

CITATION: *Lema Roseanne Patterson v Northern Territory of Australia & William John Ingram (deceased)* [2004] NTMC 019

PARTIES: LEMA ROSEANNE PATTERSON
v
NORTHERN TERRITORY OF AUSTRALIA
&
WILLIAM JOHN INGRAM (DECEASED)

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victim's Assistance)

FILE NO(s): 20119998

DELIVERED ON: 15 March 2004

DELIVERED AT: Darwin

HEARING DATE(s): 20 February 2004

JUDGMENT OF: B Monaghan

CATCHWORDS:

Crimes Victims Assistance-Whether the applicant failed to assist police in the investigation or prosecution of the offence.

Crimes Victims Assistance Act 2003 (NT) ss 12(c)

Tirak v Northern Territory of Australia and Gumbaduck and others [2002]
NTMC 35

Woodruffe v The Northern Territory of Australia (2000) 10 NTLR 52

REPRESENTATION:

Counsel:

Applicant: Ms P Tregear
Respondent: Ms J Truman

Solicitors:

Applicant: Hunt & Hunt
Respondent: Halfpennys

Judgment category classification:

Judgment ID number: [2004] NTMC 019

Number of paragraphs: 43

IN THE LOCAL
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20119998

BETWEEN:

LEMA ROSEANNE PATTERSON
Applicant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
1st Respondent
&
WILLIAM JOHN INGRAM (deceased)
2nd Respondent

REASONS FOR DECISION

(Delivered 1 March 2004)

JUDICIAL REGISTRAR MONAGHAN:

1. This is an application for Crimes (Victim's Assistance) filed by the applicant on 20 December 2001. The application follows an alleged assault suffered by the applicant at the hands of the second respondent (now deceased) on 27 April 2001. The Northern Territory opposes the application on the grounds that the applicant failed to assist the police in the investigation and prosecution of the offence and therefore an assistance certificate should not be granted to her. (s12(c) Crimes (Victims Assistance) Act)
2. The circumstances of the assault were as follows. The applicant and the second respondent were in a de facto relationship and were residing at 9

Tamarind Rd Moulden. On 27 April 2001 at approximately 2.00 am, the second respondent came home intoxicated. The applicant awoke and got up to see him. She was pushed against the wall of the hallway by the second respondent on two occasions before she fell down. Whilst she was on the ground, Mr Ingram grabbed a knife and sat on top of her. He then ran the knife across her chest twice and left a superficial wound. The second respondent then released the applicant and she ran out of the house and down the road to a phone box. She immediately rang the police.

3. Two police officers attended soon after at the parties' home at tamarind Road, Moulden. One of those police officers was Senior Constable Hege Roning-Burns. The second respondent was arrested for unrelated offences and also to allow the police to obtain a restraining order to protect the applicant.
4. An interim restraining order was immediately obtained on 27 April but charges were laid against the second respondent. On 11 May 2001, both parties consented to restraining orders of 12 months duration being made for the protection of the other.
5. On 27 April 2001, the police spoke to the applicant-although there is a dispute in evidence between the parties as to what court processes were explained to her-namely only the obtaining of a restraining order or including the laying of an assault charge.
6. There was no further contact between the NT police and the applicant and the applicant then moved to Hamilton Victoria in July 2001. On 11 October 2001, the applicant made contact with the NT police and requested that the police proceed with an assault charge against the second respondent. She confirmed that she was prepared to make a statement to the Hamilton police.

7. During the months of November and December 2001, Constable Martin of the NT Police spoke to the applicant on 3 occasions about obtaining a statement. The relevant content of those conversations will be discussed later in this decision. The statement was finally given to Victorian Police on 23 January 2002. It appears however, that the second respondent had in fact died in Darwin on 1 January 2002.

8. A brief chronology of the relevant dates is as follows:

“24-04-01	Assault and interim restraining order granted
1-05-01	Personal attendance by police on applicant and discussion of court processes and counselling.
11-10-01	Applicant contacts NT police from Victoria and asks that they proceed with assault charge. Applicant to make statement to Vic Police.
16-11-01	NT Police spoke with applicant who confirmed she intended to make a complaint.
20-11-01	Message left by NT Police for applicant to contact them.
21-11-01	Police speak to Vic Police and send details of alleged offence to Vic Police
29-11-01	Phone contact between NT Police and applicant-statement not yet made
9-12-01	Phone contact between NT Police and applicant-no statement made as Vic police officer taking statement is on leave.

