

Date: 20020117  
Docket No.: CAC 170343

**NOVA SCOTIA COURT OF APPEAL**

**[Cite as: R. v. Armstrong, 2002 NSCA 10]**

**Glube, C.J.N.S.; Freeman and Hamilton, J.J.A.**

**BETWEEN:**

ROBERT ARMSTRONG

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

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**REASONS FOR JUDGMENT**

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Revised decision: The text of the original decision has been corrected according to the erratum . The text of the erratum is appended to this decision.

Counsel: Mark G. Gosine for the appellant  
Laurel Halfpenny-MacQuarrie for the respondent

Appeal Heard: January 17, 2002

Judgment Delivered: January 17, 2002

THE COURT: Appeal dismissed per oral reasons for judgment of Freeman, J.A.; Glube, C.J.N.S. and Hamilton, J.A. concurring.

**FREEMAN, J.A. (Orally):**

[1] The appellant is appealing his conviction on two counts of break, enter and theft under s. 348 of the **Criminal Code**, on the ground that Judge Patrick Curran of the Provincial Court erred in convicting him on the identification evidence before the court.

[2] Two houses situated back to back on parallel streets were burgled around midday on August 11, 2000 and a man was seen twice leaving the alley giving access to them and proceeding down Creighton Street carrying items similar to those described as stolen.

[3] Residents of the two homes said the stolen items included a portable stereo, or “ghetto-blaster”, two black gymnasium bags, a black and yellow back pack containing a Nintendo, and a guitar and case. A witness reported a ladder missing, but it was not identified as the ladder found near the window through which one of the homes had apparently been entered.

[4] Dawn Sloan was sitting at a window across the street from the alley. She saw a man walking across the street carrying a guitar and perhaps a dark colored duffle bag. A little later she saw the same man walking down the street with a ghetto-blaster and a bag. She could not identify the man from a police photo line-up but identified him in court.

[5] Lewis Gannon was standing on Creighton Street talking to his neighbour Joseph Gangoo. He saw a man walking up the street carrying something in both hands including a guitar in a case, and shortly afterwards saw the same man coming out of the alleyway carrying something. He did not identify the person in the line-up or in court, but said the man recognized Mr. Gangoo and “called Joe by name.”

[6] Mr. Gangoo said he had been talking with Mr. Gannon when he saw the appellant come out of an alleyway and walk on Creighton Street, carrying two kit bags and “a stereo, a ghetto-blaster, or something.” One of the bags was with a yellow stripe, the other black with a shoulder strap. Mr. Gangoo said he had known Mr. Armstrong four or five years and saw him four or five times a week. Mr. Anderson “said hi to me and he walked by.” He identified the appellant in the

police line-up and in court.

[7] Mr. Armstrong did not testify and called no evidence.

[8] Judge Curran, noting that the suspect's recognition of Mr. Gangoo "closed the loop," was left without a doubt that it was Mr. Armstrong who was seen by Mr. Gangoo. He was cognizant of discrepancies and inconsistencies in the evidence, particularly with descriptions of what the suspect was wearing. But he found the whole of the evidence "overwhelming."

[9] The appellant refers to **R. v. Yebes** (1987), 36 C.C.C. (3d) 417, which requires that an appeal court, in determining whether a verdict was reasonable, must "determine on the whole of the evidence whether the verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered."

[10] We have to the necessary extent re-examined and re-weighed the evidence and considered its effect. We are satisfied the evidence is reasonably capable of supporting the conclusion reached by the trial judge, and that he could reasonably have reached that conclusion on the evidence before him. (See **R. v. Burns**, [1994] 1 S.C.R. 656 at p. 663.) The appeal is dismissed.

Freeman, J.A.

Concurred in:

Glube, C.J.N.S.

Hamilton, J.A.

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**E R R A T U M**

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On the cover page of the judgment the date should be January 17, 2002.