

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA
V.

DAMIAN LAMONT PATRICK

JUDGMENT IN A CRIMINAL CASE

Case Number: **13-Cr-234**

USM Number: **13024-089**

Christopher D. Donovan

Defendant's Attorney

Bridget J. Domaszek

Assistant United States Attorney

THE DEFENDANT:

- pleaded guilty to count(s) One (1) of the Indictment
- pleaded nolo contendere to count(s) _____
which was accepted by the court.
- was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Being a Felon in Possession of a Firearm	October 28, 2013	1

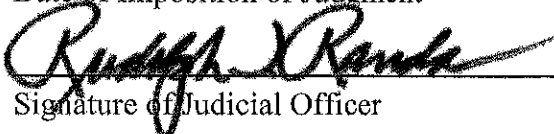
The defendant is sentenced as provided in Pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States attorney of material changes in economic circumstances.

June 25, 2015

Date of Imposition of Judgment


Signature of Judicial Officer

Hon. Rudolph T. Randa, U. S. District Judge

Name & Title of Judicial Officer

June 29, 2015

Date

Defendant: **Damian Lamont Patrick**
Case Number: **13-Cr-234**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of : **57 months.**

Defendant shall be given credit for time served, if any, as determined/calculated by the United States Bureau of Prisons.

The court makes the following recommendations to the Bureau of Prisons:

- (1) Defendant be placed at a facility as close to Wisconsin as possible;**
- (2) Defendant participate in the 500-hour Intensive Drug Treatment Program.**

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district.

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

before 12:00 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Defendant: **Damian Lamont Patrick**Case Number: **13-Cr-234****SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **Three (3) years.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and two drug tests thereafter within one year.

- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.** (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without permission of the Court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer;
- 3) the defendant shall use the defendant's best efforts to support the defendant's dependents;
- 4) the defendant shall use the defendant's best efforts to find and hold lawful employment, unless excused by the probation officer for schooling, training, or other acceptable reasons (e.g., childcare, eldercare, disability, age or serious health condition);
- 5) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment; When such notification is not possible, the defendant shall notify the probation officer within 72 hours of the change;
- 6) the defendant shall not knowingly go to places or enter buildings where controlled substances are unlawfully sold, used, distributed or administered.;
- 7) the defendant shall not associate with any persons known to the defendant to be engaged, or planning to be engaged, in criminal activity, and shall not associate with any person known by the defendant to be a felon, absent permission to do so by the probation officer except with siblings and at family gatherings. "Associate," as used here means reside, socialize, meet, communicate or otherwise interact with such person;
- 8) the defendant shall permit a probation officer to visit the defendant at reasonable times at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 9) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 10) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

Defendant: **Damian Lamont Patrick**
Case Number: **13-Cr-234**

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant is to participate in a program of testing to include not more than six urinalysis tests per month and residential or outpatient treatment for drug and alcohol abuse, as approved by his supervising probation officer, until such time as he is released from such program. The defendant shall pay the cost of this program under the guidance and supervision of his supervising probation officer. The defendant is to refrain from use of all alcoholic beverages throughout the supervised release term.
2. The defendant is to participate in the Cognitive Intervention Program, if available, under the guidance and supervision of the supervising probation officer.
3. The defendant shall not have any contact with any member of the Brother's of the Struggle (BOS) street gang, or any gang.

Defendant: **Damian Lamont Patrick**
 Case Number: **13-Cr-234**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<u>Totals:</u>	\$100.00	waived	none

The determination of restitution is deferred until _____ An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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Totals: \$ _____ \$ _____

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Defendant: **Damian Lamont Patrick**
Case Number: **13-Cr-234**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A Lump sum payment of \$ _____ due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E or F below; or
- B **Payment to begin immediately** (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F **Special instructions regarding the payment of criminal monetary penalties:**

Payments are due immediately, through the Clerk of Court, but may be paid from prison earnings in compliance with the Inmate Financial Responsibility Program in payment of the Special Assessment. The defendant's participation in the Inmate Financial Responsibility Program is voluntary.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
Defendant and Co-Defendant Names, Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case Number: 13-CR-234

NOTICE OF APPEAL

DAMIAN PATRICK,

Defendant.

Notice is hereby given that Damian Patrick, defendant in the above named case, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the judgment entered in this action on June 25th, 2015.

Dated this 8th day of July, 2015.

/s/ Christopher Donovan
Christopher Donovan
Attorney for Damian Patrick

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing pleading was served via ECF to the U.S. Attorney's Office, on this 8th day of July, 2015:

Bridget Domaszek
Assistant U.S. Attorney
517 East Wisconsin Ave, Room 530
Milwaukee, Wisconsin 53202

/s/ Christopher Donovan
Christopher Donovan
Attorney for Damian Patrick

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 13-CR-234

DAMIAN PATRICK,

Defendant.

RECOMMENDATION ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

I. PROCEDURAL BACKGROUND

On November 26, 2013, a federal grand jury sitting in this district returned an indictment against Damian Patrick, charging Patrick with knowingly possessing a firearm as a previously convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Patrick was arraigned on December 19, 2013, and he pled not guilty to the above-mentioned charge. The case was assigned to United States District Judge Rudolph T. Randa for trial and to United States Magistrate Judge Patricia J. Gorence for pretrial processing.

On January 11, 2014, Patrick filed a motion to suppress in which he argued that he was seized unlawfully and without reasonable suspicion. Judge Gorence held an evidentiary hearing on Patrick's motion on February 4, 2014. At the hearing, the court heard testimony from two law enforcement officers from the Milwaukee Police Department (MPD). Following their testimony, Patrick requested to withdraw his motion, which Judge Gorence granted.

