

SPECIAL INVESTIGATIONS UNIT



DIRECTOR'S REPORT

CASE # 24-OCI-108

July 3, 2024

MANDATE OF THE SIU

The Special Investigations Unit is a civilian law enforcement agency that investigates incidents involving an official where there has been death, serious injury, the discharge of a firearm at a person or an allegation of sexual assault. Under the *Special Investigations Unit Act, 2019* (SIU Act), officials are defined as police officers, special constables of the Niagara Parks Commission and peace officers under the *Legislative Assembly Act*. The SIU's jurisdiction covers more than 50 municipal, regional and provincial police services across Ontario.

Under the *SIU Act*, the Director of the SIU must determine based on the evidence gathered in an investigation whether there are reasonable grounds to believe that a criminal offence was committed. If such grounds exist, the Director has the authority to lay a criminal charge against the official. Alternatively, in cases where no reasonable grounds exist, the Director cannot lay charges. Where no charges are laid, a report of the investigation is prepared and released publicly, except in the case of reports dealing with allegations of sexual assault, in which case the SIU Director may consult with the affected person and exercise a discretion to not publicly release the report having regard to the affected person's privacy interests.

INFORMATION RESTRICTIONS

Special Investigations Unit Act, 2019

Pursuant to section 34, certain information may not be included in this report. This information may include, but is not limited to, the following:

- The name of, and any information identifying, a subject official, witness official, civilian witness or affected person.
- Information that may result in the identity of a person who reported that they were sexually assaulted being revealed in connection with the sexual assault.
- Information that, in the opinion of the SIU Director, could lead to a risk of serious harm to a person.
- Information that discloses investigative techniques or procedures.
- Information, the release of which is prohibited or restricted by law.
- Information in which a person's privacy interest in not having the information published clearly outweighs the public interest in having the information published.

Freedom of Information and Protection of Personal Privacy Act

Pursuant to section 14 (*i.e., law enforcement*), certain information may not be included in this report. This information may include, but is not limited to, the following:

- Confidential investigative techniques and procedures used by law enforcement agencies; and
- Information that could reasonably be expected to interfere with a law enforcement matter or an investigation undertaken with a view to a law enforcement proceeding.

Pursuant to section 21 (*i.e., personal privacy*), protected personal information is not included in this report. This information may include, but is not limited to, the following:

- The names of persons, including civilian witnesses, and subject and witness officials;
- Location information;
- Witness statements and evidence gathered in the course of the investigation provided to the SIU in confidence; and
- Other identifiers which are likely to reveal personal information about individuals involved in the investigation.

Personal Health Information Protection Act, 2004

Pursuant to this legislation, any information related to the personal health of identifiable individuals is not included.

Other proceedings, processes, and investigations

Information may also have been excluded from this report because its release could undermine the integrity of other proceedings involving the same incident, such as criminal proceedings, coroner's inquests, other public proceedings and/or other law enforcement investigations.

MANDATE ENGAGED

Pursuant to section 15 of the SIU Act, the SIU may investigate the conduct of officials, be they police officers, special constables of the Niagara Parks Commission or peace officers under the *Legislative Assembly Act*, that may have resulted in death, serious injury, sexual assault or the discharge of a firearm at a person.

A person sustains a “serious injury” for purposes of the SIU’s jurisdiction if they: sustain an injury as a result of which they are admitted to hospital; suffer a fracture to the skull, or to a limb, rib or vertebra; suffer burns to a significant proportion of their body; lose any portion of their body; or, as a result of an injury, experience a loss of vision or hearing.

In addition, a “serious injury” means any other injury sustained by a person that is likely to interfere with the person’s health or comfort and is not transient or trifling in nature.

This report relates to the SIU’s investigation into the serious injury of a 57-year-old man (the “Complainant”).

THE INVESTIGATION

Notification of the SIU¹

On March 5, 2024, at 10:45 p.m., the Durham Regional Police Service (DRPS) notified the SIU of an injury to the Complainant.

According to the DRPS, on March 5, 2024, at 5:22 p.m., the Complainant, subject to 11 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.

The Team

Date and time team dispatched: 2024/03/06 at 6:30 a.m.

¹ Unless otherwise specified, the information in this section reflects the information received by the SIU at the time of notification and does not necessarily reflect the SIU’s finding of facts following its investigation.

Date and time SIU arrived on scene: 2024/03/06 at 9:59 a.m.

