

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Hobbs, 2008 NSSC 226

**Date:** 20080714

**Docket:** CR288101

**Registry:** Halifax

**Between:**

Her Majesty the Queen

Plaintiffs

and

Kevin Patrick Hobbs

Defendants

**Judge:** The Honourable Justice Felix A. Cacchione

**Heard:** May 5-9, 28-30 and June 11, 2008, in Halifax, Nova Scotia

**Written  
Decision:** July 14, 2008

**Counsel:** Glen Scheuer, for the Crown  
Brian F. Bailey, for Mr. Hobbs

**By the Court:**

[1] The accused Kevin Hobbs (Hobbs) stands charged:

**THAT** on or about the 8<sup>th</sup> day of April, 2005, at or near Halifax Regional Municipality, in the Province of Nova Scotia, he did unlawfully have in his possession property or proceeds of property to wit: \$32,000.00 in Canadian currency, of a value exceeding five thousand dollars knowing that all or part of the property was obtained or derived directly or indirectly from the commission in Canada of an offence punishable by indictment contrary to section 354(1) of the *Criminal Code*, thereby committing an offence under section 355(a) of the *Criminal Code*.

AND FURTHER THAT at the aforementioned place and time, he did transport or otherwise deal with property or proceeds of property to wit: \$32,000.00 in Canadian currency with intent to conceal or convert that property or those proceeds knowing or believing that all or part of the property or proceeds was obtained or derived directly or indirectly as a result of the commission in Canada of a designated offence contrary to section 462.31(1)(a) of the *Criminal Code*, thereby committing an offence contrary to section 462.31(2) of the *Criminal Code*.

[2] The evidence discloses the following:

[3] The property in question, \$32,000.00 in Canadian currency, was found wrapped in a heat sealed plastic package in Hobbs' suitcase just before he was to board a flight to Vancouver, B.C.

[4] On April 7, 2005 Hobbs purchased a return ticket for a flight leaving from Halifax to Vancouver on April 8, 2005. This flight was to leave Halifax on the evening of April 8 and arrive in Vancouver on April 9, 2005 at 12:17 a.m. The return flight to Halifax was scheduled to leave Vancouver at 10:40 p.m. on April 9, 2005.

[5] The police previously had Hobbs under surveillance and believed that he would be flying to Vancouver on April 9, 2005. When he was seen at the airport on April 8 checking in for a flight, the police removed his suitcase from the checked baggage area and placed it with 10 other randomly selected suitcases. Corporal Daigle, a member of the RCMP interdiction team at the airport, was called in with his police service dog Boris. The police canine was trained to detect the presence of narcotics but not money.

[6] The 11 bags which the police had set apart were inspected by the police dog. As a result of a positive indication of the presence of drugs in Hobbs' suitcase by the service dog, Hobbs was detained.

[7] Hobbs was asked by the police if he would allow them to open and search his suitcase without a warrant. He refused. Hobbs was told by the police that they would keep the suitcase until they could obtain a warrant to search it and that Hobbs was free to leave. Hobbs did so. Hobbs was told that he could claim the bag upon his return if nothing illegal was in the bag. He denied drugs being present in his luggage. Hobbs never returned to retrieve the bag.

[8] Hobbs retained counsel to be present when the suitcase was opened. Subsequently Hobbs' bag was searched in the presence of counsel retained by the accused. The contents of the bag were catalogued and no drugs were found in the suitcase. The suitcase contained clothing and money but no toiletry bag or drugs.

[9] Hobbs admitted that the suitcase and money was his and that he was, on April 8, 2005, in possession of that suitcase. The accused in his evidence acknowledged packing the money in his suitcase. His testified that he was going to gamble with it in British Columbia.

[10] A search of that suitcase revealed \$32,000.00 in Canadian currency wrapped in a heat sealed plastic bag. The currency was divided into seven separate parcels. Six of these parcels contained \$5,000.00 each while the seventh parcel had \$2,000.00. A large majority, 1463 out of 1582 total notes were \$20.00 bills. Some of the bundles contained notes of different denominations.

[11] The evidence discloses that there is nothing illegal in carrying cash on a domestic flight no matter what the amount.

[12] The suitcase was then examined on April 12, 2005 using an ion scanner. This machine is used to detect the presence of various drugs including amongst others hashish, marijuana and cocaine.