Thereafter, on April 29, 2014, Patrick's attorney filed a motion to withdraw as counsel of record. Judge Randa granted the motion the following day and appointed new counsel to represent Patrick. On July 3, 2014, Patrick filed a motion for leave to file a new motion to suppress. Judge Randa approved Patrick's motion and referred the matter back to Judge Gorence. During a status conference, counsel for the parties agreed that another evidentiary hearing was unnecessary. Moreover, Patrick's attorney requested that his motion for leave to file a motion to suppress also serve as his opening suppression motion. The court agreed and set out a briefing schedule on Patrick's motion. Patrick filed a brief in support of his motion to suppress on August 1, 2014. The government filed its response on August 14, 2014, and Patrick filed a reply on August 21, 2014.

On September 17, 2014, the case was reassigned to this court for pretrial processing. Patrick's trial before Judge Randa currently is adjourned, and a new date has not yet been set. Now pending before this court is Patrick's motion to suppress, which is fully briefed and ready for resolution. For the reasons that follow, I will recommend that Patrick's motion be denied.

II. FACTUAL BACKGROUND

On October 28, 2013, law enforcement officers from MPD observed Patrick sitting in the passenger seat of a vehicle that was parked in an alley behind an apartment complex located at 5909 N. Teutonia Ave., in the City of Milwaukee. At that time, the officers were aware that Patrick was wanted for violating his probation/extended supervision. The officers ordered Patrick to exit the vehicle and, as he did, they observed a firearm on the floor of the vehicle between Patrick's feet. Patrick was then taken into custody.

At the February 4, 2014 evidentiary hearing, Patrick learned that law enforcement located him on October 28, 2013, by tracking his cell phone. (Hr'g Tr. 34.)¹ On October 27, 2013, Milwaukee County Circuit Court Judge Maria Carolina Stark issued an order authorizing, among other things, the disclosure of location information for a cell phone that was known to be used by Patrick. Accordingly, the court will summarize the contents of that state court order as well as its supporting application and affidavit.

On October 27, 2013, MPD officer Mark Harms submitted a sworn affidavit in support of an application by the Milwaukee County District Attorney's Office for three orders: (1) an order approving the installation and use of a trap and trace device; (2) an order approving the installation and use of a pen register device; and (3) an order approving the release of certain subscriber information, including what is commonly referred to as cell-site location information. (Govt. Ex. A at 6-10, ECF No. 42-1 [hereinafter "Ex. A"].) Officer Harms indicated that he was "conducting or assisting with a criminal investigation involving the offense(s) of Violation of Probation as detailed in Wisconsin Statute §§ 973.10" and that the information sought "would be useful to investigators." (Ex. A at 6, para. 2.)

Officer Harms then recounted his training, experience, and knowledge concerning electronic surveillance. (Ex. A at 6-7, paras. 3a-k.) Thereafter, Officer Harms set forth the specific facts he believed supported the request for the three orders:

¹ Apparently, this fact was not disclosed in any reports generated by law enforcement. Rather, the three officers who prepared reports concerning their involvement in Patrick's arrest indicated, respectively: (1) law enforcement "obtained information" of Patrick's location; (2) law enforcement had "prior knowledge" that Patrick was occupying the vehicle, which officers observed while on patrol; and (3) law enforcement "obtained information from an unknown source" that Patrick was inside the vehicle at that location. (ECF No. 12-1.) The government now readily acknowledges that law enforcement determined Patrick's location on October 28, 2013, by tracking his cell phone. (ECF No. 42.)

On July 27th 2013, the Wisconsin Department of Corrections entered a valid felony warrant for Damian L. Patrick, black male, . . . regarding Violation of Parole. To date (10-27-2013), the Felony Violation of Parole warrant for Damian Patrick is currently valid. On today's date 10-27-2013, I PO Mark Harms, FBI SA Jason Soule and FBI SA Rich Bilson, conducted a meeting with a CW (cooperating witness) that has a child in common with Damian Patrick. The CW stated she has been talking and texting Damian Patrick over the past two days on his number 414-484-9162. The CW placed a telephone call to Damian Patrick at 414-484-9162 and put the call on speaker. The CW addressed Damian Patrick by his first name and he responded with conversation. A check through open source data bases revealed the cell phone carrier for number 414-484-9162 is Sprint.

(Ex. A at 8, para. 3l.) Officer Harms indicated that, based on the above facts, "the information likely to be obtained by the installation and use of the pen register and trap and trace device is relevant to an ongoing criminal investigation, related to the offense(s) of Violation of Probation in violation of Wisconsin Statute § 973.10." (Ex. A at 8, para. 3n.) Officer Harms further indicated that "there is probable cause to believe that the physical location of the cellular telephone will reveal evidence of the crime of Violation of Probation in violation of Wisconsin Statute § 973.10." (*Id.*)

Christopher Ladwig, an assistant district attorney (ADA) for Milwaukee County, submitted the application for the orders. (Ex. A at 9-10.) ADA Ladwig stated that the application was made pursuant to Wisconsin Statute § 968.35 and 18 U.S.C. § 2703(c)(1)(B) and (d), § 2711(3), § 3117, and § 3127(2)(B). (Ex. A at 9.) He further stated that "there are reasonable grounds to believe that the requested telecommunications records are relevant and material to this ongoing criminal investigation." (Ex. A at 10, para. 2b.) ADA Ladwig concluded, based on Officer Harms' affidavit, "that probable cause exists for an order approving the release of cellular tower activity, cellular tower location, cellular toll information and cellular telephone global positioning system (GPS) location information,

if available, that will permit identification of the physical location of the target cellular phone." (Ex. A at 10, para. 2c.)

