***Isenhood v Green* [2011] WASC 70 (10 February 2011) – Supreme Court of Western Australia**

'Breach of violence restraining order' – 'Deterrence' – 'Exposing a child' – 'Following, harassing, monitoring' – 'Hearsay' – 'People affected by substance abuse' – 'Prejudicial material in victim impact statement' – 'Programs for perpetrators' – 'Sentencing' – 'Threats to injure' – 'Victim impact statement'

Charge/s: Breach of violence restraining order, making threats to injure.

Appeal Type: Appeal against sentence.

Facts: The complainant was the ex-partner of the appellant's current partner. There was one daughter of that relationship. The appellant's partner remained principally responsible for the welfare of the daughter. This meant that the appellant and the complainant often had contact with each other. Events at the complainant's home prompted the complainant to seek a violence restraining order (VRO) on behalf of his daughter against the appellant, to prevent the appellant from committing an act of abuse against his daughter and from 'behaving in a way that could reasonably be expected to cause fear that the child will be exposed to an act of family and domestic violence' (see at [4]). The complainant then later obtained another VRO which prevented the appellant from communicating in any way with him. The appellant then made repeated telephone calls to the complainant and threatened to kill him and his daughter, which constituted both the breach and threat to injure charges. He was sentenced to 12 months' imprisonment on each of the charges, to be served concurrently.

Issue/s:

1. Whether the sentence was manifestly excessive.
2. Whether the Magistrate erred by taking into account hearsay and irrelevant material in the victim impact statement.
3. Whether the Magistrate erred by taking into account prior property damage offences in concluding that the appellant has the potential to act violently in the future.

Decision and Reasoning: The appeal was upheld in respect of issues one and two.

1. Firstly, Jenkins J noted that the breach offence was not at the upper range because it did not involve any physical contact or actual violence. However, it was not trivial and included a threat of actual violence. Furthermore, there were no significant mitigating factors – the appellant had six prior convictions for breaching a VRO, was not remorseful and the previous penalties imposed had clearly not been effective as a personal deterrent. Notwithstanding, there were no attempts to carry through with the threats and no indication that the appellant intended to do so. Also, the appellant was no longer in a relationship with his partner and had ceased contact with the complainant's daughter.

2. The victim impact statement detailed the history of the dispute between the appellant and complainant from the complainant's point of view. The appellant described it as 'inflammatory' and Jenkins J agreed with that description. The appellant was not given an opportunity to respond to the matters in the statement. The respondent conceded that the Magistrate should not have taken these matters into account. The Magistrate needed to make clear that these matters were not taken into account.

3. Jenkins J held that it was 'drawing too long a bow' to suggest that the appellant's violent attack on an ATM machine was reason to believe that he may attack people in the future. However, this of itself was not cause to allow the appeal as no substantial miscarriage of justice occurred.

   The appellant was re-sentenced to a 12-month intensive supervision order which included programs to address anger management and alcohol abuse.