

ONTARIO COURT OF JUSTICE

THE CORPORATION OF THE CITY OF MISSISSAUGA

against

LESLEY ATKINS (TEE)

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PROCEEDINGS

BEFORE HIS WORSHIP JUSTICE N. BURGESS  
on October 2, 2007 at MISSISSAUGA, Ontario

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OFFENCE: s. 130 - Highway Traffic Act

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APPEARANCES:

A. Stevenson, Ms.

Prosecutor

W. Whidden, Mr.

Representative for the Defendant



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Tuesday, October 2, 2007

MS. STEVENSON: Line 1 on the docket for Lesley Atkins.

MR. WHIDDEN: Good morning, Your Worship. For the record the name is Whidden, W-H-I-D-D-E-N, initial W., acting as representative for Mrs-it was Atkins, Your Worship, her name is now changed, it is now Tee, T-E-E.

THE COURT: Seems to be a lot of that going on in this court this morning. Was that the third person?

MS. STEVENSON: I believe so, Your Worship.

THE COURT: Third person that's been married. So it's Ms. Tee now, is it?

MR. WHIDDEN: Yes. Give your name to the court, please.

THE COURT: Thank you.

MS. TEE: It's Lesley Erin(ph) Tee.

THE COURT: Thank you. Ready to proceed?

MR. WHIDDEN: Yes, we are, Your Worship. This is a Charter motion.

THE COURT: Read the charge, please.

CLERK OF THE COURT: Lesley Tee, you are charged on November 2<sup>nd</sup>, 2006 at 4:15 p.m. at Erin Mills Parkway at The Collegeway in the City of Mississauga, did commit the offence of careless driving, contrary to the Highway Traffic Act, section 130. How do you....

MS. STEVENSON: Your Worship-sorry. Before a plea is entered I need to see if the officer is here and speak to the witness. I don't know yet whether I

could proceed just on the witness' evidence. If I could possibly have just a two minute recess?

THE COURT: All right. Okay, just take--just take five minutes, okay.

MS. STEVENSON: Thank you, Your Worship.

THE COURT: Alright, thank you.

RECESS:

11:08 a.m.

UPON RESUMING:

11:16 a.m.

MS. STEVENSON: Thank you, Your Worship. I am ready for arraignment.

THE COURT: Okay, thank you. We've had arraignment.

CLERK OF THE COURT: I haven't....

MR. WHIDDEN: Yes, that was done....

CLERK OF THE COURT: No, I never--I never did arraignment. We stopped in the middle. Lesley Atkins....

THE COURT: Just have Ms. Tee stand up.

CLERK OF THE COURT: Lesley Atkins Tee, you are charged on November 2, 2006 at 4:15 p.m. at Erin Mills Parkway at The Collegeway in the City of Mississauga, did commit the offence of careless driving, contrary to the Highway Traffic Act, section 130. How do you wish to plea to this charge, guilty or not guilty?

MR. WHIDDEN: Your Worship, before she enters a plea to that charge there is a Charter 11(b) motion before the court.

THE COURT: Well, there doesn't appear to be Affidavit of Service here.

MR. WHIDDEN: I submitted an Affidavit to both the court office and to the Prosecutor's....

THE COURT: Oh, I'm sorry, just a minute. Sorry.

MR. WHIDDEN: ...Your Worship.

THE COURT: It's on the back. Just a minute. Just a minute. It wasn't in the front part, it's at the back. Okay, thank you, I'm satisfied there's an Affidavit here. Go ahead, sir.

MR. WHIDDEN: Your Worship, as you can see from the documents the charge was laid on the 2<sup>nd</sup> day of November of 2006. The ticket was filed in the court on the 6<sup>th</sup> day of November. The officer's copy would have to have been in the court by 9<sup>th</sup> of November. The trial notice was not issued by this court, even though it could have been issued on the 9th of November, '06, it was not issued until the 1<sup>st</sup> of March of '07, which is four months later. This is the first date for the matter in the court, which is exactly 11 months. Your Worship, I'm aware of the fact that you're very familiar with the various pieces of case law that pertain to the issue of delay. I submit that the period of delay is excessive under the circumstances and we are prepared to lead evidence of the effects that this has had upon my client. She's prepared to take the witness stand to give that evidence if you're ready.

