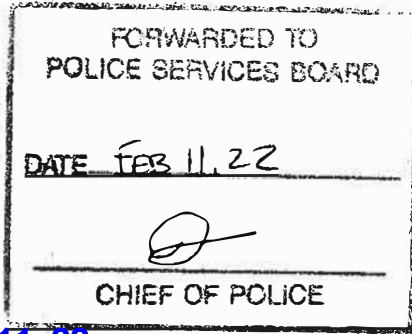


# IC12-02-22



**REPORT**  
Police Services Board

For Information

File Class: \_\_\_\_\_

Cross-Reference File Class: \_\_\_\_\_

**PSB REC: FEB. 11, 22**  
**LOG #11-22**  
**FILE CLASS: M13**

DATE: February 8, 2022

SUBJECT: **CLOSED SPECIAL INVESTIGATIONS UNIT FILES 21-OVI-238, 21-OCI-262, 21-OVI-274, 21-OSA-300, 18-OCI-274, 19-OCI-062 AND 21-OSA-195.**

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 21-OVI-238, 21-OCI-262, 21-OVI-274, 20-OSA-300, 18-OCI-274, 19-OCI-062 and 21-OSA-195.

## REPORT HIGHLIGHTS

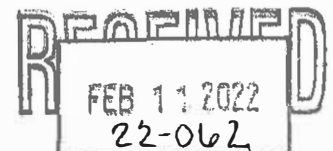
- Details describing the involvement of the S.O.'s and the S.I.U. complainants.
- Findings of the Special Investigations Unit.
- Conclusions concerning the services provided by the police service and the officer's compliance with policies and procedures.
- Subject Officer is abbreviated S.O. and Witness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

## DISCUSSION

### 21-OVI-238 (Mr. L.G.)

#### Executive Summary:

On Friday July 30, 2021, at 4:15 p.m., the complainant was panhandling on the eastbound off-ramp of Highway #403 at Hurontario Street, Mississauga. When the motorists would decline to make a donation, he was aggressively punching the windows of the vehicles.



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At this same time, Constable D. S., the Subject Official, happened to be southbound on Hurontario Street approaching this same off-ramp. The first stopped vehicle in line on the ramp waved at the S.O., getting his attention, and alerted him to the aforementioned activity.

The S.O. stopped and parked his cruiser and approached the complainant. The Complainant was advised that the behavior was unwanted by the motorists and told to discontinue. The complainant responded, "go fuck yourself" and continued down the line of vehicles.

The S.O. immediately made the decision to arrest the complainant for the offence of "soliciting in an aggressive manner" under the authority of the Safe Streets Act. The S.O. moved in closer to effect the arrest, however, was met with continued profanity and hostility. The complainant then took up a defensive stance, was motioning toward his right front pocket and repeatedly said "I'll fuck you up" to the officer.

Fearing the complainant had a weapon, the S.O. deployed his Taser. Despite it being a direct contact, it was ineffective. The complainant then ran towards Hurontario, crossed the roadway, hopped the guardrail and descended down the embankment toward Highway #403. He attempted to cross the eastbound lanes, however, upon reaching the last one, the High Occupant Vehicle lane, was struck by a 2006 BMW, travelling at highway speed. The complainant was vaulted onto the shoulder and upon coming to rest, was tended to by the S.O.

A silver collapsible folding pocketknife with a four-inch blade was found in the Complainant's right front pocket, and seized.

An ambulance was immediately dispatched. Upon arrival, the initial assessment revealed several injuries and he was transported to Sunnybrook Health Sciences Centre for examination. Injuries consisted of:

- i. Broken nasal bone,
- ii. Multiple left rib fractures, and
- iii. Fractured shoulder blade

The Special Investigations Unit was notified 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 Special Investigations Unit and conduct an administrative review.

