



SUPREME COURT OF CANADA

CITATION: R. v. Delmas, 2020 SCC 39

APPEAL HEARD: December 2,
2020

JUDGMENT RENDERED: December
2, 2020

DOCKET: 39163

BETWEEN:

Michael Christopher Delmas
Appellant

and

Her Majesty The Queen
Respondent

- and -

Attorney General of Ontario
Intervener

CORAM: Abella, Moldaver, Karakatsanis, Côté, Brown, Martin and Kasirer JJ.

JUDGMENT Moldaver J.
READ BY:
(paras. 1 to 2)

MAJORITY: Abella, Moldaver, Karakatsanis, Brown, Martin and Kasirer JJ.

DISSENT: Côté J.

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R. v. DELMAS

Michael Christopher Delmas

Appellant

v.

Her Majesty The Queen

Respondent

and

Attorney General of Ontario

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Indexed as: R. v. Delmas

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Present: Abella, Moldaver, Karakatsanis, Côté, Brown, Martin and Kasirer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Criminal law — Evidence — Assessment — Generalizations and stereotypes — Admissibility — Complainant’s sexual activity — Accused convicted of sexual assault at trial — Trial judge did not rely on stereotypes in assessment of accused’s evidence — Trial judge’s error in not conducting voir dire regarding complainant’s evidence of past sexual relationship with accused did not give rise to substantial wrong or miscarriage of justice — Conviction upheld.

Statutes and Regulations Cited

Criminal Code, R.S.C. 1985, c. C-46, s. 276.

APPEAL from a judgment of the Alberta Court of Appeal (O’Ferrall, Hughes and Feehan JJ.A.), 2020 ABCA 152, 64 C.R. (7th) 71, [2020] A.J. No. 471 (QL), 2020 CarswellAlta 737 (WL Can.), affirming the conviction of the accused for sexual assault. Appeal dismissed, Côté J. dissenting.

Andrea L. Serink and Alias A. Sanders, for the appellant.

Sarah Clive, for the respondent.

Mabel Lai, for the intervener.

The judgment of the Court was delivered orally by

[1] MOLDAVER J. — A majority of the Court would dismiss the appeal. The trial judge did not engage in stereotypical reasoning in his assessment of the appellant's evidence. To the extent he may have erred in drawing an illogical inference about the unlikelihood of the appellant having sex with the complainant while he was involved in a relationship with another woman, the error in the view of the majority was harmless having regard to the reasons as a whole, and it occasioned no wrong or miscarriage of justice. Likewise, while the failure to conduct a s. 276 *voir dire* (*Criminal Code*, R.S.C. 1985, c. C-46) regarding the complainant's evidence of a past sexual relationship with the appellant was an error, it gave rise to no substantial wrong or miscarriage of justice.

[2] Justice Côté, dissenting, would allow the appeal for substantially the reasons of O'Ferrall J.A. She would not apply the curative proviso since she is not persuaded that there was no substantial wrong or miscarriage of justice in this case.

Judgment accordingly.

Solicitors for the appellant: Serink Law Office, Calgary; Alias A. Sanders Barrister & Solicitor, Calgary.

Solicitor for the respondent: Justice and Solicitor General, Appeals, Education & Prosecution Policy Branch, Calgary.

Solicitor for the intervener: Attorney General of Ontario, Toronto.