

# SUPREME COURT OF QUEENSLAND

CITATION: *Sanchez & Anor v Commissioner of Police* [2022] QCA 212

PARTIES: **In CA No 128 of 2021:**  
**SANCHEZ, Louis Philippe**  
(applicant)  
v  
**COMMISSIONER OF POLICE**  
(respondent)

**In CA No 129 of 2021:**  
**SANCHEZ, Rona Marie**  
(applicant)  
v  
**COMMISSIONER OF POLICE**  
(respondent)

FILE NO/S: CA No 128 of 2021  
CA No 129 of 2021  
DC No 196 of 2020  
DC No 197 of 2020

DIVISION: Court of Appeal

PROCEEDING: Application for Leave s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Maroochydore – [2021] QDC 76  
(Cash KC DCJ)

DELIVERED ON: 28 October 2022

DELIVERED AT: Brisbane

HEARING DATE: 7 October 2022

JUDGES: McMurdo and Flanagan JJA and Freeburn J

ORDER: **In each application, leave to appeal is refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – OTHER MATTERS – where the applicants were found guilty of charges of obstructing police – where one applicant was found guilty of contravention of a direction or requirement – where the applicants appealed against conviction in the District Court – where the appeal was dismissed – whether the District Court judge erred in construing s 365 of the *Police Powers and Responsibilities Act 2000* (Qld) – whether the arrest was lawful – whether the police officers lawfully entered Mr and Mrs Sanchez’s dwelling

*Police Powers and Responsibilities Act 2000* (Qld), s 21, s

365, s 791

COUNSEL: J Levine for the applicants  
A Nikolic for the respondent

SOLICITORS: Matrix Legal for the applicants  
Director of Public Prosecutions (Queensland) for the respondent

- [1] **McMURDO JA:** I agree with Freeburn J.
- [2] **FLANAGAN JA:** I agree with Freeburn J.
- [3] **FREEBURN J:** The applicants, Mr and Mrs Sanchez, live at Buderim with their adult son, Phillipe Sanchez. On 6 February 2019, at the Buderim house, a police officer issued Phillipe Sanchez with a notice to appear, as well as a particulars notice requiring that he attend the Maroochydore Police Station within seven days to provide his identification particulars.<sup>1</sup> Phillipe Sanchez did not attend the police station within the required seven days. He therefore committed the offence of contravening a direction or requirement.<sup>2</sup>
- [4] Over the period from February to July 2019, a police officer attempted to serve Phillipe Sanchez with a further notice to appear regarding the offence of contravening a direction or requirement. All attempts at service failed.<sup>3</sup>

***Events of 29 July 2019***

- [5] On the evening of 29 July 2019, two police officers travelled to Mr and Mrs Sanchez's home at Buderim to arrest Phillipe Sanchez. They did not have an arrest warrant. At the home, the officers knocked several times. Whilst the officers were knocking on the door, the lights in the house were turned off, the conversations from within reduced to whispering, and the television was turned off or muted. The officers went to the back deck. There they had a conversation with Mr Sanchez. They explained why they were there. One of the officers observed that Phillipe Sanchez was in the house. They asked Phillipe Sanchez to come out. He did not. Mrs Sanchez asked the officers to leave. One of the officers said: "*Tell him to come out now or I'm going to come in there and bring him out.*" Mrs Sanchez replied: "*Well you can't. This is my house.*" Mrs Sanchez then blocked the entry of the officers. She was asked to move aside but she refused. Using minimal force, the officers entered the house. They went to a bedroom and saw Phillipe Sanchez. Mr and Mrs Sanchez then pushed past them and blocked their entry into the bedroom. That conduct is the subject of an obstructing police charge against both Mr and Mrs Sanchez.<sup>4</sup>
- [6] The officers then pushed past into the darkened bedroom. As they tried to arrest Phillipe Sanchez, Mrs Sanchez stood between them and her son. That is the subject of an obstructing police charge against Mrs Sanchez. There was then some pushing of the officers and some mild altercations. Mr Sanchez then left the room and

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<sup>1</sup> The notice was presumably given pursuant to the *Police Powers and Responsibilities Act 2000* (Qld) s 470.

<sup>2</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 470.

<sup>3</sup> The attempts are accurately set out in the Respondent's Outline of Submissions at [5].

