

Tackling Day and Night Hawks by jonespeter66



The subject of Day and Night Hawks being apprehended by metal detectorists on private land using citizens arrest powers. This being my own opinion as a private individual and does not reflect any others opinions official or otherwise or represent any organisations. Any similarities are purely coincidental.

It commendable that we have people in this country who are willing to get involved . I do believe the country would be a better place if we had more doers than walkers by. I can understand getting involved and wishing to make the difference, that is what society should be about.

However here's a few words of caution. What if the person doesn't wish to be apprehended by you (I would suggest this is a foregone conclusion) they will either fight or flee. You may well find you are out of your depth very quickly. You do not want to be involved in a fight in a field in the middle of nowhere with no help. Even the fittest person will struggle to subdue a person using reasonable force for any length of time.

Assuming you have subdued them and are restraining them, which free hand are you going to use to call for help on your mobile phone which probably does not have a signal .If you do get through I assume you are willing to restrain the offender while you wait 20-40 minutes for the police to turn up and give them a good description of which field you are in on the farm so they can find you.

This probably sounds a bit negative and that I discourage people to do their bit, I don't discourage it but that's the reality of it. Rhetoric is one thing, reality is another. Going along the lines of GRAB EM and BASH EM is not necessarily the safest or best course of action in this world of uncertainty. Arresting people is serious.

It would probably be best to photograph them, get the registration of the vehicle and write down the description of the offender, call the police while they are still there and see if you can get them caught red handed at the scene. Perhaps better to keep out of sight so they do not know they have been rumbled.

But before you think about policing your fields get the view of the land owner first. These fields do not belong to you (and yes I know we think they are ours once we have permission. We act like a dog guarding its bone when it comes to our permissions) You cannot make a complaint of theft or going equipped, you are a witness. It is the land owner who must make that complaint. The last thing you want is to be making an arrest and later finding the farmer /owner does not wish to make a complaint for whatever reason, it is the wrong time to find out they are not that bothered about such things and you realise in fact that you care more about it than they do.

You may well find the offender suing you for wrongful arrest and interfering with their Human right to liberty. Best of luck with that one. I would like to re-iterate a lot of farmers do not have the time or the will to pursue night hawkers and make a complaint of going equipped. We think it's a serious crime as detectorists but farmers might well complain about holes being left and get annoyed about trespassers but to them it's often an annoyance and not something they wish to go to court for. So before you tackle such people you really need to have a certain knowledge that you are acting on the owner's wishes. If not, then any arrest would be questionable, no complaint from the farmer, will leave you on very shaky ground.

Before making a citizens arrest you must be very sure of the facts or fall foul of the law yourself. Just look up citizens arrest on the internet and you will find a host of cases where the unfortunate arrestors have fallen foul of the law and deemed to have made an unlawful arrest by the courts. Always best to call the police and let the slow wheels of justice turn.

For some it is worth getting assaulted in pursuing the right thing to do and that is commendable. But thieves have more to lose than you so they might fight harder to get away. You could get badly hurt and that in the end is what my word of caution is about. In the end the night hawker may have only dug up a few vicky coins and a few buttons. Was it worth it?

For some the answer will be yes, for the owner, probably not. This is a very imotive subject and goes further than metal detecting and brings the whole right & wrong thing into sharp focus. I think we should always do the right thing but I do not want people getting hurt or putting themselves in danger or on the wrong side of the law for what effectively is a non violent offence in this case. I am sure it would be different if a granny was being bashed on the head.

You should always report night hawking to the police, even if this seems a waste of time. You might not get an officer to visit there and then, or even in the next week but if it is reported then it is recorded. If it is recorded it becomes a crime figure.

Keep reporting it and make enough noise and it will become a priority.

It will flag up as a crime trend and something will have to be done.

The local beat cops are the best to try in these cases as they are much more likely to get a feel for the issue .Do not call it in to the police as night hawking. They will not have an idea about what it is you are on about. Always call it in as going equipped to steal (the definition of going equipped is; A person shall be guilty of an offence if when not at his place of abode, he has with him any article for use in the course of or in connection with any burglary, theft or cheat.) The theft is what he digs out and the article for use would be the detector and spade etc.

Going equipped is a crime that is counted under home office rules for police figures so it will eventually get some notice. Even if that's just from the beat officer who gets it in the neck because he has crime starting to rise on his beat .Don't let it be dismissed as trespass, that's civil and will not even enter on the police radar.

On the plus side should the offender be arrested and interviewed and only gets a caution for a first offence. It is almost certain to lose the equipment they used for the offence .That could hurt if they spent many hundreds of pounds on the detector.

To finish, the CPS may not even prosecute, if the offender doesn't have any finds on him and spins a yarn about losing his keys or his watch in the field the other day and was just trying to find them etc. Justice unfortunately seems to be very fickle indeed. Going equipped to steal is an offence which may be tried on indictment, in other words it is triable either way so fits the citizens arrest powers.

Do not confuse any of this with detecting on a scheduled monument. That is a criminal offence whether you have permission for the land or not. To note that is also a triable either way offence so is still subject to the same rules as going equipped.

If you want the legislation it is below. Going equipped to steal is triable either way so fits the citizens arrest powers.

*ORDINARY CITIZENS' POWERS OF ARREST WITHOUT WARRANT.
SECTION 24A OF THE POLICE AND CRIMINAL EVIDENCE ACT 1984
(INSERTED BY SECTION 110 OF THE SERIOUS
ORGANISED CRIME AND POLICE ACT 2005)*

"24A Arrest without warrant: other persons

(1) A person other than a constable may arrest without a warrant -

(a) anyone who is in the act of committing an indictable offence;*

(b) anyone whom he has reasonable grounds for suspecting to be committing an indictable offence.

(2) Where an indictable offence has been committed, a person other than a constable may arrest without a warrant -

(a) anyone who is guilty of the offence;

(b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(3) But the power of summary arrest conferred by subsection (1) or (2) is exercisable only if -

(a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and

(b) it appears to the person making the arrest that it is not reasonably practicable for a constable to make it instead.

(4) The reasons are to prevent the person in question -

(a) causing physical injury to himself or any other person;

(b) suffering physical injury;

(c) causing loss of or damage to property; or

(d) making off before a constable can assume responsibility for him"

(2) Section 25 of PACE (general arrest conditions) shall cease to have effect.

[Note: this is one of several earlier sources of police powers that has now been subsumed under the new section 24 of PACE].

(3) In section 66 of PACE (codes of practice), in subsection (1)(a) -

(a) omit "or" at the end of sub-paragraph (i),

(b) at the end of sub-paragraph (ii) insert "or (iii) to arrest a person;"

[Note: this means that arrests will now be subject to codes of practice]

(4) The sections 24 and 24A of PACE substituted by subsection (1) are to have effect in relation to any offence whenever committed.

NOTE: The common law power to prevent or deal with a breach of the peace is still available to ordinary citizens.

** The term 'indictable offence' means an offence which is triable only on indictment or an offence which may be tried on indictment (in other words triable either way).*