

CITATION: *Northern Territory of Australia v Longmair* [2006] NTMC 005

PARTIES: NORTHERN TERRITORY OF AUSTRALIA

v

ROSARIA THERESE LONGMAIR

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance) Act

FILE NO(s): 20427942

DELIVERED ON: 23 January 2006

DELIVERED AT: Darwin

HEARING DATE(s): 11 January 2006

JUDGMENT OF: Mr V M 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; *Woodruffe v Northern Territory of Australia* (2000) 10 NTLR 52; *Dobson v Northern Territory of Australia* [2002] NTMC 6; *Stratford v Northern Territory of Australia* [2006] NTMC 4; *Watson v Tudehope & Northern Territory of Australia* [2001] NTMC 79.

REPRESENTATION:

Counsel:

Appellant: Ms McDade

Respondent: Ms Comer

Solicitors:

Appellant: Priestleys

Respondent: NAALAS

Judgment category classification: B

Judgment ID number: 2006 NTMC 005

Number of paragraphs: 19

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

No. 20427942

BETWEEN:

**NORTHERN TERRITORY OF
AUSTRALIA**

Appellant

AND:

ROSARIA THERESE LONGMAIR

Respondent

REASONS FOR DECISION

(Delivered 23 January 2006)

Mr V M LUPPINO SM:

1. This is an appeal under the *Crimes (Victims Assistance) Act* (“the Act”) from a decision of Judicial Registrar Fong Lim on 27 September 2005.
2. The evidence put before the Judicial Registrar at the time of the hearing was not in dispute, nor is it in dispute before me. That evidence comprised:
 1. Affidavit to the Applicant sworn 15 June 2005 and the annexures thereto.
 2. Affidavit of Tyron Murray Bellman sworn 2 September 2005.
 3. Affidavit of Shane Ryan Dexter sworn 1 July 2005 and the annexures thereto.
3. The only ground of appeal is that the learned Judicial Registrar erred in not finding that the Applicant had failed to provide the Police with the

assistance required by section 12(c) of the Act. That remains the only issue between the parties.

4. The relevant background facts are as follows:-
 1. The Applicant alleges that her then boyfriend Andrew Lantjin assaulted her on 16 May 2004;
 2. The assault was reported to the Police by the Applicant's mother;
 3. In response to that report a Police Officer, Constable Tyron Bellman, attended and spoke to the Applicant later that evening;
 4. The Applicant then told Constable Bellman that "*... I don't want to take Andrew to court but I want that restraining order that says he is not allowed to hit me*" (per statutory declaration 17 May 2004 being annexure RL-1 to the Applicant's affidavit) and "*...I told the police that I didn't want to take Andrew to court but I wanted him to stay away from me*" (per paragraph 11 of the Applicant's affidavit sworn 15 June 2005);
 5. Constable Bellman again spoke to the Applicant on the following day (17 May 2004) when she told him "*...I want to still get that restraining order*" (per the statutory declaration) and "*..the next day I again told the police I wanted an order for Andrew to stay away from me*" (per paragraph 12 of the affidavit).
 6. Police therefore secured a Domestic Violence Order and took the matter of criminal charges no further.
5. The discussions that the Applicant had with Constable Bellman were largely confirmed by him in his affidavit. In paragraph 3 of his affidavit he says, in relation to the first discussion, that the Applicant "*...advised us that she was unsure if she wished to make a formal complaint of assault*". In relation to the second discussion, at paragraph 4, he says "*...she later gave a statement*

in relation to the assault. She advised me that she did not wish to proceed with a formal complaint of assault, as she wanted to continue seeing Andrew Lantjin who was her boyfriend”.

6. The discussions are also largely confirmed in the Promis records (annexure SRD-1 to the affidavit of Shane Ryan Dexter). These record that, in relation to the first discussion, Police spoke with the Applicant, that she was upset but was not sure if she wished to make a formal complaint. In relation to the second discussion, the records note that the Applicant informed Police that she only wanted a restraining order, that she still wanted to see Lantjin but she wants the problem to stop. It is then recorded that after the Applicant was taken to the clinic for treatment and a victim statement was taken for the purposes of a domestic violence order application.
7. Section 12 of the Act relevantly provides:-

12. Assistance certificate not to be issued in certain circumstance

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;
- (d)-(f) *Omitted*

8. The Act is remedial and is therefore to be construed beneficially. That principle however does not necessarily apply to exceptions in the Act. Section 12(c) is such an exception. Unlike section 12(b) which is an excepting provision which also has some remedial elements, section 12(c) is an excepting provision totally. Accordingly that is to be given its ordinary literal meaning. *Woodruffe v Northern Territory of Australia* (2000) NTLR 52.
9. It is clear on the authorities that section 12(c) does not require a claimant to take a pro-active role. 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. The respondent to the primary application has the onus of proving that a claimant has failed to assist as required by that section. See *Woolfe v Northern Territory of Australia* [2002] NTSC 26, *Dobson v Northern Territory of Australia* [2002] NTMC 6, *Stratford v Northern Territory of Australia* [2006] NTMC 4.
10. Ms McDade for the appellant submitted that the first step in satisfying the requirements of section 12(c) is for the claimant to make a report, in the sense of a statement for the purposes of charges, to the Police. She went on to submit that as the question of lack of consent is an essential element to a charge of assault, the report must include the necessary details to enable that element to be satisfied. She submitted that the Applicant failed to do that. Although the evidence shows that the Applicant did not tell Police that she did not consent to the assault, this seems to overlook that section 12(c) only requires assistance that is requested and there is no evidence that the Police requested specifically requested that of the Applicant. I bear in mind that the Appellant has the onus of proof in relation to that. Closer scrutiny of the evidence indicates that Ms McDade's submission does not fall foul of the principle that the claimant's role is secondary. In my view it does not only turn on whether a claimant answers all the questions that are put by investigating Police Officers. The questions the Police asked of the

