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Supreme Court of New Jersey
DOCKET NO. 089819

Criminal Action

STATE OF NEW JERSEY,	:	On Certification Granted from a Final Order of the Superior Court of New Jersey, Appellate Division.
Plaintiff-Petitioner,	:	
v.	:	Sat Below: Hon. Patrick DeAlmeida, J.A.D. Hon. Maritza Berdote Bryne, J.A.D. Hon. Avis Bishop-Thompson, J.A.D.
JULE HANNAH,	:	
Defendant-Respondent.	:	

STATE'S COMBINED RESPONSE TO AMICUS BRIEFS

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July 16, 2025

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PRELIMINARY STATEMENT

The arguments raised by defendant's amici largely overlook the facts of the case before this Court. While amici argue that a witness must be qualified as an expert to offer testimony describing how cell towers operate, why a phone would have connected to one tower over another, or where a phone is precisely located, these arguments fail to address the type of cell-site testimony at issue here: simply reading and plotting tower locations on a map. This latter type of testimony—much like any factual recitation of business records—can indeed be presented by a lay witness, as the vast majority of courts have recognized.

That is dispositive, and warrants reinstating defendant's murder conviction. Drawing from spreadsheets obtained from defendant's cellphone service provider (Sprint), a detective testified that these spreadsheets recorded sixteen calls from defendant's phone during the hour culminating in the murder, and then plotted the coordinates of those sequential tower locations on a map. The detective did not opine about defendant's phone's location or estimate the range of any given tower, and indeed he admitted that these tower connections could not identify the phone's specific location, let alone defendant's location. Consistent with the overwhelming judicial consensus, this was proper lay testimony, which permissibly supported the State's theory that defendant's phone was in the victim's car right before the murder—a theory defendant

himself admitted was likely. And because cellphones are ubiquitous, the average juror needs no special expertise to conclude that the fact that a cellphone connects to a certain trajectory of cell towers across a sequence of calls makes it somewhat more likely that the phone itself was moving roughly across that trajectory—much as hearing that a person's cellphone connected to a cell tower in Morristown at a given moment makes them less likely to believe that the person was in Medford at the time.

Amici nonetheless claim that defendant's rights would have been better protected had the State presented an expert to more accurately pinpoint the location of defendant's cellphone, as defendant could then have cross-examined the expert about the limits of their testimony and analysis. To the contrary, defense counsel not only already effectively cabined the detective's testimony with an agreed-upon limiting instruction, effective cross-examination, and a forceful summation, but was likely able to do so because the detective was not qualified as an expert and thus not able to address these limitations. And defendant, of course, could have called his own expert to explain any aspects of the detective's testimony that he felt undermined its weight. In short, none of amici's contentions justify the Appellate Division's outlier ruling.

STATEMENT OF PROCEDURAL HISTORY AND FACTS[1]

The State relies on the statement of procedural history and facts set forth in its May 12, 2025, supplemental brief, and adds the following:

On June 16, 2025, the Association of Criminal Defense Lawyers of New Jersey (ACDL), American Civil Liberties Union of New Jersey and Innocence Project (ACLU), and the Digital Forensics Justice Initiative (DFJI) filed motions to appear as amicus curiae, which this Court granted on June 30. (Paa1; Paa2; Paa3).

[1] These related sections are combined for the Court's convenience.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT APPROPRIATELY ADMITTED DETECTIVE LEYMAN'S TESTIMONY.

Detective Leyman provided appropriate lay testimony in outlining the location of the ten towers to which defendant's phone calls connected and plotting them on a map to show the distinct pattern they created and how that pattern compared the victim's location in the time leading up to the murder. Amici's contrary arguments conflate distinct types of testimony regarding cell-site data, overstate the import of Leyman's training and experience, and improperly assume that the average juror requires an expert's testimony to comprehend basic facts about cellphones. Nor did the State's choice to present Leyman as a lay witness in any way deprive Defendant of an adequate opportunity for cross-examination.

