

**PARTIES:** MICHAEL WAYNE POTTS  
v  
NORTHERN TERRITORY OF AUSTRALIA  
and  
ANTHONY RUBUNTJA  
and  
NOEL PAREROULTJA  
and  
TERRY PAREROULTJA  
and  
KELLY PAREROULTJA  
and  
JERMAINE PAREROULTJA  
and  
BENJAMIN INKAMALA

**TITLE OF COURT:** SUPREME COURT OF THE NORTHERN  
TERRITORY at Alice Springs

**JURISDICTION:** SUPREME COURT OF THE NORTHERN  
TERRITORY exercising Territory jurisdiction

**FILE NO:** 55/2003 (20201782)

**DELIVERED:** 24 March 2005

**HEARING DATES:** 5 March 2005

**JUDGMENT OF:** MARTIN (BF) AJ

**CATCHWORDS:**

**REPRESENTATION:**  
*Counsel:*  
Appellant: O Khan  
Respondent: M Heitmann  
*Solicitors:*  
Appellant: Morgan Buckley  
Respondent: Mark Heitmann

Judgment category classification: C  
Judgment ID Number: Mar(BF)0501  
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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT ALICE SPRINGS

*Potts v NTofA & Ors* [2005] NTSC 16  
No. 55/2003 (20201782)

BETWEEN:

**MICHAEL WAYNE POTTS**  
Appellant

AND:

**NORTHERN TERRITORY OF  
AUSTRALIA**  
First Respondent

and

**ANTHONY RUBUNTJA**  
Second Respondent

and

**NOEL PAREROULJTA**  
Third Respondent

and

**TERRY PAREROULTJA**  
Fourth Respondent

and

**KELLY PAREROULJTA**  
Fifth Respondent

and

**JERMAINE PAREROULJTA**  
Sixth Respondent

and

**BENJAMIN INKAMALA**  
Seventh Respondent

CORAM: MARTIN (BF) AJ

## REASONS FOR JUDGMENT

(Delivered 24 March 2005)

- [1] Appeal under the Local Court Act from the issue of an Assistance Certificate pursuant to s 8 of the Crimes (Victims Assistance) Act as in operation prior to the amendments by the Crimes (Victims Assistance) Act of 2002 (“the Act”). Hence, the joining of the Northern Territory of Australia and other parties joined (s7) hereafter called “the offenders”.
- [2] The application made by the appellant was in respect of injuries sustained by him in an incident involving a number of police and Aboriginals at Hidden Valley near Alice Springs on 12 July 2001. Police had pursued a motor vehicle driven by Anthony Rubuntja which had failed to stop at a random breath testing station. There were three passengers in the vehicle. It was driven along the streets of Alice Springs at high speed and in an erratic manner before arriving at Hidden Valley. The driver jumped out of the vehicle whilst it was still moving (estimated at 50kmph) and the vehicle continued until it collided with a fence. The police then stopped their vehicles and got out. One of the passengers in the vehicle, Jermaine Pareroultja, was “apprehended”. A violent fight followed between the police and the offenders during which the appellant was injured.
- [3] The learned Magistrate considered that the amount of the Assistance Certificate to be issued under s 9 of the Act (if the appellant was wholly successful) would be \$10,000. He went on to reduce that sum by \$4,000

taking into account injuries caused to the appellant when bitten by “camp dogs”. His Worship also held that the appellant “contributed significantly to the incident” and reduced that sum by one third on that account. The Certificate therefore was to be in the sum of \$4,000.

