

# IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Daunt*, 2005 YKSC 33

Date: 20050603  
Docket No.: S.C. No. 03-01510  
Registry: Whitehorse

Between:

**HER MAJESTY THE QUEEN**

And

**GEORGE KIERAN DAUNT**

Before: Mr. Justice R.S. Veale

Appearances:

David McWhinnie and  
Michael Cozens  
Richard Fowler and  
Elaine Cairns

For the Crown

For the Defence

## **MEMORANDUM OF RULING** (Change of Venue)

### **INTRODUCTION**

[1] This is an application by defence counsel for a change of venue for a second degree murder trial from Dawson City to Whitehorse. The Crown prosecutor, while not formally consenting, to a considerable extent supports the application. The issue is whether the accused will have a fair trial with an impartial jury in Dawson City. For the reasons that follow, I have ordered that the venue of the trial be changed from Dawson City to Whitehorse.

## THE FACTS

[2] George Daunt has been charged with the second degree murder of Robert Truswell on August 28, 2003.

[3] The factual basis for this application was initially somewhat weak as it was based upon the affidavit of an associate of defence counsel from Vancouver.

[4] However, the factual basis was amplified by an Agreed Statement of Facts filed by Crown and defence following the hearing of the application.

[5] The Agreed Statement of Facts establishes the following:

1. Dawson City is a community of approximately 1800 full time residents.
2. Both the applicant and the deceased are/were well known members of the Dawson City community, and both were involved in the local mining industry.
3. The events surrounding the death of Robert Truswell were widely reported in the local and national media. Printed articles appeared in the *Yukon News*, *Whitehorse Star* and the *Globe and Mail*.
4. Approximately thirty to thirty-five letters were obtained from a wide cross-section of the community supporting the applicant's release on bail.
5. Also in connection with the bail application, a petition was prepared and signed by members of the Dawson City community which expressed support for the Accused.
6. Previous incidents involving the deceased are widely known in the Dawson City community. Over time the circumstances of these incidents have apparently become distorted by gossip and rumour. One such event which

has become distorted over time is adverted to by the witness Bryde at the preliminary inquiry.

7. The deceased was widely known as “two-by-four Bob” ostensibly because of an incident in which he struck someone with a piece of wood.
8. The circumstances of an altercation involving the accused and his father, Dr. Ivan Daunt, a potential Crown witness known to be friendly with Truswell, are well known in the Dawson City community, having been dealt with both in open court and in a community group conferencing forum.
9. The Prosecution has disclosed to Defence a copy of a letter from a member of the Dawson City community to the accused while he was initially detained concerning this matter, and seized by the police, which letter expressed an opinion in respect of the death of Truswell that “someone had to do it.”

## **ANALYSIS**

[6] The applicable law is not in dispute. Section 599 of the *Criminal Code* provides that the location of a trial may be changed where “it appears expedient to the ends of justice”.

[7] The guiding principles for this exercise of discretion are:

1. a criminal trial should be held in the place in which the crime is alleged to have occurred;
2. the applicant must establish, on a balance of probabilities that a fair and impartial trial cannot be held in Dawson City;
3. the discretion to change the location must be exercised judicially, that is on a principled basis;

4. the applicant must be able to demonstrate that the partiality or prejudice established cannot be overcome by safeguards in jury selection which include peremptory challenges, challenges for cause and trial judge instructions to the jury.

See *R. v. Charest* (1990), 57 C.C.C. (3d) 312 at page 350 (Qué.C.A.); *R. v. Eng* (1999), 138 C.C.C. (3d) 188 at paragraphs 10 – 13 (B.C.C.A.); *R. v. Suzack* (2000), 141 C.C.C. (3d) 449 at paragraphs 30 – 44 (Ont. C.A.), leave to appeal denied [2000] S.C.C.A. No. 583.

[8] Some of the factors for considering whether a trial will be fair, are:

1. the size of the community;
2. prejudicial pre-trial publicity;
3. widespread animosity that people may have towards the accused or the victim;
4. widespread sympathy for the accused or the victim;
5. fear or revulsion in the community;
6. the nature of the crime; and
7. the nature of the issues

[9] All of the above factors are brought to bear on this trial.

[10] The list of factors is not exhaustive. In this case, there is another troubling factor and that is the number of witnesses likely to be called from the Dawson City community. The Crown has approximately thirty-five witnesses. The names on the Crown witness list can be disclosed to prospective jurors which would reduce the possibility that jurors

would be partial to particular witnesses. The Crown submits that this would still be a problem, given the extent of sympathy for the accused.

[11] The defence may have ten to fifteen local witnesses, whose names are not disclosed, making it impossible to inform potential jurors of witnesses they may be related to or influenced by.

[12] The witness factor must be placed in the context of this case. Self-defence will be an issue and some of the incidents regarding the deceased have become distorted over time. The deceased is known locally as “two-by-four Bob” as a result of an incident.

[13] The accused obtained thirty to thirty-five letters of support for his release on bail. A petition was prepared and signed by members of the community to support the accused. The police seized a letter to the accused expressing the opinion that “someone had to do it”.

[14] All of this would usually result in a Crown application for a change in the location of the trial. Pronounced hostility towards the victim and widespread sympathy for the accused would commonly be a great concern for the Crown, not the defence.

[15] But the settled views in the community apparently cut both ways prompting counsel for the accused to bring this application with the support of the Crown.

[16] I order that the venue of this second degree murder trial be changed from Dawson City to Whitehorse, Yukon Territory.

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VEALE J.