



# ELECTRONIC ADVANCES AND THE LAW

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## AGENDA

- Tangipahoa Case Study and Cell Phone Basics
- Cell Phone Issues
- Police Protocols and Common Tactics
- La. Case Law on Cell Phone Searches
- Federal 5<sup>th</sup> Circuit Cell Phone Searches
- Other Federal Circuits Cell Phone Cases
- The U.S. Supreme Court and Cell Phone Searches
- Distinctions Between Text Messages and Stored Information, Phone Numbers and Photos
- Accessing Cell Tower Historical Data
- Search of License Plate Readers, Non Bank Money Transmitter Records and other Electronic Searches
- State Wire Intercepts



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# Tangipahoa Case Study



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## Electronic Searches

- **Facts: Officer detains a vehicle, finds CDS.**
  - Can officer search the telephone found in the car incident to arrest?
- **F: Officer obtains consent to search a vehicle.**
  - Is the search of a cell phone found in the car permissible?
- **F: Officer obtains search warrant for CDS in residence.**
  - Can cell phone found in the house be seized and searched without procuring another warrant?



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## Electronic Searches-Scenarios



- During the search of a phone, text messages and videos are found.
  - Any problems entering into evidence the results of this search??
- Under any of the preceding scenarios,
  - If the phone rings while in the officer's possession and during the investigation, can the officer answer for the suspect??



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## Electronic Searches

- Is a search warrant or subpoena needed to procure cell tower historical data??
- When procuring an order for a pen register and trap and trace, can cell tower tracking locations of the target phone be included??



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# **Electronic Searches**

- In the event your officers possess devices to perform cell phone tracking without access to a provider, are those searches constitutionally permissible?



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# **Electronic Searches**

- Can a license plate reader be profiled?
- Can Western Union bulk data (Louisiana to border states) be obtained via subpoena and profiled?



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# Phone Basics

- Call detail record logs
- Incoming and outgoing text messages, (difference in providers? Also, see electronics surveillance act)
- GPS of the mobile device for suspect's phone number.
- Emails



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## La. Cases on Cell Phone Search

- *St. v. Bone, 107 So. 3<sup>rd</sup> 49 (2012) - Homicide Case; 5th Circuit Court of Appeals*
  - State filed Art. 66 Subpoenas to Sprint/Nextel for account information, call detail records, incoming/outgoing text messages, and GPS of the mobile device of the suspect's phone number.



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# Bone

## ■ Defense:

- Subpoena violated the 4<sup>th</sup> amendment and the Electronic Communications Privacy Act (probable cause to get text messages) + he had an expectation of privacy in the text messages.

## ■ State:

- Relies on the Inevitable Discovery Exception to the warrant requirement and/or any error in the admission of these responses is harmless.



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# State Law

## ■ Court Held:

- Obtaining text messages **did** violate the 4<sup>th</sup> amendment but in the context of this case, it was harmless error.
- Test messages – probable cause required for account information, call detail records, and GPS of the mobile device of the suspect's phone number – subpoena sufficient



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## A Word About Subpoenas

### ■ C. Cr. P. Art. 66-A



➤ Upon written motion of the AG or DA setting forth reasonable grounds therefore, the court may order the clerk to issue subpoenas....



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## Subpoenas

### RECOMMENDED:

- Attach affidavit to subpoena with facts that show it should issue!
- Do not characterize the facts as reasonable suspicion or probable cause. Leave that to the courts if challenged (*State v. Pou*)



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# Subpoenas

■ Is the subpoena process inherently a search that violates the 4<sup>th</sup> amendment??



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## Obtaining Incoming Text Messages

- BUT what about R.S. 15:1303 it shall be unlawful to:
  - (1) Willfully intercept, endeavor to intercept or procure any other person to intercept, any wire or oral communication;
  - (4) Willfully use or endeavor to use, the contents of any wire... or oral communication, knowing or having reason to believe that such information was obtained through the interception of a wire....communication....



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## Federal 5<sup>th</sup> Circuit Ct. Of Appeals



*U.S. v. Finley, 477 F. 3<sup>rd</sup> 250, Nov 26, 2007*

### Fact:

- Buy / Bust of Meth. Finley driving truck used for the sale; detained by police. Phone seized from Finley's person, but belonged to employer / plumbing Company. During questioning the phone is searched and Defendant confronted with the information.