[13] The machine analyzes swabs which have been wiped on the object to be tested. Once the object is wiped, the swab is then placed in the machine and a reading is obtained if drugs are present. If no drugs are present the machine shows a reading of pass. If drugs are present the scanner notes the type of drug detected together with certain numerical readings. No evidence was presented to interpret the numerical readings obtained.

[14] The first scan was of a swab wiped on the outside of the suitcase. It tested positive for cocaine. A swab of the suitcase handle was also positive for cocaine but with a higher numerical reading than that obtained from the swab of the outside of the suitcase.

[15] A swab taken by wiping the clothing which surrounded the plastic sealed bag containing the money also tested positive for the presence of cocaine but with a higher numerical reading than the two previous swabs.

[16] Swabs of the outside of the package containing the money were taken but showed no reading. The ion scan of the first swab used on the outside of the money bag indicated a pass; that is no drugs were detected. This test was repeated twice with the same results.

[17] The inside of the same plastic bag, however, tested positive for the presence of cocaine. The readings obtained from the inside of the plastic bag were the highest of all the readings.

[18] On August 18, 2005 Hobbs was arrested in relation to the present charges.

[19] At the start of the trial a ruling was sought by counsel for Hobbs regarding the admissibility of bad character evidence which the Crown proposed to lead as part of its case-in-chief. In separate reasons this evidence was ruled admissible as being relevant to some other issue in the case beyond character or disposition. The probative value of the evidence was determined to outweigh its prejudicial effect and accordingly the evidence was admitted.

[20] The evidence ruled to be admissible was reduced to formal admissions made by the accused pursuant to s. 655 of the *Criminal Code* and filed as Exhibit 1. These admissions were that on July 28, 2005 Hobbs was arrested in a hotel in New York City. He was found in the hotel room with two other individuals; one, a resident of Vancouver, British Columbia and the other a resident of New York State. Also found in the hotel room was approximately 100 pounds of marijuana and \$178,000.00 U.S. currency together with \$2,305.00 Canadian. All of the property was seized and forfeited. On December 20, 2006 Hobbs pled guilty to a felony conviction for possession of marijuana relating to his arrest on July 28, 2005 and he received a sentence of one-year in jail with credit for remand time served.

[21] The accused was also charged with possession for the purpose of trafficking marijuana contrary to s. 5(2) of the *Controlled Drugs and Substances Act* as well as production of marijuana contrary to s. 7(1) of the *Controlled Drugs and Substances Act*. These offences were alleged to have occurred on August 5, 2005. These charges relate to a seizure of marijuana plants from a grow operation at 69 Chelton Woods Lane, Halifax, Nova Scotia. Lewis Noonan pled guilty to a charge contrary to s. 5(2) of the *Controlled Drugs and Substances Act* and received a conditional sentence. On August 5, 2005 the police entered 69 Chelton Woods Lane, Halifax, Nova Scotia, pursuant to a search warrant and seized a total of 203 plants. Of these, five plants which were set apart from the other plants were approximately 3-1/2 feet tall and the 198 other plants were not ready for harvest.

[22] Other admissions relating to the testimony of Corporal Duggan given at the preliminary inquiry were also made.

[23] On August 5, 2005 the police, acting under warrant, searched a residence located at 69 Chelton Woods Lane. This residence was a large upscale single family residence. The house was empty and sparsely furnished. Most of the rooms were empty save for a living room which had two couches and a bedroom which contained no furniture except for a box spring and mattress on the floor.

[24] In the basement of that residence the police found a marijuana grow operation containing 198 plants. The plants were growing under high intensity lights and were at the flowering stage. Another five plants referred to as mother plants were also found but in a different location in the basement. The mother plants are typically used for cloning and according to Constable Slaunwhite, who was qualified to give opinion evidence in relation to among other things the production of marijuana, their presence indicates that there had been some growing prior to the 198 plant grow which the police seized on August 5, 2005. I accept the evidence of Constable Slaunwhite and where his evidence differs from that of Corporal Duggan's given at the preliminary inquiry I accept Constable Slaunwhite's evidence over that of Corporal Duggan.

[25] This marijuana grow operation was described by Constable Slaunwhite as a semi sophisticated grow operation. The basement grow room not only had high intensity grow lights but also a carbon filtration system used to remove the odour of marijuana from the air. Also found were water pumps used to water the plants by drawing water from bins which contained water and fertilizer. Instructions regarding the fertilization of plants were also found attached to one of the basement walls. A digital scale was also found in the basement. Present as well was a CO<sub>2</sub> canister which according to Constable Slaunwhite is used to inject CO<sub>2</sub> gas into the water or the soil in order to increase plant production.

