

PARTIES: KINSELLA, Patrick David

v

SOLICITOR FOR THE  
NORTHERN TERRITORY

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT EXERCISING  
TERRITORY JURISDICTION

FILE NOS: No. 59 OF 1995

DELIVERED: Alice Springs 24 November 1995

HEARING DATES: 16 November 1995

JUDGMENT OF: ANGEL J

**CATCHWORDS:**

Appeal from local court - Crimes (Victims Assistance) Act NT -

Whether commission of an offence was reported within a  
reasonable period - Whether the applicant was prevented  
from reporting the commission of the offence - Onus of  
reporting commission of an offence - Relevant  
considerations

Crimes (Victims Assistance) Act NT s12

*Schmidt v South Australia* (1985) 37 SASR 570, applied

Appeal from local court - Practice and procedure - Basis of  
appeal to Supreme Court - question of law - relevant  
considerations

Local Court Act NT s19

**REPRESENTATION:**

*Counsel:*

Appellant: G Algie  
Defendant: J Stirk

*Solicitors:*

Appellant: Morgan Buckley  
Respondent: McBride & Stirk

Judgment category classification: C

Court Computer Code:

Judgment ID Number: ang95024

Number of pages: 7

Distribution: Local Unpublished

ang95024

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA

No. 59 of 1995

BETWEEN:

**PATRICK DAVID KINSELLA**  
Appellant

AND:

**SOLICITOR FOR THE**  
**NORTHERN TERRITORY**  
Respondent

CORAM: ANGEL J

REASONS FOR JUDGMENT

(Delivered 24 November 1995)

This is an appeal from a decision of the Local Court, sitting at Alice Springs, dismissing an application under the Crimes (Victims Assistance) Act NT, handed down on 25 October 1995.

There are two grounds of appeal:

- "1. The learned special magistrate erred in law in finding that a report of the commission of the offence had not been made within a reasonable period after its commission having regard to:-
  - a. The applicant's sworn evidence;
  - b. The medical evidence tendered by way of medical reports.
2. The learned magistrate erred in law in finding that nothing prevented the Applicant from reporting the

offence within a reasonable period of time having regard to:-

- a. The applicant's sworn evidence;
- b. The medical evidence tendered by way of medical reports."

Section 12(b) of the Crimes (Victims Assistance) Act  
relevantly provides:

"The Court shall not issue an assistance certificate -

- (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;".

The learned Magistrate in her reasons for decision  
discussed the background as follows:

"At that time the applicant was employed as a security guard at the Alice Springs Hospital. Whilst disarming a female with a broken bottle who was attacking another female, he slipped on the kerb, caught his heel on it and fell heavily on the ground. As a result of that, he suffered from injuries which were the subject of an operation upon him.

At the time of the incident on the 18th January 1994, he was already suffering from some pain as a result of an incident a short time before. I understand, although it is not clear from transcript, that incident had not occurred on the 18th of January but on some other earlier date.

In evidence Mr Kinsella said of the events on the 18th of January:

'There was some screaming going on towards the front entrance of the hospital, there was a lady with a broken bottle who was fighting with another aboriginal lady, there was also a man present away to one side my understanding of what was happening one was attacking the other. I approached these

ladies with the intent to disarm her and she lunged at me with the bottle. I stepped back, I caught my heel and fell hitting my side on the kerb.'"

It is to be observed that s12(b) makes no mention of an applicant and places no onus on the applicant or anyone else to inform the police. Nevertheless, unless the commission of an offence is reported to police within a reasonable time after the commission of the offence, the court is bound to refuse a certificate. It is the fact of the absence of a report rather than an applicant's failure to report which precludes qualification for compensation.

The only evidence before the learned Magistrate as to the reporting of the commission of an offence is Exhibit A8. That exhibit comprises a written "Official Crime Report" completed by the applicant in the presence of First Class Constable Campbell and a supporting statutory declaration by the applicant, both dated 20 May 1994, that is, four months after the incident occurred.

In the course of her reasons the learned Magistrate stated:

"A victim under the Crimes (Victims Assistance) Act, means a person who is injured or dies as the result of the commission of an offence by another person. I am satisfied in the present case, (despite the variations in the reports of the offence) that the applicant was injured as the result of the commission of an offence by another person. Whether the applicant was injured when he went to assist the person who was being assaulted or

whether he had a broken bottle swung at himself, either way, I consider that his injury was 'as the result of the commission of an offence by another person.' I do not consider that is necessary for an applicant to establish that the person who was actually being assaulted is in fact the applicant for assistance.

