

Abstract

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The holding charge is the practice in England, Wales and so on, whereby a suspect is arrested for some minor offence so that, whilst he is being remanded in custody on that charge, the police may inquire into him on a more serious crime of which they suspect him. The matter is the use of holding charges for questioning suspects in particular.

Under the Old Judge's Rules, the use of holding charges evaded the restriction on questioning suspects about the offence for which they were arrested. The police mightn't have sufficient evidence to enable them to arrest the suspect on the major crime they were investigating. Arresting him on some minor charge ensured that he was safely under lock and key for a while whilst they pursued their inquiries on the major crime. Even if they could arrest him on the major crime they mightn't wish to do so. Because the Old Judges' Rules prohibited them from interrogating him on the charge for which he was held in custody. Interrogation on some other crime than that for which a suspect was held in police custody wasn't prohibited by the Old Judges' Rules.

The New Judge's Rules accepted that the police could properly question a person as part of their investigation of the offences for which he was under arrest. However the use of holding charges continued after 1946, because not all police officers were aware of the extent of their powers and old habits died hard.

The police and Criminal Evidence Act 1984 regulates the use of holding charges for questioning now. This paper makes clear how arguments under the Judges' Rules were applied to the legislative process of the Act.