

# DRUGS

DISCUSSION ON THE DRUGS AND DRUG  
TRAFFICKING ACT 140 OF 1992 AND THE  
CRIMINAL PROCEDURE ACT 51 OF 1977



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- ▶ DRUGS AND DRUG TRAFFICKING ACT 140 OF 1992
- ▶ CRIMINAL PROCEDURE ACT 51 OF 1977
- ▶ KUNJANA JUDGMENT
- ▶ IMPLICATIONS OF KUNJANA JUDGMENT



# DRUGS AND DRUG TRAFFICKING ACT

- ▶ The Offences – section 3, 4 and 5
- ▶ Powers of Police Officials
- ▶ Search – Section 11 (a) and (g) of Act 140 of 1992
- ▶ Schedules



# DRUGS AND DRUG TRAFFICKING ACT

## ▶ OFFENCES

- Section 3 – manufacture and supply of scheduled substances
- Section 4 – Use and Possession of Drugs
- Section 5 – Dealing in Drugs



# S35 (5) – Constitution

- ▶ “EVIDENCE OBTAINED IN A MANNER THAT VIOLATES ANY RIGHT IN THE BILL OF RIGHTS MUST BE EXCLUDED IF THE ADMISSION OF THAT EVIDENCE WOULD RENDER THE TRIAL UNFAIR OR OTHERWISE BE DETRIMENTAL TO THE ADMINISTRATION OF JUSTICE.”



# S 14 – Constitution

- ▶ “Everyone has the right to privacy, which includes the right not to have–
- ▶ (a) their person or home searched
- ▶ (b) their property searched
- ▶ (c) their possessions seized; or
- ▶ (d) the privacy of their communications infringed”



# S 36 – Constitution

- ▶ The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all the relevant factors, including –



# S 36 – Constitution

- ▶ (a) the nature of the right
- ▶ (b) the importance of the purpose of the right
- ▶ (c) the nature and extent of the limitation
- ▶ (d) the relation between the limitation and the purpose; and
- ▶ (e) less restrictive means to achieve the purpose.

2 Except as provided in ss(1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.





# DRUGS AND DRUG TRAFFICKING ACT

- **POWERS OF POLICE OFFICIALS**

- Section 11 (1) (a) and (g)

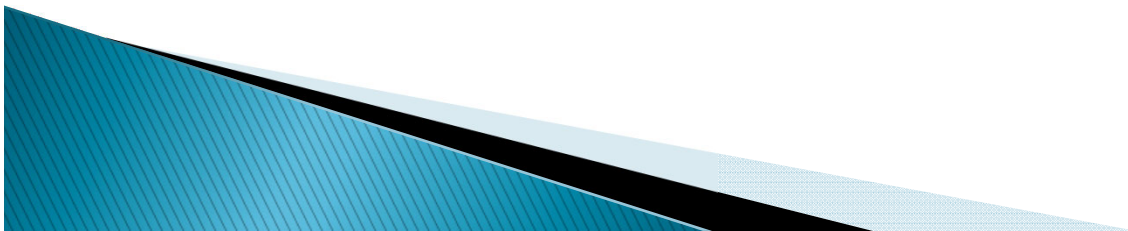
A police official may–

- a) if he has reasonable grounds to suspect that an offence under this Act has been or is about to be committed by means or in respect of any scheduled substance, drug or property, at any time–*
- i) enter or board and search any premises, vehicle, vessel or craft on or in which any such substance, drug, or property is suspected to be found;*



# DRUGS AND DRUG TRAFFICKING ACT

- ii) *search any container or other thing in which any such substance, drug or property is suspected to be found;*
- b) if he has reasonable grounds to suspect that any person has committed or is about to commit an offence under this Act by means or in respect of any scheduled substance, drug or property, search or cause to be searched any such person or anything in his possession or custody or under his control: provided that a woman shall be searched by a woman only;



# DRUGS AND DRUG TRAFFICKING ACT

- c)..... article transmitted through the post ... intercept any such article, open it and examine it in the presence of any suitable person;
- d) question any person .....
- e) require any person ..... to hand over any register, record or other document.....
- f) examine register, record....



# DRUGS AND DRUG TRAFFICKING ACT

- g) *seize anything which in his opinion is connected with, or may provide proof of, a contravention of a provision of this Act*

- *KUNJANA JUDGMENT*

Initially the police officials had the power to conduct a warrantless search in any premises if there are reasonable grounds to suspect that an offence under the Drugs and Drug Trafficking Act has or is about to be committed, and the power to seize anything that would result in an infringement of the Drugs Act.



