ROY v O'NEILL (D2/2020)

Court appealed from: Court of Appeal of the Supreme Court of the Northern Territory
[2019] NTCA 8

Date of judgment: 4 September 2019

Special leave granted: 20 March 2020

The appellant was the subject of a Domestic Violence Order (DVO) which restrained her from being in the company of her partner when she was consuming or under the influence of alcohol or other intoxicating drug or substance.

In April 2018 the Northern Territory Police Force conducted Operation Haven which was designed to address issues concerning domestic violence and alcohol-related crime. As part of the operation three police officers attended a unit in Katherine where the appellant and her partner lived. One of the police officers gave evidence in a Local Court hearing that the reason for their visit was that he had observed antisocial behaviour coming from the property for several weeks prior to the operation. He had frequently observed the appellant in an intoxicated state and neighbours had reported seeing the appellant in a continuous alcohol-affected state. The police were also aware that the respondent's partner had a medical condition. The police officer described his attendance at the unit as 'proactive policing' which involved attendance at identified residences to check compliance with DVOs.

Upon arriving at the unit the police officers used a footpath running from the street to the front door where they knocked on the front door. The police could see both the appellant and her partner in the unit, with the appellant clearly affected by alcohol. The police called the appellant to the front door for the purpose of the DVO check. A breath test was conducted on the appellant which was positive for alcohol. She was then taken to the Katherine Watch House for further breath analysis.

The matter came before the Local Court in Katherine in November 2018 when there was a challenge to the admissibility of the evidence of the arresting police officers. The Local Court determined that the officers did not have power under either the *Police Administration Act 1978* (NT) or the *Domestic and Family Violence Act 2007* (NT) to attend the residence and check that the appellant was complying with the terms of the DVO.

The prosecution appealed the decision of the Local Court and the matter was heard in the Supreme Court in March 2019. In dismissing the appeal, Mildren AJ held that unless there is a clear and express statutory power to do so, neither the police nor anyone else has an implied invitation to enter private property for the mere purpose of investigating whether a breach of the law has occurred in circumstances where there is no basis for suspecting that an offence has been, or is in the process of being, committed.

The prosecution then appealed to the Court of Appeal of the Supreme Court of the Northern Territory. Southwood and Kelly JJ, together with Riley AJ, allowed the appeal, holding that the police officers did not seek to go beyond the threshold of the premises or enter the premises. Their actions did not involve interference with the occupier's possessions or injury to the person or property of either occupier. It was open to the appellant and her partner to revoke or negate the implied invitation or licence by telling the police to leave. Neither did so.

The grounds of appeal in this Court are as follows:

1. The Court of Appeal erred in holding that the police officers were not trespassers on the curtilage of the appellant's premises; and

2. The Court of Appeal erred in holding that an implied licence entitled the police officers to enter upon the curtilage of the appellant's premises for the purpose of investigating the appellant for a criminal offence because they did so with the additional purpose of communicating with another occupant of the same dwelling.