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## Federal 5<sup>th</sup> Circuit-Search of Cell Phones

- Finley argued that the police had no right to search his cell phone without a warrant.
  - Holding: Officers could search cell phone incident to arrest.
- Note: In addition to phone numbers and call records, text messages were also searched in the Finley's phone; also see *US v. Curtis, 635 F. 3<sup>rd</sup> 704.*



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## Federal 5<sup>th</sup> Circuit Cell Phone Searches

- *U.S. v. Zavala*, 541 F.3<sup>rd</sup> 562, 5<sup>th</sup> Cir. Court of Appeals, August 22, 2008

**Fact:**

Following defendant's granting of a consent to search his vehicle, his cell phone found in the vehicle was searched.

**Held:**

Consent did not extend to search of cell phone, plus the search was beyond the scope of a lawful protective search.



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## Current Status of the Law- Other Federal Circuits

- *U.S. v. Santillan*, 571 F. Supp. 2<sup>nd</sup> 1093, U.S. District Court for Arizona

**Fact:**

Immigrations Officers believed the defendant who was jogging back and forth next to highway walking on cell phone was a spotter for drug haulers (three trucks obviously modified for drug hauling were being directed when to enter highway).



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## Federal Circuits-Cell Phone Searches

- **Held:**

Defendant arrested based upon Probable Cause. Seizure of Cell Phone justified under plain view and exigent circumstances. Search of Cell phone valid incident to arrest and exigent circumstances justifies warrantless search of cell phone.



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## Federal Circuits-Search of Cell Phones

- ***US v. Wurie, 728 F. 3<sup>rd</sup> 1 ,Fed. 1<sup>st</sup> Cir.  
Court of Appeals; May 17, 2013***

- **Held:**

Search incident to arrest did not authorize exception did not authorize the warrantless search of data on a cell phone seized from arrestee's person.

- **Note:**

Important to read prior to suppression hearing. Extremely extensive analysis.



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## Current Status U.S. Supreme Court

- 2013-2014 Term (Briefs)
  - *Riley v. California* (Docket #12-132) has now reached the Supreme court and the Writ Application is now pending.
  - The petition provides a full recital of the depth of the conflict among the lower courts on the question of search of cell phones.



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## Cell Tower Historical Data

### In Re:

**APPLICATION FOR PEN REGISTER AND TRAP/TRACE DEVICE WITH CELL SITE LOCATION AUTHORITY 396 F.Supp.2d 747 United States District Court, S.D. Texas, Houston Division, No. H-05-557M. Oct. 14, 2005**

The government asked a magistrate judge to approve a request to two cell phone companies for 60 days of cell phone location records as part of a routine law enforcement investigation. The judge denied the request, saying it was necessary for the government to get a warrant based on probable cause before it could obtain the records.



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# Cell Tower Records

- The case was argued to the Fifth Circuit in October 2, 2012 in New Orleans. In July 2013, the Fifth Circuit reversed the lower court in a 2-1 decision, ruling that law enforcement didn't need a search warrant to access historical cell site records.



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# Cell Tower Data

- Practically, what are service providers now requiring??
- Can cell tower information be obtained without going through the service provider??



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## Answering Arrestee's Cell Phones

- ***U.S. v. Gomez, 807 F. Supp. 2<sup>nd</sup> 1134, August 11, 2011 United States District Court for the Southern District of Florida.***

➤ Although defendant had reasonable expectation of privacy in his cell phone, when cell phone rang numerous times and agents saw on caller ID it was another individual suspected in the case.



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## Answering Defendant's Cell Phone

- The court further found that the facts met the test for an exigent search which justified answering the phone call.
- The test is whether the facts would lead an experienced agent to believe that evidence might be destroyed before a warrant could be obtained. (albeit danger of flight, harm to officers and general public, destruction or concealment of evidence, etc. are also factors.)



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## Answering Defendant's Cell Phone

- See *U.S. v. De La paz*, 43 F. Supp 2<sup>nd</sup> 370 (S.D.N.Y.) for analysis of phones answered during search warrants.
- *U.S. v. Panda*, 289 F. Supp. 2<sup>nd</sup> 1291 (D. Kan 2003)
  - The recorded phone numbers in a cell phone's memory are not contents of a communication.



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## Answering Defendant's Cell Phone

- See *U.S. v. Lopez-Cruz*, 2013 U.S. app. Lexis 18930 (9<sup>th</sup> Cir. Cal. Sept. 12, 2013) for opposite holding.



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## Electronic Searches-Generally

- License Plate Readers:
  - Can the data be procured and the information searched for specifics and even profiled?
  - Is any court authority needed?  
(Ex.-border crossings by ICE, LSP License Plate readers).
- Can non bank money transmitter information be secured via subpoena and searched proactively?



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## Wire Intercepts ??

- There may be a wire intercept case coming to your district.....
- R.S. 15:1302



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# QUESTIONS?

