

Citation: *R. v. Harpe*, 2006 YKTC 64

Date: 20060616
Docket: 05-00603
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

R e g i n a

v.

Jeremy Scott Harpe

Appearances:
Noel Sinclair
James Van Wart

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] Mr. Harpe is charged with assaulting his wife, Cassandra Harpe, on January 7, 2006, an offence contrary to s. 266 of the *Criminal Code*. As is often the case in allegations of domestic violence, there were no witnesses and now, five months later, the court is faced with differing versions of the event from the complainant and the accused.

The Evidence of Cassandra Harpe

[2] Mrs. Harpe is 23 years old. She has been married to Jeremy Harpe for almost two years and they lived together for one year prior to their marriage. They have one child together, Jocelyn, who is one year old. Mrs. Harpe has another child, Kaylan, who is two-and-a-half years old and lives with her.

[3] Mrs. Harpe testified that on the evening of January 7th, around 8:30 p.m., she was getting ready to visit a friend. She was putting some of Jocelyn's things

together as she was planning on taking her along. She had been arguing with Mr. Harpe earlier, something Mr. Harpe described as “pushing each other’s buttons”. She was upset with him.

[4] Mr. Harpe was holding Jocelyn when she asked him for the keys to the car. In response, he raised his hand whereupon she said, “Don’t you dare hit me.” She said he struck three or four blows to her face, and when she ducked and covered her face, he hit her two or three times on her back. She described blows and injuries to her left and right cheek and to the bridge of her nose. She said the blows left “angry red marks”. While hitting her with his left hand, she said that Mr. Harpe continued to hold Jocelyn with his right arm. She also described Mr. Harpe as placing her in a “sort of headlock” when she covered her head and face and ducked to evade his blows. She later noticed a red welt on her neck that she believed was caused by her necklace when he had her in the headlock. She was not able to get away from Mr. Harpe because she was backed up at the top of the stairs.

[5] Immediately after this alleged assault, Mr. Harpe left the house and took Jocelyn with him to his parents who live close by. Mrs. Harpe called the police who attended within five or ten minutes.

The Evidence of Jeremy Harpe

[6] Mr. Harpe testified that Mrs. Harpe had spent most of the day in bed and that she was upset that her mother had decided not to move to Whitehorse. They had been arguing or “bickering” at each other all day. He acknowledged that the arguing came to a head when she asked for the car keys. He said he refused to give her the keys because she was on medication, and that she had friends with cars that she could ask to transport her. He denied raising his hand and striking her. Instead, he said that Mrs. Harpe threw a punch at him that could have struck Jocelyn, because she started crying. He said he did not feel the blow. He said he placed Mrs. Harpe in a headlock for five or six seconds to restrain her from hitting him or possibly Jocelyn.

The Evidence of Constable Manchur

[7] Constable Manchur responded to Mrs. Harpe's call to the police at 8:54 p.m. He described her as visibly upset and red-faced, consistent with recently crying, and agitated. He noticed a red mark on her neck but no other injuries. Because he did not observe any marks on her face or other injuries, he doubted what she told him and wanted to talk to Mr. Harpe. He spoke to him at his parents' house.

[8] When Constable Manchur asked Mr. Harpe what happened, he said that he and Mrs. Harpe had gotten into an argument about her leaving with the child. Constable Manchur stopped Mr. Harpe and read him the police caution, and then let Mr. Harpe continue. He told the officer that he had placed Mrs. Harpe in a headlock and pushed her away from him. He did not say he was responding to her blows. At this point, Constable Manchur arrested Mr. Harpe and took him to the detachment.

[9] At the detachment, Mr. Harpe spoke to counsel. He then told Constable Manchur that he had not hit her, that he had been assaulted by her and that he had merely grabbed her and had not hit her. Constable Manchur did not, however, notice any injuries on Mr. Harpe, nor did he point any out to the Constable.

[10] Constable Connelly attended at the Harpe residence with Constable Manchur and was called to give evidence on behalf of the defence. As he was not the principal investigator, he had not taken any notes, and testified from memory. He recalled that when he arrived at the Harpe residence, Mrs. Harpe was upset and crying and her face was red. She told him about an assault that involved some punching and a headlock. Later that evening, he took photographs of Mrs. Harpe. He did not observe any bruises or cuts consistent with an assault. He said Mrs. Harpe's face was red, consistent with crying.

The Evidence of Tara Larkin

[11] Ms. Larkin is a Victim Services worker who was on duty at her office on January 10, 2006. Mr. Harpe, along with several support people, arrived at her office wanting information about an Emergency Intervention Order that was issued the previous day that apparently prevented him from seeing his daughter, Jocelyn. She was left with the impression from what Mr. Harpe said that he had hit Mrs. Harpe. When asked if she could recall his exact words, she recalled him saying "Yeah, I hit her but she hit me as well". When queried further, she stated that she understood him to say that she hit him back, after he had hit her first.

[12] Ms. Larkin did not take or make any notes of this discussion, in keeping with policy in the office. She was recalling what transpired five months earlier. She stated that she remembered the event because it was an exceptional one, in that Mr. Harpe turned out not to be a victim and she needed to seek guidance from her supervisor.

