

CITATION: *Rankine v Northern Territory of Australia* [2006] NTMC 069

PARTIES: Rachael Rankine

v

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance)

FILE NO(s): 20516673

DELIVERED ON: 09 August 2006

DELIVERED AT: Darwin

HEARING DATE(s): July 2006, 3rd August 2006

JUDGMENT OF: Judicial Registrar Fong Lim

CATCHWORDS:

Crimes (Victims Assistance) – failure to assist police – section 12(c) Crimes (Victims Assistance) Act

Longmair v Northern Territory of Australia [2006] NTMC 005

Woolfe v Northern Territory of Australia [2002] NTSC 26

Woodruffe v Northern Territory of Australia [2000] 10 NTLR 52

REPRESENTATION:

Counsel:

Applicant: Ms Truman
Respondent: Ms Rowbottom

Solicitors:

Applicant: Halfpennys
Respondent: Withnalls

Judgment category classification: C
Judgment ID number: [2006] NTMC 069
Number of paragraphs: 36

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

No. 20516673

BETWEEN:

Rachael Rankine
Applicant

AND:

Northern Territory of Australia
Respondent

REASONS FOR JUDGMENT

(Delivered 3rd August 2006)

Judicial Registrar Fong Lim:

1. The Applicant applied for an Assistance Certificate to issue in her favour pursuant to section 5 of the Crimes (Victims Assistance) Act. To be successful the Applicant must prove to the court on the balance of probabilities that she was the victim of an offence and that she suffered an injury from that offence.
2. The Respondent took no issue with the court finding that the Applicant was a victim of an offence nor did they take issue with the Applicant having suffered an injury arising out of that offence. The Respondent argued that the Applicant must be precluded from the issue of an assistance certificate pursuant to section 12(c) of the Act which states:

“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. The Applicant relied upon two affidavits of herself and one of her solicitor Jodi Truman. The Respondent relied on the affidavit of Constable Bland and the PROMIS records produced by the Commissioner of Police on summons to produce.
4. The evidence is that the Applicant was walking toward a public telephone box to try and contact her daughter when she saw the offender approaching her. The offender was the Applicant’s former de facto partner of 4 months. The Applicant says she started yelling at the offender to stay away as she was scared of him. The offender continued to follow the Applicant and when she reached the phone booth she could hear the offender screaming at her. The offender caught up with her at the phone box, grabbed her hair and there was a struggle. The Applicant was stabbed in the back, the left ear and the right thigh. Another person came towards them and the offender ceased to attack the Applicant. The third party advised the Applicant that he had called the police.
5. The attack was reported by the third party who had assisted the Applicant and the police attended. The Applicant was transported to hospital and the police took a lengthy statement from her at the hospital (see Log 17 of the PROMIS log). The Applicant then attended the police station later on that day and advised the police officer that she didn’t wish to continue with her complaint against the offender. The Applicant signed a withdrawal of complaint. The Respondent argues that the signing of the “Withdrawal of complaint” constitutes a failure to assist police. The Applicant, while acknowledging that the signature is hers on the bottom of the “Withdrawal of Complaint” she cannot remember signing it and she states that she always intended that the offender be taken to court for what he did to her.

6. The Police took no further steps to investigate or prosecute the matter.
7. After the “Withdrawal of complaint” came to the Applicant’s attention she and her solicitors advised the police that she wished to proceed with the complaint however the police have declined to pursue the matter any further. Constable Bland accepts the request to proceed was made by the Applicant’s solicitors and states that he requested advice from the Director of Public Prosecutions whether they could proceed given a withdrawal of complaint had been signed however there has been no further communication between him and the Director of Public Prosecutions since that request.
8. In *Woolfe v Northern Territory of Australia [2002]NTSC 26* the applicant had withdrawn his complaint and the magistrate in the first instance had found that the applicant was excluded pursuant to section 12(c). That decision was appealed to the Supreme Court on the basis that the magistrate erred in finding that a withdrawal of complaint is conduct sufficient to disentitle the applicant from an award. Her honour Justice Thomas upheld the finding that the Applicant had failed to assist police however did not accept that the magistrate had relied solely on that fact to exclude the applicant. Her honour adopted the magistrate’s reasoning as follows:

“ The withdrawal of complaint – and of course that is the actual documentis a significant aspect in this case. The withdrawal of a complaint per se is not indicative of a failure to assist police because it may well be that a person has provided all the information in their possession; taken all reasonable effort to assist the police in the investigation of the matter but the end of the day the matter is not considered to be worth taking any further.

So in this particular case, what is important to my mind is what preceded the withdrawal of complaint.”

9. Her honour found that given the above the magistrate did not find a failure to assist on the basis of the withdrawal of complaint alone. It is important for the court to look at all of the circumstances surrounding the investigation and the subsequent withdrawal of complaint. Her honour also

confirmed the principle that the Applicant's role in the investigation and prosecution of the offence is secondary to the police and that is the Respondent's burden to prove that the applicant has failed to assist the police.

