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## 1998 Survey of Rhode Island Law: Cases: Tort Law

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**Tort Law.** *Palazzolo v. Ruggiano, M.D.*, 993 F. Supp. 45 (D.R.I. 1998). To bring an action under the Violence Against Women Act, a plaintiff must state a claim under state law for second-degree sexual assault to establish the "crime of violence" element required to support an action under this statute.

In *Palazzolo v. Ruggiano*,<sup>1</sup> the United States District Court for the District of Rhode Island found that mere touching does not constitute second-degree sexual assault. Allegations of sexual conduct without the use of force or coercion cannot establish a "crime of violence" in which the victim was overcome by an attacker.

#### FACTS AND TRAVEL

Plaintiff Donna M. Palazzolo (Palazzolo) was a patient of Dr. John R. Ruggiano (Ruggiano) between the years of 1992 and 1995.<sup>2</sup> As her psychiatrist, Ruggiano allegedly made sexually suggestive physical contact with Palazzolo on three separate counseling sessions. The first occurrence was in the fall of 1994, when Palazzolo claimed Ruggiano placed his hands around her waist as she was being weighed.<sup>3</sup> In the winter of 1995, Ruggiano allegedly briefly placed a hand on her shoulder while pressing his genitals against her buttocks as he weighed her.<sup>4</sup> The last incident occurred in April, 1995, when Ruggiano allegedly placed his arms around her shoulders and pressed his genital area against hers.<sup>5</sup> Palazzolo testified that she pushed him away and left his office at that time.<sup>6</sup>

#### ANALYSIS AND HOLDING

Count One of Palazzolo's complaint brings a claim under the Violence Against Women Act (VAWA). The statute provides a civil cause of action for victims of gender motivated violence.<sup>7</sup> For VAWA to become applicable, a plaintiff must show that a "crime of violence" was committed. In doing so, two requirements must be met: (1) the act must "constitute a felony against the person"; and

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1. 993 F. Supp. 45 (D.R.I. 1998).
  2. *See id.* at 48.
  3. *See id.*
  4. *See id.*
  5. *See id.*
  6. *See id.*
  7. *See* 42 U.S.C. § 13981(a) and (b) (1996).

(2) the act must be a state or federal offense described in 18 U.S.C. section 16.<sup>8</sup>

Palazzolo relied upon the Rhode Island second degree sexual assault statute to demonstrate "felony against the person." Section 11-37-4 of the Rhode Island General Laws provides:

A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and if any of the following circumstances exist: (1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled or physically helpless. (2) The accused uses force or coercion. (3) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification or stimulation.<sup>9</sup>

Palazzolo alleged violations of both subsections (2) and (3).<sup>10</sup> In regard to subsection (2) she relied on Rhode Island General Laws section 11-37-1(2)(B), which is applicable when the assailant "overcomes the victim through the application of physical force or physical violence."<sup>11</sup> That is, it must be clear that contact was made after a lack of consent by the victim to be sufficient "force or coercion" under section 11-37-4(2).<sup>12</sup> In the first two alleged incidents, the court found no evidence that force or coercion was used.<sup>13</sup> The plaintiff admitted the encounters lasted only a matter of seconds, and the counseling sessions continued without further incident.<sup>14</sup> Moreover, Palazzolo admitted that she did not resist or convey her disapproval in any manner.<sup>15</sup> In the third incident, Ruggiano hugged her then she pushed him away.<sup>16</sup> He ceased making any advances and did not restrain her from leaving his office. Other than the actual sexual conduct, there was no additional

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8. 18 U.S.C. section 16 requires that the act either: (a) Have, as an element of the offense, "the use, attempted use, or threatened use of physical force against the person or property of another"; or (b) "[B]y its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." 18 U.S.C. § 16 (1994).

9. R.I. Gen. Laws § 11-37-4 (1956) (1994 Reenactment).

10. See *Palazzolo*, 993 F. Supp. at 48.

11. *Id.*

12. *State v. Goodreau*, 560 A.2d 318, 322 (R.I. 1989) (quoting *State v. Carvalho*, 409 A.2d 132, 135-36 (1979)).

13. See *Palazzolo*, 993 F. Supp. at 48.

14. See *id.*

15. See *id.*

16. See *id.*

physical contact.<sup>17</sup> Palazzolo acknowledged that Ruggiano did not coerce her or use any kind of force when he made contact with her.<sup>18</sup>

Although Ruggiano's conduct may have been inappropriate, the court did not find that such conduct constituted an assault involving force or coercion.<sup>19</sup> Similarly, the conduct could not be construed to be a "crime of violence" under VAWA. To do so, reasoned the court, would be to ignore the enumerated criteria set forth within the statutes, and would also render the term "violent crime" so overbroad as to include any unwelcome physical contact.<sup>20</sup> The court suggested that the conduct described in Palazzolo's complaint would be better treated under other criminal statutes, such as battery, or state laws providing civil remedies.<sup>21</sup>

The court also noted that Ruggiano's conduct would satisfy the section 13981(d)(2)(A) test as a "felony against the person" because his conduct clearly was "medical treatment or examination . . . for the purpose of sexual arousal, gratification or stimulation."<sup>22</sup> However, Ruggiano's conduct did not meet the requirements of the remaining test prongs, and thus could not be held to be a "crime of violence" under the statute.<sup>23</sup>

Since the sole federal claim under VAWA was inappropriate, the claim was dismissed. The district court had no independent jurisdictional basis to exercise its jurisdiction over the remaining state law claims, and adhered to the principles of comity by refraining from rendering judgment on the twelve state law-based claims.<sup>24</sup>

#### CONCLUSION

The district court is unwilling to allow a claim to be brought under VAWA unless the plaintiff can demonstrate a "crime of violence" has occurred. In doing so, the court avoids a trivialization of the statute by directing the plaintiff to seek remedies for her

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17. *See id.*

18. *See id.*

19. *See id.*

20. *See id.*

21. *See id.* at 48-49.

22. *Id.* at 49.

23. *See id.*

24. *See id.*

claims under the appropriate governing statutes. Thus the court upholds the fundamental purposes underlying VAWA by confining claims brought under the statute to those who have been victim of a violent, gender-based crime. Accordingly, Ruggiano's motion to dismiss is granted.

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