CITATION: *Stratford v Northern Territory of Australia* [2006] NTMC 004

PARTIES:	DENNIS WAYNE STRATFORD
	v
	NORTHERN TERRITORY OF AUSTRALIA
TITLE OF COURT:	Local Court
JURISDICTION:	Crimes (Victims Assistance) Act
FILE NO(s):	20313470
DELIVERED ON:	23 January 2006
DELIVERED AT:	Darwin
HEARING DATE(s):	19 December 2005
JUDGMENT OF:	Mr VM Luppino SM

CATCHWORDS:

Crimes (Victims Assistance) – Whether Applicant failed to assist police in the investigation or prosecution of the offence – Whether Applicant is thereby precluded from receiving assistance.

Crimes (Victims Assistance) Act, s 12(c)

Woolfe v Northern Territory of Australia [2002] NTSC 26; *Woodroffe v Northern Territory of Australia* [2000] 10 NTLR 52; *Dobson v Northern Territory of Australia* [2002] NTMC 006; *Jones v Dunkel* (1959) 101 CLR 298

REPRESENTATION:

Counsel:

Appellant:	Mr Rowbottam
Respondent:	Ms Spurr

Solicitors:

Appellant:	Withnalls
Respondent:	Halfpennys

Judgment category classification:	B
Judgment ID number:	[2006] NTMC 004
Number of paragraphs:	25

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

No. 20313470

BETWEEN:

DENNIS WAYNE STRATFORD
Appellant

AND:

NORTHERN TERRITORY OF AUSTRALIA
Respondent

REASONS FOR JUDGMENT

(Delivered 23 January 2006)

Mr VM LUPPINO SM:

1. This matter comes before the Court as an appeal under the *Crimes (Victims Assistance) Act* ("the Act") consequent on the dismissal of the Appellant's application for an assistance certificate by Judicial Registrar Monaghan on 11 January 2005.

2. The grounds of appeal set out in the Appellant's Notice of Appeal dated 8 February 2005 are that:

    2.1. In "preferring" the Affidavit evidence of Constable Dean Strohfeldt, the learned Registrar made impermissible "presumptions" as to the operation or workings of the Northern Territory Police Force, not borne out by the evidence;

    2.2. In "assuming" that the Applicant "may well have been reluctant to pursue the matter" the learned Registrar made an impermissible assumption as to the evidence;

2.3. The failure of the learned Registrar to apply *Jones v Dunkel* to the Respondents' failure to call Constable Whittington led to a miscarriage of justice.

3. The parties agree that appeals to this Court from a decision of the Judicial Registrar are appeals *de novo*. Accordingly placed before me was all of the evidence before the Judicial Registrar at the time of her decision which consisted of:

3.1 Affidavit of Dennis Wayne Stratford sworn 25 October 2004 and annexures thereto;

3.2 Affidavit of Sandra Christine Hallinan sworn 10 May 2004;

3.3 Affidavit of Dean Strohfeldt sworn 23 December 2004;

3.4 Affidavit of Wayne Curyer sworn 29 December 2004.

4. The application related to injuries sustained by the Appellant in an incident that allegedly occurred at Corroborree Park Tavern on 9 August 2002. The Appellant states that he had no warning of the assault and only momentarily saw the approach of the offender and neither long enough to be able to identify the offender nor to avoid the assault. He alleges that he was struck a hard blow to his lower right leg together with a strike by fist to the left side of his face. He alleges that the blows caused him to lose balance and to fall on his face on the concrete floor. Consequently he claims that he twisted his right ankle in the fall and briefly lost consciousness when he hit the ground.

5. The contentious issues, both before the learned Judicial Registrar and before me, were:

1. Whether there was sufficient proof to the required standard that the Appellant was "a victim" as defined in the Act;

2. Whether the Appellant is nonetheless precluded by s12(a) of the Act;

3. Whether the Appellant failed to report the offence to the police and is thereby precluded by s12(b) of the Act;

4. Whether the Appellant failed to assist the police in the investigation and prosecution of the offence so as to be precluded by s12(c) of the Act.

6. The learned Judicial Registrar found that the Appellant was “a victim” as required by the Act. That was not in issue in the hearing before me. I agree with the reasons and finding of the learned Judicial Registrar in that regard.

7. The remaining issues are contentious. The relevant sections of the Act are set out hereunder, namely:-

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 Appellant 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 Appellant or victim has failed to assist the Police Force in the investigation or prosecution of the offence;

(d)-(f) omitted;

8. The evidence in relation to the report to the police is set out in the Appellant’s affidavit, in particular paragraph 15. Therein the Appellant states that due to the need for treatment for his injuries and the memory

loss suffered for a period of some ten days following the incident, his isolated location, his lack of a phone and transport the Appellant did not report the matter to the police until 20 September 2002. The incident occurred on 9 August 2002 and hence the initial report was made some six weeks afterwards. The Appellant states that he was initially reluctant to report the matter believing it may have been futile but was prompted to do so by friends.