#### Findings of the Special Investigations Unit:

On November 25, 2021 Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraippah (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 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 Complainant's injuries."*

*The Complainant was belligerent with motorists refusing to give him money, prompting one such motorist to complain about his behaviour to the SO as the officer pulled onto the Highway 403 eastbound off-ramp to Hurontario Street. Told to stop, the Complainant ignored the officer and continued to aggressively seek money from motorists waiting on the off-ramp. In the circumstances, I am satisfied that the SO had lawful grounds to arrest the Complainant under section 6 of the Safe Streets Act.*

*I am also satisfied that the force used by the SO, in an effort to take the Complainant into custody, was legally justified. The Complainant challenged the officer's arrest authority and refused to surrender peacefully. Instead, he moved away from the officer while continuing to ask motorists for money. On this record, confronted by a combative individual on the off-ramp of a major highway, I am unable to reasonably conclude that the SO acted with excess in resorting to his CEW when the Complainant moved toward him in an aggressive fashion. Given their location, engaging the Complainant in a physical altercation would have been a risky proposition. The use of the CEW, on the other hand, held the potential to immediately immobilize the Complainant and assume prompt custody over him, mitigating the dangers of traffic in the area. Through no fault of the officer, the Complainant was able to overcome the incapacitating effects of the weapon by ripping away the wires from the probes.*

*Lastly, there is no reason to believe that the Complainant's injuries were occasioned, in whole or in part, by any criminal want of care on the part of the SO.*

*The SO was within his rights in seeking to arrest the Complainant for aggressive solicitation. On this record, the officer's decision to intervene when and how he did was a reasonable one."*

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

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### **21-OCI-262 (Ms. M.R.)**

#### Executive Summary

On Thursday July 15, 2021, at approximately 22:00 hours, Ms. Macey Reagan was at her residence located at 5344 Richborough Drive, Mississauga, and had consumed a quantity of

alcohol and non-prescription drugs. She then contacted the Canada Suicide Prevention line and indicated that she had suicidal thoughts. Her intent was to harm herself with some type of knife.

The counsellor immediately contacted Peel Regional Police and 11 Division officers attended her residence.

Officers found the victim in her bedroom; however, she had barricaded herself inside and continued threatening to harm herself. The door was breached and she was found with an open and bleeding cut on her left wrist and brandishing a fully extended X-Acto knife blade and waving it at the officers. She would not comply with directions and the Taser was administered. The Taser was successful and the officers disarmed and apprehended her under authority of the Mental Health Act.

Ms. Reagan was conveyed to Credit Valley Hospital and admitted under a Form 1. Other than the self-inflicted cut, there was no other indication that she was seriously injured.

On July 27th, Ms. Reagan submitted an OIPRD complaint and indicated that during the above interactions, the officers broke her fingers. On August 17, 2021, during a brief telephone interview, she confirmed that her wrist and little finger were broken that night.

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 December 15, 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 his report to the Attorney General, the Director states;

*"Significantly intoxicated and under the influence of one or more mental health conditions, the Complainant was clearly of unsound mind and threatening to harm herself at the time. In the circumstances, I am satisfied the officers were within their rights in taking her into custody pursuant to section 17 of the Mental Health Act."*

*I am also satisfied that the force used by the SO was not more than was reasonably necessary to effect the Complainant's apprehension. The officers had tried to resolve the matter peacefully over about 20 minutes before they embarked on a more proactive course. That decision, in my view, was reasonable as the Complainant's behaviour suggested she was on the verge of doing significant harm to herself. Once through the door, I am unable to fault the SO for deploying his CEW, especially after the Complainant failed to drop the knife she was holding when directed by the officer. The force used by the officer*

*promised to immediately neutralize the Complainant, preventing her harming herself before she was taken into custody. In fact, that is precisely what occurred.*

*There is some evidence that the Complainant was tackled to the floor by the SO following the CEW deployment; however, that evidence is of little import to the liability analysis. Even if true, I would be unable to reasonably conclude that the force used by the SO was excessive given the exigencies of the moment and the absolute need to immobilize the Complainant as soon as possible.*

*In the result, while it may be that the Complainant's hands were fractured when she fell to the floor following the CEW discharge, there are no reasonable grounds to believe that the SO comported himself other than lawfully throughout this incident. 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 81, Community Safety and Policing Act, 2019. There were no identified issues as a result of this review.

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### 21-OVI-274 (Mr. R.D.)

#### Executive Summary

On Thursday August 26th, 2021 at approximately 9:05 pm, an RBU officer was conducting traffic enforcement/radar in the area of Mayfield Road and Bramalea Road in the City of Brampton.

The officer observed a white BMW travelling eastbound on Mayfield Road which was travelling at a speed of approximately 170 km/hr in a 60 km/hr zone. Mayfield Road is three lanes in each direction with a large low profile median separating the east and westbound lanes.

