

EXHIBIT A



2,000 cases may be overturned because police used secret Stingray surveillance

A motion filed Friday says the State's Attorney's office colluded with police to withhold 'discovery' material obtained via Stingrays from defendants

Nicky Woolf in Baltimore

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More than 2,000 cases could be overturned in Baltimore as the first motion for a retrial is filed accusing the state's attorney's office and the police of "deliberate and wilful misrepresentation" of the use of the secret surveillance equipment known as Stingrays.

The motion, which was filed on behalf of defendant Shemar Taylor by attorney Josh Insley in the Baltimore city circuit court on Friday, says the state's attorney's office colluded with the police department to withhold "discovery" material from the defendants and the courts about the use of the Stingray device. Taylor was convicted of assault, robbery and firearm possession.

Manufactured by the Harris corporation and around the size of a briefcase, Stingrays are one of a class of surveillance devices known as "cell-site simulators", which pretend to be cellphone towers in order to extract metadata, location information, and in some cases content from phones that connect to it.

Prosecutors are required to reveal the evidence against defendants in the "discovery" phase of a criminal trial.

However, a Guardian investigation in April revealed a non-disclosure agreement that local police and prosecutors were forced to sign with the FBI before using the Stingray devices, which mandated them to withdraw or even drop cases rather than risk revealing Stingray use.

"It shocks the conscience that a police commissioner and an elected State's Attorney would conspire to commit obstruction of justice unless the FBI told them they could disclose," Insley told the Guardian.

In the motion, Insley cited part of a specific 2011 agreement similar to the one revealed by the Guardian, between then-states' attorney Gregg Bernstein and then-police commissioner Frederick Bealefeld which stated that their offices "shall not, in any civil or criminal proceeding, use or provide any information concerning the Harris corporation wireless collection equipment/technology" without permission from the FBI.

The motion also stated that in Taylor's original trial in November 2014, attorneys for the state told defence counsel that "the device" was not used in the investigation. But a USA Today investigation that unearthed a log of cases in which the device was used showed that a Stingray was in fact used in Taylor's case.

"This was clearly a deliberate and willful misrepresentation to the court to conceal the use of extrajudicial clandestine surveillance by the Baltimore City police department," the motion stated, adding later that the State's Attorney had demonstrated "an intentional wanton disregard of the Rules of Evidence."

The Baltimore public defender's office has also begun re-examining more than 2,000 cases in which police secretly used Stingrays.

The move also follows a change in federal policy on Thursday in which the US department of justice said that agencies under its aegis would have to obtain a specific warrant to use Stingrays. But this change in policy does not affect local police forces or state-level agencies, where the use of cell-site simulators and other devices is still shrouded in secrecy, and requires only a low-level court order called a PEN register, or "trap-and-trace" order, to grant police permission for its use.

Defence attorneys and civil liberties activists told the Guardian that prosecutors and police departments go to extraordinary lengths to avoid being forced to reveal their use of these devices. They do this by using Stingrays in the first instance, then reverse-engineering a case which they can safely bring to trial without mentioning the surveillance equipment.

In other instances, according to Nate Wessler, a staff attorney at the ACLU's speech, privacy and technology project, police would present "inscrutable euphemisms" to courts.

"Terms like 'we located this phone using information from a confidential source', which sounds a whole lot like they had an informant; it doesn't sound like they were using a sophisticated electronic device forcing all phones in the area to report back," Wessler told the Guardian. "Those efforts to hide what the police were doing are very difficult to smoke out."

"It's really very frightening," Natalie Finegar, the deputy public defender for Baltimore city, told the Guardian. She said that her office was starting the process of going through their clients' cases to see if the police and prosecutors had committed a "discovery violation" in not disclosing the use of Stingray devices - starting with currently incarcerated clients.

Finegar said that it was "too early to tell" how many cases might be affected. "We know there's 2,000 potential cases," she told the Guardian, "but there may be more."

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