

The Truth Emerges

Posted At : June 4, 2013 11:25 PM | Posted By : Rick Bernardi

Related Categories: Cyclist fatalities

It was a summer evening, the last night of August nearly four years ago, [when two worlds violently collided](#) on Toronto's posh Bloor Street. In the aftermath, a cyclist lay dead, and the driver he clashed with stood accused of criminal charges in that death.

But let's get real.

Motorists rarely face serious charges when cyclists die at their hands. After all, cyclist deaths are "just accidents," and [we don't want to hold people accountable](#) for "accidents."

Except this death was no "accident." The driver's actions were, according to the nineteen witnesses who stepped forward, intentional.

Still, let's get real. The cyclist, Darcy Allan Sheppard, was [Métis](#), and had a history of substance abuse and anger control issues. In contrast, the motorist, Michael Bryant, well, he also had a history of substance abuse and [a reputation for a "pugnacious streak."](#) But unlike Sheppard, Bryant was an attorney—in fact, Ontario's former Attorney General, educated at some of the world's finest universities—and a rising star in Ontario politics. For all of our comforting illusions about the [Rule of Law](#), people like Michael Bryant don't answer for the deaths of people like Darcy Allan Sheppard.

But there's still at least the appearance of the Rule of Law to adhere to. Michael Bryant couldn't just be let off without even a perfunctory nod to the Rule of Law. In the immortal words of [Vincent LaGuardia Gambini](#), there was no way this was not going to trial.

Except it didn't go to trial. Bryant was charged. A Special Prosecutor was appointed. And after these formalities were observed, the charges were dropped. Sorry, Vinny, but in this case, there was no way this was going to go to trial—even if the Special Prosecutor had to jump teams and [present Bryant's defense](#).

Or rather, Bryant wasn't going to be put on trial. The day after Sheppard's death, it became apparent that only one of the two men involved in this violent confrontation would be put on trial, and that man was not Michael Bryant. Before he was released on his own recognizance, Bryant had made two phone calls. The first was to high-profile criminal attorney Marie Henein; the second, to high-profile public relations firm Navigator Ltd.

A day after that second call, a tidal wave of negative news stories about Darcy Allan Sheppard swept through the press. He drank. He had been on the lam from a stolen checks charge. He had been homeless. He had fathered kids he never knew. He enjoyed loud parties. He had had a loud argument

with his girlfriend.

Police administered the full battery of toxicology tests on Sheppard—but not a single toxicology test was performed on the driver who stood accused in his death. Bryant told his side of the story, but Sheppard lay silent on a slab in the morgue. Nineteen witnesses stepped forward to tell what they saw, but their words went unheeded, dismissed out of hand by a Special Prosecutor who seemed to have understood his mandate to mean that he would be defending Bryant and prosecuting Sheppard.

And so, having put Sheppard on trial and found him guilty, the Special Prosecutor dismissed the charges against Bryant. He was a free man.

That wasn't enough for Bryant. Three years later, Bryant felt compelled to [tell his side of the story once again](#). Don't we get it? Sheppard (like Bryant) had a history of substance abuse. Sheppard had been aggressively confronting drivers, while Bryant had that pugnacious streak. Clearly, [despite the evidence](#), Sheppard was to blame. We have the word of the man who killed him to rely on.

And still, Sheppard lay silent.

Sheppard's father, Allan Sheppard, had remained somewhat silent too—until now. "I reluctantly accepted that decision," [Sheppard \(Sr.\) says](#). "Given the circumstances and my son's background, getting a conviction would have been difficult."

But while Sheppard (Sr.) might have accepted, albeit reluctantly, the Special Prosecutor's decision to drop charges, he never dropped his own pursuit of the truth. He filed a Freedom of Information request for documents pertaining to the incident; years later, having finally received those documents, Sheppard now "emphatically rejects" the Special Prosecutor's explanation of his decision.

"Information obtained through freedom of information access does not—and cannot—support the exoneration implicitly given to Mr. Bryant by [Special Prosecutor Richard] Peck. The documents say my son and Mr. Bryant were both responsible for what happened...I am amazed—shocked might be a better word—at the degree to which some of the new material challenges Mr. Peck's version of events."

In fact, Peck's version of events was apparently copied wholesale from Bryant. In 2010, when Special Prosecutor Richard Peck dismissed the charges against Bryant, [Bob Mionske noted](#) that

"What was most remarkable, however, was not the prosecutor's decision that he could not win the case. It was Peck's obligation to determine whether he had the evidence to go forward with his case, and in fact, prosecutors regularly make determinations as to whether they have sufficient evidence to get a conviction. But Peck went further, seemingly taking on the role of defense attorney and

presenting Bryant's defense to the Court."

