

CITATION: Tirak v Northern Territory of Australia & Gumbaduck & Phillips

PARTIES: FRANCIS TIRAK
v
NORTHERN TERRITORY OF AUSTRALIA
First Respondent
RICHARD GUMBADUCK
Second Respondent
WARREN PHILLIPS
Third Respondent

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance) Act

FILE NO(s): 20018834

DELIVERED ON: 11 September 2002

DELIVERED AT: Darwin

HEARING DATE(s): 10 September 2002

DECISION OF: Jenny Blokland SM

CATCHWORDS:

Crimes (Victims Assistance) Act – whether applicant failed in the circumstances to assist police in the investigation or prosecution of the offence – Crimes (Victims Assistance) Act s 12(c).

Crimes (Victims Assistance) Act s 12 (b) and (c)

Dobson v Northern Territory of Australia [2002] NTMC 006

Wolfe v Northern Territory of Australia [2002] NTSC 26

Woodruffe v Northern Territory of Australia [2000] 10 NTLR 52

Rose v Secretary, Department of Social Security [1990] 92 ALR 521

REPRESENTATION:

Counsel:

Applicant: Ms Little
Respondent: Mr Johnson

Solicitors:

Applicant: Top End Women's Legal Service
Respondent: Priestley Walsh

Judgment category classification:

Judgment ID number: [2002] NTMC 35

Number of paragraphs: 11

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

No. 20018834

[2002] NTMC 035

BETWEEN:

FRANCIS TIRAK
Plaintiff

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**

First Respondent

RICHARD GUMBADUCK

Second Respondent

WARREN PHILLIPS

Third Respondent

REASONS FOR DECISION

(Delivered 11 September 2002)

JENNY BLOKLAND SM:

Introduction

1. This is an application for an *assistance certificate* under the *Crimes (Victim's Assistance) Act* by Ms Francis Tirak for injuries she sustained on 12 February 2002. The injuries were inflicted by the second and third respondents who, it is alleged, while acting in concert threw a rock at Ms Tirak's friend Germaine and then at Ms Tirak.
2. As a result of the assault, Ms Tirak suffered a broken jaw requiring hospitalisation, surgery and management by Maxilla-Facial Surgeons. Ms Tirak still suffers discomfort from the injury, especially when eating. These facts are not in dispute and are sourced in the affidavit of the applicant sworn 4 March 2002 (Ex A1), the report of Dr Didier Palmer dated November 1 2000 (Ex A2) , the hospital notes comprising six pages of the

applicant's medical records (Ex A3) and brief evidence given by the applicant in these proceedings. The court readily accepts these primary facts concerning the assault and the extent of the injury.

Section 12 (c) *Crimes (Victim's Assistance) Act*

3. The first respondent opposes the application on the basis that although the applicant has certain worthy features associated with her claim, she is disentitled to an assistance certificate as she failed to assist police in the investigation of the offence within the meaning of *s 12 (c) Crimes (Victim's Assistance) Act*. *Section 12 (c)* provides that the Court shall not issue an assistance certificate *where an applicant or victim has failed to assist the Police Force in the investigation or prosecution of the offence*.
4. Ms Little for the applicant has pointed out that this provision has been subject to interpretation in *Dobson v Northern Territory of Australia*, [2002] NTMC 006 and *Wolfe v Northern Territory of Australia* [2002] NTSC 26. The principles revealed in those authorities are first, that an applicant need not take a proactive role; secondly, the applicant's role is contemplated as being secondary to the role of police in the sense of providing assistance when requested to do so; thirdly, the onus of proof is on the respondent to show that an applicant has failed to assist in the sense of the section. This is all within the context of a remedial Act which should be construed liberally, save for excepting provisions which do not necessarily attract a liberal interpretation: (*Woodruffe v The Northern Territory of Australia* (2000) 10 NTLR 52, citing *Rose v Secretary, Department of Social Security* (1990) 92 ALR 521).
5. The evidence of assistance in this matter comprises the applicant's evidence that some time after the assault the applicant attended Darwin police station with Felix Tirak and made a complaint to police. That evidence is not contested by the respondent and is accepted by the Court. That evidence is also supported by the police documents tendered as a bundle (Ex R4), in particular, the *NT Case Summary Report, 27/02/2002*. In that report, it is noted, *Compl drinking and cooking at lookout when offender – Richard*

Gumbaduck (From One Mile Dam) arrived and assaulted compl. Compl attended RDH for operation 140299. The making of the complaint could be considered some assistance within the meaning of the section. The applicant had provided the name of the offender or offenders and it appears she had given some detail of her medical treatment. The applicant told the Court in evidence that Felix Tirak is now in hospital with a brain problem. By bringing Felix Tirak to the police station she could be said to have provided the police with a potential witness.

