

CANADA / JUDGMENT

R. v. Bentil

2025 BCSC 1407

COURT

Supreme Court of British Columbia

DECIDED

10 April 2025

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2025 BCSC 1407 R. v. Bentil

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bentil,

2025 BCSC 1407

Date: 20250410

Docket: 34392-3

Registry: Vancouver

Rex

v.

David Christian Bentil

Before: The Honourable Mr. Justice Brongers

Oral Ruling following s. 644(1) Criminal Code Inquiry

Counsel for the Crown:

B. McCabe, KC

S. Gillespie

Counsel for the Accused:

P.S. McMurray

C. St. Germain

Place and Date of Application within Trial:

Vancouver, B.C.

April 9, 2025

Place and Date of Judgment:

Vancouver, B.C.

April 10, 2025

Overview

- [1] THE COURT: This is my ruling following an inquiry pursuant to s. 644(1) of the Criminal Code, R.S.C. 1985, c. C-46 [Code], into whether a juror should be discharged.
- [2] The inquiry was conducted yesterday, on April 9, 2025. This was the seventh continuous day of jury deliberations following my final jury instructions provided on April 3, 2025. It was prompted by a jury question received late in the morning by which I was informed by the foreperson that 11 of the 12 jurors had concerns with the conduct during deliberations of the other juror. In these reasons I will refer to this juror as the "Other Juror".
- [3] At the end of the inquiry, Crown counsel took the position that the Other Juror should be discharged and that the remaining 11 jurors should continue with their deliberations. Counsel for Mr. Bentil took the position that if the court were to find that sufficient grounds exist to discharge the Other Juror, a mistrial should be declared instead.
- [4] After hearing submissions of counsel, I decided that the Other Juror is to be discharged with reasons to follow. I reserved my decision on whether I should also declare a mistrial.
- [5] I have now decided not to declare a mistrial, and that the 11 remaining members of the jury are to continue to deliberate and attempt to reach a unanimous verdict if they can. These are the reasons for my two decisions.

Background

- [6] Mr. Bentil has been charged with second degree murder. His trial began on Tuesday, October 8, 2024. The Crown closed its case after three days of testimony from 12 witnesses. At the end of that day, which was Thursday, October 10, 2024, the defence asked for the trial to be stood down over the long Thanksgiving weekend so as to consider their options.
- [7] When the trial resumed on Tuesday, October 15, 2024, counsel for Mr. Bentil informed the court that their solicitor-client relationship had broken down. I then granted counsel for the defence's application to withdraw.

- [8] What followed was a lengthy adjournment, with the trial only resuming on March 31, 2025, and with Mr. Bentil being represented by his current counsel. On that day, Mr. Bentil testified and the defence closed its case. Closing arguments were then presented on April 2, 2025, and the jury was charged on the morning of April 3, 2025. It has been deliberating ever since.
- [9] On April 9, 2025, I received a note from the jury signed by the foreperson. It indicated that the Other Juror had been expressing an unwillingness to work cooperatively with the rest of the jury since the first day of deliberations, as he does not want to be here. The note also alleged that the Other Juror has behaved in an intimidating manner, particularly towards some of the female jurors, by raising his voice and standing over jurors. The note further alleges that the jury room has not been a "safe place" to deliberate. It concludes by asserting the following:

We have reached an impasse that very likely requires your intervention. Please know that 11 of us are committed to the process, as may be indicated by the number of days we have been willing to compromise our collective sense of safety to work with this juror.

- [10] After informing counsel of this development and soliciting their input, I decided to conduct an inquiry into the potential discharge of the Other Juror pursuant to s. 644(1) of the Code in accordance with the accepted process described in *R. v. Giroux*, 2006 CanLII 10736 (O.N.C.A.), 207 C.C.C. (3d) 512. Para. 35 of that decision states that such an inquiry must:
- a) be fair to the parties and to all members of the jury;
 - b) be open, in the sense the trial judge's enquiries should take place in open court, on the record, and in the presence of the accused and counsel;
 - c) enable the trial judge to determine the true nature of the internal problem faced by the jury, and to resolve it; and,
 - d) must preserve the integrity, confidentiality and impartiality of the jury deliberation process.
- [11] In this case, the process involved making inquiries of all 12 jurors individually, in open court, with respect to the allegations made in the jury note. The questions were posed by me, although counsel were invited to propose additional questions if they wished. The jurors were warned repeatedly not to divulge the content of the jury's deliberations as they answered my questions, an instruction they respected.
- [12] The Other Juror was questioned first. He was informed about the purpose of the inquiry and asked about three topics: (1) his awareness of the note and the circumstances surrounding its creation; (2) his views on the allegations in the note; and (3) his views on whether he is able to continue to deliberate impartially, fairly, and respectfully.
- [13] The Other Juror said that he was unaware of the content of the note and was under the impression that it was simply an expression of the jury's difficulties in reaching a verdict. The Other Juror said that the allegations about him in the note are all lies and he denies

intimidating anyone. He said he was expressing normal emotions in the jury room, noting that others had become emotional at times too. The Other Juror also feels that he has been deliberating impartially, fairly, and respectfully, and is surprised that his fellow jurors have alleged otherwise.

