

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Muise*, 2016 NSCA 34

Date: 20160504

Docket: CAC 438457

Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Victor Daniel Joseph Muise

Respondent

Judges: The Honourable Justice Hamilton
The Honourable Justice J.E. (Ted) Scanlan (dissenting)

Appeal Heard: February 8, 2016, in Halifax, Nova Scotia

Subject: Appeal by Crown from acquittal; Totality of evidence must be considered in reaching verdict.

Summary: The respondent was acquitted of robbing a bank. The robber was given a red dye pack after presenting a hold-up note to the teller, which dye pack exploded after he left the bank. The evidence included a bank video; the teller's identification of the respondent from a photo line-up and in court; the respondent's possession of some of the red-stained stolen money several hours after the robbery; his red-stained hands and his DNA, among others, on the hold-up note. It also included evidence that the police had identified two other people as possible robbers from viewing the bank video; the search of the respondent's residence did not turn up the clothes worn by the robber; the hold-up note was written on paper from a public venue and the teller's testimony about the numbers she saw on the robber's bank card differed from the numbers on the respondent's card found in his residence.

Issues: Did the judge err in law by subjecting individual pieces of evidence to the standard of proof beyond a reasonable doubt – by failing to consider the whole of the evidence in relation to the ultimate issue of guilt or innocence?

Result: Appeal dismissed.

Majority: A Crown appeal from acquittal is limited to an error of law. We are not to reassess the evidence in order to determine if the judge's findings are reasonable. Here, the judge considered the whole of the evidence in reaching his decision.

Minority: Would have allowed the appeal based on the fact that the decision does not reflect that the trial judge considered the evidence as a whole.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 16 pages.