

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

DEREK J. DUNLOP

S E T D A T E

BEFORE THE HONOURABLE JUSTICE P.J. WRIGHT

on September 19, 2007

at NEWMARKET, Ontario.

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

APPEARANCES:

P. Westgate,

Counsel for the Crown

S. Sager,

Counsel for Mr. Dunlop

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WEDNESDAY, SEPTEMBER 19, 2007

MR. WESTGATE: We also have the matter of Derek Dunlop, which is a continuing pre-trial before Your Honour. I've had a chance to review the file and Mr. Enright's notes. I haven't seen counsel on that. That's something that we can deal with later on today.

*MR SAGER
NOT
PRESENT*

THE COURT: Thank you. We'll stand it down. I take it that's your request then...

MR. WESTGATE: Oh, yes.

THE COURT: ...to be stood down?

MR. WESTGATE: I am requesting it be stood down.

THE COURT: Okay, thank you.

...

R E C E S S

U P O N R E S U M I N G :

MR. WESTGATE: Yes, what I was going to do Your Honour, we can speak to the other matter...

THE COURT: Oh, yes.

MR. WESTGATE: ...before we deal with this one.

THE COURT: Yes.

MR. WESTGATE: And that would be the matter of Derek Dunlop.

THE COURT: Yes.

MR. WESTGATE: And as I understand it, counsel is here.

MR. SAGER: Good morning Your Honour. Sager, S-A-G-E-R, first initial "S". I appear for Mr. Dunlop. There is a designation on file.

THE COURT: Yes. Good morning Mr. Sager.

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MR. SAGER: Good morning.

THE COURT: This is a matter which was pre-tried on the 15th of August, 2007. Mr. Enright and Mr. Sager were present and we spent a considerable amount of time going through the facts and the Crown's position, and the defence position, and identified what I understood to be the primary issue, and the matter was put over to today's date so that we could jump start ^(was?) this matter, were it to come back again before me, rather than having to reinvent the wheel as it were, before another judge, and spend 15 or 20 minutes going through what we had done already.

MR. SAGER: Yes.

THE COURT: All right. So where are we?

MR. SAGER: What - I spoke to my friend during the recess and prior to our last meeting, Mr. Dunlop had seen a social worker, that helped him prepare a report for anger management. ^(with?) When we appeared before Your Honour last August Your Honour brought forth - you would require some evidence of the fact that he has straightened himself out with respect to alcohol consumption, but you'd have to see that. So I felt the only way that we could really do this, is to have him see a psychiatrist ^(?) that specialises in alcohol abuse. Mr. Dunlop resides in Sudbury, Ontario, which is - makes it a little bit difficult, 'cause there's not too many psychiatrists up there that deal in alcohol abuse. We've found three that could possibly look after this problem. But they're going to need two to three

WHO HAD DISCUSSIONS ABOUT THIS?

never
interviewed
by MR
SAGER and
names

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months to do this. I spoke to my friend. We've agreed with your consent, to adjourn this matter to January the 9th.

THE COURT: Do you have a court room in mind?

MR. SAGER: Well, whatever court room you're in, Your Honour.

THE COURT: Could you find out where I am on January the 9th please, Madame Clerk?

MR. WESTGATE: What I can just add, Your Honour, is that I've spoken to Mr. Sager, and I

understand that 11(b) will be waived until that date. It is likely that this matter will be

resolved by way of a guilty plea, and so on those conditions, if you will, I am content to

have the matter go to January 9th to allow Mr. Sager and his client to marshal the necessary

evidence to put their position before you.

THE COURT: Yes, and without commenting on the issue of guilt or innocence, and of course the defendant is presumed by law to be innocent...

MR. WESTGATE: Yes, sir.

THE COURT: ...and will remain with that presumption, unless it's displaced either through a finding made after a plea, or trial, there is a recognisance of bail in effect which Mr. Dunlop is a party to, in which he has placed before the court his assurances that he would not operate a motor vehicle. I appreciate Mr. Sager that you appear today as agent for the defendant through the designation as counsel, and I would simply ask on behalf of the community and this court, that you reassure Mr.

