The California Legal Update

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This Edition dedicated to the Memory of Ernest L. Marugg, Sr.
September 14, 1941 - October 29, 2013
Deputy District Attorney, San Diego District Attorney's Office
You will be missed

Remember 9/11/01; Support Our Troops

THIS EDITION'S WORDS OF WISDOM:

"*Welcome to IDAHO. Attention Criminals & Terrorists. Over 170,000 Idaho Residents Have A Permit To Carry A Concealed Weapon. About 60% Of The Rest Of The Population Is Armed But Have Not Bothered to Purchase The License As It Is Not A Requirement to Carry A Firearm. Understand, A Substantial Portion Of The Population Is Armed And Prepared To Defend Themselves And Others Against Acts Of Criminal Violence. YOU HAVE BEEN WARNED! However, California, New York and Illinois have disarmed their citizens for your convenience*." (Actual road sign on the Idaho border. I can forward a photograph of this sign to you upon request.)

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***ADMINISTRTIVE NOTES*:**

> ***Change in the Legal Update*:** In case you didn't notice, the title to the *Legal Update* has changed, at least to the extent of deleting any reference to the San Diego District Attorney's Office (i.e., "*SDDAO*"). What this means is that the *Legal Update* is no longer a publication of the SDDAO. And I've added "*California*" to the title as being more descriptive of what this publication is all about. The reason for this change is that the SDDAO has declined to continue providing me with the legal research tools I've used in writing the *Update* and other legal publications while employed by San Diego District Attorney and for the last five years since my "retirement." The SDDAO's continuing research support in the writing of the *Update* was based upon a "gentleman's agreement" we reached when I retired, and which the SDDAO has now unilaterally decided to no longer honor. Despite my efforts in authoring the *Update* without compensation, with the SDDAO getting the overall credit for providing law enforcement officers, prosecutors, and anyone else interested in the law throughout the state, with up-to-date reviews of new cases, annual statutory changes, and extensive easy-reference outlines on search and seizure, *Miranda*, Sixth Amendment right-to-counsel, and other legal topics, the SDDAO has chosen to no longer back me in this endeavor. The fact that this withdrawal of support comes shortly after I publicly endorsed both Bob Brewer and Terri Wyatt in their respective campaigns to become the next District Attorney, running against incumbent Bonnie Dumanis, might be purely coincidental with no retaliation intended. I don't know, and I don't really care. My loyalties and concerns are with the SDDAO and its hard working deputies, investigators, and support staff; not to the District Attorney herself. Either way, I will continue to put out the *Legal Update* and other publications with the research sources being secured at my own expense. However, following this edition, the *Update* will no longer be provided to the employees of the SDDAO as a group. Those in the SDDAO who are interested in continuing to receive the *Legal Update* individually may certainly do so. You need only notify me of your wish to be placed on my e-mail address list. Also, the SDDAO no longer has my permission to include my writings in the Office's DANet or other computerized repositories. I appreciate your understanding in this unfortunate turn of events.

***CASE LAW*:**

***Hot Pursuit*; *Warrantless Residential Entries*:**

Stanton v. Sims **(Nov. 4, 2013) 571 U.S. __ [No. 12-1217]**

Rule: Pursuing a fleeing misdemeanant in "hot pursuit" into the curtilage of one's home (or even the home itself) may or may not be constitutional, but at least, being an unsettled issue, entitles the offending officer to qualified immunity from civil suit.

