

**DECISION OF
THE ȤAWĪIȤ COUNCIL**

Application # HCR 3

**Determination re Risk to Public Safety – David Bird
2024 HCD 3**

Place and date of hearing: Port Alberni, BC
November 7, 2024

Date of judgment: November 19, 2024

Panel:

Yaalthuuaa-uks (Sherri Cook), head of Yaaluuwaštak'amath house,
Ȥapinyuuk (Tommy Happynook), head of Čačaahsi?as house,
Thlut' as aksup (Theresa Nookemus), head of Ȥaw'ehtak'amłath house

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I. BACKGROUND

1. On February 19, 2020, David Bird (“David”) was convicted of the offence of forcible confinement under section 279(2) and the offence of assault with a weapon under section 267(a) of the Criminal Code. As a result, the Executive Director issued an exclusion order against David as required under section 6(1) of the *Community Safety Act*, HFNA 4/2021 (the “Act”) prohibiting him from being on Huu-ay-aht treaty lands.
2. David made an application under section 10(1) of the Act for a determination that he does not pose an unreasonable risk to public safety and as a result the exclusion order should be varied or rescinded. The H̱aw̱ii̱ẖ Council arranged to hold a hearing to consider the matter.
3. Public notice of the application was given on September 11, 2024, and public notice of the hearing was given on October 25, 2024. The public notice advised how people designated as “impacted individuals” under the Act, and others, could seek to participate in the hearing.
4. The hearing was held in person in Port Alberni on November 7, 2024. Participants had the option of speaking at the hearing or of providing written submissions. There was also an option to attend by Zoom.
5. A panel of three members of the H̱aw̱ii̱ẖ Council (the “panel”), made up of Yaalthuuaa-uks (Sherri Cook), head of Yaaluuwaštakamał̱ẖ house, ɥapinyuuk (Tommy Happynook), head of Čačaaẖsiʔas house, and Thlut’ as aksup (Theresa Nookemus), head of H̱aw’eẖtak’amł̱ẖ house, heard the matter on behalf of the H̱aw̱ii̱ẖ.
6. The panel heard from the following individuals:
 - David Bird
 - Sandra Lawlor
 - Connie Waddell
 - Kimberly Nookemus
 - Rita Watts
 - Al Shewish
7. Additionally, the H̱aw̱ii̱ẖ Council received a letter from Darlene Nookemus.

II. WHAT THE H̱AW̱II̱H̱ COUNCIL HEARD

David

8. David was born in Tofino and primarily raised by his mother, Sandra Lawlor. Neither David nor his mother are Huu-ay-aht citizens. Sandra resides on treaty lands in Sarita Bay with her partner, Tommy Joe, who is a Huu-ay-aht citizen.
9. David is currently living in Victoria. He does not have a fixed address and is staying in a park. He wishes to be allowed on treaty lands so that he can reside with his mother and Tommy Joe in Sarita and assist them with work around the property.
10. David described a positive relationship with his mother and stated that he had a lot of respect for Tommy. He would like permission to be on Tommy Joe's property and to be elsewhere on treaty lands in the company of Tommy Joe.
11. David confirmed that he was convicted of the excludable offences, which took place in 2018. As a result, he was sentenced to four years in jail, less credit for time served. He was also issued a lifetime firearms ban and a three-year probation order.
12. David acknowledged he has a lengthy criminal history but said that he is not a bully and that he has never been violent towards individuals whom he described as "innocent" or who did not "initiate" something.
13. David told the panel that he has spent approximately 18 years of his life in jail, including for serious offences. He noted that he does not have a history of institutional violence, which he felt reflected positively on him.
14. David described the period he spent in custody as a result of the excludable offences as a turning point for him. He said he got tired of being in jail and decided he wanted to change. During his time in prison, David volunteered as a school tutor for other inmates pursuing their Dogwood diploma and also engaged in arts and crafts programming. He described beading as one of his hobbies.
15. David attended the Guthrie Therapeutic Community addictions treatment program while in jail. He has used drugs in the past but advised the panel that is not currently using drugs other than marijuana, which he said helps him with anxiety, sleep, and pain issues. He stated that he does not really use alcohol.
16. David has probation conditions which do not permit him to be in Port Alberni or on treaty lands. His probation is managed through the Repeat Violent Offending Intervention Initiative (ReVOII). He advised that he sees his probation officer in person every two weeks and also has access to a community transition team.

