

STATE OF NEW SOUTH WALES v ROBINSON (S119/2019)

Court appealed from: New South Wales Court of Appeal
[2018] NSWCA 231

Date of judgment: 16 October 2018

Special leave granted: 12 April 2018

At 5:00 pm on 22 December 2013, Mr Bradford Robinson attended a Sydney police station in response to attempts by police to contact him. Upon attendance he was immediately arrested, without warrant, for breach of an apprehended violence order. Mr Robinson was offered, and accepted, the opportunity to participate in a record of interview. He was released without charge at 6:18 pm, following the conclusion of that interview.

Mr Robinson commenced proceedings against the State of New South Wales, claiming damages for wrongful arrest and false imprisonment. On 3 August 2017 the trial judge, Judge Taylor, dismissed his claim. In doing so, Judge Taylor accepted the arresting officer's evidence that a decision on whether to charge Mr Robinson depended on what he said in the interview and that, at the time of the arrest, he had not decided to charge him.

On appeal, the key issue was whether the arrest of Mr Robinson was lawful under s 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ("the Act") in circumstances where there was no positive intent to lay charges at the time of arrest.

On 16 October 2018 the Court of Appeal (McColl and Basten JJA; Emmett AJA dissenting) allowed Mr Robinson's appeal. The majority held that in legal terminology, "arrest" is generally used to identify that deprivation of liberty which is a precursor to the commencement of criminal proceedings against the person arrested, justified as necessary for the enforcement of the criminal law. The power to arrest exists, and must be exercised, for the purpose of bringing the person arrested before a justice as soon as reasonably practicable.

Their Honours held, that as no decision whether to charge Mr Robinson had been made at the time of his arrest, the arrest was not for the purpose of commencing the criminal process. It was therefore unlawful.

Justice Emmett however held that the legislative scheme contemplates a distinction between the decision to arrest and the decision to charge. A positive intent to charge at the time of arrest is not a necessary precondition of the valid exercise of the power of arrest under s 99 of the Act. Accordingly Mr Robinson's arrest was lawful.

The ground of appeal is:

- The Court of Appeal erred in concluding that, for an arrest to be lawful under s 99(1) of the Act, there is an implied requirement that the arresting police officer intend to charge the arrested person with an offence.