Facts: Plaintiff Drendolyn Sims lived in a small house in the City of La Mesa. Her front yard was completely enclosed by a "sturdy, solid wood" six-foot fence, with a closed (also apparently of solid wood) gate. At about one o'clock in the morning on May 27, 2008, La Mesa Police Department Officer Mike Stanton and his partner responded to a radio call concerning an "unknown disturbance" involving a baseball bat in the street in front of Sims's home. Arriving at the scene in a marked patrol car and wearing police uniforms, the officers observed three men walking in the street. Upon seeing the officers, two of the subjects turned into an apartment complex. The third, later determined to be Nicholas Patrick, walked quickly across the street in front of the patrol car towards Sims's house. None of the subjects were carrying a baseball bat nor any other visible weapons, nor was there anything else tending to indicate that the subjects had been involved in the reported disturbance. Officer Stanton knew the area, however, to be associated with gang violence and that gang members often carried guns and knives. Officer Stanton called to Patrick, identifying himself as a police officer and ordering him to stop. Patrick looked directly at the officers and, despite several repeated commands, kept walking. He entered the gate to Sims's front yard and shut it behind him. Believing Patrick to be in violation of P.C. § 148 (disobeying a peace officer), and fearing for his own safety, Officer Stanton made a "split-second decision" to kick open the gate. Drendolyn Sims, who was standing immediately behind the gate, was struck by the gate as it flung open, knocking her into the front stairs. She was temporarily knocked unconscious, or at least became incoherent, sustaining a laceration on her forehead and an injury to her shoulder. She was later transported to the hospital. Sims filed a civil action in federal district court under 42 U.S.C. § 1983, alleging that her Fourth Amendment rights had been violated by Officer Stanton's warrantless entry into her front yard. Officer Stanton filed a motion for summary judgment (i.e., pre-trial dismissal), arguing that he had qualified immunity. During these pre-trial motions, Sims testified that she "enjoy[s] a high level of privacy in [her] front yard." Her fence, which was built for "privacy and protection," ensured that her outdoor space was "completely secluded" and cannot be seen by someone standing outside the gate. Additionally, the front yard was used for talking with friends, as Sims was doing on this evening (at 1:00 o'clock in the morning?), and for storing her wheelchair. The federal trial court judge dismissed her lawsuit, finding that (1) Stanton had not used excessive force; (2) exigency and a lesser expectation of privacy in the curtilage surrounding Sims's home justified the warrantless entry; and (3) no clearly established law put Stanton on notice that his conduct was unconstitutional, entitling him to qualified immunity. Sims appealed. The Ninth Circuit Court of Appeal reversed (*Sims v. Stanton* (9th Cir. Jan 16, 2013) 706 F.3rd 954; see *Legal Update*, Vol. 17, No. 12, Dec. 26, 2012.) While holding that the curtilage of Sims' home was entitled to the same protections as the rest of her residence, the Court also held that Officer Stanton was not entitled to qualified immunity, and that because Nicolas Patrick had committed, at best, no more than a misdemeanor, chasing him into the curtilage of one's home was a clearly-established Fourth Amendment violation. The City of La Mesa petitioned the U.S. Supreme Court.

Held: A unanimous United States Supreme Court reversed. In considering only the question of whether Officer Stanton was entitled to qualified immunity, the Court found that the legal rules on the legality of a hot pursuit of a fleeing misdemeanant into one's