If Peck had conducted an objective review of the case, and had reached the conclusion that Bryant's version of events was a consistent with the truth of what had happened, it would not be so remarkable that Peck's version of events coincided so neatly with Bryant's version. But [according to Sheppard \(Sr.\)](#), Peck's review was neither objective nor credible.

"Mr. Peck attributes huge swaths of supporting evidence to Mr. Bryant and his wife...There is no common definition of 'objective' that would apply to any testimony from an accused person or his wife. Nor is there any responsible use of 'credible,' in a judicial context, to describe testimony that is not given under oath or subject to cross-examination. The evidence of Mr. Bryant and his wife, and most or all of the witness and expert testimony used by Mr. Peck in his statement, was not sworn or cross-examined. That does not mean anyone lied; it does mean such evidence cannot be accepted as unchallengeable truth. Yet that is what Mr. Peck and Mr. Sandler did, and what they persuaded me, the media, and the public to do. Thanks to the new documents I now have, I am no longer persuaded."

Simply put, Peck's review of the case did not conform to any recognizable legal standard. It was garbage law, and [as they say in a different field](#), garbage in, garbage out. Writing about this case, [Bob Mionske noted](#) that Peck's dismissal of the charges against Bryant rested on five legs: (1) Sheppard's history of altercations with drivers; (2) Sheppard's history of drug and alcohol issues; (3) eyewitness accounts and forensic examinations; (4) Sheppard's intent to attack Bryant; and (5) Bryant's account of events. But a closer look reveals that each of these legs was so weakly cobbled together that in fact, Peck's analysis didn't have a single leg to rest on:

- **Sheppard had a history of altercations with drivers**—but what cyclist hasn't had run-ins with drivers? So was Sheppard's experience out of the norm for what most cyclists experience? Consider the incidents used to discredit Sheppard: A driver who cut him off. Another driver who cut him off. A driver on the wrong side of the road. A driver who honked his horn at Sheppard because he was riding in the center of the lane.
- **Shepard had a history of substance abuse problems.** So, [by his own admission](#), does Bryant. And like Sheppard, word-of-mouth allegations of Bryant's own substance abuse problems aren't limited to legal substances.
- **Sheppard attempted to enter Bryant's vehicle with the intent to attack Bryant.** Or so the prosecution speculated. This was, in fact, Bryant's defense. And countering Bryant's defense/the prosecution's speculation were Sheppard's own words—" [You aren't going to get away that easy](#)"—spoken as he gave chase on foot after Bryant, who had just knocked Sheppard off his bike and was accelerating away from the

scene. Sheppard's words suggest another explanation for his actions—that he intended to prevent Bryant from fleeing the scene. This explanation for Sheppard's actions is supported by eyewitness accounts and forensic evidence. The Special Prosecutor's explanation for Sheppard's actions is supported by Bryant's defense. Draw your own conclusions.

- **Bryant's account of events was supported by Sheppard's prior history** of altercations with drivers and his problems with substance abuse, and by eyewitness accounts and forensic examinations. *Except that it wasn't* Bryant had his own past history that mirrored that of the man he stood accused of killing. And those eyewitness accounts and forensic examinations? They were the final leg of the prosecution's analysis.
- **The eyewitness accounts and forensic examinations** were alleged by Special Prosecutor Richard Peck to support Bryant's account of what happened the night of Darcy Allan Sheppard's death. In fact, nothing could have been further from the truth. Nineteen eyewitnesses, some of whom gave sworn testimony, said that Bryant was at least as aggressive as Sheppard. And forensic examinations reached the same conclusion. But evidence that contradicted Bryant's defense was either rejected or ignored by the Special Prosecutor.

In 2010, I wrote in Dandyhorse magazine that

"the rule of law means that a nation is governed by laws, rather than by the caprices of the powerful few. It means, among other things, that nobody, rich or poor, powerful or powerless, is above the law. It means that even the powerless can find justice under the law, and that even the powerful can be brought to justice. It's an idea that is ingrained in Western society....Two men, one powerful, the other not, collided violently on a Toronto street. Their lives will intersect once again in a court of law, as one is brought to stand before justice and answer for the death of the other. Will justice be served? Nothing less than the rule of law is at stake."

For Darcy Allan Sheppard, "a nobody born into a hardscrabble life on the wrong side of the tracks," that day in court never came. The prosecutor who was appointed to uphold the Rule of Law and bring the powerful man who killed Darcy Allan Sheppard to justice ignored the evidence and presented the powerful man's defense instead.

And now Sheppard's father has the evidence.