

CANADA / JUDGMENT

R. v. J.M.

2019 SCC 24

COURT

Supreme Court of Canada

DECIDED

18 April 2019

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R. v. J.M. Collection Supreme Court Judgments Date 2019-04-18 Neutral citation 2019 SCC 24 Report

- [2019] 2 SCR 396 Case number 38483 Judges Abella, Rosalie Silberman; Karakatsanis, Andromache; Côté, Suzanne; Rowe, Malcolm; Martin, Sheilah On appeal from Ontario Notes SCC Case Information Decision Content SUPREME COURT OF CANADA Citation: R. v. J.M., 2019 SCC 24, [2019] 2 S.C.R. 396 Appeal Heard: April 18, 2019 Judgment Rendered: April 18, 2019 Docket: 38483 Between: Her Majesty The Queen Appellant and J.M. Respondent
- and - Criminal Lawyers' Association (Ontario) Intervener Coram: Abella, Karakatsanis, Côté, Rowe and Martin JJ. Reasons for Judgment: (paras. 1 to 3) Abella J. (Karakatsanis, Côté, Rowe and Martin JJ. concurring) R. v. J.M., 2019 SCC 24, [2019] 2 S.C.R. 396 Her Majesty The Queen Appellant v. J.M. Respondent and Criminal Lawyers' Association (Ontario) Intervener Indexed as: R. v. J.M. 2019 SCC 24 File No.: 38483. 2019: April 18. Present: Abella, Karakatsanis, Côté, Rowe and Martin JJ. on appeal from the court of appeal for ontario Criminal law — Evidence — Admissibility — Charge to jury — Post-offence conduct — Failure to attend trial — Trial judge permitting Crown to lead evidence at accused's trial that accused failed to attend for his original trial date — Trial judge instructing jury on use it could make of evidence — Accused convicted of sexual assault — Court of Appeal setting aside convictions and ordering new trial — Majority holding that trial judge erred in failing to engage in second step of admissibility inquiry and in his instructions to jury on post-offence conduct — Dissenting judge finding that trial judge's decision to admit evidence entitled to deference and that charge to jury was adequate — Failure to attend trial is not presumptively post-offence conduct and its admissibility must be assessed on case-by-case basis — Convictions restored. APPEAL from a judgment of the Ontario Court of Appeal (MacPherson, Huscroft and Nordheimer JJ.A.), 2018 ONCA 1054, 144 O.R. (3d) 125, 370 C.C.C. (3d) 458, [2018] O.J. No. 6741 (QL), 2018 CarswellOnt 21543 (WL Can.), setting aside the convictions of the accused for sexual assault and ordering a new trial. Appeal allowed, Abella and Karakatsanis JJ. dissenting. Luke Schwalm and Alexander Alvaro, for the appellant. Michael A. Johnston and Matthew B. Day, for the respondent. Solomon Friedman and Meaghan McMahon, for the intervener. The judgment of the Court was delivered orally

by

- [1] Abella J. — We are all of the view that the failure to attend a trial is not presumptively after-the-fact conduct. Its admissibility must be assessed on a case-by-case basis.
- [2] A majority, however, is of the view that the appeal should be allowed substantially for the reasons of Justice Huscroft. Justice Karakatsanis and I would dismiss the appeal for the reasons of Justice Nordheimer.
- [3] The appeal is therefore allowed and the convictions are restored. Judgment accordingly. Solicitor for the appellant: Attorney General of Ontario, Toronto. Solicitors for the respondent: Shore Johnston Hyslop Day, Ottawa. Solicitors for the intervener: Edelson & Friedman, Ottawa.

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Prepared on 27 October 2026 · Esheria