

SUPREME COURT OF QUEENSLAND

CITATION: *Stannard v Lane* [2000] QSC 086

PARTIES: **JEFFREY RAYMOND KEITH STANNARD**
(applicant)
v
JOY-ANNE LANE
(respondent)

FILE NO/S: SC No 2263 of 2000

DIVISION: Trial Division

PROCEEDING: Application for criminal compensation

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 18 April 2000

DELIVERED AT: Brisbane

HEARING DATE: 17 April 2000

JUDGE: Williams J

ORDER: **Respondent to pay to the applicant \$2,250 by way of compensation for the injuries suffered by the applicant as a result of the commission of the offence for which the respondent was convicted, namely assault occasioning bodily harm;**
Paragraphs 22 to 42 inclusive of the affidavit of Jeffrey Raymond Keith Stannard filed 31 March 2000 to be struck from the record.

CATCHWORDS: CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - ORDERS FOR COMPENSATION, REPARATION, RESTITUTION, FORFEITURE AND OTHER MATTERS RELATING TO THE DISPOSAL OF PROPERTY - COMPENSATION - QUEENSLAND - application for compensation pursuant to *Criminal Offence Victims Act* 1995 - where applicant sustained head injury as a result of assault for which respondent convicted - where respondent acquitted of more serious charges in relation to same incident which resulted in other serious injuries to applicant - where medical reports canvassed totality of injuries received - construction of s 24(2) - compensation limited to consequences of offence for which conviction recorded - onus on applicant to establish on balance of probabilities consequences which flowed from offence for which conviction recorded - where history of violence from

applicant towards respondent - whether finding by jury at trial that applicant's conduct afforded defence of self-defence requires court to conclude that applicant's behaviour contributed to injury - whether any compensation awarded should thereby be discounted

CRIMINAL LAW - EVIDENCE - JUDICIAL DISCRETION TO ADMIT OR EXCLUDE EVIDENCE - GENERALLY - where applicant made serious allegations in affidavit contrary to evidence received at trial - such material totally and utterly irrelevant to application and should be struck from record

Criminal Offence Victims Act 1995 (Qld), s 22, s 24(2), s 25(7), s 31

COUNSEL: Mr J White (*sol.*) for the applicant
Mr A Boe (*sol.*) For the respondent

SOLICITORS: James White Lawyers for the applicant
Boe & Callaghan for the respondent

- [1] **WILLIAMS J:** This is an application for compensation brought pursuant to the provisions of the *Criminal Offence Victims Act 1995*. It is based on the conviction of the respondent, Joy-Anne Lane, for the offence of assault occasioning bodily harm to the applicant, Jeffrey Raymond Keith Stannard. The injury sustained in that assault was essentially a laceration to the head.
- [2] However, the matter is complicated because at the trial the jury acquitted the respondent of more serious charges which resulted in the applicant suffering severe injuries. It is sufficient to say that in the course of the events which occurred on 8 September 1996, the respondent shot the applicant on two occasions. Each bullet wound caused major injuries to the applicant. The firing of those shots resulted in the respondent being charged with two counts of attempted murder; there was an alternative count of doing grievous bodily harm with intent based on the first shot. The jury returned not guilty verdicts on each of those three charges after a lengthy trial.
- [3] The parties had been living in a de facto relationship and there was evidence, some from witnesses who could be regarded as independent, of a history of violence (physical and mental) from the applicant towards the respondent. The jury, as I indicated in my sentencing remarks, must have accepted that such evidence raised the defence of "self defence" under the Code.
- [4] The conviction for assault occasioning bodily harm was based on the following facts. Whilst the applicant was still asleep early in the morning the respondent was fearful for her own safety given the events of the previous evening. She took hold of what was described in evidence at the trial as a heavy ceramic mortar bowl and

struck the applicant on the head with it. Blood gushed out of the wound and the applicant was dazed. It was after that incident that the shootings occurred.

