



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

Judgment of December 7, 2021 (written reasons issued June 10, 2022) | On appeal from the Court of Appeal for Saskatchewan  
Neutral citation: 2022 SCC 25

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***The Supreme Court restores a foster parent’s convictions for the death of a child and for causing bodily harm to another.***

Kevin Goforth and his wife were charged with the second degree murder of a four-year old and unlawfully causing bodily harm to a two-year old. Both children were being foster parented by the Goforths. The parents were accused of failing to provide the children with the necessities of life, such as food and water, contrary to section 215 of the *Criminal Code*.

In 2016, a jury convicted both foster parents of unlawfully causing bodily harm to the younger child. As to the older child, the jury found the wife guilty of second degree murder, whereas it found Mr. Goforth guilty of manslaughter. Second degree murder is a more serious offence than manslaughter because someone who murders intends to kill (or at least cause the victim serious harm), while someone who commits manslaughter does not.

Mr. Goforth appealed to Saskatchewan’s Court of Appeal, which set aside his convictions and ordered a new trial. The Court of Appeal said the trial judge made errors in her instructions to the jury in two ways. First, she was wrong in how she described the guilty mind requirement, known as the “*mens rea*”. Second, she failed to properly instruct the jury regarding Mr. Goforth’s evidence that he was only a secondary caregiver to the children. The Crown then appealed to the Supreme Court of Canada.

The Supreme Court agreed with the Crown.

**The jury was properly instructed.**

Writing for a majority of the judges of the Supreme Court, Justice Suzanne Côté said the jury was properly instructed. “This Court has long held that an accused is entitled to a jury that is properly — and not necessarily perfectly — instructed”, she wrote. Trial judges must be allowed some flexibility in the language they use to instruct a jury since their role is to simplify the law and evidence. An appeal court must review any alleged errors in the instructions in the context of the evidence, the entire jury instructions and the trial as a whole.

In this case, the trial judge’s instructions were not perfect but were adequate. The majority of judges said there was no reasonable possibility that the jury would have been confused about the *mens rea* requirement or been misled about what the Crown had to prove for Mr. Goforth to be found guilty of either manslaughter or unlawfully causing bodily harm.

Also, the trial judge’s instructions were sufficient as to Mr. Goforth’s evidence relating to his busy schedule and that he was only a secondary caregiver, which he argued prevented him from foreseeing the risk of harm to the children.

Finally, the judge’s instructions necessarily allowed the jury to make a common sense assessment about whether failing to provide food and water to young children was a marked departure (significantly different) from what a reasonably prudent person would do.

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**Breakdown of the decision:** **Majority:** Justice [Côté](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Rowe](#) and [Kasirer](#) agreed) | **Concurring:** Justice [Brown](#) allowed the appeal but for different reasons (Justices [Martin](#) and [Jamal](#) agreed)

**More information (case # 39568):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** judgment (Court of Queen’s Bench for Saskatchewan – unreported) | [appeal](#) (Court of Appeal for Saskatchewan)

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