A. Amici Conflate Two Distinct Types of Cell-Site Testimony.

The flaws in amici's arguments stem largely from their conflation of the two distinct types of cell-site testimony regularly offered in courts across the country. Amici assert that "using historical cell site data for location purposes" is a "complex and technical" process, (ACDLb8), and that an average juror cannot understand "why the cell phone connected to a particular tower," "the workings of cell towers," or how geographic and phone-specific factors would

lead a cellphone to connect to one tower over another. (ACDLb14; ACLUb3, 13); see also (DJFIb14). The State has not disputed that. Indeed, its petition and supplemental brief acknowledged that cell-site testimony describing how cell towers operate, why a phone would have connected to one tower over another, or where the phone is located because of a connection may indeed require expertise. See (Psb25-26). The cases the State cited, which amici have also cited, accord with this position, for technical testimony of this sort. See, e.g., State v. Johnson, 797 S.E.2d 557, 567 (W. Va. 2017) (finding investigator who testified about beamwidth, azimuth, and coverage range of a tower and about "side of the tower" that calls connected to should have been qualified as an expert, while recognizing that a "minority" of courts allow even this level of scientific testimony through a lay witness); State v. Evans, 892 F. Supp. 2d 949, 955-56 (N.D. Ill. 2012) (finding testimony that "us[ed] a theory of granulization" to "estimate the range of certain cell sites" required expertise); United States v. Banks, 93 F. Supp. 3d 1237, 1249 (D. Kan. 2015) (holding expertise was needed to "prove location" of cellphones "at a given time.").

But amici fail to address the core issue in this appeal, which concerns a distinct type of cell-site testimony: a factual recitation of information contained in cellphone records. As dozens of courts across the country have recognized, a lay witness may inform a jury about the location of the cell towers that a phone

has connected to or explain the contents of phone records. E.g., Perez v. State, 980 So. 2d 1126, 1131-32 (Fla. Dist. Ct. App. 2008); United States v. Evans, 892 F. Supp. 2d 949, 953-54 (N.D. Ill. 2012). "Specialized knowledge is not necessary" for this type of testimony because the witness "conveys only the factual information displayed on cell phone billing records." State v. Wyman, 107 A.3d 641, 648 (Me. 2015); see Torrence v. Commonwealth, 603 S.W.3d 214, 227-28 (Ky. 2020) (following the holdings of Ohio, Tennessee and Indiana courts that "permit lay testimony for marking maps with data from cell phone records"). As the Supreme Court of Iowa emphasized, for example, the "growing majority of jurisdictions [] draw the line between lay and expert testimony involving historical cell site data based on the underlying information supporting the testimony." State v. Boothby, 951 N.W.2d 859, 876 (2020). When, as here, "the witness conveys inferences that can be drawn from factual information contained in the phone records using 'a process of reasoning familiar in everyday life,' such as plotting data on a map, the testimony qualifies as lay testimony." Ibid. The question changes, by contrast, if the witness "relies on specialized knowledge about how a cell tower functions," or opines about "why a phone pings off one cell tower instead of another" or "the coverage area of a tower or a cell phone's location." See ibid.

Here, Detective Leyman provided the kind of factual cell-site testimony that does not require qualification as an expert. From defendant's cellphone records, Leyman read for the jury the coordinates of the ten towers to which defendant's sixteen phone calls connected, and he plotted the coordinates of those towers on a map to show their geographic and chronological progression—proceeding from Monroe Township to Bridgeton in the hour before the murder. Leyman offered no opinion as to the physical location of defendant's cellphone or any given tower's coverage area, nor did he analyze why defendant's phone may have connected to those towers over others.[2] This Court should thus distinguish between these types of cell-site data testimony and hold, in line with the weight of authority across the country, that plotting relevant towers contained in a defendant's cellphone records is factual testimony that may be presented by a lay witness. As Leyman's testimony stayed within these bounds, the Appellate Division erred in reversing defendant's conviction.

