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MOCK TRIALS

Tournament Case

2019

R v Delaney



ONTARIO BAR ASSOCIATION
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FINAL VERSION

Canada,
Province of Ontario,
County of Missinaba.
In the Superior Court of Justice,

Her Majesty the Queen
against
Skye Delaney

Skye Delaney stands charged:

1. That he/she, on or about the 21st through 27th days of August, 2018, in the City of Mariposa, being the parent of Jack Delaney-Parker, did fail without lawful excuse to provide the necessaries of life to Jack Delaney-Parker, a child under the age of sixteen years, and did thereby endanger the life of Jack Delaney-Parker, to wit: Skye Delaney failed to seek or facilitate timely medical attention for Jack Delaney-Parker for injuries sustained under his/her care, contrary to section 215 of the Criminal Code.

Dated this 12th day of November, A.D. 2018 at Mariposa, Ontario.



Steve Smith,

Agent for the Attorney-General of Ontario

Criminal Code of Canada

(RSC, 1985, c. C-46, as am.)

Duties Tending to Preservation of Life

Duty of persons to provide necessities

215(1) Every one is under a legal duty

(a) as a parent, foster parent, guardian or head of a family, to provide the necessities of life for a child under the age of sixteen years; ...

Offence

(2) Everyone commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies on him, to perform the duty, if

(a) with respect to the duty imposed by paragraph (1) (a) ...,

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently ...

Punishment

(3) Everyone who commits an offence under subsection (2)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Presumptions

(4) For the purpose of proceedings under this section,

(b) evidence that a person has in any way recognized a child as being his child is, in the absence of any evidence to the contrary, proof that the child is his child;...

Witness List

Crown:

- Detective Constable Robin Lestrade
- Dr. Blair Chao

Defence:

- Skye Delaney (defendant)
- Quinn Parker

Notes:

- Dr. Blair Chao should be “qualified” as an expert witness. Qualifying a witness as an expert allows the witness to give opinions in their area of expertise (in this case, paediatric medicine and surgery). To do this, Crown counsel will enter Dr. Chao’s CV as an exhibit and ask a few leading questions at the beginning of direct examination (which is permitted) to establish Dr. Chao’s credentials and expertise. This is not a long process. Crown counsel will then ask the judge to accept Dr. Chao as an expert witness and the judge will make a ruling (Dr. Chao’s credentials are not in question, so the ruling will be positive). Dr. Chao can then provide expert opinion testimony.
- Witnesses playing Dr. Chao are free to do whatever research they wish to convincingly play Dr. Chao and answer questions on cross-examination. **Questions to Dr. Chao must be material to the case;** i.e. Dr. Chao cannot be expected to answer general medical questions beyond the scope of the case.

Sworn Statement of Det. Cst. Robin Lestrade

1 I have been a police officer with the Mariposa Police Service for six years. I hold the rank of
2 Detective Constable and have worked in the Children and Vulnerable Persons sub-unit for one
3 year. Before that, I worked in Drug Enforcement for two years after I became a detective.

4
5 On Monday, August 27th, 2018, at approximately 10:50 a.m., I attended Mariposa General
6 Hospital to investigate suspicious circumstances surrounding injuries sustained by a child: Jack
7 Delaney-Parker, aged two years, two months.

8
9 I spoke with Dr. Chao, the paediatric surgeon who operated on Jack, and took a statement.

10

11 I then spoke to Jack's parents, Skye Delaney and Quinn Parker. They were resistant to coming
12 down to the station to give statements. They said wanted to stay close to Jack, who was in the
13 post-operative recovery room. Wanting to get separate statements as soon as possible, I took
14 them at the hospital.

15

16 Delaney did not want to give a statement at all. Naturally, I informed both Delaney and Parker
17 that any statements they gave at that point would be voluntary. Parker took Delaney aside for a
18 moment and when they came back, Delaney agreed to give a statement.

19

20 Based on my interviews, I attended the Delaney/Parker home at 8277 Blue Ridge Road later that
21 day, with the permission of Delaney and Parker. Delaney accompanied me to give me access.

22

23 I observed that the home had three staircases. There were baby gates at the top and bottom of
24 two staircases, and at the top of one – the one leading to what I would call the sub-basement. The
25 house has a level that is five steps down from ground level, then another level six more steps
26 down from that, which appeared to be used for storage. There is an upper level where the

27 bedrooms are located, seven steps up from the main level. According to Delaney, this is where
28 the fall with Jack happened.

29

30 I decided to conduct a thorough forensic investigation of the home. Delaney seemed agitated
31 about this prospect and told me I couldn't. I therefore left and obtained a search warrant, though
32 Quinn Parker called me while I was in the process of doing so to consent to the search, and to
33 say that Delaney had as well.

