

CANADA / JUDGMENT

R. v. Sorensen

2025 BCSC 1877

COURT

Supreme Court of British Columbia

DECIDED

23 January 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1877 R. v. Sorensen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sorensen,

2025 BCSC 1877

Date: 20250123

Docket: X085366-2

Registry: New Westminster

Rex

v.

Darren Robert Sorensen

Before: The Honourable Justice Greenwood

Oral Reasons for Judgment

(Re Application for Mistrial)

Counsel for the Crown:

A. Bonfield

Counsel for the Accused:

J. Chadi

J. Sawani

Place and Date of Trial:

New Westminster, B.C.

January 20-23, 2025

Place and Date of Judgment:

New Westminster, B.C.

January 23, 2025

- [1] THE COURT: These are oral reasons. I will do my best to make my decision evident on the record, but it will not be very pretty given the time involved and I reserve the right to edit any reasons if a transcript is ordered.
- [2] This is an application for a mistrial arising from a juror's note received this morning in which one of the jurors expressed concern about the other jurors. That note has been marked as Exhibit J1. The juror who wrote the note expressed concern about very active premature discussions of the case inside the jury room being very evident, and the juror's concern that the fairness and impartiality of the trial would be compromised.
- [3] Defence counsel says that the active discussions in the jury room are not his concern, but what is of concern is that the juror talked about preconceived notions of the other jurors in the plural which defence counsel submits irreparably impairs the fairness of the trial. The reference to "opinions and conclusions" in the note raises the risk that the jury have made up their minds. A jury inquiry in this situation is not a solution due to jury secrecy and a mid-trial instruction will not cure the problem and is not sufficient.
- [4] The Crown shares the concern of the defence with respect to a jury inquiry, but takes the position that they are concerned with all aspects of the process which includes both the efficiency of trial processes and fairness to the accused. The Crown suggests that a mid-trial caution can be given and that, included in that mid-trial instruction, there would be an invitation to other jurors to come forward by providing the sheriff a note if any further concerns arise. Counsel agree that there is uncertainty over whether the note is prejudicial to one side or the other. The note itself does not disclose, of course, the exact discussions that took place in the jury room.
- [5] In general terms, a mistrial is an exceptional remedy and is only appropriate where there is a fatal wounding of the trial such that the problem at issue cannot otherwise be cured by, for example, an instruction to the jury or some other remedy. The Court of Appeal reviewed the law in relation to mistrials in *R. v. Vallee*, 2022 BCCA 11, at paras. 43- 65. While the issue in that case centred around non-disclosure, the court outlined some of the language that has been used to describe the test for a mistrial:

- [45] There is a bounty of largely consistent cases describing the criteria for a mistrial. These recognize that a mistrial should only be declared where lesser remedies will not adequately preserve the accused's right to a fair trial or will not remedy the prejudice suffered by the accused: The comments of Madam Justice Newbury in *R. v. Pires* are apposite:
- [59] It is not necessary for me to decide whether the Court's comments in *Khan* are entirely consistent with the standard referred to in *Lawson and Paterson* ... It may be that the requirement for a "fatal wounding of the trial process" in the "clearest of cases" is simply a more colourful expression of the principle enunciated in *Khan* that if it was "likely that the exposure by the jury to the tainted information could have affected the jury to the point that the entire trial was compromised and that no remedy other than a new trial was available", the mistrial must be granted.
- [46] In the *R. v. Muller*, 2013 BCCA 528, Stromberg-Stein J.A. provided this summary in a passage that was later adopted in *R. v. Montgomery*, 2016 BCCA 379:
- [66] Having regard to the authorities, I conclude a mistrial is a discretionary remedy of last resort that should not be granted unless other, less extreme, corrective measures are incapable of preventing a miscarriage of justice. A mistrial should only be granted "in the clearest of cases", where there is a "fatal wounding of the trial process". A "fatal wounding of the trial process" is "a wounding to the administration of justice which cannot be cured by remedial measures"
- [6] The court goes on to say, at para. 47, that several descriptions of the standard for a mistrial have been employed over the years including that a mistrial is a last resort; a mistrial is reserved for the "clearest of cases" where there has been a "fatal wounding" of the trial that cannot be cured by other remedial measures, and a mistrial should be ordered where there is a "real danger" of prejudice to the accused or danger of a miscarriage of justice.
- [7] The decision to grant or deny a mistrial is an exercise of judicial discretion as explained in *R. v. Athwal*, 2021 BCCA 84:
- [94] Granting or denying a mistrial is a discretionary decision that attracts deference on review. In *Muller*, it was explained this way:
- [4] A trial judge's exercise of discretion on a mistrial application is entitled to significant deference from this Court. As stated in *Emkeit* "the administration of justice in our courts would be gravely hampered if it were not recognized that a trial judge has a wide discretion as to the manner in which a trial is to be conducted". Further, in *R. v. Larose Wood J.A.* commented: "This court will not interfere with the exercise of a trial judge's discretion to declare or not to declare a mistrial unless it is clear that the judge proceeded on a wrong principle or that the exercise of the discretion resulted in a miscarriage of justice".

