

From the fact of the question the issues has been identified in turn:

1. Whether the constable has right to search any person under the pace code?
2. Is their any reasonable ground present for suspecting Mr Kevin Cromwell?
3. Is their any possible breach of S2(2) and S2(3) of PACE?
4. Is their any possible breach of S(10)(1)(a) of PACE, where constable seized the letter from solicitor which address to the suspect ?
5. Do the constable had authority to ask to the suspect to remove his shirt?
6. Is that necessary to arrest Mr Kevin, Code G para 2.22?
7. Is their any breach of detainee rights by police?
8. Whether the suspect were physically fit for the interview?

Stop and Search

Here, the police have statutory power to stop and search a person in connection with investigation of a criminal offence, which govern by PACE 1984, Misuse of Drugs Act 1971, Terrorism Act 2000, Pace Codes A & B and Serious and Organized Crime and Police Act 2005. In common law an officer cannot stop and search or detain a person unless they give consent, (*Rice v Connelly*)¹.

On the 9th December PC Elizabeth stopped and search Mr Cromwell in the high street in Chelmsbridge which is under Section 1(2) of PACE, a police officer may search a person or vehicle if he has reasonable ground for suspecting (which should be objective test) that he will find or possessing (which should be subjective test) stolen or prohibited articles. "Prohibited articles" comprise offensive weapons and articles made or intended by the persons carrying for use in connection with burglary, theft, taking vehicles or obtaining property by deception².

By looking at Pace Code A Para's 2.2-2.11 stated that reasonable suspicion must be based on the fact such as suspect behavior, the time and location but its must never be based on race, ethnic background, religious, previous convictions and appearance³ from the facts it is difficult to establish whether reasonable suspicion has been based on anything other than suspect behavior. In code A Section 2.3 states that 'from the surrounding circumstances the officer may base such suspicion on the fact that this kind of behavior is often linked to stolen or prohibited articles being carried.

Before commencing the search the officer must disclose to the suspect his or her name and station, the object of the search and the ground for it and the person right to ask for a copy of the search record. In *Osman v DPP*⁴, the officer fail to give detail of his name and station and the search consider as unlawful. But in our case this did not happen so there is another breach of S2(2) and S2(3) of PACE.

Under the S1(1) of PACE states that the power to stop and search may be exercised only in a place to which the public have access, this mean any public place or any place where the public have regular access.⁵. From the statement of P.C seemed to have adhered to this.

However on regarding the suspicion PC have had a valid reason that Mr Cromwell is carrying prohibited articles, but at the time of searching P.C found a letter from a firm of solicitors advising on a personal injury claim, which has been seized by the P.C. So this could be an breach of PACE Act by P.C, where under S10(1)(a) of PACE, it says that material that cannot be seized 'items subject to legal professional privilege' and this document would be inadmissible evidence on the court.

1 [1966]2 ALL ER 64

2 John Sprack, *Emmins Criminal Procedure* (9th edition, Oxford university press 2002, Oxford)

3 Race Relations (Amendment) Act 2000

4 [1999] 163 J.P 725

5 John Sprack, *Emmins on Criminal Procedure* (9th edition, Oxford university press 2002, Oxford) pg40

Stop and search must be done in a public place, which discussed above. Code A 3.5 PACE states that the officer may only require the suspect to remove his outer coat, jacket and gloves. However, the constable had no authority to ask the suspect to remove his shirt so there is breach of Code A Para 3.5. Where under Code A, Para 3.10 the suspect also have right that the outer clothing should be searched where the search requires the removal of more than this it should be conducted in private.

During the stop and search P.C ask the suspect to remove the outer coat, jacket, shirt and gloves and the cannabis and double bladed knife found which was obtained lawfully, on this regard there is no breach of law by the P.C.

It also need to identify whether there has been a breach of the law and the PACE codes as under S.78 states that if a suspect has been unlawfully stopped and searched the admissibility of any resulting evidence may be challenged as it would alter the fairness of the trial. *Harry and Sandra Rednapp v Commissioner*⁶ s.

ARREST

After being searched Mr Cromwell was arrested. At common law an officer can arrest the suspect for breach of the peace-'an act done or threatened to be done which either actually harms a person, or in his presence, his property, or is likely to cause such harm being done'. see *R v Howell*⁷.

Arrest by a police officer is covered by PACE Code G for the statutory power of arrest by police officer. A police officer has a number of power of arrest without a warrant ,the most important of which are contained in PACE 1984 s24(1)-(3) and s 24(a) as amended. There are two main elements for the arrest, firstly there must be actual ,suspected or attempted involvement in a criminal offence by the person and secondly, is reasonable ground for believing that the arrest is necessary. To determining the reasonable ground for arrest can be seen in the case *O'Hara v Chief Constable of the Royal Ulster Constabulary*⁸ .

