

Citation: *R. v. Germaine*, 2025 YKTC 12

Date: 20250117

Docket: 23-00549A

Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Phelps

REX

v.

WILLIAM NORMAN GERMAINE

Appearances:

Bradley Demone

Amy E. Chandler

Counsel for the Crown

Counsel and Agent for the Defence

REASONS FOR JUDGMENT

[1] PHELPS T.C.J. (Oral): There are two applications before the Court with respect to William Germaine: one, with respect to an application for the primary witness in this matter to testify by telephone and; the second application, to move the trial from Mayo, where it was set out of Whitehorse, back to Whitehorse where the offence is alleged to have occurred.

[2] Both applications are vigorously opposed by defence counsel, and defence has relied on the decision of *R. v. Kellar*, [1973] O.J. No. 1329 (*R. v. Kellar* (1973), 24 C.R.N.S. 71 (Ont. Co. Ct.)). That Court sets out the change of venue considerations at paras. 18 to 20, which state as follows:

18 The general rule as to the locus of a trial at common law was the place where the offence was alleged or supposed to have been committed and, as has been pointed out by the authorities, [then s. 527] of the Criminal Code is merely a codification of the common law position.

19 In the well-known and oft-cited case of *Rex v. Adams*, 1946 CanLII 64 (ON SC), [1946] O.R. 506, 2 C.R. 56, 86 C.C.C. 425, ... at p. 427:

"As early as 1762 it was said: "There was no rule better established than, that all causes shall be tried in the county, and by the neighbourhood of the place, where the fact is committed." And, therefore, that rule ought never to be infringed unless it plainly appears that a fair and impartial trial can not be had in that county". [citations omitted]

20 It also appears from the authorities, and I refer again to the case of Roy, that in an application brought as here for an order changing the venue back to the judicial district where the original order changing the venue was made, the grounds in support of such an application need not be as weighty and cogent as are required in the initial application for a change of venue. I quote again Cross J. in the Roy case where His Lordship said at p. 371:

"My view is that an application to change back to the district in which the offence is said to have been committed, should be favourably considered and does not require to be supported by such strong reasons as are needed when the proposed change is a change from that district. The change to Montreal was ordered for the reasons then advanced by the petitioner." [citations omitted]

[3] Here, the application was made on May 8, 2024, for the trial in Mayo. I have listened to the application. It was, of course, very brief, having taken place in adult docket court on a Wednesday morning, and I note that the Crown at that point in time consented to the change of venue.

[4] The Crown witness is in Whitehorse, where the offence occurred. *Keller* does address the inconvenience to witnesses at para. 32, as follows:

I may say that the convenience of the witness is a factor, albeit minor and secondary, which I have considered in coming to the conclusion that I have come to.

[5] The decision at para. 33 continues:

It is my judgment in the present case that the *prima facie* rule that the accused should be tried at the place at which the offence is alleged to have been committed, ought to be given full force and effect. I am satisfied that any possibility of prejudice either has been, or can be, effectively eradicated, and thus it is expedient to the ends of justice to grant the application.

[6] The Crown relied on the decision of *R. v. Davis*, 2018 ONSC 4630. Really, it just echoes the same principles in that decision as in the defence counsel decision of *Keller*.

[7] So, following *Keller*, the Crown's consent has now been revoked, and the trial should take place where it is alleged to have been committed, which is Whitehorse. The application is allowed. The matter will go to fix-date court on January 23, 2025, to fix a date for trial in Whitehorse.

PHELPS T.C.J.