



171 (1)(a)(i) ca

FC 00157
TC CR 79 001

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

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HER MAJESTY THE QUEEN

-vs-

RICK FAIR

J U D G M E N T

delivered by His Honour, Judge R. W. Halifax, at Fort Smith, N.W.T. on the 2nd day of April, A.D. 1979.

We will deal with the 171 (1) (a) (i) matter.

This is a matter that came on for trial at Fort Smith, in the Northwest Territories on February 27th, 1979, on a charge that Rick Fair, on or about the 9th day of December, 1978, at or near the Town of Fort Smith in the Northwest Territories, not being in a dwelling house, did unlawfully cause a disturbance in or near a public place, to wit: Mount Aven Residence, by using obscene



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or insulting language contrary to Section 171 (1) (a) (i) of the Criminal Code.

In my view it is not necessary to relate the facts in detail as Counsel have covered the facts substantially sufficient in their written argument, which has been filed. However, basically the facts as I find them are that the R.C.M.P. responded to a complaint at Mount Aven Residence on the 9th of December, 1978, and upon arriving found a female person in the lounge or supervisor's area in a very intoxicated state.

Constable Tsetso attended to the female and she became very hysterical. Constable Proudman was standing at the doorway to the lounge, which opens into the corridor of the Residence.

The accused, Mr. Rick Fair, appeared and initially had to be restrained by Constable Proudman, who was advised by the accused in an obscene manner that the female person was his girl friend. Constable Proudman then let the accused into the room, hoping that the accused would be able to assist in calming the female. However, such was not the case, and the officers then arrested the female and proceeded to remove her from the room, down the stairs, out the front door and into the police vehicle

I am satisfied that at the time the officers arrived there were other persons in the area of the lounge including one Mr. Macdonald, who was the supervisor at the time.



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These persons left the area after the officers arrived, and at the time the female was removed, other than the two officers, only Mr. Macdonald and the accused were present.

The accused followed the officers, shouting obscenities, to the front door and continued shouting obscenities at the officers, who were outside at their police vehicle placing the female person in the vehicle.

The evidence is unclear as to whether the accused stepped outside the doorway or remained on the threshold of the Residence. I am satisfied that the accused at least had part of his body past the threshold to hold open the door, which opened outwards, in order to continue his verbal attack.

After placing the female in the police vehicle Constable Proudman returned to the accused and attempted to arrest the accused in what purported to be an arrest under Section 80 of the Liquor Ordinance.

At this point a bit of a scuffle took place and the accused was eventually subdued, arrested and placed in custody.

At the time Constable Proudman returned to the accused several other persons had appeared in the area, in my view no doubt as a result of the activity which was taking place. Mr. Macdonald did not indicate in his evidence that he was disturbed by the incident, and in



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fact, tried to calm the accused and be an intermediary between the accused and the officers.

This is the basic situation out of which the alleged charge arose, and I am satisfied that the time, the date and the place and the identity of the accused have been sufficiently established by the Crown.

In my view two issues arise in this case. Firstly, whether the accused was in a dwelling house, and secondly, whether he unlawfully caused a disturbance in or near a public place.

Dealing with the first issue, I'm satisfied that the Mount Aven Residence is a dwelling house within the meaning of Section 2 of the Criminal Code. In my view the lounge area, the corridors, the landing and the doors all form part of that dwelling house and are not a public place.

I refer to the case of R. vs Panipatsek, a judgment of Morrow, J., sitting as a Magistrate, 4 Canadian Criminal Cases, Second Edition, page 1.

As well I also refer to the unreported decision of Judge Ayotte of the Northwest Territories Territorial Court in January, 1979 - a case arising in Cambridge Bay which is basically on all four's with this case.

I am satisfied that part of the accused projected past the threshold of the dwelling house, as I have defined it, and he projected his obscene comments



1 into the public domain outside the dwelling house.
2 If the action complained of had occurred totally within
3 the dwelling house, that is, the four walls of the res-
4 idence, if such did cause a disturbance outside the
5 dwelling house no offence is committed.

6 It seems to me this provision of the Criminal
7 Code is to prevent a disturbance of the public peace -
8 at the same time not to interfere with a person's enjoy-
9 ment of a dwelling house.

10 I concur wholeheartedly with Judge Ayotte
11 in his opinion, where actions involved are intended to
12 be out in the public domain. The fact that the accused
13 was partially in the dwelling house in a physical sense
14 in a manner will not excuse the accused's action if a
15 disturbance results.

16 Thus I am satisfied in this case on these part-
17 icular facts the accused was not in a dwelling house at th
18 time the action complained of took place.

19 With regard to the second issue, that being
20 whether a disturbance was caused in or near a public place
21 I am satisfied the disturbance was caused. Other persons
22 came to the area as a result of the activities in my
23 view partly due to the accused shouting obscenities.

24 The officers were interrupted during their
25 arrest of the female and placing her in the vehicle to
26 deal with the accused. I am satisfied the officers and
27



1 the others who gathered in the area were disturbed,
2 and in my view the surrounding facts of this incident
3 were sufficient to draw the inference that a disturbance
4 was caused.

5 I wish to thank both Counsel for their
6 written argument and the various cases provided, which
7 were of great assistance to me in dealing with this
8 matter.

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13 Certified correct.

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15 *R. Hobbs*

16 Rosalie Hobbs
17 Court Reporter.
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TERRITORIAL COURT
NORTHWEST TERRITORIES

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