

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Stephan, 2018 SCC 21, [2018] 1 S.C.R. 633 | **Appeal heard:** May 15, 2018  **Judgment rendered:** May 15, 2018  **Docket:** 37845, 37846 |

Between:

**Collet Dawn Stephan**

Appellant

and

Her Majesty The Queen

Respondent

**And Between:**

**David Robert Stephan**

Appellant

and

**Her Majesty The Queen**

Respondent

**Coram:** Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté and Rowe JJ.

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| **Reasons for Judgment:**  (paras. 1 to 3) | Moldaver J. (Wagner C.J. and Abella, Karakatsanis, Gascon, Côté, and Rowe JJ. concurring) |

R. *v.* Stephan, 2018 SCC 21, [2018] 1 S.C.R. 633

Collet Dawn Stephan Appellant

v.

Her Majesty The Queen Respondent

- and -

**David Robert Stephan** *Appellant*

*v.*

**Her Majesty The Queen** *Respondent*

**Indexed as: R. *v.*** Stephan

2018 SCC 21

File Nos.: 37845, 37846.

2018: May 15.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté and Rowe JJ.

on appeal from the court of appeal for alberta

*Criminal law — Failure to provide necessaries of life — Elements of offence — Charge to jury — Accused couple convicted by jury of failing to provide the necessaries of life to their son — Majority of Court of Appeal affirming convictions — Dissenting judge holding that trial judge did not properly instruct jury on second element of offence and did not properly explain mens rea of offence to jury — New trial ordered.*

APPEALS from a judgment of the Alberta Court of Appeal (Watson, McDonald and O’Ferrall JJ.A.), 2017 ABCA 380, 357 C.C.C. (3d) 10, 395 C.R.R. (2d) 252, 41 C.R. (7th) 424, 61 Alta. L.R. (6th) 26, [2018] 4 W.W.R. 719, [2017] A.J. No. 1203 (QL), 2017 CarswellAlta 2403 (WL Can.), affirming the convictions of the accused for failing to provide the necessaries of life. Appeals allowed.

Heather Ferg and Ian McKay, for the appellant Collet Dawn Stephan.

*Karen B. Molle* and *Kelsey Sitar*, for the appellant David Robert Stephan.

Julie Morgan and Colin Schulhauser, for the respondent.

The judgment of the Court was delivered orally by

1. Moldaver J. — We are in essential agreement with the reasons of Justice O’Ferrall.
2. In particular, we agree that the learned trial judge conflated the *actus reus* and *mens rea* of the offence and did not sufficiently explain the concept of marked departure in a way that the jury could understand and apply it.
3. Accordingly, we would allow the appeals, quash the convictions and order a new trial.

*Judgment accordingly.*

Solicitors for the appellant Collet Dawn Stephan: McKay Criminal Defence, Calgary.

*Solicitors for the appellant David Robert Stephan: Karen Molle Law Office, Calgary; Sitar & Milczarek, Calgary.*

Solicitor for the respondent: Attorney General of Alberta, Calgary.