SUPREME COURT OF QUEENSLAND

CITATION:	*R v N* [2015] QSC 91
PARTIES:	**R** (respondent) **v** **N** (accused/applicant)
FILE NO/S:	SC No 432 of 2014
DIVISION:	Trial Division
PROCEEDING:	Pre-Trial Hearing
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	17 April 2015
DELIVERED AT:	Brisbane
HEARING DATE:	27 January 2015
JUDGES:	Carmody CJ
ORDERS:	**1. The application for exclusion of the seized mobile phone, and any information or data contained or recorded in the mobile phone, is allowed.**
CATCHWORDS:	CRIMINAL LAW – EVIDENCE – PRE-TRIAL APPLICATION – EXCLUSION OF EVIDENCE ON PUBLIC POLICY GROUNDS – EMERGENT POLICE SEARCH AND SEIZURE – where applicant indicted for drug trafficking and supply – where applicant filed application under s 590AA for exclusion of mobile phone – where mobile phone obtained during emergent police search and seizure – whether emergent police search and seizure unlawful or improper – whether the mobile phone obtained through an unlawful search and seizure should be excluded on public policy grounds. *Evidence Act* 1995 (Cth) *Police Powers and Responsibilities Act* 2000 (Qld) *Ghani v Jones* [1969] 3 All ER 1700, considered *Goldie v Commonwealth of Australia* [2002] FCA 433; (2002) 117 FCR 566, considered *R v Pohl* [2014] QSC 173, considered *R v Rondo* [2001] NSWCCA 540, considered

COUNSEL:	P J Callaghan SC for the applicant G P Cash for the respondent
SOLICITORS:	Potts Lawyers for the applicant Office of the Director of Public Prosecutions for the respondent

[1] **THE CHIEF JUSTICE:** This is a contested pre-trial hearing of a s 590AA application for a ruling excluding iPhone data seized from the applicant (N) during a warrantless police search.

[2] The sole issue is whether or not the iPhone product is "the tainted fruit" of a poisoned tree (an illegal search) and, if so, should be excluded from the evidence pool as contrary to public policy.

The context

[3] N and a group of her friends were detained by police in a city hotel room for an emergent search "in regard to drugs" ostensibly under the provisions of s 160 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPR Act).

[4] The police were initially acting on a public nuisance complaint. They also had information suggesting drug use in the room but did not make a pre-search application to a magistrate for a warrant for reasons of convenience and resource efficiency.

[5] N was subjected to the indignity of a strip search by K which produced a negative result (the first search). K was just following orders and held no personal suspicions about N having drugs.

[6] Believing (wrongly) that drugs had been found elsewhere on the premises K proceeded to search N's handbag for any illicit items (the second search).

[7] She found $305.55 in cash and the iPhone.

[8] Suspecting that the money was drug proceeds K seized the iPhone to search its database for any sign of use in connection with drug dealing and presumably to preserve any evidentiary material (the third search).

[9] Incriminating text messages found during the third search are integral, indeed vital, to the prosecution case but counsel for N argues that the overall cost of using it against her in court outweighs its social benefits.

[10] The relevance of the challenged evidence makes it technically admissible. But it is liable to exclusion as contrary to public policy if seizing and searching the iPhone was not authorised (either by common law or statute).

Contemporary common law principles and policy

[11] Free societies have a deeply rooted aversion to needless State intervention and interference with individual freedoms and civil liberties. This is reflected in the tight rein kept by the common law on police search and seizure powers for criminal investigation purposes. Truth and justice cannot be pursued at all costs or by any

means. Democratic values such as personal integrity, privacy and private property rights, including possession and quite enjoyment, cannot always be sacrificed to meet law enforcement goals.

[12] The use of coercive and intrusive law enforcement power in Queensland is now largely, but not solely, regulated by the PPR Act.[1] Its stated purposes[2] include consolidating and rationalising police powers and responsibilities, supporting and facilitating modern policing, standardising the manner in which police power is exercised and ensuring fairness to, and protecting the rights of, affected persons.

[13] Pre-existing common law police powers or admissibility rules are not affected, including those relating to search and seizure.[3]

[14] While police can speak to anyone about anything, they cannot usually demand an answer, identification[4] or even compel assistance.[5]

[15] Nor is there any general power to search someone on the off chance of finding something incriminating with which to prosecute them. Involuntary searches "simply to see if he or she may have committed some crime or other"[6] are illegal.

