

CITATION: *Christakis v NT of Australia* [2006] NTMC 035

PARTIES: MANUEL CHRISTAKIS

v

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance)

FILE NO(s): 20425003 & 20425005

DELIVERED ON: 24<sup>th</sup> April 2006

DELIVERED AT: Darwin

HEARING DATE(s): 18<sup>th</sup> April 2006

JUDGMENT OF: Judicial Registrar Fong Lim

**CATCHWORDS:**

Crimes victims assistance – Failure to assist – Section 12(c) Crimes Victims Assistance Act

*Woodruffe v Northern Territory of Australia* [2000] NTCA 8

*Wolfe v Northern Territory of Australia* [2002] NTSC 26

*Geisler v Northern Territory of Australia* [1996] NTSC 19

**REPRESENTATION:**

*Counsel:*

Applicant: Ms Spurr  
Respondent: Mr Priestley

*Solicitors:*

Applicant: Halfpennys  
Respondent: Priestleys

Judgment category classification: C  
Judgment ID number: [2006] NTMC 035  
Number of paragraphs: 66

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

No. 20425003 & 20425005

BETWEEN:

Manuel Christakis  
Applicant

AND:

Northern Territory of Australia  
Respondent

REASONS FOR JUDGMENT

(Delivered 24 April 2006)

Judicial Registrar Fong Lim:

1. The Applicant has applied for an assistance certificate pursuant to section 5 of the Crimes (Victims Assistance) Act (“the Act”) for each of two separate assaults upon him in April of 2004. The Respondent accepts that the Applicant was assaulted on both occasions and that he suffered injuries from those assaults however submit that the Applicant should be disentitled to any assistance by the operation of section 12(c) of the Act.
2. Section 12(c) provides:

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

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;”

3. This section has been the subject of many decisions from which the following principles can be distilled:
  - (a) The Act is remedial and should be construed beneficially although excepting provisions in a remedial Act do not necessarily have to be given a liberal interpretation (*Woodruffe v Northern Territory of Australia* [2000] NTCA 8)
  - (b) The Applicant need not take a proactive role in the investigation or prosecution (*Wolfe v Northern Territory of Australia* [2002] NTSC 26)
  - (c) The Applicant's role is secondary to the police ( *Wolfe's case*)
  - (d) The onus is upon the Respondent to prove the failure to assist (*Wolfe's case*).
  - (e) Prejudice to police enquires is properly considered under section 12(c) (*Geisler v Northern Territory of Australia* [1996] NTSC 19
4. Of course each case should be considered on its facts.
5. The Respondent was given leave to cross examine the Applicant regarding his alleged failure to assist the police in relation to both assaults.
6. The Applicant was the victim of two assaults in three days one in a laneway in town and the other at his unit. He stated that he did not see who assaulted him on the first occasion but positively identified the offenders on the second occasion. After the second assault he says he also told the police that he thought that the first assault was by the same offenders as the second assault, a Mr Simpson and Mr Hoffman.
7. **The first assault:** The Applicant's evidence contained in his affidavits and in cross examination is contradictory throughout.
8. The inconsistency in the Applicant's evidence can be demonstrated by examining his evidence of how he knew Simpson and Hoffman ( the alleged offenders).

9. In cross examination the Applicant first stated that he had never met Simpson before a meeting in a friends shop but later he then accepted that he had met Mr Simpson prior to the assault and that he knew of Mr Simpson's reputation of a stand over man. The Applicant consistently stated that he had nothing to do with Simpson and Hoffman yet in cross examination conceded that he had previously had dealings with Simpson when Simpson had twice demanded a sum of \$400.00 from the Applicant.
10. Inconsistent with that evidence in the Applicant's statement to the police taken after the second assault the Applicant states that he had known Mark Simpson for about a year. On page 2 of his Statutory Declaration of the 7<sup>th</sup> of April 2004 he says:

“I have know Mark Simpson for about year, I don't know him well and I wouldn't call him a friend. I have seen him working on the door to discovery and I have said hello to him in passing. I also know him through some mutual friends.”

