PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Roberts*, 2018 NSPC 54

Date: 20181029
Docket: 8190968-71
8191858-66
Registry: Dartmouth

Between:

Her Majesty The Queen

v.

Anthony Douglas Roberts and
Antoine Steve Williams

LIBRARY HEADING

Judge:	The Honourable Chief Judge Pamela S. Williams
Heard:	September 10, 2018 in Dartmouth, Nova Scotia
Oral Decision	October 29, 2018 in Dartmouth, Nova Scotia
Subject:	Possession for the Purpose of Trafficking s. 5(2) CDSA
Summary:	Armed with a search warrant, police search the home of Anthony Roberts and locate quantities of drugs and items associated with mid-level drug trafficking. Antoine Williams arrives during the search and makes a vague reference to the 'stuff' belonging to him. The evidence against both is circumstantial. Neither accused testifies.
Issue:	Whether the Crown has proven Mr. Roberts and/or Mr. Williams to have the required knowledge and control to be found in possession of: the drugs for the purpose of trafficking, the brass knuckles and/or the ammunition? The outcome will determine whether either or both are also guilty of breaching related court orders.

Result: In order to convict, the evidence must be both consistent with guilt and inconsistent with any other rational conclusion.

It is unknown whether Mr. Williams lives at, or had at any time lived at the residence. The statement made by Mr. Williams, 'the stuff is mine, bro' is insufficient to conclude that he has knowledge and control over all or some of the drugs and items associated with drug trafficking. An acquittal is entered.

Mr. Roberts, on the other hand, lives at the residence and is present when the warrant is executed. Found in one of the bedrooms is a kitbag containing large quantities of cocaine and marihuana, drug trafficking paraphernalia, and an old bank statement addressed to Mr. Roberts. The central item linking Mr. Roberts to drug trafficking is a debt sheet, on the back of an envelope addressed to 'Uncle Tony' which is located among Mr. Roberts papers in a kitchen cabinet. Viewed in total, the only rational inference is that the debt sheet, the drugs and items associated with drug trafficking belong to Mr. Roberts. The brass knuckles, found in a bathroom cabinet next to towels are also possessed by Mr. Roberts. Accordingly Mr. Roberts is found guilty of possession of drugs for the purpose of trafficking, possession of ammunition and brass knuckles and breach of various court orders.

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Charge:	s.91(2) ***Criminal Code*** s. 145(3) ***Criminal Code*** *s.* 145(3) ***Criminal Code*** s.145(3) ***Criminal Code*** s. 733.1(1)(a) ***Criminal Code*** s. 733.1(1)(a) ***Criminal Code*** s. 117.01(1) ***Criminal Code*** s. 117.01(1) ***Criminal Code*** s. 5(2) ***Controlled Drugs and Substances Act*** s. 5(2) ***Controlled Drugs and Substances Act***
Counsel:	Mike Taylor, for the Federal Crown Karen Endres, for the Defence (Williams) Scott Brownell, for the Defence (Roberts)

By the Court:

Introduction:

[1] Anthony D. Roberts and Antoine S. Williams are charged with possession for the purposes of trafficking less than 3 kilograms of cannabis (marihuana) and cocaine pursuant to s. 5(2) of the **Controlled Drug and Substances Act**. Together they are also charged with possession of brass knuckles (a prohibited weapon). Mr. Williams is charged with possession of ammunition, contrary to a prohibition order, and each are charged with breaches of various court orders following a search of Mr. Robert's residence on January 19, 2018.

Issue:

[2] The focal issue is whether the Crown has proven Mr. Roberts and/or Mr. Williams to have the required knowledge and control to be found in possession of the drugs, the brass knuckles and the ammunition. The answer to these questions will determine the outcome of the charges related to breach of court orders.

Position of the Parties:

[3] The Crown, who has the onus of proof beyond a reasonable doubt, contends that Mr. Roberts occupies the residence, that he is responsible for what's in the

home and that the Crown has a strong case against him, both with respect to the drugs and the brass knuckles. The Crown concedes that the case against Mr. Williams is 'less strong' and that the powdered cocaine and the 6.1 grams of cannabis marihuana could be consistent with personal use.

