

R. v. Cecil James Speirs, 1993, # Docket No. 30604870P10101

IN THE CRIMINAL DIVISION OF  
THE PROVINCIAL COURT OF ALBERTA

HER MAJESTY THE QUEEN

- v. -

CECIL JAMES SPEIRS

Accused

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REASONS FOR JUDGMENT OF HIS HONOUR JUDGE NEMIRSKY

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Red Deer, Alberta  
27th August, A.D. 1993  
Court Recorders, Red Deer

1 Proceedings taken at Trial, in The Provincial Court of Alberta,  
2 Courthouse, Red Deer, Alberta

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4 27th August, A.D. 1993

5 The Honourable Judge Nemirsky      The Provincial Court of Alberta  
6 L. Kurata, Esq.                      For the Crown  
7 J. Dixon, Esq.                        For the Accused  
8 J. Gwozdz, (Ms.)                      Court Recorder

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11 THE COURT:                              Thank you, Mr. Kurata.

12                      The accused, Cecil James Speirs, is charged that:

13                      "On or about the 22nd day of April, at or near  
14                      Eckville, Alberta, he did commit forcible entry  
15                      on the real property of Dale Bott, contrary to  
16                      the Criminal Code."

17                      In particular, Section 72 of the Criminal Code. All of the  
18                      circumstances that are relevant surround an unhappy  
19                      landlord/tenant relationship between Dr. Speirs and Ms. Bott.  
20                      And I am not concerned about the civil ramifications, except  
21                      to the extent that they are necessarily relevant  
22                      to the criminal charge facing Dr. Speirs.

23                      Defense counsel, in his arguments, acknowledges that  
24                      Dr. Speirs was in breach of the provisions of the Residential  
25                      Tenancies Act when he entered the premises occupied by Ms. Bott.  
26                      He argues that Dr. Speirs had the mistaken belief  
27                      that he had the legal right to enter; certainly he didn't have  
                    the legal right to enter. The argument is that he had a

1 genuine and honest, although mistaken, belief to that effect.

2 Section 72, sub (1) says, and I quote:

3 "A person commits forcible entry when that person  
4 enters real property that is in the actual and  
5 peaceable possession of another, in a manner that is  
likely to cause a breach of the peace or reasonable  
apprehension of a breach of the peace."

6 Clearly we're dealing with real property. Was there a  
7 forcible entry? If I accept Dr. Speirs version of what took  
8 place, there would not have been a forcible entry, in that he  
9 had a key and he, according to him, used that key. Ms. Bott  
10 however, says that it wasn't quite that simple and straight-  
11 forward. She states that there was a knock on the door, she  
12 went to the door, Dr. Bott -- or Dr. Speirs wanted to come  
13 in, she said you can't come in. She held her hand out, he  
14 used the key and gained entry, and in so doing, moved up  
15 against her hand. I accept Ms. Bott's version of what did  
16 transpire, in terms of Dr. Speirs gaining entry on that  
17 April 22nd day. Having accepted her version, I am satisfied  
18 that there was forcible entry by Dr. Speirs.

19 There remain two questions: whether the  
20 real property was in the actual and peaceable possession of  
21 another, that other here being Ms. Bott; and secondly,  
22 whether the forcible entry was in a manner likely  
23 to cause a breach of the peace, or reasonable apprehension of  
24 a breach of the peace. From what has already been said, and  
25 acknowledged by counsel for Dr. Speirs, I don't think there's  
26 any question but that Ms. Bott was in actual possession of  
27 the real property in question, and she was in peaceable

1 possession, notwithstanding the prior history of the matter,  
2 she was entitled to be there. So the only remaining matter  
3 for me to decide is, was the forcible entry by Dr. Speirs  
4 in a manner likely to cause a breach of the peace, or  
5 reasonable apprehension of a breach of the peace. I have  
6 already stated that I accept the version of what happened, as  
7 given by Ms. Bott. She made it clear, I am satisfied, to  
8 Dr. Speirs, that she did not want him in the premises. She  
9 held her hand out as if to prevent his coming in; he  
10 disregarded it and came in. I think that, in itself,  
11 should have been sufficient indication to Dr. Speirs that  
12 his entry in those circumstances would be likely to cause  
13 a breach of the peace. But I go further, and Crown counsel  
14 alluded to this in his argument, and Dr. Speirs gave answers  
15 when asked about it in his testimony. Apparently Dr. Speirs,  
16 as a result of this incident on April 22nd, despite his saying  
17 that there was no physical involvement, or no assault upon him  
18 by Ms. Bott, he apparently did go to the police and made efforts  
19 to try to see to a charge of assault being laid against Ms. Bott.  
20 I don't know what better indication I could have of what  
21 Dr. Speirs made of the situation, in terms of whether what  
22 happened was likely to cause a breach of the peace, or at  
23 least a reasonable apprehension of a breach of the peace.