The Evidence of Bonnie Harpe

[13] Bonnie Harpe is Jeremy Harpe's aunt. She attended with several other relatives at the Victim Services office with Jeremy Harpe to find out what had happened in relation to the Emergency Intervention Order that had been issued the previous day. It was her evidence that Mr. Harpe was present for only five or ten minutes and left early to attend at the legal aid office. She said that Mr. Harpe did not say anything to Ms. Larkin.

[14] Bonnie Harpe's recollection of the details surrounding the meeting with Tara Larkin was somewhat limited. She could not remember the date or even the month of the meeting. She confused the Emergency Intervention Order with an Emergency Apprehension Order, but perhaps that is explained by the fact that the Emergency Intervention Order apparently limited or prevented Mr. Harpe from seeing his daughter.

[15] Bonnie Harpe also told the court that Jeremy Harpe had described the incident of January 7th to her: that Cassandra Harpe had slapped him on the back of the head, and that in defending himself and protecting the baby, he pushed her away. Fearing for the baby, he wrapped her in his coat and went next door to his parents' residence.

Photographs of Cassandra Harpe

[16] I examined the photographs of Mrs. Harpe taken by Constable Connelly very carefully. Apart from the mark on her neck which she believes was caused by her necklace when Mr. Harpe had her in a headlock, there were no bruises, redness or swelling consistent with the punches to her face as described by her. The photographs, in my view, were consistent with the evidence of Constable Connelly and Manchur who did not notice any injuries on her. In fact, it was the absence of apparent injuries that resulted in Constable Manchur wanting to speak to Mr. Harpe to get his version of the incident.

[17] Mrs. Harpe stated in her evidence that the redness from the blows persisted for five months, to the date of the trial. The redness she described was not observable in court. Her assertion that an injury that was not observable by the officers who attended to her call on January 7th would persist for five months is inconsistent with this court's experience.

Conclusion

[18] The relationship between Mr. and Mrs. Harpe had, in fact, broken down some time prior to the January 7th incident.

[19] I have some concerns regarding the credibility of Mrs. Harpe. Her description of her injuries was not corroborated by the two officers who attended the scene. I do not accept her suggestion that her injuries persisted for five months. Her description of the assault does not match the injuries observed by the officers or the photographs taken of her later that evening.

[20] Mrs. Harpe has a pending Supreme Court application for custody of Jocelyn. This in itself is not surprising or of particular concern. On the other hand, she acted very quickly to put an Emergency Intervention Order in place, which I understand she applied for the day after the incident, and which appeared to prevent Mr. Harpe from seeing his daughter. Considering all the circumstances, including Mrs. Harpe's determination to use this criminal proceeding in her custody application, I am left with some doubts concerning the objectivity of her evidence. There is reason to believe that the evidence I have heard on this trial from both the complainant and the accused is more about custody of Jocelyn than what actually happened on January 7, 2006.

[21] The evidence also raises questions about Mr. Harpe's credibility. He has given several versions of the incident to different people. Initially he told Constable Manchur that he got into an argument with Mrs. Harpe about her leaving with their child. But he told the court that he was not concerned about Mrs. Harpe leaving and taking Jocelyn with her, only that she could not take his car. He told Constable Manchur that he got into an argument with Mrs. Harpe, put her in a headlock and pushed her away. The officer's occurrence report quoted him as saying: "I grabbed her, that's all; I didn't hit her". It was only after he talked to a lawyer that he volunteered that he was assaulted by her first.

[22] He may well have told a different story to Tara Larkin, the Victim Services worker. However, I am not prepared to make any findings regarding the assault based on her evidence. She did not take or make any notes of her meeting with Mr. Harpe and was only able to express her impression or understanding of what he said, not the exact words he used. On the other hand, I accept her evidence that Mr. Harpe was present at the entire meeting and that he did speak to her, something he denied.

[23] Mr. Harpe told a slightly different version of the incident to Bonnie Harpe, his aunt. He told Bonnie Harpe that Cassandra Harpe slapped him on the back

of his head while he was holding onto the baby, that he defended himself and protected the baby by pushing Mrs. Harpe away.

[24] He told the court a different version all together. He said that they got into an argument and Mrs. Harpe threw a punch. He did not feel it but Jocelyn started to scream so he assumed the blow had struck her. He placed her in a headlock for five or six seconds to stop her. Then he took Jocelyn across the street to his parents' house.

[25] I have come to the conclusion that I am unable to accept the versions of the incident given by both Mr. Harpe or Mrs. Harpe, except to the extent that it is corroborated by independent objective evidence. The mark on Mrs. Harpe's neck is consistent with an injury caused by a necklace and Mr. Harpe placing her in a headlock. While I am satisfied beyond a reasonable doubt that Mr. Harpe placed her in a headlock of some sort, I am not able to determine whether Mrs. Harpe struck Mr. Harpe first, or at least swung at him, possibly striking Jocelyn who was under his arm. I do not accept Mrs. Harpe's version, that while holding the baby in his right arm, Mr. Harpe was able to punch Mrs. Harpe in the face four to six times and in the back of the head two or three times, while at the same time placing her in a headlock.

[26] I am satisfied that there was a verbal altercation between Mr. and Mrs. Harpe on January 7, 2006. I am also satisfied that there was some physical contact between them. I am, however, unable to determine whether the headlock placed on Mrs. Harpe was defensive, protective or offensive. To make such a finding on the evidence before me, would be unsafe. In the result, I find Mr. Harpe not guilty of assaulting Mrs. Harpe.