

# DISTRICT COURT OF QUEENSLAND

CITATION: *Davis v Wildey & Clarke* [2009] QDC 79

PARTIES: **SHANNON CHRISTOPHER DAVIS**  
(Applicant)  
v  
**DREW WILLIAM WILDEY**  
(First Respondent)  
and  
**DAVID OLIVER CLARKE**  
(Second Respondent)

FILE NO/S: 154 of 2008

DIVISION: Civil

PROCEEDING: Application for criminal compensation

ORIGINATING COURT: District Court Beenleigh

DELIVERED ON: 20 March 2009

DELIVERED AT: Beenleigh

HEARING DATE: 30 January 2009

JUDGE: Dearden DCJ

ORDER: **The respondents Drew William Wildey and David Oliver Clarke pay the applicant Shannon Christopher Davis the sum of \$13, 500.00.**

CATCHWORDS: APPLICATION – CRIMINAL COMPENSATION –assault occasioning bodily harm in company – bruising and lacerations – facial fracture – mental or nervous shock

LEGISLATION: *Criminal Offence Victims Act (Qld)* 1995 ss 22(4), 24, 25, 26, 30(2)

CASES: *R v Ward; ex parte Dooley* [2001] 2 Qd R 436  
*Riddle v Coffey* [2002] 133 A Crim R 220; [2002] QCA 337  
*Wren v Gaulai* [2008] QCA 148

COUNSEL: Ms A Campbell (solicitor) for the applicant  
No appearance for the respondents

SOLICITORS: Campbell + White Lawyers for the applicant

## No appearance for the respondents

### Introduction

- [1] The applicant Shannon Christopher Davis seeks compensation in respect of injuries suffered by him in an incident which occurred at Browns Plains on 3 January 2005. The first respondent, Drew William Wildey, was sentenced by Judge Samios in the District Court, Brisbane, on 18 November 2005 to a sentence (relevantly in respect of this application) of three years imprisonment suspended after serving twelve months, with an operational period of three years. The second respondent, David Oliver Clarke, was sentenced by Judge Griffin in the Beenleigh District Court on 1 May 2007 to a sentence (relevantly in respect of this application) of three years imprisonment suspended after twelve months, with an operational period of three years.

### Facts

- [2] The first and second respondents were involved in a series of offences in respect of four persons who lived together in a house at Browns Plains. On 3 January 2005, the first and second respondents obtained entry to the residence at Browns Plains by a ruse while the four residents were at home watching TV around midday. After an initial assault of one of the residents, Scott Waddell, the first respondent turned to the applicant and said, "You are next". The first respondent then chased the applicant down the hall. The applicant was punched in the back of the head by the first respondent while he was being chased. The applicant ran into a bedroom and tried to shut the door. The first respondent forced the door open, pushing the applicant to the floor. The first respondent started punching the applicant in the face, using both of his fists, causing the applicant's nose to bleed. The first respondent then stomped on the applicant's head, face and body about 10 to 15 times.
- [3] The applicant tried to punch the first respondent in the groin region in retaliation and the first respondent then kicked the applicant in the nose. At this point the second respondent came into the room and started kicking and punching the applicant for about 3 minutes. The first respondent then picked the applicant up by the neck and threw him down the hallway. The first respondent then punched the applicant again in the face about four times. The final assault by the respondent was a kick to the face of the applicant.<sup>1</sup>

### Injuries

- [4] The applicant was taken to Logan Hospital where his injuries were observed to include multiple contusions to the head, right arm and thorax, abrasions to the thorax, and an injury to the nose "which at the time was too badly swollen to tell if it was fractured". The applicant was treated with pain killers and "would have suffered discomfort for a number of days"<sup>2</sup>.

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<sup>1</sup> Exhibit C p.6 Affidavit of Alison Campbell sworn 3 November 2008 and see Exhibit 2A (Sentence of David Oliver Clark – District Court Beenleigh, 1 May 2007)

<sup>2</sup> Exhibit C (Sentencing Submissions re Drew Wildey) p 6-7 Affidavit of Alison Campbell sworn 3 November 2008

- [5] The three photographs of the applicant are exhibited to Ms Campbell's affidavit<sup>3</sup>. These photographs graphically illustrate the bruised and bloody appearance of the applicant shortly after the assault.

