

~~TC 00 338~~
TC CR 86 003

IN THE TERRITORIAL COURT
OF THE
NORTHWEST TERRITORIES

R E G I N A

VS

FRANK JACOBSON

Evidence taken at the Summary Trial, held before
His Honour Judge J.R. Slaven, at the Court House,
Inuvik, Northwest Territories, on the 13th day of
May, A.D. 1986.

L. Wall, Ms.,	Appeared for the Crown.
L. Sebert, Esq.,	Appeared for the Defence.
Cathy Gingras,	Court Reporter.

1 THE COURT: I see there is a new charge, 387.

2 The Crown election on that?

3 MS. WALL: Summary, Your Honour.

4 THE COURT: Is Mr. Jacobson prepared to enter a
5 plea on the new charge, Mr. Sebert?

6 MR. SEBERT: He is, Your Honour.

7 THE COURT: Frank Sekub Forrest (phonetics)
8 Jacobson, on or about the 17th day of April, A.D. 1986, at
9 or near the Town of Inuvik in the Northwest Territories did
10 commit mischief to property, namely the RamAir Charter
11 Limited employee residence by interfering with the lawful
12 use and enjoyment of the property contrary to Section 387 of
13 the Criminal Code.

14 How do you plead, guilty or not guilty?

15 MR. JACOBSON: Not guilty.

16 THE COURT: So are the witnesses here for a
17 trial on the 306?

18 MS. WALL: Your Honour, I discussed this with
19 Mr. Sebert, it's Crown's intention to proceed on the 387
20 matter, and Mr. Sebert and I have agreed that the Crown's
21 case will go in as an agreed statement of facts plus a
22 statement given by the accused to the police, then there
23 will be argument as to whether that constitutes a defence.

24 THE COURT: We will do that now, eh?

25 MS. WALL: Yes. Unfortunately, I have just
26 discovered that the original statement of the accused isn't
27 in court, it will have to be brought over from the police

1 detachment. I am afraid I am going to have to ask for five
2 minutes for that to be done.

3 JUDGE SLAVEN: Okay.

4 (BRIEF RECESS)

5 THE CLERK: Court resumes after a recess, be
6 seated. Frank Jacobson?

7 MS. WALL: Thank you for your indulgence, Your
8 Honour. I will just read in the facts that have been agreed
9 to by Crown and Defence.

10 That on the 17th of April, 1986 at 1 a.m. an employee
11 of RamAir in Inuvik in the Northwest Territories noticed a
12 light on inside a vacant trailer which was reserved for
13 RamAir employees. The trailer was known to be unoccupied.
14 The employee checked more closely and found the trailer door
15 was locked from the inside. He could hear noises from
16 within and he could see a flame; he believed it was a candle
17 and he called the police, as he knew that no persons had
18 been given permission to be inside the trailer.

19 Two police officers arrived, knocked loudly on the door
20 with no result, then knocked loudly on a window. The
21 trailer door was unlocked and they found the accused, Frank
22 Jacobson, inside the trailer. He was the only person
23 inside, he was intoxicated. He provided no resistance to
24 them. He stated he had no residence in Inuvik and he had
25 gone into the trailer for shelter.

26 The officers also found the trailer was filled with
27 foul-smelling smoke and they found that the oven door was

1 open and the element was red-hot. The accused had been
2 sitting on a chair in front of the oven with his feet up on
3 the oven door, he had apparently fallen asleep, his boot had
4 caught fire. The entire sole and heel area were burned off
5 and the accused's foot was burned, too. The accused had no
6 permission to be inside the trailer from RamAir.

7 Those are the agreed facts, Your Honour.

8 The accused also gave a statement to the police on the
9 17th of April, 1986, which I would also like to enter. I
10 understand there is no objection from my friend as to its
11 admissibility.

12 MR. SEBERT: That's correct.

13 THE COURT: Exhibit 1.

14 EXHIBIT 1: STATEMENT GIVEN BY
15 FRANK JACOBSON ON APRIL 17TH, 1986.

16 THE COURT: Very good.

17 MS. WALL: That is the case for the Crown on
18 the 387 information, Your Honour. It replaces the 306 and
19 the Crown won't be proceeding on the 306, in any event.

20 THE COURT: Mr. Sebert?

21 MR. SEBERT: Yes, Your Honour, one witness,
22 Frank Jacobson.

23 FRANK JACOBSON, having first been
24 duly sworn, was examined and testified as follows:

25 DIRECT EXAMINATION BY MR. SEBERT:

26 Q MR. SEBERT: Mr. Jacobson, could you tell the
27 Court your age?

1 A Forty-six.

2 Q Now, there has been evidence given that you went into this
3 trailer on the 17th of April; do you remember what the
4 weather was like on that day?

