ARREST FOR QUESTIONING

IF they wish to question a person they suspect of committing an offence, are the police completely free to arrest him for this purpose? Or may they do so only if he refuses to talk to them voluntarily? Last year this important issue was examined by Mrs. Justice Slade in *Richardson* v. *Chief Constable of West Midlands* [2011] EWHC 773, [2011] 2 Cr. App. R 1 – a decision which attracted much attention.

In 2005, the Labour government persuaded Parliament to "modernise" – i.e. drastically extend – police powers by giving English police officers what are probably the widest powers of summary arrest existing anywhere in Western Europe. Previously the police could, in principle, only arrest without warrant those whom they reasonably suspected of "arrestable offences": which as defined by section 24 of the Police and Criminal Evidence Act 1984 meant, broadly speaking, those that carried a maximum of five years' imprisonment or more. As "modernised", the section now permits them to arrest without warrant anyone they reasonably suspect of *any* criminal offence. And what is more, this means any offence whether currently in the course of commission or committed at some point in the past. So in principle the police, without obtaining a warrant, can now lawfully arrest people on suspicion of past offences not only where they are grave, like murder or terrorism, but even where they are trivial, like using an unlicensed TV, or shaking a mat in the street after 8 a.m.

The new power of summary arrest is limited by section 24(3), which sets out a list of alternative conditions, one of which must be present before the power is exercised. But as the list includes the condition that the arrest is reasonably believed to be necessary "to allow the prompt and effective investigation of the offence or of the conduct of the person in question", the limitation does not look very limiting. Many police forces have taken the view that this condition means that they can now arrest anyone for anything, if they think a spell of custodial interrogation will induce him to confess.

Richardson, a 39-year-old teacher of good character, was reported to the police for a common assault on a student: an offence punishable with only six months' imprisonment, and hence one for which no power of summary arrest existed before 2005. When contacted by the police he agreed to go to the police station for a voluntary interview. But when he got there the police, over the protest of his solicitor, promptly arrested him – and having done so, also took his photograph, his finger-prints and a sample of his DNA, procedures which the police, under their "modernised" powers, may now impose on anyone whom they arrest.

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Having heard Richardson's explanation of the incident, and made further enquiries, the police decided to take no further action. At this point Richardson sued them for false imprisonment – namely the arrest. The police countered this by claiming that they believed this to be necessary "to allow the prompt and effective investigation" of his alleged assault. It was true, they said, that he was prepared to give a voluntary interview, but in a voluntary interview he could have got up and left at any time. Had he tried to do so, they could indeed have arrested him as he made for the door; but that "would disrupt the free flow of the interview".

After hearing argument on various cases (including *Alexander* [2009] N.I.Q.B. 20 and *R. (C.)* v. *Chief Constable of A*. [2006] EWHC 2352, noted at [2007] C.L.J. 282), Slade J. accepted that in principle an arrest could be justified on the ground the police put forward, but only if there was an "evidential basis for a belief that the claimant would interrupt his interview and leave the police station". In the case in hand there was none. Indeed, the police custody record actually noted that on arrival Richardson was "calm and compliasnt [sic]". So the arrest was not justified – and Slade J. marked the fact by awarding him £1,000 damages for false imprisonment.

This decision, surely, is most welcome. To arrest a person is a serious matter, and the police should not be permitted to do it lightly, particularly where, as here, the offence in question is trivial. Not only is it humiliating and degrading. In our present risk-averse culture, getting arrested, like getting chewing-gum on the sole of your shoe, has unwelcome consequences that are singularly difficult to get rid of. It may lead to various countries excluding you if you wish to visit them. For the purpose of its visa requirements the USA – Sweet Land of Liberty – puts "have you ever been arrested?" on the same footing as "have you ever been convicted?". And the fact of an arrest (irrespective of what happened afterwards) is "soft information" which the police are likely to reveal to those, including a range of potential employers, who are entitled to ask for an "enhanced CRB check". As such it seriously reduces a person's prospects of employment. The trade union official whom Richardson called as a witness told the court that "A teacher who has been arrested is left virtually unemployable because disclosure on enhanced CRB disclosures is generally fatal to an application."

In the light of all this one wonders if the decision goes far enough. Should the police really be able to arrest for questioning someone who is willing to talk to them voluntarily, even supposing they really do believe he might seek to leave if the questioning gets tough – given that, if he does, they can then arrest him at that point? The risk of "interrupting the flow of the police interview" is a small thing to weigh

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against the risk of blighting the career of a person who may well be innocent.

On 29 July the Court of Appeal discussed the issues debated in this note in *Hayes* v. *Chief Constable of Merseyside* [2011] EWCA Civ 911. In this case, the police were held to be justified in arresting a person who was prepared to give a voluntary interview, inter alia because they needed to be able to seize his mobile phone and because they wanted to impose bail conditions on his release in order to protect the person whom they believed he was intimidating. But in so holding, the Court recognised that in other situations it might be "quite unnecessary to arrest a suspect who will voluntarily attend an interview, as it was with the schoolteacher in *Richardson*".

J.R. SPENCER

KILLA WALKS FREE

ONCE upon a time it used to be said that, to find out what the law of evidence prescribes, you simply ask what common sense suggests and turn it on its head. The rules of criminal evidence seemed to be a maze of technical irrationality, shutting out material that is logically cogent, and admitting material that is logically weak, more or less in equal measure. Central to this perverse structure was the celebrated "hearsay rule", and conscious of this, in Part 11 of the Criminal Justice Act 2003 Parliament sought, with the aid of the Law Commission's Report No. 245, to inject some rationality into it. But the decision in *Ford* [2010] EWCA Crim 2250 suggests (alas!) that the attempt has at least partly failed – and the ancient recipe for determining whether evidence is legally admissible is still to be relied on.

Shortly after his release from prison, Ford (who liked to be called "Killa") started threatening to kill a woman called CW, reinforcing the threats by firing shots through her front window. This led to his return to prison. While he was behind bars, a second gunman came and shot CW's front window out again. When the police arrived a woman who claimed to have seen the shooting gave them a note she had made of the registration number of the attackers' car, and then vanished. Having found the car in question the police arrested the four young men inside, whose mobile phones revealed not only that they had been in discussion with the incarcerated Ford, but also that they were in the area of the second shooting at the relevant time. Deducing they were Ford's associates who had carried out the shooting at his instigation, the police charged Ford with conspiring with them to commit it.

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