17. David is on disability. He told the panel that he and his mother have plans to operate a food truck in the future.

Questions from the panel

18. The panel asked David about his criminal record and history of compliance with court orders. He advised that since the exclusion order was issued, he has been convicted for breaches of probation orders. [REDACTED DUE TO PUBLICATION BAN]. David stated that he was dealing with mental health issues at the time. David confirmed that [REDACTED DUE TO PUBLICATION BAN].

19. The panel asked David about his mental health and what he was doing to address anxiety or other mental health issues. David advised that he does not like taking medication and is not attending counselling, but that he is scheduled to have a psychiatric evaluation done. He also advised that he is trying to manage his stress levels.

20. The panel asked David how he planned to get to and from Sarita if he were allowed to be on treaty lands, given that his probation order prohibits him from being within 10 km of Port Alberni. David advised that if allowed on treaty lands, he intends to ask his probation officer for written permission to be in Port Alberni when in the company of his mother or Tommy Joe; for example, to travel through or attend appointments.

21. The panel noted that Tommy Joe is a hunter and asked David whether he would stay behind during hunting trips rather than go with Tommy, due to his firearms ban. David told the panel that he was allowed to go along with Tommy but could not handle firearms himself.

Other individuals

22. Sandra Lawlor is David's mother. She attended the hearing via Zoom. She stated that she and Tommy Joe support David living in Sarita and that they have lots of work for him to do there, and that he needs his family. She also provided the panel with a letter to this effect. Tommy Joe did not attend the hearing or provide his own comments to the panel.

23. Darlene Nookemus is a Huu-ay-aht citizen and resident of Sarita. Darlene did not attend the hearing but advised the panel that she had the same views and concerns as those she expressed in a letter shared with the panel. Darlene's letter described how scary it was for her when David was involved in a violent offence in Sarita several years ago, and police and helicopters came to the community. She stated that she would not feel safe with David living in Sarita, particularly since it is a very isolated community with no police presence or emergency services.

24. Connie Waddell is a Huu-ay-aht citizen and attended the hearing via Zoom. She spoke in favour of keeping the exclusion order in place in light of Mr. Bird's serious criminal history and the fact that he is not a Huu-ay-aht citizen.
25. Kimberly Nookemus is a Huu-ay-aht citizen. She attended the hearing via Zoom and also expressed concerns about Mr. Bird's criminal history. She stated that she hoped the panel would be mindful of the experiences of and impacts on victims in making its determination.
26. Rita Watts is [REDACTED DUE TO PUBLICATION BAN]. She stated that in her view, David is a dangerous individual and she expressed concern that allowing him on treaty lands would give him greater access to Port Alberni.
27. Al Shewish is a member of Tseshaht First Nation. He attended the hearing in person. Al advised the panel that David is not permitted to be on Tseshaht's reserve land, and expressed concern about the possibility of David being allowed to visit Port Alberni.

III. WHAT THE ḤAWĪIḤ COUNCIL MUST CONSIDER

28. Section 11 of the Act sets out the factors that the ḤawĪiḤ must take into account in determining whether an excluded person poses an unreasonable risk to public safety, and deciding whether to uphold, rescind, or vary an exclusion order as follows:
 - a) the time that has elapsed since the actions giving rise to the conviction and the excluded person's behaviour during that time;
 - b) the role of substance use in the offence and the excluded person's current status with respect to substance use, including participation in any treatment program;
 - c) the excluded person's ties to the Huu-ay-aht community;
 - d) the potential impacts of the exclusion order on the excluded person, impacted individuals, and the Huu-ay-aht community;
 - e) the nexus between the offence and the potential risk posed by the person to people on Treaty Lands and to the Huu-ay-aht community;
 - f) any proposed mitigation plan;
 - g) participation of the individual in a restorative program;
 - h) any supports put in place by the excluded person's Huu-ay-aht Maht Mahts;
 - i) whether the excluded person has a criminal history beyond the commission of the prescribed offence giving rise to the exclusion order;
 - j) whether the excluded person has a history of non-compliance with court orders;

