PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Parker*, 2024 NSPC 36

Date: 20240604
Docket: 8729574
Registry: Windsor

Between:

His Majesty the King

v.

Christopher Amis Parker

DECISION

Judge:	Associate Chief Judge Ronda van der Hoek
Trial:	May 3, 2024, in Windsor, Nova Scotia
Decision:	June 4, 2024
Charges:	Section 145(4)(a) of the *Criminal Code of Canada*
Counsel:	Hope Bell, for the Crown Michael Curry, for the Defence

By the Court:

Introduction

[1] Mr. Parker is a landlord charged with breaching a condition of an undertaking that required him to have no contact with two tenants, contrary to section 145(4)(a) of the *Criminal Code*. The tenants say he verbally chastised them about their parked car and threatened to tow it. Mr. Parker argues he had a lawful excuse to breach the no contact provision because the tenants took up an extra parking spot and, in any event, the doctrine of *de minimis non curat lex* applies to his communication with them. I reject both arguments but first the evidence.

[2] Before analyzing the testimony given at the trial, it is important to first set out the legal burdens and standards that I must apply and keep foremost in mind. First, Mr. Parker benefits from the presumption of innocence. He cannot be convicted unless the evidence to which I give credit proves his guilt beyond a reasonable doubt. I remind myself that a trial is not a search for the truth but an assessment of the case and a determination of whether the Crown has discharged its burden to establish guilt beyond a reasonable doubt. This case raises issues of credibility and reliability and lawful excuse and *de minimis*. Following my analysis, I may not be sure what happened between these people, but throughout, I must remain mindful of the burden on the Crown and consider whether the evidence, as a whole, established Mr. Parker's guilt beyond the aforementioned reasonable doubt, and whether the

potential defences apply. I remind myself that there is no burden on Mr. Parker, or indeed on any defendant in a criminal proceeding, to testify at trial. I am also aware that I can accept some, none, or all of what any witness says as truthful, and this remains so regardless of the role of the witness in the proceedings.

[3] In assessing the reliability and credibility of witness testimony, the Court considered such things as general capacity to make specific observations, ability to recall what was observed or heard, and to interpret what was perceived and testify accurately about what was recollected. The assessment also considers whether the witness was sincere, candid, biased, reticent, or evasive. (*R. v. D.D.S.*, 2006 NSCA 34)

Evidence and findings of fact:

[4] The investigating officer, Cst. Collins, testified that he responded to the tenants' allegation of breach and, after taking statements, arrested Mr. Parker. On cross examination he agreed the decision to charge is within his discretion, but rejected defence counsel's suggestion the charge was not particularly serious. Cst. Collins testified, "I take all breaches seriously, so I laid a charge."

[5] Ms. Elizabeth Misner was a plain-spoken, no-nonsense witness. She did not argue with counsel and readily conceded appropriate points on cross examination. While there may be an issue with the reliability of her testimony concerning the exact words attributed to Mr. Parker, she was nonetheless a credible historian of the

overall interaction involving her car and the nature of the verbal communication initiated by him.

[6] Ms. Misner explained that she and Mr. O'Neil resided in an apartment building in Windsor where Mr. Parker is the landlord. As she backed her car into a parking spot at the building, she noticed Mr. Parker driving his 2021 light grey truck out of the parking lot.

[7] Upon exiting the car, she and Mr. O'Neil were preparing to walk onto the adjacent sidewalk toward the building front door when Mr. Parker turned in their direction, slowed the truck in front of them, rolled down his window, and spoke to her and Mr. O'Neil.

[8] Ms. Misner watched Mr. Parker lean over the passenger seat of his truck and heard him said, "we had to have the car removed or he would have it towed, he is only providing us with two parking spots". Later, on direct examination she attributed the following words to Mr. Parker, "You need to remove that car, I'm only giving you two parking spots". On cross examination she candidly qualified her answer saying she is "pretty sure" he used the word 'tow'.

[9] Ms. Misner says Mr. Parker drove off and she turned to Mr. O'Neil and said, "He spoke to us. We need to call because he breached his no contact condition with us".

