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Document ID:
Investigation: DUNPHY – 2015-376186

Document Title

Doc Description

How Received

When Received

Date

Document Type:

Document Summary:

Letter from Erin BREEN to Darin KING, Andrew BOLAND and Kent OSMOND.

This is a copy of a document already in the system

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Secured for Hold Back or Disclosure Issues

Vetting

Submitted/Recommended/Approved By

Date 2015-11-30

Number ID	Category	Reason
82	T	
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April 16, 2015

The Honourable Darin King
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Dear Minister King, Superintendent Boland and Sergeant Osmond:

RE: RCMP investigation into the death of Donald Dunphy

I write to you on behalf of my client, Ms. Meghan Dunphy. Meghan Dunphy is the sole daughter of Mr. Donald Dunphy who was shot and killed in his home in Mount Carmel by a member of the Royal Newfoundland Constabulary on Sunday, April 5, 2015.

Ms. Dunphy retained my firm Simmonds + Partners Defence to represent her and her family on April 7, 2015. She did so as a result of frustration she experienced in dealing with aspects of the criminal investigation conducted by the RCMP. She came to our firm

in an attempt to obtain basic information, understand her rights and place issues in perspective due to the public controversy which arose following her father's death and during her concurrent state of grief and shock.

Upon being retained by Ms. Dunphy, I immediately wrote a detailed letter to the RCMP to express her concerns, frustrations and requests. One of her first concerns was that in her opinion her interview with the police on April 5, 2015 had been narrow in terms of the information that was sought and appeared to be directed in one area – that being her father's mental health. I requested a meeting with the RCMP to discuss this and other frustrations that she had. My client and I were granted a personal meeting with Sergeant Kent Osmond to discuss these issues on April 8, 2015 at 8:15 pm at which time we had a lengthy meeting.

Despite Ms. Dunphy's frustrations, she was willing to trust that the criminal investigation would be thorough and objective. She was encouraged by the appointment of an independent observer. As you are likely aware, to date she has not engaged in the current ongoing public controversy and has commented only through legal counsel that her current focus is that the criminal investigation exhibit thoroughness and integrity.

At approximately 11:30 am on April 14, 2015, Ms. Dunphy brought to my attention that she had discovered an object that remained in her father's home after the crime scene had been processed by the RCMP and released to her custody. That object was her father's eyeglasses which she found on a coffee table in the living room. When Ms. Dunphy first noticed the glasses, they appeared to be unwearable, bent out of shape with pieces of the glasses separated from the frame which appeared to her to be on the right side. Ms. Dunphy located a piece of the glasses (a small oval piece resting on the bridge of the nose) well apart from the glasses. Ms. Dunphy advised me that to her this was extremely unusual in that her father required his glasses to read and use his phone and although she knew her father's glasses were in rough shape which he corrected with tape from time to time, to her knowledge they were not broken, bent nor unwearable on the day of his death. Ms. Dunphy stated that the glasses looked like they had been crushed by a heavy object. Ms. Dunphy was with her father in the hours before his death and holds an intimate knowledge of his routines generally and his appearance and specific whereabouts on April 5, 2015.

Upon hearing this information, I immediately contacted Sergeant Osmond by e-mail to question why the eyeglasses had not been seized as evidence by the police. My concern was heightened due to the information I had received from the RCMP at our meeting on April 8, 2015 and the location of the eyeglasses. I then instructed Ms. Dunphy to return to her father's home and photograph the glasses as she had found them. I am currently in possession of 10 photographs that were taken by Ms. Dunphy.

I then received e-mail correspondence from Constable Burke regarding the issue. I will not divulge the information that he provided to me in the e-mail as in order to obtain information for Ms. Dunphy I was asked, and agreed, to keep confidential any information given to me by the RCMP about the details of the criminal investigation. I then requested to meet in person with Sergeant Osmond and Constable Burke regarding my concerns. My request was granted and that meeting occurred at my office on April 15, 2015 from 1:30-2:00 pm. Upon hearing the response of the officers to the concerns, I requested to attend at the RCMP to view certain photos of the crime scene as it existed on April 5, 2015 as based on the information I was given at the meeting I expected this could possibly resolve Ms. Dunphy's concern.

I did subsequently attend at the RCMP at approximately 3:15 pm where I met with Constable Burke and reviewed the photographs. I was hoping that this meeting would alleviate the concerns of both my client and I. Regretfully, our concerns were not alleviated.

I was informed by my client that sometime on the afternoon of April 15, 2015 an RCMP officer did attend her father's home to seize the eye glasses and the pieces. According to my client, the RCMP officer commented at the time that it appeared to him that someone had stepped on the glasses.

In a scenario such as this where of the two persons present during an act of extreme violence resulting in death, only one witness survives to speak to the events, it is obvious that a rigorous examination of the crime scene is imperative. The collection of the exhibits from the crime scene is the foundation of the investigation. The determination of what exhibits are potentially relevant and to be seized must be an objective assessment conducted with an open mind. In making this determination, it is essential to thoroughly canvass any other source of available and relevant information, particularly with respect to the deceased who cannot attest to the events.

I now have no reservation in stating that a piece of potentially relevant evidence at the crime scene was not seized by the RCMP. It was overlooked and/or dismissed as irrelevant as a result of a lack of information that should have and would have been gathered in an objective investigation in the initial days. If this investigation was thorough and objective as we had expected there is no doubt in my mind that the exhibit would have been seized and the relevant questions asked. Neither of these investigative steps occurred and, rather, an assumption without evidentiary basis was relied upon as the reason for the lack of investigative action.

On today's date, April 16, 2015, I have met with Ms. Dunphy and reviewed with her the concerns she has and my opinion with respect to those concerns. I am instructed by Ms. Dunphy to herein request that an out-of-province police force be immediately brought in to take over both the *Criminal Code* investigation and the *Fatalities Investigations Act*

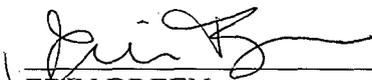
investigation. I do not make this request lightly. I make this request on Ms. Dunphy's behalf after (1) keeping an open mind from the beginning of my involvement in this process and (2) seriously considering the information that I have seen and obtained from Ms. Dunphy as well as the response of the RCMP. My unfortunate but sole conclusion is that the investigation currently ongoing is not thorough and has not been objective.

The failure to seize an exhibit of this nature accompanied by the failure to ask wide ranging questions of available witnesses in a case of this nature is a serious red flag for tunnel vision which cannot and should not be ignored. Tunnel vision in police investigations has been the subject of a previous public inquiry in our Province, the Lamer Commission of Inquiry. Tunnel vision, defined as "the single-minded and overly narrow focus on a particular investigative or prosecutorial theory, so as to unreasonably colour the evaluation of information received and one's conduct in response to that information", can lead investigators to overlook evidence that does not fit into their theory of the event. Commissions of inquiries across the country have concluded that tunnel vision in the investigative stage is a significant contributing factor to subsequent miscarriages of justice.

Unfortunately, the presence of the independent observer no longer gives us assurance. We are aware that the independent observer has been present at the crime scene with the police yet it was Ms. Dunphy who subsequently discovered and raised questions about the glasses. Mere observation in a case of this nature is ineffective – what is necessary and required immediately is investigative objectivity.

I respectfully request a response to Ms. Dunphy's request by 5:00 pm on Tuesday, April 21, 2015 in light of the urgency of this issue. If this is not possible for whatever reason, please contact me.

Yours truly,


ERIN BREEN
PARTNER