# DRUGS AND DRUG TRAFFICKING ACT

## -KUNJANA JUDGMENT

- Section 11 (a) and (g) infringed the right to privacy in section 14 of the Constitution and that the infringement was not justifiable in terms of section 36 of the Constitution.
- Both sections were declared unconstitutional
- The police can no longer conduct warrantless searches of premises in terms of the Drugs and Drug Trafficking Act



# CRIMINAL PROCEDURE ACT

## SEARCH AND SEIZURE

- ▶ Section 20 –State may seize certain articles :
  - a) which is concerned in or is on reasonable grounds believed to be concerned in the commission .....
  - b) which may afford evidence of the commission or suspected commission of an offence.....
  - c) which was intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence



# CRIMINAL PROCEDURE ACT

## SEARCH AND SEIZURE

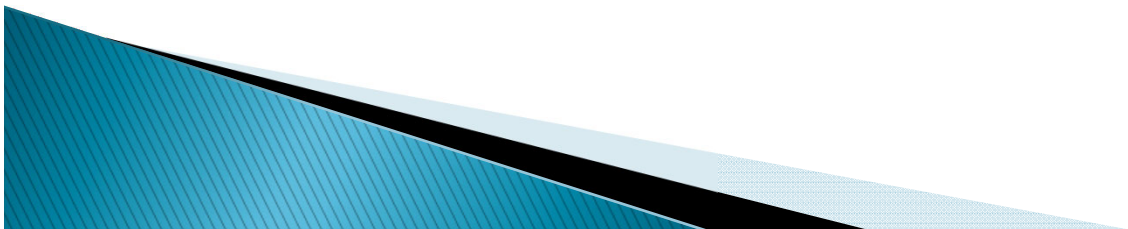
- Section 21 – Article to be seized under a search warrant–
  - a) Issued by a magistrate or justice if it appears to such magistrate or justice *from information on oath that there are reasonable grounds for believing* that any such article is in the possession or under the control of or upon any person or at any premises within his area of jurisdiction – see
  - b) **Goqwana v Min of Safety and Security NO and others 2016 (1) SACR 384 (SCA)**  
**Powell NO and Others v Van Der Merwe NO and Others 2005 (5) SA 62 (SCA)**  
**Min of Safety and Sec v Van Der merwe 2011 (1) SACR 211 (SCA)**  
**V Mohamed and Another 2012 (1) SACR 321 (SCA)**



# CRIMINAL PROCEDURE ACT

## ▶ SEARCH AND SEIZURE

- Section 22 – Circumstances in which article may be seized without a search warrant.
- A police official may without a search warrant search any person or container or premises for the purpose of seizing any article referred to in section 20 –
  - a) if the person consents to the search for and the seizure of the article in question, or if the person who may consent to the search ....consents to such search and the seizure of the article in question , or –
- *S v MOTLOUTSI 1996(1) SACR 78 ( C),*
- *LATCHMAN v S 2010 (2) SACR 52 (SCA) – \*\*\**



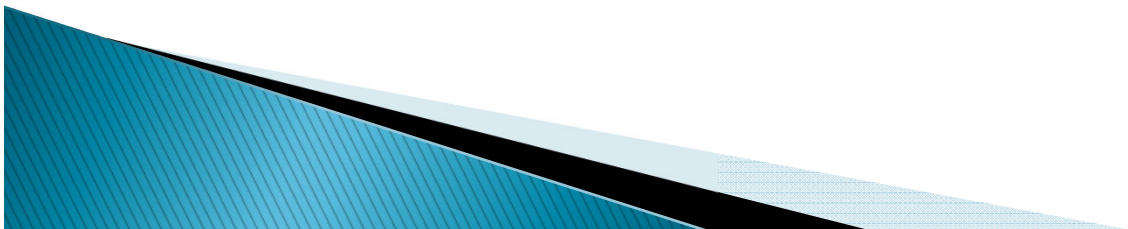


# CRIMINAL PROCEDURE ACT

## ▶ SEARCH AND SEIZURE

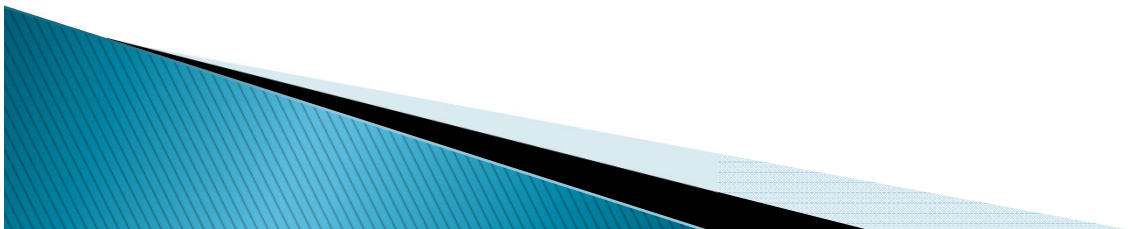
- b) if he on reasonable grounds believes –
  - i) that a search warrant will be issued to him under paragraph (a) of section 21(1) if he applies for such warrant; and
  - ii) that the delay in obtaining such warrant would defeat the object of the search. –

