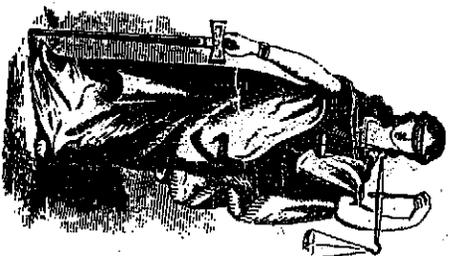


CONTINUING LEGAL EDUCATION
FALL 2009

November 16, 2009

Cell Phone Forensics

Eric Sears, Esq. and Michael Grennier



SPONSORED BY:

APPELLATE DIVISION, FIRST AND SECOND JUDICIAL DEPARTMENTS
IN CONJUNCTION WITH THE ASSIGNED COUNSEL PLAN OF THE CITY OF NEW YORK

TABLE OF CONTENTS
Cell Phone Forensics
Presented by Eric Sears, Esq. & Michael Grennier

CPL § 240.20	Page 1
CPL § 240.30	Page 3
Court Order – Authorization to retain expert, enhanced rates under Article 18-b, with Affirmation and supporting documents	Page 4
Introductory letter to expert summarizing the relevant case particulars	Page 13
Search Warrant for Cell Phones	Page 16
CPL §240.20 Motion to Inspect cell phones	Page 28
People’s response- Motion to Inspect cell phones	Page 34
Reply Affirmation – Motion to Inspect cell phones	Page 41
Decision and Order – Motion to Inspect cell phones	Page 44
Expert 18-b voucher and supporting papers	Page 47
Affirmation in support of voucher	Page 59
Curriculum Vitae, Eric Sears	Page 62

Discovery; upon demand of defendant.

1. Except to the extent protected by court order, upon a demand to produce a defendant against whom an indictment, superior court information, prosecutor's information, information, or simplified information charging a misdemeanor is pending, the prosecutor shall disclose to the defendant and make available for inspection, photographing, copying or testing, the following property:

(a) Any written, recorded or oral statement of the defendant, and of a co-defendant to be tried jointly, made, other than in the course of the criminal transaction, to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him;

(b) Any transcript of testimony relating to the criminal action or proceeding pending against the defendant, giving by the defendant, or by a co-defendant to be tried jointly, before any grand jury;

(c) Any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test or experiment, relating to the criminal action or proceeding which was made by, or at the request or direction of a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the people intend to introduce at trial;

(d) Any photograph or drawing relating to the criminal action or proceeding which was made or completed by a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the people intend to introduce at trial;

(e) Any photograph, photocopy or other reproduction made by or at the direction of a police officer, peace officer or prosecutor of any property prior to its release pursuant to the provisions of section 450.10 of the penal law, irrespective of whether the people intend to introduce at trial the property or the photograph, photocopy or other reproduction.

(f) Any other property obtained from the defendant, or a co-defendant to be tried jointly;

(g) Any tapes or other electronic recordings which the prosecutor intends to introduce at trial, irrespective of whether such recording was made during the course of the criminal transaction;

(h) Anything required to be disclosed, prior to trial, to the defendant by the prosecutor, pursuant to the constitution of this state or of the United States.

(i) The approximate date, time and place of the offense charged and of defendant's arrest.

(j) In any prosecution under penal law section 156.05 or 156.10, the time, place and manner of notice given pursuant to subdivision six of section 156.00 of such law.

(k) In any prosecution commenced in a manner set forth in this subdivision alleging a violation of the vehicle and traffic law, in addition to any material required to be disclosed pursuant to this article, any other provision of law, or the constitution of this state or of the United States, any written report or document, or portion thereof, concerning a physical examination, a scientific test or experiment, including the most recent record of inspection, or calibration or repair of machines or instruments utilized to perform such scientific tests or

experiments and the certification certificate, if any, held by the operator of the machine or instrument, which tests or examinations were made by or at the request or direction of a public servant engaged in law enforcement activity or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the people intend to introduce at trial.

2. The prosecutor shall make a diligent, good faith effort to ascertain the existence of demanded property and to cause such property to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control; provided, that the prosecutor shall not be required to obtain by subpoena duces tecum demanded material which the defendant may thereby obtain.

Discovery, upon demand of prosecutor.

1. Except to the extent protected by court order, upon a demand to produce by the prosecutor, a defendant against whom an indictment, superior court information, prosecutor's information, information, or simplified information charging a misdemeanor is pending shall disclose and make available for inspection, photographing, copying or testing, subject to constitutional limitations:

(a) any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test, experiment, or comparisons, made by or at the request or direction of, the defendant, if the defendant intends to introduce such report or document at trial, or if the defendant has filed a notice of intent to proffer psychiatric evidence and such report or document relates thereto, or if such report or document was made by a person, other than defendant, whom defendant intends to call as a witness at trial; and

(b) any photograph, drawing, tape or other electronic recording which the defendant intends to introduce at trial.

2. The defense shall make a diligent good faith effort to make such property available for discovery where it exists but the property is not within its possession, custody or control, provided, that the defendant shall not be required to obtain by subpoena duces tecum demanded material that the prosecutor may thereby obtain.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - Criminal Term

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 3024N-2007

-against-

GEORGE CAMPOS,

ORDER

Defendant.

Having read the annexed affirmation of ERIC M. SEARS, Esq., attorney for the defendant GEORGE CAMPOS, and due deliberation having been had thereon, now on motion of said attorney, it is hereby

ORDERED, that ERIC M. SEARS, attorney for the defendant, is hereby authorized to retain the services of THE INTELLIGENCE GROUP and MICHAEL GREENNIER, Senior Analyst, to assist in the defense of said defendant, pursuant to Article 18-B of the County Law; and it is

FURTHER ORDERED, that THE INTELLIGENCE GROUP, upon presentation of suitable documentation, is to be compensated by the Assigned Counsel Plan, pursuant to section 18-B of the County Law, at the rate of [REDACTED] per hour, and if testimony is required, such testimony is to be compensated at the rate of [REDACTED] for the half-day.

Dated:

PT. 21 AUG 6 2007

So Ordered:



CLERK OF THE COURT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - Criminal Term

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 3024N-2007

-against-

GEORGE COMPOS,

AFFIRMATION

Defendant.

ERIC M. SEARS, an attorney duly admitted to practice in the courts of New York State, hereby affirms under penalty of perjury the truth of the following statements:

1. I am the attorney of record for the defendant GEORGE CAMPOS, having been assigned pursuant to Article 18-B of the County Law.
2. This affirmation is respectfully submitted in support of the attached Order, authorizing the defense to retain the services of THE INTELLIGENCE GROUP and MICHAEL GRENNIER, Senior Analyst.
3. The defendant has been indicted for the crime of Criminal Sale of a Controlled Substance in the Third Degree. A potential trial date has been set for September 9th, 2008.
4. Mr. Campos and the co-defendant, Benitez, are charged with selling a quantity of cocaine to two individuals.

4. On March 6th, 2008, I was advised for the first time by the District Attorney that a search warrant had been obtained relative to cell phones recovered from Mr. Campos and the co-defendant, and that examination of the two phones had revealed data the prosecution intended to offer at trial. Some time later, I was provided with copies of the search warrant and related documents, as well as a DVD purportedly containing data obtained from the phones.

5. Upon examination of the DVD, it became clear that certain relevant information, including the date, time, duration and content of various calls and/or messages, was not contained on the DVD, and that, in any event, we were not content with the police version of what information the subject phones contained, and desired to examine the phones ourselves, pursuant CPL § 240.20(1)(f). When the District Attorney opposed examination of the phones by the defense, a formal motion was submitted to this Court. By decision dated July 15th, 2008, the defense motion as denied, "to the extent that the People allow defense counsel to personally observe the Arresting Officer go through the cell phones."¹

6. The importance of the cell phone data cannot be over-emphasized. The District Attorney contends that Campos placed a cellular call to the co-defendant Benitez "moments before" Benitez arrived to consummate the sale. Our preliminary review of the DVD supplied by the prosecution, however, appears to show no such call. Obviously, whether or not such a call was made is of vital importance. For this reason, it is essential that an expert in this area, in the first instance, examine the DVD to ascertain as precisely as possible what information it contains, and what conclusions, if any, may be drawn concerning contact between the two phones. In the event that examination of the DVD is inconclusive in this regard, it may then be necessary for the expert to proceed pursuant to the Court's order, that is, to observe the Arresting Officer go through the phones. Finally, if, through this process, relevant information is obtained, it may be necessary for the expert to testify with regard thereto.

7. Attached hereto under Exhibit A is a short business description of The Intelligence Group, along with a copy of the C.V. of Michael Grennier, the Senior Analyst who would be **working on this case**. **Mr. Grennier has the experience and expertise necessary to assist the**

¹ I am proceeding under the assumption that by allowing "counsel" to observe, the Court meant to include an expert retained by counsel, as counsel is not an expert in these matters and, in any event, would not be in a position to testify as to his observations, should that become necessary.

defense in analyzing the cell phone data in this case. Also attached under Exhibit B is a printout of the applicable billing rates, which, I am advised, are well within the range customarily charged for such services.

8. The Court has discretion to approve fees outside of the 18-b guidelines. It has been my experience that competent and respected experts routinely charge rates higher than those suggested in the 18-b guidelines, and, often higher than the rates being sought herein. The defense is entitled to the assistance of an expert in whom it has confidence, and upon whose opinion it can, in good conscience, rely. The People, of course, are not limited in the amount of money they can spend for experts, and are free to retain those whom they believe to be most qualified. An indigent defendant should, within reason, have equal access to such potential evidence. It is respectfully submitted that the rates sought in the attached order are reasonable, and within the range of fees customarily charged for these services.

WHEREFORE, it is respectfully requested that the attached Order authorizing the defense to retain THE INTELLIGENCE GROUP and MICHAEL GRENNIER, Senior Analyst, and further providing that he be compensated by the Assigned Counsel Plan, at the rate [REDACTED] per hour, and if testimony is required, such testimony is to be compensated at the rate of [REDACTED] for the half-day, be granted.

Dated: New York, N.Y.
August 5, 2008.


ERIC M. SEARS
Attorney for GEORGE CAMPOS
62 Broadway, Suite 1601
New York, N.Y. 10006
212-252-8560

Exhibit A

Memorandum

To: Eric M. Sears
Law Offices of Eric M. Sears,
From: Rob Kleeeger
Date: August 5, 2008
Subject: George Campos Cell Phone Matter

The Intelligence Group (TIG) is a data forensics firm serving its client's needs in systematically identifying, preserving, extracting, analyzing, and interpreting digital evidence. The firm can uncover e-mail communications, account information, file copying, attempted data destruction, account usage, and other activities performed on computers. TIG has assisted clients in a wide variety of lawsuits, ranging from cases involving fraud, intellectual property theft, wrongful termination, forgery and other matters to matrimonial and custody disputes. We have been retained to assist on civil, family and criminal matters.

TIG complies with all computer forensics standards as set forth by the U.S. Federal Bureau of Investigation (FBI) and Guidance Software's Incident Response Forensic Analysis and Discovery (IRFAD) program. The forensic technicians and examiners at TIG employ a number of computer forensic software packages and analysis techniques which include but are not limited to Guidance Software's Encase to complete a comprehensive search of both active and deleted files as well as to provide an unbiased report of the results. These software products are also utilized by the law enforcement community worldwide. Extensive coursework in the computer forensics field along with hands-on, product-specific training is necessary in order to use these products correctly. Additionally, specialized knowledge and training in chain of custody and evidence handling procedures in the field of computer forensics is necessary in order to perform imaging and analysis up to industry and legal standards.

The staff at TIG are specialists in the skills necessary to extract and analyze computer data, even if that data has been deleted or destroyed. In the field of data forensics, TIG places highest regard for the continuity, preservation and integrity of the digital evidence. Once accessed, TIG applies its expert opinion to the provenance and complete analysis of that digital evidence

TIG Proposed Protocol:

TIG will conduct a review of the electronically stored information that was taken off the cell phone devices and copied onto a DVD, in order to determine whether a specific cellular phone call during a specified date and time had occurred. Once TIG has concluded its specified analysis, TIG will provide its finding report directly to counsel.



