**POLICE SEARCHES – WITHOUT WARRANT**

Where a police officer reasonably suspects that any of the prescribed circumstances for searching a vehicle without a warrant exist, s 31 *Police Powers and Responsibilities Act 2000* (‘*PPRA’*) authorizes a police officer to –

1. stop a vehicle;
2. detain a vehicle and the occupants of the vehicle; and
3. search a vehicle and anything in it for anything relevant to the circumstances for which the vehicle and its occupants are detained.

The prescribed circumstances for searching a vehicle without a warrant include that there is something in the vehicle that “may be an unlawful dangerous drug”: s 32(1)(c) *PPRA*.

Similar provisions apply for searching a person, without warrant (ss 29, 30 *PPRA*).

Reasonably suspects means suspects on grounds that are reasonable in the circumstances: Schedule 6 *PPRA*.

A police officer has power to require a person to stop a vehicle for a prescribed purpose (enforcing a transport Act; checking whether the person is complying with a transport Act; and to monitor or enforce a liquor provision (s 60 PPRA). The power to search under s 60 is only if for the purpose of monitoring or enforcing the liquor provision: s 60(4) *PPRA*.

***R v Swain* [2012] QSC 233** (Martin J)

* Application to exclude evidence obtained as a result of a vehicle search [1]
* Proceed on basis of written statements [2]
* Police were conducting foot patrols when they saw a car parked in a “police parking only” zone. The defendant was in the driver’s seat and was the only occupant of the vehicle [3]
* When police approached the vehicle, they saw S looking at them, and then looking away and he **seemed extremely agitated and nervous**. His **hands were shaking** and his **voice was breaking** and he had a discernable stutter. S’s voice was described by one of the officers as having an “amphetamine reverb” to it, and he had dried spittle in the corner of his mouth, which is often a sign someone is under the influence of a strong stimulant drug. It was also noted that there was a **high level of drug activity in the area** [4],[6]
* A search was undertaken of the vehicle and the applicant himself [5]
* Justice Martin, in finding that police were not entitled to engage s 31 of the PPRA to search either the Defendant or his vehicle [11]
* At [10] -

*“… the grounds upon which the suspicion was formed do not constitute grounds that were reasonable in the circumstances. The mere fact that someone is parked in a police parking area and that the person appears nervous is insufficient to ground a reasonable suspicion even if the area in which the car is parked is one which is known for having drug transactions occur. The additional material … upon analysis, could just as easily be indicia of a person who is nervous. A person who has parked his vehicle in a police parking only area may well become very nervous when approached by police. But that in itself does not give rise to a reasonable suspicion.”*

* An order was made excluding any evidence arising from the search [12]