11. It seems that in cross examination the Applicant was attempting to distance himself from any dealings at all with Simpson yet it is clear from his statement to the police that he knows Simpson better than he was saying in his cross examination.
12. Further inconsistencies arise in the Applicant's evidence for example he said in cross examination that he had been called by his friend to come to his shop.
13. He stated in cross examination that he was called by his friend to go to his friend's shop to pay the money he owed for the bike and when he got there Simpson was there demanding the money the Applicant expressed surprise at Simpson being there. Yet in his statutory declaration he states:

“Simpson contacted me on about 3 occasions and I finally arranged to meet him at Anitas' Sandwich Bar on Friday 2<sup>nd</sup> April 2004. I attended at the sandwich bar and gave Simpson the \$400.00”

14. The Applicant also stated that Simpson had asked about the whereabouts of another friend of his and that he told Simpson that he didn't know where that person was.
15. It was a couple of days after that encounter that the Applicant was assaulted in Austin Lane. The Applicant's evidence is that he was walking from Squires down the laneway at about 3:30am when he was hit in the face and fell over. After he fell over the Applicant claims he received a couple of punches to the head. The assailant then apparently went through his pockets while talking to someone. The Applicant does not give evidence about what was said. The Applicant claims that he did not see who hit him and or recognise the voice.
16. The Respondent suggested to the Applicant that he had a suspicion that one of the assailants was Simpson given what happened a couple of days before in the friend's shop however that was vehemently denied by the Applicant.
17. The Applicant took himself to the hospital, after going home first, and reported the incident to the police the next day. A prosecution did not occur because of insufficient evidence to identify the offenders.
18. The second assault occurred at the Applicant's home when Simpson and Hoffman came to the unit, forced their way in, beat up the Applicant and then left. The Applicant clearly identified Simpson and Hoffman saying he knew Hoffman by sight and reputation. The Applicant did not call the police however the police did attend and the Applicant told them he would go to the station and give a statement to Constable Payne as he had taken the Applicant's previous statement.
19. Even though the Applicant was in "extreme pain" he did not go to hospital after the second assault because he didn't think he had any broken bones.

20. The Applicant gave a statement about the second assault the next day to Constable Payne and at that time did not state any connection between the first and second assault. There was no prosecution of either assault.
21. On the 13<sup>th</sup> December 2004 the Applicant saw Dr Kenny for the purpose of an assessment of his mental injury for these proceedings and in his report Dr Kenny relays the history provided to him by the Applicant. Dr Kenny states on page 4 :

“I understand he’d been harassed by these two people before the first of these assaults. He told me that they were wanting to find the address of a friend from him and he refused”

22. Then on page 2 :

“He said he woke up at 6:30 am to see a car out the front of his place. He recognised the car. He said he wasn’t particularly surprised because he thought these two might follow him again. He said at that stage he wasn’t particularly scared of them and he thought that they probably wouldn’t kill him.”

23. In his affidavit of the 28<sup>th</sup> October 2006 the Applicant confirmed that he told Dr Kenny that he had formed a belief in relation to the identity of the offenders but couldn’t identify them. The Applicant then goes on to say:

“I state that the reason that I formed this belief is simply that over time I have formed an opinion that given I was assaulted twice within a period of 3 days it is highly likely that it was the same 2 people who assaulted me on each occasion”

24. In this statement the Applicant is indicating to the court that “over time” he has come to the opinion that Simpson and Hoffman were his assailants in the laneway.
25. The Respondent suggested to the Applicant that he had formed that opinion straight away after the second assault and did not mention that to Constable Payne when giving his statement about the second assault.

26. The Respondent relied on the affidavit of Constable Payne of the 28<sup>th</sup> October 2005 in which Payne states that the Applicant made no mention of the motive for the assault eg related to protecting a friend to show that the Applicant never suggested a link between the two assaults.
27. After being provided with Payne's affidavit the Applicant then filed a further affidavit of the 23<sup>rd</sup> January 2006 in an attempt to explain his actions. It is clear from that affidavit that the Applicant accepted that the details in his first affidavit to the court was not the whole of the story and with his latest affidavit he attempts to rectify that.
28. It appears that the Applicant did advise the police, in particular, Sergeant Sodoli that he thought Simpson and Hoffman assaulted him on both occasions and that the reason was that he was protecting a friend of his that they were looking for. The Applicant stated he did not provide this information to the court before because he thought he had some sort of confidentiality agreement with Sergeant Sodoli because Sodoli told him that he, Sodoli, would not disclose their little chat to anyone.
29. A further reason for non disclosure was because he was afraid that the information would get back to the offenders and he would be in danger of further assault.
30. Throughout the cross examination the Applicant continued to give inconsistent evidence, he also showed that he was not averse to swearing on oath evidence which was clearly not the whole truth.
31. The Applicant is a person who has suffered two assaults which he believes were at the hands of Simpson and Hoffman. The Applicant had been harassed by these people prior to the first assault in relation to the whereabouts of a friend who had been involved in drug dealing with Simpson and Hoffman. The Applicant would have the court believe that he

did not make the connection between the harassment and the first assault until after the second assault.

