FILED, Clerk of the Supreme Court, 28 Jan 2025, **089819**

Supreme Court of New Jersey
DOCKET NO. 089819

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Petitioner,	:	On Petition for Certification to the Supreme Court of New Jersey.
v.	:	Sat Below: Hon. Patrick DeAlmeida, J.A.D.,
JULE HANNAH,	:	Hon. Maritza Berdote Byrne, J.A.D., Hon. Avis Bishop-Thompson, J.A.D.
Defendant-Respondent.	:	

PETITION FOR CERTIFICATION AND APPENDIX
ON BEHALF OF THE STATE OF NEW JERSEY

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OF COUNSEL AND ON THE PETITION October 8, 2024

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CERTIFICATION

I hereby certify that this application is made in good faith, presents a substantial question, and is not made for purposes of delay.

/s/ *Bethany L. Deal*
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PRELIMINARY STATEMENT

Cellphones are a ubiquitous and familiar feature of daily life. As the U.S. Supreme Court observed in 2018, there were 396 million cellphone service accounts at that time in a nation of 326 million people. They can provide relevant information regarding a user's location, now commonly used in criminal trials. Indeed, as this Court explained over a decade ago in discussing how cell phones function, cell phones "use radio waves to communicate between a user's handset and a telephone network," and they "continuously scan[ning] their environment looking for the best signal" from "radio antennas called 'cell sites,'" which "are usually mounted on a tower." Each time the phone places a call or sends a text message, the carrier generates a time-stamped record of that connection, referred to as cell-site data. The question this petition presents is whether an individual must be qualified as an expert to explain that cellphones generally connect to cell towers based on physical proximity and to describe the otherwise admissible tower location data associated with a phone.

This Court should grant review because the Appellate Division adopted a new rule that conflicts with precedents in this State and across the country, and that misinterpreted this Court's precedents, on a recurring issue of considerable practical importance. In this first-degree murder case, the Appellate Division held that one of the State's witnesses, a detective, provided "essentially" expert

testimony in addressing the locations of cellular towers to which defendant's phone connected in the hours preceding the murder, and plotting those location on a map, based on lawfully obtained cellphone business records. (Ppa18). That testimony, according to the panel, was inappropriate because it let the jury draw inferences about the location of defendant's phone around the time of the murder based on the location of the towers to which it connected. (Ppa19).

That holding is not only incorrect, but splits with case law in New Jersey and across other jurisdictions. Federal courts and state courts across the country recognize that testimony regarding cell-tower location data need not come from an expert, so long as it does not opine on particular technical workings of cellular networks or on the precise location of a cellphone at a given point in time, and instead identifies the locations of the tower. For good reason. The mere fact of a connection between a phone and a tower, and the existence of some geographic relationship between the two, is not specialized knowledge. Given the division of authority, certification is appropriate to resolve this unsettled issue.

Certification is also warranted because the decision below conflicts with this Court's precedent on a recurring issue of considerable practical importance. In State v. Burney, this Court addressed the factors that bear on the reliability of expert testimony regarding the technical operation of cell towers. But Burney does not address the question here—which does not involve technical operations

of cell towers, but instead simply identified and mapped out the towers to which the defendant's phone had connected. In relying solely on Burney, without any other authority, the Appellate Division misunderstood, and created confusion about, the scope of that holding. And it did so not only on an issue that can arise repeatedly given the ubiquity of cell phones in modern society, but also in an important case, which involved the murder of a good Samaritan. This Court's traditional certification criteria all support granting review.

STATEMENT OF THE MATTER INVOLVED

The evidence adduced at trial showed that around 8:30 AM on January 15, 2017, a resident in Bridgeton heard a loud bang, looked out of her bedroom window, and saw a man with a distinctive limp rapidly walking down the road, away from a crashed vehicle. (6T101-9 to 21; 6T103-1 to 112-1; 6T133-21 to 25). She called 9-1-1. (6T116-21 to 118-12). First responders found the victim, Miguel Lopez, dead from gunshots in the driver's seat. (6T76-16 to 77-7; 6T88-3 to 12). Forensics indicated the shots were fired from the passenger seat inside the vehicle. (7T199-23 to 25; 9T199-4 to 5; 9T205-21 to 22).