MR. SAGER
11B

WESTGATE
11B

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Dunlop that that particular recognisance remains in effect, as in regards to that term as with respect to all of the other terms, and there's no indication at all that I have a concern that it has been breached. I do not, of course. If I did, I would deal with this otherwise, but simply to remind him of that particular term and it's continued existence until this matter is dealt with finally. *Court believes case will be done soon*

MR. SAGER: Yes, I have no problem advising Your Honour that he hasn't driven; he hasn't consumed alcohol, because I received a very lengthy letter from his father, who he is staying with now.

THE COURT: Yes.

MR. SAGER: Saying that up to this point he's abided by all his bail conditions. He's going to Alcoholics Anonymous. He doesn't have a car to drive nor does he borrow anybody else's. ~~He~~ So he has honoured the conditions of his bail.

THE COURT: Thank you. And Mr. Westgate, you might report back if you are, to Mr. Enright, that I'm reflecting on my pre-trial form notes in which there was a very fulsome discussion that took place involving myself, Mr. Sager and Mr. Enright in the context of a judicial pre-trial in camera, during which issues which were very personal in nature to the defendant and dealt with the very issue that we're talking about here, were explored in some considerable depth, and it was really on the basis of that discussion that I had inquired of Mr. Sager

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whether or not he would be in a position to provide some documentary evidence to establish much of what was discussed then, and has been notionally discussed now. I was assured that it would, hence the reason for the lengthy adjournment. I take it Mr. Sager, your client although not present, would waive section 11(b) in relation to these proceedings? ASSUMPTION ^{NOT} DISCUSSIO

MR. SAGER: Yes. WHAT?

THE COURT: Thank you. That particular request by the Crown therefore has been met. The information will be endorsed that section 11(b) under the Charter is waived, and do we have a court?

MADAME CLERK: One-o-two court.

THE COURT: I'm in courtroom 102 that day. Is 9:30 an acceptable time Mr. Sager, or given the distances...

MR. SAGER: That's fine.

THE COURT: ...would you prefer it to be in the afternoon? I'm prepared to do it either way.

MR. SAGER: Nine-thirty in 102.

THE COURT: In the morning. Thank you.

MR. SAGER: Thank you Your Honour.

THE COURT: Mr. Sager appearing as counsel and agent for Mr. Dunlop. This matter will be adjourned for the reasons indicated to January the 9th, 2008 at 9:30 a.m. in court room 102. I'm going to mark it for a continuation of a judicial pre-trial but obviously if the matter is ready to be resolved ^{WHAT?} on that date, we can do so.

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MR. SAGER: Yes, I'm hoping it is going to be. ^{These are} _{in evidence}

THE COURT: Is that satisfactory Mr. Westgate?

MR. WESTGATE: Yes. What I've indicated to Mr. Sager was that if he has his material he can get it to us in advance so that we can be in a position to respond.

THE COURT: Sure.

MR. SAGER: Yes.

THE COURT: I'm sure that he will. The issue ^{WANT TO GET MISMISMAN} before the court has been crystallised. It's set out right on my form, and we know what that issue is, and certainly giving that documentation to the Crown in advance would be of assistance.

MR. SAGER: Yes.

THE COURT: All right. Anything else in relation to the Dunlop matter then, by either counsel? Mr. Sager?

MR. SAGER: That's it for now.

THE COURT: No. Mr. Westgate?

MR. WESTGATE: Nothing from the Crown, thank you Your Honour.

THE COURT: Thank you very much counsel.

MR. SAGER: I thank my friend, thank you Your Honour.

THE COURT: You're welcome.

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CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

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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 September 19, 2007, taken from Recording 4911-203-0374/07 and 4911-203-0375/07 which have been certified in Form 1.

aug 22/08

(Date)

Tricia Rudy

(Signature of authorized person)

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