***R v Versac* [2013] QSC 46**

* Applicant sought exclusion of evidence obtained during a search. Respondent ultimately concluded that the search was unlawful [2]
* Factors relevant in the exercise of the public policy discretion to exclude evidence [6]
* Nature of balancing exercise, as per *The Queen v Ireland* (1970) 126 CLR 321 at 335
* The Applicant had attended Southport Magistrates Court for a committal hearing. The Applicant was known to be a heroin user, and a police officer who had given evidence at the hearing observed the applicant in the precincts of the Court and based on his observations and knowledge of the Applicant, he suspected the Applicant may be under the influence of heroin [9]-[11]
* The Applicant was arrested. He was taken to the nearby watchhouse and when processed a set of car keys was taken by police. The applicant denied having a motor vehicle and stated that a friend had dropped him off at court. The police officer found his responses evasive and she suspected he was lying. She took possession of the keys [13]
* The suspicion was founded on his demeanour at the watchhouse, his possession of keys and his evasive answers [14]
* A decision was made to locate the car. There was some urgency in doing so, in case an associate had seen the arrest or learn of it and try to retrieve any drugs in the car. Police used the key to activate an electronic unlocking device [15]
* After the vehicle was located, it was searched without a warrant. Heroin was located [16]
* Once the car was located, there was no urgency necessitating an emergent search to prevent loss of evidence [18]
* An application for a post-search approval order was made 3 days later and granted on the basis that, having regard to the nature of the evidence found during the search, it was in the public interest to make the order. The order does not operate as a determination that the search was lawful [25]
* Police did not purport to exercise the power conferred by s 160 of the Act to conduct a search without a warrant in order to prevent loss of evidence [31]
* Neither officer had a concern that a brief delay might jeopardise the seizure of any drugs that were inside it. They simply thought they had authority to search the car without warrant [32]
* A warrant could have been obtained reasonably quickly if one had been sought [33]
* Only applied for post-search approval because they were directed to [34]
* Sections 31 and 32 [39]-[40]
* It was acknowledged by the Respondent, that the vehicle and its occupants were not detained [41]
* Consideration of discretionary factors [44]-[79]
* The unlawfulness of the search reflected a reckless disregard of the constraints imposed by law under s 31 [55]
* The unlawful search does not affect the cogency of the evidence [59]
* The evidence is vital to the successful prosecution of the applicant [61]
* The more serious the offence, the more likely it is that the public interest requires the admission of the evidence [62]
* The conduct involved a serious disregard of constraints upon the exercise of official power [72]
* The officer’s conduct has had no consequences for them. They have not been counselled. They have not acknowledged making a mistake in searching the car without a warrant. The officers were directed to make an application for post search authority and thought it was unnecessary [73]-[75]
* It would have been relatively easy to obtain a warrant without substantial delay [79]
* The principle that the Court should not admit the tainted fruits of unlawful conduct by law enforcement agencies, lest the administration of just be brought into disrepute, is engaged. So too is the need to deter unlawful conduct by those entrusted with powers of law enforcement in circumstances in which the unlawful conduct in this case apparently has been tolerated by those in higher authority [83]
* The unlawful search involved a reckless disregard by the officers of the extent of their powers. There was intrusion into a place which, in the circumstances, the law required a warrant to search [84]
* Convictions obtained by the aid of unlawful searches have the potential to suggest court approval being given to the unlawful conduct of those whose task it is to enforce the law. It has the potential to bring the administration of justice into disrepute [85]
* The public interest in bringing a wrong doer to justice is outweighed by the factors supporting the exclusion of evidence [86]