Judge Stark signed the order that same day, which was issued pursuant to Wisconsin Statute § 968.35 and 18 U.S.C. § 2703(c)(1)(B) and (d), § 2711(3), § 3117, § 3125 and § 3127(2)(B). (Ex. A at 1-5.) Based on the application and supporting affidavit, Judge Stark found that Patrick was believed to be utilizing the cell phone assigned the number stated in the affidavit; Patrick was the subject of an investigation; the physical location of the cell phone was unknown; and the affidavit offered "specific and articulable facts showing that there are reasonable grounds to believe that the records and information sought by the applicant are relevant and material to an ongoing criminal investigation." (Ex. A at 1-2, paras. 1-4.) Judge Stark further found that "[t]here is probable cause to believe that the physical location of the target cellular telephone will reveal evidence of the Violation of Parole in violation of Wisconsin Statutes § 973.10." (Ex. A at 2, para. 5.)

Accordingly, the court approved (1) the installation and use of a trap and trace device; (2) the installation and use of a pen register device; and (3) the release of cell-site location information related to the target cell phone. (Ex. A at 2-3, paras. 1-3.) The court ordered Sprint to provide the cell-site location information from July 27, 2013, to the date the order was signed and extending sixty days thereafter. (Ex. A at 4.)

The order was served upon Sprint that same day, (Ex. A at 5), and law enforcement agents began obtaining data related to the location of the target cell phone. Just before noon on October 28, 2013, law enforcement established physical surveillance of Patrick by using

the cell-site location information. Officers then followed Patrick to the area of 5909 N. Teutonia Ave., where ultimately he was arrested.

III. DISCUSSION

Patrick argues that he was unlawfully searched when law enforcement officers located him on October 28, 2013, by tracking his cell phone. Specifically, Patrick maintains that the state court order issued by Judge Stark does not constitute a warrant under the Fourth Amendment and, at any rate, the order's supporting documents failed to satisfy the Fourth Amendment's probable cause standard. Patrick further contends that none of the authority cited in the order or its supporting documents provided adequate authorization to track his cell phone. He also asserts that the unlawful tracking of his cell phone cannot be saved by any exception to the warrant requirement because Officer Harms was dishonest in preparing the supporting affidavit, and the order was so lacking in probable cause as to render law enforcement's belief in its validity entirely unreasonable. Accordingly, Patrick seeks an order suppressing from use at trial all evidence recovered after the government's illegal search—namely, the firearm found at Patrick's feet when he exited the vehicle.

In response, the government argues that the application and affidavit in support of the state court order were supported by probable cause. Specifically, the government maintains that Officer Harms' affidavit established that Patrick was the user of the target cell phone and that he had not been apprehended in three months, despite the existence of a valid probation violation warrant. Coupled with Officer Harms' description of electronic surveillance, these facts established probable cause to believe that evidence of Patrick's whereabouts would be found by obtaining the cell-site location information. Moreover, the

government contends that the state court order is the functional equivalent of a warrant and that the order and its supporting documents cited authority that authorizes the disclosure of prospective cell-site location information. Alternatively, the government asserts that law enforcement officers relied in good faith on Judge Stark's decision to issue the order and, therefore, the *Leon*² good faith exception to the warrant requirement applies and dictates that the evidence should not be suppressed.

The ability of law enforcement to track an individual's cell phone in real time is an evolving and somewhat unsettled area of law. One of the principal issues in this ongoing debate is whether such tracking constitutes a "search" within the meaning of the Fourth Amendment and thereby requires a warrant supported by probable cause. Compare *United States v. Skinner*, 690 F.3d 772, 781 (6th Cir. 2012) (finding that the defendant did not have a reasonable expectation of privacy in the GPS data and location of his cell phone and, therefore, such real-time tracking was not a search) with *State v. Earls*, 70 A.3d 630, 639-40, 644 (N.J. 2013) (requiring a warrant) (collecting cases). Although the Seventh Circuit Court of Appeals has yet to definitely weigh in on this issue, see *United States v. Thousand*, 558 F. App'x 666, 670 (7th Cir. 2014) ("We have yet to address whether . . . cell-tower information that telecommunication carriers collect is protected by the Fourth Amendment."), the parties here agree that, at least in this district, law enforcement must obtain a warrant supported by probable cause to obtain real-time location data for Patrick's cell phone, see, e.g., *In re United States*, 412 F. Supp. 2d 947 (E.D. Wis. 2006) (Callahan, Jr., J.) (denying government's application for an order authorizing the disclosure of prospective cell-site information

² *United States v. Leon*, 468 U.S. 897 (1984).

exclusively pursuant to the combined authority of 18 U.S.C. § 2703 and § 3122), *aff'd*, 2006 U.S. Dist. LEXIS 73324, at *22 (E.D. Wis. Oct. 6, 2006) (Adelman, J.) (holding that “the government must meet the probable cause standard to obtain cell site information”). This, however, is where the parties’ agreement ends.