residence (or the curtilage of a residence) is *not* well-settled as was alleged by the Ninth Circuit. The doctrine of qualified immunity protects government officials (including police officers) from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person (or officer) should have known. Recognizing that police work is often the product of "split-second decisions," the doctrine of qualified immunity is intended to protect all but the "plainly incompetent or those who knowingly violate the law" from the consequences of "reasonable but mistaken judgments." To be a "clearly established" rule, "existing precedent must have placed the statutory or constitutional question beyond debate." It has not been suggested in this case that Officer Stanton knowingly or purposely violated the Constitution. The issue here, therefore, is whether, in light of case law precedent existing at the time, he was "plainly incompetent" when he entered Sims' yard in pursuit of a fleeing misdemeanant. The Ninth Circuit concluded that he was. The Ninth Circuit was wrong. Federal and state court decisions nationwide are sharply divided on the question whether an officer with probable cause to arrest a suspect for a misdemeanor may enter a home without a warrant while in hot pursuit of that suspect. In so finding, the Supreme Court listed a number of conflicting decisions from across the country on this issue. It also noted two decisions from California where the courts have refused to limit the hot pursuit exception to felony suspects. (*People* v. *Lloyd* (1989) 216 Cal. App. 3rd1425; and *In re Lavoyne M.* (1990) 221 Cal. App. 3rd 154.) Per the Supreme Court; "It is especially troubling that the Ninth Circuit would conclude that Stanton was plainly incompetent—and subject to personal liability for damages—based on actions that were lawful according to courts in the jurisdiction where he acted." It was further noted that two different District Courts in the Ninth Circuit have granted qualified immunity precisely because the law regarding warrantless entry in hot pursuit of a fleeing misdemeanant is not clearly established. (*Kolesnikov* v. *Sacramento County* (ED Cal., Apr. 22, 2008) No. S–06–2155, 2008 WL 1806193; *Garcia* v. *Imperial* (SD Cal., Sept. 28, 2010) No. 08–2357, 2010 WL 3834020.) The Court also discussed its own decision in *Welsh v. Wisconsin* (1984) 466 U.S. 740, used by the Ninth Circuit as justification for its decision here and in similar cases. In *Welsh*, it was held only that an entry into a residence for a minor offense would, as a general rule, be illegal absent a search warrant, and that a warrant is "usually" going to be required. But even so, *Welsh*, and other decisions cited by the Ninth Circuit, were not "hot pursuit" cases. In noting this, the Supreme Court then ruled that "nothing in the (*Welsh*) opinion establishes that the seriousness of the crime is equally important *in cases of hot pursuit*." It is uncontested that Officer Stanton was in hot pursuit of Patrick when he burst his way through Sims' gate. Whether or not Officer Stanton was right or wrong, from a constitutional standpoint, in forcing entry under the circumstances remains the subject of much debate. But certainly, he was entitled to qualified immunity.

Note: The Court specifically declined to resolve this conflict in the case law even though acknowledging the fact that the lower courts don't seem to know which way to go. Too bad. This would have been the perfect time, and (in my never-to-be-so-humble opinion) the perfect case, to do so. But, by leaving this an open question, you at least know that California authority approves of what Officer Stanton did and that the Ninth Circuit cannot hold you civilly liable should you choose to do the same, at least until the rule does become settled. I've always been of the opinion, and have in fact taught at any number of seminars and college classes, that "hot pursuit" justifies warrantless entries into residences in any case, even when chasing a "fleeing infractioner" (to coin a word). But either way, I at least have the satisfaction of being able to tell the Ninth Circuit, along with some other legal sources that have been advising you to follow the Ninth Circuit's lead on this issue; "*I TOLD YOU SO*." Note my comment in my brief on this case when the Ninth Circuit's decision first came down: "*So is this a* "*well-settled*" *rule of which*

Officer Stanton should have known? *Absolutely not*!" (*Legal Update*, Vol. 17, No. 12, Dec. 26, 2012.)

***Accessories, per P.C. § 32*:**

***People v. Nuckles* (Apr. 22, 2013) 56 Cal.4th 61**

Rule: A person who intentionally aids a parolee in absconding from parole supervision qualifies as an accessory, per P.C. § 32.

