The Queen v Cant [2001] NTSC 38

PARTIES:	THE QUEEN
	v
	CRAIG CANT
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	9900592
DELIVERED:	25 May 2001
HEARING DATES:	20-24, 28-30 November 2000, 1, 4-8, 12-15, 18-19, 21-22 December 2000, 9 March 2001
JUDGMENT OF:	THOMAS J

CATCHWORDS:
CRIMINAL LAW – EVIDENCE

Application under section 26L of the Evidence Act 1939 (NT) – admissibility of evidence at trial – search warrant – admissibility of items seized during searches

Police Administration Act 1978 (NT), s 117, s 118, s 120, s 120B(1)(b), s 120B(1)(c)(ii), s 120B(1)(d)(i), (ii) and (iii), s 120B(5), s 120B(6) and s 120B(7), s 120BA(7)(a), s 120BA(7)(d) and s 120C(c)

Tran Nominees Pty Ltd v Scheffler (1986) 20 A Crim R 287; *George v Rockett* (1990) 170 CLR 104; *Carbone v National Crime Authority* (1994) 52 FCR 516; *R v Swaffield; Pavic v The Queen* (1998) 192 CLR 159; *A'Beckett v Commissioner of Taxation* (1959) 104 CLR 508; *Wrotesley v Adams* (1558) 1 Plowd 187 [75 ER 287]; *R v Adams* [1980] 1 All ER 473; *Larsson v Commissioner of Police (NSW)* (1988) 40 A Crim R 301, referred to

REPRESENTATION:
Counsel:

Applicant:	D Dalrymple
Respondent:	J Lawrence & M Hassall

Solicitors:

Applicant:	Dalrymple & Associates
Respondent:	Commonwealth Director of Public Prosecutions

Judgment category classification:	C
Judgment ID Number:	tho200112 (ruling on search warrant)
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Cant [2001] NTSC 38
No. 9900592

BETWEEN:

THE QUEEN

AND:

CRAIG CANT

CORAM: THOMAS J

REASONS FOR RULING

(Delivered 25 May 2001)

[1] This matter is a hearing pursuant to s 26L of the Evidence Act 1939 (NT).

Mr Cant has entered a plea of not guilty to a charge that:

> "Between about 25 November 1998 and about 29 December 1998 at Darwin in the Northern Territory of Australia was knowingly concerned in the importation into Australia of a prohibited import to which section 233B of the Customs Act 1901 applies, namely, narcotic goods consisting of a quantity of 3, 4 methylenedioxymeth-amphetamine ('MDMA'), being not less than the commercial quantity of MDMA.
>
> Contrary to paragraph 233B(1)(d) of the Customs Act 1901"

[2] On 6 January 1999, officers of the Northern Territory Police Force attended at 21 Cocos Grove Durack and seized certain items.

[3] On 7 January 1999, a number of police officers returned to the premises at 21 Cocos Grove Durack and seized further items.

[4] The defence challenge the admissibility of the items seized during searches at 21 Cocos Grove Durack on 6 and 7 January 1999 on the trial of Mr Cant.

[5] The grounds on which the defence challenge the admissibility of these items that were seized are as follows:

> "1. There never was a warrant and there was no compliance with subsections 118(4), 118(5), 118(6) and 120B(6) of the *Police Administration Act*.
>
> 2. Even if capable of being deemed a valid warrant in the absence of the existence of an original warrant, the "copy of the warrant" produced by Detective Jordan was invalid on its face in that the authorisation to search was indiscriminately broad.
>
> 3. Even if the "copy of the warrant" produced by Detective Jordan was capable of being deemed a warrant valid on its face, the initial entry into the house by Police Officers other than the warrant holder was unlawful.
>
> 4. Even if the searching of other items at 21 Cocos Grove on 6/1/99 was lawful, the search of the accused's bumbag took place at the house was unlawful because the bumbag had been unlawfully seized on Carpentaria Street.
>
> 5. Even if the searching on 6/1/99 was lawful, the further searching on 7/1/99 was unlawful because:
>
> (a) the 6/1/99 warrant (if a valid warrant) expired the moment that 6/1/99 turned into 7/1/99;
>
> (b) the grounds relied upon at the time of the application for the search warrant for establishing a reasonable belief that there was a dangerous drug on the premises no longer existed by the end of the searching on 6/1/99;
>
> (c) even if the 6/1/99 "warrant" was valid on its "face" for the purposes of authorising a search to take place between the time of issue on 6/1/99 and midnight on 7/1/99, the further searching that took place on 7/1/99 was unlawful because the warrant permitted only a single search, not multiple searches;
>
> (d) even if the 6/1/99 "warrant" was valid on its "face" for the purposes of authorising a further search to take place on 7/1/99, the initial re-entry of the house at 21 Cocos

Grove on the morning of 7/1/99 was unlawful, having taken place in the absence of the warrant holder.

6. Regardless of the lawfulness of searching that took place on 6/1/99 and 7/1/99, the seizure of any items by Australian Customs Officer Esther Ray was not authorised under s.120BA because at the material time she was not "a member of the Police Force".

7. Regardless of the lawfulness of searching that took place on 6/1/99 and 7/1/99, the seizure of the three mobile phones from the bumbag was not authorised by subs. 120BA(d) because the phones were not things "found in the possession of a person as the result of a search" (because by the time of the search at 21 Cocos Grove they were no longer in the possession of the Accused).

8. Regardless of the lawfulness of searching that took place on 6/1/99 and 7/1/99, the seizure of the following items was not authorised by subs. 120BA(d), either because the seizing officer held no suspicion that the item seized was evidence of an offence against the *Misuse of Drugs Act* or because any such suspicion in respect of the seized item was not a suspicion on reasonable grounds:

   (a) the three mobile phones – CC/PB(2), W14:

   (b) 3 receipts (including 2 Ron Parr receipts – CC/PB(5), W17;

   (c) telephone account documentation seized by Passmore – CC/MP(19), W43;

   (d) telephone account documentation seized by Croker – CC/CC(23), W7 and CC/CC(24), W8;

   (e) telephone account documentation seized by Jordan – CC/RJ(26), W3;

   (f) Budget hire agreement seized by Ray – CC/ER(31), W29;

   (g) telephone account documentation seized by Ray – CC/ER(32), W31;

   (sic)(g) Budget refund receipt seized by McMaster (on 7/1/99 – CC/KM(1)

   (h) Bigfoot receipt seized by Jordan (on 7/1/99) – CC/RJ(3), W5;

   (i) telephone account documentation and Silk vehicle authority seized by McDonagh (on 7/1/99) – CC/GM(8), W27."

[6] I will deal with these in order:

Ground 1. There never was a warrant and there was no compliance with subsections 118(4), 118(5), 118(6) and 120B(6) of the Police Administration Act 1978 (NT).

[7] Copy of the search warrant on which the Crown rely was tendered and marked Exhibit W1.

[8] The evidence relating to the issuing of the Search Warrant was given by Detective Jordan and Justice of the Peace, Mr Des Feeney.

[9] Detective Jordan is a Detective Senior Constable in the Northern Territory Police Force. In January 1999, Detective Jordan was with the Drug Enforcement Unit.

[10] On Tuesday 6 January 1999, Detective Jordan made application for a search warrant following a conversation he had with Detective Oldfield at the Berrimah Police Complex.