[4] Mr. Roberts argues there is little to connect him to bedroom 2 where the closed kit bag containing the drugs is located, save for an old bank statement also located in that room. He states that there is no evidence that the 'scoresheet', located in a kitchen cabinet, belongs to him or that he wrote on it.

[5] Mr. Williams maintains but for the comments attributed to him (that he lives there and 'That stuff's mine bro, not his') he would not be arrested and charged. His lawyer states that the utterances lack clarity and are of limited weight. She adds there is nothing to link Mr. Williams to bedroom 2 where the drugs and ammunition are found.

Law:

Possession

[6] Possession as defined in section 2(1) of the **Controlled Drugs and Substances Act** adopts the meaning of possession in subsection 4(3) of the **Criminal Code**:

> (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.

Knowledge and Control

[7] The crime of possession requires both proof of knowledge and control over the drugs and brass knuckles.

[8] The Supreme Court of Canada describes knowledge as it relates to possession, both personal and constructive: *R. v. Morelli* 2010 SCC 8 at paras. 16-17:

> On an allegation of personal possession, the requirement of knowledge comprises two elements: the accused must 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…
>
> Constructive possession is established where the accused did not have physical custody of the object in question, but did have it 'in the actual possession or custody of another person' or 'in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or another person' …Constructive possession is thus complete 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.

[9] Proof of knowledge, or even wilful blindness, demands a subjective inquiry: that is, 'What did the accused know?' But neither knowledge nor wilful blindness alone can establish possession. The Crown must also prove a measure of control over the thing said to be possessed: *R. v. Tyrell*, 2014 ONCA 517 at paras. 30 and 36.

[10] As noted in *R. v. Omer*, [2014] O.J. No. 3245 at para. 43, citing *R. v. Pham*, [2005] O.J. No. 5127 (CA) control is the ability to exert power or authority over the object in question. Possession cases are fact driven inquiries and each case turns on its own unique facts.

[11] It is to be noted that there is a significant difference between access to a location and control over it. Control requires proof of the ability to exercise a restraining or directing influence: *R. v. Singh*, 2011 ONSC 4162. In that case the Court held:

> On the question of control, the Court must be satisfied that the accused could give or withhold consent to the illicit item or items being in the place they were located. Further, where the prohibited thing or substances are located in a place under the control of the accused, the Court must be satisfied that there is evidence from which an inference may reasonably be drawn that the accused was aware of the presence of the illicit items or substances.

Circumstantial Evidence

[12] Where the only evidence linking an accused to a crime is circumstantial, the Crown's evidence must lead to no rational conclusion other than the accused is guilty. If a reasonable inference can be drawn from the Crown's evidence that is consistent with the accused's innocence, whether or not there is evidence to support such an inference, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt: *R. v. Villaroman*, 2016 SCC 33 at paras 35-37. Stated otherwise, where there are competing inferences on the issue of knowledge and control, an acquittal must be entered: *R. v. Yowfoo*, 2013 ONCA 751.

Evidence

Background

[13] Detective Constable Robbie Baird drafts the search warrant for 8 Bashful Ave., Lake Echo, N.S which is executed on January 19, 2018. The target is Anthony Roberts, but he does not elaborate.

[14] 8 Bashful Ave. is a single level residence (a trailer) containing a kitchen, living room, bathroom, 3 bedrooms and a 'mud room' off bedroom 1.

[15] Police enter the front door of the residence at 10 pm by using a battering ram. Mr. Roberts is sitting on the couch in the living room watching television with his son and daughter present.

[16] Antoine Williams arrives during the search. According to Detective Constable Baird, 'Williams was not on the radar on this file'. The Crown brief indicates that Mr. Williams is asked to leave but says he lives there. There is no evidence to confirm this. Mr. Williams, who is in the kitchen looking at the coffee table in the living room, tells Constable Parker McIsaac, the arresting officer, "That stuff's mine bro, not his".

