

# Recent Case Report

## People v. Daggs

(2005) \_\_ Cal.App.4<sup>th</sup> \_\_ [2005 WL 2516674]

### ISSUE

Did a robbery suspect have standing to challenge the search of a cell phone he had dropped at the crime scene?

### FACTS

Daggs went into a Walgreen's store in San Mateo County, walked behind the counter, grabbed several cartons of cigarettes, and headed for the door. An employee tried to stop him but Daggs squirted him with pepper spray. Before running out the door, Daggs dropped a cell phone he had been carrying. Officers found the phone and booked it into evidence.,

About a week later, an officer removed the battery from the phone so as to display the phone's electronic serial numbers. With this information, he was able to obtain a search warrant for phone company records showing the subscriber's name and address. It turned out the phone belonged to Daggs' brother who told officers he had given it to Daggs. Daggs was subsequently arrested and, after his motion to suppress the cell phone information was denied, pled no contest to the robbery

### DISCUSSION

Daggs contended that, (1) the officer's act of removing the battery from his cell phone constituted a "search" because he had locked the phone to prevent anyone from accessing his phone number, and (2) it was an illegal search because the officer did not have a warrant. Consequently, he asked the court to suppress the phone company records linking him to the phone. The prosecution replied that, even if the officer's actions constituted an illegal search, Daggs did not have standing to challenge the search because he had abandoned the phone at the crime scene.

It is settled that evidence obtained as the result of an illegal search of an object will not be suppressed unless the defendant had "standing" to challenge the search, meaning he reasonably expected the contents of the object would remain private.<sup>1</sup>

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<sup>1</sup> See *Rakas v. Illinois* (1978) 439 U.S. 128, 143 ["[The] capacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place."]; *United States v. Payner* (1980) 447 U.S. 727, 731 ["[A] court may not exclude evidence under the Fourth Amendment unless it finds that an unlawful search or seizure violated the defendant's own constitutional rights."]; *In re Tyrell J.* (1994) 8 Cal.4<sup>th</sup> 68, 89 ["[O]ne must *first* have a reasonable expectation of privacy *before* there can be a Fourth Amendment violation."].

It is also settled, however, that a defendant who had a reasonable expectation of privacy will lose it if he abandoned the object—permanently or temporarily—under circumstances that made it unreasonable to expect its contents would remain private.<sup>2</sup>

This is exactly what Daggs had done, said the prosecution—he abandoned the cell phone when he left the store without it. Daggs responded that he did not “abandon” the phone. Actually, he just “lost” it, probably during the scuffle with the Walgreen’s employee who had interfered with his getaway. Furthermore, when he realized the phone was missing he would certainly have returned to the store to retrieve it except, of course, that would have been stupid.

The court noted that Daggs was essentially arguing that abandonment cannot occur unless the defendant *intended* to abandon the object. But, as the court explained, a defendant’s subjective intent is irrelevant. What matters is whether the objective circumstances demonstrated an intent to abandon.<sup>3</sup> And, objectively speaking, most robbers who drop personal property at their crime scenes seldom return to ask if anybody happened to see it. As the court explained, “[D]efendant’s testimony that he did not intend to drop the phone, and wanted it back, is immaterial where the objective circumstances were that he left his phone unattended in a public place, fled the scene, and made no attempt to retrieve it.”<sup>4</sup>

Accordingly, the court ruled that Daggs lacked standing to challenge the search and, therefore, his motion to suppress was properly denied. POV

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<sup>2</sup> See *California v. Greenwood* (1988) 486 U.S. 35, 39-41; *People v. Ayala* (2000) 24 Cal.4<sup>th</sup> 243, 279; *People v. Shepherd* (1994) 23 Cal.App.4<sup>th</sup> 825, 828-9 [defendant left her purse in a stolen truck]; *In re Baraka H.* (1992) 6 Cal.App.4<sup>th</sup> 1039, 1048 [abandonment may occur even if the defendant does not intend “to permanently relinquish control over the object.”]; *U.S. v. Basinski* (7<sup>th</sup> Cir. 2000) 226 F.3d 829, 836 [“[N]o person can have a reasonable expectation of privacy in an item that he has abandoned.”]; *U.S. v. Stevenson* (4<sup>th</sup> Cir. 2005) 396 F.3d 538, 546 [“When a person voluntarily abandons his privacy interest in property, his subjective expectation of privacy becomes unreasonable, and he is precluded from seeking to suppress evidence seized from it.”]; *U.S. v. Alewelt* (7<sup>th</sup> Cir. 1976) 532 F.2d 1165, 1167 [leaving an item unattended in a public place evidences a “relinquishment of any reasonable expectation of privacy and security in regard to it.”].

<sup>3</sup> See *People v. Brown* (1990) 216 Cal.App.3d 1442, 1451 [“Abandonment is primarily a question of intent, and intent may be inferred from words, acts, and other *objective* facts.”].

<sup>4</sup> **NOTE:** The court pointed out that even if a defendant’s subjective intent was the determining factor, Daggs would still lose because “as soon as he realized he had left the phone behind, he made a conscious and deliberate decision not to reclaim the phone, and never did.”