

Interpretation No. → VOLUME Book 1 # 7 → 12-6820
APPEAL Book

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

JOHN ATKINSON

PROCEEDINGS AT TRIAL

BEFORE THE HONOURABLE JUSTICE E. MEIJERS
on October 8, 2013, at BRADFORD, Ontario.

APPEARANCES:

F. Faveri

K. Hyslop

Counsel for the Crown

Counsel for John Atkinson

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EXHIBITS

EXHIBIT NUMBER

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25	Transcript Ordered:	September 23, 2015
28	Transcript Completed:	November 7, 2015
30	Notified Ordering Party:.November 9, 2015

1.
R. v. Atkinson
Arraignment

TUESDAY, OCTOBER 8, 2013

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

MR. FAVERI: Good morning, Your Honour.

THE COURT: Good morning.

MR. FAVERI: Mr. Atkinson's in custody. We didn't get your approval to do this but I hope you're okay with it. He's in leg irons. The handcuffs have been taken off. That's how we did it at the preliminary inquiry because Mr. Atkinson wants to take notes, so he's been given paper....

THE COURT: All right. The security people are okay with that?

SECURITY OFFICER: Yes, Your Honour.

THE COURT: Okay. That's fine.

MR. FAVERI: I know on the last appearance he made his election. I don't - I can't recall if he was arraigned or not. Okay. So I guess that's the first thing we need to do.

COURT CLERK: And that's on Information 11-0706?

MR. FAVERI: Yes, the one where there was an amendment.

COURT CLERK: Okay.

MR. FAVERI: Thank you.

...ARRAIGNMENT

COURT CLERK: John Bradley Atkinson, you stand charged that on or about the 14th day of May, 2006, at the Township of Adjala in the said region, did commit mischief and thereby endangered the life of Raymond Summerfield, S-U-M-M-E-R-F-I-E-L-D, contrary to section 430(2) of the *Criminal Code* of

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Canada.

5 Further, John Bradley Atkinson, you stand charged that on or about the 14th day of May, 2006, at the Township of Adjala, in the said region, unlawfully did operate a motor vehicle while disqualified while so doing, contrary to section 259(4) of the Criminal Code of Canada.

10 Further, John Bradley Atkinson, you stand charged that on or about the 5th day of July, 2010, at the Township of Adjala, in the said region of Central East, did verbally knowingly convey a threat to Deborah Campbell to cause serious bodily harm to Daniel Summerfield, contrary to section 264.1(1)(a) of the Criminal Code of Canada.

15 Further, John Bradley Atkinson, you stand charged that on or about the 14th day of January, 2008, at the Township of Adjala in the said region of Central East, did have the care or control of a motor vehicle while his ability to operate a motor vehicle was impaired by alcohol or a drug, contrary to section 253(1)(a) of the Criminal Code of Canada.

20 Further, John Bradley Atkinson, you stand charged that on or about the 14th day of January, 2008 at the Township of Adjala, in the said region of Central East, did operate a motor vehicle while disqualified from so doing, contrary to section

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259(4) of the Criminal Code of Canada. Further,
John Bradley Atkinson, you stand charged that on or
about the 14th day of January 2008 at the Township
of Adjala, in the said region of Central East, did
commit mischief and thereby endangered the life of
Deborah Campbell, contrary to section 430(2) of the
Criminal Code of Canada.

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Further, John Bradley Atkinson, you stand charged
that on or about the 14th day of January, 2008 at
the Township of Adjala, in the said region of
Central East, did in committing an assault upon
Deborah Campbell use a weapon, to wit, a motor
vehicle, contrary to section 267(a) of the Criminal
Code of Canada.

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On September 24th, 2013 the Crown proceeded by
indictment and on September 24th, 2013, you elected
to be tried by the Ontario Court of Justice on all
counts.

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The Highway Traffic Act provides that upon
conviction of the offences with which you are
charged in the circumstances indicated therein,
your driver's licence shall be suspended forthwith
for a period prescribed by statute.

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How do you plead to the first count as read?

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THE ACCUSED: Not guilty

COURT CLERK: Second count as read?

THE ACCUSED: Not guilty.

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COURT CLERK: Third count as read? 3

THE ACCUSED: Not guilty.

COURT CLERK: Fourth count as read? 4

THE ACCUSED: Not guilty.

