SC CR 95 012

CR 02912

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF S C , presently committed for trial at the next sittings of a Court of Competent jurisdiction in the Northwest Territories upon Informations alleging sexual assault and assault causing bodily harm, contrary to the Criminal Code of Canada;

AND IN THE MATTER OF an Application made on behalf of the prosecutor, for an Order pursuant to the provisions of section 599(1)(a) of the Criminal Code of Canada, that the trial of the said S C upon the said charges be held in a location other than the Hamlet of Hall Beach, in the Northwest Territories.

BETWEEN:

HER MAJESTY THE QUEEN

Applicant

- and -

S C

Respondent

Crown application for change of venue. Dismissed.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.E. RICHARD

Heard at Yellowknife, Northwest Territories
September 29, 1995

Reasons filed: October 2, 1995

Counsel for Applicant: Les Rose

Counsel for Respondent: Lloyd Stang

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REASONS FOR JUDGMENT

1 The accused is charged with two crimes of violence against the complainant, A C , who is his sister-in-law. These crimes are alleged to have occurred in Hall Beach in 1992 and 1994. The jury trial is scheduled to take place in Hall Beach on October 30, 1995. The accused S C is a member of a prominent family in Hall Beach. On the present application, the Crown seeks a change of venue, and asks that the jury trial take place at Iqaluit or elsewhere in the Northwest Territories. The accused opposes the application.

The Crown's application is founded in the provisions of s.599(1)(a) of the Criminal Code:

> 599. (1) A court before which an accused is or may be indicted, at any term or sittings thereof, or a judge who may hold or sit in that court, may at any time before or after an indictment is found, upon the application of the prosecutor or the accused, order the trial to be held in a territorial division in the same province other than that in which the offence would otherwise be tried if
>
> (a) it appears expedient to the ends of justice, . . .

and in the decisions of this court in R. v Lafferty (1977) 35 C.C.C. (2d) 183 and R. v I.K. [1990] N.W.T.R. 388.

In his oral submissions Crown counsel put forward three separate grounds for moving the place of trial:

(1) There is evidence of divisiveness among the members of the community of Hall Beach regarding these pending charges against S C .

(2) The Court will be unable to empanel an impartial jury in Hall Beach.

(3) The atmosphere in Hall Beach surrounding these pending charges is such that the complainant A C will be unable to give her testimony in a forthright or uninhibited manner.

Ground (3) - Risk of Harm to a Key Witness:

Counsel frankly indicated that it is the third aspect above which is the essential focus of the Crown's application. In this submission he relies primarily on the uncontradicted statements contained in the complainant's sworn affidavit.

In her affidavit the complainant indicates that the accused's family is angry with her because she has initiated these criminal proceedings against the accused and that she has been under pressure to "drop the charges". She says that the accused's family accuse her of lying. At one point in her affidavit she alleges "the rest of the community has isolated me because they think I am lying" without providing any specifics to substantiate that general statement about the entire community of Hall Beach.

It is clear from the complainant's affidavit that she wants the trial held in another community:

> ". . . 10. Because of the pressure I was under, I have written two letters to the Department of Justice discouraging the Crown to proceed with the charges in this community. I would be extremely reluctant to testify if the trial were held in Hall Beach.
>
> 11. The pressure to drop the charges has subsided, but I verily believe that this is only because I have told people in the community that I asked to drop the charges. As the trial approaches, and as people realize that the trial will go ahead, I verily believe that the pressure will increase.
>
> 12. I verily believe that a fair trial could not be held in Hall Beach. Everybody knows the accused and his family. . . ."

The Crown relies on R. v I.K. in support of this aspect of its application for a change of venue. In the I.K. case the complainant was a 17 year old girl who allegedly had suffered sexual abuse at the hands of three male relatives in the community of Pond Inlet. The complainant was suicidal in the months following disclosure and leading up to the trial. The Court was provided with psychiatric evidence to the effect that it would be harmful to the young complainant's mental health if she was compelled to testify before the members of her home community and also that the risk to her mental health

would be reduced if the trial was held in another community. In granting the application for a change of venue in I.K., the Court held that "the risk of mental harm to a key witness, combined with the enhanced likelihood of truthful, uninhibited testimony from a key witness constitutes a valid reason for moving the place of trial."

9 More recently, the Court considered a similar application in R. v Nasken (CR 02870, September 20, 1995) in Rae-Edzo. The complainant was the 13 year old daughter of the accused man. There was uncontradicted evidence before the Court that the young complainant would likely suffer serious psychological or emotional trauma or harm if compelled to testify before her home community. On a Crown application, the trial was moved to Yellowknife.

10 In the present case the evidence falls far short of that presented in I.K. and Nasken. Essentially, the evidence shows that (a) the complainant is not believed by the accused's family, (b) the accused's family wants the criminal proceedings discontinued, and (c) the complainant doesn't want to testify in Hall Beach. There is no evidence that the complainant is in danger, nor of any deleterious effect on her health that would result from her testimony in Hall Beach.

11 **Ground (1) - Divisiveness and Hostility in the Community:**

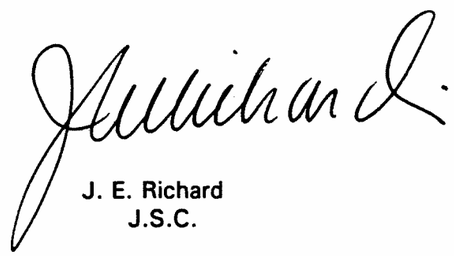
There is insufficient evidence in support of this submission. Taking the affidavit material at face value, the most that can be said is that the accused's family and circle of friends are biased against the complainant. There is no indication of how large that group of people might be - is it 8 people, 18 people or 118 people? Hall Beach has a population of 550 persons. The evidence does not indicate the extent of the bias, as in R. v Fatt [1986] N.W.T.R. 388. Also, the Crown on the present application does not provide the type of evidence presented in Lafferty, supra, to show that holding the trial in the particular community would cause or aggravate divisiveness or hostility in the community.

12 **Ground (2) - Inability to Select Impartial Jury:**

This submission is, at best, premature. There are 243 names on the voters' list in Hall Beach from which the Sheriff has prepared a panel of 175 prospective jurors. No doubt both accused and complainant have relatives and close friends on the panel. The accused and the Crown will take advantage of the provisions of the Criminal Code with respect to peremptory challenges, challenges for cause, and the stand-by of prospective jurors. The Sheriff may well be required to summon talesmen in the Court's attempt to find twelve impartial jurors. To say it will be impossible to select an impartial jury is speculation. Indeed, Cpl. Gordey in his affidavit does not go that far.

13 It may be that the Court will be unsuccessful in its attempt to find twelve impartial jurors, but, as in R. v Chinna [1990] N.W.T.R. 1, and R. v Muckpa (CR 02572, Oct. 28, 1994), there is insufficient evidence to justify making that determination at this stage.

14 For these reasons, the application is dismissed.



J. E. Richard
J.S.C.

Heard at Yellowknife, Northwest Territories

Reasons filed: October 2, 1995

Counsel for Applicant: Les Rose

Counsel for Respondent: Lloyd Stang

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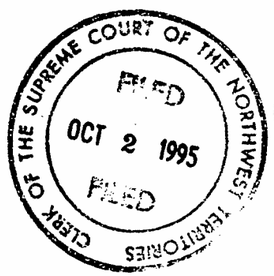

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