34

35 I obtained the search warrant anyway, and returned to the home at 3:50 p.m. with the forensic
36 team. We conducted a thorough forensic investigation of the stairs, but found nothing of
37 significance. The baby gates were functional and undamaged. The gates were made of strong
38 plastic and seemed very sturdy, so the fact that they were not damaged did not, in my opinion,
39 mean that the fall Delaney had with Jack was insignificant. We did find several towels and
40 children's clothing with dried vomit on them, waiting to be laundered in the laundry room in the
41 sub-basement.

42

43 From my interview with Parker, I formed the impression that a sore spot in the relationship was a
44 broken arm Jack had suffered under Delaney's care before the reconciliation and Delaney
45 moving back in. Parker seemed to be deflecting on this topic. I noted that Parker and Delaney
46 had only recently reconciled after having broken up shortly after Jack was born.

47

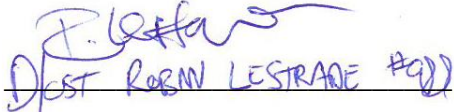
48 I contacted Missinaba Child and Family Services (MCFS) to obtain the file on the family. The
49 only note was for the incident that Quinn Parker disclosed, where Jack had broken his arm in
50 November 2017. It did not say very much: it seemed to have been a routine investigation due to
51 the broken arm, which was closed after the first, most minimal, stage of investigation. There was
52 no police involvement.

53

54 I suspected that this history, and fear of Parker's reaction, may have been the reason Delaney
55 failed to seek immediate medical attention or disclose Jack's fall to the doctors initially at the
56 hospital.

57

58 Based on Dr. Chao's assessment of Jack's injuries, the symptoms that he would have presented,
59 and the risk that resulted from the delay in seeking medical attention, I charged Skye Delaney
60 with failing to provide necessities of life, contrary to section 215 of the Criminal Code.


D/CST. ROBIN LESTRADE #988

D/Cst. Robin Lestrade #988

Sworn (or Affirmed) before me at <u>Mariposa</u> in the PROVINCE OF ONTARIO, on this <u>6th</u> day of <u>September</u> 20 <u>18</u> <u>C. Scott</u> A Commissioner for Taking Oaths for Ontario

Sworn Statement of Skye Delaney

1 I am 38 years old, and I am self-employed as a software developer. I live at 8277 Blue Ridge
2 Road in Mariposa. I've lived there since April of this year, when I moved in with my partner,
3 Quinn Parker.

4
5 I am giving this statement voluntarily. I understand that I do not have to say anything, and I have
6 been instructed of my right to consult a lawyer at any time.

7
8 Quinn and I were together for several years before our son, Jack, arrived. Around that time that I
9 got offered a job heading an app team in California for the company I worked for at the time.

10

11 Needless to say, Quinn was not impressed with my timing. But, the job was a huge opportunity
12 and our relationship was not really going well. We broke up and I gave Quinn full custody of
13 Jack. After about a year, I moved back. The scene out there wasn't really for me, and I didn't
14 want to miss Jack growing up. Now I run my own app development company. Working from
15 home makes up for the fact that sometimes I have to work long hours.

16

17 I had to work very hard to win back Quinn's trust. Quinn felt that I would just move away on a
18 whim again but I think I have proved that I turned over a new leaf. Quinn slowly let Jack spend
19 more and more time with me. From all that time spent co-parenting, Quinn and I grew closer
20 together again. Finally, Quinn said I could move back in in April, and we have been a happy
21 family ever since.

22

23 The week of August 20, 2018, Quinn was at a conference in Las Vegas for five days. This was
24 the longest time I had ever looked after Jack myself. Honestly, this business with Jack getting
25 injured, it's just so weird. It wasn't until after the surgery that I thought it could even be the
26 issue. All his symptoms seemed like the flu or some sort of stomach bug. The fall just never
27 crossed my mind as being related.

28

29 The second night that Quinn was away was August 21. Sometime in the middle of the night, Jack
30 got up and came into my bedroom, saying he couldn't sleep. I got up and took him downstairs to
31 get something to eat or drink.

32

33 We have a baby gate at the top of the stairs and another at the bottom. The house is a split-level,
34 so it's only five or six steps per staircase. I picked Jack up and held him with one arm, kind of
35 sitting on my forearm, so that I could open the first gate with my other hand. I do this all the
36 time. I think that around the first or second stair I stepped right onto a toy and we fell, landing on
37 the second baby gate.

38

39 The way I remember it, I held Jack close to protect him as we fell. The baby gate broke our fall.
40 The baby gates are attached to the wall by tension, so the gate bounced loose when we fell on it.