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Louisiana Department of Public Safety and Corrections  
Office of State Police

Consent to Search

Date	Time	Location
------	------	----------

In order to cooperate in an investigation being conducted by the Louisiana Office of State Police, I \_\_\_\_\_  
Name

residing at \_\_\_\_\_  
Address

do hereby voluntarily authorize \_\_\_\_\_ of the Louisiana Office of State Police to search  
Officer's Name

Describe Residence, Object, or Vehicle to be Searched

and its contents, which are owned or controlled by me and remove any items the Louisiana Office of State Police deems pertinent to their investigation, providing a receipt is furnished for the removed items. No promise, threat, or coercion of any kind has been made against me by the Louisiana Office of State Police and I have been informed by the above named officer that I may refuse to consent to any search and that I may revoke my consent to search at any time.

Signature:

State Police Officers:

Departmento De Seguridad Publica Y Correcciones De Louisiana  
Oficina De La Policia Del Estado

Consentimiento A Registro

Fecha	Hora	Lugar
-------	------	-------

Para cooperar en una investigacion de la Oficina de la Policia del Estado de Louisiana, yo \_\_\_\_\_  
Nombre

que resido en \_\_\_\_\_ por la presente voluntariamente  
Direccion

autorizo a \_\_\_\_\_ de la Oficina de la Policia del Estado de Louisiana a registrar  
Nombre el Oficial

Describa la Residencia, Objeto, O Vehiculo a Ser Registrado

y su contenido, los cuales son de mi propiedad o controladas por mi, y a embargar cualquier cosa que la Oficina de la Policia del Estado de Louisiana considere pertinente a su investigacion, siempre que se me provea un recibo por las cosas embargadas. No se me ha hecho ninguna promesa, amenaza, o coaccion de ninguna clase por parte de la Oficina de la Policia del Estado, ni se me ha forzado y me ha informado el Oficial de la Policia del Estado arriba mencionado que puedo rehusar cualquier registro y que puedo revocar mi consentimiento al registro en cualquier momento.

Firma:

Oficial de la Policia del Estado:



## **APPLICATION FOR SEARCH WARRANT**

### **STATE OF LOUISIANA PARISH OF ST. TAMMANY**

BEFORE ME, Judge of the 22nd Judicial District Court in and for the State and Parish aforesaid, personally came and appeared Investigator Leland Dwight of the Louisiana State Police, a law enforcement officer in and for the State aforesaid, who, after being duly sworn by me, deposed and said that probable cause exists for issuance of a search warrant for the search of the following items:

- 1. One (1) black Samsung wireless phone, Model# SGH-S275G, FCC ID: A3LSGH275G, IMEI # 352478/05/089367/8, with removable SIM card.**

A search of this item is requested as it is believed to contain evidence relating to an ongoing narcotics trafficking investigation, including, but not limited to, names and phone numbers of possible suspects. Probable cause exists for the following reasons, to-wit:

1.

In May of 2013, I, Investigator Leland Dwight of Louisiana State Police Narcotics/HIDTA, was contacted by DEA/Baton Rouge/HIDTA Special Agent (S/A) Mark Lusco regarding his agency's current investigation of a Drug Trafficking Organization (DTO) operating in the Baton Rouge area. S/A Lusco relayed the following facts:

2.

Since January 15, 2013, the Drug Enforcement Administration (DEA/Baton Rouge/HIDTA), along with agents and officers of the Louisiana State Police, Alcohol Tobacco and Firearms, Internal Revenue Service, Ascension Parish Sheriff's Office, East Baton Rouge Sheriff's Office, West Baton Rouge Sheriff's Office, Baton Rouge Police Department, Gonzales Police Department, have been investigating a DTO operating in East Baton Rouge Parish and the surrounding area of Southeast Louisiana. One of the DTO's chief managers was identified as Charles London. The DTO, consisting of London and a group of persons, both known and unknown in the Baton Rouge area, are involved in a pattern of drug activity associated with the sale, receipt, possession, and distribution of kilogram quantities of powder and 'crack' cocaine, kilogram quantities of 3, 4-methylenedioxymethamphetamine (herein after referred to as MDMA), and other controlled dangerous substances in the Baton Rouge area, the Southeast Region of Louisiana, and elsewhere.

3.

Through investigative means, it had been determined that London's source of supply for MDMA, known only as "Joe" at that time, lived and operated in the New Orleans, Louisiana area. S/A Lusco requested that the New Orleans Office of the Louisiana State Police Narcotics/HIDTA initiate an investigation of "Joe".

4.

Through review of reports made (both oral and written) from the London DTO investigation and through other investigative means, agents were able to identify "Joe" as Joseph Sergent (B/M, 5-18-81) and determined that he had a narcotics (including MDMA) trafficking history.

5.