MICHAEL GRENNIER
SENIOR ANALYST — *Dirr*

Mr. Grennier is a Senior Analyst in The Intelligence Group's Forensics and Security Services Practice area. His expertise is focused on digital forensic data acquisition, analysis, intelligence and threat management solutions, including investigation and security operations for corporate and government clients, and the creation of various policies regarding physical and information security controls.

Mr. Grennier is a trained and certified digital forensic analyst, conducting and overseeing data acquisition and electronic evidence examination services conducted by the firm. He has conducted dozens of digital forensic investigations for law enforcement agencies, corporations and government clients in matters including harassment, theft, fraud, intellectual property disputes, employee behavior, violation of restrictive covenants and related contractual issues.

Mr. Grennier has conducted dozens digital forensic investigations on various electronic media utilizing software products such as Encase , Access Data's Forensic Tool Kit (FTK), Registry Viewer, Password Recovery Tool Kit, Paraben's Network E-mail Examiner and Paraben E-mail Examiner.

Mr. Grennier has conducted several covert, internal operations in both criminal and civil litigation, which have included court-ordered production of evidence, certifications and affidavits, and the production of expert's reports.

In 2006, Mr. Grennier retired as a Police Captain with the additional responsibility of handling the day to day operation of the local government's network for over 15 years. During his tenure with the South Plainfield Police Department, Mr. Grennier served as the Commander of Staff Services and 9-1-1 Coordinator. Mr. Grennier was appointed to the State of New Jersey, 9-1-1 Commission in 2004 by Governor McGreevey and served as the Vice President of the National Emergency Number Association - New Jersey Chapter for several years.

Mr. Grennier has completed extensive training in digital forensic field since 2001. As part of his training to become a digital forensic examiner, Mr. Grennier completed training classes conducted by International Association of Computer Investigative Specialists in which he has received Certifications as a Forensic Computer Examiner (CFCE), Electronic Evidence Collection Specialist (CEECS), Encase Certified Examiner (ENCE) from Guidance Software, The National White Collar Crime Center and by the International Association of Computers, Investigative Specialists (IACIS). Mr. Grennier is a coach/instructor for students taking this years IACIS CFCE program.

Mr. Grennier volunteers his time as the Deputy Coordinator of Emergency Management for the Borough of South Plainfield. He is responsible for both planning, communications and interoperability. Through Emergency Management he has received and provides training for the Incident Command Systems, Citizen Emergency Response Teams (CERT), Emergency Center Operations, Weapons of Mass Destruction Awareness courses for both energetic materials and radiological materials.

Exhibit B



Fees and Charges

	Standard (M-F, 8:00 to 5:00pm)	Premium (Nights, Weekends, Holidays)	Depositions and Testifying (Billed at full or half day Premium rate plus travel)
Directors/Case Managers	[REDACTED]	[REDACTED]	[REDACTED] /Full [REDACTED] /Half
Forensic Examiners	[REDACTED]	[REDACTED]	[REDACTED] /Full [REDACTED] /Half

Project charges will be based on the hourly rates and/or project fees identified above. In addition to the foregoing hourly rate charge, we will charge you, and you agree to pay, all out-of-pocket expenses incurred in connection with the project. The forensic process requires us to use various storage devices (i.e. hard drive, backup tape, floppy diskette, CD's, DVD's or other storage media) for each device imaged.

We charge a five and one-half percent (5.5%) surcharge on the services fee for costs not directly billable to you, such as facsimile and telephone usage, photocopies, postage, mail courier and other administrative costs. Field-related direct project expenses are invoiced at actual cost. Such direct project expenses include travel expenses, out-of-pockets, meals, and third party document reproduction charges. Mileage for local travel utilizing company or employee-owned vehicles is reimbursable at the IRS rate in effect at the time the expense is incurred.

We appreciate the opportunity to work together in this matter. Please contact me directly with regard to any further questions.

Rob Kleeger
Rob Kleeger, Esq. is a member of the New York State Bar and the New Jersey State Bar. He is also a member of the American College of Forensic Examiners Institute (ACFEI) and the American Society of Crime Scene Investigators (ASCSI).

Rob Kleeger
 Managing Director

ERIC M. SEARS
Attorney at Law

61 Broadway, Suite 1601
New York, NY 10006

Tel. 212-252-8560 Fax: 212-267-3024 Cell: 917-929-2096
email: ensearsesq@aol.com Website: EricMSearslaw.com

August 6, 2008.

The Intelligence Group
1545 Route 206
Bedminster, NJ 07921

Attention: Robert Kleeger

Re: People v. George Campos
New York County Indictment No. 3024N-2007

Dear Robert:

Enclosed is a copy of an order signed by Judge Ambrecht authorizing me to retain the services of TJG and Michael Grenier at the rates shown, which I believe are in line with your standard fees. These rates are somewhat higher than most judges would have approved, and without the limits many such orders impose. I was glad to get it.

Let me give you some relevant case information:

Mr. Campos and the co-defendant, Jose Benitez, are charged with selling cocaine to two individuals. The sale is alleged to have taken place on April 18th, 2007, at approximately 2:30 pm. The sale is alleged to have gone down as follows: two buyers approached Campos; a sum of money was given to Campos, who then made a cell phone call to Benitez; moments later Benitez exited a housing development and approached the scene; Campos then exchanged the money he had been given for cocaine supplied by Benitez; the cocaine was then handed by Campos to the buyers. Both defendants were arrested at approximately 2:35 pm. Thus, the cell phone call with which we are concerned is alleged to have been made by Campos to Benitez some time between 2:30 and 2:35 pm, give or take a minute or two.

Cell phones were recovered from each defendant. Eventually, a search warrant was obtained authorizing a search of the phones. That search was conducted by the arresting

TIG 8/6/08, p.2.

officer, who produced a DVD of data purportedly obtained from the phones. A copy of the DVD is enclosed.

My assistant and I reviewed the DVD. I believe the Campos phone number is 347-408-3138, and the Benitez number is 347-609-8924. "Recent calls" in the Campos phone (voucher #656012) shows Benitez's cell phone number and a call duration of 15 seconds, but does not show a date and time of call, or whether the call was incoming or outgoing. "Recent calls" in Benitez's phone (voucher #656010) has an entry with Campos's phone number at 5:24 pm on April 18th, some three hours after arrest, with a call duration of zero seconds, and again we cannot tell if it is incoming or outgoing.

What we really want to know is what the data says, if anything, about the call alleged to have been made from Campos to Benitez at approximately 2:30 pm on the 18th. Does the DVD show evidence of such a call? We would also like any additional information that may be gleaned from the DVD about time/date on the Campos phone, and incoming/outgoing on both phones.

If you can say, based upon the DVD, that the subject call is not shown, i.e. was not made, then we need go no further in examining the phones themselves, and we would simply present that conclusion at trial. If the DVD is inconclusive on the issue, we may have to proceed with the limited inspection provided in the judge's order - that is, to observe the arresting officer examine the phones.

So take a look, and let me know what you think. It is not necessary at this time to prepare any written report.

Sincerely,

Eric M. Sears

EMS/abs
encl.

P.S. In order to facilitate payment by the Assigned Counsel Plan, I need from you a completed Substitute W9 (blank form enclosed) and a "government issued" photo ID (I assume it should be of Grennier). This will permit payment for this one case. If you are interested in being certified by the panel for future work in assigned cases, let me know and I will get you the necessary paperwork.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - Criminal Term

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 3024N-2007

-against-

GEORGE CAMPOS,

ORDER

Defendant.

Having read the annexed affirmation of ERIC M. SEARS, Esq., attorney for the defendant GEORGE CAMPOS, and due deliberation having been had thereon, now on motion of said attorney, it is hereby

ORDERED, that ERIC M. SEARS, attorney for the defendant, is hereby authorized to retain the services of THE INTELLIGENCE GROUP and MICHAEL GRENNIER, Senior Analyst, to assist in the defense of said defendant, pursuant to Article 18-B of the County Law; and it is

FURTHER ORDERED, that THE INTELLIGENCE GROUP, upon presentation of suitable documentation, is to be compensated by the Assigned Counsel Plan, pursuant to section 18-B of the County Law, at the rate of [REDACTED] per hour, and if testimony is required, such testimony is to be compensated at the rate of [REDACTED] for the half-day.

Dated:

PT. 21 AUG 6 2007

So Ordered:


ERIC M. SEARS, ATTORNEY

CRIMINAL COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN THE MATTER

OF

AN APPLICATION FOR A WARRANT
AUTHORIZING A SEARCH OF THE FOLLOWING
PROPERTY ON NYPD VOUCHER # N656010: ONE
CELLULAR TELEPHONE THAT IS A BLACK AND
GRAY MOTOROLA CELLULAR TELEPHONE,
MODEL NUMBER H72UAH9JR7AN, SERIAL
NUMBER 805JGW0114, AND BATTERY NUMBER
S/N: N5705C. IN NYPD CUSTODY

AFFIDAVIT IN
SUPPORT OF
SEARCH WARRANT
SEARCH WARRANT
No. **1346-2007**
SPECIAL NARCOTICS COURT

IN THE MATTER

OF

AN APPLICATION FOR A WARRANT
AUTHORIZING A SEARCH OF THE FOLLOWING
PROPERTY ON NYPD VOUCHER # N656012: ONE
CELLULAR TELEPHONE THAT IS A BLUE AND
GRAY MOTOROLA CELLULAR PHONE WITH
MODEL NUMBER I295 IN NYPD CUSTODY

AFFIDAVIT IN
SUPPORT OF
SEARCH WARRANT
No. **1347-2007**
SEARCH WARRANT NO.
SPECIAL NARCOTICS COURT

State of New York)

) ss:

County of New York)

Detective Lisa McCalla, Shield 7346, being duly sworn, deposes and says:

1. I am a Detective in the New York City Police Department (NYPD), assigned to the Narcotics Boro Manhattan South.
2. I have been with the NYPD for more than fourteen years. During my career, I have participated in thousands of narcotics-related arrests, most of which have involved cocaine, heroin and marijuana. I have also participated in the execution of numerous search warrants, the majority of which were also narcotics-related.

3. This affidavit is submitted in support of an application for warrants to search the property described below, all of which is currently vouchered and in police custody:

- a. On NYPD Voucher N656010, one cellular telephone that is a black and gray Motorola Cellular Telephone, model number H72UAH9JR7AN, serial number SERIAL805JGW0114, and battery number S/N: N5705C now in police custody; for any and all means of committing a narcotics crime, including the following property: any and all records pertaining to the possession and sale of narcotics and the participation in a narcotics conspiracy, including, but not limited to: 1) names, addresses, and/or telephone numbers of narcotics co-conspirators stored in and retrievable from the memory of the cellular telephone; 2) numbers previously dialed or programmed as part of a speed dial function into the cellular telephone; and 3) any photographs or other information stored in the memory of the cellular telephone.
- b. On NYPD Voucher N656012, one cellular telephone that is a blue and gray Motorola Cellular Telephone, Model Number i295, now in police custody, for any and all means of committing a narcotics crime, including the following property: any and all records pertaining to the possession and sale of narcotics and the participation in a narcotics conspiracy, including, but not limited to: 1) names, addresses, and/or telephone numbers of narcotics co-conspirators stored in and retrievable from the memory of the cellular telephone; 2) numbers previously dialed or programmed as part of a speed dial function into the cellular telephone; and 3) any photographs or other information stored in the memory of the cellular telephone.

