

***R v Fox* [2017] SASC 5 (3 February 2017) – Supreme Court of South Australia**

‘Intervention order’ – ‘Physical violence and harm’ – ‘Presumption against bail’ – ‘Protection orders’ – ‘Protective function’ – ‘Special circumstances’

Appeal Type: Appeal against refusal to grant bail.

Facts: The applicant and the female complainant had been in a relationship for 10 years. On 14 September 2016, the applicant was charged with using a dangerous article, aggravated assault with a weapon against his own child or spouse, and committing an assault aggravated by the use of an offensive weapon. These offences occurred in the context of the breakdown of the applicant and complainant’s relationship and were committed against the complainant and her new partner. On 14 September 2016, an interim intervention order was made against the applicant. The applicant breached this order on two occasions.

The applicant was charged with two counts of contravening a term of an intervention order pursuant to s 31 of the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) and one count of aggravated threat to cause harm. The applicant was a prescribed applicant pursuant to s 10A(2)(ba) of the *Bail Act 1985* (SA) because he was charged with breaching an intervention order in circumstances involving violence. As such, there was a presumption against the grant of bail unless the applicant established the existence of special circumstances: s 10A(1). The magistrate refused to grant bail.

Issue/s: The magistrate erred in failing to find there were special circumstances.

Decision and Reasoning: The appeal was dismissed. Hinton J noted generally that Parliament’s approach to an act of defiance to a protective order allegedly perpetrated in circumstances involving violence ‘only tolerates release into the community on bail if special circumstances can be established’ (see [16]). This is part of the community’s recognition of the ‘prevalence of domestic violence’ and the need to insist on strict compliance with intervention orders to ensure they fulfil their protective purpose (see [17]).

His Honour continued that, ‘special circumstances will only exist where the applicant can demonstrate that he or she does not pose the risk which Parliament had in contemplation in reversing the presumption and in relation to whom the denial of bail would result in consequences beyond the contemplation of Parliament’. The relevant risk here was ‘of further defiance of an order and violence threatened or perpetrated in doing so’ (see [19]).

The ability to fashion bail conditions which reduce the risk of offending and offer protection to the victim will not ordinarily amount to special circumstances (see [40]).

On the facts, Hinton J held that there were no special circumstances warranting the grant of bail. None of

the sorts of special circumstances referred to in *R v Buhmann* were present (see [20] of this case). The applicant had not pointed to any exceptional hardship that would result from his continued incarceration (see [42]).