

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Murphy*, 2014 NSCA 91

**Date:** 20141023

**Docket:** CAC 420792

**Registry:** Halifax

**Between:**

Gordon James Murphy

Appellant

v.

Her Majesty the Queen

Respondent

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**Judge:** The Honourable Justice Duncan R. Beveridge

**Appeal Heard:** September 15, 2014, in Halifax, Nova Scotia

**Subject:** Criminal law: requirements for constructive possession

**Summary:** A property manager of an apartment complex testified that the appellant was the sole occupant of a two bedroom apartment. The police searched the apartment. On entry, a man was asleep on the couch. He was released. The police found hydromorphone, cocaine, cash, scales and paraphernalia indicative of commerce in those drugs. The appellant was not present in the apartment, and no evidence was adduced that tended to show that he knew of, and was in control of, the drugs. Nonetheless, a jury found the appellant guilty of possession of the drugs for the purpose of trafficking. He appealed, alleging that the verdicts were unreasonable or not supported by the evidence.

**Issue:**

Are the verdicts unreasonable?

**Result:**

To convict, the jury must have concluded that the Crown had proven beyond a reasonable doubt that the appellant was the sole occupant, and from that fact, inferred that he had the requisite knowledge and control over the drugs that were hidden in the apartment. The evidence of the property manager that, in her view, the appellant was the sole occupant of the apartment constituted some evidence of that fact. “Some evidence” is insufficient. The jury’s conclusion conflicts with the bulk of judicial experience. A properly instructed jury, acting judicially, could not reasonably conclude that the Crown had proven beyond a reasonable doubt that the appellant was the sole occupant of the apartment, and hence had the requisite knowledge and control of the drugs. The appeal is allowed, the verdicts quashed and acquittals entered.

*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 22 pages.*