[11] The evidence in this matter is that Detective Jordan contacted a Justice of the Peace, Mr Des Feeney, shortly after 7.00 pm on 6 January 1999. Detective Jordan advised Mr Feeney that police had apprehended a person in Halls Creek, they located a quantity of ecstasy and had information that there was more ecstasy at 21 Cocos Grove Durack in the Northern Territory. When asked why he contacted Mr Feeney, Detective Jordan replied that "He's a known JP. We've used him before. He is easily contacted. He's reliable." Mr Feeney authorised the warrant to be issued. Detective Jordan

gave evidence that the power he was operating under was s 120 of the Police Administration Act. He explained that the warrant under s 120B of the Police Administration Act is a pro forma and a standard document on the computer (t/p 223). Detective Jordan printed the form from the computer. He filled in his own name on this form before contacting Mr Feeney. Detective Jordan inserted the dates, the time it was issued, Mr Feeney's name, the expiry date and that it was a telephone warrant. The time of the application to Mr Feeney was shortly after 7.00 pm. It was this document that Detective Jordan used when the search warrant was executed at 21 Cocos Grove Durack.

[12] Detective Jordan gave evidence that on the warrant (Exhibit W1) his writing is in blue, he wrote 7 January, he initialled the change of year from 1998 to 1999 and wrote: "- 7.03 … afternoon …. 6th January 1999. Issued by Desmond John Feeney…per telephone".

[13] Detective Jordan gave evidence that when he made the telephone application he explained to Mr Feeney that he would like to apply for a search warrant, gave his own name and made an application on oath for a warrant to search the premises at 21 Cocos Grove. Detective Jordan said he inserted the name of Des Feeney on the form of the warrant and told Mr Feeney the grounds for applying for the warrant.

[14] Detective Jordan gave further evidence that he informed Mr Feeney about the start of the operation (being Operation Caelum) which was the operation

concerning police surveillance of Mr Cant and observations of heroin dealing by Mr Godbier.

[15] In cross examination, Detective Jordan agreed that his conversation with Mr Feeney took two or three minutes.

[16] Detective Jordan confirmed evidence given at the committal that when he telephoned Mr Feeney he explained he was applying for a warrant. Mr Feeney had replied "okay, tell me what it is about". Detective Jordan then indicated the nature of the information he had and what he wanted to do. Mr Feeney had replied "yeah, that's fine". Detective Jordan gave evidence that the original warrant, being the document to be completed by the Justice of the Peace had not been forwarded to the Commissioner of Police. The warrant which was Exhibit W1 was shown to Detective Jordan in re-examination. Detective Jordan stated he had taken this document to Mr Feeney on 7 January after they had completed the search. Mr Feeney had looked at it and signed it. Detective Jordan had retained the warrant. It is Detective Jordan's evidence that he understood this was complying with the requirement to forward the warrant to the Commissioner of Police as it was being handed to him as the Commissioner's representative.

[17] Detective Jordan gave further evidence that later that evening of 6 January 1999, he searched the premises at 21 Cocos Grove Durack under the authority of the warrant and certain items were seized.

[18] Mr Feeney gave evidence that he is a Justice of the Peace and has held that position for 21 years. Mr Feeney gave evidence that his usual practice with telephone warrants is to make a record of the name of the police officer who is making the application, notes the time and date the application was made, administers the oath, makes a note of the offence alleged and record of the grounds upon which he relies in support of his application. Mr Feeney said he then ascertains if the officer has previously applied for a warrant and been refused or declined. Mr Feeney said he then considers the application and if he is satisfied on reasonable grounds then he will issue the warrant and make a note of the time. Mr Feeney states he will make a record as he is hearing the grounds for the application. If he grants the application he keeps the record. If he is at home the record is kept in a storeroom downstairs. If he is at work he places the record in his briefcase and eventually takes them home to store in the storeroom with the others.

[19] It is Mr Feeney's evidence that he receives an average of five applications for warrant each week and approximately once a month there will be an application for a search warrant by telephone from a member of the Drug Squad. Generally the police officer involved will attend on him one or two days later with the warrant that has been executed and Mr Feeney will sign it. Mr Feeney gave evidence that normally he asks the police officer to bring around two copies so that he will have a copy. The original is signed and returned to the police officer. Mr Feeney had no specific recollection of this warrant. Mr Feeney stated the record he made of information provided

to him on the telephone by Detective Jordan had been lost. Mr Feeney identified his signature on the copy of the warrant (Exhibit W1) which was signed by him after the warrant had been executed.

[20] Mr Feeney gave evidence he had searched through the boxes in his storeroom for his records in relation to this warrant but was unable to find his copy of this warrant. Mr Feeney said he can only conclude that it was in a box that his wife had thrown out when she was spring cleaning.

[21] Mr Feeney was cross examined as to his knowledge of the requirements of s 120B of the Police Administration Act which deals with the requirements when a search warrant is issued.

[22] Mr Feeney agreed that what is required in that section is that he, as the Justice of the Peace to whom the application is made, creates a warrant document at the time of considering the application and if he decides to grant the application then the document he has created is the warrant. Mr Feeney also agreed that s 120B requires the officer who makes application for the warrant to create a document which is a duplicate and accurately reflects the original warrant created by the Justice of the Peace.

[23] Mr Feeney also agreed that to comply with subsection 120B(6) he as Justice of the Peace is required to forward to the Police Commissioner the original warrant being the document created by the Justice of the Peace within seven days of its issue.

[24] Mr Feeney stated that although he now understands that is the correct procedure at the time he authorised the search warrant, he believed when the police officer brought his document around to him and Mr Feeney signed it, then he had discharged his obligation.

[25] Under cross examination it was put to Mr Feeney the evidence given by Detective Jordan as to what was said and done at the time of applying for the search warrant. Mr Feeney stated that in broad terms this was a description of the sort of conversation that takes place in relation to telephone applications for search warrants. It is Mr Feeney's evidence that it is most unlikely he would not administer the oath over the telephone before receiving the information as to the reason for the application for a search warrant. Mr Feeney stated it is his practice, on every occasion there is an application for a telephone warrant, to ask questions. Also under cross examination Mr Feeney was asked about the words appearing on the search warrant Exhibit W1 "…. am satisfied that there are reasonable grounds for believing that there is on or in that land a dangerous drug". Mr Feeney gave evidence it his understanding that the "belief" which is there referred to as "the belief of the officer who's making the application". Mr Feeney was then asked these questions in cross examination (t/p 705):

> "And is the situation that provided you're satisfied that that officer making the application to you honestly and reasonably holds that belief that you will then issue the warrant?---Yes, issue the warrant to that officer to execute, yeah.
>
> Yes. So essentially after hearing what the officer has to say, you – and being satisfied that he believes that, and perhaps asking some –

some further questions yourself, you would issue the warrant on – on that basis? On the basis of your satisfaction as to the existence of his belief?---Yes."

and in re-examination (t/p 706):

"Just on your satisfaction, Mr Feeney, which you've just been questioned about, your evidence in chief was that you were satisfied that the police officer had reasonable grounds?---Yes.

Do you understand the difference between being satisfied that the police officer had reasonable grounds and the police officer having a belief that he had reasonable grounds?---Yes.

Is it the former or the latter that you have to be satisfied about?---The former.

Have you got the warrant in front of you?---Yes.

And is says – has you name there, that's not your writing?---No it's not.

And what does it say directly after that?---'am satisfied that there are reasonable grounds for believing that there is on or in that land, a dangerous drug."

