

SUPREME COURT OF QUEENSLAND

CITATION: *Byles v. Palmer* [2003] QSC 295

PARTIES: **MATTHEW BYLES**
(applicant)
v.
STEWART WILLIAM PALMER
(respondent)

FILE NO: 2309/03

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 10 September 2003

DELIVERED AT: Brisbane

HEARING DATES: 11, 22 August 2003

JUDGE: Helman J.

ORDER: **Order that the respondent pay to the applicant \$7,500 by way of compensation for the injuries suffered by the applicant as a result of the commission of the offence against the applicant of which the respondent was convicted.**

CATCHWORDS: CRIMINAL LAW – CRIMINAL COMPENSATION – application for compensation where applicant police officer not named in indictment – factors to be taken into account in determining the amount of award

Criminal Offence Victims Act 1995 ss. 19, 20, 21 and 24

SOLICITORS: Q Solicitors for the applicant

[1] This is an application for compensation for injury brought under the *Criminal Offence Victims Act 1995*. On 6 December 2001 the respondent came before me in Brisbane to answer an indictment in which he was charged with five offences. In count 2 it was alleged that on 4 June 2000 at Brisbane he attempted unlawfully to kill Elaine Frances McMillan or another. Count 3 was an alternative charge of unlawfully attempting to strike with a projectile, and count 4 a further alternative charge of serious assault. On count 8 he was charged with unlawful possession of a dangerous drug, and on count 9 with entering premises with intent to commit an indictable offence in them. The charge of attempted murder and the charges in counts 3 and 4 arose out of an incident in which, on the Crown case, the respondent, with a revolver, fired a shot from a moving car at a police car driven by the applicant, a constable of police, in which the only passenger was another police

officer, Constable Elaine McMillan. The other person referred to in count 2 was of course the applicant. There was another man, Leonard Hite, charged on the same indictment with dangerous operation of a motor vehicle (count 1), being an accessory after the fact to attempted murder (count 5), an alternative charge of being an accessory after the fact to unlawfully attempting to strike with a projectile (count 6), and a further alternative charge of being an accessory after the fact to a serious assault (count 7). Hite was the driver of the car from which the respondent fired on the police car. Each accused man pleaded not guilty to the charges against him and the trial proceeded until 19 December 2001 when the respondent was found guilty by the jury on counts 2, 8, and 9. Hite was found guilty on counts 1 and 5. The jury was discharged from giving verdicts on counts 3, 4, 6, and 7. There was some delay before the respondent and Hite could be sentenced. On 10 April 2002 I sentenced the respondent to imprisonment for seventeen years on count 2 and declared his conviction to be that of a serious violent offence. I sentenced him to imprisonment for four years and six months respectively on counts 8 and 9.

- [2] The respondent appealed against his convictions to the Court of Appeal and applied to that court for leave to appeal against his sentence for attempted murder. On 6 September 2002 his appeal was dismissed and his application refused. He then applied for special leave to appeal to the High Court, but on 30 May 2003 it was certified by a Deputy Registrar of that court that his application was deemed to have been abandoned.
- [3] In written submissions made on behalf of the applicant it is asserted that the respondent was convicted of the attempted murder of the applicant, indicating that this application is made in reliance on s. 19(1)(a) of the *Criminal Offence Victims Act* which provides that there may be a payment of compensation to an applicant ‘for injury suffered by the applicant caused by a personal offence committed against the applicant’. An ‘injury’ may be ‘mental or nervous shock’ (s. 20: meaning of ‘injury’) and a ‘personal offence’ is ‘an indictable offence committed against the person of someone’ (s. 21: meaning of ‘personal offence’). Section 24 provides for orders for compensation:

24 Court may make an order compensating someone injured by personal offence

- (1) This section applies if someone (the “**convicted person**”) –
- (a) is convicted on indictment of a personal offence; or
 - (b) is convicted on indictment and a personal offence is taken into account on sentence.
- (2) The person against whom the personal offence is committed may apply to the court before which the person is convicted for an order that the convicted person pay compensation to the applicant for the injury suffered by the applicant because of the offence.
- (3) The Court may make an order (a “**compensation order**”) for an amount to be paid by the convicted person to the applicant because of the injury.

