



**IN THE MATTER OF AN INVESTIGATION INTO AN INCIDENT DURING MFNPS  
ARREST IN SANDY BAY**

**FINAL REPORT OF THE CIVILIAN DIRECTOR**  
**OF THE INDEPENDENT INVESTIGATION UNIT**

Civilian Director:	Roxanne M. Gagné
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## **Introduction**

On September 27, 2023, the Manitoba First Nation Police Service (MFNPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

*“Officers, SO (subject officer) and WO1 (witness officer), activated emergency equipment to conduct traffic stop as license plate did not match vehicle description. Vehicle was observed leaving a known drug house. Suspect vehicle (with 2 occupants) refused to stop and sped away which led into a short pursuit which was aborted by the officers. A short time later, officers located the suspect vehicle which was now abandoned. SO (K9 officer) and PSD Zion start to track and locate driver in long grass area. Verbal commands given. Upon approaching the driver to effect arrest, passenger AP was discovered in the long grass near the officers at which time PSD Zion engaged AP. Verbal commands given and AP complied. Knife located on AP. AP arrested and transported to Portage District General Hospital for treatment for K9 bite. AP was seen by medical staff and discharged.”*

The IIU assumed responsibility for this investigation in accordance with Section 75(1) of The Police Services Act (PSA). IIU investigators were assigned to this investigation.

IIU investigators obtained the following information from WPS, among other items:

- Notes and reports from WO1 and WO2
- Photographs of the scene and the injury to AP’s left calf
- Use of Force report of SO
- Audio files of police radio transmissions

The civilian director designated one subject officer and two witness officers.

## **Facts and Circumstances**

### **Affected Person**

AP refused to provide a statement to IIU investigators; however, he provided consent to release his medical records.

### **Witness Officers**

#### **WO1**

On January 3, 2024, IIU investigators obtained a statement from WO1. On September 26, 2023, WO1 was partnered with SO, working a day shift in a single police vehicle, when they observed a red truck parked outside a known drug house in the community. They turned around and the truck, containing two occupants, was driving on the roadway. A verification of the licence plate on the vehicle was done. It did not match the truck, and it was expired. Emergency lights on the

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police vehicle were activated; however, the truck did not stop. The officers engaged in a pursuit of the truck until it became unsafe to continue, due to pedestrians and other vehicular traffic.

After they aborted the pursuit, they continued to search for the vehicle and located it abandoned along a trail in the community. SO, who is a dog handler, took out his police service dog (PSD) on a leash and started a track, which went for a distance before they spotted CW1 hiding in the bushes. WO1 stated he was focused on CW1 and had his conductive energy weapon (CEW) out to get CW1 into custody. He did not see AP, as AP was lying down in the bush in a camouflage jacket; however, the police dog located him. WO1 stated that his partner did not give the dog any commands to attack AP.

WO1 said that he handcuffed both suspects, while SO stood back and controlled his dog. After AP was handcuffed, he said he had been injured. WO2 then arrived on scene and walked the prisoners out of the bush.

## **WO2**

On December 21, 2023, IIU investigators obtained a statement from WO2. WO2 stated he was enroute to court in Amaranth on September 26, 2023, when he heard on the police radio that SO and WO1 were trying to stop a vehicle in Sandy Bay First Nation, but the vehicle did not stop and a brief pursuit ensued. At 8:32 a.m. the two officers announced on the police radio that they had aborted the chase. At 8:37 a.m. they announced that they had located the vehicle abandoned on a trail in the community. SO stated he was deploying his police dog to try to locate the occupants. WO2 started to speed up with the intention of attending the location to assist the two officers, but a short time later he heard that the officers had two persons in custody.

WO2 arrived on scene. There were two males in handcuffs lying on the ground. WO2 knew both prisoners from previous dealings. AP had a dog bite on his left leg. WO2 transported both men to the MFNPS office in Sandy Bay, where CW1 was lodged and AP was turned over to emergency medical services (EMS).

WO2 did not remember if SO said anything about the dog bite. Neither prisoner spoke about the dog bite, other than AP saying his leg was bleeding.

## **Civilian Witness CW1**

On November 3, 2023, IIU investigators obtained a statement from CW1. CW1 stated said he was lying in the grass, minding his own business, when he heard someone say, "Don't move." Then the person he was with said the dog bit him. He said he had just met the person he was with that day, and knew him only as "AP boy." He stated that he did not hear anything else prior to being told not to move, and the command was followed within a second by "AP boy" screaming. According to CW1, there were three or four police officers present at the time.