[10] Ms. Misner testified that she and her partner had a security camera mounted in their apartment window aimed in the direction of their parking spots because she was worried about Mr. Parker. She perceived his words as a firm threat, adding it did not intimidate her, but being unsure "where he's going to go with this", she collected the video clip from the camera and provided it to police along with her statement.

[11] The video clip was entered into evidence and Ms. Misner explained that the camera is motion activated and the image on the screen freezes until something in the target area moves and it begins to record. She demonstrated how that worked while the video clip played. She indicated that the video shows Mr. Parker's truck leaving the parking lot and stopping on the street where Mr. O'Neil can be seen on the edge of the screen near her car. The image freezes once the truck is gone and Mr. O'Neil stops moving. He quickly appears and disappears at edge of the target area. It resumed some time later when Mr. Parker's vehicle returned to the parking lot.

[12] On cross examination Ms. Misner reviewed a copy of her lease and agreed it granted one parking space. She also confirmed that she had three vehicles parked on the lot "temporarily" and denied making a report to police to gain a parking spot.

[13] She also denied any gamesmanship occurred in the making of the video recording.

[14] Mr. Lawrence O'Neill was a plain spoken and earnest witness. While his use of the word 'tow' may or may not be accurate, it was clear he understood the import of Mr. Parker's words to convey an intention to remove the third vehicle. Otherwise, he was a reliable and credible witness, quite consistent with Ms. Misner about this short but significant interaction. He testified that upon exiting his vehicle, Mr. Parker told him and Ms. Misner, "that we gotta move one of them vehicles or one will be towed away". He says he was standing 10 to 15 feet away from Mr. Parker who had rolled down his truck window and said this in a "basically firm, strict voice", before peeling away. Mr. O'Neill says he looked at Ms. Misner and said, "did he speak to you?". Mr. Parker says the words were delivered in a threatening tone, plausible given "he threatened to tow a vehicle". On cross-examination it was suggested he did not tell the police that Mr. Parker had mentioned the word 'tow', but Mr. O'Neill insisted, "no, I said he threatened to tow". After considering his statement that did not contain the word, he maintained that he nonetheless told the police there was a threat to tow.

[15] Mr. O'Neil candidly cut to the heart of the matter, "I was shocked that he spoke to me, he was on an order to have no contact direct or indirect with us".

[16] With respect to the video recording, he also watched it in the courtroom and confirmed its integrity. On cross-examination he agreed that he can be seen looking

up in the direction of the video camera but disagreed with the suggestion he was somehow manipulated the camera with his cell phone.

Position of the parties:

[17] The Crown says this is straightforward case with good witnesses recounting a breach of a no contact provision of an undertaking. The condition was clear, there were no exceptions, and the conditions were in place to protect the tenants from contact with Mr. Parker. The complainants were moved to call police because they perceived his words as a threat to tow their personal property. The clip from their video surveillance recording simply supports the contact, and it is not necessary that it be perfect, it is simply a motion activated recording that supports their otherwise unshaken accounts.

[18] Defence counsel argues (i) The tenants are not credible witnesses because they testified that Mr. Parker threatened to tow, but those words were not contained in their police statements. (ii) There is no evidence it was Mr. Parker's truck in the video. (iii) Ms. Misner is bringing this allegation to maintain parking spots, a motive to fabricate substantiated by her testimony that Mr. Parker had communicated at some point that he needed the spot for another tenant and ultimately achieved when police became involved. (iv) the video is unreliable because the image of Mr. O'Neill disappears from the edge of the screen and there is a twenty second gap in the recording.

Analysis:

[19] First, the charge involves communication, and does not focus on the particular words spoken. I have no doubt Mr. Parker spoke to the tenants in the manner described, and while there was some reasonable debate about the exact words spoken, the import of the words related to an extra car leading to the conclusion that car would be towed. Did he say ‘tow’? Does it matter if he said ‘tow’? Well, both tenants recall the threat to tow and that makes sense to me in the circumstances. It makes sense that the words spoken either included a threat to tow or strongly suggested that event would occur given the manner in which the message was delivered. In any event, Ms. Misner interpreted his words as a threat to tow which is plausible and reasonable given the words were directed at parking too many vehicles in the lot. It is not expected that in all cases witnesses will recall with exactitude all words spoken, and sometimes the gist is all that can be provided. This is such a case.

