

DISTRICT COURT OF QUEENSLAND

CITATION: *Spoor v Schultz and Sherman* [2010] QDC 126

PARTIES: **Cristy Anne Spoor**
(Applicant)

v

Brett Andrew Schultz
(First respondent)

and

Belinda Jane Sherman
(Second respondent)

FILE NO/S: 3063/2009

DIVISION: Civil

PROCEEDING: Application for criminal compensation

ORIGINATING COURT: District Court Brisbane

DELIVERED ON: 1 April 2010

DELIVERED AT: Brisbane

HEARING DATE: 9 December 2009

JUDGE: Tutt DCJ

ORDER: **The respondent Brett Andrew Schultz pays to the applicant Cristy Anne Spoor the sum of \$7,500.00 by way of compensation for the injury sustained by the applicant arising out of criminal conduct for which both respondents were convicted by this court on 20 September 2007.**

CATCHWORDS: CRIMINAL COMPENSATION – “armed robbery” – where applicant claims “mental or nervous shock” only - where applicant did not contribute to index assault – where liability attaches to first respondent only.

Criminal Offence Victims Act 1995, ss 24, 25(7), 26, 31

Ferguson v Kazakoff; ex parte Ferguson [2001] 2 Qd R 320

RMC v NAC [2009] QSC 149

SOLICITORS: Mr M.E. Holmes, solicitor of Murphy Schmidt Solicitors for the applicant.

No appearance by on behalf of respondents.

Introduction:

- [1] Cristy Anne Spoor (“the applicant”) claims compensation under Part 3 of the *Criminal Offence Victims Act* 1995 for injury she sustained arising out of the criminal conduct of Brett Andrew Schultz and Belinda Jane Sherman (“the respondents”) who were respectively convicted by this court at Brisbane on 20 September 2007 for the offence of the armed robbery of the applicant on 7 October 2006 at Ellen Grove, Queensland.
- [2] Both respondents were respectively served personally with the application and supporting affidavits and appeared in person when the application came on for hearing in the first instance on 12 November 2009. Because the respondents informed the court on that occasion they had applied for legal aid for advice in respect of the application to which a decision had not been made at that time, by consent the hearing of the application was adjourned to 9 December 2009 to enable them to obtain further advice.
- [3] On 5 December 2009 each of the respondents forwarded to the applicant’s solicitors a copy of their respective affidavits sworn 4 December 2009 with the advice that “we will not be attending the hearing because we are not challenging the application made against us”. Copies of the affidavits of the respective respondents are received and placed on the court file as Exhibits 1 and 2 respectively at the hearing.
- [4] The application for compensation is made pursuant to s 24 of the Act and is supported by the following material:
 - (a) the applicant’s affidavit with Exhibits sworn 29 October 2009 and filed in this court on 5 November 2009;

- (b) the affidavit of Peter Jordan, psychologist, sworn 9 November 2009 with Exhibit and filed in this court on 10 November 2009;
- (c) the affidavit of service of Laurence John Parker, commercial agent and private investigator, sworn 4 November 2009 and filed in this court on 10 November 2009;
- (d) the affidavit of John Harold Robinson sworn and filed by leave on 12 November 2009.

Background facts:

- [5] The applicant was born on 27 September 1985 and was the victim of an armed robbery by the respondents on 7 October 2006 when she and a co-employee were leaving their liquor cellar workplace at Ellen Grove, Queensland, at which time they were accosted by the respondent Schultz within the building premises where the liquor cellar was located. The respondent Schultz “was holding a bat which seemed to be about half the size of a baseball bat”; lunged at the applicant and demanded money from the applicant and her co-employee. The money was thrown at the respondent Schultz who “then ran off”. The respondent Sherman who had previously worked at the shop was waiting in a motor vehicle outside the premises and both respondents then left the scene in the vehicle.

Applicant’s injuries:

- [6] The applicant claims compensation for alleged psychological injuries she suffered arising out of the respondents’ criminal conduct. In her affidavit the applicant sets out a summary of sequelae from the incident including the following:
- She has a “fear of living by herself”;
 - Her sleep “has been greatly affected”;

- She has “a great deal of trouble getting to sleep at night because I have become extremely security conscious”
- “Since the robbery I sleep with the light on in the house”;
- She “had to change my position within the organisation as I was unable to fulfil my job description in retail as I was too scared to be on the business premises by myself at night”; and
- She “would not work at Liquor Legends on her own”.

[7] In addition to her own evidence as set out above, the further evidence filed in support of the applicant’s injury is the report dated 29 October 2009 from Mr Peter Jordan, psychologist, being Exhibit “A” to his affidavit.