4. The cellular telephone under NYPD Voucher Number N656010 was recovered from Jose Benitez (hereinafter "BENITEZ"), in connection with his arrest on April 18, 2007, for the crime of Criminal Sale of a Controlled Substance in the Third Degree, under Penal Law § 220.39(1).
5. The cellular telephone under NYPD Voucher Number N656012 was recovered from George Campos (hereinafter "CAMPOS"), in connection with his arrest on April 18, 2007, for the crime of Criminal Sale of a Controlled Substance in the Third Degree, under Penal Law § 220.39(1).
6. There is reasonable cause to believe that the above-described cellular telephones under NYPD Vouchers N656010 and N656012, currently, police custody, are being used to facilitate the sale of controlled substances, and that evidence of the sale of cocaine, and conspiracy to commit those crimes and efforts to conceal those crimes will be found therein, including, but not limited to:
 - a. electronic communication equipment, including but not limited to telephone bases and handsets, cellular telephones, answering machines, paging devices and related equipment, including but not limited to auxiliary batteries, chargers, and wiring, and stored information, data, and images contained on or in said communication equipment, including but not limited to stored names and numbers and recorded messages; and electronic security equipment and devices.
 - b. information, data, images and electronic communications including but not limited to, the names, nicknames, addresses, e-mail addresses, numbers, including telephone numbers, credit card numbers, notes, correspondence, instructions, orders, time, date and location descriptions, item descriptions and event descriptions, together with evidence showing or tending to show the identity of the maker or user of the information, data, images and/or electronic communications such as passwords, sign-on codes and program design.

7. The basis for my belief is as follows: on April 18, 2007, I was part of a Narcotics Enforcement Team working in the vicinity of West 25th Street and Ninth Avenue, in New York County. At approximately 2:30PM, in front of 443 West 25th Street, I, along with Sergeant Ponce, observed two separately charged individuals, Jeff Carmen (hereinafter "CARMEN") and Allison Morris (hereinafter "MORRIS") approach defendant CAMPOS. CARMEN then handed CAMPOS a sum of United States currency, and CAMPOS, in turn, placed a cellular telephone call. Moments later, BENITEZ walked out of a housing development directly opposite the aforementioned location, and joined CAMPOS, CARMEN AND MORRIS. CAMPOS then handed BENITEZ United States currency in exchange for small objects. CAMPOS then handed said small objects to CARMEN, who, after dropping said objects on the ground, handed them to MORRIS.

8. I am informed by Detective Joseph Fills, Shield 1393, also with the NYPD, that moments later, MORRIS dropped six yellow Ziploc bags of alleged crack cocaine to the ground as the police approached. Detective Fills recovered said evidence, which was then vouchered under NYPD Voucher Number N656008.

a. Based on his experience in narcotics investigations, Detective Fills believes the substance recovered on the above occasion was cocaine. Furthermore, said purchase was field tested with positive results for cocaine.

9. On April 18, 2007, BENITEZ and CAMPOS were arrested pursuant to the above referenced narcotics sale. The above-described cellular telephone contained under NYPD Voucher Number N656010 was recovered from BENITEZ's person at the time of his arrest, and the above-described cellular telephone contained under NYPD Voucher Number N656012 was recovered from CAMPOS' person at the time of his arrest.

WHEREFORE, I respectfully request that the Court issue a warrant and order of seizure in the form annexed, authorizing a search of the following property identified on NYPD voucher number N656010: one cellular telephone that is a black and gray Motorola Cellular Telephone, on NYPD Voucher N656010, one cellular telephone that is a black and gray Motorola Cellular Telephone, model number H72UAH9JR7AN, serial number 805JGW0114, and battery number S/N: N5705C now in police custody; and on NYPD voucher number N656012, . one cellular telephone that a blue and gray Motorola Cellular Telephone, Model Number i295, for above described property, and directing that if such property or evidence or any part thereof be found that it be seized and brought before the Court.

CRIMINAL COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK
TO ANY POLICE OFFICER IN THE CITY OF NEW YORK

Proof by affidavit having been made this day before me by Detective Lisa McCalla.

Shield 7346, that there is reasonable cause for believing that certain property, to wit:

- a. electronic communication equipment, including but not limited to telephone bases and handsets, cellular telephones, answering machines, paging devices and related equipment, including but not limited to auxiliary batteries, chargers, and wiring, and stored information, data, and images contained on or in said communication equipment, including but not limited to stored names and numbers and recorded messages; and electronic security equipment and devices.
- b. information, data, images and electronic communications including but not limited to, the names, nicknames, addresses, e-mail addresses, numbers, including telephone numbers, credit card numbers, notes, correspondence, instructions, orders, time, date and location descriptions, item descriptions and event descriptions, together with evidence showing or tending to show the identity of the maker or user of the information, data, images and/or electronic communications such as passwords, sign-on codes and program design.

may be found in the following property identified on NYPD voucher number N656010: one cellular telephone that is a black and gray Motorola Cellular Telephone, model number

H72UAH9JR7AN, serial number SERIAL805JGW0114, and battery number S/N: N5705C.

YOU ARE THEREFORE COMMANDED, to search the following property: on NYPD

Voucher Number N656010: one cellular telephone that is a black and gray Motorola Cellular

Telephone, model number H72UAH9JR7AN, serial number SERIAL805JGW0114, and battery

number S/N: N5705C for the above described property, and if you find such property or

evidence or any part thereof to bring it before the court without unnecessary delay.

Additionally, with respect to the data, information, images and electronic communications contained on electronic communication equipment, as described above, this Court authorizes the retrieval of the above-described data, information, images and electronic communications, and the printing of them or otherwise reproducing them by converting them or copying them into storage in another device.

WARRANT MUST BE EXECUTED WITHIN (10)TEN DAYS OF DAY OF ISSUANCE

DATED IN THE CITY OF NEW YORK, this 21 day of November 2007

TIME: 10:55 AM

AS

JUDGE OF THE CRIMINAL COURT
HON. ANTHONY J. PERAZZA

CRIMINAL COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK
TO ANY POLICE OFFICER IN THE CITY OF NEW YORK

Proof by affidavit having been made this day before me by Detective Lisa McCalla,

Shield 7346, that there is reasonable cause for believing that certain property, to wit:

- c. electronic communication equipment, including but not limited to telephone bases and handsets, cellular telephones, answering machines, paging devices and related equipment, including but not limited to auxiliary batteries, chargers, and wiring, and stored information, data, and images contained on or in said communication equipment, including but not limited to stored names and numbers and recorded messages; and electronic security equipment and devices.
- d. information, data, images and electronic communications including but not limited to, the names, nicknames, addresses, e-mail addresses, numbers, including telephone numbers, credit card numbers, notes, correspondence, instructions, orders, time, date and location descriptions, item descriptions and event descriptions, together with evidence showing or tending to show the identity of the maker or user of the information, data, images and/or electronic communications such as passwords, sign-on codes and program design.

may be found in the following property identified on NYPD voucher number N656012: one cellular telephone that is a blue and gray Motorola Cellular Telephone, Model Number i295.

YOU ARE THEREFORE COMMANDED, to search the following property: on NYPD Voucher Number N656012: one cellular telephone that is a blue and gray Motorola Cellular Telephone, Model Number i295 for the above described property, and if you find such property or evidence or any part thereof to bring it before the court without unnecessary delay.

Additionally, with respect to the data, information, images and electronic communications contained on electronic communication equipment, as described above, this

Court authorizes the retrieval of the above-described data, information, images and electronic

communications, and the printing of them or otherwise reproducing them by converting them or copying them into storage in another device.

WARRANT MUST BE EXECUTED WITHIN (10) TEN DAYS OF DAY OF ISSUANCE

DATED IN THE CITY OF NEW YORK, this 24 day of November, 2007

TIME: 10:55 AM

JUDGE OF THE CRIMINAL COURT

HON. ANTHONY J. PENNINO

APL

CRIMINAL COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN THE MATTER
OF

AN APPLICATION FOR A WARRANT AUTHORIZING A SEARCH OF THE FOLLOWING
PROPERTY ON NYPD VOUCHER # N656010: ONE CELLULAR TELEPHONE THAT IS A
BLACK AND GRAY MOTOROLA CELLULAR TELEPHONE, MODEL NUMBER
H72UAH9JR7AN, SERIAL NUMBER 805JIGW0114, AND BATTERY NUMBER SN:
N5705C. IN NYPD CUSTODY

BRIDGET G. BRENNAN
SPECIAL ASSISTANT DISTRICT ATTORNEY
30 Centre Street
New York, New York 10013

SEARCH WARRANT #

1346-2007

CRIMINAL COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN THE MATTER
OF

AN APPLICATION FOR A WARRANT AUTHORIZING A SEARCH OF THE FOLLOWING
PROPERTY ON NYPD VOUCHER # N656012: ONE CELLULAR TELEPHONE THAT IS A
BLUE AND GRAY MOTOROLA CELLULAR PHONE WITH MODEL NUMBER I295 IN
NYPD CUSTODY

BRIDGET G. BRENNAN
SPECIAL ASSISTANT DISTRICT ATTORNEY
80 Centre Street
New York, New York 10013

SEARCH WARRANT #

1347 - 2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 3024N-2007

-against-

MOTION TO INSPECT
PROPERTY PURSUANT TO
CPL § 240.20

JOSE BENTITEZ, and
GEORGE CAMPOS,

Defendants.

PLEASE TAKE NOTICE, that upon the annexed affirmation of ERIC M. SEARS, Esq., and upon all other papers and proceedings heretofore filed and/or had herein, the defendant, GEORGE CAMPOS will move this Court, Part 21 thereof, to be held at the courthouse at 111 Centre Street, on the 4th day of June, 2008, at 9:30 a.m., or as soon thereafter as counsel may be heard, for the following relief:

An order pursuant to CPL § 240.20(1)(d), and the New York State and Federal Constitutions, providing that the Office of the Special Narcotics Prosecutor, at a date and time to be agreed upon by the parties, and under such conditions as the Court deems appropriate, make available to the defense, for inspection, photographing, copying or testing, certain property obtained from the defendant and the co-defendant, to wit: two cell phones.

Dated: New York, N.Y.
May 21, 2008.


ERIC M. SEARS
Attorney for GEORGE CAMPOS
61 Broadway, Suite 1601
New York, N.Y. 10006
212-252-8560

90:01MD 12 YW 8002

SC110887M 711938JS
K011105102 10 3011110

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 3024N-2007

-against-

SUPPORTING AFFIRMATION

JOSE BENITEZ, and
GEORGE CAMPOS,

Defendants.

ERIC M. SEARS, an attorney duly admitted to practice in the courts of New York State, hereby affirms under penalty of perjury the truth of the following statements:

1. I am the attorney of record for the defendant GEORGE CAMPOS, having been assigned pursuant to article 18-b of the County Law.
2. This affirmation is submitted in support of the attached notice of motion, seeking an order, pursuant to CPL § 240.20(1)(f), permitting the defense to inspect, examine and/or test certain property obtained from the defendant and the co-defendant, to wit: two cell phones, under such conditions as the Court may deem appropriate.
3. Mr. Campos and the co-defendant, Benitez, are charged with Criminal Sale of a Controlled Substance in the Third Degree, for allegedly selling a quantity of cocaine to two individuals.
4. On March 6th, 2008, I was advised for the first time by ADA Dowdell (the assigned Assistant) that a search warrant had been obtained relative to cell phones recovered from Mr. Campos and the co-defendant, and that examination of the two phones had revealed data the

prosecution intended to offer at trial.¹ I requested that I be given immediate access to the search warrant documents, and to the data allegedly obtained. ADA Dowdell initially refused such request, contending that the information was "Rosario" material, to which I was not yet entitled. A short time later, however, ADA Dowdell abandoned that untenable position, and I was provided with copies of the search warrant and related documents, as well as a DVD purportedly containing the data obtained from the phones.

5. Upon examination of the DVD, it became clear that certain relevant information, including the date, time, duration and content of various calls and/or messages, was not contained on the DVD, and that, in any event, we were not content with the police version of what information the subject phones contained, and desired to examine the phones ourselves, as we are clearly entitled to do, pursuant CPL § 240.20(1)(f).²

6. On May 12th, I advised ADA Dowdell of my desire to examine the cell phones.³ She refused my request, and suggested I "make a motion." On May 15th, in the hope of avoiding having to burden the Court with needless motion practice, I faxed a letter to ADA Dowdell calling her attention to CLP § 240.20(1)(f), and renewing my request. Several days later I received a response, in which ADA Dowdell offered to permit me to "personally observe the Arresting Officer go through each cell phone, just as he did on the DVD already provided," and that if I wanted any more extensive examination I should "petition the Court."

