

CANADA / JUDGMENT

R. v. Hayes

2025 BCSC 2187

COURT

Supreme Court of British Columbia

DECIDED

23 October 2025

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2025 BCSC 2187 R. v. Hayes

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hayes,

2025 BCSC 2187

Date: 20251023

Docket: 100339-2

Registry: Kelowna

Rex

v.

Stephen Daniel Hayes

Restriction on Publication: Pursuant to s. 648(1) C.C.C.

Before: The Honourable Justice Hardwick

Oral Reasons for Judgment re Judicial Interim Release

Counsel for the Crown:

J.M. O'Quinn

Counsel for the Accused:

D.M. Melville

Place and Date of Trial/Hearing:

Kelowna, B.C.

October 23, 2025

Place and Date of Judgment:

Kelowna, B.C.

October 23, 2025

[1] THE COURT: These are my oral reasons for judgment which I reserve the right to edit if a transcript is ordered for grammar or syntax and to include all citations, but my decision will not change.

[2] Mr. Stephen Daniel Hayes was convicted by a jury this evening on the following two offences:

Count 1: Stephen Daniel HAYES, on or about the 17th day of February, 2024, at or near West Kelowna, in the Province of British Columbia, did break and enter a dwelling house at 3436 McTaggart Rd in West Kelowna, BC, and commit an indictable offence therein, utter or convey a threat to [L.H.] to cause death or bodily harm to [L.H.], contrary to Section 348(1)(b) of the Criminal Code; and

Count 3: Stephen Daniel HAYES, from the 17th day of February, 2024 to the 19th day of February, 2024, inclusive, at or near West Kelowna, in the Province of British Columbia, did without lawful excuse use, carry, handle, ship, transport or store a firearm in a careless manner or without reasonable precautions for the safety of other persons, contrary to Section 86(1) of the Criminal Code.

[3] Mr. Hayes was acquitted by the jury of Count 2, which read that:

Stephen Daniel HAYES, on or about the 17th day of February, 2024, at or near West Kelowna, in the Province of British Columbia, did without lawful excuse point a firearm, whether loaded or unloaded, at [L.H.], contrary to Section 87(1) of the Criminal Code.

[4] Since his arrest on these matters, which occurred shortly after the incidents occurred, Mr. Hayes has been on judicial interim release involving what I am informed by his counsel are strict conditions, including electronic monitoring with a tightly defined curfew. He is wearing his electronic monitoring bracelet in court. It is not alleged that Mr. Hayes has been noncompliant with his conditions and he has presented in court in a polite and respectful way.

[5] However, Count 1 of the Indictment for which Mr. Hayes was found guilty involves obvious intimate partner violence. Count 3 is an associated charge, but still must be viewed, in the circumstances, in the context of an intimate partner violence scenario.

[6] Accordingly, upon receiving the jury's verdict, I requested submissions from counsel as to whether bail, or judicial interim release as it is more appropriately known, should be revoked pursuant to s. 523(1)(b)(ii) of the Criminal Code.

- [7] I was referred by the Crown to the Alberta Court of Appeal decision in *R. v. Aheer*, 2020 ABCA 232. I will read into the record for the purposes of these oral reasons for judgment paragraphs 16 to 18:
- [16] The language in s 523(1)(b)(ii) contemplates that bail will continue after conviction and prior to sentencing, unless the judge orders otherwise. Section 523(2) opens with the phrase "Despite subsections (1) to (1.2) ". This language suggests that section 523(1)(b)(ii) provides an exception to the [rule] in s 523(2) that would otherwise apply. In other words, s 523(2) allows bail to be vacated on cause being shown in the circumstances set out in ss 523(2)(a), (b) and (c). The very specific language in s 523(1)(b)(ii), which continues bail "unless, at the time the accused is determined to be guilty, the court, judge or justice orders that the accused be taken into custody pending such sentence", would be redundant if resort were needed to s 523(2) for jurisdiction to revoke bail after conviction and prior to sentencing.
- [17] When s 523(1)(b)(ii) is viewed in its overall context, this interpretation reflects the distinction between the pre-conviction and post-conviction bail provisions of the Criminal Code, as the accused no longer benefits from the presumption of innocence. Section 523(2) deals with the revocation of bail during the course of a trial, prior to conviction, so the requirement that the Crown show cause is not surprising. However, post-conviction, and prior to sentencing, the trial judge who heard all the evidence and convicted the accused has the unique discretion contemplated in s 523(1)(b)(ii) to revoke bail in an appropriate case, without the Crown having to show cause.
- [18] In short, ss 523(1)(b)(ii) and 523(2) address different scenarios. The former gives a trial judge the discretion to revoke bail upon conviction (after the presumption of innocence has been lost) and before sentence, without cause being shown. The latter allows a judge before whom the accused is being tried to vacate or vary an order of release or detention upon cause being shown "at any time".