[26] Constable Slaunwhite estimated that the plants seized were four to six weeks away from harvest and had been planted approximately two months before the search date.

[27] The search of this residence also uncovered empty prescription pill bottles in the name of the accused as well as insurance papers in his name relating to the insurance coverage for the residence at 69 Chelton Woods Lane. Also found was an unsigned letter from Hobbs addressed to the Nova Scotia Gaming Corporation dated April 25, 2005.

[28] On August 16, 2005 the police executed a search warrant for a residence located at 87 Cutter Drive where Hobbs, at trial, indicated he was at that time residing with his girlfriend and her mother. A number of items were seized in a room where some of Hobbs' belongings were also present. These seized items were entered into evidence at trial and included an unsigned photocopy of a lease (Exhibit 19) in the accused's

name for 69 Chelton Woods Lane together with some handwritten lists (Exhibits 24 and 25). Exhibits 24 and 25 were found among other things in a garbage bag in the residence and Exhibit 19 was found under some sheets in a room which contained items belonging to Hobbs.

[29] The lease (Exhibit 19) shows the rent for the house at 69 Chelton Woods Lane was \$2,000.0 per month and that the tenancy was to commence on February 1, 2005.

[30] Exhibit 24 was described by Constable Slaunwhite as a list of paraphernalia required for a marijuana grow operation. Exhibit 25 was referred to as a score sheet although that exhibit did not contain any money symbols, just numbers.

[31] The search of 87 Cutter Drive also uncovered receipts from a cable company, a pet store and a clothing store. All of these were entered as exhibits and bore Hobbs' name and address which was shown on these exhibits as 69 Chelton Woods Lane.

[32] No analysis was conducted on Exhibits 24 and 25 to determine who wrote these notes.

[33] Hobbs was identified by Detective Keltie Jones, who was doing surveillance on the residence at 69 Chelton Woods Lane, as the person who Detective Jones saw on two occasions entering and exiting that house in the month of March 2005. A second officer on surveillance detail, Mr. Seebold, also testified that he saw Hobbs entering and leaving the same house in the month of July 2005.

[34] Jeffrey Rafuse, an employee of the Canada Revenue Agency, testified that as of July 7, 2005 Hobbs had not filed income tax returns for the years 1998, 2002, 2003 and 2004. These records also show that Hobbs' highest earnings in any one year was approximately \$35,000.00 which occurred in 2000.

[35] Mr. Rafuse also testified that winnings from a casino or lottery are not considered as income for tax purposes since earnings from games of chance are not considered as taxable income. He stated, however, that if a person earns their income from gambling as a professional gambler and receives things such as promotion fees then the income must be reported.

[36] Mr. Edward Rodonets, a retired member of the RCMP was qualified to give opinion evidence regarding proceeds of crime, money laundering and the identification and tracing of money. Mr. Rodonets' work experience included 10 years with the Integrated Proceeds of Crime section of the RCMP which saw him investigate over 100 files where cash was seized.

[37] Mr. Rodonets' opinion based on his experience, training, the documents he reviewed regarding the seizure of April 8, 2005 together with the testimony presented in

court was that the \$32,000.00 seized from Hobbs' suitcase was derived directly or indirectly from trafficking in drugs.

[38] Mr. Rodonets testified that the money seized from Hobbs would not have been obtained from any financial institution or casino. He stated that financial institutions package their currency in 100 note bundles of the same denomination. These bundles are wrapped with paper bands which are dated, stamped and initialed by bank staff. Financial institutions do not use staples or elastics to hold the notes together because these things damage the notes. As indicated previously, the money found in Hobbs' suitcase was in six bundles of \$5,000.00 each and one bundle of \$2,000.00. Each bundle was held together by elastic bands. Some of the bundles of money contained a mix of different denominational notes held together by elastic bands.

[39] The suspect currency also contained notes which were damaged, had handwriting on them or were otherwise defaced. According to Mr. Rodonets, had this money come from a financial institution or casino the damaged or defaced notes would have been removed from circulation.

[40] Mr. Rodonets testified as to the obvious, which is that traveling with \$32,000.00 cash in one's suitcase is a risky proposition because of the possibility of theft or the loss of the luggage.

[41] Mr. Rodonets referred to the late booking of flights with a quick return flight as a method used by drug traffickers to avoid police detection.

[42] Mr. Rodonets also testified that in early 2005 a kilogram of cocaine was selling in Vancouver for approximately \$30,000.00.