¹ The VDF does not show that a search warrant was obtained in the case, nor was a search warrant and the data allegedly recovered mentioned in ADA Dowdell's response to defense omnibus motions and discovery requests. The case had been pending some 11 months before I was informed of the warrant and the data allegedly obtained thereby.

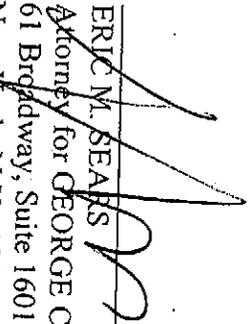
² CPL 240.20(1)(f) provides, in pertinent part, that "the prosecutor shall disclose to the defendant and make available for inspection, photographing, copying or testing . . . any property obtained from the defendant, or a co-defendant to be tried jointly."

³ I also made clear to ADA Dowdell that I would waive any chain of custody and preservation objections associated with the defense examination.

7. CPL 240.20(1)(f) gives the defense the right to inspect, photograph, copy or test, any property obtained from the defendant, or a co-defendant to be tried jointly. The statute clearly envisions the defense conducting its own examination of the property, as it sees fit. The prosecution's offer to limit such examination to observing the arresting officer "go through" the phones is wholly inadequate.

WHEREFORE, the defense requests that the Office of the Special Narcotics Prosecutor, at a date and time to be agreed upon by the parties, and under such conditions as the Court deems appropriate, be ordered to make available to the defense, for inspection, photographing, copying or testing, the two cell phones that were the subject of the search warrant

Dated: New York, N.Y.
May 21, 2008.



ERIC M. SEARS
Attorney for GEORGE CAMPOS
61 Broadway, Suite 1601
New York, N.Y. 10006
212-252-8560

TO:
SPECIAL NARCOTICS PROSECUTOR
Attention: Eva Marie Dowdell

TO:

SPECIAL NARCOTICS PROSECUTOR
Attention: Eva Marie Dowdell

SUPREME COURT: STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 3024N-2007

-against-

GEORGE CAMPOS,

Defendant.

MOTION TO INSPECT PROPERTY

ERIC M. SEARS
Attorney for George Campos

61 Broadway, Suite 1601
New York, NY 10006
212-252-8560

Rec'd 6/20/08

SUPREME COURT OF THE STATE OF NEW YORK
SPECIAL NARCOTICS COURT
COUNTY OF NEW YORK
CITY OF NEW YORK: PART 21

THE PEOPLE OF THE STATE OF NEW YORK

INDICTMENT NUMBER
3024/07

- against -

George Campos,

Defendant.

**PEOPLE'S RESPONSE TO
DEFENDANT'S MOTIONS
TO INSPECT PROPERTY
AND TO SUPPRESS
EVIDENCE**

Eva Marie Dowdell, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms under penalty of perjury that the following statements are true:

1. I am an Assistant District Attorney in and for the County of New York, currently assigned to the Office of the Special Narcotics Prosecutor for the City of New York.
2. I have been designated by Bridget G. Brennan, Special Narcotics Prosecutor for the City of New York, to prosecute the above-captioned case.
3. I submit this affirmation in response to the defendant's motions dated April 21, 2008 and May 21, 2008, and served on the People on April 21, 2008 and May 21, 2008.
4. The responses contained herein are based upon information and belief, the sources of which are a review of the police reports contained in the Special Narcotics Prosecutor's Office file and discussions with the police officers involved in this matter.
5. The People hereby deny all factual allegations set forth by the defendant that are not specifically admitted herein.

FACTS

6. On April 18, 2007, a Narcotics Enforcement Team working in the vicinity of West 25th Street and Ninth Avenue, in New York County, observed two separately charged individuals,

11. The above described search warrants were subsequently executed. The Arresting Officer proceeded to inspect the cellular telephones by going through the call logs of each. This inspection procedure was videotaped.

INSPECTION OF PROPERTY PURSUANT TO CPL § 240.20

12. On March 13, 2008, the People provided the defendant with a DVD of the Arresting Officer's inspection of each cellular telephone.

13. On May 15, 2008, the defendant, through counsel, demanded that the People turn over said cellular telephones for independent testing.

14. As the People are concerned with maintaining both the chain of custody and the preservation of said evidence, an alternative proposal was made. Specifically, the People agreed to an in person observation by defense counsel of the Arresting Officer's inspection of the cellular telephones. That is, defense counsel was invited to personally watch the Arresting Officer go through the data in each phone, as she did when the search warrant was originally executed.

15. The People submit that this in person observation is sufficient pursuant to CPL § 240.20(1)(d). Furthermore, given the nature of the evidence and lack of specificity by the defendant in regards to "independent testing" of the cellular telephones, the People respectfully request that the Court deny the defendant's motion to inspect said property by means of "independent testing."

A. CPL § 240.20 Provides a Limited Right of Inspection by Defense

The defendant's right to perform its own scientific tests upon material evidence was recognized and qualified by the Court of Appeals with respect to dangerous drugs. See People v. White, 40 N.Y.2d 797, 798 (1976) (holding that "a defendant charged with a dangerous drug offense must normally be accorded the right, with appropriate safeguards and under the supervision of the court, to pretrial discovery with respect to the alleged dangerous drug . . ."). The

defendant's right to conduct independent testing was primarily designed to determine the weight and composition of alleged dangerous drugs, in order to challenge the People's tests and experts. See People v. North, 96 Misc. 2d 637, 638 (1978) (finding that "the defendant should have the right to call his own expert witness to testify as to the result of any scientific tests"). Furthermore, testing was allowed in cases where the "[d]efendant's guilt or innocence hung exclusively on the nature and amount of the substance in question; he advanced no other theory of defense." White, 40 N.Y.2d at 798.

The independent testing issue in the instant case does not involve dangerous drugs or other scientific evidence that the defendant may wish to independently verify. Rather, the defendant wants to conduct unspecified tests on cellular telephones, even though he has not shown the importance or usefulness of said tests to his defense. See id. (stating that "[f]or refutation of the charge against him there was no acceptable alternative to scientific testing by experts of his choice"). The People submit that there are viable alternatives available to the defendant that would properly balance his right to inspect evidence with the People's duty to preserve evidence that could readily be destroyed or altered. This includes the People's proposal for in person observations, by counsel, of a review of the information contained in each cellular telephone.

B. CPL § 240.50 Permits the Court to Limit, Condition or Regulate Discovery

Where there is a "danger to the integrity of physical evidence," the court is permitted to issue a protective order limiting, conditioning or regulating discovery. See CPL § 240.50. As noted in White, pretrial testing should "be conducted under the supervision of the court and with safeguards . . . to protect against contamination or destruction of evidence." 40 N.Y.2d at 798.

Additionally, "the particular safeguards must necessarily be designed on an ad hoc basis in the light of the nature, form, quantity and other characteristics of the substance in question and with

recognition of other material circumstances of the individual case.” Id.; see also People v. Green,

123 Misc. 2d 648, 651 (1984) (quoting White); People v. Karpeles, 146 Misc. 2d 53, 56-57 (“[T]he court must have an equivalent, broad power to intervene, to appropriately regulate discovery according to the unique circumstances of each case.”). The court may also limit discovery “for good cause, including danger to the integrity of physical evidence, unjustified annoyance, adverse effect upon the legitimate needs of law enforcement, and any other factor outweighing the usefulness of discovery.” People v. Napolitano, No. 584N/05, slip op. at 6 (N.Y.S.2d Jul. 13, 2005). Given the potential for damage to the cellular telephones and, more importantly, to the data and call records contained therein, as well as the opportunity for defense counsel to personally observe the Arresting Officer’s inspection of the phones, the People submit that the Court has adequate justification in limiting the defendant’s access to the said evidence.

To ensure against contamination or destruction of evidence, previous courts have required defendants to furnish the Court with their intended sampling procedures and protocols before granting independent testing rights. See Green, 123 Misc. 2d at 648 (agreeing with the Attorney-General’s conditioning of defendant’s access to the evidence with defendant’s submission of “sampling protocols so as to ensure that the material would not be contaminated or destroyed . . .”). In the instant case, the defendant has failed to submit the sampling procedures or types of testing that he would conduct on the cellular telephones. Therefore, the People believe that an in person observation of the Arresting Officer’s inspection of the cellular telephones adequately meets the testing standard while preserving the integrity of the evidence.

C. Defendant Has Shown No Prejudice Suffered by Not Allowing Independent Testing

The “purpose of discovery is to prevent a trial by ambush and so that a defendant can make a more informed choice as to whether to take a plea or proceed to trial.” People v. Darrosa, 177

Misc. 2d 837, 838 (1998). In Darrosa, videotape evidence was made available to the defendant for inspection, but the defendant was precluded from actually possessing it. See id. The court determined that the discovery considerations of CPL § 240.20 “have been accommodated . . . since the tape has been seen by [defense] counsel . . . [and] the District Attorney has agreed to make arrangements for additional viewings of the tape by counsel and the defendant.” Id. In denying the defendant Darrosa’s request, the court noted that the defendant “has not shown any prejudice at all” if he is precluded from possessing a copy of the tape, and “[i]n fact there is no allegation by the defendant that possession of a copy of the videotape is important to her defense.” Id. at 839.

Given that the defendant in the instant case has shown no reason to independently possess the cellular telephones for testing or any prejudice suffered by not being allowed independent possession, the People respectfully request the court to deny defendant’s motion to inspect property outside the confines of in person observation.

MOTION TO SUPPRESS

1. Defendant has also moved to suppress “the use at trial of certain tangible property . . . , to wit: data recovered from a cell phone” under the grounds that the cellular telephones were obtained by means of an unlawful search and seizure (Def.’s Mot.). The defendant claims he “did not have an opportunity to move with regard to the data obtained via the search warrant” (Def.’s Mot.).
2. A search warrant for the cellular telephones was properly obtained and executed, as described above.
3. Furthermore, the collection of electronic data from the cellular telephones was covered under the search warrant, and as such allowed the Arresting Officer to inspect the phones for such content. See People v. McGee, No. 2006NY047717, slip op. at 3 (N.Y.S.2d Jun. 29, 2007) (stating



that "the correct procedure to follow in order to examine images on a cell phone is to obtain a search warrant").

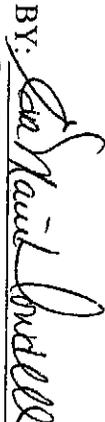
4. As the search warrants were properly obtained and executed, the People respectfully request the court to deny the defendant's motions to suppress the data recovered from these cellular telephones in its entirety.

WHEREFORE, the People respectfully request that except to the extent consented to herein, the Court deny the defendant's motion or, where appropriate, the Court order a hearing on the factual issues presented.

DATED: NEW YORK, NEW YORK
June 16, 2008

Respectfully submitted

BRIDGET G. BRENNAN
Special Narcotics Prosecutor

BY: 
Eva Marie Dowdel
Assistant District Attorney
(212) 815-0427

Eric Sears
Attorney for Defendant: George Campos
61 Broadway
New York, NY 10006

INDICTMENT NUMBER 3024/07

SPECIAL NARCOTICS COURTS
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, CITY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

George Campos,

Defendant.

PEOPLE'S RESPONSE TO DEFENDANT'S
MOTIONS TO INSPECT PROPERTY AND TO
SUPPRESS EVIDENCE

BRIDGET G. BRENNAN
Special Narcotics Prosecutor

80 Centre Street
New York, New York 10013
(212) 815-0400

ADA Eva Marie Dowdell PART 21



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 3024N-2007

-against-

REPLY AFFIRMATION

JOSE BENITTEZ, and
GEORGE CAMPOS,

Defendants.

