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December 13, 2024

Agent D. Christensen

State Bureau of Investigation

4501 South 2700 West

Taylorsville, UT 84129

RE: DOC K9 Loki

Incident Location: 1480 North 8000 West, Salt Lake City, Utah

Incident Date: July 13, 2023

SBI Case No.: IU7181970

DA Case No.: 23.017197

Dear Agent Christensen:

This letter addresses our consideration of the above-referenced matter which you submitted to our office for screening. As discussed more fully below, we decline to file a criminal case against Utah Department of Corrections (“DOC”) K9 Officer Jacob Lee Naccarato for the death of his police service dog (“K9”) “Loki” who tragically passed away at the Utah State Correctional Facility (“the prison”) on July 13, 2023, inside a DOC K9 Unit vehicle.

**SUMMARY OF RELEVANT FACTS**

The following summary of facts was developed from your investigation of this matter. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

On July 13, 2023, Officer Naccarato was on duty with Loki at the prison. Officer Naccarato began his day at about 6:00 a.m.[[1]](#footnote-1) with a joint search operation with the K9 Unit and their law enforcement bureau, which utilized Loki and one other K9 to perform searches.[[2]](#footnote-2) After completing the search operation, at about 2:00 p.m., Officer Naccarato returned to the K9 “Kennel” building and took a lunch break. The “Kennel” is used to keep police service dogs when they were not being used for law enforcement activities at the prison and is air-conditioned, has indoor kennels with connecting outdoor fenced runs (accessed by dog doors), and had an office area with desks for each of the K9 officers.

At about 2:39 p.m., Officer Naccarato and K9 Officer Dallin Gappmayer were deployed to a call for a search inside a prison warehouse. Officers Naccarato and Gappmayer and Loki exited the “Kennel,” loaded into a DOC Ford Interceptor that was shared by the K9 Unit and equipped for K9 operations, and Officer Naccarato drove them to the warehouse.[[3]](#footnote-3) Officers Naccarato and Gappmayer and Loki went inside the warehouse to search, and then returned to the Interceptor and moved it to another portion of the warehouse.[[4]](#footnote-4) Officers Naccarato and Gappmayer went briefly inside, without Loki, and then at about 2:45 p.m., Officer Naccarato retrieved Loki from the Interceptor and they went inside. At 3:02 p.m., after utilizing Loki to search inside, Officer Naccarato exited the warehouse with Loki, stored him in the Interceptor’s kennel, and then returned to the warehouse, without Loki.[[5]](#footnote-5) During the deployment at the warehouse, the Interceptor was left running.[[6]](#footnote-6)

At about 3:12 p.m., Officer Naccarato drove them back to the “Kennel,” backed the Interceptor into a stall in front of the “Kennel,” and **turned the vehicle off.** Officers Naccarato and Gappmayer then exited the vehicle, **without Loki**, and went inside the “Kennel,” where they dropped off their vests and bags. Officers Gappmayer and Naccarato then left the “Kennel” at about 3:13 p.m.—Officer Naccarato went inside the nearby “Security” building while Officer Gappmayer went to another building before also going to the “Security” building.[[7]](#footnote-7) At about 3:32 p.m., after learning about an ongoing incident in the prison which they were being requested to respond, Officers Naccarato and Gappmayer walked back to the “Kennel” to get their vests and bags. Officers Naccarato and Gappmayer then learned that the incident had resolved itself, but that another call had come in to return to a building they had searched earlier and search for a missing tool.

At about 3:44 p.m., K9 Sergeant Jacob Waters and Officers Naccarato and Gappmayer loaded into a Dodge Ram that was also shared by the K9 Unit and left to search for the missing tool.[[8]](#footnote-8) After several hours of searching, at about 6:30 p.m., Officers Naccarato and Gappmayer and Sgt. Waters returned in the Ram to the “Kennel,” unloaded and went inside, and did a quick debrief and decided to go home for the night. At about 6:44 p.m., Officer Naccarato went to get Loki from his indoor kennel, opened it, and then ran out to the Interceptor where he found Loki deceased.

Dr. Kelly with the Utah Veterinary Diagnostic Laboratory performed a necropsy and determined Loki probably died as a result of heatstroke. During your investigation, you found that historical weather data for July 13, 2023, in Salt Lake City, shows that the temperature at 3:54 p.m. was 96° Fahrenheit and the temperature at 4:54 p.m. was 97° Fahrenheit.[[9]](#footnote-9) The location that the Interceptor was parked had no shade cover.

