NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Roberts*, 2020 NSCA 20

Date: 20200303
Docket: CAC 490018
Registry: Halifax

Between:

Anthony Douglas Roberts

Appellant

v.

Her Majesty the Queen

Respondent

Judge:	The Honourable Justice Peter M. S. Bryson
Appeal Heard:	December 11, 2019, in Halifax, Nova Scotia
Subject:	Criminal law; possession for the purpose of trafficking; inferences; reasonable verdict
Summary:	Anthony Douglas Roberts and Antoinne Williams were charged with possession for the purpose of trafficking following a warrant authorized search of Mr. Roberts's home in which a large quantity of drugs was located primarily in one bedroom as well as some 9 mm ammunition. Brass knuckles were found in the bathroom. Mr. Roberts was watching TV with his two minor children when the police arrived. Mr. Williams arrived during the search. The police also located a score sheet with Mr. Roberts's personal papers and a bank statement of his in the bedroom with most of the drugs. Neither accused testified or called any evidence. Chief Judge Pamela Williams acquitted Mr. Williams because she was not satisfied that he lived at Mr. Roberts's home and had possession of the drugs located in the room in question. Mr. Roberts was convicted. He appealed, arguing that the judge misapprehended some evidence and the verdict was unreasonable.
Result:	Appeal dismissed. The judge did not misapprehend any

material evidence. The Crown established beyond a reasonable doubt that Mr. Roberts was in possession of the drugs in the bedroom, as well as ammunition located there and brass knuckles in a bathroom cabinet. The judge's inference of guilt beyond a reasonable doubt was based on a consideration of all the evidence. Alternative inferences proposed by Mr. Roberts were speculative and unreasonable.

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Judges:	Bryson, Oland and Beaton, JJ.A.
Appeal Heard:	December 11, 2019, in Halifax, Nova Scotia
Held:	Appeal dismissed, per reasons for judgment of Bryson, J.A.; Oland and Beaton, JJ.A. concurring
Counsel:	Nicholaus Fitch and Scott Brownell, for the appellant Glen Scheuer, for the respondent

Reasons for judgment:

Introduction:

[1] Anthony Douglas Roberts appeals his convictions for possession of cocaine and marijuana for the purposes of trafficking, possession of a prohibited weapon, and breach of recognizance (2018 NSPC 54). He does not say that Chief Judge Pamela Williams erred in the legal tests that she applied; rather he says that the judge misapplied the law to the facts by drawing unreasonable inferences concerning his knowledge and control of the illicit drugs and related materials found in his home. He adds that the judge misapprehended some evidence.

[2] Mr. Roberts was jointly tried with Antoinne Williams, who had arrived during the police search of Mr. Roberts's home. Neither man testified or called any evidence. Mr. Williams was acquitted.

[3] The evidence against Mr. Roberts was gathered at a warrant-authorized search of his home. Mr. Roberts called no evidence. The judge drew inferences from the evidence tendered by the Crown. Mr. Roberts argues that the verdict was unreasonable. That means this Court must re-examine and to some extent reweigh the evidence and consider its effect (*R. v. Biniaris*, [2000] 1 S.C.R. 381 at ¶36; *R. v. Murphy*, 2014 NSCA 91 at ¶7).

[4] For reasons that follow, the appeal should be dismissed. The judge did not misapprehend material evidence, nor was the verdict unreasonable.

[5] Following a review of the factual background, the applicable law will be considered, and then applied to the arguments advanced by Mr. Roberts.

Background:

[6] On January 19, 2018, the police executed a search warrant for 8 Bashful Avenue, Lake Echo, Nova Scotia, which is a single-level trailer containing a kitchen, living room, bathroom, three bedrooms, and "mud room" off the first bedroom.

[7] The police entered at 10 p.m. Mr. Roberts was sitting on a couch in the living room watching television with his children, both minors.

