



## HIGH COURT OF AUSTRALIA

4 December 2019

STATE OF NEW SOUTH WALES v BRADFORD JAMES ROBINSON  
[2019] HCA 46

Today the High Court dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales concerning the power of a police officer to arrest a person, without a warrant, under s 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ("the Act") when, at the time of the arrest, the officer had not formed the intention to charge the arrested person with an offence. A majority of the High Court held that s 99 of the Act does not confer a power to arrest a person in such circumstances.

An Apprehended Violence Order ("AVO") restrained Mr Robinson from certain conduct. When Mr Robinson voluntarily entered Sydney City Police Station, a constable arrested him and told him he was being arrested for breaching the AVO. The constable had no intention, at the time of the arrest, of bringing Mr Robinson before an authorised officer to be dealt with according to law unless it later emerged that there was sufficient reason to charge him. The constable offered Mr Robinson the opportunity of an interview, which he accepted. At the end of the interview Mr Robinson was released without charge.

Mr Robinson brought a claim for damages for wrongful arrest and false imprisonment, which the State of New South Wales ("the State") defended on the basis that the arrest was authorised by the Act. Mr Robinson was unsuccessful in the District Court. The Court of Appeal allowed his appeal. In this Court, the State submitted that, on a proper construction of s 99 of the Act, the Court of Appeal erred in finding that at the time of arrest the arresting police officer must have formed a positive intention to charge the arrested person with an offence.

Section 99(1) stipulates conditions for arrest without a warrant, namely that "the police officer suspects on reasonable grounds that the person is committing or has committed an offence" and that "the police officer is satisfied that the arrest is reasonably necessary for any one or more" of specified reasons. Pursuant to s 99(3), a police officer who arrests a person under s 99 must, as soon as is reasonably practicable, take the person before a magistrate (or other authorised officer) to be dealt with according to law.

The High Court unanimously held that in New South Wales, at common law, an arrest can only be for the purpose of taking the arrested person before a magistrate (or other authorised officer) to be dealt with according to law to answer a charge for an offence ("the single criterion"). Nothing in the Act displaced that single criterion. An arrest under s 99 can only be for the purpose, as soon as is reasonably practicable, of taking the arrested person before a magistrate (or other authorised officer) to be dealt with according to law to answer a charge for an offence. A majority of the High Court held that it followed that the constable did not have the power to arrest Mr Robinson pursuant to s 99 when, at the time of the arrest, the constable had not formed the intention to charge him. The arrest was unlawful.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*