2008 JUL 10 AM 10:48
OFFICE OF PROSECUTION
SPECIAL INVESTIGATIVE
COURTS

ERIC M. SEARS, an attorney duly admitted to practice in the courts of New York State, hereby affirms under penalty of perjury the truth of the following statements:

1. I am the attorney of record for the defendant GEORGE CAMPOS, having been assigned pursuant to article 18-b of the County Law.
2. This affirmation is submitted in support of the motion filed on May 22nd, 2008, seeking an order, pursuant to CPL § 240.20(1)(f), permitting the defense to inspect, examine and test cell phones recovered from the defendant and the co-defendant, and in reply to the People's response to that motion, dated June 16th, 2008.
3. Mr. Campos and the co-defendant, Benitez, are charged with Criminal Sale of a Controlled Substance in the Third Degree, for allegedly selling a quantity of cocaine to two individuals. As discussed in the motion and in the People's response, a search warrant was obtained with reference to cell phones recovered from Campos and Benitez. The District Attorney intends to offer at trial information obtained from the cell phones. I have been given a DVD prepared by the arresting officer, purportedly containing the relevant cell phone data. By motion filed May 22nd, 2008, I am seeking an order permitting the defense to perform its own

examination of the cell phones, rather than have to rely upon material prepared by the arresting officer. The District Attorney has submitted in opposition to that motion.

4. The district attorney faults the defense for not showing "the importance or usefulness" of examining the cell phones, or that the defense has suffered any "prejudice" by not being permitted access. I suppose one could simply say, in response, that if the cell phone evidence were not "important" or "useful," the prosecution would not be seeking to use it. One assumes that the District Attorney is offering the cell phone evidence because she believes it to be probative on the issue of the defendant's guilt. CPL § 240.20(1)(f) entitles the defense to examine such evidence.

5. As to importance, the District Attorney contends that Campos placed a cellular call to the co-defendant Benitez "moments before" Benitez arrived to consummate the sale. Our preliminary review of the DVD supplied by the prosecution, however, appears to show no such call. Obviously, whether or not such a call was made is of vital importance to the defense. To the extent that first-hand, expert examination of the cell phones can help shed light on this issue, due diligence and effective assistance of counsel dictate that we obtain it. It is for this reason that the present motion has been made.

WHEREFORE, the defense respectfully requests that the motion to inspect be granted.

Dated: New York, N.Y.
July 9, 2008.


ERIC M. SEARS
Attorney for GEORGE CAMPOS
61 Broadway, Suite 1601
New York, N.Y. 10006
212-252-8560

TO:
SPECIAL NARCOTICS PROSECUTOR
Attention: Eva Marie Dowdell

SUPREME COURT: STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 3024N-2007

-against-

GEORGE CAMPOS,

Defendant.

REPLY AFFIRMATION

ERIC M. SEARS
Attorney for George Campos

61 Broadway, Suite 1601
New York, NY 10006
212-252-8560

(43)

SUPREME COURT: NEW YORK COUNTY
CRIMINAL TERM: PART 21

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

IND # 3024N-2007
DECISION AND ORDER

GEORGE CAMPOS,

Defendant.

-----X
AMBRECHT, J.

Defendant, charged with Criminal Sale of a Controlled Substance in the Third Degree (CPL §220.39[1]), moves pursuant to CPL §240.20(1)[f] for an Order compelling the People to make available to the defense, for inspection, two cellular telephones obtained from the defendant and co-defendant. In addition, the defendant moves to expand the scope of the *Mapp* hearing ordered on October 12, 2007 to include the data obtained from those cell phones. By affirmation dated June 16, 2008, the People oppose both motions and ask the Court to limit discovery of the phones pursuant to CPL §240.50. For the reasons set forth below, the defendant's motion compelling discovery is denied. Defendant's motion to expand the *Mapp* hearing is granted.

Background

Defendant and co-defendant were arrested on April 18, 2007 following an alleged narcotics sale. The defendants were searched pursuant to their arrest at which time two cellular telephones were recovered from them. On August 8, 2007, defense counsel served and filed an omnibus motion and various discovery requests, including a motion to suppress tangible property obtained by means of an unlawful search and seizure pursuant to CPL §710.20(1). On October 12, 2007 a *Mapp* hearing was ordered (Hon. Bartley, A. Kirke) to determine whether such evidence was obtained by an unlawful search and seizure.

Following the decision on defendant's omnibus motion, on November 21, 2007 the People obtained a search warrant for the contents of the cell phones. Defense counsel did not

(44)

become aware of the search warrant until March 6, 2008, and he immediately requested that he be given access to the search warrant documents and to the data obtained. After initially refusing, the People later provided defense counsel with the documents and a DVD containing the data obtained from the phones. Defense counsel was not satisfied with the contents of the DVD and requested possession of the phones to conduct his own examination. The People agreed to permit defense counsel to personally observe the arresting officer go through the data in each phone, but did not consent to turning over the phones to defense counsel without their supervision.

Discussion

At common law, courts had no power to order discovery in criminal cases (*see, People v Colavito*, 87 NY2d 423, 426 [1996]); *People ex rel Lemon v Supreme Court* 245 NY 24, 28 (1927). Indeed, New York Law is clear that discovery is not a constitutional right (*see, e.g. Matter of Miller v Schwartz*, 72 NY2d 869, 870 [1988]; *People v Colavito*, 87 NY2d 423 [1996]). The legislature, however, in taking into account Constitutional principles of fundamental fairness, adopted Article 240 of the Criminal Procedure Law which specifically directs the prosecution to disclose various documents, statements etc. to a defendant against whom “an indictment [or] superior court information..... is pending ” (CPL §240.20[1]).

CPL §240.20 sets forth in detail the scope of discovery to which a defendant, upon demand, is entitled. The statute states, in pertinent part, that the prosecutor must “make available for inspection, photographing, copying or testing...any other property obtained from the defendant, or co-defendant to be tried jointly.” CPL §240.20(1)[f]. In this case, by offering defense counsel the opportunity to personally observe the arresting officer go through the data in each phone, the People have made available for inspection the data contained in the cell phones. The People do not need to physically deliver seized property to the defendant in order to “make available” such property (*People v Cole*, 90 AD2d 27, 29 [3rd Dept 1982]).

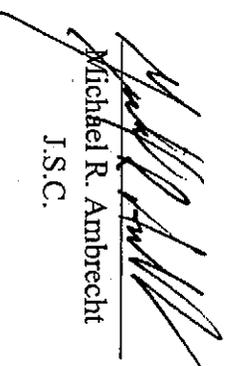
This is especially true in instances, as here, where there is a potential risk to the integrity of the evidence—here the cell phones or the data contained therein. To the extent that the People have agreed to in person observation by defense counsel, they have indicated a willingness to make the phones available for inspection, and thus satisfied the requirements of the statute (*People v Causssade*, 162 AD2d 4, 11 [2nd Dept 1990]). In any event, the Court may limit discovery for good cause including danger to the integrity of physical evidence (CPL 240.50 [1])

Furthermore, the central purposes of discovery are to prevent a trial by ambush and to allow a defendant to make a more informed choice as to whether to take a plea or proceed to trial (*People v Copicotto*, 50 NY2d 222,226 [1980]). The defendant has not demonstrated how these purposes are thwarted, or his defense prejudiced, by the People's refusal to physically deliver the cell phones to defense counsel.

Accordingly, the motion compelling discovery is denied to the extent that the People allow defense counsel to personally observe the Arresting Officer go through the cell phones. The motion to expand the previously ordered *Mapp* hearing, to include the data obtained from the cell phones, is granted.

This constitutes the Decision and Order of the Court.

July 15, 2008


Michael R. Ambrecht
J.S.C.

CRIMINAL COURT AND SUPREME COURT CRIMINAL TERM

Name of Defendant George Lampos

Name of Payee The Intelligian Group

Indictment Number 90241-2007

Area of Expertise Detective

Date of Order Authorizing Service

Name of Expert if Different from Payee Michael Gennier

All Docket Numbers:

County and Court of Service

Social Security #

-or-

Tax Payer ID#

Attorney Assigned to Case with Expert Eric M. Jears

Payee Street Address (No PO Boxes Accepted) 1545 Route 206, Suite 202

Judge/Referee/HO/Magistrate

City Bedminster NJ

State NJ

Zip Code 07921

Telephone 908-911-0112

A. TOTAL HOURS BILLED 6 AT \$ 100 FEE HOURLY RATE = \$ 600

B. ITEMIZED EXPENSES (RECEIPTS MUST BE ATTACHED; ATTACH ADDITIONAL SHEET IF NECESSARY)
(1) \$ 0 (3) \$ 0
(2) \$ 0 (4) \$ 0
TOTAL EXPENSES \$ 0

TOTAL AMOUNT OF VOUCHER (SUM OF A & B) = \$ 600

HAS EXPERT COMPENSATION AND/OR REIMBURSEMENT FOR THIS INDICTMENT/DOCKET(S) PREVIOUSLY BEEN APPLIED FOR OR RECEIVED? YES ? NO IF YES, SPECIFY AMOUNT AND CIRCUMSTANCES: Analysis of evidence per attorney request.

DATE 8/20/07 AMOUNT 600 REASON FOR PAYMENT Analysis of evidence per attorney request.

THE ABOVE INFORMATION IS CERTIFIED TO BE CORRECT.

EXPERT SIGNATURE [Signature]

ATTORNEY AFFIRMATION Eric M. Jears

I, Eric M. Jears (print name) certify, pursuant to the penalties of perjury, that the above-named expert was duly appointed to this case by order dated 8/14/07. I further certify that I utilized the services of this expert in conjunction with my legal representation of the above-named defendant and the work product and services described in the voucher and accompanying worksheet are consistent with my understanding of the services conducted by this expert.

Attorney Signature: [Signature]

Date 8/21/07

EXPERT COMPENSATION

FOR COURT USE ONLY:

\$ RATE 0 x HOURS = \$ 0
EXPENSES + \$ 0
TOTAL = \$ 0

\$ RATE 0 x HOURS = \$ 0
EXPENSES + \$ 0
TOTAL = \$ 0
 APPROVED AS SUBMITTED ADJUSTED

JUDICIAL SIGNATURE/STAMP

DATE

ANY VOUCHER EXCEEDING THE STATUTORY \$1,000 CAP MUST INCLUDE AN AFFIDAVIT OF EXPLANATION THIS VOUCHER SUBMISSION MUST INCLUDE THE ORDER, WORKSHEET AND ANY EXPENSE RECEIPTS VOUCHER MUST BE SUBMITTED WITHIN 45 DAYS OF FINAL DISPOSITION OR DATE ATTY RELIEVED FROM CASE
Assigned Counsel Plan 253 Broadway, 2nd Floor, New York, New York, 10007
PLEASE RETAIN A COPY FOR YOUR RECORDS
ACP 1207

The Intelligence Group

1545 Route 206, Suite 202
 Bedminster, NJ 07921
 Tel: (908) 901-0112 Fax: (908) 901-0115

Eric M Sears
 Campos, George
 61 Broadway
 Suite 1601
 New York NY 10006

Project ID: CAM-01-01:
 Project Name: Campos, George
 Manager: RAK

Invoice Date	Aug 31, 2009	Invoice Num	3921
Billing From	Aug 01, 2009	Billing To	Aug 31, 2009

INVOICE

Date	Employee	Description	Hours	Rate	Amount
Services:					
8/3/2009	MFG	Expert Testimony	1.00	[REDACTED]	[REDACTED]
		Trial Prep - case review			
8/4/2009	MFG	Expert Testimony	4.00	[REDACTED]	[REDACTED]
		Trial Prep			
8/5/2009	MFG	Expert Testimony	4.00	[REDACTED]	[REDACTED]
		Testified in Court			

Total Service Amount: \$3,085.00

Reimbursable Expenses:

8/4/2009	Office	Parking	[REDACTED]
8/4/2009	Office	Travel-NJ Transit,Path	[REDACTED]
8/4/2009	MFG	Mileage to from S.Plainfield/Metropark	[REDACTED]
8/5/2009	Office	Parking	[REDACTED]
8/5/2009	Office	Travel-Taxis	[REDACTED]
8/5/2009	Office	Travel-NJ Transit	[REDACTED]
8/5/2009	MFG	Mileage Metropark/Bedminster	[REDACTED]
8/5/2009	MFG	Mileage S.Plainfield/Metropark	[REDACTED]

