

# SUPREME COURT OF QUEENSLAND

CITATION: *Crinis & Anor v Commissioner of Queensland Police Service*  
[2018] QCA 150

PARTIES: **KERRY CRINIS**  
(first appellant)  
**CHARLES DUPOIS**  
(second appellant)  
v  
**COMMISSIONER OF QUEENSLAND POLICE  
SERVICE**  
(respondent)

FILE NO/S: Appeal No 9395 of 2017  
Appeal No 9397 of 2017  
SC No 8206 of 2017  
SC No 8205 of 2017

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane – Unreported, 18 August 2017  
(Flanagan J)

DELIVERED ON: 29 June 2018

DELIVERED AT: Brisbane

HEARING DATE: 7 November 2017

JUDGES: Fraser and Philippides and McMurdo JJA

ORDERS: **1. Appeal is allowed.**  
**2. The decision of the primary judge is set aside and in lieu thereof condition 4 of the bail conditions is varied by adding the following words “or for any new civil or private criminal proceedings including the subpoenaing of any witnesses”.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – INTERFERENCE WITH DISCRETION OF COURT BELOW – IN GENERAL – where the appellants were both charged with the criminal offences of unlawful stalking, using a carriage service to menace, harass or cause offence, two counts of personation, attempting to pervert the course of justice, forgery and two counts of uttering – where the appellants were granted bail which required the appellants to comply with residency, non-contact and non-attendance conditions – where the non-contact and non-attendance conditions prohibited the appellants from having contact with or attending within 100 metres of various persons including persons involved in civil proceedings with the appellants –

where the non-contact conditions did not prohibit contact in relation to ongoing civil proceedings – where the non-attendance conditions did not prohibit the attendance of court proceedings – where the appellants applied pursuant to s 10(1) of the *Bail Act* 1980 (Qld) to vary the bail conditions – where the appellants successfully applied to vary the residency condition – where the appellants unsuccessfully applied to vary the non-contact and non-attendance conditions – whether by refusing to vary the non-contact and non-attendance conditions the trial judge’s discretion miscarried

*Bail Act* 1980 (Qld), s 10(1)

*Criminal Code* (Qld), s 140, s 359E, s 488, s 514

*Criminal Code Act* 1995 (Cth), s 474.17

*House v The King* (1936) 55 CLR 49; [1936] HCA 40, applied

*Williamson v Director of Public Prosecutions (Qld)* [2001]

1 Qd R 99; [1999] QCA 356, cited

- COUNSEL: The first appellant appeared on her own behalf  
The second appellant appeared on his own behalf  
M Nicolson for the respondent
- SOLICITORS: The first appellant appeared on her own behalf  
The second appellant appeared on his own behalf  
Queensland Police Service Legal Unit for the respondent

[1] **FRASER JA:** I agree with the reasons for judgment of Philippides JA and the orders proposed by her Honour.

[2] **PHILIPPIDES JA:**

### **Background**

[3] This is an appeal against the primary judge’s refusal to vary certain of the appellants’ bail conditions. The appellants were each granted bail following each being charged on 18 May 2017 with the following offences:

1. unlawful stalking (domestic violence offence) contrary to s 359E of the *Criminal Code* (Qld) (the Code);
2. using a carriage service to menace, harass or cause offence contrary to s 474.17 of the *Criminal Code Act* 1995 (Cth);
3. two counts of personation contrary to s 514 of the Code;
4. attempting to pervert the course of justice contrary to s 140 of the Code; and
5. forgery and two counts of uttering contrary to s 488 of the Code.

[4] The charge of unlawful stalking arose from a complaint made by Kellie Suna on 13 May 2016 to police. She is also the complainant in respect of the charges of using a carriage service to menace, harass or cause offence.

