



REPORT Police Services Board

For Information

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DATE: February 7, 2023

SUBJECT: **CLOSED SPECIAL INVESTIGATIONS UNIT FILES 22-OFP-068, 22-OCI-232, AND 22-OOD-243.**

FROM: Nishan Duraiappah, Chief of Police

RECOMMENDATION

It is recommended that this document be received as information concerning Special Investigations Unit (S.I.U.) files 22-OFP-068, 22-OCI-232, and 22-OOD-243.

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

22-OFP-068 (Mr. W.A.)

Executive Summary:

On March 7, 2022, at 9:59 a.m., 11 Division officers were dispatched to an address on Southampton Drive, Mississauga for a Domestic where a male was stabbing his wife then assaulting her with a hammer while in front of this residence. Officers learned that the male had also stabbed his 11 year old son, who had since fled the residence to a neighbour's.

Tactical officers also responded. Upon arrival, the male was located in the garage of the residence holding his two-year old son as a shield. His wife was lying on the driveway, covered in blood and in critical condition. Tactical Officers moved in to arrest the male who was still in possession of the knife and hammer. At this time, one of the tactical officers struck the male with the muzzle end of the rifle. The second tactical officer, in the process of shooting at the male from close range re-directed his shot as his partner entered his field of view.

The male continued to resist against the officers attempting to apply handcuffs. As a result several CEW's were deployed.

The male was finally taken into custody without any injuries being caused by the officers. At the time of police interaction the male had already sustained a self-inflicted injury to his thigh.

The female was transported to St. Mike's hospital with life threatening injuries.

The male was transported to St. Mike's hospital for treatment to his thigh.

The 11 year old was transported to Credit Valley Hospital then transferred to Sick kids with a punctured lung.

The 2 year old was transported to Credit Valley Hospital as a precaution. No physical injuries were determined.

At the time of this report I.P.V. has carriage of the Criminal investigation. Body Worn Cameras did capture the apprehension.

The Special Investigations Unit was notified and Mr. Troy Reddington 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 July 12, 2022, Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraipappah (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 states;

"In my view, there is insufficient evidence to reasonably conclude that the discharge by the SO of his firearm amounted to a marked departure from a reasonable standard of care."

The SO was at all times lawfully placed throughout the series of events culminating in the Complainant's arrest. Called to the scene of what effectively was a hostage situation, where moments prior the assailant – the Complainant – had reportedly inflicted serious injuries on his wife and son, the officer was duty

bound to do what he could to prevent further harm from materializing to the toddler in the Complainant's arms.

The decision by the SO and WO #1 to storm the garage was a reasonable one. The Complainant had violently attacked his wife and 11-year-old son, was in the garage holding his toddler and refusing to release him, and remained possibly in the possession of the knife and hammer that he had just used against his family. In the circumstances, one can understand the need to take prompt action to incapacitate the Complainant in the fashion the officers did. The use of their weapons from a distance was effectively ruled out given the presence of the child in the Complainant's arms.

The decision to fire the weapon is open to scrutiny. If the SO had the presence of mind to alter his aim as his partner physically engaged the Complainant, how is it he was not able to refrain from pulling the trigger? That said, in the highly fraught circumstances in which the SO found himself, I am unable to dismiss the officer's explanation that he was able to do one but not the other, namely, reposition his firearm but not stop himself from firing. Nor does the fact that the SO had decided to shoot the Complainant, and had his rifle aimed in his direction, alter the liability analysis. At the time of these events, the officers had good reason to believe that the toddler's life was at imminent risk of grievous bodily harm or death at the hands of the Complainant. A resort to lethal force on this record would not appear to have been disproportionate to the exigencies of the moment.

In the result, as I am satisfied that the SO did not transgress the limits of care when he fired his C-8 rifle, there are no grounds for proceeding with criminal charges against the officer."