Facts: Adam Gray was convicted of dissuading a witness (per P.C. § 136.1(a)(2)) and sentenced to state prison for two years. In July, 2008, he was paroled to Kern County. As a condition of his parole, he was not to leave that county without his parole officer's permission. But he only lasted a year before he disappeared, causing a warrant to be issued for his arrest. Defendant, Jane Nuckles, who lived in the neighboring Kings County with her boyfriend, John Amaral, knew Gray in that her daughter had had a child by him. Defendant, who was also on parole, liked Gray, having indicated that she would "take a bullet for him." She invited Gray and his new girlfriend, Brea Hays, to stay with her and Amaral. In August, 2009, Gray and Hays did in fact move into defendant's home. When Gray was featured in the "Crime Stoppers" section of a local newspaper, defendant, Gray and Hays all celebrated his notoriety. But Amaral expressed his concern that defendant might have her own parole revoked if it was discovered that she was harboring Gray. Defendant told Amaral not to tell anyone about him. Gray, defendant and Hays made contingency plans should the police come looking for him. Defendant instructed Gray and Hays that they could hide in the basement by going through a trap door hidden in the bedroom closet. On September 3rd, Amaral, still uncomfortable with Gray being there, called the Crime Stoppers hotline and reported that Gray was staying in their house. Police found Gray hiding in the garage. Gray's personal belongings were found in several large duffel bags. A handgun was also found that Amaral claimed did not belong to him or defendant. Gray was found in violation of parole and returned to prison for six months. Defendant was arrested and charged in state court with being an accessory, per P.C. § 32. A jury didn't believe her testimony when she denied that Gray was living with her, claiming that he was only visiting and that she'd ordered him to leave when she discovered he had absconded from parole. Defendant was convicted and, after admitting that she'd served a prior prison term (per P.C. § 667.5(b)), was sentenced to prison for four years. On appeal, defendant argued that assisting a parolee abscond from supervision did not constitute being an accessory, as that term is described in P.C. § 32. The Court of Appeal disagreed, and affirmed. Defendant filed a petition with the California Supreme Court.

Held: The California Supreme Court unanimously affirmed. Pursuant to P.C. § 32, an accessory is a person "who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction, *or punishment*, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof . . . ." (Italics added) The operative word here is "*punishment*." Defendant argued that

harboring a person who is on parole does not fit the elements of California's accessory statute. However, the Court noted that this argument misses the point. Defendant was not charged with being an accessory to a parole violation, but rather to the punishment for his earlier dissuading a witness conviction. P.C. § 32 applies not only to those who help felons avoid capture or conviction, but also to those who help them avoid or escape from punishment. "The concept of punishment is broader than the term of imprisonment." Under California's sentencing scheme, a convicted felon's parole supervision, occurring after completing a term in state prison, is a direct consequence of a felony conviction and therefore constitutes a part of the punishment for the felony. Adam Gray in this case had served part of his punishment for his dissuading conviction when he completed his two years in prison. But he had not yet completed the supervised parole portion of his punishment. Absconding from parole, he was avoiding that portion of his punishment. Defendant's acts of helping Gray abscond from parole supervision was properly charged as a violation of P.C. § 32; being an accessory to the crime of dissuading by helping him avoid a portion of his punishment.

Note: This case provides an excellent discussion of California's felony sentencing scheme and parole's relationship to a criminal defendant's prison sentence. It's also worth noting that while Jane Nuckles didn't actually take a bullet for Adam Gray, she might as well have, getting sentenced to prison for longer than Gray's initial prison term even when added to the extra six months he got for violating parole. The fact that she'll still be cooling her heels in prison when Gray is back out on the street (although still on parole), by the way, was held by the Court *not* to constitute a due process violation.

***Requesting Identification & Consensual Encounters*:**

***People v. Leath* (June 20, 2013) 217 Cal.App.4th 344**

Rule: Merely requesting identification from a suspect, or even retaining it, absent more coercive circumstances, does not by itself convert a consensual encounter into a detention.

Facts: Osmara Merlo, Jorge Vasquez, and Daniel Guillen were walking home at 11:30 p.m. in the area of 43rd Place and Sixth Avenue in Los Angeles when a dark colored SUV drove up to them. The area is known as territory controlled by the 48th Street clique of the Rollin 40's street gang. Two individuals in the SUV, later identified as defendant and co-defendant Timothy Brewer, confront the three victims at gunpoint. They took Merlo's purse along with other personal belongings from Vasquez and Guillen. The defendants then yelled; "*Four-Eighth Street. Start running*." L.A. P.D. Officers Ishigami and Quinata responded to the call and obtained a vehicle and suspect description. Two additional officers, Leary and Holliman, arrived. They got the suspect information and talked briefly with the three victims before heading out to check the area. Upon driving their marked patrol car across the intersection of 48th Street and 4th Avenue, the officers noticed a dark SUV going southbound on 3rd Avenue. Making a couple of quick turns, the officers followed the SUV onto 3rd Avenue, and found it parked awkwardly at the curb, "but not close, but kind of like it looked like in a hurry." The passenger-side door

