

Cellphone Surveillance

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BALTIMORE — The crime itself was ordinary: Someone smashed the back window of a parked car one evening and ran off with a cellphone. What was unusual was how the police hunted the thief.

Detectives did it by secretly using one of the government's most powerful phone surveillance tools — capable of intercepting data from hundreds of people's cellphones at a time — to track the phone, and with it their suspect, to the doorway of a public housing complex. They used it to search for a car thief, too. And a woman who made a string of harassing phone calls.

In one case after another, USA TODAY found police in Baltimore and other cities used the phone tracker, commonly known as a stingray, to locate the perpetrators of routine street crimes and frequently concealed that fact from the suspects, their lawyers and even judges. In the process, they quietly transformed a form of surveillance billed as a tool to hunt terrorists and kidnapers into a staple of everyday policing.

The suitcase-size tracking systems, which can cost as much as \$400,000, allow the police to pinpoint a phone's location within a few yards by posing as a cell tower. In the process, they can intercept information from the phones of nearly everyone else who happens to be nearby, including innocent bystanders. They do not intercept the content of any communications.

Dozens of police departments from Miami to Los Angeles own similar devices. A [USA TODAY Media Network investigation](#) identified more than 35 of them in 2013 and 2014, and the American Civil Liberties Union has found 18 more. When and how the police have used those devices is mostly a mystery, in part because the FBI swore them to secrecy.

Police and court records in Baltimore offer a partial answer. USA TODAY obtained a [police surveillance log](#) and matched it with court files to paint the broadest picture yet of how those devices have been used. The records show that the city's police used stingrays to catch everyone from killers to petty thieves, that the authorities regularly hid or obscured that surveillance once suspects got to court and that many of those they arrested were never prosecuted.

Defense attorneys assigned to many of those cases said they did not know a stingray had been used until USA TODAY contacted them, even though [state law](#) requires that they be told about electronic surveillance.

"I am astounded at the extent to which police have been so aggressively using this technology, how long they've been using it and the extent to which they have gone to create ruses to shield that use," Stephen Mercer, the chief of forensics for Maryland's public defenders, said.

Cellphone Surveillance

Prosecutors said they, too, are sometimes left in the dark. "When our prosecutors are made aware that a detective used a cell-site stimulator, it is disclosed; however we rely upon the Police Department to provide us with that information," said Tammy Brown, a spokeswoman for the Baltimore's State's Attorney. "We are currently working with the Police Department to improve upon the process to better obtain this information in order to comply with the law."



Baltimore's police are prolific stingray users. In April, Baltimore Det. Emmanuel Cabreja testified that officers had used cell-site simulators more than 4,300 times since 2007, a figure that easily dwarfs the tallies reported by the few police departments that have provided any public details at all. The police have not previously identified the crimes they used the device to investigate or the people they arrested as a result. (Photo: Patrick Semansky, AP)

Baltimore is hardly alone. Police in Tallahassee used their stingray to track a woman wanted for check forging, according to [records provided to the ACLU](#) last year. Tacoma, Wash., police used theirs to try to find a stolen city laptop, according to [records released to the website Muckrock](#). Other departments have acknowledged that they planned to use their stingrays for solving street crimes.

As that surveillance became more common — and more widely known — state and federal lawmakers moved to put new limits on the circumstances in which it can be used. Some states require the police to get a search warrant before they can use a stingray, and [Congress is considering a similar rule](#) for the federal government.

Federal officials have said stingrays allow them to track dangerous criminals. "It's how we find killers," FBI Director James Comey [said last year](#). "It's how we find kidnappers. It's how we find drug dealers. It's how we find missing children. It's how we find pedophiles."

In Baltimore, at least, it's how the police tracked the man they suspected stole a phone from the back seat of a car parked outside the city's central booking facility in 2009. Two days after the theft, an officer [said in a court filing](#) that detectives found Danell Freeman holding the phone in the doorway of an East Baltimore public housing complex. The court filing did not say how

Cellphone Surveillance

detectives knew to look for the phone there, but a police surveillance log indicates they used a stingray.



Police charged Danell Freeman with stealing a cellphone from a parked car in 2009. Records show detectives used a stingray to find him, a fact omitted from court records. (Photo: Baltimore Police Department)

Police charged Freeman with misdemeanor theft. Prosecutors dropped the case a month later.

“The problem is you can’t have it both ways. You can’t have it be some super-secret national security terrorist finder and then use it to solve petty crimes,” Electronic Frontier Foundation lawyer Hanni Fakhoury said.

FBI spokesman Chris Allen said the bureau does not have the authority to tell police departments how they should use stingrays. It has asked them to keep that use confidential, requiring them to sign non-disclosure agreements that prohibit officers from revealing how the phone-tracking technology works. Baltimore police officials [signed one in 2011](#).

