

# Unlocking the Power of Cellphone Records in Kentucky Civil Litigation

## *Practical strategies for obtaining, interpreting and admitting digital evidence under the Stored Communications Act in Kentucky*

Kevin Horan

### At a Glance

Cellphone records are becoming indispensable in civil litigation, from motor vehicle and wrongful death actions to employment and family law disputes. Understanding the Stored Communications Act and Kentucky discovery rules is essential to obtaining usable evidence. This article outlines the types of data available, the legal hurdles to obtaining them and practical strategies for Kentucky litigators.

### Why Cellphone Records Matter in Civil Cases

Cellphone records are no longer confined to police investigations. In Kentucky civil courts, they increasingly play a decisive role. From proving or disproving distracted driving in auto cases to clarifying timelines in family or contract disputes, digital breadcrumbs can be powerful.

But getting and using these records is not straightforward. The federal Stored Communications Act (SCA) sets strict limits, and Kentucky's discovery rules provide only certain tools for civil practitioners.

### What's Out There — And Why It Matters

Cellphone evidence generally falls into several categories:

- Call Detail Records (CDRs): Logs of calls and texts, showing time, number and duration, but not content.
- Cell Site Location Information (CSLI): Which tower and sector handled a call or data session; useful for estimating location.
- Timing Advance (TA): Where available, an estimate of the phone's distance from the tower.
- App and Cloud Data: Google Timeline, Apple "Significant Locations," WhatsApp logs or social media account data; often requires consent or direct login credentials.

Retention periods vary, so issuing preservation letters early is essential.

### The Legal Hurdles — and How to Clear Them

The Stored Communications Act prohibits carriers from releasing subscriber records without consent—even with a subpoena. Kentucky courts, like others, follow this federal limitation.

Kentucky practitioners can use:

- Subscriber Consent: the most direct route, using carrier-provided forms.
- Court-Compelled Consent: courts may order a party to sign consent forms under CR 34 or CR 37.
- Third-Party Discovery: if a non-carrier (such as an employer) controls the records, CR 34 or CR 45 subpoenas may apply.
- Preservation Requests: while Kentucky does not allow pre-litigation subpoenas, counsel should move quickly to secure preservation orders once litigation is reasonably anticipated.

### Privacy and Kentucky Case Law

The U.S. Supreme Court in *Carpenter v. United States* recognized a reasonable expectation of privacy in historical CSLI, requiring warrants for law enforcement access. The Kentucky Supreme Court followed this in *Commonwealth v. Reed*, applying *Carpenter* to state prosecutions and confirming CSLI is protected information. Civil courts are likely to adopt the same privacy-protective approach — allowing discovery but limiting scope to ensure relevance and proportionality.

### Case Spotlight: Motorcycle Crash and Driver Deception

In a Kentucky civil case, plaintiff's counsel represented a motorcyclist permanently injured when struck by a truck making an illegal turn. The truck driver stated that at the time of the crash, he had just returned to duty after taking the previous 24 hours off. According to the driver, while he was resting, another employee used his truck to make and receive deliveries.

Plaintiff's counsel sought to test this account by moving for a court order compelling production of the driver's cellphone records. The driver provided written consent, and the court also issued an order authorizing release of the data. Subsequent analysis of those records revealed that the driver's story was false. The data showed that he had, in fact, been with his truck, making deliveries and picking up products across Kentucky in the 24 hours before the accident. This not only undercut his credibility but also demonstrated a violation of federal and state commercial driver regulations governing rest periods.

The analysis exposed deception and provided leverage for settlement. The case illustrates how cellphone records can be decisive in civil litigation, both for proving or disproving statements and for establishing liability beyond the immediate accident itself.

Kevin R. Horan is a retired FBI Supervisory Special Agent and former Assistant Prosecutor. He cofounded Precision Cellular Analysis, specializing in historical cellphone record analysis, expert testimony and legal training. He has investigated and testified in hundreds of cases involving cellular data, location analysis and digital evidence. He regularly trains attorneys and law enforcement and has authored numerous reports and articles on the use of cellphone data in litigation. ■



### Practical Takeaways for Kentucky Litigators

- Subpoenas alone won't work against carriers — secure consent.
- Move quickly to preserve data.
- Be prepared for courts to narrow the scope of discovery.
- Use experts to interpret and explain CSLI and metadata to the court.



RETIRED JUDGE  
**TARA HAGERTY**  
FAMILY LAW MEDIATION

JUDGETARAHAGERTY@GMAIL.COM  
TARAHAGERTY.COM • 502.558.7991



SMITH & HOSKINS PLLC

Anna S. Rueff, Mediator

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(502) 899-5220 | [arueff@smith-hoskins.com](mailto:arueff@smith-hoskins.com)

[www.smith-hoskins.com](http://www.smith-hoskins.com)

