

**Davis, Rheta R**

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**From:** Davis, Rheta R  
**Sent:** Tuesday, January 27, 2015 2:39 PM  
**To:** Suttle, Kiona  
**Subject:** RE: PRR #7082

Just let me know when you are ready.

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**From:** Suttle, Kiona  
**Sent:** Monday, January 26, 2015 12:32 PM  
**To:** Davis, Rheta R  
**Subject:** RE: PRR #7082

Let's meet tomorrow when you return.

Kiona Suttle  
Police Services Manager  
Oakland Police Department  
Records Division  
(510) 238-6886

Mission:

"The Mission of the Oakland Police Department is to provide the Community of Oakland an environment in which its citizens can live, work, play, and thrive free from crime and fear of crime."

Motto:

"We will be there when you need us."

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**From:** Davis, Rheta R  
**Sent:** Wednesday, January 21, 2015 7:48 PM  
**To:** Suttle, Kiona  
**Subject:** PRR #7082

Kiona-

I need your assistance in interpreting the differences in the current PRR #7082 and two closed PRRs #3442 & 3443 relating to "Stingray".

The current PRR #7082 from Mr. Cyrus Farivar is requesting:

- Any and all documents, materials, spreadsheets, internal/external correspondence reports, memos,

concerning, consisting of, or relating to any and all templates for judicial orders and/or warrant applications in possession of OPD to local courts that involve or mention the use of cell site simulators, also known as stingrays from 2004 – present.

The two PRRs #3442 & 3443 requested in March 2014:

- Copies of warrants or court orders for the 19 arrest that were listed in the “Stingray” documents we provided from the time periods of 2007, 2008 and 2009.

The differences I interpreted are:

The dates requested (he currently is seeking information from 2004 to the present time)

The actual copy of a warrant/court order(from specific arrest) vs. templates or warrant/court order applications in OPD possession.

The request was received on December 8, 2014. An extension letter was sent to the requester and he is up-dated weekly regarding the request.

**Davis, Rheta R**

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**From:** Davis, Rheta R  
**Sent:** Friday, January 30, 2015 11:59 AM  
**To:** Guttormson, Mary  
**Subject:** RE: PRR #7354

✓

Do you know who would be the contact person?

---

**From:** Guttormson, Mary  
**Sent:** Friday, January 30, 2015 11:49 AM  
**To:** Davis, Rheta R  
**Cc:** Millington, Sekou  
**Subject:** RE: PRR #7354

This has to go to someone from SOD - sorry

---

**From:** Davis, Rheta R  
**Sent:** Friday, January 30, 2015 10:35 AM  
**To:** Guttormson, Mary  
**Subject:** PRR #7354

Sgt. Guttormson-

Attached is a public records request from Mr. Brian Hofer requesting training manuals regarding the below list:

- Pole Attic camera
- Under the door camera
- Thru-wall camera
- Crawl space camera
- Stingray van
- Lincoln system
- GPS Vehicular tracking devices
- Cellbrite
- Penlink
- Tracking the world
- Social media
- Handheld Doppler radar
- Thermal imaging devise
- FLIR (Forward looking infrared device)
- Rang-R

The response due date is February 9, 2015.

Thanks in advance,

heta Davis  
Records Supervisor  
Public Records Request Unit  
(510) 238-7143

**Davis, Rheta R**

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**From:** Davis, Rheta R  
**Sent:** Monday, February 23, 2015 12:07 PM  
**To:** Fuller, Amber  
**Subject:** FW: PRR #7354  
**Attachments:** pen reg order blank.pdf

FYI

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**From:** Saunders, Jason F.  
**Sent:** Monday, February 23, 2015 10:59 AM  
**To:** Davis, Rheta R  
**Cc:** Babka, Serge; Jones, Trevelyon; Coleman, Kirk; Joshi, Holly J.; Crum, Omega  
**Subject:** RE: PRR #7354

Any un sealed court order applications that involve or consist of Pen registers and/or trap and trace orders would be filed with the county court.