10. The Respondent referred the court to the recent decision of his honour Mr Luppino SM in the matter of *Longmair v Northern Territory of Australia [2006]NTMC 005* the facts in that matter were that the applicant had been the victim in a domestic dispute and had advised the police that she wasn't sure if she wanted to make a formal complaint. At first instance I found that the applicant had not failed to assist as she had only told the police of a preference, I further found that there was no evidence that she did anything else to suggest a failure to assist. My decision was overturned by Mr Luppino on appeal, his honour found that by expressing the preference not to make a complaint the applicant in that matter "indicates an intention not to give Police the information and assistance they require to investigate the matter with a view to prosecuting the offender" (see paragraph 10 of his honour's decision). His honour found that there was no need for the Applicant to be asked specific questions by Police the respondent just has to show in all of the circumstances the Applicant has failed to assist in the prosecution. His honour did indicate that each case must be considered on its own facts.
11. It is clear from the authorities that a withdrawal of a complaint may not necessarily indicate a failure to assist police and circumstances surrounding that withdrawal of complaint must be considered in making the decision whether the applicant failed to assist the police.
12. In the present matter the Applicant was the victim of a serious assault at the hands of her ex de facto, apart from the physical injuries it is safe to assume that she suffered some mental and emotional distress as well. According to the date of the "Withdrawal of Complaint" and the log in the PROMIS

records the withdrawal was signed on the day of the assault. In his affidavit Constable Bland states that the Applicant attended upon him at the police station wishing to withdraw her complaint. According to Constable Bland the applicant told him the reason for doing so was that the offender was the father of her daughter. There is no other evidence of the any other failure to assist on behalf of the Plaintiff.

13. The Plaintiff cannot remember why she signed the document and says that she always intended that the offender be pursued by the police and shows by her actions since she found out about the document that she is willing and able to assist the police with whatever they needed however the Police have not taken the matter any further. Constable Bland referred the matter to the Director of Public Prosecutions in March of 2005 for an advice on whether the police could now pursue the matter. Nothing further has happened regarding the prosecution.
14. The Respondent made no submissions to me about the effect of the withdrawal of complaint on the prosecution or investigation of the offence.
15. The Applicant was asked to produce further evidence as to whether the statement the offender is the father of her daughter. The Applicant has filed an affidavit in the negative, the offender is not the father of the Applicant's daughter.
16. The Applicant has not put evidence before the court that she did not make that statement that the offender was the father of her child and without evidence to the contrary I accept that the Applicant did make that statement.
17. The question must be why did she tell Constable Bland that the offender was the father of her daughter when he clearly was not.
18. The Respondent argues that the Applicant had deliberately lied to the police about the relationship between the offender and her daughter so that the Police would not pursue the offender. The Respondent based this argument

on conjecture that the police will be more willing to drop charges when it involves a relationship issue between the parties. This was pure conjecture, there was no evidence to support this argument and I do not accept it. Even if that was the case how would the Applicant know of this practice.

19. Why the Applicant made this statement had not been explained to the court and will remain a mystery to the court. Why the police officer accepted the withdrawal of a complaint from a person who on the same day had suffered a serious attack without further investigation has not been explained either. It is my view given the seriousness of the assault the police have a duty to the victim and the community to investigate these matters to see if a prosecution could be successful even without the victim's evidence.
20. On the basis to Woolfe's case it is my view that while the withdrawal of complaint is significant so is the failure of the police to investigate the matter further given the seriousness of the offence. Counsel for the respondent argued that the police had taken the prosecution of this offender as far as they could charging him with the carrying of an offensive weapon and given the Applicant's withdrawal of complaint it is not incumbent on the police to pursue the matter.
21. In *Longmair's case* his honour accepted that a mere indication from the victim of intended non co-operation with police is enough to excluded that victim from the issue of a certificate in her favour. However it is my view that the circumstances surrounding the withdrawal of complaint in the present case make it distinguishable from the situation in *Longmair's case*. The victim in *Longmairs' case* was caught up in a violent domestic relationship and had received a beating from her partner. The victim indicated that she wanted to try and work it out with her partner and asked only that a domestic violence order be taken out against the offender. There were no other witnesses to the assault on the victim.

22. In the present case there was an independent witness to the assault , the gardener who called the police, there was no continuing domestic relationship, and there was the use of an offensive weapon in the attack. There is no suggestion by the police that the offender was not able to be found, in fact he was to be summonsed over the possession of an offensive weapon.
23. Given that there was an independent witness to the assault and that the offender was to be summonsed regarding the possession of the weapon it is my view that the police could have pursued the investigation into the assault even with the Applicant's withdrawal of complaint. There seems to be no effort made to ensure that the Applicant was aware of the implications of her withdrawal of complaint especially when that document was signed on the day of the assault. The Applicant was not asked to sign her statement given to the police at the hospital and typed up at a later date and therefore she did not get the opportunity to either refuse or agree to sign the statement.
24. The Respondent says that it is disingenuous of the applicant to say she doesn't remember signing the withdrawal of complaint however it is just as disingenuous for Constable Bland to state that he doesn't remember ever sighting the statement of the Applicant even though he is named as the witness and clearly had a hand in the preparation of the statement of the 2nd August 2005. Counsel for the respondent suggested that the reason the statement had a different date than the one annexed to the Applicant's affidavit of the 10th of January 2006, that statement was dated the 22nd of September 2004, is simply because it is a computer generated date to reflect the day of printing the documents. The respondent argues that every time the document is printed it will show the date of it being printed not necessarily the date of the time that it was created. I accept that word processing programs can have the feature as suggested by counsel for the respondent however there is no evidence before the court to confirm that is the case

