

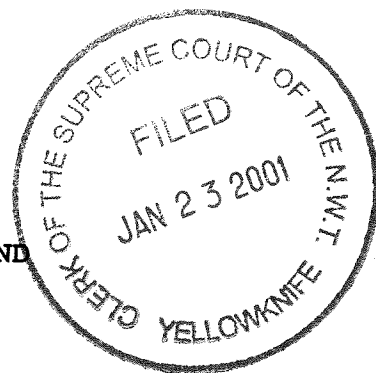
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

CARSON JAMES GREENLAND



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

APPEARANCES:

Ms. S. Kendall:

Counsel for the Crown

Mr. A. Fox:

Counsel for the Defence

1 THE COURT: This is an application for a change of
2 venue made by -- the application is made by the Crown
3 pursuant to Section 599 of the Criminal Code. The
4 application is to change the venue from Fort
5 McPherson to Inuvik. I'm sorry, I believe that is
6 correct; Inuvik is it?

7 MS. KENDALL: That's correct, Sir.

8 THE COURT: Yes. The distance between the two --
9 both of the places are within the Territorial
10 division; that is the Northwest Territories, a
11 distance of 250 miles separates them.

12 Section 599 provides that a Court, before which
13 an accused is, may at any time before or after the
14 indictment is found, upon the application of the
15 prosecutor or of the accused, order the trial to be
16 held in a Territorial division in the same province
17 other than in which the offence would otherwise be
18 tried if a) it is expedient to the ends of justice;
19 or b) a competent authority has directed that a jury
20 is not to be summonsed at the time appointed in the
21 Territorial division where the trial would otherwise
22 by law be held. 'B' does not apply, what applies in
23 this case is that a Court can order a change of venue
24 if it appears expedient to the ends of justice.

25 The Crown has filed two affidavits in support of
26 its application, the affidavits are of Scott Duke and
27 also -- I'm sorry, are of -- not of Scott Duke, I'm

1 sorry, I was referring to the wrong affidavit. The
2 affidavits are principally on -- the one affidavit
3 sets out the population in the various areas, the
4 other is the affidavit of Jeffrey Garceau of Fort
5 McPherson, and attached to his affidavit are a number
6 of statements received from persons whom he
7 interviewed with respect to this matter.

8 A change of venue must -- before there can be a
9 change of venue, various matters must be considered,
10 particularly whether or not there is another answer
11 to the matters raised by the Crown, that is the
12 concerns raised by the Crown, and matters such as --
13 can be problems that are alleged to exist, whether or
14 not those problems -- those matters can be dealt with
15 by other procedural safeguards.

16 The case which, in my view, most correctly sets
17 out what the Court must consider is the case of
18 *Charest*, which I'm sure the counsel are familiar
19 with, it's 1990, 57 C.C.C. (3rd) 312 at page 349
20 where Mr. Justice Fish states in part that he
21 disagrees with the earlier case from British Columbia
22 Supreme Court of the *Queen and Beaudry* which sets out
23 a rather restricted or narrow requirement while Mr.
24 Justice Fish would say that he would follow another
25 case called *Collins* wherein that it adds to the
26 impartial jury standard the additional concept of a
27 fair trial,

1 In my view, a fair trial can be conducted
2 only in a reasonably serene environment.
3 Extensive prejudicial publicity shortly
4 before the trial, pronounced hostility
5 toward the accused, wide-spread sympathy
6 for the victim, and a frightened or enraged
7 community surely create, especially in a
8 small judicial district, the kind of
9 emotionally-charged atmosphere in which the
10 ends of justice may best be served by
11 removal of the trial to another venue.

12 In this case, of course, there is no evidence that
13 there is a frightened and enraged community. There
14 is reference in a letter from the chief, which is
15 part of the affidavit of Jeffrey Garceau, setting out
16 what effect he perceives has been had in the
17 community by reason of these charges.

18 Mr. Justice Fish states that the factors to be
19 considered and which are of some assistance in the
20 pursuit of the goal for a fair trial are the presence
21 or absence of prejudicial publicity, that can include
22 gossip, feelings that people have toward either of
23 the parties, a degree of prejudicial publicity, what
24 degree of prejudicial publicity is there, and clearly
25 a degree of prejudicial publicity could be described
26 as one matter that can seriously effect the opinion
27 of those who would be called forward as judges.

28 A third matter would be, of course, pronounced
29 hostility toward either the accused or toward the
30 victims, or another matter would be wide-spread
31 sympathy for the victims or the accused. Another is
32 the general feeling in the community, is there a

1 revulsion or is the community frightened or enraged
2 or is it in turmoil as a result of this. Are the
3 sides -- the lines clearly drawn. These are some of
4 the factors that are to be considered.

