

Case Note - [R v Duncan \[2025\] QCA 187](#)

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Facts: The appellant, Ms Duncan, was convicted after a judge-alone trial before Henry J in the Supreme Court at Cairns on 8 November 2024. She faced two counts: one of possessing a dangerous drug in excess of 2.0 grams, and one of possessing a dangerous drug. The trial proceeded on formal admissions following a pre-trial ruling that dismissed her application to exclude evidence obtained during a police search of her vehicle on 12 July 2023.

The appeal was brought against conviction, asserting that the primary judge erred in finding the police stop lawful under s 60 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA).

Police from the Major Organised Crime Squad (MOCS) had intelligence that a man named Kubler was travelling to Cairns from Brisbane in a utility vehicle with a camper attachment, suspected of transporting drugs. However, the description of the vehicle was vague. A photograph of Kubler was circulated to assist identification.

To locate and stop the suspect vehicle, the MOCS devised a plan using a Tactical Crime Squad (TCS) roadside interception site. The site was ostensibly established for random breath and licence testing (RBT), but its true operational purpose was to identify and intercept Kubler. Detectives positioned to the south of the site would radio to the TCS when a vehicle matching the description approached. That vehicle would then be stopped under the pretence of an RBT and licence check, allowing MOCS officers to identify Kubler and, if present, lawfully detain and search the vehicle under s 31 of the PPRA.

On 12 July 2023, Detective Johnson radioed to Senior Constable Querruel (TCS) that a suitable vehicle was approaching. Duncan was the driver, and Kubler was in the passenger seat. Upon identification, MOCS officers searched the vehicle and located dangerous drugs.

At trial, Duncan contended that the stop was unlawful because the "true purpose" was investigative, not one of the authorised purposes under s 60. If unlawful, the subsequent search and drug discovery would be tainted and inadmissible. The prosecution argued the stop was lawful, as the officers were simultaneously conducting legitimate RBT and licence checks.

Primary Judge's Findings: The pre-trial ruling found that the interception site had been lawfully established for licence and breath tests under s 60, even if the operation also served a broader investigative purpose. Police at the site were actually conducting breath tests and licence checks for each stopped vehicle, including Duncan's. The primary judge accepted that an investigative "ruse" existed but found that the concurrent

investigative purpose did not vitiate the statutory authority to stop vehicles for RBT and licence checks.

The judge concluded that Duncan's vehicle was lawfully stopped for an authorised purpose under s 60, and the ensuing search (after identification of Kubler) was valid under s 31.

Appeal Issues:

1. Whether the stopping of the appellant's vehicle was unlawful because the "true" or "substantial" purpose was investigative and not one authorised by s 60.
2. Whether the primary judge erred by failing to identify and apply the correct test for dual or improper purposes in the exercise of statutory power.

Court of Appeal Decision: The appeal was dismissed (Mullins P, Bond JA and Doyle JA).

Doyle JA (with whom Mullins P and Bond JA agreed, subject to minor additional reasons) held that:

Section 60 confers power to stop a vehicle for prescribed purposes such as licence checks or breath testing. The existence of a concurrent investigative motive does not necessarily render the exercise of that power unlawful. The relevant question is whether the illegitimate purpose was *causative*—that is, whether the vehicle would have been stopped "but for" the improper purpose (*Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285; *Thompson v Randwick Corporation* (1950) 81 CLR 87).

Where police act for multiple purposes, the exercise of power is invalid only if the substantial (or causative) purpose falls outside the scope of the statute.

Applying this test, Doyle JA found that although there was a concurrent investigative purpose to identify Kubler, the evidence showed that:

The site was genuinely conducting RBT and licence checks on all vehicles. Duncan's vehicle would likely have been stopped regardless of the investigation. Senior Constable Querruel did perform a breath test and licence check before Kubler's presence was discovered.

While some officers described the RBT site as a "ruse", this was in the context of the broader MOCS strategy. The Tactical Crime Squad officer's conduct in stopping vehicles for RBT and licence checks remained within the lawful power of s 60.

Bond JA agreed, noting the primary judge did not correctly frame the causative-purpose test but that the misstep did not affect the outcome. On the evidence, it could not be concluded that the illegitimate investigative purpose was causative of the stop.

Finding: The appeal was dismissed. The Court of Appeal confirmed that the stop and subsequent search were lawful.

Notes for Practice:

Dual purposes and statutory power: An RBT or licence check conducted with a concurrent investigative motive does not necessarily invalidate the stop. The question is whether the improper purpose was *causative* of the exercise of power, would the stop have occurred without it?

Section 60 PPRA can lawfully operate alongside investigative aims if the authorised purpose (RBT/licence check) is genuinely pursued.

Key distinction: If police know in advance that the suspect is in the vehicle and stop solely to investigate or search, the power under s 60 would not apply.

Practical takeaway: Defence practitioners should probe the “true purpose” and causation chain when challenging police powers. Evidence of genuine RBT or licence checks, even amid broader investigations, will likely sustain lawfulness.

The decision endorses *R v Kola* (2002) 83 SASR 477 and *R v Owens* [2025] SASCA 96, while distinguishing *R v Davis* [2023] QSC 112 (which emphasised “dominant purpose”). The Court preferred a “causative” or “substantial purpose” test over “dominant purpose”.

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