Total Expenses: [REDACTED]
 Amount Due This Invoice: [REDACTED]
This invoice is due upon receipt

Account Summary							
Retainer Received	Retainer Applied	Retainer Left	Last Inv Num	Last Inv Date	Last Inv Amt	Last Pay Amt	Prev Unpaid Amt
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Amount Due Including This Invoice: [REDACTED]							



CRIMINAL COURT AND SUPREME COURT CRIMINAL TERM

George Campos

The Intelligence Group
Name of Payee

Name of Defendant
302441-2007

Def. Forensic
Area of Expertise

Indictment Number

Michael Cernier
Name of Expert if Different from Payee

Date of Order Authorizing Service

All Docket Numbers:

County and Court of Service

Eric M. Sears

Social Security #

-or-

Tax Payer ID#

1545 Route 206, Suite 202

Payee Street Address (No PO Boxes Accepted)

Bedminster NJ 07921

City

State

Zip Code

Telephone

908-901-6112

A. TOTAL HOURS BILLED

[REDACTED]

AT \$ [REDACTED]

FEE HOURLY RATE = [REDACTED]

[REDACTED]

B. ITEMIZED EXPENSES (RECEIPTS MUST BE ATTACHED; ATTACH ADDITIONAL SHEET IF NECESSARY)

(1) \$ [REDACTED]

(3) \$ [REDACTED]

(2) \$ [REDACTED]

(4) \$ [REDACTED]

TOTAL EXPENSES \$ [REDACTED]

TOTAL AMOUNT OF VOUCHER (SUM OF A & B) = \$ [REDACTED]

HAS EXPERT COMPENSATION AND/OR REIMBURSEMENT FOR THIS INDICTMENT/DOCKET(S) PREVIOUSLY BEEN APPLIED FOR OR RECEIVED?

X YES ? NO IF YES, SPECIFY AMOUNT AND CIRCUMSTANCES:

Analysis of evidence per Attorney Request.

DATE [REDACTED] AMOUNT [REDACTED] REASON FOR PAYMENT:

THE ABOVE INFORMATION IS CERTIFIED TO BE CORRECT.
EXPERT SIGNATURE

ATTORNEY AFFIRMATION

I, Eric M. Sears

(print name) certify, pursuant to the penalties of perjury, that the above-named expert was duly appointed to this case by order dated [REDACTED]. I further certify that I utilized the services of this expert in conjunction with my legal representation of the above-named defendant and the work product and services described in the voucher and accompanying worksheet are consistent with my understanding of the services conducted by this expert.

Attorney Signature: [Signature]

Date 9/11/09

EXPERT COMPUTATION

FOR COURT USE ONLY:

\$ RATE x HOURS = \$

\$ RATE x HOURS = \$

EXPENSES + \$

EXPENSES + \$

TOTAL = \$

TOTAL = \$

? APPROVED AS SUBMITTED ? ADJUSTED

JUDICIAL SIGNATURE/STAMP

DATE

ANY VOUCHER EXCEEDING THE STATUTORY \$1,000 CAP MUST INCLUDE AN AFFIDAVIT OF EXPLANATION. THIS VOUCHER SUBMISSION MUST INCLUDE THE ORDER, WORKSHEET AND ANY EXPENSE RECEIPTS. VOUCHER MUST BE SUBMITTED WITHIN 45 DAYS OF FINAL DISPOSITION OR DATE ATTY RELIEVED FROM CASE. Assigned Counsel Plan 253 Broadway, 2nd Floor, New York, New York, 10007. PLEASE RETAIN A COPY FOR YOUR RECORDS. ACP 1207

The Intelligence Group

1545 Route 206, Suite 202
 Bedminster, NJ 07921
 Tel: (908) 901-0112 Fax: (908) 901-0115

Eric M Sears
 Campos, George
 61 Broadway
 Suite 1601
 New York NY 10006

Project ID: CAM-01-01:
 Project Name: Campos, George
 Manager: RAK

Invoice Date	Dec 31, 2008	Invoice Num	3669
Billing From	Nov 01, 2008	Billing To	Dec 31, 2008

INVOICE

Date	Employee	Description	Hours	Rate	Amount
Services:					
12/4/2008	MFG	Legal Document Preparation	1.00	[REDACTED]	[REDACTED]
		Creation of Affidavit to be supplied with August invoice			
12/22/2008	RAK	Conference Call	0.25	[REDACTED]	[REDACTED]
		Discussed trial prep for MG			
12/22/2008	MFG	Conference Call	0.25	[REDACTED]	[REDACTED]
		Call with Mr. Sears, review of case prior to court. Requested photos and text file for discovery,			
12/22/2008	MFG	Consulting	3.00	[REDACTED]	[REDACTED]
		Take Screen Shots and convert information from DVD to text Reporting			
12/23/2008	MFG	Place images into word document to be included with notes	3.00	[REDACTED]	[REDACTED]
Total Service Amount:				[REDACTED]	[REDACTED]
Amount Due This Invoice:				[REDACTED]	[REDACTED]

This invoice is due upon receipt

Account Summary							
Retainer Received	Retainer Applied	Retainer Left	Last Inv Num	Last Inv Date	Last Inv Amt	Last Pay Amt	Brev Unpaid Amt
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Amount Due Including This Invoice:							[REDACTED]

529

AFFIDAVIT OF MICHAEL GRENNIER, CFCE, EnCE

Michael Grennier, CFCE EnCE, of full age and duly sworn, does hereby state as follows:

1. I am a Senior Analyst of Forensics and Security at The Intelligence Group (TIG), 1545 Route 206, Bedminster, NJ 07921. I have been employed with TIG since January 2008.
2. Prior to my tenure at TIG, I was employed by a computer forensic firm in Princeton, NJ. I started in May 2005 as a Senior Forensic Examiner. Prior to that, I retired as a Police Captain with twenty-five (25) years of service at the South Plainfield Police Department in NJ. Prior to my retirement I had the additional responsibility of maintaining the local government's computer network. As a Police Officer, I worked as a computer forensic examiner on cases involving fraud, theft, and internal affairs investigations, as well as murder, rape, and child pornography. I have received training from Guidance Software, The National White Collar Crime Center and the International Association of Computers Investigative Specialists (IACIS) which include Certified Forensic Computer Examiner (CFCE), Electronic Evidence Collection Specialist (CEECS) and Encase Certified Examiner (EnCE), Access Data, and Dan Mares Inc. I hold both a Certified Forensic Computer Examiner (CRCE) with IACIS and Encase Certified Examiner (EnCE) certification from Guidance Software. Over the past 12 months I have conducted well over eighty (80) digital forensic examinations.
3. TIG is a digital forensics firm servicing its client's needs in systematically identifying, preserving, extracting, analyzing, and interpreting digital evidence. The firm can uncover e-mail communications, account information, file copying, attempted data destruction, account usage, and other activities performed on computers.
4. TIG has assisted clients in a wide variety of lawsuits, ranging from cases involving fraud, intellectual property theft, wrongful termination, forgery, matrimonial disputes including child custody and other matters that involve electronically stored information. TIG complies with all computer forensics standards as set forth by the U.S. Federal Bureau of Investigation (FBI) and Guidance Software's Incident Response Forensic Analysis and Discovery (IRFAD) program. The forensic technicians and examiners at TIG employ a number of digital forensic software packages and analysis techniques which include, but are not limited to Guidance Software's Encase, Access Data's FTK (Forensic Toolkit) and Paraben Software's E-Mail Examiner to complete a comprehensive search of both active and deleted files, as well as to provide

an unbiased report of the results. These software products are also utilized by the law enforcement community worldwide. Extensive coursework in the digital forensics field along with hands-on, product-specific training is necessary in order to use these products correctly. Additionally, specialized knowledge and training in chain of custody and evidence handling procedures in the field of digital forensics is necessary in order to perform imaging and analysis up to industry and legal standards.

5. TIG was retained by Eric M. Sears, Attorney at Law, 61 Broadway, Suite 1601, New York, New York to provide forensic services in the matter of People v. George Campos, New York County Indictment No. 3024N-2007. Mr. Campos has been charged with various felonies in the State of New York relating to his alleged selling of cocaine on April 18, 2007.

6. On August 6, 2008 Judge Ambrecht signed a court order (attached) authorizing Eric Sears to retain the services of TIG and specifically Michael Grenier at the rate of \$ 285.00 per hour and if testimony is required such testimony was to be charged at \$ 1,400.00 per half-day.

7. During the month of December 2008 TIG invoiced our work performed on this project which included:

- a. Creation of the Affidavit dated December 5, 2008 relating to this case.
- b. A conference call with Eric Sears concerning scheduling and discovery.
- c. The creation of screen shots from a video tape created by the New York Police Department for court.
- d. The compilation of the screen shots into a printable report.

8. During the month of August 2009 TIG invoiced our work performed on this project which included:

- a. Time to review the case folder and evidence relating to our testimony
 - b. A trial review meeting at Eric Sears office
 - c. Testimony in NY Criminal court
 - d. Expenses for my travel to Eric Sears office and court.
9. The analysis and review was concerning a videotaped created by the New York Police

Department showing how they obtained information from two cell phones (numbers dialed, address book,

call received etc). During said review and analysis the video had to be paused, re-winded and re-started multiple times to document information such as numbers, names, and icons displayed on the screen.

10. A copy of TTG's Invoice for December 2008 and August 2009 have been attached to this affidavit for review.

Signed and sworn to this date and time.



Michael Grenier, CFCE, ENCE

Dated: 8/31/2009



8/31/2009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - Criminal Term

THE PEOPLE OF THE STATE OF NEW YORK

Indicment No. 3024N-2007

-against-

GEORGE CAMPOS,

ORDER

Defendant.

Having read the annexed affirmation of ERIC M. SEARS, Esq., attorney for the defendant GEORGE CAMPOS, and due deliberation having been had thereon, now on motion of said attorney, it is hereby

ORDERED, that ERIC M. SEARS, attorney for the defendant, is hereby authorized to retain the services of THE INTELLIGENCE GROUP and MICHAEL GRENNIER, Senior Analyst, to assist in the defense of said defendant, pursuant to Article 18-B of the County Law; and it is

FURTHER ORDERED, that THE INTELLIGENCE GROUP, upon presentation of suitable documentation, is to be compensated by the Assigned Counsel Plan, pursuant to section 18-B of the County Law, at the rate of ██████████ per hour, and if testimony is required, such testimony is to be compensated at the rate of ██████████ for the half-day.

Dated:

PL.21 AUG 6 2007

So Ordered:




SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - Criminal Term

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 3024N-2007

-against-

GEORGE CAMPOS,

AFFIRMATION

Defendant.

ERIC M. SEARS, an attorney duly admitted to practice in the courts of New York State, hereby affirms under penalty of perjury the truth of the following statements:

1. I am the attorney of record for the defendant George Campos, having been assigned pursuant to Article 18-B of the County Law.
2. This affirmation is respectfully submitted in support of the vouchers submitted by Michael Grennier of The Intelligence Group, seeking payment for services rendered to the defense in this case.
3. This was an "observation sale" narcotics case. The underlying transaction was alleged to have been observed by the arresting officer and backup team. Arrests were made of Mr. Campos, his alleged accomplice/supplier, Jose Benitez, and two buyers. It was alleged by the prosecution that after being approached by the buyers, Mr. Campos placed a cell phone call to his supplier, Benitez. At arrest, cell phones were recovered from Mr. Campos and Benitez. The District Attorney obtained a search warrant for the cell phones, and alleged that the subsequent search of the cell phone data found evidence to corroborate the alleged phone call from Campos to Benitez shortly before the sale. Obviously, proof that such a call had been made would prove extremely damaging to the defense. It was vital, therefore, to have the phone data examined by an qualified expert retained by the defense, to either confirm that the District Attorney's evidence was reliable, or to show why it was not. With this in mind, an order and affirmation

was submitted to Judge Albrecht seeking authorization to retain the services of The Intelligence Group and Michael Grennier. Attached to the request was a statement of the billing rates to be charged. By order dated August 21, 2008, Judge Ambrecht authorized me to retain the services of The Intelligence Group and Michael Grennier, at the stated rates of [REDACTED] per hour, and \$1,400.00 per half-day testimony.