[16] Thus, with limited exceptions, police have no right to search suspected persons, premises or papers without consent or a warrant authorising them to enter a stated place to find and recover specifically identified potential evidentiary material.

[17] A warrant is still generally expected in usual cases as a constraint on invasion of privacy or over intrusion.

[18] The warrant process acts as a safeguard in the "contest" between public authority and the security of private dwellings and property.[7]

[19] As Lord Denning MR noted in *Ghani v Jones*[8] a warrant to enter and search, including seize, tends to ensure that police power does not extend beyond its intended bounds by requiring: (1) specific and sufficient sworn evidence; (2) a mutually reasonable belief of both the informant and an independent legally qualified magistrate acting judicially; (3) enforceable conditions confining the scope of the authority; and (4) strict formalities and procedures assuring regularity, transparency and accountability.

[20] For generations, common law warrants were only available to recover stolen goods in larceny cases. They were not issued for other crimes – not even murder. Police were civilly liable for trespass if the property nominated in a warrant was not found where it was believed to be hidden, or if other items not mentioned in the warrant were removed without permission. What was initially a lawful entry became

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1 PPR Act, s11(1).
2 PPR Act, s 5(a) – (e).
3 PPR Act, ss 9-10.
4 This is subject to a few statutory exemptions: see ss 40-41 (relating to proof of identity), 397 PPR Act.
5 There may be a moral obligation to assist, but no legal duty: *Rice v Connolly* (1966) 2 QB 414; cf s 8(2) PPR Act.
6 *Ghani v Jones* at 706, 708-709; cf *GH Photography v McGarrigle* [1974] 2 NSWLR 635.
7 *Halliday v Nevill* (1984) 155 CLR 1, per Brennan J dissenting.
8 *Elias v Pasmore* [1969] 3 All ER 1700, 1704-1705

unlawful and actionable.[9] Overstaying an occupier's welcome has much the same legal effect even today.[10]

[21] Here both parties accept that the police entry and continuing presence was by invitation, or at best, not objected to, and thus lawful.[11]

[22] It is still the case that evidence outside the scope of a warrant authorising entry and search cannot be *lawfully* seized,[12] but it has been held in the UK that confiscation *may* be justified in cases where the evidence relates to the commission of *any* offence at all, even by a person other than the suspect.[13] It is doubtful, however, that there is such a broad based common law power in this country authorising police to take anything found in the possession or premises of a suspect implicating him or her in some other crime unrelated to the one for which they entered or he was arrested.[14]

[23] In fact, there is relatively modern Australian authority that police lawfully on premises cannot search them, their precincts or the person or property of an occupant before arrest merely on the basis of reasonable suspicion,[15] but these are inconsistent with Lord Denning's influential obiter dictum in *Ghani v Jones*[16] confirming a public interest-based judicial discretion to receive evidence of a technically illegal pre-arrest seizure, at least, in the case of lawful entry, where it was reasonably believed that the seized objects (a) provided evidence of a criminal offence, (b) were the proceeds of a crime committed by the occupier or (c) had been used as an instrument of a crime committed by the owner/occupier.

Warrantless searches in Queensland

[24] The PPR Act does little more than restate the pre-existing legal position in regard to warrants, but codifies warrantless procedures.

[25] Conducting personal searches without warrant is intended as a last resort, and where it would not be reasonably practicable for judicial authority to be obtained beforehand. Thus, if a warrant can realistically be applied for to conduct a search of private property, especially a dwelling, it usually should be.

[26] The statutory warrant process is found in Ch 7 of the PPR Act. Search warrant powers are set out in s 157. Warrantless searches are permitted under ss 29 and 160. Seizure and retention of evidentiary items is regulated by ss 29(2), 31(5) and 196 of the PPR Act. The nature and extent of the post-arrest power of search and seizure in ss 442-444 is not relevant here.

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9 *Entick v Carrington* (1765) 19 State Tr 1029 but this is no longer the case: see *Ghani v Jones*.

10 *Kuru v State of New South Wales* (2008) 236 CLR 1; *Plenty v Dillon* (1991) 171 CLR 635.

11 Sections19 and 52 *PPR* Act now allow police to enter and stay on premises for a reasonable time to perform any genuine policing function, including preventing a breach of the peace and criminal investigation in circumstances that would otherwise constitute a trespass . Section 196(2) PPR Act also permits warrantless seizure of suspected evidence of any offence, or if acting under a warrant, one that is not particularised.