<sup>4</sup> This summary is based on the useful summary in the Respondent's Outline of Submissions at [6].

closed the door preventing the officers from leaving. That is the subject of an obstruction charge against Mr Sanchez. Eventually, with some abuse, and pushing, the officers were able to exit through the front door and escort Phillippe Sanchez to the police car. At some stage Mrs Sanchez failed to provide her name as requested. That is the subject of a contravening direction or requirement charge against her.<sup>5</sup>

### ***The Proceedings***

- [7] On 13 November 2020, a Magistrate convicted Mr and Mrs Sanchez of the obstruction charges and also convicted Mrs Sanchez of the contravening a direction or requirement charge. A global fine of \$1,500 was imposed on each of them with no convictions recorded.
- [8] On 6 May 2021, Cash DCJ dismissed appeals against those convictions.
- [9] Mr and Mrs Sanchez now apply for leave to appeal under s 118 of the *District Court of Queensland Act 1967* (Qld). Mr and Mrs Sanchez need leave because they seek to appeal a decision of Cash DCJ in the Maroochydore District Court which dismissed an appeal from the Magistrates Court.
- [10] The discretion to grant leave to appeal will be exercised where there is an important point of law, or an issue of general importance or where it is necessary to correct a substantial injustice and there is a reasonable argument that there is an error to be corrected.
- [11] Here, Cash DCJ made two relevant decisions. The *first* was that, even though the police officers had not obtained an arrest warrant, s 365(1) of the *Police Powers and Responsibilities Act 2000* (Qld) (**PPRA**) made it lawful for the police officers to arrest Phillippe Sanchez. The *second* was that pursuant to s 21 of the PPRA the police officers lawfully entered the home of Mr and Mrs Sanchez in order to arrest their son.

### ***Interpretation of Section 365(1) PPRA***

- [12] Before considering each of those decisions, it is necessary to analyse s 365(1) of the PPRA. That section provides that:

“It is lawful for a police officer, without warrant, to arrest an adult the police officer reasonably suspects has committed or is committing an offence if it is reasonably necessary for 1 or more of the following reasons—

- (a) to prevent the continuation or repetition of an offence or the commission of another offence;
- (b) to make inquiries to establish the person’s identity;
- (c) to ensure the person’s appearance before a court;
- (d) to obtain or preserve evidence relating to the offence;
- (e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;

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<sup>5</sup> Ibid.

- (f) to prevent the fabrication of evidence;
- (g) to preserve the safety or welfare of any person, including the person arrested;
- (h) to prevent a person fleeing from a police officer or the location of an offence;
- (i) because the offence is an offence against section 790 or 791;
- (j) because the offence is an offence against the *Domestic and Family Violence Protection Act 2012*, section 177, 178 or 179;
- (k) because of the nature and seriousness of the offence;
- (l) because the offence is—
  - (i) an offence against the *Corrective Services Act 2006*, section 135(4); or
  - (ii) an offence to which the *Corrective Services Act 2006*, section 136 applies.”

[13] Thus, reducing the section to its components, the arrest of Phillippe Sanchez, without a warrant, was lawful if:

- (a) the police officer reasonably suspected that Mr Phillippe Sanchez had committed an offence, or was committing an offence – there was no dispute about this component; and
- (b) the arrest was reasonably necessary for one of the 12 reasons set out in subsections (a) to (l).

[14] The 12 reasons are designed to limit the situations where it is lawful to arrest without an arrest warrant.

[15] There is some awkwardness in the way the section operates. For example, it makes sense to say that an arrest is “*reasonably necessary ...to preserve the safety or welfare of any person*”.<sup>6</sup> But it is a little clumsy to say that an arrest is “*reasonably necessary...because the offence is an offence against section 790 or 791*” (or one of the other specified offences).<sup>7</sup>

[16] One possible interpretation of s 365(1) resolves the clumsiness of the section by specifying that the arrest is reasonably necessary “*because*” the offence is one of the designated offences. Thus, to use the present case as an example, because the officers sought to make an arrest for an offence against s 791 of the PPRA,<sup>8</sup> that is sufficient to justify arrest without warrant. Interpreted in that way, s 365(1) has the effect of deeming the police officer’s reasonable suspicion of particular offences as sufficient to justify arrest without a warrant.

[17] Cash DCJ described that argument as having been faintly put to him. In my opinion, his Honour was right to reject that ‘faint’ argument. The qualifying words

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<sup>6</sup> Section 365(1) of the PPRA includes nine reasons [subsections (a) to (h) and (k)] that fall into this category.