- [4] The appellant says that his Worship erred in law in respect of both deductions. As to the injuries sustained by dog bites, his Worship was wrong in holding, in effect, that no offence had been committed, the appellant was not a “victim” in that regard (see definition s 4).
- [5] As to the reduction on account of the appellant’s conduct (s 10) his Worship held that the appellant had unlawfully arrested Jermaine Pareroultja and that had precipitated the assaults upon the appellant by one or more of the offenders.
- [6] Although raised in the grounds of appeal, it was conceded during the course of submissions, that the sum of \$10,000 was a discretionary assessment and no error of law could be shown.
- [7] It is important I think to note the legislative directions given to a Court when dealing with an application under the Act. The hearing is to be conducted with as little formality and technicality, and with as much expedition, as the requirement of the Act and proper consideration of the application permit. The Court is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks fit (s 15(2) and s 15(3)). Further, it is provided in s 17 that a fact to be proved by an

applicant should be sufficiently proved where it is proved on the balance of probabilities. The Court may receive into evidence any transcript of evidence in proceedings in any other Court and may draw any conclusions of fact there from that it considers proper (s 17(1) and 17(2)). Evidence is to be given by affidavit and a party may cross examine the deponent (s 17(3) and s 17(6)).

[8] It should also be noted that the learned Magistrate dealing with the application by the appellant had constituted a Court of Summary Jurisdiction hearing charges against some or all of the offenders and when hearing the appellant's application was also dealing with claims by other police under the Act arising in the same incident. No objection was made by any party to his Worship's hearing the applications under the Act when he had passed judgment on some related issues in the criminal proceedings. The evidence before his Worship on the application as to the circumstances given rise to the injury to the appellant was by way of affidavits confirming the contents of statutory declarations prepared by the deponents for the brief relating to the prosecutions. No deponent was cross examined.

[9] His Worship brought to bear on the application under the Act, knowledge acquired from and judgments made in other proceedings. The parties were apparently content that his Worship was then acting in a manner consistent with the legislative procedure, especially s 15(3).

[10] I turn first to the finding that no offence had been committed giving rise to injuries inflicted by the dog or dogs. His Worship said at page 27:

“A complicating factor in this matter is that some of the injuries to Sergeant Potts occurred as a result of the ministrations of Noel Pareroultja and a large proportion of them consisted of an attack upon him by camp dogs, which I agree with Mr Heitmann’s submission, who are owned by nobody and are feral animals. Even if they were owned by somebody I don’t know by whom they were owned, there’s been no application to add a person or persons unknown as a respondent in this matter and I simply must not award anything to Sergeant Potts for that part of his injuries that consisted of injuries inflicted by the dog.”

[11] His Worship did not otherwise deal with the question of whether an offence had been committed. He limited his considerations on this point to the issue of ownership of the dog or dogs from which I infer that in his opinion there could be no offence unless there was an owner, identified or not.

[12] In that I hold that his Worship erred in all law.

[13] There was evidence from Scott Reinke (his Statutory Declaration par 15):

“I was yelling at the male to get back ..... the male with the belt was swinging the belt at me and sicking his dogs onto us .....

[14] It was agreed before me that the male referred to was the fifth respondent. In my opinion whether he was the owner of the dog or dogs is not to the point. The evidence is that he was responsible for “sicking”, by which I understand him to have incited the animal or animals to attack the police, including Sergeant Potts.

[15] The owner of a dog that attacks a person is guilty of an offence (Summary Offences Act s 75A); by definition “owner” includes the person for the time being under whose control the dog is. Further, a person is guilty of an offence if he entices or induces a dog to act in a manner that would render the owner of the dog liable for prosecution (s 75A(4)). It also seems to me that inciting a dog to attack a person falls into the definition of “assault” under s 187 of the Criminal Code much the same as would the throwing of a rock at a person constitute an assault. I note that at common law an assault may be committed by inciting a dog to bite a horse - *Dodwell v Burford* (1669) 1 Mod Rep 24 referred to in Archibold 42<sup>nd</sup> Edition paragraph 20 144. It is not necessary for a person to be convicted of an offence before a victim may apply under the Act.

[16] In those circumstances the deduction on account of injuries sustained as a result of the dog bites should not have been made and should be restored to the appellant.

