

## People v. Bowen

(2020) \_\_ Cal.App.5th \_\_ [2020 WL 3989644]

### Issue

Did officers have grounds to initiate an emergency “ping” on a suspect’s cellphone?

### Facts

Quentin Bowen placed a newspaper ad for someone to board his dog, Dash. A man identified as Dennis N. answered the ad and agreed to take care of Dash for \$100 per week. At first, everyone was happy, especially Dash. Bowen would visit him frequently and Dennis enjoyed his company and eventually became very attached to him. Plus, Dennis was earning some extra money. Or so he thought. After being stiffed for four months, he complained to Bowen who clubbed him on the head and stabbed him eight times in the neck. Dennis and Bowen fled in different directions and, not surprisingly, Dash followed Dennis. Witnesses phoned 911.

Santa Rosa police and paramedics responded. Before Dennis was transported to the hospital, he told officers that Bowen’s cell phone number was on Dash’s dog tag. An officer obtained the number and asked Bowen’s cell phone service provider to conduct an emergency “ping.” The ping disclosed that Bowen’s phone was currently near the Santa Rosa Creek Trail. Several officers converged on the location and found Bowen. They also found his bloody knife.

Bowen was charged with, among other things, attempted murder. When his motion to suppress the knife was denied, the case went to trial and he was convicted.

### Discussion

Bowen argued that the knife should have been suppressed on grounds that it was obtained as the result of an unlawful search. Specifically, he argued that a “search” occurred when the cell phone provider, at the officers’ direction, pinged his phone, thereby disclosing Bowen’s current whereabouts.

It appears this is the first case in which this issue was directly presented. As the court pointed out, “The parties do not cite any California cases addressing whether obtaining real-time CSLI [Cell Site Location Information] constitutes a search, and we are unaware of any published authority on this issue.” It was, however, unnecessary for the court to resolve this issue. Instead, it ruled that Bowen’s flight with his bloody knife into a populated area constituted an exigent circumstance that warranted an emergency ping. As the court explained, under California law a warrant is not required to access electronic communications data when officers reasonably believed “that an emergency involving danger of death or serious physical injury to any person requires access to the electronic device information.”<sup>1</sup>

Bowen argued that he did not present such a threat, but the court disagreed. As it explained, “Here, at the time [the officer] requested a ping of defendant’s cell phone, the information available to him was that less than an hour earlier Dennis N. had been repeatedly stabbed in the neck in an unprovoked attack within 200 yards of a preschool and near a shopping center and multiple neighborhoods. Further, the suspect, who was possibly still armed with a knife, had fled on foot.” These circumstances, said the court,

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<sup>1</sup> Pen. Code § 1546.1(c)(6).

made it “imperative that the suspect be found as soon as possible to prevent another possible unprovoked attack.”<sup>2</sup> Accordingly, the court ruled that the evidence was obtained lawfully. POV

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<sup>2</sup> Also see *U.S. v. Banks* (10th Cir. 2018) 884 F.3d 998, 1013 [“exigent circumstances justified pinging Banks’ phone ... Banks called an informant and threatened to kill him”]