Conclusion

As a part of the administrative investigation, the incident was reviewed from the perspective of best practices and current training guidelines with input from Sergeant Auden Whyte, a Use of Force instructor certified by the Ministry of the Solicitor General at the Ontario Police College. Sergeant Whyte is also recognized by the Force Science Institute (FSI) as having completed training in the principles of Force Science and is certified to apply these principles to the analysis of use-of-force incidents.

Sergeant Whyte concluded that Constable J.M. was justified in this scenario as it applies to the Ontario Use of Force Model. Furthermore, Sergeant Whyte determined that Constable J.M. was compliant with the decision making model based on the N.R.A. (Necessary, Reasonable, and Acceptable).

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that the tactics and force used by the officers was legally justified, there were no grounds for proceeding with charges against the officer notwithstanding the self-inflicted injury the complainant sustained or the discharge of a firearm in the affected person's proximity.

In the Director's decision letter to Chief Duraiappah, he stated;

"I note that A/Sgt Jeffrey Cooper's audio-record function of his BWC was turned off in conversation after the shooting. That fact potentially deprived the SIU of important evidence from the subject of the investigation – Cst MacPherson – particularly as the officer would go on (as was his right) to decline an interview with the SIU. I ask that your service look into this matter and take such steps as may be necessary to prevent the same thing occurring in the future."

Acting Sergeant J.C.'s reasoning behind his decision to mute his BWC, was based on good faith without any intent to deceive or cover-up. In his interview with the SIU he disclosed that shortly following his decision to mute his BWC the S.O. approached him and informed him of the firearm discharge. It was only at this time that it became apparent that this incident met the threshold for SIU notification.

It appears that Acting Sergeant J.C.'s actions were in line with current Directives on the use of BWC, which acknowledge that BWC are not intended to be recording at all times. The Directive attempts to find an appropriate balance in recording key interactions with the public, while also maintaining privacy and operational efficiencies, where officers are engaged in non-investigative matters, not in the presence of members of the public. In this circumstance, while it is unfortunate that the conversation with the S.O. was not captured, there was no way for Acting Sergeant J.C. to predict the nature of that conversation.

The Directive will be reviewed to ensure that the guidelines on muting and turning off BWC provide an appropriate balance between privacy, operational efficiencies, and capturing important evidence.

Finally, an in-depth analysis of all other applicable Federal Legislation, Provincial Legislation, Peel Regional Police policies and procedures was conducted by members of the Investigative Support Bureau pursuant to Section 81, Community Safety and Policing Act, 2019. There were no identified issues as a result of this review.

22-OCI-232 (Mr. M.K.)

Executive Summary

The complainant resides on Williamsport Drive, Mississauga. Also residing in the same townhouse complex are his brother and nephews.

On July 15, 2021, at approximately 1:20 a.m., the complainant attended his brother's residence and was banging on the front door. He was intoxicated, brandishing a knife and uttered death threats. The victim of the threats contacted police and numerous 12 Division officers attended as well as members of the Tactical and Rescue Unit.

Containment was set up on the complainant's residence and after approximately 20 minutes of negotiation, he exited and surrendered. He was still not fully compliant with the officers and was grounded. He was eventually handcuffed, taken into custody and transported to 22 Division, lodged and held pending a bail hearing.

He was charged with:

- (1) Weapons Dangerous, Section 88(1), and
- (2) Utter Threat to Cause Death, Section 264.1(1)(a).

In September of 2022, some 14 months afterward, counsel for the complainant forwarded correspondence to the SIU alleging that he sustained a “shattered humerus” during the above interactions with officers. This was confirmed by his family doctor, who he visited approximately one week after his arrest.

As a result, the SIU invoked their mandate and Ms. Pasha Prendergast was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the S.I.U. and conduct an administrative review.

Findings of the Special Investigations Unit:

On January 10, 2023, Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraipappah (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 subject official.”

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

“The officers who attended at the Complainant’s door would have understood from the 911 call that he had wielded a knife in a threatening manner at another residence only minutes prior. In the circumstances, the Complainant was subject to lawful arrest for being in possession of a weapon contrary to section 88(1) of the Criminal Code.