- [5] The count of attempting to pervert the course of justice concerns allegations of witness tampering. The allegations are that during the course of a meeting with Robin Martin, a solicitor acting for Joanne Suna in relation to a defamation action, the appellant Dupois attempted to pervert the course of justice. It is alleged that Martin was asked to persuade Joanne Suna not to give evidence against Dupois or provide any statement to police about Dupois in respect of the stalking investigation of her sister, Kellie Suna. It is alleged that in return for Joanne Suna not being a police witness, Dupois indicated he would discontinue civil defamation claims against her. It is alleged that, during the meeting, the appellant Crinis asserted that he assisted Dupois with his legal work.
- [6] The appellants were granted bail on conditions that included a residency condition and the following non-contact and non-attendance conditions:
- “4 The defendants shall have no contact whatsoever directly or indirectly with Kellie Suna, Joanne Suna, Brendon Boyd, Tanya Suna, Julian Holman, Carmel Suna and Robin Martin, however contact may be made with Kellie Suna, Joanne Suna and Robin Martin but only in relation to **current ongoing civil proceedings** and only in relation to those civil proceedings.
- 5 The defendants shall not attend within 100 metres of Kellie Suna, Joanne Suna, Brendon Boyd, Tanya Suna, Julian Holman, Carmel Suna, and Robin Martin except when attending any court proceedings.” (emphasis added)

#### **The application for variation of bail**

- [7] The application for variation of bail was made pursuant to s 10(1) of the *Bail Act* 1980 (Qld) which states:
- “The Supreme Court or a judge thereof may, subject to this Act, grant bail to a person held in custody on a charge of an offence, or in connection with a criminal proceeding, or enlarge, vary or revoke bail granted to a person in or in connection with a criminal proceeding whether or not the person has appeared before the Supreme Court in or in connection therewith.”
- [8] The application before the primary judge sought a variation of the residency condition. It also sought variation of the other bail conditions to remove the names of those who were not complainants from the ambit of the bail conditions and that condition 4 be varied by adding the words “or for any new civil or private criminal prosecution including subpoenaing of any witnesses”.
- [9] The primary judge granted the application for variation of the residency condition but otherwise refused to make the variations sought.
- [10] The material before the primary judge included an affidavit of Detective Senior Constable Alistair Cameron Smith, filed by the respondent in opposition to the application for bail variation. DSC Smith was the arresting officer in the criminal proceedings against the appellants. He was also the investigating officer. Amongst the material exhibited to his affidavit were copies of the police QP9 documents as to the allegations against the appellants, the police statement provided by Kellie Suna in September 2016, a search warrant executed at the premises of the appellants on 23 February

2017 and a retention order subsequently made in relation to material seized by police.

- [11] In his affidavit, DSC Smith deposed to the following concerning the other persons identified in the bail conditions:
1. Joanne Suna, is a witness in the complaints by Kellie Suna, who had provided a witness statement;
  2. Tanya Suna and Carmel Suna, were witnesses in the complaints by Kellie Suna and it was intended that they would provide witness statements; and
  3. Robin Martin, a witness in the offence of attempting to pervert the course of justice, had provided a witness statement.
- [12] DSC Smith deposed to his belief that the appellants would attempt to contact Joanne Suna or Tanya Suna indirectly through Julian Holman (the partner of Tanya Suna) and Brendon Boyd (the partner of Joanne Suna).
- [13] In his affidavit, DSC Smith<sup>1</sup> exhibited messages said to have been sent by Dupois to Kellie Suna threatening her family if they became involved. He also set out examples of civil proceedings he had identified,<sup>2</sup> which Dupois had commenced over the past years involving persons connected with the complainant Kellie Suna. These included two defamation proceedings commenced and discontinued against Joanne Suna by Dupois. Dupois had also made an unsuccessful appeal against an order of a magistrate setting aside subpoenas issued against Tanya Suna and Julian Holman. A defamation proceeding commenced by Dupois against Kellie Suna was ordered to be struck out by Robin DCJ.
- [14] On 14 July 2017, the appellants filed an action in the Supreme Court against a number of defendants for damages.<sup>3</sup> The defendants include Kellie Suna, Joanne Suna, Carmel Suna, Robin Martin, who have not been served. Other defendants are the State of Queensland, the Queensland Commissioner of Police, Shiralee Coleman and Michelle Porcheron. The latter is a principal of the law firm at which Robin Martin is employed and has previously represented Joanne Suna. Shiralee Coleman is a friend of Kellie Suna.
- [15] On 18 July 2017, Dupois swore a complaint in the Magistrate's Court seeking a peace and good behaviour order be made against DSC Smith.<sup>4</sup> Clearly, those proceedings were not encompassed by the proceedings referred to in condition 4 of the bail conditions.