9. It would appear that the report on 20 September 2002 was preliminary and only provided police with some basic details. It would appear from the Appellant's affidavit that some arrangements were subsequently made, (whether by himself or the police is unclear), to provide further details. The Appellant's affidavit states, in paragraph 16, that *"…on or about 23 September 2002 the police attended at the farm* ***to obtain a detailed statement from me.****"* (emphasis added).

10. Noting the provisions of s12(b) as set out above, assistance is precluded only where there is a failure to report the offence within a reasonable time after its commission absent acceptable circumstances totally excusing such a report. Noting the delay was of the order of six weeks, noting the short term memory loss, the need for treatment for the injuries and the Appellant's isolated location coupled with his lack of a phone and transport, there appears to be ample cause for excusing the delay in reporting the offence.

11. Bearing in mind the explanations given by the Appellant and the decision of the Court of Appeal in *Woodroffe v Northern Territory of Australia* [2000] 10 NTLR 52, I do not consider that the delay to be unreasonable. I therefore find that a report to the police was made within a reasonable time after the commission of the offence.

12. That then leaves only the issue based on s12(c) of the Act. The section precludes an assistance certificate issuing in favour of a claimant where the

claimant fails to assist the police with the investigation or prosecution of the offences.

13. The same issue was before me in the matter of *Dobson v Northern Territory of Australia* [2002] NTMC 6. In that case I expressed the view that s12(c) does not require a claimant to take a pro-active role but that the claimant's role is secondary to that of the police and only requires the claimant to provide such assistance as is requested by the police. This approach has been approved of by Thomas J in *Woolfe v Northern Territory of Australia* [2002] NTSC 26. The Respondent has the onus of proving that an applicant has failed to assist as required by the section.

14. The relevant evidence on behalf of the Respondent in this regard is the affidavit of Dean Strohfeldt. He deposes that he and Senior Constable Robert Whittington attended at the Appellant's address on 11 October 2002. He states *"…we attended at that time to take details to constitute a formal complaint, together with information in relation to the preparation of a statement from the Applicant."* This seems to accord with the Appellant's understanding of the purpose of the visit as at paragraphs 16 and 17 of the Appellant's affidavit he states, with reference initially to police attendance on 23 September 2002 that *"… the police attended at the farm to obtain a detailed statement from me."* The Appellant went on to say that he was not at home at the time the police initially attended and that the police attended again on 11 October 2002. This coincides with the date deposed to by Constable Strohfeldt.

15. The balance of paragraph 17 of the Appellant's affidavit sets out his version of discussions between he and the attending police officers at the time. The Appellant states:

> *"… I again complained and advised the police that I wanted them to know about the offence and be aware of what had happened. I was upset about being assaulted, my injuries had been substantially impacting my life, and I was certainly interested in having the police*

> *involved if they could help.* ***I informed the police of everything I knew about the offence.*** *(emphasis added) I advised them that I would have thought there would have been the witnesses to the offence. Based on Trevor's comments regarding the purported relationship of the offender to the proprietors of the Corroborree, the fact that the offender does not reside in the Northern Territory, and that none of the locals appeared to want to come forward to speak against someone related to the owners of Corroborree or about what they may or may not have seen, I advised the police that I did not think much could be done. When I did not hear further from the police, I simply assumed that they were investigating the matter."*

Although the Appellant claims to having *"…informed the police of everything I knew about the offence"*, it is telling that he does not depose to actually informing police of what he knew from Trevor or that he told police that Trevor could be a line of enquiry. He also failed to do so on a later occasion when an opportunity presented to do so (see paragraph 22 hereof).

16. Constable Strohfeldt has a different recollection of those events. His affidavit, at paragraph 3, states *"…at that time I recall that we were informed by the Appellant that he did not wish to make a formal complaint regarding the matter. The Appellant informed Whittington and I that he had spoken to a welfare staff member at the Royal Darwin Hospital whilst he was receiving treatment and was encouraged by them to report the matter to the police."* He continues at paragraph *4 "…the Appellant indicated that he had sustained a fracture of the lower right leg and an injury to the left hand side of his face. The Appellant indicated to Whittington and I that he wished to only report the matter so that police were aware of the matter."*

17. The reference to the possible connection between the offender and the proprietors of the Corroborree Tavern relates to something which one of the Appellant's friends, Trevor, said to him sometime after the incident.

This is recited in paragraph 9 of the Appellant's affidavit and in summary form was to the effect that:-

1. The offender was related to one of the proprietors of the Corroborree Tavern;

2. That the offender had left the Territory to return to his home in Victoria;

3. That locals at Corroborree Tavern had said that he (the Appellant) was assaulted because the offender thought that he had been flirting with the offender's wife.

