

COURT: SUPREME COURT OF TASMANIA

CITATION: *Arnesto v Hickman* [2016] TASSC 26

PARTIES: ARNESTO, Lavina Mario
v
HICKMAN, Genevieve (Sergeant)
WILKIE, Scott (Senior Constable)

FILE NO: 380/2015

DELIVERED ON: 31 May 2016

DELIVERED AT: Hobart

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JUDGMENT OF: Wood J

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Police Offences Act 1935 (Tas), s 55A.

Aust Dig Magistrates [1349]

REPRESENTATION:

Counsel:

Applicant: F Cangelosi

Respondent: S Nicholson

Solicitors:

Applicant: Simmons Wolfhagen

Respondent: Director of Public Prosecutions

Judgment Number: [2016] TASSC 26

Number of paragraphs: 59

**LAVINA MARIO ARNESTO v SERGEANT GENEVIEVE HICKMAN,
SENIOR CONSTABLE SCOTT WILKIE**

REASONS FOR JUDGMENT

**WOOD J
31 May 2016**

1 Lavina Mario Arnesto pleaded not guilty to a charge of fail to state name and address contrary to s 55A of the *Police Offences Act 1935*, and a charge of assault a police officer contrary to s 34B(1)(a)(i) of the same Act. After a hearing before Magistrate Rheinberger, the charges were found proved and convictions recorded.

2 The charges arose from an incident that occurred at approximately 8.50pm on 9 January 2015 at the Caldew Park, known as "the Train Park", on the corner of Hill and Warwick Streets in West Hobart. Police officers, Senior Constable Verney and Constable Lobb, attended the park because a woman was said to be causing a disturbance. Their observations were that a woman, who was not known to them, appeared intoxicated. Later on, the police officers discovered that the woman's name was Lavina Mario Arnesto. She was staggering, slurring her words and she smelt of alcohol. Senior Constable Verney spoke to her and requested her name and address. Ms Arnesto refused to provide that information.

3 The police officers spoke to a family at the park having a barbeque. A member of the family had called police because Ms Arnesto had been verbally abusive and had been hugging people against their wishes. Another family had left the park because she had been harassing them. Senior Constable Verney gave evidence that, based on this information and her observations of Ms Arnesto, she believed that Ms Arnesto had committed an offence of disorderly conduct.

4 Ms Arnesto was again asked to provide her name and address; she refused.

5 The learned magistrate's findings regarding aspects of the exchange between Ms Arnesto and the attending police officers are set out below. In essence, the learned magistrate accepted that Senior Constable Verney told Ms Arnesto that she was required to provide her name and address. She was warned that if she did not provide her details that that would result in her arrest.

6 Ms Arnesto continued to refuse to provide her details and she was arrested for failing to state her name and address. She was handcuffed and restrained, and Senior Constable Verney conducted a "pat down" search. During the search, Ms Arnesto spat at the officers. That conduct was the basis for the charge of assault police.

The decision

7 Significant aspects of the evidence given by the police officers about what had transpired were not accepted by the magistrate. Senior Constable Verney and Constable Lobb both gave evidence that they told Ms Arnesto that she had committed an offence. Senior Constable Verney gave evidence that she had said to Ms Arnesto that "due to her behaviour and my belief that she'd committed an offence, she was required to provide me with her name". Senior Constable Verney said she told Ms Arnesto that "because of your behaviour; because you've been verbally abusive to people, I need to you [sic] provide me your name". When Ms Arnesto refused, saying that she had not done anything, Senior Constable Verney explained to her several times that her behaviour constituted disorderly conduct. Constable Lobb said that he told Ms Arnesto words to the effect that she needed to provide that information because "we believed she committed an offence".

8 Her Honour recounted the evidence, and went on to observe, "It seems to me that there is some doubt about whether Ms Arnesto was told why she was required to provide her name and address." In context, it is clear that her Honour not only acknowledged that doubt, but proceeded on the basis that she did not accept any of the evidence of the police officers that Ms Arnesto was given a reason or reasons for requiring her to state her name and address. Her Honour did not accept that in their exchange with Ms Arnesto the police officers referred to her having committed an offence or referred to the fact that they held such a belief. I mention that the learned magistrate's findings of fact are not the subject of any criticism in these proceedings and were clearly open to her Honour.