41

42 Honestly, it did not seem like a big deal at the time. Jack was crying, but he cries every time he
43 falls or bumps himself. I was a little dazed, but I was unhurt, and Jack stopped crying after a few
44 minutes. After Jack had settled down, I gave him a glass of juice and some cookies and we
45 stayed up together for a half-hour or so. He vomited up the juice and cookies after about 20
46 minutes, but that's not odd for Jack. He has this on-and-off problem with upset stomach.

47 Honestly, I never connected the vomiting to the fall. I was thinking more about his ongoing
48 stomach issue and what the trigger could be.

49

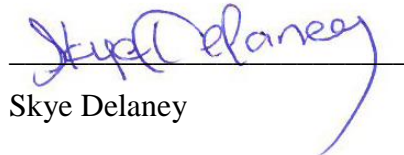
50 For the next few days, Jack seemed sick, but as a toddler, that's not uncommon. After a day or
51 so, I figured it wasn't related to food and must be a stomach bug of some kind. He was crankier
52 than usual and quite sleepy, but it wasn't to an extreme. It was like a flu. He was better in the
53 mornings, but wore out earlier throughout the day.


54

55 I never noticed bruises during the couple of times I gave Jack a bath or changed his clothes. Even
56 still, as a toddler, running around, it's normal for him to get bumps and bruises.

57

58 When Dr. Chao asked me about whether Jack had had any kind of “trauma” recently, the fall
59 down the stairs never occurred to me. Obviously, now it seems like, how could it not? But when
60 the doctor asked me, I hadn’t even thought about it since it happened. I had been thinking about
61 Jack’s stomach problems as part of the ongoing issue, or that he had an illness of some kind. I
62 feel absolutely terrible about the whole thing, but I’m not a criminal.


Skye Delaney

Sworn (or Affirmed) before me at
Mamora
in the PROVINCE OF ONTARIO, on
this 27th day of August 2018

A Commissioner for Taking Oaths for Ontario

Sworn Statement of Quinn Parker

1 I am 35 years old and work as a pharmaceutical sales representative. I live at 8277 Blue Ridge
2 Road in Mariposa with my partner, Skye Delaney, and our son, Jack.

3

4 I am giving this statement voluntarily. I understand that I do not have to say anything, and I have
5 been instructed of my right to consult a lawyer at any time.

6

7 Jack was born June 2, 2016. It wasn't long after we had Jack that Skye left for a job in
8 California. I wasn't ready for the upheaval. Truthfully, the relationship was already on the rocks.
9 I got full custody with no argument from Skye.

10

11 Skye eventually moved back to Mariposa after about a year and wanted to be part of Jack's life.
12 We got into a rhythm of Skye taking Jack for periods of time, and eventually overnight
13 sometimes.

14

15 Co-parenting brought us closer together. Skye moved in with us in April of this year. Parenting
16 was an adjustment for Skye, who's a tech geek. But, Skye has stepped up.

17

18 Since the house is a split-level, it has several sets of stairs. Ever since Jack began walking
19 independently, I put up baby gates everywhere to ensure that Jack does not fall down and
20 seriously hurt himself. There's a gate at the bottom and the top of each staircase.

21

22 The only incident of Jack getting seriously injured was in November of 2017. Jack broke his arm
23 when he fell off a play structure at the park when he was with Skye. Skye wasn't sure exactly
24 what happened, but thought that another kid probably knocked Jack off the structure. He hadn't
25 been walking for very long at that point, so I guess balance was an issue.

26

27 That led to an investigation by Child and Family Services after we took Jack to the hospital. I
28 guess they were just following procedure. They just spoke to us, visited us both at our homes,
29 and then they closed the investigation since obviously there was nothing going on.

30

31 Of course, I was upset. Skye should have been paying more attention. I don't think I would have
32 let that happen because I would have been right there with Jack. But, accidents do happen. At the
33 playground, there's a lot going on. It's easy enough to get distracted for a moment. I assumed
34 that it was a painful learning experience for Skye.

35

36 I was away at a conference in Las Vegas for work from August 20 to 25. It was the longest I had
37 been away from Jack but definitely not the only time I had left him overnight with Skye.

38

39 I video-called the first time on the second night – August 21 – and everything seemed fine. When
40 I called on August 23, Skye said that Jack seemed unwell: he had been vomiting and seemed
41 quite tired. Jack has had an on-again, off-again problem with upset stomach for about six
42 months. Our family doctor has been trying to figure out what it is: lactose intolerance, food
43 allergies or something else. There's no obvious trigger. Given Jack's age, he's prone to catching
44 bugs from daycare and such, so it's been really hard to tell what the issue is.