With respect to the force that was used by the officers in aid of the Complainant’s arrest, there is insufficient evidence to reasonably conclude it was excessive. The takedown effected by the SO would appear to have constituted a legitimate tactic. An intoxicated Complainant was alleged to have threatened a fellow resident a short time ago with a knife in hand. In the circumstances, it was only prudent to ground the Complainant to mitigate the risk of injury that a weapon would have created. Nor does it appear that the takedown itself was the cause of the Complainant’s injury. That appears to have been the result of the manipulation of the Complainant’s arms behind his back by the officers, including the SO.

In the result, while I accept that the Complainant’s injury was incurred at some point during his arrest, there are no reasonable grounds to believe that it was the product of unlawful conduct on the part of the arresting officers.”

Conclusion

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that there were no grounds for proceeding with charges against the officer notwithstanding the injury the Complainant sustained.

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 81, Community Safety and Policing Act, 2019. There were no identified issues as a result of this review.

22-OOD-243 (Mr. M.R.)

Executive Summary

On November 22, 2021, at approximately 12:02 p.m., a resident of a complex on Vanrose Street, Mississauga, observed an unconscious male slumped over in the back seat of a motor vehicle in the communal parking lot at her apartment building.

She called 911 and along with PRP, Mississauga Fire and Peel Paramedics also responded. At 12:08 p.m., two officers, Constable J.M. (the Subject Official) and Constable J.D. (the Witness Official) from 11 Division arrived. They were the first of the Emergency Medical Services on scene.

They found Mr. M.R. slouched forward in the rear door of his 2008 Saturn Outlook SUV. His upper body was on the back seat and his legs outside. He was assessed and moved to the ground. He was determined to be 'Vital Signs Absent' (VSA) and lifesaving measures (CPR) were started immediately. Within a few minutes, paramedics arrived and took over care of Mr. M.R. He was transported to CVH, but despite their best efforts, he was pronounced at the hospital.

A Sudden Death investigation of this incident was managed by 11CIB. A post mortem examination took place which confirmed that the cause of death was a drug overdose.

A public complaint was lodged by a family member of the deceased with our Public Complaints Bureau. Forming part of the basis for the complaint was that the Service issued Naloxone Nasal Spray was not used during the first few minutes of the life-saving efforts; the S.I.U. was notified.

As a result, the S.I.U. invoked their mandate and Mr. Chris Leining was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the S.I.U. and conduct an administrative review.

Findings of the Special Investigations Unit:

On January 13, 2023 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 subject official.”

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

“The SO was lawfully placed and in the execution of his duty when he responded to the scene of a medical distress call and began to render emergency care. A police officer’s foremost obligation is the protection and preservation of life, and the officer acted quickly attempting to do just that with the Complainant....The officer had no articulable reason to believe that the Complainant’s predicament was the result of a drug overdose. Though there was drug paraphernalia in the SUV, it was contained in the glove compartment box and centre console storage, and not in plain view. The SO instead suspected, given the Complainant’s positioning in the vehicle, that he had suffered a heart attack and acted accordingly. Indeed, that was the impression of Witness #1, who said as much in her 911 call to police.

In the final analysis, it remains unclear whether the failure to administer naloxone caused or contributed to the Complainant’s death, or endangered his life, in the language of the relevant Criminal Code sections – the Complainant had been discovered VSA soon after the officers’ arrival on scene and might well have been deceased. In any event, as there are no reasonable grounds to believe that the SO comported himself other than lawfully throughout his engagement with the Complainant, there is no basis for proceeding with criminal charges in this case.”

