

# DISTRICT COURT OF QUEENSLAND

CITATION: *Shyu v Mathers* [2010] QDC 96

PARTIES: **MIN SHANG SHYU**  
(Applicant)  
**AND**  
**STANLEY JOHN MATHERS**  
(Respondent)

FILE NO/S: BD1502/09

DIVISION: Civil

PROCEEDING: Application for criminal compensation

ORIGINATING COURT: District Court, Brisbane

DELIVERED ON: 22 March 2010

DELIVERED AT: Brisbane

HEARING DATE: 6 July 2009

JUDGE: Tutt DCJ

ORDER: **The respondent Stanley John Mathers pays to the applicant Min Shang Shyu the sum of \$750.00 by way of compensation for injuries caused by the respondent to the applicant for which the respondent was convicted by the District Court at Brisbane on 14 November 2006.**

CATCHWORDS: CRIMINAL COMPENSATION – attempted armed robbery – where respondent allegedly threw metal bar at applicant – where applicant sustained minor bruising on arm – where applicant claims “mental or nervous shock” – where applicant not entitled to compensation for “mental or nervous shock” as applicant “does not have a diagnosable psychiatric disorder”  
*Criminal Offence Victims Act* 1995 ss 24, 31  
*Ferguson v Kazakoff; ex parte Ferguson* [2001] 2 Qd R 320  
*RMC v NAC* [2009] QSC 149

SOLICITORS: Ms J.C. Wilson Solicitor of Murphy Schmidt Solicitors for  
the applicant  
Respondent appeared in person

**Introduction:**

- [1] Min Shang Shyu (“the applicant”) claims compensation under Part 3 of the Criminal Offence Victims Act 1995 (“the Act”) for an alleged injury he sustained arising out of the criminal conduct of the respondent, Stanley John Mathers (“the respondent”) who was convicted by the District Court at Brisbane on 14 November 2006 for the offence of the attempted armed robbery of the applicant’s convenience store on 28 January 2005 at Inala, Queensland.
- [2] 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 5 May 2009 and filed in this court on 29 May 2009;
  - (b) the affidavit of Dr Donald Grant, psychiatrist, with exhibit, sworn 27 April 2009 and filed in this court on 29 May 2009;
  - (c) the affidavit of service of Wayne Colin Heydt, licensed commercial agent, sworn 11 June 2009 and filed in this court on 30 June 2009;
  - (d) the affidavit of Jillian Christina Wilson, solicitor, with exhibits sworn and filed by leave in this court on 6 July 2009.
- [3] The respondent, having been served with the application and supporting documents on 6 June 2009, appeared in person at the hearing on 6 July 2009 and made a number of submissions.

**Facts:**

[4] The circumstances of the attempted armed robbery on 28 January 2005 are set out in the applicant's affidavit as follows:<sup>1</sup>

- “6. At the time of the robbery I was in attendance at my convenience store when Mathers entered the store and bought a drink. Mathers didn't say anything when he got his drink but he appeared to be trying to hide his face and was wearing a dark cap and sunglasses. He then walked out of the store.
7. Approximately 5 minutes later I was doing some paperwork near the cash til when I saw someone move slowly past the front of the store. There was no one else in the store at the time. I walked outside at the front of my store and saw Mathers squatting outside the store. I didn't say anything but became even more suspicious of Mathers as I had been robbed previously.
8. I then served a female customer. When she walked out of the store I saw that Mathers was still squatting outside the store. I then stood at the front of my store watching Mathers. Mathers then walked past me into my store and proceeded to walk around the store.
9. I then walked to the cash til area as Mathers walked towards me and stood in front of the counter.
10. I remember that I said to him very loudly, 'What do you want?' He said words to the effect of, 'I want a packet of

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<sup>1</sup> Applicant's affidavit filed 29 May 2009.

cigarettes'. I said, 'Which ones?' Mathers then lifted his shirt with his right hand and I saw that near his waist and pointing to me was a small black gun. The gun was resting between his right hip and stomach. The gun seemed to be very small, with a small barrel. I do not know the difference between a revolver and a semi-automatic hand gun. I had never seen a gun like that before.

11. Mathers then said to me, 'I want the money.' I then said, 'Alright, alright.' As I said this I ran to the front of my shop and pulled down the steel roller door and locked it. I then ran to the side of my shop where there is a business. I clapped my hands loudly and called out for help and to phone the Police. I then ran to the rear of my store where the other door is located. I then locked that door as well and waited for the Police to arrive.
12. Mathers was banging and pulling on the back door of the store. I could see that he was still holding the black gun in his hand. He was also kicking at the door with his feet. He then threw a bar at me through the grilled door which hit me on the arm. He then threw a screwdriver, steel bar, hammer and motor cord at me which did not hit me as I dodged them. I then picked up the steel bar and hit the grilled back door with it. Mathers then found a refrigerator motor fan behind a fridge and threw it towards me but it hit the steel grill door instead and hit the floor. He then started to kick and shake the grill door violently with both hands while screaming angrily for more than thirty seconds.
13. I saw that he was going crazy and was afraid he might damage my fridge because there was a lot of stock inside. I wanted to calm him down so I picked up the steel bar he

had previously thrown at me to bang on the grill door 7 or 8 times.

