

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

DEREK JAMES DUNLOP

PROCEEDINGS AT ADJOURNMENT

BEFORE THE HONOURABLE JUSTICE P. J. WRIGHT

on January 9, 2008,
at NEWMARKET, Ontario

CHARGES:

- s. 253(b) C.C. - Over 80mg
- s. 255(2) C.C. - Impaired driving causing bodily harm(x2)

APPEARANCES:

E. Kulpers

Counsel for the Crown

S. Sager

Counsel for Derek James Dunlop

WEDNESDAY, JANUARY 9, 2008

MS. KULPERS: I do have the brief and this appears at lines 1 through 3 of the adult 102 docket.

5 MR. SAGER: Good Morning, Your Honour. My name is Sager, S-A-G-E-R, first initial, "S". This will be, probably, the third time I've appeared before you on this particular matter. We've been involved in judicial pre-trials which you may or may not recall. Unfortunately, I felt that we were going to be able to resolve this matter, that was a part of our conversation at the last pre-trial, but I've run into a big of a snag with my client. He's ill. He is suffering from a bit of a breakdown. His father and his stepmother, who is the surety in this matter, have come down. He resides in North Bay but, unfortunately, the snag is that he does not want me to be his counsel any longer. He's put this in writing. So this morning I'm asking for two things. Number one, that this matter be put over for two months. He has waived his 11(b) rights. So I've got time to get all the file up to North Bay so that he can either do one of two things, represent himself or retain new counsel. I've let my position be known as to what he should do but, unfortunately, he doesn't agree with that. So we are at a stalemate. So I'm asking this be put over for two months. Any dates two months from now would give him more than adequate time to get the file, get counsel, speak to counsel, get some advice and get back here to have this matter spoken to. And I would ask you to make an order to remove me as

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counsel of record.

MS. KULPERS: Okay. Dealing with first things first, Your Honour, I don't know whether the court requires a formal application before the court with respect to the removal of counsel of record and I'm in the court's hands with respect to that issue. If there has been a breakdown in communication, then I'm not opposed to the application, but I'm not sure which form it should take. Secondly, I'm concerned, while I appreciate that he needs time to get a new lawyer, and so on, and so forth, I'm concerned that the matter is languishing. Although 11(b) is being waived, I'm wondering if two months is a bit too long, but I'm in the court's hands.

THE COURT: Well let me deal with the two applications, in a sense, that are before the court in reverse order. As far as the adjournment application is concerned, the defendant is not present. Is that correct?

MR. SAGER: He's in North Bay but his father and the surety are here. They came down from North Bay this morning.

THE COURT: I understand that. Is the Crown proceeding summarily or by indictment in the matter?

MS. KULPERS: By indictment, Your Honour.

THE COURT: By indictment. I understand, Mr. Sager, that there is a designation of counsel filed?

MR. SAGER: Yes.

THE COURT: I think, in the circumstances, before

I would be prepared to entertain the application for the adjournment, I would want the defendant to be present.

MR. SAGER: He was supposed to be here this morning but then he became quite ill.

THE COURT: Well, I have to have more before me to be able to justify not issuing a warrant for his arrest if you were to be removed as counsel of record because then there's nobody here and that's the problem that we have. The Crown is proceeding by indictment. So that really sets the table for a requirement for the defendant to be present.

Therefore, the adjournment date is going to mandate that the defendant come here on that date. If it turns out that he is medically incapable of coming here, or there's some issue that needs to be discussed, some application that needs to be made based upon that, then it can be done, in written form, complimented with the appropriate medical reports and so forth. It's not that I'm not prepared to accept your word for it as an officer of the court, I most certainly am, but I'm trying to protect the integrity of the record and particularly so given the fact that you've indicated your intentions to be removed as counsel of record and the client's apparent indication that he no longer wants you to represent him. So I'm going to grant the adjournment. Where do you practice? In this area?

MR. SAGER: I'm in Richmond Hill.

THE COURT: Richmond Hill. I'm going to shorten the period by half the distance of what you've

indicated, from two months to one month. He can certainly be here within a month. Pick a date that's convenient. I'd rather not have it go over for two months in the circumstances. This matter originated as a result of an occurrence that's alleged to have occurred on the 22nd of October, 2006. So we are now 15 months post offence date. We had a lengthy pre-trial that occurred on the 15th of August, 2007, and I had anticipated, based upon my rather detailed notes and the length of time that was spent, that this matter would be resolved.

MR. SAGER: So did I, Your Honour.

THE COURT: I understand that. It hasn't, but that's all the more reason, given the timelines in this, that the matter proceed now to trial as quickly as possible. So I'm going to select a date, at your convenience, sometime in early February if you have your calendar with you.

MR. SAGER: I think I'm open almost any date in February.

THE COURT: All right. Well then why don't we make it the 6th of February. That's four weeks from today at nine thirty, courtroom 102, to be spoken to. Please impress upon the defendant that he is required to be here in person. The Crown is now proceeding by indictment. I appreciate that there's a designation of counsel. I would ask, as well, that your application to be removed as counsel of record be formalized in a written application, served on the defendant, and presented to the court indicating the reasons for

the breakdown. I think that, in principle, you have it from Ms. Kulpers that the Crown is not opposed to the application if there's been a breakdown, and I'm confident that the court would not either. I think, again, to protect the integrity of the record, and the defendant's position, that it should be placed before the court in writing. So, to sum up, the application to be removed as counsel of record will be adjourned, the oral application, for further written submissions with respect to that application returnable on the 6th of February, 2008, at 9:30 a.m., in courtroom 102. Secondly, the defendant is to be present on that date given that the Crown is proceeding by indictment.

MR. SAGER: All right. Would you be in this court, Your Honour, do you know?

THE COURT: I don't know.

MR. SAGER: I was attempting to bring this matter back before you.

THE COURT: Actually, to tell you the truth, I am in the youth court on February the 7th. It just so happens I'm looking at my diary, would that be convenient, Ms. Kulpers?

MS. KULPERS: Sure. Yes.

THE COURT: I did pre-try this matter and I know that Mr. Enright had actually indicated that he was hoping that if it were resolved that it could be dealt with before me. So, perhaps, the only thing I'll change in the comments that I've made up to this point, is to change the date from February the 6th to February the 7th, 2008, at

9:30 a.m., in courtroom 102.

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

THE COURT: Thank you.

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FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

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Evidence Act

I, TRACEY BEATTY, certify that this document is a true and accurate transcript of the recording of R. v. Derek James Dunlop in the Ontario Court of Justice held at 50 Eagle Street West, Newmarket, Ontario, on January 9, 2008, taken from Recording No. 4911-102-008/2008 which has been certified in Form 1.

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August 20, 2008
Date

Tracey Beatty
Tracey Beatty, Court Reporter

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