COURT CLERK: Fifth count as read? 5

THE ACCUSED: Not guilty.

COURT CLERK: Sixth count as read? 6

THE ACCUSED: Not guilty.

COURT CLERK: Seventh count as read? 7

THE ACCUSED: Not guilty.

COURT CLERK: Thank you, you may be seated.

MR. FAVERI: Your Honour, at the outset, there should be an order excluding witnesses. I'd ask for an exception for Chris Lewis, who probably isn't a witness anyways, but he had some minor involvement in the investigation.

Chris Lewis
Opp

THE COURT: Any comments?

MS. HYSLOP: No issue with that.

THE COURT: All right. There will be an order excluding witnesses. All witnesses are to remain outside of the courtroom until it's their turn to testify. While outside the courtroom, they're not to discuss their evidence with anyone, including other witnesses. Detective Chris Lewis will be excluded from that order.

Deborah
Campbell

MR. FAVERI: Thank you. Your Honour, just in terms of what we expect to happen today, Ms. Hyslop please correct me if I'm wrong, but if I recall the email correctly, we'll start with Deborah Campbell's evidence. We'll do her in-chief. Because Ms. Hyslop was unable to meet with Mr.

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Atkinson between the last appearance and today and because he wants to I think have some input into how the cross-examination is going to be conducted, we're going to hold off on that for another day.

THE COURT: All right.

MR. FAVERI: But we will be able to hopefully argue the DSF application, if I can call it that.

10 MS. HYSLOP: Yes. And just with respect to that, because I think we would be entering into a *Voir Dire*, with respect, sort of as a blended trial with respect to the evidence, and my friend I think will lead that evidence in through the in-chief examination of Ms. Campbell, I suppose that because it's a *Voir Dire* on that particular issue, I would still be entitled to some cross-examination of Ms. Campbell on those issues as part of the *Voir Dire* would be my understanding and I'm prepared to do that today so that we could still argue that motion. That would be my view of it. That's how I did it in the past. I'm not sure what my friend's view is of that and certainly what Your Honour's direction is with respect to that application, but that was my expectation, that in terms of Your Honour making that decision, especially in relation to the probative value of this evidence, that it may require my cross-examination on those particular facts to ensure Your Honour has the full factual basis for what my friend is seeking to have admitted. So that was the only comment I was going to make on that. I'm not sure what my friend's position is on that.

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THE COURT: Do we have other dates set already?

MR. FAVERI: We do.

COURT CLERK: They're in Barrie, Your Honour.
October 24...

THE COURT: Yes.

COURT CLERK: ...January 6 and January 7.

MR. FAVERI: I think it's the October 24th date that
Ms. Campbell's unavailable.

THE COURT: And - oh, that's right, she's
unavailable on that date. And so I take it there's
no other witnesses that you have today that you
would be prepared to call?

MR. FAVERI: There's a couple on - I guess they're
a phone call away. That would be two of her sons,
but we weren't anticipating calling them today.

THE COURT: All right. And I expect that defence
would be in the same position in any case with
respect to those other witnesses?

MS. HYSLOP: That is correct in terms of cross-
examination. I do, unfortunately, have, at the
direction of Mr. Atkinson some comments to make
about the October 24th date. I thought we would get
started and I could address that issue with Your
Honour depending on how things were going today.

THE COURT: M'hm.

MS. HYSLOP: But just so that Your Honour is aware,
I made efforts to try and get Mr. Atkinson back to
Bath so I could meet with him and was unable to do
that prior to today's court date and I've also been
advised that there's no way that they will transfer
him back to Bath between now and then, which means

5 between now and October 24th, which means the only
time I would be able to see Mr. Atkinson at
Penetang would be October 23rd, the day before
trial. There's nothing I'm told that I can do to
get him back for October 24th to Bath. So that
poses a problem for me. As defence counsel I can
advise Your Honour this is the first time I've ever
had an issue where I haven't been able to meet with
10 my client face-to-face in person being able to show
him disclosure. Your Honour is well aware of the
history of this matter because it was subject to
Ms. Primo's (ph) application to be removed. I am
doing my best to move the matter along and get us
started but I'm also I think obliged to present Mr.
15 Atkinson's concerns to this court with respect to
whether or not he feels comfortable proceeding with
cross-examination when he hasn't had the benefit
that all of my other clients have always had where
he's able to meet with me in person.