[43] His evidence was that approximately 75 percent of all currency in circulation in Canada has some degree of contamination from coming into contact with drugs. Mr. Rodonets acknowledged the possibility that the currency in the bag was contaminated with cocaine but stated that it was only to the level of the normal contamination found on currency in circulation. No evidence was adduced to indicate either what the normal level of contamination found on currency in circulation is or what level of contamination was on the currency possessed by Hobbs.

[44] The fact that traces of cocaine were found on the outside and the handle of Hobbs' suitcase as well as on the clothing in the suitcase and on the inside of the bag containing the money but not on the outside of the currency bag was according to Mr. Rodonets indicative of the outside of the bag having been washed. According to Mr. Rodonets washing is done in an effort to remove fingerprints and drug residue from the surface of the item.

[45] The defence called evidence from three witnesses including Mr. Hobbs.

[46] Mr. Brent Cowan testified that he has known the accused since 2000 through playing poker at the casino. He described Hobbs as an aggressive and skilled player who wins over 50 percent of the hands he plays. Mr. Hobbs testified that he does not declare his winnings at the casino because he is not a professional player. He described Hobbs as someone who generally plays in no limit games. Mr. Cowan stated that he generally plays at limit tables whereas Hobbs generally plays at no limit tables, although Mr. Cowan had on some occasions played at no limit tables with Hobbs.

[47] Sharon Hobbs, the accused's mother, testified that during the period from 2000 - 2004 she lived and worked in Saudi Arabia. She and the accused had a joint bank account into which she deposited approximately \$50,000.00 over that period. The money was to be used by Hobbs and his brother so that they could have money to live on. She also described Hobbs as a very good poker player.

[48] Kevin Hobbs testified and denied the allegations against him. He denied having any involvement whatsoever with either cocaine or marijuana. He acknowledged that the money found in his suitcase was his but denied that it was derived from any illegal source in particular from drug trafficking. His evidence was that the \$32,000.00 found in his suitcase was to be used for a one-day, or perhaps longer if he won, gambling junket to B.C.

[49] The money seized, according to Hobbs came from his poker roll which he described as a form of capitalization amassed from his poker winnings. In his direct evidence he estimated the value of his poker roll, which took a few years to build, to be approximately \$100,000.00 in April 2005. Hobbs testified that the roll was built by putting aside any amount won on a given day over and above what he had started with.

[50] Hobbs admitted that he had signed a one-year lease (Exhibit 19) for the residence at 69 Chelton Woods Lane with a monthly rent of \$2,000.00. The term of the lease, according to Hobbs, was to begin on January 1, 2005. His evidence-in-chief was that he moved into that residence in early January 2005, however a review of Exhibit 19, the lease, shows the tenancy was to begin February 1, 2005. Hobbs testified that he moved out of that residence in May 2005 because his girlfriend's mother had purchased a new home and he and his girlfriend moved in with her to help with the mortgage payments. His evidence was that an acquaintance of his, Lewis Noonan, agreed to take over his lease and that Noonan moved into that residence in June 2005.

[51] Hobbs testified that the lease and various utilities were kept in his name even though those were being paid by Noonan. Hobbs' testimony was that Noonan was to deposit his rent payment into a TD Bank account which was used solely for the purpose of paying the rent. Although Hobbs introduced bank records from his Scotiabank account no records relating to the TD Bank account were produced.

[52] Hobbs' evidence was that he had little contact with Noonan after Noonan moved into the house. Hobbs testified that he may have gone to the house once or twice in the

month of June just to say hello to Noonan but that he, on those visits, never went any further than the foyer or livingroom. He denied ever going to the basement or seeing a marijuana grow operation there. Hobbs denied any involvement with or knowledge of the grow operation found in the basement of 69 Chelton Woods Lane.

[53] Hobbs admitted that the empty prescription bottles bearing his name found at the Chelton Woods residence and shown in Exhibit 14 photographs 41 - 43 were his. His evidence was that he might have left them there when he moved out. Exhibit 14, photograph 41 shows one of the pill bottles with the date on the label of March 3, 2005.

[54] Hobbs denied knowing anything about Exhibits 24 and 25 which were described by Constable Slaunwhite as a list of paraphernalia needed to set up a grow operation and a score sheet. Hobbs denied that the handwriting on those exhibits was his or that he had ever seen those before they were introduced into evidence. He commented that any paperwork he took from 69 Chelton Woods Lane when he moved to his girlfriend's house would have been kept in a plastic filing cabinet and organized because his girlfriend was at the time, in my words, a meticulous organizer.