[20] Mr. O’Neill also testified that the there was a threat to tow. He went as far as to say that even though it was not in his statement, he communicated that word to the police. He could be wrong, but his testimony supports a conclusion Mr. Parker spoke to them about their car in a manner that left him concerned about what would happen next leading to a call to police.

[21] Second, the tenants identified Mr. Parker in the truck, and I accept their evidence unshaken on cross examination. They know Mr. Parker, he is their

landlord, they recognized his truck, and he was very close to them when he spoke from the truck window.

[22] Third, Ms. Misner denied falsifying a charge to gain a parking spot, and I believe her evidence for the reasons stated above. Her testimony about how the words spoken made her feel was plausible and reasonable in the circumstances. It appeared to me that she was putting on a brave face to say Mr. Parker did not intimidate her. Mr. O'Neill was also a very compelling witness on that point.

[23] Fourth, concerns about the motion activated video recording are insignificant and satisfactorily explained by the evidence of the tenants. It would be an elaborate feat indeed to somehow use the motion activated recording to set up Mr. Parker. Moreso given he is not even visible in the video as he is, at all times, inside the truck and out of view of the camera.

[24] I accept the evidence of the Crown witnesses. I find Mr. Parker stopped to speak to the tenants about their parking while subject to a no contact provision in violation of that order. The effect was to intimidate the tenants such that they contacted police and the investigating officer charged Mr. Parker because he considers serious breaches of undertaking conditions. Having accepted the evidence of the Crown witnesses, I now turn to defence arguments.

Lawful excuse:

[25] Defence argues that as a landlord Mr. Parker had a lawful excuse to communicate with the complainants because he is responsible for the building, and by extension the parking lot. Ms. Misner's lease provided one parking spot and there was evidence she had more than one vehicle and understood another tenant needed a spot.

[26] The Crown reminds the Court that Mr. Parker must abide by the conditions of his undertaking and if he wanted to seek an exemption to communicate with the tenants he could have done so. Instead, he ignored the condition and challenged the tenants when he should not have done so.

Analysis:

[27] I reviewed *R. v. Tan*, 2010 ABPC 163, in which a worker on a curfew condition stayed on the job site to fix compromised concrete and argued he had a lawful excuse to breach the curfew because it was an urgent situation. In rejecting this argument, the court did not agree 'urgent situation' was a fair description of what occurred and found the submission did not set out a lawful excuse for the violation. The court found acceding to such an argument would greatly expand the concept of lawful excuse and render it unrecognizable. Urgent cannot be so elevated because it would result in loss of the ability to control the actions of people on release conditions. Urgent situations are simply too nebulous, and "[i]f all attendances at work, including impromptu work attendances, are to be exempted from the curfew

restrictions, then they should be the subject of a properly worded exception without unnaturally expanding the concept of "lawful excuse"" (para. 43).

[28] I agree with the reasoning in *Tan* and find lawful excuse unsupported on the facts before me. First, Mr. Parker is not named as landlord on the lease that I reviewed, instead the apartment is owned by a Nova Scotia numbered company that is listed as landlord. If contact needed to occur between the landlord and these tenants, it had to occur in a manner that did not involve Mr. Parker. While this Court can imagine many situations that might represent lawfully excused communication such as a building flood, the need to move a car is not one of them. The lease provides for one parking spot, the tenants say Mr. Parker told them they had two spots, and they acknowledge temporarily using a third. Mr. Parker had recourse to options that did not include talking to these tenants who are connected to a criminal charge involving him that required a no contact condition. The parking situation was not an emergency, there was no fire, no sudden risk presented to the parked car of which he was required to provide information.

de minimus:

[29] Defence also argued *de minimus* (the law does not concern itself with trifles) relying on *R. v. Kubassek*, 2004 CCC (3d) 307 (ONCA). I am pleased to take guidance on the doctrine of *de minimus* from Gorman J. who delineated the historical background in detail in *R. v. Gale*, 2009 CanLII 73900 (NL PC) at paras. 25-41.

