



HIGH COURT OF AUSTRALIA

9 December 2020

ROY v O'NEILL
[2020] HCA 45

Today the High Court dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of the Northern Territory. The appeal concerned the permission, implied by the common law, to enter upon premises and approach a dwelling to engage in lawful purposes ("implied licence") and arose in the context of police activities to address domestic violence.

On 1 June 2017, a Domestic Violence Order ("DVO") was issued against the appellant to protect her partner in circumstances where the appellant had consumed alcohol. On 6 April 2018, three police officers visited the unit where the appellant and her partner resided. At the time, police in the Northern Territory were engaged in a wider operation which targeted domestic violence. One of the officers knocked on the flyscreen door of the unit. The officer called the appellant to the door for the purpose of a DVO check. The appellant answered the door in a state of intoxication and was requested to take a breath test. The test was positive for alcohol, suggesting a violation of a condition of the DVO. Regulation 6 of the *Domestic and Family Violence Regulations* (NT) required a defendant to comply with a reasonable direction by an officer to submit to a breath test but did not authorise entry onto premises for that purpose. Section 126(2A) of the *Police Administration Act* (NT) authorised entry onto premises, but only if the officer believed on reasonable grounds that a contravention of a DVO had occurred, was occurring or was about to occur.

In proceedings brought for breach of the DVO, evidence from the breath test was excluded on the ground that it was obtained unlawfully. The trial judge held that the police did not have the power to attend at the unit to check the appellant's compliance with the DVO under reg 6, nor under s 126(2A) because the officer did not hold the requisite belief. On appeal, the Supreme Court of the Northern Territory agreed with the trial judge that neither provision applied and went on to hold that the police did not have an implied licence for the purpose of investigating whether a breach of the law had occurred. On further appeal, the Court of Appeal found that the police had a dual purpose in entering the premises: to determine whether the DVO was being honoured and to check on the wellbeing of the appellant's partner. The police officers had an implied licence because the latter purpose involved lawful communication with the occupier of the unit and did not involve an interference with the occupier's possession, or injury to the person or property of either occupier.

Dismissing the appeal, a majority of the High Court found that the police officers had an implied licence to enter onto the premises. All Justices of the Court accepted that the common law will not imply a licence for police where entry is for the sole purpose of exercising coercive powers. However, the majority found it could not be inferred from the unchallenged evidence that the officer who administered the breath test intended to do so when he entered onto the premises regardless of the appellant's condition when he first observed or spoke to her. The Court of Appeal was correct to hold that the police had a purpose of enquiring about the welfare of the appellant's partner. The purpose of checking on the welfare of the appellant's partner was a sufficient foundation for an implied licence. Once the officer observed the appellant's state of intoxication, he had the requisite belief for the purposes of s 126(2A) and was authorised to remain on the premises and to require a sample of the appellant's breath.

- *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.*