

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Spicer, 2016 SCC 3, [2016] 1 S.C.R. 11 | **Appeal heard:** January 15, 2016  **Judgment rendered:** January 15, 2016  **Docket:** 36532 |

Between:

Johnathan Peter Spicer

Appellant

and

Her Majesty The Queen

Respondent

**Coram:** Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

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| **Reasons for Judgment:**  (paras. 1 to 2) | Moldaver J. (Karakatsanis, Wagner, Gascon and Côté JJ. concurring) |

R. *v.* Spicer, 2016 SCC 3, [2016] 1 S.C.R. 11

Johnathan Peter Spicer Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.*** Spicer

2016 SCC 3

File No.: 36532.

2016: January 15.

Present: Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

on appeal from the court of appeal for alberta

*Criminal law — Sexual assault — Charge to jury — Mistaken belief in consent — Failure of trial judge to instruct jury on need to take reasonable steps to ascertain consent having material bearing on acquittal — New trial justified.*

APPEAL from a judgment of the Alberta Court of Appeal (Côté, Slatter and Wakeling JJ.A.), 2015 ABCA 190, 600 A.R. 397, 645 W.A.C. 397, [2015] A.J. No. 602 (QL), 2015 CarswellAlta 986 (WL Can.), setting aside the accused’s acquittal and ordering a new trial. Appeal dismissed.

Daryl Royer and *Akram Attia*, for the appellant.

Joanne Dartana, for the respondent.

The judgment of the Court was delivered orally by

[1] Moldaver J. — The sole issue before us is whether the trial judge’s failure to instruct the jury on the need to take reasonable steps to ascertain consent might reasonably be thought to have had a material bearing on the acquittal. A majority of the Alberta Court of Appeal found that it did. We agree.

[2] Accordingly, we would dismiss the appeal.

*Judgment accordingly.*

Solicitors for the appellant: Daryl Royer, Edmonton; Akram Attia, Edmonton.

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