9 The learned magistrate went on to express her conclusions stating: there was "more than sufficient evidence to satisfy a Court beyond reasonable doubt that she's been asked to provide her name and address, that she refused to provide her name and address and that ... she was told that she would be arrested if she failed to provide her name and address and in fact she was." Evidently, these were the matters the learned magistrate was satisfied of beyond reasonable doubt. Her Honour proceeded to consider whether the findings were sufficient to prove the charge of failing to state name and address.

10 I reiterate that the learned magistrate did not accept that the police officers made any reference to Ms Arnesto having committed an offence or that they gave her any reason for the requirement to state her name and address. It is apparent from the learned magistrate's reasons and implicit in her findings, that she did not accept other evidence that was given about aspects of the exchange with Ms Arnesto. In this regard, Senior Constable Verney said that several times she explained to Ms Arnesto that her behaviour constituted disorderly conduct and "we were legally allowed to request her to provide her name". Constable Lobb gave evidence that Ms Arnesto was told that she was obliged to provide her name and address and that if she did not she would be committing an offence. Constable Lobb also gave evidence that the section of the Act in which Ms Arnesto was obliged to provide that information was quoted to her. During the evidence of other attending police officers, aspects of the exchange with Ms Arnesto were recounted to similar effect.

11 As noted, the learned magistrate did not accept this evidence and proceeded on the basis that Ms Arnesto was asked to provide her name and address, she was told she would be arrested if she failed to provide that information, and she was arrested.

12 The learned magistrate considered the elements of the offence. Her Honour made an observation that the offence was very similar to the offence of fail to comply with a direction of a police officer. The learned magistrate concluded:

"... as long as there's evidence before the Court that the police officer becomes aware or has reasonable grounds for believing that a person has committed or is committing an offence, the police officer then may require that person to state his or her name and address."

13 Her Honour then referred to the following evidence: the officers had reasonable grounds for believing that Ms Arnesto committed the offence of disorderly conduct; she was required to provide her name and address and she refused; she was told she could be arrested for refusing; she continued to refuse and she was arrested. In light of that evidence, the learned magistrate concluded that the charge was proved.

14 Her Honour determined that it is not an element of the offence that a police officer needs to convey to a person what particular offence is believed to have been committed, or the reason or the ground for believing that the person has committed an offence.

15 The learned magistrate was satisfied that the first charge was proved beyond reasonable doubt. Accordingly, the officers were executing their duty by arresting Ms Arnesto. Having found

that an assault by deliberately spitting at the officers occurred, the second charge was also found proved.

The review

16 The ground of review asserts an error of law in that the learned magistrate determined that a police officer, in requiring a person to state his or her name under s 55A of the *Police Offences Act*, needed only to have formed a belief that the person had committed an offence, and to have required the person to state his or her name, without using any words to bring to the notice of the person that he or she was the subject of a lawful requirement to do so.

17 The ground of review extends to the charge of assault a police officer. The learned magistrate's conclusion, in finding the second charge proved, is said to be an error of law. The argument is that, as a corollary of the first argument, there was no requirement for Ms Arnesto to state her name and address, therefore, the police were not entitled to arrest her, and they were not acting in the execution of their duty at the time when she spat at them.

18 It is accepted on behalf of the respondent to the motion to review, for all intents and purposes the prosecution, that if the argument with respect to the first charge succeeds, and Ms Arnesto was not "required" to provide her name and address, the arrest was not lawful and the police officers could not have been acting in the execution of their duty when they were assaulted. This means that the motion to review with respect to the second charge must also succeed.

Submissions as to "require"

19 The question raised by the notice to review, as identified by Ms Arnesto's counsel, Mr Cangelosi, is what a police officer must say to a person so that it amounts to a requirement to state their name and address. It was argued that the central denotation of "require" is the sense of obligation; it is mandatory. It was contended that the mandatory nature of the request must be communicated by the police officer to the person whose name and address he or she requires. Section 55A must be approached as legislation that limits the operation of a common law right to remain silent. There was reliance on *Coco v The Queen* (1994) 179 CLR 427 and the need for "unmistakeable and unambiguous language" to limit the operation of the fundamental right to remain silent. The argument is that there is ambiguity regarding the content of the requirement by a police officer for the purpose of s 55A(1). It is further argued that it is an "elementary proposition" that a person is "only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed" (*Christie v Leachinsky* [1947] AC 573 at 587-588 per Viscount Simon). It is submitted that "police may not require a person to state his or her name, thus depriving them of their liberty to the extent that he may wish to ignore a request from the police for assistance, without informing him of the reason in substance why it is claimed that the restraint upon liberty is being imposed". The police officers' failure to inform Ms Arnesto that they had formed a belief upon reasonable grounds that she had committed an offence meant that there was not a requirement for the purpose of s 55A(1).

