PROSECUTING ATTORNEYS' COUNCIL OF GEORGIA

Presentation On

"RESOURCES FOR THE DRUG PROSECUTOR"

LECTURE BY A. JASON SALIBA
Deputy Assistant District Attorney
Cobb Judicial Circuit District Attorney's Office
Marietta, Georgia

DISCUSSION NOTES AND DETAILED OUTLINE

This lecture concerns resources for the drug prosecutor with an emphasis on investigative and trial preparation tools. The discussion will begin by reviewing different types of common electronic surveillance and stored information available, excepting pen registers and Title III intercept orders. We will then examine the resources available to us from outside agencies.

I. Information available

A. Landline telephone records.

1. Usually available by Grand Jury subpoena.

2. Toll records will show patterns and help identify the potential member of the narcotics organization.

3. Subscriber records lead you to the people involved in the narcotics organization Subscriber information is also a good place to start your financial investigation.

B. Cellular telephone records.

1. These records provide you with all of the benefits of landline telephone records, plus let you know if the target has push to talk or text service.

2. A subpoena is sufficient for subscriber information and toll records. 18 U.S.C.A. 2703 (a)(1)(C).

3. Cell site information can also assist in an investigation by giving general geographic information. Disclosure of cell site information requires a court order based on a showing of "specific and articulable facts showing that there are reasonable grounds to

believe that the . . . records . . . are relevant and material to ongoing investigation." 18 U.S.C.A. 2703(d). However, the case law is trending towards probable cause and defining a cellular phone as a tracking device, pursuant to 18 U.S.C.A. 3117, when used to determine the geographic location of the user. See *In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority*, 396 F.Supp. 2d 747 (S.D. Tex. 2005) and *In re U.S. for an Order Authorizing Installation and Use of a Pen Register*, 415 F.Supp. 2d 211 (W.D. N.Y. 2006).

C. Pager Records

D. On Star Records

E. DSL or Broadband Records

F. Credit Agency Records

1. These records will reveal credit cards, store charges, and bank accounts.

2. You can then pull credit card and bank statements and determine who the target is paying for telephone, pager, or cellular service.

II. Preliminary Electronic Surveillance

A. Global Positioning System (GPS) Devices

1. Can tell you everywhere the device has physically been located. They are most often used on vehicles.

2. Installation and monitoring require a court order. See United States v. Knotts, 460 U.S. 276 (1983) and United States v. Karo, 468 U.S. 705 (1984).

3. The device must be installed in the jurisdiction where the order is issued but may be monitored no matter where it goes. 18 U.S.C.A. 3117.

4. Pursuant to a court order OnStar can track vehicles with an OnStar system activated in it.

5. Nextel/Sprint has limited capability to activate GPS in its handsets and track it real time pursuant to a court order.

6. Remember to get permission to do a surreptitious entry to install

the device when you get your order. See sample order.

7. Battery life can be an issue if the unit is not hardwired. The order should include a provision for maintenance and battery replacement.

B. National Guard C126 aircraft.

1. Can be requested free of charge.

2. Each plane is equipped with cameras, zoom lenses, and forward looking infrared (FLIR). These are great surveillance tools to supplement your electronic efforts. See California v. Ciraolo, 476 U.S. 207 (1986); Florida v. Riley, 488 U.S. 445 (1989); and Don Chemical Co. v. United States, 476 U.S. 227 (1986) for discussions on aerial surveillance and the use of magnifying instruments. See also Kyllo v. U.S., 533 U.S. 27 (2001) for the law relating to the use of infrared.

