**HAMILTON POLICE SERVICE**

**CONFIDENTIAL
INFORMATION REPORT**

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| **TO:** | Chair and MembersHamilton Police Service Board |
| **BOARD MEETING DATE:** | October 24, 2024 |
| **SUBJECT:** | Special Investigation Unit’s Probe into the Injury of B.S.SIU File 24-OCI-209 |
| **REPORT NUMBER:** | 24-091 |
| **SUBMITTED BY:** **SIGNATURE:** | Frank Bergen, Chief of PoliceActing Chief Bergen's Signature |

**EXECUTIVE SUMMARY**

On May 16, 2024, at 10:40 am the Subject Official (SO #1) a Hamilton Police Service (HPS) officer and another HPS officer (SO #2) both worked plainclothes. SO #1 operated an unmarked police cruiser and observed a Hyundai Tucson travelling at a high rate of speed eastbound on Sanford Avenue, Hamilton, ON. SO #1 followed the Hyundai Tucson for a short distance. The Hyundai Tucson continued into a parking lot located at 81 Kinrade Street, Hamilton, ON. SO #1 was joined by SO #2 in the parking lot of 81 Kinrade Street, and the officers approached the Hyundai Tucson. BS (the Complainant) was in the driver’s seat of the Hyundai Tucson and there was a female passenger in the front passenger seat of the vehicle. SO #1 and SO #2 identified themselves as police officers and BS exited the vehicle. Officers intended to arrest BS for impaired operation of a motor vehicle. As the officers handcuffed BS’s right wrist he became combative and a struggle ensued. SO #1 called for further police assistance. The police officers delivered several strikes to BS which caused him to fall backwards onto a nearby vehicle. SO #3 arrived to assist SO #1 and SO #2. BS was handcuffed and he complained of sore ribs.

HPS officers transported BS to the Hamilton General Hospital (HGH) and he was found to have a fractured orbital bone, fractured ribs and a stable back fracture.

**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 May 16, 2024, at approximately 10:40 am, SO #1 operated an unmarked police cruiser and his attention was drawn to a Hyundai Tucson northbound on Sanford Avenue travelling in excess of the speed limit. SO #1 obtained a license plate number for the Hyundai Tucson and learned that BS had previously stolen that same vehicle. The driver of the Hyundai Tucson, BS, matched the description of the male who had taken the vehicle in the past and BS was a prohibited driver. SO #1 decided to stop the Hyundai Tucson.

SO #1 followed the Hyundai Tucson as it drove into the parking lot at 81 Kinrade Avenue, Hamilton, ON. SO #2 joined SO #1 in the parking lot. BS parked the Hyundai Tucson in the southwest corner of the parking lot and exited the vehicle. The female passenger also exited the vehicle. SO #1 and SO #2 approached BS and identified themselves as police officers. SO #1 and SO #2 told BS he was under arrest and took hold of him. BS was placed against an adjacent motor vehicle. SO #1, SO #2 and BS slammed back and forth between the other motor vehicle and the Hyundai Tucson. SO #1 and SO #2 struggled to control BS and all three parties went to the ground. SO #1 broadcast a radio transmission and requested assistance. Several strikes and knees were delivered to BS in an attempt to control him. SO #3 arrived and assisted with the arrest and he also delivered some knee strikes. SO #1, SO #2 and SO #3 were able to take control of BS and handcuff him behind his back.

BS complained of sore ribs. BS was taken to the hospital after his arrest and was found to have four right side rib fractures, a right maxillary sinus fracture and fractures of the three lumbar vertebrae.

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 my assessment of the evidence, there are no reasonable grounds to believe that any of the subject officials committed a criminal offence in connection with the Complainant’s arrest and injuries.

The Complainant was operating a motor vehicle while under suspension. In the circumstances, he was subject to arrest as a prohibited driver and for non-compliance with the terms of a probation order.

There is no doubt that the Complainant was subject to significant physical force during his arrest, but the totality of the evidence falls short of reasonably establishing it was unlawful. There is an account proffered in the evidence in which the Complainant reportedly pulled his right hand away from the officer who initially grabbed and broke one of his fingers. The same account suggests the Complainant did not resist arrest as three officers subjected him to multiple knee strikes, punches, and kicks.

This narrative, however, is undermined by an opposing civilian witness account that the Complainant aggressively resisted arrest over a protracted period, and was not subdued and handcuffed until the arrival of SO #3. It is also contradicted in part by video footage, which appears to capture the Complainant lifting his body as the officers are attempting to control him on the ground. Lastly, it is in conflict with the accounts proffered by the subject officials.

SO #1 says he punched the Complainant two to three times to the head and once to the left ribs when the Complainant began to physically jostle with the officers on his feet. The Complainant was then forced to the ground where he continued to resist arrest. SO #1 tripped in the takedown and inadvertently landed on the Complainant’s right side. SO #2 says he punched the Complainant in the ribs several times after he started to resist on his feet and then wrestled with him on the ground in an effort to secure his arms. According to SO #3, he arrived at the scene of the altercation to find the Complainant on the ground on his stomach, and SO #1 and SO #2 struggling to control his arms. The officer observed the Complainant kicking backwards at the officers and attempting to stand, and reacted by kneeing the Complainant to the left side of the torso. When the Complainant continued to refuse to release his arms, SO #3 delivered two more knee strikes, this time to the right side of the torso, before the officers managed to apply the handcuffs. On the officers’ rendition of events, the strikes were at all times a measured response to the Complainant’s fight, and they came to a stop as soon as the Complainant had been subdued.

On the aforementioned-record, as there is no reason to believe that the account of undue force against the Complainant is any likelier to be closer to the truth than the countervailing evidence, and some reason to doubt it, I am unable to reasonably conclude that the incriminating evidence is sufficiently cogent to warrant being put to the test by a court. As such, while I accept that the Complainant’s injuries were incurred in the physical altercation that marked his arrest, 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.

**APPENDICES AND SCHEDULES ATTACHED**

Not Applicable

FB/W. Mason

c: Paul Hamilton, Deputy Chief – Support

 Will Mason, Superintendent – Professional Development Division

Marco Visentini, Legal Counsel