45

46 I called the last time on August 24, but Skye said that Jack was sleeping and since he had been
47 sick, we just let him sleep. When I got back on August 25, Jack was very sleepy. He vomited
48 after dinner and clutched his stomach and said that it hurt. I stayed with him all night. He woke
49 up to vomit a couple more times, but otherwise was very sleepy.

50

51 The next day, August 26, I took Jack to our family doctor, first thing in the morning. The doctor
52 thought it was probably stomach flu, although he thought it was important to monitor because
53 Jack wasn't running much of a fever. When the doctor examined Jack, he noticed some bruises
54 on his belly that I hadn't noticed before. I asked Skye about the bruises, but Skye had no idea.
55 Jack definitely gets bruises from time to time from running around, as all children do, and
56 sometimes we don't see what happened or know where they came from.

57

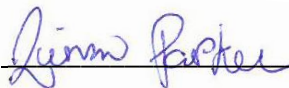
58 Jack and I stayed home and rested all day that day. Then, early in the morning on August 27,
59 Jack woke up to vomit, and he seemed more unresponsive than usual, so we took him to the
60 emergency room around 5am. Everything happened very fast from that point.

61

62 After the surgery, Dr. Chao told us that this was a close call, but Jack was going to be okay. I
63 was floored when Dr. Chao said that Jack had internal bleeding. Dr. Chao asked again whether
64 Jack might have had a fall or experienced any other type of trauma recently. I remembered the
65 bruises on Jack's belly and asked Skye about them again. That was when Skye mentioned falling
66 down the stairs with Jack.

67

68 Of course, this whole situation has me worried. But, accidents do happen. I believe that this was
69 like a perfect storm: I was away, the fall happened in the middle of the night, Jack's ongoing
70 stomach issues, the symptoms being hard to detect. Skye loves Jack, and I cannot believe that
71 Skye would intentionally let him suffer. Even if I had known about the fall, I can't say that I
72 would have connected those symptoms with it either.



Quinn Parker

Sworn (or Affirmed) before me at
Manissa
in the PROVINCE OF ONTARIO, on
this 27th day of August 2018
M. Nelson
A Commissioner for Taking Oaths for Ontario

Sworn Statement of Dr. Blair Chao

1 I am 45 years old and work as a paediatric surgeon. I obtained my medical degree from McGill
2 University in 1999. I was certified as a specialist in general surgery by the Royal College of
3 Physicians and Surgeons of Canada in 2006, and in paediatric surgery in 2008. I have practised
4 paediatric surgery at Mariposa General Hospital ever since.

5
6 At about 5:45 a.m. on August 27, 2018, I was consulted by Dr. Dolores about a child, Jack
7 Delaney-Parker, who she had examined in the emergency room. Dr. Dolores found Jack to be
8 very listless, unresponsive, and exhibiting low energy. Jack had a low-grade fever and his
9 abdomen was warm, tender, somewhat tense, and slightly distended. I noted two bruises on
10 Jack's left lower abdomen: one was large and purple; the other was smaller, brown, and close to
11 the larger one. I took photographs, which is standard procedure. Jack seemed dehydrated, and his
12 pulse was faster than normal.

13
14 I ordered an ultrasound, followed by a CT scan. The ultrasound showed a lot of unexplained
15 fluid in the abdomen and the CT scan showed not only fluid but also a possible laceration of the
16 pancreas.

17
18 In my initial consult with Jack's parents, I asked them whether they knew about any trauma or a
19 fall that he might have experienced recently. They told me that he had fallen off a slide at a
20 playground almost a year ago but denied any recent trauma. As I was concerned about the injury
21 to the abdomen and puzzled about the source of fluid, I elected to operate and obtained the
22 parents' consent.

23
24 The original plan was to conduct a laparoscopy, which would involve a small incision and
25 inserting a small camera into the abdomen to assist in determining the cause of fluid. However,
26 as I entered the abdomen, I realized that there was a lot of blood. I aborted the laparoscopy and
27 proceeded instead with a laparotomy, which involved making a large incision in the abdomen.

28

29 After making the incision, I found that the abdomen was full of blood. I also found saponified
30 fat, which indicated that the fat had already been digested by an enzyme which may have
31 originated in the pancreas. This indicated that the injuries were over 24 hours old, although I
32 cannot date them more specifically than that.

33

34 During the operation, I also found multiple lacerations which appeared to be caused by a trauma.
35 I had to repair a deep bleeder in the mesentery (the membrane containing blood vessels which
36 supplies the small bowel). 16 centimetres of small bowel was detached from the mesentery.
37 Because of what I had found so far during the laparotomy, I called the hospital's SCAN
38 (Suspected Child Abuse and Neglect) team.

