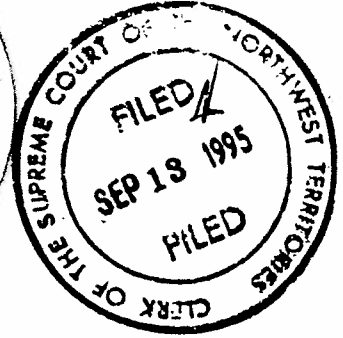
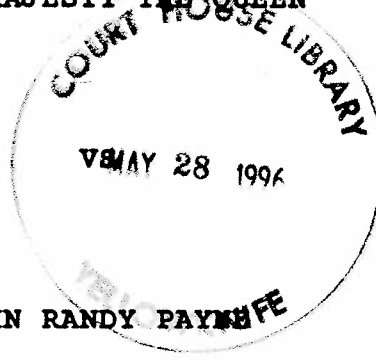


CR 02941

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN




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Transcript of the Reasons for Sentence Delivered by The Honourable Mr. Justice J. E. Richard, sitting at Yellowknife in the Northwest Territories, on September 11th, A.D., 1995.

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APPEARANCES:

MR. L. ROSE: Counsel for the Crown  
 MS. B. SCHMALTZ:

MR. N. SINCLAIR: Counsel for the Defence

1 THE COURT: This offender, John Randy Payne, is  
2 before the court to be sentenced for a serious  
3 narcotics offence, and also for a separate unrelated  
4 crime of being in possession of stolen property. I  
5 say that the narcotics offence is serious for the  
6 simple reason that Mr. Payne was involved in January  
7 of this year in the cocaine trade here in the city of  
8 Yellowknife.

9 Mr. Payne is a mature man of 43 years of age who  
10 it appears has been gainfully employed throughout his  
11 adult life. He does not have a record of criminal  
12 activity. He says he became involved in the cocaine  
13 trade on the encouragement of an acquaintance as a  
14 means to make some quick and easy money. He says he  
15 became involved in order to get some money to retire  
16 some significant debts that he was carrying at the  
17 time. He says that while out in Edmonton he obtained  
18 two and a half ounces of cocaine. Although he did not  
19 pay cash at the time, he was given credit, and that  
20 transaction was for \$4,500.

21 By his own admission, he was involved in selling  
22 cocaine here in Yellowknife in transactions of one  
23 half gram and one gram quantities. On January 16,  
24 1995, the police went to Mr. Payne's residence here in  
25 Yellowknife with a search warrant and seized 13 grams  
26 of cocaine which had a purity content of 86 percent.  
27 The police also seized scales, a quantity of dextrose

1           which is a cutting agent used with cocaine, and foil  
2           paper used to make decks to hold the cocaine.

3           The offence or crime for which Mr. Payne is being  
4           sentenced today is possession of the 13 grams of  
5           cocaine on January 16th for the purpose of  
6           trafficking.

7           Shortly after his arrest, Mr. Payne made a  
8           confession to the police. On the advice of counsel he  
9           elected to have a preliminary inquiry in the  
10          Territorial Court in order to explore certain legal  
11          defences that might be available to him. He pleads  
12          guilty to the charge upon his arraignment in this  
13          court. I agree with counsel that Mr. Payne's plea of  
14          guilty is something that mitigates the sentence that  
15          would otherwise be imposed.

16          I also accept Mr. Payne's words today in which he  
17          expresses remorse and he also expresses regret that he  
18          ever got involved in this illegal business. Mr. Payne  
19          acknowledged to the police and to this court that he  
20          did involve his 19 year old son in his illegal  
21          activity on one occasion during his short career as a  
22          drug dealer by showing his son how to crush the  
23          cocaine. That is clearly an aggravating circumstance.  
24          I believe that Mr. Payne accepts that that is an  
25          aggravating circumstance as he took some pain to tell  
26          the court firstly that it only happened on that one  
27          isolated occasion, and even then by happenstance. And

1 secondly, that he has taken steps since January to try  
2 and ensure that his son does not become involved in  
3 the drug trade.

