

ISSUE

Did a detention become an unlawful arrest when an officer drove the suspect from the scene of the detention to the crime scene?

FACTS

Elvira Charley shot and killed three of her six children as they slept in their home on a Navajo reservation in Arizona. Later, she went to the home of her aunt where she phoned the police and reported she had “done something bad.” When Sgt. Wallace Billie arrived at the aunt’s house, Charley told him “she’d done something very bad,” that he was “going to have to put her away for a long time,” and that she “needed [him] to check on her children.” Sgt. Billie told her, “You’re not under arrest. You’re being detained. I need to take you to your house and find out what’s going on.” He then put Charley in his patrol car and drove to her house.

When they arrived, Charley waited in the patrol car while Sgt. Billie went inside where he found the bodies. He then returned to the patrol car, obtained a *Miranda* waiver from Charley, and questioned her about how the children were killed. Charley then “described the manner and order in which she had shot them.”

At Charley’s trial, her statement to Sgt. Billie was admitted into evidence. She was convicted of three counts of first-degree murder.

DISCUSSION

Charley argued that her statement to Sgt. Billie should have been suppressed because it was made after she had been illegally arrested. Although it was apparent that Sgt. Billie had grounds to detain her, she contended that his act of transporting her to her home converted the detention into a de facto arrest. And, because he did not have probable cause to arrest her at the point, the arrest was unlawful.

As a general rule, a detention becomes a de facto arrest if the detainee was transported away from the scene of the detention. This is because the act of moving a detainee to some other location—such as the crime scene or a police station—is much more akin to an arrest than a detention.¹ Furthermore, there are usually less intrusive means of accomplishing the officers’ objective.²

A de facto arrest will not, however, result if the detainee freely consented to be transported,³ or if there was good cause to do so. As the court in *Charley* pointed out, “[W]e have held that the police may move a suspect without exceeding the bounds of an investigative detention when it is a reasonable means of achieving the legitimate goals of

¹ See *Kaupp v. Texas* (2003) 538 U.S. 626, 630 [“Such involuntary transport to a police station for questioning is sufficiently like arrest to invoke the traditional rule that arrests may constitutionally be made only on probable cause.”]; *Dunaway v. New York* (1979) 442 U.S. 200, 212-3 [suspect unlawfully transported to police station for questioning]; *People v. Bowen* (1987) 195 Cal.App.3d 269, 274; *U.S. v. Parr* (9th Cir. 1988) 843 F.2d 1228, 1231 [“(A) distinction between investigatory stops and arrests may be drawn at the point of transporting the defendant to the police station.”].

² See *People v. Harris* (1975) 15 Cal.3d 384, 391; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 383. COMPARE *People v. Gatch* (1976) 56 Cal.App.3d 505, 509 [alternatives to transporting were impractical].

³ See *Ford v. Superior Court* (2001) 91 Cal.App.4th 112, 125 [“The Fourth Amendment does not prevent a person from agreeing to accompany officers to the police station and remain there for interrogation.”]; *U.S. v. Garcia* (7th Cir. 2004) 376 F.3d 648 [cited driver consented to be driven home to look for ID].

the detention given the specific circumstances of the case.”⁴For example, good cause to transport a detainee has been found when a hostile crowd had gathered at the detention site, and when officers needed to transport the suspect to the crime scene for a showup because the victim was being treated there for injuries.⁵

After examining the situation that Sgt. Billie was confronting, the court in *Charley* ruled it was also reasonable for him “to detain Charley in his car for investigation as he drove to her home to determine why she had called dispatch and the reason for her distress.” Furthermore, because Sgt. Billie had told Charley that she was not under arrest, and because “there is no evidence that he used any kind of force against Charley,” the court ruled that Charley was not arrested until Sgt. Billie questioned her after discovering the bodies.

Charley’s conviction was affirmed.

⁴ Citing *Gallegos v. City of Los Angeles* (9th Cir. 2002) 308 F.3d 987, 991; *Halvorsen v. Baird* (9th Cir. 1998) 146 F.3d 680, 684-5.

⁵ See *People v. Soun* (1995) 34 Cal.App.4th 1499, 1519-20 [“A three-block transportation to an essentially neutral site for these rational purposes did not operate to elevate [the suspects’] custodial status from detention to arrest.”]; *People v. Harris* (1975) 15 Cal.3d 384, 391 [“We can conceive of factual situations in which it might be quite reasonable to transport a suspect to the crime scene for possible identification, If, for example, the victim of an assault or other serious offense was injured or otherwise physically unable to be taken to promptly view the suspect, or a witness was similarly incapacitated, and the circumstances warranted a reasonable suspicion that the suspect was indeed the offender, a ‘transport’ detention might well be upheld.”]; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 382 [permissible to transport a rape suspect to a hospital for a showup because the victim was undergoing a “rape-victim examination” which officers believed would take about two hours]; *Florida v. Royer* (1983) 460 U.S. 491, 504 [“(T)here are undoubtedly reasons of safety and security that would justify moving a suspect from one location to another during an investigatory detention”]; *Stovall v. Denno* (1967) 388 U.S. 293, 302.