During this time, it was learned that Joseph Sergent was sending a courier to Baton Rouge from the New Orleans area with a supply of MDMA pills. DEA/Baton Rouge/HIDTA agents were able to establish surveillance on the known delivery point and captured the courier's license plate as VXY725. This vehicle was registered to Lionell Conway, who, through the course of the investigation, delivered several times to London in Baton Rouge, La. Lionell Conway's listed address was in Kenner, La. But it was later determined that he was actually residing at 10151 Curran Blvd Apt#56, in New Orleans, La. This apartment was additionally being utilized by the DTO as a location to secrete illegal narcotics. Observed, as well as documented, hand-to-hand transactions, which were facilitated by Joseph Sergent and Lionell Conway (among others), were supplied from this location. Proceeds from those transactions were also temporarily stored at this

apartment. It was also established via Confidential Source (CS) information, which was corroborated through investigative means, that Joseph Sergent maintained the rent and utilities and had free access, control and dominion of the apartment.

6.

Through telephone tolls, physical surveillance and CS information, agents determined that Joseph Sergent's source of supply for MDMA was James L. Whitaker Jr. It was further learned that Whitaker was operating a pill press and processing raw MDMA in a house at 1021 Lesan St. in Kenner, La. One such documented occasion occurred on September 4, 2013 when Joseph Sergent coordinated a delivery of 10,000 dosage units of MDMA from Whitaker via Conway to London in Baton Rouge, La. The following day, September 5, 2013, DEA/Baton Rouge/HIDTA executed search warrants at several locations, one of which was London's residence. The 10,000 MDMA pills were seized along with a large amount of currency and a firearm. Directly after that police action, Whitaker fled to Texas but later returned to Louisiana and was residing at an unknown location.

7.

Further, on September 27, 2013, it was learned through a reliable CS that Whitaker was preparing 5,000 MDMA pills for Joseph Sergent at an unknown location. The CS further related that Joseph Sergent was directing Lionell Conway to meet James Whitaker, receive the 5,000 MDMA pills and deliver them to a new, as of yet undetermined, customer in Baton Rouge, La. Agents were able to initiate surveillance on Joseph Sergent and Lionell Conway. Conway met with Whitaker and an exchange was observed. Conway was then followed to Baton Rouge and the CS's information was corroborated. Conway was then followed to Jefferson Parish where a traffic stop was conducted on his vehicle at I-10 East and Williams Blvd. As a result of that stop (speeding and improperly displayed license tag), a consent to search was requested and denied by Conway. A K-9 unit was requested and a free-air sniff of the vehicles exterior resulted in a positive alert for the presence of narcotics. A subsequent search of the vehicle's interior resulted in the seizure of over 1,000 MDMA pills and \$3,800 in US currency. Conway was subsequently arrested and booked accordingly at the Jefferson Parish Correctional Center. Also seized at the time of the arrest was Conway's cellular telephone, seized in Jefferson Parish.

8.

After the meeting between Conway and Whitaker in Metairie, agents followed Whitaker to Room #126 at the Best Western Hotel, 625 Hwy 190, Covington, La. Agents were able to establish probable cause and obtained a search warrant for that room. The search warrant was executed and resulted in the seizure of a large amount of MDMA and its pre-cursors, what is believed to be synthetic cannabis, a pill press, and chemicals utilized in the manufacture, processing and packaging of MDMA. Whitaker and two other subjects (Dennis Beverly and Jermel Beverly) were arrested there on-scene. Also seized at the time of his arrest were three of James Whitaker Jr.'s cellular telephones (listed above), seized in St. Tammany Parish.

9.

During this time, search warrants (earlier prepared, presented, signed and so ordered) were executed at Joseph Sergent's residence (7707 Reindeer St, New Orleans, La.), Lionell Conway's residence (aka "stash location", 10151 Curran Blvd, Apt 56, New Orleans, La.), and James Whitaker's previously establish processing location/residence (1021 Lesan Dr., Kenner, La.). Joseph Sergent and his wife, Dominique Sergent, were located and detained at the Clearview Mall (4436 Veterans Blvd, Metairie, La.). They were then relocated to their residence while agents conducted a systematic search. During the search of 10151 Curran Blvd, Apt#56, agents located and seized 87 grams of marijuana, packaged for resale. The search of 7707 Reindeer St revealed there to be a loaded, .40 calibur semi-automatic pistol in the master bedroom. Joseph Sergent is a felon (previously convicted of illegal narcotics charges), and had just been released from probation for drug law violations in March, 2013. As a result of the findings, Joseph Sergent was arrested for RS 14:95.1, Felon in Possession of a Firearm, and RS 40:966A(1), Possession with Intent to Distribute a Schedule I C.D.S. to wit marijuana. Subsequent to his arrest, two cellular telephones were seized from Joseph Sergent, seized in Orleans Parish.

