Woods & Williams v The Queen [2010] NTSC 36

PARTIES:	WOODS, Graham and WILLIAMS, Julian and THE QUEEN
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING APPELLATE JURISDICTION
FILE NO:	20912126, 20912166
DELIVERED:	12 July 2010 (via video to Alice Springs)
HEARING DATES:	11 June 2010
JUDGMENT OF:	BLOKLAND J

CATCHWORDS:

CRIMINAL PROCEDURE – PRACTICE AND PROCEDURE – APPLICATION FOR CHANGE OF PLACE OF TRIAL

'Good cause' must exist in order to change trial venue – is there a real or perceived risk that the accused will not receive a fair trial – the applicants' concerns regarding prejudice can be appropriately dealt with by the trial judge at the time of jury selection and through directions during the course of the trial – not satisfied that 'good cause' has been shown – Applications refused.

Criminal Code (NT) s 297(2)

DPP v Bennett [2004] VSC 148; *R v Iaria* (2004) 145 A Crim R 74, applied.

ACH [2002] 130 A Crim R 40; *Lange* (1987) 25 A Crim R 139; "*L*" (1989) 43 A Crim R 51; *R v Gojanovic* [2005] VSC 9; *R v Anderson* (1974) 5 ALR 268; *Webb* (1992) 64 A Crim R 38, considered.

The Queen v Pepperill (1980) 54 FLR 327, distinguished.

Dupas v The Queen [2010] HCA 20; *Glennon v The Queen* [1992] 173 CLR 592, followed.

REPRESENTATION:

Counsel:

Applicant Woods:	Mr Goldflam
Applicant Williams:	Mr Brustman SC
Respondent:	Mr Noble

Solicitors:

Applicant Woods:	NTLAC
Applicant Williams:	CAALAS
Respondent:	DPP

Judgment category classification:	B
Judgment ID Number:	BLO 1005
Number of pages:	14

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Woods & Williams v The Queen [2010] NTSC 36
No. 20912126, 20912166

BETWEEN:

GRAHAM WOODS
Applicant

AND:

JULIAN WILLIAMS
Applicant

AND:

THE QUEEN
Respondent

CORAM: BLOKLAND J

RULING ON CHANGE OF VENUE APPLICATION

(Delivered 12 July 2010)

Introduction

[1] Graham Woods and Julian Williams ("the applicants") are remanded to stand trial on 14 September 2010 at Alice Springs. The indictment filed charges them jointly with the murder of Edward Hargraves. The date of the alleged offence is 3 April 2009.

[2] The applicants apply for a change of venue pursuant to s 297(2) *Criminal Code* (NT), to move the trial from Alice Springs to Darwin. The application is opposed by the Crown. Section 297 *Criminal Code* (NT) provides:

297 Change of place of trial

(1) When a person has been committed for trial at a court held at any place, whether he has been admitted to bail or not, the Supreme Court or a judge thereof may, on the application of the Crown or of the accused person and upon good cause shown, order that the trial shall be held at some other place.

(2) When an indictment has been presented against any such person the court may, on the application of the Crown or the accused person and upon good cause shown, order that the trial shall be held at some place other than that named in the indictment and at a time to be named in the order.

(4) The obligations of any persons who are bound to attend as witnesses or to produce any documents are in like manner to be deemed to be altered to the same time and place upon their being given written notice to that effect.

[3] The applicants contend "good cause" has been shown, given, it is argued, the following features are present in this case:

- The deceased was a prominent person, who some may regard as a local hero or loved son of Alice Springs;

- A significant manifestation of public grief has been evident in for instance, a statement from the mayor of Alice Springs; a public appeal to raise money for the deceased's family that received widespread support; a memorial procession through Alice Springs; a significant volume of expressions of regret and notices in the local Newspapers by persons acquainted or connected with the deceased;

- Media reporting surrounding the case tending to highlight racial issues, including a juxtaposition of this case with a previous unrelated case where racial elements were acknowledged; instances of inaccurate or misleading reporting;

- Evidential material in the committal indicative of racial issues surrounding the incident alleged;

- Specific prejudice to both accused and in relation to the accused/applicant Woods, to his family, leading to both accused being moved by authorities to Darwin for a period while in custody;

- The historical racially skewed composition of juries in Alice Springs;

- General prejudice given the expressed anger and distress reported on or otherwise shown in Alice Springs.

- The deceased was a non Aboriginal person and the accused are Aboriginal persons;

[4] In general terms, the applicants argue those features within the circumstances of Alice Springs, a town of 30,000 people, lead to the conclusion that there is a risk, perceived or real, that the accused will not receive a fair trial if the jury is to be drawn from the Alice Springs populace.