At times, the parties’ arguments tend to muddy the waters and drift away from the “real” issue at hand. As the muck settles, the issue becomes clear: Did law enforcement officers violate the Fourth Amendment when they determined Patrick’s location by tracking his cell phone in real time pursuant to a state court order? Consequently, whether the order and its supporting documents cited the proper statutory authority, or whether the order satisfied the requirements of Rule 41 of the Federal Rules of Criminal Procedure, is largely irrelevant. Those authorities are subservient to the Fourth Amendment, and there is no suggestion that the failure to comply with Rule 41 violated any of Patrick’s constitutional rights. *See, e.g., In re United States ex rel. an Order Authorizing Disclosure of Location Information of a Specified Wireless Telephone*, 849 F. Supp. 2d 526, 564 (D. Md. 2011); *see also United States v. Harrington*, 504 F.2d 130, 133-34 (7th Cir. 1974).³ Likewise, that the document purportedly authorizing the disclosure of the cell-site location information is labeled an “order” rather than a “warrant” is a distinction without a difference. Just as a rose by any other name would smell as sweet, a warrant by another name is still a warrant, provided that the

³ That the order failed to comply with the “ministerial terms” of Rule 41(e) and (f) should not invalidate the search. *See Harrington*, 504 F.2d at 134. The order was executed on the same day that Judge Stark issued it, (Ex. A at 5), and the “daytime”/“any time” distinction is rather irrelevant given the nature of the data sought. Likewise, as will be shown, law enforcement officers sought the particular information so that they could locate and apprehend Patrick. Thus, Patrick’s property rights were not inadequately protected just because the order apparently was not returned.

document comports with the "Warrant Clause" of the Fourth Amendment. Accordingly, the court's analysis will begin and, as will be shown, end with the Fourth Amendment.

The Fourth Amendment reads in full:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The Supreme Court has stated that the words of the second clause of the Fourth Amendment, referred to as the "Warrant Clause," are "precise and clear" and require only three things:

First, warrants must be issued by neutral, disinterested magistrates. *See, e. g., Connally v. Georgia*, 429 U.S. 245, 250-251 (1977) (per curiam); *Shadwick v. Tampa*, 407 U.S. 345, 350 (1972); *Coolidge v. New Hampshire*, 403 U.S. 443, 459-460 (1971). Second, those seeking the warrant must demonstrate to the magistrate their probable cause to believe that "the evidence sought will aid in a particular apprehension or conviction" for a particular offense. *Warden v. Hayden*, 387 U.S. 294, 307 (1967). Finally, "warrants must particularly describe the 'things to be seized,'" as well as the place to be searched. *Stanford v. Texas*, *supra*, at 485.

Dalia v. United States, 441 U.S. 238, 255 (1979).

The state court order at issue here easily satisfies the first and third requirements of the Warrant Clause. The order was issued by a neutral, disinterested state court circuit judge, and the order particularly describes the information to be seized from a specific cell phone. Patrick makes no argument to the contrary. Nevertheless, the parties vehemently disagree as to whether the order's supporting documents satisfied the requisite probable cause showing under the Fourth Amendment. And, more precisely, the parties disagree as

to what that requisite showing is. In other words, the order must establish probable cause of what?

The government maintains that “the information in support of the order established probable cause to believe that evidence of Patrick’s whereabouts would be found by obtaining the location data for his cellular telephone.” (Govt.’s Resp. 8.) Patrick necessarily concedes the truth of this statement – that is, there was a fair probability that he would be located by tracking his cell phone. (Def.’s Reply 6.) However, Patrick argues, this statement does not accurately set forth the probable cause standard as described in *Illinois v. Gates*, 462 U.S. 213 (1983).⁴ In *Gates*, the Supreme Court determined that a search warrant affidavit establishes probable cause if, given all the circumstances, “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” 462 U.S. at 238.

According to Patrick, Officer Harms’ affidavit clearly did not allege that the cell-site location information would lead to finding any “contraband” in a particular place; he himself was not contraband merely by way of the outstanding probation violation warrant. Patrick further argues that the affidavit failed to allege that “evidence of a crime” would be found in a particular location. While the affidavit asserted that the physical location of the target cell phone would reveal “evidence of the crime of Violation of Probation in violation of Wisconsin Statute § 973.10,” (Ex. A at 8, para. 3n), violating one’s probation is not a crime and § 973.10 is not a criminal statute. And, having an outstanding violation warrant is not a crime either. Consequently, Patrick maintains that the state court order is invalid because

⁴ Patrick also cites the Supreme Court’s holding in *Florida v. Harris*, 133 S. Ct. 1050 (2013). However, *Harris* involved a warrantless search of an automobile.

the supporting affidavit failed to allege that there was a fair probability that contraband or evidence of a crime would be found in a particular place.

Although Patrick's recitation of the probable cause standard is not entirely inaccurate, it is incomplete. The Supreme Court has stated that, in addition to seeking contraband or evidence of a crime, "it is reasonable, within the terms of the Fourth Amendment, to conduct otherwise permissible searches for the purpose of obtaining evidence which would aid in apprehending and convicting criminals." *Hayden*, 387 U.S. at 306. "[T]he Supreme Court has consistently reiterated this formulation" of the Fourth Amendment probable cause standard. See *In re Smartphone Geolocation Data Application*, 977 F. Supp. 2d 129, 134 (E.D.N.Y. 2013) (collecting cases). Likewise, the Seventh Circuit has quoted *Hayden's* "aid in apprehension" language in several opinions and has also utilized this language to describe the requisite Fourth Amendment probable cause finding. See, e.g., *United States v. Lisk*, 522 F.2d 228, 230-31 (7th Cir. 1975) (upholding the lawfulness of a seizure of "mere evidence" based on "a reasonable belief that it would aid in a particular apprehension or conviction"); *United States v. Anton*, 633 F.2d 1252, 1254 (7th Cir. 1980) ("Probable cause exists when it is reasonably believed that the evidence sought will aid in a particular apprehension or conviction for a particular offense and that the evidence is located in the place to be searched.")