[8] Mr Jordan’s comprehensive 15 page “psychological assessment report” contains an extensive “Personal Background History” of the applicant and her various symptomology containing the “Psychological Effects of the Robbery”.¹

[9] Mr Jordan conducted a number of psychological tests on the applicant and ultimately came to a number of conclusions, but summarised his “diagnosis” as “Specific phobia”.²

What is “mental or nervous shock”?

[10] The recent decision of *RMC v NAC* [2009] QSC 149 revisited this question and what was said by Thomas JA in *Ferguson v Kazakoff; ex parte Ferguson* [2001] 2 Qd R 320. His Honour Byrne SJA analysed the legal history of the condition in paragraphs [25] to [37] of his judgment and ultimately came to the conclusion in paragraph [38] thereof that:

¹ Paragraph 10 at p 7 of the report.

² Paragraph 12.15 at p 14 of the report.

“Nervous shock” in the *Act* is confined to a recognisable psychiatric illness or disorder”.

Applicant’s submissions:

- [11] It is submitted on the applicant’s behalf that compensation for the applicant’s injuries should be assessed in terms of Item 32 of the Compensation Table contained in Schedule 1 of the Act – “mental or nervous shock (moderate) ... 10%-20%” and that an assessment should be made of \$15,000.00 representing 20% of the Scheme maximum.

Finding on category of injury:

- [12] On the basis of the evidence before the court and the submissions made I find that the applicant is entitled to an award of compensation against the respondent Schultz for the psychological injury she sustained as a result of the index assault, and that such injury falls within Item 31 of the Compensation Table in Schedule 1 of the Act. My reason for this finding is, that although the applicant seems to have suffered “a range of depressive symptomology”³ the ultimate diagnosis of the applicant’s “psychiatric impairment” is classified as “Specific phobia” which I find is at the lower end of “a recognisable psychiatric illness or disorder” within the terms of the dictum expressed in *RMC v NAC* referred to above, and consequently I find that Item 31 is the appropriate category upon which to assess the applicant’s compensation.
- [13] I therefore assess the applicant’s compensation in respect of this Item in the sum of \$7,500.00 representing 10% of the Scheme maximum payable under Schedule 1 of the Act.

³ Paragraph 11.2.4.2 at p 12 of Mr Jordan’s report.

Applicant's direct contribution to injury:

- [14] In deciding the amount of compensation payable to the applicant I must also take into account the behaviour of the applicant that directly or indirectly contributed to the injury (see s 25(7) of the Act).
- [15] I refer to the circumstances of the incident as set out in paragraph [5] above and I am satisfied that the applicant did not either directly or indirectly contribute to the injuries she sustained at the hands of the respondents.

Whether liability attaches to both respondents:

- [16] Section 26 of the Act relevantly provides that:

“(5) A single compensation order may be made against more than one convicted person.”

(6) If a single compensation order is made against more than 1 convicted person, the order may provide for—

- (a) separate liability of a convicted person scaled according to the person's direct and material contribution to the injury; or
- (b) joint liability of more than 1 convicted person for an amount payable under the order; or
- (c) both the separate liability mentioned in paragraph (a) for an amount and joint liability for the amount.

(7) Without limiting subsection (5), if each of more than 1 convicted person directly and materially contributed to injury mentioned in subsection (3)(a) and (b), a court may make a compensation order against each of more than 1 of the convicted persons.”

- [17] In this instance, I find that it was the respondent Schultz only who caused the applicant's injury the subject of the application for the reason that it was Schultz only who confronted the applicant and her co-employee, and although it was the respondent, Sherman, who was the driver of the "getaway" vehicle, and therefore a party to the offence, the applicant saw only a car "speed off in the estate across the road" after the robbery, but "didn't see anyone else in this car".⁴ The reason both respondents were ultimately apprehended was because the applicant recognised the respondent Schultz as being "the boyfriend" of the respondent, Sherman, who had previously worked at the shop.
- [18] I therefore find that the respondent, Schultz, is the only respondent liable to the applicant under the Act as he alone was directly responsible for the applicant's injury arising out of the index assault.

Order:

- [19] I order that the respondent, Brett Andrew Schultz, pay to the applicant the sum of \$7,500.00 by way of compensation for the injury sustained by the applicant arising out of the index assault on 7 October 2006 for which both respondents were convicted by this court on 20 September 2007.
- [20] In accordance with s 31 of the Act I make no order as to costs.

⁴ Paragraphs 23 and 24 of Applicant's affidavit.