Evidence of Occupancy:

Anthony Douglas Roberts

[17] Detective Constable Baird testifies that Anthony Roberts is the owner of the residence and thought to be the only one living there.

[18] A Recognizance for Anthony Douglas Roberts dated September 26, 2017 and varied on December 20, 2017 (Ex 22) located in the upper kitchen cabinet of the residence shows his residence to be 8 Bashful Ave. Lake Echo, NS. It requires

him to live there and lists as surety, Glenn Roberts with the same address pending a January 8, 2018 court appearance in Halifax for different matter.

[19] Also found in the upper kitchen cabinet is an envelope addressed to 'Uncle Tony' of 8 Bashful Ave. Lake Echo, NS (date unknown) with what is purported to be a debt sheet on the back (Ex 16 and Ex 20 – photos 33 and 34).

[20] A 'Personal Representation Form' in the name of Tony Douglas Roberts, of 8 Bashful Ave. signed September 1, 2017 and date stamped October 19, 2017 is also found in the same kitchen cabinet, (Ex 20 – photo 37).

[21] An RBC Mastercard statement from 'Feb 18 to Mar 17, 2017' in the name of Anthony Roberts, is found in bedroom 2, 'perhaps in the night stand' according to Detective Constable Nick Joseph. It shows his residence to be 56 Sheraton Place, Halifax (Ex 20 – Photos 29-30).

Antoine Steve Williams AKA Antoinne Steve Williams

[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.

[23] Two Probation orders for Antoinne Steve Williams are tendered as exhibits. The first is dated October 20, 2016. It lists his address as 35 Circassion Crescent, Cole Harbour (Ex 24). The second order is dated September 16, 2008 and lists his address as 21 Williams St., East Preston, NS (Ex 25).

[24] According to Detective Constable Joseph, two pieces of unopened mail (Ex 20 – photos 36 and 38) addressed to Antoinne Williams at 8 Bashful Lane, Lake Echo are among a stack of paperwork located in upper kitchen cabinet where paperwork and an envelope addressed to Anthony Roberts are found.

Arrest and Search of Anthony Roberts and Antoine Williams

[25] Constable McIsaac arrests and searches Anthony Roberts. He locates $1,545.00 in cash (100's, 50's and 20's) (Ex 20 – photos 20-21) in Mr. Robert's right front pocket.

[26] As noted above, Constable McIsaac also arrests and searches Antoine Williams. He locates a wallet on Mr. Williams containing $65 (Ex 17) and the driver's license.

Location of Drugs, Drug Paraphernalia, Brass Knuckles and Ammunition:

Kitchen Cabinet

[27] Detective Constable Joseph locates 'a stack of paperwork' in an upper kitchen cabinet including:

- 'Debt Sheet' on back of envelope addressed to 'Uncle Tony' 8 Bashful Ave. (Ex 20 – photo 34) referred to previously.
- The Personal Representation Form noted above.
- The Recognizance for Anthony Roberts (Ex 22) referred to earlier.
- Unopened mail addressed to Antoinne Williams (Ex 20 – Photos 36 and 38) referred to above.

Living Room

[28] Detective Constable Dan Parent locates and seizes:

- 6.1 grams cannabis marijuana stuffed inside a small compartment of coffee table. Nothing is closed over it. One can see the bag, but not it's contents, from a distance (Ex 20 – photos 39-40)
- White Apple iPhone on the coffee table (Ex14)

Bathroom Cabinet

[29] Detective Constable Joseph finds a set of ‘brass knuckles’ in a cabinet next to some towels (Ex 15).

Bedroom 1 and adjoining Mudroom

[30] Detective Constable Parent finds nothing.

Bedroom 2 (Ex 20 photo 8)

[31] Detective Constable Joseph searches bedroom 2.