Here, the affidavit at issue demonstrated that law enforcement was attempting to apprehend Patrick based on the July 27, 2013 felony violation of probation/parole warrant. Officer Harms swore that on October 27, 2013, the day he composed and submitted the affidavit, the warrant was still valid and apparently had not yet been executed. The

affidavit further demonstrated that the prospective cell-site location information could reasonably assist in Patrick's apprehension. On October 27, a CW who had a child in common with Patrick met with law enforcement agents and told them that she had been talking with and texting Patrick on a specific cell phone number over the past two days. In the presence of the agents, the CW called Patrick on that number, placed the call on speaker phone, addressed Patrick by his first name, and Patrick responded with conversation.

Patrick argues that these facts are "completely conclusory." The court disagrees. The above facts demonstrate that Patrick was the user of the target cell phone and that he was the subject of a valid probation violation warrant, which had not been executed during its three months of existence. Nothing more was needed to obtain the information sought by the government. As the Supreme Court has stated, "the probable-cause standard is . . . a 'practical, nontechnical conception.'" *Gates*, 462 U.S. at 231 (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)). It would be impractical if the government were unable to obtain search warrants for information that would aid in the execution of a valid violation warrant merely because the object to be seized does not constitute "evidence of a crime" in the technical sense.

Indeed, the law already permits the issuance of search warrants to assist law enforcement officers in executing an arrest warrant. Specifically, the government can obtain a warrant to search for a defendant subject to an arrest warrant in a particular place, even if that particular place is the private home of a third party. See *Steagald v. United States*, 451 U.S. 204, 214 (1981); see also Fed. R. Crim. P. 41(c)(4). But, according to Patrick's definition of probable cause, the government cannot obtain a search warrant to obtain data that would

assist in locating the same defendant. Such a distinction would defy common sense. Put simply, the above facts are sufficient to sustain a search warrant for information that reasonably could facilitate capture of Patrick.⁵

In sum, Judge Stark had a "substantial basis" for concluding that probable cause existed when she issued the state court order authorizing the disclosure of location information related to Patrick's cell phone because the information sought would "aid in a particular apprehension." *See Gates*, 462 U.S. at 236 (quoting *Jones v. United States*, 362 U.S. 257, 271 (1960)) (quotation marks omitted). Consequently, the order at issue here effectively served as a warrant that complied with the three requirements of the Warrant Clause of the Fourth Amendment and, therefore, no further authorization was required for the government to track Patrick's cell phone.⁶ Given the court's ruling, there is no need to address the government's alternative argument that the order is saved by the *Leon* good faith exception. Nevertheless, considering the unsettled nature of this area of law, it seems certain that the exception would apply. Accordingly, the court will recommend that the district judge deny Patrick's motion to suppress.

NOW THEREFORE IT IS RECOMMENDED that the defendant's motion to suppress (ECF No. 41) be **DENIED**.

⁵ Patrick does not specifically attack the reasonableness of the order's execution. Nevertheless, the court notes that the order was executed on the same day that Judge Stark issued it, and Patrick was apprehended the following day at approximately 12:10 p.m. Thus, although one could argue that it may be unreasonable to allow law enforcement officers to obtain this information for a period not to exceed sixty days when they merely are attempting to locate a wanted subject, the particular facts and circumstances here present no such concerns.

⁶ Notably, the Wisconsin Supreme Court recently upheld the lawfulness of a "search" under circumstances very similar to those present in the instant action. *See State v. Tate*, 849 N.W.2d 798 (Wis. 2014).

Your attention is directed to 28 U.S.C. § 636(b)(1)(B) and (C), and Federal Rule of Criminal Procedure 59(b)(2) (as amended effective December 1, 2009), whereby written objections to any recommendation herein or part thereof may be filed within fourteen days of the date of service of this recommendation. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Courtesy paper copies of any objections shall be sent directly to the chambers of the district judge assigned to the case. Failure to file a timely objection with the district court shall result in a waiver of a party's right to appeal.

Dated this 30th day of September 2014, at Milwaukee, Wisconsin.

BY THE COURT:

s/ William E. Callahan, Jr.
WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 13-CR-234

DAMIAN PATRICK,

Defendant.

DECISION AND ORDER

Magistrate Judge William E. Callahan, Jr. has recommended to this Court that Defendant Damian Patrick's (Patrick) motion to suppress be denied.

Patrick has objected, the government has filed a response, and the Court has reviewed the decision and the responses. Because the Court thinks that Magistrate Judge Callahan has utilized precedent that is more cogent than that relied upon by Patrick, the Court will adopt Magistrate Judge Callahan's recommendation and deny the motion to suppress.

IT IS HEREBY ORDERED THAT:

Patrick's motion to suppress (ECF No. 41) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 7th day of January, 2015.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge

**IN THE MATTER OF AN APPLICATION BY THE
MILWAUKEE COUNTY DISTRICT ATTORNEY OFFICE
FOR THE FOLLOWING ORDERS:**

- (1) An order approving the installation and use of a trap and trace device or process.
 - (2) An order approving the installation and use of a pen register device / process or Dialed Number Recorder (DNR) on a cellular telephone line, a designated Electronic Serial Number (ESN), an International Mobile Subscriber Identifier (IMSI), an International Mobile Equipment Identifier (IMEI), or other cellular lines of a particular subscriber.
 - (3) An order approving the release of subscriber information, incoming and outgoing call detail, cellular tower activity, cellular tower location, text header information, cellular toll information and cellular telephone global positioning system (GPS) location information, if available, and authorizing the identification of the physical location of a target cellular telephone.
-

