

CANADA / JUDGMENT

R. v. B.T.R.

2025 BCSC 2724

COURT

Supreme Court of British Columbia

DECIDED

21 July 2025

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2025 BCSC 2724 R. v. B.T.R. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. B.T.R., 2025 BCSC 2724 Date: 20250721 Docket: 113356-3 Registry: Kamloops Rex v. B.T.R. Restriction on publication: Pursuant to ss. 486.4(2), 486.4(2.2) and 648(1) of the Criminal Code Corrected Ruling: The text of the Oral Ruling re Midtrial Instruction was corrected at paragraphs 2 and 6 on April 30, 2026 Before: The Honourable Justice Hardwick Oral Ruling re Midtrial Instruction Counsel for the Crown: C. Cook Counsel for the Accused: M. Ford Place and Date of Trial/Hearing: Kamloops, B.C. July 21, 2025 Place and Date of Ruling: Kamloops, B.C. July 21, 2025

- [1] THE COURT: At this point I am providing these brief reasons for judgment in respect of the suggested midtrial jury instruction wording regarding a non-witness's evidence put forward by the Crown.
- [2] The basis of the Crown's submission is that defence counsel has suggested that the jury should consider the fact that the Crown did not call M.T.'s counsellor to testify and that I should instruct the jury to disregard this suggestion.
- [3] I was referred to two cases by counsel. The first by Ms. Cook is R. v. Cook, [1997] 1 S.C.R. 1113, and as well as I was referred to one by Mr. Ford, R. v. Maxie which is 2014 SKCA 103 which does refer to Cook. In particular, at paragraph 38 of Maxie there are a number of principles arising from the authorities which deal with, as set out, the adverse interest based upon the Crown's failure to call witnesses.
- [4] The most salient of the subparagraphs are subparagraphs (ii), (iii) and (iv). Those provide that: [38] (ii) The Crown has a broad discretion in prosecuting offences which include a right to determine what evidence it will call. As such, the Crown does not have a duty to call all witnesses who have relevant testimony. [citations omitted] (iii) In certain circumstances an adverse inference may be drawn against a party for failing to call a witness. [citations omitted] (iv) Adverse inferences should only be drawn where the witness has relevant information pertaining to a material issue. A witness need not be called if his or her evidence is collateral, peripheral, cumulative or inferior to other evidence called. [citations omitted]

- [5] In the circumstances, I am satisfied that the Crown is correct in that the adverse inference should not be drawn from the failure to call the counsellor because there is no evidence before me or basis before me that the witness has relevant information pertaining to a material issue. I appreciate credibility is a material issue but this is a collateral issue to credibility and I am not satisfied that the jury should consider that an adverse inference should be drawn.
- [6] What I am going to do is not give the suggested midtrial jury warning that was proposed by the Crown. I am going to make it much simpler because it is not the case that they necessarily might not speculate about potential witnesses. I think there needs to be more nuance put into the charge and so my midtrial instruction to the jury will be as follows: In his closing, defence counsel has suggested that you should consider the fact that the Crown did not call [M.T.'s] counsellor to testify. I am instructing you to disregard this suggestion. I will explain this point in further detail in my final charge.
- [7] And we will leave it at that. "Hardwick J."

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Prepared on 28 October 2026 · Esheria