12 *Chic Fashions (West Wales) Ltd v Jones* [1968] 2 QB 299.

13 [1934] 2 KB 164, 173.

14 cf *Tye v Commissioner of Police* (1995) 84 A Crim R 147.

15 *Levine v O'Keefe* [1930] VLR 70; *Challenge Plastics Pty Ltd v Collector of Customs* (1993) 43 FCR 396.

16 [1969] 3 All ER 1700, 1704-1705. *Ghani v Jones* was recently approved by the House of Lords in *Rottman v Commissioner of Police of the Metropolis* [2002] 2 All ER 865 (HC).

[27] Exercising the search and seizure powers in ss 157 and 196 of the PPR Act without a warrant is allowed by s 160(3) only if the conditions in ss 160(1) are met; that is to say, if a thing (the iPhone) at a place (N's bedroom) or in her possession or control (in her handbag) was reasonably suspected: (i) to be evidence of an indictable (e.g. drug) offence; (ii) was otherwise at risk of being destroyed or concealed; and (iii) a s 161(1) post-search approval order of a magistrate is applied for as soon as practicable after the event. This is the source of power K relied on to search N and her handbag.

[28] However, the prosecution relies on s 29, not s 160 of the PPR Act. It submits that, whether K knew it or not, and even if also acting lawfully pursuant to s 160 of the PPR Act, she was entitled to search N and anything in her possession without a warrant under s 29 of the PPR Act because, even though the police themselves believed that the requisite suspicion was lacking, there was actually information available "sufficient to induce a suspicion in the mind of a reasonable person"[17] that N had something that may be an unlawful dangerous drug (s 30(a)(ii)) or evidence of a serious drug offence at risk of being destroyed (s 30(a)(vii)). Another, possible and even arguably more apposite circumstance, at least insofar as the iPhone is concerned, was that it was potentially tainted (s 30(a)(v)).

[29] The legality of the iPhone seizure and search is to be tested in exactly the same way at common law and under both ss29 and 160 of the PPR Act; that is, by asking whether or not there were grounds capable of supporting a reasonable suspicion that the iPhone was the product or instrument, or would itself, or on scientific examination, provide evidence, of the commission of a suspected offence.[18]

The reasonableness requirement

[30] The reasonableness of K's actions is determined by reference to her actual state of mind at the time and not by what was found or happened afterwards. It does not depend on whether she personally thought at that time that her suspicions were reasonable but rather whether a reasonable person would be of that opinion having regard to the context and available information.

[31] Reasonableness (an antonym for arbitrariness) is an unruly, indeterminate but standard threshold test used throughout the common law world for distinguishing between when State agents may (and arguably should) intervene in private lives for the greater good and when they cannot. Although the requirement is a limited and indefinite one, it nevertheless acts as a practical safeguard against overly invasive investigative action and a workable meaning can be ascertained from the PPR Act and the decided cases.

[32] The term "reasonably suspects" is defined in schedule 6 of the PPR Act to mean "suspects on grounds that are reasonable in all the circumstances".

[33] Judges have described the notion of reasonableness as lying "somewhere on the spectrum between certainty and irrationality."[19] The concept denotes a degree of satisfaction at the lower end of that scale. It has subjective and objective aspects. To satisfy the criterion, a suspicion has to be honestly held and underpinned by

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17 *R v Bossley* [2012] QSC 292 at 15.

18 *Ghani v Jones* [1969] 3 All ER 1700; PPR Act, ss 29(2) 160(3), 196.

19 *Goldie v Commonwealth* (2002) 117 FCR 566, [5] per Grey and Lee JJ.

sufficiently credible facts and circumstances.[20] An unreasonable opinion, by contrast, lacks an intelligible justification,[21] or can only be explained on the basis of some misconception, bias or faulty reasoning.[22]

[34] A suspicion is an inference or positive feeling described as a "slight opinion without sufficient evidence".[23] It is more than a hunch or pure conjecture and cannot be legally reasonable if it is arbitrary, irrational or prejudiced or is not supported by a sufficiently firm factual foundation.[24]

[35] In forming a reasonable suspicion a police officer must, at least, at the time he or she conducts a search, act in good faith on information he or she bona fide believes to be true, even if it if it is only hearsay, such as an anonymous tip off, and later turns out to be false.[25]

[36] Whether a suspicion is reasonably open on the available information is a matter of logic, judgment and degree. All of the circumstances must be considered, including circumstances dependent on conflicting or contradictory considerations. If facts give rise to conflicting inferences of approximately equal probability and the choice between them is no more than a matter of idle speculation or imagination, the suspicion in question may not be reasonable. However, an authentic conclusion will not be unreasonable merely because different interpretations or impressions may be produced from the same set of facts.[26] Thus, the same body evidence may be capable of sustaining opposite but equally plausible and rational conclusions neither of which is demonstrably right nor manifestly wrong.