ORDER

This matter comes before the court pursuant to an Application by Christopher Ladwig, a[n] Assistant District Attorney, for Milwaukee County, for the above requested orders pursuant to Wisconsin Statutes § 968.35 and 18 U.S.C. §§ 2703(c)(1)(B) and (d), 2711(3), 3117 and 3127(2)(B), and 18 USC § 3125, that;

Based upon the application and the supporting affidavit of Mark Harms, the court finds that;

- (1) Damian Patrick, black male, 05-21-1988 is believed to be utilizing the cellular telephone assigned the number 414-484-9162.
- (2) Damian Patrick, black male, 05-21-1988 is the subject of the investigation.
- (3) The number 414-484-9162 is the number of the cellular telephone. The physical location of this cellular telephone is unknown.
- (4) The applicant has certified that the information likely to be obtained by the installation and use of the pen register and trap and trace device is relevant to an ongoing criminal investigation, related to the offense(s) of Violation of Parole in

EXHIBIT

 A

violation of Wisconsin Statutes § 973.10.

The Affidavit of Mark Harms offers specific and articulable facts showing that there are reasonable grounds to believe that the records and information sought by the applicant are relevant and material to an ongoing criminal investigation.

- (5) There is probable cause to believe that the physical location of the target cellular telephone will reveal evidence of the Violation of Parole in violation of Wisconsin Statutes § 973.10.
- 6) Disclosure to any person of this investigation or this application and Order will result in (1) assisting Damian L. Patrick, black male, 05-21-1988, and/or his/her associate[s], in flight to avoid prosecution; (2) destruction of or tampering with evidence;

THE COURT HEREBY

- (1) Approves the installation and use of a trap and trace device or process related to 414-484-9162
- (2) Approves the installation and use of a pen register device / process or Dialed Number Recorder (DNR) on a cellular telephone line 414-484-9162, a designated Electronic Serial Number (ESN), an International Mobile Subscriber Identifier (IMSI), an International Mobile Equipment Identifier (IMEI), or other cellular lines of a particular subscriber.
- (3) Approves the release of information, including but not limited to ESN, MSID, IMSI, IMEI, MEID, MDN, cellular tower activations, cellular tower location, signaling information, cellular toll information, text header information, dialed digit extraction, party join/hold/drop messages, numbers dialed and incoming number identified without geographic limitation, subject initiated dialing and signaling information, direct connect activity with originating and terminating urban area codes and ACGLD at call origination, duration and call termination, In-band and

Out-of-band signaling information, a listing of all control channels and their corresponding cell sites, engineering maps or spread sheets if a map is not available that shows all cell site/tower locations by address, latitude / longitude, sector and orientation for the state of Wisconsin or any other state where the target phone/wireless device may be located, inclusion of subject initiated conference calls and timing and cellular telephone global positioning system (GPS) location information or other precision locating information, if available, and authorizes the identification of the physical location of the target cellular telephone. Such service provider shall initiate a signal to determine the location of the subject's mobile device on the service provider's network or with such other reference points as may be reasonable available and at such intervals and times as directed by the law enforcement agent serving this order. The information authorized in this order shall be released to the Wisconsin Department of Justice, Division of Criminal Investigation, the United States Marshals Service, and/or any other law enforcement agency the Department of Justice may designate and the Milwaukee Police Department.

IT IS HEREBY ORDERED, pursuant to Wisconsin Statute § 968.35 and 18 U.S.C. §§ 2703(c)(1)(B) and (d), 2711(3) and 3127(2)(B) and 2703(e)(1)(B) and (d), that Sprint and/or any other providers of electronic communication service or remote computing service whose assistance is needed to comply with this Order, shall provide all technical assistance necessary to accomplish this order and disclose the records and other information described herein twenty-four hours a day; that assistance shall include switch-based solutions including ranging reports and precision location based information queries and Sprint is required to lend all reasonable assistance to permit the Wisconsin Department of Justice, Division of Criminal Investigation, any other law enforcement agency the Department of Justice may designate and the Milwaukee Police Department to triangulate target location, including but not limited to terminating interfering service on the target cellular telephone.

IT IS FURTHER ORDERED that the electronic communications service providers for these cellular/wireless numbers provide subscriber information, billing information, call detail

information, any historical information law enforcement may request to include historical cell site information from July 27th 2013 through this order's duration and subscriber and billing information for the target cellular/wireless device or any other cellular/wireless devices that may be identified in the course of this investigation communicating with the target line.

IT IS FURTHER ORDERED that this order shall cover and be applied to any and all phone lines or services being provided to the target of this investigation, named herein, and any changes (including additions, deletion, and transfers) in service regarding the subscriber account, including changed cellular telephone numbers (MDN or MIN/MSID), network address (IMSI, IP and UFMID), equipment changes (e.g. ESN, MEID, IMEI and SIM) and subscriber information changes (published, non-published, listed or unlisted) for the duration of this order; which shall not exceed a period of sixty days, unless a court authorized extension is granted.

IT IS FURTHER ORDERED that Sprint and their resellers not terminate or restrict service to any cellular/wireless telephone covered by this order for the duration of this order. In the event that service must be extended beyond a billing issue, the Milwaukee Police Department will compensate Sprint for any charges associated with that service extension.

IT IS FURTHER ORDERED that agents from the Milwaukee Police Department shall compensate the providers for such costs as are reasonably necessary and which have been directly incurred in complying with this Order, as required in 18 U.S.C. §§ 2706.

IT IS FURTHER ORDERED, pursuant to Wisconsin Statute § 968.36(5)(a), that the orders be sealed until otherwise ordered by the court and pursuant to Wisconsin Statute § 968.36(5)(B) and 18 U.S.C. § 2705(b), that the providers, their agents and employees, shall not notify any other person of the existence of this court Order for a period of ninety (90) days from the date of this Order or until otherwise ordered by the court.

