

CITATION: *Barolits v NT of Australia* [2006] NTMC 009

PARTIES: JON RICHARD BAROLITS

v

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance) Act

FILE NO(s): 20506786

DELIVERED ON: 1<sup>st</sup> February 2006

DELIVERED AT: Darwin

HEARING DATE(s): 24<sup>th</sup> January 2006

JUDGMENT OF: Judicial Registrar Fong Lim

**CATCHWORDS:**

Crimes (Victims Assistance) – credibility of Applicant – evidence of offence

**REPRESENTATION:**

*Counsel:*

Applicant: Ms Truman  
Respondent: Mr Garraway

*Solicitors:*

Applicant: Halfpennys  
Respondent: De Silva Hebron

Judgment category classification: C  
Judgment ID number: [2006] NTMC 009  
Number of paragraphs: 24

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

No. 20506786

BETWEEN:

**JON RICHARD BAROLITS**  
Applicant

AND:

**NORTHERN TERRITORY OF  
AUSTRALIA**  
Respondent

REASONS FOR JUDGMENT

(Delivered 1<sup>st</sup> February 2006)

Judicial Registrar Fong Lim:

1. The Applicant has made application for an Assistance certificate to issue in his favour pursuant to section 5 of the Crimes (Victims Assistance) Act. The Respondent opposes this application on the basis that the Applicant's evidence is so unreliable that the Court should not be convinced on the balance of probabilities that the Applicant was a victim of an assault.
2. The Applicant relies upon his affidavit of the 24<sup>th</sup> of October 2005 which annexes medical reports, police records and hospital records pertaining to his claim. The Respondent tendered the affidavit of Morgan Moss annexing police records of the alleged assault.
3. The Applicant claims that on the 7<sup>th</sup> of October 2004 he was at a bus stop opposite the Rapid Creek shops when he was approached by a youth demanding a cigarette from him. When the Applicant did not accede to the youth's demand the youth and his mates set upon the Applicant and beat him

up. The Applicant states that he was beaten severely and when the youths had finished with him he found he had been robbed. In his affidavit the Applicant states he then went to the Bakery at the Rapid Creek Shops to call the police. The Police attended and the Applicant says that he really doesn't remember what was said:

“16. I recall the police arriving and I remember telling them what I could remember but I can't even remember exactly what I told them. Even to this day it still remains a blur”

4. The Applicant was then conveyed to the hospital by the police and attended to at the Accident and Emergency section of the hospital. The hospital records show the Applicant presenting with two black eyes, laceration about 2cm deep near the left eye, bruising over cheeks and some bruising in the abdomen. The hospital notes also mention that the Applicant was unwilling to stay in hospital for observation and left without receiving his written “head injury advice sheet”.
5. The Respondent argues that the Applicant's evidence should not be accepted by the Court because there are too many inconsistencies in his evidence. The Respondent argues that the Applicant is clearly an alcoholic who is prone to falling over.
6. There is sufficient evidence to convince this court that the Applicant is an alcoholic not in the least the Applicant's acknowledgment to Dr Kenny that he is on a disability pension for “alcohol abuse and depression” (see page 3 of Dr Kenny's report). Dr Kenny also states that the Applicant “reeked of alcohol” at the time of his consultation and admitted to Dr Kenny he had some wine before attending the consultation. It was Dr Kenny's opinion that the Applicant was intoxicated at the time of the interview.
7. The hospital notes indicate that the Applicant smelt strongly of alcohol and could not give a coherent history. The Applicant's counsel argued that it is understandable a person who had been severely beaten may be confused.

8. The Police records note that “Compl was very intoxicated” (see page 2 of the PROMIS notes annexed to the affidavit of Morgan Moss).

9. In his affidavit the Applicant specifically denies that he had been drinking any alcohol at paragraph 23:

“I state that I had not been drinking alcohol at all that evening. After the assault the people at the Baker’s did however put Dettol on the wounds to my face and therefore this may have made my face smell”

10. The Applicant explains his confused state as a result of the assault.

“I do not dispute that I was vague but this was simply because of the injuries that I suffered as a result of the assault”

11. It is my view that it is quite unlikely that medical staff and police officers would mistake the smell of Dettol on the Applicant for intoxication and vagueness because of injury for intoxication. It is clear from the hospital medical summary that there was no indication of neurological damage:

“Eye movements were normal and there was no focal neurology but there was bruising below both eyes”

12. I find that the Applicant was on the balance of probabilities intoxicated at the time of the alleged assault and that his statements as to what actually happened after the alleged assault were inconsistent in detail. The Respondent would have the Court find that because the Applicant is an alcoholic his evidence must be completely disregarded as unreliable. I accept that there are inconsistencies in the Applicant’s evidence. I also accept that it is likely that the Applicant is not being truthful about his level of intoxication on the day.

