

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2023-013

Referral from

RCMP “H” Division

Nova Scotia

December 9, 2022

Erin E. Nauss  
Director  
June 26, 2024

## **MANDATE OF THE SiRT**

The Serious Incident Response Team (“SiRT”) has a mandate under the Nova Scotia *Police Act* to investigate all matters that involve death, serious injury, sexual assault, and intimate partner violence or other matters determined to be of a public interest to be investigated that may have arisen from the actions of any police officer in Nova Scotia.

At the conclusion of every investigation, the SiRT Director must determine whether criminal charges should result from the actions of the police officer. If no charges are warranted the Director will issue a public summary of the investigation which outlines the reasons for that decision, which must include at a minimum the information set out by regulation. Public summaries are drafted with the goal of adequate information to allow the public to understand the Director’s rationale and conclusions.

## **INTRODUCTION**

On December 9, 2022, the RCMP contacted the SiRT regarding a matter involving a retired member of the RCMP. The Civilian Review and Complaints Commission for the RCMP (“CRCC”) had recommended that the RCMP “H” Division should consider whether a retired member of the RCMP Southeast Traffic Services, Chester, Nova Scotia (the “Subject Officer”/”SO”) should be prosecuted for a possible offence of perjury. This was related to a public complaint made to the RCMP that the SO provided false or misleading information in court regarding the use of in-car video recording equipment during a traffic stop for a seatbelt infraction under the *Motor Vehicle Act* that occurred in 2018.

Upon review of initial information, on February 15, 2023, the former SiRT Director determined that this was a matter of public interest to be investigated. There were some delays in the investigation as the Affected Party (“AP”) had health concerns and was uncertain whether he could participate in the investigation. The SO also took time to determine whether he would participate in an interview with the SiRT and declined, which is his legal right. The SiRT investigation concluded on June 6, 2024.

The decision summarized in this report is based on evidence collected and analyzed during the investigation, including, but not limited to, the following:

1. Affected Party Statement
2. RCMP Public Complaint, Letter, and Code of Conduct Final Report
3. CRCC Interim Report
4. Summary Offence Ticket
5. Court Transcript
6. In-car camera video
7. RCMP Vehicle Help Ticket Incident Reports

## **INCIDENT SUMMARY**

On March 26, 2018, the AP was stopped by the SO in Mahone Bay, Nova Scotia for an alleged seat belt violation under the *Motor Vehicle Act*. A summary offence ticket was issued. The AP challenged the ticket in provincial court, and as part of the court process the SO testified on July 5, 2023. The AP was convicted of the traffic offence, and he appealed that decision. The Supreme Court set aside the conviction on November 7, 2018, and ordered a new trial. The Crown offered no evidence, and the charge was dismissed on November 14, 2018.

On August 26, 2019, the AP made a public complaint to the RCMP and made a number of allegations against the SO, including a claim the SO committed neglect of duty in that he provided inconsistencies in his testimony at trial. The RCMP process unfolded and the SO ultimately retired. The CRCC made a number of recommendations, including that the Commanding Officer of “H” Division should consider referring the SO’s apparent perjury for prosecution.

An excerpt from the provincial court transcript includes the following exchange at the trial:

AP: *So why wasn't a dash camera activated?*

SO: *Not all vehicles have operational dash cams. The vehicle is not a vehicle that's used a lot and the dash cam was inactive for quite some time. A help ticket, what we call a help ticket was put in, but it wasn't working at all that day.*

The AP was interviewed by the SiRT. He stated that he was shocked by the SO’s testimony and felt that the SO was not truthful. He made a public complaint on his own and was ultimately happy with the final results of his complaint.

The evidence gathered in the SiRT investigation shows that the in-car video camera in the SO’s police vehicle was in fact working the day in question. However, despite the findings by the CRCC, it is not clear whether the SO was aware that it was functional. Help Ticket Incident requests had been submitted twice previously for the in-car camera in the vehicle. The RCMP investigation showed that the in-car video camera had automatically started recording when emergency equipment was activated and was turned off. The evidence is not clear whether the SO was aware that it was recording, as he did not download any of the recordings for the traffic stop in question or other traffic stops that day. It is understood that in order to know if a video had been recorded, an officer would have to download a recording. There is nothing to indicate the SO made any attempt to download a recording, and without doing so, there would be no way to confirm this.

## **RELEVANT LEGISLATION**

*Criminal Code:*

### **Perjury**

131 (1) Subject to subsection (3), every one commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false.

## **LEGAL ISSUES & ANALYSIS**

Section 131 of the *Criminal Code* requires that a statement be made that is false. There is also a requirement that the accused knew that the statement was false and that they intended to mislead. The false statement may have been made under oath or solemn affirmation, orally, by affidavit or solemn declaration. Caselaw has held that where the most that can be found is that evidence was given in error, the elements of the offence cannot be established as there is no basis for the inference of the requisite knowledge and intent. To establish perjury, there must be more than even a deliberate false statement, as the statement must also have been made with intent to mislead. I am bound to consider the legal test required for the criminal offence of perjury.

In the present case, a review of the evidence does not clearly show that the SO knew the statement he made regarding the in-car camera was false, nor is there evidence to indicate the SO had an intent to mislead the court. When the SO provided evidence in court related to the summary offence ticket, he testified that he believed it was not working based on past issues he experienced in that police vehicle. Although the video was working, it appears that the SO failed to confirm this, did not perform a download, and may have assumed it was not operational. It also appears that the SO failed to follow RCMP policy which requires officers to inspect and ensure the system is working properly.

It is reasonable to conclude that the SO may not have been aware the in-car camera video system was working. Although he may have been careless in his failure to confirm if it was operational, his actions do not rise to the level required to warrant a charge for the criminal offence of perjury.

## **CONCLUSION**

The former SiRT Director initiated an investigation of the incident, which has now concluded. My review of the evidence indicates there are no reasonable grounds to believe that the SO committed a criminal offence.