### The law

- [6] This is an application under s 24 of the *Criminal Offence Victims Act* 1995 ("COVA"). COVA commenced operation on 18 December 1995 and provides for compensation in respect of convictions on indictment of a personal offence for injury suffered by an applicant because of that offence. *R v Ward; ex parte Dooley* [2001] 2 Qd R 436 indicates that the assessment of compensation should proceed pursuant to COVA s 22(4) by scaling within the ranges set out in the compensation table (Schedule 1) for the relevant injuries. In particular the fixing of compensation should proceed by assessing the seriousness of a particular injury in comparison with the "most serious" case in respect of each individual item in Schedule 1. *Riddle v Coffey* [2002] 133 A Crim R 220; [2002] QCA 337 is authority for the proposition that COVA s 26, read in its entirety, aims to encourage only one criminal compensation order for one episode of injury without duplication. However "where it is practical to make separate assessments under each applicable item in the [compensation] table whilst at the same time avoiding duplication that course should be adopted", unless it is impractical.<sup>4</sup> Further, "if an injury that is best described in one item [of the compensation table] is instead assessed together with another injury under another item in order to avoid duplication it may therefore be necessary to make an adjustment to cater for differences between the ranges or maxima for each item".<sup>5</sup> Ultimately the court should ensure that there is compliance with "the use of the methodology prescribed by [COVA] s 25 [which] is mandatory".<sup>6</sup>

### Compensation

- [7] Ms Campbell on behalf of the applicant seeks compensation as follows:

**1. *Item 1 – Bruising/laceration etc. (minor/moderate)***

The applicant suffered multiple contusions to his head, right arm and thorax with abrasions to the thorax. In the circumstances these injuries, which are starkly illustrated by the photographs contained at Exhibit K of Ms Campbell's affidavit, clearly require an award at the upper end of the range for Item 1. Accordingly I award 3% (\$2,250) pursuant to Item 1.

**2. *Item 3 – Fractured nose (no displacement) – 5%-8%***

The submissions on behalf of the prosecutor at the sentence of the first respondent indicate that when the applicant was taken to hospital he had "an injury to the nose which at the time was badly swollen to tell if it was fractured". The applicant himself in his Victim Impact Statement refers to "a broken nose" but goes on to note that "x-rays" were "found

<sup>3</sup> Exhibit K Affidavit of Alison Campbell sworn 3 November.

<sup>4</sup> *Wren v Gaulai* [2008] QCA 148 per Fraser JA at para [24]-[25].

<sup>5</sup> *Wren v Gaulai* [2008] QCA 148 per Fraser JA at para [29].

<sup>6</sup> *Wren v Gaulai* [2008] QCA 148 per Fraser JA at para [22].

<sup>7</sup> Exhibit C p.7 Affidavit of Alison Kendall sworn 3 November 2008

inconclusive.”<sup>8</sup> The applicant refers in his affidavit to “continuing nasal problems since the assault”<sup>9</sup>. On the balance of probabilities,<sup>10</sup> I am not persuaded that the material reveals that the applicant did in fact suffer a fractured nose. Accordingly, I make no award pursuant to Item 3.

**3. *Item 32 – Mental or nervous shock (moderate)***

The report of Mr Peter Stoker, Clinical Psychologist, dated 28 February 2008<sup>11</sup> indicates that the applicant is suffering Post Traumatic Stress Disorder (PTSD) with continued flashbacks and nightmares of the assault leading to a much more circumscribed lifestyle. Mr Stoker notes further that the applicant is suffering from a post-concussional disorder, as intellectual testing indicated a significant diminution in the applicant’s verbal and performance test results (i.e. “a mild head injury”). In addition, the applicant was diagnosed by Mr Stoker as suffering from alcohol abuse disorder.

Mr Stoker concluded that the applicant was suffering a moderate degree of mental and nervous shock, in the mid to upper level of the moderate range. In my view an appropriate award under Item 32 in these circumstances would be at the middle of the moderate range, namely 15% of the scheme maximum (\$11,250).

**Contribution**

- [8] I do not consider that the applicant has contributed in any way to the injuries that he suffered.

**Conclusion**

- [9] Accordingly I order that the first respondent Drew William Wildey and the second respondent David Oliver Clarke pay the applicant Shannon Christopher Davis the sum of \$13, 500.00.

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<sup>8</sup> Exhibit C Affidavit of Shannon Davis sworn 16 December 2008

<sup>9</sup> Affidavit of Shannon Davis sworn 16 December 2008 para 24

<sup>10</sup> COVA s30(2)

<sup>11</sup> PS2 Affidavit of Peter Stoker sworn 21 January 2009