Considering the foregoing facts and circumstances, your affiant respectfully affirms that probable cause does exist for the issuance of a search warrant authorizing the search of the above listed wireless cell phone. The search is to be conducted at by trained Louisiana State Police Technical Support Officers according to department protocols. Specifically, your affiant

**LOUISIANA STATE POLICE**

**STATE OF LOUISIANA  
PARISH OF JEFFERSON**

**AFFIDAVIT FOR SEARCH WARRANT**

Senior Trooper (S/T) Sean McCaffery - Louisiana State Police - affiant, now appears before the undersigned Judge authorized to issue warrants in criminal cases, and makes this affidavit, under oath, in support of the issuance of a search warrant, to search the following described place:

A certain single family dwelling located within a multi-family apartment complex within the Parish of Orleans. The apartment is assigned the number xxxx within the xxx apartment complex, and is known to be the residence of Lionell xxx

The purpose and reason for this search is to seize, secure, tabulate and make return thereof according to law the following property or things used in the commission of, or which constitute evidence of, criminal conduct, to wit:

Any and all property or evidence of any kind, related to the sale, resale, and distribution of 3,4-methylenedioxymethamphetamine (MDMA), (herein after referred to as MDMA), any salts, isomers, or salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation, and marijuana, tetrahydrocannabinols, or chemical derivatives of tetrahydrocannabinols, or synthetic cannabinoids as controlled in R.S. 40:966, including but not limited to any and all electronic storage or recording material, books, records, currency, documents, paraphernalia notes, and papers, including cellular telephones, banking records, scales, capsules, powder, packaging implements and materials, ledgers, names and addresses of associates

- 1.) Your Affiant is a trained and experienced investigator with the Louisiana State Police currently assigned to the Bureau of Investigation within the State Police. I was previously employed by the New Orleans Police Department from 1993 to 1995 and the Jefferson Parish Sheriff's Office from 1995-1999. I was assigned to the Jefferson Parish Sheriff's Office Special Investigations Division (Narcotics) of the Detective Bureau from 1997-1999. I have been employed with the Louisiana State Police for the past 14 years, since April of 1999, and have been assigned to the Louisiana State Police-Criminal Investigations Division for the past six years, since January of 2007. I know through my training and experience, people involved in the distribution of narcotics utilize cellular phones to converse with others who are also involved with the distribution of narcotics. These cellular phone calls are used to obtain/distribute amounts of narcotics, monies paid/owed, and/or discuss future narcotic transactions.
  
- 2) During the course of my career, I have participated in investigations which have led to the arrest, prosecution and conviction of persons involved in the illegal trafficking of controlled substances. I have personally participated in investigations of large-scale drug trafficking organizations. Additionally, I have interviewed numerous suspects and cooperating witnesses in the above stated investigations. I am familiar with the terms and language used by persons involved in the above mentioned crimes and drug distributors. I am also familiar with, and have

personally used, investigative techniques in these investigations such as the use of undercover agents, cooperating witnesses, confidential informants, the analysis of telephone toll and pen register information, search and seizure warrants and grand jury investigations.

3) As a result of my training, experience and discussions with other narcotics agents and officers, as well as my daily involvement in drug investigations, I am familiar with the methods used by drug traffickers to acquire, transport, store, conceal, process, package and distribute controlled substances.

Affiant says that he has probable cause to believe that the above-listed things to be seized are now concealed and located upon the above described premises, based upon the following facts:

- Paragraph 1.)** On May 17, 2013, Affiant was told by S/A Lusco of the Drug Enforcement administration that he had a reliable source of information hereafter referred to as CS1 who was providing intimate details of the activities of Gary London, Joseph D. Sergent, and a group of persons known and unknown in the Baton Rouge, and New Orleans area who are involved in a pattern of drug activity associated with the sale, receipt, possession, and distribution of kilogram quantities of cocaine, and 3,4-methylenedioxymethamphetamine, (herein after referred to as MDMA), and other controlled dangerous substances.
- Paragraph 2.)** CS1 has provided information to S/A Lusco which has proven to be truthful, accurate, reliable, and correct. Further, the information provided by CS1 has resulted in the seizure of controlled dangers substances, and has been corroborated by several independent sources of information.
- Paragraph 3.)** Affiant was able to obtain the same information provided to S/A Lusco from CS1, and
- Paragraph 4.)** Between May 13, 2013 and June 4, 2013, CS1 provided accurate and reliable information indicating that Joe Sergent and London were actively involved in the sale and distribution of multi-kilogram quantities of cocaine, the transportation and distribution of several thousands of dosage units of MDMA by Sergent to London, and the transportation of thousands of dollars of currency between London and Sergent.
- Paragraph 5.)** On May 21, 2013 CS1 provided details indicating that London received 4,000 dosage units of MDMA delivered by or on behalf of Joe Sergent to London at his residence. This information was corroborated by independent sources.
- Paragraph 6.)** On May 28, 2013, CS1 provided information indicating that Joseph Sergent sent a courier to deliver 5,000 dosage units of MDMA to London. This information was later corroborated by independent sources.
- Paragraph 7.)** CS1 also provided information to Affiant that between June 1-2, 2013, Joseph Sergent delivered ½ kilogram of MDMA to London and that Joseph Sergent said he would be delivering 5,000 more dosage units to London on June 4, 2013.
- Paragraph 8.)** During July of 2013, agents conducted surveillance of Joseph Sergent and observed him meet with James Whittaker and Lionell Conway, and observed activity consistent with the distribution of illegal substances, and the transportation of proceeds from drug offenses.
- Paragraph 9.)** On August 30, 2013, Affiant developed an additional source of information hereafter referred to as CS2. CS2 also provided Affiant with intimate details of the Joe Sergent drug trafficking organization. The information provided by CS2 has been proven reliable by independent investigation, surveillance, and information provided by CS1, as well as personal observations of numerous agents of the Louisiana State Police and Drug Enforcement Administration in Baton Rouge and New Orleans. The information provided by CS2 has resulted in the seizure of over ten thousand dosage units of MDMA, and the seizure of more than one hundred fifty thousand dollars in proceeds from drug offenses.
- Paragraph 10.)** CS2 provided direct information indicating that the MDMA was provided by Whittaker, brokered by Sergent, and transported by Conway to London. CS2 also indicated that Dominique Sergent was aware of the illegal distribution of MDMA by Sergent, Whittaker, and Conway, and the transportation and laundering of proceeds from drug offenses, and that Dominique Sergent, received, proceeds derived from a violation of the criminal activity, and knowingly and intentionally engaged in a transaction that she knew involved

- proceeds from such violations.
- Paragraph 11.)** The information provided by CS2 was corroborated by surveillance, independent investigation, call detail record analysis, public records, and other means of investigation.
- Paragraph 12.)** On August 30, 2013, CS2 provided information indicating that Joe Sergent was in contact with London in reference to the distribution of several thousand dosage units of MDMA. CS2 further indicated that Whittaker was in the process of packaging the MDMA for distribution, and that Conway would transport the MDMA to Baton Rouge, and transport the money back to New Orleans. Whittaker was in possession of several thousand dosage units and Jackson wants Whittaker to have an extra 5000 dosage units on hand at all times for distribution. Conway agrees to transport 3000 dosage units to Baton Rouge and return with over five thousand dollars which was proceeds from the sale of MDMA. CS2 further indicated that Whittaker stood to make ten thousand dollars profit from the distribution of MDMA. London is purchasing the pills for approximately 1.85 each from Whittaker, Sergent, and Conway, and is selling the individual pills for approximately twelve dollars each.
- Paragraph 13.)** On August 30, 2013, CS2 indicated that Whittaker had been carjacked at gunpoint, that Conway normally has marijuana in his vehicle which he distributes to numerous persons in the New Orleans area. Jackson gives advice to Whitaker on the finer points of distributing marijuana, and advice on how to cover up the smell of marijuana in the trunk of a vehicle. CS2 further indicated that Conway was confused and asked Sergent if Conway was to deliver an additional two thousand dosage units of MDMA. Jackson related to CS2 that London wanted eight thousand dosage units of MDMA and was very upset that Whittaker had not provided all the MDMA to Joe for Conway to transport to London.
- Paragraph 14.)** On August 30, 2013, CS2 related that Whittaker is packaging the powder MDMA into individual capsules for resale at his grandmothers residence at 1021 Lesan Street in Kenner, La. CS2 also indicated that Whittaker, Conway and Sergent make a decent living selling marijuana and MDMA and use the proceeds to support their lifestyle, and pay bills and obtain assets.
- Paragraph 15.)** CS2 also indicated Sergent also keeps marijuana at his residence and frequently distributes marijuana from within his residence and vehicle and sells  $\frac{1}{4}$  ounce quantities of marijuana for approximately seventy-five dollars, ounce quantities for about three hundred dollars, and further that Sergent keeps large sums of cash from transactions involving proceeds from drug offenses in his closet in his residence at 7707 Reindeer Street, in New Orleans. CS2 indicated Sergent obtains  $\frac{1}{2}$  pound quantities of marijuana routinely.
- Paragraph 16.)** CS2 provided information that Sergent, Conway and Whittaker are distributing approximately ten thousand dosage units of MDMA on a weekly basis to London.
- Paragraph 17.)** CS2 also indicated that Sergent, Conway and Whittaker frequently use their vehicle for the purpose of the transportation, receipt, and distribution of MDMA, cocaine, and marijuana, and also transport the proceeds from transactions involving proceeds from drug offenses in their cars and residences.
- Paragraph 18.)** CS2 also revealed that Sergent and Conway frequently use bank accounts to deposit the proceeds from transactions involving proceeds from drug offenses, and
- Paragraph 19.)** CS2 provided direct evidence and information to indicate that Sergent Conway and Whittaker frequently, and through a pattern of drug racketeering activity conduct, supervise, and facilitate multiple financial transactions involving proceeds known to be derived from drug offenses, and that the transaction are designed to conceal or disguise the nature, location, source, ownership, or the control of proceeds known to be derived from drug offenses. Further, CS2 provided direct evidence and information to indicate that Sergent Conway and Whittaker frequently direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from the distribution of MDMA and marijuana, and that they give, sell, transfer, trade, invest, conceal, transport, maintain an interest in, or otherwise make available things of value known to be for the purpose of committing or furthering the commission of criminal activity associated with the distribution of MDMA and marijuana.
- Paragraph 20.)** Conway told CS2 that he (Conway) frequently has marijuana at his residence and specifically as recently as September 7<sup>th</sup>, 2013 that he had marijuana at his residence located at xxxxxxxxxxxxxxxxxxxxxxxxx
- Based on statements made by CS1, CS2, Joseph Sergent, Dominique Sergent,