[8] In the kitchen, the police located "a stack of paperwork" in an upper cabinet containing:

- An envelope addressed to "Uncle Tony, 8 Bashful Avenue" with notations on the back, later identified as a "debt sheet";
- A Personal Representation Form in the name of Tony Douglas Roberts of 8 Bashful Avenue, signed September 1, 2017 and date stamped October 19, 2017;
- A Recognizance for Anthony Roberts dated September 26, 2017, varied December 20, 2017 describing his residence as 8 Bashful Avenue, Lake Echo. The recognizance listed Glen Roberts – Mr. Roberts's brother – as surety and has the same address.
- Unopened mail addressed to Antoinne Williams at 8 Bashful Avenue.

[9] In the living room, the police located and seized 6.1 grams of cannabis marijuana inside a small compartment in the coffee table and a white Apple iPhone.

[10] In the bathroom, the police located a set of brass knuckles in a cabinet next to some towels.

[11] In bedroom number two, the police found the following in an unlocked cabinet:

- A working digital scale;
- 3.2 grams of powdered cocaine;
- A package of sandwich bags;
- 26 rounds of 9 mm ammunition in the drawer of the cabinet.

[12] A closed red gym bag was located at the foot of the bed in bedroom number two. That bag contained:

- Two bags of cannabis marijuana totalling 379.6 grams;
- Three baggies of crack cocaine, comprising a total of 9.6 grams;
- A package of dime baggies;
- 47.8 grams of cut cocaine;
- Vacuum sealer and vacuum sealer bags.

[13] Also seized in bedroom number two was an RBC MasterCard Statement in the name of Anthony Roberts from February-March 2017, showing an address of 56 Sheradon Place, Halifax.

[14] Mr. Roberts was arrested and searched. He had $1,545 in cash in his right front pocket.

[15] During the search of the premises, Antoinne Williams arrived. He was asked to leave but said that he lived there. While at the doorway of the home—from which he could see the living room—Mr. Williams said, "That stuff's mine bro, not his". He did not elaborate. Shortly thereafter, Mr. Williams indicated that he wished to speak to a lawyer. He said nothing further. Police did not question him in light of his request for counsel.

[16] Mr. Williams was also arrested and charged with possession for the purpose of trafficking. The judge acquitted Mr. Williams since she was not satisfied that he lived at 8 Bashful Avenue at that time and there was no evidence connecting him with the illicit materials in bedroom number two and the brass knuckles in the bathroom.

[17] By contrast, the judge found that Mr. Roberts lived at 8 Bashful Avenue. In all the circumstances, she was satisfied that Mr. Roberts was aware of and had control of the illicit drugs and the 9 mm ammunition in bedroom number two.

The standard of review and applicable law:

[18] Section 686(1) of the *Criminal Code* authorizes the Court to allow an appeal if a verdict is unreasonable or cannot be supported by the evidence. In *R. v. Thompson*, 2015 NSCA 51, this Court described the test:

> [60] In assessing whether a verdict is unreasonable, an appellate court must:
>
> i. determine whether the verdict is one that a properly instructed jury or a judge could reasonably have made; or
>
> ii. find the trial judge has drawn an inference or made a finding of fact essential to the verdict that:
>
> a. is plainly contradicted by the evidence relied on by the trial judge in support of that inference; or
>
> b. is shown to be incompatible with evidence that has not otherwise been contradicted or rejected by the trial judge (R. v. Sykes, 2014 NSCA 57, ¶39).

[19] Where a verdict flows from circumstantial evidence, the standard of review is:

> [18] [. . .] whether a properly instructed jury, acting judicially, could have reasonably concluded that the guilt of the accused is the only rational conclusion to be reached from the whole of the evidence. Within such an inquiry, the standard of review for error is correctness. The standard of review of possible inferences that may be drawn from the evidence is palpable and overriding error. See, for example, *R. v. Shea*, 2011 NSCA 107.
>
> [*R. v. Henderson*, 2012 NSCA 53]

[20] For allegations that a judge misapprehended evidence, the appellant must show two things:

> [40] [. . .] first, that the trial judge, in fact, misapprehended the evidence – that is, she failed to consider evidence relevant to a material issue, was mistaken as to the substance of the evidence, or failed to give proper effect to evidence; and second, that the judge's misapprehension was substantial, material and played an essential part in the decision to convict (see *R. v. Schrader*, 2001 NSCA 20; *R. v. Deviller*, 2005 NSCA 71; *R. v. D.D.S.*, 2006 NSCA 34).
>
> [*R. v. Izzard*, 2013 NSCA 88]

