

***Beechey v McDonald* [2010] TASSC 47 (25 October 2010) – Supreme Court of Tasmania**

‘Breach of domestic violence order’ – ‘Conditions of orders’ – ‘Guilty plea - unequivocal’ – ‘Physical violence and harm’ – ‘Risk factor - separation’ – ‘Temporary protection order’

Charges: Breach of a family violence protection order (2 counts), Assault

Appeal type: Appeal against conviction

Facts: The male applicant pleaded guilty to two breaches of a family violence protection order and was sentenced to a wholly suspended sentence of 2 months’ imprisonment. The family violence order included an order that he not enter the premises of the complainant, his wife and mother of his 4 children. On one occasion, when returning the children to the premises, the applicant entered the residence and placed some of the children’s belongings inside (the first complaint – breach of a family violence protection order). The family violence order was later replaced with an order including a term that the applicant not directly or indirectly threaten, harass, abuse or assault the complainant. The applicant and the complainant agreed to spend Christmas day together. On the day, a box the applicant was carrying came into contact with the complainant. She fell over and dislocated a shoulder (the second complaint – breach of a family violence protection order by assault).

Issue: Whether the magistrate erred in accepting the applicant’s plea to one of the charges as he had made assertions that were inconsistent with his plea of guilty.

Decision and Reasoning: The appeal was upheld. Sentencing submissions from counsel for the applicant evidenced that he denied applying force to the complainant intentionally. This was inconsistent with his plea of guilty on the second complaint. A plea of guilty must be unequivocal. The magistrate should have informed counsel for the applicant of this inconsistency ([9]-[12]).