IT IS FURTHER ORDERED, that from July 27th 2013, to the date that the Order is signed, and extending sixty (60) days beyond the date that the order is signed, Sprint, shall provide the records and information described for cellular/wireless telephone assigned mobile identification number(s): 414-484-9162 unless the order is terminated earlier at law enforcement's request.

IT IS FURTHER ORDERED, that this order shall be in effect for a period not to exceed sixty days, unless a court approved extension is granted;

Dated at MILWAUKEE, Wisconsin, this 27 day of OCTOBER 2013.

BY THE COURT:

Carolina Maria Stark
JUDGE CAROLINA MARIA STARK
Milwaukee Circuit Court BRANCH 17

I hereby certify that I have served this Order upon SPRINT by mail and/or fax transmission and received confirmation of the Order's receipt.

10-27-13
Date D-015957

IN THE MATTER OF AN APPLICATION BY THE
MILWAUKEE COUNTY DISTRICT ATTORNEY OFFICE
FOR THE FOLLOWING ORDERS:

- (1) An order approving the installation and use of a trap and trace device or process.
- (2) An order approving the installation and use of a pen register device / process or Dialed Number Recorder (DNR) on a cellular telephone line, a designated Electronic Serial Number (ESN), an International Mobile Subscriber Identifier (IMSI), an International Mobile Equipment Identifier (IMEI), or other cellular lines of a particular subscriber.
- (3) An order approving the release of subscriber information, incoming and outgoing call detail, cellular tower activity, cellular tower location, text header information, cellular toll information, and cellular telephone global positioning system (GPS) location information, if available, and authorizing the identification of the physical location of the target cellular telephone.

AFFIDAVIT

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

I, Police Officer Mark Harms being duly sworn on oath states that:

- 1.) I am employed as a Police Officer with the Milwaukee Police Department, and has been a full-time sworn law enforcement officer for over 16 years;
- 2.) I am conducting or assisting with a criminal investigation involving the offense(s) of Violation of Probation as detailed in Wisconsin Statute §§ 973.10. In the course of that investigation, it became apparent that particular information found in cellular call records would be useful to investigators. The information useful to investigators was determined to be available from Sprint, a cellular service provider and communications common carrier as defined in 18 U.S.C. § 2510(10);
- 3.) In support of the request for the requested orders, I offer the following specific and articulable facts and circumstances to the court:
 - a. I am aware that subscriber information, incoming and outgoing call detail, cellular tower and toll information, phone enabled GPS or locating devices, electronic serial numbers of phones and other identifiers are useful in attempting to identify the physical location of a cellular/wireless device.

- b. I am aware that cellular telephone communications are routed through transmitters and receivers on towers, often called "cell towers" or "cell sites;"
- c. I am aware that the transmitters and receivers on these towers are articulated in such a way so as to divide the tower's footprint into thirds or 120 degree sectors, to cover the full radius around each cell tower;
- d. I also am aware that as cellular telephone users move around a tower, their communications are routed through the various tower sectors and when they move far enough away from the tower, the cellular communications are recognized and transmitted through other towers in closer proximity or with a stronger signal;
- e. I know that in order to maintain their networks and to properly bill their customers, cellular telephone companies record the site of the cell tower to which a cellular telephone sends its signals when a call is first placed, the telephone number dialed, the duration of the call, and the cell tower through which the call is being routed when the call ends;
- f. Based upon my experience, I believe that this cell tower information can assist in the locating of a given cellular telephone, but not pinpoint the location where the cellular telephone was used. Typically, the area could range anywhere from several square blocks to several square miles;
- g. I believe that the records I seek are collected by the cellular telephone company at the cell towers or sites and this application does not request any data stored within the customer's cellular telephone;
- h. Furthermore, by this application, I am only requesting records pertaining to calls and do not seek to intercept or otherwise obtain any part of a customer's cellular communications or conversations;
- i. I know that a pen register device or process records or decodes dialing, routing, addressing or signaling information from a given cellular telephone, as well as the telephone numbers, published and unpublished, of certain parties placing telephone calls from a given telephone;
- j. I also know that a trap and trace device or process captures incoming electronic or other impulses that tend to identify the originating number of an instrument or device from which an electronic communication was transmitted to a given telephone but does not reveal the location of that originating instrument;
- k. Through installation of a trap and trace device and pen register device as well as the provision of the other information identified above, law enforcement has the technological capability to engage in real time identification of the target cellular telephone location.

1. On July 27th 2013, the Wisconsin Department of Corrections entered a valid felony warrant for Damian L. Patrick, black male, 05-21-1988, regarding Violation of Parole. To date (10-27-2013), the Felony Violation of Parole warrant for Damian Patrick is currently valid. On today's date 10-27-2013, I PO Mark Harms, FBI SA Jason Soule and FBI SA Rich Bilson, conducted a meeting with a CW (cooperating witness) that has a child in common with Damian Patrick. The CW stated she has been talking and texting Damian Patrick over the past two days on his number 414-484-9162. The CW placed a telephone call to Damian Patrick at 414-484-9162 and put the call on speaker. The CW addressed Damian Patrick by his first name and he responded with conversation. A check through open source data bases revealed the cell phone carrier for number 414-484-9162 is Sprint.

- m. I checked the Internet database telcodata.us to confirm the cellular telephone carrier company. I have used this database in the past and found it to be reliable and correct. I entered the area code (414) and prefix 484 and found the number lists to Sprint. I also checked the Nuestar Wireless Portability Database and found that the phone has not been ported to another company.