The Relevant Principles

[5] It is in the interests of the community that an offence ought ordinarily be tried in the locality in which it is alleged to have been committed: (*R v Iaria*[1]; *R v Gojanovic*[2]; *DPP v Bennett*[3]; "*L*"[4]; *R v Anderson*[5].) The trial should ordinarily be held before a jury selected from the same district: (*Lange*[6]).

[6] Changing the venue of the trial will inevitably result in increased costs and inconvenience to the Crown and its witnesses and others from the local community interested in the trial. To some extent this will also impact on the cost and convenience to the accused. Although they are relevant considerations, they are subsidiary or secondary considerations if indeed "good cause" is shown to change the venue.

[7] There is no rule that to show "good cause" (or other analogous standard utilized in other jurisdictions) there needs to be shown "exceptional circumstances": (*R v Iaria* (supra)), or that there should be further embellishment of the term "good cause". Each case is to be dealt with on its merits. In terms of adverse or inflammatory publicity or antipathy that may have been directed towards the applicant accused, or other reasons to apprehend prejudice it must be shown there is a reasonable possibility that the applicant accused will not have a fair and impartial trial:

---

[1] (2004) 145 A Crim R 74.
[2] [2005] VSC 9.
[3] [2004] VSC 148.
[4] (1989) 43 A Crim R 51.
[5] (1974) 5 ALR 268.
[6] (1987) 25 A Crim R 139.

(*ACH*[7]; *Webb*[8].) The applicants' argue cases such as *Iaria* and *DPP v Bennett* stand for the proposition that the trial needs to not only be fair but be perceived to be fair. In *Iaria,* Nettle J cited previous authority concluding:[9]

> "... it is desirable to go further than that, to ensure not only that a fair trial would be had in fact, but that is should be had in such circumstances that all reasonable men would so admit."

[8] Accepting *Iaria* and *Bennett* represent the current state of the law, it must be accepted any perception on whether there will be a fair trial must be a perception appropriately and reasonably informed. This includes a perception that is informed by the knowledge of the regular process of jury selection, including the ability of jurors to be excused from service should they be unable for any reason to bring an open mind to their task. It includes an appreciation of directions being given by the trial judge to remedy any obstacle to a fair trial and the underlying principle that jurors will be true to their oath. Applying the test "reasonable possibility that the accused will not have a fair trial" or the perception test drawn from *Iaria* do not admit a significant difference if it is appreciated that any perception by a reasonable person must be appropriately informed.

[9] A decision on a change of venue application must be made against the background of the Courts' usual processes in jury trials. Although this application is not only based on issues of adverse publicity, cases where

[7] [2002] 130 A Crim R 40.
[8] (1992) 64 A Crim R 38.
[9] At 80.

adverse publicity has been an issue are instructive in terms of the expectation and perception of the processes actively engaged in with jurors and potential jurors to ensure a fair trial and the perception of a fair trial. The law proceeds on the basis that the jury acts on the evidence and in accordance with directions. Recently this has been described by the High Court as "akin to a species of 'constitutional fact'": (*Dupas v The Queen*[10]).

[10] In *Glennon v The Queen*[11], (an appeal from a refusal of an application for a permanent stay of proceedings on the basis of public disclosure of a prior conviction for an offence of the same nature), Mason CJ and Toohey J recognised that "the possibility that a juror might acquire irrelevant and prejudicial information is inherent in a criminal trial"[12]. In discussing that possibility, the High Court in *Dupas* [13] stated:

> "What, however, is vital to the criminal justice system is the capacity of jurors, when properly directed by trial judges, to decide cases in accordance with the law, that is, by reference only to admissible evidence led in court and relevant submissions, uninfluenced by extraneous considerations. That capacity is critical to ensuring that criminal proceedings are fair to an accused." [14]

[11] I am mindful that cases such as *Glennon* and *Dupas* involve consideration of an exceptionally high standard on whether to enliven the discretionary remedy of a permanent stay of proceedings, however the statements of principle to give effect to respecting the efficacy of the jury system are still

[10] [2010] HCA 20, para 28.
[11] [1992] 173 CLR 592.
[12] At 603.
[13] Supra, para 29.
[14] At para 31.

relevant to the question of whether there is a real possibility the applicants will not have a fair and impartial trial or whether there will be a perception of the same. I am also mindful that change of venue is one of the mechanisms a Court can use to ensure a fair trial when there is an obstacle to ensuring the same.

Application of the Principles

[12] I have had the benefit of detailed affidavits from solicitors for both applicants, Graham Woods Senior (the father of the applicant Graham Woods), the applicant Graham Woods, the Officer In Charge of the investigation and detailed submissions from both counsel for the applicants and the respondent.