Multiple sources of evidence tied defendant to the victim's car and the scene of the crime. Police found a cigar butt near the front-passenger seat of the vehicle after the crash. (7T61-6 to 63-25; 9T242-5 to 6). DNA testing revealed only one source of DNA, identified as defendant. (9T253-9 to 13). In addition,

Detective Kenneth Leyman reviewed surveillance footage from the crime scene, which showed a man with marked limp walking away from the victim's vehicle, and compared it to footage of defendant from prior incidents. (7T224-19 to 23; 7T226-12 to 18). Leyman determined that all these videos showed a man with a consistent and distinctive gait. (7T226-12 to 18).

Other sources of evidence further enabled the jury to find that earlier on the morning of the murder, Lopez picked defendant up from around the site of defendant's own car crash, in Williamstown, and drove defendant to Bridgeton, where the murder occurred. Using surveillance videos from numerous locations, police determined that Lopez left an Atlantic City casino in his vehicle around 6:30 a.m., and that before ending up dead in Bridgeton two hours later, his path of travel included driving through Williamstown and Monroe Township. (8T36-12 to 23; 8T66-1 to 18); see also (Ppa5-6) (describing evidence of the victim's path of travel). As for defendant's movements, a witness testified that on the morning at issue, he saw a minivan in a ditch near Franklinville-Williamstown Road in Monroe Township. (6T216-7 to 217-22; 6T219-2 to 23); see (Ppa7). The witness stopped to help, and a bald male with a limp approached him and asked him for a ride to Bridgeton in exchange for $100. (6T220-9 to 223-22). The witness declined to give the man a ride, but reported the abandoned vehicle

to the police at 7:27 a.m. (6T218-5; 6T252-7 to 257-22). Police subsequently linked the crashed minivan to defendant. (6T257-15 to -22).

Detective Leyman also testified about defendant's cellphone records from the morning of the homicide, which police obtained with a communications data warrant. Prior to trial, defendant consented to the admission of Leyman's "lay witness testimony regarding his review, interpretation, and plotting of the location of cell towers on a map from the defendant's historical cell site data records." (6T8-23 to 9-13; Da6) (emphasis added).[2] Leyman described how, on the morning of the homicide, sixteen of defendant's calls connected to ten different cellphone towers[3] located along the same general path of travel as the victim—whose trajectory was determined by surveillance footage—starting in Monroe Township (where defendant had abandoned his vehicle) and ending in Bridgeton (where the homicide occurred). (8T156-10 to 172-22).

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[2] The Appellate Division mistakenly said the trial court "ruled Leyman was not qualified as an expert." (Ppa18). But the trial court never ruled on the State's in limine motion to qualify Leyman as an expert because, before it could do so, the parties agreed to limit the scope of Leyman's testimony. (6T8-23 to 10-6; Da6). And defense counsel did not object during Leyman's testimony. (7T241-8 to 17). Nevertheless, defense counsel later noted at sidebar that while she "agreed to the admission of . . . all the cell phone records," defense counsel was nonetheless "preserving" her objection "for appeal." (7T241-8 to 17).

[3] The terms cell site and cell tower are often used interchangeably, although the former is the equipment used to transmit cell signal and the latter is the physical structure to which this equipment is attached.

Specifically, Leyman testified that at 7:27 a.m., a call from defendant's phone connected to a tower in Williamstown less than a mile away from the disabled vehicle. (8T148-17 to 149-20; 8T155-4 to 9). Thereafter, all calls from defendant's cell phone connected to cell towers heading away from the disabled vehicle and toward Bridgeton. (8T156-10 to 165-25). For instance, a 7:53 a.m. call connected to a tower 1.5 miles away from a particular road where the victim's vehicle is shown on surveillance video at 7:54 a.m. (8T166-1 to 20). An 8:03 a.m. call connected to a tower in Upper Deerfield Township, about 1.6 miles away from the Rite-Aid where the victim was seen driving at the same time. (8T8T169-1 to 170-6). The last call before the homicide from defendant's phone began at 8:25 a.m. and connected to a tower on East Commerce Street in Bridgeton. (8T171-20 to 172-22). The victim's vehicle was captured on video taken minutes earlier at the intersection of E Commerce Street and Burlington Road minutes earlier. (8T99-1 to 15; 8T118-14 to 120-7 to 16).