4 It appears that there has been an increase in the  
5 amount of illegal trafficking in cocaine in the city  
6 of Yellowknife if one looks at the number of these  
7 cases which have come before the court in recent  
8 years. When the court is called upon to impose  
9 sentence on an offender who has been involved in the  
10 trafficking of cocaine, the primary consideration is  
11 deterrence, the deterrence of this particular kind of  
12 criminal activity which is itself a source of other  
13 social problems within this community. It is because  
14 of the need for deterrence that the courts have almost  
15 invariably imposed a substantial term of imprisonment  
16 on offenders involved with the trafficking of cocaine.

17 In Alberta, the benchmark sentence for many years  
18 now has been three years imprisonment. I see no  
19 reason why the same benchmark should not apply for  
20 commercial criminal activities of this kind which  
21 occur here in Yellowknife.

22 In this case I am going to give credit to Mr.  
23 Payne for his plea of guilty in which he accepts  
24 responsibility for his crime, and I am also taking  
25 into consideration the fact that he has with one minor  
26 exception some 16 years ago, that he has led a crime  
27 free life, and he comes before the court today

1 essentially as a first time offender at the age of 43.

2 Please stand now, sir. John Randy Payne, for the  
3 crime of possession of cocaine for the purpose of  
4 trafficking contrary to Section 4(2) of the Narcotic  
5 Control Act, your sentence today is a term of  
6 imprisonment of two years.

7 Secondly, for the crime of possession of stolen  
8 property, that is a laptop computer purchased by you  
9 behind the Gold Range bar for \$150, contrary to  
10 Section 355(b)(i) of the Criminal Code of Canada, you  
11 are sentenced to a term of imprisonment of two months  
12 consecutive to the sentence on the narcotic offence.  
13 In the circumstances there will be no victim fine  
14 surcharge. You may sit down now, sir.

15 Is there anything further on this case, counsel?

16 MS. SCHMALTZ: Just with respect to the possession of  
17 stolen property charge, My Lord, there were some  
18 exhibits seized and the Crown would just ask for an  
19 order that they be returned to their rightful owner  
20 after the appeal period.

21 THE COURT: Any problem with that?

22 MR. SINCLAIR: No, sir.

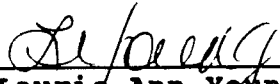
23 THE COURT: Fine. That order will issue then.

24 Thank you counsel. We will close court.

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26 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)  
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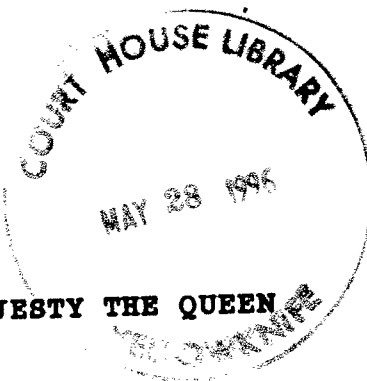
Certified Pursuant to Practice Direction #20  
dated December 28, 1987.

  
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Lauris Ann Young  
Court Reporter

CR 02870

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

- vs. -

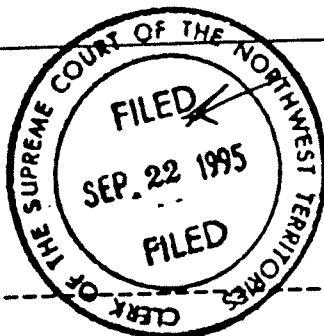
W N

Transcript of the Change of Venue Application before The Honourable Mr. Justice J. E. Richard, at Rae-Edzo in the Northwest Territories, on Wednesday, September 20th A.D, 1995.

APPEARANCES:

MS. S. BOUR:

MR. G. WATT:



Counsel for the Crown

Counsel for the Accused

AN ORDER HAS BEEN MADE IN THIS CASE PROHIBITING PUBLICATION OF ANY INFORMATION THAT COULD DISCLOSE THE IDENTITY OF THE COMPLAINANT PURSUANT TO s. 486(3) OF THE CRIMINAL CODE

1 received no indication from defence counsel that their  
2 concern extended to any possibility of consenting to  
3 this application or that further time was needed to  
4 investigate the matter.