- 12-12-01 Phone Contact between NT Police and applicant-
statement not yet made-decision by NT Police to finalise
matter pending receipt of statement from applicant
- 20-12-01 Crimes Victims Assistance application filed.
- 1-01-02 Second Respondent died in Darwin.
- 23-01-02 Statement made to Victorian Police.

9. The question before me is whether or not the applicant failed to assist the police in the investigation and prosecution of the offence under s12(c). If she did fail to assist them, then she is not entitled to a victims assistance certificate.

“12. Assistance certificate not to be issued in certain circumstances

The Court shall not issue an assistance certificate –

- (a) where it is not satisfied, on the balance of probabilities, that the person whom the applicant claims was injured or killed was a victim within the meaning of this Act;
- (b) where the commission of the offence was not reported to a member of the Police Force within a reasonable time after the commission of the offence, unless it is satisfied that circumstances existed which prevented the reporting of the commission of the offence;
- (ba) where the commission of the offence has not been reported to a member of the Police Force before the date on which the Court considers the issuing of the assistance certificate, unless the Court is satisfied that circumstances existed which prevented the reporting of the commission of the offence;
- (c) where an applicant or victim has failed to assist the Police Force in the investigation or prosecution of the offence; (*my emphasis*)
- (d) where it is satisfied that the applicant has made the application in collusion with the offender;

- (e) in respect of an injury or death caused by, or arising out of, the use of a motor vehicle except where that use constitutes an offence under the Criminal Code; or
- (f) in respect of an injury or death that occurred during the commission of a crime by the victim.

10. The Northern Territory through its counsel Ms Truman argues that the applicant's long delay in providing a statement to police means that she failed to assist the police as required under Section 12(c). Her submission was that the applicant was provided with ample opportunities to assist them and she did not use those opportunities. Ms Tregear for the applicant denies that the applicant failed to assist and asserts that she made a statement as soon as practicable.

11. Magistrate Blokland in *Tirak v Northern Territory of Australia and Gumbaduck and others* [2002] NTMC 35 succinctly summarised the guidance given in earlier decisions on section 12 (c) and stated as follows:

“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 the police in providing assistance when required 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 the 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).”

12. In the case before me, it appears to me that there are 2 distinct time periods that need to be considered. The first is the period from the date of the assault on 27 April 2001 to 10 October 2001. The second is the period commencing 11 October 2001 when the applicant contacted police and asked them to pursue assault charges against the second respondent to the date of the death of the second respondent on 1 January 2002.

The First Period

13. Looking initially at the hours following the assault on 27 April 2001, the affidavit of Senior Constable Hege Roning-Burns sworn 28 November 2003 states at paragraph 6:

“The applicant stated that she only wanted a domestic violence restraining order and did not want to make a formal complaint”.

14. Words to this effect are also contained in the unsigned copy of the statutory declaration contained in the Promis notes tendered in evidence. This document was presumably relied upon when an interim restraining order was obtained. I have no reason to doubt the veracity of Roning-Burns’ sworn evidence on this issue and accept that on the morning of the assault, the applicant elected not to make a formal complaint. The Promis notes, however, give a further possible reason why no complaint was made. Log 9 states:

“Nil complt assault forthcoming at this stage as all parties intoxicated.” (my emphasis)

If this is correct and the applicant was also intoxicated, then her initial failure to assist can hardly be held against her.

15. On 1 May 2001, there were further discussions between the applicant and police. In her affidavit, the applicant states;

“The Northern Territory Police officers then attended upon me at my new address and explained to me the court processes and the domestic counselling services available”.

16. At paragraph 5 she goes on to say:

“In my dealings with the Northern Territory Police in April and May of 2001 it was not explained to me that if I wanted criminal proceedings to be commenced against William John Ingram in relation to his assault upon me that I would have to take any further action, such as giving a formal statement to the police”.

17. I have also already indicated my acceptance of Roning –Burns evidence that on the morning of the assault the applicant indicated her preference not to lay a complaint. There is a clear conflict on this issue between the applicant and aforementioned police officer and on this issue and I prefer the latter’s evidence. I also note that the applicant may have been intoxicated on the morning of the assault and her memory of discussions with police may have been affected.
18. As regards the second conversation between police and the applicant on 1 May 2001, I am surprised by the applicant’s statement that all legal options were not discussed with her. One would expect the officers from the Domestic Violence Unit to explain both the complaint process and the process for obtaining a restraining order-especially in circumstances where the PROMIS notes available to them suggest that the applicant may well have been intoxicated when those options were first explained to her.
19. I am however reluctant to reach the conclusion that the complaint process was discussed with the applicant for the following reasons. The first is that I have no affidavit evidence from the police officers involved to confirm that these matters were spoken of. The PROMIS notes on the subject simply state:

“Members Henson/Littman attended and spoke to Lema. Court process explained and domestic counselling services provided. Nil further required from this unit.”
20. The *court process*” referred to may simply have been the process for obtaining a final restraining order- obtained some 10 days later.
21. I further note that the police officers who attended on that occasion were confused as to the applicant’s new home address which indicates that they did not in fact check their PROMIS records. An updated address had been earlier provided by the applicant and had been clearly noted.