<sup>7</sup> Section 365(1) of the PPRA includes three reasons [subsections (i), (k) and (l)] that fall into this category.

<sup>8</sup> The offence of contravening a requirement or direction given by a police officer.

“*reasonably necessary*” cannot be ignored. In their context the words “*reasonably necessary*” need to be given some effect. Despite the awkwardness, the evident intention is that the arrest be reasonably necessary in circumstances where the police officer has a reasonable suspicion of one of the specified offences. If the legislature had intended that it was lawful for a police officer, without warrant, to arrest a person merely because the police officer reasonably suspects the person has committed or is committing a specified offence, then there would be no need for the words “*if it is reasonably necessary for 1 or more of the following reasons*”.

- [18] The legislative intention is to specify some particular offences where arrest, without an arrest warrant, is appropriate. Thus, the 12 reasons include: contravention of a domestic violence order;<sup>9</sup> contravention of a police protection notice;<sup>10</sup> contravention of domestic violence release conditions;<sup>11</sup> a failure to comply with the direction of a person with control of a prisoner;<sup>12</sup> where a corrective services officer finds a person committing a security offence;<sup>13</sup> a person assaults or obstructs a police officer in the performance of the officer’s duties;<sup>14</sup> or a person contravenes a requirement or direction given by a police officer.<sup>15</sup> It can be observed that, in broad terms, that collection of offences have in common a failure to respect the orders and directions of police and corrective services officers.
- [19] Thus, the rationale for the 12 reasons in s 365(1) is that a police officer may arrest without an arrest warrant where there is a situation of urgency or necessity, or where the arrest is reasonably necessary in circumstances where the offence has a civil disobedience character.
- [20] Next, it is necessary to consider what s 365(1) means when it specifies that the section operates “*if it is reasonably necessary for 1 or more of the [12 reasons]*”. The word “*it*” must mean that “*the arrest*” is reasonably necessary. I do not think the legislative intention is that the police officer is required to determine that an arrest without an arrest warrant is reasonably necessary for one or more of the 12 reasons.
- [21] *First*, the evident purpose of s 365 is to identify those limited occasions where an arrest without a warrant is lawful.
- [22] *Second*, if s 365(1) were construed as requiring the police officer to determine whether an arrest without a warrant was reasonably necessary, it would require the officer to assess the reasonable necessity of an arrest without a warrant as against an arrest with a warrant.
- [23] An arrest warrant is obtained by application to a justice pursuant to s 370 of the PPRA. The justice may issue a warrant only if satisfied there are reasonable grounds for suspecting that the person has committed an offence and, for a non-indictable offence, a notice to appear would be ineffective. That balancing of the reasonable necessity of either course would add an element of impracticality and complication.

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<sup>9</sup> *Domestic and Family Violence Protection Act 2012* (Qld) s 177.

<sup>10</sup> *Ibid* s 178.

<sup>11</sup> *Ibid* s 179.

<sup>12</sup> *Corrective Services Act 2006* (Qld) s 135(4).

<sup>13</sup> *Ibid* s 136.

<sup>14</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 790.

<sup>15</sup> *Ibid* s 791.

- [24] *Third*, the language of s 365A, which extends the operation of s 365(1) to the situation where one officer instructs another officer to arrest a person, strongly suggests that the intention was that s 365 was speaking of ‘an arrest’ being reasonably necessary, rather than ‘an arrest without a warrant’ being reasonably necessary. In particular s 365A(2) says that s 365A(1) does not apply unless [in s 365A(2)(b)] “**the arrest of the person is reasonably necessary for 1 or more of the reasons mentioned in section 365(1)**” [emphasis added].
- [25] *Fourth*, the equivalent legislation in other states is consistent with the idea that an arrest without a warrant is justified where the police officer has a reasonable suspicion of an offence, and the officer is satisfied that ‘the arrest’ or apprehension of the person is reasonably necessary.<sup>16</sup>
- [26] *Fifth*, the explanatory notes to the Bill suggest that the legislature had in mind merely that the arrest is reasonably necessary not that an arrest without a warrant is reasonably necessary.<sup>17</sup>
- [27] Counsel for Mr and Mrs Sanchez raised a further interpretation issue. He submitted that, when considering whether the arrest is “*reasonably necessary*” under s 365, the police officer should also take into account that the officer will be required to enter a person’s home, and perhaps force entry to the home.<sup>18</sup> However, nothing in the language of s 365 requires the police officer to consider not only whether the arrest is reasonably necessary but also the means or method by which the arrest might be effected, or the prospect that entry into a private residence may be required.<sup>19</sup>
- [28] The scheme of the PPRA is reasonably clear. Chapter 14, which includes s 365 (arrest without warrant) and s 369 (arrest with warrant), deals with the power of arrest. The power to enter premises to arrest, with or without a warrant, is expressly provided for in s 21. Section 21(2) expressly permits entry to a dwelling, without the consent of the occupier, subject to certain specified limitations.<sup>20</sup>
- [29] It follows that the court should reject the argument that the words ‘the arrest is reasonably necessary’ in s 365(1) are to be read as ‘the arrest is reasonably necessary, taking into account whether the arrest can be effected without entry into a dwelling’.