The trial court instructed the jury about how to consider Leyman's cell-site-data testimony. Midway during Leyman's testimony, the judge cautioned that while the testimony regarding tower-location data "can show you those locations and how far apart they are," it does not "mean that th[e] phone was located [in] any particular spot within any particular distance from that tower." (8T152-9 to 17); see also 8T183-25 to 184-3 (reiterating to counsel that "tower

location" cannot be "the sole indication of where the phone was"). After the State's closing argument, the judge again explained that although jurors "can't conclude that a phone was in any particular spot simply because it connected to a tower," they could nonetheless draw inferences about the phone's location based on the tower location data "in connection with" "some other evidence." (11T139-1 to 5; 11T139-12 to 16); (Ppa 13-14).

The jury convicted defendant of first-degree murder and various weapons offenses. (Ppa14). On appeal, defendant raised multiple arguments, including that Leyman's cell-site-data testimony exceeded the bounds of lay testimony. (Db30). While acknowledging that it "is a simple matter to understand that a cell phone communicates with cell towers through a radio signal," defendant nonetheless argued Leyman's testimony required expert qualifications because it was "beyond the ken of the average juror[.]" (Db33).

The Appellate Division, in an unpublished opinion, reversed, finding that the trial court abused its discretion in permitting Leyman to offer "essentially" expert testimony on cell-tower location data. (Ppa3, 18-19). According to the Appellate Division, lay testimony that the towers to which defendant's phone connected fell along a route "consistent with the general path of the victim's course of travel" amounted, "in all but explicit words," to expert testimony about the specific whereabouts of the phone itself. (Ppa18-19). The panel also found

that the court's limiting instructions were "insufficient to overcome the likely inference created by Leyman's testimony" about the location of defendant's phone, even though the court expressly cautioned that jurors could not draw such an inference from the tower data alone. (Ppa19); see (8T183-25 to 184-3). The Appellate Division suggested this result was compelled by Burney, 255 N.J. 1 (2023), even while recognizing that Burney "did not state whether expert testimony [is] necessary to address historical cell site data." (Ppa18).

This Petition followed. (Ppa22-23).

QUESTION PRESENTED

Can a lay witness present information about the locations of cell towers to which a cellphone had connected based on otherwise admissible cellphone records, so long as the witness does not opine on the operations of the cellular networks or the cellphone's precise physical location?

LEGAL ARGUMENT

THE DECISION BELOW ADOPTED A LEGAL RULE THAT CONFLICTS WITH PRECEDENT ON A QUESTION OF GENERAL IMPORTANCE AND SIGNIFICANT PUBLIC INTEREST.

This Court should grant certification regarding whether lay witnesses may present otherwise admissible cellphone tower data for three principal reasons. First, the decision below that only experts can offer this kind of testimony has created a split with another unpublished opinion from the Appellate Division

and with the holdings rendered by several federal courts and state high courts. See R. 2:12-4 (discussing need for certification to review divisions of authority). Second, the decision below misinterprets Burney, 255 N.J. 1, a mistake only this Court can fix. Third, this case implicates an unsettled issue of widespread public importance, as well as the interests of justice. R. 2:12-4.

A. The Decision Below Creates A Split of Authority Within New Jersey And With Other State And Federal Courts.

This Court should grant review to resolve a disagreement among courts in New Jersey and across the country. As to the former, there is an explicit divide between the decision below and the only other appellate decision to address this question. See State v. Martin, A-1592-17T4 (App. Div. 2020); (Ppa24-53). In Martin, a detective offered lay testimony regarding the location of cell towers to which the defendant's phone connected close in time to the murder. The evidence showed that approximately eighty minutes before the victim's body was discovered, the defendant's phone "pinged off a tower about six minutes away from where the victim's body was [later] found." (Ppa26). The Martin court noted that while "our courts are silent" on the question, the Third Circuit previously held "that no expert testimony is needed" to describe the location of a "cell tower ping." (Ppa39) (citing United States v. Kale, 445 F. App'x 482, 485-86 (3d Cir. 2011)). Finding Kale persuasive, Martin concluded that the detective's use of "latitude and longitude coordinates" to determine the location

of a cell tower that pinged "when a call was made from a particular phone" did not need to come in through expert testimony as it "requires no special skill." (Ppa39.)

