



HIGH COURT OF AUSTRALIA

Public Information Officer

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STATE OF NEW SOUTH WALES v JAMES JOHN CORBETT AND ROBYN JEAN CORBETT

The citation of a repealed statute on an application for a search warrant did not render the application or the search warrant invalid, the High Court of Australia held today.

Mr Corbett is a former NSW police officer who had attended traumatic events such as the Hilton Hotel bombing and the Granville rail disaster. During the 1990s, he suffered from emotional and mental problems. While working in police communications Mr Corbett developed a rural radio network which gave police 24-hour radio contact. In 1997 the police decided to replace his system with one operated in conjunction with a mobile phone provider. Mr Corbett became concerned that police safety would be jeopardised by the new system. On 28 May 1998, while attending a communications conference in Wollongong, he attempted suicide and was hospitalised. A suicide note included the words “police will die”. The Court of Appeal later observed that this related to his concerns about the new communications regime, but police at first took it as a threat. Goulburn police suspended his shooter’s licence and applied for a warrant to search the Corbetts’ property for firearms. On 4 June 1998, while Mr Corbett was still in hospital, police entered and searched the property. No firearms were found.

The Corbetts commenced proceedings seeking damages for trespass on the basis that the search warrant was invalid and did not authorise police to enter their property. They contended that the application for the search warrant failed to specify an offence because the pro forma application referred to the 1989 *Firearms Act* which had been repealed and replaced by the 1996 *Firearms Act*. At the time, the *Search Warrants Act* still referred to the 1989 *Firearms Act*. The *Search Warrants Act* provided that a search warrant is not invalidated by a defect unless it affects the substance of the warrant. Equivalent sections in the 1989 and 1996 *Firearm Acts* both prohibited the possession or use of a firearm without a licence or a permit. The definition of “firearm” differed only slightly between the two Acts but the substance of each offence was the same. The Corbetts also contended that the officer who applied for the search warrant did not have a reasonable belief that Mr Corbett had any firearms in his possession.

The NSW District Court determined that the defects in the search warrant did not render it invalid, therefore the search warrant provided a defence to the Corbetts’ action for trespass. The Court of Appeal found that the search warrant was invalid due to the reference to the 1989 *Firearms Act*, but rejected the submission that the officer seeking the search warrant did not have reasonable grounds for a belief relating to the possession of firearms by Mr Corbett. The State then appealed to the High Court on the issue of the validity of the search warrant.

The High Court unanimously allowed the appeal. It held that it was an accurate statement of the offence (possession of a firearm) which was critical, not the reference to a repealed Act. This was surplusage and did not detract from the statement of the nature of the offence or render the description of the object of the search unintelligible or ambiguous. Furthermore, the 1996 *Firearms Act* contains a transitional provision which stated that a reference in any instrument to any provision of the 1989 Act is to be read as referring to the corresponding provision of the 1996 Act. Accordingly, the statutory requirements were complied with and the application and the search warrant were valid, so no trespass to the Corbetts’ property was committed. The Court also upheld the Court of Appeal’s conclusion that police believed on reasonable grounds that there would be firearms on the property.

- *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.*