

TO BE DELIVERED BY EMAIL

April 20, 2015

Wayne Scott

Dear Sir,

It has come to our attention, purely by happenstance, that you are soon to release a film about the Michael Bryant case. From your comments in Now Magazine, and from what Mr. Hechter has indicated, much of the film will focus on, and make allegations about the propriety of the prosecutorial decision we made not to proceed to trial against Mr. Bryant.

We are disappointed that no effort has ever been made to obtain our response to allegations that are unfounded. With respect, it is no answer to indicate at this late stage – and only as a result of our expression of concern to Mr. Hechter – that you are prepared to hear from us now. It is obvious from what you said in Now Magazine, amongst other things, that you have already drawn your conclusions – unaided by a response from those who made the decision in the first place – and that, sadly, those conclusions are skewed by a lack of balance. The very least you can do is ensure that the following response is fully reflected in your film.

When the charges were withdrawn against Mr. Bryant, the Crown provided detailed verbal and written reasons for its decision. These were made available to the public. The level of detail provided was unprecedented. The Crown's explanation consumed approximately 50 pages of transcript. The explanation carefully articulated the ethical duty of the Crown not to proceed when there is no reasonable prospect of conviction, and the exhaustive steps taken by the Crown to evaluate whether a reasonable prospect of conviction existed.

Although it was not required to do so, the defence chose to provide very full disclosure of its case to the Crown, including access to its defence expert materials. It also permitted the Crown and investigating officer to interview Mr. Bryant. The Crown also interviewed his wife, Ms. Abramovitch. Expert and other evidence proffered by the defence was subjected to independent review by the Crown through our own interviews and through the use of our own experts.

It was clear to us, based on the totality of the evidence that there was no reasonable prospect that Mr. Bryant would be convicted of any criminal offence. We met or spoke with Mr. Sheppard on multiple occasions before and after this decision was made. He acknowledged to the Crowns and to the investigating officer that we were correct that Mr. Bryant would never be convicted, but he felt that the case should proceed to trial nonetheless. While that sentiment was understandable, we explained that it was inconsistent with our ethical duty. Mr. Sheppard was well aware at the time that we had identified concerns about the eyewitness accounts given by a number of the witnesses.

It would appear that a centerpiece of your film – and Mr. Sheppard's current position – is that eyewitness accounts tell a different story, and were "buried". This is untrue. Those acquainted with the criminal justice system are all too familiar with the need to carefully scrutinize eyewitness accounts of an event that took place in a matter of seconds. As the Crown advised the Court, the eyewitness accounts were, at times, inconsistent with each other. At times, they also contained demonstrably inaccurate information.

For example, the Crown noted that the accounts given by eyewitnesses as to the movements of Mr. Bryant's vehicle as it proceeded westbound, with Mr. Sheppard latched onto the driver's side varied considerably. Three witnesses described Mr. Bryant's vehicle as swerving or weaving as it travelled along the south side of Bloor Street. Another three witnesses said they did not observe any swerving. One witness said the car was rubbing against the south curb. Another said the car mounted the sidewalk and drove half on the sidewalk and half on the road. Another witness described the vehicle as going onto the sidewalk, and another said that it was driving over the curb.

A number of the witnesses estimated the speed of the vehicle as ranging from 60 to 100 kilometres per hour. Two witnesses observed the brake lights come on during the course of this drive. Many of the witnesses described hearing the roar of the vehicle's engine or the sound of the engine revving.

Expert analysis determined that the average speed of the vehicle during this drive was in the range of 34 kilometres per hour. It appears that the vehicle may never have left first gear. This would cause an audible revving of the engine, which might explain the witnesses' misperception of speed and what was transpiring. A forensic examination of the vehicle and the curb demonstrated that the vehicle did not rub up against or mount the curb at any time.

Equally important, a forensic analysis of the videotapes from nearby commercial premises, involving a micro-second by micro-second (or frame by frame) breakdown of the available videos showed activity not otherwise seen by the naked eye. The Crown painstakingly outlined this evidence in its explanation to the Court and public.

No eyewitness saw the entire incident. It was hardly surprising that an eyewitness could draw conclusions about what had just occurred in a confrontation between a motor vehicle and a bicyclist that were vivid, but unreliable in the face of the entirety of the evidence. Nonetheless, the Crown was obligated to take into consideration the fact that aspects of the eyewitness accounts were incompatible with the known objective evidence. To be clear, the Crown never suggested that these witnesses were anything, but honest. The issue was reliability, not credibility.

Criticism has also apparently been levelled at the Crown for its use of the deceased's prior discreditable conduct.

This evidence (most particularly of the deceased's prior assaultive and aggressive behaviour towards motorists and others) was legally relevant in considering whether Mr. Bryant was attacked by the deceased, and as circumstantial evidence that the deceased was the aggressor. Nonetheless, this evidence was only considered after it was carefully evaluated. That evaluation included personal interviews conducted by the Crown and the investigating officers. That process resulted in several similar accounts being discounted as insufficiently reliable, even in the context of the burden of proof.

Based on the investigation undertaken by the Crown and police, reliance could be placed on the evidence pertaining to six separate altercations involving the deceased and other motorists, one of which was photographed. This prior evidence resonated with the accounts given by Mr. Bryant and his wife, and was consistent with the body of reliable objective evidence pertaining to the critical events.

This evidence was carefully outlined in Court, together with the important caution that the consideration of such evidence was not done to demonize the deceased or as the basis for anyone

suggesting that he deserved his fate. Indeed, the Crown chose to highlight other features of the deceased's background so as to provide valuable insight into him more generally.

Viewed in the context of the entirety of the available evidence, the account provided by Mr. Bryant and his wife could not be discounted or rejected when viewed in the context of the Crown's burden of proof. Indeed, their accounts were circumstantially supported by other reliable evidence available to the Crown.

Conspiracy theories have apparently been floated about this case. Perhaps that is not surprising given its profile. The Crowns in this case were selected to ensure an independent and impartial approach to this prosecution. That is precisely what took place. The same result would and should have followed regardless of the antecedents of the defendant. The Crowns' collective reputations earned over many years ensured that this was the case.

Yours truly,

Richard Peck Q.C.
Mark Sandler