

ONTARIO COURT OF JUSTICE

5 HER MAJESTY THE QUEEN

v.

10 DEREK J. DUNLOP

15 A D J O U R N M E N T A P P L I C A T I O N

BEFORE THE HONOURABLE JUSTICE P.J. WRIGHT

on March 6, 2008.

at NEWMARKET, Ontario.

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CHARGES: Sec 253(b) C.C. - Over 80 mg Alcohol
s. 255(2) C.C. - Impaired, causing bodily harm X2

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APPEARANCES:

A. Ghosh

Counsel for the Crown

30 S. Sager

Counsel for Mr. Dunlop

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THURSDAY, MARCH 6, 2008

MR. GHOSH: We also have at lines three to five,
please, Derek Dunlop.

THE COURT: Yes.

MR. GHOSH: It's a matter to be spoken to.
Counsel is present.

...MR. SAGER PAGED...

...DEREK DUNLOP PAGED...

THE COURT: May I see the information please?

MR. GHOSH: There are target trial dates in
November Your Honour. Your Honour has been case
managing this since the judicial pre-trial. Your
Honour I just spoke to counsel for Dunlop, if
that matter could be held down. It's being -
what's - I don't think I'm speaking out of turn,
oh, there is counsel. There's an adjournment
motion for today that's been filed by counsel.
We're addressing the Dunlop matter.

MR. SAGER: Yes, I apologise. I wanted to speak
with Mr. Dunlop Your Honour. Sager, S-A-G-E-R,
first initial "S", I appear as counsel for Mr.
Dunlop, who is before the court this morning,
down from North Bay. I've spoken to my friend,
and as you may recall Your Honour, there was an
application put forward by myself to be removed
from the record. Mr. Dunlop is - wants - just
felt he had to do this by himself, and I'll
leave it at that.

THE COURT: And to do what by himself?

MR. SAGER: Handle his own defence.

THE COURT: Thank you.

MR. SAGER: He has spoken to me this morning. He

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has changed his mind. I think all this came down to fear on his part, just afraid of what the possibilities could be at the end of the day.

THE COURT: Where is Mr. Dunlop?

MR. SAGER: Mr. Dunlop is right here.

THE COURT: There are two gentlemen standing up.

MR. SAGER: Oh, his father is with him here.

THE COURT: The man with his hands in his pockets?

MR. SAGER: Yes, that's right.

THE COURT: Thank you.

MR. SAGER: I've spoken to my friend this morning. There is going to be a plea on this matter. We are going to have some discussions, so we've agreed, with your consent, to put this over 'til April 10th, or whatever date you are going to be available. So we'll bring this matter back before Your Honour.

THE COURT: April the 10th happens to be a plea court, and I will be in the plea court that day, so it's probably appropriate that it go to that particular court, if that's agreeable.

MR. GHOSH: Yes, please.

THE COURT: If counsel would rather the matter appear during a trial court, we can make it some other day.

MR. GHOSH: No, plea court should make sense Your Honour. I'm wondering, if my friend doesn't have any objections, this may or may not be a contested sentencing hearing. The allegations are rather serious, and if we're going to be 15 minutes in submissions each, if not more, that

it makes sense to schedule this for 2:15 when the list is substantially lighter.

THE COURT: Right. Maybe that would be better. To complete the record, the application to be removed as counsel of record was entertained by this court on February the 7th, and my endorsement on the notice of application speaks for itself. I have received a notice of application clearly drawn in a law office, by its format, but purportedly on the personal application of Derek Dunlop, and the relief that he has sought is an order allowing the application to adjourn the trial scheduled for November the 17th and 18th, 2008 in court room 104 with or without counsel. The basis for the application is set out in the application, and there's some confirmatory, up to this point, uncontradicted evidence, in the form of an affidavit sworn the 5th of March, under the signature of Derek James Dunlop, the applicant to the notice of application. What is counsel's position with respect to this notice of - actually, Mr. Sager has not yet been removed as counsel of record, so I find it peculiar that the defendant is making an application on his own while still represented by counsel. I need to know what the position is with respect to this notice of application and affidavit first.

