**HAMILTON POLICE SERVICE**

**CONFIDENTIAL   
INFORMATION REPORT**

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| **TO:** | Chair and Members  Hamilton Police Service Board |
| **BOARD MEETING DATE:** | February 20, 2025 |
| **SUBJECT:** | Special Investigation Unit’s Probe into the Injury of S.A.  SIU File 24-OVI-350 |
| **REPORT NUMBER:** | 25-002 |
| **SUBMITTED BY:**  **SIGNATURE:** | Frank Bergen, Chief of Police  Acting Chief Bergen's Signature |

**EXECUTIVE SUMMARY**

On August 21, 2024, at 2:10 am the Subject Official (SO) a Hamilton Police Service (HPS) officer operated a marked police cruiser. Witness Officer #1 (WO #1) operated another marked police cruiser and drove directly behind the SO. The SO entered a parking lot at Bay Street and Bold Street, Hamilton, ON, to make notes regarding the previous call he attended. The SO felt resistance from his cruiser as he entered the lot. The SO stopped his vehicle, exited and observed a male, S.A. (Complainant), under the cruiser, who was wearing dark clothing.

The male was transported to the Hamilton General Hospital (HGH) via Emergency Medical Services (EMS) and he was admitted. The Complainant was found to have a lacerated liver and required stitches to his left eye.

The SIU was contacted and invoked their mandate.

**INFORMATION**

Background

Provincial legislation requires that the Chief or designate shall conduct an investigation promptly into any incident in which the Special Investigations Unit (SIU) has investigated a member of a police service. The purpose of the Chief’s investigation is to investigate the member’s conduct in relation to the incident, the policing provided by the member in relation to the incident, and the procedures established by the Chief of Police as they related to the incident (Section 81(4)). The Chief is mandated to make the report to the Board within 90 days after the SIU Director publishes a report in respect of the incident (if no charges are laid), or within 90 days after the disposition of the charges (if charges are laid) (Section 8(3) of Ontario Regulation 90/24). The Board shall publish the report on the internet within 30 days of receiving the report (section 8(5) O. Regulation 90/24).

On August 21, 2024, at approximately 2:10 am the SO concluded a call for service in the area. The SO drove his marked police cruiser into the parking lot of a school located at the northeast corner of Bold Street and Bay Street South, Hamilton. The SO was followed by WO #1 who was in his own marked police cruiser. The two officers planned to meet up to make their notes regarding the call they had just completed.

The area had very little artificial lighting. S.A. was lying on the ground near the entrance to the parking lot and would have been difficult for the SO to observe.

The SO entered the parking lot off of Bay Street South, and travelled a short distance in a southerly direction at approximately 9km/h. The SO sensed there was an obstruction under his cruiser after he travelled twenty meters in his cruiser. The SO stopped his cruiser and exited, finding the S.A. under the front carriage of the cruiser.

WO #1 also came to a stop behind the SO’s cruiser and stood by while the SO reversed his cruiser to free the Complainant from the undercarriage of the cruiser.

S.A. sustained cuts to his left forehead, near his left eye and had “road rash”. EMS transported S.A. to the HGH where he was admitted to hospital for a lacerated liver.

The SIU was notified, invoked their mandate and commenced an investigation.

**Conclusion**

The report prepared by the SIU Director Joseph Martino in relation to this incident is a public document and made available on the SIU’s Ontario Government website. In his report, Director Martino stated the following:

“On August 21, 2024, the HPS notified the SIU that a male – the Complainant – taken to hospital after being struck by a police cruiser had been diagnosed with a serious injury. The SIU initiated an investigation naming the driver of the cruiser – the SO – the subject official. The investigation is now concluded. 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 offence that arises for consideration is *dangerous driving causing bodily harm* contrary to section 320.13(2) of the *Criminal Code*. As an offence of penal negligence, a simple want of care will not suffice to give rise to liability. Rather, the offence is predicated, in part, on conduct that amounts to a marked departure from the level of care that a reasonable person would have observed in the circumstances. In the instant case, the issue is whether there was a want of care in the manner in which the SO operated his vehicle, sufficiently egregious to attract criminal sanction that caused or contributed to his collision with the Complainant. In my view, there was not.

The SO approached the parking lot at modest speeds, and had travelled no more than about 20 metres at minimal speed before he ran over the Complainant. The scene was dark with very little artificial lighting in the area and it would have been difficult to see the Complainant, who was lying on the ground at the time. It might have been that the Complainant was briefly visible in the cruiser’s headlights as the officer approached his location, and that the SO had an opportunity to avoid the collision. Even if that was the case, however, the officer’s want of care was characteristic of a momentary lapse of attention. On this record, I am unable to reasonably conclude that the manner in which the SO operated his cruiser transgressed the limits of care prescribed by the criminal law.

For the foregoing reasons, there is no basis for proceeding with criminal charges in this case. The file is closed.”

A comprehensive review of the events and information gathered in relation to the complaint has determined that there were no breaches of Hamilton Police Service Policies and Procedures. A review of the In Car Camera (ICC) noted that a dark object was illuminated by the headlights of the cruiser. While it is important to note that the dark object was later determined to be SA it was not apparent from the ICC that the object was recognizable as a person. Further the officer entered the private parking lot with due care, and there were no Highway Traffic Act infractions. Given these factors the SO’s actions and conduct were reasonable and within the scope of policy.

FB/W. Mason

c: Paul Hamilton, Deputy Chief – Support

Will Mason, Superintendent – Professional Development Division

Marco Visentini, Legal Counsel