Attached is an example of a court order that would be filled out by any police officer who wished to use such investigation tool.

CID would be the division who administers Pen Register trap/trace.

Ms, Davis call me 3753 and we can discuss further, your line is not working.

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**From:** Davis, Rheta R  
**Sent:** Wednesday, February 18, 2015 10:42 AM  
**To:** Saunders, Jason F.  
**Subject:** RE: PRR #7354

Hello Jason-

The PRR Unit has received another PRR#7966 from Mr. Cyrus Farivar. In the below email dated 2/3/15, you responded to Mr. Farivar PRR #7354 requesting **templates for judicial orders and/or warrant applications in possession of OPD that involve or mention the use of cell site simulators, also known as stingrays**. Your response was that OPD does not possess the requested information. The new PRR #7966 from Mr. Farivar is requesting

- any and all documents, materials, spreadsheets, internal and external correspondence reports, memos, concerning, consisting of, or relating to any and all applications (including any and all relevant templates) to local courts that involve or consist of pen registers and/or trap and trace orders.

Please consider the timeline range from January 1, 2004 (or whenever the earliest such record begins) until this search request is fulfilled.

Will you advise on a response to the requester?

Thanks again,

Rheta Davis  
Records Supervisor  
Public Records Request Unit  
(510) 238-7143

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**From:** Saunders, Jason F.  
**Sent:** Wednesday, February 04, 2015 10:18 AM  
**To:** Davis, Rheta R  
**Subject:** Re: PRR #7354

Yes that is correct

Jason Saunders OPD intel  
Sent from my iPad  
Cell 510-773-0981

On Feb 3, 2015, at 4:33 PM, Davis, Rheta R <[rdavis@oaklandnet.com](mailto:rdavis@oaklandnet.com)> wrote:

Jason-

Would it be correct to respond to the requester that OPD does not possess templates for judicial orders and/or warrant applications that involve or mention the use of cell site simulators, also known as stingrays?

Rheta Davis  
Records Supervisor  
Public Records Request Unit  
(510) 238-7143

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**From:** Saunders, Jason F.  
**Sent:** Monday, February 02, 2015 11:03 AM  
**To:** Davis, Rheta R  
**Subject:** RE: PRR #7354

Pen link is the software that a pen register is run on. It receives the data from the phone company and displays it on a computer.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Davis, Rheta R"  
Date: 02/02/2015 9:57 AM (GMT-08:00)  
To: "Saunders, Jason F."  
Cc: "Crum, Omega"  
Subject: RE: PRR #7354

Jason-

Does Pen registers have anything to do with Penlink?

Rheta Davis

Records Supervisor

Public Records Request Unit

(510) 238-7143

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**From:** Saunders, Jason F.  
**Sent:** Friday, January 30, 2015 3:47 PM  
**To:** Davis, Rheta R  
**Cc:** Crum, Omega  
**Subject:** RE: PRR #7354

None of the warrants we use have any of those terms in them. We only have warrants/orders for pen registers, which are under court seal. We don't have any training manuals for cell site simulators or "stingrays".

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**From:** Davis, Rheta R  
**Sent:** Friday, January 30, 2015 2:56 PM  
**To:** Saunders, Jason F.  
**Cc:** Crum, Omega  
**Subject:** RE: PRR #7354

Hello Jason-

I do need your assistance after all. I sent a request to CID to regarding the portion of the request for **templates for judicial orders and/or warrant applications in possession of OPD that involve or mention the use of cell site simulators, also known as stingrays.** CID said I should check with you. In addition, The requester is also seeking training manuals. Can you assist?

Rheta Davis

Records Supervisor

Public Records Request Unit

(510) 238-7143

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**From:** Davis, Rheta R  
**Sent:** Wednesday, January 28, 2015 2:32 PM  
**To:** Saunders, Jason F.  
**Subject:** RE: PRR #7354

IT will conduct an email search for the items listed in the request.