At para. 97 of *Athwal*, Dewitt-Van Oosten J.A. stated:

- [97] There is no question that both "the fact of a fair trial and the appearance of a fair trial are essential to the administration of justice" However, it is my view that what happened in this case did not compromise that principle in a manner sufficient to displace the deference afforded to the judge's choice of remedy.
- [8] The question here for me is whether in the overall context it is open to me in the exercise of my discretion to fashion a remedy that is sufficient to address the problem raised by the juror's note or whether a mistrial is the only reasonable remedy in the circumstances.
- [9] There are a variety of concerns that the court has on both sides of the case and that would include that, in the event of a mistrial, it causes a difficulty or a heavy burden on all who are involved. It would force Mr. Sorensen to be part of a retrial. It could force the complainant to testify again and she has described in her testimony the difficulty she encountered while testifying about these events. So those are all valid considerations for the court. However, so, too, is the fairness of the trial for Mr. Sorensen which is a fundamental Canadian value and so, if I am of the view that the fairness of the trial or the integrity of the process are fatally flawed, I would not hesitate and I would be obliged to declare a mistrial since that is an overriding concern.
- [10] I have been referred to the case of R. v. Sidhu, 2004 BCCA 59. In that decision, it says at para. 21:

The first difficulty I have with this submission is that I fail to see how the impugned comments of the juror give rise to any suggestion of juror misconduct or any reasonable possibility that one or more of the jurors may have been partial to the Crown. While I consider it highly likely that the jury had been discussing the case, (I would be surprised if they had not), there is nothing to indicate that they had in any way prejudged the outcome. The fact that the juror described the members of the jury as "passionate people" is telling of nothing.

- [11] Here, the defence argue that there is much more than a reference to other jurors being passionate people and that the very risk that the jurors have prejudged the outcome is present.
- [12] Counsel are agreed that there is no indication from the juror's note in the present case whether any jurors are partial as between the Crown and the defence and there is some uncertainty as to the interpretation of the juror's note. So those are the considerations that I have borne in mind in exercising my discretion and I have carefully considered this.
- [13] In my view, the defence's concerns about the fairness of the proceeding are legitimate in the sense that there is a risk. However, I am not satisfied that the risk is something that cannot be repaired. I agree that the note raises particular concerns that certain members of the jury may be making comments about the evidence as it is received that might be perceived as prejudging the case, but there is an element of interpretation to the note and an element of uncertainty on that issue. I am not satisfied that the risk to the fairness of the process of the trial has fatally wounded the process. I say that in part because the instructions given to the

jury at the outset, although this is one of the concerns in the juror's note, included the admonition that the jury should not prejudge the case.

- [14] Accordingly, a mid-trial instruction that reinforces that initial instruction to the jury and in much stronger language than I originally suggested in light of hearing defence counsel's submissions and the true risks that the note might give rise to. What I am going to do is give a mid-trial instruction, but in much stronger language and I will adopt the Crown's suggestion of leaving the door open if there are further concerns on the part of the jury.
- [15] Accordingly, I am not granting the application for a mistrial. I am directing the trial will continue at 2:00 pm, and counsel, I am going to be drafting the stronger language and what I propose we do at 2:00 pm is that I will provide you a copy before I give it to the jury and invite any submissions or concerns that counsel have about the language I propose to use.

"Greenwood J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/18/2025BCSC1877.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-sorensen-2025-bcsc-1877>

Prepared on 26 October 2026 · Esheria