[17] Section 10 of the Act provides that in considering an application for assistance, and in assessing the amount of assistance, the Court should have regard to the conduct of the victim and where it is satisfied that the victim’s conduct contributed to the injury, it shall reduce the amount of assistance by such amount as it considers appropriate in all the circumstances.

[18] As to this, his Worship said:

“The applicant in this matter is Sergeant Michael Wayne Potts. I have, in a previous matter, made a finding that the arrest by Sergeant Potts of Jermaine Pareroultja, was illegal and without justification, he being a passenger in a motor vehicle where the driver of the vehicle had committed obvious offences and was arrestable. But for all the police knew, the passengers were unwilling prisoners in the car and the driving was entirely a product of the driver’s own will without any help incitement or encouragement from the passengers. What happened on that night really developed from the illegal arrest of Jermaine Pareroultja by Sergeant Potts and whatever damages are to be awarded there must be a significant discount for that reason. It is true that the people who attacked Sergeant Potts had no business in doing so, because there is no possible way in which they could know whether the arrest was or was not lawful. Therefore I have no hesitation at all in awarding a Certificate of Assistance against the first respondent and third respondent because of the part the third respondent played in the injuries and condition suffered by Sergeant Potts.”

[19] As a consequence of his findings as to the appellant’s conduct, his Worship deducted one third of the net amount after reducing the \$10,000 on account of the injuries sustained as a result of the dog bites. There is no reason to think that the one third reduction would not have been retained had the tentative award of \$10,000 not been reduced by the amount attributable to the injuries sustained as a result of the dog bites.

[20] The previous matter comprised proceedings in the Court of Summary Jurisdiction on 29 August 2003 against Noel Pareroultja, (mistakenly called Jermaine Pareroultja in the reasons). His Worship found that the detention by Sergeant Potts of Jermaine Pareroultja was “illegal and without justification”. It was appropriate in those proceedings to make a finding as to whether the arrest or detention was lawful since the charge against Noel Pareroultja being dealt with was under s 177 of the Criminal Code Act. The



offence concerns a person preventing a lawful arrest or detention of another.

His Worship then held that element of the offence had not been proved.

- [21] His Worship also had before him, on the hearing of the application under the Act, the Statutory Declaration of the appellant and Police Officer Bronkhurst. At the top of par 10 the appellant said:

“... Another member who I believe was Constable Bronkhurst was now at the front passenger door of the vehicle and opening this door. I then assisted him to extract a male Aboriginal from the vehicle. I also noted other persons walking on the other side of the vehicle, one being a woman and the other a young child. Bronkhurst let go of this male for a brief moment and I then instructed him to lie down on his stomach on the ground.. I could see a group of about 15-20 Aboriginals start to approach me. One of these persons charged towards me yelling ‘that is my brother, let him go, let him go.’ At this point I was trying to contain the male passenger .....

- [22] Constable Bronkhurst said in his Statutory Declaration at par 10:

“... As I got to the rear passenger door it opened. I had passed the door when it opened. I turned and the male was getting out. I had my torch in my right hand, so I took hold him with my left. I grabbed his shirt at the back and pushed him forward over the boot. I then saw Potts was next to me. He reached over and took hold of the male and pushed him onto the ground face down. I illuminated the offender as Potts conducted a pat down search. ....”

- [23] Nowhere does Sergeant Potts advance any justification for his detention of Jermaine Pareroultja so as to make the action lawful under the provisions of s 123 of Police Administration Act or otherwise. Numerous examples were put to his Worship and this Court by which it was sought to justify the detention of Jermaine Pareroultja by the appellant, but none of them fall

within the statute. His Worship did not err in holding that the appellant's conduct towards Jermaine Pareroultja was not a lawful arrest.

[24] The issue now is whether his Worship's reduction by one third of the amount of the assistance because the appellant's conduct constituted an error of law.