13. It is my view that the Applicant has made a deliberate attempt to hide his alcoholism from the court, for example he states that everything immediately after the assault was a blur however can specifically remember that the people in the bakery put Dettol on his wounds. Nevertheless I am

not of the view that makes the whole of his evidence unreliable it just shows that the Applicant is an alcoholic in denial.

14. Given that the Applicant has been consistent in his description of the assault and he clearly suffered injuries consistent with the alleged assault and given that the Applicant immediately reported the assault to the police it is my view that the evidence is enough to satisfy me on the balance of probabilities that the Applicant was the victim of an assault as described by him.
15. The Applicant suffered bruising and a minor laceration to the face as was reported to have some tenderness about the stomach. He claimed he suffered continued problems with his breathing and in November 2004 was diagnosed as having sustained an undisplaced fracture.
16. The Applicant produced a report of Dr Zacharia his general practitioner who links the Applicant's continuing problems with his breathing with the assault suffered by the Applicant. It should be noted at this point the Applicant claims that he was a victim of a second assault in December of 2004.
17. Dr Zacharia reports as follows:

“..there was a CT scan of the facial bones performed on 18<sup>th</sup> November 2004 and this has revealed an undisplaced fracture through the anterior wall of the right maxillary antrum, which did involve the canal of the infra – orbital nerve, which would typify the symptoms of paraesthesia that he is experiencing. His sinuses were essentially clear and there was a pre- existing deviation of the right bony septum on that side.

It appears that the deviation of the nasal dorsum may be the result of traumas from the assault described by Mr Barolits on one or both of these occasions. It is more likely that it would be the first occasion if he had a heavy object such as a pipe smashed against his face.”
18. While there is no evidence that the Applicant was assaulted by a heavy object such as a pipe it is clear from the Applicant that the problems he was

having with his nose started happening after the first assault and therefore should be attributed to that assault.

19. Dr Zacharia goes on to say that the Applicant's difficulties would be improved by an operation at the cost of approximately \$8000.00 and the Applicant claims assistance for that amount.
20. The Respondent argues that the Applicant should have arranged to have the operation through the public system and in doing so would have not incurred any cost. There is no evidence that this sort of operation is available through the public system.
21. The Applicant also produced a report of Dr Kenny, a psychiatrist, who confirms that the Applicant is suffering from adjustment disorder attributed to both the assault subject of this action and the later assault in December of 2004. Dr Kenny opines:

“..I think it's reasonable to consider that he has a mild adjustment disorder with anxiety in response to these two assaults that occurred in quick succession. Of course one could describe him as having an understandable fear in light of what's happened.....

...I don't believe it is possible to separate out the two incidents. But I suppose it would reasonable to say that each incident contributed fifty percent to his reaction.”

22. Dr Kenny did not suggest any treatment and was of the opinion that the psychological effects of the assaults will fade into insignificance besides other problems in the Applicant's life.

**Conclusion:**

23. The Applicant was a victim within the meaning of the act and is entitled to the issue of an assistance certificate the physical injuries suffered by the Applicant are relatively minor except the injury to the nose which will require surgery to rectify as recommended by Dr Zacharia. The Applicant also suffers a mild adjustment disorder which is contributed to by this

assault. The difficulties caused by the nose injury are ongoing but are more of an annoyance and inconvenience rather than something that would cause a person great distress.

24. **Orders:**

24.1 An assistance certificate issue in favour of the Applicant for the sum of \$6000 for pain and suffering and mental distress plus \$8000 for the surgery recommended by Dr Zacharia.

24.2 Costs of the application are reserved for further submission if not agreed between the parties.

Dated this 1<sup>st</sup> day of February 2006

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Tanya Fong Lim  
JUDICIAL REGISTRAR