5 A I don't quite recall, but I know it was fairly cold.

6 Q And did you have somewhere to stay that evening?

7 A No, not that evening.

8 Q Is there a hostel or some other -- is there a hostel in
9 town you could stay at?

10 A There is no hostel in town here.

11 Q Had you been drinking that evening?

12 A Yes.

13 Q Did you have any friends that you could have stayed at that
14 evening?

15 A It was fairly late, you know, I didn't want to bother
16 anybody.

17 Q Thank you, I have no more questions.

18 CROSS-EXAMINATION BY MS. WALL:

19 Q MS. WALL: Mr. Jacobson, are you from Inuvik?

20 A No, not really, from Aklavik.

21 Q How long have you lived in Inuvik?

22 A I would say about four months.

23 Q Four months?

24 A Yes.

25 Q Do you know a lot of people here?

26 A I know most of them here.

27 Q Do you sometimes stay with friends in town?

1 A Very seldom.

2 Q Any reason for that?

3 A I'm just, you know, a bother to them, I guess, that's why --
4 you know, I drink so much.

5 Q Because you drink so much?

6 A It was late at night, too, that's the reason I didn't want
7 to bother anyone.

8 Q But there were places where you could have gone, you could
9 have gone and knocked on their door and asked to stay?

10 A If I saw them earlier, yes.

11 Q Pardon me?

12 A If I did see them earlier, it would have been all right.

13 Q Even if you had to wake people up, there were places you
14 could have gone to, to stay for the night; is that right?

15 A I don't think so, no.

16 Q Well, you said you had some friends in town, people you
17 could stay with?

18 A If I saw them earlier, yes, I would have.

19 Q So the reason you didn't go and stay with friends is because
20 you didn't want to wake anyone up?

21 A Yes, it was late at night, too.

22 Q At that time, did you have any address in town, was there
23 any place where you were staying most of the time?

24 A No, my address is just General Delivery.

25 Q Where were you staying when you weren't staying with friends
26 or staying in this trailer; was there any place that you
27 called home?

1 A I was staying down in a tent down here, Twin Lakes.

2 Q In a tent?

3 A Yeah.

4 Q So you could have gone to the tent that night, too?

5 A It was worse than that trailer, it was under the snow, eh.

6 Q Did you come into town that day to drink or were you in town
7 already?

8 A I was out of town for a few days to Aklavik with John
9 Wedeman.

10 Q Did you come in that day to drink?

11 A No, we just came back to town here, we were working.

12 Q You got back from Aklavik that day?

13 A Yes.

14 Q Then you started drinking here in town?

15 A Yes.

16 Q Did you have the money they paid you for the job in Aklavik?

17 A Yes, John did pay me. Not very much, you know, part of my
18 wages.

19 Q Thank you, I have no more questions.

20 EXAMINATION BY JUDGE SLAVEN:

21 Q In your statement, Mr. Jacobson, you say there were about
22 six guys drinking with you at the tent in Twin Lakes and you
23 went back uptown; did you go uptown with them?

24 A No, it's how many fellows that stayed there, but there was
25 nobody there that night.

26 Q "I stayed there Monday, went back last night again"?

27 A That's the trailer.

1 Q Yes. "I was drinking down at a tent in Twin Lakes, there
2 was about six guys there, so I went back uptown and from
3 there I went back to that trailer." So did you come uptown
4 with the six guys?

5 A Earlier that day probably.

6 Q Before you went to the trailer?

7 A Yes.

8 Q Couldn't you have stayed with any of them, your drinking
9 friends?

10 A They didn't have any place to stay, too.

11 Q Did they stay in the tent, as far as you know, in Twin
12 Lakes?

13 A Yes.

14 THE COURT: Any re-examination, Mr. Sebert?

15 MR. SEBERT: No, Your Honour.

16 THE COURT: That is all, Mr. Jacobson, go back
17 to there.

18 Is that the defence?

19 MR. SEBERT: Yes, it is.

20 THE COURT: Any rebuttal, Ms. Wall?

21 MS. WALL: No, Your Honour.

22 THE COURT: Submission, Mr. Sebert?

23 MR. SEBERT: Yes, Your Honour. Section 73 of
24 the Criminal Code permits the advancement for defence of
25 defences that were available to the accused in common law:

26 "The rule and principle of the common law that
27 renders any circumstance or justification or
excuse for the act, a defence of the charge
continues in force and applies in respect of

1 proceedings for an offence of this act or any
2 other act under the Parliament of Canada except
3 so far as they are altered by or inconsistent
4 with this act or any other act in the Parliament
5 of Canada."