[25] The appellant argues that there should have been no reduction. Even if the arrest was found to be unlawful, it was put that it is contrary to public policy to discount assistance to an injured Police Officer, on the basis that an attempt to perform an arrest function at a time when bona fide split second decisions had to be made, and were made, were subsequently adjudged to involve sufficient objective grounds to not justify an arrest. Further, it was argued that the appellant was not engaged in wilful criminal conduct. At worst he made an error of judgment and he could not reasonably foresee that if his arrest was unlawful he would likely be assaulted. "Certainly not by persons other than the one he was arrested." I do not accept this argument. The overriding public policy is that police do not deprive a person of liberty without authority. The appellant held the rank of sergeant and was not inexperienced.

[26] His Worship does not go into detail as to what occurred after the appellant detained Jermaine Pareroultja. He refers in general to the attack upon the appellant, a hit to the back of his head by Noel Pareroultja who then kicked

him in the head, shoulders and back and described, in brief, a continuation of that assault upon the appellant.

[27] However, given all that had gone before and all that was before his Worship by way of evidence and submissions immediately before giving his reasons and the general tenor of those reasons it seems to me highly unlikely that his Worship did not bear in mind all that he knew. For example, the evidence of the appellant at par 3 of his affidavit is as follows:

“It was while I was attempting to apprehend one of the passengers of the vehicle driven by the Second Respondent that I observed a group of approximately 15-20 aboriginals approaching me. One of the persons from the group was agitated and was yelling “that is my brother, let him go, let him go”. I then observed that a number of the male aboriginals in the group were armed with an assortment of weapons including what appeared to be a star picket and an iron bar. One of the aboriginals, whom I now know to be the Fifth Respondent, namely Kelly Parerloutja removed a studded belt that he was wearing, wrapped it around his hand and began to wave it around in a threatening manner. While still holding down the passenger from the Second Respondent’s vehicle I attempted to deter this man from assaulting me with the belt. I raised my baton and told him to back off. He swung the studded belt towards my head. I responded by tilting back to avoid the blow then retaliated with an attempted baton strike to his forearm (the one holding the belt). It was then that I was hit in the back of my head with something hard and forcibly pushed to the ground. While on the ground I was kicked a number of times in my head, left shoulder and back. I was dazed and out of the corner of my eye I saw a male aboriginal, who I now know to be the Third Respondent, namely Noel Pareroultja armed with what appeared to be a galvanised pipe or similar bar about 10 feet long. I believe I may have lost consciousness or received concussion for a period as the Third Respondent was no longer wearing his shirt. I can not recall the incident involving other officers and the removal of the Third Respondent’s shirt. The Third Respondent waved the bar downwards towards my head. I rolled away from the path of the bar before feeling it glide across my forehead. I then saw another male aboriginal armed with a long length of white coloured wood or piping. This person went to strike me to the head with the weapon. I felt it glide down the right side of my head. This impact caused me

to become disoriented and I felt like I was going to black out. While attempting to get to my feet I felt another blow to the back of my head. I became aware that I was completely surrounded by a number of aboriginals all preparing to assault me with an assortment of weapons. I was in genuine fear for my safety. I sustained another blow to my back. Another officer appeared and assisted me to my feet. We were attempting to retreat when I felt a push to my back and fell to the ground. I was kicked again and felt a sharp blow to the outside of my right knee with a solid object, causing immense pain. I tried to get up but a camp dog had latched itself onto my left bicep. I recall struggling to get the dog off me while still trying to protect my head from the kicks being directed at it. The dog relatched on to the soft flesh under my right armpit. I managed to get the dog off me and got onto my feet. I was then again confronted by the Third Respondent armed with an object that he swung towards my head. I punched the Third Respondent and retreated from the scene. Further details regard the assaults are contained in my Statutory Declaration annexed to this affidavit and marked with the letter 'A'."

