

CITATION: Stanley Anthony Tabored v Northern Territory of Australia
& James Massey [2004] NTMC 009

PARTIES: STANLEY ANTHONY TABOREK

v

NORTHERN TERRITORY OF AUSTRALIA

AND

JAMES MASSEY

TITLE OF COURT: Local Court

JURISDICTION: Crimes Victims Assistance

FILE NO(s): 20215122

DELIVERED ON: 18th February 2004

DELIVERED AT: Darwin

HEARING DATE(s): 13th February 2004

JUDGMENT OF: Judicial Registrar Fong Lim

CATCHWORDS:

“Victim” – Offence – commission of a crime – sections 10 & 12 Crimes (Victims Assistance) Act.

REPRESENTATION:

Counsel:

Applicant:	Mr Davis
1st Respondent:	Ms Saraglou
2nd Respondent:	No Appearance

Solicitors:

Applicant:	Davis Norman
1st Respondent:	Withnall Maley
2nd Respondent:	Self

Judgment category classification:	C
Judgment ID number:	[2004] NTMC 009
Number of paragraphs:	35

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20215122

BETWEEN:

Stanley Anthony Taborek
Applicant

AND:

Northern Territory of Australia
1st Respondent

James Massey
2nd Respondent

REASONS FOR JUDGMENT

(Delivered 18th February 2004)

JUDICIAL REGISTRAR FONG LIM:

1. The Applicant has applied for an Assistance Certificate pursuant to the provisions of the Crimes (Victims Assistance) Act.
2. To issue a certificate in favour of the Applicant the Court must be satisfied that the Applicant is a “victim” and that he has suffered an injury arising out of an offence.
3. The Applicant in this matter claims he was assaulted by the Second Respondent being stabbed in the head, back and torso. The First Respondent argued that the Second Respondent was acting in self –defence. The First Respondent argued that either the Applicant was commissioning a crime against the Second Respondent (and therefore is excluded by section 12(f)) or his behaviour substantially contributed to his injuries that there should be a large discount for that behaviour (applying section 10).

4. The Applicant relied upon his affidavits of the March 2003 and 18th August 2003 as well as the affidavit of Dr Singh of the 8th of August 2003 and psychologist Robin Gibson of the 26th may 2003. The Respondent relied on an affidavit of Ms Saraglou which annexed the statutory declarations gathered by the Police in the criminal investigation.
5. The Second Respondent was committed for trial in the Supreme Court and both parties confirmed he was acquitted but could not give any details of any defence raised by the Second Respondent. Of course in these matters the Applicant only has to prove an offence occurred on the balance of probabilities and not beyond a reasonable doubt. However on the application of Briginshaw v Briginshaw [1938]60 CLR 336 the court must be convinced to its reasonable satisfaction that on the balance of probabilities the offence occurred.
6. The Applicant's evidence is inconsistent in some areas. In his affidavits the Applicant states :

“I walked from my residence to unit 32/40 Davoren circuit”

7. In his statement to the police the Applicant states that he:

“My uncle Mark Bishop drove me...I went to see Mick to let him know Mark's new address..... I went to flat 32/40 Davoren Circuit to see old Joe Massey”

8. In his Affidavits the Applicants states:

“James Massey lost control and stabbed me with knife. James stabbed me in the head, chest, abdomen and back”

9. There is no explanation in the Applicant's affidavit of the lead up to the “assault” whereas it is clear from the statements of the applicant in the committal and other witnesses that there had first been a verbal argument between the Applicant and Second Respondent before the stabbing.

10. The Applicants evidence in the committal and his statutory declaration is that after some verbal insults the Second Respondent came running at the Applicant and a fight ensued with both parties throwing punches. He stated that :

“We were both swinging punches at each other. His first blow landed on my head, it felt like my head exploded. I knew I was cut pretty badly because of blood going everywhere. I thought he must have stabbed me.”

11. The Applicant then states he got back into his Uncles car, the Uncle started to reverse out of the driveway and the Second Respondent pursued them on foot. The Applicant then grabbed a bat from the car and got out of the car and hit the Second Respondent with the bat several times before jumping in to the car and driving away. It was then the Applicant believes he was stabbed in the stomach a second time. He makes no mention in his statements about being stabbed in the back although it is clear from the medical evidence of the hospital files that he did have a cut to the back.
12. There was no formal statement taken from the Second Respondent however the statements of the attending police officers recounted the Second Respondent’s version of events. The Second Respondent claimed that he had acted in self defence. In response to a question by a Constable Cruyer as to the incident the Second Respondent apparently responded that:

“Stan pulled up in a car with another bloke.... Stan got out , he had a metal bar like the one you blokes carry he hit me across my back and shoulder then he hit me in the head, I thought I was in trouble so I kicked the bottle and it smashed , I picked it up and started to slash at him. I saw him get back into the car with Monkey and they drove off.”

13. There was one independent witness to the fight and her evidence is contained in a statutory declaration of the 1st of June. Ms Jeffrey was in her car in the car park at the time as she was a resident in one of the units in the same complex as the Masseys. She witnessed an argument with the

Applicant, James Massey and Massey's father in front of the Massey's flat. She then tried to reverse her car out of the driveway and found she couldn't because the driveway was blocked by another car, a silver commodore. She says she saw the Applicant get into the commodore and the car started to reverse out of the driveway.

