Police v Giles **[2013] SASC 11 (15 January 2013) – Supreme Court of South Australia**

‘Emotional and psychological abuse’ – ‘Evidence of prior abuse’ – ‘Following, harassing, monitoring’ – ‘Interim intervention order’ – ‘Physical violence and harm’ – ‘Reasonable suspicion’

Appeal Type: Police appeal against a Magistrate’s refusal to confirm an interim intervention order.

Facts: The Magistrate refused to confirm an interim intervention order which had previously been made ex parte against the respondent in favour of his former de facto partner. At trial, there were disputed facts regarding various prior incidents of physical and verbal abuse. The Magistrate made no findings of fact about these incidents.

Issue/s:

1. Whether the Magistrate’s failure to make findings of fact about these incidents amounted to an error of law.
2. Whether the Magistrate erred in finding that there was no reasonable suspicion that the respondent ‘would if unrestrained commit an act of abuse which was to result in more than trivial emotional harm’ (See at [4]). This appeal therefore concerned the meaning of ‘trivial’ distress, anxiety or fear and the degree of suspicion which is required.

Decision and Reasoning: The appeal was upheld.

1. The Magistrate’s failure to make factual findings amounted to an error of law because: they were important to determining the nature of the relationship; they affected the degree of anxiety that the respondent’s former de facto partner may have felt about potential further acts of abuse and they were probative of further allegations made by his former de facto partner. Kourakis CJ noted at [29] that while proof of past acts of abuse is not a precondition to the making of an intervention order, the Act ‘appears to contemplate that the court will make findings of fact about past events and provides that it is to make those findings on the balance of probabilities’. As such, a reasonable suspicion (under s 6) that an act of abuse will be committed must be based on findings of fact made on the balance of probabilities.
2. The Court found the Magistrate erred in finding that there was no reasonable suspicion in the circumstances. There is no requirement that the facts found by the Magistrate themselves constitute an act of abuse, that they be recent or that they occur before or after a relationship breakdown. An order could be made based on a statement of intention to commit an act of abuse, no matter who that statement was made to. While the timing of the acts is relevant, Kourakis CJ stated that depending on the circumstances, an event many years earlier could constitute a reasonable suspicion (See at [30]-[31]). A reasonable suspicion will include a suspicion that the ‘defendant will act in a certain way’ and a suspicion that those acts would have the prescribed effect on the protected person of something more than a trivial kind (See at [32]). In this case, the respondent’s former de facto partner had anxiety that the respondent may kill her. This was not trivial and the Magistrate had erred in finding it was.

   Kourakis CJ then made several factual findings including that the appellant used a knife and verbally

abused his former de facto partner and therefore found that the prescribed reasonable suspicion under the Act existed. His Honour then found that it would be appropriate in the circumstances to make the order.