[13] Although there are some issues of concern in the material before me, in my view there is nothing that could not be overcome by direction and instruction of the trial judge once brought to their attention. Some of the issues raised which may have been of concern at the time of the alleged offence and laying of the charge, now appear to have subsided. I will refer to some of the material in the affidavits that is of significance.

[14] Senior Counsel for the applicant Williams referred to statutory declarations and evidential material from the committal that on the face of it, is indicative of racial taunting prior to the incident leading to the alleged offence. Statements such as “come out here you white cunts” from one witness through to statements such as “fuck off you black cunt” and other

offensive sounding name calling or taunting was drawn to my attention. It is unlikely that issues of prejudice that might be stirred from those offensive sounding statements could not be dealt with appropriately by the trial judge. It is the combined effect of that context of the background to the case, the media coverage and the prominence of the deceased that have raised concerns on the part of the applicants.

[15] A number of extracts from the Centralian Advocate, the Alice Springs News and web pages from the ABC throughout 2009 are before the Court. Some of the print media articles impliedly refer to Aboriginal people in a negative or accusatory way. The placement of an early article concerning the applicants being charged, it is argued, adds to the concern. Similarly an article reporting on the statements of the deceased's parents in terms of their perceptions about deterioration of conditions in Alice Springs, violence and attracting "trouble makers and criminals of the worst kind" further reinforces the view held by the applicants. A number of reports of the committal proceedings are annexed to affidavits before the Court. Of concern is a headline "DNA found on knife". The Court was informed by the parties that it was the deceased's DNA. The concerns of the applicants are that a wrong impression was given through that headline. Overall, I have come to the conclusion that the press coverage itself, while in part is no doubt concerning to the applicants, does not have the characteristics noted by Muirhead J in *The Queen v Pepperill*[15]. His Honour there found

[15] (1980) 54 FLR 327.

inaccuracy to be well proved and found some reports mischievous and inflammatory. It is necessary to bear in mind this was in the context of a police arrest of Pepperill and others during which police shot and killed one member of the party and wounded another. This involved the trial of Pepperill and others of those who were charged with offences against police. His Honour's conclusion on the publicity at that time was[16]:

> "In view of the tragic background to the events and in view of the pending trial of five men at Alice Springs, I can only term this editorial as disgraceful journalism calculated and likely to inflame opinion against the aborigines'. It constituted a type of rallying call to the local populous to stand by the police involved in the "Tea Tree incident"."

[16] Reviewing the media material before me, although some of it would be understandably of concern to the applicants, it has not reached the level as was found in *Pepperill* that would in my view justify moving the trial away from Alice Springs. Those matters covered in the press are more appropriately dealt with by the trial judge; if the trial judge deems it necessary. In making this decision I note that the most significant and potentially disturbing of the articles were published in the first six months after the date of the alleged offence. I would not expect the press articles from that time to be influential at the time of the trial.

[17] Mr Goldflam's affidavit contains an account of his experiences and perceptions concerning racism in Alice Springs. He considers the publicity has been intense and there are continuing discussions and debate within the

[16] At 331.

Alice Springs community about race relations. He is concerned of a link in the public's mind as is evident in some of the press commentary between the recent Ryder case and this matter. Once again, any perception of such a link is a matter that the trial judge can appropriately deal with.

[18] In terms of specific prejudice to the accused, I note the treatment of the applicants as set out in the applicant Graham Wood's affidavit affirmed 25 May 2010. He reports threats and abuse by prison officers towards himself and the applicant Williams. After two weeks in custody both applicants were flown to the Darwin Correctional Centre. The applicant Woods states he was told by Prison Officers that he and Williams were transferred for their own safety because there was so much feeling against them in Alice Springs following the death of the deceased. He reports other abuse and taunting on the way to Darwin. He says he was treated well at the Darwin Correctional Centre and he was transferred back to Alice Springs Correctional Centre shortly before the committal hearing which started on 19 October 2009. He reports he has not been treated badly by Prison Officer since then. If true, the previous treatment of the applicants is serious and for the purposes of this application I accept there was sufficient concern on the part of Correctional authorities to move the applicant to Darwin. The Crown have not asserted to the contrary. Given the applicant has been treated well since his return, I conclude that at this time, being close to the time of the scheduled trial, there is no longer the intensity of feeling that may have manifested itself towards the accused at an earlier time.