20 In argument before me, it was submitted on behalf of the prosecution that s 55A did not require the police officers to set out the belief held prior to the requirement being made for the name and address of Ms Arnesto, nor did it require an explanation by the police officers of the reasonable grounds forming the basis of their belief. It was also submitted that, providing the police officer has a reasonable belief or has an awareness of an offence, and a requirement is made, no more is necessary for the purposes of s 55A. A person is required to state their name and address so long as the requirement conveys that it is necessary that they comply.

Meaning of "require"

21 The task is one of statutory interpretation and involves ascertaining the meaning of the word "requirement" in s 55A(3). The issue is whether Ms Arnesto had been required to state her name and address. The task should begin with the "ordinary and grammatical sense of the statutory words having regard to their context and the legislative purpose": *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 per French CJ at [4]. The context includes the Act as a whole and the existing state of the law before the enactment of the legislation. The consequences of competing interpretations are also to be considered in ascertaining whether the construction being considered gives effect to the purpose of the legislation (*Acts Interpretation Act* 1931 (Tas), s 8B)

22 Section 55A of the *Police Offences Act* provides:

"55A Names and addresses of offenders

(1) If a police officer becomes aware that, or has reasonable grounds for believing that, a person has committed or is committing an offence, the police officer may require that person to state his or her name and address.

(2) If a police officer becomes aware that, or has reasonable grounds for believing that, a person is likely to commit an offence against section 15B, the police officer may require that person to state his or her name and address.

(3) A person who fails or refuses to comply with a requirement referred to in subsection (1) or (2) or, in response to such a requirement, states a name or address that is false, is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units.

(4) A police officer making a requirement under subsection (1) or (2) may arrest, without warrant, a person who fails or refuses to comply with that requirement or who, in response to the requirement, gives a name or address that the police officer has reason to believe is false."

23 It can be seen that subs (1) sets out the circumstances in which a requirement may be made; subs (3) creates an offence for failing or refusing to comply with a requirement or providing false information; and subs (4) provides for a power of arrest in the event of an offence contravening subs (3) having been committed.

Ordinary and grammatical sense

24 I make a number of observations about the section gleaned from the text. A "requirement" is an essential element of an offence pursuant to subs (3). It is apparent from the section that central to the notion of "requirement" is that it is a communication with a person directed at eliciting their name and address. The question is: what must be communicated so that the communication amounts to a requirement?

25 The words of the section are silent as to the terms of a requirement under subs (1). It is not spelt out elsewhere in the Act.

26 One of the questions is whether the police officer's state of mind must be communicated in the "requirement". As to when a police officer may require a person to state their name and address, it can be seen that there are four possible states of mind contemplated by subs (1): a police officer becomes aware that a person has committed an offence; a police officer becomes aware that a person is committing an offence; a police officer believes that a person has committed an offence; or a police officer believes that a person is committing an offence. In the case of a belief, the section requires that the belief be based on reasonable grounds. The words of the section do not convey that the

reasonable grounds for any belief, or the reasons for any awareness, must be stated when requiring a person to state their name and address. The words of the provision convey merely that the state of mind of awareness or belief (based on reasonable grounds) is a pre-condition to a requirement. The elements of the state of mind of the police officer and the requirement are distinct.

27 The words do not suggest that the reasons for any belief are to be conveyed. It is merely the "requirement" for the individual to state their name and address which must be conveyed. It would seem unlikely that this word imports the reasons for any belief, or that such a degree of detail was intended to be encapsulated in the meaning of "requirement".

28 That is not fatal to the argument made on Ms Arnesto's behalf. It should be noted that the possible interpretations of "requirement" open to the Court are not confined to a requirement without any explanation at all or, at the other extreme, a requirement that articulates in full the grounds for the belief held, or the reasons for the awareness. A possible interpretation of "requirement" is that it encompasses the entitlement for it to be made, or the statutory obligation to provide that information, but that it does not extend to the grounds held for any belief or reasons for any awareness.