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**From:** Saunders, Jason F.  
**Sent:** Wednesday, January 28, 2015 1:49 PM  
**To:** Davis, Rheta R  
**Subject:** RE: PRR #7354

Where are we on this?

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**From:** Davis, Rheta R  
**Sent:** Wednesday, January 14, 2015 11:54 AM  
**To:** Saunders, Jason F.; Crum, Omega; Babka, Serge  
**Cc:** Suttle, Kiona  
**Subject:** PRR #7354  
**Importance:** High

All-

The PRR Unit has received another request regarding "stingray". Attached are the Stingray documents released by the OCOP that were released to prior stingray requests. The OCOP has provided all releasable information they have on this subject. Will you review the attached new PRR #7354 and let me know whether the Department can provide the requested material. This request was submitted on December 30, 2014, and the PRR Unit received it on January 12, 2015. The response due date is January 24, 2015. Please let me know, as soon as possible, your response.

Rheta Davis

Records Supervisor

Public Records Request Unit

(510) 238-7143

**Davis, Rheta R**

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**From:** Davis, Rheta R  
**Sent:** Tuesday, February 24, 2015 5:49 AM  
**To:** Fuller, Amber  
**Subject:** FW: Media query re: StingRay

FYI

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**From:** Watson, Johnna A.  
**Sent:** Monday, February 23, 2015 5:58 PM  
**To:** Eric Kurhi  
**Cc:** Watson, Johnna A.; Bonifacio, Frank I.  
**Subject:** Re: Media query re: StingRay

Hello,

We will forward your request to our records division for follow up.

Sent from my iPhone

On Feb 23, 2015, at 2:01 PM, Eric Kurhi <[ekurhi@bayareanewsgroup.com](mailto:ekurhi@bayareanewsgroup.com)> wrote:

Hi Johnna --

I'm doing a story about Santa Clara County's potential procurement of a StingRay type cell phone tracker. Wanted to touch base with you for comparative purposes.

Can you tell me when OPD got the tracker? How often is it used? What sorts of situations is it used for? Does it require a search warrant to be issued before use? What was the process by which it was required?

Let me know if you are available this afternoon, I have a deadline in a couple of hours.

Thanks much, and best regards,

Eric Kurhi  
Reporter  
The San Jose Mercury News  
Desk: 408-920-5852  
Cell: 925-482-4950  
[ekurhi@mercurynews.com](mailto:ekurhi@mercurynews.com)  
[Twitter.com/erickurhi](https://twitter.com/erickurhi)  
[www.facebook.com/eric.kurhi.9](https://www.facebook.com/eric.kurhi.9)  
[www.mercurynews.com/](http://www.mercurynews.com/)

Davis, Rheta R

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From: Watson, Johnna A.  
Sent: Wednesday, January 28, 2015 10:16 AM  
To: Bronwen Lacey  
Subject: Re: PRA for Oakland's policies

Good morning,  
do remember you, and will call. Currently we are in morning meeting and can call this afternoon.

Sent from my iPhone

On Jan 28, 2015, at 8:53 AM, Bronwen Lacey <[BLacey@fremont.gov](mailto:BLacey@fremont.gov)> wrote:

Hi Johnna,  
I'm not sure if you remember me, but we met at the DA's office coordinating a response to the PRA for the Stingray grant. The City of Fremont has received another PRA that involves Oakland and I would like to discuss with you over the phone. Please call me on my direct line listed below when you get a chance.  
Thank you

Bronwen Lacey  
Deputy City Attorney  
City of Fremont  
510-284-4035

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The information contained in this email is confidential and is intended only for the named recipient(s) and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately delete this e-mail and any attached files from your system. Thank you.

