

**DATE: 20040510**  
**DOCKET: C36449**

**COURT OF APPEAL FOR ONTARIO**

**RE:                   HER MAJESTY THE QUEEN (Respondent) – and – PATRICK  
ESPEUT (Appellant)**

**BEFORE:           ABELLA, SIMMONS and LANG J.J.A.**

**COUNSEL:       Gregory Lafontaine  
for the appellant**

**Lorna Bolton  
for the respondent**

**HEARD AND  
ENDORSED:      May 6, 2004**

**On appeal from the conviction entered by Justice J. M. Wilson of the Superior  
Court of Justice on January 26, 2001.**

**APPEAL BOOK ENDORSEMENT**

[1]     The appellant abandoned the ground of appeal dealing with alibi.

[2]     The appellant concedes that the onus was on him to establish the foundation for issue estoppel. Based on the evidence at trial, it was open to the trial judge to conclude that the appellant was present at the Foot Locker incident.

[3]     We see no error on the part of the trial judge in these circumstances. Accordingly, the appeal is dismissed.