[26] Section 120B(1) of the Police Administration Act provides as follows:

"**120B. Search warrants**

(1) Where it is made to appear to a justice, by application on oath, that there are reasonable grounds for believing -

(a) that there is on or in land, an aircraft, vehicle or ship a dangerous drug;

(b) that a dangerous drug may be concealed on a person or on or in property in the immediate control of a person; or

(ba) that a dangerous drug may, within the next following 72 hours -

(i) be brought on or into land, an aircraft, vehicle or ship; or

(ii) be concealed on a person or on or in property in the immediate control of a person,

the justice may issue a warrant authorizing a member of the Police Force named in the warrant, with such assistance as the member thinks necessary, to search -

(c) in a case referred to in paragraph (a) or (ba)(i) -

(i) the land, aircraft, vehicle or ship;

(ii) any person found on or in the land, aircraft, vehicle or ship; and

(iii) any person who enters the land, aircraft, vehicle or ship while the search is in progress; and

(d) in a case referred to in paragraph (b) or (ba)(ii), or in respect of a person referred to in paragraph (c)(ii) or (iii) -

(i) the person;

(ii) the clothing worn by the person; or

(iii) the property in the immediate control of the person."

[27] I have come to the conclusion that this requires the Justice of the Peace to create a document which is the original warrant.

[28] Subsection (6) and (7) of s 120B, clearly infer that such a document has been created by the justice at the time the warrant is issued.

[29] Subsections 120B(6) and (7) provide as follows:

> "(6) Where a warrant is issued as the result of an action taken under or in pursuance of subsection (4), the justice issuing it shall send it to the Commissioner within 7 days after it is issued.
>
> (7) Where it is necessary for a member to satisfy a person that a warrant under this section was issued authorizing the member to conduct a search and, for reasonable cause, the member cannot, at the time of the search, produce the warrant, the member may produce a copy of the warrant completed and endorsed in accordance with subsection (8) and the production of the copy shall be deemed to be a production of the warrant."

[30] This procedure was not followed as no document was created which could be regarded as the original warrant. This flaw in the procedure for obtaining the search warrant is exacerbated by the fact that Mr Feeney has no memory

of what was said to him at the time this warrant issued and such record as he would have made of the information that was given to him at the time, has since been lost.

[31] In addition it would appear that subsection 120B(6) of the Police Administration Act was not complied with as Mr Feeney did not forward the warrant to the Commissioner of Police within seven days of its issuing. I do not consider that it is sufficient compliance with this section that Detective Jordan retained a copy of the warrant as he stated in evidence as "the representative of the Commissioner". The requirements of subsection 120B(6) are clear on its face and it is the responsibility of the justice to forward the original warrant to the Commissioner of Police.

[32] I accept the submission of Mr Dalrymple that there are numerous authorities which stress an established principle governing the interpretation of statutory provisions relating to the issue of search warrants being a principle that dictates:

- that the wording of procedural requirements concerning the issue and execution of search warrants is to be construed strictly; and
- in the case of ambiguity, the ambiguity is to be resolved in favour of the citizen whose privacy and property were interfered with as a result of the proposed search taking place.

[33] In the matter of *Tran Nominees Pty Ltd v Scheffler* (1986) 20 A Crim R 287

Jacobs J at 294:

> "…. There is, I think, no doubt about the guiding principles. The issue and execution of a warrant to enter, or to search and seize, or both, represents an invasion of the liberty of the subject, which was jealously protected by the common law, and the need for protection against abuse or unauthorised invasion is still a guiding principle when the authority to enter or search or seize is derived from statute: the Court will construe such statutes strictly, resolving any ambiguity in favour of the subject, and insist upon strict compliance with the statute and the conditions upon which the warrant is authorised: *Inland Revenue Commissioners; Ex parte Rossminster Ltd* [1980] 2 WLR 1; *Crowley v Murphy* (1981) 52 FLR 123 per Lockhart J at 141 – 142. …"

[34] In *George v Rockett* (1990) 170 CLR 104 at 110-111:

> "A search warrant thus authorises an invasion of premises without the consent of persons in lawful possession or occupation thereof. The validity of such a warrant is necessarily dependent upon the fulfilment of the conditions governing its issue. In prescribing conditions governing the issue of search warrants, the legislature has sought to balance the need for an effective criminal justice system against the need to protect the individual from arbitrary invasions of his privacy and property. Search warrants facilitate the gathering of evidence against, and the apprehension and conviction of, those who have broken the criminal law. In enacting s. 679, the legislature has given primacy to the public interest in the effective administration of criminal justice over the private right of the individual to enjoy his privacy and property. The common law has long been jealous of the prima facie immunity from seizure of papers and possessions: see Holdsworth, *A History of English Law*, vol. 10 (1938), pp. 668 – 672. Except in the case of a warrant issued for the purpose of searching a place for stolen goods, the common law refused to countenance the issue of search warrants at all and refused to permit a constable or government official to enter private property without the permission of the occupier: *Leach v Money; Entick v Carrington*. Historically, the justification for these limitations on the power of entry and search was based on the rights of private property: *Entick*. In modern times, the justification has shifted increasingly to the protection of privacy: see Feldman, *The Law Relating to Entry, Search and Seizure* (1986), pp. 1-2.

> State and Commonwealth statutes have made many exceptions to the common law position, and s 679 is a far-reaching one. Nevertheless, in construing and applying such statutes, it needs to be kept in mind that they authorize the invasion of interests which the common law has always valued highly and which, through the writ of trespass, it went to great lengths to protect. Against that background, the enactment of conditions which must be fulfilled before a search warrant can be lawfully issued and executed is to be seen as a reflection of the legislature's concern to give a measure of protection to these interests. To insist on strict compliance with the statutory conditions governing the issue of search warrants is simply to give effect to the purpose of the legislation. …."

[35] In *Carbone v National Crime Authority* (1994) 52 FCR 516 Hill J at 521:

> "In my opinion, however, a warrant must be strictly construed. If the NCA, albeit inadvertently and through typing error, describes documents in a way which is ambiguous in the sense that the person to whom the warrant is addressed could read it either in one way or another, then if the warrant is capable of being read in a way adverse to the NCA, the NCA must bear the consequences."

[36] In this case Mr Feeney has no independent recollection of the circumstances of the authorisation of the search warrant applied for on 6 January and the record of the information he was given at the time has been lost.

[37] I have also had regard to the effect of the High Court decision in *R v Swaffield; Pavic v The Queen* (1998) 192 CLR 159 and the overlap between "the fairness discretion" and "the public policy discretion" to exclude evidence which was discussed by Brennan CJ at 175 to 183 and Toohey, Gaudron and Gummow JJ at 189 – 198.

[38] Kirby J at 212 – 213 set out a checklist of matters to be considered under the public policy discretion:

"In *Bunning v Cross*, Stephen and Aickin JJ outlined some of the relevant considerations. One of them was the nature of the offence charged. Also commonly mentioned has been the probative value of the evidence, and its importance in the proceedings. The remaining considerations which Stephen and Aickin JJ listed were:

> (i) whether the conduct was deliberate, or resulted from a mistake;
>
> (ii) whether the nature of the conduct affected the cogency of the evidence so obtained;
>
> (iii) the ease with which those responsible might have complied with the law in procuring the evidence in question; and
>
> (iv) the legislative intention (if any) in relation to the law that is said to have been infringed.

To the foregoing, Mason CJ, Deane and Dawson JJ in *Ridgeway* added an additional consideration:

> (v) 'whether such conduct is encouraged or tolerated by those in higher authority in the police force or, in the case of illegal conduct, by those responsible for the institution of criminal proceedings.'