# SUPERIOR COURT OF CALIFORNIA

County of \_\_\_\_\_

## COURT ORDER Pen Register and Trap-Trace



To the Electronic Communications Service Provider identified below:

**RE:** Name of Provider:

Name, address, and phone number of Applicant:

Name, address, and phone number of Applicant's Agency:

Target of Investigation (if known):

Name of Subscriber (if other than Target):

### FINDINGS

- (1) Provider is an electronic communication service provider as defined in 18 USC § 2510(15) and is doing business in California.
- (2) Pursuant to 18 USC § 3123, this court is authorized to issue this order.
- (3) Pursuant to 18 USC 3123(a)(2), Applicant has furnished this court with a declaration that the data likely to be obtained pursuant to this order is relevant to an ongoing criminal investigation.

### ORDERS

- (1) **Installation and monitoring:** Per 18 USC §§ 3121-27, Provider shall install and monitor a pen register and trap-trace device for each of the following:
  - ☐ **Telephone:** Telephone numbers(s):
  - ☐ **Email:** Email address(es)
  - ☐ **Internet Protocol:** IP address:
- (2) **Dates of operation:** The above data shall be provided as follows:
  - ☐ For 60 days beginning upon receipt of this order.
  - ☐ Start date: \_\_\_\_\_ End date: \_\_\_\_\_ [not to exceed 60 days]
- (3) **Reporting:** Provider shall furnish Applicant with all listed data as follows:
  - ☐ In real time    ☐ Daily    ☐ Other (specify):
- (4) **Sealing and Nondisclosure:** Pursuant to 18 USC 3123(d), this order shall be sealed; and Provider shall not disclose to the Target, Subscriber, or any other person the existence or contents of this order.
- (5) **Compensation:** Pursuant to 18 USC § 3124(c), Applicant's agency shall compensate Provider for reasonable expenses incurred in complying with this order.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge of the Superior Court

### Application for Court Order

**Jurisdiction:** Provider is an electronic communication service provider as defined in 18 USC § 2510(15) and is doing business in California.

**Certification:** Per 18 USC §3122, I certify that records that are likely to be obtained pursuant to this Order are relevant to an ongoing criminal investigation being conducted by my agency.

**Declaration:** I declare under penalty of perjury that the foregoing is true.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant

Davis, Rheta R

From: Google Alerts <googlealerts-noreply@google.com>  
Sent: Monday, February 23, 2015 5:16 PM  
To: Bonifacio, Frank I.  
Subject: Google Alert - oakland police department

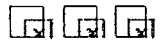


# oakland police department

As-it-happens update - February 24, 2015

## NEWS

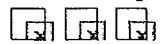
**Oakland** to consider **department** to stamp out bias at City Hall  
Vallejo Times Herald  
Proposed by Councilwoman Desley Brooks, the **Department** of Race and Equity ... At the order of a federal judge and **police** monitor, **Oakland** is now ...



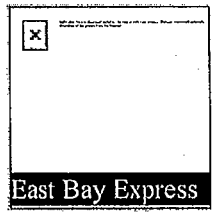
Flag as irrelevant



Bay Area Law Enforcement Agencies Rush to Obtain New,  
More Powerful Surveillance Systems  
East Bay Express  
The **Oakland Police Department**, among other agencies in the Bay Area, already owns a Stingray. But Oakland wants a upgrade. The Oakland police ...



Flag as irrelevant



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**Davis, Rheta R**

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**From:** Saunders, Jason F.  
**Sent:** Tuesday, February 24, 2015 8:11 PM  
**To:** Fuller, Amber  
**Cc:** Watson, Johnna A.; Joshi, Holly J.; Babka, Serge; Crum, Omega  
**Subject:** RE: Public Records Request #8140 eric kurhi

These questions are not prr. It's a request for an interview. This needs to go to the PIO. These questions have been addressed.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----  
From: "Fuller, Amber"  
Date: 02/24/2015 7:27 PM (GMT-08:00)  
To: "Saunders, Jason F."  
Cc: "Babka, Serge"  
Subject: Public Records Request #8140 eric kurhi

Good evening Officer Saunders:

The PRR Unit received a request for the following information regarding the stingray type cell phone tracker:

- When OPD got the tracker
- How often is it used
- What sorts of situations is it used for
- Does it require a search warrant to be issued before use
- What was the process by which it was required

Please respond to each inquiry and provide any releasable information. The response due date is (5 Mar 15).