Number of SIU Investigators assigned: 3

Number of SIU Forensic Investigators assigned: 1

Affected Person (aka “Complainant”): 57-year-old male; interviewed; medical records obtained and reviewed

The Complainant was interviewed on March 14, 2024.

[Note: An affected person (complainant) is an individual who was involved in some form of interaction with an official or officials, during the course of which the individual sustained serious injury, died, was reported to have been sexually assaulted, or was shot at by a firearm discharged by an official.]

Subject Official

SO Interviewed, but declined to submit notes, as is the subject official’s legal right

The subject official was interviewed on March 18, 2024.

[Note: A subject official is an official (whether a police officer, a special constable of the Niagara Parks Commission or a peace officer with the Legislative Protective Service) whose conduct appears, in the opinion of the SIU Director, to have been a cause of the incident under investigation.

Subject officials are invited, but cannot be legally compelled, to present themselves for an interview with the SIU and they do not have to submit their notes to the SIU pursuant to the SIU Act.]

Witness Official

WO #1 Interviewed
WO #2 Interviewed
WO #3 Not interviewed; notes reviewed and interview deemed not necessary

The witness officials were interviewed on March 10, 2024.

[Note: A witness official is an official (whether a police officer, a special constable of the Niagara Parks Commission or a peace officer with the Legislative Protective Service) who, in the opinion of the SIU Director, is involved in the incident under investigation but is not a subject official in relation to the incident.

Upon request by the SIU, witness officials are under a legal obligation pursuant to the SIU Act to submit to interviews with SIU investigators and answer all reasonable questions. The SIU is also entitled to a copy of their notes.]

EVIDENCE

The Scene

The events in question began outside the Real Canadian Superstore, 481 Gibb Street, Oshawa, continued in a DRPS cruiser, and concluded in the sally port of the DRPS Central East Division, 77 Centre Street North, Oshawa.

Physical Evidence

On March 6, 2024, at 10:45 a.m., the SIU attended 77 Centre Street North, Oshawa, the DRPS Central East Division.

The sally port had a second access door entering the booking hall from the west side of the sally port, at the northwest corner. A security camera was mounted on the north wall at the northwest corner of the sally port. The access door to the booking hall was sealed. The interior of the booking hall had additional security cameras covering the various areas of the hall and access to the holding cells. There was a marked police vehicle inside of the sally port, a Ford Explorer.

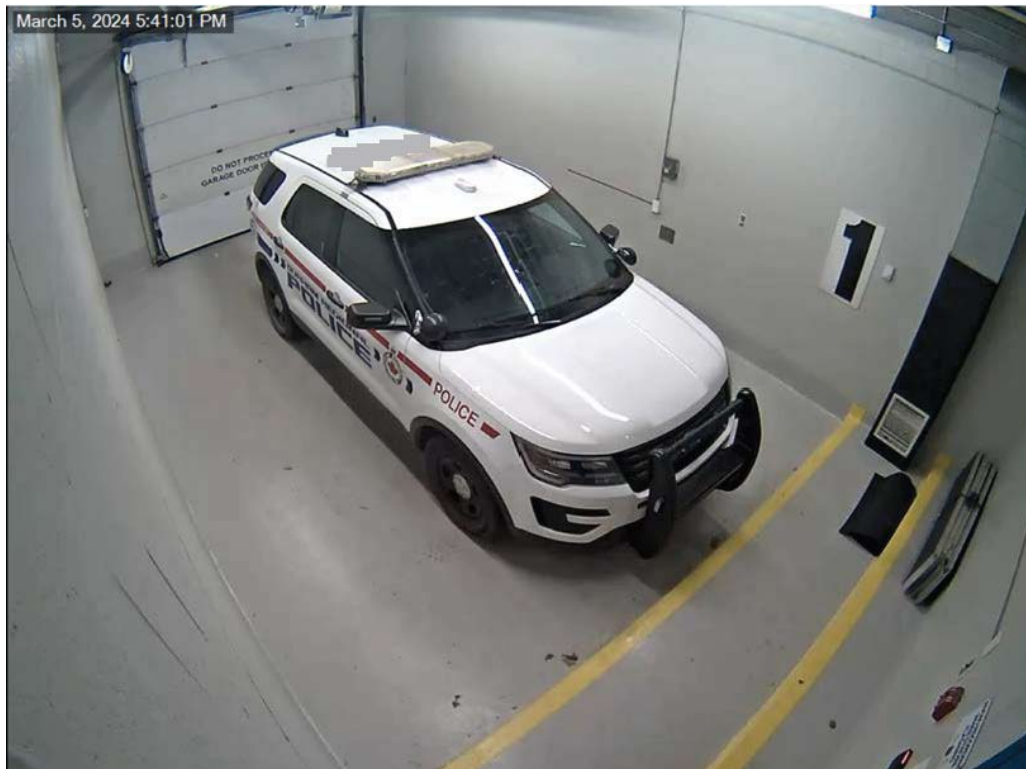


Figure 1 - Marked police vehicle inside sally port

A Narcan kit and two used Narcan nasal spray dose dispensers were collected from a storage locker within the booking hall.