32. The Respondent submits that reasonable person in the Applicant's position would have had a suspicion of who his assailants were in the first assault and that is unbelievable that the Applicant did not make the connection between the harassment and the first assault. The Respondent submitted that the Applicant must have held at least a suspicion that the first assault was connected to the previous harassment and chose not to disclose this to the Police when giving his statement. Therefore the Applicant should be found to have failed to assist the police pursuant to section 12 (c) and therefore be excluded from an assistance certificate regarding the first assault.
33. The Applicant argues that he did not suspect the offenders until after the second assault and then he told Sodoli therefore he has given the police all of the information he had. The Applicant argues that it was the police's failure to properly investigate his claims which led to no prosecution being pursued. Given the Applicant's obvious deliberate failure to fully disclose to the court all of the relevant evidence until he was forced to by Dr Kenny's and Payne's evidence, I do not accept that he did not have a suspicion that Simpson and Hoffman were the assailants in the first assault.
34. It is my view that on the balance of probabilities the Applicant would have had a suspicion about Simpson and Hoffman and their motive for attacking him before the second attack and he just chose not to tell the police at the time. This is clearly a failure to provide information to the police, the Applicant has withheld information which might have assisted the police in identifying the assailants of that assault however whether this is a failure to assist within the meaning of section 12(c) is a further matter.
35. The Applicant's solicitor submits that even if the Applicant did have a suspicion about the identity of his assailants the Respondent has not produced evidence that the withholding of that information caused some



prejudice to their investigation (see Geisler v Northern Territory of Australia [1996] Court of Appeal Northern Territory 3 April 1996).

36. The Applicant's evidence is that he provided the information 4 days later to Sergeant Sodoli even though officially it was not recorded in his statement the police were aware of the Applicant's suspicion. The Respondent did not dispute this affidavit with an answering affidavit of Sergeant Sodoli and even though I am of the opinion that the Applicant is an unreliable witness it is open to the court to infer that Sergeant Sodoli's evidence would not have been contrary to the Applicant's evidence. I accept that the Applicant did provide that information to the police and that his failure to provide it 4 days earlier would not have prejudiced their investigation into the first assault.
37. Therefore in relation to the first assault I find that the Applicant is not excluded pursuant to section 12(c) of the Act.
38. **Second assault** - it has been established that after the second assault the Applicant reported it to the Police on the next day. The Applicant had a discussion with Sergeant Sodoli and signed a statement. It is Payne's evidence (affidavit of 9<sup>th</sup> March 2006) that after the Applicant signed his statement on the 7<sup>th</sup> of April he phoned Payne and advised that he did not want to pursue a formal complaint against Simpson and Hoffman.
39. Payne advised the Applicant that when he made up his mind he was to contact Payne.
40. Constable Payne further attests that he attempted to contact the Applicant several times between the 8<sup>th</sup> May 2004 – 20<sup>th</sup> May 2004 and was unsuccessful. Payne's attempts were by attending the Applicant's place of residence and leaving a calling card with a request that the Applicant contact him and calling him on his mobile phone.
41. In cross examination the Applicant categorically denied ever receiving the calling cards or calls on his mobile. The Applicant also attempted to explain

that he may have been at his mother's place however Payne had attended the Applicant's mother's home and was advised that the Applicant was still at his residence in Duke Street. The Applicant again showed that he was willing to give evidence under oath that may not be the truth. Having found the Applicant to be an unreliable witness I accept Payne's evidence where it contradicts with the Applicant's.

42. I find that Payne did make attempts to contact the Applicant as stated in his affidavit and it was only until the 25<sup>th</sup> of June 2004 some 3 months after the assault that the Applicant confirmed that he wanted to continue with a formal complaint.
43. There is no evidence before the court as to what investigations the Police did after being advised by the Applicant that he wished to continue with the complaint. The court was not even provided with the full case report on either of the assaults. The Applicant annexed correspondence from the Police to his affidavit which indicated that the first assault "Due to insufficient evidence, this matter did not proceed to prosecution."
44. I note that while the documents from the police had been the subject of an early return of a summons to produce neither party tendered those documents in evidence.
45. There is no evidence to suggest that the Applicant's failure to confirm that he wanted to go ahead with the complaint was the cause of the matter not being prosecuted. In fact the Respondent has tendered no evidence as to what has happened with the investigation or prosecution of the second assault. There is no evidence to show that the delay in the Applicant confirming he wanted to go ahead with the complain has in any way affected the investigation or prosecution of the second assault.
46. It must be remembered at this point that it is the Respondent's onus to prove the Applicant's actions or omissions didn't assist in the investigation or

prosecution of the offence. The Respondent has not provided to the court any evidence of how the Applicant's delay in confirming he wanted to go ahead with the complaint affected the investigation of the offence. The Respondent has not provided any evidence to the court to show that the Applicant's agreement with Sergeant Sodoli to omit mention of his friend and drug related matters in his statement affected the investigation of the offence.