20 THE COURT: What's the limitation of your ability
to see Mr. Atkinson in Penetang? Is it your
availability? I appreciate its distant and I'm not
saying it's unreasonable, but is that what it is?

25 MS. HYSLOP: I think it's more a combination of the
two because in order to meet with Mr. Atkinson in
Kingston, that would be about three and a half
hours of my time in terms of travel, so I could
tack it on to an afternoon, even if I was in court.
30 But if I have to come all the way to Penetang to
meet with him there, I can't tack it on to any
other day I had any other matters in court because

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it's ten hours of travelling time just to get there and back, and so that's the problem I have from a financial perspective. I'd have to do all of that in one day because Legal Aid would not pay for a hotel room for me over the evening if I wanted to come up the night before and meet with him in the morning, for example, and then attend, so that sort of is part of the problem but realistically given the schedule that I have between now and October 24th, I simply don't have a full day that I can drive all the way down to Penetang to meet with Mr. Atkinson other than October 23rd, the day before trial.

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MR. FAVERI: The forms I sent you won't do anything?

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MS. HYSLOP: The forms that were sent to me by Mr. Faveri, which I've brought today, will only assist me in getting him back prior to January 6th, because absent those forms, there would not even be any reason for them to send him back between now and January 6. So the forms are definitely of assistance and will be required to even get Mr. Atkinson back between the October dates and the January dates, but there is nothing I can do with respect to Barrie OPP or with respect to the actual officers and the departments that transfer in terms of the bailiff's office to get him back to Bath before October 24th.

THE COURT: Is there something I can do?

MS. HYSLOP: Well, we had talked about perhaps a Judge's Order and I think Your Honour indicated

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some reluctance on your part in terms of sort of making an order that would be contrary to the general practice. I don't know. I've been trying to go the avenues that are available to me in terms of having the various consent forms signed, and I know Mr. Faveri has certainly offered his support in that regard. My understanding is because of the way that things work when you're transferring from Provincial to Federal, it can't be done by the police, it has to be done through the actual bailiff's office and because you're going from one jurisdiction to the next in terms of Federal to Provincial, they're not able to do that process quickly enough. So by the time if they were to do that, even if they expedited, going through the regular process, by the time he is transferred out of here and if he ends up in Bath, he might be there for a day and then they'll start the transfer process all over again.

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THE COURT: I mean, is the issue a transfer between Federal and Provincial or is the issue a transfer between here and there? Like, for example, if he's currently housed in a provincial facility awaiting this trial, the completion of this trial, is there a facility that he can be transferred to within the provincial system that's closer? And I honestly have no idea. I'm just wondering whether that's - since you then don't have to - you don't have to deal with two different bureaucracies.

MS. HYSLOP: The way that it was explained to me by

5 the person in the bailiff's office was just explained it had to be different offices because of the way that the transfer worked between the federal and provincial. I never asked whether or not it would be possible to transfer him to another provincial institution and how that would be done. I guess it would depend on whether or not there was room in the receiving provincial institution.

10 Obviously, the one that's closest to me is the Ottawa-Carleton Detention Centre but they're generally in overflow, so I think that probably would be the - and the same with Brockville, I know Brockville is overflow, as well, so I think that might be another problem, which is why a lot of people from OCDC get shipped down to Lindsay. Same as Brockville all go to Lindsay and that doesn't put me in any better position really.

15 THE COURT: Well, a little better. All right. I guess my - I'll leave it I guess to counsel as they want to call the matter and approach the matter.

20 I'm going to have to think about this other issue, but let me just say this. I, as you know, don't really know anything about the facts of this case, like what's being alleged, and I am a little bit uncomfortable if you are suggesting that you're in a position at this point where you're not prepared to complete or maybe even begin cross-examination of the first witness who no doubt judging by what appears in the Informations is an important witness today not having seen your client as you have not been able to. I'm a little bit concerned about,

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quite frankly, the - well, let me put it this way.
I was under the impression that when we deal with a
blended *Voir Dire* on this matter that we would deal
with the submissions in that regard at the close of
the Crown's case. I am prepared to do it in a
different manner if you would like to do so, but at
this point - well, I guess maybe at some point I'll
know better. So maybe I'll just keep my mouth shut
for now.