[37] Facts capable of grounding a reasonable *suspicion* may fall well short of supporting a reasonable *belief*[27] but be more cogent than those capable of meeting the benchmark expressed by "reason to suspect".[28]

[38] The more objectively unreasonable a suspicion is the less likely it is to be a genuine one. Moreover, a suspicion that is not grounded in fact to the point of being reasonable is no more reasonable because of a sense of urgency.[29]

[39] In *R v Rondo* Smart JA summarised the position thus:[30]

> (a) A reasonable suspicion involves less than a reasonable belief, but more than a possibility. There must be something, which would create in the mind of a reasonable person an apprehension or fear of one of the state of affairs covered by section 357E (the section at that time relating to the powers to stop search and detain). A reason to suspect that a fact exists is more than a reason to consider a look into the possibility of its existence.

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20 *R v Chorley* (2000) Tas SC 30, per Slicer J.
21 *House v The King* (1936) 55 CLR 499.
22 *Avon Downs Pty Ltd v FCT* (1949) 78 CLR 353, 360.
23 *Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266; *Shaaban bin Hussien v Chong Fook Kam* [1970] AC 942, 949.
24 *R v Rondo* (2001) 126 A Crim R 562; *Goldie v Commonwealth of Australia* (2002) 117 FCR 566, 566, 569)
25 *O'Hara v Chief Constable of the Royal Ulster Constabulary (Northern Ireland)* [1997] AC 286.
26 *R v Chan* (1992) 29 NSWLR 421.
27 *George v Rocket* (1990) 170 CLR 104, 115-116.
28 *Goldie v Commonwealth of Australia* (2002) 117 FCR 566.
29 Ibid.
30 *R v Rondo* (2001) 126 A Crim R 562 at [53] per Smart JA.

> (b) Reasonable suspicion is not arbitrary. Some factual basis for the suspicion must be shown. A suspicion may be based on hearsay material, or materials which may be inadmissible in evidence. The materials must have some probative value.
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> (c) What is important is the information in the mind of the police officer [at the time]... Having ascertained that information, the question is whether the information afforded reasonable grounds for the suspicion which the police officer formed. In answering that question, regard must be had to the source of the information and its content seen in the light of the whole of the surrounding circumstances.

Was the third search lawful?

[40] N was initially detained by K for an emergent s 160 PPR Act search on instructions of a superior who had reason to suspect that she might have dangerous drugs in her possession. No drugs at all were found as a result of the first search (which may or may not have been illegal because of the lack of emergent circumstances). However, based on weak and equivocal indicia of drug use (i.e. a "hung over" appearance) and an erroneous belief that drugs had been uncovered elsewhere in the room, K conducted the second search and found money which she supposed to be crime proceeds, and seized the iPhone to conduct the third search for evidence of something relevant to the circumstances for which N was detained.

[41] There were clearly reasonable grounds for suspecting one of the prescribed circumstances for searching a person without a warrant in ss 30(a)(ii) of the PPR Act, which is that N had something that may be an unlawful dangerous drug. Despite being unproductive the first search was undoubtedly authorised by s 29 via s 30(a)(ii) of the PPR Act if not also at common law. K had the requisite suspicion based on the hearsay information she was given and had lawful authority to search N.

[42] Mr Callaghan argues that any power to detain N ceased at the end of the first search, and that K had no legal authority to search the handbag or its contents beyond that. This is reminiscent of the old and "…inconvenient common law doctrine of somewhat uncertain extent to the effect that a power conferred by statute was exhausted by its first exercise".[31] Although is unnecessary for me to finally determine the validity of this argument because of my view on the reasonableness issue, I note that Douglas J did not find it compelling in similar circumstances in *R v Peirson*.[32] I think the better view is that the second search was justified.

