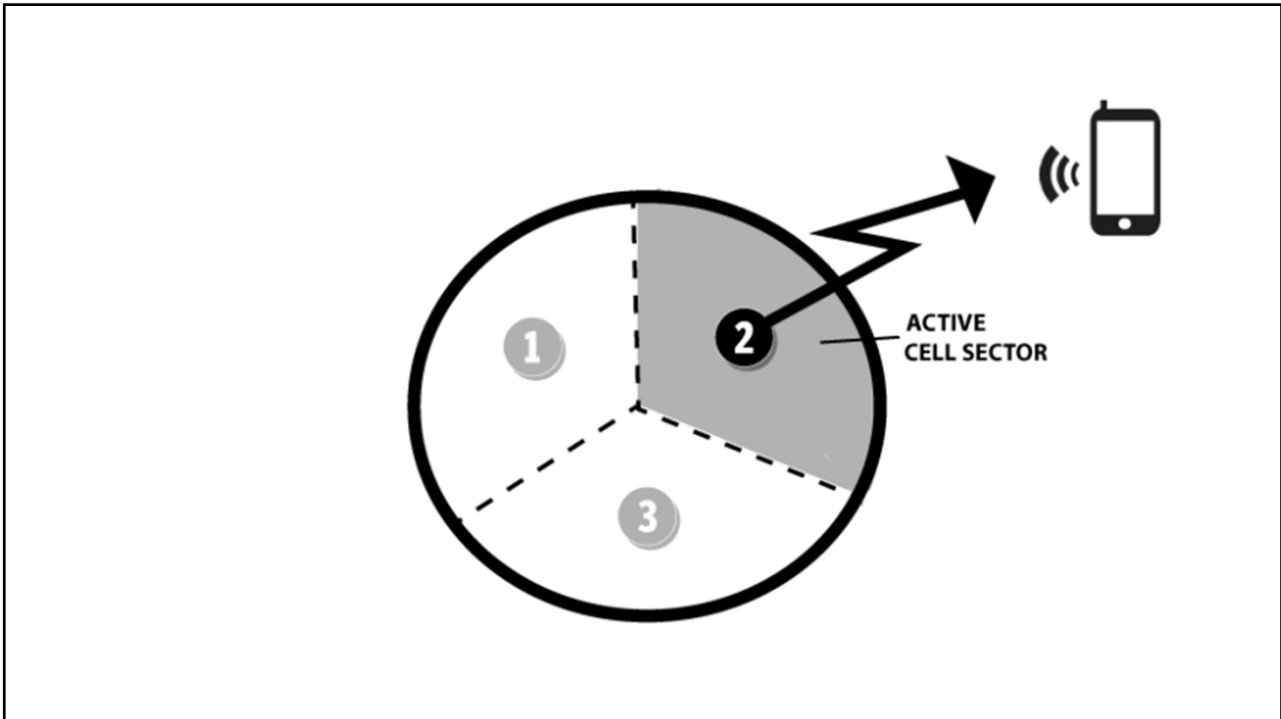
