



**IN THE MATTER OF AN INVESTIGATION INTO AN ALLEGATION OF PERJURY
OF A WINNIPEG POLICE SERVICE OFFICER**

FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT

IIU File Number:	2019-0052
Final decision made by:	Zane Tessler, Civilian Director
Final report prepared by:	Roxanne M. Gagné, Civilian Director
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Introduction

On August 22, 2019, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) via telephone of an incident involving the subject officer (SO); where it was alleged the officer had committed perjury by intentionally failing to disclose surveillance results on a target when he completed an Information to Obtain a Search Warrant (ITO) in January 2018. The notification document made reference to a memorandum, prepared by Federal Crown Attorney (professional witness PW1), containing the following information:

“This matter was set for trial August 6 and 7, 2019. The case involved a search warrant executed at the residence of the accused, where street level amounts of cocaine and meth were located.

Defence counsel filed a motion to cross-examine the affiant on numerous areas. Of all the areas, only one had potential merit. Defence wanted to ask the affiant about the absence of surveillance being mentioned in the ITO, because according to the TST (tactical support team) narrative, during the TST briefing, surveillance had been done “that day, the day before and last week”. The ITO and the balance of the file made no mention of surveillance.

In order to ascertain [sic] what position I would be taking on this area of cross-examination, I needed to find out if surveillance had in fact been done and what the affiant knew (or ought to have known) at the time.

In early July 2019 I learned from witness officer (WO1) that a team had conducted surveillance, but no notes could be located. WO1’s daily occurrence report (DOR) records indicated that surveillance had been done the couple days leading up to the warrant. The accused was seen at the residence. However, after asking the officers, none of them had any notes of surveillance. He apologized for this.

I met with the affiant (SO) on July 17, who told me he did not know about any surveillance conducted on this investigation. If he had known the accused was seen at the residence, he would have included it.

SO also brought to the meeting photocopied pages of his informant handlers notes, which we vetted and I disclosed to defence.

Upon reviewing the file again I came across another set of informant handler notes, similar but different from the ones provided during the July 17 meeting.

On July 22, I spoke with SO who explained he re-copied his notes because he didn’t want to bring in his notebook. The re-copying was not verbatim and some of the information was different, although mostly the same.

During this conversation he also told me he spoke with WO2 very recently (who was part of the investigative team on this file) and she she [sic] recalls seeing the accused at the residence, so the SO felt she probably told him about it at the time he was writing the ITO. Later that day I spoke with WO2 and she told me she hadn’t spoken with SO in weeks.

I also spoke with WO3 who recalled the surveillance was during the evening shifts, they did see the accused at the house one day, but otherwise no drug activity was noted. He recalls

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surveillance was done in the evenings and it was very cold out. He said although there were no surveillance notes (and he didn't know why no notes were taken), SO would have been apprised of the surveillance and what was seen, either by the team or during the briefings.

I felt after learning all of this information that SO would not be reliable witness for cross-examination and I chose to stay the charges.

Affiants must be full, fair and frank in their ITO, which should include if surveillance was conducted and no drug activity was observed. If no drug activity is observed, and the affiant still believes reasonable grounds exist, he/she should explain why in the ITO. I provided this advice to SO. I also told him under no circumstances should he be recopying notes and producing them as photocopies of originals.

PW1 subsequently supplied the IIU with a redacted copy of the Information to Obtain a Search Warrant (ITO), purportedly prepared by SO, dated January 9, 2018. In the ITO, SO outlined information received from a confidential human source implicating the target of the WPS investigation (the accused) in drug trafficking. There was no mention in the ITO that any surveillance had been conducted on (the accused).

WPS also supplied the IIU with a copy of a DOR, completed by WO1, indicating that surveillance had been done on (the accused) on December 19, 2017, January 8, 2018, and January 9, 2018. The DOR also indicated that an ITO and search warrant for the investigation had been completed on January 8, 2018. Finally, the report stated that the search warrant was executed at (the accused's) residence on January 10, 2018."