During your investigation, you learned that prior to this incident, the standard operating procedures within the K9 Unit at the prison were as follows:

* When at home or at the K9 building located at the USCF facility, all canines are to be removed from vehicles and placed in secure kennels that were provided by the department.
* Canines are to be secure inside a vehicle while they are completing duties within the community unless being deployed by the handler. The vehicle is to remain turned on at all times and secured.[[10]](#footnote-10)

Additionally, you learned that the K9 Unit’s Ford Interceptor had a K9 heat alert system installed, which was set up to provide real-time temperature monitoring from sensors inside the vehicle and had a programmable heat alert function.[[11]](#footnote-11) During an inspection of the Interceptor,[[12]](#footnote-12) the heat alert system was found to be powered on and actively monitoring the vehicle’s temperature, however, the “Heat Alert” function was turned “OFF.” During a functions test of the heat alert system with the “Heat Alert” function turned on, with the Interceptor turned both on and off, the system functioned during the “Heat Alert” as intended. Specifically, when the temperature hit 85 degrees, a heat alert was triggered, the passenger/kennel window dropped, the AUX fan turned on (however, the lights and horns did not engage); additionally, when the vehicle was turned off, the ignition also engaged, starting the engine fully.[[13]](#footnote-13) You further learned that the K9 Unit primarily used the heat alert system as a heat monitoring system, and that the K9 Unit had not been trained on, nor were using, the system’s heat alert function.

Notably, Officer Naccarato refused to be interviewed by investigators or make a statement regarding the incident. Officer Naccarato has a constitutional right to remain silent and is presumed innocent of any wrongdoing.

**LEGAL ANALYSIS**

We considered the elements of the offenses of cruelty to an animal and aggravated cruelty to an animal under Utah State Code, as well as the offense of cruelty to animals under Salt Lake City Code. In this case, there is no evidence that Officer Naccarato intended Loki’s death or acted with knowledge that Loki would die; indeed, there is ample evidence against such propositions. As such, we considered whether the evidence is sufficient to prove, beyond a reasonable doubt and to the unanimous satisfaction of a jury, that in storing and leaving Loki in the K9 Unit’s Interceptor, Officer Naccarato acted recklessly or with criminal negligence.

Utah Code Section 76-9-301(2) provides: “a person is guilty of cruelty to an animal if the person, without legal privilege to do so, intentionally, knowingly, recklessly, or with criminal negligence: (a) fails to provide necessary food, water, care, or shelter for an animal in the person’s custody….” If the violation of Subsection (2) is committed recklessly or with criminal negligence, it is a class C misdemeanor. Utah Code § 76-9-301(3). Utah Code Section 76-9-301(4) provides: “A person is guilty of aggravated cruelty to an animal if the person: . . . (c) kills an animal or causes an animal to be killed without having legal privilege to do so.” If the violation of Section (4) . . . is committed recklessly, it is a class B misdemeanor; and if committed with criminal negligence, it is a class C misdemeanor. Utah Code § 76-9-301(5). Salt Lake City Code 8.04.470, entitled “Cruelty to Animals Prohibited,” provides: “(D) Animals In Vehicles: It is unlawful for any person to carry or confine any animal in or upon any vehicle in a cruel or inhumane manner, including, but not limited to, carrying or confining such animal without adequate ventilation or for an unusual length of time.” Where the offense does not specify a mental state and the offense does not involve strict liability, criminal responsibility shall be established by intent, knowledge, or recklessness. Utah Code § 76-2-102. A violation of the Cruelty to Animals provision of the City code is a class B misdemeanor. Salt Lake City Code 1.12.050.

Under Utah law, a person acts recklessly:

when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

Utah Code § 76-2-103(3). A person acts with criminal negligence:

when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor’s standpoint.

Utah Code § 76-2-103(4). “[O]rdinary negligence, which is the basis for a civil action for damages, is not sufficient to constitute criminal negligence.” *State v. Larsen*, 2000 UT App 106, ¶ 18 (quotations and citation omitted). “‘[M]ere inattention or mistake in judgment resulting even in death of another is not criminal unless the quality of the act makes it so.’” *Id*. (quoting *State v. Warden*, 784 P.2d 1204, 1207 (Utah Ct.App.1989)).