### **The appeal before this Court**

- [16] Before this Court, the appellants applied for an order for variation of condition 4 in the terms sought before the primary judge. It is apparent that the matter before this Court proceeded on the basis that there was error by the primary judge in the exercise of his discretion to refuse to vary the bail conditions as sought in relation to

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<sup>1</sup> See affidavit of Alistair Cameron Smith filed 18.8.17, AB at 272-274 para 40.

<sup>2</sup> See affidavit of Alistair Cameron Smith filed 18.8.17, AB at 274-275 para 41.

<sup>3</sup> A copy of the statement of claim is exhibited to the affidavit of the appellant Crinis, AB at 62-69.

<sup>4</sup> A copy of the complaint is exhibited to the affidavit of Alistair Cameron Smith filed 18.8.17 ("ACS 15"), AB at 435-437.

condition 4 such that the discretion miscarried in accordance with the principles in *House v The King*.<sup>5</sup>

- [17] The appellants submitted that the variations sought to condition 4 should have been allowed so as to enable the appellants to commence further civil and private prosecution action and to proceed also with current civil proceedings against witnesses involved in the current criminal prosecution. The appellants are not legally represented in the current civil proceedings. They submitted that they did not wish to serve documents personally on the witnesses and that they would use the services of a process server or bailiff to serve documents. In their outlines,<sup>6</sup> each appellant expressed the basis of his appeal as follows:

“The main thrust of this appeal centres around the principle of law that every citizen has a right to issue and process lawful civil proceedings for either monies owed or entitlement to damages and only a civil court Judge can decide if those civil proceedings are without merit or are vexatious after hearing all the evidence.

In our respectful submission a court should not condone or assist the illegal agenda of a corrupt police officer to subvert the course of Justice by using his powers under the criminal law to prevent the continuance or commencement of any private civil or criminal prosecutions against his complainant [complaint] and others.”

- [18] The appellants in their Supreme Court proceeding make serious allegations of corruption against DSC Smith as the arresting officer in the criminal proceedings issued against them, specifically it is alleged that as he has fabricated criminal proceedings against them and that he engaged in malicious prosecution. These allegations are not accepted.
- [19] In addition to written submissions, the appellants made oral submissions at the hearing before this Court. A matter developed further by the appellant Crinis in oral submissions was that the primary judge proceeded on the basis of a wrong principle, namely that his Honour was concerned to protect the appellants from possible fresh charges. In that regard, reliance was placed on comments made by the primary judge that “the witness can feel intimidated by those processes... depending on how they unfurl, and whether or not they constitute abuse of process, can itself lead to further criminal charges”<sup>7</sup> and that that course was dangerous, “because if it is ultimately found to be an abuse of process, or an oppressive civil proceeding, served in circumstances where there are potential witnesses in your criminal prosecution, it puts all parties in a difficult situation”.<sup>8</sup> The argument appears to be that the primary judge implicitly made an assessment of the likely merit of proceedings which might be brought by the appellants and, with an apprehension that the further proceedings would be an abuse of process and in some way unlawful in a criminal sense, was concerned to protect the appellants from themselves.

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<sup>5</sup> (1936) 55 CLR 499. See also *Williamson v Director of Public Prosecutions* [2001] 1 Qd R 99 at [24].

<sup>6</sup> See paras 3 and 4 of the outline of each appellant.

<sup>7</sup> AB at 14.19-14.22.

<sup>8</sup> AB at 17.47-18.02.