III. Outside Agency Help

A. HIDTA (High Intensity Drug Trafficking Area)

1. Fully equipped wiretap facility.

2. Analysts support.

3. Will adopt cases smaller than DEA standards.

B. EPIC (El Paso Intelligence Center)

1. Vetted access only

2. Monitors all activity on the United States border

a. People

b. Vehicles, watercraft, aircraft

c. Intelligence information

3. Access to all Federal Databases

4. Coast Guard component

5. Airplane tracking

6. Foreign drug enforcement representatives
7. Intelligence can be accessed by telephone call or internet portal

C. ROCIC (Regional Organized Crime Information Center)

1. A centralized law enforcement database with connectivity among projects and nationwide search ability .
2. Analysis of investigative data.
   a. Financial investigations.
   b. Exhibits and experts for court .
3. Specialized investigative equipment for loan
4. Technical assistance
   a. Computer forensics.
   b. Equipment help.
5. Training .
6. Telecommunications system access .

D. NW3C (National White Collar Crime Center)

1. Financial Analysis.
2. Financial investigative support.
3. Training.

E. FINCEN (Financial Crimes Enforcement Network)

1. Financial information.
2. Established to fight money laundering.

F. Other Prosecutors

1. Nearby jurisdictions.
2. Experts around the state.

3. PAC

IV. Research and Membership Information

A. Clifford S. Fishman and Anne T. McKenna, Wiretapping and Eavesdropping (2d ed. 2004). This is the foremost reference to use for electronic surveillance. It covers every issue in depth with an analysis of federal and state law and practical examples. It is a large two volume set.

B. United States Code Annotated, Title 18 Crimes and Criminal Procedure, § 2441 to 3160. This is one volume of the U.S.C.A. and contains all of the electronic surveillance code sections.

C. Department of Justice briefs and manuals. Many of these are available on line.

D. http://www.whitehousedrugpolicy.gov/hidta/atlanta.html

E. http://www.rocic.com/index.html

F. http://www.nw3c.org/

G. http://www.fincen.gov

Search Warrant /Order # _____

IN RE: APPLICATION FOR ORDER
AUTHORIZING THE PRODUCTION
OF CALL DETAIL, CELL SITE
AND TOLL RECORDS ON ANY
AND ALL INCOMING AND
OUTGOING CALLS FOR AN
ONGOING INVESTIGATION

ORDER FOR THE PRODUCTION OF CALL DETAIL,

CELL SITE INFORMATION, AND TOLL RECORDS

Now comes the State of Georgia by and through the District Attorney for the Cobb Judicial Circuit and seeks an application for an Order to obtain call detail and toll record information necessary to the ongoing investigation involving the above case.

After hearing the sworn testimony of **Investigator Tony Simpson of the Cobb County Sheriff's Office, currently assigned to the Metro Fugitive Squad**, and after reviewing the relevant code section under O.C.G.A. 16-11-66 and 18 U.S.C.A. 2703(c)(d), and finding probable cause to support the request , this Court finds probable cause to believe the records requested are relevant to the ongoing investigation in this case.

It is HEREBY ORDERED that **AT&T Wireless** provide to **Investigator Simpson** whose office is located **at [redacted], Atlanta, GA 30349**, telephone number (**XXX) XXX-XXXX** and fax number **(XXX) XXX-XXXX** the following information:

Any and all call detail, cell site information, and toll records on all incoming and outgoing calls for a **60 day** period beginning on **August 8, 2008** for telephone number **(XXX) XXX-XXXX**.

It is the FURTHER ORDER of this Court that said company not disclose to subscriber of said telephone number or any other person the existence of this ongoing investigation and the State's request for the above information.

The Clerk of Superior Court of Cobb County is directed to seal and hold said Order until the fugitive is apprehended or the time limit expires.

SO ORDERED this _____ day of _____, 2008.

