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| **SUPREME COURT OF CANADA** |

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| **Citation:** R. *v.* M.R.H., 2019 SCC 46, [2019] 3 S.C.R. 563 | |  | **Appeal Heard:** October 9, 2019  **Judgment Rendered:** October 9, 2019  **Docket:** 38547 |
| Between:  Her Majesty The Queen  Appellant  and  M.R.H.  Respondent | | | | |
| **Coram:** Karakatsanis, Côté, Brown, Martin and Kasirer JJ. | | | | |
| **Reasons for Judgment:**  (paras. 1 to 6) | Karakatsanis J. (Côté, Brown, Martin and Kasirer JJ. concurring) | | | |

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R. *v.* M.R.H., 2019 SCC 46, [2019] 3 S.C.R. 563

Her Majesty The Queen *Appellant*

*v.*

M.R.H. *Respondent*

**Indexed as:** R. ***v.*** M.R.H.

2019 SCC 46

File No.: 38547.

2019: October 9.

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

on appeal from the court of appeal for british columbia

*Criminal law — Charge to jury — Accused charged with sexual assault and sexual interference — Indictment charging both offences and covering period of time during which two separate incidents alleged to have occurred — Jury asking trial judge during deliberations whether it could convict accused for both offences based on first incident alone — Jury convicting accused of both offences — Majority of Court of Appeal holding that trial judge erred in giving confusing charge to jury as to indictment, in responding to jury’s question and in failing to provide further instructions on credibility — Majority ordering new trial — Dissenting judge holding that trial judge’s charge to jury and response to jury’s question were adequate — Convictions restored.*

**Cases Cited**

**Referred to:** *Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3.

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C-46, s. 581(1).

APPEAL from a judgment of the British Columbia Court of Appeal (Garson, Harris and Savage JJ.A.), 2019 BCCA 39, 373 C.C.C. (3d) 464, [2019] B.C.J. No. 144 (QL), 2019 CarswellBC 202 (WL Can.), setting aside the accused’s convictions for sexual interference and sexual assault and ordering a new trial. Appeal allowed.

Matthew Scott and Mary T. Ainslie, Q.C., for the appellant.

Brent V. Bagnall, Roger P. Thirkell and Joseph M. Doyle, for the respondent.

The judgment of the Court was delivered orally by

1. Karakatsanis J. — The appeal is allowed, substantially for the reasons of Mr. Justice Savage (2019 BCCA 39, 373 C.C.C. (3d) 464).
2. As for the three additional issues raised by the respondent for the first time in this Court, we are not satisfied that they require a new trial.
3. First, we are satisfied that no limiting instruction was required on the issue of character evidence, as there was no real risk of propensity reasoning in this case.
4. Second, we are of the view that no limiting instruction was necessary regarding prior consistent statements, because the statements were elicited early in the trial, were relied upon by the defence and not by the Crown, and there was no real risk in the circumstances of this case that they would be used as self-corroboration.
5. Finally, with respect to the interpretation of the phrase “single transaction” in s. 581(1) of the Criminal Code, R.S.C. 1985, c. C-46, we agree that the Crown practice of drafting a single count of an indictment to capture multiple distinct incidents creates the risk that the accused may be convicted without the jurors’ unanimous agreement on any one underlying incident. We leave for another day whether the law supports such a practice and whether jury unanimity is required in such circumstances. In essence, the jury in this case asked whether unanimity on the first incident was sufficient to convict. It is not necessary to deal with the issue in this case, because it is clear from the jury’s question and the response it received, that the jurors unanimously agreed that the first incident had been proven. Here, there is no risk of an injustice and the issue need not be considered (Guindon v. Canada, 2015 SCC 41, [2015] 3 S.C.R. 3, at para. 22).
6. Therefore, the appeal is allowed. The order of the Court of Appeal is set aside. We restore the respondent’s conviction for sexual assault and the judicial stay on the count of sexual interference.

Judgment accordingly.

Solicitor for the appellant: Attorney General of British Columbia, Vancouver.

*Solicitor for the respondent: Legal Services Society, Vancouver.*