Mr Cromwell was found to be in possession of a knife which is prohibited under S139 of the Criminal justice Act 1967, and he also to be in possession of cannabis suggesting that Mr Cromwell is engaging in criminal activity. The P.C must prove that he or she had reasonable ground for believing an arrest was necessary under s 24(5), otherwise he might cause injury to himself or any other person ⁹,where a knife could be danger to himself as well as other that is why the arrest was necessary at that moment, under S24(5)(c)(i).

The person arrested must be told that he is arrested for the grounds and reasons which have been mentioned in PACE Code G Para 2.22. From the statement of P.C it was not clear that whether the arrest were done followed by the PACE Code G Para 2.22, because on the statement it appeared that P.C simply says 'you are under arrest' where ground, and the reason for the arrest is missing which is obvious under S28(3) of PACE, so there is breach of S28(3) of the PACE.

The suspect must also be caution on conjunction that what they say or do not say may now have legal consequence¹⁰ term of the caution are laid down by PACE Code C Para 10. "*You do not have to say anything. But it may harm you defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence*" from the statement of P.C its wasn't clear about the caution on conjunction (which discussed above).

Mr Cromwell has been escorted by P.C to the police station and arrived a mere one hour and five

6 [2008] EWHC 1177

7 [1998] Crim LR 836

8 [1996] AC 286 for judicial guidance

9 PACE CODE G

10 Philip Powden, Judith Gowland and Joanne Clough, *Criminal Litigation in Practice* (12th edi, Northumbria law press, Newcastle upon Tyne 2010)

minuter later after the arrest. Under s 30 of PACE states that the suspect should be taken to the police station as soon as practicable after the arrest, on the P.C statement it is not clear whether PC took the suspect to the station as soon as the arrest has been taken place or not. So by considering the arresting officer statements it seems the arrest were been taken unlawfully were several PACE Code and section was being breached by the P.C. As the arrest is taken unlawfully and the evidence which obtained might be admissible in court.

Police Station

On the arrival at the police station and in accordance with Code C para.3.1, the custody officer should explain to the suspect that he has the following right which may be exercised at any stages, such as the right to have someone informed of his arrest¹¹, the right to consult in private with a solicitors¹², the right to examine the Codes of Practice and provide a written copy of his right. Form the statement of the P.C there is no clue or evidence that the custody officer met with Mr Cromwell so this could be another breach of PACE Code C Para 3.1 .

In our case it show that before interview P.C did not give chance to the suspect to ask for the legal representative but stated that she was going off duty the interview was going to be conducted. So this could be breach of S58 of the PACE. However if a suspect refuses for legal representation then they must asked why and the explanation should be recorded.

Before any detainee is interviewed the custody officer must assess whether the detainee is fit to be interviewed ¹³Code C para.12.3. From the P.C statement its being noticed that suspect wasn't feel very well before interview therefore he is not fit for the interview, however the officer did not care about the fitness of the suspect and took him to the interview. In some instance the custody officer will need to consult an appropriate health care professional to determine the suspect's fitness to be interview. This did not happened in to our case so this could be breach of PACE Code C Para 12.3.

By taking into account the behavior of the suspect singing the national anthem and giggling while being arrested it seems that Mr Cromwell may not have had capacity to understand that what happening around him and he should have had an adult or a legal representative.

Nevertheless if a person appear to be unable to appreciate the significance of questions put to him or her or their answers or unable to understand what happening because of drink, drug, any illness, ailment or condition. Therefore it is very important that the suspect must be fit to be interviewed so if anything said during the interviews about the alleged in participation of the offence could be consider as undependable in court due to physical or mental state of the person. Which mentioned in Annex G Para 2.

So if Mr Cromwell was found to be 'mentally vulnerable' then whatever he said that would not count as evidence because it could self-incriminating or misleading. In paragraph 1G provide that the term 'mentally vulnerable' applies to those who 'because of their mental state or capacity, may not understand the significant of what is said, of questions or of their replies'. From the fact it is not clear that whether the Mr Cromwell is mentally vulnerable or not. If the custody officer in doubt on the mental state of the Mr Cromwell then they should treat him as mentally vulnerable.

From the above discussion it appears that there are several breaches of PACE Act and PACE Code. The police constable was not doing his job the way which he supposed to do. It has also been noticed from the statement of P.C. that she was negligent with her duties.

11 Police and Criminal Evidence Act 1984 s56

12 Police and Criminal Evidence Act 1984 s58

13 Martin Hannibal & Lisa Mountford, *Criminal Litigation Handbook* (Oxford University press,Oxford 2009)pg71

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Legislation

1. Criminal Justice Act 1988
2. Misuse of Drugs Act 1971
3. Terrorism Act 2000
4. Serious and Organized Crime and Police Act 2005
5. Race Relations (Amendment) Act 2000
6. Police and Criminal Evidence Act 1984
7. PACE Codes A, C & G

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2. Philip Powden,Judith Gowland and Joanne Clough,*Criminal Litigation in Practice*(12th edi,Northumbria law press,Newcastle upon Tyne2010
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