4. Preparation for trial included many conversations with Mr. Grennier, several meetings, exchange and review of case documents, and, most particularly, review of the relevant cell phone data, including a DVD provided by the District Attorney. Mr. Grennier's testimony at trial proved crucial to the defense. He was not only able to demonstrate that the call relied upon by the District Attorney was not in the cell phone data, but that the only call between the two phones originated with the Benitez phone, not the Campos phone, and that it occurred three hours after the alleged sale, when the phones were in police custody. In speaking with jurors after the acquittal, it was apparent that Mr. Grennier's testimony was decisive.

5. The reason why rates in excess of the standard 18-b fee were charged is that The Intelligence Group and experts of Mr. Grennier's caliber routinely charge more for their services than the standard 18-b fee. Judge Ambrecht was fully aware of this when he signed the order authorizing their services at the stated rates. The submitted vouchers detail the work done, and the time required, and fully support the requested totals above the \$1000 cap.

6. The Court has discretion to approve fees outside of the 18-b guidelines. The People, of course, are not limited in the amount of money they can spend for experts, and are free to retain those whom they believe to be most qualified. An indigent defendant should, within reason, have equal access to such potential evidence.

WHEREFORE, it is respectfully requested that the vouchers submitted in this case by The Intelligence Group and Michael Grennier be granted, in accordance with Justice Ambrechts' order.

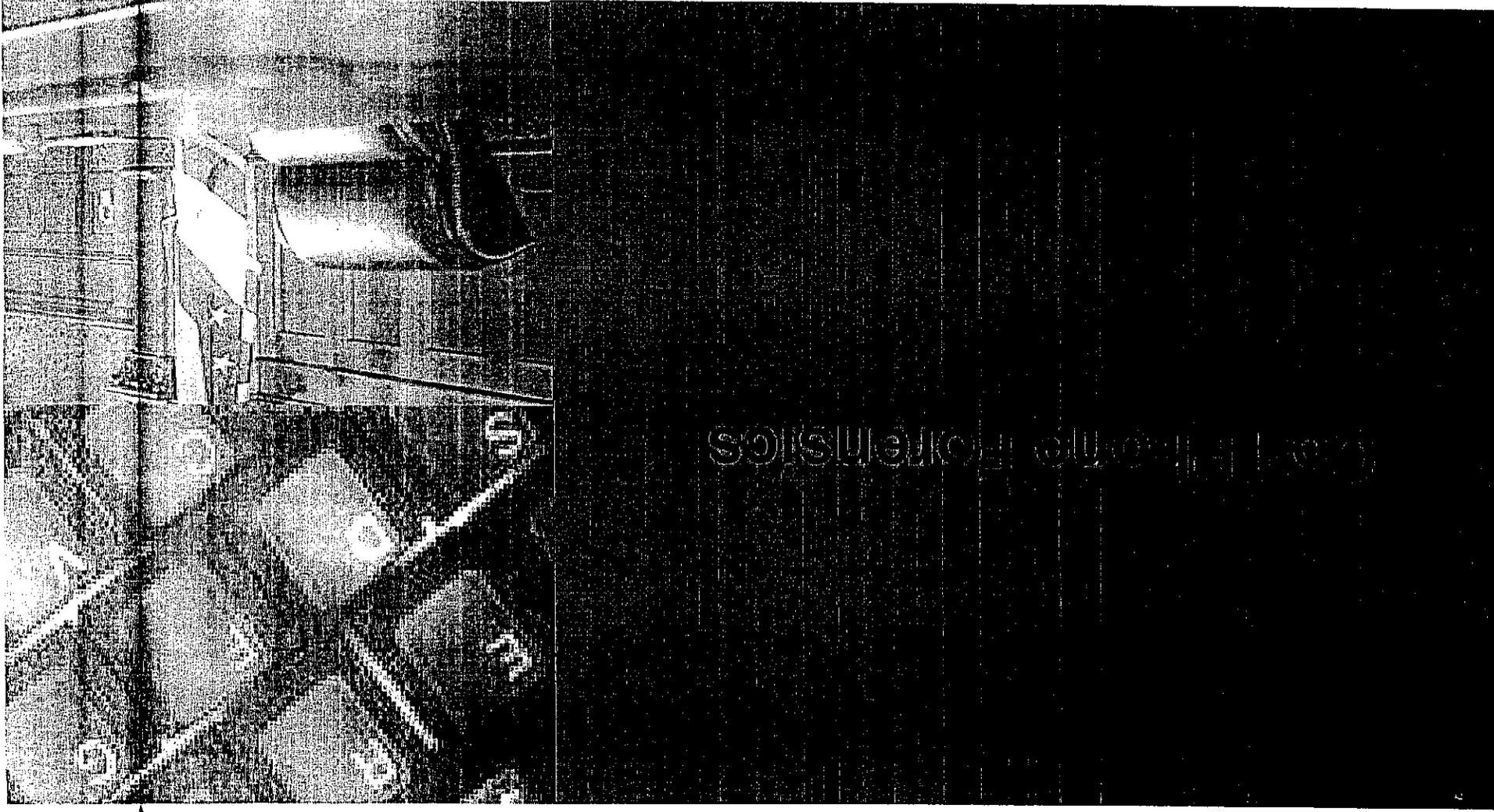
Dated: New York, N.Y.
October 15, 2009.

ERIC M. SEARS
Attorney for GEORGE CAMPOS
61 Broadway, Suite 1601
New York, N.Y. 10006
212-252-8560



November 16, 2009
Eric M Sears, Esq. & Michael Grennier, CFCE, ENCFE

Forensic Investigation



Eric M. Sears, Esq.

- Degrees from both Columbia Law School
NY & Princeton University, NJ
- 25+ years as a New York City criminal
attorney
- Certified as lead counsel under the NYS
death penalty statute
- Appointed to the Homicide Panel of the
Assigned Counsel Plan
- Guest Lecturer in Trial Practice at both
Columbia and Fordham Universities

Michael Grenier, CFCE, ENCF

- Retired Police Captain from the South Plainfield Police, NJ after 25 years of service.
- Certified Forensic Computer Examiner by the International Association of Computer Specialists (www.cops.org)
- Certified by Guidance Software (Encase)
- Numerous classes by the White Collar Crime Center, Dept. of Justice in WV.

“Mobile phone forensics is the science of recovering digital evidence from a mobile phone under forensically sound conditions using accepted methods”

Guidelines on Cell Phone Forensics, Computer Security, NIST Special Publication 800-101, May 2007, page 9
(<http://csrc.nist.gov/publications/nistpubs/800-101/SP800-101.pdf>)

Computer Forensics

Computer forensics is the discipline that combines elements of law and computer science to collect and analyze data from computer systems, networks, wireless communications, and storage devices in a way that is admissible as evidence in a court of law.

US Computer Emergency Response Readiness Team, Definition - http://www.us-cert.gov/reading_room/forensics.pdf

- Evidence (data) that remains unchanged by the forensic process
- The "data" would be the binary (zero's & one's / positive and negative) numbers stored on the device.
- The data 01100001 (binary) represents the small letter "a"

Best Evidence

- A mathematical Message-Digest algorithm that processes a set of data and produces a hex decimal number of a certain length. An examiner can hash an entire hard drive, a volume or a single file
- Hash values can be MD5, SHA, SHA-### are the standard hash values accepted a digital evidence
- Also referred to as a "Digital Fingerprint"

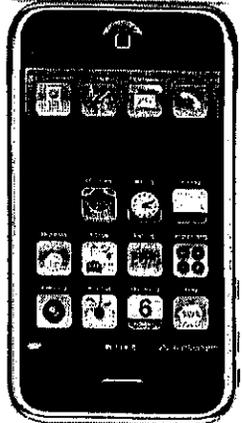
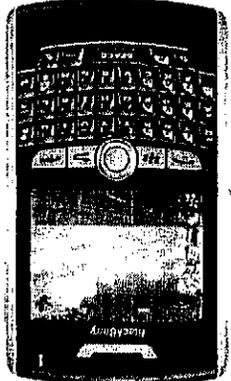
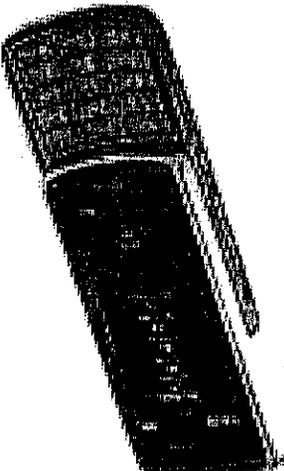
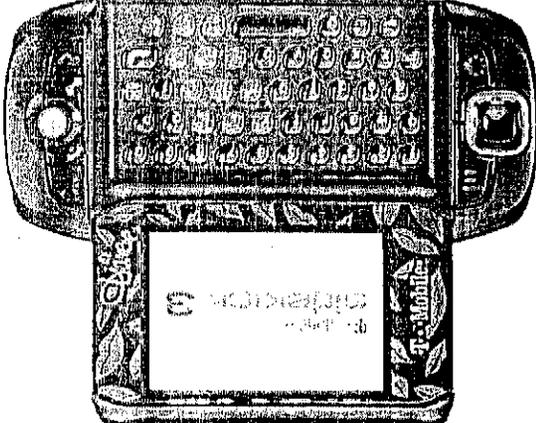
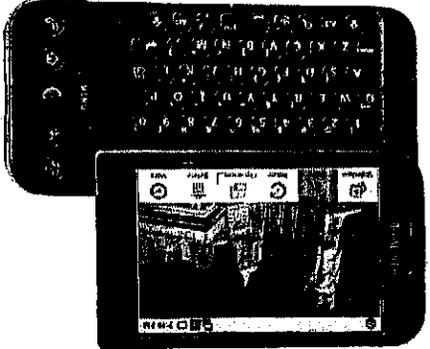
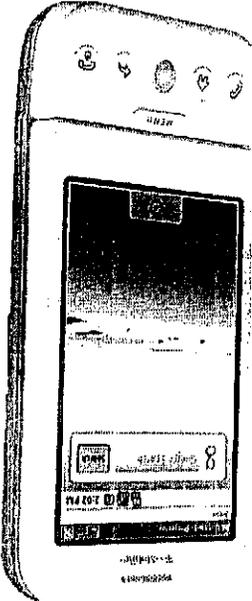
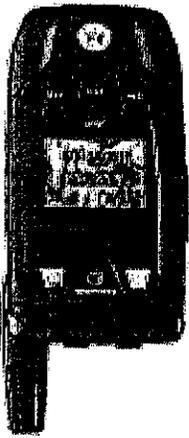
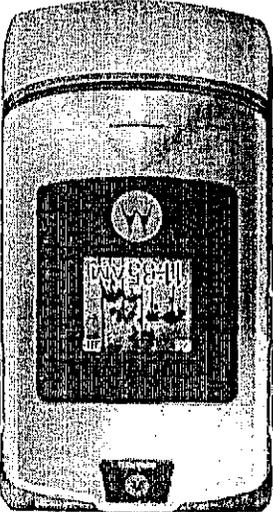
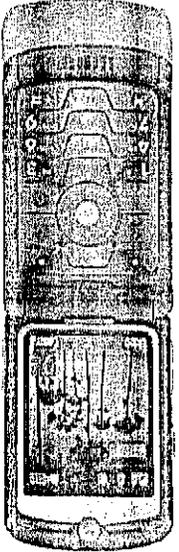
Hash Value

- Both contain electronic data that needs to be collected using “*Industry Standards*” in a manner that can be analyzed and produced in court.
- Computers and some cell phones have a file structure and store data in files
- **Most cell phones store data in data blocks**
- File systems store data in files which can grow in size and move.
- Data blocks are static (unchanged) areas that do not change.



