

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Power*, 2017 NSCA 85

Date: 20171130

Docket: CAC 464605

Registry: Halifax

Between:

Lonnie Power

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Cindy A. Bourgeois

Appeal Heard: October 4, 2017, in Halifax, Nova Scotia

Subject: Possession of cannabis for the purpose of trafficking;
constructive possession; unreasonable verdict

Summary: In September 2015, the appellant was charged with two counts under the *Controlled Drugs and Substances Act*. The charges flowed from a search of residential property located at Blue Mountain, Kings County. Numerous marihuana plants were found growing in two cleared areas in woods behind the house which gave rise to a charge of production contrary to s. 7(1) of the *CDSA*. Substantial amounts of marihuana were found in a barn on the property. In addition, two plastic bins were found in the woods behind the barn, each containing dried marihuana. The appellant was charged with possession of cannabis for the purpose of trafficking contrary to s.5(2) of the *CDSA*.
At trial, the appellant's brother testified and claimed ownership of the marihuana found in the barn. He and his girlfriend possessed licenses to grow and possess marihuana

for medical purposes. He denied knowledge of the marihuana plants or the bins found in the woods.

The trial judge acquitted the appellant of the production charge. She also appeared to accept that the marihuana found in the barn was possessed by the appellant's brother. She convicted the appellant of possession of cannabis for the purpose of trafficking in relation to the marihuana located in the plastic bins found in the woods.

Issues: Did the appellant's conviction under s. 5(2) of the *CDSA* constitute an unreasonable verdict?

Result: Appeal allowed and an acquittal under s. 5(2) entered. The Crown's case against the appellant was entirely circumstantial. As such, the reasonableness of the verdict must be assessed in light of the requirement that the circumstantial evidence be inconsistent with any rational conclusion other than the appellant's guilt. Based on the evidence before the trial judge, there were a number of rational conclusions other than that the appellant had knowingly possessed the marihuana found in the bins. As such, he could not be found guilty of possession for the purpose of trafficking.

<p><i>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 13 pages.</i></p>
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