with statutory declarations prepared by the police and without that evidence I cannot make that assumption.

25. Even if the date on the statement of the 2nd of August 2005 is merely a print date it would indicate that on that day someone has accessed the records and printed a copy of the statement on that day. Given that the Applicant and her solicitors have annexed the earlier statement it would be safe to assume that is the copy they received out of their enquiries.
26. The court file discloses an affidavit from the Respondent's solicitors in support of an application for a summons to produce to the Commissioner of police attesting to a request made on the 26th of July 2005 of the Commissioner for information. That affidavit annexes the statement of the 2nd of August 2005 it could be that the statement was produced in answer to the enquiries made on the 26th July 2005.
27. In any event these dates are of no significance as the Applicant clearly did not sign the statement and was not given the opportunity to do so even until the day of the hearing of this application. Constable Bland clearly thought that the date was significant because he attempted to deny knowing of its existence arguing the it was not produced by him and he couldn't understand why it was produced. Constable Bland did not suggest that the dates were print dates.
28. There was some evidence from the Applicant that as soon as she was reminded of the withdrawal of complaint, in January of 2005, she went to the police to agitate to have the complaint reinstated. Constable Bland attests that there is no record of the Applicant's visit to the police station and counsel for the Respondent argued that if that attendance actually occurred it would show in the PROMIS summary.
29. Counsel for the Applicant submitted that PROMIS summary cannot be accepted as the full record of all dealings the police have had in relation to

any particular matter as it is clear that some of the correspondence between the applicant's solicitors and police representatives have not been recorded neither has the communication between police officers. I accept that the PROMIS records are supposed to be a full record of police dealings with matters however it is my view that this is clearly not the case regarding the police dealings with the Applicant.

30. I accept that the Applicant is anxious to ensure that the offender is prosecuted for the assault he committed upon her and that she continues to be willing to assist in the further investigation and prosecution of the offence. It is my view that even though the Applicant signed a withdrawal of complaint it is incumbent on the Respondent to show that constituted a failure to assist in the circumstances of the present case.
31. It is my further view that the Respondent should show that the applicant's actions have impacted upon the investigation and prosecution of the offence. I am not satisfied that the Respondent has discharged that burden. They have not shown that they could not have investigated further or even prosecuted the offender without the Applicant's co – operation. They had a statement from the Applicant even though unsigned could have been the basis for further investigation with other witnesses. The Applicant could have been approached a couple of days later to make sure that she didn't want to proceed she was not. I do not know why the Applicant chose to sign a withdrawal of complaint however in my mind the Respondent has not shown that her doing so hindered the investigation of the offence. There was no evidence from the police or the respondent's representative on how that document effected the investigation only that upon receiving it the police ceased any action against the offender for the assault.
32. Counsel made much of the fact that the police had actually followed through on other charges regarding the offender namely the possession of an offensive weapon however there is no evidence before the court to show that

the offender was actually summonsed in relation to that charge or if the prosecution was pursued. An assumption was made on behalf of the counsel for the Respondent without supporting evidence and that is an assumption that the Court cannot make.

33. Accordingly I find that the Respondent has not discharged its burden to prove to the court that the Applicant has failed to assist the police in the investigation of the offence and is therefore not excluded from the issue of an assistance certificate pursuant to section 12(c).
34. In relation to quantum the Applicant suffered three stab wounds to her back, left ear and right thigh and cuts to her right forearm. She attended hospital that day and received stitches to her wounds. The Applicant states she was very sore for many days and suffered bad dreams for a period of time. The Applicant obviously suffered the immediate mental distress of being a victim of an unprovoked vicious attack. A report was obtained from psychiatrist Dr Kenny, who reports that the Applicant was suffering mild post traumatic stress disorder manifesting itself in some sleeplessness and fearfulness of meeting up with the offender again.
35. In light of the relatively minor physical injuries suffered by the Applicant, the immediate fear for her life during the attack and her continuing mild post traumatic stress disorder I am of the view that an assistance certificate issue in favour of the Applicant in the sum of \$7000.00
36. I order
 - 36.1 An assistance certificate issue in the sum of \$7000.00.
 - 36.2 The Respondent pay the Applicant's costs and disbursements to be taxed in default of agreement.

Dated this 9th day of August 2006

Tanya Fong Lim
JUDICIAL REGISTRAR