

“A person who...carries away another person...to exact from another person any money or valuable thing...is guilty of [kidnapping].” (Pen. Code, § 209.) The *Daniels* test further defines this asportation element as “requir[ing]: [1] that the movement of the victim be for a distance which is more than that which is merely incidental to the commission or attempted commission of [the robbery] and [2] that this movement substantially increase the risk of harm to the victim over and above that necessarily present in the commission of [the robbery].” (*People v. Dominguez* citing *People v. Rayford*, p. 2).

A. More than Merely Incidental to the Crime

Determining if movement is incidental to the crime is a “multifaceted, quantitative evaluation”; it considers both the distance victims are forced to move and the necessity of the movement to facilitate the crime. (*People v. Leavel* (2012) 203 Cal.App.4th 823, 824.) Additionally, these interrelated factors “must be considered in context, including the nature of the crime and its environment.” (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1152.)

While there is no minimum distance required, the movement must be substantial given the circumstances. (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1152.) “In some cases a shorter distance may suffice...while in others a longer distance, in the absence of other circumstances, may be found insufficient.” (*Ibid.* [moving victim 25 feet—from the street down a steep hill into an isolated orchard—was substantial]; *People v. Washington* (2005) 127 Cal.App.4th 290, 297 [movement of bank employees from the teller area down the hall to the vault 25 feet away was not substantial].

Movement is “incidental” when it is necessary to commit the crime and “excessive and gratuitous” when unrelated to the crime. CITE. Moreover, when the movement is unnecessary to the commission of the crime, the movement—despite the distance—is not incidental. (See *People v. Thornton* (1974) 11 Cal.3d 738, 777 [four steps taken by the victim were incidental to the robbery because it was necessary to obtain the wallet]; *People v. Leavel* (2012) 203 Cal.App.4th 823, 824 [defendant’s movement of the victim from her kitchen to outside her home was considered “excessive and gratuitous” because it was unnecessary for the robbery]; *People v. Corcoran* (2006) 143 Cal.App.4th 272, 279 [moving victims to a secluded building across the parking lot was unnecessary since defendants had already aborted their robbery aim].)

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Caroline's movement of Krish was incidental to the robbery because Caroline moved Krish within the county tax collector's building, with the intent to only collect money. Caroline movement of Krish from behind the employee side to the three stations on the public side to collect money, helped her collect money from the other employees. The movement was necessary to obtain the money that was at the facility. Having Krish made it easier for Caroline to obtain the money because no one would want to interfere in case Caroline decided to hurt Krish. Some may argue that the movement was not incidental when Caroline led Krish towards the public entrance after she obtained the money. However, Caroline's movement of Krish towards the public entrance was necessary because it helped her escape.

It can also be argued that the movement of Krish was not incidental because Caroline could have obtained the money without involving Krish. The movement of Krish was not incidental because Krish was not needed to open a safe since the money was being collected from the employees. However, the movement was incidental because Caroline needed Krish to scare the remaining customers away to help make the robbery easier. Krish movement was incidental because he was not moved more than to obtain the money.

A possible rewrite of the analysis:

Caroline's movement of Krish was incidental to the robbery because it occurred within the county tax collector's building and was solely intended to facilitate the collection of money. She moved Krish from the employee side to the public stations to access funds. Although Caroline did not need Krish to access a register or safe—she collected money from other employees—having Krish present discouraged interference; others feared Caroline might harm him. The further movement—leading Krish toward the public entrance after obtaining the money— was also incidental because it was necessary for Caroline's escape. Caroline's movements of Krish were incidental because they were necessary to completing the robbery.

Food for thought:

- Which version reads more persuasive? Why?
- Which version reads more clearly? Do different portions of each read more clearly than the other version? Why?
- Does the more concise version omit any point(s) made in the longer version? If so, how could they be incorporated?

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