Following his review, Gorman J. took the view "that we should recognize the inherent impossibilities in applying this doctrine in a reasonable and fair manner and thus unequivocally declare that it does not exist as a defence or excuse in Canadian criminal law". I adopt his reasons and highlight the take aways from that decision:

> (i) the doctrine of de minimis non curat lex stands for the proposition that "the law does not care for small or trifling matters".
>
> (ii) its existence as a defence or as an excuse in Canadian criminal law is the subject of debate.
>
> (iii) this principle's potential application as a defence to criminal culpability has not yet been decided by this Court and would appear to be the subject of some debate in the courts below (*Kubassek*).
>
> (iv) whether or not the doctrine applies in Canada is an open question.
>
> (v) The doctrine of *de minimis non curat lex* is often traced back to a case referred to as *The Reward* (1818), 165 E.R. 1482…this case does not stand for the broad proposition for which it has so long been cited: that any matter a Court finds trifling can be dismissed. The *Reward* involved a question of statutory interpretation and a desire to avoid the application of statutes in a pedantic manner so as to avoid the "infliction" of "inflexibly severe" penalties. This is simply an early example of the "absurdity principle" of statutory interpretation being applied.
>
> (vi) the test for "triviality is undoubtedly elastic" … and that the "authority for the maxim in criminal law, is, at best, sketchy" … in applying this doctrine judges must be careful not to limit or interfere with prosecutorial discretion
>
> (vii) the primary difficulty with applying the *de minimis non curat lex* doctrine to a criminal trial is the vague and uncertain nature of the excuse it creates (it is an excuse rather than a defence and should when successfully applied result in a stay of proceedings rather than an acquittal).
>
> (viii) the arguments "against the de minimis principle are definitely compelling, the weight of the current jurisprudence and the interests of justice both fall in favour of fully recognizing the defence."
>
> (ix) What is or is not trifling, in a specific situation, will be difficult to agree upon. This leads to the type of inconsistent verdicts we should try to avoid.
>
> (x) less serious matters can be properly dealt with on sentencing.

> (xi) *R. v. Carson* (2004), 2004 CanLII 21365 (ON CA), 185 C.C.C. (3d) 541, the Ontario Court of Appeal stated the doctrine "seeks to avoid the criminalization of harmless conduct by preventing the conviction of those who have not really done anything wrong. The application of the principle goes only so far as to preclude the criminalization of conduct for which there is no reasoned apprehension of harm to any legitimate personal or societal interest.
>
> (xii) the inherent impossibilities in applying this doctrine in a reasonable and fair manner and thus unequivocally declare that it does not exist as a defence or excuse in Canadian criminal law. (*Gale* at paras. 24-41 with citations omitted)

[30] While counsel says this is an available defence, and I am required to grapple with whether it applies, I note context is everything. Mr. Parker accepted to abide by the no contact condition imposed upon him by virtue of a July 5, 2023, allegation of assault involving these people in Windsor. The complainants testified that they were aware he was not permitted to communicate with them and were surprised that he did so. This occurred in the parking lot of the complainants' home, involved a threat to their property, and they did not welcome it. This is not a case of *de minimis*, any more than the protest related push to the church minister in *Kubassek*. Mr. Parker's words caused the tenants distress and were completely unnecessary except as a tool of intimidation. The landlord tenant relationship frequently represents a power imbalance of severe consequence. The tenants were so concerned about Mr. Parker they had installed a video camera pointed at their vehicles. That speaks volumes about the nature of the relationship and their perceived vulnerability, or at least efforts to keep control of their situation. I say this cognizant of defence counsel's stated concern that the Court not read anything into the *Criminal Code* charge that

led to the undertaking. Not to worry the Court is firmly and fully aware of the presumption of innocence, but I am also aware that people placed on undertakings with no contact conditions are expected to comply unless and until a condition is varied. There was no exemption for landlord tenant communications, and a person on an undertaking does not choose which conditions to comply with- all are in effect.

[31] I find Mr. Parker guilty of the charge.

[32] Judgment accordingly.

van der Hoek ACJ