***R v Pohl* [2014] QSC 173**

* Officers entered the rear of the Wallaby Hotel, Mudgeeraba [2]
* Prior to that entry, there had been two hours of static surveillance from the hotel car park. Police had received a tip that Jones was to buy 2kg of ice that afternoon [3]
* As police entered, 3 males quickly left the bar. The three were pursued by officers. One of the officers remained at the hotel to check the CCTV. He identified Jones to be drinking with two other people. CCTV showed Jones had arrived in a Holden sedan, and the applicant had arrived in a white utility, and parked in the rear carpark [4]
* 3 men matching the description of those who fled the hotel were later spotted at Mudgeeraba Shopping Centre. Jones and the Applicant were arrested. Pat down searches were conducted and nothing was found on either man [5]
* The men were taken back to the Wallaby hotel and a search of the Holden Commodore was undertaken. No property was located in this search. A pat down search of a third man, located a clip seal bag of cannabis [6]
* A further pat down search of the Applicant located a key ring and two mobile phones. The Applicant said he had walked to the hotel, and that he was the owner of a black BMW. The police officer knew the Applicant had not walked to the hotel. Due to conflicting stories and the fact that no drugs were found in Jones’ possession, the officer formed the view that drugs were stored in the vehicle the Applicant had arrived in [7]
* Using the remote key, officers located and unlocked a white Holden Rodeo. Located inside the car was 32.861 grams of cocaine. The applicant was arrested [8]
* 3 days later an application for a post search approval order was heard, and approved by a Magistrate [9]
* Paddock (police officer) confirmed in evidence that the grounds upon which it was believed officers were executing an emergent search were enquiries considering after receiving an anonymous tip confirmed Jones had an extensive criminal and drug history and links to various OMCG. Officers saw the three men flee the hotel on CCTV footage. [10]
* The applicant sought to have the evidence of the cocaine excluded on the basis the search was unlawful [11]
* The applicant argued that the lack of search warrant and lack of consent meant the search was unlawful [12]
* The respondent eventually conceded that ss 29(1) and 31(3) did not authorize the search, and the parties agreed the matter was to be determined on the discretionary basis [13]
* Consider public policy grounds [14]-[16]
* Factors relevant to the exercise of the public policy discretion (as per *Versac* at [6]) [17]
* Police gave evidence they believed they were exercising the power conferred by s 160 PPRA – search to prevent loss of evidence [20]
* Police relied on links to OMCG and the possibility that members of the gang might retrieve the drugs prior to police arrival. Both officers conceded that other police officers could have been called to secure the scene [24]
* The evidence does not justified a conclusion that there was any property basis for a suspicion that evidence might be concealed or destroyed unless the place was immediately entered and searched. There were means available to secure the scene while a search warrant was obtained [25]
* Bespeaks a reckless disregard for the law [26]
* Cogency of the evidence is not affected by the unlawful search [27]
* The evidence obtained in the unlawful search is the only evidence for the alleged offence [28]
* Seriousness of the alleged offence supports the admission of the evidence [29]
* Police were not acting under a misapprehension but were disregarding the constraints placed on search powers [30]
* A warrant could have been obtained easily from the on-call magistrate, which is a factor favouring exclusion of the evidence [32]
* Despite the cogency of the evidence and the seriousness of the alleged offence, I have concluded that this is an appropriate case for the exercise of the discretion to exclude the evidence. The situation was not one where an emergent search was required to prevent disappearance of the evidence [33]

***R v Keen* [2015] QSC 7**

* Applicant and H were standing outside but near the rear of a blue Holden Barina motor vehicle. It was stationary at the rear of a service station, near the toilets [4]
* Police officers drove into the service station and identified themselves and asked the Applicant and H their names [5]
* SC Cameron returned to the car and conducted a name check and returned to the car and advised that it would be searched and the Applicant and H detained [6]
* Various drugs were located in the car [7]-[9]
* Earlier in the afternoon, SC Cameron had attended a briefing and was informed that the Applicant was a target of an operation involving covert surveillance, interception of telephone calls and text messages and their analysis. He was informed it was believed that the Applicant was intending to pick up drugs from the principal target of the operation and thereafter would be in possession of drugs [11]
* The plan was to make a traffic interception of the vehicle in which the Applicant was travelling [12]
* On the hearing of a voir dire in the present case, the prosecution would have borne the onus of proof on factual questions and the standard of proof would have been on the balance of probabilities [21]
* Were they occupants of the vehicle? [22]-[38]
* The applicant and H were not occupants because they were not inside the vehicle when SC Cameron approached it before the power to detain the vehicle and them was exercised [39]
* Because SC Cameron was directed to make the intercept, it was argued that he did not personally form the suspicion required to exercise the powers [41]
* I am satisfied that SC Cameron did exercise the powers personally [47]
* There were grounds that were reasonable in the circumstances (based on the briefing) for SC Cameron to reasonably suspect that there was something in the Barina that may have been a dangerous drug [57]
* The search was unlawful because it was not authorized by s 31 of the PPRA, because the applicant and H were not occupants of the vehicle when the power was exercised [58]
* The question that remains is whether the evidence obtained from the search should be excluded [61]
* Consideration of discretionary factors [65]-[72]
* In the circumstances of this case, the public interest in bringing a wrongdoer to justice and the factors favouring admission of the evidence outweigh the factors supporting its exclusion [74]

