CITATION:	*Splinter v Dunne* [2024] NTSC 24
PARTIES:	SPLINTER, Harvey v DUNNE, Andrew
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	LCA 21 of 2021 (22036092)
DELIVERED:	5 April 2024
HEARING DATES:	12 November 2021; written submissions from the Local Court supplied by counsel following the appeal hearing.
JUDGMENT OF:	Blokland J

CATCHWORDS:

APPEAL – POLICE POWERS – statutory powers of entry of private premises – authority to remain on premises – authority to request the name of a person present – whether repeated request of a person's name invalidates authority to remain on premises.

APPEAL – POLICE POWERS – whether Judge gave insufficient reasons when the charge of assault police in the due execution of their duties was found proved – whether the onus of proof was reversed – whether verdict unreasonable – whether Judge misconstrued s 126(2A) of the *Police Administration Act* 1978 (NT) – grounds not made out – appeal dismissed.

Criminal Code 1983 (NT), s 189A
Domestic and Family Violence Regulations (NT), Regulation 6
Police Administration Act, ss 126(2A), 134

Allitt v Sullivan [1988] VR 621; *Crowley v Murphy* [1981] FCA 31; *Halliday v Nevill* (1984) 155 CLR 1; *Kuru v State of New South Wales* (2008) 236 CLR 1; *Police v Dafov* [2008] SASC 247, 188 A Crim R 98; *Roy v O'Neill* [2020] HCA 45; *R v Ricciardi* [2017] SASCFC 128; *Slaveski v State of Victoria and Ors* [2010] VSC 441; *Sun Alliance v Massaud* [1989] VR 8, referred to.

REPRESENTATION:

Counsel:

Appellant:	N. Redmond
Respondent:	J. Singh

Solicitors:

Appellant:	Northern Territory Legal Aid Commission
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
Judgment ID Number:	BLO2402
Number of pages:	25

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

Splinter v Dunne [2024] NTSC 24
No. LCA 21 of 2021 (22036092)

BETWEEN:

QUAIDE SPLINTER
Appellant

AND:

ANDREW DUNNE
Respondent

CORAM: BLOKLAND J

REASONS FOR JUDGMENT

(Delivered 5 April 2024)

Background

[1] This is an appeal against conviction. The appellant was found guilty on 15 July 2021 of the charge of unlawfully assault a police officer in the due execution of his duty. Both the Local Court proceedings and the appeal were heard in Alice Springs.

[2] The charge was brought under s 189A of the *Criminal Code* 1983 (NT). The assault involved one circumstance of aggravation, namely that the officer suffered harm. At the oral hearing of the appeal I indicated some scepticism about the appellant's arguments. For the reasons that follow the appeal will be formally dismissed.

[3] Initially there were four grounds of appeal. The original grounds 2 and 4 were withdrawn. Leave was granted to add two additional grounds. The appeal was heard on the basis of the following grounds:[1]

> 1. The Judge provided insufficient reasons for his verdict;
>
> 2. The Judge reversed the onus of proof;
>
> 3. The verdict was unreasonable and not supported by the evidence;
>
> 4. The Judge erred in his interpretation of s 126(2A) of the *Police Administration Act*.

[4] It was common ground s 126(2A) of the *Police Administration Act* 1978 (NT) ('the Act') was the relevant operative section which provided the source of police powers at the time the offence was committed. Section 126(2A) has since been repealed and replaced with s 126B of the Act.

[5] At the relevant time, s 126(2A) read as follows:

> (2A) A member of the Police Force may, by reasonable force if necessary, enter a place if he believes, on reasonable grounds, that:
>
> (a) a person at the place has suffered, is suffering or is in imminent danger of suffering personal injury at the hands of another person; or
>
> (b) a contravention of an order under the *Domestic and Family Violence Act* 2007 has occurred, is occurring or is about to occur at the place,

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1 Submissions of the appellant at [6].

and remain at the place for such period, and take such reasonable actions, as the member considers necessary:

(c) to verify the grounds of the member's belief;

(d) to ensure that, in the member's opinion, the danger no longer exists;

(e) to prevent a breach of the peace or a contravention of the order; or

(f) where a person at the place has suffered personal injury, to give or arrange such assistance to that person as is reasonable in the circumstances.