[21] Mr. Roberts was convicted of possession of cocaine and marijuana for the purposes of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c. 19. That *Act* refers us to the *Criminal Code* for the meaning of possession. Subsection 4(3) of the *Criminal Code* describes three ways in which a person can be in possession:

> **Possession**
>
> (3) For the purposes of this Act,
>
> (a) a person has anything in possession when he has it in his personal possession or knowingly
>
> (i) has it in the actual possession or custody of another person, or
>
> (ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
>
> (b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

[22] In this case, the judge concluded guilt by inferring from the facts as she found them. Both these facts and the inferences she drew from them are reviewable on a standard of palpable and overriding error (*Henderson*, ¶18; *R. v. Shea*, 2011 NSCA 107, ¶35).

[23] Mr. Roberts acknowledges that the trial judge correctly referred herself to the law and in particular the leading cases of *R. v. Morelli*, 2010 SCC 8 and *R. v. Villaroman*, 2016 SCC 33. In *Morelli*, the Supreme Court said that personal possession requires that the accused be aware that "he or she has physical custody of the thing in question, and must be aware as well of what that thing is …" (¶16).

[24] *Morelli* defines constructive possession as established:

> [17] [. . .] where the accused: (1) has knowledge of the character of the object, (2) knowingly puts or keeps the object in a particular place, whether or not that place belongs to him, and (3) intends to have the object in the particular place for his "use or benefit" or that of another person.

[25] If reasonable inferences other than guilt can be drawn from circumstantial evidence the Crown has not met the standard of proof beyond a reasonable doubt. Reasonable doubt can be logically based on the evidence or lack of evidence, must be reasonable given that evidence or lack thereof, and assessed logically in light of human experience and common sense (*Villaroman*, ¶35-38).

Mr. Roberts's challenge to the trial judge's inferences:

[26] Although there are two grounds of appeal, Mr. Roberts argues them together. He says the judge failed to consider reasonable alternative inferences and misapprehended some evidence which would have grounded alternative reasonable inferences.

[27] Mr. Roberts does not challenge the judge's conclusion that he was living at 8 Bashful Ave. Rather he attacks the inference that he had knowledge and control over the drugs located in bedroom number two. It will be useful to preface consideration of Mr. Roberts's submissions with a summary of the judge's reasons for inferring Mr. Roberts's residency.

[28] The judge concluded that Mr. Roberts lived at 8 Bashful Avenue because:

- He was seated on the couch in the living room with his children watching television when the police executed the search warrant;

- A Recognizance located in a kitchen cabinet and dated September 26, 2017, varied December 20, 2017 (a month earlier) was conditioned on him residing at 8 Bashful Avenue;
- A Personal Representation Form in the name of Tony Douglas Roberts and dated September 1, 2017, date stamped October 19, 2017 was located in the same cabinet;
- A third undated envelope addressed to "Uncle Tony, 8 Bashful Avenue, Lake Echo" – which the judge found to be a drug score sheet – was located in the cabinet with the foregoing documents;
- An RBC MasterCard Statement for February/March 2017 was located in bedroom number two and addressed to Anthony Roberts at 56 Sheradon Place, Halifax.

[29] The trial judge observed that mere occupancy is generally not enough to establish knowledge citing *R. v. Allison*, 2016 ONSC 3073 and see *R. v. Murphy*, 2014 NSCA 91. The facts here went far beyond "mere occupancy".

[30] The judge remarked that photographs of the bedrooms taken by police depicting clothing, footwear, hats and personal items suggested the occupant(s) of the residence were male. She also found that it was "inconceivable" that Mr. Roberts was unaware of the 6.1 gram bag of cannabis located in the coffee table. She also noted that the drugs and drug paraphernalia located elsewhere in the residence, while not in plain sight, were not hidden and were easily discoverable.