Two small sections of tissue were found in the prisoner transport area of the police cruiser: one on the rear left floor and the second on the rear left bench seat. Neither showed any staining or other soiling. There was also a section of plastic, purple and white in colour. The plastic was torn at both ends and appeared to have a knot tied along its length.



Figure 2 - Interior of police vehicle with torn purple and white plastic on the seat

Video/Audio/Photographic Evidence²

Police Communications Recordings

On March 5, 2024, at about 5:04 p.m., an employee at the Real Canadian Superstore reported that the Complainant had consumed food from the shelves and carried a bag of burglary tools.

Starting at about 5:16 p.m., the SO and WO #2 responded. The Complainant was identified for a theft in progress as well as outstanding warrants with the DRPS.

Starting at about 5:22 p.m., the SO reported the Complainant was in custody.

² The following records contain sensitive personal information and are not being released pursuant to section 34(2) of the *Special Investigations Unit Act, 2019*. The material portions of the records are summarized below.

Starting at about 5:32 p.m., the SO transported the Complainant to the Central East Division.

Starting at about 5:54 p.m., WO #2 requested an ambulance for the Complainant, who was foaming at the mouth.

Starting at about 6:00 p.m., a dose of Narcan was administered by the DRPS.

Starting at about 6:04 p.m., a second dose of Narcan was administered. The Durham EMS arrived at the station.

Body-worn Camera (BWC) Footage – The SO

On March 5, 2024, starting at about 5:20 p.m., the SO was captured waiting in the entrance foyer of the Real Canadian Superstore until the Complainant exited, followed by an employee. The Complainant was arrested for outstanding warrants and escorted to the SO's police vehicle.

Starting at about 5:21 p.m., the Complainant stood against the front driver's side of the SO's police vehicle and placed his cellular phone on the hood. He wore a grey winter coat with multiple exterior pockets, and black pants with pockets at the waist and zippered pockets on the thighs. He mumbled and his voice was slightly slurred. The SO instructed the Complainant to place his hands behind his back and proceeded to handcuff the Complainant but had difficulty due to the mobility of the Complainant's arms and the bulky winter coat he wore. The Complainant protested and said, "Can we avoid that? Can I just show you something?" The SO responded, "Okay, you want me to cuff you in the front? I will because I understand what you're going through." The Complainant was handcuffed in front of his body and remained hunched over the hood. The SO searched the right exterior pockets of the Complainant's coat. He placed an orange lighter and a pair of wire cutters on the hood. He searched a zippered pants pocket on the Complainant's right leg and patted down both legs. The Complainant was turned so his right side was against the police vehicle and the SO removed bits of tin foil and reading glasses from the left exterior coat pocket. He patted down the left pantleg and squeezed the left zippered pocket but did not unzip it.

Starting at about 5:23 p.m., the SO turned the Complainant to face him and searched the inside left pocket of his coat and pulled out a green lighter. He informed the Complainant, "You know I'm going to search you better at the station. Do you have anything else on you?" The Complainant responded he did not.

Starting at about 5:24 p.m., the Complainant rolled up his pantleg to show the SO wounds related to his illness and he responded, "That's not good, man." The Complainant entered the driver's side rear seat, hands still handcuffed in front of his body. The SO inspected the crumpled tin foil and paper left on the hood of his police vehicle. The store employee brought out the Complainant's white shopping bag. The SO removed bolt cutters, a pick hammer, a blanket, gloves, and an USB cord from the bag before he replaced them. He entered his vehicle, confirmed the Complainant's date of birth, and reviewed his outstanding warrants.

Starting at about 5:28 p.m., the SO read the Complainant his rights to counsel, and the Complainant replied he understood. He answered all further questions.

Starting at about 5:32 p.m., the SO transported the Complainant to the Central East Division. He conversed normally with the Complainant during transport. The Complainant was responsive throughout.

