



Case in Brief: ***R. v. Berg***

Reasons of June 5, 2026 | On appeal from the Court of Appeal for Saskatchewan  
Neutral citation: 2026 SCC 21

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**The Supreme Court of Canada confirms that criminal convictions must be based on proof beyond a reasonable doubt, not simply on choosing one witness's account over another.**

Mr. Berg and the complainant met when he checked into the hotel where she worked at the front desk. They exchanged contact information and stayed in touch over the next two days. During Mr. Berg's stay at the hotel, the complainant accepted an invitation to visit him in his room after finishing her shift.

The complainant testified that Mr. Berg sexually assaulted her in the hotel room. Mr. Berg testified that the sexual intercourse was consensual. The central issue at trial was whether the Crown proved beyond a reasonable doubt that the complainant did not consent. The judge accepted the complainant's evidence and rejected Mr. Berg's version of events. He found Mr. Berg guilty of sexual assault.

Mr. Berg appealed his conviction to the Court of Appeal for Saskatchewan. He argued that the trial judge failed to properly address important inconsistencies in the complainant's evidence when deciding whether she was a credible witness.

A majority of the Court of Appeal dismissed the appeal. It concluded that the judge did not disregard the inconsistencies in the complainant's evidence and could find that they did not undermine her credibility on the key issue of consent. It held that the judge considered the evidence as a whole and correctly applied the burden of proof. One judge of the Court of Appeal disagreed. In her view, the trial judge did not properly address important inconsistencies in the complainant's evidence about her alcohol and marijuana use. She concluded that the evidence was not properly assessed as a whole when determining whether the Crown had proved the charge beyond a reasonable doubt. She would have allowed the appeal, set aside the conviction, and ordered a new trial. Mr. Berg appealed to the Supreme Court of Canada.

The Supreme Court of Canada dismissed the appeal. The judgment was delivered orally by Chief Justice Wagner on the day of the hearing with reasons to follow.

**Mr. Berg's conviction for sexual assault remains in place.**

In a unanimous judgment, the Court agreed with the majority of the Court of Appeal. However, the Court gave guidance about an Ontario Court of Appeal decision called *R. v. J.J.R.D.* (2006), 218 O.A.C. 37. That case is often used when trial judges deal with conflicting testimony. The Court explained that *J.J.R.D.* was about whether a trial judge's reasons were detailed enough to allow an appeal court to review the decision. It clarified that trial judges should generally not rely on *J.J.R.D.* when assessing an accused person's evidence in a criminal trial or directing the jury. If used incorrectly, *J.J.R.D.* may wrongly suggest that a judge can reject an accused person's evidence simply because the judge accepts the complainant's evidence. That would be an error, because a conviction must always rest on proof beyond a reasonable doubt.

In this case, the trial judge did not make that error. He did not reject Mr. Berg's account only because he accepted the complainant's testimony. Instead, he considered Mr. Berg's account in light of all the evidence before finding him guilty beyond a reasonable doubt. As such, Mr. Berg's conviction for sexual assault remains in place.

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**Breakdown of the decision:** A unanimous Court dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Rowe](#), [Martin](#), [Kasirer](#), [Jamal](#), [O'Bonsawin](#) and [Moreau](#) agreed)

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