Backpacker Sues NSW Police Over Bashing

A backpacker who was prosecuted for a minor offence after allegedly being bashed by a NSW police officer is now suing the Force, accusing it of an institutional cover-up over the failure to investigate or discipline an off-duty officer involved.

The trouble for Liam Monte started one Friday night in April 2013. He and some mates were eating at McDonalds on George Street in the Sydney CBD, larking around. It is understood the men were throwing French Fries, and that one of the fries landed on the shoulder of Dennis Schafer, who was there with an off-duty police officer named Osvaldo Painemilla, both of whom were intoxicated.

A dispute ensued and the two groups of men left the restaurant. Outside, Officer Painemilla produced his badge, saying he was a police officer and that Monte was under arrest.

Officer Painemilla later [admitted in court](#) to consuming about 16 alcoholic drinks that evening. Also in court, the officer claimed he was trying to calm the situation down, which was completely at odds with Monte and his friends' version of the events, as well as those of independent witnesses, who stated that the officer was highly aggressive, and was yelling threats.

The officer then pulled out his badge, after which Monte said it was fake, before grabbing it, running up the street and getting into a taxi.

Painemilla and his friends caught up with Monte, dragged him out of the taxi, through him to the ground and repeatedly punched and kicked him while he was on the ground.

According to a statement from a bus driver who witnessed the assault, Monte was "punched approximately 10 times to the face as he lay on the ground".

Monte was taken to hospital by ambulance, suffering severe facial bruising and a suspected fractured eye socket.

Monte charged and prosecuted

Shortly after Monte was discharged from hospital, detectives from The Rocks police station in central Sydney arrived at his backpackers' hostel, where they arrested and charged him with assaulting Officer Painemilla.

The case proceeded to a defended hearing in 2014, during which the Presiding Magistrate, Michael Barnes, described the prosecution as an abuse of process by police.

The Magistrate noted that police initially charged Monte with "assaulting an officer in execution of his duty", but that charge was later withdrawn when independent witness statements made it abundantly clear that Monte did not assault anyone, but was the victim of a vicious and sustained assault by the drunk off-duty officer and his mates.

It was only then that police charged Monte with stealing the police badge.

The Magistrate noted that police had brought the prosecution in an attempt to "somehow negate the suggestion that the force applied to Monte was otherwise completely unjustifiable".

His Honour ultimately found that the facts supported the charge of stealing a badge, but did not convict Monte, instead giving him a [Section 10 bond](#) (now [conditional release order](#) without conviction) which means that he was found guilty but no criminal conviction was recorded against his name.

Proceedings against police

Monte is now [suing the NSW Police Force](#) for damages resulting from assault and battery, misfeasance in public office, unlawful imprisonment and collateral abuse of process.

[His statement of claim](#) argues that the Force is vicariously liable for Officer Painemilla's actions, and that police investigating the incident failed in their duties to fairly investigate the matter and charge those who assaulted him.

NSW Police are yet to file a defence in the case, although last month, lawyers acting for the Force applied to the NSW District Court for security of costs — asking that Monte be ordered to pay $60,000 upfront to cover police costs in the event that Monte loses the case. That application failed.

A date for the civil trial has not yet been set.