22. If the Police officers in question did not check their records for an updated address, they may not have been aware that she was perhaps intoxicated when first spoken to and thus her legal options needed to be explained to her. In summary, although I would anticipate that the officers attached to the domestic violence unit would routinely speak to victims about laying charges, I cannot be sure that they did so in this case. In the light of her sworn evidence to the contrary, I must give the applicant the benefit of the doubt on that issue.
23. The question for the court is whether during this first period from the date of the assault to 11 October 2001, the applicant failed to assist police in the investigation and prosecution of the matter. The onus is on the respondent to satisfy me that the applicant failed to assist during this period, and for the reasons given above, I am not satisfied that this is so.
24. Following this contact with police on 1 May 2001, there appears to have been no further contact with the police for 5 months until 11 October 2001. As I am reluctant to assume on the evidence before me that the applicant knew of the requirement upon her to provide a statement to police at this stage, then I am not satisfied that her actions –or lack thereof-during this period amounted to a failure to assist.

The Second Period

25. I consider that the second relevant time period commences in October 2001 when the applicant remade contact with the police and ends on 1 January 2002 with the death of the second respondent. The fact that the applicant ultimately made her statement in late January 2002 is of little consequence. With the death of the second respondent, any opportunity to investigate and prosecute him disappeared.
26. I note from the evidence that some 3 months or so after the assault (i.e. July 2001), the applicant left Darwin and moved to Victoria.

Approximately 2 months later on 11 October 2001, the applicant contacted the NT police from Hamilton, Victoria to ask them to proceed with her complaint of (aggravated) assault against the second respondent. She agreed to provide a statement to her local police about the incident. She also gave them the details she had about the name of a potential witness to the assault and the means of contacting her. The PROMIS record accords with the applicant's sworn evidence on this issue.

27. The Promis notes confirm a number of attempts made by Constable Martin of the NT Police to obtain a statement from the applicant.

“07.40 16-11-01, Const Martin reports speaking to the complainant in this matter who still wishes to proceed with a complaint of assault. She has been advised to attend her local LPO in Vic to make a statement and have it forwarded to Cas LPO.

17.45 20-11-01, Const Martin reports leaving a message for the complainant to call me.

11.50 29-11-01, Const Martin reports speaking to Lema Patterson who stated she had not as yet made a statement and she said she would try to do it today or tomorrow. Const Martin reports speaking to a const in the Vic police and forwarding a fax to her with the information in relation to this matter.

07.20 9-12-01, Const Martin reports speaking to Lenma Patterson who stated she has not as yet made her statement as she stated that the officer taking her statement is on leave.

14.50 12-12-01, Const Martin reports speaking to Lema Patterson who has still not made her statement. I explained to her that this matter would be finalised pending the statement from her as she appears to be disinterested in pursuing the matter by making a statement. Please finalise.”

The tenor and content of these conversations is confirmed by Constable Martin in her filed affidavit.

28. Ms Truman notes that the applicant filed a Crimes Victim's Assistance application on 20 December 2001 but that the statement was not made until

23 January 2002. There is no affidavit evidence from the applicant to advise whether or not she knew of the second respondent's earlier death at the time of making her statement.

29. It is Ms Truman's submission that the applicant's failure to make a statement during this period amounts to a failure on her part to assist the police and investigation and prosecution of the offence. She further submits that the fact that the statement was only filed some five weeks after the filing of the Crimes Victims Assistance application tends to support her view that the only reason the complaint was made was so that the application could be pursued. It is Ms Truman's submission that this is just the sort of situation that section 12(c) was enacted to control.
30. Ms Tregear submits that the applicant, after remaking contact with the police on 11 October 2001, made a statement to her local police "as soon as practicable". The applicant, at paragraph 19 of her affidavit sworn 18 December 2003 states:

"I approached Senior Constable Kylie Wilkinson at the Hamilton Police Station and explained that I wanted to make a report about the assault on 27 April 2001 at 9 Tamarind Road Moulden. Kylie Wilkinson explained that she would make inquiries with the Northern Territory Police and that we could then arrange for a statement to be taken. I attempted to contact Kylie Wilkinson a number of times, however it always seemed as though she was on holidays or working night shift. I believe that she may have also have been on maternity leave at some stage while I was trying to contact her. On 23 January 2002 I was eventually able to make a statement to Senior Constable Kylie Wilkinson at the Hamilton Police Station".

