***Conomy v Maden* [2016] WASCA 30 (18 February 2016) – Supreme Court of Western Australia (Court of Appeal)**

'Following harassing, monitoring' – 'Interim violence restraining order' – 'Questioning witnesses' – 'Stalking' – 'Systems abuse' – 'Unrepresented litigant'

Charge/s: Stalking.

Appeal type: Application for leave to appeal from Supreme Court's decision to refuse leave to appeal.

Facts: The appellant and the complainant went on six dates. The complainant made it clear she did not want to see the appellant again. The appellant repeatedly sent her emails, letters and text messages. She took steps to discourage further communication including obtaining an interim violence restraining order which prohibited contact. But the appellant persisted. The appellant was charged with a stalking offence and fined $3000. Leave to appeal against sentence and conviction was refused in the Supreme Court.

Issue/s: Whether the primary judge erred in finding that none of the grounds of appeal against conviction had any reasonable prospect of success.

Decision and Reasoning: The appeal was dismissed. None of the many and detailed grounds of appeal that the appellant advanced had any reasonable prospect of success. Some of the reasons for this finding included that the magistrate was correct in treating the existence and breach of the interim violence restraining order as relevant to the complainant's subjective fear and apprehension and assessing whether the communication could reasonably be expected to cause fear or apprehension in the complainant (See 'Primary Ground 5B/Appeal Ground 6' [96]).

Additionally, the appellant argued that the objective element of the stalking offence was not satisfied because he could not reasonably have expected his actions to have intimidated a normal person. However, the question was not what the appellant could reasonably have expected but rather whether the manner of his communication with complainant could reasonably be expected to cause her fear or apprehension. Further, the magistrate did not give inordinate weight to the evidence of the complainant because the complainant's evidence was central to questions of whether the communications occurred, and whether the manner of these communications subjectively caused her fear and apprehension (See 'Primary Grounds 9A and 9B/Appeal Grounds 9 and 10' [109] - [110]).

Finally, the magistrate did not err in assessing the complainant to be a reliable witness and did not err in refusing to permit the appellant to ask certain questions. The appellant, an unrepresented litigant, had a 'tendency to become distracted by, and fixated on, issues not significant to the question of his guilt of the charged offence'. The appellant was entitled to ask questions of the complainant relevant to matters in issue at trial. However, the magistrate had a responsibility to ensure the appellant did not abuse this right by the manner and length of his cross-examination of the complainant (See 'Primary Ground 16/Appeal Ground 12' [115]-[118]).

'The paramount responsibility which a judicial officer presiding over a criminal trial owes to the community is ensuring that the accused person receives a fair trial. However, the judicial officer also owes other concurrent responsibilities to the community. In a case such as the present they include a responsibility to see that the accused does not utilise the proceedings as a vehicle for harassment of the alleged victim. The exercise of that responsibility will require vigilance in confining an accused person to asking questions which are relevant to the issues raised for the court's determination' (See 'Primary Ground 16/Appeal Ground 12' [117]).