

CITATION: *Ruska v Northern Territory of Australia* [2006] NTMC 024

PARTIES: MELAINE REBECCA ELIZABETH RUSKA
v
NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance)

FILE NO(s): 20424026

DELIVERED ON: 27th March 2006

DELIVERED AT: Darwin

HEARING DATE(s): 21st March 2006

JUDGMENT OF: Judicial Registrar Fong Lim

CATCHWORDS:

Crimes (Victims Assistance) – failure to assist police – Section 12(c) Crimes (Victims Assistance) Act
Woolfe v Northern Territory of Australia [1992] NTSC
Patterson v Northern Territory of Australia [2004] NTMC 019
Stratford v Northern Territory of Australia [2006] NTMC4
Longmair v Northern Territory of Australia [2006] NTMC 5

REPRESENTATION:

Counsel:

Applicant: Ms Tregear
Respondent: Ms Zebell

Solicitors:

Applicant: Hunt & Hunt
Respondent: Priestleys

Judgment category classification: C
Judgment ID number: [2006] NTMC 024
Number of paragraphs: 44

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

No. 20424026

BETWEEN:

**MELANIE REBECCA ELIZABETH
RUSKA**

Applicant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**

Respondent

REASONS FOR JUDGMENT

(Delivered 27th March 2006)

Judicial Registrar Fong Lim:

1. The Applicant applies for the issue of an Assistance Certificate in her favour pursuant to section 5 of the Crimes (Victim's Assistance) Act. The Respondent accepts that the Applicant is a victim pursuant to the Act and that she has suffered an injury arising out of the assault upon her by her then partner.
2. The Respondent submits that the Court should not issue an Assistance certificate in favour of the Applicant because she has failed to assist the police in their investigation of the offence.
3. Section 12(c) of the Act provides:

“The Court shall not issue an assistance certificate –

.....

(c) where an applicant or victim has failed to assist the Police Force in the investigation or prosecution of the offence;”

4. There have been several cases decided on this issue and each with its set of unique facts.
5. The case law on section 12(c) is very clear, the Applicant does not have to be proactive in the pursuit of the offender her role is only secondary to that of the police *Woolfe v Northern Territory of Australia*[1992] NTSC; the Respondent has the onus of proving the applicant's failure to assist *Stratford v Northern Territory of Australia* [2006] NTMC 4; the request for assistance does not have to be specific a general request is enough *Longmair v Northern Territory of Australia* [2006] NTMC 5 and each case must be considered on its facts. It is the application of those principles to the facts of the case which can at times be difficult.
6. The Applicant's evidence is contained in her affidavits of the 4th January 2006 and 15th March 2006. She also relied on the affidavit of Pamela Tregear of the 21st of March 2006 annexing documents returned on summons by the Commissioner of Police. The Respondent relied on the affidavits of Police Officer Mead (Mead) and Police Officer Finch (Finch).
7. The Applicant was assaulted on the 1st of March 2004 by her then de facto partner Leslie Cooper ("the Offender"). As a result of the assault the Applicant was required to be hospitalised with a broken jaw for three days. The Applicant underwent surgery for her jaw and emerged with two plates in her jaw.
8. In her affidavit of the 4th of January 2006 the Applicant states that she was visited by the police while she was in hospital at which time she took part in an interview which was taped. The Applicant then asked the police to charge Cooper with assault, this is confirmed in the transcript of the interview. She also states in paragraph 4 of that affidavit that she attended the police station "a few days later" to sign the record of interview.

9. The Applicant states that she told the Police of several addresses at which the offender might have gone and also told the police that the offender might have gone to WA. The Applicant doesn't state when she gave this information to the police and to which police officer.
10. Finch states that between the 23rd of March 2004 and the 11th May 2004 he made several attempts to get the Applicant to sign the record of interview and was met with hostile reactions to those requests. The record of interview was in fact signed on the 11th of May 2004.
11. Finch states he tried to contact the Applicant on her mobile phone several times to request a further statement and when he did the Applicant refused to give a further statement, became hostile and stopped answering his calls. The Applicant denies that she ever had a mobile phone with that particular number or that she was ever asked for a further statement.
12. Mead states that in May he was tasked to investigate a further assault upon the applicant by the offender which occurred on the 16th of May 2004. He further states that he agreed to help out Finch to find the offender so that he could be questioned in relation to both offences. Mead also states that during that investigation he was informed that the Applicant and the offender had left for Queensland together.
13. The evidence put forward indicates a possible failure to assist the police in their investigation through delay by the applicant in signing the transcript, her attitude to the police and the refusal by the Applicant to provide a further statement.

Signing of the transcript and attitude of applicant

14. On the police evidence the interview of the Applicant was transcribed and passed to Finch to get the Applicant to sign three weeks after it was taken and then it took her a further 2 months to actually sign the document.