39

40 I proceeded to examine the pancreas. It showed signs of injury and the tail of the pancreas was
41 damaged. I drained the fluid in the pancreas to treat it. Finally, I removed two damaged areas of
42 bowel and reconnected the remaining bowel. A transfusion of one litre of blood was required.

43

44 I consider the surgery that I performed to be “major surgery”. The injuries were life threatening.
45 I believe that the child was not brought to the emergency room within a reasonable time, as he
46 was already very ill on arrival. The injuries could have become fatal within 24 hours. Jack had to
47 remain in hospital for approximately three weeks after surgery to fully recover.

48


49 After surgery, I reported my findings to the parents. I asked again about possible trauma. Only
50 then did Skye Delaney tell me about Jack falling down the stairs onto a baby gate five or six days
51 prior. The way it was told to me, Delaney may have fallen on top of Jack, which would have
52 placed considerable pressure on his abdomen if it hit the baby gate, and would have caused the
53 injuries that I found.

54

55 Had the injury been treated sooner, Jack may not have required a blood transfusion. He also may
56 not have lost so much bowel. We may have even been able to just repair it. When bowel is
57 removed, there is a long-term risk of complications.

58

59 Based on my experience, this type of a fall would cause the injuries that Jack had, and the
60 symptoms that would likely have presented include vomiting, crying, complaining of a stomach
61 ache, and not wanting to eat. The bruises, in particular, must have been caused by this fall, or
62 whatever trauma it was that caused the internal injuries, and they would have been hard to miss
63 for an attentive parent. The bruises would have turned blue-purple within one to two days of the
64 injury.



Dr. Blair Chao

Sworn (or Affirmed) before me at
Markham
in the PROVINCE OF ONTARIO, on
this 27th day of August 2017
M. Hebert
A Commissioner for Taking Oaths for Ontario

R v Delaney

APPENDIX I: LEGAL GUIDANCE



ONTARIO BAR ASSOCIATION
L'ASSOCIATION DU BARREAU DE L'ONTARIO
A Branch of the Canadian Bar Association
Une division de l'Association du Barreau canadien

FINAL VERSION

Legal Guidance for *R. v. Delaney*

Overview of Section 215 of the *Criminal Code of Canada*

Most laws tell us what *not* to do. However, some laws tell us what we *must* do. These laws create a “duty” – a legal obligation to take certain actions in particular circumstances.

The existence of a duty is an exception to the norm; there is, for example, no *legal* duty to call 911 or intervene if you witness a house fire or a victim who is drowning (though you may feel a strong *moral* duty to do so). One exception to this general rule is found in section 215 of the *Criminal Code*.

The Parliament of Canada has decided that parents have certain legal duties towards their children. So, it created s. 215, commonly called “failing to provide the necessaries of life”, which has been in our *Criminal Code* since the *Code* was first introduced in 1892. An offence is committed when a parent is *negligent* in the performance of their duty. Negligence is not about what the accused intended, but about whether their conduct **met or fell short of the standard that the law sets for all parents.**

“Necessaries” is often accidentally misstated as “necessities”, so watch out for that.

The most serious cases of harm to children, where a child is assaulted or neglected over a long period of time – especially those leading to serious injury – will attract even more serious charges than s. 215. Section 215 sets the most basic standard that all parents must live up to. Because it is judged on the standard of negligence, a parent who does not mean to cause any harm at all may still be found guilty of the offence if a judge or jury finds that the parent nonetheless fell short of the standard.

As you read and dissect this case, you will see that it is about the alleged failure of a parent to perform their parental duty over a short period of time in a specific situation – a situation any parent might find themselves in. That’s why there are no additional charges beyond s. 215.

The standard of fault, or *mens rea*

The law uses the terms “subjective” and “objective” to express two basic standards for judging the “fault element” of a crime, also known as the *mens rea*. These are broad categories, with variations depending on the offence in question.

The **subjective standard** focuses on what an accused person **intended and knew** in the situation. It is a personalized assessment of what was going through the accused's mind at the time, and it applies to many serious crimes, such as murder and assault.

Failing to provide the necessities of life is, however, judged on an objective standard. The objective standard does not look at what the accused was thinking or intended; instead, it holds the accused to the standard of a hypothetical "reasonable person". In the *Delaney* case, the question will be **what a reasonable parent in the same circumstances would have done.**

The "reasonable parent" is a made-up, normal parent, with a normal degree of skill and knowledge about parenting, who provides the "trier of fact" (the jury, or the judge in a trial without a jury) with someone to judge the accused against: how would a reasonable parent have behaved in this situation, and did the accused fail to live up to that standard?