29 Noting that the words "require" and "requirement" are not defined in the Act, it can be assumed that the ordinary, natural meaning applies, coloured by the statutory context. It is useful to refer to some dictionary definitions. The *New Shorter Oxford English Dictionary* provides the following meanings:

"**require** / v. **1** Ask [...] a question, inquire of [...]; request something from or of [...] Seek, search for; inquire after. **2** Demand (a thing) authoritatively or as a right, insist on having [...]; order or instruct (a person etc.) to do something. [...] Ask or wish for (a thing) as a favour; desire or request to do. [...] **3** Make a request or demand. [...] **4** Demand [...] or call on [...], in order to comply with a law, regulation, custom etc. [...] **5** Need (a thing or person) for a particular purpose; depend on for success or fulfilment. [...] Be necessary to do something. [...] **6** Feel a wish to do something; wish to have" (*The New Shorter Oxford English Dictionary on Historical Principles*, vol 2, 4th ed abridged (1993) at 2556).

"Requirement" means:

"**requirement** / n. **1** The action of requiring something; a request. [...] **2** A thing required or needed, a want, a need [...] Also, the action or an instance of needing or wanting something. [...] **3** Something called for or demanded; a condition which must be complied with" (at 2557).

The *Macquarie International English Dictionary* provides the following definition for "require":

"**require** / vt **1. Need something or somebody** to be in need of something or somebody for a purpose *The recipe requires a cup of milk.* **2. Make something necessary** to have something as a necessary precondition *A password is required for entry to the system.* **3. Demand something by law** to demand something by a law or regulation [...] *Notification was required by law.* **4. Insist on something** to insist that somebody do something *All applicants are required to pass a medical exam*" (*Macquarie International English Dictionary*, 2nd ed unabridged (2004) at 1585).

30 It can be seen that the words "require" and "requirement" have different meanings depending on the context in which the words are used. So, it can be seen that the word "require", at one end of the spectrum, may mean merely to insist, or at the other end, it may mean a demand by law carrying with it a legal obligation to comply.

31 In the context of s 55A, the concept of "require" or "requirement" involves more than a demand from, or an insistence by a police officer to provide information. Therefore, a mere demand in terms that "you are required to provide me with your name and address" could not be adequate as

the terms do not denote lawful authority. Such words alone could not be sufficient to convey the meaning of "requirement" in s 55A, ie a legal obligation. A mere demand or insistence does not have the appearance of a demand by law.

32 The natural meaning of the word "requirement" (or "require"), in its statutory context, is a compelling indication that what must be communicated, is, at least, a legal obligation to comply.

A penal provision

33 In ascertaining the meaning of "requirement", it is relevant to have regard to the fact that the section being construed is a penal provision.

34 The frequently quoted statement of principle that applies to the construction of penal statutes is that of Gibbs J (as he then was) in *Beckwith v The Queen* (1976) 135 CLR 569 at 576:

"The rule formerly accepted, that statutes creating offences are to be strictly construed, has lost much of its importance in modern times. In determining the meaning of a penal statute the ordinary rules of construction must be applied, but if the language of the statute remains ambiguous or doubtful the ambiguity or doubt may be resolved in favour of the subject by refusing to extend the category of criminal offences ... The rule is perhaps one of last resort."

35 In *Stevens v Kabushiki Kaisha Sony Computer Entertainment* (2005) 224 CLR 193, the plurality judgment of Gleeson CJ, Gummow, Hayne and Heydon JJ stated at [45] that "in choosing between a relatively broad and relatively narrow construction of legislation it is desirable to take into account its penal nature ... An appreciation of the heavy hand that may be brought down by the criminal law suggests the need for caution in accepting any loose, albeit 'practical' construction ...". Here, a failure to comply with a requirement may result in arrest, s 55A(4), prosecution and a maximum penalty of 10 penalty units (presently, a maximum of \$1,540).

36 On its own, the penal nature of the provision is not a significant factor. In choosing between two competing interpretations of the word "requirement", both of which are reasonably open, this factor weighs in favour of the interpretation which is more informative and in favour of Ms Arnesto, rather than the interpretation in favour of the prosecution.

Context – right to silence

37 The common law is part of the context to be taken into account in construing s 55A. In the absence of s 55A(1) a person would be under no obligation to provide their name and address to police. The person would have a right to remain silent. Subsection (1), allowing a requirement to be made, subs (3), creating an offence provision and subs (4), giving a power to arrest without warrant for that offence, all intrude upon an individual's right that he or she would otherwise have to remain silent.