The officer caught up to the vehicle and attempted a side stop while both vehicles continued eastbound. The driver of the BMW braked suddenly and fell back behind the RBU vehicle at the intersection of Torbram Road and Mayfield Road, then purposely drove into the westbound lanes and into oncoming traffic. The BMW maneuvered around two oncoming vehicles and continued at a high rate of speed. The officer paralleled the BMW while continuing to travel in the eastbound lanes attempting to alert oncoming vehicles with his cruiser lights and siren.

The BMW collided head on with a black Hyundai travelling westbound on Mayfield Road. The driver of the Hyundai, the Complainant, sustained serious injuries as a result of the collision. These injuries included a fractured lower back, abdominal hematoma, fractured jaw, and right artillery pelvis fracture.

The driver of the BMW, a G1 license holder, and his passenger were not injured.

The Special Investigations Unit was notified and Mr. Alex Kravcheko 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 December 20, 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 his report to the Attorney General, the Director stated;

*"The SO was within his rights in seeking to stop Complainant #1 for a serious traffic infraction. The officer had measured Complainant #1's vehicle speeding at about 170 km/h. Arguably, at that speed, Complainant #1 was not merely in contravention of the speeding laws, he was driving dangerously in violation of the Criminal Code.*

*I am also satisfied that the SO comported himself with due care and regard for the safety of the public throughout the events in question. The officer did travel at speeds well above the speed limit, at times over 150 km/h, but did not do so at any great risk to the public. Traffic was minimal, the roads were dry, and there was no evidence of any vehicles having been placed at imminent peril by the SO's cruiser. Moreover, given the velocity at which the BMW was travelling, a degree of speeding was to be expected of the officer if he was to place himself in a position to stop the BMW.*

*The real issue, in my view, is whether the SO's decision to continue to follow the BMW, after the vehicle had taken off from him the wrong way in the Mayfield Road westbound lanes, was a prudent one. The officer had a difficult decision to make. By that time, the SO had taken note of the BMW's licence plate and had cast eyes on the driver and passenger, both of whom were young persons. In the circumstances, he might have decided to forego any further engagement to mitigate the risk of continued reckless driving by Complainant #1. Instead, the SO decided to follow the BMW, on a parallel track but in the proper lanes of travel a distance behind. His aim was to have westbound motorists alerted to the danger of the approaching BMW by his emergency lights. I am unable to reasonably conclude that the officer's decision was an imprudent one or, if it was, that it markedly deviated from a reasonable course of action in the circumstances. Complainant #1 had been operating his BMW at dangerous speeds before he was ever aware of the SO's presence. Given that fact, the SO had some reason to believe that he would continue to do so, at even greater risk to the public on the wrong side of the road, regardless of the officer's*

*involvement. On this record, the SO's conduct might well have served to lessen the risk to public safety created by Complainant #1.*

*In the result, there are no reasonable grounds to believe that the SO transgressed the limits of care prescribed by the criminal law in his brief engagement with Complainant #1 over about two kilometres. 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 approach and the interaction used by the subject official were appropriate in the circumstances and therefore there were no grounds for proceeding with charges against the subject official 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 81, Community Safety and Policing Act, 2019. There were no identified issues as a result of this review.

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## 21-OSA-300 (Ms. N.P.)

### Executive Summary

The complainant is a 29 year old female that resides at the townhouse complex at 6777 Formentera Avenue, Mississauga.

On Thursday September 9, 2021, at approximately 12:53 a.m., she was roaming around the common area of the complex in an intoxicated state and was causing a disturbance. While in that area, she was banging on the front door of one of her neighbours, threw a planter at the same door and then damaged the 'For Sale' sign that was erected on the front lawn. The residents of that unit contacted Peel Regional Police and 11 Division officers were dispatched.

Upon police arrival, she was still found to be shouting in the courtyard and was quickly arrested for the offence of Mischief to Property. She was then transported back to 11 Division and lodged in cells. For several hours, she continued to be uncooperative and belligerent in the cells.

At approximately 8:00 a.m., six hours after she was originally lodged, she disclosed to the dayshift Staff Sergeant that during her travels back to 11 Division, she was sexually assaulted by the transporting officer.

