

## ABOVE THE LAW

### A SERIES PROBING POLICE CONDUCT IN ONTARIO

A [Star investigation](#) has found lack of results and little accountability from the \$7 million a year Special Investigations Unit that probes police accused of injuring or killing civilians.

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## Durham police beat man bloody during arrest

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Hafeez Mohamed lies in a hospital bed in an induced coma and breathing with a tracheotomy after being arrested and beaten by police.

**Michele Henry and David Bruser**

Staff Reporters

### Related

Drunk driver Hafeez Mohamed was pinned under two officers, face down on the ground when Durham Region Constable Prasanth Tella slammed a fist into his head, neck and shoulder at least seven times.

Within hours one of Mohamed's eyes swelled shut and golf-ball-sized bumps protruded above both eyes. He had "facial fractures," spent many days in a coma during a 57-day stay in intensive care, and a tracheotomy had to be performed on his throat so he could breathe.

A police officer at the scene, and Mohamed himself, said Mohamed did not actively resist arrest. Tella and another officer said he did resist and Tella said his punches were needed to subdue and handcuff the man.

The province's Special Investigations Unit (SIU), which was six days late in starting its probe, cleared the officers.

“This isn't right,” the heavily intoxicated Mohamed said to the breathalyzer technician the evening of the arrest.

This case raises the issue of force: How much is reasonable?

The information in this story comes from transcripts of interviews of police officers in a civil action and also at a bail hearing held after Mohamed was arrested. There is an SIU report, but the SIU would not release it.

Mohamed, a convenience store owner, has filed a lawsuit against police over the May 2006 incident, alleging excessive force was used.

Tella did not return the *Star's* requests for comment. Durham Police and the SIU would not answer questions. Mohamed has sued the officers and police services board. In their statement of defence, the Durham officers said they used reasonable force in the arrest.

Mohamed is a self-admitted drunk carrying out a habit — driving drunk — that makes him a public scourge.

Mohamed, 43 at the time, had just closed up his shop, Ajax Halal Meats, around midnight on May 23, 2006 and was headed home. As usual, he had been sipping vodka.

“I take a chance,” the Trinidad native said of his decision to drink and drive yet again.

An alcoholic already accused twice in the previous year of drinking and driving, Mohamed was not supposed to be driving because he had been convicted of failing to provide a breath sample.

His white van blew through a red light in front of a Durham Regional police station. Police said they saw him “weaving” and speeding about 120 km/h in a 60 km/h zone. Cruisers boxed him in and he was pulled from his car on Kingston Rd. in Pickering.

This is where the stories diverge.

Tella, an officer in one of the cruisers, said in testimony at a bail hearing after the arrest that Mohamed's van lurched forward and almost ran him down. Tella said he had to jump on the hood of the van to escape injury.

Another officer, Constable Jason Spooner, said he pulled Mohamed from the car as hard as he could and on the way down Mohamed's face hit the ground. Tella and another officer knelt down to handcuff him.

Spooner and Tella described Mohamed as putting up a fight as he lay on the ground, kicking and “actively” trying to resist the arrest.

Mohamed's right arm was tucked under his body and Mohamed “kept on trying to raise his body up and just continued to resist the arrest,” Tella said. To “gain control” Tella said he struck Mohamed six to seven times. Tella testified he used what he called “empty-handed” techniques, which he defined as punches, knee or elbow strikes.

Spooner said he saw 10-12 hits by Tella. Throughout this the officers said they were telling Mohamed — who was extremely drunk with more than four times the legal blood alcohol limit — to “stop resisting.”

Another officer at the scene, Constable William Gardiner, said Mohamed “wasn't fighting us in any way.”

Gardiner said Mohamed was initially not complying with officers' requests, but it was “not very difficult at all” to get him in a position to be handcuffed.

At 5-foot-7 and 170 pounds, Mohamed is small and paunchy. Tella, who is now an officer with the Ottawa Police Service, is thick and muscular.

In an interview, Mohamed said he stepped out of his van when police stopped him and then an officer kicked him off his feet, handcuffed him and “put the boot and fist in my head. ... I would say about 12 times.”

Mohamed has no recollection of trying to run down an officer, his lawyer says.

After his arrest, Mohamed was charged with five offences, including failing to stop and assaulting police. He was subsequently convicted of driving drunk, his wife told the *Star*.

Durham Regional Police reported Mohamed's injuries to the Special Investigations Unit the day after the incident, saying Mohamed suffered an eye injury that did not appear to be “serious.” The SIU investigates only serious injuries and deaths.

The SIU took their word for it. Six days later, after a call from Durham police reporting that Mohamed was in hospital, SIU investigators began a probe that eventually cleared the officers.

In their statement of defence, the officers state that Mohamed's injuries were twice dismissed by medical examiners as “superficial.”

At Mohamed's bail hearing following arrest, Constable Spooner told Justice of the Peace Constance McIlwain he did not believe Mohamed suffered anything worse than “scratches” and “road rash” on his face.

It was not until Mohamed spent one full day out of Durham police custody — he had been sent to jail — that he complained of “new, more severe injuries,” the police officers claim in their statement of defence.

A photo taken by police hours after the incident shows Mohamed's face swollen and bloody, with two golf-ball-size lumps protruding from his forehead.

Less than a week later, on May 29, Mohamed ended up in an intensive care unit fighting for his life.

Alan Young, an Osgoode Hall criminal law professor, who is not involved in the case, said police beatings are abuses of power.

“The whole idea of having police officers is so you don't have vigilante justice,” he said. “It's an enormously difficult job, policing, but that's why we have highly trained police and don't leave law enforcement to private citizens.”

Mohamed was not granted bail. He was subsequently sentenced to 12 months in jail and had his licence taken away, this time for 10 years. It is the pictures of him in a coma, swollen and purple that make him weep today.

“Why can an officer, who is working on taxpayer money, do that to me?” he asks. “What gives him the right? If I did the same thing to somebody who was drinking and driving, what would happen to me?”

Mohamed's lawyer, Julian Falconer, said the actions of the police were “out of whack” with the threat that was presented.

He is also disappointed with the investigation.

“This is the SIU at its darkest hour,” said Falconer, who claims his client suffered permanent mental and physical trauma.

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