The RBC MasterCard Statement:

[31] Recognizing the significance of the RBC MasterCard Statement, Mr. Roberts first attacks the judge's reliance on its location in bedroom number two. He suggests that it could have ended up in bedroom number two by being placed in furniture which was moved into that bedroom. He claims that reliance upon it is unreasonable because it is "dated" and described a different address. He says the drugs located in bedroom number two would have "turned over" within 30 days. From the latter Mr. Roberts says an inference should be drawn that he may not have occupied the bedroom at the relevant time when the drugs were present. These arguments are mere speculation. Moreover, they ignore other evidence from which the judge inferred Mr. Roberts's residency, knowledge, and control of the drugs in question.

[32] Except for the RBC MasterCard Statement, all of Mr. Roberts's personal papers were located in the same cabinet in the kitchen. One of those documents was identified by a police expert as a debt or score sheet on which a drug dealer habitually keeps a record of who owes what. The judge accepted the expert's evidence. The presence of the score sheet addressed to "Uncle Tony, 8 Bashful Ave., Lake Echo" with Mr. Roberts's other personal papers, together with the RBC MasterCard Statement in bedroom number two, were fundamental to the judge's inference of Mr. Roberts's knowledge and control of the drugs and drug paraphernalia in that room.

Residency/Occupancy of bedroom number two:

[33] Mr. Roberts suggests that the co-accused, Mr. Williams, resided at 8 Bashful Avenue and may have occupied bedroom number two although there is no evidence linking him to that room. Mr. Roberts argues that Mr. Williams's utterance, upon entering the kitchen, "I live here" was not given effect by the judge. He adds that Mr. Williams's comment when confronted by the police in the kitchen: "that stuff's mine bro" referred to all the drugs in the home because Mr. Williams was being arrested as he said this. The evidence is not so clear. We do not know the timing of these two events and putting them together to claim a reference to the drugs in bedroom number two is not merely unreasonable, it is sheer speculation.

[34] The judge was also unpersuaded that Mr. Williams's vague reference to "the stuff's mine, bro, not his" referred to the drugs in bedroom number two:

> [54] The statement "The stuff's mine bro, not his" is rather vague and lacks clarity. However, I must consider the context. Mr. Williams arrives at 8 Bashful Ave. in the middle of a drug search. He is in the kitchen and has a clear view of the living room. He is looking at the coffee table that has a small compartment containing a bag of cannabis marihuana.
>
> [55] The only rational inference to be drawn is that the stuff Mr. Williams is referring to is cannabis marihuana, that he knows it is there, and that it belongs to him.
>
> [56] No other drug paraphernalia is found in the living room. ***The bag of cannabis marihuana containing 6.1 grams, according to the Crown's expert, could be for personal use. I am therefore not satisfied beyond a reasonable doubt that he possessed it for the purpose of trafficking.***
>
> [57] ***With respect to the drugs, drug paraphernalia, the brass knuckles and the ammunition***, located elsewhere in the residence, there is no compelling

> evidence to link Mr. Williams to these items. ***I am unable to conclude that Mr. Williams lives at this address, knew of their existence or had any control over them.***
>
> [Emphasis added]

[35] As earlier recounted, there was a small bag of marijuana in a lower shelf in the coffee table in the living room. Neither bedroom number two nor its contents were visible to Mr. Williams when he allegedly said "The stuff's mine bro, not his".

[36] Mr. Roberts says the trial judge misunderstood Mr. Williams's comment to police that "he lives here". Mr. Roberts notes the trial judge says in her decision that the relevant police officer "does not recall hearing this and it is not in his notes". Mr. Roberts relies on this to claim the judge's summation of the evidence is inaccurate or incomplete. The impugned passage in the judge's decision says:

> [22] As noted above, the Crown sheet (hearsay) indicates that Antoine Williams, upon arrival is told to leave the residence and that he says he lives at 8 Bashful Ave. Lake Echo. ***However, no witness can state they hear him make this utterance. Detective Constable Baird does not recall hearing this and it is not in his notes, made that evening.*** The exhibit officer, Constable Mirko Markovic is not involved with the people in the residence. Constable Parker McIsaac, the arresting officer, who locates a wallet on Mr. Williams containing $65 in cash and a driver's license with an address of 35 Circassion Crescent, Cole Harbour makes no mention of the utterance. Constable Nick Joseph who seizes the wallet and contents does not testify to hearing Mr. Williams say he lives at 8 Bashful Ave., Lake Echo.
>
> [Emphasis added]