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This is what I'm going to suggest we do, I suggest
we begin Ms. Campbell in-chief and that we revisit
these issues at some convenient point later on.
Okay?

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Are there any areas that are not contentious in
this trial?

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MR. FAVERI: I would think identification isn't
going to be an issue. I don't know whether the
fact that Mr. Atkinson was a prohibited driver at
the times we say he was or not is an issue, but
other than those two things, I think everything
else would be contentious.

THE COURT: Identification is admitted?

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MS. HYSLOP: That's correct, it's admitted that Mr.
Atkinson, he would identified by all of the
witnesses. There is one count that there might be
an identification issue, but no different than any
other trial in terms of whether or not Mr. Atkinson
was driving on that particular day. I can also
advise - so, yes, identity is admitted in that

← appeal

regard. With respect to the driving prohibition, I was reviewing other notes and I think it was admitted by past counsel that there was a suspension "from 2003" that would cover this. My friend provided me with the MTO records today, as well. I just - I'm wondering, though, if we plan on filing a copy of the prohibition order as an exhibit, if I could see that before I make the final admission, but perhaps if my friend and I can discuss that a little bit more today, I anticipate that that will be a factor that's admitted and I wouldn't expect my friend to call any evidence, but I did want to see a copy of the prohibition order if it's being filed.

MR. FAVERI: I'll have to look for it. I'm not sure that I have the one from 2003.

MS. HYSLOP: If we can just gather that together, I imagine that that will be an issue that can be dealt with quickly but I'll just - because I am new on the case, I'd like to make sure that we follow that particular step.

THE COURT: All right.

MR. FAVERI: So I just want to make sure I understand, is what you're proposing that we have Deborah Campbell sworn on a *Voir Dire*, I'll call all the evidence, you cross-examine on some issues on the application and then her evidence, whatever the ruling is, the ruling is, and then the evidence would just be admitted for the purposes of the trial...

MS. HYSLOP: Yes and...

MR. FAVERI: ...for all of it or whatever's excluded.

MS. HYSLOP: Subject to His Honour's...

THE COURT: My...

MS. HYSLOP: ...ruling.

THE COURT: My preference, if it matters, is that we begin the trial, that we have your first witness sworn on the trial and when we are done either with examination in-chief of that witness or whether we wait until some other point, we can address the issues of similar fact. My expectation is is that trial issues - trial evidence would be applied to the similar fact evidence ruling as a blended trial.

MS. HYSLOP: Right. I think that was my understanding. I guess...

MR. FAVERI: All right.

MS. HYSLOP: ...it's just I'm not sure when my friend was planning on dealing with those particular issues, if it was all going to sort of come up and be mixed in.

MR. FAVERI: I think it's probably going to be mixed in.

MS. HYSLOP: So perhaps - I've never obviously appeared before Your Honour so I don't know how you like to do things here, but perhaps when my friend maybe gets to those areas - it's quite clear in the factums and the materials that have been filed the sort of six areas that are part of this prior discreditable conduct application, so perhaps if my friend knowing that that's where he's about to go

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could alert the court to that area, then perhaps
it's at that point we enter into a *Voir Dire*. I
don't know, I guess we'll have to see how the
evidence comes out, but I'm flexible, certainly,
Your Honour, with respect to how we proceed today.
I think we'll all be quite capable of sorting out
exactly what evidence is at issue.

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THE COURT: Well, that's kind of what I'm
thinking. That's what I'm thinking, let's just
call her evidence and when the time comes to argue
it, whether it be at some point today or whether it
be at the end of the case, which would be my
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preference because then I would know exactly what
the case is that this evidence is supposed to or
not supposed to fit into it. I agree with you,
we're going to have to do a sorting exercise at one
point and I think I'd rather sort when everything's
on the table.

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MS. HYSLOP: I'm entirely agreeable to that, Your
Honour.

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Reporter's Note: Evidence of Deborah Campbell
begins - already transcribed.

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...COURT ADJOURNS

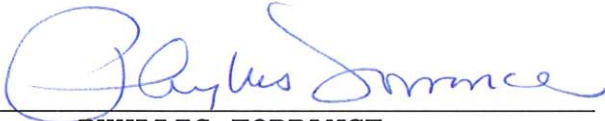
15.
R. v. Atkinson
Certification

FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

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Nov. 8/15
(Date)


PHYLLIS TORRANCE,
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Certified Court Reporter

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