

**NOVA SCOTIA COURT OF APPEAL**

**Cite as: R. v. Syliboy, 1994 NSCA 202  
Clarke, C.J.N.S.; Matthews and Chipman, JJ.A.**

**BETWEEN:**

DENNIS WILLIAM SYLIBOY

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

) Deborah E. Bowes  
) for the Appellant

) Robert E. Lutes, Q.C.  
) for the Respondent

) Appeal Heard:  
) October 3, 1994

) Judgment Delivered:  
) October 3, 1994

**THE COURT:** The appeal against conviction for aggravated assault is allowed, the conviction is quashed and an acquittal entered, per oral reasons for judgment of Clarke, C.J.N.S., Matthews and Chipman, JJ.A. concurring.



The reasons for judgment of the Court were delivered orally by:

**CLARKE, C.J.N.S.;**

DWS appeals his conviction of aggravated assault contrary to s. 268 of the **Criminal Code**. He contends the trial judge erred in finding there was any evidence upon which to convict and as a result pronounced an unreasonable verdict.

A ruckus involving at least a dozen men and women occurred outside the residence of CB during the evening of July 19, 1993. A variety of words and blows were exchanged among various combinations of those present. CB suffered extensive physical injuries.

DWS was charged with assaulting CB with a beer bottle (s. 267(1)), using a weapon (a pipe) while committing an assault on CB (s. 267(1)(a)) and committing an aggravated assault on CB (s. 268). DWS plead not guilty to all three.

After his trial at which several witnesses were called by both the Crown and the defence, the trial judge acquitted DWS on the first two charges because he was not satisfied that the Crown had proved either of them beyond a reasonable doubt.

The problem which is recognized by counsel of both the appellant and the respondent Crown is that the trial judge has not identified or clarified the evidence on which the finding of guilt is made. He found the evidence of two of the three Crown witnesses was not credible. Of the third, CB, he found his evidence credible to establish he had been assaulted. At the same time, the trial judge observed the evidence of CB as to the "numerous details" of the assault was excluded and unexplained. Accordingly, the conviction is based on unclear and uncertain findings.

We have reviewed, reconsidered and reweighed the evidence as we are required by the ruling of the Supreme Court of Canada in **R. v. Yeboes**, [1987] 2 S.C.R.

168. We agree with counsel that the verdict is unreasonable and not supported by the evidence. It is our further opinion that there is insufficient cause to order a new trial. Based on the acquittals entered by the trial judge on the other two counts, the evidence that remains is uncertain and equivocal as it relates to the count of aggravated assault.

Accordingly, and pursuant to s. 686(1)(a)(i), the appeal is allowed, the conviction is quashed and the entry of a verdict of acquittal is ordered.

C.J.N.S.

Concurred in:

Matthews, J.A.

Chipman, J.A.

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**BETWEEN:**

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**ORDER FOR JUDGMENT**

REASONS FOR JUDGMENT having been delivered by Clarke, C.J.N.S.;  
Matthews and Chipman, JJ.A. concurring;

IT IS ORDERED THAT the appeal is allowed and the conviction of the  
appellant on March 29, 1994 for the offence of aggravated assault is quashed;

IT IS FURTHER ORDERED THAT an acquittal of the appellant be entered.

DATED at Halifax, Nova Scotia, this 3rd day of October, 1994.

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Registrar