

## People v. Barnes

(2013) \_\_ Cal.App.4th \_\_ [2013 WL 2481258]

### Issue

Must officers obtain a search warrant to “ping” a stolen cell phone?

### Facts

Early one morning near Fort Mason in San Francisco, a man robbed two people at gunpoint and took a GPS-equipped cell phone. SFPD officers drove the victims to a nearby police station where an investigator reported the robbery to the victim’s cell phone provider, Sprint. A Sprint employee notified the investigator that, if the victim consented, Sprint could determine the current whereabouts of the phone by means of “pinging” it.

What’s “pinging”? It occurs when a cell phone provider transmits a signal (a “ping”) to a certain cell phone and the signal commands the device to transmit its current location as determined by means of GPS or cell tower triangulation. As the investigator testified, “The way they explained it to me was that they would send a signal to the phone ... they described it as ‘pinging it,’ that they could then basically find a general location within 15 yards or 15 meters of where the phone was.” Upon faxing the victim’s consent form to Sprint, the investigator was notified that the phone was now “stationary at 16th and Mission Street.” Although 16th and Mission was about three miles from the crime scene, the robbery had occurred about 45 minutes earlier, so the time and distance factors were not inconsistent.

While en route to that location, the investigator requested that patrol officers also respond and he provided them with a general description of the robber. At this point, Sprint reported that the ping was now coming from “between 16th and 17th and Mission.” Seconds later, one of the responding officers reported that he was at 15th and Mission, and that a person who matched the general description of the robber had just gotten into a car and was driving down Mission. When the car stopped for a red light at 15th and Mission, the investigator asked Sprint to ping the phone again and was informed that the phone was also now at 15th and Mission, “moving towards the north.” The car was also now moving north.

The officers stopped the car at 13th and Mission. As one of them testified, “As I approached, I had my flashlight out; I looked in the rear seat of the vehicle and I noticed a purse that matched the description [of the purse] that was taken in the robbery.” He also saw a cell phone on the front seat. The officers then ordered the driver, Lorenzo Barnes, to exit and, as he did so, they saw a handgun in his waistband. When Barnes’ motion to suppress the evidence was denied, he pled guilty to two counts of armed robbery.

### Discussion

Barnes contended that the pinging of a person’s cell phone constitutes a “search” because it reveals information; i.e., the phone’s current location. Consequently, he argued that officers must have a search warrant to ping a phone—even a stolen phone. And because the officers did not have one, he thought the court should suppress all of the evidence in the case.

The U.S. Supreme Court has ruled that a “search” can result in two ways. First, it occurs if officers physically trespassed upon private property for the purpose of obtaining information.<sup>1</sup> Second, a search results if officers intruded upon a place or thing in which a person had a reasonable expectation of privacy.<sup>2</sup> Here, there was no trespass, so Barnes argued that a search resulted because he reasonably believed that the officers would not ping the phone he had stolen and, thereby, determine his whereabouts.

Most readers are probably thinking that this sounds ridiculous. Well, so did the court. In fact, it expended only six words in response to Barnes’ argument that he had a legitimate expectation of privacy in the cell phone he had stolen: *The answer is an emphatic “No.”*<sup>3</sup>

Finally, Barnes argued that the officers lacked grounds to detain him because the pinging merely revealed the location of the stolen phone, not the location of the robber. But the court observed that the officers “could certainly infer a reasonable possibility that if they could locate the phone they would also locate the robber.” Furthermore, the court pointed out that the detention was not based solely on Barnes’ location; it was also based on the similarity between Barnes’ and the robber’s race, gender, and attire. Barnes’ conviction was affirmed. POV

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<sup>1</sup> See *United States v. Jones* (2012) \_\_ U.S. \_\_ [132 S.Ct. 945].

<sup>2</sup> See *Katz v. United States* (1967) 389 U.S. 347.

<sup>3</sup> **NOTE:** The court also pointed out that the Sixth Circuit in *U.S. v. Skinner* (6th Cir. 2012) 690 F.3d 772, 778 reached the same conclusion, ruling that a drug courier could not reasonably expect that officers would not monitor his travels by means of pinging because it merely provided them with information as to his movements along public highways. The court added there was another reason for denying Barnes’ motion: a warrant was not required because the owner of the cell phone had consented to the pinging.