

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

AND IN THE MATTER OF KENNETH ARNGNA'NAAQ, committed to stand trial in the Supreme Court of the Northwest Territories in Baker Lake, upon an Indictment alleging one count of sexual assault 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 **KENNETH ARNGNA'NAAQ** upon the said charge be held in a location other than Baker Lake, in the Northwest Territories.

BETWEEN:

HER MAJESTY THE QUEEN

Applicant

- and -

KENNETH ARNGNA'NAAQ

Respondent

**REASONS FOR DECISION
OF
THE HONOURABLE MADAM JUSTICE HETHERINGTON**

[1] Counsel for the Crown has applied for a change of the venue of the trial of the accused, Kenneth Arngna'naaq, from Baker Lake to Rankin Inlet. She has done this on three grounds:

- (1) That it may not be possible to empanel a fair and impartial jury in Baker Lake;
- (2) That holding the trial in Baker Lake would foster hostility and divisiveness in this small community; and
- (3) That the complainant is afraid to testify again in Baker Lake.

[2] A preliminary hearing and a jury trial have already been held in Baker Lake in this matter. The jury was not able to reach a verdict. Another trial is therefore necessary.

[3] Counsel filed with the court an agreed statement of facts. It says that according to Statistics Canada, in 1995 the population of Baker Lake was 1,410. Of this number, 761 were over the age of 19.

[4] I also have before me an affidavit sworn by the complainant in this case, Rebecca Arngna'naaq. In it she states that she has lived in Baker Lake all her life, and that many members of her family live there. The accused is her adopted brother. She expresses her concerns about testifying at another trial in Baker Lake as follows:

- “5. I am uncomfortable testifying about this matter in Baker Lake, and it is hard for me to talk about in front of people I know. I am scared and afraid that the people in Baker Lake will turn against me because Kenny ARNGNA'NAAQ is older than me. It is hard for me to testify in front of the same people again and again. It would be easier for me talk about what happened in a community other than Baker Lake.
6. This matter has been hard on my family; when I was given some papers for Court, my Uncle Barnabus became upset and called me a liar, and punched the wall. I am afraid of what will happen to my family if this Trial proceeds in Baker Lake again.
7. After the trial when I was coming out of court, I heard a person say that Rebecca's lucky, she tried hard to get her brother to go to jail, but we helped him more than we helped her. I did not see who said this as there were a lot of people coming out from Court.
8. I am the complainant on another sexual assault matter in Baker Lake. Last fall, when I was at my friend Jenny's house, Winnie Owingayak, came over and talked to me about that case; she told me I should leave the police out of it, and I should talk to the Justice Committee.”

[5] This application is made under s. 599(1) of the Criminal Code. The relevant parts of that section read as follows:

“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, on 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; or

.....”

[6] Counsel for the Crown provided me with the following decisions of this court on applications for change of venue under s. 599(1) of the Criminal Code:

- R. v. Quitte**, unreported, January 23, 1998, (S.C.N.W.T.)
- R. v. Wedzin**, unreported, January 23, 1998, (S.C.N.W.T.)
- R. v. Aaluk**, unreported, March 6, 1996, (S.C.N.W.T.)
- R. v. S.C.**, unreported, October 2, 1995, (S.C.N.W.T.)
- R. v. W.N.**, unreported, September 22, 1995, (S.C.N.W.T.)
- R. v. Koonoo**, unreported, November 9, 1990, (S.C.N.W.T.)

[7] I have reviewed these decisions with care. In **Aaluk**, [*supra*], Mr. Justice Vertes provided (at p. 3) the following guidance in relation to applications for change of venue under s. 599(1):

“The Criminal Code does provide that the place of trial may be changed if it appears expedient to the ends of justice to do so. The factors that may make it expedient to change venue depend on the circumstances. Case law from this jurisdiction recognizes factors such as community divisiveness or hostility, oppression of complainants or witnesses, publicly expressed sentiments of bias or an extremely small jury pool. The guiding principle, however, has always been that the power to order a change of venue should be exercised with caution and only upon strong grounds.”

(Emphasis added)

[8] In my view the grounds in this case are not strong. I will deal with them in turn.

[9] The first ground is that it may not be possible to empanel a fair and impartial jury in Baker Lake. There is really no evidence before me which would support this ground. It is true that Baker Lake is a small community, and a trial of this matter has already been held there. However, I cannot infer from these facts alone that it may not be possible to empanel a fair and impartial jury.

[10] The second ground is that holding the trial in Baker Lake would foster hostility and divisiveness in this relatively small community. There is simply no evidence before me to support this ground.

[11] The third ground is that the complainant is afraid to testify again in Baker Lake. She described her fears in the paragraphs of her affidavit which I quoted above. However, there has already been a trial of this matter in Baker Lake, and the things that she fears apparently did not happen then. Why would they happen if there was a second trial? There is no answer to this question in the material provided to me.

[12] The application for a change of venue is therefore denied.

DATED this 15th day of March, 1999

HETHERINGTON, J.,
Deputy Judge of N.W.T.

COUNSEL:

Bernadette Schmaltz

for the Crown Applicant

Tom Boyd

for the Respondent