For my part, I would add two further considerations to this non-exhaustive list, namely;

> (vi) whether the conduct, if proved in court, would involve the court itself in giving, or appearing to give, effect to illegality or impropriety in a way that would be incompatible with the functions of a court, or such, or which might damage the repute and integrity of the judicial process; and
>
> (vii) whether the conduct would be contrary to, or inconsistent with, a right of the individual which should be regarded as fundamental."

[39] I do take into account the nature of the offence. The evidence as to the items seized in the course of the search has considerable probative value and is important in the proceedings.

[40] Dealing with each of the other criteria as it applies to the case before this Court, I find as follows:

1) I am satisfied the errors which occurred that affect the validity of the warrant were the result of mistake and a lack of understanding of the requirements of s 120B of the Police Administration Act by the Justice of the Peace who authorised the warrant.

2) This did not affect the cogency of the evidence obtained.

3) The requirements of s 120B of the Police Administration Act could have been complied with without difficulty.

4) The intention of the legislation is to protect citizens from an arbitrary or unlawful search by police officers.

5) The fact that the Justice of the Peace and to a lesser extent the police officer who obtained the warrant had such a fundamental lack of understanding of the requirements of the Police Administration Act is of concern. I am not able to find that it is conduct either encouraged or tolerated by those in higher authority in the Police Force. For future reference I suggest that the Reasons for Ruling in this matter be drawn to the attention of the Commissioner of Police.

6) This Court does not condone a failure to comply with the requirements of the Police Administration Act. It does, however, recognise that the failure on the part of the Justice of the Peace to create an original warrant does not mean the police officers who participated in the search acted improperly. I am satisfied that

Detective Jordan genuinely believed he had obtained a properly authorised search warrant and that belief was shared by other officers who participated in the search.

7) The fact that the search warrant was technically flawed does not in my opinion affect Mr Cant's rights. I am satisfied the application for a search warrant was properly made. I accept as true and correct the evidence given by Detective Jordan as to the information he gave to Mr Feeney when making application for a warrant. I accept that there were reasonable grounds provided by Detective Jordan to the Justice of the Peace for the Justice of the Peace to be satisfied there were reasonable grounds for believing that there were dangerous drugs on the land the subject of the application. I find that both the Justice of the Peace and Detective Jordan genuinely believed they had complied with the requirements of the Act. Section 120B does not place any requirement on the Justice of the Peace to retain details of the information which formed the reasons for him to issue a warrant or to forward such information with the original warrant to the Commissioner of Police. Accordingly, Mr Cant has not lost any statutory right as he would have if the search warrant was issued pursuant to s 118 of the Police Administration Act.

[41] In considering all of the evidence and submissions on this issue, I have come to the conclusion that s 117 and s 118 are not applicable in this case. Section 120B falls within a separate Division from the earlier sections

dealing with search warrants. Section 120B falls within Division 2A of Part VII – police powers under the Police Administration Act. Division 2A has specific provisions relating to Dangerous Drugs and Kava. Section 120B dealing with search warrants relating to Dangerous Drugs stands alone and does not include the same requirements as are provided in s 118.

[42] In my opinion, s 120B places a requirement on the Justice of the Peace to create a document at the time he authorises a search warrant. This document is the original warrant. Subsections 120B(6) and 120B(7) make it clear that there is a requirement on the Justice of the Peace to create and sign an original search warrant.

[43] This did not occur and I agree with the submission made by Mr Dalrymple that the warrant is technically invalid because no original warrant ever issued. I also agree that there was a failure to comply with subsection 120B(6).

[44] I then turn to whether in the exercise of my discretion I should exclude or allow the evidence obtained pursuant to the purported warrant. I have decided that the evidence should not be excluded.

[45] Essentially I accept the evidence given by Detective Jordan as to the information given to the Justice of the Peace. I accept that this information was sufficient to satisfy the Justice of the Peace that there were reasonable grounds for believing that there were dangerous drugs on the land the subject of the application. I accept the Justice of the Peace advised

Detective Jordan by telephone that the application for a warrant would be granted and that the following day the Justice of the Peace signed the warrant document created by Detective Jordan. I accept that this document (Exhibit W1) was in the terms authorised by the Justice of the Peace by telephone on 6 January 1999.

[46] I am satisfied Detective Jordan and the other police officers conducted the search pursuant to what they genuinely believed to be a properly authorised search warrant.

[47] Under this ground I exercise my discretion in favour of admitting the items seized under this warrant on the trial of Mr Cant.

Ground 2. Even if capable of being deemed a valid warrant in the absence of the existence of an original warrant, the "copy of the warrant" produced by Detective Jordan was invalid on its face in that the authorisation to search was indiscriminately broad.

[48] The warrant specified the property to be searched and stated the Justice who authorised the warrant was satisfied there were reasonable grounds for believing that on this land there was a dangerous drug and authorised a search of the following:

(a) The land;

(b) Any person found on or in the land;

(c) Any person who enters the land while the search is in progress;

(d) The clothing worn by a person referred to in paragraph (b) or (c); or

(e) The property in the immediate control of a person referred to in paragraph (b) or (c);

(f) To use such reasonable force as is necessary to break into, enter and search the land to be searched;

(g) To use such reasonable force as is necessary to open any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, found on or in the land;

(h) To use such reasonable force as is necessary to carry out a search of any person found on or in the land, or who enters the land, while a search is in progress;

(i) If necessary, to direct a person referred to in paragraphs (b) and (c) to remain on or in the land, for as long as is reasonably required for the purposes of the search of the land, or of the person; and

(j) To do or perform such other acts as the Police Administration Act permits.

[49] I am satisfied Mr Feeney had reasonable grounds for believing that there was on the subject land a dangerous drug.

[50] On the face of the warrant I am not persuaded it is indiscriminately broad. The warrant does incorporate the provision of s 120B of the Police

Administration Act and is reflective of the extended powers given to police officers under the provisions of Division 2A of Part VII of the Police Administration Act. There is no ambiguity in any of the provisions of the warrant. The fact that it is on a form generated by the computer does not mean it is indiscriminately broad in the circumstances of this case.

[51] The power of seizure of items is not contained in the warrant. The power of seizure is pursuant to s 120BA of the Police Administration Act.

[52] I would not exclude the evidence of items seized during the search on the basis that the warrant is indiscriminately broad.

Ground 3. Even if the "copy of the warrant" produced by Detective Jordan was capable of being deemed a warrant valid on its face, the initial entry into the house by police officers, other than the warrant holder, was unlawful.

[53] The submission by Mr Dalrymple on this issue combine matters of fact and law. It is the submission on behalf of the defence that police officers entered the house at 21 Cocos Grove Durack prior to the arrival of the warrant holder at the boundary of the premises. The alternate position of the defence is that police officers entered the house at 21 Cocos Grove and conducted a brief search just after the warrant holder and the accused had arrived at the boundary of the premises, and while they were still standing in the front yard.

[54] On either of these scenarios the defendant submits that the initial entry into the house at 21 Cocos Grove was unlawful and this unlawful entry so taints

and infects the searching that took place afterwards that all evidence derived from that searching should be rejected.