[6] Also of relevance was s 134 of the Act which sets out the circumstances in which a person must supply their name, address or both to police. Section 134 reads:

(1) Where a member of the Police Force believes on reasonable grounds that a person whose name or address is unknown to the member may be able to assist him in his inquiries in connection with an offence that has been, may have been or may be committed, the member may request the person to furnish to the member the person's name or address, or both.

(2) Where a member requests a person under subsection (1) to furnish his name or address, or both his name or address, to the member and informs the person of his reason for the request, the person:

(a) shall not refuse or fail to comply with the request;

(b) shall not furnish to the member a name that is false in a material particular; and

(c) shall not furnish to the member as his address an address other than the full and correct address of his ordinary place of residence.

Maximum penalty: 4 penalty units.

Proceedings in the Local Court

[7] Following the appellant's plea of not guilty, evidence was given in the Local Court by Constable Likhith Hommaragally ('Hommaragally') that he and Constable Cockatoo Collins ('Collins') were tasked by police communications to attend a domestic disturbance at House 21, Hidden Valley Camp. He was informed by police communications that a female at the location was screaming and yelling, that a scuffle could be heard as well as the sound of banging on a door. Attending police were also told by the call taker that the complainant was begging police to attend.[2]

[8] Hommaragally told the Court, consistent with his statement that when he and Collins walked into House 21 they were using powers of entry under s 120(2A). He corrected that point in evidence to state it was s 126(2A) of the Act. Hommaragally told the Local Court they had the power to enter the property to ensure no one was injured or at risk of danger. Inside the house he saw that Collins was talking to women who were present. As Collins was talking to the women, Hommaragally went to the back yard to see if anyone was there. As he approached the back door he saw a male, the appellant, walk away from him. The appellant started running and went out of the front

2 Transcript, *Police v Quaid Splinter*, 13 May 2021 at 6.

gate. Hommaragally hurriedly walked up to him and asked his name. In evidence he said he wanted to ask his name to establish his identity under s 134 of the Act as he was making enquiries in connection with an offence that may have taken place as part of a domestic disturbance. He did not know or recollect the appellant's name. He remembered his face faintly from a previous interaction.

[9] When Hommaragally came back into the house, Collins was still talking to the women and the appellant walked back into the house. One of the women gave the appellant a black bag. Hommaragally went to speak to the appellant again as he believed, given his evasive nature, he was involved in the domestic disturbance. As Hommaragally approached the appellant, the appellant held his bag in his right hand and made a striking action as though he wanted to throw the bag at Hommaragally. Hommaragally thought the appellant attempted that action at least twice. Hommaragally then went outside and approached the appellant who hurriedly took two steps back. The appellant took his right hand to his back and threw the bag with full force. Hommaragally ducked down to try to avoid being hit by the bag.[3] It was not contested the appellant successfully struck Hommaragally with the black bag.[4] The appellant started running. Hommaragally chased him and the appellant jumped the fence. Other attending officers detained the appellant. Hommaragally went back into the house to speak to Collins to see what the

3 Ibid.

4 Transcript, *Police v Quaid Splinter*, 15 July 2021 at 2.

domestic incident was about. The action used to duck down in a spilt second in an awkward position caused a sprain in Hommaragally's right thigh muscle.[5]

[10] Hommaragally's statement was tendered[6] as was his body worn footage[7] which was played to the Local Court. Still photographs from the body worn footage were also tendered.[8] Collin's statement was also tendered.[9]

[11] In answer to further questions Hommaragally told the Local Court the police communications passed on to him that the complainant had said the person of interest was 'trying to break in the door and there was a lot of screaming and yelling going on and the complainant was begging for police'.[10] The call taker also told Hommaragally and Collins they could hear the loud banging against the door. Hommaragally said that was why they went to the location.[11]

[12] In cross examination Hommaragally confirmed much of his evidence in chief including that he had entered the house under s 126(2A) of the Act. His reason for entering was that he had the power to enter to make sure no one was injured, or at risk or danger or imminent danger of injury.[12] He

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5 Ibid at 7.

