SUPREME COURT OF QUEENSLAND

CITATION:	*Daniel v Reeves & Ors* [2005] QSC 191
PARTIES:	**ROMAN DANIEL** (applicant) **v** **LOGAN BRUCE REEVES** (first respondent) **SIMON JAMES MCGRATH** (second respondent) **NADINE ROSE HUXLEY** (third respondent)
FILE NO/S:	SC No 724 of 2003
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Townsville
DELIVERED ON:	15 July 2005
DELIVERED AT:	Townsville
HEARING DATE:	11 July 2005
JUDGE:	Cullinane J
ORDER:	**1. I award the applicant by way of criminal compensation the sum of $31,500** **2. I order that the first respondent pay 80 per cent and the second respondent pay 20 per cent of the compensation award**
CATCHWORDS:	CRIMINAL LAW AND PROCEDURE – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – ORDERS FOR RESTITUTION AND COMPENSTAION – QUEENSLAND – where the first respondent was convicted of the attempted murder of the applicant – where the second respondent pleaded guilty to the attempted murder of the applicant and the third respondent was convicted of being an accessory after the fact – where the applicant claims criminal compensation as a result of injuries

received – where the second and third respondents took no part in the application for criminal compensation – whether a finding should be made that the applicant had directly or indirectly contributed to his injury and that either no award for compensation should be made or any such award should be reduced

PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – ORDERS FOR RESTITUTION AND COMPENSTAION – QUEENSLAND – where the applicant claims criminal compensation for injuries suffered as a result of a gun shot wound to the left buttock and left groin and an injury to the right shoulder – where the applicant also claims for post traumatic stress disorder and depression – where the events in question and a further assault suffered by the applicant both contributed to his psychological injuries

Criminal Offence Victims Act 1995 (Qld), s 25

Ferguson v Kazakoff [2000] QSC 156, SC No 8834 of 1999, 6 June 2000, applied
White v Reeves [2002] QSC 020, SC No 757 of 2001, 11 February 2002, considered

COUNSEL: The applicant appeared on his own behalf
The first respondent appeared on his own behalf
No appearance for the second and third respondents

SOLICITORS: The applicant appeared on his own behalf
The first respondent appeared on his own behalf
No appearance for the second and third respondents

[1] The applicant seeks compensation under the provisions of the *Criminal Offence Victims Act 1995* (Qld) ("the Act") as amended.

[2] He was born on 9 October 1965.

[3] The events out of which the claim arises occurred on 3 November 1999 at Townsville.

[4] The first respondent was convicted of attempting to murder the applicant and sentenced to 14 years imprisonment. He had pleaded not guilty. The second respondent pleaded guilty to attempting to murder the applicant and was sentenced to imprisonment for seven and a half years. The third respondent was convicted of being an accessory after the fact to the crime of attempted murder. Her involvement was limited to cleaning away some blood stains. It is difficult to see on what basis any claim for compensation could be made against her in relation to the injuries which were sustained and in the result I did not have any submissions addressed to me in support of such an award.

[5] The circumstances giving rise to the offence are, to say the least, curious and I have the distinct impression of not having been told the full truth of the matter. At the time of imposing sentence upon the first respondent I expressed the view the jury had not heard the whole truth.

[6] The applicant was unrepresented before me and the first respondent appeared and was unrepresented before me. Each cross-examined the other.

[7] Neither the second nor the third respondents appeared and the second respondent made it clear he did not wish to take any part in the proceedings.

[8] It was the first respondent's contention that a finding should be made under section 25(7) of the Act that the applicant had directly or indirectly contributed to his injury and that either no award for compensation should be made or any such award should be reduced.

[9] According to the first respondent the applicant had been responsible for drugging and raping two young girls aged 14 and 15. He says that he had been informed of this firstly by a detective and then by the two girls themselves. Indeed, he claims that the detective told him that he should take the applicant and do a hit on him. He says that he clarified with the detective that he meant that he should take the applicant for a ride and bash him up and leave him there but not kill him. He says that he warned the applicant of what might happen. He also says that the detective mentioned others who should similarly be dealt with. As I understand it, the applicant agrees that the first respondent said something along these lines but says that his involvement with the girls only became an issue later. There were assaults or attempted assaults by the first respondent on the applicant between this time and the date of the shooting.