- [20] The terms of condition 4 of the bail conditions are unusual. There are, however, unusual aspects to the history of litigation between some of the parties. The respondent pointed to one such feature. Relying on its affidavit material in relation to the history of civil proceedings brought and not proceeded with, the respondent submitted that the intent of condition 4 of the bail conditions is to provide protection for the complainant and witnesses in the current prosecution so as to avoid them being subject to unjustified and unsubstantiated civil claims against them. The respondent submitted that the appellants had commenced and had previously commenced civil proceedings against witnesses, in circumstances which gave rise to a concern that there was a risk that the appellants would use any future civil litigation and private prosecution proceedings for inappropriate ulterior motives that will have a negative effect on those involved in the criminal prosecution. It was contended by the respondent that there was a risk that the appellants engaged in bringing proceedings in an attempt to subvert witnesses from giving evidence against them in criminal proceedings. In that regard, reference was made to the following remarks made by Robin DCJ in striking out the statement of claim in the defamation proceeding commenced against Joanne Suna already mentioned:<sup>9</sup>

“This is a strange defamation proceeding, leading me to have developed serious concerns that the purpose is something other than the vindication of the plaintiff’s reputation against alleged attacks on it by the defendant. My decision on the r 171 application would have been the same in any event, that is, whether regard is had to the possibility that what Mr Dupois is really after is some kind of revenge against the defendant, or to ruin her – if not to achieve some reconciliation with her.”

- [21] The remarks of Robin DCJ cannot be understood as more than an inconclusive expression of suspicion as to the appellants’ motivation. However, the context of the bringing of further proceedings by the appellants against individuals, who are the complainant and proposed witnesses in criminal proceedings against them, is not without relevance. Without embarking on any consideration of the merits of the criminal charges faced by the appellants, it is pertinent to note the particulars of the charge of attempting to pervert the course of justice.
- [22] This Court will only interfere with the decision of the primary judge if the appellants demonstrate error such that the discretion has miscarried. There is no basis for concluding that the primary judge embarked on a determination of the merits of the proceedings.
- [23] The use of bail conditions to prevent a citizen from having access to the judicial system through the issuing of court proceedings is an extreme measure and, in that regard, the terms of condition 4 are, as stated, unusual. The underlying assumption by the primary judge in refusing to make the variations sought appears to be that that future proceedings, of whatever nature, brought against the individuals named in the bail conditions would be used for the ulterior purpose of interfering with or thwarting the criminal proceedings in respect of which bail was granted to the appellants. That is, that there is a real risk that any such future proceedings would amount to an abuse of process. There is, however, an insufficient foundation for such a view on the material before the Court nor any basis which would warrant a

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<sup>9</sup> *Dupois v Suna* [2013] QDC 52 at [29].

blanket prohibition on access to the Court in the manner presently stated in condition 4.

- [24] Where it is considered that a proceeding is brought in circumstances that amount to an abuse of process, the Court processes provide avenues of redress. An application may be brought in a civil proceeding to have the claim struck out on the basis that an abuse of process is demonstrated in relation to the bringing of the proceeding. Additionally, pleadings which are clearly bad or establish no cause of action may be liable to being struck out. Further, orders may be made under the *Vexatious Proceedings Act 2005* (Qld), in an appropriate case, to prevent proceedings that are an abuse of the process; are instituted to harass or annoy, to cause delay or detriment; for another wrongful purpose; or instituted or pursued without reasonable ground.
- [25] Given the erroneous approach in assuming that all future proceedings would be an abuse of process (as amounting to harassment to pervert the course of justice) the exercise of the discretion miscarried.
- [26] It is to be observed that the respondent did not ask the Court to make a less intrusive order. While condition 4 is not expressed to exempt any criminal proceedings, the matter ought to be placed beyond doubt. Accordingly, with that in mind, the discretion ought to be exercised to allow the variation sought in respect of future civil and private criminal proceedings.

#### **Order**

1. Appeal is allowed.
  2. The decision of the primary judge is set aside and in lieu thereof condition 4 of the bail conditions is varied by adding the following words “or for any new civil or private criminal proceedings including the subpoenaing of any witnesses”.
- [27] **McMURDO JA:** I agree with the orders proposed by Philippides JA substantially for the reasons given by her Honour.