_____
ROBERT E. FLOURNOY, JR.
Presiding Superior Court Judge
Assisting per O.C.G.A. 15-1-9.1
Cobb Judicial Circuit

Presented by:

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A. JASON SALIBA
Deputy Assistant District Attorney
Cobb Judicial Circuit

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

IN THE MATTER OF THE
APPLICATION FOR AN
ORDER AUTHORIZING INSTALLATION
AND USE OF ELECTRONICALLY
ACTIVATED TRACKING DEVIDES (GPS) ON
ONE 200X BLACK, FORD [redacted], BEARING
GEORGIA TAG XXXXXX

IW 2004-XX

ORDER

Application having been made to this Court by the affiant for an Order authorizing the installation and use of a Global Position System (GPS) (collectively referred to as "the tracking devices") on one 200X Ford, [MODEL], VIN [redacted], bearing Georgia Tag # XXXXXXX (the "Subject Vehicle"), and said Application having been supported by the affidavit of Agent [redacted] Engle, Marietta/Cobb/Smyrna Narcotics Unit, showing reason to believe [SUPECT NAME] and others, both known and unknown are engaged in the commission of violations of state law, specifically; Violations of the Georgia Controlled Substances Act (O.C.G.A. §§16-13-30 and 16-13-31) specifically the distribution or trafficking of cocaine, a Schedule II controlled substance, and accompanying affidavit having been read and carefully considered by the Court, this Court finds that there is probable cause to believe that:

a. [SUSPECT NAME] and others both known and unknown are engaged in a conspiracy to distribute and traffick cocaine, a Schedule II controlled substance, in Violation of the Georgia Controlled Substances Act 16-13-30 and 16-13-31;

b. One 200X Ford [redacted], VIN [redacted], bearing Georgia tag #XXXXXXX (the "Subject Vehicle"), will be used by [SUSPECT NAME] as HIS/HER means of transportation on a day-to-day basis, including as means of transportation in connection with her illegal drug trafficking activity; and

c. Relevant information as the location of the Subject Vehicle will be obtained by the use of the tracking device (GPS) and will be relevant and material to the ongoing investigation being conducted by the Marietta/Cobb/Smyrna Narcotics Unit.

Accordingly, IT IS HEREBY ORDERED that agents of the Marietta/Cobb/Smyrna Narcotics Unit and or of any other law enforcement agency, specifically [redacted] Wood, a detective with Smyrna Police Department, involved in the investigation are authorized to install by any appropriate means, as set forth in the affidavit of Agent [redacted] Engle, a Global Position System (GPS) (collectively referred to as "the tracking device") 200X Ford [redacted], VIN [redacted], bearing Georgia tag # XXXXXXX (the "Subject Vehicle"). The Court specifically authorizes surreptitious entry into the Subject Vehicle at any hour of the day or night in order to install the tracking devices or to recharge and repair these devices as needed, by either physically securing the vehicle in question or utilizing clandestine means, if necessary. Upon termination of the Order, agents are permitted to secure the vehicle in question in order to remove and recover the devices.

IT IS FURTHER ORDERED that agents of the Marietta/Cobb/Smyrna Organized Crime Unit and/or any other law enforcement agency involved in the investigation are authorized to activate said device and to continuously monitor said device for a period of thirty (30) days, or until the investigation is terminated, whichever is earlier. Such monitoring may occur whether the vehicle is in a public place or on private property, including when the vehicle is concealed from view.

IT IS FURTHER ORDERED that, in the event that the Subject Vehicle travels outside the territorial jurisdiction of

this Court, monitoring agents may continue to monitor the signaling devices in any jurisdiction in the state of Georgia.

2.

IT IS FURTHER ORDERED that agents of the Marietta/Cobb/Smyrna Narcotics Unit are not required to leave notice or an inventory in any premises or vehicle

entered regarding the installation, replacement, repair, or removal of the signaling devices.

IT IS FURTHER ORDERED that this Order, the supporting Affidavit, and all notes, disks, and tapes of the court reporter shall be sealed by the Clerk of the Superior Court. The Clerk shall make certified copies of this Order and the Affidavit for the Marietta/Cobb/Smyrna Narcotics Unit and the Office of the District Attorney for the Cobb Judicial Circuit.

SO ORDERED, this _____ day of _____, 2008.

_____
Robert E. Flournoy, Jr.
Presiding Judge
Superior Court of Cobb County

Presented by:

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A. Jason Saliba
Assistant District Attorney
Cobb Judicial Circuit