

DISTRICT COURT OF QUEENSLAND

CITATION: *Sanchez & Sanchez v Commissioner of Police* [2021] QDC 76

PARTIES: **LOUIS PHILLIPE SANCHEZ**
(appellant)

RONA MAREE SANCHEZ
(appellant)

v

COMMISSIONER OF POLICE
(respondent)

FILE NO: 196/2020 and 197/2020

DIVISION: Appellate

PROCEEDING: Appeal against conviction

ORIGINATING COURT: Magistrates Court
Maroochydore

DELIVERED ON: 6 May 2021

DELIVERED AT: Maroochydore

HEARING DATE: 30 April 2021

JUDGE: Cash QC DCJ

ORDER: **In each appeal:**

1. The appeal is dismissed.

CATCHWORDS: APPEAL – CRIMINAL LAW – APPEAL AGAINST CONVICTION – where the appellants were found guilty of charges of obstructing police – where one appellant was found guilty of contravention of a direction or requirement – whether police were acting lawfully in the execution of their duty – whether police used more than reasonably necessary force

LEGISLATION: *Criminal Code* (Qld), s 340
Justices Act 1886 (Qld), s 222, s 223, s 232
Police Powers and Responsibilities Act 2000 (Qld), s 5, s 21, s 365, s 615, s 791

CASES: *Allesch v Maunz* (2000) 203 CLR 172, [22]-[23]
Commissioner of Police v Flanagan [2018] QCA 109; [2019] 1 Qd R 249, [49]
McDonald v Queensland Police Service [2017] QCA 255; [2018] 2 Qd R 612

Namoa v The Queen [2021] HCA 13, [11]
Robinson Helicopter Company Inc. v McDermott (2016) 90 ALJR 679; [2016] HCA 22, [43]
Teelow v Commissioner of Police [2009] QCA 84, [4]
Whitelaw v O'Sullivan [2010] QCA 366, [26]-[27]
Wright & Anor v Queensland Police Service and Ors [2002] QSC 46, [30]

APPEARANCES: J B Godbolt for the appellants
 N Hamilton for the respondent

SOLICITORS: Matrix Legal for the appellants
 Office of the Director of Public Prosecutions for the respondent

Introduction

- [1] On 12 November 2020 the appellants both appeared before a Magistrate at Maroochydore. Louis Phillippe Sanchez, whom I will call Mr Sanchez, entered pleas of not guilty to two charges. Each charge, as finally amended, alleged that on 29 July 2019 Mr Sanchez wilfully obstructed a police officer who was acting in the execution of his duty, contrary to section 340 of the *Criminal Code* (Qld).¹ Rona Maree Sanchez, whom I will call Mrs Sanchez, entered pleas of not guilty² to three charges. Two were allegations of obstructing police in the same terms as faced by Mr Sanchez. The third was an allegation that Mrs Sanchez contravened a direction or requirement by failing to state her full and correct name, contrary to section 791 of the *Police Powers and Responsibilities Act 2000* (Qld) ('PPRA'). The events the subject of the charges occurred during an attempt by the two police officers to arrest the son of the appellants. His name is Phillippe Sanchez. To avoid confusion, and without intending any disrespect, I will refer to him as Phillippe.
- [2] The critical issue in the trials was whether the prosecution had proved, beyond reasonable doubt, that the police officers were acting in the execution of their duty. After hearing evidence from the two police officers involved in the events, the Magistrate convicted each appellant of each offence. The same penalty was imposed – a global fine of \$1,500, with no convictions being recorded – in relation to each appellant. They both now appeal against their convictions, and the sentences imposed, pursuant to section 222 of the *Justices Act 1886* (Qld).³ The issues raised by the grounds of appeal are identical in each case. They can be summarised as follows:
- (a) Did the prosecution prove the police were authorised by section 365 of the PPRA to arrest Phillippe without warrant?

¹ An offence contrary to section 340 of the *Criminal Code* (Qld) is a crime, and therefore an indictable offence: see section 3. Such an offence may be heard summarily pursuant to section 552A.