[2] Leyman did occasionally use an idiomatic term to refer to something as being proximately located to something else. E.g., (8T157-12 to 13) (noting Franklin Township is "in proximity to Monroe Township"); (8T147-18 to 23) (noting certain tower was "in proximity" to scene of defendant's car crash.) But he did not opine that defendant or his phone were in special proximity to any particular tower or location. Rather, these statements reflected ordinary commonsense with which any juror would be familiar—much like saying that Trenton is near Hamilton, but not near Totowa.

The ACLU and ACDL's reliance on State v. Burney, 255 N.J. 1 (2023), is thus misplaced. (ACLUb3-4; ACDLb14-15). In Burney, the State called an FBI agent as an expert to opine that cell towers had a coverage range of about one mile, which he based on his "rule of thumb" for the area and which he derived from his training and experience. 255 N.J. at 5. The agent then relied on that approximate tower range to place defendant Burney's cellphone near the crime scene. Id. at 5. This Court ruled that the agent's testimony was improper net opinion. In sharp contrast here, however, Detective Leyman merely plotted the towers to which defendant's cellphone connected in the moments leading up to the murder. These plots were not derived through any calculus made by Leyman, but rather facts in the real world, recounted and plotted by Leyman directly from defendant's cellphone records, which were properly stipulated to and admitted as business records from Sprint, defendant's cellphone provider. The jury was then free to draw its own conclusions after robust cross-examination and defendant's closing arguments—knowing, after all, that wireless telecommunications require sending out a signal that connects to physical machinery, which is why no one traveling on business in Philadelphia expects to connect to their wireless router at home in Toms River, or to a cell tower in Lakewood. Because simply informing the jury that a cell provider's business records show that a specific cell phone connected to a cell tower in

Philadelphia refers simply to facts in the real world and requires no specialized analysis regarding the implication of such facts, Burney is inapposite.

B. Leyman Properly Relied On His Training and Experience To Translate What The Business Records Said.

Nor did the fact that Leyman used his training and experience navigating cell-provider call records transform his recitation of those records into expert testimony. Contra (ACDLb24-26). Witnesses do not require expert qualification simply because they testify about the existence of real-world facts that are themselves presented in a complex form. "New Jersey law does not mandate that lay testimony, and even lay opinion testimony, based on scientific, technical, or other specialized knowledge, automatically triggers the need for compliance with the rules for admissibility of expert testimony." E & H Steel Corp. v. PSEG Fossil, LLC, 455 N.J. Super. 12, 26 (App. Div. 2018); see also State v. Labrutto, 114 N.J. 187, 192-193 (1989) (allowing trooper in vehicular homicide case to offer lay opinion testimony as to point of impact between a vehicle and decedent based on personal observations of tire tracks, scuff marks, debris, vehicle and decedent positioning and vehicle damage). Out-of-state courts likewise do not require qualification as an expert simply because a witness draws on his personal training and experience to testify. See United States v. Ransfer, 749 F.3d 914, 937-38 (11th Cir. 2014) (rejecting analogous argument regarding Metro PCS custodian and analogizing to witness who

describes financial records); see also Soden v. Freightliner Corp., 714 F.2d 498, 510-12 (5th Cir. 1983) (permitting lay witness in charge of truck maintenance to testify that, based on his experience, step brackets caused the punctures in a fuel tank that had been brought to his repair yard); Wactor v. Spartan Transp. Corp., 27 F.3d 347, 351 (8th Cir. 1994) (allowing lay opinions of lockmen based in part "upon their years of personal experience.").