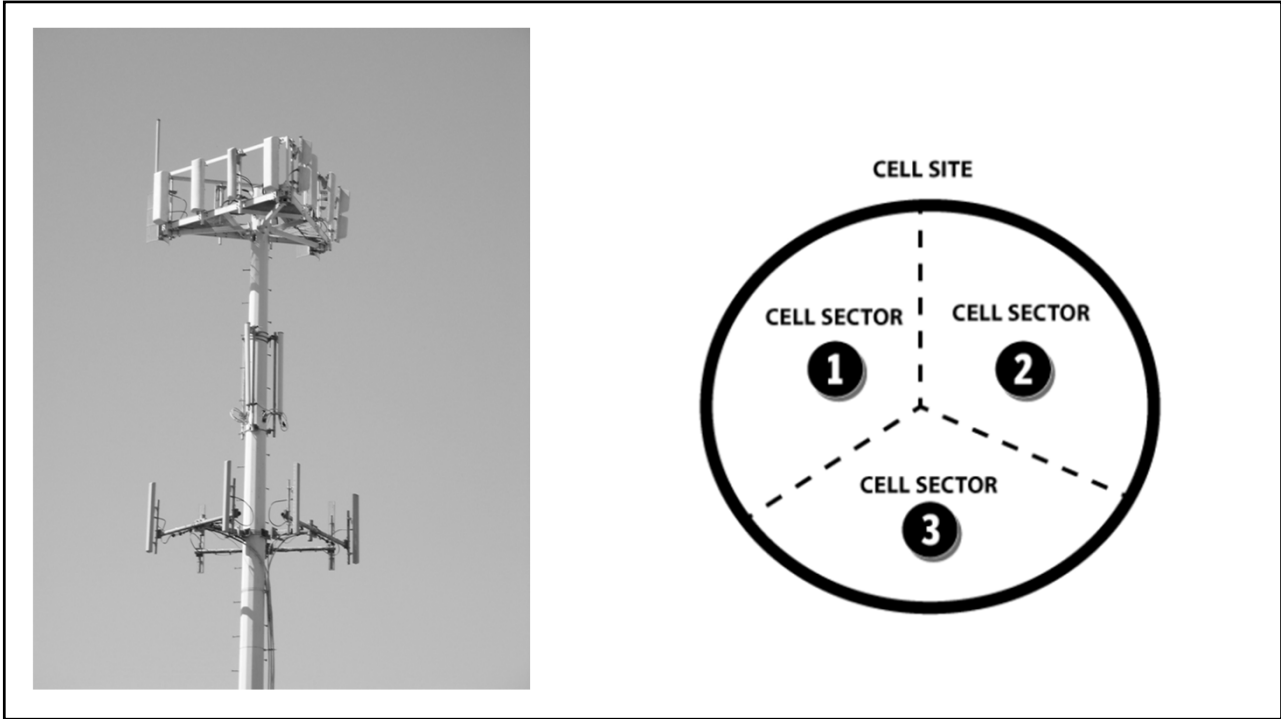
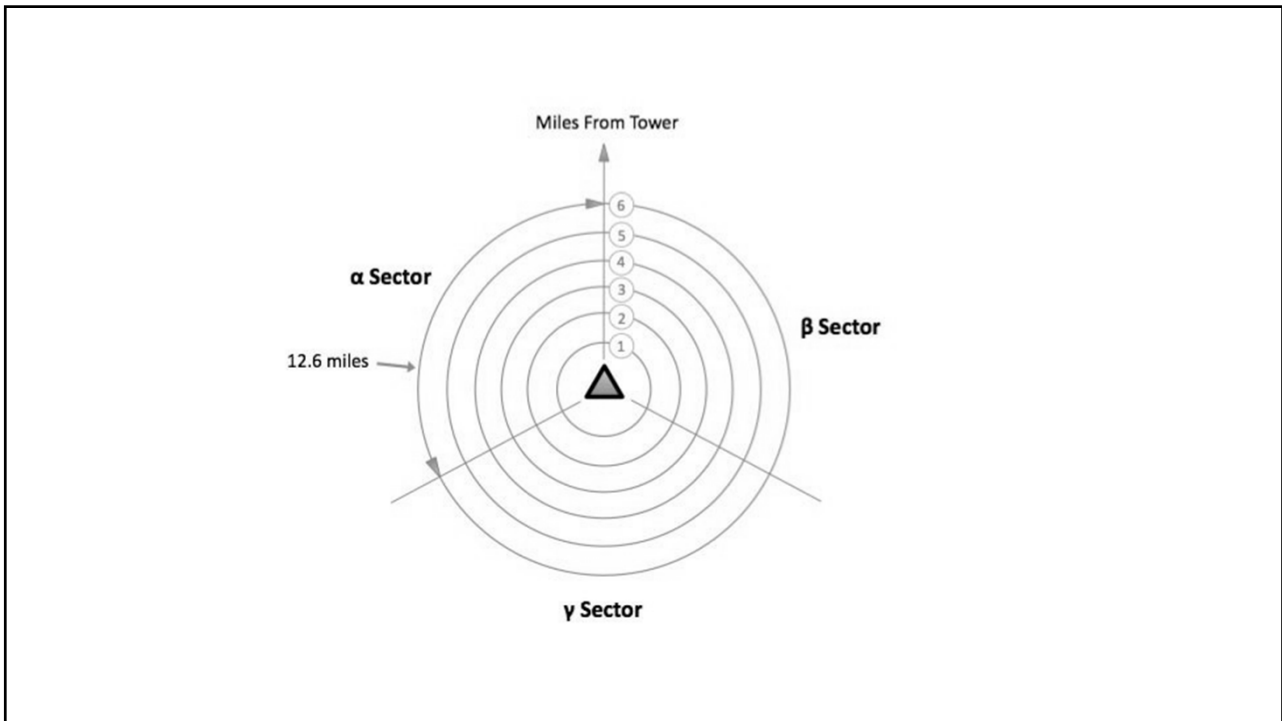