## Professional Witness PW1

On February 27, 2024, IIU investigators obtained a statement from PW1. PW1 is in charge of the K-9 program with the Office of the Fire Commissioner and had trained SO. PW1 was interviewed as a subject matter expert. He admitted he had spoken with SO regarding this incident after it had happened.

PW1 stated that police dog handlers are taught to consider the nature of the crime involved in the incident before deploying a police dog, but added that there is no hard threshold that he trains regarding when a handler is to deploy the dog; it is up to the officer's discretion. PW1 was specifically asked if a police dog is deployed for a Highway Traffic Act offence, and he stated that if other information came in or the situation developed, deployment of the dog may be justified.

## Subject Officer

SO declined to be interviewed by IIU investigators; however, through legal counsel, he provided a copy of his notebook. SO was on general patrol when he observed a small pickup truck stopped "... at a prolific drug trafficker residence." The truck departed with two occupants. SO activated his emergency equipment in an attempt to stop it, but it did not stop. A brief pursuit ensued, which was aborted by the officer due to pedestrian traffic in the area. During the pursuit, SO noted that he could see the occupants moving about in the cab of the truck in a suspicious manner.

At 8:36 a.m., SO indicates: *Vehicle located abandoned. It was unknown if the vehicle was stolen as it had improper plates on it. PSD Zion deployed on a 20 foot tracking line and harness to track the subjects. PSD Zion deployed to effect the arrest and prevent the continuation of offences. Criminals often switch plates, commit further offences and flee when stopped by police. Also, in experience, occupants in vehicles reaching around in the immediate area subjects are often concealing drugs/weapons. "Police K9" call out with no response, vehicle was off, driver's door open. At 8:38 a.m. Vehicle no longer occupied. PSD Zion directed to driver side door, fresh scent located. Tracking southbound. Track turned westbound in a thick bush. At 8:42 a.m. PSD Zion indicated on a large scent pool, displayed indication. Nose up, ears up, began pulling hard into bush. This indication perceived as a sign that a person(s) were within the bush. Aired on radio request drone. Dog team still tracking but wanted it noted in the event no track was located leaving the bush. Perimeter search for exiting track completed around the bush. At 8:51 a.m. Track located in the west side ditch on railroad, west into a field. Approximately 50 meters into the track a person was observed laying face down beside a tree and tall grass. Police challenge issued "Police K9 show me your hands." PSD Zion brought in from the full length of lead. At this time, PSD Zion engaged another suspect hiding in the tall grass approx. 10 feet to the right of member. The suspect was not seen laying that close in the tall grass. Male was engaged on the left leg (calf), member yelled "Show me your hands" as the*

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*male was reaching on his sides but quickly complied and raised hands. PSD Zion removed as WO1 began taking male into custody. Member could see a meth pipe tucked in the sock of the male. Male observed wearing a camo jacket, camo hat and blue jeans. Member had control of PSD Zion during the apprehension and did not let go of the lead at any point. Attention then directed to the other male who also complied. Male observed to have a black hoody/jacket on as well as a shaved head. Both verbally advised they were under arrest. At 8:53 a.m. The male PS Zion engaged was found to have a knife in his possession which was in immediate access to the male, identified as AP by WO2 who arrived to assist. The knife was not concealed, hidden and laying on the ground where AP was laying. Member believed that AP had the means and opportunity to carry out grievous bodily harm or death if he wished. AP was also within striking distance of SO.*

### **Other Evidence**

#### **Medical Records**

The medical records pertaining to AP's treatment at Portage District General Hospital on September 26, 2023 indicates that AP suffered a five-centimetre gaping wound to his left calf as a result of the dog bite. He was sutured and treated with medication before being discharged on the same date.

#### **MFNPS Policy**

*The use of a police canine as a force option is considered an intermediate weapon in our Service Use of Force Continuum. Under certain circumstances, police service dogs may be sent to apprehend individuals that we have reasonable and probable grounds to believe have committed a criminal offence and are refusing to stop. A determination will have to be made by the handler whether the Use of the police service dog is required to prevent the suspect's escape.*

#### **Use of Force Report**

IIU investigators obtained a copy of the Use of Force Report. It contained the following notations:

*On September 26th, 2023, at 8:29 AM, MFNPS members conducting general patrol located a vehicle, and ran MVB checks on a plate that did not match the vehicle. The vehicle left a known drug residence in the townsite area in Sandy Bay First Nation. A traffic stop was attempted, and the vehicle failed to stop for Police.*

*Police pursued the vehicle down a field trail. During this time Police observed two (2) occupants in the vehicle. The passenger was observed to be reaching side to side. SO perceived this as someone attempting to conceal/retrieve a weapon or illegal substances. The vehicle then proceeded onto a heavily traveled road, and the pursuit was terminated.*

