

SUPREME COURT OF NEW JERSEY

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November 21, 2012

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FROM: Mark Neary, Clerk

TOTAL NO. OF PAGES (INCLUDING COVER): 3

RE: A-53-11 State v. Thomas Earls (068765)

NOTES/COMMENTS:

Please see attached.

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November 21, 2012

All Counsel as Identified Below

Re: A-53-11 State v. Thomas Earls (068765)

Counsel:

The Supreme Court requests additional briefing from all parties, including amici, to address the following questions:

1. If the Court were to determine that a warrant is required to obtain an individual's cell phone location data, would that constitute a "new rule" of law? See State v. Knight, 145 N.J. 238, 250-51 (1996).
2. If so, should the decision be applied purely prospectively to future cases, to future cases and the pending matter, to future cases and those on direct appeal, or completely retroactively? Id. at 249.
3. In considering question number two, please address the three factors that traditionally apply to determining whether a "new rule" is to be applied prospectively or retroactively:
 - a. "the purpose of the rule and whether it would be furthered by a retroactive application";
 - b. "the degree of reliance placed on the old rule by those who administered it"; and
 - c. "the effect a retroactive application would have on the administration of justice."

[Id. at 251 (citation omitted)].
4. In responding to question number three, it would be helpful to the Court for the State to provide data about the extent to which law enforcement officials rely on cell phone location tracking as an investigative tool. For example,

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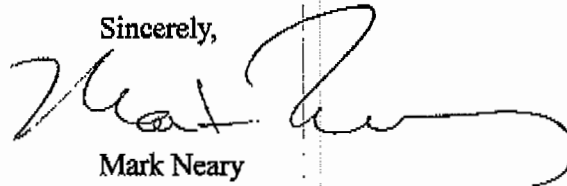
how many requests for cell phone location information, on average, do law enforcement officials make on a monthly or yearly basis?

5. Please describe the current state of technology relating to cell phone location tracking and similar technologies.
6. Do cell phone users today have a reasonable expectation of privacy in the location of modern cell phones under the federal and state constitutions?

Briefs shall be served and filed simultaneously on or before Friday, December 21, 2012. Responding briefs, if any, shall be served and filed on or before Friday, January 4, 2013.

Furthermore, the Court has determined to reargue this appeal at its argument session of January 28-29, 2013. You will be provided with more detail regarding the date and time of reargument approximately two weeks prior to the argument session.

Sincerely,



Mark Neary
Clerk

cc: Jodi L. Ferguson, Esq.
Alison Stanton Perrone, Esq.
Brian J. Uzdavinis, Esq.
Alexander Shalom, Esq.
Grayson Barber, Esq.