

***Cramphorn v Bailey* [2014] WASCA 60 (21 March 2014) – Western Australia Supreme Court (Court of Appeal)**

‘Assault’ – ‘Breach of police order’ – ‘Cross-examination’ – ‘Physical violence and harm’ – ‘Unrepresented litigant’ – ‘Violence restraining order’

Charge/s: Assault, breach of police order.

Appeal type: Appeal against conviction.

Facts: The prosecution case was that the appellant and her de facto partner, the complainant, were travelling in a vehicle when the appellant punched the complainant in the mouth. The appellant stopped the vehicle in the middle of the road and a further altercation occurred between them in which the appellant clawed at the complainant’s face. Police issued the appellant with a 24-hour police order which the appellant breached by sending the complainant two abusive text messages. The appellant was convicted after trial in the Magistrates Court of unlawful assault, and breaching a police order. At trial, the appellant was entitled to the protection of a previously imposed violence restraining order issued against the complainant. The appellant appealed to the Supreme Court but the appeal was dismissed. At every stage of proceedings, the appellant represented herself.

Issue/s: One of the issues was that the trial in the Magistrates Court was unfair to the appellant.

Decision and Reasoning: The appeal against conviction was dismissed. Although the proceedings before the magistrate were not in respect of the violence restraining order issued against the complainant, the existence of the order was relevant to the proceedings because there was likely to be considerable antipathy between the appellant and the complainant, and there was a risk that the presence might intimidate the unrepresented appellant (See [88]). The trial posed difficulties for the unrepresented appellant, particularly with respect to her having to directly cross-examine the complainant (See [90]). However, having regard to the whole of the trial record, the trial was conducted fairly. The magistrate explained the trial process to the appellant. He controlled the complainant and the appellant, intervening when required during cross-examination and when the complainant interrupted the appellant’s evidence (See [91]). Despite arguing to the contrary, the appellant was permitted by the magistrate to cross-examine the complainant about the history of the domestic violence relationship. She declined to do so (See [92]). Further, the appellant was not entitled to use an intermediary for cross-examination. These provisions are only for the benefit of the person being cross-examined (See [104]-[106]).