² The transcript of proceedings, court document 7, erroneously records at T.1-7, that Mrs Sanchez pled guilty.

³ As discussed below, the sentence appeals were only relevant in the event one or more of the convictions were set aside.

- (b) If so, did the evidence fall short of proving the police acted in the execution of their duty because they used more than ‘reasonably necessary’ force, contrary to section 615 of the PPRA?

[3] For the reasons that follow, I am satisfied that the police were authorised to arrest Phillippe without warrant and the evidence established the police used no more force than was reasonably necessary. It follows the appeals must be dismissed. Before summarising the evidence and dealing with the arguments of the parties it is appropriate to set out the principles relevant to the determination of an appeal pursuant to section 222 of the *Justices Act 1886* (Qld).

Applicable legal principles

[4] An appeal to this court pursuant to section 222 of the *Justices Act 1886* (Qld) is to be determined in accordance with section 223 of that Act. That is, the appeal is by way of rehearing on the evidence before the Magistrate (and any other evidence introduced with leave of this court) rather than a hearing de novo. It is for the appellant to demonstrate that the decision the subject of the appeal is the result of some legal, factual or discretionary error.⁴ An appeal by way of re-hearing involves the appellate court conducting a ‘real review’ of the evidence given at the trial. In *Robinson Helicopter Company Inc. v McDermott*,⁵ the High Court said:

A court of appeal conducting an appeal by way of rehearing is bound to conduct a “real review” of the evidence given at first instance and of the judge’s reasons for judgment to determine whether the judge has erred in fact or law. If the court of appeal concludes that the judge has erred in fact, it is required to make its own findings of fact and to formulate its own reasoning based on those findings.

[5] In *McDonald v Queensland Police Service*,⁶ Bowskill J said that:

It is well established that, on an appeal under s 222 by way of re-hearing, the District Court is required to conduct a real review of the trial, and the Magistrate’s reasons, and make its own determination of relevant facts in issue from the evidence, giving due deference and attaching a good deal of weight to the Magistrate’s view. Nevertheless, in order to succeed on such an appeal, the appellant must establish some legal, factual or discretionary error.

[6] If, after conducting the necessary review, I am satisfied of the guilt of the appellants, it is appropriate to dismiss the appeals.

Summary of the evidence in the proceedings

[7] The only witnesses called in the proceedings were the two police officers who were said to have been obstructed by the appellants, Senior Constable Peter Elford and Senior Constable David Hoffman. Neither appellant gave, or called, evidence. The appellants accepted that ‘not much’ of the evidence was in dispute.⁷ Most of the

⁴ *Allesch v Maunz* (2000) 203 CLR 172, [22]-[23]; *Teelow v Commissioner of Police* [2009] QCA 84, [4]. Cf *Forrest v Commissioner of Police* [2017] QCA 132, 5.

⁵ (2016) 90 ALJR 679, 686 – 687; [2016] HCA 22, [43] (footnote references omitted).

⁶ [2017] QCA 255; [2018] 2 Qd R 612.

⁷ T.1-9.44.

evidence-in-chief of the police officers was given, with the agreement of counsel for the appellants, by a reading of their written statements.⁸

