

## DPP v MORRISON [2003]

The police had cordoned off the scene of a crime where someone was wounded and there had been a large scale disturbance. This took place in a private shopping mall through which there was a public right of way. Morrison attempted to walk through the cordon, but was stopped by a police officer. He insisted that he was entitled to walk through the mall. A dispute followed and he was subsequently arrested for an offence under section 5 Public Order Act 1986, and the wilful obstruction of a police constable, contrary to the Police Act 1996. He was subsequently convicted at Magistrates court.

He appealed and it was held that the only statutory authority for setting up cordon's was contained in the Terrorism Act 2000. The cordoned off land was privately owned, neither the consent of the owner nor a warrant had been obtained. On that basis there was insufficient evidence that the police were acting in the 'execution of their duty' when they arrested Morrison.

The DPP made a further appeal asking the court following questions,

- whether the court was wrong to have stated that the police, on the evidence provided, had no lawful power or authority to close a public right of way over private premises and forcibly prohibit Morrison from using that right of way; and
- was the court wrong in law to hold that the defendant had no case to answer on both the charge of disorderly conduct and obstruction of a constable

### Held

The Crown Court had been wrong regarding this matter.

When seeking to investigate crime, police officers do not have an unencumbered right to restrict movement on private land. However, in these circumstances, the police were very much entitled to 'assume consent' to cordon off the area. This was very much in accordance with Code of Practice B (the searching of premises). This Code applies to searches of premises:

(a) by police for the purposes of an investigation into an alleged offence, with the occupier's consent, other than:

- routine scene of crime searches;
- calls to a fire or burglary made by or on behalf of an occupier or searches following the activation of fire or burglar alarms or discovery of insecure premises;
- searches when paragraph 5.4 applies;
- bomb threat calls;

The thinking behind the Code is based on the presumption that neither a search warrant nor actual consent is needed for such a search and that consent could be quite properly assumed. Therefore, in the present case the police were entitled to assume consent and cordon off the area.

The Court quoted from the judgment of Lord Justice Denning in [Ghani v Jones 1969](#), which, whilst addressing other issues, stated ....

*'The robbers of a bank 'borrow' a private car and use it in their raid, and escape. They abandon it by the roadside. The police find the car, i.e., the instrument of the crime, and want to examine it for fingerprints. The owner of the 'borrowed' car comes up and demands the return of it. He says he will drive it away and not allow them to examine it. Cannot the police say to him: 'Nay, you cannot have it until we have examined it'? I should have thought that they could. His conduct makes him look like an accessory after the fact, if not before it. At any rate it is quite unreasonable. Even though the raiders have not yet been caught, arrested or charged, nevertheless, the police should be able to do whatever is necessary and reasonable to preserve the evidence of the crime'.*

The police actions must be proportionate, reasonable and necessary and there is certainly no automatic right to access and exclusion of others. Any such action would have to be fully justified and it is suggested that the following factors might be considered;

- the likelihood of evidence being present and recoverable
- the practicability of obtaining that evidence within a given time,
- the availability of other evidence
- the seriousness of the crime

In Ghani v Jones Lord Denning further stated ....

*'No magistrate - no judge even - has any power to issue a search warrant for murder. He can issue a search warrant for stolen goods and for some statutory offences, such as coinage, but not for murder. Not to dig for the body. Nor to look for the axe, the gun or the poison dregs. The police have to get the consent of the householder to enter if they can; or, if not, to do it by stealth or by force. Somehow they seem to manage. No decent person refuses them permission. If he does, he is probably implicated in some way or other. So the police risk an action for trespass. It is not much risk'.*

*'The great train robbers, when they were in hiding at the Farm, used a saucer belonging to the farmer and gave the cat its milk. When seeking for the gang, before they were caught, the police officers took the saucer so as to examine it for fingerprints. Could the farmer have said to them: 'No, it is mine. You shall not have it' Clearly not. His conduct might well lead them to think that he was trying to shield the gang. At any rate it would have been quite unreasonable.'*

Note that sections 8 and 9 of PACE now allow for search warrants in connection with a wide variety of offences, including murder.

Section 19 also allows for the seizure of evidence, provided the police officer is lawfully on the premises (it does not allow the premises to be cordoned, but one might now cite the case of Morrison to provide the lawful authority to do so, especially as section 19(5) preserves other powers related to seizure).

*The interpretation and comments made within this document are not to be considered as legal advice.  
Reference should always be made to the original case.*