Starting at about 5:36 p.m., the SO asked him twice, "What are you doing?" There was no elaboration other than the Complainant said he had found a ring and put it in his pocket, but must have lost it.

Starting at about 5:40 p.m., the SO entered sally port #1 and remained in his police vehicle.

Starting at about 5:43 p.m., the SO asked if the Complainant was all right before he exited his police vehicle, but a response was not audible. He retrieved the Complainant's bag. The BWC footage ended.

On March 5, 2024, starting at about 5:56 p.m., the BWC footage resumed. The SO assisted the Complainant into a wheelchair beside his police vehicle. The Complainant was handcuffed with his hands in front of his body, his eyes were open and glazed, and he appeared conscious but unresponsive. Present were the SO, WO #2, WO #1 and two special constables. The Complainant's left zippered thigh pocket was unzipped and white paper towel was visible inside. The Complainant remained slumped in the wheelchair while a special constable administered Narcan into the Complainant's left nostril. The handcuffs were removed, and a blue dye or liquid was present on the Complainant's tongue, lips and down the left side of his mouth.

Starting at about 5:57 p.m., WO #1 told the Complainant an ambulance was on the way and asked if he took any drugs, but he remained unresponsive. The SO shook his left arm periodically which kept the Complainant's eyes open. The left side of his coat was searched by a special constable who noted paper towel in the back seat of the DRPS vehicle. Paper towel was removed from his left-side pants pocket and a crack pipe was found in his right-side pants pocket. WO #2 searched the right exterior coat pocket and found nothing.

Starting at about 5:58 p.m., the Complainant was laid prone on the sally port floor, then moved into a recovery position on his left side. The Complainant's limbs were very rigid; he breathed and had a pulse.

Starting at about 5:59 p.m., a special constable administered Narcan to the Complainant's right nostril. He continued to be unresponsive, but his breathing improved.

Starting at about 6:04 p.m., a second dose of Narcan was administered and the Durham EMS arrived.

Starting at about 6:05 p.m., the Complainant became more responsive but remained nonverbal.

Starting at about 6:06 p.m., the Complainant was lifted onto the EMS stretcher. The EMS questioned if he had any medical conditions or complaints, and the SO confirmed the Complainant had not given indication of any medical concerns except his prior illness.

Starting at about 6:09 p.m., a paramedic commented the blue colour around the mouth could be fentanyl.

Starting at about 6:12 p.m., the SO boarded the ambulance with the Complainant, who remained nonverbal during transport.

Starting at about 6:16 p.m., the ambulance arrived at the LHO.

BWC Footage – WO #2

On March 5, 2024, starting at about 5:57 p.m., WO #2 searched an outside pocket on the right side of the Complainant, which was empty. He was unable to search further pockets because of the Complainant's slumped position in the wheelchair.

Starting at about 5:58 p.m., WO #2 checked the backseat of the police vehicle, and a white paper towel was on the seat. He moved his vehicle outside sally port #1.

Starting at about 5:59 p.m., WO #2 notified dispatch that Narcan had been administered.

Starting at about 6:04 p.m., a second dose of Narcan was administered. The EMS arrived.

Video Footage – the Real Canadian Super Store

On March 5, 2024, starting at about 4:41 p.m., the Complainant arrived on foot carrying a white bag with possibly the handle of a tool sticking out. The Complainant retrieved a cart and entered the store.

Between 4:42 p.m., and 5:20 p.m., the Complainant walked about the store putting articles in his cart and then began eating what appeared to be breads and grapes. He obtained and drank a bottle of grape drink. At times, he stopped, leaned forward on the cart, and rested.

Starting at about 5:20 p.m., the Complainant abandoned his cart near the exit and walked out into the lobby followed by an employee.

The SO arrived and waited in the lobby. As the Complainant exited the store into the lobby, the SO approached, grabbed the Complainant's right arm, and took him out the far sliding doors to his police cruiser.

Custody Video – DRPS Central East Division Sally Port

On March 5, 2024, starting at about 5:40 p.m., the SO parked his DRPS vehicle in sally port #1. The SO collected the Complainant's shopping bag from the rear of his DRPS vehicle and walked into the police station. The Complainant remained in the DRPS vehicle.

Starting at about 5:52 p.m., the SO returned to his DRPS vehicle. He briefly looked through the driver's side rear door window, then sat in the driver's seat. He exited the vehicle and looked through the rear door window as WO #2 entered the sally port from the interior door.