The Special Investigations Unit was notified and Mr. Alex Kravchenko 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 January 6, 2022 Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraipah (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 in this case."*

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

*"...I am satisfied that the officer's conduct – free of any sexual contact or malicious motivation – did not amount to a sexual assault. I would add that there is nothing in the evidence, including the accounts of the Complainant, the SO and other officers who had dealings with the Complainant, as well as the BWC footage, that casts any doubt on that conclusion."*

*In the result, 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. The file is closed."*

### Conclusion

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that the approach and the interaction used by the subject official were appropriate in the circumstances and therefore there were no grounds for proceeding with charges against the subject official 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 81, Community Safety and Policing Act, 2019. There were no identified issues as a result of this review.

### 18-OCI-274 (Mr. C.H.)

#### Executive Summary

On September 15, 2018 at approximately 2:25 a.m. 22 Division officers attempted to stop the complainant who was suspected of driving while impaired by alcohol.

The complainant slowed his vehicle and then jumped from it while it was still moving in the area of Grouse Lane, Brampton and attempted to flee on foot.

The complainant was promptly located in the backyard of 28 Black Bear Trail, and resisted arrest at which time a CEW was deployed. The complainant pulled the probes out and continued his attempt to flee. A second attempt with the CEW resulted in the complainant forcibly removing the probes at which time he continued further into the backyard where he hid behind a BBQ. Officers located the male behind the BBQ. During the arrest, officers delivered



several knee strikes and kicks and a third attempt was made with a CEW. At this time the complainant was taken into custody.

The property located at 28 Black Bear Trail is equipped with infra-red security cameras which recorded the Complainant's activities from the moment he entered the property until his arrest.

Upon arrest the complainant began complaining of a sore wrist. The complainant was transported to BCH where he was diagnosed with a broken left wrist. Video confirmed his broken wrist occurred when he fell climbing over the fence into the backyard and not by the actions of the officers.

The Special Investigations Unit was notified and Mr. Ian Hollingsworth 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:

After a lengthy investigation, and relying on the security camera footage obtained from the residence at 28 Black Bear Trail, Constable S.M., Constable R.M. were charged with one count each of assault and one count of Assault with a weapon (each) on February 1, 2019.

On this same date, Constable C.B. was charged with one count of assault which was withdrawn by the Crown prior to trial.

#### Conclusion

At Trial the Crown elected not to seek a finding on the charge of Assault with a Weapon against Constable S.M. As a result, a verdict of "not guilty" was entered by Honourable J.S. Nadel.

On September 23, 2021, Justice Nadel provided a written 'Reasons for Judgement' in his decision to acquit Constable R.M on the count of Assault with a weapon, but convict both Constable S.M. and Constable R.M. on charges of Assault level I. In his 'Reasons for Judgement', Justice Nadel provides the following;

*"[215] However, I am satisfied to the exclusion of any reasonable doubt that [Constable R.M.] third and final stomp on [C.H.] while he was under the BBQ was an assault and not an application of force justified under s. 25. Likewise, I am satisfied to the exclusion of any reasonable doubt that the two kicks to [Mr. C.H.] stomach inflicted by [Constable R.M.] after he pulled [C.H.]out from under the BBQ were unjustified assaults. Similarly, while of a less serious nature than the abdominal kicks inflicted by [Constable R.M.], the shove to [C.H.] back inflicted by [Constable S.M.] with the inside aspect of his right boot was an unjustified assault on [C.H.].<sup>1</sup>*

<sup>1</sup> [Constable S.M.] does not lift his foot off the ground. Rather, he slides it along the ground and into [C.H.]'s back at the point where the right side of [C.H.]'s body is in contact with the ground. If I believed or had any reasonable doubt about whether [Constable S.M.] was using his foot to turn [C.H.] over onto his stomach to assist in getting him handcuffed, I would have found [Constable S.M.] not guilty of any assault.

[216] All of the leg-strikes inflicted by the defendants after [Constable R.M.] pulled [C.H.] out from under the BBQ were inflicted completely gratuitously as a form of punishment. They were not, as urged by defence counsel, inflicted reasonably in aid of the goal of controlling and then handcuffing [C.H.].

[218] That portion of the video speaks for itself. [C.H.] was essentially inert. Moreover, he was surrounded by first three and then four officers available to control him. He had no weapons and was lying in a right, lateral recumbent position. He posed absolutely no danger or risk to the defendants or anyone else at that time. The two kicks from [Constable R.M.] and the one shove from [Constable S.M.] had nothing to do with restraining or controlling [C.H.] and nothing to do with anticipating and responding to any potential danger from him. Under the BBQ

[219] Despite knowing the stresses and the dangers to which police are subject, while acknowledging the potential danger that [C.H.] presented, as well as appreciating the speed with which the events unfolded, the last stomp that [Constable R.M.] inflicted on [C.H.], while he was under the BBQ was completely unnecessary, unreasonable and disproportionate. It was a gratuitous infliction of assaultive force. I have no reasonable doubt that the Crown has negated the justificatory relief provided by s. 25, so far as that blow is concerned. I arrive at that conclusion for the following reasons.