- [4] Those provisions prompt the question whether it can be said that the respondent was convicted of an offence against the person of the applicant, because the jury's verdict goes no further than a finding that the respondent attempted to murder Constable McMillan *or* another, the applicant. The verdict could then, it might be argued, be seen as not excluding the possibility that the jury was satisfied that there had been an attempt to murder Constable McMillan but not the applicant. It would follow that it was not against the person of the applicant that the offence had been committed. The same argument, *mutatis mutandis*, could be used if Constable McMillan were to apply for compensation, thus leading to the result that neither police officer could be awarded compensation – an outcome that could be regarded as absurd.
- [5] The Crown case as it was put to the jury was that the respondent fired at the police car intending to kill one of its occupants. It was not necessary for the jury to determine, and it did not determine, which occupant the respondent intended to kill provided it was satisfied that there was an intention to kill one of the police officers. Seen in that light – correctly I think - the verdict was of an offence committed against both police officers, each of whom was under fire. If there is any uncertainty as to the construction to be put upon the relevant provisions of the Act, which is a remedial statute, they should of course be construed liberally. Accordingly, I am satisfied that the respondent was convicted of an offence against the person of the applicant.
- [6] The applicant did not suffer any physical injury as a result of what the respondent did but has suffered moderately serious mental effects. He was twenty-six years old when the offence was committed and is still a police officer, at present a senior constable attached to the Indooroopilly criminal investigation branch. He was interviewed and examined on 13 January 2003 by Dr Peter Mulholland, psychiatrist, who gave his conclusions concerning the applicant as follows:

21. COMMENT

- 21.1 Matthew Byles was a 26 year old police officer when during the course of his work whilst conducting a pursuit he was fired upon by a criminal. That criminal was subsequently convicted of an attempted murder charge and sentenced to 17 years and his conviction was declared to be a serious violent offence.
- 21.2 Matthew Byles does not have any past history of any form of psychiatric disorder and his basic personality-character is sound.
- 21.3 As a consequence of the shooting Matthew Byles has developed features of post traumatic stress disorder. It is arguable as to whether the features are severe enough to warrant a formal diagnosis or not. It is arguable as to whether he be regarded as being a mild case of PTSD or else he is in the borderlands of PTSD and has sub-clinical features of PTSD which more properly would be diagnosed as adjustment disorder (unspecified) with post traumatic stress features.
- 21.4 He has had some extensive counselling however his experience is that the process of counselling was leading to an increase of

morbid preoccupations with the event and therefore he pretended that he was OK and had himself discharged from counselling.

- 21.5 It goes without saying that he has experienced a significant degree of emotional pain and suffering as a consequence of this event.
- 21.6 His working situation has been influenced by this event in that he has got himself into a working situation that he perceives to be safer. He also experiences significant anxiety from time to time when out and about at work and has accidentally gone through red lights on a few occasions due to being startled by seeing cars similar to the one that was involved in the chase. Fortunately there has not been any episodes of the latter recently.
- 21.7 It is also noted that there have been some stresses and strains put upon the relationship with his wife who is also a police officer due to his excessive concern regarding safety matters.
- 21.8 It is advised that Matthew Byles needs to have further therapy and it is suggested that he be referred to a psychiatrist who has special interests and skills in the area of treatment of PTSD. Such psychiatrists include the following who are named in no special order of merit or expertise:-
- Dr. Alston Unwin
 - Professor Warwick Middleton
 - Dr. Michael Martin
 - Dr. John-Paul Khoo
 - Dr. George Blair West
 - Dr. Nigel Prior.
- 21.9 It is anticipated that psychiatric treatment will take the form of specialised counselling/psychotherapy.
- 21.10 It is not considered that psychiatric medication will be needed.
- 21.11 It is not considered that hospitalisation for psychiatric reasons is going to be needed.
- 21.12 Costs involved are always difficult to estimate in advance however the likely costs would be in the order of \$5000 over the next approximately 2 years.
- 21.13 It could be assumed that his condition would improve with counselling however it will not entirely go away and the most likely long term result is that he will be left with a permanent impairment in the 5%-10% psychiatric impairment range. If he was to be exposed to similar events in the future then it is likely that his reaction would be greater than if he had not had this particular experience.
- 21.14 In terms of the Criminal Events [*sic*] Victims' Act 1995 Schedule 1 it is advised that he has experienced a mental or nervous shock at the junction of the top end of the minor mental or nervous shock range and the moderate mental or nervous shock range, i.e. at 10%.

21.15 In summary this man experienced a mental or nervous shock as a consequence of being fired upon. A mathematical quantification of that mental or nervous shock as per the relevant legislation is 10%. In terms of psychiatric diagnosis it is arguable as to whether he has a PTSD of clinical degree or not and he is in the borderlands of psychopathology necessary to make a diagnosis of PTSD. Alternatively the diagnosis of adjustment disorder (unspecified) with post traumatic stress features (of mild degree) is also appropriate.

- [7] The applicant was not guilty of any behaviour that directly or indirectly contributed to his injury. Accordingly, there is no occasion for reducing, under s. 25(7) of the Act, any award to him.
- [8] I conclude that the applicant is entitled to an award under item 32, mental or nervous shock (moderate), and that an award of ten per cent. of the scheme maximum is called for. In reaching that conclusion I take into account the mental effects of the respondent's act still suffered by the applicant and the need for psychiatric treatment.
- [9] It follows that the applicant should be awarded \$7,500 by way of compensation. I shall order that the respondent pay to the applicant \$7,500 by way of compensation for the injuries suffered by the applicant as a result of the commission of the offence against the applicant of which the respondent was convicted.