The Question of Failure to Assist

6. The evidence of lack of assistance is provided by the respondent, primarily in *Ex R4*. That material indicates that on four separate occasions the applicant failed to attend the police station to make a statement after being requested by police to do so. It appears police did not take any further action by way of investigation on the matter as no statement from the applicant had been provided. On at least two of the occasions that the applicant was found by police, she was intoxicated and a card was left for her advising her to attend the Darwin police office on one occasion and on another occasion a card was left with staff of the sobering up shelter to the same effect. It is essentially the failure to attend the police station to make a statement that the respondent relies on to prove that the applicant did not assist police in the investigation or prosecution of the matter. On this matter the applicant stated in her affidavit:

“I can remember the police told me to go back to them to make a statement about this but I forgot. I told them that Richard and Warren had attacked me”.

7. In evidence before the Court the applicant stated that she remembered police asking for a statement. In cross examination she agreed that she had not given them a statement and in re-examination she said she did not know why she didn't give them a statement.
8. Ms Little argued that because the applicant was approached by police while she was intoxicated she was not in an ideal situation to give assistance. She

further argued that the applicant had not been in a state to comprehend what was being asked of her and that the Court could not therefore conclude that she had been given any *real* opportunity to assist and consequentially it could not be concluded that she had *failed* to assist.

9. I have considered this argument carefully as it is a serious matter to exclude a person who is obviously a victim of crime from assistance under the *Crime (Victim's Assistance) Act*, however, I reject the argument. Four separate approaches or requests by police when on a number of occasions they left contact cards with appointment times strikes me as reasonable police practise in the circumstances. There may be cases where it is true that the circumstances of the victim are such that they cannot be said to have been given a real opportunity to assist, but here, importantly, the applicant acknowledges that she remembers being asked by police to give a statement. It also appears that police attended to her in various locations to convey the message that she was being requested to make a statement. In these circumstances, while the applicant cooperated by making the initial complaint, she failed to assist in the next part of the process. Her affidavit and her evidence indicate that she had some comprehension that police wanted to speak to her to make a statement. She did not keep appointments, nor did she attempt to contact police after failing to meet with them.
10. It may be that police *could* have investigated the matter to a certain extent having been given the name of one or both of the nominated offenders and basic information concerning the applicant's hospitalisation. No information has been placed before the Court on whether police spoke to either of the nominated offenders nor whether they attempted to obtain hospital records. No information is before the Court on why police did not take a statement from the applicant when she first made the complaint. Despite that lack of information, I still take the view that it is a reasonable step in the investigation for police to ask for assistance beyond the initial complaint, by way of seeking a statement. Neither the second or third respondent have been charged with the assault and the police records indicate the matter was not proceeded with as police were unable to obtain a statement from the

applicant. Whether the nominated offenders have or have not been charged is ultimately irrelevant to the question before the Court that concerns whether the applicant failed to assist in the investigation.

Conclusions

11. In my view, s 12(c) *Crimes (Victims Assistance) Act* contemplates assistance by a victim throughout the various stages of the investigation and prosecution. One stage may be the making of the complaint. Notification to police is, of course, a separate requirement under s 12(b) of the Act. Assistance is contemplated and may be requested at other stages. In this case police requested assistance by way of a statement. It was not forthcoming from the applicant. Although the applicant was at times intoxicated and forgot about police approaches, importantly, she did have some comprehension of the request for assistance. Although s 12(b) of the Act which potentially excludes applicants when the offence has not been reported in a reasonable time allows the Court to assess whether there were circumstances which *prevented* the report, no such exempting is provided for in s 12(c). In other words, I am not directed by the statute to consider whether circumstances existed which *prevented* the applicant from assisting the police in the investigation or prosecution. That is not an assessment the Court is asked to make under s 12(c). I accept however that an applicant or victim must be given an opportunity, or, as in this case, opportunities to assist. They must be aware of the request to assist. This complainant had such awareness. The request for a statement was reasonable and could have been complied with. I conclude on the balance of probabilities the applicant failed to assist within the meaning of the section and is therefore disentitled to the scheme.
12. I therefore decline to issue an assistance certificate and the application is dismissed. I will hear the parties on any further orders sought.

Dated this 11th day of September 2002.

JENNY BLOKLAND
STIPENDIARY MAGISTRATE