

Citation: *R. v. Spycher*, 2003 YKTC 10

Date: 20030210
Docket: T.C. 02-00445
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Faulkner

R e g i n a

v.

Peter Albert Spycher

Appearances:
Kevin Drolet
Jennifer Reid

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] Peter Albert Spycher is charged with assaulting his estranged wife, Ploytida Spycher.

[2] The sole witness for the crown was the complainant Mrs. Spycher. The accused was the sole witness for the defence. Their evidence as to what occurred differed dramatically. The matter thus stands to be decided on the credibility of the two witnesses without any other evidence which could assist by supporting (or undermining) the evidence of either. *R. v. D.W.*, [1991] 1 S.C.R. 742, 63 C.C.C. (2d) 397, sets out the process and standard to be applied to this assessment.

[3] It is common ground that there was a physical confrontation between the couple on October 14, 2002 at the family home. The parties separated on that date and Mrs. Spycher has filed a Petition for Divorce. The catalyst for the confrontation was the wife's discovery of her husband's infidelity. The point in dispute is the question of who assaulted whom.

[4] Mrs. Spycher testified that Mr. Spycher came into her bedroom. He was enraged because Mrs. Spycher's sister had contacted Mr. Spycher's mistress and told her that Mr. Spycher was married. Mr. Spycher told his wife that he had just learned that the woman had attempted to commit suicide as a result. He kicked and slapped his wife and pulled her hair. The incident ended when the couple's nine-year-old son came into the room. Mr. Spycher left the bedroom and Mrs. Spycher fled the house and went to the neighbours. There, she first telephoned her sister to see if her husband's claim that the mistress had attempted suicide was true. She then called the police.

[5] Mr. Spycher told a completely different story. According to the accused, he was seated at his computer when he was struck on the head from behind. The assailant was Mrs. Spycher, who was armed with a rolled up telephone directory. The attack, he said, was motivated by a phone call from Mrs. Spycher's sister, wherein the sister had informed Mrs. Spycher about the mistress's attempted suicide. Mr. Spycher retreated to the bedroom with his wife in hot pursuit. Therein, Mrs. Spycher kicked him twice in the groin. In self-defence, the accused kicked his wife's leg, pulled her hair and pushed her onto the bed. He then left the room. Some time later, he discovered that his wife had left the house. He got into his car and went in search of her but did not find her, whereupon he returned home. Shortly afterward, the police arrived.

[6] It will be convenient to deal first with the evidence of the accused. His evidence did not make a positive impression on me. He struck me as less than candid about the extent of his extramarital relationship. Moreover, his claim that his wife had a telephone conversation with her sister prior to the assault, and that this telephone call precipitated the incident, also strikes me as unlikely. Mrs. Spycher says that after the incident she ran to the neighbour's house. There, she first telephoned her sister to see if what her husband had told her about the other woman attempting suicide was true. It was only after that call that she telephoned the police. This is a detail that Mrs. Spycher would be unlikely to make up. Obviously, she would not have called her sister to confirm the story if, as the accused claims, it was the sister who had provided the information to Mrs. Spycher in the first place. It would have been to her advantage to say that she ran

to the neighbour's house and immediately telephoned the police. Accordingly, I place little weight on the accused's evidence.

[7] Assessing Mrs. Spycher's evidence is not nearly as easy. Mrs. Spycher's first language is Thai and she testified with the assistance of a Thai interpreter. The interpreter was actually situated in Vancouver and participated in the trial by way of a video link.

[8] I confess to possessing no knowledge whatever of the Thai language, but from comments made by the interpreter during the course of the proceedings, it appears that there are considerable differences between the Thai language and the English language with respect to verb tense, pronoun gender and many other matters which make exact translation challenging. The manner in which counsel asked questions of the witness contributed to the problem, since many of the questions were of the syntactically complex variety beloved by barristers but which, I have no doubt, give translators naught but tortured dreams. The difficulties were further compounded by the limitations of the video link technology.

[9] Despite all this, I was able to piece together a relatively clear picture of what Mrs. Spycher's version of the events was. It was also clear that she adamantly denied initiating the fight.

[10] There was, however, one aspect of Mrs. Spycher's evidence that did give some cause for concern. She was asked in cross-examination if she had ever assaulted Mr. Spycher. At first, she refused to answer this question. Eventually she allowed that she had pulled her husband's lip, but denied ever striking him. She was then shown an affidavit she had sworn in support of her Petition for Divorce. In the affidavit, she admits hitting Mr. Spycher on occasion. Despite this, she continued to claim that she had only pulled her husband's lip.

[11] Some or all of this may be the result of language and translation difficulties. Nevertheless, it leaves some question as the veracity of Mrs. Spycher's evidence. At the end of the day, and while I prefer Mrs. Spycher's version of the events in question, there remains some doubt in my mind as to what actually occurred. Accordingly, the charge must be dismissed.

Faulkner T.C.J.