

Extortion: ss 415(1)(a) and 415(1)(b) (Before 1 December 2008)

Commentary

Intention

See the direction on intention at **No 59 – Intention**.

Meaning of ‘threat of detriment’

The question of whether particular conduct and statements are a threat is a question of fact. A statement by a defendant that he or she would withhold evidence advantageous to a person in a committal proceedings, unless the person paid a sum of money demanded, is capable of constituting a ‘threat of detriment’: *R v Jessen* [1997] 2 Qd R 213 at 218-220.

A person is not criminally responsible for the offence if the injury or detriment is threatened to themselves only, or to any other person or the public, or to property of which the person is the sole owner: s 415(2).

It does not matter if the threat does not specify the injury or detriment that is to be caused, or the person or persons to whom or the property to which injury or detriment is to be caused. Self-help, i.e. using threats for example in an attempt to recover a civil debt, is not condoned by the law. The defence of ‘reasonable and probable cause’ relates to the justification of such a claim, rather than to the appropriateness of offering violence to recover a civil debt: per Dowsett J in *R v Kelly, Baker and Perry* [1991] CCA 198, CA 144, 147 and 155 of 1991, 29.8.91.

Meaning of ‘without reasonable or probable cause’

In *R v Campbell* [1997] QCA 127, CA 379 of 1996, 16 May 1997, the court said:

....it seems that there cannot be reasonable and probable cause to make a demand ‘containing threats of injury or detriment’ which would involve the commission of a criminal offence.

The Court also remarked that it was not obvious that the word ‘probable’ added to the phrase. Perhaps the phrase requires some reasonable and just grounds for making the demand (*Reg v Miard* 1 Cox CC 22 at 24), such as furtherance or promotion of the lawful interests of the accused: *Thorne v Motor Trade Association* [1937] AC 797.

It is for the defendant to raise the question whether there was a reasonable or probable cause for the demand which was made and that, once that has been made an issue, it is for the prosecution to exclude the existence of a cause beyond reasonable doubt: *R v Johnson and Edwards* [1981] Qd R 440. For an example of a reasonable or probable cause, there may be evidence that the defendant was acting pursuant to an honest and reasonable belief as to a state of things: s 24 *Criminal Code*, but see the obiter remarks as to the availability of a defence under s 24 in *Campbell*.

Suggested Direction – s 415(1)(a)

[Note: The below direction refers only to demanding property, but the offence includes demanding benefits on performance of service.

Note: This direction deals only with written demands. If the demand is oral the offence is established by s 415(1)(b). See the below direction on s 415(1)(b).]

The prosecution must prove that:

1. **The defendant intended to extort (or gain property, or benefit or the performance of service) from a person.**
2. **The defendant caused the person to receive a document.**
3. **The defendant knew the contents of the document.**
4. **The document demanded property (or benefit or the performance of services) from the person;**
5. **The document contained threats of injury or detriment to be caused to the person, or another person, if the demand was not complied with.**
6. **The demand was without reasonable or probable cause.**

It is not for the defendant to prove that he/she acted with reasonable and probable cause; it is for the prosecution to prove he/she did not.

Suggested Direction – s 415(1)(b)

The prosecution must prove that:

1. **The defendant intended to extort [or gain property or benefit or the performance of service] from a person.**
2. **The defendant orally demanded any property [or benefit or the performance of services] from another person; OR**
that anything be done [or omitted to be done or be procured] by any person.
3. **The demand threatened injury or detriment to be caused to that person [or to the public or any member / members of the public or to property] by the defendant [or any other person] if the demand is not complied with.**
4. **The demand was without reasonable or probable cause.**

It is not for the defendant to prove that he/she acted with reasonable and probable cause, it is for the prosecution to prove he/she did not.