- [8] At the start of the hearing the prosecutor gave particulars of the allegations of obstructing police. For Mrs Sanchez she was alleged to have obstructed Hoffman by trying to force the bedroom door closed when Elford was attempting to arrest Phillipe in the bedroom. She was alleged to have obstructed Elford by lying on top of Phillipe in the bedroom when he was being arrested. Mr Sanchez was said to have obstructed Hoffman by blocking the bedroom door to stop him entering to assist Elford. He was said to have obstructed Elford by pulling the bedroom door closed, preventing Elford leaving the room after he had arrested Phillipe.
- [9] Constable Elford testified first. He had been a police officer since April 2015. On 6 February 2019 Elford went to a house in Lara Drive at Buderim. This was the home of the appellants and where Phillipe was living at the time. Elford met the appellants and served Phillipe with a notice to appear in relation to an unrelated allegation.⁹ He also gave Phillipe an ‘identifying particulars notice’.¹⁰ This notice required Phillipe to attend a police station within seven days to provide identifying particulars. A failure to comply with the notice, without reasonable excuse, may be an offence contravening a direction pursuant to section 791 of the PPRA. Phillipe did not comply with the notice. On 15 February 2019 Elford spoke to Phillipe on the telephone. Phillipe said he had been away working but would attend Maroochydore Police Station on 19 February. He asked that in the meantime that no steps be taken to arrest him.
- [10] On 17 February 2019 Phillipe was arrested by other police at Mooloolaba Wharf in relation to a separate allegation. Later, Elford spoke to Phillipe again and asked why he had not come into the station. Phillipe explained that he provided fingerprints and was photographed after his arrest on the 17th and thought that finalised the identifying particulars notice. Elford told Phillipe that he had committed an offence by not attending within seven days, to which Phillipe responded, ‘I don’t care anymore.’ Over the following months Elford made attempts to contact Phillipe by telephone or by attending the house at Lara Drive. The attempts were not successful. Elford thought that Phillipe was avoiding him. On 6 June 2019 Elford telephoned Phillipe. This time they spoke. Phillipe repeated that he had provided his fingerprints and considered the matter finalised. Elford repeated that Phillipe had committed an offence by not attending a police station and he planned to serve Phillipe with a notice to appear. Phillipe said he did not want police to attend his residence and asked if the paperwork could be sent by email. Elford checked if that could and on the same day sent an email to Phillipe to tell him it could not. On 22 June 2019 Phillipe sent an email claiming he would attend the police station the following week. Later, there was another telephone conversation in which Phillipe told Elford the police had his prints and Phillipe would not be ‘taking any more paperwork.’ On 12 July 2019 Elford had a conversation with a solicitor acting for Phillipe in an attempt to arrange service of the notice to appear for the allegation of contravening a direction. This came to nothing – the solicitor advised Elford that he did not have instructions to accept service.

⁸ T.1-10.1-5.

⁹ An allegation of contravening a protection order made under the *Domestic and Family Violence Protection Act 2012* (Qld); T.1-24.45-47.

¹⁰ PPRA, section 470.

[11] By 29 July 2029 Elford had decided he would arrest Phillippe in relation to the allegation of contravening a direction as Elford thought Phillippe was being deliberately evasive.¹¹ He believed he had to the authority to arrest Phillippe pursuant to section 365 of the PPRA. Elford and Hoffman went to the house at Lara drive, arriving at about 8.20 pm. Each officer recorded the events on their body-worn cameras. The videos recorded by the officers were tendered at the hearing. What can be seen on the videos was summarised by the respondent. The appellants accept the summary is sufficiently accurate, something I have confirmed by watching the videos myself. The summary is it out below. I have added some comments about things I heard or saw in the videos, and I have removed the paragraph numbering of the original.

The officers approached the front door. They saw lights on in the house, overheard voices coming from inside and the sound of a television. They knocked several times and observed the lights turn off, the sound of voices reduced to a whisper and the television was turned off or muted.¹² They suspected Phillippe was inside and avoiding them.

Officer Elford remained at the front door. Officer Hoffmann went to the back of the house, through a gate that was ajar, to the back veranda.

Mr Sanchez came out and Officer Hoffmann advised him why he was there. Officer Hoffmann mistook Mr Sanchez for Phillippe and advised him he was there to arrest him. Mr Sanchez walked towards the house, while making a phone call, and gestured Officer Hoffmann towards the back door of the house.¹³ This gesture can be seen in the BWC [body worn camera] footage (Magistrates Court Exhibit 2).

Officer Elford joined them on the back veranda and observed Phillippe inside the house.

Various conversations took place on the veranda. The officers explained to the appellants several times why they were there and the offence they were investigating. They asked several times for Phillippe to be brought outside. Mrs Sanchez stood in the doorway and continually told the officers to leave and move away from the door. When she asked for their paperwork / warrant, Officer Hoffmann advised they did not have a warrant and they did not need one and had a right to enter the house to arrest Phillippe.

