IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Hobbs, 2008 NSSC 206

Date: 20080505
Docket: CR 288101
Registry: Halifax

Between:

Her Majesty the Queen

and

Kevin Patrick Hobbs

Judge:	The Honourable Justice Felix A. Cacchione
Heard:	May 5, 2008, in Halifax, Nova Scotia
Written Decision:	July 4, 2008
Counsel:	Glen Scheuer, for the Crown Brian F. Bailey, for the Defendant

By the Court:

[1] In the present case the Crown wishes to introduce as part of its case-in-chief evidence that in July 2005 the present accused, Mr. Hobbs, was arrested in a hotel room in New York State. Found in that room was 100 pounds of marijuana, $178,000.00 U.S. currency and $2,305.00 Canadian currency.

[2] On December 20, 2006 Mr. Hobbs pled guilty to a felony possession of marijuana with respect to the seizure conducted on July 28, 2005. He received a sentence of one year in jail with credit for the time which he spent on remand. As well, on August 5, 2005 Mr. Hobbs was charged, and is presently awaiting trial, on charges of possession for the purpose of trafficking and production of marijuana. That second charge relates to a seizure from a grow operation where some 200 odd plants were found. Five of which have been described as over three feet tall and the rest not ready for harvesting.

[3] The Crown's theory, as I took it from our pre-trial conference in respect of the charges presently before this Court, is that Mr. Hobbs possessed funds in his suitcase and that the funds found there were generated through the sale of illicit drugs. The Crown's argument is that the accused's only source of income during the relevant time period was through the sale of illicit drugs.

[4] The defence position is that the evidence is evidence of bad character whose sole purpose is to show propensity and therefore inadmissible.

[5] The Crown has relied on two cases; *The Queen and Clymore* (1992), 74 C.C.C. (3d) 217, B.C.S.C. and *The Queen v. Cazzetta* (1993), 173 C.C.C. (3d) 144 Quebec Court of Appeal.

[6] The law regarding evidence of bad character is clear. The basic rule of evidence is that all relevant evidence is admissible unless it is barred by a specific exclusionary rule. In the *Queen v. Morris* (1983), 7 C.C.C. (3d) 97 Justice Lamer stated at p.106:

> ...evidence adduced *solely* for the purpose of proving disposition is itself inadmissible,..

He did however qualify that comment by stating at pp.106 and 107

> This is not to say that evidence which is relevant to a given issue in a case will of necessity be excluded merely because it also tends to prove disposition. Such evidence will be admitted subject to the judge weighing its probative value to that issue (e.g., identity) also weighing its prejudicial effect and then determining its admissibility by measuring one to the other.

[7] Simply put evidence tending to show bad character or criminal disposition of an accused is admissible if (1) it is relevant to some other issue beyond character or disposition and that (2) its probative value outweighs its prejudicial effect.

[8] These principles have been reinforced in numerous and subsequent cases such as *The Queen v. B(FF)* (1993), 79 C.C.C. (3d) 112 S.C.C. and *R. v. G(SG)* (1997) 116 C.C.C. (3d) 193 S.C.C.

[9] Other exceptions to the introduction of bad character evidence are for example if the accused puts his character in issue, that is a decision in *R. v. McNamara* (No. 1) (1981), 56 C.C.C. (2d) 193 (Ont. C.A.) or the evidence is adduced incidentally to a proper cross-examination *Re Lucas v. The Queen*, [1963] 1 C.C.C. 1 (S.C.C.) but that is not the situation we have in the present case.

[10] Here the proposed evidence, while being evidence of propensity, is in my view relevant to the issue of the accused's knowledge of the source of the funds found in his suitcase. It is also relevant to establish the criminal origin of the property found. The evidence is directly relevant to the Crown's theory of the case.

[11] After reviewing the comments of counsel both orally and in written form, I am satisfied that the probative value of this evidence is great and that its value as such outweighs its prejudicial effect. It is of some importance that this case is being tried without a jury. The fact that this evidence is admissible as going to an issue in this case does not mean that it can be used to determine the guilt of Mr. Hobbs simply on the basis that he might be the type of person to commit such an offence. Since I have mentioned the re-election, it is common place I would say for a judge sitting alone to hear evidence, and the best example is of a confession given by an accused to a particular crime, and then to rule that the confession was inadmissible because it was either coerced or some other reason, a *Charter* breach etc., and then disabuse his or her mind of the contents of the excluded evidence and

go on to deal with the merits of the case excluding consideration of any evidence which was proffered but rejected.

[12] So the bottom line gentlemen is the evidence with respect to the occurrences in the United States and in Canada on July 28, 2005 and August 5, 2005 are admissible as its probative value outweighs any prejudice to the accused.

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Cacchione, J.