[37] Later the judge summarized:

> [52] I cannot rely on a statement in the Crown Sheet that Mr. Williams told police he lives at 8 Bashful Ave., Lake Echo. None of the police officers testify to hearing Mr. Williams make this utterance. ***Perhaps he did say this. Perhaps he did not. Perhaps it is a conclusion drawn by one or more of the officers. In any case, it is unreliable and highly prejudicial.***
>
> [Emphasis added]

[38] The Crown acknowledges that one Constable did say that he was told by Mr. Williams that he lived at 8 Bashful Avenue. But later that same officer testified:

> Q. Right. So it's not necessarily all things that you personally did or heard or said or found…
>
> A. Right.
>
> Q. …but you're doing a summary of the totality?
>
> A. That's right.
>
> Q. So there might be things in there for example a comment that was heard by someone else but not directly by you?
>
> A. That could happen, yes.

[39] There was some ambiguity in the evidence. It is not plain that the judge misapprehended that evidence. Moreover, as discussed further below, on her consideration of the totality of the evidence, the judge did not find that Mr. Williams was living at Bashful Avenue at the time of the search.

[40] Mr. Roberts insists a reasonable inference could be made that Mr. Williams or others may have lived at 8 Bashful Avenue at the time of the search.

[41] The judge considered these possibilities:

> [64] It is unclear whether Mr. Roberts resides in the 3-bedroom trailer alone, with his children, or with others. As stated above, I am unable to conclude that Antoine Williams lives at this address simply by the unopened, undated mail in the name of Antoinne Williams of 8 Bashful Ave located in the upper kitchen cabinet. A reasonable inference can be drawn that Antoinne Williams may have lived there at one time but not necessarily at this time.
>
> [65] What about Glenn Roberts, Mr. Robert's surety? The recognizance lists his address as 8 Bashful Ave., Lake Echo but there is no justification of personal property attached to the document which would confirm Glenn Robert's address. There is nothing else connecting Glenn Roberts to 8 Bashful Ave., Lake Echo. I cannot conclude that Glenn Roberts lives at 8 Bashful Ave.
>
> [66] Photos of the bedrooms taken by police suggest the rooms are used but lend few clues as to how they are used or by whom. The clothing, footwear and hats depicted in the photos along with personal care items suggest the occupant or occupants to be male.

[42] Mr. Roberts also argues police found what was believed to be an off-road vehicle registration in bedroom number two, assumed to be that of a third party – or the police would otherwise have photocopied it. The judge was aware of this evidence. But it neither places someone else in that room nor does it remove Mr. Roberts from the room.

[43] Finally, Mr. Roberts reminds us that there were two pieces of mail addressed to Antoinne Williams at 8 Bashful Avenue in the kitchen cabinet. Mr. Roberts says this suggests that Mr. Williams resided there.

[44] But as the judge noted, this mail was undated and unopened, and a search of Mr. Williams revealed a driver's license listing him as living at 35 Circassion Crescent, Cole Harbour as did a 15-month-old Probation Order which was tendered by the Crown.

The debt sheet:

[45] The debt sheet located in the kitchen cabinet with Mr. Roberts's other papers was crucial to the judge's inference of guilt:

> [73] However, ***the central item linking Mr. Roberts to drug trafficking is the writing on the back of an envelope addressed to 'Uncle Tony', 8 Bashful Ave., Lake Echo which I find belongs to Mr. Roberts. This is the only rational inference given that Tony is short for Anthony, as noted on the Personal Reference Form***, previously mentioned, which identifies Mr. Roberts as Tony Douglas Roberts.
>
> [. . .]
>
> [75] The expert's opinion is not shaken on cross-examination and I accept his opinion as to the nature of the writing being that of a debt sheet. There is no direct evidence that the debt sheet belongs to Mr. Roberts. However, it is in his home, found in a cabinet among a stack of papers, some of which are clearly his. Additionally, the debt sheet is kept on the back of his property, an envelope addressed to Uncle Tony. The only rational inference to be drawn is that the writing is Mr. Roberts' and that the debt sheet belongs to him. ***The nature and location of the debt sheet proximate to the drugs and drug paraphernalia provide the context for an inference of knowledge and control over the drugs and items associated with drug trafficking. Therefore, I find Mr. Roberts guilty of possession of cannabis marihuana and cocaine (crack)*** for the purpose of trafficking ***both contrary to section 5(2)*** of the *Controlled Drug and Substances Act*.
>
> [Emphasis added]