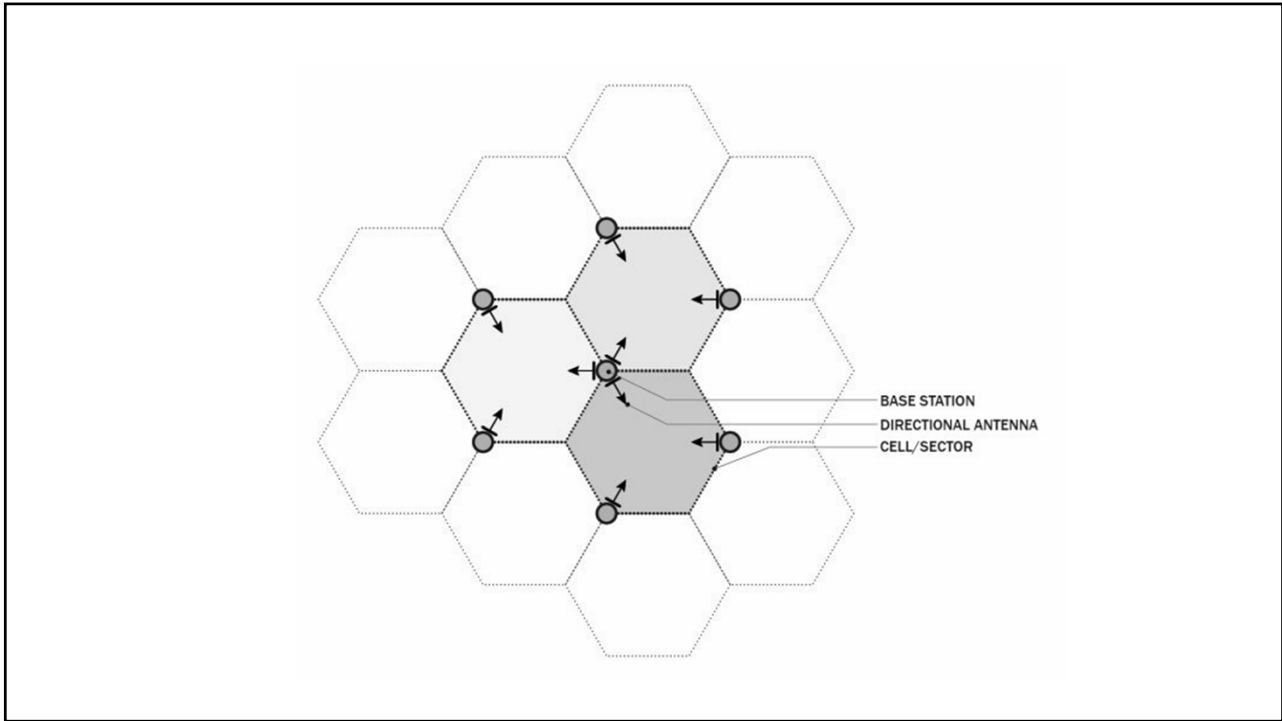