6 Various cases, Morgentaler Purga (phonetics) and The
7 Queen, which are referred to in Martin's Criminal Code, have
8 held that the defence of necessity still is a possible
9 defence with the limitations that are admittedly opposed by
10 Purga and The Queen. In that case,

11 "It was held by the majority that the defence only
12 applies in circumstances of imminent risk where
13 the action was taken to avoid a direct and immediate
14 peril. The act in question may only...",

15 and they go on.

16 There are the limitations which are set out in the
17 Martin's Criminal Code, perhaps I should give the Court a
18 copy of the case.

19 Your Honour, in this case we have Mr. Jacobson
20 apparently had a fair amount to drink that evening, it was
21 cold, it was after all only April 17th, he said it was, it
22 was cold, he had nowhere to stay, apparently there is no
23 hostel in town. He admitted he does know people in town,
24 but indicated he felt he could not stay with them. Our
25 submission therefore the defence of necessity can be made
26 out. With respect to the charge itself, the interruption
27 and interference with the property of the alleged victim,
and I am again referring to a case that is referred to in
Martin, I attempted to find the original case, it's on Page
388, but unfortunately 13 C.C.C. doesn't seem to be in the



1 library.

2 THE COURT: They don't go back that far, or
3 somebody has absconded with it?

4 MR. SEBERT: The library here is missing a lot
5 of teeth, it seems.

6 THE COURT: Even the desk here, there is only
7 supposed to be four books here and one of the four is
8 missing. Revised ordinances.

9 MR. SEBERT: The Canadian Criminal Cases seem to
10 be there up to about 10 C.C.s.

11 THE COURT: Well, I think we are pretty well
12 served library-wise compared to ten years ago.

13 MR. SEBERT: Compared even to Fort Smith, I
14 might add.

15 In any case, Turner et al the The Queen on Page 388 of
16 Martin's, the gist of the offence is created by Paragraph C
17 and D, the interference with the enjoyment of the property
18 rather than its physical alteration. My submission is that
19 in this case there really was no interference with the
20 property. This, in our submission, would be in the nature
21 of a civil trespass. There was no harming of the property,
22 the company was not prevented from using the property.
23 Admittedly Mr. Jacobson was on the property, and our
24 submission is a civil trespass.

25 Our final submission is that --

26 THE COURT: No interference with property, no
27 one was prevented from using it, eh?

1 MR. SEBERT: No.

2 THE COURT: Okay.

3 MR. SEBERT: Our final submission is that the
4 Court may possibly regard this as a diminimum non cur elect
5 situation in which the alleged crime is so minor -- I wasn't
6 able to find any cases on it here, and I realize the
7 majority of the cases for situations in which a tiny amount
8 of drugs are found and the diminimum rule applies, but our
9 submission this may be one of those situations in which the
10 alleged offence is so trifling that the Court should hear
11 the defence regarding that and grant an acquital.

12 So in summary, our defences are really three:
13 Necessity, first of all; secondly, the defence is not made
14 out in that it is not an interruption or interference with
15 the property of the alleged victim, and thirdly, diminimus.
16 Thank you, Your Honour.

17 THE COURT: Ms. Wall?

18 MS. WALL: On the necessity defence, Your
19 Honour, I submit it doesn't apply here. According to the
20 Supreme Court of Canada, the defence is available in some
21 circumstances, but I would submit there is no situation of
22 imminent peril here such as to bring that defence into play.
23 There has been some defence evidence, but not enough, I
24 would submit, to raise it, so I would submit it is not even
25 appropriate for consideration by the Court.

26 THE COURT: Okay.

27 MS. WALL: On the interference with the

1 property, Your Honour, I would submit that there is
2 sufficient interference to constitute the offence. I would
3 submit interference of a property can take different forms,
4 and with this mischief section of the Code, it can be doing
5 something in a dwelling house, for example, that prevents
6 the others in the house from enjoying the peace and
7 tranquility of it, but there are other ways in which it can
8 occur.

9 Here you have a residential trailer which is kept for
10 employees which is unoccupied; it becomes occupied by
11 someone who has no right to be there. This comes to the
12 attention of the employers. So first of all, the vacant
13 possession which the employer is entitled to maintain is
14 really being interrupted and interfered with in a technical
15 sense by the accused. And secondly, there is an actual
16 interference with the trailer by the employee having to make
17 inquiries, call the police, find out what is going on inside
18 the trailer, make sure that there is no damage being done.