*Police located the vehicle abandoned with the drivers [sic] side door open. PSD Zion was deployed on a 20 foot tracking line, and harness to track the subject. SO made the decision to*

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*deploy PSD Zion to effect the arrest and prevent the commission of further offenses. Criminals often switch license plates, commit further offenses and flee when stopped by Police.*

*Also, in SO's experience, when occupants are reaching in the immediate area, subjects are often concealing, or recovering drugs/weapons.*

*SO called out to the vehicle, "POLICE K9" with no response. Members began tracking into a field towards Highway 50.*

*Approximately 50 meters into the track, SO observed a person laying down, face down beside a tree. SO issued a Police challenge "POLICE K9, SHOW ME YOUR HANDS". SO began bringing PSD Zion in from the lead.*

*At this time, PSD Zion began engaging Subject (1) hiding in the tall grass approximately 10 feet to the right of SO. SO did not see Subject (1) laying that close in the grass. PSD Zion had engaged Subject (1) on the left leg, at which time SO began yelling "SHOW ME YOUR HANDS". Subject (1) was reaching around but quickly complied, and raised his hand. PSD Zion was removed, as WO1 began taking subject (1) into custody.*

*SO had control of PSD Zion during the apprehension and did not let go of the lead at any point. Subject (1), who PSD Zion engaged was found to have a knife in his possession which was in immediate access to Subject (1). The knife was not concealed, or hidden and laying on the ground where Subject (1) was laying. Subject (1) was within striking distance of SO, and response time would be less likely for SO.*

*Both occupants would have been aware of a Police K9, and had the opportunity to surrender. SO announced "POLICE K9" at the vehicle when the vehicle was located. Both Subjects would have known Police were in fresh pursuit, and would have visually observed Police. SO feared that if PSD Zion did not apprehend AP, the opportunity to ambush either SO or WO1 was present.*

### **Applicable Law**

Section 25 of the Criminal Code of Canada is applicable to this analysis:

*25 (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law*

*(a) as a private person*

*(b) as a peace officer or public officer*

*(c) in aid of a peace officer or public officer*

*(d) by virtue of his office, is,*

*if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.*

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*(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.*

*(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if*

*(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested*

*(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant*

*(c) the person to be arrested takes flight to avoid arrest*

*(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm*

*(e) the flight cannot be prevented by reasonable means in a less violent manner*

*26. Everyone who is authorized by law to use force is criminally responsible for any excess thereof, according to the nature and quality of the act that constitutes the excess.*

## **Conclusion**

In this investigation, the IIU's mandate is to consider whether SO's use of force was reasonable in the circumstances.

The officers were in lawful execution of their duties; they had reasonable grounds to believe that the suspects were operating the truck in violation of The Highway Traffic Act (HTA). The SO also believed that the passenger (AP) may have been in possession of a weapon or illegal substances.

The AP refused to participate in this investigation, other than providing a consent to release his medical records. The officers' evidence is that they initially saw the truck stopped at a residence known for drug trafficking. They noted that the licence plate on the truck did not match the vehicle and the licence plate was expired. The officers had grounds to stop the vehicle under the HTA. The officers turned on their emergency lights on their police vehicle and attempted to stop vehicle; however, it did not stop. The officers pursued the vehicle until it became unsafe to do so.

While the officers pursued the vehicle, SO saw the passenger moving inside the vehicle in a suspicious manner. The use of force report indicates that the passenger had been observed reaching side to side while in the vehicle. The SO perceived this as someone attempting to conceal or retrieve a weapon or illegal substances.

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The officers then located the vehicle abandoned along a trail, with the drivers' side door opened. SO deployed police service dog (PSD) Zion on a 20-foot tracking line and harness to track the subjects into a bush. SO's evidence is that he deployed the canine to effect the arrest of the individuals and prevent the commission of further offences. SO stated that he announced "Police K-9" at the vehicle, when the vehicle was located. CW1 indicated that he did not hear anything prior to being told not to move. CW1 was located without incident. AP was not initially seen by the officers, and PSD Zion located AP 10 feet away. He was wearing a camouflage jacket and lying in tall grass. There is no evidence of SO giving PSD Zion a command to attack AP. The SO did not initially see AP in the tall grass. PSD Zion bit the left leg of AP. AP was then arrested and found to have a knife in his possession, which was laying on the ground near AP.

Given the totality of the evidence and material facts obtained in this investigation, I am satisfied that use of the police canine by SO was reasonable and does not amount to criminal liability. Therefore, no charges are recommended against SO, and the IIU investigation is now completed and closed.