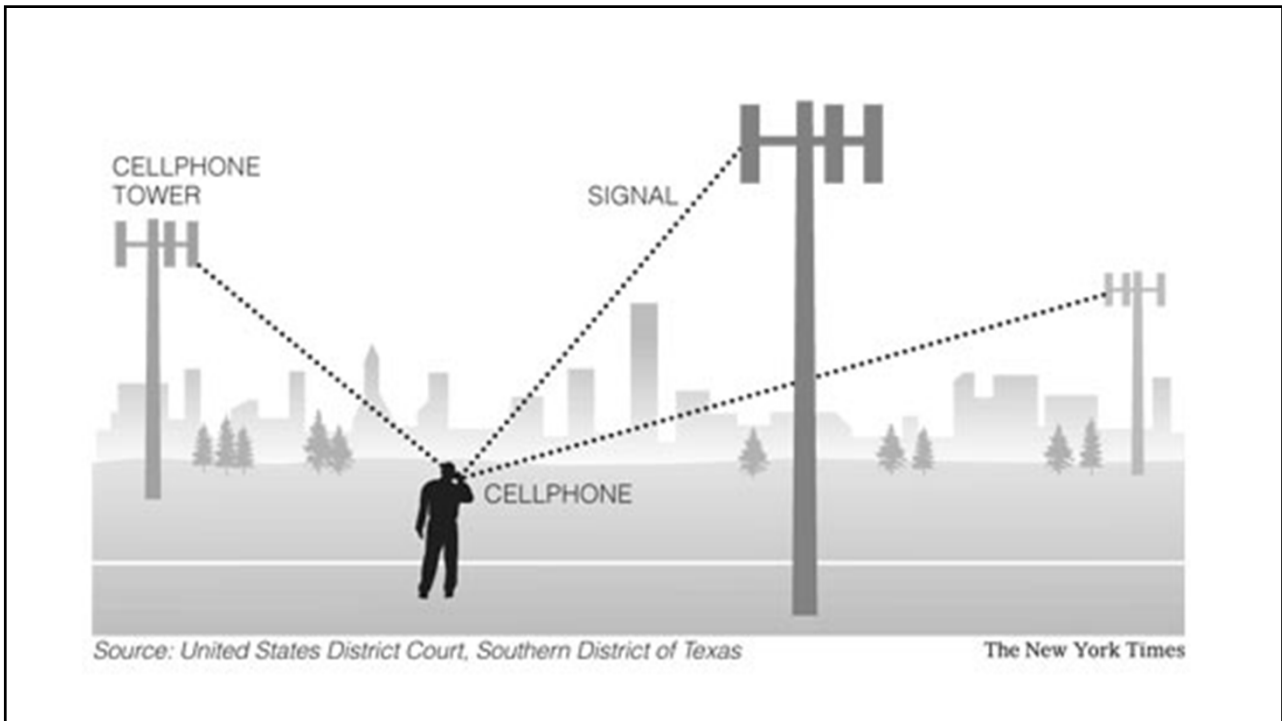
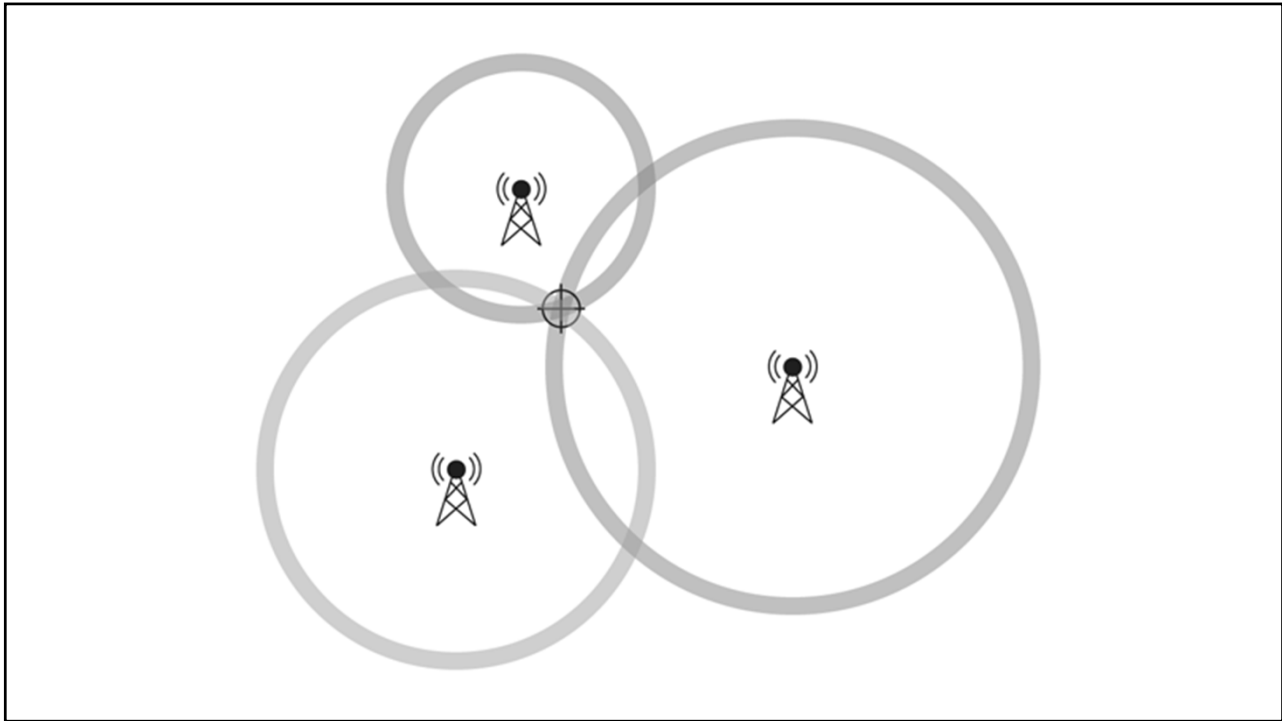
Cell Phone Tracking