[43] Having regard to all of the circumstances and assuming subjective genuineness, the search of the iPhone, by contrast, was unauthorised because the suspicion underpinning it was not reasonably held. In my opinion, a reasonable person in the circumstances of K would not have held the required suspicion based on the same information, observation or reasoning.

[44] To my mind K's conclusions can only be explained on the basis of faulty logic, an overly mistrustful disposition or an instinctive notion that the iPhone tendered to incriminate N. N's possession of $305 or so, even after a night out at a concert, is

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31 *Halsbury's Laws of England* (1st ed) Vol 27, 131.

32 [2004] QSC 134 at [30].

not, either of itself or in combination with other material circumstances, logically suggestive of N's drug dealing. The lack of a satisfactory explanation for having it could not give rise to, or sustain, a reasonable suspicion, or raise any further legitimate doubts. An unreasonable suspicion is an insufficient legal basis for K's seizure and warrantless search of the iPhone.

[45] Since the prescribed circumstances relied on by K for a warrantless search of N's iPhone did not exist at the time it was conducted, the magistrate's *ex post facto* approval does not legitimise the search or seizure, especially because it purports to approve an emergent search under s 160, rather than s 29 of the PPR Act.

[46] However, just because the search was unreasonable and therefore conducted in breach of the PPR Act does not render the texts automatically inadmissible.

[47] As already noted, strict compliance with search and seizure law, common law or statutory, is not determinative of the issue. Evidence illegally seized by investigative agencies is admissible if relevant[33] but is often rejected in common law jurisdictions for unfairness (but not on policy grounds) *if* tendered in evidence by the prosecution.[34]

[48] For example, Lord Guthrie in *HM Advocate v Turnbull*[35] rejected documents produced by the Crown where, after gaining entry lawfully, police ransacked the defendant's house with the sole aim of finding evidence on which to base additional charges against him. [36]

[49] Conversely, as early as 1867 the House of Lords waived an irregularity in executing a search warrant because the impounded goods were reasonably believed to be material to the prosecution of the same suspect for the same offence.[37]

Should the exclusionary discretion be exercised for public policy reasons?

[50] The question is whether the prosecution should have the forensic benefit of using illegally or improperly obtained evidence to convict N. Or, in other words, does the significant degree of invasion of N's privacy by K, balanced against competing policy interests, warrant the exclusion of the evidence obtained through the improper search and seizure.

[51] The evidentiary value of the incriminating texts found recorded on the iPhone does not necessarily justify admission at trial. Rather, the answer depends on the balance of the relevant public policy considerations including the cogency of the evidence, the nature and level of the impropriety, the significance of the evidence to the prosecution case, whether the law could have been complied with, and whether the forensic advantages justify the methods employed in pursuing and securing them.

[52] Factors such as urgency, mistake or confusion may influence the evaluation of the nature of State interference.

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33 *R v Kurama* [1955] AC 197.
34 *King v The Queen* [1969] 1 AC 304.
35 (1951) JC (Scot) 96.
36 *HM Advocate v Turnbull* (1951) JC 96.
37 *Pringle v Bremmer and Sterling* [1867] 5 Macph HL 55.

[53] In *R v Pohl*[38] Daubney J excluded nearly 33 grams of pure cocaine found as a result of an unlawful emergent search in reckless disregard to the statutory safeguards because the police were aware of fast tracked procedures for obtaining a search warrant from a magistrate and the scene could have easily been secured without risk of interference despite the value of the evidence, its importance to the prosecution and the seriousness of the offence. In doing so, His Honour adopted the statements of principle of Applegarth J in *R v Versac*.[39]

[54] Those principles apply equally here and lead me to the same result for slightly different reasons.

[55] Both crime and law enforcement action have social consequences. They should be chosen with care. The social price of crime prevention and community protection will be too high if it comes at the expense of the very democratic values and civil liberties it is intended to defend, such as self-determination, personal autonomy and human dignity. Privacy rights are important too. They must not be disregarded without good cause or for compelling reason. We must consider the two rival objects of desire – public and community safety, on the one hand, and unconstrained State coercive law enforcement, on the other. As Holmes J pointed out in *Olmstead v US*[40] we cannot have our cake and eat it too. We must select the lesser evil in the circumstances.