14. Suddenly he stopped, pointed his fingers at me and said 'You will die! You will die!'
15. He then went back into the store and was trying to get out the other door. When he returned to the back door he was not holding the gun anymore.
16. When Police arrived I let them into my store through the front door where they found Mathers. Later upon further investigation I found Mather's gun behind a cabinet and notified Police."

[5] At the hearing of this application the respondent challenged the account of the incident provided by the applicant, in the following terms:<sup>2</sup>

- "...in fact, he severely assaulted me, it was the other way around where I have photos of the wounds that I was inflicted upon which were stab wounds to my chest and you will also see he cut my toe in half where I was admitted to hospital later that night where I required stitches. In respect, it was completely the other way around."
- "I do admit that I was in fault. I committed a crime. I'm sorry for that and have been served a sentence time which I – criminal sentence where I went to gaol for that time... I'll admit I did kick the door. He had a very large knife with him on the outside of the shop and as I tried to let myself out of the shop he stabbed me several times in the chest. As you can see, he cut my toe in half which went down to the bone. Then afterwards I tried again to get out, where he picked up a large stick and that's where I got the scrapes from, where he

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<sup>2</sup> Hearing transcript (H.T) page 5 lines 35-60, page 6 lines 1-8.

was stabbing me with the stick, attempting to get me in the groin most of the time, laughing as he was saying it.”

- [6] The respondent further denied that he threw any objects at the applicant and implied that the applicant may be confused with what occurred in an earlier robbery of his store, to which reference is made in Dr Grant’s report of 5 May 2005 in the paragraph which states:<sup>3</sup>

“The robber then picked up an iron bar which Mr and Mrs Shyu kept behind their counter for their protection. The man used this bar to hit both Mr Shyu and his wife. Mr Shyu was struck on the left side of his forehead. He was not knocked out but he was dazed and confused and is a little unsure of subsequent events.”

- [7] In response, the applicant’s solicitor relied on the applicant’s instructions that “the steel bar was thrown at him through the metal grill of the door.”<sup>4</sup>

### **Applicant’s injuries:**

- [8] The applicant claims compensation for physical injuries which are essentially some minor bruising on his arm caused by his being struck by the bar which he alleges the respondent threw at him, and psychological injuries which the applicant claims he suffered arising out of the attempted robbery.

- [9] So far as the applicant’s physical injuries are concerned, there is no medical evidence tendered to support the alleged bruising sustained by him and when queried on this point at the hearing the applicant’s solicitor responded in the following terms:

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<sup>3</sup> Second paragraph page 2.

<sup>4</sup> H.T page 7 line 5.

“MS WILSON: There’s been no medical reports on that. I believe that the applicant’s injury wasn’t major enough to attend a GP or the hospital in respect of that.

HIS HONOUR: So it was a fairly minor bruise, was it?

MS WILSON: Yes. My instructions are that the bruising lasted one and a half to two weeks.”<sup>5</sup>

[10] With respect to the applicant’s “mental or nervous shock” claim, he relies upon the medical report of Dr Donald Grant in addition to his own sworn evidence set out in his affidavit filed 29 May 2009.<sup>6</sup>

[11] Dr Grant examined the applicant “on 4 May 2005” and the primary purpose for the applicant being examined by Dr Grant at this time would seem to be “as a result of an attempted armed hold-up on 11 December 2004.”<sup>7</sup> Again, this incident would appear to have been the second attempted armed robbery of three such incidents, with the incident involving the current respondent being the third in line.<sup>8</sup>

[12] From Dr Grant’s report, it would appear that the second of these attempted armed robberies (11 December 2004 incident) was the more serious one, when the applicant and his wife were accosted by “two men (who) came into the shop”.<sup>9</sup>

[13] In his report, Dr Grant sets out some brief details of this second incident as reported to him by the applicant, in which reference is made to “the robber picking up an iron bar” and what occurred thereafter.

[14] The only reference to the incident the subject of this application is where Dr Grant states “A third attempt at armed robbery occurred in January 2005. In this incident a man came into the shop and threatened Mr Shyu with a gun demanding money.

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<sup>5</sup> H.T page 5 lines 15-22.