6 Exhibit P1.

7 Exhibit P2.

8 Exhibit P3.

9 Exhibit P4.

10 Transcript, *Police v Quaid Splinter*, 13 May 2021 at 7.

11 Ibid.

12 Transcript, *Police v Quaid Splinter*, 13 May 2021 at 10.

agreed he saw the appellant out the back of the property, about a metre and a half from the back door when he was making sure that no one was injured or at risk of injury. When the appellant was a metre and a half away from him, he asked his name under s 134 of the Act. He agreed he wanted the appellant's name because he was making enquiries in connection with an offence that had been committed in the house.[13]

[13] Hommaragally agreed he asked the appellant his name a number of times. The appellant left the house when first being asked his name and returned shortly after. Hommaragally was not sure why the appellant left and returned but he could see him again at the back door. Hommaragally confirmed the appellant made it clear he did not want to give a response to the request for his name. It was when the appellant was at the back door that he asked for his name again and then someone passed the bag to the appellant. That was when the appellant performed the action of throwing the bag towards Hommaragally twice.[14]

[14] It was common ground the only element of the assault police charge which was in dispute was whether police were acting in the execution of their duty. The assault itself was conceded.

[15] In essence the prosecution submitted as follows. What was relevant was that police officers were tasked to attend a domestic disturbance, bearing in mind

13 Ibid.

14 Transcript, *Police v Quaid Splinter*, 13 May 2021 at 12.

the description given by police communications, set out above. It was plainly a serious set of circumstances given that description. Police held the requisite belief under s 126(2A). The initial attendance at the premises was clearly authorised by s 126(2A) and indeed the extended period was authorised. Section 126(2A) provides police may 'remain at the place for such period, and take such reasonable actions' as are considered necessary. Paragraph (2A)(c) provides 'to verify the grounds of the members belief' and 'to ensure the danger no longer exists' and 'to prevent a breach of the peace or contravention of an order.' Further, it was argued the officer was permitted by s 134 of the Act to repeatedly asked the appellant his name (likely it was some eight times)[15] as he was taking a preliminary step in the investigation in a matter where he believed there was a serious danger of harm to a person. The police were plainly acting in the execution of their duty. The prosecutor submitted police were carrying out investigations in relation to a domestic disturbance and police were attempting to verify their belief.[16]

[16] In the Local Court, counsel for the appellant argued Hommaragally became a trespasser when he remained on the premises and was asking questions about the identity of the appellant. It was submitted s 126(2A) did not authorise the police to remain on the premises in those circumstances nor

15 Transcript, *Police v Quaid Splinter*, 13 May 2021 at 13.

16 Transcript, *Police v Quaid Splinter*, 13 May 2021 at 13.

can police utilise s 134 to remain on private property.[17] It was acknowledged police initially were complying with s 126(2A) when they were walking around the property to see if any person was injured.[18] However, police were not within the execution of their duty when Hommaragally started to ask for the appellant's name or identity and the appellant made it clear he did not want to engage with police. Hommaragally remained on the premises to attempt to have the appellant engage with him by giving his name.[19]

[17] Counsel in the Local Court argued that by asking the appellant's name, the police conduct was not within the scope of the power conferred by s 126(2A)(c). That it was not rationally connected with the lawful purpose to verify whether there was an injured person or there was imminent danger of a person being injured at the address.[20] It was submitted that police obtaining the appellant's name was not capable of assisting with any of the matters specified under s 126(2A). The appellant relied on *Kuru v State of New South Wales*[21] which was to the effect that if police officers considered it necessary to be on private property and did not have the requisite authority, a search warrant may be obtained.

