

***F, S v Police* [2013] SASC 164 (1 November 2013) – Supreme Court of South Australia**

‘Emotional and psychological abuse’ – ‘Interim intervention order’ – ‘Physical violence and harm’ – ‘Standard of proof’

Appeal Type: Appeal against confirmation of intervention order.

Facts: The Magistrate confirmed an intervention order made in favour of the appellant’s ex-wife. Some of the alleged incidents of domestic violence included the appellant holding a screwdriver to his ex-wife’s throat, swearing and throwing clothes and shoes around in arguments. The Magistrate made findings of fact in relation to each alleged incident. On that basis he found a reasonable suspicion that the appellant would, without intervention, commit an act of abuse against his ex-wife and that such an act would cause distress, anxiety or fear which was not trivial.

Issue/s: Whether the Magistrate made proper findings of fact. Whether the Magistrate should have applied the higher standard of proof of ‘beyond reasonable doubt’, rather than the ‘balance of probabilities’.

Decision and Reasoning: The appeal was dismissed. The Magistrate set out the evidence very carefully, and in fact found that most of the alleged incidents were not sufficiently proven. The Court also found that the balance of probabilities is the correct standard, because the consequences of the imposition of an intervention order are ‘not so grave as to warrant such a heavier onus’ (at [18]). Finally, the Magistrate did not err by finding that the proven facts could amount to distress, anxiety or fear which is not trivial, because these considerations are somewhat subjective so the trier of fact has a distinct advantage.