was open. Defendant was walking up the driveway away from the vehicle on the driver's side. As the officers got out of their car, Officer Leary called to defendant, saying; "Hey, sir, you left your rear door open." Defendant remarked; "Oh, oh, shit, I did," and he started to walk back to the car. Officer Leary asked what defendant was doing in the area. Defendant responded that the residence he was approaching was his friend's (or his cousin's) house. Officer Leary then asked defendant his name and asked if he had any identification. Defendant handed Officer Leary his identification card. The officers then ran defendant's name through their database and discovered that he had "about a hundred thousand dollars' worth of traffic warrants." Defendant was arrested on the warrants. By then, some 5 to 7 minutes after the initial contact, Officer Ishigami had arrived at the scene. He started to check the area and found some of the victims' stolen possessions strewn about nearby. He also found co-defendant Timothy Brewer hiding under a nearby car. Defendant was further charged with three counts of second-degree robbery in state court. Defendant's motion to suppress was denied and he pled no contest to two counts of second-degree robbery, admitted a prior conviction, and was sentenced to prison for six years. Defendant appealed.

Held: The Second District Court of Appeal (Div. 4) affirmed. On appeal, defendant argued that Officers Leary and Holliman had detained him when they asked for and retained his identification card, and that the detention was illegal because at that point they lacked the necessary reasonable suspicion to believe that he had committed a crime. The Court disagreed. While first noting that investigative stops are a Fourth Amendment issue, and a "seizure" occurs whenever a police officer "by means of physical force or show of authority" restrains the liberty of a person to walk away, the Court concluded, after reviewing the relevant case authority, that no detention occurs by simply asking for a suspect's identification. The contact remains a "consensual encounter." While there is some authority for the argument that once the officer obtains a suspect's identification, the contact becomes a detention, the Court here sided with the apparent majority rule that "(t)he right to *ask* an individual for identification in the absence of probable cause is meaningless if the officer needs probable cause to *accept* the individual's proof of identification." The better rule, therefore, is that an individual's voluntary cooperation with an officer's request for identification does not convert the request into a detention, so long as the encounter remains consensual under the totality of the circumstances. This is the better rule, per the Court, because the individual remains free, at least at this point, to request that his identification be returned and to leave the scene. In the present case, the trial court determined that defendant was not detained when originally contacted. The contact was no more than a consensual encounter; i.e., a contact where a reasonable person would have felt free to leave. Defendant did not contest this finding. Then, defendant voluntarily complied with the officer's request for identification. Nothing happened that can be said to have converted the contact into a detention. The officers did not accuse defendant of any illegal activity when they first addressed him. They merely told him his car door was open. They then asked for, but did not demand, identification. No threats or force was used. Defendant did not ask for the return of his identification. Thus, the record supports the trial court's conclusion that a reasonable person in defendant's situation would have felt free to leave.

Note: The Court further held that the officers had sufficient reasonable suspicion to detain him anyway. Despite some slight discrepancies in the vehicle and the suspects' descriptions, the "totality of the circumstances," not the least of which was defendant's apparent rushed attempt to separate himself from his car, supported a reasonable suspicion to believe that defendant was involved in the robbery that had just occurred in that same vicinity. But even with a reasonable suspicion, these officers handled the contact just as they should have; i.e., keeping it low key and non-confrontational for as long as practical. In so doing, they provided the prosecution with *TWO* arguments for avoiding the suppression of any evidence. First, no justification for the contact needed to be made in that defendant was only consensually encountered. But even if the contact was a detention, the officers had an articulable reasonable suspicion justifying what they did. Good police work. Good arrest.

