Police v Martin **[2016] SASC 194 (14 December 2016) – South Australia Supreme Court**

*Note: this case was decided under now superseded legislation however the case contains relevant statements of principle.

'Error of law' – 'Failure to provide inadequate reasons' – 'Intervention order' – 'Power to issue intervention orders' – 'Protection orders'

Appeal Type: Appeal against the imposition of a final intervention order.

Facts: The male appellant was having an affair with a married woman, Ms P, who told him her marriage was over. The appellant was concerned that she was not telling the truth. On 8 October 2015, after an argument, the appellant went to Ms P's home address at night. Being unable to see or raise her, he went to the backyard and called out to her. Ms P and her husband contacted the police. The appellant left without making any threat or committing any violence.

The next day, police approached the appellant and searched his vehicle. They found a can of OC spray (oleoresin capsicum spray), a hammer and a small knife, but it was agreed that he did not take these onto Ms P's premises. The appellant was charged with being on premises without lawful excuse and for the items in his car. A police interim intervention order was issued against him with respect to Ms P, her husband and their children. On 19 August 2016, the appellant pleaded guilty. Relevant to this appeal, on the same day, the magistrate imposed an intervention order pursuant to s 19A of the *Criminal Law (Sentencing) Act 1988* (SA).

Issue/s:

1. The magistrate did not give any, or adequate, reasons for issuing the intervention order.
2. The magistrate erred in the exercise of his discretion to issue the intervention order against the appellant pursuant to s 19A(1)*Criminal Law (Sentencing) Act 1988*.

Decision and Reasoning: The appeal was allowed. Peek J held that s 19A of the *Criminal Law (Sentencing) Act 1988* did not create a freestanding power to issue final intervention orders. At [24], His Honour stated that:

‘Section 19A does no more than enable a court hearing substantive charges – in this case it happened to be a Magistrate – to issue an intervention order as if a complaint had been made under the Intervention Orders (Prevention of Abuse) Act 2009; the critical question of whether an order is to be made pursuant to such a complaint (or “as if a complaint had been made”) will depend on the substantive provisions of the Intervention Orders Act.’

Here, the sentencing magistrate made no reference to the requirements set out in the Intervention Orders Act. As such, it was impossible to assess whether the magistrate approached the matter incorrectly and failed to address the issues relevant to making a restraining order (see [33]-[34]). There was also an unacceptable risk that the magistrate took an incorrect approach to s 19A and failed to have sufficient regard to the requirements of the Intervention Orders Act (see [35]). Accordingly, the intervention order was quashed. The original police interim intervention order was declared to be continuing in force until it was withdrawn or a confirmation hearing convened.