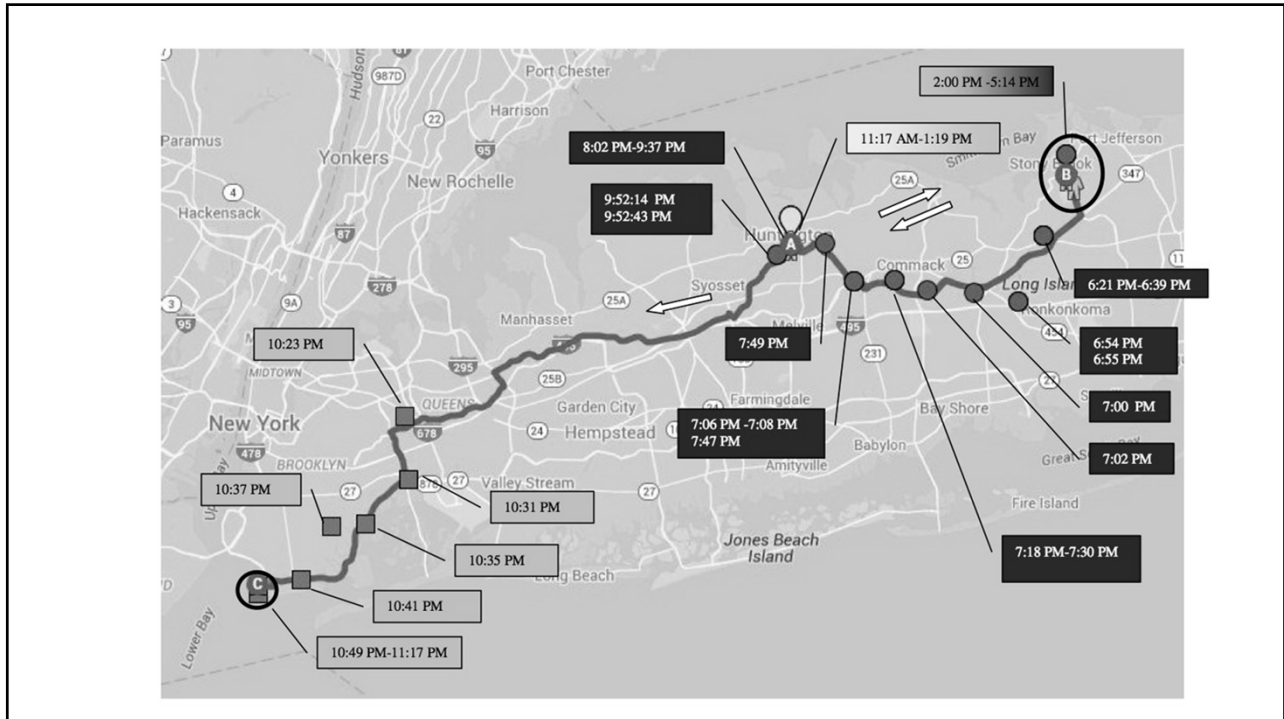