Lionell Conway, and James Whitaker, as well as interviews, call detail record analysis, physical surveillance, reports from other investigating officers, and other investigative means, Affiant believes that the aforementioned items and evidence of other crimes are being concealed within the above described xxxxxxxx.

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AFFIANT – Leland A. Dwight

SUBSCRIBED AND SWORN TO BEFORE  
ME THIS \_\_\_\_ DAY OF JULY, 1996  
Issuance of a search Warrant as prayed for in the  
foregoing Affidavit for Search Warrant is hereby  
authorized.      AT \_\_\_\_\_ A.M./P.M.

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Judge of the 22nd Judicial District  
Parish of St. Tammany  
State Of Louisiana

**LOUISIANA STATE POLICE**

**STATE OF LOUISIANA  
PARISH OF ST. TAMMANY**

**SEARCH WARRANT**

To: The within named affiant or any other qualified law enforcement officer or officers:

On this day Agent Leland A. Dwight - Louisiana State Police - Region I Detectives, affiant, having subscribed and sworn to an affidavit for a Search Warrant, and I having under oath examined affiant, am satisfied that probable cause exists;

Therefore, in the name of the people of the State of Louisiana, I order and command that you search during the day and night, Sundays and Holidays, continuing through the night or next day, the following described place; and that agents are not required to announce their purpose and presence prior to entering the residence.

The purpose and reason for this search is to seize, secure, tabulate and make return according to law the following property and things:

Any and all property or evidence of any kind, related to the sale, resale, and distribution of marijuana: including but not limited to any and all electronic storage or recording material, books, records, currency, documents, paraphernalia notes, and papers.

ISSUED UNDER MY HAND THIS \_\_\_\_ DAY OF JULY, 1996 AT \_\_\_\_\_ AM/PM

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Judge of the 22nd Judicial District  
Parish of St. Tammany  
State of Louisiana

**AUTHORITY FOR EXECUTION  
OF SEARCH WARRANT**

A judge or magistrate has issued a search warrant authorizing the search of and seizure of the aforementioned items.

In order to execute this search warrant a peace officer may use such means and force as are authorized. While in the course of executing this search warrant, a peace officer may make photographs, lift fingerprints, seize things whether or not described in the warrant that may constitute evidence tending to prove the commission of any offense, and perform all other acts pursuant to his duties.

When a peace officer seizes property under a warrant he shall give a receipt to the person from whom the property is taken, describing the property in detail. In the absence of such person, the peace officer shall leave the receipt in the place where the property was seized.

**LOUISIANA STATE POLICE**  
AGENCY EXECUTING SEARCH WARRANT

893-6240  
PHONE

**LOUISIANA STATE POLICE**

**STATE OF LOUISIANA  
PARISH OF ST. TAMMANY**

**RETURN OF SEARCH WARRANT**

Pursuant to a search warrant issued to me by the honorable Judge of the 22nd Judicial District Court, I, Agent Al Majeau, did on the day of July 1996, at PM proceed with the assistance of to and did search

and found therein the following:

Finding no other items, I terminated my search at PM on the day of July, 1996.