The Appellate Division's holding also breaks with "a growing majority" of courts across the country. State v. Boothby, 951 N.W.2d 859, 876 (Iowa 2020). Several federal courts agree that lay witnesses may testify to the location of cell towers identified in cell-site location data. See, e.g., United States v. Graham, 796 F.3d 332, 365-66 (4th Cir. 2015), rev'd on other grounds, 824 F.3d 421 (4th Cir. 2016) (testimony regarding map of cell sites to which cell phone connected "did not amount to an expert opinion," as mapping "required little more than identification of the various locations [the lay witness] intended to plot"); United States v. Henderson, 564 F. App'x 352, 363 (10th Cir. 2014) (stating "testimony limited to 'the phone records'"—including a "map of . . . cell tower locations" from phone records—"generally would not be expert testimony") (Ppa64)[4]; United States v. Baker, 496 F. App'x 201, 204 (3d Cir. 2012) (allowing lay testimony regarding "plot[ing] [of] the locations of the towers"); United States v. Evans, 892 F. Supp. 2d 949, 953-54 (N.D. Ill. 2012)

[4] All unpublished decisions have been included in the State's appendix. (Ppa24-78). The contrary authority of which the State is aware is discussed below.

(permitting lay testimony regarding map "indicating the location of certain cell towers used by [the defendant] during the course of the conspiracy").

A number of state high courts have adopted the same rule. See, e.g., State v. Sinnard, 543 P.3d 525, 544 (Kan. 2024) (permitting lay testimony "so long as the witness does not" provide a "technical opinion regarding … the location of a cell phone at a particular time, an explanation as to why a cell phone connected to a specific cell tower over another, or an explanation of apparent discrepancies in call records"); Boothby, 951 N.W.2d at 876 (explaining "growing majority of jurisdictions" recognize distinction between lay witness testimony about historical cell site data, such as plotting factual data on a map, and expert testimony relying on "specialized knowledge," such as how cell towers work, why calls connect to one tower over another, or coverage area of such towers.) (cleaned up); Torrence v. Commonwealth, 603 S.W.3d 214, 227-28 (Ky. 2020) (following decisions from "Ohio, Tennessee and Indiana [that] permit lay testimony for marking maps with data from cell phone records"); State v. Blurton, 484 S.W.3d 758, 771 (Mo. 2016) ("[R]eading the coordinates of cell sites from phone records and plotting them on a map is not a scientific procedure or technique because cell phone records are factual records and no special skill is required to plot these records.") (cleaned up); Burnside v. State, 352 P.3d 627,

636 (Nev. 2015); see also, e.g., State v. Johnson, 110 N.E.3d 800, 808 (Ohio Ct. App. 2018); Perez v. State, 980 So. 2d 1126, 1131-32 (Fla. Dist. Ct. App. 2008).

To be sure, the courts of Maryland have come out the other way. State v. Payne, 104 A.3d 142, 154-55 (Md. 2014).[5] But that only underscores the need for certification, so that this Court can clarify where New Jersey law falls. See R. 2:12-4. That is, the State, defendants, and trial courts alike need a ruling in New Jersey to instruct whether the testimony regarding the location of cell-sites derived from cellphone records may come from a lay witness, as Martin and an array of state and federal courts have held, or must come from an expert, as the Maryland courts have ruled. Only this Court can provide the answer.

[5] There is also a more pronounced split about the extent to which lay witness testimony may in fact go further and address the workings of cellular networks, including why a cellphone connected to one tower and not another, or the degree to which tower location data bears on the precise location of a phone at a given time. Compare, e.g., Sinnard, 543 P.3d at 543-44 (holding lay witnesses "may provide general information about how cell towers function," in addition to their location, and collecting case law splitting on that broader question), with, e.g., U.S. v. Natal, 849 F.3d 530, 536 (2d Cir. 2017); Evans, 892 F. Supp. 2d at 955 n.5; see also State v. Johnson, 797 S.E.2d 557, 566 (W. Va. 2017). But there is broader agreement that where, as here, testimony regarding cell-tower location data does not "try to pinpoint the defendants' exact location" or otherwise overstep into the technicalities of cellular networks, a lay witness may offer it. Blurton, 484 S.W.3d at 772; cf. State v. Carrillo, 399 P.3d 367, 376 (N.M. 2017). That is all the Court need address in this case.

B. The Decision Below Wrongly Conflicts With This Court's Precedent.

An answer from this Court is also necessary because the decision below also relied on a misunderstanding of this Court's decision in Burney, 255 N.J. 1. The decision below acknowledged that Burney is not directly on point, and thus purported to look only to its "reasoning" for "guid[ance]." (Ppa17). But it proceeded to ground its holding squarely on Burney—failing to engage with any other authority addressing the admissibility of this lay testimony, cf. (Pb26-28)—despite the fact that Burney does not dictate the result, see (Ppa17-20). That both resulted in an erroneous holding and created confusion about Burney's proper scope.