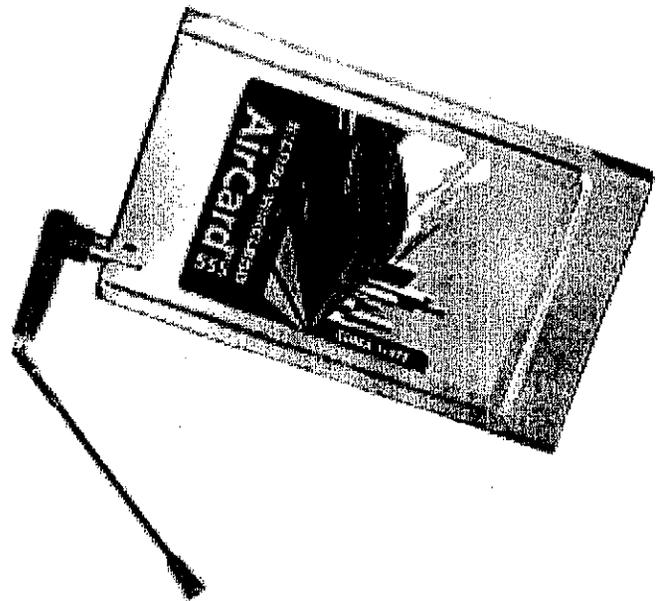
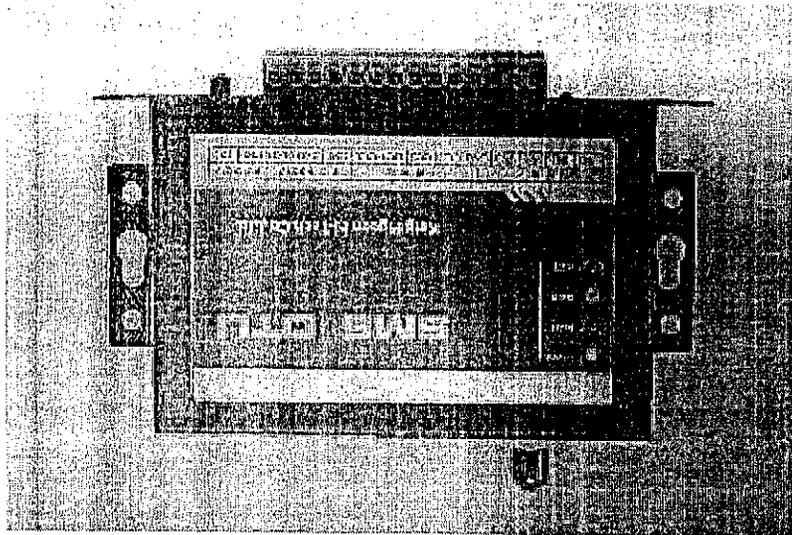
- Electronic Data is stored differently on a cell phones than on computer hard drives, thumb drive or other computer connected device.
- Computer hard drives normally store data in sectors, files using LBA (Logical Block Addressing).
- Most cell phones use data blocks for storage.

Cell Phones



Years of Cell Phones

Types of Cell Phones



- Recent Calls / Call History
- Phonebook / Contacts
- Text and/or Picture Messages
- Short Messaging Service (SMS)
- Multimedia Messaging Service (MMS)
- Photos / Video / Music
- E-mail Messages
- Internet History

data may be on cell phone

Where is the data stored?

- Recent call list – Normally on phone
- Phonebook – Normally on phone
- Text and/or Picture Messages - Depends on model
- Photos / Video / Music – Normally on phone
- E-mail Messages – Depends on phone model
- Internet History – Depends on phone model



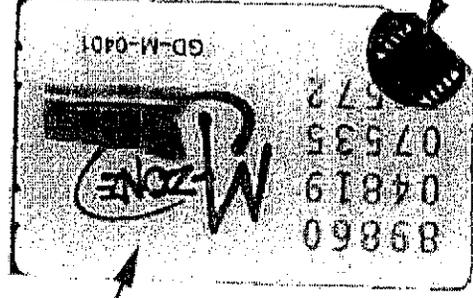
- Data can be imaged from the following areas:
 - RAM (Random Access Memory)
 - Installed Memory Card
 - SIM (Subscriber Identity Module)

Cell Phone Data

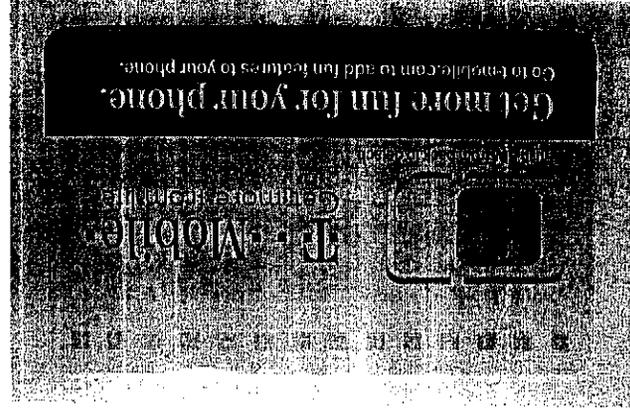
- Random Access Memory
- Requires power for continuous retention of data. Data loss starts when the phone is powered off
- RAM is built into the physical, and not upgradeable, on a phone (unlike a PC)
- There have been cases where RAM has retained some data for about a week

RAM

Unlock chipset



SIM Card

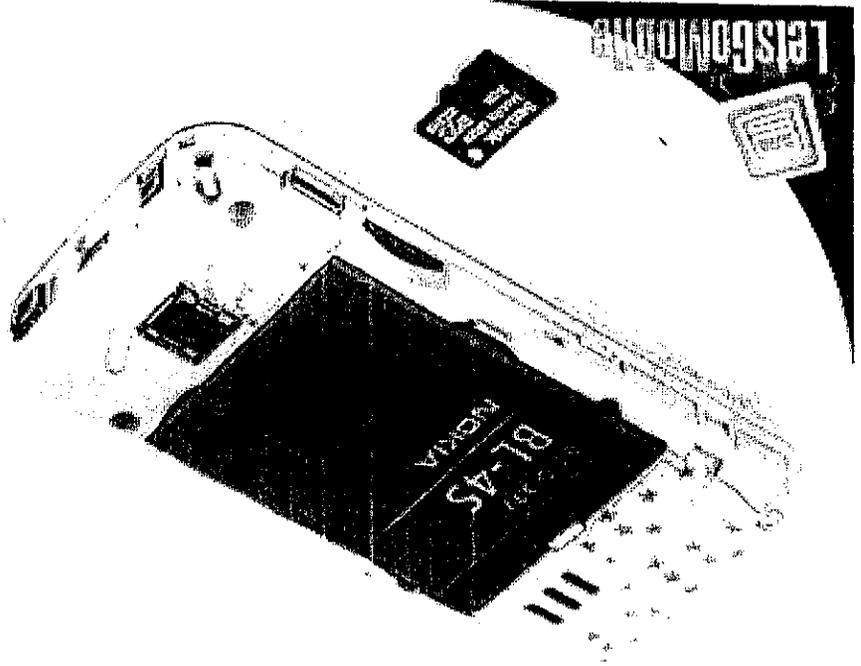


- Subscriber Identity Module
- Contains storage area

SIM CARD

Memory Card

- There are many types and names
- Standard camera / PC memory



- A bit-stream copy where the binary zero's and one's are copied from the device to an evidence file
- The evidence file must contain an exact duplicate of the data from the device to be considered "Best Evidence"
- An MD5 or SHA1 hash is used to confirm and/or define a forensic image

What is a Forensic Copy / Image

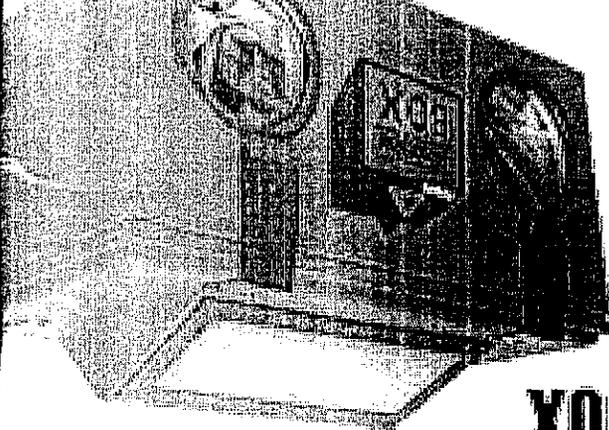
Forensic Phone Examinations

- The phone should have the transmitters off so that it does not access the cell network (airplane mode)
- Accessing the cell network allows:
 - The phone to receive software updates
 - Incoming messages (text, e-mail, etc.)
 - Possible violations of the Federal Wire and Electronic Communications Act
- Examinations should be conducted in a controlled environment

Forensic Phone Examinations

- Faraday cage / Cell Blocking Bags

PARROT'S
stronghold
box





- Report should include:
 - Make, Model, Serial #
 - ESN (Electronic Serial Number)
 - MEID (Mobile Equipment Identifier)
 - IMEI (International Mobile Equipment Number)
- Assigned phone number and/or direct connect number
- Date and time of report
- Software/hardware used
- Hash values of files and/or forensic image

Forensic Imaging

- **Logical Acquisition:** forensic image based on the forensic software knowledge of the storage areas of the cell phone
- **Physical Acquisition:** forensic image of the data area of the cell phone as seen by the phone
- **SIM Acquisition:** forensic image of the SIM card alone
- **Forensic copy:** of memory card

Forensic Imaging

- No actions performed by the examiner should change data contained on the cell phone or storage media
- The examiner should have control of the environment and know if the procedure(s) will change data
- The examiner accessing the original data must be competent to do so and have the ability to explain their actions

Cell Phone Forensics

- Reviewing the data and retrieving information for court
- The data is static, so other experts should come to the same conclusion or findings
- Be careful of examiners who only review the logical image and/or the reports generated by the forensic software companies
- Cell phone software changes consistently

Cell Phone Screen Shots

- **The most basic review**
- Examiner takes pictures of the phone screen while scrolling through the various menus

- Examiner must know enough to turn the transmitters off

- If videotaped, it should be continuous
- Pictures/video should contain date and time stamps with no delay or gaps

Phone Screen Shots

- Examiner should follow a pattern or process so they don't miss any screens
- Check the phone's owner manual to see if the examiner missed something. Some phones provide additional information on call history screens that may be missed if the examiner did not know to press the <Enter> key

- Training of examiner in computer forensics and cell phone forensics.
- Any issues in creating the forensic copies
- Use of cell phone signal blocking devices

• Forensic Images

- Did the examiner have any training and how did they turn the phone's transmitters off.
- Do the images or video show an actual representation of what was on the screen

• Screen Shots – Video

What to ask in court

References

- **NIST Cell phone forensic tools**
(National Institute Standards and Technology - 188 pages)
<http://csrc.nist.gov/publications/nistir/nistir-7250.pdf>
- **NIST Guidelines on Cell Phone Forensics**
<http://csrc.nist.gov/publications/nistpubs/800-101/SP800-101.pdf>
- **Paraben software:** <http://www.paraben-forensics.com/>
- **Cellebrite:** <http://www.cellebrite.com/Cellebrite-Forensics-Law-Enforcement.html>
- **Susteen (Data Pilot):**
<http://mobileforensics.susteen.com/>

Partners and Contact Information

- Contact Information:

Eric M. Sears, Esq.

Law office of Eric M. Sears

61 Broadway, Suite 1601

New York, NY 1006

212-252-8560

www.ericsearslaw.com

Michael F Grennier, CFCE, ENCE

The Intelligence Group

1545 US Hwy 206, Suite 202

Bedminster, NJ 07921

908-901-0112

Mgrennier@intell-group.com

The Intelligence Group

MEMBERSHIP • INVESTIGATIONS • FORENSICS