19 And finally, the air -- it may sound minimal, but with
20 the burning boots, the air inside the trailer was fouled,
21 there was a danger that there could have been a fire in the
22 trailer, which of course would have caused as much harm to
23 the accused as to the property. So I would submit it is
24 more than a trifling interference, and on that ground also I
25 would submit that my friend's third submission wouldn't be
26 applicable on the facts of this case. Those are my
27 submissions.

1 THE COURT: Well, I find this case interesting
2 in that at one point it might be a matter for consideration
3 by a higher court. There doesn't seem to be any law on it
4 available to us here, anyway, in the way of reported cases.
5 One point only, however, the first defence raised by Mr.
6 Sebert, common law defence of necessity. We have here a
7 matter where going in there was -- Mr. Jacobson felt was
8 preferable to bothering friends and waking them, as it was
9 late. And I wonder how late it was. It was 1 a.m. when the
10 employee noticed that someone was apparently in there; he
11 had to be in there long enough for his boot to catch fire.
12 So if we are talking that he went in there at midnight, I
13 don't think midnight is a late hour to wake up one's
14 friends. One can usually find friends in one of the many
15 bars in Inuvik.

16 Also he says the six fellows or so he was drinking with
17 down at Twin Lakes in the tent apparently stayed down there,
18 so Mr. Jacobson apparently decided to go to a warmer place
19 than they were staying at, this trailer that he knew of
20 which he occupied the evening before.

21 So this was not a matter of use of necessity, it was a
22 matter of his selecting it as a preferable alternative to
23 other things he could have done.

24 Regarding the diminimus, I don't think that applies.
25 It is, after all, a private residence and no one man's home,
26 I grant you, and left unlocked, but it wasn't a matter of
27 simply going in there and huddling in a corner, he sat on

1 the stove and electricity costs a great deal in Inuvik, I
2 think I can take judicial notice of that, and I think he
3 said himself in the statement, but certainly he could have
4 burned the whole place down. And I find that the third
5 defence brought up by Mr. Sebert, the diminimus, does not
6 apply.

7 However, I find the question of the interference with
8 the lawful use and enjoyment of the property an interesting
9 one. There is no doubt whatsoever in my mind that if
10 someone had been staying in that place or intended to sleep
11 in that place or intended to use that place, that trailer
12 for any purpose that night or even the next day, then the
13 smell and so on would have interfered with that lawful use
14 and enjoyment of the property. But I have no evidence that
15 what he had done to the point where he was disturbed by the
16 police disturbed anyone or even would have disturbed anyone
17 if he had not been apprehended. Outside of, as Ms. Wall
18 points out, the employee who noted the noises in there and
19 the light was disturbed, if I may, to the point where he
20 quite properly called the police. But he had no intention
21 of using or enjoying the property.

22 I think it is an important point because certainly we
23 don't want people going in and making use of other's
24 property without permission, as Mr. Jacobson did, and
25 certainly when he was drunk and could well have burned it
26 down. Certainly he trespassed and there is nothing in the
27 Code making trespass a criminal offence. Possibly he was

1 guilty of loitering that night; the question before me, of
 2 course, is is he guilty under Paragraph 387(1)(c) of the
 3 Code. I think I am forced to find that there was no actual
 4 interference with the lawful use and enjoyment of the
 5 property; accordingly, I find him not guilty.

6 MS. WALL: I have no evidence to offer on the
 7 Section 306 Information, Your Honour.

8 THE COURT: Thank you. I find him not guilty
 9 on that.

10 MR. SEBERT: Thank you, Your Honour.

11 THE COURT: I invite you to appeal, Ms. Wall,
 12 my nose won't be disjointed, it might be worthwhile.

13 MS. WALL: Thank you, Your Honour.

14 (PROCEEDINGS CONCLUDED)

15 -----
 16 I, Cathy Gingras, C.S.R.(A), Court Reporter, hereby
 17 certify that I attended the above Summary Trial and took faithful
 18 and accurate shorthand notes and the foregoing is a true and
 19 accurate transcript of my shorthand notes to the best of my skill
 20 and ability.

21 Dated at the City of Calgary, Province of Alberta, this 28th
 22 day of August, A.D. 1986.

23
 24 *Cathy Gingras per Henry*
 25 Cathy Gingras, C.S.R.(A),
 26 Court Reporter.

27 CG/kt