[225] I have not been satisfied that the evidence negatives s. 25 in respect of [Constable R.M.]'s use of his Taser and the first four leg-strikes while [C.H.] was under the BBQ. [C.H.] was not called, the video is not clear<sup>2</sup>, I did not have the benefit of expert evidence respecting either the effect of [Constable R.M.]'s Taser on [C.H.] or expert evidence on police officers uses of force.<sup>3</sup>

[234] I find [Constable R.M.] not guilty of assault with a weapon. I find both defendants guilty of assault level one for their uses of force, which I have identified in the body of these reasons, that I hold were not justified under s. 25. Put differently, I am satisfied to the exclusion of any reasonable doubt that the Crown has negated s. 25 insofar as those identified uses of force are concerned.

As a result of the above decision and finding of guilt for the offence of Assault Level I, a Police Service Act investigation has been commenced by members of Professional Standards, Internal Affairs.

<sup>2</sup> Because of the downward angle of the recording and the defendants' bodies being between the camera and [C.H.], it is not clear where their leg-strikes landed.

<sup>3</sup> Justice Cromwell makes the point at paragraph [39] of *R. v. J.M.H.*, 2011 SCC 45: "... a reasonable doubt does not need to be based on the evidence; it may arise from an absence of evidence or a simple failure of the evidence to persuade the trier of fact to the requisite level of beyond a reasonable doubt."

**19-OCI-062 (Mr. T.T.)**Executive Summary

The Brampton Village Apartments (BVA) are a group of residential buildings consisting of 75, 80, 85, and 90 Orenda Court, Brampton. These properties are managed by the Canadian Apartment Properties REIT (CAPREIT) Corporation. CAPREIT issued a "Letter of Authority" to the Peel Regional Police to enforce the Trespass to Property Act, on any area of this private property, at any time.

On Monday March 25, 2021, at approximately 1:35 pm, two uniformed School Resource Officers (NPU) from 22 Division had attended 90 Orenda Court, unit #316 for an unrelated follow up. At its conclusion, now about 1:55 pm, they walked westbound on the third floor towards the west-end stairwell. As they approached the stairwell door, they could smell freshly burnt cannabis and heard the voices of two males talking from within. Smoking in a common area is a prohibited activity at the BVA.

Constable S.D., Subject Official #1, opened the doorway and they observed two males seated on the landing just below them. As the males turned and observed the officers, they both immediately fled on foot. S.O. #1 gave chase and followed Mr. T.T. to a doorway exiting the building. This led the Complainant and the two officers onto a concrete gangway that is suspended some three stories above the ground. As the complainant was still actively resisting arrest and trying to pull away, the two officers employed hard physical control techniques to restrain him.

S.O. #1 first struck the Complainant with a distractionary punch to the head. This had no apparent effect on the Complainant and he continued to resist. Constable M. T., S.O. #2 then attempted to knee the Complainant in the midsection; however, as the male bent down, he was struck in the forehead. The Complainant then complied and dropped to the ground.

After being handcuffed, a search of the Complainant's person was conducted. He was found to have rolling papers and a small quantity of marijuana on his person.

As a result of the knee strike, the Complainant sustained an open 1" laceration near his right eyebrow. A PRP supervisor as well as an ambulance were dispatched. The paramedics attempted to assess and assist the Complainant; however, he refused medical treatment.

The officers also returned to the stairwell, found no evidence of an offence, nor were they able to locate the second party. Given the small quantity of marijuana on his person, their inability to locate the second party, no supporting evidence in the stairwell and the injury caused to the Complainant, the decision was made to use their discretion and caution him. He was subsequently released unconditionally.

Later that day, the Complainant attended William Osler Health Centre, received two stitches for the open wound, and was also advised that he had also suffered a fractured right *lamina papyracea* (orbital bone).

This information was conveyed to the SIU, they invoked their mandate, 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:

The SIU collected the closed circuit video surveillance from 90 Orenda Court, along with completing interviews of both the Complainant as well as a consenting S.O. #2.

