

NOVA SCOTIA COURT OF APPEAL
Citation: *The Queen v. Magloir*, 2003 NSCA 74

Date: 20030703
Docket: CAC 184011
Registry: Halifax

Between:

David Clarence Magloir

Appellant

v.

Her Majesty the Queen

Respondent

Judge: Oland, J.A.

Appeal Heard: June 3, 2003

Written Judgment: July 3, 2003

Subject: **Criminal Law. Identification. Admissibility of comment of bystander. Section 686(1)(a)(ii) *Criminal Code*.**

Summary: The appellant was convicted of aggravated assault. The key issue at trial was the identification of the person who struck the victim with a beer bottle. During the trial, the judge admitted a comment allegedly made by a bystander to the fight. He made specific reference to that comment in finding the appellant guilty.

Issue: Whether the trial judge erred in law in admitting the comment into evidence and in using it on the issue of identity.

Result: Appeal allowed and new trial ordered. The trial judge did not treat the comment as narrative, nor was that portion of his decision mere surplusage. Nothing in the record showed any consideration that it might be admissible as part of the *res gestae* exception or supported admissibility pursuant to the principled approach to hearsay. By admitting the comment into evidence and placing considerable reliance upon it as inculpatory evidence, the judge erred in law within the meaning of s. 686(1)(a)(ii) of the *Code*.

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 11 pages.