MR. SAGER: Up until about five minutes ago, Your Honour, I was completely unaware it even existed.

THE COURT: Well, I need to know what the

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position is, nevertheless, because it's been presented to me. I need to know what to do with it.

MR. DUNLOP: Can I speak at you Your Honour?

THE COURT: Well, you speak through your counsel, because Mr. Sager is still your counsel of record. That was one of the reasons why he was not removed, so that we could get to the bottom of what was going on. So Mr. Sager will do the speaking for you, particularly on matters that relate to court proceedings, as he is your counsel of record.

MR. SAGER: Your Honour I think because Mr. Dunlop has decided to plea to this matter, that that application be dismissed, the same as my application for removal, and that this be brought back before Your Honour on April the 10th.

THE COURT: I'm going to return then, this notice of application for the relief sought, which is an adjournment application. I take it that that application should be noted withdrawn, is that correct...

MR. SAGER: That's correct.

THE COURT: ...Mr. Sager? Thank you. And it take it that the notice of application to be removed as counsel of record in its entirety, should be dismissed at this time. All right. Today's date is March 6th, 2008, at 9:55 a.m. Mr. Sager appearing as counsel in the presence of the defendant, abandon this application. Order, application dismissed as abandoned. Trial date

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confirmed. That's my order. So the trial date, the 17th and 18th of November are confirmed, otherwise this matter is to be adjourned to April the 10th, 2008 at 2:15 and I'm going to simply mark it as to be spoken to, because quite frankly, if the matter doesn't resolve by way of plea, I don't want something noted on the record that would prejudice the defendant. He has been ambivalent with respect to his instructions, and the manner in which this case has been proceeded with in court. I want the defendant to clearly understand this matter will proceed to trial on the 17th and 18th of November, if the matter is not resolved in the interim. An indication has been given that there may be a resolution on April the 10th, 2008, and for that reason I'm adjourning this matter, court room 201, at 2:15 to be spoken to.

MR. SAGER: One moment, if I could have your indulgence Your Honour. I apologise Your Honour, I'm just trying to get some - when I came into the court room this morning I wasn't going to be counsel of record, but now I'm back on so if you can just give me a couple of seconds.

THE COURT: Well, you've always been on, you've never....

MR. SAGER: Oh, yes, yes, in my head.

THE COURT: Thank you.

MR. GHOSH: Your Honour my friend apparently now has instructions that will hopefully give the court some comfort that this matter is moving expeditiously towards plea. Mr. Dunlop has

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apparently instructed his counsel that he's prepared, at least for today, to enter a plea of guilt to the impaired bodily harm. What's being proposed Your Honour is that the matter be adjourned before you to the date that we've discussed, for facts, finding and sentence.

THE COURT: All right.

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MR. GHOSH: If that's appropriate, Your Honour, and the context here in terms of my friend's dealings with the Crown's office, Beth Barnier was the assigned Crown for this matter. As Your Honour may or may not know, Ms. Barnier is suffering from some health concerns and has been in and out sporadically in our office.

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THE COURT: I'm sorry to hear that. I wasn't aware of that.

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MR. GHOSH: So I can't - at this stage it's - the extent to which Ms. Barnier is ill is not personally clear to me or as to if and when she'll be returning to our office, but as of now, for understandable reasons, even if my friend made involved efforts to speak to Ms. Barnier, it would have gone nowhere. I'm undertaking to - and I've spoken to my friend, that I can be the point of contact and we'll discuss the nuances of the facts and sentencing submissions over the next few weeks. So that particular team now, with Ms. Barnier out of the loop, is under quite some pressure in terms of the case managing schedule as is, so I'll see if I can help out in that way.

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THE COURT: Mr. Sager, do you wish to have a few

minutes to confirm your instructions with your client, particularly in writing or are you content that the matter proceed at this stage?

MR. SAGER: I'm content to proceed.

THE COURT: All right. May I see the information please? Is it the intention, Mr. Ghosh, that once the defendant enters his plea to the impaired causing bodily harm, that the - as you've indicated the matter would be adjourned to the 10th of April for facts, finding and potentially sentence, but that the other two charges on the information would be adjourned to that same date simply to be spoken to?

