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| **SUPREME COURT OF CANADA** | | | |
| **Citation:** R. *v.* Delmas, 2020 SCC 39, [2020] 3 S.C.R. 780 |  | **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 | | | |

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| **Coram:** Abella, Moldaver, Karakatsanis, Côté, Brown, Martin and Kasirer JJ. | | |
| **Judgment Read By:**  (paras. 1 to 2) | Moldaver J. |
| **Majority:** | Abella, Moldaver, Karakatsanis, Brown, Martin and Kasirer JJ. |
| **Dissent:** | Côté J. |

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Michael Christopher Delmas Appellant

v.

Her Majesty The Queen Respondent

and

Attorney General of Ontario Intervener

**Indexed as: R. *v.* Delmas**

2020 SCC 39

File No.: 39163.

2020: December 2.

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.