Burney did not address what types of limited testimony regarding cell-site location data can be offered by a lay witness, but instead assessed the reliability of particular expert testimony about how cellular networks operate. There, the State's expert, a Federal Bureau of Investigation (FBI) Special Agent, "used defendant's cell phone records to create maps showing the cell towers to which defendant's phone made contact on the night of the robbery." 255 N.J. at 5. But the Agent also opined that the relevant cell towers "had an approximate coverage range with a radius of about one mile," which he "based solely" on a "rule of thumb"—that is, a "'good approximation' based on his training and experience." Ibid. Applying that rule of thumb, he further opined that a certain tower's radius

"would reasonably include the crime scene," which was "at the 'outer boundary' of [the tower's] estimated coverage area," even while acknowledging that "two other cell towers were closer to, and in the range of, the crime scene." Id. at 12-13 (emphasis in original). This Court held that because the "'rule of thumb' testimony … was unsupported by any factual evidence or other data," and because the Agent "failed to account adequately for the potential flaws in his 'rule of thumb' opinion," it "constitute[d] an improper net opinion." Id. at 25. Nowhere did Burney address, let alone render a holding on, the applicability of N.J.R.E. 701 and the permissible scope of lay testimony.

The Appellate Division misunderstood the scope of Burney. The analysis that bears on the reliability of expert testimony under N.J.R.E. 702 and N.J.R.E. 703 is distinct from the inquiry as to lay testimony under N.J.R.E. 701. Compare Burney, 255 N.J. at 23 (setting forth the standard for expert testimony, including the qualifications "to offer a 'scientific, technical, or ... specialized' opinion that will assist the trier of fact"), with State v. Allen, 254 N.J. 530, 543-47 (2023) (describing the "perception" and "helpfulness" prongs of N.J.R.E. 701, which require lay testimony be "limited to what was directly perceived by the witness," and "assist the trier of fact"). In other words, Burney specifically involved the kind of testimony not present here—testimony not merely as to the locations of the cell towers, but information about cellular networks and specific inferences

as to the location of the cell phone. And it asked whether an expert's testimony on that issue could be based on a "rule of thumb" consistent with the scientific or technical facts required by N.J.R.E. 702 and N.J.R.E. 703. It has no bearing on the scope of lay testimony in merely plotting out cell towers.[6]

Indeed, the panel's misinterpretation of Burney led it to adopt an incorrect legal rule. The Appellate Division wrongly believed that Detective Leyman's testimony was impermissible under N.J.R.E. 701 based upon a false construct: it reasoned that cell-tower location data either must bear on the phone's location, in which case it is beyond the ken of the average juror, or is so "clear" and self-explanatory that it "does not [even] aid the jury." (Ppa19). But that erases the considerable middle ground between those poles. For one, Leyman's testimony aided the jury. Although jurors could have waded through hundreds of pages of phone records on their own to create the same map of tower locations, Leyman's testimony helpfully highlighted the relevant portions, showed the jury how to

[6] Indeed, Burney relied in part on Evans, 892 F. Supp. 2d 949, one of the often-cited decisions holding that lay testimony regarding cell-tower location data is permissible. See Burney, 255 N.J. at 24. Evans held that testimony "concerning maps … indicating the location of certain cell towers used by [the defendant's] phone during the course of the conspiracy in relation to other locations relevant to the crime" need not come from an expert. 892 F. Supp. 2d at 953. It viewed as a separate issue the other portions of that testimony, which concerned "how cellular networks operate" and about the coverage range of particular cell sites, which it held did require expert testimony. See id. at 954, 956-57.

read the records, plotted the towers' locations, and juxtaposed those locations to the locations of the victim's path of travel based on other sources of evidence. [8T136-11 to 173-18]. As a lay witness, his ability to read records did not need to be "superior" to the jury's. State v. Singh, 245 N.J. 1, 19 (2021).

For another, Leyman's testimony did not need to come from an expert because it did not venture into the operations of cellular networks or opine on the precise location of defendant's phone. See (8T148-17 to 172-22). In fact, Leyman agreed on cross-examination that phone records do not establish who "actually" placed the phone calls at issue, where the phone was "exactly" located at the time of the calls, or the "distance of the phone" from a tower to which it connected. (9T90-3 to 25); see also (13T12-21 to 13-4) (trial court holding that "all [Leyman] did was reiterate the information received from the cell tower provided. It was not an interpretation…. It was just that on this time that cell tower pinged off that phone."). Thus, Leyman did not opine on scientific or specialized matters of the type at issue in Burney.