[55] I make the following findings of fact relevant to this submission:

[56] At 7.03 pm on 6 January 1999, Detective Jordan obtained a telephone authorisation from Justice of the Peace, Desmond Feeney, to search the premises at 21 Cocos Grove Durack. A briefing was then held involving the police officers who were to attend these premises at which methodology was discussed and roles assigned. From the police perspective they were dealing with a person whom they believed was involved in serious drug offences and implicated in the distribution of a large amount of drugs. Police officers proceeded toward 21 Cocos Grove in a convoy of vehicles. Mr Cant was observed on a bicycle accompanied by his son and apprehended by Detective Jordan who was accompanied by Detective Senior Detective Blanch. Detective Jordan showed the warrant (Exhibit W1) to Mr Cant and he and Detective Blanch then accompanied Mr Cant and his son back to 21 Cocos Grove. A map of the streets in that area including Cocos Grove was tendered and marked Exhibit W13. Marked on this with the letter H is the position of 21 Cocos Grove and with an X the position on Carpentaria Court where Detective Blanch states Mr Cant and his son were seen on their bicycles and spoken to by Constables Jordan and Blanch. Other police officers gave evidence of observing Mr Cant and his son either on their bicycles or as they were walking back toward 21 Cocos Grove in the company of Detective Jordan and Detective Blanch. There is some variation

in the evidence as to the position where Mr Cant was when he was apprehended by police. On all the evidence, estimates of the distance from the point of apprehension to 21 Cocos Grove vary from between 150 to 300 metres. I accept the submission made by Mr Dalrymple that the preponderance of the evidence is that Mr Cant was stopped at the position marked X on the map (Exhibit W13) and that this was approximately 200 metres from 21 Cocos Grove. Mr Cant then walked with Constables Jordan and Blanch back to 21 Cocos Grove whilst other police officers proceeded by motor vehicle to this address.

[57] There is a variation on the evidence as to the time it took for Mr Cant to walk back to 21 Cocos Grove. The maximum estimate was given by Mr Cant who stated it took about three minutes (t/p 833). I am not able to make a finding as to the exact time it took for Mr Cant to walk to his home after he had been apprehended other than to be confident it was no more than approximately three minutes.

[58] From all the evidence I find that police did enter the house at 21 Cocos Grove prior to Mr Cant. There is evidence an alarm was triggered when the house was first entered. I find that Detective Oldfield first entered the house through a sliding door at the side of the house after he observed Mr Cant accompanied by Detectives Jordan and Blanch arrive at the front yard of the subject premises. Detective Oldfield was followed into the house by Detective Leo. Other police officers including Detective Sergeant Davern, Detective Senior Constable McDonagh, Detective Scott and Special

Constable Doherty also entered the house very shortly before Mr Cant. Constable Doherty entered the house shortly behind Detective Oldfield and Detective Leo. At this time Mr Cant had arrived at the front yard of the premises. Mr Cant and his son entered through the front door in the company of Detective Blanch and Detective Jordan. Detective Scott and Superintendent Waite conducted a search along the carport area and out to the rear yard.

[59] The warrant holder Detective Jordan was not the first to enter the premises. However, I consider the provisions of s 120B(1) which provides that:

> ". . . the justice may issue a warrant authorising a member of the Police Force named in the warrant, with such assistance as the members think necessary . . ."

enables another officer to enter the premises prior to the warrant holder.

[60] There is no statutory requirement that the accused be in the premises when police enter premises pursuant to a warrant.

[61] Police officers are given guidance as to how to proceed by Police General Order 18 (Exhibit W49) which states:

> "18.2 Police when executing a Search Warrant should where practicable, first demand admittance to the premises. Where entry is denied, only force which is necessary in the circumstances should be used to effect entry.
>
> 18.3 Where practicable, the owner or occupier of the premises should be present when premises are searched under the authority of a Search Warrant. The owner or occupier shall, where practicable and appropriate be provided with a copy of the relevant search warrant prior to the commencement of any search."

[62] On all of the evidence I am not able to find exactly how many police officers were in the house at 21 Cocos Grove when Mr Cant entered the house. I am satisfied there were a number of police in the house who had entered the house marginally ahead of Mr Cant, that is within one to three minutes prior to Mr Cant entering. The police officers who were in the house had been informed at a prior briefing that a warrant had been obtained authorising a search of the premises. They were aware Detective Jordan was the officer who obtained the warrant and that Mr Cant was in the company of Detective Jordan from the time of his apprehension until he arrived at the house. Mr Cant had been shown the copy of the warrant and read it. It was not suggested in cross examination of the police officers that they had entered the house prior to Mr Cant for the purpose of planting evidence or for some other improper purpose. Detective Sergeant Carter (t/p 730-736), Superintendent Waite (t/p 770 – 773) and Detective Oldfield (t/p 713), have all given reasons why it is not unusual for investigating police to enter premises before the warrant holder or the suspect. In summary, these reasons are for the security of the investigating officers, to maintain the integrity of the premises and ensure that evidence of drugs is not disposed of.

[63] Mr Dalrymple, for the defence, made submissions as to the significance of the manner in which police stopped the police vehicle to apprehend Mr Cant. Mr Cant states it was dangerous. Mr Cant may well have been surprised at being apprehended as he was cycling along the road and in retrospect

considered it was a dangerous action by the police. I am not persuaded this perception of the police actions in their manner of driving is based upon objective evidence.

[64] Neither do I place any significance on the difference between the evidence of Mr Cant and that of Detective Scott with respect to the keys (item 15 in the Search Warrant booklet). Detective Scott gave evidence (t/p 605) that when searching the backyard he located a small garden shed that was locked. He went inside and asked Mr Cant for the keys to the shed. Mr Cant was in the lounge room near the dining room table. Detective Davern, the exhibits officer, was sitting at the end of the table and Mr Cant was on his immediate left. Mr Cant produced the keys from the top surface of a wooden cupboard which was to Mr Cant's right against the lounge room wall. It is Detective Scott's evidence that he went to the garden shed and found a key from the set given to him by Mr Cant to unlock the garden shed. Detective Scott also gave evidence that one of the keys on the set of keys given him by Mr Cant opened the car in the carport.

[65] Under cross examination Detective Scott gave evidence (t/p 620) that it was at about a quarter to nine in the evening that he went to get the keys to the shed. Detective Scott identified photograph 40 (Exhibit W28) as being a photo of the wooden cupboard from the top of which Mr Cant had obtained the keys. It is Detective Scott's evidence that later that evening another key was produced to him, he cannot remember by whom, being the key to the pinball machine.

[66] Under cross examination Detective Scott denied that Mr Cant had obtained the keys to the garden shed from a bowl on the kitchen bench. Detective Scott stated the keys came from the top of the wooden cabinet trunk depicted in photo 36 (Exhibit W28). I note that photos 36 and 40 in Exhibit W28 depict the same wooden cabinet.

[67] I accept the evidence of Detective Scott as to how he obtained the keys to the garden shed and the motor vehicle in the carport owned by Mr Cant. I prefer the evidence of Detective Scott to the evidence given by Mr Cant on this issue.

[68] Counsel for the defence submits that if the keys had been left in the bowl where the accused said they had been placed when he left the house, it would have been easy for any police officer to pick them up, open the outside shed and enter the shed placing traces of MDMA in the cylinders. The officer could then have locked the shed and returned the keys to the bowl, prior to the formal seizure, resulting in the recording of item 15 in the Search Warrant booklet. It is the defence submission that a similar exercise could have taken place in relation to the vehicle and items of evidence placed in the car before the formal search at a later time, after the formal "seizure" of the keys. I do not accept this submission.

[69] I am not persuaded there is any evidence to support the suspicion Mr Cant has expressed as to possible police conduct.

[70] I agree there may be circumstances in which the entry of police into premises prior to an accused person could give rise to an unfairness because of the potential opportunity to plant evidence. I do not consider there are any circumstances about the conduct and manner of this particular search that gives rise to such an unfairness.

