

A CASE OF DOING WHAT THEY LIKE

Someone is assaulted and the police try and intervene but are pushed away. They stand by and watch the assault. What is the legal remedy?

Normally we would expect the police not to stand by while an offence of this serious nature was taking place in front of them. The person who was offending would be arrested and probably charged and the due legal process would begin. That's normally what would happen in the English legal system.

However this is a real case and what actually happened is far from the norm. The difference being that the person who actually assaulted a British citizen is a member of the United States Visiting Forces (USVF) and the police are a very different police force to the Home office police. They are the Ministry of Defence Police Agency (MDPA) who, when working on US bases in this country, are paid for and under the operational control of the US authorities.

This is an account of how the US Visiting Forces do what they like when a serious offence is committed by a member of the USVF. It has implications for us all.

The incident happened two years ago at the American base at Croughton near Northampton. A peace campaigner, who was well known to the American authorities as a peaceful person, was researching on this base. She was eventually found, thrown to the ground, handcuffed, intrusively searched and assaulted. Before this she had identified herself and said she would leave. She also insisted that the MDPA be called. The assault was such that she suffered a facial palsy which took 6 weeks to resolve.

There were many US servicemen and women and two MDPA officers present during the incident. American instructions which are mandatory, say that if the 'intruder' is British, peaceful and the MDPA can deal with them, control must be handed over to the MDPA to deal with.

The MDPA were called, one of them did try to take control and get the handcuffs removed but he was pushed away by the American serviceman. He said he could go to jail if he disobeyed orders.

The peace campaigner was eventually served a notice not to return to the base for 3 months. She immediately did so, to ensure that the case came to court. She was charged with 'aggravated trespass'. The case collapsed very early on in the trial because of a technicality. The opportunity to cross examine the players involved was lost.

What next? An offence had occurred and the police did not want to do anything. The remedy therefore was to secure summonses in a private prosecution. This was duly done by the peace campaigner and the summonses carefully drafted. Corby Magistrates' Court refused to issue the summonses. They gave no reasons.

The campaigner applied for a Judicial Review in the High Court, London on this decision by the court. It's not easy when acting in person. A year later she was successful. The Judges were highly critical of the Magistrates. They were not represented in court and had not responded to any court documents. The Judges ordered the Magistrates to issue the summonses. Costs were awarded to the peace campaigner.

The summonses were eventually issued after several phone calls from the peace campaigner. The case came to Northampton Magistrates' Court earlier this year. Although ordered to attend court, none of the defendants appeared in court; despite protestations by the peace campaigner. The Crown Prosecution applied to the court to take over the case which they can and usually do, when there is a contentious case brought privately and with political implications. The case was then out of the peace campaigner's control.

There was a twist however. The Crown Prosecutor (CP) was the very man who had brought the case against her concerning the same incident at Croughton. Asked by the peace campaigner, on what information he would decide whether to discontinue or continue the case, he said 'from the taped interview you gave when you were charged'. On second thoughts however and in a letter, he did agree that the peace campaigner could give a statement.

There were four hearings altogether. None of the defendants ever appeared in court despite one bench of Magistrates saying that the American must appear at the next hearing. He didn't appear and a warrant backed with bail was issued by the Magistrates. They acknowledged that enforcement might be a problem.

Within days, the CP applied for the warrant to be withdrawn, saying that the court had no jurisdiction to hear the case. The American legal department at the US base at Mildenhall had entered a Certificate, under the Visiting Forces Act 1952, exempting the American of ever being brought to court. The case was discontinued a week later.

There is a process which the court must follow. However the CPS were probably never going to allow this case to proceed. The two tests whether to continue or discontinue, as with any case assessed by the CPS, were not rigorously applied. We now are looking at alternative legal remedies.

What happened in Northampton Magistrates' Court, quietly, without much publicity and without the usual processes of the court being applied, means that the American military, unfettered, do what they like. They do this all round the world.

What needs to happen is a challenge to the Certificate and a good look at the Visiting Forces Act 1952. This Act is out of date and means that, with no accountability or legal remedies for the British citizen, the American serviceman has escaped the scrutiny of the English legal system. A piece of paper waved in the court lets him get away with this offence. As for the MDPA? The test for neglect of duty is deliberately very high.

Lindis Percy
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