Here, the phone records were therefore not "difficult for the average person to understand and interpret," (ACDLb25), in the relevant sense. Rather, much as when a lay witness permissibly saves a jury time by highlighting key entries in voluminous financial records, see United States v. Hamaker, 455 F.3d 1316, 1331 (11th Cir. 2006) (rejecting argument that such a witness would have had to be qualified as an expert), the average juror likewise would have been able to figure out the locations of the towers defendant's cellphone calls connected to if given reasonable time to do so—in contrast to true expert testimony, which would require the average juror not simply to be given more time, but also to be given specialized training in the first place.[3] While Leyman's training and experience allowed him to efficiently explain what the

[3] For example, the State was able to create its own map of the ten relevant tower connections without any specialized expertise or training.

spreadsheets said and to highlight the relevant portions, that did not transform his helpful testimony into expert testimony.

C. Defendant's Cellphone Records were Properly Admitted Under N.J.R.E. 403.

Amici's broad claim that evidence contained in cellphone records is irrelevant unless coupled with expert testimony explaining the mechanics of cell-site technology overstates N.J.R.E. 403's bar and overlooks that cellphone records contain a wealth of information beyond simply "pinpointing" a phone's specific location or "tying" a particular phone to a crime scene. See (ACLUb7-9). For evidence to be relevant, it need only have "a tendency in reason to prove or disprove any fact of consequence to the determination of the action." N.J.R.E. 401. The test for relevance is broad, and favors admissibility. State v. Deatore, 70 N.J. 100, 116 (1976). "The true test is the logical connection of the proffered evidence to a fact in issue, i.e., whether the thing sought to be established is more logical with the evidence than without it." State v. Coruzzi, 189 N.J. Super. 273, 302 (App. Div. 1983). The evidence thus need not be dispositive "or even strongly probative" to clear the relevancy bar. State v. Cole, 229 N.J. 430, 447 (2017). To nonetheless be excluded by Rule 403, evidence must be so significantly prejudicial that it prevents the jury from a fair and reasonable evaluation of the defendant's guilt or innocence. State v. Moore, 122 N.J. 420, 467 (1991). But since all evidence is to some extent prejudicial to the defendant,

when evidence "is a significant part of the proof," it must be more than "shrouded with unsavory implications" for Rule 403 to mandate exclusion. State v. West, 29 N.J. 327, 335 (1959).

Rule 403's high bar is not met here. The information Detective Leyman obtained from defendant's cellphone records—that sixteen of the calls from defendant's cellphone connected to ten different towers via a chronological progression of geographic tower locations that proceeded from Monroe Township to Bridgeton in the hour before the murder and that tracked the path the victim drove—was undeniably relevant. While not dispositive of the ultimate issue of guilt or even defendant's location, this progression made the State's theory of the case more likely, for the same reason that knowing someone's cellphone connected to a cell tower in Summit makes it less likely that the person was in Swedesboro at that moment.

The potential for the jury to misunderstand Leyman's testimony does not substantially outweigh the relevance of this evidence, because the average cellphone user understands far more than amici give credit for. Indeed, because of the prevalence of cellphones in today's society, the average cellphone user understands that their phone will only connect to a tower with a sufficiently strong signal, and that proximity to a tower plays a significant part in determining signal strength. See In re U.S. for Historical Cell Site Data, 724

F.3d 600, 613 (5th Cir. 2013); Evans, 892 F. Supp. 2d at 953 (acknowledging "general rule" that "a cell phone connects to the tower in its network with the strongest signal, and the tower with the strongest signal is usually the one closest to the cell phone at the time the call is placed."). And users know that these cell towers are usually only a few miles apart, sometimes less. See United States v. Hill, 818 F.3d 289, 295 (7th Cir. 2016) ("In urban areas, cell towers may be located every one-half to one mile, while cell sites in rural areas may be three to five miles apart."). Users thus commonly understand that a connection to a tower can reveal a "general area" where a phone could be located. See United States v. Banks, 93 F. Supp. 3d 1237, 1252 (D. Kan. 2015) ("If a phone cannot connect to the nearest tower, it will usually connect to the next closest tower[]" because there is only "a small universe of calls where the government's nearest tower theory does not hold."). Even the amici acknowledge as much. (ACLUb2). The progression of defendant's cellphone's calls do not show that the phone was at any specific location at any specific time, but it takes only common sense to understand that they make it less likely that the phone was at the Delaware Water Gap or Long Beach Island at the time.

