



The District of Columbia Court of Appeals reverses a Defendant's convictions after finding that law enforcement's use of a cell-site simulator (i.e., a "stingray"), without first obtaining a warrant, violated the Defendant's Constitutional rights



November 2017

For duplication & redistribution of this article, please contact Public Agency Training Council by phone at 1.800.365.0119.
PATC 5235 Decatur Blvd Indianapolis, IN 46241

Article Source : http://www.patc.com/weeklyarticles/2017_jones_v_us_chapman.shtml

©2017 [Jim Chapman](#), Attorney, Public Agency Training Council

In *Jones v. United States*, ___ A.3d ___, 2017 WL 4211499 (D.C. Sept. 21, 2017), the District of Columbia Court of Appeals was asked to decide whether law enforcement's use of a cell-site simulator (a/k/a a "stingray") without first obtaining a warrant violated Defendant Prince Jones' Constitutional rights. After consideration, the DC Court of Appeals joined a line of other courts in holding that law enforcement must obtain a warrant before using a stingray and that any evidence obtained by the use of the cell-site simulator without the prior issuance of a warrant permitting the intercept must be excluded. The relevant facts are as follows.

A jury found Jones guilty of various offenses arising out of two alleged incidents of sexual assault and robbery at knifepoint. Jones appealed his convictions on the ground that much of the evidence offered against him at trial was the direct or indirect product of a warrantless, unlawful search involving a cell-site simulator or "stingray." Jones presented this Fourth Amendment claim to the trial court in a pretrial motion to suppress, but the trial court denied it under the inevitable-discovery doctrine.

At the suppression hearing, Detective Rachel Pulliam, a member of the Sexual Assault Unit of the Metropolitan Police Department (MPD), testified that she investigated a sexual assault that occurred around 12:30 a.m. on

©2017 Online Article: 800.365.0119

Link to article online: http://www.patc.com/weeklyarticles/2017_jones_v_us_chapman.shtml
<http://www.patc.com>

October 9, 2013, and another that occurred around 1:30 a.m. on October 11. The two sexual-assault complainants were women who had advertised escort services on the classified-advertising website Backpage. Detective Pulliam testified that, on each occasion, the perpetrator contacted the complainant by telephone in response to an advertisement and arranged to pay the complainant for sexual services. According to Detective Pulliam, when each complainant arrived at the arranged meeting place, the perpetrator “forced [her] to perform oral sex on [him] at knifepoint” and robbed her of her cellphone and other property. Detective Pulliam testified that on one of the two occasions, the perpetrator also robbed the complainant’s cousin who had been waiting in a car outside the meeting location.

Detective Pulliam testified that, in the morning following the second incident, she and her colleagues obtained telephone records for the sexual-assault complainants. The telephone records revealed a possible suspect. Both complainants had received calls from the same number during the relevant time periods. Accordingly, Detective Pulliam sought the assistance of the MPD’s Technical Services Unit (TSU) to track the suspect’s and the complainants’ phones.

Sergeant Todd Perkins, a supervisor in the TSU, testified about his office’s efforts to track the phones that morning. He testified that he and his team sought “subscriber information” for the suspect’s number from the provider associated with that number but were unsuccessful because the cellphone “was just a generic prepaid” with “no subscriber information whatsoever.” The TSU also sought and obtained information about the locations of the suspect’s and complainants’ cellphones from the relevant telecommunication providers. According to Sergeant Perkins, the TSU received updated location information from the providers every fifteen minutes. The information came in the form of geographic coordinates—latitude and longitude—with a “degree of uncertainty” specified in meters.

Sergeant Perkins further testified that the real-time location information that they had received that morning had a high degree of uncertainty (“within several hundred meters”) indicating that the phones’ GPS capabilities

were inactive. He explained that “if it [had been] true GPS,” his team would have been “getting two meter, three meter, five meter hits.” Despite the lack of precision in the location information, Sergeant Perkins and his team were able to tell that one of the complainants’ phones and the suspect’s phone were traveling in the same general direction as if they were together. The location information suggested that the two phones stopped in the general vicinity of the Minnesota Avenue Metro Station.

Based on this information, Sergeant Perkins and other TSU officers took a truck equipped with a cell-site simulator to the area of the Minnesota Avenue Metro station and used the device to track the suspect. Sergeant Perkins could not remember whether he and his team used the cell-site simulator to track the suspect’s phone or the complainant’s phone that they believed was traveling with it, but whichever signal they were tracking led them, at around 11:30 a.m., to a parked Saturn. Inside the Saturn were Jones and Jones’ girlfriend, Nora Williams. The police arrested Jones and recovered evidence from Jones’ person and his car and from Ms. Williams, including a folding knife and the complainants’ and the suspect’s cellphones. Jones also made an incriminating statement to the police. Williams later testified against Jones at trial.

