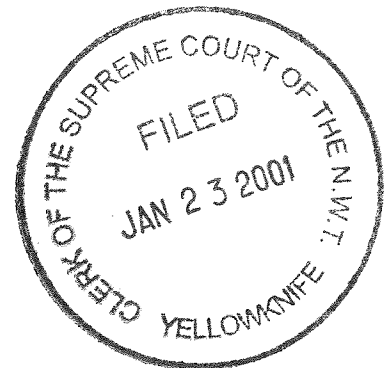


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- v -

TONY CHOCOLATE aka BLACKDUCK

Transcript of the Reasons for Judgement on a Change of Venue Application held before The Honourable Justice P. Chrumka, sitting in Yellowknife, in the Northwest Territories, on the 30th day of November, A.D. 2000.

APPEARANCES:

Mr. J. O'Halloran:

Counsel for the Crown

Mr. A. Mahar:

Counsel for the Defence

1 THE COURT: This is an application by the Crown to
2 order a change of venue for the trial which is to
3 commence in December, as I understand it, the 11th of
4 December, the charges against the accused are set out
5 in the indictment and they involve a number of
6 persons and witnesses from the area in which the
7 offence is alleged to have been committed; namely,
8 Rae.

9 Clearly trials should be held in the
10 jurisdiction in which the offence is alleged to have
11 been committed. Of course the Criminal Code provides
12 that in certain circumstances the venue may be
13 changed and the trial be held in another jurisdiction
14 if it appears expedient to the ends of justice. The
15 trial, of course, must be held in the same
16 Territorial division.

17 In this case the Crown has called viva voce
18 evidence as well as referred to transcripts of prior
19 proceedings and to various judgments from judges who
20 sit and try matters in the Northwest Territories. In
21 fact, most of the cases cited in the joint book of
22 authorities are concerned with judgments of Mr.
23 Justices Vertes, I believe Mr. Justice de Weerd, t,
24 also a number of judgments of Mr. Justice Richard and
25 of Madam Justice Schuler who is now called Justice
26 rather than Madam Justice.

27 These cases reflect the manner in which these

1 applications and which cases are tried in the
2 Northwest Territories in the various small
3 jurisdictions throughout the Northwest Territories.
4 They reflect the matters considered besides the law.
5 They reflect the makeup of the community and
6 certainly deal with the concerns that the persons who
7 apply for a change of venue have. There is also
8 clearly the judgment of Madam Justice Heatherington
9 of our Court of Appeal in the Baker Lake case.

10 Firstly I would say that as Mr. Justice Vertes
11 noted in his judgment cited to me, he spoke of the
12 makeup of Yellowknife, it being a community
13 predominantly non-aboriginal, but with links and
14 residents of the aboriginal community; namely, the
15 Dogrib community.

16 And as he mentions in that case, I also note in
17 this one, as submitted by the Crown, there is no
18 cultural perspective to be considered in this
19 particular trial in this particular matter. It isn't
20 a question that would relate to a cultural
21 perspective, it's a question simply of whether or not
22 the offence charged in the indictment having been
23 committed and by whom they have been committed.

24 The authorities do summarize what matters must
25 be taken into consideration in determining whether or
26 not there should be a change of venue and clearly
27 they reflect that the presence or absence of

1 prejudicial publicity or notoriety is a serious
2 consideration, the degree to which there is this
3 prejudice, and the degree to which there is this
4 notoriety. The divisiveness in the community is
5 another matter. Whether there is hostility toward
6 the accused or toward any of the witnesses.

7 There appears in this case before me, from the
8 evidence of Sergeant Wharton, that there is
9 considerable hostility toward the accused by some of
10 the members of the Rae community, that they do not
11 wish him to return to live there. There is no
12 evidence of any wide-spread sympathy for anyone in
13 this particular case, be it witnesses or the parties
14 involved who were the victims. There is expressed,
15 on behalf of at least two persons, that is witnesses
16 in this case, a fear of the accused personally, a
17 fear of intimidation or harassment of themselves or
18 their families in the event that they're required to
19 testify in Rae. Their fears are lessened by a
20 prospect of having the matter heard in another
21 jurisdiction.

22 There has been contact with these witnesses by
23 persons who suggested, in one case being the accused
24 himself who suggested on the telephone, that a
25 particular witness not testify or tell the police
26 nothing, and also there is evidence in the
27 transcripts of other proceedings that were had

1 against an accused person who had contact with the
2 witnesses in Yellowknife and the conviction resulting
3 thereof.

4 I'm satisfied, in this case, there is
5 considerable notoriety and there is considerable
6 divisiveness in the community of Rae over this case.
7 This case, according to the officer, that is Sergeant
8 Wharton, is a topic of conversation. It is something
9 that the community is aware of, and which the
10 community is divided on.

11 There is an issue of security and it's a valid
12 consideration. It may be that even though the
13 accused wants to have his trial there, I must
14 consider the prejudice that would work against him if
15 he were to be shackled in full view of not only the
16 spectators, but in full view of the jury. Further,
17 if the jury knows of his background and the fact that
18 he has been convicted on a number of occasions and
19 convicted, in fact, by a jury in Rae Edzo, I must
20 take that into consideration when considering whether
21 or not there is the possibility of prejudice working
22 to the accused's disadvantage by having his trial in
23 Rae-Edzo even if he wishes to have it there.

24 A matter such as that where the whole community
25 knows the history of each party is something that can
26 not, in my view, be totally dealt with on an
27 application to challenge a juror for cause.

1 If the divisiveness is as described, the
2 notoriety is as described, in my view, the accused is
3 entitled to have a trial elsewhere, and he certainly
4 would get it in this case if he would be asking for
5 it.

6 And one of the concerns that I must have is, can
7 the accused have a fair trial in Rae-Edzo? I've
8 already spoken of the matters and, in my view, it is
9 difficult for me to say that on what I have heard
10 that he could have a fair trial there. By that I
11 don't mean that people wouldn't try their very best
12 to be honest, but the problem is that there is this
13 notoriety that's been expressed by Sergeant Wharton
14 from persons he's contacted and spoken with and who
15 have contacted him and who have raised the subject
16 with him without his prompting. There is
17 polarization. There is the question of security and
18 there is the fear that certain witnesses have of
19 intimidation and harassment of themselves or their
20 families, and for all of those reasons, I grant the
21 application. The change of venue application is
22 granted, the matter will be tried in Yellowknife
23 beginning the 11th of December. Anything further
24 today?

25 MR. MAHAR: Thank you, My Lord, no.

26 THE COURT: Thank you very much. I'll leave you
27 the files.

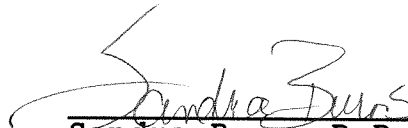
1 THE CLERK: Thank you.

2 THE COURT: We will adjourn until 10 o'clock
3 tomorrow morning.

4 MR. O'HALLORAN: Fine, thank you.

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6 Certified pursuant to Practice Direction #20
7 dated December 28, 1987.

8 
9 Sandra Burns R.P.R., C.R.R.
10 Court Reporter

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