[46] Mr. Roberts complains that there is no discussion of alternative reasonable inferences. He specifically complains of a lack of direct evidence of dates or timing of the writing on the debt sheet. No handwriting expert evidence was tendered. But as the foregoing quotations show, the judge was well-aware that

there was no direct evidence regarding creation of the debt sheet. Nevertheless, for the reasons she describes, she inferred that it belonged to Mr. Roberts.

[47] The judge also noted and considered Mr. Roberts's submissions that there was no fingerprint or DNA evidence, no surveillance of 8 Bashville Ave., and no analysis of the phone seized from Mr. Roberts. She was aware that reasonable doubt could be raised by both evidence and a lack of evidence. She had no such doubt after considering all the evidence.

[48] A number of other factors not mentioned by the judge are unhelpful to Mr. Roberts. Police located an empty iPhone box in bedroom number two. Mr. Roberts used a white iPhone to call his lawyer after the police entered the premises. Although mail addressed to Mr. Williams was located in the same place as Mr. Roberts's personal papers in the kitchen cabinet, Mr. Roberts's papers had been opened and Mr. Williams's mail had not. If Mr. Williams lived there, why was his mail unopened? That is more consistent with keeping mail for someone not present to be picked up, than it is with someone living there who puts unopened mail away. If Mr. Williams lived there would he put his unopened mail with Mr. Roberts's papers? Finally, if Mr. Williams lived at 8 Bashful Ave. and was aware of the large quantity of drugs in bedroom number two, why would he knock at the door of "his" home first and then enter premises being searched by police, identify himself, and make himself available to be arrested?

[49] As *Villaroman* counsels, alternative inferences relying on circumstantial evidence must be:

> [38] [. . .] viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.

[50] The judge found that while not visible, the drugs and ammunition in bedroom number two were not hidden. The bag containing the drugs was lying on the floor and could be seen from a distance. The other drug paraphernalia would be in plain sight once the cabinet was opened, as would be the ammunition upon opening the drawer. The same applies for the brass knuckles in the cabinet next to the towels in the bathroom – itself a common area. All were easily discoverable. The judge's inferential reasoning path resembles that of the judge described with approval by the Ontario Court of Appeal in *R. v. Emes* (2001), 147 O.A.C. 129:

> [7] In our opinion, Hill J. was correct in his appreciation of the admissibility and use to be made of the materials seized from the Nina Street and Darcel

Avenue addresses that were central to the Crown's case against the appellant. He characterized the import and relevance of that evidence as follows:

> ***The seized documents in this case have relevance to a material issue – whether Mr. Emes had a sufficient connection to the Darcel Ave. apartment to permit the court to be satisfied, beyond a reasonable doubt, that the accused was in possession of the marihuana***.
>
> The documents are effectively relevant for the fact of their existence as real or tangible evidence. The probative value relates to circumstantial inference-drawing apart from the truth of the contents of the seized documents: see *Regina v. Lydon* (1987), 85 Cr. App. R. 221 (C.A.) at 223-225 *per* Woolf L.J.; *Regina v. Rice*, [1963] 1 Q.B. 857 (C.C.A.) at 869-973 *per* Winn J., Ewart D., *Documentary Evidence in Canada* (1984), at pp. 20-21; Sopinka J., Lederman, S., Bryant, A., *The Law of Evidence in Canada* (1992), at p. 20.