<sup>6</sup> Paragraphs [18]-[27] of applicant’s affidavit sworn 29 May 2009 set out the applicant’s complaints and reactions to the subject incident.

<sup>7</sup> I.e. 6 weeks before the subject incident.

<sup>8</sup> The first attempted robbery was “earlier in 2004” – page 3 of Dr Grant’s report at .3 of page.

<sup>9</sup> Dr Grant’s report of 5 May 2005, page 1.

Mr Shyu's response was to leave the shop and close and lock the front shutter door, leaving the robber inside. He was arrested by police."<sup>10</sup>

[15] The report sets out the applicant's history, which includes the following:<sup>11</sup>

- "He has had military training in Taiwan and he doesn't scare easily. However, he has been rather unsettled by this series of attempted robberies."
- "He says he will never hand over money to robbers and will defend himself."
- "He is very concerned about the inadequacies of the justice system."
- "[He] indicated that since the second episode and even more so since the third episode he has felt rather anxious in the shop environment and is very watchful and suspicious of some people."
- "[He] indicated that at times his sleep is not good and he has some difficulties getting off to sleep. His anxiety has been worse since the third attempted robbery because the offender who was locked in the shop threatened Mr Shyu, saying 'You will die'."

[16] Dr Grant confirmed that the applicant "has not required any psychological or psychiatric treatment following this episode. He does not feel in need of such treatment. He has not been prescribed any medication. He feels that his symptoms have improved with the lapse of time."<sup>12</sup>

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<sup>10</sup> Ibid page 3 at .5 of page.

<sup>11</sup> Ibid page 3 & 4.

<sup>12</sup> Ibid page 4 at .3 of page.

[17] Dr Grant reached the following conclusions in his report:<sup>13</sup>

- “Mr Shyu displayed no evidence of any thought disorder or psychotic features. He was clearly angry about repeated armed hold-ups of his shop and other businesses nearby and felt that the justice system was inadequate to deal with the situation.”
- “Mr Shyu has not had any treatment for his anxiety and he does not want any. In my opinion there is no indication for him to undergo psychiatric treatment.”
- “Mr Shyu will not have any permanent psychiatric impairment by virtue of the fact that he does not have a diagnosable psychiatric disorder. However, clearly the attempted armed hold-ups have had some cumulative effect on his attitudes and caused him some anxiety in the workplace.”
- “There is no psychiatric reason why Mr Shyu cannot go on working in his current occupation or a chosen alternative occupation.”

**What is “mental or nervous shock”?:**

[18] 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:

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

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<sup>13</sup> Ibid page 5 & 6.

**Applicant's submissions:**

- [19] It is submitted on the applicant's behalf that the applicant should be awarded compensation arising out of the respondent's criminal conduct on the following bases:
- (a) Item 31 of the compensation table contained in Schedule 1 of the Act "mental or nervous shock (minor)" to be assessed at 8% of the scheme maximum that is \$6,000.00.
  - (b) Item 1 "bruising/laceration etc (minor/moderate)" at 1% of the scheme maximum, that is \$750.00.

**Findings on categories of injuries:**

- [20] On the basis of the evidence before me and the submissions made, I find that the applicant is entitled to an award of compensation against the respondent but only in respect of the minor bruising he sustained to his arm as a result of his being struck by the respondent. I am satisfied on the balance of probabilities, based upon the applicant's sworn evidence, that he was struck on the arm by "a bar" thrown at him by the respondent through the grill door of the premises during the course of the attempted robbery but the injury was of a relatively minor nature for which no medical or hospital treatment was sought.
- [21] On the basis of the information contained in Dr Grant's medical report and the conclusions he reached, together with the principles enunciated by Byrne SJA in the matter of *RMC v NAC* referred to above, as to what constitutes "mental or nervous shock" in the Act, I am not satisfied that the applicant's symptoms of anxiety, hypervigilance or anger amount to a diagnosis of "a recognisable psychiatric illness or disorder" and in particular, where Dr Grant specifically concludes that the applicant does not have "any permanent psychiatric impairment by virtue of the fact that he does not have a diagnosable psychiatric disorder". On this basis, I find that

the applicant is not entitled to any award of compensation under Item 31 of the compensation table in Schedule 1 of the Act for “mental or nervous shock”.

- [22] I assess the applicant’s compensation in this application in the sum of \$750.00, representing 1% of the scheme maximum under Item 1 of the compensation table in Schedule 1 of the Act, namely “Bruising/laceration etc (minor/moderate)”.

**Order:**

- [23] I order that the respondent Stanley John Mathers pays to the applicant the sum of \$750.00 by way of compensation for injuries caused by the respondent to the applicant for which the respondent was convicted by the District Court at Brisbane on 14 November 2006.

- [24] In accordance with s 31 of the Act I make no order as to costs.