[12] I interpolate at this point an observation. When I watched the videos, I saw and heard Mrs Sanchez, as soon as she came out to the back deck, saying, 'This is private property, you have no right to be here.' She also said, in what I think was an aggressive tone, 'Can you get off my deck?' Hoffman said, 'We have power of entry. Can you tell your son if he comes out, we don't need to go inside?'

Mrs Sanchez told the officers she was closing the door as there were children inside. The officers observed she had her hand on the locking mechanism and believed she was going to close and lock the door to prevent them from entering. The officer reached out and grabbed the door and slid it open. Mrs Sanchez stood in the doorway, physically blocking their entry, with her arms outstretched. Officer Hoffmann

¹¹ T.1-19.8-12.

¹² This cannot actually been seen and heard on the videos, but there was unchallenged evidence to the same effect: T.1-44.31-32.

¹³ The respondent did not suggest this was an invitation to the police to enter the house.

cautioned her to move aside but she refused. He used minimal force to break her grip on the doorway and entered the house. Officer Elford followed him inside.

- [13] At the point just before Hoffman slid open the door and entered the house I heard him say, ‘Tell him to come out now or I’m going to come in there and bring him out.’ Mrs Sanchez said, ‘Well, you can’t. This is my house.’ As Hoffman moved toward the bedroom Mrs Sanchez can be heard saying loudly, ‘If you go near my kids I’ll fucking kill you,’ and, ‘Get out of my house.’

The officers went to the bedroom and saw Phillipe. The appellants pushed past the officers and stood in the bedroom doorway, blocking their entry. Phillipe moved back inside the room. The officers pushed past the appellants and entered the bedroom. The lights were off and it was dark. As they tried to arrest Phillipe and handcuff him, Mrs Sanchez stood between them and Phillipe. She used one hand to push Officer Elford (in the chest) away and one hand to grab onto Phillipe.

When Phillipe was handcuffed, Mrs Sanchez pushed Officer Elford in the chest and shoulders several times. He grabbed her wrists in an attempt to stop her and she headbutted him in the chest. He pushed her onto the bed which was directly behind her. Mr Sanchez hit him on the shoulder and Officer Elford moved him to the bed also. Mr Sanchez then left the room and closed the bedroom door, preventing them from leaving.

The officers pried open the door and walked Phillipe to the front door. The appellants continued to verbally abuse and threaten the officers. Mrs Sanchez tried to push past Officer Hoffmann, he put out his arm to prevent her from getting past and instructed her to move away several times. She told him to “fuck off” and continued past him. Officer Elford unlocked the front door and opened it. As he did so, Mrs Sanchez pushed past him, pushed him away and slammed the door shut with her body weight. Officer Hoffmann grabbed her sleeve and pulled her aside. She struck the wall and fell to the ground. The officers opened the door and escorted Phillipe to the police car.

- [14] I note that immediately before Mrs Sanchez fell to the ground she was yelling profanities and other abuse at the police officers, as was Mr Sanchez. In the case of Mr Sanchez he was doing so while pointing a finger at Hoffman.
- [15] In cross-examination Elford accepted the following propositions. Between 12 and 29 July 2019 he took no steps to contact Phillipe or to obtain a warrant for his arrest. Obtaining an arrest warrant was not an unduly burdensome process. Elford thought he had the power to arrest Phillipe without warrant and went to the house on 29 July for that purpose. He did not think the offence of contravening a direction was a serious offence.¹⁴ Elford suspected Phillipe was inside the house and when there was no response to his knocks on the front door, he considered he was authorised to go around to the back of the house. After speaking to the appellants on the back deck, Elford entered the house as he had ‘made and exhausted all other attempts and enquiries to have Phillip ... attend the station’.¹⁵ Elford considered he had used the minimum force necessary in the circumstances.¹⁶ He agreed that Mrs Sanchez made many requests for the police officers to leave the house. Elford testified:

¹⁴ T.1-34.25-26.

