

CANADA / JUDGMENT

R. v. S.A.M.

2025 BCSC 534

COURT

Supreme Court of British Columbia

DECIDED

14 January 2025

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2025 BCSC 534 R. v. S.A.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. S.A.M.,

2025 BCSC 534

Date: 20250114

Docket: 44410-2

Registry: Duncan

Rex

v.

S.A.M.

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Before: The Honourable Madam Justice Sharma

Oral Ruling on the Accused's

(Application to Adjourn Voir Dire)

Counsel for the Crown:

J. Vivian

Counsel for the Accused:

R.S. Horne

Counsel for the Director of the Ministry of Children and Family Development:

M. Morrison

Counsel for the Complainant:

J. Kelly

Place and Date of Trial/Hearing:

Duncan, B.C.

January 14, 2025

Place and Date of Judgment:

Duncan, B.C.

January 14, 2025

This is the written version of judgment delivered orally on January 14, 2025. It has been edited to correct and improve grammar and style, but nothing else has been changed. Certain facts have been added for the purpose of clarity, identified by text in italics contained within square brackets.

- [1] THE COURT: This ruling addresses the defence application to adjourn the voir dire that has been set for some time regarding disclosure of records from the Ministry of Children and Family Development ("MCFD"). I do not have time to review the entire history that has been reviewed in relation to this application. As I understand how things unfolded, unfortunately, counsel for the accused, Mr. Horne, is unwell. Yesterday, after being directed to do so by the Registry at my request, he filed an affidavit and an application.
- [2] Yesterday was the first indication I received that the scheduled voir dire might not go ahead because of Mr. Horne's condition. Today, he has explained to me certain other commitments he had on a file over which Justice Gaul is presiding which, apparently, occupied his time last week. He indicated the nature of his illness, and I have no reason to doubt his word about that. Given the nature of his illness, he is of the view that he should not be in a courtroom with other people because of the concern about his being contagious. He also relied on his illness to say he was unable to prepare for the voir dire.
- [3] There are a lot of factors at play on this file. I appreciate the other parties who are here today: Crown counsel, counsel for the Director of MCFD, and counsel for the complainant. They are in a difficult position because the rules of civility and professional courtesy would usually require that counsel and parties not oppose reasonable applications for adjournments.

- [4] The problem in this case is the request is not reasonable, and I do not make that comment lightly.
- [5] This application is very troubling. This is a very serious criminal trial that is set to proceed in front of a jury on Monday. Summons went out some time ago, and we are expecting a large group of people to show up on Monday in order to be picked for this jury.
- [6] I previously dismissed an application for an adjournment in mid-December [That judgment (indexed at 2024 BCSC 2471) remains unpublished because of the relevant publication bans and the fact this case will be going before a jury]. At that time, I went through a history of this proceeding which has, unfortunately, been plagued by consistent and frequent inability of the defence to meet deadlines, including deadlines for filing applications, including in relation to this specific application regarding disclosure of MCFD documents [paras. 25-30]. [Among the issues raised for that adjournment was the accused's belief and position that having seen some of the MCFD documents, expert evidence would be required, potentially just to understand some of the documents. The accused had a trial in Provincial Court in January 2021 and believes he needs to have transcripts from that for this trial].
- [7] Mr. Horne tells me now there are other reasons why he "more strongly" believes the necessity to consult an expert, and have available at trial Provincial Court transcripts of another proceeding involving his client. Neither is a new issue.
- [8] I am concerned when I hear defence counsel say things like his client "now tells him" certain things. At the root of all of this, Mr. Horne represents Mr. M. I would have thought Mr. M. would consider this trial as being the most important thing going on in his life at the moment because if he is convicted, he might face quite serious consequences. However, I am in the difficult position of having some doubt about that. Mr. M. is not here in person this morning. It is astonishing to me that he is not. Fortunately, he has called in by phone and told me he is at a worksite.
- [9] It is astonishing to me that I have to explicitly say this, but this trial proceeds according to how this Court decides it will proceed. It does not proceed or not proceed according to communications sent to schedulers. I appreciate, and the schedulers appreciate, getting updates as a heads-up as to what might happen in Court, but if it was thought that an email to a scheduler saying that counsel was unwell could result in an automatic adjournment without the necessity for the accused to be here in person when the trial is scheduled to start in less than a week, that is a remarkable proposition.
- [10] I am going to suggest that we stand down. I am going to suggest that Mr. Horne consult with a bencher. I am going to require a representative from Legal Aid to appear before me, if not this afternoon, then tomorrow at 10:00 a.m. because of what has happened on this file. I am duty-bound to ensure the timely and efficient progress of this file. I have grave concerns about what has happened on this file.