Applying the standard of fault: The "modified objective test"

The standard for the *mens rea* applying to s. 215 is called a "modified objective test". It's "modified" because the Supreme Court of Canada has determined that the simple objective standard, often used in civil (i.e., non-criminal) law needs to be modified for criminal law, in two key ways:

First, the conduct must be a **marked departure** from the conduct of the reasonable parent in the same circumstances. A "marked departure" is something more than a "mere departure". Therefore, a parent is not guilty of the offence if they failed to meet the standard, but only slightly.

Second, even though the standard is objective, not subjective, the accused can be acquitted if they can raise a reasonable doubt that they **were incapable of appreciating the situation.**

The Supreme Court has specifically rejected the idea that the "human frailties" or "personal characteristics" of the accused, such as youth, inexperience, or lack of education, can go into the consideration of what a reasonable person would have done in the circumstances.

In other words, the trier of fact cannot ask, "What would a reasonable parent, who had very little experience caring for a baby, have done?", or, "What would a parent who thought that fall was no big deal have done?" The point of the objective standard is to maintain a minimum standard that everyone has to live up to.

However, the defence can argue that **something personal to the accused, or something about the circumstances of the situation, meant that the accused simply could not**

understand or perceive what was going on. One hypothetical example that has been suggested in the case law is an illiterate person carelessly handling an explosive substance because they couldn't read the label. Another interesting one is that "a reasonable person will not show the same anxious care when handling an umbrella as when holding a loaded gun". But, what if the umbrella is, unknown to the accused, actually a gun disguised to look like an umbrella (James Bond-style!)?

The guilty act, or *actus reus*

In criminal law, to find someone guilty, they must have had both a guilty mind, or *mens rea*, and they must have committed a guilty act, or *actus reus*.

There are two possible ways to establish the *actus reus*, depending, as with *mens rea*, on the offence in question:

- **Commission of an act:** a person does something they shouldn't.
- **Omission of an act:** a person omits, or fails, to do something which the law requires of them.

Which one applies to failing to provide the necessities of life?

Note re: "... fails without lawful excuse, the proof of which lies on him,

Although the words, "the proof of which lies on him" still appear in s. 215 (2), they are no longer applied. They were declared unconstitutional for creating a "reverse onus" – requiring an accused person to prove something in order to avoid conviction. The accused only needs to raise a reasonable doubt that they had a lawful excuse.

However, the defence of "lawful excuse" does not apply to the facts of *R v Delaney*. It generally only applies to cases where someone has a legal duty that prohibited them from providing the necessities of life. An example could be a prison guard who, during a riot, is obligated to lock down the prison to prevent harm to the whole prison population and, as a result, can't immediately attend to the injuries of a particular prisoner.

Applying the Law and Further Reading

With your teacher and lawyer coaches, you will need to work on applying the law to the facts of the case. Remember that different witnesses may have conflicting "facts" – what one witness thinks is fact does not make it the undisputed truth.

Your opening statement and your closing arguments should argue how the law applies to the evidence. Your opening statement should outline the law and how the evidence that you anticipate the witnesses will give either establishes guilt if you are the Crown, or raises a reasonable doubt if you are defence. Then, your closing arguments should refer back to the evidence the court heard, and again put it in the context of the law.

Remember that the mock trial is really about making good arguments: whether they actually succeed in achieving a “verdict” of guilty or not guilty makes no difference to the scores.

You will likely find it helpful to do some further reading to refine your understanding of the law and how it applies to this case. Key cases are noted below. Keep a few things in mind:

- Case summaries, or “briefs”, which you can find online (even on Wikipedia), can be very helpful in explaining the key points of a legal judgment. The cases themselves can all be found on the website of the Canadian Legal Information Institute: canlii.org
- Legal judgments can make for dense reading, even for lawyers. Start by reading the summary at the beginning (called the “headnote”) so you know what the judgment is about and what points are relevant to this case, then read parts of the judgment itself if you think you need more detail. Judges do not always agree with each other. The majority opinion – the judgment written by the judge who most judges agreed with, is the best statement of the law. However, dissents (the view of a minority of judges) may help you understand the majority opinion by comparison.
- There is no need, and the rules do not allow, for you to reference cases by name. Simply state what you believe the law requires in the case at hand.