- [14] I then questioned the remaining 11 jurors, beginning with the foreperson. The topics I canvassed with them were fourfold: (1) their awareness of the note and the circumstances surrounding its creation; (2) their views on the allegations in the note; (3) their views on whether they are able to continue to deliberate impartially, fairly, respectfully, and safely if the Other Juror remains on the jury; and (4) their views on whether they are able to continue to deliberate impartially, fairly, respectfully, and safely if the Other Juror is excused from the jury.
- [15] While there were some differences in the remaining 11 jurors' answers to the specific questions they were asked, there was also a general consensus that could be distilled from them. I summarize it as follows.
- [16] It is apparent that the note was drafted by the foreperson alone, based on her personal concern about the manner in which the Other Juror was participating and engaging in the deliberative process. However, this concern was broadly shared by all of the remaining 11 jurors. The foreperson said that she drafted and sent the note while the Other Juror was in the washroom, as she was nervous about letting him know of its content. While the remaining jurors were aware that the note was being sent, they did not participate in its drafting and did not know its specific wording. That said, when I read the note out loud to them, they generally agreed with its content, particularly the assertions that the Other Juror was not being cooperative and was not fully participating in the deliberative process. For example, several observed that the Other Juror would refuse to clarify his views when asked to do so on the basis that he was unwilling to repeat what he had already said. The remaining jurors also generally agreed that the Other Juror had at times acted in a manner that could be viewed as intimidating, even though not everyone felt personally unsafe.
- [17] In response to my query to individual jurors about the possibility of continuing to deliberate with the Other Juror, the majority expressed reservations. In particular, many were pessimistic about the jury's ability to reach a unanimous verdict when the Other Juror was not actively participating ever since his early declaration of his views of the case. On the other hand, all 11 of the remaining jurors were emphatic that they felt the jury could continue to deliberate impartially, fairly, respectfully, and safely if the Other Juror were to be excused.

Analysis

- [18] Section 644(1) of the Code provides:

Where in the course of a trial the judge is satisfied that a juror should not, by reason of illness or other reasonable cause, continue to act, the judge may discharge the juror.

- [19] In Giroux, at para. 30, the Ontario Court of Appeal held that the notion of "other reasonable cause" includes a situation where the conduct of a juror threatens to interfere with the integrity of the jury process and the ability of the jury to carry out its deliberations. In such a case, it is permissible to order the discharge of the juror in question, and to have the remaining jurors continue to deliberate as opposed to simply declaring a mistrial.
- [20] Having considered the foreperson's note and all of the answers I received from the 12 jurors during my s. 644(1) inquiry, I have concluded that such a situation has presented itself here. In particular, I find that the Other Juror's conduct threatens to interfere with the integrity of the jury process and the jury's ability to carry out its deliberations.
- [21] I accept the statements of the 11 remaining jurors that the Other Juror has shown a continuing unwillingness to fully participate and respectfully engage in the deliberative process by keeping an open mind and discussing all of the evidence impartially with his fellow jurors. Also, in the face of the 11 remaining jurors' clear consensus regarding the dynamics in the jury room, I do not accept the Other Juror's bald assertion to the contrary. This is particularly the case since the jury has been steadily deliberating for seven days in respect of a trial that involved just four days of testimony. From the answers I received and the surrounding circumstances, I am satisfied that the jury has experienced unacceptable difficulties with their deliberations, and not simply an inability to agree on a unanimous verdict.
- [22] As for the allegation that the Other Juror has engaged in "tactics of intimidation", I need not and do not make a finding to this effect. However, I accept that several of the remaining jurors have felt intimidated by the Other Juror at times, and I am concerned that this, too, is interfering with the jury's ability to deliberate.
- [23] For all of these reasons, I am exercising my authority under s. 644(1) of the Code to discharge the Other Juror. As you are aware, the Other Juror was informed yesterday of my decision and has been excused.
- [24] I turn now to the question of whether I should also declare a mistrial, as counsel for Mr. Bentil urges me to do. He submits that this is necessary since the jury is deadlocked as a result of the Other Juror refusing to bow to the will of the remaining jurors. Counsel for Mr. Bentil also argues that the court should not discharge a juror just in order to create a pathway to a verdict.
- [25] I agree with this latter statement. And, as noted in Giroux at para. 28, I acknowledge that there is always the potential that a request to eliminate jury strife may be a disguised attempt by a majority of jurors to cast off a dissenting minority opinion. However, after having made direct inquiries of all 12 of the jurors, I am satisfied that this is not the case here. In particular, there is no indication that all 11 of the remaining jurors have developed a

monolithic view of a verdict to be rendered, while the Other Juror has been stubbornly resisting it. Rather, I find that the difficulty here is the Other Juror's unwillingness to respectfully engage with his fellow jurors, and to deliberate collectively with an open mind.

[26] In sum, it is well established that a mistrial is a remedy of last resort and will occur only where the court concludes that no other curative measure will suffice. We are not in that situation, and I decline to order a mistrial.

"Brongers J."

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Prepared on 29 October 2026 · Esheria