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17 Transcript, *Police v Quaid Splinter* 13 May 2021 at 15.

18 Transcript, *Police v Quaid Splinter* 13 May 2021 at 16.

19 Ibid.

20 Defendant's outline of submissions, Local Court, 28 May 2021 at 25.

21 (2008) 236 CLR 1 at [38].

[18] Reliance was also placed on *Police v Dafov*[22] where the South Australian Court of Appeal held police were trespassing at the time they required a defendant's name and address on the basis that the power to require a person to give their name and address does not operate in circumstances where an implied right to enter had been expressly revoked. It was acknowledged that elements of *Dafov* are no longer good law given the High Court decision of *Roy v O'Neill*[23] which examined scope of an implied licence to enter private premises.

[19] The appellant called no evidence at the Local Court hearing.

[20] After adjourning and receiving written submissions from both parties[24] the Judge found the charge proved and in so doing, rejected the argument that Hommaragally was not acting in the execution of his duties.[25]

[21] The Judge spent some time in his reasons reviewing the non-contentious facts. In terms of statutory compliance and the question of the authorisation of police to be on the premises at the time of the assault, he examined closely the evidence from the body worn footage and set out his description and findings as follows:

> The video from the body-worn camera shows the following: 28 seconds after the video commences both police officers enter the property. 16 seconds later they enter the house. 8 seconds after

22 [2008] SASC 247, 188 A Crim R 98 at [28], [37].

23 [2020] HCA 45.

24 Transcript, *Police v Quaid Splinter*, 22 June 2021, 1-3; Defendant's outline of submissions, 28 May 2021; Prosecution's outline of submissions, 28 May 2021.

25 Transcript, *Police v Quaid Splinter*, 15 July 2021.

entering the house Probationary Constable Cockatoo Collins knocks on an internal door and calls out, “Hello.” 14 seconds later Constable Hommaragally, whilst inside the house, sees the defendant standing immediately outside a door opened on to the back yard. He calls out, “Hey, man, what’s your name?”

The defendant walks away and the constable asks a second time for his name. The defendant immediately runs around the side of the house and exits the front gate and runs across the road. He exits the front gate 7 seconds after Constable Hommaragally asked for the first time his name. Constable Hommaragally does not leave the property but speaks to the defendant who has slightly approached the property and is standing in the middle of the road.

Constable Hommaragally asks him four times for his name over the next 27 seconds. The defendant does not reply. Constable Hommaragally turns and re-enters the house and at the same time the defendant walks around the opposite side of the house to where he was first seen by Constable Hommaragally.

Constable Hommaragally re-enters the house 23 seconds after his last interaction with the defendant.

Probationary Constable Cockatoo Collins is in the house speaking to a female whom he identifies later as Christina Childs (?), par 7 of exhibit P4, and another female is standing at the back door. 16 seconds after Constable Hommaragally enters the house the defendant is at the back door and is heard calling out, “Come on, find me my stuff.’ A woman hands the defendant a black backpack and at the same time Constable Hommaragally calls out, “Hey” and walks to the back door -sorry, walks out the back door. 5 seconds elapse between asking for his stuff and the defendant then swinging his black backpack with his right arm, hitting Constable Hommaragally. He hits him again within 3 seconds then turns, runs off and scales a side fence.

The total time between Constable Hommaragally entering the property at House 21, Hidden Valley, and being assaulted was 1 minute and 35 seconds. During that time he did not leave the property. The total time between Constable Hommaragally first asking the defendant his name, and the defendant hitting him with backpack is 57 seconds. The total time between Constable

Hommaragally entering the house the second time and being assaulted is 14 seconds.