- [5] In his affidavit in support of this application the applicant said that he remembered “receiving a heavy blow to the head as I propped myself upon one arm to see what was happening. I felt a large quantity of blood coming out of my head. I stood up very giddy and tried to work out what was going on ...”.
- [6] In the report from the hospital dated 9 March 1999 it was said that the applicant “also had a scalp laceration and this was cleaned and sutured”. There is no mention in the medical reports of the number of stitches, but in oral evidence on this application the applicant said there were 12.
- [7] It should be briefly noted that one bullet wound caused significant damage to the applicant’s abdomen and the other had penetrated his back and lodged in the area of his left loin. Those injuries required major surgery and it took the applicant a long time to recover from them; they were life threatening.
- [8] The difficulty for present purposes is that the applicant claims that as a result of the injuries he sustained on 8 September 1996 he has suffered from nervous shock and post traumatic stress. The medical reports relied on by the applicant, in particular that of P J Stoker, a psychologist, do not differentiate between the injuries sustained on that date; essential they deal with the consequences of the totality of the injuries received.
- [9] There is no doubt that as a result of the totality of injuries received on the day in question the applicant has suffered what could accurately be described as nervous shock and has developed a post traumatic stress syndrome involving depression. Against that background I am prepared to accept that the applicant suffers reasonably severe headaches, but the probability is that they are stress or tension related and not directly the consequence of the blow to the head.
- [10] Section 24(2) of the Act is in these terms:
- “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.”
- [11] Properly construed that limits compensation to the consequences of the offence in relation to which a conviction was recorded. In other words the Act makes it clear that compensation in this case is limited to the injuries related to the blow to the head. It was accepted that the onus was on the applicant of establishing the consequences which flowed from the offence for which the respondent was convicted. It was also accepted that the onus was on the balance of probabilities.
- [12] Having considered the evidence I am not satisfied that the applicant has proven that the headaches he still experiences are attributable to the blow to his head. The report of Stoker strongly suggests that the injuries sustained by the shootings have given rise to the psychological problems which the applicant now has. As they were the most serious injuries that is understandable.

- [13] In the circumstances I am prepared to accept that there would have been some headaches associated with the aftermath to the blow to the head, but they would have ceased within a few weeks at most of the injury being sustained.
- [14] Section 25(7) of the Act is in these terms:
- “In deciding whether an amount, or what amount, should be ordered to be paid for an injury, the court must have regard to everything relevant, including, for example, any behaviour of the applicant that directly or indirectly contributed to the injury.”
- [15] The respondent contends that, particularly because the applicant’s conduct was regarded by the jury as sufficient to afford her a defence of self-defence, the court should now hold that the behaviour of the applicant directly or indirectly contributed to the head injury he sustained and therefore the amount of compensation awarded should reflect some discounting. The applicant takes issue with that, primarily because he contends that he was not permitted whilst giving evidence at the criminal trial to raise matters which, in his view, would have demonstrated that the respondent was primarily, or at least largely, responsible for the breakdown in the relationship between the parties. Understandably evidence at a criminal trial must be restricted to what is relevant to the charges, and courts will not allow collateral issues to be raised. That may sometimes mean that evidence relevant to s 25(7) of the Act was not led at the trial; where that occurred it would be proper for the court to allow the convicted person to adduce evidence on the application pursuant to the Act.
- [16] But here there was a lot of independent evidence corroborating the relevant testimony of the respondent at the trial. Given the jury’s verdict on the attempted murder charges it is appropriate for the court now to conclude that the applicant’s behaviour contributed to the respondent’s conduct which occasioned the injury to his head. In consequence some slight discounting at least is called for.
- [17] What is of more concern is that the applicant in his affidavit in support of this application has made a number of serious allegations in paragraphs 22 to 42 inclusive which are completely contrary to evidence received at the trial. That material is clearly totally and utterly irrelevant to this application for compensation. The respondent ought not to be placed in a position where she should respond to those allegations, nor should any failure on her part to respond be thought to be an admission of the matters raised therein. The allegations contained in those paragraphs are so irrelevant to the application now in issue, and so scandalous in the traditional legal sense, that they should be struck from the record.
- [18] Sections 22 and 25 of the Act and Schedule 1 thereto deal with the assessment of compensation. The prescribed maximum is \$75,000.
- [19] Given the evidence now before the court I find that the applicant suffered a moderate (bordering on the severe) laceration to his head and that he is entitled to 3% of the scheme maximum in relation to it. That would be the figure of \$2,250.

- [20] In addition to that the applicant would be entitled to a small amount for nervous shock which was associated with that head injury and the headaches which directly ensued. However, there would then have to be some discounting because of the operation of s 25(7) as indicated above. I have come to the conclusion that those two factors would cancel themselves out in this particular case.
- [21] It therefore follows that the applicant is entitled to compensation in the sum of \$2,250.
- [22] Notwithstanding the wording of s 31 of the Act Mr Boe for the respondent sought an order for costs, primarily because it was submitted that this was a vexatious application.
- [23] Whilst, for the reasons given above, the applicant is not entitled to succeed to the extent that he claimed, the application has nevertheless been successful. It cannot be said in those circumstances that the application was vexatious.
- [24] It is sufficient to say that in consequence there is no need to consider whether or not there may be circumstances where, despite the wording of s 31, some order for costs could be made in favour of a respondent.
- [25] My orders will therefore be:
- (i) Order that the respondent pay to the applicant \$2,250 by way of compensation for the injuries suffered by the applicant as a result of the commission of the offence for which the respondent was convicted, namely assault occasioning bodily harm;
 - (ii) Order that paragraphs 22 to 42 inclusive of the affidavit of Jeffrey Raymond Keith Stanndard filed 31 March 2000 be struck from the record.