5 Other factors are obviously the nature of the
6 crime. The nature -- in this case there are four
7 sexual assaults, one has to have regard to the size
8 of the community. What may be extensive coverage in
9 a small community may pale in comparison to what
10 would be required in a large community. If this was
11 in the city -- if these offences were alleged to have
12 been committed in the city of Montreal then, of
13 course, a greater amount of publicity, adverse
14 publicity would have to be shown to the Court before
15 one could reasonably say that it tarnished or
16 affected the opinions or the views of the members of
17 the larger community.

18 The goal, of course, in all of this is a fair
19 trial. A fair trial to the accused, and how can that
20 fair trial best be achieved.

21 A fair trial also means a fair trial to more
22 than just the accused, and Madam Justice -- who now
23 is Chief Justice of Canada, quite recently in a case
24 called *Harrer* and I'll give you the citation, I
25 didn't have it with me when counsel were making their
26 submissions but I remembered the name and I checked
27 to see if my memory was correct, it's spelled

1 H-A-R-R-E-R versus the Queen, it's found in 1996, 101
2 C.C.C. (3rd) at page 193 and at page 212, now Chief
3 Justice McLachlin had this to say,

4 At base, a fair trial is a trial that
5 appears fair both from the perspective of
6 the accused and the perspective of the
7 community. A fair trial must not be
8 confused with the most advantageous trial
9 possible from the accused's point of view,
10 nor must it be conflated with the perfect
11 trial. In the real world, perfection is
12 seldom attained. A fair trial is one which
13 satisfies the public interest in getting at
14 the truth, while preserving basic
15 procedural fairness to the accused.

16 In addition to the affidavit, of course what
17 must be considered in this case is the size of the
18 community and from which would be drawn a jury to try
19 these four counts. The accused has 12 preemptory
20 challenges. Crown has 12 preemptory challenges,
21 that's a total of 24 people. 12 persons must be
22 selected, that's a total of 36. If there are --
23 depending on how many adult members there are in the
24 community, this would be approximately 1/10 of that
25 community would be required just to deal with the
26 preemptory challenges. Not challenges for cause, but
27 preemptory challenges and also to form the jury.
That is a consideration.

Could the panel be increased? Could the number
of persons be increased to comprise a larger panel?
I have not heard, but I understand that the number of

1 persons who could possibly serve on the jury is
2 limited. That is one factor and that is a practical
3 factor as well.

4 Further, of course, many of the questions that
5 are raised in the affidavit could probably and could
6 be dealt with by providing unlimited challenges for
7 cause if such arose, that is another matter that I
8 must consider in the number of persons available in
9 this case to hear four counts of sexual assault.

10 In order, therefore, for there to be a fair
11 trial and having regard to what the Criminal Code
12 provides and the law states I must consider, and
13 although the information before me is not under oath,
14 it is still information that was provided, and I note
15 that in some cases it is double hearsay, in others it
16 is hearsay in the first instance such as the letter
17 from the Chief; having regard to that information,
18 having regard to the submissions of counsel and the
19 factors that I've mentioned, in my view, it appears
20 expedient to the ends of justice that there be a
21 change of venue in this particular case and I order
22 that the trial be held in Inuvik.

23 Is there anything further on this file? Of
24 course if there are additional costs of counsel or
25 additional costs of witnesses for the accused, that
26 cost is to be borne by the Crown.

27 MS. KENDALL: Of course, Sir. I would just ask,

1 Sir, that the matter then be spoken to on December
2 8th in scheduling court so that a date for trial
3 could be affixed.

4 THE COURT: Is that agreeable?

5 MR. FOX: If December 8th is the appropriate
6 day.

7 MS. KENDALL: It is scheduling. I think if it's
8 adjourned to scheduling court, I was told December
9 8th.

10 MR. FOX: That's December 8?

11 THE COURT: December the 8th, I'll check and see
12 if that's a juridical day. It's a Friday.

13 MS. KENDALL: Yes.

14 MR. FOX: That's fine, Sir.

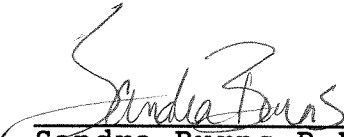
15 THE COURT: All right, the matter will be
16 adjourned to the 8th of December at 10 a.m. to set a
17 date for the trial.

18 MS. KENDALL: Thank you.

19 THE COURT: All right.

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21 Certified pursuant to Practice Direction #20
22 dated December 28, 1987.

23 
24 Sandra Burns R.P.R., C.R.R.
25 Court Reporter

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