[32] Found in a cabinet, that is closed but not locked:

- working digital scale (Ex 13)
- 3.2 grams of powdered cocaine (Ex 12)
- Package of sandwich bags (Ex 11)

[33] Found in a night stand:

- 26 rounds of 9mm ammo (Ex 8)

[34] Found in a closed Red Gym Bag at foot of bed (Ex 20 – photo 15):

- 2 bags of cannabis marijuana – 225 grams + 154 grams = 379.6 grams (Ex 2)

- 3 baggies of crack cocaine - 3.3 grams + 3.2 grams + 3.1grams = 9.6 grams (Ex 5)
- Package of dime baggies (Ex 7)
- 47.8 grams of ‘cut’ (Ex 9)
- Vacuum Sealer and vacuum sealer bags (Ex 20 – photo 16

[35] Also seized from bedroom 2 is an RBC Mastercard Statement in the name of Anthony Roberts from ‘Feb-Mar 2017’ with address of ‘56 Sheraton Pl’, Halifax (Ex 20 – photos 29-30). Detective Constable Joseph is not sure exactly where this is found, perhaps in the night stand.

Bedroom 3

[36] Nothing found

Utterance by Antoine Williams

[37] Constable Parker McIsaac testifies that while he is reading Mr. Williams his rights, Mr. Williams states “That stuff’s mine bro, not his”. They are in the kitchen by the stove and sink and can see into the living room (Ex 20 – photo 39). It is noted that the statement does not specify any type or quantity of ‘stuff’.

Expert Opinion Evidence

[38] Constable Carl MacIsaac, an 11 year member of the RCMP, presently with the Integrated Drug Unit, is qualified as an expert to give opinion evidence on the possession and possession for the purpose of trafficking in cocaine and marihuana, and in relation to the sale and value of cocaine and marihuana, methods used to avoid police detection, trafficking methods, drug use, trafficking trends, drug availability, drug distribution chains, drug hierarchy, drug pricing and quantities, and drug packaging methods.

[39] The expert's opinion is that the evidence in this case is consistent with a person being in possession of cannabis marihuana and cocaine for the purpose of trafficking. It could be a 'one-man' operation or in partnership with someone else. The opinion is based on the following:

Crack Cocaine

- Crack cocaine is the freebase form of cocaine that can be smoked.
- Crack cocaine is usually sold on the street as 20 stones (0.2 grams), 40 stones (0.4 grams) or 100 stones (1 gram).
- It is most common for a user of crack cocaine to purchase 1-2 crack cocaine stones at a time for personal use. Normally they would be 20 stones but could be 40 or 100 stones.

- Cocaine purchased for personal consumption on the street is normally packaged in tin foil or saran wrap (otherwise known as corner bags).

- In this case, there is no personal use drug paraphernalia present. Crack cocaine is highly addictive, and users commonly carry a crack pipe. It is uncommon for a crack user to not possess a crack pipe.

- Based on the amount and packaging, the 3 bags of crack cocaine containing 3.3 grams, 3.2 grams and 3.1 grams (Ex 5) are consistent with a dealer selling those to low level dealers as 3 '8-balls', who would then chip off pieces to be sold, typically into 20 or 40 stones (.2 or .4 grams respectively).

Powdered Cocaine

- A heavy user can consume 2-3 grams per day when on a binge, but this can not continue for an extended period without severe medical consequences.

- A typical user uses .5 to 1 gram per day.

- 1 gram will yield 8-12 lines of cocaine.

- A line of cocaine is the dosage that is separated by the user so that it can be snorted through the nasal passage.

- The 3.2 grams found in the cabinet in bedroom 2 was possessed for the purpose of trafficking based on the following:

- The amount is significant, worth between $256-$320 and beyond which a drug user would possess.

- The expert's report indicates the quantity is not consistent with personal use. However, in his evidence he does say the powdered cocaine could be for personal use.

- There is no drug paraphernalia found to suggest personal use, however minimal paraphernalia is needed to snort cocaine.

'Cut'

- Seized in this search is 47.8 grams of Phenacetin, (Ex 9-10) which is packaged inside a clear plastic Ziploc bag and then vacuum sealed which is labelled in the marker as "50 cut". This is a common cutting agent which extends the profit margin on the sale of cocaine.

- Users of cocaine do not have a bag of cut.