5 I guess what the Crown is suggesting is that any  
6 concerns about the complainant were raised solely by  
7 the Crown and we haven't received any sort of  
8 cooperation in terms of further investigating these  
9 concerns. So I just wanted to raise that.

10 MR. WATT: My Lord, just briefly, at no time has  
11 anybody drawn any concerns to my attention vis-a-vis  
12 the possibilities of suicide until I received the  
13 affidavit of H M . I was aware of the concern  
14 the complainant may not testify in this community. It  
15 was not made clear to me in the phone call or any  
16 other format that this was a concern until I received  
17 service.

18 THE COURT: Fine, we are going to adjourn until  
19 1:30 this afternoon. The Court will attempt to make a  
20 decision on the Crown's application at that time.

21 (ADJOURNMENT)

22 THE COURT: In this case, the accused man W  
23 N is charged with sexually assaulting his  
24 13-year-old daughter a number of years ago when she  
25 was 8 to 10 years of age.

26 There are four separate counts in the indictment  
27 document. Three of those allegations are of a minor



1 nature and in the normal course would not and should  
2 not in themselves be the subject matter of a jury  
3 trial in this Court. The fourth charge is more  
4 serious in which inappropriate sexual contact is  
5 alleged, by Mr. N against his young daughter.

6 It appears that the young complainant, B  
7 D , and her siblings were removed from the  
8 family home in Rae-Edzo some time ago. The  
9 complainant, I understand, now resides in the  
10 community of Dettah with other relatives.

11 The Crown today makes application for a change of  
12 venue from the community of Rae-Edzo to Yellowknife.

13 There is evidence before the Court in the form of  
14 affidavits that the young complainant is reluctant  
15 about testifying against her father before the  
16 community of Rae-Edzo, that she may well refuse or be  
17 unable to so testify and if she does or if she is  
18 forced by compulsion of the law to come before the  
19 Court in Rae-Edzo, that she will suffer serious  
20 psychological or emotional trauma or harm.

21 This evidence of the likely effect on the young  
22 complainant of being required to testify before a jury  
23 here in her home community is uncontradicted. There  
24 is no evidence presented by the accused to counter the  
25 Crown's case on this specific issue.

26 There is also an allegation in the Crown's  
27 affidavit material that there is in the community of

1 Rae-Edzo a marked absence of support or sympathy for  
2 the plight of complainants who allege that they are or  
3 have been victims of domestic violence and/or sexual  
4 abuse. In particular, the affidavit of Nora Quitte  
5 makes certain of these allegations.

6 Ms. Quitte, I understand, is a community social  
7 worker who has experience in the field over the past  
8 nine years. And I quote from her affidavit as  
9 follows:

10 "... 6) B D further advises  
11 me if she were to go to Rae-Edzo to  
12 testify she would receive no support  
13 from her family or from the community.

14 7) I do verily believe that the  
15 community of Rae-Edzo is an extremely  
16 difficult place for victims of physical  
17 and sexual assault to testify. The  
18 Court facilities in the community  
19 complex are inappropriate for victims  
20 who are testifying in Court because  
21 there is no privacy. In many cases,  
22 victims come face-to-face with the  
23 accused. I do verily believe that this  
24 process further victimizes the witness.

25 8) I have personal experience  
26 with the difficulties faced by victims  
27 who testify in Rae-Edzo. Approximately  
two years ago, I charged my then husband  
after he assaulted me. I began to  
receive phone calls at work and at home  
from people who would yell at me and  
tell me not to proceed. At times, I  
would have to leave the office to get  
away from the pressure. On the day that  
I testified in Court, I felt intimidated  
and threatened. As a social worker, I  
thought that I was strong but I felt  
like the accused. It was only through  
counseling that I came to realize that  
my then husband put himself in this  
position.

9) I do verily believe that the

1 community attitude toward assault has  
2 not changed since I pressed charges  
3 against my then husband. In my  
4 experience both as a social worker and  
5 as a victim of domestic violence, I do  
6 verily believe that the community tends  
7 to support the accused in such  
8 circumstances. There is a commonly held  
9 attitude in this community that women  
10 bring the assaults upon themselves. The  
11 offender will often make the victim feel  
12 guilty by accusing the victim that she  
13 is bringing harm to herself and to her  
14 family. I do verily believe that such  
15 attitudes further victimize the victim..."