Thank you,

Amber Fuller

Police Records Specialist

Oakland Police Department

Public Records Request Unit

**Davis, Rheta R**

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**From:** Saunders, Jason F.  
**Sent:** Wednesday, February 25, 2015 8:28 AM  
**To:** Bonifacio, Frank I.  
**Subject:** Fwd: Public Records Request #8140 eric kurhi  
**Attachments:** RE: Public Records Request #8140 eric kurhi

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

**From:** "Fuller, Amber"  
**Date:** 02/25/2015 8:17 AM (GMT-08:00)  
**To:** "Saunders, Jason F."  
**Subject:** RE: Public Records Request #8140 eric kurhi



Davis, Rheta R

---

**From:** Fuller, Amber  
**Sent:** Wednesday, February 25, 2015 8:17 AM  
**To:** Saunders, Jason F.  
**Subject:** RE: Public Records Request #8140 eric kurhi

Eric Kurhi  
Reporter  
The San Jose Mercury News

It was forwarded to us from PIO

---

**From:** Saunders, Jason F.  
**Sent:** Tuesday, February 24, 2015 8:17 PM  
**To:** Fuller, Amber  
**Subject:** RE: Public Records Request #8140 eric kurhi

Who is this from

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

**From:** "Fuller, Amber"  
**Date:** 02/24/2015 7:27 PM (GMT-08:00)  
**To:** "Saunders, Jason F."  
**Cc:** "Babka, Serge"  
**Subject:** Public Records Request #8140 eric kurhi

Good evening Officer Saunders:

The PRR Unit received a request for the following information regarding the stingray type cell phone tracker:

When OPD got the tracker

How often is it used

What sorts of situations is it used for

Does it require a search warrant to be issued before use

What was the process by which it was required

Please respond to each inquiry and provide any releasable information. The response due date is (5 Mar 15).

Thank you,

Amber Fuller

Police Records Specialist

Oakland Police Department

Public Records Request Unit

## Davis, Rheta R

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**Subject:** Provide update on Stingray PRRs and discuss training of new employees  
**Location:** My Office  
**Start:** Wed 7/2/2014 11:00 AM  
**End:** Wed 7/2/2014 11:30 AM  
**Recurrence:** (none)  
**Meeting Status:** Accepted  
**Organizer:** Suttle, Kiona  
**Required Attendees:** Davis, Rheta R

From: Hubbard, Bryan  
Sent: Wednesday, November 27, 2013 8:47 AM  
To: Hubbard, Bryan  
Subject: Legal Update: First Circuit Upholds Use of GPS Tracking Device

FIRST CIRCUIT UPHOLDS USE OF GPS TRACKING  
DEVICE

*United States v. Sparks*

©2013 Brian S. Batterton, Attorney, PATC Legal & Liability  
Risk Management Institute ([www.llrmi.com](http://www.llrmi.com))

Law enforcement officers have, in recent years, come to rely on GPS technology to assist in vehicle surveillance. However, in 2012, the United States Supreme Court decided the *United States v. Jones* [i], in which they held that the government's installation and use of such GPS devices to monitor a suspect's movements constituted a "search" under the *Fourth Amendment*. This left some question as to whether evidence obtained by GPS prior to the Jones decision would be suppressed in court.

Recently, the First Circuit Court of Appeals decided the *United States v. Sparks* [ii], in which they addressed the admissibility of evidence obtained by the installation and monitoring of a GPS device on a vehicle before the Supreme Court decided *Jones*. The facts of *Sparks* are as follows:

The Federal Bureau of Investigation (FBI) suspected Sparks of committing three bank robberies in late 2009. Accordingly, in the early hours of December 24, 2009, FBI agents affixed a GPS tracker to a black Chrysler sedan registered to Sparks's mother but used by Sparks himself. At the time, the Chrysler was parked in a private parking lot used by tenants of two adjacent residential buildings, including Sparks himself. The agents did not have a warrant to place the tracker on the car.