***R v Toon* [2015] QSC 117**

* Applicant for exclusion of evidence, namely items found in the search of a motor vehicle [1]
* Police were called to a disturbance at the Windmill Hotel in Mount Pleasant [2]
* A female with a laceration to her head answered the door. Police announced they were entering under the DFVPA. Some green leaf material and a used needle and syringe were on the kitchen table. The applicant was hiding in the bathroom and he was detained under the DFVPA and taken outside [3]
* He was wanted on a warrant. He tried to flee but was caught and placed under arrest in respect of the warrant. He was searched and various items, including car keys were found [4]
* Police used the car key to search for and find the car the keys related to in the motel car park. The constable only locked and unlocked it to identify the car [6]
* Officer S arrived at the hotel and used the keys to unlock the car. It was searched and various items were located, including 22.178 grams of methylamphetamine. 10 days later a post search approval order was obtained [8]
* Officer S testified that he conducted the search pursuant to s 31(3). That section did not empower the search because the vehicle had not, and was not, not detained. The prosecution accepts that the search was not lawful [9]
* Police claimed that the search undertaken without warrant needed to be conducted urgently in order to prevent loss of, or interference with, evidence [10]
* Consideration of the discretion [13]-[18]
* The importance of the evidence in the proceeding if self-evident [19]
* So too is the seriousness of the offending, it bespeaks of a commercial purpose [20]
* This is serious criminal behaviour which is an element favouring its admission [21]
* Considerations against allowing the unlawfully obtained evidence – it would have been simple to leave a police officer to guard the car while another went and secured a warrant. It is inevitable, in my view, if a search warrant had been applied for, it would have been granted [25]
* The ease with which the law could have been complied with in this case is not, as it seems to have been in Bunnings v Cross, a neutral consideration. It favours exclusion. “Given the ease with which police could have behaved lawfully, the Court ought be reluctant to signal that in such a situation the court will settle for such a lax approach to compliance with legislative requirements that bear upon the government’s interference with the property of citizenry”. [26]
* The officer’s error was reckless. It is not unreasonable to expect that police ought know the laws which regulate their own powers as police to search the property of citizens [28]
* The Court will not turn a blind eye to this level of ignorance in the exercise of police power in order to help perpetuate prosecution cases based on unlawfully obtained evidence [29]
* Also relevant was the fact the officer made an application for post search approval founded on another provision of the Act, without examining that provision [30]
* The evidence should be excluded [32]

***R v Barbaro & Anor* [2015] QSC 346**

* Applicants were charged with possessing methylamphetamine [1]
* The evidence was obtained as a result of search of vehicle by police [2]
* B was under surveillance by Queensland Police and wanted in connection with outstanding warrants. It was known that he was to attend Tweed Heads Police Station in NSW [3]
* Police went to Tweed Heads Station to see if B appeared, which he did [4]
* B travelled back across the border to Queensland, with P with him. B and P parked the car and got out of it. They were then apprehended at a restaurant. P was in possession of a set of car keys. Police officers accompanied P back to the subject vehicle [5]
* Officers used the keys to open the vehicle and proceeded to search it. They located 27.909 grams of methylamphetamine [6]
* P did not consent to the search of the vehicle [8]
* Both police officer believed they were entitled to search under ss 31 and 32. They relief on information they had about B and P’s involving in a criminal organization and drug trafficking. They didn’t believe it was necessary to seek post-search approval [9]
* The search was clearly not within the parameters of s 31 [10]
* Conceded by Counsel for the Respondent that the search was unlawful [11]
* The only question if the exercise of the discretion to allow or exclude unlawfully procured evidence on public policy grounds. Principles are summarized in *Pohl*, and *Versac* [12]
* This was not an emergent search. Nor was it a case where there was any risk of interference with the vehicle while a warrant for its search was obtained. The vehicle could have been guarded while a search warrant was sought from an appropriate issuing authority. The only reason for that not happening, it would seem, was F’s erroneous belief that the search was authorized under s 31 PPRA [15]
* Consideration of *Keen* and whether occupants standing outside the vehicle are occupants for the purpose of s 31. *Keen* concluded they were not [16]
* Neither B or P was an occupant of the vehicle when the search was undertaken and s 31 is not available. There was no consent to the search. There was no reason why a search warrant could not have been obtained [18]
* Circumstances are closely analogous to *Pohl*, and the unlawful search was a reckless disregard for the law [18]
* Cogency of the evidence should bear some weight towards it admission [19]
* It is the only evidence of the offence [20]
* The seriousness of the alleged offence, supports the admission of the evidence [21]
* There was no thought given to the need to obtain a warrant [22]
* There is no evidence to suggest that the search was encouraged or tolerated by those in higher authority in the police force [23]
* The law could have easily been complied with. The vehicle could have been secured intact, while a search warrant was obtained [24]
* In Keen, it was at least arguable that they were occupants of the vehicle [25]
* The present case is closer to *Versac*, *Toon* and *Pohl*. This is not a case where an emergent search was required to prevent the disappearance of evidence. A warrant could easily have been obtained and the law complied with. There is a clear public interest in protecting individuals from unlawful and unfair treatment [26]
* The evidence should be excluded [27]