16 Defence counsel in response has provided the Court  
17 with affidavits sworn by Chief Joe Rabesca and also by  
18 Mayor Dan Marion.

19 I quote from Dan Marion's affidavit as follows:

20 "... 4) That I do not believe there is  
21 a "community attitude" toward physical  
22 assault or sexual assault in Rae-Edzo as  
23 Nora Quitte has deposed.

24 5) That I verily believe that the  
25 hamlet of Rae is composed of  
26 approximately 1,700 individuals each of  
27 whom subscribe to their own thoughts,  
28 beliefs, and opinions.

29 6) That I verily believe that the  
30 Court will be able to select a jury from  
31 this community that will be able to  
32 execute their duty in an objective,  
33 impartial, and fair manner having regard  
34 only for the evidence as it has done  
35 many times in the past..."

36 Excerpts from the affidavit of Chief Joe Rabesca  
37 are as follows:

38 "... 3) That I do not agree that there  
39 now exists nor has there ever existed a  
40 "community attitude" towards physical  
41 assault and sexual assault in Rae-Edzo.  
42 In my experience, the population of  
43 Rae-Edzo has demonstrated a diversity of

1 opinions on issues much like the people  
2 of any other community.

3 4) That Rae-Edzo is comprised of  
4 approximately 1,700 persons and is  
5 considered to be the economic and  
6 political center of the Dogrib Nation.  
7 Both the Dogrib Rae Band and the Dogrib  
8 Treaty 11 Council are based in Rae-Edzo.  
9 I verily believe that the majority of  
10 people in Rae-Edzo would want the  
11 Supreme Court to continue sitting in  
12 Rae-Edzo as well. I am concerned that  
13 if a trial is moved from this community  
14 on the basis of an allegation that this  
15 community is biased in favour of accused  
16 persons, all jury trials will eventually  
17 be moved from Rae-Edzo.

18 5) That I verily believe that the  
19 Supreme Court will be able to select a  
20 jury in this case that will be able to  
21 decide this case in an objective and  
22 impartial manner and based only on the  
23 evidence and the law as explained to  
24 them by the Court..."

25 The issue of the possibility or likelihood of  
26 being able to select an impartial jury of 12 members  
27 of this community to try the charges against Mr.  
N is not the issue that is before the Court on  
this application.

28 The issue, as in the I. K. [(1990) N.W.T.R. 388]  
29 case in another community in 1990, is the risk of  
30 mental harm to the young complainant combined with the  
31 enhanced likelihood of truthful, uninhibited testimony  
32 from that complainant should she testify in another  
33 venue.

34 The most telling evidence on this point comes from  
35 the affidavit of Dorothy Chocolate.

1           Ms. Chocolate is a Dogrib person originally from  
2 this community and in recent years she has been  
3 employed as a victim assistant in the Crown  
4 prosecutors' office. In that capacity, she has worked  
5 with the young complainant in this case. Because of  
6 her background and experience, I am prepared to accept  
7 her evidence which evidence is not countered by any  
8 evidence to the contrary.

9           It is her evidence that this young girl feels  
10 intimidated by the community in her position as  
11 someone alleging abuse at the hands of a member of the  
12 community and that this young girl will be severely  
13 traumatized if she is required to appear as a witness  
14 before a jury and the rest of the community right here  
15 in Rae-Edzo.

16           It is further Ms. Chocolate's evidence that the  
17 complainant's trauma will be lessened and the  
18 likelihood of her giving truthful and complete  
19 testimony will be enhanced if she testifies in Court  
20 in a place other than Rae-Edzo.

21           Taking into consideration all of the evidence  
22 presented on this application, I am satisfied that the  
23 potential harm to the young complainant, together with  
24 the likelihood of getting forthright testimony from  
25 her in another venue, are sufficient reasons to move  
26 the trial.