[71] I am not persuaded that the police entry into the premises was unlawful or that there was anything relating to the entry or the manner of the search that would justify an exercise of a discretion to exclude evidence as to the items seized on the basis of an unfairness to the accused or on the grounds of public policy.

Ground 4. Even if the searching of other items at 21 Cocos Grove on 6 January 1999 was lawful, the search of the accused's bumbag that took place at the house was unlawful because the bumbag had been unlawfully seized on Carpentaria Street.

[72] It is the evidence of Detective Blanch (t/p 508 - 509) that he was with Detective Jordan driving toward 21 Cocos Grove Durack when they observed Mr Cant travelling by bicycle outbound on Carpentaria Street. Mr Cant was stopped on the side of the road. Detective Blanch and Detective Jordan approached Mr Cant. Detective Jordan showed Mr Cant the warrant to search his premises and asked Mr Cant to accompany police back to his home at 21 Cocos Grove. Mr Cant agreed. Before they left Detective Blanch asked Mr Cant for his bumbag and Mr Cant took it off and handed it to Detective Blanch. Detective Blanch gave evidence that he carried the

bumbag back to the residence which was to be searched. Detective Blanch stated he asked for the bumbag because he thought Mr Cant may have been carrying drugs in the bumbag and also for health and safety reasons in that there may have been weapons or firearms in it. This evidence contrasts with the evidence of Detective Jordan who states the bumbag was searched at the roadside, the evidence of Mr Cant who stated that Detective Blanch did not search the bumbag but did open it up and look inside it and Detective Davern who supports the evidence of Detective Blanch that Detective Blanch took possession of the bumbag but did not open it until after they arrived at the premises 21 Cocos Grove.

[73] I prefer the evidence of Detective Blanch and Detective Davern that Detective Blanch obtained the bumbag from Mr Cant but did not attempt to open it or search it until after they arrived at Mr Cant's premises 21 Cocos Grove.

[74] I am satisfied that Detective Blanch was authorised to seize the bumbag pursuant to s 120BA(d) of the Police Administration Act which provides as follows:

> "(d) a thing found in the possession of a person as the result of a search, being a thing that the member suspects, on reasonable grounds, is evidence of the commission of an offence against the Misuse of Drugs Act;"

[75] I do not accept the submission by counsel for the defence that it was not seized as the "result of a search" because the bumbag was clearly visible to

Detective Blanch as he approached Mr Cant. In the context of this provision search can be an observation of an object about the suspect person.

[76] I would also agree with the submission by Mr Lawrence, counsel for the Crown, that in all the circumstances including the reasons for obtaining the search warrant of which Detective Blanch was well aware the seizure of the bumbag was authorised under s 120C(c) of the Police Administration Act, which provides:

> "S.120C A member of the Police Force may stop and search, and detain for the purposes of that search –
>
> ……
>
> (c) a person in a public place if the member has reasonable grounds to suspect that the person has in his or her possession, or is in any way conveying, a dangerous drug."

[77] I am satisfied that the exhibiting of the bag and its contents in the house was legal and provided for in the search warrant (Exhibit W1) - see s 120B(1)(b), (c)(iii), (d)(i), (ii) and (iii). I conclude that a member of the Police Force was entitled to seize the bumbag and its contents pursuant to s 120BA(a) and (d).

Ground 5. Even if the searching on 6 January 1999 was lawful, the further searching on 7 January 1999 was unlawful because:

(a) the 6 January 1999 warrant (if a valid warrant) expired the moment that 6 January 1999 turned into 7 January 1999.

[78] The Crown submission is that the authority granted by this warrant embraces and includes the whole of 7 January 1999, thus expiring at midnight on 7 January 1999.

[79] The defence submission is that the authority terminates the moment that 6 January 1999 turns into 7 January 1999.

[80] Both counsel are in agreement that there is no authority on this point. Mr Dalrymple referred to a decision of *A`Beckett v Commissioner of Taxation* (1959) 104 CLR 508 at 515.

[81] In this matter Windeyer J referred to a passage in Plowden's report of *Wrotesley v Adams* (1558) 1 Plowd 187 [75 ER 287] which drew a parallel between the expiration of a legal estate and the death of a man. I did not consider this authority of great assistance. The following words do appear in the report "… so the word expiration being applied to an estate for years, may aptly enough signify the end of it, whatever way it be" which applied to this case I would interpret to mean at the expiration or end of 7 January 1999. However, I do not rely on this authority to come to that conclusion. In my own research I was not able to find the answer in any legal text on statutory interpretation or search warrants. I was not able to find any other authority and neither counsel were able to put forward any further authority to support their respective argument.

[82] My own interpretation as to the natural meaning of the words "The authority granted by this warrant expires on the 7th day of January 1999" is that it expires at midnight on 7 January 1999.

Ground 5. Even if the searching on 6 January 1999 was lawful, the further searching on 7 January 1999 was unlawful because:

(b) the grounds relied upon at the time of the application for the search warrant for establishing a reasonable belief that there was a dangerous drug on the premises no longer existed by the end of the searching on 6 January 1999.

[83] Mr Dalrymple on behalf of the defence submits that at the end of searching on the night of 6 January 1999, police knew there was no significant quantity of ecstasy tablets secreted at 21 Cocos Grove and the focus of their searching and investigation shifted to seeking evidence to support their belief that a large quantity of ecstasy tablets had recently been in the cylinders and in the bedroom. It is the submission of counsel for the defence this was not the same belief that was relied upon when application was made for the search warrant on 6 January 1999.

[84] I do not accept this submission. There is evidence that police made a decision to return to the premises at 21 Cocos Grove the following morning when visibility would be better. There was a belief in the part of police officers that dangerous drugs specifically ecstasy could be found on the premises at 21 Cocos Grove. I accept the evidence given by Detective Leo (t/p 781)

"See, what was it that you were looking for on the 7th?---On the 7th?

Yes?---We were continuing the search from the 6th because of the daylight. We were looking for the same thing in the daylight hours because we could see the yard and have a better idea of where to search and a better view of what to search in the daylight hours.

Well, you weren't looking for tablets in the cylinders, were you, because the cylinders by that stage were already back at the DEU office?---Yes.

Right. So you certainly weren't looking for those tablets?---There may have been tablets in any other location around the yard or the house."

[85] The evidence of Detective Leo is supported to some extent by the evidence of Detective Jordan who gave evidence (t/p 231 – 232):

"When did the search of the premises end that evening?---About half past 11.

And why did it end then?---Because we wanted to search the grounds and we wanted to continue on the next day. It was getting dark. It was too dark to search the grounds."

[86] Detective Jordan also gave evidence that guards were left at the crime scene because they wanted to continue the search the next day.

Ground 5. Even if the searching on 6 January 1999 was lawful, the further searching on 7 January 1999 was unlawful because:

(c) even if the 6 January 1999 "warrant" was valid on its "face" for the purposes of authorising a search to take place between the time of issue on 6 January 1999 and midnight on 7 January 1999, the further searching that took place on 7 January 1999 was unlawful because the warrant permitted only a single search, not multiple searches;

[87] On the back of the search warrant Detective Jordan has written the words "warrant executed 2017 hrs 6/1/99". He then signed his name and added his police number.