14. Ms Jeffrey goes on to say that all the time the commodore was reversing out of the driveway the Applicant was leaning out of the window yelling abuse at the second respondent. She then saw James Massey run past towards the commodore with "something in his right hand. This item was silver in colour and about 4 inches long."
15. Ms Jeffrey then witnessed the Applicant jump out of the car with a baton with which he hit the Second Respondent 2 to 3 times and to which the second respondent started to "punch" the applicant. When the Applicant returned to the car he had a large cut above his left eye. Ms Jeffrey then goes on to make a value statement to say the "As far as I could see the man in the car was the aggressor and was egging James on". I do not place any weight on that statement.
16. I do however accept that James Massey had something in his hand when he ran towards the Applicant's car being something silver which on the balance of probabilities was a knife. The wounds suffered by the Applicant were more consistent with a stabbing (see hospital notes) than a slashing as suggested by the Second Respondent in his statement to the police.
17. It is clear that the Applicant's recount of the events is different to the Second Respondent and to Ms Jeffrey's. Given that Ms Jeffrey is the only independent witness to the incident I prefer her evidence over that of the Applicant and the Second Respondent.
18. It is clear that there was a consensual fight between the Applicant and the Second Respondent. The Applicant used a baton and the Second Respondent

used a knife. I do not accept the Second Respondent's statement that he used a broken bottle. Who attacked whom first is at issue.

19. In his evidence in the committal the Applicant claims that he had already been stabbed in the head and in the stomach when he got back into the car the first time and then after he got out to face the Second Respondent he was stabbed twice more after hitting the Second Respondent with the baton.
20. In his affidavits the Applicant makes no mention of his use of the baton although he does annex the police records to his affidavit which describe his use of the baton.
21. The statement of the Applicant's uncle Mark Bishop and the statement of Ms Jeffrey make no mention of any blood on the Applicant before he got into the car the second time. This is inconsistent with the Applicant's evidence that he had been stabbed prior to getting into the car. I could accept that other witnesses may not have noticed a stab wound to the stomach in those circumstances however if the head wound was bleeding as profusely as the Applicant would have the court believe it is unlikely that it would not have been noticed by the other witnesses.
22. The Applicant stated in his evidence in the committal hearing that he got out of the car with the baton because

“I assumed he was going on with it, like attack again”

23. When asked why he didn't just wind up the window the Applicant replied

“ ..it's nothing to kick in a window or smash a window with your fist”

24. The Applicant would have the court believe that he wielded the bat in self defence as he stated in his statement to the police:

“I did not provoke this fight in any way and I only used the little bat in self defence”

25. The Applicant stated that he thought he was in danger

“James was closing in on the car. I knew that we had to do a 180 degree turn to straighten up the car and then put it into drive to drive away and James was almost at the car before we would be able to do this”

26. Mark Bishop’s statement contradicts the Applicant statement in this aspect stating that

“I reversed out on to Davoren Crct and they were still yelling at each other when Stanley jumped out of the vehicle and they both ran up to each other in the driveway”

27. Ms Jeffrey’s states that

“The commodore had reversed onto Daveron Circuit and facing towards Bonson Terrace.....James was still running, he had got near the letter boxes about 6 metres from the commodore when the male in the front passenger seat got out.”

28. Given this evidence and that I prefer Ms Jeffrey’s evidence over the Applicant’s it is my view that on the balance of probabilities the Applicant could have avoided any further contact with the Second Respondent had he stayed in the car and driven off with his uncle. He chose instead to leave the vehicle armed with a weapon and confront the Second Respondent.

29. It is at this point that the evidence converges and there is agreement between the Applicant, Second Respondent and Ms Jeffrey in that they all agree the Applicant used the baton on the Second Respondent first. The Applicant’s evidence in the committal hearing:

“When I got out with the bat, right, I went up to hit him again,”

30. Ms Jeffrey states

“the man that jumped out of the car ran straight up to James and hit him 2 to 3 times with the baton.....James then started to punch this man.”

31. The second respondent states that :

“Stan got out, he had a metal bar like the ones you blokes carry. He hit me across my back and shoulder then he hit me in the head”

32. While I accept that it is more likely than not that the Second Respondent had knife in his hand before the Applicant attacked him with the baton, given the evidence as set out above I find on the balance of probabilities the Applicant had not been stabbed before he used the baton on the Second Respondent.

33. I am therefore reasonably satisfied that the Applicant assaulted the Second Respondent with a baton before he was assaulted with a knife and therefore was injured in the commissioning of a crime. Section 12 (f) therefore precludes the Applicant from having the benefit of an Assistance certificate issue in his favour.

34. It should be noted that if I had found that even if I had found that the Applicant had been stabbed by the Second Respondent before he retaliated with the baton then the fact that the Applicant got out of the car and attacked the Second Respondent when he could have escaped would have meant that any assistance certificate issued would be heavily discounted to take into account that contributory behaviour pursuant to section 10(2).

35. My orders will be:

35.1 The application for assistance is dismissed

35.2 The matter is adjourned to 9:00am on the 1st March 2004 for submissions on costs.

Dated this 18th day of February 2004

Tanya Fong Lim
JUDICIAL REGISTRAR