MR. GHOSH: Yes, please Your Honour.

THE COURT: Thank you. Mr. Derek James Dunlop, I have before me information 06-08133. It alleges three counts against you. I'm going to read to you the second count. "Derek James Dunlop on or about the 22nd day of October, 2006, at the Township of King in the said Region while his ability to operate a motor vehicle was impaired by alcohol or a drug, operated a motor vehicle and did thereby cause bodily harm to Terry Corbett contrary to section 255(2) of the Criminal Code." Do you understand that charge?

MR. DUNLOP: Yes I do.

THE COURT: The Crown has proceeded by indictment on the 7th of February, 2008. Do you understand that?

MR. DUNLOP: Yes.

THE COURT: Do you understand that you have the right to be tried by a judge of the Superior

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Court of Justice sitting with a jury, a Superior Court judge sitting without a jury, or by a judge of this court, the Ontario Court of Justice? Do you understand that?

MR. DUNLOP: Yes.

THE COURT: You understand that if you were to elect to be tried in the Superior Court, either with or without a jury you would be entitled to a preliminary inquiry?

MR. DUNLOP: Yes, I do.

THE COURT: How do you wish to elect to be tried?

MR. DUNLOP: This court, before you.

THE COURT: The Ontario Court of Justice?

MR. DUNLOP: Yes.

THE COURT: Do I understand that you wish to enter a plea of guilty to this charge?

MR. DUNLOP: Yes, I do, but I'd like to speak to my attorney for just one second?

THE COURT: Yes.

MR. DUNLOP: Yes, I do.

THE COURT: Thank you. Do you understand that by entering a plea of guilty to this offence you are giving up, that is to say you are waiving your right to a trial?

MR. DUNLOP: Yes.

THE COURT: Are you doing that of your own free will, without pressure from anyone?

MR. DUNLOP: Yes.

THE COURT: Do you understand that after you have entered your plea of guilty I will hear about the facts and circumstances of this case from Mr. Ghosh and Mr. Sager, perhaps not today, but

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at some point in time? Do you understand that?

MR. DUNLOP: Yes.

THE COURT: And do you understand that I will then determine whether, based upon those facts, I can confirm and find you guilty as you have pleaded?

MR. DUNLOP: Yes.

THE COURT: Do you understand that once you have been found guilty the court then proceeds to sentencing phase?

MR. DUNLOP: Yes, I'm under the impression, Your Honour, on April 10th that....

THE COURT: It could be April the 10th or it could be later.

MR. DUNLOP: Okay.

THE COURT: But you understand that there will be a sentence component to these proceedings once I've found that you're guilty?

MR. DUNLOP: Yes, I do.

THE COURT: And do you understand that regardless of whatever discussions may have taken place between you and your lawyer, or your lawyer and the Crown, I am not a party to those discussions, nor am I bound by them. Do you understand that in the end, I will sentence you as I see fit in accordance with the sentencing principles set out in the Criminal Code, and in the law that I must have regard to?

MR. DUNLOP: Yes.

THE COURT: In short, I'm not making you any promises as to what that sentence is going to be. Do you understand that?

MR. DUNLOP: Yes.

THE COURT: Finally, in relation to the particular nature of this charge, you understand that you're licence to operate a motor vehicle will be suspended and you'll be prohibited from driving for some period of time, at least a year?

MR. DUNLOP: Yes.

THE COURT: Do you understand that in the Crown proceeding by indictment they may be asking for a jail sentence?

MR. DUNLOP: Yes, I do.

THE COURT: Do you understand those matters?

MR. DUNLOP: Yes.

THE COURT: All right, and in view of all of the questions that I have asked you, and the answers that you have given, do you continue with your position that you wish to enter a plea of guilty to this charge?

MR. DUNLOP: Yes, I do.

THE COURT: Madame Clerk, could you arraign the defendant, including the Highway Traffic Act warning? Please listen carefully, my clerk will now read to you this charge.