The risk of prejudice was particularly low in light of the trial court's curative instructions. See, e.g., (8T152-9 to 17) (cautioning jury that while testimony regarding tower-location data "can show you those locations and how

far apart they are," it did not "mean that th[e] phone was located [in] any particular spot within any particular distance from that tower"); see also (Psb10-11); infra at 21-22. After the judge instructed the jury on how they were permitted to use Leyman's testimony, jurors could attach appropriate significance to the geographic and chronological progression of these connections and understand from this testimony that defendant's phone was close enough to the ten towers at the relevant times to connect to each of them in sequence, even if they did not have an expert to explain the precise range of each tower or why defendant's cellphone would have connected to one tower over another. Leyman's testimony was properly admitted under Rule 403.

POINT II

AMICI'S REMAINING OBJECTIONS TO THE USE OF DETECTIVE LEYMAN'S TESTIMONY AT TRIAL FAIL.

Amici get no further in challenging the prosecution's reliance on Detective Leyman's testimony in closing arguments or in arguing that defendant was deprived of an adequate opportunity to cross-examine Leyman.

A. The State's Closing Argument Was Appropriate.

Amici do not identify any error in the prosecutor's summation—much less one that would justify overturning defendant's convictions. The ACLU first disputes the prosecutor's statement, at closing, that "[c]ommon experience dictates that you have to be close to a tower in order to connect to a call,"

(11T92-14 to 16). (ACLUb13). But as noted above and in the State's supplemental brief, that statement is generally true, and does reflect common sense and experience. See Carpenter v. United States, 585 U.S. 296, 300 (2018) (noting that "best signal" "generally comes from the closest cell site"). The prosecution's reliance on this robustly accepted understanding was thus well within the "wide latitude" afforded to a prosecutor in summations, State v. R.B., 183 N.J. 308, 330 (2005), and was at absolute most harmless error, id. at 330-31. That is especially so where defense counsel relied on the same general understanding first in her own closing, telling the jury that if they wanted to consider the tower connections as evidence of guilt, they must also recognize that the last calls defendant made connected to Tower 37, which "puts him at his home on 25 Reeves Road[.]" (11T34-16 to 24). Implicit in counsel's statement was the acknowledgement that tower connections can, at times or in conjunction with other evidence, make a user's suspected location more or less likely. The prosecutor could not have erred in drawing a similar inference.

The ACDL, for its part, argues that the prosecutor improperly urged the jury not only to conclude that defendant was near the towers his phone connected to, but also to find "that he was actually in the car with the victim." (ACDLb21). But this, too, was an entirely permissible inference within the wide latitude afforded a closing argument. For one, the defense itself embraced the theory

that defendant may have been in the car with the victim. During her summation, defense counsel admitted to the jury that there was "certainly the possibility" that defendant had asked the victim for a ride home and that the victim "did give him a ride home and drop him off on Reeves Road." (11T13-13 to 17). And on appeal, defendant expressly stated in his Appellate Division brief that "[t]he evidence the State did adduce showed that defendant may have gotten a ride to Bridgeton from Lopez on that day, after crashing his own car about forty minutes up the road, in Monroe Township." (Db1). The prosecutor therefore had every right to advocate the same theory in her summation.

Moreover, even without defendant's implicit admission, the inference the prosecutor drew was reasonable, for two reasons. First, the prosecution noted that in two instances, there was evidence that independently tied defendant to a physical location near the towers his phone connected to. There was ample evidence that defendant was in Monroe Township at the scene of his crashed vehicle around the time his phone connected to a tower a little over a mile away. (11T91-14 to 15). And there was evidence that, in the minutes after the murder, witnesses saw a person matching defendant's description walking away from the murder scene with a distinct limp in his left leg—which the jury saw, too, via surveillance video footage—at the same time defendant's cellphone was connecting to a tower in that area. (11T90-7 to 12; 11T98-14 to 21). When

