slow or uneven, or has stopped. While the training does not preclude the use of the drug in the absence of respiratory distress if other signs of overdose are present, the SO was not alone in taking away from the training that naloxone ought not be administered when the victim was breathing. For example, WO #5 was of the same view. It should also be noted that naloxone was not administered by the paramedics based on information that led at least one of them to conclude that the Complainant was suffering from an overdose of cocaine, a non-opioid, in which case naloxone would be of no assistance. On this record, if the officers, including the SO, fell short in not administering naloxone, their failure amounted to something less than a marked departure from a reasonable level of care.

In the result, while the cause of the Complainant's tragic death remains unknown at this time, I am unable to reasonably conclude that the officers who dealt with him comported themselves unlawfully. Accordingly, there is no basis for proceeding with criminal charges in this case, and the file is closed."

Conclusion

As a result of the Special Investigations Unit investigation, the Interim Director, Mr. Joseph Martino determined that the tactics used by the officers was legally justified, there were no grounds for proceeding with charges against the Subject Official.

Furthermore, an in-depth analysis of all applicable Federal Legislation, Provincial Legislation, Peel Regional Police policies and procedures was conducted by members of the Investigative Support Bureau pursuant to Section 11(1) and (2) of Ontario Regulation 267/10 of the Police Services Act. There were no identified issues as a result of this review.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Approved for Submission:

Chief Nishan Duraiappah

For further information regarding this report, please contact Inspector Bill Ford at extension 6080 or via e-mail at william.ford@peelpolice.ca

Authored By: *Detective Sergeant Andy Babensee #1585*

ⁱ *Merriam Dictionary defines Haymaker as: A powerful blow.*