Listen to reporter Brad Heath discuss his investigation in the audio player below:

CRIMES LARGE AND SMALL

Baltimore’s police are prolific stingray users. In April, Det. Emmanuel Cabreja testified that officers had [used cell-site simulators more than 4,300 times](#) since 2007, a figure that easily dwarfs the tallies reported by the few police departments that have released details of their usage. The police have not previously identified the crimes they used the device to investigate or the people they arrested as a result.

By matching court records and [a surveillance log](#) from the police department’s Advanced Technical Team, USA TODAY identified 837 criminal cases in which the police indicated they

Cellphone Surveillance

had used a device to simulate a cell tower. The log does not expressly reference cell-site simulators, but detectives and a police spokesman, Det. Jeremy Silbert, confirmed the language officers used in the log to indicate a stingray had been used.

Among those cases are some of the most serious crimes the police were called on to investigate — and some of the least.

In 2010, police used a stingray to track a man they suspected had [kidnapped his girlfriend's two daughters](#), ages 3 and 5, and demanded half of her \$6,000 tax refund as a ransom “in exchange for her older daughter’s life.” He threatened in text messages to throw the older daughter off a bridge if he didn't get the money, according to court records. Detectives quickly recovered the children unharmed. Prosecutors quickly dropped the kidnapping charges against the man, Kwame Oseitutu; he was convicted only of misdemeanor misuse of a telephone. Prosecutors did not explain that decision.

Officers rely on reports from phone companies to track a suspect's phone to a particular neighborhood, then use their tracker, known as a Hailstorm, to pinpoint his location. In one court filing in 2013, an officer said Advanced Tactical Team detectives received 40 hours of training on using the tracker and an additional eight hours of “cellular theory” training from the U.S. Secret Service.

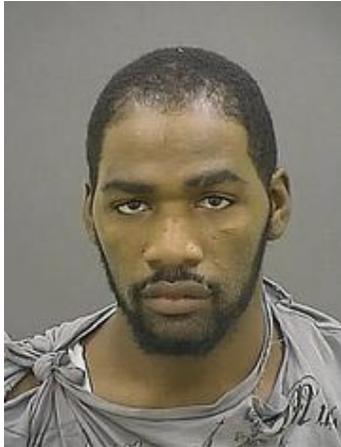
The team's log shows the police used cell-site simulators in at least 176 homicide cases, 118 shootings and 47 rapes since 2008. Usually they were searching for suspects, but occasionally, the records show they used the devices to track down witnesses. The most common use by far was solving robberies. Stingrays are especially well-suited to that job because robbers frequently take their victims' phones.

“We’re out riding around every day,” said one officer assigned to the surveillance unit, who spoke on the condition of anonymity because of the department’s non-disclosure agreement with the FBI. “We grab a lot of people, and we close a lot of cases.”

Not all of those cases are big. Records show police used a cell-site simulator to track down a woman charged with stealing credit cards from a garage and using them to pay two months’ rent at a self-storage unit. They used it to hunt for a stolen car and to find a woman who sent hundreds of “threatening and annoying” text messages to a Baltimore man. In each case, prosecutors ultimately dropped the charges or agreed to pretrial diversion.

In 2011, detectives used a stingray to try to find a man who took his wife’s cellphone during an argument, telling her, “If you won’t talk to me, you’re not going to talk to anyone,” according to court records, a crime the surveillance team classified as a robbery. Police tracked the phone that day, but by then, it had already been returned to his wife, so they tracked it to her house.

Cellphone Surveillance



Police charged Jarrod Tongue with taking his wife's cellphone during an argument. Detectives tried to track the phone with a stingray, but it had already been returned to his wife. (Photo: Baltimore Police Department)

Police did not find Jarrod Tongue until he showed up in court a month and a half later, when the case was dismissed. Tongue could not be reached to comment.

Baltimore police officials [declined to comment](#).

Baltimore's use is consistent with how the police have used cell trackers in other cities, ACLU lawyer Nathan Wessler said, albeit on a much larger scale. "We know that they have been purchased widely and used widely," he said. "In the few departments that we've seen [records from], they are being used for a wide range of investigations."

Rochelle Ritchie, a spokeswoman for Baltimore's state's attorney, could not say whether prosecutors had ever dropped a case because of issues related to such surveillance.

Still, barely half of the cases USA TODAY identified ended in a conviction. Prosecutors dismissed about a third of the cases outright, even when suspects had stolen phones with them when they were arrested. What's less clear is whether those outcomes were the result of the secret surveillance or merely reflected the normal ebb and flow of Baltimore's clogged criminal justice system.

