

This essay will be looking at the case of PC Steve and Mr. Harvey. The main purpose is to examine the options available to both parties depending on circumstances.

When PC Steve first sees Mr. Harvey, PC Steve Can stop and question Mr. Harvey. If Mr. Harvey refuses and tries to flee the PC Steve can utilize S24 PACE (1984) to arrest without a warrant. S24 PACE (1984) is used for when an officer without a warrant wants to make an arrest and has reasonable grounds to be suspicious of an individual. It can also be used when an offence has been committed/ is being/ about to be committed and if necessary for any reasons found in S24(5) PACE (1984) which is known as the necessity test. The reasoning behind PC Stevens being able to exercise this right is the fact that Mr. Harvey matches the eyewitness description, is found running from the specified location with a bag and the action of running from an officer when approached adds a level of reasonable suspicion. If PC Steve does not follow the correct procedure regarding the arrest, it will be deemed as unlawful. An example of an unlawful arrest can be seen in *Elkington v DPP* (2012) where the officer is unable to make a choice quickly enough and only after the Victim walks away decides to detain them. Following on from that S54 PACE (1984) gives PC Steve and other officers the right to search Mr. Harvey on arrival at the police station. On the other hand, S32 PACE (1884) would allow PC Steve the ability to search an Mr. Harvey, at a place other than the police station. Only if he has reasonable grounds to believe Mr. Harvey presents danger to others or for items which may be used to escape, or for items relating to an offence. Following on for indictable offences only police may also immediately search the premises where the suspect was arrested. This is relevant as burglary, which is the offence Mr. Harvey is being charged with is a summary offence. Under S18 PACE this would allow PC Stevens if necessary to search premises 'occupied or controlled' by arrested persons, after arrest however this requires written authority from the inspector. In relation to detaining a suspect for questioning If Mr. Harvey does nothing suspicious, he is able to voluntarily attend the police station to help with enquiries, and an example of this can be found in *r v Bamber* (2002). Once detained by an officer PC Steve is under regulation to take Mr. Harvey to the police station as soon as practicable after arrest due to S30 PACE (1982). If not as seen in *r v Halliwell* (2012) any evidence obtained will be deemed inadmissible in court if the case goes that far.

When Mr. Harvey is detained at the police station without a charge, the basic amount of time he will stay there for will be 24 hours from when he was brought to the police station under S41 PACE (1982). This can be extended up to 36 hours if authorised by superintendent, but this is for indictable offences only under S42 PACE (1982). After the 36-hour period if the police want more time, they must get a magistrate's approval and this can only be extended up to 96 hours, this falls under S43 PACE and S44 PACE (1982). While detained Mr. Harvey is entitled to own choice of solicitor if he intends to pay out of his own pocket. Otherwise, he will be aided by criminal defence service under the police station advice and assistance scheme. Telephone advice may only be permitted in certain circumstances e.g., non-imprisonable offence; drink driving; breach of bail conditions. For Mr. Harvey his rights after arrest regarding PACE are as follows. To be told the grounds for Arrest PACE Code C S3 (4) (1982). To inform someone of his arrest PACE Code C S56 (1982). To have access to a solicitor PACE Code CS 58 (1982). To be cautioned prior to being questioned and following any break PACE Code C S10 (1982). Moving on PACE code rights ensure that Mr Harvey has a comfortable time while detained as it encompasses things such as: access to custody record, appropriate cell conditions, breaks from questioning, meals, rest,

medical treatment etc. Mr Harvey is also able to request a solicitor at any time, and this request will be entered into the custody record. PACE code C states that nothing must be said or done to dissuade the suspect from seeking legal advice and the consultation must be in private.

Regarding Police questioning the purpose is to question a person regarding his involvement or suspected involvement in a criminal offence PACE Code C 11.1.A (1982). After being charged Mr. Harvey should face no other questioning, although there is room for some exceptions as seen in PACE Code C 11.1 (1982). A couple things Mr. Harvey has the right to know is that firstly any failures to answer questions may lead to inferences under S34 criminal justice and public order act (1994). That in essence means that although you have a right to silence, saying nothing can seem incriminating. Secondly there must be no inducements to encourage a confession, thirdly Interviewers must identify themselves, fourthly there is no limit on how many officers can be present however more than two can feel intimidating and would be considered oppressive. Finally, Mr. Harvey, must be reminded of his right to legal advice prior to the interview and after any breaks. During the police interview Mr. Harvey has many options available to him these include Answering police questions fully, answer some questions not others, Give a full 'no comment' interview or hand in a written statement. Mr. Harvey's right to remain silent is protected by S34 criminal justice and public order act (1994). Following along this line is the case *r v Argent* (1997) in the case there are some important lines such as "in the circumstances" not to be interpreted restrictively. What is "reasonable" depends on the particulars of each case'. Appropriate measures must also be given to the defendant Mr. Harvey in this case under article 6 European convention on human rights (1950). A person cannot be convicted solely on an inference under S38 criminal justice and public order act (3) (1994) however there is an outlier in *r v Bamba* (2009). Finally, no inferences can be drawn whilst suspect is denied solicitor access under S34 (2A) criminal justice and public order act (1994).