other evidence already indicated that defendant was near the towers his cellphone accessed during the first and last calls of the ten-tower pattern, the State permissibly asked the jury to infer that it was also more likely that the remaining eight tower connections were created because defendant was also relatively close to those towers. The prosecutor was within her rights to ask the jury to make that inference, and it was ultimately "for the jury to decide whether to draw the inferences the prosecutor urged." State v. Carter, 91 N.J. 86, 125 (1982); see also State v. McNeil-Thomas, 238 N.J. 256, 275 (2019) ("[A]s long as the prosecutor 'stays within the evidence and the legitimate inferences therefrom, there is no error[.]'").

Second, this was a permissible inference given the other evidence that tied defendant to the murder. The prosecutor highlighted that defendant's DNA was found on a cigar in the victim's car and that there was video evidence of defendant smoking that exact same type of cigar, (11T106-5 to 15); defendant denied knowing the victim or ever being in his car despite his DNA being found there, (11T105-11 to 18); a voice was heard talking to the victim in the background of the victim's phone call minutes before the murder, (11T98-11); witnesses provided a similar description of a balding, black male walking with a limp both at the scene of defendant's crash in Monroe Township and at the crime scene, (11T71-20 to 24; 11T86-16 to 22); and a witness at the Monroe

crash scene testified that the bald man with the limp asked him for a ride to Bridgeton, (11T86-1 to 25). The plotted tower connections were simply one more piece of evidence that the State presented to the jury to support its theory of defendant's guilt. As the trial court recognized, the prosecutor did not ask the jury "to identify the defendant's location by use of where his phone is hitting off the tower," as defendant claimed, (11T113-1 to 11), but rather presented Leyman's testimony "as another piece of information that would corroborate" the theory that defendant killed the victim. (5T91-10 to 12; 5T93-16 to 18; 5T102-4 to 3); see (11T117-3 to 18). Given the totality of that evidence, the prosecutor's remarks were entirely reasonable inferences about the geographic and chronological progression of cell towers that defendant's cellphone connected to in the time leading up to and immediately following the murder.

B. Defendant's Rights Were Amply Protected At Trial.

To the extent amici disagree with the weight the jury accorded Detective Leyman's testimony, defendant had a more than sufficient opportunity to challenge it and to exercise his other trial rights. He undisputedly availed himself of "[v]igorous cross-examination [and] presentation of contrary evidence"—one of the most "traditional and appropriate means of attacking" admissible evidence that a defendant believes is "shaky," see Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 596 (1993)—and any suggestion to the contrary

is belied by the trial record. Defense counsel was able to effectively cross-examine Leyman and elicit multiple concessions about the limits of both Leyman's knowledge and of what the cellphone records could provide. For example, Leyman agreed on cross-examination that the phone records did not establish where exactly the phone was located at the time of the calls, the distance of the phone from a tower to which it connected, or who had placed the calls at issue. (9T90-3 to 25). Leyman also confirmed that a phone may not connect to the closest tower. (9T90-3 to 25).[4] The reason Leyman could not be asked on cross-examination to "explain the basis for [his] opinions and inferences" or "articulate the uncertainties, limitations, and potential errors affecting the relevance and weight of their conclusions" (ACLUb18), is that there were no "opinions," "inferences," or "conclusions" for him to explain. Leyman read information from defendant's cellphone records and plotted on a map the sequential locations of the towers to which defendant's phone connected over the course of the phone's sixteen calls—he did not opine about the location

[4] Defense counsel highlighted those limitations in summation as well, arguing to the jury that a tower connection proves nothing about the location of the phone or the person making or receiving the call, (11T33-14 to 19); and that Leyman did not determine if there were other towers in the area or plot their location in relation to defendant and so did not "dot the I's and cross the T's" during his investigation, (11T34-1 to 35-7). Counsel was thus able to urge the jury not to draw any inferences or conclusions from the connections. (11T33-19 to 34-1).

of defendant's phone, the range of the towers the phone connected to, or reasons the phone would have connected to those specific towers at those times.