47. In short the Respondent has not discharged its burden of proof that the Applicant's omissions had negatively affected the investigation or prosecution.
48. Therefore the Applicant's claims for assistance certificates are not excluded pursuant to section 12(c) of the Act.
49. **Quantum in relation to first assault:** The physical injuries sustained by the Applicant as a result of the first assault were a cut lip which required some stitching, some loose teeth, a black eye and a small cut above his left eye. The Applicant states in his affidavit that because of the damage to his teeth he continues to have a sensitivity to cold foods and liquids, he also says that he still has some problems eating.
50. The Applicant has also produced a report of a Dr Kenny, a psychiatrist, in support of a claim for mental injury. Dr Kenny diagnoses a mild Post traumatic stress disorder, an adjustment disorder with depressed mood however attributes that psychological state to "as much upon the failure of the police to act as it does upon the assaults themselves". Dr Kenny suggests that the Applicant would benefit from few sessions of counselling at \$150-\$200 per session.
51. The Applicant has stated that he is prepared to undertake the counselling should he be granted the compensation for those things.

52. Dr Kenny does not attribute any particular proportion of the Applicant's psychological state to the first offence and in fact attributes it to the cumulative effect of both assaults and the police inaction.
53. For pain and suffering for the physical injury the Applicant shall be awarded the sum of \$800.
54. In relation to the mental injury arising out of both assaults the Applicant shall be awarded \$6000.00 half of which shall be apportioned to the first assault and the other half to the second. The Applicant shall also be awarded inj half of the costs of 6 sessions of counselling at \$200 per session.
55. Therefore for the first assault an assistance certificate shall issue for the sum of \$4400.00
56. **Quantum for the second assault:** while the second assault in its description seems more brutal especially as the Applicant was set upon with a baseball bat it is curious that his physical injuries were not more serious. The Applicant did not go to hospital because he believed that nothing was broken and all that the hospital would record was "bruising and pain".
57. The Applicant does state in his statement to the police after the second assault that he was finding it hard to walk without limping but does not say in his affidavit for what period of time he had bruising and that his legs were sore.
58. The only continuing injury the Applicant is claiming is the damage to his teeth and the mental injury supported by the reports of Dr Vrodos and Dr Kenny.
59. I have already accepted that the Applicant suffers a mental injury arising out of the assaults and that he should be granted assistance in the sum of \$3000.00 for each offence for that mental injury.

60. In support of his claim regarding his teeth the Applicant produced a report from a Dr Angelo Vrodos of the Palmerston Dental Surgery. Dr Vrodos has the opinion that even though he had not seen the Applicant's dental records prior to the assault the injuries to tooth 11 and 26 "could well be a consequence of the assault". It is Dr Vrodos' opinion that these two teeth will require root canal treatment and a crown in the future at an approximate cost of \$2200 - \$2600. I accept that on the balance of probabilities the Applicant's teeth 11 and 26 were loosened by the assault and will need the treatment as assessed by Dr Vrodos. I cannot accept however that all of the loose teeth have been caused by the assault and if they were that they will require the treatment suggested. I will allow \$2600.00 for the repair of teeth.
61. In relation to pain and suffering for the bruising and damage to teeth received from the beating and mental distress I award the Applicant the sum of \$3000.00.
62. I also note that the Applicant has made a claim for economic loss for the loss of income because he couldn't work for two weeks and he estimates that loss at \$2000.00. The Applicant is apparently self – employed and was receiving regular work from Annear Holdings prior to the assault. It is clear from the invoices to Annear Holdings before and after the assaults the Applicant was regularly working 6 days a week for \$200 per day plus GST. There is no reason to doubt he would have been able to get that same work in the two weeks after the assault. However any such loss of income should be assessed net of tax. The Applicant has not advised the court of his normal tax rate and therefore the court cannot assess his loss of income with any certainty.
63. In relation to the second assault I an assistance certificate should issue in favour of the Applicant for the sum of \$9200.00 plus an amount to be determined for the Applicants' loss of income.

64. I therefore make the following orders:
65. In the matter of 20425005
- (a) An assistance certificate issue in the sum of \$4400.00.
  - (b) The Respondent to pay the Applicant's costs to be taxed in default of agreement.
66. In the matter of 20425003
- (a) An Assistance certificate issue in the sum of \$9200.00 plus an amount for economic loss to be calculated upon the Applicant filing and serving evidence of his normal income tax rate.
  - (b) The Applicant to file and serve affidavit regarding income tax rate within 14 days.
  - (c) The Respondent to file and serve and answering affidavit regarding tax rate within 7 days of service of service of the Applicant's affidavit.
  - (d) The matter is set down for further submissions regarding economic loss at a date to be fixed after the service of affidavits regarding taxation rates.

Dated this 24<sup>th</sup> day of April 2006

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Tanya Fong Lim  
JUDICIAL REGISTRAR