24 In summary, I am satisfied the Crown has, beyond any  
25 reasonable doubt, proved the offense under Section 72, sub (1)  
26 of the Criminal Code, and accordingly I find Cecil James Speirs  
27 guilty as charged of the offense under Section 72, sub (1).

1 MR. KURATA: If I might then, sir. It is my intention  
2 at this time to stay the Information of mischief.

3 THE COURT: Thank you.

4 Madam Clerk, that will accordingly be noted on the  
5 Information.

6 COURT CLERK: Thank you, sir.

7 MR. KURATA: Sir, there are a number of matters I should  
8 advise you of. That Dr. Speirs has no prior criminal record.  
9 With respect to this incident, sir, it is the submission of the  
10 Crown, on the evidence, that the particular circumstances, two  
11 individuals entering into the residence of a mother with  
12 children. It's certainly an intimidating situation for a person  
13 in Dr. Speirs's situation in life, he indicated he's in his  
14 60's, professional man. Certainly rehabilitation is not an  
15 issue, and it's the greatest respect submitted to the court  
16 that specific deterrence is required, as is general deterrence,  
17 in the sense that a message can be and should be sent out to  
18 the community that intrusive acts by landlords cannot or  
19 should not be tolerated. I'd ask Your Honour to consider a  
20 substantial monetary fine. Thank you.

21 THE COURT: Thank you. Mr. Dixon?

22 MR. DIXON: Sir, my friend has told you that with  
23 respect to rehabilitation of this offender, he's rehabilitated.  
24 I can tell the court he has learned his lesson from this, and  
25 recognizes the error of his ways in that sense. He is, as you  
26 know, sir, a man who is in his mid 60's, practices veterinary  
27 medicine, has done so for some decades in these parts, sir.

1 He's, may I say, a classic country vet, attends at the  
2 auctions, rodeos from time to time. And I think that's in  
3 keeping with the sort of gruff man you saw beside yourself  
4 today in the witness box, sir. He is inclined to deal in a  
5 simpler form of world than the kind of world we have to deal  
6 in -- in these kinds of matters where there are particular  
7 procedures and -- and policies. I think I have no particular  
8 submission as to the quantif -- I don't know quite what the  
9 imposition of a large monetary penalty's going to do to  
10 serving the ends of justice in this regard, sir. I think he --  
11 the conviction is more important than anything else, in the  
12 sense that that lesson has been driven home. As to the  
13 quantification of a monetary punishment, sir, I leave that  
14 in the court's hands.

15 Dr. Speirs, would you stand up, please.

16 THE COURT: Thank you, Mr. Dixon.

17 It's unfortunate that matters like this end up with the  
18 resolution that this one has had here today. I think it is  
19 important, Dr. Speirs, that not only you derive a lesson from  
20 this, and I am satisfied that you have, and I accept your  
21 counsel's statement that in his assessment you have. But as  
22 well, a message must go out to other members of the community  
23 that this is not the kind of conduct that will, or should, be  
24 tolerated. I do take into account your age, in dealing with  
25 disposition of this matter, Dr. Speirs. I, as well, very  
26 much take into account the fact that you have no prior criminal  
27 record.

1           In the circumstances you will forfeit and pay a fine in  
2 the sum of \$500, in default 50 days. In addition, there will  
3 be a victim fine surcharge of \$50, in default five days. Is  
4 he able to pay the fine, the victim --

5 MR. DIXON:                   He's -- he will ...

6 THE COURT:                 -- fine surcharge today?

7 MR. DIXON:                 Yes, tender payment to the counter today,  
8 sir.

9 THE COURT:                 All right. Thank you, Mr. Dixon.

10 MR. DIXON:                 Thank you very much, sir.

11 THE COURT:                 Mr. Kurata.

12 MR. KURATA:                Thank you.

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14 REASONS FOR JUDGMENT CONCLUDED

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1 Certificate of Transcript

2 I, Charlotte Drummond, hereby certify that the foregoing pages  
3 1 to 6 are a true and faithful transcript of the contents  
4 of the record in this action on Tape No. 190 at Red Deer, Alberta.  
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8 Charlotte Drummond  
9 Monitor-Transcriber

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Typed 30th September, 1993