[56] The illicit drug trade extracts a heavy human and economic toll from society. It causes lifelong misery, contributes to community deterioration, social disintegration and intergenerational family despair. It leads to dependence, increased crime rates and, in extreme cases, premature death. Consequently, there is a strong and understandable public desire to deter commercial drug dealers and rehabilitate users.

[57] Thus, as a general rule, in punishing the deserving guilty of drug crime, a jury should have as much relevant information at its disposal as possible, even, in some cases, material that was unlawfully or improperly obtained. Solely, on this basis, it would usually be wrong to reject high value evidence of serious criminal conduct merely because it was found by police during a search authorised for a different purpose or before a warrant had been obtained.

[58] By the same token, the State is expected not to exceed the carefully drawn bounds of its law enforcement power or circumvent procedural safeguards in pursuing laudable policy goals at all costs.

[59] As the great Lord Cooper pointed out in *Lawrie v Muir*[41] public law and order interests cannot be magnified to the point of the legal system routinely ignoring, condoning or encouraging investigative overreaching or lapses.

[60] In the US, police invariably need a warrant to search a mobile (or cell) phone to meet the Fourth Amendment requirements.

[61] In *Reilly v State of California*,[42] for example, an in custody search of a mobile phone revealed evidence of a shooting unrelated to the reason for arrest. The police

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38 [2014] QSC 173.
39 (2013) QSC 46.
40 277 US 438 at 470 (1928).
41 (1950) SC (J) 19, 26.

could have seized and secured the phone to prevent destruction of its contents pending issue of a warrant. The Supreme Court of the United States held that the common law exigent circumstances exception (similar to the PPR Act's emergent search provisions in s 160) might excuse a warrantless search of a cell phone in such circumstances, but the wider "incident to arrest" exception[43] did not justify such an interference with privacy rights even where it was reasonable to believe that it would reveal evidence of the crime of arrest and might be destroyed if not preserved. In doing so, the Court accepted that because of their large storage capacity and broader privacy implications, iPhones differ in both a quantitative and qualitative sense from other documentary records.

[62] In point of principle, the general incident to arrest power was considered too broad and invasive to justify searching a mobile phone, whereas the exigent circumstances search had the standard safeguard of reasonable suspicion of imminent destruction of evidence before it could be validly exercised without warrant.

[63] That is really no different to the current Queensland position. A warrantless pre-arrest search of a mobile phone may be legally justified under the PPR Act despite the invasion of privacy where a post arrest search would not be.

Ruling

[64] N is an 18 year old young woman. She is charged with selling a schedule 1 drug over a nine month period at street level.

[65] K was arguably authorised or at least justified in taking possession of the iPhone to prevent possible destruction of potential evidence of a crime, but was not entitled to take the extra step of searching it there and then (as she did). She could have minimised or eliminated any risk of deletion long enough to have applied for a warrant to search the iPhone.

[66] There is little or no suggestion that the iPhone was particularly vulnerable to remote wiping. Any risk of pre-search erasure could have been avoided simply by disconnecting the phone from the network or removing its battery.

[67] The seizure of N's iPhone for the purposes of a warrantless search pursuant to either ss 29 or 160 of the PPR Act was unreasonable and, therefore, illegal. It was also contrary to the balance of relevant public policy considerations. The common law power is no wider and is conditional on the same criterion viz reasonable suspicion.

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42 573 US 321 (2014).

43 The common law pre and post-arrest search powers are much the same (*Dillon v O'Brien and Davis* (1887) 16 Cox CC 245; *Ghani v Jones* 706, *Chic Fashion* 317). The approach accords with logic because if reasonable suspicion was accepted as legal justification for an arrest (which interferes with liberty) it must also be able to excuse a search or seizure (which involves a lesser interference with mere personality). The Fourth Amendment to the USA Constitution and the provisions of s 21 of the New Zealand Bill of Rights 1990, which both deal with the "rights of the people to be secured in their persons, houses, papers and effects against unreasonable searches and seizures", reflect similar albeit slightly stricter principles.
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[68] In short, the desirability of admitting the texts does not outweigh the undesirability of the illegal and overly intrusive means of obtaining them.[44]

[69] Thus despite its potent probative value as evidence, the content of the iPhone data should not be led by the prosecution against N because it was obtained by investigative action which was illegal or improper, and public policy warrants its exclusion.

[70] Ruling accordingly.

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44 cf *Evidence Act* 1995 (Cth), s 138(1))