Cannabis Marihuana

- Cannabis marihuana is usually purchased by users in amounts ranging from 1 gram up to 10 grams. Some users purchase as much as one ounce at one time. Users tend to purchase smaller amounts of cannabis marihuana due to the THC losing its potency over time.

- 6 grams of cannabis marihuana found in the living room could be for personal use.

- A heavy user will consume 5-6 grams per day.

- A total of 379.6 grams of cannabis marihuana seized, which is divided in two vacuumed sealed bags (A=154.6 grams, B=225 grams) (Ex 2) is in the gym bag.

- Vacuum sealed bags are used to hide scent and keep cannabis marihuana fresh.

- The expert's opinion is that the cannabis marihuana is not yet packaged for resale. Inside the bag is a package of small clear Ziploc baggies, also known as dime bags (Ex 7). Drug dealers will normally sell dime bags for $10.00 that contain approximately 1 gram of cannabis marihuana.

- Sandwich bags (Ex 11) found in the cabinet in bedroom 2 are a cheap way of packaging drugs.

- This quantity and packaging are not consistent with personal use. They are consistent with possession for the purpose of trafficking and consistent with mid-level drug trafficking distribution.

Cash Currency

- Typically, 20's, 10's and 5's are the most common currency denominations found on street level dealers.

- When referring to the cash found on Anthony Roberts, the expert says he has not seen 100's and 50's to purchase street level drugs (Ex 1).

- Drug dealing is a cash business. It is common to locate sums of money within a residence or on their person as the drug dealer may not want to have any records on file showing these funds. When a street level dealer needs to restock their product, they need to make a purchase from their supplier. The cash transaction limits the possibility of the police being able to track the transaction.

Debt Sheets

- Debt sheets, also known as score sheets, are used by drug dealers to keep track of drug sales as well as who owes them money.

- Debt sheets can be stored on cell phones or can be done 'crudely' on scrap paper.

- The back of the envelope found in the kitchen cabinet (Ex 20 – photo 34) contains a list of names with a check mark and numbers beside their names. The expert's opinion is that this is a debt sheet.

- The expert is unable to decipher what the numbers or other markings mean, however it has been his experience that drug dealers will have, in some shape or form, a type of debt sheet that they understand and would be difficult for others to understand, such as the police, if they came across it.

Digital Scales

- Digital scales are 'tools of the trade' for weight dependent drug trafficking.

- The use of a digital scale is consistent with what would be used by a cocaine trafficker to weigh product intended for sale.
- A person who is in possession of cocaine for only personal use would have no need for a digital scale.
- Cocaine and marihuana traffickers use digital scales to ensure the product to be sold is weighed accurately for maximization of profit.
- A working digital scale (Ex 13) found in a cabinet in bedroom 2 containing traces of cocaine and cannabis marihuana confirms it has been used to weigh cocaine and cannabis marihuana.

Brass Knuckles

- 'Brass Knuckles' are not a typical weapon of the drug trade.
- They are found in an odd place, that is a bathroom cabinet.

Gaps

[40] Defence counsel note various gaps in the evidence related to occupancy of the residence and the possession of items in the residence.

- There is no surveillance of the residence at 8 Bashful Ave., Lake Echo.
- Police do not 'run the plates' on a motorcycle/dirt bike situate under a tarp in driveway.
- There is no swabbing for DNA on articles in bedroom 1 (hats, footwear) or bedroom 2 (motorcycle helmet).
- There is no dusting for fingerprints on items in bedroom 1 or 2.
- The white iPhone is not sent for analysis.

- An Off Highway MV Permit is in the cabinet of Bedroom 2 but it is unknown to whom it belongs or whether it relates to the motorcycle/dirt bike under the tarp.

Analysis

[41] The Crown's case is circumstantial on the issue of possession. Mr. Roberts is found in the residence when police come, armed with a search warrant. Mr. Williams arrives later. Police discover drugs, drug paraphernalia, brass knuckles and ammunition. Mr. Williams makes an utterance suggesting the 'stuff' is his.