THE COURT: I'm always ready. You do whatever you have to do, sir.

L. Tee - In-ch.

L. Tee - Cr-ex.

LESLEY ERIN TEE: Sworn

EXAMINATION IN-CHIEF BY MR. WHIDDEN:

Q. From the date of this collision back in November of last year, has the period of time from then until now caused any concern to you?

A. Yeah, it's a heavy charge with significant damage or dent to insurance, so-because I haven't known what insurance is going to be and it's also a charge that is a big ticket, so.

Q. Now, do you remember all of the details from that day, do you remember them today?

A. I remember most of maybe the big details, but I'm afraid I might have forgotten some of the little ones.

Q. Okay, so the primary things you're looking at are the fact that it's a serious charge....

A. Yes.

Q. ...and insurance....

A. Yes.

Q. ...and remembering all the details?

A. Yes.

MR. WHIDDEN: Thank you, that's the only questions I have, Your Worship.

CROSS-EXAMINATION BY MS. STEVENSON:

Q. Do you work?

A. Yes.

Q. Okay, has this in any way affected your ability to work?

A. Not so much.

Q. So you're still able to drive to work?

A. Yes.

Q. Okay. And right now your insurance is the same, is that correct?

A. Yeah, but dependent on what happens today, it could change.

Q. Okay. But essentially nothing has happened to your insurance?

A. Not yet, but they're waiting.

Q. Okay. And you indicated that you do remember most of the big details?

A. I hope I remember most of the big details. We'll find out when you ask questions.

MS. STEVENSON: Okay. Well-okay, I have no further questions, Your Worship.

THE COURT: Okay, thank you.

MS. TEE: Do I sit down?

MR. WHIDDEN: Well, Your Worship, I would submit that there is an issue of prejudice here, in as much as over a period of 11 months my client has, as most people would, she's not so sure she's going to remember everything. And as you well know, sometimes the small details can make a significant difference. The officer's, when they're investigating matters, take notes so they can refer to their notes when the matter comes to trial months and months later. The average person has no idea that this is going to be that far down the road and they don't usually take notes, which is the case here. Which means she has got to totally rely on her memory and that, I believe, leads to an issue of prejudice. Those are my submissions, Your Worship.

MS. STEVENSON: Thank you, Your Worship.

Essentially it should run from November 6<sup>th</sup>, 2006, which is the date the Notice of Intention to Appear was filed. There should also be two months taken off for the intake period. And, Your Worship, although there may be some minor prejudice, I would submit, Your Worship, that it hasn't affected her life. She's still able to drive, it hasn't affected her insurance as of yet. The possibility that it could doesn't impede her from doing anything in her daily life at this point in time. As far as memory, she indicates she remembers the big details and she just doesn't know whether or not there possibly could be small details she's forgotten. She doesn't know until the questions are asked of her whether or not she remembers. Your Worship, I would submit that prejudice hasn't been proven and that this should not be stayed.

THE COURT: Can I just ask the prosecution a question here? I guess this is what bothers me, when I read the case law as it pertains to this, you know, we're looking at the side where exactly how long is this going to take, we hear from eight to ten months, sometimes even longer depending on whether or not it's a larger of an area or whether the-what's your expectation of these trials. Often defence are criticized that they sit in the weeds waiting for the time to go and then argue 11(b). One is just to assume that everybody wants a speedy trial, well that's not realistic because some people don't want a speedy trial, they want to delay it as long as they can and we see that

happening on a constant basis in the courts, people trying to delay cases, asking for adjournments and things of that nature, and you know what I'm talking about.