***Cellphone Use While Driving*:**

People v. Spriggs **(Mar. 21, 2013) 215 Cal.App.4th Supp. 1**

Rule: Using a cellphone's map application by looking at a map on the phone while driving is a violation of V.C. § 23123.

Facts: Defendant was cited by a California Highway Patrol officer for using his handheld wireless cellphone while driving although he was only using it for its map application function. Specifically, defendant was merely looking at a map on his cell phone while he was driving. The citation was written as a violation of Vehicle Code section 23123 which makes it illegal to use a wireless telephone while driving. Defendant was convicted, and appealed.

Held: The Appellate Department of the Superior Court (Fresno) upheld defendant's conviction. V.C. § 23123(a) provides that: "A person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving." The section does not define the term "*using*." Defendant argued that "using" is necessarily limited to "conversing" or "listening and talking" on the cellphone. In support of this argument, defendant pointed out that the Legislature separately enacted V..C. § 22123.5, making it illegal to write, send, or read a text-based communication. This fact, according to defendant, shows a legislative intent *not* to include other uses of a cellphone, such as its map function, when it enacted section 23123. The Court disagreed. In response to defendant's argument, the Appellate Department of the Superior Court cited the standard procedures for determining the "plain and commonsense meaning" of statutes. "In undertaking to interpret the words of a statute, the court ascertains the Legislature's intent by 'follow[ing] the statute's plain meaning, if such appears, unless doing so would lead to absurd results the Legislature could not have intended.'" Ultimately, the legislation's purpose must be considered. Looking at the legislative history of section 23123, the Court determined that the section was intended to mitigate the dangers caused by distracted drivers. Even though the term "using" is not defined in the statute, the Legislature could have limited it to "conversing" or "listening and talking"

had it so intended. Alleviating the problem of distracted driving requires that the statute be interpreted to include anything that causes such distractions and to keep "both hands on the wheel." While an ongoing conversation carried on between a motorist and another passenger—i.e., a "mental distraction"—is also a problem, this section wasn't intended to deal with this. Mitigating the "physical distraction" a motorist encounters by picking up the phone, punching the number keypad, holding the phone up to his or her ear to converse, or pushing a button to end a call, is what was intended to be addressed by section 23123. The legislative history as discussed by the Court suggests that this section was designed to prohibit any "hands-on" use of the phone while driving, without limitation, including using a cellphone's map application. Also, the fact that the Legislature has also chosen to separately legislate against texting is irrelevant to the purposes behind section 23123.

Note: Little by little, the courts are dealing with the cellphone and texting statutes (i.e., sections 23123 (cellphone use), 13123.5 (texting), and 23124 (use by minors)), adding definitions to words where the Legislature failed to do so. But the trend is to give the statutes a very broad interpretation. The intent of the Legislature, as noted in this decision, was to alleviate, as much as is practical and possible, the dangers of distracted driving. So far, at least, what few cases there are, have all been decided against the defendant's attempts to restrict the meaning of the statutes. E.g., see *People v. Nelson* (2011) 200 Cal.App.4th 1083: "*Driving*" includes a "fleeting pause," such as while stopped at a red light. *People v. Corrales* (2013) 213 Cal.App.4th 696, 669-700: Defendant, having been observed while stopped at the side of the road and texting, was lawfully stopped five minutes later when observed pulling into traffic while learning forward and looking down, with hand movements consistent with texting. This new case continues the trend.

***GPS*; *Pinging A Cellphone*:**

People v. Barnes **(June 11, 2013) 216 Cal.App.4th 1508**

Rule: Use of a victim's cellphone GPS capabilities to track her phone after it is stolen is not a Fourth Amendment violation.