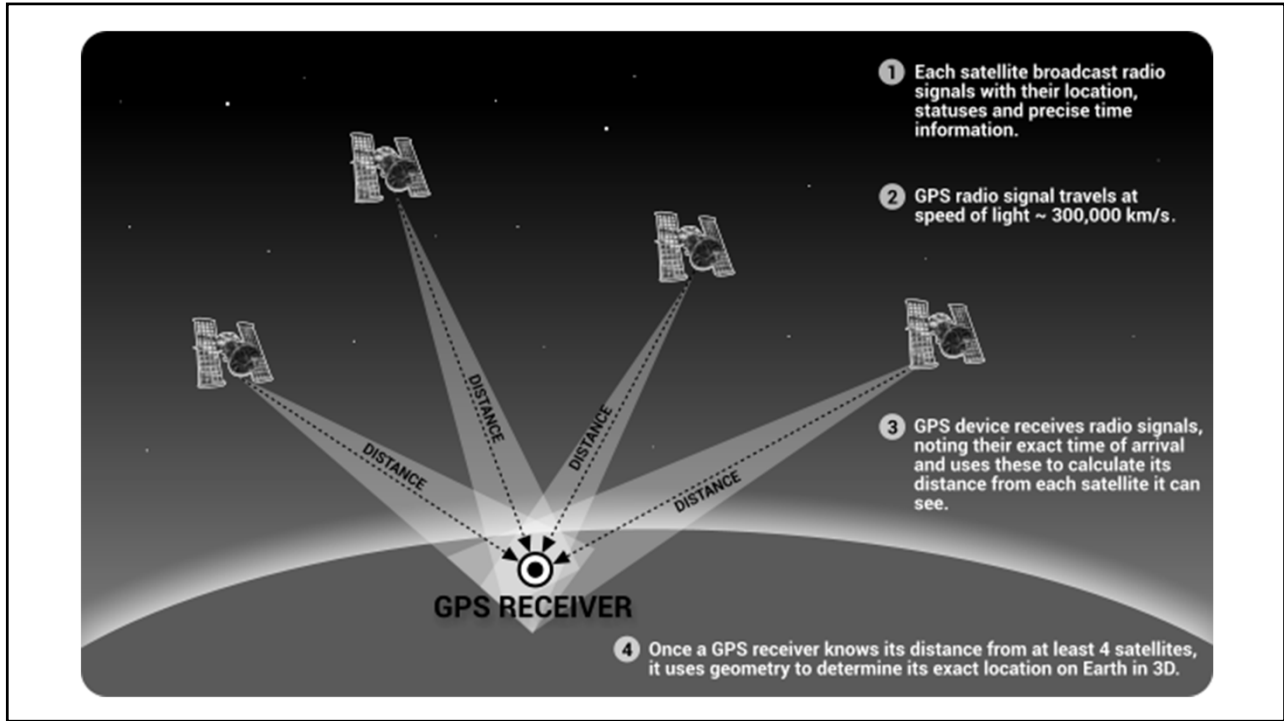
Jeff Welty
UNC School of Government