Applicant in the relevant discussions were more directed at ascertaining the Applicant's intentions as to charges rather than as to the elements of the offence. Those discussions were essentially of a preliminary nature only and the Applicant's willingness to answer those questions was not necessarily indicative of the Applicant having assisted Police. I am of the view that the evidence inferentially shows that the Applicant's actions amounts to a failure to assist in the investigation of the offence as it indicates an intention not to give Police the information and assistance they require to investigate the matter with a view to prosecuting the offender.

11. As I said in *Stratford v Northern Territory of Australia* [2006] NTMC 4, although accepting that assistance must be requested by the police, it does not have to be specifically requested. In my view it does not require the request to be in distinct question by question form. That would be unnecessarily artificial and does not take into account that, as in *Stratford*, some necessary information may be such that Police could not specifically request that information out of ignorance of its existence. Furthermore the authorities referred to make it clear that the request only needs to be made for assistance. That goes beyond an answer to a particular question or even a series of questions. It refers to all assistance that the Police may need and which is requested and which the claimant can reasonably provide. Therefore a general request is sufficient.
12. In *Stratford*, the claimant withheld information which may have led to ascertaining the identity of the offender. He knew however that police were seeking the information to investigate the matter with a view to prosecuting the offender if the investigations showed that charges were appropriate. If this is made known to the claimant then in my view a request for all information and assistance reasonably able to be given by the claimant has been made. This is consistent with the views of Thomas J in *Woolfe*. The assistance is required to be given both in the investigation stage and at the prosecution stage. The claimant must provide that assistance under penalty

of preclusion under section 12(c) if the claimant fails to do so. A statement such as that of the Applicant here to the effect that she did not want the offender prosecuted, if it indicates a present intention not to assist the Police and not to give evidence, is inconsistent with assisting the Police both in the investigation and prosecution of the offence.

13. In the present case, the Applicant must have appreciated that a request of the nature described had been made. Her clear statement to police that she wanted only a restraining order and that she did not want the offender to go to court lends itself to no other conclusion. As a restraining order would involve the offender going to court in respect of that order, then her reference to not wanting the offender to go to court could only refer to court for the criminal charges, hence she must have appreciated that the request had the ultimate purpose of the prosecuting the offender.
14. Her statement that she did not want the offender to be prosecuted can therefore only indicate a failure to assist and a present intention not to give evidence against the offender. Consequently she has not given Police all information available and she has not done all that was reasonably possible for her to do.
15. Ms Comer, for the Respondent/Applicant submitted that all the Applicant had done was to express a preference about whether the offender should be charged and it still remained a matter for the Police as to whether they would charge the offender. She submitted that the issue for consideration is not whether a complaint is prosecuted but whether the victim has provided all the information in their possession and taken all reasonable steps to assist the police in the investigation and prosecution of the matter (per *Woolfe v Northern Territory of Australia*). Essentially I agree with that principle, however my application of that principle to the facts of this case leads me to the conclusion referred to in the preceding paragraph. Ms Comer referred me to an earlier decision of mine (*Watson v. Tudehope & Northern*

Territory of Australia) where I found that the claimant in that case was not precluded by section 12(c) because all she had done was express a preference for the offender not be prosecuted and had not indicated an unwillingness to assist in either the investigation or the prosecution. That however was an application of the same principle to the facts of that case. It is not a principle of law in its own right. In the current case, I have come to a different conclusion on the facts.

16. I arrive at this conclusion notwithstanding that there is no direct evidence that the Applicant would not assist in the Police. Police did not specifically ask her about that. It would have been preferable for Police to ask the Applicant specifically as well as whether she would assist if Police chose to charge the offender. In my view however an appropriate inference can be drawn from the available facts. I accept what Constable Bellman has said in his affidavit, particularly at paragraph 4 namely that the Applicant “...*did not wish to proceed with a formal complaint of assault, as she wanted to continue seeing Andrew Lantjin who was her boyfriend..*”. Clearly it would not be conducive to an ongoing personal relationship with the offender if she were to be the complainant in assault charges against him. In my view, her statement in the circumstances as they existed, is of the same effect as if she had specifically declined to assist police and I so find.
17. A claimant who indicates an unwillingness to have the offender brought before the criminal courts cannot be said to have assisted in the investigation or prosecution of the offence whether or not charges are then laid. It is true that prosecuting authorities have the option of proceeding with criminal charges without the evidence of a victim. A conviction remains theoretically possible. Realistically however, as a defendant to criminal charges merely has to show that a reasonable doubt exists on the evidence, the prospects of a conviction in that situation are small and would not likely warrant charges being laid. That remains a largely irrelevant

consideration as the issue is whether the Applicant assists the Police as required and not how that impacts on the securing of a conviction.

18. For the foregoing reasons I find that the Applicant has failed to assist Police in the investigation and the prosecution of the offence. She is therefore precluded from receiving an Assistance Certificate. Accordingly the appeal is allowed.
19. I shall hear the Parties as to any consequential matters.

Dated this 23rd day of January 2006.

V M LUPPINO
STIPENDIARY MAGISTRATE