

Crown Brief Synopsis
R. vs. STILLMAN
Sec 264.1(1)(b) C.C. - Utter Threats to Damage Property

HISTORY: The accused Robert STILLMAN has been renting two bays in a complex on 2504 Base Line in Otonabee-South-Monaghan Twp. from Joseph BARBER and Randy BARBER since June 1st, 2008. At the end of January 2009 STILLMAN informed BARBER brothers that he was moving out at the end of February thus giving them a month notice for the termination of the rent. Randy BARBER spoke with STILLMAN a week later and advised him that since STILLMAN owed them money for hydro he should vacate the premises a week before the end of February to compensate for the debt and that he should also clean the place from the chemical spills and 45 gallon drums he stored in as the place he had been renting was very contaminated and BARBER brothers were not willing to incur the cost for cleaning his mess and disposing off of his chemicals. According to BARBER brothers STILLMAN was supposed to get everything done and move out by February 19. On Thursday, 19 February, 2009 sometime in the afternoon Randy BARBER called STILLMAN and left a message for him regarding the move out. Since STILLMAN did not follow up with their agreement BARBERs blocked the access to the STILLMAN's bays by positioning motor vehicles in front of the entrance doors.

INVESTIGATION: On Thursday 19 February, 2009 sometime afternoon Brenda STILLMAN, who is a wife of Robert STILLMAN, was spotted by Randy BARBER on their property at the above incident location. Randy BARBER asked Brenda STILLMAN to get off the property. Brenda STILLMAN complied and left. At approximately 17:44 hrs Robert STILLMAN drove to the Pine Crest Golf Course, which is located right across the road from the incident location, where he approached the BARBER brothers in an aggressive manner and demanded the following: "I want you two guys go back to the place, open it up, move the vehicles, so I can take my property. If you do not do that, I will smash the doors open, take my property, and burn the place down." According to the BARBER brothers STILLMAN was very direct and threatening. BARBERs called OPP and stayed on the line with the dispatcher while STILLMAN was still there. STILLMAN then left towards Keene. At approximately 18:00 hrs BARBERs drove to the incident location and blocked the entrance to the property gates with their motor vehicle.

At approximately 18:00 hrs STILLMAN called OPP and advised that he had been locked out of his own business and wanted to see the police ASAP. At 18:15 hrs PC JACK and PC FILMAN attended the incident location. Both BARBERs and both STILLMANs were present and were in separate vehicles parked on the opposite sides of the road. PC FILMAN spoke with BARBER brothers and PC JACK spoke with Robert STILLMAN. At 18:25 hrs PC FILMAN formed grounds that STILLMAN had committed an offence of Uttering Threats to Damage Property and advised PC JACK to place him under arrest. At 18:28 hrs PC JACK placed STILLMAN under arrest for Uttering Threats to Damage Property.

At 18:30 hrs STILLMAN was read his rights to counsel. He understood.

At 18:33 hrs STILLMAN was read adult caution. He understood.

Then STILLMAN was transported to Peterborough County detachment.

At 18:45 hrs STILLMAN was lodged in cell 2 in Peterborough County detachment.

At 19:03 hrs STILLMAN spoke with a duty counsel.

At 19:05 hrs STILLMAN finished speaking with a duty counsel and he was satisfied.

At 19:15 hrs STILLMAN spoke with lawyer David Ross.

At 19:30 hrs BARBER brothers attended Peterborough County detachment where KGB video statements were taken from them by PC JACK.

At 20:21 hrs STILLMAN was released on PTA with an Undertaking.

PC TAPP #10905

Having reviewed this material on Saturday the 12th of June, 2010, I assert that the tenant STILLMAN should and ought never to have been charged for the utterances he made since they were conditional and stemmed from a defensive view.

His comments were "... if you don't move the vehicles I am ...". Mr. STILLMAN was defending the right he had by law to not be deprived of obtaining his property, property to which he had sole color of right to. Should there have been an absence of any impediment of his personal property then his utterance of those words would indeed have constituted a threat to damage property.

Now being that his comments were retaliatory one must examine the actions of the BARBERS and see whether or not they were lawfully entitled to detain any property.

In order to detain property one has to be authorized by law to do so. One is authorized by law to detain property that they have color of right to. One gets color of right by being the actual owner of the said property or getting judicial authorization through the courts to detain the said property.

In this particular case there was no judicial authorization presented or obtained through the courts to make the detention of the property lawful. Furthermore, the BARBERS were not the lawful owners of the property and hence had no inherent color of right to the property.

The offense of Forcible Detainer is very clear in section 72(2) of the Criminal Code:

One commits the offense of Forcible Detainer when they detain property without color of right in a manner that is likely to cause a breach of the peace or in a manner that is likely to cause a reasonable apprehension of a breach of the peace.

Mr. STILLMAN was the person authorized by law to have the property because he was the lawful owner or person having color of right to the property. His property was being detained by the BARBERS since he could not access the peaceful removal of his property. The BARBERS were detaining his property by blocking access to the property with their vehicles. The actions of the BARBERS had already caused considerable dissention and tension that the peace was disturbed to the point of having the police called to intervene. The fact that Mr. STILLMAN uttered words that the recipients viewed as a threat established a prima facie case of *likely to cause a reasonable apprehension of a breach of the peace*.

Hence in summary, Mr. STILLMAN should and ought to have never been arrested, detained and charged. The BARBERS ought to have been the ones charged. The only applicable charge should have been Forcible Detainer.