

Groom v Police (No 3) [2013] SASC 93 (25 June 2013) – Supreme Court of South Australia

‘Adjournment’ – ‘Consent to confirmation of intervention order’ – ‘Interlocutory orders’

Appeal Type: Appeal against the order of a Magistrate.

Facts: With the appellant’s consent, a Magistrate confirmed an interim intervention order which had been put in place against him in favour of his domestic partner pursuant to s 23(3) of the *Intervention Orders (Prevention of Abuse) Act 2009*. At the time of the hearing, the appellant was in custody and appeared unrepresented in the Magistrates’ Court. On the day of the hearing, he did not have documentation relating to his case including an affidavit sworn by the applicant, and his responses to this affidavit. This was because he had attempted to have the documents brought to him in prison by a friend but permission was refused. The prosecution had not provided him with the affidavit. The Magistrate granted an adjournment until the afternoon, but refused to grant a longer adjournment.

Issue/s: Whether the appellant’s consent to the intervention order was freely given and whether he could withdraw his consent and have the order set aside.

Decision and Reasoning: The appeal was upheld. Before deciding the main issue, the Court confirmed as a matter of procedure that the Magistrate’s confirmation order was interlocutory in nature as it was capable of variation or revocation. As such, permission to appeal was required (See at [29]- [32]). The Court then found (at [40]) that had the longer adjournment been granted, no prejudice to the protected person would have occurred because the interim intervention order would have remained in place. Sulan J drew an analogy between consent under s 23(3) and admissions made in civil proceedings. As such, the corresponding principles that govern whether such admissions can be withdrawn became relevant. The Court found that the appellant’s consent was given in circumstances, ‘in which he considered that he had no satisfactory alternative but to agree’, because of all the circumstances outlined above, the fact that he was partially unrepresented, as well as the fact that he was not aware that he could have applied for a further adjournment. As such, his consent was not freely given.