

## ISSUES

At what point in a murder investigation was the defendant detained or arrested? At that point, did the facts known to the investigators constitute reasonable suspicion or probable cause?

## FACTS

At about 8 P.M., a man who lived in an apartment in Pacific Grove noticed water seeping through the ceiling. He immediately went upstairs to investigate. When he looked through the window of the upstairs apartment, he saw the body of the woman who lived there. He immediately notified Pacific Grove police. When officers entered the apartment, they found the victim on the floor of the kitchen. She had been stabbed repeatedly and the scene was bloody.<sup>1</sup>

While detectives were working inside the apartment, patrol officers cordoned off the area with CRIME SCENE tape. Then they started talking with onlookers, trying to determine if any of them had any useful information. One of the onlookers was Hughes. He spoke freely with the officers, telling them he lived in an apartment on the ground floor. Although he didn't say anything incriminating, the officers thought his responses to some of their questions were "strange." So they asked one of the detectives to come outside and speak with Hughes.

The first thing the detective noticed about Hughes was that there were stains on his jacket and shirt—and the stains appeared to be bloodstains. He also noticed that the front of Hughes' jeans were wet. The detective then obtained Hughes' consent to have his jacket analyzed by a criminalist on the scene to see if the stains were blood. Although the criminalist couldn't confirm they were bloodstains, he informed the detective that a "blood-saturated Kool brand cigarette" had been found on the floor next to the victim's body. The detective had noticed that Hughes was smoking Kool cigarettes while he was being questioned.

The detective went back outside, told Hughes that the test on his jacket was inconclusive, but said he'd like to talk with him some more at the police station. Hughes said okay and "expressed no hesitation about traveling to the police station."

Hughes was driven to the station by a patrol officer. Before Hughes got into the car, however, the officer explained to him that he was going to handcuff him; that he was "not under arrest but was being handcuffed for safety reasons." Hughes said he understood "and expressed no reluctance about being handcuffed or traveling to the station." When they arrived at the station and Hughes stepped out of the car, the officer immediately removed the cuffs.

The interview began at 12:30 A.M. The detective began by making sure Hughes understood he was not under arrest. Hughes said he understood and waived his *Miranda* rights. Although Hughes did not make any obviously incriminating statements, he claimed he had never been inside the victim's apartment.

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<sup>1</sup> **NOTE:** The water that was leaking downstairs was coming from the victim's refrigerator; she was apparently defrosting it when he was murdered.

At the conclusion of the interview—which lasted about two hours—Hughes was arrested for the murder. He was then fingerprinted. The fingerprints were taken to the crime scene and compared with a bloody thumbprint officers had found. They matched.

## DISCUSSION

Hughes contended he was illegally detained when the patrol officers questioned him on the street and, if not then, when he was transported to the police station. Consequently, he argued that all the evidence obtained from him must be suppressed. This would have included the officers' observations of the bloody jacket and shirt, the Kool cigarettes, his statements to the detectives, and the booking fingerprints.

### Contact or detention?

An encounter between an officer and a suspect is a "contact" if a reasonable person in the suspect's position would have believed he was free to decline the officer's requests or otherwise terminate the encounter.<sup>2</sup> If, however, the suspect reasonably believed he had no choice in the matter, the encounter is a "detention" or "arrest," which would be illegal if officers lacked reasonable suspicion or probable cause.

At the outset, the court ruled the initial encounter with the patrol officers was plainly only a "contact." As the court observed:

The apartment building had been cordoned off; police cars were parked outside and the area was being guarded by officers as defendant walked by. [A patrol officer] approached defendant, inquired whether he could assist him, and posed basic and preliminary questions to establish whether defendant might possess information concerning the crime. The conversation was nonaccusatory, routine, and brief, and would not have caused a reasonable person to believe that his or her liberty was being restrained.

Nor did subsequent events at the scene transform the encounter into a detection or arrest. Said the court, [T]he record amply supports the trial court's factual finding that defendant freely consented to remain for the purpose of speaking with [the detective], having the jacket tested, and being transported in handcuffs to the police station for further questioning."<sup>3</sup>

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<sup>2</sup> See *Florida v. Bostick* (1991) 501 US 429, 438; *United States v. Mendenhall* (1980) 446 US 544, 554; *Florida v. Royer* (1983) 460 US 491; *People v. Ross* (1990) 217 Cal.App.3d 879, 884; *People v. Daugherty* (1996) 50 Cal.App.4<sup>th</sup> 275, 283; *People v. Terrell* (1999) 69 Cal.App.4<sup>th</sup> 1246, 1253.

<sup>3</sup> **NOTE:** As noted in *CCI 2002*, an unarrested suspect's consent to accompany officers to the police station must be voluntary, otherwise the encounter will be deemed an arrest. <sup>3</sup> See *United States v. Mendenhall* (1980) 446 US 544, 557-8; *In re Gilbert R.* (1994) 25 Cal.App.4<sup>th</sup> 1121, 1125 ["In a thoroughly motley array of circumstances, appellate courts have held that when a person agrees to accompany the police to a station for interrogation or some other purpose, the Fourth Amendment is not violated."]; *People v. Singer* (1990) 226 Cal.App.3d 23, 46-7. **COMPARE:** *People v. Boyer* (1989) 48 Cal.3d 247, 268 ["The manner in which officers arrived at defendant's house, accosted him, and secured his 'consent' to accompany them [to the police station for questioning] suggested they did not intend to take 'no' for an answer."]. To help establish that the consent was voluntary officers should inform the suspect that he can choose not to go with them. See *People v. Profit* (1986) 183 Cal.App.3d 849, 858, 866; *Ford v. Superior Court* (2001) 91 Cal.App.4<sup>th</sup> 112, 125. Officers must also make sure nothing happens during the trip or after arrival at the police station that would reasonably indicate to the suspect that he was no longer free to leave (at least until grounds to detain or arrest are established). *In re Gilbert R.* (1994) 25 Cal.App.4<sup>th</sup> 1121; *Ford v. Superior Court* (2001) 91 Cal.App.4<sup>th</sup> 112, 125.

Probable cause?

The court ruled that even if Hughes was effectively “arrested” when he was transported to the station, the arrest would have been lawful because the facts known to the officers at that time constituted probable cause. Those facts, according to the court, were as follows:

“(i) [Hughes] lived in the apartment house, (ii) smoked Kool brand cigarettes (like the ones found at the crime scene, (iii) wore wet pants (it appeared that the assailant had washed down the crime scene), (iv) appeared to have blood on his jacket, and (v) made initial statements [to the patrol officer] that conflicted with the officer’s own observations.”

Consequently, the court ruled the evidence the obtained lawfully.