The GPS tracker enabled the agents to track

the car's location in real time by logging onto a website. The tracker had its own battery and thus drew no power from the car. In fact, the tracker's battery failed shortly after installation, prompting the agents to replace the battery and reattach the tracker on December 29.

On January 4, 2010 (eleven days after the tracker's initial installation), the agents, using the tracker, located the Chrysler in Waltham, Massachusetts. When the agents reached the car at approximately 12:15 p.m., it was parked near the intersection of Ash and Crescent Streets, unoccupied but with the engine running. The agents took up position nearby to watch the car.

Roughly ten minutes later and two blocks away, two men entered the Bank of America branch on Moody Street, wearing dark clothing and ski masks and brandishing what appeared to be handguns. They demanded money. After obtaining approximately \$10,676 in cash, they left the bank, and fled in a red SUV with the license plate number 4205YN.

Moments later, the same red SUV pulled up across from the Chrysler and two men in dark hooded sweatshirts, one of whom carried a dark-colored bag, emerged. They ran to the Chrysler, climbed in, and drove off. The watching agents tried to follow, but became ensnarled in traffic. Thanks to the GPS tracker, however, they located the Chrysler heading north on Route 128 and caught up to it. As the car passed through Lexington, a Massachusetts State Police cruiser attempted to pull it over, but the Chrysler's driver slammed on the brakes, sending the car into a ditch along the side of the highway. The two occupants fled into the woods, temporarily evading the agents' grasp.

A quick search of the car revealed two BB guns that resembled the weapons brandished by the bank robbers. A subsequent, more thorough search uncovered further incriminating evidence, including clothing and latex gloves like those worn by the robbers, a knife and a dagger, identification belonging to both defendants, and a screwdriver. (The latter was relevant because the red SUV's ignition had been "popped," allowing it to be started with a screwdriver. The SUV turned out to have been

stolen in Charlestown.) Investigators also found, in the woods into which the suspects fled, \$1,381 in cash and a bag containing two dark hooded sweatshirts.

The Lexington Police apprehended defendant Michaud later that afternoon. He was found with roughly \$9,284 in cash (bearing money bands from the bank), two black ski masks, and white latex gloves. He was also wearing mismatched shoes, the mates of which were found in the Chrysler. Sparks proved somewhat harder to catch; he was ultimately collared in Maine a few weeks later. [iii]

Later, Sparks filed a motion to suppress the evidence obtained by use of the GPS tracking device. The district court, relying on the *United States v. Knotts* [iv] which was controlling United States Supreme Court precedent at that time, denied the motion and held that the use of the GPS was not a search. In *Knotts*, the Supreme Court held that the use of a radio-based tracking device on a vehicle as it traveled on public roads was a not a "search" under the *Fourth Amendment* because a person traveling in public has no reasonable expectation of privacy in his movements from one place to another. Sparks pleaded guilty with a right to appeal. He subsequently appealed the denial of the motion to suppress to the First Circuit Court of Appeals.

Meanwhile, the United States Supreme Court decided the *United States v. Jones* [v], which involved the installation and monitoring of a GPS device for approximately one month. Writing of the decision in *Jones*, the First Circuit stated:

[T]he Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a "search" for *Fourth Amendment* purposes. 132 S. Ct. at 949 (footnote omitted). The Justices all agreed that a search had occurred, but differed as to why. The five-Justice majority held that a search occurred because "[t]he Government physically occupied private property for the purpose of obtaining information." *Id.* The majority opinion emphasized that the government had committed a common-law trespass by installing the tracker on the defendant's car. See *id.* at 949-50. [vi]

Thus, based on *Jones*, there were two issues before the First Circuit. The first issue was whether the installation and monitoring of the GPS device on Sparks' vehicle required a warrant. The second issue was whether the evidence must be suppressed if a warrant was required.