Cell Phone Tracking:
How It Works









Location Demands

(Breakout detail of data included in Total U.S. Criminal & Civil Demands)

	<i>Jan. – June 2016</i>	<i>July – Dec. 2016</i>
Total	36,935	33,593
Historic	27,909	25,198
Real-Time	8,363	7,608
Cell Tower	663	787

Cell Phone Tracking:
Legal Issues

Investigation: Legal Standard

- Officers may access historical location information (and other non-content records of cellular service providers) without a search warrant, using a court order based on reasonable suspicion.

Investigation: Search Warrant Not Required

- Obtaining location information is not a Fourth Amendment “search.” Cell phone users voluntarily reveal their location to service providers in the course of using their phones, so they do not have a reasonable expectation of privacy in service providers’ records.
 - State v. Perry, __ N.C. App. __, 776 S.E.2d 528 (2015)
 - United States v. Graham, 824 F.3d 421 (2016)



Neighbor Talk

Find a neighbor or two. Discuss the issue before the Supreme Court in Carpenter. If you were on the Court, would you be inclined to rule that an officer who accesses cell site location information conducts a “search”? Why or why not?

Investigation: Court Order Required

- Federal statutory law prohibits service providers from revealing most non-content information, including location information, to law enforcement without a court order based on reasonable suspicion.
 - 18 U.S.C. § 2703(c)(1)

Investigation: Reach of Court Order

- A court order can allow officers to access to any “record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications).”
 - 18 U.S.C. § 2703(c)(1)

STATE OF NORTH CAROLINA
COUNTY OF COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

**APPLICATION FOR ORDER FOR THE PRODUCTION OF ELECTRONIC
RECORDS AND OTHER INFORMATION PURSUANT TO 18 USC § 2703(d)**

NOW COMES AGENT NAME, a RANK with the AGENCY NAME, and petitions the Court to authorize the production of the electronic records on the telephone service being used by TARGET NAME and subscribed to an unknown subscriber with assigned call number TARGET NUMBER, pursuant to 18 USC § 2703(d).

In support of this application, the following facts are presented:

1. That there is **PROBABLE CAUSE** to believe that a crime has been committed. The nature of the criminal offense(s) is as follows: OFFENSE(S), which is in violation of North Carolina General Statute(s) NUMBER.

3. All published and non-published detailed subscriber records for incoming calls received or outgoing numbers dialed; and

7. Historical Global Positioning Location (GPS) information **without geographical limits**; and

9. Historical IP address information, internet history, web browsing history,

12. Any other relevant information pertaining to the target telephone number(s) if available, for the cellular telephone number **TARGET NUMBER** for the dates of **DATE through DATE**.

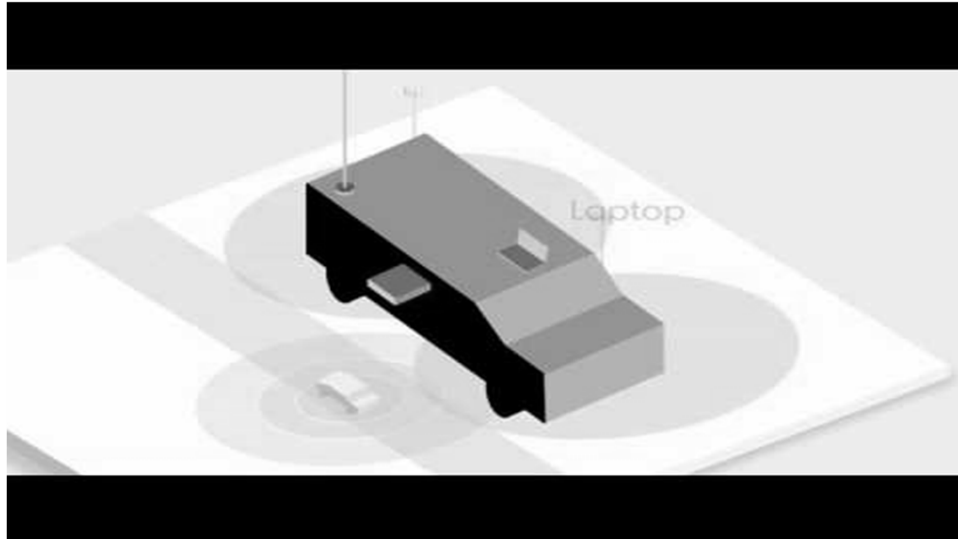
13. That this **APPLICATION** and **ORDER** are to be kept under seal except for service upon members that have a need to know of the **SBI, FBI, USMS, USSS, and/or AGENCY NAME**, the District Attorney's Office, and the electronic communications service provider being requested to provide installation assistance and "records or other information" to avoid prejudice to the criminal investigation, and that the electronic service provider and its agents,