15. There is no date on the transcript indicating when the Applicant signed it however it is clear that it could not have been signed “a few days later” as suggested by the Applicant as she was not actually provided with a copy until the 23rd of March some three weeks after the incident.
16. This discrepancy in the Applicant’s evidence would suggest that her memory of the course of events is not as clear as the Court would hope. It is clear from the Applicant’s evidence that she was concentrating more on her children and leaving the Territory than signing the transcript. It is also clear from the Applicant’s evidence that she was suffering some intimidation from the offender’s family. It would be understandable if she put off signing the transcript until she felt she and her children would be safely out of the jurisdiction. However that is not what she attests to. She attests that she signed the transcript a few days after the interview and that is clearly not the case.
17. The Applicant has not been full and frank with the court in her evidence about the signing of the transcript nor is it my view has she been frank in her evidence about her attitude to the police in the period between the assault and the eventual signing of the transcript. It is my view that the Applicant’s evidence in her most recent affidavit cannot be accepted wholly as the truth. I accept Finch’s evidence that the Applicant had been hostile to the police when they were attempting to get the transcript signed even though she denies it. Even though she did eventually sign the transcript the delay supports Finch’s evidence that the Applicant had proved reluctant to do so.
18. In the *Longmair v Northern Territory of Australia* [2006] NTMC 5 the applicant signed a statement but told the police that she didn’t want the offender prosecuted there was no further specific request for information and I found at first instance that did not constitute a failure to assist on the basis that it was up to the police to follow through on the prosecution. On

appeal Mr Luppino SM overturned my decision on the basis that the Applicant's statement about not wanting to take the offender to court showed an intention to not give the police the assistance they needed to investigate and prosecute the offence.

19. It is agreed that the Applicant in the present case did initially ask for the offender to be charged and therefore the facts are distinguishable from *Longmair's case* but applying the reasoning in that case the respondent could argue that the Applicant's behaviour subsequent to making that statement suggests that she was not actually willing to assist in the investigation and prosecution.
20. In the present case the evidence supports the view that there was hostility towards the police by the Applicant when they tried to get her to sign the transcript.
21. In paragraph 3(g) of his affidavit Finch says he made several "attempts" to contact the applicant on the mobile phone number and that he when actually contacted the Applicant and she was hostile towards him.
22. In the case report from the Police records the note relating to the 26.5.04 reads:

"26.05.04 attempted to contact Ruska on phone onPH:0400082612 to advise her of the status of the investigation. No Joy."
23. The police records also note the Applicant becoming hostile in the entry for 18.3.04 (which should read 18.4.04) which reads:

"Finch reports Ruska refused to sign statement and was acting hostile towards members, Cooper was with Ruska at the time"
24. On the 18.4.04 Finch states that he saw the Applicant and offender together and the offender ran off as soon as he saw Finch. There is no explanation of how the Finch knew the person was the alleged offender and the Applicant denies this incident at all.

25. Finch elaborates on his observations set out in the case report in paragraph 3(e) in his affidavit in which he states:

“In between the 23rd of March and 11 May 2004, I contacted that applicant via telephone and at her residence on many more occasions than the four I have detailed above. I would estimate that I attempted to get her to sign the transcript approximately 10 or 12 times during this period. On many occasion the applicant acted very hostile towards myself. I did not make a note of all those attendances because it was the same result each time.”

26. I accept that the evidence shows that the applicant was reluctant or even hostile at first to sign her interview transcript without some persuasion. Whether this amounts to a failure to assist the police must be considered in light of all of the circumstances.

Failure to sign and provide a second statement.

27. Finch also attests that he had requested a further statement from the Applicant but she refused. There is no note of that request in the police records and while I can accept that the officer may not have recorded all of his attendances on the applicant if there was nothing new arising out of those attendances I cannot accept that this would be the case if there was a refusal to provide a further statement.
28. It is my view that Finch has recalled the hostility from the Applicant and the delay in her signing the transcript and translated that memory into a refusal to give a further statement. There is no explanation of why a second statement would have been required from the Applicant and why the failure to provide that statement would have hinder the investigation of the alleged assault. While I accept that Finch was having trouble contacting the Applicant by phone I do not accept that this was in relation to obtaining a further statement.

Other factors

29. Finch also attests that after several hostile reactions to his contact with the Applicant by phone she stopped answering his calls and by that stage had moved to Queensland. It is clear that the message Finch was receiving from the Applicant was that she was reluctant to co – operate with the police at that time.
30. There is an allegation that the Applicant and the offender went to Queensland based on information given to Mead but unfortunately he does not say where he got the information from nor does he say why he believes that is it reliable information. The court cannot place any real weight on the conclusion reached by the police that the Applicant and the Offender left to go to Queensland together. Of course if there was some objective evidence put forward in relation to this eg a bus manifesto then it could be inferred that the Applicant and the offender were in collusion to keep the offender from being arrested however no such objective evidence has been provided.
31. The Respondent would have the Court believe that the Applicant and the Offender were living together the whole time that the Police were looking for him, this is a suspicion the police had without any evidence to support that suggestion and it is clear from the Applicant’s evidence that for at least some of the time the investigations were on foot she was at DAWS accommodation.