I have taken the above described items into my possession and do hereby make my return to the Honorable , Judge of the 22nd Judicial District Court on this day of July, 1996.

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CASE AGENT

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**CERTIFICATE OF RECEIPT OF  
RETURN OF SEARCH WARRANT**

This is to certify that I, , Judge of the 22nd Judicial District Court, have this day received a return of a warrant issued by me to Agent Al Majeau, this day of July, 1996.

---

Judge

**SEARCH WARRANT  
ENTRY FORM- FIELD NOTES**

Date of entry \_\_\_\_\_ Time of entry \_\_\_\_\_ AM PM  
Other officers present: \_\_\_\_\_ Agency \_\_\_\_\_


The following items were located:

The search was terminated at \_\_\_\_\_ ~ on 1996.

Copy of Search warrant was left at residence \_\_\_\_\_ YES \_\_\_\_\_ NO



## **SEARCH WARRANT**

STATE OF LOUISIANA  
PARISH OF ST. TAMMANY

TO LAW ENFORCEMENT OFFICERS in and for the Parish aforesaid:

WHEREAS an affidavit has been made before me upon the oath of Investigator Leland Dwight, alleging that there is probable cause that the following wireless phone:

- 1. One (1) black Samsung wireless phone, Model# SGH-S275G, FCC ID: A3LSGH275G, IMEI # 352478/05/089367/8, with removable SIM card.**

contains evidence needed in furtherance of a narcotics trafficking investigation and will in fact be found, to include Owner/User data, Owner's phone number, SMS Messages, MMS Messages, Call History and Data, Phonebook and/or Contacts list(s), Digital photographs and/or video(s), any other data the phone(s) may contain that may further this investigation, and that they are secreted or concealed, and whereas the affidavit submitted in support of the request for this search warrant indicates that the affiant has shown probable cause for its issuance,

**YOU ARE HEREBY ORDERED** to search the aforesaid wireless phone, where evidence in furtherance of a narcotics trafficking investigation is likely to be found, and if aforementioned items of evidence be found there, to seize, secure, tabulate, and bring them before this Court,

This search warrant is expressly authorized for execution at any time of the day or night and also on weekends (Saturday and Sunday) and on all legal holidays.

And this shall be your warrant to which you are to make due return according to law.

WITNESS my official signature on this \_\_\_\_\_ day of October, 2013, at \_\_\_\_\_ hours, in St. Tammany Parish, Louisiana.

---

Judge 22nd Judicial District Court  
Parish of St. Tammany  
State of Louisiana

requests to search the phone for: Owner/user data, Owner's phone number, SMS messages, MMS messages, Call history and details, Phonebook and/or contacts list(s), digital photographs and/or video(s), and any other data the phone(s) may contain that may further this investigation.

WHEREFORE, for the reasons set forth above and elsewhere in this writing, your affiant respectfully shows that probable cause does exist for issuance of a search warrant for the above listed wireless cell phones, and respectfully requests that a *Search Warrant* issue from this Honorable Court.

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Investigator Leland Dwight (Affiant)  
Louisiana State Police

Sworn to and subscribed before me on this \_\_\_\_\_ day of October, 2013

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Judge 22<sup>nd</sup> Judicial District Court  
St. Tammany Parish  
State of Louisiana

Time: \_\_\_\_\_

# **Search and Seizure of Cell Phone and other Electronic 4<sup>th</sup> Amendment Issues**

**Submitted By:**

**Leland "Corky" Dwight, Investigator, Louisiana State Police  
J. J. Williams, LDAA Staff Attorney**

- I. TANGIPAHOA CASE STUDY AND CELL PHONE BASICS
- II. CELL PHONE ISSUES
- III. POLICE PROTOCOLS AND COMMON TACTICS
- IV. LA. CASE LAW ON CELL PHONE SEARCHES
- V. FEDERAL 5<sup>TH</sup> CIRCUIT CELL PHONE SEARCHES
- VI. OTHER FEDERAL CIRCUITS CELL PHONE CASES
- VII. THE U.S. SUPREME COURT AND CELL PHONE SEARCHES
- VIII. DISTINCTIONS BETWEEN TEXT MESSAGES AND STORED INFORMATION, PHONE NUMBERS AND PHOTOS
- IX. ACCESSING CELL TOWER HISTORICAL DATA
- X. SEARCH OF LICENSE PLATE READERS, NON BANK MONEY TRANSMITTER RECORDS AND OTHER ELECTRONIC SEARCHES
- XI. STATE WIRE INTERCEPTS