[28] Constable Bronkhurst in his Statutory Declaration at par 10.3 says this:

- “ At the time that Potts commenced the search I observed a group of Aboriginal males coming from house 22. There were about five of them. I particularly took notice of the one in front. He was a male Aboriginal, 165 to 170cms tall, stocky build, a beard and curly short hair. He was wearing a bright yellow silky shirt, dirty blue jeans and I did not notice any shoes. I have not seen this person before. He was very agitated, he was yelling “Your racist, because you only pick on black people. This is Aboriginal land, fuck off you copper cunts.” Potts appeared to notice these people approaching at that time and stood up. The offender was still on the ground, face down. When the male in the yellow shirt was about 5 metres away I yelled at him to back off. He did [not] listen and kept approaching. The other males had stopped about 6 metres away. All I can say about them was that they were all male Aboriginals and young (in their 20’s). I did not observe any clothing or any other details. I recall a light shining from somewhere and it was in my eyes when I looked at them. I focused most of my attention on the male in the yellow shirt.
11. I kept yelling for him to back off, but he did not listen. When he was about [one] and a half metres away I got the impression he was making his way to Potts. I then moved in the middle,

preventing him for getting to Potts. I again told him to back off. He then raised both fists at me. He was still yelling in the same vein as before. I moved forward and took him by both arms. I tried to move his arms to his back in an attempt to restrain him, however he resisted. At the time I took particular notice that I could not smell alcohol on his breath. I recall him swinging both arms at once in the opposite direction to how I was holding him. He did this abruptly causing me to loose my grip with my right hand. I still had hold of an arm with my left hand. We both then pushed each other in the chest, away from each other. I then told him to back off. He moved towards me again and pushed me with both hands in the chest. I went backwards and struck the offending vehicle between the front and back doors.”

[29] Constable Reinke in his Statutory Declaration recalls seeing:

“... Sgt Potts on one knee next to an offender, it looked to me that he was trying to handcuff him. I could also see about three male aboriginals running towards him. ....

The male with the yellow shirt pushed Sgt Potts, I then ran towards them from our car. ....”

After detailing other confrontations between police and the Aboriginals:

“.... I saw the male in the yellow shirt strike Sgt Potts in the head and back while he was on the ground, the man hit Sgt Potts on about three time[s].

[30] It is not necessary to go into further detail on the ongoing and prolonged attack on police by the Aboriginals and police response. It would be very difficult to come to a view on the balance of probabilities as to who did what to whom and in what order.

[31] In the decision of *Lanyon v Northern Territory of Australia & Anor* [2002] NTSC 6, Justice Bailey, in the course of his consideration on the operation of the Act and in particular section 10, said as follows:

“Whether or not a victim’s unlawful conduct will preclude any assistance or reduce the amount of assistance must be a matter of fact and degree to be determined in light of the particular circumstances of a case by applying a common sense test of causation. No doubt there are circumstances where it would be inappropriate to make a reduction for an amount to be specified in an assistance certificate despite some unlawful conduct on the part of the victim. There would be cases where the unlawfulness of the victim’s conduct made no substantial contribution to the injuries suffered by the victim.”

[32] In my opinion his Worship was faced with a difficult task. It was open to him to find, as he did, that what happened on the night developed in part from the unlawful detention of Jermaine Pareroultja. That is not to say that all that happened on that night can be attributed to the conduct of the appellant, nor indeed that all the injuries sustained by the appellant, could be attributed to his conduct.

[33] There was a stage at which Jermaine Pareroultja was free of the detention and there was a time at which the fighting had nothing to do with the appellant’s holding of him. Some of the injuries were no doubt sustained after that event. It was open to his Worship to find that the whole of the injuries were not sustained as a result of the appellant’s conduct and that his conduct did not contribute to all of the injuries.

[34] An assessment of one third reduction of the assistance on account of the appellant's conduct in the exercise of discretion, can not be set aside as an error of law in this case.

[35] In the result the appeal will be allowed and the Assistance Certificate is to be issued in the sum of \$6,666.67.

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