

NEWS RELEASE

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DA's Office statement regarding cell site simulators

CHARLOTTE, N.C. – The Mecklenburg County District Attorney's Office has completed its review of court orders sought by the Charlotte-Mecklenburg Police Department to use various technology, which could include cell site simulators. These court orders, which were granted and subsequently sealed by state judges, were unsealed with CMPD's consent in November 2014. The DA's Office immediately began reviewing those cases individually to determine whether the information was shared with defendants when necessary.

The review found that only two cases could involve the use of cell site simulators for investigative purposes, and in each case, the respective motions and orders, as well as cellphone records, were provided to the defendants' attorneys.

The court unsealed 522 orders in which police asked the court's permission to use cellphone tracking technology. These were broad requests covering multiple investigative techniques, including the option to utilize cell site simulators. Over the course of the review, the DA's Office excluded a number of cases, allowing prosecutors to focus only on pending state cases or cases that resulted in a conviction. The cases excluded from the review were those that were dismissed, resulted in a not guilty verdict or were federally charged.

That process narrowed the review to motions and orders associated with 149 cases. These cases fall into one of the following categories: 1) The case is still pending, 2) the defendant was convicted at trial, 3) the defendant entered a guilty plea, 4) the case has been dismissed to the Grand Jury pending an indictment or 5) there is an outstanding warrant that has not yet been served on the defendant. The DA's Office requested CMPD to review each of these files to determine whether or not a cell site simulator had in fact been used.

CMPD's review confirmed that cell site simulators were used in 39 of the 149 cases. In 38 of those 39 cases, the device was used to locate a defendant who already had a warrant for his arrest, and only one was used for investigative purposes.

CMPD found that in 70 of the 149 cases, cell site simulators were not used. CMPD was unable to determine whether or not the device was used in the remaining 40 cases.

Although prosecutors were not able to obtain information as to whether cell site simulators were definitively used in 40 cases, prosecutors examined the language in the motions to determine whether CMPD sought the orders for investigative purposes or for merely locating a defendant who had already been charged with a crime. Of those 40 cases, only one order was

apparently sought for investigative purposes. It remains unclear whether this data was collected by a cell site simulator or another investigative technique.

The DA's Office then reviewed the files of the two cases – one that CMPD confirmed the use of a cell site simulator and one that CMPD could not determine whether the device was used – in which court orders were sought for investigative purposes. The review determined that the motions and orders – despite being sealed – and cellphone records were provided by CMPD, included in the files and were turned over by the DA's Office to the defense in both cases.

It is the position of the DA's Office that the use of a cell site simulator to locate a defendant who already has a warrant issued for his arrest is not discoverable, as identifying the location of the defendant for the purposes of bringing him into custody does not contribute to the investigation of the alleged crime. If used for investigative purposes, however, cell site simulators should be included in the evidence of the case and turned over to the defense. The DA's Office is working with CMPD to streamline this process to ensure that, moving forward, such technology continues to be shared as appropriate.

In order to share the results of prosecutors' review, the DA's Office will mail letters to defense attorneys who handled cases in which the office now knows that cell site simulators were used. Letters will also be sent to attorneys who handled cases in which there is question as to whether the device was used.

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