Sergeant Perkins testified at the suppression hearing about how the cell-site simulator that they used worked based on the information that’s “publicly available.” He explained that his team engages the cell-site simulator by programming into it a unique identifier associated with the target phone. The simulator then begins listening for the target phone that, as part of its normal operation, is “constantly transmitting to and receiving from a tower.” The officers operating the cell-site simulator drive around and as soon as the simulator comes across the target phone’s signal, it grabs it, and it holds on to it. Once the cell-site simulator “grabs” the target phone, the simulator begins reporting general location information and signal strength that can be used to locate the target phone’s exact location. Sergeant Perkins testified that, once the cell-site simulator “grabs” the target phone, the target phone is prevented from communicating with an actual tower.

Further information about the cell-site simulator was provided at the suppression hearing by Ben Levitan, an

expert on “cellular telephone networks and systems” called by the defense. According to Mr. Levitan, cell phones are “dumb devices” that “generally connect themselves to the strongest cell tower signal that they detect.” Mr. Levitan explained that a cell-site simulator “acts as a portable cell tower,” which, when turned on or brought into an area, may appear to be a stronger signal and cause a phone to break its connection with the cell phone network and re-attach itself to the newly found simulator. Mr. Levitan testified that, when the cellphone “attaches” itself to the cell-site simulator, it “identifies itself by phone number and various codes.” Although Mr. Levitan had never used the type of cell-site simulator utilized by law enforcement, he testified that he had used similar devices working within the telecommunications industry and that the devices allow the user to determine the target phone’s direction and distance relative to the simulator device. Moreover, because the cell-site simulator is not a true cell tower connected with the cellular network, any cellphone connected to the cell-site simulator will not be able to communicate with the network. In other words, “your call doesn’t go through, period. Nothing happens.”

At the conclusion of the suppression hearing, the trial court did not decide whether the use of a cell-site simulator was a search within the meaning of the Fourth Amendment or whether the government was required to obtain a warrant to use the cell-site simulator. Instead, the trial court focused on the issues of standing, exigent circumstances, and inevitable discovery. Ultimately, the trial court agreed with the government’s argument that, regardless of whether there had been a Fourth Amendment violation, the inevitable-discovery doctrine rendered the exclusionary rule inapplicable. The trial court found that “even if [the police] were using [Mr. Jones’s] phone on the cell site simulator, . . . had they switched over . . . to use the [complainant’s] number instead, . . . they would have eventually gotten to the exact same place because the phones were together [a]nd it’s the same technology.” The trial court agreed with the government’s assertion that “there [was] a separate lawful means” by which the government “would have gotten to the exact same place.” Accordingly, the trial court denied Jones’ motion to suppress and allowed the government to use the evidence at trial that law enforcement had obtained by using the stingray based upon the inevitable discovery doctrine.

On appeal, Jones argued that the government's use of a cell-site simulator violated his Fourth Amendment rights and that the trial court erred in failing to grant his motion to suppress. The District of Columbia Court of Appeals agreed with Jones, and the Court of Appeals became the fourth court in the nation to hold that police must first obtain a warrant before using a cell-site simulator and that failure to do so results in the suppression of any evidence obtained through the use of the stingray.

Specifically, the Court of Appeals held that the use of a cell-site simulator to locate Jones' cell phone invaded his reasonable expectation of privacy, and therefore, it constituted a search for purposes of the Fourth Amendment. Because a warrantless search occurred *via* the use of the stingray, the evidence obtained against Jones was not admissible. The Court of Appeals also disagreed with the trial court's conclusion that the evidence was admissible under the inevitable discovery doctrine. According to the Court of Appeals, the inevitable discovery doctrine was inapplicable because a lawful search of Jones' cell phone never occurred, thereby making the seizure unlawful and not the result of any lawful, inevitable discovery.

Furthermore, the Court of Appeals held that the evidence that the police obtained by use of the stingray was not subject to the good-faith exception to the exclusionary rule. The Court of Appeals made this determination because the United States Supreme Court has never applied the good-faith exception in any case remotely close to this one and because, even assuming that the police believed that the warrantless use of the cell-site simulator was lawful, the police could not have reasonably relied on that belief given the secrecy surrounding the device and the lack of law on the issue.

Finally, the Court of Appeals concluded that the trial court erred and that the trial court should have found that the incriminating statement that Jones made after the police found him by using the cell-site simulator should have been excluded as being fruit of the poisonous tree. The Court of Appeals reached the same conclusion regarding the evidence that the police obtained from a search of Jones' girlfriend's purse; it should have been excluded as being fruit of the poisonous tree.

In short, a trend has developed in the law whereby courts are holding that law enforcement's use of a cell-site simulator or stingray to find a suspect's location constitutes a search for purposes of the Fourth Amendment. Because the use of the device constitutes a search for purposes of the Fourth Amendment, law enforcement must first obtain a warrant before using the device. Finally, courts—including the Court of Appeals in this case—have concluded that no exception to the warrant requirement exists in these situations. Therefore, courts have excluded any evidence from use at trial that police have discovered by using a stingray without first obtaining a warrant to use a cell-site simulator.

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*