¹⁵ T.1-31.23-26.

¹⁶ T.1-32.8-9.

[W]e used minimal force to push past Rona to break her grip, because communication had failed. We'd given her multiple instructions to remove herself from the doorway. She continued to refuse. Despite Senior Constable Hoffman standing right in front of her and again instructing her to move away, she's completely not complied, therefore, we had to use minimal force to break her grip and move into the dwelling.¹⁷

- [16] Senior Constable Hoffman had been a police officer since September 2002. He was not involved with the Sanchez family until the events of 29 July 2019. His evidence was to the effect that after arriving at the house in Lara Drive he and Elford went to the front door. They could hear movement and people talking inside the house. When Elford knocked on the door, the voices went quiet and lights were turned off inside the house. Hoffman's actions were recorded on his camera and are summarised above.
- [17] As the police officers were talking to Mrs Sanchez on the back deck she began to close the door. Hoffman thought she was going to close and lock the door and so moved to keep the door open. Mrs Sanchez tried to hold the door with her body across the doorframe. Hoffman forced his way past her into the house and moved toward the bedroom where he could see Phillipe.¹⁸ He described the resistance the police encountered in the following terms:

[T]here was a lot of barriers. Even just effecting the arrest [of Phillipe]. There was obviously a struggle there with Rona grabbing hold of his arms, pulling him away. He was pulling away. As we've gone to leave the room, Louis has shut the door on us, enclosed us in the room. There was no lights on. In the dark. It was quite – the door was held shut with such force that both Senior Constable Elford and myself had to grab the doorhandle itself from inside. I think Peter might have had two hands on the doorknob at that time and I had one, and we had to both pull the door as hard as we could to open and ajar slightly. We've got it possibly about six inches/150 mil open, then Rona has come across and she's put her body weight onto the doorframe and tried to close the door on us again. Elford's pushed her away from the door so we could get out of the room.¹⁹

- [18] Hoffman considered he used the least level of force possible in the circumstances by only pushing or pulling the appellants.²⁰ In cross-examination Hoffman said he understood the police were authorised by the PPRA to enter the dwelling and arrest Phillipe without a warrant. He explained police went there to arrest Phillipe because they had exhausted other avenues to commence proceedings against him for allegedly contravening a direction.

The arguments on the appeals against conviction

- [19] The appellants submit, as they did before the Magistrate, that the power to arrest a person without a warrant given by section 365 is only to be exercised only where it is impractical to obtain an arrest warrant. It is submitted that 'the PPRA is structured in such a way that the starting point must be that police who make the determination to arrest a citizen ought to do so under warrant.'²¹ The appellants say that as the police could have, but did not, obtain an arrest warrant they were not entitled to act

¹⁷ T.1-35.7-12.

¹⁸ T.1-45.1-20.

¹⁹ T.1-46.1-12.

²⁰ T.1-47.5-7.

²¹ Written submission on behalf of the appellants, p. 5, paragraph 12.

pursuant to section 365. It follows that the police were not acting in the execution of their duty at the time of these events and the prosecution had failed to prove an essential element of the alleged offences. To support this proposition the appellants rely upon a number of decisions from other jurisdictions dealing with the power of arrest at common law.

- [20] The alternative argument of the appellants is that the force used by the police officers was more than reasonably necessary. If this were the case the actions of the police were not authorised by section 615 and they were not acting in the execution of their duty.
- [21] The respondent's argument is that the plain words of section 365 authorised the police to arrest Phillippe without warrant and the force they use in the exercise of this power was no more than reasonably necessary.

Consideration

- [22] The proper starting point for any analysis of the appellants' arguments is the legislation, rather than the common law. The relevant provisions of the PPRA are set out below.

5 Purposes of Act

The purposes of this Act are as follows—

- (a) to consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law;
- (b) to provide powers necessary for effective modern policing and law enforcement;
- (c) to provide consistency in the nature and extent of the powers and responsibilities of police officers;
- (d) to standardise the way the powers and responsibilities of police officers are to be exercised;
- (e) to ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under this Act;
- (f) to enable the public to better understand the nature and extent of the powers and responsibilities of police officers;
- (g) to provide for the forced muster of stray stock.