It is not contested that Constable Hommaragally had the lawful authority to ask the defendant to provide his name, subs (1) and (2) of s 134 of the Police Administration Act. Note that pursuant to sub (2) an offence is only committed if the police officer, in addition to asking for a name, or a name and an address, informs the person as to why he has requested the name and the address. Constable Hommaragally gave no reason for his request that he made to the defendant to provide his name. However, Constable Hommaragally was not given an opportunity on any of the occasions to give an explanation as the defendant ran away after being first asked for his name.

There is no evidence that can be relied upon, both expressly or impliedly, before this court that during the 1 minute and 35 seconds when Constable Hommaragally was on the property that anyone asked either himself or Probationary Constable Cockatoo Collins to leave. There is no evidence that the defendant had any authority to withdraw permission from the police officers to remain on the property as a result of his possible occupation of that property. There is no evidence that he was an occupant at that property and in fact there is some evidence, pars 10 and 11 of exhibit P4, that Probationary Constable Cockatoo Collins was told the defendant resides in the Larapinta Valley Camp.

In any event, the defendant did not expressly tell the police officers to leave and his actions in running away gave rise to a suspicion in the minds of the police officers that he may have had some involvement in the complaint they were investigating. Paragraph 9 of exhibit P1 of Constable Hommaragally's statutory declaration and par 15 of exhibit P4 of Probationary Constable Cockatoo Collins' statutory declaration.

I find that there is no reason for the police officers to believe that the defendant was a lawful occupier of the property and that his actions could give rise to any inference that he was withdrawing his permission for them to be on the property.

[22] After discussing the authorities, the Judge concluded *inter alia* that in this instance a time of one minute and 35 seconds elapsed from the moment the

two police officers entered the property until Hommaragally was assaulted. During that time they were entitled to take reasonable actions which included asking the appellant his name, both initially when he refused to give his name, and when he ran from their presence and when he returned.

Consideration of the grounds of appeal

[23] The appellant's primary contention is that the evidence did not establish that Hommaragally was acting in the execution of his duty; that Hommaragally remained on the premises beyond what was permissible and sought to compel the appellant to provide his name. It was contended that those actions did not fall within the powers set out in s 126(2A)(c)-(d) of the Act.

[24] A number of the appellant's contentions are uncontroversial. For instance, it is accepted that statutes which authorise what would otherwise be tortious conduct, such as entering or remaining in private premises, must be clear and the language unambiguous. Provisions of that kind must be strictly construed. The relevant language of the statute must either expressly provide the power or it must be capable of being ascertained by necessary implication. General words will rarely be sufficient when police are exercising a power which involves interference with fundamental common law right. The conduct must remain strictly within the power conferred. Within that context some latitude will be granted to determine the scope of

what is a reasonable exercise of the power in the circumstances.[26]All of those principles can be accepted, however it seems to me on the facts police were properly undertaking duties within the scope of s 126(2A).

[25] The High Court considered s 126(2A) in a slightly different context in *Roy v O'Neill*.[27] The question before the Court was whether a police officer was trespassing on private property when he administered a breath test, the results of which were used in evidence against the appellant Ms Roy. Police there attended the appellant's residence, knocked on the fly screen door and called the appellant to the door for the purpose of a check of a Domestic Violence Order which provided the appellant was not to be intoxicated in the presence of the protected person.

[26] At the time, police were engaged in a wider operation which targeted domestic violence. The appellant *Roy* answered the door in an apparent intoxicated state and a breath test was requested which was positive. Regulation 6 of the *Domestic and Family Violence Regulations* (NT) required a person who was the subject of such an order to comply with a reasonable direction by an officer to submit to a breath test. It did not however, authorise entry on the premises for that purpose. Section 126(2A) authorised entry onto premises, but only if the officer believed on

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26 *Slaveski v State of Victoria and Ors* [2010] VSC 441 at [154]-[160] and [165]-[178] which dealt with the strict construction of search warrants, citing *Allitt v Sullivan* [1988] VR 621 and *Crowley v Murphy* [1981] FCA 31.