***R v P & Anor* [2016] QSC 49**

***R v Purdon* [2016] QSC 128**

* The police officer was on patrol and drove past an address that he had previously been made aware of in relation to drug offences. As he drove past, he saw P leaving the address and entering a vehicle. He then turned around and followed P a short distance, before activating the emergency lights and intercepting the vehicle. As he did this, he observed P, in the passenger seat, move as though he was moving something around [6]
* The factual basis to purportedly reasonably ground the suspicion in that case was –
1. the Sergeant saw P leaving an address the Sergeant had previously been made aware of in relation to drug offences;
2. when following the vehicle with the emergency light activated, the driver in the forward vehicle turned to P, and P reacted by leaning forward, moving his arms around, as if moving something; and
3. after the vehicle had stopped, and the Sergeant was approaching the vehicle, he could see that P was fidgeting and placing something either on his body or under the front seat [19].
* Justice Henry indicated these were “surprisingly tenuous grounds to be relied on to justify this search” [20]
* His Honour stated (at [21]) –

*“The prospect that a person in a vehicle, at a time after police have commenced obvious steps to intercept it, may move in a way consistent with the person moving property within the vehicle hardly means anything illicit is occurring. There are a multitude of innocuous reasons why there may be such movement. Those reasons could involve innocuous movement of property that had no connection whatsoever to the fact that the police happened to be endeavouring to intercept the vehicle and, even if they do, may nonetheless have innocuous motivations, including, for example, concerns of modesty or embarrassment.”*

* His Honour further went on to state that the mere fact a police officer has been made aware of a residence in relation to drug offences, it not of itself, even when considered with the other bases, sufficient to anywhere near reasonably ground the suspicion. The information in relation to the property was so vague and tenuous that it could not be said to provide a factual basis to reasonably suspect that P had drugs on his person, or in the vehicle in which he was travelling [23]-[25].
* His Honour found that the search was unlawful and that the fruits of the search were unlawfully obtained [25]
* In going on to consider whether the public interest in the conviction and punishment of P, outweighed the undesirability of the court giving curial approval to an unlawful search, His Honour found that it did not (at [26] –[31]). Relevant considerations included that **it was not suggested that the possession (of 5 grams of methylamphetamine) was for a commercial purpose; there was a possibility P would not receive any actual imprisonment**; P appeared to only be a drug user; and the ease with which police could have lawfully intercepted the vehicle.

Definition of ***reasonable suspicion*** –

*R v Fuentes* [2012] QSC 288

*R v Bossley* [2012] QSC 292 at [14]

* Deals with issue of consent to search, and the reality of consent when permission is sought by a police officer (at [18])