Starting at about 5:53 p.m., the SO opened the rear driver's door of his DRPS vehicle and leaned in until he was out of view. WO #2 stood by the open door.

Starting at about 5:54 p.m., WO #2 opened the rear passenger door. He leaned in briefly before he closed the door and returned inside the booking area. A view of the SO remained blocked by the DRPS vehicle. WO #2 returned less than a minute later. The two DRPS officers leaned into the rear driver's side door before WO #2 returned to the passenger rear door.

Starting at about 5:55 p.m., WO #1 entered the sally port, viewed the backseat, and returned inside. Two special constables entered the sally port along with WO #1, who brought a wheelchair. The Complainant was blocked from view as DRPS officers huddled around the driver's side area of the DRPS vehicle.

Starting at about 5:58 p.m., a third special constable entered the sally port and delivered a Narcan kit.

Starting at about 6:05 p.m., the EMS arrived.

Between 6:07 p.m. and 6:11 p.m., the Complainant was placed on a stretcher, and he was taken by paramedics to the ambulance.

Materials Obtained from Police Service

The SIU obtained the following records from the DRPS between March 6, 2024, and March 8, 2024:

- Communications recordings;
- Custody video;
- BWC footage;
- Outstanding arrest warrants;
- Computer-assisted Dispatch Report;
- Criminal history of the Complainant;
- DRPS Directives: Arrest and Warrant / Search of Persons / Prisoner Transportation / Detainee Care and Control;
- Involved Officers List;
- Notes - WO #1, WO #2 and WO #3; and
- DRPS Reports.

Materials Obtained from Other Sources

The SIU obtained the following records from the following other sources between March 7, 2024, and March 20, 2024:

- Ambulance Call Report from Durham EMS;
- Video footage from the Real Canadian Superstore; and
- The Complainant's medical records from LHO.

INCIDENT NARRATIVE

The evidence collected by the SIU, including interviews with the Complainant and the SO, and video footage that captured the incident in parts, gives rise to the following scenario.

The Complainant was arrested by the SO at the Real Canadian Superstore, 481 Gibb Street, Oshawa, in the afternoon of March 5, 2024. An employee had contacted police to report that the Complainant was eating food items while shopping in the store without having paid for them. He was also subject to multiple arrest warrants at the time.

The SO escorted the Complainant to his cruiser, handcuffed him and searched his clothing, removing several items, before placing him in the backseat of the vehicle. As the Complainant was wearing a coat and in some discomfort, the officer chose to handcuff him to the front. En route to the station, the Complainant moved forward and placed his head against the Plexiglas partition, prompting the SO to ask what he was doing. The Complainant replied he was picking up a ring from the floor.

The SO and the Complainant arrived at the station at about 5:40 p.m. The cruiser, with the Complainant in the backseat, was parked in the sally port while the officer made his way to the booking area to speak with the sergeant. Upon returning to the cruiser, about ten minutes later, the SO noticed the Complainant with his head against the driver's side window, seemingly asleep. With the assistance of another officer, WO #2, the SO opened the door and positioned the Complainant's head off the window. There was a blue liquid coming from the Complainant's mouth and he was unresponsive. WO #2 left the sally port to call for an ambulance.

WO #1, and two special constables, made their way to the sally port with WO #2. The Complainant was removed from the backseat of the cruiser and eventually placed in a recovery position on the floor. He was administered two doses of nasal Narcan by the special constables, five minutes apart. At about 6:05 p.m., paramedics attended and took charge of the Complainant's care.

The Complainant was transported to hospital and diagnosed with multi-substance overdose.

RELEVANT LEGISLATION

Section 215, *Criminal Code* - Failure to Provide Necessaries

215 (1) Every one is under a legal duty

(c) to provide necessaries of life to a person under his charge if that person

(i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and

(ii) is unable to provide himself with necessaries of life.

(2) Every person commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse to perform that duty, if

(b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

Sections 219 and 221, *Criminal Code* - Criminal Negligence Causing Bodily Harm

219 (1) Every one is criminally negligent who

(a) in doing anything, or

(b) in omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

(2) For the purposes of this section, *duty* means a duty imposed by law.

221 Every person who by criminal negligence causes bodily harm to another person is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) an offence punishable on summary conviction.

ANALYSIS AND DIRECTOR'S DECISION

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 necessaries 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.

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.

Date: July 3, 2024

Electronically approved by

Joseph Martino
Director
Special Investigations Unit