Case Law

32. In *Stratfords* case the Applicant gave a statement to the police, after some delay, which failed to suggest a line of enquiry. It was found at first instance that the Applicant had deliberately withheld information and therefore in doing so failed to assist the police. The Applicant in that matter was refused an assistance certificate and that decision was upheld by Mr Luppino SM. There is no evidence in the present case to suggest that the Applicant had withheld information from the police.

33. In the matter of *Patterson v Northern Territory of Australia* [2004] NTMC 019 the Judicial Registrar found that the applicant in that case had failed to assist police by providing a statement to the police in Victoria some nine months after the alleged assault and in the intervening period the offender had died. The Respondent submits that this case was indistinguishable from the present case which is clearly not the case. There is no evidence in the present case that suggests that the offender is deceased the evidence is that he has managed to evade police.
34. In Patterson's case the Judicial Registrar found that even though the applicant had eventually provided a statement to the police her delay in doing so was a failure to assist because the offender had died in the meantime.
35. In the present case the delay in signing the transcript has not been shown to prejudice any investigation.
36. The evidence is that the police were unable to speak to the offender but not because the applicant had been reluctant to sign her transcript more because the offender had been avoiding the police. The précis in relation to this assault confirms that to be the police view, page 7 of the case report reads:

“Attempts to contact the defendant have not been successful, the defendant is anti police and decamps when he see's police coming”
37. Given this situation it is not the Applicant's delay in signing the transcript which caused the investigation of this offence to fail rather the offender's ability to evade the police.
38. In *Longmair's case* the Applicant gave a statement to the police but advised them she did not want to take the offender to court she only wanted a domestic violence order. His honour Mr Luppino found that this attitude showed a general reluctance to assist police in the prosecution of the offender and therefore was a failure to assist the police for the purposes of

section 12 (c) of the Act because without the co –operation of the victim a prosecution would unlikely to be successful.

39. In the present case we have an Applicant who was in a violent domestic relationship, the Applicant had a current domestic violence order against the offender, she has been the victim of an assault and had sought the assistance of the Police to pursue the offender. On the evidence of both the police and the Applicant she gave them information of the offender's possible whereabouts (WA) but that information was not correct. Subsequent to her initial complaint the Applicant delayed in signing the transcript of her interview, was hostile to police and eventually left the jurisdiction cutting off communication with the police.
40. The Applicant made much of the fact that Finch while attempting to contact the Applicant during the month of May clearly did not attend her at the DAWS accommodation at which the Applicant states she was living from 16th May – 4th June 2004. It was suggested that the Finch was unaware of the Applicant living at that accommodation however it is clear from the case report notes that Finch was liaising with the Domestic Violence unit in relation to the Applicant (see the entry for 11.5.04) and it is more likely that he was aware of that situation. There is no explanation of why the police did not attend the DAWS accommodation if they required a further statement from the Applicant. However in my view there doesn't need to be and explanation it is not the actions of the police that are being scrutinised it is the actions of the Applicant.
41. Applying the reasoning of His Honour Mr Luppino in *Longmair's case* the facts in the present case can be interpreted as a general reluctance by the Applicant to co – operate with police and that general reluctance translates to a failure to assist the police. Even though there has never been a statement by the Applicant that she didn't want to take the offender to court, quite the contrary she asked the police to charge the offender, her actions

believe her words, she gives the interview but then delays signing the transcript and is hostile when the police officers attend upon her to get it signed. If the police were not assured of the Applicant's co-operation then the likelihood of success of a prosecution is slim.

42. It may be that given the Applicant's situation, she was trying to extricate herself from a violent domestic situation, that she wasn't thinking straight at the time and didn't understand that her full co-operation was required for the police to track down and prosecute the offender. It may be that the Applicant's top priority was getting her and her children away from the offender and the added pressure of thinking of a prosecution of the offender was causing her to act erratically. I note also that at one stage Family and Children services had removed the children from her care. The Applicant may have also been frightened of what might have happened to her if she pursued her claims against the offender, she says she had received threats. If any of these scenarios are the reason why the Applicant acted in the manner that she did I have the greatest sympathy for her plight. However it is clear from the authority of *Woolfe v Northern Territory of Australia [2000] NTLR 52* that section 12(c) must be given its literal meaning and unlike section 12(b) there is no provision for the applicant to provide a reasonable excuse for failing to assist the police and thereby avoid being excluded from the issue of an assistance certificate.
43. In light of the above I find that the Applicant failed to assist the police in their investigation of the assault upon her by failing to give them her full co-operation when they approached her sign the transcript and being hostile to them when they attempted further communication with her. She has also failed to assist by leaving the jurisdiction and not leaving a forwarding address or phone number with the police to allow them to contact her further about the alleged offence.
44. I order that

44.1 The Applicant's application for assistance is dismissed.

44.2 The Costs of the proceeding are reserved.

Dated this 27th day of March 2006

Tanya Fong Lim
JUDICIAL REGISTRAR