[19] Graham Woods Senior reports amongst other matters raised in his affidavit that following Mr Hargraves death, for the first time ever he had difficulty obtaining work in Alice Springs. He believed that was a result of his family being blamed for the death of the deceased. He also reports certain incidents of threatening or offensive remarks and behaviour to members of his family. For a time, the family moved out of Alice Springs. He has been living back in Alice Springs since the committal commenced in October 2009. Counsel advised the Court that only very recently he has obtained a small amount of casual work. Once again, although these incidents are concerning, it appears with the passing of time any antagonism towards the applicants and their families has lessened significantly.

[20] I note also the respondent's submission that no antagonism was evident in and around the court at the committal.

> "There were no banner waving crowds outside, no campaign by even a special interest group against them but rather a simple observance of the court process during the committal."[17]

I note also the affidavit of the Officer in Charge at paragraph 10:

> "During the committal stage there was a large amount of public interest in this court case as referred to in the depositions of Russell Goldflam and Ted Sinoch. There were a large amount of civilian people in the court room however there were more family for the accused than the victim's family. The courtroom was usually full. At no time was there ever any disruption to the court proceedings or was there any report to police in the preceding days of racism or any incident, to any extent either in the courtroom, foyer, outside of the court or anywhere."

[17] Respondent's Submissions, paragraph 10.

[21] Concerns are also expressed on behalf of the applicants that they may suffer specific prejudice given the prominence of the deceased. The material before the court concerning the deceased includes many favourable descriptions of the deceased and his various community activities that are reported on in a positive light. There are numerous death notices in the Centralian Advocate and a report of a memorial procession through Alice Springs. I have mentioned also the Mayor of Alice Springs made statements about the loss of the deceased. This is not an uncommon reaction to the unexpected loss of a person who is or is perceived as being a good person and significant contributor to the community. The deceased was obviously well known and admired in a section of the Alice Springs community, beyond that, I can make no positive finding. The various expressions of grief, loss and regret about the deceased and the circumstances of his death do not in my view, now more than a year later mean the trial will be unfair if conducted in Alice Springs. A fundraiser organised for the benefit of the deceased's family raised $45,385. It is a significant contribution considering the size of Alice Springs. All businesses and a number of individuals who contributed are acknowledged in a Centralian Advocate advertisement of 19 June 2009. The advertisement states:

> "We urge all people of Alice Springs to support these businesses that stand up to help those in our community when times are tough. Thank you once again."

[22] These sentiments are sentiments to be expected in the circumstances of the death of a much admired person in a small community. Once again, this

fundraiser concluded, or was reported to have concluded in June 2009. I agree that it tends to show the deceased was admired and connected to many people and organisations in the Alice Springs community, however over a year after the critical events, in my view these are all matters that if the trial judge deems appropriate, may be raised with jurors concerning whether they can bring an open mind to proceedings or whether they believe there is some reason why they would not bring an open and impartial mind or be perceived not to bring the same. It is open to the applicants to draw any of these matters to the trial judge's attention for formulation of any instruction to potential jurors. There is no reason why this cannot be appropriately dealt with by the trial judge.

[23] Mr Goldflam also points to the fact that the trial may not be perceived to be fair as in addition to the matters already raised and matters relevant to racism, his affidavit states:

> "I have appeared in Alice Springs jury trials regularly since about 2002. I have noticed that Alice Springs jury panels always seem to be very predominantly composed of non-indigenous people, although from time to time one or two jurors of Aboriginal appearance have been selected onto juries in trials in which I have appeared. I have never challenged the array of a jury panel, or heard of such a challenge being made in Alice Springs. I have read and believed that Aboriginal people comprise approximately twenty percent of the Alice Springs population. I do not know why jury panels do not appear to reflect the proportion of indigenous people in the Alice Springs community."

[24] The Crown do not appear to disagree that Alice Springs jury panels often do not include Aboriginal persons. Mr Noble for the Crown referred to his

observation that many Aboriginal persons excuse themselves from jury service. The ultimate jury selected and drawn from the array will be subject to the directions of the trial judge. There is no reasons to conclude that whatever the racial make up of the panel, they will not comply with the trial judge's directions.

[25] I am not satisfied good cause exists to change the venue of the trial at this time. The concerns raised on behalf of the applicants in my view are more appropriately dealt with by the trial judge at the time of the jury selection and by directions during the course of the trial.

[26] I decline to order the venue of the trial be changed.

[27] At the hearing of this application in open court, I made orders suppressing publication of proceedings on this application. Until further order, (given the sensitivity of the material before the Court and given the close proximity of the trial date), I continue that suppression order. Further, I order the reasons delivered today not be published until after the completion of the trial.

[28] I confirm the trial is to commence on 14 September 2010 at Alice Springs.

———————————————————