**JACOBS v MIN OF SAFETY AND SEC ECG CA  
327/2012**



# TINTO v MIN OF POLICE 2014 (1) SACR 267 (ECG)

“In my view however the information given to Smith was such that swift, effective action was called for lest the evidence which was believed to be in the vehicle disappeared. In these circumstances the police were in my view, obliged to act upon the information received. Unfortunate as the result may be for the Plaintiff I am satisfied that the Plaintiffs constitutionally protected right to privacy was outweighed by the States constitutionally mandated task of combatting and prosecuting crime



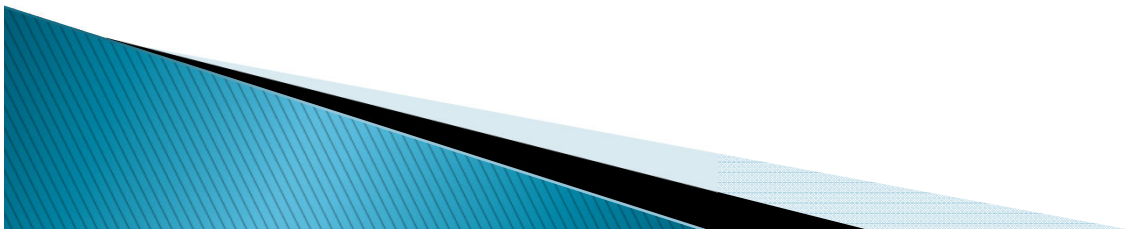
# Inevitable Discovery

- ▶ Real Evidence
- ▶ S v Mkhize 1999 (2)SACR 632 (W)
- ▶ Real Evidence which was highly relevant was found in locker which was searched without a warrant. – Admissible
- ▶ S v Pillay and Others 2004(2) SACR 419 (SCA)
- ▶ Cash box and vehicle found as a result of torturing a witness who testified in terms of S204 of Act 51 of 1977 – Inadmissible



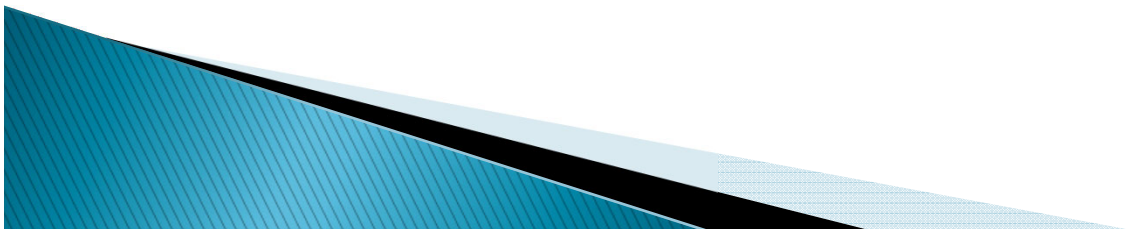
# Limiting the right to Privacy

- ▶ There may be circumstances where exigency and emergency calls on police to act without a warrant.
- ▶ S v Madiba 1998(1) BCLR 38 ( D )



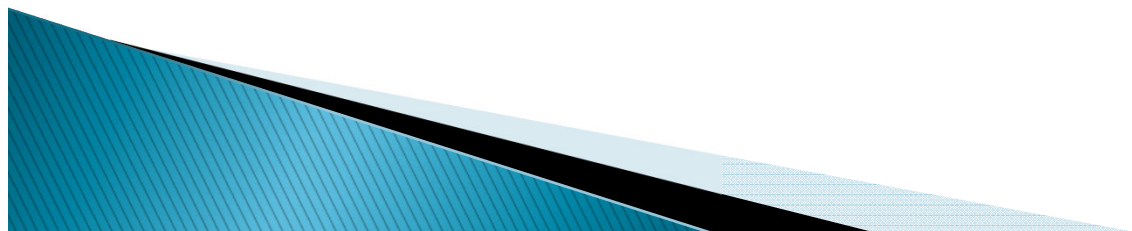
# KEY v AG CAPE 1996(4)SA187(CC)

- ▶ “WHAT THE CONSTITUTION DEMANDS IS THAT THE ACCUSED BE GIVEN A FAIR TRIAL. FAIRNESS IS AN ISSUE WHICH HAS TO BE DECIDED UPON THE FACTS OF EACH CASE, AND THE TRIAL JUDGE IS THE PERSON BEST PLACED TO TAKE THAT DECISION. AT TIMES FAIRNESS MIGHT REQUIRE THAT EVIDENCE UNCONSTITUTIONALLY OBTAINED BE EXCLUDED. BUT THERE WILL ALSO BE TIMES WHEN FAIRNESS WILL REQUIRE THAT EVIDENCE, ALBEIT OBTAINED UNCONSTITUTIONALLY, NEVERTHELESS BE ADMITTED.”



# SCHEDULES

- ▶ **SCHEDULE 1** – Part I and II – Substances useful for the manufacture of drugs .
- ▶ **SCHEDULE 2**
  - PART 1 – Dependence Producing substances
  - PART 11 – Dangerous Dependence Producing substances
  - PART 111 – Undesirable Dependence Producing Substances
- ▶ The salts of all substances has been added
- ▶ All Homologues of the listed substances added



THANK YOU