It was clear that S.O. #1 initiated the physical interaction with the first but ineffective distractionary blow. And, it was the knee strike from S.O. #2 which not only caused the open cut, but the broken orbital bone. This is the injury that ultimately caused the SIU to (a) be notified, and (b) invoke their mandate.

After much deliberation, they found exception with the first punch, and as a result, swore to an information, a Summons was issued and on September 23, 2019, S.O. #1 was charged with Assault Level One. Ostensibly, they had no issue with the actions of S.O. #2.

### Conclusion

This trial took place over three days from September 20, 2021 to September 22, 2021 before the Honourable Justice D.S. Rose from Newmarket. The complainant was the Crown's sole witness and S.O. #1 testified in his own defence. Upon completion, the court was adjourned for two months for decision.

On November 5, 2021 Justice Rose rendered his decision and found S.O. #1 not guilty of assault. He supported this conclusion with a 27 page written decision. In it, he reviewed the testimony of both parties as well as findings in regard to the arrest and the officers use of force. The following are the pertinent details from that decision:

- (i) Firstly, with regard to the arrest, Justice Rose found that there was a credible basis to the officers reasonable grounds to act as he did, namely to arrest the Complainant. Although in hindsight there was little if any evidence to support a charge, which explains the unconditional release, the officer launched into the investigation and the resultant arrest in good faith.
- (ii) Secondly, the analysis of the single distractionary strike was found to be reasonable, necessary and proportionate 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 81, Community Safety and Policing Act, 2019. There were no identified issues as a result of this review.

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### 21-OSA-195 (Ms. M.K.)

#### Executive Summary

The Complainant was a guest at the Super 5 Motel located at 2171 Dundas Street East, Mississauga. Due to ongoing problems, she was asked to leave and served with a trespass notice on Wednesday June 23, 2021. 24 hours had elapsed and she still refused to leave.

On Thursday June 24, 2021, at approximately 3:20 p.m., the Complainant was causing a disturbance and Peel Regional Police was contacted. Two 12 Division officers attended and were advised of the circumstances. They attended room #127; however, she refused to unlock the door. Motel staff provided the master key and the officers entered the room. It was clear after a prolonged discussion that she still refused to leave the premise. At 3:55 p.m., she was arrested for Failing to Leave Premise when Directed under authority of the Trespass To Property Act.

While attempting to effect the arrest, she kicked at both officers striking them in the leg and groin areas. Eventually she was subdued, placed in the cruiser and returned to 11 Division where she was lodged, pending a bail hearing.

Approximately 3 hours later, at 7:18 p.m., she disclosed to the nightshift Staff Sergeant that during her dealings with the officers, she was sexually assaulted by one of them. The Complainant alleged that during her arrest, one of the officers fondled her breast, pinched her nipple and digitally penetrated her vagina.

The Special Investigations Unit was notified 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.

#### Findings of the Special Investigations Unit:

On December 20, 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 in this case."*

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

*"On my assessment of the evidence, there are no reasonable grounds to believe that the SO committed a criminal offence in connection with the Complainant's sexual assault allegation."*

*A sexual assault consists of an assault within any of its definitions in the Criminal Code that is sexual in nature and violates the sexual integrity of the victim: R. v. Chase, [1987] 2 SCR 293.*

*The Complainant alleges that the SO groped her right breast, pinching her nipple in the process, and digitally penetrated her vagina, as the officer took physical control of her to effect her arrest.<sup>2</sup> If true, the Complainant's complaint amounts to a sexual assault. However, it would be unwise and unsafe to rest charges on the strength of the Complainant's word alone based on significant conflicting accounts proffered in the evidence.*

*The SO and WO #1, for their part, deny that the Complainant's breast was groped or pinched, or that her vagina was digitally penetrated.*

*While I am mindful that a charging authority must restrict its assessment of the relative strength of competing evidence to threshold considerations, the cumulative impact of the frailties associated with the Complainant's story persuade me that her allegations are insufficiently reliable to warrant being put to the test by a court of law. 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 there were no grounds in the evidence to pursue charges of sexual assault against the Subject Official. The Director believed "it would be unwise and unsafe to rest charges on the strength of the Complainant's word alone based on significant conflicting accounts proffered in the evidence."

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.

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### **Approved for Submission:**



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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](mailto:william.ford@peelpolice.ca)*

Authored By: *Detective Sergeant Andy Babensee #1585*