

Federal Court Throws Out Cell Phone Location Evidence Obtained Without Search Warrant

July 14, 2016 - Last year, we told you about cell site simulators being used by police agencies. Called "dirtboxes" or "Stingrays," these devices simulate a cell phone tower and essentially hijack cell phone radio signals. Stingrays provide police the ability to determine the location of a cell phone by tricking the phone into "pinging" it. Use of the devices has been so secretive that both federal and state police have been known to drop charges against defendants rather than admit that they use them. But a New York case in which the federal government decided to move forward with evidence obtained via a Stingray has now drawn a stark rebuke from the federal judge overseeing it. He ruled that the defendant's rights were violated when DEA agents failed to obtain a search warrant prior to using a Stingray; leading to exclusion of the evidence discovered through its use.

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The defendant in the case, Raymond Lambis, was the target of a DEA drug investigation. The agency used a Stingray to determine the location of Lambis phone. This led them to an apartment building in Manhattan. Once agents narrowed down the building the cell signal was coming from, they actually walked the halls of the building to determine which apartment had the strongest signal. From there, they knocked on the door and according to prosecutors whoever answered the door consented to a search of the premises. That search turned up both drugs and drug paraphernalia.

But in a written opinion US District Judge William Pauley said, "Absent a search warrant the government may not turn a citizen's cellphone into a tracking device." He went on to say that even though the government had received a warrant to obtain the phone numbers being dialed by the defendant, that warrant had never contemplated using the defendant's phone as a means to locate the defendant or his premises.

This is the first case in which a federal court has ruled on the use of Stingray obtained evidence.

Within a week of Lambis' arrest, the Department of Justice issued a rule to government police agencies stating that future use of Stingrays in their investigation require a search warrant. Because of this, Judge Pauley's ruling may have only limited affect in federal investigations. But the use of Stingrays is also widespread in state and local police departments. For that reason, the ruling is very good news for personal privacy and the Fourth Amendment. It places all policing agencies on notice that if they use these devices without having a search warrant in place, there is a reasonable chance that their evidence will eventually be thrown out; if not in their own state courts, then at the federal court level.

by Jim Malmberg

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