The allegation of perjury is a prescribed offence under IIU regulation 99/2015 and as such constitutes a mandatory investigation for IIU under the *Police Services Act* (PSA). IIU investigators were assigned to this matter.

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

Facts and Circumstances

Witness officers

WO1

WO1, who has been posted to the Guns and Gangs Unit of WPS (formerly the WPS Street Crimes Unit) for the past five years, recalled his unit's investigation into the alleged drug trafficking activity of the accused and stated SO was assigned to prepare the ITO. He could not recall if SO performed other duties in the investigation.

WO1 confirmed he had prepared the DOR supplied to the IIU, and acknowledged that surveillance appeared to have been done on the accused on December 19, 2017, January 8 and 9, 2018. He did not know who performed surveillance duties on those dates, as he had no notes on the matter and he was unaware if the results from that surveillance were passed along to SO. He

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did say that SO drafted the ITO during his shift on January 8, 2018, and that he had reviewed it prior to submission to a Judicial Justice of the Peace.

WO1 added that in his review of the ITO, he missed the fact that the officer did not disclose surveillance done on December 19, 2017, and speculated that the affiant may not have been aware of the surveillance being conducted that date due to a lack of notes on the matter.

WO2

WO2 was a member of the WPS Street Crimes Unit from May 2015 to May 2018, and remembered being involved in the execution of a search warrant on the residence of the accused on January 10, 2018. She had no recollection of involvement in the file on any other dates.

WO2 was aware SO was the affiant on the file, but she did not know if he performed any other duties in the investigation. She did not know if or how the results of surveillance were conveyed to SO, as she had no notebook entries on surveillance done ahead of the search date.

WO3

WO3 stated he was in a supervisory role in the WPS Street Crimes Unit during the project involving accused, and recalled SO being assigned the role of affiant in the investigation. He could not recall if SO was involved in other aspects of the matter, such as surveillance duties.

WO3 remembered surveillance being conducted on the target of the investigation January 8 and 9, 2018, but at the time of the interview did not know who was involved in performing that function. He knew that SO was writing the ITO on January 8, 2018. The witness officer believed SO would have been made aware of the results of surveillance, but he had no notebook entries on the investigation, so could not confirm this.

Following his statement, WO3 returned to his office and located WPS Target Sheets regarding surveillance conducted on the accused for the three dates. These were supplied to the IIU. Constable SO's name appears only on the sheet for the warrant execution date of January 10, 2018. No target sheet was found for surveillance done on December 19, 2017.

WO4

This officer's name appeared on the target sheets supplied by WO3. In his interview with the IIU, WO4 stated that while he remembered the search warrant execution on the accused's residence, he did not recall doing surveillance on December 19, 2017 or January 8, 2018. He had no notes for either date and did not remember having any conversation with SO regarding either date.

WO5

This officer's name appeared on the target sheets supplied by WO3. He had some recollection of the investigation into the accused's alleged drug trafficking, but did not remember doing surveillance on the target at all, had no notebook entries regarding that, and did not know how or if results from the surveillance were conveyed to SO.

WO6

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This officer's name appeared on the target sheets supplied by WO3. WO6 remembered there had been a project run by the WPS Street Crime Unit directed at investigating drug trafficking activity by the accused, in which SO was the affiant. WO6 did not remember doing surveillance on the target on December 19, 2017 or January 8, 2018, had no notes for either date, and did not remember speaking with SO about the surveillance.

WO7

WO7's name appeared on the target sheets supplied by WO3, and he did remember the surveillance on January 8, 2018, adding that SO was preparing the ITO that date in the office. The application for search warrant was granted on January 9, 2018, and the warrant was executed on January 10, 2018. WO7 knew nothing about the surveillance done on the accused on December 19, 2017, and did not know if the results from any of the surveillance was passed along to SO.

