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# **LED BULLETIN**

*Legal Guidance for Massachusetts Law Enforcement — April 26, 2022*

## ***Search Warrant for CSLI***

***Officers must obtain a search warrant from a judge before acquiring “tower dumps” of Cell Site Location Information (CSLI).*** Tower dumps provide investigators with CSLI for all phones that are connected to specific cell towers near the location of a crime at a particular time. Since tower dumps intrude on a defendant’s reasonable expectation of privacy, Article 14 mandates that they be approved in advance by a search warrant signed by a judge.<sup>1</sup>

***Background on CSLI and its value as an investigative tool.*** Once a cell phone connects with a cell tower, the tower generates a time-stamped record known as CSLI. There are two varieties:

- **Telephone call CSLI** occurs when a person uses their phone to place or receive a call or text.
- **Registration CSLI** occurs without any action by the user. The reason is that cell phones regularly connect to the nearest cell site by a process known as “registration.”

The precision with which CSLI identifies a subject’s location varies. It is more precise when a tower has a smaller coverage area and is equipped with advanced technology — e.g., some units now register exactly where a phone is located, including the address *and* specific floor in the building.

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<sup>1</sup> Whether surveillance activity intrudes upon a reasonable expectation of privacy depends on its duration and scope. In other words, did access to the specific technology enable police to track and/or reconstruct a suspect’s movement in a manner that would never have been possible using traditional investigative tools? Resolving this question often turns on whether “discrete acts of surveillance . . . in the aggregate . . . paint an intimate picture of a defendant’s life.”

Clearly, CSLI informs investigators about a citizen’s location (including in constitutionally protected areas like homes) and potentially about their associations (i.e., who do they visit; where do they visit — church, health club, political party headquarters, restaurant, etc.).

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**Police investigators may obtain targeted CSLI, which provides a log of every cell site a particular phone connected to within a given time frame.** This enables investigators to reconstruct a suspect's movement over time.

**On the other hand, a tower dump provides investigators with CSLI from every device that connected to a cell site within a given time frame.** This is especially useful for investigating serial crimes. By cross referencing the information, investigators can focus on the same phone number appearing at the locations and times of multiple offenses.

***Comm. v. Perry involved multiple crimes likely committed by one offender.*** In 2018, a task force had to solve seven gunpoint robberies — including one that resulted in the murder of a store clerk. The task force had no suspects. The tower dump was the perfect strategy. *Comm. v. Perry*, \_\_ Mass. \_\_ (SJC-13144, April 1, 2022).

- **Detectives believed that these crimes had been committed by one person because:**
  - The target was always a convenience store or gas station;
  - Within an eleven mile radius;
  - Between dusk and dawn;
  - By a man holding a black semiautomatic pistol in his right hand;
  - Described by witnesses as a light-skinned Black or Hispanic; 6'2" with medium build; wearing a black hooded jacket, dark pants, black gloves, black shoes, and a black or red mask.
- **Surveillance video showed the robber being assisted by a getaway driver.**
- **Detectives obtained two warrants<sup>2</sup> directing cell carriers in the area of the crimes to furnish:**
  - Location of cell towers providing service;
  - Telephone number of device<sup>3</sup> initiating the communication (known as the "source number");
  - Telephone number of device receiving the communication ("destination number");
  - Date, time, and duration of each communication; and
  - Type of communication (e.g., phone call or text message).

Four carriers provided a list of the phone numbers that connected to the towers on the specific dates and times listed in the warrants.

- **Detectives cross-referenced over 50,000 numbers and learned that Jeron Perry's phone registered at the time and location of the crimes.** Perry's number had connected to another device possessed by his getaway driver. This evidence helped secure Perry's indictment for six armed robberies and the murder.

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<sup>2</sup> Technically, the SJC rejected one of the warrants, obtained by the FBI, while upholding the other warrant obtained by Boston detectives. The precise basis for this ruling is not relevant here.

<sup>3</sup> In addition to the telephone number, each device also has another unique identifying number that carriers supply.

***Reconstructing a person's movement over a period of time cannot practically be done using traditional law enforcement surveillance.*** In *Comm. v. Perry*, the CSLI search — spanning multiple days, locations, and times — provided highly personal and otherwise unknowable facts about the defendant before he was even a suspect. This is why officers must seek a search warrant from a judge assigned to their court of jurisdiction for this type of information.<sup>4</sup>

- **The search warrant affidavit for any type of CSLI must:**
  - *Establish probable cause that CSLI will aid in the apprehension of a criminal or provide evidence of a crime.*
  - *Provide a factual basis that the suspect used their cell phone during the relevant time period.* This requires *more* than a general statement that people possess cell phones, carry them everywhere, and often communicate with them. However, the affidavit does not have to present an eyewitness account or other actual knowledge of this fact. For example, the SJC in *Perry* found it persuasive that the affidavit presented evidence that a getaway driver arrived as the defendant was exiting the location of some robberies, suggesting a level of coordination that would require phone calls or text messages.
- **With respect to a tower dump, the affidavit must also:**
  - *State that the phone numbers revealed by CSLI will only be examined if, as a result of cross referencing, they are linked to more than one location and time where offenses occurred.* This information, which was provided in the *Perry* affidavit, ensures that tower dumps do not become “thinly veiled fishing expeditions.”
  - *Present a protocol to dispose of innocent third party information given to police as part of the tower dump.*

Boston investigators did an excellent job crafting a warrant for CSLI tower dumps. As a result, Jeron Perry was identified as a serial armed robber and murderer. He is off the street.

**Hope this helps further your knowledge of law and investigation,**  
***John Sofis Scheft, Esq.***

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<sup>4</sup> Interestingly, the SJC repeated its position — announced in *Comm. v. Estabrook*, 472 Mass. 852 (2015) — that investigators do *not* need a search warrant to obtain targeted CSLI of an identified phone number for a continuous period of six or less hours. However, at Law Enforcement Dimensions, we recommend that investigators, absent exigent circumstances, obtain a search warrant for CSLI covering any time period because we contend that the SJC's position conflicts with the U.S. Supreme Court decision, *Carpenter v. U.S.*, 138 S.Ct. 2206 (2018), decided after *Estabrook*.