21 General power to enter to arrest or detain someone or enforce warrant

- (1) A police officer may enter a place and stay for a reasonable time on the place—
 - (a) to arrest a person without warrant ...
- (2) If the place contains a dwelling, a police officer may enter the dwelling without the consent of the occupier to arrest or detain a person only if the police officer reasonably suspects the person to be arrested or detained is at the dwelling.

...
- (3) A police officer who enters a place under this section may search the place for the person.

...

365 Arrest without warrant

- (1) 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;
 - (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.

615 Power to use force against individuals

- (1) It is lawful for a police officer exercising or attempting to exercise a power under this or any other Act against an individual, and anyone helping the police officer, to use reasonably necessary force to exercise the power.

Example—

A police officer may use reasonable force to prevent a person evading arrest.

- (2) Also, it is lawful for a police officer to use reasonably necessary force to prevent a person from escaping from lawful custody.
- (3) The force a police officer may use under this section does not include force likely to cause grievous bodily harm to a person or the person's death.

[23] The PPRA has been described as a Code.²² The purposes set out in section 5 are consistent this view. The proper approach to construing such a statute does not

²² *Wright & Anor v Queensland Police Service and Ors* [2002] QSC 46, [30].

involve divining the common law to see if the words of the statute will bear the same interpretation. Recently, in *Namoa v The Queen*,²³ Gleeson J, with whom the other members of the High Court agreed, stated:

A code is to be construed according to its natural meaning and without any presumption that its language was intended to do no more than restate the common law. The common law cannot be used to supply the meaning of a word used in a code except where the word has a well-established technical meaning under the pre-existing law and the code uses that word without definition, or it appears that the relevant provision in a code is ambiguous. The common law cannot be invoked in the interpretation of a code for the purpose of creating an ambiguity.²⁴

- [24] It is with this approach in mind that section 365 must be considered. The words of the section relevant to these proceedings are as follows:

[W]ithout warrant, to arrest an adult the police officer reasonably suspects has committed or is committing an offence if it is reasonably necessary ... because the offence is an offence against section 790 or 791.

- [25] Apart from section 615, there are no other qualifications expressed in the statute to the exercise of the power. For instance, there is no hierarchy of provisions requiring a police officer to consider the appropriateness of various steps before proceeding to arrest a person without warrant. The only qualification to the power of a police officer to arrest, without warrant, a person they reasonably suspect has committed an offence against section 791 is that the arrest is ‘reasonably necessary’. The respondent, faintly, advanced an argument that the qualifying words ‘reasonably necessary’ did not apply to section 365(1)(i). It was said the choice of language in the provision – ‘because the offence’ – amounted to a deeming provision. That is, if a police officer suspects a person has committed an offence against section 790 or 791, it will always be reasonably necessary to arrest the person without warrant.
- [26] There are at least two reasons why this argument should not be accepted. First, it overlooks section 365(1)(k). The terms of this subsection – ‘because of the nature and seriousness of the offence’ – call attention to the qualities of the offence the police suspect has been, or will be, committed. That is, if section 365(1)(k) is said to be engaged, it is necessary to consider the qualities of the offence to answer the question of whether arrest without warrant is reasonably necessary. Section 365(1)(k) is not a deeming provision. To read section 365(1)(i), which is syntactically the same, as producing a different result – one that ignores the words ‘reasonably necessary’ earlier in the section – would be inconsistent. The construction proposed by the respondent would also have the result that, as long as a police officer reasonably suspected a person had committed any of the offences identified in subsections (i), (j), or (l), they could arrest the person without warrant, no matter how unnecessary that might be. Had this result been the intention of parliament it is to be expected clear language to that effect would have been used.²⁵
- [27] Secondly, there is much in the text of the section, read as a whole, to support the appellants’ contention that the circumstances where arrest without warrant would be

²³ [2021] HCA 13.