In this case, the evidence produced during the investigation shows that at about 3:02 p.m., after utilizing Loki during a search in a prison warehouse, Officer Naccarato stored Loki in the Interceptor’s kennel while the vehicle was running and then returned back inside the warehouse. At about 3:12 p.m., Officer Naccarato drove the Interceptor back to the “Kennel,” where he parked and turned the vehicle off, and then he and Officer Gappmayer went inside, without Loki. Officer Naccarato then left the “Kennel” at 3:13 p.m. and he went inside the nearby “Security” building until he returned to the “Kennel” at about 3:33 p.m. Officer Naccarato then deployed at about 3:33 p.m. with Sgt. Waters and Officer Gappmayer to another call inside the prison, until they returned at about 6:30 p.m. At about 6:44 p.m., as he was preparing to go home for the night, Officer Naccarato went to retrieve Loki from his indoor kennel, discovered that he was not there, and then ran to the Interceptor where he found Loki deceased.

We do not believe the evidence supports a finding that Officer Naccarato was aware of the circumstances that contributed to Loki’s heatstroke and death and disregarded those circumstances, as would be needed to support a charge for cruelty to an animal under a reckless standard. Such a scenario would require evidence that Officer Naccarato was aware of the risk of heatstroke and death to Loki and that he disregarded that risk. While it was certainly Officer Naccarato’s duty to care for Loki and know of Loki’s whereabouts, we are not aware of any evidence which would support a finding that Officer Naccarato remembered that Loki was in the Interceptor when he returned to the “Kennel” building after the warehouse searches. Rather, we believe, based on what we know of Officer Naccarato’s activities throughout the remainder of his shift and his behaviors as he went to retrieve Loki from his kennel before going home, that it is reasonable to infer that he believed, albeit mistakenly, that Loki was safely in his kennel. Thus, we do not believe the evidence before us supports a finding that Officer Naccarato acted “recklessly,” and we decline to file a case for cruelty to an animal under a reckless standard.

If a charge was filed for cruelty to an animal under a negligence standard, a prosecutor would have to prove beyond a reasonable doubt and to the unanimous satisfaction of a jury, that Officer Naccarato ought to have been aware of the risk of heatstroke and death to Loki when he stored him and inside the Interceptor and then left him in it after returning to the “Kennel.” In this case, the evidence suggests that Officer Naccarato mistakenly left Loki in the Interceptor and did not realize his unfortunate mistake until he was preparing to go home. We are not aware of any facts that would indicate that Officer Naccarato’s failure to remove Loki from the vehicle was anything other than an isolated deviation from the K9 Unit’s policies, or that he had failed to provide for Loki’s care on any other occasion or in any other way. We are further not aware of any evidence that would support an effort to show that Officer Naccarato should have sooner realized his mistake. Accordingly, while Officer Naccarato was seriously mistaken in his belief that Loki was inside the “Kennel,” we find that his failure does not rise to level of criminal negligence. In other words, even though Officer Naccarato’s mistake resulted in Loki’s death, we are not aware of any evidence which would support a conclusion that the quality of his act was criminal.

While the scope and purpose of our review in this case was limited to determining whether the filing of a criminal charge is warranted based on the facts of the case when applied to the law, our review revealed an institutional failure by the DOC to implement systems and protocols to safeguard against anticipated human failure. Human error does not always equate to criminal negligence, and when human failure is anticipated, it is upon us, as institutions, to create systems to safeguard against human error.

In this case, we discovered that the DOC recognized the possibility of human error and the necessity for a system to protect against that error. The DOC intentionally purchased K9 heat alert systems—systems which were designed and intended to protect the life and safety of K9s in this very scenario—and then installed those systems, along with heat sensors and appropriate equipment for the systems to function, in the K9 Unit’s vehicles. The DOC then failed to fully implement the system to effectively safeguard against human error—the DOC did not train officers on the installed K9 heat alert systems and the heat alert functions, or with the consistency of protocols to safeguard human failure.[[14]](#footnote-14)

**CONCLUSION**

We believe that Loki’s death was a profoundly unfortunate accident. However, based on the facts before us as produced by the investigation, we do not believe Officer Naccarato’s conduct was reckless, nor do we believe his actions rise to the level of criminal negligence.

While the facts of this case do not warrant a criminal charge, we believe that Loki’s death could—and should—have been avoided. Where human error is anticipated, it is upon us as institutions to safeguard against that error. As a result of the investigation in this case, we found that while the DOC was cognizant of the possibility of human error, and even decided to purchase and install K9 heat alert systems to protect against that error, it ultimately failed to implement the systems with the necessary officer training and protocols for those systems to be effective.

