

***Kerr v Brown* [2013] TASMC 30 (8 July 2013) – Tasmanian Magistrates' Court**

'Breach of domestic violence order' – 'Interpretation of order'

Charge: Breach of family violence order (FVO)

Facts: A family violence order (FVO) was made in favour of the protected person that prohibited the defendant from approaching the protected person directly or indirectly. After the order was made, she phoned the defendant and caught a bus to Hobart where he was residing and commenced residing at his property.

The defendant submitted that he never approached the protected person, notwithstanding the fact that when she approached him, he allowed her to remain living at his home. The prosecutor submitted that the order should be interpreted to mean that the defendant was not permitted to allow the protected person to come into his presence, and that if she did, he must immediately leave her presence.

Issue: Whether the defendant was guilty of the offence charged.

Decision and Reasoning: The charge was dismissed. *'Clearly the intention of the order is to prevent the respondent from coming near or initiating communication with the person to be protected. However, my impression is that police, and perhaps courts, view the condition as a primary mechanism for keeping persons apart in cases where family violence has been alleged or perpetrated, and may well consider the order to have the more extensive effect contended for by the prosecution in this case.'* ([5]). The ordinary meaning of 'approach' in the context of the FVO is that a person should not intentionally contact or bring themselves into the presence of the protected person. The order should be interpreted in a way that it would be understood by persons in the position of the defendant without legal training and of limited education: *'The defendant cannot, in my view, be said to have approached (the protected person) by simply allowing her into the house, even for an extended stay, once she was there. To hold otherwise would be to give the word an extended meaning which is beyond its ordinary common meaning.'*