[55] Regarding Exhibit 18, a receipt dated July 11, 2005 from Pets Unlimited made out in Hobbs' name and bearing the Chelton Woods address, Hobbs testified the merchant probably did not change his address on their computer and that was the reason why the Chelton Woods address appeared on the handwritten receipt.

[56] Hobbs stated that Exhibit 16, a receipt from a hotel in New York which was found in a garbage bag at 87 Cutter Drive, would have been filed or shredded by his girlfriend and not been in a garbage bag.

[57] The accused was clear in his direct testimony that his suitcase, Exhibit 4, was purchased two days before his departure and that he had no carry-on luggage for this trip. He testified it was as the result of a phone call from a friend in B.C. advising him of a big poker tournament at the River Rock Casino that he decided to fly to B.C. On April 7, 2005 he booked a return ticket to Vancouver. As stated, the flight was scheduled to depart Halifax at 7:55 p.m. on April 8, 2005 arriving in Vancouver at 12:17 a.m. on April 9, 2005. Hobbs' return flight to Halifax was to leave Vancouver 10:40 p.m. on April 9. According to his testimony, the reason he booked a flight returning less than 24 hours after his arrival in B.C. was to appease his girlfriend. He also testified that booking flights at the last minute often results in cheaper fares.

[58] Hobbs' evidence was that \$2,000.00 of the \$32,000.00 he was taking to B.C. was to buy into the tournament at the River Rock Casino. The rest of that money was to be used for gambling. He testified that the reason the \$30,000.00 was bundled in six stacks of \$5,000.00 each was because presenting a stack of \$5,000.00 made up of mostly \$20.00 notes is a poker tactic used to intimidate other players.

[59] He indicated he did not bring a toiletry bag in his suitcase because the casino at River Rock would provide him with a room and all the necessary toiletries would be in that room.

[60] Hobbs' evidence was that he would net approximately \$4,000.00 - \$5,000.00 per week at Casino Nova Scotia if he played four days per week. He introduced his bank records from Scotiabank, Exhibit 31, and testified that the large deposits found there were from his poker roll.

[61] Hobbs described a practice known as staking where a poker player with limited playing skills but with lots of money will stake a better player to play for him. If the player wins he keeps half of the winnings. If the player does not win he has lost nothing because it is not his money that he was gambling with.

[62] Hobbs went on to describe how a friend, Eric Cheung, had come into a lot of money and wanted to stake Hobbs to play poker for him. His evidence was that Cheung wanted him to go to Atlantic City, N.J. Hobbs testified that he went to New York City to meet Cheung. His direct evidence was that he flew to New York, took a taxi to Queens where he met Cheung and a friend of Cheung's named Jack at a restaurant where they were both dining. The group left the restaurant and went on to party that evening. Hobbs testified that because he got too drunk he decided to stay in Eric Cheung's hotel room. The next thing he recalled was the New York police knocking on the door and arresting them. He testified that he was unaware of the presence of 100 pounds of marijuana and \$178,000.00 U.S. in the room. Hobbs' evidence on direct examination left the distinct impression that his arrest in New York occurred the morning after his arrival there.

[63] Hobbs stated that he was kept in custody until his release a few weeks later and that he returned to New York City for several court appearances. During one of these appearances he was re-arrested and charged with harassing a witness. He was returned to custody and testified that after spending some seven months in custody he, in my words, was made an offer which he could not refuse. He then pled guilty to a lesser offence and was released from custody shortly thereafter. His stated reason for pleading guilty to an offence, which according to his evidence he was not involved in or guilty of, was to get out of the horrible conditions of the jail where he was being held on remand.

## **POSITION OF THE PARTIES**

[64] The defence position is that the Court should believe the evidence of the accused and acquit him. It was argued that, even if the Court disbelieves the accused, the whole of the evidence is insufficient to enter a conviction. This argument is in essence that the Court must apply the test set out by the Supreme Court of Canada in *R. v. W.(D.)*, 1991, 63 C.C.C. (3d) 397 (S.C.C.).

[65] Counsel for Hobbs also stressed the limited use that could be made of the evidence of bad character led by the prosecution. As noted in the reasons given for allowing this evidence to be led, the evidence of bad character cannot be used to infer that the accused is the sort of person likely to commit the offences charged. In other words, such evidence cannot be used to infer propensity: *The Queen v. Morris* (1983), 7 C.C.C. (3d) 97 (S.C.C.); *The Queen v. B(F)* (1993), 79 C.C.C. (3d) 112 (S.C.C.); *R. v. G.(S.G.)* (1997), 116 C.C.C. (3d) 193 (S.C.C.).