WO8

This officer's name appeared on the target sheets supplied by WO3. He remembered doing surveillance on the accused but not the specific date, and had no notes regarding this. He did not know if the results of the surveillance were relayed to SO.

WO9

WO9's name also appeared on the target sheets provided by WO3. He remembered doing surveillance on the target of the investigation with WO10 on a very cold day where nothing happened. He did not know the date that occurred and did not have any notebook entries. WO9 did not remember if he told SO about the results of surveillance.

WO10

This officer's name appeared on the target sheets supplied by WO3. WO10 recalled doing surveillance with WO9 on one day where the target of the investigation was not seen. He had no notes and he could not remember if the surveillance results were passed onto SO, who was the affiant on the file. WO10 stated that normally there was a debriefing held after surveillance, but he could not recall if one took place.

Subject Officer

SO declined to be interviewed by IIU investigators, choosing instead to supply a prepared statement through his legal counsel. The statement does not address the issue of surveillance results not being disclosed in the ITO, and instead mainly focused upon the relationship between the Crown Attorney and SO as the court case involving the accused made its way through the courts.

Applicable Law

Sections 131 to 134 of the *Criminal Code of Canada* state:

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.

(1.1) Subject to subsection (3), every person who gives evidence under subsection 46(2) of the [Canada Evidence Act](#), or gives evidence or a statement pursuant to an order made under section 22.2 of the [Mutual Legal Assistance in Criminal Matters Act](#), commits perjury who, with intent to mislead, makes a false statement knowing that it is false, whether or not the false statement was made under oath or solemn affirmation in accordance with subsection (1), so long as the false statement was made in accordance with any formalities required by the law of the place outside Canada in which the person is virtually present or heard.

(2) Subsection (1) applies, whether or not a statement referred to in that subsection is made in a judicial proceeding.

(3) Subsections (1) and (1.1) do not apply to a statement referred to in either of those subsections that is made by a person who is not specially permitted, authorized or required by law to make that statement.

132 *Every one who commits perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.*

133 *No person shall be convicted of an offence under section 132 on the evidence of only one witness unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.*

134 (1) *Subject to subsection (2), every one who, not being specially permitted, authorized or required by law to make a statement under oath or solemn affirmation, makes such a statement, by affidavit, solemn declaration or deposition or orally before a person who is authorized by law to permit it to be made before him, knowing that the statement is false, is guilty of an offence punishable on summary conviction.*

(2) Subsection (1) does not apply to a statement referred to in that subsection that is made in the course of a criminal investigation.

The determination of whether the necessary reasonable and probable grounds exist must not be based solely on speculation. The absence of evidence on essential elements of the offence means there is an absence of the necessary reasonable and probable grounds. Therefore, in those circumstances, there is no legal support for the laying of a criminal charge. To establish the offence of perjury, there must exist proof beyond reasonable doubt that:

1. The testimony was false;
2. The witness knew the testimony was false;
3. The witness had the intent to mislead.

Actual misleading of the court is not an essential element of the offence. Carelessness or recklessness in providing a statement or affidavit under oath or by solemn affirmation --without the intent to mislead and give false evidence--does not amount to the offence of perjury. In other

words, knowingly giving a false statement is not enough for a conviction. There must be an intent to mislead.

Conclusion

Where it is determined that reasonable and probable grounds exist to believe a criminal offence has been committed, the IIU civilian director may charge the subject officer(s) accordingly. The determination of whether reasonable and probable grounds exist is based on a careful assessment of all the available evidence. The totality of the circumstances must be considered in the assessment of grounds. Civilian Director Zane Tessler, assigned to this matter at the time, gave due consideration to all the circumstances and did a thorough review of all evidence and material facts obtained in this investigation, and determined that the actions of SO did not amount to an offence of perjury under the Criminal Code.

The IIU investigation is now completed and this matter is now closed.