Circumstantial Evidence

[42] *Villaroman*, *supra* at paras. 23-26 is instructive on how to assess the burden of proof in cases of circumstantial evidence. Cromwell, J. first distinguishes between direct and circumstantial evidence. Direct evidence is evidence, which if believed, *proves* the conclusion the evidence is intended to prove. Circumstantial evidence, on the other hand, is evidence that, if believed, s*upports* the conclusion the evidence is intended to prove [emphasis added].

[43] The evidence must be both consistent with guilt and inconsistent with any other rational conclusion. I must be persuaded beyond a reasonable doubt that the only rational inference is guilt. Caution must be exercised not to 'fill in the blanks'

or bridge gaps in the evidence to support the inference that the Crown invites me to draw.

[44] Justice Cromwell also considers the range of reasonable inferences that can be drawn from circumstantial evidence. Inferences consistent with innocence do not have to arise from proven facts, as this would wrongly put an obligation on the accused to prove facts. Simply stated, if there are any reasonable inferences other than guilt, "the Crown's evidence does not meet the standard of proof beyond a reasonable doubt": para. 35.

[45] As well, assessing other reasonable inferences inconsistent with guilt requires that the circumstantial evidence be viewed 'logically and in view of human experience'. This ensures that the theory is plausible and not merely speculative.

[46] And finally, a reasonable doubt need not rest upon the same sort of foundation of factual findings that is required to support a conviction. A reasonable doubt arises where an inadequate foundation has been laid: *R. v. Walker*, [2008] S.C.J. No. 34.

Possession

[47] What does Mr. Roberts know? What does Mr. Williams know? Do either have control over the drugs, drug paraphernalia, brass knuckles and ammunition?

[48] Are either in personal or constructive possession of the items? As stated earlier, to be in personal possession, the accused must know of the existence of the item and consents to having it in a place under their control. To be in constructive possession, the accused does not have physical custody of the item but knows of its existence and has it in a place for the use or benefit of himself or another.

Circumstantial Evidence Against Mr. Williams

[49] Mr. Williams arrives at the residence after police commence the search. He is asked to leave. He is standing in the kitchen, looking at the coffee table in the living room and states "The stuff's mine bro, not his". There is a bag stuffed into a compartment of the coffee table containing 6.1 grams of cannabis marihuana. A portion of the bag but not its contents is visible from a distance.

[50] Two pieces of unopened mail addressed to Antoinne Williams at 8 Bashful Ave., Lake Echo is in the upper kitchen cabinet among a stack of papers, including what police believe to be a debt sheet. There are no dates on the mail.

[51] It is unknown whether Mr. Williams lives at, or had at any time lived at, 8 Bashful Ave., Lake Echo. A copy of his 15 month old Probation Order has him listed as living at 35 Circassion Crescent, Cole Harbour, NS, as does his driver's license. It is not known when that license was issued.

[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.

[53] There are competing inferences with respect to whether Mr. Williams resides at 8 Bashful Ave. I am therefore not able to conclude that he does.

[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.

[58] I find Mr. Williams not guilty of possession of cannabis marihuana for the purpose of trafficking and not guilty of possession of cocaine for the purpose of trafficking both contrary to section 5(2) of the **Controlled Drugs and Substances Act**.

[59] I find Mr. Williams not guilty of possession of brass knuckles, a prohibited weapon contrary to section 91(2) of the **Criminal Code**. Similarly, I find him not guilty of breach of probation for failing to notify the Court or the Probation Officer

in advance of any change of address contrary to s. 733.1 (1)(a) of the **Criminal Code**.

[60] And additionally, I find Mr. Williams not guilty of breaching his Prohibition Order not to possess a prohibited weapon or ammunition, both contrary to section 117.01(1) of the **Criminal Code**.

Circumstantial Evidence Against Mr. Roberts

[61] Mr. Roberts is alone in the residence with his two young children when police armed with a warrant enter to search for drugs. Mr. Roberts, the target of the warrant, is seated on the couch in the living room with his children, watching television.

