

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No.: 21-CR-28-5 (APM)
	:	
BENNIE PARKER	:	

**BENNIE PARKER AND MICHAEL GREENE’S MOTION FOR MISTRIAL**

Bennie Parker, through undersigned counsel, Stephen F. Brennwald, and Michael L. Greene, through Britt Redden, Esq., hereby move this Court to declare a mistrial on the remaining counts in this case (one count as to each defendant).

The jury in this case informed the Court on Thursday, March 16, 2023, at about 2:09 p.m., that it was “deadlocked on a few counts, but have agreed on the majority....” ECF No. 897.

The jury was told to keep deliberating, and did keep deliberating the rest of the day on Thursday, for a total of about another two hours and 40 minutes.

The jury did not sit on Friday because of a juror issue.

When the jury returned to resume its deliberations on Monday, March 20, 2023, it continued to deliberate from about 9:30 a.m. until 11:53 a.m (their note mistakenly notes the time as 11:53 p.m.), at which time it sent a note to the Court indicating that “we have reached our verdict with respect to particular defendants and counts.” ECF No. 903.

The Court then asked the jury to clarify whether it wished to return verdicts on those particular defendants and counts, and the jury indicated that it did. This Court then took the jury’s verdicts, and the verdict form revealed that the jury was deadlocked on Count 1 as to Mr. Parker, and Count 2 as to Mr. Greene.

After the Court accepted the verdicts, it gave the jury its anti-deadlock instruction. The

jury then resumed its deliberations as to Mr. Parker and Mr. Greene at about 1:45 p.m.

The jury deliberated the rest of the day on Monday, March 20, 2023, and left for the day at around 4:50 p.m. Thus, the jury deliberated on these two counts another three-plus hours.

At this point, the jury has deliberated a total of about 8 hours with respect to these two counts alone after it had already deliberated about those counts and all of the other counts since Friday, March 10, 2023 (though their deliberations on March 10 lasted less than an hour, as the Court excused the jury at lunchtime).

The fact that the jury has not sent out a third note indicating it is still deadlocked is more likely a sign that the jurors have never been in this position before (having to keep deliberating after they've already informed the Court on two occasions that they are unable to reach a verdict) than a sign that they are making any progress.

Further, at this point in the proceedings, with these jurors having already devoted a month and a half of their life to this case, asking them to keep coming back day after day until they reach a verdict is coercive, and unfairly so.

No one knows how the jury is split as to each count. But at this stage, the outcome of these two counts should not come down to the jurors' personal circumstances, i.e., how much time each juror can afford to keep spending in court trying to come to some agreement. Some jurors may have nothing but time in their lives, and others may well be extremely backed up in their work lives, or have other personal commitments that they have had to keep pushing aside such that whichever jurors have the most to lose, time-wise, will be pressured to compromise so that they can "get out of there." That is not how cases should be decided.

One must not forget that jurors who have never been in this situation before (either on a

jury, or on a deadlocked jury) would reasonably conclude from the Court's repeated instructions to keep deliberating that the Court will never let them leave until they have unanimously decided these last two counts. That is unduly coercive.

In light of the foregoing, both remaining defendants hereby move for a mistrial. Mr. Parker on Count 1, and Mr. Greene on Count 2.<sup>1</sup>

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent, by ECF, this 21<sup>st</sup> day of March, 2023, to all parties of record.

*Stephen F. Brennwald*

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Stephen F. Brennwald

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<sup>1</sup> Because this motion is being hastily prepared as the jury continues to deliberate, counsel has not had time to include a detailed legal exposition of the law with respect to this issue.