[66] Because this case is a circumstantial case the defence also urges the Court not to engage in conjecture or speculation when drawing inferences. The process of drawing inferences is well known. It was aptly described by Doherty, J.A. in *R. v. Morrissey* (1995), 97 C.C.C. (3d) 193 (Ont.C.A.) at p.209 as follows:

A trier of fact may draw factual inferences from the evidence. The inferences must, however, be ones which can be reasonably and logically drawn from fact or a group of facts established by the evidence. An inference which does not flow logically and reasonably from established facts cannot be made and is condemned as conjecture and speculation...

[67] In *R. v. Katwaru* (2001), 153 C.C.C. (3d) 433 (Ont. C.A.) Moldaver J.A. stated at p.444:

...In order to infer a fact from established facts, all that is required is that the inference be reasonable and logical.

[68] These cases and others referred to in argument all make the point that drawing inferences cannot be based on conjecture or speculation but rather that inferences can only be drawn from proven facts.

[69] The Crown position is that the inferences it wishes the Court to draw are reasonable ones which are based on proven facts. It argues that the accused's evidence was vague and that he adapted his testimony to ever-changing events. The Crown also argues that there is only one issue to be decided, that is whether the property was obtained or derived from the commission of an offence. The Crown states that the other elements of the offences charged such as identity, time and place and possession have been proven beyond a reasonable doubt.

## **ANALYSIS**

[70] The basic tenet of any criminal trial is that the accused is presumed innocent. The onus rests with the Crown to prove the guilt of the accused beyond a reasonable

doubt. The onus never shifts to the accused. There is no burden on the accused to prove or disprove anything. The Court can accept all, some or none of a witness' evidence.

[71] The proven facts are that on April 7, 2005 Hobbs purchased a return airline ticket to Vancouver. This ticket showed that Hobbs was to leave Halifax on April 8 and return to Halifax less than 24 hours after his arrival in Vancouver. Hobbs had \$32,000.00 in his suitcase which was bundled into six parcels containing \$5,000.00 each and one parcel containing \$2,000.00. Most of the \$32,000.00 was made up of \$20.00 bills.

[72] The outside of the suitcase, its handle, the clothing inside the suitcase and the inside of the plastic bag containing the money all had traces of cocaine on them. The outside of the money bag had no traces of cocaine. While it is possible, although not likely, that the handle, the outside of the suitcase and the inside of the money bag could have been contaminated by other persons handling the suitcase or from contaminated money in the bag, the presence of cocaine on the accused's clothing in the suitcase belies his evidence that he had nothing to do with cocaine.

[73] The accused at the relevant time had no employment or visible means of income other than his stated evidence that he was a poker player. In the years between 2000 and 2004 the accused received approximately \$50,000.00 from his mother which was deposited into a joint bank account held by the accused and his mother. This money, according to Mrs. Hobbs, was given to the accused and his brother, who had employment, because they needed a hand financially. It is difficult to reconcile this evidence with Hobbs' evidence that he earned \$4,000.00 to \$5,000.00 per week playing poker.

[74] The accused rented a house which cost \$2,000.00 per month. Heat, power and water were not included in the rent. The accused leased a Cadillac vehicle at a cost of \$1,000.00 per month.

[75] The residence leased by the accused was, in August 2005, found to contain a marijuana grow operation. The accused was seen by surveillance officers at the residence in July 2005.

[76] The accused often took flights to Vancouver and returned to Halifax shortly after his arrival in Vancouver.

[77] Some three months after the \$32,000.00 was found in the accused's luggage he and two other men were arrested in a hotel room in New York City where 100 pounds of marijuana and \$178,000.00 U.S. were found. The accused pled guilty to felony possession of marijuana and received a period of incarceration.

[78] On August 16, 2005 the police seized from 87 Cutter Drive, a residence where the accused indicated he was then living with his girlfriend and her mother, various

documents showing the accused's address as being 69 Chelton Woods Lane, the location of the marijuana grow operation discovered on August 5, 2005. Also located at 87 Cutter Drive was a copy of the lease for the residence at 69 Chelton Woods Lane. This lease was found under some sheets in a room which had items belonging to the accused in it. A list of items (Exhibit 24) consistent with the required paraphernalia for a marijuana grow operation was also found in a garbage bag at 87 Cutter Drive.