²⁴ *Namoa v The Queen* [2021] HCA 13, [11]. Internal citations omitted. See also *Stuart v The Queen* (1974) 134 CLR 426, 437.

²⁵ *Whitelaw v O’Sullivan* [2010] QCA 366, [27].

reasonably necessary all involve some sort of exigent reason. Almost all of the ‘reasons’ set out involve what would usually be a situation of some urgency – to ensure a person’s appearance before court, obtain or preserve evidence, or to prevent a person fleeing. Other situations of less urgency can be imagined, but this common thread is instructive. It suggests that section 365(1)(i) should not be singled out as a deeming provision, and that it remains necessary to consider if arrest without warrant was reasonably necessary even if the alleged offence is one contrary to section 790 or 791. It is in this context the actions of the police, and the arguments of the appellants, are to be assessed.

- [28] 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.
- [29] Section 21 of the PPRA was then engaged. The police officers were permitted to ‘enter a place and stay for a reasonable time ... to arrest a person without warrant’. They could ‘enter the dwelling without the consent of the occupier to arrest or detain the person only if the officer reasonably suspects the person to be arrested or detained is in the dwelling’. There is no dispute that the police officers saw Phillipe inside the house and knew, rather than just suspected, he was inside. Of course, in exercising this power, the police could only use ‘reasonably necessary’ force, pursuant to section 615. The section ‘is intended to regulate the use of force in the exercise of the powers conferred upon police officers elsewhere in the Act’.²⁶ Whether or not force used by a police officer was reasonably necessary is to be determined objectively, having regard to all of the relevant circumstances. It does not depend upon the subjective view of a police officer.²⁷
- [30] Having considered the statutory framework and the evidence, I am satisfied the police did not use more force than was reasonably necessary. The tone of the police remained measured throughout the events. This may be contrasted to the behaviour of the appellants, in particular Mrs Sanchez. Hoffmann explained, in my view patiently and calmly, why police were at the house. He made it plain that if Phillipe

²⁶ *Whitelaw v O’Sullivan* [2010] QCA 366, [26].

²⁷ *Ibid*, [27]. See also *Commissioner of Police v Flanagan* [2018] QCA 109; [2019] 1 Qd R 249, [49].

came outside there would be no need for police to enter the house. When Mrs Sanchez began to close the sliding door, and Hoffman opened it and entered the house, it was more than reasonably open to him to conclude that Phillippe was not going to come outside voluntarily. When the police were engaged in arresting Phillippe they were actively obstructed by the appellants. The force used by the police against the appellants was minor. It was, in my view, a reasonable response to the conduct of the appellants. Having read the testimony of the police officers and watched the videos of the events, there is no doubt in my mind that the force actually used was no more than reasonably necessary.

- [31] It follows that both police officers were acting lawfully. That is, they were acting in the execution of their duty. There was no dispute about the other elements of the offences of obstructing police. The appeals against conviction in relation to these offences must be dismissed. Mrs Sanchez was also convicted of contravening a direction by failing to provide the police with her personal details. The only argument against this conviction was that if the police were acting unlawfully, they had no authority to require Mrs Sanchez to give her personal details. As I am satisfied the police were acting lawfully, the appeal against this conviction must also be dismissed.

Appeal against sentence

- [32] In the event the appeals against conviction were dismissed, the appellants did not suggest that the imposition of a single fine of \$1,500 in relation to each appellant was excessive. Such a sentence was plainly within the proper exercise of the sentencing discretion by the Magistrate. The appeals against sentence must be dismissed as well.

Costs

- [33] In written submissions, the appellants sought their costs of the appeals. No costs can be awarded on the hearing or determination of an appeal in relation to an indictable offence that was dealt with summarily.²⁸ This would prohibit an award of costs in relation to, at least, four of the five convictions under appeal. In the circumstances, the parties agreed at the hearing that there should be no order as to costs.

²⁸ *Justices Act 1886* (Qld), section 232(4).