1. That the ~~SRI, FBI, USMS~~, the New Hanover County Sheriff's Office, the Nebraska State Police, and/or USSS are authorized to install and monitor a pen register and/or trap and trace device(s) **without geographical limits** on the TARGET TELEPHONE(s), subscribed to **an unknown subscriber** and being used by **TARGET NAME**.

"Tower Dumps"

In addition, we received approximately 8,637 warrants or court orders for "cell tower dumps" in the second half of last year. In order to try to identify a suspect of a crime, the government may apply to a court for a warrant or order compelling us to provide a "dump" of the phone numbers of all devices that connected to a specific cell tower or site during a given period of time. This tool is being used much more frequently by law enforcement. We previously reported that in 2013 we received approximately 3,200 warrants or orders for cell tower dumps; we received 14,630 warrants or orders for cell tower dumps in 2016 (including the almost 6,000 demands we reported receiving in the first half of 2016), a substantial increase. Although the total number of cell tower

“Stingrays”/Cell Site Simulators



Filing

- G.S. 7A-109(a)(1) requires the clerk to keep “an accurate record of every determinative legal action, proceeding, or event which may affect the person or property of any individual, firm, corporation, or association.”

Discovery

- G.S. 15A-903(a)(1) provides that the defendant is entitled to “the complete files of all law enforcement agencies, investigatory agencies, and prosecutors’ offices involved in the investigation of the crimes committed or the prosecution of the defendant.”

Testimony

- Must the witness qualify as an expert?
 - Yes. *See, e.g., United States v. Banks*, 93 F.Supp.3d 1237 (D. Kan. 2015) (“[T]he cell-site data’s relevance [depends on] . . . how cell towers communicate with cell phones [and other technical matters]. These issues are not familiar to the Court . . . Thus, the Court concludes that the government cannot prove the physical location of the cell phones with cell-site data unless it can establish a sufficient relationship between two through expert testimony.”)
 - No. *See, e.g., United States v. Evans*, 892 F.Supp.2d 949 (N.D. Ill. 2012) (“[U]sing Google Maps to plot [tower] locations does not require scientific, technical, or other specialized knowledge.”)

Testimony

- Must the court conduct a *Daubert* hearing?
 - Yes. *State v. Edwards*, 156 A.3d 506 (Conn. 2017) (ruling that testimony regarding cell phone tracking is scientific in nature and therefore a *Daubert* hearing is required, and stating that “many other federal courts have required the government to demonstrate that the methodology used by their expert witness on cell phone data ‘clears the hurdle imposed by *Daubert*’”).
 - No. *United States v. Jones*, 918 F.Supp.2d 1 (D.D.C. 2013) (finding a *Daubert* hearing unnecessary because “[t]he use of cell phone records to locate a phone has been widely accepted in both federal and state courts across the country”).

Testimony

- Is the evidence sufficiently reliable to be admitted?

Neighbor Talk

Find a neighbor or two. Review the scenario in the materials. Based on the evidence presented, would you admit the expert testimony offered by the prosecution? Why or why not?



Cell Phone Tracking

Jeff Welty

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