- [11] As noted, I set out the history of the proceedings in my reasons dismissing the adjournment in December 2024, which I rely on, but a few highlights are in order.
- [12] The disclosure of the conduct that has led to these charges occurred in May 2021. The charging document was sworn in July 2022. There was an appearance in Provincial Court in August 2022. Mr. M. was arraigned in October 2022 and entered a plea of not guilty, electing a Provincial Court trial.
- [13] Pretrial conferences were held. The trial at that time was set for Provincial Court to take place in November 2023. I am led to understand that current defence counsel came on the file no earlier than the summer of 2023.
- [14] Past the deadline when the accused could have elected a Supreme Court trial with preliminary inquiry, the accused indicated he wanted to make that application. It was opposed by the Crown. There was a concern about whether that would trigger an automatic right to appeal, which would create further delays. Crown decided to consent to the re-election and then ultimately decided to go by way of direct indictment.
- [15] The first appearance in this Court was in December 2023. On January 8, 2024, the current trial dates were set with a jury, as were dates for the voir dire that started in December 2024. In my reasons dismissing the adjournment, I reviewed the unfortunate reality that, despite deadlines being set by Justice Thompson at an August 2024 pretrial conference and by me on November 22, 2024, and later, defence did not meet those deadlines. I have heard about Mr. Horne's personal circumstances to which the Court is sympathetic. Those concerns were first raised and addressed at the first pretrial conference before me. In addition, there is the issue of a box of documents from MCFD that Mr. M. say he only received in November 2024.
- [16] In the background of all of this, the complainant in this case has been under the care of the Director for years, and, in fact, the Director is the guardian of the complainant since June 2024. There was also a previous trial by another stepchild, for which Mr. M. was acquitted. Mr. M. believes information from that trial has some relevance (that is the Provincial Court matter for which Mr. Horne believes transcripts are necessary).
- [17] The involvement of Mr. M. and his family with MCFD has been known to him for at least four years. That the stepchild who is the complainant here became under the care of the guardian for some time has been known to Mr. M. Mr. M. obviously knows what happened at his trial. Therefore, the potential that MCFD records or the Provincial Court transcripts might possibly be relevant has been known to him for some time.
- [18] I am not making this finding, but I have to be alive to the possibility that the steps taken by the defence -- the delays and failures to meet deadlines -- have been done in the interest of causing delay in favour of Mr. M. to aid this matter not going forward in a timely manner. I must be alive to that possibility. Justice requires it, and I am duty-bound to consider that possibility.

- [19] I am not adjourning this application completely, but I will adjourn it over until tomorrow at 10:00 a.m.
- [20] My recollection is that we were first going to deal with the stage-one inquiry for the production of third-party records. Before we start that, it would be prudent if Mr. Horne took the steps that I mentioned earlier.
- [21] This trial date has been known to Mr. M. for a year. It is a jury trial which is considerably more complicated and puts a strain on people in the community, and a strain on court resources. A jury trial is a right asserted by Mr. M. However, I am not satisfied, based on what I have heard, that Mr. M. has been diligent in ensuring that he is ready for his trial.
- [22] The reasons for today's application for adjournment -- apart from Mr. Horne's recent illness -- are all factors that existed for some months, like the receipt of a box of MCFD documents and what happened at Mr. M.'s Provincial Court trial. The mother of the complainant is Mr. M.'s spouse, and both he and his spouse have been aware of MCFD involvement for years. None of that is recent or creates any urgency, in the sense of meaning that Mr. M. could not have been prepared for the trial and the voir dire. The public, the Court, and the complainant are all entitled to have this trial go forward.
- [23] An application was made in December 2024 to adjourn the trial on virtually the identical basis to the grounds asserted today. It was dismissed, and I am in the regrettable position of seeing this as simply a renewal of that application. I acknowledge that Mr. Horne has been unwell recently, and that, of course, is a valid reason to ask for some time. However, he advises the Court that his illness came on last week, but he also says he appeared in court in Victoria on another matter. He says he was unwell over the weekend.
- [24] However, I do not know why preparation for the application for production of MCFD records was not done before that. The first time the possibility of an application for MCFD disclosure was raised was in early December 2024. The idea that apparently nothing has been done between the adjournment of trial being dismissed and today is unfortunate, but it cannot be a basis upon which the public, the Court, and the complainant have to face the very serious consequence of an adjournment of this jury trial.
- [25] Mr. Horne has indicated that he has made "valiant efforts" with Legal Services regarding getting funding to acquire the Provincial Court transcripts. That is information I probably do not need to have, but I accept his word on that. It is not for me to second-guess the procedures or decisions at Legal Services. There may be a reason why approval is not forthcoming. However, again, what happened at the Provincial Court trial is something known to Mr. M. I do not understand, if that was thought to be important, why it is only being pursued at the last possible moment.

- [26] This application for MCFD records has to go forward. It is going to go forward tomorrow in some form. If Mr. Horne is unable to speak to it, he can send in written points to counsel to hand up to me tomorrow. It ought to be an area of law with which counsel who practice in this area have at least some familiarity. I would have thought that the issue is not what the test is, but really how the particular factors in this case support passing the threshold, factors that must be known to Mr. M.
- [27] I continue to have a lack of understanding about Mr. Horne's submission that he is somehow in a Catch-22 situation in the sense of not being able to reference MCFD documents in arguing the application. While this application may not be common, it is not an unusual one, and the accused person is always in the same position of having to indicate how they can meet the threshold test without referring to the documents. It is unclear to me why that creates a situation that is different for Mr. M. or Mr. Horne than in any other case.
- [28] It is not clear to me what will happen tomorrow. As I said, this application has to go ahead, but I am alive to the possibility that Mr. Horne's inquiries may require some further considerations by this Court. I had mentioned, at a previous hearing, the idea that there should be further resources assigned to this trial in light of Mr. Horne's having had an illness in the fall, and given what he believed to be late information from his client and the volume of that material. I commented at that time that my concern should be conveyed to Legal Services in order to not jeopardize this trial date. That is why I would appreciate, if possible, someone from Legal Services appearing in front of me tomorrow at 10:00 a.m.
- [29] I am very concerned to hear Mr. Horne say that despite dismissal of an adjournment application in December 2024 and despite the grounds on which an adjournment is being sought before me today are very similar, he believes there is a concern about the viability of the trial date. That is very concerning to the Court, and I need to hear from Legal Services as to what can be done, what has been done, and how much they are aware of this Court's concern about the potential that this trial goes off the rails.
- [30] For all those reasons, the application for an adjournment is denied.

"Sharma J."

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