The court then set out to decide the second issue, particularly, whether the evidence must be suppressed even if they later decide a warrant was required because this issue alone could be dispositive in Sparks' case. To this issue, the court examined the good faith exception to the exclusionary rule that was further clarified by the United States Supreme Court in their 2011 decision, *Davis v. United States*. [vii] In *Davis*, the Supreme Court addressed the issue of whether evidence that was obtained during a search of a vehicle incident to arrest based upon reliance of *New York v. Belton* should be suppressed because the Supreme Court later modified the *Belton* rule in *Arizona v. Gant*. The Supreme Court stated that the purpose of the exclusionary rule was to deter unlawful conduct by law enforcement. Therefore, if law enforcement officers are properly complying with valid precedent at the time of their conduct, and later a case is decided that renders that previous conduct unlawful, there is no deterrent effect because police cannot modify their conduct to conform to cases not yet decided.

Applying the principal from *Davis* to Sparks' case, the court stated:

Thus, in *Davis*, where the police conducted a vehicle search incident to arrest that strictly complied with binding circuit precedent applying the bright-line rule of *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981), suppression of the resulting evidence was not appropriate even though *Arizona v. Gant* subsequently established that the vehicle search was unlawful. 131 S. Ct. at 2428. Under the same principle, if the warrantless installation and monitoring of the GPS tracker in this case was "objectively reasonable" under then-"binding appellate precedent," suppression is not warranted, even if it turns out that the agents should have gotten a warrant first. *Id.* at 2423-24. [viii]

Therefore, the First Circuit had to decide whether agents were following valid binding precedent when they installed and monitored the GPS device on Sparks' vehicle. The court first noted that the precedent must be "clear and well-settled" for the good faith exception to apply. The two cases relied upon to support the agents actions in this case are the United States Supreme Court case of the *United States v. Knotts* and the *United States v. Moore* [ix], from the First Circuit. Describing *Moore*, the First Circuit stated:

In *Moore*, we considered the government's warrantless installation and use of "beepers" (battery-powered radio transmitters) to track the movements of the defendants' vehicles on

public roads. 562 F.2d at 110-13. We concluded that "[w]hile a driver has no claim to be free from observation while driving in public, he properly can expect not to be carrying around an uninvited device that continuously signals his presence." *Id.* at 112. Balancing these considerations and the needs of law enforcement, we held that "while the lessened expectancy of privacy associated with motor vehicles justifies the use of beepers without a warrant to track vehicles, this can be done only if the officers have probable cause at the time." *Id.* at 112-13. Importantly for present purposes, we focused almost exclusively on the defendants' privacy interests in their movements, dismissing "the trespass involved in affixing the beepers to the underbody of the vehicles" as "so minimal as to be of little consequence." *Id.* at 111. [x]

Also, describing *Knotts*, the First Circuit stated:

In *Knotts*, the Court held that "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." 460 U.S. at 281. For that reason, the use of a beeper to track the defendant's movements on public roads involved "neither a 'search' nor a 'seizure' within the contemplation of the Fourth Amendment." *Id.* at 285. *Knotts* thus abrogated Moore's probable-cause requirement for beeper surveillance, but it did not address the issue of a beeper's installation on the defendant's property, see *id.* at 286 (Brennan, J., concurring in the judgment), leaving undisturbed Moore's conclusion that the trespass involved in attaching a beeper to a car was "of little consequence." [xi]

The court then held that it was reasonable for the agents to use the GPS device in Sparks' case based upon reliance on clear precedent.

However, the court noted that they did not decide the issue of whether any exceptions to the warrant requirement exist for future installation use of the GPS device to monitor suspect's movements. Therefore, future use of such GPS monitoring is governed under the *United States v. Jones*. [xii]

As such, the court of appeals affirmed the denial of the motion to suppress.