ANALYSIS

Peel Regional Police Policy: I-B-170 (F), “Naloxone Nasal Spray”; addresses the application of Naloxone spray;

F. Responsibilities – Officers, Cadets, Prisoner Escort Officers, Scenes of Crime Specialists, and Auxiliary Members;

1. (f) in the event of a suspected or confirmed opioid exposure, administer the Naloxone Nasal Spray by adhering to the instructions as set out by the manufacturer and their First Aid training;
 - (g) if suspecting or confirming that a member of the public and/or any member of this Service has suffered from an opioid overdose, or any other medical emergency, immediately arrange for emergency medical services to respond and commence First Aid, including providing C.P.R. and A.R. if required and safe to do so;
 - (h) administer Naloxone Nasal Spray if the member believes, based on the totality of the circumstances, that it is safe to do so;

Furthermore; the below excerpt from Naloxone training material states;

After you have assessed the situation, and concluded that the individual is suffering from an opioid overdose and requires naloxone you must first:

1. Contact EMS right away.
2. Wear appropriate PPE as the situation dictates.
3. Following the assessment at the scene, determine the best way to reposition the individual, removing them from the toxic area or source of exposure if possible (i.e., to fresh air), in order to prevent further exposure. Ensure that other hazardous objects are not in close proximity to the individual to prevent any harm to themselves or the first responders; and
4. Reposition the individual on their back.
5. If the individual is not breathing or has no pulse, start CPR.
 - If you are not with a partner, complete one full cycle of CPR prior to administering the first dose of naloxone; or
 - If you are with a partner, one member should perform CPR while the other administers naloxone.
6. Be aware of other sources of contamination before providing rescue breathing.
7. Always use a one-way valve pocket mask to provide artificial respiration. Do NOT perform direct mouth to mouth resuscitation. Note, ensure contaminants on the face are covered by the one way valve pocket mask.

Mr. M.R. was vital signs absent, prior to the arrival of the police officers. This was confirmed in the Director's Report and is supported by Communications recordings, the officer's Body Worn Camera footage, and the officer's notes.

When the officers began CPR on Mr. M.R., they did not know who he was, that he was a drug abuser, or that there was drug paraphernalia in the car. The officers were of the honest belief that the male had suffered a heart attack, and despite the male having already likely been deceased for some time, commenced lifesaving efforts. Because there was no evidence at the time of arrival that the male was V.S.A. due to the effects of respiratory depression caused by opioids, the administration of Naloxone was not necessarily indicated by either the training or Directive.

Conclusion

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined on reasonable grounds that no offence was committed by any particular officer whose presence at the scene was confirmed by the SIU.

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 81, Community Safety and Policing Act, 2019. There were no identified issues as a result of this review.

Note:

In the Director's decision letter to Chief Duraiappah, he addressed the following concern;

"I note that the PRP was late in notifying the SIU of this incident in apparent violation of section 16 of the Special Investigations Unit Act, 2019. The facts-in-issue that caused the service to contact the SIU on September 16, 2022, would have been known to the service at the time of the incident. Late notifications of this nature jeopardize the integrity of SIU investigations, detract from the SIU's independence and credibility, and undermine the public's confidence in policing and policing oversight. I ask that your service look into this matter and take such steps as may be necessary to mitigate the risk of late notifications moving forward."

It is noted however, that section 16 of the Special Investigations Unit Act, 2019, S.O. 2019, c. 1, Schedule 5 states:

Notification of incident

16 (1) *A designated authority shall immediately notify the SIU Director of an incident referred to in subsection 15 (1) involving an official in relation to whom the authority is designated in any of the following circumstances:*

- 1. In the case of an incident referred to in paragraph 1 or 2 of subsection 15 (1),*
 - i. if the official used force against the affected person,*
 - ii. if the affected person was detained by or in the custody of the official,*
 - iii. if the affected person was involved in a motor vehicle accident involving the official or pursuit by the official, or*
 - iv. in any other circumstance in which the designated authority reasonably believes that the official's conduct may have been a contributing factor in the incident.*

2. *In any case of an incident referred to in paragraph 3 or 4 of subsection 15 (1).*

Same

(2) For greater certainty, a designated authority is not required to notify the SIU Director respecting an incident referred to in subsection 15 (1) except in the circumstances set out in subsection (1).

In accordance with this provision, the Service would not notify the Director in circumstances where a person was located, vital signed absent, prior to the arrival of police.

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

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