[Emphasis added.]

- [8] In submissions thereafter, I engaged with counsel about two leading Supreme Court of Canada decisions, namely, *R. v. Ferguson*, 2008 SCC 6 and *R. v. Sheppard*, 2025 SCC 29. These cases deal with the role of judicial fact finding after a jury trial for the purposes of sentencing, pursuant to s. 724(2) of the Criminal Code. I am very familiar with them.
- [9] While being mindful of the propositions these cases stand for, and obviously without making any conclusive determinations as that issue is not yet before me, the practical reality is that this case is quite factually distinguishable from both of those decisions.

- [10] As to the two counts on the Indictment to which Mr. Hayes was convicted, they either happened or they did not. There is no alternate explanation by Mr. Hayes that he nudged in the door and referred to [L.H.] in an inappropriate and offensive but not threatening way. The conviction is breaking and entering with intent to commit an indictable offence, namely, uttering threats; in this case, a death threat. That was the only evidence put to the jury as to the words spoken on February 17, 2024.
- [11] Count 3 was a conviction for what is colloquially known as careless use of a firearm. In this case, and giving the benefit of the most favourable interpretation of the evidence to Mr. Hayes, there was at least a restricted weapon stored at the Big White condo in a careless manner. There may have also been a prohibited weapon, but I shall not touch on that tonight in the course of these reasons.
- [12] In my view, notwithstanding the submissions of Mr. Melville and my acknowledgment of Mr. Hayes' compliance with his judicial interim release conditions, otherwise known as bail conditions, his conviction on Counts 1 and 3 constitutes a manifest change in the landscape.
- [13] Relying upon the Alberta Court of Appeal authority referred to above, I am accordingly going to revoke Mr. Hayes' bail, or judicial interim release as I have otherwise referred to it of, pursuant to s. 523(1)(b)(ii) of the Code.
- [14] As Mr. Melville addressed in his submissions, this does not disentitle Mr. Hayes from his rights under s. 520 of the Criminal Code going forward. It is necessary, therefore, to set a fix date with respect to the next steps regarding sentencing.
- [15] CNSL D. MELVILLE: Yes, Justice, I will take the next available fix date in court. Are they Mondays here or Tuesdays? Mondays.
- [16] THE COURT: Mondays at 2:00.
- [17] CNSL D. MELVILLE: Monday at 2:00 p.m. then for the next fix date and what I would respectfully submit is, as it sounds like the decision has been made on judicial interim release, is it possible or would the court be willing to hear further submissions with regards to a stricter form of release, surety or otherwise as there was not any notice that my friend was going to seek revocation of bail. What I would ask for, as well, is an opportunity to put a stronger plan before the court rather than --
- [18] THE COURT: Well, that is that is why I canvassed the possibility for a s. 520 review. But, having heard the facts, I am not satisfied in the circumstances that an electronic monitoring bracelet is sufficient. You are welcome to bring forward a different release plan as you indicated s. 520 still applies, but I am satisfied that this is the very situation that is contemplated in circumstances where the presumption of innocence has been lost.
- [19] CNSL D. MELVILLE: What I would respectfully submit, Justice, is you are sitting as the trial judge and will be until sentencing.

- [20] THE COURT: Yes.
- [21] CNSL D. MELVILLE: I would want to bring a stronger release plan for Mr. Hayes including cash and surety and so what --
- [22] THE COURT: I am certainly open -- like, as I said, I -- that is why I asked you. There is the 520 option you can bring forward, but until such time, I have revoked his bail.
- [23] CNSL D. MELVILLE: Thank you --
- [24] THE COURT: Until such time as an application is brought forward, and it can be brought forward before me and I will make myself available at the earliest opportunity, my decision stands.
- [25] CNSL D. MELVILLE: Thank you, Justice.
- [26] THE COURT: So the next fix date, Mr. Melville, is the 27th at two o'clock. That is quite quick. That is given that we are Thursday night at 8:51 p.m. Do you want to consider potentially putting it over to the 3rd?
- [27] CNSL D. MELVILLE: No, Justice.
- [28] THE COURT: Okay.
- [29] CNSL D. MELVILLE: I will be filing that --
- [30] THE COURT: Since you will want to have your reports done and so forth. All right. I just know I will not be the justice presiding and so you are just going to have to deal with the next further dates before another justice.
- [31] CNSL D. MELVILLE: Yes, Justice, and I can say that I will be putting the materials together and filing them tomorrow morning for review.
- [32] THE COURT: All right. Thank you. Is there anything further arising, counsel?
- [33] CNSL J. O'QUINN: No, Madam Justice.
- [34] THE COURT: Thank you.

"Hardwick J."

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