

**SUPREME COURT OF CANADA**

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| **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.

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| **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.