[88] The submission on behalf of the defence is that in the absence of express words in both the empowering statute and in the warrant itself to the contrary, once a search warrant is "executed" the authority granted under the warrant is exhausted and any further searching must be authorised under a fresh warrant. Mr Dalrymple referred to the decision in *R v Adams* [1980] 1 All ER 473 in which the English Court of Appeal discussed this issue and determined that whether a warrant could be re-executed was to be determined from the particular terms of the relevant statute. In *Larsson v Commissioner of Police for NSW* (1988) 40 A Crim R 301 Smart J considered the issue and held that a search warrant ceases to have effect when it is executed. This required a consideration of s 20 of the New South Wales Search Warrants Act 1985 (NSW). Section 120B of the Police Administration Act has no similar provision. Subsection (5) of s 120B of the Police Administration Act of the Northern Territory does state:

> "(5) A warrant issued under this section shall remain in force for such period as the justice issuing it specifies in the warrant."

[89] The search commenced at 8.17 pm on 6 January 1999 and continued until shortly after 11.00 pm. A decision was made to abandon the search and to return the next day when the search could be concluded in daylight. I accept the evidence given by Detective Jordan that the search the following day, 7 January 1999, was made pursuant to the same warrant which Detective Jordan believed did not expire till midnight on 7 January 1999.

[90] Retired police officer Thomas Davern gave evidence that at the premises Detective Jordan after showing the search warrant to Mr Cant, had handed the search warrant to Mr Davern who was the designated exhibits officer. Mr Davern identified Exhibit W1 as being the search warrant. I accept Mr Davern's evidence that this is the search warrant he handed to Constable Dunn who with Constable Evans arrived at 21 Cocos Grove to act as guard on the premises till the search resumed the following day. I also accept the evidence of Detective Leo that she spoke with Mr Cant at about 8.15 am on 7 January 1999 in the cells at the Peter McAulay Centre. This conversation was conducted in the presence of Detective Jordan. I accept the evidence of Detective Leo that she advised Mr Cant the search of the premises at 21 Cocos Grove was resuming that morning and asked if he wished to accompany police officers back to the premises for the resumption of the search. Mr Cant declined the invitation.

[91] I am satisfied on the evidence that when police officers returned to 21 Cocos Grove they were still of the belief that drugs could be found on the premises. I have also concluded that the warrant (Exhibit W1) had not expired at the time police conducted a search of the premises at 21 Cocos Grove on 7 January 1999.

[92] I have concluded that the warrant (Exhibit W1) covered the resumption of the search on 7 January 1999 being a continuation of the search commenced on 6 January 1999.

Ground 5. Even if the searching on 6 January 1999 was lawful, the further searching on 7 January 1999 was unlawful because:

(d) even if the 6 January 1999 "warrant" was valid on its "face" for the purposes of authorising a further search to take place on 7 January 1999, the initial re-entry of the house at 21 Cocos Grove on the morning of 7 January 1999 was unlawful, having taken place in the absence of the warrant holder.

[93] Detective Jordan who is the officer referred to as the warrant holder organised other members to assist him in the search of premises 21 Cocos Grove on 7 January 1999. Detective Jordan personally returned to the house and participated in the search. Detective Jordan made arrangements for forensic officers to vacuum the carpets in Mr Cant's bedroom for the purpose of obtaining the residue of any ecstasy from the carpet. Detective Jordan arrived at the premises in company with Detective Leo. The two officers who had been on guard duty were present as were other officers of the drug squad.

[94] The warrant (Exhibit W1) authorises Detective Jordan "with such assistance as you think necessary to search". The evidence is that Mr Davern had handed the warrant to one of the two police officers mounting guard overnight, to retain, until the search resumed.

[95] I am not persuaded that the search conducted on 7 January was unlawful because other police officers entered the house prior to the arrival of Detective Jordan.

6. Regardless of the lawfulness of searching that took place on 6 January 1999 and 7 January 1999, the seizure of any items by

Australian Customs Officer Esther Ray was not authorised under s 120BA because at the material time she was not "a member of the Police Force".

[96] The evidence is that Esther Ray is an experienced Customs Officer who has attended many drug squad search warrant executions with her sniffer dog. Ms Ray holds the position of Level 1 in the Customs Service and is the detector dog handler. Under a formal arrangement, Ms Ray works in liaison with the Drug Enforcement Unit of the Northern Territory. Ms Ray gave evidence that whenever she found something she considered may be relevant she brought it to the attention of the warrant holder to decide if it was relevant or not. I accept that the items seized by Ms Ray were only done so after she had drawn them to the attention of an officer of the drug squad who decided they should be seized and that she then handed these items to the designated exhibits officer.

[97] In these circumstances I do not consider the seizures by Customs Officer Ray to be unlawful.

7. Regardless of the lawfulness of searching that took place on 6 January 1999 and 7 January 1999, the seizure of the three mobile phones from the bumbag was not authorised by subs. 120BA(d) because the phones were not things "found in the possession of a person as the result of a search" (because by the time of the search at 21 Cocos Grove they were no longer in the possession of the Accused).

[98] It is the submission on behalf of the defence that when the bumbag was searched it was no longer in the accused's possession and the seizure could

not be justified pursuant to s 120BA(d). I do not accept this submission. I consider the seizure was legal under s 120BA(d) which provides as follows:

> "120BA A member of the Police Force may seize –
>
> ……
>
> (d) a thing found in the possession of a person as the result of a search, being a thing that the member suspects on reasonable grounds, is evidence of the commission of an offence against the Misuse of Drugs Act."

[99] The three mobile telephones were for the purpose of s 120BA(d) "things found in the possession of a person (Mr Cant) as the result of a search."

8. Regardless of the lawfulness of searching that took place on 6 January 1999 and 7 January 1999, the seizure of the following items was not authorised by subs. 120BA(d), either because the seizing officer held no suspicion that the item seized was evidence of an offence against the *Misuse of Drugs Act* or because any such suspicion in respect of the seized item was not a suspicion on reasonable grounds:

(a) The three mobile phones – CC/PB(2), Exhibit W14.

[100] Detective Blanch gave evidence (t/p 510) that he seized the three mobile phones because in his experience people who carry three mobile phones, or one mobile phone with multiple sim cards, are drug dealers. Detective Blanch did not check if any of the mobile phones had sim cards in them (t/p 528). Initially, Detective Blanch gave evidence that three mobile phones is very extraordinary. He subsequently modified this to unusual and stated he seized them so they could be downloaded for any numbers and so that the sim cards could be checked for the investigation. Detective Blanch agreed he did not have information that these particular phones may be of

any evidentiary significance because at the time he did not know their phone numbers. Under cross examination Detective Blanch gave evidence that he was not aware at the time of seizing the mobile phones that Mr Cant was involved in placing bets on horse races with bookmakers throughout the country.

[101] I accept the evidence of Detective Blanch that it is unusual for one person to be in possession of three mobile phones and that in his experience persons who carry three mobile phones or one mobile phone and multiple sim cards are drug dealers. Based on this experience I accept that Detective Blanch did have a suspicion, on reasonable grounds that the mobile phones were evidence of an offence against the Misuse of Drugs Act. I would rule the tender of these items admissible on the trial of Mr Cant.

(b) Three receipts (including 2 Ron Parr receipts – CC/PB(5), Exhibit W17.

[102] Detective Blanch gave evidence that he seized the receipts so that the detectives handling the case could look at them to see if they were related to drug activities. I agree with Mr Dalrymple that this evidence does not indicate a suspicion under s 120BA(d) of the Police Administration Act. Detective Blanch gave further evidence that the receipts were two receipts from a dentist Mr Ron Parr. Detective Blanch gave further evidence that Mr Parr is an associate of Mr Cant and there has been intelligence regarding activities with drugs.

[103] On the basis of this further evidence, I accept that Detective Blanch did have a suspicion on reasonable grounds that this was evidence in the commission of an offence against the Misuse of Drugs Act. I would allow the tender of this evidence on the trial of Mr Cant.

