Bacchelli v Merchant **[2015] WASC 205 (9 June 2015) – Western Australia Supreme Court**

'Breach of violence restraining order' – 'Insanity' – 'Miscarriage of justice' – 'People with mental illness' – 'Physical violence and harm' – 'Plea of guilty'

Charge/s: Breach of violence restraining order.

Appeal Type: Appeal against conviction.

Facts: The appellant pleaded guilty to breaching a violence restraining order in favour of his wife and was fined $500 with costs. The breach arose out of the appellant's attendance at his wife's home to retrieve some of his property. He claimed he had misunderstood the terms of the violence restraining order and that if he had known that the order did not permit him to attend the house, he would have attended the police station and asked officers to accompany him while he retrieved the property. The appellant had previously been diagnosed with bipolar disorder and had tendered medical records to the Magistrate.

Issue/s: Whether there was a miscarriage of justice because when the appellant pleaded guilty he was unaware he had an arguable defence of unsoundness of mind.

Decision and Reasoning: The appeal was upheld and a retrial was ordered. The appellant's affidavit on appeal stated that he was suffering a relapse of his bipolar disorder when he pleaded guilty to the charge. A psychiatrist's affidavit indicated that it was more likely than not that the appellant was, 'in such a state of mental impairment so as to deprive him of the capacity to know that he ought not to assault someone or return to his house' (see at [36]). However, at the time he pleaded guilty, he was not aware that his mental state was not normal. As such, the evidence indicates that he may have had an arguable insanity defence at the time of the guilty plea. Furthermore, when the appellant consulted with a solicitor, there was no discussion in relation to a possible insanity defence, even though the solicitor knew of the appellant's history of mental illness. There was no available evidence at the time that the lawyer should have considered the availability of a mental impairment defence. Nevertheless, Beech J held that, 'through no fault of his own, Mr Bacchelli had no practical opportunity to raise the possible defence of insanity, or the facts relevant to it, with his lawyer' (see at [54]). The appellant had an arguable defence but had no way of knowing of that defence, such that his plea was fundamentally not an informed one. Beech J noted that this does not mean a plea will always be set aside in these circumstances but in this case, the nature of the appellant's ignorance of the defence resulted in a miscarriage of justice.