18. Mr Rowbottam submitted that the learned Judicial Registrar had misinterpreted the content of the affidavits as to whether there was sufficient to disentitle the Appellant under s12(c). He said that the issue was whether the Appellant had indicated an unwillingness to co-operate. He submitted that the Appellant sustained grievous harm and as at law a person cannot consent to the infliction of grievous harm, any reluctance on the part of the Appellant was irrelevant. He submitted that reluctance could only impact on the question of the lack of consent which was irrelevant for the reasons put. He submitted that all the police required was medical evidence as well as evidence showing the fact of an assault. He submitted that there was no relevance to the assessment or opinion of Constable Strohfeldt that the Appellant did not want to make a "formal complaint". He queried what an unwillingness to make a "formal complaint" meant in the context of the Act in particular s12(c). Clearly, a "formal complaint", whatever that term means, is not strictly required by the Act. The Act only requires the level of assistance referred to in s 12(c). Whether that has occurred or not is a question of fact to be decided by the Court. Section 12(c) obliges a claimant to provide assistance. This is not necessarily limited to provision of a "formal complaint" or a statement or even answering specific questions. *Woolfe v Northern Territory of Australia*

confirms that the section requires a claimant to do all they reasonably can to assist the Police including providing all information available to the claimant.

19. The learned Judicial Registrar preferred the evidence of Constable Strohfeldt to that of the Appellant as to the events on 11 October 2002. The learned Judicial Registrar noted that the police Promis report (Annexure C to the affidavit of the Appellant) largely confirmed Constable Strohfeldt's version. I agree with the assessment of the learned Judicial Registrar and for the same reasons as she sets out in her reasons (refer paragraph 14). I find accordingly.

20. Given that the Appellant was aware that the police required a *"detailed statement"* and given my acceptance of the version of Constable Strohfeldt over that of the version of the Appellant as to the events on 11 October 2002, the inescapable conclusion is that the Appellant has failed to assist the police in the investigation of the matter. The Appellant knew that the police were attending to obtain necessary information. The Appellant withheld known information regarding the offender, i.e. that the offender may have been known to the proprietors of Corroborree. In addition the Appellant failed to tell police that there was some information as to the possible motive for the assault. He also failed to tell police the name of his friend Trevor as the source of that information. Consequently, a line of enquiry emanating from Trevor's knowledge was denied to the police and therefore the Appellant withheld information necessary for the investigation. The police left the Appellant on 11 October 2002 with no information from which they could make any further enquiries.

21. Bearing in mind that the authorities referred to in paragraph 13 hereof, the issue is whether the Appellant's assistance had been requested by the police. The Appellant complains that the learned Judicial Registrar simply assumed that the request was made. However in my view, given that the

Appellant knew that the police were there to take a detailed statement concerning the incident, then there is sufficient to draw an appropriate inference that at some point before 11 October 2002 the Appellant knew he was required to provide all relevant information to the Police and whether specifically requested or not. The police, not having any knowledge of Trevor or what Trevor had told the Appellant, could not have specifically requested the information conveyed to the Appellant by his friend Trevor. A general request must be sufficient and in my view to satisfy that, all that police need to do is to make it clear to the claimant that they seek information to investigate the matter with a view to prosecuting the offender if the investigations reveal that charges should be laid. Obviously the best way to communicate this is by a direct statement. Absent that, indirect evidence and inference can establish the request in those terms. By inference from the Appellant's own words that the police were attending to take a detailed statement, I find that the Appellant knew what was required of him. I find that an appropriate request has been made.

22. There remains the further matter of the Appellant's communication with the police on 8 July 2003. The Appellant then apparently contacted Palmerston police with a view to having the matter pursued further. The affidavit of Constable Curyer confirms that and also shows that the Appellant stated that he wished to *"re-open"* the matter. Constable Curyer deposes to enquiring as to the name of the offender. He deposes that the Appellant could not give a name and could only indicate that the offender had moved to Victoria. Importantly Constable Curyer states at paragraph 4 *"…when I attempted to obtain further information from the Appellant he told me that he could give no other information."* The Appellant does not contradict the first part of this assertion and is silent as to the second part. Annexure D to the Appellant's affidavit largely corroborates Constable Curyer's version. Again there is no reference to the information he had from Trevor or any mention at all of Trevor. Rather than support the

Appellant's case, in my view this evidence establishes the continuation of the failure to assist. The Appellant had yet again failed to disclose relevant information which could have assisted in investigations directed to identifying the offender.

23. Lastly the failure of the Respondent to call Senior Constable Whittington was raised in the grounds of appeal. The point was not argued on appeal, but nor was I told that it was formally abandoned so I will briefly deal with it. I am satisfied that it is not appropriate to draw any adverse inference from that failure. *Jones v Dunkel* (1959) 101 CLR 298 does not oblige a party to call every possible witness to avoid an inference of the type contemplated. In this case, any evidence from Senior Constable Whittington would have been cumulative to that of Constable Strohfeldt and absent some other issue warranting the calling of both as witnesses, it is sufficient that there is evidence of one or the other given that their evidence is as to the same matters. In any event, *Jones v Dunkel* does not allow a positive inference to be made such as would bolster the deficiency in the Appellant's case.

24. For the forgoing reasons, I conclude that the Appellant is precluded from a grant of an assistance certificate by reason of s12(c) of the Act. The appeal and the Appellant's claim are dismissed.

25. The parties are at liberty to apply as to any consequential orders.

Dated this 23rd day of January 2006.

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V.M. LUPPINO
STIPENDIARY MAGISTRATE