

***Conomy v Western Australian Police* [2016] WASCA 31 (18 February 2016) – Western Australia Supreme Court (Court of Appeal)**

‘Breach of violence restraining order’ – ‘Evidence issues’ – ‘Following, harassing, monitoring’ – ‘Unrepresented litigant’

Charge/s: Breach of violence restraining order.

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

Facts: The appellant was convicted of breaching a violence restraining order by sending three text messages to the complainant. He was arrested and participated in a video-recorded interview. Leave to appeal to the Supreme Court against conviction and sentence was refused.

Issue/s: Whether the primary judge erred in refusing to grant leave to appeal against conviction. The appellant was self-represented. The grounds were interpreted as raising issues including that:

1. The DVDs of the recorded police interview should not have been admitted in circumstances where the discs served to the appellant were labelled differently and were blank.
2. The magistrate erred by basing his decision on the evidence of the recorded interview which was ‘not worthy of any significant weight’.
3. The evidence was not capable of establishing, beyond reasonable doubt, that the interim violence restraining order was still in force, and had not been amended, at the time of breach.
4. The primary judge’s reasons were inadequate.

Decision and Reasoning: The appeal was dismissed. In relation to ground 1 above, there was no substance to the appellant's allegations. The labelling of the DVDs was immaterial and even if the discs were blank, the appellant made it clear at trial that he was aware of their contents. There was no issue about the authenticity of the recording, and no challenge as to its fairness (See [8]). Second, the magistrate based his decision on all the evidence before him and indicated that, even without reference to the recorded interview, there was a compelling case the appellant breached the order (See [9]). Third, it was open to the magistrate to be satisfied beyond reasonable doubt that the interim order was still in force at the time of breach. It was implicit in the complainant's evidence that the interim order was still in force. The appellant made no suggestion to any witness in cross-examination that the interim order was not still in force. Statements in the recorded interview reflected the appellant's understanding that the order was still in force. Nothing in the evidence suggested the order had been cancelled or amended (See [12]). Finally, the primary judge's reasons clearly explained why he concluded that none of the grounds had any reasonable prospects of success (See [13]).