MADAME CLERK: Derek James Dunlop, you are charged on or about the 22nd day of October, 2006, at the Township of King in the said Region while his ability to operate a motor vehicle was impaired by alcohol or a drug, operated a motor vehicle and did thereby cause bodily harm to Terry Corbett contrary to section 255(2) of the Criminal Code. The Crown has elected to proceed

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by indictment. Upon this charge you have the option to elect to be tried by a Provincial Court judge, without a jury and without having had a preliminary inquiry or you may elect to be tried by a judge without a jury, or you may elect to be tried by a court composed of a judge and jury. If you do not elect now, you are deemed to have elected to be tried by a court composed of a judge and jury. If you elect to be tried by a judge without a jury or by a court composed of a judge and jury or if you are deemed to have elected to be tried by a court composed of a judge and jury you will have a preliminary inquiry only if you or the prosecutor requires one. Mr. Dunlop, how do you elect to be tried today?

MR. DUNLOP: In this court by Your Honour.

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MADAME CLERK: The Highway Traffic Act provides that upon conviction of the offence with which you are charged in the circumstances indicated therein, your driver's licence shall be suspended for the period prescribed by statute. Mr. Dunlop, how do you plead to this charge, guilty or not guilty?

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MR. DUNLOP: Guilty.

MADAME CLERK: Thank you.

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THE COURT: Counsel, I understand that the intention is that this matter is to be adjourned to April the 10th, 2008 at 2:15 p.m. in court room 201 for facts, finding and sentence.

MR. SAGER: That's correct.

THE COURT: is that correct?

MR. DUNLOP: Yes, please.

THE COURT: Thank you. Are there any adjustments or procedural changes to be made with regard to this man's release documentation given the fact that he's now entered a plea of guilty to this offence?

MR. SAGER: There is one thing that I would like to touch on this morning, Your Honour. Presently Mr. Dunlop is by his bail conditions, residing with his father who is here in court today. The surety is his step mother. She is in court here today.

THE COURT: Where is she?

MR. SAGER: She is right here - where is she?

MR. DUNLOP: She's outside.

MR. SAGER: Okay. We propose to make just a slight vary from the conditions of Mr. Dunlop's bail. He would simply like to move in with his mother. There's more job opportunities in the area living with his mother. Mr. Dunlop's father and stepmother and his mother are all in constant communication with each other, and have spoken to Mr. Dunlop's mother, who's quite aware of what her responsibilities would be if there were any problems with him not appearing in court or honouring the conditions of his bail. Like I said, there's a constant communication back and forth by telephone between the parties.

MR. GHOSH: I'm not opposed to that variation.

THE COURT: What I would suggest Mr. Sager is that I'll present to you the recognisance of

bail. There's a form that's completed actually in the Trial Coordinator's office, and once that form is completed and approved by Mr. Ghosh and by the surety and the defendant, I will sign it and that will put into effect that bail variation. It's not done here, as it were. It should be done through the Trial Coordinator's office so the forms are there. Actually, that protects your client as well, because once it's done that way, the police will immediately be notified with respect to these changes, so if your client were to be stopped for some reason by the police, he would be in a position that the bail confirmation would protect him in regards to those changes.

MR. SAGER: So I can deal with that this morning.

THE COURT: Yes, absolutely. I can assure you that once the paperwork is completed, it will take a bit of time, but not terribly much, in the Trial Coordinator's office, my clerk will alert me and I will sign the amendments and your client will be on his way. All right.

MR. SAGER: Do I need anything for the Trial Coordinator?

MR. GHOSH: Just fill out the form.

THE COURT: They have the form at - we've got it streamlined. It's relatively straight forward, and Mr. Ghosh has already indicated his consent. So about as fast as it takes to complete the form it will be done.

MR. SAGER: All right. Thank you very much, Your Honour.

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THE COURT: All right. Thank you very much folks.

MR. DUNLOP: Thank you.

M A T T E R A D J O U R N E D

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CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

I, **Tricia Rudy**, certify that this document is a true and accurate transcript of the recording of **R. v. Derek J. Dunlop** in the Ontario Court of Justice, held at Newmarket, Ontario, on March 6, 2008, taken from Recording 4911-105-0102/08, which has been certified in Form 1.

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(Date)

Tricia Rudy

(Signature of authorized person)

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