[79] For the following reasons I do not believe the evidence of the accused, nor does his testimony leave me in a state of reasonable doubt.

[80] Hobbs' evidence given in direct examination did not withstand the scrutiny of cross-examination. To borrow from the poker parlance used so freely by Hobbs in his direct testimony, his evidence was a flop. According to Hobbs it was simply a confluence of different circumstances, not under his control, that led him to be charged with the present offences and other offences both here and in New York State.

[81] When asked why Exhibit 19, an unsigned copy of the lease for 69 Chelton Woods Lane, was found under sheets in a closet of a home ostensibly occupied by Hobbs his reply was that his lease would have been filed and not hidden under sheets. He went on to state "maybe you guys (the police and prosecutor) had this printed up for this" (the trial) implying that the prosecution and police had fabricated some of the evidence presented.

[82] Hobbs stated that he had set up a TD Bank account solely for the purpose of paying the rent at 69 Chelton Woods Lane and that Lewis Noonan, the alleged sub-tenant, would deposit the rent money into that account. Hobbs did not produce bank statements for the TD account and offered no reason why, despite having accessed his Scotiabank account in order to present in his defence evidence of his banking history, he would not have had access to the TD bank account statements. Hobbs also testified that his girlfriend was a meticulous organizer who kept documents in a plastic filing cabinet.

[83] When asked why Exhibit 18, a handwritten receipt from Pets Unlimited signed by Hobbs and dated July 11, 2005, showed his address as being 69 Chelton Woods Lane he stated that it was because the merchant had not changed his address on the store computer. This receipt, Exhibit 18, shows that over \$1,300.00 in cash was paid for the purchase of a dog.

[84] Hobbs was referred to other exhibits which contained his name and the Chelton Woods Lane address such as the cable bill (Exhibit 17) and a power bill (Exhibit 21). His evidence was that, although he no longer resided at that location, he had left everything in his name and the sub-tenant would be the one paying those bills. If Noonan failed to pay, Hobbs would then cancel the service. In direct examination Hobbs referred to leaving the power bill in his name because Noonan owed the power company some money and could not get the power hooked-up in his name unless he

paid off those arrears. No reason was given for leaving the other accounts in his name other than the one previously mentioned.

[85] His evidence was that insurance papers, in his name, for insurance coverage on the 69 Chelton Woods home address were left at that residence because they contained important telephone numbers which Noonan might require in the event that the insurer needed to be contacted.

[86] Hobbs denied that Exhibits 24 and 25 were his and could offer no explanation why these had been found at 87 Cutter Drive a residence where he was allegedly living with his girlfriend and her mother.

[87] Hobbs' testimony that he packed the money in a heat sealed plastic bag because it was flopping around in his suitcase was simply not credible, as was his apparent lack of concern about his luggage, which contained a substantial sum of money, being lost or stolen.

[88] In cross-examination he referred to his poker roll being valued at approximately \$70,000.00 whereas in his direct evidence he testified that it was valued at \$100,000.00.

[89] In cross-examination he stated that this poker roll was kept in a box in a drawer at his residence so that it would be available on short notice should the need arise, but he also stated in his direct examination that some of the large deposits shown on Exhibit 31, his Scotiabank statements, came from his poker roll. The impression Hobbs gave in his direct evidence was that the poker roll was accumulated from his winnings and kept apart from his other funds not that it was mingled with his other funds and used to pay his living expenses.

[90] On direct examination Hobbs' evidence was that he did not have a carry-on bag for his flight to Vancouver in April 2005. However, in cross-examination when asked why he had the money in his checked luggage he testified that his carry-on was full and this was the reason why he did not carry the money with him onboard the aircraft. When it was brought to his attention that he had said something different on direct examination he scampered to explain how this carry-on, which in his direct evidence he denied having, was very small much like a wallet. He stated in cross-examination that he had misused the term carry-on when instead he meant a satchel. When his inconsistent testimony was brought to his attention Hobbs blushed profusely.

[91] This Court is aware that evidence of demeanor is highly suspect and easily misinterpreted: *R. v. Levert* (2001), 159 C.C.C. (3d) 71 (Ont. C.A.); *R. v. Baltrusaitis* (2002), 162 C.C.C. (3d) 539 (Ont. C.A.); *R. v. Bennett* (2003), 179 C.C.C. (3d) 244 (Ont. C.A.), however Hobbs' reaction when caught in a blatant lie was not only physically noticeable but also very telling about his credibility.