Key Cases:

- R. v. Beatty, [2008] 1 SCR 49, 2008 SCC 5 (CanLII), <<http://canlii.ca/t/1vrp5>>*
- R. v. Creighton, [1993] 3 SCR 3, 1993 CanLII 61 (SCC), <<http://canlii.ca/t/1fs09>>*
- R. v. Naglik, [1993] 3 SCR 122, 1993 CanLII 64 (SCC), <<http://canlii.ca/t/1fs0h>>*

Other Reading:

- “Who Are the ‘Parents of the Nation’? Thoughts on the Stephan Case and Section 215 of the Criminal Code”, by Lisa Silver. Posted on the University of Calgary, Faculty of Law’s ABLawg.ca blog: <ablawg.ca/2016/05/24/who-are-the-parents-of-the-nation-thoughts-on-the-stephan-case-and-section-215-of-the-criminal-code>*

* Retrieved Nov. 23, 2018

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APPENDIX II: EXHIBITS



ONTARIO BAR ASSOCIATION
L'ASSOCIATION DU BARREAU DE L'ONTARIO
A Branch of the Canadian Bar Association
Une division de l'Association du Barreau canadien

FINAL VERSION

List of Exhibits

1. Curriculum Vitae of Dr. Blair Chao (2 pages)

- To be entered by: the Crown
- Foundation laid by: Dr. Blair Chao
- Entering this exhibit is required to qualify Dr. Chao as an expert witness

2. Photos of Bruises (1 page)

- To be entered by: either the Crown or the defence
- Foundation laid by: Dr. Blair Chao
- Entering this exhibit is optional

3. Photos of Staircases (4 pages)

- To be entered by: either the Crown or the defence
- Foundation laid by: Any of Det. Cst. Robin Lestrade, Skye Delaney or Quinn Parker
- Entering these exhibits is optional
- Teams can choose to enter some or all of the photos. Teams may decide whether to enter each page of photos as separate exhibits or together as a single exhibit

Note: To lay the evidentiary foundation for a photo, a witness does not need to be the person who took the photo. The witness only needs to be in a position to testify to what the photo shows because they know what is in the photo (e.g. they have seen it themselves).

CURRICULUM VITAE

Name: DR. BLAIR CHAO
Date of Last Update: January 1, 2019
Date of Birth: June 18, 1973

Office: Mariposa General Hospital
1000 Tecumseh St.
Mariposa, Ontario
Q4N 3M5

Telephone: 555-480-6770
Fax: 555-867-5309

Personal Information: [Email: blair.chao@mgh.ca](mailto:blair.chao@mgh.ca)

EDUCATION

Degrees, Diplomas, Licenses and Certifications

Sep 1995 - Jul 1999	M.D.C.M., McGill University Montreal, Quebec
1999	LMCC, McGill University Montreal, Quebec
1999 - 2003	The Hospital for Sick Children, Division of Paediatric Surgery Toronto, Ontario Subject: Residency Program
2006	RCPSC Specialist, General Surgery
2008	RCPSC Specialist, Paediatric Surgery
2008	FRCS(C), The Hospital for Sick Children Toronto, Ontario

APPOINTMENTS

University Appointments

- 2008 - 2019 Instructor, Department of Paediatric Surgery, Mariposa General Hospital, Mariposa, Ontario
- 2008 - 2013 Lecturer, Department of Paediatric Surgery, Mariposa General Hospital, Mariposa, Ontario
- 2013 - 2019 Assistant Professor, Department of Paediatric Surgery, Mariposa General Hospital, Mariposa, Ontario

Hospital Appointments

- 2008 - 2019 Surgical/Emergency Department Hospital Privileges, Mariposa General Hospital, Mariposa, Ontario

Appointments

- 2010 - 2019** Paediatric Surgical Consultant, National Ballet of Canada, Mariposa
- 2009 - 2013** Paediatric Surgical Consultant, Phantom of the Opera Cast, Mariposa