38 In *Petty v The Queen* (1991) 173 CLR 95, Mason, Toohey and McHugh JJ stated at 99:

"A person who believes on reasonable grounds that he or she is suspected of having been a party to an offence is entitled to remain silent when questioned or asked to supply information by any person in authority about the occurrence of an offence, the identity of the participants and the roles which they played. That is a fundamental rule of the common law which, subject to some specific statutory modifications, is applied in the administration of the criminal law in this country."

39 In *Pyneboard Pty Ltd v Trade Practices Commission* (1983) 152 CLR 328 at 340, the common law privilege against compulsory self-incrimination was described by Mason ACJ, Wilson

and Dawson JJ as "too fundamental a bulwark of liberty to be categorised simply as a rule of evidence ..."; see also Murphy J at 346.

40 It is interesting to note the common law in relation to executing a lawful arrest. In ordinary circumstances, an arresting police officer is under a duty to inform the suspect of the nature of the charge: *Christie v Leachinsky*. Viscount Simon spoke at 587-588 of the "elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed". The requirement that a person should be so informed does not mean that technical or precise language need be used.

41 Without drawing on the common law with respect to arrest to interpret the meaning of the wording of the section here, it is mentioned as part of the context for s 55A.

Construing statutes affecting a fundamental right

42 There is a principle of statutory construction which must be applied to the construction of any statute which affects common law rights. A statute will only be interpreted to have abrogated a fundamental right by the use of clear words to that effect: *Coco v The Queen* at 437; displacement requiring words of "irresistible clearness": *Bropho v Western Australia* (1990) 171 CLR 1 at 18; see also *Police v Conway* (2006) 95 SASR 83 at [35]. As acknowledged on behalf of Ms Arnesto, plainly the section encroaches upon the right to silence and does so in express terms. The question in this case is one of degree and the extent or impact of the provision in its operation. This principle of construction applies in determining this question; the principle favours the least infringement of the common law right: *RJE v The Secretary to the Department of Justice* (2008) 21 VR 526 per Maxwell P and Weinberg JA at [37], *Williams v The Queen* (1986) 161 CLR 278 per Mason and Brennan JJ at 292.

43 In *Arachchi v Orłowski* [2003] VSC 161, Nettle J at [26] referred to "the principle of statutory construction which requires that great care be exercised in the construction of any statute which affects the liberty of the subject. The statute must not be extended beyond the area of operation for which Parliament has clearly provided. Therefore, a construction of a statute which interferes with the legal rights of the subject to a lesser extent and produces the less hardship is to be preferred to another."

44 Nettle J referred to some of the authorities in support of that principle, noting at [27] that the "principle is of course so well entrenched that the recitation of authority is hardly necessary", but that it is worth recalling the reason for its existence, referring to the judgment of French J (as he then was) in *Commissioner of Taxation v Citibank Ltd* (1988) 20 FCR 403 at 433:

"Australia is a liberal democracy with a broad tradition of at least nominal resistance to encroachment upon established rights and freedoms ...

The nature of this society and its tradition of respect for individual freedoms, will support an approach to construction which requires close scrutiny and a strict reading of statutes which could otherwise remove or encroach upon those freedoms."

45 Section 55A(1) provides for an entitlement for a police officer to demand a person to provide information as an exception to the right to silence. A requirement made pursuant to s 55A(1) gives rise to a legal obligation to comply. The content of a requirement under s 55A, as opposed to a mere demand, should at least communicate to an individual that he or she has a legal obligation to comply. It must be clear that the demand is not merely a demand without lawful authority. This is important as it impinges upon a fundamental freedom, and otherwise an individual may be perfectly within his or her rights to refuse to comply with it. With this in mind, it seems axiomatic that the source or reason

for the right to demand be communicated, identifying the legal obligation to speak and provide the information.

46 This interpretation involves "less hardship" than a requirement expressed as a mere demand. The individual is informed of their legal obligation to comply and also effectively, that they cannot insist on their common law right to silence. This is less likely to lead to confusion on the part of the individual, and less likely to give rise to difficulties in their interaction with police than if a mere demand without explanation were all that had to be communicated. This principle of statutory construction weighs against the prosecution's interpretation that all that has to be conveyed is that it is necessary to comply.