Moreover, the trial court did not abuse its discretion in instructing the jury that it could draw an inference from Leyman's testimony together with other evidence regarding the location of defendant's cellphone. See (Ppa19-20). "An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence." Model Jury Charges

(Criminal), "Circumstantial Evidence" (rev. Jan. 11, 1993). Inferences are merely "permissive deductions." State v. Humphrey, 183 N.J. Super. 580, 584 (Law Div. 1982), aff'd, 209 N.J. Super. 152 (App. Div. 1986). The State does not need to establish the truth of any one inference beyond a reasonable doubt, State v. Brown, 80 N.J. 587, 592 (1979), so long as "each of the interconnected inferences necessary to support a finding of guilt beyond a reasonable doubt is reasonable on the evidence as a whole." State v. Samuels, 189 N.J. 236, 246 (2007) (cleaned up). And juries may also draw inferences concerning crucial components of guilt. Ibid.; see also State v. Gantt, 101 N.J. 573, 590 (1986) (noting such inferences are "consistent with prior law in New Jersey"); Graham, 796 F.3d at 351 (cell-site location data "support[ed] reasonable inferences about [defendant's] locations at specific points in time.").

Indeed, this case is a perfect example of the errors in the panel's new rule. The Appellate Division was concerned that Leyman's testimony as to cell-tower data alone gave rise to a "likely inference" of the location of defendant's phone. (Ppa19). But the trial court instructed that such inference could be drawn only from that portion of testimony "in connection with" other evidence, (11T139-12 to 16), and "[o]ne of the foundations of our jury system is the presumption that jurors listen to and are guided by the court's instructions." State v. Cooper, 256 N.J. 593, 607 (2024). Moreover, the evidence presented to the jury, taken as a

whole, permitted an inference that on the morning of the murder, defendant's cellphone traveled along a path roughly similar to that of the victim's vehicle, and thus that defendant was located at or around the murder scene at the relevant time—evidence that included the cell tower records themselves, which all agree were permissibly introduced. Leyman's testimony simply explained, based on the cell-tower location data and surveillance footage of the victim's vehicle, that defendant's sixteen calls connected to ten different towers along the same route of travel as the victim's vehicle. See (8T148-17 to 172-22). The average juror can grasp that there is a geographic relationship between a cellphone and a tower to which it connects, even if tower location alone does not directly prove phone location, as the trial court instructed. See (Db33; 8T152-9 to 17; 8T183-25 to 184-3).

Given the legal errors below and misinterpretation of Burney, certification is necessary to address the acceptable scope of lay testimony regarding cell-site location data, and how jurors may permissibly use it. See R. 2:12-4.

C. The Interests of Justice Warrant Certification.

Not only did the Appellate Division deepen a division of authority based on a misinterpretation of Burney, but its error was also on a matter of recurring importance, and in a case that implicates the interests of justice.

As to the former, which witnesses may testify as to cell tower location is a question of tremendous practical consequence. Indeed, even by 2018, the U.S. Supreme Court had identified that there were "396 million cell phone service accounts" for "a Nation of 326 million people." Carpenter v. United States, 585 U.S. 296, 300 (2018). It is therefore no surprise that testimony relating to cell tower data is increasingly used in criminal trials as one piece of corroborating evidence regarding a defendant's location. And it is no surprise that so many federal and state courts have thus had to confront this question in recent years. See Subpoint A, above. The recurring nature of this testimony, and need for clarity as to who may introduce it, make this case of general public importance.

This is also a case involving the interests of justice. The decision below involved the reversal for a conviction for first-degree murder—in this case, the murder of a kind stranger who offered defendant a ride home. That conviction was supported other evidence too, including corroborating DNA evidence. See (6T133-21 to 25; 6T220-9 to 223-22; 9T253-9 to 13). And it involved an element of unfair surprise, because the State had actually sought to qualify Leyman as an expert but terminated those efforts when defense counsel agreed Leyman could provide "lay witness testimony regarding his review, interpretation, and plotting of the location of cell towers on a map from the defendant's historical cell site data records." (6T8-23 to 9-13; Da6); see also

(7T241-8 to 17) (not objecting during Leyman's testimony, but simply preserving an objection for appeal). Invalidating defendant's convictions based on testimony agreed to below—and based on erroneous conclusions of law out of step with a growing view of courts across the nation—calls for review.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition.

Respectfully submitted,

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DATED: October 8, 2024