Three pieces of evidence show Mr. Roberts address as 8 Bashful Ave., Lake Echo. The first is a Recognizance dated September 26, 2017, varied December 20, 2017 (one month earlier) which has as a condition to 'Reside at 8 Bashful Ave., Lake Echo, NS unless permission to reside elsewhere is obtained from the Court. The second is a Personal Representation Form in the name of Tony Douglas Roberts, dated September 1, 2017 also containing a date stamp of October 19, 2017. The third is an undated envelope addressed to Uncle Tony, 8 Bashful Ave., Lake Echo.

[62] A fourth document, the RBC Mastercard statement for February/March 2017, located in bedroom 2 is addressed to Anthony Roberts at 56 Sheraton Pl, Halifax.

[63] The only rational inference to be drawn from these documents is that Anthony Roberts has been living at 8 Bashful Ave., Lake Echo since at least September 1, 2017, a period of over 4 and ½ months.

[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.

[67] The 6.1-gram bag of cannabis marihuana in the small compartment of the coffee table is in physical proximity to Mr. Roberts who is seated on the couch inches away from the coffee table. The bag itself can be seen from even a greater distance. It is inconceivable that Mr. Roberts does not see the bag or know what it is. It may not be his cannabis marihuana, but he allows it to be there. He is therefore in possession of cannabis marihuana. For the reasons outlined above in relation to Mr. Williams, I am not able to conclude it is possessed for the purpose of trafficking.

[68] The other drugs and drug paraphernalia located elsewhere in the residence are not in plain sight. Nor are they hidden away to avoid detection of drug trafficking, as is the case in *R. v. Deng, Yussuf and Chartier* 2017 SKPC 084 at para. 14. They are easily discoverable by opening an unlocked cabinet or gym bag.

[69] I am mindful that occupancy alone is generally not enough to establish knowledge: *R. v. Allison*, 2016 ONSC 3073.

[70] Neither Mr. Robert's fingerprints nor his DNA are found on any item associated with drug trafficking or on the brass knuckles. Mr. Roberts does not make any statements and exercises his right not to testify. No adverse inference is to be drawn in this regard. He is presumed innocent until proven guilty.

[71] But an RBC Mastercard statement addressed to Mr. Roberts, found somewhere in bedroom 2, possibly the night stand, connects him to the same bedroom where the drug trafficking items and the ammunition are found.

[72] The closed gym bag containing drugs and drug paraphernalia is on the floor at the foot of the bed in bedroom 2, which is readily accessible. The contents of the bag clearly establish possession for the purpose of trafficking, given the expert opinion. The powered cocaine, digital scale containing traces of both cocaine and cannabis marihuana and packaging in the cabinet of bedroom 2 are also suggestive of drug trafficking, although the powdered cocaine could be for personal use.

[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.

[74] In the expert's opinion debt sheets are used by drug dealers to keep track of drug sales as well as who owes them money. The back of the envelope found in a stack of papers in the upper kitchen cabinet contains a list of names with a check mark and numbers beside their names. The expert is unable to decipher what the numbers or other markings mean; however, he says that this not uncommon. Drug dealers will have a type of debt sheet that they understand but which will be difficult for others to understand, such as police, if they come across it.

[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**.

[76] As for the brass knuckles, they are found in a bathroom cabinet, on a shelf, next to what appear to be towels. Once the cabinet door is open, they are plainly visible. The only rational inference to be drawn is that Mr. Roberts both knows the brass knuckles are there and has control over them, either having placed them there himself or having allowed them to remain there. I therefore find him guilty of possession of a prohibited weapon contrary to section 91(2) of the **Criminal Code**.

[77] I also infer Mr. Robert's knowledge and control over the ammunition in the night stand, given the presence of his credit card statement and the drugs, located in the same room.

[78] Additionally, I find Mr. Roberts guilty of failing to comply with three conditions of his Recognizance dated September 26, 2017, varied December 20, 2017 by failing to keep the peace and be of good behaviour, by possessing a prohibited device and ammunition and by possessing a controlled substance as defined by the **Controlled Drugs and Substances Act**, all offences contrary to section 145(3) of the **Criminal Code**.

Pamela S. Williams, CJPC