(c) Telephone account documentation seized by Detective Passmore – CC/MP(19), Exhibit W43.

[104] Detective Passmore gave evidence that the telephone records were seized because they itemise numbers that have been called from a particular telephone, the length of the call, the time and the date and are often used to corroborate other evidence that is being gathered to identify possible co-offenders. Under cross examination Detective Passmore was referred to one of the documents being a Vodafone connection agreement with a telephone bill attached in the name of Michael Cant with a customer address of Unit 12 Grand Apartments and a billing address of 21 Cocos Grove Durack. Detective Passmore gave evidence that in his experience people involved in criminal activity carry one or more telephones, not usually connected in their name but the service is used by them. Detective Passmore stated that he believed at that time Mr Cant was involved in a criminal activity namely the possession of ecstasy. Detective Passmore said he also had information Mr Cant was a drug dealer and it was standard practise to seize recent telephone accounts to establish possible co-offenders and corroborate other information that may be found. Detective Passmore denied that it was a fishing expedition. The other document is a One Tel company application or

connection agreement form followed by telephone billing for that service. The application form is in the name Anthony Silk, 4 Jarvis Street, Malak. There is no reference to 21 Cocos Grove. There is reference to Craig Cant in the credit reference details. Detective Passmore gave evidence that this belief was that Mr Cant was in the possession of ecstasy. This ecstasy must have been obtained from somewhere. The telephone records may identify the person from whom he obtained the drugs. Such telephone calls can stretch over a considerable time whilst arrangements are set up between supplier and recipient. I accept the evidence of Detective Passmore and am satisfied he had a suspicion based on reasonable grounds that the telephone account documents was evidence of the commission of an offence against the Misuse of Drugs Act. I would allow the tender of this documentation on the trial of Mr Cant.

(d) Telephone account documentation seized by Detective Croker – CC/CC(23), Exhibit W7 and CC/CC(24), Exhibit W8.

[105] The exhibit marked W7 is a mobile phone account in the name of M. Cant. Exhibit marked W8 is a mobile phone account in the name of A. Silk. Under cross examination Detective Croker stated he seized the phone bill (Exhibit W7) because to his knowledge Mr Cant was using a number of mobile phones and the phone number on the account, Detective Croker thought was one of the numbers Mr Cant was using. Detective Croker stated he could not remember the source of the information but on the night of 6 January 1999 he had information that related to this phone number.

Detective Croker gave evidence that he seized this phone account because it may have offered evidence in relation to illicit drugs. It may have afforded evidence of a particular phone call made to a particular point on a particular date which may afford evidence in further investigations. Detective Croker gave similar evidence in respect of his reasons for seizing the phone account in the name of Anthony Silk (Exhibit W8). Detective Croker gave evidence that he had investigated another person whom he suspected was involved in the illicit drug industry in Darwin and established from reverse calls from his phone that he was contacting Mr Cant. It is Detective Croker's evidence that police had cause to believe that the ecstasy tablets seized in Western Australia came from 21 Cocos Grove and that information obtained from these references to telephones located at 21 Cocos Grove may provide evidentiary value in the case.

[106] Detective Croker was not clear in his evidence as to where he had obtained the information that Mr Cant had used these telephone numbers. However, I accept that as at the night of 6 January 1999, Detective Croker was of the belief that Mr Cant had used these telephone numbers in a way that may have been associated with illicit drug dealing. I am satisfied that Detective Croker had the requisite suspicion based on reasonable grounds that these telephone accounts as being evidence of the commission of an offence under the Misuse of Drugs Act. I would allow the tender of these accounts, being Exhibits W7 and W8, on the trial of Mr Cant.

(e) Telephone account documentation seized by Detective Jordan – CC/RJ(26), Exhibit W3.

[107] Detective Jordan gave evidence that telephone account (Exhibit W3) relates to number 0414 529831. Detective Jordan stated he seized the telephone account because the itemised account identifies possible customers or suppliers. Detective Jordan stated in cross examination that his power to seize this account was under s 120BA(d) of the Police Administration Act. Detective Jordan stated Mr Cant was a person known to him as the person Detective Jordan believed sold drugs and he also believed the telephone accounts which itemises phone calls may offer evidence as to Mr Cant's suppliers or customers. Detective Jordan gave further evidence that in his experience it is common for persons who sell drugs to use a telephone in the name of another person.

[108] With respect to the seizure of this account (Exhibit W3), I consider the requirements of s 120BA(d) of the Police Administration Act have been satisfied. I would allow the tender of this telephone account on the trial of Mr Cant.

(f) Budget hire agreement seized by Customs Officer Ray – CC/ER(31), Exhibit W29.

[109] Customs Officer Ray, gave evidence that every time she found anything she considered to be relevant she brought this to the attention of the warrant holder and let him make the decision whether it was relevant or not. Customs Officer Ray gave evidence she considered the hire car agreement

seemed a bit strange. Customs Officer Ray states that the hire agreement was in the name of the renters details, Mr Peter Godbier, at 21 Cocos Grove Durack. Ms Ray stated she would have shown the document to Detective Jordan and let him decide if it was relevant before she seized it.

[110] There is not sufficient evidence to establish the basis for seizure of this item pursuant to s 120BA(d) of the Police Administration Act and I rule that this item is not admissible on the trial of Mr Cant.

(g) Telephone account documentation seized by Customs Officer Ray – CC/ER(32), Exhibit W31.

[111] The evidence from Customs Officer Ray is similar to that set out under the previous item. I am not satisfied a basis for seizure has been established under s 120BA(d) of the Police Administration Act and I do not allow the tender of this item on the trial of Mr Cant.

(sic)(g) Budget refund receipt seized by Detective McMaster (on 7 January 1999 – CC/KM(1).

[112] Detective McMaster (Leo) was not able to positively identify this document as being one of the documents seized by her on 7 January 1999.

[113] I understand the tender of this document is not pressed by the Crown.

(h) Bigfoot receipt seized by Detective Jordan (on 7 January 1999) – CC/RJ(3), Exhibit W5.

[114] Detective Jordan gave evidence he seized this because the receipt was for $300. Detective Jordan considered this an excessive amount as Mr Cant did not have a job but the receipt demonstrated he had access to a lot of money for food and his customers may have been associated with the Bigfoot Restaurant.

[115] I do not consider this satisfies the requirement of s 120BA(d) of the Police Administration Act and I rule the receipt from the Bigfoot Restaurant (Exhibit W3) is not admissible on the trial of Mr Cant.

(i) Telephone account documentation and Silk vehicle authority seized by McDonagh (on 7 January 1999) – CC/GM(8), Exhibit W27.

[116] Detective McDonagh gave evidence that the vehicle authority may have been payment for unlawful drugs.

[117] The vehicle authority directs Mr Cant to deliver the vehicle to another person. The phonetic document is a record in respect of maintenance work carried out on a mobile phone being replacement of certain parts.

[118] Detective McDonagh gave evidence about his prior association with Mr Cant and his use of mobile phones. He gave further evidence concerning his suspicions. However, I do not consider that the evidence of Detective McDonagh's suspicions has been adequately connected to these two documents.

[119] Accordingly, I do not consider the requirements of s 120BA(d) of the Police Administration Act has been satisfied and I rule that these documents are not admissible on the trial of Mr Cant.

[120] With the exception of the specific items already referred to as being inadmissible on the trial of Mr Cant, I consider other items seized pursuant to search warrant Exhibit W1 are admissible on Mr Cant's trial.

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