

***Gilmour v State of Western Australia* [2005] WASC 243 (8 November 2005) – Western Australia Supreme Court**

‘Aggravated stalking’ – ‘Attempt to pervert the course of justice’ – ‘Bail’ – ‘Breach of violence restraining order’ – ‘Damaging property’ – ‘Following, harassing, monitoring’ – ‘Physical violence and harm’ – ‘Systems abuse’ – ‘Temporary protection order’

Charge/s: Aggravated stalking, breach of violence restraining order, attempt to pervert the course of justice.

Appeal type: Appeal against refusal of bail.

Facts: The decision concerned a bail application arising from three charged offences following the estrangement of the applicant from his second wife. The first alleged offence was the theft of mail from the complainant by the applicant. The second alleged offence was the commencement of a series of events said to amount to stalking. Some of these events included the applicant damaging the property of the complainant’s male friend, and the male friend obtaining a violence restraining order which the applicant subsequently breached. The applicant also became involved in an altercation with the complainant and she obtained a violence restraining order against him. The applicant stole items of women’s clothing from the complainant’s home, stole a security camera the complainant had installed, and was seen in the complainant’s backyard disguised with a mask and carrying a knife. The third offence occurred when the applicant asked his neighbours to provide him with a false alibi for the evening he was seen in the complainant’s yard wearing a mask and carrying a knife.

Issue/s: Whether there were exceptional reasons why the applicant should not be kept in custody.

Decision and Reasoning: The appeal was dismissed. The applicant had not made out exceptional reasons for the grant of bail in this case. The character of factors pointing towards the grant of bail, namely, hardship to the applicant, the applicant’s antecedents, and the likely time before trial, were not sufficient to establish exceptional reasons. This was particularly so when weighed against the strength of the State’s case, the adverse effects on protected persons of a release on bail, the concern for the failure of achievement of the purposes of protection orders in this case, and any difficulties in proving any future breach of a protective order (See [69]). See also *Gilmour v The State of Western Australia* [2008] WASC 42 (28 February 2008).