

CITATION: *Barolits v NT of Australia* [2006] NTMC 008

PARTIES: JON RICHARD BAROLITS

v

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance) Act

FILE NO(s): 20506781

DELIVERED ON: 1st February 2006

DELIVERED AT: Darwin

HEARING DATE(s): 24th January 2005

JUDGMENT OF: Judicial Registrar Fong Lim

CATCHWORDS:

Crimes (Victims Assistance) – credibility of applicant

REPRESENTATION:

Counsel:

Applicant: Ms Truman
Respondent: Mr Garraway

Solicitors:

Applicant: Halfpennys
Respondent: De Silva Hebron

Judgment category classification: C
Judgment ID number: [2006] NTMC 008
Number of paragraphs: 24

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

No. 20506781

BETWEEN:

JON RICHARD BAROLITS
Applicant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
Respondent

REASONS FOR JUDGMENT

(Delivered 1st February 2006)

Judicial Registrar Fong Lim:

1. The Applicant applies for the issue of an Assistance Certificate pursuant to section 5 of the Crimes (Victims Assistance) Act.
2. The Applicant relies on his affidavit of the 24th October 2005 in support of this application and an application no 20506786. The two applications were heard together and my reasons for decision in both matters are handed down together.
3. The Respondent argues that the Applicant's evidence is so unreliable that the Court cannot be convinced to its reasonable satisfaction that the Applicant was a victim pursuant to the Act and therefore the Applicant is not entitled to an Assistance Certificate.
4. I have previously found that the Applicant is clearly an alcoholic upon the history he gave to Dr Kenny and the evidence of others. In the previous matter I found that even though the Applicant was an alcoholic he was

always consistent in his description of the assault and any inconsistencies in his evidence of later events could be explained by his denial of his alcoholism.

5. That is not the case in matter. There are inconsistencies in the evidence of the Applicant's description of the alleged assault. In his affidavit he states that on the 1st of December 2004 he was in the toilet cubicle at the Casuarina Shopping Centre when he was grabbed by the shoulder swung around and beaten up. The Applicant says nothing was said to him and he lost consciousness. The Applicant believes he was found by a cleaner who then got security. What the Applicant did immediately after that is not explained.
6. The Applicant then says that the police came to Casuarina Shopping Square and took him to hospital where he received treatment for his wounds.
7. The Applicant further states that he was told by the police that they would investigate further but it wasn't until he was told by his solicitor that there was no record of the Police attendance that he contacted the police again in about January 2005.
8. The evidence from the police records and the Shopping centre records do not accord with what the Applicant is stating in his affidavit. The Centre had no report of the incident on the 1st of December 2004 but there was a report by the Applicant on the 3rd of December complaining of an incident on the 1st of December 2004. That report is tendered in the documents attached to the Applicant's affidavit.
9. In the Lend Lease incident report form the incident was reported by the Applicant as having occurred in the carpark when he was putting his groceries in the car. There was no corroborating report from the Security people or the cleaners. The report was accompanied by a handwritten note

with the Applicant's address on top of the note and the Applicant's name stating:

“Assaulted by someone in Woolworths carpark (undercover) around 4:30 -5.

Reported incident to Alan Hodge (Cas Police) – Wednesday 1/12/04”

10. The Applicant attempts to explain this version of events as a misunderstanding by the Lend Lease person when filling in the form (see paragraph 35 of his affidavit). The Applicant does not explain the handwritten note which the Police report was given by the Applicant to the Lend Lease representative when he made his complaint.
11. The Case Report in the police records show that the Applicant had not reported the incident to the police until several weeks after the event and when the police did their investigations the second version of events (given to Centre Management) was discovered.
12. The Police notes show that neither the cleaners nor the security officers at the shopping centre had any record of the incident as reported by the Applicant even though it is the centre's policy that such reports ought to be done.
13. There is nothing in the evidence before this court that the Applicant or the centre reported the incident to the police on the day. There is evidence in the form of the police “CAD Log” of PROMIS 1225146 which seems to indicate that a vehicle was dispatched at 19:43 on the 1/12/04 and a further request for a van at 19:46 because the patrol “Have male with split lip and lac's to head” and that the van was required to convey the male to the RDH. There is no indication that there was a report of an assault only that police on patrol found the Applicant with some injuries.
14. The only other evidence of how the police became involved is contained in the Police case report for PROMIS 1276827 at page 7:

“An interrogation of PROMIS located a job number 1225146 which relates to Police attended at Casuarina square at 1924hrs 1.12.04 and locating BAROLITS and then conveying him the RDH.

Reporting member has spoke to one of the attending members, MC WATT, who advised that they located him in the vicinity of the Casuarina bus interchange opposite number 24 Bradshaw Terrace. He was in a dishevelled condition and incoherent.”

15. There is no other indication in the police records of how the Applicant came to the Police attention. It could be that someone from the shopping centre reported to assault to the police however as there are no records of a police officer actually attending the shopping centre it is in my view just as likely that the police found the Applicant at the bus stop with a bloodied face on normal patrol or that someone had notified the police of a person who may be in trouble in that area.
16. There is a statutory declaration from Dr Elizabeth Ward of the 9th of March 2005 in which she sets out the history of the Applicant’s injury which accords with what the Applicant states in his affidavit except that her records show that there was no reported loss of consciousness. It is safe to assume that this is the history given to her by the Applicant at the time.
17. There is no investigation by the Police of the alleged assault until after the Applicant makes a report about a month later. The case note shows that on the 20th of January 2005 the Applicant made a report to Police Officer Hodge of the alleged result and that after some investigation the Police treated the Applicant’s report with suspicion.
18. The Applicant states in paragraph 30 of his affidavit that he was told by police they would look at the security camera system. In paragraph 33 the Applicant didn’t do any further about the criminal matter because he was under the impression that the police were going to conduct an investigation into the matter.

19. If the Court accepts that the handwritten note attached to the Shopping Centre's incident report is that produced by the Applicant then the Court cannot rely on the Applicant's evidence as to what happened. He has given two completely different stories to different parties and there is no evidence to support one or the other. It is my view that the handwritten note must be accepted as having been handed to Centre's management by the Applicant there is no other logical explanation for that note.
20. Accepting that piece of paper as the Applicant's note is also accepting that at that stage the Applicant said that he may have already spoken to police officer Hodge about the incident.
21. This is confirmed in a small way by the police records which confirm (at page 5 of the case report for PROMIS number 1276827) that "Hodge reports receiving information form RDH to the effect that about 8:00pm on the 1st of December a John Barolits, with the victim in this matter was treated at the RDH Emergency dept head injuries consistent with being assaulted." There is no indication when that information might have been received.
22. The Applicant has obviously told the hospital staff of the alleged assault in the toilet cubicle but then gave a completely different story to the Shopping Centre management. The medical report saying that the Applicant's injury is consistent with an assault could be supportive of the Applicant's claim but the report does not go on to say that the injuries are not consistent with a fall that the Applicant may have had.
23. In short the Applicant has not convinced this court to its reasonable satisfaction that the injuries sustained by the Applicant are as a result of an assault. The Applicant has been inconsistent in his description of the incident and did not report the incident to the Police. It is highly unlikely that the security services of the Centre would not have reported the incident if they had been called upon as the Applicant would have the Court believe.

24. **Orders:**

24.1 The application for assistance is dismissed.

24.2 Costs reserved

Dated this 1st day of February 2006

Tanya Fong Lim
JUDICIAL REGISTRAR