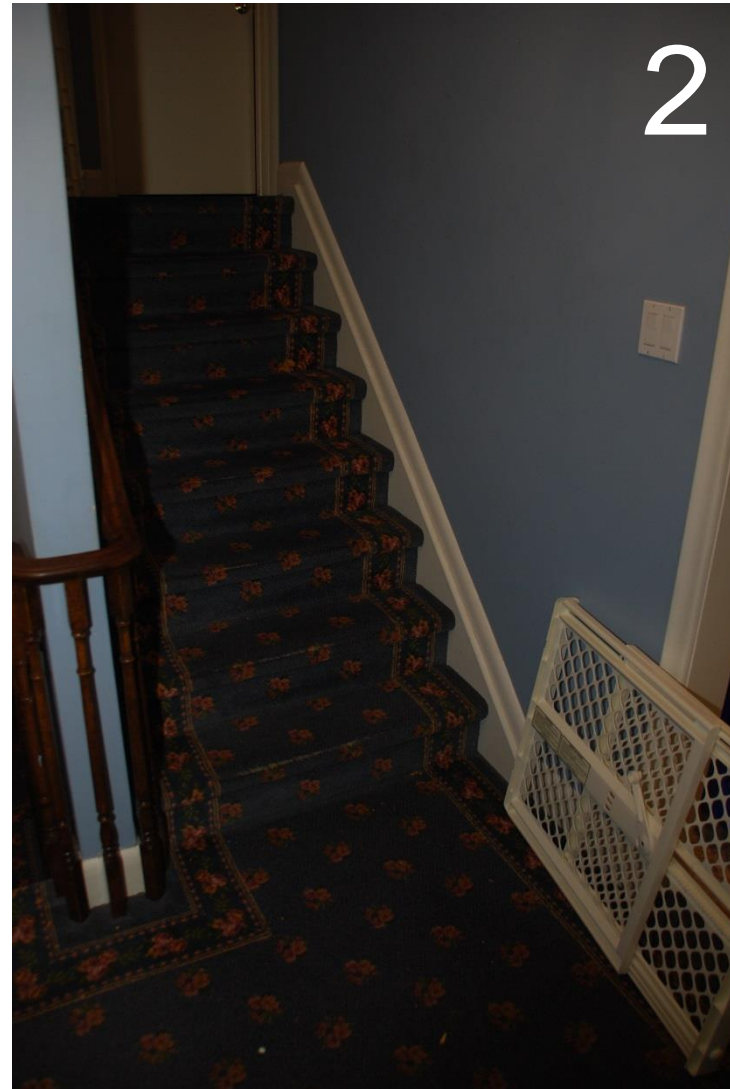
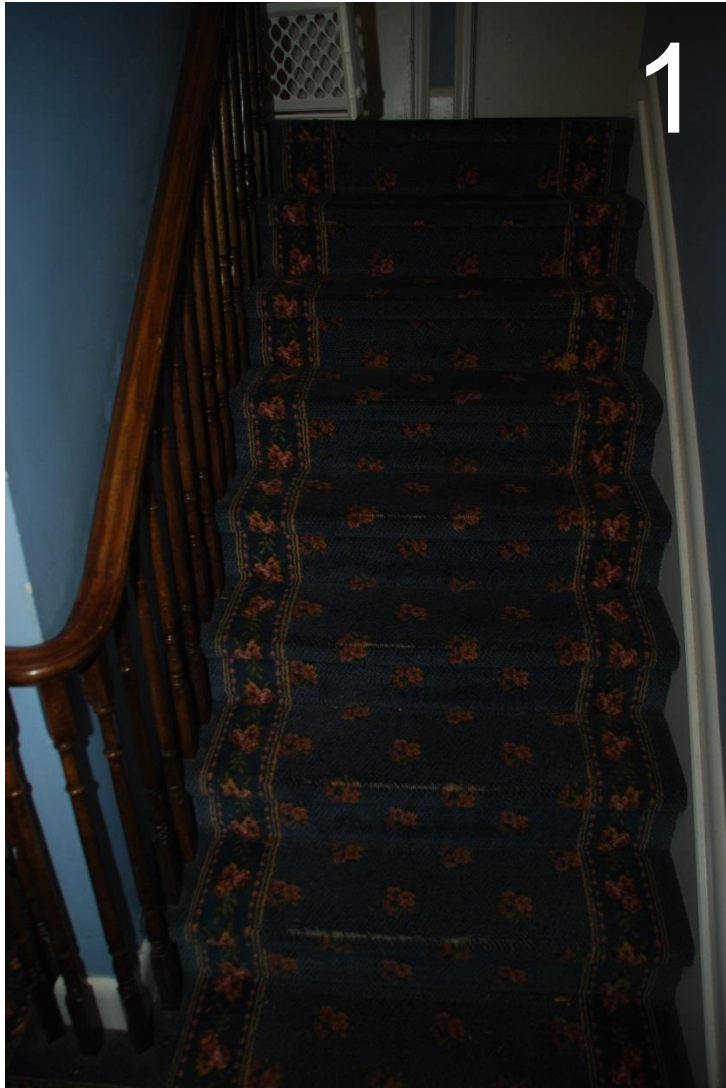
R. v. Delaney

Photos taken by Dr. Blair Chao at Mariposa General Hospital: Bruises observed on Jack Delaney-Parker on August 27, 2018



R. v. Delaney

Photos taken at 8277 Blue Ridge Rd: Staircase from main floor to bedrooms as observed on entry by Mariposa Police on August 27, 2018



R. v. Delaney

Photos taken at 8277 Blue Ridge Rd: Staircase from main floor to first basement level, as observed on entry by Mariposa Police on August 27, 2018



R. v. Delaney

Photos taken at 8277 Blue Ridge Rd: Staircase from main floor to first basement level, baby gates removed for examination on August 27, 2018



R v. Delaney

Photos taken at 8277 Blue Ridge Rd: Staircase from first basement level to sub-basement, as observed on entry by Mariposa Police on August 27, 2018