Very Truly Yours,

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Sim Gill,

Salt Lake County District Attorney

1. Officer Naccarato’s shifts normally began at 8:00 a.m. but he began earlier due to the joint search operation. [↑](#footnote-ref-1)
2. K9 Officer Gappmayer’s K9 was also utilized to perform searches during the operation. [↑](#footnote-ref-2)
3. During the earlier operation, K9 Sergeant Jacob Waters utilized the Interceptor while Officers Naccarato and Gappmayer, and their two K9s, utilized a Dodge Ram that was also shared by the K9 Unit. [↑](#footnote-ref-3)
4. Officers Naccarato and Gappmayer and Loki were inside the warehouse from about 2:40 p.m. to 2:43 p.m. [↑](#footnote-ref-4)
5. The Interceptor’s kennel was located behind the driver’s seat in the passenger compartment. [↑](#footnote-ref-5)
6. Officer Gappmayer recalled watching Officer Naccarato put Loki inside the Interceptor’s kennel and that the vehicle was running at that time. [↑](#footnote-ref-6)
7. Officer Gappmayer explained that after dropping off their gear, he told Officer Naccarato that he was going to go over to the motor pool building. After going to the motor pool building, Officer Gappmayer also went to the “Security” building. [↑](#footnote-ref-7)
8. Unlike the Interceptor, the Dodge Ram could accommodate more than two people. [↑](#footnote-ref-8)
9. Temperature readings were retrieved during the investigation from wunderground.com. [↑](#footnote-ref-9)
10. Sgt. Waters advised that the standard operating procedures were not in any policy or formally written in any way. In their interviews, both Sgt. Waters and Officer Gappmayer explained that their standard operating procedure while on site is to remove their K9s from vehicles and have them in the kennels, unless they are actively on a call or a deployment. Specifically, Sgt. Waters explained (quotations have been lightly edited for concision and readability):

[W]hen we are here on site, the SOP is to take the K9 out of the vehicle and place them in the kennels inside the building. They’re indoor/outdoor kennels, air-conditioned, and they’re taken care of. It is not common practice to leave the K9s inside vehicles unless we’re out actively on a call or a deployment. But even then, we try to get them as many breaks outside of those vehicles as possible. But at, yeah, if we’re here on site and not in the prison, they are to be in these kennels, not stored in the vehicles

Similarly, Officer Gappmayer explained:

[W]hen we’re here at work, we have these kennel set up out here. If we’re not training or currently working with the dog, the dogs are kept in their kennels. If we go out on a deployment like that and we come back, our SOP would be to remove the dogs from the vehicles and take them back to the kennels. That would be our normal thing to do. [↑](#footnote-ref-10)
11. The Interceptor had an Allen F3 Gen2 K9 Deployment / Heat Alert System. The system is designed so that when the system is powered on and the “Heat Alert” function is turned on, if the temperature monitoring system gets a reading above the designated temperature threshold, then a “Heat Alert” is triggered, notification will be displayed on a display installed in the center console of the vehicle as well as a hand-held pager, and user-selected safety protocols will also activate. [↑](#footnote-ref-11)
12. The Interceptor was inspected on July 18, 2023, by Captain Brian Asay and Sgt. Waters. [↑](#footnote-ref-12)
13. The K9 deployment function was also tested and functioned as intended. Specifically, when the emergency button on the back of the pager was pressed, the driver-side kennel door opened. [↑](#footnote-ref-13)
14. During our review, the Department of Corrections advised of the following (emphasis in original):

The following processes were reviewed and created to mitigate any future incidents. These have been, or are in the process of being implemented:

	* When at home or at the K9 building located at the USCF facility all canines are to be removed from vehicles and placed in secure kennels that were provided by the department. **This process is still in place, however now the process is the vehicle is to remain turned on at all times while on shift, and after any calls to service all canines are to be removed from the vehicle. The handler is to return to the vehicle and verify all kennels are empty. If there is a second Officer that Officer is to also verify the vehicles are empty.**
	* The K9 Unit was equipped with a K9 Patrol vehicle which had a heat alert and heat monitoring system installed. This system was primarily used as a heat monitoring system. The heat alert system was not configured and turned on. **The heat alert system has been properly configured to specific settings. Each Officer receives direct training and familiarization with the system, how it operates and how to respond to any alert. The Officer will maintain on their person a remote/pager that reads the current temperature and produces alerts while on shift. Prior to every shift a vehicle maintenance and inspection is performed which includes turning on the heat alert system, checking its functionality, and completing a form that is turned into the supervisor.**
	* **The Utah Department of Corrections is in the process of purchasing canine patrol vehicles equipped with heat alert monitoring systems for every K9 handler within the department.**
	* **A new requirement for supervisors to inspect the heat monitoring systems on a monthly basis.**
	* **The K9 Unit supervisor is currently revising K9 Post Orders and K9 Policy to reflect these standards and expectations.** [↑](#footnote-ref-14)