27 [2020] HCA 45; 272 CLR 291.

reasonable grounds that a contravention of a Domestic Violence Order had occurred, was occurring or about to occur.

[27] The High Court found that the police officers had implied licence to enter the premises. All members of the Court accepted that the common law will not imply a licence for police where entry is for the sole purpose of exercising coercive powers. Kiefel CJ, Keanne and Edelman JJ (the latter jointly) considered the officer was not a trespasser at the time the breath test was administrated. The Court noted[28] that to lawfully enter private property permission to enter must first be given by the occupier. Citing *Halliday v Nevill*[29] it was held such permission can be implied and a revocable licence to enter will be implied to walk on a path or driveway for the purpose of communication or delivery, provided there is no indication that entry is prohibited.[30] Their Honours considered the police officer lawfully entered the private premises for the purpose of conducting a welfare check. Kiefel CJ[31] also considered that when the police officer saw the appellant in an intoxicated state, he had the requisite belief for the purposes of s 126(2A) of the Act to remain on the property and require a sample of breath under Reg 6.

[28] The minority (Bell and Gaegler JJ) recognised an implied licence can be invoked by police officer, however considered the limit of such a licence is

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28 Kiefel CJ at [11] and Keanne and Edelman JJ at [66].

29 (1984) 155 CLR 1.

30 At [14] per Kiefel CJ; at [68] per Keanne and Edelman JJ.

31 At [19].

exceeded if police have any conditional or unconditional intention of ordering the occupier to do anything.[32] Their Honours concluded that in that instance the police officer was a trespasser as he intended to take a sample of the appellant's breath when he entered the property and this exceeded the limits of the implied licence.

[29] In the end the most that can be taken from *Roy v O'Neill* for application here is that a licence will not be implied if police have entered (and I would add here remained) on the private premises for the sole purpose of exercising coercive powers. There was no indication on the facts that police intended to do anything more than remain to carry out their duties authorised by s 126(2A), (c)-(f), unless, as the appellant argued it could be said that compelling the appellant to give his name was outside of the scope of s 126(2A), was coercive power and therefore meant police were trespassers and not within the lawful execution of their duty.

[30] It is plain on the evidence before the Local Court, the police did not enter or remain on the premises for the purpose of utilising coercive powers, notwithstanding police repeatedly asked for the appellant's name. Police were permitted, and had well substantiated reasons to enter and 'remain at the place for such period, and take such reasonable actions as the member considers necessary' to fulfil any of the enumerated conditions in s 126(2A) (c)-(f), (c) and (d) being the most relevant, namely 'to verify the grounds of

32 At [34].

the members belief' and 'to ensure that, in the member's opinion, the danger no longer exists'. Section 134 of the *Police Administration Act* was utilised concurrently with s 126(2A) because police had reason to believe a person was in imminent danger or a domestic violence offence may have been committed and that the appellant may be able to assist with the enquiry does not in my view invalidate the otherwise lawful purpose for which police were in attendance. It is acknowledged s 134 does not of itself create any right to enter or remain on private premises. However the circumstances enlivened the conditions which permitted the police officer to require the appellant to give his name.

[31] Contrary to the appellant's proposition that police exceeded their power by compelling the appellant, or attempting to, give his name and were thus trespassing at the time of the assault, police were authorised to be present by s 126(2A) whether or not as part of their duties they then required a name. The pre-conditions to requiring a name under s 134 were made out.

[32] In as much as the appellant contends the Judge's time calculations were irrelevant, I disagree. The very short period police were present on the premises before the assault took place tended to support the prosecution case that police remained on the premises only to satisfy themselves and take such reasonable actions as permitted by s 126(2A).

[33] The appellant's case was more formally stated as follows:[33]

(a) The presumption of innocence means that the complainant is presumed not to be acting in the execution of his duty;

i. The Crown must prove beyond a reasonable doubt that he was;

ii. In order to do so they must prove beyond a reasonable doubt that he was acting lawfully;

iii. In the circumstances of this case this means that prosecution must prove beyond reasonable doubt that he was authorised by some power to be present on the premises and take the actions he did.