MS. STEVENSON: Right.

THE COURT: But in this particular case, it would appear that when the Notice of Trial is sent out, which is sent out in March, it would appear that the defence, within a very short period of time, has notified the prosecutor's office, early in June, that they intend to argue under 11(b). What I don't understand is why the prosecutor's office didn't make some attempt at that point to bring the matter forward and get a new trial date.

MS. STEVENSON: I apologize, Your Worship, I don't work for the City of Mississauga, so I'm not sure exactly what their procedure is on bringing matters forward when there's an 11(b) filed on....

THE COURT: But you know you're the warm body I can talk to.

MS. STEVENSON: I understand that. No, I totally understand that, Your Worship, I just—I can't answer why there wasn't a motion brought forward to see if they could put it to another date.

THE COURT: But you understand what I mean?

MS. STEVENSON: Oh, absolutely.

THE COURT: I mean, this is not an indication that just before the trial date you're handed with these documents what makes it impossible, and as I say, defence are often criticized, even in the higher courts they say, you know, if defence sit in the weeds waiting for the period of time just so they

can argue 11(b), it takes away from, obviously, the merits within the case itself. But here you have a case where in June they notify the City of Mississauga that they intend to argue 11(b), and it would appear that nothings been done and there's service that's not only on the Attorney General of Canada, the Ontario Attorney General of Ontario and on the City of Mississauga. It seems to me that that's a clear indication and obviously a red flag to say, you know, maybe you should be putting in a Notice of Motion and asking for the matter to be brought forward.

MS. STEVENSON: Okay.

THE COURT: Anyways you have no real answer for that?

MS. STEVENSON: Unfortunately I don't. I apologize, Your Worship.

RULING ON 11(B) MOTION

BURGESS: Justice of the Peace (Orally)

Okay, Ms. Tee, stand up. Ms. Tee, the application with regard to staying the proceedings, and I guess really what you have to take a look at, society has a right to have you tried on the merits of the case, because if you are charged with careless driving and there is an accident involved, the matter should be tried on its merits, and of course, you made some indication with regard to the insurance company involved in this matter. I don't want to get into the insurance aspect, but I do know that sometimes when accidents occur without having to wait for a court hearing the insurance

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Ruling

5 company makes some determination of whether a person is at fault or not at fault, and of course, being at fault does not always work good in your favour, and being not at fault is even better because it does not affect your insurance. Now, that may be some concern that you have at this time, but that's not going to be the determination here.

10 So when you take a look at the case law and it starts to talk about, you know, what are the outside parameters of the time limit, they talk about ten, 11 months. Realistically, when you start getting into the Toronto, Brampton, Mississauga, Whitby, in the GTA area, you are going to find that it's more difficult to get a trial as fast as you might in the areas where you don't have the volume. So, this is a situation where the defence, and I think it works in your favour, has notified the prosecutor's office well in advance, that you intend to argue 11(b). Now, certainly it is within their parameters to put in a Notice of Motion and ask for the matter to be brought forward and to try and set an earlier trial date so that the 11(b) does not happen. That was not done.

25  
30 So when I take it all together I think that the defence has acted responsibly in this matter, and although, and I do not want anybody to take this to the bank, but I am not always staying things at 11 months, but under the circumstances I find that the

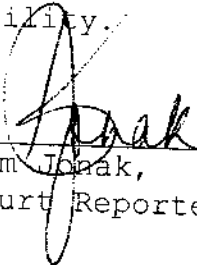
application is reasonable and the matter will be noted stayed.

MS. STEVENSON: Thank you. If we could release Elizabeth Bukowski(ph). Thank you for your attendance.

MR. WHIDDEN: Thank you, Your Worship.

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THIS IS TO CERTIFY THAT the digitally recorded evidence that was taken by Carmela Radice has been transcribed by myself to the best of my skill and ability.

  
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Kim Jonak,  
Court Reporter