Consequences

47 It is useful to consider the consequences of the competing interpretations advanced and see whether they accord with the expected purpose of the legislation. The interpretation argued on behalf of Ms Arnesto does not necessitate that police officers, in requiring a person to state their name and address, communicate a complex or comprehensive level of detail. Further, this interpretation is not out of step with the practicalities of police operations, and does not place an inappropriate burden on the police force. Indeed, the police evidence, rejected by the learned magistrate, of what was said to Ms Arnesto is in line with the argument as to what should be said. A factor weighing against an onerous burden on a police officer, in terms of the content of "requirement", is that a consequence of any failure to communicate that information would result in an unlawful arrest pursuant to subs (4), and a failed prosecution for an offence of failing to state name and address. Relevantly, Ms Arnesto's argument does not place an onerous burden on police officers.

48 The consequence of the argument on behalf of the prosecution is that a police officer, with the necessary state of mind, may approach an individual and say, without more, "I require you to tell me your name and address". If the individual refuses and insists on knowing why, the police officer may say in response, "that has nothing to do with you; tell me now or you will be arrested and charged with failing to state your name and address." In language borrowed from Viscount Simon, in terms applicable here too, "that would be quite contrary to our conceptions of individual liberty" (at 588).

49 It is argued for the prosecution that the counter to any criticism of this outcome is that, in these circumstances, a prosecution for failing to state name and address would fail unless it was proved that the police officer had the necessary state of mind. However, this is beside the point. It does not address the concern that generally an individual has a right to refuse to answer questions, and the construction urged on behalf of the prosecution means that the individual need not be informed that he or she is under a legal obligation, how it arises or that they can be arrested for non-compliance with it. That is heavy-handed, regardless of the legitimacy of the police officer's state of mind.

50 It can be seen that "require" also appears in s 55A(2). This subsection refers to an offence against s 15B of the *Police Offences Act*. Section 15B allows a police officer to direct a person in a public place to leave and not return for a specified period of not less than four hours if the police officer believes on reasonable grounds that the person:

- "(a) has committed or is likely to commit an offence; or
- (b) is obstructing or is likely to obstruct the movement of pedestrians or vehicles;
or
- (c) is endangering or likely to endanger the safety of any other person; or
- (d) has committed or is likely to commit a breach of the peace."

51 Subsection (2) creates an offence for non-compliance with subs (1), providing that a person must comply with a direction under subs (1) and setting out a maximum penalty of two penalty units.

52 Ordinary rules of statutory construction mean that "require" is to be given the same meaning in the context of both s 55A(1) and (2). This does not weigh against Ms Arnesto's argument. The consequence is that a police officer, in making such a requirement under s 55A(2), would need to convey that the person was under a legal obligation to state their name and address and the reason for the requirement. I do not view that as out of step with the purpose of the legislation or operational realities of policing.

Determination regarding "requirement"

53 Having regard to the ordinary meaning of "require", the context of s 55A, the words of the section as a whole which give meaning to the word "require", and the common law context particularly, that s 55A is a statutory exception to a fundamental right to remain silent, I regard the statutory basis for a "requirement" as integral to its content.

54 A police officer must convey to an individual, as a minimum, that he or she has a legal obligation to provide their name and address and the essence of the reason for that obligation. In "requiring" a person to state their name and address it is not necessary that technical or precise language be used.

55 These matters were not conveyed to Ms Arnesto. The learned magistrate found that she was not informed that she had a legal obligation to provide her name and address and she was not informed that the reason for that obligation was that a police officer believed she had committed an offence. It is acknowledged that she was informed that she would be arrested if she failed to provide her name and address. That was not sufficient. A legal obligation is still not conveyed by those words. The words beg the question, "what am I to be arrested for?" It is unclear whether the arrest was a consequence of the failure to state name and address (arguably, capable of suggesting a legal obligation), or an allegation of offending, such as the conduct attracting the attention of the police in the first place.

56 I agree with the learned magistrate insofar as she stated that it is not necessary for the police officer to spell out the reasonable grounds for a belief held that the person has committed an offence. The holding of a reasonable belief is an essential element of the offence, but it need not form part of the content of the requirement.

57 The words uttered by the police officers fell short of a "requirement" for the purpose of s 55A and the motion to review with respect to this charge succeeds. Absent a requirement, and an essential element of the offence, it was not open to the learned magistrate to be satisfied beyond reasonable doubt that Ms Arnesto had committed the offence of failing to state name and address.

58 It follows that the police officers were not entitled to arrest Ms Arnesto because she had not been "required" to state her name and address. It could not be said that the arresting officers were acting in the execution of their duty in arresting Ms Arnesto when they were assaulted.

Outcome and orders

59 For the reasons given, the motion to review is allowed. I set aside the determination of the learned magistrate and the convictions imposed. The complaint is dismissed.