SUPREME COURT OF CANADA

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Case in Brief: *R. v. Goldfinch*

Judgment of June 28, 2019 | On appeal from the Court of Appeal of Alberta
Neutral citation: 2019 SCC 38

A jury shouldn't have heard that an accused person and a complainant in a sexual assault case were "friends with benefits," the Supreme Court has ruled.

Mr. Goldfinch dated and lived with a woman for a while. She ended the relationship, but they later got back in touch. They considered their relationship to be "friends with benefits."

One evening in 2014, the woman was at Mr. Goldfinch's place. They had drinks with Mr. Goldfinch's roommate. The woman said she told Mr. Goldfinch that sex wasn't going to happen that night, but Mr. Goldfinch said he didn't hear this. They kissed on the couch, and Mr. Goldfinch said they should go to bed. After that, their stories became very different.

Mr. Goldfinch said he followed her to his bedroom. He said they each took off their own clothes, and then had sex. He said he fell asleep and she woke him up later, saying he hit her on the head in his sleep. He said he was annoyed and told her to leave.

The woman said she told Mr. Goldfinch she didn't want to have sex. She said he dragged her to the bedroom, and it was like something "just snapped" in him. She said he pushed her onto the bed, hit her, and forced her to have sex.

Mr. Goldfinch was charged with sexual assault. He wanted to tell the jury that he and the woman were "friends with benefits". He said this was important context for jury members to know. He said if the jury thought the relationship was not a sexual relationship, he wouldn't be able to properly defend himself. He wanted the jury to know specifically that, as "friends with benefits," they had sex from time to time. The Crown (the prosecution) agreed to tell the jury they had dated and lived together and that, sometimes, the woman would stay the night at his house.

A person who accuses someone else of a crime (like the woman in this case) is a "complainant." In sexual assault cases, there are rules in the *Criminal Code* about what the defence and Crown can say about a complainant's sexual history. Trials are supposed to get to the truth. But some people believe myths and stereotypes about women and their sexual history. These get in the way of the truth. One myth is that a person who agreed to sex in the past is more likely to agree again. Evidence that might support this myth is not allowed at trial, except where it's relevant and useful for *other* important reasons.

The trial judge said Mr. Goldfinch was allowed to tell the jury that he and the complainant were "friends with benefits" because this was important "context" to understand their relationship. The jury found him not guilty. The Crown appealed. The Court of Appeal said the evidence shouldn't have been allowed. Just saying the evidence was "context" wasn't enough to outweigh the risk that the jury would make its decision based on a myth. (That is, the myth that because a woman has said yes in the past, she was more likely to say yes this time.)

The majority at the Supreme Court agreed that the evidence shouldn't have been allowed. While Mr. Goldfinch said the evidence was for "context," it didn't add anything useful to help the jury decide his guilt. In this case, telling the jury he and the woman had a sexual relationship was only useful for one reason. That was to suggest she had agreed to have sex in the past, and so was more likely to agree that night, too. This is wrong because agreeing to sexual acts (consent) doesn't carry over from one time to the next. Consent has to be given, and communicated, at the time of each act. By letting the jury hear the evidence, the judge made a legal mistake. The judge should have made Mr. Goldfinch show that the evidence was useful for some other important reason. The majority said there should be a new trial where the rules about using the complainant's sexual history would be followed.

This case came to the Supreme Court as an appeal "as of right." That means there is an automatic right to appeal. The person doesn't need the Court's permission. The right is automatic in criminal cases when a Court of Appeal judge dissents (disagrees) on a point of law, as happened here. The Court previously dealt with sexual history evidence in *R. v. Barton*.

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Breakdown of the decision: ***Majority:*** Justice Andromache Karakatsanis dismissed the appeal (Justices Abella, Gascon, and Martin agreed) | ***Concurring:*** Justice Michael Moldaver would have also dismissed the appeal and ordered a new trial but would have left it up to the judge at the new trial to decide whether there may be a proper legal basis for admitting the "friends with benefits" evidence (Justice Rowe agreed) | ***Dissenting:*** Justice Russell Brown said the trial judge was right to allow the evidence and would have allowed the appeal and entered an acquittal

More information (case # 38270): Decision | Case information | Webcast of hearing

Lower court rulings: trial (Alberta Court of Queen's Bench, not available online) | appeal (Court of Appeal of Alberta)

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