[10] The applicant acknowledges that he had given drugs to and had sexual relations with the two girls in question but said that this was consensual and that he believed that they were 16 and 17 respectively. He said in answer to some questions by the first respondent that the girls had told him in effect that they were operating as prostitutes.

[11] The motivation then which the first respondent claimed was that the applicant had been guilty of predatory conduct towards two girls and for this deserved punishment in which he was encouraged by a senior police officer. He says it was not his intention to kill the applicant but rather to take him out and to frighten him. The second respondent who had pleaded guilty gave evidence that it was their intention to kill the applicant and a jury found the first respondent guilty of attempting to murder the applicant who was at the time in the course of escaping from the house where he had been taken. It was the prosecution's case that he had been lured there and that he was bound and was about to be removed to a place where he would be killed.

[12] The applicant on the other hand claims that he had known the first respondent before and had looked after some property of his while the first respondent was in prison. The first respondent came out of prison not long before the relevant date and according to the case advanced by the applicant before me, some bad blood developed between them because of nothing more important than the manner in

which the applicant on one occasion spoke to the first respondent. He says that the first respondent told him that the police officer to whom I have already referred had encouraged the first respondent to take the applicant for a drive and bash him up.

[13] There is evidence of a somewhat bizarre visit by the first respondent to the applicant in hospital after the applicant had been shot by him and in which a conversation occurred in the course of which the first respondent asked to borrow the applicant's vehicle and the applicant readily agreed. The first respondent told the applicant that if he didn't take the matter any further with the police he would ensure that he (the applicant) would be given an entry into "the right crowd" and he would not be an outcast anymore.

[14] Just what to make of the evidence of both the applicant and the first respondent as to the circumstances leading up to the events in question is highly problematical. I do not accept the evidence that a detective effectively encouraged the first respondent to take the applicant somewhere and to use the words the applicant claims the first respondent used "taken for a ride". On the other hand the applicant's claim that the only difficulty between them arose out of the manner in which the applicant had spoken to the respondent and the offence which the first respondent had taken from this is also very difficult to accept. I am inclined to think there is something more serious in the nature of criminal dealings between the parties which resulted in the plan which the first and second respondents formed to lure the applicant to a house and from there to take him, as I am satisfied is the case, somewhere and kill him.

[15] Whatever suspicions I might entertain, it is not, I think, possible in the circumstances of this case to make any findings of fact with any degree of certainty as to the circumstances leading up to the events of the 3 November 1999 in which the applicant was shot. Therefore I am not persuaded that this is a case in which the court is entitled to act under section 25(7) of the Act.

[16] The applicant was shot while jumping through a window in the course of escaping from the house to which he had been taken. The applicant was admitted to hospital suffering from a gun shot wound to the left buttock and left groin. The bullet had traversed the pelvic canal containing the nervous supply to the groin sensation as well as the penile erectile nerves.

[17] In the result no permanent damage has been done except for some impairment of the nerve which supplies the sensation to the groin and to the penis erectile.

[18] Although it does not appear in the report of the admitting doctor, it appears that the applicant probably suffered some injury to his right shoulder. A little over two months later he attended an orthopaedic surgeon complaining of symptoms in his right shoulder which he related to the incident in question. At that time he was seen to have pain on movement and also an uncomfortable clicking sensation. On examination there was tenderness of the acromioclavicular joint and pain on adduction. Crepitus on movement in the joint was detected. The report of the orthopaedic surgeon is only brief and leaves open the possibility of some surgical treatment for the condition in the future. The applicant has not had any surgery, and there is no more recent information on the subject. Although he was first seen by the orthopaedic surgeon following a subsequent assault upon him in prison, I am

prepared to accept that he suffered some injury to his shoulder at that time as he told the orthopaedic surgeon and that he continues to suffer some symptoms from this.