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**Note:** Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a



local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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**CITATIONS:**

- [i] 132 S.Ct. 945 (2012)
  - [ii] 711 F.3d 58 (2013)
  - [iii] *Id.*
  - [iv] 460 U.S. 276 (1983)
  - [v] 132 S.Ct. 945 (2012)
  - [vi] Sparks, 711 F.3d 58
  - [vii] 131 S. Ct. 2419 (2011)
  - [viii] 711 F.3d at
  - [ix] 562 F.2d 106 (1st Cir. 1977)
  - [x] 711 F.3d at
  - [xi] *Id.*
  - [xii] 132 S.Ct. 945 (2012)
-

**Davis, Rheta R**

---

**From:** Coleman, Kirk  
**Sent:** Monday, January 26, 2015 1:51 PM  
**To:** Causapin, Nenette  
**Cc:** Crum, Omega  
**Subject:** Re: Pen-Link, Ltd - - INV\_13265

No talk to Omega.

Sent from my iPhone

On Jan 26, 2015, at 1:48 PM, "Causapin, Nenette" <[NCausapin@oaklandnet.com](mailto:NCausapin@oaklandnet.com)> wrote:

Do you know about this bill? Thanks.

<image001.png>

---

**From:** Kealey Butler [<mailto:kbutler@penlink.com>]  
**Sent:** Monday, January 26, 2015 6:16 AM  
**To:** Jones, Trevelyon; Crum, Omega; Causapin, Nenette  
**Subject:** Pen-Link, Ltd - - INV\_13265

Good morning,

Attached is invoice 13265 for the purchase of an additional audio channel. If you have any questions, please feel free to contact John or me at any time.

Regards,

<image003.jpg>

**Kealey Butler |Accountant**  
5944 VanDervoort Drive | Lincoln, NE 68516 | USA  
402.421.8857 Office | 402.421.9287 Fax  
[kbutler@penlink.com](mailto:kbutler@penlink.com) | [www.penlink.com](http://www.penlink.com)

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<INV\_13265.pdf>

**Davis, Rheta R**

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5944 VanDervoort Drive | Lincoln, NE 68516 | USA  
402.421.8857 Office | 402.421.9287 Fax  
[kbutler@penlink.com](mailto:kbutler@penlink.com) | [www.penlink.com](http://www.penlink.com)

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<INV\_13265.pdf>

**Davis, Rheta R**

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**To:** Jones, Trevelyon; Crum, Omega; Causapin, Nenette  
**Subject:** Pen-Link, Ltd - - INV\_13265  
**Attachments:** INV\_13265.pdf  
  
**Categories:** Red Category

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**PEN-LINK, LTD**  
5936 VanDervoort Drive  
Lincoln, NE 68516  
PH: (402)-421-8857

Date	1/26/2015
Page	1

**Bill To:**

Oakland PD-Oakland-ND

**Ship To:**

Oakland PD-Oakland-ND

Contract Number

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Ship Date
	00005-0000-00	JMS	ELECTRONIC	Net 30	1/26/2015
Ordered	Item Number	Description	Unit Price	Ext. Price	
1	C-SF-CCC	Call Content Channel	\$7,500.00	\$7,500.00	

**Please Remit to Above Address**

Subtotal	\$7,500.00
Tax	\$0.00
Total	\$7,500.00

**Davis, Rheta R**

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**From:** Johnson, Qiana  
**Sent:** Thursday, January 22, 2015 2:37 PM  
**To:** Arreola, Lorena  
**Subject:** Sample Tracker Warrant  
**Attachments:** TrackerSample.doc

**Ofc. Q. Johnson**  
Burglary Section  
Criminal Investigations Division  
Oakland Police Department  
Office 510-238-3953 / Cell 510-593-0957  
[qjohnson@oaklandnet.com](mailto:qjohnson@oaklandnet.com)