Prosecutors have certainly agreed to forgo evidence officers gathered after using a stingray. At [a court hearing in November](#), a lawyer for a robbery suspect pressed one of the detectives assigned to the surveillance team, John Haley, for information about how the police had found a phone and gun prosecutors wanted to use as evidence against his client. Haley refused to explain, citing the non-disclosure agreement. "You don't have a non-disclosure agreement with the court,"

Cellphone Surveillance

Judge Barry Williams replied and threatened to hold the detective in contempt if he did not answer.

Prosecutors quickly agreed to forgo the evidence rather than let the questioning continue. “I don’t think Det. Haley wants to see a cell today,” Assistant State’s Attorney Patrick Seidel said.

SECRET SURVEILLANCE

In court records, police routinely described the phone surveillance in vague terms — if they mentioned it at all. In some cases, officers said only that they used “advanced directional finding equipment” or “sophisticated electronic equipment” to find a suspect. In others, the police merely said they had “[located](#)” a suspect’s phone without describing how, or they [suggested](#) they happened to be in the right place at the right time.

Such omissions are deliberate, said an officer assigned to the department’s Advanced Technical Team, which conducts the surveillance. When investigators write their reports, “they try to make it seem like we weren’t there,” the officer said.

Public defenders in Baltimore said that robbed them of opportunities to argue in court that the surveillance is illegal. “It’s shocking to me that it’s that prevalent,” said David Walsh-Little, who heads the felony trial unit for Baltimore’s public defender office. “We can’t challenge it if we don’t know about it, that’s sort of the horror of it.”

Defendants usually have a right to know about the evidence against them and to challenge the legality of whatever police search yielded it. Beyond that, Maryland court rules generally require the government to tell defendants and their lawyers about electronic surveillance without being asked. Prosecutors say they are not obliged to specify whether a stingray was used. Referring to direction-finding equipment “is sufficient to place defense counsel on notice that law enforcement employed some type of electronic tracking device,” Ritchie said.

In at least one case, police and prosecutors appear to have gone further to hide the use of a stingray. After Kerron Andrews was charged with attempted murder last year, Baltimore’s State’s Attorney’s Office said it [had no information](#) about whether a phone tracker had been used in the case, according to court filings. In May, prosecutors reversed course and said the police had used one to locate him. “It seems clear that misrepresentations and omissions pertaining to the government’s use of stingrays are intentional,” Andrews’ attorney, Assistant Public Defender Deborah Levi, charged in a court filing.

Judge Kendra Ausby ruled last week that the police should not have used a stingray to track Andrews without a search warrant, and she said prosecutors could not use any of the evidence found at the time of his arrest.

Cellphone Surveillance



Baltimore police used a stingray to locate Kerron Andrews after he was charged with attempted murder in 2014. Prosecutors did not reveal that surveillance until a year later, and a judge ruled that using the phone tracker was an unconstitutional search. (Photo: Baltimore Police Department)

Some states require officers to get a search warrant, in part because the technology is so invasive. The Justice Department is considering whether to impose a similar rule on its agents. In Baltimore, police routinely relied instead on what are known as “pen register” orders, which must be approved by a judge but do not require the same level of proof as a search warrant. For a time last year, Baltimore officers also started getting search warrants, then stopped, Haley [testified](#) at a hearing in June.

Few courts have weighed in on stingrays' legality, partly because so much of the surveillance happened in secret that defense lawyers had few opportunities to challenge it.

Levi, for example, said she did not realize until USA TODAY contacted her that the police had used stingrays in at least three other cases she handled.

In one, police tracked a rape suspect to an address on the city's west side. Their arrest report didn't specify how they found him there, and a disclosure form filed in Baltimore's Circuit Court did not indicate that the police had conducted any electronic surveillance. But his case number and the address where he was arrested appear in the Advanced Technical Team's surveillance log with language indicating that a stingray was used.

Even when stingray cases reach appeals courts responsible for settling those legal questions, the judges don't always appear to know about the surveillance.

Two years ago, for example, a Maryland appeals court [heard a case](#) in which the police arrested a robbery suspect after tracking a stolen cellphone. Kenneth Redmond had been convicted of

Cellphone Surveillance

robbing a high school student at knife-point; police found him by tracking her stolen phone to a house. The court's description of how they did that was vague; detectives found him by "triangulating the signal from cellphone towers in the area," the judges wrote, using "phone company technology."

In fact, according to the police log, detectives used a stingray.

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Cellphone Surveillance



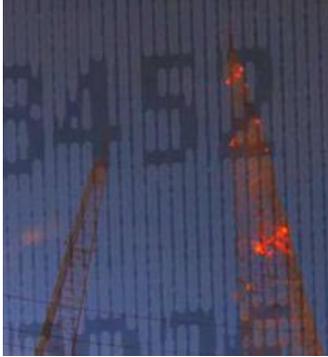
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