

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. States, 1995 NSCA 225

Hallett, Matthews and Bateman, JJ.A.

BETWEEN:

DAMON STATES)	Lou Ann Thomson
)	for the Appellant
Appellant)	
)	
- and -)	
)	Dana Giovannetti
)	for the Respondent
HER MAJESTY THE QUEEN)	
)	
Respondent)	Appeal Heard:
)	November 22, 1995
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)	Judgment Delivered:
)	November 24, 1995
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THE COURT Leave to appeal granted but the appeal is dismissed per reasons for judgment of Matthews, J.A.; Hallett and Bateman, JJ.A. concurring.

MATTHEWS, J.A.:

After a trial before a provincial court judge, the appellant was found guilty of

robbery: s. 344 of the **Code**. He now appeals from that conviction.

There are essentially two grounds of appeal: (1) respecting eye witness identification of the appellant and (2) whether the identification of the appellant by photographs "was carried out in such a way as to prejudice the accused".

There is no need to discuss the facts in detail.

We are satisfied that the experienced trial judge thoroughly understood the frailty of eye witness identification and properly instructed himself on the law pertaining thereto. He began his decision on this issue with these words: "The issue of identification requires careful consideration by the Court". He later remarked:

It is the duty of the trial judge to deal carefully as to the weakness in the evidence of identification and to direct himself as such evidence must be weighed with the greatest care. The necessity for this rule is the opportunity of honest mistake peculiar to identification.

He analyzed the testimony and considered the relevant evidence on this issue. We note that the appellant did not testify and elected not to call evidence.

As to the second issue, the transcript discloses that the investigating constable took care not to influence the witness in his choice of the identifying photograph. That identification took place while the constable was absent. We agree with the trial judge's comment that this identification was "not tainted in any way by the police procedure...".

After re-examining, reweighing and considering the effect of the evidence and hearing counsel, we are satisfied that the verdict is one that a properly instructed jury acting judicially could reasonably have rendered.

While we permit leave to appeal, we dismiss the appeal.

Concurred in:

Hallett, J.A.

Bateman, J.A.

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- and -
FOR

BY:
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