[19] There is a substantial report from Mr Zemaitis, psychologist. The applicant was assaulted on 6 January 2000. The applicant was assaulted whilst an inmate of the Townsville prison. This is described in some detail in the report of Mr Zemaitis. Whilst the applicant was inclined to attempt to link this to this claim for compensation, there is no evidence at all which would support this. He informs me he has a claim for compensation in relation to this in the District Court where apparently the charges arising out of the assault are to be dealt with.

[20] Mr Zemaitis describes the applicant as suffering from a post traumatic stress disorder and depression. He had of course not long suffered these injuries when he was assaulted at the prison. According to Mr Zemaitis the close proximity of the second assault has intensified the symptoms of post traumatic stress disorder and led to him suffering from a major depressive episode. He is currently taking anti-depressant medication. Mr Zemaitis does not attempt any opinion as to the relative contributions each incident has made to his current condition.

[21] He is entitled to be compensated in respect of the psychological or psychiatric consequences of the events of 3 November 1999 upon this application. Any increased consequences of the first assault as a result of the second assault fall to be dealt with in the application pending in the District Court.

[22] It is not easy to assess the extent to which the applicant's current condition is the result of the first incident. However given its serious nature and the undoubted fear that it must have created in him (exacerbated one would think by the presence shortly afterwards at the hospital of the man who had shot him) it is reasonable to accept that a significant part of the post traumatic stress disorder relates back to this incident and that his present condition is a consequence of both incidents, i.e. that each substantially contributed to it. He suffers:

(a) anxious arousal;

(b) depression;

(c) intrusive experiences;

(d) dissociation;

(e) impaired self reference.

[23] The applicant is described a having been at the time a personal trainer. According to the report of Mr Zemaitis he has not worked since these events and has been in receipt of social welfare payments.

[24] I mention that the applicant in the course of submissions from the Bar table handed me a judgment (*White v Reeves* [2002] QSC 020) and relied upon this in support of his various claims for compensation. The respondent in that matter was the first respondent here and he also had some things to say about the applicant in that case, contending that he (the first respondent) had inflicted considerably more serious

harm with more serious consequences upon that applicant than the present applicant. This seems to be so from a reading of the judgment.

[25] I approach the matter on the basis of what was said by Thomas JA in *Ferguson v Kazakoff* [2000] QSC 156. In written submissions made at the time when the applicant here was represented by counsel, separate claims are made for bruising and laceration in relation to the shoulder injury and bodily scarring in relation to the gunshot wound. It seems to me that in each of those cases a single allowance should be made.

[26] I make, for the shoulder injury, an allowance, under item 13 of the schedule, of $7,500 which is 10% of the statutory maximum.

[27] In relation to the gunshot wounds and the associated scarring, I made an allowance under item 25. The applicant does not seem to have suffered any significant sequelae of this apart from some loss of sensation. I allow under item 25, 12% of the statutory maximum namely $9,000.

[28] Doing the best I can with the claim for mental or nervous shock in the absence of any direct evidence apportioning the applicant's present psychological or psychiatric problems as between the two events, I allow the sum of $15,000 representing one fifth of the statutory maximum. It is, it seems to me, in the circumstances of this case appropriate to treat it as either at the top of item 32 or at the bottom of item 33 in the absence of any evidence enabling the court to make a more accurate assessment.

[29] The total of compensation is $31,500.

[30] As I have already said, I do not see how the third respondent is causally linked to the applicant's injuries and I dismiss the application against her.

[31] There will be a single order for compensation pursuant to section 26(5) of the Act against both the first and second respondents. The second respondent's role was to lure the applicant to the house were he was to be bound and gagged preparatory to execution. He must be regarded as having contributed to the injuries. However, the first respondent who was, on my assessment, both the principal in the plan and the person who shot the applicant, must bear by far the primary responsibility.

[32] I award the applicant by way of criminal compensation the sum of $31,500.

[33] I order that the first respondent pay 80 per cent and the second respondent pay 20 per cent of the compensation award.