- n. I submit that based upon the above stated facts, the information likely to be obtained by the installation and use of the pen register and trap and trace device is relevant to an ongoing criminal investigation, related to the offense(s) of Violation of Probation in violation of Wisconsin Statute § 973.10. Furthermore, there is probable cause to believe that the physical location of the cellular telephone will reveal evidence of the crime of Violation of Probation in violation of Wisconsin Statute § 973.10.

- o. Based upon my training and experience, I believe that it is necessary to protect the nature and scope of ongoing criminal investigations. Actionable information derived from pen registers and trap and trace devices is sensitive, and the premature disclosure of such information may cause the target of this investigation or persons with whom the target associates to change their current practices. This disclosure, in effect, would make it extremely difficult for law enforcement to utilize existing technologies to aid in the apprehension of known or suspected criminals and to protect the public. I request that this sealing period begin upon execution of the Order and continue for a period of ninety (90) days, or by further order of the court.

The information contained herein is true to the best of my knowledge and belief.

P.O. [Signature]

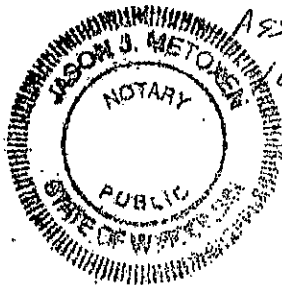
 Mark Harms
 Police Officer

Subscribed and sworn to before me
 this 27th of OCTOBER, 2013.

[Signature]

 Notary Public, State of Wisconsin
 My commission expires 05-15-2016.

Reviewed + Approved Christopher Ludwig
 Asst. DA - M.I.W. Co.
 10/27/13 *[Signature]*



**IN THE MATTER OF AN APPLICATION BY THE
MILWAUKEE COUNTY DISTRICT ATTORNEY OFFICE
FOR THE FOLLOWING ORDERS:**

- (1) An order approving the installation and use of a trap and trace device or process.
- (2) An order approving the installation and use of a Pen Register device / process or Dialed Number Recorder (DNR) on a cellular telephone line, a designated Electronic Serial Number (ESN), an International Mobile Subscriber Identifier (IMSI), an International Mobile Equipment Identifier (IMEI), or other cellular lines of a particular subscriber.
- (3) An order approving the release of subscriber information, incoming and outgoing call detail, cellular tower activity, cellular tower location, text header information, cellular toll information and cellular telephone global positioning system (GPS) location information, if available, and authorizing the identification of the physical location of the target cellular telephone.

APPLICATION FOR ORDERS

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

I, Assistant District Attorney Christopher Ladwig, being duly sworn on oath, depose and state as follows:

Christopher Ladwig, a[n] Assistant District Attorney, for Milwaukee County, hereby applies for an order pursuant to Wisconsin Statute § 968.35 and 18 U.S.C. §§ 2703(c)(1)(B) and (d), 2711(3), 3117 and 3127(2)(B) directing Sprint, a provider of electronic communications service, to disclose records and other information pertaining to a customer or subscriber as described in the proposed Order. It is further requested that the Order apply to any other providers of electronic communications service or remote computing service whose assistance is needed to provide the records or other information sought.

1. The State of Wisconsin requests that the provider disclose the information and records described in the proposed Order submitted with this Application. The State of Wisconsin does not seek the contents of any communications covered by 18 U.S.C. §§ 2703(a) or (b).

2. In support of this request, the applicant states the following:

a. Sections of the United States Code explicitly allow state court judges to issue orders for disclosure of records and information by electronic communications providers. Specifically, 18 U.S.C. § 2703(d) provides that any "court of competent jurisdiction" may issue orders to electronic communications providers. Next, 18 U.S.C. §§ 2711(3) and 3127(2)(B) provide that a court of competent jurisdiction is a court of general criminal jurisdiction of a state authorized by that state to issue orders authorizing the use of a pen register or trap and trace device.

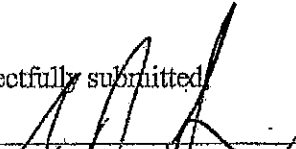
b. The Milwaukee Police Department is conducting a criminal investigation of the crime[s] of Violation of Parole in violation of Wisconsin Statute § 973.10, I certify that: (1) the information likely to be obtained by the installation and use of the pen register and trap and trace device is relevant to an ongoing criminal investigation and (2) there are reasonable grounds to believe that the requested telecommunications records are relevant and material to this ongoing criminal investigation.

c. Based upon the affidavit of Mark Harms of the Milwaukee Police Department, I believe that probable cause exists for an order approving the release of cellular tower activity, cellular tower location, cellular toll information and cellular telephone global positioning system (GPS) location information, if available, that will permit identification of the physical location of the target cellular phone.

3. Pursuant to Wisconsin Statutes § 968.36(5)(b) and 18 U.S.C. § 2705(b), the applicant further requests that the court order the applicable providers, their agents and employees, not to notify any other persons of the existence of the requested court order because there is reason to believe that notification of the existence of the requested court order will result in (1) assisting Damian L. Patrick, black male, 05-21-1988, and/or his/her associate[s], in flight to avoid prosecution; (2) destruction of or tampering with evidence; **WHEREFORE**, it is respectfully requested that the court grant the proposed Order submitted with this Application.

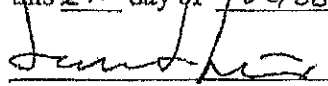
Dated this 27th day of October, 2013.

Respectfully submitted,



Christopher Madwig
Assistant District Attorney

Subscribed and sworn to before me
this 27th day of October, 2013.



Notary Public, State of Wisconsin
My commission expires 05-15-2016.