She makes similar statements in her later affidavit at paragraph 12.

31. The applicant denies that she was disinterested in pursuing the investigation by making a statement. She states at paragraph 9 of her affidavit of 16 January and I quote:

“At no stage did I specifically instruct any Northern Territory Police Officer that I did not want criminal proceedings to be commenced against William John Ingram in relation to his assault upon me”.

32. In considering whether or not the applicant failed to assist, it is necessary to look at what she did do. She immediately reported the assault and gave the police sufficient information to them to enable them to obtain a restraining violence order for her. At least one police officer saw the cut on her chest allegedly inflicted by the second respondent's knife. Later, in October 2002, the applicant gave the police the name of a potential witness and some information as to how they might track down this witness. What the applicant did not do was to provide the police with her statement as requested until some time had elapsed. Her stated reasons for any delay are provided to the court.
33. The obligation is on the first respondent to prove that the applicant failed to assist the police and they rely on her delay in making a statement as the failure in question.
34. I have considered this issue carefully. While it may have been possible in theory for the police to investigate this matter without a statement from the applicant, it appears to me quite reasonable that they would want her statement as some sort of confirmation that she would continue to assist them to prosecution. I say this particularly in the circumstances before me where I have accepted the evidence of a police officer that the applicant initially did not want to pursue criminal charges against the second respondent.
35. Further, a considerable period of time had passed since the assault and the Promis notes that have been provided to me give little detail of the alleged assault. It appears to me quite sensible in such circumstances to require a formal statement before pursuing criminal enquiries-especially in a domestic situation where the two main witnesses will obviously be the two people involved in the relationship. I also note that the restraining order

was entered into by both parties by consent so the police would not have had the applicant's sworn evidence in those proceedings to rely upon.

36. Even if the applicant is to be believed that she did not understand that she had to make a statement until her phone call to the police in October, does her inability to do so after that period amount to a failure to assist? The applicant states in her affidavit that she provided a statement to interstate police as soon as practicable. She states that the police constable with whom she was dealing seemed to be constantly on night duty or on leave. I query the amount of effort made.
37. I note there was obviously some reluctance on the part of the applicant to assist police in a prosecution as is evident from the comment of psychologist Andrew Gray: “ *She is anxious about retribution should police charges be laid.*” (page 2 of filed report-undated). I also note the earlier comment in the same report that “*she believes her safety to still be at risk and is fearful of his continued efforts to contact her.*”
38. Unlike s12(b), there is no ability for me to take account of the reasons why the applicant failed to assist. If I am satisfied that the respondent has proved on the balance of probabilities that the applicant failed in this regard, then that is the end of the matter.
39. To my mind, this was a matter where the NT police through Constable Martin were making it very clear that they wanted a statement as soon as possible-that time was of the essence. The number of telephone calls at regular intervals made by Constable Martin during this period confirms this. It also appears that Constable Martin seemed able to contact Constable Hutchinson on 21 November without any noted problems when I am supposed to believe that the applicant couldn't.
40. I have formed the view that the applicant was well aware of the need to make a statement as soon as she reasonably could and that she did not do

so. I do not accept her evidence that she made her statement as soon as practicable. For these reasons, I reach the conclusion that the applicant did in fact fail to assist the police during what I see as a crucial period.

41. I note that the applicant may well have been fighting depression over this period but this is not a reason for inaction that I can take into account.
42. Ms Truman also commented on what she sees as the applicant's main motivation in deciding to make a statement –namely to support her Victims Assistance application. I take no account of the applicant's motivation however as it is not relevant. The only question is whether or not the respondent has satisfied me on the balance of probabilities that the applicant failed to assist the police in the investigation and prosecution of the offence. My conclusion is that the applicant's delays in making a statement amounted to a failure to assist and an assistance certificate should not be granted to her.
43. In these circumstances, the application for the issue of a Crimes Victims Assistance Certificate is dismissed.

Dated this 15th day of March 2004.

BRENDA MONAGHAN
JUDICIAL REGISTRAR