27           For greater certainty, I am satisfied that it is

1 expedient to the ends of justice that the complainant  
2 E D not be required to testify before a  
3 jury in Rae-Edzo and that Mr. N 's jury trial be  
4 held in Yellowknife.

5 In making this decision, I am well aware that  
6 there will be those in the community who will be  
7 unhappy with this result. And for that reason, I wish  
8 to add a few further words.

9 I would recommend that the members of the  
10 community consider carefully what has been said in  
11 this courtroom today. A young girl from this  
12 community, 13 years old, feels alienated from, feels  
13 intimidated by, the members of the community simply  
14 because she has complained of abuse which she says  
15 happened to her right here in the community.

16 Both she and the alleged offender are members of  
17 the community and both of them are entitled to the  
18 support and the love and the respect of the other  
19 members of this community.

20 The community leaders and others in the community  
21 should ask themselves, What are we doing to lend  
22 support, love, and respect to both the alleged  
23 offender and the alleged victim in those difficult  
24 times, in those difficult circumstances, which follow  
25 an allegation of sexual abuse or domestic violence  
26 within the community?

27 Rae-Edzo, like other northern communities, wants

1 to take ownership of justice and justice issues in the  
2 community. And that is a commendable goal or  
3 objective and I for one support that objective.

4 One of the steps in attaining that goal, in my  
5 respectful view, is ensuring that appropriate and  
6 compassionate support and guidance is provided to both  
7 those members of the community who are alleged to have  
8 committed a crime and to those members of the  
9 community who it is alleged are victims of crime.

10 It is for this reason that I inquired of counsel  
11 earlier about the current functions of the Community  
12 Justice Committee here.

13 Now, it is of course for the community to decide  
14 how and to what extent it will become involved in each  
15 case where a crime is alleged. For myself, I do not  
16 for one moment agree with any blanket policy that  
17 prohibits all cases of alleged sexual abuse or  
18 domestic violence from being directed to a community  
19 group for resolution. In fact, in my respectful view,  
20 the present case is one which cries out for community  
21 involvement. However, it is equally clear that it is  
22 now too late for that to happen in this particular  
23 case.

24 In any event, and to repeat myself, in the big  
25 picture it is for the community itself to decide how  
26 it is going to get involved in the criminal justice  
27 process and how it is going to lend support to both

1           alleged victims and alleged offenders.

2           So in conclusion, and for the reasons that I have  
3 mentioned, I grant the Crown's application and I  
4 direct that Mr. N       's trial be held in Yellowknife  
5 on a date to be set by the Clerk of the Court.

6 MR. WATT:           My Lord, just one housekeeping matter.  
7 My client will incur additional expenses as a result  
8 of having to move to Yellowknife. There is a  
9 provision under Section 599 where the Crown can be  
10 asked to compensate him for those expenses and I would  
11 ask Your Lordship to make that order.

12 THE COURT:           Apart from the provisions of the  
13 Criminal Code in that regard, we have a practice  
14 within the Court Registry in Yellowknife that any time  
15 an accused is required to go to another community for  
16 his trial that his expenses in that regard are  
17 reimbursed to him just as they would be for a witness.

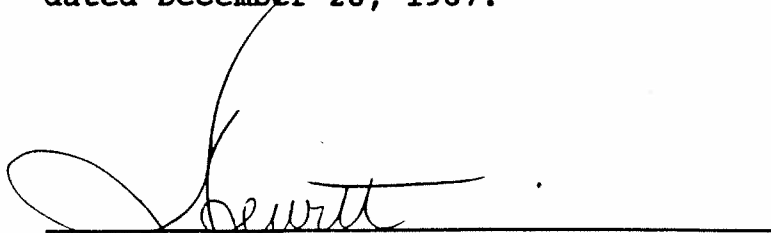
18 MR. WATT:           Thank you, My Lord.

19 THE COURT:           If there is nothing further, then we  
20 will close Court.

21 (AT WHICH TIME THIS CHANGE OF VENUE APPLICATION CONCLUDED)  
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1  
2 Certified Pursuant to Practice Direction #20  
dated December 28, 1987.  
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6 Lois Hewitt,  
7 Court Reporter  
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