### ***Was the Arrest Lawful?***

- [30] As explained, the arrest of Phillipe Sanchez without a warrant was lawful if two elements were satisfied. The *first* was that the police officer reasonably suspected

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<sup>16</sup> See, for example, the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 99 and the *Crimes Act 1958* (Vic) s 458.

<sup>17</sup> *Police Powers and Responsibilities Bill 2000: Explanatory Notes*, at clause 163 [the predecessor to s 365(1)]. The text of the explanatory note is: *Clause 163 provides a police officer with the power to arrest a person without warrant if the police officer reasonably suspects the person has committed or is committing an offence and the arrest is reasonably necessary* – [for the reasons listed]. Four examples are given. In each case the examples commence: “*A police officer may arrest a person...*”.

<sup>18</sup> T1-6 line 22. These are grounds (a) and (d) of the applicants’ grounds listed in the Notice of Application for Leave to Appeal.

<sup>19</sup> Here, when they arrived at the Buderim home, the possibilities were that Phillipe Sanchez may not have been there, or he may have been there but not reasonably suspected to be there, or he may have left the home with the officers willingly, or the officers may have entered with consent, or (as happened) he may have refused to come out.

<sup>20</sup> Section 21 is discussed below.

that Phillipe Sanchez had committed an offence or was committing an offence. There was no dispute that this element was satisfied. The *second* was that the arrest was reasonably necessary for one of the 12 reasons set out in subsections (a) to (l). The reason relied upon here was that Phillipe Sanchez had contravened or was contravening s 791 of the PPRA.<sup>21</sup> The only issue was whether the police had established that the arrest of Phillipe Sanchez for that offence was reasonably necessary.

- [31] On that issue, Cash DCJ decided that the arrest was reasonably necessary. At paragraph [28] his Honour said:

“It was not in dispute that the police officers reasonably suspected Phillipe had committed an offence contrary to section 791 of the PPRA. The appellants’ arguments centred on whether arrest without warrant was reasonably necessary. They pointed to other options available to the police. One was to try to obtain an arrest warrant. Another was to attend the house at Lara Drive to give Phillipe a notice to appear. Yet another option was to continue attempts to negotiate an arrangement with Phillipe so that proceedings for contravening a direction could be commenced. Each of these can be accepted as options the police may have pursued. But the mere availability of an option does not itself make arrest without warrant unreasonable. By late July 2019, the situation was such that it was reasonably necessary for the police to take the steps they did. The conduct of Phillipe was enough to permit the police to conclude that he was being deliberately uncooperative. He had stopped communicating with police and in June told police he did not want them to attend his home. The ‘cat and mouse’ games had been going on for some months. The only reasonable conclusion to reach in the circumstances is that it was necessary to arrest Phillipe. The only remaining question was whether that should be with or without warrant. Either process was likely to have produced the same result. There is nothing about the unchallenged facts that favoured arrest with a warrant over arrest without. I am satisfied that it was reasonably necessary to arrest Phillipe without warrant.”

- [32] Different people will have different views about what is reasonably necessary in particular circumstances. The circumstances here were that, on 6 February 2019, Mr Phillipe Sanchez was served with an identifying particulars notice which required him to attend a police station within seven days to provide identifying particulars. A failure to comply with such a notice, without reasonable excuse, is an offence under s 791 of the PPRA.
- [33] There was then, from February to July 2019, numerous attempts to have Mr Phillipe Sanchez attend Maroochydore Police Station to provide his identifying particulars. Those attempts came to nothing. Then, when the officers attended Mr and Mrs Sanchez’s residence on 29 July 2019, Mr and Mrs Sanchez and their son declined to answer the door, turned off the lights and whispered behind the closed doors. In the subsequent discussions, the officers saw that Mr Phillip Sanchez was inside the house. He refused to come out.