[92] In direct examination Hobbs testified very clearly that the buy-in for the River Rock Casino tournament which he was to attend in April 2005 was \$2,000.00 and this was the reason why the \$32,000.00 seized from his suitcase had one bundle of \$2,000.00 and the other bundles, which were to be used for gambling, were all \$5,000.00 each. In cross-examination he stated that the buy-in for the River Rock Casino tournament was not known to him but that he had allotted \$2,000.00 for the buy-in.

[93] In his direct evidence Hobbs' stated that he went to New York City in July 2005 because his friend Eric Cheung had come into a lot of money and would stake him to play poker. In cross-examination his evidence was that he went to New York to party and do a little gambling.

[94] Hobbs' evidence on direct examination left the distinct impression that his arrest in New York occurred the day after his arrival there. In cross-examination however his evidence was that he arrived in New York some eight or nine days prior to his arrest. As well Hobbs' testimony in direct made no reference to Rick Chow being in New York with him, however in cross-examination he referred to both Eric Cheung and Rick Chow being with him in New York.

[95] In cross-examination Hobbs testified that he arrived at the hotel where he was arrested the afternoon of the day of his arrest. His evidence on direct examination was that after his arrival in New York he, Eric Cheung and a person named Jack partied and Hobbs got very drunk so he accepted Cheung's offer to stay in Cheung's hotel room. The impression left by his direct evidence was that the arrest came within hours of his arrival in New York not some eight or nine days after his arrival.

[96] Hobbs was not a credible witness. His evidence was inconsistent with itself and with the uncontroverted facts. It appeared at times that he was making up his evidence as he was going along. His attempts at explaining inconsistencies between his direct and cross-examination evidence were feeble.

[97] Hobbs spoke at great lengths and in great detail about poker however he was evasive and inconsistent when addressing matters of substance. One example of this evasiveness comes from his testimony-in-chief dealing with the plastic bag which contained the money seized. When asked by his counsel if he could explain how the inside of that bag tested positive for cocaine Hobbs went on to talk at length about why he put the money in a heat sealed bag but did not answer the question that was posed.

[98] Not only did Hobbs' evidence not withstand the scrutiny of cross-examination but his credibility was seriously damaged by the attempts he made to mislead the Court through his evidence-in-chief.

[99] In his evidence-in-chief Hobbs wanted the Court to accept as fact the following: that he had been advised of a big poker tournament at River Rock Casino which would

attract big cash game players; that he is a big cash game player and that is why he traveled to Vancouver, B.C. with cash in his suitcase; that the buy-in for the tournament was \$2,000.00; that he brought no toiletry bag with him because the complimentary hotel rooms given to or arranged for players in the tournament would have all of the toiletry items he needed; that he booked a one-day return flight from Halifax to Vancouver to appease his girlfriend when his real intent was to stay longer depending on how he fared in the tournament and cash games; that he had no carry-on luggage for his flight and that the money in his suitcase was in a heat sealed bag to prevent it from fumbling around in his suitcase.

[100] His cross-examination however saw him move away from having one bundle of money worth \$2,000.00 because he knew that the buy-in for the tournament at River Rock was \$2,000.00 to allotting \$2,000.00 for the buy-in because he really did not know what the buy-in for the tournament would be.

[101] The rebuttal evidence of Howard Blank, Senior Vice-President of the Great Canadian Gaming Corporation which owns the River Rock Casino is accepted as truthful and credible. This evidence clearly shows that Hobbs was not truthful about his stated reason for going to Vancouver with \$32,000.00 in his possession.

[102] Mr. Blank testified that the River Rock Casino did not have any big poker tournaments in April 2005. He did testify that the casino held mini tournaments in April 2005 but that the buy-in for those tournaments was \$30.00, \$50.00 or \$100.00, not \$2,000.00.

[103] Mr. Blank's evidence concerning the casino's policy regarding complimentary rooms for tournament players at their hotel, which had not yet opened in April 2005, or at any other hotels confirmed that Hobbs was untruthful in his evidence and that he attempted to deceive the Court.

[104] On the whole Hobbs' evidence was not truthful or convincing. It is not believed or accepted. The evidence of the accused does not leave me in a state of reasonable doubt.

[105] I accept the evidence of the Crown witnesses and it together with the inferences drawn from the proven facts, coupled with Hobbs' attempts to mislead the Court convinced me beyond a reasonable doubt that the accused is guilty as charged. Accordingly a conviction will be entered on both counts on this indictment.

---

**Cacchione, J.**