- k) any expressions of remorse or attempts to make restitution undertaken by the person; and
- l) any other factors it considers relevant.

IV. APPLICATION

- 29. The panel listened carefully to all the evidence and comments received at the hearing, and to those provided in writing. In making a decision, the panel considered the factors set out in section 11 of the Act. In particular, the panel's considerations included the matters discussed below.
- 30. David is not a Huu-ay-aht citizen and does not have strong ties to the Huu-ay-aht community. While the panel understands that his mother is in a relationship with a Huu-ay-aht citizen, David was not raised by Tommy Joe, did not grow up on treaty lands, and has not been involved in the community more generally. In fact, he stated that he did not believe he had ever been to Pachena, by which the panel assumes he meant the village of Anacla.
- 31. The offences for which the exclusion order was issued are serious and violent ones. David has a lengthy criminal history and has spent much of his adult life in custody.
- 32. The offences that gave rise to the exclusion order took place in Port Alberni and the victim was not a Huu-ay-aht citizen. However, the panel understands that David has been convicted of other violent offences that took place in Sarita.
- 33. The excludable offences took place in 2018. David was in custody for a significant period of time as a result. He engaged in volunteer work and attended treatment for addictions while incarcerated. The panel acknowledges that David has a desire to change and to not commit any more violence, and recognizes that he has taken some positive steps on this journey.
- 34. We encourage David to continue to pursue self-improvement through attending counselling and working with his probation officer. However, we do not consider that David's journey is complete.
- 35. Since the exclusion order was issued, David [REDACTED DUE TO PUBLICATION BAN].
- 36. David expressed the view that he felt "bullied" by the situation which prevents him from residing with his mother. However, the panel notes that the exclusion order was issued as a result of David's commission of violent criminal offences. David is also subject to probation conditions that prohibit him from being on treaty lands. The H̱aw̱iiẖ Council is not responsible for court orders and the panel's decision on this application will have no effect

on any existing probation orders or other conditions that are or may be imposed by law enforcement.

37. These comments and others indicate that David has not taken full responsibility for his actions. This is of significant concern to the panel. In our view, a lack of accountability suggests a likelihood of reoffending.
38. David did not express remorse or concern for his victims. Instead, his comments suggested that he believes that those he has hurt in the past were in some way deserving of harm. The panel wishes to condemn the idea that violence is justifiable in the strongest of terms.
39. Allowing David to be in Sarita would bring him into close proximity to firearms in a remote and isolated community without a police presence or emergency services. In the panel's view, this would undermine community safety.
40. From a practical perspective, it would also bring him into closer proximity to the Alberni Valley, where he has a history of committing criminal offences and where many Huu-ay-aht citizens reside.
41. Huu-ay-aht citizens, including those who reside in Sarita, have stated that they would not feel safe with David living on treaty lands. The panel is of the view that allowing David to live in or visit Sarita would impact the well-being of Huu-ay-aht community members.

V. DECISION

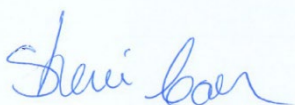
42. The panel has determined that David Bird continues to pose an unreasonable risk to public safety.

VI. ORDER

The H̱awiiẖ Council orders as follows:

1. The exclusion order is affirmed.

Decided this 19th day of November, 2024.



Yaalthuuaa-uks (Sherri Cook)

Tommy Happynook

ᕿapinyuuk (Tommy Happynook)

Theresa Nookemus

Thlut' as aksup (Theresa Nookemus)