Further, nothing prevented Defendant from pursuing additional lines of questioning to push back on Detective Leyman's testimony. Defendant could have sought to elicit an admission that Leyman did not know the range of any of the towers defendant's phone connected to; or confronted Leyman with evidence of other towers that may have been closer to the victim's path of travel that defendant's phone did not connect to. Or, if defendant wanted the jury to understand "the factors that influence whether a cell phone will connect to a particular tower" or "the area covered by the particular cell tower to which the cell phone did connect" (ACDLb18), or wanted to rebut the inferences the jury might draw from Leyman's testimony, he could have presented his own expert.[5] That Defendant opted not to pursue these theories simply reflects his own defense strategy; nothing about the State's choice to "present[] this evidence through a lay witness" prevented Defendant from developing any of amici's own proposed lines of questioning. (ACDLb18); cf. State v. Nyhammer, 197 N.J. 383, 414 (2009) (in Confrontation Clause analysis, noting that the fact "[t]hat

[5] Notably, there is little a defense expert could have attested to that was not already elicited as an admission from Leyman.

counsel decided to forgo critical cross-examination" of a witness "does not mean that defendant was denied the opportunity for cross-examination").

Likewise, there is no merit to amici's claim that introducing the information within the Sprint records through Leyman violated defendant's right to confrontation. To the contrary, the "overwhelming" majority of courts hold that cell-site records data is not testimonial "and hence, not subject to the Confrontation Clause." Banks, 93 F. Supp. 3d at 1248. Amici themselves acknowledge as much, noting that "evidence generated from technology may not be testimonial under a traditional understanding of the Confrontation Clause." (ACLUb16). What is more, defendant himself stipulated to the admissibility of the records. (7T241-8 to 17). And in any event, the confrontation right is a particular odd fit for amici's theory, when Leyman himself plainly was "made available for cross-examination." (ACLUb16).

Finally, amici's argument that the jury received inadequate instructions likewise lacks merit. The trial judge cautioned the jury numerous times that it could not infer from Leyman's testimony alone that defendant's cellphone was in a particular location. The trial court first instructed the jury, during Detective Leyman's testimony, that it could not determine that defendant's cellphone was in any particular location just because it connected to a tower. (8T152-2 to 153-8). Defense counsel and the State subsequently submitted a detailed limiting

instruction with "agreed upon language" that "clarified" for the jury the limited use of Leyman's testimony. (9T10-10 to 18; 9T17-19 to 18-25). Defense counsel did not object after the judge read that limiting instruction to the jury. (9T19-1). And after advising counsel that he would include in the final charge the "limiting instructions that occurred during the trial, some of which were provided by counsel as agreed by counsel[,]" the judge told the jury, "[Y]ou can't conclude that a phone was in any particular spot simply because it connected to a tower. You can, however, utilize that information along with other information if you think it's appropriate to do so." (11T5-9 to 24; 11T139-1 to 5); see (11T139-12 to 16; 11T140-1 to 141-3) (similar). Defendant again did not object when the court read this limiting instruction during the jury charge. (11T5-9 to 24; 11T195-15 to 197-25). Any claim that the agreed-upon instruction insufficiently protected defendant's rights was thus waived, and in any event is not properly presented when it was "raised for the first time by an amicus curiae." State v. J.R., 227 N.J. 393, 421 (2017).

In short, defendant's rights were amply protected through his counsel's zealous efforts to cabin Leyman's testimony, and amici's view that defendant would have been better off had the State presented an expert to opine about the precise location of defendant's cellphone is not a valid basis to vacate a

conviction and in any event falls short given the multiple tools at defendant's disposal to limit the effectiveness of the testimony that the State did present.

CONCLUSION

This Court should reverse the decision of the Appellate Division and reinstate defendant's convictions.

Respectfully submitted,

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