The next section of this will be focusing on bail and how it relates to Mr. Harvey. In brief Bail releases a defendant from court until the next hearing. However, this is conditional as they are under a legal obligation to return to the court on a date and time to which they are bailed. Under the bail act (1976) there is prima facie right to bail which means the human right article 5 (1950), which is a limited right can be suspended, when necessary, which allows the restrictions on movement when bailed. This also goes toward Article 8 of human right (1950) as that is a qualified right. S90 and SCH Legal Aid, Sentencing and punishment of offenders act (2012) explain that the court cannot usually remand an adult defendant in custody where there is no real prospect of the defendant being imprisoned if convicted. There are three main exceptions to bail that will prevent access to it. Paragraph 2 part 1 SCH bail act (1976) states failure to surrender commission of further offences or interfering with witnesses. Paragraph 2A part 1 SCH 1 Bail Act (1976) states refusal of bail where defendant appears to have committed an indictable or either way offence whilst on bail and finally paragraph 6 part 1 SCH 1 Bail act (1976) refusal of bail where defendant has been arrested for breaking conditions of bail or failing to surrender to previously granted bail. If Mr. Harvey can gain access to bail these are the conditions he would have to agree to: Surrender to custody, Not commit an offence while on bail, no interference with witnesses/ obstruct justice, make himself available for enquiries/ reports, attends an interview with legal advisor.

In brief if this goes far enough towards trial the procedure will follow this short template. The first part will be the charges written down as seen in S17 (3) Magistrate court act (1980). Following that Mr. Harvey will be asked to make a plea at this point Mr. Harvey would be expected answer with either guilty or not guilty. If you plea guilty you will generally receive a reduced sentence and that will end the court proceedings. If you answer not guilty the procedure will continue. Moving on as burglary is an either way case both parties will make cases for where the case should be heard such as magistrate or crown court, as dictated by S19 (3) magistrate court act (1980). The magistrate is always the first court you are heard in therefore they will decide what is best based off guidelines by the sentencing council. If the magistrate believes it is suitable, they will hear the case, if not the case will be trialled in the crown court, S21 magistrate court act (1980)/ S51 Crime and disorder Act (1998).

Bibliography

- PACE Code C S24 1984:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- PACE Code C S24(5) PACE 1984:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- Elkington v DPP (2012) United Kingdom Queens bench division, Westlaw,
[https://uk.westlaw.com/Document/ICC85CA101FE811E29FFACD8939BDDBC8/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/ICC85CA101FE811E29FFACD8939BDDBC8/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- PACE Code C S54 1984:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- PACE Code C S32 1884:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- Bamber (2002) United Kingdom Court of appeal, 7 WLUK 244, Westlaw,
[https://uk.westlaw.com/Document/I2A392D1041C011DE9E2490EE12C1E9D1/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I2A392D1041C011DE9E2490EE12C1E9D1/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- PACE Code CS30 PACE 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- Halliwell (2012) United Kingdom Court of appeal, Westlaw,
[https://uk.westlaw.com/Document/I923CC05061C611E2B5D484F601D755D4/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I923CC05061C611E2B5D484F601D755D4/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- PACE Code C S41 PACE 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]

- PACE Code C S42 PACE 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- PACE Code C S43 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- PACE Code C S44 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- PACE Code C S3 (4) 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- PACE Code C S56 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- PACE Code CS 58 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- PACE Code C S10 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- PACE Code C 11.1.A 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- PACE Code C 11.1 1982:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf [accessed 1 January 2022]
- Legislation.gov (2022) Criminal Justice and public order act 1994:
<https://www.legislation.gov.uk/ukpga/1994/33/contents> [accessed 1 January 2022]
- Argent (1997) United Kingdom Court of appeal, Westlaw,
[https://uk.westlaw.com/Document/I2F69F970E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I2F69F970E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- European Convention on human rights 1950:
https://www.echr.coe.int/documents/convention_eng.pdf [accessed 1 January 2022]
- Legislation.gov (2022) Criminal Justice and public order act 1994:
<https://www.legislation.gov.uk/ukpga/1994/33/section/3> [accessed 1 January 2022]
- Bamba (2009) United Kingdom Court of appeal 7 WLUK 244, Westlaw,
[https://uk.westlaw.com/Document/I2A392D1041C011DE9E2490EE12C1E9D1/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I2A392D1041C011DE9E2490EE12C1E9D1/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Legislation.gov (2022) Criminal Justice and public order act 1994:
<https://www.legislation.gov.uk/ukpga/1994/33/section/34> [accessed 1 January 2022]
- Legislation.gov (2022) bail act 1976: <https://www.legislation.gov.uk/ukpga/1976/63/contents> [accessed 1 January 2022]

- Legislation.gov (2022) Legal Aid, Sentencing and Punishment of Offenders Act 2012: <https://www.legislation.gov.uk/ukpga/2012/10/section/90/enacted> [accessed 1 January 2022]
- Legislation.gov (2022) Bail act 1976: <https://www.legislation.gov.uk/ukpga/1976/63/section/1> [accessed 1 January 2022]
- Legislation.gov (2022) Bail act 1976: <https://www.legislation.gov.uk/ukpga/1976/63/section/2> [accessed 1 January 2022]
- Legislation.gov (2022) Magistrates' Courts Act 1980: <https://www.legislation.gov.uk/ukpga/1980/43/section/17A> [accessed 1 January 2022]
- Legislation.gov (2022) Crime and Disorder Act 1998: <https://www.legislation.gov.uk/ukpga/1998/37/section/51> [accessed 1 January 2022]