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<sup>21</sup> The likelihood is that Phillipe Sanchez’s failure to report was a continuing offence.

- [34] No doubt that sequence of events is what Cash DCJ referred to as the “*cat and mouse*” games.
- [35] It is true that there were alternatives open to the police officers. Before they travelled to the Buderim home, they could have applied for an arrest warrant pursuant to s 369 of the PPRA. However, they had transported Phillipe Sanchez to his Buderim home previously. They had also served him with notices there on 6 February 2019. The officers would not necessarily have concluded that Phillipe Sanchez would refuse to meet them. Another alternative was that when he refused to come out, the officers may have withdrawn and made an application for an arrest warrant. That was likely to lead to delays. And, when they returned with the warrant, Phillipe Sanchez may not have been there. Instead, because the police officers identified Phillipe Sanchez as being present in the Buderim home at that time, they decided to proceed to arrest him without a warrant. The police officers were entitled to conclude that, over the previous five months or so, Phillipe Sanchez had been deliberately uncooperative.
- [36] Thus, the circumstances were that the officers were faced with a deliberately uncooperative citizen, who had for some months avoided complying with a notice to provide his identifying particulars. He was at the Buderim house at the time they attended, and he may not be there if they attended subsequently. As explained, s 365(1) of the PPRA enables arrest without a warrant where there is a situation of urgency or necessity, or where the arrest is reasonably necessary in circumstances where the offence was one of only seven specified offences, each of which has a civil disobedience character. The latter was the case here.
- [37] In the circumstances, there is no reason to doubt the conclusion reached by Cash DCJ that the arrest was reasonably necessary.<sup>22</sup>
- [38] Counsel for Mr and Mrs Sanchez contended that Cash DCJ erred in this conclusion because there were no impediments to the police obtaining an arrest warrant.<sup>23</sup> In one sense there are always ‘impediments’ to obtaining an arrest warrant because there is a procedure for obtaining an arrest warrant. An arrest warrant can be obtained by making an application to a justice under s 370 of the PPRA. The application must be sworn and state the grounds on which it is sought. The justice may refuse to consider the application if the justice requires further information. The justice may issue the arrest warrant only if satisfied of the matters set out in s 371 of the PPRA. The arrest warrant must satisfy s 372 of the PPRA.
- [39] In any event, s 365(1) of the PPRA does not require that a police officer form a view as to whether or not there are impediments to an application for an arrest warrant under s 370 of the PPRA. Section 365(1) requires a focus on whether the arrest was reasonably necessary.
- [40] Counsel for Mr and Mrs Sanchez also contended that s 365(1) of the PPRA only authorised the arrest of their son if it was reasonably necessary because it was impractical to obtain a warrant.<sup>24</sup> Again, such a requirement does not appear in s 365(1). The two requirements of s 365(1) are that the police officer reasonably

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<sup>22</sup> This deals with ground (b) of the application for leave.

<sup>23</sup> This is ground (c) of the application for leave.

<sup>24</sup> This is ground (e) of the application for leave.



suspects that the person has committed or is committing an offence and that the arrest is reasonably necessary for one or more of the 12 reasons.

***Lawful Entry***

- [41] The second issue is whether the police officers lawfully entered Mr and Mrs Sanchez's house in order to arrest their son.
- [42] Section 21 of the PPRA provides that: "*A police officer may enter a place and stay for a reasonable time on the place – (a) to arrest a person without warrant ...*".
- [43] There is a limit on that power. Section 21(2) provides that, if the place is a dwelling (as was the case here), the officer may enter the dwelling without the consent of the occupier to arrest or detain a person only if the police officer reasonably suspects that the person to be arrested is at the dwelling. Here, there was no doubt about that. The police officers saw Mr Phillippe Sanchez inside the house.
- [44] Thus, there is no reason to doubt the decision of Cash DCJ that the entry on to the dwelling was lawful.
- [45] Lastly, the proposed grounds of appeal at paragraphs 2(f) and (g) of the notice of the application for leave to appeal need not be addressed as the applicant did not pursue those grounds.<sup>25</sup>
- [46] It follows that leave should be refused. There is no reason to doubt the decision of the District Court.

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<sup>25</sup> Applicants' Outline of Argument at [9].