



REPORT TO THE POLICE SERVICE BOARD

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Date of Report: 9/17/2024

Type of Report: Public

Title: Report on SIU Case 24-OCI-108

Recommendation

That the Board receives this report as it relates to SIU Case 24-OCI-108.

Background

On March 5, 2024, at 5:22 p.m., the Complainant, subject to 11 Criminal Code arrest warrants, was arrested for shoplifting at the Real Canadian Superstore by the Subject Official (SO) and Witness Official (WO) #2. At 5:32 p.m., the officers began transporting the Complainant to the Central East Station. He was completely coherent and appeared to be fine at the time. They arrived at the station at 5:40 p.m. The Complainant remained in the rear seat of the police cruiser in the sally port while the officers entered the station and spoke to WO #1. When the SO and WO #2 returned to the cruiser at 5:54 p.m., they found the Complainant unconscious and foaming at the mouth. Two doses of Narcan were administered and the Complainant regained consciousness. An ambulance was dispatched at 5:56 p.m. and the Complainant was transported to Lakeridge Health Oshawa (LHO). The Complainant was laughing and joking around in the ambulance. He was examined at the hospital for about an hour and then fell asleep for about a half hour. He was then observed to have laboured breathing. Hospital staff administered an oral dose of Narcan. The Complainant's condition deteriorated, and he was intubated and transferred to the Intensive Care Unit.

Investigation

SIU Director Martino's decision, dated July 3rd, 2024, summarized the investigation and result below, Director Martino reported the following:

“On March 5, 2024, the Complainant lapsed into medical crisis while in the custody of the DRPS. The SIU was notified of the incident and initiated an investigation. The SO was identified as 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 medical event. The offences that arise for consideration are failure to provide the necessities of life and criminal negligence causing bodily harm contrary to sections 215 and 221 of the Criminal Code, respectively. Both require something more than a simple want of care to give rise to liability. The former is predicated, in part, on conduct that amounts to a marked departure from the level of care that a reasonable person would have exercised in the circumstances. The latter is premised on even more egregious conduct that

demonstrates a wanton or reckless disregard for the lives or safety of other persons. It is not made out unless the neglect constitutes a marked and substantial departure from a reasonable standard of care. In the instant case, the question is whether there was any want of care on the part of the SO, sufficiently serious to attract criminal sanction, that endangered the Complainant's life or caused his overdose. In my view, there was not. There are no questions raised in the evidence regarding the lawfulness of the Complainant's arrest and period in custody. There were warrants in effect authorizing his arrest and he had been caught stealing from a grocery store."

Professional Standards Unit – Section 32 Investigation

The Professional Standards Unit conducted an investigation pursuant to Ontario Regulation 268/10. The investigation reviewed the following applicable DRPS Directives and Policies;

| Authority | Number or Section | Description | Compliance | | Requires Amendment | |
|-----------|-------------------|--|------------|----|--------------------|----|
| | | | Yes | No | Yes | No |
| Directive | AO-09-010 | DRPS Code of Professional Conduct | X | | | X |
| Directive | AO-05-001 | Special Investigations Unit | X | | | X |
| Directive | LE-12-001 | Arrest and Warrant Applied For | X | | | X |
| Directive | LE-15-001 | Search of Persons | X | | | X |
| Directive | AO-14-006 | Prisoner Transport | X | | | X |
| Directive | LE-01-020 | Fentanyl Officer Safety Implementation of Narcan | X | | | X |

The results of the Professional Standards Unit investigation are as follows:

Conduct: No conduct issues were identified.

Policies: All policies were adhered to.

Service: No service issues were identified.

Conclusion

SIU Director Martino has concluded, “*With respect to the care afforded the Complainant, I am satisfied that the SO comported himself with due regard for his health and wellbeing throughout his time in custody. The officer conducted a search at the scene, removing items from the Complainant's clothing while advising him that a more thorough search would be completed at the station. Asked by the SO whether he had anything else on his person, the Complainant*

responded in the negative. As it turns out, it appears that the Complainant did have drugs on his person, which he was able to retrieve and consume while in the SO's custody. That, in turn, was made possible by the Complainant having been handcuffed to the front, rather than behind the back. Officers retain a measure of discretion with respect to the side of the torso where the hands are cuffed. The Complainant was wearing a coat, suffering from wounds to his legs, and in some pain when arrested by the officer. His discomfort would have been amplified with his arms restrained to the back. In the circumstances, if the SO miscalculated the risks associated with handcuffing the Complainant to the front, I am unable to reasonably conclude with any confidence that the indiscretion amounted to a marked departure from a reasonable standard of care, much less a marked and substantial one. As soon as the Complainant was discovered in distress, the SO and the other officers acted quickly and prudently in rendering aid.

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

No further action is required.

Report Approval Details

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| Document Title: | Report on SIU Investigation File 24-OCI-108.docx |
| Attachments: | - DR-24-108-Durham-CI.pdf |
| Final Approval Date: | Aug 6, 2024 |

This report and all of its attachments were approved and signed as outlined below:

Chris Kirkpatrick

A handwritten signature in black ink, appearing to read "Peter Moreira", with a stylized flourish at the end.

Peter MOREIRA