(b) Section 134 of the *Police Administration Act* does not, of itself, authorise entry onto or remaining on private premises, the words of the section are not sufficient to overcome the common law presumption against interference with common law rights;

i. That does not mean that s 134 can never be utilised on private premises, but only that another basis will be required to authorise the officer to be present on the premises at the time;

(c) The only basis advanced for police presence on the premises was s 126(2A) of the *Police Administration Act*.

(d) The issue was therefore whether in remaining at the premises and taking the action of purporting to compel the defendant to provide his name:

(i) The police officer considered that the defendant's name was necessary for one (or more) of the purposes contained in section 126(2A)(c) through (f); and

33 Submissions of the appellant at [20].

(ii) The police officers continued presence and action was reasonable for that for that same purpose(s).

(e) The evidence needs to establish both of (d) (i) and (ii) above and fails to establish either.

[34] It is accepted that it was for the prosecution to prove police were acting in the execution of their duty, although contrary to the appellant's submission that does not mean police are 'presumed' not to be acting in the execution of their duty. That language tends to raise the bar. There is no such presumption. It is simply that the prosecution must prove that particular element beyond a reasonable doubt. Further, there is no reason why s 126(2A) and s 134 cannot be seen as complementary powers when there is some overlap. It is surely to be expected that during the course of completing duties by way of satisfying themselves of the safety of all persons under s 126(2A), to verify their belief or prevent a breach of the peace or contravention of an order, police would concurrently require names of persons they were dealing with. This was especially so in circumstances where the information given to police described a serious set of facts.

Insufficiency of reasons

[35] The appellant contends the trial Judge's reasons were insufficient. What was said in *Sun Alliance v Massaud* can be adopted here:[34]

> The adequacy of the reasons will depend upon the circumstances of the case. But the reasons will, in my opinion be inadequate if:

34 [1989] VR 8; see also *R v Ricciardi* [2017] SASCFC 128, per Lovell J.

(a) The appeal court is unable to ascertain the reasoning upon which the decision is based; or

(b) Justice is not seen to have been done.

The two above stated criteria of inadequacy will frequently overlap. If the primary Judge does not sufficiently disclose his or her reasoning, the appeal court is denied the opportunity to detect error and the losing party is denied knowledge of why his or her case was rejected.

[36] The complaint is that the reasons did not disclose what inferences had been drawn from the evidence, nor did they disclose whether the prosecution had proven the elements of the charge. I have set out some of the Judge's reasoning above, primarily dealing with facts and conclusions the Judge plainly thought were important. There was little in the facts that was in dispute.

[37] The Judge clearly found Hommaragally had the lawful authority to ask the appellant's name.[35] It was obvious from the reasons the Judge concluded on the evidence that Hommaragally was acting within the course of his duties. The Judge also remarked, that on the basis of written submissions which had been provided since the hearing and before the decision which clarified the parties' positions, that police were lawfully on the premises by virtue of s 126(2A) and that they remained for only one minute and 36 seconds before the assault. The Judge expressly rejected the argument that the powers under s 126(2A) and s 134 are mutually exclusive and remarked: "It would be an unnecessary and unreasonable fettering of police power if in speaking to a

35 Transcript, *Police v Quaid Splinter*, 15 July 2021 at 4.

person about a particular incident such as a possible domestic violence offence a police officer could not ask that person his name until the police officer had established a reasonable belief that the person was involved or had information germane to that belief."[36]

[38] Further succinct reasons were given by the Judge for finding the charge proven beyond reasonable doubt which primarily focused on the reasonableness of the continued presence of police for the period of one minute and 35 seconds and asking the appellant's name within that time. The Judge also rejected an argument suggesting that because there was no risk to persons when police attended, they were no longer authorised to be present. The Judge noted that "the mere presence of police officers is a principal reason, in most circumstances why behaviour de-escalates".[37] The suggestion that police should not have made reasonable enquiries when the commotion had stopped cannot stand.

