

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

State of Minnesota ,

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NOTICE OF MOTION AND MOTION

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Plaintiff,

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vs.

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BRIAN GEORGE FITCH, SR.

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Court File No. 19HA-CR-14-2677

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Defendant.

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TO: THE HONORABLE MARY THEISEN, JUDGE OF DISTRICT COURT; PHILLIP PROKOPOWICZ, CHIEF DEPUTY DAKOTA COUNTY ATTORNEY; RICHARD DUSTERHOFT, CRIMINAL DIVISION HEAD, RAMSEY COUNTY ATTORNEY'S OFFICE

NOTICE OF MOTIONS

PLEASE TAKE NOTICE, that on the 12th day of January, 2015, at 9:00 a.m., or as soon thereafter as the matter may be heard, the defendant, Brian Fitch, by and through his counsel, will move the Court as follows:

MOTIONS

1. To disclose the identity of the Confidential Informant 13-X-72 who spoke to BCA Agents Hanegraaf and Redman on 7/30/14. This informant may have material, exculpatory information and therefore must be disclosed, pursuant to *Brady v. Maryland*, 376 U.S. 83, 87 (1963) and *State v. Rambahal*, 751 N.W.2d 84 (Minn. 2008);
2. To preclude the use of any *Spreigl* evidence in this case, due to lack of proper notice from the State, pursuant to Minnesota Rule of Criminal Procedure 7.02 and Minnesota Rule of Evidence 404(b). Additionally, the proposed evidence is unfairly prejudicial and lacks probative value, pursuant to Minnesota Rule of Evidence 403;

3. To preclude any expert testimony by the Sprint Custodian of Records, due to the lack of notice or any report of the proposed testimony, as required by Rule of Criminal Procedure 9.01, subd. 1(4)(c);
4. To preclude any expert testimony related to cell phone records and cell phone towers by Lt. Matthew Swenke. Lieutenant Swenke is not qualified as an expert in any field relevant to interpreting the cell phone records under Minnesota Rule of Evidence 702;
5. To preclude opinion testimony by Officer Jamie Sipes regarding the trajectory of the bullet labeled "Item 27," recovered from the Hyundai Veracruz. The analysis of a projectile's strike impression to determine its original path of flight or trajectory employs the use of measuring devices and mathematical calculations. No notes or documentation of the examination including measurements obtained and relied upon by Officer Sipes (if he did use or rely upon measurements) or his mathematical calculations have been disclosed or referenced in his notes; therefore meaningful cross-examination on his work is not possible. There is no foundation offered for his opinion. Finally, Officer Sipes is not qualified as an expert in the subject matter under Minnesota Rule of Evidence 702;
6. To preclude opinion testimony by Officer Jamie Sipes regarding the trajectory of the bullet/bullet hole labeled "PSHR" recovered from the Hyundai Veracruz. The analysis of a projectile's strike impression to determine its original path of flight or trajectory employs the use of measuring devices and mathematical calculations. No notes or documentation of the examination including measurements obtained and relied upon by Officer Sipes (if he did use or rely upon measurements) or his mathematical calculations have been disclosed or referenced in his notes; therefore meaningful cross-examination on his work is not possible. There is no foundation offered for his opinion. Finally, Officer Sipes is not qualified as an expert in the subject matter under Minnesota Rule of Evidence 702;

7. To preclude any testimony regarding the firearm involved in the case having been stolen, including any reference to a "Russian mafia" based on the fact it is irrelevant and highly prejudicial. Additionally, the evidence should be suppressed based on late disclosure from the State. The State has collected evidence regarding this since September 2014 and did not disclose information to the defense until January 7 and 8, 2015;
8. To amend the complaint to add three counts of the lesser included offense, Assault in the Second Degree pursuant to Minn. Stat. §609.222, Subd. 1, against Officer Timothy Bohn, Sergeant Don Benner and Commander Karsten Winger.
9. To amend the complaint to add the lesser included offense of Reckless Discharge of a Firearm pursuant to Minn. Stat. §609.666, Subd.1a(2).

These motions are based on all records, files, and argument the Court may entertain.

Respectfully Submitted,

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DATED: this ___ day of January, 2015