[8] After reviewing the items of evidence, Hill J. set out his reasons for accepting the seized documents as circumstantial evidence. He held that:

> ***Personal papers are, as a general rule, maintained in a location to which a person has access and control.*** When documents such as income tax forms, invoices, cancelled cheques, leases, insurance papers and the like are located in a residential premise it is surely a fair inference that the person identified in the documents is an occupant with a significant measure of control. This is a matter of logic and common sense. While the existence of the papers at the location in question could be as a result of the documents being stolen, or simply stored there, or abandoned, such explanations do not, in my view, accord with the factual probabilities of the circumstances here.
>
> ***Likewise, the finding of documents relating to the subject matter of marihuana cultivation, found in close proximity to those personal papers identifying Mr. Emes, suggests that the documents are his as well.*** The inference to be drawn from a person's possession of documents characteristic of one operating a hydroponics venture is not terribly dissimilar to the inference which might be drawn from finding an individual in possession of physical items such as ballast, fans, grocubes, water trays, fans, heaters, various chemicals, PH compound, transformers, high wattage bulbs and reservoirs.
>
> [Emphasis added]

[51] The Crown adds that this Court may take into account Mr. Roberts's failure to testify, particularly in light of submissions on speculative inferences to be drawn from the evidence, about which Mr. Roberts could have said something.

[52] This Court described the proper approach to this type of submission in *R. v. Murphy*, 2014 NSCA 91:

> [87] … In my view, an otherwise unreasonable finding of guilt cannot be made reasonable merely because the accused elected not to testify. The fact that an accused did not testify at trial can be used by an appellate court to indicate that it does not have an alternative explanation for the conduct in issue, but cannot be used to sustain a conviction that is otherwise unreasonable or not supported by the evidence (see *R. v. Noble*, [1997] 1 S.C.R. 874 ¶ 103; *R. v. Gagnon*, (2000), 147 C.C.C. (3d) 193, 136 O.A.C. 116 ¶ 132).

[53] In *R. v. Ward*, 2011 NSCA 78, this Court said of the accused's silence at trial, "His decision not to testify, in a case that "cried out for an explanation" heightened the risk of conviction, dramatically" (¶73).

[54] In this case, there was a lot of evidence connecting Mr. Roberts to the drugs in the home. By calling no evidence and choosing not to testify the trial judge was denied evidence from the accused to support alternative explanations, for which he now argues before this Court.

[55] This Court cannot use Mr. Roberts's silence to supply any shortcomings in the Crown's case at trial. Equally however, Mr. Roberts cannot at once remain silent and then ask this Court to transform speculative alternative explanations, on which he offered no evidence, into reasonable doubt.

[56] Mr. Roberts criticizes the verdict by focusing on particular aspects of the evidence and the inferences drawn from those aspects by the trial judge. Nevertheless, it is important to keep in mind that standard of proof beyond a reasonable doubt does not apply piecemeal to individual items of evidence (*R. v. Ménard*, [1998] 2 S.C.R. 109 at ¶23). Rather that standard applies to consideration of all the evidence. As Justice Beveridge explained in *R. v. Al-Rawi*, 2018 NSCA 10:

> [73] A trier of fact is not to assess each piece of evidence individually on a standard of proof beyond a reasonable doubt (*R. v. Morin*, [1988] 2 S.C.R. 345). Rather, the trier of fact must take into consideration all of the circumstantial evidence relevant to any particular element.
>
> [74] When the evidence is entirely circumstantial, the judge must again consider all of the evidence. If after considering that evidence, existence of the elements is the only reasonable or rational inference, the trier of fact should draw the inference that the elements, and hence guilt, have been established beyond a reasonable doubt (see *R. v. Villaroman*, *supra* at para. 41). If there are other

> reasonable or rational explanations inconsistent with guilt, the inference must not be drawn and the accused acquitted.

[57] Chief Judge Williams considered the alternative arguments offered by Mr. Roberts. She rejected them. This Court should not lightly intervene:

> [139] Consistent with the observations of Cromwell J. in *Villaroman*, the cases illustrate a high level of deference to a trial judge's conclusion that there are no reasonable alternative inferences other than guilt. In *R. v. Loor*, 2017 ONCA 696, this court observed, at para. 22, that, "[a]n appellate court is justified in interfering only if the trial judge's conclusion that the evidence excluded any reasonable alternative was itself unreasonable."
>
> (*R. v. S.B.1*, 2018 ONCA 807)

[58] Accordingly, I would dismiss the appeal.

Bryson, J.A.

Concurred in:

Oland, J.A.

Beaton, J.A.