[39] There can be no doubt in either party's mind as to the reasons the Judge dismissed the charge.

[40] This ground is not made out.

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36 Transcript, *Police v Quaid Splinter*, 15 July 2021 at 5-6.

37 Transcript, *Police v Quaid Splinter*, 15 July 2021 at 6.

Reversal of the onus of proof

[41] The appellant contends the Judge did not address the elements to be proven by the prosecution but rather focused on rejecting the appellant's argument, reversing the onus of proof.

[42] It must be remembered that many if not all of the facts were agreed. In relation to the statement from the Judge that he "cannot find any support for this proposition", as illustrative of reversing the onus of proof, (that the appellant was the lawful occupier) a fair reading shows the Judge was primarily focused on a discussion of law. The Judge immediately after that statement explained that the powers under s 126(2A) and s 134 were not mutually exclusive. The Judge was discussing how he saw the legal framework, the facts largely spoke for themselves. Rejecting defence arguments is not reversing the onus of the proof. The Judge expressed in different ways why the defence arguments were rejected but that was largely to do with the construction of the sections of the Act. From my reading of the remarks it could not be said the Judge reversed the onus.

[43] This ground is not made out.

Verdict unreasonable and not supported by the evidence

[44] Much of the evidence is set out in the above summary. Much was uncontested. The assault itself was conceded. The legality of the entry to the premises was uncontested. The information police had received was that there was a domestic disturbance between a male and female and that

someone was trying to enter the premises and banging on the doors or windows. It was not contested that the time between Hommaragally entering the premises and being assaulted was one minute and 35 seconds.

[45] The time between asking the appellant his name and Hommaragally being assaulted was 57 seconds. The total time between Hommaragally entering the house for the second time and being assaulted was 14 seconds. Hommaragally had lawful authority to ask the appellant's name, both through s 126(2A)(c)-(f) read with s 134. It was found by the Local Court Judge, not unreasonably that Hommaragally was not given an opportunity to tell the appellant why he wanted his name as required by s 134(2) because the appellant ran away. There was no evidence of a lawful occupier, the appellant or others, asking police to leave the premises. There was no evidence the appellant was a lawful occupier. Although those points were discussed by the Local Court Judge, they were not germane to the ultimate decision which required construction of s 126(2A).

[46] This ground is not made out.

Error in the interpretation of s 126(2A)(c) through (f)

[47] As above, it is accepted as the appellant emphasizes that statutory intrusions into common law rights or civil liberties must be construed strictly. However, I do not see the error as asserted.

[48] The authorisation given to police to act in accordance with s 126(2A) of the Act does not exclude the authority given to police to request a person's

name under s 134. These are not mutually exclusive powers, but rather as the Crown argued on appeal, are complimentary. Both provisions are contained in Part VII of the Act which deals with police powers. If police are otherwise complying with s 126(2A)(c)-(f) as it was held that they were in this instance, then the fact a police officer has required a person to give their name in accordance with s 134 does not invalidate the lawfulness of their presence, provided their presence can be concurrently justified under s 126(2A). Requesting the name of the appellant did not magically turn police into trespassers as they were authorised under s 126(2A) to be and remain on the premises. Clearly the very brief enquiries made after the information that they were given justified their continued presence.

[49] There is much force in the argument made on behalf of the respondent that police were informed of a potentially dangerous situation. The appellant would be hard pressed to suggest that the circumstances as presented to police could be considered properly by them in order to assess whether any person was in danger in the under two minutes they were present. Police observed the appellant around the back door. He disappeared when he was asked his name. Given the information police acted upon, they could not be criticised for being suspicious and for continuing their enquiries of all persons concerning whether anyone was injured or whether a domestic violence offence had taken place.

[50] This ground is not made out.

[51] A courtesy letter will be sent to counsel with these reasons.

[52] The order is that the appeal is dismissed.