Facts: Defendant accosted Charles Parce and Carolyn Fey near Fort Mason in San Francisco. Brandishing a handgun, defendant demanded their belongings. Parce gave defendant his wallet. Fey, on the other hand, ran across the street and threw her turquoise Prada handbag under a parked car. Defendant retrieved her purse, however, and fled. In Fey's purse were her wallet and a "Palm Pre smart phone." The phone was equipped with GPS capabilities. San Francisco P.D. Officers Zeltzer and Hamilton responded, broadcasting a description of the suspect and the stolen items. Upon Fey telling Officer Zeltzer that her phone had GPS, the officer contacted Sprint corporate security. Sprint told Office Zeltzer that if Fey would sign a release of civil liability, they could "ping" the phone and provide a location accurate to within 15 yards (or 15 meters). This was done. Sprint, therefore, was able to tell Officer Zeltzer that the phone was currently at 16th and Mission Streets, and stationary. This was about 45 minutes after the robbery. Officers

responded to that location looking for someone fitting defendant's description. Officers Clifford and Tannenbaum, upon arriving at 16th and Mission, observed defendant who fit the physical description of the robber. Defendant was seen getting into a car and driving down Mission Street when Sprint reported the phone to be at 15th and Mission. With the pings moving north, defendant was followed to 13th and Mission where a traffic stop was made. Officer Zeltser arrived just in time to help. Upon approaching the car defendant was driving, Officer Zeltzer saw the victim's distinctive purse on the back seat. A cell phone was on the seat next to defendant. This all occurred within an hour of the robbery. Fey was brought to the scene and identified defendant as the robber. Charged with two counts of armed robbery (and other offenses) in state court, defendant filed a motion to suppress. The trial court denied the motion. Defendant pled guilty and appealed.

Held: The First District Court of Appeal (Div. 2) affirmed. While the appeal on this case was pending, the United State Supreme Court decided *United States v. Jones* (2012) 565 U.S. __ [132 S.Ct. 945]. *Jones* held that the placing of a tracking device on a suspect's vehicle and then monitoring its movement for 28 days constituted a trespassory Fourth Amendment violation. The Court here discussed *Jones* at length, noting in particular several of the justices' concerns that new high-tech technology was creating unique privacy rights issues that the authors of the Fourth Amendment could never have foreseen. In this case, however, contrary to *Jones*, there was no trespass involved in the placement of the GPS (it already being in a phone that defendant stole), it was the victim's GPS phone that was being tracked, and it was for only limited time (one hour) as opposed to an extended period. *Jones*, therefore did not dictate the outcome of this case. Specifically, it was held that because the phone that was being tracked was stolen by defendant, belonging to the victim, defendant couldn't claim any reasonable expectation of privacy that was being violated. The Court further cited with approval a Sixth Circuit federal case (*United States v. Skinner* (6th Cir. 2012) 690 F.3rd 772.) which held that pinging a suspect's own cell phone as an aid to locating the suspect who was driving on the public thoroughfares did not violate the suspect's expectation of privacy. Here, the officers' use of Fey's GPS to track her cell phone was held to be in compliance with California's statutory restrictions on such use, as described in P.C. § 637.7(a), where an exception is provided for law enforcement. (Subd. (c)) And lastly, the Court found that the use of the GPS, along with the physical description of suspect, constituted sufficient reasonable suspicion to justify stopping defendant. Use of the GPS under the circumstances of this case, therefore, was held *not* to be in violation of the Fourth Amendment.

Note: The Court also rejected, without any real analysis, a few other defense arguments, such as that some foundation should have been provided in testimony attesting to the accuracy of the use of a GPS. I can see this being a real issue in some future case where another court takes this argument seriously. Asked once about writing a search warrant affidavit for a house where pinging a stolen iPad indicated the device was located, my suggestion to the officer was that he should call the Apple corporation and get an expert opinion as to the accuracy of its location-finding features (e.g., within how many feet), and include that in the affidavit. I never heard back on how that turned out. But I can see the lack of such an expert opinion being a serious issue someday.