I am also satisfied that the applicant suffered injuries as a result of this incident."

Mr Algie, counsel for the applicant, argued that the four month delay was not unreasonable, given the gravity and sequelae of the injury, its treatment and the ameliorative surgery, the convalescent period, and the applicant's later discovery of his legal rights and obligations. It was conceded that the only evidence of a report having been made to the police, was comprised by Exhibit A8. The applicant also reported the matter to his employer and at an earlier time, as evidenced by Exhibit A1: a Workers Compensation Claim Form and Employer's Report, dated 1 February 1994.

Mr Algie submitted that the applicant's plight should attract the benevolence of the Crimes (Victims Assistance) Act, which was said to be its object, and that the delay had not prejudiced or frustrated the police in their enquiries. Mr Algie was also critical of the learned Magistrate's finding as to the applicant's "motive" for reporting the matter to police: that is, that his intended claim for compensation was the reason for the report, not the offence itself. Motive, he said, was not relevant. I agree, but I do not think that assists him.

Mr Stirr, counsel for the Solicitor for the Northern Territory, submitted that an appeal lies to this court pursuant to s19 of the Local Court Act; that is, on a question of law only. He submitted that the learned Magistrate's finding of fact, an unreasonable delay, did and could not constitute an error of law.

As I have said, the only evidence in relation to a report to the police was Exhibit A8; there was no evidence which could found or sustain an inference that a report had been made to police earlier, whether by the applicant or anyone else. What the learned Magistrate found was open on the evidence, and therefore, was not an error of law. I agree with the submissions of Mr Stirr.

The learned Magistrate, in her reasons in the present case, said:

"From all the answers that were given by Mr Kinsella, I consider it plain the only reason he reported the offence in May of 1994 was because he had suffered injuries and intended to make application for compensation in one form or another.

It would seem from his evidence had he not suffered from any injuries, he would not have reported the matter. However, I note it was apparent to him as at 24th January 1994 he was suffering from some pain as a result of the incident, by 31st January 1994 when a referral of Dr Art Schmidt, the orthopaedic surgeon, was arranged, it must have been apparent to the applicant he was suffering from injuries which could be long term.

I do not consider it reasonable to delay the reporting of the commission of an offence simply in order to see what injuries one may suffer in the long term. Whether or not

injuries are suffered is not a consideration as to whether an offence has been committed and as to whether the commission of an offence should be reported to a member of the Police Force.

I note the evidence which has been given by the applicant as to his condition up to the time of the operation performed upon him and the pain he was in. However, I do not accept it would not have been possible for him to report the matter to the police, either by attending at the Police Station or by telephoning.

It does not appear any effort had been made at that time to report the offence to the Police. I do not consider the matter was reported to the member of the police force within a reasonable time after the commission of the offence, and in those circumstance an Assistance Certificate cannot be issued by me."

The appellant has failed to demonstrate a material error of law. The critical findings of the learned Magistrate were open on the evidence, in particular that the period of four months was an unreasonable period in the circumstances. The period of time, four months, after the commission of the offence before which a report was made to police, was unreasonable. There was no material before the learned Magistrate sufficient to show that the applicant was somehow prevented from making an earlier report to police. He was not prevented from reporting the matter to his employer on 1 February 1994. Given the circumstances of the incident, particularly the absence of any witnesses, the applicant could not have expected anyone else to have reported the matter to police. He did not request his employer to report the matter to police.



In *Schmidt v South Australia* (1985) 37 SASR 570 at 573-4, Bollen J, in relation to the Criminal Injuries Compensation Act 1977-1982 (SA), s7(9a), of which materially differs from s12(b) of the Northern Territory Act, said:

"It is to be interpreted in a liberal and generous manner. Parliament intends that people injured by criminal conduct should be compensated. There are checks and balances in the legislation. The Act is not to be interpreted in a rigid or too technical a manner to the deprivation of a right to compensation. ... But Parliament has said in stark terms that the Court shall not make an order if some things appear to the Court. Parliament certainly intends the Act to be remedial. But it sets boundaries to the benevolence which the Act distributes. Parliament says that persons who prove the suffering of injuries by criminal conduct shall have compensation unless some things appear to the Court.

...

If these ... matters obtain then the Court is directed not to order compensation. No matter how generously one interprets the Act there is no getting away from these provisions if they obtain ... But if despite that generosity those matters appear from the evidence no compensation may be ordered."

I respectfully agree with those remarks which are equally applicable to the Northern Territory legislation.

Both grounds of appeal fail.

The appeal is dismissed.